

COUNCIL OF THE COUNTY OF MAUI
POLICY AND INTERGOVERNMENTAL
AFFAIRS COMMITTEE

February 18, 2015

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy and Intergovernmental Affairs Committee, having met on February 4, 2015, makes reference to County Communication 15-29, from the Director of Water Supply ("Director"), transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE HONOLULU BOARD OF WATER SUPPLY".

The purpose of the proposed bill is to authorize the Mayor to execute an agreement with the Honolulu Board of Water Supply ("Board") to continue to provide billing services through September 30, 2024, for water service charges for County of Maui customers.

The Director stated the County has contracted with the Board to provide water billing services since 1977. He further stated both parties agree the County should provide its own water-service billing in the future. He informed your Committee the Department of Water Supply ("Department") is planning for a transition to a County-operated billing system, and will be requesting a \$1,000,000 appropriation in the Fiscal Year 2016 Budget to begin implementation of the system.

The Director further stated that although the proposed bill extends the contract to September 30, 2024, he projects the Department will have established the new billing system within the next three years and will request to terminate the contract at the appropriate time.

The Manager and Chief Engineer of the Board stated the Board is satisfied with the Department's projected timeline and will support an equitable termination of the contract.

COUNCIL OF THE COUNTY OF MAUI
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Your Committee voted 8-0 to recommend passage of the proposed bill on first reading and filing of the communication. Committee Chair Victorino, Vice-Chair Couch, and members Baisa, Carroll, Cochran, Crivello, Guzman, and White voted "aye". Committee member Hokama was excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

Your Policy and Intergovernmental Affairs Committee RECOMMENDS the following:

1. That Bill _____ (2015), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE HONOLULU BOARD OF WATER SUPPLY", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 15-29 be FILED.

COUNCIL OF THE COUNTY OF MAUI
**POLICY AND INTERGOVERNMENTAL
AFFAIRS COMMITTEE**

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**Committee
Report No.** _____

This report is submitted in accordance with Rule 8 of the Rules of the Council.



MICHAEL P. VICTORINO, Chair

pia:cr:15007aa:kcw

ORDINANCE NO. _____

BILL NO. _____ (2015)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE
COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT
WITH THE HONOLULU BOARD OF WATER SUPPLY

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

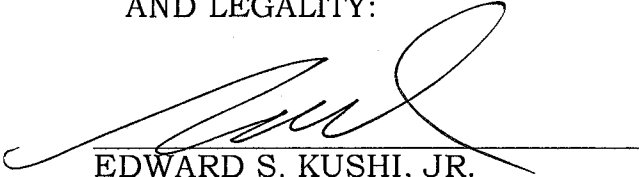
SECTION 1. Purpose. The Board of Water Supply, City and County of Honolulu ("BWS"), conducts the billing for water service charges for the Department of Water Supply, County of Maui ("DWS"). The operating agreement between BWS and DWS expired on September 30, 2014. In order to avoid a disruption in billing services, the Billing of Water Service Charges Memorandum of Agreement ("Agreement"), attached hereto and incorporated herein as Exhibit "1", was executed on October 1, 2014, provided, that all funding to pay for services rendered is subject to Maui County Council approval and appropriation.

Section 2.20.020, Maui County Code ("MCC"), provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the County or any department or agency thereof.

SECTION 2. Authorization. The Council hereby authorizes the Mayor to execute the Agreement and all other necessary documents relating to the Agreement.

SECTION 3. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

A handwritten signature in black ink, appearing to read 'E. Kushi, Jr.', is written over a horizontal line.

EDWARD S. KUSHI, JR.
First Deputy Corporation Counsel
County of Maui

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BILLING OF WATER SERVICE CHARGES

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** ("Agreement"), is made this 1st day of October, 2014 by and between the **BOARD OF WATER SUPPLY**, City and County of Honolulu, a semi-autonomous agency of the City and County of Honolulu ("BWS"), and the **DEPARTMENT OF WATER SUPPLY**, County of Maui, ("DWS") with regard to the billing of water service charges. The BWS and DWS shall collectively be referred to herein as the "**Parties**". This Agreement shall be for a ten-year period, commencing October 1, 2014 ("**Effective Date**").

