

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Joint Application of)
KAPALUA WATER COMPANY, LTD.,) DOCKET NO. _____
KAPALUA WASTE TREATMENT COMPANY,)
LTD.)
and)
HAWAII WATER SERVICE COMPANY, INC.)
For Approval of the Sale and Transfer of Assets)
of Kapalua Water Company, Ltd. and Kapalua)
Waste Treatment Company, Ltd.)
)

JOINT APPLICATION

EXHIBITS "A" – "D"

CONFIDENTIALITY LOG

VERIFICATIONS

AND

CERTIFICATE OF SERVICE

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COMPANY, LTD., and
HAWAII WATER SERVICE COMPANY, INC.

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JOINT APPLICATION

KAPALUA WATER COMPANY, LTD., a Hawaii corporation (“KWC”), KAPALUA WASTE TREATMENT COMPANY, LTD., a Hawaii corporation (“KWTC”) (KWC and KWTC are hereinafter referred to collectively as “Sellers”), and HAWAII WATER SERVICE COMPANY, INC., a Hawaii corporation (“HWSC” or “Buyer”) (Sellers and Buyer are hereinafter referred to collectively as the “Applicants”), by and through their counsel, Watanabe Ing LLP, respectfully submit this joint application (the “Application”), pursuant to Hawaii Revised Statutes (“HRS”) §§ 269-7 and/or 269-19, and Hawaii Administrative Rules (“HAR”) Title 16, Chapter 601, Subchapters 2, 6, and 10, as applicable, requesting the Hawaii Public Utilities Commission (the “Commission”):

1. Approve the Asset Purchase Agreement dated December 20, 2019, as amended by that certain First Amendment to Asset Purchase Agreement dated May 19,

2020, between Sellers and Buyer (the “Agreement” or “APA”), and the transactions and agreements contemplated therein, including the following:

- a. Transfer of the water system assets and the wastewater treatment system assets from Sellers to Buyer;
- b. Transfer of Sellers’ Certificates of Public Convenience and Necessity (“CPCNs”) to Buyer;
- c. Agreement for Water Delivery (Non-Potable Water) (the “Non-Potable WDA”) between Maui Land & Pineapple Company, Inc. (“MLP”) and Buyer;
- d. Agreement for Water Delivery (Well Water) (the “Potable WDA”) between MLP and Buyer;
- e. Well Operation and Maintenance Service Agreement (the “Wells OMA”) between MLPO and Buyer; and
- f. Ditch System Operation and Maintenance Service Agreement (the “Ditch OMA”) between MLP and Buyer.

A redacted version of the Agreement is attached as Exhibit A. The confidential portions of the Agreement will be submitted once a protective order is issued for this docket.¹

2. Order that the currently approved rules, regulations, tariffs and rates of Sellers (collectively, “Sellers’ Tariffs”) shall continue in effect following the closing of the

¹ Confidential information contained in this Application and Exhibits has been redacted to the extent necessary to protect the confidential information from disclosure in instances where, for example, the disclosure of such confidential information could competitively disadvantage Applicants, and/or their respective affiliates. Such confidential information will be provided, along with justifications for such redactions, pursuant to a protective order governing this docket issued by the Commission.

proposed transaction, provided that Buyer shall republish the Sellers' Tariffs in its own name with the same rules, regulations, tariffs, and rates as currently approved for Sellers;

3. Approve and/or confirm that, following the closing of the proposed transaction, Buyer shall have the right to provide utility services to Sellers' authorized service areas on the island of Maui under the Sellers' Tariffs, as may be amended from time to time with Commission approval;

4. Approve the proposed expansion of the service areas covered by the CPCNs; and

5. Grant such other relief as may be just and reasonable under the circumstances.

In support of this Application, Applicants provide the following information.

I. DESIGNATED CONTACT

All pleadings, correspondence, and communications regarding this Application should be directed to the following:

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II. EXHIBITS

The following exhibits are provided in support of this Application and are incorporated herein by reference:

EXHIBIT A – Asset Purchase Agreement dated December 20, 2019, as amended by that certain First Amendment to Asset Purchase Agreement dated May 19, 2020 (includes copies of Non-Potable WDA, Potable WDA, Wells OMA, and Ditch OMA, between Sellers and Buyer.²

EXHIBIT B – KWC's latest available balance sheet and income profit and loss statement.³

EXHIBIT C – KWTC's latest available balance sheet and income profit and loss statement.⁴

EXHIBIT D – Buyer's latest available balance sheet and income profit and loss statement.⁵

Confidential information contained in this Application and Exhibits has been redacted to the extent necessary to protect the confidential information from disclosure in instances where, for example, the disclosure of such confidential information could competitively disadvantage Applicants, and/or their respective affiliates. Such confidential information will be provided, along with justifications for such redactions, pursuant to a protective order governing this docket issued by the Commission and acceptable to Applicants.

² This exhibit is being provided pursuant to HAR § 16-601-105(c)(2).

³ This exhibit is being provided pursuant to HAR § 16-601-105(c)(1).

⁴ This exhibit is being provided pursuant to HAR § 16-601-105(c)(1).

⁵ This exhibit is being provided pursuant to HAR § 16-601 -105(c)(1).

III. DESCRIPTION OF THE APPLICANTS

A. KWC

KWC, a Hawaii corporation with its principal place of business at 200 Village Road, Lahaina, Hawaii 96761, is a public utility that provides potable and non-potable water services to approximately 4,500 individuals in 11 developments and a hotel in the Kapalua area on the island of Maui, Hawaii.⁶ KWC obtained its CPCN to operate as a public utility by Decision and Order No. 4813, filed on September 2, 1977, in Docket No. 3157. KWC is a wholly owned subsidiary of Maui Land & Pineapple Company, Inc. (“MLP”).⁷

In general, KWC’s system consists of pumps, reservoirs, pressure reducing systems, transmission and distribution mains, a chlorination system, Supervisory Control and Data Acquisition (“SCADA”) system, diesel generators, office and supply storage facilities and replacement equipment.⁸ KWC has two 14-inch diameter wells at 78 and 771 feet above sea level, both equipped with pumps rated at 250 horsepower, 750 gallons per minute.⁹ KWC also has six booster pumps at three potable booster pump stations and six booster pumps at three booster pump stations for non-potable water.¹⁰

B. KWTC

KWTC, a Hawaii corporation with its principal place of business at 200 Village Road, Lahaina, Hawaii 96761, is a public utility providing wastewater collection and transmission services from residential and commercial customers in Kapalua to the

⁶ See Proposed Decision and Order, at 2, filed on July 15, 2009, in Docket No. 2008-0325.

⁷ Id.

⁸ Id. at 3.

⁹ Id.

¹⁰ Id.

wastewater treatment plant located in Lahaina operated by the County of Maui.¹¹ KWTC obtained its CPCN to operate as a public utility by Decision and Order No. 4813, filed on September 2, 1977, in Docket No. 3157. Like KWC, KWTC is a wholly owned subsidiary of MLP.¹²

C. HWSC

Buyer, a Hawaii corporation with its principal place of business at 68-1845 Waikoloa Rd., Unit 216, Waikoloa, Hawaii 96738, is a public utility that holds CPCNs to provide water service in Kaanapali, Maui¹³ and wastewater collection and treatment services in Pukalani, Maui.¹⁴ In addition, buyer owns all of the stock of Waikoloa Sanitary Sewer Company, dba West Hawaii Sewer Company, Waikoloa Water Co., Inc., dba West Hawaii Water Company, Waikoloa Resort Utilities, Inc., dba Waikoloa Utility Company,¹⁵ and Kona Water Service Company, Inc.¹⁶

Buyer is a wholly-owned subsidiary of California Water Service Group (“CWSG”), a publicly traded (NYSE: CWT) Delaware corporation that has provided high-quality water utility services through its subsidiaries since 1926. Besides Buyer, CWSG’s operating subsidiaries include California Water Service Company (water service), New Mexico Water Service Company (water and wastewater services), Washington Water Service

¹¹ See Decision and Order No. 23261, filed on February 15, 2007, in Docket No. 2006-0075, at 1.

¹² Id.

¹³ See Docket No. 3700, Decision & Order No. 6230, issued June 9, 1980 (granting CPCN to Kaanapali Water Corporation); Docket No. 02-0372, Decision and Order No. 20102, issued March 27, 2003 (approving California Water Service Group’s purchase of Kaanapali Water Corporation’s stock); Docket No. 03-0275, Notice of Intent, filed September 30, 2003 (noting the name change from Kaanapali Water Corporation to Hawaii Water Service Company, Inc.).

¹⁴ See Docket No. 2007-0238, Decision and Order, issued June 12, 2008 (approving the transfer of Pukalani STP Co, Ltd.’s CPCN to Buyer).

¹⁵ See Docket No. 2008-0018, Decision & Order, issued Aug. 20, 2008, at 25-27.

¹⁶ See Docket No. 2008-0109, Decision & Order, issued Dec. 1, 2008, at 24-27.

Company (water and wastewater services), CWS Utility Services (non-regulated), and HWS Utility Services LLC (non-regulated). CWSG's audited financial statements are available on the SEC's website.¹⁷

As an established Hawaii water and wastewater utility that is a subsidiary of a publicly traded company in the business of providing water and wastewater service, Buyer is well-qualified managerially, technically, and financially to own and operate the water system and wastewater system previously owned by KWC and KWTC, respectively.

IV. REQUEST FOR APPROVAL OF PROPOSED TRANSFER

Applicants request approval for the Proposed Transfer pursuant to HRS §§ 269-7(a) and -19(a).

A. Description of the Proposed Transfer

As noted above, KWC and KWTC provide utility water and wastewater services (the "Business"), respectively, in Kapalua within the areas more specifically identified in Exhibit A-1 (service area of KWC) and Exhibit A-2 (service area of KWTC) of the Agreement. In connection with the same, KWC and KWTC own certain: (1) facilities, equipment, fixtures and other property necessary for their utility operations (collectively, the "Assets");¹⁸ (2) perpetual easements in which the Assets are located, and the rights-of-way, rights of entry and licenses necessary and desirable to conduct the Business and to access, operate, maintain, remove and replace the Assets (collectively, the

¹⁷ See California Water Service Group, Annual Report (Form 10-K) (Feb. 28, 2019), [available at https://www.sec.gov/Archives/edgar/data/1035201/000103520119000003/0001035201-19-000003-index.htm](https://www.sec.gov/Archives/edgar/data/1035201/000103520119000003/0001035201-19-000003-index.htm).

¹⁸ The Assets are more specifically described in Exhibit B-1 (assets of KWC), Exhibit B-2 (assets of KWTC), and Exhibit C (capital expenditure projects for KWC and KWTC currently being made by Aqua Engineers, the company that currently provides Sellers with operation and maintenance services under existing agreements) to the Agreement.

