BOARD OF WATER SUPPLY of the COUNTY OF KAUA‘I

REGULAR MEETING

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

Friday, August 23, 2019
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 26, 2019

   Review and approval of:
   Executive Session – July 26, 2019

E. CORRESPONDENCE/ANNOUNCEMENTS/PUBLIC TESTIMONY

F. BOARD COMMITTEE & PERMITTED INTERACTION GROUP REPORTS

G. OLD BUSINESS

H. NEW BUSINESS

1. Manager’s Report No. 20-05 – Discussion and Possible Action on Contract No. 656, Water Plan 2020 Project No. WK-39 Drill & Develop Kapa’a Homesteads Well No. 4 & Package A-Well and Drainage Package of Water Plan 2020 Project No. WK-08, Job No. 02-14, Kapa’a Homesteads 325’ Tanks, Two 0.5 MG Tanks Projects, Kapa‘a, Kaua‘i, Hawai‘i for a construction change order no. 6 and additional contingency in the amount of $51,870.99

2. Manager’s Report No. 20-06 - Discussion and Possible Action on the Approval of the Department of Water’s Supplemental Budget for Fiscal Year 2020

3. Manager’s Report No. 20-07 - Discussion and Possible Action on the Second Amendment to Contract No. 639, Job No. 17-10, WP2020 Project No. KW-07 Rehabilitate Puaa Valley Tank #1, 0.5MG Concrete, with KAI Hawai‘i Inc. for a time extension of 150 days and for additional design funding in the amount of $11,636.00
H. NEW BUSINESS (cont’d)

4. Manager’s Report No. 20-08 - Discussion and Possible Action on the Fourth Amendment to Contract No. 533, Job No. 09-01 WP2020 #K-01, K-12, Phase II – Kālāheō 1111’ and 1222’ Water System Improvements, Kālāheō, Kaua’i, Hawai’i with Belt Collins Hawai’i LLC for a time extension of 220 days and for additional design funding in the amount of $101,583.00

5. Manager’s Report No. 20-09 - Discussion and Possible Action to accept a perpetual non-exclusive Grant of Easement for water line and related purposes on TMK: (4) 2-8-017:009, Lot 1-B from the property owners, Po’ipū, Kōloa District, Kaua’i, Hawai’i

6. Manager’s Report No. 20-10 – Discussion and Possible Action on Board Approval for Indemnification in Licensing Agreement with Apple Developer Programs between the Board of Water Supply, County of Kaua’i and Apple

7. Manager’s Report No. 20-11 – Discussion and Possible Action on Board Approval for Indemnification, Attorney’s Fees, and Governing Law for use of Apple IOS12 between the Board of Water Supply, County of Kaua’i and Apple

8. Manager’s Report No. 20-12 - Discussion and Possible Action on Board Approval for Indemnification, Attorney’s Fees, and Governing Law for use of Apple Media software between the Board of Water Supply, County of Kaua’i and Apple

9. Manager’s Report No. 20-13 - Discussion and Possible Action to Establish and Approve the Manager and Chief Engineer’s Goals for August, 2019 through March, 2020

I. 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
   b. Accounts Receivable Aging Summary

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

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

4. Discussion and Receipt of the Manager and Chief Engineer’s Monthly Update

J. EXECUTIVE SESSION

Pursuant to Hawai’i Revised Statues (HRS) §92-7(a), the Board may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a).
K. TOPICS FOR NEXT BOARD OF WATER SUPPLY MEETING (September 2019)
1. Discussion and Suggestions of the Department of Water’s Capital Improvement Projects for 2020-2021
2. Resolution Adoption – Make A Splash Volunteers

L. TOPICS FOR FUTURE BOARD OF WATER SUPPLY MEETINGS
1. Department of Water Performance Audit (Update)
2. Table of Organization Workshop
3. Workshop presentation regarding the Master Plan of the Department of Water’s former Administration Building, Baseyard, Micro Lab, Information Technology (October/November 2019)
5. Board Meeting Dates for 2020 (November 2019)
6. Discussion and Possible Action to establish Fiscal Policies and Procedures (January 2020)
7. Discussion and Possible Action on the Manager and Chief Engineer’s Goals (March 2020)
8. Evaluation of the Department of Water’s Manager and Chief Engineer from May 1, 2019 to May 1, 2020 (April 2020)

M. UPCOMING EVENTS
1. Make a Splash, Project WET (September 20, 2019)
2. HWWA/HRWA Conference (October 9-11, 2019), Honolulu, Hawai’i
3. DOW’s Annual Meeting (December 13, 2019)

N. NEXT WATER BOARD MEETING
1. Friday, September 27, 2019, 10:00 a.m.
2. Friday, October 25, 2019, 10:00 a.m.
3. Friday, November 22, 2019, 10:00 a.m.
4. Friday, December 20, 2019, 10:00 a.m.

O. ADJOURNMENT

PUBLIC TESTIMONY

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

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

SPECIAL ASSISTANCE

If you need an auxiliary aid/service, other accommodation due to a disability, or an interpreter for non-English speaking persons, please contact Edie Ignacio-Neumiller at (808) 245-5406 or eineumiller@kauaiwater.org as soon as possible. Requests made as early as possible will allow adequate time to fulfill your request. Upon request, this notice is available in alternate formats such as large print, braille, or electronic copy.
Draft Minutes
MEETING MINUTES
BOARD OF WATER SUPPLY
July 26, 2019

The Board of Water Supply, County of Kaua‘i, met in regular meeting at the Board Conference Room in Līhu'e on Friday, July 26, 2019. Chair Thomas Canute called the meeting to order at approximately 10:03 a.m. The following Board members were present:

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

Quorum was achieved with 6 members present at Roll Call.

STAFF:  Mr. Bryan Wienand  
Mr. Valentino Reyna  
Mr. Michael Hinazumi  
Mr. Carl Arume  
Mr. Eric Fujikawa  
DCA Mahealani Krafft

Mr. Eddie Doi  
Mrs. Marites Yano  
Mr. Darrell Acob  
Mrs. Jonell Kaohelaulii  
Mrs. Mary-jane Akuna  
Ms. Margie Mills

GUESTS:  Ms. Felicia Cowden, Councilwoman  
Mr. Andrew Michaels, Deputy County Attorney  
Mr. Hall Parrott, Private Citizen

C.  ACCEPTANCE OF AGENDA

Ms. Ho moved to reorder the Agenda to move Manager’s Report No. 19-65 after Staff Reports; seconded by Mr. Akamine; with no objections, motion carried with 6 ayes.

D.  MEETING MINUTES

Review and approval of:
Regular Board Meeting – June 28, 2019

Mr. Hull moved to approve the Regular Board Meeting minutes of June 28, 2019, seconded by Mr. Calipjo; with no objections, motion carried with 6 ayes.

Review and approval of:
Executive Session – June 28, 2019

Mr. Hull moved to approve the Executive Session minutes of June 28, 2019, seconded by Mr. Dill; with no objections, motion carried with 6 ayes.

E.  CORRESPONDENCE/ANNOUNCEMENTS/PUBLIC TESTIMONY

1.  Correspondence from Mr. Jan TenBruggencate, Vice Chair Charter Review Commission regarding Requesting any proposals to amend the Charter, dated July 3, 2019

Chair Canute explained that the correspondence requested any proposal for Charter Amendments from the Water Board.

Received for the Record
2. Committee Appointments by 2019 Chair Thomas Canute for Rules Committee

Chair appointed Mr. Ka‘aina Hull as Chair and Mr. Kurt Akamine to the Rules Committee. The Audit Committee would be discussed at a later time.

F. BOARD COMMITTEE & PERMITTED INTERACTION GROUP REPORTS

None.

G. OLD BUSINESS

1. Manager’s Report No. 19-57 - Discussion and Possible Action to Approve the 5-Year Information Technology Strategic Plan for the Department of Water (Update)

BACKGROUND:
Manager Wienand explained that Brio presented the IT Strategic Plan (ITSP) in May/June Board meeting and during that time, the Board discussed the plan as it related to the Fiscal Year (FY) 2020 budget. In June, the DOW presented the IT Specialist III position as well as the approval of IT as its own division. The ITSP is recommended to be formally approved as a living document. Bryan explained that funding is not being requested for approval, but just the plan itself. If there are items that the Board does not agree with, it can be brought up for discussion. The cost estimates over the 5 year period is included in the 5 year rate study. The DOW is not bound to those cost estimates, but is responsible to be included in the rate study.

The Manager also added that it could have been presented more clearly in May informing the Board that the intent of the DOW is that we are not requesting the 5 years’ worth of funding, but instead the plan amounts are incorporated with the water service rate study. The approval of the plan will formally allow the DOW to move forward based on these estimates for the study on best projections.

DISCUSSION:
Mr. Dill explained that he is comfortable with the plan and wanted to confirm if this 6 year plan started this current FY and included in this year’s approved budget. Manager Wienand referenced page 41 at the bottom total which recommended the budget for FY 2020-2025 period. This total identifies the estimated cost of $5.636M. From this total, the Board approved for $1.35M for FY2020. On page 42, the bulleted list of the 5 items were approved for the current FY 2020 budget. This is a net difference of the recommended total ending the 6 year spending with an estimate of just above $4M over the next 5 fiscal years in additional IT costs. The intent is to use the annual cost identified in this plan in the 5 year water service rate study. Mr. Dill mentioned that all of the items identified to be done this year with the opinion of costs, have funds for the current FY. Manager Wienand said FY 2020 approved $1.35M of the 5 year costs.

Mr. Dill referred to page 41, for FY2020 which shows $954K (opinion of costs $1.35M) and neither one of the number, is the $1.35M. He wanted to know if the DOW is planning on moving forward with all items funded for this year which Manager Wienand said “yes.” The difference of the highlighted Supervisory Control & Data Acquisition (SCADA) upgrade and replacement service was recommended several years ago which the Department wanted to move up. The $5.6M is recommended over the 6 fiscal years. The difference and what was already approved, could be incorporated into the rate study and on the approved plan.

Mr. Dill asked if the DOW is coordinating the Geographic Information System (GIS) with the County doing a single GIS or is the DOW doing its own? Manager Wienand met with the County and the DOW will be able to share GIS layers. County has an enterprise agreement with ESRI and already have a number
of free access to licenses based on their agreement. The DOW will be looking at cost sharing of what makes sense and would be free for the software.

As far as implementation, DOW staff went to the ESRI conference and ESRI recommended for the DOW to develop a road map with ESRI in implementing the tools but would not be a free service. Some fees would be for the staff to develop a specific documents within GIS with ESRI which would have cost factors and it would identify the detailed tools, jobs and road map to implement the tools specifically needed for the DOW. Once the mapping of the IT system is done, all of the tools will be rolled out. There will be layers to be able to access property information, ownership and boundaries from County Planning Department and the Public Works (hydrants, valves, water, and infrastructure) and the layers could be shared from the data bases.

Mr. Hull initially had issues with the plan and later met with the DOW because he was not at ease with some of the details. The County is going with the multimillion dollar bid on the Land Information Management System (LIMS) system. He understands that water is not part of that planning and implementation because of the additional cost. As the County implements LIMS, there should be a level of which water could be folded into to address some issues of the plan. As the plan progresses, Mr. Hull will be looking at how some of this can be beneficial for water as a partner. Manager Wienand mentioned he met with Del yesterday about this.

Mr. Dill inquired about page 41, 2nd line from bottom, “total cost previously budgeted” and the Department has not budgeted anything in 2025. There is an opinion of $1.679M; total previous budgets at $65K. Mr. Dill explained that the wording is a little bit of a misrepresentation. The increase in cost is based on what was projected. The Board only approved the budget for 2020. When looking at additional cost it’s not $5.6M it’s $10.2M. Mr. Dill asked if this represents $4.6M that already ran through the Board as a strategic plan initiative? Manager Wienand explained that it could have been phrased much clearer and clarified that the intent was to look at initiatives and new items that would have been budgeted versus maintaining the status quo that is what is represented in that line. The DOW didn’t implement any of the major initiatives that they identified with added costs. Also, if servers had to be replaced but in year 2023, they would have to be replaced anyway, then costs should be budgeted. Recommendations are made beyond such as the SCADA initiative (future cost) and the consultant tried to separate the status quo off the plan. The DOW could update the plan to rephrase that line.

Mr. Hull asked if this is adopted today, what is the timeline of the rate study? Mr. Wienand explained that the DOW expects to the have recommendation ready within two months and to bring the discussion back by the September Board meeting.

Mr. Dill moved to approve Manager’s Report No. 19-57 - Discussion and Possible Action to Approve the 5-Year Information Technology Strategic Plan for the Department of Water (Update) and to have the Manager include a Quarterly status update of the IT Strategic Plan in the Department of Water’s Quarterly Reports; seconded by Ms. Ho; with no objections, motion carried with 6 ayes.

H. NEW BUSINESS
1. Discussion and Receipt of the American Water Works Association, Annual Conference & Exposition Report (June 9-12, 2019)
   a. Report from Kaua‘i Board of Water Supply Member, Elesther Calipjo

Mr. Calipjo thanked the DOW and Board for sending him to the AWWA Conference. His conference experience was an eye opener and learned a lot on the projects.

Received for the Record
H. **NEW BUSINESS (cont’d)**

2. *Manager’s Report No. 20-01* – Discussion and Possible Action to amend the Table of Organization of the Fiscal Division and the creation of a new position for an Assistant Waterworks Controller

**BACKGROUND:**
Manager Wienand provided a background of the position of the Waterworks Controller is responsible of financial audit, development of fiscal policy and annual outlay expenses, the annual water audit, Accounting Section and Billing Section, monitoring debt levels, cash flow requirements, availability of funds and all financial obligations. Fiscal’s billing system was implemented in 2013 when monthly billing started for 21,000 customer accounts. Fiscal follows the rules and regulations by the Board and daily demands for service. The Manager explained that the DOW is the only County within Hawai’i without an Assistant Controller (or equivalent) and in comparison with the County Department of Finance which has a Deputy Director of Finance along with the Finance Director. An Assistant Controller will provide improvement to internal and external customer service. The benefits are a balance in oversight for both accounting and billing, a robust succession plan to transfer of knowledge, duty transfers, learning procedures and an alternate when the controller is out of the office as well as, improved performance for existing staff and improves customer service. The position salary is based off a range and on qualifications with DOW and Department of Human Resources approval on an Excluded Managerial 3 level. If additional funds are required, the Department would come back to the Board.

**DISCUSSION:**
Mr. Dill agreed and supports the idea. He was curious on how the Waterworks Controller’s position description is affected with an Assistant Controller on board and how is it different? He asked how is the Controller’s scope of work different from the Assistant Controller’s scope of work? How will the workload be divided up between the two positions? The Manager explained that he did review the details and couldn’t remove position duties from the existing Waterworks Controller as that goes with the rights of the position.

The Manager added that the intent for the Assistant Controller position is to not make any drastic changes just minor updates of what needs to be included and it would be very similar duties and responsibilities to the Controller. The Waterworks Controller’s duties would remain the same and could delegate some of the work to the Assistant Controller. DOW will look carefully on how the other islands balanced duties and create a strong succession plan where the Assistant Controller would eventually become qualified.

Mr. Dill moved to approve *Manager’s Report No. 20-01* – Discussion and Possible Action to amend the Table of Organization of the Fiscal Division and the creation of a new position for an Assistant Waterworks Controller; seconded by Mr. Akamine; with no objections, motion carried with 6 ayes.

3. *Manager’s Report No. 20-02* - Discussion and Possible Action for Board Approval to enter a Memorandum of Understanding No. 2330 between the Hawai’i Department of Transportation and the Board of Water Supply, County of Kaua’i for the Hawai’i Department of Transportation’s Kūhi‘ō Highway Short-Term Improvements, Kuamo’o Road to Temporary Kapa’a Bypass Road, Project No. NH-056-1(50)

Mr. Dill disclosed his conflict of interest to the Board on this item which the Chair noted.

Mr. Dill moved to approve *Manager’s Report No. 20-02* - Discussion and Possible Action for Board Approval to enter a Memorandum of Understanding No. 2330 between the Hawai’i Department of Transportation and the Board of Water Supply, County of Kaua’i for the Hawai’i Department of Transportation’s Kūhi‘ō Highway Short-Term Improvements, Kuamo’o Road to Temporary Kapa’a Bypass Road, Project No. NH-056-1(50); seconded by Mr. Akamine; with no objections, motion carried with 6 ayes.
Transportation’s Kūhiʻō Highway Short-Term Improvements, Kuamoʻo Road to Temporary Kapaʻa Bypass Road, Project No. NH-056-1(50); seconded by Ms. Ho; with no objections, motion carried with 6 ayes.

H. NEW BUSINESS (cont’d)

4. Manager’s Report No. 20-03 - Discussion and Possible Action to approve additional funds for a Second Amendment to Contract No. 682 with ES&A, Inc., A Law Corporation, for continued legal services to the Department in the amount of $120,000.00

BACKGROUND:
Manager Wienand explained that the DOW is named as a defendant for civil action. The two defendants are former employees. The Office of County Attorney (OCA) is short-staffed and does not have enough staff to handle the case. Previously, funding was requested in January. In June, mediation failed to reach settlement. Litigation is ongoing and OCA recommended using special counsel. The DOW recommended the Board to approve the additional funds. The Deputy County Attorney (DCA) Andrew Michaels was available to provide updates to answer questions from the Board.

DISCUSSION:
Mr. Akamine inquired if OCA does not have sufficient staff, why does the DOW incur the cost and not the County. Could it be incurred by the County? The Manager would have to look into this. Chair Canute asked if the Board didn’t approve the additional funding, the DOW would not have representation on this case? Manager Wienand said the OCA has minimal time to handle the case. Mr. Hull added that it has been County standards to expend funds from the Department needing the services. He will have a question for DCA Michaels on the amount during executive session.

Mr. Hull moved to reorder Manager’s Report No. 20-03 to go after Executive Session item Manager’s Report No. 19-65; seconded by Mr. Dill; with no objections, motion carried with 6 ayes.

5. Manager’s Report No. 20-04 - Discussion and Possible Action on the Request for Additional Funding to Award GS-2019-9, One (1) 4-Wheel Drive 18,000 LB Gross Vehicle Weight Rating Cab and Chassis with Mechanic Service Body, Underdeck Power Take Off Air Compressor and Accessories

BACKGROUND:
Manager Wienand explained the service vehicle will service the Heavy Equipment Mechanic. The initial estimate was $110K and the DOW received one responsive bidder. The Department’s estimate was not accurate without factoring in the additional cost of the crane body. Through discussions with Operations, they confirmed that the vehicle would be useful. It would be mostly for when a vehicle or piece of equipment is at a remote site, this would be the vehicle to retrieve or service the existing equipment. The DOW doesn’t have a comparable vehicle right now.

DISCUSSION:
Chief of Operations Mr. Reyna clarified a minor correction; the vehicle that the DOW replaced CK1785. The Manager’s Report is incorrect which should be “1783.” Operations is upgrading a lot of specialized details such as the crane, power take off and power condenser.

Mr. Calipjo asked how was the procurement done? Mr. Reyna said there was another bidder but was non-responsive (bidder did not meet any of the specifications which was rejected). Bids are posted and inquiries are received nationwide. Only two bids were received.
Mr. Dill moved to approve *Manager’s Report No. 20-04* - Discussion and Possible Action on the Request for Additional Funding to Award GS-2019-9, One (1) 4-Wheel Drive 18,000 LB Gross Vehicle Weight Rating Cab and Chassis with Mechanic Service Body, Underdeck Power Take Off Air Compressor and Accessories; seconded by Mr. Akamine; with no objections, motion carried with 6 ayes.

I. **CONSENT CALENDAR**

None.

J. **STAFF REPORTS**

MONTHLY

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

**BACKGROUND:**

Waterworks Controller Ms. Yano highlighted the following:

1. Financial Year End Audit – The kick-off meeting with the consultants will be on July 31st. The consultants may contact the Finance Chair Mr. Dill. Year-End Adjustments are still being worked on. The year-end final report will be presented as the audited financial statements. Fiscal’s goals are to complete the financial audit on October 31st and the final draft audit will be presented to the Board at the November 22nd Board meeting.

Received for the Record

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

**BACKGROUND:**

Information & Education Specialist Ms. Kaohelaullii highlighted the following:

2. Expand Project Wet network throughout the state this year.
3. The release of the Customer Account Portal that includes payment options with credit card or debit card on line.

**DISCUSSION:**

Mr. Dill had questioned how many customers were using the portal which Ms. Kaohelaullii explained was successful with about 250+ registered users signed up. Ms. Kaohelaullii said advertising is with radio and a notice will be going out with the monthly bill.

Received for the Record

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

**BACKGROUND:**

Chief of Operations Mr. Reyna provided highlights:

1. Promotion for Operations – A Groundskeeper was promoted to Utility Worker.
2. Service Laterals – A lot of service laterals were breaking (with the warm weather this past June) that caused more overtime which was reported to the Board last month.

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

BACKGROUND:
Manager Wienand highlighted the following:
1. Waiver Release and Indemnify (WR&I) application - for Habitat for Humanity.
2. Personnel Matters – Continuous recruitments and on-going classifications for each division.
3. Customer Account Portal (page 345) – 1st week had 74 registered users and will keep climbing after the kiosk awareness is promoted.
4. GIS – Four staff and Manager attended the GIS ESRI conference this month. Tools can be shared with the Planning Department and the Department of Transportation. The Manager added that GIS is not just for mapping but is for location intelligence. The Department will begin a push with IT to start the mapping to use the tools. IT will oversee the GIS which will benefit the whole Department.
5. DOW has confirmed 345 registered users using the new customer account portal.

DISCUSSION:
Chair Canute asked if the WR&I was the Waimea property? Manager Wienand would have to double check on the property.

Mr. Dill asked when will the rehab Paua Valley Tank be completed? Manager Wienand said the designs are finalized to get the tank back on line. What are the results on PCB’s on the tank? Microbiologist Mr. Carl Arume explained that PCB results came back negative. Sampling will be coordinated on those tanks with Phase 2/Phase 5 and sampling will be ongoing. Sampling was done through the top of the tanks and the caps.

Received for the Record

K. QUARTERLY (April – June 2019)
   1. Discussion and Receipt of the DOW’s Quarterly Project Status Update
      a. Construction Management Division

BACKGROUND:
Manager Wienand reported for Mr. Dustin Moises and referred to the Executive Summary on page 352.
1. Major Water Plan 2020 projects are on-going – Hanapēpē-Elele Booster Pump Replacements and the Kōloa Well 16a & 16B are almost closed out. Dedications for both projects are scheduled for next week.
2. Continue to work through challenges with Kapa’a Well 4 Drain line & Kapa’a Well 4 Drill & Test. Additional funds will be requested at the August Board meeting.
3. The is a high volume of private developer projects.
4. Recruitment continues for the new positions that were created for the two (2) Inspector I positions and a CE IV position.

Received for the Record

b. Engineering Division Design

BACKGROUND:
Engineer Mr. Eric Fujikawa explained highlights from the Executive Summary on page 369-370.
1. ‘Anini and Kalihiwai Road Main Replacement Project Phase I – Completed the past quarter and ready for construction.
2. Makaleha Tunnel Water Line Repairs (new project) – A waterline mitigation was due to the April floods. Continue working to gain information from FEMA. The design project is moving forward to create construction plans for mitigation.

3. Island Wide Vulnerability and Resiliency Assessment – was started in June and the design team will be looking at the entire island regarding natural disasters that relates to the law, America’s Infrastructure Act that past last year. The first meeting with consultants will start soon.

Received for the Record

c. Water Resources & Planning Division

**BACKGROUND:**
Chief of Water Resources & Planning Mr. Doi reported that WR&P has been out one staff member since January and has been getting out the work as best that they can.

**DISCUSSION:**
Mr. Hull asked how the DOW prioritizes their upgrades on the waterlines? The Manager explained that a factor is the necessity such as Makaleha necessitated by the flood. The DOW works off of the DOW’s long-range plan. Mr. Hull asked if the long range plan accommodates a Bill was passed a few years about regarding increased density moved to certain locations of the island that may not have the infrastructure. Does the plan account for that? Mr. Doi mentioned that the long range plan considers additional densities that were approved. He explained that the DOW can’t build without any necessary facilities happening with no development of approved densities. Mr. Hull added that the Planning Department handed over 60-70 Affordable Rental Units (ARUs). Often times they get held up because the customer does not have access to sewer or septic system. He wasn’t sure if waterlines are inadequate. Mr. Doi mentioned an example, if ARU’s can accommodate 2nd dwellings and the third dwelling may have requirements; WR&P would do an individual analysis.

Received for the Record

Mr. Hull moved to approve to go into Executive Session at 10:15 a.m., seconded by Ms. Ho; with no objections, motion carried with 6 ayes.

**K. EXECUTIVE SESSION** (started at 10:20 a.m.)
Ms. Ho read the following Executive Session language:

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). Pursuant to Hawai‘i Revised Statutes §92-4 and §92-5 a Board may hold a meeting closed to the public pursuant to section §92-4.

2. The purpose of this Executive Session is for the Board to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities as those relate to the litigation matter *Yamashita vs. County of Kaua‘i*, CIV-18-1-0158.

Mr. Hull moved to approve to go out of Executive Session at 11:40 a.m. and back to open session; seconded by Mr. Akamine; with no objections, motion carried with 6 ayes.
H. **NEW BUSINESS**

3. *Manager’s Report No. 20-03* - Discussion and Possible Action to approve additional funds for a Second Amendment to Contract No. 682 with ES&A, Inc., A Law Corporation, for continued legal services to the Department in the amount of $120,000.00

Mr. Akamine moved to approve *Manager’s Report No. 20-03* - Discussion and Possible Action to approve additional funds for a Second Amendment to Contract No. 682 with ES&A, Inc., A Law Corporation, for continued legal services to the Department in the amount of $120,000.00; seconded by Ms. Ho; with no objections, motion carried with 6 ayes.

Ms. Ho moved to go back to Executive Session at 11:42 a.m.; seconded by Mr. Hull; with no objections, motion carried with 6 ayes.

K. **EXECUTIVE SESSION (cont’d)**

Ms. Ho read the following Executive Session language:

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). Pursuant to Hawai‘i Revised Statutes §92-4 and §92-5 a Board may hold a meeting closed to the public pursuant to section §92-4.

1. The purpose of this Executive Session is for the Board to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held; as it relates to Agenda Item Chairperson’s Report No. 19-65.

*Chairperson’s Report No. 19-65* – Discussion and Possible Action on an appropriate increase of the Manager and Chief Engineer’s salary based on the Board’s evaluation of the Manager, after due consideration of the memorandum from Acting Director of Human Resources via the Administrator of Boards and Commission relating to the Pay Adjustment Requests for Commission-Appointed Officers as it relates to the memorandum from Mayor Kawakami concerning the Salary Commission Resolution No. 2019-1 “Resolution Relating To The Salaries Of Certain Officers And Employees Of The County Of Kaua‘i pursuant to Article 29 of the Charter effective as of July 1, 2019”

Mr. Dill moved to approve the Manager’s salary at $130,000 effective July 1, 2019; seconded by Ms. Ho; motion carried with 4 ayes 2 nos. (Yes: Ho, Dill, Calipjo, Canute / Nos: Hull Akamine)

Chair Canute called the Regular Meeting back to order at 11:51 a.m. with no objections.

L. **TOPICS FOR NEXT WATER BOARD MEETING** (August 2019)

1. Budget Rollovers
2. Discussion and Possible Action to Establish and Approve the Manager and Chief Engineer’s Goals
3. *Manager’s Report No. 19-60* *(Update)* – Discussion and Possible Action for Water Plan 2020 Project No. WK-39 Drill & Develop Kapa‘a Homesteads Well No. 4 & Package A-Well Drainage Package for Water Plan 2020 Project No. WK-08, Job No. 02-14, Kapa‘a Homesteads 325’ Tanks, Two 0.5 MG Tank Projects, Kapa‘a, Kaua‘i Hawai‘i for additional construction funding in the amount of $159,471.63
M. TOPICS FOR FUTURE BOARD OF WATER SUPPLY MEETINGS
1. Department of Water Performance Audit (Update)
2. Table of Organization Workshop
3. Capital Improvement Project Suggestions for 2020-2021 (September 2019)
4. Resolution Adoption – Make A Splash Volunteers (September 2019)
5. Workshop presentation regarding the Master Plan of the Department of Water’s former Administration Building, Baseyard, Micro Lab, Information Technology (October/November 2019)
7. Board Meeting Dates for 2020 (November 2019)
8. Discussion and Possible Action to establish Fiscal Policies and Procedures (December 2019)
9. Discussion and Possible Action on the Manager and Chief Engineer’s Goals (March 2020)
10. Evaluation of the Department of Water’s Manager and Chief Engineer from May 1, 2019 to May 1, 2020 (April 2020)

N. UPCOMING EVENTS
1. Make a Splash, Project WET (September 20, 2019)
2. HWWA/HRWA Conference, Honolulu, Hawai‘i (October 9-11, 2019), Honolulu
3. DOW’s Annual Meeting (December 13, 2019)

O. NEXT WATER BOARD MEETING
1. Friday, August 23, 2019, 10:00 a.m.
2. Friday, September 27, 2019, 10:00 a.m.
3. Friday, October 25, 2019, 10:00 a.m.
4. Friday, November 22, 2019, 10:00 a.m.
5. Friday, December 20, 2019, 10:00 a.m.

P. ADJOURNMENT
Ms. Ho moved to Adjourn the Regular Board Meeting at 11:53 a.m., seconded by Mr. Dill with no objections, motion carried with 6 ayes.

Respectfully submitted,                                             Approved,

Edith Ignacio Neumiller                                            Ka‘aina Hull
Commission Support Clerk                                          Secretary, Board of Water Supply
New Business
MANAGER’S REPORT NO. 20-05

August 23, 2019

Re: Discussion and Possible Action on Contract No. 656, Water Plan 2020 Project No. WK-39 Drill & Develop Kapa’a Homesteads Well No. 4 & Package A-Well and Drainage Package of Water Plan 2020 Project No. WK-08, Job No. 02-14, Kapa’a Homesteads 325’ Tanks, Two 0.5 MG Tanks Projects, Kapa’a, Kaua‘i, Hawai‘i for a construction change order no. 6 and additional contingency in the amount of $51,870.99

RECOMMENDATION:
It is recommended that the Board approve additional funds for the subject project related to proposed change order #6 and additional contingency for construction.

FUNDING:
Approved Budget to date:

<table>
<thead>
<tr>
<th>Project Code</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>30-21-00-605-118</td>
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<td>10-21-00-605-118</td>
<td>WU/ Capital Outlay – EXP/WK-39</td>
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Total Approved Funding in FY 17-18 Budget = $2,285,000.00

Per March 2019 Board Meeting

Total Approved Funding: $2,328,337.37

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<tr>
<th>Project Code</th>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>30-21-00-605-118</td>
<td>BAB Bond/ Capital Outlay-EXP/WK-39</td>
<td>$43,337.37</td>
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Construction Contract No. 656 $2,176,400.00
Approved Change Order No. 1 $20,000.00
Approved Change Order No. 2 $23,853.47
Approved Change Order No. 3 $88,083.90
Approved Change Order No. 4 $-1,371.55
Approved Change Order No. 5 $15,641.30
Proposed Change Order No. 6 $27,601.24
Proposed Additional Contingency $30,000.00
Total Funding Required $2,380,208.36

Total Certified Funding to Date as of March 2019 Board meeting: $2,328,337.37

Additional Funds Requested for, 30-21-00-605-118 BAB / Capital Outlay – EXP/WK-39 $51,870.99

BACKGROUND:
PACKAGE A – WELL AND DRAINAGE PACKAGE OF WATER PLAN 2020 PROJECT NO. WK-08, JOB NO. 02-14, KAPA’A HOMESTEADS 325’ TANKS, TWO 0.5 MG TANKS PROJECT: This scope consists of furnishing all materials, labor, tools, and equipment for installation of twenty-two drain manholes, one drain inlet, approximately 3,550 linear feet of 18-inch reinforced concrete drain line, a retention basin with headwall, grouted rubble pavement
overflow and grass berm, chain link fence, and removal of existing wall and existing chain link fence.

WATER PLAN 2020 PROJECT NO. WK-39 DRILL & DEVELOP KAPA‘A WELL NO. 4: This scope consists of furnishing all materials, labors, tools, and equipment and appurtenances to drill, case, and pump test a new 12-inch diameter, 550-foot deep drinking water well. The well site is located at the existing Ornellas tank site, at the intersection of Kawaihau Road and Ka‘apuni Road in Kapa‘a, Kaua‘i, Hawai‘i.

The project notice to proceed was issued on June 30, 2018. To date, the construction is a little over 47% completed as a majority of the work has been concentrated on the well drilling. The majority of the project’s costs are related to the drainage package, which has been delayed by unanticipated conditions and subsequent re-designs. To date the following change orders have been approved:

**Approved change order #1:** Per the contract requirements, if additional drilling was necessary during the pilot borehole process at the direction of the well engineer of record, the Department would require additional drilling at an additional cost. Subsequently, during the pilot borehole drilling, the contractor was required to drill an additional 20 feet at a cost of $20,000.00 with an additional 24 calendar day extension.

**Approved change order #2:** The design team recognized conflicts and re-designed via Request for Information (RFI) #11. The design team provided three (3) revised plan sheets that required structure modifications: a CRM wall was added with fencing, additional grading, and a reduction in curbing. The cost was $23,853.47 with an additional 22 calendar day extension.

**Approved change order #3:** There were issues with the survey control data which were revised by the design team via RFI 24 & 26 responses. There were differences between the design survey and construction survey, in some cases as much as 1.01 feet. To fix the discrepancy, the design team revised a total of five (5) plan sheets which affected approximately 3,300 LF of the 3,600 linear feet (station 0+15 to 33+01) of drain line grades and numerous manhole structures. The contractor submitted a change request in the amount of $91,367.00 for the additional geotechnical, surveying, and construction work required to complete construction related to the design conflicts at a cost of $88,083.90 with an additional 84 calendar day extension. At the March 22, 2019 Board meeting, additional funding was approved to compensate the contractor for this additional scope of work. A contingency of $20,000 was also included in the additional funds approved for the contract.

**Approved change order #4:** The DOW CM Division requested a credit for bonding and taxes that were to be included in the percentage of overhead and profit for previous change orders. The total credit was $1,371.55.

**Approved change order #5:** Per RFI 40, the contractor encountered an underground structure that was not shown on the approved plans that had to be removed. Per RFI 40 response, the contractor was directed to re-excavate the area, demolish & remove existing concrete sides and top within the limits of the drain line trench. The scope includes fill, forming and pouring of CLSM, placing and compacting base course, cold mix, and traffic control. The additional work was approved with an additional 7 calendar day time extension.

**Proposed Change order #6:**
Per approved RFI 35, the contractor encountered an existing SCADA conduit on the project site which was not shown on the approved plans. This conduit conflicts with the new drain line installation and it is anticipated that there will be an additional cost of $27,601.24 to relocate this conduit and an additional 28 calendar day time extension for the scope of work.

Additional contingency request: An additional contingency of $30,000 is also being requested for any potential future change order requests which may be required. The intent in requesting the $30,000 in contingency funds is to avoid any further delays to complete the contract while awaiting Board approval of additional funds.

The Department and our As-Needed Construction Management team from SSFM have reviewed the contractor’s proposed change order #6 request and we find it to be fair and reasonable. We recommend approval of the additional funding in the amount of $51,870.99 for the proposed change order #6 and the additional project contingency. This amount includes the contingency of $30,000.00 as recommended above.

**OPTIONS:**

**Option 1:** Approve additional funds in the amount of $51,870.99 for the proposed changes to the project, which includes $30,000.00 in additional contingency funds.

**Pros:**
- The contractor can relocate the existing SCADA line that is in conflict with the new drain line installation per the request of the DOW Operations staff and RFI 35 redesign.

With approval, the construction contractor can be compensated for the additional work via the proposed change order. The drilling of Kapa’a Well 4 and installation of the drain line can continue, which is needed for the operations of the water system, and further delays and additional costs associated with delays can be avoided. The additional contingency requested will minimize delays associated with any potential future change order requests, such as delay costs for demobilization and remobilization.

**Cons:**
- The cost of the project is higher than anticipated and an additional 28 calendar days would be needed to complete the project.

**Option 2:** Do not approve the additional funds in the amount of $51,870.99 for the proposed changes to the project.

**Pros:**
- The Department would not spend more than previously approved and the project would not be delayed further from the changes associated with the requested change order.

**Cons:**
- The Contractor would not be able to complete the drainage work given the existing SCADA conduit conflict.
- The Department may not have enough contingency to complete the project without requesting Board approval for funding associated with any unanticipated changes.
H. NEW BUSINESS

2. Manager’s Report No. 20-06 –
Discussion and Possible Action on the
Approval of the Department of Water’s
Supplemental Budget for Fiscal Year
2020

REPORT

PENDING
MANAGER’S REPORT No. 20-07

August 23, 2019

Re:  Discussion and Possible Action on the Second Amendment to Contract No. 639 Job No. 17-10, WP2020 Project No. KW-07 Rehabilitate Paua Valley Tank #1, 0.5MG Concrete, with KAI Hawaii Inc. for a time extension of 150 days and for additional design funding in the amount of $11,636.00

RECOMMENDATION:
It is recommended that the Board approve a second amendment to contract no. 639 with KAI Hawaii Inc. for the subject project for a time extension of 150 days and additional design funding in the amount of $11,636.00.

FUNDING:

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<tr>
<th>Account No.</th>
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<tbody>
<tr>
<td>Acct Description</td>
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<td>Funds Available</td>
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<td>Contract No.</td>
<td>639</td>
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<td>Amendment:</td>
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<td>PCB Soil Removal Plan</td>
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BACKGROUND:
Contract NTP Date: July 10, 2017
Original Contract End Date: March 16, 2018
First Amendment End Date: May 4, 2019
New Contract End Date: Estimate November 6, 2019

The DOW started Job No. 17-10, WP2020 Project No. KW-07 Rehabilitate Paua Valley Tank #1, 0.5MG Concrete to address the aging tank located in Kekaha and to perform repairs, including fixing a leak located at the base of the tank. As part of the project, DOW performed
hazardous material surveys to ensure proper disposal of any material intended to be removed. Results of the hazardous material survey identified the presence of polychlorinated biphenyls (PCBs) within the interior liner of the tank, which required the shutdown of the tank and the involvement of the Department of Health Hazard Evaluation and Emergency Response Office (HEER) and the Environmental Protection Agency (EPA) to provide direction of proper removal and disposal of the PCBs.

After discussions with HEER and EPA, specifications needed to be provided for proper removal and disposal of the interior liner of the tank. Additionally, the soils in the drainage ditch needed to be tested for the presences of PCBs, as this is where the tank discharges overflow or washout water.

Testing from the drainage ditch resulted in the presence of PCBs within the soils. Requirements from EPA require that a PCB soil removal plan must be developed and approved by the EPA and HEER for proper mitigation of the soil in the ditch.

The proposed amendment and additional funding are necessary to complete the PCB soil removal plan to satisfy requirements from HEER and EPA. We have reviewed the proposal from KAI Hawaii, Inc. for additional engineering services for the work and the additional fee of $11,636.00 and find it acceptable.

**OPTIONS:**

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

*Pro:* This will allow DOW to adhere to requirements from HEER and EPA to develop an approved plan to mitigate PCB contaminated soils from the drainage ditch adjacent to the Paua Valley 0.5 MG tank.

*Con:* Additional funds will be expended.

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

*Pro:* Additional funds will not be expended.

*Con:* The DOW will not be able to adhere to the requirements from HEER and EPA to develop an approved plan to mitigate PCB contaminated soils from the tank drainage ditch.

KA/ein

Attachments: Amendment to Contract No. 639, Professional Services Contract
Exhibit A – Scope of Work
Exhibit B – Budget Breakdown

Mgmrp/August 2019/Discussion and Possible Action on the Second Amendment to Contract No. 639 Job No. 17-10, WP2020 Project No. KW-07 Rehabilitate Paua Valley Tank #1, 0.5MG Concrete, with KAI Hawaii Inc. for a time extension of 150 days and for additional design funding in the amount of $11,636.00 (8-23-19)
AMENDMENT TO CONTRACT NO. 639
PROFESSIONAL SERVICES CONTRACT
(DESIGN PROFESSIONAL SERVICES LICENSED UNDER HAWAI‘I REVISED STATUTE §464)

THIS SECOND AMENDMENT TO CONTRACT NO. 639 by and between the
BOARD OF WATER SUPPLY, County of Kaua‘i, whose mailing address is 4398 Pua Loke Street,
Līhu‘e, Hawai‘i 96766 (hereinafter the “Board”) and KAI Hawaii, Inc., a Corporation under the
laws of the State of Hawai‘i, whose principle mailing address is 50 South Beretania Street, #C-
119C, Honolulu, Hawaii, 96813 (hereinafter the “Contractor”).

RECITALS

WHEREAS, the Board and the Contractor entered into Contract No. 693 on June 23,
2017 for the purposes of rehabilitating Paua Valley Tank #1, including the repair of aging
appurtenances, fixing a leak at the base of the tank, and repaving a new access road around the
tank perimeter; and

WHEREAS, the Board and Contractor entered into a First Amendment to Contract No.
639 on May 15, 2018 to perform necessary soil sampling and prepare polychlorinated byphenyls
(PCB) mitigation specifications to satisfy added requirements from the Department of Health and
Environmental Protection Agency; and

WHEREAS, soil sampling resulted in the discovery of PCB within the drainage ditch
identified as DU 1, for Paua Valley Tank #1; and

WHEREAS, the Board has requested the Contractor prepare a PCB-consummated soil
removal plan for acceptance by Department of Health and Environmental Protection Agency; and

WHEREAS, the updated proposal has been received and found acceptable; and

WHEREAS, Paragraph 13 of the General Terms and Conditions for Professional Services
Contracts, Department of Water, County of Kaua‘i, dated August 21, 2008, incorporated by
reference, (hereinafter “General Terms”); allows for contract modification within the general
scope of the agreement, subject to mutual agreement of the parties; and

NOW THEREFORE, the Board and Contractor, in consideration of the mutual promises,
consideration, and understandings set forth in the Contract, the Contract is hereby amended as
follows:

1. **Scope of Work.** Pursuant to Paragraph 2 “Changes in Scope of Work” of the original
   Contract, the Contractor agrees to complete the Scope of Work as amended by Exhibit A-
   2 which is attached and incorporated herein.

   ☒ Exhibit “A -1” which was attached, referenced, and incorporated into Contract
   No. 639 is deleted in its entirety and replaced with Exhibit “A- 2.”
☐ Exhibit “A Click here to enter text.” which was attached, referenced, and incorporated into Contract No. Click here to enter text. is amended by Exhibit “A-Click here to enter text.”

2. Paragraph 4(b)(i) is deleted in its entirety and replaced with the following:

Paragraph 4(b)(i): “Performance of the planning, design, and permitting services required under this Contract (1-8, 11-13 inclusive) shall commence upon written notification to proceed by the Officer-in-Charge and shall be completed within SIX HUNDRED SEVENTY (670) CALENDAR DAYS, exclusive of the time required for Board review of Contractor’s work product. In any event, all work shall be completed as expeditiously as possible. This Contract may be extended, by mutual written agreement of the parties, as needed, to complete the scope of the Project.”

3. Paragraph 5(a) is deleted in its entirety and replaced with the following:

Paragraph 5(a): “Compensation. For and in consideration of the Contractor’s full and faithful performance of all services required to be performed under the Contract Documents, the Board hereby agrees to pay the Contractor the total maximum sum of ONE HUNDRED SEVENTY FOUR THOUSAND FIFTY SIX AND 52/100 DOLLARS ($174,056.52), federal, state, and local taxes included, in lawful money of the United States of America; a detailed breakdown of the budget is provided in Exhibit B, attached and incorporated herein. The Contractor understands and agrees that payment shall be made in the manner and at the times specified in the Contract Documents, and shall also be subject to and conditioned upon such additions to or deductions from the preceding sum as may herein be made, according to the Contract Documents.”

☒ Exhibit “B-1” which was attached, referenced, and incorporated into Contract No. 639 is deleted in its entirety and replaced with Exhibit “B-2”

4. Cost and/or Pricing. If this Amendment required Cost and/or Pricing Data, Contractor understands and agrees that the price to the Board, including profit or fee, shall be adjusted to exclude any significant sums by which the Board finds that the price was increased because Contractor furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

5. Agreement in Full Force and Effect as Amended. The parties further agree that all other provisions of Contract No. 639 and any amendments thereto shall remain in full force and effect except as amended herein.
IN WITNESS WHEREOF, the parties hereto have hereunto caused this Contract to be executed as of the _____ day of __________, 2019.

RECOMMENDED FOR APPROVAL

Bryan Wienand, P.E.
Manager and Chief Engineer

Thomas Canute
Chairperson, Board of Water Supply

APPROVED AS TO FORM AND LEGALITY

Mahealani M. Krafft
Deputy County Attorney

By: _____________________________
Its: _____________________________
STATE OF HAWAI'I    )
     ss.
COUNTY OF __________)

On this ____ day of ________________________, 20____ in the ____ Circuit, State of Hawai'i, before me personally appeared ______________________________, 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 ______________________________, 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: ______________

Ver.: 09/11/18
SCOPE OF WORK:

The Contractor shall take full charge of designing the Project. The Contractor shall be responsible for completing the construction solicitation, detailed construction plans, cost estimate, and the specifications required to construct the Project. The Contractor shall furnish all personnel, materials, transportation, and equipment needed to perform the Scope of Work.

The Contractor shall perform the following tasks:

1. Identify the reason(s) why the 0.5 MG concrete storage tank is leaking and present recommendations for addressing the problem(s) and repairing any other deficiencies in the tank structure.

2. Take samples and perform hazardous material testing on said samples, and prepare a report detailing the results of material testing for lead-containing paint, asbestos, and the presence of Polychlorinated biphenyl (PCBs). If hazardous materials are determined to occur in the areas of repair work, the Contractor shall prepare mitigation design and special provisions as part of the Project.

   A. If hazardous material testing determines PCB sources are present within the tank, the Contractor and Board will renegotiate the scope and fee for the Project to prepare mitigation design and special provisions.

3. Permits: Prepare, submit, and obtain all necessary permits to complete the Project, including payment of any required permit fees and costs. The following permits are anticipated and are included as part of this Project:

   A. Prepare and submit a NPDES General Permit Form NOI-F for discharges of hydrotesting waters. Obtain NGPC from the Department of Health – Clean Water Branch for discharges of hydrotesting waters. If the General Permit is unavailable, the Contractor shall prepare, submit, and obtain a NPDES Individual Permit for Discharges of Hydrotesting Waters. Application fee for either General or Individual permit shall be covered as part of this item.

   B. Prepare and submit the project-specific Hawaii Revised Statutes (HRS) § 103-50 Document Transmittal Form, along with required documents, to the State Department of Health, Disabilities and Communication Access Board (DCAB) for review. Contractor shall satisfy DCAB requirements and obtain
approval from DCAB for the Project. Applicable DCAB plan review fee shall be covered as part of this item.

C. The following permits and items are not anticipated and are excluded from this Scope of Work. If it is determined that any of the excluded permits and items are needed to complete the Project, the DOW and Contractor will negotiate a separate fee to complete the work:
   a. Preparation of an Environmental Assessment
   b. Conservation District Use Application (CDUA) and Permit
   c. NPDES Permit for discharges of storm water associated with construction activity (Permit Form C)
   d. Department of Planning Zoning Permit, Use Permit, Special Permit, Variance Permit
   e. Department of Public Works Building Permit

4. Schedule for design, permitting, construction, and all other pertinent activities for purposes of monitoring the Project’s progress and planning. The schedule shall include all significant Project activities and milestones, submittal dates of work products, DOW review periods, construction solicitation advertisement, and other information necessary to ensure efficient progress of the work. Contractor shall update the schedule as necessary.

5. Design and prepare final construction plans for Job No. 17-10, WP2020 No. KW-07 Rehabilitate Paua Valley Tank #1, 0.5 MG Concrete in the Kekaha Water System. The design shall include, but not be limited to, the following:
   A. Improvements recommended by the Contractor and agreed to by DOW to prevent leaking of the tank and restore other deficiencies identified on the tank structure.
   B. Remove and replace a 12 foot width of the existing asphalt access roadway around the concrete tank with a new access roadway.

6. Construction Solicitation
   A. Preparation of cost estimate, construction solicitation requirements, general and special provisions based on the DOW’s standard construction solicitation template, and specifications. The DOW will provide the Contractor with its standard construction solicitation template.

7. The design and preparation of the final construction plans and shall also include the following:
   A. Prepare a Preliminary Engineering Report (PER) equivalent to a 30% design which identifies and addresses all major design concepts and permits needed for construction. The Contractor shall coordinate with DOW Operations
Division and all affected and/or applicable government agencies and utility companies. The Contractor shall meet with the DOW after submittal of the PER to obtain approval to move forward with the Preliminary Design submittal (equivalent to 60% design).

B. Submit plans for review to all affected governmental agencies and utility companies.

C. Provide all revisions as necessary leading to approval of plan and Project specifications.

D. The Contractor shall be available to provide consultation and advice during the construction and permit application phases.

8. The contractor shall provide, at a minimum, weekly updates to the DOW for the Project’s schedule and budget.

9. After approval and acceptance of the final construction plans and specifications, the Contractor shall be available for consultation, review, and shall approve material submittals, shop drawings, respond to Requests For Information (RFI’s) within ten (10) calendar days and other services during the construction solicitation phase, the construction phase, and up to ninety (90) calendar days after completion of construction as indicated by the date on the final inspection letter by the DOW. Physical attendance at the pre-proposal conference and pre-construction meeting are excluded from this Project.

10. The Contractor shall sign and submit record drawings that are prepared by the DOW’s construction management division and construction contractor.

The presence of PCBs have been discovered in the project and the following tasks (11 and 12) were added to the scope of work via the First Amendment to Contract 639.

11. Surface Soil Sampling and Analysis
   A. Prepare a Sampling and Analysis Plan for review by the U.S. Environmental Protection Agency (EPA), Region 9 and Hawaii Department of Health (HDOH).
   B. Collect a minimum of four (4) up to seven (7) primary and two (2) replicate multi-incremental samples from the surface to 6 inches below ground surface from four decision units. The sampling will be conducted using manual methods.
   C. The soil samples will be analyzed for PCBs by EPA Method 8081.
   D. Prepare and submit a report including the methodology and findings. The analytical results will be compared to the HDOH Tier 1 Environmental Action Levels for residential/unrestricted use.

12. Prepare Special Provisions and Design Requirements for PCB Mitigation
   a. Attend meetings (in-person or via tele-conference) with EPA and HDOH.
b. Develop PCB mitigation specifications. These will be reviewed by DOW, HDOH, and EPA.
c. Develop a PCB mitigation plan.
d. Prepare cost estimates for required mitigation tasks.

The presence of PCBs have been discovered in the drainage ditch of the tank site and the following task (13) is added to the scope of work via the Second Amendment to Contract 639.

13. Develop PCB-Consummated Soil Removal Plan to be reviewed and approved by the EPA and HDOH at the Paua Valley Tank #1 drainage ditch DU 1.

DELIVERABLES

All work of the Contractor shall be subject to the approval of the DOW. The Contractor shall submit construction plans, cost estimates, and specifications to the designated representative of the DOW for review and approval of each task. The Contractor shall also submit, through the DOW, plans, cost estimates, and specifications at each task for review and approval by all other affected governmental agencies as necessary to complete the Project. The Contractor shall not proceed with work in subsequent tasks until the DOW has reviewed and approved the previous task and determined it to satisfactorily conform to the contract documents. The DOW will then notify the Consultant in writing, via email and/or hard copy, to proceed with the next task.

1) Design Services
   Submittal for review by the DOW shall be made as follows:

   A. PER and Conceptual Design. The Contractor shall submit the PER and advance prints of construction drawings, containing sufficient details to permit a review of the design concept, equivalent to approximately 30% design of the final construction drawings. The DOW will provide the Contractor with a template of its construction solicitation document to serve as a basis for the Contractor’s construction solicitation submittals. Submission to consist of two (2) hard copy sets of full size (22” x 34”) prints of the drawings, two (2) hard copy sets of the PER (8 ½” x 11”), and a digital (searchable PDF and Microsoft Word) version of each to be submitted to the DOW.

   B. Preliminary Design – 60%. The Contractor shall submit advance prints of construction drawings containing sufficient construction details and outline specifications to permit an engineering review at approximately the 60% phase of the final construction drawings. Submission to consist of two (2) sets of the 60% design full-size (22” x 34”) prints, and one (1) set of the 60% construction solicitation document, including the engineer’s estimate for final construction cost. Digital (searchable PDF) submission of the 60% plans and 60% construction solicitation document (searchable PDF and Microsoft Word) shall also be submitted to the DOW.
C. **Pre-Final Design – 90%**. The Contractor shall submit advance prints of construction drawings and specifications, at approximately the 90% phase of the final construction drawings, complete in all major details. Submission to consist of two (2) sets of full-size (22” x 34”) prints, and one (1) set of the 90% construction solicitation document, including the engineer’s estimate for final construction cost. Digital (searchable PDF) submission of the 90% plans and 90% construction solicitation document (searchable PDF and Microsoft Word) shall also be submitted to the DOW.

D. **Final Design – 100%**. The Contractor shall submit one (1) complete, final set of construction plans to the DOW, including signed approval from all required County, State, and Federal governmental agencies and utilities affected. The final construction plans shall be 22” x 34” lasered on mylar. The drawings shall also be submitted digitally as a searchable PDF and a DWG file in AutoCAD 2013 format.

The Final construction solicitation document shall be submitted as one (1) complete set, via 8-1/2” x 11” printed and bound copy. The Contractor shall also submit to the DOW a Digital (searchable PDF and Microsoft Word) version of the Final construction solicitation document. The estimate for final construction costs shall also be submitted.

This final design submittal shall also include one (1) digital copy and one (1) hard copy of all engineering data and calculations, including work sheets for the determination of quantities in the construction solicitation document.
### EXHIBIT “B-2”

**BUDGET BREAKDOWN**

**JOB NO. 17-10, WP2020 PROJECT NO. KW-07**

**REHABILITATE PAUA VALLEY TANK #1, 0.5 MG CONCRETE**

**KEKAHA WATER SYSTEM**

**TMK: (4) 1-2-02:005**

**KEKAHA, KAUA'I, HAWAI'I**

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**CONTRACT TOTAL**

(not to exceed) $174,056.52
EXHIBIT A-2
SCOPE OF WORK

JOB NO. 17-10, WP2020 PROJECT NO. KW-07
REHABILITATE PAUA VALLEY TANK #1, 0.5 MG CONCRETE
KEKAHA WATER SYSTEM
TMK: (4) 1-2-02:005
KEKAHA, KAUA‘I, HAWAI‘I

SCOPE OF WORK:

The Contractor shall take full charge of designing the Project. The Contractor shall be responsible for completing the construction solicitation, detailed construction plans, cost estimate, and the specifications required to construct the Project. The Contractor shall furnish all personnel, materials, transportation, and equipment needed to perform the Scope of Work.

The Contractor shall perform the following tasks:

1) Identify the reason(s) why the 0.5 MG concrete storage tank is leaking and present recommendations for addressing the problem(s) and repairing any other deficiencies in the tank structure.

2) Take samples and perform hazardous material testing on said samples, and prepare a report detailing the results of material testing for lead-containing paint, asbestos, and the presence of Polychlorinated biphenyl (PCBs). If hazardous materials are determined to occur in the areas of repair work, the Contractor shall prepare mitigation design and special provisions as part of the Project.

   A. If hazardous material testing determines PCB sources are present within the tank, the Contractor and Board will renegotiate the scope and fee for the Project to prepare mitigation design and special provisions.

3) Permits: Prepare, submit, and obtain all necessary permits to complete the Project, including payment of any required permit fees and costs. The following permits are anticipated and are included as part of this Project:

   A. Prepare and submit a NPDES General Permit Form NOI-F for discharges of hydrotesting waters. Obtain NGPC from the Department of Health – Clean Water Branch for discharges of hydrotesting waters. If the General Permit is unavailable, the Contractor shall prepare, submit, and obtain a NPDES Individual Permit for Discharges of Hydrotesting Waters. Application fee for either General or Individual permit shall be covered as part of this item.

   B. Prepare and submit the project-specific Hawaii Revised Statutes (HRS) § 103-50 Document Transmittal Form, along with required documents, to the State Department of Health, Disabilities and Communication Access Board (DCAB) for review. Contractor shall satisfy DCAB requirements and obtain approval from DCAB for the Project. Applicable DCAB plan review fee shall be covered as part of this item.
C. The following permits and items are not anticipated and are excluded from this Scope of Work. If it is determined that any of the excluded permits and items are needed to complete the Project, the DOW and Contractor will negotiate a separate fee to complete the work:
   a. Preparation of an Environmental Assessment
   b. Conservation District Use Application (CDUA) and Permit
   c. NPDES Permit for discharges of storm water associated with construction activity (Permit Form C)
   d. Department of Planning Zoning Permit, Use Permit, Special Permit, Variance Permit
   e. Department of Public Works Building Permit

4) Schedule for design, permitting, construction, and all other pertinent activities for purposes of monitoring the Project’s progress and planning. The schedule shall include all significant Project activities and milestones, submittal dates of work products, DOW review periods, construction solicitation advertisement, and other information necessary to ensure efficient progress of the work. Contractor shall update the schedule as necessary.

5) Design and prepare final construction plans for Job No. 17-10, WP2020 No. KW-07 Rehabilitate Paua Valley Tank #1, 0.5 MG Concrete in the Kekaha Water System. The design shall include, but not be limited to, the following:
   A. Improvements recommended by the Contractor and agreed to by DOW to prevent leaking of the tank and restore other deficiencies identified on the tank structure.
   B. Remove and replace a 12 foot width of the existing asphalt access roadway around the concrete tank with a new access roadway.

6) Construction Solicitation
   A. Preparation of cost estimate, construction solicitation requirements, general and special provisions based on the DOW's standard construction solicitation template, and specifications. The DOW will provide the Contractor with its standard construction solicitation template.

7) The design and preparation of the final construction plans and shall also include the following:
   A. Prepare a Preliminary Engineering Report (PER) equivalent to a 30% design which identifies and addresses all major design concepts and permits needed for construction. The Contractor shall coordinate with DOW Operations Division and all affected and/or applicable government agencies and utility companies. The Contractor shall meet with the DOW after submittal of the PER to obtain approval to move forward with the Preliminary Design submittal (equivalent to 60% design).
   B. Submit plans for review to all affected governmental agencies and utility companies.
   C. Provide all revisions as necessary leading to approval of plan and Project specifications.
   D. The Contractor shall be available to provide consultation and advice during the construction and permit application phases.
8) The contractor shall provide, at a minimum, weekly updates to the DOW for the Project’s schedule and budget.

9) After approval and acceptance of the final construction plans and specifications, the Contractor shall be available for consultation, review, and shall approve material submittals, shop drawings, respond to Requests For Information (RFI’s) within ten (10) calendar days and other services during the construction solicitation phase, the construction phase, and up to ninety (90) calendar days after completion of construction as indicated by the date on the final inspection letter by the DOW. Physical attendance at the pre-proposal conference and pre-construction meeting are excluded from this Project.

10) The Contractor shall sign and submit record drawings that are prepared by the DOW’s construction management division and construction contractor.

The presence of PCBs have been discovered in the project and the following tasks (11 and 12) are added to the scope of work via the First Amendment to Contract 639.

11) Surface Soil Sampling and Analysis
   A. Prepare a Sampling and Analysis Plan for review by the U.S. Environmental Protection Agency (EPA), Region 9 and Hawaii Department of Health (HDOH).
   B. Collect a minimum of four (4) up to seven (7) primary and two (2) replicate multi-incremental samples from the surface to 6 inches below ground surface from four decision units. The sampling will be conducted using manual methods.
   C. The soil samples will be analyzed for PCBs by EPA Method 8081.
   D. Prepare and submit a report including the methodology and findings. The analytical results will be compared to the HDOH Tier 1 Environmental Action Levels for residential/unrestricted use.

12) Prepare Special Provisions and Design Requirements for PCB Mitigation
   A. Attend meetings (in-person or via tele-conference) with EPA and HDOH.
   B. Develop PCB mitigation specifications. These will be reviewed by DOW, HDOH, and EPA.
   C. Develop a PCB mitigation plan.
   D. Prepare cost estimates for required mitigation tasks.

The presence of PCBs have been discovered in the drainage ditch of the tank site and the following tasks (13) is added to the scope of work via the Second Amendment to Contract 639.

13) Develop PCB-Consummated Soil Removal Plan to be reviewed and approved by the EPA and HDOH at the Paua Valley Tank #1 drainage ditch DU 1.

