

BOARD OF WATER SUPPLY

TOM SHIGEMOTO CHAIR
JULIE SIMONTON, VICE CHAIR
KURT AKAMINE, SECRETARY

MICAH FINNILA, MEMBER
KA'AINA HULL, EX-OFFICIO
TROY TANIGAWA, EX-OFFICIO
VACANT, EX-OFFICIO



JOSEPH E. TAIT
MANAGER AND CHIEF ENGINEER

REGULAR MONTHLY MEETING NOTICE AND AGENDA

Thursday, November 21, 2024
9:30 a.m. or shortly thereafter

Meetings of the Board of Water Supply, County of Kauai will be conducted in-person at the Department of Water Board Room, 2nd Floor located at 4398 Pua Loke Street, Lihue, Kauai, Hawaii, and remotely in accordance with Act 220, Session Laws of Hawai'i 2021 via interactive conference technology as follows:

Click on the link below to join on your computer or mobile app by VIDEO:

<https://us06web.zoom.us/j/82705746686>

Passcode: 009885

OR

Dial phone number and enter conference ID to call in and join by AUDIO:

Phone: 888 788 0099 US Toll-free

Phone Conference ID: 827 0574 6686

Please Note: If you do not provide a name, unique identifier, or alias when joining the meeting, you will be renamed to allow staff to address and manage individual guests.

In the event of a lost connection the Board will recess for up to 30 minutes to restore the connection. If the connection cannot be restored within 30 minutes, the Board will continue the meeting to 12:00 p.m. or shortly thereafter. If the visual link cannot be restored, the Board may reconvene with an audio-only link using the above dial-in phone number and conference ID. A lost connection only applies to remote connections provided as part of the remote meeting but does not apply to a public member being unable to access the meeting due to a connectivity issue on their end.

CALL TO ORDER

ROLL CALL

ANNOUNCEMENTS

Next Scheduled Board Meeting: Thursday, December 19, 2024 – 9:30 a.m.

APPROVAL OF AGENDA

MEETING MINUTES

1. Regular Board Meeting – October 17, 2024

PUBLIC TESTIMONY

OLD BUSINESS

1. Discussion and Possible Action on Manager's Annual Evaluation timeline, process, and Criteria (*referred to PIG Committee at October 19, 2023 Board meeting; PIG committee report presented at October 17, 2024 Board meeting*)

NEW BUSINESS

1. Manager's Report No. 25-08 Discussion and Possible Action to reappropriate certain budget line items to other line-item budgets for the purpose of compliance with the Supplemental Agreement for Bargaining Unit 13, Salaries for Certain Engineering Classes.
2. Manager's Report No. 25-09 Discussion and Possible Action on Approving Certain Unspecified Future Obligations Provisions Included in Laserfiche's Professional Services Additional Terms
3. Manager's Report No. 25-10 Discussion and Possible Action to Approve GOE for 'Ōpaeka'a Falls Subdivision Lot 2, TMK (4) 4-2-003:065
4. Manager's Report No. 25-11 Discussion and Possible Action to Approve Notice of Waiver and Release and Cancellation of Private Water System Agreement for 'Ōpaeka'a Falls Subdivision Lot 2, TMK (4) 4-2-003:065
5. Manager's Report No. 25-12 Discussion and Possible Action to Approve Memorandum of Agreement with DHHL (Interconnection Agreement)
6. Manager's Report No. 25-13 Discussion and Possible Action to Approve GOE with Achberg LLC, TMK (4) 5-1-005:124
7. Manager's Report No. 25-14 Discussion and Possible Action to Request Board Approval for Unspecified Future Obligations and Indemnification for Zoom between the Board of Water Supply, County of Kaua'i and Zoom
8. Election of Board Chair, Vice-Chair and Secretary, and committee appointments for 2025
9. Proposed Board meeting calendar for 2024

STAFF REPORTS

1. **Fiscal:**
 - a. Monthly dashboard
 - b. Budget Report for October 2024
2. **Operations** – Monthly dashboard
3. **Engineering** – Monthly dashboard
4. **Administration**
 - a. Monthly Dashboard
 - b. Human Resources – updates on Personnel Vacancies
5. **Manager and Chief Engineer** – Required communications to the Board, and update of Department activities

TOPICS FOR NEXT BOARD OF WATER SUPPLY MEETING: *(December)*

TOPICS FOR FUTURE BOARD OF WATER SUPPLY MEETING:

1. Resolutions for 2024 Employees of the Year

EXECUTIVE SESSION:

Pursuant to Hawai'i Revised Statutes (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).

1. Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), the Office of the County Attorney requests an Executive Session with the Board, to provide a briefing and to discuss possible settlement authority in Ronald K. Yamashita, Jr., vs. County of Kaua'i, et al., Civil No. 18-1-0158, and to consult with the Board's attorney on its powers, duties, privileges, immunities, and liabilities as they relate to this agenda item.

ADJOURNMENT

WRITTEN TESTIMONY

The Board is required to afford all interested persons an opportunity to present testimony on any agenda item. The Board encourages written testimony at least two (2) business days prior to a scheduled Board meeting. At each Board meeting, the Board will accept oral and written testimony on any agenda item during the Public Testimony portion.

Please include:

1. Your name and if applicable, your position/title and organization you are representing
2. The agenda item that you are providing comments on; and
3. Whether you are a registered lobbyist and, if so, on whose behalf you are appearing.

Send written testimony to:

Board of Water Supply, County of Kaua'i
C/O Administration
4398 Pua Loke Street
Lihu'e, Hawai'i 96766

E-Mail: board@kauaiwater.org
Phone: (808) 245-5406
Fax: (808) 245-5813

Public Testimony

You do not need to register to provide oral testimony on the day of the meeting. Please note that public testimony is taken after the approval of the meeting agenda to ensure public testimony is received before any action is taken on an agenda item. The length of time allocated to present oral testimony may be limited at the discretion of the chairperson.

SPECIAL ASSISTANCE

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

A horizontal splash of clear blue water with bubbles, positioned behind the text.

DRAFT

MINUTES

MINUTES
BOARD OF WATER SUPPLY
Thursday, October 17, 2024

The Board of Water Supply, County of Kaua'i, met in a regular meeting in Lihu'e on Thursday, October 17, 2024. Chair Tom Shigemoto called the meeting to order at 9:34 a.m. The following Board members were present:

BOARD:

Mr. Tom Shigemoto, *Chair*
Ms. Julie Simonton, *Vice Chair*
Mr. Kurt Akamine
Ms. Micah Finnila
Mr. Ka'aina Hull (*entered at 10:13 a.m.*)
Mr. Troy Tanigawa (*entered at 9:46 a.m.*)

EXCUSED:

Quorum was achieved with 4 members present at Roll Call. *Board member Tanigawa entered the meeting at 9:46 a.m. (due to audio issues, Mr. Tanigawa was recused from voting). Board member Hull entered the meeting at 10:13 a.m.*

ANNOUNCEMENTS

Next Scheduled Board Meeting: Thursday, October 17, 2024 – 9:30 a.m.

APPROVAL OF AGENDA

The agenda was approved with no objections

MEETING MINUTES

1. Regular Board Meeting – August 15, 2024

The minutes of the August 15, 2024 meeting was received for the record

PUBLIC TESTIMONY

None

NEW BUSINESS

1. Discussion and Adoption of Resolution No. 25-03, Mahalo and Aloha to Virgil RH Kapanui (Retiree), Water Field Operations Superintendent, Operations Division

Board member Simonton moved to adopt Resolution No. 25-03, seconded by Mr. Akamine; with no objections, motion carried with 4 Ayes.

Chair Shigemoto recognized Mr. Duane Moriguchi, retiree, whose resolution was adopted at the September 19, 2024 meeting.

The meeting recessed at 9:44 a.m.

The meeting reconvened at 9:47 a.m.

2. *Manager's Report No. 25-05* Discussion and Possible Action to Approve Grant of Easement from County of Kaua'i for TMK 2-1-013:001 (Lima Ola Lot 1 Kealaula West)

Board member Akamine moved to approve Manager's Report No. 25-05, seconded by Ms. Simonton; with no objections, motion carried with 4 Ayes.

3. Manager's Report No. 25-06 Discussion and Possible Action to Approve Grant of Easement from DMurata LLC; Murata, Dawn M Rev Living Trust for TMK 3-8-007:014

Board member Simonton moved to approve Manager's Report No. 25-06, seconded by Mr. Akamine; with no objections, motion carried with 4 Ayes.

4. Manager's Report No. 25-07 Discussion and Possible Action to execute an annual Use and Occupancy Permit No. 914 between the State of Hawai'i and the Board of Water Supply, County of Kaua'i for non-trenching maintenance, inspection and other uses and activities within the State Highway Right of Way, Kaua'i, Hawai'i.

Board member Simonton moved to approve Manager's Report No. 25-07, seconded by Ms. Finnila; with no objections, motion carried with 4 Ayes.

PERMITTED INTERACTION GROUP REPORT

1. Permitted Interaction Group (PIG) Report for the Performance Appraisal for the Manager & Chief Engineer and Delegation of Authority to the Board Chair

The Permitted Interaction Group Report was received for the record.

INFORMATIONAL BRIEFING

1. Water Systems Investment Plan presentation (*Information only; non-action item*)
Michelle Sorensen and Stan Kowalczyk provided an overview of the Water Systems Investment Plan update submitted (presentation on file)

STAFF REPORTS

1. Fiscal:
 - a. Monthly dashboard
 - b. Budget Report for September 2024
2. Operations – Monthly dashboard
3. Engineering – Monthly dashboard
4. Administration:
 - a. Monthly dashboard
 - b. Public Relations – updates on Public Notices & Announcements, Community Outreach & Education, and Upcoming Events
 - c. Human Resources – updates on Personnel Vacancies
 - d. Information Technology
 - i. Corrective Action Plan updates
5. Manager and Chief Engineer – Required communications to the Board, and update of Department activities

TOPICS FOR NEXT BOARD OF WATER SUPPLY MEETING: (November)

TOPICS FOR FUTURE BOARD OF WATER SUPPLY MEETING:

EXECUTIVE SESSION:

Pursuant to Hawai'i Revised Statutes (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).

There was no executive session held.

ADJOURNMENT

The meeting was adjourned at 10:38 a.m.

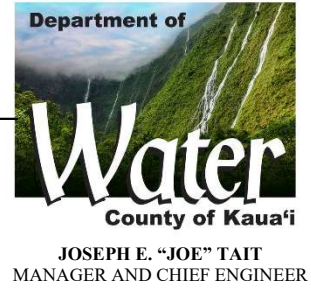
Respectfully submitted,

Cherisse Zaima
Commission Support Clerk

DRAFT

A horizontal splash of clear blue water with bubbles and ripples, set against a white background. The splash is centered and spans most of the width of the page.

OLD BUSINESS



BOARD OF WATER SUPPLY

TOM SHIGEMOTO, CHAIR
JULIE SIMONTON, VICE CHAIR
KURT AKAMINE, SECRETARY

MICAH FINNILA, MEMBER
KA'AINA HULL, MEMBER *Ex-Officio*
TROY TANIGAWA, MEMBER *Ex-Officio*
VACANT, MEMBER, *Ex-Officio*

PERMITTED INTERACTION GROUP REPORT

October 8, 2024

Subject: Report of the Permitted Interaction Group of the Kaua'i County Board of Water Supply regarding Discussion and Possible Action on Manager's Annual Evaluation timeline, process, and criteria

The Permitted Interaction Group (PIG) met on February 15, 2024, March 7, 2024, July 16, 2024, and August 8, 2024, with **all three members (Micah Finnila, Kurt Akamine, and Ka'aina Hull) present**. The group reviewed the presentation slides provided by Ms. Finnila at the November 17, 2023, Board meeting and discussed Human Resources Best Practices using SHRM (Society for Human Resource Management) as a reference point and guideline.

The PIG agreed to develop a hybrid/combination Performance Evaluation policy, process and form utilizing elements of Manager's Report No. 22-55 Manager/Chief Engineer's Goals & Benchmarking, County of Kauai Department of Human Resources Evaluation Factors for Appointees, and SHRM/Joyaux Associates Best Practice Performance Appraisal Process for CEO from which the PIG developed a draft Board Policy that includes the evaluation process and form.

The members recommend that the PIG be disbanded and that the proposed policy titled The Performance Appraisal Process for the Manager & Chief Engineer & Delegation of Authority to the Board Chair be forwarded to the full Board for discussion and possible adoption.

Sincerely,

Micah Finnila
Micah Finnila (Oct 9, 2024 17:11 HST)

Micah Finnila
Permitted Interaction Group

MF/crz

PIG Report - Mgr. Eval. Process

Final Audit Report

2024-10-10

Created:	2024-10-10
By:	Cherisse Zaima (czaima@kauaiwater.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAuN5QC34JsyZLINBFVSEitqOwQ1klcvZV

"PIG Report - Mgr. Eval. Process" History

-  Document created by Cherisse Zaima (czaima@kauaiwater.org)
2024-10-10 - 0:49:38 AM GMT
-  Document emailed to Micah Finnila (poipucrater30@gmail.com) for signature
2024-10-10 - 0:49:42 AM GMT
-  Email viewed by Micah Finnila (poipucrater30@gmail.com)
2024-10-10 - 3:10:07 AM GMT
-  Document e-signed by Micah Finnila (poipucrater30@gmail.com)
Signature Date: 2024-10-10 - 3:11:19 AM GMT - Time Source: server
-  Agreement completed.
2024-10-10 - 3:11:19 AM GMT

BOARD OF WATER SUPPLY POLICY NO. XX

RE: THE PERFORMANCE APPRAISAL PROCESS FOR THE MANAGER & CHIEF ENGINEER AND DELEGATION OF AUTHORITY TO THE BOARD CHAIR

Purpose

Pursuant to the Kaua‘i County Charter, the Board of Water Supply (“Board”) has the authority to manage, control and operate the waterworks of the County of Kaua‘i, which includes appointing and removing the Manager & Chief Engineer (“Manager”). Accordingly, the Board has inherent authority to conduct annual job performance appraisals of the Manager. The purpose of this policy is to establish the Board’s job performance appraisal process for the Manager and the form to be used and completed by the Board as a result of the Manager’s annual job performance appraisal process.

Elements of the Performance Appraisal Process

The Performance Appraisal Process will be documented using the attached form, titled Performance Appraisal Form (“Form”). The Form will aid the Board in conducting a careful review of the following:

- Accomplishment of goals for the review period (Section 1 of the Form)
- Performance on key responsibilities of the job description (Section 2 of the Form)
- Goals for upcoming review period with ample input from Board Chair and incumbent (Section 3 of the Form)
- Performance improvement plan (Section 4 of the Form)
 - Set jointly with Board and Manager, with monitored target dates as needed.
- Development Plan (Section 5 of the Form)
 - Set jointly with Board and Manager and includes monitored target dates.
- Potential for advancement to greater responsibilities.

Delegation of Authority

The Board delegates to the Board Chair the authority to commence and manage the Performance Appraisal Process in accordance with this policy. The Board retains final approval authority.

Board Chair Responsibilities

1. Initiate the formal Performance Appraisal Process, typically 2-3 months prior to the start of the new fiscal year. This time period allows completion of the Performance Appraisal Process, format review and action by the Board, meeting with the Manager, and then any necessary budget action.
2. The Chair sends the Manager the Form to complete as a self-appraisal. Once the Manager completes the Form, the Manager sends it to the Chair.
3. The Chair completes Sections 1-4 of the Form. The Chair then compares results to Manager’s self-appraisal.
4. The Chair prepares the final Form, completing Sections 1-4 of the Form and the “Overall performance rating” of the Form. The Chair may also make merit-based recommendations on salary and benefit adjustments for possible Board action, provided any such recommendations are not contrary to the maximum salary determined for the Manager position as established by the Salary Commission and/or any employee benefits regulated by the Department of Human Resources.
5. At a duly noticed meeting, the Board convenes in executive session, unless the Manager requests that the Performance Appraisal Process occur in open session, to discuss the results of the performance appraisal with the Manager. The Manager may comment on the Performance Appraisal Process and/or the results documented on the Form. The Board and the Manager jointly

outline the Performance Improvement Plan (Section 4 of the Form) and Development Plan (Section 5 of the Form). The Chair incorporates and updates the Form.

6. The Board shall take action on the results of the Performance Appraisal Process.
7. If approved, the Chair prepares and signs the final Performance Appraisal Form and presents the Form to the Manager for signature.
8. The fully executed Form and the Manager's self-appraisal Form is forwarded to the Department of Human Resources.

Performance appraisal ratings

The Performance Appraisal Process shall use the following criteria in rating the Manager's performance:

- **Exceeds expectations** – The individual is making an exceptional, significant contribution to DOW. This person constantly accepts responsibilities beyond those of the job held and continuously exceeds expectations regarding completion of work assignments. There are few areas regarding performance of job responsibilities in which she could improve.
- **Meets expectations** – The individual is a steady, consistent, dependable performer and carries out duties in a fully responsible and effective manner. Meets and occasionally exceeds expectations regarding job responsibilities and completion of work assignments. Even though present performance is acceptable, there may be areas regarding performance of job responsibilities in which the person should improve.
- **Needs improvement** – The individual falls below standards or expectations. It is expected that with the appropriate improvement plan, performance will reach a fully satisfactory level within a specified time period.

APPROVED:

CHAIR
BOARD OF WATER SUPPLY

Date

Performance Appraisal Form DOW Manager & Chief Engineer

First & Last Name: _____

Current evaluation period _____

Date evaluation completed _____ Date of Board action _____

Section 1: Achievement of goals from last review period *(type in the agreed-upon goals decided during the last review period):*

Section 2: Performance on key responsibilities of the job description: *Use ratings: EE (Exceeds Expectations), ME (Meets Expectations), NI (Needs Improvement). When using NI, please give specific example(s) below the goal statement.*

Performance appraisal ratings

- **Exceeds expectations** – The individual is making an exceptional, significant contribution to DOW. This person constantly accepts responsibilities beyond those of the job held and continuously exceeds expectations regarding completion of work assignments. There are few areas regarding performance of job responsibilities in which she could improve.
- **Meets expectations** – The individual is a steady, consistent, dependable performer and carries out duties in a fully responsible and effective manner. Meets and occasionally exceeds expectations regarding job responsibilities and completion of work assignments. Even though present performance is acceptable, there may be areas regarding performance of job responsibilities in which the person should improve.
- **Needs improvement** – The individual falls below standards or expectations. It is expected that with the appropriate improvement plan, performance will reach a fully satisfactory level within a specified time period.

