

## BOARD OF WATER SUPPLY

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

**MICAH FINNILA**, MEMBER  
**LAWRENCE DILL**, MEMBER  
**KA'AINA HULL**, MEMBER  
**TROY TANIGAWA**, MEMBER



**JOSEPH E. TAIT**  
MANAGER AND CHIEF ENGINEER

### REGULAR MONTHLY MEETING NOTICE AND AGENDA

Thursday, October 19, 2023  
9:30 a.m. or shortly thereafter

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

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

<https://us06web.zoom.us/j/81930174072>

**Passcode: 683408**

**OR**

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

**Phone: 888 788 0099 US Toll-free**

**Phone Conference ID: 819 3017 4072**

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

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

### CALL TO ORDER

### ROLL CALL

### ANNOUNCEMENTS

Next Scheduled Meeting: Thursday, November 16, 2023 – 9:30 a.m.

### APPROVAL OF AGENDA

### MEETING MINUTES

1. Regular Board Meeting – September 21, 2023

## **PUBLIC TESTIMONY**

### **NEW BUSINESS**

1. Manager's Report No. 24-01 Discussion and Adoption of Resolution No. 24-01, Safe Drinking Water State Revolving Fund (DWSRF) Pro-Fi Loan of \$5M for SFY 2024 for Kaua'i Board of Water Supply (Board)
2. Manager's Report No. 24-02 Discussion and Possible Action to execute an annual Use and Occupancy Permit No. 886 between the State of Hawai'i and the Board of Water Supply, County of Kaua'i for non-trenching maintenance, inspection and other uses and activities within the State Highway Right of Way, Kaua'i, Hawai'i.
3. Manager's Report No. 24-03 Discussion and Possible Action on acceptance of certain terms and conditions as stated in master services agreement (DOXIM dba Utilitec)
4. Manager's Report No. 24-04 Discussion and Possible Action on acceptance of certain terms and conditions as stated in software subscription agreement (LeaseQuery)
5. Discussion and Adoption of Resolution No. 24-02, Mahalo to Participants and Partners of the 2023 Make a Splash with Project WET Water Festival
6. Discussion and Possible Action on Manager's Annual Evaluation timeline, process, and criteria

### **STAFF REPORTS**

1. Fiscal:
  - a. Monthly dashboard
  - b. Budget Report for September 2023
  - c. Quarterly BAB Statement
2. Operations – Monthly dashboard
3. Engineering
  - a. Monthly dashboard
  - b. Quarterly Update
4. Administration:
  - a. Monthly dashboard
  - b. Public Relations – updates on Public Notices & Announcements, Community Outreach & Education, and Upcoming Events
  - c. Human Resources – updates on Personnel Vacancies
5. Manager and Chief Engineer – Required communications to the Board, and update of Department activities

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

1. Board Chair and Vice Chair elections; committee appointments for 2024
2. Board meeting calendar for 2024

### **TOPICS FOR FUTURE BOARD OF WATER SUPPLY MEETING:**

3. CIP Update

### **EXECUTIVE SESSION:**

Pursuant to Hawai'i Revised Statutes (HRS) §92-7(a), the Board may, when deemed necessary, hold an executive session on any agenda item without written public notice if the Executive

Session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a).

1. Pursuant to Hawai'i Revised Statutes § 92-4 and § 92-5(a)(4) and § 92-5(a)(6), the purposes of this executive session are to consult with the Board's attorney on this matter as it pertains to the Board's powers, duties, privileges, immunities, and liabilities and to consider sensitive matters related to public safety or security

**ADJOURNMENT**

## **WRITTEN TESTIMONY**

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

Please include:

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

### Send written testimony to:

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

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

### Public Testimony

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

### SPECIAL ASSISTANCE

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

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

DRAFT

MINUTES

MINUTES  
BOARD OF WATER SUPPLY  
Thursday September 21, 2023

The Board of Water Supply, County of Kaua'i met in a regular meeting in Līhu'e on Thursday, September 21, 2023. Chair Kurt Akamine called the meeting to order at 9:33 a.m. The following Board members were present:

**BOARD:**

Mr. Kurt Akamine, *Chair*  
Ms. Julie Simonton, *Vice Chair*  
Ms. Micah Finnila (*remote*)  
Mr. Larry Dill

**EXCUSED:**

Mr. Tom Shigemoto  
Mr. Ka'aina Hull  
Mr. Troy Tanigawa

Quorum was achieved with 4 members present at Roll Call.

**ANNOUNCEMENTS**

Next Scheduled Meeting: Thursday, October 19, 2023

**APPROVAL OF AGENDA**

**The agenda was approved with no objections.**

**APPROVAL OF MEETING MINUTES**

1. Regular Board Meeting – August 17, 2023
2. Executive Session – August 17, 2023

**The meeting minutes were approved with no objections.**

**PUBLIC TESTIMONY**

Public testimony was received by John Moore, Director of the Hawaiian Sustainability Foundation, a member of the Get Fit Built Environment Task Force, one of the co-founders of the Community Coalition of Kaua'i and has also been involved as a builder in the project at the North end of Kapa'a. Mr. Moore expressed his appreciation for the transformation of the Water Department, which he described as miraculous compared to the history of difficulties everyone on the island faced. He shared that many of his friends who are plumbers and contractors have expressed amazement at getting permit approvals in a matter of days, and Mr. Moore himself has been trying to get an approval for 19 years. Mr. Moore stated that what the county has done on every level to transform DOW with new people that are cooperative, helpful, and go out of their way to try and solve issues and get things done is truly miraculous, and though he does not know what is happening or how it's coming about, he is greatly appreciative of such positive change.

**STAFF REPORTS**

1. Fiscal:
  - a. Monthly dashboard
  - b. Budget Report for August 2023

Waterworks Controller Renee Yadao provided an overview of the Fiscal monthly dashboard noting that the Fiscal Division is now fully staffed. The last remaining Accountant position was filled on September 1, and the Account Clerk is being redescribed to an accounting assistant. The summer intern will be filling the account clerk position as an 89-day hire and has been instrumental in assisting the billing section with the rebuild. Ms. Yadao reminded the Board that

the billing section continues to work towards catching up with the backlog of customer accounts needing adjustments, which are needed to determine actual consumption used. They were able to work with software consultant, Prithibi, who developed a software enhancement that has taken a six-step process down to a 1-step process that has significantly reduced the amount of time it takes to perform.

Manager Tait commented that a year and a half ago the Department was not able to get a true picture of the Department's financial standing, but we are now seeing that light switch change with hiring staff to reduce overtime, getting a handle on what our actual power costs are, and finally capturing what we had hoped to do in previous years' Finance meetings. He feels that once Renee's team is fully staffed and situated, we will get to where we need to be.

## 2. Operations – Monthly dashboard

Assistant Chief of Operations Ryan Smith provided an overview of the monthly dashboard, highlighting that they had an increase in the amount of work orders generated and completed for the last month which is mainly due to all the meter changeouts. The coordination between the billing staff and ops staff resulted in the field crew being able to use the remainder of the transponders they had in the warehouse, which equated to a couple of months of back-logged work they were able to catch up on. Due to that, the margin of the non-revenue water in the monthly water audit was brought down significantly. In addition to the use of all the transponders and replacements, the meter mechanics have been focusing on the large meters and were able to get five back in operation in the last three weeks.

Mr. Smith noted they are continuing recruitment for pipefitter helper and electrician helper, and hope to have one more meter mechanic starting October 1.

## 3. Engineering – Monthly dashboard

Engineering Division Head Jason Kagimoto provided an overview of the monthly dashboard. He noted that what is not noted on this month's dashboard but will be on next month's report is the internal movement of a current staff member to fill an additional Inspector position, noting the amount of experience and qualifications he brings will be a huge benefit to the team. Engineering is at two-thirds filled as far as staffing and have been consistent in their budgeted amounts for OT relative to staffing; however, the past couple of months have been much higher due to the numerous public meeting they have held regarding the Water Use and Development Plan. Project Management has continued at a steady pace in approving and overseeing projects, more recently taking on more internal design CIP projects. Mr. Kagimoto provided a summary of the CIP projects highlighted.

Water Resources and Planning held five public meetings in August which reflects a decrease in the number of day-to-day tasks on the dashboard. Mr. Kagimoto noted they received a lot of positive feedback from the communities and were able to answer questions about the Water Use and Development Plan as well as some general Water Department questions.

GIS training sessions were held over the course of two days, which received a lot of positive feedback from staff especially on the Operations side. There is a lot of interest in how this could be used in the field through electronic formats as opposed to hard copy maps. There's a lot more that can be done, but this is a good start.

The lead and copper rule revision project is still ongoing and they are currently working on the utility inventory portion and the related administrative tasks.

#### 4. Administration:

Manager Tait commented that the Board may have noticed that the Administration Support stations up front are currently vacant and in transition. Administration is currently without the necessary support staff and are currently working with County DHR to get some positions posted within the next 45 days.

- a. Monthly dashboard
- b. Public Relations – updates on Public Notices & Announcements, Community Outreach & Education, and Upcoming Events

Information and Education Specialist Jonell Kaohelaulii provided an overview of the monthly report submitted.

- c. Human Resources – updates on Personnel Vacancies (see attached chart)
- d. Information Technology – Monthly update

IT Specialist Wayne Takabayashi provided an update on the status of the Corrective Action Plan that was identified in last year's audit, noting the color code indicators: green=complete; blue=complete/ongoing; olive=in progress, nearing approval

#### 5. Manager and Chief Engineer – Required communications to the Board, and update of Department activities

Manager Tait highlighted that the vacancies in Admin. have gone down from 32% to 21%, though he is still attempting to reach his end of fiscal year objective of getting it down to 10%. He noted that though Admin. has many vacancies, this division can afford to go without as long as the other three divisions are taken care of. The current focus is Engineering as due to the number of contracts we currently have, the cost of as-needed outsourcing to support Engineering has been somewhere between a 25%-40% premium.

Manager Tait thanked the members of the Administration staff that have worn several hats over the last few months to assist with additional work.

#### **TOPICS FOR NEXT BOARD OF WATER SUPPLY MEETING:**

1. Quarterly Financial Report

#### **TOPICS FOR FUTURE BOARD OF WATER SUPPLY MEETING**

1. Board Chair and Vice Chair elections; committee appointments for 2024
2. Board meeting calendar for 2024
3. CIP Update

#### **EXECUTIVE SESSION:**

Pursuant to Hawai'i Revised Statutes (HRS) §92-7(a), the Board may, when deemed necessary, hold an executive session on any agenda item without written public notice if the Executive

Session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a).

**ADJOURNMENT**

The meeting was adjourned at 10:16 a.m.

Respectfully submitted,

Cherisse Zaima  
Commission Support Clerk

DRAFT

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

NEW

BUSINESS

# DEPARTMENT OF WATER

County of Kaua'i

*"Water has no Substitute – Conserve It!"*

## MANAGER'S REPORT No. 24-01

October 19, 2023

Re: Discussion and Adoption of Resolution No. 24-11, Safe Drinking Water State Revolving Fund (DWSRF) Pro-Fi Loan of \$5M for SFY 2024 for Kaua'i Board of Water Supply (Board)

### **RECOMMENDATION:**

The Board's approval is requested to adopt Resolution No. 24-11 pertaining to the subject loan agreements between the Board of Water Supply (Board) and the State of Hawai'i, Department of Health.

### **FUNDING:**

None required.

### **BACKGROUND:**

The State of Hawai'i, Department of Health, Safe Drinking Water Branch is proposing to issue a loan to the Department from the Drinking Water State Revolving Fund for the subject project. The Safe Drinking Water Branch has committed loan funds in the amount of \$5M, with \$1,658,500.00 of the \$5M identified as principal forgiveness, with 0.25% interest and 1.50% annual loan fee, for a term of 20 years.

Board of Water Supply approval, documented by resolution, is required to enter into this loan agreement to secure and expend the DWSRF funds.

The funds will allow the Department to move forward with its projects that will provide critical infrastructure improvements.

### **OPTIONS:**

#### **Option 1: Approve to accept and expend DWSRF loan funds.**

Pro: DWSRF loan will provide loan interest supplemental funding, with cost spread out over 20 years, and allow for the Department's projects to move forward and address critical water system needs.

Con: DWSRF funds require additional level of project management oversight to ensure that the funds are expended per State regulations and are subject to State project level audit.

#### **Option 2: Do not accept and expend DWSRF loan funds.**

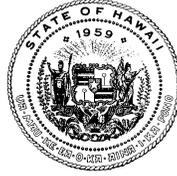
Pro: Project management expenditures will not be subject to State project level auditing.

Con: The funds required for the Department's projects will be passed on to the Department's customers with water rate increases.

JK/crz

Attachment(s): Commitment Notice from State DOH for Kauai DOW Pro-Fi SFY 2024, KDOW-PF24 (DWSRF Loan)  
Resolution No. 24-01 DWSRF Funding for CIP Projects

JOSH GREEN, M.D.  
GOVERNOR OF HAWAII  
KE KIA'AINA O KA MOKU'AINA 'O HAWAII



KENNETH S. FINK, M.D., M.G.A., M.P.H.  
DIRECTOR OF HEALTH  
KA LUNA HO'OKELE

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
KA 'OIHANA OLAKINO  
P. O. BOX 3378  
HONOLULU, HI 96801-3378

In reply, please refer to:  
File: SDWB  
KauaiDOW02

September 25, 2023

Mr. Joseph E. Tait  
Manager and Chief Engineer  
4398 Pua Loke Street  
Līhu'e, HI 96766  
[via [jtait@kauaiwater.org](mailto:jtait@kauaiwater.org) only]

Dear Mr. Tait:

**Subject: Commitment Notice for KAUAI DOW PRO-FI SFY 2024, KDOW-PF24**

This letter is to inform you that the Drinking Water State Revolving Fund (DWSRF) program is hereby committing loan funds for the Subject Project. The loan term will be 20 years. Details of the committed funds are up to the dollar amounts shown in the table below.

TYPE	DOLLAR AMOUNT	INTEREST
PRINCIPAL FORGIVENESS	\$1,658,500.00	0.00% interest, 0.00% fee
REPAYABLE PORTION	\$3,341,500.00	0.25% interest, 1.50% annual fee
<b>TOTAL LOAN</b>	<b>\$5,000,000.00</b>	

The final loan amount may be adjusted after receipt of bids, and again upon completion of construction and receipt of a final request for reimbursement of eligible costs by the County.

Payments and all obligations of the State of Hawaii under this loan will be subject to the execution of a loan agreement that meets all applicable federal and State requirements and to the availability of funds.

This commitment expires in one (1) year from the date of this letter. If there are any questions, please contact Ms. Judy Hayducsko of the SDWB Engineering Section at (808) 586-4258.

Sincerely,

GAUDENCIO C. LOPEZ, P.E., CHIEF  
Safe Drinking Water Branch

JH:sw

c: Ms. Renee Yadao, KDOW [via [ryadao@kauaiwater.org](mailto:ryadao@kauaiwater.org) only]  
Mr. Jason Kagimoto, KDOW [via [jkagimoto@kauaiwater.org](mailto:jkagimoto@kauaiwater.org) only]  
WRFS [via email only]  
LGTS (Project Costs/Agreement History/Binding Commitment/"CL")

RESOLUTION NO.	24-01
----------------	-------

APPROVING THE RECEIPT AND EXPENDITURE OF MONIES FOR:

KAUA'I DOW PRO-FI SFY 2024, KDOW-PF24

FUNDED BY THE DRINKING WATER STATE REVOLVING FUND (DWSRF); AND AUTHORIZING THE MANAGER AND CHIEF ENGINEER TO REDUCE, REPLACE, ALLOCATE, AND EXPEND UP TO \$5,000,000.00 IN MONIES FOR SAID PROJECT, IN THE FORM OF A LOAN AGREEMENT OR GRANT BETWEEN THE STATE OF HAWAII (State) AND BOARD OF WATER SUPPLY, COUNTY OF KAUAI (Board)

WHEREAS, the Board of Water Supply, County of Kaua'i (Board) desires to authorize the Manager and Chief Engineer, County of Kaua'i, to request and execute loan/grant applications and agreements with the State of Hawaii (State) in order to receive funding from the Drinking Water State Revolving Fund (DWSRF) for various Board Capital Improvement Program (CIP) Projects to achieve and maintain compliance in accordance with the Federal Safe Drinking Water Act and its amendments, 42 USCA 300f et seq.; and

WHEREAS, Hawaii Revised Statutes (HRS) Sections 340E-31 through 340E-41 establish a drinking water treatment revolving loan fund, also known as the DWSRF, for the purpose of protecting and improving drinking water quality by financing eligible projects consistent with applicable federal and state laws; and

WHEREAS, the State Department of Health may execute a loan and/or grant to Board funded by the DWSRF for the Projects pursuant to HRS Sections 340E-34 through 340E-37; and

WHEREAS, Department of Water, County of Kaua'i (DOW) anticipates encumbering or receiving up to \$5,000,000.00 in DWSRF funds for various CIP Projects including design, construction and contingency costs in Fiscal Year 2024 ending June 30, 2024; and

WHEREAS, actual design, construction, and contingency costs associated with DOW CIP Projects are unknown at this time, but shall be confirmed and this resolution amended accordingly should DOW be eligible to receive reimbursement for CIP Project costs in excess of the amount authorized herein by this resolution; and

WHEREAS, under Article XVII of the Kaua'i County Charter, expressly and by implication, the Board is the governing body of the DOW and the Board warrants that it has the full authority to manage, control, and operate the DOW waterworks of the County of Kaua'i, and all DOW waterworks finances and property; and

WHEREAS, the Board and DOW also have broad authorities over County waterworks and facilities under the authorities granted to Counties and their Boards of Water Supply by HRS Sections 46-1.5 (19) and (23), and Chapter 54; and to the extent that such statutes are not superseded by the County Charter's provisions; and

WHEREAS, the Board, to the extent permitted by law, may request and consent to the pledge of revenues for the construction and acquiring of capital improvements, and the Board warrants that it has such authority for these Projects; and

RESOLUTION NO.

24-01

WHEREAS, for the purpose of this Resolution, any loan/grant from the DWSRF shall constitute an obligation of the DOW; therefore,

BE IT RESOLVED BY THE BOARD OF WATER SUPPLY COUNTY OF KAUAI, STATE OF HAWAII:

1. That the Board Chair is authorized to enter into loan agreements with the State of Hawai'i for the projects mentioned in paragraph 2 below, and
2. That the Manager and Chief Engineer of DOW is hereby authorized to reduce, replace, and/or allocate up to \$5,000,000.00 in funds advanced by the DOW to undertake the CIP Projects in the form of loan or grant agreement(s) between the State Department of Health and the Board, and is hereby authorized to execute any and all documents necessary to effectuate such loan and/or grant agreement(s); and
3. That the receipt and expenditure of loan and/or grant monies from the DWSRF for CIP Projects is hereby approved; and
4. That any monies received as a loan and/or grant be used to reduce or replace funds advanced by the DOW to undertake the qualifying CIP Projects; and
5. That the monies received as a loan and the resulting debt service be included as a part of DOW debt service with annual payments budgeted according to the debt service schedule to be provided by the State; and
6. That the funds borrowed by the DOW are to be held to the same accounting standards as funds borrowed through the issuance of bonds; and
7. That the Board and DOW further pledge sufficient DOW revenue as to provide security for repayment of the loan, plus interest, pursuant to the loan agreement; and
8. That the Board and DOW pledge it shall exercise their revenue bond, revenue, assessment, and other authority as needed, to the extent allowed by law, to pay the semiannual repayments and any loan fees under this agreement. As needed, the Board and DOW shall establish, increase, and collect such fees, assessments, and revenues and make such adjustments to raise funds sufficient to repay the loan and pay any loan fees under this agreement, as permitted by law; and
9. BE IT FURTHER RESOLVED that this Resolution shall take effect upon the adoption thereof, and that the Secretary be directed to provide certified copies of this Resolution to the Manager and Chief Engineer of the DOW, Controller of DOW, Mayor of the County of Kaua'i, and the Director of the State Department of Health.

RESOLUTION NO.	24-01
----------------	-------

APPROVED AS TO FORM AND LEGALITY:

BOARD OF WATER SUPPLY

Tyler C. Saito  
Deputy County Attorney,  
County of Kaua'i

Kurt Akamine, Chairperson  
4398 Pua Loke Street  
Līhu'e, Hawai'i 96766

RESOLUTION NO.	24-01
----------------	-------

CERTIFICATION OF ADOPTION

APPROVING THE RECEIPT AND EXPENDITURE OF MONIES FOR THE DEPARTMENT OF WATER'S CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS FUNDED BY THE DRINKING WATER STATE REVOLVING FUND (DWSRF); AND AUTHORIZING THE MANAGER AND CHIEF ENGINEER TO REDUCE, REPLACE, ALLOCATE UP TO \$5,000,000.00 IN MONIES FOR SAID PROJECTS, IN THE FORM OF A LOAN AGREEMENT OR GRANT BETWEEN THE STATE OF HAWAII (State) AND BOARD OF WATER SUPPLY, COUNTY OF KAUAI (Board)

It is hereby certified that the foregoing resolution was adopted by the Kauai County Board of Water Supply, State of Hawai'i, at its meeting held October 19, 2023, by the following vote:

APPROVED:	[Insert Names]	Total: X
DISAPPROVED:	[Insert Names]	Total: X
ABSENT:	[Insert Names]	Total: X
	TOTAL:	X

-----  
CERTIFICATION

The undersigned hereby certifies that the foregoing Resolution is a true and correct copy of Resolution No. 24-11, adopted at the meeting of the Kauai Board of Water Supply, duly held on the 19th day of October 2023.

Joseph E. Tait  
Manager & Chief Engineer

# DEPARTMENT OF WATER

County of Kaua'i

*"Water has no Substitute – Conserve It!"*

## MANAGER'S REPORT No. 24-02

October 19, 2023

Re: Discussion and Possible Action to execute an annual Use and Occupancy Permit No. 886 between the State of Hawai'i and the Board of Water Supply, County of Kaua'i for non-trenching maintenance, inspection and other uses and activities within the State Highway Right of Way, Kaua'i, Hawai'i.

### **RECOMMENDATION:**

It is recommended that the Board allow the Department of Water to enter into an annual Use and Occupancy Permit (UOP) No. 886 between the State of Hawai'i and the Board of Water Supply, County of Kaua'i for non-trenching maintenance, inspection and other uses within the State Highway Right of Way, Kaua'i, Hawai'i.

Further, Board approval is specifically requested for the "Workmanship: Responsibility" and "State: Indemnity" provisions in the UOP, wherein the Board agrees to the following provisions in connection with Department of Water's use and occupancy within the various state highway right of ways on Kaua'i:

#### Workmanship: Responsibility

*"6. To make, for a period of one (1) year after the expiration date of this permit, any necessary repairs to highway facilities disturbed and/or caused by the work, activity, or event performed under said permit; or to pay the actual cost of such repairs made by the Department of Transportation."*

And:

#### State Indemnity

*8. To protect, defend, indemnify and save harmless, the state and its agents and representatives against any claim, liability, suit, or action of every manner and description, for any injury to or death of persons or for property damage, whenever such injury, death, or damage shall be inflicted or caused by him, his agents, contractors, or representatives in connection with the work, activity, or event covered by said permit.*

**FUNDING:** N/A.

### **BACKGROUND:**

In 2022, the State of Hawai'i Department of Transportation requested the Department of Water to apply for an annual UOP for non-trenching work in the various state highway right of ways in a similar way that other utilities such as the County of Kaua'i Wastewater Division. The first annual UOP for non-trenching work was executed by DOW in May 2022 and expired in May 2023. In May of 2023, a permit was only renewed through November 1, 2023, due to the expiration of the Department of Water Certificate of Insurance (COI). The permit must be

renewed annually, hence the need for this permit for November 2023 – November 2024 to get back on an annual basis. The proposed permit application is intended to include Department of Water non-trenching functions related to the maintenance, repair, and replacement of water facilities which include water meters, water meter boxes, hydrants, pressure/air relief valves, vaults, and other system appurtenances. The application also covers inspection and water meter readings.

The State is requiring that the Department complete and apply for this permit on an annual basis for non-trenching work in the State Right of Way. The Department will attach the applicable COI when executing the permit. The one (1) year time period would commence from the time the current permit expires in November 2023 and run through November 2024 per the dates on the draft permit. Please note that trench work, such as for Operations waterline repairs will still need to obtain a separate permit to perform work upon state highways.

Potential future financial liabilities:

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

**OPTIONS:**

**Option 1: Agree to enter into Use and Occupancy Permit No. 886 with the State of Hawai'i.**

Pros: The completion of a UOP will address the State request that a UOP is completed for the non-trenching maintenance, repair, replacement, inspection and reading of Department of Water facilities and meters installed in the State Highway Right of Way.

Cons: The UOP will obligate the DOW with unknown financial liabilities and risk; to some extent at the discretion of the State. The permit will also have to be reapplied for annually as each permit is only valid for one (1) year from the approximate time of application date.

**Option 2: Do not agree to enter into Use and Occupancy Permit No. 886 with the State of Hawai'i.**

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

Cons: The Department may not be able to maintain, repair, replace, inspect, or read meters and water facilities that do not involve trenching as intended as it relates to the State request for an annual UOP.

DM/crz

Attachment: Use and Occupancy Permit No. 886  
Certificate of Liability Insurance

**APPLICATION & PERMIT FOR THE OCCUPANCY & USE OF STATE HIGHWAY RIGHT-OF-WAY**

**Application date** 9/18, **20**23

**POLICE CHECKLIST: ITEMS 1 THRU 5.**

Pursuant to the provisions of Chapter 264, Hawaii Revised Statutes as amended, application is hereby made to perform the following work, activity, or event, upon the state highway described below and at the location(s) specified below and at no other place.

**1. Name of Highway** Various **Route # /Section** All

**2. Locations or limits on said highway** Within State Right of Way

**3. Description of work, activity, or event to be performed**

Engineering Survey     Maintenance     Inspection     Landscaping     Other  
Maintenance, repair and replacement of water facilities which include water meters, water meter boxes, hydrants and pressure/air relief valves, vaults, and other system appurtenances.  
The Department of Water also conducts water meter readings.

**4. Dates between which work, activity, or event will be performed:** 11/1/2023 -11/1/2024

**5. General Conditions**

- a. No digging or disturbing of the highway will be permitted under this permit.
- b. The work, activity, or event may be performed only during off-peak hours unless otherwise approved in writing. Peak hours are from 6:00 AM to 8:30 AM and from 3:00 PM to 6:00 PM, Monday through Friday excluding State Holidays.
- c. All lanes shall be open to traffic during the hours from 6:00 AM to 8:30 AM, during the hours of 3:00 PM to 6:00 PM, and when no work is being done under this permit. Only one lane of traffic may be closed at any other time unless otherwise approved in writing.
- d. Parking permitted only in designated areas for vehicles actively engaged in, or loading or unloading materials for, the specified work, activity, or event. Unattended vehicles will not be permitted.

**6. Special Conditions and/or Restrictions** See attached DOW-886.

**7. Submittals Required**

- a.  Traffic Control Plan (whenever there are lane closures)
- b.  Approved Landscaping Plan: It is agreed that upon final acceptance of the approved landscape work by the State, all improvements placed on said premises shall be and remain the property of the State and may be removed or otherwise disposed of by the State at any time.
- c. Proof of State Indemnity  
Certificate of Insurance naming State of Hawaii as an additional insured, having minimum coverages for Bodily Injury or Death Per Person; Bodily Injury or Death Per Accident: and Property Damages Per Accident of:
  - \$100,000, \$300,000, and \$500,000 respectively; or
  - combined single limit of \$500,000
  - Certificate attached or with Permit No. 886
  - Federal Non-Liability Clause (See Item 11 on the back of this permit)
  - Waived
- d.  Permit Fee \$0 (make check payable to Dept. of Transportation, State of Hawaii)

The applicant hereby agrees that any agreement heretofore made or hereafter to be made, and the covenants and conditions stated on the reverse side hereof shall be binding upon him, his heirs, personal representatives, successors, contractors, and assigns.

**APPLICANT:** County of Kauai - Department of Water  
(Name or owner, whether individual firm, partnership, corporation, governmental agency, etc)

**ADDRESS:** 4398 Pua Loke Street, Lihue, HI 96766

**TELEPHONE NUMBER:** (808) 245-5400

(Print Name & Title of Applicant or Authorized Rep.)

(Signature)

**PERMIT NO.** 886 **DATE** \_\_\_\_\_, **20**23

Permission to perform the above described work, activity, or event at the location(s) stated and between the dates set forth in said application is hereby granted. The applicant shall notify the issuing office in writing at least 24 hours before commencing work.

Director of Transportation or Authorized Representative

**IN CONSIDERATION OF A PERMIT BEING ISSUED TO THE APPLICANT, THE APPLICANT HEREBY AGREES AS FOLLOWS:**

**Rules & Regulations**

1. To observe and comply with and cause all his agents, servants, and employees to observe and comply with all existing laws, ordinances, and regulations.
2. To install, provide, and maintain all traffic control devices in accordance with the Administrative Rules Governing the Use of Traffic Control Devices at Work Sites on or Adjacent to Public Streets and Highways as adopted by the Director of Transportation, and the FHWA Manual on Uniform Traffic Control devices for Streets and Highways, Part VI, Traffic Controls for Highway Construction and Maintenance Operations.
3. To safeguard and facilitate the movement of vehicular and pedestrian traffic in accordance with the Administrative Rules Governing the Design, Construction, and Maintenance of Public Streets and Highways as adopted by the Director of Transportation; to place signs or barricades informing motorists or pedestrians of work to be done in a safe manner and remove same upon completion of work.

**Workmanship: Responsibility**

4. To diligently prosecute the work, activity, or event to completion, in a neat and workmanlike manner, within the dates and conditions set forth under said permit so as to minimize any inconvenience or interference to the public or traffic movements.
5. To remove all equipment and unused material upon completion of the work, activity, or event, repair any damages and leave the surface in a clean, safe, usable, and presentable condition.
6. To make, for a period of one (1) year after the expiration date of this permit, any necessary repairs to highway facilities disturbed and/or caused by the work, activity, or event performed under said permit; or to pay the actual cost of such repairs made by the Department of Transportation.
7. To make all repairs in such manner as may be required by Chapter 264, Hawaii Revised Statutes.

**State Indemnity**

8. To protect, defend, indemnify and save harmless, the state and its agents and representatives against any claim, liability, suit, or action of every manner and description, for any injury to or death of persons or for property damage, whenever such injury, death, or damage shall be inflicted or caused by him, his agents, contractors, or representatives in connection with the work, activity, or event covered by said permit.
9. To procure, at his own expense, and keep in force at all times when the work, activity, or event permitted under said permit is being done, a policy or policies of public liability and property damage insurance, naming the State as additional insured, covering the work, activity, or event to be done under said permit and for at least the minimum coverages set forth on the reverse side hereof. The State is to be given 30 days written notice of cancellation of said insurance.
10. To supply evidence satisfactory to the State that the required insurance has been procured and is in force prior to commencing the work, activity, or event approved under said permit.
11. If the death or injury to any person, or the loss or damage to any property, is caused by the United States Government in the course of its use of the property, the liability, if any, of the U.S. Government thereof shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (62 Stat. 869,982;28 USC 2671-2680).

**Nondiscrimination Covenants**

12. No person on the grounds of race, color, religion, sex, or national origin shall be excluded from participating in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
13. In the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, or national origin shall be excluded from participating in, denied the benefits of, or otherwise be subjected to discrimination.
14. The applicant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulation, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended.

**Agreements**

15. Any State highway representative or police officer has the right to stop any or all of the work or activity being performed under this permit if the work or activity is being conducted in an unsafe or unauthorized manner. The work or activity will not be allowed to continue until the deficiency has been corrected.
16. To surrender the permit herein applied for and surrender all rights thereunder whenever notified to do so by the State. The State may cancel this permit at any time.
17. To keep a copy of said permit available for exhibit upon request of any representative of the Department of Transportation or police officer.



# DEPARTMENT OF WATER

County of Kaua'i

*"Water has no Substitute – Conserve It!"*

## MANAGER'S REPORT No. 24-03

October 19, 2023

Re: Discussion and Possible Action on acceptance of certain terms and conditions as stated in master services agreement (DOXIM dba Utilitec)

### **RECOMMENDATION:**

It is recommended that the Board approve Option 1, which will allow the Department to move forward with securing bulk mailing services from current services provider.

### **FUNDING:**

Account No.	10-30-20-541-020		
Acct Description	WU/Bill/Collection/Billing Costs (Bill Processing Fees)		
Funds Available	<i>Verified by WWC</i>		\$52,840.00
Contract No.	733		
Vendor	Doxim dba Utilitec		
	Contract Amount	\$48,000.00	
	5% Contingency	\$N/A	
	Total Funds Certified	\$48,000.00	<\$48,000.00>
Fund Balance			\$4,840.00

Multi-term contract for three (3) years.

Year 1 Services (365 days): \$48,000.00

Year 2 Services (365 days): \$49,500.00

Year 3 Services (365 days): \$51,000.00

Total Contract (1,095 days): \$148,500.00

### **BACKGROUND:**

The Fiscal Division is seeking Board approval to accept standard terms as stated in the Master Service Agreement (MSA) from Doxim dba Utilitec). The Fiscal Division worked with our Deputy County Attorney to review and approve the standard Terms and Conditions of the MSA. The purpose of this agreement is to provide routine mass mailing and billing statement services for all customer accounts. Furthermore, these are standard Terms and Conditions that cannot be removed from the MSA and deemed reasonable and acceptable.

The sections within the MSA that reference Unspecified Future Obligations, Indemnification, and Governing Law and Jurisdiction, and Venue are shown below:

### ***2. Fees. Payment Terms. Taxes.***

**2.3. Increases.** Unless otherwise stated in a Schedule, at any time after each twelve (12) month period during the Term, we may increase the Fees once in each twelve (12) month period by no more than 3% higher than applicable national Consumer Price Index applicable to Canada, for Customers in Canada or in the United States, for Customers in the United States. Such increases will take effect in January of each calendar year, regardless of the Effective Date of this Agreement, unless we advise otherwise. We will provide you with at least thirty (30) days prior written notice of any increase in the Fees in respect of CPI. Furthermore, in respect of materials used by us in connection with the Services (including, without limitation, paper and envelopes), the Fees shall be subject to increases from time to time based on then current market rates. We will provide you with at least thirty (30) days prior written notice of any such increase in Fees.

**2.4. Taxes.** The Fees exclude applicable taxes. The invoice you receive will include the applicable sales, use, excise, value-added or similar sales taxes or assessments imposed by a governmental authority for the Services you purchase from us and you will pay us those taxes along with the Fees. We will remit those taxes to the appropriate taxing authority. You will not be charged taxes based upon Doxim's income. If you are tax exempt and are not required to pay the taxes described in this section, you must provide us with a valid tax exemption certificate. If we are required to pay withholding taxes for the Professional Services, we reserve the right to gross up the Fees to reflect those withholding taxes. Subject to Section 2.6, Customer shall indemnify Doxim for any liabilities Doxim incurs as a result of Customer failure or delay in paying these taxes.

**2.6. Fee Disputes.** (a) Fees reasonably disputed by you (along with late fees attributable to such amounts) shall not be due and payable provided you (i) pay all undisputed Fees on or before the date specified in the invoice, (ii) no later than thirty (30) days after the date of the applicable invoice in dispute you provide Doxim a written statement setting out reasonable details of the dispute including without limitation any billing discrepancies together with appropriate supporting documentation; and (iii) negotiate in good faith with Doxim for the purpose of resolving such dispute within thirty (30) days of submitting the written statement referred to above. (b) If a dispute is resolved in our favor, you agree to pay us the disputed Fees together with any applicable late fees within ~~five (5)~~ 10 days of resolution of the dispute (or such other timeframe Doxim's Finance Dept. may authorize in writing). If a Dispute is resolved in your favor, Doxim will provide you with a credit for the disputed Fees together with any late fees invoiced.

**2.7. Suspension.** If you do not pay an invoice by the due date (excluding invoices in dispute), after the thirty first (31st) day of an invoice due date Doxim may suspend your access to and use of the Services, including but not limited to the Service Levels (the "**Suspension Period**") until you pay the applicable outstanding amounts. In the event of a suspension of Services, the Term shall, subject to any right of termination contained in the Agreement, be extended by an amount of time equal to that of the Suspension Period. You are responsible for reimbursing Doxim for any reasonable collection expenses incurred by Doxim in collecting overdue amounts.

## **9. Indemnity**

**9.2. By Customer.** Customer shall indemnify, defend and hold Doxim, its officers, directors, employees, agents and contractors harmless from any and all Claims which arise from or relate to (i) the Customer Property; and (ii) Customer's breach or alleged breach of Sections 1.3(b), 1.3(c), 2.1, 4.1(d), 4.1(e) and 4.1(h) of the Master Agreement.

**13.5. Governing Law, Jurisdiction, and Venue.**

a) **United States.** If the Customer is a U.S. entity or individual and this Agreement is entered into with Doxim Inc., the Agreement shall be construed pursuant to the laws of the State of Delaware, United States without regard to conflict of law principles or choice of law doctrine. Any action or proceeding will be brought exclusively in the courts located in ~~Delaware~~-New York.