DELIVERABLES

All work of the Contractor shall be subject to the approval of the DOW. The Contractor shall submit construction plans, cost estimates, and specifications to the designated representative of the DOW for review and approval of each task. The Contractor shall also submit, through the DOW, plans, cost estimates, and specifications at each task for review and approval by all other affected governmental
agencies as necessary to complete the Project. The Contractor shall not proceed with work in subsequent tasks until the DOW has reviewed and approved the previous task and determined it to satisfactorily conform to the contract documents. The DOW will then notify the Consultant in writing, via email and/or hard copy, to proceed with the next task.

1) Design Services

Submittal for review by the DOW shall be made as follows:

A. PER and Conceptual Design. The Contractor shall submit the PER and advance prints of construction drawings, containing sufficient details to permit a review of the design concept, equivalent to approximately 30% design of the final construction drawings. The DOW will provide the Contractor with a template of its construction solicitation document to serve as a basis for the Contractor’s construction solicitation submittals. Submission to consist of two (2) hard copy sets of full size (22” x 34”) prints of the drawings, two (2) hard copy sets of the PER (8 ½” x 11”), and a digital (searchable PDF and Microsoft Word) version of each to be submitted to the DOW.

B. Preliminary Design – 60%. The Contractor shall submit advance prints of construction drawings containing sufficient construction details and outline specifications to permit an engineering review at approximately the 60% phase of the final construction drawings. Submission to consist of two (2) sets of the 60% design full-size (22” x 34”) prints, and one (1) set of the 60% construction solicitation document, including the engineer’s estimate for final construction cost. Digital (searchable PDF) submission of the 60% plans and 60% construction solicitation document (searchable PDF and Microsoft Word) shall also be submitted to the DOW.

C. Pre-Final Design – 90%. The Contractor shall submit advance prints of construction drawings and specifications, at approximately the 90% phase of the final construction drawings, complete in all major details. Submission to consist of two (2) sets of full-size (22” x 34”) prints, and one (1) set of the 90% construction solicitation document, including the engineer’s estimate for final construction cost. Digital (searchable PDF) submission of the 90% plans and 90% construction solicitation document (searchable PDF and Microsoft Word) shall also be submitted to the DOW.

D. Final Design – 100%. The Contractor shall submit one (1) complete, final set of construction plans to the DOW, including signed approval from all required County, State, and Federal governmental agencies and utilities affected. The final construction plans shall be 22” x 34” lasered on mylar. The drawings shall also be submitted digitally as a searchable PDF and a DWG file in AutoCAD 2013 format.

The Final construction solicitation document shall be submitted as one (1) complete set, via 8-1/2” x 11” printed and bound copy. The Contractor shall also submit to the DOW a Digital (searchable PDF and Microsoft Word) version of the Final construction solicitation document. The estimate for final construction costs shall also be submitted.

This final design submittal shall also include one (1) digital copy and one (1) hard copy of all engineering data and calculations, including work sheets for the determination of quantities in the construction solicitation document.
### TASK DESCRIPTION | FEE ALLOCATION
---|---
1. Preliminary Engineering Report | $17,160.00
   A. Preparation of plans and specifications for working with and disposal of lead-containing paint | $1,870.12
   B. Preparation of plans and specifications for working with and disposal of asbestos-containing materials | $1,870.12
3. Permitting
   A. NPDES Permit for Hydrotesting - Application with State General Permit | $8,137.08
   B. Additional efforts needed to obtain NPDES Individual Permit | $4,781.12
4. Prepare Repair Solicitation Documents | $20,868.00
5. Services During Solicitation and Construction Phases | $5,632.00
   **First Contract Amendment**
6. Preparation of plans and specifications for working with and disposal of PCB containing materials | $16,782.00
7. Surface Soil Sampling and Analysis | $52,013.00
   **Second Contract Amendment**
8. PCB Soil Removal Plan | $11,636.00

**CONTRACT TOTAL (not to exceed)** | **$174,056.52**
MANAGER’S REPORT No. 20-08

August 23, 2019

Re: Discussion and Possible Action on the Fourth Amendment to Contract No. 533 Job No. 09-01 WP2020 #K-01, K-12, Phase II – Kalāheo 1111’ and 1222’ Water System Improvements, Kalāheo, Kaua‘i, Hawai‘i with Belt Collins Hawai‘i LLC for a time extension of 220 days and for additional design funding in the amount of $101,583.00

RECOMMENDATION:
It is recommended that the Board approve a fourth amendment to contract No. 533 with Belt Collins Hawai‘i LLC for the subject project for a time extension of 220 days and additional design funding in the amount of $101,583.00.

FUNDING:

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<th>Account No.</th>
<th>30-20-00-604-105</th>
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<tbody>
<tr>
<td>Acct Description</td>
<td>Certified BAB Funds for Contract No. 533</td>
</tr>
<tr>
<td>Funds Available</td>
<td>BAB Fund 30-00-00-320-000</td>
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</tbody>
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| Contract No. | 533 |
| Vendor       | Belt Collins Hawai‘i LLC |
| Contract Amount | $955,000.00 |
| 5% Contingency | $47,750.00 |
| Amendment 1 Additional Amount | $0.00 |
| Amendment 2 Additional Amount | $197,459.00 |
| Amendment 3 Additional Amount | $38,500.00 |
| Total Funds Certified To Date | $1,238,709.00 |

Amendment:
Additional Funds Requested for Amendment 4: Recertification and DWSRF Requirements $101,583.00

Proposed New Contract Amount $1,340,292.00

Fund Balance $7,213,422.00

BACKGROUND:
Contract NTP Date: April 13, 2011
Original Contract End Date: April 11, 2013
First Amendment End Date: October 31, 2014
Second Amendment End Date: February 15, 2018
Third Amendment End Date: December 28, 2019
New Contract End Date: Estimate August 3, 2020
The DOW is proposing to construct four (4) packages as part of the Kalâheo Water System Improvements Project. Package A is the new Yamada 0.5 MG (million gallon) concrete tank and Package B is the new Clearwell 0.1 MG concrete storage tanks. Package C consists of approximately 11,000 feet of new transmission and distribution lines along Kikala Road, Pu'uawai Road, Po'ohiwi Road, and Pu'ulima Road. Package D – Yamada well, includes drilling, testing, and construction of a new production well at the Yamada Tank site, constructing a new booster pump on the Yamada Tank site, and improving the existing booster pump located at the Kalâheo 908’ Tank.

**Contract Amendment No. 1:**
The contract was first amended for additional scope requested by the DOW; including replacing the water main along the access road between the existing Clearwell Site and its intersection with Pu'uwai Road, additional topographic survey, addressing subdivision approval comments, finalizing the subdivision map at the proposed Yamada tank site, and providing an Archaeological Inventory Survey (AIS) for the project.

**Contract Amendment No. 2:**
The design of the Package B Clearwell tank was changed from 0.5 MG to a 0.1 MG tank to meet the capacity needs of the affected water services area and to save approximately $1,300,000 in overall construction costs of the tank site. The amendment provided additional design services to complete the design for Packages A, B, and C, including: the downsizing of the Package B tank, design revisions to the water line alignment, additional project management and sub-consultant coordination, additional permitting requirements, moving the new SCADA unit into the new control building, and various other updates to the plans and specifications as requested by the DOW.

**Contract Amendment No. 3:**
As part of the process of obtaining the appropriate land rights for the operation and maintenance of the proposed Clearwell Tank site, the Department was informed that a Governor’s Executive Order (EO) is required. The Board of Land and Natural Resource (BLNR) has approved issuing an EO for the land needed for the Clearwell Tank improvements. Subsequently, the existing parcel must be subdivided to create the Clearwell tank site for the DOW. Scope was added for the consultant to prepare and submit the necessary documents to obtain final subdivision approval from the Planning Commission for the Package B Clearwell Tank site.

**Proposed Contract Amendment No. 4:**
Design work for the Kalâheo Water System Improvements, Packages A, B, and C, were completed in June 2018. However, the packages’ construction dates were delayed due to the Department’s project delivery capacity and funding. The Department recently obtained a State grant of $10,200,000 for the construction of the project. The Department also intends to utilize all of the remaining Build America Bond (BAB) funds available for this project, estimated at $7,200,000. However, to secure the remaining funding needed, the Department is looking to obtain a Drinking Water State Revolving Fund (DWSRF) loan through the Department of Health because the interest rates are significantly more attractive than other debt-financing options. To qualify for the DWSRF loan, additional environmental work must be done and of federal requirements which were not included in the original scope of work for the contract must be incorporated into the project plans and specifications.

In addition to the DWSRF loan requirements, design plans will need to be recertified and some permits will need to be renewed because construction of the project is estimated to start in July,
2020 and the design was completed in June 2018. This amendment includes scope to recertify plans and renew permits and approvals. The Department has reviewed the proposal from the consultant and has found it to be fair and reasonable. With Board approval of the additional funds for Contact Amendment No. 4, the contract time will also need to be extended an additional 220 calendar days for the additional scope to be completed.

Contract Amendment No. 4 is intended to address the need for completing work for Packages A (Yamada Tank), B (Clearwell Tank), and C (Water Pipeline) only. Package D (Yamada well) will continue to proceed through design, and it is anticipated that additional services will be requested to complete the design of Package D in the future. The design and construction of Package D is lagging for two main reasons: first, another well site in Kalāheo is concurrently being evaluated. Additionally, the construction of Package A (Yamada Tank) must be complete prior to the construction of Package D (Yamada Well) due to spatial constraints at the site. Therefore, a contract amendment for Package D may be necessary in the future.

**OPTIONS:**

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

**Pro:** This will allow the DOW to incorporate federal requirements into the plans and specifications to qualify for a low interest rate loan through the Department of Health’s Drinking Water State Revolving Fund program. The Department will also recertify the plans and renew permits and approvals necessary for the construction of Packages A, B, and C.

While additional funds will be expended for the design, the Department estimates that over the life of the DWSRF loan, approximately $285,000 - $570,000 will be saved in interest by qualifying for a 2.15%, 20 year loan through the DWSRF program as compared to a 3.35%, 20 year loan through the Water Infrastructure Finance and Innovation Act. The estimates are based on a principal loan amount of $2 Million to $4 Million: the amount will not be known until the project bids are received.

Additionally, the Safe Drinking Water Branch, who administers the DWSRF, has stated that principal forgiveness is available for work done to satisfy environmental requirements of the DWSRF, such as the National Historic Preservation Act, Section 106 review process. This would potentially offset a significant portion of the additional costs for the design contract.

**Con:** Additional funds will be expended for the design contract.

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

**Pro:** Additional design funds will not be expended.

**Con:** The DOW will not realize the benefits listed in Option 1 and will not be able to recertify the plans and renew permit approvals needed for the project. The $10,200,000 grant from the State appropriated for the project would also be jeopardized if construction of the project is delayed.
FOURTH AMENDMENT TO CONTRACT NO. 533
PROFESSIONAL SERVICES CONTRACT
(DESIGN PROFESSIONAL SERVICES LICENSED UNDER HAWAI`I REVISED STATUTE §464)

THIS FOURTH AMENDMENT TO CONTRACT NO. 533 by and between the
BOARD OF WATER SUPPLY, County of Kaua`i, whose mailing address is 4398 Pua Loke Street,
Līhu`e, Hawai`i 96766 (hereinafter the “Board”) and Belt Collins Hawaii LLC., a partnership under
the laws of the State of Hawai`i, whose principle mailing address is 2153 North King Street, Suite
200, Honolulu, Hawai`i 96819 (hereinafter the “Contractor”).

RECITALS

WHEREAS, the Board and the Contractor entered into Contract No. 533 on April 13,
2011 for the purposes of completing the Kalāheo 1111’ and 1222’ Water System Improvements,
which includes engineering design for the integration of the proposed Clearwell Tank, Yamada
Tank, and Well to the Kalāheo Water System, the associated improvements; pipeline
improvements; preparation of an Environmental Assessment and CDUA and Class III and IV
Zoning Permit to support these improvements; preparation of bidding and construction
documents; and bidding and construction services; and

WHEREAS, the Board and Contractor entered into a First Amendment to Contract No.
533 on January 23, 2014 to prepare additional topographic surveys, final subdivision maps and
descriptions for the Yamada Tank site, record the final subdivision documents with the Bureau
of Conveyances, and conduct an Archaeological Inventory Survey; and

WHEREAS, the Board and Contractor entered into a Second Amendment to Contract No.
533 on June 23, 2017 to update the construction plans and final specifications to resize the
Clearwell Tank (Package B) plans to 100,000 gallons to meet full build out capacity
requirements of its service zone, address comments made by other agencies, combine the
specifications for Packages A, B, and C into one document, design additional improvements as
detailed in Exhibits A-2 and B-2, and prepare and finalize additional permits necessary to
complete the project; and

WHEREAS, the Board and Contractor entered into a Third Amendment to Contract No.
533 on February 22, 2019 to obtain final subdivision for the parcel of land for the Clearwell
Tank site; and

WHEREAS, the Board needs to recertify the approved construction drawings and desires
to apply for a loan under the Drinking Water State Revolving Fund (DWSRF) to assist with
funding the construction of Packages A, B, and C of the project; and

WHEREAS, the updated proposal has been received and found acceptable; and

WHEREAS, Paragraph 13 of the General Terms and Conditions for Professional Services
Contracts, Department of Water, County of Kaua`i, dated August 21, 2008, incorporated by
reference, (hereinafter “General Terms”); allows for contract modification within the general
scope of the agreement, subject to mutual agreement of the parties; and
NOW THEREFORE, the Board and Contractor, in consideration of the mutual promises, consideration, and understandings set forth in the Contract, the Contract is hereby amended as follows:

1. ☒ **Scope of Work.** Pursuant to Paragraph 2 “Changes in Scope of Work” of the original Contract, the Contractor agrees to complete the Scope of Work as amended by Exhibit A-4 which is attached and incorporated herein.

    ☒ Exhibit “A -3” which was attached, referenced, and incorporated into Contract No. 533 is deleted in its entirety and replaced with Exhibit “A-4.”

2. Paragraph 5(i) is deleted in its entirety and replaced with the following:

   “Performance of the planning, design, and permitting services required under this Contract shall be completed by the Contractor within **FIVE HUNDRED TWENTY (520) CALENDAR DAYS** from and including the date as specified in the written Notice to Proceed of the Third Amendment to Contract 533, exclusive of the time required for Board review of Contractor’s work product. In any event, all work shall be completed as expeditiously as possible. The Board will issue to the Contractor a letter to suspend the Contract performance time during periods when the Board reviews the Contractor’s work product, provided that work is not being performed in other Task(s). At the end of a review period, if the Contractor performance is suspended, the Board will issue a letter to resume the Contract performance time. Any work performed or funds expended prior to receipt of the Notice to Proceed shall be at the Contractor’s expense and risk.”

3. Paragraph 10 is deleted in its entirety and replaced with the following:

   Paragraph 10: **Compensation.** For and in consideration of the Contractor’s full and faithful performance of all services required to be performed under the Contract Documents, the Board hereby agrees to pay the Contractor the total maximum sum of **ONE MILLION THREE HUNDRED FORTY THOUSAND TWO HUNDRED NINETY TWO AND 00/100 DOLLARS ($1,340,292.00)**, federal, state, and local taxes included, in lawful money of the United States of America; a detailed breakdown of the budget is provided in Exhibit B-4, attached and incorporated herein. The Contractor understands and agrees that payment shall be made in the manner and at the times specified in the Contract Documents, and shall also be subject to and conditioned upon such additions to or deductions from the preceding sum as may herein be made, according to the Contract Documents.”

    ☒ Exhibit “B-3” which was attached, referenced, and incorporated into Contract No. 533 is deleted in its entirety and replaced with Exhibit “B-4.”
4. **Cost and/or Pricing.** If this Amendment required Cost and/or Pricing Data, Contractor understands and agrees that the price to the Board, including profit or fee, shall be adjusted to exclude any significant sums by which the Board finds that the price was increased because Contractor furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

5. **Agreement in Full Force and Effect as Amended.** The parties further agree that all other provisions of Contract No. 533 and any amendments thereto shall remain in full force and effect except as amended herein.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Contract to be executed as of the _____ day of __________, 2019.

RECOMMENDED FOR APPROVAL

BOARD OF WATER SUPPLY
COUNTY OF KAUA‘I

_____________________________   _____________________________
Bryan Wienand, P.E.          Thomas Canute
Manager and Chief Engineer    Chairperson, Board of Water Supply

APPROVED AS TO FORM
AND LEGALITY

_____________________________ _____________________________
Mahealani M. Krafft          By: _____________________________
Deputy County Attorney       Its: _____________________________
STATE OF HAWAI‘I )
 ) ss.
COUNTY OF ________________ )

On this ___ day of ________________________, 20____ in the ___ Circuit, State of Hawai‘i, before me personally appeared ______________________________, 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 __________________________________, 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: ________________
EXHIBIT “A-4”
SCOPE OF WORK

JOB NO. 09-01, #K-01, K-12 - PHASE II
KALAHEO 1111’ AND 1222’
WATER SYSTEM IMPROVEMENTS
KALAHEO, KAUA‘I, HAWAI‘I

The Contractor shall provide design services to upgrade the Kalaheo Water System, which includes engineering design for the integration of the proposed Yamada Tank and well(s) to the Kalaheo Water System, the associated improvements; pipeline improvements; preparation of an Environmental Assessment and CDUA and Class III and IV Zoning Permit to support these improvements; preparation of bidding and construction documents; and bidding and construction services. Specifically, the contractor shall perform the following work items:

System Base Map. Contours from the U.S. Geological Service (USGS) quadrangle map for the Kalaheo area will be added to the DOW’s May 2010 system map. System pressure zones will be identified using the USGS elevation data.

Parcel Assessment. A review of the title to the land occupied by the existing Kalaheo filtration system, Tax Map Key (TMK): 2-4-09:003 will be made to determine if it is ceded lands. On behalf of the DOW, correspond with the Department of Land and Natural Resources to secure permission to use State land.

Travel. At the DOW’s suggestion, a meeting was held on Kaua‘i to discuss the scope of work and see the project area. A second trip will be scheduled for two persons to verify the topographic survey and further evaluate the project areas. For the Permitting Services (see below), two trips are proposed, including for attendance at the public hearing and at the Planning Commission for the Use Permit/Zoning Permit Application. Additional trips for site observation during construction are anticipated.

Preliminary Engineering Design. Preliminary design plans will be prepared for the system improvements as listed below. These plans will then be used as a basis for preparation of the Environmental Assessment, for preparing opinions of probable construction costs, and serve as a basis for preparation of the final bidding and construction documents. The preliminary design plans will address the following improvements:

1. Clearwell, Nursery Tank and Yamada Tank site demolition plans including hazardous materials survey and identification of necessary permits for the demolition work.

2. New Clearwell Tank site design including preliminary site plan indicating control building, tank, incorporation of a hydropneumatic booster pump system specified by the DOW and driveway layouts, utility layouts and grading plan. Preliminary Electrical design will include coordination with Kaua‘i Island Utility Cooperative (KIUC) for service and concept SCADA instrumentation design.
3. New well design including feasibility study and preliminary design for the well, pumps and related facilities. An initial review suggests the Nursery Tank site is the preferred location for the new well. Tom Nance Water Resource Engineering (TNWRE) will be subcontracted to prepare the study and recommendations and preliminary design plan. Preliminary electrical design to include concept power, SCADA instrumentation design and Motor Control Center designs.

4. New Yamada Tank site design including preliminary site and utility layouts and grading plan. Electrical design will include coordination with KIUC for service and concept SCADA instrumentation design.

5. Replacement booster pump system design at the 908’ tank site including concept electrical design for power service and the Motor Control Center.

6. Preliminary plan and profile of approximately 8,000 linear feet of transmission line between the 908’ tank site and the Yamada Tank site, along Pu‘uawai and Po‘ohiwi Roads, approximately 2,000 linear feet of transmission line along Kikala Road from its intersection with Pu‘uawai Road and approximately 3,000 linear feet of distribution line along Po‘ohiwi Road.

7. Preliminary design for replacement and/or modification of existing pressure reducing valves (PRVs) within the Kalaheo Water System to accommodate the pressure zone changes caused by the addition of the Yamada Tank. The DOW will provide the necessary analysis and design parameters for adjusting the existing PRVs.

8. Quantity takeoff and an opinion of probable cost based on recent available construction cost information.

9. Basis of design report containing the design assumptions and computations used in the preliminary design.


Environmental and Permitting Services. An Environmental Assessment (EA) will be prepared under Chapter 343, Hawai‘i Revised Statutes, requirements. It is anticipated that the project, which includes new waterlines, two storage tanks and a production well, will generate no significant environmental impacts and that a Finding of No Significant Impact (FONSI) will be issued by the proposing agency. Further, it is understood that the proposed project will bypass the exploratory well stage for the new well and that the EA should assess the potential potable water source for production purposes.

If the EA determines that significant impacts will be generated, the Board and Contractor will renegotiate the scope and fee for the project to prepare an Environmental Impact Statement (EIS).

Permitting services will include preparation of a CDUA for the Clearwell Tank site and Use Permit and Class III or IV Zoning Permit Applications for the well and Yamada Tank sites. These permit
applications may be prepared during the EA or planning stage or during the project’s pre-design stage, respectively.

The CDUA requires review by the State Board of Land and Natural Resources (BLNR). As such, attendance at the BLNR action meeting is included in the scope. The County Use Permit and Class IV Zoning Permit (if this is required in lieu of the Class III Zoning Permit) require a public notice, notice mail-out, and public hearing, participation at which is also included. According to the County, the hearings for the two permits will be consolidated into one hearing.

Bidding and Construction Documentation. With the DOW’s approval of the preliminary engineering design, preparation of the final bidding and construction documents will commence. The manner in which the packages are to be bid and awarded will be determined by the DOW. The water system improvements will be divided into four (4) separate bid packages as follows:

Package A: Yamada Tank Site: Design to include demolition, site, grading and drainage, access driveway, retaining wall, erosion control and water piping plans; two (2) retaining walls; drainage report; structural design for a 0.5 MG reservoir including handrails, security fencing and gate at the tank structure; and electrical site, power and control plans.

Package B: Clearwell Tank Site: Design to include demolition, site, grading and drainage, access road, retaining wall, control building, erosion control and water piping plans; drainage report; structural design for a 0.1 MG reservoir including handrails, security fencing and gate at the tank structure; and electrical site, power and control plans. Electrical design will include provision for telephone service at the Clearwell Tank Site. The existing SCADA cabinet will be relocated into the new control building. Also included will be a hydropneumatic tank and pump system; the DOW will provide specifications.

Package C: Water Main Improvements: Design to include approximately 7,000 linear feet of booster pump transmission line between the 908’ tank site and the Yamada Tank site, along Pu’uawai and Po’ohiwi Roads. The existing 8-inch main between the Clearwell and Yamada sites will remain in service for the new booster pumps at the Yamada Tank site. Additional design includes approximately 1,200 linear feet of transmission main along Kikala Road from its intersection with Pu’uawai Road and approximately 3,000 linear feet of distribution line along Po’ohiwi Road. Waterline plans and profiles, traffic control plans, pavement restoration plans, and details will be prepared.

Package D: Yamada Well Site and 908’ Booster Pump Site: Design to include permitting and design of the Yamada Well; well pump and booster pump design; and electrical site, power and control plans for the Yamada Well Site. Demolition, site, grading, control building, erosion control and water piping plans will be included for the Yamada Well Site. Also included in the design will be upsizing of the existing 908-foot booster pumps without modification to the booster pumps’ existing suction barrels. The discharge capacity and pressure of the new 908-foot booster pumps within the
Kalaheo Water System will be based on the DOW’s analysis. Modification of the electrical power and control systems to the 908-foot booster pumps will be included.

The intent is to bid Packages A, B and C together. Package D will be bid separately at a later date. The project request for proposal (RFP) with special provisions and proposal schedule will be prepared with Packages A, B and C as a single bid set. DOW will provide a sample of the RFP document. A separate RFP with special provisions and proposal schedule will be prepared for Package D.

The preliminary quantity takeoff and opinion of probable cost will be updated based on the final design plans.

The proposed sequencing of preliminary engineering and construction documentation presented in this contract allows work completed under initial phases to be used as a basis for subsequent phases. The fee and effort reflect the cost savings realized using these efficiencies and may be subject to change should the design scope and phasing be changed.

**Bidding and Construction Services.** The Contractor anticipates that his involvement during construction will be limited to reviewing submittals and responding to construction contractor inquiries. Site observation trips will be made at key milestones during construction. The scope of services will include:

1. Attend the pre-bid and pre-construction meetings.
2. Review and comment on substitution requests.
3. Review and comment on value engineering proposals.
4. Review construction contractor submittals for items identified in the drawings and special provisions.
5. Review and address requests for clarification that may be issued by the construction contractor.
6. Conduct six (6) site observation visits during the construction period. These services will include field observation to review the site work relative to the design intent and general conformance of the work to the design plans. Engineering visits will occur at key milestones for site civil construction. Field reports for each site visit will be prepared. A punch list of work that is not in general conformance to the design plans and special provisions will be prepared after the prefinal site visit.
7. Prepare record drawings using the information submitted on the contractor as-built plans.

National Pollutant Discharge Elimination System Permit (NPDES). DOW anticipates a need for a NPDES General Permit for stormwater discharge associated with construction activity. The effort includes preparation of the permit applications including the Storm Water Pollution Prevention
Plan (SWPPP) and coordination with the State Department of Health, Clean Water Branch to obtain approval of the applications. Two (2) separate permit applications will be prepared. The first application will be prepared for Packages A, B and C. Subsequently, a new application will be prepared for Package D.

Two NPDES permit applications for discharge of hydrotesting waters will be completed for the project. The effort includes preparation of the permit applications and coordination with the State Department of Health, Clean Water Branch to obtain approval of the applications. Two (2) separate permit applications will be prepared. The first application will be prepared for Packages A and B. The second application will be prepared for Package D. If the NPDES general permit authorizing discharges of hydrotesting waters has expired, individual NPDES permit applications will be prepared.

**Subconsultant Services**

The following services will be provided under subconsultant agreements with the Contractor’s office:

1. Well Site Feasibility and Design: Tom Nance Water Resources Engineering (TNWRE) will conduct a hydrologic prospects study of the well site and provide preliminary and final designs and opinions of probable costs for the well, permanent pump, and related facilities. Post-design services including attendance at construction meetings; preparation and processing of change order documents; review of shop drawings, sketches, data and catalog cuts; and preparation of record drawings by the well design team will be provided on an as-requested basis.

2. Hazardous Materials Survey: EnviroServices & Training Center will conduct a hazardous materials survey of the structures located on the Clearwell, existing Nursery Tank and Yamada Tank sites, provide design specifications and an opinion of probable cost of the abatement of hazardous materials.

3. Electrical System Design: Ronald N.S. Ho and Associates will prepare preliminary and final designs for power, controls and communications for the new 908’ booster pumps, Yamada Tank and Clearwell sites.

4. Geotechnical Engineering Recommendations: Geolabs Hawai‘i will conduct site investigation at the Yamada Tank, new well and Clearwell sites and prepare geotechnical recommendations for the construction of tanks and well facilities.

5. Structural Engineering Design: Shigemura, Lau, Sakanashi, Higuchi and Associates Inc. will prepare final designs for the water tanks, retaining wall, and valve boxes at the Yamada and Clearwell tank sites.

6. Topographic Survey: Honua Engineering, Inc. (formerly Wagner Engineering Services) will prepare topographic survey of the 908’ tank, Yamada Tank and Clearwell sites. The survey will include the Pu‘uwai and Po‘ohiwi Road rights-of-way from the 908’ tank to
the Clearwell site.

7. Subconsultants for the EA will prepare botanical and fauna studies for the project area. An archaeology consultant will conduct an archaeological reconnaissance survey and prepare a cultural impact assessment report.

8. Surveyor: Honua Engineering, Inc. will prepare final subdivision maps and descriptions, additional topographic survey and record final subdivision documents with bureau for the Yamada Tank site.

9. Archaeology: Cultural Surveys Hawaiʻi will conduct an Archaeological Inventory Survey (AIS).

A 10-percent fee will be added to the subconsultant fees along with Hawaiʻi State Tax as applicable.

**Reimbursable Expenses**

Anticipated expenses include printing, reproduction and binding of the basis of design report and figures and preliminary and final construction plans. Notice mail-out for public meetings. Travel costs, including airfare, car rental and parking are anticipated. A day trip for one person is budgeted for the initial project scoping phase. Day trips for two individuals are planned for the field investigation phase. Two day trips are planned for attendance/participation at hearings associated with the BLNR and County permits. These reimbursable expenses will be invoiced directly with a 10-percent processing fee in addition to Hawaiʻi State Tax.

**Exclusions**

1. Coordination with affected individual landowners other than the DLNR regarding the Clearwell site.
2. Traffic studies.
3. Landscape architecture.

**Amendment 2**

1. Revise the design for the Clearwell Tank (Package B) as listed below:
   a. Change tank size from 500,000 gallons to one 100,000-gallon concrete tank and one future 100,000-gallon concrete tank. The tanks shall have a minimum separation of ten feet.
   b. Redesign the tank site for the revised tank sizes and to reduce the extent of the site retaining walls and grading.
   c. Reduce the size of the water main from 12-inch diameter to 8-inch diameter.
   d. Prepare structural drawings for the 100,000-gallon concrete tanks.

**Amendment 3**
1. Complete Subdivision of TMK: 2-4-09:003 for the Clearwell Tank site as listed below:
   a. Preliminary Map. Conduct boundary research for the existing parcel and the contiguous lots. Submit subdivision application and payment of application fee. Address all comments to obtain tentative approval from the Planning Commission.
   b. Acquire Title Report for the submission of the final subdivision map.
   c. Final Map. Prepare and process final subdivision map with the County of Kaua'i Department of Planning. Provide payment of application fee. Address all comments to obtain Final Subdivision approval from the Planning Commission.
   d. Record final subdivision map with the Bureau of Conveyances.
   e. Construction Drawing Update. Revise the Erosion Control plan for the Clearwell Tank to reflect the parcel boundaries shown on the final subdivision map. Replot revised mylar sheet of Erosion Control plan for approval and signature.

Exclusions:
- Staking of the Clearwell lot based on the approved Final Map
- Except as identified above, updating the construction drawing mylars to reflect the boundaries shown on the Final Map.
- Topographic surveying services
- Geotechnical engineering services
- Architectural design services
- Phase I Environmental Site Assessment
- Entitlement services
- Obtaining Title Reports for additional parcels
- Effort related to requesting or processing the Executive Order
- Conservation district use permit revisions, extensions and associated fees
- Except as identified above, preparation of permit applications and payment of filing fees.

Amendment 4

1. **Recertification and Construction Document Revisions.** Review plans and recertification process with agencies and utilities. Coordinate with Kaua'i County Department of Public Works, Engineering Division, to confirm no additional comments on the plans. Revise specifications and the invitation to bid to comply with DWSRF requirements, including the DWSRF boilerplate specifications; American Iron and Steel (AIS) required language for construction contracts and certification letters; required federal forms for disadvantaged businesses and Davis-Bacon wages; and signage requirements. Obtain required agency/utilities signatures and restamp tracings.

2. **Address Environmental Cross-Cutting Federal Authorities and Loan Application Preparation.** Consult with applicable agencies and prepare environmental review documentation to address the cross-cutting environmental authorities that are required by the DWSRF program. These authorities include Section 106 of the National Historic Preservation Act (NHPA), Clean Air Act, Coastal Barriers Resources Act (CBRA), Coastal Zone Management Act (CZM), Section 7 of the Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), Fish and Wildlife Coordination Act (FWCA), Environmental Justice (EJ), Farmland Protection Policy Act, Floodplain Management, Magnuson-Stevens
Fishery Conservation and Management Act, Marine Mammal Protection Act, Protection of Wetlands, Section 10 of the Rivers and Harbors Act, Safe Drinking Water Act (SDWA), and Wild and Scenic Rivers Act. Document the findings of the agency consultation and environmental review in the SDWB Environmental Review Checklist. Environmental review will be based on existing studies previously prepared under this contract, including the final environmental assessment (FEA) and appendices dated July 22, 2012. Prepare the application for the DWSRF loan as coordinated with DOW.

3. Reimbursable Budget for Section 7 Biological Evaluation. A biological evaluation may be required to complete the Section 7 ESA consultation. Should a biological evaluation be required, the preparation of the biological evaluation shall be done on a time and materials basis.

4. Reimbursable Budget to Address Government Agency and Utility Recertification Comments and Building Permit Renewal Comments. Work to address comments arising from the recertification process or building permit renewal process shall be done on a time and material basis.

5. Additional Reimbursable Budget for reprinting of mylars and delivery expenses.

Exclusions
a. Topographic surveying services
b. Geotechnical engineering, structural engineering, and electrical engineering design services
c. Architectural design services
d. Entitlement services
e. Conservation district use permit revisions, extensions, and associated fees
f. National Pollutant Discharge Elimination System (NPDES) permit revisions, extensions, and associated fees
g. Building permit application revisions and associated fees
h. Preparation of permit applications and payment of filing fees
i. Preparation of payment requests to SDWB for repayment of contractor invoices
j. Preparation of a new EA, supplemental EA, or Environmental Impact Statement
k. Public notices, hearings, and meetings
l. Preparation of a County resolution, ordinance or other debt authorization to meet DWSRF requirements
m. Preparation of a Notice to Proceed letter to the construction contractor
n. Biological Surveys
o. Preparation of an archaeological literature review, assessment, inventory survey plan, inventory survey report, monitoring plan, preservation plan, data recovery plan, burial treatment plan, ethnographic documentation report, burial disinterment report, osteological analysis report, and cultural impact assessment
p. Archaeological subsurface investigations
q. Hazardous materials and waste services
r. Visits to the project site
EXHIBIT “B-4”

BUDGET ESTIMATE

JOB NO. 09-01, #K-01, K-12 - PHASE II
KALAHEO 1111’ AND 1222’
WATER SYSTEM IMPROVEMENTS
KALAHEO, KAUA‘I, HAWAI‘I

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MANAGER’S REPORT No. 20-09

August 23, 2019

Re: Discussion and Possible Action to accept a perpetual non-exclusive Grant of Easement for water line and related purposes on TMK: (4) 2-8-017:009, Lot 1-B from the property owners, Po'ipū, Kōloa District, Kaua'i, Hawai'i

RECOMMENDATION:
It is recommended that the Board accept a perpetual non-exclusive Grant of Easement for water line and related purposes on TMK: (4) 2-8-017:009, Lot 1-B from the property owners.

Further Board approval is specifically requested of the indemnification provisions of the Grant of Easement, wherein the Board agrees to: “indemnify and save the GRANTOR harmless from and against all damage to the GRANTOR’s property and all liability for injury to or the death of persons when such damage, injury, or death is caused by the negligence of the GRANTEE, its officers, agents and employees while using the Easement Area; except that GRANTEE shall not be liable for any claims, suits, demands, actions, judgments, losses, damages, costs, expenses, and liabilities whatsoever arising from or relating to flooding due to broken or leaking waterworks facilities owned by GRANTEE, including any damage to vertical improvements or their foundations, or both, or damage to parking improvements. GRANTEE shall also not be liable for any claims, suits, demands, actions, judgements, losses, damages, costs, expenses, and liabilities whatsoever arising from or relating to GRANTEE’s backfilling of soil over areas GRANTEE disturbs or GRANTEE’s placing temporary cold mix asphalt pavement patches over pavement or concrete sidewalk areas that GRANTEE has disturbed as described in Section 1.a. of this Grant.”

FUNDING: N/A

BACKGROUND:
The Department of Water (DOW) previously maintained a water line and hydrants that were located within the subject property (Kiahuna Plantation development) without an easement in favor of the DOW. The water line and hydrants located within the subject property were not re-connected to the new water main that was later installed along Po'ipū Road which fronts the subject property. It is surmised that the water line located within the property was not reconnected due to the DOW not having an easement or right of entry for the property.

The County of Kaua'i Fire Department is concerned with the lack of adequate spacing of onsite fire hydrants for the Kiahuna Plantation buildings. The Kiahuna Plantation manager and the County of Kaua'i Fire Department have both requested that the DOW reactivate the water line and hydrants that are located within the subject property that were not reconnected to the new water main. The DOW agreed to do so provided that a perpetual Grant of Easement is provided to the DOW.

After completion of the Grant of Easement, the DOW’s Operations Division will be responsible to reactivate the water line and hydrants located within the easement area.
OPTIONS:

Option 1: Accept the Grant of Easement for water line and related purposes on the subject lot.

Pros: The Board will be helping the County of Kaua'i’s Fire Department and the Kiahuna Plantation by providing the requested on-site hydrants for fire protection.

Con: The DOW will need to spend time to re-activate and maintain the water line and hydrants located within the easement area.

Option 2: Do not accept the Grant of Easement for water line and related purposes on the subject lot.

Pro: The DOW will not need to spend time to re-activate and maintain the water line and hydrants located within the easement area.

Cons: The DOW will not be helping the County of Kaua'i’s Fire Department with their request and the Kiahuna Plantation and residents/guests may not have adequate on-site fire protection relative to the Fire Department’s request to provide closer hydrant spacing on-site.

DOW personnel told the owner that the DOW would reactivate the hydrants on the property if an easement was provided. The owner expended time and money to prepare the Grant of Easement document. The DOW’s credibility may be negatively affected if we do not accept the Grant of Easement.

KA/ein

Attachment: Grant of Easement, TMK: (4) 2-8-017:009, Lot 1-B from the property owners, Po'ipu, Koloa District, Kaua'i, Hawai'i

Mgrp/August 2019/20-09/Discussion and Possible Action to accept a perpetual non-exclusive Grant of Easement for water line and related purposes on TMK: (4) 2-8-017:009, Lot 1-B from the property owners, Po'ipu, Koloa District, Kaua'i, Hawai'i (8-23-19):ein
LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by Mail to:
Board of Water Supply,
County of Kauai
4398 Pua Loke Street
Lihue, Hawaii 96766

This document contains _______ pages.

TYPE OF DOCUMENT:

GRANT OF EASEMENT

PARTIES TO DOCUMENT:

GRANTOR: KAMALI'I FAMILY LIMITED PARTNERSHIP, a Hawaii limited partnership; KVH, LLC, a Hawaii limited liability company; CGB PARTNERS, a Hawaii limited partnership; MAKANA PROPERTIES LLC, a Hawaii limited liability company; MOIR FAMILY LIMITED PARTNERSHIP, a Hawaii limited partnership; AUKAHI FARM LLC, a Hawaii limited liability company; JOHN HORWITZ, PETER B. BALDWIN, MATTHEW B. GUARD and GEORGE R. ROBINSON, Successor Co-Trustees of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922; and JOCELYN BENSON, Trustee of the Knudsen Irrevocable Trust dated December 14, 2012

GRANTEE: BOARD OF WATER SUPPLY, COUNTY OF KAUI
4398 Pua Loke Street
Lihue, Kauai, Hawaii 96766

TAX MAP KEY FOR PROPERTY:

Grantor's Property: (4) 2-8-017:009
GRANT OF EASEMENT

THIS GRANT OF EASEMENT ("Grant") is made effective this _____ day of ________, 20____, by and between KAMALI'I FAMILY LIMITED PARTNERSHIP, a Hawaii limited partnership, whose mailing address is 3040 Hibiscus Drive, Honolulu, Hawaii 96815, KVH LLC, a Hawaii limited liability company, whose mailing address is 1000 Bishop Street, Suite 502, Honolulu, Hawaii 96813, CGB PARTNERS, a Hawaii limited partnership, whose mailing address is c/o Benjamin D. Blackwell, 7637 East Gold Dust Avenue, Scottsdale, Arizona 85258, MAKANA PROPERTIES LLC, a Hawaii limited liability company, whose mailing address is P. O. Box 130, Koloa, Kauai, Hawaii 96756, MOIR FAMILY LIMITED PARTNERSHIP, a Hawaii limited partnership, whose mailing address is 334 Arcadia Avenue, Long Beach, California 90803, AUKAHI FARM LLC, a Hawaii limited liability company, whose mailing address is P. O. Box 670, Koloa, Kauai, Hawaii 96756, JOHN HORWITZ, PETER BALDWIN, MATTHEW B. GUARD, and GEORGE R. ROBINSON, Successor Co-Trustees of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended, whose mailing address is P. O. Box 160, Koloa, Kauai, Hawaii 96756, and JOCELYN BENSON, Trustee of the Knudsen Irrevocable Trust dated December 14, 2012, with full powers, in her fiduciary and not in her individual capacity, whose mailing address is P. O. Box 415, Verdi, Nevada 89439 (collectively, the "GRANTOR"), and the BOARD OF WATER SUPPLY, COUNTY OF KAUAI, whose mailing address is 4398 Pua Loke Street, Lihue, Kauai, Hawaii 96766 ("GRANTEE").

I. RECITALS

A. The GRANTOR is the owner of real property known as Lot 1-B, located at Koloa, Kauai, Hawaii, as shown on Map 2 of Land Court Consolidation 125 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, identified by Kauai Tax Map Key No. (4) 2-8-017:009, as more fully described in Transfer Certificate of Title No. 1,054,906 and in Exhibit "A", attached hereto and incorporated herein (the "Property").

B. Subject to the terms, conditions and limitations contained herein, the GRANTEE wishes to acquire and the GRANTOR is willing to grant a perpetual, non-exclusive easement (referred to hereinafter as the "Easement") for access and underground utility purposes over and across that portion of GRANTOR's Property identified as the Easement, as shown on Exhibit "B" and described in Exhibit "C", both of which are attached hereto and incorporated herein.

II. GRANT

NOW, THEREFORE, in consideration of the sum of one dollar ($1.00) paid by the GRANTEE to the GRANTOR, the receipt of which is acknowledged, and the covenants contained in this Grant to be performed by the GRANTEE, the GRANTOR does hereby grant, bargain, sell and convey to the GRANTEE a non-exclusive Easement in perpetuity on, over, and under the Property. The Easement is more particularly shown in Exhibit "B" and described by metes and bounds in Exhibit "C". The portion of GRANTOR's Property subject to the Easement shall be referred to as the "Easement Area".
The foregoing easement is granted for the reading of water meters and for the construction, installation, re-installation, maintenance, repair, and removal of potable water pipelines and related meters, valves, and other associated waterworks facility improvements and appurtenances within the Easement Area. The GRANTEE is further allowed the right of ingress and egress at any time to, from, and through the Easement Area, with or without vehicles or equipment, as the GRANTEE deems necessary for the proper operation of its water system.

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

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

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

1. Should the GRANTEE, while performing activities permitted under this Grant, disturb in any way the ground which is the subject of the Easement Area:

   a. GRANTEE shall place temporary cold mix asphalt pavement patches over pavement or concrete sidewalk areas that GRANTEE has disturbed to allow pedestrians and vehicles to pass over such temporary repaired areas.

   b. GRANTOR understands and agrees that GRANTEE’s temporary repairs to pavement or sidewalk areas over which pedestrians may pass may not comply with requirements of the U.S. Americans with Disabilities Act.

   c. GRANTOR shall be responsible for permanent restoration of asphalt, concrete pavement, concrete curbs, concrete sidewalks, landscaping and other ancillary physical damage relating to Easement Areas disturbed by the GRANTEE.

2. The GRANTEE shall indemnify and save the GRANTOR harmless from and against all damage to the GRANTOR’s property and all liability for injury to or the death of persons when such damage, injury, or death is caused by the negligence of the GRANTEE, its officers, agents and employees while using the Easement Area; except that GRANTEE shall not be liable for any claims, suits, demands, actions, judgments, losses, damages, costs, expenses, and liabilities whatsoever arising from or relating to flooding due to broken or leaking waterworks facilities owned by GRANTEE, including any damage to vertical improvements or their foundations, or both, or damage to parking improvements. GRANTEE shall also not be liable for any claims, suits, demands, actions, judgments, losses, damages,
costs, expenses, and liabilities whatsoever arising from or relating to GRANTEE’s backfilling of soil over areas GRANTEE disturbs or GRANTEE’s placing temporary cold mix asphalt pavement patches over pavement or concrete sidewalk areas that GRANTEE has disturbed as described in Section 1.a. of this Grant.

3. The GRANTEE shall not assign its rights under this easement without the prior written consent of the GRANTOR; provided that the GRANTEE may assign its rights to a successor of the GRANTEE duly created by law.

4. Should the GRANTOR’s development plans require that the Easement Area and/or waterworks facility improvements within, on, or under the Easement Area be re-located, the GRANTOR will, at the GRANTOR’s own expense and pursuant to the GRANTEE’s instructions and specifications, re-locate the affected Easement Area and related waterworks facility improvements and appurtenances without interruption of the GRANTEE’s services.

5. The GRANTOR shall at no time erect any building foundation of any kind below the surface of the land which is the subject of the Easement Area or any building or structure of any kind (other than roads, sidewalks, curbs or similar appurtenances) on the surface of the land which is the subject of the Easement Area unless the GRANTOR receives the prior written consent of the GRANTEE.

Only lawn grass shall be planted within three (3) feet of all meter boxes, fire hydrants, and other waterworks facility improvements and appurtenances. No new trees with aggressive root systems shall be planted within twenty (20) feet of all meter boxes, fire hydrants, and other waterworks facility improvements and appurtenances, except that any trees existing at the time of the execution of this Grant by the parties hereto and shown on attached Exhibit “B” shall be allowed to remain in place unless such trees die or GRANTEE or GRANTOR removes such trees for purposes related to the operation, maintenance, repair, or replacement of waterworks facilities located within the Easement Area. Any such dead trees or trees removed for the foregoing purposes shall not be replaced by GRANTEE or GRANTOR.

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

6. The GRANTOR covenants with the GRANTEE that the GRANTOR is the lawful owner of the land which is the subject of this Easement Area, that the GRANTOR has good right and title to grant this easement, and that the GRANTOR will warrant and defend the same unto the GRANTEE against the claims and demands of all persons or entities with the exception of those restrictions, encumbrances and other matters currently of record.

7. When used within this Grant the term "GRANTOR" shall mean the singular and plural, masculine and feminine, and natural persons, trustees, corporations, partnerships, limited partnerships, sole proprietors and other forms of business entities. The term shall also mean the GRANTOR’s or GRANTORS’ estates, heirs, devisees, personal representatives, successors, successors-in-trust and assigns.
8. It is further mutually agreed that the terms of this Grant shall be binding upon and inure to the benefit of all the parties to this Grant and that all covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed in this Grant.

9. This Grant 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.

10. This Grant has been executed by the Successor Co-Trustees of the Eric A. Knudsen Trust in their fiduciary capacity as said Successor Co-Trustees, and not in their individual capacities. No personal liability or obligation under this Grant shall be imposed or assessed against said Successor Co-Trustees, or their successors in trust and assigns, in their individual capacities.

IN WITNESS WHEREOF, the parties have hereunto executed this Grant Of Easement on the date first above written.

grantor:

KAMALI‘I FAMILY LIMITED PARTNERSHIP,
a Hawaii limited partnership

By: Waita LLC, a Hawaii limited liability company
    Its General Partner

By: MATTHEW B. GUARD
    Its Member
STATE OF HAWAII
CITY AND COUNTY OF HONOLULU

On this 15th day of November, 2018, before me appeared MATTHEW NUE GUARD, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing GRANT OF EASEMENT dated 11/15/18, 2018, which document consists of 22 page(s), as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Name of Notary: Kellan Briones
My commission expires: 08/20/2027

Doc Date: 11/15/18 # Pages: 22
Notary Name: Kellan Briones Circuit
Doc. Description: 23-230 (Stamp or Seal)
Notary Signature Date

{W:/DOCS/28399/8/W0150319.DOCX} -6-
GRANTOR:

KVH, LLC, a Hawaii limited liability company

By ____________________________

MATTHEW P. S. CHAPMAN
Its Manager

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

On this 14th day of June, 2018, before me appeared Matthew P. S. Chapman, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing GRANT OF EASEMENT dated undated, 20__, which document consists of [22] page(s), as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

_____________________________________
Name of Notary: SHIRLYN OGATA
Notary Public, First Judicial Circuit,
State of Hawaii.

My commission expires: 10/31/2020

LS
GRANTOR:

CGB PARTNERS, a Hawaii limited partnership

By:  Benjamin D Blackwell
    BENJAMIN D. BLACKWELL
    Its General Partner

STATE OF Connecticut  )  SS: Salisbury
COUNTY OF Litchfield   )

On this 27 day of June, 2018, before me appeared Benjamin D. Blackwell, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing GRANT OF EASEMENT dated June 27, 2018, which document consists of 22 page(s), as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Jean Marie Brant / Jean Marie Brant
Name of Notary:
Notary Public, in and for said County and State.

My commission expires: 5/31/2020

Jean Marie Brant
Notary Public State of CT
Commission Exp: 05/31/2020
GRANTOR:

MAKANA PROPERTIES LLC,
a Hawaii limited liability company

By ________________________________
PETER K. BALDWIN
Its Manager

By ________________________________
GREGORY WILLIAMS
Its Manager

STATE OF HAWAII    )
COUNTY OF KAUAI    ) ss:

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

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

My commission expires: 10/6/21
STATE OF HAWAII  
COUNTY OF KAUAI  

On this 5 day of June, 2016, before me appeared Gregory Williams, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing GRANT OF EASEMENT dated undated, 20__, which document consists of 24 page(s), as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Name of Notary: ARLENE PURISIMA

My commission expires: 10/6/31

(W/DOCS/28399/8/W0150315.DOCX)
GRANTOR:

MOIR FAMILY LIMITED PARTNERSHIP,
a Hawaii limited partnership

By: Makana Kauai LLC,
a Hawaii limited liability company
   Its General Partner

By: [Signature]
   Its Managing Member

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

ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF [Los Angeles]

On 6/9/18, before me, Marsha Jeffery, a Notary Public, personally appeared ANN JENNEY BURKE, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature [Signature] (Seal)

(W:\DOCS\29399\W0150319.DOCX) -11-
GRANTOR:

AUKAHI FARM LLC,
a Hawaii limited liability company

By ______________________________
ALIDA TOULON WHITE
Its Manager

STATE OF HAWAII  
COUNTY OF KAUAI

On this 4th day of June, 20__ before me appeared
ALIDA TOULON WHITE, to me personally known, who, being by me duly sworn, did say that
she is the Manager of AUKAHI FARM LLC, a Hawaii limited liability company, and that the
foregoing GRANT OF EASEMENT dated ____________, 20__, which document
consists of ______ page(s), was signed on behalf of said entity, and the said ALIDA TOULON
WHITE acknowledged said instrument to be the free act and deed of said entity.

{Signature}
Name of Notary: AIDA G. DOLFO
Notary Public, Fifth Judicial Circuit,
State of Hawaii.

My commission expires: Nov. 18, 2019
GRANTOR:

ERIC A. KNUDSEN TRUST

By

JOHN HORWITZ, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended

By

PETER BALDWIN, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended

By

MATTHEW B. GUARD, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended

By

GEORGE R. ROBINSON, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended
GRANTOR:

ERIC A. KNUDSEN TRUST

By________________________

JOHN HORWITZ, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended

By________________________

PETER BALDWIN, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended

By________________________

MATTHEW B. GUARD, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended

By________________________

GEORGE R. ROBINSON, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended
GRANTOR:

ERIC A. KNUDSEN TRUST

By ____________________________
  JOHN HORWITZ, Successor Co-Trustee of
  the Eric A. Knudsen Trust under Deed of
  Trust dated April 30, 1922, recorded in
  Liber 639 at Page 326, and also filed as
  Land Court Document No. 27057, as
  amended

By ____________________________
  PETER BALDWIN, Successor Co-Trustee
  of the Eric A. Knudsen Trust under Deed of
  Trust dated April 30, 1922, recorded in
  Liber 639 at Page 326, and also filed as
  Land Court Document No. 27057, as
  amended

By ____________________________
  MATTHEW B. GUARD, Successor Co-
  Trustee of the Eric A. Knudsen Trust under
  Deed of Trust dated April 30, 1922,
  recorded in Liber 639 at Page 326, and also
  filed as Land Court Document No. 27057,
  as amended

By ____________________________
  GEORGE R. ROBINSON, Successor Co-
  Trustee of the Eric A. Knudsen Trust under
  Deed of Trust dated April 30, 1922,
  recorded in Liber 639 at Page 326, and also
  filed as Land Court Document No. 27057,
  as amended
GRANTOR:

ERIC A. KNUDSEN TRUST

By JOHN HORWITZ, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended

By PETER BALDWIN, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended

By MATTHEW B. GUARD, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended

By GEORGE R. ROBINSON, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended
STATE OF California
COUNTY OF Orange

On this 05 day of June, 2018, before me appeared JOHN HORWITZ, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing GRANT OF EASEMENT dated June 5, 2018, which document consists of 22 page(s), as his free act and deed, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Name of Notary: MARK W. MASTERS
Notary Public, in and for said County and State.

My commission expires: 04/1/19

STATE OF HAWAII
COUNTY OF KAUA'I

On this _____ day of ____________, 20___, before me appeared PETER BALDWIN, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing GRANT OF EASEMENT dated ____________, 20___, which document consists of ______ page(s), as his free act and deed, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

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

My commission expires: ____________________________
STATE OF _____________________________ ) SS:
COUNTY OF ___________________________ )

On this _______ day of __________________, 20____, before me appeared JOHN HORWITZ, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing GRANT OF EASEMENT dated __________________, 20____, which document consists of ______ page(s), as his free act and deed, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

____________________________________
Name of Notary:
Notary Public, in and for said County and State.

My commission expires: ______________________

STATE OF HAWAII )
COUNTY OF KAUAI ) SS:

On this ______ day of June, 2018, before me appeared PETER BALDWIN, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing GRANT OF EASEMENT dated __________________, 20____, which document consists of ______ page(s), as his free act and deed, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

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

My commission expires: 10/20/18

ARLENE PURISIMA
NOTARY PUBLIC
No. 13-364
STATE OF HAWAII

{W:\DOCS\28395\5W0150319.DOCX} -14-
STATE OF HAWAII
CITY AND COUNTY OF HONOLULU

On this ______ day of __________________, 20____, before me appeared MATTHEW B. GUARD, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing GRANT OF EASEMENT dated __________________, 20____, which document consists of ______ page(s), as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

______________________________
Name of Notary:
Notary Public, First Judicial Circuit,
State of Hawaii.
My commission expires:__________________________

STATE OF: ________ HAWAI\'I ________
COUNTY OF: ________ HAWAI\'I ________

On this 14th day of JUNE, 2018, before me appeared GEORGE R. ROBINSON, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing GRANT OF EASEMENT dated _______D A T E D _______ 20____, which document consists of ______ page(s), as his free act and deed, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

______________________________
Name of Notary: Daniel Lovejoy
Notary Public, in and for said County and State.
My commission expires: ____________________________
Commission Expires: 25 November 2020

(W:/DOCS/28398/8W015031S.DOCX) -15-
STATE OF HAWAII
CITY AND COUNTY OF HONOLULU

On this 15th day of NOVEMBER, 2016, before me appeared MATTHEW B. GUARD, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing GRANT OF EASEMENT dated November 15, 2016, which document consists of _____ page(s), as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

KELLEN BRIONES
NOTARY PUBLIC
Comm. No. 18-230
STATE OF HAWAII

Name of Notary: Kellen Briones

My commission expires: 05/20/2022

-------------------

STATE OF __________________________
COUNTY OF _________________________

On this _____ day of ____________________, 20____, before me appeared GEORGE R. ROBINSON, Successor Co-Trustee of the Eric A. Knudsen Trust under Deed of Trust dated April 30, 1922, recorded in Liber 639 at Page 326, and also filed as Land Court Document No. 27057, as amended, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing GRANT OF EASEMENT dated ____________, 20________, which document consists of _______ page(s), as his free act and deed, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

______________________________
Name of Notary:
Notary Public, in and for said County and State.

My commission expires: ________________________
My commission expires:
Notary Public in and for said County and State.

Name of Notary

__________________________

__________________________

November 17, 2013

__________________________

__________________________

STATE OF

COUNTY OF

On this day of ______, 20___ before me,__________________________,

SS:

__________________________

__________________________

December 14, 2012

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CALIFORNIA JURAT

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

STATE OF CALIFORNIA

COUNTY OF Sonoma

Subscribed and sworn to (or affirmed) before me on this 8 day of June, 2018

by Jocelyn B. Knudsen

Name of Signers

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature: [Signature of Notary Public]

Seal

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent attachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Grant of Easement

Document Date: June 8, 2018

Number of Pages: 16

Signer(s) Other Than Named Above: None
GRANTEE:

BOARD OF WATER SUPPLY,
COUNTY OF KAUAI

By______________________________

Its Chairperson

APPROVED:

[Signature]
Manager and Chief Engineer
Department of Water, County of Kauai

APPROVED AS TO FORM
AND LEGALITY:

[Signature]
Deputy County Attorney
STATE OF HAWAII  
COUNTY OF KAUAI  

SS:

On this _____ day of ________________, 20____, before me appeared ___________________________________, to me personally known, who, being by me duly sworn or affirmed, did say that said officer is the Chairperson of the BOARD OF WATER SUPPLY, COUNTY OF KAUAI, and that the foregoing GRANT OF EASEMENT dated ________________, 20___, which document consists of _____ page(s), was signed on behalf of said Department, and said officer acknowledged said instrument to be the free act and deed of said Department, and that said Department has no corporate seal.

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

My commission expires: _________________________

-18-
EXHIBIT "A"

All of that certain parcel of land situate at Koloa, Island and County of Kauai, State of Hawaii, described as follows:

LOT 1-B, AREA 14.142 acres, more or less, as shown on Map 2, filed with Land Court Consolidation No. 125 of Bishop Trust Company, Limited, Trustee for Eric A. and Augustus F. Knudsen.

Being all of that land identified by Kauai Tax Map Key No. (4) 2-8-017:009.

Being the land described as Transfer Certificate of Title No. 1,054,906.

END OF EXHIBIT "A"
SEE ENLARGEMENT

ENLARGEMENT

Scale: 1 in. = 60 ft.

NOTE
Coordinates referred to Government Survey Triangulation
Station "VMA".

DESIGNATION OF
EASEMENT
(In Favor of Dept. of Water, for Water Utility Purposes)
And Location of Existing Trees Within
Portion of Lot I-B
Land Court Consolidation 125, Map 2
At Koloa, Kauai, Hawaii

Given:
Joseph B. Barron, Trustee
Kauai Family Limited Partnership
PBN LLC
CBB Partners
Holomo Properties LLC
Kupuna Family Limited Partnership
Ahahui Kula LLC
John Horne Jr., Peter Bubba, Matthew B. Ford, and George R. Robinson, Successor Co-Trustees

EXHAUST "B"

(T:DOCS:28399/BW0150319.DOCX)
-20-
DESCRIPTION

EASEMENT
(In favor of Department of Water, for Water Utility Purposes)

Being Portion of Lot 1-B
Land Court Consolidation 125, Map 2

At Koloa, Kauai, Hawaii.

Beginning at the northeast corner of this easement, and the south side of New Poipu Beach Road, the coordinate of said point of beginning referred to Government Survey Triangulation Station "PAA" being 2,332.81 feet south and 5,302.89 feet west, thence running by azimuths measured clockwise from True South:

1. 19°28'          60.53 feet along remainder of Lot 1-B, Land Court Consolidation 125, Map 2;
2. 289°28'        145.30 feet along same;
3. 199°28'          7.31 feet along same;
4. 289°28'         15.00 feet along same;
5. 19°28'          7.31 feet along same;
6. 289°28'         70.07 feet along same;
7. 292°44'        86.15 feet along same;
8. 348°29'        135.09 feet along same;
9. 20°17'          94.16 feet along same;
10. 110°17'        15.00 feet along same;
11. 200°17'       89.88 feet along same;

Page 1 of 2

EXHIBIT "C"
12. 168°29' 122.88 feet along same;
13. 112°44' 77.78 feet along same;
14. 109°28' 244.95 feet along same;
15. 199°28' 75.52 feet along same;
16. 289°26' 15.00 feet along the south side of New Poipu Beach Road to the point of beginning and containing an area of 9,240 Square Feet.

Licensed Professional Land Surveyor
License No.12973-LS
Portugal Surveying, LLC
Lihue, Kauai, Hawaii
April 12, 2016

TMK: (4) 2-8-17:9
Easement
MANAGER’S REPORT No. 20-10

August 23, 2019

Re: Discussion and Possible Action on Board Approval for Indemnification in Licensing Agreement with Apple Developer Programs between the Board of Water Supply, County of Kaua‘i and Apple

RECOMMENDATION:
The Department recommends that the Board approve Option 1, which will allow the Department to move forward with the purchase and implementation of the Apple Ko‘u Wai App, App Store, and upgrade of current iOS to iOS12.

