BOARD OF WATER SUPPLY of the COUNTY OF KAUA‘I

REGULAR MEETING
Second Floor, Kaua‘i County Department of Water
4398 Pua Loke Street, Līhu‘e, Kaua‘i, Hawai‘i 96766

MONDAY, AUGUST 21, 2017

10:00 a.m.

Or soon thereafter

A. CALL TO ORDER

B. ROLL CALL

C. ACCEPTANCE OF AGENDA

D. MEETING MINUTES
   Review and approval of:
   - Regular Board Meeting – July 28, 2017
   - Public Hearing – July 26, 2017

E. CORRESPONDENCE/ANNOUNCEMENTS
   1. Correspondence from Mr. Allan Rietow, Field Representative, The Nature Conservancy Coordinator for the Benefit of the Kaua‘i Watershed Alliance regarding a Kaua‘i Watershed Alliance Progress Report presentation for FY2017 at the August Board meeting, dated July 5, 2017

F. BOARD COMMITTEE REPORTS
   Report of the Audit Committee of the Kaua‘i County Board of Water Supply
   1. Discussion and Possible Action on the Scope for a Performance Audit

G. CONSENT CALENDAR
   1. Manager’s Report No. 17-09 (Update) - Discussion and Possible Action for Board Approval with the State of Hawaii’s July 15, 2016 conditional letter and enter into Use and Occupancy Agreement No. 333 with the State of Hawaii for Job No. 12-01, Water Plan 2020 No. H-05, Hanalei Waterline Improvements (Weke, Anae, Mahimahi and He‘e Roads Main Replacements), Hanalei, Kaua‘i, Hawai‘i

NOTE: If you need an ASL Interpreter, materials in an alternate format, or other auxiliary aid support, please contact Edie at 245-5406 or email: eineumiller@kauaiwater.org at least seven (7) calendar days before the meeting.
G. **CONSENT CALENDAR (cont’d)**

2. *Manager’s Report No. 18-60* – Discussion and Possible Action to approve the State of Hawai‘i’s June 12, 2017 conditional letter and to enter into Use and Occupancy Agreement No. 368 between the State of Hawai‘i and the Board of Water Supply, County of Kaua‘i and for Job No. 15-07, Water Plan 2020 No. HE-1, Reorganize Water System - Pipeline Connecting Hanapēpē and ‘Ele‘ele, Kaua‘i, Hawai‘i

3. *Manager’s Report No. 18-61* - Discussion and Possible Action for the Board to concur with Right of Entry letter from the Department of Land and Natural Resources for the construction of the Clearwell Tank site as part of the Kalaeoh Water Improvements Project, Package B – 0.1 MG Clearwell Reservoir, Kalāheo, Kaua‘i, Hawai‘i

4. *Manager’s Report No. 18-62* - Discussion and Possible Action to approve the Request for State Lands – Application Form to obtain a temporary Right of Entry and a Grant of Easement for construction, operation, and maintenance of proposed drain line on TMK: (4) 4-6-11:125, Job No. 02-14 WP2020 #WK-08 Kapa‘a Homesteads 325’ Tanks – Two 0.5 Million Gallon Storage Tanks, Kapa‘a, Kaua‘i, Hawai‘i

5. *Manager’s Report No. 18-63* – Discussion and Possible Action to Request Board Approval to enter into a Memorandum of Agreement (Drainage) and Right of Entry that will allow the Department of Water to construct drainage pipe lines, necessary appurtenances and ditches for WP2020 Project No. WK-08 affecting the following:
   a. Godwin M. Esaki, Janet M. Esaki, the Godwin M. Esaki Revocable Living Trust, and the Janet M. Esaki Revocable Living Trust, TMK: (4) 4-6-11:125, Kapa'a, Kaua'i, Hawai'i

H. **OLD BUSINESS**

1. *Manager’s Report No. 18-57* - Discussion and Possible Action to join in the Petition for Subdivision, Designation of Restriction of Access Rights, and Cancellation of Portions of Easement and Easements; Joinders, Land Court of the State of Hawaii Application No. 1087, Puhi, Kaua‘i, Hawai‘i

2. *Manager’s Report No. 16-58* – Discussion and Possible Adoption of Part 2, Water Service Connections, Section II General Conditions, subsection 1. Rule amendment relating to the DOW’s Standard Operating Procedure for Providing Water Service Outside of the Water Zone

3. *Manager’s Report No. 16-38* – Discussion and Possible Adoption of Part 5, Facility Reserve Charge, Section III – Applicability, relating to Multi-Family Dwelling Units and Affordable Housing Units *(Update)*
I. NEW BUSINESS

1. Resolution No. 18-01 – Farewell to Leo Anguay (Retiree), Waterworks Inspector III, Construction Management Division

2. Manager’s Report No. 18-64 - Discussion and Possible Action to approve the Department of Water’s Supplemental Budget for Fiscal Year 2017-2018

3. Manager’s Report No. 18-65 - Discussion and Possible Action on Part 2 Rules and Regulation for Water Service Connection to address Landlord and/or Property Managers and Tenant issues
   a. Section I – Definitions
   b. Section III – Conservation Measures and Interruption of Water Supply
   c. Section IV – Elevation Agreement, Pressure Controls
   d. Section V – Application for Water Service and Service Connection

4. Manager’s Report No. 18-66 - Discussion and Possible Action for Job No. 17-11, WP2020 WKK-02, Drill and Test Kīlauea Well No. 3, Kīlauea, Kaua‘i, Hawai‘i for additional design funding in the amount of $18,339.35

5. Manager’s Report No. 18-67 - Discussion and Possible Action on the 5th Amendment for Contract No. 440, Job No. 02-06 WP2020 #WKK-15, Kīlauea, Kaua‘i, Hawai‘i, 1.0 Million Gallon Storage Tank and Connecting Pipeline with Kodani & Associates Engineer, LLC for the additional design funding of $25,260.00

6. Manager’s Report No. 18-68 - Discussion and Possible Action for Job No. 11-07, Water Plan 2020 KP-09, MCC, Chlorination Facilities, Koloa Well “16A” & “16B” Site and Building Improvements for additional construction funding in the amount of $2,050,000.00

J. STAFF REPORTS

MONTHLY

1. Discussion and Receipt of the Kaua‘i County Water Department’s Statement of Revenues and Expenditures
   a. July Monthly Summary Budget

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

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

4. Discussion and Receipt of the Manager and Chief Engineer’s Monthly Update Regarding Activities of Note of the DOW
   a. Report of the BAB pay down as of July 2017
K. **EXECUTIVE SESSION**
   1. Pursuant to H.R.S. §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 H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a), the Board did not anticipate, but deems it necessary, pursuant to §92-5(a)(4) to consult with its attorney on issues pertaining to the Board’s rights, privileges, and obligations that the Board may incur or be responsible for as a consequence in agreeing to this agreement.

   a. *Manager’s Report No. 18-57 - Discussion and Possible Action for the Board of Water Supply to join in the Petition for Subdivision, Designation of Restriction of Access Rights, and Cancellation of Portions of Easement and Easements; Joinders, Land Court of the State of Hawaii Application No. 1087, Puhi, Kaua‘i, Hawai‘i*

L. **TOPICS FOR NEXT WATER BOARD MEETING (September 2017)**
   1. Discussion and Receipt of the Department of Water’s Capital Improvement Projects (CIP) for the 2018 Legislative Session
   2. Annual Evaluation of the Department of Water’s Manager and Chief Engineer for Fiscal Year 2016-2017

M. **TOPICS FOR FUTURE WATER BOARD MEETINGS**
   1. Discussion and Possible Action on Proposed Board Policy for Delegating Routine Actions from the Water Board to the Department of Water’s Manager and Chief Engineer regarding Right of Entry
   2. Workshop presentation regarding the Long Range Plan of the Department of Water’s former Administration Building
   3. Discussion and Possible Action on Utility Agreement No. 2257 between the State of Hawai‘i Department of Transportation and the Board of Water Supply, County of Kaua‘i for the upcoming Hanapēpē River Bridge, Kaumuali‘i Highway, Route 50, HI STP SR50 (1) Project, Hanapēpē, Kaua‘i Hawai‘i Water System Improvements
   4. Discussion and Possible Action on the Department of Water’s Standard Operations Procedures as it relates to the Board of Water’s Rules and Regulations
   5. Discussion and Receipt of the Department of Water’s Draft Audit by Accuity for FY2016-2017 (October)

N. **UPCOMING EVENTS**
   1. Project Wet – Make A Splash (September 28, 2017)
   2. HWWA & HRWA Conference, Hawai‘i, HI (Kona, Hawai‘i, November 1 – 3, 2017)

O. **NEXT WATER BOARD MEETING**
   1. Friday, September 22, 2017, 10:00 a.m.
   2. Friday, October 27, 2017, 10:00 a.m.
   3. Wednesday, November 29, 2017, 10:00 a.m.
   4. Friday, December 22, 2017, 10:00 a.m.

P. **ADJOURNMENT**
MEETING MINUTES
BOARD OF WATER SUPPLY
Friday, July 28, 2017

The Board of Water Supply, County of Kaua‘i, met in regular meeting at the Board Conference Room in Līhu‘e on Friday, July 28, 2017. Chair Sherman Shiraishi called the meeting to order at 10:04 a.m. The following Board members were present:

BOARD: Mr. Sherman Shiraishi, Chair
Ms. Laurie Ho
Mr. Thomas Canute
Ms. Beth Tokioka
Mr. Michael Dahilig
Mr. Lawrence Dill

EXCUSED: Mr. Lyle Tabata

Quorum was achieved with 6 members present at the time of roll call.

STAFF: Mr. Kirk Saiki
Mr. Eddie Doi
Mr. Valentino Reyna
Mr. Carl Arume
Mr. Keith Aoki
Mr. Dustin Moises
Deputy County Attorney, Mahealani Krafft

GUEST(s) Mr. Hall Parrott, Private Citizen

ACCEPTANCE OF AGENDA
Mr. Dill moved to approved the Agenda as circulated; seconded by Mr. Dahilig; with no objections, motion carried with 6 ayes.

D. MEETING MINUTES
Review and approval of:
Regular Board Meeting – June 23, 2017

Ms. Ho moved to approve the Regular Board Meeting minutes of June 23, 2017; seconded by Ms. Tokioka; with no objections, motion carried with 6 ayes.

E. CORRESPONDENCE/ANNOUNCEMENTS
None.

F. BOARD COMMITTEE REPORTS
None.

G. OLD BUSINESS
1. Manager’s Report No. 17-43 - Discussion and Possible Action on the Re-establishment of the Water Field Operations Superintendent – Position No. 2491

BACKGROUND:
Chief of Operations Mr. Reyna gave a history of when the Water Field Operations Superintendent position was created in 2009. This position was posted in 2011 but was never filled. In 2012, there was a change
in the Operations Division and the Assistant Chief of Operations was created. At that time, filling the Field Superintendent position was shelved. After five years, situations have changed and this position is needed back.

The counter part for the Field Superintendent is the existing Plant Superintendent position which is vacant. The Chief of Operations and the Assistant Chief of Operations have been performing the duties of the Field Operations Superintendent and Plant Superintendent.

Mr. Reyna requested approval to reinstate the Field Operations Superintendent position and fund it at 50% as it was approved in the budget for Fiscal Year 2017-2018.

**DISCUSSION:**
Mr. Dill asked what the current Table of Organization (TO) looks like. Mr. Reyna said the current TO consisted of 1) Administrative & Clerical who reports to the Chief of Operations and Assistant Chief of Operations, 2) Plant Section reports to the Assistant Chief of Operations with approximately 20 employees and 3) Field Section reports to the Chief of Operations with approximately 25-30 employees.

Ms. Tokioka inquired if Operations will continue to do more work in-house rather than with consultants? Mr. Reyna answered the plan is to do work in-house which have been service lateral installations related to an executive order from the Manager. The executive order has helped the engineers and Construction Management Division to process 180 service lateral installations requests from January 2016 to May 2017. This resulted in 180 less plan reviews by the engineers.

Mr. Canute asked why the Field Operations Superintendent position was difficult to fill in the past. Mr. Reyna explained this is a 24/7 position with paperwork involved vs. supervising a crew. If the position is posted, Manager Saiki added, there is no guarantee of applicants. He mentioned a concern because now there is a stand-by crew. Two Field Superintendents are also on a week-long stand-by every other week creating burn out. To assist the two supervisors, Mr. Reyna is now on stand-by as well. The new Field Operations Superintendent will be inserted into the rotation of three.

Mr. Dahilig wanted a clarification and thought this position was dollar funded but now it is being funded at 50% as another action from the last Board meeting regarding the 2017-2018 budget.

Mr. Dill mentioned from Mr. Reyna’s report that “Funds for requested position is 50% funded in the approved budget for Fiscal year 2017-2018.” Mr. Reyna made a correction from the last Board meeting that this position was dollar funded, but in fact was 50% funded in the 2017-2018 budget.

Deputy County Attorney Krafft further clarified that this position was eliminated in 2012. In 2014, the then Deputy County Attorney realized there was a procedural deficiency so the Board addressed the issue again to correct the procedural defect, essentially to reaffirm the 2012 Board decision to eliminate the position which included removing the position from the TO, so this position does not exist. Mr. Dahilig’s concern was the 2018 budget had a line item for this position, which acts as creating the position again and an approval from the Board. He clarified that the line item re-establishes the position without a separate action. Deputy County Attorney Krafft disagreed. Mr. Dahilig disagreed with that assessment on how appropriations were created and need the funding. His understanding is if the Board consented to a position in the budget, even though the position was dollar funded, that position in the budget and is created (if this is what the rate from the County Attorney’s office is). Mr. Dahilig asked what exactly is the Board acting on between the budget and this action.
Manager Saiki commented if the Manager’s Report is not approved, the position could be taken off the budget. Mr. Dahilig wants Operations to get the position with the funding and was in favor of a motion. Chair Shiraishi clarified Manager’s Report No. 17-43 as an effort to clean up any deficiency that might arise in the future (i.e. a paper trail). The position was abolished and the Department has now funded the position at 50%.

Mr. Dill moved to approve Manager’s Report No. 17-43 - Discussion and Possible Action on the Re-establishment of the Water Field Operations Superintendent – Position No. 2491; seconded by Mr. Canute; with no objections, motion carried with 6 ayes.

**H. NEW BUSINESS**

   a. Report from Kaua‘i Board of Water Supply Member, Michael Dahilig

**DISCUSSION:**

Mr. Dahilig had the opportunity to attend this year’s AWWA conference. He felt the conference was a bit disjointed because the venue stretched along several blocks, which made networking difficult. He was among only 10 people who attended the keynote address. The conference was more of a self-exploration exercise instead of networking with other people but he gained insight regarding policies that affect people.

The City of Baltimore used to do a self-reporting system for meter reading which they transitioned out of because customers had to call in how much water they used. This made meter reading difficult when checking the meters that were located in people’s homes. This template is not recommended for the Department of Water (DOW) to follow.

Mr. Dahilig thanked the Board for allowing him to attend this conference.

Mr. Dahilig moved to receive the American Water Works Association, Annual Conference Exposition Report from Kaua‘i Board of Water Supply Member, Michael Dahilig; seconded by Ms. Ho; with no objections, motion carried with 6 ayes.

   b. Report from Kaua‘i Board of Water Supply Member, Lyle Tabata

Mr. Dahilig moved to receive the American Water Works Association, Annual Conference Exposition Report from Kaua‘i Board of Water Supply Member, Lyle Tabata; seconded by Ms. Ho; with no objections, motion carried with 6 ayes.

2. Discussion and Possible Action by the Board to create an Audit Committee for the Scope of the Procurement on a Performance Audit for Professional Services for the Department of Water

**BACKGROUND:**

The Commission Support Clerk reminded the Board at the June Board meeting, Mr. Canute volunteered to be on the Audit Committee and Mr. Dahilig volunteered Mr. Tabata as Chair of the Audit Committee. Chair Shiraishi said he communicated with Mr. Tabata who did not object to being on the Audit Committee. Chair Shiraishi appointed Mr. Tabata as Chair and members Mr. Canute and Ms. Tokioka, and requested the Audit Committee to report back at the August 21st Board meeting.
Ms. Ho moved to approve Chair’s appointment of Mr. Tabata as Audit Committee Chair & Audit Members: Ms. Tokioka & Mr. Tom Canute to create an Audit Committee for the Scope of the Procurement on a Performance Audit for Professional Services for the Department of Water; seconded by Ms. Tokioka; with no objections, motion carried with 6 ayes.

3. Manager’s Report No. 18-54 - Discussion and Possible Action to approve the Request for State Lands – Application Form to obtain a right of entry for construction related purposes on TMK: (4) 1-9-05:007, WP2020 No. HE-10 Reorganize Water System: Hanapepe Road 6-Inch Main Replacement Hanapēpē -'Ele'ele Water System project, Hanapēpē, Kaua‘i, Hawai‘i

BACKGROUND:
Civil Engineer Mr. Aoki reported new water meters need to be installed and connected to existing plumbing on the Hanapēpē Road Main Replacement project. The Right of Entry is to move an existing meter out of the private property into the County Right of Way and/or for the Department to reconnect the plumbing after the meter is installed.

Mr. Dill moved to approve Manager’s Report No. 18-54 - Discussion and Possible Action to approve the Request for State Lands – Application Form to obtain a right of entry for construction related purposes on TMK: (4) 1-9-05:007, WP2020 No. HE-10 Reorganize Water System: Hanapepe Road 6-Inch Main Replacement Hanapēpē -'Ele'ele Water System project, Hanapēpē, Kaua‘i Hawai‘i; seconded by Mr. Canute; with no objections; motion carried with 6 ayes.

4. Manager’s Report No. 18-55 - Discussion and Possible Action to approve the Request for State Lands – Application Form to obtain a right of entry for construction related purposes on TMK: (4) 1-9-05:049, WP2020 No. HE-10 Reorganize Water System: Hanapēpē Road 6-Inch Main Replacement, Hanapēpē-'Ele'ele Water System project, Hanapēpē, Kaua‘i Hawai‘i

Mr. Dill moved to approve Manager’s Report No. 18-55 - Discussion and Possible Action to approve the Request for State Lands – Application Form to obtain a right of entry for construction related purposes on TMK: (4) 1-9-05:049, WP2020 No. HE-10 Reorganize Water System: Hanapēpē Road 6-Inch Main Replacement, Hanapēpē-'Ele'ele Water System project, Hanapēpē, Kaua‘i, Hawai‘i; seconded by Mr. Canute; with no objections, motion carried with 6 ayes.

5. Manager’s Report No. 18-56 - Discussion and Possible Action to approve the Request for State Lands – Application Form to obtain a right of entry for construction related purposes on TMK: (4) 1-9-10:037, WP2020 No. HE-10 Reorganize Water System: Hanapēpē Road 6-Inch Main Replacement Hanapēpē-'Ele'ele Water System project, Hanapēpē, Kaua‘i Hawai‘i

Mr. Dill moved to approve Manager’s Report No. 18-56 - Discussion and Possible Action to approve the Request for State Lands – Application Form to obtain a right of entry for construction related purposes on TMK: (4) 1-9-10:037, WP2020 No. HE-10 Reorganize Water System: Hanapēpē Road 6-Inch Main Replacement Hanapēpē-'Ele'ele Water System project, Hanapēpē, Kaua‘i, Hawai‘i; seconded by Mr. Canute; with no objections, motion carried with 6 ayes.

6. Manager’s Report No. 18-57 - Discussion and Possible Action for the Board of Water Supply to join in the Petition for Subdivision, Designation of Restriction of Access Rights, and Cancellation of Portions of Easement and Easements; Joinders, Land Court of the State of Hawaii Application No. 1087, Puhi, Kaua‘i, Hawai‘i
DISCUSSION:
Mr. Dahilig asked if this was a time sensitive matter for the State to join in the petition and if a response is needed today? Mr. Aoki said the State is trying to close out their projects. Because there were moving parts with three (3) parties, Mr. Dahilig was unclear on whose rights the three parties are giving up.

Chair Shiraishi commented that DOW is giving up an easement in exchange for a Use and Occupancy Agreement (UOA).

At 10:36 a.m., Mr. Dahilig moved to go into Executive Session; seconded by Mr. Dill; with no objections, motion carried with 6 ayes.

J. EXECUTIVE SESSION
1. Pursuant to H.R.S. §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 H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a), the Board did not anticipate, but deems it necessary, pursuant to §92-5(a)(4) to consult with its attorney on issues pertaining to the Board’s rights, privileges, and obligations that the Board may incur or be responsible for as a consequence in agreeing to this agreement.

   a. Manager’s Report No. 18-57 - Discussion and Possible Action for the Board of Water Supply to join in the Petition for Subdivision, Designation of Restriction of Access Rights, and Cancellation of Portions of Easement and Easements; Joinders, Land Court of the State of Hawaii Application No. 1087, Puhi, Kaua‘i, Hawai‘i (Add to Executive Session in August agenda.)

At 10:48 a.m., Chair Shiraishi called the Regular Board meeting back to order.

The Board deferred Manager’s Report 18-57 to the August Board meeting.

At 10:49 a.m., Mr. Dahilig exited the meeting.

At 10:51 a.m., Mr. Dahilig re-entered the meeting.

H. NEW BUSINESS (cont’d)
7. Manager’s Report No. 18-58 - Discussion and Possible Action for Board Approval on the Ninth Amendment to Contract No. 427, Job No. 02-14, WP2020 WK-08 Kapa’a Homesteads 325’ Tanks – Two 0.5 Million Gallon (MG) Storage Tanks, Kapa’a, with Belt Collins Hawai‘i for a time extension of 360 calendar days and expenditure of an additional $160,149.00

BACKGROUND:
The Kapa’a Homesteads 325’ Tank drainage is being resolved and on the proposed Kapa’a Homesteads Well No. 4 project located on the same site. Originally a drain line was going to be along Kapahi Road to drain into the Tokashiki property. The property owner, after a lengthy discussion, was not willing to accept the additional water from the DOW site. An alternate drainage solution was needed but Mr. Aoki found another landowner on Ka’apuni Road that would accept the additional water from the DOW site. There would be more expense to design the drain line, update the permits, and revised the drain line study for the County because it is a different site.

Part of the ninth amendment would require the design consultant for the Kapa’a Homesteads Tank to separate the drainage part of the project into a separate construction drawings. The Department could
combine the separated set of design drawings with the Kapa‘a Homesteads Well No. 4 plans to make one construction package. The review of the proposal for the amendment is reasonable and Mr. Aoki recommended approval.

**DISCUSSION:**
Chair Shiraishi asked if the Department should get acceptance from the owner on Ka‘apuni Road before agreement for a contract extension. Spending money on the contract amendment and if the landowner changes their mind, will that money be wasted? Mr. Aoki said the State has funding for the Kapa‘a Homesteads Well No. 4 which expires at the end of this fiscal year. He suggested if the Board would consider approving additional funds for the project, contingent on getting a written permission from the landowner (Godwin Esaki), before the money is expended due to the time frame. If the project is pushed back, it would take two months before an amendment can be executed. According to Mr. Aoki, a written agreement could be executed by next week. The Department already has a Right of Entry draft written which is with the Deputy County Attorney Krafft for legal review.

Chief of Construction Manager Mr. Moises noted that this project has been worked on for 15 years. The contract has two projects with one tank built in Makaleha and the 2nd phase was in Kapahi. One tank was built prior to this contract.

Ms. Tokioka noted the cumulative funding request is four times the original contract amount. She hoped the Department learned from this experience by avoiding many amendments and to separate contracts. Mr. Aoki agreed with Ms. Tokioka to avoid a lot of amendments in the future.

Timeline to execute the contract is by March 2018 and to complete construction before June 2018 for the well.

Mr. Canute moved to approve *Manager’s Report No. 18-58 - Discussion and Possible Action for Board Approval on the Ninth Amendment to Contract No. 427, Job No. 02-14, WP2020 WK-08 Kapa‘a Homesteads 325’ Tanks – Two 0.5 Million Gallon (MG) Storage Tanks, Kapa‘a, with Belt Collins Hawai‘i for a time extension of 360 calendar days and expenditure of an additional $160,149.00 based on the contingency on the Department obtaining, from the landowner, a written agreement to accept the drainage discharge; seconded by Ms. Ho; with no objections, motion carried with 6 ayes.*

8. *Manager’s Report No. 18-59 - Discussion and Possible Action on the Manager and Chief Engineer’s Goals for FY17-18*

**BACKGROUND:**
Manager Saiki pointed out that Step 2 were the goals from last year such as starting design or Preliminary Engineering Report’s (PER) period to potentially getting them into construction. The following goals for divisions were mentioned:

Operations – The Department has an asset management program but concluded that the Department will need help to determine if there is a more suitable asset management program. The Department may come back to the Board for funding for an asset management program and a consultant for preventative maintenance.

Engineering - Completed six (6) projects last year out of the five (5) projects. The goal this year is four (4) projects.

DISCUSSION:
Chair Shiraishi discussed goals relating to Communications, which would be under Administration to improve communication top down from the Manager to the supervisors and rank and file as well as bottom up. Employee comments to the Chair suggest better communications and information from management would improve efficiency and morale. Ms. Ho asked how would this be measured.

The Manager’s evaluation is usually discussed in August and done in executive session (to be completed by September/October). Mr. Canute asked if the performance appraisal is in line with the Manager’s goals or in addition to other things? Chair Shiraishi commented part of the evaluation is to determine if the Manager obtained his goals. Ms. Tokioka mentioned the evaluation (form) is general and does not provide feedback based on the goals the Board sets. She was not sure if the Board has flexibility to create an instrument which would be a 360 evaluation and reflect the specific goals for the Manager.

Suggestions and additions to Manager’s goals by the Board (in order of discussion):
Add to Admin.: Improve communication and morale from the Manager by being open to staff top down and vice versa. (Chair & BT)

Supply metrics; work on measurements to assist the Board; was the goal met? (LD)

Re-write “Outcomes.” Provide more thought on the Outcomes (i.e., what is the benefit to the Department)? (LD)

Rename Outcome to “ Desired Outcome” (TC)

Add to Admin: “Performance Audit” (BT)

Update Timeline – Some goals could be accomplished earlier in the year (BT)

Financially how much money is needed in times of disaster; what is a dollar value needed to survive. Is this considered a reserve? Possibly add to the Performance Audit? (LH)

Geographic Information Systems (GIS) - To see an operational plan and investments proposed by the end of this fiscal year that target investments hardware and software to upgrade asset management compatible with all county agencies. (MD)

Vision and Leadership – To see how the Manager will move forward with updates on Water Plan 2020, which is budgeted. Need to see results at the end of the Manager’s evaluation. How will the Manager envision the operations of Department beyond 2020? (MD)

Chair Shiraishi reminded the Board to review the draft minutes when completed to make sure their comments on the Manager’s goals are included for follow up with the Manager.

Ms. Tokioka moved to approve with modifications by the Board on the Manager’s goals Manager’s Report No. 18-59 - Discussion and Possible Action on the Manager and Chief Engineer’s Goals for FY17-18; seconded by Mr. Dahilig; with no objections, motion carried with 6 ayes.

At 11:18 a.m., Chair Shiraishi exited the meeting and Vice Chair Ho conducted the meeting.

I. STAFF REPORTS
MONTHLY
1. Discussion and Receipt of the Kaua‘i County Water Department’s Statement of Revenues and Expenditures
   a. June Monthly Summary Budget
BACKGROUND:
Waterworks Controller Ms. Yano commented the end of the fiscal year was as of June 30, 2017 which reflects preliminary numbers. An audited financial statement will be done by the new Auditor’s Accuity. A field audit will be done by August 28th.

DISCUSSION:
Mr. Dill asked why the fuel and utility was under budget at 22%? (Page 99 & 102)

At 11:20 a.m., Chair Shiraishi re-entered the meeting.

Mr. Reyna explained the fuel prices have been lower than budgeted and oil prices were also lower. The lowered the fuel consumption was the 2013 mandate from the Mayor regarding take home vehicles. Employees have decided not to take home their vehicles since they are taxed.

Ms. Yano mentioned the power cost adjustment for 2018 is zero and adjusted annually. Mr. Dill asked if the Department could adjust the automatic power cost to once a month? Under the rules, Ms. Yano commented the power cost is adjusted every year. The power cost adjustment involves the cost of pumping which is not under line item Fuel; it is under line item Utilities. When the power cost adjustment is calculated, the budget is also compared in the adjustment and the actual expenses. The power cost adjustment is under Revenues (Water Sales).

Mr. Dill suggested if the Department budgeted less, and the cost of the commodity increased during the year, the Department could adjust the billings with the automatic power cost adjustment on a monthly basis to recoup the cost.

Ms. Yano said by doing the power cost monthly, you would not see an average cost. It would be easier to see the average cost yearly based on a longer period of time. Mr. Canute and Mr. Dahilig did not agree on a monthly average basis because a month’s average could be missed. Mr. Dill added KIUC adjusts their fuel cost every month.

At the request of Mr. Dill, Waterworks Controller Ms. Yano will prepare a report to evaluate adjusting the power cost adjustment either once a month or quarterly for the August Fiscal report. She will also check the Chart of Accounts the past two years for actuals.

Mr. Dill moved to receive the Kaua‘i County Water Department’s Statement of Revenues and Expenditures, a) June Monthly Summary Budget; seconded by Ms. Ho; with no objections, motion carried with 6 ayes.

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

DISCUSSION:
Chair Shiraishi has received emails on water interruptions and asked if this was an unusual month? Information Specialist Jonell Kaohelaulii said there were a few scheduled shut downs and emergency shut downs depending on the projects. There were some complaints from the public but they were resolved.

Mr. Canute moved to receive the Report by the Information and Education Specialist on Public Relations Activities; seconded by Ms. Ho; with no objections, motion carried with 6 ayes.
2. Discussion and Receipt of the Chief of Operation’s Summary Report on Operational Activities

**BACKGROUND:**
Mr. Reyna mentioned overtime (OT) is stable and was down for June. In July OT will increase due to scheduled water shutdowns and unscheduled overnight interruptions. Mr. Dahilig asked when there are scheduled shutdowns, are schedules not adjusted to avoid OT?

Mr. Reyna said based on the United Public Workers (UPW) contract, a 30 day notice is required. Another question Mr. Dahilig asked was if Mr. Reyna considered the UPW contract before scheduling OT? Mr. Reyna said he will review the UPW contract but because lack of personnel, or rotation requirements with the Union scheduling for OT, this would be hard to do.

If there are anticipated shutdowns, Mr. Reyna could have a schedule to minimize OT, instead of defaulting to OT. Personnel could only work during nighttime shutdown and not their daytime schedule if there is a 30 day advance notice. In the past, there has not been 30 days’ notice for anticipated shutdowns. At times when the schedule is given, it is unknown if the shutdown will happen or is cancelled for nighttime work. Operations works with Construction Management. Mr. Moises added the minimum time frame given to schedule shutdowns is two weeks but could be changed to four or five weeks’ notice. There may be cancellations due to chlorination.

Mr. Dahilig explained OT should not be a regular practice but utilized only when needed. To the extent possible, the Department should work with the union to adjust schedules in anticipation of water shutdowns so as not to unnecessarily accrue OT costs. He suggested changing the Operations procedures to minimize this situation.

Chair Shiraishi asked Mr. Reyna to include research on the matter and report back to the Board on the OT matter.

Mr. Dahilig moved to receive and to include a research report by the Chief of Operations regarding the overtime issue on the Operation’s Summary Report on Operational Activities; seconded by Mr. Canute; with no objections, motion carried with 6 ayes.

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

**BACKGROUND:**
Manager Saiki highlighted the following:

1. **Personnel Matters:**
   - Sr. Clerk, Admin. – has been filled
   - CE V, Construction Management – list of eligible received
   - Inspector I & Inspector II – were posted
   - CE V, Engineering – selected candidate
   - CE V, Engineering – evaluating whether to fill the position

2. **Claims Settled** – There was one claim for $130.20.

Ms. Tokioka moved to receive the Manager and Chief Engineer’s Monthly Update Regarding Activities of Note of the DOW; seconded by Ms. Ho; with no objections, motion carried with 6 ayes.
a. Report of the BAB pay down as of June 2017

Ms. Tokioka moved to receive the Report of the BAB pay down as of June 2017; seconded by Ms. Ho; with no objections, motion carried with 6 ayes.

**QUARTERLY (April – June 2017)**
1. Discussion and Receipt of the DOW’s Quarterly Project Status Update
   a. Construction Management Division Status

**BACKGROUND:**
Mr. Moises highlighted the following:
1. Water Plan 2020 designs – Kapaia Haul Cane Road and Hanapēpē water lines were done.
2. Water Plan 2020 construction – Kōloa Well D Repairs is almost complete.
   Halewili 8” Main Replacement - was paid final payment.
3. New building - contract is currently being closed out and off the books.
4. Request for Proposal (RFP) – 'Anini Waterline Phase II completed but construction and procurement was cancelled.
   Kōloa Well A & B – procurement for construction; proposals are currently being reviewed. To be awarded in the next month.
5. Private Projects – One project for Certificate of Completion. Lots of time spent at Hanamā'ulu Triangle on site & off site and dealing with the control valve. There was a final connection last night with three shutdowns for one control valve and abandonment of the old control valve this morning.
6. Subdivisions - Eleele Habitat increment II, Kukui‘ula and Puakea are coming up.
7. Preventive Maintenance (PM) software – awarded to PM Web and Notice To Proceed July 17th.
   Mr. Moises thanked Waterworks Information Technology Officer Jeff Mendez and Information Specialist Sandi Nadata-Mendez for getting the PM software out to streamline procurement.
8. Staffing issues - CE III applicant will be interviewed next week and one staff member will be retiring the end of August. Mr. Moises has promoted a work-life balance in his division. Active projects had to be limited for one of the engineers because it was overwhelming. Overtime has been limited cost wise and health wise which has been the biggest struggle in Mr. Moises’ division. Mr. Aoki and his team have done a good job of putting projects out. When projects hit construction, it is daily for a year with staffing requirements without working overtime. Developments may be delayed due to lack of staff. Otherwise his staff is doing well.

Mr. Canute moved to receive the DOW’s Quarterly Project Status Update, a) Construction Management Division Status; seconded by Ms. Ho; with no objections, motion carried with 6 ayes.

b. Engineering Division Design Status

**BACKGROUND:**
Mr. Aoki provided highlights on the following:
1. Completed two designs this quarter and ready to turn it over to Mr. Moises. A few other designs are almost completed.
2. Private project reviews – There were 33 reviews this quarter (includes new and existing projects that are going through reviews). 13 out of 33 projects were submitted for first time review.
DISCUSSION:
Chair Shiraishi had a question on Executive Summary, No. 14, Grove Farm Tanks #1 & #2 and asked if this was still active. Mr. Aoki mentioned this project deferred construction to a later time. Chair said the reports are inconsistent because some reports say cancelled or turned over. Is there a difference?

Mr. Moises reports use the word “cancelled” as procurement or RFP got cancelled and the project got “shelved.” Mr. Aoki’s understanding is that a project is “deferred” or will be done eventually. Chief of Water Resources & Planning Mr. Doi uses “shelved” until other things come into play such as source or an immediate need for a tank.

c. Water Resources & Planning Division Status

Mr. Doi agreed with Mr. Dahilig’s comment on the GIS as a good idea to explore inter-county collaboration. He thanked the Board for allowing Civil Engineer Mr. Hinazumi who attended the ESRI conference recently. Mr. Hinazumi was able to gain knowledge about planning.

Mr. Canute moved to receive the DOW’s Quarterly Project Status Update, b) Engineer Division Design Status; seconded by Ms. Ho; with no objections, motion carried with 6 ayes.

BACKGROUND:
Mr. Canute moved to receive the DOW’s Quarterly Project Status Update, Water Resources & Planning Division Status; seconded by Ms. Ho; with no objections, motion carried with 6 ayes.

K. TOPICS FOR NEXT WATER BOARD MEETING (August 2017)
1. Discussion and Possible Action on Part 2 Rules and Regulation for Water Service Connection to address Landlord and/or Property Managers and Tenant issues
   a. Section I – Definitions
   b. Section III – Conservation Measures and Interruption of Water Supply
   c. Section IV – Elevation Agreement, Pressure Controls
   d. Section V – Application for Water Service and Service Connection
2. Annual Evaluation of the Department of Water’s Manager and Chief Engineer for Fiscal Year 2016-2017
3. Discussion and Possible Action on the Approval of the Department of Water’s Supplemental Budget for Fiscal Year (FY) 2017-2018
4. Discussion and Possible Action on the Procurement for a Performance Audit
5. Manager’s Report No. 18-57 - Discussion and Possible Action for the Board of Water Supply to join in the Petition for Subdivision, Designation of Restriction of Access Rights, and Cancellation of Portions of Easement and Easements; Joinders, Land Court of the State of Hawaii Application No. 1087, Puhi, Kaua‘i, Hawai‘i

L. TOPICS FOR FUTURE WATER BOARD MEETINGS
1. Discussion and Possible Action on Proposed Board Policy for Delegating Routine Actions from the Water Board to the Department of Water’s Manager and Chief Engineer regarding Right of Entry
2. Workshop presentation regarding the Long Range Plan of the Department of Water’s former Administration Building
3. Discussion and Possible Action on Utility Agreement No. 2257 between the State of Hawai‘i Department of Transportation and the Board of Water Supply, County of Kaua‘i for the
upcoming Hanapēpē River Bridge, Kaumuali‘i Highway, Route 50, HI STP SR50 (1) Project, Hanapēpē, Kaua‘i Hawai‘i Water System Improvements
4. Discussion and Possible Action on the Department of Water’s Standard Operations Procedures as it relates to the Board of Water’s Rules and Regulations
5. Discussion and Receipt of the Department of Water’s Capital Improvement Projects (CIP) for the 2018 Legislative Session (September)

M. **UPCOMING EVENTS**
1. Project Wet – Make A Splash *(September 28, 2017)* Chair requested the Board to volunteer.
2. HWWA & HRWA Conference, Hawai‘i, HI *(Kona, Hawai‘i, November 1 – 3, 2017)*

N. **NEXT WATER BOARD MEETING**
1. Monday, August 21, 2017, 10:00 a.m.
2. Friday, September 22, 2017, 10:00 a.m.
3. Friday, October 27, 2017, 10:00 a.m.
4. **Wednesday**, November 22, 2017, 10:00 a.m.
5. Friday, December 22, 2017, 10:00 a.m.

O. **ADJOURNMENT**

Mr. Dill moved to adjourn the Regular Board Meeting at 11:57 a.m.; seconded by Mr. Dahilig; with no objections, motion carried with 6 ayes.

Respectfully submitted,  
Approved,

Edith Ignacio Neumiller  
Beth Tokioka  
Commission Support Clerk  
Secretary – Board of Water Supply
The Board of Water Supply, County of Kaua‘i, met in Public Hearing at the Board Conference Room in Līhu‘e on Wednesday, July 26, 2017. Chairperson Sherman Shiraishi called the meeting to order at 5:01 p.m. On roll call, the following answered present:

**BOARD:**
- Mr. Sherman Shiraishi, Chair
- Ms. Laurie Ho, Vice Chair
- Mr. Michael Dahilig
- Mr. Lawrence Dill
- Mr. Thomas Canute
- Ms. Beth Tokioka

**EXCUSED:**
- Mr. Lyle Tabata

Quorum was achieved with 6 members present at the time of roll call.

**STAFF:**
- Mr. Kirk Saiki
- Mr. Eddie Doi
- Mr. Michael Hinazumi
- Mr. Keith Aoki
- Ms. Marites Yano
- Ms. Jonell Kaohelaulii
- Ms. MJ Akuna
- Deputy County Attorney Mahealani Krafft

**GUESTS:**
- Mr. Hall Parrott, Private Citizen

*Written Testimonies are attached at the end of these minutes*

Chair Shiraishi read the following at the start of the public hearing: A public hearing will be held today, Wednesday, July 26th regarding Proposed Amendments to the Rules and Regulations of the Board of Water Supply, County of Kaua‘i, State of Hawai‘i, Part 2 – Water Service Connections Section III – General Conditions and Part 5 – Facility Reserve Charge Section III – Applicability.

The Department of Water recommended the following rule changes below:

**Part 2 – Water Service Connections Section III – General Conditions** – clarifies the conditions upon which the Department will provide water service to a prospective consumer. The definition of the change includes the water service area.

**Part 5 – Facility Reserve Charge Section III – Applicability** – promotes affordable housing development.

Copies of the proposed rule amendments were available, posted and published. With no objections, the Chair summarized the rule changes for the public. The Clerk read the following:

1. **Public Hearing Procedures - Presentation by Department on its findings of the Proposed Rules** (A presentation will first be made by the Department regarding the proposed amendments to the Rules and Regulations that are the subject of today’s hearing.)
2. **Questions by Board to Department Regarding Presentation** (The Department will then answer any questions the Board may have regarding the Department’s presentation.)
3. **Take Public Testimony** (When the Board has asked all its questions of the Department, the Board will then take public testimony.)
   a. If you wish to testify, please register by filling out the Request to Testify signature list.
   b. Anyone testifying is entitled to the floor only when recognized by the presiding officer.
   c. Anyone with written testimony may be given priority at the discretion of the presiding officer. Then the presiding officer shall grant registered speakers an opportunity to present testimony, followed by persons who have not registered.
   d. For those that wish to testify:
      i. Please state your name, address, and organization you’re representing, if any, and if you are a registered lobbyist.
      ii. Please limit your comments to the subject matter of today’s public hearing.
      iii. Anyone testifying shall refrain from direct questioning of the Board and shall direct any remarks or questions to the presiding officer.
   e. Anyone who testifies may be subject to questioning by the Board. Questions by the Board shall be permitted only at the discretion of the presiding officer.

