

## **BOARD OF WATER SUPPLY**

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

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



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

### **REGULAR MONTHLY MEETING NOTICE AND AGENDA**

Thursday, December 19, 2024  
9:30 a.m. or shortly thereafter

Meetings of the Board of Water Supply, County of Kauai will be conducted in-person at the Department of Water Board Room, 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/83477729232>

**Passcode: 833363**

**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: 834 7772 9232**

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

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

### **CALL TO ORDER**

### **ROLL CALL**

### **ANNOUNCEMENTS**

Next Scheduled Board Meeting: Thursday, January 23, 2024 – 9:30 a.m.

### **APPROVAL OF AGENDA**

### **MEETING MINUTES**

1. Regular Board Meeting – November 21, 2024
2. Executive Session – November 21, 2024

## **PUBLIC TESTIMONY**

### **CORRESPONDENCE**

1. Email dated December 4, 2024, from Sherrie Toma and Howard Carvalho re: debris from Albizia tree on DOW property causing damage to their roof

### **NEW BUSINESS**

1. Discussion and Adoption of Resolution No. 25-04, Mahalo and Aloha to Dean Sacramed (Retiree), Maintenance Worker II, Operations Division
2. Manager's Report No. 25-15 Discussion and Possible Action to receive and expend grant funds from the Hawaii Community Foundation
3. Manager's Report No. 25-16 Discussion and Possible Action to Request Board Approval for the Indemnification Provisions of the Apple Business Manager Agreement between the Board of Water Supply, County of Kaua'i and Apple, Inc.
4. Manager's Report No. 25-17 Discussion and Possible Action for Adoption of Budget Resolution 25-05 for the acceptance and expenditure of grant monies from the Legislature of the State of Hawai'i Supplemental Appropriations Act of 2024 for the Kapa'a Homesteads Tanks, Two 0.5 MG Tanks, Package B
5. Confirmation of Board Committee appointments for 2025

### **STAFF REPORTS**

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

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

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

1. Resolutions for 2024 Employees of the Year

### **EXECUTIVE SESSION:**

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

### **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.

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DRAFT

MINUTES

MINUTES  
BOARD OF WATER SUPPLY  
Thursday, November 21, 2024

The Board of Water Supply, County of Kaua‘i, met in a regular meeting in Lihu'e on Thursday, November 21, 2024. Chair Tom Shigemoto called the meeting to order at 9:34 a.m. The following Board members were present:

**BOARD:**

Mr. Tom Shigemoto, *Chair*  
Ms. Julie Simonton, *Vice Chair*  
Ms. Micah Finnila  
Mr. Troy Tanigawa

**EXCUSED:**

Mr. Kurt Akamine  
Mr. Ka‘aina Hull

Quorum was achieved with 4 members present at Roll Call.

**ANNOUNCEMENTS**

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

**APPROVAL OF AGENDA**

The agenda was approved with no objections

**MEETING MINUTES**

1. Regular Board Meeting – October 17, 2024

The minutes of the October 17, 2024 meeting was received for the record

**PUBLIC TESTIMONY**

None

**OLD BUSINESS**

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

**Board member Simonton moved to defer Old Business Item 1. To the December 19, 2024 meeting, seconded by Mr. Tanigawa; with no objections, motion carried with 4 Ayes.**

**NEW BUSINESS**

1. *Manager’s Report No. 25-08* Discussion and Possible Action to reappropriate certain budget line items to other line-item budgets for the purpose of compliance with the Supplemental Agreement for Bargaining Unit 13, Salaries for Certain Engineering Classes.

**Board member Simonton moved to approve Manager’s Report No. 25-08, seconded by Mr. Tanigawa; with no objections, motion carried with 4 Ayes.**

2. *Manager’s Report No. 25-09* Discussion and Possible Action on Approving Certain Unspecified Future Obligations Provisions Included in Laserfiche’s Professional Services Additional Terms

**Board member Tanigawa moved to approve Manager’s Report No. 25-09, seconded by Ms. Finnila; with no objections, motion carried with 4 Ayes.**

3. Manager's Report No. 25-10 Discussion and Possible Action to Approve GOE for 'Ōpaeka'a Falls Subdivision Lot 2, TMK (4) 4-2-003:065

**Board member Simonton moved to approve Manager's Report No. 25-10, seconded by Mr. Tanigawa; with no objections, motion carried with 4 Ayes.**

4. Manager's Report No. 25-11 Discussion and Possible Action to Approve Notice of Waiver and Release and Cancellation of Private Water System Agreement for 'Ōpaeka'a Falls Subdivision Lot 2, TMK (4) 4-2-003:065

**Board member Tanigawa moved to approve Manager's Report No. 25-11, seconded by Ms. Finnila; with no objections, motion carried with 4 Ayes.**

5. Manager's Report No. 25-12 Discussion and Possible Action to Approve Memorandum of Agreement with DHHL (Interconnection Agreement)

**Board member Simonton moved to approve Manager's Report No. 25-12, seconded by Mr. Tanigawa; with no objections, motion carried with 4 Ayes.**

6. Manager's Report No. 25-13 Discussion and Possible Action to Approve GOE with Achberg LLC, TMK (4) 5-1-005:124

Engineering Division Head Jason Kagimoto requested that this item be withdrawn from the agenda, noting that there are a few edits to the Grant of Easement that were made after it was provided for agenda posting. The intent is to finalize those edits and bring it back before the board at the December 19, 2024 meeting.

**Chair Shigemoto approved the request to withdraw Manager's Report No. 25-13.**

7. Manager's Report No. 25-14 Discussion and Possible Action to Request Board Approval for Unspecified Future Obligations and Indemnification for Zoom between the Board of Water Supply, County of Kaua'i and Zoom

**Board member Tanigawa moved to approve Manager's Report No. 25-14, seconded by Ms. Simonton; with no objections, motion carried with 4 Ayes.**

8. Election of Board Chair, Vice-Chair and Secretary, and committee appointments for 2025

**Board member Simonton moved to elect Julie Simonton as Chair, Tom Shigemoto as Vice-Chair, and Micah Finnila as Secretary of the Board of Water Supply for calendar year 2025, seconded by Mr. Tanigawa; with no objections, motion carried with 4 Ayes.**

9. Proposed Board meeting calendar for 2024

**Board member Tanigawa moved to approve the proposed Board meeting calendar for 2025, seconded by Ms. Finnila; with no objections, motion carried with 4 Ayes.**

## **STAFF REPORTS**

1. Fiscal:

- a. Monthly dashboard
- b. Budget Report for October 2024

2. Operations – Monthly dashboard

3. Engineering – Monthly dashboard

4. Administration:

- a. Monthly dashboard
- b. Human Resources – updates on Personnel Vacancies
5. Manager and Chief Engineer – Required communications to the Board, and update of Department activities

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

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

1. Resolutions for 2024 Employees of the Year

**EXECUTIVE SESSION:**

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

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

**Board member Simonton moved to enter into executive session, seconded by Mr. Tanigawa; with no objections, motion carried with 4 Ayes.**

The Board entered into executive session at 10:09 a.m.

The Board resumed in open session at 10:41 a.m.

**The Board has concluded its executive session for Item 1. Item 1. Involved discussion and/or final action for the purpose stated on the agenda for the particular item. Pursuant to HRS 92-4(b), the disclosure of the discussion and/or final action would defeat the purpose of convening the executive meeting which was held pursuant to HRS 92-5(a)(4).**

**Board member Simonton moved to ratify actions taken in executive session, seconded by Mr. Tanigawa; with no objections, motion carried with 4 Ayes.**

**ADJOURNMENT**

The meeting was adjourned at 10:43 a.m.

Respectfully submitted,

Cherisse Zaima  
Commission Support Clerk

A horizontal splash of clear blue water with bubbles and ripples, centered on the page. The word "CORRESPONDENCE" is overlaid on the water in a blue, serif font.

# CORRESPONDENCE



## Cherisse Zaima

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**From:** Sherrie Toma <sherrietoma@yahoo.com>  
**Sent:** Wednesday, December 4, 2024 4:05 PM  
**To:** DOW Board  
**Subject:** 1451 Kualapa Place, Kapaa, Kauai

You don't often get email from sherrietoma@yahoo.com. [Learn why this is important](#)

[External]

**CAUTION: This email originated from outside of the Department of Water. Do not follow guidance, click links, or open attachments unless you recognize the sender and know the content is safe.**

Board Chair - Tom Shigemoto, Board Vice Chair - Julie Simonton, Board Secretary - Kurt Akamine, Board Member - Micah Finnila,

We have verbally petitioned the Board of Water Supply for years to remove the Albizia tree across our home. This tree sheds so much debris that we had to replace our roof in 2021. The debris is so extensive that my husband, Howard Carvalho, cannot safely maintain clearing the fallout. We need to hire someone to clean our roof because of mold.

Our private water supply is housed in the building adjacent to the Department of Water. Fallen branches from that Albizia landed on your fence, blocked our road, and got cleared by Howard. The families in this subdivision depend on electricity to run our water supply. The danger of your tree falling on the power lines, our water building, and our bedrooms will be devastating.

December 4, 2024, photo shows the daily debris from your tree. The third photo shows one of the many fallen branches.

Please address this situation,

Sherrie Toma and Howard Carvalho







A horizontal splash of clear blue water with bubbles, positioned behind the text. The splash is wider and more turbulent on the right side.

NEW

BUSINESS

MAHALO AND ALOHA

Dean Sacramed

Maintenance Worker II
December 2016 – December 2024

WHEREAS, Dean Sacramed joined the County of Kaua'i, Department of Water as a Maintenance Worker I on December 16, 2016, following 31 years of work with the State in various maintenance supervisory roles. He brought with him vast amounts of knowledge in many different aspects of maintenance work; and

WHEREAS, Dean bided his time and three years later he was promoted to Maintenance Worker II on May 1, 2019, where he could use that experience to bring up the next generation of maintenance workers; and

WHEREAS, Dean, out of necessity, devoted the majority of his time to clearing cross-country water lines and vastly improving remote site access. He unearthed many water relics lost to time and improved the overall system quality and integrity; and

WHEREAS, Dean no longer has to dread working on something in the Admin Building that almost always turns into requests for additional maintenance from fellow workers that happen to catch him there, where he can't say "no" or deny he doesn't know about it; and

WHEREAS, Dean does not have to worry himself about the next major storm and all the damage repair that comes with it, cutting trees, removing sand and mud, rebuilding washed out roads, etc.; and

WHEREAS, after more than 8 years of service to the County of Kaua'i and DOW customers, Dean decided it is time to pursue other interests. He can devote some of that time to clearing out the list of maintenance assistance requests from relatives that never seems to end; and

WHEREAS, in addition to his many years of dedicated, loyal and devoted service with the Department of Water of the County of Kaua'i, we will miss the positive attitude with which Dean performs his work duties and work assignments; and

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF WATER SUPPLY, COUNTY OF KAUAI, STATE OF HAWAII, that on behalf of the water-consuming customers of Kaua'i, the Board expresses its gratitude and appreciation for the many years of dedicated service rendered by Dean Sacramed. We extend to Dean our best wishes for much happiness and success in retirement.

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



We do certify that the foregoing was duly adopted by the Board of Water Supply during its meeting on December 19, 2024.

Tom Shigemoto, Chairperson

Kurt Akamine, Secretary

# DEPARTMENT OF WATER

County of Kaua'i

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

## MANAGER'S REPORT No. 25-15

December 19, 2024

Re: Discussion and Possible Action to receive and expend grant funds from the Hawaii Community Foundation.

### **BACKGROUND:**

In October 2024, the Department of Water (DOW) was awarded a \$100,000 grant from the Hawaii Community Foundation. The Hawaii Community Foundation partners with organizations and government entities to further invest in communities that will ultimately benefit Hawaii's people. The grant funds will further extend the DOW's reach to promote water conservation and educational outreach. This is a one-time grant award, and the grant period is from 11/1/2024 to 10/31/2026.

Key Milestone Dates:

|            |                     |    |           |
|------------|---------------------|----|-----------|
| 11/1/2024  | Payment No. 1       | \$ | 50,000.00 |
| 10/31/2025 | Payment No. 2       | \$ | 50,000.00 |
| 10/31/2025 | Progress Report Due |    |           |
| 11/30/2026 | Final Report Due    |    |           |

### **RECOMMENDATION:**

It is recommended that the Board approve to receive and expend the grant funds.

### **FUNDING:**

N/A

### **OPTIONS:**

#### **Option 1: Approve Manager's Report as recommended.**

Pro: DOW will be able to expand its water conservation efforts and educational outreach, using grant funds.

Con: DOW is required to comply with certain grant terms, conditions, and reporting requirements.

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

Pro: DOW will not need to comply with grant terms, conditions, and reporting requirements.

Con: DOW will return the grant funds and use its operating budget to continue its water conservation efforts and educational outreach.

RY/crz

Attachment(s): None

# DEPARTMENT OF WATER

County of Kaua'i

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

## MANAGER'S REPORT No. 25-16

December 19, 2024

Re: Discussion and Possible Action to Request Board Approval for the Indemnification Provisions of the Apple Business Manager Agreement between the Board of Water Supply, County of Kaua'i and Apple, Inc.

### **RECOMMENDATION:**

The Department recommends that the Board approve Option 1, which will allow the Department to move forward with the implementation and use of Apple Business Manager for the Department's mobile devices.

**FUNDING:** N/A

### **BACKGROUND:**

The Department's Information Technology Division continues to improve its management and security measures for the Department's technologies. To improve the management efficiency of its mobile devices (smartphones, tablets, etc.) the Department intends to procure Apple Business Manager, as it provides easier access for IT staff to manage the devices and provides an enhanced level of security over the current method with individual user management.

Procurement of the Apple Business Manager service is required for its use. The agreement contains language for indemnification and governing law provisions. The County Attorney's Office has reviewed and approved the Terms and Conditions for the Apple Business Manager Agreement.

The sections within the agreement that reference Indemnification are shown below:

### **Apple Business Manager Agreement:**

#### **5. Indemnification**

To the extent permitted by applicable law, You agree to indemnify and hold harmless, and upon Apple's request, defend, Apple, its directors, officers, employees, affiliates, independent contractors and authorized representatives (each an "Apple Indemnified Party") from any and all claims, losses, liabilities, damages, expenses and costs, including without limitation attorneys' fees and court costs, (collectively, "Losses") incurred by an Apple Indemnified Party and arising from or related to any of the following: (a) Your breach of any certification, covenant, obligation, representation or warranty made in this Agreement; (b) Your use (including but not limited to Your Service Provider's, Administrators', Authorized Users', Permitted Users', and/or Permitted Entity's use) of the Service; (c) any claims, including but not limited to any end user claims, about Your use,



deployment or management of Authorized Devices, Device Enrollment Settings, and/or MDM Servers; (d) any claims, including but not limited to any end user claims, about the provision, management, and/or use of Authorized Devices, Administrator accounts, Managed Apple Accounts, or Content, and/or any other use of the Service; and/or (e) any claims regarding Your use or management of Personal Data. In no event may You enter into any settlement or like agreement with a third-party that affects Apple's rights or binds Apple or any Apple Indemnified Party in any way, without the prior written consent of Apple.