<u>Responsibility</u>	<u>Rating</u>
<u>Mission, policy, planning</u>	
1. Helps Board monitor and evaluate organization’s relevancy, effectiveness, and results. Example(s):	
2. Keeps Board fully informed re: organization’s condition and all important factors influencing it. Example(s):	

<p>3. Assures that appropriate policies are in place to guide the organization’s work in all areas.</p> <p>Example(s):</p>	
<p><i>Management, administration</i></p>	
<p>4. Provides oversight of all DOW activities, manages day-to-day operations, and assures a smoothly functioning, efficient organization.</p> <p>Example(s):</p>	
<p>5. Assures DOW quality and organizational stability through development and implementation of standards and controls, systems and procedures, and regular evaluation.</p> <p>Example(s):</p>	
<p>6. Assures a work environment that recruits, retains, and supports quality staff.</p> <p>Example(s):</p>	
<p>7. Assures process for selecting, development, motivating, and evaluating staff.</p> <p>Example(s):</p>	
<p><i>Responsibility</i></p>	
<p>8. Recruits personnel, negotiates professional contracts, and assures development and maintenance of appropriate salary structures.</p> <p>Example(s):</p>	
<p><i>Governance</i></p>	
<p>9. Work effectively with Board, its officers and committees to define their roles and responsibilities; helps evaluate their performance regularly.</p> <p>Example(s):</p>	
<p>10. Works with Board Chair to enable Board to fulfill its governance functions and manages Boards’s due diligence process to ensure timely attention to core issues.</p> <p>Example(s):</p>	

<p>11. Works with Board Chair to focus Board attention on long-range strategic issues.</p> <p>Example(s):</p>	
<p>12. Works with Board officers and committee chairs to get best thinking and involvement of each Board member & to stimulate each Board member to give his / her best.</p> <p>Example(s):</p>	
<p>13. Frames significant questions and complex issues in ways that facilitate Board dialogue and action.</p> <p>Example(s):</p>	
<p>14. Recommends Board and its committees.</p> <p>Example(s):</p>	
Finance	
<p>15. Oversees the fiscal activities of the organization, assures adequate controls.</p> <p>Example(s):</p>	
<p>16. With Board, ensures financing to support goals, including effective fund development program.</p> <p>Example(s):</p>	
Relationship building	
<p>17. Identifies the key relationships necessary to support an effective organization and assures proper planning, relationship building and communications to develop and maintain these.</p> <p>Example(s):</p>	
<p>18. Facilitates the integration of the organization into the community by assuring the use of effective marketing and communications activities.</p> <p>Example(s):</p>	
<p>19. Acts as an advocate, within the public and private sectors, for issues relevant to DOW, its services, and constituencies.</p> <p>Example(s):</p>	

20. Listens to s stakeholders in order to improve services. Example(s):	
21. Works with legislators and regulatory agencies to promote legislative and regulatory policies that promotes the DOW's policies and priorities. Example(s):	
Leadership	
22. Demonstrates initiative and creativity in identifying and addressing strategic issues facing the organization. Example(s):	
23. Effectively manages continuity, change and transition. Example(s):	
24. Sets and achieves clear and measurable goals and reasonable deadlines. Example(s):	
25. Deals effectively with demanding situations and designs and implements effective interventions. Example(s):	
26. Consistently displays integrity and models the organization's values. Example(s):	

Section 3: Goals for the next review period:

___ Check if none.

Goal 1:	
Goal 2:	
Goal 3:	

Section 4: Performance improvement plan: *Outline any areas where the Manager & Chief Engineer needs improvement to reach higher levels of performance.*

___ Check if none.

Needs Improvement:	
Needs Improvement:	
Needs Improvement:	

Section 5: Development plan: *Outline training / development that will enhance Manager & Chief Engineers contribution to the organization. Also specify areas of support and action that the Board can do to help the Manager & Chief Engineer.*

___ Check if none.

Training/Development:	
Training/Development:	
Training/Development:	

Overall performance rating:

___ Exceeds Expectations ___ Meets Expectations ___ Needs Improvement

Comments for Manager & Chief Engineer for this evaluation period:

Action and approvals

APPROVED:
BOARD OF WATER SUPPLY, COUNTY OF KAUA'I

Its: Chair

Dated: _____

Manager & Chief Engineer signature and meeting date: _____

Please write any comments from Manager & Chief Engineer on the other side of these pages.

A horizontal splash of clear blue water with bubbles, positioned across the middle of the page. The text 'NEW BUSINESS' is overlaid on this splash, with 'NEW' above the water and 'BUSINESS' below it. Both words have a slight reflection effect on the water surface.

NEW

BUSINESS

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 25-08

November 21, 2024

Re: Discussion and Possible Action to reappropriate certain budget line items to other line-item budgets for the purpose of compliance with the Supplemental Agreement for Bargaining Unit 13, Salaries for Certain Engineering Classes.

BACKGROUND:

On October 9, 2024, the County of Kauai and the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO entered into a supplemental agreement on behalf of employees in Civil Engineer classes in Bargaining Unit 13 to aid in recruitment and allow for retention of engineers in the Civil Engineer classification. As such, a revised salary schedule would take effect on October 1, 2024. The increases in salaries for the affected employees also impact other non-budgeted increases, including premium pay, fringe benefits, and taxes.

RECOMMENDATION:

It is recommended that the Board approve the supplemental budget line-item movements.

FUNDING:

<u>Account No:</u>	<u>Account Description</u>	<u>Supplemental Budget</u>
10-XX-10-510-010	WU/Eng/Adm/Salaries and Wages	\$ 96,400.00
10-XX-10-510-030	WU/Eng/Overtime	65,000.00
10-XX-10-530-010	WU/Eng/FICA Taxes	7,400.00
10-XX-10-530-020	WU/Eng/Retirement Contributions (ERS Pension)	23,200.00
10-XX-10-530-060	WU/Eng/Other Post Employment Benefits (OPEB)	9,900.00
	Total	\$ 201,900.00
10-20-10-540-010	WU/Eng/Adm/Professional Services	\$ (201,900.00) defund

OPTIONS:

Option 1: Approve Manager's Report as recommended.

Pro: DOW will reappropriate budget and be in compliance with the executed Supplemental Agreement for Bargaining Unit 13, Salaries for Certain Engineering Classes.

Con: DOW will require additional expenditures of budgeted funds.

Option 2: Do Not Approve Manager's Report as recommended.

Pro: DOW will be able to use the funds for other budget items.

Con: DOW will not make the necessary budget movements and actual expenditures reported will be overspent at the end of the fiscal year.

ry/cz

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 25-09

November 21, 2024

Re: Discussion and Possible Action on Approving Certain Unspecified Future Obligations Provisions Included in Laserfiche's Professional Services Additional Terms

RECOMMENDATION:

It is recommended that the Board approve the unspecified future obligation in Section 5.2, relating to the reimbursement for: 1) Services delivered up to the date of termination, 2) costs incurred by Laserfiche for unfinished Services as of the date of termination and 3) payment of a 10% cancellation charge of the remaining amount of Services.

FUNDING:

<u>Account No:</u>	<u>Account Description</u>	<u>Amount</u>
10-31-10-550-000	WU-Acc-Adm-Subscription Based IT Arrangement	\$ 85,415.00
	Total Funds Certified	\$ 85,415.00

Contract #: 769
Vendor: Compulink Management Center, Inc. dba Laserfiche
Multi-Term contract:
Year 1: \$85,415.00
Year 2: \$22,701.20
Year 3: \$23,382.35

Contract NTP Date: TBD
Contract Start Date: TBD

BACKGROUND:

The Department of Water (DOW) currently operates in a highly paper-driven environment. The purpose of the document management software is two-fold; the Department will address Audit Finding 2023-004 *Improve Procedures to Identify and Account for Contracts* and allow the Department to transition to an electronic workflow. Repetitive scanning and copying will be replaced by electronic forms, automatically saved in a repository located in the cloud that is safe, secure, and reliable. The solution will ultimately provide document management and allow for ease of retention requirements for financial records, DOW's contracts, and other pertinent business-related records.

Laserfiche Professional Services Additional Terms includes the provision below, which requires Board approval for acceptance:

5.2 Termination. Customer may terminate this Agreement at any time for convenience by providing Laserfiche a 30-day notice. Customer may terminate in whole or in part, in which event, Customer's sole obligation will be to reimburse Laserfiche for (a) those Services

delivered up to the date of termination, and (b) costs incurred by Laserfiche for unfinished Services, which are specifically for Customer, as of the date of termination. Customer will also be responsible for paying a 10% cancellation charge of the remaining amount of Services. Either party may terminate this Contract at any time upon written notice if the other party (a) fails to cure a material breach of this Contract within thirty (30) days after receiving written notice from the non-breaching party specifying such material breach; (b) becomes insolvent or ceases doing business; (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement or comparable proceeding, or if any such proceeding is instituted against it and not rescinded within ninety (90) days. In addition, Laserfiche may terminate this Contract without cause upon thirty (30) days' written notice.

OPTIONS:

Option 1: Approve Manager's Report as recommended.

Pro: DOW will move forward with a contract with Laserfiche that includes the above unspecified future obligation provisions.

Con: DOW will require an expenditure of budgeted funds.

Option 2: Do Not Approve Manager's Report as recommended.

Pro: DOW will be able to use the funds for other budget items.

Con: DOW will not move forward with the contract award and continue operating in an inefficient, highly paper-driven environment. DOW will further delay addressing the audit finding and an alternative software will be more costly and less effective.

RY/cz

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 25-10

November 21, 2024

Re: Discussion and Possible Action to Approve a Grant of Easement (GOE) Agreement from 3824 Punahale Road, LLC, Diana Kiser, Nathan A. Wood, Trustee of the Nathan A. Wood Trust dated April 20, 2012, and Courtney M.K. Wood, Trustee of the Courtney M.K. Wood Trust dated April 20, 2012; and Craig T. Hoshide and Tonci Hoshide, Trustees of the Craig T. Hoshide and Tonci Hoshide Self-Trusteed Trust, dated November 6, 2019 for the Opaekaa Falls Lot 2 Condominium Located on Opaekaa Falls Lot 1 Condominium at TMK: (4) 4-2-003:065, Wailua, Kaua'i, Hawai'i

RECOMMENDATION:

It is recommended that the Board approve the Grant of Easement (GOE) document; whereby, the above landowners, grant to the Board of Water Supply, County of Kaua'i, easement "W-3" on, over and under that certain parcel of land located TMK: (4) 4-2-003:065 as specified above in Wailua, Kaua'i, Hawai'i, for the following work:

1. Reading of water meters and for the construction, installation, re-installation, maintenance, repair, and removal of potable water pipelines and related meters, valves, and other associated waterworks facility improvements and appurtenances.

Further, the GRANTEE shall indemnify and save the GRANTOR harmless from and against all damage to the GRANTOR's property and all liability for injury to or the death of persons when such damage, injury, or death is caused by the negligence of the GRANTEE, its officers, agents and employees while using the easement area.

FUNDING: N/A.

BACKGROUND:

As part of the constructions plans for the subject project, the above owner installed five (5) 5/8" water meters and a 6" RPDA to provide water service for Opaekaa Falls Lot 2 Condominium. The water facilities are on private property (Opaekaa Falls Lot 1 Condominium) which requires an easement in favor of the Department of Water.

OPTIONS

Option 1: Approve the Grant of Easement.

Pro: Project can be completed as designed. Project will attain certificate of completion.

Con: None.

Option 2: Do not approve the Grant of Easement.

Pro: None.

Con: Project won't be completed as designed. The project won't attain certificate of completion.

JK/cz

Attachment: Grant of Easement – 3824 Punahale Road, LLC, Diana Kiser, Nathan A. Wood, Trustee of the Nathan A. Wood Trust dated April 20, 2012, and Courtney M.K. Wood, Trustee of the Courtney M.K. Wood Trust dated April 20, 2012; and Craig T. Hoshide and Tonci Hoshide, Trustees of the Craig T. Hoshide and Tonci Hoshide Self-Trusteed Trust, dated November 6, 2019, TMK: (4) 4-2-003:065, Wailua, Kaua'i, Hawai'i

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation Return By: **MAIL [XX]** Pickup []
TO:

DEPARTMENT OF WATER

PO BOX 1706

LĪHU'E, HAWAI'I 96766

GRANT OF EASEMENT
for
TMK: (4) 4 - 2 - 0 0 3 : 0 6 5 ;

THIS INDENTURE is made on this _____ day of _____,

between

3824 PUNAHELE ROAD, LLC, a Hawaii limited liability company; DIANA KISER, a single woman; NATHAN A. WOOD, Trustee of the Nathan A. Wood Trust dated April 20, 2012, and COURTNEY M. K. WOOD, Trustee of the Courtney M. K. Wood Trust dated April 20, 2012; and CRAIG T. HOSHIDE and TONCI HOSHIDE, Trustees of the Craig T. Hoshide and Tonci Hoshide Self-Trusteed Trust, dated November 6, 2019

a n/a _____ corporation,

whose principal place of business is

1110 Mar West, Suite E, Tiburon, California 94920; 1718 Ximeno Avenue, Long Beach, California 90815; P. O. Box 452, Kapaa, Kauai, Hawaii 96746; P. O. Box 1417, Kapaa, Kauai, Hawaii 96746, respectively

and whose mailing address is

1110 Mar West, Suite E, Tiburon, California 94920; 1718 Ximeno Avenue, Long Beach, California 90815; P. O. Box 452, Kapaa, Kauai, Hawaii 96746; P. O. Box 1417, Kapaa, Kauai, Hawaii 96746, respectively

(hereafter individually or collectively "GRANTOR") and the **BOARD OF WATER SUPPLY, COUNTY OF KAUAI**, whose mailing address is P. O. Box 1706, Līhu'e, Hawai'i 96766 (hereafter "GRANTEE");

W I T N E S S E T H:

THAT IN CONSIDERATION of the sum of one dollar (\$1.00) paid by the GRANTEE to the GRANTOR, the receipt of which is acknowledged, and the covenants contained in this grant of easement to be performed by the GRANTEE, the GRANTOR does hereby grant, bargain, sell and convey to the GRANTEE an easement in perpetuity on, over, and under that certain parcel of land located generally at Kawaihau District, Kaua'i, Hawai'i, **Tax Map Key No. (4)** 4 2 0 0 3 0 6 5;

Project Name: Opaekaa Falls Lot 1 Condominium

Subdivision No.: n/a, and more particularly described in Exhibit "A", which is attached and incorporated by reference into this grant of easement (hereafter "easement area").

This easement is granted for the reading of water meters and for the construction, installation, re-installation, maintenance, repair, and removal of potable water pipelines and related meters, valves, and other associated waterworks facility improvements and appurtenances. The GRANTEE is further allowed the right of ingress and egress at any time to, from, and through the easement area, with or without vehicles or equipment, as the GRANTEE deems necessary for the proper operation of its water system.

TO HAVE AND TO HOLD the same unto the GRANTEE forever; provided that should the GRANTEE cease to use the easement area for the purposes described for a continuous period of two (2) calendar years, this easement shall terminate and the interest granted shall immediately and without the GRANTOR's re-entry revert to the GRANTOR. In such an event, this easement shall cease to exist by operation of the GRANTEE's non-use, without any necessary action on the GRANTOR's part.

AND IN FURTHER CONSIDERATION of the rights granted to the GRANTEE the benefits accruing to the GRANTOR under this easement, the GRANTOR and GRANTEE further covenant, agree, and promise as follows:

1. That should the GRANTEE disturb in any way the ground which is the subject of the easement area, the GRANTEE shall at its own expense restore the ground to its original condition to the extent that such restoration is reasonable;
2. That the GRANTEE shall indemnify and save the GRANTOR harmless from and against all damage to the GRANTOR's property and all liability for injury to or the death of persons when such damage, injury, or death is caused by the negligence of the GRANTEE, its officers, agents and employees while using the easement area;

3. That the GRANTEE shall not assign its rights under this easement without the prior written consent of the GRANTOR; provided that the GRANTEE may assign its rights to a successor of the GRANTEE duly created by law;
4. That should the GRANTOR's development plans require that the easement area and/or waterworks facility improvements within, on, or under the easement area be re-located, the GRANTOR will, at the GRANTOR's own expense and pursuant to the GRANTEE's instructions and specifications, re-locate the affected easement area and waterworks facility improvements and appurtenances without interruption of the GRANTEE's services;
5. That the GRANTOR shall at no time erect any building foundation of any kind below the surface of the land which is the subject of the easement area or any building or structure of any kind (other than roads, sidewalks, curbs or similar appurtenances) on the surface of the land which is the subject of the easement area unless the GRANTOR receives the prior written consent of the GRANTEE.

Only lawn grass shall be planted within three (3) feet of all meter boxes, fire hydrants, and other waterworks facility improvements and appurtenances. No trees with aggressive root systems shall be planted within twenty (20) feet of all meter boxes, fire hydrants, and other waterworks facility improvements and appurtenances.

This Paragraph No. 5, though, shall not prevent the GRANTOR from crossing over, constructing, and maintaining roadways within the easement area or laying, operating, maintaining, repairing, or removing conduits and drains which do not interfere with the exercise of the GRANTEE's rights under this easement; and

6. That the GRANTOR covenants with the GRANTEE that the GRANTOR is the lawful owner of the land which is the subject of this easement area, that the GRANTOR has good right and title to grant this easement, and that the GRANTOR will warrant and defend the same unto the GRANTEE against the claims and demands of all persons.

When used within this document the term "GRANTOR" shall mean the singular and plural, masculine and feminine, and natural persons, trustees, corporations, partnerships, limited partnerships, sole proprietorships and other forms of business entities. The term shall also mean the GRANTOR's or GRANTORS' estates, heirs, personal representatives, successors, successors-in-trust and assigns.

IT IS FURTHER MUTUALLY AGREED that the terms of this easement shall be binding upon and inure to the benefit of all the parties to this document and that all covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed in this document.

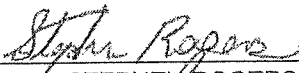
This Agreement may be executed in counterparts. Each counterpart shall be executed by one or more parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

APPROVED:

Manager and Chief Engineer
Department of Water, County of Kaua'i

OWNER:

3824 PUNAHELE ROAD, LLC,
a Hawaii limited liability company



By: STEPHEN ROGERS, Manager
(Please type or stamp name above.)

GRANTOR

APPROVED AS TO FORM
AND LEGALITY:

County Attorney

ACCEPTED:

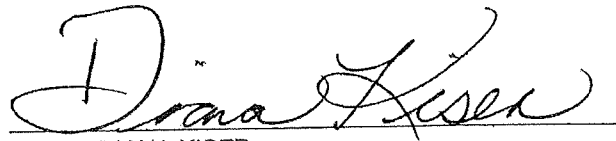
BOARD OF WATER SUPPLY,
COUNTY OF KAUA'I

By Its _____

GRANTEE

This Agreement may be executed in counterparts. Each counterpart shall be executed by one or more parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

OWNER:

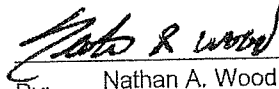


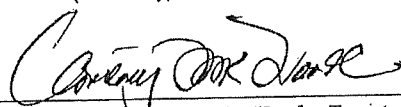
By: DIANA KISER
(Please type or stamp name above.)

GRANTOR

This Agreement may be executed in counterparts. Each counterpart shall be executed by one or more parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

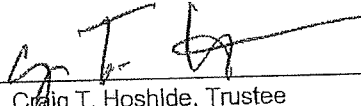
OWNER:

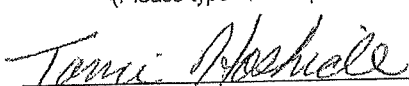

By: Nathan A. Wood, Trustee
(Please type or stamp name above.) GRANTOR


By: Courtney M. K. Wood, Trustee

This Agreement may be executed in counterparts. Each counterpart shall be executed by one or more parties hereinbefore named and the several counterparts shall constitute one instrument to the same effect as though the signatures of all the parties are upon the same document.

OWNER:


By: Craig T. Hoshide, Trustee
(Please type or stamp name above.) **GRANTOR**


By: Tonci Hoshide, Trustee

STATE OF HAWAII)
) ss.
COUNTY OF KAUA'I)

On this _____ day of _____, _____, before me appeared _____
_____, to me personally known, who, being by me duly sworn, did say that said officer is the
_____ of the **COUNTY OF KAUA'I, BOARD OF WATER SUPPLY**, and that the
foregoing instrument was signed on behalf of said Department, and said officer acknowledged said instrument to be
the free act and deed of said Department, and that said Department has no corporate seal.

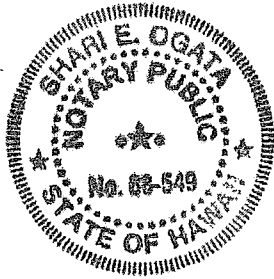
Notary Public, State of Hawaii

Name of Notary: _____
My Commission expires: _____

Grantor: Please attach applicable notary section to your document (need to be letter size paper, 8-1/2" by 11"). Your notary section should match the situation under which you are signing this document. (You can check our website for a list of example notary sections.)

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this 28th day of March, 2023, before me appeared STEPHEN ROGERS, to me personally known, who, being by me duly sworn, did say that he is the Manager of 3824 PUNAHELE ROAD, LLC, a Hawaii limited liability company, that the foregoing GRANT OF EASEMENT FOR TMK: (4) 4-2-003:065 dated undated, 20____, which document consists of 14 page(s), was signed in behalf of said entity, and the said STEPHEN ROGERS acknowledged said instrument to be the free act and deed of said entity.



Shari E. Ogata

Name of Notary: SHARI E. OGATA
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: 10/05/2024

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

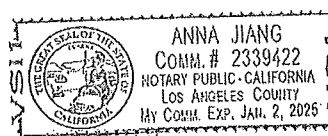
STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles)

On April 28, 2023, before me, Anna Jiang,
Notary Public, personally appeared DIANA KISER, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

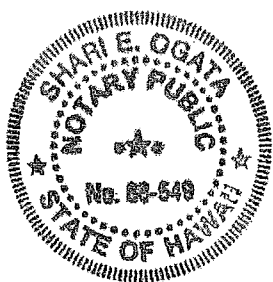
WITNESS my hand and official seal.