4. **Regarding Public Testimony**
   a. **Three minute rule:** The three minute rule will be followed regarding all testimony.
   b. Please limit your initial testimony to three minutes. This will give everyone who wants to say something an opportunity to testify. If you don’t complete your testimony within three minutes, you will be given another opportunity to complete what you want to say after everyone has had a chance to testify.
   c. If you have not completed your testimony on the second go-around, you will then be given another chance to finish your testimony after everyone in the second round of testimony has had a chance to testify.
   d. The presiding officer may restrict or terminate the speaker’s right to the floor for intemperate or abusive behavior or language.

5. The Board shall not be bound by technical rules of evidence.

6. Thank you for participating in this public hearing. Are there any questions?
   There were no questions from the public.

Chair Shiraishi suspended the rules and opened the public hearing for testimony. He said the purpose of this hearing is for the Board of Water to hear testimony and take action relating to the proposed amendments. Chair Shiraishi asked for the Clerk to conduct a roll call of the Board members as follows:

“Board Member Mr. Dahilig, Board Member Mr. Dill, Board Member Mr. Tabata (Excused), Board Member Ms. Ho, Board Member Ms. Tokioka, Board Member Mr. Canute and Board Chair, Mr. Shiraishi.” Quorum was established with 6 members present.

Chair Shiraishi asked if the Department wanted to make a presentation. Manager Saiki responded by saying no because the rule changes were presented to the Board previously.

Chair Shiraishi called on persons who signed up on the Request to Testify sheet and reminded those testifying that they must state their name, address, organization, and if they’re a registered lobbyist.

**Mr. Hall Parrott, Private Citizen provided his testimony.**

Mr. Parrott was in agreement with the Board in whatever they could do to help with housing. This would be an even larger problem in the future and to get this going is good.

The Facilities Reserve Charge (FRC) caused the Board a lot of problems. There is difficulty with the normal day-to-day process such as construction overages and budgeting that is going all over the place which is not
being done well yet. Mr. Parrott was amazed to witness the Finance Committee’s review process of the budget and thanked Finance Chair Mr. Dill.

Mr. Parrott asked the Board why take on the risk? The American Water Works Association says FRC is for “unexpected risks.” If someone is coming in with an unexpected risk, he said make them mitigate it. Why throw it to the Department that is trying to keep water going?

Mr. Parrott’s point was to suspend and to get away from the FRC. FRC is causing problems for the community who hates it. Where this would hit the most is in filling which is the source of housing in the future and to make it easy. Putting an FRC program together and having it as a policy takes a lot of discussion, a lot of work and can be useful if the unexpected drops in. This will be seen in the airport and in the roads if this appears but there could be a “heads up” on the situation. The Department has enough cash if something happens. Example: After World War II, soldiers came home with money to buy houses. 17,000 houses were built in Leavitt Town in two years which would not happen on Kaua‘i.

Mr. Parrott suggested to get away from FRC which creates another housing class. Rates are based on meter size; the Department has the metrics to analyze on how the rates and the Department of Water are performing. He added if social layers are put on top of this, the Department is not set up and neither is the accounting on how the Department is working. People have come in and want help from the Department for non-profits; the Department currently provides good water. How would you measure what the Department is doing?

Chair Shiraishi thanked Mr. Parrott for his testimony.

The Clerk stated there were two (2) written testimonies from Mr. Kurt Bossard and Ms. Kanani Fu which were circulated to the Board, staff and the public.

Ms. Ho moved to “Receive for the Record” the two (2) written testimonies from Mr. Kurt Bossard and Ms. Kanani Fu; seconded by Mr. Canute; with no objections, motion carried with 6 ayes.

After all public testimony was received, Chair Shiraishi said there being no further testimony, the Chair closed the public testimony portion of the public hearing. The result of this public hearing needs to be sent to the Small Business Regulatory Review Board (SBRRB) for their review. The Board then intends to make its decision regarding the adoption of these rule amendment at its August Regular Board Meeting, depending on the SBRRB’s response and its timeliness.

Chair Shiraishi closed the public hearing at 5:12 p.m. and said the rules were now in effect.

The Board agreed to change the Regular Board meeting date to Monday, August 21st with no objections.

Mr. Dahilig moved to adjourn the Public Hearing at 5:19 p.m.; seconded by Mr. Canute; with no objections, motion carried with 6 ayes.

(Note: *Two (2) written testimonies are attached.)

Respectfully submitted, 

Edith Ignacio Neumiller 
Commission Support Clerk

Approved, 

Beth Tokioka 
Secretary – Board of Water
Board of Water Supply  
County of Kauai Department of Water  

I support the rule change to Part 5, Section III – Applicability, paragraph 3.c. as presently proposed which I understand is meant to encourage the stock of dwelling units on the Island.

In fact, where there is an existing single family residence where an FRC charge has been paid and no significant additions are being added to the existing structure, there should be no additional charge when a conversion to a duplex takes place.

I believe that most of these newly permitted units will be of modest size with lesser water usage and burden on the Water Department. In many instances permitting of such units will not significantly increase the number of occupants on the property, but simply legalize or make more comfortable existing usage.

Thank you for your consideration of this matter.

Kurt Bosshard, Esq.  
3144 Elua Street  
Lihue, HI 96766

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KAUAI COUNTY HOUSING AGENCY
4444 Rice Street Suite 330
Līhu‘e, Hawai‘i 96766
TEL (808) 241-4444  FAX (808) 241-5118
www.kauai.gov/housing

TESTIMONY OF KANANI FU
DIRECTOR OF HOUSING, COUNTY OF KAUAI
BEFORE THE BOARD OF WATER, COUNTY OF KAUAI

PROPOSED AMENDMENTS TO THE RULES AND REGULATIONS OF THE BOARD OF WATER SUPPLY, COUNTY OF KAUAI, STATE OF HAWAII

Dear Chairman Shiraishi and Honorable Members:

The County of Kauai Housing Office strongly supports the proposed rule amendments. These amendments will help right-size the cost of water service for the types of housing units our office is attempting to construct.

However, in review of the proposed amendment to Part 5, Section 3(c-d), we would ask the Board to further clarify the distinction between a single-family and multi-family unit.

Given the product we intend to produce, some potentially involve the conversion of single-family residential units to multi-family units where FRC was previously paid. Conversion efforts may entail use changes to the structure, but not necessarily the structure itself.

Therefore, we ask that the phrase “multi-family” be clarified to also include any units that are attached regardless of structural dependence or independence.

Further, the County Council recently introduced a bill expanding the ability of homes to construct additional rental units no larger than 800 square feet in size. We also believe, should this law be passed, these units also be given the same FRC consideration as “multi-family” units.

Mahalo for the opportunity to testify.
Correspondence
July 5, 2017

Mr. Sherman Shiraishi, Board Chairperson
Board of Water Supply
County of Kauai
Department of Water
4398 Pua Loke Street
Lihu'e, HI 96766

RE: Request to Present a Kauai Watershed Alliance Progress Report for FY17 at the August 25, 2017 Regular Board Meeting

Dear Chair Shiraishi,

The Kaua‘i Watershed Alliance (KWA) respectfully requests to attend the August 25, 2017 Regular Board Meeting to present a KWA Progress Report to the Board members.

Project Tax Map Key: The project area (146,000 acres) contains numerous TMKs within the Mauka Watershed (Conservation District).

Project Background: The KWA was formed in 2003 with the Water Department as one of the founding members. The KWA is currently operating within the updated 2012 Management Plan; its objectives and actions are focused on protecting the highly functional native forested mauka watersheds. Primary goals include reducing and controlling ecosystem changing invasive species.

The mission: Our mission as Coordinator for the benefit of the KWA will be to update the Water Board of the progress made by KWA with objectives and actions completed, in progress and planned to protect the Hawaiian forested mauka watershed over the last year (FY17) and to thank the Board for its continuing support.

Attending the August 25th Board meeting will be two KWA Coordinator staff (TNC) and two KWA members. A power point presentation will be used for the progress report.

Sincerely,

Allan Rietow
Field Representative
The Nature Conservancy Coordinator for the Benefit of the Kauai Watershed Alliance
Kaua'i Watershed Alliance Key Dates

2003 – Membership formed
“The Mission of the Kaua‘i Watershed Alliance is to PROTECT, PRESERVE and MANAGE our valuable watershed resources for the benefit of our residents, communities and all future generations through the concerted efforts of its members.”

2003 - 2005 – Management Plan
TNC hired to complete a management plan for the membership.

2005 – Coordinator Secured
Upon completion of the plan, the membership needed an entity to coordinate the work and asked TNC to fulfill the position.

2012 – Management Plan updated
Coordinator revised plan to reflect progress and next steps for goals.
Kauaʻi Watershed Alliance Members

- Kaua'i Department of Water
- Namahana Farms
- DHHL
- Grove Farm Co. Inc.
- Jurassic Kahili Ranch
- Kamehameha Schools
- Kauai Ranch
- Lihue Land Co.
- McBryde Sugar
- NTBG
- Princeville Utilities
- State of Hawaii DLNR
Kauaʻi Priority I Watershed

KWA Partner Lands

KWA Partnership Boundary
Watershed Protection Priority I

Total Acreage in Partnership:
146,388 acres
Fences
2008 Kanāele
2011 Wainiha
2011 Alakaʻi S
2017 Halehaha

Types of work:
- Planning New Work
- Fence Construction & Checks
- Weed Removal
- Ungulate Removal
- Monitoring

Nature Conservancy Project Areas, Kauai
12,000 acres of watershed protected

Management Units
- Alakai
- Wainiha
- Lumahai
- Halehaha
- Drinking Glass
- Koaie
- Kanaele
- Existing Fences
- Planned Fences
How do we take care of so much with so few?
40 Feet
F. BOARD COMMITTEE REPORTS

Report of the Audit Committee of the Kaua'i County Board of Water Supply

1. Discussion and Possible Action on the Scope for a Performance Audit

PENDING REPORT
Consent
Calendar
MANAGER’S REPORT No. 17-09 (Update)

August 21, 2017

Re: Discussion and Possible Action for Board Approval with the State of Hawaii’s July 15, 2016 conditional letter and enter into Use and Occupancy Agreement No. 333 with the State of Hawaii for Job No. 12-01, Water Plan 2020 No. H-05, Hanalei Waterline Improvements (Weke, Anae, Mahimahi and Heʻe Roads Main Replacements), Hanalei, Kauaʻi, Hawaiʻi

RECOMMENDATION:
It is recommended that the Board enter into Use and Occupancy Agreement No.’s 333-A and 333-B with the State of Hawaii for Job No. 12-01, Water Plan 2020 No. H-05, Hanalei Waterline Improvements (Weke, Anae, Mahimahi and Heʻe Roads Main Replacements), Hanalei, Kauaʻi, Hawaiʻi

Further, Board approval is specifically requested of the indemnification provisions in the Use and Occupancy Agreements, wherein the Board agrees to hold harmless, indemnify and defend the State against all claims, demands, liabilities, suits, actions, judgments, costs and expenses whenever such loss, injury, death or damage arises out of, is connected with or related to (a) occurrences or incidents on, within, under, over or across the Premises or the Project, (b) the exercise of the rights and privileges granted in the agreements, (c) any failure on the part of the Department of Water, County of Kauai (DOWK) to use due care or otherwise perform in accordance with the terms and conditions of the agreements, (d) any act or omission of the DOWK and/or the DOWK’s use and occupancy of the Premises.

FUNDING: N/A.

BACKGROUND:
The HANALEI WATERLINE IMPROVEMENTS project replaces and installs new water lines along Weke, Anae, Mahimahi and Heʻe Roads in Hanalei that will increase the available fire flow to the Hanalei School. The improvements also require a portion of the work to be done in the Kuhio Highway Right-of-Way (ROW). The State requires the Department of Water (DOW) to enter into a Use and Occupancy Agreement (UOA) for new DOW facilities installed within the State ROW.

The Board previously agreed to and approved Manager’s Report No. 17-09 through which the Board approved the State of Hawai`i’s July 15, 2016 conditional letter. The conditional letter required that the Board agreed to enter into UOA no. 333 with the State of Hawai`i for the subject project.

Subsequent to the conditional letter, the State determined that they were requiring two separated UOA maps to be done for the project due to the work in the State right-of-way being at two different locations (2 intersections with the Highway). The State has send UOA no.’s 333-A and 333-B to the Department for approval. The State is requiring a separate UOA map and UOA agreement for each separate location of the project.
Potential future financial liabilities:
Condition item 13.c. of the UOA (“State remedies for failure to cure”) allows for the State, at the option of the State, to cure any defaults of the DOWK in the fulfillment of the DOWK’s obligations under the agreement. The State may charge the DOWK for any costs and expenses incurred in curing any defaults of the DOWK. The DOWK shall immediately pay said costs and expenses to the State upon receiving written notice from the State.

Due to not knowing when or the amount of any financial liabilities that may or may not occur in the future associated with the conditions of the UOA, specific funding to address potential financial liabilities is not being requested or budgeted at this time. If special funding is required in the future, the necessary funds will be requested from the Board at that time.

OPTIONS:

Option 1: Enter into UOA no’s. 333-A and 333-B with the State.
Pros: The DOW will be able to construct the project as designed and improve Fire flow to the Hanalei School and area.

Cons: The UOA will obligate the DOW with unknown financial liabilities and risk; to some extent, at the discretion of the State.

Option 2: Do not enter into UOA no’s. 333-A and 333-B with the State.
Pros: The DOW will not be able to construct the project as designed and not need to expend money on construction.

The DOW will not be obligated with unknown financial liabilities and risk from the conditions in the UOA.

Cons: The DOW will not be able to construct the project as designed and improve the fire flow to the Hanalei School and area, as intended.

Respectively submitted,

Keith Aoki, P.E.
Engineering Division

CONCURRED:

Kirk Saiki, P.E.
Manager and Chief Engineer

KA/ein

Attachments: Conditional Letter for Kūhiʻō Highway at Anae Road & Mahimahi Road, Hanalei, Kauaʻi, Hawaiʻi
UOA No. 333-A and No. 333-B

Mggrp/August 2017/17-09/Discussion and Possible Action for Board Approval with the State of Hawaii’s July 15, 2016 conditional letter and enter into Use and Occupancy Agreement No. 333 with the State of Hawaii for Job No. 12-01, Water Plan 2020 No. H-05; Hanalei Waterline Improvements (Weke, Anae, Mahimahi and Heʻe Roads Main Replacements), Hanalei, Kauaʻi, Hawaiʻi (8-21-27)
June 15, 2017

Mr. Keith Aoki, Civil Engineer
Department of Water
County of Kauai
P.O. Box 1706
Lihue, Hawaii 96766

Dear Mr. Aoki:

Subject: Kuhio Highway at Anae Road and Mahimahi Road at Hanalei, Kauai, Hawaii, TMKs: (4) 5-5-03: Rd (4) 5-5-04: Rd and (4) 5-5-06: Rd, Use and Occupancy Agreements 333-A and 333-B Request for Use and Occupancy for Water Main Replacement Transmittal for Document Execution

We are transmitting for your execution Use and Occupancy Agreements 333-A and 333-B for water main replacement within Kuhio Highway. When completed, please return the documents to our office for further processing.

Should you have any questions, please call me at (808) 692-7324, or you may e-mail me at Katja.M.Jordan-King@Hawaii.Gov.

Very truly yours,

Katja M. Jordan-King
Right-of-Way Agent
Property Management Section

Attachments
USE AND OCCUPANCY AGREEMENT NO. 333-A

THIS USE AND OCCUPANCY AGREEMENT NO. 333-A is made on __________, but effective as of __________, by and between the STATE OF HAWAI'I, by its Director of Transportation, for the Highways Division, (hereinafter referred to as the "STATE") and BOARD OF WATER SUPPLY, COUNTY OF KAUAI, whose principal place of business and mailing address is 4398 Pua Loke Street, Lihue, Hawaii 96766 (hereinafter referred to as the "DOWK").

RECITALS:

WHEREAS, the STATE is the owner of those certain parcels of land upon which Kuhio Highway, Hawaii (hereinafter referred to as the "Highway") is situated, which parcels contain approximately 240 Square Feet, designated as Tax Map Key Numbers (4) 5-5-4: Road (Portion), (4) 5-5-5: road (Portion) and (4) 5-5-6: Road (Portion), (hereinafter referred to as the "Property"); and

WHEREAS, the DOWK desires to occupy a portion of the Property, as described in Exhibit A and delineated on Exhibit B attached hereto and incorporated herein by reference (hereinafter referred to as the "Premises"), for the construction, operation, maintenance, and repair of a 12 Inch Water Main Replacement (said Water Main project, together with all improvements, equipment, facilities, components and appurtenances related thereto, is hereinafter referred to as the "Project"); and

WHEREAS, the STATE does not object to granting the DOWK use and occupancy rights over the Premises provided the DOWK fully complies with the terms and conditions set forth below,

NOW, THEREFORE, for good and valuable consideration, and other valuable consideration, the receipt whereof is hereby acknowledged, and the mutual covenants and promises herein made, and pursuant to Section 264-13, Hawaii Revised Statutes ("HRS"), the parties do hereby agree as follows:
AGREEMENT:

1. **Grant of Use and Occupancy Rights.** The STATE hereby grants to the DOWK the non-exclusive right to use and occupy the Premises for the purpose of constructing, operating, maintaining, and repairing the Project.

2. **Right to Construct the Project.** The DOWK may construct, maintain and repair the Project on, within, under, over and across the Premises provided that the DOWK obtains the STATE’S prior written approval for the plans and specifications for the Project and any subsequent alterations thereto prior to commencing the construction of any portion of the Project. The DOWK shall be solely responsible for all costs and expenses incurred in connection with the Project and the maintenance of the Premises, in accordance with paragraph 4, 5 and 16 of this Agreement, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.

3. **Work Permit.** The DOWK shall obtain a permit from the STATE for any construction, installation, maintenance, repair, removal, replacement, reconstruction and upkeep work for or related to the Project on, within, under, over or across the Premises prior to commencing such work. Without limiting the foregoing or any other provision contained herein, the DOWK shall comply with any and all other requirements of the STATE relating to any construction, installation, maintenance, repair, removal, replacement, reconstruction, and upkeep work for or related to the Project.

4. **Work Completion.** Upon the completion of any work performed in, on, under, over or across the Premises by the DOWK, the DOWK shall remove therefrom within seven (7) days of completion, all equipment and unused or surplus materials, if any, and shall restore the Premises and any other affected areas to a condition satisfactory to the STATE in its sole discretion. In
addition, the DOWK shall provide all as-built drawings of work completed, for the STATE’S acceptance within sixty (60) days of the DOWK’S final acceptance of the DOWK’S contractor’s work and the DOWK shall warranty the restoration work for a period of one (1) year from the date of final inspection and acceptance by the STATE. Such warranty shall insure that the DOWK shall be responsible for any failure of the restoration work and any potholes occurring in and along the restoration area for the warranty period. An example of such potholes occurring along the seams of a trench that was restored after installing a water pipeline.

5. **Maintenance.** The DOWK shall, at its sole cost and expense, keep the Premises and the Project in a safe, clean, sanitary, and orderly condition, including, but not limited to, making all necessary repairs to the Project.

6. **Repair.** The DOWK shall not damage, undermine or otherwise destroy any portion of State of Hawaii ("STATE") property, including without limitation, any Highway facilities or improvements or facilities of other Highway tenants or other permitted users of the Highway situated on or near the Premises or any equipment or appurtenances relating thereto, including, but not limited to, sidewalks, storm drains, drainage systems, and underground utility systems. The DOWK shall, at its sole cost and expense, repair, restore and reconstruct that portion of said Property so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances. All repairs, restoration, and reconstruction shall be completed by the DOWK immediately to the existing, or better, condition and shall be inspected and approved by the STATE in its sole discretion.

7. **No Obstruction.** The DOWK shall not construct, replace, repair or maintain any improvements or any portion of the
Project on, within, under, over or across the Premises in such a manner as to: (a) unnecessarily obstruct traffic, (b) obstruct, in any way whatsoever, the sight lines and distances and view corridors along the Highway; or (c) otherwise constitute a hazard to users of the Highway, as determined by the STATE in its sole discretion; (d) obstruct Highway operations and or (e) obstruct operations of Highway tenants or other permitted users of the Highway on the Property or near the Premises.

8. Reservation of Rights. The STATE reserves unto itself the full use and enjoyment of the Premises and the right to grant to others rights and privileges for any and all purposes affecting the Premises, all without charge by and without the consent of the DOWK, provided that such use by the STATE and/or third parties does not unreasonably interfere with the DOWK’S rights to use the Premises under this Agreement. The DOWK shall take steps necessary to ensure that the DOWK exercise of the rights and privileges granted hereunder does not cause any substantial interference with the STATE’S operations in or near the Premises. In addition, the DOWK acknowledges and agrees that this Agreement is for a limited purpose, and that the DOWK shall use the Premises only for the purpose of serving the Project. Any intensification to include modification or expansion of the use of the facilities, from what is approved herein, including but not limited to, connection of additional laterals or extensions that feed or are fed from the Project shall require the written consent of the STATE, which consent may be withheld in the STATE’S sole discretion, and may require a new request and review and consideration by any user not covered by this Agreement.

9. STATE Work Within or Affecting the Premises. If the STATE decides to perform work of any kind on, within, under, over, across, near, or affecting the Premises, the STATE will coordinate such work with the DOWK. The DOWK shall not prevent
the STATE from performing such work, provided, however, that the STATE will take certain protective measures to assure that such work does not unreasonably interfere with the DOWK'S use of the Premises as described herein. At the STATE'S sole option, the DOWK, at the DOWK'S sole cost, except as may otherwise be required by law, shall relocate the Project to the extent the Project conflicts with plans of a STATE project.

10. **Indemnity.** The DOWK shall at all times with respect to the Project and the Premises use due care for public safety. It is strictly understood that the STATE shall in no way be held liable for any claims, damages, causes of action or suits resulting from any acts or omissions of the DOWK. The DOWK shall hold harmless, indemnify and defend the STATE, its officers, agents, successors and assigns, and employees, from and against all claims, demands, liabilities, suits, actions, judgments, costs and expenses (including attorney's fees) for loss, injury, death or damage, including, without limitation, claims for property damage, personal injury, or loss or death of persons, whenever such loss, injury, death or damage arises out of, is connected with or related to (a) occurrences or incidents on, within, under, over or across the Premises or the Project, as it relates to DOWK's use of the Premises (b) the exercise of the rights and privileges herein granted, (c) any failure on the part of the DOWK to use due care or otherwise perform in accordance with the terms and conditions of this Agreement, (d) any act or omission of the DOWK and/or the DOWK'S use and occupancy of the Premises. This provision shall survive the expiration or earlier termination of this Agreement.

11. **Assignment.** The DOWK'S rights under this Agreement shall not be sold, assigned, conveyed, leased, subleased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the STATE which consent may be withheld by the STATE in its sole
discretion. In giving any such consent, the STATE need not release the DOWK from any liabilities or obligations hereunder.

12. Insurance. The DOWK has elected to self-insure all liabilities arising out of the DOWK'S operations and activities on the Premises which self-insurance shall be primary and non-contributory with any insurance policy maintained by the STATE. The DOWK shall provide a letter of self-insurance to the STATE upon execution of this Agreement.

   
a. Notice of default. If the DOWK defaults on or otherwise fails to perform the DOWK'S obligations under this Agreement, the STATE will issue a written notice of default to the DOWK by hand-delivery or first-class mail.

   b. DOWK to cure defaults. Any and all defaults or failures to perform contained in such notice of default must be resolved and remedied to the STATE'S sole satisfaction within thirty (30) days of the date of the STATE'S written notice to the DOWK or such further time as may be authorized by the STATE in writing, unless there is an immediate safety problem, then the STATE has the right to take immediate action and mitigate damages after-the-fact and DOWK will pay for all costs incurred by the STATE. Without limiting the foregoing, the DOWK'S failure to construct the Project in accordance with the plans and specifications approved by the STATE shall be deemed a default of this Agreement.

   c. STATE remedies for failure to cure. If the DOWK fails to cure said defaults or fails to perform within the required time period, the STATE itself may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in performing said cure or remedy to the DOWK, who shall immediately pay said costs and expenses to the STATE upon receiving notice from the STATE. If
the DOWK fails to cure said defaults or fails to perform within the required time period, the STATE may terminate this Agreement and the DOWK'S rights under this Agreement to use the Premises and the Project. Upon such termination and at the STATE'S option, the Project improvements will thereafter belong to the STATE. If the DOWK defaults or fails to perform as required under this Agreement, the STATE shall be entitled to all remedies available under this Agreement and by law, which remedies shall be cumulative and not exclusive. This provision shall survive the expiration or earlier termination of this Agreement.

14. Abandonment. This Agreement and all of the DOWK'S rights hereunder shall terminate, without any action on the part of the STATE, in the event of non-use or abandonment by the DOWK of the Premises or the Project, or any portion thereof, for a period of one (1) year; provided, however, that the DOWK is subject to the provisions of the STATE'S Pipeline Removal Policy, dated September 24, 2002, as the same may be amended, which may include, but not limited to, the DOWK'S execution of an agreement, in form and substance acceptable to the STATE in its sole discretion. The current Pipeline Removal Policy is attached hereto as Exhibit C and made a part hereof.

15. Termination. If not otherwise terminated or cancelled, this Agreement may be cancelled in whole or in part at any time by the mutual written agreement of the parties hereto or by the STATE, in its sole discretion upon the STATE'S giving thirty (30) days' prior written notice to the DOWK by hand delivery or first-class mail, return receipt requested. Any termination or cancellation of this Agreement, in whole or in part, shall not relieve the DOWK of its obligations to indemnify, defend and/or hold harmless the STATE as provided herein and including, but not limited to Paragraphs 10 (Indemnity) and 16 (Hazardous Substances) herein with respect to any such claims, demands, liabilities,
suits, actions, judgments, costs and expenses for loss, injury, death or damage arising prior to such termination or cancellation of all or a portion of this Agreement. This provision shall survive the expiration or earlier termination of this Agreement.


a. Definitions. For purposes of this Agreement, the DOWK acknowledges and agrees that the following terms shall have the following meanings:

"Environmental Laws" shall mean all federal, state and local laws of every nature including statutes, ordinances, rules, regulations, codes, notices, standards, directives of every kind, guidelines, permits, licenses, authorizations, approvals, interpretations of the foregoing by any court, legislative body, agency or official, judicial decisions, judicial and administrative orders, rulings or judgments, or rules of common law which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health or safety. These environmental laws include, but are not limited to, regulations and orders of the federal Environmental Protection Agency and the State of Hawaii Department of Health.

"Hazardous Substance" shall include any chemical, substance, radioactive materials, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may in the future be, or has been determined by state or federal authority under any Environmental Law to be hazardous to human health or safety or detrimental to the environment. This term shall include, but not be limited to, petroleum hydrocarbons, asbestos, radon, polychlorinated biphenyls, methane, fuels of any kind, and other
materials or substances that are, or may in the future be, regulated by the state or federal authorities.

b. DOWK’S Activities and Duties.

b. 1 Compliance with Environmental Laws. The DOWK agrees, at its sole expense and cost, to comply with all Environmental Laws applicable to the Property and the DOWK’S occupancy, activities, operations, and use of the Project and the Premises. This duty shall survive the expiration or earlier termination of this Agreement, which means that the DOWK’S duty to comply with Environmental Laws shall include complying with all Environmental Laws that may in the future apply, or be determined to apply, to the occupancy and activities of the DOWK on the Premises after the expiration or termination of this Agreement. Failure of the DOWK to comply with any Environmental Law shall constitute a breach of this Agreement for which the STATE may, in its sole discretion, terminate this Agreement, exercise its remedies under this Agreement, including, but not limited to, remediation of any condition on behalf of the DOWK at the DOWK’S expense under subparagraph 16.b.5 below (Environmental Investigations and Assessments), subparagraph 16.b.6 below (Remediation) and subparagraph 16.b.7 below (Restoration and Surrender of Premises), and take any other action at law or in equity that the STATE deems appropriate.

b. 2 Hazardous Substances. The DOWK shall not use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any Hazardous Substances, or allow the same by any of its employees, agents, guests, contractors or third persons, on the Premises without first obtaining the written consent of the STATE (which consent may be withheld by the STATE in its absolute discretion) and shall fully comply with all Environmental Laws, including giving all required notices, reporting to, and obtaining
permits from, all appropriate authorities, and shall comply with all provisions of this Agreement.

b. 3 Notice to the STATE. The DOWK shall keep the STATE fully informed at all times regarding all matters related to any Environmental Laws affecting the DOWK, the Project, or the Premises. This duty shall include, but not be limited to, providing the STATE with a current and complete list and accounting of all Hazardous Substances of every kind which are present in, on or about the Premises by or as a result of the DOWK, together with evidence that the DOWK has in effect all required and appropriate permits, licenses, registrations, approvals, and other consents that may be required by any federal, state, or county authority, under any authority or Environmental Laws. The DOWK shall provide said list and accounting at the commencement of this Agreement and shall update said list and accounting whenever any Hazardous Substance not accounted for on said list is or becomes present in, on, or about the Premises by the DOWK or otherwise. The DOWK shall also provide immediate written notice to the STATE of any spills, releases, and/or discharge of Hazardous Substances investigation, enforcement action, compliance order, or order of any type, or any other legal action, initiated, issued, or any indication of an intent to do so, communicated in any way to the DOWK by any federal, state, or county authority or individual that relates in any way to any Environmental Law or any Hazardous Substance. This written notice to the STATE shall include copies of all written communications from any federal, state, or county agency or authority, including copies of all correspondence, claims, complaints, warnings, reports, technical data, and any other documents received or obtained by the DOWK. At least thirty (30) days prior to termination of this Agreement, or termination of the use and occupancy of the Premises by the DOWK, whichever occurs first, the DOWK shall provide the STATE with written evidence
satisfactory to the STATE that the DOWK has fully complied with all Environmental Laws, including any orders issued by any governmental authority that relate to the Premises, and the results of all assessments and investigations that may be ordered by the STATE pursuant to subparagraph 16.b.5 (Environmental Investigations and Assessments) of this provision, or by any governmental agency responsible for enforcement of the Environmental Laws.

b. 4. Disposal/Removal. Except as to the possession and handling of Hazardous Substances for which the DOWK is authorized by law, including those Hazardous Substances for which the DOWK has obtained all currently required permits to store or use certain Hazardous Substances on the Premises, including written permission from the STATE, the DOWK shall cause any Hazardous Substances resulting from the DOWK’S use to be removed and transported from the Premises for disposal solely by duly licensed hazardous substances transporters to duly licensed facilities for final disposal as required by all applicable Environmental Laws. Within ten (10) days of any such disposal, the DOWK shall provide the STATE with copies of documentary proof including manifests, receipts, or bills of lading, which reflect that said Hazardous Substances have been properly removed and disposed of in accordance with all Environmental Laws. This provision shall survive the expiration or earlier termination of this Agreement.

b. 5. Environmental Investigations and Assessments. The DOWK, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the Premises to determine the presence of any Hazardous Substance on, in, or under the Premises as may be reasonably directed from time to time by the STATE, or by any federal or state authority. The extent and number of any environmental investigations and assessments
shall be determined by the STATE or the federal or state authority directing said investigations and assessments to be conducted. The DOWK shall retain a competent and qualified person or entity that is satisfactory to the STATE or governmental authority, as the case may be, to conduct said investigations and assessments. The DOWK shall direct said person or entity to provide the STATE or governmental authority, if so requested, with testable portions of all samples of any soils, water, ground water or other material that may be obtained for testing and provide directly to the STATE and the other governmental authority, at the sole expense of the DOWK, written results of all tests on said samples upon completion of said testing. In any event, the DOWK shall have the option to conduct environmental assessments as aforesaid prior to or at the time of termination of this Agreement in order to determine the condition of the Premises.

b. 6. Remediation. In the event that any Hazardous Substance is used, stored, treated, or disposed on the Premises or any location off the Premises to which it is determined any Hazardous Substance has migrated, by the DOWK, or its duly authorized employees, or handled, discharged, released by the DOWK or determined to be present on the Premises or any location off the Premises to which it is determined any Hazardous Substances has migrated by or as a result of the DOWK’S actions or the actions of its duly authorized employees, agents, contractors, guests, or invitees, the DOWK shall, at its sole expense and cost, remediate the Premises, or any location off the Premises to which it is determined any Hazardous Substance has migrated, of such Hazardous Substance, and dispose/remove said Hazardous Substance in accordance with subparagraph 16.b.4 (Disposal/Removal) of this provision. This duty to remediate includes strict compliance with all Environmental Laws, as well as any directives by the STATE or other governmental authority, to the DOWK to remediate such
Hazardous Substance. This duty to remediate shall include replacement of any materials, such as soils, so removed with material that is reasonably satisfactory to the STATE and governmental authority, as the case may be.

b. 7. Restoration and Surrender of Premises.

The DOWK hereby agrees to timely surrender the Premises upon termination of the Agreement and, prior thereto, shall restore the Premises to the same condition as the Premises existed at the commencement of this Agreement, as determined by the STATE in its sole discretion, reasonable wear and tear excepted. Said surrender and restoration shall be at the sole cost and expense of the DOWK. This duty to restore the Premises includes remediation as described in the previous subsection. Subject to subparagraph 18.b (STATE’S option), this duty also includes, but is not limited to, the removal within seven (7) days of termination or such longer period of time as the STATE may agree to in writing, of all of the DOWK’S improvements, including, without limitation, pipes, pipelines, tanks, containers, equipment, and appurtenances of any kind that the DOWK has installed or erected on the Premises. In the event the DOWK does not timely restore the Premises to a satisfactory condition, as determined by the STATE in its sole discretion, the DOWK understands and agrees that the STATE may exercise its rights under subparagraph 16.b.9 (STATE’S Right to Act), and until such time as the restoration is completed to the satisfaction of the STATE in its sole discretion, the DOWK shall be liable for any damages and costs that the STATE may have incurred, including penalties, fines, and assessments related to the Premises which may be imposed on the STATE or the DOWK by any governmental authority.

b. 8 Tanks, Pipelines; Inspections and Repairs; Protection of Waters. Unless the STATE specifically agrees in writing prior to their installation, all pipes, pipelines, tanks,
containers, or conduits of any kind that may at any time have
contained, or may have been intended to contain, Hazardous
Substances of any type (hereafter referred to as a “facility”),
must be installed above ground level in such manner that allows
for periodic inspection and maintenance of the facility for
purposes of determining the existence of leaks and discharges from,
and deterioration of any kind to, and that allows repair of, the
facility. The DOWK shall provide the STATE with prior written
notice of the DOWK’S intent to install a facility to allow the
STATE ample time, as reasonably determined by the STATE, to inspect
the plan for installation of such a facility. Said facility shall
not be installed unless and until the facility and its manner of
installation are approved, in writing by the STATE. Within ninety
(90) days of the commencement of this Agreement, or commencement
of possession of the Premises by the DOWK, whichever first occurs,
the DOWK shall submit a contingency plan covering the DOWK
facilities if any, and as applicable, to control and remedy any
spill, discharge, or leak from any DOWK facility on the Premises
during the term of this Agreement, which plan shall include the
cleanup of all Hazardous Substances that may be spilled,
discharged, or leaked, to the satisfaction of the STATE in its
sole discretion. The DOWK shall also submit to the STATE a plan
for the DOWK to conduct, or have conducted, regular inspections of
all facilities, if any, on the Premises for the purpose of
prevention of any leak, discharge, or spill from said facilities.
Said contingency plan and inspection plan are subject to the prior
written approval of the STATE. The DOWK shall timely obtain and
maintain in effect all required permits, licenses, and approvals
for such facilities from any governmental authority. Failure to
submit said plans, to comply with said plans, or obtain and
maintain any required permits, licenses, or approvals constitutes
a breach of this Agreement, giving the STATE the right to
immediately terminate this Agreement, take possession of the Premises, and pursue any other remedy available to the STATE.

The DOWK shall maintain and employ reasonable debris, pollution and contamination control measures, safeguards and techniques on the Premises to prevent debris, pollution or contamination to ocean waters, streams or waterways, groundwater, including any storm drains within and about the Premises, resulting from the activities or operations of the DOWK and the DOWK’S agents on, within, over, through, across, under or connected with the Premises. The DOWK shall take immediate corrective action in the event of an unauthorized release of Hazardous Substances by the DOWK or its agents to immediately remove or correct the cause of such release, and shall immediately clean the Premises and affected areas and surrounding waters of such Hazardous Substances, pollutants or contaminants to levels satisfactory to the STATE’S and/or other governmental authority in the STATE’S sole discretion, all at the DOWK’S own cost and expense. This section shall not be construed to require the DOWK to cleanup or respond to any Hazardous Substances existing on the Premises prior to the DOWK’S occupancy of the same.

b. 9. **STATE’S Right to Act.** In the event the DOWK fails for any reason to comply with any of its duties under this Agreement or under any Environmental Laws within the time set for doing so, or within a reasonable time as determined by the STATE, the STATE shall have the right, but not the obligation, in its sole discretion, to perform those duties, or cause them to be performed. The DOWK hereby grants access to the Premises and the Project at all reasonable hours to the STATE, its agents and anyone designated by the STATE, in order to perform said acts and duties. Any cost, expense, or liability of any type that may be incurred by the STATE in performing said acts or duties shall be the sole responsibility of the DOWK and the DOWK hereby agrees to
immediately pay to the STATE all of such costs and expenses incurred by the STATE in performing said acts or duties. This obligation shall extend to any costs and expenses incident to enforcement of the STATE'S right to act, including litigation costs, attorney fees, and the costs and fees for collection of said costs, expenses, or liability.

b. 10. Release and Indemnity. In addition to and without limiting the provisions of Paragraph 10 (Indemnity) above, the DOWK hereby agrees to release, indemnify, defend, and hold harmless the STATE, its officers, employees, agents, successors, and assigns from any liability of any kind, including, but not limited to, any liability for any damages, penalties, fines, judgments, or assessments that may be imposed or obtained by any person, agency, or governmental authority by reason of any Hazardous Substance that may be present by or as a result of the DOWK'S use of the Premises or the Project by whatever means on, in or under the Premises including, but not limited to, any fines or penalties assessed against the STATE for the DOWK non-compliance with any Environmental Laws.

The DOWK understands and agrees that any claims for damages, penalties, fines, judgments, or assessments that may be assessed against the DOWK or the STATE by any person or governmental authority based on any violation of any Environmental Laws concerning the Premises or the Project shall be paid in full, complied with, and in every way satisfied by the DOWK within the required time, and not by the STATE. In the event both the STATE and the DOWK are liable for any environmental cleanup or remediation of the Premises, the DOWK shall indemnify, defend and hold harmless the STATE in accordance with the terms of this subsection, unless the STATE, or any other entity with an easement or access to the property has been shown to have actually caused
the condition complained of. This provision shall survive the expiration or earlier termination of this Agreement.

b. 11. Burden of Proof. In all instances covered in this Paragraph 16 (Hazardous Substances), the DOWK accepts the burden of establishing that it is not responsible for the existence of Hazardous Substances in the Premises or in any location or any location off the premises to which Hazardous Substances have migrated. If the DOWK cannot establish that it is not responsible for the existence of Hazardous Substances in the Premises, or any location off the Premises to which Hazardous Substances have migrated, the DOWK shall be deemed responsible for the existence of the Hazardous Substances.

b. 12. Protection of Waters. The DOWK shall maintain and employ reasonable debris, pollution or contamination control measures, safeguards and techniques on the premises to prevent debris, pollution or contamination from reaching ocean waters, streams or waterways, groundwater, including any storm drains within and about the Premises, resulting from the activities or operations of the DOWK and the DOWK'S employees, agents, contractors or third persons on, within, over, through, across, under or connected with the Premises. The DOWK shall take immediate corrective action in the event of an unauthorized release of Hazardous Substances by the DOWK or its employees, agents, contractors or third persons to immediately remove or correct the cause of such release, and shall immediately clean the Premises and affected areas and surrounding waters of such Hazardous Substances, pollutants or contaminants to levels satisfactory to the DOH, EPA and/or any governmental entity with regulatory jurisdiction over the release, in strict compliance with all Environmental Laws, all at the DOWK'S own cost and expense. This subparagraph shall not be construed to require the DOWK to clean up or respond to any Hazardous Substances existing on the Premises.
prior to the DOWK’S occupancy of the same provided, however, that the DOWK acknowledges and agrees that the date of the DOWK’S occupancy may be a date prior to the Effective Date such that the DOWK shall be responsible for cleanup or to respond to any Hazardous Substances for the DOWK’S occupancy prior to the Effective Date.

17. **Removal of Improvements.** If the STATE decides to perform work of any kind within, on, over, under, across, near, or affecting the Premises, the DOWK shall be responsible for the removal or relocation of all or any portion of the Project from the Premises deemed necessary by the STATE, without cost and expense to the STATE, within thirty (30) days from the date the STATE requests such removal or such longer period of time as may be approved in writing by the STATE, except as shall be otherwise required by applicable law. In the event it becomes necessary for the STATE to destroy, remove or alter all or any portion of the Project or improvements, the STATE shall not be obligated to replace or restore those portions of the Project or improvements so destroyed, removed or altered and the DOWK waives any and all right to compensation therefore, except as shall be otherwise required by applicable law.