## **OPTIONS**

### **Option 1:**

#### **Approve Manager's Report.**

Pro: The Department will be able to procure and utilize Apple Business Manager.

Cons: The Department would have potential risk associated with future indemnification provisions of Apple, Inc.

### **Option 2:**

#### **Deny request to approve Indemnification.**

Pro: No potential legal risk associated with indemnification provisions of Apple, Inc.

Cons: The Department would not be able to procure and utilize Apple Business Manager to assist with management efficiency and its enhanced security features.

MH/crz

Attachment(s): Apple Business Manager Agreement

PLEASE READ THE FOLLOWING APPLE BUSINESS MANAGER TERMS AND CONDITIONS CAREFULLY BEFORE USING THE SERVICE. THESE TERMS AND CONDITIONS CONSTITUTE A LEGAL AGREEMENT BETWEEN INSTITUTION AND APPLE. BY CLICKING ON THE "AGREE" BUTTON, INSTITUTION, THROUGH ITS AUTHORIZED REPRESENTATIVE, IS AGREEING TO BE BOUND BY AND IS BECOMING A PARTY TO THIS AGREEMENT. IF INSTITUTION DOES NOT OR CANNOT AGREE TO THIS AGREEMENT, THEN CLICK THE "CANCEL" BUTTON. IF INSTITUTION DOES NOT AGREE TO THIS AGREEMENT, THEN INSTITUTION IS NOT PERMITTED TO PARTICIPATE.

## Apple Business Manager Agreement

### Purpose

This Agreement permits You to participate in Apple Business Manager, which allows You to automate enrollment of Apple-branded devices for Mobile Device Management (MDM) within Your Institution, to purchase and manage content for such devices, to create Managed Apple Accounts for Your users, and to access facilitation tools for related services.

**Note:** You will need to have an MDM solution (e.g., from a third-party developer) enabled within Your Institution so that you can utilize the features of this Service. An MDM solution enables You to configure, deploy, and manage Apple-branded devices. For more information, see <https://www.apple.com/business/resources/>.

### 1. Definitions

Whenever capitalized in this Agreement:

**"Administrators"** means employees or Contract Employees (or Service Providers) of Institution who have been added to the Service for purposes of account management, e.g., administering servers, uploading MDM provisioning settings, adding devices to Your account, purchasing content, and performing other related services.

**"Agreement"** means this Apple Business Manager Agreement.

**"Apple"** means the following, unless otherwise specified herein: (a) **Apple Inc.**, located at One Apple Park Way, Cupertino, California 95014, U.S.A., for Institutions in the United States, including Puerto Rico; (b) **Apple Canada Inc.**, located at 120 Bremner Blvd., Suite 1600, Toronto ON M5J 0A8, Canada, for Institutions in Canada or its territories and possessions; (c) **Apple Services LATAM LLC**, located at 1 Alhambra Plaza, Ste 700 Coral Gables, Florida, for Institutions in Mexico, Central or South America, or any Caribbean country or territory (excluding Puerto Rico); (d) **iTunes K.K.**, located at Roppongi Hills, 6-10-1 Roppongi, Minato-ku, Tokyo 106-6140, Japan, for Institutions in Japan; (e) **Apple Pty Limited**, located at 20 Martin Place, Sydney NSW 2000, Australia, for Institutions in Australia and New Zealand, including island possessions, territories, and affiliated jurisdictions; (f) **Apple Services Pte. Ltd.**, located at 4F, 504 Teheran-ro (Daechi-dong), Gangnam-gu, Seoul, Republic of Korea for Institutions in South Korea; and (g) **Apple Distribution International Ltd.**, located at Hollyhill Industrial Estate, Hollyhill, Cork, Republic of Ireland, for Institutions in all other countries or territories not specified above in which the Service is offered.

**"Apple Services"** means the App Store, Apple Books, Apple Online Store, AppleCare, iCloud, and other Apple services as available to Your Authorized Users under this Agreement.

**"Apple Software"** means the iOS, iPadOS, macOS, tvOS, visionOS, and watchOS operating system software, or any successor versions thereof.

**“Authorized Devices”** means Apple-branded devices that are owned or controlled by You, have been designated for use by Authorized Users or Permitted Users only, and that are eligible for use in the Service. For the avoidance of doubt, devices that are personally-owned by an individual (e.g., “BYOD” devices) are not permitted to be enrolled in supervised device management (e.g., configured with Device Enrollment Settings) as part of the Service, unless otherwise agreed by Apple in writing, and not all devices are eligible to be added to the Service.

**“Authorized Users”** means employees and Contract Employees (or Service Providers) of (i) Your Institution and/or (ii) Your Institution’s directly or indirectly wholly-owned subsidiaries, if applicable. If You are a hospital, the term “Authorized Users” also includes credentialed physicians, referring physicians and clinicians). For clarity, You may request, and Apple may approve, in its sole discretion, other similar users to be included as “Authorized Users”; however, no other parties shall be included in this definition without Apple’s prior written consent.

**“Content”** means any material or information that may be licensed or acquired as part of the Service pursuant to Apple’s Volume Content Terms (e.g., Apps from the App Store).

**“Contract Employees”** means individuals who perform work or provide services on behalf of an entity on a non-piece-rate basis and who have internal use access to the entity’s private information technology systems (e.g., VPN) and/or secured physical premises (e.g., badge access to corporate facilities).

**“Device Enrollment Settings”** means settings for an Apple-branded device that can be configured and managed as part of the Service, including but not limited to the initial enrollment flow for a device, and settings to supervise a device, make configuration mandatory, or lock an MDM profile.

**“Documentation”** means the technical or other specifications or documentation that Apple may provide to You for use in connection with the Service.

**“End User License Agreement”** or **“EULA”** means the software license agreement terms and conditions for the Apple Software.

**“Managed Apple Account(s)”** means a user account (including but not limited to storage, calendar, notes, and contacts) that You create and deploy through the use of the Service.

**“MDM Server(s)”** means computers owned or controlled by You (or a Service Provider acting on Your behalf) that have been designated to communicate with the Service.

**“Permitted Entity(ies)”** means: (a) if You are a vehicle manufacturer, Your authorized vehicle dealerships and certified service partners; (b) if You are a hotel holding company, hotel properties operating under Your name, trademark or brand (or a name, trademark or brand it owns or controls); or (c) if You deploy an app on Authorized Devices in Restricted App Mode (e.g., a point-of-sale provider who deploys its app-based payment system on iPads), Your customers who are using such app in Restricted App Mode on the Authorized Device. Further, any such app must be developed and distributed in accordance with the terms of the Apple Developer Program License Agreement (e.g., distribution of a Custom App). For clarity, You may request, and Apple may approve, other entities similar to those identified in subsections (a) and (b) above; however, no other entity shall be included in this definition without Apple’s prior written consent.

**“Permitted Users”** means employees and Contract Employees of Your Permitted Entity.

**“Personal Data”** means data that can be reasonably used to identify an individual that is under

the control of the Institution under this Agreement.

**“Restricted App Mode”** means when an Apple-branded device is supervised and configured through the Service such that (a) the device automatically launches and is locked into a single application upon activation and no other operating system functionality can be accessed; or (b) the device cannot be personalized by an end-user (e.g. the device settings prohibit the Mail app from configuration with personal credentials, Content cannot be acquired from the App Store with a personal Apple Account, etc.).

**“Service”** means the Apple Business Manager service (and any components, functionality or features thereof) for automated mobile device management enrollment, acquisition and management of Content, the creation, use, and management of Managed Apple Accounts, iCloud storage connected to a Managed Apple Account, the use of Administrator accounts, and other related services as contemplated in this Agreement, including the web portal and any services or tools provided hereunder.

**“Service Provider”** means a third-party who provides a service on Your behalf in accordance with the terms of this Agreement.

**“Server Token”** means the combination of Your public key, Apple Account and a token provided by Apple that permits Your MDM Server(s) to be registered with the Service.

**“Sub-processor”** means a third party that performs certain tasks on Apple’s behalf, such as processing or storing data and providing customer service, in connection with Apple’s provision of the Service.

**“You,” “Your,” and “Institution”** means the institution entering into this Agreement. For the avoidance of doubt, the Institution is responsible for compliance with this Agreement by its employees, Contract Employees, and Service Providers who are authorized to exercise rights under this Agreement on its behalf.

**Note:** If you are a Service Provider, you need to have the Institution with whom you are working enter into this Agreement and add you as an Administrator since the entity that owns the Authorized Devices and plans to distribute such Devices to its Authorized Users must enroll in the Service.

## **2. Service Requirements**

### **2.1 Use of the Service**

As a condition to using the Service, Institution acknowledges and agrees that:

- (a) Institution is permitted to use the Service only for the purposes and in the manner expressly permitted by this Agreement and in accordance with all applicable laws and regulations, and the Documentation;
- (b) Institution is not permitted to use the Service (or any part thereof) for any unlawful, improper, inappropriate, or illegal activity;
- (c) Institution is permitted to use the Service to manage Authorized Devices for use only by Authorized Users and Permitted Users and not for general deployment to third parties (except as otherwise expressly permitted herein), and Institution will be responsible for all use of the Authorized Devices by such users, including but not limited to obtaining consents and providing appropriate information to users about the managed features of such devices;
- (d) Institution will be responsible for all use of the Service by its Permitted Entities (and any Permitted Users of the Permitted Entity), and any actions undertaken by its Permitted Entity shall be deemed to have been taken by Institution, and Institution (in addition to its Permitted Entity) shall be responsible to Apple for all such actions.
- (e) Institution will obtain all necessary rights and consents from its Authorized Users and Permitted

Users to deploy its Authorized Devices as permitted hereunder;

- (f) Institution will have the rights to purchase and manage Content as may be permitted through the Service and will comply with all applicable terms for the use of Content;
- (g) Institution will obtain all necessary rights and consents from its Authorized Users where necessary to create Managed Apple Accounts and to allow Apple to provide the Service for Managed Apple Accounts (including using and maintaining Personal Data);
- (h) Institution may add Administrators to the Service, but only if such individuals are employees or Contract Employees of Institution or are Service Providers acting on Institution's behalf, and Institution may add such parties only for account management purposes; and
- (i) Institution is permitted to use the Service only for its own (and its Permitted Entity's) internal business operations and information technology purposes and is not permitted to provide a device or service to third parties (other than to a Permitted Entity that is covered under subsection (c) of the "Permitted Entity" definition) that integrates with or leverages services or information provided by the Service or uses the Service in any way, or as otherwise agreed by Apple in writing.

## **2.2 No Other Permitted Uses**

Institution agrees not to exploit the Service in any way unauthorized by this Agreement, including, but not limited to, by trespass, burdening network capacity, or uploading malicious code. Any attempt to do so is a violation of the rights of Apple and its licensors. Institution may not license, sell, share, rent, lease, assign, distribute, host, permit timesharing or service bureau use, or otherwise make the Service (or any components thereof) available to any third-party, except as expressly permitted in this Agreement. Institution agrees not to use the Service to upload, download, post, email, transmit, store or otherwise make available: (i) any Content that is unlawful, harassing, threatening, harmful, defamatory, obscene, invasive of another's privacy, hateful, racially or ethnically offensive or otherwise objectionable; (ii) any Content that infringes any copyright or other intellectual property, or violates any trade secret, or contractual or other proprietary right; (iii) any unsolicited or unauthorized email message, advertising, promotional materials, junk mail, spam, or chain letters; and/or (iv) any Content that contains viruses or any computer code, files or programs designed to harm, interfere with or limit the normal operation of the Service or any other computer software or hardware. Institution further agrees that it will not use the Service to stalk, harass, mislead, abuse, threaten or harm or pretend to be anyone other than the entity that has enrolled, and Apple reserves the right to reject or block any accounts that could be reasonably deemed or suspected to be an impersonation or misrepresentation of another entity or person's name or identity. Institution will not interfere with the Service, or with any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the Service or by the Apple Software or any other related Apple software or technology, or enable others to do so. If Institution is a covered entity, business associate, representative of a covered entity or business associate (as those terms are defined at 45 C.F.R § 160.103), or otherwise a health care provider or entity, Institution agrees that it will not use any component, function or other facility of the Service to create, receive, maintain or transmit any "protected health information" (as such term is defined at 45 C.F.R § 160.103) or equivalent health data under applicable law, or use the Service in any manner that would make Apple a business associate of Institution or any third-party or otherwise directly subject Apple to applicable health privacy laws. All rights not expressly granted in this Agreement are reserved and no other licenses, immunity or rights, express or implied are granted by Apple, by implication, estoppel, or otherwise.

## **2.3 Server Token Usage**

Institution agrees to use the Server Token only for purposes of enrolling Institution's MDM Server into the Service and uploading Device Enrollment Settings that will be sent to Authorized Devices when they are initially activated by Authorized Users and Permitted Users. Institution agrees not to provide or transfer its Server Token to any other entity or share it with any other entity, excluding its Service Provider. Institution agrees to take appropriate measures to safeguard the security and privacy of such Server Token and to revoke it if it has been compromised or Institution has reason

to believe it has been compromised. Apple reserves the right to revoke or disable Server Tokens at any time in its sole discretion if Apple has reason to believe that (i) the security and privacy of a Server Token has been compromised or (ii) a breach of this Agreement has occurred. Further, Institution understands and agrees that regenerating the Server Token will affect Institution's ability to use the Service until a new Server Token has been added to the MDM Server.

#### **2.4 EULAs Term and Conditions**

As part of the Service, Institution may elect to have its Authorized Users and Permitted Users accept the terms and conditions for the Apple Software outside of the normal initial activation process on a device. Institution may use this feature of the Service as long as Institution agrees to the following requirements:

- (a) Institution's authorized representative must accept the EULAs for the Apple Software on the Service web portal prior to deploying Authorized Devices running such Apple Software to Authorized Users and Permitted Users;
- (b) If the EULAs for the Apple Software have changed, Institution agrees to have its authorized representative return to the Service web portal and accept such EULAs promptly upon notice from Apple in order to continue using the Service. Institution acknowledges that it will not be able to use the Service, including associating additional Authorized Devices with its MDM Server, until such EULAs have been accepted;
- (c) Institution is responsible for ensuring that such EULAs are provided to Authorized Users and Permitted Users, and that each Authorized User and Permitted User is aware of and complies with the terms and conditions of the EULAs for the Apple Software; and
- (d) Institution agrees to be responsible for obtaining any required consents for Authorized Users' and Permitted Users' use of the Apple Software.

#### **2.5 Device Transfer**

Institution will not resell any Authorized Devices with Device Enrollment Settings enabled and agrees to remove such Devices from the Service prior to reselling them or transferring them to third parties in any way.