WHEREAS, the BWS currently facilitates the processing, printing and mailing of water bills to DWS's customers on the island of Maui (collectively "**Water Billing Services**"); and

WHEREAS, the BWS is currently providing these services under an agreement that expires on September 30, 2014; and

WHEREAS, the BWS agrees to continue to provide the Water Billing Services on behalf of DWS subject to the terms and conditions set forth herein.

NOW, THEREFORE, the Parties hereto agree as follows:

1. SCOPE OF WATER BILLING SERVICES TO BE PROVIDED BY THE BWS

1.1 The BWS will license and host the Customer Information System (CIS) software; deploy the CIS on the BWS hardware and provide network access; provide CIS system support through patches, bug fixes and new releases; and provide CIS database support.

1.2 The BWS will provide CIS software technical support to DWS personnel through the BWS Information Technology Division (IT) Help Desk, or BWS IT Applications Analysts, or Contract Application Consultants. This support will include;

1.2.1 Basic customer issues related to the CIS such as, troubleshooting and resolving application and network problems, resetting and administering passwords, setting up and administering profiles, system security, and configuration changes to support changes in rates or rate structure.

1.2.2 Being the contact point for all reported problems and configuration and enhancement requests.

EXHIBIT " 1 "

1.2.3 Development of special reports for DWS if required. DWS will submit an IT Request for configuration, enhancement and special reporting services, and BWS will assess the request for level of effort, timeframe and cost (if any) to implement. BWS will provide this assessment to DWS for acceptance and approval. Costs for services provided to fulfill the IT Request will be the responsibility of DWS except for costs for annual or other standard rate adjustments not involving a rate structure change. A three (3) month lead time is required for rate changes involving changes in rate structure.

1.3 The BWS will be responsible for the processing, printing, bundling and mailing of all water bills. The BWS currently outsources this function to a vendor. This outsourcing contract will come up for renewal occasionally, and this Agreement is separate and apart from any particular vendor the BWS has chosen to use.

1.4 The BWS will bill all customers on a monthly basis.

1.5 The BWS will update DWS customer account payment information upon receipt of valid electronic payment data from identified financial vendors.

1.6 The BWS will provide monthly, quarterly, and annual sales, adjustments, and payment information in support of financial and audit needs.

1.7 The BWS will provide its best efforts in ensuring system resiliency and performance on a par with that provided for itself and ENV.

2. DWS DUTIES

2.1 **Payment.** DWS agrees to pay the BWS the following charges for the services set forth in Section 1 above;

2.1.1 From October 1, 2014 through June 30, 2015; in the form of a per bill fee equal to \$0.335 plus actual postage, which BWS will invoice monthly to DWS

2.1.2 From FY16 through FY24; in the form an annual charge (to include Operational and Capital Recovery Charges as defined in sections 2.1.2.1 and 2.1.2.2 below) projected in Exhibit A; which BWS will invoice in quarterly increments to DWS

- 2.1.2.1 Operational Charges based on DWS's pro-rata share (determined by percentage of accounts in the CIS) of the BWS and Contract Support Personnel and overhead costs, Annual Software License costs, Hardware costs, Software and Hardware maintenance costs, bill printing, production and presentment costs, and actual mailing costs.
- 2.1.2.2 Capital Recovery Charges, based upon DWS's pro-rata share (based on percentage of accounts in the CIS) of the initial projected BWS CIS Implementation Project cost of \$7.136 million, allocated over the term of this agreement, as proposed in Exhibit A. If DWS terminates this agreement prior to the expiration date, BWS will consider any outstanding Capital Recovery Charge balance as being satisfied.
- 2.1.3 Any costs identified via an IT Request submittal that has been accepted and approved by DWS.
- 2.1.4 The annual amount of payments for items 2.1.1 through 2.1.3 will be estimated by the BWS for the subsequent fiscal year by April of the current fiscal year (unless an earlier date is needed due to budgeting processes and mutually agreed upon by both parties), and submitted to DWS via a proposed amendment to Exhibit A of this MOA.
- 2.1.5 Since these amounts are estimates of cost for the upcoming year, actual costs incurred (whether up or down) are to be adjusted in the subsequent year estimation (hence the Prior FY Adjustment column in Exhibit A). Upon the expiration or termination of this agreement, any outstanding estimate versus actual costs variances incurred during the term of the agreement will be invoiced or refunded to DWS as soon as it is determined, but not to exceed two fiscal years following expiration/termination.
- 2.1.6 BWS and DWS acknowledge that DWS' funding for each fiscal year is subject to Maui County Council approval and appropriation. It is herein specifically UNDERSTOOD AND AGREED by the Parties that BWS' obligations to perform and DWS' obligation and liability for payments to BWS for work to be performed for the upcoming fiscal year, as herein

