

ORDINANCE NO. _____

BILL NO. 21 (2017)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR
OF THE COUNTY OF MAUI TO ENTER INTO
INTERGOVERNMENTAL AGREEMENTS WITH THE BOARD OF WATER SUPPLY
OF THE DEPARTMENT OF WATER, COUNTY OF KAUAI AND WITH THE
BOARD OF WATER SUPPLY, CITY AND COUNTY OF HONOLULU

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

SECTION 1. Purpose. The Board of Water Supply of the City and County of Honolulu ("HBWS") previously handled the billing for water and wastewater service charges for the Department of Water Supply of the County of Maui ("DWS") and for the Board of Water Supply of the Department of Water of the County of Kauai ("KDOW").

The Memorandum of Agreement ("Agreement"), attached hereto and incorporated herein as Exhibit "1", provides that DWS and KDOW agree to share the cost of acquiring a new billing software system for the counties of Maui and Kauai. DWS and KDOW agree to share the cost of licensing acquisition, installation and implementation, and maintenance and support of the software products and agree to have shared access to all of the software services.

The Oracle Assignment ("Assignment"), attached hereto and incorporated herein as Exhibit "2", provides that the HBWS will assign certain Oracle programs to the County of Maui, and as a result, the County of Maui will assume all liabilities of the HBWS in relation to such programs. Further, the current annual fee for Software Update License & Support for the Oracle programs is \$40,535.43.

Section 2.20.020, Maui County Code, 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 the Assignment, all other necessary documents relating to the Agreement and the Assignment, and any amendments thereto.

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 'J.M.O.', is written over a horizontal line.

JENNIFER M.P.E. OANA
Deputy Corporation Counsel
County of Maui
2017-0078

MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT ("Agreement"), is made this ____ day of _____, 2017 by and between the **Board of Water Supply of the Department of Water, County of Kaua'i, ("DOW")** and **County of Maui for its Department of Water Supply ("DWS")**, (individually "Party" and collectively the "Parties").

RECITALS

WHEREAS, the Parties have agreed to terminate their billing services relationship with the Honolulu Board of Water Supply; and

WHEREAS, the Parties wish to share the cost of acquiring a new billing software system for their respective counties; and

WHEREAS, DOW purchased the Oracle Customer Care & Billing System (CC&B), Service Cloud (SC), and Billing Insight (BI) and DWS purchased the Field Service Maintenance (FSM); and

WHEREAS, the Parties agree to share the cost of licensing acquisition, installation and implementation, and maintenance and support of the Oracle software products mentioned above; and

WHEREAS, the Parties further agree to have shared access to all of the software services in accordance with and subject to the terms and conditions set forth herein.

NOW THEREFORE, the DOW and DWS, in consideration of the mutual promises, consideration, and understandings hereinafter set forth, hereby agree as follows:

I. Cost Sharing.

- a. Software licensing costs: The Parties agree to share the fees and costs incurred to license the Oracle software products, based on the proration of the number of installed active water meters in each respective county.
 - i. Software licensing costs are identified as payments made to Mythics for the purchase of:
 1. Service Cloud, Billing Insight, Online Policy Automation (OPA), FSM, CC&B database and application setup.
 2. 5 Oracle Processing Units (OCPU) and 1 extra interface for Maui.
 - a. Of the 5 OCPU, DWS and DOW would share the cost for 4 OCPU's and DOW would solely pay for the fifth OCPU.
 3. Eloqua marketing tool (if DOW and DWS choose to continue with it after the first year).

EXHIBIT " 1 "

- ii. As of the Effective Date of this Agreement, the pro-rata cost for the initial year is based on DOW's existing 21,740 meters installed and DWS' 36,211 meters installed. Based on these totals, DOW's pro-rata share is 37.5% and DWS's pro-rata share is 62.5% of the initial licensing fees and costs.
 - iii. Within sixty days (60) of the end of every fiscal year each county will be required to submit to the other a summary of the county's number of existing meters for the calculation of pro-rata annual licensing cost.
- b. Annual software maintenance and support costs:
 - i. The Parties agree to share in the annual maintenance and support costs based on the proration of the number of installed active water meters in each respective county at the start of each new fiscal year.
 - ii. For each successive fiscal year, the pro-rata share is recalculated based on the formula in Section a(ii) above.
- c. Project Management costs: The Parties agree to share the contractual non-recurring fees and costs associated with the Project Management on a 50/50 share basis, which fees and costs are necessary to create a fully operational billing system which include, but are not limited to, payments made to Prithibi, LLC and Mythics.
- d. Technical Support: Fees and costs for as needed technical support services which include but are not limited to overtime charges incurred by DOW or DWS staff to troubleshoot processing errors and/or outside services paid by DOW or DWS shall be charged accordingly as follows:
 - i. Fees and costs incurred to troubleshoot errors that are not identifiable to DOW nor DWS shall be shared 50/50 and approved beforehand.
 - ii. Fees and costs to troubleshoot errors identified to DOW shall be charged to DOW only.
 - iii. Fees and costs to troubleshoot errors identified to DWS shall be charged to DWS only.

