BOARD OF WATER SUPPLY of the COUNTY OF KAUA'I

SPECIAL BOARD MEETING

Board Room, Second Floor, Department of Water
4398 Pua Loke Street, Līhu'e, Kaua'i, Hawai'i 96766

Monday, December 2, 2019
10:00 a.m. or soon thereafter

A. CALL TO ORDER

B. ROLL CALL

C. MEETING MINUTES
Review and approval of:
Regular Board Meeting – October 25, 2019
Finance Committee Meeting – November 4, 2019
Special Board Meeting – November 4, 2019

Review and approval of:
Executive Session - Special Board Meeting – November 4, 2019

D. CORRESPONDENCE/ANNOUNCEMENTS/PUBLIC TESTIMONY
1. Correspondence from Ms. Dawn Ikei to Customer Relations Assistant Norma Imada for her excellent customer service at the Department of Water, dated October 31, 2019

E. BOARD COMMITTEE & PERMITTED INTERACTION GROUP REPORTS

F. OLD BUSINESS
1. *Manager's Report No. 20-21* – Discussion and Possible Action to Adopt Board Policy No. 31 for the Application of the Facilities Reserve Charge to Guest Houses (Update)

2. Department of Water's Capital Improvement Projects for 2020-2021 (Update)

G. NEW BUSINESS
1. *Manager's Report No. 20-25* - Discussion and Receipt of the Department of Water's Draft Audit Financial Statements and Independent Auditor's Report by Accuity, Inc. for Fiscal Year 2019 and 2018

2. *Manager's Report No. 20-26* - Discussion and Possible Action for As-Needed Construction Management Services for the Department of Water, Second Amendment to Contract No. 637, Job No. 15-07 with RM Towill Corporation, Hanapēpē Waterline Project for a time extension to September 30, 2020 and additional funding in the amount of $440,000.00

H. NEW BUSINESS (cont'd)

3. *Manager's Report No. 20-27* - Discussion and Possible Action for Job No. 17-10, Water Plan 2020 No. KW-07, Rehabilitate Paua Valley Tank No.1, 0.5 MG Concrete, Kekaha Water System for additional construction funding in the amount of $975,000.00

4. *Manager's Report No. 20-28* - Discussion and Possible Action to request Board Approval to enter into a Memorandum of Agreement between the Department of Public Works, County of Kaua'i and the Board of Water Supply, County of Kaua'i for the Maluhia Road and Kōloa Road Improvements Project

5. Election of Officers for 2020

6. Board Meeting Dates for 2020

7. *Manager's Report No. 20-34* - Discussion and possible action related to the delegation of duties to Department personnel during the vacancy of the Manager and Chief Engineer

I. CONSENT CALENDAR

1. *Manager's Report No. 20-29* - Discussion and Possible Action on Board Approval for Governing Law in Licensing Agreement with Microsoft Software License Terms for Microsoft Windows server 2016 Standard and DataCenter between the Board of Water Supply, County of Kaua'i, and Microsoft Corporation

2. *Manager's Report No. 20-30* – Discussion and Possible Action on Board Approval for Indemnification, Governing Law in the Software Licensing Agreement for WIN-911 Software between the Board of Water Supply, County of Kaua'i, and WIN-911 Software

3. *Manager's Report No. 20-31* - Discussion and Possible Action on Board Approval for Governing Law, Indemnification, and Future Costs in the Master End User License Agreement for AVEVA Software between the Board of Water Supply, County of Kaua'i, and AVEVA

4. *Manager's Report No. 20-32* - Discussion and Possible Action on Board Approval for Governing Law in Licensing Agreement with VMWARE End User License Agreement between the Board of Water Supply, County of Kaua'i, and VMWARE

5. *Manager's Report No. 20-33* – Discussion and Possible Action on Board Approval for Licensing Agreement and Governing Law with IBM International between the Board of Water Supply, County of Kaua'i, and IBM International

J. STAFF REPORTS MONTHLY

1. Discussion and Receipt of the Kaua'i County Water Department's Statement of Revenues and Expenditures
   a. October Monthly Summary Budget
   b. Accounts Receivable Aging Summary

J. STAFF REPORTS MONTHLY (cont'd)

2. Discussion and Receipt of the Report by the Information & Education Specialist on Public Relations Activities

3. Discussion and Receipt of the Chief of Operation's Summary Report on Operational Activities

4. Discussion and Receipt of the Manager and Chief Engineer's Monthly Update Regarding Activities of Note of the DOW

K. EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statues (HRS) §92-7(a), the Board may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a).

Pursuant to Hawai'i Revised Statutes § 92-4 and § 92-5(a)(2), the purpose of this Executive Session is for the Board to consider the hiring, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held.

1. Discussion and Possible Action on the Board of Water Supply executing a contract for employment services pursuant to HRS sec. 76-77 (7), (8), or (12)

L. TOPICS FOR NEXT BOARD OF WATER SUPPLY MEETING (December 2019)

1. Resolution *(12/19)* Mahalo and Aloha Board Member, Laurie Ho
2. Committee Appointments by 2020 Incoming Chair for Rules Committee, Finance Committee, Committee of the Whole

M. TOPICS FOR FUTURE BOARD OF WATER SUPPLY MEETINGS

1. Department of Water Performance Audit (Update)
2. Table of Organization Workshop
3. Discussion and Possible Action to establish Fiscal Policies and Procedures
4. Report of the Finance Committee of the Kaua'i County Board of Water Supply, Financial Management Planning and Water Rate Analysis for the Department of Water's FY2020 through FY2024 held on November 4, 2019
5. *Manager's Report No. 19-60* - Discussion and Possible Action for Water Plan 2020 Project No. WK-39 Drill & Develop Kapa'a Homesteads Well No. 4 & Package A-Well and Drainage Package of Water Plan 2020 Project No. WK-08, Job No. 02-14, Kapa'a Homesteads 325' Tanks, Two 0.5 MG Tanks Projects, Kapa'a, Kaua'i, Hawai'i for additional construction funding in the amount of $140,843.18 *(Update)*
6. *Manager's Report No. 20-24* – Discussion and Possible Action for the Proposed Amendment to the Memorandum of Agreement (Drainage) between Godwin M. Esaki and Janet M. Esaki, individually and as trustees of the Godwin M. Esaki Revocable Living Trust, and the Janet M. Esaki Revocable Living Trust, TMK: (4) 4-6-011:125, Kapa'a, Kaua'i, Hawai'i) and the Board of Water Supply, dated August 21, 2017

N. UPCOMING EVENTS

1. DOW's Annual Meeting (December 13, 2019)
2. HWWA & HWEA Pacific Water Conference (February 2-6, 2020)
3. AWWA ACE 20th Conference (June 14-17, 2020, Orlando, Florida)
4. AWWA HWWA & HWEA 6th Annual Joint Conference *(TBA)*

O. NEXT WATER BOARD MEETING

1. Friday, December 20, 2019, 10:00 a.m.
2. Friday, January 24, 2020, 10:00 a.m.
3. Friday, February 28, 2020, 10:00 a.m.
4. Friday, March 27, 2020, 10:00 a.m.

P. ADJOURNMENT

PUBLIC TESTIMONY

The Board is required to afford all interested persons an opportunity to present testimony on any agenda item. At each Board meeting, the Board will accept oral and written testimony on any agenda item at item E Correspondence/Announcements/Public Testimony.

If any member of the public wishes to submit written testimony, please submit the written testimony to Edie Ignacio-Neumiller, the Commission Support Clerk via email at **eineumiller@kauaiwater.org** at least two (2) business days prior to the meeting and the Commission Support Clerk will provide copies to the Board members or bring eight (8) copies with you the day of the meeting.

SPECIAL ASSISTANCE

If you need an auxiliary aid/service, other accommodation due to a disability, or an interpreter for non-English speaking persons, please contact Edie Ignacio-Neumiller at (808) 245-5406 or **eineumiller@kauaiwater.org** as soon as possible. Requests made as early as possible will allow adequate time to fulfill your request. Upon request, this notice is available in alternate formats such as large print, braille, or electronic copy.

Draft Minutes

MEETING MINUTES
BOARD OF WATER SUPPLY
October 25, 2019

The Board of Water Supply, County of Kaua'i, met in regular meeting at the Board Conference Room in Līhu'e on Friday, October 25, 2019. Chair Thomas Canute called the meeting to order at 10:05 a.m. The following Board members were present:

BOARD: Mr. Thomas Canute, *Chair*
Ms. Laurie Ho
Mr. Lawrence Dill
Mr. Kurt Akamine
Mr. Elesther Calipjo

EXCUSED: Mr. Ka`aina Hull

Quorum was achieved with 5 members present at Roll Call.

STAFF:

Mr. Bryan Wienand	Mr. Darrell Acob
Mr. Ryan Smith	Mr. Dustin Moises
Mrs. Marites Yano	Mr. Valentino Reyna
Mrs. Mary-jane Akuna	Mr. Eddie Doi
Mr. Eric Fujikawa	Mr. Keith Aoki
Mrs. Jonell Kaohelaulii	Mr. Andrew Canavan
Mr. Jason Fujinaka	Mrs. Brandi Ventar
Mr. Jas Banwait	Ms. Christine Erorita
Deputy County Attorney Mahealani Krafft	Mr. Michael Hinazumi

GUESTS: Councilwomen, Felicia Cowden

C. ACCEPTANCE OF AGENDA

Mr. Akamine moved to accept the Agenda as distributed; seconded by Mr. Dill; with no objections, motion carried with 5 ayes.

D. MEETING MINUTES

Review and approval of:
Regular Board Meeting – September 27, 2019

Ms. Ho moved to approve the Regular Board Meeting minutes of September 27, 2019; seconded by Mr. Calipjo; with no objections, motion carried with 5 ayes.

Workshop – Baseyard Master Plan Presentation – October 7, 2019

Ms. Ho moved to approve the Workshop – Baseyard Master Plan Presentation minutes of October 7, 2019; seconded by Mr. Calipjo; with no objections, motion carried with 5 ayes.

Review and approval of:
Executive Session – September 27, 2019

Mr. Calipjo moved to approve the Executive Session minutes of October 25, 2019; seconded by Mr. Dill; with no objections, motion carried with 5 ayes.

E. CORRESPONDENCE/ANNOUNCEMENTS/PUBLIC TESTIMONY

None.

F. BOARD COMMITTEE & PERMITTED INTERACTION GROUP REPORTS

None.

G. OLD BUSINESS

1. *Manager's Report No. 19-60* - Discussion and Possible Action for Water Plan 2020 Project No. WK-39 Drill & Develop Kapa'a Homesteads Well No. 4 & Package A-Well and Drainage Package of Water Plan 2020 Project No. WK-08, Job No. 02-14, Kapa'a Homesteads 325' Tanks, Two 0.5 MG Tanks Projects, Kapa'a, Kaua'i, Hawai'i for additional construction funding in the amount of $140,843.18 *(Update)*

Received for the Record was a letter from Mr. Godwin M. Esaki dated October 24, 2019 requesting a deferral on related matters to this project to consult with legal counsel.

Chair Canute moved to defer to the October Board meeting *Manager's Report No. Manager's Report No. 19-60* - Discussion and Possible Action for Water Plan 2020 Project No. WK-39 Drill & Develop Kapa'a Homesteads Well No. 4 & Package A-Well and Drainage Package of Water Plan 2020 Project No. WK-08, Job No. 02- 14, Kapa'a Homesteads 325' Tanks, Two 0.5 MG Tanks Projects, Kapa'a, Kaua'i, Hawai'i for additional construction funding in the amount of $140,843.18 *(Update);* seconded by Ms. Ho; with no objections, motions carried with 5 ayes.

2. *Manager's Report No. 20-24* – Discussion and Possible Action for the Proposed Amendment to the Memorandum of Agreement (Drainage) between Godwin M. Esaki and Janet M. Esaki, individually and as trustees of the Godwin M. Esaki Revocable Living Trust, and the Janet M. Esaki Revocable Living Trust, TMK: (4) 4-6-011:125, Kapa'a, Kaua'i, Hawai'i) and the Board of Water Supply, dated August 21, 2017

Chair Canute moved to defer to the October Board meeting *Manager's Report No. 20-24* – Discussion and Possible Action for the Proposed Amendment to the Memorandum of Agreement (Drainage) between Godwin M. Esaki and Janet M. Esaki, individually and as trustees of the Godwin M. Esaki Revocable Living Trust, and the Janet M. Esaki Revocable Living Trust, TMK: (4) 4-6-011:125, Kapa'a, Kaua'i, Hawai'i) and the Board of Water Supply, dated August 21, 2017; seconded by Ms. Ho; with no objections, motions carried with 5 ayes.

H. NEW BUSINESS

1. *Resolution No. 20-01* - Discussion and Adoption of Resolution No. 20-01, Mahalo Department of Water Participants 2019 Make a Splash Water Festival

Chair Canute deferred reading all of the volunteer names but continued to read Resolution No. 20-01 and thanked all of the volunteers. A photo op followed with the Board members and volunteers.

Ms. Ho moved to approve & adopt Resolution No. 20-01, Mahalo Department of Water Participants 2019 Make a Splash Water Festival; seconded by Mr. Dill; with no objections, motions carried with 5 ayes.

2. *Manager's Report No. 20-16* – Discussion and Possible Action for the Board to approve Concept B in the Master Plan of the Department of Water's former Administration Building, Baseyard, and Micro Lab

BACKGROUND:

Manager Wienand recommended the Board approve and to move forward with Concept B. At the Workshop, three of the four members were ready to approve Concept B (Mr. Dill & Mr. Calipjo was excused). The current baseyard was assessed for current and future spatial needs and resources. At this time, no funding is being requested. Parking shortage is expected in the next few years regarding the upcoming affordable housing project adjacent to Department of Water building by the end of next year. Parking that will be eliminated is mostly used by Operations. This plan will be done in phases and is intended to provide for the next 30 years. Currently, the master plan is at a 70% phase of conceptual design. The magnitude of cost is high but will be spread out over approximately 10 years (2020 – 2030). Staff interviews, a charrette, and a Board workshop

were held to gather with input from a wide variety of sources. Manager Wienand referred to Page 129 for a detailed comparison summary of Concept A, B, & C.

Concept A:
- Adapting existing structures to be more resilient
- Maintain the old Administration building
- Re-grade storm water retention field to the north for a new Operations and garage
- A new multi-level parking garage over the existing parking lot
- Highest cost and longest construction time
- Staff did not recommend this concept

Concept B:
- Lowest cost and best demolition and using existing space
- New Operations warehouse; will exist from the existing warehouse
- Demo old Administration building for additional parking
- Storm water retention to the north would potentially be re-graded with a retaining wall to accommodate more parking in that area.
- Benefit: Department is looking for a long-term lease for parking on the Kukui Grove side of this property to eliminate building new parking and the storm water retention field
- Shorter construction time line
- Benefit: new Operation positions are without desk space; allows temporary office space on the 2nd floor of the Micro Lab for Operations staff. Hiring could move forward to fill the new office space
- Maintains phased demolitions
- Maintain Operations throughout a 10 year period during construction with low impact to customers

Concept C:
Would have a significant three story parking structure with in the baseyard; could include new parking to for Operations and staff, new office space
Benefit: Nothing would be done with the storm water retention area
Lowest construction time line
Challenge: Getting approvals for a three story parking structure

Manager Wienand intends to approach the State legislature for additional design funding in 2020. Funding could also be through the rate study in 5 to 10 year increments, but there will need to be decisions made now to face future impacts. Separate meetings with the Board members and with staff were offered by the Manager. The Manager recommended moving forward with Concept B and to stop working on Concept A & C with the consultant, then move forward with the design.

DISCUSSION:
Mr. Dill requested an explanation on Concept B and regarding the filling of the storm water retention area, how is drainage adjusted? Manager Wienand said that first, additional parking may be avoided if the DOW can work out a lease agreement for parking next to the Department of Water (DOW) on the Kukui Grove side. If not, and parking is built in the field, the storm water retention would be relocated. Ms. Ho mentioned the golden arches buried would have to dug out, raised up; then rebury it.

Mr. Calipjo inquired if the Department is anticipating any grants. Manager Wienand said the funding strategy for now is to request funding from the legislature for the design which is estimated at approximately $1.5M. Construction phases would be looked at next with five or six phases spread out over approximately 7 years. The Department could go back to the legislature to request for additional funding for each of the phases. The rate study would not include construction funds without Board approval. More discussions should be held during the rate study meetings, but today's focus is on the conceptual plan.

Mr. Dill asked if Phase 1 & 2 is a single phase? Manager indicated that temporary offices in the Mirco Lab would not be identified as a construction phase and could be done internally. Mr. Dill mentioned if there are pauses between the phases for funding, would there be a fully functioning Water Department? The Manager referred to Page 107 for Phases 1 & 2 that would go together on the demolition of the old Administration building and construction of the new Operations garage. The Department would still be functioning if the Department had to wait for funding. Phase 3 may be eliminated if the Department could find additional off-site parking that is close and less expensive. Phases 4 & 5 would be one construction contract; Phase 6 is stand alone. Refer to Page 116 for the cost of each of the phases. Phase 1 - $10.4M, Phase 2 - $.75M, Phase 3 - $4.9M, Phase 4 – $6.1M, Phase – 5 $3.9M & Phase 6 – $5.8M (2022 to 2029). Every phase of the Master Plan ensures that the DOW can continue to function continuously.

Mr. Calipjo commented out of the $11.M, could Phase 1 be grant funded for $5M from the State? Manager Wienand stated the intent for today is not to discuss the funding in detail, but to answer the question it could be debt funded or rate funded. This will not be added to the current rate study. Funds would be identified for construction in fiscal year 2022 or 2023. If the Department is not able to get funds from the legislature, the rate study could be considered. Operations staff volunteered to do the construction management so this project would not have to be delayed in the base yard. The Manager did not recommend adding additional funds to the rate study for the base yard at this time. A full analysis has not been done in considering satellite base yards on the east and west side of the island.

Mr. Dill agreed with the Manager's recommendation and that this project is not funded by the rate payers. Mr. Dill asked what future growth capacity would the new facility accommodate? Would this handle the Department's needs through 5, 20, 30 or 40 years? Manager Wienand said the concept design is for 30 years. Parking stalls would be for approximately 80 staff which includes the existing parking at the new Administration building. Parking would be for 55 fleet vehicles, plus staff parking with future growth (refer to parking on Page 103). Assumptions have been made to ensure the parking needs are reasonable and minimize costs.

Ms. Ho mentioned Board member Mr. Ka`aina Hull's concern was that the design the Department chooses would not pass Planning Department because the Planning Commission wants a building up front and parking in the back. Ms. Ho suggested to flip the building and parking design. Civil Engineer Mr. Eric Fujikawa mentioned it is zoned residential with an exemption as light industrial. Concerns discussed: liability with parking & traffic on affordable housing with children in the area and the base yard. Real Property shows the property as commercial with the use permit. The Manager feels it should be considered light industrial with affordable housing. Mr. Dill asked if the parking can be moved behind the building and if Phase 1 & 2 could put the parking behind the building? Manager Wienand said there would be challenges based on the flow of traffic.

Mr. Akamine moved to approve *Manager's Report No. 20-16* – Discussion and Possible Action for the Board to approve Concept B in the Master Plan of the Department of Water's former Administration Building, Baseyard, and Micro Lab; seconded by Ms. Ho; with no objections, motion carried with 5 ayes.

3. *Manager's Report No. 20-17* – Discussion and Possible Action to grant an easement for the purpose of allowing a support pole for the Kauai Island Utility Cooperative and Hawaiian Telcom, Inc. (fka Verizon Hawai'i, Inc., fka GTE Hawaiian Telephone Company Incorporated) on a portion of the Department of Water's Kōloa 1.0 Million Gallon Tank site, TMK: (4) 2-7-003:008, Lot 426, Kōloa, Hawai'i

BACKGROUND:

Manager Wienand commented that the County will be repaving part of the project along Kōloa Road. There is a conflict with the push pole along Kōloa Road on the Department's 1.0 MG tank site. There are no risks with

the existing operations on the location of the support pole. The Manager recommended an easement in favor of Kaua'i Island Utility Cooperative and Hawaiian Tel to move forward with their project.

Mr. Dill moved to approve *Manager's Report No. 20-17* – Discussion and Possible Action to grant an easement for the purpose of allowing a support pole for the Kauai Island Utility Cooperative and Hawaiian Telcom, Inc. (fka Verizon Hawai'i, Inc., fka GTE Hawaiian Telephone Company Incorporated) on a portion of the Department of Water's Kōloa 1.0 Million Gallon Tank site, TMK: (4) 2-7-003:008, Lot 426, Kōloa, Hawai'i; seconded by Ms. Ho with no objections, motion carried with 5 ayes.

4. *Manager's Report No. 20-18* – Discussion and Possible Action to approve final condemnation documents between the Board of Water Supply, County of Kaua'i and Visionary, LLC and Grove Farm Company, Incorporated, TMK: 3-8-018:001 to allow the Department of Water to obtain five (5) lots and six (6) easements for existing Department of Water facilities in Maalo, Hanamā'ulu, and Līhu'e

BACKGROUND:
Civil Engineer Eric Fujikawa commented that in the late 1990's the Department completed well projects with this TMK in Hanamā'ulu near Ma'alo Road. There have been negotiations with Līhu'e Plantation at that time to obtain the land rights of the new sites and did not come to an agreement. At the January 2000 Board meeting, a Resolution was passed by the Board to excise an eminent domain that resulted in filing a complaint to condemn the parcels from the land owner. There is a transfer of ownership of the property from Līhu'e Plantation to Visionary, LLC currently with Grove Farm Company. The Department negotiated with Grove Farm Company to complete the subdivision of the five (5) parcels and easements to execute the condemnation documents for the conveyance of the properties. A total of $46,000 was deposited based on a judgement for the value of the land on a number of appraisals submitted and withdrawn. The Department also was granted the rights to maintain the sites until those documents are completed for final execution. Manager Wienand added that staff have worked very hard, Eric Fujikawa in particular, to finalize these documents and prepare them for the Board.

DISCUSSION:
Chair Canute understood that Grove Farm Company filed a suit to overturn the condemnation of the eminent domain but the court was in favor of the DOW. The main issue was the valuation of the property. Mr. Fujikawa commented that once the documents are in place, the property would be conveyed with no cost at this time.

Mr. Akamine moved to approve *Manager's Report No. 20-18* – Discussion and Possible Action to approve final condemnation documents between the Board of Water Supply, County of Kaua'i and Visionary, LLC and Grove Farm Company, Incorporated, TMK: 3-8-018:001 to allow the Department of Water to obtain five (5) lots and six (6) easements for existing Department of Water facilities in Maalo, Hanamā'ulu, and Līhu'e; seconded by Mr. Dill; with no objections; motion carried with 5 ayes.

5. *Manager's Report No. 20-19* - Discussion and Possible Action on the Third Amendment to Contract No. 666 Review and Update the Department's Information Technology Strategic Plan and I.T. Project Implementation and Support with Brio Consulting for a time extension of 90 days and additional funding in the amount of $97,000.00

BACKGROUND:
Manager Wienand mentioned funding was approved by the Board for the Information Technology (IT) Strategic Plan in this fiscal year for five (5) of the initiatives. Two (2) initiatives are included a) SharePoint upgrades and b) financial system Great Plains (Workplace) upgrades. Funds are in place and the request for $97,000.00 is to provide staff augmentation support. On October 8th, available funds were used to execute a second amendment to bring more staff due to the DOW's current situation with extremely short staffing in I.T. The Manager introduced Jas Banwait who has been with the Department for 2-1/2 weeks and is anticipated to

be on contract through the end of the year. One of the DOW's existing IT staff is on long-term leave until the end of the calendar year. The scope of this Third Amendment includes additional funds for staff. Another consultant would be added through this contract. Manager recommended the Board to approved Option 1. One position was in recruitment last week, IT Specialist III and the IT Officer position is still pending review with Department Human Resources.

Mr. Akamine moved to approve Option 1 through the end of 2019 for *Manager's Report No. 20-19* - Discussion and Possible Action on the Third Amendment to Contract No. 666 Review and Update the Department's Information Technology Strategic Plan and I.T. Project Implementation and Support with Brio Consulting for a time extension of 90 days and additional funding in the amount of $97,000.00; seconded by Ms. Ho; with no objections, motion carried with 5 ayes.

6. *Manager's Report No. 20-20* - Discussion and Possible Action for the Board of Water Supply to enter into the Hawai'i Water Agency Response Network Mutual Aid and Assistance Agreement with the City and County of Honolulu, Honolulu Board of Water Supply, the County of Hawai'i Department of Water Supply, and the County of Maui Department of Water Supply

BACKGROUND:
Manager Wienand mentioned that the Hawai'i Water Agency Response Network (HIWARN) is about each county's water departments coming together to help each other in emergencies and sharing resources and staff as needed. Honolulu Board of Water Supply, County of Hawai'i & County of Kaua'i have agreed on the HIWARN but County of Maui had not previously been part of HIWARN agreement. Now the County of Maui wants to take part in HIWARN. Each county wanted to update the agreement. The Department is working on an operational plan. There is a provision in the agreement for indemnification in the recommendation and has gone through legal review. The Manager recommended that the Board approve the DOW to enter in this agreement. This month Hawai'i and Kaua'i will approve the agreement and in November, County of Maui and Honolulu Board of Water Supply have it on their next board agenda. Each county will then counter sign the agreement.

Chair Canute moved to approve *Manager's Report No. 20-20* - Discussion and Possible Action for the Board of Water Supply to enter into the Hawai'i Water Agency Response Network Mutual Aid and Assistance Agreement with the City and County of Honolulu, Honolulu Board of Water Supply, the County of Hawai'i Department of Water Supply, and the County of Maui Department of Water Supply; seconded by Mr. Dill; with no objections; motion carried with 5 Ayes.

7. *Manager's Report No. 20-21* – Discussion and Possible Action to Adopt Board Policy 31 for the Application of the Facilities Reserve Charge to Guest Houses

BACKGROUND:
Manager Wienand indicated that this report could be deferred to the Department for action. This is brought before the Board for transparency and to take action at the Board level. This year the Kaua'i County Council amended the County Code definition for guest houses. There are two definitions of guest house and the amended definition. The original definition said a guest house contains "no kitchen" but the amended guest house says it "may contain a kitchen" used for dwelling purposes. The Department assessed the Facilities Reserve Charge (FRC) because the Department's interpretation is that a dwelling may contain a kitchen. The Kaua'i County Council was attempting to make housing more affordable which changed the code and zoning for affordable housing. There was an unintended consequence on the Council that the current Department's interpretation would have an amended definition that says it may contain a kitchen used for dwelling purposes and therefore the Department would still assess an FRC. Many applicants are not happy to pay the FRC when their guest house does not contain a kitchen. Manager Wienand commented there is a gap because over the next year, the Department will complete the next FRC assessment. During this assessment, the Department will examine the impact of guest homes, Additional Dwelling Units (ADU), rental units, and tiny homes if there is less of an impact on the water system, then the FRC should be less.

Board Policy 31 was proposed and recommended that if the Planning Department indicates a guest house that is permitted and approved as an accessory structure that has no kitchen, then an FRC would not be assessed. If the Planning Department indicates there is a kitchen, the Department would assess an FRC. The risk is that the DOW would not be able to enforce this in the sense that there is no way of knowing if an applicant intentionally circumvents this by saying they do not have kitchen, but then they come back and build a kitchen in a guest house to avoid paying the FRC. Manager Wienand recommended Option 1 for the Board to adopt a Board Policy to this effect of no kitchen, no FRC.

DISCUSSION:
Chair Canute asked if someone currently builds a guest house with no kitchen, they would be charged FRC which the Manager agreed because the amended definition of guest house may contain a kitchen as a dwelling unit. Chair Canute mentioned if there is a stove, hot plate, microwave, water basin, and sink this may be considered a kitchen; water use could be the same.
Ms. Ho was in favor of identifying Transient Vacation Rentals (TVR) or Visitor Destination (VD) areas and should be included in the Board Policy and assessed the FRC.

Mr. Dill mentioned if there was a stove, water usage would be increased for cooking but a 500 square feet guest home would not use more water than a typical dwelling unit. The Board has a responsibility of addressing the FRC. The Manager commented that staff is getting the FRC Assessment scope finalized within this calendar year to start a contract by early 2020 that may take several years to complete (i.e., are tiny homes the same thing? What about conversions?). Mr. Dill encouraged the Department to get the contract in place as a priority because the Finance Committee will be working on this. He agreed that the Department does not have the resources to double check the guest houses have installed a stove after being permitted. Mr. Dill asked if the Planning Department does enforcement inspections? Chief of Water Resources & Planning Mr. Doi commented that Planning Department would not be checking guest houses but only to check if there are complaints.

Councilmember Felicia Cowden provided her testimony.

Councilmember Cowden mentioned that on the County Council agenda several items are about affordable additional rental units which may pass. She is the least supportive of it but feels there is a need of additional affordable rental units. An element she is less resistive to is additional rental units intended as affordable to take away the FRC and the building permit fee and taking away about $19,000 of permitting fees. Councilmember Cowden said it is important for the DOW to testify during the meetings on this subject.

Another concern was to add an additional rental unit availability along the new Līhu'e Town corridor when it went from R20 per acre to R40 about one year ago. By adding this additional rental unit she said, it would become R80 and if they were affordable rental units. There could be lots of housing coming on to the market without any FRC. There will be a 10" pipe going along Rice Street and that this choice is being made recklessly because the traffic study for R20 and the road is narrowed to two lanes instead of four lanes with parking issues. It appears that is doesn't matter on what the Council says if the Department is planning no FRC for an affordable rental unit for three years which can to go market after three years to avoid the FRC. Councilmember Cowden added there may be infrastructure costs of $30M in 10 years. This is a big burden on people who are building units and agrees that there is a need for the affordable rental units. The Council addressed the Planning Department and Planning's enforcement at the Council meeting. This summer there was a $10,000 per violation a day for unofficial kitchens, which Councilmember Cowden was a lone no vote, to go again the mortgage and Bureau of Conveyances. Neighborhoods could be shut down if Planning Department hired another person to check for kitchen violations. Councilmember Cowden will be asking Council to defer two of those points. For the Līhu'e Town Core, she may not get a majority on a deferral for greater conversation.

The position of the DOW should be known with the Council members. Councilmember Cowden will ask for agenda space briefing from the DOW. The Council and DOW should be working collaboratively but not to dump affordable housing on the gap housing which does not quality. Regarding the three years, she asked

Planning Department why not five years? It is easier administratively for Planning Department and Real Property Tax to look for three years.

At 11:35 a.m., Mr. Calipjo exited the meeting.

DISCUSSION:

Manager Wienand commented on what Councilmember Cowden mentioned that the proposal would take away FRC. The Board of Water Supply sets rules and determines the charge and assesses the FRC. The Manager asked that the Council read Part 5 of the Board of Water Supply Rules. The last rules which were last updated in 2014 set the current charges and it is the law. Council would not have the authority to determine whether the Board can or can't assess the FRC. Manager Wienand asked if possibly the Council is proposing a subsidy from the County? Councilmember Cowden said the Housing Revolving Fund would pay for the FRC that would remove the problem.

Manager Wienand could follow up after the Board meeting and appreciates if the Council members could come to the Department first to talk through these issues before Council action. There could be anticipated issues that are identified first. He did received a request from Council regarding potential impacts of R20 to R40 earlier this year. The Department provided a response on the availability of source, storage and transmission in the Līhu'e area. Significant impacts are with R80 because currently there are certain available units (possibly 150 current available units in Līhu'e) as first come, first serve with no guarantee of affordable housing being built in the Rice Street area. Councilmember Cowden did address that question and asked how big the pipe for 70 acres was.

At approximately 11:40 a.m., Mr. Calipjo re- entered the meeting.

DCA Krafft mentioned Board Policy 31 has not been reviewed by legal.

Manager Wienand requested the Board to take action because there have been requests from applicants who are unhappy with the Department's current interpretation of assessing the FRC on a guest house that could have a kitchen. Mr. Akamine asked if this could be the purview of the Department instead of the Board. If this is deferred to the Department, the Manager would have internal procedures and not assess the FRC for guest houses as long as the Planning Department says there is no kitchen. Applicants are waiting until this Board meeting for action. Mr. Dill asked if the application of the FRC be part of the rules? Because this is an interpretation, the Manager said this would not require a rule amendment because it does not address guest homes for a 5/8 inch meter and the rules do not identify a dwelling unit.

Mr. Dill and Mr. Akamine agreed to defer this matter to the Department for legal review on the best action to take and to be legally strong (to be a Board Policy or change in the rules). Manager Wienand said the Department could move forward for an internal procedure.

Mr. Doi commented that staff looked at the rule change and identified dwelling to assess the fee. The Department followed the Planning Department to determine a dwelling and the problem if the kitchen was in or not. The Department's concern was to assess it as a dwelling. The Planning Department has a part to add safe guards for the applicants who say they don't have a kitchen or they do. If an applicant comes in for plumbing or electrical to put in a stove or add a hotplate, this does not come to DOW for review. External concerns have to come in to the Department to resolve this issue soon.

Civil Engineer Michael Hinazumi clarified dwelling unit by CZO is defined the by the kitchen. In terms of guest houses and if a kitchen goes in, it is a dwelling unit. If a kitchen does not go in, it falls in as an accessory structure (not a dwelling unit). In the past, the definition said no kitchen would be allowed, it is treated as an accessory structure and no FRC was assessed to a guest house. The guest house was excluded from having a kitchen. With the recent change that may allow a kitchen in a dwelling guest house in the form, the Department does not have enforcement capability or Planning Department. As a Department policy that is being proposed

would be to go back and review what the Department is doing. Based on the new wording, Mr. Doi said it is used as a dwelling.

DCA Krafft's concern on the process is if it comes back and the determination is a Board authority and if the Board makes a motion to allow the Department to do it, the Board may have delegated what may not have been done to the Department.

Manager Wienand commented that if legal determined that this matter could this be handled at the Department level, would the Board entrust the Department to act on it if it was determined in a month? An update could be done in a Manager's Update report. If legal said, it is the Board's authority, it would come back to the Board in the next meeting.

Mr. Dill moved to defer and amend his motion on *Manager's Report No. 20-21* – Discussion and Possible Action to Adopt Board Policy 31 for the Application of the Facilities Reserve Charge to Guest Houses back to the Department for a legal review, and if determined that the Department does have the authority, the Manager will provide an update in his Manager's Update Report at the next Board meeting. If it is determined that the Department does not have the authority, the Manager will present the Board with the appropriate Manager's Report to update Board Policy No. 31 at the next Board meeting; seconded by Ms. Ho; with no objections, motion carried with 5 ayes.

8. *Manager's Report No. 20-22* – Discussion and Possible Action to Approve Indemnification, Governing Law in Licensing Agreement with Microsoft Software and Adobe Flash Player Terms of Service between the Board of Water Supply, County of Kaua'i, Microsoft and Adobe

BACKGROUND:
Windows 10 needs to be updated to eliminate functions for staff and legal review was done.

Mr. Dill moved to approve Option 1 in *Manager's Report No. 20-22* – Discussion and Possible Action to Approve Indemnification, Governing Law in Licensing Agreement with Microsoft Software and Adobe Flash Player Terms of Service between the Board of Water Supply, County of Kaua'i, Microsoft and Adobe; seconded by Mr. Akamine; with no objections; motion carried with 5 ayes.

9. *Manager's Report No. 20-23* - Discussion and Possible Action to Approve Indemnification, Governing Law in Licensing Agreement with Google Chrome Terms of Service between the Board of Water Supply, County of Kaua'i and Google

Mr. Dill moved to approve *Manager's Report No. 20-23* - Discussion and Possible Action to Approve Indemnification, Governing Law in Licensing Agreement with Google Chrome Terms of Service between the Board of Water Supply, County of Kaua'i and Google; seconded by Mr. Akamine; with no objections, motion carried with 5 ayes.

I. CONSENT CALENDAR

None.

J. STAFF REPORTS

MONTHLY

1. Discussion and Receipt of the Kaua'i County Water Department's Statement of Revenues and Expenditures
   a. September Monthly Summary Budget
   b. Accounts Receivable Aging Summary

BACKGROUND:
Waterworks Controller Mrs. Yano highlighted the following:
1. Closing the year-end audit

2. Working with divisions for extensions on FEMA projects
3. Working with the Manager, staff and consultant on the rate study
4. Upcoming Water Audit on December 31st
5. Preparing the proposed budget for FY 2020-2021

Received for the Record

2. Discussion and Receipt of the Report by the Information & Education Specialist on Public Relations Activities

BACKGROUND:
Information and Education Specialist Mrs. Jonell Kaohelaulii highlighted the following:
1. PR team extended their appreciation to over 200 volunteers for a successful Make a Splash even with the new location and its challenges. The Board's continued support was appreciated by PR efforts and Project Wet and Make a Splash Festival.
2. The Department participated as a water sponsor at the North Shore Community Foundation's Fit Fest held at the Aina Hou Community Center in Kīlauea on October 5th. This was a fundraiser to benefit non-profit organizations that focus on fitness. The Department should support community event awareness because it is in line with the community outreach efforts in promoting safe and healthy drinking water. This allowed PR to share informational brochures with the North Shore residents.

Received for the Record

3. Discussion and Receipt of the Chief of Operation's Summary Report on Operational Activities

BACKGROUND:
Chief of Operations Mr. Reyna provided highlights:
1. Filled three (3) new positions that were approved last year that included promotions.
   Interviews were done on the Water Works Technician, Lead Pipefitter position.
   In September five (5) positions were filled.

Received for the Record

4. Discussion and Receipt of the Manager and Chief Engineer's Monthly Update Regarding Activities of Note of the DOW
   a. Build America Bond Quarterly Report *(July – September 2019)*

BACKGROUND:
Manager Wienand highlighted the following:
1. Contract Amendment 3 for the IT Strategic Plan approved by the Board.
2. Personnel Matters (Page 531)
3. Update on Billing System – Total registered users are over 2,000 by October 1st (Page 532)
4. First quarterly update with IT will be discussed in todays Board meeting.
5. 2019 HWWA Annual Conference October 9th -11th (Page 533) Ms. Jonell Kaohelaulii was awarded a prestigious William Y. Thompson Service Award for Excellence.
6. Water Quality Report (Page 534)

Received for the Record

QUARTERLY *(July - September 2019)*
1. Discussion and Receipt of the DOW's Quarterly Project Status Update
   a. Construction Management Division Status

Highlights
Mr. Dustin Moises briefly went over the Executive Summary:

1. Worked on design reviews.
2. Held two dedications for Hanapēpē and Eleele Booster pump and Kōloa Well 16 A/B projects. Those contracts would be closed by the end of the year.
3 Kaumualiʻi Highway and Kapaʻa Well No. 4 are in construction but are delayed due to design issues.
4. Kapaia is on a Stop Work Order.
5. Staff busy with private projects.
6. Bids to be open on Paua Valley tank on October 31st.

Received for the Record

b. Engineering Division Design Status

Highlights:
Mr. Keith Aoki shared Engineering highlights:
1. Kukuiolono Tank Demo Plans that is tied with the land exchange agreement with the McBryde Trust. The design was completed and ready for construction.
2. Engineering met with the owner of the Kīlauea Well 3 site. The Right of Entry (ROE) draft would be sent and reviewed by the owner's attorney. Trust documents are being worked on with the Owner and Administration regarding signing the agreement for the trust.

Received for the Record

c. Water Resources & Planning Division Status

Received for the Record was the Quarterly Report for WR&P.

Highlights:
Mr. Edward Doi presented WR&P highlights.
1. The FRC needs to be working on the grace period matter and to work on previous approvals to the grace period.
2. Water Development Plan – submitted the prototype of Līhu'e approved with comments. All sectors are done and providing information for a conclusion.

Received for the Record

d. Information Technology Strategic Plan Status

Highlights:
Manager Wienand highlighted the following:
1. Update Five Initiatives (Page 578) – 1) to replace the MPET system with a GIS based work management system but delayed due to staffing. The IT Officer, once hired, will take the lead with the GIS implementation, 2) Upgrading SCADA and server is funded this fiscal year. At the November meeting, a contract will be presented to the Board for approval with Glenmount to continue services, 3) Upgrade of financial system; Department is moving forward with the third amendment with work on the scope with Brio's contract on the IT Strategic plan, 4) Development of GIS technologies with ESRI but procurement has not been worked out to create a GIS roadmap, 5) Maintain new hydraulic software; contract is pending execution that will go through the WR&P Division, 6) Core IT infrastructure upgrades; supported with contractor Jas Banwait, 7) Completed emergency communication equipment. Honolulu Board of Water Supply purchased satellite radios to test next week with the neighbor islands. Radios would be kept with the Chief of Operations or Manager.
2. Personnel Matters (Page 580) – Manager is waiting to hear from Department of Human Resources (DHR) on the final review on the IT Officer position. An initial determination from DHR was an EM3 with disagreement by the Manager who wanted the position as an EM5 level.
   The new IT Specialist III position is posted.

Received for the Record

Chair Canute called for a Recess at 12:27 pm; with no objections.

K. EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statues (HRS) §92-7(a), the Board may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a).

L. TOPICS FOR NEXT BOARD OF WATER SUPPLY MEETING (November 2019)

1. Election of Officers for 2020
2. Board Meeting Dates for 2020
3. Discussion and Receipt of the Department of Water's Draft Audit Financial Statements and Independent Auditor's Report by Accuity, Inc. for FY 2019-2020
4. *Manager's Report No. Manager's Report No. 19-60* - Discussion and Possible Action for Water Plan 2020 Project No. WK-39 Drill & Develop Kapa'a Homesteads Well No. 4 & Package A-Well and Drainage Package of Water Plan 2020 Project No. WK-08, Job No. 02-14, Kapa'a Homesteads 325' Tanks, Two 0.5 MG Tanks Projects, Kapa'a, Kaua'i, Hawai'i for additional construction funding in the amount of $140,843.18 *(Update)*
5. *Manager's Report No. 20-24* – Discussion and Possible Action for the Proposed Amendment to the Memorandum of Agreement (Drainage) between Godwin M. Esaki and Janet M. Esaki, individually and as trustees of the Godwin M. Esaki Revocable Living Trust, and the Janet M. Esaki Revocable Living Trust, TMK: (4) 4-6-011:125, Kapa'a, Kaua'i, Hawai'i) and the Board of Water Supply, dated August 21, 2017
6. *Manager's Report No. 20-21* – Discussion and Possible Action to Adopt Board Policy 31 for the Application of the Facilities Reserve Charge to Guest Houses

M. TOPICS FOR FUTURE BOARD OF WATER SUPPLY MEETINGS

1. Department of Water Performance Audit (Update)
2. Table of Organization Workshop
3. Discussion and Possible Action to establish Fiscal Policies and Procedures

N. UPCOMING EVENTS

1. DOW's Annual Meeting (December 13, 2019)
1. AWWA HWWA & HWEA 7th Annual Joint Conference (February 2-6, 2020)
2. AWWA ACE 20th Conference, Orlando, Florida (June 14-17, 2020)
3. HWWA & HWEA Pacific Water Conference *(TBA)*

O. NEXT WATER BOARD MEETING

1. Friday, October 25, 2019, 10:00 a.m.
2. Friday, November 22, 2019, 10:00 a.m.
3. Friday, December 20, 2019, 10:00 a.m.
4. Friday, January 24, 2020, 10:00 a.m.

Chair Canute called the meeting back to order at 12:39 p.m.

P. ADJOURNMENT

Mr. Dill moved to adjourn the Regular Board meeting at 12:39 p.m.; seconded by Ms. Ho; with no objections; motion carried with 5 ayes.

Respectfully submitted,

Edith Ignacio Neumiller
Commission Support Clerk

Approved,

Ka`aina Hull
Secretary, Board of Water Supply

FINANCE COMMITTEE MEETING

Monday, November 4, 2019

Committee Members Present: Finance Committee Chair Lawrence Dill, Ka`aina Hull and Elesther Calipjo. Also present was Board Chair Thomas Canute *(entered @ 9:28 am)* and Board Member Laurie Ho *(entered @ 9:55 am)*

Staff Present: Bryan Wienand, Marites Yano, Michael Hinazumi, Dustin Moises, Edward Doi, Darrell Acob, Keith Aoki, Marcelino Soliz, Anne Parrott, Val Reyna, Jonell Kaohelaulii, Mary-jane Akuna, DCA Mahea Krafft

Consultants (via teleconference): Sudhir Pardiwala, P.E. and Hannah Phan

Guest(s): Hall Parrott, Private Citizen

Finance Chair Dill called the meeting to order at 8:05 a.m., and quorum was established.

D. ACCEPTANCE OF AGENDA

Mr. Calipjo moved to approve the Finance Committee Meeting Agenda; seconded by Mr. Hull; with no objections, motion carried with three ayes.

E. OLD BUSINESS

1. *Manager's Report No. 17-29* - Discussion and Possible Action on the Financial Management Planning and Water Rate Analysis for the Department of Water for Fiscal Year 2020 through Fiscal Year 2024 and refer to the Finance Committee for Further Discussion and Analysis *(Update)*

BACKGROUND:

Manager Wienand briefed the Finance Committee that an overall workshop approach was done in May by Raftelis Financial Consultants on the proposed rate increases. Since 2017, this proposal was deferred several times by the Finance Committee based on Facilities Reserve Charge (FRC) and updates to the FRC rules. The Department received from the legislature $14M this year with an 80% match. From May 2019, recalculations were done with the $14M funding.

The major update from Water Resources & Planning (WR&P), Engineering, Construction Management and Operations teams reviewed the updated list, scores and the analysis of the construction spending the next five years. The second major factor was the maintenance and operations costs.

Refer to Attachment 3 in the Board packet which was the previous May Workshop packet. Attachment 2 is the Executive Summary.

Water Rate Study packet topics by Ms. Phan:
Agenda – page 7
Main Study Objections – page 8
Key Assumptions – page 9 & 10
O&M Expenses – page 11
CIP Financing Plan – page 12
Proposed Revenue Adjustment – page 13 (recommended a 7% revenue adjustment 2020-2024 but not for 2021)
Financial Plan – page 14
Current Target Reserve – page 15 (no changes on the reserve policy)

Ending Fund Balance – page 16 (on target)

Anne Parrott, Accountant provided comments to the Board
The objective operating expenditures are based on the 2020 budget. Mrs. Parrott observed that no one looked at the historical data. She indicated the Department spent operating expenses at $20M a 30% jump. The 30% rolls on collecting $4M/year x 5 = $20M. If $20M is eliminated, she asked what does that do to the 7% per year? It appears to be eliminated. Mrs. Parrott defined fund balance as spendable cash in a government setting. An enterprise fund looks at the unrestricted net position which the Board does not need to look at does need to look at working capital according to the government finance officer. The reserve amounts are taken away that is needed for 90 days of working capital. Not shown is the $35M for fiscal year 2019 of unrestricted net position. By adding this amount to the working capital equals $55M. If the $29M changes to $55M, Mrs. Parrott asked what could this do to a rate increase?

Mrs. Parrott continued to say if the Board needs more reserves, a Board policy would initiate to set aside money for future pensions and future post employee benefits but it has not been done. Two years ago, she came to the Board to work on financial policies before going into the rate study. Leadership could have completed the policy and management needs to make a decision with Fiscal's support and to start over. Fiscal only added $300,000 to the fund balance this year due to spending $900,000 on trucks.

Chair Dill agreed with Mrs. Parrott and asked the consultant to respond to her points. Mr. Pardiwala responded that there is 25% of operating expenses after depreciation for working capital. The insurance deductible of $1M is set aside typical for water agencies. He recommended a capital fund but the Department has various grants and loans. Mr. Pardiwala requested to have Mrs. Parrott's explanation on the $55M. Mrs. Parrott said the unrestricted net position at the end of 2019 is $35M. Out of the $35M due to accounting changes, $20M of pension liability and post-employment benefit liability is currently spendable money. This would be added to the unrestricted position to get to money that the Department actually has to be spendable. By adding current assets less liabilities, the number is smaller because the Department has $20M sitting in long-term investments. The Government Finance Officers Association (GFOA) says organizations needs to look at how their organization operates to come up with these numbers. The long term investments are in Freddie's ad Fanny's that are publically traded. Monies could be acquired in 30 days. This money could go into spendable pot because the Department is fat rich. Mrs. Parrott indicated that after the last rate study, the Department got lots of money which could be divided between the divisions but they could never spend all of the money. She is not in favor of asking for a rate increase at this time. She suggested to revisit the capital plan. With a 7% per year increase when compounded is 30% for the customers, this is not fair for the public.

Chair Dill agreed that 7% per year is a large increase. He wanted to know if all of the extra funds set aside such as the Other Post-Employment Benefits (OPEB) that are invested benefits? Mrs. Parrott said that was not true because they were expensed with an accounting change. A policy could make it nonspendable money to be analyzed to set aside 5 or 10 years.

Waterworks Controller Mrs. Yano said there is $20M in the operating expenses but need to consider adding $8M per year in debt service. Mrs. Parrott was not speaking to the debt service or the capital but only for the inflated operating expense. Mrs. Yano explained that the $20M in employee benefits is a long term liability of the Department of Water (DOW) that is set aside in the financials. The Board could decide how the money is used or could be available funds. Chair Dill said to set aside money, there is no policy that confirms this which Mrs. Parrott said yes. The projections were based on this year's budget. Chair Dill asked if the Department based the projected numbers on the high expenses on historical data and Mrs. Parrott said yes. Cash expenditures need to be separated from accruals which could be difficult with pension accruals for long term liabilities. Mrs. Yano handled the expenses

from the County, Admin., offsets by the hydrants and the rate study plan. Mrs. Parrott suggested someone should work with everybody in the Department because the budget is not right.

Manager Wienand shared that the rate model will show on how to adapt the various changes. Ms. Phan explained the O&M costs that is going into the budget for the rate study has accrual total amounts of $26.3M for 2020, $27M for 2021 and $26M for 2022. Mrs. Yano said the actual fund balance was provided for fiscal year 2019 and the actual operating expenses for 2019 was $23.M with interest in the June statement. Expenses are considered debt service. Ms. Phan did not see cash flow because she put in the fund balance at the end of 2019 and beginning of 2020 is $39 net encumbrances.

At 8:40 a.m., Mr. Calipjo exited the meeting
At 8:45 a.m., Mr. Calipjo re-entered the meeting

At 8:41 a.m., Chair Dill Recessed the meeting.
At 9:07 a.m., Chair Dill Reconvened the meeting.

Chair Dill addressed two significant issues 1) Liability for future retirement expenses also a statewide issue. Only the County of Kaua'i and the DOW have current liabilities. Liabilities need to be current for the retired employees, to the rate payers and tax payers. Missing was the Board policy to confirm the management of this. He commended the Department for making sure the future liabilities are funded and it needs to be done for rates to be captured in the future. The Manager will need to establish a Board policy and 2) the manner of projecting future expenses on actual expenses required for rate increases. He would like to see adjustments to the model to base projected needs on rate increased on recent trends of actual expenses as opposed to fiscal year 2020 budget. Often numbers are picked with the Department's expenses. If the Department has a revenue challenge, this could be revisited with the Board to make sure the costs are covered.

Mr. Hall Parrott, private citizen provided his testimony.

Mr. Parrott addressed the electrical company's returns that are unused money collected for unused expenses. The public has a choice of receiving cash or deducted on their bill. He noted 1st quarter's expenses are budgeted at $3M and spent $2M ($1M at the end of the year would be $4M that goes to water fund (is not tracked, not identified & is lost). Expenses are $55M and next year this amount will go up. What of he went the newspaper and asked, what is the DOW doing?

Chair Dill asked how Mr. Parrott up with $55M? Anne Parrott said $55M which is conservative, but he says it is $62M. Mr. Parrott said there are pluses and minus that was pulled from seven different accounts. He said to work with the GFOA for a report.

DISCUSSION:

Mr. Hull inquired on the vacant positions and salaries allocated, what was the process of budget transfers? Does the Board review transfers? Mrs. Yano explained that the operating expenses are approved by the Manager in Board Policy No. 3. The approved budget transfers, depending on the category are capital expenditures less than $10K. Manager Wienand said historically, salaries and wages have been over budgeted for vacancies. The Department can transfer funds within salaries and wages from a different vacant positions to position. Many positions budgeted for 2019 are still in DHR going through the process of getting a positions filled.

Mr. Dill requested to see how the operating maintenance expenses budget is revised to project expenses.

Mr. Hull was not comfortable without addressing the retirement liabilities and agreed with Chair Dill and asked if there is a specific rate? Mrs. Yano explained that the state engages the services of an actuarial consultant. Every government participates with that procurement study that includes the

DOW. From inactive employee's retirement and active/future employees, it determined the unfunded liability amortized over 30 years. Included is the performance of the investment and takes out administrative expenses to determine the balance at year end. Mr. Hull asked if the formula is based on the State formula? The State is trying to catch up with this statewide formula. Contributions are future liabilities on the payroll percentage incurred yearly. Mrs. Yano commented that statewide all counties determine what each liability is on what the Department puts in every year paying 100%. This is put into the rate study for future expenses on the projected actuarial study. Mr. Hull said the statewide system has an unfunded liability established because the State of Hawai'i was not funding at 100%. He asked if the Department have to make up of their loss in commitments to payments? Mrs. Yano said no and that each county submits a record of retirees based on the study. The Department has its own accounting. Mrs. Parrott mentioned 1) what should to be funded this year and a portion of the unfunded. Money is sent to the retirement individuals. What is recorded on the financials is the extra 30 years' worth. She added do we set aside the whole 30 years' worth of cash or half of it? GFOA has not given any guidance on this. If money is set aside, it is not paid to the State.

Mr. Hull mentioned the large amount is above the formula for the DOW to pay the Employee Retirement System (ERS) which Mrs. Parrott agrees due to the accounting change. Government Accounting Standards Board (GASB) made projections difficult and if expensed, it comes out of the fund balance (unrestricted net position). This policy was put in place for transparency by disclosing this number, according to Mrs. Parrott, it tells the public more information. The Department would have to analyze this to cover cash liability.

Mr. Dill understood that the Department is doing the minimum requirement. Mrs. Parrott commented that the Department would set aside the cash to fully fund the pension for the next 30 years and restrict the cash for the debt service reserve and emergency reserve. This is not included in the current year contribution (unfunded).

Manager Wienand asked if the current approach is to set aside the full amount or a Board policy would it set aside a number in between that the Board choose 10, 15 or 20 years? According to Mrs. Parrott, the Board could set aside any amount and it could be funded. Mrs. Yano mentioned this is funding the unfunded liability in Fiscal's account. Whatever is left out from $20M, is a net position, which is broken down into restricted funds, Build America Bond fund, Facilities Reserve Fund (FRC a restricted fund), restricted Emergency Fund and Debt Service fund.

Mr. Hull would be okay if the Department is aligning the same process with the County of Kaua'i (COK). He mentioned that the last Council meeting was to have the DOW under the council's review with a Charter amendment. If the Department has a 7% rate hike over the next several years, putting away a certain amount of money that is not calculated into expenses would allow for a lower rate hike.

Chair Dill requested the Department to provide answers for recommendation to the Board:
1) Determine what the Board Policy on how to fund the liability and to what extend?
2) Issue projected expenses with the actual expenses for the recent history of the DOW.
3) Continue the rate study presentation and to come back to the Board with more answers.
4) The Finance Committee needs more information on what the policy should be on retirement.
5) What is the industry standard?
6) What are other agencies around the State are doing?
7) Is DOW setting the standard? Are calculations with the County Finance the same as DOW?

Ms. Phan continued the Water Rate presentation:
Existing Water Rates - page 18 – will cover the additional revenue adjustments if FY 2020 effective February if the 7% rate will change. The Board should look at the rate structure.

FY 2015 Customer Data - page 19- 22

Proposed Rate Structure - page 23 – consultant recommended metric rates that are differentiated by the customer class, not by meter size.
Proposed Monthly Meter Charges – FY 2020 - page 19
Proposed Monthly Private Fire Meter Charges – FY 2020 - page 25
Proposed Volume Rates - page 26
Proposed Volume Rates FY 2020 - page 27
Customer Impacts – FY 2020 - page 28

At 9:55 a.m., Ms. Ho entered the meeting.

Mr. Hull asked what type of single family falls in Tier 3 or if single family falls in Tier 1? Why isn't "all other" tiered? Mr. Pardiwala commented that most single family fall under 3 tiers that provides for conservation, commercial customers, and single family for conservation. Tier 1 is for indoor use and is the lowest customer use and lowest rate, Tier 2 is average consumption and Tier 3 are for customers that use more than the average use / irrigation and pay the highest rate. Mr. Hull mentioned that if someone was running a commercial business, they could reduce cost. Mr. Pardiwala mentioned if a tier was used for non-residential customers, it is based on historical usage each year. Tiers are not set for non-residential customers but could be set.

Mr. Hull inquired what is the qualification for an agriculture rate? Manager Wienand indicated the qualification is in Part 4 of the rules by submitting taxation documents to the State and proof of an annual backflow inspection. Mrs. Yano's discussions with the consultants proposed that ag rate users have a hybrid component rate structure. If they had a residential house, the DOW proposed a domestic usage and ag rate.

Mr. Hull asked Manager Wienand what is the Transient Vacation Rental usage? Would it be in "all other" or fall under the tiers of single family residence? Mrs. Yano said this would be categorized as single family. Mr. Pardiwala said single family rentals would be under single family and multi-family would fall under "all other." Mr. Hull mentioned that the vacation single family unit is like a resort and if it would fall under single family residence or "all other rates." This is hard to know if it is a resort or part time single family use. Under the Tier 3 level, there would be no problem. If they are using less usage, there are about 4,000 rentals who may be taking advantage of a single family component paying compared to a commercial under "all other." Manager Wienand said the billing system would have to be identified by TMK customers who would be in the TVR and to analyze if their usage is consistent with single family. If the rates are changed, the billing system would have to be restructured. Once the Finance Committee makes a recommendation to the full Board and if the full Board gives their approval that would be the internal go ahead to reconfigure the billing system to make sure it is accurate before finalizing the rule change that goes public within three months. By looking at TVR's, this could delay the rate making process but also the internal testing.

Mr. Hull asked what are the figures if the "all other" was tiered? Mr. Pardiwala said the industry standard is to have ag and everything in the commercial category. You would have to analyze usage for all customers and to ensure that it can be done on the current data on meter size. Currently the consultant did not have the historical data. Mr. Hull inquired if they could look at the multi-family usage? By comparing the multi-family rate to a single family residence at 0 to 7,000 gallons a month, it should be lower with or without landscape usage. There could be a residential tier level to incorporate a multi-family. Chair Dill asked if there was a justification for the tiered rate for multi-family in addition to single family? **The consultant will address tiers for multi-family residence.**

A follow up meeting will rescheduled based on the questions posed today.

At 10:09 a.m., Chair Dill deferred the Finance Committee meeting.

ein

SPECIAL BOARD MEETING MINUTES
BOARD OF WATER SUPPLY
Monday, November 4, 2019

The Board of Water, County of Kaua'i, met in a special meeting at Department of Water's Board Room in Līhu'e on Monday, November 4, 2019. Chair Thomas Canute called the meeting to order at 10:20 a.m.

BOARD: Mr. Thomas Canute, *Board Chair*
Ms. Laurie Ho
Mr. Ka`aina Hull
Mr. Lawrence Dill
Mr. Elesther Calipjo

EXCUSED: Mr. Kurt Akamine

Quorum was achieved with 5 members present.

STAFF: Mr. Bryan Wienand *(exited @ 10:46 a.m.)*
Deputy County Attorney Mahealani Krafft

A. ACCEPTANCE OF THE AGENDA

Mr. Hull moved to approved the November 4, 2019 Special Board Meeting Agenda; seconded by Ms. Ho; with no objections; motion carried with 5 ayes.

B. NEW BUSINESS

1. Discussion and Possible Action on Creating a Permitted Interaction Group for the Recruitment and Recommendation of a Manager and Chief Engineer

Mr. Dill moved to go into Executive Session at 10:23 a.m.; seconded by Ms. Ho with no objections, motion carried with 5 ayes. Mr. Dill read the following language.

C. EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statues §94-4 and §92-5(a)(2) and (4), the purpose of this executive session is for the Board to consider the hiring, evaluation, dismissal, or discipline of the Manager and Chief Engineer or of changes brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held; and to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities as they may relate to this agenda item.

D. ADJOURNMENT

Mr. Dill moved to Adjourn the Special Board Meeting at 11:51 a.m.; seconded by Ms. Ho; with no objections, motion carried with 5 ayes.

Respectfully submitted,

Edith Ignacio Neumiller
Commission Support Clerk

Approved,

Mr. Ka`aina Hull
Secretary – Board of Water Supply

DRAFT

Correspondence

RECEIVED
2019 NOV -6 PM 1:05
DEPARTMENT OF WATER
COUNTY OF KAUA'I

October 31, 2019

Board of Water Supply
County of Kauai
Attn: Customer Service Supervisor
4398 Pua Loke
Lihue, HI 96766

Dear Sir:

I had the pleasure of speaking to Norma in your office on both my calls to apply and disconnect service for my home at 5970A Kaapuni Road in Kapaa.

She handled my calls with professionalism and courtesy and I appreciated the high quality of customer service she provided.

Norma is truly an asset to your department!

Mahalo,

Dawn Ikei

Dawn Ikei

Old Business

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 20-21 *(Update)*

December 2, 2019

Re: Discussion and Possible Action to Adopt Board Policy No. 31 for the Application of the Facilities Reserve Charge to Guest Houses

RECOMMENDATION:
It is recommended that the Board does not Adopt Board Policy No. 31, nor make any Rule changes relating to the application of the Facilities Reserve Charge, until the next Needs Assessment Study is completed.

FUNDING: N/A

BACKGROUND:
At the October 25, 2019 Board meeting, the following information was provided to the Board. An update is shown on the following page.

In ongoing efforts by the County of Kaua'i to address the issue of affordable housing on Kaua'i, the Council of the County of Kaua'i recently amended Section 8-1.5, Kaua'i County Code 1987, relating to the definition of "Guest House." The following is the original (a) and amended (b) definition of "Guest House":

Original (previous) definition of Guest House:

(a) "Guest House" means a building with a floor area or no more than five hundred (500) square feet, contains no kitchen, is used for dwelling purposes by guests, and is located on a parcel of at least nine thousand (9,000) square feet that contains one (1) or more dwelling units.

Amended definition of "Guest House":

(b) "Guest House" means a building with a floor area of no more than five hundred (500) square feet, may contain a kitchen, and is used for dwelling purposes by guests, tenants, or owner(s). A guest house shall not be used for a transient vacation rental (TVR) or homestay operation within or outside of the visitor destination area (VDA)."

The Kaua'i County Code Comprehensive Zoning Ordinance defines "Dwelling" as a building or portion thereof designed or used exclusively for residential occupancy and having all necessary facilities for permanent residency such as living, sleeping, cooking, eating and sanitation.

The interpretation by the Department of Water of the original definition of a "Guest House" (a) above, concluded that due to the lack of a kitchen facility, a "Guest House" would not be considered a "Dwelling" as defined by the Kaua'i County Code, therefore the Board of Water Supply would not assess a Facilities Reserve Charge (FRC) for guest house structures.

The recent amendment to the definition includes "may contain a kitchen," however, which would qualify a "Guest House" with a kitchen as a "Dwelling." Therefore, it would be subject to the assessment of a FRC.

To clarify the Department's interpretation and application of the Board of Water Supply's Rules & Regulations, Part V – Facilities Reserve Charge with respect to Guest House designation, a Board policy is being recommended as follows.