Note: Vendor agreed to change the venue to New York City. Services procured is imperative to operations, as billing statements are provided to customers on monthly basis. The likelihood of litigation is highly unlikely, and the assessment of risk is minimal, as services procured is limited to bulk mailing services.

**OPTIONS:**

Option 1: Approve Manager's Report to allow the Department to continue to obtain bulk mailing services.

Pro: The Department can move forward with provided customers monthly billing statements.

Cons: The Board would agree to indemnify the contractor, agree to unspecified future obligations in the event of a breach or similar contract issue occurring, and Governing Law outside of the State of Hawaii.

Option 2: Do not approve Manager's Report.

Pro: There is no risk associated with indemnification, unspecified future obligations, or breach of contract.

Cons: The Department will not be able to provide customers with monthly billing statements, resulting in revenue losses and increases in accounts receivable balances and uncollectable accounts.

The Department will take months to secure services for bulk billing services containing similar language in its Master Service Agreement.

Attachment(s): Doxim\_MSA\_July\_2023\_Blank\_Confidential\_Original  
Kauai Water Department\_MSA\_Amendment\_September 21, 2023

## DOXIM MASTER SERVICES AGREEMENT

These master services terms and conditions (“**Master Agreement**”) are a contract between the Doxim legal entity listed in Section 13.12 below which is based on Customer location (“**Doxim**”, “**we**”, “**us**”, “**our**”) and

(“**Customer**”, “**you**”, “**your**”). “**Agreement**” means the Master Agreement, Schedules, SOWs, Change Orders and service level agreements, and any other attachments incorporated into the Master Agreement. The Effective Date of this Master Agreement is . “**End Users**” means Customer users that access or use the Services and includes consumers. “**Services**” means the Products, Optional Products and Professional Services (each as defined in Section 1.1 below).

### 1. **Product. Optional Products. Professional Services.**

1.1. Customer can purchase (i) Products and Optional Products from us using a schedule provided by us (“**Schedule**”), and (ii) Professional Services using a statement of work (“**SOW**”). “**Product**” means the product listed on a Schedule. “**Optional Products**” means any additional products or optional features you purchase that are described in a Schedule. If Optional Products are purchased, Optional Products is included in the definition of Product and governed by the terms and conditions applicable to Products. “**Professional Services**” mean the professional services listed in a SOW. When you use the Services you may also be using Third Party Property (as defined in Section 11.3). Customer’s use of Third Party Property is subject to that third party’s terms of use.

1.2. **Change Order.** Any changes to Professional Services that are described in a mutually executed SOW requires a change order signed by both parties which will include the agreed upon changes (“**Change Order**”). Customer acknowledges that such changes may result in additional fees and a change to timelines depending on the changes requested. No changes to the Professional Services described in a SOW will be made until Doxim and Customer agree in writing to the Change Order.

#### 1.3. **Software.**

(a) Our Products and Optional Products may include the use of SaaS based software which is hosted by us or a third party hosting provider (“**Software**”). Notwithstanding any other language to the contrary in the Agreement, the Software is not sold to you but instead, if you comply with the terms of the Agreement (including paying us the Fees), Doxim grants you, for the term of the applicable Schedule, a personal, limited, non-exclusive, non-transferable, non-sublicenseable, non-assignable (except as set out in Section 13.3 of the Master Agreement), revocable right to access the Software solely for your internal business use up to the number of authorized users as may be specified in a Schedule and/or SOW. The

Software is provided on a subscription basis and therefore the rights described herein apply only for the time period for which you have paid the applicable Fees. Doxim grants no other rights to you except the rights expressly granted herein.

(b) Customer will not (i) distribute, resell or use the Software for any purpose including without limitation as part of a service bureau or timeshare except as expressly stated in writing in this Master Agreement, a Schedule or SOW; (ii) provide unauthorized access to the Software to any party; or (iii) except as expressly authorized in a Schedule, modify, reproduce, duplicate, reverse engineer, decompile, disassemble or create derivative works of the Software or create any software or service that is similar to or competitive with the Software.

(c) Any agreements with your End Users applicable to the Services must not be inconsistent with the terms of the Agreement.

1.4. When you purchase Services, the Agreement governs the Services purchased. You are deemed to have accepted the Agreement when you (i) sign a Schedule and/or SOW, and/or (ii) use the Product or when the Professional Services you purchase begins.

### 2. **Fees. Payment Terms. Taxes.**

2.1. Fees for the Services will be listed in the applicable Schedule and SOW (“**Fees**”). Unless different payment terms apply in a Schedule or SOW, you will pay us Fees within thirty (30) days of receipt of an invoice from us. You will also reimburse Doxim for reasonable travel and out-of-pocket expenses incurred in providing you with the Services.

2.2. Customer will provide Doxim with accurate billing contact information and provide updates if that information changes.

2.3. **Increases.** Unless otherwise stated in a Schedule, at any time after each twelve (12) month period during the Term, we may increase the Fees once in each twelve (12) month period by no more than 3% higher than applicable national Consumer Price Index applicable to Canada, for Customers in Canada or in the United States, for Customers in the United States. Such increases will take

effect in January of each calendar year, regardless of the Effective Date of this Agreement, unless we advise otherwise. We will provide you with at least thirty (30) days prior written notice of any increase in the Fees in respect of CPI. Furthermore, in respect of materials used by us in connection with the Services (including, without limitation, paper and envelopes), the Fees shall be subject to increases from time to time based on then current market rates. We will provide you with at least thirty (30) days prior written notice of any such increase in Fees.

- 2.4. **Taxes.** The Fees exclude applicable taxes. The invoice you receive will include the applicable sales, use, excise, value-added or similar sales taxes or assessments imposed by a governmental authority for the Services you purchase from us and you will pay us those taxes along with the Fees. We will remit those taxes to the appropriate taxing authority. You will not be charged taxes based upon Doxim's income. If you are tax exempt and are not required to pay the taxes described in this section, you must provide us with a valid tax exemption certificate. If we are required to pay withholding taxes for the Professional Services, we reserve the right to gross up the Fees to reflect those withholding taxes. Subject to Section 2.6, Customer shall indemnify Doxim for any liabilities Doxim incurs as a result of Customer failure or delay in paying these taxes.
- 2.5. **Interest.** Interest will begin to accrue on unpaid invoices on the thirty-first (31<sup>st</sup>) day after the date of each invoice at the rate of 2% per month (24% per year) until paid in full.
- 2.6. **Fee Disputes.**
- (a) Fees reasonably disputed by you (along with late fees attributable to such amounts) shall not be due and payable provided you (i) pay all undisputed Fees on or before the date specified in the invoice, (ii) no later than thirty (30) days after the date of the applicable invoice in dispute you provide Doxim a written statement setting out reasonable details of the dispute including without limitation any billing discrepancies together with appropriate supporting documentation; and (iii) negotiate in good faith with Doxim for the purpose of resolving such dispute within thirty (30) days of submitting the written statement referred to above.
- (b) If a dispute is resolved in our favor, you agree to pay us the disputed Fees together with any applicable late fees within five (5) days of resolution of the dispute (or such other timeframe Doxim's Finance Dept. may authorize in writing). If a Dispute is resolved in your favor, Doxim will provide you with a credit for the disputed Fees together with any late fees invoiced.

- 2.7. **Suspension.** If you do not pay an invoice by the due date (excluding invoices in dispute), after the thirty first (31<sup>st</sup>) day of an invoice due date Doxim may suspend your access to and use of the Services, including but not limited to the Service Levels (the "**Suspension Period**") until you pay the applicable outstanding amounts. In the event of a suspension of Services, the Term shall, subject to any right of termination contained in the Agreement, be extended by an amount of time equal to that of the Suspension Period. You are responsible for reimbursing Doxim for any reasonable collection expenses incurred by Doxim in collecting overdue amounts.

### 3. Support Services. Service Levels. Changes.

- 3.1. We provide the support services and service levels ("**Service Levels**") in the attached Support Services and Service Level Exhibit ("**Exhibit 1**").
- 3.2. **Changes.** We have the right, without cost or penalty of any kind, to discontinue, modify or place limits on the Services at any time and will provide you with at least two (2) months' prior written notice of such change. We will provide you with a pro-rated refund for any prepaid Fees paid to Doxim for discontinued Services as of the effective date of the discontinuance. If a change materially diminishes the functionality of the Services you purchase, Doxim will contact you in writing and you will have the option to terminate the product schedule that applies to the material change if that change materially diminishes the Doxim Service. Notwithstanding any other term to the contrary in the Agreement, the aforementioned is Doxim's sole liability to you under this section.

### 4. Customer Responsibilities.

- 4.1. You shall:
- (a) develop your own document and data retention and disposition policies and procedures. You must use the online controls offered by Doxim if you wish to delete Customer PI stored in the production environment of the Services. "**Customer PI**" means personal information that you provide to Doxim that is considered personal information pursuant to the following applicable U.S. and Canadian laws, depending on the jurisdiction applicable to Customer PI and each party's obligations: Gramm-Leach-Bliley and PIPEDA. If you are providing Customer PI that is considered personal information under any other laws including without limitation HIPPA, please notify Doxim in advance of executing this Agreement to assess any additional Customer requirements not provided by the Services. Except as expressly set out in Section 7.4 (Deletion of Data) below or if required for

- business purposes (such as, by example only, responding to a complaint) or by law, Doxim will not delete or destroy any Customer PI stored in the Services without your prior written consent, which consent may be communicated to Doxim (i) using the online controls offered by Doxim, in which case Doxim will securely delete copies of the Customer PI stored in Doxim's non-production environments within ninety (90) days thereafter, or (ii) in writing, in which case Doxim will securely delete all copies of the Customer PI within sixty (60) days after Doxim's receipt of your written deletion request;
- (b) be responsible for the accuracy, quality, integrity and legality of Customer PI and of the means by which you acquire such Customer PI;
  - (c) make timely decisions with respect to your obligations in the Agreement;
  - (d) obtain the lawfully required End User informed consents for Doxim to provide the Services to your End Users including, without limitation, consents required by applicable privacy laws and anti-spam laws such as the U.S. CAN-Spam Act and Gramm-Leach-Bliley Act and Canada's PIPEDA and CASL legislation;
  - (e) be responsible for authentication of authorized individuals that access the Services and for maintaining the security and confidentiality of all passwords. Customer acknowledges and agrees that Customer is entirely responsible for all activities that occur under Customer's account;
  - (f) provide Doxim with all required information, materials, access to personnel and assistance in a timely manner in order for Doxim to provide Customer with the Services and to provide the Services in accordance with any applicable service levels;
  - (g) provide Doxim with up to date contact information should Doxim need to contact Customer during or after business hours; and
  - (h) comply with applicable laws and industry codes, policies and practices that apply to Customer's obligations in the Agreement.
- 4.2. Customer acknowledges and agrees that Doxim does not monitor or police the content Customer provides or transmits through the Services and that Customer is responsible for all such content. If Customer intends on providing Customer PI that is subject to additional laws other than Gramm-Leach-Bliley and PIPEDA, prior to executing the Agreement, Customer will notify Doxim in writing so the parties can assess Customer's requirements.
- 4.3. Customer grants Doxim a non-exclusive, sub-licensable, assignable, royalty free license to use the Customer Property, equipment and other Customer materials solely for the purpose of performing Doxim's rights under the Agreement.
- 4.4. Customer acknowledges and agrees that in the course of providing the Services, Doxim may transfer, process, use and store Customer PI and other Customer Property in the United States or Canada and that Customer has obtained all required consents or given all required notices to authorize the transfer, processing, use and storage of Customer PI in these locations.
5. **Subcontractors.** You acknowledge and agree that Doxim may subcontract any Services and Doxim will use commercially reasonable efforts to require such subcontractors to comply with all applicable Agreement terms. Doxim shall remain liable for the performance of its subcontractors (except vendors, suppliers and Third Party Property that Doxim may use to provide Services).
6. **Term and Termination.**
- 6.1. **Term.** Unless terminated earlier as provided in Section 6.2 below, the initial term and any applicable renewal term of a Schedule and SOW will as set out therein. Unless terminated earlier as provided in Section 6.2 below, the term of this Master Agreement, the term of this Master Agreement (the "**Term**") begins on the Effective Date and continues in effect until terminated in writing by either party upon thirty (30) days prior written notice, provided however, if a Schedule or SOW is in effect at the time of the Master Agreement termination, the Master Agreement will not terminate until the date of expiration or termination of the last applicable Schedule or SOW.
- 6.2. **Termination.** Notwithstanding anything to the contrary contained in the Master Agreement, a Schedule or a SOW, Doxim or Customer may, in addition to any other rights and remedies Doxim or Customer may have at law or in equity, immediately terminate a Schedule or SOW and the Master Agreement if:
- (a) a party to the Agreement breaches any material obligation and such breaching party has not cured the breach within thirty (30) days after receiving written notice of the breach from the non-breaching party; or
  - (b) the non-terminating party is adjudged as bankrupt, makes a general assignment for the benefit of its creditors, a receiver is appointed on account of such party's insolvency, or any provision of applicable bankruptcy or insolvency law is invoked by or against such party.
- 6.3. **Suspension Period.** In addition at any time during the Suspension Period Doxim may terminate this Agreement upon thirty (30) days prior written notice to Customer.

- 6.4. Notwithstanding Section 6.2, Doxim will not be considered in breach of the Agreement if Service Levels are not met. Customer is provided the exclusive remedies described in Exhibit I if Service Levels are not met.
- 6.5. **Disputes.** All other disputes will be referred to and finally resolved by confidential binding arbitration as follows:
- (a) for Customers in the U.S., under the American Arbitration Association under its Commercial Arbitration Rules in effect at the time the dispute is submitted for resolution, or
  - (b) for Customers in Canada, under the ADIC Arbitration Rules of the ADR Institute of Canada, Inc. by a single arbitrator appointed in accordance with those rules.

## 7. Privacy. Security.

- 7.1. Doxim implements reasonable, technical, physical and administrative measures for the security, confidentiality and integrity of Customer Confidential Information. Once in each twelve (12) month period during the Term of the Agreement, you may request in writing a copy of our SOC 1 and SOC 2 reports (or equivalent report). If you require additional risk assessment services (including responding to your vendor questionnaire), Doxim will review your request and notify you in writing if such additional services are subject to additional fees.
- 7.2. Customer acknowledges and agrees that although Doxim will endeavor to create a secure and reliable system for Customer and its End Users, the confidentiality of any communication or material transmitted to and from the Services via the Internet or other telecommunication means cannot be fully guaranteed by Doxim. Doxim shall not be liable for any breach in the security of information transmittal via the Internet or other telecommunications means when Doxim has acted in accordance with this Agreement and has otherwise put into place the necessary security measures to protect Customer PI.
- 7.3. Customer PI is and will remain under the custody and control of Customer even if Doxim temporarily has access to Customer PI. Customer will at all times retain control over the access, use, disclosure, retention, destruction and integrity of Customer PI. Doxim will provide Customer with a copy of all Customer PI that is in Doxim's possession or control within twenty (20) business days of Customer's written request.
- 7.4. **Deletion of Data.** Upon expiration or termination of a Schedule or SOW Doxim will notify Customer in writing that Customer has sixty (60) days from the date of such written notice ("**Data Access Date**") to retrieve all Customer PI stored by Doxim. Customer acknowledges that, unless

legally restricted or required for business purposes, Doxim will permanently and securely delete and destroy all Customer PI sixty (60) days after the Data Access Date.

- 7.5. Customer acknowledges that the Services provided by Doxim as a vendor are in compliance with Gramm-Leach-Bliley in the U.S. and PIPEDA privacy laws as applicable to the Services. Since Doxim has several obligations under applicable U.S. and Canadian privacy laws, Customer acknowledges that Doxim requires reasonable time to investigate a potential breach to understand if it involves Customer PI and to gather other important details. If there is a potential or actual data breach, Doxim will promptly notify Customer of same (which shall be no later than five (5) business days after a potential or actual data breach) and which will include steps Doxim is taking to resolve or address the actual or alleged breach. Doxim will provide follow up information to Customer as soon as possible thereafter which will provide any missing information and updates to information already provided to Customer. A final written incident report will be provided to Customer once the investigation of the incident has concluded. Doxim agrees to reasonably assist Customer in investigating, responding to and taking risk mitigation measures if Customer PI is involved.
- 7.6. **Claims.** Unless otherwise required by law, if Doxim receives a claim or complaint regarding Customer PI, or a request for access to or correction of Customer PI (collectively "**PI Issue**") then Doxim will promptly: (i) advise the person to notify the Customer's privacy officer (or other contact person as instructed by Customer); and (ii) cooperate with and reasonably assist Customer regarding the PI Issue.
- 7.7. Our privacy policy (which is incorporated herein by reference) <https://www.doxim.com/privacy-policy/> explains how we treat your personal information and protect your privacy. By using our Services, you agree we can use your data as described herein and in our privacy policy.
- ## 8. Warranties, Liability and Indemnity.
- 8.1. **Warranty.** EXCEPT AS EXPRESSLY STATED IN THE MASTER AGREEMENT, (A) NEITHER DOXIM NOR ANY OF ITS THIRD PARTY PROVIDERS OR SUBCONTRACTORS GUARANTEES THE AVAILABILITY, ACCURACY, COMPLETENESS, RELIABILITY, OR TIMELINESS OF ANY SERVICES. TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY STATED IN THESE MASTER TERMS, DOXIM AND ITS THIRD PARTY

PROVIDERS AND SUBCONTRACTORS MAKE NO WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT ALTHOUGH DOXIM AND ITS THIRD PARTY PROVIDERS USE COMMERCIAL REASONABLE EFFORTS TO PROVIDE UNINTERRUPTED USE, PROTECTION OF CUSTOMER DATA AND TO SECURE THE SOFTWARE, DOXIM AND ITS THIRD PARTY PROVIDERS DO NOT PROVIDE OR GUARANTEE ABSOLUTE SECURITY OR UNINTERRUPTED USE. NO ADVICE, STATEMENT OR INFORMATION GIVEN BY DOXIM, ITS AFFILIATES, CONTRACTORS OR AGENTS SHALL CREATE OR CHANGE ANY WARRANTY PROVIDED HEREIN.

8.2. **Limitation of Liability.**

(a) The liability of Doxim and Customer will in all circumstances be limited to direct damages and in no event will either party have any liability to the other, whatsoever, for any special, consequential, indirect, incidental, exemplary or punitive damages of any kind arising out of the Agreement, lost profits, lost or damaged data, product liability, failure to realize expected savings, cost of procurement of substitute goods or services and loss of business, even if such party has been advised of the possibility of such damages, whether in contract or tort or based upon any other legal or equitable theory.

(b) Notwithstanding anything to the contrary contained in an Agreement, and to the fullest extent permitted by applicable law, in no event will Doxim's liability to Customer, or to that of its directors, officers, employees or users of the Services, or to any third parties exceed the Fees actually paid to Doxim within the six (6) month period immediately preceding the date on which the cause of action arose. Without limiting the aforementioned, Doxim is not responsible for Customer Property or Third Party Property used as part of the Services.

(c) **Service Levels.** Customer acknowledges and agrees that Sections 8.2(a) and 8.2(b) do not apply to Service Levels and that Customer's sole and exclusive remedy for Doxim's failure to provide any Services in accordance with the applicable Service Levels is described in Exhibit 1 attached.

(d) Customer acknowledges and agrees that it is solely responsible for discharging all reporting

and notification requirements relating to a data breach involving Customer PI, unless Doxim is otherwise required by applicable privacy laws to directly undertake notification or reporting obligations.

9. **Indemnity.**

9.1. **By Doxim.** Subject to Section 8.2, Doxim will defend, indemnify and hold Customer harmless from and against any third party liabilities, costs and expenses resulting from claims, demands, lawsuits, proceedings and investigations (collectively "**Claims**") alleging that the Services infringe or misappropriate a third party's intellectual property rights in the U.S. or Canada. Doxim is not obligated to provide the aforementioned indemnity if the Claim is based on or related to (1) Customer's modification to the Services without Doxim's prior written approval; (2) combining the Services with other materials or services where such Claim would not have resulted but for such combination, (3) using the Services with materials, software or equipment not provided by Doxim, and (4) Customer Property or Third Party Property.

9.2. **By Customer.** Customer shall indemnify, defend and hold Doxim, its officers, directors, employees, agents and contractors harmless from any and all Claims which arise from or relate to (i) the Customer Property; and (ii) Customer's breach or alleged breach of Sections 1.3(b), 1.3(c), 2.1, 4.1(d), 4.1(e) and 4.1(h) of the Master Agreement.

9.3. **Indemnity Process.** To be indemnified pursuant to Sections 9.1 and 9.2 above, the party seeking indemnification must (i) promptly notify the indemnifying party in writing about the Claim provided that failure or delay or alleged delay in providing such prompt notice shall not adversely affect the indemnified party's right to indemnification hereunder unless and then only to the extent that such failure or delay or alleged delay has resulted in actual prejudice to the indemnifying party, including, without limitation, by the expiration of a statute of limitations, (ii) reasonably cooperate with the indemnifying party, at the indemnifying party's expense, (iii) give the indemnifying party sole control of the defense and settlement of the Claim, provided that the indemnifying party may not settle any Claim without the indemnified party's prior written consent unless the settlement releases the indemnified party from all liabilities and such settlement does not place any obligation on the indemnified party, including without limitation, an obligation to change its business practice.

9.4. NO PARTY TO THE AGREEMENT SHALL BE ENTITLED TO ANY FORM OF IMPLIED

OR EQUITABLE INDEMNIFICATION AT ANY TIME, WHETHER BASED ON A THEORY OF CONTRACT, TORTS (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND ANY RIGHT THERETO IS HEREBY IRREVOCABLY WAIVED AND DISCLAIMED BY EACH OF THE PARTIES.

9.5. THIS SECTION 9 SETS FORTH THE COMPLETE LIABILITY OF THE PARTIES WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

#### 10. **Representations and Warranties.**

10.1. **By Doxim.** Doxim represents and warrants:

- (a) it owns or has obtained the applicable rights and licenses to the Intellectual Property Rights used to provide the Services;
- (b) it is a corporation in good standing under the laws of its jurisdiction of incorporation; and
- (c) the Services Doxim provides will be provided in accordance with industry standards and will comply with applicable federal, provincial and state laws.

10.2. **By Customer.** Customer represents and warrants:

- (a) it will comply with laws applicable to its obligations under the Agreement including privacy laws and anti-spam laws that require obtaining consent for Doxim to use Customer PI and any other personal information Customer provides to Doxim;
- (b) it owns all rights in Customer Confidential Information or has authorization or is otherwise legally permitted to upload and/or provide Customer Confidential Information to Doxim and through the Services; and
- (c) it is a corporation in good standing under the laws of its jurisdiction of incorporation.

#### 11. **Ownership.**

11.1. **By Doxim.** Doxim owns all right, title and interest in the Doxim Property, including without limitation, all Intellectual Property Rights therein. "**Intellectual Property Right(s)**" means all right, title and interest to intellectual property rights recognized in any jurisdiction, including without limitation patents, inventions, trade and service marks, trade names, domain names, rights in designs, copyrights, mask work rights, trade secrets, confidential information, moral rights, and rights in databases, in all cases whether or not registered or able to be registered in any particular jurisdiction in the world, and including without limitation any extension or renewal of the terms of such rights, registrations and applications for registration of any such rights that may subsist anywhere in the world. "**Doxim Property**"

means the Products (including the Software), Optional Products, Doxim Confidential Information and all Doxim and its third party licensor and supplier materials, equipment, strategies, content, hardware, tools, methodologies, data, databases, content, format of content, systems, technology and software (but excluding Third Party Property). Unless expressly provided otherwise in the Agreement, nothing in the Agreement contemplates, constitutes or creates a transfer or license of any Doxim Property or Third Party Property to Customer.

11.2. **By Customer.** Customer owns all right, title and interest in and to the Customer Property, including without limitation all Intellectual Property Rights therein. "**Customer Property**" means Customer PI, Customer Confidential Information and all Customer and its third party licensor and supplier provided materials, equipment, strategies, content, hardware, tools, methodologies, data, databases, content, format of content, systems, technology, software and End User information.

11.3. **Third Party Property.** The provider of the Third Party Property retains ownership of all right, title and interest in and to the Third Party Property including without limitation all related Intellectual Property Rights therein. "**Third Party Property**" means products, hardware, software, content and services provided by a third party provider and which are included or offered as part of the Services.

11.4. Customer shall not dispose of, share with a third party or suffer a lien or encumbrance upon the Doxim Property or Third Party Property. Customer further agrees it will not (i) modify any part of the Doxim Property or Third Party Property, (ii) remove any proprietary notices, labels or marks from the Doxim Property or Third Party Property, (iii) authorize or acquiesce in the use of the Doxim Property or Third Party Property by persons other than Customer as expressly stated in the Agreement, and (iv) copy the Doxim Property or Third Party Property or any accompanying documentation except as expressly authorized in writing.

11.5. Doxim shall not dispose of or suffer a lien or encumbrance upon the Customer Property. Doxim further agrees it will not, except as required to provide the Services as described in the Agreement, (i) modify any part of the Customer Property, (ii) remove any proprietary notices, labels or marks from the Customer Property, and (iii) copy the Customer Property or any accompanying documentation.

11.6. Customer grants Doxim a non-exclusive, non-transferable, sub-licensable, licence to copy and

use the Customer Property so Doxim can fulfill its obligations to Customer described in the Agreement.

- 11.7. We may use the data provided through our Services to improve our services and for other standard business purposes but will only use such data in an aggregate and anonymous manner that does not identify Customer, Customer PI and any End User.

## 12. Confidentiality.

- 12.1. By virtue of the Agreement, each party (the “**Disclosing Party**”) may provide the other party (the “**Receiving Party**”) with or the Receiving Party may otherwise access or become aware of proprietary or Confidential Information relating to the Disclosing Party or its affiliates, suppliers and clients (including without limitation the identity of such clients). During the Term and at any time after the expiration or termination of the Agreement, the Receiving Party will keep in strict confidence all Confidential Information of the Disclosing Party. “**Confidential Information**” means information, materials or data obtained, shared, accessed, disclosed, used or acquired in connection with the Agreement that is marked as confidential or which by its nature ought to be in good faith considered confidential and proprietary to the Disclosing Party, including without limitation, strategies, financial information, product information, employee information, customer and client information, pricing, trade secrets, Customer Property, Doxim Property, the Master Agreement, Schedules, SOWs and Exhibit 1. The Confidential Information will be used for no purpose other than for the Receiving Party to exercise its rights and fulfil its obligations under the Agreement.
- 12.2. Nothing in this Section 12 shall restrict the Receiving Party from disclosing Confidential Information of the Disclosing Party (1) if disclosed to its affiliates, lawyers, accountants, auditors, managers, representatives, contractors, employees and consultants who have a need to know the Confidential Information in order to fulfill the party’s obligations in the Agreement (collectively, the “**Representatives**”), provided that, prior to the Receiving Party disclosing Confidential Information to its Representatives (i) such Representatives are informed by the Receiving Party of the confidential nature of the Confidential Information and the obligations in this Agreement, and (ii) such Representatives are subject to written confidentiality obligations similar to the confidentiality obligations set out in the Agreement, and in all instances each party will be responsible for its Representatives’ compliance with the foregoing, or (2) to the

extent required by applicable law, including without limitation requests by a regulatory or administrative authority, provided the Receiving Party provides prior written notice to the Disclosing Party to the extent practicable and permitted by law.

- 12.3. The Receiving Party will (i) protect the Confidential Information of the Disclosing Party from unauthorized access, use or disclosure, (ii) use at least the same degree of care it uses to protect its own Confidential Information of a like nature; and (iii) access, use and reproduce the Confidential Information of the Disclosing Party only as permitted under the Agreement.
- 12.4. Confidential Information excludes information which: (a) is rightfully in the Receiving Party’s possession without breach of this Section 12; (b) is or becomes generally available to the public other than as a result of a violation of this Section 12; (c) is lawfully received by the Receiving Party from a third party that the Receiving Party knows is not prohibited or limited from disclosing such information; or (d) is independently developed by the Receiving Party or its Representatives without any use of or reference to the Confidential Information.
- 12.5. **Injunctive Relief.** The parties agree that breach or threatened breach of this Section 12 by a party or its Representatives may cause immediate and irreparable injury to the other party and that, in the event of such breach or threatened breach, the injured party will be entitled to seek injunctive relief as well as any other legal remedies available without being required to post any bond or to prove any actual damages or other similar requirement required to seek injunctive relief.
- 12.6. **Disclosure Required By Law.** Notwithstanding anything to the contrary in the Agreement, Doxim may disclose all or part of Customer Property if required by law. Unless prohibited by law, Doxim will provide Customer reasonable notice and an opportunity to challenge such disclosure.

## 13. General.

- 13.1. **Customer References.** Customer grants Doxim a non-exclusive, non-sublicenseable, royalty free, worldwide licence to use Customer’s trademarks, service marks, trade names, logos, or other commercial or product designations (collectively the “**Marks**”) only for the purpose of marketing and promoting Doxim’s services. Customer may terminate Doxim’s right to use the Marks, in whole or in part, upon written notice to Doxim.
- 13.2. **Severability and No Waiver.** If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated. The parties agree

- to replace any invalid provision with a valid provision that most closely approximates the spirit and intent of the invalid provision. The waiver by either party of a breach of any provision of an Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
- 13.3. **Assignment.** Except for the right to receive payment and except as provided in Section 5 above, neither party may assign nor delegate the Agreement, whether by operation of law or otherwise, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, provided however, either party may assign the Agreement without the other party's consent if such assignment is to a parent or affiliate, to a successor in interest to substantially all of the business of that party to which an Agreement relates or as part of a corporate reorganization. An assignee of either party authorized hereunder shall be bound by all the terms of an Agreement and shall have all of the rights and obligations of the assigning party set forth therein. The provisions contained herein are for the sole benefit of the parties hereto.
- 13.4. **Independent Contractors.** The parties to the Agreement are independent contractors and no agency, partnership, joint venture or employment relationship is intended or created. Except as expressly stated in an Agreement, neither party shall have the power to obligate or bind the other.
- 13.5. **Governing Law, Jurisdiction and Venue.**
- (a) **United States.** If the Customer is a U.S. entity or individual and this Agreement is entered into with Doxim Inc., the Agreement shall be construed pursuant to the laws of the State of Delaware, United States without regard to conflict of law principles or choice of law doctrine. Any action or proceeding will be brought exclusively in the courts located in Delaware
- (b) **Canada.** If the Customer is a Canadian entity or individual and this Agreement is entered into with Doxim Solutions ULC, the Agreement shall be construed pursuant to the laws of the Province of Ontario, Canada without regard to conflict of law principles or choice of law doctrine. Any action or proceeding will be brought exclusively in the courts located in Toronto, Canada.
- (c) The United Nations Convention for the International Sale of Goods does not apply to the Agreement.
- 13.6. **Notices.** Notices shall be in writing and will be deemed delivered on the day it is personally served, when received by successful transmission via facsimile, or on the date delivered if sent via certified or registered mail to the following addresses (or to such other addresses given in writing by either party to the other).  
If to Customer: at the address in the Schedule or SOW.  
If to Doxim Inc. at: 2200 Production Drive, Indianapolis IN, 46241 United States  
Attention: Legal Department  
With a copy to: [legal@doxim.com](mailto:legal@doxim.com)  
If to Doxim Solutions ULC at: 1380 Rodick Road, Suite 102, Markham, Canada L3R 4G5  
Attention: Legal Department  
With a copy to: [legal@doxim.com](mailto:legal@doxim.com)
- 13.7. **Counterparts.** Each Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.
- 13.8. **Force Majeure.** Neither party is liable for any delay or failure to perform any obligation under an Agreement where the delay or failure results from a Force Majeure. "Force Majeure" is a cause of action beyond the party's reasonable control including catastrophic events, wars, terrorism, utilities or telecommunications failure, strikes or other labor disputes, accidents, fires, weather conditions materially preventing or impairing work, equipment or machinery failure, delays in transportation, civil commotion, sabotage, interruption by government, court orders, and material changes in applicable legislation and regulations. Notwithstanding any other provision of an Agreement, if a party is wholly or partly unable to perform material elements of its obligations hereunder, that party shall be relieved of those obligations to the extent, and for the period, that it is affected by Force Majeure provided the affected party gives the other party prompt written notice of such inability. The party affected by Force Majeure shall use all reasonable efforts to remedy the situation and remove the cause of its inability to perform, in a timely manner, provided that there shall be no obligation on a party so affected to settle labor disputes or to test or to refrain from testing the validity of any order, regulation or law in any court having jurisdiction.
- 13.9. **Non-Solicitation.** Both Doxim and Customer agree that during the Term and for a period of one (1) year following the expiration or termination of an Agreement, neither party shall, directly or indirectly, hire or offer to hire or entice away or in any other manner persuade or attempt to persuade any officer, employee, or agent of the other party to discontinue his or her or its relationship with that other party. The foregoing prohibition does not apply to Doxim or Customer advertising positions in the normal course of its business or where the employee contacts the

hiring party on his or her own initiative, provided, in both instances, the hiring party does not induce the employee to apply for the position or leave its employ.

13.10. **Survival.** The following sections shall survive the expiration or termination of the Master Agreement, regardless of the reasons for its expiration or termination, in addition to any other provision which by law or by its nature should survive: Sections 2.1, 2.4, 2.5, 2.6, 6.5, 7.2, 7.4, 8, 9, 11, 12 and 13.

13.11. **Entire Agreement.** The Agreement, and any documents referenced in the Agreement, constitute the complete agreement between Doxim and Customer with respect to the subject

matter hereof and supersedes any prior agreements or understandings. This Agreement may only be amended by a document that references this Agreement and that is signed by both the Customer and Doxim.

13.12. If you are located in the United States, then you are contracting with Doxim Inc. with a registered office at 200 Bellevue Parkway, Suite 210, Wilmington DE, 19809 United States. If you are located in Canada, then you are contracting with Doxim Solutions ULC with an office at 1380 Rodick Road, Suite102, Markham, ON, Canada L3R 4G5.

By signing below Customer and Doxim agree to the terms and conditions in this Master Agreement and acknowledge they have the authority to bind their respective companies.

<b>Doxim</b>	<b>Customer</b>
Signature:	Signature:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:

**Exhibit 1**  
**Support Services and Service Level Agreement**

This Exhibit 1 “Support Services and Service Level Agreement” (“**Exhibit 1**”) is incorporated into and governed by the attached Master Services Agreement. Capitalized terms and definitions used in this Exhibit 1 but not defined herein will have the meanings described in the Master Agreement and applicable Schedule and SOW.

**1. Definitions**

- (a) “**Business Day**” means a 24-hour day other than Saturday, Sunday or statutory holiday.
- (b) “**Business Hours**” means (i) 8am – 6pm EST for the U.S., and (ii) 8:00 a.m. to 8:00 p.m. EST for Canada.

**2. Support Services**

**(a) *Definitions:***

- (i) “**Recovery Time**” means the time by which Doxim implements a Workaround for an incident.
- (ii) “**Response Time**” means the time by which Doxim notifies one of Customer’s support contacts that Doxim has assigned the incident reported by Customer to Doxim’s customer support team for assessment and resolution.
- (iii) “**Solution**” means a final solution to resolve an incident which causes the Services to conform to and operate in accordance with the descriptions and specifications set out in an Agreement by providing the same level of functionality and results that occurred immediately prior to the incident. If an incident resulted in corruption of a database then the Solution means Doxim’s correction and reconstruction of the database (and all related data) to the initial database structure in place immediately prior to the incident.
- (iv) “**Tier 1 Support**” means the initial triaging of an incident reported to the Customer by their users of the Services.
- (v) “**Tier 2 Support**” means Doxim’s assessment, investigation and diagnosis of an incident reported by Customer using the reporting process identified in this Exhibit 1 so Doxim can implement Workarounds and Solutions.
- (vi) “**Workaround**” means a practical, temporary solution to an incident reported by Customer using the reporting process identified in this Exhibit 1 that causes the Services to substantially conform to, and to function, operate, perform and generate results in accordance with, the requirements and specifications set out in an Agreement with substantially the same level of functionality, operation, performance and results as immediately before the occurrence of the incident.

**(b) *Responsibilities.*** Throughout the Term:

- (i) Customer will provide Tier 1 Support as further described in Section 2(d) below.
- (ii) Doxim will provide Customer with Tier 2 Support as described in this Exhibit 1.

**(c) *Hours of Availability:*** Tier 2 Support is available during Business Hours.

**(d) *Customer Tier 1 Support Responsibilities:*** Customer will be the initial point of contact for any support inquiries related to the Services. Before escalating an issue to Doxim for Tier 2 Support, Customer will engage with the individual inquiring about the Services and will use Customer’s administrative access to the Services to attempt to resolve the issue. If Customer is not able to resolve the issue using Customer’s administrative access to the Services, then Customer can report the issue to Doxim to receive Tier 2 Support.

**(e) *Tier 2 Support Procedure:*** In order to receive Tier 2 Support, Customer must report all incidents to Doxim using the contact information in Table 3.