FUNDING: N/A

BACKGROUND:
The Department’s Information Technology (I.T.) staff has been working closely with our Deputy County Attorney to review and approve of the End User License Agreements from Apple. Before we can move forward with the software and app for iPhone and iPads, Board approval is required as the agreement contains language for unspecified future obligations such as indemnification, attorney’s fees, and governing law provisions.

The sections within the agreement that reference Indemnification, Limitation of Liability, Attorney’s Fees, and Governing Law and Arbitration are shown below:

APPLE DEVELOPER AGREEMENT – This agreement is for the development of our Apple App for our Customer Account Portal.

3. Your Obligations
(d) You will be solely responsible for all costs, expenses, losses and liabilities incurred, and activities undertaken by You and Your Authorized Developers in connection with the Apple Software and Apple Services, the Authorized Test Units, Registered Devices, Your Covered Products and Your related development and distribution efforts, including, but not limited to, any related development efforts, network and server equipment, Internet service(s), or any other hardware, software or services used by You in connection with Your use of any services;

9.3 Information Submitted to Apple Not Deemed Confidential
Apple works with many application and software developers and some of their products may be similar to or compete with Your Applications. Apple may also be developing its own similar or competing applications and products or may decide to do so in the future. To avoid potential misunderstandings and except as otherwise expressly set forth herein, Apple cannot agree, and expressly disclaims, any confidentiality obligations or use restrictions, express or implied, with respect to any information that You may provide in connection with this Agreement or the Program, including but not limited to information about Your Application, Licensed Application Information, and metadata (such disclosures will be referred to as “Licensee Disclosures”). You agree that any such Licensee Disclosures will be non-confidential. Except as otherwise expressly set forth herein, Apple will be free to use and disclose any
Licensee Disclosures on an unrestricted basis without notifying or compensating You. You release Apple from all liability and obligations that may arise from the receipt, review, use, or disclosure of any portion of any Licensee Disclosures. Any physical materials You submit to Apple will become Apple property and Apple will have no obligation to return those materials to You or to certify their destruction.

10. Indemnification
To the extent permitted by applicable law, You agree to indemnify and hold harmless, and upon Apple’s request, defend, Apple, its directors, officers, employees, independent contractors and agents (each an “Apple Indemnified Party”) from any and all claims, losses, liabilities, damages, taxes, expenses and costs, including without limitation, attorneys’ fees and court costs (collectively, “Losses”), incurred by an Apple Indemnified Party and arising from or related to any of the following (but excluding for purposes of this Section, any Application for macOS that is distributed outside of the App Store and does not use any Apple Services or Certificates): (i) Your breach of any certification, covenant, obligation, representation or warranty in this Agreement, including Schedule 2 and Schedule 3 (if applicable); (ii) any claims that Your Covered Product or the distribution, sale, offer for sale, use or importation of Your Covered Product (whether alone or as an essential part of a combination), Licensed Application Information, metadata, or Pass Information violate or infringe any third party intellectual property or proprietary rights; (iii) Your breach of any of Your obligations under the EULA (as defined in Schedule 1 or Schedule 2 or Schedule 3 (if applicable)) for Your Licensed Application; (iv) Apple’s permitted use, promotion or delivery of Your Licensed Application, Licensed Application Information, Safari Push Notification, Safari App Extension (if applicable), Pass, Pass Information, metadata, related trademarks and logos, or images and other materials that You provide to Apple under this Agreement, including Schedule 2 or Schedule 3 (if applicable); (v) any claims, including but not limited to any end-user claims, regarding Your Covered Products, Licensed Application Information, Pass Information, or related logos, trademarks, content or images; or (vi) Your use (including Your Authorized Developers’ use) of the Apple Software or services, Your Licensed Application Information, Pass Information, metadata, Your Authorized Test Units, Your Registered Devices, Your Covered Products, or Your development and distribution of any of the foregoing. You acknowledge that neither the Apple Software nor any Services are intended for use in the development of Covered Products in which errors or inaccuracies in the content, functionality, services, data or information provided by any of the foregoing or the failure of any of the foregoing, could lead to death, personal injury, or severe physical or environmental damage, and, to the extent permitted by law, You hereby agree to indemnify, defend and hold harmless each Apple Indemnified Party from any Losses incurred by such Apple Indemnified Party by reason of any such use. In no event may You enter into any settlement or like agreement with a third party that affects Apple's rights or binds Apple in any way, without the prior written consent of Apple.

11.3 Effect of Termination
Upon the termination of this Agreement for any reason, You agree to immediately cease all use of the Apple Software and services and erase and destroy all copies, full or partial, of the Apple Software and any information pertaining to the services (including Your Push Application ID) and all copies of Apple Confidential Information in Your and Your Authorized Developers' possession or control. At Apple’s request, You agree to provide written certification of such destruction to Apple. Upon the expiration of the Delivery Period defined and set forth in Schedule 1, all Licensed Applications and Licensed Application Information in Apple’s possession or control shall be deleted or destroyed within a reasonable time thereafter, excluding any archival copies maintained in accordance with Apple’s standard business practices or required to be maintained by applicable law, rule or regulation. The following provisions shall survive any termination of this Agreement: Sections 1, 2.3, 2.5, 2.6, 3.1(d), 3.1(e), 3.1(f), 3.2(d), 3.2(e), 3.2(f), 3.2(g), and 3.3, the second paragraph of Section 5.1 (excluding the last two
sentences other than the restrictions, which shall survive), the third paragraph of Section 5.1, the last sentence of the first paragraph of Section 5.3 and the limitations and restrictions of Section 5.3, Section 5.4, the first sentence of and the restrictions of Section 6.5, the restrictions of Section 6.6, the second paragraph of Section 6.8, Section 7.1 (Schedule 1 for the Delivery Period), the restrictions of Section 7.3, 7.4, and 7.5, Section 7.6, Section 9 through 14 inclusive; within Attachment 1, the last sentence of Section 1.1, Section 2, Section 3.2 (but only for existing promotions), the second and third sentences of Section 4, Section 5, and Section 6; within Attachment 2, Sections 1.3, 2, 3, 4, 5, 6, and 7; within Attachment 3, Sections 1, 2 (except the second sentence of Section 2.1), 3 and 4; within Attachment 4, Sections 1.2, 1.5, 1.6, 2, 3, and 4; within Attachment 5, Sections 2.2, 2.3, 2.4 (but only for existing promotions), 3.3, and 5; within Attachment 6, Sections 1.2, 1.3, 2, 3, and 4; and within Attachment 7, Section 1.1, and the last paragraph of Section 1.2 (but only for existing promotions). Apple will not be liable for compensation, indemnity, or damages of any sort as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement will be without prejudice to any other right or remedy Apple may have, now or in the future.

13. LIMITATION OF LIABILITY
TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, YOUR USE OR INABILITY TO USE THE APPLE SOFTWARE, SECURITY SOLUTION, SERVICES, APPLE CERTIFICATES, OR YOUR DEVELOPMENT EFFORTS OR PARTICIPATION IN THE PROGRAM, HOWEVER CAUSED, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

In no event shall Apple’s total liability to You under this Agreement for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty dollars ($50.00).

OPTIONS:

Option 1: Approve Manager’s Report.
Pro: The Department can move forward with the development and release of our Customer Account Portal App, which would allow our customers to view their water account information as well as pay for their water bill via their Apple device. The Department can also move forward with updating our iPad’s to the current iOS version and access the Apple Store.

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

Option 2: Do Not Approve Manager’s Report.
Pro: There is no risk associated with unspecified future obligations.
Cons: The Department would not be able to move forward with our Customer Account Portal Mobile App and would not be able to utilize the Apple iOS Upgrade and access to the apple store.

The Department would continue to use staff time to search for another similar software, which would most likely contain similar indemnification, attorney’s fees, and governing law and arbitration provisions.

SN/ein
Attachment: Apple Developer Agreement

Mgrrp/August 2019/20-10/ Discussion and Possible Action on Board Approval for Indemnification in Licensing Agreement with Apple Developer Programs between the Board of Water Supply, County of Kauai and Apple (8-23-19):ein
Apple Developer Program License Agreement

Purpose
You would like to use the Apple Software (as defined below) to develop one or more Applications (as defined below) for Apple-branded products. Apple is willing to grant You a limited license to use the Apple Software and Services provided to You under this Program to develop and test Your Applications on the terms and conditions set forth in this Agreement.

Applications developed under this Agreement for iOS Products, Apple Watch, or Apple TV can be distributed in four ways: (1) through the App Store, if selected by Apple, (2) through the Custom App Distribution via Apple Business Manager, if selected by Apple, (3) on a limited basis for use on Registered Devices (as defined below), and (4) for beta testing through TestFlight. Applications developed for macOS can be distributed through the App Store, if selected by Apple, or separately distributed under this Agreement.

Applications that meet Apple's Documentation and Program Requirements may be submitted for consideration by Apple for distribution via the App Store, Custom App Distribution, or for beta testing through TestFlight. If submitted by You and selected by Apple, Your Applications will be digitally signed by Apple and distributed, as applicable. Distribution of free (no charge) Applications (including those that use the In-App Purchase API for the delivery of free content) will be subject to the distribution terms contained in Schedule 1 to this Agreement. If You would like to distribute Applications for which You will charge a fee or would like to use the In-App Purchase API for the delivery of fee-based content, You must enter into a separate agreement with Apple ("Schedule 2"). If You would like to distribute Applications via Custom App Distribution, You must enter into a separate agreement with Apple ("Schedule 3"). You may also create Passes (as defined below) for use on Apple-branded products running iOS or watchOS under this Agreement and distribute such Passes for use by Wallet.

1. Accepting this Agreement; Definitions

1.1 Acceptance
In order to use the Apple Software and Services, You must first accept this Agreement. If You do not or cannot accept this Agreement, You are not permitted to use the Apple Software or Services. Do not download or use the Apple Software or Services in that case. You accept and agree to the terms of this Agreement on Your own behalf and/or on behalf of Your company, organization, educational institution, or agency, instrumentality, or department of the federal government as its authorized legal representative, by doing either of the following: (a) checking the box displayed at the end of this Agreement if You are reading this on an Apple website; or (b) clicking an “Agree” or similar button, where this option is provided by Apple.

1.2 Definitions
Whenever capitalized in this Agreement:

“Ad Network APIs” means the Documented APIs that provide a way to validate the successful conversion of advertising campaigns on supported Apple-branded products using a combination of cryptographic signatures and a registration process with Apple.
“Ad Support APIs” means the Documented APIs that provide the Advertising Identifier and Advertising Preference.

“Advertising Identifier” means a unique, non-personal, non-permanent identifier provided through the Ad Support APIs that are associated with a particular Apple-branded device and are to be used solely for advertising purposes, unless otherwise expressly approved by Apple in writing.

“Advertising Preference” means the Apple setting that enables an end-user to set an ad tracking preference.

“Agreement” means this Apple Developer Program License Agreement, including any attachments, Schedule 1 and any exhibits thereto which are hereby incorporated by this reference. For clarity, this Agreement supersedes the iOS Developer Program License Agreement (including any attachments, Schedule 1 and any exhibits thereto), the Safari Extensions Digital Signing Agreement, the Safari Extensions Gallery Submission Agreement, and the Mac Developer Program License Agreement.

“App Store” means an electronic store and its storefronts branded, owned, and/or controlled by Apple, or an Apple Subsidiary or other affiliate of Apple, through which Licensed Applications may be acquired.

“App Store Connect” means Apple’s proprietary online content management tool for Applications.

“Apple” means Apple Inc., a California corporation with its principal place of business at One Apple Park Way, Cupertino, California 95014, U.S.A.

“Apple Certificates” means the Apple-issued digital certificates provided to You by Apple under the Program.

“Apple Maps Service” means the mapping platform and Map Data provided by Apple via the MapKit API for use by You only in connection with Your Applications, or the mapping platform and Map Data provided by Apple via MapKit JS and related tools for capturing map content (e.g., MapSnapshotter) for use by You only in connection with Your Applications, websites, or web applications.

“Apple Pay APIs” means the Documented APIs that enable end-users to send payment information they have stored on a supported Apple-branded product to an Application to be used in payment transactions made by or through the Application, and includes other payment-related functionality as described in the Documentation.

“Apple Pay Payload” means a customer data package passed through the Apple Software and Apple Pay APIs as part of a payment transaction (e.g., name, email, billing address, shipping address, and device account number).

“Apple Push Notification Service” or “APN” means the Apple Push Notification service that Apple may provide to You to enable You to transmit Push Notifications to Your Application or for use as otherwise permitted herein.

“APN API” means the Documented API that enables You to use the APN to deliver a Push Notification to Your Application or for use as otherwise permitted herein.

“Apple Services” or “Services” means the developer services that Apple may provide or make available through the Apple Software or as part of the Program for use with Your Covered Program Agreement
Products or development, including any Updates thereto (if any) that may be provided to You by Apple under the Program.

"Apple Software" means Apple SDKs, iOS, watchOS, tvOS, iPadOS, and/or macOS, the Provisioning Profiles, FPS SDK, FPS Deployment Package, and any other software that Apple provides to You under the Program, including any Updates thereto (if any) that may be provided to You by Apple under the Program.

"Apple SDKs" means the Apple-proprietary Software Development Kits (SDKs) provided hereunder, including but not limited to header files, APIs, libraries, simulators, and software (source code and object code) labeled as part of iOS, watchOS, tvOS, iPadOS, or Mac SDK and included in the Xcode Developer Tools package for purposes of targeting Apple-branded products running iOS, watchOS, tvOS, iPadOS, and/or macOS, respectively.

"Apple Subsidiary" means a corporation at least fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are owned or controlled, directly or indirectly, by Apple, and that is involved in the operation of or otherwise affiliated with the App Store, Custom App Distribution, TestFlight, and as otherwise referenced herein (e.g., Attachment 4).

"Apple TV" means an Apple-branded product that runs the tvOS.

"Apple Watch" means an Apple-branded product that runs the watchOS.

"Application" means one or more software programs (including extensions, media, and Libraries that are enclosed in a single software bundle) developed by You in compliance with the Documentation and the Program Requirements, for distribution under Your own trademark or brand, and for specific use with an Apple-branded product running iOS, watchOS, tvOS, or macOS, as applicable, including bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases and new versions of such software programs.

"Authorized Developers" means Your employees and contractors, members of Your organization or, if You are an educational institution, Your faculty and staff who (a) each have an active and valid Apple Developer account with Apple, (b) have a demonstrable need to know or use the Apple Software in order to develop and test Covered Products, and (c) to the extent such individuals will have access to Apple Confidential Information, each have written and binding agreements with You to protect the unauthorized use and disclosure of such Apple Confidential Information.

"Authorized Test Units" means Apple-branded hardware units owned or controlled by You that have been designated by You for Your own testing and development purposes under this Program, and if You permit, Apple-branded hardware units owned or controlled by Your Authorized Developers so long as such units are used for testing and development purposes on Your behalf and only as permitted hereunder.

"Beta Testers" means end-users whom You have invited to sign up for TestFlight in order to test pre-release versions of Your Application and who have accepted the terms and conditions of the TestFlight Application.

"Configuration Profile(s)" means an XML file that allows You to distribute configuration information (e.g., VPN or Wi-Fi settings) and restrictions on device features (e.g., disabling the camera) to compatible Apple-branded products through Apple Configurator or other similar Apple-branded software tools, email, a webpage, or over-the-air deployment, or via Mobile Device Management (MDM). For the sake of clarity, unless otherwise expressly permitted by Apple in writing, MDM is available only for enterprise use and is separately licensed for under the Apple Developer Enterprise Program License Agreement.

Program Agreement
“Custom App Distribution” means the Apple program that offers third parties the ability to obtain volume purchases of Licensed Applications and/or customized Licensed Applications through Apple Business Manager, Apple School Manager, or as otherwise permitted by Apple.

“ClassKit APIs” means the Documented APIs that enable You to send student progress data for use in a school-managed environment.

“CloudKit APIs” means the Documented APIs that enable Your Applications, Web Software, and/or Your end-users (if You permit them) to read, write, query and/or retrieve structured data from public and/or private containers in iCloud.

“Covered Products” means Your Applications, Libraries, Passes, Safari App Extensions, Safari Push Notifications, and/or FPS implementations developed under this Agreement.

“DeviceCheck APIs” means the set of APIs, including server-side APIs, that enable You to set and query two bits of data associated with a device and the date on which such bits were last updated.

“DeviceCheck Data” means the data stored and returned through the DeviceCheck APIs.

“Documentation” means any technical or other specifications or documentation that Apple may provide to You for use in connection with the Apple Software, Apple Services, Apple Certificates, or otherwise as part of the Program.

“Documented API(s)” means the Application Programming Interface(s) documented by Apple in published Apple Documentation and which are contained in the Apple Software.

“Face Data” means information related to human faces (e.g., face mesh data, facial map data, face modeling data, facial coordinates or facial landmark data, including data from an uploaded photo) that is obtained from a user’s device and/or through the use of the Apple Software (e.g., through ARKit, the Camera APIs, or the Photo APIs), or that is provided by a user in or through an Application (e.g., uploads for a facial analysis service).

“FPS” or “FairPlay Streaming” means Apple’s FairPlay Streaming Server key delivery mechanism as described in the FPS SDK.

“FPS Deployment Package” means the D Function specification for commercial deployment of FPS, the D Function reference implementation, FPS sample code, and set of unique production keys specifically for use by You with an FPS implementation, if provided by Apple to You.

“FPS SDK” means the FPS specification, FPS server reference implementation, FPS sample code, and FPS development keys, as provided by Apple to You.

“FOSS” (Free and Open Source Software) means any software that is subject to terms that, as a condition of use, copying, modification or redistribution, require such software and/or derivative works thereof to be disclosed or distributed in source code form, to be licensed for the purpose of making derivative works, or to be redistributed free of charge, including without limitation software distributed under the GNU General Public License or GNU Lesser/Library GPL.

“Game Center” means the gaming community service and related APIs provided by Apple for use by You in connection with Your Applications that are associated with Your developer account.

“HealthKit APIs” means the Documented APIs that enable reading, writing, queries and/or retrieval of an end-user’s health and/or fitness information in Apple’s Health application.
“HomeKit Accessory Protocol” means the proprietary protocol licensed by Apple under Apple’s MFi/Works with Apple Program that enables home accessories designed to work with the HomeKit APIs (e.g., lights, locks) to communicate with compatible iOS Products, Apple Watch and other supported Apple-branded products.

“HomeKit APIs” means the Documented APIs that enable reading, writing, queries and/or retrieval of an end-user’s home configuration or home automation information from that end-user’s designated area of Apple’s HomeKit Database.

“HomeKit Database” means Apple’s repository for storing and managing information about an end-user’s Licensed HomeKit Accessories and associated information.

“iCloud” or “iCloud service” means the iCloud online service provided by Apple that includes remote online storage.

“iCloud Storage APIs” means the Documented APIs that allow storage and/or retrieval of user-generated documents and other files, and allow storage and/or retrieval of key value data (e.g., a list of stocks in a finance App, settings for an App) for Applications and Web Software through the use of iCloud.

“In-App Purchase API” means the Documented API that enables additional content, functionality or services to be delivered or made available for use within an Application with or without an additional fee.

“Intermediary Party” means a party that passes an Apple Pay end-user’s Apple Pay Payload to a Merchant for processing such end-user’s payment transaction outside of an Application.

“iOS” means the iOS operating system software provided by Apple for use by You only in connection with Your Application development and testing, including any successor versions thereof.

“iOS Product” means an Apple-branded product that runs iOS or iPadOS.

“iPadOS” means the iPadOS operating system software provided by Apple for use by You only in connection with Your Application development and testing, including any successor versions thereof.

“iPod Accessory Protocol” or “iAP” means Apple’s proprietary protocol for communicating with supported Apple-branded products and which is licensed under the MFi/Works with Apple Program.

“Library” means a code module that cannot be installed or executed separately from an Application and that is developed by You in compliance with the Documentation and Program Requirements only for use with iOS Products, Apple Watch, or Apple TV.

“Licensed Application” means an Application that (a) meets and complies with all of the Documentation and Program Requirements, and (b) has been selected and digitally signed by Apple for distribution, and includes any additional permitted functionality, content or services provided by You from within an Application using the In-App Purchase API.

“Licensed Application Information” means screen shots, images, artwork, previews, icons and/or any other text, descriptions, representations or information relating to a Licensed Application that You provide to Apple for use in accordance with Schedule 1, or, if applicable, Schedule 2 or Schedule 3.
“Licensed HomeKit Accessories” means hardware accessories licensed under the MFi/Works with Apple Program that support the HomeKit Accessory Protocol.

“Local Notification” means a message, including any content or data therein, that Your Application delivers to end-users at a pre-determined time or when Your Application is running in the background and another application is running in the foreground.

“MFi Licensee” means a party who has been granted a license by Apple under the MFi/Works with Apple Program.

“MFi/Works with Apple Accessory” or “MFi Accessory” means a non-Apple branded hardware device that interfaces, communicates, or otherwise interoperates with or controls an Apple-branded product using technology licensed under the MFi/Works with Apple Program (e.g., the ability to control a supported Apple-branded product through the iPod Accessory Protocol).

“MFi/Works with Apple Program” means a separate Apple program that offers developers, among other things, a license to incorporate or use certain Apple technology in or with hardware accessories or devices for purposes of interfacing, communicating or otherwise interoperating with or controlling select Apple-branded products.

“macOS” means the macOS operating system software, including any successor versions thereof.

“Map Data” means any content, data or information provided through the Apple Maps Service including, but not limited to, imagery, terrain data, latitude and longitude coordinates, transit data, points of interest and traffic data.

“MapKit API” means the Documented API that enables You to add mapping features or functionality to Applications.

“MapKit JS” means the JavaScript library that enables You to add mapping features or functionality to Your Applications, websites, or web applications.

“Merchant” means a party who processes Apple Pay payment transactions under their own name, trademark, or brand (e.g., their name shows up on the end-user’s credit card statement).

“Motion & Fitness APIs” means the Documented APIs that are controlled by the Motion & Fitness privacy setting in a compatible Apple-branded product and that enable access to motion and fitness sensor data (e.g., body motion, step count, stairs climbed), unless the end-user has disabled access to such data.

“Multitasking” means the ability of Applications to run in the background while other Applications are also running.

“MusicKit APIs” means the set of APIs that enable Apple Music users to access their subscription through Your Application or as otherwise permitted by Apple in the Documentation.

“MusicKit Content” means music, video, and/or graphical content rendered through the MusicKit APIs.

“MusicKit JS” means the JavaScript library that enables Apple Music users to access their subscription through Your Applications, websites, or web applications.

“Network Extension Framework” means the Documented APIs that provide Applications with the ability to customize certain networking features of compatible Apple-branded products (e.g.,
customizing the authentication process for WiFi Hotspots, VPN features, and content filtering mechanisms).

“Pass(es)” means one or more digital passes (e.g., movie tickets, coupons, loyalty reward vouchers, boarding passes, membership cards, etc.) developed by You under this Agreement, under Your own trademark or brand, and which are signed with Your Pass Type ID.

“Pass Information” means the text, descriptions, representations or information relating to a Pass that You provide to or receive from Your end-users on or in connection with a Pass.

“Pass Type ID” means the combination of an Apple Certificate and Push Application ID that is used by You to sign Your Passes and/or communicate with the APN.

“Program” means the overall Apple development, testing, digital signing, and distribution program contemplated in this Agreement.

“Program Requirements” mean the technical, human interface, design, product category, security, performance, and other criteria and requirements specified by Apple, including but not limited to the current set of requirements set forth in Section 3.3, as they may be modified from time to time by Apple in accordance with this Agreement.

“Provisioning Profiles” means the files (including applicable entitlements or other identifiers) that are provided by Apple for use by You in connection with Your Application development and testing, and limited distribution of Your Applications for use on Registered Devices and/or on Authorized Test Units.

“Push Application ID” means the unique identification number or other identifier that Apple assigns to an Application, Pass or Site in order to permit it to access and use the APN.

“Push Notification” or “Safari Push Notification” means a notification, including any content or data therein, that You transmit to end-users for delivery in Your Application, Your Pass, and/or in the case of macOS, to the macOS desktop of users of Your Site who have opted in to receive such messages through Safari on macOS.

“Registered Devices” means Apple-branded hardware units owned or controlled by You, or owned by individuals who are affiliated with You, where such Products have been specifically registered with Apple under this Program.

“Safari App Extensions” means one or more software extensions developed by You under this Agreement only for use with Safari on macOS in compliance with this Agreement.

“Security Solution” means the proprietary Apple content protection system marketed as Fairplay, to be applied to Licensed Applications distributed on the App Store to administer Apple’s standard usage rules for Licensed Applications, as such system and rules may be modified by Apple from time to time.

“Sign In with Apple” means the Documented APIs and JavaScript libraries that allow You to log users into Your Application (and Corresponding Products) with their Apple ID or anonymized credentials.

“SiriKit” means the set of APIs that allow Your Application to access or provide SiriKit domains, intents, shortcuts, donations, and other related functionality, as set forth in the Documentation.

“Site” means a website provided by You under Your own name, trademark or brand.
“Single Sign-on Specification” means the Documentation provided by Apple hereunder for the Single Sign-On API, as updated from time to time.

“Term” means the period described in Section 11.

“TestFlight” means Apple’s beta testing service for pre-release Applications made available through Apple’s TestFlight Application.

“TestFlight Application” means Apple’s application that enables the distribution of pre-release versions of Your Applications to a limited number of Your Authorized Developers and to a limited number of Beta Testers (as specified in App Store Connect) through TestFlight.

“TV App API” means the API documented in the TV App Specification that enables You to provide Apple with TV App Data.

“TV App Data” means the data described in the TV App Specification to be provided to Apple through the TV App API.

“TV App Features” means functionality accessible via the TV App and/or tvOS, iOS, iPadOS, and/or macOS devices, which functionality provides the user the ability to view customized information and recommendations regarding content and to access such content through the user’s apps, and/or provides the user the ability to continue play of previously viewed content.

“TV App Specification” means the Documentation provided by Apple hereunder for the TV App API, as updated from time to time.

“tvOS” means the tvOS operating system software, including any successor versions thereof.

“Updates” means bug fixes, updates, upgrades, modifications, enhancements, supplements, and new releases or versions of the Apple Software or Services, or to any part of the Apple Software or Services.

“Wallet” means Apple’s application that has the ability to store and display Passes for use on iOS Products, Apple Watch, or Safari on macOS.

“WatchKit Extension” means an extension bundled as part of Your Application that accesses the WatchKit framework on iOS to run and display a WatchKit app on the watchOS.

“watchOS” means the watchOS operating system software, including any successor versions thereof.

“Web Software” means web-based versions of Your software applications that have the same title and substantially equivalent features and functionality as Your Licensed Application (e.g., feature parity).

“Website Push ID” means the combination of an Apple Certificate and Push Application ID that is used by You to sign Your Site’s registration bundle and/or communicate with the APN.

“You” and “Your” means and refers to the person(s) or legal entity (whether the company, organization, educational institution, or governmental agency, instrumentality, or department) that has accepted this Agreement under its own developer account and that is using the Apple Software or otherwise exercising rights under this Agreement.

Note: For the sake of clarity, You may authorize contractors to develop Applications on Your behalf, but any such Applications must be owned by You, submitted under Your own developer account, and distributed as Applications only as expressly permitted herein. You are responsible

Program Agreement
to Apple for Your contractors’ activities under Your account (e.g., adding them to Your team to perform development work for You) and their compliance with this Agreement. Any actions undertaken by Your contractors arising out of this Agreement shall be deemed to have been taken by You, and You (in addition to Your contractors) shall be responsible to Apple for all such actions.

2. Internal Use License and Restrictions

2.1 Permitted Uses and Restrictions; Program services

Subject to the terms and conditions of this Agreement, Apple hereby grants You during the Term, a limited, non-exclusive, personal, revocable, non-sublicensable and non-transferable license to:

(a) Install a reasonable number of copies of the Apple Software provided to You under the Program on Apple-branded products owned or controlled by You, to be used internally by You or Your Authorized Developers for the sole purpose of developing or testing Covered Products designed to operate on the applicable Apple-branded products, except as otherwise expressly permitted in this Agreement;

(b) Make and distribute a reasonable number of copies of the Documentation to Authorized Developers for their internal use only and for the sole purpose of developing or testing Covered Products, except as otherwise expressly permitted in this Agreement;

(c) Install a Provisioning Profile on each of Your Authorized Test Units, up to the number of Authorized Test Units that You have registered and acquired licenses for, to be used internally by You or Your Authorized Developers for the sole purpose of developing and testing Your Applications, except as otherwise expressly permitted in this Agreement;

(d) Install a Provisioning Profile on each of Your Registered Devices, up to the limited number of Registered Devices that You have registered and acquired licenses for, for the sole purpose of enabling the distribution and use of Your Applications on such Registered Devices; and

(e) Incorporate the Apple Certificates issued to You pursuant to this Agreement for purposes of digitally signing Your Applications, Passes, Safari App Extensions, Safari Push Notifications, and as otherwise expressly permitted by this Agreement.

Apple reserves the right to set the limited number of Apple-branded products that each Licensee may register with Apple and obtain licenses for under this Program (a “Block of Registered Device Licenses”). For the purposes of limited distribution on Registered Devices under Section 7.3 (Ad Hoc distribution), each company, organization, educational institution or affiliated group may only acquire one (1) Block of Registered Device Licenses per company, organization, educational institution or group, unless otherwise agreed in writing by Apple. You agree not to knowingly acquire, or to cause others to acquire, more than one Block of Registered Device Licenses for the same company, organization, educational institution or group.

Apple may provide access to services by or through the Program for You to use with Your developer account (e.g., device or app provisioning, managing teams or other account resources). You agree to access such services only through the Program web portal (which is accessed through Apple’s developer website) or through Apple-branded products that are designed to work in conjunction with the Program (e.g., Xcode, App Store Connect) and only as authorized by Apple. If You (or Your Authorized Developers) access Your developer account through these other Apple-branded products, You acknowledge and agree that this Agreement shall continue to apply to any use of Your developer account and to any features or functionality of the Program that are made available to You (or Your Authorized Developers) in this manner (e.g., Apple Certificates and Provisioning Profiles can be used only in the limited manner permitted herein, etc.). You agree not to create or attempt to create a substitute or similar service through use of or access to the services provided by or through the Program. Further, You may only access such services using the Apple ID associated with Your developer account or authentication credentials (e.g., keys, tokens, password) associated with Your developer account, and You are fully responsible for safeguarding Your Apple ID and authentication credentials from compromise and for using them only as authorized by Apple and in accordance with the terms of
this Agreement, including but not limited to Section 2.8 and 5. Except as otherwise expressly permitted herein, You agree not to share, sell, resell, rent, lease, lend, or otherwise provide access to Your developer account or any services provided therewith, in whole or in part, to anyone who is not an Authorized Developer on Your team, and You agree not to solicit or request Apple Developer Program members to provide You with their Apple IDs, authentication credentials, and/or related account information and materials (e.g., Apple Certificates used for distribution or submission to the App Store or TestFlight). You understand that each team member must have their own Apple ID or authentication credentials to access Your account, and You shall be fully responsible for all activity performed through or in connection with Your account. To the extent that You own or control an Apple-branded computer running Apple’s macOS Server or Xcode Server (“Server”) and would like to use it for Your own development purposes in connection with the Program, You agree to use Your own Apple ID or other authentication credentials for such Server, and You shall be responsible for all actions performed by such Server.

2.2 Authorized Test Units and Pre-Release Apple Software
As long as an Authorized Test Unit contains any pre-release versions of the Apple Software or uses pre-release versions of Services, You agree to restrict access to such Authorized Test Unit to Your Authorized Developers and to not disclose, show, rent, lease, lend, sell or otherwise transfer such Authorized Test Unit to any third party. You further agree to take reasonable precautions to safeguard, and to instruct Your Authorized Developers to safeguard, all Authorized Test Units from loss or theft. Further, subject to the terms of this Agreement, You may deploy Your Applications to Your Authorized Developers for use on a limited number of Authorized Test Units for Your own internal testing and development purposes.

You acknowledge that by installing any pre-release Apple Software or using any pre-release Services on Your Authorized Test Units, these Units may be “locked” into testing mode and may not be capable of being restored to their original condition. Any use of any pre-release Apple Software or pre-release Services are for evaluation and development purposes only, and You should not use any pre-release Apple Software or pre-release Services in a commercial operating environment or with important data. You should back up any data prior to using the pre-release Apple Software or pre-release Services. Apple shall not be responsible for any costs, expenses or other liabilities You may incur as a result of provisioning Your Authorized Test Units and Registered Devices, Your Covered Product development or the installation or use of this Apple Software or any pre-release Apple Services, including but not limited to any damage to any equipment, or any damage, loss, or corruption of any software, information or data.

2.3 Confidential Nature of Pre-Release Apple Software and Services
From time to time during the Term, Apple may provide You with pre-release versions of the Apple Software or Services that constitute Apple Confidential Information and are subject to the confidentiality obligations of this Agreement, except as otherwise set forth herein. Such pre-release Apple Software and Services should not be relied upon to perform in the same manner as a final-release, commercial-grade product, nor used with data that is not sufficiently and regularly backed up, and may include features, functionality or APIs for software or services that are not yet available. You acknowledge that Apple may not have publicly announced the availability of such pre-release Apple Software or Services, that Apple has not promised or guaranteed to You that such pre-release software or services will be announced or made available to anyone in the future, and that Apple has no express or implied obligation to You to announce or commercially introduce such software or services or any similar or compatible technology. You expressly acknowledge and agree that any research or development that You perform with respect to pre-release versions of the Apple Software or Services is done entirely at Your own risk.

2.4 Copies
You agree to retain and reproduce in full the Apple copyright, disclaimers and other proprietary notices (as they appear in the Apple Software and Documentation provided) in all copies of the Apple Software and Documentation that You are permitted to make under this Agreement.
2.5 Ownership
Apple retains all rights, title, and interest in and to the Apple Software, Services, and any Updates it may make available to You under this Agreement. You agree to cooperate with Apple to maintain Apple’s ownership of the Apple Software and Services, and, to the extent that You become aware of any claims relating to the Apple Software or Services, You agree to use reasonable efforts to promptly provide notice of any such claims to Apple. The parties acknowledge that this Agreement does not give Apple any ownership interest in Your Covered Products.

2.6 No Other Permitted Uses
Except as otherwise set forth in this Agreement, You agree not to rent, lease, lend, upload to or host on any website or server, sell, redistribute, or sublicense the Apple Software, Apple Certificates, or any Services, in whole or in part, or to enable others to do so. You may not use the Apple Software, Apple Certificates, or any Services provided hereunder for any purpose not expressly permitted by this Agreement, including any applicable Attachments and Schedules. You agree not to install, use or run the Apple SDKs on any non-Apple-branded computer, and not to install, use or run iOS, watchOS, tvOS, iPadOS, macOS and Provisioning Profiles on or in connection with devices other than Apple-branded products, or to enable others to do so. You may not and You agree not to, or to enable others to, copy (except as expressly permitted under this Agreement), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, decrypt, or create derivative works of the Apple Software, Apple Certificates or any Services provided by the Apple Software or otherwise provided hereunder, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by licensing terms governing use of open-sourced components or sample code included with the Apple Software). You agree not to exploit any Apple Software, Apple Certificates, or Services provided hereunder in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity, or by harvesting or misusing data provided by such Apple Software, Apple Certificates, or Services. Any attempt to do so is a violation of the rights of Apple and its licensors of the Apple Software or Services. If You breach any of the foregoing restrictions, You may be subject to prosecution and damages. All licenses not expressly granted in this Agreement are reserved and no other licenses, immunity or rights, express or implied are granted by Apple, by implication, estoppel, or otherwise. This Agreement does not grant You any rights to use any trademarks, logos or service marks belonging to Apple, including but not limited to the iPhone or iPod word marks. If You make reference to any Apple products or technology or use Apple’s trademarks, You agree to comply with the published guidelines at http://www.apple.com/legal/trademark/guidelinesfor3rdparties.html, as they may be modified by Apple from time to time.

2.7 FPS SDK and FPS Deployment Package
You may use the FPS SDK to develop and test a server-side implementation of FPS, solely for use with video streamed by You (or on Your behalf) through Your Applications, or video downloaded for viewing through Your Applications, on iOS Products and/or Apple TV, through Safari on macOS, or as otherwise approved by Apple in writing (collectively, “Authorized FPS Applications”). You understand that You will need to request the FPS Deployment Package on the Program web portal prior to any production or commercial use of FPS. As part of such request, You will need to submit information about Your requested use of FPS. Apple will review Your request and reserves the right to not provide You with the FPS Deployment Package at its sole discretion, in which case You will not be able to deploy FPS. Any development and testing You perform with the FPS SDK is at Your own risk and expense, and Apple will not be liable to You for such use or for declining Your request to use FPS in a production or commercial environment.

If Apple provides You with the FPS Deployment Package, You agree to use it solely as approved by Apple and only in connection with video content streamed by You (or on Your behalf) to
Authorized FPS Applications or downloaded for viewing through Your Authorized FPS Applications. Except as permitted in Section 2.9 (Third-Party Service Providers), You will not provide the FPS Deployment Package to any third party or sublicense, sell, resell, lease, disclose, or re-distribute the FPS Deployment Package or FPS SDK to any third party (or any implementation thereof) without Apple’s prior written consent.

You acknowledge and agree that the FPS Deployment Package (including the set of FPS production keys) is Apple Confidential Information as set forth in Section 9 (Confidentiality). Further, such FPS keys are unique to Your company or organization, and You are solely responsible for storing and protecting them. You may use such FPS keys solely for the purpose of delivering and protecting Your content key that is used to decrypt video content streamed by You to Authorized FPS Applications or downloaded for viewing through Your Authorized FPS Applications. Apple will have no liability or responsibility for unauthorized access to or use of any FPS key or any content streamed or otherwise delivered under this Agreement in connection with FPS. In the event that Your FPS key is disclosed, discovered, misappropriated or lost, You may request that Apple revoke it by emailing product-security@apple.com, and You understand that Apple will have no obligation to provide a replacement key. Apple reserves the right to revoke Your FPS key at any time if requested by You, in the event of a breach of this Agreement by You, if otherwise deemed prudent or reasonable by Apple, or upon expiration or termination of this Agreement for any reason.

You acknowledge and agree that Apple reserves the right to revoke or otherwise remove Your access to and use of FPS (or any part thereof) at any time in its sole discretion. Further, Apple will have no obligation to provide any modified, updated or successor version of the FPS Deployment Package or the FPS SDK to You and will have no obligation to maintain compatibility with any prior version. If Apple makes new versions of the FPS Deployment Package or FPS SDK available to You, then You agree to update to them within a reasonable time period if requested to do so by Apple.

2.8 Use of Apple Services
Apple may provide access to Apple Services that Your Covered Products may call through APIs in the Apple Software and/or that Apple makes available to You through other mechanisms, e.g., through the use of keys that Apple may make accessible to You under the Program. You agree to access such Apple Services only through the mechanisms provided by Apple for such access and only for use on Apple-branded products. Except as permitted in Section 2.9 (Third-Party Service Providers) or as otherwise set forth herein, You agree not to share access to mechanisms provided to You by Apple for the use of the Services with any third party. Further, You agree not to create or attempt to create a substitute or similar service through use of or access to the Apple Services.

You agree to access and use such Services only as necessary for providing services and functionality for Your Covered Products that are eligible to use such Services and only as permitted by Apple in writing, including in the Documentation. You may not use the Apple Services in any manner that is inconsistent with the terms of this Agreement or that infringes any intellectual property rights of a third party or Apple, or that violates any applicable laws or regulations. You agree that the Apple Services contain proprietary content, information and material owned by Apple and its licensors, and protected by applicable intellectual property and other laws. You may not use such proprietary content, information or materials in any way whatsoever, except for the permitted uses of the Apple Services under this Agreement, or as otherwise agreed by Apple in writing.

You understand there may be storage capacity, transmission, and/or transactional limits for the Apple Services both for You as a developer and for Your end-users. If You reach or Your end-user reaches such limits, then You or Your end-user may be unable to use the Apple Services or may be unable to access or retrieve data from such Services through Your Covered Products or through the applicable end-user accounts. You agree not to charge any fees to end-users solely
for access to or use of the Apple Services through Your Covered Products or for any content, data or information provided therein, and You agree not to sell access to the Apple Services in any way. You agree not to fraudulently create any end-user accounts or induce any end-user to violate the terms of their applicable end-user terms or service agreement with Apple or to violate any Apple usage policies for such end-user services. Except as expressly set forth herein, You agree not to interfere with an end-user’s ability to access or use any such services.

Apple reserves the right to change, suspend, deprecate, deny, limit, or disable access to the Apple Services, or any part thereof, at any time without notice (including but not limited to revoking entitlements or changing any APIs in the Apple Software that enable access to the Services or not providing You with an entitlement). In no event will Apple be liable for the removal of or disabling of access to any of the foregoing. Apple may also impose limits and restrictions on the use of or access to the Apple Services, may remove the Apple Services for indefinite time periods, may revoke Your access to the Apple Services, or may cancel the Apple Services (or any part thereof) at any time without notice or liability to You and in its sole discretion.

Apple does not guarantee the availability, accuracy, completeness, reliability, or timeliness of any data or information displayed by any Apple Services. To the extent You choose to use the Apple Services with Your Covered Products, You are responsible for Your reliance on any such data or information. You are responsible for Your use of the Apple Software and Apple Services, and if You use such Services, then it is Your responsibility to maintain appropriate alternate backup of all Your content, information and data, including but not limited to any content that You may provide to Apple for hosting as part of Your use of the Services. You understand and agree that You may not be able to access certain Apple Services upon expiration or termination of this Agreement and that Apple reserves the right to suspend access to or delete content, data or information that You or Your Covered Product have stored through Your use of such Services provided hereunder. You should review the Documentation and policy notices posted by Apple prior to using any Apple Services.

Apple Services may not be available in all languages or in all countries, and Apple makes no representation that any such Services would be appropriate, accurate or available for use in any particular location or product. To the extent You choose to use the Apple Services with Your Applications, You do so at Your own initiative and are responsible for compliance with any applicable laws. Apple reserves the right to charge fees for Your use of the Apple Services. Apple will inform You of any Apple Service fees or fee changes by email and information about such fees will be posted in the Program web portal, App Store Connect, or the CloudKit dashboard. Apple Service availability and pricing are subject to change. Further, Apple Services may not be made available for all Covered Products and may not be made available to all developers. Apple reserves the right to not provide (or to cease providing) the Apple Services to any or all developers at any time in its sole discretion.

2.9 Third-Party Service Providers

Unless otherwise prohibited by Apple in the Documentation or this Agreement, You are permitted to employ or retain a third party ("Service Provider") to assist You in using the Apple Software and Services provided pursuant to this Agreement, including, but not limited to, engaging any such Service Provider to maintain and administer Your Applications’ servers on Your behalf, provided that any such Service Provider’s use of the Apple Software and Services or any materials associated therewith is done solely on Your behalf and only in accordance with these terms. Notwithstanding the foregoing, You may not use a Service Provider to submit an Application to the App Store or use TestFlight on Your behalf. You agree to have a binding written agreement with Your Service Provider with terms at least as restrictive and protective of Apple as those set forth herein. Any actions undertaken by any such Service Provider in relation to Your Applications or use of the Apple Software or Apple Services and/or arising out of this Agreement shall be deemed to have been taken by You, and You (in addition to the Service Provider) shall be responsible to Apple for all such actions (or any inactions). In the event of any
actions or inactions by the Service Provider that would constitute a violation of this Agreement or otherwise cause any harm, Apple reserves the right to require You to cease using such Service Provider.

2.10 Updates; No Support or Maintenance
Apple may extend, enhance, or otherwise modify the Apple Software or Services (or any part thereof) provided hereunder at any time without notice, but Apple shall not be obligated to provide You with any Updates to the Apple Software or Services. If Updates are made available by Apple, the terms of this Agreement will govern such Updates, unless the Update is accompanied by a separate license in which case the terms of that license will govern. You understand that such modifications may require You to change or update Your Covered Products. Further, You acknowledge and agree that such modifications may affect Your ability to use, access, or interact with the Apple Software and Services. Apple is not obligated to provide any maintenance, technical or other support for the Apple Software or Services. You acknowledge that Apple has no express or implied obligation to announce or make available any Updates to the Apple Software or to any Services to anyone in the future. Should an Update be made available, it may have APIs, features, services or functionality that are different from those found in the Apple Software licensed hereunder or the Services provided hereunder.

3. Your Obligations

3.1 General
You certify to Apple and agree that:
(a) You are of the legal age of majority in the jurisdiction in which You reside (at least 18 years of age in many countries) and have the right and authority to enter into this Agreement on Your own behalf, or if You are entering into this Agreement on behalf of Your company, organization, educational institution, or agency, instrumentality, or department of the federal government, that You have the right and authority to legally bind such entity or organization to the terms and obligations of this Agreement;
(b) All information provided by You to Apple or Your end-users in connection with this Agreement or Your Covered Products, including without limitation Licensed Application Information or Pass Information, will be current, true, accurate, supportable and complete and, with regard to information You provide to Apple, You will promptly notify Apple of any changes to such information. Further, You agree that Apple may share such information (including email address and mailing address) with third parties who have a need to know for purposes related thereto (e.g., intellectual property questions, customer service inquiries, etc.);
(c) You will comply with the terms of and fulfill Your obligations under this Agreement, including obtaining any required consents for Your Authorized Developers’ use of the Apple Software and Services, and You agree to monitor and be fully responsible for all such use by Your Authorized Developers and their compliance with the terms of this Agreement;
(d) You will be solely responsible for all costs, expenses, losses and liabilities incurred, and activities undertaken by You and Your Authorized Developers in connection with the Apple Software and Apple Services, the Authorized Test Units, Registered Devices, Your Covered Products and Your related development and distribution efforts, including, but not limited to, any related development efforts, network and server equipment, Internet service(s), or any other hardware, software or services used by You in connection with Your use of any services;
(e) For the purposes of Schedule 1(if applicable), You represent and warrant that You own or control the necessary rights in order to appoint Apple and Apple Subsidiaries as Your worldwide agent for the delivery of Your Licensed Applications, and that the fulfillment of such appointment by Apple and Apple Subsidiaries shall not violate or infringe the rights of any third party; and
(f) You will not act in any manner which conflicts or interferes with any existing commitment or obligation You may have and no agreement previously entered into by You will interfere with Your performance of Your obligations under this Agreement.

3.2 Use of the Apple Software and Apple Services
As a condition to using the Apple Software and any Apple Services, You agree that:
(a) You will use the Apple Software and any services only for the purposes and in the manner expressly permitted by this Agreement and in accordance with all applicable laws and regulations;
(b) You will not use the Apple Software or any Apple Services for any unlawful or illegal activity, nor to develop any Covered Product, which would commit or facilitate the commission of a crime, or other tortious, unlawful or illegal act;
(c) Your Application, Library and/or Pass will be developed in compliance with the Documentation and the Program Requirements, the current set of which is set forth in Section 3.3 below;
(d) To the best of Your knowledge and belief, Your Covered Products, Licensed Application Information, and Pass Information do not and will not violate, misappropriate, or infringe any Apple or third party copyrights, trademarks, rights of privacy and publicity, trade secrets, patents, or other proprietary or legal rights (e.g., musical composition or performance rights, video rights, photography or image rights, logo rights, third party data rights, etc. for content and materials that may be included in Your Application);
(e) You will not, through use of the Apple Software, Apple Certificates, Apple Services or otherwise, create any Covered Product or other code or program that would disable, hack or otherwise interfere with the Security Solution, or any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by iOS, watchOS, iPadOS, tvOS, the Apple Software, or any Services, or other Apple software or technology, or enable others to do so (except to the extent expressly permitted by Apple in writing);
(f) You will not, directly or indirectly, commit any act intended to interfere with the Apple Software or Services, the intent of this Agreement, or Apple’s business practices including, but not limited to, taking actions that may hinder the performance or intended use of the App Store, Custom App Distribution, or the Program (e.g., submitting fraudulent reviews of Your own Application or any third party application, choosing a name for Your Application that is substantially similar to the name of a third party application in order to create consumer confusion, or squatting on application names to prevent legitimate third party use). Further, You will not engage, or encourage others to engage, in any unlawful, unfair, misleading, fraudulent, improper, or dishonest acts or business practices relating to Your Covered Products (e.g., engaging in bait-and-switch pricing, consumer misrepresentation, deceptive business practices, or unfair competition against other developers); and
(g) Applications for iOS Products, Apple Watch, or Apple TV developed using the Apple Software may be distributed only if selected by Apple (in its sole discretion) for distribution via the App Store, Custom App Distribution, or the Program (e.g., submitting fraudulent reviews of Your own Application or any third party application, choosing a name for Your Application that is substantially similar to the name of a third party application in order to create consumer confusion, or squatting on application names to prevent legitimate third party use). Further, You will not engage, or encourage others to engage, in any unlawful, unfair, misleading, fraudulent, improper, or dishonest acts or business practices relating to Your Covered Products (e.g., engaging in bait-and-switch pricing, consumer misrepresentation, deceptive business practices, or unfair competition against other developers); and

3.3 Program Requirements

Any Application that will be submitted to the App Store, Custom App Distribution, or TestFlight, or that will be distributed through Ad Hoc distribution, must be developed in compliance with the Documentation and the Program Requirements, the current set of which is set forth below in this Section 3.3. Libraries and Passes are subject to the same criteria:

APIs and Functionality:

3.3.1 Applications may only use Documented APIs in the manner prescribed by Apple and must not use or call any private APIs. Further, macOS Applications submitted to Apple for distribution on the App Store may use only Documented APIs included in the default installation of macOS or as bundled with Xcode and the Mac SDK; deprecated technologies (such as Java) may not be used.
3.3.2 Except as set forth in the next paragraph, an Application may not download or install executable code. Interpreted code may be downloaded to an Application but only so long as such code: (a) does not change the primary purpose of the Application by providing features or functionality that are inconsistent with the intended and advertised purpose of the Application as submitted to the App Store, (b) does not create a store or storefront for other code or applications, and (c) does not bypass signing, sandbox, or other security features of the OS.

An Application that is a programming environment intended for use in learning how to program may download and run executable code so long as the following requirements are met: (i) no more than 80 percent of the Application’s viewing area or screen may be taken over with executable code, except as otherwise permitted in the Documentation, (ii) the Application must present a reasonably conspicuous indicator to the user within the Application to indicate that the user is in a programming environment, (iii) the Application must not create a store or storefront for other code or applications, and (iv) the source code provided by the Application must be completely viewable and editable by the user (e.g., no pre-compiled libraries or frameworks may be included with the code downloaded).

3.3.3 Without Apple’s prior written approval or as permitted under Section 3.3.25 (In-App Purchase API), an Application may not provide, unlock or enable additional features or functionality through distribution mechanisms other than the App Store, Custom App Distribution or TestFlight.

3.3.4 An Application for iOS, watchOS, iPadOS, or tvOS may only read data from or write data to an Application's designated container area on the device, except as otherwise specified by Apple. For macOS Applications submitted to Apple for distribution on the App Store: (a) all files necessary for the Application to execute on macOS must be in the Application bundle submitted to Apple and must be installed by the App Store; (b) all localizations must be in the same Application bundle and may not include a suite or collection of independent applications within a single Application bundle; (c) native user interface elements or behaviors of macOS (e.g., the system menu, window sizes, colors, etc.) may not be altered, modified or otherwise changed; (d) You may not use any digital rights management or other copy or access control mechanisms in such Applications without Apple’s written permission or as specified in the Documentation; and (e) except as otherwise permitted by Section 3.3.25 (In-App Purchase API), such Applications may not function as a distribution mechanism for software and may not include features or functionality that create or enable a software store, distribution channel or other mechanism for software delivery within such Applications (e.g., an audio application may not include an audio filter plug-in store within the Application).

3.3.5 An Application for an iOS Product must have at least the same features and functionality when run by a user in compatibility mode on an iPad (e.g., an iPhone app running in an equivalent iPhone-size window on an iPad must perform in substantially the same manner as when run on the iPhone; provided that this obligation will not apply to any feature or functionality that is not supported by a particular hardware device, such as a video recording feature on a device that does not have a camera). Further, You agree not to interfere or attempt to interfere with the operation of Your Application in compatibility mode.

3.3.6 You may use the Multitasking services only for their intended purposes as described in the Documentation.

User Interface, Data Collection, Local Laws and Privacy:

3.3.7 Applications must comply with the Human Interface Guidelines (HIG) and other Documentation provided by Apple. You agree to follow the HIG to develop an appropriate user interface and functionality for Your Application that is compatible with the design of Apple-branded products (e.g., a watch App should have a user interface designed for quick interactions in accordance with the HIG’s watchOS design themes).
3.3.8 If Your Application captures or makes any video, microphone, screen recordings, or camera recordings, whether saved on the device or sent to a server (e.g., an image, photo, voice or speech capture, or other recording) (collectively "Recordings"), a reasonably conspicuous audio, visual or other indicator must be displayed to the user as part of the Application to indicate that a Recording is taking place.

- In addition, any form of data, content or information collection, processing, maintenance, uploading, syncing, storage, transmission, sharing, disclosure or use performed by, through or in connection with Your Application must comply with all applicable privacy laws and regulations as well as any related Program Requirements, including but not limited to any notice or consent requirements.

3.3.9 You and Your Applications (and any third party with whom You have contracted to serve advertising) may not collect user or device data without prior user consent, whether such data is obtained directly from the user or through the use of the Apple Software, Apple Services, or Apple SDKs, and then only to provide a service or function that is directly relevant to the use of the Application, or to serve advertising in accordance with Sections 3.3.12. You may not broaden or otherwise change the scope of usage for previously collected user or device data without obtaining prior user consent for such expanded or otherwise changed data collection. You may not use analytics software in Your Application to collect and send device data to a third party. Further, neither You nor Your Application will use any permanent, device-based identifier, or any data derived therefrom, for purposes of uniquely identifying a device.

3.3.10 You must provide clear and complete information to users regarding Your collection, use and disclosure of user or device data, e.g., a description of Your use of user and device data in the App Description on the App Store. Furthermore, You must take appropriate steps to protect such data from unauthorized use, disclosure or access by third parties. If a user ceases to consent or affirmatively revokes consent for Your collection, use or disclosure of his or her user or device data, You (and any third party with whom You have contracted to serve advertising) must promptly cease all such use. You must provide a privacy policy in Your Application, on the App Store, and/or on Your website explaining Your collection, use, disclosure, sharing, retention, and deletion of user or device data. You agree to notify Your users, in accordance with applicable law, in the event of a data breach in which user data collected from Your Application is compromised (e.g., You will send an email notifying Your users if there has been an unintentional disclosure or misuse of their user data).

3.3.11 Applications must comply with all applicable criminal, civil and statutory laws and regulations, including those in any jurisdictions in which Your Applications may be offered or made available. In addition:

- You and the Application must comply with all applicable privacy and data collection laws and regulations with respect to any collection, use or disclosure of user or device data (e.g., a user’s IP address, the name of the user’s device, and any installed apps associated with a user);

- Applications may not be designed or marketed for the purpose of harassing, abusing, spamming, stalking, threatening or otherwise violating the legal rights (such as the rights of privacy and publicity) of others;

- Neither You nor Your Application may perform any functions or link to any content, services, information or data or use any robot, spider, site search or other retrieval application or device to scrape, mine, retrieve, cache, analyze or index software, data or services provided by Apple or its licensors, or obtain (or try to obtain) any such data, except the data that Apple expressly provides or makes available to You in connection with such services. You agree that You will not collect, disseminate or use any such data for any unauthorized purpose; and
If Your Application is intended for human subject research or uses the HealthKit APIs for clinical health-related uses which may involve personal data (e.g., storage of health records), then You agree to inform participants of the intended uses and disclosures of their personally identifiable data as part of such research or clinical health uses and to obtain consent from such participants (or their guardians) who will be using Your Application for such research or clinical health purposes. Further, You shall prohibit third parties to whom You provide any de-identified or coded data from re-identifying (or attempting to re-identify) any participants using such data without participant consent, and You agree to require that such third parties pass the foregoing restriction on to any other parties who receive such de-identified or coded data.

Advertising Identifier and Preference; Ad Network APIs:

3.3.12 You and Your Applications (and any third party with whom You have contracted to serve advertising) may use the Advertising Identifier, and any information obtained through the use of the Advertising Identifier, only for the purpose of serving advertising. If a user resets the Advertising Identifier, then You agree not to combine, correlate, link or otherwise associate, either directly or indirectly, the prior Advertising Identifier and any derived information with the reset Advertising Identifier. For Applications compiled for any Apple-branded product providing access to the Ad Support APIs, You agree to check a user’s Advertising Preference prior to serving any advertising using the Advertising Identifier, and You agree to abide by a user’s setting in the Advertising Preference in Your use of the Advertising Identifier. In addition, You may request to use the Ad Network APIs to track application advertising conversion events. If You are granted permission to use the Ad Network APIs, You agree not to use such APIs, or any information obtained through the use of the Ad Network APIs, for any purpose other than verifying ad validation information as part of an advertising conversion event. You agree not to combine, correlate, link, or otherwise associate, either directly or indirectly, information that is provided as part of the ad validation through the use of the Ad Network APIs with other information You may have about a user. Apple reserves the right to reject any requests to use the Ad Network APIs, in its sole discretion.

Location and Maps; User Consents:

3.3.13 Applications that use location-based APIs (e.g., Core Location, MapKit API) or otherwise provide location-based services may not be designed or marketed for automatic or autonomous control of vehicle behavior, or for emergency or life-saving purposes.

3.3.14 Applications that offer location-based services or functionality, or that otherwise obtain a user’s location through the use of the Apple Software or Apple Services, must notify and obtain consent from an individual before his or her location data is collected, transmitted or otherwise used by the Application and then such data must be used only as consented to by the user and as permitted herein. For example, if You use the “Always On” location option in Your Application for the purpose of continuous collection and use of a user’s location data, You should provide a clearly defined justification and user benefit that is presented to the user at the time the permission.

3.3.15 If You choose to provide Your own location-based service, data and/or information in conjunction with the Apple maps provided through the Apple Maps Service (e.g., overlaying a map or route You have created on top of an Apple map), You are solely responsible for ensuring that Your service, data and/or information correctly aligns with any Apple maps used. For Applications that use location-based APIs for real-time navigation (including, but not limited to, turn-by-turn route guidance and other routing that is enabled through the use of a sensor), You must have an end-user license agreement that includes the following notice: YOUR USE OF THIS REAL TIME ROUTE GUIDANCE APPLICATION IS AT YOUR SOLE RISK. LOCATION DATA MAY NOT BE ACCURATE.
3.3.16 Applications must not disable, override or otherwise interfere with any Apple-implemented system alerts, warnings, display panels, consent panels and the like, including, but not limited to, those that are intended to notify the user that the user's location data, address book data, calendar, photos, audio data, and/or reminders are being collected, transmitted, maintained, processed or used, or intended to obtain consent for such use. Further, if You have the ability to add a description in such alerts, warnings, and display panels (e.g., information in the purpose strings for the Camera APIs), any such description must be accurate and not misrepresent the scope of use. If consent is denied or withdrawn, Applications may not collect, transmit, maintain, process or utilize such data or perform any other actions for which the user’s consent has been denied or withdrawn.

3.3.17 If Your Application (or Your website or web application, as applicable) uses or accesses the MapKit API or MapKit JS from a device running iOS version 6 or later, Your Application (or Your website or web application, as applicable) will access and use the Apple Maps Service. All use of the MapKit API, MapKit JS, and Apple Maps Service must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 6 (Additional Terms for the use of the Apple Maps Service). If Your Application uses or accesses the MapKit API from a device running iOS version 5 or earlier, Your Application will access and use the Google Mobile Maps (GMM) service. Such use of the GMM Service is subject to Google’s Terms of Service which are set forth at: http://code.google.com/apis/maps/terms/iPhone.html. If You do not accept such Google Terms of Service, including, but not limited to all limitations and restrictions therein, You may not use the GMM service in Your Application, and You acknowledge and agree that such use will constitute Your acceptance of such Terms of Service.

Content and Materials:

3.3.18 Any master recordings and musical compositions embodied in Your Application must be wholly-owned by You or licensed to You on a fully paid-up basis and in a manner that will not require the payment of any fees, royalties and/or sums by Apple to You or any third party. In addition, if Your Application will be distributed outside of the United States, any master recordings and musical compositions embodied in Your Application (a) must not fall within the repertoire of any mechanical or performing/communication rights collecting or licensing organization now or in the future and (b) if licensed, must be exclusively licensed to You for Your Application by each applicable copyright owner.