Notary Public



STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this 17th day of May, 2023, before me appeared NATHAN A. WOOD, Trustee of the Nathan A. Wood Trust dated April 20, 2012, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing GRANT OF EASEMENT FOR TMK: (4) 4-2-003:065 dated undated, 20 , which document consists of 14 page(s), as his free act and deed, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

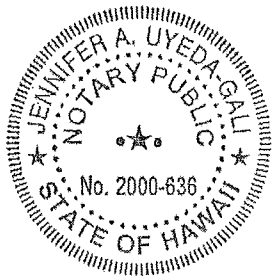


Shari E. Ogata
Name of Notary: SHARI E. OGATA
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: 10/05/2024

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this 13th day of June, 2023, before me appeared COURTNEY M. K. WOOD, Trustee of the Courtney M. K. Wood Trust dated April 20, 2012, to me personally known, who, being by me duly sworn or affirmed, did say that she executed the foregoing GRANT OF EASEMENT FOR TMK: (4) 4-2-003:065 dated undated, 20 , which document consists of 14 page(s), as her free act and deed, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

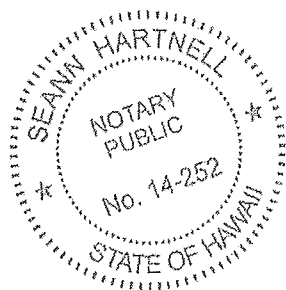


Jennifer A. Uyeda-Gali
Name of Notary: JENNIFER A. UYEDA-GALI
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: 12/11/2024

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this 28th day of March, 2023, before me appeared CRAIG T. HOSHIDE, Trustee of the Craig T. Hoshide and Tonci Hoshide Self-Trusteed Trust, dated November 6, 2019, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing GRANT OF EASEMENT FOR TMK: (4) 4-2-003:065 dated March 28th, 2023, which document consists of 14 page(s), as his free act and deed, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

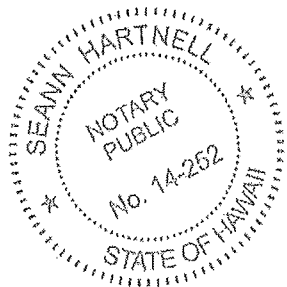


Seann Hartnell
Name of Notary: Seann Hartnell
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: 7-27-2026

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this 28th day of March, 2023, before me appeared TONCI HOSHIDE, Trustee of the Craig T. Hoshide and Tonci Hoshide Self-Trusteed Trust, dated November 6, 2019, to me personally known, who, being by me duly sworn or affirmed, did say that she executed the foregoing GRANT OF EASEMENT FOR TMK: (4) 4-2-003:065 dated March 28th, 2023, which document consists of 14 page(s), as her free act and deed, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Seann Hartnell
Name of Notary: Seann Hartnell
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: 7-27-2026

OPAEKAA FALLS LOT 1 CONDOMINIUM

EASEMENT W-3

(For Waterline And Water Facilities Purposes)

LAND SITUATED AT WAILUA, KAWAIHAU, KAUAI, HAWAII

Being Portion of Lot 1

Being Also Portion of Land Patent Grant 11238 To Eula Urban Kuhns

Beginning at the southwest corner of this parcel of land, on the north side of Kuamoo Road the coordinates of said point of beginning referred to Government Survey Triangulation Station "NONOU" being 3,788.69 feet South and 4,129.10 feet West, thence running by azimuths measured clockwise from true South:

- | | | | |
|----|----------|-------|---|
| 1. | 236° 36' | 21.50 | feet along the remainder of Lot 1, Land Patent Grant 11238 to Eula Urban Kuhns (Common Element 1 and Unit 4); |
| 2. | 326° 36' | 10.00 | feet along the remainder of Lot 1, Land Patent Grant 11238 to Eula Urban Kuhns (Unit 4); |
| 3. | 56° 36' | 21.50 | feet along the remainder of Lot 1, Land Patent Grant 11238 to Eula Urban Kuhns (Unit 4 and Common Element 1); |
| 4. | 146° 36' | 10.00 | feet along the north side of Kuamoo Road to the point of beginning and containing an area of 215 square feet. |



Lihue, Hawaii
October 2024

DESCRIPTION PREPARED BY:
ESAKI SURVEYING & MAPPING, INC.

Wayne T. Wada

Wayne T. Wada
Licensed Professional Land Surveyor
Certificate Number 4596

EXHIBIT "A"

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 25-11

November 21, 2024

Re: Discussion and Possible Action to Approve a Notice of Waiver and Release and Cancellation of Private Water System Agreement with 3824 Punahale Road, LLC, Hale Poliahu LLC, and Ohana Acres, LLC for the Opaekaa Falls Lot 2 Condominium at TMK: (4) 4-2-003:012 (CPR Nos. 0001-0008), Wailua, Kaua'i, Hawai'i

RECOMMENDATION:

It is recommended that the Board approve a Notice of Waiver and Release and Cancellation of Private Water System Agreement; whereby, the above landowners, agree that Units 1-5 are each entitled to one (1) single-family dwelling unit with only one DOW meter allocated per unit (a total of five (5) 5/8" water meters allocated to Units 1-5), the DOW meters are for the exclusive use of Units 1-5, and Units 6-8 are not entitled to any dwelling unit density and have no right to a DOW meter or to receive County water service from the Board. No dwelling units, condominium houses, or buildings or structures greater than five (5) feet in height may be constructed on Units 6, 7 or 8. The above landowners agree that all water use for the Lot 2 project will be serviced with County water and not private water sources and have no right to develop any private water source or systems, including ground wells, within Lot 2. As such, the Private Water System Agreement is being cancelled. The above landowners agree that certain necessary water facilities will be constructed and conveyed to the Water Board (being presented as a separate agenda item at the November 2024 Board Meeting) and the applicable Facilities Reserve Charges ("FRC") and installation fees for the DOW meters will be paid by 3824 Punahale Road, LLC.

FUNDING: N/A.

BACKGROUND:

Opaekaa Falls Lot 2 Condominium was created as part of the Opaekaa Falls Subdivision, which was approved by the Planning Commission in Subdivision No. S-2006-47. As a condition of subdivision approval, the original owner of Lot 2 entered into a Private Water System Waiver, Release and Indemnity Agreement with the Board on May 29, 2009, in which the parties agreed that Lot 2 would not be connected to the Department's public water system and Lot 2 would be required to provide water for its potable water and fire-flow requirements via a Private Water System ("PWS"). The Owners never constructed a PWS. Instead, by letter dated January 11, 2021, the Department agreed to issue five (5) water meters for use by each of Units 1-5 provided that all water uses for the Lot 2 Project would be serviced with County water and not private sources; certain necessary water facilities would be constructed and conveyed to the Board; the applicable FRC and installation fees for the water meters would be paid; and the PWS Agreement would be cancelled consistent with the Department's agreement to approve the water meters. The Owners adopted an amendment to Restated Declaration of Condominium Property Regime of Opaekaa Falls Lot 2 Condominium on October 19, 2021, which was recorded in the Bureau as Document No. A-79720769 and eliminated the requirement that a private water system be developed for the Lot 2 Project and assigning the DOW meters for the exclusive use of each of Units 1-5. To date, the water facilities have been constructed, the Owners are prepared and willing to convey the water

facilities to the Board, and the Unit 1-5 Owner is prepared to pay the FRC and installation fees for the DOW meters to the Board.

OPTIONS

Option 1: Approve the Notice of Waiver and Release and Cancellation of Private Water System Agreement.

Pro: Project can be completed as designed and intended. Units 1-5 will each receive one 5/8" water meter each. Project will attain certificate of completion.

Con: None.

Option 2: Do not approve the Notice of Waiver and Release and Cancellation of Private Water System Agreement.

Pro: None.

Con: Project won't be completed as designed and intended. Units 1-5 will not receive one 5/8" water meter each. Project will not attain certificate of completion.

JK/cz

Attachment: Notice of Waiver and Release and Cancellation of Private Water System Agreement – 3824 Punahale Road, LLC, Hale Poliahu, LLC, and Ohana Acres, LLC, TMK: (4) 4-2-003:012, Wailua, Kaua'i, Hawai'i

**NOTICE OF WAIVER AND RELEASE AND
CANCELLATION OF PRIVATE WATER SYSTEM AGREEMENT
FOR TMK: (4) 4-2-003:012 (CPR NOS. 0001-0008)
(Reference: Subdivision No. S-2006-47))**

THIS NOTICE OF WAIVER AND RELEASE AND CANCELLATION OF PRIVATE WATER SYSTEM AGREEMENT FOR TMK: (4) 4-2-003:012 (CPR NOS. 0001-0008) ("Notice") is made this _____ day of _____, 20____, by 3824 PUNAHELE ROAD, LLC, a Hawaii limited liability company, whose mailing address is 1110 Mar West Street, Suite E, Tiburon, California 94920 ("Units 1-5 Owner"), HALE POLIAHU LLC, a Hawaii limited liability company, whose mailing address is 4-831 Kuhio Hwy, Suite 438-343, Kapaa, Kauai, Hawaii 96764 ("Unit 6 Owner"), and OHANA ACRES LLC, a Hawaii limited liability company (formerly known as MOHALA KE OLA MANAGEMENT, LLC, a Hawaii limited liability company), whose mailing address is 5663 Ohelo Road, Kapaa, Kauai, Hawaii 96746 ("Units 7/8 Owner") (hereinafter collectively designated as the "Owners"), and the BOARD OF WATER SUPPLY, COUNTY OF KAUAI (hereinafter designated as the "Water Board"), by and through its Department of Water ("Department" or "DOW"), a political subdivision of the State of Hawaii, whose mailing address is 4398 Pua Loke Street, Lihue, Kauai, Hawaii 96766 (hereinafter designated as the "Water Board").

I. RECITALS

A. The Owners are the owners of certain property located in Wailua, Puna, Kauai, Hawaii, known as Units 1 through 8 of the Opaekaa Falls Lot 2 Condominium ("Lot 2 Units") located on Lot 2 of the Opaekaa Falls Subdivision ("Lot 2") identified by Kauai Tax Map Key No. (4) 4-2-003:012 (CPR Nos. 0001-0008). The Opaekaa Falls Lot 2 Condominium ("Lot 2 Project") contains eight (8) Units. The Units 1-5 Owner is the owner of Units 1-5, the Unit 6 Owner is the owner of Unit 6, and the Units 7/8 Owner is the owner of Units 7 and 8 of the Lot 2 Project.

B. Pursuant to the Restated Declaration Of Condominium Property Regime Of Opaekaa Falls Lot 2 Condominium dated October 30, 2012, recorded in the Bureau of Conveyances of the State of Hawaii ("Bureau") as Document No. A-48630811, as amended, Units 1-5 are each entitled to one (1) single-family dwelling unit (also referred to as a "Condominium House") and Units 6-8 are not entitled to any dwelling unit density. In addition, pursuant to that certain Declaration Of Covenants, Conditions And Restrictions For Opaekaa Falls Lot 2 Condominium dated October 30, 2012, recorded in the Bureau as Document No. A-48630810, no dwelling units, condominium houses, or buildings or structures greater than five (5) feet in height may be constructed on Units 6, 7 or 8.

C. Lot 2 was created as part of the Opaekaa Falls Subdivision, which was approved by the Planning Commission of the County of Kauai in Subdivision No. S-2006-47 ("Subdivision").

D. As a condition of Subdivision approval, the original owner of Lot 2 (Opaekaa Falls Land Company 1, LLC) entered into that certain Private Water System Waiver, Release And Indemnity Agreement with the Water Board dated May 29, 2009, recorded in the Bureau as Document No. 2011-007838 ("PWS Agreement"), in which the parties agreed that: Lot 2 would not be connected to the Department's public water system; and Lot 2 would be required to provide water for its potable water and fire-flow requirements via a Private Water System ("PWS").

E. The Owners never constructed a PWS. Instead, by letter dated January 11, 2021 ("Department's Approval Letter"), the Department agreed to issue five (5) water meters for use by each of Units 1-5 ("DOW Meters") provided that: all water uses for the Lot 2 Project would be serviced with County water and not private sources; certain necessary water facilities ("Water Facilities") would be constructed and conveyed to the Water Board; the applicable Facilities Reserve Charges ("FRC") and installation fees for the DOW Meters would be paid; and the PWS Agreement would be cancelled consistent with the Department's agreement to approve the DOW Meters.

F. Consistent with the Department's Approval Letter, the Owners adopted a Third Amendment To Restated Declaration Of Condominium Property Regime Of Opaekaa Falls Lot 2 Condominium dated October 19, 2021, which was recorded in the Bureau as Document No. A-79720769, and which amended the Lot 2 Project Declaration: by eliminating the requirement that a Private Water System be developed for the Lot 2 Project; and by assigning the DOW Meters for the exclusive use of each of Units 1-5.

G. To date, the Water Facilities have been constructed, the Owners are prepared and willing to convey the Water Facilities to the Water Board, and the Unit 1-5 Owner is prepared to pay the FRC and installation fees for the DOW Meters to the Water Board.

H. Consistent with the representations contained in these Recitals, the Owners wish to enter into this Notice in favor of the Water Board in order to:

1. Cancel the PWS Agreement as it applies to Lot 2.
2. Confirm that only the Units 1-5 Owner and Units 1-5 have the right to the DOW Meters; that Units 1-5 will each be allocated only one DOW Meter; and that none of Units 1-5 will be allocated more than one DOW Meter.
3. Confirm that the Unit 6 Owner and Unit 6, and the Units 7/8 Owner and Units 7 and 8 have no rights: to the DOW Meters; or to receive County water service from the Department or the Water Board.
4. Confirm that the Owners have no right to develop any private water sources or systems, including ground wells, within Lot 2.

5. Confirm that the Water Facilities have been constructed.

6. Confirm that the Owners will execute a Conveyance Of Water Facilities Agreement ("COWF Agreement") and any other documents required by the Water Board necessary to convey the Water Facilities to the Water Board.

7. Confirm that the Units 1-5 Owner will be solely responsible for the payment of all FRC and installation fees for the DOW Meters.

II. AGREEMENT

NOW, THEREFORE, in consideration of the approval of the DOW Meters by the Water Board and the mutual promises and covenants contained herein, the parties agree as follows:

1. Cancellation. The parties agree that the PWS Agreement as it applies to Lot 2 is cancelled in its entirety.

2. Owners Agreement. The Owners confirm, agree and stipulate with the Water Board as follows:

a. That the Units 1-5 Owner and Units 1-5 shall have the sole and exclusive right: to the DOW Meters; and to receive County water service from the Department and the Water Board.

b. That Units 1-5 will each be allocated only one DOW Meter, and none of Units 1-5 will be allocated more than one DOW Meter.

c. That the Units 1-5 Owner and Units 1-5 shall have no right to develop any private water sources or systems, including ground wells, within Units 1-5.

d. That the Unit 6 Owner and Unit 6 and the Units 7/8 Owner and Units 7 and 8 shall have no rights: to the DOW Meters; to receive County water service from the Department or the Water Board; or to develop any private water sources or systems, including ground wells, within Units 6, 7 or 8.

e. That the Owners agree to execute the COWF Agreement and any other documents required by the Water Board necessary to convey the Water Facilities to the Water Board or required as a condition of approval for the DOW Meters.

f. That the Units 1-5 Owner shall be solely responsible for the payment of all FRC and installation fees for the DOW Meters.

3. DOW Meters. Upon the conveyance to the Water Board of all necessary Water Facilities and payment of FRC and installation fees, the Department will install the DOW Meters to be used for Units 1-5.

4. Recordation. The Owners shall record this Notice with the Bureau within thirty (30) days of final approval by the Water Board, and shall bear the burden of any costs associated with the recordation of this Notice, or any future modification, release, or extinguishment thereof.

5. Waiver, Release And Indemnity Provisions. In consideration for the Water Board's approval of the DOW Meters, the Owners do agree, promise and covenant as follows:

a. The approval of the DOW Meters for Units 1-5 will not be construed by the Owners, or the Owners' successors and assigns ("Successors"), to infer, to warrant, or to guarantee that water or water service by the Water Board will be provided to Units 6, 7 or 8 at any time in the future.

b. Neither the Owners, nor the Successors, will use the issuance of the DOW Meters as a basis for any claim, action, suit, or demand of any kind whatsoever for the providing of water or water service to the Owners, or the Successors, by the Water Board as to Units 6, 7 or 8, at this time or any time in the future.

c. The Owners waive any rights the Owners may have to institute any claim, action, suit, or demand of any kind whatsoever which could or will arise out of the absence of County water or water service to Units 6, 7 or 8.

d. The Owners will defend, indemnify and hold harmless the Water Board and the Department from any claim, action, suit, or demand that is brought by the Owners or the Successors for the Owners' failure to comply with any provision of this Notice.

e. The covenants, encumbrances, restrictions and servitudes ("Encumbrances") created in this Notice are hereby declared to encumber and touch and concern Lot 2 and the Lot 2 Units and the beneficial rights in Lot 2 and the Lot 2 Units. The Owners expressly understand and agree that the Encumbrances created by this Notice shall run with the land as an Encumbrance on the aforesaid Lot 2 and the Lot 2 Units and shall constitute notice to all persons, natural and corporate, who may have or claim an interest in Lot 2 and the Lot 2 Units.

f. As a condition of the ownership of any interest in Lot 2 and the Lot 2 Units, the Owners and the Successors shall be deemed to have waived any and all rights the Owners and the Successors have, or will have, to maintain or pursue any action, claim, suit or demand against the Water Board and the Department, or its members, officers and employees which may arise from this Notice.

g. As a condition of the ownership of any interest in Lot 2 and the Lot 2 Units, the Owners and the Successors shall be deemed to have agreed to defend, indemnify and hold harmless the Water Board and the Department, and their members, officers and employees from any and all claims, and from any and all injuries and/or damages, which may arise

from this Notice. The Owners and the Successors shall pay for any and all damages for which the Water Board and the Department, and their members, officers and employees is held liable and all expenses incurred by the Water Board and the Department or their elected and appointed officers and employees in their defense. This paragraph shall survive the termination of this Notice.

h. As a condition of the ownership of any interest in Lot 2 and the Lot 2 Units, the Owners and the Successors shall be deemed to have agreed that if the Water Board and the Department, or their members, officers and employees becomes a third-party defendant in any action initiated by the Owners or the Successors against a third-party plaintiff, and if the Water Board, the Department, or their members, officers and employees is adjudged to be liable for any portion of the damages which the Owners or the Successors are able to recover from the third-party plaintiff, then this Notice releases the Water Board and the Department, or their members, officers and employees from the responsibility of paying to the Owners or the Successors any damages, and ensures that the total damages which the Owners or the Successors could have recovered from the third-party plaintiff will be reduced by the amount of damages which the Water Board or the Department, or their members, officers and employees would have had to pay to the Owners or the Successors under such judgment or liability.

i. The Owners and Successors shall show the restrictions contained in this Notice in the deeds for Lot 2 and the Lot 2 Units.

6. Counterpart. This Notice may be executed in more than one counterpart, each of which shall be considered to be an original, but all of which shall constitute a single counterpart.

7. Modification of Notice. This Notice represents the entire agreement between the parties hereto and may not be modified or terminated, in whole or in part, except by another agreement in writing, duly executed by all of the parties.

8. Time of Essence. Time is of the essence of this Notice. No provisions relating to the timeliness may be waived, extended or modified except by the written agreement of all of the parties.

9. Controlling Law. The performance and interpretation of this Notice shall be controlled by the laws of the State of Hawaii.

10. Invalidity - Severability. If any term or provision of this Notice or any application thereof shall be invalid or unenforceable, the remainder of this Notice shall not be affected thereby, provided that the essential provisions of this Notice and the position of the parties hereto are not materially changed thereby.

11. Entire Notice. This Notice contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein and shall supersede any and all other prior agreements between the parties hereto with respect to the Lot 2 Units.

No parties hereto shall be liable or bound to any other party in any manner by any agreement, warranty, representation or guarantee, except as specifically set forth herein.