18. **Removal upon Termination.** Upon any full or partial termination or cancellation of this Agreement, the DOWK shall, at the DOWK’S sole cost and expense:

a. **Remove and restore.** Remove any and all portions of the Project installed or constructed on, within, under, over or across the Premises and any improvements, equipment, facilities, components and appurtenances relating thereto and restore the Premises to as good a condition as existed prior to the commencement of this Agreement, satisfactory to the STATE in its sole discretion, and if the DOWK fails to restore the Premises to a condition satisfactory to the STATE, the STATE shall have the
right to charge the DOWK, and the DOWK shall be solely responsible for, any and all costs and expenses incurred by the STATE in completing and accomplishing such restoration, including but not limited to, any costs the STATE incurs in removing and disposing of the DOWK'S property; or

b. STATE’S option. At the STATE’S sole option and subject to the provisions of Paragraph 14, (Abandonment) including, but not limited to, the provisions of the STATE’S Pipeline Removal Policy, and any other terms and conditions, or amendments therein, abandon in place the Project and any improvements, equipment, facilities, components and appurtenances relating thereto; provided, however, that such termination or cancellation shall not relieve the DOWK of its obligations to indemnify, defend and/or hold harmless the STATE pursuant to Paragraphs 10 (Indemnity) and 16 (Hazardous Substances) herein with respect to any such claims, demands, liabilities, suits, actions, judgments, costs and expenses for loss, injury, death or damage arising prior to such termination or cancellation of all or a portion of this Agreement. A Memorandum of Agreement or Memorandum of Understanding must be executed if the Director of Transportation approves abandonment in place.

19. Compliance with Laws. The DOWK, at all times during the term of this Agreement, shall comply with all of the requirements of the federal, state and county authorities and shall observe all federal, state and county laws, statutes, ordinances, rules and regulations, now in force or which may hereafter be in force, including, but not limited to, all laws and regulations applicable to the use of areas within the highway right-of-way and/or federal-aid highways.

20. Binding Effect. All provisions contained in this Agreement shall be binding upon and inure to the benefit of the respective parties, their successors and permitted assigns, and
officers, agents, and employees or any person acting for and on their behalf.

21. **Singular, Plural.** All words used herein the singular number shall extend to and include the plural. All words used in any gender shall extend to and include all genders.

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

23. **Counterparts.** This instrument may be executed in two or more counterparts, and when all counterparts have been executed, each counterpart shall be considered an original but when assembled shall constitute one and the same instrument, and shall have the same force and effect as though all the signatories had executed a single instrument. Any unexecuted duplicate pages may be omitted from the assembled original document.

24. **No Drafter.** The DOWK and the STATE agree that no party shall be deemed to be the drafter of this Agreement and further that in the event that this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision of this Agreement against any party as the drafter of this Agreement.

25. **Prehistoric and Historic Remains.** Any and all prehistoric and historic remains found at, in, on, over, or under the Premises shall be and remain the property of the State of Hawaii, and shall not be disturbed or removed by the DOWK, and/or the DOWK’S successors in interest, assigns, officers, directors, employees, agents, or guests, without the express written approval of the STATE. Upon discovery of any prehistoric or historic remains, the DOWK shall immediately stop and cease any further disturbance of the remains and surrounding portion(s) of the
Premises containing the remains, and promptly notify the STATE of such discovery.

26. **Severability.** In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.

27. **Waiver.** The failure of the STATE to insist upon strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Agreement.

28. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Hawaii.

29. **Nondiscrimination.** The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.

30. **Notices.** Except as otherwise specifically provided in this Agreement, any notice, consent, request, demand, or other correspondence given under this Agreement shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or overnight courier, return receipt requested, with postage prepaid; to: (a) the DOWK at the address as stated on page one herein; or (b) the STATE at the following address: State of Hawaii, Department of Transportation, Highways Division, 869 Punchbowl Street, Honolulu, Hawaii 96813, Attn: Administrator; or (c) such other address as either the DOWK or the STATE may designate, in writing, as its new address for such purpose by notice given to the other in accordance with this section. Any notice hereunder shall be deemed to have been given and received and effective two (2) calendar days after the date when it is
mailed, if sent by first-class, certified mail, one (1) calendar
day after the date when it is mailed if sent by overnight courier,
or upon the date personal delivery is made.

31. Entire Agreement. This instrument constitutes the
total agreement of the parties with respect to the matters set
forth in this Agreement, and, except as specifically provided
otherwise herein, there are no agreements, understandings,
warranties, or representations between the parties except as set
forth herein. This Agreement cannot be modified except by an
instrument, in writing, signed by each of the parties. Any
termination or cancellation of this Agreement, in whole or in part,
shall not relieve the DOWK of its obligations to indemnify, defend
and/or hold harmless the STATE as provided herein.

32. Amendments. All amendments to this Agreement must
be in writing and must be signed by all parties to this Agreement.

33. No Recordation. This instrument shall not be
recorded.

34. No Third Party Beneficiaries. No third party
beneficiaries are intended by this Agreement, and the terms and
provisions of this Agreement shall not give rise to any right in
third parties to enforce the provisions of this Agreement.

[SIGNATURE PAGE IS ON THE FOLLOWING PAGE.]
IN WITNESS WHEREOF, the undersigned have executed this Use and Occupancy Agreement No. 333-A the day and year first above written.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

APPROVED AS TO FORM AND
AND LEGALITY:

By: ______________________________
Its: ______________________________

Print Name: ______________________________
Title: Deputy County Attorney

BOARD OF WATER SUPPLY
COUNTY OF KAUA‘I

By: ______________________________
Name: ______________________________
Title: ______________________________

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

APPROVED AS TO
FORM:

Deputy Attorney General
Print Name: Julia H. Verbrugge

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STATE OF HAWAII  
)  
) SS.  
COUNTY OF KAUAʻI  
)  

On this __________ day of __________________, 2017, before me appeared SHERMAN SHIRAISHI, to me personally known, who, being by me duly sworn, did say that he is the CHAIRPERSON of the BOARD OF WATER SUPPLY, COUNTY OF KAUAʻI, and that the foregoing instrument was signed on behalf of said BOARD, and said officer acknowledged said instrument to be the free act and deed of said BOARD, and that said BOARD has no corporate seal.

________________________________________
Notary Public, State of Hawaii

________________________________________
Name of Notary

My Commission Expires:__________

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EXHIBIT A

KUHIO HIGHWAY
(40 FT. RIGHT-OF-WAY THRU HANALEI & WAIOLI)
At Hanalei, Kauai, Hawaii

Use and Occupancy Agreement No. 333-A
(For Water Line Purposes)

Being Portion of Kuhio Highway (40 Ft. Right-of-Way thru Hanalei & Waioli)
Land situated at Waioli, Hanalei, Kauai, Hawaii

Beginning at the Northwest corner of this piece of land, on the North side of
Kuhio Highway (40 Ft. Right-of-Way thru Hanalei & Waioli), the coordinates of said point
of beginning referred to Government Survey Triangulation Station "PAPALIHALA" being
1,668.11 feet North and 4,823.20 feet West, thence running by azimuths measured
clockwise from true South:

1. 270° 10'  15.00  feet along Lot 14, Map 1 of Land Court
   Application 1469, along the North side
   of Kuhio Highway (40 Ft. Right-of-Way
   thru Hanalei & Waioli);

2.  0° 10'  16.00  feet along the remainder of Kuhio
   Highway (40 Ft. Right-of-Way thru
   Hanalei & Waioli);

3.  90° 10'  15.00  feet along the remainder of Kuhio
   Highway (40 Ft. Right-of-Way thru
   Hanalei & Waioli);

4. 180° 10'  16.00  feet along the remainder of Kuhio
   Highway (40 Ft. Right-of-Way thru
   Hanalei & Waioli) to the point of
   beginning and containing an area of 240
   square feet.

DESCRIPTION PREPARED BY:
ESAKI SURVEYING & MAPPING, INC.

Wayne T. Wada
Licensed Professional Land Surveyor
Certificate Number 4596
License Expires April 30, 2018

Lihue, Hawaii
September, 2016

Tax Map Key (4) 5-5-04: Road (Por.),
(4) 5-5-05: Road (Por.),
(4) 5-5-06: Road (Por.)
State of Hawaii
Department of Transportation

MEMORANDUM

TO: HWY, HAR, AIR Offices
FROM: DIR
SUBJECT: Departmental Pipeline Removal Policy

Effective immediately, it is the state Department of Transportation (DOT) policy to prohibit the abandonment of pipelines and utilities' facilities on all DOT properties, including the highway right-of-way. This policy is effected in order to address the increasing problem of unidentified, abandoned pipelines on DOT property, and the heightened awareness of environmental concerns related to and arising from abandoned pipelines.

Additionally, if any current or pending projects call for any utility lines to be abandoned in place, the DOT will require that the respective utility company, tenant/user, state, county and federal agency agree to be responsible for all costs of removing said pipelines, and also agree to be liable for any cleanup costs, if any, that are related to said pipelines, the prior use of said pipelines, or the removal of same, if such action becomes necessary in the future. The Director may consider exceptions to the removal policy, if the justification is provided in writing. Such consent, however, will be subject to the utility company agreeing to remove its facilities left in place, at its own cost, if the DOT makes such determination in the future.

Finally, any plans that the utility company, state, county and federal agency and other tenant/user has in leasing any of the existing abandoned lines to other utility companies for use in fiber optics, cabling, etc. for which there is no lease with the DOT is strictly prohibited. The new Use and Occupancy Agreement form is specific that the "right under this Agreement shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the State." This language should be added to the Utility Agreement forms currently in use. If any such use and/or activity have occurred, you must notify Director immediately and appropriate agreements must be negotiated with the DOT.

Each division is hereby responsible to notify by letter to be signed by the Director to all of their utility companies, state, county and federal agencies, and tenants/users that currently have lines within our properties and highway right-of-way of this said policy.

You should also notify any company, agency and tenant/user that in the event, such company, agency or tenant/user is already leasing any of the existing abandoned lines to other companies for use in fiber optics, cabling, or other use, and there is no direct agreement for such use with the DOT, they must notify the DOT within five (5) working days of said letter describing the assignee and the current uses and/or activities. They must be further advised that those unauthorized uses and/or activities must be immediately terminated, or a direct agreement with the DOT must be reached for their continued use. The DOT will otherwise take appropriate action against said violators.

To ensure consistency within each of the divisions, a sample letter is attached.


cc given to all Branchare Districts 9/26/02
USE AND OCCUPANCY AGREEMENT NO. 333-B

THIS USE AND OCCUPANCY AGREEMENT NO. 333-B is made on 

, but effective as of 

, by and between the 

STATE OF HAWAII, by its Director of Transportation, for the 
Highways Division, (hereinafter referred to as the "STATE") and 
BOARD OF WATER SUPPLY, COUNTY OF KAUA'I, whose principal place of 
business and mailing address is 4398 Pua Loke Street, Lihue, Hawaii 
96766 (hereinafter referred to as the "DOWK").

RECITALS:

WHEREAS, the STATE is the owner of those certain parcels 
of land upon which Kuhio Highway, Hawaii (hereinafter referred to 
as the "Highway") is situated, which parcels contain approximately 
358 Square Feet, designated as Tax Map Key Numbers, (4) 5-5-3: Road 
(Portion), (4) 5-5-6: Road (Portion), (hereinafter referred to as 
the "Property"); and

WHEREAS, the DOWK desires to occupy a portion of the 
Property, as described in Exhibit A and delineated on Exhibit B 
attached hereto and incorporated herein by reference (hereinafter 
referred to as the "Premises"), for the construction, operation, 
maintenance, and repair of a 12 Inch Water Main Replacement (said 
Water Main project, together with all improvements, equipment, 
facilities, components and appurtenances related thereto, is 
hereinafter referred to as the "Project"); and

WHEREAS, the STATE does not object to granting the DOWK 
use and occupancy rights over the Premises provided the DOWK fully 
complies with the terms and conditions set forth below,

NOW, THEREFORE, for good and valuable consideration, and 
other valuable consideration, the receipt whereof is hereby 
acknowledged, and the mutual covenants and promises herein made, 
and pursuant to Section 264-13, Hawaii Revised Statutes ("HRS"), 
the parties do hereby agree as follows:

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AGREEMENT:

1. **Grant of Use and Occupancy Rights.** The STATE hereby grants to the DOWK the non-exclusive right to use and occupy the Premises for the purpose of constructing, operating, maintaining, and repairing the Project.

2. **Right to Construct the Project.** The DOWK may construct, maintain and repair the Project on, within, under, over and across the Premises provided that the DOWK obtains the STATE’s prior written approval for the plans and specifications for the Project and any subsequent alterations thereto prior to commencing the construction of any portion of the Project. The DOWK shall be solely responsible for all costs and expenses incurred in connection with the Project and the maintenance of the Premises, in accordance with paragraph 4, 5 and 16 of this Agreement, including but not limited to, all design, planning, engineering, construction, alteration and maintenance costs and expenses.

3. **Work Permit.** The DOWK shall obtain a permit from the STATE for any construction, installation, maintenance, repair, removal, replacement, reconstruction and upkeep work for or related to the Project on, within, under, over or across the Premises prior to commencing such work. Without limiting the foregoing or any other provision contained herein, the DOWK shall comply with any and all other requirements of the STATE relating to any construction, installation, maintenance, repair, removal, replacement, reconstruction, and upkeep work for or related to the Project.

4. **Work Completion.** Upon the completion of any work performed in, on, under, over or across the Premises by the DOWK, the DOWK shall remove therefrom within seven (7) days of completion, all equipment and unused or surplus materials, if any, and shall restore the Premises and any other affected areas to a condition satisfactory to the STATE in its sole discretion. In
addition, the DOWK shall provide all as-built drawings of work completed, for the STATE'S acceptance within sixty (60) days of the DOWK'S final acceptance of the DOWK'S contractor's work and the DOWK shall warranty the restoration work for a period of one (1) year from the date of final inspection and acceptance by the STATE. Such warranty shall insure that the DOWK shall be responsible for any failure of the restoration work and any potholes occurring in and along the restoration area for the warranty period. An example of such potholes occurring along the seams of a trench that was restored after installing a water pipeline.

5. Maintenance. The DOWK shall, at its sole cost and expense, keep the Premises and the Project in a safe, clean, sanitary, and orderly condition, including, but not limited to, making all necessary repairs to the Project.

6. Repair. The DOWK shall not damage, undermine or otherwise destroy any portion of State of Hawaii ("STATE") property, including without limitation, any Highway facilities or improvements or facilities of other Highway tenants or other permitted users of the Highway situated on or near the Premises or any equipment or appurtenances relating thereto, including, but not limited to, sidewalks, storm drains, drainage systems, and underground utility systems. The DOWK shall, at its sole cost and expense, repair, restore and reconstruct that portion of said Property so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances. All repairs, restoration, and reconstruction shall be completed by the DOWK immediately to the existing, or better, condition and shall be inspected and approved by the STATE in its sole discretion.

7. No Obstruction. The DOWK shall not construct, replace, repair or maintain any improvements or any portion of the
Project on, within, under, over or across the Premises in such a manner as to: (a) unnecessarily obstruct traffic, (b) obstruct, in any way whatsoever, the sight lines and distances and view corridors along the Highway; or (c) otherwise constitute a hazard to users of the Highway, as determined by the STATE in its sole discretion; (d) obstruct Highway operations and or (e) obstruct operations of Highway tenants or other permitted users of the Highway on the Property or near the Premises.

8. Reservation of Rights. The STATE reserves unto itself the full use and enjoyment of the Premises and the right to grant to others rights and privileges for any and all purposes affecting the Premises, all without charge by and without the consent of the DOWK, provided that such use by the STATE and/or third parties does not unreasonably interfere with the DOWK’S rights to use the Premises under this Agreement. The DOWK shall take steps necessary to ensure that the DOWK exercise of the rights and privileges granted hereunder does not cause any substantial interference with the STATE'S operations in or near the Premises. In addition, the DOWK acknowledges and agrees that this Agreement is for a limited purpose, and that the DOWK shall use the Premises only for the purpose of serving the Project. Any intensification to include modification or expansion of the use of the facilities, from what is approved herein, including but not limited to, connection of additional laterals or extensions that feed or are fed from the Project shall require the written consent of the STATE, which consent may be withheld in the STATE’S sole discretion, and may require a new request and review and consideration by any user not covered by this Agreement.

9. STATE Work Within or Affecting the Premises. If the STATE decides to perform work of any kind on, within, under, over, across, near, or affecting the Premises, the STATE will coordinate such work with the DOWK. The DOWK shall not prevent
the STATE from performing such work, provided, however, that the
STATE will take certain protective measures to assure that such
work does not unreasonably interfere with the DOWK'S use of the
Premises as described herein. At the STATE'S sole option, the
DOWK, at the DOWK'S sole cost, except as may otherwise be required
by law, shall relocate the Project to the extent the Project
conflicts with plans of a STATE project.

10. Indemnity. The DOWK shall at all times with respect
to the Project and the Premises use due care for public safety.
It is strictly understood that the STATE shall in no way be held
liable for any claims, damages, causes of action or suits resulting
from any acts or omissions of the DOWK. The DOWK shall hold
harmless, indemnify and defend the STATE, its officers, agents,
successors and assigns, and employees, from and against all claims,
demands, liabilities, suits, actions, judgments, costs and
expenses (including attorney's fees) for loss, injury, death or
damage, including, without limitation, claims for property damage,
personal injury, or loss or death of persons, whenever such loss,
injury, death or damage arises out of, is connected with or related
to (a) occurrences or incidents on, within, under, over or across
the Premises or the Project, as it relates to DOWK's use of the
Premises (b) the exercise of the rights and privileges herein
granted, (c) any failure on the part of the DOWK to use due care
or otherwise perform in accordance with the terms and conditions
of this Agreement, (d) any act or omission of the DOWK and/or the
DOWK'S use and occupancy of the Premises. This provision shall
survive the expiration or earlier termination of this Agreement.

11. Assignment. The DOWK'S rights under this Agreement
shall not be sold, assigned, conveyed, leased, subleased,
mortgaged, or otherwise transferred or disposed of, directly or by
operation of law, except with the prior written consent of the
STATE which consent may be withheld by the STATE in its sole
discretion. In giving any such consent, the STATE need not release the DOWK from any liabilities or obligations hereunder.

12. Insurance. The DOWK has elected to self-insure all liabilities arising out of the DOWK'S operations and activities on the Premises which self-insurance shall be primary and non-contributory with any insurance policy maintained by the STATE. The DOWK shall provide a letter of self-insurance to the STATE upon execution of this Agreement.

   a. Notice of default. If the DOWK defaults on or otherwise fails to perform the DOWK'S obligations under this Agreement, the STATE will issue a written notice of default to the DOWK by hand-delivery or first-class mail.
   b. DOWK to cure defaults. Any and all defaults or failures to perform contained in such notice of default must be resolved and remedied to the STATE'S sole satisfaction within thirty (30) days of the date of the STATE'S written notice to the DOWK or such further time as may be authorized by the STATE in writing, unless there is an immediate safety problem, then the STATE has the right to take immediate action and mitigate damages after-the-fact and DOWK will pay for all costs incurred by the STATE. Without limiting the foregoing, the DOWK'S failure to construct the Project in accordance with the plans and specifications approved by the STATE shall be deemed a default of this Agreement.
   c. STATE remedies for failure to cure. If the DOWK fails to cure said defaults or fails to perform within the required time period, the STATE itself may, but shall not be obligated to, cure or remedy said defaults or failures to perform and charge any costs and expenses incurred in performing said cure or remedy to the DOWK, who shall immediately pay said costs and expenses to the STATE upon receiving notice from the STATE. If
the DOWK fails to cure said defaults or fails to perform within the required time period, the STATE may terminate this Agreement and the DOWK'S rights under this Agreement to use the Premises and the Project. Upon such termination and at the STATE'S option, the Project improvements will thereafter belong to the STATE. If the DOWK defaults or fails to perform as required under this Agreement, the STATE shall be entitled to all remedies available under this Agreement and by law, which remedies shall be cumulative and not exclusive. This provision shall survive the expiration or earlier termination of this Agreement.

14. Abandonment. This Agreement and all of the DOWK'S rights hereunder shall terminate, without any action on the part of the STATE, in the event of non-use or abandonment by the DOWK of the Premises or the Project, or any portion thereof, for a period of one (1) year; provided, however, that the DOWK is subject to the provisions of the STATE'S Pipeline Removal Policy, dated September 24, 2002, as the same may be amended, which may include, but not limited to, the DOWK'S execution of an agreement, in form and substance acceptable to the STATE in its sole discretion. The current Pipeline Removal Policy is attached hereto as Exhibit C and made a part hereof.

15. Termination. If not otherwise terminated or cancelled, this Agreement may be cancelled in whole or in part at any time by the mutual written agreement of the parties hereto or by the STATE, in its sole discretion upon the STATE'S giving thirty (30) days' prior written notice to the DOWK by hand delivery or first-class mail, return receipt requested. Any termination or cancellation of this Agreement, in whole or in part, shall not relieve the DOWK of its obligations to indemnify, defend and/or hold harmless the STATE as provided herein and including, but not limited to Paragraphs 10 (Indemnity) and 16 (Hazardous Substances) herein with respect to any such claims, demands, liabilities,
suits, actions, judgments, costs and expenses for loss, injury, death or damage arising prior to such termination or cancellation of all or a portion of this Agreement. This provision shall survive the expiration or earlier termination of this Agreement.

   a. Definitions. For purposes of this Agreement, the DOWK acknowledges and agrees that the following terms shall have the following meanings:

   "Environmental Laws" shall mean all federal, state and local laws of every nature including statutes, ordinances, rules, regulations, codes, notices, standards, directives of every kind, guidelines, permits, licenses, authorizations, approvals, interpretations of the foregoing by any court, legislative body, agency or official, judicial decisions, judicial and administrative orders, rulings or judgments, or rules of common law which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health or safety. These environmental laws include, but are not limited to, regulations and orders of the federal Environmental Protection Agency and the State of Hawaii Department of Health.

   "Hazardous Substance" shall include any chemical, substance, radioactive materials, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may in the future be, or has been determined by state or federal authority under any Environmental Law to be hazardous to human health or safety or detrimental to the environment. This term shall include, but not be limited to, petroleum hydrocarbons, asbestos, radon, polychlorinated biphenyls, methane, fuels of any kind, and other
materials or substances that are, or may in the future be, regulated by the state or federal authorities.

b. DOWK'S Activities and Duties.

b. 1 Compliance with Environmental Laws. The DOWK agrees, at its sole expense and cost, to comply with all Environmental Laws applicable to the Property and the DOWK'S occupancy, activities, operations, and use of the Project and the Premises. This duty shall survive the expiration or earlier termination of this Agreement, which means that the DOWK'S duty to comply with Environmental Laws shall include complying with all Environmental Laws that may in the future apply, or be determined to apply, to the occupancy and activities of the DOWK on the Premises after the expiration or termination of this Agreement. Failure of the DOWK to comply with any Environmental Law shall constitute a breach of this Agreement for which the STATE may, in its sole discretion, terminate this Agreement, exercise its remedies under this Agreement, including, but not limited to, remediation of any condition on behalf of the DOWK at the DOWK'S expense under subparagraph 16.b.5 below (Environmental Investigations and Assessments), subparagraph 16.b.6 below (Remediation) and subparagraph 16.b.7 below (Restoration and Surrender of Premises), and take any other action at law or in equity that the STATE deems appropriate.

b. 2 Hazardous Substances. The DOWK shall not use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any Hazardous Substances, or allow the same by any of its employees, agents, guests, contractors or third persons, on the Premises without first obtaining the written consent of the STATE (which consent may be withheld by the STATE in its absolute discretion) and shall fully comply with all Environmental Laws, including giving all required notices, reporting to, and obtaining
permits from, all appropriate authorities, and shall comply with all provisions of this Agreement.

b. Notice to the STATE. The DOWK shall keep the STATE fully informed at all times regarding all matters related to any Environmental Laws affecting the DOWK, the Project, or the Premises. This duty shall include, but not be limited to, providing the STATE with a current and complete list and accounting of all Hazardous Substances of every kind which are present in, on or about the Premises by or as a result of the DOWK, together with evidence that the DOWK has in effect all required and appropriate permits, licenses, registrations, approvals, and other consents that may be required by any federal, state, or county authority, under any authority or Environmental Laws. The DOWK shall provide said list and accounting at the commencement of this Agreement and shall update said list and accounting whenever any Hazardous Substance not accounted for on said list is or becomes present in, on, or about the Premises by the DOWK or otherwise. The DOWK shall also provide immediate written notice to the STATE of any spills, releases, and/or discharge of Hazardous Substances investigation, enforcement action, compliance order, or order of any type, or any other legal action, initiated, issued, or any indication of an intent to do so, communicated in any way to the DOWK by any federal, state, or county authority or individual that relates in any way to any Environmental Law or any Hazardous Substance. This written notice to the STATE shall include copies of all written communications from any federal, state, or county agency or authority, including copies of all correspondence, claims, complaints, warnings, reports, technical data, and any other documents received or obtained by the DOWK. At least thirty (30) days prior to termination of this Agreement, or termination of the use and occupancy of the Premises by the DOWK, whichever occurs first, the DOWK shall provide the STATE with written evidence
satisfactory to the STATE that the DOWK has fully complied with all Environmental Laws, including any orders issued by any governmental authority that relate to the Premises, and the results of all assessments and investigations that may be ordered by the STATE pursuant to subparagraph 16.b.5 (Environmental Investigations and Assessments) of this provision, or by any governmental agency responsible for enforcement of the Environmental Laws.

b. 4. Disposal/Removal. Except as to the possession and handling of Hazardous Substances for which the DOWK is authorized by law, including those Hazardous Substances for which the DOWK has obtained all currently required permits to store or use certain Hazardous Substances on the Premises, including written permission from the STATE, the DOWK shall cause any Hazardous Substances resulting from the DOWK’s use to be removed and transported from the Premises for disposal solely by duly licensed hazardous substances transporters to duly licensed facilities for final disposal as required by all applicable Environmental Laws. Within ten (10) days of any such disposal, the DOWK shall provide the STATE with copies of documentary proof including manifests, receipts, or bills of lading, which reflect that said Hazardous Substances have been properly removed and disposed of in accordance with all Environmental Laws. This provision shall survive the expiration or earlier termination of this Agreement.

b. 5. Environmental Investigations and Assessments. The DOWK, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the Premises to determine the presence of any Hazardous Substance on, in, or under the Premises as may be reasonably directed from time to time by the STATE, or by any federal or state authority. The extent and number of any environmental investigations and assessments

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shall be determined by the STATE or the federal or state authority directing said investigations and assessments to be conducted. The DOWK shall retain a competent and qualified person or entity that is satisfactory to the STATE or governmental authority, as the case may be, to conduct said investigations and assessments. The DOWK shall direct said person or entity to provide the STATE or governmental authority, if so requested, with testable portions of all samples of any soils, water, ground water or other material that may be obtained for testing and provide directly to the STATE and the other governmental authority, at the sole expense of the DOWK, written results of all tests on said samples upon completion of said testing. In any event, the DOWK shall have the option to conduct environmental assessments as aforesaid prior to or at the time of termination of this Agreement in order to determine the condition of the Premises.

b. 6. Remediation. In the event that any Hazardous Substance is used, stored, treated, or disposed on the Premises or any location off the Premises to which it is determined any Hazardous Substance has migrated, by the DOWK, or its duly authorized employees, or handled, discharged, released by the DOWK or determined to be present on the Premises or any location off the Premises to which it is determined any Hazardous Substances has migrated by or as a result of the DOWK’S actions or the actions of its duly authorized employees, agents, contractors, guests, or invitees, the DOWK shall, at its sole expense and cost, remediate the Premises, or any location off the Premises to which it is determined any Hazardous Substance has migrated, of such Hazardous Substance, and dispose/remove said Hazardous Substance in accordance with subparagraph 16.b.4 (Disposal/Removal) of this provision. This duty to remediate includes strict compliance with all Environmental Laws, as well as any directives by the STATE or other governmental authority, to the DOWK to remediate such
Hazardous Substance. This duty to remediate shall include replacement of any materials, such as soils, so removed with material that is reasonably satisfactory to the STATE and governmental authority, as the case may be.

b. 7. Restoration and Surrender of Premises.

The DOWK hereby agrees to timely surrender the Premises upon termination of the Agreement and, prior thereto, shall restore the Premises to the same condition as the Premises existed at the commencement of this Agreement, as determined by the STATE in its sole discretion, reasonable wear and tear excepted. Said surrender and restoration shall be at the sole cost and expense of the DOWK. This duty to restore the Premises includes remediation as described in the previous subsection. Subject to subparagraph 18.b (STATE’S option), this duty also includes, but is not limited to, the removal within seven (7) days of termination or such longer period of time as the STATE may agree to in writing, of all of the DOWK’S improvements, including, without limitation, pipes, pipelines, tanks, containers, equipment, and appurtenances of any kind that the DOWK has installed or erected on the Premises. In the event the DOWK does not timely restore the Premises to a satisfactory condition, as determined by the STATE in its sole discretion, the DOWK understands and agrees that the STATE may exercise its rights under subparagraph 16.b.9 (STATE’S Right to Act), and until such time as the restoration is completed to the satisfaction of the STATE in its sole discretion, the DOWK shall be liable for any damages and costs that the STATE may have incurred, including penalties, fines, and assessments related to the Premises which may be imposed on the STATE or the DOWK by any governmental authority.

b. 8 Tanks, Pipelines; Inspections and Repairs; Protection of Waters. Unless the STATE specifically agrees in writing prior to their installation, all pipes, pipelines, tanks,
containers, or conduits of any kind that may at any time have contained, or may have been intended to contain, Hazardous Substances of any type (hereafter referred to as a "facility"), must be installed above ground level in such manner that allows for periodic inspection and maintenance of the facility for purposes of determining the existence of leaks and discharges from, and deterioration of any kind to, and that allows repair of, the facility. The DOWK shall provide the STATE with prior written notice of the DOWK'S intent to install a facility to allow the STATE ample time, as reasonably determined by the STATE, to inspect the plan for installation of such a facility. Said facility shall not be installed unless and until the facility and its manner of installation are approved, in writing by the STATE. Within ninety (90) days of the commencement of this Agreement, or commencement of possession of the Premises by the DOWK, whichever first occurs, the DOWK shall submit a contingency plan covering the DOWK facilities if any, and as applicable, to control and remedy any spill, discharge, or leak from any DOWK facility on the Premises during the term of this Agreement, which plan shall include the cleanup of all Hazardous Substances that may be spilled, discharged, or leaked, to the satisfaction of the STATE in its sole discretion. The DOWK shall also submit to the STATE a plan for the DOWK to conduct, or have conducted, regular inspections of all facilities, if any, on the Premises for the purpose of prevention of any leak, discharge, or spill from said facilities. Said contingency plan and inspection plan are subject to the prior written approval of the STATE. The DOWK shall timely obtain and maintain in effect all required permits, licenses, and approvals for such facilities from any governmental authority. Failure to submit said plans, to comply with said plans, or obtain and maintain any required permits, licenses, or approvals constitutes a breach of this Agreement, giving the STATE the right to
immediately terminate this Agreement, take possession of the Premises, and pursue any other remedy available to the STATE.

The DOWK shall maintain and employ reasonable debris, pollution and contamination control measures, safeguards and techniques on the Premises to prevent debris, pollution or contamination to ocean waters, streams or waterways, groundwater, including any storm drains within and about the Premises, resulting from the activities or operations of the DOWK and the DOWK’S agents on, within, over, through, across, under or connected with the Premises. The DOWK shall take immediate corrective action in the event of an unauthorized release of Hazardous Substances by the DOWK or its agents to immediately remove or correct the cause of such release, and shall immediately clean the Premises and affected areas and surrounding waters of such Hazardous Substances, pollutants or contaminants to levels satisfactory to the STATE’S and/or other governmental authority in the STATE’S sole discretion, all at the DOWK’S own cost and expense. This section shall not be construed to require the DOWK to cleanup or respond to any Hazardous Substances existing on the Premises prior to the DOWK’S occupancy of the same.

b. 9. STATE’S Right to Act. In the event the DOWK fails for any reason to comply with any of its duties under this Agreement or under any Environmental Laws within the time set for doing so, or within a reasonable time as determined by the STATE, the STATE shall have the right, but not the obligation, in its sole discretion, to perform those duties, or cause them to be performed. The DOWK hereby grants access to the Premises and the Project at all reasonable hours to the STATE, its agents and anyone designated by the STATE, in order to perform said acts and duties. Any cost, expense, or liability of any type that may be incurred by the STATE in performing said acts or duties shall be the sole responsibility of the DOWK and the DOWK hereby agrees to
immediately pay to the STATE all of such costs and expenses incurred by the STATE in performing said acts or duties. This obligation shall extend to any costs and expenses incident to enforcement of the STATE'S right to act, including litigation costs, attorney fees, and the costs and fees for collection of said costs, expenses, or liability.

b. 10. Release and Indemnity. In addition to and without limiting the provisions of Paragraph 10 (Indemnity) above, the DOWK hereby agrees to release, indemnify, defend, and hold harmless the STATE, its officers, employees, agents, successors, and assigns from any liability of any kind, including, but not limited to, any liability for any damages, penalties, fines, judgments, or assessments that may be imposed or obtained by any person, agency, or governmental authority by reason of any Hazardous Substance that may be present by or as a result of the DOWK'S use of the Premises or the Project by whatever means on, in or under the Premises including, but not limited to, any fines or penalties assessed against the STATE for the DOWK non-compliance with any Environmental Laws.

The DOWK understands and agrees that any claims for damages, penalties, fines, judgments, or assessments that may be assessed against the DOWK or the STATE by any person or governmental authority based on any violation of any Environmental Laws concerning the Premises or the Project shall be paid in full, complied with, and in every way satisfied by the DOWK within the required time, and not by the STATE. In the event both the STATE and the DOWK are liable for any environmental cleanup or remediation of the Premises, the DOWK shall indemnify, defend and hold harmless the STATE in accordance with the terms of this subsection, unless the STATE, or any other entity with an easement or access to the property has been shown to have actually caused
the condition complained of. This provision shall survive the expiration or earlier termination of this Agreement.

b. 11. Burden of Proof. In all instances covered in this Paragraph 16 (Hazardous Substances), the DOWK accepts the burden of establishing that it is not responsible for the existence of Hazardous Substances in the Premises or in any location or any location off the premises to which Hazardous Substances have migrated. If the DOWK cannot establish that it is not responsible for the existence of Hazardous Substances in the Premises, or any location off the Premises to which Hazardous Substances have migrated, the DOWK shall be deemed responsible for the existence of the Hazardous Substances.

b. 12. Protection of Waters. The DOWK shall maintain and employ reasonable debris, pollution or contamination control measures, safeguards and techniques on the premises to prevent debris, pollution or contamination from reaching ocean waters, streams or waterways, groundwater, including any storm drains within and about the Premises, resulting from the activities or operations of the DOWK and the DOWK’S employees, agents, contractors or third persons on, within, over, through, across, under or connected with the Premises. The DOWK shall take immediate corrective action in the event of an unauthorized release of Hazardous Substances by the DOWK or its employees, agents, contractors or third persons to immediately remove or correct the cause of such release, and shall immediately clean the Premises and affected areas and surrounding waters of such Hazardous Substances, pollutants or contaminants to levels satisfactory to the DOH, EPA and/or any governmental entity with regulatory jurisdiction over the release, in strict compliance with all Environmental Laws, all at the DOWK’S own cost and expense. This subparagraph shall not be construed to require the DOWK to clean up or respond to any Hazardous Substances existing on the Premises.
prior to the DOWK'S occupancy of the same provided, however, that
the DOWK acknowledges and agrees that the date of the DOWK'S
occupancy may be a date prior to the Effective Date such that the
DOWK shall be responsible for cleanup or to respond to any
Hazardous Substances for the DOWK'S occupancy prior to the
Effective Date.

17. **Removal of Improvements.** If the STATE decides to
perform work of any kind within, on, over, under, across, near, or
affecting the Premises, the DOWK shall be responsible for the
removal or relocation of all or any portion of the Project from
the Premises deemed necessary by the STATE, without cost and
expense to the STATE, within thirty (30) days from the date the
STATE requests such removal or such longer period of time as may
be approved in writing by the STATE, except as shall be otherwise
required by applicable law. In the event it becomes necessary for
the STATE to destroy, remove or alter all or any portion of the
Project or improvements, the STATE shall not be obligated to
replace or restore those portions of the Project or improvements
so destroyed, removed or altered and the DOWK waives any and all
right to compensation therefore, except as shall be otherwise
required by applicable law.

18. **Removal upon Termination.** Upon any full or partial
termination or cancellation of this Agreement, the DOWK shall, at
the DOWK'S sole cost and expense:

a. **Remove and restore.** Remove any and all
portions of the Project installed or constructed on, within, under,
over or across the Premises and any improvements, equipment,
facilities, components and appurtenances relating thereto and
restore the Premises to as good a condition as existed prior to
the commencement of this Agreement, satisfactory to the STATE in
its sole discretion, and if the DOWK fails to restore the Premises
to a condition satisfactory to the STATE, the STATE shall have the
right to charge the DOWK, and the DOWK shall be solely responsible for, any and all costs and expenses incurred by the STATE in completing and accomplishing such restoration, including but not limited to, any costs the STATE incurs in removing and disposing of the DOWK's property; or

b. STATE'S option. At the STATE'S sole option and subject to the provisions of Paragraph 14, (Abandonment) including, but not limited to, the provisions of the STATE'S Pipeline Removal Policy, and any other terms and conditions, or amendments therein, abandon in place the Project and any improvements, equipment, facilities, components and appurtenances relating thereto; provided, however, that such termination or cancellation shall not relieve the DOWK of its obligations to indemnify, defend and/or hold harmless the STATE pursuant to Paragraphs 10 (Indemnity) and 16 (Hazardous Substances) herein with respect to any such claims, demands, liabilities, suits, actions, judgments, costs and expenses for loss, injury, death or damage arising prior to such termination or cancellation of all or a portion of this Agreement. A Memorandum of Agreement or Memorandum of Understanding must be executed if the Director of Transportation approves abandonment in place.

19. Compliance with Laws. The DOWK, at all times during the term of this Agreement, shall comply with all of the requirements of the federal, state and county authorities and shall observe all federal, state and county laws, statutes, ordinances, rules and regulations, now in force or which may hereafter be in force, including, but not limited to, all laws and regulations applicable to the use of areas within the highway right-of-way and/or federal-aid highways.

20. Binding Effect. All provisions contained in this Agreement shall be binding upon and inure to the benefit of the respective parties, their successors and permitted assigns, and
officers, agents, and employees or any person acting for and on their behalf.

21. **Singular, Plural.** All words used herein the singular number shall extend to and include the plural. All words used in any gender shall extend to and include all genders.

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

23. **Counterparts.** This instrument may be executed in two or more counterparts, and when all counterparts have been executed, each counterpart shall be considered an original but when assembled shall constitute one and the same instrument, and shall have the same force and effect as though all the signatories had executed a single instrument. Any unexecuted duplicate pages may be omitted from the assembled original document.

24. **No Drafter.** The DOWK and the STATE agree that no party shall be deemed to be the drafter of this Agreement and further that in the event that this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision of this Agreement against any party as the drafter of this Agreement.

25. **Prehistoric and Historic Remains.** Any and all prehistoric and historic remains found at, in, on, over, or under the Premises shall be and remain the property of the State of Hawaii, and shall not be disturbed or removed by the DOWK, and/or the DOWK’S successors in interest, assigns, officers, directors, employees, agents, or guests, without the express written approval of the STATE. Upon discovery of any prehistoric or historic remains, the DOWK shall immediately stop and cease any further disturbance of the remains and surrounding portion(s) of the
Premises containing the remains, and promptly notify the STATE of such discovery.

26. Severability. In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.

27. Waiver. The failure of the STATE to insist upon strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Agreement.

28. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Hawaii.

29. Nondiscrimination. The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.

30. Notices. Except as otherwise specifically provided in this Agreement, any notice, consent, request, demand, or other correspondence given under this Agreement shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or overnight courier, return receipt requested, with postage prepaid; to: (a) the DOWK at the address as stated on page one herein; or (b) the STATE at the following address: State of Hawaii, Department of Transportation, Highways Division, 869 Punchbowl Street, Honolulu, Hawaii 96813, Attn: Administrator; or (c) such other address as either the DOWK or the STATE may designate, in writing, as its new address for such purpose by notice given to the other in accordance with this section. Any notice hereunder shall be deemed to have been given and received and effective two (2) calendar days after the date when it is
mailed, if sent by first-class, certified mail, one (1) calendar day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made.

31. Entire Agreement. This instrument constitutes the entire agreement of the parties with respect to the matters set forth in this Agreement, and, except as specifically provided otherwise herein, there are no agreements, understandings, warranties, or representations between the parties except as set forth herein. This Agreement cannot be modified except by an instrument, in writing, signed by each of the parties. Any termination or cancellation of this Agreement, in whole or in part, shall not relieve the DOWK of its obligations to indemnify, defend and/or hold harmless the STATE as provided herein.

32. Amendments. All amendments to this Agreement must be in writing and must be signed by all parties to this Agreement.

33. No Recordation. This instrument shall not be recorded.

34. No Third Party Beneficiaries. No third party beneficiaries are intended by this Agreement, and the terms and provisions of this Agreement shall not give rise to any right in third parties to enforce the provisions of this Agreement.

[SIGNATURE PAGE IS ON THE FOLLOWING PAGE.]
IN WITNESS WHEREOF, the undersigned have executed this Use and Occupancy Agreement No. 333-B the day and year first above written.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

APPROVED AS TO FORM AND
AND LEGALITY:

By: ____________________________
Its: ____________________________ STATE

Print Name: _______________________
Title: Deputy County Attorney

BOARD OF WATER SUPPLY
COUNTY OF KAUA‘I

APPROVED:

By: ____________________________
Name: ____________________________
Title: ____________________________ DOWK

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

APPROVED AS TO
FORM:

Deputy Attorney General
Print Name: Julia H. Verbruggen
STATE OF HAWAII
COUNTY OF KAUAI

) SS.