**(f) *Assistance by Customer:*** If Customer reports an incident to Doxim for Tier 2 Support, Customer will reasonably assist Doxim in order for Doxim to properly diagnose and resolve the incident. At a minimum, Customer must provide the following information and any additional information reasonably requested by Doxim: a detailed description of the issue, a description of the efforts made by Customer to resolve the issue and the results of those efforts.

**(g) *Responding to Incidents:***

All Tier 2 Support incidents submitted to Doxim using the process described in this Exhibit 1 will generate an incident number. Doxim will acknowledge and respond to each reported incident in accordance with the applicable Response Times set out in Table 2 below and will thereafter, as promptly as possible in the circumstances, perform all work required to verify, assess, and resolve reported incidents. Doxim will use reasonable efforts to provide updates to Customer for P1 and P2 incidents not less than every two hours following the initial response or within a different timeline for updates that Doxim agrees upon in writing.

(h) **Tracking/Reporting:**

- (i) **Incident Number:** The incident number must be referred to by both parties in all communications.
- (ii) **Incident Handling System:** Doxim will log and track information regarding all Tier 2 Support incidents using Doxim's electronic issue handling system which will include the date and time for each of the following: (i) when a Tier 2 Support request is received by Doxim; (ii) when Doxim provides the requested Tier 2 Support for the incident; and (iii) the names of Customer's representatives involved in each communication. Doxim will promptly update the information in the electronic issue handling system on an ongoing basis to reflect the progress of work.
- (iii) **Monitoring / Reporting:** Support incidents are reviewed during Doxim's regular monthly managers meeting. The incidents are discussed and key points / challenges are highlighted and used, as appropriate, to address internal issues applicable to the incident reported.
- (iv) Within a commercially reasonable timeframe after Customer's written request, Doxim will provide Customer with information regarding the progress of Doxim's work to resolve an incident, including the current status of the incident, details of the work to date to resolve the incident, details of planned work to resolve the incident and the estimated time to resolve the incident.

(i) **Workarounds:** When Doxim implements a Workaround for an incident, Doxim may request written confirmation from Customer that the Workaround is satisfactory and effective. Customer agrees it will promptly respond to Doxim's confirmation request.

(j) **Solutions:** Doxim will use commercially reasonable efforts to implement a Solution for each incident as soon as reasonably possible. When Doxim implements a Solution for an incident, Doxim may request written confirmation from Customer that the Solution is satisfactory and effective. Customer will promptly respond to Doxim's confirmation request.

(k) **Priority Levels:** Each incident will be assigned a Priority Level by Doxim in order to establish the urgency and appropriate level of response, based upon the criteria below in Table 1. Upon written request by Customer from time to time and provided such requests are reasonable, Doxim will reassess the Priority Level assigned to such incident and if Doxim determines the Priority Level of an incident should be changed Doxim will change the Priority Level using the information provided by Customer. If Customer disagrees with the Priority Level of an incident, then the Priority Level specified by Doxim will apply and govern until Doxim implements a Workaround for the incident.

Table 1 – Incident Priority Levels	
Priority Level	Description
P1	An incident that: (1) causes important functionality, operation, performance or results of the Service to be inoperative or unstable, or causes the Service to yield flawed results/output; (2) impairs the security or integrity of the Service or of any data stored in the Service or presents a risk of a security or privacy breach (including unauthorized access to or disclosure of data stored in the Service); or (3) is reasonably expected to be likely to do any of the above in the immediate future.
P2	An incident that is not Priority Level P1, but nevertheless degrades or impairs (other than in an inconsequential, temporary and non-recurring manner) an important functionality, operation, performance or results of the Service or is reasonably expected to be likely to do so in the near future.
P3	Any incident that is not Priority Level P1 or P2 but is not merely cosmetic or trivial. The following are examples of possible P3 priority level incidents: (a) isolated instances in which an individual member's eStatement is not available or accessible by the member or

	Customer's staff; or (b) isolated instances in which the Solution is temporarily inaccessible for a short period by an individual member of Customer's staff.
P4	Any incident that is not Priority Level P1, P2 or P3

Table 2 – Support Response SLA	
Priority Level	Response Time
P1	2 Business Hours
P2	4 Business Hours
P3	6 Business Hours
P4	Next Business Day

Table 3 – Doxim Contact Details for Support Services		
	Canada	United States
Email contact and Web submission	<a href="mailto:support@doxim.com">support@doxim.com</a> <a href="http://www.doxim.com/technical-support-request">www.doxim.com/technical-support-request</a>	<a href="mailto:support@doxim.com">support@doxim.com</a> <a href="http://www.doxim.com/technical-support-request">www.doxim.com/technical-support-request</a>
Telephone	(905) 475-9876 or 1-866-475-9876	1-888-354-0118

In order to receive notifications, Customer must provide Doxim, in writing, with current Customer contact information for such notifications.

3. **Service Levels.** The following describes the performance metrics (“**Service Levels**”) for the products and services offered by Doxim:

(a) **Service Levels: SaaS Availability**

(i) ***Definitions:*** The following definitions apply to this section:

- (1) “**Available**” and “**Availability**”, means the SaaS is accessible and responds to a request or query within three seconds at the 95<sup>th</sup> percentile measured at five (5) minute intervals by timing responses to enquiries using a commercially available, third-party tool that measures availability at the edge of Doxim’s network.
- (2) “**Emergency Maintenance Period**” means a period during which Doxim intends to perform maintenance work on the Services that Doxim in good faith determines cannot be reasonably performed during a Maintenance Window.
- (3) “**Maintenance Window**” means 6:00 a.m. to 12:00 p.m. (Eastern Time) on Sundays. Doxim will provide Customer with no less than 10 (ten) Business Days’ written notice of Doxim’s intention to utilize a Maintenance Window.
- (4) “**Planned Downtime**” means the time that the SaaS is not Available during either a Maintenance Window or during an Emergency Maintenance Period.
- (5) “**SaaS**” means the Software provided by Doxim that is included with the Services, as more specifically described in the applicable Schedule.
- (6) “**Total Monthly Fees**” means all fees paid or payable by Customer in respect of the affected SaaS for the applicable month in which a Service Level is not met.

(ii) ***Service Levels:*** The SaaS will be Available not less than 99.5 percent of the time, calculated on a monthly basis. Customer acknowledges and agrees that the aforementioned Service Level obligations (and Service Level Credits in Section 5 below) are subject to and will not apply to the

extent the Service Level is affected by (i) a Planned Downtime, (ii) Maintenance Window, (iii) Emergency Maintenance Period, (iv) acts or omissions of Customer or its employees, contractors, agents, vendors or End Users, (v) cyber-security attacks on Doxim’s systems, (vi) a force majeure event, and (vii) third party products and services including without limitation telecommunication, Internet and third-party software and hardware providers, (collectively “**Unavailability Criteria**”).

- (iii) **Minutes:** For the purposes of calculating Availability, Planned Downtime, Maintenance Window and Emergency Maintenance Period, a fraction of a minute that is less than a half minute will be rounded down and a fraction of a minute that is half a minute or greater will be rounded up.
- (iv) **Monitoring/Reporting:** Within fifteen (15) days of Customer’s written request for information about Service Levels not being met by Doxim , Doxim will deliver to Customer an incident report detailing the cause of and actions taken with respect to Service Levels in this section not being met.
- (v) **Service Level Credits:** If the actual Availability of the SaaS during a month is less than the Service Levels, and subject to such Service Levels being impacted by the Unavailability Criteria, then Doxim will provide Customer with a Service Level credit (“**Service Level Credit**”) equal to a percentage of the Monthly Fees for the relevant month and the relevant SaaS product, in accordance with the following Table 4:

Table 4 – Service Level Credits	
Unavailability	Service Level Credit
Two failures to achieve the SaaS Service Levels during any semi-annual calendar period (January-June and July-December of each year).	10% of SaaS Monthly Fees
Three failures to achieve the Service Levels during any semi-annual calendar period (January-June and July-December of each year).	25% of SaaS Monthly Fees.

- (vi) If the Service Levels are not met for six (6) consecutive months because Doxim did not meet the Service Levels and not as a result of Unavailability Criteria, then, in addition to the above remedies Customer may, at its option:
  - (1) Require Doxim to form a working group, including representatives from Customer, to review the situation and propose solutions. The costs of creating any such joint plans and implementing any solutions shall be paid by Doxim, or
  - (2) Request that an independent third party, mutually agreeable to the parties, review the situation and propose solutions. The costs of creating any such joint plans and engaging any such third party shall be paid by Doxim.

Both Doxim and Customer will work together in good faith to resolve the issue and agree upon a solution.

**AMENDING AGREEMENT** This amending agreement (this “**Amendment**”) is between **Doxim Inc.** (“**Doxim**”) and **Kauai County Department of Water** (“**Customer**”). The Amendment is incorporated into the MSA (as hereinafter defined and referred to) and is collectively referred to as the “**Agreement**”.

The “**Amendment Effective Date**” is **[insert date]**, 2023.

A. Doxim and Customer entered into a Master Services Agreement with an Effective Date of **[insert date]**, 2023 (“**MSA**”); and

B. Doxim and Customer wish to amend the MSA as described below.

C. The MSA is amended as follows:

1. Section 2.6(b) is deleted in its entirety and replaced with the following:

(b) If a dispute is resolved in our favor, you agree to pay us the disputed Fees together with any applicable late fees within ten (10) days of resolution of the dispute (or such other timeframe Doxim’s Finance Dept. may authorize in writing). If a Dispute is resolved in your favor, Doxim will provide you with a credit for the disputed Fees together with any late fees invoiced.

2. Section 10.2 is deleted in its entirety and replaced with the following:

10.2 **By Customer.** Customer represents and warrants:

(a) it will comply with laws applicable to its obligations under the Agreement including privacy laws and anti-spam laws that require obtaining consent for Doxim to use Customer PI and any other personal information Customer provides to Doxim; and

(b) it owns all rights in Customer Confidential Information or has authorization or is otherwise legally permitted to upload and/or provide Customer Confidential Information to Doxim and through the Services.

3. Section 13.1 Customer Reference is deleted in its entirety and replaced with the following:

13.1 **[intentionally deleted]**.

4. Section 13.5(a) United States is deleted in its entirety and replaced with the following:

(a) **United States.** If the Customer is a U.S. entity or individual and this Agreement is entered into with Doxim Inc., the Agreement shall be construed pursuant to the laws of the State of New York, United States without regard to conflict of law principles or choice of law doctrine. Any action or proceeding will be brought exclusively in the courts located in New York, New York.

D. Except as expressly set out herein, nothing in this Amendment shall operate to modify or amend the terms of the Agreement, or to waive any of the parties’ obligations thereunder.

E. This Amendment may be executed electronically and by way of counterparts.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment as of the Amendment Effective Date.

Doxim Inc.	Kauai County Department of Water
Signature:	Signature:
Printed Name:	Printed Name:

Title:	Title:
Date:	Date:

# DEPARTMENT OF WATER

County of Kaua'i

*"Water has no Substitute – Conserve It!"*

## MANAGER'S REPORT No. 24-04

October 19, 2023

Re: Discussion and Possible Action on acceptance of certain terms and conditions as stated in software subscription agreement (LeaseQuery)

### **RECOMMENDATION:**

It is recommended that the Board approve Option 1, which will allow the Department to move forward with securing software services for implementation of Government Accounting Standards Board (GASB) Statement No. 96, *Subscription-Based Information Technology Arrangements*. The DOW is required to implement GASB Statement No. 96 in the fiscal year ended June 30, 2023

### **FUNDING:**

Account No.	10-31-10-540-020		
Acct Description	WU/Acctng/Admin/Accounting and Auditing		
Funds Available	<i>Verified by WWC</i>		\$20,000.00
Contract No.	N/A		
Vendor	LeaseQuery		
	Contract Amount	\$5,400.00	
	5% Contingency	\$N/A	
	Total Funds Certified	\$5,400.00	<\$5,400.00>
Fund Balance			\$14,600.00

Total Contract (365 days): \$5,400.00

### **BACKGROUND:**

The Fiscal Division is seeking Board approval to accept standard terms as stated in the Subscription Agreement (SA) with LeaseQuery. The SA was reviewed by Tyler Saito, Office of the County Attorney. In May 2020, the Government Accounting Standards Board (GASB) issued GASB Statement No. 96, *Subscription-Based Information Technology Arrangements*. This statement provides guidance for accounting and financial reporting for subscription-based information technology arrangements (SBITAs) for governments that are end users of SBITAs. The DOW is required to implement GASB Statement No. 96 in the fiscal year ended June 30, 2023. LeaseQuery is a software solution that will be used to compile existing contracts and calculate the subscription asset, corresponding liability, and amortization schedule to be recognized in the financial statements. Furthermore, these are standard Terms and Conditions that cannot be removed from the MSA and deemed reasonable and acceptable.

The sections within the MSA that reference Unspecified Future Obligations, Indemnification, and Governing Law and Jurisdiction, and Venue are shown below:

3.2 Restrictions on Use of the Solution. Client shall reimburse LeaseQuery for all costs incurred in enforcing the use restrictions in this Section, including, without limitation, attorneys' fees, legal costs, and court or arbitration costs.

5. Fees; Charges. Any payment not received from Client by the due date will accrue interest from the date such payment is due until the date such payment is paid at the compounded monthly rate of the lesser of 2.0% of the outstanding balance or the maximum rate permissible under applicable law. Client shall reimburse LeaseQuery for all costs incurred in collecting any overdue payments and related interest, including, without limitation, attorneys' fees, legal costs, court or arbitration costs and collection agency fees.

8.2 Limitation of Liability. To the maximum extent permitted by applicable law, in no event shall the aggregate liability of LeaseQuery or any of its affiliates or subcontractors, regardless of the cause and regardless of any other failure of any provision or undertaking in this Agreement, under contract, tort or any other theory of liability (including claims alleging negligence), exceed (i) in case of causes of action that arise out of or relate to Professional Services, the total amounts paid by Client to LeaseQuery for the Professional Services giving rise to the claim during the six months preceding the date such cause of action arises, and (ii) in the case of any other cause of action, 50% of the annualized subscription fee (to the extent paid by Client) as of the date such cause of action arises for the product giving rise to the claim, except to the extent resulting from LeaseQuery's willful misconduct or bad faith. In circumstances where any limitation of liability or indemnification provision in this Agreement is unavailable, the aggregate liability of LeaseQuery and its affiliates and subcontractors for any claim shall not exceed an amount that is proportional to the relative fault that the conduct of LeaseQuery and its affiliates and subcontractors bears to all other conduct giving rise to such claim.

8.3 Indemnification. To the maximum extent permitted by applicable law, Client shall indemnify and hold harmless LeaseQuery, its affiliates and subcontractors, and their respective personnel from all claims, liabilities and expenses (including, without limitation, attorneys' fees) attributable to claims of third parties relating to or resulting from (i) a breach of Section 3 of this Agreement, or (ii) the use of the Solution or the use or disclosure of any outputs therefrom, any Professional Services or any other deliverables from LeaseQuery. This indemnification provision applies regardless of whether the third-party claim is caused or alleged to be caused in whole or in part by the indemnified party; provided, however, that it shall not apply to the extent of LeaseQuery's willful misconduct or bad faith.

11.17 Governing Law. Issues of arbitrability shall be determined by an arbitrator in accordance with the federal substantive and procedural laws relating to arbitration; in all other respects, all matters arising out of or relating to this Agreement or any Sales Order shall be governed, construed and enforced in accordance with the laws of the State of Delaware, without reference to the conflicts of law principles that would require the application of any other law.

*Note: Standard terms within the contract. This software will basically compile our lease documents. Data will be entered into the software that will automatically calculate the amounts needed to be presented in our financial statements and footnote disclosures. As for risk, there is no monetary risk or liability. The program is designed to indicate if the calculations are incorrect. Potential exposure is relatively non-existent, granted this software is designed for GASB 87 and GASB 96.*

**OPTIONS:**

Option 1: Approve Manager's Report to allow the Department to procure software to implement requirements of GASB Statement No. 96.

Pro: The Department can move forward with requirements as required by GASB.

Cons: The Board would agree to indemnify the contractor, agree to unspecified future obligations in the event of a breach or similar contract issue occurring, and Governing Law outside of the State of Hawaii.

Option 2: Do not approve Manager's Report.

Pro: There is no risk associated with indemnification, unspecified future obligations, or breach of contract.

Cons: The Department will not be able to successfully implement GASB Statement No. 96 and as a government entity will not be in compliance with said pronouncement.

RY:CE/crz

Attachment(s): LeaseQuery Sales Order  
LeaseQuery Subscription Agreement  
CPO Approval



# SALES ORDER

Date	10/6/2023
Sales Order #	Q-26867
Expiration Date	10/26/2023

## LeaseQuery, LLC

3 Ravinia Drive NE  
Suite P7  
Atlanta, GA 30346  
(800) 880-7270  
LeaseQuery.com

## Client

Kauai Department of Water  
4398 Pua Loke St  
Lihue, HI 96766  
Attention: Renee Yadao  
8082455422  
ryadao@kauaiwater.org

## Length of Subscription

Initial Term (commencing on the date last signed below) 12 months

## Recurring Services

**Annual  
Amount**

### Platform/Edition

Platform subscription for LeaseQuery Advanced Standard (first 40 Records included) \$5,400

## Non-Recurring Services

**One-Time  
Fee**

Self-Guided Training	\$0
Organizational database structure setup	\$0
Contract analysis and Record entry, up to 35 Records	\$0

## Notes

- **For recurring services, the annual amounts shown above are payable in advance upon execution of this Sales Order for the full length of the subscription shown above. For non-recurring services, the one-time fees shown above are payable upon execution of this Sales Order.**
- The Platform subscription for LeaseQuery Advanced Standard includes access to the LeaseQuery platform and LeaseQuery's Advanced Standard lease accounting solution.
- To the extent the number of Records shown above for contract analysis and Record entry services is exceeded, an additional fixed fee of \$200 per Record (invoiced monthly in arrears) will apply.
- If the maximum number of Records for the platform subscription for LeaseQuery Advanced Standard is exceeded, an additional platform subscription fee of \$7 per Record per month will apply, invoiced in advance for the full remaining term.
- Self-guided training includes access to LeaseQuery's knowledge base, including video and written instructions.

## Terms and Conditions

---

As of the date last signed below, Client hereby subscribes to the Solution and services described in this Sales Order. This Sales Order shall be governed by the terms and conditions set forth herein and in the subscription agreement available at [https://leasequery.com/subscription\\_terms\\_and\\_conditions.pdf](https://leasequery.com/subscription_terms_and_conditions.pdf), which is incorporated herein by reference, unless the parties have manually executed a separate subscription agreement governing this Sales Order (in either case, the "Subscription Agreement"). Capitalized terms used but not defined in this Sales Order shall have the meaning set forth in the Subscription Agreement.

## Signatures

---

Kauai Department of Water ("Client"):

**By:**

\_\_\_\_\_

**Name:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

LeaseQuery, LLC ("LeaseQuery"):

**By:**

\_\_\_\_\_

**Name:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

## SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT, by and between LeaseQuery and Client, is effective as of the Effective Date. Each of Client and LeaseQuery is referred to herein as a “party” and collectively as the “parties.” In consideration for the mutual covenants and agreements contained in this Agreement (as defined below), the parties agree as follows:

### 1. DEFINITIONS.

1.1 “Agreement” means this Subscription Agreement, including any schedules, addenda and exhibits hereto.

1.2 “AI Functionality” means the functionality available as part of or in connection with the Solution that utilizes artificial intelligence to, for example, return Predictions to Client or automate other tasks, in each case solely where Client chooses to enable this functionality (which may be offered for a separate fee).

1.3 “Beta Services” means services or functionality that LeaseQuery may make available to Client to try at its option at no additional charge which is designated as beta, pilot, limited release, developer preview, nonproduction, evaluation or by a similar description.

1.4 “Business Day” means any day on which the New York Stock Exchange is open for unrestricted trading.

1.5 “Certified Service Partner” means any third party that is a member of LeaseQuery’s certified service partner program for the Solution, which program requires, as a condition to such membership, that the participating organization, among other things, successfully complete LeaseQuery’s Certified Service Partner training program and enter into a certified service partner agreement with LeaseQuery.

1.6 “Client” means the entity set forth in the applicable Sales Order incorporating the terms and conditions of this Agreement and any of its Client Subsidiaries that accesses the Solution at any point during the term of this Agreement. “Client” shall exclude any Client Subsidiary that, during the term of this Agreement, does not access the Solution, which Client Subsidiary shall be deemed a third party for purposes of this Agreement.

1.7 “Client Data” means all data that is entered into or received by the Solution from or on behalf of Client.

1.8 “Client Subsidiary” means (i) any entity which is directly or indirectly owned by the entity listed on the signature page of this Agreement, or (ii) any entity whose financial statements are required to be consolidated with Client’s financial statements. For purposes of the preceding sentence, “directly or indirectly owned” means direct or indirect ownership of more than 50% of the voting interests of the subject entity.

1.9 “Client Feedback” means suggestions, enhancement requests, recommendations or other feedback provided by Client or its personnel relating to the operation or functionality of the Solution or the content of the Documentation.

1.10 “Confidential Information” means (i) information that is marked by the disclosing party as “confidential,” (ii) whether or not marked as “confidential,” information of a party of a special and unique nature and value or relating to such matters as trade secrets, know-how, systems, programs, developments, designs, procedures, manuals, products, financial statements or forecasts, confidential reports and communications, in each case whether such information is shared prior to or during the term of the Sales Order, and (iii) with respect to LeaseQuery’s Confidential Information, the terms and conditions of this Agreement, any Sales Order, or any drafts thereof, including without limitation all terms relating to pricing.

1.11 “Dispute” means any controversy or claim between the parties arising out of or relating to this Agreement or any Sales Order, the breach, termination, enforcement, interpretation or validity thereof, or any services provided under this Agreement or Sales Order, whether in contract, tort or otherwise.

1.12 “Documentation” means the user instructions and specifications for the Solution described in the Solution or any information included on the LeaseQuery Academy site (or any successor thereto), each as may be updated by LeaseQuery from time to time.

1.13 “Effective Date” means the date that the initial Sales Order incorporating the terms and conditions of this Agreement is last signed by the parties.

1.14 “Force Majeure Event” means any event that is reasonably beyond the control of the party.

1.15 “Initial Term” means the initial term of an applicable Sales Order, as set forth in such Sales Order; provided, however, that if such Sales Order does not contain an Initial Term, the Initial Term shall be one year, commencing on the date such Sales Order is last signed by the parties.

1.16 “Integration” means any application programming interface or other functionality, including automations, that enables the Solution to integrate or interoperate with a third-party application or obtain information from a third-party application. Unless otherwise expressly provided in the applicable Sales Order, the Integration will be enabled solely with respect to Client’s first production instance of the Solution.

1.17 “Intellectual Property Rights” means any and all common law, statutory and other intellectual property rights throughout the world, including, without limitation, copyrights, design rights, database rights, data collections trademarks, service marks, service names, corporate names, internet identifiers or other similar designations of goodwill, trade secrets or other proprietary rights in confidential information, patents or disclosures of inventions (whether or not patentable), patent applications, reissues, reexaminations and other proprietary rights issued, honored or enforceable (whether registered or not) under any applicable laws anywhere in the world, any derivatives thereof, and all moral rights related thereto.

1.18 “LeaseQuery” means LeaseQuery, LLC, a Delaware limited liability company.

1.19 “Legal Notices” shall be as defined in Section 11.1 of this Agreement.

1.20 “Member” means any personnel or service account to be managed by the Solution (currently only for SaaS spend management), who are currently referred to in that Solution as “members.”

1.21 “NDA” means any confidentiality or nondisclosure agreement (or other agreement with a similar purpose) entered into by the parties hereto or their respective affiliates in consideration of potentially entering into the business relationship governed by this Agreement.

1.22 “Prediction” means data returned by the AI Functionality, such as, by way of example, as a suggested input for a field for review or as a confirmatory interpretation of a command to perform an automated task.

1.23 “Preexisting Materials” means all items of property (including, without limitation, equipment and Intellectual Property Rights) that such party owned prior to the provision of any Professional Services.

1.24 “Professional Services” means, if applicable for the purchased subscription, any services purchased by Client that are provided by LeaseQuery’s personnel or its subcontractors’ personnel for the implementation of the applicable Solution or ongoing support of Client in connection with its use of the Solution. For the avoidance of doubt, the provision of access to the Solution is not a Professional Service.

1.25 “Record” means any individual record with a unique identifier that is entered into and stored in the Solution. With respect to LeaseQuery’s Solution for leases, a single leased asset may be comprised of multiple Records (such as for land and improvements), and a single contract may provide for multiple leased assets.

1.26 “Renewal Term” has the meaning set forth in Section 6.1 of this Agreement.

1.27 “Sales Order” means any sales order or statement of work (as may be amended by a change order, amendment or otherwise, from time to time) that (i) describes the LeaseQuery products and services purchased by Client and the fees related thereto, (ii) specifically incorporates by reference the terms and conditions of this Agreement, and (iii) is signed by both parties.

1.28 “Sensitive Personal Information” means an individual’s (i) government-issued identification number, including without limitation a Social Security number, driver’s license number, or state-issued identification number, (ii) financial account number, credit reporting information, or credit, debit or other payment cardholder information, with or without any required security or access code, personal identification number, or password that permits access to the individual’s financial account, or (iii) biometric, genetic, health or health insurance data.

1.29 “Solution” means the specific product, to which Client purchases a subscription pursuant to a Sales Order, that is hosted by LeaseQuery or by a third-party hosting service provider for LeaseQuery.

1.30 “Taxes” means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including, without limitation, value-added, excise, sales, use or withholding taxes, but excluding LeaseQuery’s or its members’ income taxes.

1.31 “Update” means a modification to the Solution or workaround to fix bugs or correct errors.

1.32 “Upgrade” means any modification to the Solution that is not an Update, including, without limitation, a new version or release of the Solution that adds new features, functional capabilities or other improvements to the Solution.

## 2. SCOPE OF SERVICES.

2.1 Provision of Access to the Solution. By entering into a Sales Order, (i) Client subscribes for access to the Solution, and (ii) LeaseQuery agrees to enable Client to access the Solution via a website in accordance with and subject to the terms and conditions of the applicable Sales Order and this Agreement. LeaseQuery will make commercially reasonable efforts to maintain availability of the Solution in accordance with the SLAs set forth in Exhibit A hereto, but Client acknowledges and agrees that LeaseQuery shall not be responsible for any downtime of the Solution other than as set forth in Exhibit A.

2.2 Updates. LeaseQuery may release Updates to the Solution at any time. Client acknowledges that LeaseQuery is not required or obligated to provide any Updates, other than those that are required to comply with this Agreement, or any Upgrades to the Solution. Any Upgrade may be offered separately with different pricing. Client agrees that its purchase of the subscription and any Professional Services (if applicable) is not contingent on the delivery of any future functionality or features or dependent on any oral or written comments made by LeaseQuery regarding future functionality or features.

2.3 Professional Services (if applicable). All Professional Services, if any, will be provided remotely. LeaseQuery may subcontract the performance of any Professional Services. LeaseQuery will be responsible for the quality of any Professional Services performed by such subcontractors to the extent LeaseQuery would be responsible to Client under this Agreement had LeaseQuery provided such Professional Services. Unless otherwise set forth in an applicable Sales Order, each deliverable shall be deemed delivered and accepted upon its delivery. Professional Services, which are applicable only if they are included in the applicable Sales Order, are described at [https://leasequery.com/professional\\_services\\_policy.pdf](https://leasequery.com/professional_services_policy.pdf).

2.4 AI Functionality. Should Client choose to use any AI Functionality, Client agrees that (i) the Predictions returned by the AI Functionality are suggestions based on the text of the inputs (e.g., document, command or request) and require review and verification by Client, (ii) notwithstanding anything to the contrary in this Agreement, including, without limitation, any warranties herein, LeaseQuery is not responsible for the accuracy of any Predictions returned by the AI Functionality, nor any output or actions performed by the Solution based on Client’s use of the AI Functionality, and (iii) Client grants LeaseQuery the right to use Client Data to allow the Solution to return Predictions for Client, and to maintain, train or retrain the AI Functionality models.

2.5 Limitations of Services. Client acknowledges that LeaseQuery is not a registered public accounting firm, and some or all of the Professional Services (if any) may be performed by individuals who are not certified public accountants. LeaseQuery’s performance of services, including the provision of access to the Solution and the performance of any Professional Services, does not constitute an audit in accordance with generally accepted auditing standards, an examination of or any other form of assurance with respect to internal controls, or other attestation, review or compilation services in accordance with standards or rules established by the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board or any other regulatory body. LeaseQuery will not express, and will not be deemed to have expressed, an opinion or any other form of assurance with respect to any matters as a result of the performance of any such services, including with respect to Client’s financial statements, tax returns or Client’s operating or internal controls. Client acknowledges that the Solution is not designed for compliance with accounting standards for all jurisdictions or all accounting rules worldwide. Client is exclusively responsible for identifying the accounting standards applicable to it in its local jurisdiction and evaluating the suitability of the Solution for its purposes. LeaseQuery will not perform, and will not be deemed to have performed, any evaluation of Client’s internal controls and procedures for financial reporting upon which Client’s management can base its assertions in connection with the Sarbanes-Oxley Act of 2002, as amended, or any related rules or regulations. LeaseQuery will not make any representations or warranties and will not provide any assurances that Client’s disclosure controls and procedures are compliant with the certification requirements of, or that Client’s internal controls and procedures for financial reporting are effective as required by, any applicable law. Neither the Solution nor any Professional Services may be relied upon to identify errors or fraud should they exist. LeaseQuery does not provide legal or tax services, and none of its services will be performed by attorneys. Client acknowledges and agrees that LeaseQuery is not, and will not agree to be named as, an expert under the Securities Act of 1933, as amended, or any other state or federal securities laws.

## 3. CLIENT DUTIES AND RESPONSIBILITIES.

3.1 Use of Output and Professional Services. Client’s access to the Solution and Client’s use of any outputs therefrom, all Professional Services (if any) and all other deliverables by LeaseQuery, shall be solely for Client’s benefit and are not intended to be relied upon, and shall not be relied upon, by any other party. Client shall not disclose the outputs, Professional Services or other deliverables, or refer to the Solution, outputs therefrom, Professional Services or other deliverables, in any communication to any third party other than (i) Client’s independent auditors solely in connection with their audit of Client’s financial statements, (ii) Certified

Service Partners solely for the purpose of providing implementation-related services for Client that are permitted under LeaseQuery's certified service partner program and provided such Certified Service Partners comply with the restrictions set forth in this sentence, (iii) regulatory authorities with jurisdiction over Client to the extent required by such authority, and (iv) to the extent required by an order of a court of competent jurisdiction or a valid subpoena, provided that, in the case of this subclause (iv), Client provides LeaseQuery with prompt written notice of any such requirement and reasonably cooperates with LeaseQuery's efforts to obtain a protective order or otherwise limit such disclosure. In the event Client creates its own materials based on the content of the outputs, Professional Services or other deliverables for disclosure to a third party, Client shall not in any way, expressly or by implication, attribute such materials to LeaseQuery or identify LeaseQuery as the source of the content reflected in such Client-created materials.

3.2 Restrictions on Use of the Solution. Client shall not (i) use the Solution in any way that violates the terms of this Agreement, the Documentation, Sales Order or applicable law; (ii) modify, copy or create any derivative works based on, or reverse engineer or decompile, the Solution, Documentation or any portion thereof; (iii) attempt to license, sell, resell, rent, lease, transfer, assign (except as permitted under this Agreement), distribute, time share, offer in a service bureau, or otherwise share Client's access to the Solution with any third party, except that such access may be shared as permitted under this Agreement with Client's employees (provided that separate login credentials are created for and used by each authorized user) and, solely for the purpose of providing Professional Services (if applicable) for Client that are permitted under LeaseQuery's certified service partner program, a Certified Service Partner; (iv) use Client's access to the Solution or Documentation for any benchmarking, outsourced procurement or competitive purpose or to build or design any commercially available product or service; (v) interfere with or disrupt performance of the Solution or the data contained therein; (vi) attempt to gain access to the Solution or LeaseQuery's related systems or networks in a manner not set forth in this Agreement; (vii) use Client's access to the Solution to send or store infringing, obscene, threatening, or otherwise unlawful or tortious material, including, without limitation, material that violates privacy, confidentiality, Intellectual Property Rights or other rights of third parties; (viii) use or launch any automated system, including without limitation, robots (or bots), spiders, offline readers, or load testers, or other technological means to access the Solution, rip any content from the Solution, or measure, test, health check or otherwise monitor the Solution or any of LeaseQuery's network equipment, servers or other assets, in each case without the prior written consent of LeaseQuery, which consent, if provided, (a) is conditioned on the requirement that the technology must not send more request messages to the Solution in a given period of time than a human can reasonably produce in the same period by using the Solution, and (b) may be revoked at any time for any or no reason; (ix) share any Sensitive Personal Information with LeaseQuery or enter, or cause or request to be entered, any such information into the Solution; or (x) access the Solution for the benefit of, or for any purpose if Client is a provider of accounting or SaaS spend management software or otherwise competes with LeaseQuery. Client shall be liable for the acts and omissions of all Client-authorized users relating to this Agreement or any Sales Order. LeaseQuery may alter, suspend or discontinue all or a portion of Client's access to the Solution if LeaseQuery reasonably suspects that (1) Client's access to the Solution may be causing harm to LeaseQuery or other users, or (2) such suspension is necessary to comply with law or a request from a law enforcement agency or to prevent, remediate or mitigate an actual or potential security incident. LeaseQuery will use commercially reasonable efforts to resolve the issues causing the suspension of the Solution. Client agrees that no information obtained through the Solution or the Professional Services (if applicable), nor will any access thereto, be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor be used for nuclear activities, chemical biological weapons, or missile projects unless authorized by the U.S. government. Proscribed countries are set forth in the U.S. Export Administration Regulations and are subject to change without notice, and Client must comply with the list as it exists in fact. Client and its authorized users shall not access the Solution from jurisdictions subject to trade and economic sanctions maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"). Client represents and warrants that Client and its authorized users are (1) not located in, organized under the laws of, or ordinarily a resident in any country or territory subject to territorial sanctions, nor is it owned by or acting on behalf of a government subject to asset-blocking sanctions or any person or entity organized, located or ordinarily resident in a sanctioned country; and (2) not identified on, or more than 50% owned or controlled, directly, or indirectly, by or acting on behalf or at the direction of any entity identified on U.S. or other applicable government restricted party lists such as the Specially Designated Nations list maintained by OFAC. Client represents and warrants that either (a) Client does not and will not have any users located in the Russian Federation, or (b) in the event that Client requests access for a user located in the Russian Federation, (x) Client is owned or controlled by U.S. persons or U.S. entities, or (y) Client will not request that LeaseQuery perform contract analysis and Record entry services as described in this Agreement or any advisory or consulting services. Client shall reimburse LeaseQuery for all costs incurred in enforcing the use restrictions in this Section, including, without limitation, attorneys' fees, legal costs, and court or arbitration costs.

3.3 Responsibility for Client Data. Client is exclusively responsible for its financial statements, tax returns, and the accuracy, quality and legality of all Client Data, including, without limitation, obtaining all required authorizations, permissions and consents necessary for LeaseQuery and its contractors and subcontractors to access, process and use any Client Data in accordance with this Agreement. LeaseQuery shall not be responsible for (i) any Client Data received by the Solution from Client or its agents or representatives, or (ii) any judgments made (whether by Client or LeaseQuery) with respect to any inaccuracies, ambiguities or inconsistencies in any document containing Client Data. Client is responsible for the use of the output which it obtains from the Solution.

3.4 Responsibility for Users, Authentication Credentials and Equipment. Client shall (i) be responsible for safeguarding its usernames and passwords, (ii) be responsible for the identification and authentication of its users and any access, whether or not

authorized by Client, to the Solution that results from the actions or omissions of Client or any of its personnel, and (iii) notify LeaseQuery promptly of any unauthorized access or use. Client shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Solution, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like. LeaseQuery shall not be responsible for any delay or inoperability of the Solution based on a failure of such equipment.

**3.5 Cooperation with LeaseQuery.** If Client purchases Professional Services, Client shall cooperate reasonably and in good faith with LeaseQuery in the execution of the Professional Services by, without limitation, (i) attending and actively participating in scheduled meetings; (ii) promptly providing complete, accurate and timely information, data and responses as requested by LeaseQuery; and (iii) promptly completing any other tasks or approvals that are reasonably necessary to enable LeaseQuery to efficiently complete the Professional Services. Client will reasonably cooperate with LeaseQuery to enable functionalities necessary for the operation of the Solution, including, where applicable, to automate (i) the identification of Members, and (ii) collection of relevant information from Client and its Members and vendors.

**3.6 Client Subsidiaries.** The party signing the applicable Sales Order incorporating this Agreement on behalf of Client (i) represents and warrants that it has the authority to enter into this Agreement and any Sales Order on behalf of each of its Client Subsidiaries and bind each such Client Subsidiary to the terms and conditions of this Agreement and any applicable Sales Order, (ii) shall be jointly and severally responsible for each such Client Subsidiary, and (iii) shall ensure that each such Client Subsidiary complies with the terms and conditions of this Agreement and any applicable Sales Order.