#### **2.6 Purchasing Content**

Acquisition of Content is automatically disabled in the Service, and Your use is subject to the restrictions of this Agreement and the terms governing the use of Apps and Books in the Service ("Volume Content Terms"). You may choose to enable Your Administrators to access Content through the Service by granting them purchasing authority and allowing them to access Content. Subject to the Volume Content Terms and the restrictions of this Agreement, the Service enables You to allocate Content to Authorized Devices using device assignment or to Authorized Users or Permitted Users using user assignment and Apple Accounts. You may assign (or revoke and re-assign) apps to Authorized Users and Authorized Devices in any country where such app is commercially available on the App Store or otherwise, subject to change at any time. With respect to books, You understand and agree that once You have assigned a book to an Authorized User or a Permitted User, such book is non-transferable, and You will not be able to revoke or re-assign the book. You are solely responsible for all such purchases and compliance with the applicable terms. You agree that You have the authority to and will accept such applicable terms on behalf of Your Authorized Users and Permitted Users if You (or Your Administrators) purchase or access Content as part of the Service. You understand and agree that Content may not be available in all countries or regions. You agree not to export Content for use outside of the country in which You are domiciled nor represent that You have the right or ability to do so. You agree not to circumvent the laws of any country or restrictions set forth by providers of the Content.

#### **2.7 Administrator Accounts**

You may create Administrator accounts for Your Administrators to use in administering the Service, subject to limits Apple may impose on the number of Administrator accounts. These Administrator

accounts will be a combination of a unique user name and password, which will be owned by You. When You create Administrator accounts, all features and functionality of the Service that You select to be available will be enabled for such accounts, and You are responsible for appropriately enabling these Administrator accounts and for all activity in connection with these accounts (e.g., permitting Content purchases). You acknowledge and agree that these Administrator accounts may be used only to access and manage the Service for account management purposes. If You delete any Administrator accounts, then neither You nor the Administrator will have access to such Administrator accounts, and You acknowledge and agree that this action may not be reversible.

## **2.8 Managed Apple Accounts**

You may create Managed Apple Accounts for Your Authorized Users to access and use as part of the Service in accordance with this Agreement and the Documentation. You are responsible for deciding which features and functionality of the Service to enable for Your Authorized Users and for the creation, use, and management of Managed Apple Accounts.

To create a Managed Apple Account for use by an Authorized User the following information, which may include Personal Data, is needed: name, proposed role, password, email address (for contact purposes), and phone number. In order to protect the security of Authorized Users' accounts and preserve Your ability to easily reset Your Authorized Users' passwords online, You should keep this information confidential. You agree to deploy Managed Apple Accounts only for Your own internal business or information technology purposes and only to Your Authorized Users. You agree not to share, sell, resell, rent, lease, lend, or otherwise provide access to Managed Apple Accounts to anyone other than Your Authorized Users. You may disable, suspend, or delete Managed Apple Accounts (e.g., if an Authorized User leaves the Institution) in the Service. Apple reserves the right to limit the number of Managed Apple Accounts that may be created for Your Authorized Users and the number of Authorized Devices associated with an account. Additional information, including Personal Data, may be needed for certain features and functionality of the Service You enable for Your Authorized Users, such as a directory.

If You make available other Apple Services for Your Administrators, managers or staff to sign into, You agree to allow the Apple Services to store data in the accounts associated with those Authorized User's Managed Apple Accounts, and for Apple to collect, store and process such data associated with Your and/or Your Authorized User's use of the Apple Service in accordance with applicable laws. You are responsible for ensuring that You and Your Authorized Users are in compliance with all applicable laws for each Managed Apple Account based on the Apple Service You allow Your Authorized Users to access. If Your Administrators, managers or staff access certain Apple Services, Apple may communicate with Your Authorized Users about their use of the Apple Service.

## **2.9 Permitted Entities and Permitted Users**

Subject to the terms of this Agreement, Permitted Entities and Permitted Users may access the Service under Your account, excluding the use and deployment of Managed Apple Accounts (unless otherwise separately approved in advance and in writing by Apple). You shall be responsible for compliance with the terms of this Agreement by the Permitted Entities and Permitted Users and shall be directly liable to Apple for any breach of this Agreement by Your Permitted Entities and Permitted Users. If You (or Service Provider acting on Your behalf) add Apple-branded devices to the Service that are owned by a Permitted Entity, You represent and warrant to Apple that the Permitted Entity has authorized You to add such devices, that You have control of such devices, and that You have the authority to accept EULAs on behalf of the Permitted Entity (and its Permitted Users, if applicable). Apple reserves the right to: set limitations on the Service features or functionality that Institution may allow its Permitted Entity (or Permitted Users) to access or use, and to require You to remove any Permitted Entities or Permitted Users from Your account at any time, in its sole discretion if Apple reasonably believes that a breach has occurred of this

Agreement.

#### **2.10 Updates; No Support or Maintenance**

Apple may extend, enhance, suspend, discontinue, or otherwise modify the Service (or any part thereof) provided hereunder at any time without notice, and Apple will not be liable to You or to any third-party should it exercise such rights (to the maximum extent permitted by law). Apple will not be obligated to provide Institution with any updates to the Service. If Apple makes updates available, the terms of this Agreement will govern such updates, unless the update is accompanied by a separate agreement in which case the terms of that agreement will govern. Should an update be made available, it may have features, services or functionality that are different from those found in the Service. Apple is not obligated to provide any maintenance, technical or other support for the Service.

#### **2.11 Third-Party Service Providers**

You are permitted to use a Service Provider only if the Service Provider's access to and use of the Service is done on Your behalf and in accordance with these terms, and is subject to a binding written agreement between You and the Service Provider with terms at least as restrictive and protective of Apple as those set forth herein. Any actions undertaken by any such Service Provider in relation to the Service and/or arising out of this Agreement shall be deemed to have been taken by You, and You (in addition to the Service Provider) shall be responsible to Apple for all such actions (or any inactions). In the event that any actions or inactions by the Service Provider could reasonably be considered to constitute a violation of this Agreement or otherwise cause any harm, Apple reserves the right to require You to cease using such Service Provider.

### **3. Institution's Obligations**

Institution represents and warrants that:

- (a) Institution's authorized representative has the right and authority to enter into this Agreement on its behalf and to legally bind Institution to the terms and obligations of this Agreement;
- (b) All information provided by Institution to Apple (or to its Authorized Users or Permitted Users) in connection with this Agreement or use of the Service (including the Apple Software) will be current, true, accurate, supportable and complete; and, with regard to information Institution provides to Apple, Institution will promptly notify Apple of any changes to such information;
- (c) Institution will monitor and be responsible for its authorized representatives', Administrators', Service Providers', Authorized Users', Permitted Users', and Permitted Entities' use of the Service and their compliance with the terms of this Agreement;
- (d) Institution will be solely responsible for all costs, expenses, losses and liabilities incurred, and activities undertaken by Institution, its authorized representatives, Administrators, Service Providers, Authorized Users, Permitted Users, Permitted Entities, and Authorized Devices, in connection with the Service;
- (e) Institution is solely liable and responsible for ensuring compliance with all privacy and data protection laws (e.g., Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data, and repealing directive 95/46/EC ("GDPR")) regarding the use of the Service and use or collection of data, including Personal Data, and information through the Service;
- (f) Institution is responsible for its activity related to Personal Data (e.g., safeguarding, monitoring, and limiting access to Personal Data, preventing and addressing inappropriate activity, etc.); and
- (g) Institution will comply with the terms of and fulfill Institution's obligations under this Agreement.

### **4. Changes to Service Requirements or Terms**

Apple may change the Service or the terms of this Agreement at any time as published on Apple's website from time to time. In order to continue using the Service, Institution, through its authorized representative, must accept and agree to the new requirements or terms of this Agreement. If You



do not agree to the new requirements or terms, Your use of the Service, or any part thereof, may be suspended or terminated by Apple. You agree that Your acceptance of such new Agreement terms may be signified electronically, including without limitation, by checking a box or clicking on an “agree” or similar button.

## **5. Indemnification**

To the extent permitted by applicable law, You agree to indemnify and hold harmless, and upon Apple's request, defend, Apple, its directors, officers, employees, affiliates, independent contractors and authorized representatives (each an “Apple Indemnified Party”) from any and all claims, losses, liabilities, damages, expenses and costs, including without limitation attorneys' fees and court costs, (collectively, “Losses”) incurred by an Apple Indemnified Party and arising from or related to any of the following: (a) Your breach of any certification, covenant, obligation, representation or warranty made in this Agreement; (b) Your use (including but not limited to Your Service Provider's, Administrators', Authorized Users', Permitted Users', and/or Permitted Entity's use) of the Service; (c) any claims, including but not limited to any end user claims, about Your use, deployment or management of Authorized Devices, Device Enrollment Settings, and/or MDM Servers; (d) any claims, including but not limited to any end user claims, about the provision, management, and/or use of Authorized Devices, Administrator accounts, Managed Apple Accounts, or Content, and/or any other use of the Service; and/or (e) any claims regarding Your use or management of Personal Data. In no event may You enter into any settlement or like agreement with a third-party that affects Apple's rights or binds Apple or any Apple Indemnified Party in any way, without the prior written consent of Apple.

## **6. Term and Termination**

The term of this Agreement shall commence on the date You first accept this Agreement in the Service and extend for an initial period of one (1) year following the initial activation date of Your Service account by Apple. Thereafter, subject to Your compliance with the terms of this Agreement, the term of this Agreement will automatically renew for successive one (1) year terms, unless sooner terminated in accordance with this Agreement. Apple may terminate this Agreement and/or Your account if you do not complete the Service enrollment verification process for Your Institution. Either party may terminate this Agreement for its convenience, for any reason or no reason, effective 30 days after providing the other party with written notice of its intent to terminate.

If You fail, or Apple reasonably suspects that You have failed, to comply with any of the provisions of this Agreement, Apple, without notice to You may: (a) terminate this Agreement and/or Your account; and/or (b) suspend or preclude access to the Service (or any part thereof). Apple reserves the right to modify, suspend, or discontinue the Service (or any part or content thereof) at any time without notice to You, and Apple will not be liable to You or to any third-party should it exercise such rights (to the maximum extent permitted by law). Apple may also terminate this Agreement, or suspend Your rights to use the Services, if: (a) You fail to accept any new Agreement terms as described in Section 4; or (b) You or any entity or person that directly or indirectly controls You, or is under common control with You (where “control” has the meaning defined in Section 10.8), are or become subject to sanctions or other restrictions in the countries or regions where the Service is available. . You acknowledge and agree that You may not be able to access the Service upon expiration or termination of this Agreement and that Apple reserves the right to suspend access to or delete data or information that You, Your Administrators, Authorized Users, Permitted Entities, or Permitted Users have stored through Your use of the Service. You should review the Documentation prior to using any part of the Service and make appropriate back-ups of Your data and information. Apple will not be liable or responsible to You or to any third party should it exercise such rights or for any damages that may result or arise out of any such termination or suspension. The following provisions shall survive the termination of this Agreement: Section 1, the second sentence of Section 2.9, Section 2.10, the second sentence of Section 2.11, Section 3, Section 5, the second paragraph of Section 6, and Sections 7, 8, 9, and 10.

## **7. DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF, OR INABILITY TO USE, THE SERVICE, OR ANY TOOLS OR FEATURES OR FUNCTIONALITY ACCESSED BY OR THROUGH THE SERVICE, IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND APPLE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AUTHORIZED REPRESENTATIVES, AGENTS, CONTRACTORS, RESELLERS, OR LICENSORS (COLLECTIVELY REFERRED TO AS "APPLE" FOR THE PURPOSES OF **SECTIONS 7 AND 8**) HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE SERVICE, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, TITLE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

APPLE DOES NOT GUARANTEE, REPRESENT OR WARRANT AGAINST INTERFERENCE WITH YOUR USE OR ENJOYMENT OF THE SERVICE, THAT THE FEATURES OR FUNCTIONALITY CONTAINED IN, OR SERVICES PERFORMED OR PROVIDED BY, THE SERVICE WILL MEET YOUR REQUIREMENTS, WILL BE SECURE, THAT YOUR USE OF OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS OR ERRORS WILL BE CORRECTED, THAT THE SERVICE WILL CONTINUE TO BE MADE AVAILABLE, THAT THE SERVICE WILL BE COMPATIBLE OR WORK WITH ANY THIRD PARTY SOFTWARE, APPLICATIONS, CONTENT, OR THIRD PARTY SERVICES OR ANY OTHER APPLE PRODUCTS OR SERVICES, OR THAT ANY DATA OR INFORMATION STORED OR TRANSMITTED THROUGH THE SERVICE WILL NOT BE LOST, CORRUPTED, DAMAGED, ATTACKED, HACKED, INTERFERED WITH OR SUBJECT TO ANY OTHER SECURITY INTRUSION. YOU AGREE THAT FROM TIME TO TIME APPLE MAY REMOVE THE SERVICE FOR INDEFINITE PERIODS OF TIME OR MODIFY, SUSPEND, DISCONTINUE, OR CANCEL THE SERVICE AT ANY TIME, WITHOUT NOTICE TO YOU (OTHER THAN AS PROVIDED FOR ELSEWHERE IN THIS AGREEMENT).

YOU FURTHER ACKNOWLEDGE THAT THE SERVICE IS NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN THE CONTENT, DATA OR INFORMATION PROVIDED BY OR THROUGH THE SERVICE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, INCLUDING WITHOUT LIMITATION THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, LIFE SUPPORT, OR WEAPONS SYSTEMS.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY APPLE OR AN APPLE AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. SHOULD THE SERVICE PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION.

## **8. LIMITATION OF LIABILITY**

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL APPLE BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, CORRUPTION OR LOSS OF DATA OR INFORMATION,

FAILURE TO TRANSMIT OR RECEIVE ANY DATA OR INFORMATION, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF THIS AGREEMENT AND/OR YOUR USE OR INABILITY TO USE THE SERVICE, EVEN IF APPLE HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE), AND EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL APPLE'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) EXCEED THE AMOUNT OF FIFTY DOLLARS (\$50.00). THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## **9. Data Privacy and Security**

### **9.1 Personal Data Usage and Disclosure**

Under this Agreement, Apple, acting as a data processor on Your behalf, may receive or have access to Personal Data, if provided by You or on Your behalf. By entering into this Agreement, You instruct Apple to process and use this Personal Data to provide and maintain the Service in accordance with applicable law, Your instructions given through the use of the Service (e.g., instructions given through the Service), and any other written instructions given by You that are accepted and acknowledged in writing by Apple, and Apple shall only process the Personal Data on such documented instructions, unless required to do so by law, in such case, Apple shall inform You of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest. Apple may provide Personal Data to Sub-processors who provide services to Apple in connection with the Service. You authorize Apple to use all the Apple entities set forth in the definition of "Apple" as Sub-processors and to use any other Sub-processors; provided such Sub-processors are contractually bound by data protection obligations at least as protective as those in this Agreement. The list of Sub-processors is available at [https://www.apple.com/legal/enterprise/data-transfer-agreements/subprocessors\\_us.pdf](https://www.apple.com/legal/enterprise/data-transfer-agreements/subprocessors_us.pdf). If a Sub-processor fails to fulfil its data protection obligations, Apple shall remain liable to You for the performance of that Sub-processor's obligations to the extent required by applicable law.