“Easements”); (3) the parcels of real estate owned by KWC (collectively, the “Real Property”);¹⁹ and (4) the intangible and the other right described in the Agreement necessary or desirable to operate the Business (collectively, the “Rights”).

Sellers desire to sell, and Buyer desires to purchase, all of the Assets, Easements, Real Property, and Rights (collectively, the “Acquired Assets”)²⁰ as an on-going business (the “Contemplated Transaction”). As a result, Sellers and Buyers have entered into the Agreement, a redacted copy of which is attached hereto as Exhibit A, which sets forth the terms and conditions upon which Sellers will sell and transfer the Acquired Assets to Buyer. Under the terms of the Agreement, upon satisfaction of the conditions stated therein, including approval by the Commission as set forth herein, Sellers will sell, assign, transfer, and deliver to HWSC, free and clear of all liens and encumbrances,²¹ all of its rights, title and interests in the Acquired Assets including, but not limited to, KWC’s CPCN and KWTC’s CPCN. In connection with the Contemplated Transaction, HWSC will assume the public service obligation to provide water and sewer services to Sellers’ customers.

MLP, the owner of KWC and KWTC, is not a professional water and wastewater service provider. MLP recognizes the challenges of staying abreast of regulations and best practices for water system operations and would rather focus on its core business

¹⁹ The Real Property is identified as Lots 26 and 31 of the “Honolua Ridge – Phase I” subdivision, Tax Map Key Nos. (2) 4-2-008-026 and -027, and Lot 27 of the “Honolua Ridge – Phase II” subdivision, Tax Map Key No. (2) 4-2-009-027.

²⁰ The Acquired Assets from KWC are hereinafter referred to collectively as the “Water System,” and the Acquired Assets from KWTC are hereinafter referred to collectively as the “Wastewater System.”

²¹ Sellers will transfer to Buyer the Acquired Assets free and clear of all liens and encumbrances except as provided in the Agreement with respect to the Real Property.

instead of continuing its ownership of KWC and KWTC. Additionally, Sellers know that Buyer provides excellent customer service and emergency response.

The purchase price for the Acquired Assets is as set forth in Sections 2 and 2.1 of the Agreement (the “Purchase Price”).²² It is Applicants’ desire and request to consummate and close the Contemplated Transaction on or before December 31, 2020. Specifically, Sellers currently have an operations and maintenance contract that is set to end December 31, 2020 and will go month-to-month after that date. A December 31, 2020 closing date would help facilitate an orderly transition of operations from the operations and maintenance contractor to Buyer. As a result, in order to provide sufficient time to allow for a closing of the Contemplated Transaction by December 31, 2020, Applicants respectfully request that the Commission issue a decision on this Application on or before November 30, 2020.

B. Applicable Law

HRS § 269-19(a), which applies to any transfer of utility property, provides in relevant part the following:

- (5) No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the public utilities commission an order authorizing it to do so.²³

²² Applicants consider the purchase price, as well as certain other terms of the Agreement, to be highly confidential. Sections 2 and 2.1 have been redacted from the attached copy of the Agreement, and will be submitted once a protective order is issued for this docket.

²³ The Contemplated Transaction involves the sale of utility property, but does not involve the merger or consolidation of multiple public utilities into a single entity.

The purpose of HRS § 269-19 is to safeguard the public interest.²⁴

In furtherance of this public policy of safeguarding the public interest, HRS § 269-7(a) also authorizes the Commission to examine the condition of each public utility, its financial transactions, "and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Under this authority, the Commission has recently reviewed analogous applications for approval of a change of control²⁵ of public utilities using a two-part analysis in determining whether to approve proposed transactions: (1) whether, following the change of control, the utility was fit, willing, and able to provide the utility service, and (2) whether the proposed transaction was reasonable and consistent with the public interest.²⁶ As further discussed below, HWSC is fit, willing, and able to provide the utility services currently being provided by KWC and KWTC. Further, for the reasons discussed below, the Contemplated Transaction is reasonable and consistent with the public interest.

²⁴ See In re Honolulu Rapid Transit Co., 54 Haw. 402, 409, 507 P.2d 755, 759 (1973); see also In re Miller and Lieb Water Company, Inc. and Hawaiian Beaches Water Company, Inc., Docket No. 2006-0437, Decision and Order No. 23313 (March 21, 2007). Some of the factors the Commission considers in determining whether the public interest is protected are whether the transaction will have a negative impact on the cost of the utility's operations, on the continued ability to serve customers, on the efficiency of operations, on the quality of personnel, and on rates. See In re GTE Corp. and Bell Atlantic Corp., 197 P.U.R. 4th 337, Docket No. 98-0345, Decision and Order No. 17377 (November 17, 1999); In re BHP Hawaii, Inc., Gasco, Inc. and Citizens Utilities Company, Docket No. 97-0035, Decision and Order No. 15899 (September 10, 1997).

²⁵ While the Commission does not appear to have applied this two-part analysis to a recent application for approval of a sale of utility assets, Applicants provide this analysis herein to the extent the Commission determines that this type of analysis is appropriate in these types of dockets as well.

²⁶ See In re Turtle Bay Wastewater Treatment, LLC, Docket No. 2017-0408, Decision & Order No. 35648, issued Aug. 16, 2018 ("D&O 35648"), at 33, 38-39; In re Cincinnati Bell, Inc., Docket No. 2017-0208, Decision & Order No. 35427, issued Apr. 30, 2018 ("D&O 35427"), at 35-49, 52-56.

C. HWSC is Fit, Willing, and Able to Provide Water and Wastewater Service Following the Proposed Transaction

In considering whether a utility under new ownership will be fit, willing, and able to perform the utility service, the Commission has previously looked at the following four factors: (1) financial fitness; (2) technical fitness; (3) willingness to provide the service; and (4) ability to provide the service.²⁷

1. Financial Fitness

Buyer has the financial fitness to provide service to the service territories of KWC and KWTC. As noted above, Buyer is an established Hawaii water and wastewater utility that is wholly-owned by CWSG, a publicly traded company that has provided high-quality water utility services through its subsidiaries since 1926. CWSG's audited financial statements are available on the SEC's website.²⁸ HWSC's latest available balance sheet and income profit and loss statement are attached hereto as Exhibit D.

HWSC will have the added ability to access the excellent technical, managerial and financial support CWSG provides to its subsidiaries and their systems. For example, because of the financial strength of CWSG, CWSG can obtain lower financing costs on a more favorable capitalization structure than its subsidiaries and their individual systems.

The Water and Wastewater Systems (collectively, the "Utility Systems") will require capital improvements in the future to continue the provision of safe and reliable services to customers. With the financial strength and technical and management expertise of

²⁷ D&O 35648, at 39; D&O 35427 at 35-49, 52-56.

²⁸ See California Water Service Group, Annual Report (Form 10-K) (Feb. 28, 2019), [available at https://www.sec.gov/Archives/edgar/data/1035201/000103520119000003/0001035201-19-000003-index.htm](https://www.sec.gov/Archives/edgar/data/1035201/000103520119000003/0001035201-19-000003-index.htm).

CWSG, HWSC's ownership and operation of the Utility Systems will ensure that all necessary capital improvement projects will continue in a timely and efficient manner.

2. Technical Fitness

HWSC and its affiliates have extensive experience in both the water and wastewater industries, and have the technical expertise necessary to operate the Utility Systems. HWSC, either directly or through its subsidiaries, currently operates three water systems (Kaanapali, Waikoloa, and Kona) and three wastewater systems (Pukalani, Waikoloa, and Kona) in Hawaii. As noted above, HWSC's parent company has been providing high-quality utility services through its subsidiaries since 1926.

As a result of the foregoing, HWSC understands the regulatory issues affecting the industry and has the experience and knowledge necessary to ensure the successful operation of the Utility Systems without any degradation of service to Sellers' customers. HWSC will also have the ability to access the excellent technical, managerial and financial support CWSG provides to its subsidiaries and their systems.

3. Willingness to Provide Water and Wastewater Service

HWSC's willingness to assume the responsibilities of owning the Utility Systems is evident from the considerable time, effort, and resources spent negotiating the APA and anticipated to be expended in connection with the proposed acquisition. HWSC is committed to making the Contemplated Transaction as smooth as possible for Sellers' customers. HWSC commits and agrees to abide by and conform to all applicable Commission rules and orders upon closing of the Contemplated Transaction, if approved by the Commission.

4. Ability to Provide Water and Wastewater Service

As noted above, HWSC and its upstream affiliates have extensive experience in both the water and wastewater industries, and have both the technical and regulatory expertise necessary to successfully operate the Utility Systems and navigate through the regulatory issues affecting the industry. Further, HWSC will have the ability to access the excellent technical, managerial and financial support CWSG provides to its subsidiaries and their systems. For example, HWSC can consult with other CWSG subsidiaries on issues relating to, among other things, operations, water quality, and engineering with no added cost to customers. This combined experience demonstrates the ability of HWSC to successfully own, operate, manage, and maintain the Utility Systems.

D. The Proposed Transaction is Reasonable and Consistent with the Public Interest in Light of the Commission's Guidance

In considering whether a transaction involving the merger or acquisition of a public utility is reasonable and in the public interest, the Commission has considered the factors identified in the *Commission Guidance for any Further Merger or Acquisition Proceedings*, filed on July 15, 2016 as Appendix A to Decision and Order No. 33795 in Docket No. 2015-0022 (“Guidance”) including (1) ratepayer benefits and (2) mitigation of risk.²⁹

1. Ratepayer Benefits

Ratepayers will benefit from the Contemplated Transaction. Buyer's expertise in the management and operation of water and wastewater systems, including long-term

²⁹ See D&O 35648 at 35, 49-51. The Guidance also considers (a) the achievement of the State's clean energy goals; (b) competition; (c) the Hawaiian Electric Companies' transformation; and (d) corporate governance. See Guidance at 9-17. However, these factors do not appear to be applicable to water and wastewater cases and were not considered by the Commission in D&O 35648. See D&O 35648 at 49-53. Moreover, with respect to corporate governance, Buyer is a Hawaii corporation and public utility with an established track record and reputation with the Commission. See *supra* Section III.C. Buyer's corporate governance will continue to have the local representation in decision-making as it did all these years since it has been operating in Hawaii without issue or controversy.

capital improvement planning, will lead to improvements in efficiency, safety, and reliability as improvements are made to Sellers' Utility Systems over the long-term. Ratepayers will continue to be serviced under Sellers' existing tariffs, as may be modified by the Commission. Thus, ratepayers will not see a change in rates or rules of service that would not occur in the ordinary course of Sellers' business absent the Contemplated Transaction. In addition, Applicants acknowledge and confirm that transaction costs associated with the Contemplated Transaction may not and will not be passed on to either Sellers' or Buyer's ratepayers.

2. Mitigation of Risk

Applicants do not believe that ring-fencing measures, to the level and extent contemplated in the Guidance, are needed at this time because HWSC is subject to regulatory rate-making review to ensure that any losses are not passed on to ratepayers. As noted above, HWSC will record any transaction and transition costs associated with the Contemplated Transaction in a "below the line" account.