**3.7 Purchase by Client Affiliates of LeaseQuery Products and Services.** If any Client Subsidiary or affiliate of Client (or, with respect to governmental customers, any related governmental entity) wishes to incorporate the terms of this Agreement with respect to its purchase of its own separate subscription or Professional Services from LeaseQuery, and LeaseQuery wishes to sell such subscription and/or Professional Services pursuant to such terms, such Client Subsidiary or other affiliate may do so by entering into a separate Sales Order that specifically incorporates the terms of this Agreement, in which event, notwithstanding anything to the contrary herein, solely with respect to such Sales Order, the terms of this Agreement shall apply to such Sales Order as if this Agreement were entered into between LeaseQuery and such Client Subsidiary or affiliate (rather than with the party that executed this Agreement for Client). If any Client Subsidiary or affiliate of Client requests to incorporate these terms, Client hereby consents to LeaseQuery's disclosure of these terms and any applicable Sales Order to such Client Subsidiary or affiliate.

**3.8 Certified Service Partners.** If Client elects to engage any Certified Service Partner to provide any services that are permitted under LeaseQuery's certified service partner program, Client (i) acknowledges and agrees that any such services provided by any Certified Service Partner shall be provided directly to Client, solely for the benefit of and reliance by Client, and subject to any terms or conditions that may be entered into directly between Client and such Certified Service Partner; (ii) acknowledges and agrees that no such Certified Service Partner shall be deemed a subcontractor, agent or client of LeaseQuery, and LeaseQuery shall have no responsibility for, and shall have no obligation to review, any services provided by any Certified Service Partner; and (iii) hereby releases LeaseQuery from any claims arising out of or relating to any services provided by any Certified Service Partner for Client.

#### **4. INTELLECTUAL PROPERTY RIGHTS.**

**4.1 Ownership; Reservation of Rights.** LeaseQuery owns and reserves all right, title and interest, including all Intellectual Property Rights, in and to the Solution, Documentation and other LeaseQuery Intellectual Property Rights. No rights are granted to Client under this Agreement or any Sales Order other than as expressly set forth in this Agreement. Under no circumstance will Client have the right to access the object code or source code for the Solution. By submitting Client Feedback, Client hereby grants and assigns to LeaseQuery all right, title and interest in and to such Client Feedback. LeaseQuery shall have no obligation to accept or incorporate Client Feedback, and Client shall have no obligation to provide Client Feedback.

**4.2 Client Data.** Client agrees to allow LeaseQuery to collect Client Data and use Client Data for the purposes of providing and improving the Solution and performing Professional Services (if applicable). As between Client and LeaseQuery, Client owns all Client Data. Notwithstanding anything to the contrary in this Agreement, LeaseQuery may anonymize and/or aggregate any data obtained from the Solution or the operation thereof, including, without limitation, performance results for the Solution, information derived from data received or generated by the Solution, reports generated by the Solution, and any derivative works of any of the foregoing. LeaseQuery shall own and may utilize such anonymized and/or aggregated information for purposes of LeaseQuery's business, provided that LeaseQuery's use thereof will not directly or indirectly reveal through any reasonably foreseeable method the identity of Client, any individual or any specific data entered by Client (or by LeaseQuery on behalf of Client) into the Solution.

**4.3 Professional Services; Preexisting Materials.** In connection with the provision of Professional Services (if applicable), as between LeaseQuery and Client, each party shall be the sole and exclusive owner of all Intellectual Property Rights in and to its Preexisting Materials and any modifications, derivatives, or improvements it makes thereto. Except as expressly set forth herein, both parties understand and agree that no license, right, title or interest in any of the other party's Preexisting Materials or Intellectual Property

Rights is granted or transferred under this Agreement and neither party will gain by virtue of this Agreement or any Sales Order any rights of ownership in any Intellectual Property Rights or Preexisting Materials owned by the other party (except to the extent any Client Feedback is based on Client's Preexisting Materials).

4.4 Indemnification for Infringement. LeaseQuery shall indemnify, defend and hold Client harmless from and against any third-party claims or suits arising out of actual infringement by the Solution of the third-party's Intellectual Property Rights, provided that (i) Client immediately notifies LeaseQuery in writing of the third-party claim, (ii) Client tenders to LeaseQuery sole and complete control of the defense and any settlement of the claim, and (iii) Client reasonably cooperates with LeaseQuery in its defense of the claim. These obligations of LeaseQuery do not apply with respect to claims arising out of or related to Client Data or to portions or components of the Solution or reports generated by the Solution (A) that (in the case of reports generated by the Solution) are modified (other than by LeaseQuery) after delivery by LeaseQuery, (B) where Client continues the allegedly infringing activity after being notified thereof, (C) where Client's use of the Solution or reports generated by the Solution is not in accordance with this Agreement and the applicable Sales Order, or (D) the use of the Solution in combination with other software where such other software is alleged to be infringing. If LeaseQuery or Client is enjoined from providing access to, or using, the Solution or LeaseQuery reasonably believes that LeaseQuery or Client will be enjoined, LeaseQuery shall have the right, at its sole option, to obtain for Client the right to continue to access the Solution or to replace or modify the Solution so that it is no longer infringing. If neither of the foregoing options is commercially practicable to LeaseQuery, then Client's access to the Solution may be terminated at the option of LeaseQuery and LeaseQuery shall refund or offset against other amounts due to LeaseQuery any prepaid subscription fees prorated for the portion of the then-current term remaining after the effective date of the termination. The obligations set forth in this paragraph shall be LeaseQuery's sole and exclusive obligations, and Client's sole and exclusive remedy, for infringement.

## 5. FEES; CHARGES.

5.1 Invoices; Payment. Fees and expenses will be invoiced to Client in accordance with the terms and conditions of this Agreement, unless otherwise agreed by the parties and set forth in the applicable Sales Order. All fees and expenses due under this Agreement or any Sales Order shall be due and payable within thirty (30) days of the invoice date. Client shall provide LeaseQuery with complete and accurate billing and contact information, including a valid email address for receipt of invoices, and shall promptly update LeaseQuery with any changes to such information. Except as specifically set forth in this Agreement, all payment obligations are non-cancelable, not subject to setoff, and all payments made are non-refundable. Any payment not received from Client by the due date will accrue interest from the date such payment is due until the date such payment is paid at the compounded monthly rate of the lesser of 2.0% of the outstanding balance or the maximum rate permissible under applicable law. Client shall reimburse LeaseQuery for all costs incurred in collecting any overdue payments and related interest, including, without limitation, attorneys' fees, legal costs, court or arbitration costs and collection agency fees.

5.2 Recurring Fees. LeaseQuery reserves the right to adjust fees in connection with any renewal of the Sales Order. Any such change may be evidenced solely by the invoice submitted by LeaseQuery for such upcoming Renewal Term; provided, however, that with respect to any increase in recurring fees for an automatically renewing purchase of a product or service by an amount that exceeds an annual, compounded rate of three percent (3%), calculated from the commencement of the applicable Sales Order through the effective date of the increased fees, LeaseQuery must first provide such invoice or other notice to Client at least 60 days before the end of the then-current term of the Sales Order. For any fees that are charged on a per-unit basis, any adjustments to such fees shall be calculated on a per-unit basis for purposes of the preceding sentence. Notwithstanding the foregoing, any products or services offered for free may be adjusted to their then-current list price upon renewal. All fees are based on access rights acquired and shall not be contingent on any actual access, the entry of any data or information into the Solution or the completion of any Client-requested software integration or software development; provided, however, that all fees that may be invoiced upon execution of the Sales Order are due and payable in advance even though Client may not have access to the Solution or components thereof until required implementation steps are complete. In the event that an applicable Sales Order provides that additional or supplemental fees shall be payable if a specified number of Records or Members (a "Usage Threshold") is exceeded, (i) the number of Records or Members to be measured against the Usage Threshold shall be calculated as the maximum number of Records or Members maintained by the Solution at any time during the term of the applicable Sales Order, and (ii) once such Usage Threshold has been exceeded, such additional or supplemental fees may be invoiced, and shall be payable, in advance for the remainder of the then-current term and shall be calculated based on the number of full or partial months (without intramonth proration) from the date such Usage Threshold is exceeded through the end of the then-current term.

5.3 Professional Service Fees. Unless otherwise agreed upon by the parties, all Professional Services (if applicable) specifically described in a Sales Order shall be provided for the fees set forth in such Sales Order, provided that LeaseQuery reserves the right to change such fees upon 60 days' notice (which may be in the form of an invoice) in connection with a renewal of the Sales Order. To the extent LeaseQuery does not receive during the first 30 days after the Effective Date information necessary to complete the Professional Services, LeaseQuery will reallocate its resources to perform such Professional Services at a later date at LeaseQuery's then-current standard hourly or per-unit rates set forth in the Sales Order for the applicable Professional Service. Unless otherwise

specified in an applicable Sales Order, all Professional Services shall be provided on a time and materials basis at LeaseQuery's then-current standard rates and invoiced in arrears no more frequently than on a monthly basis in increments not to exceed one hour.

5.4 Suspension of Services. Without limiting any of LeaseQuery's rights to suspend or discontinue access to the Solution pursuant to any other provision of this Agreement, LeaseQuery may, without liability to Client, alter, suspend, or discontinue all or a portion of Client's access to the Solution and/or any Professional Services at any time if LeaseQuery believes in good faith that Client has breached, or has communicated its intention to breach, any of the terms of this Agreement with respect to such Solution or any Sales Order, including, without limitation, the failure to pay any invoiced fees or expenses in a timely manner.

5.5 Taxes. LeaseQuery's fees do not include any Taxes. Client is responsible for paying all Taxes related to this Agreement or any Sales Order. The amount shown in the Sales Order, which is net of Taxes, plus any Taxes that LeaseQuery is required to collect or pay (regardless of when LeaseQuery is made aware of any obligation to collect or pay such Taxes), shall be invoiced to and promptly paid by Client (without reducing the amount of fees or expense reimbursements to which LeaseQuery is entitled under this Agreement and any Sales Order), unless Client provides LeaseQuery with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 6. TERM AND TERMINATION.

6.1 Term of Sales Order. Unless otherwise specified in the Sales Order, the term of each Sales Order shall commence on the date such Sales Order is last signed by the parties and shall continue for the Initial Term thereof. Thereafter, such Sales Order shall automatically renew for an unlimited number of consecutive terms, each of the same duration as the immediately preceding term (each, a "Renewal Term") unless (i) otherwise specified in a Sales Order or (ii) either party provides written notice of such party's determination not to renew the Sales Order at least 30 days and no more than 180 days prior to the end of the then-current term. In the event either party declines to renew any Sales Order in accordance with the preceding sentence for any or no reason, such party shall not have any liability to the other party merely as a result of such non-renewal, including without limitation any claim for detrimental reliance.

6.2 Term of this Agreement. This Agreement shall remain in effect until all Sales Orders have been terminated, at which point this Agreement shall automatically terminate. For the avoidance of doubt, if any Sales Order is terminated, the terms of this Agreement shall continue to apply to any other Sales Order that has not been terminated.

6.3 Termination. Any Sales Order may be terminated by either party if the other party materially breaches the terms or conditions of this Agreement with respect to such Sales Order and the breaching party fails to cure such breach within 30 days of the date that written notice of the breach is given by the non-breaching party. In addition, any Sales Order may be immediately terminated by LeaseQuery with written notice to Client if LeaseQuery determines that the provision of services in exchange for the fees as set forth in this Agreement or in the applicable Sales Order (i) may be in conflict with law, (ii) would require the Client Data to be hosted in another country, or (iii) would subject LeaseQuery to industry-specific registration, certification, licensing or similar requirements. If this Agreement is terminated, all Sales Orders shall automatically terminate.

6.4 Effect of Termination. Upon a termination of any Sales Order or this Agreement for any reason, Client shall promptly (but in no event within more than 30 days) pay LeaseQuery all amounts owed as of the effective date of the termination, including, without limitation, the subscription fees for the unexpired then-current term (to the extent not already paid). Client acknowledges and agrees that all Client Data may be deleted or destroyed at any time after the termination or expiration of the applicable Sales Order.

## 7. REPRESENTATIONS; WARRANTIES; DISCLAIMERS.

7.1 Representations and Warranties. Each party represents, with respect to this Agreement and any applicable Sales Order, that (i) it has the requisite power, authority and capacity to enter into this Agreement or the Sales Order, and (ii) this Agreement and the Sales Order each constitute a legal, valid and binding obligation, enforceable against such party. Client represents and warrants that it is not a competitor of LeaseQuery. LeaseQuery warrants that (a) the Solution shall operate materially in accordance with the terms of this Agreement and the applicable Sales Order, provided that Client's sole and exclusive remedy for noncompliance with the SLAs set forth in Exhibit A are as set forth in Exhibit A, and (b) any Professional Services (if applicable) shall be performed in good faith.

7.2 Warranty Remedies. To receive remedies for LeaseQuery's breach of a warranty, Client must promptly report the breach of warranty in writing to LeaseQuery no later than thirty (30) days of the first date the deficiency is identified by Client. As Client's sole and exclusive remedy and LeaseQuery's sole liability for an act or omission constituting a breach of warranty, (i) LeaseQuery shall correct the deficiency at no additional charge to Client, or (ii) in the event it is not commercially practicable for LeaseQuery to correct such deficiencies after good-faith efforts, LeaseQuery shall refund to Client or offset against other amounts due to LeaseQuery any fees paid allocable to the defective portion of the service from the date LeaseQuery received such notice.

**7.3 DISCLAIMER OF WARRANTIES AND REPRESENTATIONS.** Except for the limited warranties and representations expressly provided in Section 7.1 of this Agreement and to the maximum extent permitted by applicable law, LeaseQuery does not make, and specifically negates and disclaims, any warranties, representations, promises, covenants, obligations, agreements or guarantees of any kind, whether express or implied (including, without limitation, any implied warranties of merchantability or fitness for a particular purpose), written or oral, past, present or future, statutory or otherwise, with respect to the Solution, Professional Services, the Documentation, and/or any related resources. Client is not relying on, and has not relied on, any other representation, warranty or other information with respect to LeaseQuery, the Solution, the outputs of the Solution, or the Professional Services. Client is responsible for making its own evaluation of the adequacy and suitability of the Solution and Professional Services for Client's needs. LeaseQuery does not warrant that the Solution will be error free or uninterrupted or that any integration or interoperability with a third-party software provider will remain available for the duration of Client's subscription. Loss of internet access or failure or unavailability of any third-party software, hardware or other interfacing or communicating device (whether due to an outage, update, upgrade, password re-provisioning or otherwise) is Client's responsibility and is not warranted by LeaseQuery.

## **8. LIMITATION OF LIABILITY; INDEMNIFICATION.**

**8.1 DISCLAIMER OF CERTAIN DAMAGES.** Under no circumstances shall LeaseQuery or any of its affiliates or subcontractors have any liability whatsoever for (i) any damages of any kind arising out of any interruption in availability of internet connectivity or the Solution, (ii) any damages of any kind arising out of errors in the entry of data or information into the Solution, or (iii) any consequential, indirect, incidental, punitive, special or exemplary damages, loss of Client's profit or revenue, loss of use, loss of data or business interruption damages.

**8.2 LIMITATION OF LIABILITY.** To the maximum extent permitted by applicable law, in no event shall the aggregate liability of LeaseQuery or any of its affiliates or subcontractors, regardless of the cause and regardless of any other failure of any provision or undertaking in this Agreement, under contract, tort or any other theory of liability (including claims alleging negligence), exceed (i) in case of causes of action that arise out of or relate to Professional Services, the total amounts paid by Client to LeaseQuery for the Professional Services giving rise to the claim during the six months preceding the date such cause of action arises, and (ii) in the case of any other cause of action, 50% of the annualized subscription fee (to the extent paid by Client) as of the date such cause of action arises for the product giving rise to the claim, except to the extent resulting from LeaseQuery's willful misconduct or bad faith. In circumstances where any limitation of liability or indemnification provision in this Agreement is unavailable, the aggregate liability of LeaseQuery and its affiliates and subcontractors for any claim shall not exceed an amount that is proportional to the relative fault that the conduct of LeaseQuery and its affiliates and subcontractors bears to all other conduct giving rise to such claim.

**8.3 INDEMNIFICATION.** To the maximum extent permitted by applicable law, Client shall indemnify and hold harmless LeaseQuery, its affiliates and subcontractors, and their respective personnel from all claims, liabilities and expenses (including, without limitation, attorneys' fees) attributable to claims of third parties relating to or resulting from (i) a breach of Section 3 of this Agreement, or (ii) the use of the Solution or the use or disclosure of any outputs therefrom, any Professional Services or any other deliverables from LeaseQuery. This indemnification provision applies regardless of whether the third-party claim is caused or alleged to be caused in whole or in part by the indemnified party; provided, however, that it shall not apply to the extent of LeaseQuery's willful misconduct or bad faith.

## **9. CONFIDENTIALITY.**

Each party acknowledges that in the course of this Agreement, it may have access to and may be making use of, acquiring or adding to Confidential Information of the other party. Each party hereby confirms that it will not, using at least the same degree of care as it employs in maintaining in confidence its own Confidential Information of a similar nature (but in no event less than a reasonable degree of care), disclose any such Confidential Information to a third party except with the prior written consent of the other party or as specifically provided in this Agreement. This Agreement imposes no confidentiality obligation upon the receiving party with respect to information that (i) was in the receiving party's possession before receipt from the disclosing party without an obligation to keep such information confidential; (ii) is or becomes available to the public through no fault of the receiving party; (iii) is received in good faith by the receiving party from a third party not subject to an obligation of confidentiality owed to the disclosing party and who discloses the Confidential Information without an obligation of confidentiality; or (iv) is disclosed as required by law or regulation, to respond to governmental inquiries, or in connection with litigation pertaining hereto, provided in each case that the party so compelled promptly provides the other party with prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the other party's cost, if the other party wishes to contest or otherwise limit the disclosure. If a party discloses (or threatens to disclose) any Confidential Information of the other party in breach of confidentiality protections in this Section, the other party shall have the right, in addition to any other remedies available, to seek injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies may be inadequate. Client hereby consents to LeaseQuery disclosing Client's Confidential Information to contractors providing administrative, infrastructure and other support services to LeaseQuery, subcontractors providing

services in connection with this Agreement, and actual or potential investors or acquirers. With respect to any NDA, notwithstanding anything to the contrary in such NDA, the obligations of the parties under such NDA shall be superseded in their entirety by the observance by the parties of the confidentiality obligations in this Agreement, and any Confidential Information shared under such NDA shall be treated as Confidential Information under this Agreement.

## 10. PRODUCT-SPECIFIC TERMS

10.1 Lease Accounting/Management. Solely with respect to a Sales Order that includes the purchase of a subscription to LeaseQuery's Solution for lease accounting/management, any fees for contract analysis and Record entry services set forth in the Sales Order (whether paid upfront based on a maximum number of Records or per-Record on an ongoing basis) include, for each Record, one original lease and one amendment. An additional \$100 fee will apply for each additional amendment (invoiced no more frequently than monthly in arrears).

10.2 SaaS Spend Management Solution. LeaseQuery expressly reserves the right to decline to register any Member if LeaseQuery determines in its sole discretion that such action is necessary for compliance purposes. Should LeaseQuery decline to register any Member for purposes of compliance with applicable law, such Member will not count towards Client's Usage Threshold.

## 11. MISCELLANEOUS.

11.1 Notices. Except as otherwise expressly specified in this Agreement, all notices related to this Agreement or any Sales Order shall be effective upon (i) personal delivery, (ii) the third Business Day after mailing, (iii) the first Business Day following dispatch using a nationally recognized overnight courier (with all fees prepaid), or (iv) except with respect to notices of direct or indemnifiable claims, demands or waivers (collectively, "Legal Notices"), which shall be clearly identifiable as Legal Notices, the day of sending notice via email or posting notice in the Solution; provided, however, that (in the case of subclauses (i) through (iv) of this sentence) such notice shall be effective only if (a) delivered in accordance with this sentence and (b) with respect to notices to LeaseQuery, a mandatory copy is delivered via email to legalnotices@leasequery.com. Each party may modify its recipient of notices or the address for notices by providing notice pursuant to this Agreement.

11.2 Force Majeure. LeaseQuery will not be liable for any act, omission, or failure to fulfill its obligations under this Agreement or any Sales Order if such act, omission, or failure arises from any Force Majeure Event. If LeaseQuery is unable to fulfill its obligations due to the Force Majeure Event, LeaseQuery will as soon as practicable notify Client in writing of the reasons for its failure to fulfill its obligations and the effect of such failure and use reasonable means to avoid or remove the cause and perform its obligations.

11.3 Marketing. Client acknowledges and agrees that LeaseQuery may use the name, logo or marks of Client and its affiliates in a representative client list or other marketing material. Client may revoke the rights granted in this paragraph at any time by providing at least thirty (30) days' written notice to LeaseQuery via email to legalnotices@leasequery.com.

11.4 Non-Solicitation. For the duration of this Agreement and for the period of two years following termination thereof, Client shall not directly or indirectly recruit, solicit, or induce or attempt to recruit, solicit or induce any employee of LeaseQuery to terminate their employment relationship with LeaseQuery or to enter into employment or any other kind of business relationship with Client or its affiliate.

11.5 End of Life. LeaseQuery may discontinue the Solution by providing at least 180 days' notice to Client (the Solution's "End of Life"). If the End of Life occurs during the term of a Sales Order and LeaseQuery maintains a different solution serving substantially the same purpose, LeaseQuery will use commercially reasonable efforts to transition Client to such other LeaseQuery solution for the remainder of the then-current term. If LeaseQuery does not maintain such an alternative solution, LeaseQuery may terminate the Sales Order and refund or offset against other amounts due to LeaseQuery any prepaid subscription fees prorated for the portion of the then-current term remaining after the effective date of the End of Life.

11.6 Integrations. In the event that, per Client's request, LeaseQuery makes available to Client any Integration, then Client may use such Integration solely as part of the Solution during the term of the applicable Sales Order on a non-exclusive, non-transferable, non-assignable (except pursuant to Section 11.12 of this Agreement) basis, subject at all times to the terms and conditions of this Agreement. Any disclosure of Client Data to a third party through the Integration shall be deemed, for purposes of this Agreement, a disclosure by Client rather than LeaseQuery. The Integration shall be deemed part of the Solution for purposes of this Agreement; provided, however, that any third-party software or third-party data accessed through an Integration is independent from LeaseQuery, and LeaseQuery has no control over, is not responsible for, and makes no warranties or representations regarding, such third-party software, data, website, security or other information accessed through the Integration. Provision of the Integration does not imply that LeaseQuery endorses or accepts any responsibility for the software, content accessed therefrom or availability thereof. Client acknowledges that integrated third-party software providers may, with or without notice, restrict, interrupt, discontinue or terminate the Integration, or require LeaseQuery to do any of the foregoing, in which case Client's right to use such Integration pursuant to this Section

shall automatically terminate, and LeaseQuery shall not be responsible for, and shall have no liability (including any obligation to provide a refund, credit or other compensation) in connection therewith.

11.7 Beta Services. From time to time, LeaseQuery may make Beta Services available to Client at no charge. Client may choose to try such Beta Services or not in its sole discretion. Any use of Beta Services is subject to the Beta Services Terms and Conditions available at [leasequery.com/beta\\_services\\_terms.pdf](https://leasequery.com/beta_services_terms.pdf), which may be updated by LeaseQuery from time to time.

11.8 Entire Agreement; Amendment and Unilateral Updates. This Agreement (together with any Sales Order) contains the entire agreement and understanding among the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements (including, without limitation, any NDA), understandings, proposals, representations, promises, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. LeaseQuery reserves the right, at its sole discretion, to update the terms of this Agreement at any time with at least 30 days' advanced notice to Client by posting the updated agreement to [https://leasequery.com/subscription\\_terms\\_and\\_conditions.pdf](https://leasequery.com/subscription_terms_and_conditions.pdf). Client agrees that, by continuing to access the Solution following such update, Client agrees to be bound by the terms of such updated agreement. Payment of invoices shall not be dependent upon a Client-generated purchase order. Client's provision of any such purchase order under this Agreement shall be for the informational purposes only, and any terms or conditions stated in such purchase order shall be void and will not modify the terms or become part of this Agreement, or otherwise affect either party's rights or obligations, in any way, even if such purchase order is signed by LeaseQuery. The express terms of this Agreement control and supersede any course of performance or usage of the trade inconsistent with any of the terms of this Agreement. Except as otherwise provided in this Agreement, no modification, amendment, or waiver of any provision of this Agreement or any Sales Order shall be effective unless in writing and executed by the party against whom the modification, amendment or waiver is to be asserted. Any click-through terms that Client, or a third party on behalf of Client, requires of LeaseQuery shall have no effect and hereby are deemed null and void.

11.9 Interpretation. This Agreement is the result of negotiations between, and has been reviewed by, the parties and their respective legal counsel, and shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. Headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement. If any date on which a party is required to make a payment or a delivery pursuant to the terms of this Agreement or a Sales Order is not a Business Day, then such party shall make such payment or delivery on the next Business Day. Any schedules and exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

11.10 Severability. If any provision of this Agreement or any Sales Order is held to be invalid, illegal, or unenforceable, such provision will be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the parties, and the remainder of this Agreement or such Sales Order will remain in full force and effect.

11.11 Waiver. Failure of either party to seek remedy of any breach of any portion of this Agreement or any Sales Order by the other party from time to time shall not constitute a waiver of such rights in respect to the same or any other breach.

11.12 Assignment. Client shall not assign, voluntarily or involuntarily, all or any portion of this Agreement (or any Sales Order) without the prior written consent of LeaseQuery, provided that, upon advance written notice to LeaseQuery, Client may assign all (or a portion) of its rights and obligations under this Agreement (together with all Sales Orders) without LeaseQuery's consent to a successor by merger or a purchaser of all or substantially all of Client's assets, but only if, as reasonably determined by LeaseQuery, such successor or purchaser is not a competitor of LeaseQuery. In the event of a purported assignment or delegation of any of Client's rights or obligations under this Agreement (or any Sales Order) made in violation of this section, such assignment or delegation shall be void, and LeaseQuery shall have the right to terminate this Agreement, immediately upon written notice to Client without limiting any of LeaseQuery's other rights or remedies herein. Any assignment or delegation that is made in accordance with this section shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns.

11.13 No Third-Party Beneficiaries. This Agreement and any Sales Order are for the sole benefit of the parties hereto and their respective permitted successors and assigns and nothing herein or in any Sales Order, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement or any Sales Order.

11.14 Limitation on Actions. Except with respect any express indemnification obligation under Section 8.3 of this Agreement, no action relating to any Dispute (other than to collect unpaid invoices or protect or enforce Intellectual Property Rights set forth in Section 4.1 of this Agreement) may be brought more than one year after the cause of action accrued, and Client shall not raise any Dispute based on the alleged inaccuracy of an invoice more than ninety (90) days after the invoice date.

11.15 Survival. Notwithstanding anything herein to the contrary, the provisions of Section 1, Section 2.1, Section 3, Section 4, Section 5.5, Section 6.4, Section 8, Section 9 and Section 11 hereof shall survive any termination of this Agreement.

11.16 Conflicts. In the event of a conflict between the terms of this Agreement and a Sales Order, the terms of this Agreement shall control, except to the extent that a Sales Order expressly provides that certain provisions therein shall control over specified provisions of this Agreement.

11.17 Governing Law. Issues of arbitrability shall be determined by an arbitrator in accordance with the federal substantive and procedural laws relating to arbitration; in all other respects, all matters arising out of or relating to this Agreement or any Sales Order shall be governed, construed and enforced in accordance with the laws of the State of Delaware, without reference to the conflicts of law principles that would require the application of any other law.

11.18 Dispute Resolution; Arbitration; WAIVER OF JURY TRIAL. Any Dispute (including, without limitation and for the avoidance of doubt, the determination of the scope or applicability of this Section) shall be finally determined and resolved on an individual basis by binding arbitration in Atlanta, Georgia. The arbitration shall be administered by JAMS Mediation, Arbitration and ADR Services (“JAMS”) pursuant to its Comprehensive Arbitration Rules and Procedures or pursuant to JAMS’ Streamlined Arbitration Rules and Procedures, if applicable (collectively, the “Rules”) that are in effect at the time of the commencement of the arbitration, except to the extent modified by this section. LeaseQuery and Client agree that each party waives the right to a jury trial and to assert class or collective action claims against the other. The obligation to arbitrate shall extend to and encompass any claims that either party may have or assert against any of the other party’s personnel. The arbitration shall be conducted before one arbitrator to be appointed in accordance with the applicable provisions of the JAMS Rules. No arbitrator may serve as an arbitrator with respect to the Dispute unless such arbitrator agrees in writing to abide by the terms of this section. Except with respect to the interpretation and enforcement of these arbitration procedures, the arbitrator shall apply the governing law set forth herein in connection with the Dispute. The arbitrator shall have no power to award damages inconsistent with this Agreement, including the limitations on liability herein. To the extent the arbitration is governed by JAMS’ Streamlined Arbitration Rules and Procedures, no discovery shall be permitted in connection with the arbitration, except to the extent that it is expressly authorized by the arbitrator upon a showing of substantial need by the party seeking discovery. The parties and the arbitrator shall maintain the confidential nature of the arbitration proceeding and the award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment on the arbitrator’s award may be entered in any court having jurisdiction thereof. Notwithstanding anything to the contrary in this Section, with respect to any claim brought by LeaseQuery for nonpayment of its fees, expenses or interest, LeaseQuery, in its sole discretion, may elect to bring such claim to mandatory arbitration pursuant to this Section or, alternatively, in the courts of the State of Georgia or the federal courts located in the Northern District of Georgia, and in the event LeaseQuery elects to bring such claim in any of such courts, (i) each party irrevocably submits to the exclusive jurisdiction of such courts, (ii) each party hereby waives, and agrees not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or thereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in such courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, (iii) each of the parties hereby consents to and grants any such court jurisdiction over the person of such parties and over the subject matter of any such Dispute, and (iv) each of the parties hereby irrevocably waives all right to a trial by jury and all right to assert class or collective action claims against the other in any action, proceeding or counterclaim arising out of or relating to this Agreement. Except as otherwise set forth in this Agreement, each party shall bear its own costs in connection with a Dispute, including, without limitation, attorneys’ fees and arbitration and court costs.

11.19 Federal Clients. If Client is a U.S. federal government department or agency or contracting on behalf of such department or agency, all services described herein, including the provision of access to the Solution and all Professional Services, 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 those terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, and supporting Professional Services in accordance with paragraph (5) of the definition of “Commercial Item” in 48 C.F.R. §2.101. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, access to the Solution and supporting Professional Services are provided to Client with only those rights as provided under the terms and conditions of this Agreement and any applicable Sales Order.

11.20 Multiple Counterparts. Any amendment or addendum to this Agreement or any Sales Order may be executed in multiple counterparts, including facsimile signatures (e.g., pdf files) and digital signatures using digital software that electronically captures, or otherwise allows a signatory to adopt, an identifying mark as such person’s signature thereto, each of which shall be deemed an original, but all of which shall be deemed to be one and the same agreement. A signed copy of such Agreement delivered by e-mail or other means of electronic communication shall be deemed to have the same legal effect as delivery of an original signed copy.

\* \* \*

## Exhibit A Service Level Agreements (SLAs)

LeaseQuery's Solution is a software-as-a-service based on a multi-tenanted operating model that applies common, consistent management practices for all clients using the service. This common operating model, which requires LeaseQuery to make uniform availability commitments across its client base, allows LeaseQuery to provide the high level of service reflected in its agreements with its clients. Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Agreement.

1. **Service Availability.** LeaseQuery's service availability commitment for a given calendar month is 99.9%, excluding Planned Downtime. For purposes of calculating service availability, (i) "Total Minutes" means the total minutes in the calendar month; (ii) "Planned Downtime" means the total minutes during the month of planned downtime that occur between 12:00 a.m. (midnight) and 2:00 a.m. (Eastern Time), Monday through Friday; on Friday and Saturday between 11:00 p.m. and 5:00 a.m. the following morning (Eastern Time); or at any other time in increments not to exceed one hour if at least 24 hours' notice is provided in the Solution or otherwise; and (iii) "Unplanned Downtime" means the total minutes for which Client notifies LeaseQuery within 30 days after the end of the applicable month and LeaseQuery confirms that the Solution is unavailable due to an outage (other than Planned Downtime) during the month. All times are subject to change upon reasonable notice in the Solution or otherwise. The measurement point for service availability is the availability of the Solution at LeaseQuery's or its third party provider's hosting data center's internet connection points based solely on LeaseQuery's monitoring tool. As a result, any unavailability of, or temporary lack of interoperability or integration of the Solution with, any third-party application due to such third-party application's downtime, updates, upgrades, changes in Client's administrator passwords (if applicable), reprovision of Client's Members' accounts (if applicable), or other causes outside of LeaseQuery's reasonable control, does not constitute downtime. Service availability is calculated per month as follows:

$$\left( \frac{\text{Total Minutes} - \text{Unplanned Downtime} - \text{Planned Downtime}}{\text{Total Minutes} - \text{Planned Downtime}} \right) \times 100 \geq 99.9\%$$

2. **Noncompliance with Service Availability Commitment.** The consequences of a failure by LeaseQuery to meet the service availability commitment set forth above are set forth below:

- (a) First month of missed availability: If requested by Client, the parties shall meet telephonically, at Client's request, to discuss potential corrective actions.
- (b) Second consecutive month: 10% of the subscription fee for the Solution for applicable month.
- (c) Third consecutive month: 20% of the subscription fee for the Solution for the applicable month.
- (d) Fourth consecutive month: 30% of the subscription fee for the Solution for the applicable month.
- (e) Fifth consecutive month: 40% of the subscription fee for the Solution for the applicable month.
- (f) Sixth consecutive month: 50% of the subscription fee for the Solution for the applicable month.
- (g) More than six consecutive months: Within 30 days of such failure, either party shall have the option to terminate the Sales Order for the affected Solution.

Credits shall be deducted from subsequent invoices for subscription fees or other fees or, upon the expiration or termination of the Sales Order, paid to Client directly or offset against other amounts due to LeaseQuery hereunder. The remedies set forth in this exhibit shall be Client's sole remedies and LeaseQuery's sole liability for missed service availability commitments.

## DEPARTMENT OF WATER

### FISCAL DIVISION

RENEE M. YADAO, WATERWORKS CONTROLLER

4398 PUA LOKE STREET LIHUE, HAWAII 96766

[WWW.RYADAO@KAUAIWATER.ORG](mailto:WWW.RYADAO@KAUAIWATER.ORG) (808) 245-5422 BUSINESS



JOSEPH E. TAIT  
MANAGER AND CHIEF ENGINEER

MICHAEL K. HINAZUMI, P.E.  
DEPUTY MANAGER-ENGINEER

## MEMORANDUM

TO: Joseph E. Tait, Manager & Chief Engineer

FROM: Renee M. Yadao, Waterworks Controller

DATE: October 11, 2023

SUBJECT: **CHIEF PROCUREMENT OFFICER (CPO) APPROVAL ON ACCEPTANCE OF CERTAIN TERMS AND CONDITIONS AS STATE IN SUBSCRIPTION AGREEMENT (LEASEQUERY)**

The Fiscal Division is seeking CPO approval to accept standard terms as stated in the Subscription Agreement (SA) with LeaseQuery. The SA was reviewed by Mahealani Krafft, Office of the County Attorney. In May 2020, the Government Accounting Standards Board (GASB) issued GASB Statement No. 96, *Subscription-Based Information Technology Arrangements*. This statement provides guidance for accounting and financial reporting for subscription-based information technology arrangements (SBITAs) for governments that are end users of SBITAs. The DOW is required to implement GASB Statement No. 96 in the fiscal year ended June 30, 2023. LeaseQuery is a software solution that will be used to compile existing contracts and calculate the subscription asset, corresponding liability, and amortization schedule to be recognized in the financial statements.

Below represents standard terms and conditions that cannot be removed from the SA. We are moving forward with the execution of the 12-month agreement, future years to be re-solicited. We request CPO approval for the following terms and conditions:

**3.3 Responsibility for Client Data.** Client is exclusively responsible for its financial statements, tax returns, and the accuracy, quality and legality of all Client Data, including, without limitation, obtaining all required authorizations, permissions and consents necessary for LeaseQuery and its contractors and subcontractors to access, process and use any Client Data in accordance with this Agreement. LeaseQuery shall not be responsible for (i) any Client Data received by the Solution from Client or its agents or representatives, or (ii) any judgments made (whether by Client or LeaseQuery) with respect to any inaccuracies, ambiguities or inconsistencies in any document containing Client Data. Client is responsible for the use of the output which it obtains from the Solution.

**5. Fees; Charges.** Any payment not received from Client by the due date will accrue interest from the date such payment is due until the date such payment is paid at the compounded monthly rate of the lesser of 2.0% of the outstanding balance or the maximum rate permissible under applicable law. Client shall reimburse LeaseQuery for all costs incurred in collecting any overdue payments and related interest, including, without limitation, attorneys' fees, legal costs, court or arbitration costs and collection agency fees.