Procedure:

The Department reviews an applicant's Planning Zoning Permit for "Guest House" designation.

i. If the Planning Zoning Permit indicates that a "Guest House" is designated and permitted as an accessory structure without a kitchen facility, then no FRC would be assessed.
ii. If the Planning Zoning Permit indicates that a "Guest House" is designated and permitted as an accessory structure with a kitchen facility, a FRC would be assessed.

This proposed Board Policy No. 31 is intended to be an interim policy that extends only to the completion and implementation of the next FRC – Needs Assessment Study which is anticipated to begin in 2020. The scope of the study will evaluate the relative impacts of guest houses, additional dwelling units, additional rental units, etc. on the water system to determine if the same FRC should be applied or if separate amounts shall be applied. The basis for the determinations will be the proportionate impact to the water system as required by HRS §46-143.

UPDATE for November 22, 2019 Board Meeting:

As requested by the Board at the October 25, 2019 meeting, a legal opinion has been provided to clarify whether:

1. The Board has the authority to implement the proposed Policy,
2. The Department has the authority to interpret the existing Rules and apply the FRC as indicated in the proposed policy, or
3. A Rule must be implemented.

In response, this matter falls under the definition of a Rule. Per Hawai'i Revised Statues Ann. § 91-1, "Rule" means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to section 91-8, nor intra-agency memoranda.

OPTIONS:

Option 1: Do not implement Board Policy No. 31 and do not make any rule changes relating to the application of the Facilities Reserve Charge until the next Needs Assessment Study is completed.

Pros: Any proposed rule changes relating to this matter may take many months and ultimately delay the process to complete the next Needs Assessment study, which is intended to be a comprehensive assessment of all of the impacts of various categories of dwelling and rental units and their corresponding impact fees. The basis for the determinations will be the proportionate impact to the water system as required by HRS §46-143.

Cons: Some applicants who have guest houses without a kitchen have been waiting this past month in anticipation of possibly having the FRC waived for their guest house.

Option 2: Direct the Department to draft a proposed Rule with the same intent as draft Board Policy No. 31.

Pro: Working towards implementing a rule demonstrates the Board's willingness to support the Kaua'i County Council's efforts to address the affordable housing issue on Kaua'i on an interim basis until the next FRC – Needs Assessment Study is completed.

The intent of the proposed rule would be as follows:

If the Planning Zoning Permit indicates that a "Guest House" is designated and permitted as an accessory structure without a kitchen facility, then no Facilities Reserve Charge (FRC) would be assessed.

If the Planning Zoning Permit indicates that a "Guest House" is designated and permitted as an accessory structure with a kitchen facility, a Facilities Reserve Charge (FRC) would be assessed.

Cons: Any proposed rule changes relating to this matter may take many months and ultimately delay the process to complete the next Needs Assessment Study, which is intended to be a comprehensive assessment of all of the impacts of various categories of dwelling and rental units and their corresponding impact fees.

It is possible that the scope of the proposed rule will grow in complexity as it may involve Additional Rental Units (ARUs), Additional dwelling units (ADUs), recent bills passed by the Kaua'i County Council relating to affordable housing, and so on, which may cause further delays to the rule itself and ultimately delay the completion of the Needs Assessment Study.

BW/ein

Attachment: Draft Board of Water Supply Policy No. 31

BOARD OF WATER SUPPLY POLICY NO. 31 (*October 25, 2019)*

RE: APPLICATION OF FACILITIES RESERVE CHARGE TO "GUEST HOUSES"

The Board of Water Supply (BWS) deems it prudent to establish a policy for the application of the Facilities Reserve Charge (FRC) to "Guest Houses" as defined by the Kaua'i County Code.

Purpose: To clarify the Department's interpretation and application of the Board of Water Supply's Rules & Regulations, Part V – Facilities Reserve Charge with respect to Guest House designation.

This proposed Board Policy No. 31 is intended to be an interim policy that extends only to the completion and implementation of the next Facilities Reserve Charge – Needs Assessment Study which is anticipated to begin in 2020.

Background: The Council of the County of Kaua'i recently amended Section 8-1.5, Kauai County Code 1987, relating to the definition of "Guest House." The following is the original (a) and amended (b) definition of "Guest House":

Original (previous) definition of Guest House:

(a) "Guest House" means a building with a floor area or no more than five hundred (500) square feet, contains no kitchen, is used for dwelling purposes by guests, and is located on a parcel of at least nine thousand (9,000) square feet that contains one (1) or more dwelling units.

Amended definition of "Guest House":

(b) "Guest House" means a building with a floor area of no more than five hundred (500) square feet, may contain a kitchen, and is used for dwelling purposes by guests, tenants, or owner(s). A guest house shall not be used for a transient vacation rental (TVR) or homestay operation within or outside of the visitor destination area (VDA)."

The Kaua'i County Code Comprehensive Zoning Ordinance defines "Dwelling" as a building or portion thereof designed or used exclusively for residential occupancy and having all necessary facilities for permanent residency such as living, sleeping, cooking, eating and sanitation.

The interpretation by the Department of Water of the original definition of a "Guest House" (a) above, concluded that due to the lack of a kitchen facility, a "Guest House" would not be considered a "Dwelling" as defined by the Kaua'i County Code, therefore the Board of Water Supply would not assess a Facilities Reserve Charge (FRC) for guest house structures.

The recent amendment to the definition includes "may contain a kitchen,", however, which would qualify a "Guest House" with a kitchen as a "Dwelling". Therefore, it would be subject to the assessment of a Facilities Reserve Charge (FRC).

DRAFT

Procedures:

The Department reviews an applicant's Planning Zoning Permit for "Guest House" designation.

1. If the Planning Zoning Permit indicates that a "Guest House" is designated and permitted as an accessory structure without a kitchen facility, then no Facilities Reserve Charge (FRC) would be assessed.

2. If the Planning Zoning Permit indicates that a "Guest House" is designated and Permitted as an accessory structure with a kitchen facility, a Facilities Reserve Charge (FRC) would be assessed.

APPROVED BY: Date:

_____ _____

Chairperson, Board of Water Supply

RE: APPLICATION OF FACILITIES RESERVE CHARGE TO "GUEST HOUSES"

Effective Date: _____

Proposed

CAPITAL IMPROVEMENT PROJECTS (CIP)

for the

Department of Water County of Kaua'i

"WATER HAS NO SUBSTITUTE - CONSERVE IT"

Request for State Aid

2020

Legislative Session

* FOREWORD *

The Kauaʻi Department of Water's (DOW) fiscal year 2021 *(July 1, 2020 through June 30, 2021)* request for Capital Improvement Funds is intended to address the needs of our community, including public safety and affordable housing, by providing safe, sufficient, and affordable water to the people of Kauaʻi.

1. The **FIRST and TOP PRIORITY** project is to develop new storage infrastructure that will provide adequate fire flow storage capacity for the Kapaʻa area including Kapaʻa High School and the State's Samuel Mahelona Memorial Hospital. The existing Kapaʻa Homesteads 313-foot storage tank is undersized and does not meet the Water System Standards for fire storage capacity. The project is currently under design with construction anticipated to start in 2021. **(Project: Construct Kapaʻa Homesteads 325' Tanks, Two 0.5 MG Tanks);**

2. **SECOND PRIORITY** project is to develop storage infrastructure that will provide adequate domestic and fire flow storage capacity for the Haʻena-Wainiha water system, including Haʻena State Park, customers, and businesses in the area. The project will allow the DOW to remove the current water meter restriction that limits water service to three single family dwellings or three 5/8-inch water meters per lot due to inadequate storage facilities. The project's design is nearly complete and construction is anticipated to start in 2021. **(Project: Construct Haʻena 0.2 MG Storage Tank, 144');** and

3. The **THIRD PRIORITY** project is to develop storage infrastructure that will provide adequate domestic and fire flow storage capacity for the Kīlauea water system, including residential and business customers in the area. It is expected that this additional storage capacity will allow for future development and/or expansion of businesses, residential units, affordable housing and/or schools in the Kīlauea 466' service area. The project will allow the DOW to remove the current storage restriction that limits water service to five single family dwellings or five 5/8-inch water meters per lot due to inadequate storage facilities. The project's design is nearly complete and construction is anticipated in 2021. **(Project: Construct Kīlauea 1.0 MG Storage Tank and Connecting Pipeline, 466');**

4. The **FOURTH PRIORITY** project is to design Phase 1 of the DOW's Baseyard Master Plan in Līhu'e. The DOW's Baseyard is the single, central hub of all DOW operations and the design will include a significant reorganization of existing facilities and the design of new facilities to support both the DOW's current, growing needs and its future operational needs. The Master Plan will address spatial challenges, including equipment and employee parking, critical staff work areas, and material storage. While the Master Plan vision establishes a 30-year planning horizon, the urgency for initiating Phase 1 has accelerated in 2019 as upcoming projects in adjacent properties will remove parking for existing DOW staff as early as 2021. **(Project: DOW Baseyard Master Plan: Phase I);**

The Kauaʻi Board of Water Supply and the DOW are committed to operating in a fiscally responsible manner. The DOW's revenue is derived from water service sales with no direct subsidy from, or contributions to the County General Fund. The DOW's water service revenue is used for the operation and maintenance of each of our nine (9) public water systems. In efforts to provide for adequate funding in the future, the DOW periodically studies its water service charges and its impact fee, known as the "Facilities Reserve Charge"

(FRC), which is a fee to be paid by new developers or existing developers seeking additional water supply from the DOW's water system.

In the meantime, the DOW's current resources are not sufficient to fully develop the necessary infrastructure to replace aging water systems and satisfy Kaua'i's future needs. The DOW's water systems are not yet highly integrated or interconnected. Most of the water systems rely on less water sources and less storage tanks than are required by Water System Standards, and the majority of the water systems are still separate water systems serving individual communities around the island. Aging pipelines that were originally installed in many of these systems are now undersized, according to current Water System Standards.

The DOW periodically updates its Water Plan 2020, a comprehensive long-range plan to address infrastructure, revenue, and water rate needs of Kaua'i's water systems, and the DOW is currently initiating its next Island-Wide Long-Range Water Infrastructure Maintenance and Improvement Plan.

The maintenance and replacement of water infrastructure facilities is a continuous and critical process for ensuring a safe and sufficient public drinking water supply. Ultimately, given the high cost of infrastructure development in Hawai'i and the DOW's current fiscal capabilities, financial assistance from the State and Federal grants-in-aid are vital in order to meet the drinking water needs of our community and ensure the long-term viability of our water systems. On behalf of the people of Kaua'i, mahalo nui loa for your consideration of this request.

Department of Water, County of Kaua'i

SUMMARY REQUEST FOR STATE AID

CAPITAL IMPROVEMENT PROJECTS (CIP)

Fiscal Year 2021

Public Water System	Water Plan 2020 No.	Project	TOTAL Estimated Construction Costs FY 2021-2022	FY 2021	FY 2022
Priority No. 1 Kapaʻa-Wailua Water System	WK-8	Construct Kapaʻa Homesteads 325' Tanks, Two 0.5 MG Tanks	$12.3M	$8.0M	$4.3M
Priority No. 2 Hā'ena-Wainiha Water System	HW-11	Construct Haʻena 0.2 MG Storage Tank, 144'	$5.5M	$4.0M	$1.5M
Priority No. 3 Kīlauea Water System	WKK-15	Construct Kīlauea 1.0 MG Tank and Connecting Pipeline, 466'	$5.5M	$4.0M	$1.5M
Priority No. 4 Supports all Water Systems Island-Wide	-	DOW Baseyard Master Plan (Phase I)	$1.6M	$1.6M	-
		TOTAL	$24.9M	$17.6M	$7.3M

PRIORITY NO.	1

WAILUA-KAPAʻA WATER SYSTEM
Construct Kapaʻa Homesteads 325' Tanks, 1.0 MG (Two 0.5 MG Tanks)
Water Plan 2020 Project No. WK-08

A. **PROJECT DESCRIPTION AND JUSTIFICATION**

The Department of Water is requesting State aid to construct two (2) new 0.5 MG Storage Tanks in the Kapaʻa Homesteads area.

Per Water System Standards, the lower Kawaihau, Kapaʻa area of the Kapaʻa Water System is currently deficient in storage capacity for fire protection. This area includes Kapaʻa High School, Kapaʻa Middle School, Kapaʻa Elementary School, and the State's Samuel Mahelona Memorial Hospital. To address the storage deficit and provide adequate fire protection, the DOW is currently designing two (2), 0.5 million gallon storage tanks.

This project also includes site drainage, site improvements, and connecting pipeline to the Department's 313' water service zone in Kapaʻa. Construction is anticipated to start in 2021 if adequate funds are available. The design is nearly complete and the tanks will be constructed following the completion of the ongoing Drill and Test Kapaʻa Well No. 4 Project, which is currently under construction at the same site and is anticipated to be completed in 2020.

B. **ESTIMATED COST:**

	FISCAL YEAR		
	Total	**2021**	**2022**
Construction Cost	**$12.3M**	**$8.0M**	**$4.3M**

PRIORITY NO.	2

HAʻENA-WAINIHA WATER SYSTEM
Construct Haʻena 0.2 MG Storage Tank, 144'
Water Plan 2020 Project No. HW-11

C. **PROJECT DESCRIPTION AND JUSTIFICATION**

The Department of Water is requesting State aid to construct a new 0.2 MG Storage Tank in the Hā'ena-Wainiha area.

The existing storage facilities for the Haʻena-Wainiha 144' service zone are not adequate to provide the required domestic flow and fire flow demands required by Water System Standards. The proposed Haʻena 0.2 MG Storage Tank will provide adequate storage facilities to meet the Water System Standards and will provide storage facilities for anticipated demands in the Haʻena-Wainiha 144' service area into the future. The project would allow the DOW to remove the current water meter restriction that limits water service to three single family dwellings or three 5/8-inch water meters per lot due to inadequate storage facilities.

The design of the project is nearing completion and includes the new 0.2 million gallon steel water storage tank, site and drainage improvements, and connecting pipeline. Construction is anticipated to start in 2021 if sufficient funds are available.

A. **ESTIMATED COST:**

	FISCAL YEAR		
	Total	**2021**	**2022**
Construction Cost	**$5.5M**	**$4.0M**	**$1.5M**

PRIORITY NO.	3

KĪLAUEA WATER SYSTEM

Construct Kīlauea 1.0 MG Tank and Connecting Pipeline

Water Plan 2020 Project No. WKK-15

A. **PROJECT DESCRIPTION AND JUSTIFICATION:**

The Department of Water is requesting State aid to construct a new 1.0 MG Storage Tank in the Kīlauea area.

The existing storage facilities for the Kīlauea 466' service zone are not adequate to provide the required domestic flow and fire flow demands required by Water System Standards. The proposed Kīlauea 1.0 MG Storage Tank will provide adequate storage facilities to meet the Water System Standards and will provide storage facilities for anticipated demands in the Kīlauea 466' service area. It is expected that this additional storage capacity will allow for future development and/or expansion of businesses, residential units, affordable housing and/or schools in the Kīlauea 466' service area. The project would allow the DOW to remove the current storage restriction that limits water service to five single family dwellings or five 5/8-inch water meters per lot due to inadequate storage facilities.

The design of the project is nearing completion and includes the new 1.0 million gallon concrete water storage tank, site and drainage improvements, and connecting pipeline. Construction is anticipated to start in 2021 if sufficient funds are available.

B. **ESTIMATED COST:**

	FISCAL YEAR		
	Total	2021	2022
Construction Cost	$5.5M	$4.0M	$1.5M

PRIORITY NO.	4

ISLAND-WIDE WATER SYSTEM
DOW Baseyard Master Plan (Phase I, Design)

A. **PROJECT DESCRIPTION AND JUSTIFICATION:**

The Department of Water is requesting State aid to design the first phase of the DOW's Baseyard Master Plan.

The DOW's Baseyard is the single, central hub of all DOW operations and the design will include a significant reorganization of existing facilities and the design of new facilities to support both the DOW's current, growing needs and its future operational needs. The Master Plan will address spatial challenges, including equipment and employee parking, critical staff work areas, and material storage. While the Master Plan vision establishes a 30-year planning horizon, the urgency for initiating Phase 1 has accelerated in 2019 as upcoming projects in adjacent properties will remove parking for existing DOW as early as 2021.

The Master Plan is nearing completion and includes multiple phases to fully utilize and upgrade the DOW's baseyard facilities with future-focused solutions for the Department's growing needs over the next 30 years. Design is anticipated to start in 2020 if sufficient funds are available.

B. **ESTIMATED COST:**

C.

	FISCAL YEAR		
	Total	**2021**	**2022**
Design Cost	**$1.6M**	**$1.6M**	**-**

County of Kaua‘i, Department of Water

BOARD OF WATER SUPPLY

of the

CHAIRPERSON:	**THOMAS CANUTE**
VICE CHAIRPERSON:	**LAURIE HO**
BOARD MEMBERS:	**LAWRENCE DILL**
	KA‘AINA HULL
	KURT AKAMINE
	ELESTER CALIPJO
MANAGER & CHIEF ENGINEER: BRYAN WIENAND	

Email: dow@kauaiwater.org
Phone No. (808) 245-5400, FAX No. (808) 245-5813
4398 Pua Loke St, Lihu‘e, HI 96766

"WATER HAS NO SUBSTITUTE - CONSERVE IT"

New Business

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 20-25

December 2, 2019

Re: Discussion and Receipt of the Department of Water's Draft Audit Financial Statements and Independent Auditor's Report by Accuity, Inc. for Fiscal Year 2019 and 2018

RECOMMENDATION:

It is recommended that the Board receive and accept the Department of Water's (DOW's) draft Financial Statements (FS) as of June 30, 2019 and 2018 together with the Independent Auditor's Report.

BACKGROUND:

The independent auditor, Accuity, LLP has completed the audit of the DOW's financial accounts and information technology operations, including review of internal controls, accounting and reporting procedures for the Fiscal Year (FY) ending June 30, 2019. A draft copy of the audited Financial Statements as of June 30, 2019 and 2018 together with the Independent Auditor's Report are hereby submitted for your review, discussion and necessary action. The Auditors representing Accuity, LLP are here to discuss the results of the audit and to answer any questions that the Board may have.

The Board's acceptance of the audited financial statements is necessary to meet the County of Kauai's timeline in finalizing the County's Comprehensive Annual Financial Report (CAFR). DOW is a component unit of the County and the DOW's financial statements are an integral part of the County of Kaua'i's CAFR. The County has respectfully requested that the final financial statements be provided by November 25, 2019.

It is recommended that the Board receive and accept the draft Financial Statements for the Fiscal Years (FY) ending June 30, 2019 and 2018 as presented and approve the transmittal of the Financial Statements to the County of Kaua'i Finance Director. Pending any questions or proposed changes from the Board, the final copy of the Financial Statements and accompanying Auditors Report will be submitted to the Board at the December 27, 2019 Board meeting.

OPTIONS:

Option 1: **It is recommended that the Board receive and accept the DOW's Financial Statements as of June 30, 2019 and 2018 with the accompanying Independent Auditor's Report as presented.**

Pros: The DOW can transmit a copy of the audited Financial Statements to the County of Kaua'i Finance Director in a timely manner.

Cons: None known.

Option 2: **Do not receive and accept the DOW's Financial Statements as of June 30, 2019 and 2018 with the accompanying Independent Auditor's Report as presented. Do not transmit the audited Financial Statements to the County of Kaua'i Finance Director at this time.**

Pros: The Board can have additional time to discuss additional questions that they may have regarding the results of the audit.

Con: Deferral will affect the County of Kaua'i's timeline in meeting the deadline to submit to the County Council.

MY/ein

Attachments: 1. Accuity, LLP Financial Audit Result Presentation June 30, 2019
2. Accuity, LLP Department of Water Financial Statement June 30, 2019 and 2018

Mgrrp/December 2019/20-25/Discussion and Receipt of the Department of Water's Draft Audit Financial Statements and Independent Auditor's Report by Accuity, Inc. for Fiscal Year 2019 and 2018 (SBM 12-2-19):ein

Accuity LLP

CERTIFIED
PUBLIC
ACCOUNTANTS

Department of Water
County of Kauai
June 30, 2019 Audit Results

Presentation to the Board
November 22, 2019

Presented by:
Donn Nakamura
Matthew Oda

An independent member of bakertilly INTERNATIONAL

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QUALITY. INTEGRITY. INSIGHT.

ACcuity LLP

Scope of Services

- Provide an opinion on the fair presentation of the Department of Water's ("DOW") financial statements.
- Consider DOW's internal control over financial reporting in relation to our audit of the financial statements.
- Perform tests of the DOW's compliance with certain provisions of laws, regulations, contracts and grant agreements in relation to the financial statements.

QUALITY. INTEGRITY. INSIGHT.

Financial Statement Highlights

- Net position increased $9.3 million in fiscal 2019 to $198.1 million compared to the $5.4 million increase in fiscal 2018. The increase in the current year was primarily due to $3.4 million in income from operations and $6.7 million in contributions. In fiscal 2019, investment income increased by $2.3 million and contributions increased by $1.8 million from the prior year. The increase in the prior year was primarily due to $3.9 million in income from operations and $5.0 million in contributions, offset by $3.5 million in nonoperating expenses. In fiscal 2019, investment income increased by $2.3 million and contributions increased by $1.8 million from the prior year.
- Current assets at June 30, 2019 of $39.6 million exceeded total current liabilities by $28.2 million.
- Equity interest in pooled investments increased by $4.5 million to $57.1 million. This increase was due to investment purchases offset by investment sales and maturities.
- Net pension liability was $16.2 million as of June 30, 2019, an increase of $733,000 from the prior year end.
- Net OPEB liability was $8.5 million as of June 30, 2019, a $91,000 increase from the prior year end.
- Bonds payable decreased by $3.0 million due to current payments and no new additions.
- SRF loans payable decreased by $1.9 million due to current payments and no new additions.

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Required Communications

- AU-C Section 260 – *The Auditor's Communication With Those Charged with Governance*. These required communications are addressed in the following pages. Our procedures and scope require communication of various matters to the individuals responsible consistent with our planned audit strategy.

- As a result of our audit procedures performed relating to the financial statements for the year ended June 30, 2019, there are no matters which came to our attention that would require further communication or action by management other than those discussed in the following pages.

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Required Communications

Required Communications	Application to DOW
Auditors' responsibility under Generally Accepted Auditing Standards. The auditors should communicate the level of responsibility assumed for fraud and illegal acts, whether the financial statements are free of material misstatement and whether management's assessment of the effectiveness of the entity's internal control over financial reporting is fairly stated.	Our primary responsibility as the Department of Water's ("DOW") independent auditors is to evaluate and report on the fairness of the DOW's financial statements prepared in accordance with generally accepted accounting principles ("GAAP"). Based upon the results of our audit, which was performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*, we are prepared to issue an unmodified opinion on the DOW's financial statements.
Overview of the planned scope of the audit. The overview of the planned scope and timing of the audit should be communicated to those charged with governance.	This was communicated in our Contract No. 638 dated June 23, 2017.
Significant accounting policies, including critical accounting policies and the auditors' judgment about the quality of accounting principles. The entity's initial selection of and changes in significant accounting policies or their application; methods used to account for significant unusual transactions; and effect of significant policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus should be communicated to those charged with governance.	GASB No. 88, *Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements*, was adopted effective July 1, 2018. As a result of the adoption, Note 6 in the financial statements discloses finance-related consequences related to significant events of default.

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Required Communications

Required Communications	Application to DOW
Management judgments and accounting estimates. Those charged with governance should be informed about the process used by management in formulating sensitive accounting estimates and about the auditors' conclusions regarding the reasonableness of those estimates.	The more difficult and subjective judgments and estimates were: • Allowance for uncollectible receivables. • Revenue recognized related to unbilled accounts. • Depreciation and useful lives of capital assets. • Calculation of net pension benefits, net other postemployment benefits and workers' compensation liabilities. Management's estimates were evaluated and appeared to be reasonable.
Audit adjustments. All significant financial statement adjustments arising from the audit or proposed during the audit and any uncorrected misstatements that were determined to be immaterial by management individually and in the aggregate should be communicated to those charged with governance.	There were eight adjusting journal entries for fiscal 2019. All of these journal entries were recorded by management in the audited financial statements and are shown on pages 9 and 10. There were three uncorrected misstatements above our de minimis noted in the current year that are shown on page 11.

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Required Communications

Required Communications	Application to DOW
Potential effect on the financial statements of any significant risks and exposures. Those charged with governance should be aware of major risks and exposures facing the entity and how they are disclosed.	No major risks or exposures noted.
Material uncertainties related to events and conditions, specifically going concern issues. Any doubt regarding the entity's ability to continue as a going concern and any other material uncertainties should be communicated.	No issues related to the DOW's ability to continue as a going concern or other material uncertainties were noted.
Other information in documents containing audited financial information. Those charged with governance should be informed of the auditors' responsibility for information in a document containing audited financial statements, as well as of any procedures performed and the results.	We are unaware of any documents that will be submitted containing the audited financial statements.
Disagreements with management. Disagreements with management, whether or not satisfactorily resolved, about matters that could be significant to the entity's financial statements or the auditors' report should be communicated.	No such matters noted.
Consultation with other accountants. When the auditors are aware that management has consulted with other accountants about significant accounting or auditing matters, the auditors' view about the consultation subject should be communicated to those charged with governance.	We know of no such consultations made by management.

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Required Communications

Required Communications	Application to DOW
Major issues discussed with management prior to retention. Any major accounting, auditing or reporting issues discussed with management in connection with our initial or recurring retention should be communicated.	There were none.
Difficulties encountered in performing the audit. Serious difficulties encountered in dealing with management that related to the performance of the audit are required to be brought to the attention of those charged with governance.	There were no serious difficulties encountered in performing the audit.
Internal control deficiencies. Those charged with governance should be informed of any significant deficiencies or material weaknesses in the design or operation of internal control that came to the auditors' attention during the audit.	There were no material weaknesses noted while performing the audit.
Fraud and illegal acts. Fraud or illegal acts involving senior management, or those responsible for internal controls, or causing a material misstatement of the financial statements where the auditors determine there is evidence that such fraud may exist should be communicated. Any illegal acts coming to the auditors' attention involving senior management and any other illegal acts, unless clearly inconsequential.	We are not aware of any fraud or illegal acts.

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Required Communications

Required Communications	Application to DOW
Other material written communications.	
• Management representation letter.	• Management representation letter is available upon request.
• Schedule of findings.	• Refer to financial statements.
• Engagement letter.	• Contract is available upon request.

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Adjusting Journal Entries

Description	Debit	Credit
To properly reflect the pension liability related amounts to the GASB 68 allocation schedules		
Pension expense	1,176,364	
Deferred inflows on net pension liability	176,892	
Deferred outflows on net pension liability		620,106
Net pension liability		733,150
	1,353,256	1,353,256
To properly reflect the prior year contributions as a pension expense in FY19		
Pension expense	1,035,930	
Deferred outflows on net pension liability		1,035,930
	1,035,930	1,035,930
To properly reflect pension contributions subsequent to the measurement date as deferred outflows in FY19		
Deferred outflows on net pension liability	1,108,853	
Pension expense		1,108,853
	1,108,853	1,108,853
To properly reflect current year excess pension contributions subsequent to the measurement date as deferred outflows in FY19		
Deferred outflows on net pension liability	330,779	
Pension expense		330,779
	330,779	330,779

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Adjusting Journal Entries

Description	Debit	Credit
To properly reflect the OPEB liability related amounts to the GASB 75 report		
Deferred outflows on net OPEB liability	203,858	
OPEB expense		21,821
Deferred inflows on net OPEB liability		90,631
Net OPEB liability		91,406
	203,858	203,858
To properly reflect the prior year contributions as a OPEB expense in FY19		
OPEB expense	948,000	
Deferred outflows on net OPEB liability		948,000
	948,000	948,000
To properly reflect OPEB contributions subsequent to the measurement date as deferred outflows in FY19		
Deferred outflows on net OPEB liability	1,223,378	
OPEB expense		1,223,378
	1,223,378	1,223,378
To properly state FY19 OPEB expense		
Cash	84,250	
Insurance expense	4,825	
OPEB expense	123,303	
Deferred outflows on net OPEB liability		212,378
	212,378	212,378

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Summary of Uncorrected Misstatements

Description	Debit	Credit
To properly state depreciation expense in the current fiscal year		
Net position	359,715	
Depreciation		359,715
	359,715	359,715
To properly state the State Grants receivable at year-end		
Grants and subsidies receivable	1,089,891	
State grants revenue		1,089,891
	1,089,891	1,089,891
To properly state accounts payable as of year-end		
Construction in progress	254,816	
Accounts payable		254,816
	254,816	254,816

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Audit Plan for June 30, 2020 - Timeline

Discussion with management to understand any key risks or areas of focus for current year	May 2020
Planning	July 2020
Year-end financial statement fieldwork	August – September 2020
Draft report to management	Mid-October 2020
Issue final report	October 31, 2020 if pension allocation and OPEB valuation audits are completed by ERS and EUTF auditors in a timely manner

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Cybersecurity: Managing the Risks

- **Have you assessed your cybersecurity risks?**
  - The average cost of a data breach exceeds $1 million for small and mid-size businesses (Ponemon Institute, 2017).
  - Boards and senior management are responsible for oversight of cyber risk.

- **Have you developed a formal cybersecurity program?**
  - Aligning your cybersecurity controls with your cyber risks is key to managing and mitigating cyber threats.
  - Accuity's IT Risk team helps clients develop and prioritize cyber controls to address identified risks.

- **Have you had an independent assessment?**
  - Accuity's independent cybersecurity assessments can help give you confidence your controls are working.

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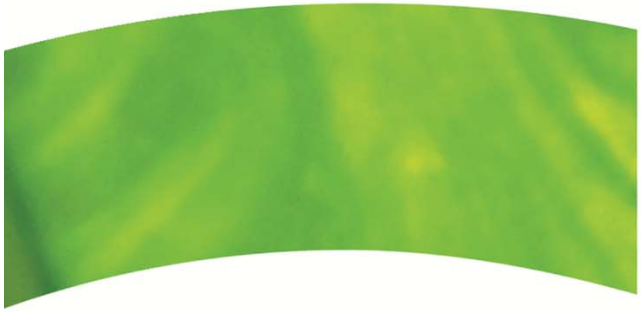

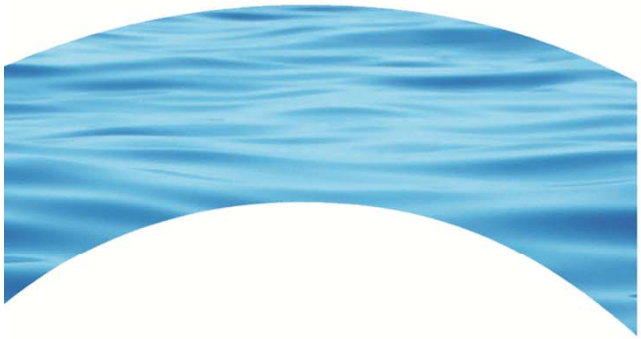

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CERTIFIED PUBLIC ACCOUNTANTS

Department of Water
County of Kauai

Financial Statements
June 30, 2019 and 2018

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County of Kauai
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Report of Independent Auditors

To the Board of Water Supply
Department of Water, County of Kauai

Report on the Financial Statements

We have audited the accompanying financial statements of the Department of Water (the "Department"), a component unit of the County of Kauai (the "County"), as of and for the years ended June 30, 2019 and 2018, and the related notes to the financial statements, which collectively comprise the Department's basic financial statements as listed in the index.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditors consider internal control relevant to the Department's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Department's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Department as of June 30, 2019 and 2018, and the respective changes in its financial position and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

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Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 4 through 10 and schedule of the Department's proportionate share of the net pension liability, schedule of the Department's pension contributions, schedule of the Department's proportionate share of the net other postemployment benefits ("OPEB") liability, and schedule of the Department's OPEB contributions on pages 45 through 48, respectively, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Information

Our audit was conducted for the purpose of forming an opinion on the financial statements that collectively comprise the Department's basic financial statements. The accompanying Supplemental Schedules I and II are presented for purposes of additional analysis and are not a required part of the basic financial statements.

The accompanying Supplemental Schedules I and II are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audits of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the accompanying supplemental information in Schedules I and II is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

Emphasis of Matter

As discussed in Note 2, the basic financial statements of the Department are intended to present the financial position, the changes in financial position, and cash flows of only that portion of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the County that is attributable to the transactions of the Department. They do not purport to, and do not, present fairly the financial position of the County as of June 30, 2019 and 2018, the changes in its financial position, or its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

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Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated November __, 2019 on our consideration of the Department's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Department's internal control over financial reporting and compliance.

Honolulu, Hawaii
November __, 2019

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Management's Discussion and Analysis

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The Department of Water, County of Kauai (the "Department") is a semiautonomous agency consisting of a Board of Water Supply Manager and Chief Engineer, and support staff. The Board of Water Supply is responsible for the management, control and operation of the County of Kauai's water system. This discussion and analysis is designed to assist the reader in focusing on the significant financial issues and activities and to identify any significant changes in financial position. We encourage readers to consider the information presented here in conjunction with the financial statements.

Financial Highlights

- Total assets and deferred outflows at fiscal year-end ("FY") June 30, 2019 were $303.3 million ("M") and exceeded liabilities and deferred inflows by $198.1M.

- Total net position at June 30, 2019 had a net change of $9.3M. The current year's income before contributions of $2.5M and capital contributions of $6.7M brought in a combined $9.3M increase in net position.

- Total cash and investments at June 30, 2019 were $67.4M, a decrease of $3.0M from June 30, 2018. The decrease was due to cash transfers from the Build America Bonds ("BAB") investment portfolio to pay for BAB capital projects.

- The Department's liquidity ratio is 3.5 at June 30, 2019 and 3.9 at June 30, 2018.

- The Department finances part of its capital improvement and rehabilitation programs through BAB and State Revolving Fund ("SRF") loans. There were no new debts for FY 2019. The debt-to-equity ratio, including capital leases, is 37% at June 30, 2019 and 41% at June 30, 2018.

- Operating revenues for FY 2019 were $30.6M, a slight increase of $109 thousand ("K") from FY 2018. Although the water rates in FY 2019 were the same as FY 2018 and the total water usage in gallons decreased, the $100K increase could be attributed to the price differences with the tiered pricing structure in water sales.

- Operating expenses for the current year totaled $27.1M, an increase of $540K as compared to the prior year. Details of this increase are further explained on pages 7 through 10.

- Long-term debt at June 30, 2019 was $72.4M, a decrease of $4.9M from June 30, 2018. The decrease is from principal payments made for both the SRF loans and BAB.

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Overview of the Financial Statements

The financial statements are presented using the economic resources measurement focus and accrual basis of accounting, whereby revenues and expenses are recognized in the period earned or incurred. The financial statements are designed to provide readers with a broad overview of the Department's finances in a manner similar to a private-sector business.

The basic financial statements include a statement of net position, a statement of revenues, expenses and changes in net position, a statement of cash flows, and notes to basic financial statements. The statement of net position presents all of the Department's assets and deferred outflows of resources ("deferred outflows") and liabilities, deferred inflows of resources ("deferred inflows") and net position, and provides information on the nature of its resources and obligations. The statement of revenues, expenses and changes in net position presents the results of operations and the resulting change in net position for the year. The statement of cash flows presents changes in cash resulting from operating activities, capital and related financing activities, and investing activities.

The notes to the basic financial statements provide required disclosures and additional information that is essential to a full understanding of the data provided in the basic financial statements. In addition to the basic financial statements and accompanying notes, this report also presents certain supplementary information on utility plant-in-service and selective account classifications.

Financial Analysis

Statements of Net Position – Condensed

June 30, 2019, 2018 and 2017

	2019	2018	2017	FY 19 − 18 % Change
Assets				
Current and other assets	$ 39,629,448	$ 40,264,662	$ 28,682,725	(2%)
Net capital assets	222,343,881	216,914,030	217,059,494	3%
Other noncurrent assets	36,104,224	34,892,358	44,946,715	3%
Deferred outflows of resources	5,253,018	5,218,846	6,382,072	1%
Total assets and deferred outflows	$ 303,330,571	$ 297,289,896	$ 297,071,006	2%
Liabilities				
Current liabilities	$ 11,425,374	$ 10,290,202	$ 10,030,581	11%
Long-term debt, net	67,379,153	72,454,400	77,396,363	(7%)
Other long-term liabilities	25,519,494	24,708,858	18,288,117	3%
Deferred inflows of resources	912,344	998,605	338,104	(9%)
Total liabilities and deferred inflows	$ 105,236,365	$ 108,452,065	$ 106,053,165	(3%)
Net position				
Net investment in capital assets	$ 160,382,454	$ 151,506,070	$ 148,854,813	6%
Restricted	905,194	809,295	539,799	12%
Unrestricted	36,806,558	36,522,466	41,623,229	1%
Total net position	$ 198,094,206	$ 188,837,831	$ 191,017,841	5%

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Statements of Revenues, Expenses and Changes in Net Position – Condensed

Years Ended June 30, 2019, 2018 and 2017

	2019	2018	2017	FY 19 − 18 % Change
Operating revenues	$ 30,558,551	$ 30,449,591	$ 30,916,260	0%
Operating expenses	27,110,251	26,570,522	25,897,784	2%
Income from operations	3,448,300	3,879,069	5,018,476	(11%)
Nonoperating expenses	(922,775)	(3,501,720)	(3,238,418)	(74%)
Capital contributions	6,730,850	4,978,322	2,667,648	35%
Change in net position	9,256,375	5,355,671	4,447,706	73%
Beginning of year	188,837,831	191,017,841	186,570,135	(1%)
Restatement due to change in accounting principle	-	(7,535,681)	-	100%
Net position at beginning of year, as restated	188,837,831	183,482,160	186,570,135	(2%)
End of year	$ 198,094,206	$ 188,837,831	$ 191,017,841	5%

The Department's financial condition remains positive at year-end. As described earlier, net position is the reported difference between assets and deferred outflows and liabilities and deferred inflows which over time, may serve as a useful indicator of the Department's overall financial position. At June 30, 2019, total assets and deferred outflows at year-end for the Department was $303.3M which exceeded liabilities and deferred inflows of $105.2M by $198.1M (net position).

Total cash and investments (including restricted funds) decreased by $3.0M from $70.4M at June 30, 2018 to $67.4M at June 30, 2019.

The Department's liquidity ratio (current assets divided by current liabilities) was 3.5 at June 30, 2019 and 3.9 at June 30, 2018.

The Department finances part of its capital improvement and rehabilitation program through BAB and SRF loans. The debt-to-equity ratio, including capital leases, at June 30, 2019, 2018 and 2017 was 37%, 41% and 44%, respectively.

The debt service coverage, including capital leases, for FY 2019 is 2.2 which is above the Department's debt service coverage target of 1.5.

The change in net position, as a result of operating and nonoperating activities and contributions, for FY 2019 was $9.3M and is basically a result of the current year's operations and capital contributions. Key elements of this increase are as follows:

- Income from operations for FY 2019 was $3.4M and nonoperating expenses was $923K resulting in income before contributions of $2.5M. Total capital contributions were $6.7M bringing in a total of $9.3M change in net position, as a result of operating and nonoperating activities and contributions, for FY 2019.

- Total operating expenses increased by $540K or 2.0% higher from $26.6M in FY 2018 to $27.1M in FY 2019.

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- Other variances in the major components of operating expenses are explained below:

  - Depreciation and amortization decreased by $768K or 10% from the previous fiscal year. The decrease is due to an adjustment of the Department's fixed assets depreciation schedule to manually remove fully depreciated individual assets in a composite group of assets which reduced the percentage basis of the asset depreciation schedule.

  - Administrative and general expenses increased by $557K. This 6.6% increase from the previous fiscal year is attributed mainly from the following:

    - Salaries, wages and related employee benefits increased by $143K. The 3.5% increase was in line with the approved Collective Bargaining Units ("CBA") average rate of increases that the Department implemented with its employees.

    - Professional services ("PS") had a net increase of $515K. The net increase was due to outside legal service representations increase of $114K coupled with construction management services increase of $532K offset by Water Resources & Planning PS decrease of $122K due to the completion of a two-year contract for Projecting Future Rainfall and Evapotranspiration for Kauai.

    - Utilities increased by $39K and this is due to the slight change in electricity rates.

    - Repairs and maintenance increased by $100K. The increase was due to the services of an outside consultant who helped the Department with the switch over of the Department's own hosted Customer Care & Billing System ("CC&B") to a web based hosted CC&B solution.

    - Travel, training and development and meeting expenses increased by $10K or 10.5%. The Department sponsored several onsite trainings that gave all employees a chance to attend and gain leadership and technical skills.

    - An offset to these increases were decreases from office and operating supplies, books and subscriptions with a combined decrease of $44K. Insurance expense also decreased by $212K with reduced claims that were processed in FY 2019.

  - Power and pumping expenses increased by $52K. This 1.7% increase from the previous fiscal year is attributed to the following:

    - Salaries, wages and related employee benefits increased by $28K. The increase in salaries was due to an employee reallocation and increased overtime.

    - Repairs and maintenance increased by $35K. The increase was due to the needed repairs of two water pumps during the year.

    - Operating supplies increased by $24K. The increase in operating supplies was correspondingly associated with the two pump repairs that occurred during the year.

    - An offset to these increases were decreases from communication services by $2K and utility services by $33K. The decrease in utility services corresponds to the decreased billed consumption in FY 2019. In addition, a procedural adjustment on the pump stations' time scheduler were also put in place.

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- Transmission and distribution ("TandD") expenses decreased by $119K. This 2.8% decrease is mainly attributed to the following:

  - Salaries and wages including related employee benefits increased by $118K or 3.4%. As explained under the administrative function above, the rate of increase was in line with the approved increases per the CBA.

  - Rentals and leases increased by $34K or 725.4%. The Department completed several access road repairs that required the leasing of heavy equipment.

  - Operating supplies increased by $61K or 11.6% and fuel usage increased by $19K. The increase in operating supplies was due to the influx of new meter installations as a result of a change in the Facilities Reserve Charge ("FRC") Rules and Regulations. Fuel usage increased correspondingly with the purchase of new trucks that were added to the Department fleet.

  - Travel, training and development increased by $18K or 116.8%. Operations staff were provided opportunities to attend trainings and conferences to enhance their skills related to their field.

  - Repairs and maintenance (non-water systems) decreased by $30K. The decrease was attributed from the decline in auto and equipment repairs.

  - Repairs and maintenance (water systems) decreased by $196K or 63.9%. FY 2019 did not have the same amount of repairs and maintenance costs compared to FY 2018 because there was a heavy rainfall in April 2018 that damaged several water systems and caused various emergency repairs.

- Source of supply expenses increased by $599K. This 40.7% increase from previous fiscal year is attributed mainly to the following:

  - Salaries and wages including employee benefits decreased by $31K due to position vacancies.

  - Bulk water purchases increased by $378K. The capital lease for the Surface Water Treatment was fully amortized as of February 2019 and any succeeding payments made after February 2019 were all charged to bulk water purchases thereby increasing the operating cost portion.

  - Due to a County project, non-routine repairs and maintenance expense of $250K was incurred to abandon a non-functioning well to conform to Department of Health ("DOH") requirements.

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- Customer accounting and collection expenses increased by $133K. This 12.5% increase from previous fiscal year is attributed mainly to the following:
  - Salaries and wages including employee benefits increased by $57K or 17.2%. The increase was due to a benefit payout within the fiscal year.
  - Uncollectible expense increased by $26K. There were no major write-offs in FY 2018.
  - Professional services, billing costs and other services had a combined net increase of $48K. The increase was due to the services of an outside consultant to help the Department facilitate the switch of the Department owned CC&B server to a cloud-hosted CC&B and online billing services.
- Purification expenses increased by $84K. This 9.9% increase from the previous fiscal year is attributed mainly to the following:
  - Salaries and wages including employee benefits decreased by $36K due to a retirement and other position vacancies.
  - Professional services increased by $39K. The increased cost was due to additional water quality testing performed during the fiscal year.
  - Operating supplies increased by $79K and was attributed to increased prices of chemicals used in the purification process.

- Capital contributions, which are included in nonoperating income, amounted to $6.8M for FY 2019, an increase of $1.8M or 35.2% as compared to last year's $5.0M in capital contributions.

Capital Assets and Debt Administration

Capital assets are made up of property, plant and equipment. As of June 30, 2019, the Department had net capital assets of $222.3M. Utility plant-in-service additions in FY 2019 amounted to $8.5M. Major capital asset additions included general plant equipment, capital projects placed in service, and conveyances of water infrastructure completed by private developers as noted below:

Trucks and Generators	General Plant	$ 927,748
Kōloa Well 16A & 16B	Utility Plant	3,906,438
Hanapēpē Booster Station	Utility Plant	1,175,574
Conveyances of Water Services	Utility Plant	1,096,737

Long-term debt obligations outstanding as of June 30, 2019 amounted to $72.4M which consisted of $54.1M in BAB and $18.3M in SRF loans. The Department made a total of $4.9M in principal payments for both the BAB and SRF loans. There was no new debt or borrowing activity for FY 2019. More detailed information about the Department's long-term debt is provided in Note 6 of the notes to the basic financial statements.

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Current Known Facts, Decisions or Conditions

As of this date, management is not aware of any known facts, decisions or conditions that are expected to have a significant effect on financial position or results of operations of the Department.

Requests for Information

This financial report is designed to provide a general overview of the Department's finances as of June 30, 2019. Questions concerning any information provided in this report or requests for additional information should be addressed to the Manager and Chief Engineer, Department of Water, County of Kauai at 4398 Pua Loke Street, Lihue, Kauai, Hawaii 96766.

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Basic Financial Statements

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Department of Water
County of Kauai
Statements of Net Position
June 30, 2019 and 2018

	2019	2018
Assets and Deferred Outflows of Resources		
Current assets		
Cash	$ 8,359,490	$ 16,724,481
Equity interest in pooled investments	23,039,770	18,938,291
Receivables		
Accounts, net of allowance for doubtful accounts of approximately $252,000 and $260,000 in 2019 and 2018, respectively	1,769,870	1,562,951
Unbilled accounts	1,532,261	1,294,493
Grants and subsidies	3,534,286	248,071
Accrued interest	230,006	217,639
Total receivables	7,066,423	3,323,154
Materials and supplies	1,112,506	1,087,256
Prepaid expenses	51,259	191,480
Total current assets	39,629,448	40,264,662
Restricted assets		
Facility reserve charge funds		
Cash	787,533	681,404
Accounts receivable and other	103,197	106,316
Total facility reserve charge funds	890,730	787,720
Bond funds		
Cash	1,118,943	367,486
Equity interest in pooled investments	9,318,809	12,071,974
Accrued interest	22,315	29,424
Total bond funds	10,460,067	12,468,884
Total restricted assets	11,350,797	13,256,604
Equity interest in pooled investments, noncurrent	24,753,427	21,635,754
Utility plant		
In service	345,664,652	337,176,568
Accumulated depreciation	(134,500,395)	(127,779,001)
Total utility plant	211,164,257	209,397,567
Construction work in progress	11,179,624	7,516,463
Net capital assets	222,343,881	216,914,030
Total assets	298,077,553	292,071,050
Deferred outflows of resources		
Deferred loss on refunding	1,066	17,348
Deferred outflows on net pension liability	4,037,094	4,253,498
Deferred outflows on net other postemployment benefits liability	1,214,858	948,000
Total deferred outflows of resources	5,253,018	5,218,846
Total assets and deferred outflows of resources	$ 303,330,571	$ 297,289,896

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The accompanying notes are an integral part of these financial statements.

Department of Water
County of Kauai
Statements of Net Position
June 30, 2019 and 2018

	2019	2018
Liabilities, Deferred Inflows of Resources, and Net Position		
Current liabilities		
Current portion of long-term debt	$ 5,017,034	$ 4,883,749
Current portion of capital lease obligation	4,058	522,000
Accounts payable and accrued liabilities	4,396,086	3,406,396
Contracts payable, including retainages	536,898	127,590
Accrued vacation and compensatory pay	513,190	489,688
Customer deposits	958,108	860,779
Total current liabilities	11,425,374	10,290,202
Long-term debt, net of current portion and unamortized premiums	67,379,153	72,454,400
Net pension liability	16,156,668	15,423,518
Net other postemployment benefits liability	8,459,304	8,367,898
Capital lease obligation, net of current portion	-	4,619
Accrued vacation and compensatory pay, net of current portion	903,522	912,823
Total liabilities	104,324,021	107,453,460
Deferred inflows of resources		
Deferred inflows on net pension liability	685,930	862,822
Deferred inflows on net other postemployment benefits liability	226,414	135,783
Total deferred inflows of resources	912,344	998,605
Commitments and contingencies		
Net position		
Net investment in capital assets	160,382,454	151,506,070
Restricted for capital activity	905,194	809,295
Unrestricted	36,806,558	36,522,466
Total net position	$ 198,094,206	$ 188,837,831

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The accompanying notes are an integral part of these financial statements.

Department of Water
County of Kauai
Statements of Revenues, Expenses and Changes in Net Position
Years Ended June 30, 2019 and 2018

	2019	2018
Operating revenues		
Water sales	$ 27,959,395	$ 27,910,074
Other water revenue		
Public fire protection service	2,174,298	2,136,510
Other	424,858	403,007
Total operating revenues	30,558,551	30,449,591
Operating expenses		
Depreciation and amortization	6,864,701	7,632,727
Administrative and general	8,951,109	8,393,657
Transmission and distribution	4,046,581	4,165,095
Power and pumping	3,034,099	2,982,323
Customer accounting and collection	1,200,438	1,067,167
Purification	939,770	855,414
Source of supply	2,073,553	1,474,139
Total operating expenses	27,110,251	26,570,522
Income from operations	3,448,300	3,879,069
Nonoperating income (expenses)		
Investment income (expense), net	2,216,290	(87,982)
Interest expense, net of amounts capitalized	(3,139,065)	(3,413,738)
Total nonoperating expenses	(922,775)	(3,501,720)
Income before contributions	2,525,525	377,349
Contributions	6,730,850	4,978,322
Change in net position	9,256,375	5,355,671
Net position		
Beginning of year	188,837,831	183,482,160
End of year	$ 198,094,206	$ 188,837,831

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The accompanying notes are an integral part of these financial statements.

Department of Water
County of Kauai
Statements of Cash Flows
Years Ended June 30, 2019 and 2018

	2019	2018
Cash flows from operating activities		
Cash received from customers	$ 27,514,708	$ 28,085,784
Cash payments to suppliers for goods and services	(12,140,764)	(10,859,837)
Cash payments to employees for services	(6,127,319)	(5,986,800)
Other cash receipts	2,599,156	2,539,517
Net cash provided by operating activities	11,845,781	13,778,664
Cash flows from capital and related financing activities		
Acquisition and construction of capital assets	(9,996,102)	(4,487,741)
Principal paid on revolving fund loan	(1,933,749)	(1,925,459)
Principal paid on public improvement bond maturities	(2,950,000)	(2,910,000)
Principal paid on capital lease obligation	(522,561)	(742,465)
Interest paid on long-term debt	(3,474,499)	(3,695,586)
Proceeds from Build America Bond interest subsidies	851,482	874,992
Net proceeds from FRC Program	437,130	834,735
Proceeds from federal government capital grants	32,228	-
Proceeds from state government capital grants	457,839	327,632
Net cash used in capital and related financing activities	(17,098,232)	(11,723,892)
Cash flows from investing activities		
Purchases of investments	(42,480,206)	(25,654,110)
Sales and maturities of investments	39,178,933	31,503,380
Interest on investments	1,046,319	778,382
Net cash provided by (used in) investing activities	(2,254,954)	6,627,652
Net change in cash (including restricted cash)	(7,507,405)	8,682,424
Cash		
Beginning of year	17,773,371	9,090,947
End of year (including $1,906,476 and $1,048,890 in restricted cash at June 30, 2019 and 2018, respectively)	$ 10,265,966	$ 17,773,371

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The accompanying notes are an integral part of these financial statements.

Department of Water
County of Kauai
Statements of Cash Flows
Years Ended June 30, 2019 and 2018

	2019	2018
Reconciliation of cash flows from operating activities		
Income from operations	$ 3,448,300	$ 3,879,069
Depreciation and amortization expense	6,864,701	7,632,727
Bad debt expense	26,263	-
Decrease (increase) in assets and deferred outflows of resources		
Accounts receivable, net	(233,182)	(55,213)
Unbilled accounts and other receivables	(237,768)	230,923
Materials and supplies	(25,250)	9,804
Prepaid expenses and other assets	140,221	(85,950)
Deferred outflows of resources	(50,453)	1,146,945
Increase (decrease) in liabilities and deferred inflows of resources		
Accounts payable and accrued liabilities	1,063,124	631,053
Accrued vacation and compensatory pay	14,201	70,856
Customer deposits	97,329	323,347
Net pension liability	733,150	(1,497,615)
Net other postemployment benefits liability	182,037	968,000
Deferred inflows of resources	(176,892)	524,718
Net cash provided by operating activities	$ 11,845,781	$ 13,778,664

Supplemental Disclosure of Noncash Capital and Related Financing Activities
The Department received approximately $1,669,000 and $3,281,000 for the years ended June 30, 2019 and 2018, respectively, in contributions of property, plant and equipment from governmental agencies, developers and customers which are recorded as contributions at estimated fair value at the date of donation.

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The accompanying notes are an integral part of these financial statements.

1. Background

On May 10, 1960, by authority of Act 20, Session Laws of Hawaii 1960, the Board of Water Supply (the "Board") of the County of Kauai, Hawaii (the "County") was created. The County transferred to the Board the operation and management of the water transmission and distribution systems. Under Act 20, the Board has the power to make and alter rules and regulations relating to the management, control, operation, preservation and protection of the waterworks. The rules and regulations adopted by the Board have the force and effect of law.

As of January 2, 1969, under a new charter for the County, the policy-making responsibility for the water system was retained by the Board. The Board, however, is specifically stated to be an executive department of the County government. To the extent that they were not in conflict with the provisions of the charter, laws governing the County water supply which were in existence at the time of the enactment of the charter continued in effect. The water system is now being operated as the Department of Water, County of Kauai (the "Department"), a self-supporting component unit (enterprise fund) of the County, which renders water services throughout the island.

The Department is responsible for establishing rates for services based upon current operating costs and expected future capital and operating revenue requirements. The rates determined by the Department are subject to approval by the Board.

2. Summary of Significant Accounting Policies

Financial Statement Presentation

The Department is a component unit of the County (the primary government). The accompanying financial statements present only the activities of the Department and do not include other organizations, activities and functions of the County.

Basis of Accounting

The accompanying financial statements are presented using the economic resources measurement focus and the accrual basis of accounting, whereby revenues and expenses are recognized in the period earned or incurred.

The Department distinguishes operating revenues and expenses from nonoperating items. Operating revenues and expenses generally result from providing services in connection with the Department's principal ongoing water operations. The principal operating revenues are from charges for water usage, while operating expenses include cost of services, administrative expenses, and depreciation on capital assets. All revenues and expenses not meeting this definition are reported as nonoperating revenues and expenses.

Cash

The Department's cash includes cash on hand, demand deposits, and short-term investments with original maturities of three months or less from the date of acquisition.

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Investments
The Department has stated its investments at fair value, except for non-negotiable certificates of deposit which are recorded at amortized cost. Changes in the fair value of investments are recognized in investment income in the accompanying statements of revenues, expenses and changes in net position. The net increase in the fair value of investments for the year ended June 30, 2019 approximated $1,165,000. The net decrease in the fair value of investments for the year ended June 30, 2018 approximated $911,000.

Management Estimates
The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Significant items subject to such estimates and assumptions include revenue recognized related to unbilled accounts, accrued liability for workers' compensation claims and judgments, accrued liability for post-retirement health care benefits, and net pension liability. Actual results could differ from those estimates.

Utility Plant-in-Service ("UPIS") and Depreciation
In July 2007, a detailed report on the inventory and valuation of water utility properties of the Board was prepared by consultants. The estimated original cost of $161,833,581 and the accumulated depreciation of $59,014,249 were recorded. Additions to the utility plant since the date of the valuation are stated at cost and include contributions by government agencies, private developers, and customers at their fair value at the date of contribution.

The utility plant is depreciated using the straight-line basis by applying composite rates based on the useful lives below. The composite rates are applied to beginning plant balances including contributions in aid of construction to calculate depreciation expense for the year.

The estimated useful lives of the various individual and group assets are as follows:

Motor vehicles	7 – 10 years
Equipment and machinery	5 – 20 years
Buildings and improvements	40 – 50 years
Transmission and distribution equipment	18 – 63 years

Normal maintenance and repairs are charged to operations as incurred. All expenditures for major additions, betterments and replacements for the utility plant are capitalized, and expenditures for the general plant greater than $5,000 are capitalized. The Department capitalizes certain indirect costs related to construction work orders based upon actual construction direct labor hours.

Capitalization of Interest
Interest costs have been capitalized, in accordance with accounting principles generally accepted in the United States of America, based on an average of expended costs through the end of the year. Capitalized interest in 2019 and 2018 was approximately $262,000 and $213,000, respectively.

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Material and Supplies
Materials and supplies are stated at lower of average cost (which approximates the first-in, first-out method) or market. The cost of materials and supplies is recorded as an expense when consumed rather than when purchased.

Deferred Outflows and Inflows of Resources
Deferred outflows of resources represent consumptions of net position that apply to future periods and will not be recognized as an outflow of resources (expenses) until then. Deferred charges on refunding bonds resulting from the difference between the carrying value of debt and its reacquisition price are reported as deferred outflows of resources. This amount is deferred and amortized over the shorter of the life of the refunded or refunding debt on a basis that approximates the effective-interest method.

Under Governmental Accounting Standards Board ("GASB") Statement No. 68, *Accounting and Financial Reporting for Pensions*, and Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other than Pensions,* for differences between expected and actual experience and changes in assumptions are recognized in pension and other postemployment benefits ("OPEB") expense, respectively, using a systematic and rational method over a closed period equal to the average of the expected remaining service lives of all employees that are provided with pensions through the pension plan and OPEB through the OPEB plan (active and inactive employees) determined as of the beginning of the measurement period.

Additionally, differences between projected and actual earnings on pension and OPEB plan investments are recognized in the pension and OPEB expense, respectively, using a systematic and rational method over a closed five-year period. Contributions to the pension and OPEB plan from the employer subsequent to the measurement date of the net pension and OPEB liability, respectively, and before the end of the reporting period are reported as deferred outflows of resources.

Revenue Recognition
The Department recognizes revenue on the accrual method of accounting as services are rendered. Revenue recognized for services rendered but not billed is reflected as unbilled accounts receivable in the accompanying statements of net position.

Risk Management
The Department is exposed to various risks of loss from: (1) torts, (2) theft of, damage to, and destruction of assets, (3) employee injuries and illnesses, (4) natural disasters, (5) employee health, dental and accident benefits, and (6) miscellaneous others. Commercial insurance coverage is purchased for claims arising from such matters. Settled claims in excess of this commercial coverage were not significant in any of the three preceding years. The Department is self-insured for workers' compensation claims and judgments.

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Contributions
For the years ended June 30, 2019 and 2018, the following transactions represent voluntary non-exchange transactions, recorded at fair value, and are included as nonoperating income in the statements of revenues, expenses and changes in net position:

	2019	2018
Contributions of property, plant and equipment, and grant money from governmental agencies, developers and customers	$ 5,455,756	$ 3,280,608
Build America Bond interest subsidies	837,964	862,979
Facility reserve charge fees	437,130	834,735
	$ 6,730,850	$ 4,978,322

At June 30, 2019 and 2018, the Department recorded approximately $344,000 and $354,000, respectively, of accrued interest subsidies in grants and subsidies receivable in the accompanying statements of revenues, expenses and changes in net position.

Facilities Reserve Charge ("FRC")
Under the authority provided to the Board mentioned in Note 1, the Department assesses a fee to commercial and residential developers based upon the number and size of water meters installed at respective projects. These fees are restricted to fund the capital improvements of the water supply system and recorded as contributions in the statements of revenues, expenses and changes in net position.

Net Position
Net position comprises the various accumulated net earnings from operating and nonoperating revenues, expenses and contributions in aid of construction. Net position is classified in the following three components: net investment in capital assets, restricted for capital activity, and unrestricted net position. Net investment in capital assets consists of capital assets, net of accumulated depreciation and reduced by outstanding debt that is attributable to the acquisition, construction or improvement of those assets. Debt related to unspent proceeds or other restricted cash and investments at year-end are not included in the calculation of net investment in capital assets. Restricted for capital activity consists of net position for which constraints are placed thereon by external parties, such as lenders, grantors, contributors, laws, regulations and enabling legislation, including self-imposed legal mandates. Unrestricted consists of all other net position not included in the above categories. When both restricted and unrestricted resources are available for use, generally, it is the Department's policy to use restricted resources first, then unrestricted resources as they are needed.

Pensions
For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions and pension expense, information about the fiduciary net position of the Employees' Retirement System of the State of Hawaii ("ERS"), and additions to/deductions from ERS's fiduciary net position have been determined on the same basis as they are reported by ERS. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Plan investments are reported at fair value.

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Postemployment Benefits Other Than Pensions ("OPEB")
For purposes of measuring the net OPEB liability, deferred outflows of resources and deferred inflows of resources related to OPEB and OPEB expense, information about the fiduciary net position of the Hawaii Employer-Union Health Benefits Trust Fund ("EUTF"), and additions to/deductions from the EUTF's fiduciary net position have been determined on the same basis as they are reported by the EUTF. For this purpose, benefit payments are recognized when due and payable in accordance with the benefit terms. Investments are reported at their fair value.

New Accounting Pronouncements

GASB Statement No. 87
In June 2017, GASB issued Statement No. 87, *Leases*. This Statement increases the usefulness of governments' financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or outflows of resources based on the payment provisions of the contract. This Statement is effective for periods beginning after December 15, 2019. The Department has not yet determined the effect this Statement will have on its financial statements.

GASB Statement No. 89
In June 2018, GASB issued Statement No. 89, *Accounting for Interest Cost Incurred Before the End of a Construction Period*. This Statement will improve financial reporting by providing users with more relevant information about capital assets and the cost of borrowing for a reporting period. This Statement is effective for periods beginning after December 15, 2019. The Department has not yet determined the effect this Statement will have on its financial statements.

3. Deposits

The Department's deposits consist of cash on hand, cash held at financial institutions, and cash held at the County of Kauai.

At June 30, 2019 and 2018, the carrying value of the Department's cash deposits amounted to approximately $10,266,000 and $17,773,000, respectively, of which approximately $1,439,000 and $1,060,000, respectively, were held by the County in the County's name. The bank balances at June 30, 2019 and 2018 amounted to approximately $10,169,000 and $17,259,000, respectively. The County Director of Finance has arranged for all of the Department's deposits at June 30, 2019 and 2018 to be collateralized with securities held by the pledging financial institution in the County's name.

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4. Investments

The Department's investments are controlled by the Director of Finance of the County of Kauai and are generally invested in money market mutual funds, certificates of deposit, repurchase agreements, government treasury obligations and agencies (i.e., Federal Home Loan Bank notes and bonds, Federal Home Loan Mortgage Corporation bonds, and Federal National Mortgage Association notes and bonds) with federally insured financial institutions and mutual funds. The Department's investment vehicles are consistent with the investment guidelines contained in the Hawaii Revised Statutes ("HRS").

The Department participates in an investment pool with the County. The Department's portion of this pool is displayed on the statements of net position as equity interest in pooled investments.

The Department categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The hierarchy is based on the valuation inputs used to measure the fair value of the asset. Level 1 inputs are quoted prices in active markets for identical assets, Level 2 inputs are significant other observable inputs, and Level 3 inputs are significant unobservable inputs.