II. REQUEST FOR EXPANSION OF SELLERS' SERVICE AREAS

Under the Agreement, Applicants agreed to expand the Sellers' service areas to include the provision of water and wastewater services to MLP's future developments in Kapalua, including the "Kapalua Mauka" future expansion area, Tax Map Key Nos. (2) 4-2-001-042 and (2) 4-3-001-006,³⁰ "Central Resort," Tax Map Key No. (2) 4-2-004-049, and "Lot 1D," Tax Map Key No. (2) 4-2-004-037 (collectively, the "New System Areas").³¹ It is not yet known what capacity of water and wastewater services will be required by the

³⁰ "Kapalua Mauka" is more particularly described in the County of Maui's zoning code as "West Maui Project District 2 – Kapalua Mauka." See Exhibit A at 4.

³¹ See Exhibit A at 14-15.

New System Areas, but MLP has indicated that there would be a need for such utility services as these New System Areas are not currently covered by Sellers' Tariff and not served by any other water and wastewater utilities. Further, the rate payers would not be harmed by the requested service area expansion because any additions to capacity, distribution lines, etc. would be developer funded. Given the proximity of these New System Areas to Sellers' current service areas, the absence of other utilities that can provide these necessary services, and the lack of harm to rate payers, it is reasonable and in the public interest to expand Sellers' service areas to include the New System Areas.

III. REQUEST FOR APPROVAL TIME FRAME

As noted above, Applicants respectfully request that the Commission issue a decision on this Application on or before November 30, 2020 to provide sufficient time to allow for a closing of the Contemplated Transaction by December 31, 2020.

IV. CONCLUSION

For the reasons stated above, Applicants respectfully request that the Commission:

- (1) Approve the Agreement, the Non-Potable WDA, Potable WDA, Wells OMA, Ditch OMA, and the transactions contemplated therein, including the proposed transfer of the Utility Systems and CPCNs to Buyer pursuant to HRS §§ 269-7(a) and -19(a);
- (2) Order that the Sellers' Tariffs shall continue in effect following the closing of the Contemplated Transaction, provided that Buyer shall republish the Sellers' Tariffs in its own name with the same rules, regulations, tariffs, and rates as currently approved for Sellers;

(3) Approve and/or confirm that, following the closing of the Contemplated Transaction, Buyer shall have the right to provide utility services to Sellers' authorized service areas on the island of Maui under the Sellers' Tariffs, as may be amended from time to time with Commission approval;

(4) Approve the proposed expansion of the service areas covered by the CPCNs; and

(5) Grant such other relief as may be just and reasonable under the circumstances.

DATED: Honolulu, Hawaii, June 4, 2020.

/s/ David Y. Nakashima
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JOHN E. DUBIEL
Counsel for KAPALUA WATER COMPANY,
LTD., KAPALUA WASTE TREATMENT
COMPANY, LTD., and
HAWAII WATER SERVICE COMPANY, INC.

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement"), is made and entered into as of this 20th of December, 2019 (the "Effective Date"), by and between HAWAII WATER SERVICE COMPANY, INC., a Hawaii corporation or its designee entity ("Purchaser"), KAPALUA WATER COMPANY, LTD., a Hawaii corporation ("KWC"), KAPALUA WASTE TREATMENT COMPANY, LTD, a Hawaii corporation ("KWTC") (KWC and KWTC, jointly and severally, "Seller"), and MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation ("MLP") (collectively Parties).

WHEREAS, KWC and KWTC are wholly-owned subsidiaries of MLP;

WHEREAS, KWC is a utility company regulated by the Public Utilities Commission of the State of Hawaii ("Commission"), currently providing potable and non-potable water services to residential and commercial customers located in Kapalua;

WHEREAS, KWTC is a utility company regulated by the Commission, currently providing wastewater collection and transmission services from residential and commercial customers located in Kapalua to the wastewater treatment plant located in Lahaina operated by the County of Maui ("Lahaina Wastewater Treatment Plant");

WHEREAS, KWC and KWTC, provide water services and wastewater services, respectively (collectively, the "Business"), within the areas identified in **Exhibit A-1** (Service Area of KWC) and **Exhibit A-2** (Service Area of KWTC) attached hereto and incorporated herein by reference (collectively, the "Service Areas").

WHEREAS, KWC and KWTC are or at Closing will be the owners of:

(a) the facilities, equipment, fixtures and other property necessary and to operate the Business (collectively, the "Assets") identified and more specifically described in **Exhibit B-1** (Assets of KWC), **Exhibit B-2** (Assets of KWTC), and **Exhibit C** (Capital Expenditure Projects for KWC and KWTC currently being made by Aqua Engineers, Inc. ("Operator"), the company that currently provides Seller with operation and maintenance services under certain existing agreements (the "Aqua O&M Agreements") attached hereto and incorporated herein by reference);

(b) the perpetual easements in which the Assets are or shall be located, and the rights-of-way, rights of entry and licenses necessary and desirable to conduct the Business and to access, operate, maintain, remove and replace the Assets (collectively, the "Easements");

(c) the parcels of real estate owned in fee simple by KWC that are identified as Lots 26 and 31 of the "Honolua Ridge -- Phase I" subdivision (TMKs

(2) 4-2-8-26 & -27) and Lot 27 of the "Honolua Ridge -- Phase II" subdivision (TMKs (2) 4-2-9-27) (collectively, the "Real Property") and

(d) the intangible and other right described herein necessary or desirable to operate the Business (collectively, the "Rights").

WHEREAS, because KWC and KWTC are regulated utility companies in the State of Hawaii and subject to the rules and regulations thereof, the sale of the Assets, together with the Real Property, the Easements and the Rights (collectively, the "Acquired Assets") are subject to the review and approval of the Commission; and

WHEREAS, Seller desires to sell to Purchaser all of the Acquired Assets, and Purchaser desires to purchase from Seller the same as an on-going business (the "Contemplated Transaction"), pursuant to the terms and conditions described herein at the closing ("Closing").

NOW, THEREFORE, AND FOR VALUABLE CONSIDERATION, the sufficiency and receipt thereof which is hereby acknowledged by the Parties, and in consideration of the mutual covenants and promises set forth in this Agreement, the Parties hereby agree as follows:

1. **PURCHASE AND SALE OF ACQUIRED ASSETS.** Subject to the terms and conditions set forth in this Agreement, Seller and MLP agree to sell, assign, transfer and deliver to Purchaser, and Purchaser agrees to purchase and accept from Seller, at Closing, all of Seller's and MLP's right, title and interest in the Acquired Assets free and clear of all liens and encumbrances as set forth below.

1.1. **Acquired Assets.** The Acquired Assets include, without limitation:

(a) all fixed assets recorded on each of KWC and KWTC's balance sheet, together with any other tangible or intangible assets useful or necessary for the continued operations of the Business (including but not limited to spare parts, inventory, etc.), free and clear of all liens and encumbrances except as provided below with respect to the Real Property, as set forth in **Exhibits B-1 , B-2, and C** attached hereto and incorporated herein by reference, including, but not limited to, the following:

(1) all potable and non-potable water transmission facilities, pumping equipment, conduits, connections, tanks, mains, pipelines, meters and other equipment and appliances used and/or owned by KWC for the provision of potable and non-potable water to the Service Areas (collectively, "Water System");

(2) all wastewater collection and transmission equipment and facilities, wells, pumping equipment, conduits, connections, tanks, lagoons, sewage pumping stations, mains, pipelines, meters, and other equipment and appliances used and/or owned by KWTC

for the provision of wastewater collection and transmission from the Service Areas to the connection to the county sewer system located on or near Lower Honoapiilani Road by the parking lot for Merriman's Kapalua, One Bay Club Place, Lahaina, HI 96761 (collectively, "Wastewater System");

(b) the goodwill and other Rights relating to the Business;
(c) rights to use potable and non-potable water from current source(s) utilized by KWC in the provision of water services to the Service Areas, as further described in the forms attached hereto and incorporated herein by reference as said agreements may be modified pursuant to Sections 3.5 and 3.6 of this Agreement:

- i. **Exhibit D**, Water Delivery Agreement (Non-Potable Water); and
- ii. **Exhibit E**, Water Delivery Agreement (Well Water) (collectively, the "Water Delivery Agreements");

(d) the Easements, whether transferred at Closing or after Closing, as explained more fully in Section 4.3 below, and other easements, licenses rights-of-way or rights of entry necessary or desirable to build, construct, reconstruct, rebuild, repair, maintain and operate the Water System and the Wastewater System (collectively, the "Systems");

(e) the Certificates of Public Convenience Necessity ("CPCNs") issued to KWC and KWTC (pursuant to Commission approval of transfer of same) to enable continuing operation of the Systems in the Service Areas;

(f) any contributions in aid of construction ("CIAC"), as reflected in KWC's and KWTC's accounting records;

(g) any manufacturer or service warranties related to equipment and other utility assets comprising the Systems;

(h) customer deposits, if any, held by KWC or KWTC related to the Business; any deposits by KWC or KWTC held by government agencies, contractors, lessors and other vendors; and any accounts receivable and rights to payment for services provided after the Closing Date;

(i) all assignable existing contracts relating to the Business (including, but not limited to existing contracts with Seller's service providers), books, files, financial records, tax returns, and accounts, for the Business, excluding the Aqua O&M Agreements which Seller shall terminate prior to or at Closing;

(j) all prepaid rent, utilities, taxes and other prepaid expenses and/or security deposits given;

(k) all payments from insurance contracts and/or policies for casualty to the Assets occurring between the Effective Date and the Closing Date which Seller has not already applied to restore, repair or replace the damaged Assets;

(l) all other intangible assets owned by KWC or KWTC and used in the Business, including but not limited to vehicles, office and computer equipment, software, furniture, fixtures, and other equipment, any propriety rights or designs, and any intellectual trade secrets;

(m) the telephone number(s), email addresses and website urls used by the Business;

(n) all existing inventory of KWC and KWTC including, but not limited to component parts and spare parts;

(o) all rights to the trade names "Kapalua Water Company" and "Kapalua Waste Treatment Company", as more specifically set forth below in Section 1.3;

(p) any customer and vendor lists of the Business;

(q) all licenses, authorizations, and other approvals necessary or required to provide authorized services, or to operate the Business and/or related to the Business;

(r) all claims against third parties, if any, arising from ownership of the Acquired Assets that exist at Closing; and

(s) all other property which includes, without limitation, all customer service contracts and all site plans, plans and specifications, "as-built" plans and drawings, and, to the extent transferable, permits and other governmental reviews, approvals and entitlements related to the Systems and much of the foregoing as have been heretofore prepared, applied for, obtained or otherwise are in the name or possession of, under the control of or available to KWC, KWTC or MLP, relating to the Business.