7.3 Disclaimer of Warranties and Representations. Except for the limited warranties and representations expressly provided in Section 7.1 of this Agreement and to the maximum extent permitted by applicable law, LeaseQuery does not make, and specifically negates and disclaims, any warranties, representations, promises, covenants, obligations, agreements or guarantees of any kind, whether express or implied (including, without limitation, any implied warranties of merchantability or fitness for a particular purpose), written or oral, past, present or future, statutory or otherwise, with respect to the Solution, Professional Services, the Documentation, and/or any related resources. Client is not relying on, and has not relied on, any other representation, warranty or other information with respect to LeaseQuery, the Solution, the outputs of the Solution, or the Professional Services. Client is responsible for making its own evaluation of the adequacy and suitability of the Solution and Professional Services for Client's needs. LeaseQuery does not warrant that the Solution will be error free or uninterrupted or that any integration or interoperability with a third-party software provider will remain available for the duration of Client's subscription. Loss of internet access or failure or unavailability of any third-party software, hardware or other interfacing or communicating device (whether due to an outage, update, upgrade, password re-provisioning or otherwise) is Client's responsibility and is not warranted by LeaseQuery.

8.1 Disclaimer of Certain Damages. Under no circumstances shall LeaseQuery or any of its affiliates or subcontractors have any liability whatsoever for (i) any damages of any kind arising out of any interruption in availability of internet connectivity or the Solution, (ii) any damages of any kind arising out of errors in the entry of data or information into the Solution, or (iii) any consequential, indirect, incidental, punitive, special or exemplary damages, loss of Client's profit or revenue, loss of use, loss of data or business interruption damages.

8.2 Limitation of Liability. To the maximum extent permitted by applicable law, in no event shall the aggregate liability of LeaseQuery or any of its affiliates or subcontractors, regardless of the cause and regardless of any other failure of any provision or undertaking in this Agreement, under contract, tort or any other theory of liability (including claims alleging negligence), exceed (i) in case of causes of action that arise out of or relate to Professional Services, the total amounts paid by Client to LeaseQuery for the Professional Services giving rise to the claim during the six months preceding the date such cause of action arises, and (ii) in the case of any other cause of action, 50% of the annualized subscription fee (to the extent paid by Client) as of the date such cause of action arises for the product giving rise to the claim, except to the extent resulting from LeaseQuery's willful misconduct or bad faith. In circumstances where any limitation of liability or indemnification provision in this Agreement is unavailable, the aggregate liability of LeaseQuery and its affiliates and subcontractors for any claim shall not exceed an amount that is proportional to the relative fault that the conduct of LeaseQuery and its affiliates and subcontractors bears to all other conduct giving rise to such claim.

11.14 Limitation on Actions. Except with respect any express indemnification obligation under Section 8.3 of this Agreement, no action relating to any Dispute (other than to collect unpaid invoices or protect or enforce Intellectual Property Rights set forth in Section 4.1 of this Agreement) may be brought more than one year after the cause of action accrued, and Client shall not raise any Dispute based on the alleged inaccuracy of an invoice more than ninety (90) days after the invoice date.

11.17 Governing Law. Issues of arbitrability shall be determined by an arbitrator in accordance with the federal substantive and procedural laws relating to arbitration; in all other respects, all matters arising out of or relating to this Agreement or any Sales Order shall be governed, construed and enforced in accordance with the laws of the State of Delaware, without reference to the conflicts of law principles that would require the application of any other law.

11.18 Dispute Resolution; Arbitration; Waiver of Jury Trial. Any Dispute (including, without limitation and for the avoidance of doubt, the determination of the scope or applicability of this Section) shall be finally determined and resolved on an individual basis by binding arbitration in Atlanta, Georgia. The arbitration shall be administered by JAMS Mediation, Arbitration and ADR Services ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures or pursuant to JAMS' Streamlined Arbitration Rules and Procedures, if applicable (collectively, the "Rules") that are in effect at the time of the commencement of the arbitration, except to the extent modified by this section. LeaseQuery and Client agree that each party waives the right to a jury trial and to assert class or collective action claims against the other. The obligation to arbitrate shall extend to and encompass any claims that either party may have or assert against any of the other party's personnel. The arbitration shall be conducted before one arbitrator to be appointed in accordance with the applicable provisions of the JAMS Rules. No arbitrator may serve as an arbitrator with respect to the Dispute unless such arbitrator agrees in writing to abide by the terms of this section. Except with respect to the interpretation and enforcement of these arbitration procedures, the arbitrator shall apply the governing law set forth herein in connection with the Dispute. The arbitrator shall have no power to award damages inconsistent with this Agreement, including the limitations on liability herein. To the extent the arbitration is governed by JAMS' Streamlined Arbitration Rules and Procedures, no discovery shall be permitted in connection with the arbitration, except to the extent that it is expressly authorized by the arbitrator upon a showing of substantial need by the party seeking discovery. The parties and the arbitrator shall maintain the confidential nature of the arbitration proceeding and the award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment on the arbitrator's award may be entered in any court having jurisdiction thereof. Notwithstanding anything to the contrary in this Section, with respect to any claim brought by LeaseQuery for nonpayment of its fees, expenses or interest, LeaseQuery, in its sole discretion, may elect to bring such claim to mandatory arbitration pursuant to this Section or, alternatively, in the courts of the State of Georgia or the federal courts located in the Northern District of Georgia, and in the event LeaseQuery elects to bring such claim in any of such courts, (i) each party irrevocably submits to the exclusive jurisdiction of such courts, (ii) each party hereby waives, and agrees not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or thereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in such courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, (iii) each of the parties hereby consents to and grants any such court jurisdiction over the person of such parties and over the subject matter of any such Dispute, and (iv) each of the parties hereby irrevocably waives all right to a trial by jury and all right to assert class or collective action claims against the other in any action, proceeding or counterclaim arising out of or relating to this Agreement. Except as otherwise set forth in this Agreement, each party shall bear its own costs in connection with a Dispute, including, without limitation, attorneys' fees and arbitration and court costs.

Exhibit A. 2. Noncompliance with Service Availability Commitment. The consequences of a failure by LeaseQuery to meet the service availability commitment set forth above are set forth below:

- (a) First month of missed availability: If requested by Client, the parties shall meet telephonically, at Client's request, to discuss potential corrective actions.
- (b) Second consecutive month: 10% of the subscription fee for the Solution for applicable month.
- (c) Third consecutive month: 20% of the subscription fee for the Solution for the applicable month.

- (d) Fourth consecutive month: 30% of the subscription fee for the Solution for the applicable month.
- (e) Fifth consecutive month: 40% of the subscription fee for the Solution for the applicable month.
- (f) Sixth consecutive month: 50% of the subscription fee for the Solution for the applicable month.
- (g) More than six consecutive months: Within 30 days of such failure, either party shall have the option to terminate the Sales Order for the affected Solution.

Credits shall be deducted from subsequent invoices for subscription fees or other fees or, upon the expiration or termination of the Sales Order, paid to Client directly or offset against other amounts due to LeaseQuery hereunder. The remedies set forth in this exhibit shall be Client's sole remedies and LeaseQuery's sole liability for missed service availability commitments.

Approved:



---

Joseph E. Tait  
Manager and Chief Engineer  
Chief Procurement Officer

# Memo - CPO Approval LeaseQuery Terms

Final Audit Report

2023-10-12

Created:	2023-10-12
By:	Renee Yadao (ryadao@kauaiwater.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAjxafaels5itskyKG8DrTuBDCYrUNSXSe

## "Memo - CPO Approval LeaseQuery Terms" History

-  Document created by Renee Yadao (ryadao@kauaiwater.org)  
2023-10-12 - 5:58:37 AM GMT
-  Document emailed to Joseph Tait (jtait@kauaiwater.org) for signature  
2023-10-12 - 5:59:11 AM GMT
-  Email viewed by Joseph Tait (jtait@kauaiwater.org)  
2023-10-12 - 6:26:33 AM GMT
-  Document e-signed by Joseph Tait (jtait@kauaiwater.org)  
Signature Date: 2023-10-12 - 6:30:25 AM GMT - Time Source: server
-  Agreement completed.  
2023-10-12 - 6:30:25 AM GMT

## **Mahalo nui loa to the participants and partners of the 2023 Make a Splash with Project WET Water Festival**

WHEREAS, Participants and partners Reynold Abigania, Beau Acoba, Sarang Agarwal, Zyris Aldin, McKenna Allen, Terrilyn Amarin, Steve Asselin, Brittnee Balonick, Lucas Behnke, Darwin Bukoski, Albert Cadavona, Amber Cabral, Andy Canavan, Princess Calumag, Christopher Caoagas, Krist'l Castillo-Gray, Lenny Camat, Daniel Chang, Kathleen Chu, Greg DeVito, Christine Dochin, Erin Doi, Marleen Duarte, Joseph Durocher, Kawehilani Feliciano, Roscoe Fernandes, Regina Flores, Ryan Fu, Serafin Galvez, Carla Garamia, Kendall Gorospe, Joshua Gusman, Kelley Hadama, Kalli Harshman, Keely Hassett, Eric Ichimasa, Kelsie Iida-Vierra, Neal Iseri, Eric Iwamoto, Ted Johns, Darlene Johns, Kailana Kaimina'auao, Ann Kam, Alyssa Kaneshiro, Arryl Kaneshiro, Jonell Kaohelaui'i, Vernon Kaohelaui'i, Amanda Kaufman, Caroline Kealoha, Mele Khalsa, Kapuau Kinney, Daniel Kittredge, Amy Kiyotsuka, Braden Kobayashi, Daniel Koge, Takara Kunioka, Lance Lam, Sharyl Lam Yuen, Hunter Liftee, Malia Lightner, Michael Mack, Lilian Mack, Mike Malone, Bekki Dee Malapit, Florendo Melchor, Chris Metcalf, Margie Mills, Rona Miura, Dustin Moises, Kyra Moriguchi, Chris Nakamura, Keanu Namakaeha, Kyle Napoleon, Mike Nishimura, Mike Ogata, Todd Nieman, Mimi Olry, David Paul, John Parsons, Marcus Pereira, Taylor Phelps, Kevin Pongasi, Tineal Puaoi, Kelly Pummill, Sunee Putisan, Gerardo Ramos, Stetson Raposas, Malia Reis, Ridge Resinto, Danielle Restelli, Juanita Reyher-Colon, Kevin Reyes, Daynes Reynolds, Selwyn Rita, Ryan Saiki, Reid Samio, Herman Santos, Jenni Scotti, Tyrus Shigematsu, Sherri Silva, Jeffery Silva, Ryan Smith, Ann Sokei, Benjamin Soos, Cody Statler, Nicole Stulpe, Aaron Swink, Jonelle Taira-Kakutani, Joe Tait, Elshae Tanimoto, Ryan Terry, Jamie Thomson, Domie Tolentino, Justin Uegawa, Kamalani Uehara, Uncle Tilo & Archer, Kelsey Yap, Heather Ylitalo-Ward, Kristen Yoshida, Russell Yonahara, Peggy Yoshioka, Wiley Yoshioka and the following partnering agencies: Aqua Engineers Inc., American Water Works Association – Hawaii Section, Bowers and Kubota, LLC., Carollo Engineers, Inc., County of Kaua'i Department of Parks and Recreation, Department of Education, Department of Land and Natural Resources' – Division of Aquatic Resources and Division of Forestry and Wildlife, Department of Health – Safe Drinking Water Branch, East & West Kaua'i Soil and Water Conservation Districts, Grove Farm Company Inc., Hawai'i Rural Water Association, Hawaii Water Environmental Association, NOAA – Marine Animal Rescue Program, Kaua'i County Farm Bureau, UH College of Tropical Agriculture and Human Resources – Kaua'i Agricultural Research Center, Kaua'i Bus, Kapa'a High School-JROTC Warrior Battalion, Kaua'i Community College – Early Childhood Education Program, Kodani and Associates LLC, The Nature Conservancy and Uncle Tilo's Clean Water, LLC.

WHEREAS, the coordination, hard work and successful completion towards the Department of Water's 18th Make a Splash with Project WET Water Festival is honored and gratefully acknowledged; and

WHEREAS, your passion, professionalism and collaboration with the students and teachers and fellow volunteers exemplified leadership qualities that emphasize the significance of water education; and

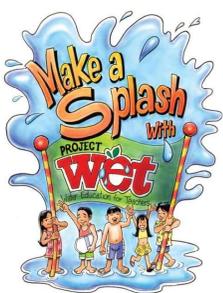
WHEREAS, you played an instrumental role in building awareness of our most precious natural resource by providing educational learning experiences in a fun, interactive way for students whereby promoting a critical decision-making process about water and our environment; and

WHEREAS, your volunteerism and partnership in this event resulted in the student's awareness of the connection between the water source and the ways their habits can affect the future of our drinking water by educating them on issues such as conservation and source protection and environmental stewardship whereby they gain the knowledge and understanding to value water and engage their family and friends to do the same; and

WHEREAS, we are honored to celebrate the continuity of this important water education event alongside volunteers whom we know we can count on to support future Make a Splash with Project WET Festivals; therefore

BE IT RESOLVED BY THE BOARD OF WATER SUPPLY, COUNTY OF KAUA'I, STATE OF HAWAII in recognition of your outstanding service and commitment to the Department of Water and our Garden Island community, does hereby extend, a heartfelt Mahalo for the contributions made as part of the 2023 Make a Splash with Project WET Water Festival.

BE IT FURTHER RESOLVED that a copy of this Resolution is forwarded to all participants and partners.



We do certify that the foregoing was duly adopted by the Board of Water Supply during its meeting on October 19, 2023

---

Kurt Akamine, Chairperson

---

Tom H. Shigemoto, Secretary

BOARD OF  
WATER SUPPLY

MANAGER REVIEW  
DISCUSSION

*Micah Finnila – Board Member*

*10/19/2023*

# THE VALUE OF THE MANAGER & CHIEF ENGINEER PERFORMANCE EVALUATION

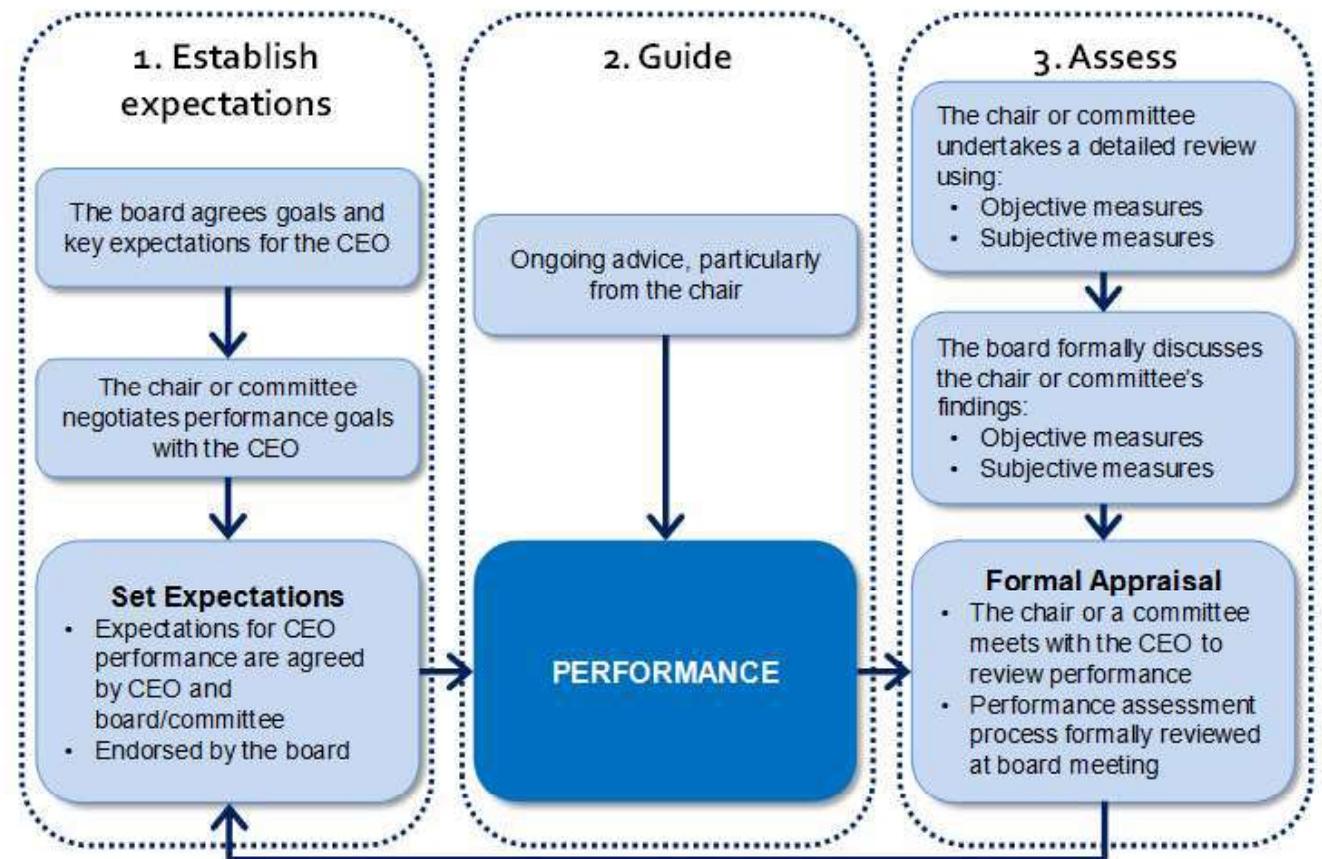
Boards have solid business reasons for undertaking executive evaluations including:

- Aligning the strategic direction set by the board with an executive's capabilities;
- Promoting better board and executive relations to ensure an appropriate and productive collaboration;
- Allowing boards to have greater objectivity about executive compensation;
- Setting an example of accountability for the organization/department as a whole – signaling that performance management is a core culture of the organization;
- Encouraging the executive's personal development;
- Providing an early warning system for possible problems.

# THE EVALUATION CYCLE

An executive's evaluation is part of a continuous cycle of:

- Establishing performance expectations;
- Guiding performance; and
- Assessing performance.



## ESTABLISHING EXPECTATION

Clear expectations form the basis for all good performance relationships. While boards should feel free to develop their own categories of expectations, a holistic evaluation of the executive's performance will generally include some targets or expectations with respect to the following:

- Leadership and management;
- Strategy;
- Working with the board;
- Financial performance;
- Human resource management;
- Personal qualities; and
- Communication.

Categorization provides the board with the opportunity to assess the balance of its measures.

# EVALUATION PROCESS

An effective executive evaluation process aligns performance expectations with the strategy of the organization.

This is more likely to occur if the executive evaluation process is integrated with the board's strategic planning cycle.

It is easier to establish meaningful goals for the executive's performance when they are considered in the context of goals set for overall organization / department performance.



# FEEDBACK DRIVES PERFORMANCE



The executive feedback process belongs to the entire board, and all should be involved. It is not a chair's or a committee's responsibility.



One of the primary inhibitors of candid feedback on performance is the emotional element of these processes which can be addressed via a system which allows for a less formal and more considered approach to providing the feedback.

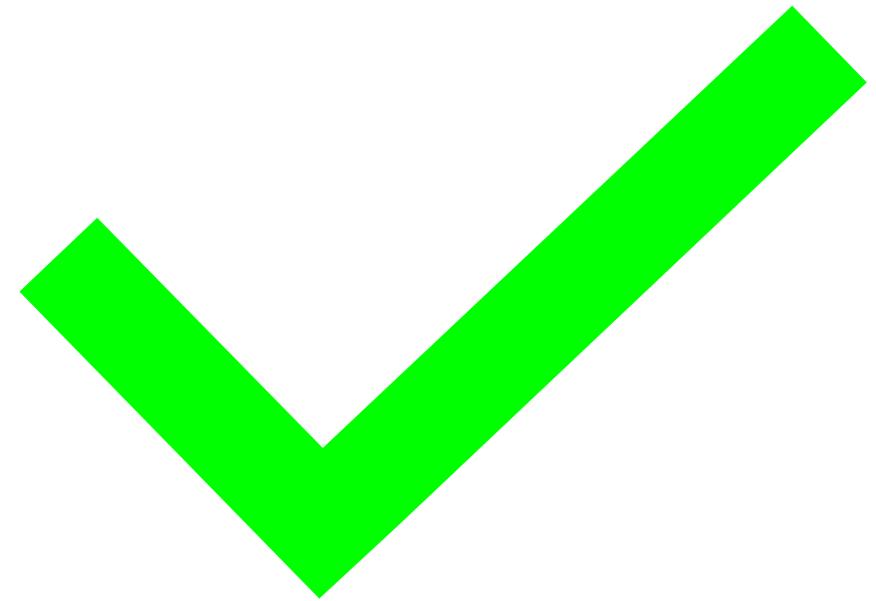


However, a process or procedure is no substitute for a good working relationship between the board and the executive.

DOW – COUNTY OF KAUA'I  
MANAGERS REPORT  
NO 22-55

*Manager and Chief Engineer's  
Goals & Benchmarking*

*Current Evaluation*



DEPARTMENT OF WATER  
County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 22-55

December 23, 2021

Re: Discussion and Approval of the Manager and Chief Engineer's Goals

RECOMMENDATION:

It is recommended that the Board discuss and approve the Manager and Chief Engineer's goals.

Manager and Chief Engineer's Goals & Benchmarking

As Manager of the Department of Water (DOW), I offer these Goals and Initial Key Performance Indicators (KPI's) to be derived through new DOW Benchmarks for the remainder of FY 2021-2022, leading up to my first full budget to be presented in draft form to this Board in Spring 2022 with final adoption of FY22-23 goals, benchmarks, and final budget during June's 2022 Board Meeting.

90-day Work Culture Assessment

*This report IS NOT intended nor meant in a negative or punitive manner. It is simply a synopsis and snapshot of the operating culture within DOW observed since arriving October 1, 2021.*

The department has suffered for many years by inconsistent and short-tenured leadership arena that failed to provide stable, effective expectations of responsibility, accountability and lacked an adequate, agreed-upon vision for the future of DOW. My countless interviews with staff, Board Members, and customers and my reviews of the department activities since 2009 have strongly indicated that lingering issues pertaining to **morale, camaraderie** and **trust** on a department-wide scale have existed for many years. Challenges with and/or absence of the required partnering mindset with related and similar County departments has led to **strained relationships** and inter-departmental process breakdowns. This change process is a management of evolution rather than revolution.

I am the sixth department manager in eight years and the eight manager since 2009. As a direct result of this chaotic history, the following culture exists:

- Adherence to policies and procedures widely varies by division and may change depending on the new Manager that comes on board. There is no consistency between senior leadership to ensure that current policies and procedures still stand in absence of a manager.
- Individual performance documentation is generally absent.
- Daily activities within the department are filled with drama resulting in much time spent on non-productive discussions and wasted energy.
- Lack of a consistent management structure has forced staff to "fend for themselves" when critical decisions are required such as contracting, retaining consultants, purchasing, etc.

Manager's Report No. 22-55  
December 23, 2021  
Page 2 of 8

- DOW functions as a fire department – pipe breaks, we respond, hydrant broken, we respond, pump stops or valve fails, we respond. Report is late or missed to an important sister department at the County, well, "we'll get it to you." Reactive culture exists versus proactive planning in managing some divisions.
- Almost every previous, short-term manager has tweaked the organization through mini-reorganization proposals to the Board that occurred without consideration of the department as a whole – the cause and effect upon other untouched areas of DOW and the process changes required after each structure change was not communicated or defined to affected staff, which has caused a whole lot of failed processes and silos among divisions. Employees did not know that a reorganization was being implemented, how it would affect their position, what would change until "after the fact."
- Initial observation from staff included, "We'll just wait-out the new manager" and "that's the way we've done it for years, why change now?" There haven't been effective meetings held with employees to help them understand of new procedures, policies, or expectations within each division. That has caused divisions to function not knowing who has the ball on specific assignments/projects.
- Dire need exists for improved processes to identify required versus actual workflows. This impacts staffing, planning and hiring decisions. Our current staff shortage of critical, qualified workers has impacted water system coverage.

Outstanding DOW Issues

To address and accomplish the required corrections within DOW, sustained day-to-day management of practice, process, and organizational needs must also include patience with dedicated staff who have endured a decade-plus of chaotic leadership and yet kept the water flowing and the department running.

The absence of standard water industry benchmarks within the department drives the strategy, focus, and need for establishment of performance targets that enables the Board and Manager alike, the ability to prioritize an appropriate budget focus and corresponding appropriations year-over-year. This is an opportune time in the department's history to holistically reset the organization from every division and level through the review of current processes and practices. This will not be a quick-fix turnaround approach but rather a halting of the unmanaged evolution throughout the past decades to a strategic, decision-driven and transparent path forward that implements corrections throughout the entire organization.

My objective is to build trust and confidence with our employees, our partners at the Department of Public Works, Planning Department, Department of Human Resources, Department of Finance, especially the Division of Information Technology, the Mayor's Office and, above all, our Ratepayers.

The following, in no particular order, are identified issues and observations that require attention, initial decisions and/or final resolution:

- Performance of consultants – Management must hold retained professionals accountable for quality of delivered products and costs that display value to DOW.

- Records and File Management – Money was budgeted, no progress toward implementation. The DOW does not have a structured filing system to upkeep digital files. All divisions are filing documents on their own. There is a central location for files on SharePoint, but the system is not built out and there has been no attention for senior leadership to implement with their teams, thus piling of files in multiple locations.
- Department does not utilize GIS – This and other required technology can be leveraged with County systems, but a relationship gap exists.
- We need a new strategic financial format and reporting dashboard to the Board – all divisions need this.
- Delinquent accounts management needs to be overhauled.
- Standard Operating Procedures are outdated, and some are redundant. Process changes are implemented without updating the SOPs.
- General Purchasing Policies and Procedures, Procurement thresholds and Requirements are not in line with the County and needs to be updated.
- Contracting in Fiscal and IT is chaotic – gap in management planning between common division users.
- Water Plan - updating needed to formally address system expansion and project delivery to resolve water-restricted areas on the island.
- Facilities Reserve Charge (FRC) needs assessment of model options and plan forward.
- Grant(s) Program in various stages of use with deadlines approaching and implementation plans required.
- Rate review is planned – several decisions and factors much precede launching this – FRC, training on model, develop new assumptions for baseline, etc.
- Workday, a new payroll and timekeeping software, is scheduled, but staff will need training and personal accountability for this transition to be successful.
- Website is outdated and ineffective for many users – more information through easier navigation is required.
- Operations Division Base Yard needs overhaul and final decision by the Board – management needs to submit updated approach.
- Department asset decisions have been inconsistent and siloed – Asset plan required.
- Parking continues to be a challenge – changing the Base Yard and bill drop-off location can alleviate most of the issue.
- Staffing continues to be problematic and with four retirements this month.
- A need exists on the island for staging areas for operations staff.
- Standby and overtime performed by higher level managers. This should be assigned to front-line staff. Manpower shortages are the cause, and clarity is needed on job descriptions.
- Many traditional utility programs either don't exist or need updating. These include: HSE program / safety officer; ERP update (underway); Asset Management Program; Fleet Management Program; Records Retention/File Storage; Apprenticeship/Internship Program; Meter Replacement Program (underway); Strategic Technology Business Plan; Staffing & Demographics Plan; Facilities Management Plan; Formal Training Programs – all areas including administration.

- Building layout makeover needed soon to best place staff and equipment in a safer working environment. Storage is years behind in implementing solutions.
- Many administrative tasks are inconsistent, disconnected by division and are dependent on a few experienced professionals rather than knowledge retention being shared, documented and passed down.
- New Department-wide Organizational Structure required to eliminate inefficiencies, redundancies, and confusion to accomplish the issues above as well many others not listed.

The preceding list is by no means all-inclusive, and many more issues are highlighted in the following short-term goals and anticipated benchmarks.

### Short-term Goals (Through FY21-22)

1. **Address outstanding issues related to the lack of a strong Information Technology Strategy and Plan** – Major components of a efficiently managed department do not exist or are in need of significant upgrading.  
2<sup>nd</sup> Qtr. 2022
2. **Greatly reduce permit/project response and turnaround time** – this is currently based on estimates and customer calls/complaints – no benchmark exists yet.  
1<sup>st</sup> Qtr. 2022
3. **Complete New Emergency Response Plan** – This document has historically existed and with the department needing to provide County EOC and DOW staff a working document with updated practices and procedures, this is a high priority.  
1<sup>st</sup> Qtr. 2022
4. **Deliver new Organizational Structure** – Present to the Board an updated layout that identifies how the department will function to best deliver services.  
1<sup>st</sup> Qtr. 2022
5. **Establish Health & Safety Program** – DOW needs to institute a first ever robust Safety Program ASAP.  
1<sup>st</sup> Qtr. 2022
6. **Develop new Financial Strategy & Plan** – Recommend a FY22-23 Financial Strategy that leverages new benchmarks, funding guidelines and a forward-looking roadmap that marries a new Water Infrastructure and Investment Plan (WIIP).  
2<sup>nd</sup> Qtr. 2022
7. **Develop Straightforward Division Dashboards** – the Board needs to know how we're performing, and the Ratepayers need transparency about how we spend their money.  
2<sup>nd</sup> Qtr. 2022

8. **Identify and account for all DOW Assets** – recordkeeping and current management of all DOW property is behind in removing and identifying actual needs for equipment, vehicles, tools, furniture, etc.

2<sup>nd</sup> Qtr. 2022

9. **Resolve outstanding strategic and legal issues** – Provide the Board with options to resolve current, on-going program and project issues.

2<sup>nd</sup> Qtr. 2022

10. **Redefine Operations Division Job Descriptions** – Provide County HR options that reflects traditional water system operations job requirements, tasks and certification levels to improve recruitment efforts.

2<sup>nd</sup> Qtr. 2022

Again, the aforementioned FY 21-22 Goals only reflect the remaining six months of our current budget – due to my start date and budget numbers having already been set. Presented with the FY 22-23 Annual Budget will be my new annual Goals supported by the next fiscal budget cycle in June.

#### **PROPOSED “MAJOR” BENCHMARK OBJECTIVES**

To my knowledge, the department has never established performance benchmarks and Key Performance Indicators (KPI's) to provide a quarterly reporting mechanism available to the Ratepayers, Board, and DOW staff to measure progress throughout any fiscal year. These benchmarks are usually derived for a combination of type of municipality – State, County, City, Special District, etc., and size of the organization – as well as specific service provided – water, power, wastewater, gas, streets, transportation, etc. I usually use a combination of effective KPI's from traditionally accepted water industry standards to customizing benchmarks that are of specific importance to the agency and what types of issues experienced in the past is driving the need to capture our unique trending results. To adequately provide the Board with stretch goals for FY22-23, we need to establish baseline benchmark data, or we'll never be able to document if we're making progress versus prior years as we move forward – if we don't measure it, how then do we define success?

The following **tangible**, proposed benchmarks – by Division – have been of particular interest to DOW or I have observed an existing need to focus on performance in that area:

#### **FISCAL**

Investment return

Grant funds management – received vs. expended by deadlines

Budget vs. Actual vs. FY expected monthly expenditures

Capital funds management – received vs. expended by project timelines

Revenue – expected & unexpected revenue sources

Expenditures – expected vs. unexpected

Establish an error-free billing protocol and delivery of service

#### **ENGINEERING**

Projects: initiated vs. completed  
annual vs. multi-year  
measure initiation to expected completion dates

Capital vs. non-capital staff hours vs. corresponding budgets  
Hours expended towards administrative processing & technical review  
Monthly response and turnaround time to customers  
Initiate the plans and rollout for an effective GIS program

#### **OPERATIONS**

Number of regulatory violations by type – initial vs. check sample results  
Number of infrastructure failures by type – pipelines, pumps, valves, hydrants, etc.

Repair response times  
Repair completion times  
Staff required per emergency event  
Cost of emergency by event  
Pipeline replacement by miles/annually or experienced area-specific failures?  
Unaccounted water vs. produced and metered sources

Vehicle management – How well do we manage mobile assets:

Assigned vs. unassigned vehicles of the total fleet  
Pool vehicles in fleet – assigned by divisions  
Annual miles driven/annual fuel costs  
Surplus/depreciated vehicles annually

Equipment management – How well do we manage heavy, mobile, stationary, and tool/parts inventory:

Mobile assets (non-standard trucks & cars) do we need vs. have (excavation, generators, trailers, dump trucks, etc.  
Mobile tools and hand tools – have vs. need

Preventive (PM) vs. Reactive/Corrective Maintenance (CM) – Are we 80% PM vs. 20% CM?

CMMS tool utilized?  
Daily scheduled PM's?  
Annual schedule of assets to be replaced? (e.g. Pipeline Replacement)  
Staff dedicated to PM's by region/area?

#### **INFORMATION TECHNOLOGY**

Total value of consulting contracts vs. actual delivered projects.

How many staff-delivered projects.

Number and value/cost of projects shared with County IT Department.

Total value of stranded technology equipment (servers, laptops, cell phones, monitors, desktops, etc.

### HUMAN RESOURCES

Current staffing demographics – tenure, progression of employees, location, equity, etc.  
Vacancies vs. budgeted staffing level  
Compensation vs. COLA  
Workplace injuries / time missed

### MANAGEMENT

Establish face-to-face, individual employee meetings frequency with all staff.  
Develop consultant performance metrics department-wide – which firms are worth hiring again?  
Require available technologies to be utilized for all processes and practices – no manual administrative work.

Department overtime vs. % of total department/division compensation = staffing calculation to determine staffing strategy

The following **intangible** benchmarks must be documented and although they are sometimes difficult to measure, they are indeed easy to recognize:

- Arrive on time, do your job, help others to best do their jobs.
- Escape the kindergarten mentality and graduate to professionalism – much less drama needed.
- Worry about doing the best job YOU can rather than gossiping about what SOMEONE ELSE is doing.
- Hold ourselves accountable by accepting responsibility for our actions AND inactions.
- Staff needs to initiate communication – stop waiting for the other person to “hopefully” communicate job-related issues.
- Demand follow-through, resolution and/or closing out an issue you’re working on – don’t let it sit until deadlines cannot be met just because someone didn’t ask you for an update.
- Initiate adherence to rules, procedures, practices, and policies – don’t wait to be told to do so.
- Realize respect through intent (actions)

Now that I’ve listed several benchmarks to target and measure, how do we plan to do so? The identification of metrics will be derived from three water industry sources – QualServe Benchmarking Program developed by the American Water Works Association (AWWA), the Water Environment Federation (WEF), and the Water Research Foundation (AWWARF). I have utilized these processes during multiple organizational and operational assessments throughout the country since 2002. Prior to these initiatives, EMA Services, Inc., provided Competitive Assessments since 1995 with which I was involved in until 2005.

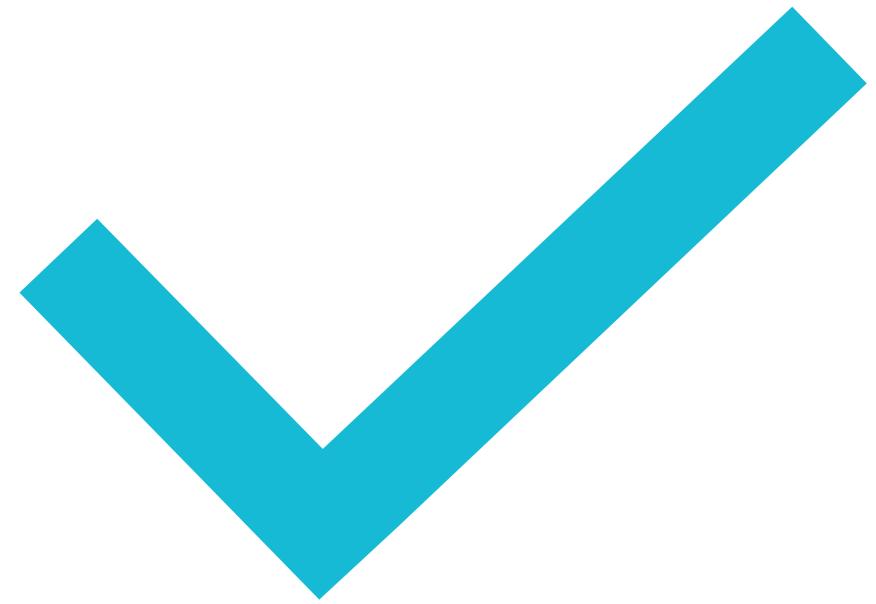
To analyze and determine the effectiveness of DOW, I am using the Effective Utility Management (EUM) framework developed and endorsed by USEPA and the trade associations serving the water and wastewater industry. This framework includes subject areas such as Operational Optimization, Employee and Leadership Training, Water Resource Adequacy, Operational Resilience, Financial Viability, and other issues of focus.

I will provide the Board with final benchmarking metrics in preparation for the FY22-23 budget preparation in March 2022. I have been here 10 weeks and with more research to do regarding internal decisions that were made prior to joining DOW, I ask for your support defining what additional target areas or subjects I may have overlooked to be included in our final benchmarking program. Please provide me with feedback regarding the aforementioned priorities of goals and proposed benchmarks.