stated, is SUBJECT TO AND CONTINGENT ON DWS' receiving Maui County Council approval and appropriations for funding the Agreement for each upcoming fiscal year. Notwithstanding the above, DWS remains obligated to pay for services received and costs incurred on its behalf as set forth in Section 2.1.5.

2.2 **Responsibilities.** Anything not specifically set forth herein as being the responsibility of the BWS in regard to the DWS customers shall be the sole responsibility of DWS.

2.2.1 DWS will be responsible for all water service related inquiries from customers on amounts due, payments made, customer changes, service investigation, adjustments, credit, collections, write-offs, etc. related to water service charges

2.2.2 DWS will be responsible for all meter readings collection and timely transmission of read data to BWS for processing.

2.3 **Agreement to Negotiate in Good Faith.** Regarding the determination of cost share allocation, the following understanding is accepted by the parties.

2.3.1 If DWS and BWS agree that there is a need for further capital investment in the BWS CIS, DWS and BWS agree to negotiate any Capital Recovery cost sharing related to such negotiated and agreed investment, and to include such agreed Capital Recovery cost sharing in Exhibit A

2.3.2 If there is a material change in operational costs for the BWS CIS, DWS and BWS agree to negotiate any changes to the methodology used in determining the cost sharing for Operational Charges and to include such agreed changes in Exhibit A.

3. DURATION OF THE AGREEMENT

3.1 **Term of the Agreement.** The term of the Agreement shall be for the period beginning on October 1, 2014, i.e. the Effective Date of this Agreement, and ending on June 30, 2024 ("Term"). The Term may be extended only upon terms and conditions that are mutually agreed upon by the Parties. If DWS wishes to extend the Term, such request shall be made to the BWS, in writing, no later than March 31, 2024. The Parties expressly acknowledge that if no such agreement is reached by March 31, 2024 extending the Term, then the

BWS shall not be obligated in any manner to provide the Water Billing Services on behalf of the DWS after the Term. Any outstanding estimate versus actual costs variances incurred during the term of the agreement will be handled in accordance with section 2.1.5 above

- 3.1.1 **Right to Terminate the Agreement.** Either Party shall have the right to terminate this Agreement upon providing one hundred eighty (180) days written notice to the other Party.
- 3.1.2 Immediately upon termination of the Agreement, the BWS's obligations under this Agreement shall cease and the BWS shall have no obligation to provide any Water Billing Services on behalf of the DWS.
- 3.1.3 If DWS initiates a termination of this agreement prior to the ending of the Term, any unpaid Capital Recovery Charges will be forgiven by the BWS, and will not result in an unpaid liability for DWS. Any outstanding estimate versus actual costs variances incurred during the term of the agreement will be handled in accordance with section 2.1.5 above.
- 3.1.4 It is herein specifically UNDERSTOOD AND AGREED by the Parties that in the event the Maui County Council fails to approve and appropriate funding for the upcoming fiscal year, BWS may terminate this Agreement at the end of the current fiscal year. DWS obligations under Section 2.1.5 would still apply.

4. LIMITED LIABILITY

4.1 **Waiver of Claims by the DWS Against the BWS.** DWS agrees to waive all claims against the BWS, except claims for indemnification as provided in Section 4.2, in regard to any services provided to DWS under this Agreement, unless based on gross negligence, intentional or reckless misconduct, or any other liabilities that Hawaii law does not permit to be excluded by agreement.