3.3.19 If Your Application includes or will include any other content, You must either own all such content or have permission from the content owner to use it in Your Application.

3.3.20 Applications may be rejected if they contain content or materials of any kind (text, graphics, images, photographs, sounds, etc.) that in Apple’s reasonable judgment may be found objectionable or inappropriate, for example, materials that may be considered obscene, pornographic, or defamatory.

3.3.21 Applications must not contain any malware, malicious or harmful code, program, or other internal component (e.g., computer viruses, trojan horses, "backdoors") which could damage, destroy, or adversely affect the Apple Software, services, Apple-branded products, or other software, firmware, hardware, data, systems, services, or networks.

3.3.22 If Your Application includes any FOSS, You agree to comply with all applicable FOSS licensing terms. You also agree not to use any FOSS in the development of Your Application in such a way that would cause the non-FOSS portions of the Apple Software to be subject to any FOSS licensing terms or obligations.

3.3.23 Your Application may include promotional sweepstake or contest functionality provided that You are the sole sponsor of the promotion and that You and Your Application comply with any applicable laws and fulfill any applicable registration requirements in the country or territory in which the promotion(s) will be conducted.
where You make Your Application available and the promotion is open. You agree that You are solely responsible for any promotion and any prize, and also agree to clearly state in binding official rules for each promotion that Apple is not a sponsor of, or responsible for conducting, the promotion.

3.3.24 Your Application may include a direct link to a page on Your web site where You include the ability for an end-user to make a charitable contribution, provided that You comply with any applicable laws (which may include providing a receipt), and fulfill any applicable regulation or registration requirements, in the country or territory where You enable the charitable contribution to be made. You also agree to clearly state that Apple is not the fundraiser.

In-App Purchase API:

3.3.25 All use of the In-App Purchase API and related services must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 2 (Additional Terms for Use of the In-App Purchase API).

Network Extension Framework:

3.3.26 Your Application must not access the Network Extension Framework unless Your Application is primarily designed for providing networking capabilities, and You have received an entitlement from Apple for such access. You agree to the following if You receive such entitlement:

- You agree to clearly disclose to end-users how You and Your Application will be using their network information and, if applicable, filtering their network data, and You agree to use such data and information only as expressly consented to by the end-user and as expressly permitted herein;

- You agree to store and transmit network information or data from an end-user in a secure and appropriate manner;

- You agree not to divert an end-user’s network data or information through any undisclosed, improper, or misleading processes, e.g., to filter it through a website to obtain advertising revenue or spoof a website;

- You agree not to use any network data or information from end-users to bypass or override any end-user settings, e.g., You may not track an end-user’s WiFi network usage to determine their location if they have disabled location services for Your Application; and

- Notwithstanding anything to the contrary in Section 3.3.9, You and Your Application may not use the Network Extension Framework, or any data or information obtained through the Network Extension Framework, for any purpose other than providing networking capabilities in connection with Your Application (e.g., not for using an end-user’s Internet traffic to serve advertising or to otherwise build user profiles for advertising).

Apple reserves the right to not provide You with an entitlement to use the Network Extension Framework in its sole discretion and to revoke such entitlement at any time. In addition, if You would like to use the Access WiFi Information APIs (which provide the WiFi network to which a device is connected), then You must request an entitlement from Apple for such use, and, notwithstanding anything to the contrary in Section 3.3.9, You may use such APIs only for providing a service or function that is directly relevant to the Application (e.g., not for serving advertising).
MFi Accessories:

3.3.27 Your Application may interface, communicate, or otherwise interoperate with or control an MFi Accessory (as defined above) through wireless transports or through Apple's lightning or 30-pin connectors only if (i) such MFi Accessory is licensed under Apple's MFi/Works with Apple Program at the time that You initially submit Your Application, (ii) the MFi Licensee has added Your Application to a list of those approved for interoperability with their MFi Accessory, and (iii) the MFi Licensee has received approval from the Apple MFi/Works with Apple Program for such addition.

Regulatory Compliance:

3.3.28 You will fulfill any applicable regulatory requirements, including full compliance with all applicable laws, regulations, and policies related to the manufacturing, marketing, sale and distribution of Your Application in the United States, and in particular the requirements of the U.S. Food and Drug Administration (FDA) as well as other U.S. regulatory bodies such as the FAA, HHS, FTC, and FCC, and the laws, regulations and policies of any other applicable regulatory bodies in any countries or territories where You use or make Your Application available, e.g., MHRA, CFDA. However, You agree that You will not seek any regulatory marketing permissions or make any determinations that may result in any Apple products being deemed regulated or that may impose any obligations or limitations on Apple. By submitting Your Application to Apple for selection for distribution, You represent and warrant that You are in full compliance with any applicable laws, regulations, and policies, including but not limited to all FDA laws, regulations and policies, related to the manufacturing, marketing, sale and distribution of Your Application in the United States, as well as in other countries or territories where You plan to make Your Application available. You also represent and warrant that You will market Your Application only for its cleared or approved intended use/indication for use, and only in strict compliance with applicable regulatory requirements. Upon Apple’s request, You agree to promptly provide any such clearance documentation to support the marketing of Your Application. If requested by the FDA or by another government body that has a need to review or test Your Application as part of its regulatory review process, You may provide Your Application to such entity for review purposes. You agree to promptly notify Apple in accordance with the procedures set forth in Section 14.5 of any complaints or threats of complaints regarding Your Application in relation to any such regulatory requirements, in which case Apple may remove Your Application from distribution.

Cellular Network:

3.3.29 If an Application requires or will have access to the cellular network, then additionally such Application:

- Must comply with Apple’s best practices and other guidelines on how Applications should access and use the cellular network; and

- Must not in Apple’s reasonable judgment excessively use or unduly burden network capacity or bandwidth.

3.3.30 Because some mobile network operators may prohibit or restrict the use of Voice over Internet Protocol (VoIP) functionality over their network, such as the use of VoIP telephony over a cellular network, and may also impose additional fees, or other charges in connection with VoIP. You agree to inform end-users, prior to purchase, to check the terms of agreement with their operator, for example, by providing such notice in the marketing text that You provide accompanying Your Application on the App Store. In addition, if Your Application allows end-users to send SMS messages or make cellular voice calls, then You must inform the end-user, prior to use of such functionality, that standard text messaging rates or other carrier charges may apply to such use.
Apple Push Notification Service and Local Notifications:

3.3.31 All use of Push Notifications via the Apple Push Notification Service or Local Notifications must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 1 (Additional Terms for Apple Push Notification Service and Local Notifications).

Game Center:

3.3.32 All use of the Game Center must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 3 (Additional Terms for the Game Center).

iCloud:

3.3.33 All use of the iCloud Storage APIs and CloudKit APIs, as well as Your use of the iCloud service under this Agreement, must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 4 (Additional Terms for the use of iCloud).

Wallet:

3.3.34 Your development of Passes, and use of the Pass Type ID and Wallet under this Agreement, must be in accordance with the terms of this Agreement (including the Program Requirements) and Attachment 5 (Additional Terms for Passes).

Additional Services or End-User Pre-Release Software:

3.3.35 From time to time, Apple may provide access to additional Services or pre-release Apple Software for You to use in connection with Your Applications, or as an end-user for evaluation purposes. Some of these may be subject to separate terms and conditions in addition to this Agreement, in which case Your usage will also be subject to those terms and conditions. Such services or software may not be available in all languages or in all countries, and Apple makes no representation that they will be appropriate or available for use in any particular location. To the extent You choose to access such services or software, You do so at Your own initiative and are responsible for compliance with any applicable laws, including but not limited to applicable local laws. To the extent any such software includes Apple’s FaceTime or Messages feature, You acknowledge and agree that when You use such features, the telephone numbers and device identifiers associated with Your Authorized Test Units, as well as email addresses and/or Apple ID information You provide, may be used and maintained by Apple to provide and improve such software and features. Certain services made accessible to You through the Apple Software may be provided by third parties. You acknowledge that Apple will not have any liability or responsibility to You or any other person (including to any end-user) for any third-party services or for any Apple services. Apple and its licensors reserve the right to change, suspend, remove, or disable access to any services at any time. In no event will Apple be liable for the removal or disabling of access to any such services. Further, upon any commercial release of such software or services, or earlier if requested by Apple, You agree to cease all use of the pre-release Apple Software or Services provided to You as an end-user for evaluation purposes under this Agreement.

3.3.36 If Your Application accesses the Twitter service through the Twitter API, such access is subject to the Twitter terms of service set forth at: http://dev.twitter.com. If You do not accept such Twitter terms of service, including, but not limited to all limitations and restrictions therein, You may not access the Twitter service in Your Application through the use of the Twitter API, and You acknowledge and agree that such use will constitute Your acceptance of such terms of service.
3.3.37 If Your Application accesses data from an end-user’s Address Book through the Address Book API, You must notify and obtain consent from the user before his or her Address Book data is accessed or used by Your Application. Further, Your Application may not provide an automated mechanism that transfers only the Facebook Data portions of the end-user’s Address Book altogether to a location off of the end-user’s device. For the sake of clarity, this does not prohibit an automated transfer of the user’s entire Address Book as a whole, so long as user notification and consent requirements have been fulfilled; and does not prohibit enabling users to transfer any portion of their Address Book data manually (e.g., by cutting and pasting) or enabling them to individually select particular data items to be transferred.

Extensions:

3.3.38 Applications that include extensions in the Application bundle must provide some functionality beyond just the extensions (e.g., help screens, additional settings), unless an Application includes a WatchKit Extension. In addition:

- Extensions (excluding WatchKit Extensions) may not include advertising, product promotion, direct marketing, or In-App Purchase offers in their extension view;

- Extensions may not block the full screen of an iOS Product or Apple TV, or redirect, obstruct or interfere in an undisclosed or unexpected way with a user’s use of another developer’s application or any Apple-provided functionality or service;

- Extensions may operate only in Apple-designated areas of iOS, watchOS, iPadOS, or tvOS as set forth in the Documentation;

- Extensions that provide keyboard functionality must be capable of operating independent of any network access and must include Unicode characters (vs. pictorial images only);

- Any keystroke logging done by any such extension must be clearly disclosed to the end-user prior to any such data being sent from an iOS Product, and notwithstanding anything else in Section 3.3.9, such data may be used only for purposes of providing or improving the keyboard functionality of Your Application (e.g., not for serving advertising);

- Any message filtering done by an extension must be clearly disclosed to the end-user, and notwithstanding anything else in Section 3.3.9, any SMS or MMS data (whether accessed through a message filtering extension or sent by iOS to a messaging extension’s corresponding server) may be used only for purposes of providing or improving the message experience of the user by reducing spam or messages from unknown sources, and must not be used for serving advertising or for any other purpose. Further, SMS or MMS data from a user that is accessed within the extension may not be exported from the extension’s designated container area in any way; and

- Your Application must not automate installation of extensions or otherwise cause extensions to be installed without the user’s knowledge, and You must accurately specify to the user the purpose and functionality of the extension.

HealthKit APIs and Motion & Fitness APIs:

3.3.39 Your Application must not access the HealthKit APIs or Motion & Fitness APIs unless it is primarily designed to provide health, motion, and/or fitness services, and this usage is clearly evident in Your marketing text and user interface. In addition:

- Notwithstanding anything to the contrary in Section 3.3.9, You and Your Application may not use the HealthKit APIs or the Motion & Fitness APIs, or any information obtained through the
HealthKit APIs or the Motion & Fitness APIs, for any purpose other than providing health, motion, and/or fitness services in connection with Your Application (e.g., not for serving advertising);

- You must not use the HealthKit APIs or the Motion & Fitness APIs, or any information obtained through the HealthKit APIs or the Motion & Fitness APIs, to disclose or provide an end-user’s health, motion, and/or fitness information to a third party without prior express end-user consent, and then only for purposes of enabling the third party to provide health, motion, and/or fitness services as permitted herein. For example, You must not share or sell an end-user’s health information collected through the HealthKit APIs or Motion & Fitness APIs to advertising platforms, data brokers, or information resellers. For clarity, You may allow end-users to consent to share their data with third parties for medical research purposes; and

- You agree to clearly disclose to end-users how You and Your Application will be using their health, motion, and/or fitness information and to use it only as expressly consented to by the end-user and as expressly permitted herein.

Configuration Profiles:

3.3.40 Configuration Profiles cannot be delivered to consumers other than for the purposes of configuration of WiFi, APN, or VPN settings, or as otherwise expressly permitted by Apple in the then-current Configuration Profile Reference Documentation. You must make a clear declaration of what user data will be collected and how it will be used on an app screen or other notification mechanism prior to any user action to use a Configuration Profile. You may not share or sell user data obtained through a Configuration Profile to advertising platforms, data brokers, or information resellers. In addition, You may not override the consent panel for a Configuration Profile or any other mechanisms of a Configuration Profile.

HomeKit APIs:

3.3.41 Your Application must not access the HomeKit APIs unless it is primarily designed to provide home configuration or home automation services (e.g., turning on a light, lifting a garage door) for Licensed HomeKit Accessories and this usage is clearly evident in Your marketing text and user interface. You agree not to use the HomeKit APIs for any purpose other than interfacing, communicating, interoperating with or otherwise controlling a Licensed HomeKit Accessory or for using the HomeKit Database, and then only for home configuration or home automation purposes in connection with Your Application. In addition:

- Your Application may use information obtained from the HomeKit APIs and/or the HomeKit Database only on a compatible Apple-branded product and may not export, remotely access or transfer such information off of the applicable product (e.g., a lock password cannot be sent off an end-user’s device to be stored in an external non-Apple database), unless otherwise expressly permitted by Apple in the Documentation; and

- Notwithstanding anything to the contrary in Section 3.3.9, You and Your Application may not use the HomeKit APIs, or any information obtained through the HomeKit APIs or through the HomeKit Database, for any purpose other than providing or improving home configuration or home automation services in connection with Your Application (e.g., not for serving advertising).

Apple Pay APIs:

3.3.42 Your Application may use the Apple Pay APIs solely for the purpose of facilitating payment transactions that are made by or through Your Application, and only for the purchase of goods and services that are to be used outside of any iOS Product or Apple Watch, unless otherwise permitted by Apple in writing. For clarity, nothing in this Section 3.3.42 supplants any of the rules or requirements for the use of the In-App Purchase API, including but not limited to Section 3.3.3 and the guidelines. In addition:
- You acknowledge and agree that Apple is not a party to any payment transactions facilitated through the use of the Apple Pay APIs and is not responsible for any such transactions, including but not limited to the unavailability of any end-user payment cards or payment fraud. Such payment transactions are between You and Your bank, acquirer, card networks, or other parties You utilize for transaction processing, and You are responsible for complying with any agreements You have with such third parties. In some cases, such agreements may contain terms specifying specific rights, obligations or limitations that You accept and assume in connection with Your decision to utilize the functionality of the Apple Pay APIs;

- You agree to store any private keys provided to You as part of Your use of the Apple Pay APIs in a secure manner (e.g., encrypted on a server) and in accordance with the Documentation. You agree not to store any end-user payment information in an unencrypted manner on an iOS Product. For clarity, You may not decrypt any such end-user payment information on an iOS Product;

- You agree not to call the Apple Pay APIs or otherwise attempt to gain information through the Apple Pay APIs for purposes unrelated to facilitating end-user payment transactions; and

- If You use Apple Pay APIs in Your Application, then You agree to use commercially reasonable efforts to include Apple Pay Cash as a payment option with Your use of the Apple Pay APIs in accordance with the Documentation and provided that Apple Pay Cash is available in the jurisdiction in which the Application is distributed.

3.3.43 As part of facilitating an end-user payment transaction through the Apple Pay APIs, Apple may provide You (whether You are acting as the Merchant or as an Intermediary Party) with an Apple Pay Payload. If You receive an Apple Pay Payload, then You agree to the following:

- If You are acting as the Merchant, then You may use the Apple Pay Payload to process the end-user payment transaction and for other uses that You disclose to the end-user, and only in accordance with applicable law; and

- If You are acting as an Intermediary Party, then:

  (a) You may use the Apple Pay Payload only for purposes of facilitating the payment transaction between the Merchant and the end-user and for Your own order management purposes (e.g., customer service) as part of such transaction;
  (b) You agree that You will not hold the Apple Pay Payload data for any longer than necessary to fulfill the payment transaction and order management purposes for which it was collected;
  (c) You agree not to combine data obtained through the Apple Pay APIs, including but not limited to, the Apple Pay Payload with any other data that You may have about such end-user (except to the limited extent necessary for order management purposes). For clarity, an Intermediary Party may not use data obtained through the Apple Pay APIs for advertising or marketing purposes, for developing or enhancing a user profile, or to otherwise target end-users;
  (d) You agree to disclose to end-users that You are an Intermediary Party to the transaction and to provide the identity of the Merchant for a particular transaction on the Apple Pay Payment Sheet (in addition to including Your name as an Intermediary Party); and
  (e) If You use a Merchant, then You will be responsible for ensuring that the Merchant You select uses the Apple Pay Payload provided by You only for purposes of processing the end-user payment transaction and for other uses they have disclosed to the end-user, and only in accordance with applicable law. You agree to have a binding written agreement with such Merchant with terms at least as restrictive and protective of Apple as those set forth herein. Any actions undertaken by any such Merchant in relation to such Apple Pay Payload or the payment transaction shall be deemed to have been taken by You, and You (in addition to such Merchant) shall be responsible to Apple for all such actions (or any inactions). In the event of any actions or inactions by such Merchant that would constitute a violation of this Agreement or otherwise cause any harm, Apple reserves the right to require You to cease using such Merchant.
SiriKit:

3.3.44 Your Application may register as a destination to use the Apple-defined SiriKit domains, but only if Your Application is designed to provide relevant responses to a user, or otherwise carry out the user’s request or intent, in connection with the applicable SiriKit domain (e.g., ride sharing) that is supported by Your Application and this usage is clearly evident in Your marketing text and user interface. In addition, Your Application may contribute actions to SiriKit, but only if such actions are tied to user behavior or activity within Your Application and for which You can provide a relevant response to the user. You agree not to submit false information through SiriKit about any such user activity or behavior or otherwise interfere with the predictions provided by SiriKit (e.g., SiriKit donations should be based on actual user behavior).

3.3.45 Your Application may use information obtained through SiriKit only on supported Apple products and may not export, remotely access or transfer such information off a device except to the extent necessary to provide or improve relevant responses to a user or carry out a user’s request or in connection with Your Application. Notwithstanding anything to the contrary in Section 3.3.9, You and Your Application may not use SiriKit, or any information obtained through SiriKit, for any purpose other than providing relevant responses to a user or otherwise carrying out a user’s request or intent in connection with an SiriKit domain, intent, or action supported by Your Application and/or for improving Your Application’s responsiveness to user requests (e.g., not for serving advertising).

3.3.46 If Your Application uses SiriKit to enable audio data to be processed by Apple, You agree to clearly disclose to end-users that You and Your Application will be sending their recorded audio data to Apple for speech recognition, processing and/or transcription purposes, and that such audio data may be used to improve and provide Apple products and services. You further agree to use such audio data, and recognized text that may be returned from SiriKit, only as expressly consented to by the end-user and as expressly permitted herein.

Single Sign-On API:

3.3.47 You must not access or use the Single Sign-On API unless You are a Multi-channel Video Programming Distributor (MVPD) or unless Your Application is primarily designed to provide authenticated video programming via a subscription-based MVPD service, and You have received an entitlement from Apple to use the Single Sign-On API. If You have received such an entitlement, You are permitted to use the Single Sign-On API solely for the purpose of authenticating a user’s entitlement to access Your MVPD content for viewing on an Apple Product, in accordance with the Single Sign-on Specification. Any such use must be in compliance with the Documentation for the Single Sign-On Specification. You acknowledge that Apple reserves the right to not provide You such an entitlement, and to revoke such entitlement, at any time, in its sole discretion.

If You use the Single Sign-On API, You will be responsible for providing the sign-in page accessed by users via the Single Sign-On API where users sign in to authenticate their right to access Your MVPD content. You agree that such sign-in page will not display advertising, and that the content and appearance of such page will be subject to Apple’s prior review and approval. If You use the Single Sign-On API and Apple provides an updated version of such API and/or the Single Sign-on Specification, You agree to update Your implementation to conform with the newer version and specification within 3 months after receiving the update from Apple.

You authorize Apple to use, reproduce, and display the trademarks provided by You for use in connection with the Single-Sign-On feature, including use in the user interface screens in Apple products where the user selects the provider and authenticates through Single Sign-on, and/or to provide the user with a list of apps that are accessible to such user through Single Sign-on. You also grant Apple the right to use screen shots and images of such user interface, including but not
limited to use in instructional materials, training materials, marketing materials, and advertising in any medium. Data provided via the Single Sign-On API will be considered Licensed Application Information hereunder, but will be subject to the use limitations set forth in this Section.

You must not collect, store or use data provided via the Single Sign-On API for any purpose other than to authenticate a user’s entitlement to access Your MVPD content on an Apple product, to provide the user access to Your MVPD content, and/or to address performance and technical problems with Your MVPD service. You will not provide or disclose data, content or information obtained from use of the Single Sign-On API to any other party except for authentication information provided to a video programming provider whose programming is offered as part of an MVPD subscription offered by You, and solely for the purpose of authenticating the user’s entitlement to access such video programming on an Apple product under the user’s MVPD subscription.

**TV App API:**

3.3.48 You may not use the TV App API unless (a) Your Application is primarily designed to provide video programming, (b) You have received an entitlement from Apple, and (c) Your use is in accordance with the TV App Specification. To the extent that You provide TV App Data to Apple, Apple may store, use and display such data solely for the purposes of: (a) providing information and recommendations to users of TV App Features, (b) enabling users to link from such recommendations and/or information to content for viewing via Your Licensed Application, and/or (c) servicing, maintenance, and optimization of TV App Features. With respect to any TV App Data that has been submitted by You prior to termination of this Agreement, Apple may continue to use such data in accordance with this Section 3.3.48 after termination of this Agreement. TV App Data will be considered Licensed Application Information under this Agreement, but will be subject to the use limitations set forth in this Section. You acknowledge that Apple reserves the right to not include Your Licensed Application in the TV App Features, in its sole discretion.

Apple will obtain user consent based on the user’s Apple ID before including Your Licensed Application in the TV App Features displayed under that Apple ID. Apple will also provide users with the ability to withdraw such consent at any time thereafter and to delete their TV App Data from Apple’s systems. In addition, You may solicit user consent based upon Your own subscriber ID system. You are responsible for Your compliance with all applicable laws, including any applicable local laws for obtaining user consent with respect to Your provision of TV App Data to Apple.

**Spotlight-Image-Search Service:**

3.3.49 To the extent that You provide Apple’s spotlight-image-search service with access to any of Your domains that are associated with Your Licensed Applications (the “Associated Domain(s)”), You hereby grant Apple permission to crawl, scrape, copy, transmit and/or cache the content found in the Associated Domain(s) (the “Licensed Content”) for the purposes set forth in this section. The Licensed Content shall be considered Licensed Application Information under this Agreement. You hereby further grant Apple a license to use, make, have made, reproduce, crop and/or modify the file format, resolution and appearance of the Licensed Content (for the purposes of reducing file size, converting to a supported file type and/or displaying thumbnails), and to publicly display, publicly perform, integrate, incorporate and distribute the Licensed Content to enhance search, discovery, and end-user distribution of the Licensed Content in Apple’s Messages feature. Upon the termination of this Agreement for any reason, end users of Apple-branded products will be permitted to continue using and distributing all Licensed Content that they obtained through the use of Apple-branded products prior to such termination.
MusicKit:

3.3.50 You agree not to call the MusicKit APIs or use MusicKit JS (or otherwise attempt to gain information through the MusicKit APIs or MusicKit JS) for purposes unrelated to facilitating access to Your end users’ Apple Music subscriptions. If You access the MusicKit APIs or MusicKit JS, then You must follow the Apple Music Identity Guidelines. You agree not to require payment for or indirectly monetize access to the Apple Music service (e.g., in-app purchase, advertising, requesting user info) through Your use of the MusicKit APIs, MusicKit JS, or otherwise in any way. In addition:

- If You choose to offer music playback through the MusicKit APIs or MusicKit JS, full songs must be enabled for playback, and users must initiate playback and be able to navigate playback using standard media controls such as “play,” “pause,” and “skip”, and You agree to not misrepresent the functionality of these controls;

- You may not, and You may not permit Your end users to, download, upload, or modify any MusicKit Content and MusicKit Content cannot be synchronized with any other content, unless otherwise permitted by Apple in the Documentation;

- You may play MusicKit Content only as rendered by the MusicKit APIs or MusicKit JS and only as permitted in the Documentation (e.g., album art and music-related text from the MusicKit API may not be used separately from music playback or managing playlists);

- Metadata from users (such as playlists and favorites) may be used only to provide a service or function that is clearly disclosed to end users and that is directly relevant to the use of Your Application, website, or web application, as determined in Apple’s sole discretion; and

- You may use MusicKit JS only as a stand-alone library in Your Application, website, or web application and only as permitted in the Documentation (e.g., You agree not to recombine MusicKit JS with any other JavaScript code or separately download and re-host it).

DeviceCheck APIs:

3.3.51 If You use DeviceCheck APIs to store DeviceCheck Data, then You must provide a mechanism for customers to contact You to reset those values, if applicable (e.g., resetting a trial subscription or re-authorizing certain usage when a new user acquires the device). You may not rely on the DeviceCheck Data as a single identifier of fraudulent conduct and must use the DeviceCheck Data only in connection with other data or information, e.g., the DeviceCheck Data cannot be the sole data point since a device may have been transferred or resold. Apple reserves the right to delete any DeviceCheck Data at any time in its sole discretion, and You agree not to rely on any such Data. Further, You agree not to share the DeviceCheck tokens You receive from Apple with any third party, except a Service Provider acting on Your behalf.

Face Data:

3.3.52 If Your Application accesses Face Data, then You must do so only to provide a service or function that is directly relevant to the use of the Application, and You agree to inform users of Your intended uses and disclosures of Face Data by Your Application and to obtain clear and conspicuous consent from such users before any collection or use of Face Data. Notwithstanding anything to the contrary in Section 3.3.9, neither You nor Your Application (nor any third party with whom You have contracted to serve advertising) may use Face Data for serving advertising or for any other unrelated purposes. In addition:

- You may not use Face Data in a manner that will violate the legal rights of Your users (or any third parties) or to provide an unlawful, unfair, misleading, fraudulent, improper, exploitative, or objectionable user experience and then only in accordance with the Documentation;
- You may not use Face Data for authentication, advertising, or marketing purposes, or to otherwise target an end-user in a similar manner;

- You may not use Face Data to build a user profile, or otherwise attempt, facilitate, or encourage third parties to identify anonymous users or reconstruct user profiles based on Face Data;

- You agree not to transfer, share, sell, or otherwise provide Face Data to advertising platforms, analytics providers, data brokers, information resellers or other such parties; and

- Face Data may not be shared or transferred off the user’s device unless You have obtained clear and conspicuous consent for the transfer and the Face Data is used only in fulfilling a specific service or function for Your Application (e.g., a face mesh is used to display an image of the user within the Application) and only in accordance with these terms and the Documentation. You agree to require that Your service providers use Face Data only to the limited extent consented to by the user and only in accordance with these terms.

**ClassKit APIs:**

3.3.53 Your Application must not include the ClassKit APIs unless it is primarily designed to provide educational services, and this usage is clearly evident in Your marketing text and user interface. You agree not to submit false or inaccurate data through the ClassKit APIs or to attempt to redefine the assigned data categories for data submitted through the ClassKit APIs (e.g., student location data is not a supported data type and should not be submitted).

**Sign In with Apple:**

3.3.54 You may use Sign In with Apple in Your Corresponding Products only so long as Your use is comparable to including Sign In with Apple in Your Application. You may not share or sell user data obtained through Sign In with Apple to advertising platforms, data brokers, or information resellers. If a user has chosen to anonymize their user data as part of Sign In with Apple, You agree not to attempt to link such anonymized data with information that directly identifies the individual and that is obtained outside of Sign In with Apple without first obtaining user consent.

4. **Changes to Program Requirements or Terms**

Apple may change the Program Requirements or the terms of this Agreement at any time. New or modified Program Requirements will not retroactively apply to Applications already in distribution via the App Store or Custom App Distribution; provided however that You agree that Apple reserves the right to remove Applications from the App Store or Custom App Distribution that are not in compliance with the new or modified Program Requirements at any time. In order to continue using the Apple Software, Apple Certificates or any Services, You must accept and agree to the new Program Requirements and/or new terms of this Agreement. If You do not agree to new Program Requirements or new terms, Your use of the Apple Software, Apple Certificates and any Services will be suspended or terminated by Apple. You agree that Your acceptance of such new Agreement terms or Program Requirements may be signified electronically, including without limitation, by Your checking a box or clicking on an “agree” or similar button. Nothing in this Section shall affect Apple’s rights under Section 5 (Apple Certificates; Revocation).

5. **Apple Certificates; Revocation**

5.1 **Certificate Requirements**

All Applications must be signed with an Apple Certificate in order to be installed on Authorized Test Units, Registered Devices, or submitted to Apple for distribution via the App Store, Custom App Distribution, or TestFlight. Similarly, all Passes must be signed with an Apple Certificate to
be recognized and accepted by Wallet. Safari App Extensions must be signed with an Apple Certificate to run in Safari on macOS. You must use a Website ID to send Safari Push Notifications to the macOS desktop of users who have opted in to receive such Notifications for Your Site through Safari on macOS. You may also obtain other Apple Certificates and keys for other purposes as set forth herein and in the Documentation.

In relation to this, You represent and warrant to Apple that:
(a) You will not take any action to interfere with the normal operation of any Apple Certificates, keys, or Provisioning Profiles;
(b) You are solely responsible for preventing any unauthorized person or organization from having access to Your Apple Certificates and keys, and You will use Your best efforts to safeguard Your Apple Certificates and keys from compromise (e.g., You will not upload Your Apple Certificate for App Store distribution to a cloud repository for use by a third-party);
(c) You agree to immediately notify Apple in writing if You have any reason to believe there has been a compromise of any of Your Apple Certificates or keys;
(d) You will not provide or transfer Apple Certificates or keys provided under this Program to any third party (except for a Service Provider who is using them on Your behalf in compliance with this Agreement and only to the limited extent expressly permitted by Apple in the Documentation or this Agreement (e.g., You are prohibited from providing or transferring Your Apple Certificates that are used for distribution or submission to the App Store to a Service Provider), and You will not use Your Apple Certificates to sign any third party's application, pass, extension, notification, implementation, or site;
(e) You will use any Apple Certificates or keys provided under this Agreement solely as permitted by Apple and in accordance with the Documentation; and
(f) You will use Apple Certificates provided under this Program exclusively for the purpose of signing Your Passes, signing Your Safari App Extensions, signing Your Site's registration bundle, accessing the APN service, and/or signing Your Applications for testing, submission to Apple and/or for limited distribution for use on Registered Devices or Authorized Test Units as contemplated under this Program, or as otherwise permitted by Apple, and only in accordance with this Agreement. As a limited exception to the foregoing, You may provide versions of Your Applications to Your Service Providers to sign with their Apple-issued development certificates, but solely for purposes of having them perform testing on Your behalf in compliance with this Agreement and only to the limited extent expressly permitted by Apple in the Documentation or this Agreement (e.g., You are prohibited from providing or transferring Your Apple Certificates that are used for distribution or submission to the App Store to a Service Provider), and that Your Applications are deleted within a reasonable period of time after such testing is performed. Further, You agree that Your Service Provider may use the data obtained from performing such testing services only for purposes of providing You with information about the performance of Your Applications (e.g., Your Service Provider is prohibited from aggregating Your Applications' test results with other developers' test results).

You further represent and warrant to Apple that the licensing terms governing Your Application, Your Safari App Extension, Your Site's registration bundle, and/or Your Pass, or governing any third party code or FOSS included in Your Covered Products, will be consistent with and not conflict with the digital signing or content protection aspects of the Program or any of the terms, conditions or requirements of the Program or this Agreement. In particular, such licensing terms will not purport to require Apple (or its agents) to disclose or make available any of the keys, authorization codes, methods, procedures, data or other information related to the Security Solution, digital signing or digital rights management mechanisms or security utilized as part of any Apple software, including the App Store. If You discover any such inconsistency or conflict, You agree to immediately notify Apple of it and will cooperate with Apple to resolve such matter. You acknowledge and agree that Apple may immediately cease distribution of any affected Licensed Applications or Passes, and may refuse to accept any subsequent Application or Pass submissions from You until such matter is resolved to Apple's reasonable satisfaction.
5.2 Relying Party Certificates
The Apple Software and Services may also contain functionality that permits digital certificates, either Apple Certificates or other third-party certificates, to be accepted by the Apple Software or Services (e.g., Apple Pay) and/or to be used to provide information to You (e.g., transaction receipts). It is Your responsibility to verify the validity of any certifications or transaction receipts You may receive from Apple prior to relying on them (e.g., You should verify that the receipt came from Apple prior to any delivery of content to an end-user through the use of the In-App Purchase API). You are solely responsible for Your decision to rely on any such certificates and receipts, and Apple will not be liable for Your failure to verify that any such certificates or transaction receipts came from Apple (or third parties) or for Your reliance on Apple Certificates or other digital certificates.

5.3 Notarized Applications for macOS
To have Your macOS Application notarized, You may request a digital file for authentication of Your Application from Apple’s digital notary service (a “Ticket”). You can use this Ticket with Your Apple Certificate to receive an improved developer signing and user experience for Your Application on macOS. To request this Ticket from Apple’s digital notary service, You must upload Your Application to Apple through Apple’s developer tools (or other requested mechanisms) for purposes of continuous security checking. This continuous security checking will involve automated scanning, testing, and analysis of Your Application by Apple for malware or other harmful or suspicious code or components or security flaws, and, in limited cases, a manual, technical investigation of Your Application by Apple for such purposes. By uploading Your Application to Apple for this digital notary service, You agree that Apple may perform such security checks on Your Application for purposes of detecting malware or other harmful or suspicious code or components, and You agree that Apple may retain and use Your Application for subsequent security checks for the same purposes.

If Apple authenticates Your developer signature and Your Application passes the initial security checks, Apple may provide You with a Ticket to use with Your Apple Certificate. Apple reserves the right to issue Tickets in its sole discretion, and Apple may revoke Tickets at any time in its sole discretion in the event that Apple has reason to believe, or has reasonable suspicions, that Your Application contains malware or malicious, suspicious or harmful code or components or that Your developer identity signature has been compromised. You may request that Apple revoke Your Ticket at any time by emailing: product-security@apple.com. If Apple revokes Your Ticket or Your Apple Certificate, then Your Application may no longer run on macOS.

You agree to cooperate with Apple regarding Your Ticket requests and to not hide, attempt to bypass, or misrepresent any part of Your Application from Apple’s security checks or otherwise hinder Apple from being able to perform such security checks. You agree not to represent that Apple has performed a security check or malware detection for Your Application or that Apple has reviewed or approved Your Application for purposes of issuing a Ticket to You from Apple’s digital notary service. You acknowledge and agree that Apple is performing security checks solely in connection with Apple’s digital notary service and that such security checks should not be relied upon for malware detection or security verification of any kind. You are fully responsible for Your own Application and for ensuring that Your Application is safe, secure, and operational for Your end-users (e.g., informing Your end-users that Your Application may cease to run if there is an issue with malware). You agree to comply with export requirements in Your jurisdiction when uploading Your Application to Apple, and You agree not to upload any Application that is: (a) subject to International Traffic in Arms Regulations; or (b) that cannot be exported without prior written government authorization, including, but not limited to, certain types of encryption software and source code, without first obtaining that authorization. Apple will not be liable to You or any third-party for any inability or failure to detect any malware or other suspicious, harmful code or components in Your Application or other security issues, or for any ticket issuance or revocation. Apple shall not be responsible for any costs, expenses, damages, losses or other liabilities You may incur as a result of Your Application development, use of the Apple Software, Apple Services (including this digital notary service), or Apple Certificates, tickets, or participation in the Program.
including without limitation the fact that Apple performs security checks on Your Application.

5.4 Certificate Revocation
Except as otherwise set forth herein, You may revoke Apple Certificates issued to You at any time. If You want to revoke the Apple Certificates used to sign Your Passes and/or issued to You for use with Your macOS Applications distributed outside of the App Store, You may request that Apple revoke these Apple Certificates at any time by emailing: product-security@apple.com. Apple also reserves the right to revoke any Apple Certificates at any time, in its sole discretion. By way of example only, Apple may choose to do this if: (a) any of Your Apple Certificates or corresponding private keys have been compromised or Apple has reason to believe that either have been compromised; (b) Apple has reason to believe or has reasonable suspicions that Your Covered Products contain malware or malicious, suspicious or harmful code or components (e.g., a software virus); (c) Apple has reason to believe that Your Covered Products adversely affect the security of Apple-branded products, or any other software, firmware, hardware, data, systems, or networks accessed or used by such products; (d) Apple’s certificate issuance process is compromised or Apple has reason to believe that such process has been compromised; (e) You breach any term or condition of this Agreement; (f) Apple ceases to issue the Apple Certificates for the Covered Product under the Program; (g) Your Covered Product misuses or overburdens any Services provided hereunder; or (h) Apple has reason to believe that such action is prudent or necessary. Further, You understand and agree that Apple may notify end-users of Covered Products that are signed with Apple Certificates when Apple believes such action is necessary to protect the privacy, safety or security of end-users, or is otherwise prudent or necessary as determined in Apple’s reasonable judgment. Apple’s Certificate Policy and Certificate Practice Statements may be found at: http://www.apple.com/certificateauthority.

6. Application Submission and Selection
6.1 Submission to Apple for App Store or Custom App Distribution
You may submit Your Application for consideration by Apple for distribution via the App Store or Custom App Distribution once You decide that Your Application has been adequately tested and is complete. By submitting Your Application, You represent and warrant that Your Application complies with the Documentation and Program Requirements then in effect as well as with any additional guidelines that Apple may post on the Program web portal or in App Store Connect. You further agree that You will not attempt to hide, misrepresent or obscure any features, content, services or functionality in Your submitted Applications from Apple's review or otherwise hinder Apple from being able to fully review such Applications. In addition, You agree to inform Apple in writing through App Store Connect if Your Application connects to a physical device, including but not limited to an MFi Accessory, and, if so, to disclose the means of such connection (whether iAP, Bluetooth Low Energy (BLE), the headphone jack, or any other communication protocol or standard) and identify at least one physical device with which Your Application is designed to communicate. If requested by Apple, You agree to provide access to or samples of any such devices at Your expense (samples will not be returned). If Your Application includes embedded font files or makes font files available for download, You agree to provide Apple with access to such font files. Apple may validate the font files and may also add metadata and other information to each font file for purposes of assisting users in finding and using the font. You agree to cooperate with Apple in this submission process and to answer questions and provide information and materials reasonably requested by Apple regarding Your submitted Application, including insurance information You may have relating to Your Application, the operation of Your business, or Your obligations under this Agreement. Apple may require You to carry certain levels of insurance for certain types of Applications and name Apple as an additional insured. If You make any changes to an Application (including to any functionality made available through use of the In-App Purchase API) after submission to Apple, You must resubmit the Application to Apple. Similarly all bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases and new versions of Your Application must be submitted to Apple for review in order for them to be considered for distribution via the App Store or Custom App Distribution, except as otherwise permitted by Apple.
6.2 App Thinning and Bundled Resources
As part of Your Application submission to the App Store or Custom App Distribution, Apple may optimize Your Application to target specific devices by repackaging certain functionality and delivered resources (as described in the Documentation) in Your Application so that it will run more efficiently and use less space on target devices ("App Thinning"). For example, Apple may deliver only the 32-bit or 64-bit version of Your Application to a target device, and Apple may not deliver icons or launch screens that would not render on the display of a target device. You agree that Apple may use App Thinning to repackage Your Application in order to deliver a more optimized version of Your Application to target devices.

As part of App Thinning, You can also request that Apple deliver specific resources for Your Application (e.g., GPU resources) to target devices by identifying such bundled resources as part of Your code submission ("Bundled Resources"). You can define such Bundled Resources to vary the timing or delivery of assets to a target device (e.g., when a user reaches a certain level of a game, then the content is delivered on-demand to the target device). App Thinning and Bundled Resources are not available for all Apple operating systems, and Apple may continue to deliver full Application binaries to some target devices.

6.3 Bitcode Submissions
For Application submissions to the App Store or Custom App Distribution for some Apple operating systems (e.g., for watchOS), Apple may require You to submit an intermediate representation of Your Application in binary file format for the LLVM compiler ("Bitcode"). You may also submit Bitcode for other supported Apple operating systems. Such Bitcode submission will allow Apple to compile Your Bitcode to target specific Apple-branded devices and to recompile Your Bitcode for subsequent releases of Your Application for new Apple hardware, software, and/or compiler changes. When submitting Bitcode, You may choose whether or not to include symbols for Your Application in the Bitcode; however, if You do not include symbols, then Apple will not be able to provide You with symbolicated crash logs or other diagnostic information as set forth in Section 6.5 (Improving Your Application) below. Further, You may be required to submit a compiled binary of Your Application with Your Bitcode.

By submitting Bitcode to Apple, You authorize Apple to compile Your Bitcode into a resulting binary that will be targeted for specific Apple-branded devices and to recompile Your Bitcode for subsequent rebuilding and recompiling of Your Application for updated hardware, software, and/or compiler changes (e.g., if Apple releases a new device, then Apple may use Your Bitcode to update Your Application without requiring resubmission). You agree that Apple may compile such Bitcode for its own internal use in testing and improving Apple’s developer tools, and for purposes of analyzing and improving how applications can be optimized to run on Apple’s operating systems (e.g., which frameworks are used most frequently, how a certain framework consumes memory, etc.). You may use Apple’s developer tools to view and test how Apple may process Your Bitcode into machine code binary form. Bitcode is not available for all Apple operating systems.

6.4 TestFlight Submission
If You would like to distribute Your Application to Beta Testers outside of Your company or organization through TestFlight, You must first submit Your Application to Apple for review. By submitting such Application, You represent and warrant that Your Application complies with the Documentation and Program Requirements then in effect as well as with any additional guidelines that Apple may post on the Program web portal or in App Store Connect. Thereafter, Apple may permit You to distribute updates to such Application directly to Your Beta Testers without Apple’s review, unless such an update includes significant changes, in which case You agree to inform Apple in App Store Connect and have such Application re-reviewed. Apple reserves the right to require You to cease distribution of Your Application through TestFlight, and/or to any particular Beta Tester, at any time in its sole discretion.
6.5 Improving Your Application and Related Materials

Further, if Your Application is submitted for distribution via the App Store, Custom App Distribution or TestFlight, You agree that Apple may use Your Application for the limited purpose of compatibility testing of Your Application with Apple products and services, for finding and fixing bugs and issues in Apple products and services and/or Your Applications, for internal use in evaluating iOS, watchOS, tvOS, iPadOS, and/or macOS performance issues in or with Your Application, for security testing, and for purposes of providing other information to You (e.g., crash logs). In addition, if Your Application includes embedded font files or makes font files available for download, You agree that Apple may use the font files to improve the user experience in Apple’s products and services (e.g., training machine learning algorithms to improve font-related features) and to include font images in technical documentation and specifications (e.g., Unicode or W3C text rendering documentation to improve the cross-platform rendering of fonts). Except as otherwise set forth herein, You may opt in to send app symbol information for Your Application to Apple, and if You do so, then You agree that Apple may use such symbols to symbolicate Your Application for purposes of providing You with symbolicated crash logs and other diagnostic information. In the event that Apple provides You with crash logs or other diagnostic information for Your Application, You agree to use such crash logs and information only for purposes of fixing bugs and improving the performance of Your Application and related products. You may also collect numeric strings and variables from Your Application when it crashes, so long as You collect such information only in an anonymous, non-personal manner and do not recombine, correlate, or use such information to attempt to identify or derive information about any particular end-user or device.

6.6 App Analytics

To the extent that Apple provides an Analytics service through App Store Connect for Applications distributed through the App Store, You agree to use any data provided through such App Analytics service solely for purposes of improving Your Applications and related products. Further, You agree not to provide such information to any third parties, except for a Service Provider who is assisting You in processing and analyzing such data on Your behalf and who is not permitted to use it for any other purpose or disclose it to any other party. For clarity, You must not aggregate (or permit any third-party to aggregate) analytics information provided to You by Apple for Your Applications as part of this App Analytics service with other developers’ analytics information, or contribute such information to a repository for cross-developer analytics. You must not use the App Analytics service or any analytics data to attempt to identify or derive information about any particular end-user or device.

6.7 Compatibility Requirement with Current Shipping OS Version

Applications that are selected for distribution via the App Store must be compatible with the currently shipping version of Apple’s applicable operating system (OS) software at the time of submission to Apple, and such Applications must stay current and maintain compatibility with each new release of the applicable OS version so long as such Applications are distributed through the App Store. You understand and agree that Apple may remove Applications from the App Store when they are not compatible with the then-current shipping release of the OS at any time in its sole discretion.

6.8 Selection by Apple for Distribution

You understand and agree that if You submit Your Application to Apple for distribution via the App Store, Custom App Distribution, or TestFlight, Apple may, in its sole discretion:

(a) determine that Your Application does not meet all or any part of the Documentation or Program Requirements then in effect;
(b) reject Your Application for distribution for any reason, even if Your Application meets the Documentation and Program Requirements; or
(c) select and digitally sign Your Application for distribution via the App Store, Custom App Distribution, or TestFlight.
Apple shall not be responsible for any costs, expenses, damages, losses (including without limitation lost business opportunities or lost profits) or other liabilities You may incur as a result of Your Application development, use of the Apple Software, Apple Services, or Apple Certificates or participation in the Program, including without limitation the fact that Your Application may not be selected for distribution via the App Store or Custom App Distribution. You will be solely responsible for developing Applications that are safe, free of defects in design and operation, and comply with applicable laws and regulations. You will also be solely responsible for any documentation and end-user customer support and warranty for such Applications. The fact that Apple may have reviewed, tested, approved or selected an Application will not relieve You of any of these responsibilities.

7. Distribution of Applications and Libraries

Applications:

Applications developed under this Agreement for iOS, watchOS, iPadOS, or tvOS may be distributed in four ways: (1) through the App Store, if selected by Apple, (2) through the Custom App Distribution, if selected by Apple, (3) through Ad Hoc distribution in accordance with Section 7.3, and (4) for beta testing through TestFlight in accordance with Section 7.4. Applications for macOS may be submitted to Apple for selection and distribution on the App Store, or may be separately distributed.

7.1 Delivery of Free Licensed Applications via the App Store

If Your Application qualifies as a Licensed Application, it is eligible for delivery to end-users via the App Store by Apple and/or an Apple Subsidiary. If You would like Apple and/or an Apple Subsidiary to deliver Your Licensed Application or authorize additional content, functionality or services You make available in Your Licensed Application through the use of the In-App Purchase API to end-users for free (no charge) via the App Store, then You appoint Apple and Apple Subsidiaries as Your legal agent and/or commissionaire pursuant to the terms of Schedule 1 for Licensed Applications designated by You as free-of-charge applications.

7.2 Schedule 2 and Schedule 3 for Fee-Based Licensed Applications; Receipts

If Your Application qualifies as a Licensed Application and You intend to charge end-users a fee of any kind for Your Licensed Application or within Your Licensed Application through the use of the In-App Purchase API, You must enter into a separate agreement (Schedule 2) with Apple and/or an Apple Subsidiary before any such commercial distribution of Your Licensed Application may take place via the App Store or before any such commercial delivery of additional content, functionality or services for which You charge end-users a fee may be authorized through the use of the In-App Purchase API in Your Licensed Application. If Your Application has been customized for use by specific third-party business customers, and You would like Apple to sign and distribute it through Apple’s applicable Custom App Distribution, then You must enter into a separate agreement (Schedule 3) with Apple and/or an Apple Subsidiary before any such distribution may take place. To the extent that You enter (or have previously entered) into Schedule 2 or Schedule 3 with Apple and/or an Apple Subsidiary, the terms of Schedule 2 or 3 will be deemed incorporated into this Agreement by this reference.

When an end-user installs Your Licensed Application, Apple will provide You with a transaction receipt signed with an Apple Certificate. It is Your responsibility to verify that such certificate and receipt were issued by Apple, as set forth in the Documentation. You are solely responsible for Your decision to rely on any such certificates and receipts. YOUR USE OF OR RELIANCE ON SUCH CERTIFICATES AND RECEIPTS IN CONNECTION WITH A PURCHASE OF A LICENSED APPLICATION IS AT YOUR SOLE RISK. APPLE MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ACCURACY, RELIABILITY, SECURITY, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO SUCH APPLE CERTIFICATES AND RECEIPTS. You agree that You will only use such receipts and certificates
in accordance with the Documentation, and that You will not interfere or tamper with the normal operation of such digital certificates or receipts, including but not limited to any falsification or other misuse.

7.3 Distribution on Registered Devices (Ad Hoc Distribution)

Subject to the terms and conditions of this Agreement, You may also distribute Your Applications for iOS, watchOS, iPadOS, and tvOS to individuals within Your company, organization, educational institution, group, or who are otherwise affiliated with You for use on a limited number of Registered Devices (as specified on the Program web portal), if Your Application has been digitally signed using Your Apple Certificate as described in this Agreement. By distributing Your Application in this manner on Registered Devices, You represent and warrant to Apple that Your Application complies with the Documentation and Program Requirements then in effect and You agree to cooperate with Apple and to answer questions and provide information about Your Application, as reasonably requested by Apple. You also agree to be solely responsible for determining which individuals within Your company, organization, educational institution or affiliated group should have access to and use of Your Applications and Registered Devices, and for managing such Registered Devices. Apple shall not be responsible for any costs, expenses, damages, losses (including without limitation lost business opportunities or lost profits) or other liabilities You may incur as a result of distributing Your Applications in this manner, or for Your failure to adequately manage, limit or otherwise control the access to and use of Your Applications and Registered Devices. You will be responsible for attaching or otherwise including, at Your discretion, any relevant usage terms with Your Applications. Apple will not be responsible for any violations of Your usage terms. You will be solely responsible for all user assistance, warranty and support of Your Applications.

7.4 TestFlight Distribution

A. Internal Distribution to Authorized Developers and App Store Connect users

You may use TestFlight for internal distribution of pre-release versions of Your Applications to a limited number of Your Authorized Developers or Your App Store Connect users who are members of Your company or organization, but solely for their internal use in testing, evaluating and/or developing Your Applications. Apple reserves the right to require You to cease distribution of such Applications to Your Authorized Developers or Your App Store Connect users through TestFlight, or to any particular Authorized Developer or App Store Connect user, at any time in its sole discretion.

B. External Distribution to Beta Testers

You may also use TestFlight for external distribution of pre-release versions of Your Applications to a limited number of Beta Testers (as specified in App Store Connect), but solely for their testing and evaluation of such pre-release versions of Your Applications and only if Your Application has been approved for such distribution by Apple as set forth in Section 6.4 (TestFlight Submission). You may not charge Your Beta Testers fees of any kind to participate in Apple’s TestFlight or for the use of any such pre-release versions. You may not use TestFlight for purposes that are not related to improving the quality, performance, or usability of pre-release versions of Your Application (e.g., continuous distribution of demo versions of Your Application in an attempt to circumvent the App Store or providing trial versions of Your Applications for purposes of soliciting favorable App Store ratings are prohibited uses). Further, if Your Application is primarily intended for children, You must verify that Your Beta Testers are of the age of majority in their jurisdiction. If You choose to add Beta Testers to TestFlight, then You are assuming responsibility for any invitations sent to such end-users and for obtaining their consent to contact them. Apple will use the email addresses that You provide through TestFlight only for purposes of sending invitations to such end-users via TestFlight. By uploading email addresses for the purposes of sending invites to Beta Testers, You warrant that You have an appropriate legal basis for using such emails addresses for the purposes of sending invites. If a Beta Tester requests that You stop contacting them (either through TestFlight or otherwise), then You agree to promptly do so.
C. Use of TestFlight Information
To the extent that TestFlight provides You with beta analytics information about Your end-user’s use of pre-release versions of Your Application (e.g., installation time, frequency of an individual’s use of an App, etc.) and/or other related information (e.g. tester suggestions, feedback, screenshots), You agree to use such data solely for purposes of improving Your Applications and related products. You agree not to provide such information to any third parties, except for a Service Provider who is assisting You in processing and analyzing such data on Your behalf and who is not permitted to use it for any other purpose or disclose it to any other party (and then only to the limited extent not prohibited by Apple). For clarity, You must not aggregate (or permit any third-party to aggregate) beta analytics information provided to You by Apple for Your Applications as part of TestFlight with other developers’ beta analytics information, or contribute such information to a repository for cross-developer beta analytics information. Further, You must not use any beta analytics information provided through TestFlight for purposes of de-anonymizing information obtained from or regarding a particular device or end-user outside of TestFlight (e.g., You may not attempt to connect data gathered through TestFlight for a particular end-user with information that is provided in an anonymized form through Apple’s analytics service).

Libraries:

7.5 Distribution of Libraries
You can develop Libraries using the Apple Software. Notwithstanding anything to the contrary in the Xcode and Apple SDKs Agreement, under this Agreement You may develop Libraries for iOS, watchOS, iPadOS, and tvOS using the applicable Apple SDKs that are provided as part of the Xcode and Apple SDKs license, provided that any such Libraries are developed and distributed solely for use with an iOS Product, Apple Watch, or Apple TV and that You limit use of such Libraries only to use with such products. If Apple determines that Your Library is not designed for use with an iOS Product, Apple Watch, or Apple TV, then Apple may require You to cease distribution of Your Library at any time, and You agree to promptly cease all distribution of such Library upon notice from Apple and cooperate with Apple to remove any remaining copies of such Library. For clarity, the foregoing limitation is not intended to prohibit the development of libraries for macOS.

7.6 No Other Distribution Authorized Under this Agreement
Except for the distribution of freely available Licensed Applications through the App Store or Custom App Distribution in accordance with Sections 7.1 and 7.2, the distribution of Applications for use on Registered Devices as set forth in Section 7.2 (Ad Hoc Distribution), the distribution of Applications for beta testing through TestFlight as set forth in Section 7.4, the distribution of Libraries in accordance with Section 7.5, the distribution of Passes in accordance with Attachment 5, the delivery of Safari Push Notifications on macOS, the distribution of Safari App Extensions on macOS, the distribution of Applications and libraries for macOS, and/or as otherwise permitted herein, no other distribution of programs or applications developed using the Apple Software is authorized or permitted hereunder. In the absence of a separate agreement with Apple, You agree not to distribute Your Application for iOS Products, Apple Watch, or Apple TV to third parties via other distribution methods or to enable or permit others to do so. You agree to distribute Your Covered Products only in accordance with the terms of this Agreement.

8. Program Fees
As consideration for the rights and licenses granted to You under this Agreement and Your participation in the Program, You agree to pay Apple the annual Program fee set forth on the Program website, unless You have received a valid fee waiver from Apple. Such fee is non-refundable, and any taxes that may be levied on the Apple Software, Apple Services or Your use of the Program shall be Your responsibility. Your Program fees must be paid up and not in arrears at the time You submit (or resubmit) Applications to Apple under this Agreement, and Your continued use of the Program web portal and Services is subject to Your payment of such fees.
fees, where applicable. If You opt-in to have Your annual Program fees paid on an auto-
renewing basis, then You agree that Apple may charge the credit card that You have on file with
Apple for such fees, subject to the terms You agree to on the Program web portal when You
choose to enroll in an auto-renewing membership.

9. Confidentiality

9.1 Information Deemed Apple Confidential
You agree that all pre-release versions of the Apple Software and Apple Services (including pre-
release Documentation), pre-release versions of Apple hardware, the FPS Deployment Package,
any terms and conditions contained herein that disclose pre-release features, and the terms and
conditions of Schedule 2 and Schedule 3 will be deemed “Apple Confidential Information”;
provided however that upon the commercial release of the Apple Software the terms and
conditions that disclose pre-release features of the Apple Software or services will no longer be
confidential. Notwithstanding the foregoing, Apple Confidential Information will not include:
(i) information that is generally and legitimately available to the public through no fault or breach
of Yours, (ii) information that is generally made available to the public by Apple, (iii) information
that is independently developed by You without the use of any Apple Confidential Information,
(iv) information that was rightfully obtained from a third party who had the right to transfer or
disclose it to You without limitation, or (v) any FOSS included in the Apple Software and
accompanied by licensing terms that do not impose confidentiality obligations on the use or
disclosure of such FOSS. Further, Apple agrees that You will not be bound by the foregoing
confidence terms with regard to technical information about pre-release Apple Software and
services disclosed by Apple at WWDC (Apple’s Worldwide Developers Conference), except that
You may not post screen shots of, write public reviews of, or redistribute any pre-release Apple
Software, Apple Services or hardware.

9.2 Obligations Regarding Apple Confidential Information
You agree to protect Apple Confidential Information using at least the same degree of care that
You use to protect Your own confidential information of similar importance, but no less than a
reasonable degree of care. You agree to use Apple Confidential Information solely for the
purpose of exercising Your rights and performing Your obligations under this Agreement and
agree not to use Apple Confidential Information for any other purpose, for Your own or any third
party’s benefit, without Apple’s prior written consent. You further agree not to disclose or
disseminate Apple Confidential Information to anyone other than: (i) those of Your employees and
contractors, or those of Your faculty and staff if You are an educational institution, who have a
need to know and who are bound by a written agreement that prohibits unauthorized use or
disclosure of the Apple Confidential Information; or (ii) except as otherwise agreed or permitted in
writing by Apple. You may disclose Apple Confidential Information to the extent required by law,
provided that You take reasonable steps to notify Apple of such requirement before disclosing the
Apple Confidential Information and to obtain protective treatment of the Apple Confidential
Information. You acknowledge that damages for improper disclosure of Apple Confidential
Information may be irreparable; therefore, Apple is entitled to seek equitable relief, including
injunction and preliminary injunction, in addition to all other remedies.

9.3 Information Submitted to Apple Not Deemed Confidential
Apple works with many application and software developers and some of their products may be
similar to or compete with Your Applications. Apple may also be developing its own similar or
competing applications and products or may decide to do so in the future. To avoid potential
misunderstandings and except as otherwise expressly set forth herein, Apple cannot agree, and
expressly disclaims, any confidentiality obligations or use restrictions, express or implied, with
respect to any information that You may provide in connection with this Agreement or the
Program, including but not limited to information about Your Application, Licensed Application
Information, and metadata (such disclosures will be referred to as “Licensee Disclosures”). You
agree that any such Licensee Disclosures will be non-confidential. Except as otherwise
expressly set forth herein, Apple will be free to use and disclose any Licensee Disclosures on an
unrestricted basis without notifying or compensating You. You release Apple from all liability and obligations that may arise from the receipt, review, use, or disclosure of any portion of any Licensee Disclosures. Any physical materials You submit to Apple will become Apple property and Apple will have no obligation to return those materials to You or to certify their destruction.

9.4 Press Releases and Other Publicity
You may not issue any press releases or make any other public statements regarding this Agreement, its terms and conditions, or the relationship of the parties without Apple’s express prior written approval, which may be withheld at Apple’s discretion.

10. Indemnification
To the extent permitted by applicable law, You agree to indemnify and hold harmless, and upon Apple’s request, defend, Apple, its directors, officers, employees, independent contractors and agents (each an “Apple Indemnified Party”) from any and all claims, losses, liabilities, damages, taxes, expenses and costs, including without limitation, attorneys’ fees and court costs (collectively, “Losses”), incurred by an Apple Indemnified Party and arising from or related to any of the following (but excluding for purposes of this Section, any Application for macOS that is distributed outside of the App Store and does not use any Apple Services or Certificates): (i) Your breach of any certification, covenant, obligation, representation or warranty in this Agreement, including Schedule 2 and Schedule 3 (if applicable); (ii) any claims that Your Covered Product or the distribution, sale, offer for sale, use or importation of Your Covered Product (whether alone or as an essential part of a combination), Licensed Application Information, metadata, or Pass Information violate or infringe any third party intellectual property or proprietary rights; (iii) Your breach of any of Your obligations under the EULA (as defined in Schedule 1 or Schedule 2 or Schedule 3 (if applicable)) for Your Licensed Application; (iv) Apple’s permitted use, promotion or delivery of Your Licensed Application, Licensed Application Information, Safari Push Notification, Safari App Extension (if applicable), Pass, Pass Information, metadata, related trademarks and logos, or images and other materials that You provide to Apple under this Agreement, including Schedule 2 or Schedule 3 (if applicable); (v) any claims, including but not limited to any end-user claims, regarding Your Covered Products, Licensed Application Information, Pass Information, or related logos, trademarks, content or images; or (vi) Your use (including Your Authorized Developers’ use) of the Apple Software or services, Your Licensed Application Information, Pass Information, metadata, Your Authorized Test Units, Your Registered Devices, Your Covered Products, or Your development and distribution of any of the foregoing.