12. Rights and Obligations. The rights and obligations set forth herein shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, estates, personal representatives, successors, successors in trust and assigns.

13. Definitions. The terms "Owners", "Units 1-5 Owner", "Unit 6 Owner", "Units 7/8 Owner", "Successor", "Water Board", "Department", "County", "party" and "parties" when used in this Notice, or any pronouns used in their place, mean and include males or females, and one or more (or a combination of) real people, companies, corporations or other entities, and their and each of their respective heirs, devisees, personal representatives, successors, successors in trust and assigns, according to the context. The term "County" shall also include the County's elected and appointed officers and employees.

14. Interpretation. Each party and/or counsel for each party has reviewed this Notice and, accordingly, the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be employed in the interpretation of this Notice.

15. Covenants Running With The Land. The rights and obligations set forth herein shall be covenants running on Lot 2 and the Lot 2 Units, or any portion thereof, in favor of the Water Board and the Department, and shall be binding upon, and inure to the benefit of, the parties and their respective estates, heirs, personal representatives, successors, successors in trust and assigns.

IN WITNESS WHEREOF, the parties have executed this Notice Of Waiver And Release And Cancellation Of Private Water System Agreement For TMK: (4) 4-2-003:012 (CPR Nos. 0001-0008) on the day and year first above written.

(SIGNATURES ON FOLLOWING PAGES)

OWNER:

HALE POLIAHU LLC,
a Hawaii limited liability company

By _____
KENT BREWSTER
Its Member

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this _____ day of _____, 20____, before me appeared KENT BREWSTER, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing NOTICE OF WAIVER AND RELEASE AND CANCELLATION OF PRIVATE WATER SYSTEM AGREEMENT FOR TMK: (4) 4-2-003:012 (CPR NOS. 0001-0008) dated _____, 20____, which document consists of _____ page(s), as his free act and deed, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Name of Notary:
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: _____

OWNER:

OHANA ACRES LLC, a Hawaii limited liability company (formerly known as MOHALA KE OLA MANAGEMENT, LLC, a Hawaii limited liability company)

By _____
DARCY LEE SUMMER
Its Member

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this _____ day of _____, 20____, before me appeared DARCY LEE SUMMER, to me personally known, who, being by me duly sworn or affirmed, did say that she executed the foregoing NOTICE OF WAIVER AND RELEASE AND CANCELLATION OF PRIVATE WATER SYSTEM AGREEMENT FOR TMK: (4)4-2-003:012 (CPR NOS. 0001-0008) dated _____, 20____, which document consists of _____ page(s), as her free act and deed, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Name of Notary:
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: _____

WATER BOARD:

BOARD OF WATER SUPPLY,
COUNTY OF KAUAI

By _____

Its Chairperson

APPROVED:

Manager and Chief Engineer
Department of Water

**APPROVED AS TO FORM
AND LEGALITY:**

County Attorney, County of Kauai

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this _____ day of _____, 20____, before me appeared _____, to me personally known, who, being by me duly sworn, and that said officer is the Chairperson of the COUNTY OF KAUAI, BOARD OF WATER SUPPLY, and such officer executed the foregoing NOTICE OF WAIVER AND RELEASE AND CANCELLATION OF PRIVATE WATER SYSTEM AGREEMENT FOR TMK: (4) 4-2-003:012 (CPR NOS. 0001-0008) dated _____, 20____, which document consists of _____ page(s), on behalf of said Board, by authority of said Board, and that said officer acknowledged said instrument to be the free act and deed of said Board, and that said Board has no corporate seal.

Name of Notary:
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: _____

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 25-12

November 21, 2024

Re: Discussion and Possible Action to Approve a Memorandum of Agreement (MOA) with the State of Hawai'i, Department of Hawaiian Home Lands (DHHL) for an Interconnection Between the DHHL Anahola Farm Lots Water System and the Board's Anahola Water System, Anahola, Kaua'i, Hawai'i

RECOMMENDATION:

It is recommended that the Board approve a Memorandum of Agreement (MOA) with the State of Hawai'i, Department of Hawaiian Home Lands (DHHL) for an Interconnection Between the DHHL Anahola Farm Lots Water System and the Board's Anahola Water System.

FUNDING: N/A.

BACKGROUND:

The DHHL Anahola Farm Lots Water System consists of one well and lacks a standby water source in the event of a system failure. DHHL constructed the necessary pipeline and appurtenances to provide an interconnection with the Board's Anahola Water System. This interconnection also provides back-up source and storage capacity for the Board's Anahola Water System. A previous agreement was made but did not identify the responsibilities of the maintenance, repair, and replacement of the necessary pipeline and appurtenances. This MOA identifies the responsibilities of DHHL and the Board.

OPTIONS

Option 1: Approve the Memorandum of Agreement.

Pro: Each agency will have a clear understanding of the responsibilities for maintenance, repair, and replacement of the interconnection pipeline and appurtenances.

Con: None.

Option 2: Do not approve the Memorandum of Agreement.

Pro: None.

Con: Each agency will not have a clear understanding of the responsibilities for maintenance, repair, and replacement of the interconnection pipeline and appurtenances.

JK/cz

Attachment: Memorandum of Agreement – State of Hawai'i, Department of Hawaiian Home Lands (DHHL), Anahola, Kaua'i, Hawai'i

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, entered into this day of _____, _____, between the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii and whose mailing address is P.O. Box 1879, Honolulu, Hawaii 96805, hereinafter referred to as the "DHHL," and the County of Kauai, BOARD OF WATER SUPPLY, whose principal place of business and mailing address is 4398 Pua Loke Street, Lihue, Kaua'i, Hawaii 96766, hereinafter referred to as the "KBWS."

WITNESSETH THAT:

WHEREAS, the existing KBWS Anahola Water System (KBWS System) meets current maximum daily requirements and interconnects to the DHHL Anahola Farm Lots Water System, identified as Public Water System No. 442 (DHHL System), and

WHEREAS, the sale of water by DHHL to KBWS will provide back-up source and storage capacity and thereby improve water service to all consumers (including homesteaders) on the KBWS System, and

WHEREAS, the DHHL System consists of one well and lacks a standby water source in the event of system failure. As such, interconnection to the KBWS System and the sale of water by KBWS to DHHL will alleviate this problematic condition and obviate the need to construct a standby water source; and

WHEREAS, water is available from the DHHL System to supplement the KBWS system and DHHL has constructed the interconnection pipeline and appurtenances between the KBWS System and DHHL System with approval by the KBWS, and

WHEREAS, the need for water from either the DHHL or KBWS Systems is intended to be "occasional" in that, on a practical basis, water will only be drawn to make up for deficiencies, as in the case of an emergency; and

WHEREAS, the Hawaiian Homes Commission adopted a Water Policy Plan in July 2014 which contains goals related to increased efficiencies, security, and reliability of water systems owned and managed by the DHHL and the interconnection and sale of water between the DHHL System and the KBWS System

achieves the goals relating to efficiency, security and reliability.

NOW THEREFORE, the parties agree as follows:

1. The DHHL shall pay to the KBWS the amount charged for water withdrawn by the DHHL System from the KBWS System on a monthly basis based on the KBWS prevailing water rates in effect at that time. No meter charges shall be assessed.
2. The KBWS shall pay to the DHHL the amount charged for water withdrawn by the KBWS System from the DHHL System on a monthly basis based on the DHHL prevailing water rates in effect at that time. No meter charges shall be assessed.
3. Water shall be withdrawn by KBWS from the DHHL System to address water quality, maintenance, and water deficiencies which may result from, but is not limited to, main line breakage, water tank flushing, drought, severe weather episodes including tropical cyclones, or other emergencies such as fires, system failures, etc., and as mutually agreed by each agency.
4. Water shall be withdrawn by DHHL from the KBWS System to address water quality, maintenance, and water deficiencies which may result from, but is not limited to, main line breakage, water tank flushing, drought, severe weather episodes including tropical cyclones, or other emergencies such as fires, system failures, etc., and as mutually agreed by each agency.
5. Since the interconnection pipeline and appurtenances, shown in Attachment A, mutually benefits both agencies, KBWS and DHHL agree to follow the agency responsibilities identified in Figure 1 for the cost of maintenance and repair or replacement. DHHL is solely responsible for the portable pump required to transfer water from the KBWS System to the DHHL System.
6. DHHL and KBWS make no warranty as to water quality, water pressure or the quantity of water available to each other. DHHL and KBWS agree to comply with the Environmental Protection Agency's (EPA's) Safe Drinking Water Act (SDWA) and Hawaii Administrative Rules (HAR) governing public potable water system standards.

7. DHHL and KBWS agree that in the event of an emergency, a temporary stoppage of water being supplied through the interconnection pipeline may be necessary to perform repairs. DHHL and KBWS will use all reasonable and practicable measures to immediately notify the other party of such temporary disruption of service. For KBWS, the point of contact is the Chief of Operations (808-245-5444, operations@kauaiwater.org). For DHHL, the point of contact is the Design and Construction Branch (808-730-0312, DHHL.Infrastructure@hawaii.gov).
8. For scheduled repairs that require a temporary stoppage of water being supplied through the interconnection pipeline, the Parties agree to provide notification to the other party no less than seven (7) working days prior to the scheduled repairs being performed.
9. DHHL and KBWS agree to inform each other of any contaminant found in the monitoring of water quality that exceeds the levels set by SDWB (HAR 11-20) and shall immediately notify its respective consumers and post Public Notices pursuant to the Safe Drinking Water Act and DOH Safe Drinking Water Branch.
10. DHHL and KBWS shall not be liable to the other for any damage arising or resulting from curtailment, interruption, or apportionment of the water supply.
11. DHHL and KBWS shall not assign or transfer any right hereunder without the prior written consent of the other party.
12. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal successors and assigns.
13. The DHHL and KBWS Systems shall remain the respective property of DHHL and KBWS and neither party shall have the right to remove the interconnection pipeline and appurtenances from the premises. Attached to this Agreement are Attachments B and C, procedures for operating the interconnection, Attachment A, the interconnection facility as-built drawings, and Attachment D, testing of interconnection.
14. This Agreement is effective upon the final execution by all Parties. This Agreement may be terminated by either party

upon not less than 365 calendar days from a written notice to terminate.

15. DHHL acknowledges that this Agreement is being entered into between DHHL and KBWS to address the potential interim potable water needs of both parties. Any future requests from DHHL for new water service from the KBWS System shall depend on the adequacy of source, storage, and transmission facilities at the time of DHHL's request, pursuant to the Anahola Water Credits Agreement, dated November 13, 2002, as may be periodically modified in a duly executed written amendment hereto between KBWS and DHHL.
16. This Agreement may be modified only by written mutual amendment executed by the KBWS and DHHL.
17. This Agreement represents the full agreement of KBWS and DHHL. Matters reflecting prior discussions, representations, and statements of KBWS and DHHL, or any one of them, that are not contained in this Agreement shall be deemed to be excluded from this Agreement.
18. Unless specifically stated otherwise in this Agreement, all notices, waivers, and demands required under this Agreement shall be in writing and delivered to KBWS and DHHL by electronic mail and/or certified or registered mail. All notices, waivers, and demands required under this Agreement shall be sent to the address below with attention to the following persons:

DHHL Contact: Design and Construction Branch, 808-730-0312,
DHHL.Infrastructure@hawaii.gov

KBWS Contact: Engineering Division Head, 808-245-5405,
engineering@kauaiwater.org

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written. This Agreement will become effective when all signatories below have signed it and is effective as of the date of the last signatory.

RECOMMENDED FOR APPROVAL

Joseph E. "Joe" Tait
Manager and Chief Engineer

Approved by the Hawaiian
Homes Commission on

State of Hawaii
DEPARTMENT OF HAWAIIAN
HOME LANDS

BOARD OF WATER SUPPLY,
COUNTY OF KAUAI

By _____
Kali Watson, Chairman
Hawaiian Homes Commission

By _____
Tom Shigemoto
Chairperson

Approved as to form:

APPROVED AS TO FORM AND
LEGALITY:

Deputy Attorney General
State of Hawaii

Tyler C. Saito
Deputy County Attorney

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 25-13

November 21, 2024

Re: Discussion and Possible Action to Approve a Grant of Easement (GOE) Agreement from Achberg LLC at TMK: (4) 5-1-005:124 (CPR No. 0003), Kīlauea, Kaua'i, Hawai'i

RECOMMENDATION:

It is recommended that the Board approve the Grant of Easement (GOE) document; whereby, the above landowners, grant to the Board of Water Supply, County of Kaua'i, Easement A-5A and modify Easement A-5, on, over, under, and across that certain parcel of land located TMK: (4) 5-1-005:124 (CPR No. 0003) as specified above in Kīlauea, Kaua'i, Hawai'i, for the following work:

1. Easement A-5A – To be used as the primary ingress and egress access to the Water Tank Lot (TMK (4) 5-1-005:131) owned by the Board
2. Modification of Easement A-5 – To be used for waterline utility purposes and for ingress and egress when required for any related activities including but not limited to repair, maintain, and replace the utilities located in Easement A-5. The Grantee will make every effort to notify Grantor in advance of its use of Easement A-5 but will not be constrained by notice provisions in the event of an emergency. Grantee's rights under GOE dated February 13, 2002, for Easement A-6 and A-7, will remain in full force and effect and shall not be modified, affected or impaired by this Grant.

The GOE contains the following terms that require Board approval:

1. The GRANTEE shall indemnify, defend, and hold the Grantor harmless against all claims, suits and actions by whomsoever brought on account of injuries or damages to persons or property resulting from either the Grantee's exercise of the Grantee's rights as granted herein or from any other person's use of the Easement Area pursuant to the rights granted to the Grantee. Provided, however, that such indemnification shall not apply to any portion of the Easement Area that may be acquired or used by any governmental entity for public access or public roadway purposes.
2. Should any such lien, charge or encumbrance or notice thereof be recorded, filed or attached to Grantor's Property as a result of Grantee's actions, then the Grantee shall immediately pay off the same and cause the same to be satisfied and discharged of record; all at the sole expense of the Grantee.
3. If they Grantee does not cause to be discharged any mechanic's or materialmen's lien or any other attachment, execution or judgment lien, or any other charge or encumbrance whatsoever which has been recorded, filed or attached to Grantor's Property as a result of Grantee's actions, the Grantor may cause the same to be discharged of recorded, and any amount so paid by the Grantor shall thereupon be and become immediately due and payable by the Grantee to the Grantor, together with interest calculated from the date such sums were so paid by the Grantor at the rate of ten percent (10%) per annum.

FUNDING: N/A.

BACKGROUND:

Grantor provided Easements A-5, A-6 and A-7 to allow Board access to the existing 0.1 MG Tank. Grantor has requested that a new Easement A-5A be issued which also modifies Easement A-5. The new Easement A-5A will construct a new driveway for ingress and egress and potential future water infrastructure. The modified Easement A-5 will allow for the existing water infrastructure to remain and the easement be access in the event of an emergency. The Grantor is paying for the GOE and the construction of the driveway in Easement A-5A.

OPTIONS

Option 1: Approve the Grant of Easement.

Pro: Continue following Memorandum of Understanding with Achberg. Achberg will construct a new driveway to the existing Water Tank Lot within Easement A-5A.

Con: None.

Option 2: Do not approve the Grant of Easement.

Pro: None.

Con: Stop following Memorandum of Understanding with Achberg. Achberg will not construct a new driveway to the existing Water Tank Lot within Easement A-5A.

JK/cz

Attachment: Grant of Easement – Achberg LLC, TMK: (4) 5-1-005:124 (CPR No. 0003), Kīlauea, Kaua'i, Hawai'i

GRANT OF EASEMENT

THIS GRANT OF EASEMENT ("Grant") is made by and between ACHBERG LLC, a Hawaii limited liability company, whose mailing address is P. O. Box 818, Bridgehampton, New York 11932, hereinafter called "Grantor", and BOARD OF WATER SUPPLY, COUNTY OF KAUAI, whose mailing address is 4398 Pua Loke Street, Lihue, Hawaii 96766, hereinafter called "Grantee".

I. RECITALS

- 1.1 Grantor is the owner of certain property known as Unit C of the 25 West Waiakalua Condominium located on Lot 25 of the West Waiakalua Subdivision in Hanalei, Kauai, Hawaii, identified by Kauai Tax Map Key No. (4) 5-1-005:124 (CPR No. 0003) ("Lot 25, Unit C").
- 1.2 The Grantee holds dominant easement interests in Easement A-5, Easement A-6, and Easement A-7, as described in a Grant of Easements, dated February 13, 2002, and recorded March 12, 2002 with the Bureau of Conveyances, State of Hawaii, as Document No. 2002-042533 ("GOE dated February 13, 2002").
- 1.3 The Grantee is the owner of certain property located in the West Waiakalua Subdivision in Hanalei, Kauai, Hawaii, identified by Kauai Tax Map Key No. (4) 5-1-005:131 on which it plans the construction of a new one (1) million gallon water tank ("Water Tank Lot").
- 1.4 This Grant is a modification of Easement A-5, as described in the GOE dated February 13, 2002, and the establishment of a new perpetual, non-exclusive Easement A-5A for the construction, installation, reinstallation, maintenance, repair, and removal of potable water pipelines and related meters, valves, and other associated waterworks facilities improvements and appurtenances, underground utility purposes ("waterline utility purposes"), and further for primary ingress and egress at any time to, from, and through the easement area, with or without vehicles or equipment, as the Grantee deems necessary for the proper operation of its water system on, over, under, and across Lot 25, Unit C in favor of the Water Tank Lot.
- 1.5 This Grant provides for a new Easement A-5A that will be used as the primary ingress and egress access to the Water Tank Lot and the modified Easement A-5 will be used for waterline utility purposes and for ingress and egress when required for any related activities including but not limited to repair, maintain, and replace the utilities located in the Easement A-5 area. The Grantee will

make every effort to notify Grantor in advance of its use of Easement A-5 but will not be constrained by notice provisions in the event of an emergency.

- 1.6 This Grant shall not affect or impair Grantee's rights under the GOE dated February 13, 2002, for Easement A-6 and Easement A-7, which shall both remain in full force and effect.

II. GRANT

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to it paid by the Grantee, and subject to all of the terms, conditions and limitations contained herein, the Grantor hereby declares, grants and conveys unto Grantee, and the Grantee's successors and assigns as owners of Grantee's Property, a perpetual, non-exclusive Easement, on, over, under and across that portion of Grantor's Property identified as Easement A-5A, as shown on Exhibit "A" and described in Exhibit "B", in favor of the Grantee. The portion of Grantor's Property subject to the Easement shall be referred to as the "Easement Area".

This Grant is for the construction, installation, reinstallation, maintenance, repair, and removal of potable water pipelines and related meters, valves, and other associated waterworks facilities improvements and appurtenances, underground utility purposes ("waterline utility purposes"), and further for primary ingress and egress at any time to, from, and through the easement area, with or without vehicles or equipment, as the Grantee deems necessary for the proper operation of its water system.

TO HAVE AND TO HOLD the same unto the Grantee and the Grantee's successors and assigns for the purposes stated herein, forever; subject, however, to all of the terms, conditions and limitations stated herein and to all encumbrances of record on the Grantor's Property.

EXCEPTING AND RESERVING, HOWEVER, from this Grant the right of the Grantor to make use of the land within the Easement Area in any manner which is not inconsistent with the rights of the Grantee hereunder and the right to grant other easements within the Easement Area for such purposes as are not inconsistent with and will not unreasonably interfere with the rights of the Grantee hereunder.

In consideration of the rights hereby granted and the acceptance thereof and the obligations hereby assumed, the parties mutually covenant and agree as follows:

1. Modification to Easement A-5 in the GOE dated February 13, 2002. This Grant provides for a new Easement A-5A to be used as the primary ingress and egress access to the Water Tank Lot and modifies Easement A-5 under the GOE dated February 13, 2002, to be used for waterline utility purposes and for ingress and egress when required for any related activities including but not limited to repair, maintain, and replace the utilities located in the Easement A-5 area. The Grantee will make every effort to notify Grantor in advance of

its use of Easement A-5 but will not be constrained by notice provisions in the event of an emergency. The Grantee's rights under the GOE dated February 13, 2002, for Easement A-6 and Easement A-7, will remain in full force and effect, and shall not be modified, affected or impaired by this Grant.