On this ______ day of __________________, 2017, before me appeared SHERMAN SHIRAISHI, to me personally known, who, being by me duly sworn, did say that he is the CHAIRPERSON of the BOARD OF WATER SUPPLY, COUNTY OF KAUAI, and that the foregoing instrument was signed on behalf of said BOARD, and said officer acknowledged said instrument to be the free act and deed of said BOARD, and that said BOARD has no corporate seal.

________________________________________
Notary Public, State of Hawaii

________________________________________
Name of Notary

My Commission Expires:__________________
EXHIBIT A
KUHIO HIGHWAY
(40 FT. RIGHT-OF-WAY THRU HANALEI & WAIOLI)
At Hanalei, Kauai, Hawaii

Use and Occupancy Agreement No. 333-B
(For Water Line Purposes)

Being Portion of Kuhio Highway (40 Ft. Right-of-Way thru Hanalei & Waioli)
Land situated at Waioli, Hanalei, Kauai, Hawaii

Beginning at the Northwest corner of this piece of land, on the North side of
Kuhio Highway (40 Ft. Right-of-Way thru Hanalei & Waioli), the coordinates of said point
of beginning referred to Government Survey Triangulation Station “PAPALIHALA” being
1,981.06 feet North and 3,185.41 feet West, thence running by azimuths measured
clockwise from true South:

1. 338° 26' 14.00 feet along the remainder of Kuhio
   Highway (40 Ft. Right-of-Way thru Hanalei & Waioli);

2. 68° 26' 25.60 feet along the remainder of Kuhio
   Highway (40 Ft. Right-of-Way thru Hanalei & Waioli);

3. 158° 26' 14.00 feet along Parcel 2, Former Hanalei
   Court House Lot, along the North side of
   Kuhio Highway (40 Ft. Right-of-Way thru Hanalei & Waioli):

4. 248° 26' 25.60 feet along the remainder of Kuhio
   Highway (40 Ft. Right-of-Way thru Hanalei & Waioli) to the point of
   beginning and containing an area of 358
   square feet.

DESCRIPTION PREPARED BY:
ESAKI SURVEYING & MAPPING, INC.

Wayne T. Wada
Licensed Professional Land Surveyor
Certificate Number 4596
License Expires April 30, 2018

Lihue, Hawaii
September, 2016

Tax Map Key (4) 5-5-03: Road (Por.),
(4) 5-5-06: Road (Por.).
EXHIBIT C

State of Hawaii
Department of Transportation

MEMORANDUM

TO: HWY, HAR, AIR Offices
FROM: DIR

SUBJECT: Departmental Pipeline Removal Policy

Effective immediately, it is the state Department of Transportation (DOT) policy to prohibit the abandonment of pipelines and utilities' facilities on all DOT properties, including the highway right-of-way. This policy is adopted in order to address the increasing problem of unidentified, abandoned pipelines on DOT property, and the heightened awareness of environmental concerns related to and arising from abandoned pipelines.

Additionally, if any current or pending projects call for any utility lines to be abandoned in place, the DOT will require that the respective utility company, tenant/user, state, county and federal agency agree to be responsible for all costs of removing said pipelines, and also agree to be liable for any cleanup costs, if any, that are related to said pipelines, the prior use of said pipelines, or the removal of same, if such action becomes necessary in the future. The Director may consider exceptions to the removal policy, if the justification is provided in writing. Such consent, however, will be subject to the utility company agreeing to remove its facilities left in place, at its own cost, if the DOT makes such determination in the future.

Finally, any plans that the utility company, state, county and federal agency and other tenant/user has in leasing any of the existing abandoned lines to other utility companies for use in fiber optics, cabling, etc., for which there is no lease with the DOT is strictly prohibited. The new Use and Occupancy Agreement form is specific that the "right under this Agreement shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the State." This language should be added to the Utility Agreement forms currently in use. If any such use and/or activity have occurred, you must notify Director immediately and appropriate agreements must be negotiated with the DOT.

Each division is hereby responsible to notify by letter to be signed by the Director to all of their utility companies, state, county and federal agencies, and tenants/users that currently have lines within our properties and highway right-of-way of this said policy.

You should also notify any company, agency and tenant/user that in the event, such company, agency or tenant/user is already leasing any of the existing abandoned lines to other companies for use in fiber optics, cabling, or other use, and there is no direct agreement for such use with the DOT, they must notify the DOT within five (5) working days of said letter describing the assignee and the current uses and/or activities. They must be further advised that those unauthorized uses and/or activities must be immediately terminated, or a direct agreement with the DOT must be reached for their continued use. The DOT will otherwise take appropriate action against said violators.

To ensure consistency within each of the divisions, a sample letter is attached.

July 15, 2016

Mr. Keith Aoki  
Department of Water  
County of Kauai  
P.O. Box 1706  
Lihue, Hawaii 96766

Dear Mr. Aoki:

Subject: Kuhio Highway at Anae Road and Mahimahi Road, At Hanalei, Kauai, Hawaii, TMKs: (4) 5-5-03: Rd, (4) 5-5-04: Rd, (4) 5-5-05: Rd and (4) 5-5-06: Rd Request Use and Occupancy Agreement for Water Main Replacement

We have conceptually completed our review; however, final approval is subject to the following conditions:

1. Department of Water, Kauai (DOW) shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments.

2. DOW’s rights under this Agreement shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the State.

3. DOW shall indemnify, defend and hold harmless the State from liability, loss, injury, or damage to persons or property which the State may suffer as a result of claims, demands, costs or judgments arising against the State in connection with DOW’s use and occupancy within Kuhio Highway.

4. DOW shall execute a Use and Occupancy Agreement (UOA) for the installation, occupancy and maintenance of its water main and appurtenances. **Use of the water main will not be allowed until the UOA has been finalized.**

5. DOW shall submit two copies of metes and bounds descriptions of the subject area along with a parcel map and mathematical closures, which will be used as exhibits to the UOA. When preparing the metes and bounds description, please indicate the agreement as “Use and Occupancy Agreement No. 333” in the legal description and parcel map.
6. DOW shall submit four sets of construction plans to Kauai District Office located at 1720 Haleukana Street, Lihue, Kauai for review and approval.

7. Upon approval of construction plans, DOW shall submit two sets of as-built plans to our Kauai District Engineer located at 1720 Haleukana Street, Lihue, Kauai.

8. DOW shall provide proof of H.R.S. Chapter 343-5 compliance (E.A. or E.I.S. documentation) when submitting the application for Permit to Perform Work Upon State Highways.

9. DOW shall coordinate the construction schedule of this project with our Highways Division to minimize possible conflicts with our scheduled construction and maintenance projects in the area.

10. DOW shall not abandon any existing water lines and appurtenances within the State’s right-of-way. Should DOW encounter during excavation any abandoned pipes/conduits within the State highway right-of-way, the Department of Transportation’s Departmental Pipeline Removal Policy should be complied with. The pipelines should not be abandoned in place and allowed to cause future problems, such as voids in the ground when lines rust/deteriorate and break.

11. DOW shall bear all costs of servicing and maintaining its facilities and shall not perform such work from the through traffic lanes during peak traffic and high volume hours, except in emergencies and then only under the condition that such work shall be performed most expeditiously and with the least possible interference with free flow of traffic and safe operation of highway facilities.

12. DOW, at its own expense, will be required to remove any of its underground facilities which it constructs, in the event the utility abandons the use of the facilities, unless the State consents in writing to allow abandonment in place. Notwithstanding any such consent by the State for abandonment in place, DOW agrees to be responsible for the removal costs and any costs of clean up and remediation for any pollution or contamination caused by the water main project, if such action becomes necessary in the future. DOW further agrees to indemnify and hold harmless the State from any and all liabilities which may arise from DOW’s acts and omissions relating to the water main project.

13. Should the State DOT Highways Division require the area for any future highway projects, DOW’s facilities shall be relocated in accordance to H.R.S. Chapter 264-33.
14. The Highways Division reserves the right to add or impose additional conditions as necessary to mitigate adverse impacts to the State.

Please return the acceptance portion of this letter with an authorized signature to our office within 30 days from the date of this letter. If we do not receive the acceptance portion within the 30 day time frame, we will assume DOW is no longer interested in pursuing this matter.

Should you have any questions, please call Katja M. Jordan-King, Right-of-Way Agent, at (808) 692-7324 or you may e-mail her at Katja.M.Jordan-King@Hawaii.Gov.

Very truly yours,

WAYNE Y. IWAMASA
Section Head
Property Management

ACCEPTANCE

The undersigned hereby accepts the above conditions as determined by the State of Hawaii, Department of Transportation letter (ref. HWY-RM 3.92836) dated July 15, 2016.

Signature

Laurie Ho
Print Name
Chairperson
Kauai Board of Water Supply

Title

August 26, 2016
Date
MANAGER’S REPORT No. 18-60

August 21, 2017

Re: Discussion and Possible Action to approve the State of Hawai‘i’s June 12, 2017 conditional letter and to enter into Use and Occupancy Agreement No. 368 between the State of Hawai‘i and the Board of Water Supply, County of Kaua‘i and for Job No. 15-07, Water Plan 2020 No. HE-1, Reorganize Water System - Pipeline Connecting Hanapēpē and ‘Ele‘ele, Kaua‘i, Hawai‘i

RECOMMENDATION:
It is recommended that the Board agree to and approve the State of Hawai‘i’s June 12, 2017 conditional letter and enter into a Use and Occupancy Agreement No. 368 (UOA) with the State of Hawaii for Job No. 15-07, Water Plan 2020 No. HE-1, Reorganize Water System - Pipeline Connecting Hanapēpē and ‘Ele‘ele, Kaua‘i, Hawai‘i.

Further, Board approval is specifically requested of the indemnification provisions in the conditional letter and UOA, wherein the Board agrees to hold harmless, indemnify and defend the State against all claims, demands, liabilities, suits, actions, judgments, costs and expenses whenever such loss, injury, death or damage arises out of, is connected with or related to (a) occurrences or incidents on, within, under, over or across the Premises or the Project, (b) the exercise of the rights and privileges granted in the agreements, (c) any failure on the part of the Department of Water, County of Kauai (DOWK) to use due care or otherwise perform in accordance with the terms and conditions of the agreements, (d) any act or omission of the DOWK and/or the DOWK’s use and occupancy of the Premises.

Further, Board approval is specifically requested of the indemnification provisions in the conditional letter and UOA, wherein the Board agrees to indemnify, defend and hold harmless the State from liability, loss, injury, or damage to persons or property which the State may suffer as a result of claims, demands, costs or judgements arising against the State in connection with Department of Water’s use and occupancy within Kaumuali‘i Highway.

FUNDING: N/A.

BACKGROUND:
The ‘Ele‘ele water system currently obtains water from the Hanapēpē water system. Water from the Hanapēpē 212’ water system is pumped by a booster pump located in Hanapēpē Valley, up to the ‘Ele‘ele 340’ storage tanks through a transmission line that runs up the valley cliff from the booster pumps to the ‘Ele‘ele 340’ storage tanks. From these storage tanks, water flows down transmission lines to the ‘Ele‘ele 340’ service zone and then through a pressure reducing valve to the lower ‘Ele‘ele 190’ sub-zone.

The Department is proposing to reorganize the Hanapēpē and ‘Ele‘ele water systems by connecting the Hanapēpē 212’ system with the ‘Ele‘ele 190’ service zone with a new transmission water line along Kaumuali‘i Highway. The project will reduce the Department’s energy cost by eliminating the need to pump water from the 212’ service area and up to the ‘Ele‘ele 340’ level and then dropping water back down to the ‘Ele‘ele 190’ service area from the 340’ level. The project will also strengthen the ‘Ele‘ele system by providing a redundant way to transmit water from Hanapēpē to the ‘Ele‘ele system.
The State is requiring that the Department agree to the subject conditional letter and complete a UOA for the new water facilities being installed in the Kaumuali‘i Highway State Right of Way (ROW). The UOA document will not be sent to the Department until after the State of Hawai‘i’s July 12, 2017 conditional letter is signed by the Board and returned to the State.

The Board previously approved and entered into a UOA No. 237 for the Department’s “8-inch Main Replacement Along Halewili Road” (Halewili Road) project. More recently, the Board agreed to a conditional letter to complete UOA No. 362 with the State for WP 2020 No. PLH-35b, “Kapaia Cane Haul Road 18” Main” project.

**Potential future financial liabilities:**
Condition in UOA (“State remedies for failure to cure”) allows for the State, at the option of the State, to cure any defaults of the DOWK in the fulfillment of the DOWK’s obligations under the agreement. The State may charge the DOWK for any costs and expenses incurred in curing any defaults of the DOWK. The DOWK shall immediately pay said costs and expenses to the State upon receiving written notice from the State.

Due to not knowing when or the amount of any financial liabilities that may or may not occur in the future associated with the conditions of the UOA, specific funding to address potential financial liabilities is not being requested or budgeted at this time. If special funding is required in the future, the necessary funds will be requested from the Board at that time.

If the Board approves the conditional letter agreeing to complete a UOA, a Manager’s Update report will be done with the final draft UOA at a future Board meeting prior to the Board signing the UOA.

**OPTIONS:**

**Option 1:** Agree to and approve the State of Hawai‘i’s July 12, 2017 conditional letter (Exhibit 1) and enter into Use and Occupancy Agreement No. 368 (UOA) with the State.

**Pros:**
The approval of the conditional letter and completion of an UOA will meet the State requirement that a UOA is completed for new facilities installed in the State Highway ROW. This will allow the DOW to install the transmission facilities to connect the Hanapēpē 212’ system with the ‘Ele‘ele 190’ service zone.

**Cons:**
The UOA will obligate the DOW with unknown financial liabilities and risk; to some extent, at the discretion of the State.

**Option 2:** Do not agree to the State of Hawai‘i’s July 12, 2017 conditional letter (Exhibit 1) and do not enter into Use and Occupancy Agreement No. 368 (UOA).

**Pros:**
The Department will not be bound by an agreement that subjects the Department to unknown financial liabilities and risk.

**Cons:**
The Department will not be able to connect the Hanapēpē 212’ system with the ‘Ele‘ele 190’ service zone, as intended.
Respectively submitted,

Keith Aoki, P.E.
Engineering Division

CONCURRED:

Kirk Saiki, P.E.
Manager and Chief Engineer

Attachment: Correspondence from Mr. Wayne Y. Iwamasa, State of Hawai‘i, Highways Division regarding Kaumualii Highway, FAP No. 12-J Eleele and Hanapepe Section, Kaua‘i Hawai‘i, dated July 12, 2017

Mgrrp/August 2017/18-60/Discussion and Possible Action to approve the State of Hawai‘i’s June 12, 2017 conditional letter and to enter into Use and Occupancy Agreement No. 368 between the State of Hawai‘i and the Board of Water Supply, County of Kaua‘i and for Job No. 15-07, Water Plan 2020 No. HE-1, Reorganize Water System - Pipeline Connecting Hanapēpē and ‘Ele’ele, Kaua‘i, Hawai‘i (8-21-17): ein
July 12, 2017

Mr. Keith Aoki
Department of Water
County of Kauai
P.O. Box 1706
Lihue, Hawaii 96766

Dear Mr. Aoki:

Subject: Kaumualii Highway, FAP No. 12-J
Elelele and Hanapepe Section, Kauai, Hawaii
TMK: (4) 1-9-07: Rd
Use and Occupancy Agreement for Water Main Replacement

We have conceptually completed our review; however, final approval is subject to the following conditions:

1. Department of Water, Kauai (DOW) shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments.

2. DOW’s rights under this Agreement shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the State.

3. DOW shall indemnify, defend and hold harmless the State from liability, loss, injury, or damage to persons or property which the State may suffer as a result of claims, demands, costs or judgments arising against the State in connection with DOW’s use and occupancy within Kaumualii Highway.

4. DOW shall execute a Use and Occupancy Agreement (UOA) for the installation, occupancy and maintenance of its water main and appurtenances. **Use of the water main will not be allowed until the UOA has been finalized.**

5. DOW shall submit two copies of metes and bounds descriptions of the subject area along with a parcel map and mathematical closures, which will be used as exhibits to the UOA. When preparing the metes and bounds description, please indicate the agreement as **“Use and Occupancy Agreement No. 368”** in the legal description and parcel map.
6. DOW shall submit four sets of construction plans to Kauai District Office located at 1720 Haleukana Street, Lihue, Kauai for review and approval.

7. Upon approval of construction plans, DOW shall submit two sets of as-built plans to our Kauai District Engineer located at 1720 Haleukana Street, Lihue, Kauai.

8. DOW shall provide proof of H.R.S. Chapter 343-5 compliance (E.A. or E.I.S. documentation) when submitting the application for Permit to Perform Work Upon State Highways.

9. DOW shall coordinate the construction schedule of this project with our Highways Division to minimize possible conflicts with our scheduled construction and maintenance projects in the area.

10. DOW shall not abandon any existing water lines and appurtenances within the State’s right-of-way. Should DOW encounter during excavation any abandoned pipes/conduits within the State highway right-of-way, the Department of Transportation’s Departmental Pipeline Removal Policy should be complied with. The pipelines should not be abandoned in place and allowed to cause future problems, such as voids in the ground when lines rust/deteriorate and break.

11. DOW shall bear all costs of servicing and maintaining its facilities and shall not perform such work from the through traffic lanes during peak traffic and high volume hours, except in emergencies and then only under the condition that such work shall be performed most expeditiously and with the least possible interference with free flow of traffic and safe operation of highway facilities.

12. DOW, at its own expense, will be required to remove any of its underground facilities which it constructs, in the event the utility abandons the use of the facilities, unless the State consents in writing to allow abandonment in place. Notwithstanding any such consent by the State for abandonment in place, DOW agrees to be responsible for the removal costs and any costs of clean up and remediation for any pollution or contamination caused by the water main project, if such action becomes necessary in the future. DOW further agrees to indemnify and hold harmless the State from any and all liabilities which may arise from DOW’s acts and omissions relating to the water main project.

13. All new manholes, covers and other utility structures within the State’s right-of-way shall be designed for traffic loads in accordance with:

14. Should the State DOT Highways Division require the area for any future highway projects, DOW's facilities shall be relocated in accordance to H.R.S. Chapter 264-33.

15. The Highways Division reserves the right to add or impose additional conditions as necessary to mitigate adverse impacts to the State.

Please return the acceptance portion of this letter with an authorized signature to our office within 30 days from the date of this letter. If we do not receive the acceptance portion within the 30 day time frame, we will assume DOW is no longer interested in pursuing this matter.

Should you have any questions, please call Katja M. Jordan-King, Right-of-Way Agent, at (808) 692-7324 or you may e-mail her at Katja.M.Jordan-King@Hawaii.Gov.

Very truly yours,

WAYNE Y. IWAMASA
Section Head
Property Management

ACCEPTANCE

The undersigned hereby accepts the above conditions as determined by the State of Hawaii, Department of Transportation letter (ref. HWY-RM 3.93681) dated July 12, 2017.

Signature

Print Name

Title

Date
MANAGER’S REPORT No. 18-61

August 21, 2017

Re: Discussion and Possible Action for the Board to concur with a Right of Entry letter from the Department of Land and Natural Resources for the construction of the Clearwell Tank site as part of the Kalaheo Water Improvements Project, Package B – 0.1 MG Clearwell Reservoir, Kalaheo, Kaua‘i, Hawai‘i

RECOMMENDATION:
It is recommended that the Board concur with the requirements set forth in the Right of Entry letter from the Department of Land and Natural Resources (DLNR) to proceed with the ground work for constructing the access roadways, installation of pipeline infrastructure, and reservoir upgrades for the Clearwell Tank site as part of the Kalaheo Water Improvements Project, Package B – 0.1 MG Clearwell Reservoir, Kalaheo, Kaua‘i, Hawai‘i.

Further, Board approval is specifically requested of the indemnification provisions in the Right of Entry letter from the DLNR, wherein the Board, its consultants, contractors and/or persons acting for or on its behalf shall indemnify, defend, and hold the State of Hawaii, DLNR harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission of the Department of Water (DOW), its consultants, contactors and/or persons acting for or on its behalf relating to DOW, its consultants, contractors and/or persons acting for or on its behalf use, occupancy, maintenance, or enjoyment of the right-of-entry area or premises; (2) any failure on the part of DOW, its consultants, contractors and/or persons acting for or on its behalf to maintain the right-of-entry area or premises and areas adjacent thereto in DOW, its consultants, contractors and/or persons acting for or on its behalf use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of DOW, its consultants, contractors and/or persons acting for or on its behalf to maintain the area or premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of DOW, its consultants, contractors and/or persons acting for or on its behalf non-observance or non-performance of any of the terms, covenants, and conditions of this right-of-entry or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments; and (4) the release of hazardous materials on the right-of-entry area or premises occurring while DOW, its consultants, contractors and/or persons acting for or on its behalf is/are in possession, or elsewhere if caused by DOW, its consultants, contractors and/or persons acting for or on its behalf.

FUNDING: N/A.

BACKGROUND:
The DOW is proposing to construct a new 0.1 MG concrete storage tank on the existing Clearwell Tank site in Kalaheo to replace the existing 0.33 MG storage tank. The existing tank site and proposed 0.1 MG concrete tank are located on state land off of Pu‘uwai Road; however, there are no records showing that DOW has an easement or rights to the site. In order to construct the proposed 0.1 MG concrete storage tank, DOW will need to obtain rights from the state.
DOW and its consultant have contacted the state land agent with DLNR and began the process to obtain an executive order form the State for the tank site. DOW was given a conditional right of entry from DLNR to perform the necessary actions to construct the tank and until an executive order can be executed. The right of entry is subject to terms and conditions as stated in the attached right of entry letter from DLNR. DLNR is requesting DOW concur with the terms and conditions by signing, dating, and returning a copy of the right of entry letter.

**OPTIONS:**

**Option 1:** Concur with the terms and conditions and sign the right of entry letter.

**Pro:**
The right-of-entry will allow the DOW the right to enter onto the State land to construct, operate, and maintain the existing and proposed improvements at the Clearwell Tank site, before the executive order and subdivision process for the site are completed.

**Con:**
None.

**Option 2:** Do not concur with the terms and conditions and don’t sign the right of entry letter.

**Pro:**
None.

**Con:**
Not concurring with the terms and conditions of the right-of-entry letter would prevent the DOW from acquiring rights to enter onto the State land to construct, operate, and maintain the existing and proposed improvements at the Clearwell Tank site until after the executive order and subdivision process for the site are completed. This will significantly delay the project.

Respectfully submitted,

Keith Aoki, P.E.
Engineering Division

CONCURRED:

Kirk Saiki, P.E.
Manager and Chief Engineer

KA/ein

Attachment: Correspondence from Suzanne d. Case, Chairperson Department of Land and Natural Resources, dated June 9, 2017
June 9, 2017

Ref. No.: 17KD-036

Mr. Eric Fujikawa, Civil Engineer
County of Kauai
Department of Water, Engineering Division
4398 Pua Loke Street
Lihue, HI 96766

Dear Mr. Fujikawa:

Subject: Partial Withdrawal of 3.20 Acres From Governor’s Proclamation dated June 5, 1909; Reset Aside 3.20 Acres to the County of Kauai, Department of Water for Proposed Clearwell Reservoir, Access Road, Water Pipelines, and Related Purposes; Issuance of Management and Construction Right-of-Entry at Kalaeo, Wahiawa, Koloa, Kauai, Tax Map Key: (4) 2-4-009: portion of 003.

At its meeting of June 9, 2017, under agenda item D-1, the Board of Land and Natural Resources approved, as submitted, the partial withdrawal of 3.20 acres from Governor’s Proclamation dated June 5, 1909, for reset aside of the 3.20 acres to the County of Kauai, Department of Water (DOW), with issuance of management and construction right-of-entry for proposed Clearwell Reservoir, access roads, water pipelines, and related purposes. Purpose of this right-of-entry is to allow the County of Kauai to commence with ground works necessary in preparation for constructing the access roadways, installing pipeline infrastructure, and reservoir upgrades for the project.

Pursuant to the authority granted to me by the Board of Land and Natural Resources, at its meeting of June 9, 2017, Item D-1, the COK DOW, its consultants, contractors, and/or persons acting for or on its behalf are hereby approved a management and construction right-of-entry permit onto State-owned lands at Kalaeo, Wahiawa, Koloa, Kauai, Tax Map Key: (4) 2-4-009: portion of 003. Purpose of the right-of-entry is to allow the county to proceed with the ground work for constructing the access roadways, installation of pipeline infrastructure, and reservoir upgrades for the project. This right-of-entry is subject to the following terms and conditions:

1. This right-of-entry shall be effective upon our receipt of a copy of this right-of-entry duly executed by an authorized representative of the COK DOW accepting the conditions herein, and shall expire upon execution of the Governor’s Executive Order;
2. The COK DOW shall insure that its consultants, contractors and/or persons acting for or on its behalf procure at its own expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, a policy or policies of comprehensive public liability insurance or its equivalent, in an amount of at least $1,000,000 for each occurrence and $2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of COK DOW, its consultants, contractors and/or persons acting for or on its behalf. COK DOW, its consultants, contractors and/or persons acting for or on its behalf shall furnish the Department with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the entire period and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited to scope of coverage, or nonrenewed until written notice has been given to the Department. The Department shall retain the right at any time to review the coverage, form, and amount of the insurance required. If, in the opinion of the Department, the insurance provisions in this right-of-entry do not provide adequate protection for the Department, the Department may require COK DOW, its consultants, contractors and/or persons acting for or on its behalf to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Department's requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Department shall notify COK DOW, its consultants, contractors and/or persons acting for or on its behalf in writing of changes in the insurance requirements and COK DOW, its consultants, contractors and/or persons acting for or on its behalf shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Department incorporating the changes within receipt of the notice. The procuring of the required policy(s) of insurance shall not be construed to limit COK DOW, its consultants, contractors and/or persons acting for or on its behalf, liability under this right-of-entry nor to release or relieve COK DOW, its consultants, contractors and/or persons acting for or on its behalf of the indemnification provisions and requirements of this right-of-entry. Notwithstanding the policy(s) of insurance, COK DOW, its consultants, contractors and/or persons acting for or on its behalf shall be obligated for the full and total amount of any damage, injury, or loss caused by COK DOW, its consultants, contractors and/or persons acting for or on its behalf negligence or neglect connected with this right-of-entry.

3. At all times herein, COK DOW, its consultants, contractors and/or persons acting for or on its behalf shall keep the right-of-entry area or premises in a strictly clean, sanitary and orderly condition.

4. COK DOW, its consultants, contractors and/or persons acting for or on its behalf shall be responsible for cleaning and restoring the area to a condition satisfactory to the Department of Land and Natural Resources upon completion of the project. All trash shall be removed from the area or premises.
5. COK DOW, its consultants, contractors and/or persons acting for or on its behalf shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the right-of-entry area or premises, now in force or which may be in force.

6. COK DOW, its consultants, contractors and/or persons acting for or on its behalf shall indemnify, defend, and hold the State of Hawaii, Department of Land and Natural Resources harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of COK DOW, its consultants, contractors and/or persons acting for or on its behalf relating to COK DOW, its consultants, contractors and/or persons acting for or on its behalf use, occupancy, maintenance, or enjoyment of the right-of-entry area or premises; (2) any failure on the part of COK DOW, its consultants, contractors and/or persons acting for or on its behalf to maintain the right-of-entry area or premises and areas adjacent thereto in COK DOW, its consultants, contractors and/or persons acting for or on its behalf use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of COK DOW, its consultants, contractors and/or persons acting for or on its behalf to maintain the area or premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of COK DOW, its consultants, contractors and/or persons acting for or on its behalf non-observance or non-performance of any of the terms, covenants, and conditions of this right-of-entry or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

7. All equipment shall be placed within the right-of-entry area or premises described on the attached map.

8. No alcoholic beverages will be served or permitted in the right-of-entry area or premises.

9. COK DOW, its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. COK DOW, its consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area or premises any such materials except to use in the ordinary course of business of the COK DOW, its consultants, contractors and/or persons acting for or on its behalf, and then only after written notice is given to the State of Hawaii, Department of Land and Natural Resources of the identity of such materials and upon the Department's consent which consent may be withheld at the Department's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by COK DOW, its consultants, contractors and/or persons acting for or on its behalf, then the COK DOW, its consultants, contractors and/or persons acting for or on its behalf shall be responsible for the cost thereof. In addition, COK DOW, its consultants, contractors and/or persons acting for or on its behalf shall execute affidavits, representations and the like from time to time at the Department's request concerning COK DOW, its consultants, contractors and/or persons acting for or on its behalf best knowledge and belief regarding the presence of hazardous materials on the right-of-entry area or premises placed or released by COK DOW, its
consultants, contractors and/or persons acting for or on its behalf.

10. COK DOW, its consultants, contractors and/or persons acting for or on its behalf agree to indemnify, defend and hold the State of Hawaii, Department of Land and Natural Resources harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area or premises occurring while COK DOW, its consultants, contractors and/or persons acting for or on its behalf is/are in possession, or elsewhere if caused by COK DOW, its consultants, contractors and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of this right-of-entry.

For purposes of this right-of-entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

11. COK DOW, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.

12. All costs associated with the construction within the right-of-entry area or premises shall be the sole responsibility of the COK DOW, its consultants, contractors and/or persons acting for or on its behalf.

13. COK DOW, its consultants, contractors and/or persons acting for or on its behalf shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from COK DOW, its consultants, contractors and/or persons acting for or on its behalf use, maintenance, repair and operation of the right-of-entry area or premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the right-of-entry area or premises and its surrounding waters of such pollutant or contaminant and restore to the State of Hawaii, Department of Land and Natural Resources satisfaction the areas affected by such pollution or contamination, all at COK DOW, its consultants, contractors and/or persons acting for or on its behalf own cost and expense.

14. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered the COK DOW, its consultants, contractors and/or persons acting for or on its behalf shall stop work and contact the State Historic Preservations Division in Kapolei at (808) 692-8015 immediately.

15. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the COK DOW, its consultants, contractors, and/or persons acting for or on its behalf shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.
16. All disputes or questions arising under this right-of-entry shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson’s decision shall be final and binding on the parties herein.

17. This right-of-entry is revocable and terminable at any-time for any reason in the sole and absolute discretion of the Chairperson.

18. This right-of-entry or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.

19. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions as it deems necessary while this right-of-entry is in force.

Should you accept the above terms and conditions please sign in the space provided below and then fax a signed copy of this letter to the Hawaii District Land Office at (808) 241-3535.

If you have any questions, please contact Wesley Matsunaga at the Kauai District Land Office at (808) 274-3491. Thank you.

Respectfully Submitted,

[Signature]

Suzanne D. Case
Chairperson

WE CONCUR:

County of Kauai
Department of Water Supply

By _______________________
Its:

Date: __________

xc: Hawaii Land Board Member
Central File
District File
MANAGER’S REPORT No. 18-62

August 21, 2017

Re: Discussion and Possible Action to approve the Request for State Lands – Application Form to obtain a temporary a Right of Entry and a Grant of Easement for construction, operation, and maintenance of proposed drain line on TMK: (4) 4-6-11:125, Job No. 02-14 WP2020 #WK-08 Kapa‘a Homesteads 325’ Tanks – Two 0.5 Million Gallon Storage Tanks, Kapa‘a, Kaua‘i, Hawai‘i

RECOMMENDATION:
The Department of Water (DOW) is proposing to construct two new 0.5 MG concrete storage tanks on the same site as the existing Ornelas tank in the Kapa‘a Homesteads located near the intersection of Kawaihau Road and Ka‘apuni Road. The project’s design includes drainage improvements for site storm water and potential tank overflow or washout events. The Department also intends to construct a separate project, Drill and Test Kapa‘a Well No. 4; a new well which will be drilled and tested at the same site. The design for the Drill and Test Kapa‘a Well No. 4 project has been complete since 2011; however, the project did not go to construction because of construction proposals coming in much higher than budgeted. It is believed one of the major reasons for the high construction proposals was due to a suitable discharge location for the new well not been identified. The Kapa‘a Homesteads 325’ Tanks project has been substantially delayed because the project’s drainage also requires a suitable discharge location and discussions with two private owners have not been successful.

Because the tank project and well project share the same site, the design must accommodate three different types of flows: site storm water runoff, flows from the tank via a washout or an unintended tank overflow event, and flows pumped from the new well. The flows pumped from the new well would be discharged during the drilling and testing phase of the project and, if the well is successful, at the start of each pump cycle when the well is pumping into the DOW system (also known as “pump to waste”).

The eighth amendment to Contract No. 427 provided for the project’s drainage to be routed to a private property along Kapahi Road which was anticipated to be approved; however, discussions and negotiations with the private owner were not successful. Subsequently, the DOW has determined another suitable location for the project’s drainage to be discharged to a private property along Ka‘apuni Road. The owner of the private property has verbally agreed to accept the flows from the DOW project site. The Department is working on obtaining written confirmation from land owner agreeing to accept the flows from the DOW project site. The written confirmation is a condition for approval of the funding for the proposed ninth contract amendment to Contract No. 427, per Board approval of Manager’s Report No. 18-58 at the July 28, 2017 Board meeting.

4398 Pua Loke Street Lihu‘e, HI 96766 Phone: 808-245-5400 Fax: 808-245-5813 Operations Fax: 808-245-5402
Fronting the property owned by the person agreeing to accept the flows is an existing ditch easement in favor of the State Department of Land and Natural Resources (DLNR). The Department is working with DLNR to obtain the necessary temporary ROE and eventual grant of easement to construct, operate, and maintain the drain pipe entering crossing the DLNR ditch easement. Upon approval of the subject request, the DOW will proceed with applying for a ROE and GOE from the DLNR.

**FUNDING:** N/A.

**OPTIONS:**

**Option 1:** Approve the submittal of the Request for State Land – Application Form.

Pro: This will allow the DOW to begin the Grant of Easement process with DLNR to obtain rights to construct, operate, and maintain the improvements within the affected property.

Con: None.

**Option 2:** Do not approve the submittal of the Request for State Land – Application Form.

Pro: None.

Con: Not approving the submittal of the Request for State Land – Application Form would prevent DOW from acquiring rights to construct, operate, and maintain the drain pipe crossing the DLNR ditch easement.

Respectfully submitted,

Keith Aoki, P.E.
Engineering Division

**CONCURRED:**

Kirk Saiki, P.E.
Manager and Chief Engineer

KA/ein

Mgrp/August 2017/18-62/Discussion and Possible Action to approve the Request for State Lands – Application Form to obtain a temporary a Right of Entry and a Grant of Easement for construction, operation, and maintenance of proposed drain line on TMK: (4) 4-6-11:125, Job No. 02-14 WP2020 #WK-08 Kapa’a Homesteads 325’ Tanks – Two 0.5 Million Gallon Storage Tanks, Kapa’a, Kaua’i, Hawai’i (8-21-17):eim
MANAGER’S REPORT No. 18-63

August 21, 2017

Re: Discussion and Possible Action to Request Board Approval to enter into a Memorandum of Agreement (Drainage) and Right of Entry that will allow the Department of Water to construct drainage pipe lines, necessary appurtenances and ditches for WP2020 Project No. WK-08 affecting the following:

a. Godwin M. Esaki, Janet M. Esaki, the Godwin M. Esaki Revocable Living Trust, and the Janet M. Esaki Revocable Living Trust, TMK: (4) 4-6-11:125, Kapa'a, Kaua'i, Hawai'i

RECOMMENDATION:
It is recommended that the Board approve the Memorandum of Agreement (Drainage) and Right of Entry whereby, Godwin M. Esaki, Janet M. Esaki, the Godwin M. Esaki Revocable Living Trust, and the Janet M. Esaki Revocable Living Trust grants to the Board, its officers, employees, contractors, subcontractors, and agents, a right of entry, over, under, and across TMK: (4) 4-6-11:125 for the purposes of the construction, installation, reinstallation, maintenance, repair, and removal of drain pipelines, drainage ditch, and related valves and other associated waterworks facilities, and appurtenances for Package A, Job No. 02-14, Water Plan 2020 Project No. WK-08 – Kapa’a Homesteads 325’ Tanks, Two 0.5 MG Tanks.

Further, Board approval is specifically requested of the indemnification provision in the Right of Entry agreement; wherein, the Board agrees to “…indemnify and hold harmless the Grantor from and against any claims for injuries or damages of any kind occasioned, in whole or in part, by Grantee’s negligent actions or omissions arising out of its exercise of this right-of-entry.”

BACKGROUND:
The Department of Water (DOW) is proposing to construct two new 0.5 MG concrete storage tanks on the same site as the existing Ornellas tank in the Kapa’a Homesteads located near the intersection of Kawaihau Road and Ka’apuni Road. The project’s design includes drainage improvements for site storm water and potential tank overflow or washout events. The Department also intends to construct a separate project, Drill and Test Kapa’a Well No. 4; a new well which will be drilled and tested at the same site. The design for the Drill and Test Kapa’a Well No. 4 project has been complete since 2011; however, the project did not go to construction because of construction proposals coming in much higher than budgeted. It is believed one of the major reasons for the high construction proposals was due to the fact that a suitable drainage discharge location for the new well had not been identified. The Kapa’a Homesteads 325’ Tanks project has been substantially delayed because the project’s drainage also requires a suitable drainage discharge location and discussions with private owners have not been successful.

Because the tank project and well project share the same site, the design must accommodate three different types of flows: site storm water runoff, flows from the tank via a washout or an unintended tank overflow event, and flows pumped from the new well. The flows pumped from
the new well would be discharged during the drilling and testing phase of the project and, if the well is successful, at the start of each pump cycle when the well is pumping into the DOW system (also known as “pump to waste”).

Most recently, the eighth amendment to Contract No. 427 provided for the project’s drainage to be routed to a private property along Kapahi Road which was anticipated to be approved; however, discussions and negotiations with that private owner were not successful. Subsequently, the DOW has determined another suitable location for the project’s drainage to be discharged to a private property along Ka‘apuni Road at TMK: (4) 4-6-11:125 and will execute a ninth amendment to Contract No. 427 for this change.

The owners of the private property along Ka‘apuni Road at TMK: (4) 4-6-11:125 have agreed in writing to accept the flows from the DOW’s projects by signing the Memorandum of Agreement (Discharge). The owners have also signed the Right of Entry agreement, indicating that they are willing to grant the Board a temporary ROE, and a subsequent GOE after or near the end of construction. The ROE and Memorandum of Agreement (Discharge) include recitals that convey the DOW’s intention to discharge the drainage waters to the private property. The Department will submit a Manager’s Report for the subsequent GOE at a future Board meeting.

**FUNDING:** N/A.

**OPTIONS:**

**Option 1:** Approval of the Right of Entry and Memorandum of Agreement (Discharge).

Pros: This will allow the DOW to access the property for construction purposes for the project and install the pipeline and ditch.

Cons: None.

**Option 2:** Do not approve the Right of Entry and Memorandum of Agreement (Discharge).

Pros: None.

Cons: The Department will not be able to access the privately owned parcel to construct the pipeline and ditch. This will cause delay to the project due to the challenges involved in finding an alternative for the site drainage water.

Respectfully submitted,

Keith Aoki, P.E.
Engineering Division

**CONCURRED:**

Kirk Saiki, P.E.
Manager and Chief Engineer
Attachments: Memorandum of Agreement (Drainage) between Godwin M. Esaki, Janet M. Esaki, the Godwin M. Esaki Revocable Living Trust, and the Janet M. Esaki Revocable Living Trust, TMK: (4) 4-6-11:125, Kapa'a, Kaua'i, Hawai'i

Right of Entry Agreement between Godwin M. Esaki, Janet M. Esaki, the Godwin M. Esaki Revocable Living Trust, and the Janet M. Esaki Revocable Living Trust, TMK: (4) 4-6-11:125, Kapa'a, Kaua'i, Hawai'i

Mgrrp/August 2017/18-63/ Discussion and Possible Action Request Board Approval to enter into a Memorandum of Agreement (Drainage) and Right of Entry that will allow the Department of Water to construct drainage pipe lines, necessary appurtenances and ditches for WP2020 Project No. WK-08 affecting the following: a. Godwin M. Esaki, Janet M. Esaki, the Godwin M. Esaki Revocable Living Trust, and the Janet M. Esaki Revocable Living Trust, TMK: (4) 4-6-11:125, Kapa'a, Kaua'i, Hawai'i (8-21-17)
MEMORANDUM OF AGREEMENT (DRAINAGE)

THIS MEMORANDUM OF AGREEMENT (DRAINAGE) (hereinafter “Drainage Agreement”) made this _____ day of _______________, 201_ by and between GODWIN M. ESAKI, JANET M. ESAKI, GODWIN M. ESAKI AND JANET M. ESAKI, TRUSTEES OF THE GODWIN M. ESAKI REVOCABLE LIVING TRUST governed by that certain unrecorded instrument dated November 20, 2015, and JANET M. ESAKI AND GODWIN M. ESAKI, TRUSTEES OF THE JANET M. ESAKI REVOCABLE LIVING TRUST governed by that certain unrecorded instrument dated November 20, 2015, whose mailing address is 5571-C Ka‘apuni Road, Kāpa‘a, HI 96746, (hereinafter, the “Grantors”), and the BOARD OF WATER SUPPLY of the County of Kaua‘i, whose mailing address is 4398 Pua Loke Street, Līhu‘e, Kaua‘i, Hawai‘i 96766 (hereinafter, the “Board” or “Grantee”).