The following table presents the fair value of the Department's investments by level of input at June 30, 2019 and 2018:

		Fair Value Measurements Using		
	Reported Value	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
2019				
Investments by fair value level				
U.S. treasury obligations	$ 3,013,750	$ 3,013,750	$ -	$ -
U.S. government agencies	32,842,358	-	32,842,358	-
Repurchase agreements	2,300,000	-	2,300,000	-
Money market mutual funds	5,449,898	5,449,898	-	-
Total investments by fair value level	43,606,006	$ 8,463,648	$ 35,142,358	$ -
Investments measured at amortized cost				
Certificates of deposit	13,506,000			
Total equity interest in pooled investments	$ 57,112,006			
2018				
Investments by fair value level				
U.S. treasury obligations	$ 956,800	$ 956,800	$ -	$ -
U.S. government agencies	30,370,302	-	30,370,302	-
Repurchase agreements	2,200,000	-	2,200,000	-
Money market mutual funds	6,608,917	6,608,917	-	-
Total investments by fair value level	40,136,019	$ 7,565,717	$ 32,570,302	$ -
Investments measured at amortized cost				
Certificates of deposit	12,510,000			
Total equity interest in pooled investments	$ 52,646,019			

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The following table represents the Department's investments by maturity as of June 30, 2019 and 2018:

	Reported Value	Maturity (in years) 0–1	1–5
2019			
U.S. treasury obligations	$ 3,013,750	$ -	$ 3,013,750
U.S. government agencies	32,842,358	13,822,682	19,019,676
Repurchase agreements	2,300,000	2,300,000	-
Certificates of deposit	13,506,000	10,786,000	2,720,000
	51,662,108	$ 26,908,682	$ 24,753,426
Money market mutual funds	5,449,898		
Total equity interest in pooled investments	$ 57,112,006		
2018			
U.S. treasury obligations	$ 956,800	$ -	$ 956,800
U.S. government agencies	30,370,302	12,413,348	17,956,954
Repurchase agreements	2,200,000	2,200,000	-
Certificates of deposit	12,510,000	9,788,000	2,722,000
	46,037,102	$ 24,401,348	$ 21,635,754
Money market mutual funds	6,608,917		
Total equity interest in pooled investments	$ 52,646,019		

- **Interest Rate Risk** – State law limits the Department's investment portfolio to maturities of less than five years. The Department does not have a formal investment policy that further limits investment maturities.

- **Credit Risk** – State law limits investments to the top rating issued by nationally recognized statistical rating organizations ("NRSROs") or investments that have the faith and credit of the United States pledged for the payment of principal and interest. The Department has no investment policy that would further limit its investment choices. As of June 30, 2019, with the exception of the Department's investment in certain fixed income and money market funds which were not rated, all of the Department's investments were rated AA or greater.

- **Custodial Credit Risk** – For an investment, custodial credit risk is the risk that, in the event of the failure of the counterparty, the Department will not be able to recover the value of its investments or collateral securities that are in the possession of an outside party.

- **Concentration of Credit Risk** – The Department places no limit on the amount which may be invested in any one issuer. As of June 30, 2019, more than 5% of the Department's investments are held in the following: Federal Farm Credit Bank (20%), First Hawaiian Bank (16%), Freddie Mac (16%), U.S. Treasury (11%), Fannie Mae (9%), Federal Home Loan Bank (8%), and BlackRock (6%).

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5. Capital Assets

Capital asset activity during 2019 and 2018 was as follows:

	Balance July 1, 2018	Additions	Reductions/ Transfers	Balance June 30, 2019
Capital assets not being depreciated				
Land and land rights	$ 1,307,422	$ -	$ -	$ 1,307,422
Construction in progress	7,516,463	9,029,271	(5,366,110)	11,179,624
Total capital assets not being depreciated	8,823,885	9,029,271	(5,366,110)	12,487,046
Capital assets being depreciated				
Utility plant	304,021,737	2,101,401	5,180,029	311,303,167
General plant	22,516,701	1,198,081	(1,182)	23,713,600
Capital leases	7,415,346	-	-	7,415,346
Intangible assets	1,915,362	9,755	-	1,925,117
Total capital assets being depreciated	335,869,146	3,309,237	5,178,847	344,357,230
Less: Accumulated depreciation and amortization				
Utility plant	(112,728,210)	(5,185,540)	111,168	(117,802,582)
General plant	(7,159,667)	(895,550)	1,182	(8,054,035)
Capital leases	(6,885,572)	(522,407)	-	(7,407,979)
Intangible assets	(1,005,552)	(230,247)	-	(1,235,799)
Total accumulated depreciation and amortization	(127,779,001)	(6,833,744)	112,350	(134,500,395)
Total capital assets, net	$ 216,914,030	$ 5,504,764	$ (74,913)	$ 222,343,881

	Balance July 1, 2017	Additions	Reductions/ Transfers	Balance June 30, 2018
Capital assets not being depreciated				
Land and land rights	$ 1,307,422	$ -	$ -	$ 1,307,422
Construction in progress	4,605,437	4,368,156	(1,457,130)	7,516,463
Total capital assets not being depreciated	5,912,859	4,368,156	(1,457,130)	8,823,885
Capital assets being depreciated				
Utility plant	300,202,562	3,521,667	297,508	304,021,737
General plant	22,529,860	202,683	(215,842)	22,516,701
Capital leases	7,415,346	-	-	7,415,346
Intangible assets	1,358,693	-	556,669	1,915,362
Total capital assets being depreciated	331,506,461	3,724,350	638,335	335,869,146
Less: Accumulated depreciation and amortization				
Utility plant	(106,672,673)	(6,076,841)	21,304	(112,728,210)
General plant	(6,539,485)	(836,024)	215,842	(7,159,667)
Capital leases	(6,338,504)	(547,068)	-	(6,885,572)
Intangible assets	(809,164)	(196,388)	-	(1,005,552)
Total accumulated depreciation and amortization	(120,359,826)	(7,656,321)	237,146	(127,779,001)
Total capital assets, net	$ 217,059,494	$ 436,185	$ (581,649)	$ 216,914,030

In 2019 and 2018, no impairment losses were identified by the Department.

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6. Long-Term Liabilities

Bonds Payable

The full faith and credit of the County is pledged for the payment of the Department's bond obligations. The County has the power and is obligated to levy ad valorem taxes, without limitation as to rate or amount, on all real property subject to taxation by the County.

As of June 30, 2019 and 2018, bonds payable consisted of the following:

	2019	2018
Public Improvement Bonds – County Series 2012A, last installment 2029. Maturing serially from August 1, 2016. Interest rate – 3.00% to 5.00%. Date issued – July 10, 2012. Original amount – $2,745,000.	$ 2,285,000	$ 2,445,000
Public Improvement Bonds – County Series 2011A, last installment 2025. Maturing serially from August 1, 2012. Interest rate – 2.00% to 5.00%. Date issued – July 7, 2011. Original amount – $5,125,000.	2,680,000	3,005,000
Build America Bonds – County Series 2010A, last installment 2033. Maturing serially from August 1, 2013. Interest rate – 1.96% to 5.76%. Date issued – March 24, 2010. Original amount – $60,000,000.	47,925,000	50,110,000
Public Improvement Bonds – County Series 2005A, last installment 2021. Maturing serially from August 1, 2008. Interest rate – 3.25% to 5.00%. Date issued – February 1, 2006. Original amount – $3,165,000.	820,000	1,100,000
	53,710,000	56,660,000
Premium on bond issuance	381,729	439,943
	$ 54,091,729	$ 57,099,943

The approximate annual debt service requirements to maturity as of June 30, 2019 are as follows:

	Principal	Interest	Total
Years ending June 30,			
2020	$ 3,075,000	$ 2,717,000	$ 5,792,000
2021	3,210,000	2,581,000	5,791,000
2022	3,260,000	2,440,000	5,700,000
2023	3,175,000	2,293,000	5,468,000
2024	3,325,000	2,141,000	5,466,000
2025–2029	17,975,000	8,049,000	26,024,000
2030–2034	19,690,000	2,730,000	22,420,000
	$ 53,710,000	$ 22,951,000	$ 76,661,000

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Loans Payable

The full faith and credit of the Board is pledged for the payment of the Department's loan obligations. The Board has power to adjust water rates in order to raise funds sufficient to repay the Department's loan obligations.

The Department's outstanding loan obligations contain provisions that, in the event of default, an interest penalty will be assessed on outstanding loan repayment amounts beginning on the first day following the repayment due date and the ending on the date the defaulted balances are paid.

As of June 30, 2019 and 2018, the loans payable consisted of the following:

	2019	2018
State Revolving Fund ("SRF") Loan – Stable 1.0 MG Tank, last installment 2029. Interest rate – 0.26%. Semi-annual loan fee rate – 1.625%. Date issued – March 15, 2009. Original amount $7,274,998.	$ 3,856,781	$ 4,237,041
SRF Loan – Poipu Road 16-Inch Main Replacement, last installment 2027. Interest rate – 0.16%. Semi-annual loan fee rate – 1.625%. Date issued – January 15, 2007. Original amount – $5,158,886.	2,139,708	2,405,273
SRF Loan – Wailua Houselots Main Replacement, last installment 2033. Interest rate – 0.5%. Semi-annual loan fee rate – 0.5%. Date issued – April 15, 2013. Original amount – $4,463,084.	2,730,865	2,918,727
SRF Loan – Kaumualii Highway 12-Inch Main Replacement, last installment 2029. Interest rate – 0.32%. Semi-annual loan fee rate – 1.625%. Date issued – August 15, 2009. Original amount – $3,989,537.	2,185,391	2,389,737
SRF Loan – Kapilimao 0.5 MG Tank, last installment 2030. Interest rate – 0.42%. Semi-annual loan fee rate – 1.625%. Date issued – January 15, 2010. Original amount – $3,793,779.	2,217,512	2,414,070
SRF Loan – Lihue Baseyard Improvements for the Department of Water, last installment 2034. Interest rate – 0.5%. Semi-annual loan fee rate – 0.5%. Date issued – December 15, 2014. Original amount – $4,000,000.	1,598,844	1,697,939
SRF Loan – Waha, Wawae & Niho Roads Main Replacement, last installment 2029. Interest rate – 0.32%. Semi-annual loan fee rate – 1.625%. Date issued – August 15, 2009. Original amount – $1,936,018.	1,064,656	1,164,198
Subtotal	15,793,757	17,226,985

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	2019	2018
Subtotal carried forward	15,793,757	17,226,985
SRF Loan – 16-Inch Waterline Replacement along Kuhio Highway, Leho Drive to North Papaloa Road, last installment 2026. Interest rate – 0.16%. Semi-annual loan fee rate – 1.625%. Date issued – August 15, 2005. Original amount – $2,305,093.	857,771	979,539
SRF Loan – Rehabilitate Lihue Steel Tanks 1 & 2, last installment 2025. Interest rate – 0.46%. Semi-annual loan fee rate – 1.625%. Date issued – January 15, 2005. Original amount – $1,243,017.	407,556	474,336
SRF Loan – Damage Repairs to Kokolau Tunnel, last installment 2021. Interest rate – 1.37%. Semi-annual loan fee rate – 1.625%. Date issued – July 15, 2001. Original amount – $1,663,201.	239,749	333,357
SRF Loan – Replace Pipeline at Hanapepe River Crossing and Control of Slope; Failure at Hanapepe Well No. 3, last installment 2023. Interest rate – 0.99%. Semi-annual loan fee rate – 1.625%. Date issued – July 15, 2003. Original amount – $1,243,976.	308,517	375,240
SRF Loan – Ornellas 0.2 MG Tank, last installment 2025. Interest rate – 0.58%. Semi-annual loan fee rate – 1.625%. Date issued – January 15, 2005. Original amount – $809,398.	262,845	305,786
SRF Loan – Kekaha Well, last installment 2022. Interest rate – 1.01%. Semi-annual loan fee rate – 1.625%. Date issued – April 15, 2002. Original amount – $862,883.	153,212	203,256
SRF Loan – Rehabilitation of 27-Inch Steel Pipeline – Hanapepe – Eleele Water System, last installment 2023. Interest rate – 0.99%. Semi-annual loan fee rate – 1.625%. Date issued – July 15, 2003. Original amount – $691,134.	171,974	209,157
SRF Loan – Wailua Homesteads Well No. 3, last installment 2024. Interest rate – 0.54%. Semi-annual loan fee rate – 1.625%. Date issued – March 15, 2004. Original amount – $397,737.	109,077	130,550
	$ 18,304,458	$ 20,238,206

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The approximate annual debt service requirements to maturity as of June 30, 2019 are as follows:

	Principal	Interest	Total
Years ending June 30,			
2020	$ 1,942,000	$ 551,000	$ 2,493,000
2021	1,951,000	486,000	2,437,000
2022	1,910,000	421,000	2,331,000
2023	1,816,000	359,000	2,175,000
2024	1,768,000	300,000	2,068,000
2025–2029	7,174,000	737,000	7,911,000
2030–2034	1,691,000	61,000	1,752,000
2035	52,000	-	52,000
	$ 18,304,000	$ 2,915,000	$ 21,219,000

Capital Lease Obligation

On February 19, 2004, the Department entered into a Water Treatment and Delivery Agreement ("Agreement") with an unrelated third-party developer. The Agreement requires the developer to build, operate and maintain a surface water treatment plant ("SWTP") with a capacity of 3.0 million gallons per day ("MGD"). The Department is required to purchase, at a minimum, 2.0 MGD and also to provide the developer a credit towards its facility reserve charge. The term of the Agreement is 15 years and the Agreement also provides the Department with the option of accepting the dedication of the SWTP at no cost after the reimbursement date, as defined. The Department commenced water purchases on January 1, 2006. This arrangement has been recorded as a capital lease in the accompanying basic financial statements.

The capital lease obligation is amortized at an implicit rate of approximately 6.0%. The utility plant related to the SWTP facility approximated $7,181,000 as of June 30, 2019 and 2018. The accumulated depreciation related to the SWTP facility approximated $7,181,000 and $6,668,000 as of June 30, 2019 and 2018, respectively.

The approximate annual requirements to amortize all capital lease obligations as of June 30, 2019 approximated $4,000.

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Changes in Long-term Liabilities

Long-term liability activity for the years ended June 30, 2019 and 2018 was as follows:

	Balance July 1, 2018	Additions	Reductions	Balance June 30, 2019	Amounts Due Within One Year
General obligation bonds payable	$ 56,660,000	$ -	$ 2,950,000	$ 53,710,000	$ 3,075,000
Deferred costs – Premiums on bond issuance	439,943	-	58,214	381,729	-
Total bonds payable	57,099,943	-	3,008,214	54,091,729	3,075,000
Loans payable	20,238,206	-	1,933,748	18,304,458	1,942,034
Total long-term debt	77,338,149	-	4,941,962	72,396,187	5,017,034
Net pension liability	15,423,518	733,150	-	16,156,668	-
Net other postemployment benefit liability	8,367,898	91,406	-	8,459,304	-
Accrued vacation and compensatory pay	1,402,511	529,411	515,210	1,416,712	513,190
Capital lease obligation	526,619	-	522,561	4,058	4,058
	$ 103,058,695	$ 1,353,967	$ 5,979,733	$ 98,432,929	$ 5,534,282

	Balance July 1, 2017	Additions	Reductions	Balance June 30, 2018	Amounts Due Within One Year
General obligation bonds payable	$ 59,570,000	$ -	$ 2,910,000	$ 56,660,000	$ 2,950,000
Deferred costs – Premiums on bond issuance	498,156	-	58,213	439,943	-
Total bonds payable	60,068,156	-	2,968,213	57,099,943	2,950,000
Loans payable	22,163,666	-	1,925,460	20,238,206	1,933,749
Total long-term debt	82,231,822	-	4,893,673	77,338,149	4,883,749
Net pension liability	16,921,133	-	1,497,615	15,423,518	-
Net other postemployment benefit liability	8,863,111	-	495,213	8,367,898	-
Accrued vacation and compensatory pay	1,331,655	520,075	449,219	1,402,511	489,688
Capital lease obligation	1,269,084	-	742,465	526,619	522,000
	$ 110,616,805	$ 520,075	$ 8,078,185	$ 103,058,695	$ 5,895,437

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7. Net Position

At June 30, 2019 and 2018, net position consisted of the following:

	2019	2018
Net investment in capital assets		
Capital assets, net	$ 222,343,881	$ 216,914,030
Less: Long-term debt, net	(72,396,187)	(77,338,149)
Less: Capital lease obligation	(4,058)	(526,619)
Add: Unspent debt proceeds	10,437,752	12,439,460
Add: Deferred outflows – deferred refunding costs	1,066	17,348
	160,382,454	151,506,070
Restricted for capital activity, debt service and reserved funds		
FRC net position	882,879	779,871
Restricted cash – Bond funds	1,118,943	367,486
Restricted investments – Bond funds	9,318,809	12,071,974
Restricted accrued interest – Bond funds	22,315	29,424
Less: Unspent debt proceeds	(10,437,752)	(12,439,460)
	905,194	809,295
Unrestricted	36,806,558	36,522,466
Total net position	$ 198,094,206	$ 188,837,831

As of June 30, 2019 and 2018, FRC net position consisted of the following:

	2019	2018
FRC assets restricted for utility plant construction		
Cash	$ 787,533	$ 681,404
Accounts receivable	103,197	106,316
	890,730	787,720
FRC liabilities	7,851	7,849
FRC net position	$ 882,879	$ 779,871

For the years ended June 30, 2019 and 2018, FRC change in net position consisted of the following:

	2019	2018
Contributions	$ 688,518	$ 1,093,628
Transfers out	(585,510)	(796,020)
Change in net position	103,008	297,608
FRC net position		
Beginning of year	779,871	482,263
End of year	$ 882,879	$ 779,871

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8. Employees' Retirement System

Description of Plan

All eligible employees of the State of Hawaii (the "State") and counties are provided with pensions through a cost-sharing multiple-employer defined benefit pension plan administered by the ERS. Benefit terms, eligibility and contribution requirements are established by HRS Chapter 88 and can be amended through legislation. The ERS issues a publicly available financial report that can be obtained at ERS's website at http://ers.ehawaii.gov/.

Benefits Provided

The ERS provides retirement, disability and death benefits that are covered by the provisions of the noncontributory, contributory and hybrid retirement membership classes. The three classes provide a monthly retirement allowance equal to the benefit multiplier (generally 1.25% or 2%) multiplied by the average final compensation multiplied by years of credited service. The benefit multiplier decreased by 0.25% for new hybrid and contributory plan members hired after June 30, 2012. Average final compensation is an average of the highest salaries during any three years of credited service, excluding any salary paid in lieu of vacation for employees hired January 1, 1971 or later, and the average of the highest salaries during any five years of credited service including any salary paid in lieu of vacation for employees hired prior to January 1, 1971. For members hired after June 30, 2012, average final compensation is an average of the highest salaries during any five years of credited service excluding any salary paid in lieu of vacation.

For members hired before July 1, 2012, the original retirement allowance is increased by 2.5% each July 1 following the calendar year of retirement. This cumulative benefit is not compounded and increases each year by 2.5% of the original retirement allowance without a ceiling (2.5% of the original retirement allowance the first year, 5.0% the second year, 7.5% the third year, etc.). For members hired after June 30, 2012, the post-retirement annuity increase was decreased to 1.5% per year.

Retirement benefits for certain groups, such as police officers, firefighters, some investigators, sewer workers, judges and elected officials, vary from general employees.

- Noncontributory Class

  Retirement Benefits

  General employees' retirement benefits are determined as 1.25% of average final compensation multiplied by the years of credited service. Employees with ten years of credited service are eligible to retire at age 62. Employees with 30 years of credited service are eligible to retire at age 55.

  Disability Benefits

  Members are eligible for service-related disability benefits regardless of length of service and receive a lifetime pension of 35% of their average final compensation. Ten years of credited service is required for ordinary disability. Ordinary disability benefits are determined in the same manner as retirement benefits but are payable immediately, without an actuarial reduction, and at a minimum of 12.5% of average final compensation.

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Death Benefits
For service-connected deaths, the surviving spouse/reciprocal beneficiary receives a monthly benefit of 30% of the average final compensation until remarriage or re-entry into a new reciprocal beneficiary relationship. Additional benefits are payable to surviving dependent children up to age 18. If there is no spouse/reciprocal beneficiary or dependent children, no benefit is payable.

Ten years of credited service is required for ordinary death benefits. For ordinary death benefits, the surviving spouse/reciprocal beneficiary (until remarriage/reentry into a new reciprocal beneficiary relationship) and dependent children (up to age 18) receive a benefit equal to a percentage of member's accrued maximum allowance unreduced for age or, if the member was eligible for retirement at the time of death, the surviving spouse/reciprocal beneficiary receives 100% joint and survivor lifetime pension.

- Contributory Class for Employees Hired Prior to July 1, 2012

Retirement Benefits
General employees' retirement benefits are determined as 2% of average final compensation multiplied by the years of credited service. General employees with five years of credited service are eligible to retire at age 55.

Disability Benefits
Members are eligible for service-related disability benefits regardless of length of service and receive a one-time payment of the member's contributions and accrued interest plus a lifetime pension of 50% of their average final compensation. Ten years of credited service is required for ordinary disability. Ordinary disability benefits are determined as 1.75% of average final compensation multiplied by the years of credited service but are payable immediately, without an actuarial reduction, and at a minimum of 30% of average final compensation.

Death Benefits
For service-connected deaths, the designated beneficiary receives a lump sum payment of the member's contributions and accrued interest plus a monthly benefit of 50% of the average final compensation until remarriage or re-entry into a new reciprocal beneficiary relationship. If there is no surviving spouse/reciprocal beneficiary, surviving children (up to age 18) or dependent parents are eligible for the monthly benefit. If there is no spouse/reciprocal beneficiary or dependent children/parents, the death benefit is payable to the designated beneficiary.

Ordinary death benefits are available to employees who were active at time of death with at least one year of service. Ordinary death benefits consist of a lump sum payment of the member's contributions and accrued interest plus a percentage of the salary earned in the 12 months preceding death, or 50% joint and survivor lifetime pension if the member was not eligible for retirement at the time of death but was credited with at least ten years of service and designated one beneficiary, or 100% Joint and Survivor lifetime pension if the member was eligible for retirement at the time of death and designated one beneficiary.

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- Contributory Class for Employees Hired After June 30, 2012

  Retirement Benefits
  General employees' retirement benefits are determined as 1.75% of average final compensation multiplied by the years of credited service. General employees with ten years of credited service are eligible to retire at age 60.

  Disability Benefits
  Disability and death benefits for contributory class members hired after June 30, 2012 are generally the same as those for contributory class members hired June 30, 2012 and prior.

- Hybrid Class for Employees Hired Prior to July 1, 2012

  Retirement Benefits
  General employees' retirement benefits are determined as 2% of average final compensation multiplied by the years of credited service. General employees with five years of credited service are eligible to retire at age 62. General employees with 30 years of credited service are eligible to retire at age 55.

  Disability Benefits
  Members are eligible for service-related disability benefits regardless of length of service and receive a lifetime pension of 35% of their average final compensation plus refund of their contributions and accrued interest. Ten years of credited service is required for ordinary disability. Ordinary disability benefits are determined in the same manner as retirement benefits but are payable immediately, without an actuarial reduction, and at a minimum of 25% of average final compensation.

  Death Benefits
  For service-connected deaths, the surviving spouse/reciprocal beneficiary receives a lump sum payment of the member's contributions and accrued interest plus a monthly benefit of 50% of the average final compensation to the surviving spouse/reciprocal beneficiary until remarriage or re-entry into a new reciprocal beneficiary relationship. If there is no surviving spouse/reciprocal beneficiary, surviving children (up to age 18) or dependent parents are eligible for the monthly benefit. If there is no spouse/reciprocal beneficiary or dependent children/parents, the ordinary death benefit is payable to the designated beneficiary.

  Ordinary death benefits are available to employees who were active at time of death with at least five years of service. Ordinary death benefits consist of a lump sum payment of the member's contributions and accrued interest plus a percentage multiplied by 150%, or 50% joint and survivor lifetime pension if the member was not eligible for retirement at the time of death but was credited with at least ten years of service and designated one beneficiary, or 100% joint and survivor lifetime pension if the member was eligible for retirement at the time of death and designated one beneficiary.

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- Hybrid Class for Employees Hired After June 30, 2012

  Retirement Benefits
  General employees' retirement benefits are determined as 1.75% of average final compensation multiplied by the years of credited service. General employees with ten years of credited service are eligible to retire at age 65. Employees with 30 years of credited service are eligible to retire at age 60. Sewer workers, water safety officers, and EMTs may retire with 25 years of credited service at age 55.

  Disability Benefits
  Provisions for disability and death benefits generally remain the same except for ordinary death benefits. Ordinary death benefits are available to employees who were active at time of death with at least ten years of service. Ordinary death benefits consist of a lump sum payment of the member's contributions and accrued interest, or 50% joint and survivor lifetime pension if the member was not eligible for retirement at the time of death but was credited with at least ten years of service and designated one beneficiary, or 100% joint and survivor lifetime pension if the member was eligible for retirement at the time of death and designated one beneficiary, or if less than ten years of service, return of member's contributions and accrued interest.

Contributions
Contributions are established by HRS Chapter 88 and may be amended through legislation. The employer rate is set by statute based on the recommendations of the ERS actuary resulting from an experience study conducted every five years. Since July 1, 2005, the employer contribution rate is a fixed percentage of compensation, including the normal cost plus amounts required to pay for the unfunded actuarial accrued liabilities. The Department's required contributions for the years ended June 30, 2019 and 2018 were approximately $1,109,000 and $1,036,000, respectively. The contribution rate was 19.0% and 18.0% for the years ended June 30, 2019 and 2018, respectively.

On May 18, 2017, the Governor signed into law Act 17 SLH 2017. Per Act 17, future employer contributions from the State and counties are expected to increase pursuant to a phased-in contribution rate increase over four years beginning July 1, 2017. The rate for all other employees, other than police and firefighters, increases to 18.00% on July 1, 2017; 19.00% on July 1, 2018; 22.00% on July 1, 2019; and 24.00% on July 1, 2020.

The employer is required to make all contributions for members in the noncontributory plan.

- For contributory class employees hired prior to July 1, 2012, general employees are required to contribute 7.8% of their salary.

- Contributory class employees hired after June 30, 2012 are required to contribute 9.8% of their salary.

- Hybrid members hired prior to July 1, 2012 are required to contribute 6.0% of their salary.

- Hybrid members hired after June 30, 2012 are required to contribute 8.0% of their salary.

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Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions

At June 30, 2019 and 2018, the Department reported a liability of approximately $16,157,000 and $15,424,000, respectively, for its proportionate share of the net pension liability. The net pension liability was measured as of June 30, 2018 and 2017, respectively, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of those dates. The Department's proportionate share of the net pension liability was based on a projection of the Department's long-term share of contributions to the pension plan relative to the projected contributions of all participants, actuarially determined. At June 30, 2018 and 2017, the Department's proportionate share was 0.12%.

The average of expected remaining service lives for the purposes of recognizing the applicable deferred outflows and inflows of resources established in the 2018 fiscal year is 5.3882 years.

There were no changes in actuarial assumptions in 2018.

There were no other changes between the measurement date, June 30, 2018, and the reporting date, June 30, 2019, that are expected to have a significant effect on the proportionate share of the net pension liability.

For the year ended June 30, 2019 and 2018, the Department recognized pension expense of approximately $2,212,000 and $2,157,000, respectively.

At June 30, 2019 and 2018, the Department reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
2019		
Difference between actual and expected experience	$ 291,427	$ 101,239
Net difference between projected and actual earnings on pension plan investments	-	83,469
Changes of assumptions	1,741,950	-
Changes in proportion and differences between employer contributions and proportionate share of contributions	564,085	501,222
Department contributions subsequent to the measurement date	1,439,632	-
	$ 4,037,094	$ 685,930

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	Deferred Outflows of Resources	Deferred Inflows of Resources
2018		
Difference between actual and expected experience	$ 247,175	$ 165,286
Net difference between projected and actual earnings on pension plan investments	-	45,667
Changes of assumptions	2,355,113	-
Changes in proportion and differences between employer contributions and proportionate share of contributions	615,280	651,869
Department contributions subsequent to the measurement date	1,035,930	-
	$ 4,253,498	$ 862,822

Deferred outflows of resources related to pensions of approximately $1,440,000 at June 30, 2019 resulting from Department contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the year ending June 30, 2020. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in pension expense as follows:

Years ending June 30,	
2020	$ 1,000,615
2021	748,589
2022	177,366
2023	(42,863)
2024	27,825
	$ 1,911,532

Actuarial Assumptions

The total pension liability in the June 30, 2018 and 2017 actuarial valuations were determined using the following actuarial assumptions, applied to all periods included in the measurement:

Inflation	2.50%
Projected salary increases, including inflation	3.50% – 6.50%
Investment rate of return, including inflation	7.00%
Payroll growth	3.50%

The same rates were applied to all periods. There were no changes to ad hoc postemployment benefits including cost of living allowance ("COLA"). Post-retirement mortality rates are based on the 2016 Public Retirees of Hawaii mortality table with adjustments based on generational projections of the BB projection table for 2016 and full generational projections in future years. Pre-retirement mortality rates are based on multiples of RP-2014 mortality table based on the occupation of the member. The actuarial assumptions used in the June 30, 2018 and 2017 valuations were based on the results of actuarial experience study for the five-year period ended June 30, 2015. ERS updates their experience studies every five years.

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The discount rate used to measure the net pension liability at June 30, 2019 and 2018 was 7.00%. The projection of cash flows used to determine the discount rate assumed that plan member contributions were made at the current contribution rate and that employer contributions were made at statutorily required rates, actuarially determined. Based on those assumptions, the pension plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

The following presents the Department's proportionate share of the net pension liability as of June 30, 2018 calculated using the discount rate of 7.00%, as well as what the Department's proportionate share of the net pension liability would be if it were calculated using a discount rate that is one percentage point lower (6.00%) or one percentage point higher (8.00%) than the current rate:

	1% Decrease (6.00%)	Current Discount Rate (7.00%)	1% Increase (8.00%)
Department's proportionate share of the net pension liability	$ 21,009,134	$ 16,156,668	$ 12,156,556

The long-term expected rate of return on pension plan investments was determined using a "top down approach" of the Bespoke Client-Constrained Simulation-based Optimization Model (a statistical technique known as "re-sampling with replacement" that directly keys in on specific plan-level risk factors as stipulated by the ERS Board) in which best-estimate ranges of expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target allocation and best estimates of geometric real rates of return for each major asset class used in the actuarial valuation as of the June 30, 2018 valuation are summarized in the following table:

Strategic Allocation	Long-Term Target Allocation	Long-Term Expected Geometric Rate of Return
Broad growth	63 %	7.10 %
Principal protection	7 %	2.50 %
Real return	10 %	4.10 %
Crisis risk offset	20 %	4.60 %
	100 %	

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Pension Plan Fiduciary Net Position
The pension plan's fiduciary net position is determined on the same basis used by the pension plan. ERS's financial statements are prepared using the accrual basis of accounting under which expenses are recorded when the liability is incurred, and revenues are recorded in the accounting period in which they are earned and become measurable. Employer and member contributions are recognized in the period in which the contributions are due. Benefits and refunds are recognized when due and payable in accordance with the terms of the plan. Investment purchases and sales are recorded as of their trade date. Administrative expenses are financed exclusively with investment income.

There were no significant changes after the report measurement date. Detailed information about the pension plan's fiduciary net position is available in the separately issued ERS financial report. ERS's complete financial statements are available at http://www.ers.ehawaii.gov.

Payables to the Pension Plan
As of June 30, 2019 and 2018, the Department had no payables to ERS.

9. Post-Retirement Health Care and Life Insurance Benefits

Plan Description
The Department provides certain health care and life insurance benefits to all qualified employees. Pursuant to Act 88, SLH 2001, the Department contributes to EUTF, an agent multiple-employer defined benefit plan that replaced the Hawaii Public Employees Health Fund effective July 1, 2003. EUTF was established to provide a single delivery system of health benefits for state and county workers, retirees and their dependents. EUTF issues a publicly available annual financial report that can be obtained at http://eutf.hawaii.gov.

For employees hired before July 1, 1996, the Department pays the entire base monthly contribution for employees retiring with ten years or more of credited service, and 50% of the base monthly contribution for employees retiring with fewer than ten years of credited service. A retiree can elect a family plan to cover dependents.

For employees hired after June 30, 1996 but before July 1, 2001, and who retire with less than ten years of service, the Department makes no contributions. For those retiring with at least ten years but fewer than 15 years of service, the Department pays 50% of the base monthly contribution. For employees retiring with at least 15 years but fewer than 25 years of service, the Department pays 75% of the base monthly contribution. For employees retiring with at least 25 years of service, the Department pays 100% of the base monthly contribution. Retirees in this category can elect a family plan to cover dependents.

For employees hired on or after July 1, 2001, and who retire with less than ten years of service, the Department makes no contributions. For those retiring with at least ten years but fewer than 15 years of service, the Department pays 50% of the base monthly contribution. For those retiring with at least 15 years but fewer than 25 years of service, the Department pays 75% of the base monthly contribution. For employees retiring with at least 25 years of service, the Department pays 100% of the base monthly contribution. Only single plan coverage is provided for retirees in this category. Retirees can elect family coverage but must pay the difference.

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Employees Covered by Benefit Terms
At July 1, 2018 and 2017, the following number of plan members were covered by the benefit terms:

	2018	2017
Inactive plan members or beneficiaries currently receiving benefits	51	50
Inactive plan members entitled to but not yet receiving benefits	6	6
Active plan members	85	88
Total plan members	142	144

Contributions
Contributions are governed by HRS Chapter 87A and may be amended through legislation. Contributions to the OPEB plan from the Department was $1,011,000 and $948,000 for the fiscal years ended June 30, 2019 and 2018, respectively. The employer is required to make all contributions for members.

OPEB Liabilities, OPEB Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to OPEB
At June 30, 2019 and 2018, the Department reported a net OPEB liability of approximately $8.5 million and $8.4 million. respectively. The net OPEB liability was measured as of July 1, 2018 and July 1, 2017, respectively, and the total OPEB liability used to calculate the net OPEB liability was determined by an actuarial valuation as of that date.

There were no changes between the measurement date, July 1, 2018, and the reporting date, June 30, 2019, that are expected to have a significant effect on the net OPEB liability.

For the years ended June 30, 2019 and June 30, 2018, the Department recognized OPEB expenses of approximately $926,000 and $928,000, respectively. At June 30, 2019 and 2018, the Department reported deferred outflows of resources and deferred inflows of resources related to OPEB from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
2019		
Difference between actual and expected experience	$ -	$ 226,414
Changes of assumptions	203,858	-
Department contributions subsequent to the measurement date	1,011,000	-
	$ 1,214,858	$ 226,414
2018		
Net difference between projected and actual earnings on OPEB plan investments	$ -	$ 135,783
Department contributions subsequent to the measurement date	948,000	-
	$ 948,000	$ 135,783

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The $1,011,000 reported as deferred outflows of resources related to OPEB resulting from Department contributions subsequent to the measurement date will be recognized as a reduction of the net OPEB liability in the year ending June 30, 2020. Other amounts reported as deferred outflows and inflows of resources related to OPEB will be recognized in OPEB expense as follows:

Years ending June 30,		
2020	$	(21,633)
2021		(21,633)
2022		(21,632)
2023		12,314
2024		14,414
Thereafter		15,614
	$	(22,556)

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Actuarial Assumptions

The total OPEB liability in the July 1, 2018 actuarial valuation was determined using the following actuarial assumptions adopted by the Board of Trustees of the Hawaii Employer-Union Health Benefits Trust Fund of the State of Hawaii, on January 8, 2018, based on the experience study covering the five-year period ended June 30, 2015:

Valuation date	July 1, 2018
Actuarial cost method	Entry age normal
Discount rate	7.00%
Inflation	2.50%
Salary increases	3.50% to 7.00%; including inflation
Demographic assumptions	Based on the experience study covering the five-year period ending June 30, 2015
Mortality	System-specific mortality tables utilizing scale BB to project generational mortality improvement
Participation rates	98% healthcare participation assumption for retirees that receive 100% of the Base Monthly Contribution (“BMC”). Healthcare participation rates of 25%, 65% and 90% for retirees that receive 0%, 50% or 75% of the BMC, respectively. 100% for life insurance and 98% for Medicare Part B
Healthcare cost trend rates	
PPO*	Initial rate of 10.00%, declining to a rate of 4.86% after 13 years
HMO*	Initial rate of 10.00%, declining to a rate of 4.86% after 13 years
Part B & Base Monthly Contribution ("BMC")	Initial rate of 4.00% and 5.00%, declining to a rate of 4.70% after 12 years
Dental	Initial rate of 5.00% for first three years, followed by 4.00%
Vision	Initial rate of 0.00% for first three years, followed by 2.50%
Life insurance	0.00%

* Blended rates for medical and prescription drug.

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The long-term expected rate of return on OPEB plan investments was determined using a building-block method in which best-estimate ranges of expected future real rates of return (expected returns, net of OPEB plan investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target allocation and best estimates of arithmetic real rates of return for each asset class in the July 1, 2018 actuarial valuation are summarized in the following table:

Strategic Allocation	Long-Term Target Allocation	Long-Term Expected Real Rate of Return
Non-U.S. equity	17 %	6.50%
U.S. equity	15 %	5.05%
Private equity	10 %	8.65%
Core real estate	10 %	4.10%
Trend following	9 %	3.00%
U.S. microcap	7 %	7.00%
Global options	7 %	4.50%
Private credit	6 %	5.25%
Long treasuries	6 %	1.90%
Alternative risk premia	5 %	2.45%
TIPS	5 %	0.75%
Core bonds	3 %	1.30%
	100 %	

Single Discount Rate

The discount rate used to measure the net OPEB liability was 7.00%, based on the expected rate of return on OPEB plan investments of 7.00% and the municipal bond rate of 3.56% (based on the daily rate closest to but not later than the measurement date of the Fidelity "20-year Municipal GO AA index"). Beginning with the fiscal year 2019 contribution, the Department's funding policy is to pay the recommended actuarially determined contribution, which is based on layered, closed amortization periods. Based on those assumptions, the OPEB plan's fiduciary net position was projected to be available to make all projected future benefit payments of current active and inactive plan members. Therefore, the long-term expected rate of return on OPEB plan investments was applied to all periods of projected benefit payments to determine the total OPEB liability.

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Changes in Net OPEB Liability

The following table represents a schedule of changes in the net OPEB liability. The ending balances are as of the measurement date, July 1, 2018.

	Total OPEB Liability	Plan Fiduciary Net Position	Net OPEB Liability
Balance at July 1, 2017	$ 15,331,541	$ 6,468,430	$ 8,863,111
Service cost	380,075	-	380,075
Interest on the total OPEB liability	1,073,630	-	1,073,630
Employer contributions	-	1,287,000	(1,287,000)
Net investment income	-	654,929	(654,929)
Benefit payments	(368,000)	(368,000)	-
Administrative expense	-	(1,485)	1,485
Other	-	8,474	(8,474)
Net changes	1,085,705	1,580,918	(495,213)
Balance at June 30, 2018	16,417,246	8,049,348	8,367,898
Service cost	380,070	-	380,070
Interest on the total OPEB liability	1,144,135	-	1,144,135
Difference between expected and actual experience	(135,272)	-	- (135,272)
Changes of assumptions	237,370	-	237,370
Employer contributions	-	948,000	(948,000)
Net investment income	-	588,700	(588,700)
Benefit payments	(525,000)	(525,000)	-
Administrative expense	-	(1,803)	1,803
Net changes	1,101,303	1,009,897	91,406
Balance at June 30, 2019	$ 17,518,549	$ 9,059,245	$ 8,459,304

Sensitivity of the Net OPEB Liability to Changes in the Discount Rate and Healthcare Cost Trend Rates

The following table presents the Department's net OPEB liability calculated using the discount rate of 7.00%, as well as what the Department's net OPEB liability would be if it were calculated using a discount rate that is one percentage point lower (6.00%) or one percentage point higher (8.00%) than the current discount rate:

	1% Decrease (6.00%)	Current Discount Rate (7.00%)	1% Increase (8.00%)
Department's net OPEB liability	$ 11,343,135	$ 8,459,304	$ 6,176,376

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The following table presents the Department's net OPEB liability calculated using the assumed healthcare cost trend rate, as well as what the Department's net OPEB liability would be if it were calculated using the trend rate that is one percentage point lower or one percentage point higher than the current healthcare cost trend rate:

	1% Decrease	Healthcare Cost Trend Rate	1% Increase
Department's net OPEB liability	$ 6,031,363	$ 8,459,304	$ 11,591,295

Payables to the OPEB Plan
At June 30, 2019 and 2018, the Department had no payables to EUTF.

10. Deferred Compensation Plan

The Department offers its employees, through the County, a deferred compensation plan established in accordance with Internal Revenue Code Section 457. The plan, available to all full-time Department employees, permits them to defer a portion of their salary until future years. The deferred compensation is not available to employees until termination, retirement, death or an unforeseeable emergency. The plan's assets have been placed in trust accounts with the plan administrators for the exclusive benefit of participants and their beneficiaries and are not considered assets of the County or the Department.

In accordance with GASB Statement No. 32, *Accounting and Financial Reporting Code Section 457 – Deferred Compensation Plans*, the Department has excluded the plan assets from the financial statements. All such amounts are not subject to the claims of the Department or the County's general creditors.

11. Commitments and Contingencies

Sick Leave
Accumulated sick leave as of June 30, 2019 and 2018 was approximately $2,078,000 and $2,160,000, respectively. Sick leave accumulates at the rate of 14 hours for each month of service, as defined, without limit. Sick pay can be taken only in the event of illness and is not convertible to pay upon termination of employment. As a result, no liability for sick pay is recorded in the accompanying financial statements. However, a public employee who retires or leaves government service in good standing with sixty days or more of unused sick leave is entitled to additional service credit in the ERS.

Workers' Compensation Insurance
Prior to July 1, 2001, the Department was fully self-insured for workers' compensation claims. Beginning July 1, 2001, the Department purchased insurance with a deductible of $550,000. Claims are reported to and managed by the County. The Department provides reserves for claims not covered by insurance that in the opinion of counsel will result in probable judgment against the Department. These reserves include an estimate of claims that have been incurred but not reported ("IBNR"). Claim liabilities, including IBNR, are based on the estimated ultimate cost of settling the claims. Claims liabilities are estimated by a case-by-case review of all claims and the application of historical experience to outstanding claims. As of June 30, 2019 and 2018, the workers' compensation liability amounted to approximately $326,000 and $314,000, respectively, and is recorded in accounts payable and accrued liabilities in the accompanying statements of net position.

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Safe Drinking Water Act
The Department is subject to the requirements of the Safe Drinking Water Act (the "Act") which is administered by the State of Hawaii Department of Health on behalf of the United States Environmental Protection Agency. Management indicated that the Department is in full compliance with the requirements of the Act and is not aware of any matters under the Act that materially affected or is currently affecting the Department's customer service area.

Other Legal Matters
The Department is party to various legal proceedings arising in the normal course of business. The outcome of individual matters is not predictable. However, management believes that the ultimate resolution of all such matters will not have a material adverse effect on the Department's financial position or results of operations.

Other
Other commitments, primarily for utility plant construction, approximated $17,941,000 and $22,239,000 at June 30, 2019 and 2018, respectively.

12. Billing Service Contract

Effective January 1, 2017, the Department entered into a memorandum of agreement with the Department of Water Supply, County of Maui, to split the cost of licenses for a shared Customer Care & Billing System. The amounts charged approximated $325,000 in 2018.

13. Related Party Transactions

The Department charges the County for fire protection services (hydrant use) at agreed-to rates that approximate the cost for such services. The County provides certain services to the Department and charges the Department for these services at an amount equal to the charge for fire protection services. The amounts charged approximated $2,174,000 and $2,137,000 in 2019 and 2018, respectively.

At June 30, 2019 and 2018, amounts due to the County for reimbursement of payroll expenses were approximately $175,000 and $184,000, respectively.

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Required Supplementary Information

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Department of Water
County of Kauai
Schedule of the Department's Proportionate Share of the Net Pension Liability
Last Ten Fiscal Years*

	2019	2018	2017	2016	2015	2014
Department's proportion of the net pension liability	0.12%	0.12%	0.13%	0.13%	0.12%	0.12%
Department's proportionate share of the net pension liability	$ 16,156,668	$ 15,423,518	$ 16,921,133	$ 11,310,002	$ 9,317,991	$ 10,322,299
Department's covered payroll	$ 5,633,000	$ 5,515,000	$ 5,110,000	$ 4,836,000	$ 4,645,000	$ 4,385,000
Department's proportionate share of the net pension liability as a percentage of its covered payroll	286.82%	279.66%	331.14%	233.87%	200.60%	235.40%
Plan fiduciary net position as a percentage of the total pension liability	55.48%	54.80%	51.28%	62.42%	63.92%	57.96%

* This data is presented for years for which information is available.

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See accompanying independent auditors' report.

Department of Water
County of Kauai
Schedule of the Department's Pension Contributions
Last Ten Fiscal Years*

	2019	2018	2017	2016	2015	2014	2013	2012	2011
Statutorily required contribution	$ 1,109,000	$ 1,016,000	$ 938,000	$ 911,000	$ 798,000	$ 745,000	$ 679,000	$ 642,000	$ 601,000
Contributions in relation to the statutorily required contribution	1,109,000	1,016,000	938,000	911,000	798,000	745,000	679,000	642,000	601,000
Contributions deficiency (excess)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Department's covered payroll	$ 5,840,000	$ 5,633,000	$ 5,515,000	$ 5,110,000	$ 4,836,000	$ 4,645,000	$ 4,385,000	$ 4,285,000	$ 4,014,000
Contributions as a percentage of covered payroll	18.99%	18.04%	17.01%	17.83%	16.50%	16.04%	15.48%	14.98%	14.97%

* This data is presented for years for which information is available.

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See accompanying independent auditors' report.

Department of Water
County of Kauai
Schedule of the Department's Proportionate Share of the Net OPEB Liability
Last Ten Fiscal Years*

	2019	2018
Total other postemployment benefits liability		
Service cost	$ 380,070	$ 380,075
Interest on the total other postemployment benefits liability	1,144,135	1,073,630
Difference between expected and actual experience in the measurement of total OPEB liability	(135,272)	-
Changes of assumptions or other inputs	237,370	-
Benefit payments	(525,000)	(368,000)
Net change in total other postemployment benefits liability	1,101,303	1,085,705
Total other postemployment benefits liability – beginning	16,417,246	15,331,541
Total other postemployment benefits liability – ending	$ 17,518,549	$ 16,417,246
Plan fiduciary net position		
Employer contributions	$ 948,000	$ 1,287,000
Net investment income	588,700	654,929
Benefit payments	(525,000)	(368,000)
Other postemployment benefits plan administrative expense	(1,803)	(1,485)
Other	-	8,474
Net change in plan fiduciary net position	1,009,897	1,580,918
Plan fiduciary net position – beginning	8,049,348	6,468,430
Plan fiduciary net position – ending	9,059,245	8,049,348
Net other postemployment benefits liability – ending	$ 8,459,304	$ 8,367,898
Plan fiduciary net position as a percentage of total other postemployment benefits liability	51.71%	49.03%
Covered-employee payroll	$ 5,700,000	$ 5,269,000
Net other postemployment benefits liability as a percentage of covered-employee payroll	148.41%	158.81%

* This data is presented for years for which information is available.

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See accompanying independent auditors' report.

Department of Water
County of Kauai
Schedule of the Department's OPEB Contributions
Last Ten Fiscal Years*

	2019	2018	2017	2016	2015
Actuarially determined contribution	$ 1,011,000	$ 1,002,000	$ 968,000	$ 914,000	$ 884,000
Contributions in relation to the actuarially required contribution	1,011,000	948,000	968,000	883,000	885,000
Contributions deficiency (excess)	$ -	$ 54,000	$ -	$ 31,000	$ (1,000)
Department's covered-employee payroll	$ 5,787,000	$ 5,700,000	$ 5,269,000	$ 5,068,000	$ 5,052,000
Contributions as a percentage of covered-employee payroll	17.47%	16.63%	18.37%	17.42%	17.52%

* This data is presented for years for which information is available.

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See accompanying independent auditors' report.

Supplementary Information

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Department of Water
County of Kauai
Supplemental Schedule of Utility Plant in Service
Year Ended June 30, 2019

Schedule I

	July 1, 2018 Balance	Additions	Reductions/ Transfers	June 30, 2019 Balance
Cost basis				
Land and land rights				
Source	$ 837,879	$ -	$ -	$ 837,879
Pumping	156	-	-	156
Water treatment	150	-	-	150
Transmission and distribution	469,237	-	-	469,237
Total land and land rights	1,307,422	-	-	1,307,422
Utility plant				
Source	9,994,121	-	2,068,670	12,062,791
Pumping	46,195,390	-	2,521,499	48,716,889
Water treatment	2,349,126	-	615,111	2,964,237
Transmission and distribution	245,483,100	2,101,401	(25,251)	247,559,250
Total utility plant capital assets	304,021,737	2,101,401	5,180,029	311,303,167
General plant	22,516,701	1,198,081	(1,182)	23,713,600
Capital leases				
Water treatment	7,181,456	-	-	7,181,456
General	233,890	-	-	233,890
Total capital leases assets	7,415,346	-	-	7,415,346
Intangible assets				
Easements	35,722	-	-	35,722
Software	1,879,640	9,755	-	1,889,395
Total intangible assets	1,915,362	9,755	-	1,925,117
	$ 337,176,568	$ 3,309,237	$ 5,178,847	$ 345,664,652
Accumulated depreciation and amortization				
Utility plant				
Source	$ 5,569,397	$ 219,436	$ -	$ 5,788,833
Pumping	27,789,600	1,679,289	(70,610)	29,398,279
Water treatment	2,184,850	8,787	-	2,193,637
Transmission and distribution	77,184,363	3,278,028	(40,558)	80,421,833
Total utility plant accumulated depreciation	112,728,210	5,185,540	(111,168)	117,802,582
General plant	7,159,667	895,550	(1,182)	8,054,035
Capital leases				
Water treatment	6,668,361	513,096	-	7,181,457
General	217,211	9,311	-	226,522
Total capital lease accumulated depreciation and amortization	6,885,572	522,407	-	7,407,979
Intangible assets	1,005,552	230,247	-	1,235,799
	$ 127,779,001	$ 6,833,744	$ (112,350)	$ 134,500,395

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See accompanying independent auditors' report.

Department of Water
County of Kauai
Supplemental Schedule of Selective Account Classifications
Five Years Ended June 30, 2019
(All Dollars in Thousands) **Schedule II**

	2019	2018	2017	2016	2015
Statements of Net Position					
Utility plant in service	$ 345,665	$ 337,177	$ 332,814	$ 317,155	$ 313,402
Net position					
Net investment in capital assets	$ 160,382	$ 151,506	$ 148,855	$ 147,808	$ 145,475
Restricted for capital activity and debt service	905	809	540	1,864	-
Unrestricted	36,807	36,522	41,623	36,898	30,359
	$ 198,094	$ 188,837	$ 191,018	$ 186,570	$ 175,834
Statements of Revenues, Expenses and Changes in Net Position					
Resources					
Water sales	$ 27,959	$ 27,910	$ 28,445	$ 29,228	$ 29,616
Other	2,600	2,540	2,471	2,463	2,270
	30,559	30,450	30,916	31,691	31,886
Operating expenses					
Depreciation and amortization	6,865	7,633	7,440	7,065	7,315
Administrative and general	8,951	8,394	7,874	6,971	6,468
Transmission and distribution	4,047	4,165	4,043	3,472	3,145
Power and pumping	3,034	2,982	2,949	2,832	3,505
Accounting and collection	1,200	1,067	1,231	1,058	967
All other	3,014	2,330	2,361	2,205	2,132
	27,111	26,571	25,898	23,603	23,532
Nonoperating expense	(923)	(3,502)	(3,238)	(3,405)	(3,788)
Contributions	6,731	4,978	2,668	6,053	4,933
	$ 9,256	$ 5,355	$ 4,448	$ 10,736	$ 9,499

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See accompanying independent auditors' report.

Report of Independent Auditors on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*

To the Board of Water Supply
Department of Water, County of Kauai

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the Department of Water, County of Kauai (the "Department") as of and for the year ended June 30, 2019, and the related notes to the financial statements, which collectively comprise the Department's basic financial statements, and have issued our report thereon dated November __, 2019.

Internal Control Over Financial Reporting
In planning and performing our audit of the financial statements, we considered the Department's internal control over financial reporting ("internal control") to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Department's internal control. Accordingly, we do not express an opinion on the effectiveness of the Department's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the Department's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters
As part of obtaining reasonable assurance about whether the Department's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

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Accuity LLP is a member of the global network of Baker Tilly International Limited, the members of which are separate and independent legal entities.

Purpose of this Report
The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Department's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Department's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Honolulu, Hawaii
November __, 2019

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Schedule of Findings and Questioned Costs

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Department of Water
County of Kauai
Schedule of Findings and Questioned Costs
Year Ended June 30, 2019

Section I – Financial Statement Findings

None noted.

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Section II – Federal Award Findings and Questioned Costs

None noted

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DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 20-26

December 2, 2019

Re: Discussion and Possible Action for As-Needed Construction Management Services for the Department of Water, Second Amendment to Contract No. 637, Job No. 15-07 with RM Towill Corporation, Hanapēpē Waterline Project for a time extension to September 30, 2020 and additional funding in the amount of $440,000.00

RECOMMENDATION:
It is recommended that the Board approve revisions to Contract No. 637 for a time extension of 274 calendar days and $440,000.00 in additional funding for the second amendment of the subject contract due to unanticipated project delays.

FUNDING: Water Utility/Capital Outlay/R&R

Account No.	10-21-10-540-010				
Acct Description	WU-CNS-ADMIN-PROFESSIONAL SERVICES-GENERAL				
Funds Available	*Water Utility Fund Unrestricted Balance – Verified by WWC*			$	$2,898,513.39
Contract No.	637				
Vendor	RM Towill Corporation				
	Contract Amount	$	200,000.00		
	Additional Funds for PAO#1	$	419,069.00		
	Total Funds Certified	$	619,069.00		
First Amendment:					
Contract Time Extension and Revised Language		$	0.00		
Second Amendment:					
Contract Time Extension and Additional Funding			$440,000.00		
	Total Amendment	$	440,000.00		
PAO#1R (Superseded PAO #1)		$	600,405.00		
Proposed PAO #2, additional funding approved at November 22, 2019 Board Meeting		$	$440,000.00		
Contingency		$	18,664.00		
Contract Amount To Date (NTE)		$	1,059,069.00		

Upon full execution of the contract amendment #2, the DOW will issue and execute a Project Assignment Order #2 (PAO#2) to complete the project management through September 30, 2020.

BACKGROUND:

Approved Contract Amendment #1:

Unanticipated delays during the design phase caused the construction work to proceed later than originally planned, resulting in the contract work extending beyond the original contractual limit. The Department of Water (DOW) was unable to attract qualified engineering and inspection staff. This impacted our Construction Management (CM) division's ability to manage projects with current staff and was exacerbated with the infusion of the state appropriation funding projects such as the Hanapēpē Waterlines project (Job No. 15-07), for which RM Towill Corporations (RMTC) has been utilized as our As-Needed Construction manager. Although the cost for As-Needed CM project management and inspectional services is high compared to staff costs, the DOW needed to use the As-Needed CM contract to meet the project's construction deadlines. The Board approved additional funding for this project at the June 22, 2018 meeting and RMTC was given notice to proceed as the As Needed Construction manager via Project Assignment Order #1 on June 30, 2018.

The original contract language and Project Assignment Order (PAO) #1 did not clearly state that the monthly rental of housing in lieu of a hotel room is allowed. In June of 2018 when the DOW received RMTC's proposal, they included $82,750.00 for airfare and $14,000 for car rental. During the June 22, 2018 Board meeting, DOW staff mentioned to the Board having RMTC look for housing on-island to lower travel costs. They secured a furnished condo at approximately $1,850 per month. The amendment was approved by the Board at the August 24, 2018 meeting to realize cost savings.

Proposed Contract Amendment #2:

There have been numerous unanticipated delays during the course of construction with the biggest being the redesign of the waterline crossing the historic Hanapēpē Bridge and encountering petroleum-contaminated soils in Hanapēpē town. The redesign of the waterline crossing is nearing completion and the proposed plan in dealing with contaminated soils is currently being formulated. Due to these delays, we recommend a contract amendment to extend the contract by 274 calendar days to September 30, 2020 and approval of an additional $440,000.00 in funding. This will ensure services are provided to span from the current contract end date of December 31, 2019 to September 30, 2020 to complete the construction management portion of the project.

The time extension will allow for payment of the Project Assignment Orders are anticipated prior to the current contract end date of December 31, 2019. No additional Project Assignment Orders are anticipated to extend this contract beyond September 30.

It is the DOW staff's opinion that RMTC has made sufficient progress related to Project Assignment Order 1R for project management and inspection, and we anticipate the same performance for future project assignment orders. We have reviewed RMTC's rates for the work and find it acceptable.

Contract NTP Date: June 26, 2017
Original Contract End Date: June 25, 2019
1st Contract Amendment End Date: December 31, 2019
New Contract End Date with proposed Contract Amendment No. 2 Time Extension:
September 30, 2020

~~Original Project Assignment Order #1 = $619,069.00~~
Approved Project Assignment Order #1R (Superseded PAO E1) = $600,405.00
Proposed Project Assignment Order #2 = $440,000.00
Contingency = $18,664.00

Upon full execution of the contract amendment #2, the DOW will issue and execute a Project Assignment Order #2 (PAO#2) to complete the project management through September 30, 2020.

OPTIONS:

Option 1: **Approve a time extension of 274 calendar days and additional funding in the amount of $440,000.00 as recommended.**

Pros: The DOW can manage construction of existing and new projects such as Hanapēpē Waterlines (Job 15-07) and pay RMTC as required for the Project Assignment Orders issued within an active contract end date per the approved scope of work and associated fees. RMTC has managed the project from the beginning of construction so continuity would be maintained through completion.

Con: Higher costs than existing DOW staff.

Option 2: **Do not approve a time extension of 274 calendar days and additional funding in the amount of $440,000.00.**

Pro: Overall costs to manage the project may be reduced.

Con: DOW staff would have to manage construction and it would be extremely difficult given other current construction projects and anticipated projects that will begin in 2020.

DM/ein

Attachment: RMTC revised fee 10-28-19

Mgrrp/December 2019/20-26/Discussion and Possible Action for As-Needed Construction Management Services for the Department of Water, Second Amendment to Contract No. 637, Job No. 15-07 with RM Towill Corporation, Hanapēpē Waterline Project for a time extension to September 30, 2020 and additional funding in the amount of $440,000.00 (SBM 12-2-19):ein

Construction Management Services
Fee Proposal for Hanapepe Waterline Improvements
Hanapepe, Kauai, Hawaii
October 28, 2019

1. Construction Phase Extension (12/31/2019 to 9/30/2020)

Personnel	Hourly Rate	Total Hours	Fee
Principle (Roy Tsutsui, PE)	$203.50	48	$9,768
Project Engineer (Lydia Yee, PE and CCM)	$141.98	928	$131,757
Construction Inspector (Phillip Ho)	$111.56	1856	$207,055
Clerical	$76.68	232	$17,790
			$356,603
Subtotal			$356,603
Reimbursable Cost			
Airfare			$26,000
Vehcle			$6,845
Housing			$29,715
Supplies			$650
Total			$419,812
GET (4.712)			$19,782
Grand Total			**$439,594**

Basis of Fee:

1. Fee is based on 8 hrs/day of inspection, 4 hrs/day of engineer's time and 1 hr/week of principle's time.
2. Receipts will be submitted as a basis of payments for reimbursable expenses
3. See attached for reimbursable expense breakdown.

Hanapepe Waterline PAO #01R Extension
October 28, 2019

Breakdown of Reimbursable Charges

Airfare:		
52 trips @ $250 - 2 people	$25,000.00	
1 trip quarterly @ $250 - 1 person	$1,000.00	
	$26,000.00	
Vehicle:		
Mileage (estimated 40 miles rdtrip)	$4,964.80	
Parking at airport ($160/month)	$1,600.00	
Rental Car - (4 days @ $50 + $20 for fuel)	$280.00	(for extra inspector on tie-in days)
	$6,844.80	
Housing:		
Condo Unit ($1859.50/mon)	$18,595.00	
Utilities - ($300/mon)	$3,000.00	
Per diem for Inspector - ($35/day)	$8,120.00	
	$29,715.00	
Supplies:		
Office supplies ($25/mon)	$250.00	
Internet hotspot ($40/mon)	$400.00	
	$650.00	
Total	$63,209.80	

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 20-27

December 2, 2019

Re: Discussion and Possible Action for Job No. 17-10, Water Plan 2020 No. KW-07, Rehabilitate Paua Valley Tank No.1, 0.5 MG Concrete, Kekaha Water System for additional construction funding in the amount of $975,000.00

RECOMMENDATION:
It is recommended that the Board approve additional funds for the subject project to allow the Department to award and execute a new contract for construction.

FUNDING:

Approved Budget FY17-18		
10-21-00-604-001 WU/ Capital Outlay-R&R/Paua Valley Tank Repair	$1,400,000.00	
Total Approved Funding in FY2020 Budget =	$1,400,000.00	
Contractor Proposal (Earthworks Pacific. Inc.)		$ 2,264,750.00
Total Contingency (approx. 5%)		$ 110,250.00
Total Funding Required		$ 2,375,000.00
Available Water Utility Fund Balance		$3,873,513.39
Additional Funds Requested for, **10-21-00-604-001** WU/ Capital Outlay-R&R/Paua Valley Tank Repair		$ 975,000.00
Water Utility Fund balance to remain after additional funds approved		$2,898,513.39

BACKGROUND:
The original scope of the Paua Valley Tank #1, 0.5 MG Project was to address the cause of a leak in the tank and perform hazardous material testing. During this testing, it was determined that the tank's liner contained Polychlorinated Biphenyls (PCBs). The tank was then taken out of service by the DOW Operations Division. This project was then initiated to mitigate the PCBs and other hazardous materials such as lead paint in addition to fixing the leak(s) in the existing tank.

This scope of this project, as indicated in the contract drawings and specifications, is as follows:

Repair the existing tank which is a 0.5 million gallon (MG) reinforced concrete reservoir, with an inside diameter of 69 feet and a maximum water height of 18 feet to the overflow pipe opening. The flat concrete roof is supported on the interior by four square concrete columns. Work includes installation of a level indicator system with gauge board, remove and replace the interior ladder, remove and replace the asphalt concrete pavement surrounding the reservoir, repair the leak at the base of the reservoir, spall repairs, install interior coating of the reservoir, repaint the entire reservoir including appurtenances, remove and replace the reservoir roofing system, mitigate

hazardous materials associated with the repair work. The project is located in the Kekaha, Kauaʻi, Hawaiʻi. area accessed by a gated unpaved access road from Kokeʻe Road.

Bids were opened on October 31, 2019 and subsequently reviewed as follows:

Earthworks Pacific. Inc. $2,264,750.00 (Deemed Responsive to Procurement)
This project is not a typical project given the specialty areas related to hazardous materials, coating, and leak repairs. There were two general contractors who provided notice of intent to bid; however, only one of those contractors provided a bid. The other contractor is based in Oʻahu and stated that the project location on Kaua'i posed an issue for them and they felt they would not be competitive and thus decided not to propose. The project's unique requirements, specifically those related to the rehabilitation work required, led to a construction price significantly higher than originally anticipated. Additionally, the construction economy is extremely busy and contractors who may bid this type of project are overloaded to the point where they are picking and choosing projects to bid on. Therefore, more difficult or complex projects such as this one are not as enticing compared to when construction is slower on the island and throughout the state.