2. Improvements Within Easement Area. The following improvements shall be allowed within the Easement Area:

a. Grantor shall be obligated to construct an access road to the Water Tank Lot for the Grantee as provided for in the mutually agreed to Memorandum of Understanding (Easement Modification/Relocation), dated April 18, 2024 ("Grantor's Improvements"). The Grantee shall have the right, but not the duty, to construct, install, maintain, reconstruct, replace or repair the following improvements ("Grantee's Improvements") within the Easement Area, provided such improvements do not unreasonably interfere with the Grantor's rights hereunder: access and waterline utility facilities. The Grantee shall be solely responsible for the maintenance and repair of the Grantee's Improvements.

b. Except as provided herein, no party shall be entitled to construct any buildings, structures or other improvements, or place or store any objects or materials, within the Easement Area.

c. With the exception of the access road, the Grantor's Improvements and the Grantee's Improvements shall be and remain the property of the Grantor and the Grantee, respectively. If the Grantee constructs waterline improvements ("Improvements") within the Easement Area, the Grantor and any other person who has easement rights in and to the Easement Area shall be allowed to use such Improvements to access the Grantor's Property, but shall have no obligation to reimburse the Grantee or otherwise pay for any costs of constructing, reconstructing, repairing or maintaining the Improvements.

3. Condemnation. If at any time the Easement Area, or any part thereof, shall be condemned or taken for any public project by any governmental authority, the Grantee shall have the right to claim or recover from the condemning authority, but not from the Grantor, such compensation as is payable for the Easement and the rights granted herein.

4. Exercise of Rights. Each party shall exercise its rights hereunder in such manner as to occasion as little interference as reasonably necessary with the use of said Easement Area by the other party. The Grantee shall exercise the Grantee's rights hereunder in such a manner as to occasion as little interference as reasonably necessary with the Grantor's use and enjoyment of the Grantor's Property.

5. Indemnification. The Grantee agrees to indemnify, defend, and hold the Grantor harmless against all claims, suits and actions by whomsoever brought on account of injuries or damages to persons or property resulting from either the Grantee's exercise of the Grantee's rights as granted herein or from any other person's use of the Easement Area pursuant to the rights granted to the Grantee. Provided, however, that such indemnification shall not apply

to any portion of the Easement Area that may be acquired or used by any governmental entity for public access or public roadway purposes.

6. Liability for Damages. The Grantee agrees to use due care in exercising the Grantee's rights hereunder so as to avoid any damage to the Easement Area, and the Grantor's Improvements and personal property located thereon, and the Grantor's Property, and to be liable to the Grantor for the full extent of any damages which the Grantee may cause to the Easement Area or the Grantor's improvements or personal property located thereon, or the Grantor's Property, resulting from the Grantee's negligence or the negligence of Grantee's agents, employees, contractors, guests, invitees, or other persons, in exercising the Grantee's rights as granted herein.

7. Release of Claims. The Grantee hereby releases the Grantor, and the Grantor's successors and assigns, from any and all liability, losses and damages arising out of or related to the Grantee's, or the Grantee's agent's or contractor's, entry upon or use of the Easement Area or other property of the Grantor, including but not limited to any such liability related to the physical condition of the Easement Area or the Grantor's Property.

8. Condition of Easement Area. The Grantor has not made and does not make any representation or warranty with respect to the condition of the Easement Area, and the Grantee hereby accepts the Easement Area in its "as is" conditions.

9. Restriction on Assignment. The Easement and the rights granted hereunder shall run solely in favor of the Grantee's Property, and any portion thereof, and may not be assigned, granted or otherwise given for the purpose of benefiting any other person, entity, or real property, except to a successor in ownership.

10. Limitation of Use. The Grantee's rights shall be strictly limited to those necessary to allow each party to utilize the Easement Area for the purposes intended and described above. The Grantee shall have no right to utilize the Easement Area for purposes unrelated to the exercise of the Grantee's rights hereunder. The Grantee's rights hereunder shall be limited to those uses legally permitted on Grantee's Property and for no other purposes.

11. Covenants Running With The Land. The rights and obligations set forth herein shall be covenants running on the Grantor's Property in favor of the Grantee's Property, and shall be binding upon, and inure to the benefit of, the parties and their respective estates, heirs, personal representatives, successors, successors in trust and assigns.

12. Mediation and Arbitration. In the event a dispute arises between any of the parties regarding the application, interpretation or enforcement of any provision of this Grant, the dispute shall be submitted for mediation between the affected parties. The parties shall select a mutually acceptable third-party to act as mediator. If the dispute cannot be resolved within five (5) business days after commencement of the mediation process the dispute shall be resolved by arbitration. Conduct of arbitration and decisions entered by the arbitrator shall be subject to the provisions of Hawaii Revised Statutes Chapter 658A. The request for arbitration shall be in writing

and delivered to the other party and shall set forth the issue to be arbitrated, the amount involved, if any, and the remedy sought. Such arbitration shall be conducted in an expedited manner so that a final decision shall be made by the arbitrator as quickly as possible and in any event not more than thirty (30) days after the request for arbitration was first made. The arbitration shall be conducted by a single arbitrator, mutually selected by the parties. If the parties cannot agree as to the selection of an arbitrator, then the arbitrator shall be selected by the judge of the Fifth Circuit Court, State of Hawaii. The decision of the arbitrator shall be final and binding and may be enforced in any court of competent jurisdiction. All proceedings before the arbitrator shall be held in Lihue, Kauai, Hawaii. The non-prevailing party as determined by the arbitrator shall pay the costs and expenses of the prevailing party, including reasonable attorney's fees and the arbitrator's costs and fees; provided, however, if the arbitrator decides that neither party is the prevailing party, each party involved in the dispute shall bear his own costs and expenses and pro rata share of the arbitrator's costs and fees.

13. Service of Notice. Any written notice or request required or authorized to be served hereunder shall be deemed delivered and received either upon the actual personal receipt thereof by the receiving party or within two (2) business days after the notice has been either emailed or posted with the U.S. Mail, return receipt requested, addressed to the receiving party at its address as stated herein, or at such other address as the receiving party may have previously designated to the sending party in writing.

14. No Liens. The Grantee shall take no action nor refrain from taking any action, nor shall the Grantee allow or authorize its agents or contractors to take any action or refrain from taking any action, by or as a result of which the Easement Area, Grantor's Property or any portion thereof shall be made subject to any mechanic's or materialmen's lien or any other attachment, execution or judgment lien, or any other charge or encumbrance whatsoever. Should any such lien, charge or encumbrance or notice thereof be recorded, filed or attached to Grantor's Property as a result of Grantee's actions, then the Grantee shall immediately pay off the same and cause the same to be satisfied and discharged of record, all at the sole expense of the Grantee. If the Grantee does not cause to be discharged any mechanic's or materialmen's lien or any other attachment, execution or judgment lien, or any other charge or encumbrance whatsoever which has been recorded, filed or attached to Grantor's Property as a result of Grantee's actions, the Grantor may cause the same to be discharged of record, and any amount so paid by the Grantor shall thereupon be and become immediately due and payable by the Grantee to the Grantor, together with interest calculated from the date such sums were so paid by the Grantor at the rate of ten percent (10%) per annum.

15. Severability. If any term or provision of this Grant is determined by a court or competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of the remainder of this Grant.

16. Headings For Reference Only. The headings of the sections and subsections herein are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provision of this Grant.

17. Counterparts. This Grant may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages from separate signed copies may be attached to a single copy for purposes of recording.

18. Interpretation. This Grant shall be interpreted in accordance with the laws of the State of Hawaii.

19. Terms. All defined terms (such as "Grantor", "Grantee", "parties", etc.), as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporation and their and each of their respective successors, heirs, personal representatives and assigns, according to the context thereof. Rights granted to a condominium project hereunder shall be enforceable by any owner of such condominium to the extent of condominium association approval or in the absence of the need for such approval.

20. Rule Against Perpetuities. If any of the covenants, conditions, agreements, restrictions, limitations or other provisions of this Grant shall at any time be interpreted or construed as unlawful, void or unenforceable for violation of the rule against perpetuities, then and in such case such covenant, condition, agreement, restriction, limitation or provision shall be construed and interpreted to continue only until the ninetieth (90th) anniversary of the effective date of this Grant.

21. Joint and Several Liability of Grantor and Grantee. The Grantor's and the Grantee's obligations under this Grant shall be joint and several among each Grantor and Grantee, respectively.

IT IS AGREED AND UNDERSTOOD that the rights and obligations set forth herein shall be binding upon, and inure to the benefit of, the Grantor and the Grantee, and their respective heirs, successors, successors in trust and assigns.

IN WITNESS WHEREOF, the parties have hereunto executed this GRANT OF EASEMENT this ____ day of _____, 20 ____.

GRANTOR:

ACHBERG LLC,
a Hawaii limited liability company

By _____

RECOMMEND APPROVAL:

JOSEPH E. TAIT
Manager and Chief Engineer

APPROVED AS TO FORM
AND LEGALITY:

TYLER SAITO
Deputy County Attorney

GRANTEE:

BOARD OF WATER SUPPLY
COUNTY OF KAUAI

TOM SHIGEMOTO
Chairperson

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On this _____ day of _____, 20_____, before me appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing GRANT OF EASEMENT dated _____, 20_____, which document consists of _____ page(s), as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Name of Notary:
Notary Public, Fifth Judicial Circuit,
State of Hawaii

My commission expires: _____

Exhibit "A"

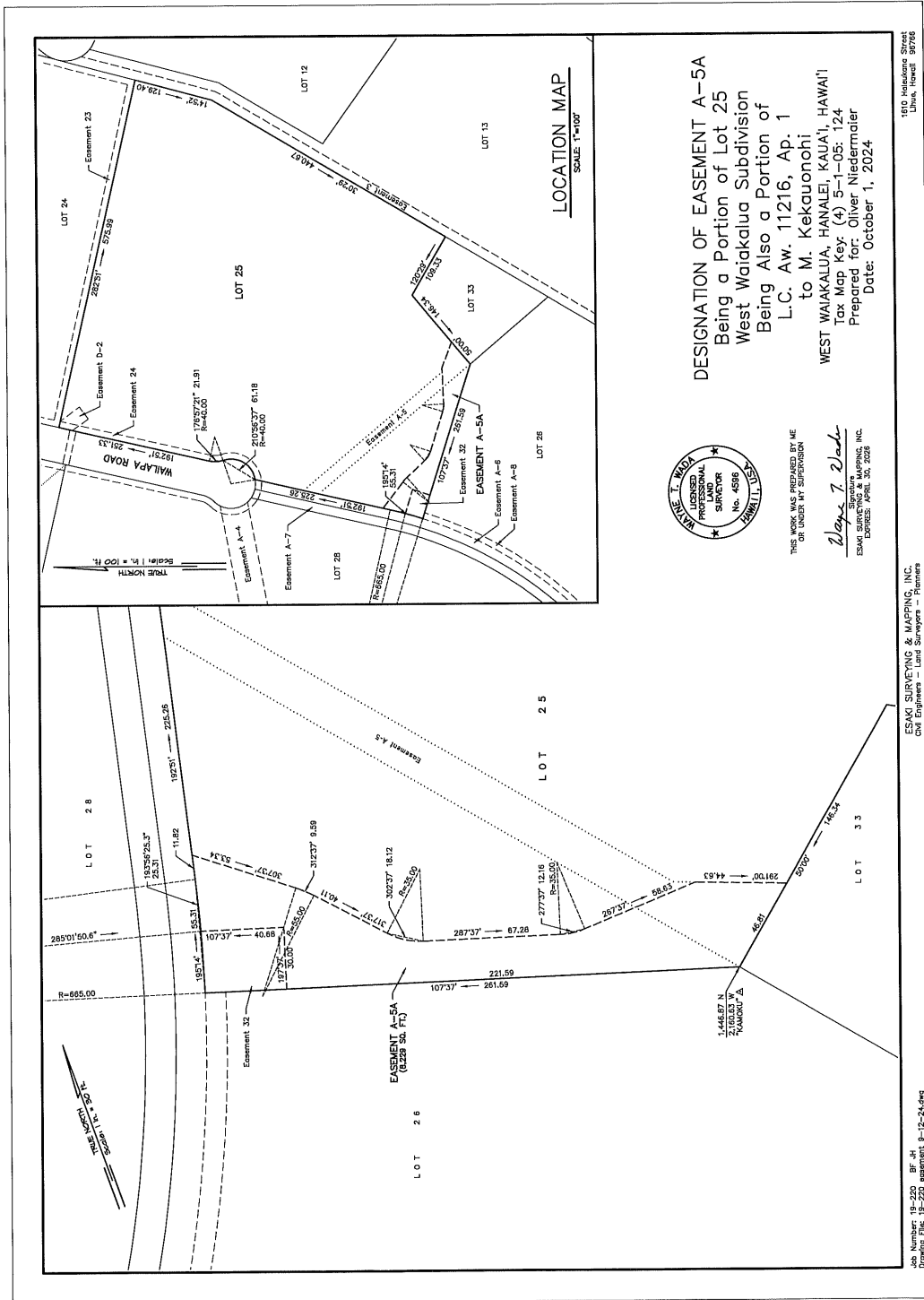


Exhibit "B"

EASEMENT A-5A for Access and Utility Purposes

LAND SITUATED AT WEST WAIAKALUA, HANAIEI, KAUAI, HAWAII

Being a Portion of Lot 25, West Waiakalua Subdivision
Being Also a Portion of L.C. Aw. 11216, Ap. 1 to M. Kekauonohi

Beginning at the south corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAMOKU" being 1,446.87 feet North and 2,160.63 feet West, thence running by azimuths measured clockwise from true South:

- | | | | |
|----|----------------|--------|--|
| 1. | 107° 37' | 221.59 | feet along Lot 26; |
| 2. | 197° 37' | 30.00 | feet along the remainder of Lot 25; |
| 3. | 107° 37' | 40.68 | feet along the remainder of Lot 25;

thence along Lot 26 on a curve to the left with a radius of 665.00 feet, the chord azimuth and distance being: |
| 4. | 193° 56' 25.3" | 25.31 | feet; |
| 5. | 192° 51' | 11.82 | feet along Lot 26; |
| 6. | 307° 37' | 53.34 | feet along the remainder of Lot 25;

thence along the remainder of Lot 25 on a curve to the right with a radius of 55.00 feet, the chord azimuth and distance being: |
| 7. | 312° 37' | 9.59 | feet; |
| 8. | 317° 37' | 40.11 | feet along the remainder of Lot 25;

thence along the remainder of Lot 25 on a curve to the left with a radius of 35.00 feet, the chord azimuth and distance being: |
| 9. | 302° 37' | 18.12 | feet; |

- | | | | |
|-----|----------|-------|---|
| 10. | 287° 37' | 67.28 | feet along the remainder of Lot 25;

thence along the remainder of Lot 25 on a curve to the left with a radius of 35.00 feet, the chord azimuth and distance being: |
| 11. | 277° 37' | 12.16 | feet; |
| 12. | 267° 37' | 58.63 | feet along the remainder of Lot 25; |
| 13. | 291° 00' | 44.63 | feet along the remainder of Lot 25; |
| 14. | 50° 00' | 46.81 | feet along Lot 33 to the point of beginning and containing an area of 8,229 square feet. |



Lihue, Hawaii
October 2024

DESCRIPTION PREPARED BY:
ESAKI SURVEYING AND MAPPING, INC.

Wayne T. Wada

Wayne T. Wada
Licensed Professional Land Surveyor
Certificate Number 4596

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 25-14

November 21, 2024

Re: Discussion and Possible Action to Request Board Approval for Unspecified Future Obligations and Indemnification for Zoom between the Board of Water Supply, County of Kaua'i and Zoom

RECOMMENDATION:

The Department recommends that the Board approve Option 1, which will allow the Department to move forward with the renewal of Zoom.

FUNDING: N/A

BACKGROUND:

The Department's Information Technology Division continues to utilize Zoom for the monthly Board meetings, as it provides easier access to and for the public to participate and interact with the Board and meets the Hawaii's Sunshine Law requirements.

Renewal of the Zoom service is required to continue with its use. The agreement contains language for unspecified future obligations, indemnification and governing law provisions. The County Attorney's Office has reviewed and approved the Terms and Conditions for Zoom.

The sections within the agreement that reference Charges, Collection of Charges, Support Services and Updates, Indemnification, Settlement Offers and Offers of Judgment and Arbitration Fees are shown below:

ZOOM TERMS of SERVICE:

12.1 Charges. You agree that Zoom may charge your credit card, debit card, or other payment mechanism selected by you and approved by Zoom ("**Payment Method**") for all amounts due and owing in connection with your use of the Services, as set forth in the applicable Order Form or otherwise used or ordered by or for you through the Services, including set up fees, one-time fees, non-recurring fees, overages, per-use charges, subscription fees, recurring fees, and any other fees and charges associated with the Services or your account ("**Charges**"). As provided in Section 13, unless otherwise expressly specified an Order Form, all Charges are exclusive of Taxes and Fees. You agree to promptly update your Payment Method to allow for timely payment. Changes made to your Payment Method will not affect Charges that Zoom submits to your chosen Payment Method before Zoom could reasonably act on your changes. Additionally, you agree to permit Zoom to use any updated Payment Method information provided by your issuing bank or the applicable payment network and to charge your current primary Payment Method by using the details of such Payment Method saved in our system, even if such Payment Method is declined. Zoom further reserves the

right to use your backup Payment Method to the extent one is provided. By adding a backup Payment Method, you authorize Zoom to process any applicable Charges on your backup Payment Method if your primary Payment Method is declined.

12.5 Collection of Charges. You agree that if Zoom is unable to collect the Charges for the Services through your Payment Method, Zoom may, to the extent not prohibited by applicable Law, take any other steps it deems necessary to collect such Charges from you and that you will be responsible for all costs and expenses incurred by Zoom in connection with such collection activity, including collection fees, court costs, and attorneys' fees. You further agree that, to the extent not prohibited by applicable Law, Zoom may collect interest at the lesser of 1.5% per month or the highest amount permitted by Law on any Charges not paid when due.

12.6 Support Services and Updates. In accordance with applicable Law and the terms of this Agreement, Zoom reserves the right to (a) modify its standard support and charge you for standard support and (b) charge you for any updates to the Services or for any premium features or functionality.

25. Indemnification To the extent not prohibited by applicable Law, you agree to indemnify, defend, and hold Zoom and its affiliates and each of our licensors and suppliers ("Indemnified Parties") harmless, including any officers, directors, employees, shareholders, members, consultants, and agents of the Indemnified Parties, from any third party allegation, claim, proceeding, liability, damage, or cost (including reasonable attorneys' fees) arising out of or related to (i) your or your End User's use of the Services or Software, (ii) your or your End User's breach of this Agreement or violation of applicable Law, (iii) your or your End User's infringement or violation of any Proprietary Rights or other right of any person or entity, (iv) your relationship with your End User or any dispute between you and your End User, or (v) a personal injury or property damage to a third party relating to your or your End User's acts or omissions.

27.8 Settlement Offers and Offers of Judgment. If an offer made by one party is not accepted by the other party, and the other party fails to obtain a more favorable award, the other party shall not recover their post-offer costs and shall pay the offering party's costs from the time of the offer (which, solely for purposes of offers of judgment, may include reasonable attorneys' fees to the extent they are recoverable by statute, in an amount not to exceed the damages awarded).

27.9 Arbitration Costs. Except as provided for in a Mass Filing (see Section 27.7), your responsibility to pay any filing, administrative, and arbitrator costs will be solely as set forth in the applicable arbitration provider's rules. If you have a gross monthly income of less than 300% of the federal poverty guidelines, you may be entitled to a waiver of certain arbitration costs.

OPTIONS

Option 1:

Approve Manager's Report.

Pro: The Department will be able to move forward with the renewal and continued use of Zoom.

Cons: The Department would have potential risk associated with future unspecified obligations, indemnification and governing law provisions of Zoom.

Option 2:

Deny request to approve Indemnification, Limitation of Liability, Arbitration, and Governing Law.

Pro: No potential legal risk associated with future unspecified obligations, indemnification, limitation of liability, arbitration, and governing law of Zoom.