4.2. **Defense and Indemnity.** DWS agrees to defend and indemnify the BWS for any Customer or other claims arising out of DWS's responsibilities under this Agreement, except to the extent such claims are attributable to the gross negligence, intentional or reckless misconduct, or any other liabilities that Hawaii law does not permit to be excluded by agreement of BWS. BWS agrees to defend and indemnify DWS for any Customer or other claims arising out of BWS's responsibilities under this Agreement, except to the extent such claims are attributable to the negligence of DWS.

5. MISCELLANEOUS

5.1 **Entire Agreement.** This Agreement shall not be altered, amended, modified, or otherwise changed, in any respect or particular whatsoever, except by writing duly executed by the Parties. The Parties hereby acknowledge and agree that they will make no claim at any time that this Agreement has been orally altered or modified in any respect whatsoever. This Agreement constitutes a single integrated written contract; expresses the entire agreement among the Parties; and supersedes all prior oral and written agreements, representations, negotiations, and correspondence with respect to the matters addressed in the Agreement.

5.2 **Assignment; Successors.** No Party may assign any or all of its rights or interests in, or delegate any part or all of its performance or obligations, under this Agreement without the prior written consent of the other Party. Subject to the preceding sentence, this Agreement shall apply to, be binding in all respects upon and inure to the benefit of, the respective successors and permitted assigns of the Parties.

5.3 **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws by any court of competent jurisdiction, such provision shall be fully severable; the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

5.4 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties agree that facsimile signatures shall be valid for purposes of execution.

5.5 **Notices.** All notices, requests, communications and documents required or permitted by this Agreement shall be in writing and shall be deemed given to a Party when (i) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (ii) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment; or (iii) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a Party may designate by notice to the other Party):

To BWS:

Board of Water Supply
630 South Beretania Street
Honolulu, Hawaii 96843

Attention: Executive Support Office
Telephone: (808) 748-5231
Facsimile: (808) 550-9016

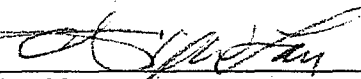
To DWS: Department of Water Supply
County of Maui
200 South High Street
Wailuku, Hawaii 96793-2155
Telephone: (808) 270-7816
Facsimile: (808) 270-7951


5.6 **Rules of Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

BOARD OF WATER SUPPLY


APPROVED AS TO FORM:

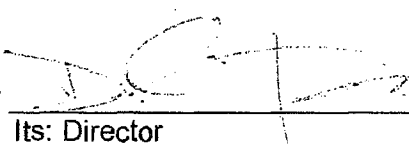
By 
Its: Manager
aka

By 
Its: Deputy Corporation Counsel
MASTERS UCHIHIMA

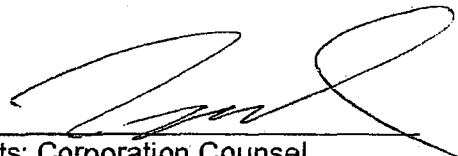
**DEPARTMENT OF WATER SUPPLY
County of Maui
APPROVED:**

RECOMMENDED BY:

By 
Its: Mayor

By 
Its: Director

APPROVED AS TO FORM:

By 
Its: Corporation Counsel

MAUI COST ALLOCATION

EXHIBIT A (rev. 9/6/14) - Projections assume a 5% annual increase. Table will be revised and updated annually for changes in budgeted and actual costs.