### **9.2 Data Incidents**

If Apple becomes aware that Personal Data has been altered, deleted, or lost as a result of any unauthorized access to the Service (a "Data Incident"), Apple will notify Institution without undue delay if required by law, and Apple will take reasonable steps to minimize harm and secure the data. Notification of, or response to, a Data Incident by Apple will not be construed as an acknowledgment by Apple of any responsibility or liability with respect to a Data Incident. Institution is responsible for complying with applicable incident notification laws and fulfilling any third-party obligations related to Data Incident(s). Apple will not access the contents of Personal Data in order to identify information subject to any specific legal requirements.

### **9.3 Security Procedures; Compliance**

Apple shall use industry-standard measures to safeguard Personal Data during the transfer, processing, and storage of Personal Data as part of the Service. As part of these measures, Apple will use commercially reasonable efforts to encrypt Personal Data at rest and in transit; ensure the ongoing confidentiality, integrity, availability and resilience of the Service; in the event of an issue, restore the availability of Personal Data in a timely manner; and regularly test, assess, and evaluate the effectiveness of such measures. Apple will take appropriate steps to ensure compliance with security procedures by its employees, contractors and Sub-processors, and Apple shall ensure that any persons authorized to process such Personal Data comply with applicable laws regarding the confidentiality and security of Personal Data with regards to the Service. Encrypted Personal Data may be stored at Apple's geographic discretion. To the extent Apple is acting as a data processor, Apple will assist You with ensuring Your compliance, if applicable, with the following: (a) Article 28 of the GDPR or other equivalent obligations under law (by making available all necessary

information; by allowing for and contributing to audits (provided, that Apple Inc.'s ISO 27001 and ISO 27018 certifications shall be considered sufficient for such required audit purposes) and by informing You, as required by applicable law, if, in Apple's opinion, any of Your instructions infringes the GDPR or other European Union or European Union Member State data protection provisions); (b) Article 32 of the GDPR or other equivalent obligations under law (including implementing the security procedures set forth in this Section 9.3 and by maintaining the ISO 27001 and ISO 27018 Certifications); (c) Articles 33 and 34 of the GDPR or other equivalent obligations under law (by assisting You with providing required notice of a Data Incident to a supervisory authority or data subjects); (d) Articles 35 and 36 of the GDPR or other equivalent obligations under law requiring Institution to conduct data protection impact assessments or to consult with a supervisory authority prior to processing; (e) an investigation by a data protection regulator or similar authority regarding Personal Data; and (f) Your obligation to respond to request for exercising data subject's rights under the GDPR or other equivalent obligations under law, taking into account the nature of the processing by appropriate technical and organizational measures, insofar as this is possible. Apple shall inform You if, in its opinion, it can no longer meet its obligation under the California Consumer Privacy Act (CCPA) or other applicable data protection laws and regulations.

#### **9.4 Data Access and Transfer; Termination; Institution as Processor**

If required by law, Apple will ensure that any international data transfer is done only to a country that ensures an adequate level of protection, has provided appropriate safeguards as set forth in applicable law, such as those in Articles 46 and 47 of the GDPR (e.g., standard data protection clauses), or is subject to a derogation in Article 49 of the GDPR. Such safeguards may include the Model Contract Clauses as executed by Apple, or other data transfer agreements, which You agree to enter into if required by Your jurisdiction, as executed by Apple at <https://www.apple.com/legal/enterprise/datatransfer/>. Apple's international transfer of Personal Data collected in participating Asia-Pacific Economic Cooperation (APEC) countries abides by the APEC Cross-Border Privacy Rules (CBPR) System (<http://cbprs.org/>) and Privacy Recognition for Processors (PRP) System (<http://cbprs.org/>) for the transfer of Personal Data. In case of questions or unresolved concerns about our APEC CBPR or PRP certifications, our third-party dispute resolution provider (<https://feedback-form.truste.com/watchdog/request>) can be contacted. Apple is not responsible for data You store or transfer outside of Apple's system. Upon termination of this Agreement for any reason, Apple shall securely destroy Personal Data stored by Apple in connection with Your use of the Service within a reasonable period of time, except to prevent fraud or as otherwise required by law. To the extent that Institution enters into this Agreement as a data processor for a Permitted Entity, Institution represents and warrants that Institution is entering into this Agreement on behalf of itself, and, to the limited extent set forth herein, such Permitted Entity. Institution represents that it has the applicable consents from such Permitted Entity to enter into this Agreement and to engage Apple as a sub-processor on such entity's behalf, and is responsible to Apple for any claims from such Permitted Entities with respect thereto. Apple shall not disclose any Personal Data in such a manner as to constitute a "sale" or "sharing" (as those terms are defined in the CCPA or any similar concept in other data protection laws) of Personal Data nor shall Apple engage in any processing activity in connection with this Agreement that would constitute a "sale" or "sharing" of Personal Data.

#### **9.5 Access to Third Party Products and Services**

If You choose to access, use, download, install, or enable third party products or services that operate with the Service but are not a part of the Service, then the Service may allow such products or services to access Personal Data as required for the use of those additional services. Certain of those third party products or services may also provide access to Personal Data to Apple, such as if You allow Your Authorized Users to sign into the Service through federated identity providers. You are not required to use such additional products or services in relation to the Service, and Your Administrator may restrict the use of such additional products or services in accordance with this Agreement. Prior to accessing, using, downloading, installing, or enabling third party products or

services for use with a Managed Apple Account, You should review the terms, policies and practices of the third party products and services to understand what data they may collect from Your Authorized Users, how the data may be used, shared and stored, and, if applicable, whether such practices are consistent with any consents You have obtained.

## **9.6 Other**

To the extent permitted under applicable laws, Apple may disclose Personal Data about You if Apple determines that disclosure is reasonably necessary to enforce Apple's terms and conditions or protect Apple's operations or users. Additionally, in the event of a reorganization, merger, or sale, Apple may transfer any and all Personal Data You provide to the relevant party. THIS DISCLOSURE DOES NOT APPLY TO THE DATA COLLECTION PRACTICES OF ANY CONTENT (INCLUDING THIRD-PARTY APPS). PRIOR TO PURCHASE OR DOWNLOAD OF CONTENT AS PART OF THE SERVICE, YOU SHOULD REVIEW THE TERMS, POLICIES, AND PRACTICES OF SUCH CONTENT. In the event Apple receives a third-party request for Personal Data ("Third-Party Request"), Apple will notify You, to the extent permitted by law, of its receipt of the Third-Party Request, and notify the requester to address such Third-Party Request to You. Unless otherwise required by law or the Third-Party Request, You will be responsible for responding to the Request.

## **10. General Legal Terms**

### **10.1 Third-Party Notices**

Portions of the Apple Software or the Service may utilize or include third-party software and other copyrighted material. Acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the Service or applicable part thereof, and Your use of such material is governed by their respective terms.

### **10.2 Other Collection and Use of Data**

Apple and its affiliates and agents may collect, maintain, process and use diagnostic, technical, usage and related information, including but not limited to unique system or hardware identifiers, cookies or IP addresses, information about Your and Your Authorized Users' use of the Service, Your MDM Server, Device Enrollment Settings, computers, devices, system and application software, and other software and peripherals, that is gathered periodically to facilitate the provision of services to You related to the Service, to provide, test and improve Apple's devices and services, for internal purposes such as auditing, data analysis, and research to improve Apple's devices, services, and customer communications, to facilitate the provision of software or software updates, device support and other services to You (if any) related to the Service or any such software, for security and account management purposes, and to verify compliance with the terms of this Agreement. Data collected pursuant to this Section will be treated in accordance with Apple's Privacy Policy, which can be viewed at: <http://www.apple.com/legal/privacy>.

### **10.3 Assignment**

This Agreement may not be assigned, nor may any of Your obligations under this Agreement be delegated, in whole or in part, by You by operation of law, merger, or any other means without Apple's express prior written consent (such consent not to be unreasonably withheld by Apple) and any attempted assignment without such consent will be null and void.

### **10.4 Press Releases and Other Publicity; Relationship of Parties**

You may not issue any press releases or make any other public statements regarding this Agreement, its terms and conditions, or the relationship of the parties without Apple's express prior written approval, which may be withheld at Apple's discretion, acting reasonably. This Agreement will not be construed as creating any agency relationship, or a partnership, joint venture, fiduciary duty, or any other form of legal association between You and Apple, and You will not represent to the contrary, whether expressly, by implication, appearance or otherwise. This Agreement is not

for the benefit of any third parties.

### **10.5 Notices**

Any notices relating to this Agreement shall be in writing. Notices will be deemed given by Apple when sent to You at the email address or mailing address You provided during the sign-up process. All notices to Apple relating to this Agreement will be deemed given (a) when delivered personally, (b) three business days after having been sent by commercial overnight carrier with written proof of delivery, and (c) five business days after having been sent by first class or certified mail, postage prepaid, to this Apple address: Apple Inc., Apple Developer Legal (Apple Business Manager), 20 Martin Place, Sydney NSW 2000, Australia, for Institutions in Australia and New Zealand. You consent to receive notices by email and agree that any such notices that Apple sends You electronically will satisfy any legal communication requirements. A party may change its email or mailing address by giving the other written notice as described above.

### **10.6 Severability**

If a court of competent jurisdiction finds any clause of this Agreement to be unenforceable for any reason, that clause of this Agreement shall be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. However, except as otherwise provided in this Agreement, if applicable law prohibits or restricts You from fully and specifically complying with the Sections of this Agreement entitled "Service Requirements", or "Institution's Obligations" or prevents the enforceability of any of those Sections, this Agreement will immediately terminate and You must immediately discontinue any use of the Service.

### **10.7 Waiver and Construction**

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

### **10.8 Export Control**

You may not use, export, re-export, import, sell or transfer the Service or Apple Software, or any part thereof, except as authorized by United States law, the laws of the jurisdiction in which You obtained the Service or Apple Software, and/or any other applicable laws and regulations. In particular, but without limitation, the Service and the Apple Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Persons List or Entity List or any other restricted party lists. By using the Service or Apple Software, You represent and warrant that You are not located in any such country or on any such list. You also agree that You will not use the Service or Apple Software for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missile, chemical or biological weapons.

You represent and warrant that You and any entity or person that directly or indirectly controls You, or is under common control with You, are not: (a) on any sanctions lists in the countries or regions where the Service is available, (b) doing business in any of the US embargoed countries or regions, and (c) a military end user as defined and scoped in 15 C.F.R § 744. As used in this Section 10.8, "control" means that an entity or person possesses, directly or indirectly, the power to direct or cause the direction of the management policies of the other entity, whether through ownership of voting securities, an interest in registered capital, by contract, or otherwise.

### **10.9 Government End-users**

The Service, Apple Software, and Documentation are "Commercial Products", as that term is

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

#### **10.10 Dispute Resolution; Governing Law**

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

(a) If You are an agency, instrumentality or department of the federal government of the United States, then this Agreement shall be governed in accordance with the laws of the United States of America, and in the absence of applicable federal law, the laws of the State of California will apply. Further, and notwithstanding anything to the contrary in this Agreement (including but not limited to Section 5 (Indemnification)), all claims, demands, complaints and disputes will be subject to the Contract Disputes Act (41 U.S.C. §§601-613), the Tucker Act (28 U.S.C. § 1346(a) and § 1491), or the Federal Tort Claims Act (28 U.S.C. §§ 1346(b), 2401-2402, 2671-2672, 2674-2680), as applicable, or other applicable governing authority. For the avoidance of doubt, if You are an agency, instrumentality, or department of the federal, state or local government of the U.S. or a U.S. public and accredited educational institution, then Your indemnification obligations are only applicable to the extent they would not cause You to violate any applicable law (e.g., the Anti-Deficiency Act), and You have any legally required authorization or authorizing statute;

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

(c) If You are an international, intergovernmental organization that has been conferred immunity from the jurisdiction of national courts through Your intergovernmental charter or agreement, then any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be determined by arbitration under the Rules of Arbitration of the International Chamber of Commerce (the “ICC Rules”) in effect at the time of applying for arbitration by three arbitrators appointed in accordance with such rules, and will be conducted according to the International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration. The place of arbitration shall be London, England. The arbitration shall be conducted in English. Upon Apple’s request, You agree to provide evidence of Your status as an intergovernmental organization with such privileges and immunities; and

(d) If You are domiciled in a European Union country, or in Iceland, Norway, Switzerland, or the United Kingdom, the governing law and forum shall be the laws and courts of the country of domicile of the Apple entity providing the Service, as applicable, as set forth in the definition of “Apple”.

(e) For the avoidance of doubt, the following Sections are not intended to exclude, restrict or modify any rights held in Australia under the Australian Consumer Law (being Schedule 2 to the

Competition and Consumer Act 2010) (including, but not limited to, the consumer guarantee provisions of the Australian Consumer Law): Sections 2.10, 3, 5, 7, 8. Your statutory entitlements under the Australian Consumer Law are separate to, and are unaffected by, this Agreement.

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

#### **10.11 Entire Agreement; Governing Language**

This Agreement constitutes the entire agreement between the parties with respect to the Service contemplated hereunder and supersedes all prior understandings and agreements regarding its subject matter. For the avoidance of doubt, nothing in this Agreement supersedes the EULAs for the Apple Software. This Agreement may be modified only: (a) by a written amendment signed by both parties, or (b) to the extent expressly permitted by this Agreement (for example, by Apple by notice to You). Any translation of this Agreement is provided as a courtesy to You, and in the event of a dispute between the English and any non-English version, the English version of this Agreement shall govern, to the extent not prohibited by local law in Your jurisdiction. If You are a government organization within France, the following clause applies: The parties hereby confirm that they have requested that this Agreement and all related documents be drafted in English. *Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.*

#### **10.12 Acceptance**

Institution acknowledges and agrees that by clicking on the “Agree” or similar button or by checking a box, Institution, through its authorized representative, is accepting and agreeing to the terms and conditions of this Agreement.

LYL186  
9 September 2024



# DEPARTMENT OF WATER

County of Kaua'i

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

## MANAGER'S REPORT No. 25-17

December 19, 2024

Re: Discussion and Possible Action for Adoption of Budget Resolution No. 25-05 for the acceptance and expenditure of grant monies from the State of Hawai'i under Act 230, SLH 2024 for the Kapa'a Homesteads Tanks, 1.0 MG (Two-0.5 MG) Tanks, Package B

### **RECOMMENDATION:**

It is recommended that the Board approve the request to accept and expend the total sum of \$2,400,000.00 as authorized by Act 230, SLH 2024.