II. Responsibilities of Parties.

- a. Pre-Implementation: The Parties agree to provide photocopies of original invoices for all payments made to the vendors identified in 1.(a), 1.(b) and 1.(c.) above for the sole purpose of calculating party obligations.
- b. Post Implementation:

- i. DOW, as the primary licensee, agrees to allow DWS to fully participate in the decision making process as it relates to the following:
 1. Software enhancements and/or upgrades
 2. Any additional software purchases
 3. Any modification to the hardware and/or software configuration
 4. Use of ancillary third party software
- ii. DOW, as the primary licensee, in exchange for the shared payment received from DWS, agrees to transfer the license used by DWS to DWS, in the event it becomes beneficial for DWS to hold its own license, provided it does not create additional cost or expense to DOW to do so.
- iii. DOW shall provide DWS no less than one administrator user login position to assist in the monitoring and maintenance of the jointly utilized system.
- iv. DOW and DWS agree to provide at least one (1) primary contact point and one (1) alternative or secondary contact. The contacts shall represent their respective party on all matters relating to this Agreement. The contact addresses shall be current and monitored or checked on a regular basis.
- v. DOW and DWS agree to communicate and/or coordinate with each other all system maintenance, processing and performance thresholds for a fully functional system.
- vi. In the event of a system failure, DOW and DWS agree to coordinate and communicate prior, during, and after system restore. Both Parties agree to provide immediate notification of a system failure to the technical contact listed in the Notice section of this Agreement.
- vii. DOW and DWS agree to coordinate with each other all processing and transaction changes which potentially could affect the operating performance of the system for either of the Parties or both.
- viii. Each Party will be responsible for their respective customer issues related to the CC&B including but not limited to troubleshooting and resolving application and network problems, resetting and administering passwords.
- ix. DOW and DWS agree to communicate, coordinate, and/or work together on system set up such as administering profiles, system

security set up changes in rates or rate structure, and other system configuration changes.

- x. The Parties are responsible for the processing, printing, bundling, and mailing of their respective county's water bills.
- xi. The Parties are responsible for all water service related inquiries from their respective customers, including but not limited to, on amounts due, payments made, customer changes, service investigation, adjustments, credit, collections, write-offs, etc. related to water service charges.
- xii. The Parties are responsible for their own meter readings collection and timely transmission of read data for daily batch processing.
- xiii. Any new or special report request that benefits only the requestor, the requestor shall bear the cost of such request. If both Parties mutually agree to develop such report, the cost shall be on a 50/50 share basis.

III. Non-binding Mediation. In the event of dispute and disagreement, Parties agree to initially participate in non-binding Mediation services for resolution.

IV. Payments.

- a. DWS shall make a one-time payment to DOW for its share of the Project Management expenses as identified in 1.(c).
- b. DWS shall make payments to DOW within forty-five (45) days upon presentation of copies of invoices received for its share of the Annual Maintenance costs, the amount as determined in 1.(a) , 1.(b) and 1.(c) of this Agreement.
- c. DWS and DOW shall reconcile payments each has made in the satisfaction of items identified in Item 1.(a) (i) and 1.(a) (ii) of this Agreement. Parties shall mutually determine outstanding amounts owed from each other, if any. Once determined, any outstanding amount shall be satisfied between the Parties no later than forty-five (45) days following this determination.
- d. Within sixty (60) days of the end of every fiscal year each Party will be required to submit to the other a summary of each county's number of existing meters for calculation of the pro-rata annual licensing cost.
- e. Contractual obligations to Consultants including Prithibi, LLC which are outside of the scope of implementation and installation of the Oracle products both DOW and DWS mutually agreed upon are not included in the cost sharing described in Item 1.(a). of this Agreement.