Cons: The Department would not be able to continue its ease of communication with the public in compliance with Hawaii Sunshine Law.

MH/cz



DEPARTMENT OF WATER
County of Kaua'i
Board of Water Supply

Officers and Committee Members for 2025
(Effective January 1, 2025)

2024 Board Officers:

Chair: Tom Shigemoto
Vice Chair: Julie Simonton
Secretary: Kurt Akamine

Rules Committee

Chair: Kurt Akamine
Member: Julie Simonton
Member: Troy Tanigawa

Finance Committee

Chair: Lawrence Dill
Member: Ka'aina Hull
Member: Tom Shigemoto

Committee of the Whole *(All Board Members)*

Chair: Tom Shigemoto

2025 Board Officers:

Chair:
Vice Chair:
Secretary:

Rules Committee

Chair:
Member:
Member:

Finance Committee

Chair:
Member:
Member:

Committee of the Whole *(All Board Members)*

Chair:



BOARD OF WATER SUPPLY, COUNTY OF KAUA'I

BOARD MEETING DATES FOR 2025

(Department of Water, County of Kaua'i *Rules & Regulations, Part I, 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*	Thursday, January 23	9:30 a.m.
2.	February	Thursday, February 20	9:30 a.m.
3.	March	Thursday, March 20	9:30 a.m.
4.	April	Thursday, April 17	9:30 a.m.
5.	May	Thursday, May 15	9:30 a.m.
6.	June	Thursday, June 19	9:30 a.m.
7.	July	Thursday, July 17	9:30 a.m.
8.	August	Thursday, August 21	9:30 a.m.
9.	September	Thursday, September 18	9:30 a.m.
10.	October	Thursday, October 16	9:30 a.m.
11.	November	Thursday, November 20	9:30 a.m.
12.	December	Thursday, December 18	9:30 a.m.

* Meeting scheduled for the 4th Thursday due to the Legislative Session opening the week prior

A horizontal splash of clear blue water with bubbles, positioned behind the text.

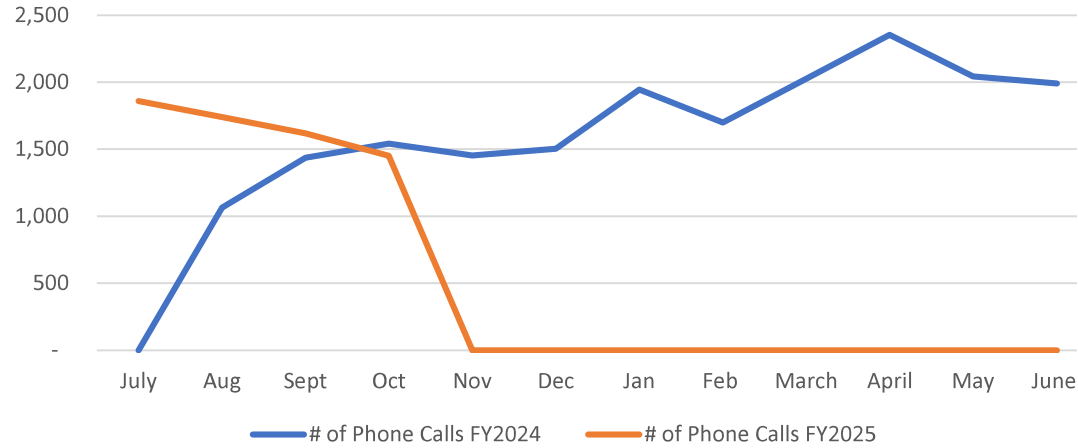
STAFF

REPORTS

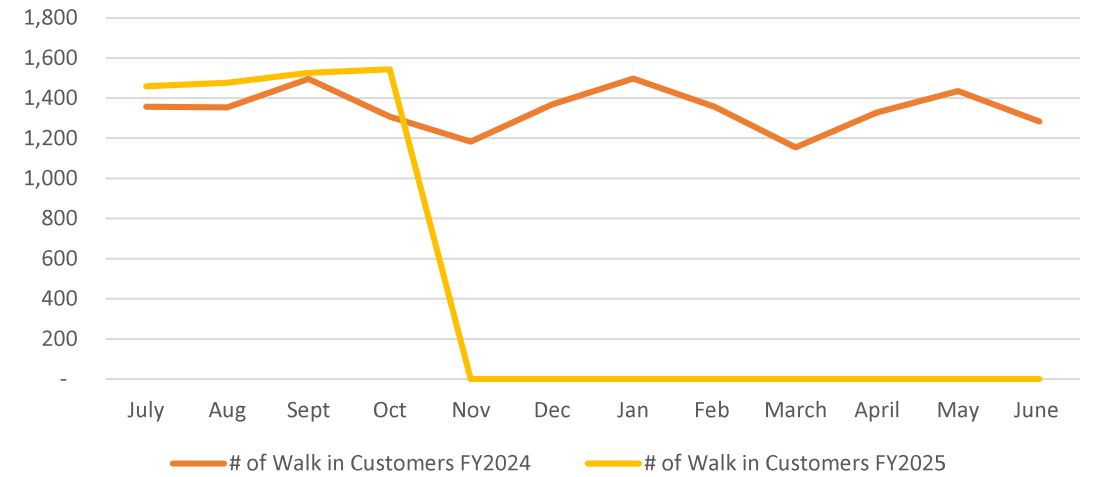


FISCAL DIVISION DASHBOARD

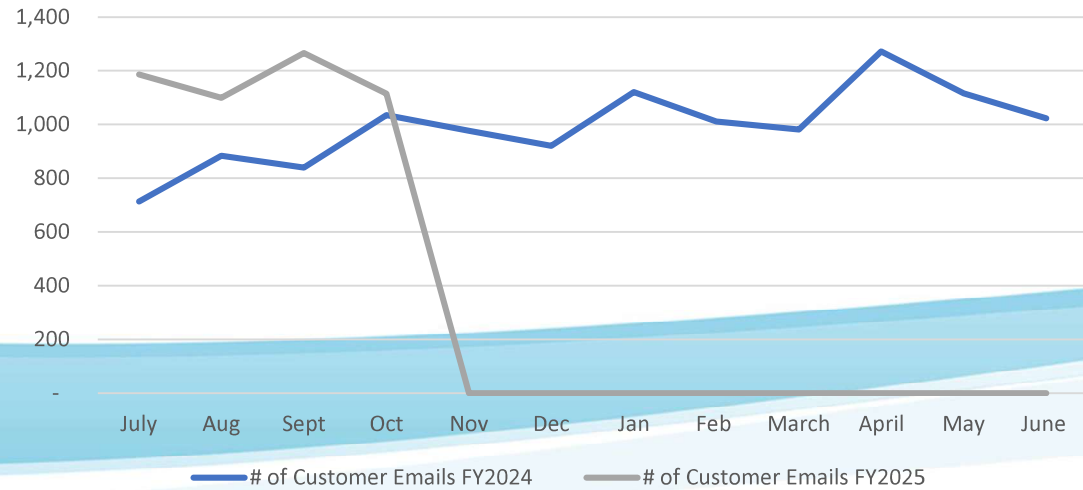
of Customer Service Calls



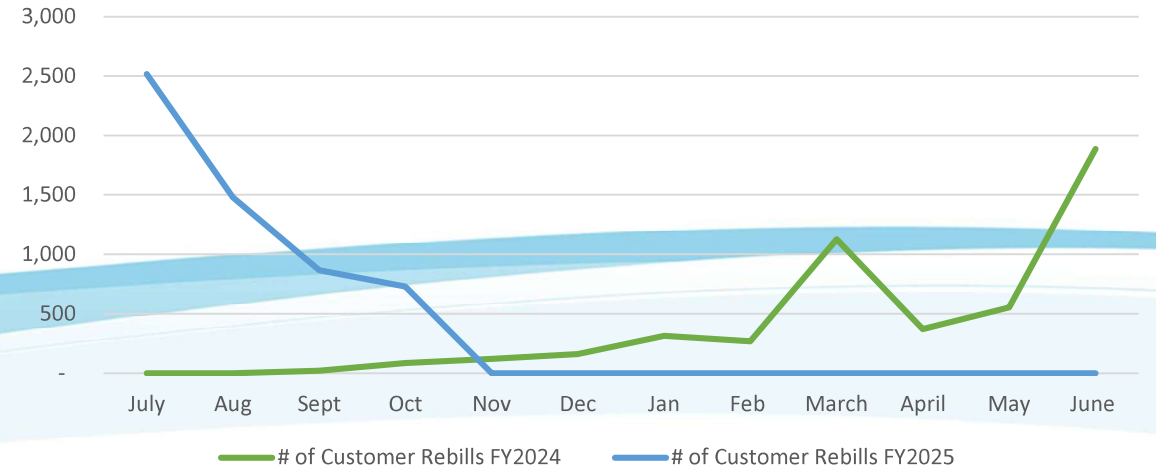
of Walk in Customers



of Customer Emails and Correspondence

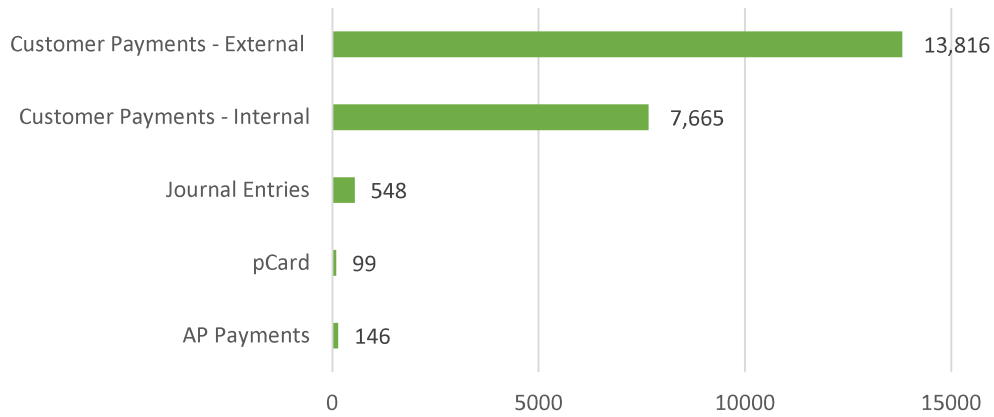


of Customer Rebills



FISCAL DIVISION DASHBOARD

Accounting Highlights



Transponder Replacement Highlights:

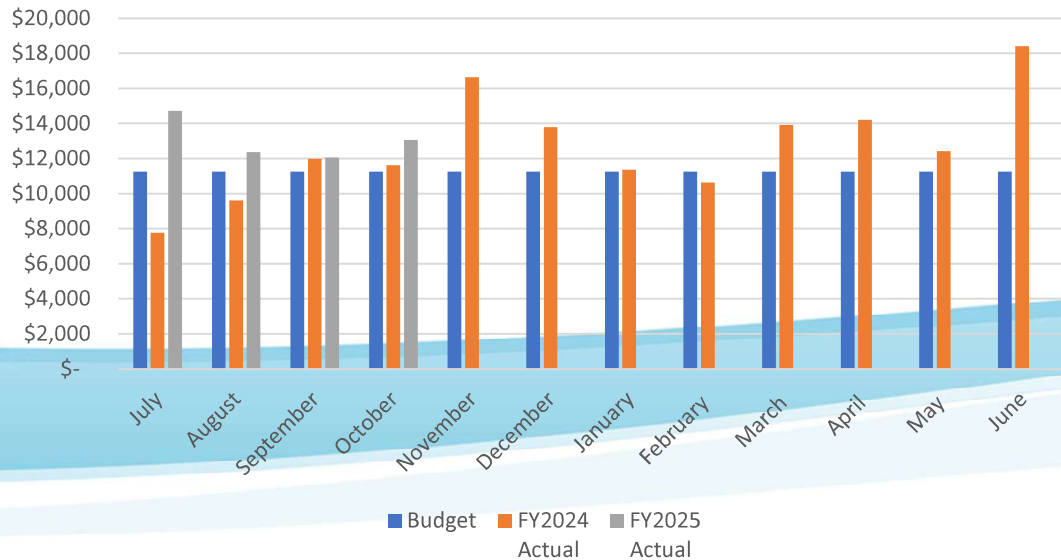
7,680 parts ordered on May 30, 2024

- 1,820 Shipped on October 28, 2024
- 3,640 Shipped on October 29, 2024
- 2,220 Shipped on October 30, 2024

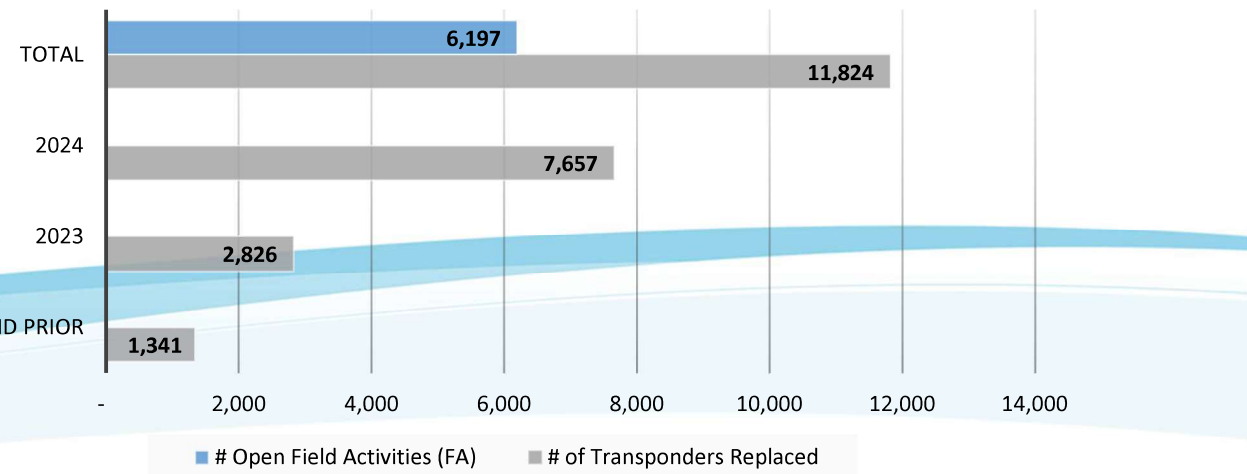
51% Replaced to date.
27% Awaiting parts.
22% Active; expected to fail

Monthly Transactional Volume processed and reconciled by the Accounting Team.

Overtime



Transponder Replacement Progress (Calendar Year)



Department Of Water Budget Report for October 2024

	October 2024			Fiscal Year 2025			
	Budget	Actual	Variance	Year to Date Budget	Year to Date Actual	Variance	Variance %
Operating							
Revenue	\$ 2,765,742.00	\$ 3,909,635.80	\$ 1,143,893.80	\$ 11,062,968.00	\$ 13,719,843.43	\$ 2,656,875.43	24.0%
Expenses							
Labor *	\$ 1,166,793.00	\$ 1,208,152.78	\$ (41,359.78)	\$ 4,667,172.00	\$ 4,832,611.09	\$ (165,439.09)	-3.5%
Services	1,341,633.30	669,632.84	672,000.46	5,366,533.20	1,661,208.68	3,705,324.52	69.0%
Utilities & Materials	952,621.84	770,579.13	182,042.71	3,810,487.35	2,408,526.44	1,401,960.91	36.8%
Total Operating Expenses	\$ 3,461,048.14	\$ 2,648,364.75	\$ 812,683.39	\$ 13,844,192.55	\$ 8,902,346.21	\$ 4,941,846.34	35.7%
Debt Service Principal & Interest	\$ 211,496.00	\$ -	\$ 211,496.00	\$ 5,529,145.00	\$ 5,529,145.14	\$ (0.14)	0.0%
Operating and Debt Expenses	\$ 3,672,544.14	\$ 2,648,364.75	\$ 1,024,179.39	\$ 19,373,337.55	\$ 14,431,491.35	\$ 4,941,846.20	25.5%
Net Income (Loss)	\$ (906,802.14)	\$ 1,261,271.05	\$ 2,168,073.19	\$ (8,310,369.55)	\$ (711,647.92)	\$ 7,598,721.63	91.4%

* Current month's labor is estimated

Capital Projects and Purchases**

	Fiscal Year Budget	October FYD 2025 Actual	Remaining Budget
Water Utility Funded Projects			
IT-Expansion Capital Purchases--	968,434.45	34,868.73	933,565.72
Eng 11-04 LO-10 Lawai 6n8inch Main Replacem	200,000.00	11,967.85	188,032.15
Eng-69%R-11-07 HE-03 Hanapepe & Koloa Well	571,650.00	2,895.00	568,755.00
Eng-ALLR-23-07 Rehabilitate Puupilo Steel Tank	169,783.00	14,922.55	154,860.45
Eng-Job 18-3 -Kuhio Hwy Hardy-Oxford 16IN M	2,808,941.82	8,253.39	2,800,688.43
Eng-56%R-Job 23-03 Kuhio Hwy Papaloa to Wai	318,284.46	77,878.09	240,406.37
23-02 WK-34, Kuamoo Rd 8" Main Replace (6,5	13,085.45	13,085.45	-
Cns-44%R-09-01 Yamada Tank Clearwell, Conn	2,777,114.24	51,730.20	2,725,384.04
Ops-R&R-Upgrade and Replace SCADA RTU anc	261,281.91	77,994.60	183,287.31
Ops-RandR Capital Purchases	2,193,999.05	24,121.98	2,169,877.07
Ops-Expansion Capital Purchases	631,573.69	18,569.39	613,004.30
Projects with budget but no activity	12,026,933.11	-	12,026,933.11
Total	\$ 22,941,081.18	\$ 336,287.23	\$ 22,604,793.95

FRC Funded Projects

Eng-ALLE-12-02 WK-23 UH Expmntal Storage Ta	\$ 304,981.00	\$ 89,231.00	\$ 215,750.00
Eng 04-08 WK-39 Drill Kapaa Homestead Well 4	2,521,934.49	1,050.00	2,520,884.49
Projects with budget but no activity	6,075,153.36	-	6,075,153.36
\$	6,165,434.36	90,281.00	6,075,153.36

Build America Bonds Funded Projects

\$	9,418,863.75	\$ -	\$ 9,418,863.75
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State Allotment Funded Projects

\$	7,300,000.00	\$ -	\$ 7,300,000.00
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State Revolving Funded Projects

\$	12,126,518.00	\$ 1,892,951.00	\$ 10,233,567.00
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Total Capital Projects

\$	57,951,897.29	\$ 2,319,519.23	\$ 55,632,378.06
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Selected Divisions

	October 2024			Fiscal Year 2025			
	Budget	Actual	Variance	Year to Date Budget	Year to Date Actual	Variance	Variance %
Engineering	\$ 881,339.59	\$ 450,843.97	\$ 430,495.62	\$ 3,525,358.36	\$ 1,305,901.68	\$ 2,219,456.68	63.0%
Fiscal	245,832.78	242,510.82	3,321.96	983,331.12	858,763.67	124,567.45	12.7%
Operations	1,561,895.28	1,393,582.35	168,312.93	6,247,581.12	4,947,714.92	1,299,866.20	20.8%
\$	2,689,067.65	\$ 2,086,937.14	\$ 602,130.51	\$ 10,756,270.60	\$ 7,112,380.27	\$ 3,643,890.33	33.9%