### **FUNDING:**

The grant monies required a 100% match. The Department of Water has budgeted for the match as follows:

Account No.: 20-20-00-605-116

Account Description: FRC/Eng/Admin/Capital Outlay-Expansion/Capital Purchases

Project Name: WK-08 Kapa'a Homesteads 2-0.5 MG Tanks

Budget: \$2,897,000.00

Account No.: 30-20-00-605-116

Account Description: BAB/Eng/Admin/Capital Outlay – Expansion/Capital Purchases

Project Name: WK-08 Kapa'a Homesteads 2-0.5 MG Tanks

Budget: \$5,600,000.00

Account No.: 40-20-00-605-116

Account Description: State Appropriation Grant/Capital Outlay-Expansion

Project Name: WK-08 Kapa'a Homesteads 2-0.5 MG Tanks

Budget: \$9,650,000.00

Account No.: 60-20-00-605-116

Account Description: SRF/Capital Outlay-R&R/Capital Projects-CM

Project Name: WK-08 Kapa'a Homesteads 2-0.5 MG Tanks

Budget: \$5,200,000.00

### **BACKGROUND:**

The Department of Water has requested Capital Improvement State-Aid funds for the Kapa'a Homesteads Tanks, 1.0 MG (Two-0.5 MG) Tanks, Package B capital improvement project. The State legislature approved the appropriation for the project under Act 230, SLH 2024 in the amount of \$2,400,000.00. The Legislature previously approved an appropriation for the project with Act 88, SLH 2021 in the amount of \$7,250,000.00. This results in a combined appropriation of \$9,650,000.00.

The State funds are available, pending the release of the funds by the Governor. Prior to requesting the Governor to release the funds, it is required that the Board of Water Supply approve to accept and expend these funds from the State. It is proposed to also document this by Resolution.

The use of State funds will allow the Department to move forward with the capital improvement project that will provide additional storage infrastructure improvements for the Wailua-Kapa'a Water System.

For reference, this was the previous breakdown to request the appropriation with Act 88, SLH 2021. The new appropriation results in reducing the amount of funds used from WU (\$2,297,000.00) and FRC (\$103,000.00).

Account No.: 10-20-00-604-116  
Account Description: WU/Eng/AdminCapital Outlay – R&R  
Project Name: WK-08 Kapa'a Homesteads 2-0.5 MG Tanks  
Budget: \$2,297,000.00

Account No.: 20-20-00-605-116  
Account Description: FRC/Eng/Admin/Capital Outlay-Expansion/Capital Purchases  
Project Name: WK-08 Kapa'a Homesteads 2-0.5 MG Tanks  
Budget: \$3,000,000.00

Account No.: 30-20-00-605-116  
Account Description: BAB/Eng/Admin/Capital Outlay – Expansion/Capital Purchases  
Project Name: WK-08 Kapa'a Homesteads 2-0.5 MG Tanks  
Budget: \$5,600,000.00

Account No.: 40-20-00-605-116  
Account Description: State Appropriation Grant/Capital Outlay-Expansion  
Project Name: WK-08 Kapa'a Homesteads 2-0.5 MG Tanks  
Budget: \$7,250,000.00

Account No.: 60-20-00-605-116  
Account Description: SRF/Capital Outlay-R&R/Capital Projects-CM  
Project Name: WK-08 Kapa'a Homesteads 2-0.5 MG Tanks  
Budget: \$5,200,000.00

**OPTIONS:**

- Option 1:** **Approve Manager's Report as recommended.**  
Pro: State funds will supplement the Department of Water's funds and allow for the projects to move forward with less impact to the Department's customers.
- Con: State funds will require additional project management oversight to ensure that the funds are expended per State regulations and are subject to State project level audits.

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

**Pro:** Additional project management oversight efforts to ensure that the funds are expended per State regulations and potential State project level audits will not be required.

**Con:** Additional funds will be required using Department of Water funds and may be passed onto the Department's customers with water rate increases.

JK/crz

Attachment(s): Resolution No. 25-05 Acceptance and Expenditure of Grant Funds from SOH Act 230, SLH 2024

|                       |              |
|-----------------------|--------------|
| <b>RESOLUTION NO.</b> | <b>25-05</b> |
|-----------------------|--------------|

A RESOLUTION APPROVING THE ACCEPTANCE AND EXPENDITURE OF GRANT FUNDS FROM THE STATE OF HAWAII UNDER ACT 230, SLH 2024 IN THE AMOUNT OF TWO MILLION FOUR HUNDRED THOUSAND DOLLARS (\$2,400,000.00).

WHEREAS, the State of Hawai'i approved funds under Act 230, SLH 2024, the supplemental budget act, in the total amount of TWO MILLION FOUR HUNDRED THOUSAND DOLLARS (\$2,400,000.00) to the Department of Water, County of Kaua'i (hereinafter "DOW") for the construction of the Kapa'a Homesteads Tanks, 1.0 MG (Two-0.5 MG) Tanks, including ground and site improvements, and equipment and appurtenances, and drainage and other related improvements (hereinafter "Project"), provided that matching funds be provided by the Board of Water Supply, County of Kaua'i (hereinafter "Board"); and

WHEREAS, the State of Hawai'i previously enacted Act 88, SLH 2021 approving the release of funds for the Project in the amount of \$7,250,000.00, provided that matching funds be provided by the Board; and

WHEREAS, the Board approved Resolution No. 24-03, a resolution approving the acceptance and expenditure of grant of funds from the State of Hawai'i under Act 88, SLH 2021; and

WHEREAS, the total amount appropriated by the State of Hawai'i for the Project is \$9,650,000.00; and

WHEREAS, the Board has appropriated the required total matching funds for the Project; and

WHEREAS, the Board desires to accept approved funds under Act 230, SLH 2024, from the State of Hawai'i, and to expend said funds for the Project; now, therefore,

BE IT RESOLVED BY THE BOARD OF WATER SUPPLY, COUNTY OF KAUA'I, STATE OF HAWAII:

1. That it does hereby authorize the Manager and Chief Engineer of the DOW, or his duly authorized representative, to accept funds on behalf of the Board in the amount of TWO MILLION FOUR HUNDRED THOUSAND DOLLARS (\$2,400,000.00) from the State of Hawai'i for the Project; and
2. That the Manager and Chief Engineer of the DOW, or his duly authorized representative, is hereby authorized to execute any and all documents necessary to process and accept such funds, including amendments thereto; and
3. That the Manager and Chief Engineer of the DOW, or his duly authorized representative, is hereby authorized to expend such funds solely for the Project.

APPROVED AS TO FORM AND LEGALITY:

BOARD OF WATER SUPPLY

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

Tom H. Shigemoto, Chair  
4398 Pua Loke Street  
Lihu'e, Hawai'i 96766



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

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

**2024 Board Officers:**

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

**Rules Committee**

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

**Finance Committee**

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

**Committee of the Whole** *(All Board Members)*

Chair: Tom Shigemoto

**2025 Board Officers:**

Chair: Julie Simonton  
Vice Chair: Tom Shigemoto  
Secretary: Micah Finnila

**Rules Committee**

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

**Finance Committee**

Chair: Ka'aina Hull  
Member: Tom Shigemoto  
Member: Micah Finnila

**Committee of the Whole** *(All Board Members)*

Chair: Julie Simonton

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

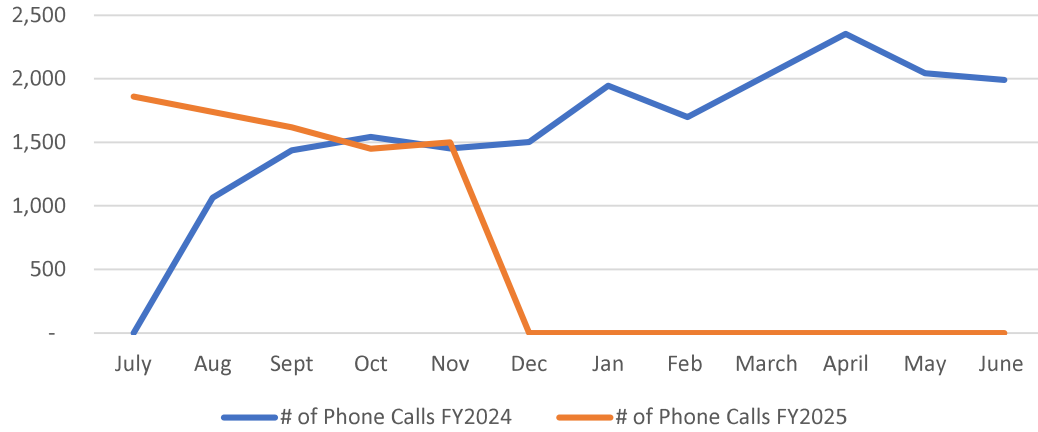
STAFF

REPORTS

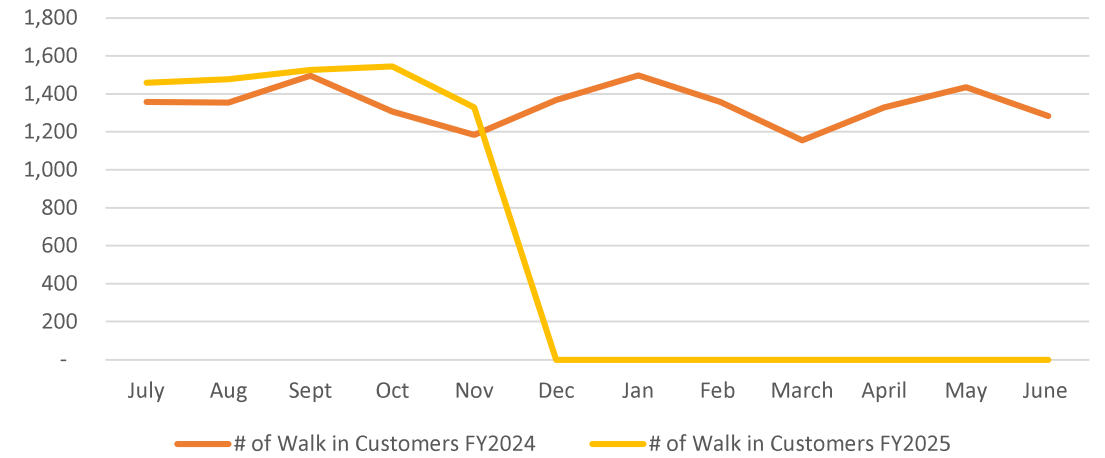


# FISCAL DIVISION DASHBOARD

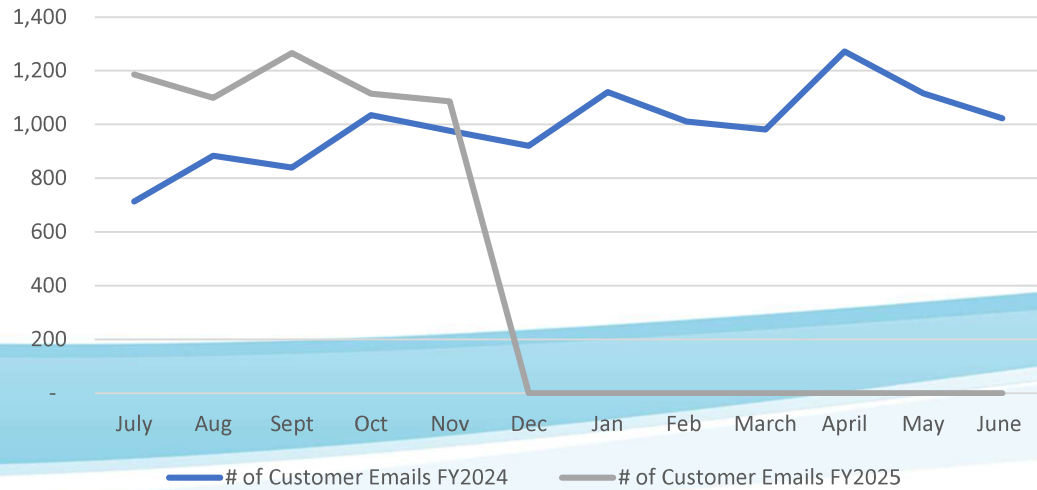
### # of Customer Service Calls



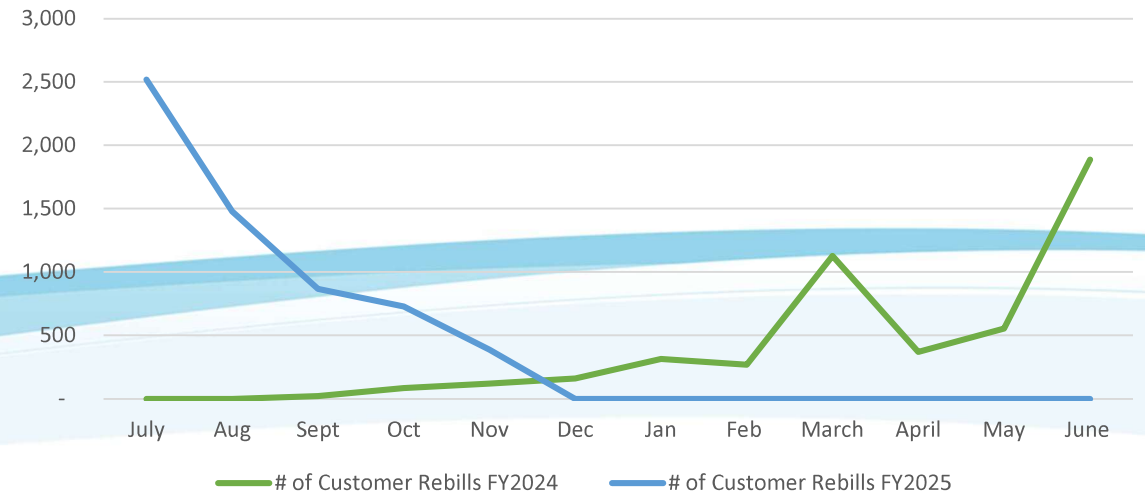
### # of Walk in Customers



### # of Customer Emails and Correspondence

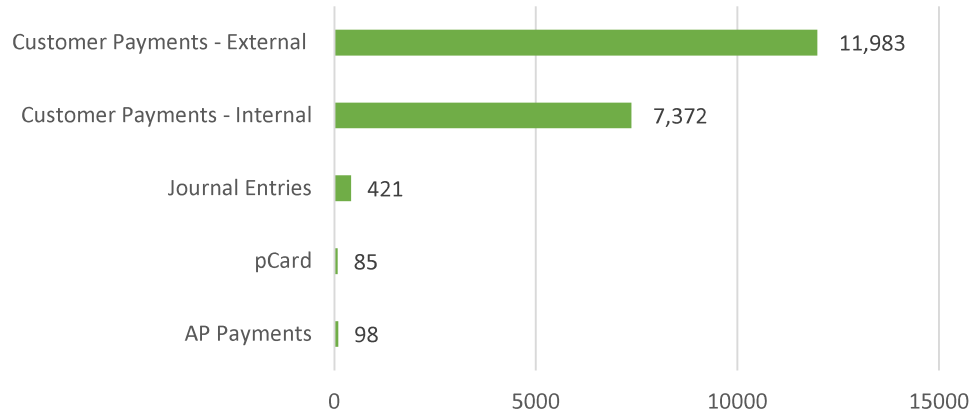


### # of Customer Rebills



# FISCAL DIVISION DASHBOARD

## Accounting Highlights



**Transponder Replacement Highlights:**

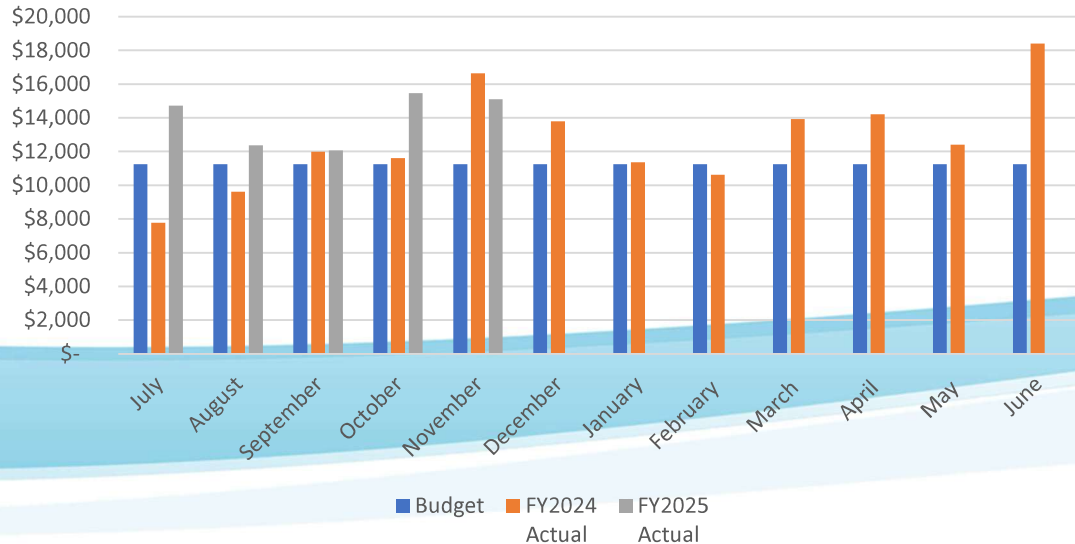
- 7,680 parts ordered on May 30, 2024
- 1,820 Shipped on October 28, 2024
- 3,640 Shipped on October 29, 2024
- 2,220 Shipped on October 30, 2024