- V. **Term of the Agreement.** This Agreement shall commence on the “Effective Date”, and end on June 30, 2026, (“Term”). The Term may be extended upon like terms and conditions when mutually agreed upon by the Parties. The Parties expressly acknowledge that if either Party does not notify the other of its intent to terminate this Agreement pursuant to the termination provisions contained herein, the Agreement shall automatically renew annually for one year terms until June 30, 2031.
- VI. **Right to Terminate.** Either Party shall have the right to terminate this Agreement having provided one hundred eighty (180) days written notice to the other Party.
- VII. **Indemnity.**
- a. DOW agrees to indemnify and hold harmless DWS for any Customer or other claims arising out of DOW’s responsibilities under this Agreement, except to the extent such claims are attributable to the gross negligence or intentional or reckless misconduct of DWS, or any other liabilities that Hawaii law does not permit to be excluded by Agreement of DWS, and will reimburse DWS for any judgments, costs, and expenses, including reasonable attorney’s fees, incurred in connection with the defense of any such claim but only to the extent that DOW’s liability for such damage, loss, or injury has been determined by a court of competent jurisdiction or otherwise agreed to by DOW, and further, to the extent the payment for such damage, loss, or injury is permitted by law and approved by the Board.
 - b. DWS agrees to indemnify and hold harmless DOW 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 or intentional or reckless misconduct of DOW, or any other liabilities that Hawaii law does not permit to be excluded by Agreement of DOW, and will reimburse DOW for any judgments, costs, and expenses, including reasonable attorney’s fees, incurred in connection with the defense of any such claim, but only to the extent that DWS’s liability for such damage, loss or injury has been determined by a court of competent jurisdiction or otherwise agreed to by DWS, and further, to the extent the payment for such damage, loss or injury is permitted by law and approved by the Maui County Council, pursuant to Chapter 3.16, Maui County Code, as amended.
- VIII. **Modification: Entire Agreement.** This Agreement shall not be altered, amended, modified, or otherwise changed, in any respect 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.

- IX. **No 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. This Agreement shall apply to and be binding in all respects upon and inure to the benefit of, the respective successors of the Parties.
- X. **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.
- XI. **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.
- XII. **Notices.** All notices, requests, communications, and documents required or permitted by this Agreement shall be in writing and deemed received when (i) delivered or rejected to the appropriate address by hand; (ii) by nationally recognized overnight courier service, postage prepaid; or (iii) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment, 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, referencing this Agreement (or to such other address, e-mail address or person as a Party may designate by notice to the other Party):

To DOW: Department of Water
County of Kaua`i
Attention: The Manager & Chief Engineer
P.O. Box 1706, Lihu`e, HI 96766
Telephone: (808) 245-5400

Primary Contact: Marites Yano, Waterworks Controller
Telephone: (808) 245-5422
myano@kauaiwater.org

Secondary Contact: Anlyn Flores, Accountant IV, Billing Supervisor
Telephone: (808) 245-5428
aflores@kauaiwater.org

Primary Technical: Sandi Nadatani-Mendez, I.T. Specialist III
Telephone: (808) 755-5301
snadatani@kauaiwater.org

Secondary Technical Contact: Jeff Mendez, Waterworks I.T. Officer
Telephone: (808) 651-8900
jmendez@kauaiwater.org

To DWS: Department of Water Supply
County of Maui
Attention: Director
200 South High Street, Wailuku, HI 96793
Telephone: (808) 270-7816

Primary Contact: Holly Ho, Fiscal Officer
Telephone: (808) 270-7303
holly.ho@co.maui.hi.us

Secondary Contact: Helene Kau, Assistant Fiscal Officer
Telephone: (808) 270-7302
helene.kau@co.maui.hi.us

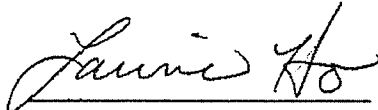
XIII. Rules of Construction. The Parties have participated in the jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of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

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

BOARD OF WATER SUPPLY
County of Kaua'i

COUNTY OF MAUI

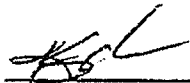


LAURIE HO
Chairperson
Board of Water Supply
County of Kaua'i

ALAN M. ARAKAWA
Its: Mayor

RECOMMEND FOR APPROVAL:

RECOMMEND FOR APPROVAL:

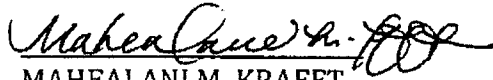


KIRK SAIKI, P.E.
Manager and Chief Engineer
Department of Water

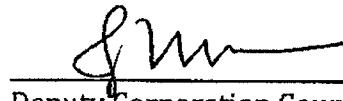
DAVID TAYLOR, P.E.
Director
Department of Water

APPROVED AS TO FORM AND
LEGALITY:

APPROVED AS TO FORM AND
LEGALITY:



MAHEALANI M. KRAFFT
Deputy County Attorney



Deputy Corporation Counsel

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On this ____ day of _____, 20__ before me appeared **ALAN M. ARAKAWA**, to me personally known, who being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, in the capacity shown, having been duly authorized to execute such instrument in such capacity, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said **ALAN M. ARAKAWA** acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

Notary Signature: _____	
Date: _____	

ORACLE

Assignor: Board of Water Supply, City and County of Honolulu

Assignor's Location: 630 S. Beretania St, Honolulu, HI, 96843, United States

Assignee: County of Kauai

Assignee's Location: Department of Water, County of Kauai, 4398 Pua Loke St, Lihue, HI, 96766,
United States

This document must be executed by Assignor and Assignee on or before November 30, 2016 to be valid and once so executed shall become effective upon the date of Oracle's consent and execution below.