The Engineer's estimate was $1,222,265.00 which was provided for the FY 2020 budget amount, which was set at $1,400,000.00. The project is funded in part by a State appropriation of $1,200,000, which represents an 80% match of $1,440,000.00 from the State and a 20% match from the Department of $240,000.00. To utilize the State funds the contract must be encumbered with a notice to proceed date of no later than June 30, 2022. The project was procured via the low bid process and the apparent low bidder's proposal has been reviewed by DOW staff and the design consultant Kai Hawai'i Inc.

Because only one bid was received and deemed responsive, a review of the bid line items was conducted by DOW staff to determine if the pricing is fair and reasonable. The Earthworks Pacific Inc. bid appeared to be high relating to hazardous material removal, removal, installation of fluid applied roofing, cleaning and disinfection of the reservoir, and temporary PCB filtration items.

Based on the Earthworks Pacific. Inc. bid alone, the DOW's design consultant, Kai Hawai'i, and DOW engineering design staff recognized the potentially excessive bid item costs. However, after reviewing the DOW consultant's responses and the information requested of Earthworks Pacific Inc. regarding these items, the DOW recommends moving forward with the project based on several key considerations. First, rehabilitation work typically has higher costs than new construction, and this project's specification requirements are stringent with respect to hazardous material handling, treatment, and disposal. Contingency related to these items is also highly variable as there is a higher level of uncertainty for these items.

Next, the needs of the water system were also given strong consideration. Per the DOW Operations staff, the tank has been offline since September 15, 2017. With only one storage tank available, our pumps are cycling more than preferred, which adds wear and tear to operations and potential costs for pump maintenance or replacement. Per our Water Resources and Planning staff, with the tank temporarily offline, fire flow is sufficient for the Kekaha area, but storage capacity is at a deficit and we are unable to provide the required maximum day demand for the Kekaha area as required in the Water System Standards.

Lastly, deferring the project until the construction climate changes is not advisable because we should jeopardize forfeiting the $1,200,000.00 in State funding. Furthermore, there is no guarantee that bids would go down, as that may actually increase if only one contractor bids again.

For all of these reasons, we believe it is in the best interest of the Department and our ratepayers to approve additional funds for the construction contract to be awarded and executed with Earthworks Pacific. Inc. This will allow work to proceed and the tank can be put back into service as soon as possible to meet water system standard requirements and reduce operational issues.

OPTIONS:

Option 1: **Approve the additional funds.**

Pros: The project can be awarded and a contract can be executed well in advance of the June 30, 2022 deadline for utilizing the State funds of $1,200,000.00. The Paua Valley #1 0.5MG Tank can be repaired and brought back online to ensure adequate storage capacity is provided to the Kekaha area.

Con: Higher cost than anticipated with only one responsive bidder.

Option 2: **Not approve additional funds.**

Pro: Department does not spend more than budgeted. Costs may be reduced with more responsive bidders.

Con: State funding could potentially lapse due to time constraints of readvertising and procuring the project. We may also end up with a single bidder or no bidders if the construction climate changes, resulting in a higher bid price. We would have to dramatically reduce the project's scope and there is no guarantee that we can stay within the current budget while meeting the needs of the water system given the construction prices observed recently. The Paua Valley #1 0.5 MG Tank would remain offline and inoperable for DOW Operations staff.

DM/ein

Mgrrp/December 2019/20-27/Discussion and Possible Action for Job No. 17-10, Water Plan 2020 No. KW-07, Rehabilitate Paua Valley Tank No.1, 0.5 MG Concrete, Kekaha Water System for additional construction funding in the amount of $975,000.00 (SBM 12-2-19):ein

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 20-28

December 2, 2019

Re: Discussion and Possible Action to enter into a Memorandum of Agreement between the Department of Public Works, County of Kaua'i and the Board of Water Supply, County of Kaua'i for the Maluhia Road and Kōloa Road Improvements Project

RECOMMENDATION:

It is recommended that the Board enter a Memorandum of Agreement with the Department of Public Works, County of Kaua'i for the Maluhia Road and Kōloa Road Improvements Project.

FUNDING: N/A

BACKGROUND:

The Department of Public Works (DPW) desires to install a roundabout at the intersection of Kōloa Road and Ala Kalanikaumaka Road as part of their Maluhia Road and Kōloa Road Improvements project.

The DPW does not want to relocate the Department of Water (DOW) water facilities from under the roundabout, as requested by the DOW. To allow the DPW to proceed with their federally funded project, this Memorandum of Agreement (MOA) will allow the DPW to construct the roundabout without relocating the DOW water facilities that are located under the roundabout. The MOA agreement contains various conditions and items that have been agreed upon between the DPW and the Board of Water Supply (BWS). Among the conditions stated in the MOA, the following items identify possible future monetary obligations of both parties as follows:

Responsibility of the DPW. The BWS is not responsible for any new landscaping damaged or removed due to necessary repair, operation, and maintenance of water facilities located on Kōloa Road. All new landscaping installed for the Project shall be maintained by the DPW or other entities. DPW shall be responsible for one-half of the cost for contracted services and related materials required for repair or restoration of any curb, gutter, sidewalk, concrete or asphalt paving, and drainage structures, including base or subgrade fill, hereafter referred to as "DPW Roadway Facilities" which are damaged or removed during BWS repair, operation, and maintenance of water facilities located on Kōloa Road. DPW shall be responsible for the procurement of services for restoration and repair of DPW Roadway Facilities, and related inspection. Trees shall not be included in the landscaping as part of the project.

Responsibility of the BWS. BWS is fully responsible for backfilling and temporary repair of any DPW roadway facilities which are damaged or removed during BWS repair, operation, and maintenance of water facilities located on Kōloa Road to the extent that the roadway is deemed by DPW to be suitable for public use. BWS's temporary repairs shall be sufficient to remain suitable for public use for a reasonable period to allow DPW sufficient time to make permanent repairs. BWS shall have primary responsibility to provide for and manage required equipment, labor and materials, including the associated costs to perform said temporary repairs. Further, BWS shall be responsible for one-half of the

cost for contracted services and related materials, for permanent repair and restoration DPW roadway facilities damaged or removed during repair, operation, and maintenance of BWS water facilities. All DPW roadway facilities installed for the Project shall be protected in place by BWS to the extent possible to minimize damage during repair, operation, and maintenance of water facilities.

There are no indemnification clauses in the MOA.

OPTIONS:

Option 1: Approve Memorandum of Agreement.

Pros: The Board will be working collaboratively with the County of Kaua'i, which will benefit the public by allowing needed road and safety improvements to be completed. This will help protect the public and lower the cost of the project. The funds saved can be used for other projects that will benefit the people of Kaua'i. Additionally, in the event the waterline needs to be repaired in the identified area, DPW will be responsible to pay for one-half of the permanent repair costs for any curb, gutter, sidewalk, concrete, or asphalt paving.

Con: Waterline repairs will be difficult due to the added roundabout structure built above existing water lines in the identified area.

Option 2: Do not approve Memorandum of Agreement.

Pro: None known.

Con: The Board won't be supporting the County to complete their road improvement project and will need to cover the full cost of any repairs to waterlines in the identified area.

KA/ein

Attachment: Memorandum of Agreement for Maluhia Road and Kōloa Road Improvements Project Federal-Aid Project No. TGR 0700(072)

Mgrrp/December 2019/20-28/Discussion and Possible Action to enter into a Memorandum of Agreement between the Department of Public Works, County of Kaua'i and the Board of Water Supply, County of Kaua'i for the Maluhia Road and Kōloa Road Improvements Project (12-2-19):ein

MEMORANDUM OF AGREEMENT

FOR

MALUHIA ROAD AND KŌLOA ROAD IMPROVEMENTS PROJECT
FEDERAL-AID PROJECT NO. TGR 0700(072)

KŌLOA WATER SYSTEM

THIS Memorandum of Agreement ("Agreement") effective as of ___ day of 2019, by and between the BOARD OF WATER SUPPLY, COUNTY OF KAUA`I (hereinafter referred to as the "BWS"), whose business and mailing address is 4398 Pua Loke Street, Līhu`e, Hawai`i 96766 and the COUNTY OF KAUA'I by and through its DEPARTMENT OF PUBLIC WORKS (hereinafter referred to as the "DPW"), whose principal place of business and mailing address is 4444 Rice Street, Suite 275, Līhu`e, Hawai`i 96766.

RECITALS

WHEREAS, the County of Kaua'i (hereafter referred to as the "County") is the owner of certain parcels of lands upon which the County road, Kōloa Road is situated (hereinafter referred to as the "County Road"); and

WHEREAS, the DPW is willing to allow the BWS to occupy or continue to occupy portions of the County Road for the BWS's Existing and Old Facilities, and

WHEREAS, the BWS desires to maintain use of water systems beneath Kōloa Road including water facilities at the intersection of Ala Kalanikaumaka affected by the Maluhia Road and Kōloa Road Improvements Project, Federal-Aid Project No. STIP-0700(072), hereafter referred to as the "Project"; and

WHEREAS, the DPW desires to install a roundabout including curbing and ADA compliant sidewalks, within portions of the County Road above existing BWS water facilities for the Project; and

WHEREAS, the DPW is willing to allow the BWS, in the event water facility repairs are required, to not be responsible for damages to the new landscaping above the existing water facilities, provided that the BWS enters into this Memorandum of Agreement and provided further that the BWS fully complies with the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual covenants and promises herein made, the parties do hereby agree as follows:

1. Right to Abandon the Old Facilities. The BWS is allowed to abandon old and unused waterlines and related components, hereafter referred to as "Old Facilities" that are located within and under the County Roads in the execution of the Project; until such time that the DPW reconstructs the County road that contains the Old Facilities and desires that the Old Facilities be removed. The term "reconstruction" as used in this Agreement shall be defined as the excavation of the pavement, soil, and facilities below the surface of the pavement. BWS shall be fully responsible for the costs associated with removal and disposal for Old Facilities.

2. Notification to the BWS. The DPW shall notify the BWS in writing five (5) months prior to the fiscal year in which DPW intends to reconstruct a County road to allow the BWS time to budget for the Old Facilities removal.

3. Excavation, Removal, and Reconstruction
    a. Excavation. Where Old Facilities must be removed, the DPW or its contractor shall be responsible for the excavation of the trench.
    b. Removal.

i. The DPW is responsible for the removal and disposal of the Old Facilities.
ii. Only BWS personnel are authorized to operate the water lines.
iii. The removal of the Old Facilities shall be limited to one pipe length beyond the trench excavation
iv. The BWS shall reimburse the DPW for costs to remove and dispose of the Old Facilities only. Excavation and reconstruction costs shall not be included in the reimbursement amount.

c. Reconstruction.
i. The DPW shall utilize any and all BWS record drawings available during the design of any road reconstruction of the County Roads. The DPW will, in the bid documents, make potential bidders aware that differing site conditions are not a basis for which change orders will be issued. To the best of the BWS' knowledge, the BWS record drawings account for all Old Facilities.

4. Responsibility of the DPW. The BWS is not responsible for any new landscaping damaged or removed due to necessary repair, operation, and maintenance of water facilities located on Kōloa Road. All new landscaping installed for the Project shall be maintained by the DPW or other entities. DPW shall be responsible for one-half of the cost for contracted services and related materials required for repair or restoration of any curb, gutter, sidewalk, concrete or asphalt paving, and drainage structures, including base or subgrade fill, hereafter referred to as "DPW Roadway Facilities" which are damaged or removed during BWS repair, operation, and maintenance of water facilities located on Kōloa Road. DPW shall be responsible for the procurement of services for restoration and repair of DPW Roadway Facilities, and related inspection. Trees shall not be included in the landscaping as part of the project.

5. Responsibility of the BWS. BWS is fully responsible for backfilling and temporary repair of any DPW roadway facilities which are damaged or removed during BWS repair, operation, and maintenance of water facilities located on Kōloa Road to the extent that the roadway is deemed by DPW to be suitable for public use. BWS's temporary repairs shall be sufficient to remain suitable for public use for a reasonable period to allow DPW sufficient time to make permanent repairs. BWS shall have primary responsibility to provide for and manage required equipment, labor and materials, including the associated costs to perform said temporary repairs. Further, BWS shall be responsible for one-half of the cost for contracted services and related materials, for permanent repair and restoration DPW roadway facilities damaged or removed during repair, operation, and maintenance of BWS water facilities. All DPW roadway facilities installed for the Project shall be protected in place by BWS to the extent possible to minimize damage during repair, operation, and maintenance of water facilities.

6. Notification to the DPW. The BWS shall notify the DPW in writing by letter or email message within ten (10) days, of any damages or removal of new landscaping or DPW Roadway Facilities installed on Kōloa Road due to water facility repair, operation, and/or maintenance. BWS shall provide immediate (or as soon as practical for emergency repair during non-work hours) verbal notice to the DPW of work on BWS water facilities that will impact traffic. BWS shall coordinate with the DPW for inspection of all work for temporary repair DPW Roadway Facilities damaged or removed by the DOW or its Contractor. Notifications by BWS to DPW shall be made to the Department of Public Works Administration office.

7. Termination. If not otherwise terminated or canceled, this Agreement may be canceled by the mutual written agreement of the parties hereto.

8. Headings. The headings and captions herein are for convenience of reference only and are not intended to fully describe, define, or limit the provisions of this Agreement to which they may pertain.

IN WITNESS WHEREOF, the undersigned have executed this Agreement the day and year first above written.

RECOMMEND APPROVAL:

Bryan Wienand, P.E.
Manager and Chief Engineer
Department of Water

BOARD OF WATER SUPPLY
COUNTY OF KAUA`I

Thomas Canute
Chairperson
Board of Water Supply

APPROVED AS TO FORM
AND LEGALITY:

Mahealani M. Krafft
Deputy County Attorney

RECOMMEND APPROVAL:

Lyle Tabata Digitally signed by Lyle Tabata Date: 2019.11.07 16:30:41 -10'00'

Lyle Tabata
Deputy County Engineer
County of Kaua'i

APPROVED:

Reiko Matsuyama
Director of Finance
County of Kaua'i

APPROVED AS TO FORM
AND LEGALITY:

Deputy County Attorney

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

Board of Water Supply

2019 - Current Officers	**2020 – Officers** *(effective: 1/1/20)*
Chair: Thomas Canute	**Chair:** _____
Vice-Chair: Laurie Ho	**Vice-Chair**: _____
Secretary: Ka`aina Hull	**Secretary:** _____

4398 Pua Loke Street Līhu'e, HI 96766 Phone: 808-245-5400 Fax: 808-245-5813 Operations Fax: 808-245-5402

BOARD OF WATER SUPPLY

BOARD MEETING DATES FOR 2020

(Department of Water, County of Kaua'i *Rules & Regulations, Part 1, Section II* – Regular Meetings of the Board shall be held in the Department of Water's Board Room or any designated place once each month, or on a date to be determined by the Board.)

1.	January	Friday, January 24	10:00 a.m.
2.	February	Friday, February 28	10:00 a.m.
3.	March	Friday, March 27	10.00 a.m.
4.	April	Friday, April 24	10:00 a.m.
5.	May	Friday, May 29	10:00 a.m.
6.	June	Friday, June 26	10:00 a.m.
7.	July	Friday, July 24	10:00 a.m.
8.	August	Friday, August 28	10:00 a.m.
9.	September	Friday, September 25	10:00 a.m.
10.	October	Friday, October 23	10:00 a.m.
11.	November	Friday, November 20	10:00 a.m.
12.	December	**Wednesday**, December 23	10:00 a.m.

DRAFT

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 20-34

December 2, 2019

Re: Discussion and Possible Action Related to the Delegation of Duties to Department personnel during the vacancy of the Manager and Chief Engineer

RECOMMENDATION:

It is recommended that the Board discuss the delegation of duties to Department personnel during the vacancy of the Manager and Chief Engineer position.

BACKGROUND:

The Department currently utilizes Standard Operating Procedure 30, attached. The Department is seeking input from the Board regarding the delegation of duties to Department personnel during the vacancy of the Manager and Chief Engineer position and Deputy Manager-Engineer position.

BW/ein

Attachments: SOP 30

Mgrrp/December 2019/20-34/Discussion and Possible Action Related to the Delegation of Duties to Department personnel during the vacancy of the Manager and Chief Engineer (SSBM 12-02-19):ein

STANDARD OPERATING PROCEDURE DEPARTMENT OF WATER COUNTY OF KAUAI		S.O.P. No.	30
		Supersedes S.O.P. No.	37
		Date Effective:	**October 10, 2012**
Applicable to:	**ALL DIVISIONS**	Date First Issued:	6-8-87
		Introduced By:	Ray Sato
		Page No.	1 of 1
		Revised By:	Edward Tschupp - 5/8/03
		Revised By:	Wynne Ushigome - 12/13/06 Wynne Ushigome - 3/20/09 David R. Craddick - 10/10/12

Subject: **CHAIN OF COMMAND**

In the absence of the Manager and Chief Engineer, the chain of command for departmental affairs shall be as follows:

1. Deputy Manager and Engineer
2. Water Resources and Planning Division Head
3. Waterworks Controller
4. Engineering Division CE VI
5. Construction Project Management Officer
6. Chief of Operations

Note that this chain of command is for affairs or actions for which a departmental representative or decision is needed. In most circumstances, actions and decisions will continue to be made by each division and its personnel in a normal manner.

APPROVED:

David R. Craddick, P.E. C.E.M.,
Manager and Chief Engineer

Consent Calendar

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 20-29

December 2, 2019

Re: Discussion and Possible Action on Board Approval for Governing Law in Licensing Agreement with Microsoft Software License Terms for Microsoft Windows Server 2016 Standard and DataCenter between the Board of Water Supply, County of Kaua'i, and Microsoft Corporation

RECOMMENDATION:
The Department recommends that the Board approve Option 1, which will allow the Department to move forward with the purchase, download, and installation of Windows Server 2016 Standard and DataCenter.

FUNDING: N/A

BACKGROUND:
The Department utilizes this software for the Business Local Area Network (LAN) and SCADA Networks. The Department's Information Technology (I.T.) staff has been working closely with our Deputy County Attorney to review and approve of the Microsoft Software License Terms for Windows Server 2016 Standard and Datacenter from Microsoft Corporation. Before we can move forward with the purchase, download and installation of the software Board approval is required as the agreement contains language for governing law provisions.

The sections within the agreement that reference the Governing Law and Arbitration are shown below:

MICROSOFT SOFTWARE LICENSE TERMS

MICROSOFT WINDOWS SERVER 2016 STANDARD AND DATACENTER

These license terms are an agreement between Microsoft Corporation (or based on where you live, one of its affiliates) and you. Please read them. They apply to the software named above, which includes the media on which you received it, if any. The terms also apply to any Microsoft:

- *updates,*
- *supplements,*
- *Internet-based services, and*
- *support services*

for this software, unless other terms accompany those items. If so, those terms apply.

By using the software, you accept these terms. If you do not accept them, do not use the software. Instead, return it to the retailer for a refund or credit. *If you cannot obtain a refund there, contact Microsoft or the Microsoft affiliate serving your country for information about Microsoft's refund policies. See (aka.ms/msoffices). In the United States and Canada, call (800) MICROSOFT or see (aka.ms/nareturns).*

As described below, using some features also operates as your consent to automatic updates and the transmission of certain standard computer information for Internet-based services.

EVALUATION USE RIGHTS. If you acquired an evaluation version of the software, then the EVALUATION USE RIGHTS described in this section apply to your use of the software:

- *You may use the software only to test, demonstrate, and internally evaluate it.*
- *You may not use the software in a live operating environment unless Microsoft permits you to do so under another agreement.*
- ***TIME-SENSITIVE LICENSING.** The evaluation license you have for the software will expire after 180 days. Unless the software is validly licensed, you have no right to use the software after the time permitted for evaluation.*
- ***Sections 1–3, 5, 9–14, 23, and Limited Warranty do not apply. The remaining sections below apply.***
- ***DISCLAIMER OF WARRANTY.** The software is licensed "as-is." You bear the risk of using it. Microsoft gives no express warranties, guarantees, or conditions. You may have additional consumer rights under your local laws that this agreement cannot change. To the extent permitted under your local laws, Microsoft excludes the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.*
- ***Because this software is "as is," we may not provide support services for it.***
- ***LIMITATION ON AND EXCLUSION OF REMEDIES AND DAMAGES.** You can recover from Microsoft and its suppliers only direct damages up to $5.00 USD. You cannot recover any other damages, including consequential, lost profits, special, indirect, or incidental damages.*

This limitation applies to:

- *anything related to the software, services, content (including code) on third-party Internet sites, or third-party programs; and*
- *claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law.*

It also applies even if Microsoft knew or should have known about the possibility of the damages. The above limitation or exclusion may not apply to you because your country may not allow the exclusion or limitation of incidental, consequential, or other damages.

If you acquired a retail version of the software, the license terms described below apply to you.
If you comply with these license terms, you have the rights below for each server you properly license.

1. OVERVIEW

***a. Software.** The software includes:*

- *server software; and*
- *additional software that may only be used with the server software.*

***b. License Model.** The license model differs based on which software edition you have acquired:*

***Windows Server Standard** is licensed based on:*

- *the number of instances of server software that you run;*
- *the number of physical cores in the physical hardware;*
- *the number of devices and users that access instances of server software; and*
- *the server software functionality accessed.*

***Windows Server Datacenter** is licensed based on:*

- *the number of physical cores in the physical hardware;*
- *the number of devices and users that access instances of server software; and*
- *the server software functionality accessed.*

c. Licensing Terminology

- ***Instance.*** *You create an "instance" of software by executing the software's setup or install procedure. You also create an instance of software by duplicating an existing instance. References to software in this agreement include "instances" of the software.*
- ***Run an Instance.*** *You "run an instance" of software by loading it into memory and executing one or more of its instructions. Once running, an instance is considered to be running (whether or not its instructions continue to execute) until it is removed from memory.*
- ***Operating System Environment.*** *An "operating system environment" is:*

  (i) all or part of an operating system instance, or all or part of a virtual (or otherwise emulated) operating system instance that enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and

  (ii) instances of applications, if any, configured to run on the operating system instance or parts identified above.

  There are two types of operating system environments: physical and virtual.

  A physical operating system environment is configured to run directly on a physical hardware system. The operating system instance used to run hardware virtualization software (e.g., Microsoft Hyper-V Server or similar technologies) or to provide hardware virtualization services (e.g., Microsoft virtualization technologies) is considered part of the physical operating system environment.

  A virtual operating system environment is configured to run on a virtual (or otherwise emulated) hardware system.

  A physical hardware system can have either or both of the following:

  (i) one physical operating system environment, and

  (ii) one or more virtual operating system environments.
- ***Server.*** *A server is a physical hardware system or device capable of running server software. A hardware partition or blade is considered to be a separate physical hardware system.*
- ***Assigning a License.*** *To assign a license means to designate that license to one device or user.*
- ***Core License.*** *A core license is the license required to license one physical core within a server.*
- ***Physical Core.*** *A physical core is a core in a physical processor. A physical processor consists of one or more physical cores.*
- ***Hyper-V Container*** *is a feature of Windows Server that utilizes a virtual operating system environment. Each Hyper-V Container is considered to be one virtual operating system environment.*
- ***Web Workloads*** *(also referred to as "Internet Web Solutions") are publicly accessible and consist solely of web pages, websites, web applications, web services, and/or POP3 mail services. For clarity, access to content, information, and applications served by the software within an Internet Web Solution is not limited to your or your affiliates' employees.*

  You may use the software in Internet Web Solutions to run:

  - *web server software (for example, Microsoft Internet Information Services), and management or security agents (for example, the System Center Operations Manager agent).*

- *database engine software (for example, Microsoft SQL Server) solely to support Internet Web Solutions.*
- *the Domain Name System service to provide resolution of Internet names to IP addresses as long as that is not the sole function of that instance of the software.*

Any other usage of the software is not considered to be a Web Workload.

- ***High Performance Computing ("HPC") Workload** is a workload where the server software is used to run a Cluster Node and is used in conjunction with other software as necessary to permit security, storage, performance enhancement, and systems management on a Cluster Node for the purpose of supporting the Clustered HPC Applications.*
- ***Clustered HPC Applications** is a common industry term for high performance computing applications that solve complex computational problems, or a set of closely related computational problems in parallel. Clustered HPC Applications divide a computationally complex problem into a set of jobs and tasks that are coordinated by a job scheduler, such as provided by Microsoft HPC Pack or similar HPC middleware that distributes these in parallel across one or more computers operating within an HPC cluster.*
- ***Cluster Node** is a device that is dedicated to running Clustered HPC Applications or providing job scheduling services for Clustered HPC Applications.*

2. USE RIGHTS

***a. Licensing a Server.** Under this agreement, we grant you the right to install and run a certain number of instances of the server software on a server. Before you run these instances, you must determine the number of required core licenses per server and assign those core licenses to that server as described below.*

***b. Determining the Number of Licenses Required.** To license a server, all physical cores in the server must be licensed. Each server is required to be licensed with a minimum of 16 core licenses. Each physical processor is required to be licensed with a minimum of eight core licenses. If the number of physical cores in the server exceeds the minimum 16-core license requirement, you need additional core licenses to cover the additional physical cores.*

c. Assigning the Required Number of Licenses to the Server

- ***Initial Assignment.** After you determine the number of core licenses you need for a server, you must assign that number of core licenses to that server. That server is the licensed server for all of those licenses. You may not assign the same core licenses to more than one server. A hardware partition or blade is considered to be a separate server.*
- ***Reassignment.** You may reassign core licenses, but not within 90 days of the last assignment. You may reassign core licenses sooner if you retire the licensed server due to permanent hardware failure. If you reassign core licenses, the server to which you reassign the licenses becomes the new licensed server for those core licenses. You may need additional core licenses to cover all of the physical cores in the new server.*

d. Running Instances of the Server Software

Windows Server Standard

i. You may run, at any one time:

- *one instance of the server software in one physical operating system environment,*
- *for each server to which you have assigned the required number of core licenses as provided in Section 2.b, up to two instances of the server software in virtual operating system environments (only one instance per virtual operating system environment), and*

any number of operating system environments instantiated as Windows Server Containers.

ii. *If you run all permitted instances at the same time, the instance of the server software running in the physical operating system environment may be used only to:*
- *run hardware virtualization software,*
- *provide hardware virtualization services,*
- *run software to manage and service operating system environments on the licensed server.*

iii. *If you want to run additional instances of the server software as set forth in this Section 2.d.i and 2.d.ii, you need to re-license the server as described in Section 2.b.*

Windows Server Datacenter

i *For each server to which you have assigned the required number of core licenses as provided in Section 2.b. you may run, at any one time:*
- *one instance of the server software in the physical operating system environment,*
- *any number of instances of the server software in virtual operating system environments (only one instance per virtual operating system environment), and*
- *any number of operating system environments instantiated as Windows Server Containers.*

e. Server Repartitioning. *You may reassign licenses on a single piece of hardware sooner than permitted above, when you:*
- *reallocate physical processors from one licensed hardware partition to another;*
- *create two or more partitions from one licensed hardware partition;*
- *create one partition from two or more licensed hardware partitions*

as long as (i) prior to repartitioning, each hardware partition is fully licensed, and (ii) the total number of physical processors, physical cores and core licenses remains the same.

f. Running Instances of the Additional Software. *You may run or otherwise use any number of instances of additional software listed on the website specified below in physical or virtual operating system environments on any number of devices. You may use additional software only with the server software. For a list of additional software, see (aka.ms/additionalsoftware).*

g. Creating and Storing Instances on Your Servers or Storage Media. *For each server license you acquire, you may create and store any number of instances of the software on any of your servers or storage media. This may be done solely to exercise your right to run instances of the software under any of your licenses as described in the applicable use rights (e.g., you may not distribute instances to third parties).*

h. Included Microsoft Programs. *The software contains other Microsoft programs. These license terms apply to your use of those programs.*

3. ADDITIONAL LICENSING REQUIREMENTS AND/OR USE RIGHTS

a. Windows Server 2016 Client Access Licenses (CALs)

i. *You must acquire and assign the appropriate CAL to each device or user that accesses your instances of the server software directly or indirectly. A hardware partition or blade is considered to be a separate device.*

Your CALs permit access to your instances of earlier versions, but not later versions, of the server software. If you are accessing instances of an earlier version, you may also use CALs corresponding to that version. You do not need CALs for:
- *any of your servers licensed to run instances of the server software;*
- *up to two devices or users to access your instances of the server software only to administer those instances;*

- *any instance running in a physical operating system environment used solely to:*
  run hardware virtualization software;
  provide hardware virtualization services;
  run software to manage and service operating system environments on the licensed server.
- *any user or device that accesses the Web Workloads;*
- *any user or device that accesses an HPC Workload.*

ii. *Some server software functionality requires additional CALs, as listed below:*
- *Windows Server 2016 Remote Desktop Services: Windows Server 2016 Remote Desktop Services CAL*
- *Windows Server 2016 Active Directory Rights Management Services: Windows Server 2016 Active Directory Rights Management Services CAL.*

iii. ***Types of CALs.*** *There are two types of CALs: one for devices and one for users. Each device CAL permits one device, used by any user, to access instances of the server software on your licensed servers. Each user CAL permits one user, using any device, to access instances of the server software on your licensed servers. You may use a combination of device and user CALs.*

iv. ***Reassignment of CALs.*** *You may:*
- *<u>permanently</u> reassign your device CAL from one device to another, or your user CAL from one user to another; or*
- *<u>temporarily</u> reassign your device CAL to a loaner device while the first device is out of service, or your user CAL to a temporary worker while the user is absent.*

v. ***Windows Server 2016 Remote Desktop Services.*** *In addition to a Windows Server 2016 CAL, you must acquire a Windows Server 2016 Remote Desktop Services CAL for each user or device that (i) directly or indirectly accesses the Remote Desktop Services functionality, (ii) directly or indirectly accesses the server software to host a graphical user interface (using the Windows Server 2016 Remote Desktop Services functionality or other technology), or (iii) accesses the Multipoint Services functionality. For more information about Windows Server 2016 Remote Desktop Services CALs, visit (aka.ms/windowsrds).*

vi. ***Windows Server 2016 Active Directory Rights Management Services CALs.*** *In addition to a Windows Server 2016 CAL, you must acquire a Windows Server 2016 Active Directory Rights Management Services CAL for each user or device that directly or indirectly accesses the Windows Server 2016 Active Directory Rights Management Services functionality.*

vii. *The server software can be used in either "per device or per user" mode or "per server" mode. In "per device or per user" mode, you need a Windows Server 2016 CAL for each device or user that directly or indirectly accesses instances of the server software on your licensed servers. In "per server" mode, you need and must dedicate exclusively to an instance of the server software as many Windows Server 2016 CALs as the greatest number of devices and users that may directly or indirectly access that instance at the same time. You may change the mode only one time, from "per server" to "per device or per user." If you do, you will retain the same number of Windows Server 2016 CALs.*

b. ***Multiplexing.*** *Hardware or software you use to:*
- *pool connections,*
- *reroute information,*
- *reduce the number of devices or users that directly access or use the software,*

- *reduce the number of devices or users the software directly manages,*

(sometimes referred to as "multiplexing" or "pooling"), does not reduce the number of licenses of any type that you need.

c. Font Components. *While the software is running, you may use its fonts to display and print content. You may only:*

- *embed fonts in content as permitted by the embedding restrictions in the fonts; and*
- *temporarily download them to a printer or other output device to print content.*

d. Icons, images, and sounds. *While the software is running, you may use but not share its icons, images, sounds, and media. The sample images, sounds, and media provided with the software are for your non-commercial use only.*

e. No Separation of Server Software. *You may not separate the server software for use in more than one operating system environment under a single license, unless expressly permitted. This applies even if the operating system environments are on the same physical hardware system.*

f. Maximum Instances. *The software or your hardware may limit the number of instances of the server software that can run in physical or virtual operating system environments on the server.*

g. Additional Functionality. *Microsoft may provide additional functionality for the software. Other license terms and fees may apply.*

h. Nano Server Installation. *A valid Microsoft Volume Licensing Agreement with active Software Assurance coverage for Windows Server on the Licensed Server is required to deploy the Nano Server installation option.*

4. MANDATORY ACTIVATION. *Activation associates the use of the software with a specific device. During activation, the software may send information about the software and the device to Microsoft. This information includes the version, language, and product key of the software, the Internet protocol address of the device, and information derived from the hardware configuration of the device. For more information, see (aka.ms/mandatoryactivation). By using the software, you consent to the transmission of this information. If properly licensed, you have the right to use the version of the software installed during the installation process up to the time permitted for activation.* ***Unless the software is activated, you have no right to use the software after the time permitted for activation.*** *This is to prevent its unlicensed use.* ***You are not permitted to bypass or circumvent activation.*** *If the device is connected to the Internet, the software may automatically connect to Microsoft for activation. You can also activate the software manually by Internet or telephone. If you do so, Internet and telephone service charges may apply. Some changes to your computer components or the software may require you to reactivate the software.* ***The software may remind you to activate it until you do.***

5. VALIDATION

a. *The software will, from time to time, validate the software and update or require download of the validation feature of the software. Validation verifies that the software has been activated and is properly licensed. Validation also permits you to use certain features of the software or to obtain additional benefits. For more information, see (aka.ms/genuine).*

b. *During a validation check, the software will send information about the software and the device to Microsoft. This information includes the version and product key of the software, and the Internet protocol address of the device. Microsoft does not use the information to identify or contact you. By using the software, you consent to the transmission of this information. For more information about validation and what is sent during a validation check, see (aka.ms/genuineprivacy).*

c. *If, after a validation check, the software is found not to be properly licensed, the functionality of the software may be affected. For example, you may:*

- *need to reactivate the software, or*
- *receive reminders to obtain a properly licensed copy of the software,*

or you may not be able to:

- *use or continue to use some of the features of the software, or*
- *obtain certain updates or upgrades from Microsoft.*

d. *You may only obtain updates or upgrades for the software from Microsoft or authorized sources.*

6. PRIVACY; INTERNET-BASED SERVICES. *Microsoft provides Internet-based services with the software. It may change or cancel them at any time.*

a. Consent for Internet-Based Services. *Some of the software features send or receive information when using those features. In some cases, you will not receive a separate notice when they connect. You may switch off these features or you can choose not to use them. By accepting this agreement and using these features, you agree that Microsoft may collect, use, and disclose the information as described in the Privacy Statement (aka.ms/winserverprivacy), and as may be described in the user documentation associated with the software features (see aka.ms/winserverdata).*

7. DATA STORAGE TECHNOLOGY. *The server software may include data storage technology called Windows Internal Database. Components of the server software use this technology to store data. You may not otherwise use or access this technology under this agreement.*

8. SCOPE OF LICENSE. *The software is licensed, not sold. This agreement only gives you some rights to use the software. Microsoft reserves all other rights. Unless applicable law gives you more rights despite this limitation, you may use the software only as expressly permitted in this agreement. In doing so, you must comply with any technical limitations in the software that only allow you to use it in certain ways. For more information, see (aka.ms/userights). You may not:*

- *work around any technical limitations in the software;*
- *reverse engineer, decompile, or disassemble the software, except and only to the extent that applicable law expressly permits, despite this limitation;*
- *use the software's files and components within another operating system or application running on another operating system;*
- *make more copies of the software than specified in this agreement or allowed by applicable law, despite this limitation;*
- *publish the software for others to copy;*
- *rent, lease, or lend the software; or*
- *use the software for commercial software hosting services.*

Rights to access the software on any device do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access that device.

9. BACKUP COPY. *You may make one backup copy of the software media. You may use it only to create instances of the software.*

10. NOT FOR RESALE SOFTWARE. *You may not sell software marked as "NFR" or "Not for Resale."*

11. ACADEMIC EDITION SOFTWARE. *You must be a "Qualified Educational User" to use software marked as "Academic Edition" or "AE." If you do not know whether you are a Qualified Educational User, visit (aka.ms/academicedition) or contact the Microsoft affiliate serving your country.*

12. DOWNGRADE. *Instead of creating, storing, and using the software, for each permitted instance, you may create, store, and use an earlier version of the following editions of the software:*

For ***Windows Server Standard***

- *Windows Server Standard*

- *Windows Server Essentials*
- *Windows Server Enterprise*
- *Windows Web Server*
- *Windows HPC Server Operating System*

*For **Windows Server Datacenter***

- *Windows Server Datacenter*
- *Windows Server Standard*
- *Windows Server Essentials*
- *Windows Server Enterprise*
- *Windows Web Server*
- *Windows HPC Server Operating System*

This agreement applies to your use of the earlier versions of the editions listed above. For the avoidance of doubt, by electing this downgrade option: (i) you will not have the right to create, store, or use a greater number of instances of the software than are permitted under this agreement, and (ii) you will need to acquire licenses for all cores in the physical server in accordance with Section 2 of this agreement. If the earlier version includes different components not covered in this agreement, the terms that are associated with those components in the earlier version of these editions apply to your use of them. Microsoft is not obligated to supply earlier versions or other editions to you. At any time, you may replace an earlier version or edition with this version and edition of the software.

13. ***PROOF OF LICENSE.*** *If you acquired the software on a disc or other media, a genuine Microsoft Proof of License label with a genuine copy of the software identifies licensed software. To be valid, this label must appear on Microsoft packaging. If you receive the label separately, it is invalid. You should keep the packaging that has the label on it to prove that you are licensed to use the software. To identify genuine Microsoft software, see (aka.ms/genuine).*
14. ***TRANSFER TO A THIRD PARTY.*** *The first user of the software may transfer it, this agreement, and CALs directly to a third party. Before the transfer, that party must agree that this agreement applies to the transfer and use of the software. The transfer must include the software and the Proof of License label. The first user may not retain any instances of the software unless that user also retains another license for the software.*

    Nothing in this agreement prohibits the transfer of software to the extent allowed under applicable law if the distribution right has been exhausted.
15. ***NOTICE ABOUT THE H.264/AVC, MPEG-4 VISUAL STANDARDS, AND THE VC-1 VIDEO STANDARDS.*** *This software may include H.264/AVC, MPEG-4 and/or VC-1 decoding technology. MPEG LA, L.L.C. requires this notice:*

    THIS PRODUCT IS LICENSED UNDER THE H.264/AVC, THE MPEG-4 PART 2 AND THE VC-1 VISUAL PATENT PORTFOLIO LICENSES FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE ABOVE STANDARDS ("VIDEO STANDARDS") AND/OR (ii) DECODE AVC, MPEG-4 PART 2 AND VC-1 VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE SUCH VIDEO. NO LICENSE IS GRANTED OR SHALL BE IMPLIED FOR ANY OTHER USE. ADDITIONAL INFORMATION MAY BE OBTAINED FROM MPEG LA, L.L.C; see www.mpegla.com.
16. ***ADOBE FLASH PLAYER****. The software includes Adobe Flash Player that is licensed under terms from Adobe Systems Incorporated at (aka.ms/adobeflash). Adobe and Flash are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries.*

17. ***THIRD PARTY PROGRAMS.*** *The software may include third party programs that Microsoft, not the third party, licenses to you under this agreement. Notices, if any, for the third party programs are included for your information only.*
18. ***EXPORT RESTRICTIONS.*** *The software is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end users, and end use. For additional information, see (aka.ms/exporting).*
19. ***SUPPORT SERVICES.*** *Microsoft provides support services for the software as described at (aka.ms/mssupport).*
20. ***ENTIRE AGREEMENT.*** *This agreement (including the warranty below), and the terms for supplements, updates, and Internet-based services and support services that you use, are the entire agreement for the software and support services.*
21. ***APPLICABLE LAW***
    a. ***United States.*** *If you acquired the software in the United States, Washington state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. The laws of the state where you live govern all other claims, including claims under state consumer protection laws, unfair competition laws, and in tort. (DOW NOTE: Governing Law is the State of Washington)*
    b. ***Outside the United States.*** *If you acquired the software in any other country, the laws of that country apply.*
22. ***LEGAL EFFECT.*** *This agreement describes certain legal rights. You may have other rights under the laws of your state or country. You may also have rights with respect to the party from whom you acquired the software. This agreement does not change your rights under the laws of your state or country if the laws of your state or country do not permit it to do so.*

    Canada. *You can choose to stop receiving updates by turning off the automatic update feature or Internet access. Refer to the product documentation to learn how to turn off updates for your specific device or software.*
23. ***LIMITATION ON AND EXCLUSION OF DAMAGES. You can recover from Microsoft and its suppliers only direct damages up to the amount you paid for the software. You cannot recover any other damages, including consequential, lost profits, special, indirect, or incidental damages.***

    This limitation applies to:
    - *anything related to the software, services, content (including code) on third-party Internet sites, or third-party programs; and*
    - *claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law.*

    It also applies even if:
    - *repair, replacement, or a refund for the software does not fully compensate you for any losses; or*
    - *Microsoft knew or should have known about the possibility of the damages.*

    Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. They also may not apply to you because your country may not allow the exclusion or limitation of incidental, consequential, or other damages.

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LIMITED WARRANTY

A. LIMITED WARRANTY. *If you follow the instructions, the software will perform substantially as described in the Microsoft materials that you receive in or with the software.*

References to "limited warranty" are references to the express warranty provided by Microsoft. This warranty is given in addition to other rights and remedies you may have under law, including your rights and remedies in accordance with the statutory guarantees under local Consumer Law.

B. TERM OF WARRANTY; WARRANTY RECIPIENT; LENGTH OF ANY IMPLIED WARRANTIES. The limited warranty covers the software for one year after acquired by the first user. If you receive supplements, updates, or replacement software during that year, they will be covered for the remainder of the warranty or 30 days, whichever is longer. *If the first user transfers the software, the remainder of the warranty will apply to the recipient.*

To the extent permitted by law, any implied warranties, guarantees, or conditions last only during the term of the limited warranty. *Some states do not allow limitations on how long an implied warranty lasts, so these limitations may not apply to you. They also might not apply to you because some countries may not allow limitations on how long an implied warranty, guarantee, or condition lasts.*

C. EXCLUSIONS FROM WARRANTY. *This warranty does not cover problems caused by your acts (or failures to act), the acts of others, or events beyond Microsoft's reasonable control.*

D. REMEDY FOR BREACH OF WARRANTY. Microsoft will repair or replace the software at no charge. If Microsoft cannot repair or replace it, Microsoft will refund the amount shown on your receipt for the software. It will also repair or replace supplements, updates, and replacement software at no charge. If Microsoft cannot repair or replace them, it will refund the amount you paid for them, if any. You must uninstall the software and return any media and other associated materials to Microsoft with proof of purchase to obtain a refund. These are your only remedies for breach of the limited warranty.

E. CONSUMER RIGHTS NOT AFFECTED. You may have additional consumer rights under your local laws, which this agreement cannot change.

F. WARRANTY PROCEDURES. *You need proof of purchase for warranty service.*

1. ***United States and Canada.*** *For warranty service or information about how to obtain a refund for software acquired in the United States and Canada, contact Microsoft at:*
   - *(800) MICROSOFT;*
   - *Microsoft Customer Service and Support, One Microsoft Way, Redmond, WA 98052-6399; or*
   - *visit (aka.ms/nareturns).*
2. ***Europe, Middle East, and Africa.*** *If you acquired the software in Europe, the Middle East, or Africa, Microsoft Ireland Operations Limited makes this limited warranty. To make a claim under this warranty, you should contact either:*
   - *Microsoft Ireland Operations Limited, Customer Care Centre, Atrium Building Block B, Carmanhall Road, Sandyford Industrial Estate, Dublin 18, Ireland; or*
   - *the Microsoft affiliate serving your country (see aka.ms/msoffices).*
3. ***Australia.*** *For warranty service and to claim expenses in relation to the warranty (if applicable) for software acquired in Australia, contact Microsoft at:*
   - *13 20 58; or*
   - *Microsoft Pty Ltd, 1 Epping Road, North Ryde NSW 2113 Australia.*
4. ***Outside the United States, Canada, Europe, Middle East, Africa, and Australia.*** *If you acquired the software outside the United States, Canada, Europe, the Middle East, Africa, and Australia, contact the Microsoft affiliate serving your country (see aka.ms/msoffices).*

G. NO OTHER WARRANTIES. The limited warranty is the only direct warranty from Microsoft. Microsoft gives no other express warranties, guarantees, or conditions. Where allowed by your local laws, Microsoft excludes implied warranties of merchantability, fitness for a particular purpose, and non-infringement. *If your local laws give you any implied warranties, guarantees, or conditions, despite this exclusion, your remedies are described in the Remedy for Breach of Warranty clause above, to the extent permitted by your local laws.*

FOR AUSTRALIA ONLY. *References to "Limited Warranty" are references to the warranty provided by Microsoft. This warranty is given in addition to other rights and remedies you may have under law, including your rights and remedies in accordance with the statutory guarantees under the Australian Consumer Law. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. Goods presented for repair may be replaced by refurbished goods of the same type rather than being replaced. Refurbished parts may be used to repair the goods.*

H. LIMITATION ON AND EXCLUSION OF DAMAGES FOR BREACH OF WARRANTY. The Limitation on and Exclusion of Damages clause above applies to breaches of this limited warranty.

This warranty gives you specific legal rights, and you may also have other rights that vary from state to state. You may also have other rights that vary from country to country.

OPTIONS:

Option 1: **Approve Manager's Report.**

Pro: The Department can move forward with the purchase, download, and installation of Windows Server 2016 Standard and Data Center for use on Departments Business Local Area Network (LAN) and SCADA Networks.

Cons: The Board would agree to unspecified future obligations in the event a breach or similar contract issue occurs and Governing Law outside of the State of Hawai'i.

Option 2: **Do Not Approve Manager's Report.**

Pro: There is no risk associated with unspecified future obligations.

Cons: The Department would not be able to utilize the software for our Business Local Area Network (LAN) and SCADA Networks. The Department would continue to use staff time to search for another similar software, which would most likely contain similar indemnification, attorney's fees, and governing law and arbitration provisions.

SN/ein

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 20-30

December 2, 2019

Re: Discussion and Possible Action on Board Approval for Indemnification, Governing Law in the Software Licensing Agreement for WIN-911 Software between the Board of Water Supply, County of Kaua'i, and WIN-911 Software

RECOMMENDATION:

The Department recommends that the Board approve Option 1, which will allow the Department to move forward with the purchase, download, and installation of the WIN-911 Software License by WIN-911 to interface with the DOW's SCADA systems.

FUNDING: N/A

BACKGROUND:

The Department utilizes the WIN-911 software to interface with our SCADA systems. WIN-911 software provides a scripting free configuration engine to enable customers to set-up the full range of alarm notification scenarios from a basic call out list to alarm escalation based on alarm label, severity, time of day, personnel available and location, etc.

The Department's Information Technology (I.T.) staff has been working closely with our Deputy County Attorney to review and approve the licensing agreement for the WIN-911 Software from WIN-911 Software. Before we can move forward with the purchase, download, and installation of the software Board approval is required as the agreement contains language for governing law provisions.

The sections within the agreement that reference the Governing Law and Indemnification provisions are shown below:

SOFTWARE LICENSE AGREEMENT

IMPORTANT: READ CAREFULLY - BY INSTALLING, COPYING, OR OTHERWISE USING THESE SOFTWARE COMPONENTS, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS SOFTWARE LICENSE. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT INSTALL, COPY, OR USE THESE SOFTWARE COMPONENTS.

1. Software License. WIN-911 Software, a Texas general partnership ("Licensor"), grants Customer a limited, revocable, nonexclusive license to use the WIN-911 proprietary software and related documentation, which may include but is not limited to WIN-911, Mobile-911, WIN-911 Mobile, WEB-911 Apollo, WIN-911 Premium Voice, XTools, TeleDAC System, WIN-411, WIN-911/SMS, MobileView, and/or WIN-911/ME, (collectively, "WIN-911 PRODUCT"), subject to the terms and conditions of this Software License Agreement, which may also be referred to in the WIN-911 SOFTWARE and related documentation as the End User License Agreement (EULA). Customer is purchasing a license to use the WIN-911 PRODUCT. Customer is not purchasing the WIN-911 PRODUCT.

2. Restrictions on Use of WIN-911 PRODUCT. Except as provided in this Section 2 and in Section 3, Customer may not copy, distribute, adapt or prepare derivative or similar works to the WIN-911 PRODUCT, reverse engineer, disassemble, decompile, rent, lend, lease, sell, or otherwise transfer or disclose WIN-911 PRODUCT or make WIN-911 PRODUCT available to any third party. Use of WIN-911 PRODUCT by any person or legal entity other than Customer is a breach of this Agreement, unless Customer is a sole proprietor and not a legal entity. In that case, Customer's employees may use WIN-911 PRODUCT in the conduct of Customer's business on the terms of this Agreement. Customer will use its best efforts to protect WIN-911 PRODUCT from unauthorized use or reproduction.

Use in a virtualized environment. If you use virtualization software, including client hyper-v, to create one or more virtual computers on a single computer hardware system, each virtual computer, and the physical computer, is considered a separate computer for purposes of this agreement. This license allows you to install only one copy of the software for use on each computer or device permitted under the installation and use rights above, whether that computer or device is physical or virtual. If you want to virtualize the software, you must obtain separate copies of the software and a separate license for each copy. Content protected by digital rights management technology or other full-volume disk drive encryption technology may be less secure in a virtualized environment.

3. Restrictions on Transfer of WIN-911 PRODUCT. Customer may not sublicense, assign, or transfer any of its rights to use WIN-911 PRODUCT without the prior written consent of Licensor.

4. Ownership. Customer acknowledges and agrees that Licensor and its licensors are the sole owners of all right, title, and interest in and to WIN-911 PRODUCT, including all intellectual property rights; this Agreement confers on Customer no ownership interest or intellectual property rights in WIN-911 PRODUCT; WIN-911 PRODUCT is protected under.

United States, Canadian, and other applicable copyright and intellectual property laws and international treaty provisions; WIN-911 PRODUCT is protected by U.S. Patent No. 9,535,570; and WIN-911 PRODUCT has been developed at considerable time and expense to Licensor and its licensors and contains confidential and proprietary information not generally known. Customer acknowledges that any misuse of WIN-911 PRODUCT or other breach of Section 2 or 3 of this Agreement will cause irreparable harm to Licensor for which Licensor cannot be adequately compensated by damages. Consequently, Customer agrees that in addition to any other remedies available to Licensor, Licensor shall be entitled to seek injunctive or other equitable relief to prevent such breach or further breaches of this Agreement. Customer shall not remove any copyright, trademark, or confidentiality notice from the WIN-911 PRODUCT.

5. Updates. Licensor may from time to time make updates to WIN-911 PRODUCT available to Customer. Unless accompanied by or expressly made subject to another license agreement, such updates are subject to the terms of this Agreement.

6. Limited Warranty.
(a) Media. Licensor warrants to Customer that, for a period of thirty (30) days following delivery of WIN-911 PRODUCT to Customer, the media containing WIN-911 PRODUCT shall be free from material defects in materials and workmanship under normal use. If a material defect in such media appears during such period, Customer's sole and exclusive remedy and Licensor's sole liability under this warranty is the replacement of defective media. To receive a replacement, during the thirty (30) day period Customer must contact WIN-911 Software, 2024 East St. Elmo Road, Austin, TX 78744.

(b) Software. Licensor warrants to Customer that, for a period of 120 days following delivery, WIN-911 PRODUCT, when operated with the equipment configuration and in the operating environment specified by Licensor, will perform substantially in accordance with the operator and user guides and other manuals and technical information, if any, whether in hard copy or electronic format, that are delivered to Customer by Licensor for use in conjunction with WIN-911 PRODUCT. This warranty shall not apply in the event WIN-911 PRODUCT is modified or installed by any party other than Licensor. Licensor does not warrant that WIN-911 PRODUCT will be uninterrupted or error free. Licensor does not warrant that Customer may manipulate data in WIN-911 PRODUCT databases using software not acquired from Licensor. In the event of any defect or error covered by this warranty, Customer agrees to provide Licensor with sufficient detail to allow Licensor to reproduce the defect or error. As Customer's exclusive remedy for any defect or error in WIN-911 PRODUCT covered by such warranty, and as Licensor's entire liability in contract, tort, or otherwise, such defect or error after a reasonable opportunity, Licensor paid for WIN-911 PRODUCT from the date Customer first encountered the defect or error. Licensor is not responsible for any defect or error not reported in writing during the warranty period or any defect or error in the event Customer has modified, misused, or damaged WIN-911 PRODUCT.

7. Disclaimer of Warranty. THE EXPRESS, LIMITED WARRANTIES PROVIDED IN THE FOREGOING SECTION 6 OF THIS AGREEMENT ARE THE ONLY WARRANTIES MADE BY LICENSOR WITH RESPECT TO WIN-911 PRODUCT. TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, OTHER THAN THE EXPRESS WARRANTIES IN SECTION 6 OF THIS AGREEMENT, LICENSOR DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO WIN-911 PRODUCT, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE OR THAT THE SOFTWARE WILL OPERATE ERROR FREE OR FREE FROM VIRUSES OR OTHER HARMFUL COMPUTER CODE.

8. Disclaimer of Liability. IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY (A) LOSS OF PROFITS OR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES, HOWEVER CAUSED, AND EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES; OR (B) CLAIMS MADE AGAINST LICENSOR MORE THAN TWO YEARS AFTER THE RELATED CAUSE OF ACTION AROSE. WITHOUT LIMITATION OF THE FOREGOING, LICENSOR SHALL HAVE NO LIABILITY FOR LOSS OF DATA HOWEVER CAUSED AND LICENSOR SHALL HAVE NO LIABILITY FOR DAMAGE CAUSED BY MALICIOUS SOFTWARE, AND WHETHER OR NOT PREVENTED OR PREVENTABLE BY ANTI-VIRUS OR INTRUSION PROTECTION SOFTWARE ACQUIRED FROM LICENSOR.

9. Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT EXCEPT SECTION 10, LICENSOR'S CUMULATIVE LIABILITY UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION IN RESPECT OF WIN-911 PRODUCT OR THE PERFORMANCE OR NON-PERFORMANCE OF OR INABILITY TO USE WIN-911 PRODUCT, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR OTHERWISE, SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE TOTAL AMOUNT OF LICENSE FEES PAID BY CUSTOMER TO LICENSOR FOR WIN-911 PRODUCT.

10. Indemnification.
(a) Third Party Infringement Claims. Licensor will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that WIN-911 PRODUCT directly infringes any United States copyright, and Licensor will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action.

(b) Conditions. Licensor's obligations under the preceding paragraph with respect to an action Are (i) Customer notifying Licensor promptly in writing of such action, (ii) Customer giving Licensor sole control of the defense thereof and any related settlement negotiations, and (iii) Customer cooperating with Licensor in such defense (including, without limitation, by making available to Licensor all documents and information in Customer's possession or control that are relevant to the infringement or misappropriation claims, and by making Customer's personnel available to testify or consult with Licensor or its attorneys in connection with such defense).

(c) Licensor's Options. If WIN-911 PRODUCT becomes, or in Licensor's opinion is likely to become, the subject of an infringement or misappropriation claim, terminate Customer's right to use WIN-911 PRODUCT and give Customer a or credit for the license fees actually paid by Customer to Licensor for the infringing components of WIN-911 PRODUCT, less a reasonable allowance for the period of time Customer has used WIN-911 PRODUCT.

(d) Exclusions. Notwithstanding the foregoing, Licensor will have no obligation or otherwise with respect to any infringement or misappropriation claim based upon (i) any use of WIN-911 PRODUCT not in accordance with this Agreement or any documentation for WIN-911 PRODUCT or for purposes not intended by Licensor, (ii) any use of WIN-911 PRODUCT in combination with other products, equipment, software or data not supplied by Licensor, (iii) any use of any release of WIN-911 PRODUCT other than the most current release made available to Customer, or (iv) any modification of WIN-911 PRODUCT made by any person other than Licensor.

11. Term and Termination. The license granted under this Agreement is effective until terminated. Customer may terminate the license at any time by discontinuing use of WIN-911 PRODUCT. Licensor may terminate the license EFFECTIVE IMMEDIATELY if Customer fails to pay any license fee or other amounts owing to Licensor in respect of WIN-911 PRODUCT or fails to comply with any term of this Agreement. Upon termination of the license for any reason, Customer shall return all copies of WIN-911 PRODUCT to Licensor upon its request, remove all copies of WIN-911 PRODUCT from its computers and demonstrate or certify to Licensor's satisfaction that it has done so. All provisions of this Agreement relating to disclaimers of warranties, limitation of liability, remedies, or damages, and Licensor's proprietary rights, shall survive termination of the license.

12. Government License Rights. WIN-911 PRODUCT is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government licensees and end users acquire WIN-911 PRODUCT with only those rights set forth herein. Contractor/manufacturer is WIN-911 Software.

13. Software Maintenance. Customer agrees to receive periodic invoices for software maintenance and support, which customer may choose to purchase or not. If Customer is not enrolled in such a plan

and contacts Licensor for support, Licensor will charge, and Customer will pay, Licensor's then standard service charges.

14. Customer Obligations.
(a) Data Back-Up. Customer shall keep up-to-date backup copies of all data for recovery purposes. Licensor shall have no liability for any loss of data arising out of the provision of maintenance and support services to Customer, including losses arising from the installation of upgrades or error corrections provided by Licensor. In all circumstances, Customer and not Licensor is responsible for ensuring that its data is accurately backed up on a daily basis.
(b) Cooperation. Customer shall provide Licensor all data, information and cooperation Licensor deems necessary for the performance of Licensor's obligations under this Agreement. Licensor shall have no liability for any delay in the performance of Licensor's obligations resulting from Customer's failure to provide data or information or to cooperate.
(c) Compliance with Law. Customer shall comply with all laws and contractual obligations applicable to Customer's use of any product described in the purchase order.
(d) Use in Accordance with Specifications. Customer shall use WIN-911 PRODUCT in accordance with the operator and user guides and other manuals and technical information and specifications, whether in hard copy, electronic or other format, furnished by Licensor to Customer.
(e) Indemnification. Licensor shall have no liability for Customer's failure to comply with its obligations under this Section 14. Customer shall defend, indemnify and hold harmless Licensor from and against any loss or damage, including attorneys' fees, resulting from Customer's breach or claimed breach of any such obligation.

15. No Waiver. Any representation, affirmation of fact, course of dealing, usage of trade, promise or condition in connection with this Agreement not incorporated herein shall not be binding on either party. No waiver, alteration or modification of any of the provisions hereof shall be effective unless in writing and signed by a duly authorized representative of Licensor. Waiver by any party of strict performance of any provision of this Agreement will not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision of this Agreement.

16. Miscellaneous. This Agreement shall be governed by the laws of the state of Texas, and not under Texas law. This Agreement constitutes the entire agreement between the parties as to the subject matter of this Agreement and supersedes all other communications, oral or written. The invalidity of any term or provision of this Agreement will not affect the validity of any other provision. The section and paragraph headings of this Agreement are for the convenience of the reader only, and are not intended to act as a limitation of the scope or meaning of the sections and paragraphs themselves.
(DOW NOTE: Governing Law is the State of Texas)

17. Export Control Laws. Customer shall comply with all laws and regulations controlling the export of certain commodities and technical data, including without limitation all Export Administration Regulations of the United States Department of Commerce. Among other terms, such laws prohibit, or require a license for, the export of computer software to specified countries, entities and persons. Customer will indemnify, defend and hold harmless Licensor from and against the consequences of any violation of such laws.

18. Customer Responsibility for Data Security and Backup. Customer is solely responsible for the security and backup of its data and for the accuracy and completeness of all data entered by Customer in the process of using WIN-911 PRODUCT. Licensor strongly encourages Customer to (a) protect its

network from unauthorized access and (b) keep all software current with the latest security patches and updates. Licensor shall have no liability for any unauthorized interception or disclosure of Customer data while transmitted by Customer to Licensor.

19. Applicability to Third Party Tools. Customer has read and accepts the provisions of third party license agreements for components of the WIN-911 PRODUCT, to the extent that they are applicable to the Customer. Such third party agreements can be found as follows:

(a) Telerik: telerik.com/help/openaccess-orm/visual-designer-deployment-consideration-licensing.html
(b) WaveMedia Stream Source: archive.msdn.microsoft.com/wavmss/Project/License.aspx
(c) MailSystem.NET: mailsystem.codeplex.com/license
(d) Ozeki: ozeki.hu
(e) GoXam for Silverlight Binary Kit: nwoods.com
(f) CSLA.NET Framework lhotka.net/cslanet/License.aspx
(g) TraySoft's AddTAPI product
(h) the OPC Foundation's redistributable plus OPC-DA (com) Various Microsoft redistributable packages (e.g. C++ Runtimes, .NET runtime, Silverlight, AppWarmup)
(l) Quick OPC (opclabs.com/products/quickopc)

OPTIONS:

Option 1: **Approve Manager's Report.**

Pro: The Department can move forward with the purchase, download, and installation of WIN-911 Software Licenses for use on the SCADA Networks.

Cons: The Board would agree to unspecified future obligations in the event a breach or similar contract issue occurs and Governing Law outside of the State of Hawai'i.

Option 2: **Do Not Approve Manager's Report.**

Pro: There is no risk associated with unspecified future obligations.

Cons: The functionality of the SCADA Network will be impacted. The Department would continue to use staff time to search for another similar software, which would most likely contain similar indemnification, attorney's fees, and governing law and arbitration provisions.

SN/ein

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 20-31

December 2, 2019

Re: Discussion and Possible Action on Board Approval for Governing Law, Indemnification, and Future Costs in the Master End User License Agreement for AVEVA Software between the Board of Water Supply, County of Kaua'i, and AVEVA

RECOMMENDATION:
The Department recommends that the Board approve Option 1, which will allow the Department to move forward with the purchase, download, and installation of AVEVA Software.

FUNDING: N/A

BACKGROUND:
The Department currently utilizes this software, which interfaces with our SCADA system and allows the Department to monitor various elements of our water systems remotely. The software must be upgraded and changing the software would require all equipment to be reconfigured, which is not recommended.

To ensure the upgrades can be implemented, the Department's Information Technology (I.T.) staff has been working closely with our Deputy County Attorney to review and approve of the Master End User License Agreement from AVEVA. Before we can move forward with the purchase, download and installation of the software Board approval is required as the agreement contains language for governing law provisions, Indemnification, and potential future costs.

The sections within the agreement that reference the Governing Law, Indemnification and potential future costs are shown below (full agreement is attached):

8. Indemnity. AVEVA will defend and indemnify Licensee against a third party claim (an "Indemnified Claim") that the Software infringes any copyright enforceable in any Included Jurisdiction or misappropriates any trade secret (as the terms "misappropriation" and "trade secret" are defined in the Uniform Trade Secrets Act) protected under the laws of any of the United States, provided that: (i) Licensee notifies AVEVA in writing within thirty (30) days of the claim; (ii) AVEVA has sole control of the defense and all related settlement negotiations; and (iii) Licensee provides AVEVA with the assistance, information and authority necessary in order for AVEVA to perform its obligations under this Section.

AVEVA will have no obligation to any Licensee for any Indemnified Claims relating to allegations of copyright infringement which arise outside the geographical boundaries of the United States, Canada, Japan, or the European Union ("Included Jurisdictions"), or any Indemnified Claims relating to allegations of trade secret misappropriation which arise outside the geographical boundaries of the United States.