RECITALS

WHEREAS, the Board is the legal owner of Kaua‘i Tax Map Key No. (4) 4-06-011:003 (hereinafter “Project Site”), which is located at the intersection of Kawaihau Road and Ka‘apuni Road in Kāpa‘a, Hawai‘i, 96746; and

WHEREAS, the Board plans to construct two new 500,000 gallon water storage tanks and drill and test a new water well on the Project Site, otherwise referred to as the Kapa‘a Homesteads 325’ Tanks – Two 0.5 Million Gallon Tanks Project and the Drill and Test Kapa‘a Homesteads Well #4 Project (hereinafter, collectively, “Projects”) to upgrade the Board’s existing water source and storage capacity, and improve water service for the Wailua-Kapa‘a community; and

WHEREAS, the Project Site drainage improvements, which consist primarily of drain inlets for stormwater runoff, tank overflow and washout lines, a vegetated drainage swale, and deepwell pump discharge piping, are designed to convey water from the Project Site via a new 18-inch diameter drainage pipe along Ka‘apuni Road and discharge in, on, and through TMK (4) 4-06-011:125; and

WHEREAS, the Project Site drainage improvements shall be designed in accordance with the County of Kaua‘i Storm Water Runoff System Manual; and

WHEREAS, the Board proposes to connect the overflow and washout piping from the Kapa‘a Homesteads 325’ Tanks Project and to convey groundwater from the new well to the new 18-inch drainage pipe; and

WHEREAS, groundwater will be conveyed during the drilling and testing phase of the new well construction, and, should the new well prove to be successful, the groundwater pumped during each initial pump cycle, with an anticipated pump cycle frequency of twice per day at a duration of approximately ten minutes with an estimated flow rate of three hundred and fifty (350) to five hundred and fifty (550) gallons per minute, will also be conveyed via the new 18-inch diameter drainage pipe; and
WHEREAS, during the drilling and testing phase of the new well construction, a pump test is required which will pump groundwater continuously for 96-hours; and

WHEREAS, should the new well prove to be successful it will be incorporated into the Board’s Wailua-Kāpaa water system; and

WHEREAS, the new 18-inch drainage pipe has a maximum discharge capacity of 12 cubic feet per second of water; one cubic foot per second is equivalent to 448.8 gallons per minute; and

WHEREAS, the Grantors are the legal owners of Kaua‘i Tax Map Key No. (4) 4-6-011:125 (hereinafter “Subject Property”); and

WHEREAS, the Grantors are willing and agree to accept the Board’s Project Site discharges via the new 18-inch drainage pipe to be collected in, on, over, under, and through the Improvements Area which is located on the Subject Property.

NOW, THEREFORE, in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration to it paid by the Grantee, receipt of which is hereby acknowledged, and subject to all of the terms, conditions, and limitations contained herein, the Grantors hereby declare, grant, and convey unto Grantee a perpetual, non-exclusive drainage easement in gross in, on, over, under, and through the Subject Property. The easement shall run with the Subject Property and be binding upon all persons or entities having or acquiring any right, title, or interest in and to the Grantors’ property, or any portion thereof, or the Improvements Area.

TO HAVE AND TO HOLD the same unto the Grantee for the purposes stated herein, subject to all of the terms, conditions, and limitations stated herein, forever.

EXCEPTING AND RESERVING, HOWEVER, from this grant the right of the Grantors to make use of the Subject Property in any manner which is not inconsistent with the rights of the Grantee hereunder and the right to grant other easements within the Subject Property 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:

**Subject Property.** The Grantors are the legal owners of Kaua‘i Tax Map Key No. (4) 4-6-011:125 (“Subject Property”) in, on, and through which the Grantee will discharge drainage from the Grantee’s Project Site.

**Project Site.** The Grantee is the legal owner of Kaua‘i Tax Map Key No. (4) 4-6-011:003 (“Project Site”), which is located adjacent to the intersection of Kawaihau Road and Ka‘apuni Road.

MOA-Job No. 02-14
Water Plan 2020 Project No. WK-08 – Kāpaa Homesteads 325’ Tanks, Two 0.5 MG Tanks and Water Plan 2020 Project No. WK-39 – Drill and Test Kapaa’ Well No. 4
Acknowledgement. The Grantors, in full recognition and appreciation of the effects inherent to the conveyance, transmission, drainage, and discharge of water in, on, and through their property, freely agree to allow the Grantee to discharge water, as explained in the recitals above, via the new 18-inch drainage pipe, ending in, on, and through the Grantors’ property, the Subject Property.

Drainage Easement. Grantors grant and transfer to Grantee all rights-of-way and easements necessary at any time to convey, transmit, drain, and discharge all waters from Grantee’s Project Site into the drainage Improvements at the point of discharge in such Improvements and over, through, and across the Subject Property by design of said Improvements and by flow of natural gravity in said Improvements and over, through, and across such other portions of the Subject Property as may be inundated and overflowed at high stages of flow. Such rights-of-way and easements shall include the right to convey, transmit, drain, and discharge such waters even though, when combined with the natural waters flowing in said Improvements, it exceeds the safe carrying capacity of said Improvements as it now or later may exist on the Subject Property, or damage or injure the Subject Property by inundation, flooding, overflowing the existing ditch or ditches, channel or channels, cutting a new ditch or ditches, channel or channels, silting, cutting, washing, raising the underground water level, or in any other manner whatsoever. Grantee shall be required to comply with all applicable governmental laws and standards, shall be required to obtain any and all necessary governmental permits, and shall be required to comply with the applicable Best Management Practices during construction.

Improvements.

Notice. Prior to any entry by the Grantee or the Grantee's agents or contractors, the Grantee shall advise the Grantors in writing of the name of the company or person hired to perform the construction, installation, and any work as may be necessary or required to implement the intention of this Drainage Agreement, and provide reasonable notice as to the date or dates of entry.

Construction. The Grantee shall have the right to construct drain pipelines, drainage ditch, and related valves and other associated waterworks facilities and all necessary appurtenances (“Improvements”) within the Subject Property as may be necessary or required to implement the intention of this Drainage Agreement, as provided in Job No. 02-14 and Project No. WK-39 Right-of-Entry. The parties will determine, by mutual consent, the location of such Improvements (“Improvements Area”).
Grantee’s Liability for Damages. The Grantee shall be liable to the Grantors for any injuries to persons or any damages to the Improvements Area which arise from, are caused by, or result from any acts or omissions of the Grantee or the Grantee’s contractors, agents, servants, guests, invitees, or any other person, in furtherance of the exercise by the Grantee or such other persons of the construction of the Improvements, as provided in Job No. 02-14 and Project No. WK-39 Right-of-Entry.

Clean-Up. Upon completion of the construction of the Improvements, Grantee shall remove from the Improvements Area all debris created by or resulting from such construction as caused by Grantee.

Maintenance. Grantors further covenant to maintain the Improvements to permit the free flow of all waters from Grantee’s Project Site and shall not permit the obstruction of the Improvements which would interfere with or impede the rights of the Grantee hereunder. All responsibility and costs necessary for the reconstruction, repair, replacement, and maintenance of the Improvements within the Subject Property shall be the sole and absolute responsibility and liability of the Grantors. The Grantee shall have no responsibility or liability for any such cost or claim beyond, or not resulting from, the initial construction of the Improvements, and the Improvements Area as described in the “Grantee’s Liability for Damages” paragraph.

Perpetual. The provisions of this Drainage Agreement shall be perpetual and shall run with the land of the Subject Property. This Drainage Agreement shall commence upon execution and the rights-of-entry and easements granted herein shall automatically expire, without the submission or presentation of any documents to that effect, at such time that the Grant of Easement, as provided in Job No. 02-14 and Project No. WK-39 Right-of-Entry, is recorded which shall incorporate the Drainage Easement herein and any other terms Grantee deems necessary for the proper operation of its water system, and shall continue unless amended, released, extinguished, or otherwise modified through the manner provided in the “Modification” paragraph.

Binding Effect. All provisions contained in this Drainage Agreement shall be binding upon and inure to the benefit of the respective parties, their heirs, successors, successors-in-interest, and permitted assigns, and officers, agents, and employees or any person acting for and on their behalf.
Disclosure; Recordation.

Disclosure. In the event Grantors sell, lease, convey, or transfer the Subject Property, or any portion thereof, prior to the recordation of the Grant of Easement, as provided in Job No. 02-14 and Project No. WK-39 Right-of-Entry, Grantors covenant with the Grantee that all sales, leases, conveyances, or transfers of the Subject Property, or any portion thereof, are made subject to this Drainage Agreement. Grantors further covenant that Grantors shall disclose on the face of any sale, lease, conveyance, or transfer of the Subject Property, or any portion thereof, the existence of this Drainage Agreement and a description of the general nature of all the promises, covenants, rights, and obligations contained herein.

Cost of Recordation. The parties agree that the Grant of Easement, as provided in Job No. 02-14 and Project No. WK-39 Right-of-Entry, shall be recorded and, for purposes of identification, this instrument shall be included as the “Memorandum of Agreement (Drainage)” and the Grantee will bear the burden of any costs associated with the recordation of the Grant of Easement, this Drainage Agreement, or any future modifications thereof.

Severability. Each provision of this Drainage Agreement and the application thereof to the Subject Property are hereby declared to be independent of and severable from the remainder of this Drainage Agreement. If any provision contained herein is held to be invalid, or to be unenforceable, or not to run with the land, such holding will not affect the validity or enforceability of the remainder of this Drainage Agreement.

Modification. This Drainage Agreement shall not be amended, released, extinguished, or otherwise modified, in whole or in part, except by another agreement in writing, duly executed by the Grantors and the Grantee.

No Party Deemed Drafter. The parties hereto hereby agree that no party hereto shall be deemed to be the drafter of this Drainage Agreement, and each party further agrees that, in the event this Drainage Agreement is ever construed by a court of law, such court shall not construe this Drainage Agreement or any provision of it against any party hereto as the drafter.

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IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement (Drainage) as of the date first listed above.

**GRANTOR(S):**

________________________
GODWIN M. ESAKI

________________________
JANET M. ESAKI

________________________
JANET M. ESAKI
TRUSTEE OF THE GODWIN M. ESAKI
REVOCABLE LIVING TRUST

________________________
GODWIN M. ESAKI
TRUSTEE OF THE GODWIN M. ESAKI
REVOCABLE LIVING TRUST

________________________
JANET M. ESAKI
TRUSTEE OF THE JANET M.
REVOCABLE LIVING TRUST

________________________
GODWIN M. ESAKI
TRUSTEE OF THE JANET M.
REVOCABLE LIVING TRUST
GRANTEE:

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

_____________________________ __________________________________
Manager and Chief Engineer Chairperson

APPROVED AS TO FORM
AND LEGALITY:

_____________________________
Deputy County Attorney

STATE OF HAWAI‘I )
COUNTY OF KAUA‘I ) ss.

On this ____ day of ________________________, 20____ in the Fifth Circuit, State of Hawai‘i, before me personally appeared Sherman Shiraishi, who is personally known to me or whose identity I proved on the basis of satisfactory evidence, who being by me duly sworn or affirmed, did say that such person is the Chairperson for the Board of Water Supply, County of Kaua‘i executed Memorandum of Agreement (Drainage), dated ________________ and consisting of ____ pages at the time of notarization, as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____________________________
Notary Public, State of Hawaii‘i
Name of Notary: _____________________ (Affix Seal)
My Commission expires: ______________
On this ____ day of ________________________, 20____ in the Fifth Circuit, State of Hawai‘i, before me personally appeared GODWIN M. ESAKI in his individual capacity, and as TRUSTEE OF THE GODWIN M. ESAKI REVOCABLE LIVING TRUST, and as TRUSTEE OF THE JANET M. ESAKI REVOCABLE LIVING TRUST who is personally known to me or whose identity I proved on the basis of satisfactory evidence, who being by me duly sworn or affirmed, did say that such person executed the Memorandum of Agreement (Drainage), dated ________________ and consisting of ____ pages at the time of notarization, as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

___________________________________
Name of Notary: _____________________
My Commission expires: ______________

On this ____ day of ________________________, 20____ in the Fifth Circuit, State of Hawai‘i, before me personally appeared JANET M. ESAKI in her individual capacity, and as TRUSTEE OF THE GODWIN M. ESAKI REVOCABLE LIVING TRUST, and as TRUSTEE OF THE JANET M. ESAKI REVOCABLE LIVING TRUST who is personally known to me or whose identity I proved on the basis of satisfactory evidence, who being by me duly sworn or affirmed, did say that such person executed the Memorandum of Agreement (Drainage), dated ________________ and consisting of ____ pages at the time of notarization, as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

___________________________________
Name of Notary: _____________________
My Commission expires: ______________
RIGHT-OF-ENTRY

THIS INDENTURE made this _____ day of _______________, 201_ by and between GODWIN M. ESAKI, JANET M. ESAKI, GODWIN M. ESAKI AND JANET M. ESAKI, TRUSTEES OF THE GODWIN M. ESAKI REVOCABLE LIVING TRUST governed by that certain unrecorded instrument dated November 20, 2015, and JANET M. ESAKI AND GODWIN M. ESAKI, TRUSTEES OF THE JANET M. ESAKI REVOCABLE LIVING TRUST governed by that certain unrecorded instrument dated November 20, 2015, whose mailing address is 5571-C Kaʻapuni Road, Kāpaʻa, HI  96746, (hereinafter, the “Grantor”), and the BOARD OF WATER SUPPLY of the County of Kauaʻi, whose mailing address is 4398 Pua Loke Street, Līhuʻe, Kauaʻi, Hawaiʻi  96766 (hereinafter, the “Board”).

W I T N E S S E T H:

For and in consideration of the sum of One Dollar ($1.00) to the Grantor paid, the receipt whereof is hereby acknowledged, the Grantor does hereby grant to the Board, its officers, employees, contractors, subcontractors, and agents (hereinafter collectively the “Grantee”), a temporary construction right-of-entry subject to the following terms and conditions:

I.  RIGHT OF ENTRY

A.  The right-of-entry shall be an area over, under, and across that certain property situated, lying, and being at Kāpaʻa, Kauaʻi, Hawaiʻi at Tax Map Key No. 4-6-11:125.

B.  The right-of-entry shall be used by the Grantee for purposes of the construction, and installation, reinstallation, maintenance, repair, and removal of drain pipelines, drainage ditch, and related valves and other associated waterworks facilities and all necessary appurtenances for the following projects: “Package A” consisting of the Kāpaʻa Drainage Improvements Project and the Drill & Test Kāpaʻa Well #4 Project, Water Plan 2020 Project No. WK-39, and “Package B” consisting of the Kāpaʻa Homesteads 325’ Tanks – Two 0.5 MG Storage Tanks Project, Job No. 02-14, Water Plan 2020 Project No. WK-08.

C.  The Grantee shall indemnify and hold harmless the Grantor from and against any claims for injuries or damages of any kind occasioned, in whole or in part, by Grantee’s negligent actions or omissions arising out of its exercise of this right-of-entry.

D.  This right-of-entry shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
E. The Grantor warrants and covenants with the Board that Grantor is the fee simple owner of the property upon which the right-of-entry is located, has full right to convey said right-of-entry and will warrant and defend the right-of-entry granted herein against all adverse claims.

F. This right-of-entry 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.

G. The term of this right-of-entry shall commence upon the execution of the same by Grantor and shall automatically expire, without the submission or presentation of any documents to that effect, at such time that the Grantor records a Grant of Easement with respect to that portion of Tax Map Key No. 4-6-11:125 which the Board deems necessary for the construction, installation, reinstallation, maintenance, repair, and removal of drainage pipelines, valves, drainage ditches, and other associated waterworks facilities improvements and appurtenances, and further for 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 and which shall incorporate the terms of the Memorandum of Agreement (Drainage).

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IN WITNESS WHEREOF, the parties hereto have executed this right-of-entry as of the date first listed above.

GRANTOR(S):

GODWIN M. ESAKI

JANET M. ESAKI

JANET M. ESAKI
TRUSTEE OF THE GODWIN M. ESAKI
REVOCABLE LIVING TRUST

GODWIN M. ESAKI
TRUSTEE OF THE GODWIN M. ESAKI
REVOCABLE LIVING TRUST

JANET M. ESAKI
TRUSTEE OF THE JANET M.
REVOCABLE LIVING TRUST

GODWIN M. ESAKI
TRUSTEE OF THE JANET M.
REVOCABLE LIVING TRUST
GRANTEE:

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

Manager and Chief Engineer Chairperson

APPROVED AS TO FORM AND LEGALITY:

Deputy County Attorney

STATE OF HAWAI‘I ) ) ss.
COUNTY OF KAUA‘I )

On this ___ day of ________________, 20___ in the Fifth Circuit, State of Hawai‘i, before me personally appeared Sherman Shiraishi, who is personally known to me or whose identity I proved on the basis of satisfactory evidence, who being by me duly sworn or affirmed, did say that such person is the Chairperson for the Board of Water Supply, County of Kaua‘i executed Job No. 02-14 and Project No. WK-39 Right-of-Entry, dated _______________ and consisting of ____ pages at the time of notarization, as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawai‘i
Name of Notary: __________________ (Affix Seal)
My Commission expires: ______________
On this ___ day of ____________, 20___ in the Fifth Circuit, State of Hawai‘i, before me personally appeared GODWIN M. ESAKI in his individual capacity, and as TRUSTEE OF THE GODWIN M. ESAKI REVOCABLE LIVING TRUST, and as TRUSTEE OF THE JANET M. ESAKI REVOCABLE LIVING TRUST who is personally known to me or whose identity I proved on the basis of satisfactory evidence, who being by me duly sworn or affirmed, did say that such person executed the Job No. 02-14 and Project No. WK-39 Right-of-Entry, dated ________________ and consisting of ____ pages at the time of notarization, as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

___________________________________
Notary Public, State of Hawai‘i
Name of Notary: _____________________ (Affix Seal)
My Commission expires: _____________

On this ___ day of ____________, 20___ in the Fifth Circuit, State of Hawai‘i, before me personally appeared JANET M. ESAKI in her individual capacity, and as TRUSTEE OF THE GODWIN M. ESAKI REVOCABLE LIVING TRUST, and as TRUSTEE OF THE JANET M. ESAKI REVOCABLE LIVING TRUST who is personally known to me or whose identity I proved on the basis of satisfactory evidence, who being by me duly sworn or affirmed, did say that such person executed the Job No. 02-14 and Project No. WK-39 Right-of-Entry, dated ________________ and consisting of ____ pages at the time of notarization, as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

___________________________________
Notary Public, State of Hawai‘i
Name of Notary: _____________________ (Affix Seal)
My Commission expires: _____________
Old Business
MANAGER’S REPORT No. 18-57 (Update)

August 21, 2017

Re: Discussion and Possible Action for the Board of Water Supply (Board) to join in the Petition for Subdivision, Designation of Restriction of Access Rights, and Cancellation of Portions of Easement and Easements; Joinders, Land Court of the State of Hawaii Application No. 1087, Puhi, Kaua‘i, Hawai‘i

RECOMMENDATION:
It is recommended that the Board join in and sign the Petition for Subdivision, Designation of Restriction of Access Rights, and Cancellation of Portions of Easement and Easements; Joinders, Land Court of the State of Hawaii Application No. 1087.

FUNDING: N/A.

BACKGROUND:
The State Department of Transportation Highways Division (DOT) “Kaumuali‘i Highway Widening, Vicinity of Anonui Street to the Vicinity of the Līhu‘e Mill Bridge” project required the State to obtain land from the University of Hawaii’s Kauai Community College property (UH) to accommodate the widening of the highway in the area. To obtain the land from UH, the property was subdivided through County subdivision S-2007-01. The State is trying to acquire two of the lots created from the subdivision, Lots 445-A-1-B and 445-A-3-B for the highway widening.

The DOT conveyed in an undated letter to and received by the Department of Water (DOW) on October 30, 2015, that it is the State’s Policy to acquire the property (lots from UH) for highway purposes free and clear of any and all liens and/or encumbrances. The DOW has water facilities located within easement 115 that is an encumbrance on the lots that the State is trying to acquire from UH. The State has requested that the DOW join/agree to the subject Petition to remove the easement encumbrance on Lots 445-A-1-B and 445-A-3-B.

Applicable to the Board:
In the Petition, the Board is specifically agreeing to the cancellation of the portion of Easement 115 (DOW) water facilities located in easement 115 affecting Lot 445-A-1-B.

If the Board joins the Petition:
The State will send a Partial Release of Easement document to the Department for Board execution once the Petition has been filed and recorded with the Bureau of Conveyances. The State is proposing to replace the released portion of the easement with a Use and Occupancy Agreement (UOA).

The Department will submit an updated Manager’s Report to the Board at future Board meetings for Board consideration of approving the Partial Release of Easement and subsequent UOA that the State will send to the Department.
OPTIONS:

Option 1: Join in the subject Petition.

Pros: This will allow the State to obtain the highway widening lots from UH in accordance with their State Policy referenced in this report.

Cons: 1. The DOW may be without legal rights to have water facilities located in Lots 445-A-1-B and 445-A-3-B between the time period after the easement is cancelled and the completion of the UOA.
       2. The Board will be subject to the conditions of the UOA when the UOA is completed.

Option 2: Do not join the subject Petition.

Pros: The DOW will not need to enter into a UOA for the water facilities located in the easement if the easement is not cancelled.

Cons: 1. It is not known how this option would affect the State’s highway widening project.
       2. It is not known how this option may affect DOW facilities located in the State ROW.

Respectively submitted,

Keith Aoki, P.E.
Engineering Division

CONCURRED:

Kirk Saiki, P.E.
Manager and Chief Engineer

KA/ein

Attachments: Petition for Subdivision, Designation of Restriction of Access Rights, and Cancellation of Portions of Easement and easements; Joinders

Correspondence from Jaime K. Yamashiro, DLNR regarding Kaumuali’i Highway Widening, dated October 27, 2015 Land Court Application 1087

Mgrp/August 2017/18-57 (Update)/Discussion and Possible Action for the Board of Water Supply (Board) to join in the Petition for Subdivision, Designation of Restriction of Access Rights, and Cancellation of Portions of Easement and Easements; Joinders, Land Court of the State of Hawaii Application No. 1087, Puh, Kaua‘i, Hawai‘i (Update) (7-28-17, 8-21-17); ein
IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application of

GROVE FARM COMPANY, LIMITED

Application No. 1087

L.D. Case No. ______

to register title to land situate at
Haiku, District of Lihue,
Island and County of Kauai,
State of Hawaii.

PETITION FOR SUBDIVISION, DESIGNATION OF EASEMENTS, DESIGNATION OF
RESTRICTION OF ACCESS RIGHTS, AND CANCELLATION OF PORTIONS OF
EASEMENTS AND EASEMENTS; JOINDERS

DOUGLAS S. CHIN 6465
Attorney General
State of Hawaii

FAWN Y.J. YAMADA 6161
Deputy Attorney General
Room 300, Kekuanao'a Bldg.
465 South King Street
Honolulu, Hawaii 96813
Tel. No. 587-2994

Attorneys for Petitioner
STATE OF HAWAII

Referred to the Surveyor of the State for check and report. Map filed herewith. Transfer Certificate of Title Nos. 168,802 and 428,387 are at the Bureau.

______ white prints requested.

BY ORDER OF THE COURT

Registrar
IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application of

GROVE FARM COMPANY, LIMITED

Application No. 1087
L.D. Case No. ______

to register title to land situate at
Haiku, District of Lihue,
Island and County of Kauai
State of Hawaii

PETITION FOR SUBDIVISION, DESIGNATION OF EASEMENTS, DESIGNATION OF
RESTRICTION OF ACCESS RIGHTS, AND CANCELLATION OF PORTIONS OF
EASEMENTS AND EASEMENTS; JOINERS

TO THE HONORABLE PRESIDING JUDGE OF THE LAND COURT OF THE STATE OF
HAWAII:

Comes now Petitioner, the STATE OF HAWAII, by its Director of Transportation,
whose address is 869 Punchbowl Street, Honolulu, Hawaii 96813, as party in interest in lands
designated as Lots 445-A-1 and 445-A-3, as shown on Map 51 of Land Court Application 1087,
being the land described in and covered respectively by Transfer Certificate of Title Nos. 168,802
and 428,387 issued to the UNIVERSITY OF HAWAII, a body corporate, whose address is 2244
Dole Street, Honolulu, Hawaii 96822, ("Owner") of said land, and petitions the court as follows:

A. Land Court Map

Petitioner files this Petition with a tracing ("Map") that shows the following:

   of 2.761 acres, 445-A-3-A, containing an area of 36.719 acres, and 445-A-3-
   B, containing an area of 3.220 acres.
B. **Designation of Easements**

1. Basements "__" and "__" for drainage purposes affecting Lot 445-A-1-A as shown on Map ____.

2. Basement "__" for drainage purposes affecting Lot 445-A-3-A as shown on Map ____.

C. **Designation of Restriction of Access Rights**

1. Lots 445-A-1-A and 445-A-3-A will have direct access to the Kaumualii Highway (STP-050-1(26)), a public road, and designation of restriction of access rights as shown on Map ____.

D. **Cancellation of Portions of Easements and Easements**

1. That certain portion of Easement 81 for ditch and reservoir purposes and Easement 82 for ditch purposes as shown on Map 51, Land Court Order No. 37170, affecting Lot 445-A-3-B as shown on Map ____ be cancelled and no other than the Owner has any right, title or interest therein. The Owner hereby agrees to the cancellation of portion of said Easements 81 and 82.

2. That a certain portion of Easement 449 as shown on Map 129, Land Court Order No. 121856, affecting Lot 445-A-1-B as shown on Map ____ be cancelled, and no one other than the Owner has any right, title or interest therein. The Owner hereby agrees to the cancellation of portion of said Easement 449.

3. That a certain portion of Easement 115 as shown on Map 72, Land Court Order No. 60107, affecting Lot 445-A-1-B as shown on Map ____ be cancelled and no one other than the Owner, Kauai Island Utility Cooperative, a consumer cooperative association formed pursuant to the provisions of Chapter 421C, Hawaii Revised Statutes, successor in interest, Hawaiian Telcom, Inc., a Hawaii corporation, successor in interest, and the Board of Water Supply, County of Kauai has any right, title or interest therein. The Owner and the Kauai Island Utility Cooperative, a consumer cooperative association formed pursuant to the provisions of Chapter 421C, Hawaii Revised Statutes, successor in interest, and the Board of Water Supply, County of Kauai has any right, title or interest therein. The Owner hereby agrees to the cancellation of portion of said Easement 115.
Statutes, successor in interest, Hawaiian Telcom, Inc., a Hawaii corporation, and the Board of Water Supply, County of Kauai agree to the cancellation of portion of said Easements 115.

4. That Easements 110, 111, 112 and 114 as shown on Map 72, Land Court Order No. 60107, affecting Lot 445-A-1-B as shown on Map _____ be cancelled, and no one other than the Owner has any right, title or interest therein. The Owner hereby agrees to the cancellation of portion of said Easements 110, 111, 112 and 114.

E. Encumbrances

See Exhibit "A" for Statement of Encumbrances.

F. Approval

Said Map filed herewith was approved by the Department of Planning, County of Kauai as evidenced by the endorsement of said Office on the Map, recertified on May 12, 2015.

Lots 445-A-1-B and 445-A-3-B are required by the State of Hawaii for a public purpose, to wit: the construction, preservation and protection of Kaumualii Highway Widening, Lihue to West of Maluhia Road, Phase 1 Lihue to West of Kipu Road, FAP No. STP-050-1(26), District of Lihue, Island and County of Kauai, State of Hawaii.

This Petition for Subdivision, Designation of Easements, Designation of Restriction of Access Rights, and Cancellation of Portions of Easements and Easements affecting Lots 445-A-1 and 445-A-3 as shown on Map 51 is being initiated by Petitioner upon the request of said Owner and is limited for this petition for subdivision, designation of easements, designation of restriction of access rights, and cancellation of portions of easements and easements and any return and/or amended return of the State Land Surveyor.

WHEREFORE, Petitioner prays as follows:

1. That this Petition and said Map filed herewith be examined and, if found true and correct, that an Order issue approving this Petition and approving and authorizing said Map;

2. That an Order issue approving and authorizing the subdivision, designation of easements, designation of restriction of access rights, and cancellation of portions of easements and easements; and directing the Assistant Registrar of this Court to note and endorse the subdivision,
designation of easements, designation of restriction of access rights and cancellation of portions of easements and easements on Transfer Certificate of Title Nos. 168,802 and 428,387 a reference to said map in accordance with Chapter 501, Hawaii Revised Statutes, or any amendments thereto.

This instrument may be executed in two or more counterparts, and when all counterparts have been executed, each counterpart shall be considered an original, but when assembled shall constitute one and the same instrument, and shall have the same force and effect as though all the signatories had executed a single instrument. Any unexecuted duplicate pages may be omitted from the assembled original document.

(Signature Page follows)
DATED: Honolulu, Hawaii, ________________, 20__

DEPARTMENT OF TRANSPORTATION

By ____________________________
FORD N. FUCHIGAMI
Its Director of Transportation

APPROVED AS TO FORM:

By ______________
FAWN Y. J. YAMADA
Deputy Attorney General

Dated: ____________________________
EXHIBIT "A"

STATEMENT OF ENCUMBRANCES

1. Lot 445-A-3-A will be subject to the following encumbrances:
   a. Remainder portion of Basement 81, Map 51, as set forth by Land Court Order No. 37170.
   b. Remainder portion of Basement 82, Map 51, as set forth by Land Court Order No. 37170.
   d. Grant of Easement in favor of the Board of Water Supply, County of Kauai, Document No. A-50090935.

2. Lot 445-A-3-B will be subject to the following encumbrance:

3. Lot 445-A-1-A will be subject to the following encumbrances:
   a. Remainder portion of Basement 449 and Basements 450 through 456, Map 129, as set forth by Land Court Order No. 121856.
   b. Remainder portion of Basement 115 and Basements 113 and 116, Map 72, as set forth by Land Court Order No. 60107.
   c. Remainder portion of Basement 115, Map 72, as set forth by Land Court Order No. 60107, and Basements 73, Map 51, as set forth by Land Court Order No. 37170, and 116, Map 72, as set forth by Land Court Order No. 60107 in favor of the Board of Water Supply, County of Kauai as set forth by Document No. 1342234.


Agreement and Subordination of Mortgage Lien and Security Interest, Document No. 3043400.


e. Basements 72, 73, and 74, Map 51, as set forth by Land Court Order Nos. 37170 and 54345.

f. Grant of Easement in favor of Island School, Document No. 2010-169130.


h. Grant of Easement in favor of the Board of Water Supply, County of Kauai, Document No. A-50090935.


4. Lot 445-A-1-B will be subject to the following encumbrances:


Agreement and Subordination of Mortgage Lien and Security Interest, Document No. 3043400.


END OF EXHIBIT "A"
ORDER

Upon the record and the evidence herein, the prayer of the petition is hereby granted and the Registrar of this Court is so ordered.

Dated: Honolulu, Hawaii, ____________________________

Registrar for the Judge of the Land Court
JOINDER

KNOW ALL MEN BY THESE PERSENTS:

That the UNIVERSITY OF HAWAII, a body corporate, whose address is 2244 Dole Street, Honolulu, Hawaii 96822, the owner of Lots 445-A-1 and 445-A-3 as shown on Map 51 of Land Court Application 1087, being the land described in and covered by Transfer Certificate of Title Nos. 168,802 and 428,387, having had an opportunity to obtain the advice and counsel of its own attorney, and acknowledging that the State of Hawaii, Department of the Attorney General, is not acting as its attorney, hereby consents to the State of Hawaii’s Petition for Subdivision, Designation of Easements, Designation of Restriction of Access Rights, and Cancellation of Portions of Easements and Easements affecting Lots 445-A-1 and 445-A-3 and does hereby join in, sign, and swear to the State of Hawaii’s Petition for Subdivision, Designation of Easements, Designation of Restriction of Access Rights, and Cancellation of Portions of Easements and Easements affecting Lots 445-A-1 and 445-A-3.

DATED: ________________, Hawaii, ________________, 20__.

University of Hawaii

APPROVED AS TO FORM:

By ____________________________

Its ____________________________

By ____________________________

Its ____________________________

PETITION FOR SUBDIVISION, DESIGNATION OF EASEMENTS, DELETION OF EASEMENTS DESIGNATION OF ACCESS AND RESTRICTION OF ACCESS RIGHTS PARCELS 10 AND 11
On this ___ day of __________, 20__ before me appeared ______________________ and ______________________, to me personally known, who, being by me duly sworn, did say that they are the _________________ and ______________________, respectively, of the UNIVERSITY OF HAWAII, a body corporate, and that the instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said officers acknowledged the instrument to be the free act and deed of said corporation.

_____________________________
Notary Public, State of Hawaii

Print Name: ______________________

My commission expires: ________

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<th>Circuit</th>
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Doc. Description :


Notary Signature

Date

PETITION FOR SUBDIVISION, DESIGNATION OF EASEMENTS, DELETION OF EASEMENTS DESIGNATION OF ACCESS AND RESTRICTION OF ACCESS RIGHTS PARCELS 10 AND 11

13
JOINDER

KNOW ALL MEN BY THESE PERSERTS:

That Board of Water Supply of the County of Kauai, a political subdivision of the State of Hawaii, whose address is P.O. Box 1706, Lihue, Hawaii 96766, the Grantee named in that Grant of Basement, Document No. 1342234 of the land described as Lot 445-A-1 as shown on Map 72 of Land Court Application 1087 does hereby join in this Petition to cancel a portion of Basement 115 affecting Lot 445-A-1-B.

DATED: ________________, Hawaii, ________________, 20__

Board of Water Supply, County of Kauai

By ________________________________
Its ________________________________

By ________________________________
Its ________________________________

APPROVED AS TO
FORM AND LEGALITY:

Deputy County Attorney
STATE OF HAWAII  
COUNTY OF KAUA'I  

On this ___ day of __________, 20__ before me appeared ____________________________ and ____________________________, to me personally known, who, being by me duly sworn, did say that they are the ____________________________ and ____________________________, respectively, of the BOARD OF WATER SUPPLY, COUNTY OF KAUA'I, a political subdivision of the State of Hawaii, and that the instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said officers acknowledged the instrument to be the free act and deed of said corporation.

Notary Public, State of Hawaii
Print Name:_____________________
My commission expires:_______
JOINDER

KNOW ALL MEN BY THESE PRESENTS:

That KAUAI ISLAND UTILITY COOPERATIVE, a cooperative association formed pursuant to the provision of Chapter 421C of the Hawaii Revised Statutes whose address is 4463 Pahe'e Street, Suite 1, Lihue, Hawaii 96766, the Grantee named in that Grant of Easement, Document No. 1342233 of the land described as Lot 445-A-1 as shown on Map 72, filed in the office of the Assistant Registrar of the Land Court Application 1087, does hereby join in this Petition to cancel a portion of Easement 115 affecting Lot 445-A-1-B.

DATED: _______________, Hawaii, ________________, 20__.

Kauai Island Utility Cooperative, a cooperative association formed pursuant to the provision of Chapter 421C of the Hawaii Revised Statutes

By _______________________________________

Its ______________________________________
STATE OF HAWAII

) SS.
COUNTY OF KAUAIR

On this ___ day of __________, 20__ before me appeared ________________________, as ________________________ for KAUAI ISLAND UTILITY COOPERATIVE, a cooperative association formed pursuant to the provision of Chapter 421C of the Hawaii Revised Statutes, to me known to be the person described in and who executed the foregoing instrument, as ________________________ for said KAUAI ISLAND UTILITY COOPERATIVE, and acknowledged that ________________________ executed the same as the free act and deed of said KAUAI ISLAND UTILITY COOPERATIVE.

Notary Public, State of Hawaii

Print Name: ________________________

My commission expires: __________
JOINDER

KNOW ALL MEN BY THESE PERSENTS:

That Hawaiian Telcom, Inc. a Hawaii corporation whose address is P.O. Box 2200, Honolulu, Hawaii 96841, the Grantee named in that Grant of Easement, Document No. 1342233 of the land described as Lot 445-A-1 as shown on Map 72, filed in the office of the Assistant Registrar of the Land Court Application 1087, does hereby join in this Petition to cancel a portion of Easement 115 affecting Lot 445-A-1-B.

DATED:___________________, Hawaii,___________________, 20___

Hawaiian Telcom, Inc., a Hawaii corporation

By__________________________________
Its__________________________________

By__________________________________
Its__________________________________
STATE OF HAWAII  
CITY AND COUNTY OF HONOLULU  

On this ___ day of __________, 20__ before me appeared ____________________________
and ____________________________, to me personally known, who, being by me duly sworn, did
say that they are the ____________________________ and ____________________________, respectively, of
HAWAIIAN TELCOM, a Hawaii corporation, and that the instrument was signed in behalf of said
corporation by authority of its Board of Directors, and the said officers acknowledged the instrument
to be the free act and deed of said corporation.

Notary Public, State of Hawaii

Print Name: ____________________________

My commission expires: ______

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Document Date: ____________________________  # Pages: ______

Notary Name: ____________________________  ______ Circuit

Doc. Description: ____________________________

Notary Signature ____________________________  Date ______
- CERTIFIED MAIL; RETURN RECEIPT REQUESTED -

Board of Water Supply
County of Kauai
P.O. Box 1706
Lihue, Hawaii 96766

Attention: Keith Aoki

Gentlemen:

Subject: Kaumualii Highway Widening
Lihue to West of Maluhia Road
Phase 1 Lihue to West of Kipu Road
At Lihue, Puna, Kauai, Hawaii
Federal Aid Project No. STP-050-1(26)
Tax Map Key Nos. (4) 3-4-07: 003

In connection with the subject project, the State of Hawaii, Department of Transportation (State) requires a portion of property identified as Tax Map Key Nos. (4) 3-4-07: 003, situated at Lihue, Puna, Kauai, Hawaii. The property is designated as Lot 445-A-1-B, containing an area of 2.761 acres.

Our Certificate of Search reveals the property is encumbered by the following document:

Grant of Easement, dated March 13, 1985, recorded in the Bureau of Conveyances of the State of Hawaii on December 24, 1985 as Document No. 1342234.

It is the State's policy to acquire the property for highways purposes free and clear of any and all liens and/or encumbrances. As a party of interest to the subject property, we are transmitting for your review and approval the original and two (2) copies of the Petition for Subdivision, Designation of Restriction of Access Rights, and Cancellation of Portions of Easements and Easements document (Petition).
OCT 27 2015

If the Petition meets your approval, please sign, notarize, and return the original and one (1) copy to this office for further processing. You may retain a copy for your files. We will send the Partial Release of Easement document for execution once the Petition has been filed and recorded with the Bureau of Conveyances. The released portion of the easement shall be replaced with our standard Use and Occupancy Agreement.

Thank you for your cooperation. Should there be any questions, please contact me at (808) 692-7336.

Sincerely,

[Signature]

AIMEE K. YAMASHIRO
Supervising Right-of-Way Agent

2 Enclosures
1. Petition (Original + 2 copies)
2. Land Court Map
SUBDIVISION OF LOTS 445–A–1 AND 445–A–3
AS SHOWN ON MAP 51

INTO LOTS 445–A–1–A, 445–A–1–B, 445–A–3–A AND 445–A–3–B

DESIGNATION OF EASEMENTS

AFFECTING LOT 445–A–1–A

DESIGNATION OF EASEMENT

AFFECTING LOT 445–A–3–A

DESIGNATION OF RESTRICTION OF ACCESS RIGHTS

AFFECTING LOTS 445–A–1–A AND 445–A–3–A

CANCELLATION OF PORTION OF EASEMENT 81 AND

PORTION OF EASEMENT 82 AS SHOWN ON MAP 51

CANCELLATION OF PORTION OF EASEMENT 449

AS SHOWN ON MAP 129 AFFECTING LOT 445–A–1–B

CANCELLATION OF PORTION OF EASEMENT 115

AS SHOWN ON MAP 72 AFFECTING LOT 445–A–1–B

CANCELLATION OF EASEMENTS 110, 111, 112 AND 114

AS SHOWN ON MAP 72 AFFECTING LOT 445–A–1–B

At Lihue, Puna, Kauai, Hawaii
Note: This copy of Land Court map submitted was "best fitted" to this sheet and location of Lot 445-A-1-B was added on to this sheet for reference.
MANAGER’S REPORT No. 16-58 (Update)

August 21, 2017

Re: Discussion and Possible Adoption on the proposed Rule Amendments Part 2 Rules and Regulations for Water Service Connections, Section II General Conditions, subsection 1.

Rule amendment relating to the DOW’s Standard Operating Procedure for Providing Water Service Outside of the Water Zone

RECOMMENDATION:
It is recommended that the Board adopt the Department of Water Rule Amendment to Part 2 Rules and Regulations for Water Service Connections, Section II General Conditions, Subsection 1. as it relates to the DOW’s SOP for Providing Water Service Outside of the Water Zone.

FUNDING: N/A.

BACKGROUND:
The proposed Rule Amendment has been previously reviewed and approved by the Board of Water Supply. The Rule Amendments has also been sent to the Small Business Regulatory Review Board. The following is a review of the most recent occurrences that took place regarding the proposed rule prior to the July 26, 2017 Public Hearing which was held at the Department of Water.

During the June 30, 2016 Regular Board meeting, the DOW has found that it is necessary to review and refine Part 2, Section II of the DOW’s rules and regulations.