ASSIGNMENT AND CERTIFICATION OF NON POSSESSION

Assignor represents and warrants that as a result of internal business reorganization, Assignor wishes to assign to Assignee certain Oracle programs and, as a result, Assignee will be assuming all liabilities of Assignor in relation to such programs. Assignor also represents and warrants that Assignor has not sold, assigned or otherwise transferred the Oracle program(s) described below or the license(s) thereto to another entity. Assignor hereby assigns to Assignee all its right, title and interest in and to the following -license(s) for the Oracle program(s) represented as per the below mentioned table (the "Oracle program(s)").

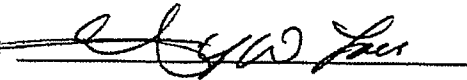
Section A:

Programs	CSI	Quantity	License Type	Support Expiration Date
Oracle Utilities Customer Care and Billing Standard Edition Commercial & Industrial Customers	16678364	16	100 in Customer Count	28-Feb-17
Oracle Utilities Customer Care and Billing Standard Edition Residential Customers	16678364	197	100 in Customer Count	28-Feb-17

Assignor hereby certifies, represents and warrants that upon execution of the above assignment, it will discontinue use of the Oracle program(s). Appropriate documentation and other materials received from Oracle for the Oracle program(s) will be immediately transferred to Assignee.

By signing below, signatory further represents and warrants that signatory has the authority to make the above representations and warranties and sign on Assignor's behalf.

Assignor: Board of Water Supply, City and
County of Honolulu

Signature: 

Name: ERNEST Y.W. LAU, P.E.

Title: Manager and Chief Engineer *a*

Date: 12/2/16

ACCEPTANCE OF ASSIGNMENT

Assignee represents and warrants that as a result of internal business reorganization, Assignor wishes to assign to Assignee certain Oracle programs and, as a result, Assignee will be assuming all liabilities of Assignor in relation to such programs. Assignee hereby accepts the foregoing assignment and agrees that the use of the Oracle program(s) will be governed by the attached Oracle Master Agreement, US-OMA-948291 ("OMA") and by the license metrics set forth below. Assignee acknowledges that the Oracle program(s) are for use in United State. The annual fee for Software Update License & Support for the Oracle program(s) is USD 25,852.11 and these Software Update License & Support are valid through February 28, 2017. After that time, Software Update License & Support may be renewed subject to the terms of the OMA.

License Metric

100 in Customer Count - One Hundred in customer count. Customer count is defined as the total number of your individual customers. If you supply multiple utility services to one person or entity, that person or entity will count as a single customer. If a person or entity receives utility services at multiple locations (e.g. a chain store, an apartment building, or a municipality), each such location shall count as a single customer.

By signing below, signatory further represents and warrants that signatory has the authority to make the above representations and warranties and sign on Assignee's behalf.

Assignee: County of Kauai

Signature: _____

Name: _____

Title: _____

Date: _____

CONSENT TO ASSIGNMENT

Subject to the terms and conditions of the above-mentioned assignment and certification of non-possession and acceptance of assignment, Oracle hereby consents to the foregoing assignment. By signing below, signatory further represents and warrants that signatory has the authority to sign on Oracle's behalf.

Oracle America, Inc.

Signature: _____

Name: _____

Title: _____

Date: _____



Assignor: Board of Water Supply, City and County of Honolulu

Assignor's Location: 630 S. Beretania St
Honolulu, HI 96843
United States

Assignee: County of Maui

Assignee's Location: 200 SOUTH HIGH STREET
WAILUKU, HI 96793
United States

This document must be executed by Assignor and Assignee on or before November 30, 2016 to be valid and once so executed shall become effective upon the date of Oracle's consent and execution below.