(t) the right, subject to Hawaii Public Utilities Commission approval, to provide wastewater and potable and non-potable water services to the "Kapalua Mauka" future expansion area (TMK 4-2-001-042 and TMK 4-3-001-006) that is more particularly described in the County of Maui's zoning code as "West Maui Project District 2 -- Kapalua Mauka".

(u) the Real Property, subject to only those liens and encumbrances deemed acceptable by Purchaser prior to the end of the Due Diligence Period.

1.2. Excluded Assets. Notwithstanding anything contained in Section 1.1 to the contrary, the Acquired Assets shall not include the following assets, properties or rights of Seller or MLP relating to the Business ("Excluded Assets"):

(a) all cash and accounts receivable of the Business existing immediately prior to the Closing (except for cash associated with CIAC set forth in Section 1.1(f) or customer deposits set forth in Section 1.1(h)); and

(b) Seller's internal corporate governance records and items, including, without limitation, corporate minute and stock books, and corporate seal; and

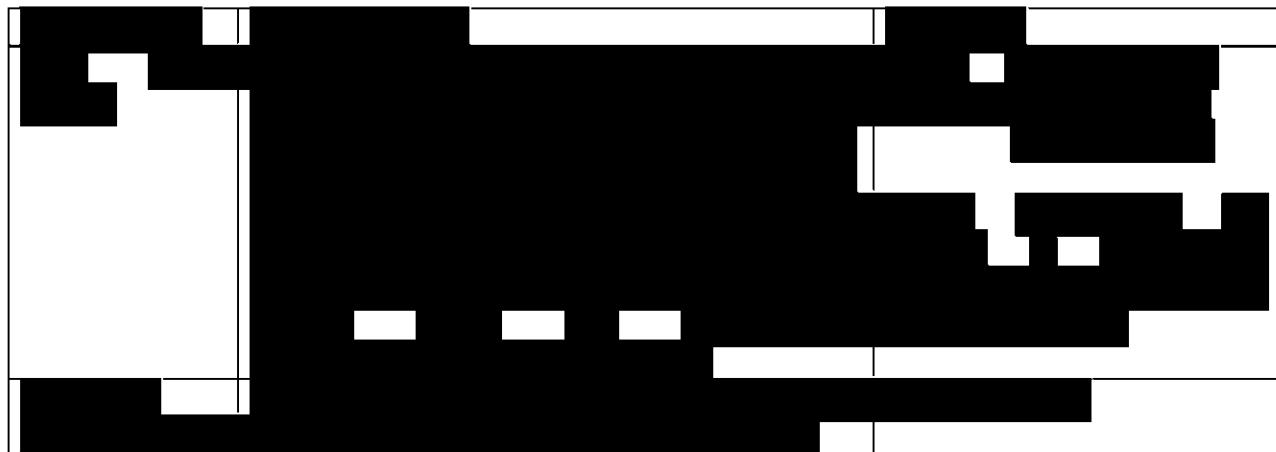
(c) The existing potable water wells and Honolua Ditch owned by MLP that are the source of potable and non-potable water, respectively, used by KWC in the operation of its Business, and the transmission infrastructure and storage facilities (including the Kapalua Plantation Reservoir and the Village Reservoir (collectively, the "Reservoirs") located between those sources and the points of water delivery under the Water Delivery Agreements, all of which are owned and retained by MLP.

1.3. Only Certain Liabilities Being Assumed; Retained Liabilities. Except those liabilities and service commitments expressly as described in Schedule 1.3 hereof ("Assumed Liabilities"), Purchaser will not assume or be obligated to satisfy or perform any of the liabilities, or commitments, whether fixed or contingent, which relate to the Seller's Business prior to the Closing Date, the Acquired Assets or the Excluded Assets including any other liabilities, obligations or commitments of Seller and MLP whether fixed or contingent, or known or unknown, including but not limited to Seller's tax, environmental and water quality liabilities that exist prior to the Closing Date including without limitation taxes arising from the sale of the Acquired Assets ("Retained Liabilities") which shall remain the sole responsibility of Seller and MLP and be paid, performed and discharged solely by Seller and MLP.

1.4 Use of Name. Effective as of Closing, Purchaser shall be entitled to utilize the trade names "Kapalua Water Company" and "Kapalua Waste Treatment Company". Upon request by Purchaser, Seller shall change its corporate names and consent to Purchaser's registration of such name with the Department of Commerce and Consumer Affairs, of the State of Hawaii, Business Registration Division.

2. PURCHASE PRICE. [REDACTED]

[REDACTED]



2.1. Modification of Purchase Price Pursuant to Seller's Capital Expenditures. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2.2 Escrow. The purchase and sale of the Assets shall be conducted through escrow at Title Guaranty Escrow Services, Inc., Main Branch attn: Jeremy Trueblood ("Escrow") pursuant to instructions consistent with the provisions of this Agreement. All amounts payable to Seller (other than the amounts specified in Section 4.3(d)) shall be released by Escrow only upon Seller's delivery to Escrow and Purchaser of an approved Report of Bulk Sale or Transfer (Form G-8A) from the State of Hawaii Department of Taxation dated no earlier than ten (10) days prior to the Closing Date indicating that all taxes due and payable by Seller, including all taxes due under the relevant provisions of Hawaii law and under Form G-8A, have been paid, and the satisfaction of all conditions to Closing.

3. PURCHASER'S REVIEW OF THE BUSINESS, THE ACQUIRED ASSETS, REAL PROPERTY AND EASEMENTS.

3.1 Due Diligence Period. Purchaser shall conduct Purchaser's review of the Acquired Assets, Easements, and Seller's business beginning upon the execution of this Agreement and for a period of 60 days, with up to three 30 day extensions if requested by Purchaser (the "Due Diligence Period"). In addition to the specific documents and records referenced in Sections 3.2 and 3.3, Seller and MLP shall give Purchaser and its counsel, accountants and other representatives, on reasonable prior notice, access during normal business hours to all properties, books, accounts, records, contracts and documents of or relating to the Business, the Acquired Assets and operations, excluding only privileged documents. Seller and MLP shall furnish to Purchaser and its representatives and consultants such additional data and information concerning the Business, operations and the Assets that may be reasonably requested as part of a customary due diligence review ("Due Diligence Review"). Notwithstanding any of the foregoing, in no event, shall the fact that Purchaser had the opportunity to conduct the Due Diligence Review be used by Seller or MLP as a defense or otherwise to Purchaser's enforcement of a Seller or MLP representation, warranty or covenant

3.2 Seller's Documents and Records.

(a) **Documents in KWC's, KWTC's or MLP's Possession.** Within five (5) business days of the Effective Date, Seller and MLP shall provide to Purchaser, all non-privileged material documents in the possession of KWC, KWTC or MLP which pertain to the ownership or operation of the Business and the Acquired Assets, including the following (collectively, the "Available Due Diligence Materials"):

- (1) site plans, plans and specifications, "as-built" plans and drawings regarding the Assets;
- (2) existing water purchase agreements;
- (3) the Sewer Agreement dated April 23, 1987, by and between the County of Maui, Seller and KWTC, as supplemented by the Lahaina Wastewater Reclamation Facility Expansion Agreement dated January 20, 1994, for the treatment of wastewater at its Lahaina Wastewater Treatment Plant (collectively, the "Wastewater Treatment Agreement");
- (4) copies of all existing and proposed leases, easements, rights-of-way, rights of entry, licenses, and other agreements affecting the Easements and Real Property;
- (5) existing contracts pertaining to the Business, excluding the Aqua O&M Agreements;

(6) copies of all existing water and wastewater customer agreements ("Customer Agreements") and all written notice of adequate capacity to provide potable or non-potable water or wastewater services to new customers in the Service Areas ("Will Serve Letters");

(7) existing surveys and maps, including but not limited to the makai easement map prepared by Warren S. Unemori Engineering, Inc. ("WSUE"), attached as **Exhibit F-1**, and mauka easement map, also prepared by WSUE, attached as **Exhibit F-2**, both reflecting, in reasonable detail, the location of the Easements in proximity to the Assets (collectively, the "Easement Map");

(8) listing of misaligned and missing Easements;

(9) existing financial statements of Seller including balance sheets income statements and retained earnings statements for the previous three fiscal years, and year-to-date financial statement by month;

(10) Commission Annual Reports for the three previous years;

(11) Consumer Confidence Reports, water quality laboratory analysis, and any notices of violation and inspection reports from Hawaii Department of Health for the three previous years; and

(12) Title reports, for the Real Property and the Easements (if any for the Easements) from Title Guaranty of Hawaii, Inc.

(b) Additional Documents. Within thirty (30) days of the Effective Date, Seller shall provide Purchaser with the following ("Additional Due Diligence Documents"):

(1) a complete list of all Easements that have been granted and recorded to date;

(2) an updated list that identifies those areas over which, to the best of Seller's or MLP's knowledge, recorded easements are necessary to build, construct, reconstruct, rebuild, repair, maintain and operate the Systems, but have not yet been obtained;

(3) Real Property related documents including but not limited to deeds, and existing title reports and title policies for all

Real Properties and Easements, encumbrances, leases, land use permits, certificates of occupancy;

(4) Commission approved tariffs, rules of service, and orders and all files and filings relating to Commission matters.

3.3 Inspection; Inspection Indemnity. During the Due Diligence Period, Purchaser and Purchaser's employees, agents, consultants, advisors, or other representatives (collectively "Purchaser's Representatives") shall have the right, upon reasonable notice to Seller and at times reasonably convenient to Seller and Purchaser, to perform reasonable non-destructive inspections and tests of the Acquired Assets. Prior to any such entry Purchaser shall provide Seller with a certificate of liability insurance in form acceptable to Seller naming Seller and MLP as additional insureds. Purchaser agrees that it will engage such consultants as it deems necessary to complete such inspections and testing. Without limiting the generality of the foregoing, at any time prior to the expiration of the Due Diligence Period, Purchaser may engage a reputable third-party environmental consulting company to perform a Phase 1 and Phase 2 environmental assessment and/or any non-destructive testing of the soil, groundwater, building components, tanks, containers and equipment on the Real Property or Easements, as Purchaser deems necessary or appropriate to confirm the condition of such properties. Any investigation or examination of the Acquired Assets is performed at the sole risk and expense of Purchaser, and Purchaser shall be solely responsible for the negligent acts or omissions of any of Purchaser's Representatives while performing such testing and inspection. Purchaser shall defend, indemnify and hold Seller harmless from and against all claims for personal injury, wrongful death or property damage against Seller, or the Acquired Assets arising from or as a result of, any negligent act or omission of Purchaser or Purchaser's Representatives, in connection with any inspection or examination of the Acquired Assets or the books and records of the Business by Purchaser or Purchaser's Representatives, except to the extent arising from or as a result of the negligent or willful misconduct of Seller, MLP or their respective officers, directors, employees, consultants or any other representatives. This obligation to indemnify shall survive closing or termination of this Agreement.