You acknowledge that neither the Apple Software nor any Services are intended for use in the development of Covered Products in which errors or inaccuracies in the content, functionality, services, data or information provided by any of the foregoing or the failure of any of the foregoing, could lead to death, personal injury, or severe physical or environmental damage, and, to the extent permitted by law, You hereby agree to indemnify, defend and hold harmless each Apple Indemnified Party from any Losses incurred by such Apple Indemnified Party by reason of any such use.

In no event may You enter into any settlement or like agreement with a third party that affects Apple’s rights or binds Apple in any way, without the prior written consent of Apple.

11. Term and Termination
11.1 Term
The Term of this Agreement shall extend until the one (1) year anniversary of the original activation date of Your Program account. Thereafter, subject to Your payment of annual renewal fees and compliance with the terms of this Agreement, the Term will automatically renew for successive one (1) year terms, unless sooner terminated in accordance with this Agreement.
11.2 Termination
This Agreement and all rights and licenses granted by Apple hereunder and any services provided hereunder will terminate, effective immediately upon notice from Apple:
(a) if You or any of Your Authorized Developers fail to comply with any term of this Agreement other than those set forth below in this Section 11.2 and fail to cure such breach within 30 days after becoming aware of or receiving notice of such breach;
(b) if You or any of Your Authorized Developers fail to comply with the terms of Section 9 (Confidentiality);
(c) in the event of the circumstances described in the subsection entitled “Severability” below;
(d) if You, at any time during the Term, commence an action for patent infringement against Apple;
(e) if You become insolvent, fail to pay Your debts when due, dissolve or cease to do business, file for bankruptcy, or have filed against You a petition in bankruptcy; or
(f) if You engage, or encourage others to engage, in any misleading, fraudulent, improper, unlawful or dishonest act relating to this Agreement, including, but not limited to, misrepresenting the nature of Your submitted Application (e.g., hiding or trying to hide functionality from Apple’s review, falsifying consumer reviews for Your Application, engaging in payment fraud, etc.).

Apple may also terminate this Agreement, or suspend Your rights to use the Apple Software or services, if You fail to accept any new Program Requirements or Agreement terms as described in Section 4. Either party may terminate this Agreement for its convenience, for any reason or no reason, effective 30 days after providing the other party with written notice of its intent to terminate.

11.3 Effect of Termination
Upon the termination of this Agreement for any reason, You agree to immediately cease all use of the Apple Software and services and erase and destroy all copies, full or partial, of the Apple Software and any information pertaining to the services (including Your Push Application ID) and all copies of Apple Confidential Information in Your and Your Authorized Developers' possession or control. At Apple’s request, You agree to provide written certification of such destruction to Apple. Upon the expiration of the Delivery Period defined and set forth in Schedule 1, all Licensed Applications and Licensed Application Information in Apple’s possession or control shall be deleted or destroyed within a reasonable time thereafter, excluding any archival copies maintained in accordance with Apple’s standard business practices or required to be maintained by applicable law, rule or regulation. The following provisions shall survive any termination of this Agreement: Sections 1, 2.3, 2.5, 2.6, 3.1(d), 3.1(e), 3.1(f), 3.2(d), 3.2(e), 3.2(f), 3.2(g), and 3.3, the second paragraph of Section 5.1 (excluding the last two sentences other than the restrictions, which shall survive), the third paragraph of Section 5.1, the last sentence of the first paragraph of Section 5.3 and the limitations and restrictions of Section 5.3, Section 5.4, the first sentence of and the restrictions of Section 6.5, the restrictions of Section 6.6, the second paragraph of Section 6.8, Section 7.1 (Schedule 1 for the Delivery Period), the restrictions of Section 7.3, 7.4, and 7.5, Section 7.6, Section 9 through 14 inclusive; within Attachment 1, the last sentence of Section 1.1, Section 2, Section 3.2 (but only for existing promotions), the second and third sentences of Section 4, Section 5, and Section 6; within Attachment 2, Sections 1.3, 2, 3, 4, 5, 6, and 7; within Attachment 3, Sections 1, 2 (except the second sentence of Section 2.1), 3 and 4; within Attachment 4, Sections 1.2, 1.5, 1.6, 2, 3, and 4; within Attachment 5, Sections 2.2, 2.3, 2.4 (but only for existing promotions), 3.3, and 5; within Attachment 6, Sections 1.2, 1.3, 2, 3, and 4; and within Attachment 7, Section 1.1, and the last paragraph of Section 1.2 (but only for existing promotions). Apple will not be liable for compensation, indemnity, or damages of any sort as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement will be without prejudice to any other right or remedy Apple may have, now or in the future.
12. NO WARRANTY

The Apple Software or Services may contain inaccuracies or errors that could cause failures or loss of data and it may be incomplete. Apple and its licensors reserve the right to change, suspend, remove, or disable access to any Services (or any part thereof) at any time without notice. In no event will Apple or its licensors be liable for the removal of or disabling of access to any such Services. Apple or its licensors may also impose limits on the use of or access to certain Services, or may remove the Services for indefinite time periods or cancel the Services at any time and in any case and without notice or liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE APPLE SOFTWARE, SECURITY SOLUTION, AND ANY SERVICES IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. THE APPLE SOFTWARE, SECURITY SOLUTION, AND ANY SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE”, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE, APPLE’S AGENTS AND APPLE’S LICENSORS (COLLECTIVELY REFERRED TO AS “APPLE” FOR THE PURPOSES OF SECTIONS 12 AND 13) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE APPLE SOFTWARE, SECURITY SOLUTION, AND SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TIMELINESS, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. APPLE DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE APPLE SOFTWARE, SECURITY SOLUTION, OR SERVICES, THAT THE APPLE SOFTWARE, SECURITY SOLUTION, OR SERVICES WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE APPLE SOFTWARE, SECURITY SOLUTION, OR THE PROVISION OF SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, THAT DEFECTS OR ERRORS IN THE APPLE SOFTWARE, SECURITY SOLUTION, OR SERVICES WILL BE CORRECTED, OR THAT THE APPLE SOFTWARE, SECURITY SOLUTION, OR SERVICES WILL BE COMPATIBLE WITH FUTURE APPLE PRODUCTS, SERVICES OR SOFTWARE OR ANY THIRD PARTY SOFTWARE, APPLICATIONS, OR SERVICES, OR THAT ANY INFORMATION STORED OR TRANSMITTED THROUGH ANY APPLE SOFTWARE OR SERVICES WILL NOT BE LOST, CORRUPTED OR DAMAGED. YOU ACKNOWLEDGE THAT THE APPLE SOFTWARE AND SERVICES ARE NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE ERRORS, DELAYS, FAILURES OR INACCURACIES IN THE TRANSMISSION OR STORAGE OF DATA OR INFORMATION BY OR THROUGH THE APPLE SOFTWARE OR SERVICES COULD LEAD TO DEATH, PERSONAL INJURY, OR FINANCIAL, PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE, INCLUDING WITHOUT LIMITATION THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, LIFE SUPPORT OR WEAPONS SYSTEMS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY APPLE OR AN APPLE AUTHORIZED REPRESENTATIVE WILL CREATE A WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. SHOULD THE APPLE SOFTWARE, SECURITY SOLUTION, OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. Location data as well as any maps data provided by any Services or software is for basic navigational purposes only and is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate or incomplete location data may lead to death, personal injury, property or environmental damage. Neither Apple nor any of its licensors guarantees the availability, accuracy, completeness, reliability, or timeliness of location data or any other data or information displayed by any Services or software.

13. LIMITATION OF LIABILITY

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING, WITHOUT
LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, YOUR USE OR INABILITY TO USE THE APPLE SOFTWARE, SECURITY SOLUTION, SERVICES, APPLE CERTIFICATES, OR YOUR DEVELOPMENT EFFORTS OR PARTICIPATION IN THE PROGRAM, HOWEVER CAUSED, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. In no event shall Apple’s total liability to You under this Agreement for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty dollars ($50.00).

14. General Legal Terms

14.1 Third Party Notices
Portions of the Apple Software or Services may utilize or include third party software and other copyrighted material. Acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the Apple Software and Services, and Your use of such material is governed by their respective terms.

14.2 Consent to Collection and Use of Data

A. Pre-Release Versions of iOS, watchOS, tvOS, iPadOS, and macOS
In order to provide, test and help Apple, its partners, and third party developers improve their products and services, and unless You or Your Authorized Developers opt out in the pre-release versions of iOS, watchOS, tvOS, iPadOS, or macOS, as applicable, You acknowledge that Apple and its subsidiaries and agents will be collecting, using, storing, transmitting, processing and analyzing (collectively, “Collecting”) diagnostic, technical, and usage logs and information from Your Authorized Test Units (that are running pre-release versions of the Apple Software and services) as part of the developer seeding process. This information will be Collected in a form that does not personally identify You or Your Authorized Developers and may be Collected from Your Authorized Test Units at any time, including when You or Your Authorized Developers sync to iTunes or automatically over a secure over-the-air connection. The information that would be Collected includes, but is not limited to, general diagnostic and usage data, various unique device identifiers, various unique system or hardware identifiers, details about hardware and operating system specifications, performance statistics, and data about how You use Your Authorized Test Unit, system and application software, and peripherals, and, if Location Services is enabled, certain location information. You agree that Apple may share such diagnostic, technical, and usage logs and information with partners and third-party developers for purposes of allowing them to improve their products and services that operate on or in connection with Apple-branded products. By installing or using pre-release versions of iOS, watchOS, tvOS, iPadOS, or macOS on Your Authorized Test Units, You acknowledge and agree that Apple and its subsidiaries and agents have Your permission to Collect all such information and use it as set forth above in this Section.

B. Other Pre-Release Apple Software and Services
In order to test, provide and improve Apple’s products and services, and only if You choose to install or use other pre-release Apple Software or Services provided as part of the developer seeding process or Program, You acknowledge that Apple and its subsidiaries and agents may be Collecting diagnostic, technical, usage and related information from other pre-release Apple Software and Services. Apple will notify You about the Collection of such information on the Program web portal, and You should carefully review the Release Notes and other information disclosed by Apple in such location prior to choosing whether or not to install or use any such pre-release Apple Software or Services. By installing or using such pre-release Apple Software and Services, You acknowledge and agree that Apple and its subsidiaries and agents have Your permission to Collect any and all such information and use it as set forth above.
C. Device Deployment Services

In order to set up and use the device provisioning, account authentication, and deployment features of the Apple Software and Services, certain unique identifiers for Your computer, iOS Products, watchOS devices, tvOS devices, and account information may be needed. These unique identifiers may include Your email address, Your Apple ID, a hardware identifier for Your computer, and device identifiers entered by You into the Apple Software or Services for such Apple-branded products. Such identifiers may be logged in association with Your interaction with the Service and Your use of these features and the Apple Software and Services. **By using these features, You agree that Apple and its subsidiaries and agents may Collect this information for the purpose of providing the Apple Software and Services, including using such identifiers for account verification and anti-fraud measures.** If You do not want to provide this information, do not use the provisioning, deployment or authentication features of the Apple Software or Services.

D. Apple Services

In order to test, provide and improve Apple’s products and services, and only if You choose to use the Services provided hereunder (and except as otherwise provided herein), You acknowledge that Apple and its subsidiaries and agents may be Collecting diagnostic, technical, usage and related information from the Apple Services. Some of this information will be Collected in a form that does not personally identify You. However, in some cases, Apple may need to Collect information that would personally identify You, but only if Apple has a good faith belief that such Collection is reasonably necessary to: (a) provide the Apple Services; (b) comply with legal process or request; (c) verify compliance with the terms of this Agreement; (d) prevent fraud, including investigating any potential technical issues or violations; or (e) protect the rights, property, security or safety of Apple, its developers, customers or the public as required or permitted by law. **By installing or using such Apple Services, You acknowledge and agree that Apple and its subsidiaries and agents have Your permission to Collect any and all such information and use it as set forth in this Section.** Further, You agree that Apple may share the diagnostic, technical, and usage logs and information (excluding personally identifiable information) with partners and third-party developers for purposes of allowing them to improve their products and services that operate on or in connection with Apple-branded products.

E. Privacy Policy

Data collected pursuant to this Section 14.2 will be treated in accordance with Apple’s Privacy Policy which can be viewed at http://www.apple.com/legal/privacy.

14.3 Assignment; Relationship of the Parties

This Agreement may not be assigned, nor may any of Your obligations under this Agreement be delegated, in whole or in part, by You by operation of law, merger, or any other means without Apple’s express prior written consent and any attempted assignment without such consent will be null and void. To submit a request for Apple’s consent to assignment, please email devprograms@apple.com, or, notwithstanding Section 14.5, send a written request to Developer Relations Customer Support, 1 Infinite Loop MS 301-1TEV Cupertino, CA, USA 95014. Except for the agency appointment as specifically set forth in Schedule 1 (if applicable), this Agreement will not be construed as creating any other agency relationship, or a partnership, joint venture, fiduciary duty, or any other form of legal association between You and Apple, and You will not represent to the contrary, whether expressly, by implication, appearance or otherwise. This Agreement is not for the benefit of any third parties.

14.4 Independent Development

Nothing in this Agreement will impair Apple’s right to develop, acquire, license, market, promote, or distribute products or technologies that perform the same or similar functions as, or otherwise compete with, Licensed Applications, Covered Products, or any other products or technologies that You may develop, produce, market, or distribute.
14.5 Notices
Any notices relating to this Agreement shall be in writing, except as otherwise set forth in Section 14.3. Notices will be deemed given by Apple when sent to You at the email address or mailing address You provided during the sign-up process. Except as set forth in Section 14.3, all notices to Apple relating to this Agreement will be deemed given (a) when delivered personally, (b) three business days after having been sent by commercial overnight carrier with written proof of delivery, and (c) five business days after having been sent by first class or certified mail, postage prepaid, to this Apple address: Apple Developer Program Licensing, Apple Inc., App Store Legal, One Apple Park Way, 169-4ISM, Cupertino, California, 95014 U.S.A. You consent to receive notices by email and agree that any such notices that Apple sends You electronically will satisfy any legal communication requirements. A party may change its email or mailing address by giving the other written notice as described above.

14.6 Severability
If a court of competent jurisdiction finds any clause of this Agreement to be unenforceable for any reason, that clause of this Agreement shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. However, if applicable law prohibits or restricts You from fully and specifically complying with, or appointing Apple and Apple Subsidiaries as Your agent under Schedule 1 or the Sections of this Agreement entitled “Internal Use License and Restrictions”, “Your Obligations” or “Apple Certificates; Revocation”, or prevents the enforceability of any of those Sections or Schedule 1, this Agreement will immediately terminate and You must immediately discontinue any use of the Apple Software as described in the Section entitled “Term and Termination.”

14.7 Waiver and Construction
Failure by Apple to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. Any laws or regulations that provide that the language of a contract will be construed against the drafter will not apply to this Agreement. Section headings are for convenience only and are not to be considered in construing or interpreting this Agreement.

14.8 Export Control
You may not use, export, re-export, import, sell, release, or transfer the Apple Software, Services, or Documentation except as authorized by United States law, the laws of the jurisdiction in which You obtained the Apple Software, and any other applicable laws and regulations. In particular, but without limitation, the Apple Software, Services, and Documentation may not be exported, or re-exported, transferred, or released (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Department of Commerce’s Denied Persons List or Entity List or any other restricted party lists. By using the Apple Software, Services, or Documentation, You represent and warrant that You are not located in any such country or on any such list. You also agree that You will not use the Apple Software, Services, or Documentation for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missile, chemical or biological weapons. You certify that pre-release versions of the Apple Software, Services or Documentation will only be used for development and testing purposes, and will not be rented, sold, leased, sublicensed, assigned, or otherwise transferred. Further, You certify that You will not transfer or export any product, process or service that is a direct product of such pre-release Apple Software, Services, or Documentation.

14.9 Government End-users
The Apple Software and Documentation are “Commercial Items”, as that term is defined at 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software
Documentation are being licensed to U.S. Government end-users (a) only as Commercial Items and (b) with only those rights as are granted to all other end-users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

14.10 Dispute Resolution; Governing Law
Any litigation or other dispute resolution between You and Apple arising out of or relating to this Agreement, the Apple Software, or Your relationship with Apple will take place in the Northern District of California, and You and Apple hereby consent to the personal jurisdiction of and exclusive venue in the state and federal courts within that District with respect any such litigation or dispute resolution. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California, except that body of California law concerning conflicts of law. Notwithstanding the foregoing:

(a) If You are an agency, instrumentality or department of the federal government of the United States, then this Agreement shall be governed in accordance with the laws of the United States of America, and in the absence of applicable federal law, the laws of the State of California will apply. Further, and notwithstanding anything to the contrary in this Agreement (including but not limited to Section 10 (Indemnification)), all claims, demands, complaints and disputes will be subject to the Contract Disputes Act (41 U.S.C. §§601-613), the Tucker Act (28 U.S.C. § 1346(a) and § 1491), or the Federal Tort Claims Act (28 U.S.C. §§ 1346(b), 2401-2402, 2671-2672, 2674-2680), as applicable, or other applicable governing authority. For the avoidance of doubt, if You are an agency, instrumentality, or department of the federal, state or local government of the U.S. or a U.S. public and accredited educational institution, then Your indemnification obligations are only applicable to the extent they would not cause You to violate any applicable law (e.g., the Anti-Deficiency Act), and You have any legally required authorization or authorizing statute;

(b) If You (as an entity entering into this Agreement) are a U.S. public and accredited educational institution or an agency, instrumentality, or department of a state or local government within the United States, then (a) this Agreement will be governed and construed in accordance with the laws of the state (within the U.S.) in which Your entity is domiciled, except that body of state law concerning conflicts of law; and (b) any litigation or other dispute resolution between You and Apple arising out of or relating to this Agreement, the Apple Software, or Your relationship with Apple will take place in federal court within the Northern District of California, and You and Apple hereby consent to the personal jurisdiction of and exclusive venue of such District unless such consent is expressly prohibited by the laws of the state in which Your entity is domiciled; and

(c) If You are an international, intergovernmental organization that has been conferred immunity from the jurisdiction of national courts through Your intergovernmental charter or agreement, then any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. The place of arbitration shall be London, England; the language shall be English; and the number of arbitrators shall be three. Upon Apple’s request, You agree to provide evidence of Your status as an intergovernmental organization with such privileges and immunities.

This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

14.11 Entire Agreement; Governing Language
This Agreement constitutes the entire agreement between the parties with respect to the use of the Apple Software, Apple Services and Apple Certificates licensed hereunder and, except as otherwise set forth herein, supersedes all prior understandings and agreements regarding its subject matter. Notwithstanding the foregoing, to the extent that You are provided with pre-release materials under the Program and such pre-release materials are subject to a separate license agreement, You agree that the license agreement accompanying such materials in addition to Section 9 (Confidentiality) of this Agreement shall also govern Your use of such materials. If You have entered or later enter into the Xcode and Apple SDKs Agreement, this Apple Developer Program License Agreement will govern in the event of any inconsistencies
between the two with respect to the same subject matter; provided, however, that this Apple Developer Program License Agreement is not intended to prevent You from exercising any rights granted to You in the Xcode and Apple SDKs Agreement in accordance with the terms and conditions set forth therein. This Agreement may be modified only: (a) by a written amendment signed by both parties, or (b) to the extent expressly permitted by this Agreement (for example, by Apple by written or email notice to You). Any translation is provided as a courtesy to You, and in the event of a dispute between the English and any non-English version, the English version of this Agreement shall govern, to the extent not prohibited by local law in Your jurisdiction. If You are located in the province of Quebec, Canada or are a government organization within France, then the following clause applies to You: The parties hereby confirm that they have requested that this Agreement and all related documents be drafted in English. Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.
Additional Terms for Apple Push Notification Service and Local Notifications

The following terms are in addition to the terms of the Agreement and apply to any use of the APN (Apple Push Notification Service):

1. **Use of the APN and Local Notifications**

1.1 You may use the APN only in Your Applications, Your Passes, and/or in sending Safari Push Notifications to the macOS desktop of users of Your Site who have opted in to receive Notifications through Safari on macOS. You, Your Application and/or Your Pass may access the APN only via the APN API and only if You have been assigned a Push Application ID by Apple. Except for a Service Provider who is assisting You with using the APN, You agree not to share Your Push Application ID with any third party. You understand that You will not be permitted to access or use the APN after expiration or termination of Your Agreement.

1.2 You are permitted to use the APN and the APN APIs only for the purpose of sending Push Notifications to Your Application, Your Pass, and/or to the macOS desktop of users of Your Site who have opted in to receive Notifications through Safari on macOS as expressly permitted by the Agreement, the APN Documentation and all applicable laws and regulations (including all intellectual property laws). You further agree that You must disclose to Apple any use of the APN as part of the submission process for Your Application.

1.3 You understand that before You send an end-user any Push Notifications through the APN, the end-user must consent to receive such Notifications. You agree not to disable, override or otherwise interfere with any Apple-implemented consent panels or any Apple system preferences for enabling or disabling Notification functionality. If the end-user's consent to receive Push Notifications is denied or later withdrawn, You may not send the end-user Push Notifications.

2. **Additional Requirements**

2.1 You may not use the APN or Local Notifications for the purpose of sending unsolicited messages to end-users or for the purpose of phishing or spamming, including, but not limited to, engaging in any types of activities that violate anti-spamming laws and regulations, or that are otherwise improper, inappropriate or illegal. The APN and Local Notifications should be used for sending relevant messages to a user that provide a benefit (e.g., a response to an end-user request for information, provision of pertinent information relevant to the Application).

2.2 You may not use the APN or Local Notifications for the purposes of advertising, product promotion, or direct marketing of any kind (e.g., up-selling, cross-selling, etc.), including, but not limited to, sending any messages to promote the use of Your Application or advertise the availability of new features or versions. Notwithstanding the foregoing, You may use the APN or Local Notifications for promotional purposes in connection with Your Pass so long as such use is directly related to the Pass, e.g., a store coupon may be sent to Your Pass in Wallet.

2.3 You may not excessively use the overall network capacity or bandwidth of the APN, or unduly burden an iOS Product, Apple Watch, macOS or an end-user with excessive Push Notifications or Local Notifications, as may be determined by Apple in its reasonable discretion. In addition, You agree not to harm or interfere with Apple’s networks or servers, or any third party servers or networks connected to the APN, or otherwise disrupt other developers’ use of the APN.

2.4 You may not use the APN or Local Notifications to send material that contains any obscene, pornographic, offensive or defamatory content or materials of any kind (text, graphics,
images, photographs, sounds, etc.), or other content or materials that in Apple’s reasonable judgment may be found objectionable by the end-user of Your Application, Pass or Site.

2.5 You may not transmit, store or otherwise make available any material that contains viruses or any other computer code, files or programs that may harm, disrupt or limit the normal operation of the APN or an iOS Product, Apple Watch, or macOS, and You agree not to disable, spoof, hack or otherwise interfere with any security, digital signing, verification or authentication mechanisms that are incorporated in or used by the APN, or enable others to do so.

3. Additional Terms for Website Push IDs

3.1 Subject to the terms of this Agreement, You understand and agree that Safari Push Notifications that You send using Your Website Push ID must be sent under Your own name, trademark or brand (e.g., a user should know that the communication is coming from Your Site) and must include an icon, trademark, logo or other identifying mark for Your Site. You agree not to misrepresent or impersonate another Site or entity or otherwise mislead users about the originator of the Safari Push Notification. To the extent that You reference a third party’s trademark or brand within Your Safari Push Notification, You represent and warrant that You have any necessary rights.

3.2 By enabling the APN and sending Safari Push Notifications for Your Site as permitted in this Agreement, You hereby permit Apple to use (i) screen shots of Your Safari Push Notifications on macOS; and (ii) trademarks and logos associated with such Notifications, for promotional purposes in Apple’s marketing materials, excluding those portions which You do not have the right to use for promotional purposes and which You identify in writing to Apple. You also permit Apple to use images and other materials that You may provide to Apple, at Apple’s reasonable request, for promotional purposes in marketing materials.

4. Delivery by the APN or via Local Notifications. You understand and agree that in order to provide the APN and make Your Push Notifications available on iOS Products, Apple Watch, or macOS, Apple may transmit Your Push Notifications across various public networks, in various media, and modify or change Your Push Notifications to comply with the technical and other requirements for connecting to networks or devices. You acknowledge and agree that the APN is not, and is not intended to be, a guaranteed or secure delivery service, and You shall not use or rely upon it as such. Further, as a condition to using the APN or delivering Local Notifications, You agree not to transmit sensitive personal or confidential information belonging to an individual (e.g., a social security number, financial account or transactional information, or any information where the individual may have a reasonable expectation of secure transmission) as part of any such Notification, and You agree to comply with any applicable notice or consent requirements with respect to any collection, transmission, maintenance, processing or use of an end-user’s personal information.

5. Your Acknowledgements.

5.1 Apple may at any time, and from time to time, with or without prior notice to You (a) modify the APN, including changing or removing any feature or functionality, or (b) modify, deprecate, reissue or republish the APN APIs. You understand that any such modifications may require You to change or update Your Applications, Passes or Sites at Your own cost. Apple has no express or implied obligation to provide, or continue to provide, the APN and may suspend or discontinue all or any portion of the APN at any time. Apple shall not be liable for any losses, damages or costs of any kind incurred by You or any other party arising out of or related to any such service suspension or discontinuation or any such modification of the APN or APN APIs.

5.2 The APN is not available in all languages or in all countries and Apple makes no representation that the APN is appropriate or available for use in any particular location. To the
extent You choose to access and use the APN, You do so at Your own initiative and are responsible for compliance with any applicable laws, including but not limited to any local laws.

5.3 Apple provides the APN to You for Your use with Your Application, Pass, or Site, and does not provide the APN directly to any end-user. You acknowledge and agree that any Push Notifications are sent by You, not Apple, to the end-user of Your Application, Pass or Site, and You are solely liable and responsible for any data or content transmitted therein and for any such use of the APN. Further, You acknowledge and agree that any Local Notifications are sent by You, not Apple, to the end-user of Your Application, and You are solely liable and responsible for any data or content transmitted therein.

5.4 Apple makes no guarantees to You in relation to the availability or uptime of the APN and is not obligated to provide any maintenance, technical or other support for the APN.

5.5 Apple reserves the right to remove Your access to the APN, limit Your use of the APN, or revoke Your Push Application ID at any time in its sole discretion.

5.6 Apple may monitor and collect information (including but not limited to technical and diagnostic information) about Your usage of the APN to aid Apple in improving the APN and other Apple products or services and to verify Your compliance with this Agreement; provided however that Apple will not access or disclose the content of any Push Notification unless Apple has a good faith belief that such access or disclosure is reasonably necessary to: (a) comply with legal process or request; (b) enforce the terms of this Agreement, including investigation of any potential violation hereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Apple, its developers, customers or the public as required or permitted by law.

6. Additional Liability Disclaimer. APPLE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY USE OF THE APN, INCLUDING ANY INTERRUPTIONS TO THE APN OR ANY USE OF NOTIFICATIONS, INCLUDING, BUT NOT LIMITED TO, ANY POWER OUTAGES, SYSTEM FAILURES, NETWORK ATTACKS, SCHEDULED OR UNSCHEDULED MAINTENANCE, OR OTHER INTERRUPTIONS.
Attachment 2  
(to the Agreement)  
Additional Terms for Use of the In-App Purchase API

The following terms are in addition to the terms of the Agreement and apply to any use of the In-App Purchase API in Your Application:

1. **Use of the In-App Purchase API**

   1.1 You may use the In-App Purchase API only to enable end-users to access or receive content, functionality, or services that You make available for use within Your Application (e.g., digital books, additional game levels, access to a turn-by-turn map service). You may not use the In-App Purchase API to offer goods or services to be used outside of Your Application.

   1.2 You must submit to Apple for review and approval all content, functionality, or services that You plan to provide through the use of the In-App Purchase API in accordance with these terms and the processes set forth in Section 6 (Application Submission and Selection) of the Agreement. For all submissions, You must provide the name, text description, price, unique identifier number, and other information that Apple reasonably requests (collectively, the “Submission Description”). Apple reserves the right to review the actual content, functionality or service that has been described in the Submission Descriptions at any time, including, but not limited to, in the submission process and after approval of the Submission Description by Apple. If You would like to provide additional content, functionality or services through the In-App Purchase API that are not described in Your Submission Description, then You must first submit a new or updated Submission Description for review and approval by Apple prior to making such items available through the use of the In-App Purchase API. Apple reserves the right to withdraw its approval of content, functionality, or services previously approved, and You agree to stop making any such content, functionality, or services available for use within Your Application.

   1.3 All content, functionality, and services offered through the In-App Purchase API are subject to the Program Requirements for Applications, and after such content, services or functionality are added to a Licensed Application, they will be deemed part of the Licensed Application and will be subject to all the same obligations and requirements. For clarity, Applications that provide keyboard extension functionality may not use the In-App Purchase API within the keyboard extension itself; however, they may continue to use the In-App Purchase API in separate areas of the Application.

2. **Additional Restrictions**

   2.1 You may not use the In-App Purchase API to enable an end-user to set up a pre-paid account to be used for subsequent purchases of content, functionality, or services, or otherwise create balances or credits that end-users can redeem or use to make purchases at a later time.

   2.2 You may not enable end-users to purchase Currency of any kind through the In-App Purchase API, including but not limited to any Currency for exchange, gifting, redemption, transfer, trading or use in purchasing or obtaining anything within or outside of Your Application. “Currency” means any form of currency, points, credits, resources, content or other items or units recognized by a group of individuals or entities as representing a particular value and that can be transferred or circulated as a medium of exchange.

   2.3 Content and services may be offered through the In-App Purchase API on a subscription basis (e.g., subscriptions to newspapers and magazines). Rentals of content, services or functionality through the In-App Purchase API are not allowed (e.g., use of particular content may not be restricted to a pre-determined, limited period of time).
2.4 You may not use the In-App Purchase API to send any software updates to Your Application or otherwise add any additional executable code to Your Application. An In-App Purchase item must either already exist in Your Application waiting to be unlocked, be streamed to Your Application after the In-App Purchase API transaction has been completed, or be downloaded to Your Application solely as data after such transaction has been completed.

2.5 You may not use the In-App Purchase API to deliver any items that contain content or materials of any kind (text, graphics, images, photographs, sounds, etc.) that in Apple’s reasonable judgment may be found objectionable or inappropriate, for example, materials that may be considered obscene, pornographic, or defamatory.

2.6 With the exception of items of content that an end-user consumes or uses up within Your Application (e.g., virtual supplies such as construction materials) (a “Consumable”), any other content, functionality, services or subscriptions delivered through the use of the In-App Purchase API (e.g., a sword for a game) (a “Non-Consumable”) must be made available to end-users in accordance with the same usage rules as Licensed Applications (e.g., any such content, services or functionality must be available to all of the devices associated with an end-user’s account). You will be responsible for identifying Consumable items to Apple and for disclosing to end-users that Consumables will not be available for use on other devices.

3. Your Responsibilities

3.1 For each successfully completed transaction made using the In-App Purchase API, Apple will provide You with a transaction receipt. It is Your responsibility to verify the validity of such receipt prior to the delivery of any content, functionality, or services to an end-user and Apple will not be liable for Your failure to verify that any such transaction receipt came from Apple.

3.2 Unless Apple provides You with user interface elements, You are responsible for developing the user interface Your Application will display to end-users for orders made through the In-App Purchase API. You agree not to misrepresent, falsely claim, mislead or engage in any unfair or deceptive acts or practices regarding the promotion and sale of items through Your use of the In-App Purchase API, including, but not limited to, in the Licensed Application Information and any metadata that You submit through App Store Connect. You agree to comply with all applicable laws and regulations, including those in any jurisdictions in which You make content, functionality, services or subscriptions available through the use of the In-App Purchase API, including but not limited to consumer laws and export regulations.

3.3 Apple may provide hosting services for Non-Consumables that You would like to provide to Your end-users through the use of the In-App Purchase API. Even if Apple hosts such Non-Consumables on Your behalf, You are responsible for providing items ordered through the In-App Purchase API in a timely manner (i.e., promptly after Apple issues the transaction receipt, except in cases where You have disclosed to Your end-user that the item will be made available at a later time) and for complying with all applicable laws in connection therewith, including but not limited to, laws, rules and regulations related to cancellation or delivery of ordered items. You are responsible for maintaining Your own records for all such transactions.

3.4 You will not issue any refunds to end-users of Your Application, and You agree that Apple may issue refunds to end-users in accordance with the terms of Schedule 2.

4. Apple Services

4.1 From time to time, Apple may choose to offer additional services and functionality relating to In-App Purchase API transactions. Apple makes no guarantees that the In-App Purchase API or any Services will continue to be made available to You or that they will meet Your requirements, be uninterrupted, timely, secure or free from error, that any information that You
obtain from the In-App Purchase API or any Services will be accurate or reliable or that any defects will be corrected.

4.2 You understand that You will not be permitted to access or use the In-App Purchase API after expiration or termination of Your Agreement.

5. Your Acknowledgements. You acknowledge and agree that:

Apple may at any time, and from time to time, with or without prior notice to You (a) modify the In-App Purchase API, including changing or removing any feature or functionality, or (b) modify, deprecate, reissue or republish the In-App Purchase API. You understand that any such modifications may require You to change or update Your Applications at Your own cost in order to continue to use the In-App Purchase API. Apple has no express or implied obligation to provide, or continue to provide, the In-App Purchase API or any services related thereto and may suspend or discontinue all or any portion of thereof at any time. Apple shall not be liable for any losses, damages or costs of any kind incurred by You or any other party arising out of or related to any suspension, discontinuation or modification of the In-App Purchase API or any services related thereto. Apple makes no guarantees to You in relation to the availability or uptime of the In-App Purchase API or any other services that Apple may provide to You in connection therewith, and Apple is not obligated to provide any maintenance, technical or other support related thereto. Apple provides the In-App Purchase API to You for Your use with Your Application, and may provide services to You in connection therewith (e.g., hosting services for Non-Consumable items). Apple is not responsible for providing or unlocking any content, functionality, services or subscriptions that an end-user orders through Your use of the In-App Purchase API. You acknowledge and agree that any such items are made available by You, not Apple, to the end-user of Your Application, and You are solely liable and responsible for such items ordered through the use of the In-App Purchase API and for any such use of the In-App Purchase API in Your Application or for any use of services in connection therewith.

6. Use of Digital Certificates for In-App Purchase. When an end-user completes a transaction using the In-App Purchase API in Your Application, Apple will provide You with a transaction receipt signed with an Apple Certificate. It is Your responsibility to verify that such certificate and receipt were issued by Apple, as set forth in the Documentation. You are solely responsible for Your decision to rely on any such certificates and receipts. YOUR USE OF OR RELIANCE ON SUCH CERTIFICATES AND RECEIPTS IN CONNECTION WITH THE IN-APP PURCHASE API IS AT YOUR SOLE RISK. APPLE MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ACCURACY, RELIABILITY, SECURITY, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO SUCH APPLE CERTIFICATES AND RECEIPTS. You agree that You will only use such receipts and certificates in accordance with the Documentation, and that You will not interfere or tamper with the normal operation of such digital certificates or receipts, including but not limited to any falsification or other misuse.

7. Additional Liability Disclaimer. APPLE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM THE USE OF THE IN-APP PURCHASE API AND ANY SERVICES, INCLUDING, BUT NOT LIMITED TO, (I) ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, OR OTHER INTANGIBLE LOSS, (II) ANY CHANGES WHICH APPLE MAY MAKE TO THE IN-APP PURCHASE API OR ANY SERVICES, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE IN-APP PURCHASE API OR ANY SERVICES (OR ANY FEATURES WITHIN THE SERVICES) PROVIDED THEREWITH, OR (III) THE DELETION OF, CORRUPTION OF, OR FAILURE TO PROVIDE ANY DATA TRANSMITTED BY OR THROUGH YOUR USE OF THE IN-APP PURCHASE API OR SERVICES. It is Your responsibility to maintain appropriate alternate backup of all Your information and data, including but not limited to any Non-Consumables that You may provide to Apple for hosting services.
Attachment 3  
(to the Agreement)  
Additional Terms for the Game Center

The following terms are in addition to the terms of the Agreement and apply to any use of the Game Center service by You or Your Application.

1. Use of the Game Center service

1.1 You and Your Application may not connect to or use the Game Center service in any way not expressly authorized by Apple. You agree to only use the Game Center service in accordance with this Agreement (including this Attachment 3), the Game Center Documentation and in accordance with all applicable laws. You understand that neither You nor Your Application will be permitted to access or use the Game Center service after expiration or termination of Your Agreement.

1.2 Apple may provide You with a unique identifier which is associated with an end-user’s alias as part of the Game Center service (the “Player ID”). You agree to not display the Player ID to the end-user or to any third party, and You agree to only use the Player ID for differentiation of end-users in connection with Your use of the Game Center. You agree not to reverse look-up, trace, relate, associate, mine, harvest, or otherwise exploit the Player ID, aliases or other data or information provided by the Game Center service, except to the extent expressly permitted herein. For example, You will not attempt to determine the real identity of an end-user.

1.3 You will only use information provided by the Game Center service as necessary for providing services and functionality for Your Applications. For example, You will not host or export any such information to a third party service. Further, You agree not to transfer or copy any user information or data (whether individually or in the aggregate) obtained through the Game Center service to a third party except as necessary for providing services and functionality for Your Applications, and then only with express user consent and only if not otherwise prohibited in this Agreement.

1.4 You will not attempt to gain (or enable others to gain) unauthorized use or access to the Game Center service (or any part thereof) in any way, including but not limited to obtaining information from the Game Center service using any method not expressly permitted by Apple. For example, You may not use packet sniffers to intercept any communications protocols from systems or networks connected to the Game Center, scrape any data or user information from the Game Center, or use any third party software to collect information through the Game Center about players, game data, accounts, or service usage patterns.

2. Additional Restrictions

2.1 You agree not to harm or interfere with Apple’s networks or servers, or any third party servers or networks connected to the Game Center service, or otherwise disrupt other developers' or end-users' use of the Game Center. You agree that, except for testing and development purposes, You will not create false accounts through the use of the Game Center service or otherwise use the Game Center service to misrepresent information about You or Your Application in a way that would interfere with an end-users’ use of the Game Center service, e.g., creating inflated high scores through the use of cheat codes or falsifying the number of user accounts for Your Application.

2.2 You will not institute, assist, or enable any disruptions of the Game Center, such as through a denial of service attack, through the use of an automated process or service such as a spider, script, or bot, or through exploiting any bug in the Game Center service or Apple Software. You agree not to probe, test or scan for vulnerabilities in the Game Center service. You further
agree not to disable, spoof, hack, undermine or otherwise interfere with any data protection, security, verification or authentication mechanisms that are incorporated in or used by the Game Center service, or enable others to do so.

2.3 You will not transmit, store or otherwise make available any material that contains viruses or any other computer code, files or programs that may harm, disrupt or limit the normal operation of the Game Center or an iOS Product.

2.4 You agree not to use any portion of the Game Center service for sending any unsolicited, improper or inappropriate messages to end-users or for the purpose of poaching, phishing or spamming of Game Center users. You will not reroute (or attempt to reroute) users of the Game Center to another service using any information You obtain through the use of the Game Center service.

2.5 You shall not charge any fees to end-users for access to the Game Center service or for any data or information provided therein.

2.6 To the extent that Apple permits You to manage certain Game Center features and functionality for Your Application through App Store Connect (e.g., the ability to block fraudulent users or eliminate suspicious leaderboard scores from Your Application’s leaderboard), You agree to use such methods only when You have a reasonable belief that such users or scores are the result of misleading, fraudulent, improper, unlawful or dishonest acts.

3. Your Acknowledgements. You acknowledge and agree that:

3.1 Apple may at any time, and from time to time, with or without prior notice to You (a) modify the Game Center service, including changing or removing any feature or functionality, or (b) modify, deprecate, reissue or republish the Game Center APIs or related APIs. You understand that any such modifications may require You to change or update Your Applications at Your own cost. Apple has no express or implied obligation to provide, or continue to provide, the Game Center service and may suspend or discontinue all or any portion of the Game Center service at any time. Apple shall not be liable for any losses, damages or costs of any kind incurred by You or any other party arising out of or related to any such service suspension or discontinuation or any such modification of the Game Center service or Game Center APIs.

3.2 Apple makes no guarantees to You in relation to the availability or uptime of the Game Center service and is not obligated to provide any maintenance, technical or other support for such service. Apple reserves the right to remove Your access to the Game Center service at any time in its sole discretion. Apple may monitor and collect information (including but not limited to technical and diagnostic information) about Your usage of the Game Center service to aid Apple in improving the Game Center and other Apple products or services and to verify Your compliance with this Agreement.

4. Additional Liability Disclaimer. APPLE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY INTERRUPTIONS TO THE GAME CENTER OR ANY SYSTEM FAILURES, NETWORK ATTACKS, SCHEDULED OR UNSCHEDULED MAINTENANCE, OR OTHER INTERRUPTIONS.
Additional Terms for the use of iCloud

The following terms are in addition to the terms of the Agreement and apply to Your use of the iCloud service for software development and testing in connection with Your Application, or Web Software.

1. Use of iCloud

1.1 Your Applications and/or Web Software may access the iCloud service only if You have been assigned an entitlement by Apple. You agree not to access the iCloud service, or any content, data or information contained therein, other than through the iCloud Storage APIs, CloudKit APIs or via the CloudKit dashboard provided as part of the Program. You agree not to share Your entitlement with any third party or use it for any purposes not expressly permitted by Apple. You agree to use the iCloud service, the iCloud Storage APIs, and the CloudKit APIs only as expressly permitted by this Agreement and the iCloud Documentation, and in accordance with all applicable laws and regulations. Further, Your Web Software is permitted to access and use the iCloud service (e.g., to store the same type of data that is retrieved or updated in a Licensed Application) only so long as Your use of the iCloud service in such Web Software is comparable to Your use in the corresponding Licensed Application, as determined in Apple’s sole discretion. In the event Apple Services permit You to use more than Your allotment of storage containers in iCloud in order to transfer data to another container for any reason, You agree to only use such additional container(s) for a reasonable limited time to perform such functions and not to increase storage and transactional allotments.

1.2 You understand that You will not be permitted to access or use the iCloud service for software development or testing after expiration or termination of Your Agreement; however end-users who have Your Applications or Web Software installed and who have a valid end-user account with Apple to use iCloud may continue to access their user-generated documents, private containers and files that You have chosen to store in such end-user’s account via the iCloud Storage APIs or the CloudKit APIs in accordance with the applicable iCloud terms and conditions and these terms. You agree not to interfere with an end-user’s ability to access iCloud (or the end-user’s own user-generated documents, private containers and files) or to otherwise disrupt their use of iCloud in any way and at any time. With respect to data You store in public containers through the CloudKit APIs (whether generated by You or the end-user), Apple reserves the right to suspend access to or delete such data, in whole or in part, upon expiration or termination of Your Agreement, or as otherwise specified by Apple in the CloudKit dashboard.

1.3 Your Application is permitted to use the iCloud Storage APIs only for the purpose of storage and retrieval of key value data (e.g., a list of stocks in a finance App, settings for an App) for Your Applications and Web Software and for purposes of enabling Your end-users to access user-generated documents and files through the iCloud service. Your Application or Web Software application is permitted to use the CloudKit APIs for storing, retrieving, and querying of structured data that You choose to store in public or private containers in accordance with the iCloud Documentation. You agree not to knowingly store any content or materials via the iCloud Storage APIs or CloudKit APIs that would cause Your Application to violate any of the iCloud terms and conditions or the Program Requirements for Your Applications (e.g., Your Application may not store illegal or infringing materials).

1.4 You may allow a user to access their user-generated documents and files from iCloud through the use of Your Applications as well as from Web Software. However, You may not share key value data from Your Application with other Applications or Web Software, unless You are sharing such data among different versions of the same title, or You have user consent.
1.5 You are responsible for any content and materials that You store in iCloud through the use of the CloudKit APIs and iCloud Storage APIs and must take reasonable and appropriate steps to protect information You store through the iCloud service. With respect to third party claims related to content and materials stored by Your end-users in Your Applications through the use of the iCloud Storage APIs or CloudKit APIs (e.g., user-generated documents, end-user posts in public containers), You agree to be responsible for properly handling and promptly processing any such claims, including but not limited to Your compliance with notices sent pursuant to the Digital Millennium Copyright Act (DMCA).

1.6 Unless otherwise expressly permitted by Apple in writing, You will not use iCloud, the iCloud Storage APIs, CloudKit APIs, or any component or function thereof, to create, receive, maintain or transmit any sensitive, individually-identifiable health information, including “protected health information” (as such term is defined at 45 C.F.R § 160.103), or use iCloud in any manner that would make Apple (or any Apple Subsidiary) Your or any third party’s “business associate” as such term is defined at 45 C.F.R. § 160.103. You agree to be solely responsible for complying with any reporting requirements under law or contract arising from Your breach of this Section.

2. Additional Requirements

2.1 You understand there are storage capacity, transmission, and transactional limits for the iCloud service, both for You as a developer and for Your end-users. If You reach or Your end-user reaches such limits, then You or Your end-user may be unable to use the iCloud service until You or Your end-user have removed enough data from the service to meet the capacity limits, increased storage capacity or otherwise modified Your usage of iCloud, and You or Your end-user may be unable to access or retrieve data from iCloud during this time.

2.2 You may not charge any fees to users for access to or use of the iCloud service through Your Applications or Web Software, and You agree not to sell access to the iCloud service in any other way, including but not limited to reselling any part of the service. You will only use the iCloud service in Your Application or Web Software to provide storage for an end-user who has a valid end-user iCloud account with Apple and only for use in accordance with the terms of such user account, except that You may use the CloudKit APIs to store of data in public containers for access by end-users regardless of whether such users have iCloud accounts. You will not induce any end-user to violate the terms of their applicable iCloud service agreement with Apple or to violate any Apple usage policies for data or information stored in the iCloud service.

2.3 You may not excessively use the overall network capacity or bandwidth of the iCloud service or otherwise burden such service with unreasonable data loads or queries. You agree not to harm or interfere with Apple’s networks or servers, or any third party servers or networks connected to the iCloud, or otherwise disrupt other developers’ or users’ use of the iCloud service.

2.4 You will not disable or interfere with any warnings, system settings, notices, or notifications that are presented to an end-user of the iCloud service by Apple.

3. Your Acknowledgements

You acknowledge and agree that:

3.1 Apple may at any time, with or without prior notice to You (a) modify the iCloud Storage APIs or the CloudKit APIs, including changing or removing any feature or functionality, or (b) modify, deprecate, reissue or republish such APIs. You understand that any such modifications may require You to change or update Your Applications or Web Software at Your own cost. Apple has no express or implied obligation to provide, or continue to provide, the iCloud service and may suspend or discontinue all or any portion of the iCloud service at any time. Apple shall
not be liable for any losses, damages or costs of any kind incurred by You or any other party arising out of or related to any such service suspension or discontinuation or any such modification of the iCloud service, iCloud Storage APIs or the CloudKit APIs.

3.2 The iCloud service is not available in all languages or in all countries and Apple makes no representation that the iCloud service is appropriate or available for use in any particular location. To the extent You choose to provide access to the iCloud service in Your Applications or Web Software through the iCloud Storage APIs or CloudKit APIs (e.g., to store data in a public or private container), You do so at Your own initiative and are responsible for compliance with any applicable laws or regulations.

3.3 Apple makes no guarantees to You in relation to the availability or uptime of the iCloud service and is not obligated to provide any maintenance, technical or other support for the iCloud service. Apple is not responsible for any expenditures, investments, or commitments made by You in connection with the iCloud service, or for any use of or access to the iCloud service.

3.4 Apple reserves the right to suspend or revoke Your access to the iCloud service or impose limits on Your use of the iCloud service at any time in Apple's sole discretion. In addition, Apple may impose or adjust the limit of transactions Your Applications or Web Software may send or receive through the iCloud service or the resources or capacity that they may use at any time in Apple's sole discretion.

3.5 Apple may monitor and collect information (including but not limited to technical and diagnostic information) about usage of the iCloud service through the iCloud Storage APIs, CloudKit APIs, or CloudKit dashboard, in order to aid Apple in improving the iCloud service and other Apple products or services; provided however that Apple will not access or disclose any end-user data stored in a private container through CloudKit, any Application data stored in a public container through CloudKit, or any user-generated documents, files or key value data stored using the iCloud Storage APIs and iCloud service, unless Apple has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to comply with a legal or regulatory process or request, or unless otherwise requested by an end-user with respect to data stored via the iCloud Storage APIs in that end-user’s iCloud account or in that end-user’s private container via the CloudKit APIs.

3.6 Further, to the extent that You store any personal information relating to an individual or any information from which an individual can be identified (collectively, "Personal Data") in the iCloud service through the use of the iCloud Storage APIs or CloudKit APIs, You agree that Apple (and any applicable Apple Subsidiary for purposes of this Section 3.6) will act as Your agent for the processing, storage and handling of any such Personal Data. Apple agrees to ensure that any persons authorized to process such Personal Data have agreed to maintain confidentiality (whether through terms or under an appropriate statutory obligation). Apple shall have no right, title or interest in such Personal Data solely as a result of Your use of the iCloud service. You agree that You are solely liable and responsible for ensuring Your compliance with all applicable laws, including privacy and data protection laws, regarding the use or collection of data and information through the iCloud service. You are also responsible for all activity related to such Personal Data, including but not limited to, monitoring such data and activity, preventing and addressing inappropriate data and activity, and removing and terminating access to data. Further, You are responsible for safeguarding and limiting access to such Personal Data by Your personnel and for the actions of Your personnel who are permitted access to use the iCloud service on Your behalf. Personal Data provided by You and Your users to Apple through the iCloud service may be used by Apple only as necessary to provide and improve the iCloud service and to perform the following actions on Your behalf. Apple shall:

(a) use and handle such Personal Data only in accordance with the instructions and permissions from You set forth herein, as well as applicable laws, regulations, accords, or treaties.
and Switzerland, Personal Data will be handled by Apple only in accordance with the instructions and permissions from You set forth herein unless otherwise required by European Union or Member State Law, in which case Apple will notify You of such other legal requirement (except in limited cases where Apple is prohibited by law from doing so);

(b) provide You with reasonable means to manage any user access, deletion, or restriction requests as defined in applicable law. In the event of an investigation of You arising from Your good faith use of the iCloud service by a data protection regulator or similar authority regarding such Personal Data, Apple shall provide You with reasonable assistance and support;

(c) notify You by any reasonable means Apple selects, without undue delay and taking account of applicable legal requirements applying to You which mandate notification within a specific timeframe, if Apple becomes aware that Your Personal Data has been altered, deleted or lost as a result of any unauthorized access to the Service. You are responsible for providing Apple with Your updated contact information for such notification purposes in accordance with the terms of this Agreement;

(d) make available to You the information necessary to demonstrate compliance obligations set forth in Article 28 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (GDPR) and to allow for and contribute to audits required under these provisions; provided however that You agree that Apple’s ISO 27001 and 27018 certifications shall be considered sufficient for such required audit purposes;

(e) assist You, by any reasonable means Apple selects, in ensuring compliance with its obligations pursuant to Articles 33 to 36 of the GDPR. If Apple receives a third party request for information You have stored in the iCloud service, then unless otherwise required by law or the terms of such request, Apple will notify You of its receipt of the request and notify the requester of the requirement to address such request to You. Unless otherwise required by law or the request, You will be responsible for responding to the request;

(f) use industry-standard measures to safeguard Personal Data during the transfer, processing and storage of Personal Data. Encrypted Personal Data may be stored at Apple’s geographic discretion; and

(g) ensure that where Personal Data, arising in the context of this Agreement, is transferred from the EEA or Switzerland it is only to a third country that ensures an adequate level of protection or using the Model Contract Clauses/Swiss Transborder Data Flow Agreement which will be provided to You upon request if you believe that Personal Data is being transferred.

4. Additional Liability Disclaimer. NEITHER APPLE NOR ITS SERVICE PROVIDERS SHALL BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY USE, MISUSE, RELIANCE ON, INABILITY TO USE, INTERRUPTION, SUSPENSION OR TERMINATION OF iCLOUD, iCLOUD STORAGE APIS, OR CLOUDKIT APIS, OR FOR ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR DATA OR ANY END-USER DATA OR ANY CLAIMS ARISING FROM ANY USE OF THE FOREGOING BY YOUR END-USERS, INCLUDING ANY CLAIMS REGARDING DATA PROCESSING OR INAPPROPRIATE OR UNAUTHORIZED DATA STORAGE OR HANDLING BY YOU IN VIOLATION OF THIS AGREEMENT.
Attachment 5
(to the Agreement)
Additional Terms for Passes

The following terms are in addition to the terms of the Agreement and apply to Your development and distribution of Passes:

1. **Pass Type ID Usage and Restrictions**

   You may use the Pass Type ID only for purposes of digitally signing Your Pass for use with Wallet and/or for purposes of using the APN service with Your Pass. You may distribute Your Pass Type ID as incorporated into Your Pass in accordance with **Section 2** below only so long as such distribution is under Your own trademark or brand. To the extent that You reference a third party’s trademark or brand within Your Pass (e.g., a store coupon for a particular good), You represent and warrant that You have any necessary rights. You agree not to share, provide or transfer Your Pass Type ID to any third party (except for a Service Provider and only to the limited extent permitted herein), nor use Your Pass Type ID to sign a third party's pass.

2. **Pass Distribution; Marketing Permissions**

   2.1 Subject to the terms of this Agreement, You may distribute Your Passes to end-users by the web, email, or an Application. You understand that Passes must be accepted by such users before they will be loaded into Wallet and that Passes can be removed or transferred by such users at any time.

   2.2 By distributing Your Passes in this manner, You represent and warrant to Apple that Your Passes comply with the Documentation and Program Requirements then in effect and the terms of this Attachment 5. Apple shall not be responsible for any costs, expenses, damages, losses (including without limitation lost business opportunities or lost profits) or other liabilities You may incur as a result of distributing Your Passes in this manner.

   2.3 You agree to state on the Pass Your name and address, and the contact information (telephone number; email address) to which any end-user questions, complaints, or claims with respect to Your Pass should be directed. You will be responsible for attaching or otherwise including, at Your discretion, any relevant end-user usage terms with Your Pass. Apple will not be responsible for any violations of Your end-user usage terms. You will be solely responsible for all user assistance, warranty and support of Your Pass. You may not charge any fees to end-users in order to use Wallet to access Your Pass.

   2.4 By distributing Your Passes as permitted in this Agreement, You hereby permit Apple to use (i) screen shots of Your Pass; (ii) trademarks and logos associated with Your Pass; and (iii) Pass Information, for promotional purposes in marketing materials and gift cards, excluding those portions which You do not have the right to use for promotional purposes and which You identify in writing to Apple. You also permit Apple to use images and other materials that You may provide to Apple, at Apple’s reasonable request, for promotional purposes in marketing materials and gift cards.

3. **Additional Pass Requirements**

   3.1 Apple may provide You with templates to use in creating Your Passes, and You agree to choose the relevant template for Your applicable use (e.g., You will not use the boarding pass template for a movie ticket).

   3.2 Passes may only operate and be displayed in Wallet, which is Apple's designated container area for the Pass, through Wallet on the lock screen of an a compatible Apple-branded product in accordance with the Documentation.
3.3. Notwithstanding anything else in Section 3.3.9 of the Agreement, with prior user consent, You and Your Pass may share user and/or device data with Your Application so long as such sharing is for the purpose of providing a service or function that is directly relevant to the use of the Pass and/or Application, or to serve advertising in accordance with Sections 3.3.12 of the Agreement.

3.4 If You would like to use embedded Near Field Communication (NFC) technology with Your Pass, then You may request an Apple Certificate for the use of NFC with a Pass from the Developer web portal. Apple will review Your request and may provide You with a separate agreement for the use of such Apple Certificate. Apple reserves the right to not provide You with such Apple Certificate.

4. Apple’s Right to Review Your Pass; Revocation. You understand and agree that Apple reserves the right to review and approve or reject any Pass that You would like to distribute for use by Your end-users, or that is already in use by Your end-users, at any time during the Term of this Agreement. If requested by Apple, You agree to promptly provide such Pass to Apple. You agree not to attempt to hide, misrepresent, mislead, or obscure any features, content, services or functionality in Your Pass from Apple’s review or otherwise hinder Apple from being able to fully review such Pass, and, You agree to cooperate with Apple and answer questions and provide information and materials reasonably requested by Apple regarding such Pass. If You make any changes to Your Pass after submission to Apple, You agree to notify Apple and, if requested by Apple, resubmit Your Pass prior to any distribution of the modified Pass to Your end-users. Apple reserves the right to revoke Your Pass Type ID and reject Your Pass for distribution to Your end-users for any reason and at any time in its sole discretion, even if Your Pass meets the Documentation and Program Requirements and terms of this Attachment 5; and, in that event, You agree that You may not distribute such Pass to Your end-users.

5. Additional Liability Disclaimer. APPLE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY USE, DISTRIBUTION, MISUSE, RELIANCE ON, INABILITY TO USE, INTERRUPTION, SUSPENSION, OR TERMINATION OF WALLET, YOUR PASS TYPE ID, YOUR PASSES, OR ANY SERVICES PROVIDED IN CONNECTION THEREWITH, INCLUDING BUT NOT LIMITED TO ANY LOSS OR FAILURE TO DISPLAY YOUR PASS IN WALLET OR ANY END-USER CLAIMS ARISING FROM ANY USE OF THE FOREGOING BY YOUR END-USERS.
Attachment 6
(to the Agreement)
Additional Terms for the use of the Apple Maps Service

The following terms are in addition to the terms of the Agreement and apply to any use of the Apple Maps Service in Your Application, website, or web application.

1. Use of the Maps Service

1.1 Your Application may access the Apple Maps Service only via the MapKit API or through MapKit JS, and Your website or web application may access the Apple Maps Service only via MapKit JS. You agree not to access the Apple Maps Service or the Map Data other than through the MapKit API or MapKit JS, as applicable, and You agree that Your use of the Apple Maps Service in Your Applications, websites, or web applications must comply with the Program Requirements.

1.2 You will use the Apple Maps Service and Map Data only as necessary for providing services and functionality for Your Application, website, or web application. You agree to use the Apple Maps Service, MapKit API and MapKit JS only as expressly permitted by this Agreement (including but not limited to this Attachment 6) and the MapKit and MapKit JS Documentation, and in accordance with all applicable laws and regulations.

1.3 You acknowledge and agree that results You receive from the Apple Maps Service may vary from actual conditions due to variable factors that can affect the accuracy of the Map Data, such as weather, road and traffic conditions, and geopolitical events.

2. Additional Restrictions

2.1 Neither You nor Your Application, website or web application may remove, obscure or alter Apple’s or its licensors’ copyright notices, trademarks, logos, or any other proprietary rights or legal notices, documents or hyperlinks that may appear in or be provided through the Apple Maps Service.

2.2 You will not use the Apple Maps Service in any manner that enables or permits bulk downloads or feeds of the Map Data, or any portion thereof, or that in any way attempts to extract, scrape or reutilize any portions of the Map Data. For example, neither You nor Your Application may use or make available the Map Data, or any portion thereof, as part of any secondary or derived database.

2.3 Except to the extent expressly permitted herein, You agree not to copy, modify, translate, create a derivative work of, publish or publicly display the Map Data in any way. Further, You may not use or compare the data provided by the Apple Maps Service for the purpose of improving or creating another mapping service. You agree not to create or attempt to create a substitute or similar service through use of or access to the Apple Maps Service.

2.4 Your Application, website, or web application may display the Map Data only as permitted herein, and when displaying it on a map, You agree that it will be displayed only on an Apple map provided through the Apple Maps Service. Further, You may not surface Map Data within Your Application, website, or web application without displaying the corresponding Apple map (e.g., if You surface an address result through the Apple Maps Service, You must display the corresponding map with the address result).

2.5 Unless otherwise expressly permitted in the MapKit Documentation or MapKit JS Documentation, Map Data may not be cached, pre-fetched, or stored by You or Your Application, website, or web application other than on a temporary and limited basis solely to improve the performance of the Apple Maps Service with Your Application, website, or web application.
2.6 You may not charge any fees to end-users solely for access to or use of the Apple Maps Service through Your Application, website, or web application, and You agree not to sell access to the Apple Maps Service in any other way.

2.7 You acknowledge and agree that Apple may impose restrictions on Your usage of the Apple Maps Service (e.g., limiting the number of transactions Your Application can make through the MapKit API) or may revoke or remove Your access to the Apple Maps Service (or any part thereof) at any time in its sole discretion. Further, You acknowledge and agree that results You may receive from the Apple Maps Service may vary from actual conditions due to variable factors that can affect the accuracy of Map Data, such as road or weather conditions.