Mgrrp/December 2021/22-55/Discussion and Approval of the Manager and Chief Engineer's Goals (12/23/21):

# EVALUATION FACTORS: APPOINTEES/MANAGERS

*County of Kaua'i*  
*DHR's Standardized Form*  
*For Board Consideration*



**COUNTY OF KAUA'I**  
**EVALUATION FACTORS: APPOINTEES/MANAGERS**

Name/Title: Joseph E. Tait, Manager & Chief Engineer

Name of Rater: \_\_\_\_\_

Review Dates: 10/01/2021 - 09/30/2022 Annual

Unsatisfactory (1)	Needs Improvement (2)	Satisfactory (3)	Excellent (4)	Superior (5)	Score
--------------------	-----------------------	------------------	---------------	--------------	-------

- 1 **Customer Service:** Courtesy in dealing with customers and effectiveness in meeting the customer's needs. (Customers may include, but not limited to, the public; Mayor; County Council; Board or Commission; and other department/agency heads and deputies.)

Has shown little interest in meeting the needs of the customers. Antagonize the customers in dealings with them.	Is occasionally discourteous when working with customers. Sometimes is not effective in meeting the needs of customers.	Almost always courteous and effective when dealing with customers.	Is pleasant and helpful when dealing with customers.	Courteous and effective when dealing with customers; goes far beyond the call of duty to serve customers.	
--	---	--	--	---	--

Trend: Improving  Same  Declining

Recommendation(s) for Improvement: \_\_\_\_\_

- 2 **Planning and Organizing:** Establishing a course of action, structuring or arranging resources, and setting priorities for self and others to accomplish specific goals. Demonstrated ability to plan ahead, schedule work, set realistic goals, anticipate and prepare for future assignments, set logical priorities and use time wisely.

Usually disorganized, and often in a crisis caused by lack of planning and organizing.	Has difficulty in setting priorities and/or in attaining goals.	Usually does a good job in assigning priorities. Able to attain most goals.	Seldom in a crisis due to lack of planning and organizing. Is able to attain nearly all goals.	Does a superior job in assigning priorities. Anticipates problems and decides how to handle them. Accomplishes tasks ahead of schedule in most instances.	
--	---	---	--	---	--

Trend: Improving  Same  Declining

Recommendation(s) for Improvement: \_\_\_\_\_

Unsatisfactory (1)	Needs Improvement (2)	Satisfactory (3)	Excellent (4)	Superior (5)	Score
--------------------	-----------------------	------------------	---------------	--------------	-------

**3 Leadership:** Measurement of getting people to willingly work to accomplish an objective. Utilization of appropriate interpersonal styles and methods to guide individuals or groups toward effective task accomplishment. Controlling and evaluating performance, utilization of resources available to accomplish tasks, effective employee development and counseling and sharing leadership when appropriate.

Inhibit subordinate motivation to accomplish tasks or improve personal development. Fails to take initiative and rarely knows job status. Shares little or no information with superiors or subordinates.	Sometimes fails to sufficiently motivate employees to accomplish tasks or develop employees. Shares very little information with superiors or subordinates.	Effectively motivates to accomplish tasks and develop employees. Takes action to solve problems. Maintains a good method of sharing information with superiors and subordinates.	Consistently effective in motivating employees to accomplish tasks and improve personal development. Maintains excellent method of sharing information. Most potential problems are detected early.	Exceptionally effective leader. Maintains highly motivated and developed employees. Problems are consistently detected early, and information is shared in the most efficient manner. This person is always on top of things.	
---	---	--	---	---	--

**Trend:** Improving  Same  Declining

**Recommendation(s) for Improvement:** \_\_\_\_\_

**4 Communication:** Expression of ideas orally and in writing, providing relevant and timely information to superiors, co-workers, subordinates and other customers, listening and understanding others.

Written work is often incomplete and contain errors. Fails to clearly express opinion on ideas.	Written work usually contains some errors. Thoughts are not presented in a logical order in conversation, often has trouble being understood.	Reports are generally accurate but occasionally contain errors. Routing reports are performed adequately, but more important or complex reports require closer supervision.	Reports are consistently accurate and well organized, seldom needing correction. This person can capably prepare and present important oral or written reports. Listens well and can be understood.	Writes well-organized, understandable and accurate reports. Oral or written presentation is excellent, needs minimal improvement. In less formal conversation, this person listens well in addition to getting the point across.	
---	---	---	---	--	--

**Trend:** Improving  Same  Declining

**Recommendation(s) for Improvement:** \_\_\_\_\_

Unsatisfactory (1)	Needs Improvement (2)	Satisfactory (3)	Excellent (4)	Superior (5)	Score
--------------------	-----------------------	------------------	---------------	--------------	-------

**5 Personnel Management:** Selecting, managing, motivating and developing employees, following prescribed personnel policies and practices, including equal employment opportunity. Effectiveness in utilization of personnel resources.

Has difficulty in selecting, managing, motivating and developing staff members to meet individual and group goals. Often disregards prescribed personnel policies and practices.	Somewhat effective in selecting, managing, motivating and developing staff members to meet individual and group goals. Usually follows prescribed personnel policies and practices. However, some improvement of these skills is needed.	Generally effective in selecting, managing, motivating and developing staff members to meet individual and group goals. Follows prescribed personnel policies and practices. Effective in managing personnel resources.	Very effective in selecting, managing, motivating and developing staff members to meet individual and group goals. Follows prescribed personnel policies and practices. Handles employee performance problems effectively and selects well-qualified candidates.	Exceptionally effective and creative in selecting, managing, motivating and developing staff members to meet individual and group goals. Follows prescribed personnel policies and practices. Demonstrates skill and creativity in dealing with employee performance problems, and selecting well-qualified candidates.	
--	--	---	--	---	--

Trend: Improving  Same  Declining

Recommendation(s) for Improvement: \_\_\_\_\_

**6 Achieving Goals:** Effective organizational management to achieve defined program measurements, goals, and objectives. Establish realistic program measurements, goals and objectives for employees. Produce a reasonable volume of work on schedule, demonstrating accuracy, thoroughness and dependability.

Does not achieve defined objectives, and establishes unrealistic goals for employees. Develops error prone, incomplete work. Work is generally untimely. Regular reminders needed to obtain compliance.	Goals are not always achieved, and accuracy and volume of work is sometimes less than standard. Work is frequently untimely. Some monitoring required.	Effective in the establishment of realistic, achievable goals; production of work is dependable and generally accurate. Work is generally timely.	Goals are consistently achieved. The volume, accuracy and thoroughness of work is very effective. Work is almost always timely.	Exceptional manager, achieving extremely high standards. Production of work is exceptional due to high degree of accuracy, volume, and thoroughness. Work is always timely.	
---	--	---	---	---	--

Trend: Improving  Same  Declining

Recommendation(s) for Improvement: \_\_\_\_\_

Unsatisfactory (1)	Needs Improvement (2)	Satisfactory (3)	Excellent (4)	Superior (5)	Score
--------------------	-----------------------	------------------	---------------	--------------	-------

7 **Policy Development:** The development and implementation of sound policy, which identifies and analyzes problems effectively and develops alternative solutions. This encompasses job knowledge, which includes depth, currency and breadth.

Cannot develop a policy independently and does not identify or analyze problems.	Often is not able to develop a sound policy based on job knowledge. Often does not identify solutions.	Effective establishment of sound policy based on analysis of problems. Develops some alternative solutions.	Consistently develops and implements sound policies. Very knowledgeable and effectively analyzes problems.	Exceptional development and implementation of sound policy. Significant thorough research and analysis conducted and several feasible alternate solutions are developed.	
--	--	---	--	--	--

Trend: Improving  Same  Declining

Recommendation(s) for Improvement: \_\_\_\_\_

8 **Financial Management:** Effective development and implementation of financial budgets and controls, operating within prescribed fiscal limits, incorporating key costs control issues.

Frequently pays inadequate attention to financial budgets and controls in planning and completing work. Work is frequently over budget. Fails to fully utilize budget resources, or budget fails to provide for program requirements.	Sometimes pay inadequate attention to financial budgets and controls in planning and completing work. Work is sometimes over budget without adequate attempts to control costs. Occasionally attempts to circumvent county guidelines.	Attentive to financial budgets and controls, and generally operates within prescribed financial limits. Budget overruns are infrequent, and causes are normally identified and justified. Implements plans to control costs where possible. Effective in managing fiscal resources.	Consistently effective in developing financial budgets and controls and in operating within prescribed financial limits. Seeks opportunities to control costs, and adapts plans and methods to prevent budget overruns.	Exceptionally effective in developing budgets and controls (incorporating low cost control issues) and in operating within prescribed financial limits. Actively seeks opportunities to control costs, adapts plans and methods to prevent budget overruns, and encourages and assists others in effecting cost savings.	
---	--	---	---	--	--

Trend: Improving  Same  Declining

Recommendation(s) for Improvement: \_\_\_\_\_  
comment \_\_\_\_\_



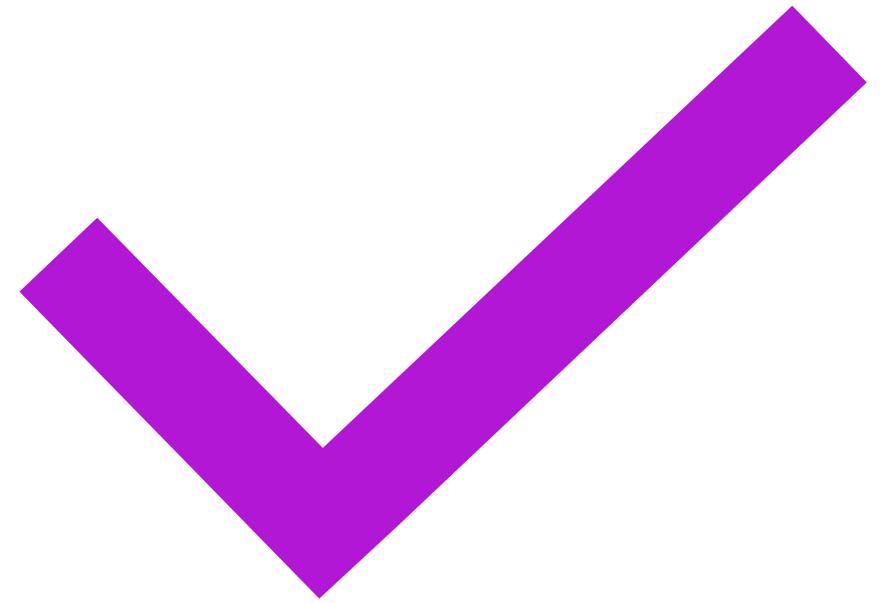
# SOCIETY FOR HUMAN RESOURCE MANAGEMENT “SHRM”

*Joyaux Associates*

*Performance Appraisal Process*

*for CEO's*

*For Board Consideration*



## Performance Appraisal Process for the CEO<sup>1</sup>

*Note: This process and appraisal tool – along with Joyaux' CEO job description – applies, in general to any organization. You would change references to "organization" to your agency's name. You would likely specific the type of mission-based information to know, e.g., environment, healthcare, etc.*

### Importance of performance appraisal

Performance appraisal / evaluation is the regular process of both formally and informally providing feedback about an individual's implementation of his / her responsibilities. The position being evaluated may be a paid employee or a volunteer.

All employees deserve and expect ongoing feedback, whether formal or informal. And all employees should expect a formal appraisal, conducted annually by the supervisor. (And, in general, the same holds true for volunteers.)

The appraisal process begins first with the job description. Supervisor and employee must be clear about the responsibilities, scope of authority and limitations, and standards and expectations of each job.

The process is clearly explained to all, is transparent, and is executed in a timely matter. In addition to written materials, dialogue between supervisor and employee is critical.

Self-appraisal is an important component of the process. Each employee completes a self-evaluation, using the Performance Factors Tool, which reflects the job description. This is the same tool used by the supervisor. The supervisor considers the employee's self-evaluation during the review of performance.

At the conclusion of the process, the forms are filed in the employee's file. The previous year's results are used for the new year's evaluation.

The formal performance appraisal for all employees is conducted during the same timeframe. The appraisal results form the basis for merit increases. Merit increases are formulated during the budgeting process and institute at the beginning of the fiscal year.

The CEO assures proper and timely appraisal for all organization employees. The CEO is responsible for an effective process that retains and supports the best employees, and provides appropriate intervention with those requiring improvement.

### Elements of the performance appraisal process

The appraisal process facilitates a careful review of the following for each employee:

- Accomplishment of goals for the review period (Section 1)
- Performance on key responsibilities in the job description (Section 2)
- Additional performance/management factors (Section 2a)
- Goals for upcoming review period with ample input from supervisor and incumbent (Section 3)

<sup>1</sup> CEO, the chief executive officer, is the principal staff person of the organization. This position is often called executive director. And sometimes, in larger institutions, the position is called President and CEO. No matter the title, the lead staff person is the CEO.

Society for Human Resource  
Management "SHRM"

Performance Appraisal  
Process for CEO's

Joyaux Associates

- Performance improvement plan that is set jointly with the supervisor and employee, with monitored target dates as needed (Section 4)
- Development plan that is set jointly, and includes monitored target dates (Section 5)
- Potential for advancement to greater responsibilities

### CEO performance appraisal process

A committee or ad hoc task force of the Board of Directors manages the performance appraisal process of the CEO and conducts the performance appraisal interview.

Typically, the Chair of the Board establishes this task force or committee. Considerations for the task force include: experience with the CEO including chairing a committee, working on a project; someone with HR expertise; possibly experience managing a nonprofit.

Often times the Board Chair serves on the task. It's also useful to include the incoming Board chair, if that person has been identified.

To assure continuity, at least two members of the task force who participated in the immediate prior year review should participate in the process in the subsequent year. To assure new perspective, at least two of the members of the task force should change every year or two.

The task force must remember that it works on behalf of the Board. The task force can neither assume – nor can the Board delegate – its authority regarding the CEO. The total Board serves as the evaluator and final arbiter of any issues related to performance of the Executive Director.

### Task force responsibilities

- Draft and secure Board approval for the CEO job description<sup>4</sup>. Design the CEO Performance Appraisal Process, including the various tools. Then recommend to the Board for discussion and action. The Board formally approves the process and tools.
- Initiate the formal Performance Appraisal Process, typically 2 – 3 months prior to the start of the new fiscal year. This time period allows completion of the appraisal process, format review and action by the Board of Directors, meeting with the CEO, and then budget action.
- Recommend a merit increase to the Board in concert with the Finance Committee following the annual performance appraisal.

<sup>2</sup> In the case of the CEO, this work is typically done by an ad hoc performance appraisal task force or some other Board committee, e.g. Personnel Committee or Executive Committee.

<sup>3</sup> Most personal work belongs to management and does not warrant a Board Personnel Committee. I see this more as an ad hoc task force for a period of time that sunsets.

And since I'm on a worldwide mission to destroy all Executive Committees, no such body would exist to conduct the performance appraisal process for the CEO.

To make this more complicated, the CEO has no "supervisor." The Board provides general direction and oversight to the CEO, within the scope of authority and limitations of good governance. The Board works diligently to focus on governance and avoid management. Most specifically, the Board chair is not the CEO's supervisor.

The CEO is hired, appraised, and if necessary fired by the Board. The Board authorizes a task force or committee to carry out the appraisal process and bring the report back to the Board for action.

<sup>4</sup> See sample at [www.simonejoyaux.com](http://www.simonejoyaux.com). Click on Resources and then Free Library. Once established, the job description and appraisal process would likely benefit from a formal review every 3 – 5 years. Naturally, during the appraisal process, the task force may identify areas of job description (and hence appraisal process) that need change. Such changes should be discussed with the CEO and require Board action.

<sup>5</sup> In other words, your Board would approve this document – which outlines the process and provides the tool.

- Review and endorse the CEO's Annual Goals and Professional Development Plan and inform the full Board.
- Based on periodic compensation analyses, recommend (in concert with the Finance Committee) a salary and benefits adjustment to the Board for action.
- Regularly review the job description, any relevant policies, and the appraisal process – and recommend enhancements for review and action by the Board as necessary.

### Steps in the CEO performance appraisal process

1. Task Force reviews Performance Appraisal Process, informs the Board of the process start, and invites Board members to provide any comments to the task force.
2. CEO completes same tool and submits to task force.
3. Task force meets and conducts appraisal process – Sections 1 – 4, comparing results to CEO self-appraisal.
4. Task force prepares final forms and then drafts a cover memo for Board review and action. The task force memo summarizes strengths and weaknesses, goals, improvement and development plans, and recommends the overall performance status.
5. The task force sends the confidential memo to each Board member – and convenes an executive session of the Board to discuss the results and recommendations. The Board discusses the appraisal memo and merit recommendation – and makes changes as it desires. The Board then acts and minutes reflect action and are filed in the permanent record.
6. The task force (or a representative thereof) then meets with the CEO to discuss the results of the appraisal process, and the resulting Board decision. The CEO comments on the Goals for the new year, may suggest modifications, and then helps outline the Performance Improvement and Development Plans.

### Performance appraisal ratings

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

<sup>6</sup> Recusal of staff, including the CEO.



PERFORMANCE APPRAISAL  
PROCESS/FORM FOR CEO

*Joyaux Associates*

## Performance Appraisal Process for the CEO

CEO name: \_\_\_\_\_

Date hired: \_\_\_\_\_ Current evaluation period \_\_\_\_\_

Date evaluation completed \_\_\_\_\_ Date of Board action \_\_\_\_\_

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

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

<b><i>Responsibility</i></b>	<b><i>Rating</i></b>
<b><i>Legal and regulatory compliance</i></b>	
1. Files and regulatory documents and complies with relevant laws and regulations.	
<b><i>Mission, policy, planning</i></b>	
2. Helps Board determine values, mission, vision and goals.	
3. Helps Board monitor and evaluate organization's relevancy, effectiveness, and results.	
4. Keeps Board fully informed re: organization's condition and all important factors influencing it.	
5. Keeps informed of developments in the organization's mission area, general business management including the nonprofit focus, governance, philanthropy and fund development.	
6. Assures that appropriate policies are in place to guide the organization's work in all areas.	
<b><i>Management, administration</i></b>	
7. Provides general oversight of all agency activities, manages day-to-day operations, and assures a smoothly functioning, efficient organization.	
8. Assures program quality and organizational stability through development and implementation of standards and controls, systems and procedures, and regular evaluation.	

9. Assures a work environment that recruits, retains and supports quality staff of volunteers.	
10. Assures process for selecting, development, motivating, and evaluating staff and volunteers.	
<b><i>Responsibility</i></b>	
11. Recommends staff, compensation, and financing to Board. Recruits personnel, negotiates professional contracts, and assures development and maintenance of appropriate salary structures.	
12. Specifies responsibilities and accountabilities for personnel; evaluates performance regularly.	
<b><i>Governance</i></b>	
13. Work effectively with Board, its officers and committees to define their roles and responsibilities; helps evaluate their performance regularly.	
14. Works with Board Chair to enable Board to fulfill its governance functions and manages Board's due diligence process to ensure timely attention to core issues.	
15. Works with Board Chair to focus Board attention on long-range strategic issues.	
16. Works with Board officers and committee chairs to get best thinking and involvement of each Board member & to stimulate each Board member to give his / her best.	
17. Frames significant questions and complex issues in ways that facilitate Board dialogue and action.	
18. Recommends volunteers to participate in the Board and its committees.	

<b>Finance</b>	
19. Promotes programs and services that are produced in a cost-effective manner, employing economy while maintaining an acceptable level of quality.	
20. Oversees the fiscal activities of the organization, assures adequate controls.	
21. With Board, ensures financing to support goals, including effective fund development program.	
22. Fosters a culture of philanthropy, and assures a donor-centered organization that nurtures loyalty through a comprehensive relationship-building program.	
<b>Philanthropy and fund development</b>	
23. Assures an effective fund development program by serving as the chief development officer or hiring and supervising an individual responsible for this activity.	
24. Assures a comprehensive gift management system, analysis and reporting to support quality decision-making.	
25. Assures the availability of materials to support solicitation.	
26. Provides leadership in developing and implementing the organization's fundraising plan and monitoring the plan's progress.	
27. Helps ensure that Board members carry out philanthropy and fund development activities.	
28. Participates actively in identifying, cultivating and soliciting donor prospects.	

<b>Relationship building</b>	
29. Identifies the key relationships necessary to support an effective organization and assures proper planning, relationship building and communications to develop and maintain these.	
30. Facilitates the integration of the organization into the fabric of the community by assuring the use of effective marketing and communications activities.	
31. Acts as an advocate, within the public and private sectors, for issues relevant to ABC, its services and constituencies.	
32. Listens to clients, volunteers, donors and the community in order to improve services and generate community involvement. Assures community awareness of the organization's response to community needs.	
33. Serves as agency's chief spokesperson and acts as advocate for issues relevant to the agency.	
34. Listens to stakeholders in order to improve services and generate community involvement.	
35. Works with legislators, regulatory agencies, volunteers and representatives of the nonprofit sector to promote legislative and regulatory policies that encourage a healthy community and address the issues of the organization's constituencies.	
<b>Leadership</b>	
36. Demonstrates initiative and creativity in identifying and addressing strategic issues facing the organization.	
37. Effectively manages continuity, change and transition.	
38. Sets and achieves clear and measurable goals and reasonable deadlines.	

39. Deals effectively with demanding situations and designs and implements effective interventions.	
40. Consistently displays integrity and models the organization's values.	

**Performance appraisal ratings**

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

**As appropriate, additional factors not in job description:**

**Section 3: Goals for the next review period**

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

**Section 5: Development plan:** *Outline training / development that will enhance CEO's contribution to the organization. Also specify areas of support and action that the Board can do to help the CEO.*

**Overall performance rating / comments for CEO for this evaluation period**

**Action and approvals**

Performance appraisal results (through memo) acted on by Board of Directors on: \_\_\_\_\_

Authorizing signature/date from Performance Appraisal Task Force: \_\_\_\_\_

CEO signature and meeting date: \_\_\_\_\_

*Please write any comments from CEO on the other side of these pages.*



## SUMMARY

- Continue with Managers Report 22-55 Goals & Benchmarking
- Use/Incorporate DHR's Standardized Form
- Consider Joyaux Associates CEO Performance Appraisal Process / Form
- Create a Hybrid Performance Appraisal Process /Form



QUESTIONS?



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

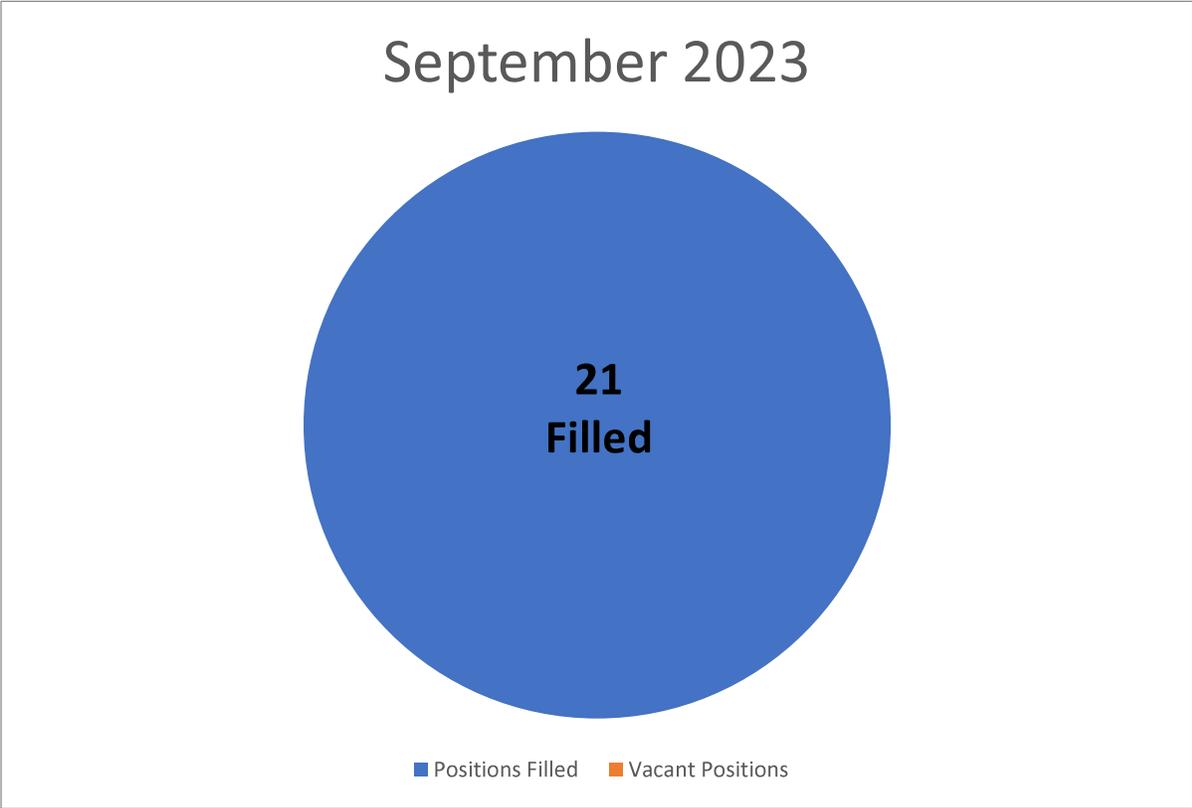
STAFF

REPORTS

# FISCAL DIVISION DASHBOARD

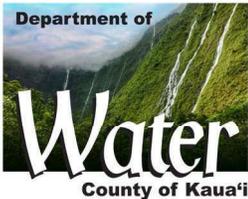


## Staffing

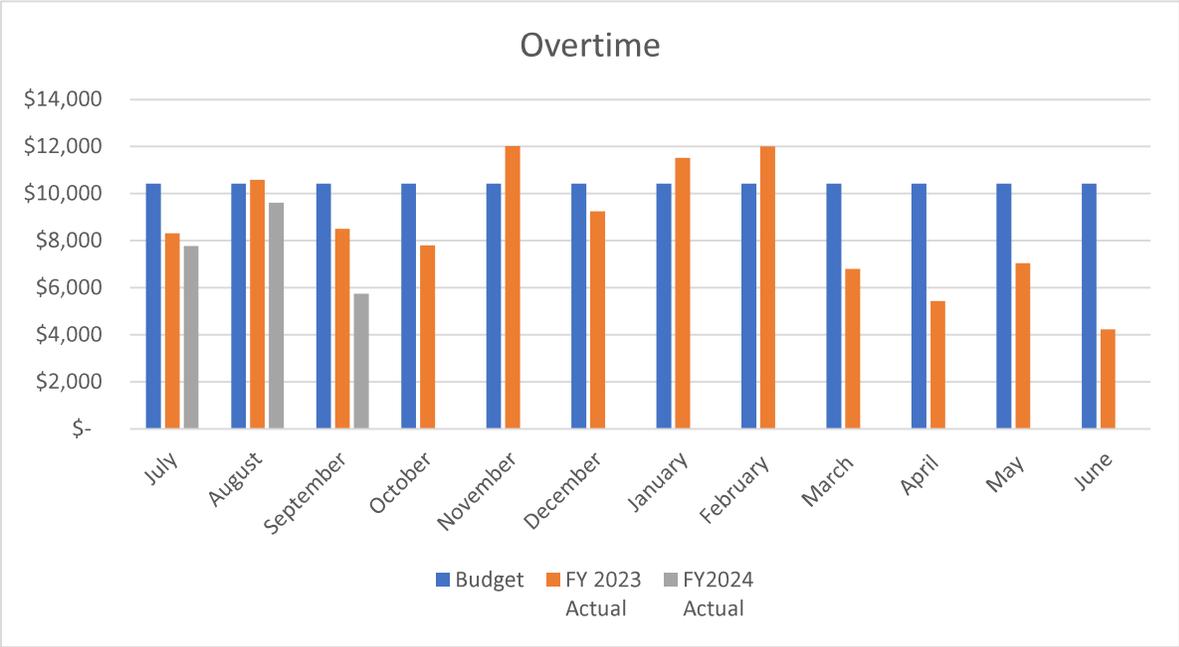


- Position 2448. Accountant II. Start date September 1<sup>st</sup>.
- Position 2463. Account Clerk. Temporary redescription to Accounting Assistant, unclassified position to allow for an 89-day hire through December 29th.

# FISCAL DIVISION DASHBOARD



## Overtime

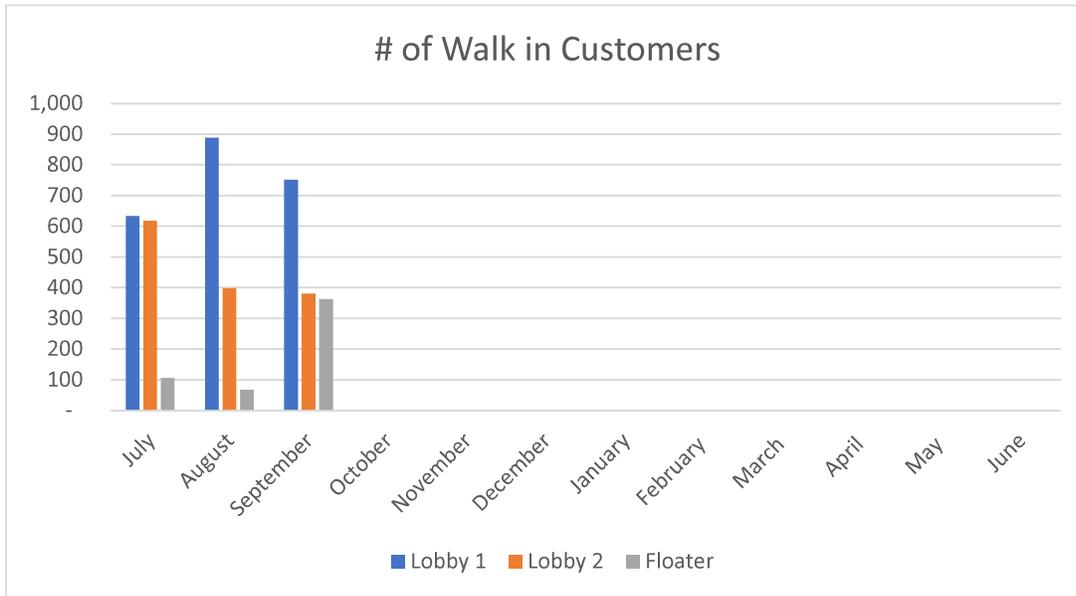


Note: September 2023 includes amounts posted from September 1<sup>st</sup> through September 15<sup>th</sup> (pay date September 31<sup>st</sup>) and “pending” transactions from September 16<sup>th</sup> through September 30<sup>th</sup>. Once HR Payroll reconciles and processes the payroll closing batches, the Central Accounting Division will post the payroll transactions to the general ledger.

# FISCAL DIVISION DASHBOARD

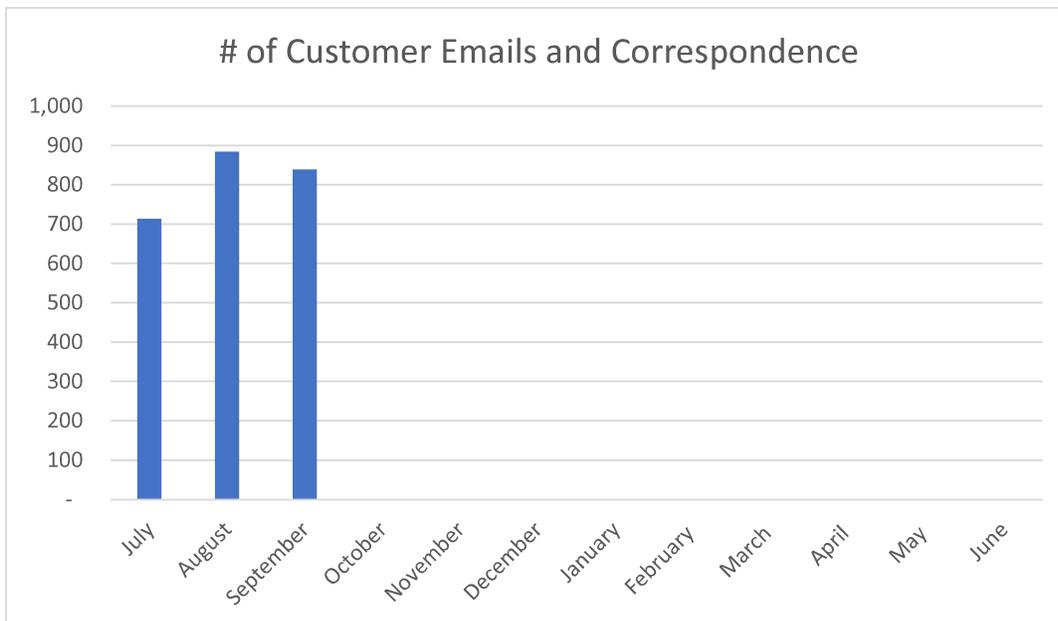


## Walk-In Customers



Note: The Billing Section currently operates two (2) payment windows, Lobby 1, and Lobby 2. There is a designated “floater” to assist at the window during breaks or for short-staffing coverage. There is a total of 19 meter reading routes island-wide with varying billing cycles.

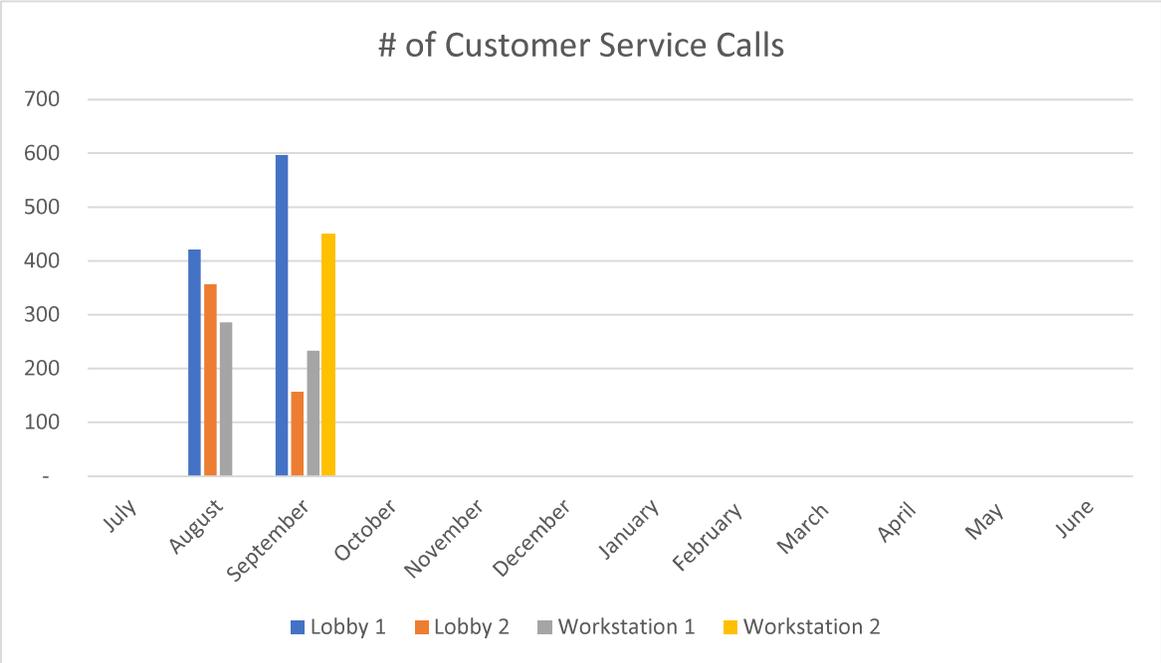
## Customer Emails & Correspondence



# FISCAL DIVISION DASHBOARD



## Customer Service Calls



Note: In addition to the two (2) payment windows, Lobby 1 and Lobby 2, there are two (2) Workstations, Workstation 1, and Workstation 2. The Billing Team of four (4) employees assist with the phone calls, respond to emails, and assist walk-in customers with payments and/or questions surrounding their account. They also provide assistance to the Meter Readers in the field.