3.4 Purchaser's Right to Waive or Terminate. During the Due Diligence Period, Purchaser will review the Acquired Assets and various aspects of Purchaser's potential acquisition of the Acquired Assets. Purchaser may accept the condition of the Acquired Assets and waive the time remaining in the Due Diligence Period by issuing to Seller a written notification of acceptance of the Acquired Assets prior to the expiration of the Due Diligence Period. In addition, the Parties agree that Purchaser, in Purchaser's sole and unreviewable discretion, may terminate this Agreement for any reason by written notice received by Seller on or before 4:00 p.m., Hawaii time, on the last day of the Due Diligence Period. If the last day of the Due Diligence Period falls on a Saturday, Sunday or holiday, the Due Diligence Period shall end on the next following business day. If Purchaser exercises such right of termination, the Parties agree that the Parties shall have no further obligations to each other under this Agreement except

with respect to the obligations set forth in Section 3.3 (Inspection; Inspection Indemnity) above.

3.5 Non-Potable Water Delivery Agreement. A draft Agreement for Water Delivery (Non-Potable Water) is attached as **Exhibit D**. The Parties agree to act in good faith and diligently pursue completion of negotiations of a final form of non-potable water delivery agreement, in form and substance acceptable to the Parties for execution and delivery at Closing, at least five (5) business days prior to the end of the Due Diligence Period. If the Parties are unable to reach agreement on the Agreement for Water Delivery (Non-Potable Water), either Party may prior to the end of the Due Diligence Period terminate this Agreement.

3.6 Potable Water Delivery Agreement. A draft Agreement for Water Delivery (Well Water) is attached as **Exhibit E**. The Parties agree to act in good faith and diligently pursue completion of negotiations of a final form of potable water delivery agreement, in form and substance acceptable to the Parties for execution and delivery at Closing, at least five (5) business days prior to the end of the Due Diligence Period. If the Parties are unable to reach agreement on the Agreement for Water Delivery (Well Water), either Party may prior to the end of the Due Diligence Period terminate this Agreement.

3.7 Negotiation of Assignment of Existing Wastewater Treatment Agreement with County of Maui. The Parties have agreed to execute the Assignment and Assumption of Wastewater Treatment Agreement attached hereto as **Exhibit H** and incorporated herein by reference, to be effective as of the Closing Date if the Contemplated Transactions close. Seller shall use commercially reasonable efforts to assist Purchaser in obtaining the acknowledgement of the County of Maui, that no consent is required from the County of Maui, and of the Assignment and Assumption of Wastewater Treatment Agreement.

3.8 Negotiation of Operation and Maintenance Service Agreement for Wells and Reservoirs. The Parties agree to use commercially reasonable efforts to negotiate in good faith the definitive terms and form of an Operations and Maintenance Service Agreement for Purchaser to operate and maintain the Kapalua Potable Well 1 & 2 and related infrastructure (the “O&M Agreement for Wells and Reservoirs”), in form and substance acceptable to the Parties for execution and delivery at Closing, at least five (5) business days prior to the end of the Due Diligence Period. If the Parties are unable to reach agreement on the O&M Agreement for Wells and Reservoirs, either Party may prior to the end of the Due Diligence Period terminate this Agreement.

3.9 Negotiation of Operation and Maintenance Service Agreement for Ditch System. The Parties agree to use commercially reasonable efforts to negotiate in good faith the definitive terms and form of an Operations and Maintenance Service Agreement for Purchaser to operate and maintain the West Maui Honokohau Ditch system, the Reservoirs and related infrastructure (the “O&M Agreement for Ditch System”), in form and substance acceptable to the Parties for execution and delivery at

Closing, at least five (5) business days prior to the end of the Due Diligence Period. If the Parties are unable to reach agreement on the O&M Agreement for Ditch System, either Party may prior to the end of the Due Diligence Period terminate this Agreement.

4. PARTIES' PRE-CLOSING COVENANTS AND ACTIVITIES.

4.1 Continued Operation and Management of the Business.

(a) Seller shall, and MLP shall cause Seller , without making any commitments or agreements on behalf of Purchaser, to keep its business organization intact, to preserve its present relationships with suppliers, customers and others having business relationships with it and to operate the Business in the ordinary course of business consistent with its prior practices and to maintain the Acquired Assets in good condition and repair. Without limiting the generality of the foregoing, Seller shall not and MLP shall cause Seller not to do, or agree to do, any of the following acts without the prior written consent of Purchaser:

- (1) enter into any contract or agreement with, make any commitment on behalf of or for the benefit of, or make any distribution of money or property to, in each case MLP or any person or entity related to or affiliated with MLP;
- (2) Enter into any contract or transaction not in the ordinary course of business, except, however, Purchaser shall not unreasonably withhold written consent in the event that a contract or transaction is necessary to correct an interruption in service to any customer(s);
- (3) Enter into any contract or transaction in the ordinary course of business involving an amount exceeding ten thousand dollars (\$10,000) individually or twenty thousand dollars (\$20,000) in the aggregate, except, however, Purchaser shall not unreasonably withhold written consent in the event that a contract or transaction is necessary to correct an interruption in service to any customer(s);
- (4) Sell or dispose of any capital assets with a net book value in excess of one thousand dollars (\$1,000) individually or two thousand dollars (\$2,000) in the aggregate; or
- (5) Make a distribution of money or property to MLP or any person or entity affiliated with MLP (whether as a dividend or otherwise) or incur any indebtedness to MLP or any person or entity affiliated with MLP.

(b) Seller shall continue to carry its existing insurance, subject to variations in amounts required by the ordinary operations of its business.

(c) No later than January 31, 2020, Seller shall provide Purchaser true and correct copies of all Will Serve letters and customer agreements executed by Seller up to and including the date such copies are provided to Purchaser (the "Will Serve Disclosure Date") and, further, Seller shall obtain the prior written approval of Purchaser for any new Will Serve Letters and customer agreements that Seller wishes to enter into during the period from the Will Serve Disclosure Date to the Closing Date.

(d) Provided that Purchaser shall elect to proceed with the Contemplated Transaction, the Parties agree that they will use commercially reasonable efforts to jointly secure Commission authorization for the Contemplated Transaction (which shall include any Commission authorization necessary) for: (1) the expansion of such services to Kapalua Mauka (as defined in Section 4.4 below); (2) the relocation of the site office and storage area (as provided in Section 4.5 below); (3) the Agreement for Water Delivery (Non-Potable Water) described in Section 3.5 above; (4) the Agreement for Water Delivery (Well Water) described in Section 3.6 above; and (5) the assignment of the Wastewater Treatment Agreement to Purchaser. Additionally, the Parties agree to use their best efforts to amend the tariff for KWC to limit the liability of Purchaser for inadequate flow surface water resulting from events beyond Purchaser's reasonable control. To this end, the Parties agree to file an Application for Commission authorization with 15 business days of Seller's receipt of Purchaser's decision to proceed with the Contemplated Transaction and to diligently prosecute such Commission authorization. The legal and other costs of seeking Commission authorization shall be shared equally between Seller and Purchaser.

(e) As of the Closing, there will be no action, suit, proceeding, claim arbitration, or investigation, audit, or inquiry, at law or in equity, before or by any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, pending or, to the knowledge of Seller or MLP, threatened, against the Business which materially affects the Business or relates to the Acquired Assets, other than the pending Hawaii Commission on Water Resources proceedings regarding the Honolua Ditch and West Maui streams from which it draws.

(f) Except as may otherwise be provided herein, the Business shall be in compliance with any and all county, state or federal health, environmental, or similar laws, rules and regulations applicable to the operation of the Systems.

4.2 [RESERVED].

4.3. Pre-closing and Post-closing Easements. Provided Purchaser shall elect to proceed with the Contemplated Transaction, Seller and MLP jointly and severally agree as follows:

(a) Existing Easements. During the Due Diligence Period, Purchaser may conduct such investigations as it desires with respect to all easements held by Seller for the System that will be assigned to Purchaser at Closing ("Existing Easements"), including securing such commitments from Title Guaranty of Hawaii, LLC, to insure Purchaser's interest in the Existing Easements at Closing.

(b) Agreed Easement Actions. Seller and Purchaser acknowledge that Seller holds certain recorded perpetual easements covering various areas of the Systems located on lands not owned by Seller, but does not currently have easements necessary for all aspects of the Systems located on lands held by Seller, MLP or third-parties, as the case may be or to allow Purchaser physical access to the Systems ("Missing Easements"), or that there may be existing easements that are not correctly aligned with the KWC or KWTC lines or facilities that they are intended to cover ("Misaligned Easements"). No later than five (5) days before the end of the Due Diligence Period, Seller and Purchaser shall mutually agree on (a) a list of the Missing Easements that Seller and MLP will pursue pursuant to this Section, and (b) a list of the Misaligned Easements and the specific amendments necessary to address them that Seller and MLP will pursue pursuant to this Section (collectively, the "Agreed Easement Actions"). If the Parties are unable to reach agreement on the Agreed Easement Actions, either Party may prior to the end of the Due Diligence Period terminate this Agreement.

(c) Seller's and MLP's Obligation to Diligently Pursue. Provided Purchaser shall elect to proceed with the Contemplated Transaction at the end of the Due Diligence Period, Seller and MLP will exercise commercially reasonable efforts to complete the Agreed Easement Actions prior to Closing and after Closing for a period of two (2) years. Agreed Easement Actions with respect to Missing Easements shall be deemed complete when Seller or MLP have secured recorded grants of easement in form reasonably acceptable to Purchaser and for which Title Guaranty of Hawaii is willing to insure ("Insurable Easements"). Agreed Easement Actions with respect to Misaligned Easements shall be deemed complete when Seller or MLP have completed the specific agreed actions on the list of Agreed Easement Actions. All Easements granted by MLP over its own lands after the end of the Due Diligence Period shall be made on Purchaser's standard Grant of Easement form, attached hereto as **Exhibit 4.3(a).**

(d) Seller's List of Easements Obtained Prior to Closing. At least thirty (30) days prior to Closing, Seller shall provide an updated true, complete and correct list of all Agreed Easement Actions that have been completed ("Pre-closing Easements"), and a list of all Agreed Easement Actions that have not been completed ("Post-closing Easements").

(e) Seller's Obligation at Closing. At Closing, Seller and MLP shall assign to Purchaser all of its right, title and interest in the Existing Easements and the Pre-closing Easements. Post-closing, Purchaser agrees to cooperate with Seller to secure the Post-closing Easements, and to execute such related and necessary

documentation as is usual and customary. For the avoidance of doubt, Post-closing Easements includes amendments to existing easements and new grants to address misaligned easements as well as new grants for Systems in locations not covered by any grant.