At the November 23, 2016 Board meeting, the Board moved to approve as amended and act on the proposed Part 2 Rules and Regulations for Water Service Connections, Section II General Conditions, Subsection 1. by sending it to the Small Business Regulatory Review Commission, notable changes include:

- Replacing the term “service limits” with “Water Service Areas” and providing a definition for “Water Service Areas”.
- Allowing the Department of Water to grant an exemption to this section pursuant to procedures adopted by the Department.

At the February 24, 2017 Board meeting, the Board approved the Department to schedule a public hearing regarding the proposed rule amendment.

Pursuant to DOW Rules and Regulations part I – Rules of Administrative practice & Procedure, Section VI – Procedure for Adoption, Amendment or Repeal of Rules, the DOW proceeded with the required Public Hearing which was held on July 26, 2017 at the Department of Water.
PUBLIC TESTIMONY AND DEPARTMENT RESPONSE:
There were no concerns or questions raised during the public hearing and no written testimony submitted for the public hearing regarding the proposed Rule amendment.

**OPTIONS:**

**Option 1:** Adopt Proposed Part 2, Section II Rule Amendment.
Pros: 1. The Department can finalize its proposed draft SOP “Water Service Request In and Out of the Water Service Area.”
2. The Department’s SOP will relate to the proposed Rule.
Con: 1. None.

**Option 2:** Deny Proposed Part 2, Section II Rule Amendment.
Pro: 1. None.
Cons: 1. The Department’s SOP will not relate to the proposed Rule.
2. The Department will be operating with existing policies not support by existing Rules and Regulations.

Respectfully submitted,

Edward Doi, P.E.
Chief of Water Resources and Planning

CONCURRED:

Kirk Saiki, P.E.
Manager and Chief Engineer

ED/ein

Attachments: Part 2 Rules and Regulations, Water Service Connections, Section II-General Conditions, subsection 1. Proposed Rule Amendment
BE IT RESOLVED BY THE BOARD OF WATER SUPPLY OF THE COUNTY OF KAUAI, STATE OF HAWAII

SECTION 1. This Amendment to Part 2, Rules and Regulations for Water Service Connections, Section II General Conditions (hereafter “Rules”), Subsection 1 of the Department of Water, County of Kaua‘i (hereafter “Department”) is made pursuant to Section 17.03C and D of the Kauai County Charter 2016, as amended, and Chapter 91, Haw. Rev. Stat. as amended.

SECTION 2. Summary of Rule Amendment.

The amendment to the Rules replaces the term “service limits” with “Water Service Areas” and provides a definition for “Water Service Areas”. This amendment allows the Department to grant exemptions pursuant to procedures adopted by the Department.

SECTION 3. Now, therefore, Part 2 Section II of the Rules is hereby amended as follows:

SECTION II – GENERAL CONDITIONS

1. Any prospective consumer may obtain water service provided all of the following conditions are met:

a. In the event that Water Service limits Areas are established by the Department that the premises are within these limits a Water Service Area.

A “Water Service Area” is defined as an area that is serviced by existing water system facilities. A water Service Area is generally limited to areas that have appropriate planning and zoning approvals in place. Water service is generally available within a Water Service Area unless system infrastructure improvements are needed to provide adequate water supply without detrimentally affecting existing consumers. As identified in Water Plan 2020, water systems and the Water Service Area can be used for purposes of planning and can be applied to guide service and development of future water service.

Consistent with the Kaua‘i General Plan and for the purposes of Water Plan 2020, the Department takes a conservative approach in defining service areas of the existing water systems, in effect, limiting them to areas that have appropriate planning and zoning approvals in place. Land use policies area established and governed by the County. The Department seeks to coordinate development effort with the County and private developers seeking to connect to the Department-operated water systems.

If the premises are not located within a Water Service Area, then the Department may grant an exemption to this section pursuant to procedures adopted by the Department.

b. The Department has a sufficient water system developed for domestic use and, if required by the Department, a sufficient water system for fire protection. In order to determine the sufficiency of the water system, the Department may require the prospective consumer to estimate the amount of water to be used.

c. The consumer agrees to design, construct, and install any component of the water system required by the Department in compliance with (1) all applicable statutes, ordinances, rules, and regulations of the State of Hawai‘i and the County of Kaua‘i, and (2) the 2002 Water System Standards (“Standards”) developed by Hawai‘i’s four county departments
of water, as amended by the Department’s 2005 Amendments (“2005 Amendments”) to the Standards as it may be subsequently amended. The Standards and the 2005 Amendments (as amended) are hereby incorporated by reference into the Department’s rules. The Manager and Chief Engineer may, for good cause shown, permit departure from the Standards or 2005 Amendments, or both (as amended).

d. The consumer agrees to abide by these rules and regulations.
e. All applicable charges have been paid.

SECTION 4. Administrative rule material to be repealed is bracketed. New material is underscored. Deleted material is stricken through. In printing this rule amendment, the brackets, bracketed material, underscoring, strikes need not be included.

SECTION 5. If any provision of this rule amendment or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the rule amendment, which can be given effect without the invalid provision, or application, and to this end the provisions of this rule amendment are severable.

SECTION 6. This rule amendment shall be effective ten (10) days after it is filed with the County Clerk of the County of Kaua‘i.
AMENDMENTS TO
THE RULES AND REGULATIONS OF THE
BOARD OF WATER SUPPLY, OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I,
PRESCRIBED ON AUGUST 21, 2017

BOARD OF WATER SUPPLY,
COUNTY OF KAUA’I

_____________________________
Sherman Shiraishi, Chairperson

APPROVED AS TO FORM
AND LEGALITY:

_____________________________
DEPARTMENT OF WATER,
COUNTY OF KAUAI

Mahealani M. Krafft
Deputy County Attorney

Kirk Saiki, P.E.
Manager & Chief Engineer

_____________________________
Jade K. Fountain-Tanigawa, County Clerk
County Clerk, County of Kaua’i

Received this 21st day of
August 2017
AMENDMENTS TO
THE RULES AND REGULATIONS OF THE
BOARD OF WATER SUPPLY, OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I,
PRESCRIBED ON AUGUST 21, 2017

CERTIFICATION

I hereby certify that the Board of Water Supply, County of Kaua'i, adopted the
foregoing amendments to the Rules and Regulations of the Department of Water,
County of Kaua'i on August 21, 2017 under authority of Sec. 17.03C and D of the Kauai
County Charter 2016, as amended, and that the provisions of Sec. 91-3, Haw. Rev.
Stat., as amended, have been satisfied, including the holding of (1) public hearing on
Wednesday, July 26, 2017, and the giving of proper notice for the public hearing,
which notice was advertised in The Garden Island on Friday, June 16, 2017 &
Wednesday, July 26, 2017.

Dated at Lihue, Kauai this 21st day of August 2017.

_________________________________
Beth Tokioka, Secretary
BOARD OF WATER SUPPLY

CERTIFICATION OF COUNTY CLERK

I hereby certify on _________________________, 2017, I accepted for filing
from the Kauai Board of Water Supply the Amendment to the Rules and Regulations
adopted on August 21, 2017.

Jade K. Fountain-Tanigawa, County Clerk
County of Kaua’i
MANAGER’S REPORT No. 16-38 (Update)

August 21, 2017

Re: Discussion and Possible Adoption on the Proposed Rule Amendments to Part 5, Facilities Reserve Charge Section III, Applicability relating to Multi-Family Dwelling Units and Affordable Housing Units

RECOMMENDATION:
It is recommended that the Board adopt the Department of Water Rule Amendment to:

Part 5, Facilities Reserve Charge Section III – Applicability:

- 3.c. The Facilities Reserve Charge for conversion of legally existing single-family units to a multi-family two dwelling unit structure, as provided by law, will be assessed at 50% of the Facilities Reserve Charge for multi-family units, per unit.
- 3.d. For projects developed by the County of Kauai Housing Agency or in partnership with the County of Kauai Housing Agency, and certified by the County of Kauai Housing Agency as affordable housing (defined by Kauai County Ordinance 7 A-1.3, the Facilities Reserve Charge shall be $4,940.00 per unit).

BACKGROUND:
On January 29, 2016 the Department received a memorandum from Board Members Mr. Michael Dahilig and Mr. Wallace Rezentes, Jr. to propose amendments to Part 5 Section III of the Department’s Rules and Regulations relating to how the Facilities Reserve Charge (FRC) is assessed for multi-family units, additional dwelling units with existing meters on the parcel, and affordable housing units.

The proposed Rule Amendment has been previously reviewed and approved by the Board of Water Supply. The Rule Amendments has also been sent to the Small Business Regulatory Review Board and returned with no comments. The following is a review of the most recent occurrences that took place regarding the proposed rule prior to the July 26, 2017 Public Hearing which was held at the Department of Water.

The proposed rule amendment was deferred at the Board Meetings on September 23, 2016; October 28, 2016; December 2016; February 24, 2017 and March 24, 2017, for various reasons and Board discussions.

During the April 28, 2017 Regular Board Meeting, the Board approved proposed rule amendment to Part 5, Facilities Reserve Charge Section III, Applicability relating to Multi-Family Dwelling Units and Affordable Housing Units and to adopt the changes on the Proposed Rules Amendment to Part 5, FRC, Section 3c & Section 3d.

Pursuant to DOW Rules and Regulations part I – Rules of Administrative Practice & Procedure, Section VI – Procedure for Adoption, Amendment or Repeal of Rules, the DOW proceeded with the required Public Hearing which was held on November 10, 2015 at the Kauai County Council Chambers and received public testimony both orally and written testimony.
PUBLIC TESTIMONY AND DEPARTMENT RESPONSE:
The following is the Department’s best attempt at summarizing the concerns and questions raised during the public hearing and by way of written testimony and providing an answer to each concern:

Clarification of terms single-family and multi-family unit?
The Department of Water will use definitions identified in the County of Kauai, Comprehensive Zoning Ordinance Chapter 8 with clarification from the Planning Department, as necessary.
- Single Family Dwelling – a building consisting of only one (1) dwelling unit designed for or occupied exclusively by one (1) family.
- Multi-Family Dwelling – a building or portion thereof consisting of two (2) or more dwelling units and designed for occupancy by two (2) or more families living independently of each other, where any one (1) of the constructed units is structurally dependent on any other unit.

OPTIONS:
Option 1: Adopt the proposed Rule change and forward formal Rule to the County Clerk.
Pro: 1. FRC rates will be reduced for projects as established in the proposed rule subsection c and d.
Con: 1. The Department will not be able determine revenue recovery options.

Option 2: Deny the proposed Rule change.
Con: 1. FRC rates will not be reduced for projects as established in the proposed rule subsection c and d.

Respectfully submitted,

Edward Doi, P.E.
Water Resources and Planning Division

CONCURRED:

Kirk Saiki, P.E.
Manager and Chief Engineer

Attachment: Part 5, Rules and Regulations, Facilities Reserve Charge Section III – Applicability, Proposed Rule Amendments
BE IT RESOLVED BY THE BOARD OF WATER SUPPLY OF THE COUNTY OF KAUA'I, STATE OF HAWAII

SECTION 1. This Amendment to Part 5, Facility Reserve Charge, Section III Applicability (hereafter “Rules”), of the Department of Water, County of Kaua‘i (hereafter “Department”) is made pursuant to Section 17.03C and D of the Kauai County Charter 2016, as amended, and Chapter 91, Haw. Rev. Stat. as amended.

SECTION 2. Summary of Rule Amendment.

The amendment relates to the conversion of legally existing single-family units to a multi-family two dwelling unit structure and Affordable Housing Units regarding the applicability of the Facility Reserve Charge. This charge will be assessed for such projects as established in the amended subsection c and d.

SECTION 3. Now, therefore, Part 5 Section III of the Rules is hereby amended as follows:

SECTION III – APPLICABILITY

1. The Facilities Reserve Charge shall be assessed against all new developments and subdivisions requiring supply of water from the County of Kaua‘i, Department of Water, and existing developments requiring new or additional supply of water from the Department’s system. The Facilities Reserve Charge must be paid before water services are made available to the new or existing development.

2. The Facilities Reserve Charge shall be paid by all Applicants for new or additional water service, including but not limited to the following:

   a. All irrigation services and/or meters.

   b. Additional buildings to be connected to existing services where additional demands are indicated. The charges shall be based on the meter sizes required if the buildings were metered separately.

   c. Additional dwellings connected to existing services and meters under the categories of single family and multi-family residential units. The charges will be based on the established schedule of charges for the respective categories.

   d. Changes in service that require an increase in meter size.

   e. Where an FRC was paid but a water meter was never installed to serve the subject property, the applicant shall pay the Facilities Reserve Charge in accordance with Part 5, Section IV (4) of these Rules.

3. The Facilities Reserve Charge shall apply to all Applicants for water service as follows:

   a. For each parcel created by subdivision, including the first lot created; and for every new single family residential dwelling unit not yet metered and a Facilities Reserve Charge has not yet been paid, the applicable Facilities Reserve Charge shall be $14,115.00.

   b. The Facilities Reserve Charge for multi-family and/or resort development will be the cost of the approved meter size or the cost of $9,880.00 per unit or hotel room,
whichever number is larger.

c. The Facilities Reserve Charge for conversion of legally existing single-family units to a multi-family two dwelling unit structure, as provided by law, will be assessed at 50% of the Facilities Reserve Charge for multi-family units, per unit.

d. For projects developed by the County of Kaua‘i Housing Agency or in partnership with the County of Kaua‘i Housing Agency, and certified by the County of Kaua‘i Housing Agency as affordable housing (defined by Kaua‘i County Ordinance 7 A-13, the Facilities Reserve Charge shall be $4,940.00 per unit.)

e. For all other uses, the Facilities Reserve Charge shall be determined by the size of the meter, as shown below. Meter sizes shall be determined by the Department and not by the Developer or Applicant.

<table>
<thead>
<tr>
<th>Meter Size</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/8&quot;</td>
<td>$14,115.00</td>
</tr>
<tr>
<td>¾&quot;</td>
<td>$21,170.00</td>
</tr>
<tr>
<td>1&quot;</td>
<td>$35,290.00</td>
</tr>
<tr>
<td>1 ½&quot;</td>
<td>$70,580.00</td>
</tr>
<tr>
<td>2&quot;</td>
<td>$112,920.00</td>
</tr>
<tr>
<td>3&quot;</td>
<td>$225,840.00</td>
</tr>
<tr>
<td>4&quot;</td>
<td>$352,880.00</td>
</tr>
<tr>
<td>6&quot;</td>
<td>$705,750.00</td>
</tr>
<tr>
<td>8&quot;</td>
<td>$1,129,200.00</td>
</tr>
</tbody>
</table>

Facilities Reserve Charges are periodically adjusted by the Department. These adjustments may increase or decrease existing Facilities Reserve Charge amounts. Where adjustments to Facilities Reserve Charges result in decreases of such charges, no refund will be made of the difference between the higher, pre-existing charges and the lower, adjusted charges.

SECTION 4. Administrative rule material to be repealed is bracketed. New material is underscored. Deleted material is stricken through. In printing this rule amendment, the brackets, bracketed material, underscoring, strikes need not be included.

SECTION 5. If any provision of this rule amendment or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the rule amendment, which can be given effect without the invalid provision, or application, and to this end the provisions of this rule amendment are severable.

SECTION 6. This rule amendment shall be effective ten (10) days after it is filed with the County Clerk of the County of Kaua‘i.
AMENDMENTS TO THE RULES AND REGULATIONS OF THE BOARD OF WATER SUPPLY, OF THE COUNTY OF KAUA'I, STATE OF HAWAII, PRESCRIBED ON AUGUST 21, 2017

BOARD OF WATER SUPPLY,
COUNTY OF KAUA’I

________________________________________
Sherman Shiraishi, Chairperson

APPROVED AS TO FORM AND LEGALITY:

DEPARTMENT OF WATER,
COUNTY OF KAUAI

________________________________________
Mahealani M. Krafft
Deputy County Attorney

Kirk Saiki, P.E.
Manager & Chief Engineer

Received this 21st day of August 2017

Jade K. Fountain-Tanigawa, County Clerk
County Clerk, County of Kaua‘i
CERTIFICATION

I hereby certify that the Board of Water Supply, County of Kaua‘i, adopted the foregoing amendments to the Rules and Regulations of the Department of Water, County of Kaua‘i on **August 21, 2017** under authority of Sec. 17.03C and D of the Kauai County Charter 2016, as amended, and that the provisions of Sec. 91-3, Haw. Rev. Stat., as amended, have been satisfied, including the holding of (1) public hearing on **Wednesday, July 26, 2017**, and the giving of proper notice for the public hearing, which notice was advertised in The Garden Island on **Friday, June 16, 2017 & Wednesday, July 26, 2017**.

Dated at Lihue, Kauai this **21st** day of **August 2017**.

_________________________________
Beth Tokioka, Secretary
BOARD OF WATER SUPPLY

______________________________
CERTIFICATION OF COUNTY CLERK

I hereby certify on ________________________, 2017, I accepted for filing from the Kauai Board of Water Supply the Amendment to the Rules and Regulations adopted on **August 21, 2017**.

Jade K. Fountain-Tanigawa, County Clerk
County of Kaua‘i
New Business
WHEREAS, Leopoldo Anguay also known as “Leo “ first joined the Department of Water (DOW) of the County of Kaua’i on May 16, 2012 as a Waterworks Inspector II in the Design and Construction Division and was later transferred to the Construction Management Division, and on January 16, 2017 was reallocated to Waterworks Inspector III, and

WHEREAS, after more than five (5) years of service to the DOW customers, Leo decided it is time to move on to the next chapter of his journey in life, and

WHEREAS, Leo who is an avid golfer and shares his knowledge as the Waimea High School golf coach, and

WHEREAS, Leo has demonstrated his ability as a hunter to “bring home the bacon” on both Lanai and Kaua’i, and

WHEREAS, Leo’s unassuming and low key friendly personality made his work place a better environment for his coworkers and supervisor, and

WHEREAS, Leo demonstrated his dedication and loyalty to the Department by working independently and fulfilling his assignments, and

WHEREAS, Leo can now also focus on his “other related duties” such as being with his grandchildren, chauffeuring them around the island, as well as his music career.

WHEREAS, in addition, thank you for sharing your abundant Pikake crop from your yard. We will miss the sweet scent of Pikake wafting through the office each morning. It was always a nice surprise in the morning when you least expect the fragrant Pikake on our desk, and

WHEREAS, the Department has benefited from the knowledge and experience Leo brought to and shared with the Department.

BE IT RESOLVED BY THE BOARD OF WATER SUPPLY, COUNTY OF KAUA’I, STATE OF HAWAI’I, that on behalf of the water-consuming customers on Kaua’i, it expresses its acknowledgment and appreciation of the many years of dedicated service rendered by LEO ANGUAY and it extends to Leo its best wishes for much happiness and success in his retirement, as well as many more …..

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to LEO ANGUAY with our warmest Aloha and best wishes for success in all his future endeavors.

We do certify that the foregoing was duly adopted by the Board of Water Supply during its meeting on August 21, 2017.

__________________________
Sherman Shiraishi, Chairperson

__________________________
Beth Tokioka, Secretary

Resolutions/Res. No. 18-01 Leo Anguay
MANAGER’S REPORT No. 18-64

August 21, 2017

Re: Discussion and Possible Action on the Approval of the Department of Water’s Supplemental Budget for Fiscal Year 2017-2018

RECOMMENDATION: The Department is requesting Board approval to transfer the budget of the attached list of Purchase Order (PO) rollovers to Fiscal Year (FY) 2017-2018.

BACKGROUND: The Department submitted the DOW Operating & New Capital Outlay Budget for FY 2017-2018 and was subsequently approved by the board on June 30, 2017.

In closing the FY 2016-2017, the Department seeks Board approval to transfer the PO Rollovers’ budget from FY 2016-2017 to FY 2017-2018. These PO Rollovers are lists of existing contracts and miscellaneous purchase orders of materials and services already encumbered but not expended as of June 30, 2017. (See attached list.)

If approved, the FY 2017–2018 budget will be increased as follows:

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Expenses - W/U</td>
<td>$1,880,129.49</td>
</tr>
<tr>
<td>Capital Outlay:</td>
<td>$3,102,007.26</td>
</tr>
<tr>
<td>Water Utility</td>
<td>$1,449,939.38</td>
</tr>
<tr>
<td>FRC</td>
<td>$415,534.52</td>
</tr>
<tr>
<td>BAB</td>
<td>$1,236,533.36</td>
</tr>
<tr>
<td>Total PO Rollovers</td>
<td>$4,982,136.75</td>
</tr>
</tbody>
</table>

Board approval is hereby recommended.

OPTIONS:

Option 1: Approve as recommended.
Pro: The Department’s unfinished programs and projects will continue to be implemented.
Con: None.

Option 2: Disapprove the recommendation.
Pro: None.
Con: DOW’s obligation to pay remaining contract balances doesn’t terminate.
Respectfully submitted,

Kirk Saiki, P.E.
Manager and Chief Engineer

Attachments: Supplemental Budget Year End Encumbrance Increase Report

Mgrrp/August 2017/Manager’s Report No. 18-64/ Discussion and Possible Action on the Approval of the Department of Water’s Supplemental Budget for Fiscal Year 2017-2018 (8-21-17)
## Fund Balance Projections (Revised)

<table>
<thead>
<tr>
<th>Water Utility General Fund</th>
<th>Water Utility Emergency Reserve</th>
<th>Water Utility Debt Reserve</th>
<th><strong>Facility Reserve Charge Fund</strong></th>
<th>Bond Fund</th>
<th>State Revolving Fund</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated Beginning Fund Balance - 7/1/17</td>
<td>$25,628,219</td>
<td>$5,900,000</td>
<td>$4,300,000</td>
<td>$482,264</td>
<td>$14,771,227</td>
<td>$0</td>
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<tr>
<td>Revenues</td>
<td>$36,873,079</td>
<td>$0</td>
<td>$0</td>
<td>$680,614</td>
<td>$50,000</td>
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<td>Non-Revenue Cash - Inflow</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>Transfers In</td>
<td>$747,343</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Transfers (Out)</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>-$747,343</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>Adjusted Balance</td>
<td>$63,248,641</td>
<td>$5,900,000</td>
<td>$4,300,000</td>
<td>$415,535</td>
<td>$14,821,227</td>
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<tr>
<td>Operating Expenses (OE)</td>
<td>$28,840,485</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>Debt Principal Repayment</td>
<td>$4,835,459</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>New Capital Outlay (CO) - FFE</td>
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<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>New Capital Outlay (CO) - CIP</td>
<td>$9,841,976</td>
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<td>$0</td>
<td>$849,201</td>
<td>$2,645,676</td>
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<tr>
<td>Reserve Transfers</td>
<td>$300,000</td>
<td>-$400,000</td>
<td>$100,000</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>PY Encumbrances- OE</td>
<td>$1,880,129</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
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<tr>
<td>PY Encumbrances- CO</td>
<td>$1,449,939</td>
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<td>$0</td>
<td>$415,535</td>
<td>$1,236,533</td>
<td>$0</td>
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<tr>
<td>Interfund Transfer</td>
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<td>-$849,201</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Estimated Ending Balance - 6/30/18</td>
<td>$13,109,651</td>
<td>$6,300,000</td>
<td>$4,200,000</td>
<td>$0</td>
<td>$10,939,018</td>
<td>$0</td>
</tr>
</tbody>
</table>

** FRC fund balance is not sufficient to fund the Proposed Capital Outlay - Expansion Projects. An Interfund transfer through a Manager's Report will be required in order to proceed with any of the FRC Capital Outlay - Expansion projects.

### Calculation of DOW Reserves:

<table>
<thead>
<tr>
<th>Category</th>
<th>Current Budget</th>
<th>Required Balance</th>
<th>Budget Required FY 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>EMERGENCY Reserve</td>
<td>25,201,384.87</td>
<td>$6,300,346</td>
<td>$400,000</td>
</tr>
<tr>
<td>DSR</td>
<td>8,474,559.57</td>
<td>$4,237,280</td>
<td>-$100,000</td>
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</tbody>
</table>

**300,000**
### Encumbrance Increase Budget

<table>
<thead>
<tr>
<th>PO Number</th>
<th>GL Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>PO 0002726</td>
<td>10-01-10-540-010</td>
<td>WU-Adm-Adm-Professional Services-General</td>
<td>5,400.00</td>
</tr>
<tr>
<td><strong>10-01-10-540-010 Total</strong></td>
<td></td>
<td></td>
<td><strong>5,400.00</strong></td>
</tr>
<tr>
<td>PO 0002753</td>
<td>10-01-10-542-010</td>
<td>WU-Adm-Adm-Public Relations -General</td>
<td>668.96</td>
</tr>
<tr>
<td><strong>10-01-10-542-010 Total</strong></td>
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<td></td>
<td><strong>668.96</strong></td>
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<tr>
<td>PO 0002325</td>
<td>10-01-10-561-000</td>
<td>WU-Adm-Adm-Repairs and Maint-Non Water System</td>
<td>8,584.07</td>
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<tr>
<td><strong>10-01-10-561-000 Total</strong></td>
<td></td>
<td></td>
<td><strong>8,584.07</strong></td>
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<tr>
<td>PO 0002842</td>
<td>10-02-10-543-000</td>
<td>WU-IT-Adm-Communication Services</td>
<td>7,839.40</td>
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<td><strong>10-02-10-543-000 Total</strong></td>
<td></td>
<td></td>
<td><strong>7,839.40</strong></td>
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<tr>
<td>PO 0002604</td>
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<td>WU-IT-Adm-Rentals &amp; Leases</td>
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<td><strong>10-02-10-545-000 Total</strong></td>
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<td><strong>23,460.87</strong></td>
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<td>WU-IT-Adm-Repairs and Maint-Non Water System</td>
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<tr>
<td>PO 0002425</td>
<td>10-02-10-561-000</td>
<td>WU-IT-Adm-Repairs and Maint-Non Water System</td>
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<td>WU-IT-Adm-Repairs and Maint-Non Water System</td>
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<td>WU-IT-Adm-Repairs and Maint-Non Water System</td>
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<tr>
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<td>PO 0002810</td>
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<td>WU-Qual-Purif-Professional Services - General</td>
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<td><strong>10-10-40-540-010 Total</strong></td>
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<td>WU-Eng-Adm-Professional Services - General</td>
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<td>10-21-10-540-010</td>
<td>WU-Cns-Adm-Professional Services - General</td>
<td>290,000.00</td>
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<td>WU-Cns-Adm-Professional Services - General</td>
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<td><strong>10-21-10-540-010 Total</strong></td>
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<td><strong>490,000.00</strong></td>
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<td>PO 0002808</td>
<td>10-21-10-563-000</td>
<td>WU-Cns-Adm-Operating Supplies</td>
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<td><strong>10-21-10-563-000 Total</strong></td>
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<td></td>
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<tr>
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<td>WU-WRP-Adm-Professional Services</td>
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<td>WU-Acctg-Adm-Professional Services</td>
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<td>WU-Acctg-Adm-Accounting &amp; Auditing</td>
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<td>10-31-10-562-000</td>
<td>WU-Acc-Adm-Office Supplies</td>
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<td><strong>3,335.51</strong></td>
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<tr>
<td>PO 0002756</td>
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<td>WU-Ops-Source-Operating Supplies</td>
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<td>WU-Ops-PhP-Operating Supplies</td>
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<td>WU-Ops-TandD-Rentals and Leases</td>
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MANAGER’S REPORT No. 18-65

August 21, 2017

Re: Discussion and Possible Action on Part 2 Rules and Regulation for Water Service Connections to address Landlord and/or Property Managers and Tenant issues

RECOMMENDATION:
The Department is recommending Board review, discussion and possible amendment of Part 2 Rules and Regulations for Water Service Connections.

BACKGROUND:
The Department of Water needs further guidance on the application of Part 2 Rules & Regulations for Water Service Connections for the following sections:

- Section I – Definitions
- Section V – Application for Water Service, Service Connection
- Section XI – Discontinuation of Water Service
- Section XII – Restoration of Water Service

The purpose is to possibly update the definition of a “consumer” which may involve any and/or all of the parties such as a Property Owner, a Landlord, a Property Manager, and/or a Tenant and to determine where the financial responsibility of an unpaid water bill account ends.

The Department has continually been experiencing unpaid water bill accounts for water services provided to rental properties occupied by Tenants. Although the Department requires a deposit of $90.00 from a Tenant when applying for a water service, sometimes the deposit amount isn’t enough to cover their balance on a water bill. There are rental properties that are either managed by Owners or Property Managers who keep sending Tenants to apply for a water service to the same property where previous tenants left with unpaid water bill accounts. Sometimes, the Owners and/or Property Managers will come in and transfer the service to their names after the water service was shut off because of a delinquent Tenant who may have vacated the property.

The Department feels that updating the Rules & Regulations may provide a firmer stand for the staff in enforcing collection of these recurring delinquency issues.

There are several options that the Board may consider to mitigate this recurring issue. Among other things are: increasing the deposit to a higher amount; or requiring the Landlord and/or Property Manager to sign the water service application with the Tenant or implement a Prepayment Plan which may involve upgrading the meters to be compatible with this option.
OPTIONS:
Option 1  Create a new Section of Part 2 to address Tenant applicants.
Pros: Provide a clear and concise instruction for better guidance in collection efforts.
Cons: Requires time. We may not need to update the Rules and Regulations after all.

Option 2  No rule change.
Pros: No additional time is required.
Cons: Landlord-tenant collection issue will not be mitigated.

Respectfully submitted,
Kirk Saiki, P.E.
Manager and Chief Engineer

Attachments: Part 2, Section I – Definitions
Part 2, Section V – Application for Water Service, Service Connection
Part 2, Section XI – Discontinuation of Water Service
Part 2, Section XII – Restoration of Water Service
PART 2
RULES AND REGULATIONS FOR WATER SERVICE CONNECTIONS
within the County of Kauai
and Providing Penalties for the Violations Thereof

SECTION I – DEFINITIONS

For the purpose of these rules and regulations, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein are defined as follows:

1. The word “DEPARTMENT” shall mean the Department of Water, County of Kauai, State of Hawaii.

2. The word “BOARD” shall mean the Board of Water Supply of the Department, County of Kauai, State of Hawaii.

3. The term “MANAGER AND CHIEF ENGINEER” shall mean the person holding the office of Manager and Chief Engineer of the Department.

4. The word “CONSUMER” shall mean the person, firm, corporation, association, or governmental department, whether owner or tenant, whose name appears on the records of the Department as the party responsible and liable for receiving water service from the Department.

5. The term “SERVICE CONNECTION” shall mean the main tap, pipe fittings, meter and valve from the water main to and including the shut-off valve on the Consumer’s side of the meter.

6. The term “COST OF SERVICE CONNECTION” shall mean the sum of the cost of the labor, materials, equipment, and road repair, if any, and other incidental charges necessary for the complete installation of a service connection, but excluding the cost of the meter.

7. The term “CONSUMER’S SUPPLY PIPE” shall mean the pipe extending from the consumer’s end of the service connection.

8. The word “MAIN” or “MAIN PIPE” shall mean the Department’s supply or distribution pipe to which service connections are made.

9. The term “FACILITIES RESERVE CHARGE” shall mean the fee to be paid by subdividers or, when applicable, new consumers as their proportionate share in improvements to the Department’s water system.
SECTION V - APPLICATION FOR WATER SERVICE AND SERVICE CONNECTION

1. When applying for water service and service connection, each prospective consumer shall:
   a. complete a standard application form;
   b. pay any applicable charges due at the time of application. The Department shall state what the applicable charges are at the time of application;
   c. If applicable, complete all infrastructure requirements, as determined by the Department; and
   d. Any other requirements as determined by the Department.

2. The Department shall inform the prospective consumer, in writing, that the application is complete and accepted for filing, or that the application is deficient and what specific information is necessary to make the application complete. If the application is deficient, computation of time for accepting or denying the request shall not begin until all requirements are met.

3. Once completed and filed, the Department shall approve or deny the application within forty-five (45) working days. The application shall be deemed approved, pursuant to Hawaii Revised Statutes 91-13.5 if the Department fails to take any action at the end of the forty-fifth working day. Upon approval of the application, the applicant shall pay all applicable charges prior to receiving water service and service connection.

4. Each prospective consumer shall be required to sign the standard application form for the water service desired, assuming responsibility for the payment of future charges for water service to the designated location before water is turned on for any use whatsoever. The prospective consumer signing the standard application form shall be (held) liable for the payment of all charges for water and water service at the designated location.

5. An advance deposit equal to the Department’s estimate of three months’ water charges will be required of tenants, lessees, and purchasers of property under an agreement of sale. When water service is discontinued, the advance deposit will be returned less all unpaid or outstanding water charges.

6. Charges for water will begin when the water service is established and will continue until due notification from the consumer or until discontinued by the Department for failure of the consumer to comply with these rules and regulations.

7. When an application for water service is made by a consumer who was responsible for and failed to pay all bills previously rendered, regardless of location or time incurred, the Department may refuse to furnish water service to such consumer until the outstanding bills are paid.
SECTION XI - DISCONTINUATION OF WATER SERVICE

Water Service may be discontinued for the following reasons:

1. **Nonpayment of Bills.** Water service may be discontinued for the nonpayment of a bill within thirty (30) days after the mailing or presentation thereof to the consumer.

2. **Non-compliance with the Board’s Rules and Regulations.** If the consumer fails to comply with any of these rules and regulations, the Department will have the right to discontinue the service.

3. **Consumer about to Vacate Premises.** Each consumer about to vacate any premises supplied with water by the Department shall give notice of his intention to vacate prior thereto, specifying the date service is desired to be discontinued, otherwise he shall be held responsible for all water service furnished to such premises until the Department has received such notice of discontinuance. Before buildings are demolished, the Department should be notified so the service connection can be closed.

4. **Unauthorized Use of Water.** The Department will refuse or discontinue water service to any premises or consumer, if necessary, without giving notice to protect itself against fraud, abuse, or unauthorized use of water. A surcharge may be established and assessed by the Department.

5. **Wasteful Use of Water.** Where negligent or wasteful use of water exists on any premises, the Department may discontinue the service if such conditions are not corrected after giving the consumer written notice of intent to do so.

6. **Discontinuation of Water Service for Non-payment of Sewer Service Charges.** The Department is authorized to discontinue and terminate water service for delinquency in payment of County of Kaua‘i sewer service charges when so directed by the County Director of Finance. Water service may be discontinued for delinquencies in payment of such sewer charges no earlier than thirty (30) days after the mailing or presentation of such delinquent charges to the consumer.

   Water service may be restored when all such delinquencies have been paid or at the request of the County Director of Finance. All Departmental charges for re-opening, re-installation, or re-connection shall be paid before water service is restored.

SECTION XII - RESTORATION OF WATER SERVICE

If water service is turned off because of failure to pay a water bill, for violation of any of the regulations of the Department, or for other reasons, arrangements must be made to pay all outstanding accounts against the consumer before his water service will be restored.

If a rule, section, sentence, clause or phrase of these rules and regulations or the application of these rules and regulations to other persons or circumstances or property is held to be unconstitutional or invalid, the remaining portions of these rules and regulations or the application of these rules and regulations to other persons or circumstances or property shall not be affected. The Department hereby declares that it would have adopted these rules and regulations and each and every rule, section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other rules, sections, sentences, clauses, or phrases be declared unconstitutional or invalid.
MANAGER’S REPORT No. 18-66

August 21, 2017

Re: Discussion and Possible Action for Job No. 17-11, WP2020 WKK-02, Drill and Test Kīlauea Well No. 3, Kīlauea, Kaua’i, Hawai’i for additional design funding in the amount of $18,339.35

RECOMMENDATION:
It is recommended that the Board approve the expenditure of $18,339.35 in additional design funds.

FUNDING:

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<th>Proposed Contract Amount:</th>
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<td>B</td>
<td>Contingency – 5%</td>
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<td><strong>D</strong> Total Funds Budgeted:</td>
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E Additional Funds Requested for 5% Contingency (FRC Fund Account No. 20-20-00-605-154) (C – D) | $18,339.35 |

**Contract Total** | **$369,847.00**

**Proposed Certified Funds for Project** | **$388,339.35**

BACKGROUND:
The proposed scope of the subject project includes drilling and testing a new drinking water well for the Kīlauea-Waipake-Kalihiwai water system. The system is currently supplied by two 700 gpm wells known as Kīlauea No. 1 & 2. The Department of Water (DOW) would like to develop a new well with a target capacity of 700 gpm, which would enable any of the systems wells to provide full standby capacity.

The DOW has completed several rounds of negotiations with the consultant for the project. The consultant has submitted a proposal to complete the design of the project which is narrowly within the DOW’s design budget. The DOW has thoroughly reviewed the consultant’s proposal and finds it acceptable. However, there are not sufficient funds budgeted to provide a 5% contingency for the contract. With the current budget, only $153.00 (< 0.05% of contract
amount) would be available for contingency. The additional funds being requested will provide the 5% contingency that is allowed. In the future, if a contract amendment is needed, including the 5% contingency may potentially save up to one month to execute a contract amendment because a Manager’s Report to the Board is required for additional funding for a contract amendment when the contingency amount is not sufficient. If this Manager’s Report requesting additional funds for a 5% contingency is approved, the certified amount for the project will reflect the new budget amount.

**OPTIONS:**

**Option 1:** Approve the expenditure of the additional design funds.

Pros: This will potentially allow the DOW to save up to a month to complete a contract amendment and the design (if Board approval is not required for additional funds for the amendment).

Cons: This will allow the DOW to not encumber the requested additional contingency funds of $18,339.35 which could be used for other purposes.

**Option 2:** Do not approve the expenditure of the additional design funds.

Pros: This will allow the DOW to not encumber the requested additional contingency funds of $18,339.35 which could be used for other purposes.

Cons: Not approving the expenditure of additional design funds may delay a contract amendment and completion of design up to one month, if the contract amendment requires more money than is available. Currently, only $153.00 is available for contingencies without approval of the additional design funds.

Respectfully submitted,

Keith Aoki, P.E.
Engineering Division

Funding reviewed:

Marites Yano
Water Works Controller

CONCURRED:

Kirk Saiki, P.E.
Manager and Chief Engineer

KA/BW/ein

Mggrp/August 2017/18-66/Discussion and Possible Action for Job No. 17-11 WP2020 WKK-02, Drill and Test Kilauea Well No. 3, Kilauea, Kaua‘i, Hawai‘i for the additional design funding in the amount of $18,339.35 (8-21-17).cin
MANAGER’S REPORT No. 18-67

August 21, 2017

Re: Discussion and Possible Action on the 5th Amendment for Contract No. 440, Job No. 02-06 WP2020 #WKK-15, Kilauea, Kaua‘i, Hawai‘i, 1.0 Million Gallon Storage Tank and Connecting Pipeline with Kodani & Associates Engineer, LLC for the additional design funding of $25,260.00

RECOMMENDATION:
It is recommended that the Board approve a total of $25,260.00 in additional design funds to be expended for the Kilauea 1.0 MG Storage Tank and Connecting Pipeline Project.

FUNDING:
Account (BAB)
Account No. 10-20-00-604-120, No. 20-20-00-604-120, No. 30-20-00-605-120

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<td>Amendment No. 2; execution 12/20/11; NTP 1/2/12 time extension for 365 days, provide technical information required for projects design, permitting and construction of tank, and drill and test well at site.</td>
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<td>Amendment No. 3; executed 2/10/14; time extension for additional 120 days, revise grading sheets due to removing drill and testing of well from scope (4/18/14)</td>
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Additional Funds Requested for Amendment No. 5 of contract
Build America Bond (BAB) Fund Account no. 30-20-00-604-120 $25,260.00

Total Additional Funds Requested $25,260.00
Contingency available $3,800.00

New Contract Amount for Kilauea 1.0 MG Storage Tank and Connecting Pipeline Project $367,883.80

BACKGROUND:
The storage facilities for the Kilauea area are not adequate. The Department is currently limiting water service to lots in the area until additional storage facilities (and additional source facilities) are provided. The DOW is proposing to construct a new 1.0 MG storage tank on the same site as an existing 0.1 MG storage tank. The 0.1
MG tank will be demolished and replaced with the new 1.0 MG storage tank. The addition of the proposed 1.0 MG tank will provide adequate storage facilities for the area.

The Environmental Assessment (EA) for the project also required the following permits to be completed: Use, Class IV zoning and Special permits. The design consultant, Kodani & Associates Engineers, LLC did not know or anticipate the need to complete these permits and did not include the cost to complete these permits for the design. The consultant has requested additional funds to complete these permits required from the EA. The Department has reviewed the request and documentation from Kodani & Associates Engineers, LLC and is satisfied that the consultant did not include the cost to complete the Use, Class IV zoning and Special permits in their contract proposal amount for the contract.

The NPDES permit required for the project required a flat $500.00 application fee. The application fee was determined not to be in the contract scope of work. The consultant submitted an invoice for the fee as a reimbursable expense which the Department paid. In oversight by the Department and the consultant, the contract was not amended at that time to include the NPDES application fee in the contract. The Department realized later that the contract should be amended to include the application fee. The NPDES permit application fee is included in the requested $25,260.00 in additional funds being requested and will be included in the scope of work to make the contract correct.

The Department has found the requested amount to complete the Use, Class IV zoning and Special permits reasonable and recommend approval of the additional funds.

The contract time will also be extended with Contract Amendment No. 5 and will be addressed in a Report to Manager/Manager’s Update.

**OPTIONS:**

**Option 1:** Approve the additional funding to complete the Use, Class IV and Special permits.

Pro: Approving the expenditure of additional design funds will allow the DOW to complete the required Use, Class IV and Special permits.

Con: None.

**Option 2:** Do not approve the additional funding to complete the Use, Class IV and Special permits.

Pro: None.