**Received all 7,680 parts as of November 19, 2024**

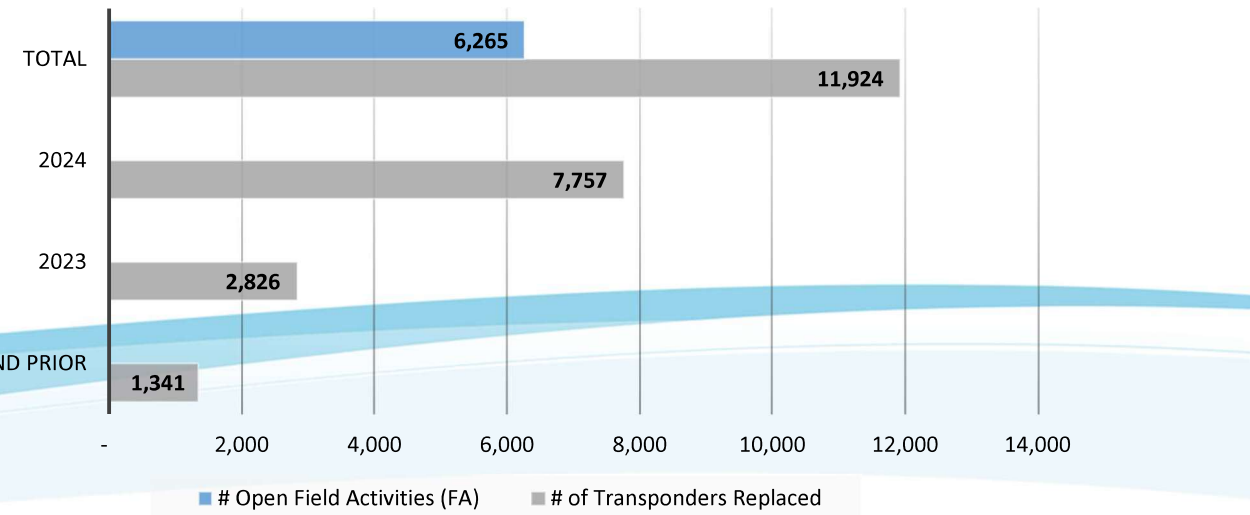
52% Replaced to date.  
27% Awaiting parts.  
21% Active; expected to fail

Monthly Transactional Volume processed and reconciled by the Accounting Team.

## Overtime



## Transponder Replacement Progress (Calendar Year)





## Department Of Water Budget Report for November 2024

|                                    | November 2024          |                        |                      | Fiscal Year 2025         |                         |                        |             |
|------------------------------------|------------------------|------------------------|----------------------|--------------------------|-------------------------|------------------------|-------------|
|                                    | Budget                 | Actual                 | Variance             | Year to Date Budget      | Year to Date Actual     | Variance               | Variance %  |
| <b>Operating</b>                   |                        |                        |                      |                          |                         |                        |             |
| Revenue                            | \$ 2,765,742.00        | \$ 3,247,731.33        | \$ 481,989.33        | \$ 13,828,710.00         | \$ 17,054,560.64        | \$ 3,225,850.64        | 23.%        |
| <b>Expenses</b>                    |                        |                        |                      |                          |                         |                        |             |
| Labor *                            | \$ 1,166,793.00        | \$ 1,165,728.36        | \$ 1,064.64          | \$ 5,833,965.00          | \$ 5,887,358.29         | \$ (53,393.29)         | (1.%)       |
| Services                           | 1,341,633.30           | 527,168.53             | 814,464.77           | 6,708,166.50             | 2,196,818.76            | 4,511,347.74           | 67.%        |
| Utilities & Materials              | 952,621.84             | 1,244,597.16           | (291,975.32)         | 4,763,109.19             | 3,653,117.84            | 1,109,991.35           | 23.%        |
| <b>Total Operating Expenses</b>    | <b>\$ 3,461,048.14</b> | <b>\$ 2,937,494.05</b> | <b>\$ 523,554.09</b> | <b>\$ 17,305,240.69</b>  | <b>\$ 11,737,294.89</b> | <b>\$ 5,567,945.80</b> | <b>32.%</b> |
| Debt Service Principal & Interest  | -                      | 50,990.76              | (50,990.76)          | 5,529,145.00             | 5,580,135.90            | (50,990.90)            | (1.%)       |
| <b>Operating and Debt Expenses</b> | <b>\$ 3,461,048.14</b> | <b>\$ 2,988,484.81</b> | <b>\$ 472,563.33</b> | <b>\$ 22,834,385.69</b>  | <b>\$ 17,317,430.79</b> | <b>\$ 5,516,954.90</b> | <b>24%</b>  |
| <b>Net Income (Loss)</b>           | <b>\$ (695,306.14)</b> | <b>\$ 259,246.52</b>   | <b>\$ 954,552.66</b> | <b>\$ (9,005,675.69)</b> | <b>\$ (262,870.15)</b>  | <b>\$ 8,742,805.54</b> | <b>97.%</b> |

\* Current month's labor is estimated

### Capital Projects and Purchases\*\*

|  | Fiscal Year Budget      | November FYD 2025 Actual | Remaining Budget        |
|--|-------------------------|--------------------------|-------------------------|
| <b>Water Utility Funded Projects</b>           |                         |                          |                         |
| IT-Expansion Capital Purchases--               | \$ 968,434.45           | \$ 43,908.73             | \$ 924,525.72           |
| Eng 11-04 LO-10 Lawai 6n8inch Main Replacem    | 200,000.00              | 25,985.57                | 174,014.43              |
| Eng-69%R-11-07 HE-03 Hanapepe & Koloa Well     | 571,650.00              | 2,895.00                 | 568,755.00              |
| Eng-ALLR-23-07 Rehabilitate Puupilo Steel Tank | 169,783.00              | 6,111.00                 | 163,672.00              |
| Eng-Job 18-3 -Kuhio Hwy Hardy-Oxford 16IN M    | 2,808,941.82            | 8,253.39                 | 2,800,688.43            |
| Eng-56%R-Job 23-03 Kuhio Hwy Papaloa to Wai    | 318,284.46              | 93,453.70                | 224,830.76              |
| 23-02 WK-34, Kuamoo Rd 8" Main Replace (6,5    | 13,085.45               | 28,008.00                | (14,922.55)             |
| Cns-44%R-09-01 Yamada Tank Clearwell, Conn     | 2,777,114.24            | 51,730.20                | 2,725,384.04            |
| Ops-R&R-Upgrade and Replace SCADA RTU anc      | 261,281.91              | 77,994.60                | 183,287.31              |
| Ops-RandR Capital Purchases                    | 2,193,999.05            | 24,121.98                | 2,169,877.07            |
| Ops-Expansion Capital Purchases                | 631,573.69              | 44,932.87                | 586,640.82              |
|  | <b>\$ 22,941,081.18</b> | <b>\$ 407,395.04</b>     | <b>\$ 22,533,686.14</b> |

**FRC Funded Projects**

|  |                        |                     |                        |
|--|------------------------|---------------------|------------------------|
| Eng-ALLE-12-02 WK-23 UH Expmntal Storage Ta  | \$ 304,981.00          | \$ 89,231.00        | \$ 215,750.00          |
| Eng 04-08 WK-39 Drill Kapaa Homestead Well 4 | 2,521,934.49           | 1,050.00            | 2,520,884.49           |
|  | <b>\$ 6,165,434.36</b> | <b>\$ 90,281.00</b> | <b>\$ 6,075,153.36</b> |

**Build America Bonds Funded Projects**

|                                      |                        |             |                        |
|--------------------------------------|------------------------|-------------|------------------------|
| Projects with budget but no activity | \$ 9,418,863.75        | \$ -        | \$ 9,418,863.75        |
|                                      | <b>\$ 9,418,863.75</b> | <b>\$ -</b> | <b>\$ 9,418,863.75</b> |

**State Allotment Funded Projects**

|  |                        |             |                        |
|--|------------------------|-------------|------------------------|
| WK-08-Kapaa Homesteads 2-0.5MG Tanks         | \$ 2,400,000.00        | \$ -        | \$ 2,400,000.00        |
| WK-39, Kapaa Homesteads Well No. 4 Pump ar   | 2,400,000.00           | -           | 2,400,000.00           |
| PLH-27 Kūhiō Highway (Hardy-Oxford) 16' Mair | 2,500,000.00           | -           | 2,500,000.00           |
|  | <b>\$ 7,300,000.00</b> | <b>\$ -</b> | <b>\$ 7,300,000.00</b> |

**State Revolving Funded Projects**

|                                      |                         |                        |                        |
|--------------------------------------|-------------------------|------------------------|------------------------|
| WK-08, Kapaa Homsteads 2.0 5MG Tanks | \$ 5,200,000.00         | \$ -                   | \$ 5,200,000.00        |
| Yamada Tank Conn Pipe                | 6,926,518.00            | 2,897,668.75           | 4,028,849.25           |
|                                      | <b>\$ 12,126,518.00</b> | <b>\$ 2,897,668.75</b> | <b>\$ 9,228,849.25</b> |

**Total Capital Projects**

|  |                         |                        |                         |
|--|-------------------------|------------------------|-------------------------|
|  | <b>\$ 57,951,897.29</b> | <b>\$ 3,395,344.79</b> | <b>\$ 54,556,552.50</b> |
|--|-------------------------|------------------------|-------------------------|

**Selected Divisions**

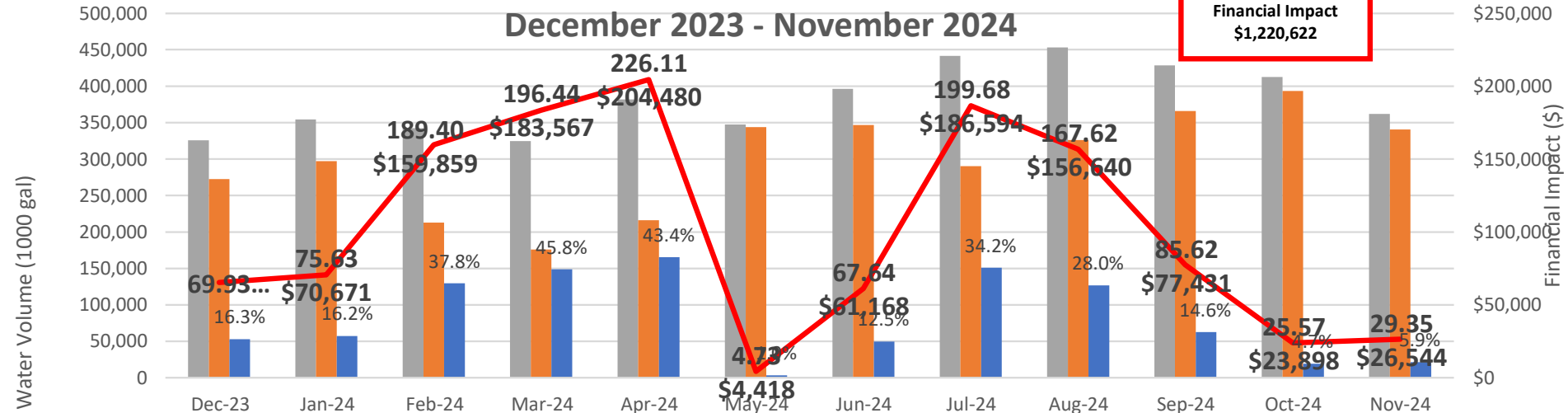
|             | November 2024          |                        |                      | Fiscal Year 2025        |                        |                        |            |
|-------------|------------------------|------------------------|----------------------|-------------------------|------------------------|------------------------|------------|
|             | Budget                 | Actual                 | Variance             | Year to Date Budget     | Year to Date Actual    | Variance               | Variance % |
| Engineering | \$ 881,339.59          | \$ 431,031.31          | \$ 450,308.28        | \$ 4,406,697.95         | \$ 1,714,531.22        | \$ 2,692,166.73        | 61.%       |
| Fiscal      | 245,832.78             | 236,351.40             | 9,481.38             | 1,229,163.90            | 1,104,352.27           | 124,811.63             | 10.%       |
| Operations  | 1,561,895.28           | 1,777,769.97           | (215,874.69)         | 7,809,476.40            | 6,640,286.71           | 1,169,189.69           | 15.%       |
|             | <b>\$ 2,689,067.65</b> | <b>\$ 2,445,152.68</b> | <b>\$ 243,914.97</b> | <b>\$ 13,445,338.25</b> | <b>\$ 9,459,170.20</b> | <b>\$ 3,986,168.05</b> | <b>30%</b> |