Billing Costs	FY2014 BWS Actual Expense	FY2014 MAUI Share of Actual	MAUI FY16 Budget (before Adjustment)*	MAUI FY2016	MAUI FY2017	MAUI FY2018	MAUI FY2019	MAUI FY2020	MAUI FY2021	MAUI FY2022	MAUI FY2023	MAUI FY2024
	MAUI ONLY SERVICES											
Printing & Mailing (based on actual Utilitec Invoices and USPS)												
Bill Production	\$76,627.74	\$76,627.74	\$84,482.08	\$84,482.08	\$88,706.19	\$95,141.50	\$97,798.57	\$102,686.50	\$107,822.93	\$113,214.07	\$118,874.78	\$124,818.51
Postage	\$162,262.64	\$162,262.64	\$178,894.56	\$178,894.56	\$187,839.29	\$197,231.25	\$207,092.82	\$217,447.46	\$228,319.83	\$239,735.82	\$251,722.61	\$264,308.74
* Since the BWS budget for FY16 was not known when this projection was developed, the BWS FY15 budget plus 5% is used for FY16 projections. Any budget versus actual variances for FY16 will be adjusted in FY17 budget projection.												
MAUI ONLY SERVICES TOTAL	\$238,890.38	\$238,890.38	\$263,376.64	\$263,376.64	\$276,545.48	\$290,372.75	\$304,891.39	\$320,135.96	\$336,142.75	\$352,949.89	\$370,597.39	\$389,127.26
ALL PARTNER SERVICES												
CIS Software Support - Application Systems Development Branch (BU5820)												
FY14-4 FTE/FY15-5 + Overhead (OBJ4110-4130)	\$594,246.83	\$94,544.67	\$91,302.33	\$91,302.33	\$95,867.45	\$100,660.82	\$105,693.86	\$110,978.55	\$116,527.48	\$122,353.85	\$128,471.55	\$134,895.12
CIS Hardware and System Software - Operations Support Branch (BU5830)												
Hardware Replacement Costs (5 year life)	\$16,000.00	\$2,545.60	\$2,547.20	\$2,547.20	\$2,674.56	\$2,808.29	\$2,948.70	\$3,096.14	\$3,250.94	\$3,413.49	\$3,584.17	\$3,763.37
CIS Hardware Support Costs (OBJ4110-4130, Assume 1/2 hr per day)	\$12,288.15	\$1,955.04	\$1,704.72	\$1,198.12	\$1,708.02	\$1,243.42	\$1,805.59	\$12,395.87	\$13,015.67	\$13,666.45	\$14,349.77	\$15,067.26
CIS Software Licenses												
Oracle CC&B (FY2014-272,400 budget)	\$276,484.00	\$43,988.60	\$50,850.07	\$50,850.07	\$53,392.58	\$56,062.20	\$58,865.31	\$61,808.58	\$64,899.01	\$68,143.56	\$71,551.16	\$75,128.72
ALL PARTNER SERVICES TOTAL	\$899,018.98	\$149,033.92	\$145,404.32	\$146,404.32	\$162,642.60	\$170,774.73	\$179,313.47	\$188,279.14	\$197,693.10	\$207,577.76	\$217,966.64	\$228,854.47
ALL SERVICES TOTALS		FY14 Actual	FY16 Budget									
Capital Recovery Allocation (16.03% of \$7.136 Mllion)	\$1,143,900.80	\$381,924.30	\$409,780.96	\$409,780.96	\$439,188.08	\$461,147.48	\$484,204.88	\$508,415.10	\$533,835.85	\$560,527.65	\$588,554.03	\$617,981.73
TOTAL MAUI ALLOCATION		\$381,924.30		\$409,780.96	\$439,188.08	\$461,147.48	\$484,204.88	\$508,415.10	\$533,835.85	\$560,527.65	\$588,554.03	\$617,981.73
TOTAL MAUI FY14 PAYMENTS		\$287,511.59										
NET ACTUAL COST LESS ACTUAL RECEIPTS*		(\$94,412.71)										
(* to be added to upcoming FY Share Allocation, N/A for FY15)												
TOTAL FY16 MAUI SHARE ALLOCATION				\$409,780.96	\$439,188.08	\$475,537.56	\$510,033.05	\$545,118.53	\$577,479.99	\$615,009.09	\$653,980.33	\$693,406.03

Percentage Allocation	FY14 Average		FY16 Budget	
	All Partners	Oahu Only	All Partners	Oahu Only
ENV	32.39%	43.30%	32.43%	43.35%
Mau	15.91%	0.00%	15.92%	0.00%
Kauai	9.23%	0.00%	9.28%	0.00%