Con: Not completing the Use, Class IV and Special permits may prevent the project from being constructed.

Respectfully submitted,

Keith Aoki, P.E.
Engineering Division

Funding reviewed:

Marites Yano
Waterworks Controller

CONCURRED:

Kirk Saiki, P.E.
Manager and Chief Engineer
MANAGER’S REPORT NO. 18-68

August 21, 2017

Re: Discussion and Possible Action for Job No. 11-07, Water Plan 2020 KP-09, MCC, Chloration Facilities, Koloa Well “16A” & “16B” Site and Building Improvements for additional construction funding in the amount of $2,050,000.00

RECOMMENDATION:
It is recommended that the Board approve additional funds for the subject project construction for awarding and executing a new contract for the project.

FUNDING: Build America Bond/Capital Outlay/R&R
30-21-00-604-107 BAB/ Capital Outlay/KP-09- MCC, Chloration facilities, Koloa Well 16A and E and 16-B Site and Bldg. Improvements approved budget FY-17-18 $1,750,000.00

Contractor Proposal $3,576,241.00
Total Contingency (approx. 5%) $178,759.00
Total Funding Required $3,755,000.00

Available BAB Fund Balance $11,277,771.77

Additional Funds Requested, (BAB) $2,050,000.00

BAB Fund balance to remain after additional funds approved $9,227,771.77

BACKGROUND:
Koloa Well 16B works in conjunction with Koloa Well 16E. Koloa Well 16B has been out of service for over a decade. The normally closed valves within the piping system can be positioned so that Koloa 16E/16B can pump to Paanau Tanks and also so Koloa 16A can pump to 366’ system. This contract consists of furnishing all materials, labor, tools, equipment, and appurtenances required to provide and install a well pump at 16B, discharge piping, disinfection system, control building, Motor Control Center, Supervisory Control and Data Acquisition for wells 16A & 16B, drainage and site improvements, and appurtenant items as specified on the plans and specifications. The work is located at the existing Kōloa Well 16A, 16B and 16E site, off Knudson Road. All work shall be in place complete and in accordance with the plans and specifications.

The original single construction proposal received on July 3, 2017 for the well, site and building improvements came in nearly 2 ½ times the engineers estimate ($1.4M) at $3.7M. The DOW has not done repairs like this to an existing site recently and the proposal came in above the budget of $1.75M. Pursuant to HRS, cost price data was requested from the contractor to review the proposal for fairness and determination of best interest of the DOW and our rate payers. Taking that into account, and the belief that the qualified proposer had a more realistic cost (although much higher
than engineers estimate) to adhere to all DOW requirements satisfactorily, the DOW determined it was worth a “Best and Final Offer” (BAFO) request. The BAFO proposal cost received on August 9, 2017 for this project reduced the project cost from initial proposal by $131,697.00 and after further cost price data review was determined to be reasonable given the DOW’s review of all information submitted.

The design consultant provided a mixed recommendation based on the BAFO. They stated the cost is high but move forward if the project is critical to DOW, or to not move forward with the construction and ask for contractor to do the work for a price near $2M. The consultant mentioned factors such as how critical the need of the project is by DOW. They stated contractors are very busy right now and contractors are not as hungry as before so there could be possible savings if the DOW were to wait until construction slowed down and reprocure construction as an option if the project is not critical to DOW. The consultant also mentioned one contractor they contacted doesn’t bid on Kauai work which is something we encounter as an isolated island, even from Oahu. Finally, the other contractor the consultant contacted said our proposal technical requirements are a lot of paperwork. This is valid given government unique requirements for procurement as well as the DOW RFP process. The consultant indicated that this contractor gave them an estimate of $2 million to construct the project but did not know if this estimate was from a detailed cost estimate or ball park estimate/guess. These are all factors that go into the pricing evaluation, however, DOW did not receive actual engineers estimate for what those costs would be estimated to be line by line to equate a total lump sum to justify what they believed would be far more reasonable at $1.4M, $1.7M or $2.0M rather than the $3.5M BAFO. The consultant has indicated that they determined their estimate by various methods that they are confident in. The design consultant was unable to provide definitive information to the DOW design team to support their assertion that their engineer’s estimate lump sum total was more realistic than the contractor’s proposal that included subsequent cost-price data information breakdowns for material, labor, equipment, overhead and profit, and general requirements for the various proposal line items to support either of their recommendations. The DOW spent a lot of time evaluating the cost-price data provided by contractor against the design consultant’s estimate. The DOW disagrees with the design consultant engineer’s estimate for the project as the contractor was very open with the information DOW requested compared to what was provided by the design team and on that basis and the other factors, the costs have been determined, fair and reasonable to DOW as stated in the price cost data review memo dated 8/11/17.

This particular project scope consists of mostly majority specialty electrical, mechanical and pump work that are very specific to the water industry, given our island isolation, this further reduces the extent of competition while increasing pricing for materials, labor and equipment operations. After the initial price analysis and supplemental cost analysis per HRS 103D-312, in my judgment, I do believe that after factoring in market conditions, our alternatives for meeting the requirement, price-related factors, and the non-price evaluation factors that relate to each procurement, my determination is that the single qualified BAFO proposal as submitted seems to be fair and reasonable to DOW customers for the majority of total pricing. There are items that may have seen further price reduction had there been more competition but the BAFO still fell within my allowable range of approximately $3.3M - $3.6M after initial cost price data review completed on July 28, 2017. As Procurement Officer responsible for exercising the requisite judgment needed to reach a negotiated settlement with the offeror and is solely responsible for the final price agreement, I recommended to the Manager that the Department move forward with awarding of the contract to Unlimited Construction Services, Inc. as selected by the proposal evaluation team.
based on the BAFO. This contract award is contingent on the Board of Water approving additional funding for the project.

The RFP process (competitive sealed proposals) although more technical and time consuming than low bid procurement allows for a BAFO which can provide substantial cost savings at times. The associated costs for material, labor, equipment, overhead and fee looked reasonable with further cost reduction of $131,697.00 realized with the BAFO. Thus, it is recommended the Board approve the additional funds so the construction contract can be awarded and executed with the contractor selected which is Unlimited Construction Services, Inc.

**OPTIONS:**

**Option 1:** Approve the additional funds.
- **Pro:** Project can be awarded. Koloa Well 16B provides backup to Koloa Well 16E and other sources in the system.
- **Con:** Higher budget than anticipated.

**Option 2:** Not approve additional funds.
- **Pro:** Department does not spend more than budgeted.
- **Con:** We would have to dramatically reduce scope and no guarantees that we can stay within the current budget while meeting the needs of the facility given the price realities seen recently. Project would likely be cancelled and shelved until budget available. Koloa system source would not have Koloa Well 16B to backup for Koloa Well 16E and other sources in the system.

Respectfully submitted,

Dustin Moises, P.E.
Chief of Construction Management

Funding reviewed:

Marites Yano
Waterworks Controller

CONCURRED:

Kirk Saiki, P.E.
Manager and Chief Engineer

DM/ein

Mgrrp/August 2017/18-68/Discussion and Possible Action for Job No. 11-07, Water Plan 2020 KP-09, MCC, Chlorination Facilities, Koloa Well “16A” & “16B” Site and Building Improvements for additional construction funding in the amount of $2,050,000.00 (8-21-17)
Staff Reports
I. BUDGET SUMMARY VS. ACTUAL (see attached report for details)

YEAR TO DATE (YTD) BUDGET & ACTUAL EXPENSES SUMMARY – AS OF JULY, 2017

<table>
<thead>
<tr>
<th></th>
<th>BUDGET</th>
<th>vs</th>
<th>ACTUAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>· Operating Expenses</td>
<td>$4,266,836.97</td>
<td>$1,968,456.18</td>
<td></td>
</tr>
<tr>
<td>· Debt Principal Payment</td>
<td>3,331,698.54</td>
<td>3,270,928.92</td>
<td></td>
</tr>
<tr>
<td>· Capital Projects</td>
<td>4,391,896.69</td>
<td>94,995.79</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>$13,550,217.50</td>
<td>$5,334,380.89</td>
<td></td>
</tr>
</tbody>
</table>

REVENUES: VARIANCE = “ACTUAL” LESS “BUDGET”; POSITIVE INDICATES HIGHER PERFORMANCE THAN EXPECTED.

- Total Revenue as of July, 2017 was 3% below projection.
  - Water sales of $2.7 million (M) was $316.7 thousand (“K”) or 13% above projection.
  - Other Water Revenue- Receipts of $45.3K exceeded projection by $24.5K or 117%.
  - Capital Contributions: Cash contributions including Federal & State Grants - $60.6K.
  - Investment Income & Net Increase in FV of Investments – None.

OPERATING EXPENSES: VARIANCE = BUDGET LESS ACTUAL EXPENDITURES; POSITIVE INDICATES LESS SPENDING THAN PLANNED.

- YTD Operating Expenses before depreciation and amortization was $2M. Total spending was $3.9M less than planned or budgeted; a positive variance of 66%.
  - Employee Related Expenses – $740.3K; a 16% positive variance.
  - Contracts & Services – $488.8K with an 81% positive variance.
  - Professional & Other Services, Insurance, Repairs and Maintenance for both water and non-water systems are the main items contributing to the 81% positive variance.
  - Exceptional Expenses – None.
  - Fuel & Utilities – $252.6K; a 5% negative variance.
  - Bulk Water Purchase – $152.8K; a 2% negative variance.
  - Office & Operating Supplies – $38K, a 72% positive variance.
  - Training, Travel & Meeting Expenses – $2K.
  - Debt Service – Interest Expense - $294K.
  - Depreciation & Amortization (non-cash expenses) is $618.3K.

NET OPERATING INCOME:

- Net Operating Income before depreciation and amortization - $1M.
- Net Operating Income after depreciation & amortization was $412.3K.
**NON-OPERATING PROCEEDS & DISBURSEMENTS**

- SRF Loan Proceeds – None.
- FRC – Facility Reserve Charge - Receipts of $91,745.00.
- YTD Debt Principal Payment is $3,270,928.92.

**CAPITAL PROJECTS BUDGET: YTD DISBURSEMENTS = $94,995.79**

- Capital Projects: Water Utility Fund - $95K.
- Capital Projects: FRC Fund – $0.00.
- Capital Projects: BAB Fund - $0.00.
- Capital Projects: SRF Loan Fund - None.

**II. FY 2017 – 2018 ENCUMBERED FUNDS**

- FY 2017 – 2018 Certification of Funds – $1,430,795.35

**III. COMPARATIVE CHARTS:**

**METERED CONSUMPTION:**

- July, 2017 metered consumption –383.8 million gallons (mg); higher by 20mg as compared from the same month of FY 2017.
- YTD metered consumption as of 07/31/17 – 383.8mg; increased by 20mg as compared from the same month of FY 2017.

**IV. COMPARATIVE BALANCE SHEET:**

* See attached.

**V. OTHER FISCAL ONGOING ACTIVITIES/INITIATIVES:**

- Five (5) years Water Rate Study – Ongoing, it is currently referred to the finance committee for deliberation.
- CC&B Phase II & III –Field Service Management –
  - User Acceptance Training (UAT) – IT is coordinating the UAT with Field Collection Clerks/Meter Readers.
  - Billing Insight is on hold until oracle software upgrade is completed.
- Fiscal Yearend Audit – Ongoing.
- Budget Program Solution – procurement is in process.

Respectfully submitted,

Marites Yano
Waterworks Controller
## I. OPERATING BUDGET

<table>
<thead>
<tr>
<th></th>
<th>Original Budget</th>
<th>Revised Budget</th>
<th>Actual</th>
<th>Variance</th>
<th>Revised YTD Budget</th>
<th>YTD Actual</th>
<th>*Variance</th>
<th>Variance %</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water Sales</td>
<td>$2,399,372.00</td>
<td>$2,399,372.00</td>
<td>$2,716,125.20</td>
<td>$316,753.20</td>
<td>$2,399,372.00</td>
<td>$2,716,125.20</td>
<td>$316,753.20</td>
<td>13%</td>
</tr>
<tr>
<td>Other Water Revenue</td>
<td>20,833.37</td>
<td>20,833.37</td>
<td>24,472.44</td>
<td></td>
<td>20,833.37</td>
<td>24,472.44</td>
<td></td>
<td>117%</td>
</tr>
<tr>
<td>Federal Grants</td>
<td>370,833.37</td>
<td>370,833.37</td>
<td>(370,833.37)</td>
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<td>370,833.37</td>
<td>(370,833.37)</td>
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<td>(100%)</td>
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<tr>
<td>Net Increase in Fair Value of Investments</td>
<td>(2,000.00)</td>
<td>(2,000.00)</td>
<td>2,060.00</td>
<td></td>
<td>(2,000.00)</td>
<td>2,060.00</td>
<td>(100%)</td>
<td>(100%)</td>
</tr>
<tr>
<td>Gains on Sale of Capital Assets</td>
<td>14,500.00</td>
<td>14,500.00</td>
<td>14,500.00</td>
<td></td>
<td>14,500.00</td>
<td>14,500.00</td>
<td></td>
<td>(100%)</td>
</tr>
<tr>
<td>Miscellaneous Revenue</td>
<td>41,567.75</td>
<td>41,567.75</td>
<td>(28.76)</td>
<td>(41,565.53)</td>
<td>41,567.75</td>
<td>(28.76)</td>
<td>(41,565.53)</td>
<td>(100%)</td>
</tr>
</tbody>
</table>

### Employee-Related Expenses

<table>
<thead>
<tr>
<th>Description</th>
<th>Original Budget</th>
<th>Revised Budget</th>
<th>Actual</th>
<th>Variance</th>
<th>Revised YTD Budget</th>
<th>YTD Actual</th>
<th>*Variance</th>
<th>Variance %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries and Wages (Includes Leaves &amp; CTO)</td>
<td>509,709.66</td>
<td>509,709.66</td>
<td>416,411.29</td>
<td>90,298.37</td>
<td>509,709.66</td>
<td>416,411.29</td>
<td>90,298.37</td>
<td>18%</td>
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<tr>
<td>Temporary Assignment</td>
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<td>4,782.13</td>
<td>(781.32)</td>
<td></td>
<td>4,782.13</td>
<td>(781.32)</td>
<td></td>
<td>(16%)</td>
</tr>
<tr>
<td>Overtime</td>
<td>40,916.67</td>
<td>40,916.67</td>
<td>4,777.80</td>
<td></td>
<td>40,916.67</td>
<td>4,777.80</td>
<td></td>
<td>6%</td>
</tr>
<tr>
<td>Standby</td>
<td>15,132.76</td>
<td>15,132.76</td>
<td>15,056.82</td>
<td>(924.86)</td>
<td>15,132.76</td>
<td>15,056.82</td>
<td>(924.86)</td>
<td>(6%)</td>
</tr>
<tr>
<td>FICA</td>
<td>44,284.00</td>
<td>44,284.00</td>
<td>35,171.61</td>
<td>9,112.39</td>
<td>44,284.00</td>
<td>35,171.61</td>
<td>9,112.39</td>
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<tr>
<td>Retirement Contribution</td>
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<td>142,343.49</td>
<td>88,932.10</td>
<td>53,411.39</td>
<td>142,343.49</td>
<td>88,932.10</td>
<td>53,411.39</td>
<td>38%</td>
</tr>
<tr>
<td>Life &amp; Health Insurance</td>
<td>43,010.92</td>
<td>43,010.92</td>
<td>3,790.38</td>
<td></td>
<td>43,010.92</td>
<td>3,790.38</td>
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<td>9%</td>
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<tr>
<td>Workers Compensation</td>
<td>8,023.78</td>
<td>8,023.78</td>
<td>8,023.78</td>
<td></td>
<td>8,023.78</td>
<td>8,023.78</td>
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<td>100%</td>
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<tr>
<td>Unemployment Compensation</td>
<td>1,250.00</td>
<td>1,250.00</td>
<td>1,250.00</td>
<td></td>
<td>1,250.00</td>
<td>1,250.00</td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>Post Employment Benefits (OPEB)</td>
<td>83,490.99</td>
<td>83,490.99</td>
<td>96,969.88</td>
<td>(13,469.89)</td>
<td>83,490.99</td>
<td>96,969.88</td>
<td>(13,469.89)</td>
<td>(16%)</td>
</tr>
<tr>
<td><strong>Total Employee-Related Expenses</strong></td>
<td>884,928.62</td>
<td>884,928.62</td>
<td>740,307.57</td>
<td>144,622.05</td>
<td>884,928.62</td>
<td>740,307.57</td>
<td>144,622.05</td>
<td>16%</td>
</tr>
</tbody>
</table>

### Contracts & Services

<table>
<thead>
<tr>
<th>Description</th>
<th>Original Budget</th>
<th>Revised Budget</th>
<th>Actual</th>
<th>Variance</th>
<th>Revised YTD Budget</th>
<th>YTD Actual</th>
<th>*Variance</th>
<th>Variance %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Services-General</td>
<td>312,048.89</td>
<td>312,048.89</td>
<td>218,722.79</td>
<td>1,043,760.58</td>
<td>218,722.79</td>
<td>1,043,760.58</td>
<td>97%</td>
<td></td>
</tr>
<tr>
<td>Professional Services-Accounting &amp; Auditing</td>
<td>58,830.00</td>
<td>58,830.00</td>
<td>8,830.00</td>
<td></td>
<td>58,830.00</td>
<td>8,830.00</td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>Other Services-General</td>
<td>5,932.13</td>
<td>5,932.13</td>
<td>3,377.79</td>
<td>2,554.34</td>
<td>5,932.13</td>
<td>3,377.79</td>
<td>2,554.34</td>
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<tr>
<td>Other Services-Billing Costs</td>
<td>17,221.50</td>
<td>17,221.50</td>
<td>41,707.81</td>
<td>24,486.31</td>
<td>17,221.50</td>
<td>41,707.81</td>
<td>24,486.31</td>
<td>140%</td>
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<td>Public Relations-General</td>
<td>7,737.50</td>
<td>7,737.50</td>
<td>640,21</td>
<td></td>
<td>7,737.50</td>
<td>640,21</td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>Procurement Advertising</td>
<td>833.37</td>
<td>833.37</td>
<td>1,390.88</td>
<td>(557.31)</td>
<td>833.37</td>
<td>1,390.88</td>
<td>(557.31)</td>
<td>(67%)</td>
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<tr>
<td>Communication Services</td>
<td>9,073.37</td>
<td>9,073.37</td>
<td>8,674.57</td>
<td>409.80</td>
<td>9,073.37</td>
<td>8,674.57</td>
<td>409.80</td>
<td>4%</td>
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<tr>
<td>Freight and Handling</td>
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<td>1,260.00</td>
<td>1,223.53</td>
<td>36.47</td>
<td>1,260.00</td>
<td>1,223.53</td>
<td>36.47</td>
<td>3%</td>
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<tr>
<td>Insurance</td>
<td>100,000.00</td>
<td>100,000.00</td>
<td>100,000.00</td>
<td></td>
<td>100,000.00</td>
<td>100,000.00</td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>County Service Charge</td>
<td>176,836.50</td>
<td>176,836.50</td>
<td>177,037.50</td>
<td>(201.00)</td>
<td>176,836.50</td>
<td>177,037.50</td>
<td>(201.00)</td>
<td>(100%)</td>
</tr>
<tr>
<td>Repairs and Maintenance-Water System</td>
<td>10,083.37</td>
<td>10,083.37</td>
<td>9,241.17</td>
<td>842.20</td>
<td>10,083.37</td>
<td>9,241.17</td>
<td>842.20</td>
<td>8%</td>
</tr>
<tr>
<td>Repairs and Maint-Non Water System</td>
<td>58,433.37</td>
<td>58,433.37</td>
<td>58,288.35</td>
<td>1,145.02</td>
<td>58,433.37</td>
<td>58,288.35</td>
<td>1,145.02</td>
<td>2%</td>
</tr>
<tr>
<td><strong>Total Contracts &amp; Services</strong></td>
<td>720,068.37</td>
<td>720,068.37</td>
<td>580,801.97</td>
<td>2,042,473.15</td>
<td>720,068.37</td>
<td>580,801.97</td>
<td>2,042,473.15</td>
<td>81%</td>
</tr>
</tbody>
</table>
## Exceptional Expenses

**FY2014 & FY2015 Kalanchoe Emergency**

**FY 2015 Kilauea**

### Total Exceptional Expenses

<table>
<thead>
<tr>
<th>Description</th>
<th>Original Budget</th>
<th>Revised Budget</th>
<th>Actual</th>
<th>Variance</th>
<th>Revised YTD Budget</th>
<th>YTD Actual</th>
<th>Variance</th>
<th>Variance %</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fuel &amp; Utilities</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utility Services</td>
<td>231,128.37</td>
<td>231,128.37</td>
<td>247,338.50</td>
<td>(16,210.19)</td>
<td>231,128.37</td>
<td>247,338.50</td>
<td>(16,210.19)</td>
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<td>Fuel</td>
<td>9,625.00</td>
<td>9,625.00</td>
<td>5,231.56</td>
<td>4,393.42</td>
<td>9,625.00</td>
<td>5,231.56</td>
<td>4,393.42</td>
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<td><strong>Total Fuel &amp; Utilities</strong></td>
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<td>240,753.37</td>
<td>252,570.14</td>
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<td>240,753.37</td>
<td>252,570.14</td>
<td>(11,816.77)</td>
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<td><strong>Bulk Water Purchase</strong></td>
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<tr>
<td>Bulk Water Purchase</td>
<td>150,048.00</td>
<td>150,048.00</td>
<td>152,805.97</td>
<td>(2,757.97)</td>
<td>150,048.00</td>
<td>152,805.97</td>
<td>(2,757.97)</td>
<td>(2%)</td>
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<tr>
<td><strong>Total Bulk Water Purchase</strong></td>
<td>150,048.00</td>
<td>150,048.00</td>
<td>152,805.97</td>
<td>(2,757.97)</td>
<td>150,048.00</td>
<td>152,805.97</td>
<td>(2,757.97)</td>
<td>(2%)</td>
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<tr>
<td><strong>Office &amp; Operating Supplies</strong></td>
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<td>Office Supplies</td>
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<td>3,985.97</td>
<td>1,182.91</td>
<td>5,166.88</td>
<td>3,985.97</td>
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<td>Operating Supplies</td>
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<td>23,809.07</td>
<td>103,856.35</td>
<td>127,665.42</td>
<td>23,809.07</td>
<td>103,856.35</td>
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<td>Books, Subscriptions and Dues</td>
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<td>2,543.26</td>
<td>10,136.00</td>
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<td>2,543.26</td>
<td>10,136.00</td>
<td>(7,592.74)</td>
<td>(269%)</td>
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<td>Books, Subscriptions and Dues - Board</td>
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<td>86.38</td>
<td>85.38</td>
<td>85.38</td>
<td>86.38</td>
<td>85.38</td>
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<td><strong>Total Office &amp; Operating Supplies</strong></td>
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<td>135,422.94</td>
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<td>97,531.90</td>
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<td><strong>Training, Travel &amp; Meeting Expenses</strong></td>
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<td>Training and Development</td>
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<td>9,048.26</td>
<td>326.06</td>
<td>8,982.19</td>
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<td>326.06</td>
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<td>Travel and Per Diem</td>
<td>8,445.00</td>
<td>8,445.00</td>
<td>1,616.26</td>
<td>6,828.74</td>
<td>8,445.00</td>
<td>1,616.26</td>
<td>6,828.74</td>
<td>100%</td>
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<tr>
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<td>1,877.50</td>
<td>1,877.50</td>
<td>1,877.50</td>
<td>1,877.50</td>
<td>1,877.50</td>
<td>1,877.50</td>
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<td>Meeting Expense</td>
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<td>650.00</td>
<td>650.00</td>
<td>650.00</td>
<td>650.00</td>
<td>650.00</td>
<td>650.00</td>
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<tr>
<td>Meeting Expense - Board</td>
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<td>828.37</td>
<td>84.19</td>
<td>744.18</td>
<td>828.37</td>
<td>84.19</td>
<td>744.18</td>
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<td>2,000.45</td>
<td>19,109.10</td>
<td>21,109.55</td>
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<td><strong>Debt Service</strong></td>
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<tr>
<td>Interest Expense</td>
<td>1,854,710.30</td>
<td>303,258.37</td>
<td>294,039.04</td>
<td>9,219.33</td>
<td>303,258.37</td>
<td>294,039.04</td>
<td>9,219.33</td>
<td>3%</td>
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<tr>
<td><strong>Total Interest Expense</strong></td>
<td>1,854,710.30</td>
<td>303,258.37</td>
<td>294,039.04</td>
<td>9,219.33</td>
<td>303,258.37</td>
<td>294,039.04</td>
<td>9,219.33</td>
<td>3%</td>
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<tr>
<td><strong>Total Operating Expenses</strong></td>
<td>3,946,492.78</td>
<td>4,256,836.97</td>
<td>1,966,455.18</td>
<td>2,298,380.97</td>
<td>2,298,380.72</td>
<td>(1,958,455.18)</td>
<td>2,298,380.72</td>
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<td><strong>Net Operating Income (Loss) Before Depreciation &amp; Amortization</strong></td>
<td>(2,986,144.87)</td>
<td>($1,156,529.08)</td>
<td>$1,030,586.72</td>
<td>$2,179,117.28</td>
<td>($1,156,529.08)</td>
<td>$1,030,586.72</td>
<td>$2,179,117.28</td>
<td>(188%)</td>
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<td><strong>Depreciation &amp; Amortization</strong></td>
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<tr>
<td>Depreciation</td>
<td>609,562.50</td>
<td>609,562.50</td>
<td>469,637.26</td>
<td>39,924.74</td>
<td>609,562.50</td>
<td>469,637.26</td>
<td>39,924.74</td>
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<td>Amortization</td>
<td>54,166.67</td>
<td>54,166.67</td>
<td>54,166.67</td>
<td>48,375.99</td>
<td>54,166.67</td>
<td>54,166.67</td>
<td>48,375.99</td>
<td>10%</td>
</tr>
<tr>
<td><strong>Total Depreciation &amp; Amortization</strong></td>
<td>663,729.17</td>
<td>663,729.17</td>
<td>618,121.72</td>
<td>45,407.45</td>
<td>663,729.17</td>
<td>618,121.72</td>
<td>45,407.45</td>
<td>7%</td>
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<tr>
<td><strong>Net Operating Income (Loss)</strong></td>
<td>(1,599,914.04)</td>
<td>($1,836,258.23)</td>
<td>412,266.50</td>
<td>2,742,524.73</td>
<td>(1,836,258.23)</td>
<td>412,266.50</td>
<td>2,742,524.73</td>
<td>(123%)</td>
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</tbody>
</table>
### Department of Water, County of Kauai
### Monthly Budget Summary vs. Actual
### SUMMARY
### 7/31/2017

#### July

<table>
<thead>
<tr>
<th>Description</th>
<th>Original Budget</th>
<th>Revised Budget</th>
<th>Actual</th>
<th>Variance</th>
<th>Revised YTD Budget</th>
<th>YTD Actual</th>
<th>Variance</th>
<th>Variance %</th>
</tr>
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<tbody>
<tr>
<td>Non Operating Proceeds</td>
<td>33,333.37</td>
<td>33,333.37</td>
<td>61,745.00</td>
<td>58,411.63</td>
<td>33,333.37</td>
<td>91,745.00</td>
<td>58,411.63</td>
<td>175%</td>
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<td>FRC-Facility Reserve Charge</td>
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<td>Total Non Operating Proceeds</td>
<td>33,333.37</td>
<td>33,333.37</td>
<td>61,745.00</td>
<td>58,411.63</td>
<td>33,333.37</td>
<td>91,745.00</td>
<td>58,411.63</td>
<td>175%</td>
</tr>
<tr>
<td>Transfers Out(In) to Other Funds</td>
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<tr>
<td>Debt Principal Payment</td>
<td>3,331,688.54</td>
<td>3,331,688.54</td>
<td>3,270,926.92</td>
<td>60,761.62</td>
<td>3,331,688.54</td>
<td>3,270,926.92</td>
<td>60,761.62</td>
<td>2%</td>
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<td><strong>Net Proceeds (Expenditures)</strong></td>
<td>(4,808,270.21)</td>
<td>(5,126,623.40)</td>
<td>(2,766,917.42)</td>
<td>2,361,705.98</td>
<td>(5,128,623.40)</td>
<td>(2,766,917.42)</td>
<td>2,361,705.98</td>
<td>(48%)</td>
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<tr>
<td>II. CAPITAL BUDGET</td>
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<td></td>
<td></td>
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<tr>
<td>Capital Projects (See Attached for Details)</td>
<td>1,289,889.43</td>
<td>4,391,858.69</td>
<td>64,035.79</td>
<td>4,268,909.90</td>
<td>4,361,858.69</td>
<td>94,955.79</td>
<td>4,268,909.90</td>
<td>58%</td>
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</table>
## Capital Projects (See Attached for Details):

<table>
<thead>
<tr>
<th>Description</th>
<th>Original Budget</th>
<th>Revised Budget</th>
<th>Actual</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Utility - Capital Projects (See Attached for Details)</td>
<td>968,648.81</td>
<td>2,440,413.24</td>
<td>94,965.79</td>
<td>2,345,417.45</td>
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<tr>
<td>FRC Special Trust Fund - Capital Projects (See Attached for Details)</td>
<td>70,766.63</td>
<td>494,476.10</td>
<td>494,476.10</td>
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<tr>
<td>BAR Fund - Capital Projects (See Attached for Details)</td>
<td>220,473.00</td>
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<td>SRF Loan Fund - Capital Projects (See Attached for Details)</td>
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<td>Total Capital Projects (See Attached for Details)</td>
<td>1,260,880.43</td>
<td>4,391,896.60</td>
<td>94,965.79</td>
<td>4,296,900.90</td>
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## FY 2018

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<tr>
<th>Description</th>
<th>Revised YTD Budget</th>
<th>YTD Actual</th>
<th>*Variance</th>
<th>Variance %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Utility - Capital Projects (See Attached for Details)</td>
<td>2,440,413.24</td>
<td>94,965.79</td>
<td>2,345,417.45</td>
<td>96%</td>
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<tr>
<td>FRC Special Trust Fund - Capital Projects (See Attached for Details)</td>
<td>494,476.10</td>
<td>494,476.10</td>
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<tr>
<td>Total Capital Projects (See Attached for Details)</td>
<td>4,391,896.60</td>
<td>94,965.79</td>
<td>4,296,900.90</td>
<td>98%</td>
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### Capital Projects (See Attached for Details):

<table>
<thead>
<tr>
<th>Item Description</th>
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<th>Variance</th>
<th>FY 2018</th>
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<tr>
<td>Revised YTD Budget</td>
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<td>Revised YTD Actual</td>
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<td>Variance</td>
<td>Variance %</td>
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<tr>
<td>10-02-00-034-999 WU-JT-RandR Capital Purchases</td>
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**Total Capital Projects (See Attached for Details):**

|                              | 998,504.81 | 2,440,413.24 | 94,995.79 | 2,345,417.45 | 2,440,413.24 | 94,995.79 | 2,345,417.45 | 98% |

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Page 202
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<td>20-20-00-605-017 FRC-Eng-ALLE-18IN Cane Haul Road Main</td>
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<td>20-20-00-605-155 FRC-Eng-ALLE-Weainiha Well #4</td>
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<td>20-21-00-605-161 FRC-Cns-Hanapepe River Bridge Kaumualii Hwy</td>
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<th>YTD Actual</th>
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<th>Variance %</th>
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**Total Capital Projects (See Attached for Details)**

<table>
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<tr>
<th>Original Budget</th>
<th>Revised Budget</th>
<th>Actual</th>
<th>Variance</th>
<th>Revised YTD Budget</th>
<th>YTD Actual</th>
<th>Variance</th>
<th>Variance %</th>
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<td>618</td>
<td>Prithibi</td>
<td>As needed Technical Support &amp; CC&amp;B Oracle Upgrade</td>
<td>10-02-10-540-010</td>
<td>OE</td>
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<td>427</td>
<td>Belt Collins Hawaii, Ltd.</td>
<td>Amendment 9, Job No: 02-14, Kapaa Homesteads 0.5MG Storage Tank &amp; Kapahi 1.0 MG Storage Tank &amp; Connecting Pipelines, Wailua-Kapaa Water System</td>
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<td>Valley Isle Motors, Ltd.</td>
<td>Solicitation GS 2017-2, Furnishing and Delivery of 3 vehicles</td>
<td>10-40-00-604-999</td>
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<td>1,270,646.35</td>
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Page 205
### BILLED REVENUES COMPARATIVE REPORT
For Fiscal Years 2016, 2017 & 2018

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<th>Month</th>
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<th>2017</th>
<th>2018</th>
<th>Cum. Inc (Dec)</th>
<th>% Inc. (Dec.)</th>
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**Note:** AFS error in billing AJE 288,133

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**BILLED REVENUES COMPARATIVE CHART**
As of July: FY 2016, 2017 & 2018

1. revenue comparison
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<th>FY 2018</th>
<th>Cum. Inc (Dec)</th>
<th>% of Inc (Dec)</th>
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<tr>
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<td>$0 M</td>
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<td>October</td>
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<tr>
<td>January</td>
<td></td>
<td></td>
<td></td>
<td>$0 M</td>
<td></td>
</tr>
<tr>
<td>February</td>
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<td></td>
<td>$0 M</td>
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</tr>
<tr>
<td>March</td>
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<td>June</td>
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Cash Receipts Comparative Chart
As of July: FY 2016, 2017 & 2018

CASH RECEIPTS (W/U) COMPARATIVE REPORT
For Fiscal Years 2016, 2017 & 2018
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<th>FY 2018</th>
<th>INC (DEC)</th>
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<td>344,542</td>
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<tr>
<td>April</td>
<td>334,995</td>
<td>348,781</td>
<td></td>
<td></td>
</tr>
<tr>
<td>May</td>
<td>335,320</td>
<td>314,701</td>
<td></td>
<td></td>
</tr>
<tr>
<td>June</td>
<td>388,313</td>
<td>355,055</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Adjustment**

* refer to monthly summary highlights

* AFS error in billing AJE 288,133

METERED CONSUMPTION (000 GALLONS) MONTHLY COMPARATIVE CHART
For Fiscal Years 2016, 2017 & 2018
(expressed in thousands)
YTD METERED CONSUMPTION (000 GALLONS) COMPARATIVE REPORT
For Fiscal Years 2016, 2017 & 2018
(expressed in thousands)

<table>
<thead>
<tr>
<th></th>
<th>FY 2016</th>
<th>FY 2017</th>
<th>FY 2018</th>
<th>CUM. INC (DEC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>July</td>
<td>400,235</td>
<td>363,695</td>
<td>383,831</td>
<td>20,136</td>
</tr>
</tbody>
</table>

** AFS error in billing AJE
288,133

Adjustment
## Department of Water - County of Kauai

### Statements of Net Position (Unadjusted)

#### July 31, 2017 and 2016

### Assets and Deferred Outflows

<table>
<thead>
<tr>
<th></th>
<th>July 31, 2017</th>
<th>July 31, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current Assets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash</td>
<td>3,690,055.72</td>
<td>6,737,728.87</td>
</tr>
<tr>
<td>Equity interest in pooled investments</td>
<td>28,778,467.66</td>
<td>18,814,012.30</td>
</tr>
<tr>
<td>Receivables:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts, net of allowance for doubtful accounts*</td>
<td>2,029,820.44</td>
<td>2,173,748.28</td>
</tr>
<tr>
<td>Due from other funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unbilled accounts</td>
<td>1,525,416.36</td>
<td>1,428,698.79</td>
</tr>
<tr>
<td>Grants and subsidies</td>
<td>627,367.53</td>
<td>274,539.58</td>
</tr>
<tr>
<td>Accrued interest</td>
<td>144,635.47</td>
<td>72,778.40</td>
</tr>
<tr>
<td><strong>Total receivables</strong></td>
<td>4,327,239.80</td>
<td>3,949,765.05</td>
</tr>
<tr>
<td>Materials and supplies</td>
<td>889,994.23</td>
<td>889,994.23</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>105,529.98</td>
<td>33,644.00</td>
</tr>
<tr>
<td><strong>Total current asset</strong></td>
<td>37,791,287.39</td>
<td>30,425,144.45</td>
</tr>
<tr>
<td><strong>Restricted Assets:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Facility reserve charge funds:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash</td>
<td>493,150.09</td>
<td>1,718,428.68</td>
</tr>
<tr>
<td>Accounts receivable and other</td>
<td>99,039.82</td>
<td>112,064.61</td>
</tr>
<tr>
<td><strong>Total facility reserve charge funds</strong></td>
<td>592,189.91</td>
<td>1,830,493.29</td>
</tr>
<tr>
<td><strong>Bond funds:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash</td>
<td>1,810,167.87</td>
<td>411,305.57</td>
</tr>
<tr>
<td>Investments</td>
<td>12,907,648.03</td>
<td>15,859,557.91</td>
</tr>
<tr>
<td>Accrued interest</td>
<td>57,536.45</td>
<td>62,192.65</td>
</tr>
<tr>
<td><strong>Total bond funds</strong></td>
<td>14,775,352.35</td>
<td>16,333,056.13</td>
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<tr>
<td><strong>Total restricted assets</strong></td>
<td>15,367,542.26</td>
<td>18,163,549.42</td>
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<tr>
<td><strong>Equity Interest in Pooled Investment - Noncurrent</strong></td>
<td>18,015,347.00</td>
<td>18,015,347.00</td>
</tr>
<tr>
<td><strong>Utility Plant:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In service</td>
<td>333,471,733.92</td>
<td>317,200,271.95</td>
</tr>
<tr>
<td>Accumulated depreciation</td>
<td>(120,978,148.58)</td>
<td>(114,017,617.66)</td>
</tr>
<tr>
<td><strong>Total utility plant</strong></td>
<td>212,493,585.34</td>
<td>203,182,654.29</td>
</tr>
<tr>
<td>Construction work in progress</td>
<td>4,042,581.84</td>
<td>16,737,431.78</td>
</tr>
<tr>
<td><strong>Total property, plant and equipment</strong></td>
<td>216,536,167.18</td>
<td>219,920,086.07</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td>287,710,343.83</td>
<td>286,524,126.94</td>
</tr>
<tr>
<td><strong>Deferred Outflow of Resources</strong></td>
<td>2,953,133.82</td>
<td>2,969,415.66</td>
</tr>
<tr>
<td><strong>Total assets and deferred outflows of resources</strong></td>
<td>$ 290,663,477.65</td>
<td>$ 289,493,542.60</td>
</tr>
</tbody>
</table>

*Allowance for doubtful accounts

(269,984.29)  
(267,390.14)
Liabilities, Deferred Inflows and Net Position

<table>
<thead>
<tr>
<th></th>
<th>July 31, 2017</th>
<th>July 31, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current Liabilities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable and accrued liabilities</td>
<td>2,525,904.66</td>
<td>$1,468,245.11</td>
</tr>
<tr>
<td>Contracts payable, including retainages</td>
<td>33,160.45</td>
<td>543,171.19</td>
</tr>
<tr>
<td>Due to/Due From Other Funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customer overpayment</td>
<td>126,549.12</td>
<td>100,037.24</td>
</tr>
<tr>
<td>Customer deposits and advances</td>
<td>415,582.47</td>
<td>449,698.44</td>
</tr>
<tr>
<td>Current portion of long term debt</td>
<td>4,835,459.24</td>
<td>4,717,296.00</td>
</tr>
<tr>
<td>Current portion of capital lease obligation</td>
<td>742,464.86</td>
<td>699,064.33</td>
</tr>
<tr>
<td><strong>Total current liabilities</strong></td>
<td>8,679,120.80</td>
<td>7,977,512.31</td>
</tr>
<tr>
<td><strong>Long-Term Debt</strong></td>
<td>74,120,583.08</td>
<td>79,126,188.83</td>
</tr>
<tr>
<td><strong>Capital Lease Obligation</strong></td>
<td>526,618.76</td>
<td>1,269,083.41</td>
</tr>
<tr>
<td><strong>OPEB &amp; Retirement Benefits</strong></td>
<td>11,406,971.88</td>
<td>11,405,287.83</td>
</tr>
<tr>
<td><strong>Accrued Vacation and Compensatory Pay</strong></td>
<td>1,283,014.93</td>
<td>1,246,850.46</td>
</tr>
<tr>
<td><strong>Deferred Inflow of Assets</strong></td>
<td>1,286,710.00</td>
<td>1,286,710.00</td>
</tr>
<tr>
<td><strong>Total liabilities and deferred inflows:</strong></td>
<td>97,303,019.45</td>
<td>102,311,632.84</td>
</tr>
<tr>
<td><strong>Net Position:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water Utility Reserves</td>
<td>10,200,000.00</td>
<td>10,200,000.00</td>
</tr>
<tr>
<td>Restricted FRC</td>
<td>592,189.91</td>
<td>1,830,493.29</td>
</tr>
<tr>
<td>Restricted Build American Bonds</td>
<td>14,771,227.35</td>
<td>15,792,466.61</td>
</tr>
<tr>
<td>Invested in Capital Assets Net of Related Debt</td>
<td>136,869,932.82</td>
<td>135,426,091.57</td>
</tr>
<tr>
<td>Unrestricted</td>
<td>30,927,108.12</td>
<td>23,932,858.29</td>
</tr>
<tr>
<td><strong>Total net position</strong></td>
<td>193,360,458.20</td>
<td>187,181,909.76</td>
</tr>
<tr>
<td><strong>Total liabilities, deferred inflows and net position:</strong></td>
<td>$290,663,477.65</td>
<td>$289,493,542.60</td>
</tr>
</tbody>
</table>
INFORMATION & EDUCATION SPECIALIST REPORT
August 21, 2017

Public Notices and Announcements
All news releases were also published on the Department’s Facebook and Twitter social media pages.