# OPERATIONS DASHBOARD

## Monthly Water Audit

December 2023 - November 2024

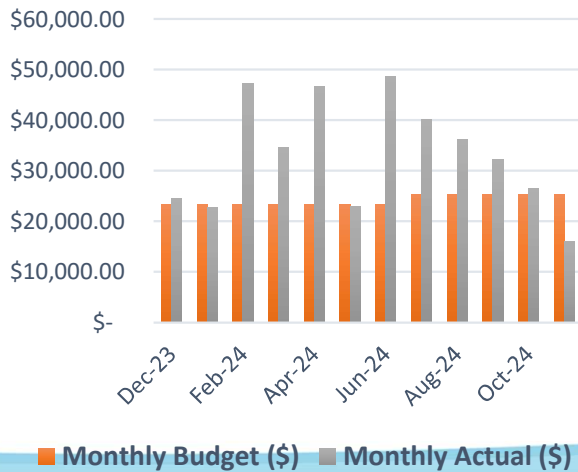


|                       | Dec-23   | Jan-24   | Feb-24    | Mar-24    | Apr-24    | May-24  | Jun-24   | Jul-24    | Aug-24    | Sep-24   | Oct-24   | Nov-24   |
|-----------------------|----------|----------|-----------|-----------|-----------|---------|----------|-----------|-----------|----------|----------|----------|
| Produced (Kgals)      | 325,580  | 354,475  | 342,356   | 324,631   | 381,800   | 347,331 | 396,223  | 441,367   | 452,933   | 428,498  | 412,714  | 361,950  |
| Customer Read (Kgals) | 272,639  | 297,225  | 212,855   | 175,924   | 216,151   | 343,752 | 346,671  | 290,208   | 326,039   | 365,771  | 393,354  | 340,447  |
| Non-Rev Water (Kgals) | 52,941   | 57,250   | 129,501   | 148,707   | 165,649   | 3,579   | 49,552   | 151,159   | 126,894   | 62,727   | 19,360   | 21,503   |
| Financial Impact      | \$65,351 | \$70,671 | \$159,859 | \$183,567 | \$204,480 | \$4,418 | \$61,168 | \$186,594 | \$156,640 | \$77,431 | \$23,898 | \$26,544 |

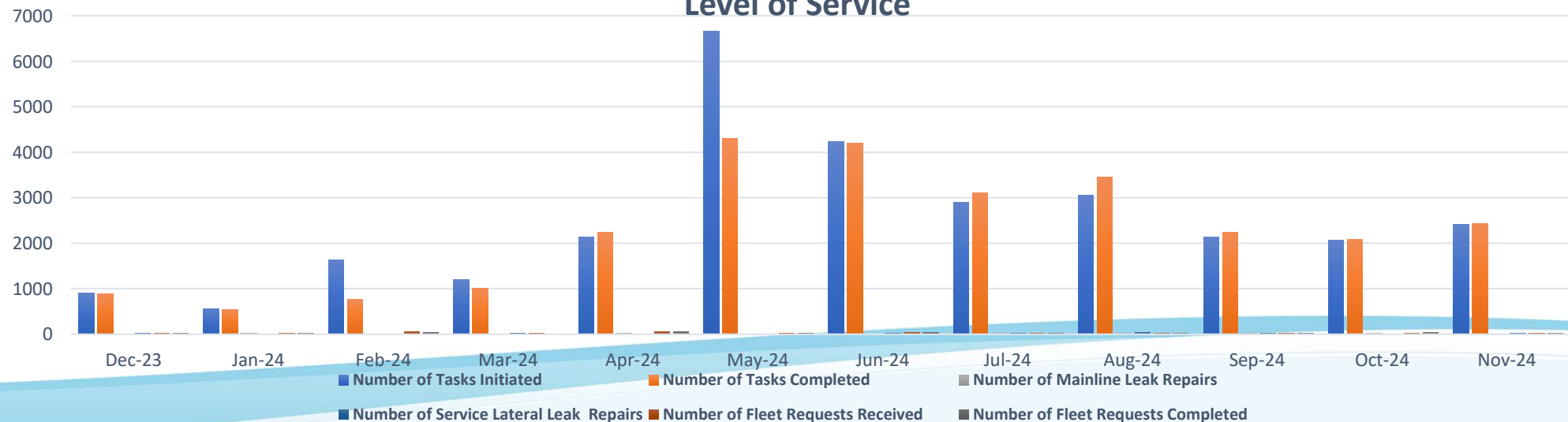
### Ops Highlights:

1. Interviewed for Water Meter Mechanic Helper and coordinating interviews for Maintenance Worker II.
2. 7,680 meter transponders arrived in November, crews starting to replace already.
3. Training conducted for Victaulic fittings, Mobile Elevated Work Platform, and the HRWA Conference in Kona.

### Overtime



### Level of Service



# OPERATIONS

|                                | Last Month  |             | Current Month |             | Previous FY  |              | Current FY   |              |
|--------------------------------|-------------|-------------|---------------|-------------|--------------|--------------|--------------|--------------|
|                                |             |             |               |             | Year to Date |              | Year to Date |              |
| <b>STAFFING</b>                |             |             |               |             |              |              |              |              |
| Budgeted Staff   Vacancies     | 48          | 11          | 48            | 11          | 50           | 7            | 48           | 11           |
| <b>OVERTIME</b>                |             |             |               |             |              |              |              |              |
| Budget (\$)   Actual (\$)      | \$25,416.67 | \$26,562.34 | \$25,416.67   | \$16,087.77 | \$116,416.67 | \$166,943.65 | \$127,083.33 | \$151,238.19 |
| <b>FLEET MANAGEMENT</b>        |             |             |               |             |              |              |              |              |
| # of Vehicles Active per day   | 42          |             | 40            |             | 42           |              | 41           |              |
| # of Vehicles Active per month | 966         |             | 760           |             | 898          |              | 866          |              |
| <b>METER PROGRAM</b>           |             |             |               |             |              |              |              |              |
| # of Existing Meters Replaced  | 0           |             | 75            |             | 11           |              | 243          |              |
| # of Existing Meters Repaired  | 519         |             | 107           |             | 268          |              | 1719         |              |
| # of New Meters Installed      | 8           |             | 20            |             | 40           |              | 53           |              |
| # of New Laterals Installed    | 0           |             | 0             |             | 7            |              | 2            |              |

# OPERATIONS



## LEVEL OF SERVICE

|  | Last  |       | Current |       | Previous |        | Current |        |
|--|-------|-------|---------|-------|----------|--------|---------|--------|
|  | Month | Month | Month   | Month | FY YTD   | FY YTD | FY YTD  | FY YTD |
| # of Tasks Initiated                         | 2071  |       | 2424    |       | 1694     |        | 12581   |        |
| # of Tasks Completed                         | 2092  |       | 2439    |       | 1532     |        | 13327   |        |
| # of Mainline Leak Repairs                   | 16    |       | 10      |       | 62       |        | 85      |        |
| # of Service Lateral Leak Repairs            | 11    |       | 17      |       | 69       |        | 93      |        |
| # of Calls for Service                       | 208   |       | 199     |       | 1015     |        | 1076    |        |
| # of Temporary Hydrant Meters Installed      | 3     |       | 2       |       | 17       |        | 11      |        |
| # One Call Request Received   Completed      | 27    | 24    | 38      | 39    | 249      | 248    | 197     | 195    |
| # of Auto Shop Requests Received   Completed | 21    | 34    | 15      | 19    | 160      | 156    | 102     | 112    |
| # of Hydrant Hits                            | 1     |       | 0       |       | 14       |        | 7       |        |

## WATER AUDIT

|  | Last        | Current Month | Previous     | Current      |
|--|-------------|---------------|--------------|--------------|
|  | Month       |               | FY YTD       | FY YTD       |
| Water Produced<br>(Million Gallons)            | 412.714     | 361.950       | 1680.351     | 1735.512     |
| Customer Meter<br>Reading<br>(Million Gallons) | 393.354     | 340.447       | 1268.540     | 1375.372     |
| Non-Revenue<br>Water<br>(Million Gallons)      | 19.360      | 21.503        | 411.811      | 360.140      |
| Non-revenue %                                  | 5%          | 6%            | 25%          | 21%          |
| Financial Impact                               | \$23,898.37 | \$26,543.73   | \$508,347.34 | \$444,564.02 |



# ENGINEERING DASHBOARD

|                            | Last Month |          | Current Month |          | Previous FY Year to Date |          | Current FY Year to Date |           |
|----------------------------|------------|----------|---------------|----------|--------------------------|----------|-------------------------|-----------|
| <b>STAFFING</b>            |            |          |               |          |                          |          |                         |           |
| Budgeted Staff   Vacancies | 24         | 5        | 25            | 4        | 23                       | 5        | -                       | -         |
| <b>OVERTIME</b>            |            |          |               |          |                          |          |                         |           |
| Budget (\$)   Actual (\$)  | \$12,900   | \$25,900 | \$12,900      | \$27,600 | \$24,600                 | \$84,800 | \$64,600                | \$116,800 |

## CIP Project Highlights:

- Pu‘u Pane 1.0 MG Tank
  - Pre-final submittal January ‘25
- Kalāheo Water System Improvements
  - Pouring Yamada Tank roof week of 12/20
  - Stripping forms for Clearwell Tank walls
  - Almost complete with water lines on Po‘ohiwi Road
  - Starting Pu‘uwai Road water lines in mid-December
- Hā‘ena 0.2 MG Storage Tank, 144’
  - Finalizing design
  - Working on permitting
  - Applied for Drought Resiliency Grant
- Kūhiō Hwy (Hardy-Oxford) 18” Main Replacement
  - Working on construction ROEs
  - Bid out 11/8/24, Bid opens 1/24/25
- Hanapēpē Town Well MCC, Chlorination Facilities
  - Contracting Valley Well Drilling
- Līhu‘e Administrative Building Fencing
  - Contracting PCCC
- Līhu‘e Baseyard Electrical Relocation
  - Issued bid 12/2/24, Bid opens 2/7/25

|  | Last Month |     | Current Month |     |
|--|------------|-----|---------------|-----|
| <b>PROJECT MANAGEMENT</b>                          |            |     |               |     |
| DOW Projects In Design   In Construction           | 15         | 8   | 15            | 8   |
| Private Projects Design Approved   In Construction | 1          | 165 | 4             | 165 |
| Private Projects Construction Completed            | 1          |     | 0             |     |

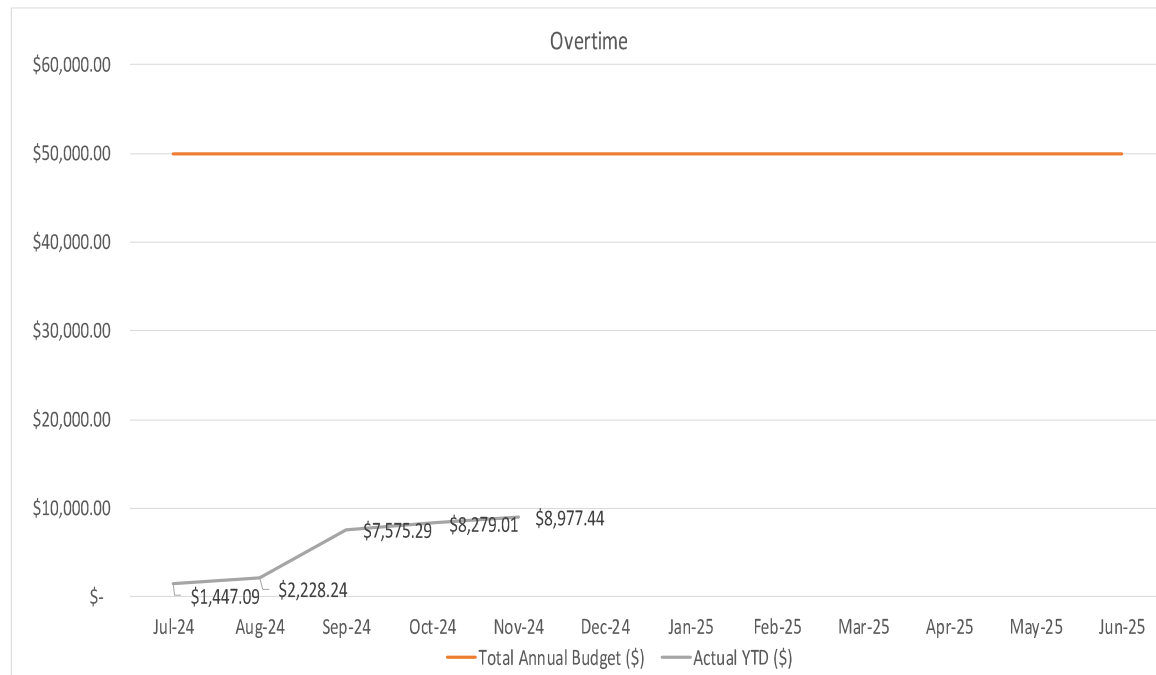
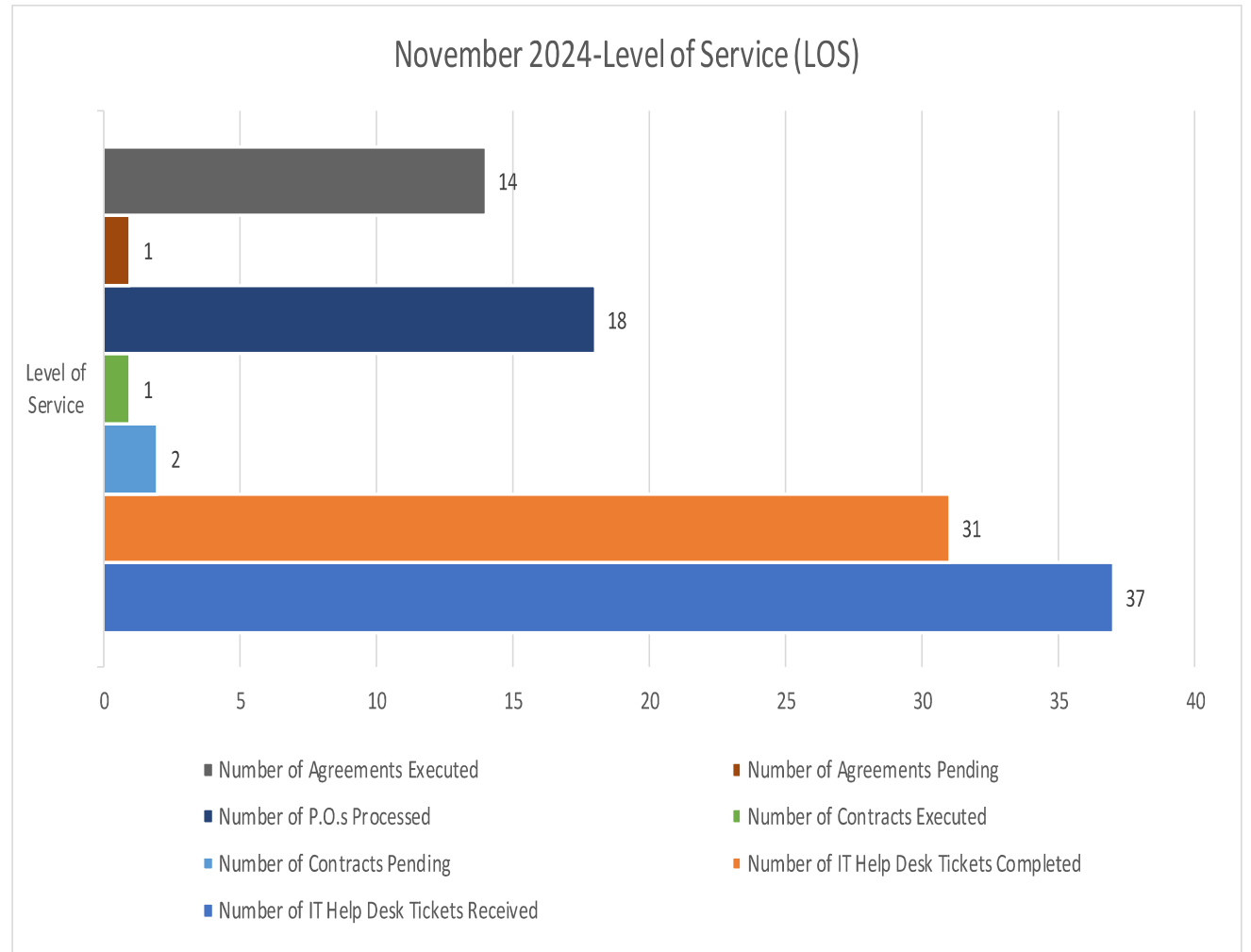
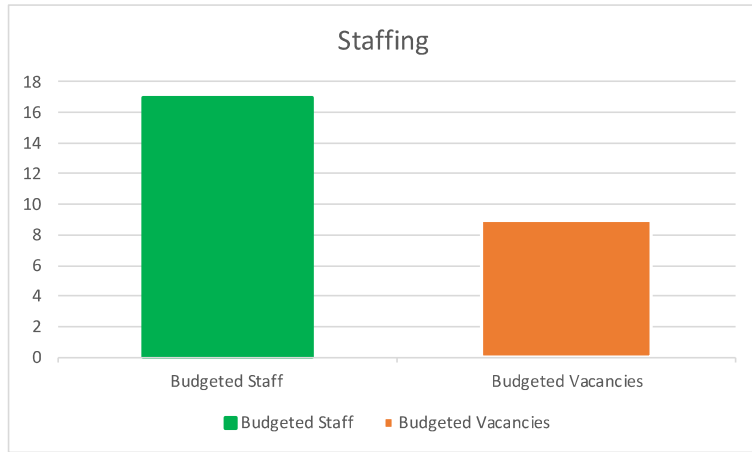
# ENGINEERING DASHBOARD