(f) Optional Post-closing Easement Deposit. In consideration of the commitments in this Section 4.3, at Closing Purchaser may elect to instruct Escrow to retain from the Purchase Price, a sum equal to the estimated sum necessary to pursue, process, grant and record any Post-closing Easements ("Post-closing Easement Deposit"). For purposes of establishing the Post-closing Easement Deposit, Seller and Purchaser agree that \$100,000 will be retained by Escrow for each Post-closing Easement. When Seller or MLP complete each Post-Closing Easement (as such completion is defined in Section 4.3(c)), Escrow shall promptly disburse to Seller or MLP from the Easement Deposit the amount of \$100,000, less reasonable expenses of escrow, conveyance and recordation paid by Escrow with respect to the Post-Closing Easement in question. Seller and MLP agree that Seller and MLP shall exercise commercially reasonably efforts to obtain and record all Post-closing Easements or Assignments to Purchaser of the Post-closing Easements within twenty four (24) months of the Closing Date. Seller, MLP and Purchaser agree that if, despite such efforts on the part of Seller and MLP, Seller and MLP are still unable to obtain all of the Post-closing Easements twenty four (24) months following Closing, Purchaser shall have the right, following notice to Seller, to have Escrow disburse to Purchaser all or any portion of the Post-closing Easement Deposit remaining for the Post-closing Easements which Seller or MLP have not then yet completed and Purchaser elects to pursue on its own. Following Escrow's release of the Post-closing Easement Deposit to Purchaser, Purchaser shall thereafter be responsible for obtaining the applicable Post-closing Easements represented by the Post-closing Easement Deposit retained by Purchaser. Seller and MLP shall thereafter be released from any further obligation to pursue the applicable Post-closing Easement(s) and Seller and MLP shall have no further obligation or liability with respect to the Post-closing Easements except that Seller and MLP shall not be released with respect to their lands or lands of Seller, MLP or any of their respective owners, affiliates or related parties, and as to unrelated third-parties, Seller and MLP shall cooperate and assist Purchaser, including without limitation by exercise of any rights held by Seller or MLP to obtain or grant easements, unless commercially unreasonable.

(g) Good Faith Efforts to Provide all Easements. Notwithstanding the foregoing provisions of Sections 4.3, so as to minimize the need to pursue Post-closing Easements, Seller and MLP, jointly and severally, shall use good faith efforts to assign and provide to Purchaser at Closing all easements necessary to operate the Systems.

4.4. Agreement to Expand Service Areas to Include Future Kapalua Developments and the Construction of All Related Water and Wastewater Infrastructures in Future Kapalua Developments. As part of the Application that KWC and KWTC will jointly file with the Commission for approval of the sale of the Acquired Assets to Purchaser, transfer of the CPCNs to Purchaser, and any other transfer that is

part of the Contemplated Transaction, the Parties further agree to expand the Service Areas to include the provision of water and wastewater services to Seller's future developments in Kapalua, including Kapalua Mauka (Maui Tax Map Key Parcels 4-2-001:042 and 4-3-001:006). After Closing, MLP shall have the option to have Purchaser construct or have constructed all water and wastewater utility infrastructure serving the Service Areas, including infrastructure reasonably designated by Seller to serve future Kapalua developments, including but not limited to Kapalua Mauka (Maui Tax Map Key Parcels 4-2-001:042 and 4-3-001:006) Central Resort (Maui Tax Map Key Parcel 4-2-004:049) and Lot 1D (Maui Tax Map Key Parcel 4-2-004:037) ("New System Infrastructure"). Any such construction that MLP requests Purchaser to undertake shall be subject to applicable Commission approved financing requirements, rules, and tariffs, which may require that MLP or other landowners and developers bear all or some of such expense of construction through contributions in aid of construction or otherwise in accordance with Commission approved rules and tariffs. Seller and MLP shall provide Purchaser with necessary land and easements to provide utility service to the Service Areas at no additional cost to Purchaser. MLP reserves the right to construct or cause others to construct New System Infrastructure, in which case (i) the design shall be pursuant to plans and specifications approved by Purchaser and all construction in conformance with such Purchaser approved plans and specifications and (ii) upon completion, Purchaser shall have the right to inspect and approve, in its sole discretion, all New System Infrastructure prior to any dedication thereof to Purchaser.

4.5 Identification and Agreement for Purchaser's Acquisition of New Office and Storage Area. **Exhibit J** (Purchaser's Proposed Location for New Office and Storage Area) attached hereto and incorporated herein reflects the location acceptable to Purchaser for a new office and storage area within the Service Areas. The Parties shall diligently pursue to completion, negotiations for the lease or conveyance of the fee simple interest in a subdivided lot of the property identified in Exhibit J and proper zoning for construction and use as Purchaser's office and storage area, in form and substance acceptable to the Parties for execution and delivery at Closing, at least five (5) business days prior to the end of the Due Diligence Period.. Seller agrees that Purchaser shall be permitted to occupy the current operator's onsite office and storage area until such time as Purchaser has completed the acquisition and construction of the new office and storage area.

4.6 Notifications. Between the date of this Agreement and the Closing, Seller shall promptly notify Purchaser in writing if Seller or MLP become aware of (i) any fact or condition that causes or constitutes a breach of any of Seller's or MLP's representations and warranties made as of the date of this Agreement or (ii) the occurrence after the date of this Agreement of any fact or condition that would or be reasonably likely to (except as expressly contemplated by this Agreement) cause or constitute a breach of any such representation or warranty had that representation or warranty been made as of the time of the occurrence of, or Seller's or MLP's discovery of, such fact or condition. Such delivery shall not affect any rights of either party under Section 10 under this Agreement.

4.7 Filing of HI DOTAX Form D-37. Seller agrees Purchaser may file Hawaii State Tax Department Form D-37 at any time prior to Closing but after the receipt of a non-appealable Commission order approving the Contemplated Transactions.

5. **CAPITAL EXPENDITURES.**

5.1 Expenditures by the Business. All capital expenditures funded by Seller on behalf of the Business between the Effective Date and the Closing Date shall be subject to Purchaser's pre-approval and shall result in an increase in the Purchase Price as set forth in Section 2 above.

6. **CLOSING.** Closing shall occur at Title Guaranty of Hawaii, located at the Main Office, Honolulu, Hawaii or at some other mutually agreeable location, on the date agreeable to both Seller and Purchaser, within thirty (30) business days after the receipt of all final non-appealable orders issued by the Commission approving the Contemplated Transaction, which date must allow for reasonable coordination of billing cycles, (the "Closing Date"). Time is of the essence with respect to closing this Agreement.

6.1. Closing Costs. Subject to the prorations described in Section 6.3, all closing costs related to the purchase of the Acquired Assets will be divided evenly between Purchaser and Seller and include, but are not limited to, escrow fees, recording fees, conveyance taxes and any other related fees related to Closing. Taxes related to Seller's compliance with the Bulk Sales laws as described in Section 6.2(a)(6) shall be the responsibility of Seller.

6.2. Deliveries at Closing. Unless the parties agree to handle specific matters outside of Escrow, the following shall be done through Escrow to effect the Closing:

(a) Seller's Deliveries. Not later than two (2) business days prior to Closing, Seller shall deposit or cause to be deposited with Escrow, the following funds, items and documents, in each case duly executed by Seller, MLP or the appropriate person, and if applicable, acknowledged and in recordable form:

(1) [intentionally deleted];

(2) Limited Warranty deeds for Real Property in forms mutually agreed to during the Due Diligence Period;

(3) An original and two (2) copies of a Bill of Sale in forms mutually agreed to during the Due Diligence Period;

(4) Any required assignment/assumption agreements, including but not limited to those related to Customer Agreements

and Will Serve Letters (in forms mutually agreed to during the Due Diligence Period), the Pre-closing Easements, and the Assignment and Assumption of the Wastewater Treatment Agreement attached as **Exhibit H**) and all third-party consents as may be necessary for the assignment of the same;

(5) Possession of the Acquired Assets not already in Purchaser's possession;

(6) a Tax Clearance Certificate for Seller issued by the Department of Taxation of the State of Hawaii not more than fifteen (15) days prior to the Closing Date and a Report of Bulk Sale or Transfer (Form G-8A) from the State of Hawaii Department of Taxation dated not more than ten (10) days prior to the Closing Date and containing the certification of the Director of Taxation that all taxes, penalties and interest by Seller on the date of the certificate have been paid; provided that if the certificate of the Director of Taxation has not been received by the scheduled Closing Date the Parties agree to extend the Closing Date until the earliest practical date after the Director's certificate is received; provided in no event shall the Closing Date be extended beyond thirty (30) days beyond the 24 month period described in Section 10.1(e);

(7) The Agreement for Purchaser's Acquisition of New Office and Storage Location described in Section 4.5 above;

(8) The mutually acceptable non-potable water delivery agreement as described in Section 3.5 above;

(9) The mutually acceptable potable water delivery agreement as described in Section 3.6 above;

(10) The Assignment and Assumption of the Waste Water Treatment Agreement described in Section 3.7 and attached hereto as Exhibit H;

(11) The mutually acceptable O&M Agreement for Wells and Reservoirs described in Section 3.8 above;

(12) The mutually acceptable O&M Agreement for Ditch System described in Section 3.9 above;

(11) Estimated funds to pay for its share of the costs of Closing;

(12) A certificate of non-foreign status in form and content required by law certifying that Seller is not a "foreign person" as such term is used under Section 1445 of the Internal Revenue Code;

(13) A certificate of resident status in form and content required by law certifying Seller is a "resident person" as such term is used in H.R.S. Section 235-68;

(14) A search conducted by the Title Company confirming that no financing statements or liens have been recorded against the Acquired Assets except for such financing statements and liens that will be released at Closing;

(15) a Good Standing Certificate for Seller issued by the Director of the Department of Commerce and Consumer Affairs for the State of Hawaii, dated not more than five (5) calendar days prior to the Closing Date; and

(16) Such other documents as Purchaser may reasonably request for the purpose of: (i) evidencing the accuracy of any of Seller's and MLP's representations and warranties; (ii) evidencing the performance by Seller or MLP or the compliance by Seller or MLP with any covenant or obligation required to be performed or complied with by Seller or MLP; (iii) evidencing the satisfaction of any condition referred to in Article 9; (iv) otherwise facilitating the consummation or performance of any of the Contemplated Transactions, including without limitation a Certificate of an offer of Seller in the form mutually agreed to during the Due Diligence Period, or (v) such other documents and instruments as shall be reasonably necessary to effect the transactions contemplated hereby, or as may be reasonably requested by Purchaser or its counsel.