**Department Of Water Budget Report for September 2023**

	September 2023			Fiscal Year 2024			
	Budget	Actual	Variance	Year to Date Budget	Year to Date Actual	Variance	Variance %
Operating Revenue	\$ 2,777,499.00	\$ 3,281,263.26	\$ 503,764.26	\$ 8,332,497.00	\$ 8,581,845.09	\$ 249,348.09	3%
Expenses							
Labor *	\$ 1,075,032.00	\$ 1,005,943.00	\$ 69,089.00	\$ 3,136,930.00	\$ 3,017,829.00	\$ 119,101.00	4%
Services	828,127.00	397,144.79	430,982.21	2,484,381.00	1,225,334.12	1,259,046.88	51%
Utilities & Materials	647,822.00	662,015.01	(14,193.01)	1,943,466.00	1,546,666.99	396,799.01	20%
Total Operating Expenses	\$ 2,550,981.00	\$ 2,065,102.80	\$ 485,878.20	\$ 7,564,777.00	\$ 5,789,830.11	\$ 1,774,946.89	23%
Debt Service Principal & Interest	426,234.25	289,961.40	136,272.85	1,877,045.00	1,441,497.61	435,547.39	23%
Operating and Debt Expenses	\$ 2,977,215.25	\$ 2,355,064.20	\$ 622,151.05	\$ 9,441,822.00	\$ 7,231,327.72	\$ 2,210,494.28	23%
<b>Net Income (Loss)</b>	<b>\$ (199,716.25)</b>	<b>\$ 926,199.06</b>	<b>\$ 1,125,915.31</b>	<b>\$ (1,109,325.00)</b>	<b>\$ 1,350,517.37</b>	<b>\$ 2,459,842.37</b>	<b>222%</b>

\* Prior month's labor is corrected - current monthly labor is estimated

Capital Projects and Purchases\*\*

	Fiscal Year Budget	September FYD 2024 Actual	Remaining Budget
<b>Water Utility Funded Projects ***</b>			
IT Capital Purchases	\$ 2,505,000.00	\$ 1,163.84	\$ 2,503,836.16
Job 09-01 Yamada Tank	-	58,932.51	(58,932.51)
Job 17-10 KW-07 Paua Valley Tank Repair	-	-	-
Job 15-07 HE-01 HE-10 Kaunualii Hwy 16" Main Boost	-	229,393.24	(229,393.24)
Job 11-07 HE-03 Hanapepe & Koloa Well MCC	-	5,070.00	(5,070.00)
Job 16-04 Kilauea Wells Rehab	-	172,867.49	(172,867.49)
Job 23-03 Kuhio Hwy Papaloa to Waikaea	-	15,575.62	(15,575.62)
Wailua Homesteads Tank	3,750,000.00	72,467.82	3,677,532.18
Ops Meter Replacement Program	-	60,975.75	(60,975.75)
Ops Capital Purchases	1,020,991.00	43,630.00	977,361.00
Projects with budget but no activity	8,247,500.00	-	8,247,500.00
	<b>\$ 15,523,491.00</b>	<b>\$ 660,076.27</b>	<b>\$ 14,863,414.73</b>
<b>FRC Funded Projects</b>			
Job 02-14 WK-08 Kapaa Homesteads Tank	\$ 700,000.00	\$ 27,940.00	\$ 672,060.00
Projects with budget but no activity	400,000.00	-	400,000.00
	<b>\$ 1,100,000.00</b>	<b>\$ 27,940.00</b>	<b>\$ 1,072,060.00</b>
<b>Build America Bonds Funded Projects</b>			
Projects with budget but no activity	6,100,000.00	-	6,100,000.00
	<b>\$ 6,100,000.00</b>	<b>\$ -</b>	<b>\$ 6,100,000.00</b>
<b>State Allotment Funded Projects</b>			
17-10 KW07 Paua Valley Tank Repair	\$ -	\$ 31,254.57	\$ (31,254.57)
Projects with budget but no activity	10,600,000.00	-	10,600,000.00
	<b>\$ 10,600,000.00</b>	<b>\$ 31,254.57</b>	<b>\$ 10,568,745.43</b>
<b>State Revolving Funded Projects</b>			
Projects with budget but no activity	\$5,000,000.00	\$0.00	\$5,000,000.00
	<b>\$5,000,000.00</b>	<b>\$0.00</b>	<b>\$5,000,000.00 #</b>
<b>Total Capital Projects</b>	<b>\$ 38,323,491.00</b>	<b>\$ 719,270.84</b>	<b>\$ 37,604,220.16</b>

\*\* Capital projects and capital purchases with no activity in the 2024 fiscal year are presented in the aggregate

\*\*\* Zero balance budgets are prior year projects awaiting supplemental budget and Board approval

Selected Divisions

	September 2023			Fiscal Year 2024			
	Budget	Actual	Variance	Year to Date Budget	Year to Date Actual	Variance	Variance %
Engineering	\$ 454,613.00	\$ 281,439.14	\$ 173,173.86	\$ 1,363,839.00	\$ 810,538.57	\$ 553,300.43	41%
Fiscal	222,259.00	190,750.74	31,508.26	666,777.00	569,262.18	97,514.82	15%
Operations	1,257,036.00	1,101,528.01	155,507.99	3,771,108.00	3,730,256.34	40,851.66	1%
	<b>\$ 1,933,908.00</b>	<b>\$ 1,573,717.89</b>	<b>\$ 360,190.11</b>	<b>\$ 5,801,724.00</b>	<b>\$ 5,110,057.09</b>	<b>\$ 691,666.91</b>	<b>12%</b>

CASH RECEIPTS	TOTAL	9/30/2023	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010
BEGINNING CASH BALANCE	\$ 60,000,000.00											\$ -	\$ -	\$ -	\$ -	\$ 60,000,000.00
Bond Proceeds																
Interest Income	\$ 1,889,706.46	\$ 40,258.11	\$ 10,145.00	\$ (321,259.46)	\$ 1,406.49	\$ 318,033.00	\$ 239,725.76	\$ 136,213.08	\$ 43,433.92	\$ 62,650.14	\$ 246,093.42	\$ 1,113,007.00				
<b>TOTAL RESOURCES</b>	<b>\$ 61,889,706.46</b>	<b>\$ 40,258.11</b>	<b>\$ 10,145.00</b>	<b>\$ (321,259.46)</b>	<b>\$ 1,406.49</b>	<b>\$ 318,033.00</b>	<b>\$ 239,725.76</b>	<b>\$ 136,213.08</b>	<b>\$ 43,433.92</b>	<b>\$ 62,650.14</b>	<b>\$ 246,093.42</b>	<b>\$ 1,113,007.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 60,000,000.00</b>
201-01 BAB - CIP	\$ -															
Cost of Issurance	\$ 535,838.66															\$ 535,838.66
217 EA-194 Hanalei River & Moelepe Stream Pipeline	\$ 741,141.50															\$ 741,141.50
218 Job 02-18 Pipeline replacement, Kapaa Homesteads	\$ 2,941,979.00													\$ 966,229.51	\$ 1,975,749.49	
219 Job 04-02 Main replacement, Vivian Heights and Apopo Road and Kanahele Road	\$ 2,651,730.99												\$ 105,007.40	\$ 476,365.60	\$ 2,070,357.99	
220 Job 03-02 Anahola 0.15 MG Tank Renovation	\$ 1,571,169.09										\$ 417,459.47	\$ 738,342.29	\$ 348,437.12	\$ 66,930.21		
684 Job 05-01 Waimea Main Replacement	\$ 3,272,975.12													\$ 112,524.38	\$ 3,160,450.74	
687 Job 02-03 Kekaha 12" Main Replacement and Waimea Canyon Drive 12" Main Replacement	\$ 677,234.29													\$ 8,796.00	\$ 668,438.29	
221 Job 10-01 Pipeline replacement, Anini Road	\$ 724,652.00						\$ 320.25	\$ 40,444.75	\$ 99,727.00		\$ 75,360.00	\$ 91,600.00	\$ 331,800.00	\$ 85,400.00		
222 Job 10-02 & 13-03 Kaunualii Hwy widening, Anonoui St to Lihue Mill Bridge	\$ 5,208,503.03										\$ 603,320.00		\$ 4,368,972.73	\$ 236,210.30		
223 Job 05-06 PLH-25, 8" Main Replacement, Eiwa, Umi, Akahi, Elua & Hardy/Alohi Streets	\$ 2,710,970.00											\$ 207,527.45	\$ 1,837,108.24	\$ 666,334.31		
224 Job 02-16 Rehabilitation of Maka Ridge Deepwell Tank, Pipeline and Rdway, Ohana, Anolani & Kuamoo Roads	\$ 1,381,988.40										\$ 70,243.40	\$ 816,129.43	\$ 495,615.57			
227 Waimea Well A Renovation	\$ 639,282.53											\$ 299,937.43	\$ 308,235.45	\$ 31,109.65		
326 Job 02-02 Omao 0.5 MG Tank and connecting Pipeline	\$ 2,519,540.05												\$ 1,105,978.21	\$ 1,413,561.84		
228 Koloa Tank Site Acquisition	\$ 500,991.73													\$ 500,991.73		
230 Job 02-08 Rehabilitation of Eleele Twin 0.4 MG Steel Tanks	\$ 2,018,853.05										\$ 419,657.59	\$ 820,325.86	\$ 654,054.56	\$ 124,815.04		
231 Job 02-19 Waipouli Main Replacement to Akulikuli	\$ 2,229,690.39										\$ 140,809.76	\$ 460,829.74	\$ 1,628,050.89			
232 Job 02-14 Kapaa Homesteads 0.5 MG Tank #2 and Kapahi 1.0 MG Tank	\$ 410,240.21	\$ 104,355.40	\$ 12,281.25				\$ 28,276.20	\$ 181,031.23	\$ 33,913.47			\$ 4,820.46	\$ 44,327.74	\$ 1,234.46		
233 Job 09-01 K-01, K-12 Kalaheo 1111' & 1222' Water System Improvement	\$ 1,117,183.23	\$ 54,579.24	\$ 5,326.25	\$ 30,660.00	\$ 67,910.95	\$ 40,510.00	\$ 252,930.74	\$ 4,084.44	\$ 41,155.98	\$ 29,424.45		\$ 54,561.67	\$ 505,005.23	\$ 31,034.28		

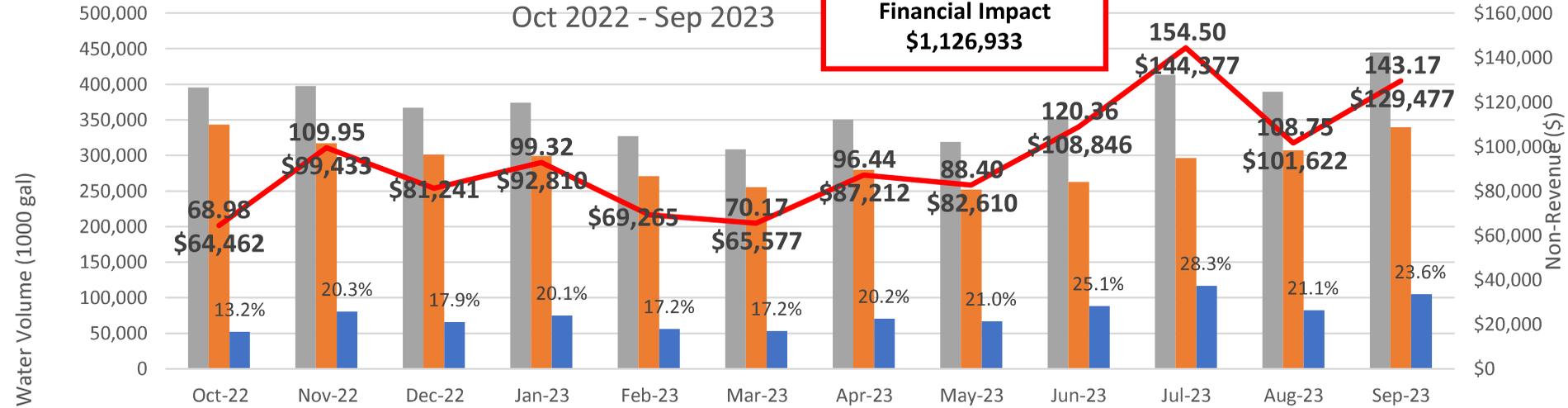
CASH RECEIPTS		TOTAL	9/30/2023	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010
683 Job 04-06	Kekaha Well B Renovation	\$ 627,165.43												\$ 42,828.60	\$ 265,223.57	\$ 319,113.26	
234	Kukuioolono Water Tank Site Acquisition	\$ 302,396.47														\$ 302,396.47	
235 Job 05-05	Nawiliwili, Niumalu and Kupolo 6", 8" and 12" Main replacement	\$ 3,150,226.75												\$ 689,732.75	\$ 2,460,494.00	\$ -	
237 Job 11-02	Replacement Grove Farm Tanks #1 & #2	\$ 201,658.00							\$ 24,767.90	\$ 33,185.10	\$ -	\$ 67,905.00	\$ 44,165.00	\$ -	\$ 31,635.00	\$ -	
692 PLH-39 Lihue Baseyd		\$ 7,755,133.98						\$ 15,035.86	\$ 544,777.77	\$ 575,693.09	\$ 5,951,097.31	\$ 1,510.40	\$ 1,466.25	\$ 382,445.74	\$ 283,107.56	\$ -	
621 Job 02-06	Kilauea 1.0 MG Tank	\$ 250,973.16						\$ 17,438.16	\$ 13,380.00				\$ 73,995.00	\$ 93,310.00	\$ 52,850.00		
238 Job 11-04	Lawai-Omao Water Main Replacement & Service Improvements	\$ 71,737.50										\$ 5,967.45		\$ 30,745.05	\$ 35,025.00		
239 Job 02-17	Maka Ridge Facilities Rehabilitation and Princeville Interconnection Plan	\$ 2,333,850.55										\$ 244,226.89	\$ 276,328.78	\$ 1,813,294.88			
240 Job 11-03	Land and Well Acquisition, Moloaa and Waimea, Kauai	\$ 159,938.00							\$ 3,678.00	\$ 25,300.00	\$ 14,160.00		\$ 23,290.00	\$ 71,730.00	\$ 21,780.00		
242 Job 02-11	Moloaa Land Acquisition	\$ -															
243 Job 11-06	Rehabilitate Moelelpe Tunnel and improve access road	\$ 19,200.00													\$ 19,200.00		
244 K-05A Kukuioolono 0.5 MG 886' Tank		\$ 193,578.95							\$ 67,715.05	\$ 61,552.30			\$ 64,311.60				
610 Job 02-11	Moloaa Land Acquisition	\$ -															
Job 11-10	8" WL Halewili Kaumualii to Hale	\$ 694,331.55								\$ 282,186.78	\$ 412,144.77						
Job 11-07	MCC Chlor KoloaWell16-A,B,E	\$ 3,667,032.67					\$ 44,513.76	\$ 1,623,383.03	\$ 1,999,135.88								
Job 04-08	Kapaa Homesteads Well #4	\$ 1,502,796.10		\$ 32,504.61	\$ 162,138.43	\$ 43,250.00	\$ 588,360.39	\$ 676,542.67									
<b>TOTAL</b>		\$ 52,783,982.38	\$ -	\$ 191,439.25	\$ 179,745.93	\$ 73,910.00	\$ 700,785.10	\$ 2,401,506.17	\$ 3,087,416.57	\$ 1,056,359.93	\$ 6,518,285.06	\$ 349,034.19	\$ 2,210,406.85	\$ 6,723,168.75	\$ 16,360,816.36	\$ 11,654,128.06	\$ 1,276,980.16
<b>Cash &amp; Investment Balance</b>		\$ 9,105,724.08	\$ 40,258.11	\$ (181,294.25)	\$ (501,005.39)	\$ (72,503.51)	\$ (382,752.10)	\$ (2,161,780.41)	\$ (2,951,203.49)	\$ (1,012,926.01)	\$ (6,455,634.92)	\$ (102,940.77)					



# OPERATIONS DASHBOARD

Monthly Water Audit  
Oct 2022 - Sep 2023

**Annual  
Financial Impact  
\$1,126,933**

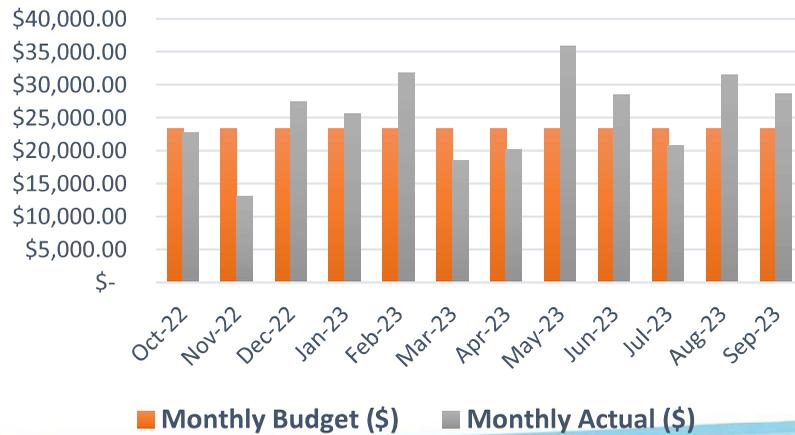


	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Jul-23	Aug-23	Sep-23
Produced (Kgals)	395,404	397,481	367,005	374,035	326,932	308,539	350,219	319,002	350,766	413,260	389,372	444,660
Customer Read (Kgals)	343,184	316,931	301,192	298,850	270,820	255,415	279,569	252,080	262,590	296,300	307,048	339,771
Non-Rev Water (Kgals)	52,220	80,550	65,813	75,185	56,112	53,124	70,650	66,922	88,176	116,960	82,324	104,889
Financial Impact	\$64,462	\$99,433	\$81,241	\$92,810	\$69,265	\$65,577	\$87,212	\$82,610	\$108,846	\$144,377	\$101,622	\$129,477

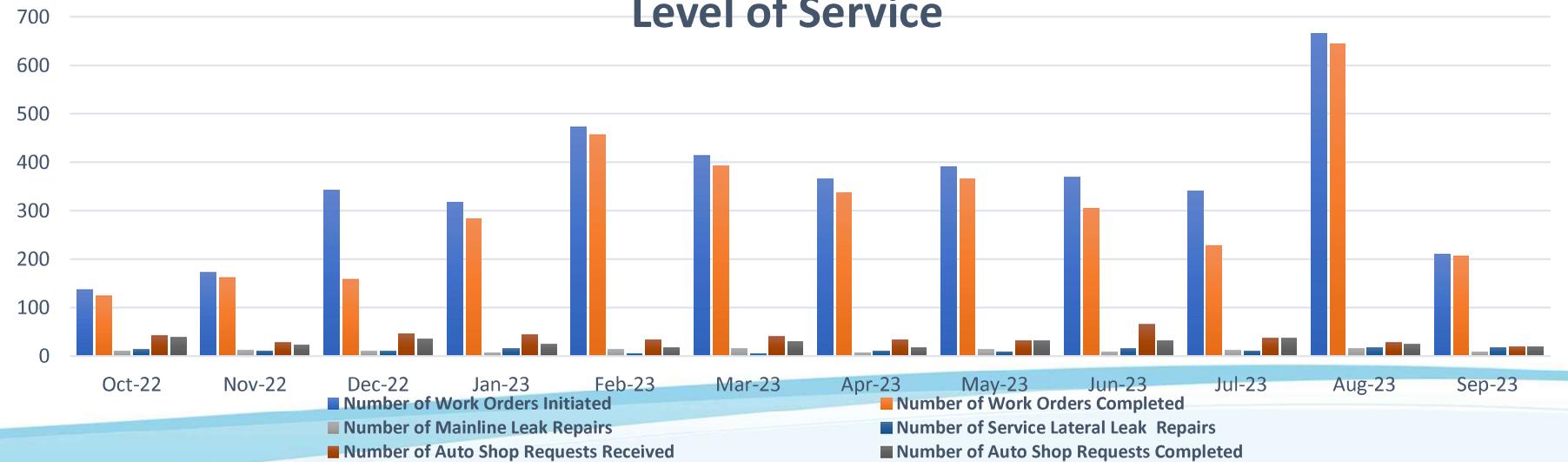
## Ops Highlights:

1. Completed interview for Plant Electrician Helper.
2. Meter Mechanics continue large meter repairs, shipment of meters expected this month.
3. Water Service Investigators continue leak investigation island wide.
4. Trainings performed were GIS, Driver Improvement, and Flagger Certification.

## Overtime



## Level of Service



# OPERATIONS

	August-23		September-23		Previous FY Year to Date		Current FY Year to Date	
<b>STAFFING</b>								
Budgeted Staff   Vacancies	50	7	49	8	49	8	49	8
<b>OVERTIME</b>								
Budget (\$)   Actual (\$)	\$23,283.33	\$31,549.73	\$23,283.33	\$31,549.73	\$69,850.00	\$88,444.21	\$69,850.00	\$80,876.97
<b>FLEET MANAGEMENT</b>								
# of Vehicles Active per day	44		43		N/A		42	
# of Vehicles Active per month	969		852		N/A		925	
<b>METER PROGRAM</b>								
# of Existing Meters Replaced	0		5		12		6	
# of Existing Meters Repaired	32		33		130		196	
# of New Meters Installed	5		9		31		23	
# of New Laterals Installed	0		1		5		4	

# OPERATIONS

## LEVEL OF SERVICES

	Last		Current		Previous		Current	
	Month	Month	Month	Month	FY YTD	FY YTD	FY YTD	FY YTD
# of Work Orders Initiated	666		210		571		1217	
# of Work Orders Completed	644		207		563		1079	
# of Mainline Leak Repairs	16		9		31		37	
# of Service Lateral Leak Repairs	17		17		32		45	
# of Calls for Service	207		191		569		583	
# of Temporary Hydrant Meters Installed	3		2		6		9	
# One Call Request Received   Completed	65	65	33	33	58	58	182	182
# of Auto Shop Requests Received   Completed	28	25	19	19	130	125	85	82
# of Hydrant Hits	2		2		6		8	

## WATER AUDIT

	Last	Current Month	Previous	Current
	Month		FY YTD	FY YTD
Water Produced (Million Gallons)	389.372	444.660	1283.172	1247.292
Customer Meter Reading (Million Gallons)	307.048	339.771	1113.169	940.355
Non-Revenue Water (Million Gallons)	82.324	104.889	170.003	306.937
Non-revenue %	21%	24%	13%	24%
Financial Impact	\$101,622.39	\$129,477.08	\$209,855.10	\$375,476.84

# ENGINEERING DASHBOARD

	Last Month		Current Month		Previous FY Year to Date		Current FY Year to Date	
<b>STAFFING</b>								
Budgeted Staff   Vacancies	23	6	23	6	22	8	23	6
<b>OVERTIME</b>								
Budget (\$)   Actual (\$)	\$4,900	\$20,200	\$4,900	\$16,500	\$4,900	\$7,500	\$14,800	\$50,200

## CIP Project Highlights:

- Kalāheo Water System Improvements
  - Site work at Yamada Tank site and pipeline work to Clearwell Tank ongoing
- Weke, Anae, Mahimahi and He'e Roads Water Main Replacement
  - Pre-Final drawings being reviewed by DOT-Highways and DPW-Engineering
- Puupilo 0.125 MG Steel Tank Rehabilitation
  - Draft report to be submitted in November

	Last Month		Current Month	
<b>PROJECT MANAGEMENT</b>				
DOW Projects In Design   In Construction	30	4	30	4
Private Projects Design Approved   In Construction	70	22	56	21
Private Projects Construction Completed	18		35	

# ENGINEERING DASHBOARD

	Last Month		Current Month		Previous FY Year to Date		Current FY Year to Date	
<b>WATER RESOURCES AND PLANNING</b>								
Number of Customer Requests Received   Completed								
Subdivision Applications, Zoning, Land Use and Variance Permits	10	0	9	15	22	23	17	
ADU/ARU Clearance Applications	3	0	2	0	33	33	7	5
Building Permits	161	142	161	156	502	484	436	
Water Service Requests	23	3	19	25	51	64	39	
Government Records Request	2	0	1	4		3	6	
Backflow Inspection # of Devices Tested	152		97		319		337	

## DOW Project Highlights:

- KWUDP Update
  - Updating draft report, tentatively providing briefing update to CWRM Board in November
- Water System Improvements Plan (WSIP)
  - Using hydraulic model to start identifying CIP projects
- Lead and Copper Rule Revisions (LCRR) Update
  - Gap analysis and work process evaluation task being performed
  - Material inventory being performed

# QUARTERLY UPDATE

Period of July 1, 2023 to September 30, 2023

ENGINEERING DIVISION

Submitted by: Jason Kagimoto, P.E.

DEPARTMENT OF WATER

October 19, 2023

# Executive Summary

Significant updates for this quarter include:

- **Water Resources and Planning Section**
  - Subdivision-Land Use applications completed = 17
  - Water Service Requests Completed = 39
  - Building Permit Applications Reviewed = 484
  - Backflow Devices Inspected and Tested = 337
  - Water Systems Investment Plan – Hydraulic model analysis to prioritize CIP ongoing
  - Lead and Copper Rule Revisions (LCRR) Update – Project work ongoing
- **Project Management Section**
  - Overseeing 30 ongoing DOW CIP design projects
  - Overseeing 4 ongoing DOW CIP construction
  - Private Project Reviews = 78
  - Rehabilitate Paua Valley Tank No. 1 (KW-07) – Tank wall interior coating complete
  - Kalāheo Water System Improvements (K-01) – Construction ongoing
  - Kīlauea Wells 1 & 2, MCC, Chlorination Facilities (WKK-03) – Construction ongoing
  - Kapa‘a 325’ Tanks – Two 0.5 MG Tanks – Bids opened 8/24, bid review ongoing
  - UH CTAHR Experimentation Station Site 605’ Tank – Design underway
  - Kūhiō Highway (Hardy-Oxford) 16” Main Replacement – Anticipated bid, March 2024
  - Weke, Anae, Mahimahi and Hee Roads Main Replacement – Anticipated bid, December 2023

# Water Restriction Areas

Water System/Sub-System	Restrictions (5/8-inch water meter or number units per lot)	Inadequate Facilities	Comments
Upper Lāwaʻi	2	Storage	Administration Approved
Poʻipū	300	Storage	Board Approved (50% of new tank allowed for new development; 50% to make up storage deficit)
Wailua Homesteads	5	Storage	Administration Approved
Upper Wailua Homesteads	2	Storage	Administration Approved
Kapaʻa Homesteads	5	Source	Board Approved
Moloaʻa	0	Source and Storage	Water Purchase Agreement
Kīlauea-Kalihiwai	5	Source and Storage	Administration Approved
Aliomanu – Kukuna Road	0	Transmission	Administration Approved
ʻAnini	1	Source and Storage	Water Purchase Agreement
Upper Wainiha Valley	1	Storage	Administration Approved
Wainiha – Hāʻena	3	Storage	Administration Approved

# Water Plan 2020 Construction Project Status

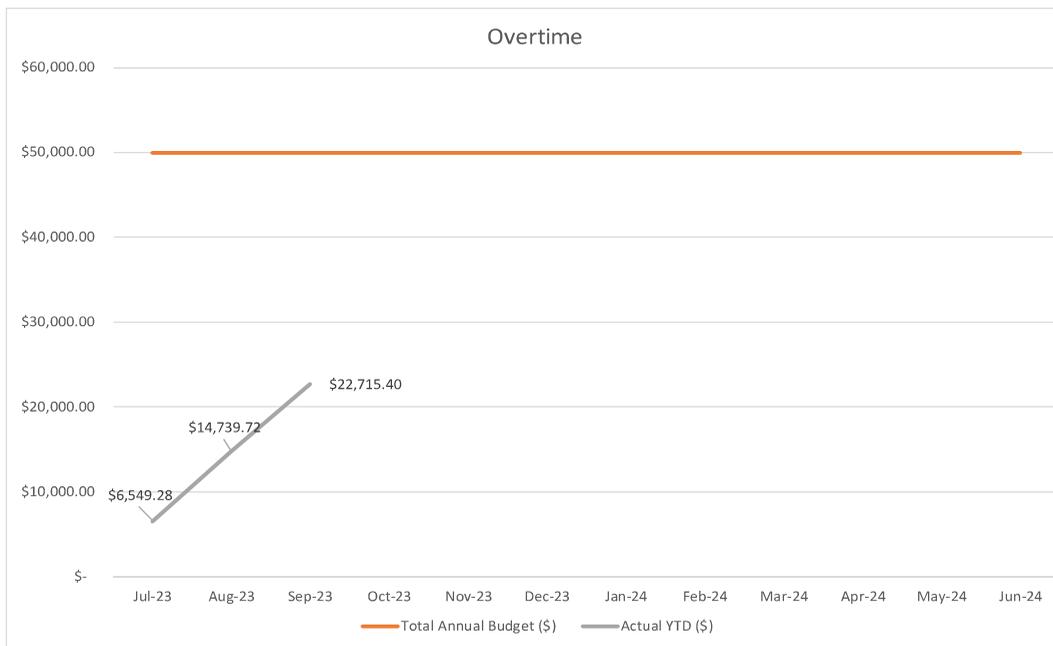
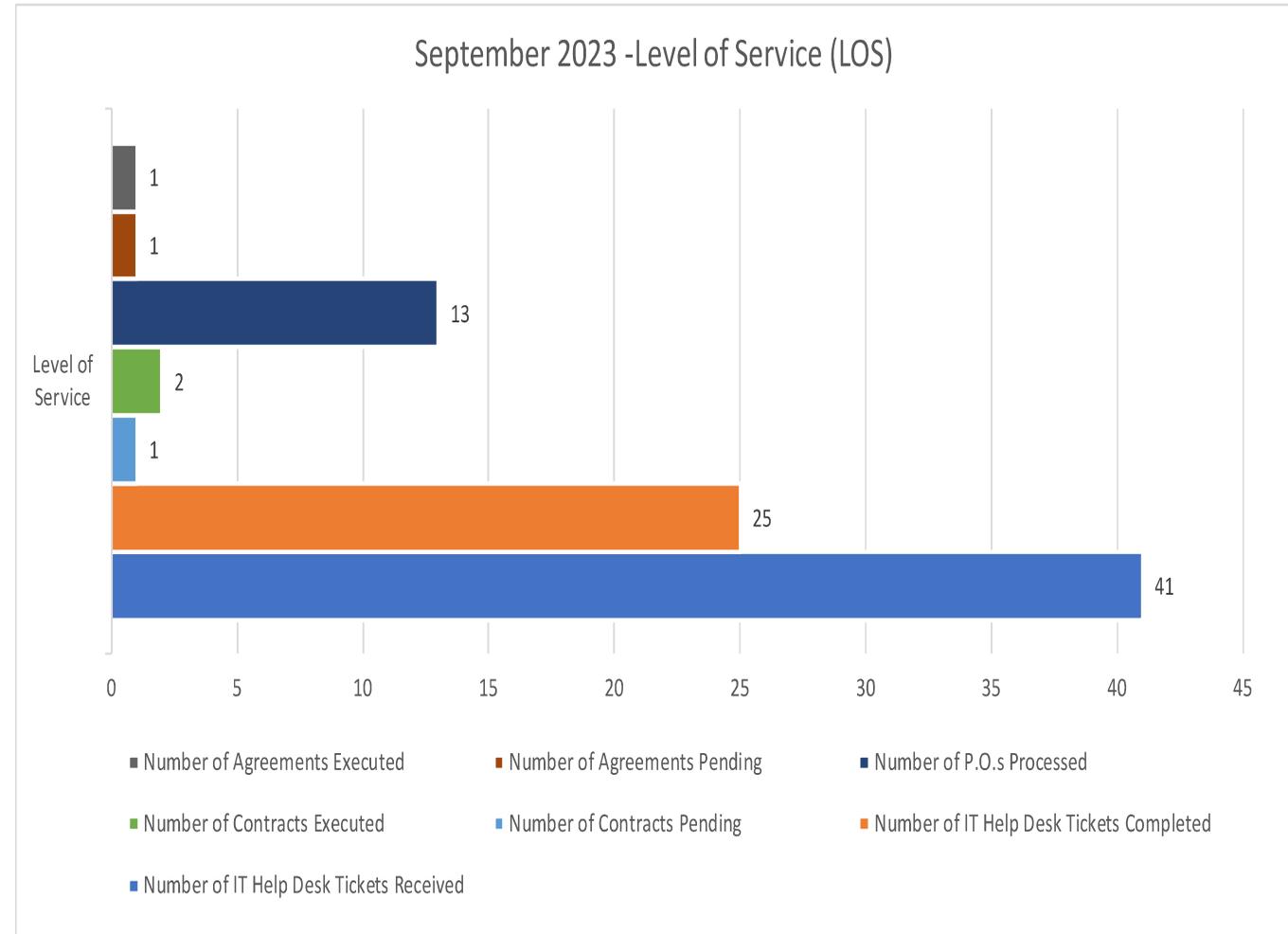
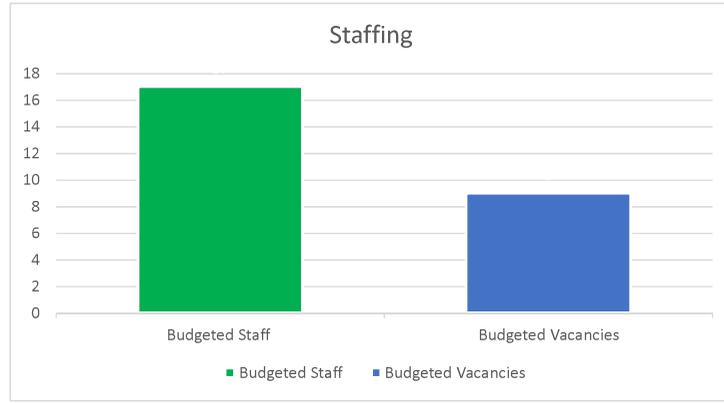
WP 2020 NUMBER	JOB NO	PROJECT TITLE	% COMPLETE MAR 2023	ORIGINAL ESTIMATE TO COMPLETE	CURRENT ESTIMATE TO COMPLETE	CURRENT CONTRACT AMOUNT
PLH-35B	16-02	Kapaia Haul Cane Road 18" Transmission Line	7	Q3 2019	xxxxx (1)	\$4,127,545.00
KW-07	17-10	Rehabilitate Paua Valley Tank No. 1, 0.5 MG Tank	68	Q2 2021	Q2 2024	\$3,540,372.99 (2)
WK-08 WK-39	02-14	Kapa'a Homestead Well 4 – Package A Drain Line	82	Q3 2019	Q1 2024 (3)	\$2,605,418.35
K-01 & K-12	09-01	Kalaheo Water System Improvements Package A – 0.5 MG Yamada Reservoir Package B – 0.1 MG Clearwell Reservoir Package C – Water Main Installation	10	Q1 2025	Q1 2025	\$21,756,430.00 (4)
WKK-03	16-04	Kilauea Wells Nos. 1 and No. 2, MCC, Chlorination Facilities	40	Q3 2024	Q3 2024	\$3,211,866.80 (5)
N/A	18-07	Kukuiolono Existing 0.2 MG Tank Demolition Plan	100	Q4 2022	Q3 2023	\$380,968.25
					TOTAL =	\$35,622,601.39

- (1) Project issued stop work order and is on hold, pending completion of additional environmental evaluation.
- (2) \$1.2M State funding assistance
- (3) Additional contract time required to re-design drainage system and obtain land-owner approval for DOW drainage easement.
- (4) \$10.2M State funding assistance
- (5) \$2.6M State funding assistance

# Supplemental Support Services

Contract Number	Company	Professional Service	Contract Amount	Amount Invoiced	Number of Projects
723	Esaki Surveying & Mapping, Inc.	As-Needed Surveying	\$20,000	\$1,400	3
725	Bowers + Kubota	Kalaheo Wtr Sys Imp CM	\$1,010,000	\$122,100	N/A
732	Bowers + Kubota	Kilauea Wells 1 & 2 CM	\$325,000	\$119,300	N/A
728	RM Towill, Inc.	As-Needed CM	\$1,000,000	\$31,975	3
747	Kennedy Jenks	As-Needed Proj Mgmt and Inspectional Services	\$1,000,000		1

# ADMINISTRATION DASHBOARD



# ADMINISTRATION

	Aug-23		Sep-23		Previous FY YTD		Current FY YTD	
<b>STAFFING</b>								
Budgeted Staff vs Vacancies (Admin-HR-IT-PR)	8	9	17	9			17	9
<b>OVERTIME</b>								
Budget (\$) vs Actual (\$)	\$ 4,166.67	\$ 8,190.44	\$ 4,166.67	\$ 7,975.68			\$ 12,500.00	\$ 22,715.40
	Aug-23		Sep-23		Previous FY YTD		Current FY YTD	
<b>LEVEL OF SERVICES</b>								
# of IT Help Desk Tickets Received   Completed	38	31	41	25			122	78
# of Legal Claims Outstanding   Resolved			1	0			1	0
# of Contracts Pending   Executed	3	0	1	2			7	4
# of Purchase Orders Processed	32		13				77	
# of Agreements Pending   Executed	0	5	1	1			2	11
# of MOU   MOA Pending	1	0	1	0			2	0
# of MOU   MOA Executed	0	0	0	0			0	0
# of Customer Remarks	0		0				0	
# of Customer Compliments	0		0				0	

Notes: DOW Dashboard data tracking started November 2022 & Legal claims are reported quarterly  
 As of September 2023, the data format presented for staffing changed to show overall total vs breakdown

# DEPARTMENT OF WATER

County of Kaua'i

*"Water has no Substitute – Conserve it!"*

## INFORMATION & EDUCATION SPECIALIST REPORT

October 19, 2023

### Public Notices and Announcements

All news releases are sent to statewide media partners, published on the Department of Water's (DOW) Facebook page and the County of Kaua'i's website at [www.kauai.gov/press-releases](http://www.kauai.gov/press-releases). Notices labeled as a Public Service Announcement (PSA) are shared directly with local newspaper and radio stations and posted on the Department's Facebook page. Additionally, all roadwork notices are emailed to the Department of Transportation's (DOT) communications office.