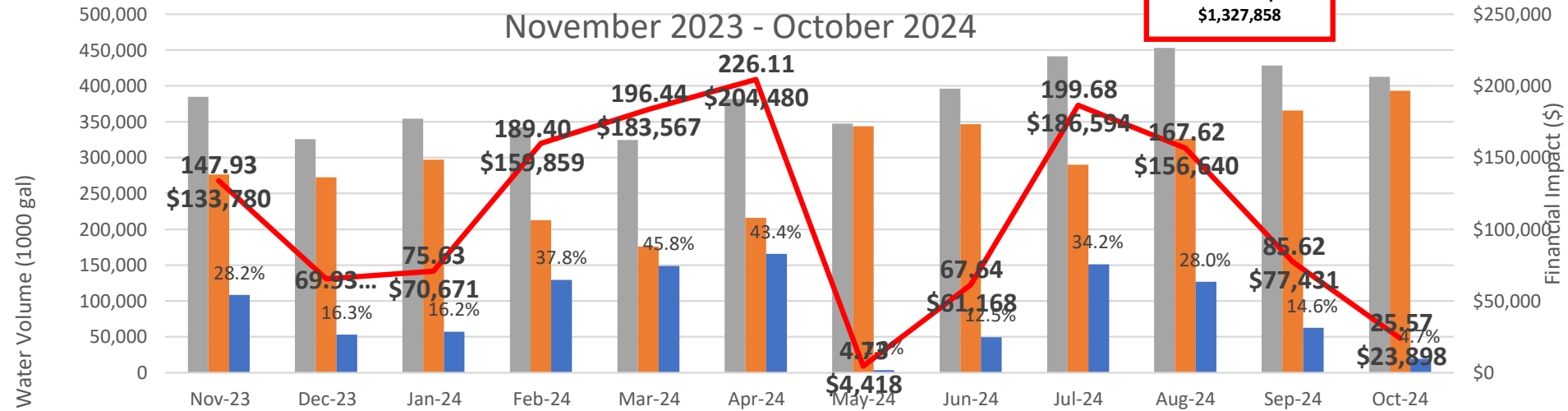


OPERATIONS DASHBOARD

Monthly Water Audit

November 2023 - October 2024

Annual Financial Impact
\$1,327,858

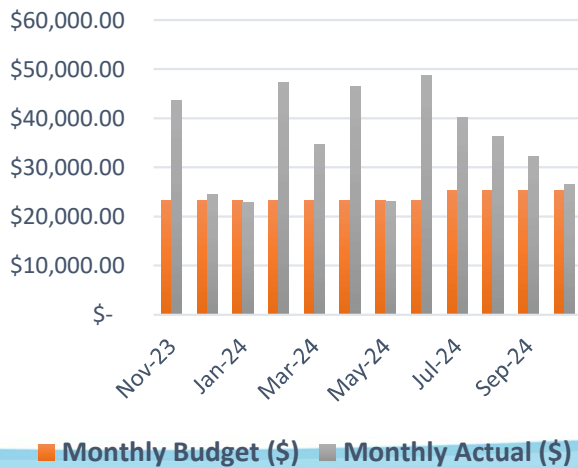


	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Jul-24	Aug-24	Sep-24	Oct-24
Produced (Kgals)	384,904	325,580	354,475	342,356	324,631	381,800	347,331	396,223	441,367	452,933	428,498	412,714
Customer Read (Kgals)	276,529	272,639	297,225	212,855	175,924	216,151	343,752	346,671	290,208	326,039	365,771	393,354
Non-Rev Water (Kgals)	108,375	52,941	57,250	129,501	148,707	165,649	3,579	49,552	151,159	126,894	62,727	19,360
Financial Impact	\$133,780	\$65,351	\$70,671	\$159,859	\$183,567	\$204,480	\$4,418	\$61,168	\$186,594	\$156,640	\$77,431	\$23,898

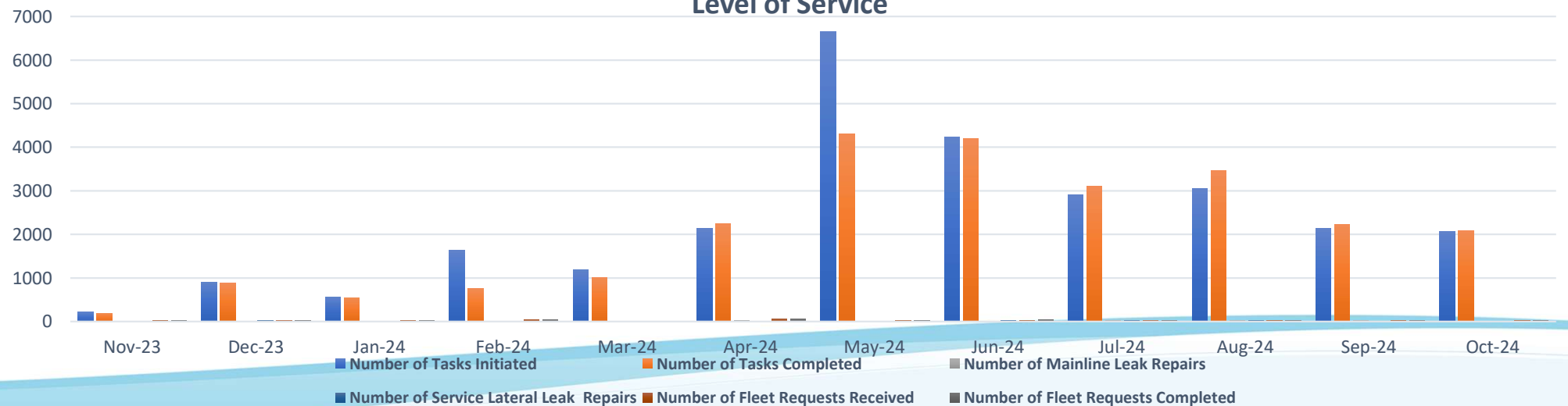
Ops Highlights:

1. Recruiting for Water Meter Mechanic Helper and Maintenance Worker II.
2. 7,680 meter transponders shipped out at the end of October, arriving in November.
3. Training conducted for Procurement with OCA, DSO Exam Review, CDL and Equipment Certification with DHR, and the HWWA Conference hosted by KDOW.

Overtime



Level of Service



OPERATIONS

	Last Month		Current Month		Previous FY		Current FY	
					Year to Date		Year to Date	
STAFFING								
Budgeted Staff Vacancies	50	9	48	11	49	8	48	11
OVERTIME								
Budget (\$) Actual (\$)	\$25,416.67	\$32,206.56	\$25,416.67	\$26,562.34	\$93,133.33	\$123,307.85	\$101,666.67	\$135,150.42
FLEET MANAGEMENT								
# of Vehicles Active per day	44		42		43		42	
# of Vehicles Active per month	869		966		923		893	
METER PROGRAM								
# of Existing Meters Replaced	0		0		8		168	
# of Existing Meters Repaired	180		519		231		1612	
# of New Meters Installed	10		8		27		33	
# of New Laterals Installed	0		0		6		2	

OPERATIONS



LEVEL OF SERVICE

	Last		Current		Previous		Current	
	Month	Month	Month	Month	FY YTD	FY YTD	FY YTD	FY YTD
# of Tasks Initiated	2134		2071		1481		10157	
# of Tasks Completed	2232		2092		1342		10888	
# of Mainline Leak Repairs	21		16		46		75	
# of Service Lateral Leak Repairs	14		11		56		76	
# of Calls for Service	234		208		817		877	
# of Temporary Hydrant Meters Installed	1		3		15		9	
# One Call Request Received Completed	51	55	27	24	214	214	159	156
# of Auto Shop Requests Received Completed	28	22	21	34	127	130	87	93
# of Hydrant Hits	1		1		8		7	

WATER AUDIT

	Last	Current Month	Previous	Current
	Month		FY YTD	FY YTD
Water Produced (Million Gallons)	428.498	412.714	1680.351	1735.512
Customer Meter Reading (Million Gallons)	365.771	393.354	1268.540	1375.372
Non-Revenue Water (Million Gallons)	62.727	19.360	411.811	360.140
Non-revenue %	15%	5%	25%	21%
Financial Impact	\$77,431.46	\$23,898.37	\$508,347.34	\$444,564.02



ENGINEERING DASHBOARD

	Last Month		Current Month		Previous FY Year to Date		Current FY Year to Date	
STAFFING								
Budgeted Staff Vacancies	24	5	24	5	23	6	24	5
OVERTIME								
Budget (\$) Actual (\$)	\$12,900	\$29,100	\$12,900	\$25,900	\$19,700	\$67,500	\$51,700	\$89,200

	Last Month		Current Month	
PROJECT MANAGEMENT				
DOW Projects In Design In Construction	15	8	15	8
Private Projects Design Approved In Construction	4	164	1	165
Private Projects Construction Completed	1		1	

CIP Project Highlights:

- Kalāheo Water System Improvements Project
 - Scheduled to pouring walls for Clearwell Tank 11/19
- Kūhiō Hwy (Hardy-Oxford) 18" Main Replacement
 - Issued IFB 11/8/24
 - Pre-Bid meeting 11/20/24
 - Bid opens 1/24/25
- Hā'ena 0.2 MG Storage Tank, 144'
 - Finalizing design
 - Working on permitting
 - Applied for Drought Resiliency Grant
- Weke, 'Anae, Mahimahi and He'e Roads 6" and 8" Main Replacement
 - Pre-con meeting 11/7/24
- Hanapēpē Town Well MCC, Chlorination Facilities
 - Contracting Valley Well Drilling
- Līhu'e Administrative Building Fencing
 - IFB issued 10/7/24
 - Bid opened 11/15/24
- Līhu'e Baseyard Electrical Relocation
 - Schedule to issue IFB 12/2/24



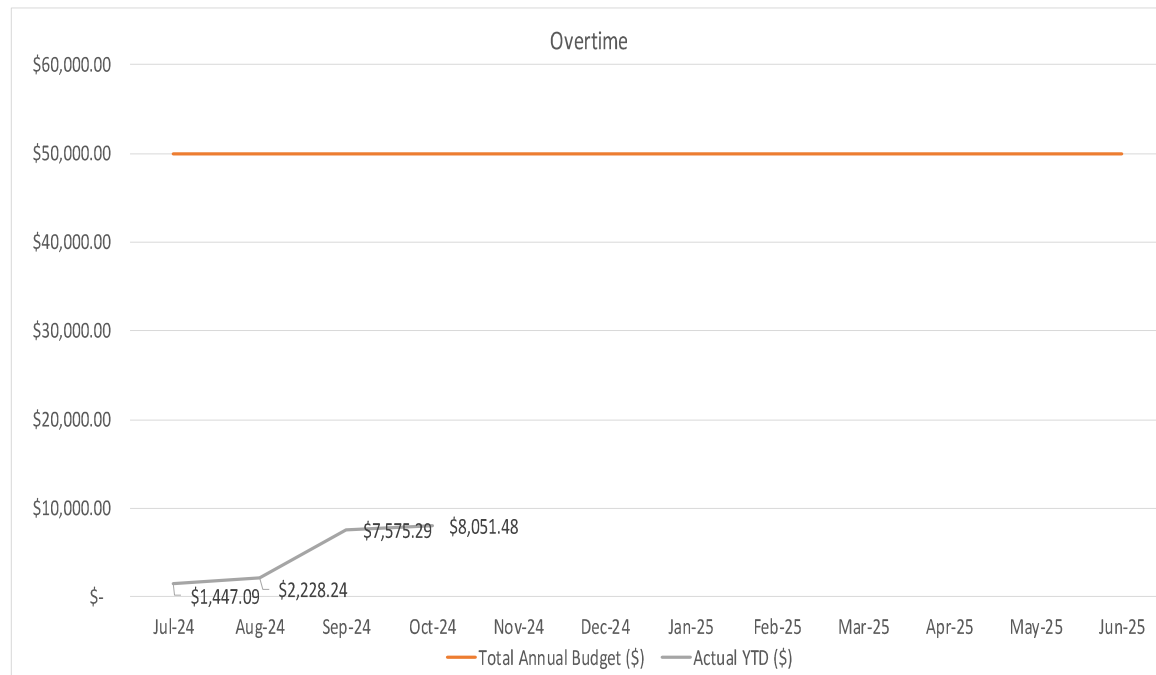
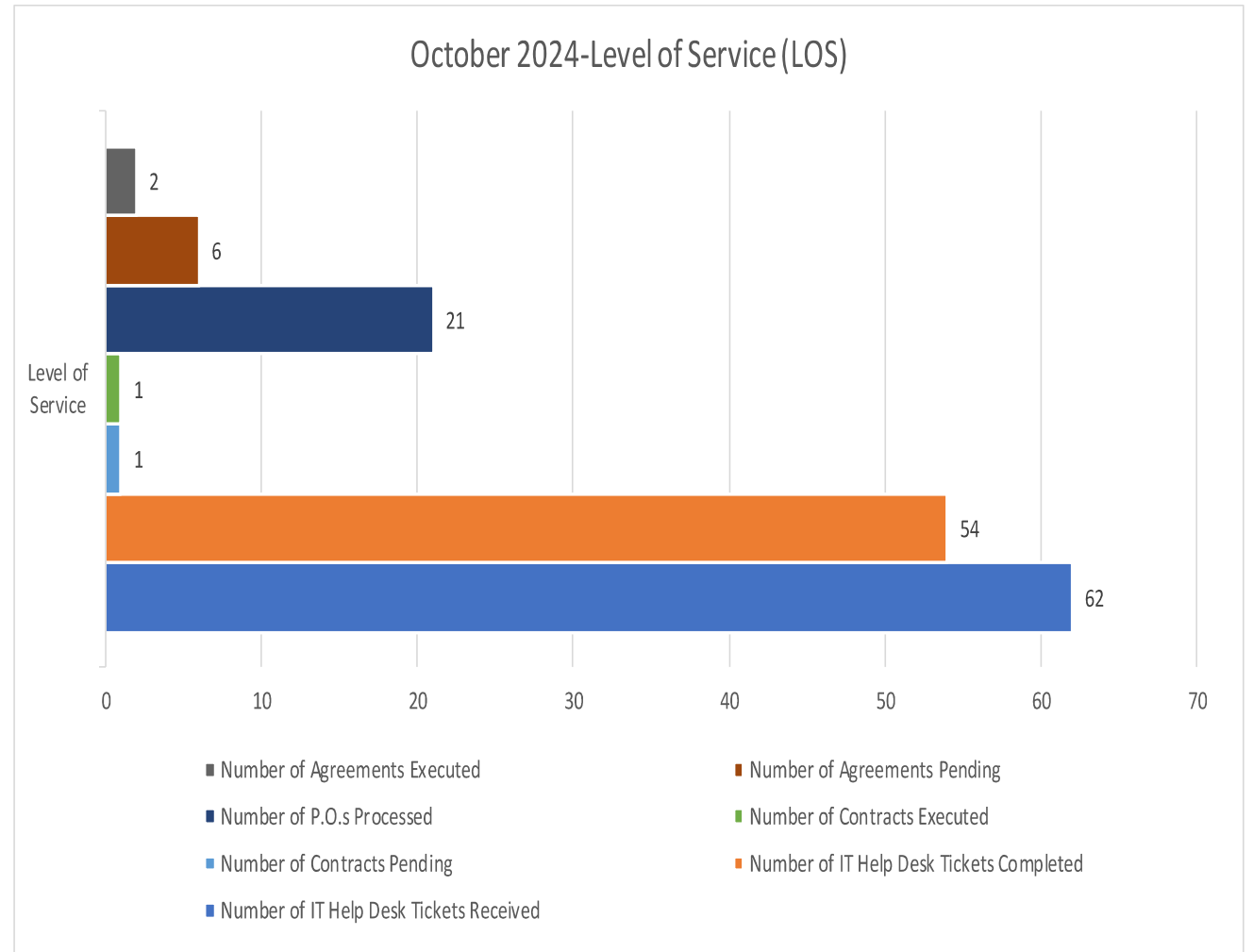
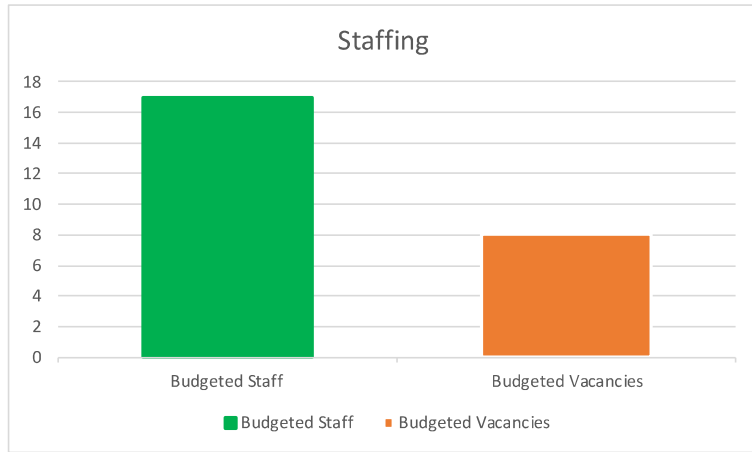
ENGINEERING DASHBOARD

	Last Month		Current Month		Previous FY Year to Date		Current FY Year to Date	
WATER RESOURCES AND PLANNING								
Number of Customer Requests Received Completed								
Subdivision Applications, Zoning, Land Use and Variance Permits	7	7	0	0	32	25	19	19
ADU/ARU Clearance Applications	2	3	3	2	8	29	14	14
Building Permits	155	180	120	121	601	618	621	615
Water Service Requests	32	33	24	13	95	82	121	100
Government Records Request	4	3	4	4	6	8	14	10
Backflow Inspection # of Devices Tested	50		59		436		491	

DOW Project Highlights:

- Water Systems Investment Plan (WSIP)
 - Evaluating CIP project list
 - Working on FRC update
- Lead and Copper Rule Revisions (LCRR) Update
 - Inventory accepted by DOH
- As-Needed Grant Writing and Preparation Services
 - Awarded HCF Freshwater Initiative Grant of \$100k
 - Applied for Drought Resiliency Grant with USBR for Hā'ena 0.2 MG Tank Construction 10/7/24
 - Applied for WaterSMART Grant for AMI Meters 11/13/24
- AWIA RRA/ERP
 - Agreed on scope, waiting for proposal

ADMINISTRATION DASHBOARD



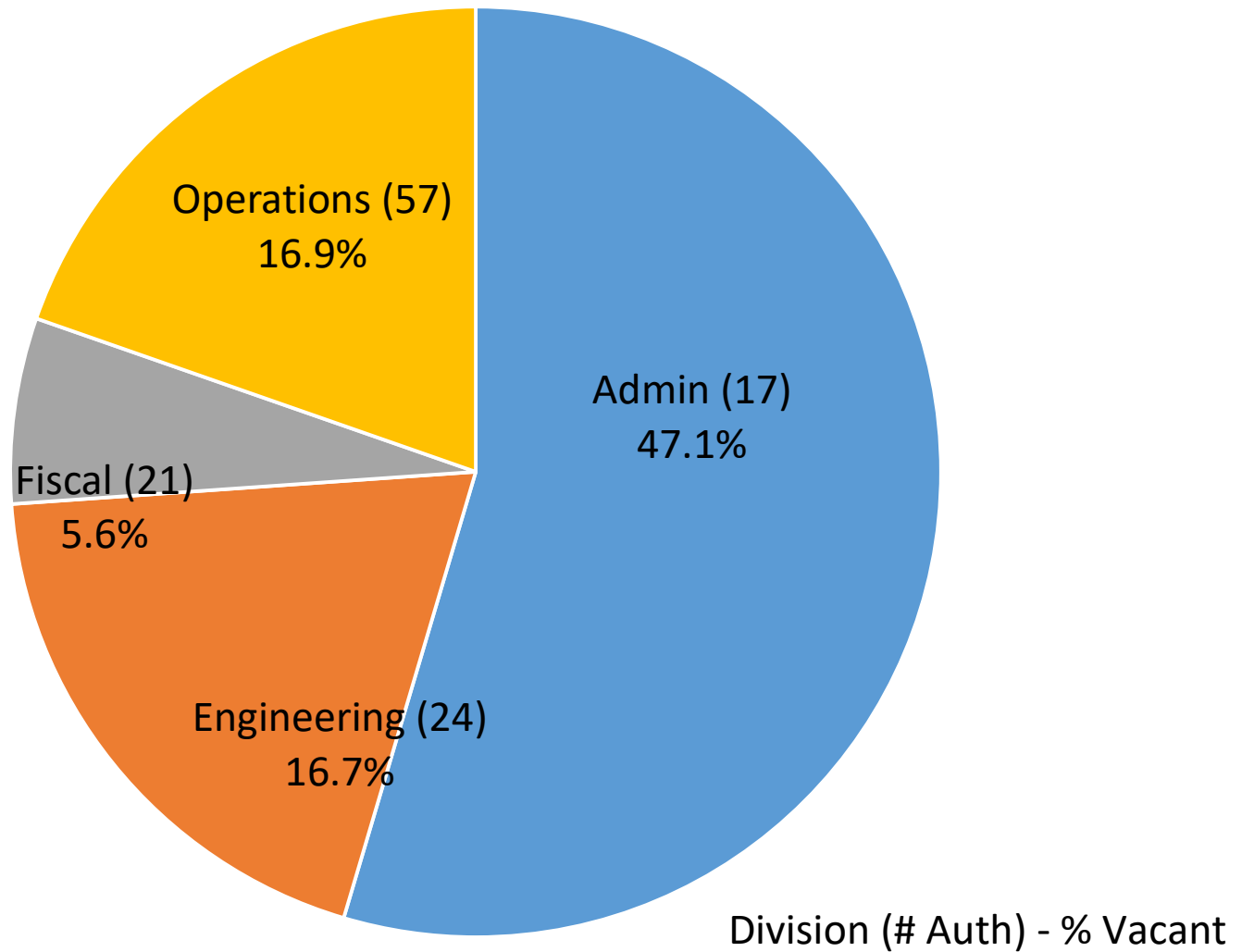
ADMINISTRATION

	Sep-24		Oct-24		Previous FY YTD		Current FY YTD	
STAFFING								
Budgeted Staff vs Vacancies (Admin-HR-IT-PR)	17	9	17	8	17	9	17	8
OVERTIME								
Budget (\$) vs Actual (\$)	\$ 4,166.67	\$ 5,347.05	\$ 4,166.67	\$ 476.19	\$ 16,666.67	\$ 30,958.83	\$ 16,666.67	\$ 8,051.48

	Sep-24		Oct-24		Previous FY YTD		Current FY YTD	
LEVEL OF SERVICES								
# of IT Help Desk Tickets Received Completed	64	58	62	54	159	101	223	202
# of Legal Claims Outstanding Resolved	1	1	0	0	0	0	0	0
# of Contracts Pending Executed	0	0	1	1	1	5	1	2
# of Purchase Orders Processed	9		21		98		89	
# of Agreements Pending Executed	0	1	6	2	2	5	6	9
# of MOU MOA Pending	0	0	0	0	0	0	0	0
# of MOU MOA Executed	1	0	0	0	1	0	1	0

Notes: DOW Dashboard data tracking started November 2022 & Legal claims are compiled quarterly as of March, June, September, & December

% Vacancy Within Each Division Level



DEPARTMENT OF WATER

County of Kaua'i

“Water has no substitute – Conserve It!”