If the Software is held, or is believed by AVEVA, to infringe, then AVEVA will have the option, at its expense, to: (i) modify the Software to be noninfringing; or (ii) obtain for Licensee a license to continue using the Software. If, in AVEVA's sole discretion, it is not economically or commercially reasonable to

perform either of the above options then AVEVA may terminate the license for the infringing Software and refund to Licensee the license fee paid to AVEVA for the infringing Software.

The foregoing AVEVA obligations do not apply when the claim of infringement results from or is related to: (i) Software provided pursuant to Licensee's designs, drawings or specifications; (ii) Software stored, used or maintained other than in accordance with AVEVA's instructions or recommendations or other than for the Licensee's internal business purposes; (iii) claims of infringement resulting from combining the Software provided hereunder with any other item not furnished by AVEVA; (iv) modifications to the Software without the prior written consent of AVEVA; (v) software or products supplied or designed by Licensee or third parties; or (vi) Licensee's failure to use corrections or enhancements made available by AVEVA.

This Section 8 states AVEVA's entire liability and Licensee's sole and exclusive remedy for infringement.

12. General Terms.

12.1 Governing Law and Dispute Resolution. This EULA will be governed by and construed in accordance with the laws of the ***State of California****, excluding its conflict of laws principles and the U.N. Convention on Contracts for the International Sale of Goods. All disputes, claims or controversies arising out of or relating to this EULA that are not resolved by the parties' good faith attempt to negotiate a resolution will be submitted to final and binding arbitration before JAMS/Endispute, or its successor, in Orange County, California, USA, pursuant to the United States Arbitration Act, 9 U.S.C. Sec. 1 et seq. The arbitration will be conducted in accordance with the provisions of JAMS/Endispute's Streamlined Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration. The parties will cooperate with JAMS/Endispute and each other in selecting a single arbitrator who will be a former judge or justice with substantial experiences in resolving business disputes with experience in resolving disputes involving computer software. The costs of arbitration will be shared equally by the parties. The provisions of this Section may be enforced by any court of competent jurisdiction. THE ARBITRATOR IS NOT EMPOWERED TO AWARD DAMAGES IN EXCESS OF THE COMPENSATORY DAMAGES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPERT WITNESS FEES) OR IN EXCESS OF THE LIMITATIONS OF LIABILITY AND DAMAGES SET FORTH IN THIS EULA, AND EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT TO RECOVER SUCH DAMAGES (INCLUDING, WITHOUT LIMITATION, PUNITIVE DAMAGES), IN ANY FORUM. THE ARBITRATOR WILL BE REQUIRED TO FOLLOW THE APPLICABLE LAW AS SET FORTH IN THE GOVERNING LAW SECTION OF THIS EULA AND FOLLOW THE TERMS OF THIS EULA. The arbitrator may award equitable relief in those circumstances where monetary damages would be inadequate, such as a party's violation of the confidential information provisions hereof. The successful or* ***prevailing party will be entitled to recover its reasonable attorneys' fees****, expert witness fees and other costs of arbitration, in addition to such other relief to which it may be entitled. Neither party has the right to act as a class representative or participate as a member of a class of claimants with respect to any claim. Either party may, without waiving any remedy under the Agreement, seek from any court of competent jurisdiction any interim or provisional relief that such party deems necessary to protect its confidential information and property rights, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the claim).*

The following Schedules are applicable to the agreement:
Schedule D-2 Wonderware InTouch
Schedule D-4 Wonderware Development Studio
Schedule D-5 Wonderware Historian
Schedule D-6 Wonderware Historian Clients
Schedule D-13 Wonderware CALs

OPTIONS:

Option 1: **Approve Manager's Report.**

Pro: The Department can move forward with the purchase, download, and installation of AVEVA Software's for use on Departments SCADA Network.

Cons: The Board would agree to unspecified future obligations in the event a breach or similar contract issue occurs and Governing Law outside of the State of Hawai'i.

Option 2: **Do Not Approve Manager's Report.**

Pro: There is no risk associated with unspecified future obligations.

Cons: The functionality of the SCADA Network will be impacted. The Department would continue to use staff time to search for another similar software, which would most likely contain similar indemnification, attorney's fees, and governing law and arbitration provisions.

SN/ein

Attachments: AVEVA MASTER END USER LICENSE AGREEMENT (the "EULA")

Mgrrp/December 2019/20-31/Discussion and Possible Action on Board Approval for Governing Law, Indemnification, and Future Costs in the Master End User License Agreement for AVEVA Software between the Board of Water Supply, County of Kaua'i, and AVEVA (SBM 12-2-19):ein

AVEVA MASTER END USER LICENSE AGREEMENT (the "EULA")

EULA v.6.2: July 2, 2018 (JS)

BY INSTALLING OR USING THIS SOFTWARE, YOU ("YOU" OR "LICENSEE") AGREE TO THE TERMS AND CONDITIONS CONTAINED IN THIS EULA. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS CONTAINED IN THIS EULA, TERMINATE THE INSTALLATION OF THIS SOFTWARE BY SELECTING "I DO NOT ACCEPT THE LICENSE AGREEMENT" IN THIS WINDOW OR BY CLICKING ON THE "CANCEL" BUTTON. YOU MAY THEN PROMPTLY DELETE THE LICENSE FILES AND SOFTWARE FROM YOUR COMPUTER AND RETURN THE LICENSE FILE MEDIA, THE ENTIRE MEDIA PACKAGE, AND ALL OTHER ITEMS (INCLUDING DOCUMENTATION AND PACKAGING) WITHIN 30 DAYS OF PURCHASE TO THE PLACE FROM WHICH YOU OBTAINED IT FOR A FULL REFUND. THIS EULA ALSO APPLIES TO ANY UPDATES OR PRE-PRODUCTION RELEASES OF THE SOFTWARE UNLESS SUCH UPDATES OR PRE-PRODUCTION RELEASES ARE ACCOMPANIED BY A SEPARATE END USER LICENSE AGREEMENT.

IF A SYSTEM INTEGRATOR, CONTRACTOR, CONSULTANT, OR ANY OTHER PARTY INSTALLS OR USES THE SOFTWARE ON YOUR BEHALF PRIOR TO YOUR USE OF THE SOFTWARE, SUCH PARTY WILL BE DEEMED TO BE YOUR AGENT ACTING ON YOUR BEHALF, AND YOU WILL BE DEEMED TO HAVE ACCEPTED ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS EULA AS IF YOU HAD INSTALLED OR USED THE SOFTWARE YOURSELF.

UNLESS OTHERWISE AGREED IN WRITING BY AVEVA, SOFTWARE SUPPORT SERVICES ARE NOT INCLUDED.

THESE TERMS AND CONDITIONS CONSTITUTE THE COMPLETE AGREEMENT BETWEEN YOU, OR THE COMPANY ON BEHALF OF WHICH YOU ARE INSTALLING THE SOFTWARE, AND AVEVA SOFTWARE, LLC (OR, DEPENDING UPON YOUR LOCATION, ONE OF ITS AFFILIATES) ("AVEVA").

1. Definitions.

1.1 "Capacity" means a specific licensed size criteria as described on the License Certificate and includes, among other measurements, Equipment counts, I/O Counts, Platform Counts, Session Counts, Tag Counts and Site Counts.

1.2 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular or smartphone, handheld computer, tablet PC, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.3 "Documentation" means the user guides and manuals for the installation and use of the Software, whether provided in electronic, physical media, hard copy, or other form.

1.4 "Enterprise License" means a license model that permits use of specified Software for a number of Licensee's employees throughout Licensee's organization and sites. An Enterprise License enables a Licensee to standardize all Licensee sites on the specified Software. (The duration, scope and pricing of an Enterprise License are determined on a case by case basis. An Enterprise License is granted upon Licensee's receipt of a written authorization signed by AVEVA which is also countersigned by Licensee. Among other things, the signed written authorization will describe the duration, scope and license fees for the Enterprise License and Licensee's Software support commitments under the Enterprise License.)

1.5 "Hot Fix" means unreleased Software which has not been processed through a full QA cycle and which is designed to correct a specific defect in the Software.

1.6 "License Certificate" means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.7 "License File" means a component of the Software that enables one or more components of the Software (for example, authorization keys) and may also specify the location of the designated Device(s), the Named User(s), and the Licensee. The License File also specifies the Capacity for the Software. Certain components of the Software may be licensed hereunder without a License File.

1.8 "Named User" means an individual person and is unique to the individual. A Named User is not a particular logon name, a group, an organization, part of a company or organization, or any other non-person entity.

1.9 "Order Form" means the document issued by AVEVA or an authorized AVEVA distributor in hard or electronic copy which, among other things, may identify (i) the particular Software ordered by or for Licensee, (ii) the location of the designated Device(s) or Named Users, (iii) the duration or term of the Software license granted to Licensee, (iv) the license fees and any applicable Software support fees owed by Licensee and/or (v) the payment schedule.

1.10 "Pre-Production Release" means Software which has not completed AVEVA's formal release requirements and includes beta software, Hot Fixes and SUPs.

1.11 "Replaced License" means a License File and/or License Certificate that has been replaced or superseded by another

License File and/or License Certificate for the purpose of direct substitution.

1.12 "SUP" (Single User Product) means modifications to the Software made for a specific licensee.

1.13 "Site License" means a license model that permits use of specified Software for a number of Licensee's employees at a specific Licensee site/physical location. (The duration, scope and pricing of a Site License are determined on a case by case basis. A Site License is granted upon Licensee's receipt of a written authorization signed by AVEVA which is also countersigned by Licensee. Among other things, the signed written authorization will describe the duration, scope and license fees for the Site License and Licensee's Software support commitments under the Site License.)

1.14 "Software" means the computer software programs in object code (machine-readable) form only for which Licensee is granted a license hereunder, the Documentation therefor and Updates thereto.

1.15 "Tag" means a representation of an internal or external data value or calculation result.

1.16 "Tag Count" means the number of internal or external data points or calculations resulting from the Tags that are being monitored, processed, or utilized by the Software.

1.17 "Update" means: (i) supplemental programs, if and when developed and distributed by AVEVA, that may contain bug fixes or improved program functions for the Software; and (ii) a subsequent release of the Software, if and when developed by AVEVA, which AVEVA generally makes available for licensees that have an annual software support agreement (sold separately). An Update does not include any release, new version, option, or future product, which AVEVA licenses separately.

2. Software License, Payment and License Restrictions.

2.1 Grant of License and Limitations.

In consideration of full payment of the Software license fee when due and subject to Licensee's compliance with its obligations under this EULA, AVEVA grants to Licensee a non-transferable, non-exclusive, limited license to use the Software described in the attached Software Schedule and/or Order Form for the term identified therein and in accordance with the license model identified therein. The Software may only be used for purposes of Licensee's ordinary business by the particular Named User(s), in the particular location(s), on the particular Device(s) and/or on the particular system(s) for which Licensee licensed such Software, as those Named User(s), location(s), Device(s) and/or system(s) are identified in the Software Schedule and/or Order Form. If the Order Form fails to state a duration/term of the license granted hereunder then such duration/term shall be deemed to be one (1) year from the date the Software is delivered to Licensee.

An Enterprise License or a Site License is not granted to Licensee under this EULA unless this EULA is accompanied by the signed written authorization from AVEVA (as noted in Section 1.4 or Section 1.13). Additionally, an Enterprise License or Site License is granted only on a non-transferable and non-exclusive basis.

The Software is licensed to Licensee and not sold to Licensee.

2.2 Payment.

The license fees and any applicable Software support fees (collectively, the "Fees") for the term of the license granted hereunder are non-refundable and, upon entering into this EULA, Licensee agrees that it is obligated to pay the Fees for the entire and full term in accordance with the payment schedule and term set forth in the Order Form. If there is no payment schedule set forth in the Order Form then the Fees shall be due and payable by Licensee within thirty (30) days of Licensee's receipt of invoice. Licensee agrees that this EULA is non-cancelable by Licensee during the term of the license granted hereunder. Notwithstanding anything to the contrary in a Licensee purchase order or other order document, Licensee agrees that the time period or term of the license granted hereunder is as stated in the Order Form.

2.3 License Restrictions.

2.3.1 Copy Restrictions. Copyright laws and international treaties protect the Software, including the Documentation. Unauthorized copying of the Software, the Documentation or any part thereof, is expressly prohibited. Subject to these restrictions, Licensee may make one (1) copy of the Software solely for backup or archival purposes, and may make a reasonable number of copies of the Documentation for use by Licensee in connection with its authorized use of the Software. All titles, trademarks, and copyright and restricted rights notices will be reproduced in such copies. Unless specifically authorized in writing by AVEVA, copying of a License File using virtualization technology is prohibited.

2.3.2 Use Restrictions.

This EULA only gives Licensee some rights to use the Software and AVEVA and its licensors reserve all other rights. Licensee does not acquire any rights, express or implied, other than those expressly granted in this EULA. Unless applicable law gives Licensee more rights despite this limitation, Licensee may use the software only as expressly permitted in this EULA. In doing so, Licensee agrees that it will comply with any technical limitations in the Software that only allow Licensee to use the Software in certain ways. Licensee agrees that it will not, nor will Licensee permit others to:

(i) reverse engineer, decompile, disassemble, modify, adapt or translate the Software or any component thereof (including Documentation), or create derivative works based on the Software (including Documentation), except and only to the extent that applicable law expressly permits, despite this limitation or except and only to the extent that AVEVA gives it prior written consent;

(ii) remove, obliterate, destroy, minimize, block or modify any logos, trademarks, copyright, digital watermarks, or other notices of AVEVA or its licensors that are included in the Software;

(iii) work around any technical limitations in the Software;

(iv) make more copies of the Software than as allowed in this EULA or allowed by applicable law, despite this limitation;

(v) publish the Software, including any application programming interfaces included in the Software, for others to copy; or,

(vi) transfer, sublicense, rent, lease, sell, lend or assign the Software or any part thereof, or any rights or duties under this EULA, to any other person or entity without the prior written consent of AVEVA and such consent may be withheld in the sole discretion of AVEVA.

2.3.3 No High Risk Use. The Software is not fault-tolerant and is not guaranteed to be error free or to operate uninterrupted. Unless AVEVA gives its prior written consent and is consulted regarding the specific deployment, system set-up and Software support plan, Licensee has no right to use (and must not use) the Software in any application or situation where the failure of the Software could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). High Risk Use does not include utilization of the Software for administrative purposes, to store configuration data, engineering and/or configuration tools, or other applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. Licensee agrees to indemnify and hold harmless AVEVA from any third-party claim arising out of Licensee's use of the Software in connection with any High Risk Use.

2.3.4 Installation Limitations. The media upon which the Software resides may contain multiple copies of some of the components of the Software, each of which is compatible with different microprocessor architectures or different underlying operating systems. Licensee may install the Software for use only with one architecture and one operating system at any given time, consistent with the restrictions in the EULA, Software Schedule and Order Form.

2.3.5 Replaced License Restrictions. License Files and/or License Certificates may be replaced for various purposes as agreed to by AVEVA and Licensee. A Replaced License must be removed from any Device and its original license file, license CD, and/or License Certificate must be destroyed or archived and clearly marked as "Inactivated" so that it cannot be used. The act of replacement includes but is not limited to:

(i) Version Upgrades – when an earlier or lower numbered version license is replaced by a newer or higher numbered version license. For example, a Product X license with version 6.0 is replaced with a Product X license with a version 6.5;

(ii) Functional Upgrades – when a license with certain Capacity and functionality is replaced by a license with greater Capacity or different functionality. For example, an InTouch 3000 Tag Count license is replaced by an InTouch 60000 Tag Count license; or an Historian license is replaced by a System Platform license;

(iii) Lost/Stolen/Failed Keys – when a license key is lost, stolen, or fails and a replacement license key is provided. If a lost/stolen key is found/recovered, it must be destroyed; or,

(iv) Keyed License to Keyless License – when a license file locked to a hardware key/dongle is replaced by a license file only or visa-versa.

2.3.6 Factory Suite (FS) Gateway Software Restrictions. FS Gateway Software is an application that acts as a communications protocol converter in a single computer. FS Gateway Software is licensed under this EULA without a separate License File or License Certificate to link AVEVA application software to clients and data sources that communicate using the following protocols: OPC (OLE for Process Control), SuiteLink, DDE/FastDDE, as well as ArchestrA and InTouch data sources. FS Gateway Software can be used in conjunction with AVEVA software products. Use of FS Gateway Software solely with non-AVEVA products is prohibited.

3. Ownership. AVEVA and/or AVEVA's Licensors retain all title, copyright and other proprietary rights in, and ownership of, the Software regardless of the media upon which the original or any copy may be recorded or fixed.

4. Verification/Audit. At AVEVA's written request, not more frequently than annually, Licensee will furnish AVEVA with a signed certification verifying that the Software is being used in accordance with the provisions of this EULA. AVEVA may audit Licensee's use of the Software. Any such audit will be conducted during regular business hours at Licensee's facilities and will not unreasonably interfere with Licensee's business activities. If an audit reveals that Licensee is using Software contrary to the terms and conditions of this EULA then Licensee will be invoiced for additional license fees consistent with Licensee's actual use of the Software in accordance with AVEVA's then current price list for the Software, which amount will be immediately due and payable. This assessment of additional fees will be without prejudice to any other remedies AVEVA may have for breach of this EULA, including without limitation, termination under Section 11 ("Termination").

5. Version Limitations. The Software, and various components thereof, contain certain version numbers (such as version "6.5"). This EULA permits Licensee to install one copy of the Software, whereas (i) some Software may allow the same version number as the Software version number listed on the Order Form (or in an Update that is part of the Software hereunder licensed) on the number of computers authorized hereunder (for example, if the version number listed for a particular component of the Software is "6.5", then Licensee may install a copy of that component of the Software having a "6.5" version number, but not a "6.6" version number), and (ii) some Software may allow the same or lower version number as the Software version number listed on the License File or Order Form (or in an Update that is part of the Software hereunder licensed) on the number of computers authorized hereunder (for example, if the version number listed for a particular component of the Software is "6.5", then Licensee may install a copy of that component of the Software having a "6.5" or "6.0" version number, but not a "6.6" version number).

6. Limited Warranties and Disclaimers.

6.1 Limited Warranty. AVEVA warrants for a period of ninety (90) days following delivery of the Software that the Software will perform substantially in accordance with the Documentation. During the warranty period and without charge to Licensee, AVEVA will: (i) replace defective media and/or (ii) use commercially reasonable efforts to provide modifications or fixes with respect to any material defect in the Software in a reasonably timely manner. If AVEVA is unable to make the Software operate as warranted then AVEVA will refund the license fees paid to AVEVA for the defective Software and the license for such defective Software will terminate.

6.2 Pre-Production Releases. As an accommodation to Licensee, AVEVA may provide Licensee from time to time a Pre-Production Release of the Software. All such Pre-Production Releases are provided strictly on an "as-is" basis and AVEVA disclaims all warranties, express or implied, for all Pre-Production Releases.

6.3 Disclaimer of All Other Warranties. THE WARRANTIES IN SECTION 6.1 ABOVE ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY AVEVA, ITS DEALERS, DISTRIBUTORS OR AGENTS OR EMPLOYEES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES GIVEN IN THIS SECTION, AND LICENSEE MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. AVEVA DOES NOT WARRANT THAT THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS, THAT THE SOFTWARE WILL OPERATE IN COMBINATIONS OTHER THAN AS SPECIFIED IN THE DOCUMENTATION, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE SECURITY THREATS, INTERNET THREATS OR OTHER THREATS OR INTERRUPTIONS.

7. Confidentiality. The Software, including the Documentation, the terms and pricing under this EULA, and any other information that may be marked as confidential is the confidential and proprietary information of AVEVA ("Confidential Information"). Results of any benchmark tests on the Software run by Licensee may not be disclosed outside of Licensee's organization without the prior written consent of AVEVA. Licensee will hold the Confidential Information in strict confidence during the term of this EULA and for a period of five (5) years thereafter. Licensee will take reasonable steps to ensure that its employees and agents also comply with the confidentiality obligations of this Section. Licensee acknowledges that confidential aspects of the Software (including but not limited to any source code) are trade secrets of AVEVA, the disclosure of which would cause substantial harm to AVEVA that could not be remedied by the payment of damages alone. Accordingly, AVEVA will be entitled to preliminary and permanent injunctive and other equitable relief for any breach of this Section 7.

8. Indemnity. AVEVA will defend and indemnify Licensee against a third party claim (an "Indemnified Claim") that the Software infringes any copyright enforceable in any Included Jurisdiction or misappropriates any trade secret (as the terms "misappropriation" and "trade secret" are defined in the Uniform Trade Secrets Act) protected under the laws of any of the United States, provided that: (i) Licensee notifies AVEVA in writing within thirty (30) days of the claim; (ii) AVEVA has sole control of the defense and all related settlement negotiations; and (iii) Licensee provides AVEVA with the assistance, information and authority necessary in order for AVEVA to perform its obligations under this Section.

AVEVA will have no obligation to any Licensee for any Indemnified Claims relating to allegations of copyright infringement which arise outside the geographical boundaries of the United States, Canada, Japan, or the European Union ("Included Jurisdictions"), or any Indemnified Claims relating to allegations of trade secret misappropriation which arise outside the geographical boundaries of the United States.

If the Software is held, or is believed by AVEVA, to infringe, then AVEVA will have the option, at its expense, to: (i) modify the Software to be noninfringing; or (ii) obtain for Licensee a license to continue using the Software. If, in AVEVA's sole discretion, it is not economically or commercially reasonable to perform either of the above options then AVEVA may terminate the license for the infringing Software and refund to Licensee the license fee paid to AVEVA for the infringing Software.

The foregoing AVEVA obligations do not apply when the claim of infringement results from or is related to: (i) Software provided pursuant to Licensee's designs, drawings or specifications; (ii) Software stored, used or maintained other than in accordance with AVEVA's instructions or recommendations or other than for the Licensee's internal business purposes; (iii) claims of infringement resulting from combining the Software provided hereunder with any other item not furnished by AVEVA; (iv) modifications to the Software without the prior written consent of AVEVA; (v) software or products supplied or designed by Licensee or third parties; or (vi) Licensee's failure to use corrections or enhancements made available by AVEVA.

This Section 8 states AVEVA's entire liability and Licensee's sole and exclusive remedy for infringement.

9. Liability Limitations. NOTWITHSTANDING ANY PROVISION OF THIS EULA TO THE CONTRARY, IN NO EVENT WILL AVEVA, NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE SOFTWARE, INCLUDING AVEVA LICENSORS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, BUSINESS, GOODWILL, REVENUE, DATA OR USE, INCURRED BY LICENSEE OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF AVEVA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH IN THIS EULA IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS EULA, AVEVA'S LIABILITY FOR DAMAGES AND EXPENSES HEREUNDER OR RELATING HERETO (WHETHER IN AN ACTION IN CONTRACT, TORT OR OTHERWISE OR WHETHER RELATED TO PARTICULAR SOFTWARE OR SOFTWARE SUPPORT SERVICES) WILL IN NO EVENT EXCEED THE AMOUNT OF LICENSE FEES PAID TO AVEVA UNDER THIS EULA IN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING A CLAIM. LICENSEE ACKNOWLEDGES THAT AVEVA'S PRICING REFLECTS THE ALLOCATION OF RISKS, OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS AND THE LIMITATION OF LIABILITY HEREUNDER.

10. Third Party Software. The Software may incorporate, embed or be bundled with software or components that are owned by third parties, including but not limited to Microsoft ("AVEVA Licensor(s)"). Use of a AVEVA Licensor's software or components is governed by the terms and conditions contained in such AVEVA Licensor's end user license agreement, a copy of which will be provided with delivery of such AVEVA Licensor's software.

11. Termination.

11.1 Termination. This EULA and the license granted hereunder may be terminated by AVEVA in its sole discretion if Licensee breaches any provision of this EULA including but not limited to the failure to pay in full the license fees (and any applicable Software support fees) when due and fails to cure such breach within thirty (30) days of receipt of AVEVA's notice to cure such breach. Termination will not relieve Licensee of its obligations specified in Section 11.2 and will not entitle Licensee to a refund of any license fees (or any applicable Software support fees) previously paid.

11.2 Effect of Termination. Upon termination of this EULA or the license granted hereunder, Licensee will cease using the Software, will delete the Software, including the License File(s), from its computer and will either return to AVEVA or destroy the Software, including the License File(s), Documentation, packaging and all copies thereof. If Licensee elects to destroy the Software then Licensee will certify in writing to AVEVA the destruction of the Software. Termination of this EULA and return or destruction of the Software will not limit either party from pursuing other remedies available to it, including injunctive relief, nor will such termination relieve Licensee's obligation to pay all fees and expenses that have accrued or are otherwise owed by Licensee under this EULA, any Order Form, and/or any purchase order from Licensee which has been received and accepted by AVEVA.

12. General Terms.

12.1 Governing Law and Dispute Resolution. This EULA will be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws principles and the U.N. Convention on Contracts for the International Sale of Goods. All disputes, claims or controversies arising out of or relating to this EULA that are not resolved by the parties' good faith attempt to negotiate a resolution will be submitted to final and binding arbitration before JAMS/Endispute, or its successor, in Orange County, California, USA, pursuant to the United States Arbitration Act, 9 U.S.C. Sec. 1 et seq. The arbitration will be conducted in accordance with the provisions of JAMS/Endispute's Streamlined Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration. The parties will cooperate with JAMS/Endispute and each other in selecting a single arbitrator who will be a former judge or justice with substantial experiences in resolving business disputes with experience in resolving disputes involving computer software. The costs of arbitration will be shared equally by the parties. The provisions of this Section may be enforced by any court of competent jurisdiction. THE ARBITRATOR IS NOT EMPOWERED TO AWARD DAMAGES IN EXCESS OF THE COMPENSATORY DAMAGES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPERT WITNESS FEES) OR IN EXCESS OF THE LIMITATIONS OF LIABILITY AND DAMAGES SET FORTH IN THIS EULA, AND EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT TO RECOVER SUCH DAMAGES (INCLUDING, WITHOUT LIMITATION, PUNITIVE DAMAGES), IN ANY FORUM. THE ARBITRATOR WILL BE REQUIRED TO FOLLOW THE APPLICABLE LAW AS SET FORTH IN THE GOVERNING LAW SECTION OF THIS EULA AND FOLLOW THE TERMS OF THIS EULA. The arbitrator may award equitable relief in those circumstances where monetary damages would be inadequate, such as a party's violation of the confidential information provisions hereof. The successful or prevailing party will be entitled to recover its reasonable attorneys' fees, expert witness fees and other costs of arbitration, in addition to such other relief to which it may be entitled. Neither party has the right to act as a class representative or participate as a member of a class of claimants with respect to any claim. Either party may, without waiving any remedy under the Agreement, seek from any court of competent jurisdiction any interim or provisional relief that such party deems necessary to protect its confidential information and property rights, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the claim).

12.2 Governing Law and Dispute Resolution For Licensees Located in Canada.

12.2.1 <u>Province of Ontario</u>: Notwithstanding Section 12.1, if the Licensee is located in the Province of Ontario, Canada then the EULA shall be governed by and construed under the laws of the Province of Ontario, and the federal laws of Canada applicable therein, without regard to the conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the EULA. The governing language for the EULA shall be English, and no concurrent or subsequent translation of the EULA into any language shall modify any term of the EULA. All documents and communications contemplated thereby or relating thereto shall be drawn up in the English language. *Les parties confirment avoir requis que cet accord, ainsi que tous les documents et communications qui y sont relatifs soient rédigés en Anglais.*

Any claim arising out of or relating to this EULA, or the breach thereof, shall be settled by arbitration. The arbitral panel shall be composed of three arbitrators, appointed as follows: each party shall appoint an arbitrator, and the two arbitrators so appointed shall appoint a third arbitrator who shall act as president of the tribunal. The place of arbitration shall be Toronto, Province of Ontario, Canada. The language of the arbitration shall be in English. The arbitration award shall be final and binding on the parties hereto. Each party shall bear its own costs relating to such arbitration, the parties shall equally share the arbitrators' fees, and the arbitration and all related proceedings and discovery shall take place pursuant to a protective order entered by the arbitrators that adequately protects the confidential nature of the parties' proprietary and confidential information. In no event shall any arbitration award provide a remedy beyond those permitted under the EULA, and any award providing a remedy beyond those permitted under the EULA shall not be confirmed, no presumption of validity shall attach, and such award shall be vacated. No claim may be brought as a class action, combined or consolidated with any other proceeding, nor may any proceeding be pursued in a representative capacity or on behalf of a class. Neither party has the right to act as a class representative or participate as a member of a class of claimants with respect to any claim. Either party may, without waiving any remedy under the EULA, seek from any court of competent jurisdiction any interim or provisional relief that such party deems necessary to protect its confidential information and property rights, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the claim).

12.2.2 <u>Province of Quebec</u>: Notwithstanding Section 12.1, if the Licensee is located in the Province of Quebec, Canada then this EULA shall be governed by and construed under the laws of the Province of Quebec, and the federal laws of Canada applicable therein, without regard to the conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this EULA. The governing language for this EULA shall be English, and no concurrent or subsequent translation of this EULA into any language shall modify any term of this EULA. All documents and communications contemplated thereby or relating thereto shall be drawn up in the English language. *Les parties confirment avoir requis que cet accord, ainsi que tous les documents et communications qui y sont relatifs soient rédigés en Anglais.*

Any claim arising out of or relating to this EULA, or the breach thereof, shall be settled by the provisions of Book Seven of the Code of Civil Procedure of the Province of Quebec and regulations thereunder, as amended from time to time. The arbitral panel shall be composed of three arbitrators, appointed as follows: each party shall appoint an arbitrator, and the two arbitrators so appointed shall appoint a third arbitrator who shall act as president of the tribunal. The place of arbitration shall be Montreal, Province of Quebec, Canada. The language of the arbitration shall be in French if the arbitration is conducted in Montreal. The arbitration award shall be final and binding on the parties hereto. Each party shall bear its own costs relating to such arbitration, the parties shall equally share the arbitrators' fees, and the arbitration and all related proceedings and discovery shall take place pursuant to a protective order entered by the arbitrators that adequately protects the confidential nature of the parties' proprietary and confidential information. In no event shall any arbitration award provide a remedy beyond those permitted under this EULA, and any award providing a remedy beyond those permitted under this EULA shall not be confirmed, no presumption of validity shall attach, and such award shall be vacated. No claim may be brought as a class action, combined or consolidated with any other proceeding, nor may any proceeding be pursued in a representative capacity or on behalf of a class. Neither party has the right to act as a class representative or participate as a member of a class of claimants with respect to any claim. Either party may, without waiving any remedy under this EULA, seek from any court of competent jurisdiction any interim or provisional relief that such party deems necessary to protect its confidential information and property rights, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the claim).

12.3 Restricted Rights Legend—U.S. Government Users. The Software is a "commercial item" as that term is defined at 48 CFR 2.101 (October 1995), consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 CFR 12.212 (September 1995), and is provided to the U.S. Government only as a commercial end item. Consistent with 48 CFR 12.212 and 48 CFR 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Software with only those rights set forth herein. Contractor/ manufacturer is AVEVA, 26561 Rancho Parkway South, Lake Forest, CA 92630. Telephone number (949) 727-3200.

12.4 Export Restrictions. Licensee agrees to comply fully with all applicable international and national export laws and regulations, including the U.S Export Administration Regulations and the Office of Foreign Asset Control Regulations, as well as end-use and destination restrictions issued by the U.S and foreign governments to assure that neither the Software nor any direct product thereof are (i) exported, directly or indirectly, in violation of export laws; or (ii) are intended to be used for any purposes prohibited by the export laws.

12.5 Force Majeure. Neither party will be responsible to the other for any failure or delay in its performance due to acts of God or other unforeseen circumstances beyond the reasonable control of either party, provided that such party gives prompt written notice thereof to the other party and uses its diligent efforts to resume performance.

12.6 Severability; Waiver. If a court of competent jurisdiction finds any provision of this EULA invalid or unenforceable, that provision of the EULA will be amended to achieve as nearly as possible the intent of the parties, and the remainder of this EULA will remain in full force and effect. The waiver by either party of a breach of any provision of this EULA in one instance shall not operate or be construed as a waiver of any subsequent breach of the same provision or any other provision of this EULA.

12.7 Notices. All notices required to be sent hereunder will be in writing and will be deemed to have been given when mailed by first class mail to the address shown on the relevant Order Form (if to Licensee) or to the AVEVA address shown on the relevant Order Form (if to AVEVA).

12.8 Assignment. Licensee may not assign this EULA, in whole or in part, without AVEVA's prior written consent. Any attempt to assign this EULA without such consent will be null and void. AVEVA may assign this EULA and all rights and obligations hereunder at any time upon written notice to Licensee. Subject to the foregoing, this EULA will bind and inure to the benefit of each party's permitted successors and assigns.

12.9 Injunctive Relief. A breach of any of the terms contained in this EULA may result in irreparable and continuing damage to AVEVA for which there may be no adequate remedy at law. Accordingly, you acknowledge and agree that AVEVA is therefore entitled to seek injunctive relief as well as such other and further relief as may be appropriate.

12.10 Survival. The Sections of this EULA that by their nature survive expiration or termination of the EULA include but are not limited to the following Sections, 2.2, 3, 7, 8, 9, 11.2 and 12.

12.11 Entire Agreement. This EULA (together with any information from the Order Forms and License Files necessary to identify any specific restrictions applicable to Software licensed hereunder) constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements, written or oral, concerning the subject matter of this EULA. This EULA may not be modified or amended except in a writing signed by an authorized representative of each party. It is expressly agreed that the terms of this EULA and any Order Form issued by AVEVA will supersede the terms in any purchasing document submitted by Licensee; and the terms of any purchasing document are expressly rejected to the extent inconsistent with the terms of this EULA. If a copy of this EULA in a language other than English is included with the Software or Documentation, it is included for convenience and the English language version of this EULA will control.

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SCHEDULE A

Avantis Asset Performance Suite

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE A ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

Licensee Name:		**Agreement No:**	
Address:		**Date:**	
		Schedule No:	
		Schedule Date:	
		Purchase Order Reference:	
		PSE:	

Licensee Contact:	
Telephone:	
Fax Number:	
Email Address:	

Ship to Address: **(if different from Licensee contact address)**	**Invoice to Address:** **(if different from Licensee contact address)**

Product	**Product Description**	**# of Users**	**Price per Unit**	**Total Price**

TOTAL LICENSE FEES : $XXXX

ANNUAL SUPPORT FEES :$XXXX

TOTAL FEES : $XXXX

Material to be delivered: (Software or Security or both)	
MAC Address:	
Number of Users for this Contract:	
Total Number of Concurrent Users:	
Software Support Period as defined in Proposal:	

This Schedule A is subject to the terms and conditions of the EULA and is not effective until signed by both parties.

AVEVA SOFTWARE, LLC

By

Name

Title

Date

LICENSEE

By

Name

Title

Date

SCHEDULE C-1

SimSci Application Software Programs

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE C-1 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

EFFECTIVE DATE:		
LICENSED PROGRAM(s): This license covers the use of the herein mentioned licensed Software(s) as applied in the Software(herein called Application) as delivered by Seller under this Agreement and this Exhibit C-1. Use of the licensed PROGRAM in a modified version of the Software which has been expanded in scope to include other units or use of the licensed Software in other applications is expressly prohibited by this Agreement and this Exhibit C-1 without prior written consent by Seller.		
NUMBER OF CONCURRENT USERS (LAN):		
NUMBER OF COPIES (PC STANDALONE)		
LICENSED LOCATION(s):		
LICENSE TERM:		
LICENSE FEE:		
PROGRAM MAINTENANCE:		During the period covered by maintenance fees, Seller will provide Software maintenance. Software maintenance includes Technical Hot Line support by telephone, fax or email during regular business hours and Software updates when and if available. From time to time Seller may also provide new capabilities. These new capabilities will be made available to the Buyer and Seller reserves the right to charge an incremental License fee for said new capabilities. Buyer shall have the right to refuse said new capabilities.
TERM OF MAINTENANCE:		
MAINTENANCE FEE:		

This Exhibit is non-cancellable.

AGREED:

AVEVA SOFTWARE, LLC		**BUYER**	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

SCHEDULE C-2

SimSci Standard Software Programs

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE C-2 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

EFFECTIVE DATE:	
LICENSED PROGRAM(s):	
NUMBER OF COPIES (PC STANDALONE): PC Standalone is a single installation of the software used by PC one user at time on the same physical machine.	
NUMBER OF CONCURRENT USERS (LAN): PC WAN is a single installation of the software installed on a Wide Area Network Computer for use by concurrent users across 3 time zones or one continent where the software in installed.	
NUMBER OF CONCURRENT USERS (WAN): PC FTS (Follow the Sun) WAN is a single installation of the software installed on a Wide Area Network Computer for use by concurrent users across multiple time zones and/or continents.	
LICENSED LOCATION(s):	
LICENSE TERM:	
LICENSE FEE:	
SOFTWARE MAINTENANCE:	During the period covered by maintenance fees, Seller will provide Software maintenance. Software maintenance includes Technical Hot Line support by telephone, fax or email during regular business hours and Software updates when and if available. From time to time Seller may also provide new capabilities. These new capabilities will be made available to the Buyer and Seller reserves the right to charge an incremental License fee for said new capabilities. Buyer shall have the right to refuse said new capabilities.
TERM OF MAINTENANCE:	
MAINTENANCE FEE:	
WARRANTY:	During the Term of this Exhibit C-2, the Software will conform to Seller's then current published Specifications, provided that the Software is properly used in full compliance with the documentation and instructions provided by Seller and that the Software is not modified or altered by the Buyer. If any defects are inherent in the Software, then Seller will make commercially reasonable efforts to correct the defect to conform to the published Specifications. Seller does not warrant that any or all failures or errors will be corrected or warrant that the functions contained in the Software will meet Buyer's requirements or will operate in the combinations selected by the Buyer.

This Exhibit is non-cancellable.

AGREED:

AVEVA SOFTWARE, LLC		**BUYER**	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

SCHEDULE C-3

SimSci PRO/II

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE C-3 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. **Security Mechanisms**. AVEVA and its affiliated companies take all legal steps to eliminate piracy of their software products. In this context, the Software may include a security mechanism that can detect the installation or use of illegal copies of the Software, and collect and transmit data to AVEVA about those illegal copies. Data collected will not include any customer data created with the Software. By using the Software, you consent to such detection and collection of data, as well as its transmission and use if an illegal copy is detected.

SCHEDULE D-1

Wonderware Skelta BPM

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-1 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.2 "Connection" means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.3 "Core" means one unit of a physical or virtual processor as detected by the operating system.

1.4 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular or smartphone, handheld computer, tablet PC, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.5 "License Certificate" means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, and Device identification.

1.6 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another device.

2. Software Versions.

2.1 Wonderware Skelta BPM Professional Edition allows connecting to one or more instances to each of the following software components: Wonderware System Platform, Wonderware Intelligence, Wonderware MES, Wonderware InBatch, Wonderware Recipe Manager Plus, Wonderware IntelaTrac and AVEVA Avantis.

2.2 Wonderware Skelta BPM Enterprise Edition is an extension of the Wonderware Skelta BPM Professional Edition. Wonderware Skelta BPM Enterprise Edition utilizes at least 2 servers connected through dedicated network connections for the purpose of load balancing and high availability.

2.3 Wonderware Skelta BPM Developer Edition is used for developing and testing of workflow solutions and strictly limited to non-production scenarios.

3. Additional Use Restrictions.

3.1 Wonderware Skelta BPM Developer Edition Software Use and Restrictions.
The Wonderware Skelta BPM Developer Edition license:
(i) is limited to by the number of developers and active workflows;
(ii) has no limitations on the number of Connections;
(iii) is strictly limited to non-production purposes;
(iv) allows only a specific number of concurrent active workflows to be executed. The Software stops accepting more workflows if concurrency limits are exceeded - i.e. if more than the allowed number of workflows are either waiting or running; and
(v) is subject to the same restrictions set forth in Section 5.

Additionally, the Wonderware Skelta BPM Developer Edition license is required:

(i) for each Device where Wonderware Skelta BPM Developer Edition Software is installed and used for development purposes including but not limited to the machine in the build environment;

(ii) for any development extending the core functionality of Wonderware Skelta BPM Software (for example using Visual Studio); and,

(iii) even if Licensee has already purchased a license for deployment edition Software such as Wonderware Skelta BPM Professional or Enterprise Server Software.

The Licensee is responsible for purchasing any necessary third-party licenses to extend the core functionality of the software.

3.2 Wonderware Skelta BPM Professional and Enterprise Software Use and Restrictions.

For Core Based Server Licenses:
(i) an unlimited number of Connections can access the Server;

(ii) use of the Software is limited by the number of Cores as defined in the authorization key, Order Form or License File or as identified in the operating system; and
(iii) the Software must not be used as a hosting solution for third parties.

4. Software License.

4.1 Device and Server Software Grant.
If you have licensed the Software on a Per Server/Core basis the Software may be installed on a single Server that will be the designated Device hereunder. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee).

Alternatively, if access to the Server Software is licensed for use on a Connection basis, then each Connection can access a single instance of the services of the Server from any Device. Access Licenses authorize access or use of only the specific Server Software associated with such Named User Client License.

If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Core Use basis, then for each processor (represented by a number of cores) residing on the Server, a separate Per Processor Client Access License must be purchased. A Per Core license will allow an unlimited number of Devices or Users to access the services of the Server running the Server Software as long as a Per Core license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the Server.

5. Wonderware Development Studio and Advanced Development Studio Use and Restrictions.
Wonderware Development Studio includes application development tools that are used to develop applications for deployment of the Wonderware System Platform Software, Wonderware InTouch and other AVEVA runtime applications such as Wonderware Skelta BPM (if configured as such) as well as tools to configure Wonderware Historian. Wonderware Development Studio Software is licensed solely on a Per Device basis. The Wonderware Development Studio Software may only be used to develop a specific application, and may not be used to run the application in a production environment except for Wonderware Historian, InTouch Runtime, ActiveFactory, I/O Servers, and InControl if located on the same device as the Development License.

SCHEDULE D-2

Wonderware InTouch

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-2 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "CAL" (Client Access License) means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.2 "Capacity" means a specific licensed size criteria as described on the License Certificate and includes, among other measurements, Equipment counts, I/O Counts, Platform Counts, Session Counts, Tag Counts and Site Counts.

1.3 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.4 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.5 "Failover" means two or more Devices connected wherein one Device is actively utilizing the services of the Software at any instant and the second Device in the application is passive i.e. not utilizing the services of the Software. Further, once the active Device stops utilizing the services of the Software (for a reason of a failure or the Device is taken off line) the passive Device begins to utilize the services of the Software, becoming active.

1.6 "**License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.7 "Load Balance" (or Load Balancing) means Software services are actively distributed and utilized across multiple connected Devices at any instant.

1.8 "Per Server Use", also called "concurrent use", means Software licensing wherein the Software may be installed on an unlimited number of Devices provided however that the number of Devices utilizing the services of the Software residing on a single Server is limited by the number of Per Server access licenses purchased as defined in the Order Form, License File, or License Certificate.

1.9 "Platform Count" means the number of Devices which are licensed to host the "Platform".

1.10 "Pre-Production Release" means Software which has not completed AVEVA's formal release requirements and includes beta software, Hot Fixes and SUPs.

1.11 "Repository" means a logical or physical database or means of grouping and/or storing workflows.

1.12 "Runtime Report" means a discrete report active in the Software.

1.13 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.14 "Session Count" means the number of licensed AVEVA-based, Microsoft Terminal Services ("TS") Sessions.

1.15 "Tag" means a representation of an internal or external data value or calculation result.

1.16 "Tag Count" means the number of internal or external data points or calculations resulting from the Tags that are being monitored, processed, or utilized by the Software.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. If the Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must be maintained by Licensee on file at Licensee's location for a minimum of thirty (30) days before the allocation and identification

of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User may activate only one instance of the services of a Server from any Device at any location at any given point in time. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and designated for use for each Device with that Server. Alternatively, if access to the Server Software is licensed for use on a Named User basis, then each Named User can access a single instance of the services of the Server from any Device with each Named User CAL purchased. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Processor Use basis, then for each processor residing on the Server, a separate Per Processor use license must be purchased. A Per Processor license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Processor license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the Server. If the Software is licensed on a Per Session Count Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of Sessions specified in the License File.

2.2 Equipment Count License Grant. Certain components of the Software are licensed according to the Equipment count. The maximum amount of Equipment that Licensee may capture information about according to established functional requirements is limited to the number of Equipment specified for the Software licensed hereunder as specified in the License File, Order Form or License Certificate.

2.3 Runtime Report License Grant. If the Software is licensed on a Runtime Report basis, the maximum number of Runtime Reports utilized by Licensee per Server is limited to the Runtime Report count for the Software as specified in the License File, Order Form or License Certificate.

3. License Restrictions.

3.1 Use Restrictions. Licensee may transfer the Software from one designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Device) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device.

3.2 Terminal Server Edition Technology. If Licensee uses Terminal Server Edition or other technology to run two or more instances (copies) of the same Software on a single Server or Device then a separate license must be purchased for each instance (copy) of the Software being run.

3.3 Runtime Restriction. If the Software licensed hereunder is for "Runtime" use, then it may only be used to run a specific application, and may not be used either (a) to develop, and/or (b) in conjunction with, new applications, databases, or tables other than those contained in the specific application to which the "Runtime" license relates. This provision does not prohibit Licensee from using a tool to run queries or reports from existing tables, or from using a separately licensed development environment to configure or extend such specific application.

4. Toolkit Software. Certain Toolkit Software may include limited portions in source code (human-readable) form for which modifications are not supported by AVEVA.

SCHEDULE D-3

Wonderware System Platform

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-3 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "Application Name Space" means a system of unique application objects (representing physical, logical, or graphical entities) that interact or are used with the Software.

1.2 "CAL" (Client Access License) means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.3 "Capacity" means a specific licensed size criteria as described on the License Certificate and includes, among other measurements, Equipment counts, I/O Counts, Platform Counts, Session Counts, Tag Counts and Site Counts.

1.4 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.5 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.6 "I/O Count" means the maximum number of unique external data points that the Software is licensed to monitor at any given time.

1.7 "**License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.8 "Per Device Use", also called "Per Seat Use" means Device licensing as specified in the Order Form, License File, or License Certificate wherein a Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software. Licensee must purchase a Per Device ("Per Seat") License for each Device licensed for Per Device Use. This type of license is installed locally on the Device.

1.9 "Per Named Device" means Server Software licensed wherein one Named Device is licensed to access or utilize the services of the Server Software on an unlimited number of Servers running the Server Software.

1.10 "Platform" means Software that is required in order for a Device to operate with Wonderware Application Server Software.

1.11 "Platform Count" means the number of Devices which are licensed to host the "Platform".

1.12 "Pre-Production Release" means Software which has not completed AVEVA's formal release requirements and includes beta software, Hot Fixes and SUPs.

1.13 "Repository" means a logical or physical database or means of grouping and/or storing workflows.

1.14 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.15 "Server Software" means those components of, or programs in, the Software that provide services on a Device called a Server on which services may be run, accessed or used by another Device.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. If the Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must

be maintained by Licensee on file at Licensee's location for a minimum of thirty (30) days before the allocation and identification of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User may activate only one instance of the services of a Server from any Device at any location at any given point in time. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and designated for use for each Device with that Server. Alternatively, if access to the Server Software is licensed for use on a Named User basis, then each Named User can access a single instance of the services of the Server from any Device with each Named User CAL purchased. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Processor Use basis, then for each processor residing on the Server, a separate Per Processor use license must be purchased. A Per Processor license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Processor license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the Server. If the Software is licensed on a Per Session Count Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of Sessions specified in the License File.

3. License Restrictions.

3.1 Use Restrictions. Licensee may transfer the Software from one designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Device) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device.

3.2 Multiplexing and Pooling. Use of software or hardware that reduces the number of users directly or indirectly accessing or utilizing Server Software (sometimes called "multiplexing" or "pooling" software or hardware) does not reduce the number of CALs required. The required number of CALs would equal the number of distinct inputs to the multiplexing or pooling software or hardware "front end".

3.3 Wonderware System Platform Software. A Wonderware System Platform Software license is limited by (i) the size of the Application Name Space, which in turn is limited by the I/O Count, or the Site Count, as defined in the License File, License Certificate or Order Form, and (ii) the number of separate Devices which the Wonderware System Platform can be physically distributed across, which in turn is limited by the Platform Count as defined in the License File, License Certificate or Order Form, and (iii) the number of TS Sessions which the Wonderware System Platform can be physically distributed across, which in turn is limited by the TS Session Count as defined in the License Certificate or Order Form. Additionally, (i) the Wonderware System Platform license contains Software which can be installed on multiple computers, (ii) the Software contained in the license cannot be separated or upgraded separately from the Wonderware System Platform license and (iii) the license must be used within a single Application Name Space.

3.4 Wonderware Information Server (formerly SuiteVoyager™). If the Software licensed by Licensee hereunder includes a license for Software known as Wonderware Information Server, then the Licensee's access to Wonderware Information Server is limited by Per Server Use. Under Per Server Use the Licensee must purchase a Wonderware Information Server CAL which limits the number of Devices and/or Users accessing or utilizing the services of Wonderware Information Server. If Licensee's use of Wonderware Information Server requires the access of any database, Licensee must purchase the required access license for each database accessed.

3.5 Galaxy Repository (GR) Access. The use of the Galaxy Repository (GR) Access interface and associated .DLLs by a Non-AVEVA client application is restricted to the physical device where the Development Studio License is located.

4. Toolkit Software. Certain Toolkit Software may include limited portions in source code (human-readable) form for which modifications are not supported by AVEVA.

SCHEDULE D-4

Wonderware Development Studio

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-4 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "CAL" (Client Access License) means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.2 "Capacity" means is a specific licensed size criteria as described on the License Certificate and includes, among other measurements, Equipment counts, I/O Counts, Platform Counts, Session Counts, Tag Counts and Site Counts.

1.3 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.4 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.5 "**License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.6 "Per Device Use", also called "Per Seat Use" means Device licensing as specified in the Order Form, License File, or License Certificate wherein a Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software. Licensee must purchase a Per Device ("Per Seat") License for each Device licensed for Per Device Use. This type of license is installed locally on the Device.

1.7 "Per Session Count Use" means Server licensing used in a Terminal Server Edition technology environment wherein the number of Devices accessing or utilizing the services of the Software residing on a single Server at a given point in time is limited by the number of Sessions specified in the license purchased as defined in the Order Form, License File, or License Certificate. Per Session Count Use applies to Terminal Server Edition technology.

1.8 "Pre-Production Release" means Software which has not completed AVEVA's formal release requirements and includes beta software, Hot Fixes and SUPs.

1.9 "Session Count" means the number of licensed AVEVA-based, Microsoft Terminal Services ("TS") Sessions.

1.10 "Tag" means a representation of an internal or external data value or calculation result.

1.11 "Tag Count" means the number of internal or external data points or calculations resulting from the Tags that are being monitored, processed, or utilized by the Software.

1.12 "Toolkit Software" means Software designated by AVEVA on the Order Form and License File as a "Toolkit" software product and which may include compiled computer code and portions of source code which may be used by the Licensee to extend the functionality of the Software.

1.13 "Update" means: (a) supplemental programs, if and when developed and distributed by AVEVA, that may contain bug fixes or improved program functions for the Software; and (b) a subsequent release of the Software, if and when developed by AVEVA, which AVEVA generally makes available for licensees that have an Annual Support Agreement (sold separately). An Update does not include any release, new version, option, or future product, which AVEVA licenses separately.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the

Licensee). If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. If the Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must be maintained by Licensee on file at Licensee's location for a minimum of thirty (30) days before the allocation and identification of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User may activate only one instance of the services of a Server from any Device at any location at any given point in time. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and designated for use for each Device with that Server. Alternatively, if access to the Server Software is licensed for use on a Named User basis, then each Named User can access a single instance of the services of the Server from any Device with each Named User CAL purchased. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Processor Use basis, then for each processor residing on the Server, a separate Per Processor use license must be purchased. A Per Processor license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Processor license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the Server. If the Software is licensed on a Per Session Count Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of Sessions specified in the License File.

2.2 Runtime Report License Grant. If the Software is licensed on a Runtime Report basis, the maximum number of Runtime Reports utilized by Licensee per Server is limited to the Runtime Report count for the Software as specified in the License File, Order Form or License Certificate.

3. License Restrictions.

3.1 Use Restrictions. Licensee may transfer the Software from one designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Device) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device.

3.2 Toolkit Software Restrictions and Rights. A Toolkit Software license provides the ability to extend Software within the limits of the specific Toolkit License as defined in the License Certificate. Subject to the then current AVEVA licensing requirements, Licensee may further distribute the application created with the Toolkit Software with other third party users of Software provided that Licensee: (i) includes AVEVA's copyright and other proprietary rights notices; (ii) indemnifies, holds harmless and defends AVEVA and its suppliers from and against any claims or lawsuits, including attorney's fees, that arise or result from the use or distribution of the I/O servers, Extension Tools, SDK Tools or Licensee's products; (iii) agrees that all such items are provided "AS IS" without warranty of any kind, and (iv) otherwise comply with the terms and limitations of this EULA.

3.3 Terminal Server Edition Technology. If Licensee uses Terminal Server Edition or other technology to run two or more instances (copies) of the same Software on a single Server or Device then a separate license must be purchased for each instance (copy) of the Software being run.

3.4 Runtime Restriction. If the Software licensed hereunder is for "Runtime" use, then it may only be used to run a specific application, and may not be used either (a) to develop, and/or (b) in conjunction with, new applications, databases, or tables other than those contained in the specific application to which the "Runtime" license relates. This provision does not prohibit Licensee from using a tool to run queries or reports from existing tables, or from using a separately licensed development environment to configure or extend such specific application.

3.5 Wonderware Development Studio and Advanced Development Studio Use and Restrictions. Wonderware Development Studio includes application development tools that are used to develop applications for deployment of the Wonderware System Platform Software, Wonderware InTouch and other AVEVA runtime applications as well as tools to configure Wonderware Historian. Wonderware Development Studio Software is licensed solely on a Per Device basis. The Wonderware Development Studio Software may only be used to develop a specific application, and may not be used to run the application in a production environment except for Wonderware Historian, InTouch Runtime, ActiveFactory, I/O Servers, and InControl if located on the same device as the Development License.

4. Toolkit Software. Certain Toolkit Software may include limited portions in source code (human-readable) form for which modifications are not supported by AVEVA.

SCHEDULE D-5

Wonderware Historian

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-5 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "CAL" (Client Access License) means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.2 "Capacity" means is a specific licensed size criteria as described on the License Certificate and includes, among other measurements, Equipment counts, I/O Counts, Platform Counts, Session Counts, Tag Counts and Site Counts.

1.3 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.4 "**License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.5 "Per Named Device" means Server Software licensed wherein one Named Device is licensed to access or utilize the services of the Server Software on an unlimited number of Servers running the Server Software.

1.6 "Platform" means Software that is required in order for a Device to operate with Wonderware Application Server Software.

1.7 "Pre-Production Release" means Software which has not completed AVEVA's formal release requirements and includes beta software, Hot Fixes and SUPs.

1.8 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.9 "Server Software" means those components of, or programs in, the Software that provide services on a Device called a Server on which services may be run, accessed or used by another Device.

1.10 "Tag" means a representation of an internal or external data value or calculation result.

1.11 "Tag Count" means the number of internal or external data points or calculations resulting from the Tags that are being monitored, processed, or utilized by the Software.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. If the Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must be maintained by Licensee on file at Licensee's location for a minimum of thirty (30) days before the allocation and identification of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User may activate only one instance of the services of a Server from any Device at any location at any given point in time. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and designated for use for each Device with that Server. Alternatively, if access to the Server Software is licensed for use on a Named User basis, then each Named User can access a single instance of the services of the Server from any Device with each Named User CAL purchased. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required

database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Processor Use basis, then for each processor residing on the Server, a separate Per Processor use license must be purchased. A Per Processor license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Processor license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the Server. If the Software is licensed on a Per Session Count Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of Sessions specified in the License File.

3. License Restrictions.

3.1 Use Restrictions. Licensee may transfer the Software from one designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Device) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device. Licensee will not, nor will Licensee permit others to, modify, adapt, translate, reverse engineer, decompile or disassemble the Software or any component thereof (including the Documentation), or create derivative works based on the Software (including the Documentation), except to the extent such foregoing restriction is agreed to in writing by AVEVA or prohibited by applicable law.

3.2 Multiplexing and Pooling. Use of software or hardware that reduces the number of users directly or indirectly accessing or utilizing Server Software (sometimes called "multiplexing" or "pooling" software or hardware) does not reduce the number of CALs required. The required number of CALs would equal the number of distinct inputs to the multiplexing or pooling software or hardware "front end".

3.3 Wonderware Information Server (formerly SuiteVoyager™). If the Software licensed by Licensee hereunder includes a license for Software known as Wonderware Information Server, then the Licensee's access to Wonderware Information Server is limited by Per Server Use. Under Per Server Use the Licensee must purchase a Wonderware Information Server CAL which limits the number of Devices and/or Users accessing or utilizing the services of Wonderware Information Server. If Licensee's use of Wonderware Information Server requires the access of any database, Licensee must purchase the required access license for each database accessed.

4. Toolkit Software. Certain Toolkit Software may include limited portions in source code (human-readable) form for which modifications are not supported by AVEVA.

SCHEDULE D-6

Wonderware Historian Clients

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-6 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.2 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.3 "**License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.4 "Per Device Use", also called "Per Seat Use" means Device licensing as specified in the Order Form, License File, or License Certificate wherein a Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software. Licensee must purchase a Per Device ("Per Seat") License for each Device licensed for Per Device Use. This type of license is installed locally on the Device.

1.5 "Per Server Use", also called "concurrent use", means Software licensing wherein the Software may be installed on an unlimited number of Devices provided however that the number of Devices utilizing the services of the Software residing on a single Server is limited by the number of Per Server access licenses purchased as defined in the Order Form, License File, or License Certificate.

1.6 "Per Named Device" means Server Software licensed wherein one Named Device is licensed to access or utilize the services of the Server Software on an unlimited number of Servers running the Server Software.

1.7 "Per Named User" means Server Software licensed wherein one Named User using any Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software.

1.8 "Pre-Production Release" means Software which has not completed AVEVA's formal release requirements and includes beta software, Hot Fixes and SUPs.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. If the Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must be maintained by Licensee on file at Licensee's location for a minimum of thirty (30) days before the allocation and identification of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User may activate only one instance of the services of a Server from any Device at any location at any given point in time. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and designated for use for each Device with that Server. Alternatively, if access to the Server Software is licensed for use on a Named User basis, then each Named User can access a single instance of the services of the Server from any Device with each Named User CAL purchased. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Processor Use basis, then for each processor residing on the Server, a separate Per Processor use license must be purchased. A Per Processor license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Processor license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the

Server. If the Software is licensed on a Per Session Count Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of Sessions specified in the License File.

3. License Restrictions.

3.1 Use Restrictions. Licensee may transfer the Software from one designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Device) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device.

4. Toolkit Software. Certain Toolkit Software may include limited portions in source code (human-readable) form for which modifications are not supported by AVEVA.

SCHEDULE D-7

Wonderware Information Server

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-7 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "CAL" (Client Access License) means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.2 "Capacity" means is a specific licensed size criteria as described on the License Certificate and includes, among other measurements, Equipment counts, I/O Counts, Platform Counts, Session Counts, Tag Counts and Site Counts.

1.3 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.4 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.5 "**License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.6 "Per Server Use", also called "concurrent use", means Software licensing wherein the Software may be installed on an unlimited number of Devices provided however that the number of Devices utilizing the services of the Software residing on a single Server is limited by the number of Per Server access licenses purchased as defined in the Order Form, License File, or License Certificate.

1.7 "Per Named Device" means Server Software licensed wherein one Named Device is licensed to access or utilize the services of the Server Software on an unlimited number of Servers running the Server Software.

1.8 "Per Named User" means Server Software licensed wherein one Named User using any Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software.

1.9 "Platform" means Software that is required in order for a Device to operate with Wonderware Application Server Software.

1.10 "Pre-Production Release" means Software which has not completed AVEVA's formal release requirements and includes beta software, Hot Fixes and SUPs.

1.11 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.12 "Server Software" means those components of, or programs in, the Software that provide services on a Device called a Server on which services may be run, accessed or used by another Device.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. If the Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must be maintained by Licensee on file at Licensee's location for a minimum of thirty (30) days before the allocation and identification of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User may activate only one instance of the services of a Server from any Device at any location at any given point in time. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and designated for use for each Device with that Server. Alternatively, if access to the Server Software is licensed

for use on a Named User basis, then each Named User can access a single instance of the services of the Server from any Device with each Named User CAL purchased. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Processor Use basis, then for each processor residing on the Server, a separate Per Processor use license must be purchased. A Per Processor license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Processor license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the Server. If the Software is licensed on a Per Session Count Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of Sessions specified in the License File.

3. License Restrictions.

3.1 Use Restrictions. Licensee may transfer the Software from one designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Device) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device.

3.2 Wonderware Information Server (formerly SuiteVoyager™). If the Software licensed by Licensee hereunder includes a license for Software known as Wonderware Information Server, then the Licensee's access to Wonderware Information Server is limited by Per Server Use. Under Per Server Use the Licensee must purchase a Wonderware Information Server CAL which limits the number of Devices and/or Users accessing or utilizing the services of Wonderware Information Server. If Licensee's use of Wonderware Information Server requires the access of any database, Licensee must purchase the required access license for each database accessed.

4. Toolkit Software. Certain Toolkit Software may include limited portions in source code (human-readable) form for which modifications are not supported by AVEVA.

SCHEDULE D-8

Wonderware Operations

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-8 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "CAL" (Client Access License) means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.2 "Capacity" means is a specific licensed size criteria as described on the License Certificate and includes, among other measurements, Equipment counts, I/O Counts, Platform Counts, Session Counts, Tag Counts and Site Counts.

1.3 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.4 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.5 "Equipment" means any physical asset, subcomponent or grouping thereof from which information is captured for use by a Software module(s) for which a functional requirement has been established.

1.6 "**License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.7 "Per Server Use", also called "concurrent use", means Software licensing wherein the Software may be installed on an unlimited number of Devices provided however that the number of Devices utilizing the services of the Software residing on a single Server is limited by the number of Per Server access licenses purchased as defined in the Order Form, License File, or License Certificate.

1.8 "Per Named Device" means Server Software licensed wherein one Named Device is licensed to access or utilize the services of the Server Software on an unlimited number of Servers running the Server Software.

1.9 "Per Named User" means Server Software licensed wherein one Named User using any Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software.

1.10 "Pre-Production Release" means Software which has not completed AVEVA's formal release requirements and includes beta software, Hot Fixes and SUPs.

1.11 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.12 "Server Software" means those components of, or programs in, the Software that provide services on a Device called a Server on which services may be run, accessed or used by another Device.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. If the Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must be maintained by Licensee on file at Licensee's location for a minimum of 30 days before the allocation and identification of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User may activate only one instance of the services of a Server from any Device at any location at any given point in time. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and

designated for use for each Device with that Server. Alternatively, if access to the Server Software is licensed for use on a Named User basis, then each Named User can access a single instance of the services of the Server from any Device with each Named User CAL purchased. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Processor Use basis, then for each processor residing on the Server, a separate Per Processor use license must be purchased. A Per Processor license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Processor license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the Server. If the Software is licensed on a Per Session Count Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of Sessions specified in the License File.

2.2 Equipment Count License Grant. Certain components of the Software are licensed according to the Equipment count. The maximum amount of Equipment that Licensee may capture information about according to established functional requirements is limited to the number of Equipment specified for the Software licensed hereunder as specified in the License File, Order Form or License Certificate.