3. Your Acknowledgements. You acknowledge and agree that:

3.1 Apple may at any time, with or without prior notice to You (a) modify the Apple Maps Service and/or the MapKit API or MapKit JS, including changing or removing any feature or functionality, or (b) modify, deprecate, reissue or republish the MapKit API or MapKit JS. You understand that any such modifications may require You to change or update Your Applications, website, or web applications at Your own cost. Apple has no express or implied obligation to provide, or continue to provide, the Apple Maps Service and may suspend or discontinue all or any portion of the Apple Maps Service at any time. Apple shall not be liable for any losses, damages or costs of any kind incurred by You or any other party arising out of or related to any such service suspension or discontinuation or any such modification of the Apple Maps Service, MapKit API, or MapKit JS.

3.2 The Apple Maps Service may not be available in all countries or languages, and Apple makes no representation that the Apple Maps Service is appropriate or available for use in any particular location. To the extent You choose to provide access to the Apple Maps Service in Your Applications, website, or web applications or through the MapKit API or MapKit JS, You do so at Your own initiative and are responsible for compliance with any applicable laws.

4. Apple’s Right to Review Your MapKit JS Implementation. You understand and agree that Apple reserves the right to review and approve or reject Your implementation of MapKit JS in Your Application, website, or web applications, at any time during the Term of this Agreement. If requested by Apple, You agree to promptly provide information regarding Your implementation of MapKit JS to Apple. You agree to cooperate with Apple and answer questions and provide information and materials reasonably requested by Apple regarding such implementation. Apple reserves the right to revoke Your MapKit JS keys and similar credentials at any time in its sole discretion, even if Your use of MapKit JS meets the Documentation and Program Requirements and terms of this Attachment. By way of example only, Apple may do so if Your MapKit JS implementation places an excessive and undue burden on the Apple Maps Service, obscures or removes the Apple Maps logo or embedded links when displaying a map, or uses the Apple Maps Service with corresponding offensive or illegal map content.

5. Additional Liability Disclaimer. NEITHER APPLE NOR ITS LICENSORS OR SERVICE PROVIDERS SHALL BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM ANY USE, MISUSE, RELIANCE ON, INABILITY TO USE, INTERRUPTION, SUSPENSION OR TERMINATION OF THE APPLE MAPS SERVICE, INCLUDING ANY INTERRUPTIONS DUE TO SYSTEM FAILURES, NETWORK ATTACKS, OR SCHEDULED OR UNSCHEDULED MAINTENANCE.
Additional Terms for Safari App Extensions

The following terms are in addition to the terms of the Agreement and apply to Safari App Extensions signed with an Apple Certificate:

1.1 Safari App Extension Requirements

If You would like to distribute Your Safari App Extension signed with an Apple Certificate, then You agree to abide by the following requirements for such Safari App Extensions, as they may be modified by Apple from time to time:

- Your Safari App Extension must not contain any malware, malicious or harmful code, or other internal component (e.g. computer viruses, trojan horses, "backdoors"), which could damage, destroy, or adversely affect Apple hardware, software or services, or other third party software, firmware, hardware, data, systems, services, or networks;

- Your Safari App Extensions must not be designed or marketed for the purpose of harassing, abusing, stalking, spamming, misleading, defrauding, threatening or otherwise violating the legal rights (such as the rights of privacy and publicity) of others. Further, You may not create a Safari App Extension that tracks the behavior of a user (e.g., their browsing sites) without their express consent;

- Your Safari App Extension must only operate in Safari on macOS' designated container area for the Safari App Extension, and must not disable, override or otherwise interfere with any Apple-implemented system alerts, warnings, display panels, consent panels and the like;

- Your Safari App Extension must have a single purpose and updates must not change the single purpose of Your Safari App Extension. You agree to accurately represent the features and functionality of Your Extension to the user and to act in accordance with such representations. For example, Your Safari App Extension may not redirect a link (or any affiliate link) on a website unless that behavior is disclosed to the user;

- Your Safari App Extension must not be bundled with an app that has a different purpose than the Safari App Extension.

- Your Safari App Extension may not inject ads into a website and may not display pop up ads;

- You must not script or automate turning on Your Safari App Extension or enable others to do so.

- You agree not to bundle Your .safariextz-based Safari App Extension with any other applications or extensions. You may allow a user to install Your .safariextz-based Safari App Extension only by: clicking the .safariextz file to open the Safari App Extension in Safari and allowing Safari to prompt the user to confirm the installation;

- Safari App Extensions must not interfere with security, user interface, user experience, features or functionality of Safari, macOS, or other Apple-branded products; and

- Your Safari App Extensions must comply with the Documentation and all applicable laws and regulations, including those in any jurisdictions in which such Safari App Extensions may be offered or made available. You should review the latest Safari App Extensions Development Guide and Safari App Extensions Development Guide available on the Developer web portal.
You understand that Apple may revoke the Apple Certificates used to sign Your Safari App Extensions at any time, in its sole discretion. Further, You acknowledge and agree that Apple may block Your Safari App Extension (such that it may be unavailable or inaccessible to Safari users) if it does not comply with the requirements set forth above in this Section 1.1 or otherwise adversely affects users of Safari or macOS.
Schedule 1

1. Appointment of Agent

1.1 You hereby appoint Apple and Apple Subsidiaries (collectively “Apple”) as: (i) Your agent for the marketing and delivery of the Licensed Applications to end-users located in those countries listed on Exhibit A, Section 1 to this Schedule 1, subject to change; and (ii) Your commissionaire for the marketing and delivery of the Licensed Applications to end-users located in those countries listed on Exhibit A, Section 2 to this Schedule 1, subject to change, during the Delivery Period. The most current list of App Store countries among which You may select shall be set forth in the App Store Connect tool and may be updated by Apple from time to time. You hereby acknowledge that Apple will market and make the Licensed Applications available for download by end-users, through one or more App Stores, for You and on Your behalf. For purposes of this Schedule 1, the following terms apply:

(a) “You” shall include App Store Connect users authorized by You to submit Licensed Applications and associated metadata on Your behalf; and

(b) “end-user” includes individual purchasers as well as eligible users associated with their account via Family Sharing. For institutional customers, “end-user” shall mean the individual authorized to use the Licensed Application, the institutional administrator responsible for management of installations on shared devices, as well as authorized institutional purchasers themselves, including educational institutions approved by Apple, which may acquire the Licensed Applications for use by their employees, agents, and affiliates.

(c) For the purposes of this Schedule 1, the term “Licensed Application” shall include any content, functionality, extensions, stickers, or services offered in the software application.

1.2 In furtherance of Apple’s appointment under Section 1.1 of this Schedule 1, You hereby authorize and instruct Apple to:

(a) market, solicit and obtain orders on Your behalf for Licensed Applications from end-users located in the countries identified by You in the App Store Connect tool;

(b) provide hosting services to You subject to the terms of the Agreement, in order to allow for the storage of, and end-user access to, the Licensed Applications and to enable third party hosting of such Licensed Applications solely as otherwise licensed or authorized by Apple;

(c) make copies of, format, and otherwise prepare Licensed Applications for acquisition and download by end-users, including adding the Security Solution and other optimizations identified in the Agreement;

(d) allow or, in the case of cross-border assignments of VPP purchases, arrange for end-users to access and re-access copies of the Licensed Applications, so that end-users may acquire from You and electronically download those Licensed Applications, Licensed Application Information, and associated metadata through one or more App Stores, and You hereby authorize distribution of Your Licensed Applications under this Schedule 1 to end-users with accounts associated with another end-user’s via Family Sharing. You also hereby authorize distribution of Your Licensed Applications under this Schedule 1 for use by multiple end users under a single Apple ID when the Licensed Application is provided to such end-users through Apple Configurator in accordance with the Apple Configurator software license agreement or requested by a single institutional customer via the Volume Purchase Program for use by its end-users and/or for installation on devices with no associated iTunes Account that are owned or controlled by that institutional customer in accordance with the Volume Purchase Program terms, conditions, and program
(e) use (i) screen shots, previews, and/or up to 30 second excerpts of the Licensed Applications; (ii) trademarks and logos associated with the Licensed Applications; and (iii) Licensed Application Information, for promotional purposes in marketing materials and gift cards and in connection with vehicle displays, excluding those portions of the Licensed Applications, trademarks or logos, or Licensed Application Information which You do not have the right to use for promotional purposes, and which You identify in writing at the time that the Licensed Applications are delivered by You to Apple under Section 2.1 of this Schedule 1, and use images and other materials that You may provide to Apple, at Apple’s reasonable request, for promotional purposes in marketing materials and gift cards and in connection with vehicle displays. In addition, and subject to the limitation set forth above, You agree that Apple may use screen shots, icons, and up to 30 second excerpts of Your Licensed Applications for use at Apple Developer events (e.g., WWDC, Tech Talks) and in developer documentation;

(f) otherwise use Licensed Applications, Licensed Application Information and associated metadata as may be reasonably necessary in the delivery of the Licensed Applications in accordance with this Schedule 1. You agree that no royalty or other compensation is payable for the rights described above in Section 1.2 of this Schedule 1; and

(g) facilitate distribution of pre-release versions of Your Licensed Applications (“Beta Testing”) to end-users designated by You in accordance with the Agreement, availability, and other program requirements as updated from time to time in the App Store Connect tool. For the purposes of such Beta Testing, You hereby waive any right to collect any purchase price, proceeds or other remuneration for the distribution and download of such pre-release versions of Your Licensed Application. You further agree that You shall remain responsible for the payment of any royalties or other payments to third parties relating to the distribution and user of Your pre-release Licensed Applications, as well as compliance with any and all laws for territories in which such Beta Testing takes place. For the sake of clarity, no commission shall be owed to Apple with respect to such distribution.

1.3 The parties acknowledge and agree that their relationship under this Schedule 1 is, and shall be, that of principal and agent, or principal and commissionaire, as the case may be, as described in Exhibit A, Section 1 and Exhibit A, Section 2 respectively, and that You, as principal, are, and shall be, solely responsible for any and all claims and liabilities involving or relating to, the Licensed Applications, as provided in this Schedule 1. The parties acknowledge and agree that Your appointment of Apple as Your agent or commissionaire, as the case may be, under this Schedule 1 is non-exclusive. You hereby represent and warrant that You own or control the necessary rights in order to appoint Apple and Apple Subsidiaries as Your worldwide agent and/or commissionaire for the delivery of Your Licensed Applications, and that the fulfillment of such appointment by Apple and Apple Subsidiaries shall not violate or infringe the rights of any third party.

1.4 For purposes of this Schedule 1, the “Delivery Period” shall mean the period beginning on the Effective Date of the Agreement, and expiring on the last day of the Agreement or any renewal thereof; provided, however, that Apple’s appointment as Your agent shall survive expiration of the Agreement for a reasonable phase-out period not to exceed thirty (30) days and further provided that, solely with respect to Your end-users, subsections 1.2(b), (c), and (d) of this Schedule 1 shall survive termination or expiration of the Agreement unless You indicate otherwise pursuant to sections 4.1 and 6.2 of this Schedule 1.

1.5 All of the Licensed Applications delivered by You to Apple under Section 2.1 of this Schedule 1 shall be made available by Apple for download by end-users at no charge. Apple shall have no duty to collect any fees for the Licensed Applications for any end-user and shall have no payment obligation to You with respect to any of those Licensed Applications under this Schedule 1. In the event that You intend to charge end-users a fee for any Licensed Application or In-App Purchase, You must enter (or have previously entered) into a separate extension of this
agreement (Schedule 2) with Apple with respect to that Licensed Application.

2. Delivery of the Licensed Applications to Apple

2.1 You will deliver to Apple, at Your sole expense, using the App Store Connect tool or other mechanism provided by Apple, the Licensed Applications, Licensed Application Information and associated metadata, in a format and manner prescribed by Apple, as required for the delivery of the Licensed Applications to end-users in accordance with this Schedule 1. Metadata You deliver to Apple under this Schedule 1 will include: (i) the title and version number of each of the Licensed Applications; (ii) the countries You designate, in which You wish Apple to allow end-users to download those Licensed Applications; (iii) any copyright or other intellectual property rights notices; (iv) Your privacy policy, if any; (v) Your end-user license agreement (“EULA”), if any, in accordance with Section 3.2 of this Schedule 1; and (vi) any additional metadata set forth in the Documentation and/or the App Store Connect Tool as may be updated from time to time, including metadata designed to enhance search and discovery for content on Apple-branded hardware.

2.2 All Licensed Applications will be delivered by You to Apple using software tools, a secure FTP site address and/or such other delivery methods as prescribed by Apple.

2.3 You hereby certify that all of the Licensed Applications You deliver to Apple under this Schedule 1 are authorized for export from the United States to each of the countries designated by You under Section 2.1 hereof, in accordance with the requirements of all applicable laws, including but not limited to the United States Export Administration Regulations, 15 C.F.R. Parts 730-774 and the International Traffic in Arms Regulations 22 C.F.R. Parts 120-130. Without limiting the generality of this Section 2.3, You certify that (i) none of the Licensed Applications contains, uses or supports any data encryption or cryptographic functions; or (ii) in the event that any Licensed Application contains, uses or supports any such data encryption or cryptographic functionality, You certify that You have complied with the United States Export Administration Regulations, and are in possession of, and will, upon request, provide Apple with a PDF copy of Your Encryption Registration Number (ERN), or export classification ruling (CCATS) issued by the United States Commerce Department, Bureau of Industry and Security and PDF copies of appropriate authorizations from other countries that mandate import authorizations for that Licensed Application, as required. You acknowledge that Apple is relying upon Your certification in this Section 2.3 in allowing end-users to access and download the Licensed Applications under this Schedule 1. Except as provided in this Section 2.3, Apple will be responsible for compliance with the requirements of the Export Administration Regulations in allowing end-users to access and download the Licensed Applications under this Schedule 1.

2.4 You shall be responsible for determining and implementing any age ratings or parental advisory warnings required by the applicable government regulations, ratings board(s), service(s), or other organizations (each a “Ratings Board”) for any video, television, gaming or other content offered in Your Licensed Application for each locality in the Territory. Where applicable, you shall also be responsible for providing any content restriction tools or age verification functionality before enabling end-users to access mature or otherwise regulated content within Your Licensed Application.

3. Ownership and End-User Licensing and Delivery of the Licensed Applications to End Users

3.1 You acknowledge and agree that Apple, in the course of acting as agent and/or commissionaire for You, is hosting, or pursuant to Section 1.2(b) of this Schedule 1 may enable authorized third parties to host, the Licensed Application(s), and is allowing the download of those Licensed Application(s) by end-users, on Your behalf. However, You are responsible for hosting and delivering content or services sold or delivered by You using the In-App Purchase API, except for content that is included within the Licensed Application itself (i.e., the In-App Purchase
simply unlocks the content) or content hosted by Apple pursuant to Section 3.3 of Attachment 2 of the Agreement. The parties acknowledge and agree that Apple shall not acquire any ownership interest in or to any of the Licensed Applications or Licensed Applications Information, and title, risk of loss, responsibility for, and control over the Licensed Applications shall, at all times, remain with You. Apple may not use any of the Licensed Applications or Licensed Application Information for any purpose, or in any manner, except as specifically authorized in the Agreement or this Schedule 1.

3.2 You may deliver to Apple Your own EULA for any Licensed Application at the time that You deliver that Licensed Application to Apple, in accordance with Section 2.1 of this Schedule 1; provided, however, that Your EULA must include and may not be inconsistent with the minimum terms and conditions specified on Exhibit B to this Schedule 1 and must comply with all applicable laws in all countries where You wish Apple to allow end-users to download that Licensed Application. Apple shall enable each end-user to review Your EULA (if any) at the time that Apple delivers that Licensed Application to that end-user, and Apple shall notify each end-user that the end-user’s use of that Licensed Application is subject to the terms and conditions of Your EULA (if any). In the event that You do not furnish Your own EULA for any Licensed Application to Apple, You acknowledge and agree that each end-user’s use of that Licensed Application shall be subject to Apple’s standard EULA (which is part of the App Store Terms of Service).

3.3 You hereby acknowledge that the EULA for each of the Licensed Applications is solely between You and the end-user and conforms to applicable law, and Apple shall not be responsible for, and shall not have any liability whatsoever under, any EULA or any breach by You or any end-user of any of the terms and conditions of any EULA.

3.4 A Licensed Application may read or play content (magazines, newspapers, books, audio, music, video) that is offered outside of the Licensed Application (such as, by way of example, through Your website) provided that You do not link to or market external offers for such content within the Licensed Application. You are responsible for authentication access to content acquired outside of the Licensed Application.

3.5 Subject to availability, You may offer in-app subscriptions for free in select territories using the In-App Purchase API subject to the terms of this Schedule 1, provided that the Licensed Application is Newsstand-enabled pursuant to section 3.7 below and You clearly and conspicuously disclose to users the following information regarding Your in-app subscription:

- Title of publication or service
- Subscription may be discontinued at any time by removing app from device
- Links to Your Privacy Policy and Terms of Use

3.6 To the extent You promote and offer in-app subscriptions, You must do so in compliance with all legal and regulatory requirements.

3.7 If Your Licensed Application is periodical content-based (e.g., magazines and newspapers), Apple may provide You with the name, email address, and zip code associated with an end-user’s account when they request an auto-renewing subscription via the In-App Purchase API, provided that such user consents to the provision of data to You, and further provided that You may only use such data to promote Your own products and do so in strict compliance with Your publicly posted Privacy Policy, a copy of which must be readily viewed and is consented to in Your Licensed Application.

3.8 Licensed Applications offering subscription services under this Schedule 1 must be included in Apple’s Newsstand program provided that, in addition to the requirements set forth in paragraphs 3.5, 3.6 and 3.7, You:
- Enable the Licensed Application as a Newsstand app in the App Store Connect tool
- Authorize Apple to select “Newsstand” as the Licensed Application’s secondary category
- Utilize the In-App Purchase API, include any additional code, and comply with any other requirements as identified and updated from time to time in Newsstand-related documentation found in the iOS developer library and the App Store Connect Developer Guide
- Provide updated cover art with each new issue
- Confirm that the content of the Licensed Application is a periodical (e.g., newspaper or magazine)

You acknowledge and agree that Apple reserves the right to recategorize or reject Your Licensed Application if it is not appropriate for Newsstand.

4. Content Restrictions and Software Rating

4.1 You represent and warrant that: (a) You have the right to enter into this Agreement, to reproduce and distribute each of the Licensed Applications, and to authorize Apple to permit end-users to download and use each of the Licensed Applications through one or more App Stores; (b) none of the Licensed Applications, or Apple’s or end-users’ permitted uses of those Licensed Applications, violate or infringe any patent, copyright, trademark, trade secret or other intellectual property or contractual rights of any other person, firm, corporation or other entity and that You are not submitting the Licensed Applications to Apple on behalf of one or more third parties; (c) each of the Licensed Applications is authorized for distribution, sale and use in, export to, and import into each of the countries designated by You under Section 2.1 of this Schedule 1, in accordance with the laws and regulations of those countries and all applicable export/import regulations; (d) none of the Licensed Applications contains any obscene, offensive or other materials that are prohibited or restricted under the laws or regulations of any of the countries You designate under Section 2.1 of this Schedule 1; (e) all information You provide using the App Store Connect tool, including any information relating to the Licensed Applications, is accurate and that, if any such information ceases to be accurate, You will promptly update it to be accurate using the App Store Connect tool; and (f) in the event a dispute arises over the content of Your Licensed Applications or use of Your intellectual property on the App Store, You agree to permit Apple to share your contact information with the party filing such dispute and to follow Apple’s app dispute process on a non-exclusive basis and without any party waiving its legal rights.

4.2 You shall use the software rating tool set forth on App Store Connect to supply information regarding each of the Licensed Applications delivered by You for marketing and fulfillment by Apple through the App Store under this Schedule 1 in order to assign a rating to each such Licensed Application. For purposes of assigning a rating to each of the Licensed Applications, You shall use Your best efforts to provide correct and complete information about the content of that Licensed Application with the software rating tool. You acknowledge and agree that Apple is relying on: (i) Your good faith and diligence in accurately and completely providing the requested information for each Licensed Application; and (ii) Your representations and warranties in Section 4.1 hereof, in making that Licensed Application available for download by end-users in each of the countries You designate hereunder. Furthermore, You authorize Apple to correct the rating of any Licensed Application of Yours that has been assigned an incorrect rating; and You agree to any such corrected rating.

4.3 In the event that any country You designate hereunder requires the approval of, or rating of, any Licensed Application by any government or industry regulatory agency as a condition for the distribution and/or use of that Licensed Application, You acknowledge and agree that Apple may elect not to make that Licensed Application available for download by end-users in that country from any App Store.

5. Responsibility and Liability

5.1 Apple shall have no responsibility for the installation and/or use of any of the Licensed
Applications by any end-user. You shall be solely responsible for any and all product warranties, end-user assistance and product support with respect to each of the Licensed Applications.

5.2 You shall be solely responsible for, and Apple shall have no responsibility or liability whatsoever with respect to, any and all claims, suits, liabilities, losses, damages, costs and expenses arising from, or attributable to, the Licensed Applications and/or the use of those Licensed Applications by any end-user, including, but not limited to: (i) claims of breach of warranty, whether specified in the EULA or established under applicable law; (ii) product liability claims; and (iii) claims that any of the Licensed Applications and/or the end-user’s possession or use of those Licensed Applications infringes the copyright or other intellectual property rights of any third party.

6. Termination

6.1 This Schedule 1, and all of Apple’s obligations hereunder, shall terminate upon the expiration or termination of the Agreement.

6.2 In the event that You no longer have the legal right to distribute the Licensed Applications, or to authorize Apple to allow access to those Licensed Applications by end-users, in accordance with this Schedule 1, You shall promptly notify Apple and withdraw those Licensed Applications from the App Store using the tools provided on the App Store Connect site; provided, however, that such withdrawal by You under this Section 6.2 shall not relieve You of any of Your obligations to Apple under this Schedule 1, or any liability to Apple and/or any end-user with respect to those Licensed Applications.

6.3 Apple reserves the right to cease marketing, offering, and allowing download by end-users of the Licensed Applications at any time, with or without cause, by providing notice of termination to You. Without limiting the generality of this Section 6.3, You acknowledge that Apple may cease allowing download by end-users of some or all of the Licensed Applications, or take other interim measures in Apple’s sole discretion, if Apple reasonably believes that: (i) those Licensed Applications are not authorized for export to one or more of the countries designated by You under Section 2.1 hereof, in accordance with the Export Administration Regulations; (ii) those Licensed Applications and/or any end-user’s possession and/or use of those Licensed Applications, infringe patent, copyright, trademark, trade secret or other intellectual property rights of any third party; (iii) the distribution and/or use of those Licensed Applications violates any applicable law in any country You designate under Section 2.1 of this Schedule 1; or (iv) You have violated the terms of the Agreement, this Schedule 1, or other documentation including without limitation the iOS App Review Guidelines. An election by Apple to cease allowing download of any Licensed Applications, pursuant to this Section 6.3, shall not relieve You of Your obligations under this Schedule 1.

6.4 You may withdraw any or all of the Licensed Applications from the App Store, at any time, and for any reason, by using the tools provided on the App Store Connect site, except that, with respect to Your end-users, You hereby authorize and instruct Apple to fulfill sections 1.2(b), (c), and (d) of this Schedule 1, which shall survive termination or expiration of the Agreement unless You indicate otherwise pursuant to sections 4.1 and 6.2 of this Schedule 1.

7. Legal Consequences

The relationship between You and Apple established by this Schedule 1 may have important legal consequences for You. You acknowledge and agree that it is Your responsibility to consult with Your legal advisors with respect to Your legal obligations hereunder.
EXHIBIT A
(to Schedule 1)

1. Apple as Agent

You appoint Apple Canada, Inc. (“Apple Canada”) as Your agent for the marketing and end-user download of the Licensed Applications by end-users located in the following country:

Canada

You appoint Apple Pty Limited (“APL”) as Your agent for the marketing and end-user download of the Licensed Applications by end-users located in the following countries:

Australia
New Zealand

You appoint Apple Inc. as Your agent pursuant to California Civil Code §§ 2295 et seq. for the marketing and end-user download of the Licensed Applications by end-users located in the following countries, as updated from time to time via the App Store Connect site:

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You appoint iTunes KK as Your agent pursuant to Article 643 of the Japanese Civil Code for the marketing and end-user download of the Licensed Applications by end-users located in the following country:

Japan

2. Apple as Commissionaire

You appoint Apple Distribution International as Your commissionaire for the marketing and end-user download of the Licensed Applications by end-users located in the following countries, as updated from time to time via the App Store Connect site. For the purposes of this Agreement, “commissionaire” means an agent who purports to act on his own behalf and concludes agreements in his own name but acts on behalf of other persons, as generally recognized in many Civil Law legal systems.

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EXHIBIT B
(to Schedule 1)
Instructions for Minimum Terms of Developer’s End-User License Agreement

1. **Acknowledgement:** You and the end-user must acknowledge that the EULA is concluded between You and the end-user only, and not with Apple, and You, not Apple, are solely responsible for the Licensed Application and the content thereof. The EULA may not provide for usage rules for Licensed Applications that are in conflict with, the App Store Terms of Service as of the Effective Date (which You acknowledge You have had the opportunity to review).

2. **Scope of License:** The license granted to the end-user for the Licensed Application must be limited to a non-transferable license to use the Licensed Application on any Apple-branded Products that the end-user owns or controls and as permitted by the Usage Rules set forth in the App Store Terms of Service, except that such Licensed Application may be accessed, acquired, and used by other accounts associated with the purchaser via Family Sharing or volume purchasing.

3. **Maintenance and Support:** You must be solely responsible for providing any maintenance and support services with respect to the Licensed Application, as specified in the EULA, or as required under applicable law. You and the end-user must acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Licensed Application.

4. **Warranty:** You must be solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. The EULA must provide that, in the event of any failure of the Licensed Application to conform to any applicable warranty, the end-user may notify Apple, and Apple will refund the purchase price for the Licensed Application to that end-user; and that, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Licensed Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Your sole responsibility.

5. **Product Claims:** You and the end-user must acknowledge that You, not Apple, are responsible for addressing any claims of the end-user or any third party relating to the Licensed Application or the end-user’s possession and/or use of that Licensed Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. The EULA may not limit Your liability to the end-user beyond what is permitted by applicable law.

6. **Intellectual Property Rights:** You and the end-user must acknowledge that, in the event of any third party claim that the Licensed Application or the end-user’s possession and use of that Licensed Application infringes that third party’s intellectual property rights, You, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

7. **Legal Compliance:** The end-user must represent and warrant that (i) he/she is not located in a country that is subject to a U.S. Government embargo, or that is on Title 15, Part 740 Supplement 1 Country Group E of the U.S. Code of Federal Regulations; and (ii) he/she is not listed on any U.S. Government list of prohibited or restricted parties.

8. **Developer Name and Address:** You must state in the EULA Your name and address,
and the contact information (telephone number; E-mail address) to which any end-user questions, complaints or claims with respect to the Licensed Application should be directed.

9. **Third Party Terms of Agreement:** You must state in the EULA that the end-user must comply with applicable third party terms of agreement when using Your Application, e.g., if You have a VoIP application, then the end-user must not be in violation of their wireless data service agreement when using Your Application.

10. **Third Party Beneficiary:** You and the end-user must acknowledge and agree that Apple, and Apple’s subsidiaries, are third party beneficiaries of the EULA, and that, upon the end-user’s acceptance of the terms and conditions of the EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce the EULA against the end-user as a third party beneficiary thereof.
EXHIBIT C  
(to Schedule 1)  
App Store Promo Code Terms

Notwithstanding any other provisions of the Agreement or this Schedule 1, You hereby agree that the following terms shall apply to all promotional Custom Codes requested by You via the App Store Connect tool. For the purposes of this Exhibit C, “You” shall include additional members of Your App Store Connect team (e.g. individuals in the marketing and technical roles).

Except as otherwise expressed in writing herein, nothing in this Exhibit C shall be construed to modify the Agreement or this Schedule 1 in any way, and all capitalized terms not defined below shall have the meanings set forth in the Program Agreement.

1. DEFINITIONS:

“Holder” means an individual located in a Territory to whom You provide one or more Custom Codes;

“Custom Code” means a unique alphanumeric code generated and provided to You by Apple pursuant to this Exhibit C which allows a Holder who is an App Store customer to download or access for free from the App Store the Licensed Application for which You have requested such code via the App Store Connect tool, whether offered for free or for a fee on the App Store (the “Promo Content”); and

“Effective Period” means the period between the Custom Code Activation Date and the Custom Code Expiration Date.

2. AUTHORIZATION AND OBLIGATIONS: You hereby authorize and instruct Apple to provide You with Custom Codes upon request, pursuant to the terms of this Exhibit C, and You take full responsibility for ensuring that any team member that requests such codes shall abide by the terms of this Exhibit C. You shall be responsible for securing all necessary licenses and permissions relating to use of the Custom Codes and the Licensed Application, including any uses by You of the name(s) or other indicia of the Licensed Application, or name(s) or likenesses of the person(s) performing or otherwise featured in the Licensed Application, in any advertising, marketing, or other promotional materials, in any and all media. Apple reserves the right to request and receive copies of such licenses and permissions from You, at any time, during the Effective Period.

3. NO PAYMENT: Except for Your obligations set forth in Section 10 of this Exhibit C, You are not obligated to pay Apple any commission for the Custom Codes.

4. DELIVERY: Upon request by You via the App Store Connect tool, Apple shall provide the Custom Codes electronically to You via App Store Connect, email, or other method as may be indicated by Apple.

5. CUSTOM CODE ACTIVATION DATE: Custom Codes will become active for use by Holders upon delivery to You.

6. CUSTOM CODE EXPIRATION DATE: All unused Custom Codes, whether or not applied to an Apple ID, expire at midnight 11:59 PT on the earlier of: (a) the date that is twenty-eight (28) days after the delivery of the Custom Codes; or (b) the termination of the Agreement.

7. PERMITTED USE: You may distribute the Custom Codes until that date which is ten (10) calendar days prior to the Custom Code Expiration Date solely for the purpose of offering instances of the app for media review or promotional purposes. You may not distribute the
Custom Codes to Holders in any Territory in which You are not permitted to sell or distribute Your Licensed Application.

8. **ADDITIONAL MATERIALS:** Apple shall not be responsible for developing and producing any materials in relation to the Custom Codes other than the Custom Codes themselves.

9. **REPRESENTATIONS, WARRANTIES, AND INDEMNIFICATION:** You represent and warrant that: (i) You own or control all rights necessary to make the grant of rights, licenses, and permissions listed in Section 2, and that the exercise of such rights, licenses, and permissions shall not violate or infringe the rights of any third party, and (ii) any use of the Custom Codes shall be in accordance with the terms of this Exhibit C and shall not infringe any third party rights or violate any applicable laws, directives, rules, and regulations of any governmental authority in the Territory or anywhere else in the world. You agree to indemnify and hold Apple, its subsidiaries and affiliates (and their respective directors, officers, and employees) harmless from all losses, liabilities, damages, or expenses (including reasonable attorneys’ fees and costs) resulting from any claims, demands, actions, or other proceedings arising from a breach of the representations and warranties set forth in this Section, or a breach of any other term of the Agreement and this Schedule 1.

10. **PAYMENT WAIVER:** You hereby waive any right to collect any royalties, proceeds, or remuneration for the distribution and download of the Licensed Application via the Custom Codes, regardless of whether any remuneration would otherwise be payable under the Agreement, including Schedule 1 thereto, if applicable. The parties acknowledge that, as between Apple and You, the parties’ respective responsibilities for the payment of any royalties or other similar payments to third parties with respect to distribution and download of the Licensed Application via the Custom Codes shall be as set forth in the Agreement.

11. **TERMS AND CONDITIONS:** You further agree to the following terms:

(a) You shall not sell the Custom Codes or accept any form of payment, trade-in-kind, or other compensation in connection with the distribution of the Custom Codes and You shall prohibit third parties from doing so.

(b) Nothing in this Exhibit C shall cause the parties to become partners, joint venturers or co-owners, nor shall either party constitute an agent, employee, or representative of the other, or empower the other party to act for, bind, or otherwise create or assume any obligation on its behalf, in connection with any transaction under this Exhibit C; provided, however, that nothing in this Section 11(b) shall affect, impair, or modify either of the Parties’ respective rights and obligations, including the agency or commissionaire relationship between them under Schedules 1, 2, and 3 of the Agreement.

(c) You shall prominently disclose any content age restrictions or warnings legally required in the Territories and ensure that Custom Codes are distributed only to persons of an age appropriate and consistent with the App Store rating for the associated Licensed Application.

(d) You shall conduct Yourself in an honest and ethical manner and shall not make any statement, orally or in writing, or do any act or engage in any activity that is obscene, unlawful, or encourages unlawful or dangerous conduct, or that may disparage, denigrate, or be detrimental to Apple or its business.

(e) Apple shall not be responsible for providing any technical or customer support to You or Holders above what Apple provides to standard or ordinary App Store users.

(f) You agree to the additional Custom Code Terms and Conditions attached hereto as Attachment 1.
(g) YOU SHALL INCLUDE THE COUNTRY SPECIFIC CODE USER TERMS AS WELL AS THE EXPIRATION DATE OF THE CUSTOM CODE ON ANY INSTRUMENT USED TO DISTRIBUTE THE CUSTOM CODE TO HOLDERS (E.G. CERTIFICATE, CARD, EMAIL, ETC). YOU SHALL RECEIVE AN EMAIL WITH THIS INFORMATION LOCALIZED FOR EACH TERRITORY UPON REQUESTING THE CUSTOM CODES IN THE APP STORE CONNECT TOOL.

Code expires on [date] and is redeemable only on the App Store for [territory]. Requires an iTunes account, subject to prior acceptance of license and usage terms. Compatible software and hardware, and internet access (fees may apply) required. Not for resale. Full terms apply; see [www.apple.com/legal/internet-services/us/terms.html]. For more information, see www.apple.com/support/ In-app purchases sold separately. This app is provided to You by [Developer’s name].

(h) You shall be solely responsible for Your use of the Custom Codes, including any use by other members of Your App Store Connect team, and for any loss or liability to You or Apple therefrom.

(i) In the event Your Licensed Application is removed from the App Store for any reason, You agree to cease distribution of the Custom Codes and that Apple may deactivate such Custom Codes.

(j) You agree that Apple shall have the right to deactivate the Custom Codes, even if already delivered to Holders, in the event You violate any of the terms of this Exhibit C, the Agreement, or Schedules 1, 2, or 3 thereto.

(k) You may distribute the Custom Codes within the Territories, but agree that You shall not export any Custom Code for use outside the Territories nor represent that You have the right or ability to do so. Risk of loss and transfer of title for the Custom Codes pass to You upon delivery to You within App Store Connect, via email, or other method provided by Apple.

12. APPLE TRADEMARKS: Your use of Apple trademarks in connection with the Custom Codes is limited only to “iTunes” and “App Store” (the “Marks”) subject to the following and any additional guidelines Apple may issue from time to time:

(a) You may use the Marks only during the Effective Period

(b) You shall submit any advertising, marketing, promotional or other materials, in any and all media now known or hereinafter invented, incorporating the Marks to Apple prior to use for written approval. Any such materials not expressly approved in writing by Apple shall be deemed disapproved by Apple.

(c) You may only use the Marks in a referential manner and may not use the Marks as the most prominent visual element in any materials. Your company name, trademark(s), or service mark(s) should be significantly larger than any reverence to the Marks.

(d) You may not directly or indirectly suggest Apple’s sponsorship, affiliation, or endorsement of You, Your Licensed Applications, or any promotional activities for which You are requesting the Custom Codes.

(e) You acknowledge that the Marks are the exclusive property of Apple and agree not to claim any right, title, or interest in or to the Marks or at any time challenge or attack Apple’s rights in the Marks. Any goodwill resulting from Your use of the Marks shall inure solely to the benefit of Apple and shall not create any right, title, or interest for You in the Marks.
13. **GOVERNING LAW:** Any litigation or other dispute resolution between You and Apple arising out of or relating to this Exhibit C or facts relating thereto shall be governed by Section 14.10 of the Agreement.
Attachment 1
(to Exhibit C of Schedule 1)
Custom Code Terms and Conditions

1. All Custom Codes delivered pursuant to this Exhibit C, whether or not applied to an App Store account, expire as indicated in this Exhibit C.

2. Custom Codes, and unused balances, are not redeemable for cash and cannot be returned for a cash refund, exchanged, or used to purchase any other merchandise, or provide allowances or iTunes Gifts by either You or Holder. This includes Custom Codes that have expired unused.

3. Custom Codes may only be redeemed through the App Store in the Territory, open only to persons in the Territory with a valid Apple ID. Not all App Store products may be available in all Territories. Internet access (fees may apply), the latest version of iTunes software, and other compatible software and hardware are required.

4. Access to, redemption of Custom Codes on, or purchases from, and use of products purchased on, the App Store, are subject to acceptance of its Terms of Service presented at the time of redemption or purchase, and found at http://www.apple.com/legal/itunes/ww/.

5. Latest version of iTunes software required to access the App Store, and can be downloaded at no charge at www.apple.com/itunes/download/. Use of iTunes software is subject to acceptance of its software license agreement presented at the time of installation. The minimum system requirements for running the software are available at www.apple.com/itunes/download/.

6. Custom Codes will be placed in the Holder’s applicable iTunes account and are not transferable.

7. If a Holder’s order exceeds the amount available on the Custom Codes, Holder must establish an iTunes Store Purchaser account and pay for the balance with a credit card.

8. Except as stated otherwise, data collection and use are subject to Apple’s Privacy Policy, which can be found at http://www.apple.com/legal/privacy.

9. Apple is not responsible for lost or stolen Custom Codes. If Holders have any questions, they may visit Apple’s iTunes Store Purchaser Service at www.apple.com/support/itunes/.

10. Apple reserves the right to close Holder accounts and request alternative forms of payment if Custom Codes are fraudulently obtained or used on the App Store.

11. APPLE AND ITS LICENSEES, AFFILIATES, AND LICENSORS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO CUSTOM CODES OR THE APP STORE, INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN THE EVENT A CUSTOM CODE IS NON-FUNCTIONAL, HOLDER’S OR COMPANY’S SOLE REMEDY, AND APPLE’S SOLE LIABILITY, SHALL BE THE REPLACEMENT OF SUCH CUSTOM CODE. THESE LIMITATIONS MAY NOT APPLY. CERTAIN LOCAL AND TERRITORY LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY, AND YOU OR HOLDER MAY ALSO HAVE ADDITIONAL RIGHTS.

12. Apple reserves the right to change any of the terms and conditions set forth in this
Attachment 1 from time to time without notice.

13. Any part of these terms and conditions may be void where prohibited or restricted by law.

EP5503
6/3/19
MANAGER’S REPORT No. 20-11

August 23, 2019

Re: Discussion and Possible Action on Board Approval for Indemnification, Attorney’s Fees, and Governing Law for use of Apple IOS12 between the Board of Water Supply, County of Kaua’i and Apple

RECOMMENDATION:
The Department recommends that the Board approve Option 1, which will allow the Department to move forward with the purchase and implementation of the Apple Ko’u Wai App, App Store, and upgrade of current iOS to iOS12.

FUNDING: N/A

BACKGROUND:
The Department’s Information Technology (I.T.) staff has been working closely with our Deputy County Attorney to review and approve of the End User License Agreements from Apple. Before we can move forward with the software and app for iPhone and iPads, Board approval is required as the agreement contains language for unspecified future obligations such as indemnification, attorney’s fees, and governing law provisions.

The sections within the agreement that reference Indemnification, Limitation of Liability, Attorney’s Fees, and Governing Law and Arbitration are shown below:

APPLE IOS12 TERMS & CONDITIONS - This agreement is for the upgrade or the current iOS to iOS12 for all DOW Ipads.

12. Controlling Law and Severability. This License will be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If you are a consumer based in the United Kingdom, this License will be governed by the laws of the jurisdiction of your residence. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this License shall continue in full force and effect.

OPTIONS:

Option 1: Approve Manager’s Report.

Pro: The Department can move forward with the development and release of our Customer Account Portal App, which would allow our customers to view their water account information as well as pay for their water bill via their Apple device. The Department can also move forward with updating our iPad’s to the current iOS version and access the Apple Store
Cons: The Board would agree to unspecified future obligations in the event a breach or similar contract issue occurs and Governing Law outside of the State of Hawai'i.

Option 2: Do Not Approve Manager’s Report.

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

Cons: The Department would not be able to move forward with our Customer Account Portal Mobile App and would not be able to utilize the Apple iOS Upgrade and access to the Apple store.

The Department would continue to use staff time to search for another similar software, which would most likely contain similar indemnification, attorney’s fees, and governing law and arbitration provisions.

SN/ein

Attachment: Apple IOS 12 Agreement
IMPORTANT: BY USING YOUR iPHONE, iPAD OR iPOD TOUCH (“iOS DEVICE”), YOU ARE
AGREEING TO BE BOUND BY THE FOLLOWING TERMS:

A. APPLE iOS SOFTWARE LICENSE AGREEMENT
B. APPLE PAY SUPPLEMENTAL TERMS
C. NOTICES FROM APPLE

APPLE INC.
iOS SOFTWARE LICENSE AGREEMENT
Single Use License

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YOUR iOS DEVICE OR DOWNLOADING THE SOFTWARE UPDATE ACCOMPANYING THIS
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APPLICABLE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO
NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT USE THE iOS DEVICE OR DOWNLOAD
THE SOFTWARE UPDATE.

IF YOU HAVE RECENTLY PURCHASED AN iOS DEVICE AND YOU DO NOT AGREE TO THE TERMS
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APPLE STORE OR AUTHORIZED DISTRIBUTOR WHERE YOU OBTAINED IT FOR A REFUND,

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   (a) The software (including Boot ROM code, embedded software and third party software),
documentation, interfaces, content, fonts and any data that came with your iOS Device (“Original iOS
Software”), as may be updated or replaced by feature enhancements, software updates or system
restore software provided by Apple (“iOS Software Updates”), whether in read only memory, on any
other media or in any other form (the Original iOS Software and iOS Software Updates are collectively
referred to as the “iOS Software”) are licensed, not sold, to you by Apple Inc. (“Apple”) for use only
under the terms of this License. Apple and its licensors retain ownership of the iOS Software itself and
reserve all rights not expressly granted to you. You agree that the terms of this License will apply to any
Apple-branded app that may be built-in on your iOS Device, unless such app is accompanied by a
separate license, in which case you agree that the terms of that license will govern your use of that app.

   (b) Apple, at its discretion, may make available future iOS Software Updates. The iOS Software Updates,
if any, may not necessarily include all existing software features or new features that Apple releases for
newer or other models of iOS Devices. The terms of this License will govern any iOS Software Updates
provided by Apple, unless such iOS Software Update is accompanied by a separate license, in which
case you agree that the terms of that license will govern your use of that app.

   (c) If you use the express setup feature to set up a new iOS Device based on your existing iOS Device,
you agree that the terms of this License will govern your use of the iOS Software on your new iOS
Device, unless it is accompanied by a separate license, in which case you agree that the terms of that
license will govern your use of that iOS Software. Your iOS Device will periodically check with Apple for
iOS Software Updates. If an update is available, the update may automatically download and install onto
your iOS Device and, if applicable, your peripheral devices. By using the Apple Software, you agree
that Apple may download and install automatic iOS Software Updates onto your iOS Device and
your peripheral devices. You can turn off automatic updates altogether at any time by changing the
Automatic Updates settings found within Settings > General > Software Update.
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(c) To the extent that Apple has preinstalled Apple-branded apps from the App Store on your iOS Device at the time of purchase (“Preinstalled Apps”), you will need to log into the App Store and associate these Preinstalled Apps with your App Store account in order to use them on your iOS Device. When you associate a Preinstalled App with your App Store account, you will at the same time be automatically associating all other Preinstalled Apps on your iOS Device. By choosing to associate the Preinstalled Apps with your App Store account, you agree that Apple may transmit, collect, maintain, process and use both the Apple ID used by your App Store account and a unique hardware identifier collected from your iOS Device, as unique account identifiers for the purpose of verifying the eligibility of your request and providing you access to the Preinstalled Apps through the App Store. If you do not wish to use a Preinstalled App, you can delete it from your iOS Device at any time.

(d) You may not, and you agree not to or enable others to, copy (except as expressly permitted by this License), decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the iOS Software or any services provided by the iOS Software or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or by licensing terms governing use of open-source components that may be included with the iOS Software).

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You agree to use the iOS Software and the Services (as defined in Section 5 below) in compliance with all applicable laws, including local laws of the country or region in which you reside or in which you download or use the iOS Software and Services. Features of the iOS Software and the Services may not be available in all languages or regions, some features may vary by region, and some may be restricted or unavailable from your service provider. A Wi-Fi or cellular data connection is required for some features of the iOS Software and Services.

Use of the App Store requires a unique user name and password combination, known as an Apple ID. An Apple ID is also required to access app updates and certain features of the iOS Software and Services.

You acknowledge that many features, built-in apps, and Services of the iOS Software transmit data and could impact charges to your data plan, and that you are responsible for any such charges. You can view and control which applications are permitted to use cellular data and view an estimate of how much data such applications have consumed under Cellular Data Settings. In addition, Wi-Fi Assist will automatically switch to cellular when you have a poor Wi-Fi connection, which might result in more cellular data use and impact charges to your data plan. Wi-Fi Assist is on by default, but can be disabled under Settings. For more information, please consult the User Guide for your iOS Device.

If you choose to allow automatic app updates, your iOS Device will periodically check with Apple for updates to the apps on your device and, if one is available, the update will automatically download and install onto your device. You can turn off the automatic app updates altogether at any time by going to Settings, tap iTunes & App Store, and under Automatic Downloads, turn off Updates.

Using your iOS Device in some circumstances can distract you and may cause a dangerous situation (for example, avoid typing a text message while driving a car or using headphones while riding a bicycle). By using your iOS Device you agree that you are responsible for observing rules that prohibit or restrict the use of mobile phones or headphones (for example, the requirement to use hands-free options for making calls when driving).

You may not rent, lease, lend, sell, redistribute, or sublicense the iOS Software. You may, however, make a one-time permanent transfer of all of your license rights to the iOS Software to another party in connection with the transfer of ownership of your iOS Device, provided that: (a) the transfer must include your iOS Device and all of the iOS Software, including all its component parts and this License; (b) you do not retain any copies of the iOS Software, full or partial, including copies stored on a computer or other storage device; and (c) the party receiving the iOS Software reads and agrees to accept the terms and conditions of this License.

When you use your device, your phone number and certain unique identifiers for your iOS Device are sent to Apple in order to allow others to reach you by your phone number when using various communication features of the iOS Software, such as iMessage and FaceTime. When you use iMessage, Apple may hold your messages in encrypted form for a limited period of time in order to ensure their delivery. You may turn off FaceTime or iMessage by going to the FaceTime or Messages settings on your iOS Device. Certain features like Analytics, Location Services, Siri, and Dictation may require information from your iOS Device to provide their respective functions.
When you turn on or use these features, details will be provided regarding what information is sent to Apple and how the information may be used. You can learn more by visiting https://www.apple.com/privacy/. At all times your information will be treated in accordance with Apple’s Privacy Policy, which can be viewed at: https://www.apple.com/legal/privacy/.

5. Services and Third Party Materials.
(a) The iOS Software may enable access to Apple’s iTunes Store, App Store, Apple Books, Game Center, iCloud, Maps and other Apple and third party services and web sites (collectively and individually, “Services”). Such Services may not be available in all languages or in all countries. Use of these Services requires Internet access and use of certain Services may require an Apple ID, may require you to accept additional terms and may be subject to additional fees. By using this software in connection with an Apple ID, or other Apple Service, you agree to the applicable terms of service for that Service, such as the latest Apple Media Services Terms and Conditions for the country in which you access such Services, which you may access and review at: https://www.apple.com/legal/internet-services/itunes/.

(b) If you sign up for iCloud, certain iCloud features like “iCloud Photos”, “My Photo Stream”, “Shared Albums”, “Back Up” and “Find My iPhone” may be accessed directly from the iOS Software. You acknowledge and agree that your use of iCloud and these features is subject to the latest terms and conditions of the iCloud service, which you may access and review at: https://www.apple.com/legal/internet-services/icloud/.

(c) News App Content. Your use of content accessed through the News application is limited solely to personal, noncommercial use, does not transfer any ownership interest to you in the content, and specifically excludes, without limitation, any commercial or promotional use rights in such content. Furthermore, you are prohibited from republishing, retransmitting and reproducing any images accessed through News as a stand-alone file.

(d) Maps. The maps service and features of the iOS Software (“Maps”), including map data coverage, may vary by region. When you use any location-based features within Maps, such as turn-by-turn navigation, traffic and local search, various location-related and usage information may be sent to Apple, including the real-time geographic location of your iOS Device, in order to process your request and help improve Maps. Such location and usage data is collected by Apple in a form that does not personally identify you. By using Maps, you agree and consent to Apple’s and its subsidiaries’ and agents’ transmission, collection, maintenance, processing, and use of this information, to provide and improve the Maps features and service, and other Apple products and services. Apple may also provide such information, in either an aggregated or non personally identifiable form, to its partners and licensees to help improve their map and location-based products and services. You may disable the location-based functionality of Maps by going to the Location Services setting on your iOS Device and turning off the individual location setting for Maps. Certain Maps features will however be unavailable if you disable the Location Services setting, such as turn-by-turn navigation.

(e) You understand that by using any of the Services, you may encounter content that may be deemed offensive, indecent, or objectionable, which content may or may not be identified as having explicit language, and that the results of any search or entering of a particular URL may automatically and unintentionally generate links or references to objectionable material. Nevertheless, you agree to use the Services at your sole risk and that Apple, its affiliates, agents, principals, or licensors shall have no liability to you for content that may be found to be offensive, indecent, or objectionable.

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7.5 YOU FURTHER ACKNOWLEDGE THAT THE iOS SOFTWARE AND SERVICES ARE NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN, THE CONTENT, DATA OR INFORMATION PROVIDED BY THE iOS SOFTWARE OR SERVICES COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, INCLUDING WITHOUT LIMITATION THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, LIFE SUPPORT OR WEAPONS SYSTEMS.

7.6 NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY APPLE OR AN APPLE AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE iOS SOFTWARE OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.
8. Limitation of Liability. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL APPLE, ITS AFFILIATES, AGENTS OR PRINCIPALS BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, CORRUPTION OR LOSS OF DATA, FAILURE TO TRANSMIT OR RECEIVE ANY DATA (INCLUDING WITHOUT LIMITATION COURSE INSTRUCTIONS, ASSIGNMENTS AND MATERIALS), BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE IOS SOFTWARE AND SERVICES OR ANY THIRD PARTY SOFTWARE OR APPLICATIONS IN CONJUNCTION WITH THE IOS SOFTWARE OR SERVICES, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. In no event shall Apple’s total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of two hundred and fifty dollars (U.S.$250.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

9. Digital Certificates. The iOS Software contains functionality that allows it to accept digital certificates either issued from Apple or from third parties. YOU ARE SOLELY RESPONSIBLE FOR DECIDING WHETHER OR NOT TO RELY ON A CERTIFICATE WHETHER ISSUED BY APPLE OR A THIRD PARTY. YOUR USE OF DIGITAL CERTIFICATES IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, APPLE MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ACCURACY, SECURITY, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO DIGITAL CERTIFICATES.

10. Export Control. You may not use or otherwise export or re-export the iOS Software except as authorized by United States law and the laws of the jurisdiction(s) in which the iOS Software was obtained. In particular, but without limitation, the iOS Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List or any other restricted party lists. By using the iOS Software, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the iOS Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons.

11. Government End Users. The iOS Software and related documentation are “Commercial Items”, as that term is defined at 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished rights reserved under the copyright laws of the United States.

12. Controlling Law and Severability. This License will be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If you are a consumer based in the United Kingdom, this License will be governed by the laws of the jurisdiction of your residence. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this
License shall continue in full force and effect.

13. Complete Agreement; Governing Language. This License constitutes the entire agreement between you and Apple relating to the iOS Software and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this License will be binding unless in writing and signed by Apple. Any translation of this License is done for local requirements and in the event of a dispute between the English and any non-English versions, the English version of this License shall govern, to the extent not prohibited by local law in your jurisdiction.

14. Third Party Acknowledgements. Portions of the iOS Software may utilize or include third party software and other copyrighted material. Acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the iOS Software, and your use of such material is governed by their respective terms. Use of the Google Safe Browsing Service is subject to the Google Terms of Service (https://www.google.com/intl/en/policies/terms/) and to Google’s Privacy Policy (https://www.google.com/intl/en/policies/privacy/).

15. Use of MPEG-4; H.264/AVC Notice.
(a) The iOS Software is licensed under the MPEG-4 Systems Patent Portfolio License for encoding in compliance with the MPEG-4 Systems Standard, except that an additional license and payment of royalties are necessary for encoding in connection with (i) data stored or replicated in physical media which is paid for on a title by title basis and/or (ii) data which is paid for on a title by title basis and is transmitted to an end user for permanent storage and/or use. Such additional license may be obtained from MPEG LA, LLC. See http://www.mpegla.com for additional details.

(b) The iOS Software contains MPEG-4 video encoding and/or decoding functionality. The iOS Software is licensed under the MPEG-4 Visual Patent Portfolio License for the personal and non-commercial use of a consumer for (i) encoding video in compliance with the MPEG-4 Visual Standard (“MPEG-4 Video”) and/or (ii) decoding MPEG-4 video that was encoded by a consumer engaged in a personal and non-commercial activity and/or was obtained from a video provider licensed by MPEG LA to provide MPEG-4 video. No license is granted or shall be implied for any other use. Additional information including that relating to promotional, internal and commercial uses and licensing may be obtained from MPEG LA, LLC. See http://www.mpegla.com.

(c) The iOS Software contains AVC encoding and/or decoding functionality, commercial use of H.264/AVC requires additional licensing and the following provision applies: THE AVC FUNCTIONALITY IN THE iOS SOFTWARE IS LICENSED HEREBIN ONLY FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE AVC STANDARD (“AVC VIDEO”) AND/OR (ii) DECODE AVC VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR AVC VIDEO THAT WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE AVC VIDEO. INFORMATION REGARDING OTHER USES AND LICENSES MAY BE OBTAINED FROM MPEG LA L.L.C. SEE http://www.mpegla.com.

16. Yahoo Search Service Restrictions. The Yahoo Search Service available through Safari is licensed for use only in the following countries and regions: Argentina, Aruba, Australia, Austria, Barbados, Belgium, Bermuda, Brazil, Bulgaria, Canada, Cayman Islands, Chile, China mainland, Hong Kong, Taiwan, Colombia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Germany, Greece, Grenada, Guatemala, Hungary, Iceland, India, Indonesia, Ireland, Italy, Jamaica, Japan, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Peru, Philippines, Poland, Portugal, Puerto Rico, Romania, Singapore, Slovakia, Slovenia, South Korea, Spain, St. Lucia, St. Vincent, Sweden, Switzerland, Thailand, The Bahamas, Trinidad and Tobago, Turkey, UK, Uruguay, US and Venezuela.
17. Microsoft Exchange Notice. The Microsoft Exchange mail setting in the iOS Software is licensed only for over-the-air synchronization of information, such as email, contacts, calendar and tasks, between your iOS and Microsoft Exchange Server or other server software licensed by Microsoft to implement the Microsoft Exchange ActiveSync protocol.

EA1566
2/21/2019

Apple Pay Supplemental Terms and Conditions

These Apple Pay Supplemental Terms and Conditions (these “Supplemental Terms”) supplement the iOS Software License Agreement (the “License”); both the terms of the License and these Supplemental Terms govern your use of the Apple Pay feature, which shall be deemed a “Service” under the License. Capitalized terms used in these Supplemental Terms have the meanings set forth in the License.

1. Overview and Use Restrictions

Apple Pay allows you to:

- store virtual representations of credit, debit, and prepaid cards, including store credit, debit, prepaid cards, and the Apple Pay Cash card, which are supported by the Apple Pay feature (“Supported Payment Cards”) and use supported iOS Devices to make contactless payments in select locations, or within apps or websites;
- use rewards and gift cards that are saved in Wallet (“Apple Pay-Enabled Cards”, and together with Supported Payment Cards, “Supported Cards”) to make contactless rewards and gift-card transactions in select stores as part of a contactless payment using Apple Pay; and
- send person to person payments to other Apple Pay users.

The Apple Pay features of the iOS Software may only be available in select regions, with select card issuers, financial institutions, and merchants. Features may vary by region, issuer, and merchant.

To use Apple Pay, you must have a Supported Card. Supported Cards may change from time to time. Additionally, in order to send or receive person to person payments, you must have an Apple Pay Cash card.

Supported Payment Cards and person to person payments are associated with the Apple ID you have signed into iCloud to use these features. Supported Cards are only available to individuals aged 13 years or older, and may be subject to additional age-based restrictions imposed by iCloud or the Supported Card which you are trying to provision. The Apple Pay Cash card and the ability to send and receive person to person payments are only available to individuals aged 18 years or older.

Apple Pay is intended for your personal use and you may only provision your own Supported Cards. If you are provisioning a supported corporate card, you represent that you are doing so with the authorization of your employer and you are authorized to bind your employer to these terms of use and all transactions effected by use of this feature. If you are sending or receiving a person to person payment, you represent that you are doing so for your own personal, non-commercial use.

You agree not to use Apple Pay for illegal or fraudulent purposes, or any other purposes which are prohibited by the License and these Supplemental Terms. You further agree to use Apple Pay in accordance with applicable laws and regulations. You agree not to interfere with or disrupt the Apple Pay service (including accessing the service through any automated means), or any servers or networks.
connected to the service, or any policies, requirements, or regulations of networks connected to the service (including any unauthorized access to, use, or monitoring of data or traffic thereon).

2. Apple’s Relationship With You

Apple Pay enables you to create a virtual representation of your Supported Cards on your supported iOS Device. However Apple does not process payments or other non-payment card transactions (such as reward accrual and redemption), receive, hold, or transfer your funds, or have any other control over payments, returns, refunds, rewards, value, discounts, or other commerce activity that may arise out of your use of this feature.

The terms of cardholder agreements you may have in place with your card issuer will continue to govern your use of your Supported Cards and their use in connection with Apple Pay. Similarly, your participation in any merchant rewards or gift card programs and your use of Apple Pay-Enabled Cards in connection with Apple Pay will be subject to such merchant’s terms and conditions.

The Apple Pay Cash card and the ability to send and receive person to person payments are only available in the United States, and are services provided by Green Dot Bank, member FDIC. When you enable these features within Apple Pay, you are opening an account with Green Dot Bank, and when you send or receive a person to person payment or load or withdraw money from your Apple Pay Cash card, Green Dot Bank will be responsible for receiving and sending your money to the intended recipient. The financial institution responsible for offering Apple Pay Cash and person to person payments within Apple Pay is subject to change, and your use of such features are subject to their terms and conditions.

Nothing in the License or these Supplemental Terms modifies the terms of any cardholder, user, or merchant agreement, and such terms will govern your use of the applicable Supported Card or the person to person payment feature of Apple Pay and their virtual representation on your iOS Device. You agree that Apple is not a party to your cardholder or merchant agreements, nor is Apple responsible for the: (a) content, accuracy or unavailability of any payment cards, rewards cards, gift cards, commerce activities, transactions, or purchases while using Apple Pay functionality; (b) issuance of credit or assessing eligibility for credit; (c) accrual or redemption of rewards or stored value under a merchant’s program; (d) funding or reloading of prepaid cards; (e) sending or receiving of person to person payments; or (f) loading, redeeming, or withdrawing money from your Apple Pay Cash card.

For all disputes or questions about payment cards, rewards cards, gift cards, or associated commerce activity, please contact your issuer or the applicable merchant. For questions regarding the Apple Pay Cash card or person to person payments, please contact Apple Support.

3. Privacy

Apple Pay requires some information from your iOS Device in order to offer the full experience. Additionally, when you use your Apple Pay Cash card or send or receive person to person payments, additional information about your transactions is collected and retained to service your account and fraud prevention and regulatory purposes. You can find more information on the data collected, used, or shared as part of your use of Apple Pay, the Apple Pay Cash card, or person to person payments with Apple Pay by reading About Apple Pay and Privacy (which can be accessed by going to Wallet & Apple Pay on your iOS Device, or within the Watch app on a paired iOS Device) or by visiting https://www.apple.com/privacy. By using these features, you agree and consent to Apple’s and its subsidiaries’ and agents’ transmission, collection, maintenance, processing, and use of all of the foregoing information, to provide Apple Pay functionality.