MANAGER’S UPDATE

November 21, 2024

Pursuant to Board Policy No. 3

**1. NASPO VL CONTRACT NO. 17-18, CPA2024-01, YEAR 2 OF 3 SERVICES AND CONTRACT CHANGE ORDER NO. 2 WITH CARAHSOFT TECHNOLOGY CORPORATION.
ASSET MANAGEMENT MANAGED SERVICES**

RECOMMENDATION:

It is recommended that the Manager approve Year 2 of 3 Services, and Change Order No. 2 to authorize 1-year managed services support for Cartegraph Asset Management Solution.

FUNDING:

Account No.	10-02-00-604-999		
Acct Description	WU/IT/Capital Outlay-Rehabilitation and		\$1,417.55
Account No.	10-02-10-550-000		
Acct Description	WU/IT/Admin/Subscription Based IT Arrangement		\$32,119.22
Funds Available	<i>Verified by WWC</i>		
Contract No.	CPA2024-01		
Vendor	Carahsoft Technology		
	Contract Amount (Year 1 of 3)	\$69,751.56	
	5% Contingency	\$3,488.00	\$3,488.00
	Change Order 1 (03/21/24)	\$9,040.00	
	Total Funds Certified To Date	\$82,279.56	
	Year 2 (of 3): \$30,673.87 plus HI Tax	\$32,119.22	
	Change Order 2: Asset Management Managed	\$4,905.55	
	Total Year 2 and CO2	\$37,024.77	<\$37,024.77>
	Contract Amount To Date	\$115,816.33	

BACKGROUND:

Contract NTP Date: September 7, 2023
 Original Contract End Date: August 31, 2024
 New Contract End Date: August 31, 2025

The Department completed the Backflow Module implementation successfully, but requires additional technical support for letter modifications and system editing. This CO2 provides 1 year of managed services that are support outside of normal Cartegraph customer help. The additional technical support will continue through until August 31, 2025, which coincides with the cloud hosting licensing agreement.

The Department is also entering into Year 2 (of 3) of the multi-term contract agreement, NASPO VL Contract No. 17-18.

**2. CONSTRUCTION CONTRACT AWARD TO VALLEY WELL DRILLING, LLC
 JOB 23-08, WP2020 HE-03a, HANAPĒPĒ TOWN WELL MCC, CHLORINATION
 FACILITIES, HANAPĒPĒ, KAUA‘I, HAWAI‘I**

RECOMMENDATION:

It is recommended that the Manager approve a construction contract award to Valley Well Drilling, LLC in the amount of \$150,000.00.

FUNDING:

Account No.	10-20-00-604-138		
Acct Description	WU/Eng/Admin/Capital Outlay – R & R (HE-03a Hanapēpē Town Well MCC, Chlorination Facilities)		
Funds Available	Verified by WWC		\$500,000.00
Contract No.	770		
Vendor	Valley Well Drilling, LLC		
	Contract Amount	\$150,000.00	
	5% Contingency	\$N/A	
	Total Funds Certified	\$150,000.00	<\$150,000.00>
Fund Balance			\$350,000.00

BACKGROUND:

The Hanapēpē Town Well MCC, Chlorination Facilities project consists of cleaning, videoing, and performing a pump test of the existing Hanapēpē Town Well (also known as the Nagoshi Well). The purpose of this project is to determine whether the existing well can be brought back online and into the Hanapēpē-‘Ele‘ele water system.

**3. CHANGE ORDER NO. 5, 5TH AND FINAL YEAR SERVICES FOR CONTRACT NO. 701 WITH GLENMOUNT GLOBAL SOLUTIONS, LLC.
 JOB NO. 20-03 SCADA SYSTEM MAINTENANCE AND PROFESSIONAL
 CONSULTATION SERVICES**

RECOMMENDATION:

It is recommended that the Manager approve the 5th and Final Year Services for Contract No. 701 with Glenmount Global Solutions, LLC.

FUNDING:

Account No.	10-02-10-561-000		
Acct Description	WU/IT/Admin/Repairs and Maintenance-Other than		
Funds Available	<i>Verified by WWC</i>		\$180,000.00
Contract No.	701		
Vendor	Glenmount Global Solutions, LLC		
	Contract Amount	\$158,764.00	
	5% Contingency	\$0.00	
	CO1 (12/23/21)	\$71,236.00	
	2 nd Year Services (12/23/21)	\$158,764.00	
	3 rd Year Services (12/15/22)	\$158,764.00	
	CO2 (09/21/23)	\$29,890.00	
	CO3, 4 th Year Services (12/21/23)	\$161,939.28	
	CO4 (05/16/24)	\$8,688.00	
	Total Funds Certified To Date	\$748,045.28	
Change Order No. 5:			
	12-month Contract Time Extension and Funding for	\$165,178.07	
	Total Amendment	\$165,178.07	<\$165,178.07>
	Contract Amount To Date	\$913,223.35	
	Fund Balance		\$14,821.93

BACKGROUND:

Contract NTP Date: January 2, 2021
 Original Contract End Date: January 1, 2025
 New Contract End Date: January 1, 2026

The Department entered into a multi-term contract with Glenmount Global Solutions, LLC to operate and maintain the SCADA System for 3 years, with an option to extend the contract not to exceed 24 months. The Department is entering into the 5th and final year of services for this contract. The 5th year price includes 2% for inflation, which is allowable per the contract (Exhibit A, Scope of Work, Item D, Duration of Work).

The budgetary breakdown for this multi-term contract are:

Year 1 = \$158,764.00
 Year 2 = \$158,764.00
 Year 3 = \$158,764.00
 Year 4 = \$161,939.28
Year 5 = \$165,178.07

**4. CHANGE ORDER NO. 2 FOR CONTRACT NO. 726 (HAWAIIAN DREDGING CONSTRUCTION COMPANY, INC.)
 JOB NO. 09-01, WP2020 #K-01, K-12, KALAHEO WATER SYSTEM IMPROVEMENTS; PACKAGE A-0.5 MG YAMADA RESERVOIR; PACKAGE B-0.1 MG CLEARWELL RESERVOIR; PACKAGE C-WATER MAIN INSTALLATION, KALAHEO-KOLOA WATER SYSTEM, KALAHEO KAUAI, HAWAII**

RECOMMENDATION:

It is recommended that the Manager approve Change Order No. 2 for Contract No. 726 with Hawaiian Dredging Construction Company, Inc.

FUNDING:

Account No.	10-21-00-604-029		
Acct Description	WU/Capital Outlay-R&R/Kalaheo (contingency)		
Funds Available	Verified by WWC		PO#5258 (Line 2)
Contract No.	726		
Vendor	Hawaiian Dredging Construction		
	Contract Amount	\$21,756,430.00	
	5% Contingency	\$1,077,025.66	\$1,077,025.66
	Change Order No. 1 (10/17/24)	\$10,544.34	
	Total Funds Certified To Date	\$12,644,000.00	
Change Order No. 2:			
	Additional SSL Installation	\$17,800.00	
	Additional Asbestos Removal	\$7,299.14	
	Total Change Order No. 2	\$25,099.14	<\$25,099.14>
Contract Amount To Date	\$21,792,073.48		
Contingency Balance			\$1,051,926.52

BACKGROUND:

Contract NTP Date: October 12, 2022
 Original Contract End Date: March 29, 2025
 New Contract End Date: n/a

The Kalaheo Water System Improvements project consists of the construction of One (1) – 0.5 million gallon storage tank, One (1) – 0.1 million gallon storage tank and approximately 11,500 linear feet of ductile iron pipeline (12”, 8”, and 6”), water meter service connections, fire protection facilities and appurtenances, along with restoration and repaving work, in accordance with the contract documents requirements.

HDCC found two single service laterals on Po’ohiwi Road that were not identified on the construction drawings. On August 19, 2024, HDCC came across the first single service lateral at Sta. 41+00 on Po’ohiwi Road. On October 29, 2024, HDCC came across the second single service lateral at Sta. 47+29.92 on Po’ohiwi Road. The Construction Contract between HDCC and DOW has an established unit price for the installation of single service laterals in the amount of \$8,900.00

each. HDCC agreed to use the unit price in the contract. The additional single service laterals cost will be \$17,800.00. The proposal was reviewed by the Department and deemed acceptable.

Additional material found at Package B was determined by laboratory analysis to contain asbestos. A proposal was submitted by HDCC on January 5, 2024 for the removal of the additional asbestos containing material by a certified Contractor. A cost of \$7,299.14 was presented by HDCC. Bowers + Kubota and the Department reviewed the proposal and deemed it acceptable. The additional single service laterals and asbestos removal will be submitted as Change Order No. 2

**5. CHANGE ORDER NO. 6 TO CONTRACT NO. 688 WITH EARTHWORKS PACIFIC, INC.
 JOB NO. 17-10, WP2020 #KW-07, PAUA VALLEY TANK NO. 1 REHABILITATION PROJECT, KEKAHA, KAUA'I, HAWAII**

RECOMMENDATION:

It is recommended that the Manager approve Change Order No. 6 for Contract No. 688 with Earthworks Pacific, Inc.

FUNDING:

Account No.	N/A		
Acct Description	N/A		
Funds Available	Verified by WWC		\$N/A
Contract No.	688		
Vendor	Earthworks Pacific, Inc.		
	Contract Amount	\$2,264,750.00	
	5% Contingency	\$18,085.07	
	Change Order No. 1 (05/05/20)	\$0.00	
	Change Order No. 2 (07/28/22)	\$994,393.77	
	Change Order No. 3 (08/25/22)	\$248,329.67	
	Change Order No. 4 (06/15/23)	\$32,899.55	
	Change Order No. 5 (01/25/24)	\$204,691.49	
	Total Funds Certified To Date	\$3,763,149.55	
Change Order No. 6:			
	Additional PCB Water Treatment, Additional Roof	<\$50,234.62>	
	Total Change Order	<\$50,234.62>	
Contract Amount To Date		\$3,694,829.86	

BACKGROUND:

Contract NTP Date: January 21, 2020
 Original Contract End Date: April 20, 2021
 New Contract End Date: January 2, 2025

The Contractor's price for filtering PCB water in the tank was based on 300,000 gallons. The total filtered PCB water ended up being 364,000 gallons. The original contract unit price for filtering PCB water was \$1.85. The Contractor was able to negotiate with their subcontractor to get the unit price down to \$0.85. A proposal of \$63,286.26 was received and reviewed by Department Staff. The work is necessary and the cost proposal is deemed acceptable.

The Contractor's Roofing Subcontractor performed a moisture test of the concrete tank roof. Upon inspection, the existing tank roof moisture exceeded the specified roof coating material. Also, some of the cracks on the existing roof exceeded the coating material warranties. An alternate roofing system was proposed by the Contractor to address the high moisture content and cracks. A proposal of \$49,038.24 was received and reviewed by Department Staff. After the proposal review, it was decided that the Contractor and the DOW would split the additional cost 50/50. DOW's portion is \$24,519.12. The Contractor is also requesting 150 additional calendar days to procure the material and perform the work. The proposal was deemed acceptable.

The quantities for two contract line items are being reduced since this work will not be performed during this contract. Item No. 12 – Remove Existing AC Pavement and Item No. 13 – Install New AC Pavement. A total of \$130,040.00 will be credited back to the DOW. This credit is the sum of Item Nos. 12 and 13 minus an approved escalation cost of \$8,243.61. The deductive change proposal was reviewed and deemed acceptable.

**6. FIFTH AMENDMENT TO CONTRACT NO. 614, BROWN AND CALDWELL
 JOB NO. 15-08, WP2020 PROJECT NO. HW-11, HĀ'ENA 0.2 MG STORAGE TANK,
 WAINIHA, KAUA'I, HAWAI'I**

RECOMMENDATION:

It is recommended that the Manager approve the fifth amendment to Contract No. 614 with Brown and Caldwell for additional environmental permitting and surveying services for the above referenced project.

FUNDING:

Account No.	10-20-10-540-010		
Acct Description	WU/Eng/Admin/Professional Services (Technical		
Funds Available	<i>Verified by WWC</i>		\$356,834.02
Contract No.	614		
Vendor	Brown and Caldwell		
	Contract Amount	\$358,881.00	
	First Amendment (09/29/17)	\$53,520.00	
	Second Amendment (12/02/19)	\$9,567.00	
	Third Amendment (10/19/23)	\$298,973.00	
	Fourth Amendment (11/16/23)	\$85,924.00	
	Total Funds Certified To Date	\$806,865.00	
Fifth Amendment:			
	Additional environmental permitting and surveying	\$86,192.00	
	Total Amendment	\$86,192.00	<\$86,192.00>

Contract Amount To Date	\$893,057.00	
Fund Balance		\$270,642.02

BACKGROUND:

Contract NTP Date: December 28, 2015
 Original Contract End Date: December 27, 2016
 New Contract End Date: March 28, 2027

The Department of Water intends to use a Drinking Water State Revolving Fund (DWSRF) loan for the design and construction of the project. In order to do this, environmental permitting for the project needs to be updated to meet the federal cross-cutter requirements. Additional surveying needs to be performed to add an additional easement needed for the project.

**7. JOINT FUNDING AGREEMENT WITH U.S. GEOLOGICAL SURVEY (USGS)
 FOR PERIOD OCTOBER 1, 2024 TO SEPTEMBER 30, 2025**

RECOMMENDATION:

It is recommended that the Manager approve the Joint Funding Agreement to continue the Department of Water's (DOW's) cooperative groundwater-monitoring program with the addition of surface-water monitoring at selected sites for period October 1, 2024 to September 30, 2025.

FUNDING:

Account No.	10-20-10-540-010		
Acct Description	WU/Eng/Admin/Professional Services (Line 1, USGS)		
Funds Available	Verified by WWC		\$75,000.00
Contract No.	N/A		
Vendor	USGS		
	Contract Amount	\$72,581.00	
	Total Funds Certified To Date	\$72,581.00	<\$72,581.00>
Fund Balance			\$2,419.00

BACKGROUND:

Contract NTP Date: N/A
 Original Contract End Date: N/A
 New Contract End Date: N/A

DOW continues to use the services of the USGS through the Joint Funding Agreement cooperative ground-monitoring program. The purpose of the water-resources monitoring program is to collect data needed to evaluate the status and trends of water levels in selected wells, and also streamflow and rainfall at selected sites on Kaua'i. Data is collected by the USGS in accordance with well-documented techniques and quality-assurance procedures.

8. WAIVER TO DEPARTMENT OF WATER'S RULES AND REGULATIONS FOR KUKUI GROVE CENTER AND MARKETPLACE

RECOMMENDATION:

It is recommended that the Manager grant Kukui Grove Center and Marketplace's ("KGCM's") request to waive the perpetual easement requirements of Part 3, Section XI ("perpetual easement requirement") of the Board of Water Supply's Rules ("Rules"). The perpetual easement requirement requires conveyance of perpetual easements for all portions of the water system installed in other than publicly owned property as a prerequisite to water service.

FUNDING:

N/A

BACKGROUND:

KGCM acquired the subject property in its present condition in which no perpetual easements were initially conveyed to the Board as a prerequisite to water service. This was discovered when KGCM submitted plans for an 8" RPDA for Building B, and it was determined that the Board does not have perpetual easements for DOW-owned infrastructure in KGCM property. As a result, building permits for KGCM have been pending until the easements are conveyed to the Board. In order to convey all applicable perpetual easements, the water lines must be located and recorded with the Land Court System (some of the parcels for Kukui Grove have title registered in the Land Court System). KGCM has identified that they are in the process of deregistering the land court parcels. After this is done, KGCM will convey all applicable perpetual easements. Since this will take time, KGCM has requested that the Manager and Chief Engineer waive the perpetual easement requirement of Part 3, Section XI of the Board of Water Supply's Rules and enter into a MOA with terms and conditions that will allow the building permits for KGCM's tenants to be approved while KGCM works on conveying all applicable perpetual easements to the Board.

KGCM's request for waiver of the perpetual easement requirement should be granted to the limited extent that a MOA may be executed to allow KGCM and its tenants to function while KGCM continues to work on conveying all applicable perpetual easements to the Board in compliance with Part 3, Section XI of the Rules and pursuant to the terms and conditions of the proposed MOA. The requested waiver should be granted because it meets the elements for waiver or modification established pursuant to Part 3, Section XIII – Modification of Requirements of the Rules. Accordingly, the following findings are made for each of the elements:

1. Strict application of the rule would cause absurd, unfair, or unreasonably harsh result.

In this particular situation, strict application of the perpetual easement requirement would cause an absurd and unreasonably harsh result because the perpetual easement requirement, in light of the information discussed above, prohibits KGCM and its tenants from applying and obtaining building and other permits needed to function. The proposed MOA would allow KGCM and its tenants to proceed to function while simultaneously working to convey perpetual easements to the Board.

2. The applicant's circumstances or condition is unique or exceptional, and the Manager would grant the same request if made by every similarly situated applicant.

In this particular situation, KGCM's circumstances or conditions are unique or exceptional because the precise location of the easements required by the Board have not yet been determined. Based on the Department's records, the waterlines at Kukui Grove Center were installed in 1981. Further, the Department has paper maps showing the approximate location of the waterline that traverse through the property. However, the precise location of the waterlines has not been determined.

3. Such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations.

In this particular situation, the proposed MOA, as a limited waiver to the perpetual easement requirements, is reasonably necessary or expedient and not contrary to the intent and purpose of the perpetual easement requirement. This is because, as discussed above, KGCM's property includes parcels of land for which the title is registered in Land Court and parcels of land that are not. Tax map designations for the land include a mixture of the land court and non-land court parcels. KGCM is in the process of deregistering the land court parcels. Once the deregistration process is complete, the intent is for the required perpetual easements for the Department's waterlines to be conveyed. The MOA balances both the need for KGCM and its tenants to function with ensuring the Department's ability to secure its rights to the waterlines via perpetual easements.

Any waiver granted by the Manager and Chief Engineer is not finally approved until the Board is notified of the decision through the Manager's monthly report to the Board. The Board may overturn or nullify the Manager's decision by a majority vote.

CONVEYANCE OF WATER FACILITIES NONE