- Hanamaulu scheduled shutdown: July 19, 2017
  - A post was published on the Department’s social media pages of a 2-hour scheduled shutdown in Hanamaulu affecting residents on Hipa Road and Hehi Road from 2 p.m. to 4 p.m. on July 19th. The shutdown allowed a private contractor to commission the newly installed control valve on the water tank.

- Hanamaulu scheduled shutdown: July 27-28, 2017
  - A news release was issued to notify residents of an 8-hour scheduled shutdown for select residents in Hanamaulu on the mauka-side of Kuhio Highway, between Laulima Street and Kapule Highway on July 27th from 9 p.m. to 5 a.m., July 28th. The shutdown allowed a private contractor to complete work on the existing control valve on the water main line.
    - The news release was published in the Garden Island Newspaper, “Hanamaulu water off Thursday” on July 26, 2017. (Attached)

- Hanamaulu emergency shutdown: July 27-28, 2017
  - Updates were posted to the Department’s social media pages of the overnight emergency shutdown that took place at approximately 10 p.m. on July 27th, due to an unexpected break in the water line. PR monitored customer comments and complaints of the outage to provide live updates and responses to the situation via Facebook. A final update announcing water service restoration, was sent to the public via the Department’s social media pages and on-air radio announcements.

Public Relations Program

- Community Relations
  - PR partnered with the Young Women’s Christian Association (YWCA) on July 21, 2017 to provide an educational presentation on water conservation and resource management at their summer camp program in Anahola. PR utilized the Project WET curriculum to offer an interactive learning component in explaining the importance of our natural eco systems and the relation to our drinking water. Special thanks to our summer intern, Trestin Alfiler who assisted PR in the presentations.

- Conservation
  - The Department’s water conservation article and advertisement was published in the Kauai Family Magazine’s fall issue, released on August 4, 2017. (Attached)

- Human Resources Orientation Video
  - PR assisted in the County’s new employee orientation video by providing highlights of the Department’s divisions and responsibilities. The video will provide a brief overview of all County departments to educate new employees of the various functions and operations of the County.
Upcoming Outreach

- September 28, 2017 - DOW’s 14th Annual Make a Splash with Project WET Festival
- November 1-3, 2017 –Project WET Workshop at the annual HRWA/HWWA conference

Project WET

- Make a Splash Festival
  - Planning continues for the DOW’s 14th Annual Make a Splash with Project WET Festival set for Thursday, September 28, 2017. Registration deadline ends on August 11, 2017. As of this report, a total of 12 schools have registered and 9 sponsors have been confirmed. DOW is expecting 800 students this year, making it the largest festival participation to date.

- Project WET Workshop
  - PR is coordinating a Project WET educator’s workshop at the Annual HWWA/HWRA conference, in partnership with Hawaii Rural Water Association. The conference is scheduled for Nov. 1-3, 2017 in Kona.

Miscellaneous

- The Department of Water was mentioned in the Garden Island Newspaper article, “Tunnel repairs to start September” regarding repairs to the Kapaia Tunnel. (Attachment)
- The County’s Employee Council meeting was held on August 10, 2017.

Respectfully submitted,

Jonell S.T. Kaohelaulii
For Information & Education Specialist

JSK: ein

Attachments: “Hanamaulu water off Thursday”, The Garden Island
“Tunnel repairs start in September”, The Garden Island
“Be conscious of your water usage”, Kauai Family Magazine
Hanamaulu water off Thursday

HANAMAULU—The county Department of Water has scheduled a water shutdown starting Thursday for customers located on the mauka side of Kuhio Highway, between Laulima Street and Kapule Highway in Hanamaulu.

Water will be turned off on Thursday from 9 p.m. to 5 a.m. Friday, weather permitting.

The shutdown will allow contractor Earthworks Pacific to complete work on the existing control valve on the water main line in the area.

The DOW is providing three trailer-mounted water tanks with potable water for essential needs.

One trailer will be located in the mall parking lot near the intersection of Hanamaulu Road and Kuhio Highway, and two will be located at the Kalepa Village Apartments. Customers will need to bring their own water containers.

Info: 245-5461

The Garden Island

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Tunnel repairs start in September

Work needed to avoid collapses that cut off water supply

Dennis Fujimoto
THE GARDEN ISLAND

LIHUE — Work on a $1.1 million repair project to the Kapaa Tunnel will start in September, said David Hinazumi, vice president of the Grove Farm Company.

“The maintenance project is needed following repeated collapses to the 100-year-old, hand-dug tunnel which feeds the Kapaa Reservoir,” Hinazumi said.

“Some of these collapses reduced water flow in the 10-foot-wide, 3,000-foot-long irrigation tunnel.”

The feed from the Kapaa Tunnel to the Kapaa Reservoir, also known as Tanaka Pond, fuels the Grove Farm Waiahi surface water treatment plant, which feeds drinking water to the county Department of Water’s Lihue-Kapaa water system. The surface water treatment plant supplies water to nearly 15,000 residents.

Additionally, the Kapaa Reservoir supplies irrigation water to a number of farms, ranches and other businesses in the area, as well as providing a habitat for the nene restoration project.

Hinazumi said following the collapse in April 2016, Grove Farm repaired the damage with an $84,000 debris-clearing effort. The repair was followed by a second major collapse taking place two months after those repairs.

The repair work starting in September is meant to restore stable water flow and avoid the risk of future collapses, Hinazumi said.

Grove Farm will install a 38-inch-wide, high-density polyethylene pipe for the entire 3,000-foot length of the tunnel, with the project being completed by December, weather-permitting.

Hinazumi said during the construction period of September through December, helicopter tour pilots have been requested to avoid flying over the tunnel area.

The Kapaa Tunnel is only one component of a water system that stretches for miles across the landscape and includes reservoirs, dams, open and covered ditches, flumes, siphons, water-treatment facilities and other tunnels.
Be Conscious of Your Water Usage

By Kauai Dept. of Water

Water conservation should be a daily, year-round habit to help in conserving our island’s most precious resource.

Here are some tips and ideas on how to conserve water all season long:

**ADJUST YOUR SPRINKLER/IRRIGATION SYSTEM:**
Adjust your sprinkler timer and remember to turn it off when it rains.

**REDIRECT GUTTER SPOUTS TO LANDSCAPE AREAS:**
Turn the down spout of your gutter towards your garden or landscape areas during rainy season.

**INSTALL WATER EFFICIENT FAUCETS:**
Replace your shower head and faucets with water saving devices. Install aerators and flow regulators to make your home conservation-friendly.

**MONTHLY LEAK CHECKS:**
A small leak in your home can account for over 10,000 gallons of water waste per month! Schedule a monthly inspection of your home’s faucets, toilets, showers and irrigation systems.

**SEASONAL GARDENING:**
In the fall, take advantage of the anticipated wet weather and plan to grow crops that will enjoy and thrive in the cooler climate.

Be a responsible water user. Use water wisely and make every drop count! Visit www.kauaiwater.org for more water conservation tips.

Here are 5 water conservation tips to remember daily:

- Turn off the water while brushing your teeth.
- Make every flush count. Don’t use the toilet as an ashtray or wastebasket.
- Limit showers to 5 minutes.
- Wait until you have a full load before using your automatic dishwasher.
- Water your plants in the early morning or late afternoon.

Water has no substitute...Conserve it!
www.kauaiwater.org
Operations Division Report for the Month of July 2017

Personnel

- Congratulations to Dean Sacramed, Maintenance Worker 1, and Franklin Iwai, Equipment Operator II who both recently passed probation.

- **Overtime**: As requested by the Board, overtime procedures were reviewed to minimize unnecessary overtime during a contractor/developer scheduled after-hours work. It should be noted that scheduled contractor/developer overtime, although paid upfront by Operations Division as part of labor overtime budget, is charged to the contractor/developer and collected by Fiscal Division.

Section 25 – Hours of Work, of the Collective Bargaining Agreement (CBA) is used as reference for changes in work hours during the work week. The union needs to be notified thirty (30) days prior to the tentative implementation date. If the parties are unable to come to an agreement, the Union may process its objections to the change through Section 15 – Grievance Procedure.

The contractor/developer construction schedules are submitted to Construction Management Division in advance. A slight deviation on the schedule will mean that there will be a corresponding deviation on Operations personnel’s scheduled change in work hours previously consulted with the Union. Unexpected deviation happens when newly installed pipes do not pass the disinfection test thus tie-in, which is usually performed at night to minimize effects on customers, will have to be rescheduled. Tie-in must be performed within a few days of passing the disinfection test so the 30 days prior notice to the Union will not be met whenever an after-hours job is rescheduled.

Moreover, due to the nature of the work that Operations personnel performs coupled with the small number personnel, changing the work hours in anticipation of a scheduled after-hours work or overnight work will cause a shortage of personnel available to respond to emergencies for two (2) work days rather than one (1) work day if Operations personnel worked during regular hours the day of the scheduled after-hours work then take the day off the following day per CBA.

Since construction work schedules as well as repair and maintenance work schedules can change any time due to various unforeseen reasons from delayed delivery of materials to failed chlorination tests and personnel shortage, we believe that continuing current practice of allowing DOW personnel to work the day of a scheduled overnight work will enable the DOW to keep up with deviations and maintain some flexibility to respond to emergencies.
**Source and Storage**

- Maintenance Workers continued cleaning of various remote facilities island-wide. Works included clearing of vegetation and drainage as well as repair and construction of structures and facilities.

- Water Plant Operators performed routine inspection and maintenance at all sites including valve maintenance, piping repair and replacement, chlorination equipment maintenance, and mixing of sodium hypochlorite.

- Electrical workers performed routine electrical maintenance at all sites including SCADA radio troubleshooting, electrical wiring for motor controls, lighting repair and replacement.

- Communications issues at Puhi wells were resolved.

**Distribution**

- Operations Division Field Section crews continue to perform live taps and routine leak repair of service laterals and mainlines. Field Section personnel responded to and completed forty (40) leak repair work orders.

- Field Section personnel installed three (3) service laterals.

- In the month of July, no work was performed. Field crew replaced 40 feet of 3” PVC distribution line on Lokokai Road under work order C141516. As of May 2017 a total of 1,746 of old pipe has been replaced.

- We received a total of 49 calls from customers reporting leaks on the mainline, service laterals, meters, meter boxes and fire hydrants including complaints of no water, complaints of low pressure, high pressure, calls requesting remote site/facility grounds and vegetation maintenance, calls for assistance in shutting off the water meter, calls reporting damaged meter box and cover, reports of leaking or damaged fire hydrants and report of white milky water. Work orders were generated and all calls resolved. Leak after the meter needs to be addressed by the customer.

**Fleet, Inventory, Warehouse and Baseyard Area**

- For the month of July, a total of one hundred thirty (130) work orders were issued for Operations Division. Works included: electrical repairs and maintenance; automotive repairs and maintenance including power generator maintenance; water meter installation and replacement; service lateral installations; leak repairs; well, tank site and PRV maintenance; replace damaged meter boxes; repair defective meters; replace damaged or leaking hydrant; door-to-door customer notifications for tie-ins of new lines to existing lines as well as notifications regarding scheduled repairs; callouts due to customer complaints/reports; meter replacement requests; contractor’s requests for markings.
For the month of July 2017, forty five (45) Hawaii One Call requests for markings were received. Also, thirty four (34) meters were installed, replaced and repaired.

Respectfully submitted,

Valentino P. Reyna  
Chief, Operations Division

VPR/ein

Attachments:  
Overtime Chart  
Leak Report Chart  
Produced/Billed Chart

Mgrp/August 2018/Operations Division Report for the Month of July 2017 (8-21-17):ein
09-Aug-2017

Work Orders by Job Reason Code for Selected Date Range

07/01/2016 to 07/31/2017

<table>
<thead>
<tr>
<th># of W/O's</th>
<th>Job Reason Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>LEAK-BOX</td>
<td>Meter Box Leak Repair</td>
</tr>
<tr>
<td>5</td>
<td>LEAK-CUST</td>
<td>Customer-Side Leak Repair</td>
</tr>
<tr>
<td>122</td>
<td>LEAK-MAIN</td>
<td>Mainline Leak Repair</td>
</tr>
<tr>
<td>153</td>
<td>LEAK-S/L</td>
<td>Service Lateral Leak Repair</td>
</tr>
</tbody>
</table>

Work Orders by Job Reason Code

![Pie chart showing the distribution of leak repair work orders by job reason code.]

Number of Leak Repairs per Month

![Line graph showing the number of leak repairs per month, with different colors for each job reason code.]

Page 221
## Monthly Water Produced, Customer Meter Read and Waterloss Comparison For Calendar Year 2017

<table>
<thead>
<tr>
<th></th>
<th>Jan-17</th>
<th>Feb-17</th>
<th>Mar-17</th>
<th>Apr-17</th>
<th>May-17</th>
<th>Jun-17</th>
<th>Jul-17</th>
<th>Aug-16</th>
<th>Sep-16</th>
<th>Oct-16</th>
<th>Nov-16</th>
<th>Dec-16</th>
<th>Total Year</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Customer Meter Read (Kgals.)</strong></td>
<td>316,424</td>
<td>314,457</td>
<td>306,619</td>
<td>348,781</td>
<td>314,701</td>
<td>355,055</td>
<td>383,966</td>
<td>335,456</td>
<td>371,437</td>
<td>346,244</td>
<td>349,909</td>
<td>304,289</td>
<td>4,047,338</td>
</tr>
<tr>
<td><strong>Waterloss (Kgals.)</strong></td>
<td>38,384</td>
<td>41,766</td>
<td>54,232</td>
<td>38,731</td>
<td>39,853</td>
<td>25,080</td>
<td>43,692</td>
<td>44,758</td>
<td>47,572</td>
<td>34,276</td>
<td>56,300</td>
<td>45,689</td>
<td>510,332</td>
</tr>
<tr>
<td><strong>Waterloss (%)</strong></td>
<td>10.8</td>
<td>11.7</td>
<td>15.0</td>
<td>10.0</td>
<td>11.2</td>
<td>6.6</td>
<td>10.2</td>
<td>11.8</td>
<td>11.4</td>
<td>9.0</td>
<td>13.9</td>
<td>13.1</td>
<td>11.2</td>
</tr>
<tr>
<td><strong>Waterloss ($)</strong></td>
<td>49,016</td>
<td>53,335</td>
<td>69,254</td>
<td>49,459</td>
<td>50,892</td>
<td>32,027</td>
<td>55,795</td>
<td>57,156</td>
<td>60,749</td>
<td>43,770</td>
<td>71,896</td>
<td>58,345</td>
<td>651,694</td>
</tr>
</tbody>
</table>

### Chart

**Produced (Kgals.)**

**Customer Meter Read (Kgals.)**

**Waterloss (Kgals.)**

**Unbilled Percentage**

---

**Page 222**
MANAGER’S UPDATE

August 21, 2017

Pursuant to Board Policy No. 3

CONTRACTION AWARDED/EXTENSION/AMENDMENTS:

(1) NINTH AMENDMENT TO CONTRACT NO. 427, JOB NO. 02-14, WP2020 WK-08 KAPA‘A HOMESTEADS 325’ TANKS – TWO 0.5 MILLION GALLON (MG) STORAGE TANKS, KAPA‘A, KAUA‘I, HAWAI‘I, WITH BELT COLLINS HAWAI‘I FOR A TIME EXTENSION OF 180 CALENDAR DAYS (“PACKAGE A DRAINAGE IMPROVEMENTS”) AND 360 CALENDAR DAYS (“PACKAGE B – TWO 0.5 MG TANKS”) AND EXPENDITURE OF AN ADDITIONAL $160,149.00

FUNDING:

Account No. 30-20-00-605-116 (BAB-Expansion-Design)

<table>
<thead>
<tr>
<th>Contract</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract No. 427: Belt Collins Hawai‘i LLC (NTP: 3/15/04)</td>
<td>$256,700.00</td>
</tr>
<tr>
<td>First Amendment (Ext to 12/31/09)</td>
<td>$354,978.00</td>
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<tr>
<td>Second Amendment</td>
<td>$10,000.00</td>
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<tr>
<td>Third Amendment</td>
<td>$19,000.00</td>
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<tr>
<td>Fourth Amendment (Ext to 12/10/10)</td>
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<tr>
<td>Fifth Amendment (Ext to 12/31/13)</td>
<td>$76,200.00</td>
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<tr>
<td>Sixth Amendment (Ext to 6/30/14)</td>
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<tr>
<td>Seventh Amendment (Ext to 5/26/16)</td>
<td>$18,100.00</td>
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<tr>
<td>Eighth Amendment (Ext to 6/30/17)</td>
<td>$51,911.26</td>
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<tr>
<td><strong>Contract Amount</strong></td>
<td><strong>$829,639.26</strong></td>
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Ninth Amendment:

<table>
<thead>
<tr>
<th>Package</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Package A (Phase 1, 180 calendar days from NTP)</td>
<td>$113,022.00</td>
</tr>
<tr>
<td>Package B (Phase 2, 360 calendar days from NTP)</td>
<td>$47,127.00</td>
</tr>
<tr>
<td><strong>Total Funds Requested for Ninth Amendment (Funds transferred from Account No. 30-20-00-605-116, Per approved Manager’s Report No. 18-58 at 7/28/17 board meeting)</strong></td>
<td><strong>$160,149.00</strong></td>
</tr>
<tr>
<td><strong>Total Contract Amount</strong></td>
<td><strong>$989,788.26</strong></td>
</tr>
</tbody>
</table>

BACKGROUND:

The Department of Water (DOW) is proposing to construct two new 0.5 MG concrete storage tanks on the same site as the existing Ornellas tank in the Kapa’a Homesteads located near the intersection of Kawaihau Road and Ka’apuni Road. The project’s design includes drainage improvements for site storm water and potential tank overflow or washout events. The Department also intends to construct a
separate project, *Drill and Test Kapa‘a Well No. 4*; a new well which will be drilled and tested at the same site. The design for the *Drill and Test Kapa‘a Well No. 4* project has been complete since 2011; however, the project did not go to construction because of construction proposals coming in much higher than budgeted. It is believed one of the major reasons for the high construction proposals was due to a suitable discharge location for the new well not being identified. The *Kapa‘a Homesteads 325’ Tanks* project has been substantially delayed because the project’s drainage also requires a suitable discharge location and discussions with private owners have not been successful.

Because the tank project and well project share the same site, the design must accommodate three different types of flows: site storm water runoff, flows from the tank via a washout or an unintended tank overflow event, and flows pumped from the new well. The flows pumped from the new well would be discharged during the drilling and testing phase of the project and, if the well is successful, at the start of each pump cycle when the well is pumping into the DOW system (also known as “pump to waste”).

Most recently, the Eighth Amendment to Contract No. 427 provided for the project’s drainage to be routed to a private property along Kapahi Road which was anticipated to be approved; however, discussions and negotiations with the private owner were not successful. Subsequently, the DOW has determined another suitable location for the project’s drainage to be discharged to a private property along Ka‘apuni Road. The owner of the private property has verbally agreed to accept the flows from the DOW project site.

The new drainage pipe will convey water away from the project site along Ka‘apuni Road approximately 2,600 feet to the south and will ultimately discharge onto private property. The Department of Public Works (DPW) requires that, as a part of the project, the DOW obtains permission from the landowner to discharge the additional water associated with the project onto the private owner’s property.

The drainage improvements are critical for the schedule of the *Drill and Test Kapa‘a Well No. 4* project because $750,000.00 in state funding has been appropriated for the project which will lapse after June 30, 2018. To utilize the state funding for the well project, the Department must complete the design of the new drainage improvements and have a construction contract in place for the well project prior to June 30, 2018. Therefore, to meet this deadline, the Department is proposing to phase the design and construction of the *Drill and Test Kapa‘a Well No. 4* project and the *Kapa‘a Homesteads 325’ Tanks* project as follows: Phase one will construct the drainage improvements and the *Drill and Test Kapa‘a Well No. 4* project together. Phase two will then consist of constructing the *Kapa‘a Homesteads 325’ Tanks* project.

The construction documents for both the drainage improvements and the *Drill and Test Kapa‘a Well No. 4* will be combined and will be constructed together under one construction contract. Belt Collins Hawai‘i will be responsible to provide the design and all construction documents necessary for the drainage improvements, and the Department will combine the drainage improvements with the *Drill and Test Kapa‘a Well No. 4* project. Belt Collins Hawai‘i will continue the design of the *Kapa‘a Homesteads 325’ Tanks* project, but priority will be given to completing the design of the drainage improvements.

The proposed Ninth Amendment to Contract No. 427 and additional funding are necessary to provide additional design services to complete the project design, including: drainage plans from the project site to private property for the disposal of site storm water, well discharge waters, and tank discharge waters, easement boundary mapping, additional permitting requirements, a coordination meeting between the
designer, the Department, and land owner to discuss the appropriate design for storm runoff, and various other updates to the plans and specifications necessary to accommodate the design changes.

Completion of the drainage design in a timely manner will allow the state funds for the Kapa’a Homesteads Well #4 project to be utilized prior to the lapse date of June 30, 2018. The design of the drainage improvements and the subsequent additional work for the Kapa’a Homesteads 325’ Tanks project will include, but not be limited to the following:

1. Conduct a site visit with the DOW staff to verify viable alternatives for the disposal of storm water runoff and all project site drainage into existing drainage ways. Meet with the private owner to discuss and coordinate the work on private property.

2. Design a drain line from the project site to the private lot on Ka’apuni Road and through the lot to the existing drainage way. The design may include a drain ditch and/or a retention basin/pond within the parcel for water storage. The design services will include a topographic survey and preparation of easement maps.

3. Prepare construction documents for the installation of the drainage improvements (“Package A”) so that it can be combined with the Drill and Test Kapa’a Well No. 4 project. Provide a request for proposal (RFP), opinion of probable construction cost, and assistance during construction for Package A.

4. Revise the Kapa’a Homesteads 325’ Tanks (“Package B”) project’s construction drawings to route storm water runoff and site discharges toward the Ka’apuni Road. The drainage piping will be designed to minimize trench excavation.

5. Update the project’s drainage report and the National Pollutant Discharge Elimination System (NPDES) permit applications to accommodate the revised drainage improvements. The NPDES effort is necessary because a second application and fee are required for the construction of Package A. However, the cost to update the NPDES application for the new discharge location is covered by the fee previously included in Amendment 8. Funds from the previous Amendment No. 8, which were intended for the design of the drainage improvements along Kapahi Road, will be credited back to the Department and utilized for the revised drain line design.

We have thoroughly reviewed the proposal from Belt Collins Hawai’i for additional engineering services of $160,149.00 for the work and find it acceptable. The requested amount includes a credit to the Department in the amount of $23,625.00 for services included in the Eighth Amendment to Contract No. 427 which are no longer included in the project’s scope. The proposed contract amendment will stipulate that the drainage improvements must be completed within 180 calendar days to provide the Department adequate time to secure a construction contract prior to the June 30, 2018 deadline to utilize the State funding. The proposed contract amendment will also stipulate that the remaining work on the contract can be done concurrently, but must be completed within 360 calendar days from the execution of the amendment.

Referenced Manager’s Report No. 18-58, which funds were approved by the board at the 7/28/17 board meeting.
(2) CONTRACT NO. 642, GS-2017-4 AWARDED TO WONG’S EQUIPMENT AND SERVICE LLC FOR THE FURNISHING AND DELIVERY OF A NOISE LEAK LOGGER SYSTEM IN THE AMOUNT OF $35,489.77

FUNDING:
Account No. 10-40-00-604-999 WU/Ops/CapitalOutlay/R&R/Equipment

<table>
<thead>
<tr>
<th>Funds Available: Leak Detection Equipment</th>
<th>$55,000.00</th>
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<tbody>
<tr>
<td>Contract No. 642: Wong’s Equipment and Service, LLC.</td>
<td>$35,489.77</td>
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<tr>
<td>Total Funds Requested</td>
<td>$35,489.77 ($35,489.77)</td>
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<tr>
<td>Balance for Leak Detection Equipment</td>
<td>$19,510.23</td>
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</tbody>
</table>

BACKGROUND:
A noise leak logger system is being purchased to replace our old loggers and to supplement and update our leak detection equipment. On April 18, 2017, we posted the solicitation for the subject procurement. Three (3) bids were opened on May 26, 2017 but two (2) of the bids did not meet the minimum requirements and specifications of the loggers and receiver unit. The sole responsive bidder’s price is higher than the 2 non-responsive bidders. Upon further research, it was found that the City and County of Honolulu ordered the same equipment (logger and receiver) in 2016 at a price approximately 4.80% lower than the bid amount. Considering freight cost to deliver to Kauai, we find that the bid price submitted by Wong’s is fair and reasonable.

(3) CONTRACT NO. 643, GS-2017-2, AWARDED TO VALLEY ISLE MOTORS, LTD. FOR THE FURNISHING AND DELIVERY OF (ITEM 1) ONE (1) ACCESS DOOR CAB PICKUP TRUCK WITH ACCESSORIES; (ITEM 2) ONE (1) ACCESS DOOR CAB MEDIUM DUTY PICKUP TRUCK WITH UTILITY BODY AND ACCESSORIES; (ITEM 3) ONE (1) ACCESS DOOR CAB MEDIUM DUTY PICKUP TRUCK WITH FLATBED AND ACCESSORIES; (ITEM 4) ONE (1) 2-WHEEL DRIVE 16,500LB GVWR CAB AND CHASSIS WITH 45LB DEMO TOOL, UNDERHOOD AIR COMPRESSOR, AND ACCESSORIES; (ITEM 5) ONE (1) 2-WHEEL DRIVE 16,500LB GVWR CAB AND CHASSIS WITH 60LB DEMO TOOL, UNDERHOOD AIR COMPRESSOR, AND ACCESSORIES IN THE AMOUNT OF $395,156.58

FUNDING:
Account No. 10-40-00-604-999 WU/Ops/CapitalOutlay/R&R/Equipment
Account No. 10-40-00-605-999 WU/Ops/CapitalOutlay/Expansion/Equipment

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<tbody>
<tr>
<td>Item No. 1</td>
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<td>Item No. 4</td>
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<td>Item No. 5</td>
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Funds Available for Account No. 10-40-00-605-999

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<td>Item No. 2</td>
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<td>Item No. 3</td>
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<td><strong>Total Funds Requested</strong></td>
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<td><strong>Fund Balance for Account No. 10-40-00-605-999</strong></td>
<td><strong>$379,909.22</strong></td>
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</table>

Contract No. 643: Valley Isle Motors, Ltd. $395,156.58

BACKGROUND:
Three of these vehicles are replacements for aged vehicles that meet the requirements for replacement based on mileage and years. Two vehicles are expansion equipment due to the increasing size of our infrastructure and the needs for maintenance and personnel. On April 18, 2017, we posted the solicitation for the subject procurement. One (1) bid was opened on May 25, 2017 and that was the only bid received for the solicitation. The sole responsive bidder’s price was deemed acceptable by the Chief Procurement Officer and in line with expected manufacturer’s retail prices and previous years purchase prices for similar vehicle types. Considering freight cost to deliver to Kaua‘i, we find that the bid price submitted by Valley Isle Motor’s, Ltd is fair and reasonable.

(4) CONTRACT NO. 644 AWARDED TO UNLIMITED CONSTRUCTION FOR JOB NO. 11-07, WP2020 KP-09, MCC, CHLORINATION FACILITIES, KÔLOA WELL 16A AND 16B SITE AND BUILDING IMPROVEMENT, KÔLOA WATER SYSTEM, KÔLOA, KAUA'I, HAWAI'I IN THE AMOUNT OF $3,576,241.00

FUNDDING:

**Account No. 30-21-00-604-107**
BAB/Capital Outlay/KP-09 MCC, Chlorination Facilities, Koloa Well 16A and E and 16B Site and Bldg. Improvements (Approved Budget FY 2017-2018) $1,750,000.00

**Account No. 30-21-00-604-107**
BAB/Capital Outlay/KP-09 MCC, Chlorination Facilities, Koloa Well 16A and E and 16-B Site and Bldg. Improvements (Additional Funding Approved on 8/21/17, Reference Manager’s Report No. 18-68) $2,050,000.00

| Total Funds Available            | $3,755,000.00 |
| Contract 644: Unlimited Construction Services, Inc. | $3,576,241.00 |
| Contingency, approximately 5%    | $178,759.00   |
| **Total Funds Required**         | **($3,755,000.00)** |
| Funds Remaining for Account No. 30-21-00-604-107 | **$0.00** |

BACKGROUND:
Kōloa Well 16B works in conjunction with Kōloa Well 16E. Kōloa Well 16B has been out of service for over a decade. The normally closed valves within the piping system can be positioned so that Kōloa 16E/16B can pump to Paanau Tanks and Kōloa 16A can pump to 366’ system. This contract consists of
furnishing all materials, labor, tools, equipment, and appurtenances required to provide and install a well pump at 16B, discharge piping, disinfection system, control building, Motor Control Center, Supervisory Control and Data Acquisition for Wells 16A & 16B, drainage and site improvements, and appurtenant items as specified on the plans and specifications. The work is located at the existing Kōloa Wells 16A, 16B and 16E site, off Knudson Road. All work shall be in place complete and in accordance with the plans and specifications.

Proposals were received and opened for the subject project on July 3, 2017, with Best and Final Offer (BAFO) requested after price data review and received on August 9, 2017 with the following results:

Unlimited Construction Services, Inc. ................................................................. 270.00 points

The original single construction proposal received on July 3, 2017 for the well, site and building improvements came in nearly 2 ½ times the engineers estimate ($1.4M) at $3.7M. The DOW has not done repairs like this to an existing site recently and the proposal came in above the budget of $1.75M. Pursuant to HRS, cost price data was requested from the contractor to review the proposal for fairness and determination of best interest of the DOW and our rate payers. Taking that into account, and the belief that the qualified proposer had a more realistic cost (although much higher than engineers estimate) to adhere to all DOW requirements satisfactorily, the DOW determined it was worth a “Best and Final Offer” (BAFO) request. The BAFO proposal cost received on August 9, 2017 for this project reduced the project cost from initial proposal by $131,697.00 and after further cost price data review was determined to be reasonable given the DOW’s review of all information submitted.

The design consultant provided a mixed recommendation based on the BAFO. They stated the cost is high but move forward if the project is critical to DOW, or to not move forward with the construction and ask for contractor to do the work for a price near $2M. The consultant mentioned factors such as how critical the need of the project is by DOW. They stated contractors are very busy right now and contractors are not as hungry as before so there could be possible savings if the DOW were to wait until construction slowed down and re-procure construction as an option if the project is not critical to DOW. The consultant also mentioned one contractor they contacted does not bid on Kaua’i projects, which is something we encounter as an isolated island, even from Oahu. Finally, another contractor who the consultant contacted said our proposal technical requirements are a lot of paperwork. This is valid given government unique requirements for procurement as well as the DOW RFP process. The consultant indicated that this contractor gave them an estimate of $2 million to construct the project, but did not know if this estimate was from a detailed cost estimate or ball park estimate/guess. These are all factors that go into the pricing evaluation, however, DOW did not receive actual engineers estimate for what those costs would be estimated to be line by line to equate a total lump sum to justify what they believed would be far more reasonable at $1.4M, $1.7M or $2.0M rather than the $3.5M BAFO. The consultant has indicated that they determined their estimate by various methods that they are confident in. The design consultant was unable to provide definitive information to the DOW design team to support their assertion that their engineer’s estimate lump sum total was more realistic than the contractor’s proposal that included subsequent cost-price data information breakdowns for material, labor, equipment, overhead and profit, and general requirements for the various proposal line items to support either of their recommendations. The DOW spent a lot of time evaluating the cost-price data provided by contractor against the design consultant’s estimate. The DOW disagrees with the design consultant engineer’s estimate for the project as the contractor was very open with the information DOW requested compared to what was provided by the design team and on that basis and the other factors, the costs have been determined, fair and reasonable to DOW as stated in the price cost data review memo dated 8/11/17.
This particular project scope consists of mostly majority specialty electrical, mechanical and pump work that are very specific to the water industry, given our island isolation; this further reduces the extent of competition while increasing pricing for materials, labor and equipment operations. After the initial price analysis and supplemental cost analysis per HRS 103D-312, in my judgment, I do believe that after factoring in market conditions, our alternatives for meeting the requirement, price-related factors, and the non-price evaluation factors that relate to each procurement, my determination is that the single qualified BAFO proposal as submitted seems to be fair and reasonable to DOW customers for the majority of total pricing. There are items that may have seen further price reduction had there been more competition but the BAFO still fell within my allowable range of approximately $3.3M - $3.6M after initial cost price data review completed on July 28, 2017. As Procurement Officer responsible for exercising the requisite judgment needed to reach a negotiated settlement with the offeror and is solely responsible for the final price agreement, I recommended the Department move forward with awarding of the contract to Unlimited Construction Services, Inc. as selected by the proposal evaluation team based on the BAFO.

The associated costs for material, labor, equipment, overhead and fee looked reasonable with further cost reduction of $131,697.00 realized with the BAFO.

WAIVER RELEASE & INDEMNITY APPLICATIONS:

<table>
<thead>
<tr>
<th>Applicant</th>
<th>TMK Location &amp; Building permit</th>
<th>Performance Bond Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>NONE</td>
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<td></td>
</tr>
</tbody>
</table>

STAFF REPORTS - FY 16-17:

PERSONNEL MATTERS

August 11, 2017

RECRUITMENT AND POSITION ACTIONS

Administration
2. Information and Education Specialist #2478. As of 8/11/2017, position description is being reviewed.
3. Procurement Specialist IV #2497. As of 8/11/2017, position description is being reviewed.

Fiscal

Construction Management Division
1. Civil Engineer III #2351. As of 8/11/2017, DHR working on providing additional names of qualified candidates.
2. Waterworks Inspector I #2357. As of 8/11/2017, DHR working on providing additional names of qualified candidates.

Engineering Division
1. Civil Engineer V #2358. As of 8/11/2017, DHR provided referred list of eligibles. Selection pending.

Operations Division
1. Pipefitter Helper #2410. As of 8/11/2017, DHR working on eligibles list.
2. Water Field Superintendent #2491. As of 8/11/2017, position description is being reviewed.
3. Water Plants Superintendent #2490. As of 8/11/2017, DHR working on providing additional names of qualified candidates.

Pursuant to Board Policy No. 24

CONVEYANCE OF WATER FACILITIES $12,425.00

<table>
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<tr>
<th>Date</th>
<th>Description</th>
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<tbody>
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<td>8/21/2017</td>
<td>Randall Parker, Trustee of the Anaka Family Trust dated June 23, 2008</td>
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<td></td>
<td>TMK: 4-8-006:037</td>
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<tr>
<td></td>
<td>Kawaihau</td>
</tr>
<tr>
<td></td>
<td>$ 12,425.00</td>
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</tbody>
</table>

CUSTOMER CARE AND BILLING (CC&B) SYSTEM UPDATE:
- Field Service Management (FSM) – In progress
  - Functional testing in progress
  - Currently retesting defects
  - Training documentation in progress
- User Acceptance Testing
  - Begin User Acceptance Training target date - July 31st
- Other Remaining Phase II Items:
  - WRP Reports
  - Kaua‘i – AP Credit Refund – waiting for upgrade
  - Kaua‘i GL Extract – waiting for upgrade
  - Kaua‘i Ag Renewal Process – to Include Automated FA Creation, change date for reminder letter
- Phase III – Oracle CC&B upgrade started project planning- project management under I.T.

I.T. STRATEGIC PLAN UPDATE:

July 17, 2017

IT Plan Task 3: Project Management and Document Imaging:
Project Management:
We executed a contract for a Project Management System with PMWeb.
We are planning a Discovery Session with the contractor at the end of the month.

Document Imaging:
In the area of document imaging, IT completed exporting all the images from the Stellent Document Imaging System and is converting all the images so that they may be uploaded into the SharePoint system. IT completed the SharePoint upload and is working on a sort/filter feature.

On-going:
We are upgrading our SharePoint system to the latest version. We currently are using SharePoint 2010 and will be upgrading to SharePoint 2016.
In order to upgrade to the latest version, we have to do a step upgrade to SharePoint 2013. This has been completed and I am now working on the 2016 version.

**IT Task 4: Develop Web based GIS Viewer and Map Layers:**
Mapping for the following water systems are completed and have been released to the GIS users.

Anahola / ‘Anini / Hā’ena-Wainiha / Hanalei / Hanapēpē/Elele / Kalāheo-Kōloa / Kīlauea / Kalāheo-Kōloa (partial) / Līhu'e-Kapa’a (partial)

IT is currently working on the Kōloa-Po’ipū area (Kalāheo-Kōloa water system) and it is near completion of getting all gsp points.

The GIS Model is about 50% completed.

IT is waiting for the as-built drawings for the Puhi- Līhu'e-Hanamā'ulu area (Līhu'e to Kapa’a water system) to finalize the system.

**IT Task 5: MMIS Replacement / Asset Based Work Orders:**
The Manager and Chief of Operations have reviewed and approved the draft RFP for a new MMIS system. It is currently with the DOW’s Attorney for her review.

**AFFORDABLE HOUSING UPDATE:**
No significant activities.

**MANAGER’S GOALS UPDATE** established July 28, 2017 for FY17-18

<table>
<thead>
<tr>
<th>Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Goal 1</strong> Implement systems that will serve to reduce customer complaints.</td>
</tr>
</tbody>
</table>

| 1. Public inquiries requiring response. | Provide a response within 2 working days, if more detailed study is required supply an estimated timeline. | Meet expectations throughout the year. Division Heads will keep a record of public inquires and response time and submit it monthly to the Manager. |

| **Goal 2** Ensure the health, safety and welfare of the Department employees and public. |

| 1. Support the needs of Department Divisions delivery of programs for health and safety for employees. | Insure adherence of the County wide safety program. Actively participate on the County wide safety committee. | No adverse activities throughout the year. Active DOW participation throughout the year. |

| **Goal 3** Improve Communications and Morale within the Department |

| **Goal 4** Performance Audit |
### Goals/Objectives

<table>
<thead>
<tr>
<th>Goals/Objectives</th>
<th>Success Measurements</th>
<th>Desired Outcome</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Assist the Board with the selection and procurement of an auditor and complete the audit.</td>
<td>Select and procure an Auditor by the end of the calendar year. Complete the performance audit by the end of the fiscal year.</td>
<td>The Board will have a performance audit that will allow the Department to make operational improvements.</td>
<td></td>
</tr>
</tbody>
</table>

### Operations

**Goal 1** Improve existing asset management program.

1. Assess existing asset management program.

### Goal 2** Improve water system reliability and resiliency.

1. Improve hurricane survivability of standby power generators.

   Complete Preliminary Engineering Report and possibly complete design and begin construction by the end of June 2018.  
   Portable generators will be protected during hurricanes.

2. Improve pump motor control center reliability.

   Continue and possibly complete design on replacing old MCCs by the end of June 2018.  
   Reliability of MCCs will be improved.

3. Assess existing preventative maintenance program.

   Contract a consultant to evaluate and improve the current preventative maintenance program for the plant and distribution systems by the end of April 2018.  
   Development of an improved preventative maintenance plan.

### Fiscal

**Goal 1** Ensure fiscal control and sustainability.

1. Use accounting program to develop annual budget.

   Acquire and implement add-on program to Great Plains accounting software to assist with the budgeting process by the end of January 2018.  
   Development of a more streamlined budgeting process.

2. Develop fair and reasonable water rates.

   Complete current water rate study within the contracted time.  
   Department will have updated water service rates.
<table>
<thead>
<tr>
<th>Goals/Objectives</th>
<th>Success Measurements</th>
<th>Desired Outcome</th>
<th>Status</th>
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<td><strong>Engineering</strong></td>
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<td></td>
</tr>
<tr>
<td><strong>Goal 1</strong></td>
<td>Oversee all engineering design work required for the Department.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Support the Engineering design needs of the other divisions.</td>
<td>Engineering Division shall lead and be responsible for all Department engineering design work.</td>
<td>Ensures quality control and standardization of projects.</td>
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<tr>
<td><strong>Goal 2</strong></td>
<td>Continue rehabilitation, replacement and expansion of water system</td>
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<td></td>
</tr>
<tr>
<td>1. Timely completion of projects.</td>
<td>Complete four (4) design projects before the end of June 2018.</td>
<td>Projects will be completed.</td>
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</tr>
<tr>
<td><strong>Construction Management</strong></td>
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<tr>
<td><strong>Goal 1</strong></td>
<td>Continue to improve construction management methods and expertise.</td>
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<tr>
<td>1. Upgrade project document management system.</td>
<td>Successfully implement construction document management program by the end of June 2018.</td>
<td>All construction projects will be using the electronic construction document management system.</td>
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<tr>
<td><strong>Water Resources and Planning</strong></td>
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<tr>
<td><strong>Goal 1</strong></td>
<td>Implement a fair and reasonable method of determining system capacity and accounting for existing use.</td>
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<tr>
<td>1. Evaluate existing design flow standards.</td>
<td>Evaluate the need to modify the existing design flow standards. If modification is justified, begin the process of revising the Design Standards. Evaluation of design flow standards shall be completed by the end of February 2018.</td>
<td>Department will determine the validity of existing design flow standards.</td>
<td></td>
</tr>
</tbody>
</table>

Respectfully submitted,

Kirk Saiki, P.E.
Manager and Chief Engineer

Attachments: 2010 BAB Spend Down Report as of July 2017
KS/MJA
Mgrrp/Manager’s Update (08-21-17):mja