(b) Purchaser's Deliveries. Not later than two (2) business days prior to Closing, Purchaser will deposit with Escrow, the following funds and documents, in each case duly executed by Purchaser or the appropriate person, and if applicable, acknowledged and in recordable form:

(1) The total Purchase Price pursuant to Section 2 above;

(2) Any required assignment/assumption agreements, including but not limited to those related to the Pre-closing Easements, and Assignment and Assumption of the Wastewater Treatment Agreement;

(3) Agreement for Purchaser's Acquisition of New Office and Storage Location described in Section 4.5 above;

(4) The non-potable water delivery agreement described in Section 3.5 above;

(5) The potable water delivery agreement described in Section 3.6 above;

(6) The Assignment and Assumption of the Waste Water Treatment Agreement described in Section 3.7 and attached hereto as Exhibit H;

(7) The mutually acceptable O&M Agreement for Wells and Reservoirs described in Section 3.8 above;

(8) The mutually acceptable O&M Agreement for Ditch System described in Section 3.9 above;

(7) Estimated funds to pay for its share of the costs of Closing;

(8) a Good Standing Certificate for Purchaser issued by the Director of the Department of Commerce and Consumer Affairs for the State of Hawaii, dated not more than five (5) calendar days prior to the Closing Date; and

(9) such other documents as Seller may reasonably request for the purpose of: (i) evidencing the accuracy of any of Purchaser's representations and warranties; (ii) evidencing the performance by Purchaser of, or the compliance by Purchaser of or with, any covenant or obligation required to be performed or complied with by Purchaser; (iii) evidencing the satisfaction of any condition referred to in Article 9; or (iv) otherwise facilitating the consummation or performance of any of the Contemplated Transactions, including without limitation a Certificate of an officer of Purchaser in a form mutually agreed to during the Due Diligence Period, or (v) such other documents and instruments as shall be reasonably necessary to effect the transactions contemplated hereby, or as may be reasonably requested by Seller or its counsel

6.3 Closing Prorations.

(a) Insurance. Purchaser shall pay to Seller the unexpired premium of any insurance policies assigned by Seller to Purchaser; provided, however,

Purchaser shall have the option to decline to have the insurance assigned, in which event no adjustment shall be made for insurance.

(b) Revenues. The Parties acknowledge that billing for residential customers' sewer charges are billed in advance. However, for commercial customers, a monthly minimum service charge is billed in advance and the sewer treatment charge, which is based on the customer's billed water usage, will be billed in a subsequent billing period. The Parties agree to cooperate with each other to allow the proper sewer charges to be assessed to customers in accordance with the Closing, the intent being that Purchaser and Seller shall each be entitled to sewer revenues including the sewer treatment charge properly allocated for pre-closing and post-closing periods of ownership.

(c) Prepaid Real Property Taxes. Purchaser shall pay to Seller the prorated amount of any real property taxes paid by Seller in connection with any Real Property.

(d) Other Expenses. Except as may otherwise set forth in this Agreement, Closing expenses will be prorated and apportioned as is customary at the Closing.

(e) Time of Prorations. Prorations shall be made as of 12:01 a.m. on the date of the Closing, with Purchaser to be entitled to all revenues (except as set forth above) and to be charged for all expenses for such day. All prorations shall be final. If the amount of any prorated item is not known at Closing, the parties agree that such items shall be prorated at Closing upon the basis of the best information available, and shall be adjusted when the actual amount (s) of such items are known, with appropriate charges and credits to be made. If subsequent to the Closing, any adjustment pursuant to this Section 6.3 shall be necessitated, then either party hereto who is entitled to additional monies shall give written notice to the other party of such additional amounts as may be owing, and such amount shall be paid within five (5) days from receipt of the invoice. The provisions of this Section 6.3(e) shall survive the closing of the Contemplated Transaction.

7. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller and MLP jointly and severally represent and warrant to Purchaser as follows:

7.1. Organization, Standing and Qualifications.

KWC and KWTC are corporations, duly organized, validly existing and in good standing under the laws of the State of Hawaii; and have all requisite corporate power and authority and is entitled to carry on the Business as now being conducted and to own, lease or operate its properties as and in the places where the Business is now conducted. Seller is engaged in the business of a water and wastewater utility serving areas in Kapalua, Maui, Hawaii, and with respect to which, it holds valid permits issued by the State of Hawaii and Maui County. There are no

dissolution, disassociation, winding-up, liquidation or bankruptcy proceedings pending or threatened against Seller or MLP. There are no events which could result in a dissolution of Seller or MLP. Seller is not doing business in any state other than Hawaii. Seller does not own, directly or indirectly, any interest or investment (whether equity or debt) in or control any corporation, partnership, business, trust, joint venture or other entity. Complete and accurate copies of the governing documents of Seller, as currently in effect, are attached as Exhibit 7.1. There are no contracts relating to the issuance, sale or transfer of any equity securities or other securities of Seller. MLP is the sole shareholder of KWC and KWTC.

7.2. Authorization of Agreement. Upon receipt of the approval of Seller's Board of Directors and of MLP, no approvals or consents of any person other than the Commission are necessary for or in connection with the performance of Seller's and MLP's obligations hereunder. No other corporate proceeding on the part of KWC, KWTC or MLP is necessary to authorize this Agreement and the Contemplated Transaction. This Agreement has been duly and validly executed by an authorized officer of KWC, KWTC and MLP and along with any and all documents and agreements to be executed and delivered by KWC, KWTC and MLP, as the case may be, are valid and binding on KWC, KWTC and MLP in accordance with their respective terms.

7.3. Assets of Business.

(a) All of the assets required to operate the Business are included with the Acquired Assets and Seller has sole, exclusive, good and marketable title to all of the Acquired Assets, which shall be conveyed free and clear of all liens, mortgages, pledges, encumbrances, and any other restrictions or defects in title excepting only those liabilities and obligations, if any, which are expressly to be assumed by Purchaser hereunder.

(b) Except for such covenants, representations and warranties that are expressly set forth in this Agreement or in the documents to be delivered at the Closing the Easements and Acquired Assets are being sold "as is, where is."

7.4. Licenses. To Seller's actual knowledge and to MLP's actual knowledge, Seller possesses and holds in its name all licenses, permits, consents, franchises, approvals, authorization, qualifications, and orders of all Governmental Bodies required to enable Seller to conduct its business as presently conducted and to own, lease and operate its assets as presently owned, leased and operated. To Seller's or MLP's knowledge, all of the Licenses held by Seller are in full force and effect and there is no default of any provision thereof which would affect the ability of Seller to engage in its business. No action is pending or, to Seller's or MLP's knowledge, threatened, seeking the suspension, modification, cancellation, revocation or limitation of any License and, to Seller's or MLP's knowledge, there is no basis for such actions.

7.5 Financial Statements. The Seller financial statements delivered to Purchaser pursuant to this Agreement are true and correct in all material respects, fairly present the financial position of Seller as of the respective dates of the balance sheets included in the Seller financial statements, and the results of its operations for the respective periods indicated.

7.6 Liabilities. Except as set forth in the Seller's financial statements there are to neither Seller's actual knowledge or MLP's actual knowledge, any liabilities, fixed or contingent, known or unknown, to which Seller, its business or assets are subject, other than those incurred in the ordinary course of business consistent with past practices. Seller is not a party to, nor are its Assets bound by, any agreement not entered into in the ordinary course of business, or any indenture, mortgage, deed of trust, lease or any agreement that is unusual in nature, duration or amount (including, without limitation, any agreement requiring the performance by Seller of any obligation for a period of time extending beyond one year from the Closing Date, calling for consideration of more than \$5,000, or requiring purchase at prices in excess of prevailing market prices). Seller is not a party to, nor is Seller or any of its assets bound by, any agreement that is materially adverse to the business, assets, prospects or financial condition of Seller. Except as disclosed to Purchaser, there are no royalty obligations, warranty and guarantee obligations, product liability obligations, or easement maintenance obligations with respect to the Acquired Assets.

7.7 Leases, Liens and Encumbrances; Real Property. Seller is not a party to any agreement for the lease of real property, and Seller owns all tangible personal property and other assets necessary to conduct the Business as now conducted not subject to any lien or encumbrance. Schedule 7.7 contains a correct legal description, street address (if any) and tax parcel identification number of all Real Property including tracts, parcels and subdivided lots and easements which Seller is using in the Business. Seller has good title to such Real Property. The Real Property may have the following encumbrances: (i) liens for taxes for the current tax year which are not yet due and payable; and (ii) those Encumbrances deemed acceptable to Purchaser during the Due Diligence Period. True and complete copies of (A) all deeds, existing title insurance policies and surveys of or pertaining to the Real Property, and (B) all instruments, agreements and other documents evidencing, creating or constituting any encumbrances on the Real Property have been delivered to Purchaser.

7.8. Customer Agreements and Will Serve Letters. The customer agreements and will serve letters identified in **Exhibit N** attached hereto and incorporated herein by reference represent all existing customer agreements and will serve letters issued by Seller. True, correct and complete copies of these customer agreements and will serve letters have been provided to Purchaser.

7.9 Payment of Taxes. Seller has filed all federal, state and local tax returns required to be filed, and has paid all taxes owed by Seller including all taxes shown by those returns to be due and payable with respect to the Business. Seller have made (or will make as of the Closing) timely payment of all applicable taxes. There

are no Encumbrances on any of the Acquired Assets that arose in connection with any failure (or alleged failure) to pay any Tax. Seller has withheld and paid all taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, member, stockholder, or other third party. Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed. There are no audits or examinations of any tax returns pending or threatened that relate to Seller's operation of the Utility Systems or the Acquired Assets. Seller is not a party to any action or proceeding by any governmental body for the assessment or collection of taxes relating to the operation of the Utility Systems or Acquired Assets, nor has such event been asserted or threatened.

7.10. No Adverse Conditions. Except as disclosed by Seller to Purchaser in writing, to neither Seller's actual knowledge or MLP's actual knowledge, there is no legal action, suit, claim, investigation, or other proceeding, whether civil, criminal, or administrative, is pending or threatened against or affecting KWC, KWTC, MLP or the Acquired Assets.

7.11. Adequate Advice. Seller and MLP have had the opportunity to receive independent tax and legal advice, at Seller's cost, with respect to the advisability of executing this Agreement.

7.12. No Broker's Fees. Seller will not have any liability or obligation to pay any fees or commission to any broker, finder, or agent with respect to the Contemplated Transaction for which Purchaser could become liable or obligated.

7.13. Compliance with Laws. To the best of actual Seller's or MLP's knowledge, Seller is in compliance with, and not in violation of, all applicable laws, rules, regulations, and ordinances affecting the Business and the Acquired Assets.

7.14 No Hazardous Waste. Neither Seller or MLP have received written notice from any government agency alleging that Acquired Assets (a) contain, or have been contaminated by or used for the storage, disposal or release of "Hazardous Materials" or (b) contain any underground storage tanks. To Seller's or MLP's actual knowledge there are no Hazardous Materials on any of the Acquired Assets or used in connection with the Business or Acquired Assets, other than Hazardous Materials that are used in the ordinary course of business, and which are not required under current law to be remediated or disposed of in their current state. For purposes of this Agreement, the term "**Hazardous Materials**" includes, without limitation, asbestos, any substance containing more than 0.1 percent asbestos, the group of compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, petroleum and petroleum by-products, pollutants, effluents, contaminants, hazardous materials, hazardous wastes, hazardous or toxic substances, and any materials included in the definitions of hazardous or toxic waste, materials or substances (regardless of concentration) in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation act, as amended (49 U.S.C. Sections 1801, et seq.), the

Resource Conservation and Recovery act of 1976, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental laws, ordinances, rules, or regulations.