3. License Restrictions.

3.1 Use Restrictions. Licensee may transfer the Software from one designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Device) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device.

4. Toolkit Software. Certain Toolkit Software may include limited portions in source code (human-readable) form for which modifications are not supported by AVEVA.

SCHEDULE D-9

Wonderware Performance

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-9 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "CAL" (Client Access License) means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.2 "Capacity" means is a specific licensed size criteria as described on the License Certificate and includes, among other measurements, Equipment counts, I/O Counts, Platform Counts, Session Counts, Tag Counts and Site Counts.

1.3 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.4 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.5 "Equipment" means any physical asset, subcomponent or grouping thereof from which information is captured for use by a Software module(s) for which a functional requirement has been established.

1.7 "**License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.8 "Per Server Use", also called "concurrent use", means Software licensing wherein the Software may be installed on an unlimited number of Devices provided however that the number of Devices utilizing the services of the Software residing on a single Server is limited by the number of Per Server access licenses purchased as defined in the Order Form, License File, or License Certificate.

1.9 "Per Named Device" means Server Software licensed wherein one Named Device is licensed to access or utilize the services of the Server Software on an unlimited number of Servers running the Server Software.

1.10 "Per Named User" means Server Software licensed wherein one Named User using any Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software.

1.11 "Pre-Production Release" means Software which has not completed AVEVA's formal release requirements and includes beta software, Hot Fixes and SUPs.

1.12 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.13 "Server Software" means those components of, or programs in, the Software that provide services on a Device called a Server on which services may be run, accessed or used by another Device.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. If the Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must be maintained by Licensee on file at Licensee's location for a minimum of 30 days before the allocation and identification of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User may activate only one instance of the services of a Server from any Device at any location at any given point in time. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and

designated for use for each Device with that Server. Alternatively if access to the Server Software is licensed for use on a Named User basis, then each Named User can access a single instance of the services of the Server from any Device with each Named User CAL purchased. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Processor Use basis, then for each processor residing on the Server, a separate Per Processor use license must be purchased. A Per Processor license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Processor license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the Server. If the Software is licensed on a Per Session Count Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of Sessions specified in the License File.

2.2 Equipment Count License Grant. Certain components of the Software are licensed according to the Equipment count. The maximum amount of Equipment that Licensee may capture information about according to established functional requirements is limited to the number of Equipment specified for the Software licensed hereunder as specified in the License File, Order Form or License Certificate.

2.3 Runtime Report License Grant. If the Software is licensed on a Runtime Report basis, the maximum number of Runtime Reports utilized by Licensee per Server is limited to the Runtime Report count for the Software as specified in the License File, Order Form or License Certificate.

3. License Restrictions.

3.1 Use Restrictions. Licensee may transfer the Software from one designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Device) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device.

4. Toolkit Software. Certain Toolkit Software may include limited portions in source code (human-readable) form for which modifications are not supported by AVEVA.

SCHEDULE D-10

Wonderware InBatch

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-10 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "CAL" (Client Access License) means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.2 "Capacity" means is a specific licensed size criteria as described on the License Certificate and includes, among other measurements, Equipment counts, I/O Counts, Platform Counts, Session Counts, Tag Counts and Site Counts.

1.3 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.4 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.5 "Failover" means two or more Devices connected wherein one Device is actively utilizing the services of the Software at any instant and the second Device in the application is passive i.e. not utilizing the services of the Software. Further, once the active Device stops utilizing the services of the Software (for a reason of a failure or the Device is taken off line) the passive Device begins to utilize the services of the Software, becoming active.

1.6 "**License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.7 "Load Balance" (or Load Balancing) means Software services are actively distributed and utilized across multiple connected Devices at any instant.

1.8 "Per Device Use", also called "Per Seat Use" means Device licensing as specified in the Order Form, License File, or License Certificate wherein a Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software. Licensee must purchase a Per Device ("Per Seat") License for each Device licensed for Per Device Use. This type of license is installed locally on the Device.

1.9 "Per Session Count Use" means Server licensing used in a Terminal Server Edition technology environment wherein the number of Devices accessing or utilizing the services of the Software residing on a single Server at a given point in time is limited by the number of Sessions specified in the license purchased as defined in the Order Form, License File, or License Certificate. Per Session Count Use applies to Terminal Server Edition technology.

1.10 "Per Named Device" means Server Software licensed wherein one Named Device is licensed to access or utilize the services of the Server Software on an unlimited number of Servers running the Server Software.

1.11 "Pre-Production Release" means Software which has not completed AVEVA's formal release requirements and includes beta software, Hot Fixes and SUPs.

1.12 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.13 "Server Software" means those components of, or programs in, the Software that provide services on a Device called a Server on which services may be run, accessed or used by another Device.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. If the

Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must be maintained by Licensee on file at Licensee's location for a minimum of 30 days before the allocation and identification of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User may activate only one instance of the services of a Server from any Device at any location at any given point in time. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and designated for use for each Device with that Server. Alternatively, if access to the Server Software is licensed for use on a Named User basis, then each Named User can access a single instance of the services of the Server from any Device with each Named User CAL purchased. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Processor Use basis, then for each processor residing on the Server, a separate Per Processor use license must be purchased. A Per Processor license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Processor license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the Server. If the Software is licensed on a Per Session Count Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of Sessions specified in the License File.

3. License Restrictions.

3.1 Use Restrictions. Licensee may transfer the Software from one designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Device) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device.

3.2 Wonderware Information Server (formerly SuiteVoyager™). If the Software licensed by Licensee hereunder includes a license for Software known as Wonderware Information Server, then the Licensee's access to Wonderware Information Server is limited by Per Server Use. Under Per Server Use the Licensee must purchase a Wonderware Information Server CAL which limits the number of Devices and/or Users accessing or utilizing the services of Wonderware Information Server. If Licensee's use of Wonderware Information Server requires the access of any database, Licensee must purchase the required access license for each database accessed.

3.3 Terminal Server Edition Technology. If Licensee uses Terminal Server Edition or other technology to run two or more instances (copies) of the same Software on a single Server or Device then a separate license must be purchased for each instance (copy) of the Software being run.

4. Toolkit Software. Certain Toolkit Software may include limited portions in source code (human-readable) form for which modifications are not supported by AVEVA.

SCHEDULE D-11

Wonderware Municipal

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-11 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "Application Name Space" means a system of unique application objects (representing physical, logical, or graphical entities) that interact or are used with the Software.

1.2 "CAL" (Client Access License) means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.3 "Capacity" means is a specific licensed size criteria as described on the License Certificate and includes, among other measurements, Equipment counts, I/O Counts, Platform Counts, Session Counts, Tag Counts and Site Counts.

1.4 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.5 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.6 "I/O Count" means the maximum number of unique external data points that the Software is licensed to monitor at any given time.

1.7 "**License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.8 "Per Device Use", also called "Per Seat Use" means Device licensing as specified in the Order Form, License File, or License Certificate wherein a Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software. Licensee must purchase a Per Device ("Per Seat") License for each Device licensed for Per Device Use. This type of license is installed locally on the Device.

1.9 "Platform Count" means the number of Devices which are licensed to host the "Platform".

1.10 "Pre-Production Release" means Software which has not completed AVEVA's formal release requirements and includes beta software, Hot Fixes and SUPs.

1.11 "Repository" means a logical or physical database or means of grouping and/or storing workflows.

1.12"Runtime Report" means a discrete report active in the Software.

1.13 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.14 "Server Software" means those components of, or programs in, the Software that provide services on a Device called a Server on which services may be run, accessed or used by another Device.

1.15 "Tag" means a representation of an internal or external data value or calculation result

1.16 "Tag Count" means the number of internal or external data points or calculations resulting from the Tags that are being monitored, processed, or utilized by the Software.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the

Licensee). If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. If the Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must be maintained by Licensee on file at Licensee's location for a minimum of 30 days before the allocation and identification of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User may activate only one instance of the services of a Server from any Device at any location at any given point in time. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and designated for use for each Device with that Server. Alternatively, if access to the Server Software is licensed for use on a Named User basis, then each Named User can access a single instance of the services of the Server from any Device with each Named User CAL purchased. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Processor Use basis, then for each processor residing on the Server, a separate Per Processor use license must be purchased. A Per Processor license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Processor license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the Server. If the Software is licensed on a Per Session Count Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of Sessions specified in the License File.

3. License Restrictions.

3.1 Use Restrictions. Licensee may transfer the Software from one designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Device) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device.

3.2 Wonderware System Platform Software. A Wonderware System Platform Software license is limited by (i) the size of the Application Name Space, which in turn is limited by the I/O Count, or the Site Count, as defined in the License File, License Certificate or Order Form, and (ii) the number of separate Devices which the Wonderware System Platform can be physically distributed across, which in turn is limited by the Platform Count as defined in the License File, License Certificate or Order Form, and (iii) the number of TS Sessions which the Wonderware System Platform can be physically distributed across, which in turn is limited by the TS Session Count as defined in the License Certificate or Order Form. Additionally, (i) the Wonderware System Platform license contains Software which can be installed on multiple computers, (ii) the Software contained in the license cannot be separated or upgraded separately from the Wonderware System Platform license and (iii) the license must be used within a single Application Name Space.

3.3 Runtime Restriction. If the Software licensed hereunder is for "Runtime" use, then it may only be used to run a specific application, and may not be used either (a) to develop, and/or (b) in conjunction with, new applications, databases, or tables other than those contained in the specific application to which the "Runtime" license relates. This provision does not prohibit Licensee from using a tool to run queries or reports from existing tables, or from using a separately licensed development environment to configure or extend such specific application.

3.4 Wonderware Development Studio and Advanced Development Studio Use and Restrictions. Wonderware Development Studio includes application development tools that are used to develop applications for deployment of the Wonderware System Platform Software, Wonderware InTouch and other AVEVA runtime applications as well as tools to configure Wonderware Historian. Wonderware Development Studio Software is licensed solely on a Per Device basis. The Wonderware Development Studio Software may only be used to develop a specific application, and may not be used to run the application in a production environment except for Wonderware Historian, InTouch Runtime, ActiveFactory, I/O Servers, and InControl if located on the same device as the Development License.

3.5 Galaxy Repository (GR) Access. The use of the Galaxy Repository (GR) Access interface and associated .DLLs by a Non-AVEVA client application is restricted to the physical device where the Development Studio License is located.

4. Toolkit Software. Certain Toolkit Software may include limited portions in source code (human-readable) form for which modifications are not supported by AVEVA.

SCHEDULE D-12

Wonderware IntelaTrac

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-12 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "Capacity" means a specific licensed size criteria as described on the License Certificate and includes, among other measurements, Equipment counts, I/O Counts, Platform Counts, Session Counts, Tag Counts and Site Counts.

1.2 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.3 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.4 "**License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.5 "Per Device Use", also called "Per Seat Use" means Device licensing as specified in the Order Form, License File, or License Certificate wherein a Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software. Licensee must purchase a Per Device ("Per Seat") License for each Device licensed for Per Device Use. This type of license is installed locally on the Device.

1.6 "Per Server Use", also called "concurrent use", means Software licensing wherein the Software may be installed on an unlimited number of Devices provided however that the number of Devices utilizing the services of the Software residing on a single Server is limited by the number of Per Server access licenses purchased as defined in the Order Form, License File, or License Certificate.

1.7 "Pre-Production Release" means Software which has not completed AVEVA's formal release requirements and includes beta software, Hot Fixes and SUPs.

1.8 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.9 "Server Software" means those components of, or programs in, the Software that provide services on a Device called a Server on which services may be run, accessed or used by another Device.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. If the Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must be maintained by Licensee on file at Licensee's location for a minimum of 30 days before the allocation and identification of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User may activate only one instance of the services of a Server from any Device at any location at any given point in time. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and designated for use for each Device with that Server. Alternatively, if access to the Server Software is licensed for use on a Named User basis, then each Named User can access a single instance of the services of the Server from any Device with each Named User CAL purchased. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Processor Use basis, then for each

processor residing on the Server, a separate Per Processor use license must be purchased. A Per Processor license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Processor license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the Server. If the Software is licensed on a Per Session Count Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of Sessions specified in the License File.

3. License Restrictions.

3.1 Use Restrictions. Licensee may transfer the Software from one designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Device) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device.

4. Toolkit Software. Certain Toolkit Software may include limited portions in source code (human-readable) form for which modifications are not supported by AVEVA.

SCHEDULE D-13

Wonderware CALs

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-13 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "CAL" (Client Access License) means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.2 "Capacity" means is a specific licensed size criteria as described on the License Certificate and includes, among other measurements, Equipment counts, I/O Counts, Platform Counts, Session Counts, Tag Counts and Site Counts.

1.3 "License Certificate" means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.4 "Per Device Use", also called "Per Seat Use" means Device licensing as specified in the Order Form, License File, or License Certificate wherein a Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software. Licensee must purchase a Per Device ("Per Seat") License for each Device licensed for Per Device Use. This type of license is installed locally on the Device.

1.5 "Per Processor Use" means Server Software licensing wherein a separate license is required for each processor that resides on a single Server.

1.6 "Per Named User" means Server Software licensed wherein one Named User using any Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software.

2. License Restrictions.

2.1 Use Restrictions. Licensee may transfer the Software from one designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Device) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device.

2.2 Multiplexing and Pooling. Use of software or hardware that reduces the number of users directly or indirectly accessing or utilizing Server Software (sometimes called "multiplexing" or "pooling" software or hardware) does not reduce the number of CALs required. The required number of CALs would equal the number of distinct inputs to the multiplexing or pooling software or hardware "front end".

3. Toolkit Software. Certain Toolkit Software may include limited portions in source code (human-readable) form for which modifications are not supported by AVEVA.

SCHEDULE D-14

Wonderware Intelligence Server

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-14 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1.1 "CAL" (Client Access License) means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.2 "Capacity" means is a specific licensed size criteria as described on the License Certificate and includes, among other measurements, data source counts, calculation counts, Equipment counts, Session Counts, Tag Counts and Site Counts.

1.3 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.4 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.5 "**License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.6 "Per Server Use", also called "concurrent use", means Software licensing wherein the Software may be installed on an unlimited number of Devices provided however that the number of Devices utilizing the services of the Software residing on a single Server is limited by the number of Per Server access licenses purchased as defined in the Order Form, License File, or License Certificate.

1.7 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.8 "Server Software" means those components of, or programs in, the Software that provide services on a Device called a Server on which services may be run, accessed or used by another Device.

2. Software License.

2.1 Device and Server Software Grant. A separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA.

3. License Restrictions.

3.1 Use Restrictions. Licensee may transfer the Software from one designated Device to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device prior to installing the Software on the second Device, and (ii) the end-user identification information (including the identification and location of the Designated Device) contained within the License File remains accurate. Wonderware Intelligence Server is comprised of components in the form of services and .DLLs. Those components may be distributed across more than one Device but only one instance of each component can be installed and active on a Device per Wonderware Intelligence Server license.

3.2 Multiplexing and Pooling. Use of software or hardware that reduces the number of users directly or indirectly accessing or utilizing Server Software (sometimes called "multiplexing" or "pooling" software or hardware) does not reduce the number of CALs required. The required number of CALs would equal the number of distinct inputs to the multiplexing or pooling software or hardware "front end".

3.3 Wonderware Intelligence Server. If the Software licensed by Licensee hereunder includes a license for Software known as Wonderware Intelligence Server, then the Licensee's access to Wonderware Intelligence Server is limited by Per Server Use. Under Per Server Use, the Licensee must purchase a Wonderware Intelligence Server CAL which limits the number of Devices and/or Users accessing or utilizing the services of Wonderware Intelligence Server. If Licensee's use of Wonderware Intelligence Server requires the access of any database, Licensee must purchase the required access license for each database accessed.

SCHEDULE D-15

Wonderware Intelligence Clients

(Analytics Client and Dashboard Users)

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-15 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1.1 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.2 "Core" means one unit of a physical or virtual processor as detected by the operating system.

1.3 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.4 "Named User" means an individual person and is unique to the individual. A Named User is not a particular logon name, a group, an organization, part of a company or organization, or any other non-person entity.

1.5 "Per Device Use", also called "Per Seat Use" means Device licensing as specified in the Order Form, License File, or License Certificate wherein a Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software. Licensee must purchase a Per Device ("Per Seat") License for each Device licensed for Per Device Use. This type of license is installed locally on the Device.

1.6 "Per Named User" means Server Software licensed wherein one Named User using any Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software.

1.7 "Per Server Use", also called "concurrent use", means Software licensing wherein the Software may be installed on an unlimited number of Devices provided however that the number of Devices utilizing the services of the Software residing on a single Server is limited by the number of Per Server access licenses purchased as defined in the Order Form, License File, or License Certificate.

1.8 "Per Core Use" means Server Software licensing wherein a separate license is required for each core that resides on a single Server.

1.9 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.10 "Server Software" means those components of, or programs in, the Software that provide services on a Device called a Server on which services may be run, accessed or used by another Device.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. If the Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must be maintained by Licensee on file at Licensee's location for a minimum of 30 days before the allocation and identification of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User may activate only one instance of the services of a Server from any Device at any location at any given point in time. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and designated for use for each Device with that Server. Alternatively, if access to the Server Software is licensed for use on a Named User basis, then each Named User can access a single instance of the services of the Server from any Device with each Named User CAL purchased. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Core Use basis, then for each processor residing on the Server, a separate Per Core use license must be purchased. A Per Core license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Core license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each Core running on the Server. You cannot mix the licensing modes for Dashboard Users on the same License Certificate. Access to the Server may either be "Per Named User", or "Per Server Use", or "Per Core Use".

3. License Restrictions.

3.1 Multiplexing and Pooling. Use of software or hardware that reduces the number of users directly or indirectly accessing or utilizing Server Software (sometimes called "multiplexing" or "pooling" software or hardware) does not reduce the number of Client licenses required. The required number of Client licenses would equal the number of distinct inputs to the multiplexing or pooling software or hardware "front end".

3.2 OEM version of Tableau software. Wonderware Intelligence Clients are provided using an OEM version of Tableau software. Intelligence Clients allow connecting to a set of data sources as enabled in the Wonderware Intelligence Analytics Client only if those data sources are configured in the Intelligence Server software. Standalone use of this OEM version of Tableau software to connect data sources that are not configured in Wonderware Intelligence Server is strictly prohibited and is a breach of this EULA.

SCHEDULE D-16

Wonderware QI Analyst

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-16 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.2 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.3 "**License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.4 "Per Device Use", also called "Per Seat Use" means Device licensing as specified in the Order Form, License File, or License Certificate wherein a Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software. Licensee must purchase a Per Device ("Per Seat") License for each Device licensed for Per Device Use. This type of license is installed locally on the Device.

1.5 "Per Server Use", also called "concurrent use", means Software licensing wherein the Software may be installed on an unlimited number of Devices provided however that the number of Devices utilizing the services of the Software residing on a single Server is limited by the number of Per Server access licenses purchased as defined in the Order Form, License File, or License Certificate.

1.6 "Per Named Device" means Server Software licensed wherein one Named Device is licensed to access or utilize the services of the Server Software on an unlimited number of Servers running the Server Software.

1.7 "Per Named User" means Server Software licensed wherein one Named User using any Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software.

1.8 "Pre-Production Release" means Software which has not completed AVEVA's formal release requirements and includes beta software, Hot Fixes and SUPs.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. If the Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must be maintained by Licensee on file at Licensee's location for a minimum of 30 days before the allocation and identification of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User may activate only one instance of the services of a Server from any Device at any location at any given point in time. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and designated for use for each Device with that Server. Alternatively, if access to the Server Software is licensed for use on a Named User basis, then each Named User can access a single instance of the services of the Server from any Device with each Named User CAL purchased. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Processor Use basis, then for each processor residing on the Server, a separate Per Processor use license must be purchased. A Per Processor license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Processor license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the

Server. If the Software is licensed on a Per Session Count Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of Sessions specified in the License File.

3. License Restrictions.

3.1 Use Restrictions. Licensee may transfer the Software from one designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Device) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device.

4. Toolkit Software. Certain Toolkit Software may include limited portions in source code (human-readable) form for which modifications are not supported by AVEVA.

SCHEDULE D-17

Wonderware Enterprise Integrator (WEI)

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-17 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "CAL" (Client Access License) means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.2 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.3 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.4 "**License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.5 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.6 "Server Software" means those components of, or programs in, the Software that provide services on a Device called a Server on which services may be run, accessed or used by another Device.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the Designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. If the Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must be maintained by Licensee on file at Licensee's location for a minimum of 30 days before the allocation and identification of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User may activate only one instance of the services of a Server from any Device at any location at any given point in time. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and designated for use for each Device with that Server. Alternatively, if access to the Server Software is licensed for use on a Named User basis, then each Named User can access a single instance of the services of the Server from any Device with each Named User CAL purchased. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Processor Use basis, then for each processor residing on the Server, a separate Per Processor use license must be purchased. A Per Processor license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Processor license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the Server. If the Software is licensed on a Per Session Count Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of Sessions specified in the License File.

2.2 License Restrictions.

2.2.1 Use Restrictions. Licensee may transfer the Software from one Designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial Designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Computer) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on

more than one Device. Licensee will not, nor will Licensee permit others to, modify, adapt, translate, reverse engineer, decompile or disassemble the Software or any component thereof (including the Documentation), or create derivative works based on the Software (including the Documentation), except to the extent such foregoing restriction is agreed to in writing by AVEVA or prohibited by applicable law.

2.2.2 Installation Limitations. The media upon which the Software resides may contain multiple copies of some of the components of the Software, each of which is compatible with different microprocessor architectures or different underlying operating systems. Licensee may install the Software for use only with one architecture and one operating system at any given time, consistent with the restrictions in the License File, License Certificate, or Order Form.

SCHEDULE D-18

Wonderware Quality

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-18 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "CAL" (Client Access License) means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.2 "Capacity" means is a specific licensed size criteria as described on the License Certificate and includes, among other measurements, Equipment Counts, I/O Counts, Platform Counts, Session Counts, Tag Counts and Site Counts.

1.3 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.4 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.5 "Equipment" means any physical asset, subcomponent or grouping thereof from which information is captured for use by a Software module(s) for which a functional requirement has been established.

1.6 "Equipment Count" means the number of Equipment.

1.7 "**License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

1.8 "Per Server Use", also called "concurrent use", means Software licensing wherein the Software may be installed on an unlimited number of Devices provided however that the number of Devices utilizing the services of the Software residing on a single Server is limited by the number of Per Server access licenses purchased as defined in the Order Form, License File, or License Certificate.

1.9 "Per Named Device" means Server Software licensed wherein one Named Device is licensed to access or utilize the services of the Server Software on an unlimited number of Servers running the Server Software.

1.10 "Per Named User" means Server Software licensed wherein one Named User using any Device is licensed to access or utilizes the services of the Server Software on an unlimited number of Servers running the Server Software.

1.11 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.12 "Server Software" means those components of, or programs in, the Software that provide services on a Device called a Server on which services may be run, accessed or used by another Device.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the Designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). If the Server Software is licensed on a Per Device Use basis, then a separate CAL must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device CAL must be dedicated to a single Device. If the Server Software is licensed on a Per Named User basis, then the allocation and identification of the individual Named User must be maintained by Licensee on file at Licensee's location for a minimum of 30 days before the allocation and identification of the Named User can be moved or transferred to a different, separate and unique individual. The identified Named User may activate only one instance of the services of a Server from any Device at any location at any given point in time. Multiple simultaneous instance activations of the services of a Server by a Named User requires an equal multiple number of Named User CALs. If the Server Software is licensed on a Per Server Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device CALs that have been purchased and designated for use for each Device with that Server. Alternatively, if access to the Server Software is licensed for use on a Named User basis, then each Named User can access a single instance of the services of the Server from any Device with each

Named User CAL purchased. CALs authorize access or use of only the specific Server Software associated with such CAL. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA. If the Server Software is licensed on a Per Processor Use basis, then for each processor residing on the Server, a separate Per Processor use license must be purchased. A Per Processor license will allow an unlimited number of Devices to access the services of the Server running the Server Software as long as a Per Processor license has been purchased, pursuant to the Order Form, License File, or License Certificate, for each processor running on the Server. If the Software is licensed on a Per Session Count Use basis, then the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of Sessions specified in the License File.

2.2 Equipment Count License Grant. Certain components of the Software are licensed according to the Equipment Count. The maximum amount of Equipment that Licensee may capture information about according to established functional requirements is limited to the number of Equipment specified for the Software licensed hereunder as specified in the License File, Order Form or License Certificate.

2.3 Runtime Report License Grant. If the Software is licensed on a Runtime Report basis, the maximum number of Runtime Reports utilized by Licensee per Server is limited to the Runtime Report count for the Software as specified in the License File, Order Form or License Certificate.

2.4 License Restrictions.

2.4.1 Use Restrictions. Licensee may transfer the Software from one Designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial Designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Computer) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device. Licensee will not, nor will Licensee permit others to, modify, adapt, translate, reverse engineer, decompile or disassemble the Software or any component thereof (including the Documentation), or create derivative works based on the Software (including the Documentation), except to the extent such foregoing restriction is agreed to in writing by AVEVA or prohibited by applicable law.

2.4.2 Multiplexing and Pooling. Use of software or hardware that reduces the number of users directly or indirectly accessing or utilizing Server Software (sometimes called "multiplexing" or "pooling" software or hardware) does not reduce the number of CALs required. The required number of CALs would equal the number of distinct inputs to the multiplexing or pooling software or hardware "front end".

2.4.3 Installation Limitations. The media upon which the Software resides may contain multiple copies of some of the components of the Software, each of which is compatible with different microprocessor architectures or different underlying operating systems. Licensee may install the Software for use only with one architecture and one operating system at any given time, consistent with the restrictions in the License File, License Certificate, or Order Form.

SCHEDULE D-19

Wonderware SmartGlance Software, Excel Connector and Related Services

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-19 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions

1.1 "Services" means the Wonderware SmartGlance services made available by AVEVA for free and for fees. The free and fee based services together are referred to as "Services".

1.2 "Device" means an output device for presentation of information for visual, tactile or audio reception, acquired, stored, or transmitted in various forms.

1.3 "Your Content" means the information you share with AVEVA to transmit the same to a particular Device in a particular format.

2. Introduction. The Wonderware SmartGlance Software and the Services currently support mobile Devices offered by Apple Inc. (iPod, iPhone and iPad), selected Android based mobile Devices and selected Windows Phone 8 mobile Devices. In the future, AVEVA may support additional Devices based on demand. The Wonderware SmartGlance Software is licensed to you to run on your mobile Device. Upon signing up for the Services, you can view your own reports and view charts from your reports in various formats on your mobile Device. You will need Internet access on your mobile Device to be able to use the Services and you are solely responsible for the cost of obtaining and maintaining such Internet access. The Services also provide you with tools to analyze your reports from the Devices and make business decisions while on the road.

3. Services. The Services will include mechanisms and Software supplied by AVEVA to you in order to:
(i) transmit your reports to an AVEVA server located at an AVEVA host center or located in your company in a secured manner;
(ii) temporarily store your reports on an AVEVA server; and,
(iii) transmit reports from an AVEVA server to your mobile Device and to local native software on your mobile Device to view your reports graphically and analyze such reports on the mobile Device.

4. Subscription Service Fees. For cloud hosted Services, the subscription fees will be based on each Device used to view information coming from an AVEVA server. The fee schedule for cloud hosted Services will be based on a separate written agreement and will include support. If you are not using the cloud hosted Services and have purchased the on-premises version of the Wonderware SmartGlance Software instead then there is a one-time fee for the perpetual license in addition to any support fees that may apply.

5. Other Terms and Conditions. In addition to the terms and conditions contained in this EULA, you agree to any applicable terms and conditions in the App Store Terms of Service from Apple, Android and/or Microsoft. You are not permitted to use the Services for any purpose other than as expressly permitted under this EULA. AVEVA reserves the right to conduct audits to ensure that you and/or your use of the Software and Services are in compliance with this EULA and you agree to cooperate and provide access for such audits.

6. Use of Services. You represent and warrant that you will not use the Services, Software and/or Your Content:
(i) in a manner that infringes, violates or misappropriates any of AVEVA's rights or property or the rights or property of any third party;
(ii) to engage in spamming or other impermissible advertising, marketing or other activities including without limitation activities that violate anti-spamming laws and regulations;
(iii) in any manner that constitutes or facilitates the illegal export of any controlled or otherwise restricted items, including without limitation, Software, algorithms or other data that is subject to export laws; or,
(iv) in a way that is otherwise illegal or promotes illegal activities, including without limitation, in a manner that might be libelous or defamatory or otherwise malicious or harmful to any person or entity or discriminatory based on race, sex, religion, nationality, disability, sexual orientation or age.

7. Applications and Your Content. You represent and warrant that:
(i) You are solely responsible for the development, operation and maintenance of Your Content, including without limitation, the accuracy, security, appropriateness and completeness of Your Content;
(ii) You have the necessary rights and licenses, consents, permissions, waivers and releases to use and display Your Content;
(iii) Neither you nor Your Content violates, misappropriates or infringes any AVEVA or third party rights or property or constitutes defamation, invasion of privacy or publicity or is designed for illegal activity or promotes illegal activities harmful to any person or entity or discriminatory in nature;
(iv) Your Content does not contain any harmful or malicious components, malware or spyware; and,
(v) You will conduct your business in a manner that does not damage the goodwill or reputation of AVEVA.

8. Services Warranty Disclaimer. THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE "AND ARE WITHOUT WARRANTY OF ANY KIND. AVEVA FURTHER DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. AVEVA MAKES NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. AVEVA WILL NOT BE RESPONSIBLE FOR ANY

SERVICES INTERRUPTION, INCLUDING WITHOUT LIMITATION, POWER OUTAGES, SYSTEM FAILURES OR OTHER FAILURES INCLUDING THOSE THAT AFFECT RECEIPT, PROCESSING, ACCEPTANCE OR COMPLETION OF ANY PAYMENT SERVICES. YOU ASSUME ALL RISKS AND ALL COSTS ASSOCIATED WITH YOUR USE OF THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY INTERNET ACCESS FEES, BACK-UP OR OTHER EXPENSES, COSTS INCURRED RELATED TO THE USE OF YOUR DEVICE, AND ANY DAMAGE OR LOSS TO ANY EQUIPMENT, SOFTWARE, INFORMATION, DATA OR YOUR CONTENT.

9. Downtime and Service Suspension. You acknowledge that your access to and use of the Services may be suspended for the duration of any unanticipated or unscheduled downtime or unavailability of the Services or any portion thereof for any reason, including as a result of power outages, system failure or other interruptions. AVEVA shall also be entitled to, without any liability to you, suspend access to the Services or any portion thereof from time to time and at any time:

(i) for scheduled downtime for maintenance or to make modifications to the Services or any portion thereof;
(ii) in the event AVEVA determines that any Services are prohibited by law or it is prudent to do so for legal or regulatory reasons;
(iii) in the event of denial of Services attack or other attack on the Services or other event that AVEVA determines, in its sole discretion, may create a risk to the applicable Services, you, AVEVA or to any third parties; or,
(iv) in the event AVEVA elects to stop providing the Services or any portion thereof.

10. Services / No Resale. You agree that you will not rent, lease, sell, trade, distribute or copy the Services or any portion thereof without the prior written consent of AVEVA.

11. Security. AVEVA uses appropriate physical, electronic and managerial procedures to protect the security of Your Content. While AVEVA strives to protect Your Content, AVEVA cannot guarantee the security of Your Content or the information you transmit. AVEVA recommends that you take every precaution in protecting Your Content when you are on the Internet. For example, change your passwords often, use a combination of letters and numbers when creating passwords, make sure you use a secure browser, and do not share your password with others.

12. Services and the AVEVA Privacy Statement. By using the Services, you agree to the terms and conditions contained in the AVEVA Privacy Statement located at https://www.aveva.com/en/Privacy_Policy/ and any modifications or updates thereto.

13. Indemnification. You agree to defend, indemnify and hold AVEVA harmless for any loss, damages or costs, including reasonable attorneys' fees, resulting from any third party claim, action, or demand arising from your use of the Software or Services in a manner not authorized by this EULA and/or in violation of applicable restrictions and/or laws; or any claims related to Your Content or your products or services; or your violation of any applicable AVEVA policies; or you or your employee's negligence or willful misconduct.

SCHEDULE D-20

Wonderware InTouch Machine Edition

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-20 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

2. Unless terminated in accordance with the EULA, your license for Wonderware InTouch Machine Edition Software is a perpetual license. Such license allows you to install and use Wonderware InTouch Machine Edition Software on a single Device.

SCHEDULE D-21

Wonderware Recipe Manager Plus

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-21 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "Application Name Space" means a system of unique application objects (representing physical, logical, or graphical entities) that interact or are used with the Software.

1.2 "CAL" (Client Access License) means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.3 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.4 "Per Server Use", also called "concurrent use", means that the number of Devices utilizing the services of the Software residing on a single Server is limited by the number of CALs purchased as defined in the Order Form, License File, or License Certificate.

1.5 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.6 "Server Software" means those components of, or programs in, the Software that provide services on a Device called a Server on which services may be run, accessed or used by another Device.

2. Software License.

2.1 Device and Server Software Grant. If you have licensed the Software on a Per Server/Concurrent Use basis, the Software may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License File. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee must purchase the required access license for each database or data source accessed. Failure of a Licensee to purchase the required database or data source license is a breach of this EULA.

3. License Restrictions.

3.1 Use Restrictions. Licensee may transfer the Software from one designated Device or Application Name Space to another for application development or for operation of the Software provided that: (i) the Software (including the License Files) is completely removed from the initial designated Device or Application Name Space prior to installing the Software on the second computer or Application Name Space, and (ii) the end-user identification information (including the identification and location of the Designated Device) contained within the License File remains accurate. The Software may only be used on one Device or Application Name Space at a time, and the component parts of the Software may not be separated for use on more than one Device.

3.2 Multiplexing and Pooling. Use of software or hardware that reduces the number of users directly or indirectly accessing or utilizing Server Software (sometimes called "multiplexing" or "pooling" software or hardware) does not reduce the number of CALs required. The required number of CALs would equal the number of distinct inputs to the multiplexing or pooling software or hardware "front end".

SCHEDULE D-22

Wonderware InduSoft Web Studio

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE D-22 ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA.

1. "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

2. Unless terminated in accordance with the EULA, your license for Wonderware InduSoft Web Studio is a perpetual license. Such license allows you to install and use Wonderware InduSoft Web Studio Software on a single Device.

3. The following provisions apply only if You obtained the Software from the Wind River Marketplace:

3.1 "Wind River Marketplace" means the Wind River Marketplace web application operated by or for Wind River Systems, Inc. ("Wind River"), where Wind River may post and distribute partner products to Wind River Marketplace users.

3.2 Grant of Limited Demonstration License.

Subject to Licensee's compliance with its obligations under this EULA, AVEVA grants to Licensee a royalty free, personal, non-transferable, non-exclusive, non-sub licensable, worldwide, limited demonstration license to perform, display, and use the Software and any content contained in, accessed by, or transmitted through the Software for Licensee's internal business use, solely to evaluate the features, functionality and performance of the Software and solely with the Wind River product VxWorks 7.

3.3 Disclaimer. The following disclaimers on behalf of AVEVA and Wind River are in addition to and not in lieu of the disclaimers set forth in the EULA.

THE SOFTWARE IS PROVIDED AS-IS WITHOUT WARRANTIES OF ANY KIND AND AVEVA, FOR ITSELF AND ON BEHALF OF WIND RIVER, HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY AVEVA, ITS DEALERS, DISTRIBUTORS, OR AGENTS OR EMPLOYEES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES GIVEN IN THIS EULA, AND LICENSEE MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. NEITHER AVEVA NOR WIND RIVER WARRANTS THAT THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS, THAT THE SOFTWARE WILL OPERATE IN COMBINATIONS OTHER THAN AS SPECIFIED IN THE DOCUMENTATION, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE SECURITY THREATS, INTERNET THREATS, OR OTHER THREATS OR INTERRUPTIONS.

3.4 Limitation of Liability. The following limitation of liability on behalf of AVEVA and Wind River is in addition to and not in lieu of the limitation of liability set forth in the EULA.

NEITHER AVEVA NOR WIND RIVER SHALL HAVE ANY LIABILITY FOR ANY DIRECT, SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCURRED BY LICENSEE OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF AVEVA OR WIND RIVER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH IN THIS EULA IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

SCHEDULE E

Citect SCADA

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE E ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.

1.1 "Client License" means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.

1.2 "Capacity" means a specific licensed size criteria as described in the Order Form and includes, among other measurements, Equipment counts, I/O Counts, Platform Counts, Session Counts, Point Counts and Site Counts.

1.3 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.4 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.5 "Failover" means two or more Devices connected wherein one Device is actively utilizing the services of the Software at any instant and the second Device in the application is passive i.e. not utilizing the services of the Software. Further, once the active Device stops utilizing the services of the Software (for a reason of a failure or the Device is taken off line) the passive Device begins to utilize the services of the Software, becoming active.

1.6 "License Key" means the software key code or a hardware key that is provided with the software product.

1.7 "Load Balance" (or Load Balancing) means Software services are actively distributed and utilized across multiple connected Devices at any instant.

1.8 "Per Server Use", also called "concurrent use", means Software licensing wherein the Software may be installed on an unlimited number of Devices provided however that the number of Devices utilizing the services of the Software residing on a single Server is limited by the number of Per Server access licenses purchased as defined in the Order Form, License File, or License Certificate.

1.9 "Pre-Production Release" means Software which has not completed AVEVA's formal release requirements and includes beta software, Hot Fixes and SUPs.

1.10 "Repository" means a logical or physical database or means of grouping and/or storing workflows.

1.11 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.12 "Point" means a representation of an internal or external data value or calculation result.

1.13 "Point Count" means the number of internal or external data points or calculations resulting from the Points that are being monitored, processed, or utilized by the Software.

2. Software License.

2.1 License. For the purposes of the license of Citect SCADA Software all references to AVEVA will refer to Schneider Electric Software Australia Pty Limited ACN 113 112 744

2.2 Device and Server Software Grant. Server Software is licensed on a Per Server/Concurrent Use basis, and may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent sessions specified in the License Key. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). One Client License is provided with a single Server license, which must be dedicated to a single Device. Additional Client Licenses must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software) and each Per Device Client license must be dedicated to a single Device. Server Software is licensed on a Per Server Use basis. The maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is equal to the number of Device Client Licenses that have been purchased and designated for use for each Device with that Server. Client Licenses authorize access or use of only the specific Server Software associated with such Client license. If any Software is licensed on a Per Server Use basis, and accesses any database or data source, the Licensee may be required to purchase the required access license for each database or data

source accessed. Failure of a Licensee to purchase a required database or data source license is a breach of this EULA.

2.3 Authorized Applications. For the purpose of this EULA, 'Authorized Applications' shall mean those applications that You create, develop or generate by using the Software (including its programming tool if any) or by loading in such applications, with or without modification, a library of the Software, provided that You have validly licensed said Software from AVEVA or its authorized resellers. Authorized Applications include, without this being limitative, applicable runtime engines for the Software and applicable driver interface that You may provide to Your own customers as part of or together with Your Authorized Applications.

Notwithstanding the foregoing, any application created with a Pre-Production Release or for demonstration, test or evaluation purposes, is not an Authorized Application.

You may distribute or otherwise make available Authorized Applications provided You comply with each of the requirements set forth below:

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(iii) You do not use AVEVA's name, logo or trademarks to market or identify Your Authorized Applications unless You are party to a separate agreement with AVEVA giving You such rights or AVEVA has given You its express prior written consent to do so;

(iv) You indemnify, hold harmless, and defend AVEVA from and against any claims (including based on warranty) or lawsuits, including attorneys' fees, that arise or result from the use or distribution of Your Authorized Applications, provided however that Your contractual obligation of indemnification shall not extend to the percentage of the claimant's damages or injuries or the settlement amount attributable to AVEVA's fault or to strict liability imposed upon AVEVA as a matter of law in any country (on either federal or state level, when applicable); the foregoing obligation of indemnification shall survive the expiry or termination of this EULA; and

(v) You do not permit further redistribution of the Software (including Your modifications thereto) by third parties except as part of Your Authorized Applications; and

(vi) You conclude Your own license agreement to grant the right to use Your Authorised Applications to any third party; and

(vii) You otherwise comply with the terms of this EULA.

2.4 Embedding the Software. You may embed or otherwise integrate the Software within Your own product or a third-party product, provided that:

(i) You have validly licensed the Software from AVEVA or its authorized resellers, and

(ii) You perform such embedding or integration in a manner that complies with the Software documentation to the extent said documentation contains any instructions or recommendations in relation therewith, and

(iii) You comply - with respect to Your own products and said third party products - with each of the same requirements as set forth hereinabove concerning Authorized Applications; said foregoing requirements shall apply mutatis mutandis to any of Your own products or third party products within which You embed or otherwise integrate the Software, and any reference made to the term 'Authorized Application' in the foregoing provision shall be deemed for the purpose of this present section to be a reference to Your own products or third party products embedding or otherwise integrating the Software.

Where Software is embedded or otherwise integrated by You within Your own product or a third-party product, You then cease all use of the Software, whether direct, indirect, concurrent or otherwise

3. License Restrictions.

3.1 Use Restrictions. There are technological measures in the Software that are designed to prevent unlicensed or illegal use of the Software. You agree that AVEVA may use those measures and You agree to follow any requirements regarding such technological measures.

4. Toolkit/Toolbox Software. Certain Toolkit Software may include limited portions in source code (human-readable) form for which modifications are not supported by AVEVA.

5. Governing Law and Dispute Resolution. For purposes of the Citect SCADA Software, this EULA shall be exclusively

governed by the laws of New South Wales, Australia to the exclusion of said country's conflict of law rules.

Any dispute between You and AVEVA arising out of or in connection with this EULA and/or the Software Product or its documentation, whether based on contract, warranty, tort (including negligence), strict liability, statute or otherwise, which cannot be amicably settled, shall in all cases be finally settled according to the law governing this EULA as defined above, by the courts of the State of New South Wales (Australia), to the exclusion of any other jurisdiction whatsoever, including in case of plurality of defendants, injunction-like or emergency proceedings and appeal in warranty.

SCHEDULE F

Ampla

ALL LICENSE RESTRICTIONS AND REQUIREMENTS CONTAINED IN SCHEDULE F ARE IN ADDITION TO AND NOT IN LIEU OF THE LICENSE RESTRICTIONS AND REQUIREMENTS SET FORTH IN THE EULA. UNLESS OTHERWISE DEFINED HEREIN, ALL CAPITALIZED TERMS SHALL HAVE THE MEANING SET FORTH IN THE EULA.

1. Definitions.
1.1 "CAL" (Client Access License) means a usage license required for each Client that runs, accesses or utilizes, directly or indirectly, Software running on a Server.
1.2 "Capacity" means a specific licensed size criteria as described in the Order Form and includes, among other measurements, Reporting Point counts, Session Counts, and Site Counts.
1.3 "Client" means a Device running, accessing or utilizing, directly or indirectly, Server Software.

1.4 "Device" means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular, or computing equipment that runs, accesses, or utilizes the services of the Software.

1.5 "Reporting Point" means an item that manages how and when data are captured from your data sources. Client applications retrieve data from the reporting point based upon module selection and filter conditions.
1.6 "Data Sources" means configurable data connectors used to connect to external data stores that are being monitored, processed, or utilized by the Software.

1.7 "License Key" means the software key code or a hardware key that is provided with the software product.

1.8 "Per Server Use", also called "concurrent use", means Software licensing wherein the Software may be installed on an unlimited number of Devices provided however that the number of Devices utilizing the services of the Software residing on a single Server is limited by the number of Per Server access licenses purchased as defined in the Order Form, License File, or License Certificate.
1.9 "Pre-Production Release" means Software which has not completed AVEVA's formal release requirements and includes beta software, Hot Fixes and SUPs.

1.10 "Repository" means a logical or physical database or means of grouping and/or storing historical data.

1.11 "Server" means any Device that hosts Server Software and can be run, accessed, or used by another Device.

1.12 "Server Software" means those components of, or programs in, the Software that provide services on a Device called a Server on which services may be run, accessed or used by another Device.

2. Software License.

2.1 License. For the purposes of the license of Ampla Software all references to AVEVA will refer to Schneider Electric Software Australia Pty Limited ACN 113 112 744

2.2 Client and Server Software Grant. Server Software is licensed on a Per Server/Concurrent Use basis, and may be installed on a single Server that will be the designated Device hereunder, and the maximum number of Devices that may access or utilize the services of the Server Software at a given point in time is limited by the number of concurrent Client sessions specified in the License Key. The services of the Server Software are considered to be accessed or utilized when there is a direct or indirect connection between a Device and the Server Software running on the Server (regardless whether the Server Software is accessed or utilized using the Device Software, third party software or an application developed by the Licensee). Client Licenses must be purchased for each specific Device that accesses or utilizes Server Software (which may access or utilize the services of the Server Software on any number of Servers running the Server Software).

2.2 Authorized Applications. For the purpose of this EULA, 'Authorized Applications' shall mean those applications that You create, develop or generate by using the Software (including its programming tool if any) or by loading in such applications, with or without modification, a library of the Software, provided that You have validly licensed said Software from AVEVA or its authorized resellers. Authorized Applications include, without this being limitative, applicable runtime engines for the Software and applicable driver interface that You may provide to Your own customers as part of or together with Your Authorized Applications.

Notwithstanding the foregoing, any application created with a Pre-Production Release or for demonstration, test or evaluation purposes, is not an Authorized Application.

You may distribute or otherwise make available Authorized Applications provided You comply with each of the requirements set forth below:

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(ii) You do not remove or obscure any notice of copyright, trademark, patent or other industrial or intellectual property

rights that appear on the Software Product as delivered to You or as may appear concerning the Software in the Authorized Application's About Box and in any applicable written documentation distributed with each copy of Your Authorized Applications; and

(iii) You do not use AVEVA's name, logo or trademarks to market or identify Your Authorized Applications unless You are party to a separate agreement with AVEVA giving You such rights or AVEVA has given You its express prior written consent to do so;

(iv) You indemnify, hold harmless, and defend AVEVA from and against any claims (including based on warranty) or lawsuits, including attorneys' fees, that arise or result from the use or distribution of Your Authorized Applications, provided however that Your contractual obligation of indemnification shall not extend to the percentage of the claimant's damages or injuries or the settlement amount attributable to AVEVA's fault or to strict liability imposed upon AVEVA as a matter of law in any country (on either federal or state level, when applicable); the foregoing obligation of indemnification shall survive the expiry or termination of this EULA; and

(v) You do not permit further redistribution of the Software (including Your modifications thereto) by third parties except as part of Your Authorized Applications; and

(vi) You conclude Your own license agreement to grant the right to use Your Authorised Applications to any third party; and

(vii) You otherwise comply with the terms of this EULA.

3. License Restrictions.

3.1 Use Restrictions. There are technological measures in the Software that are designed to prevent unlicensed or illegal use of the Software. You agree that AVEVA may use those measures and You agree to follow any requirements regarding such technological measures.

4. Governing Law and Dispute Resolution. For purposes of the Ampla Software, this EULA shall be exclusively governed by the laws of New South Wales, Australia to the exclusion of said country's conflict of law rules.

Any dispute between You and AVEVA arising out of or in connection with this EULA and/or the Software Product or its documentation, whether based on contract, warranty, tort (including negligence), strict liability, statute or otherwise, which cannot be amicably settled, shall in all cases be finally settled according to the law governing this EULA as defined above, by the courts of the State of New South Wales (Australia), to the exclusion of any other jurisdiction whatsoever, including in case of plurality of defendants, injunction-like or emergency proceedings and appeal in warranty.

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 20-32

December 2, 2019

Re: Discussion and Possible Action on Board Approval for Governing Law in Licensing Agreement with VMWARE End User License Agreement between the Board of Water Supply, County of Kaua'i, and VMWARE

RECOMMENDATION:
The Department recommends that the Board approve Option 1, which will allow the Department to move forward with the purchase, download, and installation of VMWARE software.

FUNDING: N/A

BACKGROUND:
The Department utilizes VMWARE Software to support virtual servers for our SCADA Network, which allows the Department to monitor various elements of our water systems remotely.

The Department's Information Technology (I.T.) staff has been working closely with our Deputy County Attorney to review and approve of the VMware End User License Agreement from VMWare. Before we can move forward with the purchase, download, and installation of the software Board approval is required as the agreement contains language for governing law provisions.

The section within the agreement that reference the Governing Law is shown below and the full agreement is attached to this manager's report:

12.7. ***Governing Law. This EULA is governed by the laws of the State of California, United States of America (excluding its conflict of law rules), and the federal laws of the United States. To the extent permitted by law, the state and federal courts located in Santa Clara County, California will be the exclusive jurisdiction for disputes arising out of or in connection with this EULA. The U.N. Convention on Contracts for the International Sale of Goods does not apply****.*

(DOW NOTE: Governing Law is the State of California)

OPTIONS:

Option 1: **Approve Manager's Report.**

Pro: The Department can move forward with the purchase, download, and installation of VMWare for use on Departments SCADA Network. Utilizing a virtual server allows the Department to utilize 2-3 servers instead of 5-6 servers.

Cons: The Board would agree to unspecified future obligations in the event a breach or similar contract issue occurs and Governing Law outside of the State of Hawai'i.

Option 2: **Do Not Approve Manager's Report.**
Pro: There is no risk associated with unspecified future obligations.

Cons: The functionality of the SCADA Network will be impacted if VMWARE or a similar software is not utilized. The Department would continue to use staff time to search for another similar software, which would most likely contain similar indemnification, attorney's fees, and governing law and arbitration provisions.

SN/ein

Attachments: VMWARE END USER LICENSE AGREEMENT

Mgrrp/December 2019/20-32/Discussion and Possible Action on Board Approval for Governing Law in Licensing Agreement with VMWARE End User License Agreement between the Board of Water Supply, County of Kaua'i, and VMWARE (SBM 12-2-19):ein

VMWARE END USER LICENSE AGREEMENT

PLEASE NOTE THAT THE TERMS OF THIS END USER LICENSE AGREEMENT SHALL GOVERN YOUR USE OF THE SOFTWARE, REGARDLESS OF ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE.

IMPORTANT-READ CAREFULLY: BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE, YOU (THE INDIVIDUAL OR LEGAL ENTITY) AGREE TO BE BOUND BY THE TERMS OF THIS END USER LICENSE AGREEMENT ("EULA"). IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MUST NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE, AND YOU MUST DELETE OR RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT WITHIN THIRTY (30) DAYS AND REQUEST A REFUND OF THE LICENSE FEE, IF ANY, THAT YOU PAID FOR THE SOFTWARE.

EVALUATION LICENSE. If You are licensing the Software for evaluation purposes, Your use of the Software is only permitted in a non-production environment and for the period limited by the License Key. Notwithstanding any other provision in this EULA, an Evaluation License of the Software is provided "AS-IS" without indemnification, support or warranty of any kind, expressed or implied.

1. DEFINITIONS.

1.1. "**Affiliate**" means, with respect to a party at a given time, an entity that then is directly or indirectly controlled by, is under common control with, or controls that party, and here "control" means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of that entity.

1.2. "**Documentation**" means that documentation that is generally provided to You by VMware with the Software, as revised by VMware from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.

1.3. **"Guest Operating Systems"** means instances of third-party operating systems licensed by You, installed in a Virtual Machine and run using the Software.

1.4. "**Intellectual Property Rights**" means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

1.5. "**License**" means a license granted under Section 2.1 (General License Grant).

1.6. "**License Key**" means a serial number that enables You to activate and use the Software.

1.7. "**License Term**" means the duration of a License as specified in the Order.

1.8. "**License Type**" means the type of License applicable to the Software, as more fully described in the Order.

1.9. **"Open Source Software" or "OSS"** means software components embedded in the Software and provided under separate license terms, which can be found either in the open_source_licenses.txt file (or similar file) provided within the Software or at www.vmware.com/download/open_source.html.

1.10. "**Order**" means a purchase order, enterprise license agreement, or other ordering document issued by You to VMware or a VMware authorized reseller that references and incorporates this EULA and is accepted by VMware as set forth in Section 4 (Order).

1.11. **"Product Guide"** means the current version of the VMware Product Guide at the time of Your Order, copies of which are found at www.vmware.com/download/eula.

1.12. **"Support Services Terms"** means VMware's then-current support policies, copies of which are posted at www.vmware.com/support/policies.

1.13. **"Software"** means the VMware Tools and the VMware computer programs listed on VMware's commercial price list to which You acquire a license under an Order, together with any software code relating to the foregoing that is provided to You pursuant to a support and subscription service contract and that is not subject to a separate license agreement.

1.14. "**Territory**" means the country or countries in which You have been invoiced; provided, however, that if You have been invoiced within any of the European Economic Area member states, You may deploy the corresponding Software throughout the European Economic Area.

1.15. "**Third Party Agent**" means a third party delivering information technology services to You pursuant to a written contract with You.

1.16. **"Virtual Machine"** means a software container that can run its own operating system and execute applications like a physical machine.

1.17. "**VMware**" means VMware, Inc., a Delaware corporation, if You are purchasing Licenses or services for use in the United States and VMware International Unlimited Company , a company organized and existing under the laws of Ireland, for all other purchases.

1.18. "**VMware Tools**" means the suite of utilities and drivers, Licensed by VMware under the "VMware Tools" name, that can be installed in a Guest Operating System to enhance the performance and functionality of a Guest Operating System when running in a Virtual Machine.

2. LICENSE GRANT.

2.1. **General License Grant.** VMware grants to You a non-exclusive, non-transferable (except as set forth in Section 12.1 (Transfers; Assignment)) license to use the Software and the Documentation during the period of the license and within the Territory, solely for Your internal business operations, and subject to the provisions of the Product Guide. Unless otherwise indicated in the Order, licenses granted to You will be perpetual, will be for use of object code only, and will commence on either delivery of the physical media or the date You are notified of availability for electronic download.

2.2. **Third Party Agents**. Under the License granted to You in Section 2.1 (General License Grant) above, You may permit Your Third Party Agents to access, use and/or operate the Software on Your behalf for the sole purpose of delivering services to You, provided that You will be fully responsible for Your Third Party Agents' compliance with terms and conditions of this EULA and any breach of this EULA by a Third Party Agent shall be deemed to be a breach by You.

2.3. **Copying Permitted.** You may copy the Software and Documentation as necessary to install and run the quantity of copies licensed, but otherwise for archival purposes only.

2.4. **Benchmarking.** You may use the Software to conduct internal performance testing and benchmarking studies. You may only publish or otherwise distribute the results of such studies to third parties as follows: (a) if with respect to VMware's Workstation or Fusion products, only if You provide a copy of Your study to benchmark@vmware.com prior to distribution; (b) if with respect to any other Software, only if VMware has reviewed and approved of the methodology, assumptions and other parameters of the study (please contact VMware at benchmark@vmware.com to request such review and approval) prior to such publication and distribution.

2.5. **VMware Tools.** You may distribute the VMware Tools to third parties solely when installed in a Guest Operating System within a Virtual Machine. You are liable for compliance by those third parties with the terms and conditions of this EULA.

2.6. **Open Source Software**. Notwithstanding anything herein to the contrary, Open Source Software is licensed to You under such OSS's own applicable license terms, which can be found in the open_source_licenses.txt file, the Documentation or as applicable, the corresponding source files for the Software available at www.vmware.com/download/open_source.html. These OSS license terms are consistent with the license granted in Section 2 (License Grant), and may contain additional rights benefiting You. The OSS license terms shall take precedence over this EULA to the extent that this EULA imposes greater restrictions on You than the applicable OSS license terms. To the extent the license for any Open Source Software requires VMware to make available to You the corresponding source code and/or modifications (the "**Source Files**"), You may obtain a copy of the applicable Source Files from VMware's website at www.vmware.com/download/open_source.html or by sending a written request, with Your name and address to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, CA 94304, United States of America. All requests should clearly specify: Open Source Files Request, Attention: General Counsel. This offer to obtain a copy of the Source Files is valid for three years from the date You acquired this Software.

3. RESTRICTIONS; OWNERSHIP.

3.1. **License Restrictions.** Without VMware's prior written consent, You must not, and must not allow any third party to: (a) use Software in an application services provider, service bureau, or similar capacity for third parties, except that You may use the Software to deliver hosted services to Your Affiliates; (b) disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of VMware's Software done by or on behalf of You, except as specified in Section 2.4 (Benchmarking); (c) make available Software in any form to anyone other than Your employees or contractors reasonably acceptable to VMware and require access to use Software on behalf of You in a matter permitted by this EULA, except as specified in Section 2.2 (Third Party Agents); (d) transfer or sublicense Software or Documentation to an Affiliate or any third party, except as expressly permitted in Section 12.1 (Transfers; Assignment); (e) use Software in conflict with the terms and restrictions of the Software's licensing model and other requirements specified in Product Guide and/or VMware quote; (f) except to the extent permitted by applicable mandatory law, modify, translate, enhance, or create derivative works from the Software, or reverse engineer, decompile, or otherwise attempt to derive source code from the Software, except as specified in Section 3.2 (Decompilation); (g) remove any copyright or other proprietary notices on or in any copies of Software; or (h) violate or circumvent any technological restrictions within the Software or specified in this EULA, such as via software or services.

3.2. **Decompilation**. Notwithstanding the foregoing, decompiling the Software is permitted to the extent the laws of the Territory give You the express right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, You must first request such information from VMware, provide all reasonably requested information to allow VMware to assess Your claim, and VMware may, in its discretion, either provide such interoperability information to You, impose reasonable conditions, including a reasonable fee, on such use of the Software, or offer to provide alternatives to ensure that VMware's proprietary rights in the Software are protected and to reduce any adverse impact on VMware's proprietary rights.

3.3. **Ownership.** The Software and Documentation, all copies and portions thereof, and all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of VMware and its licensors. Your rights to use the Software and Documentation shall be limited to those expressly granted in this EULA and any applicable Order. No other rights with respect to the Software or any related Intellectual Property Rights are implied. You are not authorized to use (and shall not permit any third party to use) the Software, Documentation or any portion thereof except as expressly authorized by this

EULA or the applicable Order. VMware reserves all rights not expressly granted to You. VMware does not transfer any ownership rights in any Software.

3.4. **Guest Operating Systems.** Certain Software allows Guest Operating Systems and application programs to run on a computer system. You acknowledge that You are responsible for obtaining and complying with any licenses necessary to operate any such third-party software.

4. **ORDER.** Your Order is subject to this EULA. No Orders are binding on VMware until accepted by VMware. Orders for Software are deemed to be accepted upon VMware's delivery of the Software included in such Order. Orders issued to VMware do not have to be signed to be valid and enforceable.

5. **RECORDS AND AUDIT.** During the License Term for Software and for two (2) years after its expiration or termination, You will maintain accurate records of Your use of the Software sufficient to show compliance with the terms of this EULA. During this period, VMware will have the right to audit Your use of the Software to confirm compliance with the terms of this EULA. That audit is subject to reasonable notice by VMware and will not unreasonably interfere with Your business activities. VMware may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. You will reasonably cooperate with VMware and any third party auditor and will, without prejudice to other rights of VMware, address any non-compliance identified by the audit by promptly paying additional fees. You will promptly reimburse VMware for all reasonable costs of the audit if the audit reveals either underpayment of more than five (5%) percent of the Software fees payable by You for the period audited, or that You have materially failed to maintain accurate records of Software use.

6. **SUPPORT AND SUBSCRIPTION SERVICES.** Except as expressly specified in the Product Guide, VMware does not provide any support or subscription services for the Software under this EULA. You have no rights to any updates, upgrades or extensions or enhancements to the Software developed by VMware unless you separately purchase VMware support or subscription services. These support or subscription services are subject to the Support Services Terms.

7. **WARRANTIES.**

7.1. **Software Warranty, Duration and Remedy.** VMware warrants to You that the Software will, for a period of ninety (90) days following notice of availability for electronic download or delivery ("**Warranty Period**"), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than VMware or its authorized representative. VMware will, at its own expense and as its sole obligation and Your exclusive remedy for any breach of this warranty, either replace that Software or correct any reproducible error in that Software reported to VMware by You in writing during the Warranty Period. If VMware determines that it is unable to correct the error or replace the Software, VMware will refund to You the amount paid by You for that Software, in which case the License for that Software will terminate.

7.2. **Software Disclaimer of Warranty.** OTHER THAN THE WARRANTY ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VMWARE AND ITS SUPPLIERS MAKE NO OTHER EXPRESS WARRANTIES UNDER THIS EULA, AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. VMWARE AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET YOUR REQUIREMENTS.

8. **INTELLECTUAL PROPERTY INDEMNIFICATION**.

8.1. **Defense and Indemnification.** Subject to the remainder of this Section 8 (Intellectual Property Indemnification), VMware shall defend You against any third party claim that the Software infringes any patent, trademark or copyright of such third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of Your actions) under the laws of: (a) the United States and Canada; (b) the European Economic Area; (c) Australia; (d) New Zealand; (e) Japan; or (f) the People's Republic of China, to the extent that such countries are part of the Territory for the License ("Infringement Claim") and indemnify You from the resulting costs and damages finally awarded against You to such third party by a court of competent jurisdiction or agreed to in settlement. The foregoing obligations are applicable only if You: (i) promptly notify VMware in writing of the Infringement Claim; (ii) allow VMware sole control over the defense for the claim, any settlement negotiations and any related action challenging the validity of the allegedly infringed patent, trademark, or copyright; and (iii) reasonably cooperate in response to VMware requests for assistance. You may not settle or compromise any Infringement Claim without the prior written consent of VMware.

8.2. **Remedies.** If the alleged infringing Software become, or in VMware's opinion be likely to become, the subject of an Infringement Claim, VMware will, at VMware's option and expense, do one of the following: (a) procure the rights necessary for You to make continued use of the affected Software; (b) replace or modify the affected Software to make it non-infringing; or (c) terminate the License to the affected Software and discontinue the related support services, and, upon Your certified deletion of the affected Software, refund: (i) the fees paid by You for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date such Software was delivered; and (ii) any pre-paid service fee attributable to related support services to be delivered after the date such service is stopped. Nothing in this Section 8.2 (Remedies) shall limit VMware's obligation under Section 8.1 (Defense and Indemnification) to defend and indemnify You, provided that You replace the allegedly infringing Software upon VMware's making alternate Software available to You and/or You discontinue using the allegedly infringing Software upon receiving VMware's notice terminating the affected License.

8.3. **Exclusions.** Notwithstanding the foregoing, VMware will have no obligation under this Section 8 (Intellectual Property Indemnification) or otherwise with respect to any claim based on: (a) a combination of Software with non-VMware products (other than non-VMware products that are listed on the Order and used in an unmodified form); (b) use for a purpose or in a manner for which the Software was not designed;

(c) use of any older version of the Software when use of a newer VMware version would have avoided the infringement; (d) any modification to the Software made without VMware's express written approval; (e) any claim that relates to open source software or freeware technology or any derivatives or other adaptations thereof that is not embedded by VMware into Software listed on VMware's commercial price list; or (f) any Software provided on a no charge, beta or evaluation basis. THIS SECTION 8 (INTELLECTUAL PROPERTY INDEMNIFICATION) STATES YOUR SOLE AND EXCLUSIVE REMEDY AND VMWARE'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS.

9. LIMITATION OF LIABILITY.

9.1. Limitation of Liability. TO THE MAXIMUM EXTENT MANDATED BY LAW, IN NO EVENT WILL VMWARE AND ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. VMWARE'S AND ITS LICENSORS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE GREATER OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM OR $5000. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER VMWARE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

9.2. Further Limitations. VMware's licensors shall have no liability of any kind under this EULA and VMware's liability with respect to any third party software embedded in the Software shall be subject to Section 9.1 (Limitation of Liability). You may not bring a claim under this EULA more than eighteen (18) months after the cause of action arises.