|   | 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 | 0          | 0   | 14            | 10  | 36                       | 37  | 33                      | 29  |
| ADU/ARU Clearance Applications                                  | 3          | 2   | 0             | 0   | 8                        | 31  | 14                      | 14  |
| Building Permits  | 120        | 121 | 145           | 111 | 719                      | 754 | 766                     | 726 |
| Water Service Requests  | 24         | 13  | 29            | 72  | 111                      | 114 | 150                     | 172 |
| Government Records Request                                      | 4          | 4   | 4             | 3   | 10                       | 9   | 18                      | 13  |
| Backflow Inspection # of Devices Tested                         | 59         |     | 97            |     | 527                      |     | 588                     |     |

## DOW Project Highlights:

- Water Systems Investment Plan (WSIP)
  - Evaluating CIP project list
  - Working on FRC update
- As-Needed Grant Writing and Preparation Services
  - Applied for Drought Resiliency Grant with USBR for Hā'ena 0.2 MG Tank Construction 10/7/24
  - Applied for WaterSMART Grant for AMI Meters 11/13/24
- AWIA RRA/ERP
  - Agreed on scope, waiting for proposal

# ADMINISTRATION DASHBOARD





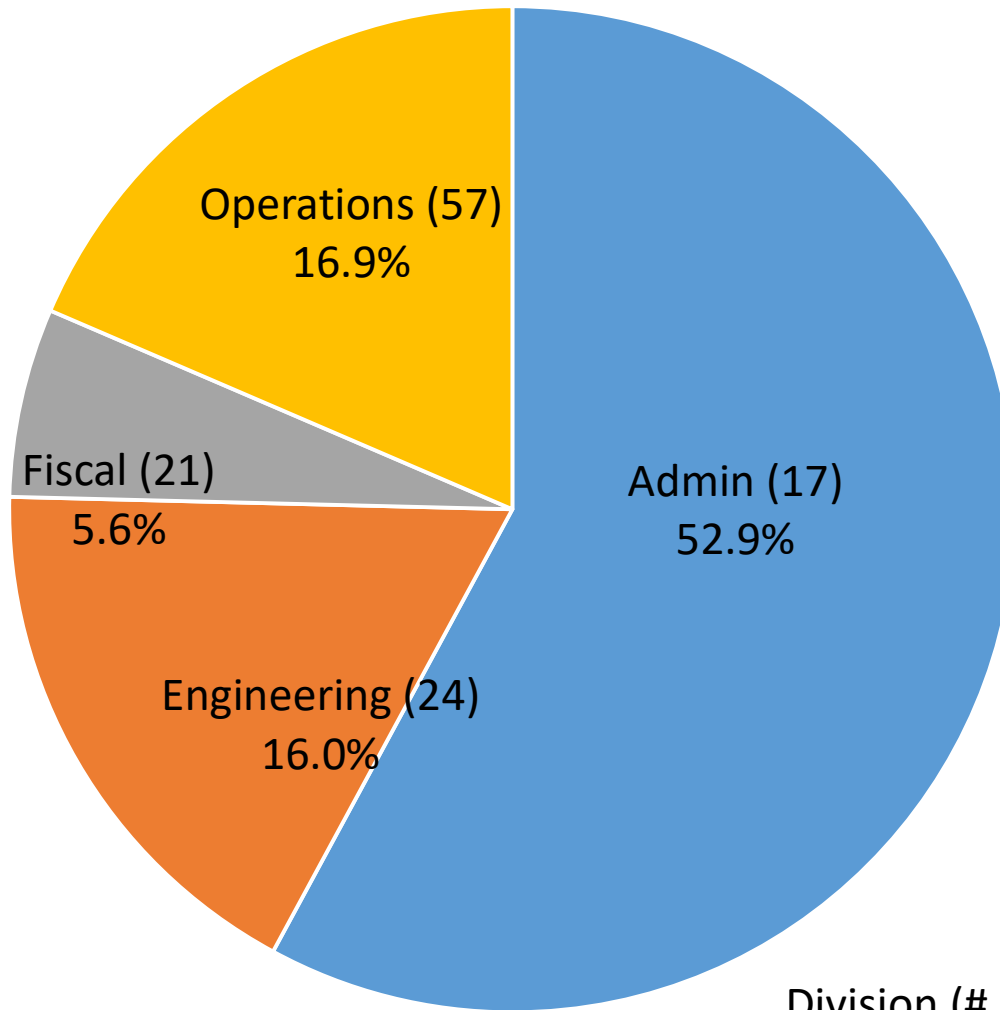
# ADMINISTRATION

|  | Oct-24      |           | Nov-24      |           | Previous FY YTD |              | Current FY YTD |             |
|--|-------------|-----------|-------------|-----------|-----------------|--------------|----------------|-------------|
| <b>STAFFING</b>                              |             |           |             |           |                 |              |                |             |
| Budgeted Staff vs VADancies (Admin-HR-IT-PR) | 17          | 8         | 17          | 9         | 17              | 8            | 17             | 9           |
| <b>OVERTIME</b>                              |             |           |             |           |                 |              |                |             |
| Budget (\$) vs ADtual (\$)                   | \$ 4,166.67 | \$ 703.72 | \$ 4,166.67 | \$ 698.43 | \$ 20,833.33    | \$ 42,017.02 | \$ 20,833.33   | \$ 8,977.44 |

|  | Oct-24 |    | Nov-24 |    | Previous FY YTD |     | Current FY YTD |     |
|--|--------|----|--------|----|-----------------|-----|----------------|-----|
| <b>LEVEL OF SERVICES</b>                       |        |    |        |    |                 |     |                |     |
| # of IT Help Desk Tickets Received   Completed | 62     | 54 | 37     | 31 | 208             | 129 | 260            | 233 |
| # of Legal Claims Outstanding   Resolved       | 0      | 0  | 0      | 0  | 0               | 0   | 0              | 0   |
| # of ContrADts Pending   Executed              | 1      | 1  | 2      | 1  | 2               | 5   | 1              | 3   |
| # of Purchase Orders Processed                 | 21     |    | 18     |    | 126             |     | 107            |     |
| # of Agreements Pending   Executed             | 6      | 2  | 1      | 14 | 1               | 5   | 1              | 23  |
| # of MOU   MOA Pending                         | 0      | 0  | 0      | 0  | 0               | 0   | 0              | 0   |
| # of MOU   MOA Executed                        | 0      | 0  | 0      | 1  | 1               | 0   | 1              | 1   |
|  |        |    |        |    |                 |     |                |     |
|  |        |    |        |    |                 |     |                |     |

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

## % Vacancy Within Each Division Level



Division (# Auth) - % Vacant

DEPARTMENT OF WATER

County of Kaua‘i

“Water has no substitute – Conserve It!”

MANAGER’S UPDATE

December 19, 2024

*Pursuant to Board Policy No. 3*

**1. CONTRACT AWARD TO KING WINDWARD NISSAN, LLC  
GS-2025-01, FURNISH AND DELIVER ONE (1) KING CAB/ACCESS CAB PICKUP TRUCK**

RECOMMENDATION:

It is recommended that the Manager approve a contract award to King Windward Nissan, LLC to furnish and deliver One (1) King Cab/Access Cab Pickup Truck.

FUNDING:

|                  |  |             |               |
|------------------|--|-------------|---------------|
| Account No.      | 10-40-00-604-999   |             |               |
| Acct Description | WU/Ops/Capital Outlay-R&R/Misc. Capital Purchases (Line 4) |             |               |
| Funds Available  | <i>Verified by WWC</i>                                     |             | \$50,000.00   |
| Contract No.     | 771  |             |               |
| Vendor           | King Windward Nissan, LLC                                  |             |               |
|                  | Contract Amount  | \$36,906.02 |               |
|                  | 5% Contingency   | N/A         |               |
|                  | Total Funds Certified                                      | \$36,906.02 | <\$36,906.02> |
| Fund Balance     |  |             | \$13,093.98   |

BACKGROUND:

The Board authorized the replacement of CK-2345, a 2015 Nissan Frontier with over 200,000 miles. The new replacement truck will be utilized by the meter readers to continue AMR meter reading and assist customers with their billing inquiries

**2. CONTRACT AWARD TO RAMSAY-BLIESE CORP. DBA LEETE GENERATORS  
GS-2025-02, FURNISH & DELIVER TWO (2) 125 KVA TRAILER MOUNTED EMERGENCY GENERATOR AND ONE (1) 220 KVA EMERGENCY GENERATOR**

RECOMMENDATION:

It is recommended that the Manager approve a contract award to Ramsay-Bliese Corp dba Leete Generators to furnish and deliver Two (2) 125 KVA Trailer Mounted Emergency Generator and One (1) 220 KVA Emergency Generator.

FUNDING:

|                  |  |  |              |
|------------------|--|--|--------------|
| Account No.      | 10-40-00-604-999   |  |              |
| Acct Description | WU/Ops/Capital Outlay-R&R/Misc. Capital Purchases (Line 1) |  |              |
| Funds Available  | <i>Verified by WWC</i>                                     |  | \$425,000.00 |

|              |   |              |                |
|--------------|---|--------------|----------------|
| Contract No. | 772                                     |              |                |
| Vendor       | Ramsay-Bliese Corp dba Leete Generators |              |                |
|              | Contract Amount                         | \$323,536.00 |                |
|              | 5% Contingency                          | N/A          |                |
|              | Total Funds Certified                   | \$323,536.00 | <\$323,536.00> |
| Fund Balance |   |              | \$101,464.00   |

**BACKGROUND:**

The Board approved the replacement of 3 generators that were over 30 years old. Included in the replacement was an upgrade of the 150 kVA generator to a 220 kVA generator to accommodate the high efficiency motors at Kīlauea Wells. The new generators will provide reliable emergency power for production of potable water.

**3. AWARD CONTRACT NO. 773 TO PRITHIBI LLC  
 JOB NO. SS-2025-06, CC&B DATA EXTRACTION FOR DEPARTMENT OF PUBLIC WORKS, WASTEWATER DIVISION (DPW) FOR THE PURPOSE OF BILLING COMMERCIAL CUSTOMERS**

**RECOMMENDATION:**

It is recommended that the Manager approve a contract with Prithibi LLC to assist DPW for the purposes of rendering commercial customer bills. The amount of \$14,764.44 consists of a one-time development fee and monthly maintenance, cloud subscription fees and storage costs, and technical support.

**FUNDING:**

|                  |                                   |             |               |
|------------------|-----------------------------------|-------------|---------------|
| Account No.      | 10-30-20-541-010                  |             |               |
| Acct Description | WU/Bill/Collection/Other Services |             |               |
| Funds Available  | <i>Verified by WWC</i>            |             | \$14,764.44   |
| Contract No.     | 773                               |             |               |
| Vendor           | Prithibi LLC                      |             |               |
|                  | Contract Amount                   | \$14,764.44 |               |
|                  | 5% Contingency                    | N/A         |               |
|                  | Total Funds Certified             | \$14,764.44 | <\$14,764.44> |

**BACKGROUND:**

The DPW requested assistance from DOW to provide water consumption data from its CC&B software application, for their commercial customer accounts that are invoiced based on water consumption to render bi-monthly billing statements. DOW's software consultant, Prithibi LLC, will develop and provide a hosted cloud-based solution that will extract consumption data from CC&B. As-needed training and technical support will be provided. The one-time development cost includes taxes and will be reimbursed to DOW, as well as monthly hosting, maintenance, technical support, and as-needed training. The DOW and DPW will enter into a separate Memorandum of Understanding (MOU) and will reimburse costs paid to Prithibi LLC.

**4. CONSTRUCTION CONTRACT AWARD TO PACIFIC CONCRETE CUTTING & CORING, INC.  
 JOB NO. 24-15 LIHU'E ADMINISTRATIVE BUILDING FENCING**

RECOMMENDATION:

It is recommended that the Manager approve a construction contract award to Pacific Concrete Cutting & Coring, Inc. in the amount of \$347,895.00.

FUNDING:

|                  |   |              |                |
|------------------|---|--------------|----------------|
| Account No.      | 10-20-00-605-178                        |              |                |
| Acct Description | WU/Eng/AdminCapital Outlay – Expansion  |              |                |
| Funds Available  | <i>Verified by WWC</i>                  |              | \$500,000.00   |
| Contract No.     | 774                                     |              |                |
| Vendor           | Pacific Concrete Cutting & Coring, Inc. |              |                |
|                  | Contract Amount                         | \$347,895.00 |                |
|                  | 5% Contingency                          | N/A          |                |
|                  | Total Funds Certified                   | \$347,895.00 | <\$347,895.00> |
| Fund Balance     |   |              | \$152,105.00   |

BACKGROUND:

The Lihu'e Administrative Building Fencing project consists of constructing a perimeter fence for the Department of Water, Lihu'e Administrative Building, which includes pedestrian access gates, swing gates, and a vehicle cantilever gate system, in accordance with the construction document requirements.

The project was procured via the low bid process and the apparent low bidder's proposal was deemed responsive.

CONVEYANCE OF WATER FACILITIES NONE