4. Security; Lost or Disabled Devices
Apple Pay stores virtual representations of your Supported Cards and should be protected as you would protect cash or your physical credit, debit, prepaid, rewards, or gift cards. Providing your device passcode to a third party or allowing a third party to add their fingerprint to use Touch ID or enable Face ID may result in their ability to make payments, send, request, or receive person to person payments, withdraw money from your Apple Pay Cash card, or receive or redeem rewards or credit using Apple Pay on your device. You are solely responsible for maintaining the security of your device and of your passcode. You agree that Apple does not have any responsibility if you lose or share access to your device. You agree that Apple does not have any responsibility if you make unauthorized modifications to iOS (such as by way of a “jailbreak”).

You may need to enable additional security measures, such as two-factor authentication for your Apple ID, in order to access particular features of Apple Pay, including the Apple Pay Cash card and person to person payments with Apple Pay. If you subsequently remove those security features, you may not be able to continue to access particular features of Apple Pay.

If your device is lost or stolen and you have Find My iPhone enabled, you can use Find My iPhone to attempt to suspend the ability to pay with the virtual Supported Payment Cards or sending person to person payments on that device by putting it into Lost Mode. You can also erase your device, which will attempt to suspend the ability to pay with the virtual Supported Payment Cards or send person to person payments on the device and will also attempt to remove the Apple Pay-Enabled Cards. You should also contact the issuer of your Supported Payment Cards, the merchant who issued your Apple Pay-Enabled Cards, and Apple in the case of your Apple Pay Cash card in order to prevent unauthorized access to your Supported Cards.

If you report or Apple suspects fraudulent or abusive activity, you agree to cooperate with Apple in any investigation and to use any fraud prevention measures we prescribe.

5. Limitation of Liability

IN ADDITION TO THE DISCLAIMERS OF WARRANTIES AND LIMITATION OF LIABILITY SET FORTH IN THE LICENSE, APPLE DOES NOT ASSUME ANY LIABILITY FOR PURCHASES, PAYMENTS, TRANSACTIONS, OR OTHER COMMERCE ACTIVITY MADE USING THE APPLE PAY FEATURE, AND YOU AGREE TO LOOK SOLELY TO AGREEMENTS YOU MAY HAVE WITH YOUR CARD ISSUER, PAYMENT NETWORK, FINANCIAL INSTITUTIONS, OR MERCHANT TO RESOLVE ANY QUESTIONS OR DISPUTES RELATING TO YOUR SUPPORTED CARDS, PERSON TO PERSON PAYMENTS, AND ASSOCIATED COMMERCE ACTIVITY.

NOTICES FROM APPLE

If Apple needs to contact you about your product or account, you consent to receive the notices by email. You agree that any such notices that we send you electronically will satisfy any legal communication requirements.
MANAGER’S REPORT No. 20-12

August 23, 2019

Re: Discussion and Possible Action on Board Approval for Indemnification, Attorney’s Fees, and Governing Law for use of Apple Media software between the Board of Water Supply, County of Kaua‘i and Apple

RECOMMENDATION:
The Department recommends that the Board approve Option 1, which will allow the Department to move forward with the purchase and implementation of the Apple Ko‘u Wai App, App Store, and upgrade of current iOS to iOS12.

FUNDING: N/A

BACKGROUND:
The Department’s Information Technology (I.T.) staff has been working closely with our Deputy County Attorney to review and approve of the End User License Agreements from Apple. Before we can move forward with the software and app for iPhone and iPads, Board approval is required as the agreement contains language for unspecified future obligations such as indemnification, attorney’s fees, and governing law provisions.

The sections within the agreement that reference Indemnification, Limitation of Liability, Attorney’s Fees, and Governing Law and Arbitration are shown below:

APPLE MEDIA SERVICES TERMS AND CONDITIONS - This agreement is for the access of Apple App’s. The Department understands they we will need to review any Terms and Conditions if an App is downloaded to our Department iPads.

f. Limitation of Liability. TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL LICENSOR BE LIABLE FOR PERSONAL INJURY OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OF OR INABILITY TO USE THE LICENSED APPLICATION, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE) AND EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU.

In no event shall Licensor’s total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty dollars ($50.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.
GOVERNING LAW

i. Except to the extent expressly provided in the following paragraph, this Agreement and the relationship between you and Apple shall be governed by the laws of the State of California, excluding its conflicts of law provisions. You and Apple agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Santa Clara, California, to resolve any dispute or claim arising from this Agreement. If (a) you are not a U.S. citizen; (b) you do not reside in the U.S.; (c) you are not accessing the Service from the U.S.; and (d) you are a citizen of one of the countries identified below, you hereby agree that any dispute or claim arising from this Agreement shall be governed by the applicable law set forth below, without regard to any conflict of law provisions, and you hereby irrevocably submit to the non-exclusive jurisdiction of the courts located in the state, province or country identified below whose law governs:

WAIVER AND INDEMNITY

BY USING THE SERVICES, YOU AGREE, TO THE EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD APPLE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, AND LICENSORS HARMLESS WITH RESPECT TO ANY CLAIMS ARISING OUT OF YOUR BREACH OF THIS AGREEMENT, YOUR USE OF THE SERVICES, OR ANY ACTION TAKEN BY APPLE AS PART OF ITS INVESTIGATION OF A SUSPECTED VIOLATION OF THIS AGREEMENT OR AS A RESULT OF ITS FINDING OR DECISION THAT A VIOLATION OF THIS AGREEMENT HAS OCCURRED. YOU AGREE THAT YOU SHALL NOT SUE OR RECOVER ANY DAMAGES FROM APPLE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, AND LICENSORS AS A RESULT OF ITS DECISION TO REMOVE OR REFUSE TO PROCESS ANY INFORMATION OR CONTENT, TO WARN YOU, TO SUSPEND OR TERMINATE YOUR ACCESS TO THE SERVICES, OR TO TAKE ANY OTHER ACTION DURING THE INVESTIGATION OF A SUSPECTED VIOLATION OR AS A RESULT OF APPLE'S CONCLUSION THAT A VIOLATION OF THIS AGREEMENT HAS OCCURRED. THIS WAIVER AND INDEMNITY PROVISION APPLIES TO ALL VIOLATIONS DESCRIBED IN OR CONTEMPLATED BY THIS AGREEMENT.

STATUTORY EXCEPTIONS FOR PUBLIC INSTITUTIONS

If you are a qualified public educational or government institution and any part of this Agreement, such as, by way of example, all or part of the indemnification section, is invalid or unenforceable against you because of applicable local, national, state or federal law, then that portion shall be deemed invalid or unenforceable, as the case may be, and instead construed in a manner most consistent with applicable governing law.

GOVERNING LAW

Except to the extent expressly provided in the following paragraph, this Agreement and the relationship between you and Apple, and all Transactions on the Services shall be governed by the laws of the State of California, excluding its conflicts of law provisions. You and Apple agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Santa Clara, California, to resolve any dispute or claim arising from this Agreement. If (a) you are not a U.S. citizen; (b) you do not reside in the U.S.; (c) you are not accessing the Service from the U.S.; and (d) you are a citizen of one of the countries identified below, you hereby agree that any dispute or claim arising from this Agreement shall be governed by the applicable law set forth below, without regard to any conflict of law provisions, and you hereby irrevocably submit to the non-exclusive jurisdiction of the courts located in the state, province or country identified below whose law governs:
If you are a citizen of any European Union country or Switzerland, Norway or Iceland, the governing law and forum shall be the laws and courts of your usual place of residence. Specifically excluded from application to this Agreement is that law known as the United Nations Convention on the International Sale of Goods.

**OPTIONS:**

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

Pro: The Department can move forward with the development and release of our Customer Account Portal App, which would allow our customers to view their water account information as well as pay for their water bill via their Apple device. The Department can also move forward with updating our iPad’s to the current iOS version and access the Apple Store.

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

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

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

Cons: The Department would not be able to move forward with our Customer Account Portal Mobile App and would not be able to utilize the Apple iOS Upgrade and access to the Apple store.

The Department would continue to use staff time to search for another similar software, which would most likely contain similar indemnification, attorney’s fees, and governing law and arbitration provisions.

SN/ein

Attachment: Apple Media Services Terms and Conditions
Apple Media Services Terms and Conditions

These terms and conditions create a contract between you and Apple (the “Agreement”). Please read the Agreement carefully. To confirm your understanding and acceptance of the Agreement, click “Agree.”

A. INTRODUCTION TO OUR SERVICES

This Agreement governs your use of Apple’s services (“Services”), through which you can buy, get, license, rent or subscribe to content, apps (“Apps”), and other in-app services (collectively, “Content”). Content may be offered through the Services by Apple or a third party. Our Services are available for your use in your country of residence (“Home Country”). To use our Services, you need compatible hardware, software (latest version recommended and sometimes required) and Internet access (fees may apply). Our Services’ performance may be affected by these factors.

B. USING OUR SERVICES

PAYMENTS, TAXES, AND REFUNDS

You can acquire Content on our Services for free or for a charge, either of which is referred to as a “Transaction.” Each Transaction is an electronic contract between you and Apple, and/or you and the entity providing the Content on our Services. However, if you are a customer of Apple Distribution International and you acquire an App or a book, Apple Distribution International is the merchant of record; this means that you acquire the Content from Apple Distribution International, and it is licensed by the App Provider (as defined below) or book publisher. When you make your first Transaction, we will ask you to choose how frequently we should ask for your password for future Transactions. If you enable Touch ID for Transactions, we will ask you to authenticate all Transactions with your fingerprint, and if you enable Face ID for Transactions, we will ask you to authenticate all Transactions using facial recognition. Manage your password settings at any time by following these instructions: https://support.apple.com/en-us/HT204030. Apple will charge your selected payment method (such as your credit card, debit card, gift card/code, or other method available in your Home Country) for any paid Transactions, including any applicable taxes. If you have also added it to your Apple Wallet, Apple may charge your selected payment method in Apple Wallet using Apple Pay. If we cannot charge your selected payment method for any reason (such as expiration or insufficient funds), you remain responsible for any uncollected amounts, and we will attempt to charge the payment method again as you may update your payment method information. If you pre-order Content, you will be charged when the Content is delivered to you (unless you cancel prior to the Content’s availability). In accordance with local law, Apple may update information regarding your selected payment method if provided such information by your financial institution. For details about how Transactions are billed, please visit http://support.apple.com/kb/HT5582. All Transactions are final. Content prices may change at any time. If technical problems prevent or unreasonably delay delivery of Content, your exclusive and sole remedy is either replacement of the Content or refund of the price paid, as determined by Apple. From time to time, Apple may
refuse a refund request if we find evidence of fraud, refund abuse, or other manipulative behavior that entitles Apple to a corresponding counterclaim. Terms related to Store Credit and gift cards/codes are available here: https://www.apple.com/legal/internet-services/itunes/giftcards/.

APPLE ID

Using our Services and accessing your Content may require an Apple ID. An Apple ID is the account you use across Apple’s ecosystem. Your Apple ID is valuable, and you are responsible for maintaining its confidentiality and security. Apple is not responsible for any losses arising from the unauthorized use of your Apple ID. Please contact Apple if you suspect that your Apple ID has been compromised.

You must be age 13 (or equivalent minimum age in your Home Country, as set forth in the registration process) to create an Apple ID and use our Services. Apple IDs for persons under this age can be created by a parent or legal guardian using Family Sharing or by an approved educational institution.

PRIVACY

Your use of our Services is subject to Apple’s Privacy Policy, which is available at https://www.apple.com/legal/privacy/.

SERVICES AND CONTENT USAGE RULES

Your use of the Services and Content must follow the rules set forth in this section (“Usage Rules”). Any other use of the Services and Content is a material breach of this Agreement. Apple may monitor your use of the Services and Content to ensure that you are following these Usage Rules.

All Services:

- You may use the Services and Content only for personal, noncommercial purposes (except as set forth in the App Store Content section below).
- Apple’s delivery of Content does not transfer any commercial or promotional use rights to you, and does not constitute a grant or waiver of any rights of the copyright owners.
- You can use Content from up to five different Apple IDs on each device.
- It is your responsibility not to lose, destroy, or damage Content once downloaded. We encourage you to back up your Content regularly.
- You may not tamper with or circumvent any security technology included with the Services.
- You may access our Services only using Apple’s software, and may not modify or use modified versions of such software.
- Video Content requires an HDCP connection.
Audio and Video Content Sales and Rentals:

- You can use Digital Rights Management (DRM)-free Content on a reasonable number of compatible devices that you own or control. DRM-protected Content can be used on up to five computers and any number of devices that you sync to from those computers.

- Content rentals are viewable on a single device at a time, and must be played within 30 days, and completed within 48 hours of the start of play (stopping, pausing or restarting does not extend this period).

- You may burn an audio playlist of purchased music to disc for listening purposes up to seven times; this limitation does not apply to DRM-free Content. Other Content may not be burned to disc.

App Store Content:

- The term “App” includes apps for any Apple platform and/or operating system, in-app purchases, extensions (such as keyboards), stickers, and subscriptions made available in an app.

- You can use Apps on any device that you own or control.

- Individuals acting on behalf of a commercial enterprise, governmental organization or educational institution (an “Enterprise”) may download and sync non-Arcade Apps for use by either (i) a single individual on one or more devices owned or controlled by an Enterprise; or (ii) multiple individuals on a single shared device owned or controlled by an Enterprise. For the sake of clarity, each device used serially or collectively by multiple users requires a separate license.

Apple Music:

- You can use an Individual Apple Music membership on up to 10 devices (only five of which can be computers).

- An Individual Apple Music membership allows you to stream on a single device at a time; a Family membership allows you or your Family members to stream on up to six devices at a time.

Apple Arcade:

- Apple Arcade Apps may only be downloaded, or redownloaded, with a valid Apple Arcade trial or subscription.

- If your subscription ends, Apps downloaded via Apple Arcade will no longer be accessible to you.

Apple TV Content

- For most channels, you can stream Content on up to three devices simultaneously.

- You may be limited in the amount of Content you may download, and some downloaded Content may expire after a given amount of time after downloaded or first played. Certain Content may not be available for download at all.

REDOWNLOADS

You may be able to redownload previously acquired Content ("Redownload") to your devices that are signed in with the same Apple ID ("Associated Devices"). You can see Content types available for Redownload in your Home Country at [https://support.apple.com/en-us/HT204632](https://support.apple.com/en-us/HT204632). Content may not be available for Redownload if that Content is no longer offered on our Services.

Associated Devices Rules (except Apple Arcade): You can have up to 10 devices (but only a maximum of 5 computers) signed in with your Apple ID at one time. Each computer must also be authorized using the same Apple ID (to learn more about authorization of computers, visit [https://support.apple.com/en-us/HT201251](https://support.apple.com/en-us/HT201251)). Devices can be associated with a different Apple ID once every 90 days.

Associated Devices Rules for Apple Arcade: You can have up to 10 devices signed in to Apple Arcade per Family member at one time. Devices can be associated with a different Apple ID once every 90 days.

SUBSCRIPTIONS

The Services and certain Apps may allow you to purchase access to Content or services on a subscription basis ("Paid Subscriptions"). Paid Subscriptions automatically renew until cancelled in the Manage Subscriptions section of your account settings. To learn more about cancelling your subscriptions, visit [https://support.apple.com/en-us/HT202039](https://support.apple.com/en-us/HT202039). We will notify you if the price of a Paid Subscription increases and, if required, seek your consent to continue. You will be charged no more than 24 hours prior to the start of the latest Paid Subscription period. If we cannot charge your payment method for any reason (such as expiration or insufficient funds), and you have not cancelled the Paid Subscription, you remain responsible for any uncollected amounts, and we will attempt to charge the payment method as you may update your payment method information. This may result in a change to the start of your next Paid Subscription period and may change the date on which you are billed for each period. We reserve the right to cancel your Paid Subscription if we are unable to successfully charge your payment method to renew your subscription. Certain Paid Subscriptions may offer a free trial prior to charging your payment method. If you decide to unsubscribe from a Paid Subscription before we start charging your payment method, cancel the subscription at least 24 hours before the free trial ends.

CONTENT AND SERVICE AVAILABILITY

Terms found in this Agreement that relate to Services, Content types, features or functionality not available in your Home Country are not applicable to you unless and until they become available to you. To see the Content types available to you in your Home Country, go to the Services or visit [https://support.apple.com/en-us/HT204411](https://support.apple.com/en-us/HT204411). Certain Services and Content available to you in your Home Country may not be available to you when traveling outside of your Home Country.
NON-APPLE DEVICES

If you use our Services on a non-Apple-branded device, you may not be able to access all features or Content types. Terms in this Agreement relating to unavailable features or Content types are not applicable to you. If you later choose to access our Services from an Apple-branded device, you agree that all terms of this Agreement will apply to your use on such device.

C. YOUR SUBMISSIONS TO OUR SERVICES

Our Services may allow you to submit materials such as comments, pictures, videos, and podcasts (including associated metadata and artwork). Your use of such features must comply with the Submissions Guidelines below, which may be updated from time to time. If you see materials that do not comply with the Submissions Guidelines, please use the Report a Concern feature. You hereby grant Apple a worldwide, royalty-free, perpetual, nonexclusive license to use the materials you submit within the Services and related marketing, and Apple internal purposes. Apple may monitor and decide to remove or edit any submitted material.

Submissions Guidelines: You may not use the Services to:

- post any materials that you do not have permission, right or license to use;
- post objectionable, offensive, unlawful, deceptive or harmful content;
- post personal, private or confidential information belonging to others;
- request personal information from a minor;
- impersonate or misrepresent your affiliation with another person, or entity;
- post or transmit spam, including but not limited to unsolicited or unauthorized advertising, promotional materials, or informational announcements;
- plan or engage in any illegal, fraudulent, or manipulative activity.

D. FAMILY SHARING

The organizer of a Family (“Organizer”) must be 18 years or older and the parent or legal guardian of any Family member under age 13 or the equivalent minimum age in their Home Country (as set forth in the registration process). Apple devices are required for access to all of the Family Sharing features.

Purchase Sharing: Family Sharing’s Purchase Sharing feature allows you to share eligible Content among up to six members of a Family. The Organizer invites other members to participate, and agrees to pay for all Transactions initiated by Family members. The Organizer's payment method is used to pay for any Transaction initiated by a Family member (except when the Family member’s account has store credit, which is always used first). Family members are acting as agents for the Organizer when the Organizer’s payment method is used. The Organizer hereby agrees (1) to pay for such Transactions, and (2) that Transactions initiated by Family members are authorized. Organizers are responsible for complying with their payment method contract, and assume all risk related to sharing access to the payment method with Family
members. A receipt or invoice for any Family member Transaction is sent to the initiating Family member and the Organizer.

Ask to Buy: Ask to Buy is a convenient feature that allows an Organizer to approve each Transaction initiated by a Family member under age 18 (or the equivalent age of majority in your Home Country). The Organizer must be the parent or legal guardian of any Family member for whom Ask to Buy is activated. Content downloaded from Family members or acquired via redemption codes are not subject to Ask to Buy.

Family Member changes: When a Family member leaves or is removed from the Family, the remaining Family members may no longer be able to access the former member’s Content, including Content acquired with the Organizer’s payment method.

Family Sharing Rules: You can only belong to one Family at a time, and may join any Family no more than twice per year. You can change the Apple ID you associate with a Family no more than once every 90 days. All Family members must share the same Home Country. Not all Content, including In-App Purchases, subscriptions, and some previously acquired Apps, are eligible for Purchase Sharing. Apple Arcade and Apple News+ subscriptions are automatically enabled for Purchase Sharing. Subscriptions shared by a Family may be subject to Content usage limitations on a per subscription basis.

E. PERSONALIZED RECOMMENDATION FEATURES

The Services may recommend Content to you based on your downloads, purchases and other activities. You may opt out from receiving such personalized recommendations for some Services in your account settings.

Some recommendation features may require your permission before they are turned on. If you turn on these features, you will be asked to give Apple permission to collect and store certain data, including but not limited to data about your device activity, location, and usage. Please carefully read the information presented when you turn on these features.

F. ADDITIONAL ITUNES STORE TERMS

SEASON PASS AND MULTI-PASS

A Pass allows you to purchase and receive television Content as it becomes available. A Season Pass applies to television Content that has a limited number of episodes per season; a Multi-Pass applies to television Content that is available on an ongoing basis. The full price of a Season Pass or Multi-Pass is charged at the time of the Transaction. Season Pass or Multi-Pass Content is available for download up to 90 days after the last episode becomes available. If automatic renewal is selected when you obtain a Multi-Pass, you will be charged the full price of each subsequent Multi-Pass cycle. You can turn off automatic renewal at least 24 hours prior to the beginning of the next Multi-Pass cycle in your account settings. If a Content provider delivers to Apple fewer TV episodes than planned when you purchased a Season Pass, we will credit to your Apple ID the retail value of the corresponding number of episodes that were not provided to Apple.
G. ADDITIONAL APP STORE TERMS (EXCLUDING APPLE ARCADE APPS)

LICENSE OF APP STORE CONTENT

App licenses are provided to you by Apple or a third party developer (“App Provider”). If you are a customer of Apple Distribution International, the merchant of record is Apple Distribution International, which means that you acquire the App license from Apple Distribution International, but the App is licensed by the App Provider. An App licensed by Apple is an “Apple App;” an App licensed by an App Provider is a “Third Party App.” Apple acts as an agent for App Providers in providing the App Store and is not a party to the sales contract or user agreement between you and the App Provider. Any App that you acquire is governed by the Licensed Application End User License Agreement (“Standard EULA”) set forth below, unless Apple or the App Provider provides an overriding custom license agreement (“Custom EULA”). The App Provider of any Third Party App is solely responsible for its content, warranties, and claims that you may have related to the Third Party App. You acknowledge and agree that Apple is a third-party beneficiary of the Standard EULA or Custom EULA applicable to each Third Party App and may therefore enforce such agreement. Certain Apps, such as stickers and iMessage apps, may not appear on the device springboard but can be accessed and used in the Messages app drawer.

IN-APP PURCHASES

Apps may offer content, services or functionality for use within such Apps (“In-App Purchases”). In-App Purchases that are consumed during the use of the App (for example, virtual gems) cannot be transferred among devices and can be downloaded only once. You must authenticate your account before making In-App Purchases – separate from any authentication to obtain other Content – by entering your password or using Touch ID or Face ID. You will be able to make additional In-App Purchases for fifteen minutes without re-authenticating unless you’ve asked us to require a password for every purchase or have enabled Touch ID or Face ID. You can turn off the ability to make In-App Purchases by following these instructions: https://support.apple.com/en-us/HT201304.

APP MAINTENANCE AND SUPPORT

Apple is responsible for providing maintenance and support for Apple Apps only, or as required under applicable law. App Providers are responsible for providing maintenance and support for Third Party Apps.

APP BUNDLES

Some Apps may be sold together as a bundle (“App Bundle”). The price displayed with an App Bundle is the price you will be charged upon purchasing the App Bundle. The App Bundle price may be reduced to account for Apps you have already purchased or acquired, but may include a minimum charge to complete the App Bundle.

LICENSED APPLICATION END USER LICENSE AGREEMENT
Apps made available through the App Store are licensed, not sold, to you. Your license to each App is subject to your prior acceptance of either this Licensed Application End User License Agreement (“Standard EULA”), or a custom end user license agreement between you and the Application Provider (“Custom EULA”), if one is provided. Your license to any Apple App under this Standard EULA or Custom EULA is granted by Apple, and your license to any Third Party App under this Standard EULA or Custom EULA is granted by the Application Provider of that Third Party App. Any App that is subject to this Standard EULA is referred to herein as the “Licensed Application.” The Application Provider or Apple as applicable (“Licensor”) reserves all rights in and to the Licensed Application not expressly granted to you under this Standard EULA.

a. Scope of License: Licensor grants to you a nontransferable license to use the Licensed Application on any Apple-branded products that you own or control and as permitted by the Usage Rules. The terms of this Standard EULA will govern any content, materials, or services accessible from or purchased within the Licensed Application as well as upgrades provided by Licensor that replace or supplement the original Licensed Application, unless such upgrade is accompanied by a Custom EULA. Except as provided in the Usage Rules, you may not distribute or make the Licensed Application available over a network where it could be used by multiple devices at the same time. You may not transfer, redistribute or sublicense the Licensed Application and, if you sell your Apple Device to a third party, you must remove the Licensed Application from the Apple Device before doing so. You may not copy (except as permitted by this license and the Usage Rules), reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Licensed Application, any updates, or any part thereof (except as and only to the extent that any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open-sourced components included with the Licensed Application).

b. Consent to Use of Data: You agree that Licensor may collect and use technical data and related information—including but not limited to technical information about your device, system and application software, and peripherals—that is gathered periodically to facilitate the provision of software updates, product support, and other services to you (if any) related to the Licensed Application. Licensor may use this information, as long as it is in a form that does not personally identify you, to improve its products or to provide services or technologies to you.

c. Termination. This Standard EULA is effective until terminated by you or Licensor. Your rights under this Standard EULA will terminate automatically if you fail to comply with any of its terms.

d. External Services. The Licensed Application may enable access to Licensor’s and/or third-party services and websites (collectively and individually, "External Services"). You agree to use the External Services at your sole risk. Licensor is not responsible for examining or evaluating the content or accuracy of any third-party External Services, and shall not be liable for any such third-party External Services. Data displayed by any Licensed Application or External Service, including but not limited to financial, medical and location information, is for general informational purposes only and is not guaranteed by Licensor or its agents. You will not use the
External Services in any manner that is inconsistent with the terms of this Standard EULA or that infringes the intellectual property rights of Licensor or any third party. You agree not to use the External Services to harass, abuse, stalk, threaten or defame any person or entity, and that Licensor is not responsible for any such use. External Services may not be available in all languages or in your Home Country, and may not be appropriate or available for use in any particular location. To the extent you choose to use such External Services, you are solely responsible for compliance with any applicable laws. Licensor reserves the right to change, suspend, remove, disable or impose access restrictions or limits on any External Services at any time without notice or liability to you.

e. NO WARRANTY: YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE LICENSED APPLICATION IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LICENSED APPLICATION AND ANY SERVICES PERFORMED OR PROVIDED BY THE LICENSED APPLICATION ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND LICENSOR HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE LICENSED APPLICATION AND ANY SERVICES, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND OF NONINFRINGEMENT OF THIRD-PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR OR ITS AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE LICENSED APPLICATION OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

f. LIMITATION OF LIABILITY. TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL LICENSOR BE LIABLE FOR PERSONAL INJURY OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OF OR INABILITY TO USE THE LICENSED APPLICATION, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE) AND EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. IN NO EVENT SHALL LICENSOR’S TOTAL LIABILITY TO YOU FOR ALL DAMAGES (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) EXCEED THE AMOUNT OF
fifty dollars ($50.00). The foregoing limitations will apply even if the above stated remedy fails
of its essential purpose.

g. You may not use or otherwise export or re-export the Licensed Application except as
authorized by United States law and the laws of the jurisdiction in which the Licensed
Application was obtained. In particular, but without limitation, the Licensed Application may not
be exported or re-exported (a) into any U.S.-embargoed countries or (b) to anyone on the U.S.
Treasury Department's Specially Designated Nationals List or the U.S. Department of Commerce
Denied Persons List or Entity List. By using the Licensed Application, you represent and warrant
that you are not located in any such country or on any such list. You also agree that you will not
use these products for any purposes prohibited by United States law, including, without
limitation, the development, design, manufacture, or production of nuclear, missile, or chemical
or biological weapons.

h. The Licensed Application and related documentation are "Commercial Items", as that term is
defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial
Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R.
§227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through
227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer
Software Documentation are being licensed to U.S. Government end users (a) only as
Commercial Items and (b) with only those rights as are granted to all other end users pursuant to
the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the
United States.

i. Except to the extent expressly provided in the following paragraph, this Agreement and the
relationship between you and Apple shall be governed by the laws of the State of California,
excluding its conflicts of law provisions. You and Apple agree to submit to the personal and
exclusive jurisdiction of the courts located within the county of Santa Clara, California, to
resolve any dispute or claim arising from this Agreement. If (a) you are not a U.S. citizen; (b)
you do not reside in the U.S.; (c) you are not accessing the Service from the U.S.; and (d) you are
a citizen of one of the countries identified below, you hereby agree that any dispute or claim
arising from this Agreement shall be governed by the applicable law set forth below, without
regard to any conflict of law provisions, and you hereby irrevocably submit to the non-exclusive
jurisdiction of the courts located in the state, province or country identified below whose law
governs:

If you are a citizen of any European Union country or Switzerland, Norway or Iceland, the
governing law and forum shall be the laws and courts of your usual place of residence.

Specifically excluded from application to this Agreement is that law known as the United

H. ADDITIONAL APPLE BOOKS TERMS

You acquire Apple Books Content from the third-party provider of such Content (the
“Publisher”), not Apple. Apple acts as an agent for the Publisher in providing Apple Books
Content to you, and therefore Apple is not a party to the Transaction between you and the Publisher. If you are a customer of Apple Distribution International, the merchant of record is Apple Distribution International, which means that you acquire a license to use the Content from Apple Distribution International, but the Content is licensed by the Publisher. The Publisher of the Apple Books Content reserves the right to enforce the terms of use relating to such Apple Books Content. The Publisher of the Apple Books Content is solely responsible for such Content, any warranties to the extent that such warranties have not been disclaimed, and any claims that you or any other party may have relating to such Content.

I. ADDITIONAL APPLE MUSIC TERMS

APPLE MUSIC MEMBERSHIP

Apple Music is a subscription music service. Your Apple Music membership will automatically renew until you cancel in account settings. See the “Subscriptions” section for more details. When your Apple Music membership ends, you will lose access to any feature of Apple Music that requires a membership, including but not limited to access to Apple Music songs stored on your device, and iCloud Music Library.

Where available, you may be offered an Apple Music membership through your wireless carrier (a “Carrier Membership”). If you purchase a Carrier Membership, your carrier will bill you for the cost of your Apple Music membership. Your billing relationship with the carrier is governed by the carrier’s terms and conditions, not this Agreement, and any billing disputes related to a Carrier Membership must be directed to your carrier, not Apple. By using Apple Music, you agree that your carrier may exchange your carrier account information, telephone number and subscription information with Apple, and that Apple may use this information to determine the status of your Carrier Membership.

ICLOUD MUSIC LIBRARY

iCloud Music Library is an Apple Music feature that allows you to access your matched or uploaded songs, playlists and music videos acquired from Apple Music, the iTunes Store or a third party (“iCloud Music Library Content”) on your Apple Music-enabled devices. iCloud Music Library is turned on automatically when you set up your Apple Music membership. iCloud Music Library collects information about your iCloud Music Library Content. This information is associated with your Apple ID, and compared to iCloud Music Library Content currently available on Apple Music. iCloud Music Library Content that is not matched is uploaded to Apple’s iCloud Music Library servers (in a format determined by Apple). You can upload up to 100,000 songs. Songs acquired from the iTunes Store or Apple Music do not count against this limit. Songs that do not meet certain criteria (for example, excessively large files) or that are not authorized for your device are not eligible for iCloud Music Library. When you use iCloud Music Library, Apple logs information such as the tracks you play, stop or skip, the devices you use, and the time and duration of playback. You agree to use iCloud Music Library only for lawfully acquired content. iCloud Music Library is provided on an “AS IS” basis and could contain errors or inaccuracies. You should back up your data and information prior to
using iCloud Music Library. If you are not an Apple Music member, you may purchase an
iTunes Match subscription, which is subject to the terms set forth in this section.

J. ADDITIONAL APPLE ARCADE TERMS

APPLE ARCADE SUBSCRIPTION

Apple Arcade is a game subscription service. Your Apple Arcade subscription will automatically
renew until you cancel in account settings. See the “Subscriptions” section for more details.
When your Apple Arcade subscription ends, you will lose access to any functionality of Apple
Arcade that requires a subscription, including but not limited to access to apps downloaded from
Apple Arcade that are stored on your device.

K. MISCELLANEOUS TERMS APPLICABLE TO ALL SERVICES

DEFINITION OF APPLE

Depending on your Home Country, “Apple” means:

Apple Inc., located at One Apple Park Way, Cupertino, California, for users in North, Central,
and South America (excluding Canada), as well as United States territories and possessions; and
French and British possessions in North America, South America, and the Caribbean;

Apple Canada Inc., located at 120 Bremner Blvd., Suite 1600, Toronto ON M5J 0A8, Canada for
users in Canada or its territories and possessions;

iTunes K.K., located at Roppongi Hills, 6-10-1 Roppongi, Minato-ku, Tokyo 106-6140, Tokyo
for users in Japan;

Apple Pty Limited, located at Level 3, 20 Martin Place, Sydney NSW 2000, Australia, for users
in Australia, New Zealand, including island possessions, territories, and affiliated jurisdictions;
and

Apple Distribution International, located at Hollyhill Industrial Estate, Hollyhill, Cork, Republic
of Ireland, for all other users.

CONTRACT CHANGES

Apple reserves the right at any time to modify this Agreement and to add new or additional terms
or conditions on your use of the Services. Such modifications and additional terms and
conditions will be effective immediately and incorporated into this Agreement. Your continued
use of the Services will be deemed acceptance thereof.

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Content or the Services.

INTELLECTUAL PROPERTY
You agree that the Services, including but not limited to Content, graphics, user interface, audio clips, video clips, editorial content, and the scripts and software used to implement the Services, contain proprietary information and material that is owned by Apple and/or its licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright. You agree that you will not use such proprietary information or materials in any way whatsoever except for use of the Services for personal, noncommercial uses in compliance with this Agreement. No portion of the Services may be reproduced in any form or by any means, except as expressly permitted by this Agreement. You agree not to modify, rent, loan, sell, or distribute the Services or Content in any manner, and you shall not exploit the Services in any manner not expressly authorized.

The Apple name, the Apple logo, iTunes, iTunes Store, App Store, Apple Books, Apple Music, and other Apple trademarks, service marks, graphics, and logos used in connection with the Services are trademarks or registered trademarks of Apple in the U.S. and other countries throughout the world. You are granted no right or license with respect to any of the aforesaid trademarks.

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If you fail, or Apple suspects that you have failed, to comply with any of the provisions of this Agreement, Apple may, without notice to you: (i) terminate this Agreement and/or your Apple ID, and you will remain liable for all amounts due under your Apple ID up to and including the date of termination; and/or (ii) terminate your license to the software; and/or (iii) preclude your access to the Services.

Apple further reserves the right to modify, suspend, or discontinue the Services (or any part or Content thereof) at any time with or without notice to you, and Apple will not be liable to you or to any third party should it exercise such rights.

DISCLAIMER OF WARRANTIES; LIABILITY LIMITATION

APPLE DOES NOT GUARANTEE, REPRESENT, OR WARRANT THAT YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, AND YOU AGREE THAT FROM TIME TO TIME APPLE MAY REMOVE THE SERVICES FOR INDEFINITE PERIODS OF TIME, CANCEL THE SERVICES AT ANY TIME, OR OTHERWISE LIMIT OR DISABLE YOUR ACCESS TO THE SERVICES WITHOUT NOTICE TO YOU.
YOU EXPRESSLY AGREE THAT YOUR USE OF, OR INABILITY TO USE, THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES AND ALL CONTENT DELIVERED TO YOU THROUGH THE SERVICES ARE (EXCEPT AS EXPRESSLY STATED BY APPLE) PROVIDED "AS IS" AND "AS AVAILABLE" FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSION OF IMPLIED WARRANTIES MAY NOT APPLY TO YOU.

IN NO CASE SHALL APPLE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, OR LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF ANY OF THE SERVICES OR FOR ANY OTHER CLAIM RELATED IN ANY WAY TO YOUR USE OF THE SERVICES AND/OR CONTENT, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN ANY CONTENT, OR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICES, EVEN IF ADVISED OF THEIR POSSIBILITY. BECAUSE SOME COUNTRIES, STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH COUNTRIES, STATES OR JURISDICTIONS, APPLE'S LIABILITY SHALL BE LIMITED TO THE EXTENT SUCH LIMITATION IS PERMITTED BY LAW.

APPLE SHALL USE REASONABLE EFFORTS TO PROTECT INFORMATION SUBMITTED BY YOU IN CONNECTION WITH THE SERVICES, BUT YOU AGREE THAT YOUR SUBMISSION OF SUCH INFORMATION IS AT YOUR SOLE RISK, AND YOU HEREBY RELEASE APPLE FROM ANY AND ALL LIABILITY TO YOU FOR ANY LOSS OR LIABILITY RELATING TO SUCH INFORMATION IN ANY WAY.

APPLE DOES NOT REPRESENT OR GUARANTEE THAT THE SERVICES WILL BE FREE FROM LOSS, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSION, AND YOU HEREBY RELEASE APPLE FROM ANY LIABILITY RELATING THERETO. YOU SHALL BE RESPONSIBLE FOR BACKING UP YOUR OWN SYSTEM, INCLUDING ANY CONTENT ACQUIRED OR RENTED THROUGH THE SERVICES.

APPLE IS NOT RESPONSIBLE FOR DATA CHARGES YOU MAY INCUR IN CONNECTION WITH YOUR USE OF THE SERVICES.

WAIVER AND INDEMNITY

BY USING THE SERVICES, YOU AGREE, TO THE EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD APPLE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, AND LICENSORS HARMLESS WITH RESPECT TO ANY CLAIMS ARISING OUT OF YOUR BREACH OF THIS AGREEMENT,
YOUR USE OF THE SERVICES, OR ANY ACTION TAKEN BY APPLE AS PART OF ITS INVESTIGATION OF A SUSPECTED VIOLATION OF THIS AGREEMENT OR AS A RESULT OF ITS FINDING OR DECISION THAT A VIOLATION OF THIS AGREEMENT HAS OCCURRED. YOU AGREE THAT YOU SHALL NOT SUE OR RECOVER ANY DAMAGES FROM APPLE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS, AND LICENSORS AS A RESULT OF ITS DECISION TO REMOVE OR REFUSE TO PROCESS ANY INFORMATION OR CONTENT, TO WARN YOU, TO SUSPEND OR TERMINATE YOUR ACCESS TO THE SERVICES, OR TO TAKE ANY OTHER ACTION DURING THE INVESTIGATION OF A SUSPECTED VIOLATION OR AS A RESULT OF APPLE'S CONCLUSION THAT A VIOLATION OF THIS AGREEMENT HAS OCCURRED. THIS WAIVER AND INDEMNITY PROVISION APPLIES TO ALL VIOLATIONS DESCRIBED IN OR CONTEMPLATED BY THIS AGREEMENT.

STATUTORY EXCEPTIONS FOR PUBLIC INSTITUTIONS

If you are a qualified public educational or government institution and any part of this Agreement, such as, by way of example, all or part of the indemnification section, is invalid or unenforceable against you because of applicable local, national, state or federal law, then that portion shall be deemed invalid or unenforceable, as the case may be, and instead construed in a manner most consistent with applicable governing law.

GOVERNING LAW

Except to the extent expressly provided in the following paragraph, this Agreement and the relationship between you and Apple, and all Transactions on the Services shall be governed by the laws of the State of California, excluding its conflicts of law provisions. You and Apple agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Santa Clara, California, to resolve any dispute or claim arising from this Agreement. If (a) you are not a U.S. citizen; (b) you do not reside in the U.S.; (c) you are not accessing the Service from the U.S.; and (d) you are a citizen of one of the countries identified below, you hereby agree that any dispute or claim arising from this Agreement shall be governed by the applicable law set forth below, without regard to any conflict of law provisions, and you hereby irrevocably submit to the non-exclusive jurisdiction of the courts located in the state, province or country identified below whose law governs:

If you are a citizen of any European Union country or Switzerland, Norway or Iceland, the governing law and forum shall be the laws and courts of your usual place of residence.

Specifically excluded from application to this Agreement is that law known as the United Nations Convention on the International Sale of Goods.

OTHER PROVISIONS

This Agreement constitutes the entire agreement between you and Apple and governs your use of the Services, superseding any prior agreements with respect to the same subject matter between you and Apple. You also may be subject to additional terms and conditions that may apply when
you use affiliate services, third-party content, third-party software, or additional services such as the Volume Purchase Program. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. Apple's failure to enforce any right or provisions in this Agreement will not constitute a waiver of such or any other provision. Apple will not be responsible for failures to fulfill any obligations due to causes beyond its control.

You agree to comply with all local, state, federal, and national laws, statutes, ordinances, and regulations that apply to your use of the Services. Your use of the Services may also be subject to other laws. Risk of loss for all electronically delivered Transactions pass to the acquirer upon electronic transmission to the recipient. No Apple employee or agent has the authority to vary this Agreement.

Apple may notify you with respect to the Services by sending an email message to your email address or a letter via postal mail to your mailing address, or by a posting on the Services. Notices shall become effective immediately. Apple may also contact you by email or push notification to send you additional information about the Services.

You hereby grant Apple the right to take steps Apple believes are reasonably necessary or appropriate to enforce and/or verify compliance with any part of this Agreement. You agree that Apple has the right, without liability to you, to disclose any data and/or information to law enforcement authorities, government officials, and/or a third party, as Apple believes is reasonably necessary or appropriate to enforce and/or verify compliance with any part of this Agreement (including but not limited to Apple's right to cooperate with any legal process relating to your use of the Services and/or Content, and/or a third-party claim that your use of the Services and/or Content is unlawful and/or infringes such third party's rights).

Children under the age of majority should review this Agreement with their parent or guardian to ensure that the child and parent or legal guardian understand it.

Last Updated: May 13, 2019
MANAGER’S REPORT No. 20-13

August 23, 2019

Re: Discussion and Possible Action to Establish and Approve the Manager and Chief Engineer’s Goals for August, 2019 through March, 2020

RECOMMENDATION:
It is recommended that the Board discuss and approve the Manager and Chief Engineer’s goals for the Department of Water for August, 2019 through March, 2020.

FUNDING:  N/A

BACKGROUND:
The Manager and Chief Engineer (hereinafter “Manager”) is responsible to the Board for the effective conduct of the affairs of the Department of Water. The Manager recommends and participates in Board formulation of the Department’s mission, goals, objectives, rules, regulations, and related policies. The Manager is charged with the effective execution of the Board’s directives, implementation and enforcement of the Board’s Rules and Regulations, and the administration of the Department. Within that framework, the Manager recommends goals, rules, or procedures which would, in his professional opinion, improve or address matters of concern.

The Board is the appointing authority of the Manager and establishes the goals for the Manager. The goals form the foundation by which the Manager will be evaluated, including: establishing the expectations of the Board, the metrics by which to determine if the Manager has met those expectations, and the basis for feedback. Traditionally, the following recommendations have been used to establish goals:

A. Should be specific, measureable, attainable, realistic, relevant, and time-oriented.
B. Shall be determined in the form of a report, quantifiable result, physical accomplishment, recommendation, or other type of verifiable confirmation.
C. Must be able to accomplish or subsequently complete within a 12 month period. If the goal is expected to take more than one year, it is recommended that it be broken into achievable phases with specific benchmarks for the current year.
D. Deadlines must be set for accomplishing the goals for the Manager to focus on them in a timely fashion.
E. Priorities should be identified for the Manager to focus time and energy on the goals which deserve the most attention.

At the June 28, 2019 Board Meeting, the Board approved Manager’s Report No. 19-66 to make two significant changes to the goals established for the Manager and Chief Engineer and the evaluation process linked to the Manager’s performance:
1. The format for the goals and evaluation has been updated to be consistent with the Department of Human Resource’s evaluation template, and
2. The timeline for the evaluation has been updated to align with the anniversary date of the Manager’s appointment and the Department of Human Resource’s annual deadline for the evaluation, which is May 1st of each year.

Of the eight (8) criteria utilized by the Department of Human Resources in the evaluation, criteria #6 is Achieving Goals:

1. Customer Service
2. Planning and Organizing
3. Leadership
4. Communication
5. Personnel Management
6. Achieving Goals
7. Policy Development
8. Financial Management

To score these eight (8) criteria, the Department of Human Resources uses a scoring legend of one (1) to five (5) as follows:

1. Unsatisfactory
2. Needs Improvement
3. Satisfactory
4. Excellent
5. Superior

Therefore, to score the goals in a manner consistent with the Department of Human Resources, the following scoring legend will be used to assess performance for Criteria #6, “Achieving Goals”:

<table>
<thead>
<tr>
<th>Scoring Legend:</th>
<th>Corresponds to DHR's Legend as:</th>
</tr>
</thead>
<tbody>
<tr>
<td>No progress on goal = 1 point</td>
<td>Unsatisfactory</td>
</tr>
<tr>
<td>Goal Partially Met = 2 Points</td>
<td>Needs Improvement</td>
</tr>
<tr>
<td>Goal Met on Time = 3 Points</td>
<td>Satisfactory</td>
</tr>
<tr>
<td>Goal Met ahead of schedule = 4 points</td>
<td>Excellent</td>
</tr>
<tr>
<td>Goal Exceeded ahead of schedule = 5 points</td>
<td>Superior</td>
</tr>
</tbody>
</table>

The goals for the period from August, 2019 through March, 2020 are shown on Attachment 1 along with step by step instructions for incorporating the scoring of the goals into the overall evaluation for the Manager. Per the Board’s approval of Manager’s Report No. 19-66 at the June 28, 2019 Board meeting, the weight of criteria #6, “Achieving Goals” is weighted as 30% of the total evaluation score, with the other seven (7) criteria each being weighted at 10%.

The Manager will provide the status of these goals to the Board at the March, 2020 Board meeting prior to the Board conducting their evaluation of the Manager’s performance, which is due from the Board to the Department of Human Resources by May 1st. This is intended to provide adequate time for the Board to review the progress made on the goals while conducting the evaluation in the month of April, 2020.
The Manager will also provide any highlights, updates, or significant information to the Board for each of the other seven (7) criteria shown in the DHR Evaluation at the March Board meeting.

**Option 1:** Approve Manager’s Report as recommended.

**Pros:**
The Department of Water and Manager and Chief Engineer will continue with the vision established with measurable, challenging, time-sensitive, and achievable goals aimed at improving customer service, accountability, and meeting the Department’s mission statement.

**Cons:**
The goals set forth are intended to be challenging and the Manager and Chief Engineer and Department may not successfully complete all of them within the timeframes shown.

**Option 2:** Do not Approve Manager’s Report as recommended.

**Pros:**
The Manager and Chief Engineer’s goals can be modified as directed by the Board.

**Cons:**
Progress on some of the goals could be delayed.

BW /ein

Attachment: Goals for the Manager and Chief Engineer for August, 2019 through March, 2020

Mgrrp/August 2019/20-13/Discussion and Possible Action to Establish and Approve the Manager and Chief Engineer’s Goals for August, 2019 through March, 2020 (8-23-19):ein
Attachment 1 - Goals for Manager and Chief Engineer and New Template for Annual Evaluation

Step 1: Conduct Evaluation using Dept. of Human Resources Template. Score all categories except #6 “Achieving Goals”. Use Weights for each criteria as follows:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>*Score (from 1 to 5)</th>
<th>Weight (%)</th>
<th>Total Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Customer Service</td>
<td></td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>2  Planning and Organizing</td>
<td></td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>3  Leadership</td>
<td></td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>4  Communication</td>
<td></td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>5  Personnel Management</td>
<td></td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>6  Achieving Goals</td>
<td>Use score from Goals, Step 2, below</td>
<td>30%</td>
<td></td>
</tr>
<tr>
<td>7  Policy Development</td>
<td></td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>8  Financial Management</td>
<td></td>
<td>10%</td>
<td></td>
</tr>
</tbody>
</table>

*To score the Dept. of Human Resources criteria, the following legend is used:

1 Unsatisfactory
2 Needs Improvement
3 Satisfactory
4 Excellent
5 Superior

Step 2: Score Goals using this format:

<table>
<thead>
<tr>
<th>Goal</th>
<th>Weight</th>
<th>Average Score (from 1 to 5)</th>
<th>Score x Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>25%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>10%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>15%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>15%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>15%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>20%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total Score of Goals

Step 3: Finalize Total Score of Evaluation (blue cell, above) by using Total Score of Goals (yellow cell) in table above
### Tactic Action

<table>
<thead>
<tr>
<th>Tactic</th>
<th>Action Steps</th>
<th>Desired Outcome</th>
<th>Success Measurements</th>
<th>Status/Notes</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Identify and hire Deputy Manager-Engineer to assist Manager &amp; Chief Engineer in fulfilling duties of managing and leading the Department of Water.</td>
<td>Knowledgeable, talented leader who is capable of fulfilling the duties of the position, including assuming the duties of Manager &amp; Chief Engineer as needed.</td>
<td>Identify and hire Deputy Manager-Engineer by March, 2020.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.2</td>
<td>Interview, select, and hire qualified applicants for two vacant positions in I.T.: 1. Information Technology Specialist III and, 2. Waterworks Information Technology Officer</td>
<td>More appropriate staffing levels will be provided within I.T. which will better serve the entire DOW and customers. Existing I.T. staff will have more balanced workloads and more balanced distribution of duties.</td>
<td>Hire qualified applicants for both positions: fill at least one position in 2019 and fill both positions by March, 2020.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.3</td>
<td>Interview, select, and hire qualified applicant for Assistant Waterworks Controller position.</td>
<td>Performance of the Fiscal division can be greatly enhanced, leading to improved internal and external customer service. A more robust succession plan will be put into place to allow for effective transfer of knowledge, duties, responsibilities, and experience from the Waterworks Controller to the Assistant Waterworks Controller</td>
<td>Hire qualified applicant by Dec. 31, 2019.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.4</td>
<td>Conduct research and investigation to determine if the Department of Water should create a new position for a Safety Officer.</td>
<td>Provide a safe and healthy work environment for employees, customers, and visitors. Develop comprehensive workplace safety program to satisfy Board Policy No. 1 and to ensure all applicable safety laws are being met.</td>
<td>Provide recommendation to the Board no later than the March, 2020 Board meeting as to whether the DOW should create a Safety Officer position with appropriate justification.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.5</td>
<td>Evaluate each division’s needs &amp; prioritize filling vacancies accordingly. Evaluate organizational structure of each division and provide recommendations for reorganization to the Board.</td>
<td>Improved performance, more balanced workloads for employees and less overtime, improved customer service.</td>
<td>Fill at least 5 vacancies across the Department by March 31, 2020.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Average Score of Goal #1**

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Page 204
<table>
<thead>
<tr>
<th>Tactic</th>
<th>Action Steps</th>
<th>Desired Outcome</th>
<th>Success Measurements</th>
<th>Status/Notes</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>Complete the ongoing 5-year water rate study to ensure fair and reasonable water rates for DOW ratepayers. Present a recommendation to the Finance Committee and receive approval of final report from Board of Water.</td>
<td>The Department will continue to be fiscally responsible to its ratepayers in ensuring fair and reasonable water rates.</td>
<td>Present a recommendation to the Board by the October 25, 2019 Board meeting and receive approval of the final report from the Board of Water by March, 2020.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.2</td>
<td>Develop financial policies in support of the DOW’s water rate study and budgeting processes by executing a contract with a financial consultant to evaluate the DOW’s existing financial policies, internal controls, and make recommendations for policy development and procedures.</td>
<td>The Department will be better positioned to ensure a high level of fiscal responsibility to its ratepayers in maintaining fair and reasonable water rates. The budgeting process will be more streamlined.</td>
<td>Negotiate and execute a professional services contract with the selected financial consultant by March, 2020.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Average Score of Goal #2
## Goal #3 - Implement Operational Improvements to Increase Efficiencies and Ensure Water Quality

<table>
<thead>
<tr>
<th>Tactic</th>
<th>Action Steps</th>
<th>Desired Outcome</th>
<th>Success Measurements</th>
<th>Status/Notes</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Develop G.I.S. Road Map with G.I.S. consultant to identify specific challenges and specific needs at the DOW to effectively implement available GIS tools and resources across the Department</td>
<td>GIS technologies will be effectively leveraged for a broad range of benefits, including but not limited to: improved identification of meter locations and water facilities, enhanced customer service, quicker response times, and establishment of a reliable system of record to be used by all staff.</td>
<td>Complete procurement for G.I.S. consultant to come to the Department and initiate development of GIS RoadMap for DOW by March, 2020.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.2</td>
<td>Water Quality division to provide systematic weekly check to ensure all sampling is conducted and all data required by Department of Health (DOH) is provided. Initiate reporting to Compliance Monitoring Data Portal required by DOH per timeline required by DOH.*</td>
<td>Meet all state and federal regulatory requirements from DOH and Environmental Protection Agency (EPA). Conduct all required sampling and monitoring throughout the year. Ensure quality control and quality assurance of all samples and laboratory practices.</td>
<td>No missed sampling, monitoring, or reporting events throughout the year.</td>
<td>*It is anticipated that DOH will establish a timeline for the requirements associated with the new Compliance Monitoring Data Portal in the 3rd quarter 2019.</td>
<td></td>
</tr>
<tr>
<td>3.3</td>
<td>Water Quality division to review all microbiological sample points and identify suitable alternate locations which may be more representative of water quality within distribution system.</td>
<td>Continue to meet all state and federal regulatory requirements from Dept. of Health and EPA while ensuring that all sample sites are representative throughout the distribution system for each of the DOW's 9 public water systems.</td>
<td>Water Quality division to review all micro sample points and identify those which are no longer viable by November 30, 2019. Identify suitable replacement sites for dedicated sample stations by March 31, 2020.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tactic</td>
<td>Action Steps</td>
<td>Desired Outcome</td>
<td>Success Measurements</td>
<td>Status/Notes</td>
<td>Score</td>
</tr>
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<td>-------</td>
</tr>
<tr>
<td>4.1</td>
<td>Continue to improve customer payment options by providing means for credit and debit card payments at DOW lobby via card-swipe machines. Provide mobile application for both Android and Apple to all customers to pay bills via smart phone.</td>
<td>Enhanced payment options for customer’s and improved customer service</td>
<td>Implement card-swipe machines in DOW lobby to accept credit and debit cards and provide mobile payment application for both Android and Apple devices to all customers within 2019.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.2</td>
<td>Host 3 DOW education events: 1. Fix a Leak Week 2. National Drinking Water Week 3. Make a Splash w/Project WET Festival</td>
<td>Build a positive community and educational awareness of DOW through public relations programs. Educate customers about water quality, conservation, DOW services and DOW’s compliance with Safe Drinking Water Act. Provide employee oriented, educational events that highlight important staff functions.</td>
<td>Coordinate and host Make a Splash Festival at a new location in 2019 - Vidinha Stadium Soccer Field. Continue to host annual Fix a Leak Week for customers and enhance National Drinking Water Week events.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.3</td>
<td>Increase media advertisements to promote DOW services, including: 1. Customer Account Portal, Billing Services, 2. Water Quality, Drinking Water Service 3. Water service announcements</td>
<td>Improve DOW’s visibility and image in the community by utilizing local advertising platforms with DOW-branded ads to promote DOW’s services, announcements, and other notices.</td>
<td>Increase use of print advertisement; continue radio announcements, and social media use. Develop DOW branded advertisements showcasing our newly revised logo. Present for Project W.E.T. in at least two conferences in Hawai’i by March, 2020.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Goal #5 - Expand Training Opportunities for Employees in Critical Areas of Need.

<table>
<thead>
<tr>
<th>Tactic</th>
<th>Action Steps</th>
<th>Desired Outcome</th>
<th>Success Measurements</th>
<th>Status/Notes</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1</td>
<td>Establish program within DOW for staff to apply for Leadership Kaua’i Program in 2020.</td>
<td>DOW staff will be provided with opportunity to demonstrate initiative and participate in valuable leadership training, which will lead to increased leadership abilities across the DOW.</td>
<td>Determine max. number of DOW staff who can attend, obtain Board approval of funds, and establish fair and reasonable means to identify which staff will attend the Leadership Kaua’i Program in 2020</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.2</td>
<td>Continue to provide valuable webinar trainings in the Board Room for all staff from professional organizations such as SkillPath and Pioneer Educator.</td>
<td>Provide staff with additional training and resources to be more effective in their roles. Improve skills and knowledge in critical areas.</td>
<td>Provide at least 4 webinar trainings for all staff from August, 2019 through March 20, 2020.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.3</td>
<td>Provide for staff to attend budgeted trainings, workshops, and conferences to expand employee’s knowledge base and improve proficiency</td>
<td>Improved performance, customer service, proficiency, and skill sets for all staff.</td>
<td>Staff from at least 4 different divisions will attend budgeted Conferences, trainings, or workshops by March, 2020.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Average Score of Goal #5**
<table>
<thead>
<tr>
<th>Tactic</th>
<th>Action Steps</th>
<th>Desired Outcome</th>
<th>Success Measurements</th>
<th>Status/Notes</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1</td>
<td>Continue to conduct all-staff meetings at least every other month and conduct effective, efficient weekly meetings amongst division heads and leads</td>
<td>All employees shall stay informed as to the major events, outcomes, and updates of the DOW throughout the year to provide for more efficient operation and streamlined and consistent communications to internal and external customers.</td>
<td>All employees shall attend all-staff meetings unless absence is pre-approved. Attendance to be taken at meetings. All division heads and leads shall attend weekly division-head meetings with Manager.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.2</td>
<td>Provide professional, in-person training for communication with an industry-leading training institution such as SkillPath, Pioneer Educator, etc.</td>
<td>Significant improvement in communications skills and professionalism for all DOW staff.</td>
<td>At least one full day communication training shall be provided to at least 40 DOW staff in 2019 by an industry-leading training institution.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.3</td>
<td>Work with staff and fun committee to provide events, outings, dinners, etc. for all employees to participate in throughout the year to build morale, teamwork, and unity. Continue to provide monthly DOW newsletter to DOW staff and partners.</td>
<td>Happier, healthier, and more productive employees with enhanced sense of pride, value, accountability, commitment, teamwork, and dedication.</td>
<td>Provide at least five (5) events, outings, dinners, etc. for all employees to participate in from August, 2019 through March, 2020 to build morale, teamwork, and unity. Continue to provide monthly DOW newsletter to DOW staff and partners.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.4</td>
<td>Ensure annual Job Performance Reviews (JPRs) are conducted for all staff, create Performance Improvement Plans as needed.</td>
<td>Improved communication, feedback, and accountability amongst staff and supervisors.</td>
<td>Annual Job Performance Reviews for at least 95% of DOW staff shall be completed and submitted to Dept. of Human Resources by requested due date.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Average Score of Goal #6**
Staff Reports
FISCAL REPORT: MONTHLY SUMMARY HIGHLIGHTS – JULY, 2019

I. BUDGET SUMMARY VS. ACTUAL (see attached report for details)

YEAR TO DATE (YTD) BUDGET & ACTUAL EXPENSES SUMMARY – AS OF JULY, 2019

<table>
<thead>
<tr>
<th></th>
<th>BUDGET</th>
<th>VS</th>
<th>EXPENSED</th>
</tr>
</thead>
<tbody>
<tr>
<td>· Operating Expenses</td>
<td>$7,667,157</td>
<td></td>
<td>$1,338,500</td>
</tr>
<tr>
<td>· Debt Principal Payment</td>
<td>418,088</td>
<td></td>
<td>3,653,063</td>
</tr>
<tr>
<td>· Capital Projects</td>
<td>20,187,645</td>
<td></td>
<td>52,792</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$28,272,890</td>
<td></td>
<td>$5,044,355</td>
</tr>
</tbody>
</table>

REVENUES: VARIANCE = “ACTUAL” LESS “BUDGET”; POSITIVE INDICATES HIGHER PERFORMANCE THAN EXPECTED.

- Total Revenue as of July, 2019 was 2% above projection.
  - Water sales of $2.58 million (M) was $334 thousand (K) higher or 15%.
  - Other Water Revenue - Receipts of $18.7K was $2K below projection or -10%.
  - Capital Contributions: Contributions from Federal & State Grants – Receipt of $66.9K was for BAB subsidy.
  - Investment Income & Net Increase in FV of Investments – $68,664K
  - Miscellaneous Revenues - $1K

OPERATING EXPENSES: VARIANCE = BUDGET LESS ACTUAL

EXPENSES; POSITIVE INDICATES LESS SPENDING THAN PLANNED. REVISED YTD BUDGET COLUMNS INCLUDE PO ROLLOVER FROM FY ENDING 2019.

- YTD Operating Expenses before depreciation and amortization was $1.34M. Total spending was $6.3M less than planned or budgeted; a positive variance of 83%.
  - Employee Related Expenses – $411.2K with a 59% positive variance.
  - Contracts & Services – $408.5K with a 90% positive variance.
  - Professional Services, and Repairs and Maintenance for water and non-water systems are the main items contributing to the 90% positive variance.
  - Exceptional Expenses – None.
  - Fuel & Utilities – $191.5; 40% positive variance.
  - Bulk Water Purchase – July expenses not posted.
  - Office & Operating Supplies – $43K, 93% positive variance.
  - Training, Travel & Meeting Expenses – $5.6K; 86% positive variance.
  - Debt Service – Interest Expense - $278.7K; -2% variance.
  - Depreciation & Amortization (non-cash expenses) is $611.7K; 8% positive variance.
DEPARTMENT OF WATER
County of Kaua‘i
“Water has no Substitute – Conserve It!”