ASSIGNMENT AND CERTIFICATION OF NON POSSESSION

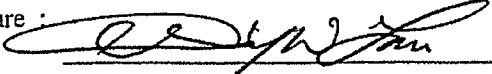
Assignor represents and warrants that as a result of internal business reorganization, Assignor wishes to assign to Assignee certain Oracle programs and, as a result, Assignee will be assuming all liabilities of Assignor in relation to such programs. Assignor also represents and warrants that Assignor has not sold, assigned or otherwise transferred the Oracle program(s) described below or the license(s) thereto to another entity. Assignor hereby assigns to Assignee all its right, title and interest in and to the following license(s) for the Oracle program(s) represented as per the below mentioned table (the "Oracle program(s)").

Program	CSI	Quantity	License Type	Support Expiration Date
Oracle Utilities Customer Care and Billing Standard Edition Commercial & Industrial Customers	16678364	28	100 in Customer Count	28-Feb-2017
Oracle Utilities Customer Care and Billing Standard Edition Residential Customers	16678364	339	100 in Customer Count	28-Feb-2017

Assignor hereby certifies, represents and warrants that upon execution of the above assignment, it will discontinue use of the Oracle program(s). Appropriate documentation and other materials received from Oracle for the Oracle program(s) will be immediately transferred to Assignee.

By signing below, signatory further represents and warrants that signatory has the authority to make the above representations and warranties and sign on Assignor's behalf.

Board of Water Supply, City and County of
Assignor : Honolulu

Signature : 

Name : ERNEST Y.W. LAU, P.E.

Title : Manager and Chief Engineer

Date : 12/2/16

ACCEPTANCE OF ASSIGNMENT

Assignee represents and warrants that as a result of internal business reorganization, Assignor wishes to assign to Assignee certain Oracle programs and, as a result, Assignee will be assuming all liabilities of Assignor in relation to such programs. Assignee hereby accepts the foregoing assignment and agrees that the use of such program licenses will be governed by the Oracle Master Agreement US-OMA-724105 and by the licensing metrics set forth below. Assignee acknowledges that the Oracle program(s) are for use in United States. The annual fee for Software Update License & Support for the Oracle program(s) is USD 40,535.43 and these Software Update License & Support is valid as per above mentioned table. After that time, Software Update License & Support may be renewed subject to the terms of the OMA.

Licensing Metrics:

Per 100 in Customer Count: Customer count is defined as the total number of your individual customers. If you supply multiple utility services to one person or entity, that person or entity will count as a single customer. If a person or entity receives utility services at multiple locations (e.g. a chain store, an apartment building, or a municipality), each such location shall count as a single customer.

By signing below, signatory further represents and warrants that signatory has the authority to make the above representations and warranties and sign on Assignee's behalf.

Assignee : County of Maui

Signature :

Name : _____

Title : _____

Date : _____

CONSENT TO ASSIGNMENT

Subject to the terms and conditions of the above-mentioned assignment and certification of non-possession and acceptance of assignment, Oracle hereby consents to the foregoing assignment. By signing below, signatory further represents and warrants that signatory has the authority to sign on Oracle's behalf.

Oracle America, Inc.

Signature :

Name : _____

Title : _____

Date : _____

DIGEST

ORDINANCE NO. _____
BILL NO. 21 (2017)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR
OF THE COUNTY OF MAUI TO ENTER INTO
INTERGOVERNMENTAL AGREEMENTS WITH THE BOARD OF WATER SUPPLY
OF THE DEPARTMENT OF WATER, COUNTY OF KAUAI AND WITH THE
BOARD OF WATER SUPPLY, CITY AND COUNTY OF HONOLULU

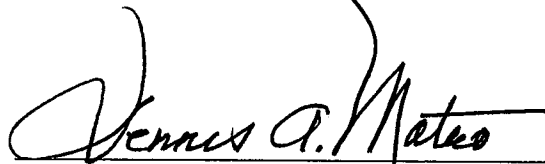
This bill proposes to authorize the Mayor to enter into intergovernmental agreements with the Board of Water Supply of the Department of Water, County of Kauai and with the Board of Water Supply, City and County of Honolulu, related to customer billing.

I, DENNIS A. MATEO, County Clerk of the County of Maui, State of Hawaii, DO
HEREBY CERTIFY that the foregoing BILL NO. 21 (2017) was passed on First Reading
by the Council of the County of Maui, State of Hawaii, on the 10th day of March, 2017,
by the following vote:

AYES: Councilmembers Alika Atay, Eleanora Cochran, S. Stacy Crivello,
Donald S. Guzman, G. Riki Hokama, Kelly T. King, Yuki Lei K.
Sugimura, Vice-Chair Robert Carroll, and Chair Michael B. White.

NOES: None.

DATED at Wailuku, Maui, Hawaii, this 13th of March, 2017.



DENNIS A. MATEO, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County
Clerk, County of Maui, for use and examination by the public.