10. TERMINATION.

10.1. EULA Term. The term of this EULA begins on the notice of availability for electronic download or delivery of the Software and continues until this EULA is terminated in accordance with this Section 10.

10.2. Termination for Breach. VMware may terminate this EULA effective immediately upon written notice to You if: (a) You fail to pay any portion of the fees under an applicable Order within ten (10) days after receiving written notice from VMware that payment is past due; or (b) You breach any other provision of this EULA and fail to cure within thirty (30) days after receipt of VMware's written notice thereof.

10.3. Termination for Insolvency. VMware may terminate this EULA effective immediately upon written notice to You if You: (a) terminate or suspend your business; (b) become insolvent, admit in writing Your inability to pay Your debts as they mature, make an assignment for the benefit of creditors; or become subject to control of a trustee, receiver or similar authority; or (c) become subject to any bankruptcy or insolvency proceeding.

10.4. Effect of Termination. Upon VMware's termination of this EULA: (a) all Licensed rights to all Software granted to You under this EULA will immediately cease; and (b) You must cease all use of all Software, and return or certify destruction of all Software and License Keys (including copies) to VMware, and return, or if requested by VMware, destroy, any related VMware Confidential Information in Your possession or control and certify in writing to VMware that You have fully complied with these requirements. Any provision will survive any termination or expiration if by its nature and context it is intended to survive, including Sections 1 (Definitions), 2.6 (Open Source Software), 3 (Restrictions; Ownership), 5 (Records and Audit), 7.2 (Software Disclaimer of Warranty), 9 (Limitation of Liability), 10 (Termination), 11 (Confidential Information) and 12 (General).

11. CONFIDENTIAL INFORMATION.

11.1. Definition. "Confidential Information" means information or materials provided by one party (**"Discloser"**) to the other party ("Recipient") which are in tangible form and labelled "confidential" or the like, or, information which a reasonable person knew or should have known to be confidential. The following information shall be considered Confidential Information whether or not marked or identified as such: (a) License Keys; (b) information regarding VMware's pricing, product roadmaps or strategic marketing plans; and (c) non-public materials relating to the Software.

11.2. Protection. Recipient may use Confidential Information of Discloser; (a) to exercise its rights and perform its obligations under this EULA; or (b) in connection with the parties' ongoing business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by this EULA, and will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this EULA and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care.

11.3. Exceptions. Recipient's obligations under Section 11.2 (Protection) with respect to any Confidential Information will terminate if Recipient can show by written records that such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Information. In addition, Recipient will be allowed to disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such

required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

11.4. Data Privacy. You agree that VMware may process technical and related information about Your use of the Software which may include internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services and may transfer such information to other companies in the VMware worldwide group of companies from time to time. To the extent that this information constitutes personal data, VMware shall be the controller of such personal data. To the extent that it acts as a controller, each party shall comply at all times with its obligations under applicable data protection legislation.

12. GENERAL.

12.1. Transfers; Assignment. Except to the extent transfer may not legally be restricted or as permitted by VMware's transfer and assignment policies, in all cases following the process set forth at www.vmware.com/support/policies/licensingpolicies.html, You will not assign this EULA, any Order, or any right or obligation herein or delegate any performance without VMware's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by You will be void. VMware may use its Affiliates or other sufficiently qualified subcontractors to provide services to You, provided that VMware remains responsible to You for the performance of the services.

12.2. Notices. Any notice delivered by VMware to You under this EULA will be delivered via mail, email or fax.

12.3. Waiver. Failure to enforce a provision of this EULA will not constitute a waiver.

12.4. Severability. If any part of this EULA is held unenforceable, the validity of all remaining parts will not be affected.

12.5. Compliance with Laws; Export Control; Government Regulations. Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this EULA.

12.6. Construction. The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA**.** As used in this EULA, the word 'including' means "including but not limited to".

12.7. Governing Law. This EULA is governed by the laws of the State of California, United States of America (excluding its conflict of law rules), and the federal laws of the United States. To the extent permitted by law, the state and federal courts located in Santa Clara County, California will be the exclusive jurisdiction for disputes arising out of or in connection with this EULA. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

12.8. Third Party Rights. Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.

12.9. Order of Precedence. In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following order of precedence shall apply unless otherwise set forth in an enterprise license agreement: (a) the Product Guide, (b) this EULA and (c) the Order. With respect to any inconsistency between this EULA and an Order, the terms of this EULA shall supersede and control over any conflicting or additional terms and conditions of any purchase order, acknowledgement or confirmation or other document issued by You.

12.10. Entire Agreement. This EULA, including accepted Orders and any amendments hereto, and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties.

12.11. Contact Information. Please direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department.

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 20-33

December 2, 2019

Re: Discussion and Possible Action on Board Approval for Licensing Agreement and Governing Law with IBM International between the Board of Water Supply, County of Kaua'i, and IBM International

RECOMMENDATION:
The Department recommends that the Board approve Option 1, which will allow the Department to move forward with the installation of upgraded AS-400 software through IBM International.

FUNDING: N/A

BACKGROUND:
The Department utilizes AS-400 Software to review and approve building permits in our Water Resources and Planning Division and for payroll in our Fiscal Division. The County of Kaua'i recently updated and upgraded the AS-400 software to a newer version which includes updates to the Licensing Agreement through IBM International.

The Manager and Chief Engineer has reviewed the terms and conditions shown in the licensing agreement and has conferred with the County of Kaua'i's I.T. staff regarding the County's review procedures for the updates to this software. The County of Kaua'i has not requested Council approval and has moved forward with installing the updated software. However, at the Department of Water, we have not yet moved forward with installing the updated software as the terms and conditions shown in the licensing agreement include governing law which merits Board approval.

The language in the licensing agreement has been reviewed by the Department's Deputy County Attorney. Board approval is being requested to allow the Department to move forward with the installation of the updated software to ensure that the Department's Water Resources and Planning staff can continue to utilize the software to review and approve building permits. In addition, it is important for the updates to be approved to allow payroll to continue to function smoothly utilizing the AS-400 software that is in place. Should the Board reject or defer approval of the terms and conditions for this software, the updated version will not be installed for at least one more month and DOW services will be impacted, including building permit review and approval and potentially payroll services.

"11. Geographic Scope and Governing Law
11.1 Governing Law
Both parties agree to the application of the laws of the country in which Licensee obtained the Program license to govern, interpret, and enforce all of Licensee's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.
The United Nations Convention on Contracts for the International Sale of Goods does not apply.
11.2 Jurisdiction

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license.

Part 2 - Country-unique Terms

For licenses granted in the countries specified below, the following terms replace or modify the referenced terms in Part 1. All terms in Part 1 that are not changed by these amendments remain unchanged and in effect. This Part 2 is organized as follows:

* Multiple country amendments to Part 1, Section 11 (Governing Law and Jurisdiction);
* Americas country amendments to other Agreement terms;
* Asia Pacific country amendments to other Agreement terms; and
* Europe, Middle East, and Africa country amendments to other Agreement terms.

Multiple country amendments to Part 1, Section 11 (Governing Law and Jurisdiction)

11.1 Governing Law

The phrase "the laws of the country in which Licensee obtained the Program license" in the first paragraph of 11.1 Governing Law is replaced by the following phrases in the countries below:

AMERICAS

(1) In Canada: the laws in the Province of Ontario;
(2) in Mexico: the federal laws of the Republic of Mexico;
(3) in the United States, Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, and Saint Vincent and the Grenadines: the laws of the State of New York, United States;

11.2 Jurisdiction

The following paragraph pertains to jurisdiction and replaces Subsection 11.2 (Jurisdiction) as it applies for those countries identified below:

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license except that in the countries identified below all disputes arising out of or related to this Agreement, including summary proceedings, will be brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction:

11.3 Arbitration

The following paragraph is added as a new Subsection 11.3 (Arbitration) as it applies for those countries identified below. The provisions of this Subsection 11.3 prevail over those of Subsection 11.2 (Jurisdiction) to the extent permitted by the applicable governing law and rules of procedure:

UNITED STATES OF AMERICA

10. General

The following is added to Section 10 as Item 10.l:

l. U.S. Government Users Restricted Rights - Use, duplication or disclosure is restricted by the GSA IT Schedule 70 Contract with the IBM Corporation.

The following is added to Item 10.e:

Each party waives any right to a jury trial in any proceeding arising out of or related to this Agreement.

AMERICAS

(1) In Canada: the laws in the Province of Ontario;
(2) in Mexico: the federal laws of the Republic of Mexico;

(3) in the United States, Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, and Saint Vincent and the Grenadines: the laws of the State of New York, United States;"

OPTIONS:

Option 1: **Approve Manager's Report.**

Pro: The Department can move forward with the installation of the updated AS-400 software.

Cons: The Board would agree to the terms and conditions shown in this report.

Option 2: **Do Not Approve Manager's Report.**

Pro: There is no risk associated with the terms and conditions set forth above.

Cons: Installation of the updated AS-400 software will be delayed at least one month and staff within Water Resources and Planning will not be able to review and approve building permits. Payroll services may be affected within our fiscal division.

BW/ein

Mgrrp/December 2019/20-33/Discussion and Possible Action on Board Approval for Licensing Agreement and Governing Law with IBM International between the Board of Water Supply, County of Kaua'i, and IBM International (SBM 12-2-19):ein

Staff Reports

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

FISCAL REPORT: MONTHLY SUMMARY HIGHLIGHTS – OCTOBER, 2019

I. BUDGET SUMMARY VS. ACTUAL (see attached report for details)

YEAR TO DATE (YTD) BUDGET & ACTUAL EXPENSES SUMMARY – AS OF OCTOBER, 2019

	BUDGET	vs	EXPENSED
· Operating Expenses	$13,948,326		$7,762,913
· Debt Principal Payment	1,672,346		3,995,334
· Capital Projects	22,463,727		2,628,303
TOTAL	$37,084,399		$14,386,550

REVENUES: VARIANCE = "ACTUAL" LESS "BUDGET"; POSITIVE INDICATES HIGHER PERFORMANCE THAN EXPECTED.

- Total Revenue as of October, 2019 was 4% below projection.
  - Water sales of $10.1million (M) was $1.1M higher or 12%.
  - Other Water Revenue - Receipts of $79.2 thousand (K) was $4.2K below projection or -5%.
  - Capital Contributions: Contributions from Federal & State Grants – 278.7K.
  - Investment Income & Net Increase in FV of Investments – 110.4K.
  - Miscellaneous Revenues - $1K

OPERATING EXPENSES: VARIANCE = BUDGET LESS ACTUAL

EXPENSES; POSITIVE INDICATES LESS SPENDING THAN PLANNED. **REVISED YTD BUDGET COLUMNS INCLUDE PO ROLLOVER FROM FY ENDING 2019.**

- YTD Operating Expenses before depreciation and amortization was $7.8M. Total spending was $6.2M less than planned or budgeted; a positive variance of 44%.
  - Employee Related Expenses –$2.9M with a 27% positive variance.
  - Contracts & Services – $2.2M with a 64% positive variance.

    - Professional Services, Other Services – Billing, Communication, Insurance and Repairs and Maintenance for non-water systems are the main items contributing to the 64% positive variance.

  - Exceptional Expenses – None.
  - Fuel & Utilities – $914.5K; 14% positive variance.
  - Bulk Water Purchase –$430.7K, 29% positive variance.
  - Office & Operating Supplies – $256.3K, 73% positive variance.
  - Training, Travel & Meeting Expenses – $57.4K; 44% positive variance.
  - Debt Service – Interest Expense - $1.1M; 2% positive variance.
  - Depreciation & Amortization (non-cash expenses) is $2.4M; 11% positive variance.

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

NET OPERATING INCOME:

- Net Operating Income before depreciation and amortization - $3.5M
- Net Operating Income after depreciation & amortization was $1.1M

NON-OPERATING PROCEEDS & DISBURSEMENTS

- SRF Loan Proceeds – None
- FRC – Facility Reserve Charge –$633.8K
- YTD Debt Principal Payment is $4M

CAPITAL PROJECTS BUDGET: YTD DISBURSEMENTS = $2,628,303.39

- Capital Projects: Water Utility Fund - $2.0M
- Capital Projects: FRC Fund – $0.0
- Capital Projects: BAB Fund - $642K
- Capital Projects: SRF Loan Fund - None

II. FY 2019 – 2020 CERTIFICATION OF FUNDS YTD $808,712.34 (SAME AS AUGUST)

	REPORT TO MANAGER (with approved Budget)	MANAGER'S REPORT (New Budget Requests)
Water Utility Fund	$3,490,360.00	$1,645,294.35
FRC Fund	$9,567.00	$0.00
BAB Fund	$0.00	$153,453.99
Total	**$3,499,927.00**	**$1,798,748.34**

III. COMPARATIVE CHARTS:

METERED CONSUMPTION:

- October, 2019, monthly metered consumption was 328.1 million gallons (mg) which decreased by 491 kg as compared from the same month of FY 2019.
- Year to Date (YTD) metered consumption as of 10/31/19 was 1,425.8 mg; YTD increase of 78.9 mg as compared from the same month of FY 2019.

IV. COMPARATIVE BALANCE SHEET: SEE ATTACHED.

Statement of Net Position as of October 31, 2019 (unadjusted).

V. OTHER FISCAL ONGOING ACTIVITIES/INITIATIVES:

- Draft Financial audit was completed and submitted for Board review and acceptance.
- Five (5) years Water Rate Study –Finance Committee (FC) meeting was held on 11/4/19. The meeting was deferred and is rescheduled at a later time to be determined while staff is working on a proposed Board policy draft to address the funding of two long term obligations of the DOW which was raised as a concern during the FC meeting.
- FEMA update: DOW submitted a request for an additional 30 months' extension to complete two outstanding projects for FEMA grant funding reimbursement; the Makaleha tunnel and Mānoa Stream.

- The DOW went live with the new CC&B environment on 2/4/19. The Customer Account Portal (CAP) for online payment was launched on 6/22/19. There are 525 new registered users in October and 11,030 total CAP users as of 11/1/19.
- Develop Financial Policies for DOW – scope of work is in progress, procurement of Consultants will follow.
- Budget Program Solution – It will be addressed concurrently with the Financial Policies Development procurement.
- Upcoming: Water Audit & Annual Proposed Budget.

MY/ein
(SBM 12-2-19)

Department of Water, County of Kauai
Monthly Budget Summary vs. Actual
SUMMARY
10/31/2019

	October				FY 2020			
	Original Budget	Revised Budget	Actual	Variance	Revised YTD Budget	YTD Actual	*Variance	Variance %
I. OPERATING BUDGET								
Revenue								
Water Sales	$2,244,154.00	$2,244,154.00	$2,323,525.60	$79,371.60	$8,976,616.00	$10,058,168.29	$1,081,552.29	12%
Revenue from Public Fire Protection	178,042.00	178,042.00	181,191.50	3,149.50	712,168.00	724,766.00	12,598.00	2%
Other Water Revenue	20,833.00	20,833.00	20,781.81	(51.19)	83,332.00	79,166.82	(4,165.18)	(5%)
Federal Grants	90,897.00	90,897.00		(90,897.00)	363,588.00		(363,588.00)	(100%)
State Grants	316,666.00	316,666.00		(316,666.00)	1,266,664.00		(1,266,664.00)	(100%)
Capital Contributions	50,990.00	50,990.00	69,678.05	18,688.05	203,960.00	278,652.20	74,692.20	37%
Net Increase in Fair Value of Investments	(2,500.00)	(2,500.00)		2,500.00	(10,000.00)	(1,113.76)	8,886.24	(89%)
Investment Income	22,084.00	22,083.67		(22,083.67)	88,334.68	111,525.01	23,190.33	26%
Gain or Loss on Disposal of Capital Assets	417.00	416.67		(416.67)	1,666.68		(1,666.68)	(100%)
Gain or Loss from the Retirement of Debt								
Miscellaneous Revenues	83.00		(197.75)	(197.75)		777.78	777.78	
Total Revenue	***2,921,666.00***	***2,921,582.34***	***2,594,979.21***	***(326,603.13)***	***11,686,329.36***	***11,251,942.34***	***(434,387.02)***	***(4%)***
Employee-Related Expenses								
Salaries and Wages (Includes Leaves & CTO)	597,142.00	597,142.00	450,404.81	146,737.19	2,388,575.00	1,571,744.96	816,830.04	34%
Temporary Assignment	5,917.00	5,917.00	7,047.67	(1,130.67)	23,664.00	25,102.16	(1,438.16)	(6%)
Overtime	40,500.00	40,500.00	54,693.64	(14,193.64)	162,000.00	189,188.82	(27,188.82)	(17%)
Standby	16,250.00	16,250.00	16,870.28	(620.28)	65,000.00	59,151.98	5,848.02	9%
FICA	50,474.00	50,474.00	38,698.01	11,775.99	201,914.00	134,288.10	67,625.90	33%
Retirement Contribution	144,332.00	144,332.00	109,783.49	34,548.51	577,341.00	392,385.32	184,955.68	32%
Life & Health Insurance	50,919.00	50,919.00	44,793.09	6,125.91	203,693.00	156,961.56	46,731.44	23%
Workers Compensation						1,818.90	(1,818.90)	
Unemployment Compensation	1,250.00	1,250.00		1,250.00	5,000.00		5,000.00	100%
Post Employment Benefits (OPEB)	89,752.00	89,752.00	106,358.94	(16,606.94)	358,986.00	369,515.24	(10,529.24)	(3%)
Total Employee-Related Expenses	***996,536.00***	***996,536.00***	***828,649.93***	***167,886.07***	***3,986,173.00***	***2,900,157.04***	***1,086,015.96***	***27%***
Contracts & Services								
Professional Services-General	303,613.00	272,671.00	162,079.53	110,591.47	3,922,972.80	995,497.71	2,927,475.09	75%
Professional Services-Accounting & Auditing	8,900.00	8,900.00		8,900.00	35,600.00	54,811.42	(19,211.42)	(54%)
Other Services-General	5,374.00	5,374.00	5,330.40	43.60	26,213.99	21,914.21	4,299.78	16%
Other Services-Billing Costs	17,221.00	17,221.00	15,427.47	1,793.53	221,576.06	62,238.37	159,337.69	72%
Public Relations-General	6,674.00	6,674.00	10,502.13	(3,828.13)	35,015.06	37,724.83	(2,709.77)	(8%)
Procurement Advertising	833.00	833.00		833.00	3,336.00		3,336.00	100%
Communication Services	10,596.00	10,596.00	14,765.83	(4,169.83)	87,988.20	37,077.05	50,911.15	58%
Freight and Postage	1,365.00	1,365.00	84.42	1,280.58	5,450.00	938.34	4,511.66	83%
Rentals and Leases	10,924.00	10,924.00	2,738.12	8,185.88	72,983.89	26,855.42	46,128.47	63%
Insurance	32,917.00	32,917.00	1,357.70	31,559.30	131,664.00	1,357.70	130,306.30	99%
County Service Charge	178,042.00	178,042.00	181,191.50	(3,149.50)	712,174.00	724,766.00	(12,592.00)	(2%)
Repairs and Maintenance-Water System	18,417.00	18,417.00	2,581.33	15,835.67	98,678.43	72,750.05	25,928.38	26%
Repairs and Maint-Non Water System	58,396.00	58,396.00	45,894.06	12,501.94	551,708.37	118,762.25	432,946.12	78%
Total Contracts & Services	***653,272.00***	***622,330.00***	***441,952.49***	***180,377.51***	***5,905,360.80***	***2,154,693.35***	***3,750,667.45***	***64%***

Department of Water, County of Kauai
Monthly Budget Summary vs. Actual
SUMMARY
10/31/2019

	October				FY 2020			
	Original Budget	Revised Budget	Actual	Variance	Revised YTD Budget	YTD Actual	*Variance	Variance %
Exceptional Expenses								
FY2014 & FY2015 Kalaheo Emergency								
FY 2015 Kilauea								
Abandoning Hanamaulu Wells 1 & 2					261,975.00		261,975.00	100%
Total Exceptional Expenses					***261,975.00***		***261,975.00***	***100%***
Fuel & Utilities								
Utility Services	238,552.00	238,552.00	218,240.80	20,311.20	970,241.59	880,283.92	89,957.67	9%
Fuel	9,625.00	9,625.00	3,931.47	5,693.53	91,703.50	34,203.01	57,500.49	63%
Total Fuel & Utilities	***248,177.00***	***248,177.00***	***222,172.27***	***26,004.73***	***1,061,945.09***	***914,486.93***	***147,458.16***	***14%***
Bulk Water Purchase								
Bulk Water Purchase	151,348.00	151,348.00	151,573.53	(225.53)	605,392.00	430,663.40	174,728.60	29%
Total Bulk Water Purchase	***151,348.00***	***151,348.00***	***151,573.53***	***(225.53)***	***605,392.00***	***430,663.40***	***174,728.60***	***29%***
Office & Operating Supplies								
Office Supplies	1,833.00	1,833.00	973.90	859.10	7,336.36	4,831.37	2,504.99	34%
Operating Supplies	113,025.00	113,025.00	50,626.58	62,398.42	930,519.02	242,420.21	688,098.81	74%
Books, Subscriptions and Dues	2,737.00	2,737.00	787.54	1,949.46	10,949.00	9,089.50	1,859.50	17%
Books, Subscriptions and Dues - Board	91.00	91.00		91.00	367.00		367.00	100%
Total Office & Operating Supplies	***117,686.00***	***117,686.00***	***52,388.02***	***65,297.98***	***949,171.38***	***256,341.08***	***692,830.30***	***73%***
Training, Travel & Meeting Expenses								
Training and Development	6,740.00	5,323.00	2,635.54	2,687.46	42,376.12	23,206.92	19,169.20	45%
Travel and Per Diem	8,885.00	8,885.00	6,377.86	2,507.14	35,530.00	27,934.62	7,595.38	21%
Travel and Per Diem - Board	1,748.00	1,748.00		1,748.00	6,986.00		6,986.00	100%
Meeting Expense	3,108.00	3,108.00	1,157.42	1,950.58	14,724.95	5,996.25	8,728.70	59%
Meeting Expense - Board	829.00	829.00	19.43	809.57	3,320.00	266.50	3,053.50	92%
Total Training, Travel & Meeting Expenses	***21,310.00***	***19,893.00***	***10,190.25***	***9,702.75***	***102,937.07***	***57,404.29***	***45,532.78***	***44%***
Debt Service								
Interest Expense	268,843.00	268,843.00	262,291.75	6,551.25	1,075,372.00	1,049,167.00	26,205.00	2%
Total Interest Expense	***268,843.00***	***268,843.00***	***262,291.75***	***6,551.25***	***1,075,372.00***	***1,049,167.00***	***26,205.00***	***2%***
Total Operating Expenses	***2,457,172.00***	***2,424,813.00***	***1,969,218.24***	***455,594.76***	***13,948,326.34***	***7,762,913.09***	***6,185,413.25***	***44%***
Net Operating Income (Loss) Before Depreciation & Amortization	***$464,494.00***	***$496,769.34***	***$625,760.97***	***$128,991.63***	***($2,261,996.98)***	***$3,489,029.25***	***$5,751,026.23***	***(254%)***
Depreciation & Amortization								
Depreciation	609,562.00	609,562.00	575,585.76	33,976.24	2,438,254.00	2,301,967.67	136,286.33	6%
Amortization	58,333.00	58,333.00	18,999.65	39,333.35	233,336.00	75,998.63	157,337.37	67%
Total Depreciation & Amortization	***667,895.00***	***667,895.00***	***594,585.41***	***73,309.59***	***2,671,590.00***	***2,377,966.30***	***293,623.70***	***11%***
Net Operating Income (Loss)	(203,401.00)	(171,125.66)	31,175.56	202,301.22	(4,933,586.98)	1,111,062.95	6,044,649.93	(123%)

Department of Water, County of Kauai
Monthly Budget Summary vs. Actual
SUMMARY
10/31/2019

	October				FY 2020			
	Original Budget	Revised Budget	Actual	Variance	Revised YTD Budget	YTD Actual	*Variance	Variance %
Non Operating Proceeds								
FRC-Facility Reserve Charge	33,333.00	33,333.00	89,605.00	56,272.00	133,332.00	633,845.00	500,513.00	375%
Total Non Operating Proceeds	**33,333.00**	**33,333.00**	**89,605.00**	**56,272.00**	**133,332.00**	**633,845.00**	**500,513.00**	**375%**
Transfers Out(In) to Other Funds								
Debt Principal Payment	418,086.00	418,086.00		418,086.00	1,672,346.00	3,995,334.11	(2,322,988.11)	(139%)
Net Proceeds (Expenditures)	***(588,154.00)***	***(555,878.66)***	***120,780.56***	***676,659.22***	***(6,472,600.98)***	***(2,250,426.16)***	***4,222,174.82***	***(65%)***
II. CAPITAL BUDGET								
Capital Projects (See Attached for Details)	724,833.00	724,833.00	913,095.99	(188,262.99)	22,463,726.52	2,628,303.39	19,835,423.13	88%

Department of Water, County of Kauai
Monthly Budget Summary vs. Actual
SUMMARY
10/31/2019

	October				FY 2020			
	Original Budget	Revised Budget	Actual	Variance	Revised YTD Budget	YTD Actual	*Variance	Variance %
Capital Projects (See Attached for Details):								
Water Utility - Capital Projects (See Attached for Details)	649,417.00	649,417.00	913,095.99	(263,678.99)	17,183,337.13	1,986,297.72	15,197,039.41	88%
FRC Special Trust Fund - Capital Projects (See Attached for Details)	75,416.00	75,416.00		75,416.00	857,427.84		857,427.84	100%
BAB Fund - Capital Projects (See Attached for Details)					4,422,961.55	642,005.67	3,780,955.88	85%
SRF Loan Fund - Capital Projects (See Attached for Details)								
Total Capital Projects (See Attached for Details)	724,833.00	724,833.00	913,095.99	(188,262.99)	22,463,726.52	2,628,303.39	19,835,423.13	88%

Department of Water, County of Kauai
Monthly Budget Summary vs. Actual
10
10/31/2019

	October				FY 2020			
	Original Budget	Revised Budget	Actual	Variance	Revised YTD Budget	YTD Actual	*Variance	Variance %
Capital Projects (See Attached for Details):								
10-02-00-604-999 WU-IT-RandR Capital Purchases--	67,917.00	67,917.00		67,917.00	302,572.08	33,900.00	268,672.08	89%
10-02-00-605-999 WU-IT-Expansion Capital Purchases--	35,417.00	35,417.00		35,417.00	206,532.87		206,532.87	100%
10-10-40-604-999 WU-QualRandR Capital Purchases						35,694.88	(35,694.88)	
10-20-00-604-001 WU-Eng-ALLR-17-10-KW-07 Paua Valley Tank Repair					105,154.74		105,154.74	100%
10-20-00-604-033 WU-Job 13-07- Koloa D Repairs					6,958.00		6,958.00	100%
10-20-00-604-132 WU-Eng-ALLR-13-05 Kolo Rd Main Replacement					2,712.50		2,712.50	100%
10-20-00-604-135 WU-Eng-ALLR-12-04 HE-14 Eleele Booster Rehab			16,478.00	(16,478.00)	2,285.00	16,478.00	(14,193.00)	(621%)
10-20-00-604-136 Job 12-01 H-05 Weke Anae Hee 6-8IN Mains					23,525.60		23,525.60	100%
10-20-00-604-138 WU-Eng-69%R-11-07 HE-03 Hanapepe & Koloa Well MCC					24,467.50		24,467.50	100%
10-20-00-604-146 WU-Eng-12%R-Job 15-7 HE-01&10HanapepeEleeleConn PL			3,755.82	(3,755.82)	51,420.50	16,853.56	34,566.94	67%
10-20-00-604-148 WU-Eng-56%R-Kuhio Hwy Hardy-Oxford 16IN Main Repla					249,224.92		249,224.92	100%
10-20-00-604-157 WU-Eng-16-4-WKK-03-Kilauea Wells MCC Rehab					66,863.70		66,863.70	100%
10-20-00-604-159 WU-Eng-ALLR-17-7 Maalo Road Easement					21,000.00		21,000.00	100%
10-20-00-604-160 Job 18-02 Islandwide Rehabilitation of Tanks					536,527.00		536,527.00	100%
10-20-00-604-163 WU-Eng-AllR-18-8 Limahuli Stream & Manoa Stream-	29,167.00	29,167.00		29,167.00	116,664.00		116,664.00	100%
10-20-00-604-999 WU-Eng-RandR Capital Purchases	1,667.00	1,667.00		1,667.00	6,664.00	123.00	6,541.00	98%
10-20-00-605-139 WU-Eng-ALLE-02-11 M-02 100K Tank & Pipeline Moloaa					125,200.00		125,200.00	100%
10-21-00-604-001 Job 17-10 KW-07 Paua Valley Tank Repair	116,667.00	116,667.00		116,667.00	466,664.00		466,664.00	100%
10-21-00-604-035 Job 12-4 HE-14, Eleele Booster Rehab					1,144,500.00		1,144,500.00	100%
10-21-00-604-146 Job 15-07 HE-01 HE-10 Kaumualii Hwy 16" Main Boost					5,749,600.00	860,741.51	4,888,858.49	85%
10-21-00-604-157 Job 16-4 WKK-03-Kilauea Wells MCC Rehab	312,917.00	312,917.00		312,917.00	1,251,664.00		1,251,664.00	100%
10-21-00-604-167 WU-CM-R&R-Kukuilono Tank Demo	8,333.00	8,333.00		8,333.00	33,336.00		33,336.00	100%
10-21-00-604-999 WU-CM-RandR Capital Purchases	833.00	833.00		833.00	3,336.00		3,336.00	100%
10-21-00-605-017 Job 16-02 PLH-35B Kapaia Cane Haul Rd 18" Main					3,195,675.00		3,195,675.00	100%
10-21-00-605-118 Job 02-14 WK39 WK08 Kapaa Hmstd Well 4; Pkg A Well					750,000.00		750,000.00	100%
10-21-00-605-146 Job 15-07 HE-01 HE-10 Kaumualii Hwy 16" Main Boost			892,862.17	(892,862.17)	1,661,544.13	892,862.17	768,681.96	46%
10-21-00-605-999 WU-CM-Expansion Capital Purchases	8,333.00	8,333.00		8,333.00	33,336.00		33,336.00	100%
10-30-00-605-999 WU-Bill-Expansion Capital Purchases					134,943.91		134,943.91	100%
10-31-00-605-999 WU-Acc-Expansion Capital Purchases	250.00	250.00		250.00	1,000.00		1,000.00	100%
10-40-00-604-166 WU-Operations-R&R-SWTP Delivery Agreement-GroveFar					1.00		1.00	100%
10-40-00-604-999 WU-Ops-RandR Capital Purchases	28,333.00	28,333.00		28,333.00	660,597.82	78,380.68	582,217.14	88%
10-40-00-605-999 WU-Ops-Expansion Capital Purchases	39,583.00	39,583.00		39,583.00	249,366.86	51,263.92	198,102.94	79%
Total Capital Projects (See Attached for Details)	649,417.00	649,417.00	913,095.99	(263,678.99)	17,183,337.13	1,986,297.72	15,197,039.41	88%

Department of Water, County of Kauai
Monthly Budget Summary vs. Actual
20
10/31/2019

	October				FY 2020			
	Original Budget	Revised Budget	Actual	Variance	Revised YTD Budget	YTD Actual	*Variance	Variance %
Capital Projects (See Attached for Details):								
20-20-00-605-017 FRC-Job 16-02 18IN Cane Haul Road Main					20,333.33		20,333.33	100%
20-20-00-605-104 FRC-Eng-ALLE-05-02 HW-12 Drill Wainiha-Haena Well					47,869.00		47,869.00	100%
20-20-00-605-117 FRC-Eng-ALLE-12-02 WK-23 UH Expmntal Storage Tank					26,832.00		26,832.00	100%
20-20-00-605-118 Job 04-08 WK-39 Drill Kapaa Homestead Well 4	37,500.00	37,500.00		37,500.00	257,163.79		257,163.79	100%
20-20-00-605-120 FRC-Eng-90%E-Kilauea 1.0MG Tank Job 02-06					7,212.24		7,212.24	100%
20-20-00-605-153 Job 15-08-HW-11-Haena 0.2MG Tank	2,500.00	2,500.00		2,500.00	59,105.48		59,105.48	100%
20-20-00-605-154 Job 17-11 Drill & Test Kilauea Well #3					297,240.00		297,240.00	100%
20-20-00-605-155 FRC-Eng-ALLE-Wainiha Well #4	13,333.00	13,333.00		13,333.00	53,336.00		53,336.00	100%
20-20-00-605-168 FRC-Eng-Exp-Kalaheo System Improvement	3,333.00	3,333.00		3,333.00	13,336.00		13,336.00	100%
20-21-00-605-161 FRC-Cns-Hanapepe River Bridge Kaumualii Hwy	18,750.00	18,750.00		18,750.00	75,000.00		75,000.00	100%
Total Capital Projects (See Attached for Details)	75,416.00	75,416.00		75,416.00	857,427.84		857,427.84	100%

Department of Water, County of Kauai
Monthly Budget Summary vs. Actual
30
10/31/2019

	October				FY 2020			
	Original Budget	Revised Budget	Actual	Variance	Revised YTD Budget	YTD Actual	*Variance	Variance %
Capital Projects (See Attached for Details):								
30-20-00-604-101 BAB-Eng-ALLR-10-01 Ani-01a Anini & Kalihiwai Rd 6-					76,108.00		76,108.00	100%
30-20-00-604-105 BAB-Eng-ALLR-09-01 K-01 Kalaheo 1111FT & 1222FT					362,335.21		362,335.21	100%
30-20-00-605-104 BAB-Eng-ALLE-05-02 HW-12 Drill Wainiha-Haena Well					32,430.00		32,430.00	100%
30-20-00-605-120 BAB-Cns-ALLE-02-06WKK15-Kilauea 466 Tank Puu Pane					22,649.00		22,649.00	100%
30-20-00-605-125 BAB-Eng-98%E-02-01 Land for Kukuiolono Tank Site					53,508.05		53,508.05	100%
30-20-00-605-139 BAB-Eng-ALLE-02-11 M-02 100K Tnk & Pipeline Moloaa					94,222.00		94,222.00	100%
30-20-00-605-158 BAB-Eng-AllE-11-3 MO-03 Land & Well Acq Moloaa&Wai					9,187.00		9,187.00	100%
30-21-00-604-017 Job 16-02 PLH-35B Kapaia Cane Haul Rd 18" Main					1,137,325.00	268,227.73	869,097.27	76%
30-21-00-604-107 Job 11-07 KP-09-MCC Chlor KoloaWell16-A,B,E					1,668,076.02	42,288.08	1,625,787.94	97%
30-21-00-605-118 Job 04-08 WK39 WK08 Kapaa Hmstd Well 4; Pkg A Well					967,121.27	331,489.86	635,631.41	66%
Total Capital Projects (See Attached for Details)					4,422,961.55	642,005.67	3,780,955.88	85%

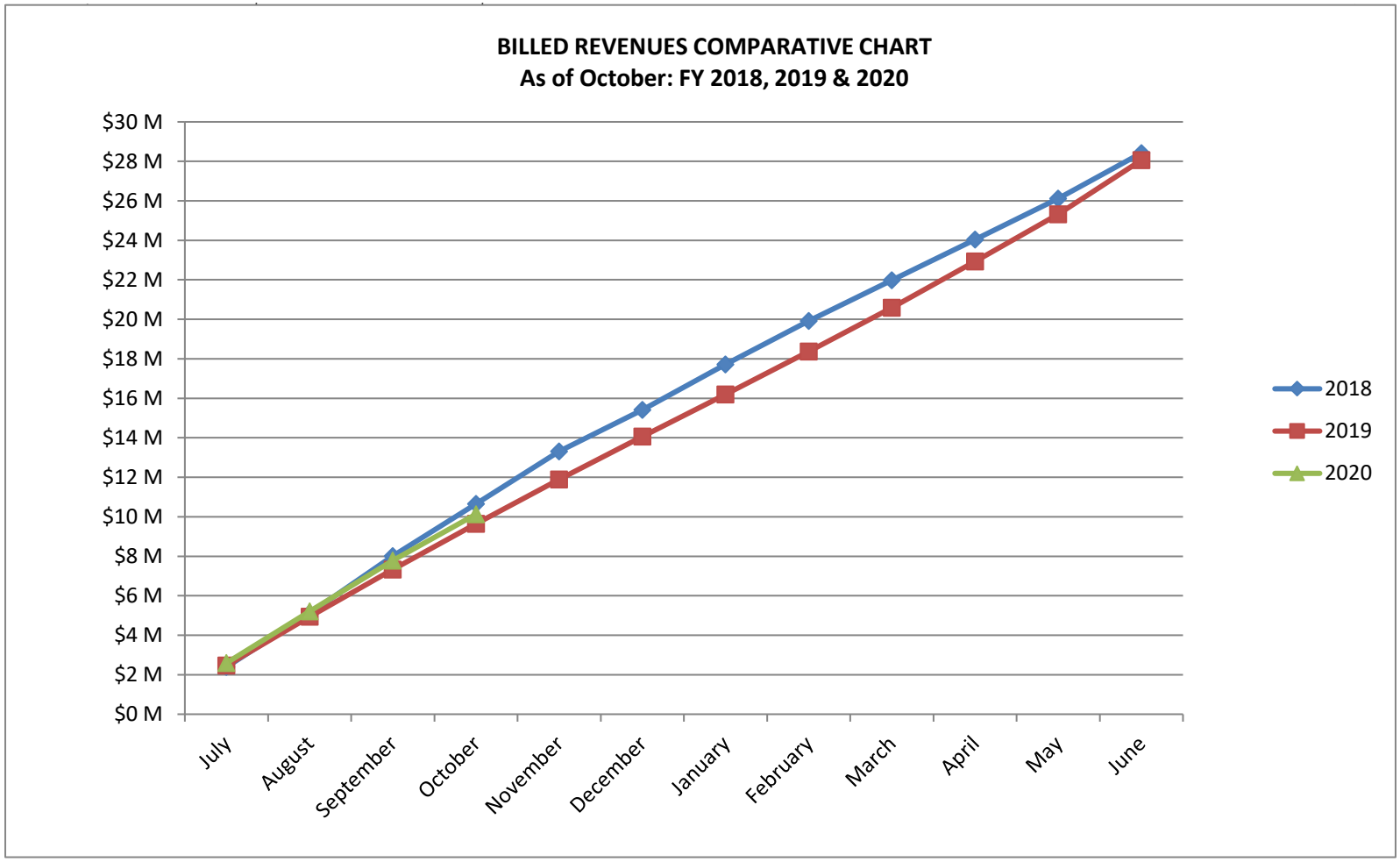
FY 2019 - 2020 Certification of Funds					REPORTS TO MANAGER (RTM)				Manager's Report (MR) - New and/or Additional Funds				
DATE	Contract #	Description	ACCOUNT #	CO/ OE	W/U (10)	FRC (20)	BAB (30)	SUB-TOTAL	W/U (10)	FRC (20)	BAB (30)	SUB-TOTAL	TOTALS
7/26/2019	632	Job NO. 17-02, SCADA System Maintenance and Professional Consultation Services.	10-40-60-560-000	OE	145,894.00			145,894.00				-	145,894.00
7/26/2019	660	SS-2018-1, Multi-Term Contract; Laboratory Testing Services For the DOW, COK.	10-10-40-540-010	OE	106,050.00			106,050.00				-	106,050.00
7/26/2019	686	Cutterrford- Solicitation GS 2019-9	10-40-00-604-999	CO	110,000.00			110,000.00	47,142.35			47,142.35	157,142.35
7/26/2019	682	A2, Solicitaion 2019-Prof-1, A.1 special Legal Services.	10-01-10-540-010	OE				-	120,000.00			120,000.00	120,000.00
8/7/2019	639	A2 - Job No. 17-10, WP 2020 #KW-07, Rehabilitate Paua Valley Tank #1, 0.5MG Concrete.	10-020-00-604-001	CO	11,636.00			11,636.00				-	11,636.00
8/7/2019	533	Job. No. 09-01, WP2020 #K-01, #K-12, Phsae II - Kalāheo 1111" and 1222" Water System Improvements, Kalaheo, HI	30-20-00-604-105	CO				-			101,583.00	101,583.00	101,583.00
8/14/2019	656	WP 2020 Proj. No. WK-39, Drill & Develop Kapaa Homesteads Well No. 4 & Package A- Well & Drainage Package of WP 2020	30-21-00-605-118	CO				-			51,870.99	51,870.99	51,870.99
8/14/2019	639	Job No. 17-10, WP2020 Project No. KW-07 Rehabilitate Paua Valley Tank #1, 0.5MG Concrete, with KAI Hawaii Inc. for a time extension of 150 days and for additional design funding	10-20-00-604-000	CO				-	11,636.00			11,636.00	11,636.00
9/12/2019	687	Job 19-06, Anahola Well A Pump Replacement, Kaua'i, Hawai'i	10-40-00-604-999	CO	102,900.00			102,900.00				-	102,900.00
11/4/2019	685	First Amendment and Time Extension of 150 days to Contract No. 685, Job No. 19-01 Island Wide Vulnerability and Resiliency Assessment	10-20-10-540-010	OE	51,516.00			51,516.00	51,516.00			51,516.00	103,032.00
11/22/2019	XXX	Paua Valley Tank repair	10-21-00-604-001	CO	2,375,000.00			2,375,000.00	975,000.00			975,000.00	3,350,000.00
11/22/2019	XXX	Legislation Services (2020)	10-01-10-540-010	OE	40,000.00			40,000.00				-	40,000.00
11/22/2019	637	Am.2- As Needed Services	10-21-10-540-010		458,664.00			458,664.00	440,000.00			440,000.00	898,664.00
11/22/2019	609	4th Am. Financial Management Planning & Water Rate Study	10-31-10-540-010	OE	20,000.00			20,000.00				-	20,000.00
11/22/2019	614	Job. No. 15-8, WP2020 Proj. No. HW-11, Haena Storage Tank	20-20-00-605-153	CO		9,567.00		9,567.00				-	9,567.00
11/22/2019	632	SCADA Server upgrade and related software	10-02-00-604-999	CO	68,700.00			68,700.00					68,700.00
					$ 3,490,360.00	$ 9,567.00	$ -	$ 3,499,927.00	$ 1,645,294.35	$ -	$ 153,453.99	$ 1,798,748.34	$ 5,298,675.34

III.

BILLED REVENUES COMPARATIVE REPORT

For Fiscal Years 2018, 2019 & 2020

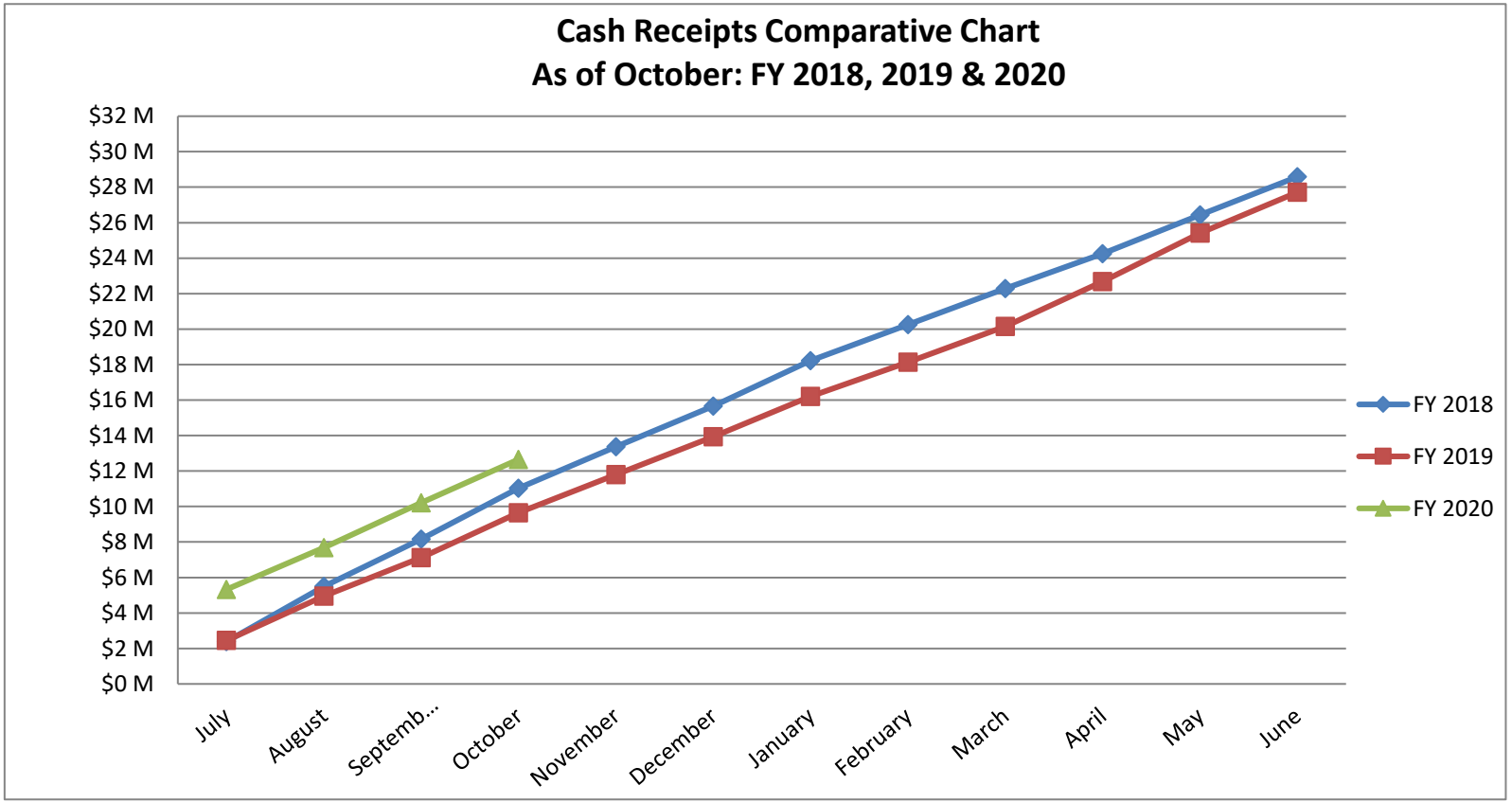
	2018	2019	2020	Cum. Inc (Dec)	% Inc. (Dec.)
July	$ 2,389,827	$ 2,459,791	$ 2,594,993	$ 135,203	5.50%
August	$ 5,110,540	$ 4,944,154	$ 5,211,518	$ 267,364	5.41%
September	$ 8,011,509	$ 7,331,598	$ 7,780,505	$ 448,907	6.12%
October	$ 10,657,809	$ 9,638,616	$ 10,125,480	$ 486,864	5.05%



1. revenue comparison

CASH RECEIPTS (W/U) COMPARATIVE REPORT
For Fiscal Years 2018, 2019 & 2020

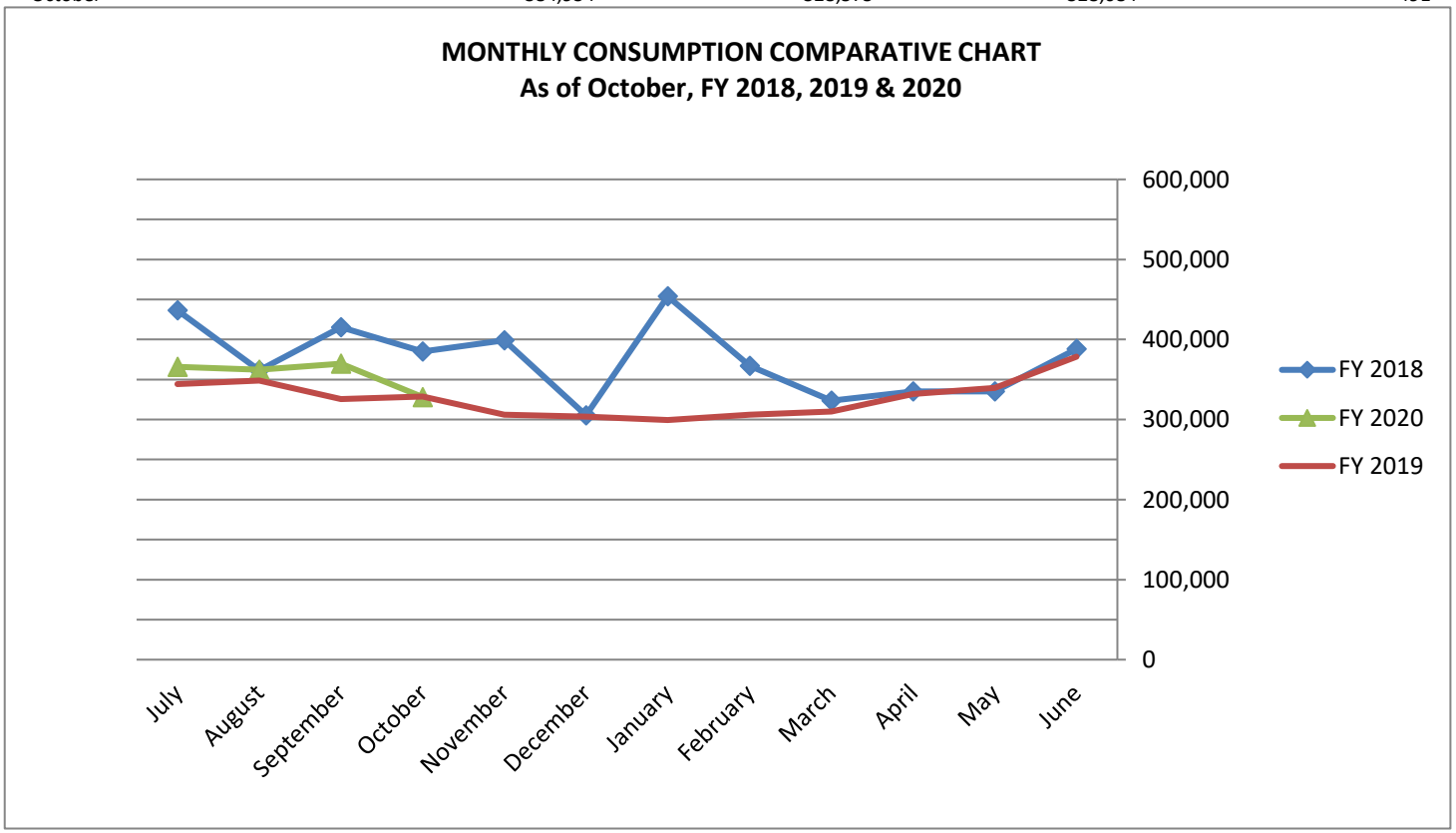
	FY 2018	FY 2019	FY 2020	Cum. Inc (Dec)	% of Inc (Dec)
July	$ 2,385,872	$ 2,449,372	$ 5,324,195	$ 2,874,823	117%
August	$ 5,504,876	$ 4,946,100	$ 7,676,802	$ 2,730,702	55%
September	$ 8,155,772	$ 7,122,906	$ 10,216,754	$ 3,093,848	43%
October	$ 11,034,364	$ 9,651,558	$ 12,655,760	$ 3,004,201	31%



* Note: July receipts include a $2.29 million state appropriation grant for the Hanapēpē.....

METERED CONSUMPTION (000 GALLONS) MONTHLY COMPARATIVE CHART
For Fiscal Years 2018, 2019 & 2020
(expressed in thousands)

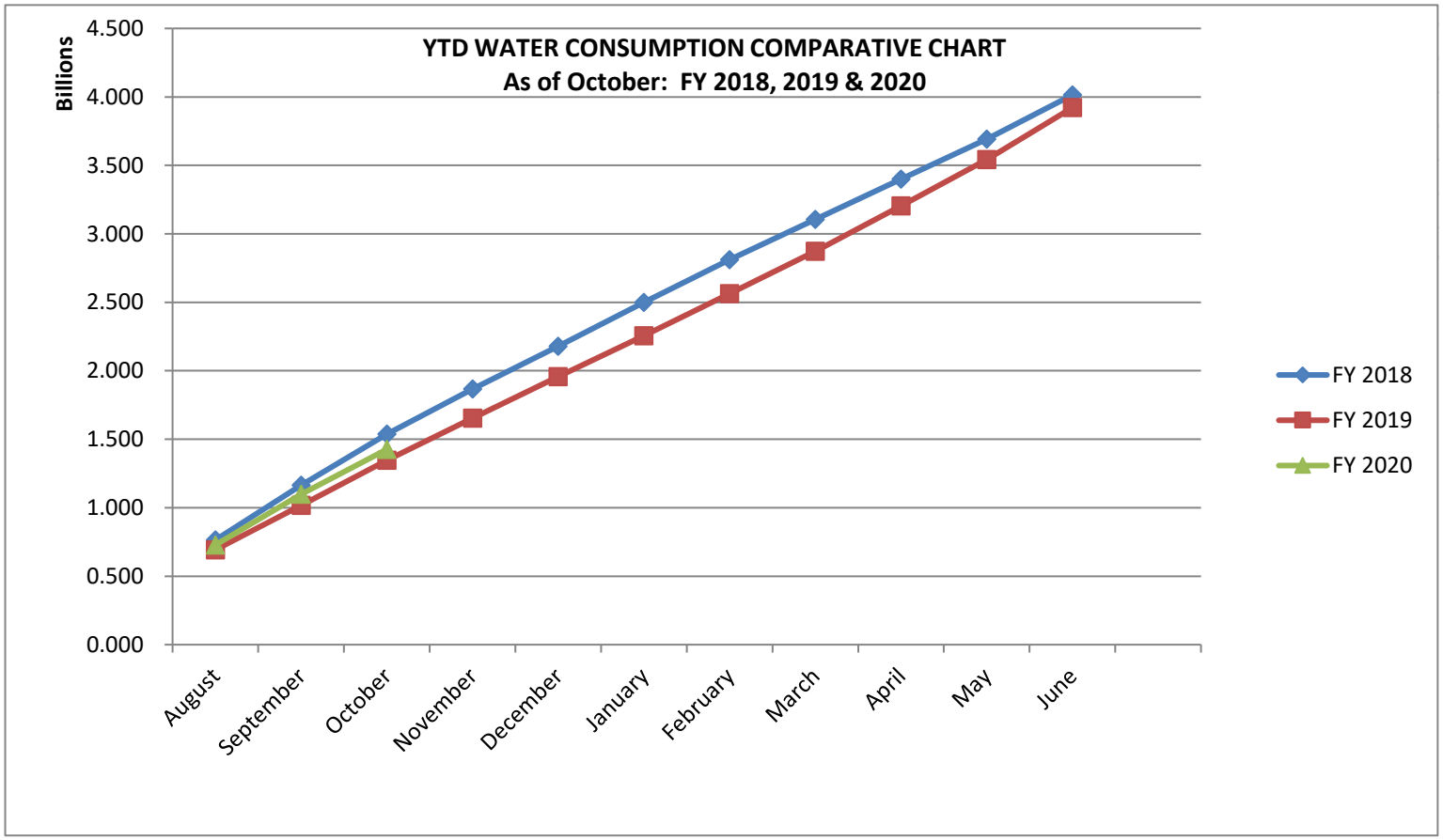
	FY 2018	FY 2019	FY 2020	INC (DEC)
July	436,238	344,364	365,892	21,528
August	361,599	348,569	362,067	13,498
September	415,176	325,351	369,751 *	44,400 *
October	384,934	328,575	328,084	-491



* refer to monthly summary highlights

YTD METERED CONSUMPTION (000 GALLONS) COMPARATIVE REPORT
For Fiscal Years 2018, 2019 & 2020
(expressed in thousands)

	FY 2018	FY 2019	FY 2020	CUM. INC (DEC)	%
July	383,831	344,364	365,892	21,528	6%
August	764,245	692,933	727,959	35,026	5%
September	1,163,843	1,018,284	1,097,710	79,426	8%
October	1,537,090	1,346,859	1,425,794	78,935	6%



Department of Water - County of Kauai
Statements of Net Position
October 31, 2019 and 2018

Assets and Deferred Outflows

	AS OF: YEAR TO DATE October 31, 2019 (Unadjusted)	October 31, 2018
Current Assets		
Cash	**7,543,856**	**11,630,317**
Equity interest in pooled investments	**25,720,826**	**21,940,096**
Receivables:	-	
Accounts, net of allowance for doubtful accounts*	1,398,469	1,466,659
Due from other funds	-	-
Unbilled accounts	1,532,261	1,294,493
Grants and subsidies	143,325	148,085
Accrued interest	-	-
Total receivables	**3,074,055**	**2,909,237**
Materials and supplies	1,087,256	1,087,256
Prepaid expenses	29,366	121,821
Total current asset	**37,455,359**	**37,688,727**
Restricted Assets:		
Facility reserve charge funds:		
Cash	1,546,738	986,351
Accounts receivable and other	61,451	68,065
Total facility reserve charge funds	**1,608,188**	**1,054,416**
Bond funds:		
Cash	506,456	(135,915)
Investments	9,343,376	12,128,545
Accrued interest	29,636	26,147
Total bond funds	**9,879,467**	**12,018,777**
Total restricted assets	**11,487,656**	**13,073,192**
Equity Interest in Pooled Investment - Noncurrent	**20,835,754**	**21,635,754**
Utility Plant:		
In service	347,268,267	338,615,449
Accumulated depreciation	(136,471,490)	(130,381,833)
Total utility plant	**210,796,777**	**208,233,616**
Construction work in progress	12,068,529	7,426,667
Total property, plant and equipment	**222,865,305**	**215,660,283**
Total assets	**292,644,074**	**288,057,956**
Deferred Outflow of Resources	5,197,137	5,213,419
Total assets and deferred outflows of resources	**297,841,211**	**293,271,374**
***Allowance for doubtful accounts**	**(219,364)**	(249,820)

Schedule IV - Comparative Balance Sheet

Report Format Created by: S. Nadatani

Department of Water - County of Kauai
Statements of Net Position
October 31, 2019 and 2018

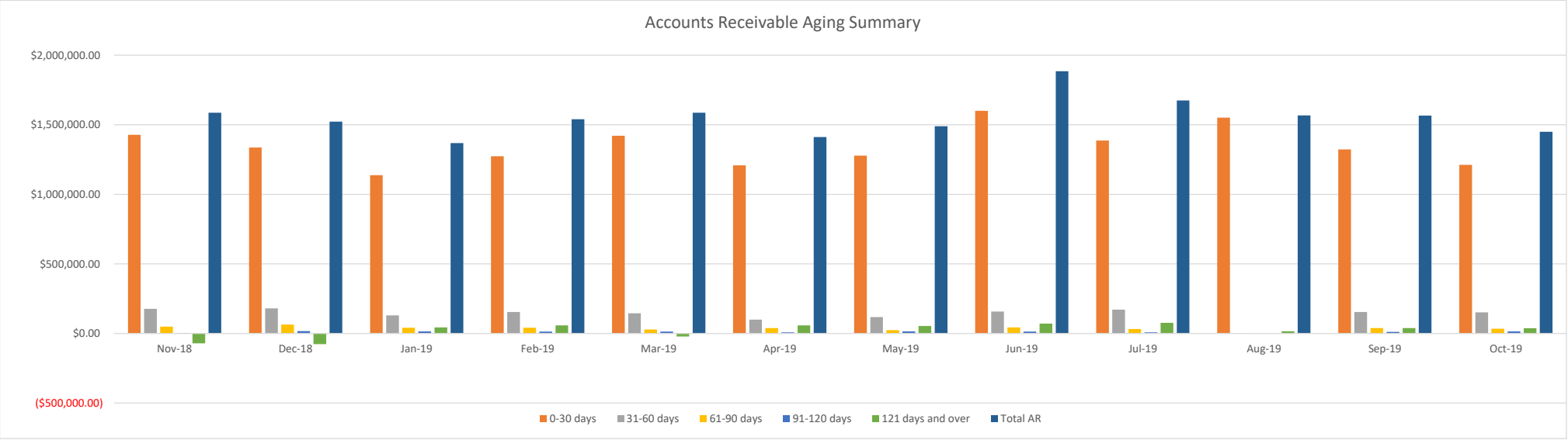
Liabilities, Deferred Inflows and Net Position

	October 31, 2019 (Unadjusted)	2018 (Unadjusted)
Current Liabilities:	-	
Accounts payable and accrued liabilities	3,860,249	2,364,629
Contracts payable, including retainages	609,860	154,961
Accrued Vacation And Compensatory Pay, current portion	412,124	-
Due to/Due From Other Funds	212	
Customer overpayment	171,655	191,979
Customer deposits and advances	464,408	462,680
Current portion of long term debt	5,017,034	4,883,749
Current portion of capital lease obligation	4,058	522,561
Total current liabilities	**10,539,599**	**8,580,559**
	-	
Long-Term Debt	63,364,414	68,568,566
Capital Lease Obligation	-	4,058
OPEB & Retirement Benefits	23,646,319	23,842,823
Accrued Vacation and Compensatory Pay	912,823	1,354,351
Deferred Inflow of Assets	998,605	1,052,128
Total liabilities and deferred inflows:	**99,461,760**	**103,402,484**
	-	
Net Position:	-	
Water Utility Reserves	9,400,000	10,200,000
Restricted FRC	1,600,337	1,046,565
Restricted Build American Bonds	9,592,903	11,889,458
Invested in Capital Assets Net of Related Debt	154,475,438	141,697,327
Unrestricted	23,310,772	25,035,539
Total net position	**198,379,451**	**189,868,890**
	-	
Total liabilities, deferred inflows and net position:	**297,841,211**	**293,271,374**
	-	
	0	-

Schedule IV - Comparative Balance Sheet

Report Format Created by: S. Nadatani

DEPARTMENT OF WATER
Accounts Receivable Aging Summary
As of October, 2019



AR Aging	Nov-18		Dec-18		Jan-19		Feb-19		Mar-19		Apr-19		May-19		Jun-19		Jul-19		Aug-19		Sep-19		Oct-19	
0-30 days	$1,427,201.11	90%	$1,336,479.81	90%	$1,138,054.93	83%	$1,273,217.02	83%	$1,420,951.29	83%	$1,208,274.55	86%	$1,278,213.00	86%	$1,599,729.91	85%	$1,386,485.84	83%	$1,551,549.22	99%	$1,322,141.93	84%	$1,211,614.04	84%
31-60 days	$177,642.89	11%	$180,361.39	11%	$130,303.61	10%	$153,722.49	10%	$144,946.90	10%	$99,265.78	7%	$118,247.86	7%	$157,456.80	8%	$170,997.42	10%	$69.02	0%	$154,707.79	10%	$151,924.87	10%
61-90 days	$49,334.87	3%	$64,366.59	3%	$40,767.50	3%	$40,729.52	3%	$28,671.62	3%	$39,246.92	3%	$24,471.80	3%	$43,189.96	2%	$31,981.80	2%	$0.00	0%	$39,193.31	3%	$33,854.98	2%
91-120 days	$3,106.80	0%	$17,060.96	0%	$14,994.42	1%	$13,629.27	1%	$14,168.37	1%	$7,651.92	1%	$15,244.24	1%	$13,314.05	1%	$8,366.01	0%	$0.00	0%	$11,189.86	1%	$14,639.21	1%
121 days and over	($70,785.33)	-4%	($76,144.74)	-4%	$43,710.50	3%	$58,638.28	4%	($22,045.64)	4%	$57,887.05	4%	$53,380.44	4%	$70,519.25	4%	$76,597.01	5%	$15,946.29	1%	$38,505.09	2%	$37,349.21	3%
Total AR	$1,586,500.34	100%	$1,522,124.01	100%	$1,367,830.96	100%	$1,539,936.58	100%	$1,586,692.54	100%	$1,412,326.22	100%	$1,489,557.34	100%	$1,884,209.97	100%	$1,674,428.08	100%	$1,567,564.53	100%	$1,565,737.98	100%	$ 1,449,382.31	100%

*Total AR is net of Customer deposits and overpayments.