NET OPERATING INCOME:

• Net Operating Income before depreciation and amortization - $1.6M.
• Net Operating Income after depreciation & amortization was $967K.

NON-OPERATING PROCEEDS & DISBURSEMENTS

• SRF Loan Proceeds – None
• FRC – Facility Reserve Charge – $327.7K
• YTD Debt Principal Payment is $3.65M

CAPITAL PROJECTS BUDGET: YTD DISBURSEMENTS = $52,791.57

• Capital Projects: Water Utility Fund - $52.8K
• Capital Projects: FRC Fund – $0.0
• Capital Projects: BAB Fund - $0.0
• Capital Projects: SRF Loan Fund - None

II. FY 2018 – 2019 CERTIFICATION OF FUNDS YTD $529,086.35

<table>
<thead>
<tr>
<th></th>
<th>REPORT TO MANAGER (with approved Budget)</th>
<th>MANAGER’S REPORT (New Budget Requests)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Utility Fund</td>
<td>$361,944.00</td>
<td>$167,142.35</td>
</tr>
<tr>
<td>FRC Fund</td>
<td>$0.0</td>
<td>$0.0</td>
</tr>
<tr>
<td>BAB Fund</td>
<td>$0.0</td>
<td>$0.0</td>
</tr>
<tr>
<td>Total</td>
<td>$361,944.00</td>
<td>$167,142.35</td>
</tr>
</tbody>
</table>

III. COMPARATIVE CHARTS:

METERED CONSUMPTION:

• July, 2019, monthly metered consumption was 365.89 million gallons (mg); it increased by 21.5 mg as compared from the same month of FY 2019.
• Year to Date (YTD) metered consumption as of 7/31/19 was 365.89 mg; YTD increase of 21.5 mg as compared from the same month of FY 2019.

IV. COMPARATIVE BALANCE SHEET:

The Statement of Net Positions as of June 30, 2019 & 2018 is attached.

V. OTHER FISCAL ONGOING ACTIVITIES/INITIATIVES:

• State Appropriation Grant – The DOW received the amount of $2,290,332.31 from the State Appropriation Grant of $4.5M for Hanapēpē–Elele Transmission Waterline Improvement project.
• FEMA update: The DOW submitted five (5) project worksheets for FEMA reimbursements amounting to $1,104,712.88 for projects related to the April 2018 rain event. To date, the DOW received three (3) Notices of Funding Obligation; federal share were; one for $129,580.04, another for $32,228.47 and the last one which was approved on 8/2/19 in the amount of $49,190.
Five (5) years Water Rate Study – The Rate Study period was changed from FY 2017-2021 to FY 2019-2023. The consultants developed a financial model that has been updated several times with different rate scenarios based on changing CIP project priority list. The last updated version was to conform to the approved FY 2019-2020 DOW budget which included the State of Hawaiʻi (SOH) grant funded CIP and was adjusted with the change in Emergency Reserve Fund board policy.

The DOW went live with the new CC&B environment on 2/4/19. The Customer Account Portal (CAP) for online payment was launched on 6/22/19. There are 330 registered user accounts and 37 credit card transactions were processed for the month of July. The current E-billing statements will the current provider will be terminated on August 31, 2019. Customers may continue to receive E-bills by registering to the New Customer Account Portal (CAP).

Develop Financial Policies for DOW – scope of work is in progress, procurement of Consultants will follow.

Budget Program Solution – It will be addressed concurrently with the Financial Policies Development procurement.

Fiscal Year ends June 30, 2019. Accuity, LLC will be conducting the Financial Audit.
## I. OPERATING BUDGET

### Revenue

<table>
<thead>
<tr>
<th>Original Budget</th>
<th>Revised Budget</th>
<th>Actual</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>$2,244,154.00</td>
<td>$2,244,154.00</td>
<td>$2,578,596.99</td>
<td>$334,442.99</td>
</tr>
</tbody>
</table>

- **Revenue from Public Fire Protection**
  - Original: 176,042.00
  - Revised: 176,042.00
  - Actual: 176,042.00
  - Variance: 0.00

- **Other Revenue**
  - Original: 20,833.00
  - Revised: 20,833.00
  - Actual: 18,899.73
  - Variance: (1,933.27)

- **Federal Grants**
  - Original: 90,897.00
  - Revised: 90,897.00
  - Actual: 90,897.00
  - Variance: 0.00

- **State Grants**
  - Original: 316,866.00
  - Revised: 316,866.00
  - Actual: 316,866.00
  - Variance: 0.00

- **Capital Contributions**
  - Original: 56,911.93
  - Revised: 56,911.93
  - Actual: 56,911.93
  - Variance: 0.00

- **Net Increase in Fair Value of Investments**
  - Original: 2,500.00
  - Revised: 2,500.00
  - Actual: 2,500.00
  - Variance: 0.00

- **Investment Income**
  - Original: 22,084.00
  - Revised: 22,084.00
  - Actual: 2,417.00
  - Variance: 7,656.52

- **Gain or Loss on Disposal of Capital Assets**
  - Original: 417.00
  - Revised: 417.00
  - Actual: 5,417.00
  - Variance: 7,656.52

- **Miscellaneous Revenues**
  - Original: 83.00
  - Revised: 83.00
  - Actual: 1,064.66
  - Variance: 1,064.66

### Total Revenue

- **Original Budget**: 2,921,666.00
- **Revised Budget**: 2,853,509.00
- **Actual**: 2,819,996.33
- **Variance**: 56,679.73

### FY 2020

- **Revised YTD Budget**: 2,853,509.00
- **YTD Actual**: 2,819,996.33
- **Variance**: 56,582.73

### Employee-Related Expenses

<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>Salaries and Wages (Includes Leaves &amp; CTO)</td>
<td>597,149.00</td>
<td>597,149.00</td>
<td>225,383.28</td>
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<td>Temporary Assignment</td>
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<td>5,913.00</td>
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<td>2,154.69</td>
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<td>Overtime</td>
<td>40,500.00</td>
<td>40,500.00</td>
<td>24,026.78</td>
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<td>Standby</td>
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<td>16,250.00</td>
<td>8,559.08</td>
<td>7,690.92</td>
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<tr>
<td>FICA</td>
<td>50,492.00</td>
<td>50,492.00</td>
<td>18,890.41</td>
<td>31,511.81</td>
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<tr>
<td>Retirement Contribution</td>
<td>144,345.00</td>
<td>144,345.00</td>
<td>54,763.50</td>
<td>89,581.64</td>
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<tr>
<td>Life &amp; Health Insurance</td>
<td>50,936.00</td>
<td>50,936.00</td>
<td>22,463.42</td>
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<tr>
<td>Workers Compensation</td>
<td>1,250.00</td>
<td>1,250.00</td>
<td>1,250.00</td>
<td>1,250.00</td>
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<tr>
<td>Post Employment Benefits (OPEB)</td>
<td>80,730.00</td>
<td>80,730.00</td>
<td>52,451.31</td>
<td>27,278.69</td>
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</tbody>
</table>

### Total Employee-Related Expenses

- **Original Budget**: 996,565.00
- **Revised Budget**: 996,565.00
- **Actual**: 411,205.91
- **Variance**: 585,359.09

### Contracts & Services

<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>Professional Services-General</td>
<td>303,608.00</td>
<td>303,608.00</td>
<td>156,590.41</td>
<td>2,128,095.39</td>
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<tr>
<td>Professional Services-Accounting &amp; Auditing</td>
<td>8,900.00</td>
<td>8,900.00</td>
<td>8,000.00</td>
<td>8,900.00</td>
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<tr>
<td>Other Services-General</td>
<td>5,984.00</td>
<td>5,984.00</td>
<td>5,984.00</td>
<td>5,984.00</td>
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<tr>
<td>Other Services-Billing Costs</td>
<td>17,227.00</td>
<td>17,227.00</td>
<td>14,574.82</td>
<td>145,548.44</td>
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<td>Public Relations-General</td>
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<td>6,675.00</td>
<td>6,643.57</td>
<td>145,548.44</td>
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<td>Procurement Advertising</td>
<td>837.00</td>
<td>837.00</td>
<td>837.00</td>
<td>837.00</td>
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<td>Communication Services</td>
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<td>10,888.00</td>
<td>5,348.02</td>
<td>5,540.02</td>
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<td>Freight and Postage</td>
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<td>1,355.00</td>
<td>1,705.05</td>
<td>1,705.05</td>
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<tr>
<td>Rentals and Leases</td>
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<td>10,911.00</td>
<td>10,942.76</td>
<td>29,542.76</td>
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<td>Insurance</td>
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<td>32,913.00</td>
<td>32,913.00</td>
<td>32,913.00</td>
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<td>County Service Charge</td>
<td>178,048.00</td>
<td>178,048.00</td>
<td>178,048.00</td>
<td>178,048.00</td>
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<tr>
<td>Repairs and Maintenance-Water System</td>
<td>18,413.00</td>
<td>18,413.00</td>
<td>43,427.43</td>
<td>43,427.43</td>
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<tr>
<td>Repairs and Maint-Non Water System</td>
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<td>56,394.00</td>
<td>43,427.43</td>
<td>43,427.43</td>
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### Total Contracts & Services

- **Original Budget**: 653,233.00
- **Revised Budget**: 653,233.00
- **Actual**: 3,918,370.80
- **Variance**: 3,509,818.84
## Department of Water, County of Kauai
### Monthly Budget Summary vs. Actual
#### SUMMARY
7/31/2019

<table>
<thead>
<tr>
<th>Description</th>
<th>Original Budget</th>
<th>Revised Budget</th>
<th>Actual</th>
<th>Variance</th>
<th>Revised Year-to-Date Budget</th>
<th>YTD Actual</th>
<th>Variance</th>
<th>Variance %</th>
</tr>
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<tbody>
<tr>
<td><strong>July</strong></td>
<td></td>
<td></td>
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<tr>
<td>Exceptional Expenses</td>
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<tr>
<td>FY2014 &amp; FY2015 Kalaeoo Emergency</td>
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<tr>
<td>FY 2015 Kilauea</td>
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<tr>
<td>Abandoning Hanamalu Wailea 1 &amp; 2</td>
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<tr>
<td><strong>Total Exceptional Expenses</strong></td>
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</tr>
<tr>
<td>Fuel &amp; Utilities</td>
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<tr>
<td>Utility Services</td>
<td>228,552.00</td>
<td>254,565.59</td>
<td>163,190.51</td>
<td>71,395.08</td>
<td>254,585.59</td>
<td>183,190.51</td>
<td>71,395.08</td>
<td>28%</td>
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<td>Fuel</td>
<td>9,625.00</td>
<td>62,928.50</td>
<td>8,276.99</td>
<td>54,651.51</td>
<td>62,928.50</td>
<td>8,276.99</td>
<td>54,651.51</td>
<td>87%</td>
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<tr>
<td><strong>Total Fuel &amp; Utilities</strong></td>
<td>248,177.00</td>
<td>317,414.09</td>
<td>181,467.50</td>
<td>125,946.59</td>
<td>317,414.09</td>
<td>191,467.50</td>
<td>125,946.59</td>
<td>40%</td>
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<tr>
<td>Bulk Water Purchase</td>
<td>151,348.00</td>
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<td>3.00</td>
<td>1,268,865.66</td>
<td>1,268,868.66</td>
<td>3.00</td>
<td>1,268,865.66</td>
<td>100%</td>
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<tr>
<td><strong>Total Bulk Water Purchase</strong></td>
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<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Office &amp; Operating Supplies</td>
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<td></td>
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<td></td>
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<tr>
<td>Office Supplies</td>
<td>1,837.36</td>
<td>1,837.36</td>
<td>401.81</td>
<td>1,346.55</td>
<td>1,837.36</td>
<td>1,837.36</td>
<td>401.81</td>
<td>73%</td>
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<tr>
<td>Operating Supplies</td>
<td>113,025.00</td>
<td>591,444.02</td>
<td>42,479.27</td>
<td>548,964.75</td>
<td>591,444.02</td>
<td>42,479.27</td>
<td>548,964.75</td>
<td>83%</td>
</tr>
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<td>Books, Subscriptions and Dues</td>
<td>2,738.00</td>
<td>2,738.00</td>
<td>94.00</td>
<td>2,644.00</td>
<td>2,738.00</td>
<td>94.00</td>
<td>2,644.00</td>
<td>100%</td>
</tr>
<tr>
<td>Books, Subscriptions and Dues - Board</td>
<td>94.00</td>
<td>94.00</td>
<td>94.00</td>
<td>94.00</td>
<td>94.00</td>
<td>94.00</td>
<td>94.00</td>
<td>100%</td>
</tr>
<tr>
<td><strong>Total Office &amp; Operating Supplies</strong></td>
<td>117,694.00</td>
<td>596,113.36</td>
<td>42,971.08</td>
<td>553,142.30</td>
<td>596,113.36</td>
<td>42,971.08</td>
<td>553,142.30</td>
<td>93%</td>
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<tr>
<td>Training, Travel &amp; Meeting Expenses</td>
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<td></td>
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<tr>
<td>Training and Development</td>
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<td>4,376.64</td>
<td>17,779.48</td>
<td>22,156.12</td>
<td>17,779.48</td>
<td>22,156.12</td>
<td>80%</td>
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<td>Travel and Per Diem</td>
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<td>8,875.00</td>
<td>1,187.97</td>
<td>7,687.03</td>
<td>6,875.00</td>
<td>1,187.97</td>
<td>7,687.03</td>
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<tr>
<td>Travel and Per Diem - Board</td>
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<td>1,742.00</td>
<td>1,742.00</td>
<td>1,742.00</td>
<td>1,742.00</td>
<td>1,742.00</td>
<td>1,742.00</td>
<td>100%</td>
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<tr>
<td>Meeting Expense</td>
<td>3,102.00</td>
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<td>57.44</td>
<td>5,352.51</td>
<td>5,409.98</td>
<td>57.44</td>
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<td>99%</td>
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<tr>
<td>Meeting Expense - Board</td>
<td>93.00</td>
<td>93.00</td>
<td>93.00</td>
<td>93.00</td>
<td>93.00</td>
<td>93.00</td>
<td>93.00</td>
<td>100%</td>
</tr>
<tr>
<td><strong>Total Training, Travel &amp; Meeting Expenses</strong></td>
<td>21,290.00</td>
<td>39,007.07</td>
<td>5,622.05</td>
<td>33,385.02</td>
<td>39,007.07</td>
<td>5,622.05</td>
<td>33,385.02</td>
<td>86%</td>
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<tr>
<td>Debt Service</td>
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<tr>
<td>Interest Expense</td>
<td>268,843.00</td>
<td>268,843.00</td>
<td>278,741.93</td>
<td>(9,808.93)</td>
<td>268,843.00</td>
<td>278,741.93</td>
<td>(9,808.93)</td>
<td>(4%)</td>
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<tr>
<td><strong>Total Interest Expense</strong></td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Operating Expenses</strong></td>
<td>2,457,150.00</td>
<td>7,667,157.00</td>
<td>1,338,500.43</td>
<td>6,328,656.57</td>
<td>7,667,157.00</td>
<td>1,338,500.43</td>
<td>6,328,656.57</td>
<td>83%</td>
</tr>
<tr>
<td>Net Operating Income (Loss) Before Depreciation &amp; Amortization</td>
<td>3,464,516.00</td>
<td>(3,413,648.00)</td>
<td>(1,581,392.90)</td>
<td>(5,395,043.90)</td>
<td>(3,413,648.00)</td>
<td>(1,581,392.90)</td>
<td>(5,395,043.90)</td>
<td>(133%)</td>
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<tr>
<td><strong>Depreciation &amp; Amortization</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation</td>
<td>609,568.00</td>
<td>609,568.00</td>
<td>592,702.61</td>
<td>16,865.39</td>
<td>609,568.00</td>
<td>592,702.61</td>
<td>16,865.39</td>
<td>3%</td>
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<tr>
<td>Amortization</td>
<td>58,337.00</td>
<td>58,337.00</td>
<td>18,996.66</td>
<td>39,337.34</td>
<td>58,337.00</td>
<td>18,996.66</td>
<td>39,337.34</td>
<td>67%</td>
</tr>
<tr>
<td><strong>Total Depreciation &amp; Amortization</strong></td>
<td>667,905.00</td>
<td>667,905.00</td>
<td>611,699.27</td>
<td>56,202.73</td>
<td>667,905.00</td>
<td>611,699.27</td>
<td>56,202.73</td>
<td>8%</td>
</tr>
<tr>
<td>Net Operating Income (Loss)</td>
<td>(203,389.00)</td>
<td>(5,481,553.00)</td>
<td>99,693.63</td>
<td>6,451,246.33</td>
<td>(5,481,553.00)</td>
<td>99,693.63</td>
<td>6,451,246.33</td>
<td>(118%)</td>
</tr>
</tbody>
</table>
Department of Water, County of Kauai  
Monthly Budget Summary vs. Actual  
SUMMARY  
7/31/2019

<table>
<thead>
<tr>
<th>Non Operating Proceeds</th>
<th>July</th>
<th>FY 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>FRC-Facility Reserve Charge</td>
<td>Original Budget</td>
<td>Revised Budget</td>
</tr>
<tr>
<td>33,333.00</td>
<td>33,333.00</td>
<td>327,705.00</td>
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<tr>
<td>Total Non Operating Proceeds</td>
<td>33,333.00</td>
<td>33,333.00</td>
</tr>
<tr>
<td>Transfers Out(In) to Other Funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Debt Principal Payment</td>
<td>418,088.00</td>
<td>418,088.00</td>
</tr>
<tr>
<td>Net Proceeds (Expenditures)</td>
<td>(588,144.00)</td>
<td>(5,665,308.00)</td>
</tr>
</tbody>
</table>

II. CAPITAL BUDGET

Capital Projects (See Attached for Details)  
724,838.00 | 20,187,644.52 | 52,791.57 | 20,134,852.95 | | 20,187,644.52 | 52,791.57 | 20,134,852.95 | 100% |
<table>
<thead>
<tr>
<th></th>
<th>Original Budget</th>
<th>Revised Budget</th>
<th>Actual</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>July</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital Projects (See Attached for Details)</td>
<td>649,414.00</td>
<td>15,235,086.13</td>
<td>52,791.57</td>
<td>15,162,294.56</td>
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<tr>
<td>Water Utility - Capital Projects (See Attached for Details)</td>
<td>75,424.00</td>
<td>631,179.84</td>
<td>631,179.64</td>
<td>4,321,378.55</td>
</tr>
<tr>
<td>SRF Loan Fund - Capital Projects (See Attached for Details)</td>
<td>724,838.00</td>
<td>20,187,644.52</td>
<td>52,791.57</td>
<td>20,134,852.95</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Revised YTD Budget</th>
<th>YTD Actual</th>
<th>*Variance</th>
<th>Variance %</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2020</td>
<td>15,235,086.13</td>
<td>52,791.57</td>
<td>15,182,294.56</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>631,179.84</td>
<td>631,179.64</td>
<td>4,321,378.55</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>20,187,644.52</td>
<td>52,791.57</td>
<td>20,134,852.95</td>
<td>100%</td>
</tr>
<tr>
<td>Capital Projects</td>
<td>Original Budget</td>
<td>Revised Budget</td>
<td>Actual</td>
<td>Variance</td>
</tr>
<tr>
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Capital Projects (See Attached for Details):
20-20-00-605-017 FRC-Job 16-02 18in Cane Haul Road Main
20-20-00-605-104 FRC-Eng-ALLE-05-02 HW-12 Drill Wainiha-Haena Well
20-20-00-605-117 FRC-Eng-ALLE-12-02 WK-23 UH Experimtal Storage Tank
20-20-00-605-118 Job 04-08 WK-30 Drill Kapaa Homestead Well #4
20-20-00-605-120 FRC-Eng-90%E-Kilauea 1.0MG Tank Job 02-06
20-20-00-605-153 Job 15-08 HW-11-Haena 0.2MG Tank
20-20-00-605-154 Job 17-11 Drill & Test Kilauea Well #3
20-20-00-605-155 FRC-Eng-ALLE-Wainiha Well #4
20-20-00-605-168 FRC-Eng-Exp-Kalaeo System Improvements
20-21-00-605-161 FRC-Cns-Hanaapepe River Bridge Kaumualii Hwy

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<td>FY 2023</td>
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<td>YTD Actual</td>
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<td>30-20-00-604-101 BAB-Eng-ALLR-10-01 Ani-01a Anini &amp; Kalihiwai Rd 6-</td>
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<td>30-20-00-604-105 BAB-Eng-ALLR-09-01 K 01 Kalaheo 1111FT &amp; 1222FT</td>
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<td>30-20-00-605-120 BAB-Ona-ALLE-02-00/WK/15-Kilaeua 466 Tank Puu Pano</td>
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|            |            |                                                                 |           |       |          |           |          |          |          |           |        |
|            |            |                                                                 |           |       |          |           |          |          |          |           |        |
|            |            |                                                                 |           |       |          |           |          |          |          |           |        |
|            |            |                                                                 |           |       |          |           |          |          |          |           |        |
|            |            |                                                                 |           |       |          |           |          |          |          |           |        |
|            |            |                                                                 |           |       |          |           |          |          |          |           |        |
|            |            |                                                                 |           |       |          |           |          |          |          |           |        |
|            |            |                                                                 |           |       |          |           |          |          |          |           |        |
|            |            |                                                                 |           |       |          |           |          |          |          |           |        |
|            |            |                                                                 |           |       |          |           |          |          |          |           |        |
|            |            |                                                                 |           |       |          |           |          |          |          |           |        |
|            |            |                                                                 |           |       |          |           |          |          |          |           |        |
|            |            |                                                                 |           |       |          |           |          |          |          |           |        |
|            |            |                                                                 |           |       |          |           |          |          |          |           |        |
| 7/26/2019  |            |                                                                 |           |       |          |           |          |          |          |           |        |

361,944.00  -  -  361,944.00  167,142.35  -  -  167,142.35  529,086.35
YTD METERED CONSUMPTION (000 GALLONS) COMPARATIVE REPORT
For Fiscal Years 2018, 2019 & 2020
(expressed in thousands)

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<th>FY 2020</th>
<th>CUM. INC (DEC)</th>
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<td>1,018,284</td>
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**AFS error in billing AJE 288,133**

Adjustment

YTD WATER CONSUMPTION COMPARATIVE CHART
As of June: FY 2018, 2019 & 2020

Billions

- FY 2018
- FY 2019
- FY 2020

4. ytdconsumption (000 gallons)
### Assets and Deferred Outflows

**June 30, 2019**  
(Unadjusted)  

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<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>$787,533</td>
<td>$681,404</td>
</tr>
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<td>Accounts receivable and other</td>
<td>$103,197</td>
<td>$106,316</td>
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<tr>
<td><strong>Total facility reserve charge funds</strong></td>
<td>$890,730</td>
<td>$787,721</td>
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<td><strong>Bond funds:</strong></td>
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<tr>
<td>Cash</td>
<td>$1,118,943</td>
<td>$367,486</td>
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<tr>
<td>Investments</td>
<td>$9,318,809</td>
<td>$12,071,974</td>
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<tr>
<td>Accrued interest</td>
<td>$22,315</td>
<td>$29,424</td>
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<tr>
<td><strong>Total bond funds</strong></td>
<td>$10,460,066</td>
<td>$12,468,883</td>
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<tr>
<td><strong>Total restricted assets</strong></td>
<td>$11,350,796</td>
<td>$13,256,604</td>
</tr>
<tr>
<td><strong>Equity Interest in Pooled Investment - Noncurrent</strong></td>
<td>$20,835,754</td>
<td>$21,635,754</td>
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<tr>
<td><strong>Utility Plant:</strong></td>
<td></td>
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<tr>
<td>In service</td>
<td>$347,022,145</td>
<td>$337,911,800</td>
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<tr>
<td>Accumulated depreciation</td>
<td>($134,093,524)</td>
<td>($127,779,001)</td>
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<td><strong>Total utility plant</strong></td>
<td>$212,928,621</td>
<td>$210,132,799</td>
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<td>Construction work in progress</td>
<td>$9,656,066</td>
<td>$6,781,231</td>
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<td><strong>Total property, plant and equipment</strong></td>
<td>$222,584,687</td>
<td>$216,914,031</td>
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<td><strong>Total assets</strong></td>
<td>$295,842,036</td>
<td>$292,071,049</td>
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<tr>
<td><strong>Deferred Outflow of Resources</strong></td>
<td>$5,202,564</td>
<td>$5,218,846</td>
</tr>
<tr>
<td><strong>Total assets and deferred outflows of resources</strong></td>
<td>$301,044,600</td>
<td>$297,289,895</td>
</tr>
</tbody>
</table>

*Allowance for doubtful accounts                                           | ($226,029)    | ($259,521)    |

Schedule IV - Comparative Balance Sheet
## Liabilities, Deferred Inflows and Net Position

<table>
<thead>
<tr>
<th></th>
<th>June 30, 2019 (Unadjusted)</th>
<th>June 30, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current Liabilities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable and accrued</td>
<td>4,323,084</td>
<td>3,406,394</td>
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<td>liabilities</td>
<td></td>
<td></td>
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<tr>
<td>Contracts payable, including</td>
<td>536,898</td>
<td>127,590</td>
</tr>
<tr>
<td>retainages</td>
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<td></td>
</tr>
<tr>
<td>Accrued Vacation And</td>
<td>412,124</td>
<td>489,688</td>
</tr>
<tr>
<td>Compensatory Pay, current</td>
<td></td>
<td></td>
</tr>
<tr>
<td>portion</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Due to/Due From Other Funds</td>
<td>212</td>
<td>-</td>
</tr>
<tr>
<td>Customer overpayment</td>
<td>180,617</td>
<td>172,170</td>
</tr>
<tr>
<td>Customer deposits and advances</td>
<td>777,492</td>
<td>688,609</td>
</tr>
<tr>
<td>Current portion of long term</td>
<td>5,017,034</td>
<td>4,883,749</td>
</tr>
<tr>
<td>debt</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current portion of capital</td>
<td>4,058</td>
<td>522,000</td>
</tr>
<tr>
<td>lease obligation</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total current liabilities</strong></td>
<td><strong>11,251,518</strong></td>
<td><strong>10,290,200</strong></td>
</tr>
<tr>
<td><strong>Long-Term Debt</strong></td>
<td>67,379,153</td>
<td>72,454,400</td>
</tr>
<tr>
<td><strong>Capital Lease Obligation</strong></td>
<td>-</td>
<td>4,619</td>
</tr>
<tr>
<td><strong>OPEB &amp; Retirement Benefits</strong></td>
<td>23,914,719</td>
<td>23,791,416</td>
</tr>
<tr>
<td>**Accrued Vacation and</td>
<td>912,823</td>
<td>912,823</td>
</tr>
<tr>
<td>Compensatory Pay**</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Deferred Inflow of Assets</strong></td>
<td>998,605</td>
<td>998,605</td>
</tr>
<tr>
<td>**Total liabilities and</td>
<td><strong>104,456,817</strong></td>
<td><strong>108,452,064</strong></td>
</tr>
<tr>
<td>deferred inflows:**</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net Position:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water Utility Reserves</td>
<td>9,400,000</td>
<td>10,200,000</td>
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<tr>
<td>Restricted FRC</td>
<td>882,879</td>
<td>779,870</td>
</tr>
<tr>
<td>Restricted Build American</td>
<td>10,203,021</td>
<td>12,364,802</td>
</tr>
<tr>
<td>Bonds</td>
<td></td>
<td></td>
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<tr>
<td>Invested in Capital Assets</td>
<td>150,185,508</td>
<td>139,070,668</td>
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<tr>
<td>Net of Related Debt</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unrestricted</td>
<td>25,916,375</td>
<td>26,422,492</td>
</tr>
<tr>
<td><strong>Total net position</strong></td>
<td><strong>196,587,783</strong></td>
<td><strong>188,837,831</strong></td>
</tr>
<tr>
<td><strong>Total liabilities, deferred</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>inflows and net position:</strong></td>
<td><strong>301,044,600</strong></td>
<td><strong>297,289,895</strong></td>
</tr>
<tr>
<td><strong>Total liabilities, deferred</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>inflows and net position:</strong></td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
## Accounts Receivable Aging Summary

**As of July, 2019**

### AR Aging

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>0-30 days</td>
<td>$1,379,032.19</td>
<td>84%</td>
<td>$1,546,380.67</td>
<td>85%</td>
<td>$1,292,124.74</td>
<td>84%</td>
<td>$1,427,201.11</td>
<td>90%</td>
<td>$1,336,479.81</td>
<td>90%</td>
<td>$1,138,054.93</td>
<td>83%</td>
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<tr>
<td>31-60 days</td>
<td>$134,710.80</td>
<td>8%</td>
<td>$138,815.46</td>
<td>8%</td>
<td>$161,048.30</td>
<td>11%</td>
<td>$177,642.89</td>
<td>11%</td>
<td>$180,361.19</td>
<td>11%</td>
<td>$190,103.61</td>
<td>10%</td>
</tr>
<tr>
<td>61-90 days</td>
<td>$40,844.48</td>
<td>2%</td>
<td>$33,477.67</td>
<td>2%</td>
<td>$18,000.92</td>
<td>1%</td>
<td>$49,334.87</td>
<td>3%</td>
<td>$56,966.19</td>
<td>3%</td>
<td>$40,763.50</td>
<td>3%</td>
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<tr>
<td>91-120 days</td>
<td>$15,245.96</td>
<td>1%</td>
<td>$13,082.76</td>
<td>1%</td>
<td>$13,918.12</td>
<td>1%</td>
<td>$3,106.80</td>
<td>0%</td>
<td>$17,060.96</td>
<td>0%</td>
<td>$14,994.42</td>
<td>1%</td>
</tr>
<tr>
<td>121 days and over</td>
<td>$71,750.24</td>
<td>4%</td>
<td>$89,434.50</td>
<td>5%</td>
<td>$46,614.28</td>
<td>3%</td>
<td>($70,785.31)</td>
<td>-4%</td>
<td>($76,144.74)</td>
<td>-4%</td>
<td>$43,710.50</td>
<td>3%</td>
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<tr>
<td>Total AR</td>
<td>$1,641,583.67</td>
<td>100%</td>
<td>$1,621,191.06</td>
<td>100%</td>
<td>$1,531,706.36</td>
<td>100%</td>
<td>$1,584,500.34</td>
<td>100%</td>
<td>$1,522,124.01</td>
<td>100%</td>
<td>$1,367,830.96</td>
<td>100%</td>
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</tbody>
</table>

*Total AR is net of Customer deposits and overpayments.

### Customer Deposits & Overpayments

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
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<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>($180,414.20)</td>
<td>($187,130.60)</td>
<td>($121,827.60)</td>
<td>($188,853.60)</td>
<td>($221,241.42)</td>
<td>($194,309.60)</td>
<td>($202,099.31)</td>
<td>($181,624.99)</td>
<td>($148,943.37)</td>
<td>($186,130.23)</td>
<td>($182,927.40)</td>
<td>($175,615.15)</td>
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</table>
### DEPARTMENT OF WATER
### SUMMARY OF MCUTS
#### As of July, 2019

<table>
<thead>
<tr>
<th>FY MONTHS</th>
<th>July</th>
<th>August</th>
<th>September</th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>TOTALS</th>
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<tbody>
<tr>
<td>2020</td>
<td>69</td>
<td>$13,779.25</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>$13,779.25</td>
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</tr>
<tr>
<td>2021</td>
<td>28</td>
<td>$2,776.27</td>
<td>$2,111.04</td>
<td>$2,042.56</td>
<td>$2,352.51</td>
<td>$3,609.04</td>
<td>$6,741.24</td>
<td>*</td>
<td>$1,196.56</td>
<td>$6,154.30</td>
<td>**</td>
<td>$35,083.14</td>
<td></td>
</tr>
<tr>
<td>2019</td>
<td>33</td>
<td>$5,506.27</td>
<td>$7,888.51</td>
<td>$3,824.19</td>
<td>*</td>
<td>$4,480.86</td>
<td>$27,291.52</td>
<td>$32,214.96</td>
<td>$8,170.17</td>
<td>$4,851.25</td>
<td></td>
<td>$133,824.29</td>
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</tr>
<tr>
<td>2018</td>
<td>11</td>
<td>$3,169.74</td>
<td>$8,051.50</td>
<td>$3,672.65</td>
<td>*</td>
<td>$4,175.66</td>
<td>$21,376.92</td>
<td>$30,795.56</td>
<td>$7,472.17</td>
<td>$5,693.23</td>
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<td>$112,282.44</td>
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<td>2017</td>
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<td>$12,602.72</td>
<td>$35,186.00</td>
<td>$12,573.35</td>
<td>$13,389.78</td>
<td>$16,357.08</td>
<td>$5,635.81</td>
<td>$6,548.66</td>
<td>$15,735.65</td>
<td>$9,379.66</td>
<td>$40,447.77</td>
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<td>$172,856.48</td>
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<td>$12,908.83</td>
<td>$31,387.14</td>
<td>$9,791.37</td>
<td>$8,808.34</td>
<td>$15,205.41</td>
<td>$3,596.94</td>
<td>$2,520.71</td>
<td>$6,793.88</td>
<td>$8,051.50</td>
<td>$37,144.99</td>
<td></td>
<td>$136,209.11</td>
</tr>
<tr>
<td>2015</td>
<td>22</td>
<td>$12,908.83</td>
<td>$31,387.14</td>
<td>$9,791.37</td>
<td>$8,808.34</td>
<td>$15,205.41</td>
<td>$3,596.94</td>
<td>$2,520.71</td>
<td>$6,793.88</td>
<td>$8,051.50</td>
<td>$37,144.99</td>
<td></td>
<td>$136,209.11</td>
</tr>
<tr>
<td>2014</td>
<td>11</td>
<td>$5,744.14</td>
<td>$13,988.13</td>
<td>$25,960.00</td>
<td>$37,591.19</td>
<td>$13,892.54</td>
<td>$5,260.00</td>
<td>$38,283.90</td>
<td>$18,792.82</td>
<td>$23,216.40</td>
<td>$27,403.03</td>
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<td>$224,881.84</td>
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<td>2013</td>
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<td>$13,117.70</td>
<td>$16,528.53</td>
<td>$16,453.27</td>
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<td>$18,475.00</td>
<td>$9,384.49</td>
<td>$17,195.51</td>
<td>$19,383.85</td>
<td>$11,733.26</td>
<td></td>
<td>$135,797.04</td>
</tr>
</tbody>
</table>

*No Mcuts, new cloud service products were being tested and validated for roll out. Staff were working closely with Consultants, training, testing and validating customer accounts into a test company.

**No Mcuts for August & September, 2016. DOW implemented its own instance of CC&B on October 3, 2016. The staff were doing testing and validations prior to the 10/16 conversion rollout.

The MCUT is normally scheduled on the FC/MR’s free day.

* No MCUT in March. There’s one dedicated staff assigned to do Mcuts and is out on extended leave.

** No MCUT in June. Field Collections/Meter Reader staffing was short.
INFORMATION & EDUCATION SPECIALIST REPORT
August 23, 2019

Public Notices and Announcements
All news releases were also published on the Department’s Facebook and Twitter social media pages.

• Kōloa – Water service shutdown scheduled for Kōloa area on August 7-8
  o A news release was issued on July 31, 2019 to announce an overnight water service shutdown in Kōloa for customers located along a portion of Maluhia Road; between Alaneo Road and Kōloa Road, including Emi Road and a portion of Wailuaau Road in Kōloa on Wednesday, August 7 from 8 p.m. to 12 a.m. on Thursday, August 8, weather permitting. The 4-hour water service shutdown is necessary in order to allow contractor, Koga Engineering & Construction Inc. to connect a new 6-inch bypass line to the existing water system.
    ▪ A BlackBoard Connect notification was issued and door to door notices were delivered to customers in the affected service area.
  o A news release was issued on August 5, 2019 to remind customers of a water service shutdown scheduled for a portion of Maluhia Road; between Alaneo Road and Kōloa Road, including Emi Road and a portion of Wailuaau Road in Kōloa on Wednesday, August 7 from approximately 8 p.m. to 12 a.m. on Thursday, August 8, weather permitting.
    ▪ A BlackBoard Connect notification was also issued to help remind residents of the shutdown.

Public Relations Program
Education & Community Outreach
• Jonell Kaohelaulii and Jason Fujinaka conducted presentations at the Joint Government Water Conference at the Kaua’i Beach Resort on August 6, 2019. Jonell provided 2 presentations explaining the educational value and outreach efforts of the Project WET curriculum and Hawai‘i program. Jason spoke about the Department’s efforts to promote conservation and groundwater protection. There were approximately 78 attendees at the Kaua‘i conference, consisting of water professionals from private and government agencies.

Upcoming Community Outreach & Educational Events
• August 12, 27, 29, 2019 – Joint Government Water Conference on O‘ahu, Maui & Hawai‘i Island.
• September 20, 2019 – Make a Splash with Project WET Festival

Project WET Hawaii
• Coordination and planning of DOW’s Make a Splash with Project WET Festival continues. A new location at the Vidinha Stadium Soccer Field in Līhu‘e, has been secured for the festival and a site inspection was completed in July. Logistics are coordinated for set up at the new event location.
• Jonell met with Hawai‘i Rural Water Association’s (HRWA) Outreach Coordinator, Juanita Reyner-Colon to discuss Project WET workshop hosting opportunities across the state. Juanita expressed willingness and interest in assisting the network with conducting workshops and being available to assist on neighbor islands. The HRWA staff is also confirmed as one of the tent sponsors at this year’s Make a Splash festival.
Miscellaneous

- The July edition of the employee newsletter, “As the Water Flows” was published.
- The County’s Employee Council hosted a Spam Fest Contest on July 26, 2019 at the Mo’ikeha Building. DOW hosted a water and juice station at the event.

JK/ein

Mgrp/August 2019/Information & Education Specialist Report (8-23-19):ein
Operations Division Report for the Month of July 2019

**Personnel**

- Field and Plant Section Operations personnel attended training and obtained American Traffic Safety Services Association Flagger Certification.
- Field personnel attended training on Fundamentals of Meter Selection and Service Configuration.

**Source and Storage**

- Maintenance Workers continued cleaning of various remote facilities island-wide. Works included clearing of vegetation and drainage as well as repair and construction of structures and facilities.
- Water Plant Operators performed routine inspection and maintenance at all sites including valve maintenance, piping repair and replacement, chlorination equipment maintenance, and mixing of sodium hypochlorite.
- Refurbishment and pump replacement at Hanamā'ulu Pump Station is on-going.
- Puhi Well 3 refurbishment Contract 679 with Derrick’s Well Drilling is on-going.
- Waipao Valley Well Contract 657 refurbishment contract on-going.
- Electrical workers performed routine electrical maintenance at all sites including SCADA radio troubleshooting, electrical wiring for motor controls, lighting repair and replacement.
- Auto mechanics performed routine maintenance of all DOW vehicle and equipment including light, medium and heavy vehicles as well as construction equipment and generators.
- Electricians and Plant Operators are working with Construction Management (CM) and contractors on the monitoring of Kōloa Wells A & B as well as Eleele Booster Capital Improvement Project contracts to ensure components installed are operating properly.

**Distribution**

- Operations Division Field Section crews continue to perform routine leak repair of service laterals and mainlines. Field Section personnel responded to thirty-six (36) leak repair work orders.
- Field Section personnel installed one (1) double service lateral.
• Four (4) temporary hydrant meter was installed for various construction projects.

• We received a total of 61 calls from customers reporting leaks on the mainline, service laterals, meters, meter boxes and fire hydrants including complaints of no water, complaints of low pressure, high pressure, calls requesting remote site/facility grounds and vegetation maintenance, calls for assistance in shutting off the water meter, calls reporting damaged meter box and cover, reports of leaking or damaged fire hydrants and report of white milky water, and non-water emergency calls mainly customer inquiries. Work orders were generated and all calls resolved. Leak after the meter needs to be addressed by the customer.

**Fleet, Inventory, Warehouse and Baseyard Area**

• For the month of July, a total of two hundred twenty (220) work orders were issued for Operations Division. Works included: electrical repairs and maintenance; automotive repairs and maintenance including power generator maintenance; Hawai'i one call requests for markings; water meter installation and replacement; service lateral installations; leak repairs; well, tank site and PRV maintenance; replace damaged meter boxes; repair defective meters; replace damaged or leaking hydrant; door-to-door customer notifications for tie-ins of new lines to existing lines as well as notifications regarding scheduled repairs; callouts due to customer complaints/reports; meter replacement requests; Hawai'i One Call relative to contractor’s requests for markings.

• For the month of July 2019, forty (40) Hawaii One Call requests for markings were received. Also, fifty-six (56) meters were maintained, replaced, repaired, issued and installed including four (4) temporary hydrant meter.

• The Operations and Microlab buildings were run on generators for 3 days to ensure stable electricity to protect computers, servers and other electrical appliances.

VPR/ein

Attachments: Overtime Chart
             Leak Report Chart
             Production/Billing Chart

Mgrp/August 2019/Operations Division Report for the Month of July 2019 (8-23-19): ein
<table>
<thead>
<tr>
<th># of W/O's</th>
<th>Job Reason Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>LEAK-BOX</td>
<td>Meter Box Leak Repair</td>
</tr>
<tr>
<td>26</td>
<td>LEAK-CALOU</td>
<td>LEAK CALL OUT</td>
</tr>
<tr>
<td>2</td>
<td>LEAK-CUST</td>
<td>Customer-Side Leak Repair</td>
</tr>
<tr>
<td>55</td>
<td>LEAK-MAIN</td>
<td>Mainline Leak Repair</td>
</tr>
<tr>
<td>85</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 work orders by job reason code.]

- LEAK-BOX: 11.1%
- LEAK-CALOU: 13.8%
- LEAK-CUST: 1.1%
- LEAK-MAIN: 29.1%
- LEAK-S/L: 45.0%
- Total: 100.0%
Work Orders by Job Reason Code for Selected Date Range

07/01/2018 to 07/31/2019

# of W/O's | Job Reason Code | Description

Number of Leak Repairs per Month

Number of Leak Repairs

Month:
- 7/2018
- 8/2018
- 9/2018
- 10/2018
- 11/2018
- 12/2018
- 1/2019
- 2/2019
- 3/2019
- 4/2019
- 5/2019
- 6/2019
- 7/2019

Graph showing the number of leak repairs per month for different job reason codes.
<table>
<thead>
<tr>
<th>Month</th>
<th>Produced (Kgals.)</th>
<th>Customer Meter Read (Kgals.)</th>
<th>Waterloss (Kgals.)</th>
<th>Waterloss (gal/con/day)</th>
<th>Waterloss (%)</th>
<th>Waterloss ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aug-18</td>
<td>386,875</td>
<td>377,682</td>
<td>9,193</td>
<td>14.11</td>
<td>2.4</td>
<td>11,739</td>
</tr>
<tr>
<td>Sep-18</td>
<td>379,321</td>
<td>325,351</td>
<td>53,970</td>
<td>80.18</td>
<td>14.2</td>
<td>68,919</td>
</tr>
<tr>
<td>Oct-18</td>
<td>370,788</td>
<td>326,689</td>
<td>44,099</td>
<td>65.52</td>
<td>11.9</td>
<td>56,315</td>
</tr>
<tr>
<td>Nov-18</td>
<td>354,625</td>
<td>306,129</td>
<td>48,496</td>
<td>74.45</td>
<td>13.7</td>
<td>61,929</td>
</tr>
<tr>
<td>Dec-18</td>
<td>352,063</td>
<td>303,733</td>
<td>48,330</td>
<td>71.80</td>
<td>13.7</td>
<td>61,717</td>
</tr>
<tr>
<td>Jan-19</td>
<td>334,975</td>
<td>299,665</td>
<td>35,310</td>
<td>72.75</td>
<td>10.5</td>
<td>45,091</td>
</tr>
<tr>
<td>Feb-19</td>
<td>356,763</td>
<td>305,811</td>
<td>50,952</td>
<td>54.21</td>
<td>14.3</td>
<td>65,065</td>
</tr>
<tr>
<td>Mar-19</td>
<td>346,567</td>
<td>303,132</td>
<td>43,435</td>
<td>63.58</td>
<td>12.5</td>
<td>55,467</td>
</tr>
<tr>
<td>Apr-19</td>
<td>360,202</td>
<td>325,067</td>
<td>35,135</td>
<td>51.43</td>
<td>9.8</td>
<td>44,867</td>
</tr>
<tr>
<td>May-19</td>
<td>397,657</td>
<td>333,272</td>
<td>64,385</td>
<td>98.02</td>
<td>16.2</td>
<td>82,219</td>
</tr>
<tr>
<td>Jun-19</td>
<td>422,007</td>
<td>372,961</td>
<td>69,046</td>
<td>75.29</td>
<td>11.6</td>
<td>62,632</td>
</tr>
<tr>
<td>Jul-19</td>
<td>415,074</td>
<td>360,893</td>
<td>54,181</td>
<td>80.49</td>
<td>13.1</td>
<td>69,189</td>
</tr>
<tr>
<td>Total</td>
<td>4,476,915</td>
<td>3,940,385</td>
<td>536,530</td>
<td>66.70</td>
<td>12.0</td>
<td>685,149</td>
</tr>
</tbody>
</table>
MANAGER’S UPDATE

August 23, 2019

Pursuant to Board Policy No. 3

CONTRACTS AWARDED/EXTENSION/AMENDMENTS:

1) FOURTH AMENDMENT TO CONTRACT NO. 533, JOB NO. 09-01, WP2020, #K-01, #K-12, PHASE II – KALĀHEO 1111’ AND 1222’ WATER SYSTEM IMPROVEMENTS, KALĀHEO, WITH BELT COLLINS HAWAII LLC FOR A TIME EXTENSION OF 220 DAY AND ADDITIONAL FUNDING IN THE AMOUNT OF $101,583.00

FUNDING:

<table>
<thead>
<tr>
<th>Account No.</th>
<th>30-20-00-604-105</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acct Description</td>
<td>Certified BAB Funds for Contract No. 533</td>
</tr>
<tr>
<td>Funds Available</td>
<td>Verified by WWC</td>
</tr>
<tr>
<td>Contract No.</td>
<td>533</td>
</tr>
<tr>
<td>Vendor</td>
<td>Belt Collins Hawaii LLC</td>
</tr>
<tr>
<td>Contract Amount</td>
<td>$ 955,000.00</td>
</tr>
<tr>
<td>Contingency</td>
<td>$ 0.00</td>
</tr>
<tr>
<td>First Amendment</td>
<td>$ 37,900.00</td>
</tr>
<tr>
<td>Second Amendment</td>
<td>$ 207,309.00</td>
</tr>
<tr>
<td>Third Amendment</td>
<td>$ 38,500.00</td>
</tr>
<tr>
<td>Total Funds Certified To Date</td>
<td>$ 1,238,709.00</td>
</tr>
</tbody>
</table>

Fourth Amendment:

| Contract Time Extension and Additional Design Funds, per approved Manager’s Report No. 20-08 | $ 101,583.00 |
| Total Amendment | $ 101,583.00 | $ <101,583.00> |

| Contract Amount To Date | $ 1,238,709.00 |

BACKGROUND:

Contract NTP Date: April 13, 2011
Original Contract End Date: April 11, 2013
First Amendment End Date: October 31, 2014
Second Amendment End Date: February 15, 2018
Third Amendment End Date: December 28, 2019
New Contract End Date: Estimate August 3, 2020
The DOW is proposing to construct four (4) packages as part of the Kalāheo Water System Improvements Project. Package A is the new Yamada 0.5 MG (million gallon) concrete tank and Package B is the new Clearwell 0.1 MG concrete storage tanks. Package C consists of approximately 11,000 feet of new transmission and distribution lines along Kikala Road, Pu‘uwai Road, Po‘ohiwi Road, and Pu‘ulima Road. Package D – Yamada well, includes drilling, testing, and construction of a new production well at the Yamada Tank site, constructing a new booster pump on the Yamada Tank site, and improving the existing booster pump located at the Kalāheo 908’ Tank.

**Contract Amendment No. 1:**
The contract was first amended for additional scope requested by the DOW; including replacing the water main along the access road between the existing Clearwell Site and its intersection with Pu‘uwai Road, additional topographic survey, addressing subdivision approval comments, finalizing the subdivision map at the proposed Yamada tank site, and providing an Archaeological Inventory Survey (AIS) for the project.

**Contract Amendment No. 2:**
The design of the Package B Clearwell tank was changed from 0.5 MG to a 0.1 MG tank to meet the capacity needs of the affected water services area and to save approximately $1,300,000 in overall construction costs of the tank site. The amendment provided additional design services to complete the design for Packages A, B, and C, including: the downsizing of the Package B tank, design revisions to the water line alignment, additional project management and sub-consultant coordination, additional permitting requirements, moving the new SCADA unit into the new control building, and various other updates to the plans and specifications as requested by the DOW.

**Contract Amendment No. 3:**
As part of the process of obtaining the appropriate land rights for the operation and maintenance of the proposed Clearwell Tank site, the Department was informed that a Governor’s Executive Order (EO) is required. The Board of Land and Natural Resource (BLNR) has approved issuing an EO for the land needed for the Clearwell Tank improvements. Subsequently, the existing parcel must be subdivided to create the Clearwell tank site for the DOW. Scope was added for the consultant to prepare and submit the necessary documents to obtain final subdivision approval from the Planning Commission for the Package B Clearwell Tank site.

**Proposed Contract Amendment No. 4:**
Design work for the Kalāheo Water System Improvements, Packages A, B, and C, were completed in June 2018. However, the packages’ construction dates were delayed due to the Department’s project delivery capacity and funding. The Department recently obtained a State grant of $10,200,000 for the construction of the project. The Department also intends to utilize all of the remaining Build America Bond (BAB) funds available for this project, estimated at $7,200,000. However, to secure the remaining funding needed, the Department is looking to obtain a Drinking Water State Revolving Fund (DWSRF) loan through the Department of Health because the interest rates are significantly more attractive than other debt-financing options. To qualify for the DWSRF loan, additional environmental work must be done and of federal requirements which were not included in the original scope of work for the contract must be incorporated into the project plans and specifications.

In addition to the DWSRF loan requirements, design plans will need to be recertified and some permits will need to be renewed because construction of the project is estimated to start in July 2020 and the design was completed in June 2018. This amendment includes scope to recertify plans and renew permits and approvals. The Department has reviewed the proposal from the consultant and has found it to be fair and reasonable. (Reference Manager’s Report No. 20-08)
(2) SIXTH AMENDMENT TO CONTRACT NO. 557, JOB NO. 11-07, WP2020 #KP-09, KÔLOA WELLS “16A” & “16B”, SITE AND BUILDING IMPROVEMENTS, MCC CHLORINATION FACILITIES WITH OKAHARA AND ASSOCIATES, INC. FOR A TIME EXTENSION OF 180 CALENDAR DAYS WITH NO ADDITIONAL FUNDING

FUNDING:

<table>
<thead>
<tr>
<th>Account No.</th>
<th>10-20-00-604-138</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acct Description</td>
<td>WU/Eng/AdminCapital Outlay – Rehabilitation and Replacement</td>
</tr>
<tr>
<td>Funds Available</td>
<td>Verified by WWC</td>
</tr>
</tbody>
</table>

| Contract No. | 557 |
| Vendor | Okahara and Associates, Inc. |
| Contract Amount | $ 181,447.00 |
| Contingency | $ 18,145.00 |
| First Amendment | $ 0.00 |
| Second Amendment | $ 0.00 |
| Third Amendment | $ 0.00 |
| Fourth Amendment | $ 0.00 |
| Fifth Amendment | $ 0.00 |
| Total Funds Certified To Date | $ 199,592.00 |

Sixth Amendment:

| Contract Time Extension for 180 calendar days | $ 0.00 |
| Total Amendment | $ 0.00 |
| Contract Amount To Date | $ 181,447.00 |
| Fund Balance | $ n/a |

BACKGROUND:

Contract NTP Date: 09/18/12, duration 270 calendar days
Original Contract End Date: 06/15/13
First Amendment: Executed 04/24/14, extending contract to 05/30/14
Second Amendment: Executed 04/28/17, NTP issued 05/09/17, extending contract 180 calendar days
Third Amendment: Executed 11/30/17, NTP issued 12/04/17, extending contract 180 calendar days
Fourth Amendment: Executed 09/12/18, extending contract 180 calendar days
Fifth Amendment: Executed 04/09/19, extending contract 180 calendar days
Sixth Amendment: Extend contract an additional 180 calendar days
New Contract End Date if Contract Time Extension: From execution date of Sixth Amendment

Additional contract time is required for the consultant to address a drainage problem discovered during construction. The land owner has been contacted and notified of the drainage problem. The land owner will let the Department know when they will be able to meet and discuss the drainage problem.
Department will need the land owner’s permission/approval for any resolution of the drainage problem. An additional 180 days to the contract is being requested at this time.

In the event that a resolution with the land owner cannot be obtained in a timely manner, another contract amendment for time extension may be required.

(3) SECOND AMENDMENT TO CONTRACT NO. 639, JOB NO. 17-10, WP2020 #KW-07, REHABILITATE PAUA VALLEY TANK #1, 0.5 MG CONCRETE WITH KAI HAWAI’I INC. FOR A TIME EXTENSION OF 150 DAYS AND ADDITIONAL FUNDING IN THE AMOUNT OF $11,636.00

FUNDING:

<table>
<thead>
<tr>
<th>Account No.</th>
<th>10-20-00-604-001</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acct Description</td>
<td>WU/Eng/Admin Capital Outlay – Rehabilitation and Replacement / Capital Purchases</td>
</tr>
<tr>
<td>Funds Available</td>
<td>Verified by WWC</td>
</tr>
</tbody>
</table>

| Contract No. | 639 |
| Vendor | KAI Hawai‘i, Inc. |
| Contract Amount | $93,625.52 |
| First Amendment | $68,795.00 |
| Total Funds Certified To Date | $162,420.52 |

Second Amendment:

| Contract Time Extension and PCB Soil Removal Plan | Per Approved Manager’s Report No. 20-07 | $11,636.00 |
| Total Amendment | $11,636.00 | $<11,636.00> |
| Contract Amount To Date | $174,056.52 |

BACKGROUND:

Contract NTP Date: July 10, 2017
Original Contract End Date: March 16, 2018
First Amendment End Date: May 4, 2019
New Contract End Date: Estimate November 6, 2019

The DOW started Job No. 17-10, WP2020 Project No. KW-07 Rehabilitate Paua Valley Tank #1, 0.5MG Concrete to address the aging tank located in Kekaha and to perform repairs, including fixing a leak located at the base of the tank. As part of the project, DOW performed hazardous material surveys to ensure proper disposal of any material intended to be removed. Results of the hazardous material survey identified the presence of polychlorinated biphenyls (PCBs) within the interior liner of the tank, which required the shutdown of the tank and the involvement of the Department of Health Hazard Evaluation and Emergency Response Office (HEER) and the Environmental Protection Agency (EPA) to provide direction of proper removal and disposal of the PCBs.
After discussions with HEER and EPA, specifications needed to be provided for proper removal and disposal of the interior liner of the tank. Additionally, the soils in the drainage ditch needed to be tested for the presences of PCBs, as this is where the tank discharges overflow or washout water.

Testing from the drainage ditch resulted in the presence of PCBs within the soils. Requirements from EPA require that a PCB soil removal plan must be developed and approved by the EPA and HEER for proper mitigation of the soil in the ditch.

The proposed amendment are necessary to complete the PCB soil removal plan to satisfy requirements from HEER and EPA. We have reviewed the proposal from KAI Hawaii, Inc. for additional engineering services for the work and find it acceptable. (Reference Manager Report No. 20-07)

**WAIVER, RELEASE & INDEMNITY APPLICATIONS:**

None

**STAFF REPORTS - FY 19-20:**

**PERSONNEL MATTERS**

*August 12, 2019*

**Administration**


**Construction Management Division**

1. Chief of Construction Management #2470. As of 8/12/2019, DHR reviewing classification request.
2. Civil Engineer V #2355. As of 8/12/2019, DHR reviewing classification request.
3. Waterworks Inspector I positions #2608 & #2609. Pending referred list of eligibles.

**Engineering Division**

1. Civil Engineer IV reallocated to Civil Engineer V #2468. Classification complete. Reallocation effective 6/1/2019.

**Fiscal Division**

1. Meter Reader I #2466. As of 8/12/2019, pending eligibles list from DHR.

**Operations Division**

3. Maintenance Worker I #2453. Received eligible list.
4. Maintenance Worker II #2610. As of 8/12/2019, pending eligibles list from DHR.
5. Utility Worker #2612. DHR to post via open recruitment. C
6. Pipefitter #2473. Received referred list of eligibles.
7. Waterworks Program Assistant #2613. As of 8/12/2019, pending eligibles list from DHR

Hires, Separations and Position Changes:
Groundskeeper #2601 Hire Starts 9/1/2019.
Summer Intern (Accounting) Separation 7/30/2019.
Summer Intern (Admin) Separation 8/20/2019.
Summer Intern (OPS) J.P. Separation 8/30/2019.
Summer Intern (OPS) B.S. Separation 8/30/2019.
Position Change Civil Engineer IV to V #2468 effective 6/1/201

Pursuant to Board Policy No. 24

CONVEYANCE OF WATER FACILITIES
None

CUSTOMER CARE AND BILLING (CC&B) SYSTEM UPDATE:
August 12, 2019

We are excited to offer our valued customers a new online service and payment option with the new Customer Account Portal (CAP). The new CAP is an easy-to-use, online service that offers convenient access to water service account info, payment history, billing statements, and allows customers to make online bill payments using a credit or debit card. This service also provides customers with a dashboard overview of their account that serves as a useful account management tool.

The online payment option accepts major credit and debit cards, including; Visa, MasterCard, Discover, and American Express, and also provides a convenient auto-payment feature. Credit and debit card payments are only being accepted online via the CAP at this time.

We invite our customers to access the CAP, by registering online at www.kauaiwater.org, by clicking on the CAP access link located on the homepage. Customers will need their DOW account number and an email address to complete the online registration. All existing electronic billing users will need to re-register to access the CAP in order to continue to use DOW’s online account services.

There are 330 registered user accounts and 37 credit card transactions were processed for the month of July. The current E-billing statements will the current provider will be terminated on August 31, 2019. Customers may continue to receive E-bills by registering for the New Customer Account Portal. Implementation of the new CAP has led to a large influx of customer calls and e-mails, and DOW staff are continuing to provide excellent customer service throughout this transition period.

I.T. STRATEGIC PLAN UPDATE:
These updates will be placed in the Quarterly reports per Board action during the July 26, 2019 Regular Board meeting.
**I.T. INITIATIVES UPDATE:**

*August 12, 2019*

Help Desk:
July No. of Received Tickets: .........................143
July No. of Resolved Tickets: ...........................129
Avg Response Time (hrs): .............................. 32:31
Avg Resolution Time (hrs): ............................. 50:49
Current Open tickets: ...............................................5

I.T. continues to work hard with limited staffing, working on numerous help desk requests and multiple projects. After the island-wide power outage I.T. staff worked diligently in getting the SCADA computers back online and up and running, as well as verifying that the business network was up and running.

I.T. Staff continues to work with our CC&B consultants in upgrading our customer account portal (CAP) as well as getting our mobile application online for DOW customers.

**GLOBAL LEADERSHIP SUMMIT:**
The Manager and Chief Engineer attended the Global Leadership Summit on August 8-9, 2019. The content provided was incredibly valuable and will be transferred to supervisors and staff at the DOW. Highlights included:

- Christopher Voss, author of “Never Split the Difference”, speaking on how to create tactical empathy to create collaboration.
- Jo Saxton, author of “More than Enchanting: Breaking Through Barriers to Influence Your World” speaking on how you don’t think your way into a new way of living, you live your way into a new kind of thinking.
- Patrick Lencioni, author of “The Five Dysfunctions of a Team” speaking on why not everyone should be a leader: only those who are responsibility-based, and not reward-based, should pursue leadership roles. He argued that leadership is sacrificial by nature and identified five key areas where leaders must be effective:
  1. Have the difficult conversations; don’t avoid them. If the leader won’t do it, why would anyone else?
  2. Manage your direct reports.
  3. Do team building.
  4. Reinforce messages.
  5. Run great meetings. Don’t let them be mediocre – make them great. The cost of bad meetings is bad decisions.

BW/mja
Mgrnp/Manager’s Update (08-23-19):mja