### Service Announcements

<i>Date Issued</i>	<i>Water System &amp; Affected Service Areas</i>	<i>Announcement</i>	<i>Effective Date &amp; Times</i>	<i>Other Notices</i>
09-13-2023	KALAEHO	Road closure scheduled for portion of Pu'uwai Road through Oct. 11	Sept. 13 to Oct. 11	Kauai County Alerts Media published via Kauainownews.com (Attached)
09-15-2023	n/a	Neighbor Island water partners joins Kauai to host 'Make a Splash'	September 15, 2023	Media published via Garden Island Newspaper Kauainownews.com (Attached)
09-21-2023	n/a	Friendly reminders during DOW's Meter and Transponder Replacement Project	n/a	Media published via Kauainownews.com (Attached)
09-30-2023	n/a	DOW adorns pink ribbon in October in honor of Breast Cancer Awareness Month	n/a	Media published via Kauainownews.com And Garden Island Newspaper (Attached)

### Public Relations Programs

#### Community Outreach & Education

- The Department hosted a hydration station and distributed 159 collapsible water storage jugs and more than 135 reusable water bottles at the Ohana Fit Fest event held in Princeville on Sept. 30, 2023. This outreach event was part of a joint partnership with the North Shore Community Association and is also part of the Department's water emergency preparedness campaign. As of this report date 858 water storage jugs have been distributed since the campaign began in May 2023. Special thanks to DOW's Krist'l Castillo-Gray and Jonell Kaohelaui'i for hosting the hydration station.
- In support of the Maui County's recovery efforts and water storage needs after the recent Lahaina fires, the Department of Water is donating 1,000 collapsible water storage jugs to the Maui County Department of Water Supply. Maui County DWS will be using the donation of jugs towards their community outreach needs. PR staff is coordinating the donation to Maui in October.

- The Department is honoring the national “Imagine a Day Without Water” (IADWW) campaign to highlight the value of water and the critical role water infrastructure plays in our daily services. As part of our local IADWW campaign, the Department is hosting a hydration station at the county employee’s spooktacular event on Oct. 20, a community exhibit at the Grove Farm Market in Puhii on Oct. 21 and coordinating a week-long social media campaign from October 16-21<sup>st</sup> via Facebook as part of a statewide social media campaign effort with Hawaii’s water agencies. Follow the trend online at #ValueWater and #imagineadaywithoutwater
- The Department of Water received its third Environmental Protection Agency’s (EPA) WaterSense Excellence Award for excellence in its education, outreach and enhanced efforts towards promoting WaterSense labeled products in 2022 programs. PR’s key accomplishments included coordinating educational conservation exhibits and displays, media promotions and community outreach events to promote EPA WaterSense labeled fixtures and campaigns. PR coordinated a successful 2022 Fix a Leak Week campaign reaching more than 1k households and through a partnership with Ferguson Facilities promoted low-flow, WaterSense labeled toilets. The return of the DOW’s water education festival, ‘Make a Splash’ in 2022 also contributed towards the department’s educational outreach successes for its impact on student learning opportunities about water. The awards ceremony was held at the American Water Works Association’s (AWWA) WaterSmart Innovations Conference in Las Vegas on October 5, 2023. PR’s Jonell Kaohelauli’i, Deputy Manager, Michael Hinazumi and Information Technology Manager, Wayne Takabayashi were in attendance to receive the award. A news release announcing the award will be issued later this month.

#### **Advertising & Communications**

- The Department’s “Wise Water Wednesday” advertising awareness campaign for the month of October includes outdoor water-saving tips, Imagine a Day Without Water campaign messaging and billing service reminders. The weekly media campaign is posted on the Department’s Facebook page, aired on local radio stations and published in the Garden Island Newspaper’s local section.
- A new department brochure has been published to address frequently asked billing questions that are being received by customers during the Meter and Transponder Replacement Project. The brochure entitled, “Frequently Asked Billing Questions Related to the Meter and Transponder Replacement Project”, is intended to be supplemental customer information that will help explain billing statements and related scenarios during the project (*brochure copy attached*).

#### **Upcoming Community Outreach & Educational Events**

- National Imagine a Day Without Water – October 19, 2023
- Water station at COK’s Spooktacular – October 20, 2023
- Water Emergency Preparedness Jug Distribution event – October 21, 2023
- Mini Make a Splash Festivals – Nov-Jan, dates TBA

#### **Project WET (Water Education Today) Hawaii**

- The Make a Splash with Project WET festival was successfully held on Friday, Sept. 15, 2023, at the Vidinha Stadium Soccer Field in Lihue. Water partners joined the Department of Water to assist with logistical needs, conduct activities, facilitate safety measures and provided overall support for the 11 activity stations offered at the festival. Festival highlights include:
  - 562 fifth grade students, along with their teachers and a few parent chaperones.
  - More than 250 volunteers over a 2-day period participated this year.

- 19 water partners participated in Make a Splash this year. Including 3 new groups from:
  - Kauai Community College – Early Childhood Education Program
  - Department of Land and Natural Resources’ -Division of Wildlife and Forestry
  - Hawaii Department of Health -Safe Drinking Water Branch (last attended in 2019).
- We received 102 post event surveys; highlights of the survey include:
  - 97 rated the overall event “excellent”
  - 92 rated the event “very organized”
  - 96 said that the activity information they received was “easy to follow”
  - 95 said they “received all the details they needed for the event”
- Implemented eco-friendly, green initiatives to improve and create sustainable practices to conduct the event. Volunteers were encouraged to bring their own reusable water bottles.
- A board resolution has been drafted to officially acknowledge and thank all of the volunteers and partnering agencies that contributed towards this year’s Make a Splash with Project WET success.
- PR is planning 3 mini Make a Splash festival experiences for students in the East complex schools in November and January 2024. Jonell is working with the schools’ faculty and fifth grade teachers to coordinate dates and locations for the festivals.

### **Miscellaneous**

- The Department of Water is participating in a county-wide effort to honor Breast Cancer Awareness month in October. Pink ribbon logo shirts were issued to staff as part of this effort and will be worn on Wednesdays in October.

Attachments:     *Kauainownews* (Road closure on Pu’uwai Road in Kalaheo through Oct. 11)  
                      *Garden Island* (Making a Splash)  
                      *Kauainownews* (Hundreds of fifth grade students participate in Kauai water education festival)  
                      *Kauainownews* (Friendly reminders during DOW’s Meter and Transponder Replacement Project)  
                      *Kauainownews* (Kaua’i County Water Department goes pink for Breast Cancer Awareness Month)  
                      *Garden Island* (Sept 30 Happy Camper)  
                      DOW Brochure – Frequently Asked Billing Questions during the Meter and Transponder Replacement Project

**Kauai News**

# Partial road closure on Pu'uwai Road in Kalaheo through Oct. 11

September 14, 2023 · 2:49 PM HST



The Department of Water and its contractor, Hawaiian Dredging Construction Company Inc. have planned a road closure on a portion of Pu'uwai Road from the intersection of Pu'ulima Road to the end of Pu'uwai Road occurring now through Oct. 11, weather permitting.

The portion of Pu'uwai Road that will be closed is an unpaved road, without residential or commercial dwellings, therefore, no vehicle or pedestrian access will be allowed during working hours.

Additionally, the partial lane closure near the intersection of Pu'uwai Road and Pu'ulima Road will continue through Oct. 11, between the working hours of 7 a.m. to 3:30 p.m., weather permitting.

For more information or questions, please contact Hawaiian Dredging Construction Company Inc.'s Nelson Colburn at 808-445-4555.

Featured

# Hundreds of fifth grade students participate in Kaua'i's water education festival

September 17, 2023 · 8:22 PM HST



One of 3 classes from Ele'ele Elementary School at the water education festival. Photo Courtesy.

-continued-

More than 500 fifth grade students and more than 200 volunteers participated in two days of educational games, activities and exhibits to learn about water conservation and education this past weekend at the Vidinha Stadium soccer field in Līhu'e.

"Make a Splash" kicked off Sept. 15. It is Hawai'i largest and only water education festival and is spearheaded by the Kaua'i County Department of Water in partnership with islandwide water agencies.

The event brought together teachers, government agencies, local water organizations and businesses. They provided local students with dynamic hands-on activities, games and educational exhibits to learn how the vital natural resource affects the islands' agriculture, recreation, groundwater, local industries and wildlife habitats.

"This event is an inspiring demonstration of teamwork, educational connections and the value of water," said Jonell Kaohelaui'i, the water department's information and education specialist.

Kaohelaui'i also is the state coordinator for Project WET (Water Education Today).

This year, the Department of Water featured eight Project WET activities and three partner-guided activities from Aqua Engineers, the state Division of Aquatic Resources and NOAA.



A fifth grader from Wilcox Elementary reacts to her clay pot eco system being damaged by a natural disaster demonstrated by cracking the pot, during one of Project WET's activities. Photo courtesy.



## ***Making a splash***

*Department of Water and water community provide nearly 600 fifth grade students a unique learning experience*

-continued-

## Department of Water and water community provide nearly 600 fifth grade students a unique learning experience

**Dennis Fujimoto**  
THE GARDEN ISLAND

LIHU'E — Nearly 600 fifth grade students got a unique and fun water education during the Make A Splash with Project WET (Water Education Today) at the Vidinha Stadium soccer fields on Friday.

"This event is an inspiring demonstration of teamwork, educational connections, and the value of water," said Jonell Kaohelaui'i of the Department of Water.

"Water agencies from across the state come together to help teach and inspire students, offering them the knowledge and experience that promotes critical thinking to make informed decisions about how they can contribute to wise water use and environmental stewardship."

Kaohelaui'i said the number of students were concentrated from the Hawai'i Department of Education Central and West complexes because the East complex schools had a day off from school.

She said having the East complex schools on a day off had its share of blessings, such as not having enough buses to accommodate the mass of students to the single-day event.

"We'll be doing mini Make A Splashes for those schools that couldn't come," Kaohelaui'i said. "We also got help from the Transportation Agency, who let us use three Kaua'i Bus to pick up students from schools where there weren't enough buses."

This effort joined those of the 240 volunteers that included representatives from business firms with neighbor island offices, including O'ahu, Maui and the Big Island, which manned 11 educational stations with each station offering a different slice of water education drawn from the curriculum of Project WET.

"This year, the DOW Make A Splash featured eight Project WET



PHOTOS BY DENNIS FUJIMOTO / THE GARDEN ISLAND

**Top: Don't spill the water, a King Kaunuaui'i Elementary School fifth grader is cheered during "The Long Haul" activity station that was part of Making A Splash at the North Vidinha soccer fields on Friday, Sept. 15, 2023. Bottom: A Department of Water monitor helps Kekaha Elementary School fifth graders break their environments, represented by the clay pots.**

activities, and three partner-guided activities from Aqua Engineers, Inc., the Department of Land and Natural Resources Division of Aquatic Resources, and the National Oceanic and Atmospheric Administration," Kaohelaui'i said.

"The DOW would like to thank the following water partners for their commitment to water education and their commendable efforts towards making this year's Make A Splash a success."

Aqua Engineers Inc., American Water Works Association-Hawai'i Section, Bowers and Kubota, LLC, Carollo Engineers, Inc., DLNR-Aquatics Resources, DLNR-Division of Forestry and Wildlife, the Department of Health-Safe Drinking Water

Branch, East and West Kaua'i Soil and Water Conservation Districts, Grove Farm Land Corporation and Hawai'i Rural Water Association each contributed to make this year's program a smash.

Also contributing to this year's program were the Hawai'i Water Environmental Association, NOAA-Marine Animal Rescue Program, Kapa'a High School JROTC program, the Kaua'i Bus, Kaua'i County Farm Bureau, University of Hawai'i-College of Tropical Agriculture and Human Resources, Kaua'i Community College-Early Childhood Learning Program, Kodani and Associates Engineers LLC, The Nature's Conservancy, Uncle Tilo's Clean Water LLC and participating DOW staff.

-end-

Kauai News

# Friendly reminders during DOW's Meter and Transponder Replacement Project

September 21, 2023 · 10:55 AM HST



The Department of Water continues to progress with its Meter and Transponder Replacement Project and is reminding customers of potential interruptions in their monthly billing statements and estimated readings based on their recorded lower-than-average monthly water usage due to delayed consumption data retrieval.

The Department of Water's Meter and Transponder Replacement Project is expected to span over several years and is in its first phase of the island wide project to upgrade and replace aging and obsolete equipment to improve its Advanced Metering Infrastructure.

Approximately 25% of its 24,000 customer accounts are included in phase one of the replacement project to upgrade meter transponder units. Since October 2022, Department of Water personnel have successfully replaced 1,100 inactive transponder units and are progressively conducting installments as the equipment arrives from the manufacturer.

Once the equipment replacement work is completed, customers will receive an adjusted billing statement based on their actual consumption, which has been maintained by transponders.

The Department's Water Meter and Transponder Replacement Project is finalizing its Invitation for Bid which is anticipated to be awarded at the end of the year.

For more information or questions regarding your water bill, please contact the Department of Water's Billing Services at 808-245-5442 or email: [billing@kauaiwater.org](mailto:billing@kauaiwater.org).

Community

# Kaua'i County Water Department goes pink for Breast Cancer Awareness Month

September 30, 2023 · 11:52 AM HST



Kaua'i County Department of Water employees gathered with members of the Kaua'i Committee on the Status of Women on Sept. 29 for a brief presentation, announcing that Water Department employees will wear pink work shirts featuring a pink remembrance ribbon on Wednesdays throughout October in observance of Breast Cancer Awareness Month.





Dennis Fujimoto

# Happy Camper



**Top: Pink power! The Department of Water unveiled its 2023 edition of its pink work T-shirt that will be worn every Wednesday in October in observance of October being Breast Cancer Awareness Week. Additionally, DOW employees will be wearing the pink shirts when they join former employee Edie Ignacio Neumiller and the Kaua'i Committee on the Status of Women at the Breast Cancer walk on Monday, Oct. 2, 2023.**

Pink is showing up all over the place, as the Kaua'i Committee on the Status of Women anticipate the Breast Cancer walk coming up on Monday at 11:30 a.m. from the Mo'iheka Building ... **Edie Ignacio Neumiller**, the Kaua'i representative to the Hawai'i Status of Women and former employee of the Department of Water (they've got new pink work shirts that's going to be worn on every Wednesday in October to celebrate the month being observed as Breast Cancer Awareness Month), said the walk to the Wilcox Medical Center (they're having refreshments there, too) and back to Mo'iheka Building should take about an hour for those planning to participate during their lunch hour.

Kaua'i High School band and cheer squad members had their pink on Thursday night, when the OC16 cameras provided live coverage of the Kaua'i Interscholastic Federation girls volleyball matches. On Friday, OC16 will cover the Kapa'a High School homecoming football game



PHOTOS BY DENNIS FUJIMOTO / THE GARDEN ISLAND

**Middle: The color was pink on Thursday night, Sept. 28, 2023. A Kaua'i Interscholastic Federation line judge holds a pink indicator flag, while watching the Kaua'i High School cheer squad perform at the girls volleyball matches broadcast by Spectrum OC16 from the new Kaua'i High School gymnasium.**

against Waimea High School at Bryan J. Baptiste Sports Complex. Mahalo, **John Felipe** and the OC16 crew for the consideration!

Beyond the color pink, **Melissa McFerrin** of Kukui Grove Center revealed the monthlong series of activities, including Freaky Fridays by the Aloha Dance Studio, which will be adding crafters to the lineup of family-friendly activities, and the flash dance perfor-

mances ... the zombies have been rehearsing their makeup. October events will end on Oct. 29 with the annual Trunk or Treat event headed by **Nannie Ann Apalla** and **Alice Luck** of the Kaua'i Planning and Action Alliance Resilience Project, who are now accepting applications from families and nonprofit organizations who like to dress up and provide keiki treats.

# FREQUENTLY ASKED BILLING QUESTIONS

## RELATED TO THE METER AND TRANSPONDER REPLACEMENT PROJECT

### How is my bill adjusted after the actual data is received?

When your actual meter consumption data is received and updated in our system, the difference between the estimated charges and the actual water consumption charges are applied accordingly. As a result, the bill adjustment could include a lump sum of the remaining balance or an account credit.

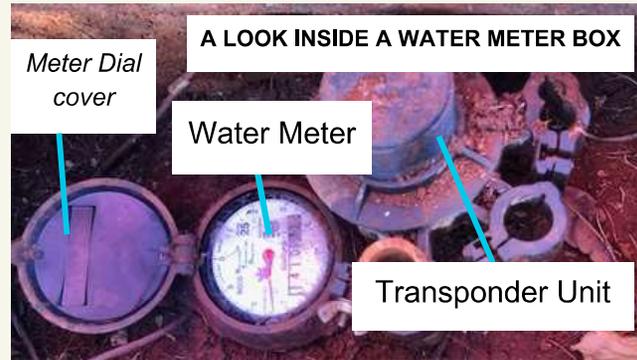
In some cases, an adjustment is also made to the accurate tier level for water consumption charges in a multi-month situation.

For example, if the actual water consumption is 10k gallons of water use and your account was estimated at 9k gallons of water, you will receive a charge for the remaining difference of 1k gallons owed for your water usage.

### Do I need to pay for water use that was not billed to me on time?

Yes. The Department of Water's responsibility is to ensure the delivery of high-quality drinking water 24 hours a day, seven days a week. As a result of this service, customers agree to pay a monthly service fee and water consumption charges for the services received in order to maintain their water service account with the Department.

We apologize for the inconvenience and the delay in the receipt of your monthly billing statements and are working towards improving this process as we advance through the project.



### What should I do if I haven't received my monthly water bill?

It is recommended that you continue to make monthly bill payments based on your past water usage. Review your previous water bill statement's, "usage profile" to see your use and determine the amount suitable for your payment. These payments will be credited to your account and adjusted accordingly when your actual water consumption data is received. This will also help to avoid a large lump sum due on your account after the data is updated. For additional information, please contact Billing Services at 808-245-5442 or email [billing@kauaiwater.org](mailto:billing@kauaiwater.org).

### I need more time to pay my balance in full. Can I make partial payments?

Yes, customers experiencing financial hardship or would like to request additional time to make payment in full can submit a request for a monthly payment plan.

For information on partial payments or to set-up a payment plan, please contact our Billing Services personnel at 808-245-5442 or email [billing@kauaiwater.org](mailto:billing@kauaiwater.org).



*Water has no substitute...Conserve it!*



4398 PUA LOKE STREET  
LIHUE, HI 96766  
BILLING SERVICES: 808-245-5442  
WWW.KAUAIWATER.ORG  
FACEBOOK @KAUAIWATER

## METER AND TRANSPONDER REPLACEMENT PROJECT

The Department of Water (DOW) is replacing water meter transponder units as part of its Meter and Transponder Replacement Project. During this process, customers may experience interruptions in their monthly billing statements and receive estimated readings based on their recorded lower-than-average monthly water usage due to delayed consumption data retrieval. The project is expected to span over several years and is in its first phase of an island wide plan to upgrade to replace aging, obsolete equipment and improve Advanced Metering Infrastructure (AMI).

Since October 2022, DOW personnel have successfully replaced 1,100 inactive transponder units and are progressively conducting installments as the meter equipment arrives from the manufacturer.

When the equipment is replaced, customers will receive an adjusted billing statement based on their actual consumption, which has been maintained by transponders.

The Department of Water strives to improve operational efficiencies and effectiveness to prevent billing interruptions in the future and thanks customers for their patience and cooperation.

### What does a transponder do and how does it affect my bill?

The transponder is 1 of 3 components of the Automated Meter Reading (AMR) equipment in the water meter box. The transponder is connected to the water meter and transmits a meter reading from the customer's meter to the DOW's meter reader system via wireless technology. This data is then used to generate your monthly bill.

When the transponder is inactive, it cannot transmit the necessary data to the DOW's meter reader system. Without the current data, the billing system will generate an estimated bill which is based on your recorded lower-than-average monthly water use. After the transponder is replaced and activated, the data is then transferred from the water meter to the system and allows the automated billing process (based on actual consumption) to resume.

### Why and how is my bill estimated?

Customers in phase 1 of the Meter and Transponder Replacement Project may be receiving an estimated water bill due to an inactive transponder. A water bill may be estimated if the actual water consumption data is not available from the customer's water bill. This typically occurs when we are not able to receive water consumption data.

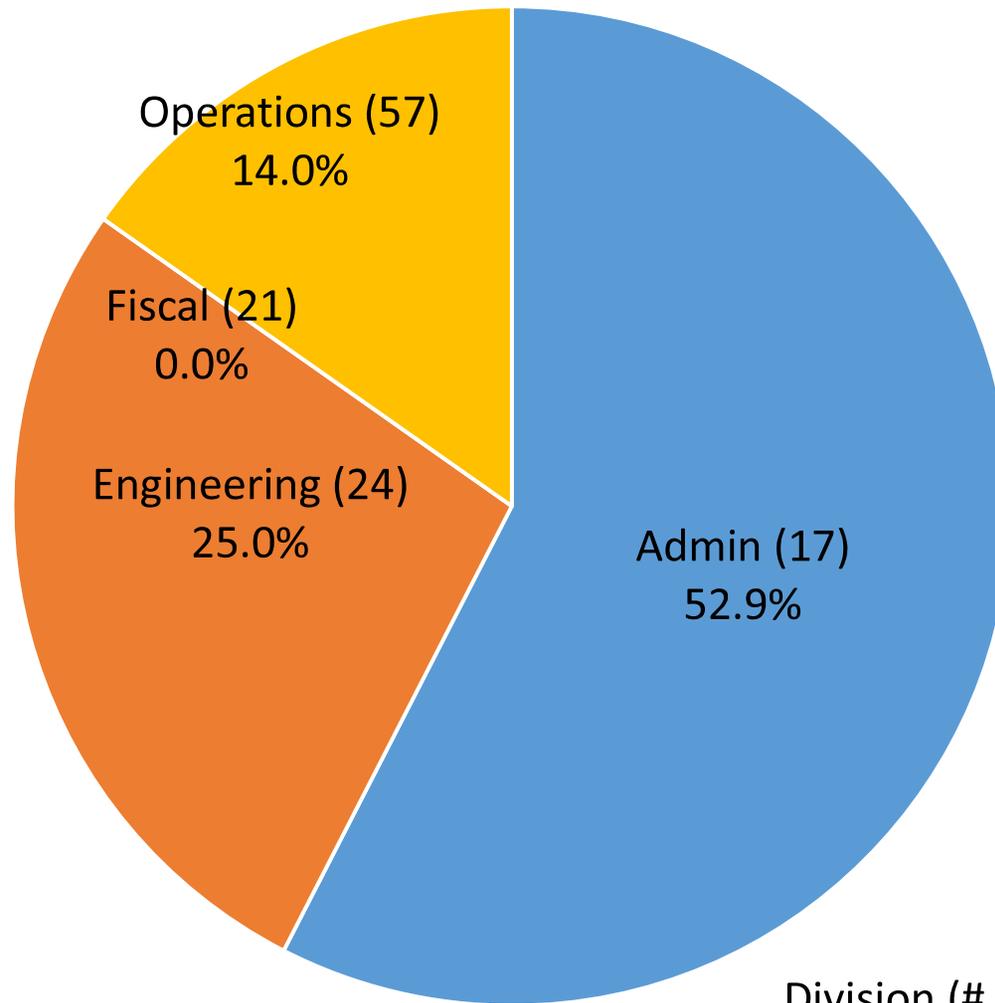
An estimated bill is typically based on the customer's recent or lower-than-average water usage and is generated to maintain the customer's service account statements.

### I received a billing adjustment, but why is my bill higher than normal?

There are a few reasons why an adjusted bill could be higher than your typical monthly bill. Here are the most common scenarios:

- **Low estimate:** An estimated bill is based on the customer's lower-than-average water consumption. Therefore, if your water use increased for any reason during this time (such as additional house guests, extra outdoor water use, filling up a pool, etc.), the added usage will result in an increase in your bill that is higher than the estimated water use.
- **Water leak:** During the estimated billing cycle, the customer experiences a water leak. A water leak can result in an increase of unknown water demand and usage that continuously draws water from the system. If you experienced a leak during the estimated billing cycles, the additional water demand will be applied to your account, accordingly, resulting in a higher bill.
- **Non-payment:** If a customer did not continue making monthly payments during the months of active service, their revised bill amount will include charges for water usage that has not yet been paid for.
- **Other- Account credit:** In some cases, the estimated billing amount could be higher than the customer's actual water usage or you may have decreased water consumption due to conservation efforts. In these scenarios, after the bill is adjusted, the customer would see a credit posted to their respective account.

## % Vacancy Within Each Division Level



Division (# Auth) - % Vacant

DEPARTMENT OF WATER  
County of Kaua'i  
"Water has no substitute – Conserve It!"

MANAGER'S UPDATE

October 19, 2023

*Pursuant to Board Policy No. 3*

**CONTRACTS AWARDED, EXTENDED, AND/OR AMENDED**

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

RECOMMENDATION:

It is recommended that the Manager approve the third amendment to Contract No. 614 with Brown and Caldwell for additional project management, permitting, environmental, design and construction phase services for the above referenced project.

FUNDING:

Account No.	10-20-10-540-010		
Acct Description	WU/Eng/Admin/Professional Services (Technical Design and Specialty Technical Engineering Services)		
Funds Available	<i>Verified by WWC</i>		\$776,590.29
Contract No.	614		
Vendor	Brown and Caldwell		
	Contract Amount	\$358,881.00	
	First Amendment (09/29/17)	\$53,520.00	
	Second Amendment (12/02/19)	\$9,567.00	
	Total Funds Certified To Date	\$421,968.00	
Third Amendment:			
	Additional project management, permitting, environmental, design and construction phase services	\$298,973.00	
	Total Amendment	\$298,973.00	<\$298,973.00>
Contract Amount To Date			
		\$720,941.00	
Fund Balance			\$477,617.29

BACKGROUND:

Contract NTP Date: December 28, 2015  
Original Contract End Date: December 27, 2016  
New Contract End Date: 1,095 calendar days from Notice to Proceed for Third Amendment

The project was previously placed on hold in 2019 when the design was complete and ready to bid for construction with regulatory approvals in place. The Department of Water is working to construct the project and will need to update the permitting and environmental portions of the project. Additionally, the Department of Water has requested additional design updates that reflect the current design approach for the Department. This requires additional engineering services during construction.

In order to complete the bid documents and construct the project, the additional project management, permitting, environmental, design and construction phase services are needed.

**2. SECOND AMENDMENT TO CONTRACT NO. 710 WITH EUROFINS EATON ANALYTICAL, LLC  
JOB NO. SS-2022-02, WATER QUALITY LABORATORY TESTING SERVICES**

RECOMMENDATION:

It is recommended that the Manager approve the Second Amendment to Contract No. 710 with Eurofins Eaton Analytical, LLC for Water Quality Laboratory Testing Services.

FUNDING:

Account No.	10-20-10-540-010		
Acct Description	WU/Eng/Admin/Professional Services (SDWA Testing)		
Funds Available	<i>Verified by WWC</i>		\$85,000.00
Contract No.	710		
Vendor	Eurofins Eaton Analytical, LLC		
	Contract Amount	\$45,250.00	
	5% Contingency	\$N/A	
	First Amendment (Year 2 of 3)	\$45,250.00	
	Total Funds Certified To Date	\$90,500.00	
Second Amendment:			
	Year 3 of 3 Services	\$45,250.00	
	Total Amendment	\$45,250.00	<\$45,250.00>
Contract Amount To Date		\$135,750.00	
Fund Balance			\$39,750.00

BACKGROUND:

Contract NTP Date: August 16, 2021  
 Original Contract End Date: August 14, 2024  
 New Contract End Date: N/A

Eurofins Eaton Analytical, LLC is the only provider that complies with the State of Hawaii, Department of Health, Safe Drinking Water Branch, Electronic Data Delivery data management

system Safe Drinking Water Information System. Vendor provides laboratory testing services required by the U.S. Safe Drinking Water Act.

The Second Amendment to Contract No. 710 is to continue laboratory testing services for the Department of Water, as required by the U.S. Safe Drinking Water Act.

**3. CHANGE ORDER NO. 4 TO CONTRACT NO. 717 WITH MIDPAC AUTO CENTER, INC.  
GS-2022-01 FURNISH AND DELIVER VARIOUS PICKUP TRUCKS**

RECOMMENDATION:

It is recommended that the Manager approve the no cost contract time extension contract change order.

FUNDING:

Account No.	10-40-00-605-999		
Acct Description	WU/Ops/Capital Outlay – Expansion/Misc. Capital Purchases		
Funds Available	<i>Verified by WWC</i>		\$N/A
Contract No.	717		
Vendor	Midpac Auto Center, Inc.		
	Contract Amount	\$160,614.00	
	5% Contingency	\$N/A	
	Change Order No. 1	\$0.00	
	Change Order No. 2	<\$1,000.00>	
	Change Order No. 3	\$0.00	
	Total Funds Certified To Date	\$159,614.00	
Change Order No. 4:			
	Contract Time Extension, 150 days	\$0.00	
	Total Change Order (NO FUNDS REQUESTED)	\$0.00	<\$N/A>
Contract Amount To Date		\$159,614.00	
Fund Balance			\$N/A

BACKGROUND:

Contract NTP Date: December 6, 2021  
 Original Contract End Date: August 3, 2023  
 New Contract End Date: February 29, 2024

This no cost time extension of 150 days is due to delays in manufacturing, shipping, and warranty repair which will impact the expected departure date from the upfitters. The UAW strike is also

having an effect on parts and shipping. The request is reasonable and not within the contractor's capability to control.

**4. 2<sup>ND</sup> YEAR AUDIT FOR CONTRACT NO. 724 WITH N&K CPAs, INC.  
ANNUAL AUDIT FOR FISCAL YEARS ENDING JUNE 30, 2022, JUNE 30, 2023,  
JUNE 30, 2024, JUNE 30, 2025, AND JUNE 30, 2026**

RECOMMENDATION:

It is recommended that the Manager approve the 2<sup>nd</sup> Year Audit for Contract No. 724 with N&K CPAs, Inc. to conduct the financial audits of the Department of Water's Financial Statements for its 2<sup>nd</sup> Fiscal Year FY ending June 30, 2023.

FUNDING:

Account No.	10-31-10-540-020		
Acct Description	WU/Acctg/Admin/Accounting and Auditing (Auditor)		
Funds Available	Verified by WWC		\$100,000.00
Contract No.	724		
Vendor	N&K CPAs, Inc.		
	Contract Amount (FY 2022)	\$107,800.00	
	5% Contingency	\$N/A	
	Total Funds Certified To Date	\$107,800.00	
2 <sup>nd</sup> Year Audit:			
	Annual Audit for the 2 <sup>nd</sup> Fiscal Year (FY) Ending June 30, 2023	\$95,900.00	
	Total for 2 <sup>nd</sup> Year Audit	\$95,900.00	<\$95,900.00>
Contract Amount To Date			
		\$203,700.00	
Fund Balance			
			\$4,100.00

BACKGROUND:

Contract NTP Date: June 28, 2022  
Original Contract End Date: June 26, 2027  
New Contract End Date: N/A

The DOW entered into Contract No. 724, with N&K CPAs, Inc. to provide financial audit services for the Department of Water for fiscal years ending June 30, 2022, 2023, 2024, 2025, and 2026.

<u>Fiscal Year</u>	<u>Recurring Audit</u>	<u>Single Audit</u>	<u>Total Proposed Fees</u>
2022	\$88,000	\$19,800	\$107,800
<b>2023</b>	<b>\$76,000</b>	<b>\$19,900</b>	<b>\$ 95,900</b>
2024	\$78,000	\$20,000	\$ 98,000

2025	\$80,000	\$20,100	\$100,100
2026	\$82,000	\$20,200	\$102,200

These fees include normal out-of-pocket expenses and are inclusive of Hawaii general excise taxes. The above fee represents the all-inclusive amount that will be charged for the financial and single audits for each year.

We have reviewed the breakdown of the estimated hours, rate of pay and out-of-pocket costs shown by N&K CPAs, Inc. We find the fees to be reasonable and are commensurate with the level of experience and effort required to complete the 2<sup>nd</sup> year audit engagement.

**5. CONTRACT AWARD TO DOXIM dba UTILITEC  
JOB NO. SS-2024-02, CUSTOMER CARE & BILLING (CC&B)**

RECOMMENDATION:

It is recommended that the Manager approve a multi-term contract award to Doxim dba Utilitec for Customer Care & Billing (CC&B) services.

FUNDING:

Account No.	10-30-20-541-020		
Acct Description	WU/Bill/Collection/Billing Costs (Bill Processing Fees)		
Funds Available	<i>Verified by WWC</i>		\$52,840.00
Contract No.	733		
Vendor	Doxim dba Utilitec		
	Contract Amount	\$48,000.00	
	5% Contingency	\$N/A	
	Total Funds Certified	\$48,000.00	<\$48,000.00>
Fund Balance			\$4,840.00

BACKGROUND:

The DOW solicited services for processing routine mass mailing and billing statement services for all customer accounts including other customer notifications through sole source procurement. Utilitec has provided excellent service all throughout the term of their previous contract engagement with the DOW. Continuation of their services will also provide significant stability to ensure that the bill processing services will not be disrupted. The 3-year multi-term contract will be renewed annually, subject to the availability of funds as approved in the DOW's annual budget:

**Year 1 Services (365 days): \$48,000.00**

Year 2 Services (365 days): \$49,500.00

Year 3 Services (365 days): \$51,000.00

Total Contract (1,095 days): \$148,500.00

The DOW Operating & Capital budgets for FY 2023 – 2024 has been submitted and approved by the Board. Funding for the 1st year term of this contract is fully budgeted for FY 2023 – 2024. (Reference Manager’s Report No. 23-\_\_\_\_\_ submitted at 10/19/23 board meeting).

**6. GS-2023-02, CHANGE ORDER NO. 1 TO CONTRACT NO. 736 WITH ALLIED MACHINERY CORPORATION FURNISH AND DELIVER THREE (3) EMERGENCY GENERATORS**

RECOMMENDATION:

It is recommended that the Manager approve the no cost time extension contract change order.

FUNDING:

Account No.	10-40-00-604-999		
Acct Description	WU/Ops/Capital Outlay – R&R/Misc. Capital Purchases		
Funds Available	<i>Verified by WWC</i>		\$N/A
Contract No.	736		
Vendor	Allied Machinery Corporation		
	Contract Amount	\$395,287.80	
	5% Contingency	\$N/A	
	Total Funds Certified To Date	\$395,287.80	
Change Order No. 1:			
	Contract Time Extension of 280 Days	\$0.00	
	Total Change Order (No Funds Requested)	\$0.00	<\$N/A>
	Contract Amount To Date	\$395,287.80	
Fund Balance			\$N/A

BACKGROUND:

Contract NTP Date: February 23, 2023  
 Original Contract End Date: August 21, 2023  
 New Contract End Date: May 27, 2024

This no cost time extension of 280 days is due to delays in manufacturing and component supply which will impact the expected departure date from the factory. The request is reasonable and not within the contractor’s capability to control.

**7. SOLE SOURCE #SS-2024-03, CONTRACT AWARD FOUR WINDS GROUP, INC. ANNUAL LICENSE AND MAINTENANCE OF DOW’S MAINTENANCE MANAGEMENT INFORMATION SYSTEM (MPET®MMIS)**

**RECOMMENDATION:**

It is recommended that the Manager approve a contract award to vendor for Four Winds Group, Inc. to complete database and application upgrades.

**FUNDING:**

Account No.	10-02-10-561-000		
Acct Description	WU/IT/Admin/Repairs and Maintenance – Other than Water System		
Funds Available	<i>Verified by WWC</i>		\$39,416.25
Contract No.	737		
Vendor	Four Winds Group, Inc.		
	Contract Amount (Year 1 of 3)	\$37,539.25	
	5% Contingency	\$1,877.00	
	Total Funds Certified	\$39,416.25	<\$39,416.25>
Fund Balance			\$0.00

**BACKGROUND:**

Four Winds Group, Inc. who is the registered trademark owner has been working with the Department of Water’s MMIS software program since 1998. In accordance with HAR Chapter 3-122-81 No. 3, Sole Source Procurements for annual license renewal and maintenance for computer software is approved by the Procurement Policy Board.

This is a multi-term contract and the contract also allows for extension of time not to exceed a total of 36 months.

**8. NASPO VL CONTRACT NO. 17-18, CONTRACT AWARD TO CARAHSOFT TECHNOLOGY CORPORATION  
CPA2024-01, IMPLEMENTATION FOR CARTEGRAPH ENTERPRISE ASSET MANAGEMENT SOLUTION**

**RECOMMENDATION:**

It is recommended that the Manager approve a contract award to Carahsoft Technology Corporation for the implementation and integration of Cartegraph for Enterprise Asset Management (EAM).

**FUNDING:**

Account No.	10-02-00-604-999		
Acct Description	WU/IT/Capital Outlay-Rehabilitation and Replacement/Misc. Capital Purchases (Line 1-MMIS)		
Funds Available	<i>Verified by WWC</i>		\$650,000.00
Contract No.	CPA2024-01		

Vendor	Carahsoft Technology Corporation		
	Contract Amount (Year 1 of 3)	\$69,751.56	
	5% Contingency	\$3,488.00	
	Total Funds Certified	\$73,239.56	<\$73,239.56>
Fund Balance			\$576,760.44

**BACKGROUND:**

The Board approved budget to replace the current EAM software, MPET, with a new EAM. The Department has entered into a multi-term contract agreement for 3 years and utilized the current NASPO VL Contract 17-18 to facilitate procurement of a new EAM, Cartegraph, that can easily integrate with current software, including our ESRI GIS database. The new software will alleviate a lot of the double work that the Department has been plagued with over the years and allow for a software suite that can be used across multiple divisions.

**CONVEYANCE OF WATER FACILITIES NONE**