Customer Deposits & Overpayments	($121,827.60)	($188,853.60)	($323,241.42)	($319,503.69)	($202,099.31)	($181,624.39)	($148,943.37)	($186,130.23)	($182,927.40)	($207,673.50)	($204,973.25)	($205,885.03)

DEPARTMENT OF WATER
SUMMARY OF MCUTS
As of October, 2019

FY	MONTHS	July	August	September	October	November	December	January	February	March	April	May	June	TOTALS
2020	Count	69	13	12	20									114
	Delinquent	$ 13,779.25	$ 2,292.13	$ 2,507.59	$ 7,257.72									$ 25,836.69
	Collection	$ 16,233.81	$ 2,507.56	$ 2,969.06	$ 8,189.34									$ 29,899.77

FY	MONTHS	July	August	September	October	November	December	January	February	March	April	May	June	TOTALS
2019	Count	19	28	38	42	8	16	20	39	0	9	36	0	255
	Delinquent	$ 2,234.03	$ 2,776.27	$ 2,111.04	$ 5,865.59	$ 2,042.56	$ 2,352.51	$ 3,609.04	$ 6,741.24	*	$ 1,196.56	$ 6,154.30	**	$ 35,083.14
	Collection	$ 3,279.94	$ 3,121.47	$ 5,710.27	$ 7,216.63	$ 3,238.32	$ 2,799.27	$ 3,471.90	$ 7,450.19	$ -	$ 1,793.18	$ 8,936.10	$ -	$ 47,017.27

*No Mcuts, new cloud service products were being tested and validated for roll out. Staff were working closely with Consultants, training, testing and validating customer accounts into a test company.

FY	MONTHS	July	August	September	October	November	December	January	February	March	April	May	June	TOTALS
2018	Count	86	16	33	11	0	0	17	66	126	79	37	39	510
	Delinquent	$ 34,440.52	$ 5,406.27	$ 7,888.51	$ 3,824.19	$ -	$ -	$ 4,480.86	$ 27,291.52	$ 32,214.96	$ 8,170.17	$ 4,851.25	$ 5,256.04	$ 133,824.29
	Collection	$ 24,657.80	$ 3,169.74	$ 8,051.50	$ 3,672.65	$ -	$ -	$ 4,175.66	$ 21,376.92	$ 30,795.56	$ 7,472.17	$ 5,693.23	$ 3,217.21	$ 112,282.44

*No Mcuts, new cloud service products were being tested and validated for roll out. Staff were working closely with Consultants, training, testing and validating customer accounts into a test company.

2017	Count	37	0	0	58	22	22	23	11	9	14	33	142	371
	Delinquent	$ 17,602.72	$ -	$ -	$ 35,186.00	$ 12,573.35	$ 13,389.78	$ 16,357.08	$ 5,635.81	$ 6,548.66	$ 15,735.65	$ 9,379.66	$ 40,447.77	$ 172,856.48
	Collection	$ 12,908.83	$ -	$ -	$ 31,387.14	$ 9,791.37	$ 8,808.34	$ 15,205.41	$ 3,596.94	$ 2,520.71	$ 6,793.88	$ 8,051.50	$ 37,144.99	$ 136,209.11

** No Mcuts for August & September, 2016. DOW implemented its own instance of CC&B on October 3, 2016. The staff were doing testing and validations prior to the 10/16 conversion rollout.

2016	Count	11	26	33	61	17	12	58	31	30	9	21	0	309
	Delinquent	$ 5,744.14	$ 13,988.13	$ 25,960.00	$ 37,591.19	$ 13,892.54	$ 5,260.00	$ 38,283.90	$ 18,769.82	$ 22,316.40	$ 27,403.03	$ 15,672.69	$ -	$ 224,881.84
	Collection	$ 3,137.70	$ 7,426.69	$ 16,528.53	$ 16,453.27	$ 11,492.90	$ 4,585.84	$ 18,475.00	$ 9,384.49	$ 17,195.51	$ 19,383.85	$ 11,733.26	$ -	$ 135,797.04

The MCUT is normally scheduled on the FC/MR's free day.

* no MCUT in March. There's one dedicated staff assigned to do Mcuts and is out on extended leave.
** no MCUT in June. Field Collections/Meter Reader staffing was short.

DEPARTMENT OF WATER

County of Kauaʻi

"Water has no Substitute – Conserve it!"

INFORMATION & EDUCATION SPECIALIST REPORT

December 2, 2019

Public Notices and Announcements

All news releases were also published on the Department's Facebook and Twitter social media pages.

- **Hanalei – Water service shutdown on a portion of Kūhiʻō Highway in Hanalei**
  - A news release was issued on October 22, 2019 to announce a water service shutdown scheduled for customers located along a portion of Kūhiʻō Highway, north of the Waipa Stream to approximately Lumaha'i Beach Park in Hanalei, on Tuesday, October 29, from 9:00 a.m. to 3:00 p.m., weather permitting.
    - A BlackBoard Connect CTY notification and electronic message boards were also used notify customers in the affected service area.
  - A public service announcement was issued to local radio stations on October 28, 2019 to remind customers located on a portion of Kūhiʻō Highway; just north of the Waipa Stream to approximately Lumaha'i Beach Park in Hanalei, about the water service shutdown scheduled for October 29, 2019 from 9 a.m. to 3 p.m., weather permitting.
    - A BlackBoard Connect CTY notification and electronic message boards were also used notify customers in the affected service area. Radio stations included Pacific Media Group and FM97 Radio stations.

Public Relations Program

Education & Community Outreach

- The Department participated in the national awareness campaign, "Imagine a Day Without Water" (IADWW) hosted by the Value Water organization. The focus of the campaign is to promote the importance of the agencies, municipalities and organizations that manage water. The Department participated through a series of social media posts encouraging customers to identify the common ways water is used and the importance of drinking water quality and drinking water delivery service. The Department joins a select few from Hawai'i who were recognized by the Value Water organization as a national participant for IADWW 2019. Jonell Kaohelaulii designed and published the series of social media posts for this campaign.
- The Department hosted a water education presentation for Island School preschool students and teachers on October 22, 2019, as part of its community education and outreach efforts and in participation of the national awareness campaign, "Imagine a Day Without Water" (IADWW). Students learned about DOW's drinking water services and the water cycle through three hands-on activities. They also received a goody bag filled with conservation awareness tools and water bottles. Special thanks to Jason Fujinaka, Brandi Ventar, Mary-jane Akuna and Jonell Kaohelaulii for hosting the group and assisting with the presentations.
- The Department participated in the Career Day events at Wilcox Elementary School on November 1, 2019. A service overview was presented to approximately 150 students and their teachers and included personnel highlights from Administration, Operations and Fiscal divisions. Students learned about career experiences as a Commission Support Clerk, Account Clerk and Pipefitter. The Department donated a total of 12 groundwater activity kits and "Water Warrior" tattoos to students to help promote the educational value of our drinking water. Special thanks to Terrilyn Amorin, Edie Ignacio-Neumiller and Jonell Kaohelaulii for representing the Department in the Community.

- The Department partnered with the Hawai'i Emergency Management Agency and the state's county water departments to provide collapsible water jugs to our more vulnerable communities; with focus on seniors and homebound residents. The Department coordinated Kaua'i's distribution of the jugs through the County's Agency on Elderly Affairs to distribute 900 collapsible water jugs through the Meals-on-Wheels program. The Department provided a partnering statement for a news release and news conference held on November 1, 2019 at the Honolulu Board of Water Supply, officially announcing the collapsible water jug program and its distribution partners, statewide.

Upcoming Community Outreach & Educational Events

- November 19, 2019 – Water Quality and Conservation presentation at Island School

Project WET Hawaii

- Due to the success from Joint Government Water Conference presentations, Project WET Hawai'i has received many inquiries for workshops across state. In order to expand the state's network of resources, a series of workshops is being planned for the beginning of 2020. Facilitator workshops will be held on the Big Island, O'ahu and Kaua'i. Educator workshops will be provided based on request and registration requirements.

Miscellaneous

- The Department participated in the County of Kaua'i, Employee Council's Spooktacular Event on October 18, 2019 by hosting a water and juice station at the event.

JK/ein

Mgrrp/December 2019/Information & Education Specialist Report (SBM 12-2-19):ein

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!

Operations Division Report for the Month of October 2019

Personnel

- Congratulations to Krist'l Castillo Gray promoted to Waterworks Program Technician
- Congratulations to Michael Mack promoted to Lead Pipefitter
- Supervisors attended the County of Kauai Drug and Alcohol Reasonable Suspicion Training

Source and Storage

- Maintenance Workers continued cleaning of various remote facilities island-wide. Works included clearing of vegetation and drainage as well as repair and construction of structures and facilities.

- Water Plant Operators performed routine inspection and maintenance at all sites including valve maintenance, piping repair and replacement, chlorination equipment maintenance, and mixing of sodium hypochlorite.

- Refurbishment and pump replacement at Hanamā'ulu Pump Station is on-going.

- Puhi Well 3 refurbishment Contract 679 with Derrick's Well Drilling is on-going.

- Installation of Sodium Hypochlorite On-Site Generation project on Makaleha Wells and Tank site complete.

- Electrical workers performed routine electrical maintenance at all sites including SCADA radio troubleshooting, electrical wiring for motor controls, lighting repair and replacement.

- Auto mechanics performed routine maintenance of all DOW vehicle and equipment including light, medium and heavy vehicles as well as construction equipment and generators.

Distribution

- Operations Division Field Section crews continue to perform routine leak repair of service laterals and mainlines. Field Section personnel responded to thirty-nine (39) leak repair work orders.

- Field Section personnel installed two (2) service laterals.

- We received a total of 138 calls from customers reporting leaks on the mainline, service laterals, meters, meter boxes and fire hydrants including complaints of no water,

complaints of low pressure, high pressure, calls requesting remote site/facility grounds and vegetation maintenance, calls for assistance in shutting off the water meter, calls reporting damaged meter box and cover, reports of leaking or damaged fire hydrants and report of white milky water, and non-water emergency calls mainly customer inquiries. Work orders were generated and all calls resolved. Leak after the meter needs to be addressed by the customer.

Fleet, Inventory, Warehouse and Baseyard Area

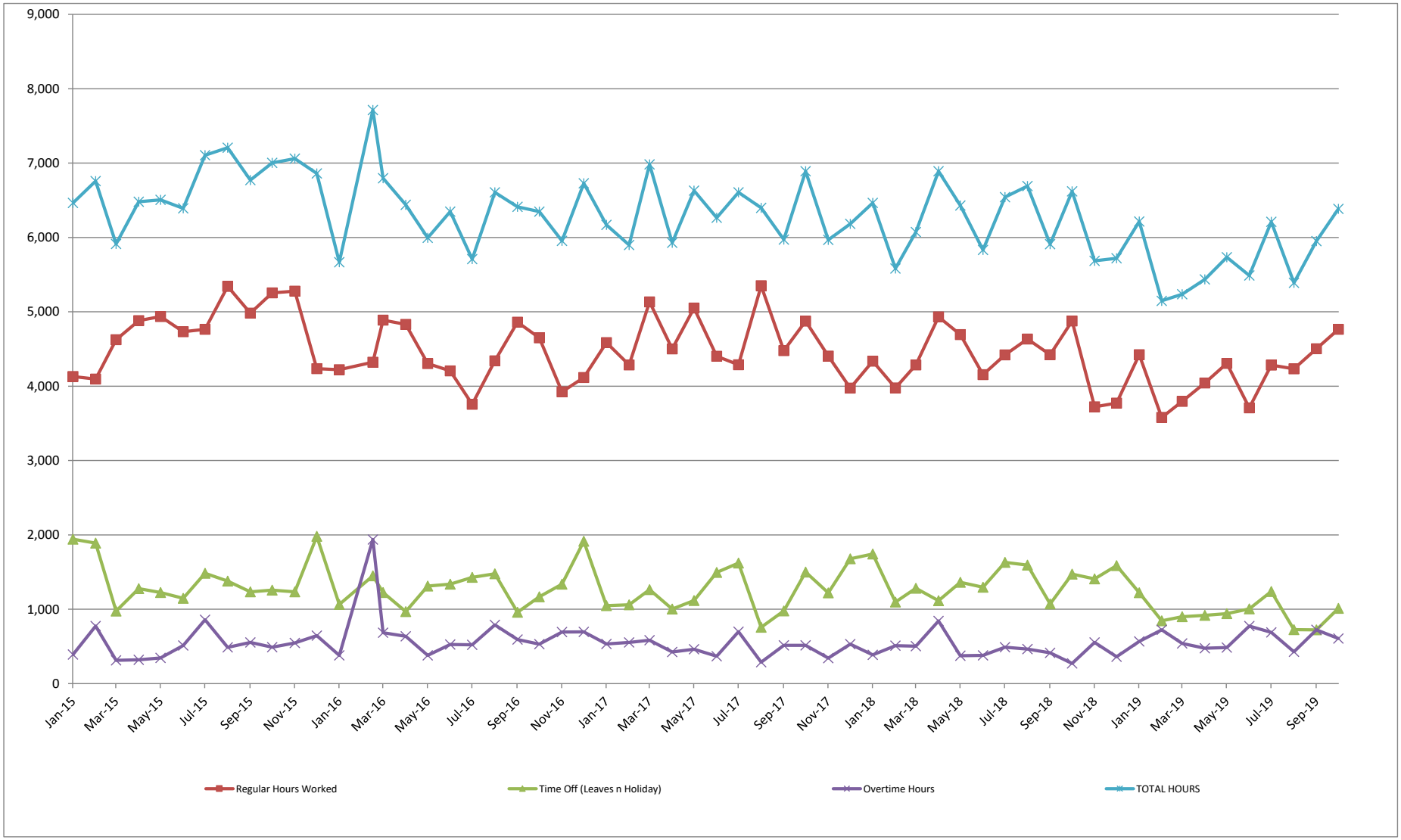
- For the month of October, a total of two hundred thirty (230) work orders were issued for Operations Division. Works included: electrical repairs and maintenance; automotive repairs and maintenance including power generator maintenance; Hawai'i one call requests for markings; water meter installation and replacement; service lateral installations; leak repairs; well, tank site and PRV maintenance; replace damaged meter boxes; repair defective meters; replace damaged or leaking hydrant; door-to-door customer notifications for tie-ins of new lines to existing lines as well as notifications regarding scheduled repairs; callouts due to customer complaints/reports; meter replacement requests; Hawai'i One Call relative to contractor's requests for markings.

- For the month of October 2019, seventeen (17) Hawaii One Call requests for markings were received. Also, forty-nine (49) meters were maintained, replaced, repaired, issued and installed including two (2) temporary hydrant meter.

VPR/ein

Attachments: Overtime Chart
Leak Report Chart
Production/Billing Chart

Mgrrp/December 2019/Operations Division Report for the Month of October (SBM 12-2-19):ein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Jul-18
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Jan-19
Mar-19
May-19
Jul-19
Sep-19
Regular Hours Worked
Time Off (Leaves n Holiday)
Overtime Hours
TOTAL HOURS

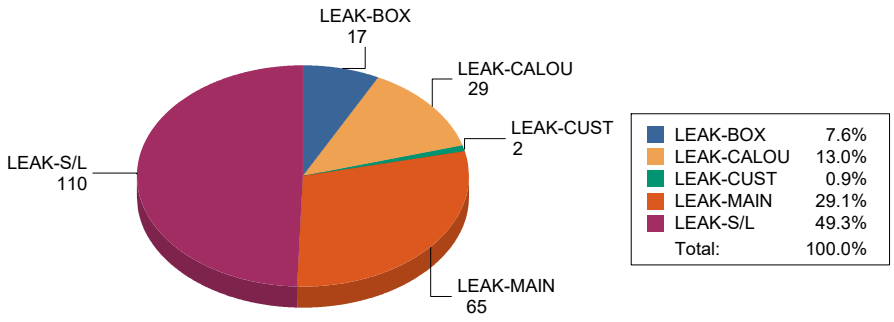
12-Nov-2019

Work Orders by Job Reason Code for Selected Date Range

10/01/2018 **to** 10/31/2019

# of W/O's	Job Reason Code	Description
17	**LEAK-BOX**	Meter Box Leak Repair
29	**LEAK-CALOU**	LEAK CALL OUT
2	**LEAK-CUST**	Customer-Side Leak Repair
65	**LEAK-MAIN**	Mainline Leak Repair
110	**LEAK-S/L**	Service Lateral Leak Repair

Work Orders by Job Reason Code



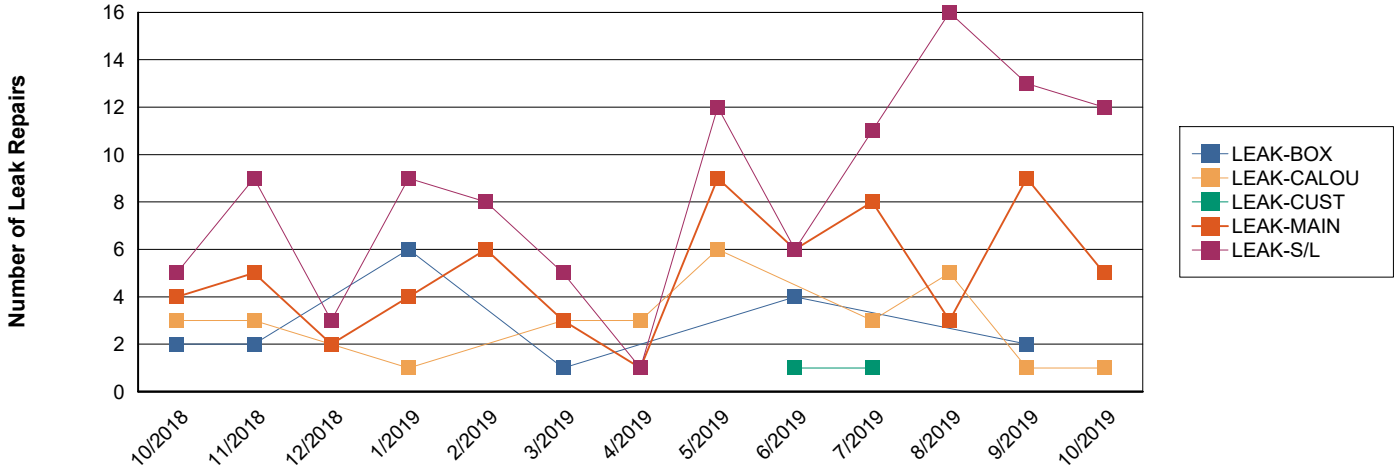
12-Nov-2019

Work Orders by Job Reason Code for Selected Date Range

10/01/2018 **to** 10/31/2019

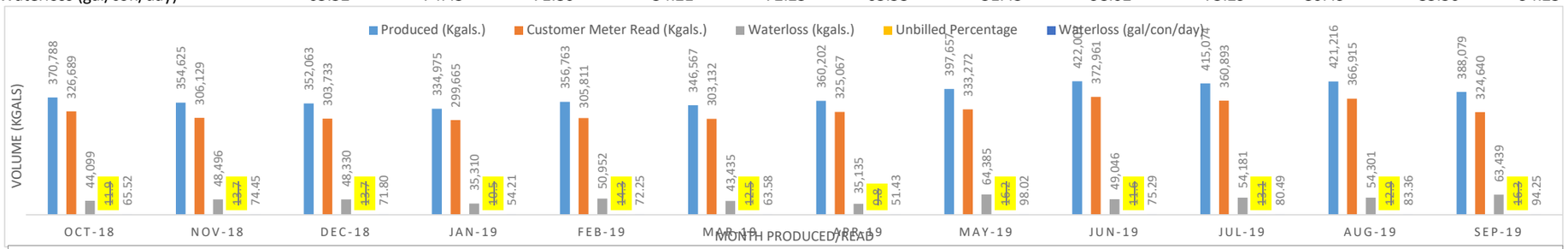
# of W/O's	Job Reason Code	Description

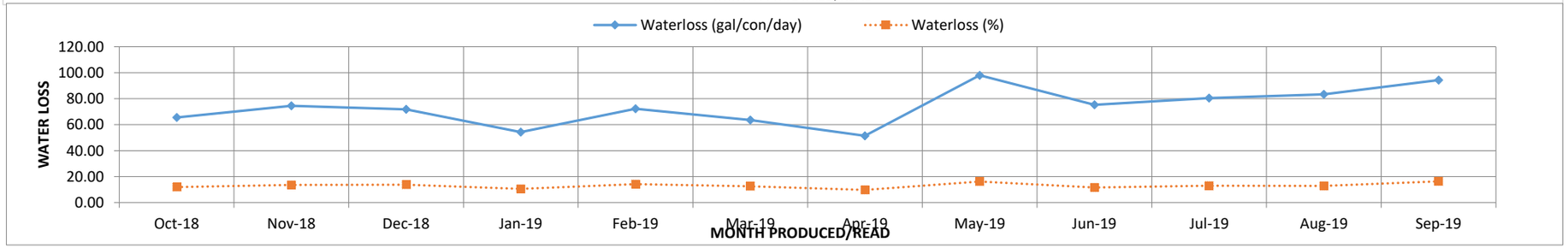
Number of Leak Repairs per Month



Monthy Water Produced, Customer Meter Read and Waterloss Comparison For Calendar Year 2018/2019

	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Total Year
Produced (Kgals.)	370,788	354,625	352,063	334,975	356,763	346,567	360,202	397,657	422,007	415,074	421,216	388,079	4,520,015
Customer Meter Read (Kgals.)	326,689	306,129	303,733	299,665	305,811	303,132	325,067	333,272	372,961	360,893	366,915	324,640	3,928,907
Waterloss (kgals.)	44,099	48,496	48,330	35,310	50,952	43,435	35,135	64,385	49,046	54,181	54,301	63,439	591,108
~~Waterloss (%)~~	~~11.9~~	~~13.7~~	~~13.7~~	~~10.5~~	~~14.3~~	~~12.5~~	~~9.8~~	~~16.2~~	~~11.6~~	~~13.1~~	~~12.9~~	~~16.3~~	~~13.1~~
Waterloss ($)	56,315	61,929	61,717	45,091	65,065	55,467	44,867	82,219	62,632	69,189	69,343	81,011	754,844
Waterloss (gal/con/day)	65.52	74.45	71.80	54.21	72.25	63.58	51.43	98.02	75.29	80.49	83.36	94.25	73.49





DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S UPDATE

December 2 2019

Pursuant to Board Policy No. 3

CONTRACTS AWARDED/EXTENSION/AMENDMENTS:

1 4TH AMENDMENT TO PROFESSIONAL SERVICES CONTRACT NO. 609 WITH RAFTELIS FINANCIAL CONSULTANTS, INC. FOR THE FINANCIAL MANAGEMENT PLANNING AND WATER RATE ANALYSIS FOR THE DEPARTMENT OF WATER FOR A CONTRACT TIME EXTENSION OF 365 CALENDAR DAYS AND ADDITIONAL FUNDING IN THE AMOUNT OF $20,000

FUNDING:

Account No.	10-31-10-540-010				
Acct Description	WU/Acctg/Admin/Professional Services-General				
Funds Available	*Verified by WWC*			$	20,000.00
Contract No.	609				
Vendor	Raftelis Financial Consultants, Inc.				
	Contract Amount	$	114,830.00		
	First Amendment	$	19,920.00		
	Second Amendment	$	0.00		
	Third Amendment	$	30,000.00		
	Total Funds Certified To Date	$	164,750.00		
Fourth Amendment:					
Contract Time Extension of 365 calendar days and additional funds for Water Rate Study		$	20,000.00		
	Total Amendment	$	20,000.00	$	<20,000.00>
Contract Amount To Date		$	184,750.00		
Fund Balance				$	0.00

BACKGROUND:

Contract NTP Date: January 1, 2016
Original Contract End Date: December 31, 2016
First Amendment End Date: December 31, 2017
Second Amendment End Date: December 31, 2018
Third Amendment End Date: December 31, 2019
New Contract End Date: December 31, 2020

Raftelis Financial Consultants, Inc. was contracted by DOW to provide consultation services in the financial management and water rate analysis of the DOW. Through the collaborative efforts of the DOW staff and Consultants, a model for rate analysis and financial planning was developed and presented to the DOW board and finance committee several times.

The following tasks are included in the scope of services: 1) Prepare revenue requirement analysis; 2) Prepare cost of service analysis; 3) Develop alternative rate proposal option; 4) Prepare rate structure impacts; 5) Conduct board workshop on utility finance; on site – three times (3x) and web presentations (3x).

There are two (2) other tasks to be completed in the scope of services of the contract. These are: 1) Prepare draft and final reports; and 2) Assistance with public involvement for rate hearings.

During the last finance committee meeting on March 31, 2017, Board Chair Lawrence Dill recommended deferring the rate study until the FRC affordable housing is resolved at the Board level and the closing of FY 2017 year end financials.

The DOW has provided the Consultants with the FY year end financials and approved FRC rule amendment. While the next Finance Committee meeting was being worked on, a request for a contract time extension until December 31, 2018 was approved to allow continuity of the ongoing water rate study and avoid possible disruption of the consultant's services.

After the last Finance Committee meeting, the following timeline occurred:

1/2/18	Raftelis provided a revised financial model that incorporated the FRC Rule amendment.
1/12/18	Raftelis conducted web presentation to the DOW staff.
2/15/18	Web conference with Raftelis, Marites Yano, Bryan Wienand and Steve Kyono
3/7/18	Fiscal re-sent previous power point from Consultants to DH, BW and SK to serve as a refresher of the DOW pricing objectives.
4/27/18	Manager's Report submitted for approval to the board to revise the study period from FY 2017-2021 to FY 2019-2023.
5/7/18	CM completed the updated CIP list.
7/26/18	Raftelis provided another updated financial model to the DOW.
9/5/18	Fiscal and DH meeting on the water rate study and concluded with the following; Bryan and the Engineers to meet on the CIP and Fiscal staff to meet on the O&M.
9/5/18	Fiscal emailed a CIP updated worksheet to Sudhir
9/28/19	The CIP worksheet was with the Manager for further review.
10-19/18	A Contract Time Suspension effective 9/6/18 was sent to Raftelis to allow DOW adequate time to review and update the 5 year CIP spending projections and cost estimates.
1/25/19	Manager's Final review of CIP was completed
2/7/19	DOW issued Notice to resume the contract.
2/22/19	RTM to amend contract to increase contract price by $20,000 to 154,750.
4/26/19	Resubmit RTM to replace contract amendment price increase from $154,750 to $164,750.
11/4/19	The Finance Committee met to discuss the new financial model and proposed new rates, but it was deferred to discuss if a new board policy on funding the long-term obligation of the DOW could be discussed at the Board level with the purpose of reducing the proposed rate increase.

2 2ND AMENDMENT TO CONTRACT N0. 614 JOB NO. 15-08, WP2020 PROJECT NO. HW-11, WITH BROWN AND CALDWELL FOR THE CONSTRUCTION OF HĀ'ENA 0.2 MG STORAGE TANK, HĀ'ENA, KAUA'I HAWAI'I FOR A CONTRACT TIME EXTENSION OF 120 CALENDAR DAYS AND ADDITIONAL FUNDING IN THE AMOUNT OF $9,567.00

FUNDING:

Account No.	20-20-00-605-153				
Acct Description	FRC/Eng/AdminCapitalOutlay-Expansion-Capital Purchases				
Funds Available	*Verified by WWC (2019-2020 Budget)*			$	30,000.00
Contract No.	614				
Vendor	Brown and Caldwell				
	Contract Amount	$	358,881.00		
	First Amendment	$	53,520.00		
	Total Funds Certified To Date	$	412,401.00		
Second Amendment:					
Contract Time Extension (120 calendar days) and Flora Study and Fauna Study		$	9,567.00	$	<9,567.00>
	Total Amendment	$	9,567.00		
Contract Amount To Date		$	421,968.00		
Fund Balance				$	20,433.00

BACKGROUND:

Contract NTP Date: December 16, 2015
Original Contract End Date: December 14, 2016
First Amendment End Date: May 23, 2018
New Contract End Date: Estimate March 28, 2020

The DOW started Job No. 15-08, WP2020 No. HW-11 Construct Hā'ena 0.2-MG Storage Tank to construct a new 0.2-MG storage tank to match the spillway elevation of the existing 0.1-MG Hā'ena Steel Tank (HW-3), which accommodates the existing 144′ service zone of the Hā'ena-Wainiha area water system. This contract consists of construction plans and specifications for a new 316 stainless steel 0.2-MG storage tank, piping and connections to the existing system, a tank site layout with grading, retaining wall, a drainage system, chain link perimeter fence, access road, and various other site improvements.

The Conservation District Use Application (CDUA) was prepared by the contractor. During review, the Office of Conservation and Coastal Lands (OCCL) commented that a new flora and fauna study are required to support the CDUA. From pre consultations done earlier in the project, the thought was that previous approved studies would be acceptable and were not included in the contract scope of work. However, after further discussions with OCCL, it has been confirmed that the studies are required to process the CDUA.

The proposed amendment is necessary to complete the required flora and fauna studies to satisfy requirements from the CDUA and OCCL. We have reviewed the proposal from Brown and Caldwell for additional engineering services for the work and find it acceptable. An additional $30,000 in funding for the project was approved in the 2019-2020 budget. Adequate funds are available for the amendment.

3 CHANGE ORDER NO. 3 FOR CONTRACT NO. 632 JOB NO. 17-02, WITH GLENMOUNT GLOBAL SOLUTIONS, LLC FOR THE SCADA SYSTEM MAINTENANCE AND PROFESSIONAL CONSULTATION SERVICES, KAUA'I, HAWAI'I IN THE AMOUNT OF $68,700.00

FUNDING:

Account No.	10-02-00-604-999				
Acct Description	WU/IT/Capital Outlay – Rehabilitation and Replacement/Misc. Capital Purchases (Line Item 3)				
Funds Available	*Verified by WWC*			$	270,000.00
Contract No.	632				
Vendor	Glenmount Global Solutions, LLC				
	Contract Amount	$	145,894.00		
	First Amendment	$	145,894.00		
	Second Amendment	$	145,894.00		
	Change Order No. 1	$	0.00		
	Change Order No. 2	$	28,525.32		
	Total Funds Certified To Date	$	466,207.32		
Change Order No. 3:					
Upgrade SCADA servers and software		$	68,700.00		
	Total Change Order	$	68,700.00	$	<68,700.00>
Contract Amount To Date		$	534,907.32		
Fund Balance				$	201,300.00

BACKGROUND:
Contract NTP Date: 05/01/2017
New Contract End Date: 04/30/2020

The current software and hardware for the SCADA servers was replaced in 2013. The server hardware has reached the end of its useful life and if not replaced could suffer failure causing reduced operational capacity of the SCADA system. The software is 7 years outdated and has not been updated since it was installed. The Department is updating our operating systems for our computers and servers. This upgrade would require a subsequent upgrade of our SCADA software so that it is compatible with the newer versions. The replacement of the SCADA servers will allow the Department to be more resilient to

problems and reduce the number of servers required to operate from six down to two. The biggest change for the servers is that we will be using virtual servers for our six different SCADA servers. The virtual servers can be combined on to a single server with an additional server which would operate as a backup for the entire SCADA system.

4 2ND AMENDMENT TO CONTRACT NO. 637 WITH R.M. TOWILL CORPORATION FOR AS NEEDED CONSTRUCTION MANAGEMENT SERVICES FOR THE DEPARTMENT OF WATER IN THE AMOUNT OF $440,000.00

FUNDING:

Account No.	10-21-10-540-010				
Acct Description	WU/Const/Admin/Professional Services-General				
Funds Available	*Verified by WWC (FY 2019-2020 Approved Budget*			$	700,000.00
Contract No.	637				
Vendor	R.M. Towill Corporation				
	Contract Amount	$	200,000.00		
	PAO#1R	$	400,405.00		
	First Amendment	$	0.00		
	Total Funds Certified To Date	$	600,405.00		
Second Amendment:					
Contract Time Extension and Additional Funding for PAO#2, Reference Manager's Report No. 20-26		$	440,000.00		
Contingency		$	18,664.00		
	Total Amendment	$	458,664.00	$	<458,664.00>
Contract Amount To Date		$	1,059,069.00		
Fund Balance				$	241,336.00

BACKGROUND:

Contract NTP Date: June 26, 2017
Original Contract End Date: June 25, 2019
First Amendment Contract End Date: December 31, 2019
Second Amendment Contract End Date: September 30, 2020

Upon full execution of the Second Amendment to Contract No. 637, the DOW will issue and execute a Project Assignment Order #2 (PAO#2) to complete the project management through September 30, 2020.

Approved Contract Amendment #1:

Unanticipated delays during the design phase caused the construction work to proceed later than originally planned, resulting in the contract work extending beyond the original contractual limit. The Department of Water (DOW) was unable to attract qualified engineering and inspection staff. This impacted our

Construction Management (CM) Division's ability to manage projects with current staff and was exacerbated with the infusion of the state appropriation funding projects such as the Hanapēpē Waterlines project (Job No. 15-07), for which RM Towill Corporations (RMTC) has been utilized as our As-Needed Construction manager. Although the cost for As-Needed CM project management and inspectional services is high compared to staff costs, the DOW needed to use the As-Needed CM contract to meet the project's construction deadlines. The Board approved additional funding for this project at the June 22, 2018 meeting and RMTC was given notice to proceed as the As Needed Construction manager via Project Assignment Order #1 on June 30, 2018.

The original contract language and Project Assignment Order (PAO) #1 did not clearly state that the monthly rental of housing in lieu of a hotel room is allowed. In June of 2018 when the DOW received RMTC's proposal, they included $82,750.00 for airfare and $14,000 for car rental. During the June 22, 2018 Board meeting, DOW staff mentioned to the Board having RMTC look for housing on-island to lower travel costs. They secured a furnished condo at approximately $1,850 per month. The amendment was approved by the Board at the August 24, 2018 meeting to realize cost savings.

Proposed Contract Amendment #2:
There have been numerous unanticipated delays during the course of construction with the biggest being the redesign of the waterline crossing the historic Hanapēpē Bridge and encountering petroleum-contaminated soils in Hanapēpē town. The redesign of the waterline crossing is nearing completion and the proposed plan in dealing with contaminated soils is currently being formulated. Due to these delays, we recommend a contract amendment to extend the contract by 274 calendar days to September 30, 2020 and approval of an additional $440,000.00 in funding. This will ensure services are provided to span from the current contract end date of December 31, 2019 to September 30, 2020 to complete the construction management portion of the project.

The time extension will allow for payment of the Project Assignment Orders are anticipated prior to the current contract end date of December 31, 2019. No additional Project Assignment Orders are anticipated to extend this contract beyond September 30.

It is the DOW staff's opinion that RMTC has made sufficient progress related to Project Assignment Order 1R for project management and inspection, and we anticipate the same performance for future project assignment orders. We have reviewed RMTC's rates for the work and find it acceptable.

5 1ST AMENDMENT TO CONTRACT NO. 685, JOB NO. 19-01 WITH BROWN AND CALDWELL FOR THE ISLAND WIDE VULNERABILITY AND RESILIENCY ASSESSMENT

FUNDING:

Account No.	10-20-10-540-010				
Acct Description	WU/Eng/Admin/Professional Services				
Funds Available	*Verified by WWC*			$	405,000.00
Contract No.	685				
Vendor	Brown and Caldwell				
	Contract Amount	$	629,686.00		
	5% Contingency	$	31,484.00		
	Total Funds Certified To Date	$	661,170.00		

First Amendment:					
Contract Time Extension (150 calendar days) and Additional Improvements to Emergency Response Plan		$	51,516.00	$	<51,516.00>
	5% Contingency	$	31,484.00		
	Total Amendment	$	83,000.00		
Contract Amount To Date		$	712,686.00		
Fund Balance				$	353,484.00

BACKGROUND:
Contract NTP Date: June 10, 2019
Original Contract End Date: October 1, 2020
New Contract End Date: February 28, 2021

The Department has 9 water systems serving more than 70,000 residents and visitors on Kaua'i, and this vulnerability assessment is being undertaken as a proactive measure by the Department to evaluate, and if necessary, improve its system resiliency against disaster events. The County of Kaua'i has experienced significant damages associated with natural disasters including two previous hurricanes and most recently, major flooding due to storm events that have hit the island of Kaua'i.

The island wide vulnerability assessment and identification of recommended projects will support the Department's goal of providing safe, affordable, and adequate drinking water for all water consumers on Kaua'i.

Concurrently, the America's Water Infrastructure Act (AWIA) 2018 law went into effect on February 7, 2019, requiring community water systems serving a population greater than 3,300 persons to conduct an assessment of the risks to, and reliance of, its system from natural hazards and malevolent acts. The assessment shall look at the resilience of the water system's pipes, conveyances, physical barriers, source water, water collection and intake, pretreatment, treatment, storage and distribution facilities, electronic, computer, and other automated systems. The AWIA 2018 also requires an evaluation of the water system monitoring practices, financial infrastructure, use and handling of chemicals, and operation and maintenance practices.

In addition, the AWIA 2018 requires the preparation or revision to the water system Emergency Response Plan (ERP). The ERP should incorporate the findings of the vulnerability and resiliency assessment, identify strategies and resources to improve the resilience of the system, include standard plans and procedures to implement, and identify equipment that can be utilized in the event of a natural hazard or malevolent act that threatens the ability to deliver safe drinking water.

Initial contract scope was to satisfy the minimum AWIA 2018 requirements, however it has become apparent that a reformatting and overhaul of the ERP needs to happen. The ERP is an invaluable tool and needs to be presented in a manner that is useful for all staff called to serve during an emergency. The current version of the ERP is cumbersome to use and may often be unable to inform staff of the necessary procedures in a timely manner when needed during an emergency.

The proposed amendment and additional funding are necessary to provide and modify the ERP such that the document becomes the vital tool for all staff in the department during an emergency. Funding will be taken from the Engineering Professional Services account. Funds from projects having professional services funds budgeted, but aren't anticipated to utilize them this fiscal year, will be used for this amendment. UH Experiment Station Tank ($50,000.00) and Develop Kāpa'a Homesteads Well No. 4 Site Improvements ($1,516.00). In the event that these 2 project are able to be done this year, additional funds will be requested, if needed. We have reviewed the proposal from Brown and Caldwell for additional engineering services for the work and the additional fee of $51,516.00 and find it acceptable.

6 CONTRACT NO. TBD AWARDED TO SPJ CONSULTING, LLC FOR LEGISLATIVE LIAISON SERVICES FOR 2020 LEGISLATIVE SESSION IN THE AMOUNT OF $40,000.00

FUNDING:

Account No.	10-01-10-540-010				
Acct Description	WU/Admin/Admin/Professional Services-General				
Funds Available	*Verified by WWC*			$	40,000.00
Contract No.					
Vendor	SPJ Consulting, LLC				
	Contract Amount	$	40,000.00		
	5% Contingency (N/A)	$	0.00		
	Total Funds Certified	$	40,000.00	$	<40,000.00>
Fund Balance				$	0.00

BACKGROUND:
The Board desires to engage a consultant to represent the Board of Water Supply, County of Kaua'i as its Legislative Liaison during the 2020 Legislative session to review and track the Board's proposed CIP Funding Bill and other legislative bills as it affects the Board.

In consideration of the work to be completed, a negotiated lump sum amount to complete the work was agreed upon.

It is recommended that the Board to enter into an agreement with SPJ Consulting, LLC to complete the work.

The current Manager and Chief Engineer is the procurement officer for this contract and will continue to serve as the procurement officer for this contract beyond November 30, 2019 unless directed otherwise by the Board or successor to the Manager and Chief Engineer position.

7 CONTRACT NO. TBD AWARDED TO EARTHWORKS PACIFIC, INC. FOR JOB NO. 17-10, WATER PLAN 2020 PROJECT NO. KW-07 TO REHABILITATE PAUA VALLEY TANK NO. 1, 0.5 MG CONCRETE KEKAHA

WATER SYSTEM, KEKAHA, KAUA'I, HAWAI'I IN THE AMOUNT OF $2,264,750.00

FUNDING:

Account No.	10-21-00-604-001				
Acct Description	WU/Capital Outlay-R&R/Paua Valley Tank Repair (FY 2019-2020 Approved Budget			$	1,400,000.00
Account No.	10-21-00-604-001				
Acct Description	WU/Capital Outlay-R&R/Paua Valley Tank Repair (Reference Manager's Report No. 20-27 approved at 11/22/19 Board Meeting			$	975,000.00
Funds Available	*Verified by WWC*			$	2,375,000.00
Contract No.					
Vendor	Earthworks Pacific, Inc.				
	Contract Amount	$	2,264,750.00		
	Contingency (approx. 5%)	$	110,250.00		
	Total Funds Certified	$	2,375,000.00	$	<2,375,000.00>
Fund Balance, Acct No. 10-21-00-604-001 WU/Capital Outlay-R&R/Paua Valley Tank Repair				$	0.00

BACKGROUND:

The original scope of the Paua Valley Tank #1, 0.5 MG Project was to address the cause of a leak in the tank and perform hazardous material testing. During this testing, it was determined that the tank's liner contained Polychlorinated Biphenyls (PCBs). The tank was then taken out of service by the DOW Operations Division. This project was then initiated to mitigate the PCBs and other hazardous materials such as lead paint in addition to fixing the leak(s) in the existing tank.

This scope of this project, as indicated in the contract drawings and specifications, is as follows:
Repair the existing tank which is a 0.5 million gallon (MG) reinforced concrete reservoir, with an inside diameter of 69 feet and a maximum water height of 18 feet to the overflow pipe opening. The flat concrete roof is supported on the interior by four square concrete columns. Work includes installation of a level indicator system with gauge board, remove and replace the interior ladder, remove and replace the asphalt concrete pavement surrounding the reservoir, repair the leak at the base of the reservoir, spall repairs, install interior coating of the reservoir, repaint the entire reservoir including appurtenances, remove and replace the reservoir roofing system, mitigate hazardous materials associated with the repair work. The

Project is located in the Kekaha, Kaua'i, Hawai'i. area accessed by a gated unpaved access road from Koke'e Road.

Bids were opened on October 31, 2019 and subsequently reviewed as follows:

Earthworks Pacific. Inc. $2,264,750.00 (Deemed Responsive to Procurement)
This project is not a typical project given the specialty areas related to hazardous materials, coating, and leak repairs. There were two general contractors who provided notice of intent to bid; however, only one of those contractors provided a bid. The other contractor is based in O'ahu and stated that the project location on Kaua'i posed an issue for them and they felt they would not be competitive and thus decided not to propose. The project's unique requirements, specifically those related to the rehabilitation work required, led to a construction price significantly higher than originally anticipated. Additionally, the construction economy is extremely busy and contractors who may bid this type of project are overloaded to the point where they are picking and choosing projects to bid on. Therefore, more difficult or complex projects such as this one are not as enticing compared to when construction is slower on the island and throughout the state.

The Engineer's estimate was $1,222,265.00 which was provided for the FY 2020 budget amount, which was set at $1,400,000.00. The project is funded in part by a state appropriation of $1,200,000, which represents an 80% match of $1,440,000.00 from the State and a 20% match from the Department of $240,000.00. To utilize the State funds the contract must be encumbered with a notice to proceed date of no later than June 30, 2022. The project was procured via the low bid process and the apparent low bidder's proposal has been reviewed by DOW staff and the design consultant Kai Hawai'i Inc.

Because only one bid was received and deemed responsive, a review of the bid line items was conducted by DOW staff to determine if the pricing is fair and reasonable. The Earthworks Pacific Inc. bid appeared to be high relating to hazardous material removal, removal, installation of fluid applied roofing, cleaning and disinfection of the reservoir, and temporary PCB filtration items.

Based on the Earthworks Pacific. Inc. bid alone, the DOW's design consultant, Kai Hawai'i, and DOW engineering design staff recognized the potentially excessive bid item costs. However, after reviewing the DOW consultant's responses and the information requested of Earthworks Pacific Inc. regarding these items, the DOW recommends moving forward with the project based on several key considerations. First, rehabilitation work typically has higher costs than new construction, and this project's specification requirements are stringent with respect to hazardous material handling, treatment, and disposal. Contingency related to these items is also highly variable as there is a higher level of uncertainty for these items.

Next, the needs of the water system were also given strong consideration. Per the DOW Operations staff, the tank has been offline since September 15, 2017. With only one storage tank available, our pumps are cycling more than preferred, which adds wear and tear to operations and potential costs for pump maintenance or replacement. Per our Water Resources and Planning staff, with the tank temporarily offline, fire flow is sufficient for the Kekaha area, but storage capacity is at a deficit and we are unable to provide the required maximum day demand for the Kekaha area as required in the Water System Standards.

Lastly, deferring the project until the construction climate changes is not advisable because we should jeopardize forfeiting the $1,200,000.00 in State funding. Furthermore, there is no guarantee that bids would go down, as that may actually increase if only one contractor bids again.

For all of these reasons, we believe it is in the best interest of the Department and our ratepayers to approve additional funds for the construction contract to be awarded and executed with Earthworks Pacific. Inc. This will allow work to proceed and the tank can be put back into service as soon as possible to meet water system standard requirements and reduce operational issues.

WAIVER, RELEASE & INDEMNITY APPLICATIONS:

None

STAFF REPORTS - FY 19-20:

PERSONNEL MATTERS

November 21, 2019

Administration

1. HR Coordinator #2489 classification requisition submitted to DHR.

Information Technology

1. DHR has approved the creation of the Information Technology Division.
2. Information Technology Specialist III #2615. Submitted request to Department of Human Resources (DHR) to re-post the recruitment announcement since only one qualified applicant on eligibles list.
3. Waterworks Information Technology Officer #2485 reallocated to Waterworks Information Technology Manager #2485 effective 8/1/2019. Classification is EM-3 and request to DHR submitted to "hire above the minimum" and post position on a range for the salary schedule.
4. Computer Systems Support Technician I #2492 classification requisition submitted to DHR for I.T. Specialist II classification.

Fiscal Division

1. Assistant Waterworks Controller #2619. New position initial allocation effective 10/1/2019. Classification is EM-3 and request to DHR submitted to "hire above the minimum" and post position on a range for the salary schedule. Next step is recruitment.
2. Meter Reader I #2466. Eligibles list received. Interviews to be scheduled.
3. Customer Service Representative #2433. Pending eligibles list.

Construction Management Division

1. Chief of Construction Management #2470. Revision to position duties, submitted to DHR on 10/23/2019.
2. Civil Engineer V #2355. Classification requisition submitted to DHR.
3. Civil Engineer III #2484. Classification requisition submitted to DHR.
4. Civil Engineer I #2351. Classification requisition submitted to DHR.
5. Civil Engineer IV #2607. Position removed.
6. Waterworks Inspector I #2608 & #2609. Positions removed.
7. Waterworks Inspector III #2353. Classification requisition submitted to DHR.
8. Waterworks Inspector II #2483. Classification requisition submitted to DHR.
9. Waterworks Inspector I #2357. Classification requisition submitted to DHR.

Operations Division

1. Automotive Mechanic I #2614. Vacant, no action.

2. Repair Shop Supervisor #2618. Vacant, no action.
3. Lead Water Meter Mechanic #2616. Pending eligibles list.
4. Lead Pipefitter #2407. Promotion effective 11/1/2019.
5. Pipefitter Helper #2410. Pending eligibles list.
6. Utility Worker #2438. Pending eligibles list.
7. Waterworks Program Technician #2613. Promotion effective 10/16/2019.
8. Water Service Investigator III. New position initial allocation effective 8/16/2019. Next step, recruitment.

Hire, Separation, Position Changes

1. Promotion to Waterworks Program Technician #2613 started 10/16/2019.
2. Promotion to Lead Pipefitter #2417 started 11/1/2019.

Pursuant to Board Policy No. 24

CONVEYANCE OF WATER FACILITIES

None

CUSTOMER CARE AND BILLING (CC&B) SYSTEM *UPDATE*:

November 21, 2019

The Customer Account Portal continues to see increased usage, with the total number of registered accounts exceeding 2,400 during the first week of November, 2019.

The Department's consultant for the cloud-hosted billing system's support continues to work closely with staff to coordinate the testing, development, and installation of the Stripe terminals which will be installed at the three front customer service windows in the Department lobby. These terminals will allow customers to pay in person with debit and credit cards. The Department continues to work with our consultant towards the installation of payment kiosks for the lobby and the implementation of a mobile payment application.

UPDATE TO WATER RATE ANALYSIS AND FINANCE COMMITTEE:

The Finance Committee met on November 4, 2019 to review and discuss the Department's recommendations for the Financial Management Plan as presented by the DOW's consultant, Raftelis.

Public testimony was received and Board members provided input and requested follow up information from the Department regarding:

1. Data showing the last five years of operating costs to verify the data being used in the model to determine the proposed water rates.
2. Confer with the County of Kaua'i's Finance Director to discuss the County's approach to long term liability as it relates to Net Pension Liability and Other Post-Employment Benefits.

The DOW is currently working to provide a Board Policy relating to Net Pension Liability and Other Post-Employment Benefits.

I.T. INITIATIVES *UPDATE:*

November 14, 2019

I.T. Update
October 2019 Board Meeting Update

Help Desk:

August No. of Received Tickets:	133
August No. of Resolved Tickets:	117
Avg Response Time (hrs):	46:48
Avg Resolution Time (hrs):	148:38
Current Open tickets:	11

I.T. Section continues to be short staffed and working on numerous help desk requests and multiple projects.

I.T. Staff received approval for Microsoft Windows 10 Upgrade. I.T. Staff continue to work with an I.T. Consultant to work on upgrading of staff computers as Windows 7 Operating System will no longer be supported by Microsoft in January 2020.

On October 28th, the Department as well as the rest of the island lost access to the internet due to a fiber outage that happened underground. DOW staff were able to communicate internally but could not receive emails from external customers. Communication was restored later in the evening and emails began coming through to the DOW Network.

AGREEMENT WITH MR. JEFF LINDNER FOR MOLOA'A WATER SYSTEM:

The Manager and Chief Engineer has been corresponding with an attorney for Mr. Jeffrey Lindner regarding additional charges that have been requested of the DOW related to the purchase of water for the DOW's customers in the Moloa'a water system. The following information has been relayed to Mr. Lindner's legal counsel:

The County of Kaua'i, Department of Water (DOW) is in receipt of your letter dated October 21, 2019 regarding the DOW's Kaua'i Department of Water's Moloa'a Water System. It is my understanding that additional charges are being assessed above the regular monthly amount which the DOW has been paying per the 1985 Agreement (hereinafter "Agreement"). The DOW had not been paying the invoices received since May, 2019 because Mr. Lindner has not yet provided the information requested to substantiate the additional charges in those invoices. However, upon receiving your letter I immediately directed my Fiscal staff to pay the outstanding balance for the regular monthly billing amount per the Agreement that is overdue. We apologize for the delay in processing these regular payments.

Regarding the additional charges being requested, in reviewing your letter it is evident that circumstances have transpired which were not anticipated in the original Agreement. As you stated, "…the DOW system's population of end users utilizing the State well water for human consumption should be combined with Moloa'a Farms' population of end users triggering regulation as a public water system." As the DOW is first learning of this situation from your letter, we request any information that you or Mr. Lindner can provide regarding the DOH's determination to better assess how the DOW may proceed with addressing this serious issue.

In our preliminary research of the basis for the Department of Health's (DOH) determination that this is a public water system, the additional requirements and corresponding additional charges to Mr. Lindner appear to be based on characteristics of both the DOW's system, the Moloa'a Farms users, and the Moloa'a Irrigation Cooperative. If this is confirmed, for the additional charges generated from DOH's determination, the DOW's position is that we should be responsible to pay for the pro rata usage of the total amount of water supplied to the DOW. This would be consistent with Section 10 of the Agreement, which states "*The Board shall pay Līhu'e for the water delivered at the Board's master meter its share of the current water delivering charges assessed the Coop. The Board's share of the*

water charges shall be based upon its pro rata usage of the total amount of water supplied by the Moloa'a sources. Payment shall be made monthly, within thirty (30) days of meter reading".

We respectfully request that supporting documentation be provided to the DOW regarding the following:

1. The total amount of water supplied by the Moloa'a source.
2. The DOW's pro rata usage.
3. The total additional charges to Mr. Lindner attributable to DOH's requirements as a public water system.
4. The DOW's pro rata charges.

We look forward to a satisfactory resolution to this matter that is equitable to all parties involved.

EVALUATION OF GRANULAR ACTIVATED CARBON TREATMENT AT WAILUA HOMESTEADS WELLS A & B:

The Manager and Chief Engineer received correspondence on November 1, 2019 from the Department of Health, Safe Drinking Water Branch regarding the Granular Activated Carbon treatment system in place at the Wailua Homesteads A & B well site. The following information has been relayed to DOH:

The Department of Water, County of Kaua'i (KDOW) is in receipt of your November 1, 2019 letter regarding the Wailua Homesteads Well A & B Granular Activated Carbon (GAC) facility. First, we would like to acknowledge and thank you for your continued partnership, and your recommendations for proactive measures aimed at ensuring that our water continuously meets or exceeds all applicable drinking water standards. We remain committed to this same purpose.

As suggested in your letter, we will proceed with retaining a qualified consultant to prepare a report which will identify recommended solutions to address the items identified in your letter. Upon completion, the report will be submitted to the Safe Drinking Water Branch for review and concurrence. Regarding your request for a timeline for these actions, we will initiate the procurement process immediately and will provide a status update regarding the procurement with the selected consultant by January 31, 2020. The update will provide a more definitive timeline for completing the report and providing it to the Safe Drinking Water Branch for review and concurrence. If this initial, proposed timeline is not acceptable, please respond to this letter.

Additionally, we would like to address a misunderstanding in the November 1, 2019 letter from DOH, which states "the past record of treatment notwithstanding, it is likely that the existing GAC media's treatment capability is close to being exhausted, and that a serious breakthrough of mercury into the system could occur. There is currently no monitoring data to evaluate this possibility". However, to clarify, the KDOW does have monitoring data to evaluate this possibility and we are providing it as an attachment to this response. The data shows two key facts:

1. Since the GAC system was installed, there has been no detection of mercury in Public Water System No. 400.
2. There has been no detection of mercury in the raw water since 2009.

Moving forward, the KDOW's main point of contact for this matter will be our Water Microbiologist V, Mr. Carl Arume. He can be contacted directly at (808) 245-5446 or via email at carume@kauaiwater.org.

AFFORDABLE HOUSING TASK FORCE:

The Manager and Chief Engineer will participate in the upcoming November 26, 2019 meeting of the Affordable Housing Task Force to represent the Department. Moving forward, for any meetings of this task force scheduled after November 30, 2019 it is recommended that the agenda for the meeting be shared with all DOW division heads to determine who should attend subsequent meetings.

FRESH WATER COUNCIL:

The Manager and Chief Engineer was previously requested to join the Fresh Water Council and attend various meetings and teleconferences throughout the year. Moving forward, for any meetings of the Fresh Water Council, the current Manager and Chief Engineer respectfully requests to continue to attend these meetings on behalf of the Department of Water should the Board not have a Manager and Chief Engineer, or acting Manager and Chief Engineer, when subsequent meetings are held. The current Manager and Chief Engineer will also request concurrence from the Fresh Water Council to continue to attend and participate.

KAUA'I WATERSHED ALLIANCE:

The Manager and Chief Engineer currently attends quarterly meetings with the Kaua'i Watershed Alliance (KWA). Moving forward, for any meetings of the KWA, the current Manager and Chief Engineer respectfully requests to continue to attend these meetings on behalf of the Department of Water should the Board not have a Manager and Chief Engineer, or acting Manager and Chief Engineer, when subsequent meetings are held. The current Manager and Chief Engineer will also request concurrence from the other KWA members to continue to attend and participate.

QUARTERLY MANAGER'S MEETINGS:

The Manager and Chief Engineer currently attends quarterly meetings with the following:

- The Manager and Chief Engineer from the Honolulu Board of Water Supply and his Deputy Manager-Engineer
- The Manager and Chief Engineer from the Hawai'i Department of Water Supply and his Deputy Manager-Engineer
- The Director of the Maui County Department of Water Supply and his Deputy Director

Moving forward, the current Manager and Chief Engineer respectfully requests to continue to attend these meetings on behalf of the Department of Water should the Board not have a Manager and Chief Engineer, or acting Manager and Chief Engineer, when subsequent meetings are held. The current Manager and Chief Engineer will also request concurrence from the other islands' Managers to continue to attend and participate in these meetings.

I.T. STRATEGIC PLAN – CONTRACT WITH BRIO CONSULTING:

The Manager and Chief Engineer continues to assist with contract oversight and administration of the I.T. Strategic Plan, I.T. staff, and on-site I.T. consultant who has been hired to assist the DOW during the current I.T. staffing shortage. One existing I.T. staff member is anticipated to return to work January 2, 2020; however, during the month of December 2019 the existing DOW Contract's Officer and existing Computer Systems Support Technician I will be the only DOW staff members available to support this contract.

Recruitment for the (new) vacant I.T. Specialist III positions is ongoing. For the Waterworks Information Technology Officer (position #2485), which was reallocated to Waterworks Information Technology Manager #2485 (classification EM-3), a request was submitted to the Department of Human Resources to "hire above the minimum" and post the position on a range for the salary schedule. It is estimated that the earliest that a selected candidate could start work at the Department is mid to late January, 2020.

POSITION DESCRIPTION FOR MANAGER AND CHIEF ENGINEER:

Per the Board's request, the Manager and Chief Engineer is working to update the position description for the Manager and Chief Engineer position. In consultation with the Board of Water Supply's Manager and Chief Engineer and the County of Hawai'i's Manager and Chief Engineer, position descriptions for these positions are not available for reference or comparison because the positions are exempt from civil service. Per the Honolulu Board of Water Supply, the only available information for the Manager and Chief Engineer position and Deputy Manager-Engineer position is shown in the Charter Section 7-105 "Powers, Duties and Functions of the Board of Water Supply".

MEMORANDUM OF AGREEMENT WITH KUKUI'ULA:

The Manager and Chief Engineer is currently working to finalize a Memorandum of Agreement with Kukui'ula regarding the construction and connection of main line and installation of a pressure-reducing valve on Lopaka Paipa Road to the DOW's 245-foot elevation system.

The Agreement can be approved by the Manager and Chief Engineer and will not require Board approval. A draft of the Agreement is shown below and is anticipated to be executed before November 30, 2019. However, should the Agreement not be executed before November 30, 2019, it is anticipated that the Agreement will be routed to the Board for approval and execution.

RECITALS

WHEREAS, Kukui'ula and the DOW entered into the Agreement for Kōloa Estates Subdivision on November 1, 1999 (1999 Agreement) which conditioned the DOW's recommendation for final approval for Kukui'ula's Subdivision S-98-9, "Kōloa Estates Subdivision," on the completion of a water main connection and installation of the pressure reducing valve (PRV) within thirty days of final subdivision approval of the residential subdivided lots; and

WHEREAS, the requirements for the water main connection and installation of the PRV have not yet been met and the parties wish to amend the 1999 Agreement as it relates to the deferral of the water main connection and installation of the PRV; and

WHEREAS, Kukui'ula and the County of Kaua'i are currently partnering to construct utility extensions to the Koa'e Makana Workforce Housing development located at Tax Map Key (4) 2-6-04:019 located along Po'ipū Road in the vicinity of Lopaka Paipa Road; and

WHEREAS, the DOW approved the water service request to the Koa'e Makana Workforce Housing project via a letter dated October 20, 2017 on the condition that the 1999 Agreement requirements be completed prior to water service or building permit approval; and

WHEREAS, Kukui'ula is currently constructing the 12-inch waterline from the existing 12-inch waterline on Lopaka Paipa Road to the Koa'e Makana Workforce Housing project without connecting the new mainline and PRV to the existing 12-inch waterline on Po'ipū Road; and

WHEREAS, the water main connection and installation of the PRV are required to be constructed and installed by Kukui'ula per the 1999 Agreement; and

WHEREAS, Koa'e Workforce Housing, L.P. executed a Waiver, Release, and Indemnity Agreement with the DOW on September 11, 2018 for the Koa'e Makana Workforce Housing project

which provides for approval of the project's building permit prior to final approval and acceptance of the project's water improvements by the DOW; and

WHEREAS, in recognition of the importance of the Koa'e Makana Workforce Housing project, and so as to avoid any potential project delays related to the water main connection and installation of the PRV requirements, the DOW is willing to maintain the Waiver, Release and Indemnity Agreement for the Koa'e Makana Workforce Housing Project, TMK: (4) 2-6-004:019, which provided for approval of the project's building permit, with the condition that Kukui'ula complete the water main connection and installation of the PRV according to the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises herein made, the parties do hereby agree as follows:

1. The DOW shall maintain and enforce the requirements for the water main connection and installation of the PRV at TMK (4) 2-6-04:019 according to the 1999 Agreement, as amended hereby.
2. Within one hundred eighty (180) calendar days: Kukui'ula shall prepare, deliver, and receive DOW's approval of construction drawings for the water main connection and the PRV. This time shall exclude review by DOW staff and submittal dates shall be tracked by both parties.
3. Within three hundred sixty-five calendar days: Kukui'ula shall prepare, deliver, and receive DOW's approval to schedule a preconstruction meeting by submitting four (4) sets of approved construction drawings and providing all necessary construction submittals.
4. Within seven hundred thirty calendar days: Kukui'ula shall construct the water main connection and the PRV and receive Certification of Completion from the DOW. Any delays caused by the DOW shall be excluded from this time of performance. Any delays directly attributed to failed Chlorination test results shall be excluded from this time of performance. Any delays beyond Kukui'ula's control, as reasonably determined by the DOW, shall be excluded from this time of performance.
5. Kukui'ula shall execute performance and payment bonds for the water main connection and installation of the PRV in a form or forms acceptable to the DOW concurrent with this Agreement.
6. If Kukui'ula refuses or fails to perform the work, or any separable part thereof, or fails to complete the work within such times established in provisions 2, 3, or 4, and further fails within thirty (30) days after receipt of written notice from the DOW to commence and correct the refusal or failure with diligence and promptness, the DOW may, by written notice to the Kukui'ula, declare the Kukui'ula in breach and terminate Kukui'ula's right to proceed with the work or the part of the work as to which there has been delay or other failure to perform. In such an event, the DOW may take over the work and perform the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, the materials, appliances, and plants as may be on the site of the work and necessary therefore. Whether or not Kukui'ula's right to proceed with the work is terminated, Kukui'ula and its sureties shall be liable for any damage to the DOW resulting from or related to Kukui'ula's refusal or failure to complete the work within the specified times.
7. All times shall be counted from the effective date of this Agreement, which shall be day zero.
8. This Agreement shall remain in effect until such time as the water main connection and installation of the PRV requirements are met as determined by the DOW in its sole and absolute discretion and written notice is issued by the DOW confirming the requirements have been met. Termination of this Agreement shall not render void any other requirements imposed by the DOW based on the Water System Standards.

9. Agreement in Full Force and Effect as Amended. The parties further agree that all other provisions of the 1999 Agreement and any amendments thereto shall remain in full force and effect except as amended herein.

BW/mja

Mgrrp/Manager's Update (SBM 12-2-19):mja