7.15 Compliance with Water Quality Requirements. Neither Seller or MLP have received written notice from a governmental agency alleging current or pending violations of applicable federal, state and local water quality regulations and requirements.

7.16 Environmental Matters. Neither Seller or MLP have received written notice from a governmental agency alleging that Seller is not in compliance with all Environmental Laws. To Seller's knowledge and to MLP's knowledge there are no pending or threatened claims arising pursuant to any Environmental Law which relate to any of the Acquired Assets or the Business. For purposes of this Agreement, "**Environmental Law**" means any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty that requires or relates to: (a) advising appropriate authorities, employees or the public of intended or actual releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment; (b) preventing or reducing to acceptable levels the release of pollutants or hazardous substances or materials into the environment; (c) reducing the quantities, preventing the release or minimizing the hazardous characteristics of wastes that are generated; (d) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the environment when used or disposed of; protecting resources, species or ecological amenities; (e) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances; and (f) cleaning up pollutants that have been released, preventing the threat of release or paying the costs of such clean up or prevention; or making responsible parties pay private parties, or groups of them, for damages done to their health or the environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

7.17 Conduct of Business in Ordinary Course. From the Effective Date until the Closing Date, there has not been nor will there be any:

- (a) Transaction by KWC, KWTC or MLP (on behalf of the Business), except in the ordinary course of business as conducted on that date consistent with past practices;
- (b) Capital expenditure by KWC, KWTC or MLP except as otherwise provided in this Agreement;

(c) Obligation incurred by KWTC, KWC or MLP (on behalf of the Business), except trade or business obligations incurred in the ordinary course of business consistent with past practices and the payment of Purchaser's invoices described in Section 4.2 above;

(d) Cancellation or compromise by KWC, KWTC or MLP (on behalf of the Business), of any debt or claim, except in the ordinary course of business consistent with past practices;

(e) Material Adverse Change in the financial condition, liabilities, assets, business, or results of operations of Seller. For purposes of this Agreement, Material Adverse Change means with respect to KWC or KWTC any event, change, development, or occurrence that, individually or together with any other event, change, development, or occurrence, is materially adverse to their respective Business, condition (financial or otherwise), assets, results of operations, or prospects.

(f) Destruction, damage to or loss of any assets of Seller (if used by Seller in providing utility service), whether or not covered by insurance, that materially and adversely affects the financial condition, business or operations of the Business;

(g) Sale or transfer of any asset of Seller (if used by Seller in providing utility services), except in the ordinary course of business consistent with past practices;

(h) Execution, creation, amendment or termination of any material contract, agreement or license to which KWC, KWTC or MLP on behalf of the Business is a party, except in the ordinary course of business consistent with past practices;

(i) Waiver or release of any right or claim of KWC, KWTC or MLP (on behalf of the Business), material to the Business or the Systems, except in the ordinary course of business;

(j) Mortgage, pledge or other encumbrance of any asset of KWTC, KWC or MLP (if used by KWC or KWTC in providing utility services);

(k) Cancellation or the giving of notice of cancellation of any insurance policy insuring KWC or KWTC, its Business or assets;

(l) Other event or condition within Seller's or MLP's control of any character that has or might reasonably have a material and adverse effect on the financial condition, assets, business or results of operations of KWC or KWTC; or

(m) Agreement by KWC, KWTC or MLP (on behalf of the Business), to do any of the things described in the preceding clauses (a) through (l) except as agreed to in writing by Purchaser.

7.18 Tax Returns. Within the times and in the manner prescribed by law, KWC, KWTC or MLP (on behalf of the Business), has filed or caused to be filed all federal, state and local tax returns required by law, on a consolidated or individual basis, as appropriate, and has paid all taxes, assessments and penalties due and payable. These tax returns reflect KWC's, KWTC's and Seller's liability for taxes applicable to KWC and KWTC operations for the periods covered thereby.

7.19 Agreement Will Not Cause Breach or Violation. Neither the entering into this Agreement nor the consummation of the Contemplated Transaction will directly or indirectly (with or without notice or lapse of time) result in or constitute any of the following: (a) a default or any event that would be a default, breach or violation of (i) the Articles of Incorporation or By-Laws of Seller or MLP or (ii) any material lease, franchise, license, promissory note, conditional sales contract, commitment, indenture, mortgage, deed of trust, or other agreement, instrument, or arrangement to which Seller or MLP is a party or by which Seller, MLP, the Business or its assets are bound, (b) an event that would permit any party to terminate any material agreement or policy of insurance of Seller, (c) the creation of imposition of any lien, charge or encumbrance on any of the Acquired Assets, or (d) the violation of any permit, license, law, regulation, ordinance, judgment, order or decree applicable to or affecting Seller, MLP, or the Business, its assets or financial condition which would have an adverse effect on the Systems or give any governmental body the right to revoke, withdraw, suspend, cancel, terminate or modify, any governmental authorization that is held by Seller or that otherwise relates to the Acquired Assets or to the Business. Other than the approval of the Commission and, potentially, the County with respect to the Assignment and Assumption of Wastewater Agreement, neither Seller nor MLP is required to give any notice to or obtain any consent from any person, entity or governmental body in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

7.20 Duration of Representation and Warranties. The representation and warranties made hereinabove will be correct and accurate in all material respects as of the Closing and shall survive the Closing for a period of three (3) years.

7.21 Disclosure. To Seller's actual knowledge and to MLP's actual knowledge, no representation or warranty or other statement made by Seller or MLP in this Agreement, any Schedule to this Agreement or supplement hereto or any document delivered in connection with this Agreement or otherwise in connection with the Contemplated Transactions contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

7.23 Insurance. During the Due Diligence Period Seller shall provide

Purchaser with a list of all policies or binders of fire, liability, product liability, worker's compensation, vehicular and other insurance held by or on behalf of the Seller. Such policies and binders are valid and binding in accordance with their terms, are in full force and effect, and insure against risks and liabilities to an extent and in a manner customary in the industries in which the Seller operates. Seller is not in default with respect to any provision contained in any such policy or binder and has not failed to give any notice or present any claim under any such policy or binder in due and timely fashion. Except as disclosed by Seller in writing, there are no outstanding unpaid claims under any such policy or binder, and the Seller has not received any notice of cancellation or non-renewal of any such policy or binder. Except as disclosed by Seller in writing, the Seller has not received any notice from any of its insurance carriers that any insurance premiums will or may be materially increased in the future or that any listed insurance coverage will or may not be available in the future on substantially the same terms as now in effect, and to Seller's actual knowledge and to MLP's actual knowledge, there is no basis for the issuance of any such notice or for any such action.

7.24 Solvency. Seller is not now insolvent and will not be rendered insolvent by any of the Contemplated Transactions by this Agreement. As used herein, "insolvent" means that the sum of the debts and other probable liabilities of Seller exceeds the present fair saleable value of the Seller's assets.

8. REPRESENTATIONS AND WARRANTIES OF PURCHASER.

Purchaser represents and warrants to Seller as follows:

8.1. Organization, Standing and Qualifications. Purchaser is a corporation, duly organized, validly existing and in good standing under the laws of the State of Hawaii; it has all requisite corporate power and authority and is entitled to carry on its business as now being conducted and to own, lease or operate its properties as and in the places where such business is now conducted.

8.2. No Adverse Conditions. No legal action, suit, claim, investigation, or other proceeding, whether civil, criminal, or administrative, is pending or threatened against Purchaser that would adversely affect its ability to consummate the Contemplated Transaction.

8.3. Adequate Advice. Purchaser has had the opportunity to receive independent tax and legal advice, at Purchaser's cost, with respect to the advisability of executing this Agreement.

8.4. No Broker's Fees. Purchaser has no liability or obligation to pay any fees or commission to any broker, finder, or agent with respect to the Contemplated Transaction for which Seller could become liable or obligated. If Purchaser has retained a broker, any fees or commissions owing to said broker are solely the obligation of Purchaser.

8.5. Agreement Will Not Cause Breach or Violation. Neither the entry into this Agreement nor the consummation of the Contemplated Transaction will result in or constitute any of the following: (a) a default or any event that, with notice or lapse of time, or both, would be a default, breach or violation of the Articles of Incorporation or By-Laws of Purchaser or of any material lease, franchise, license, promissory note, conditional sales contract, commitment, indenture, mortgage, deed of trust, or other agreement, instrument, or arrangement to which Purchaser or is a party or by which Purchaser or its assets are bound, or (b) the violation of any permit, license, law, regulation, ordinance, judgment, order or decree applicable to or affecting Purchaser or its business, assets or financial condition which would have a material adverse effect on its business.

8.6 Duration of Representation and Warranties. The representation and warranties made hereinabove will be correct and accurate in all material respects as of the Closing Date and shall survive the Closing Date for a period of three (3) years.

9. CONDITIONS PRECEDENT TO OBLIGATIONS TO CLOSE.

9.1. Conditions to Purchaser's Obligation. All obligations of Purchaser hereunder are subject at the option of Purchaser, to the fulfillment of each of the following conditions at or prior to the Closing, and Seller and MLP shall exert their best efforts to cause such condition to be so fulfilled:

(a) All representations and warranties of Seller and MLP contained herein shall be true and correct in all material respects at and as of the date of the Closing (said representations and warranties to survive Closing), except for changes in ordinary course of business after the date hereof;

(b) All covenants, agreements and obligations required by the terms of this Agreement to be performed by Seller or MLP at or before the Closing shall have been duly and properly performed in all material respects and all deliverables to be provided by Seller and MLP at Closing as described in Section 6.2(a) shall have been duly executed and delivered;

(c) No action, suit or proceeding shall be pending or threatened before any court, governmental agency or authority to enjoin, restrain or prohibit this Agreement or the consummation of the Contemplated Transaction or threaten the Acquired Assets in a material manner;

(d) No Material Adverse Change shall have occurred with respect to the operation, condition, finances or prospects of the Business or the Acquired Assets since the Effective Date;

(e) That approval for the transfer of the Acquired Assets and the Contemplated Transaction, including (i) the existing water wheeling agreement with the

golf course, and (ii) the ability of Purchaser to serve the Kapalua future expansion area, have been duly and properly obtained from the Commission in form and content acceptable to Purchaser in its sole and absolute discretion;

(f) That DOH authorization for Purchaser to operate the Systems shall be in full force and effect on the Closing;

(g) That the transfers of the Acquired Assets, except for Post-closing Easements, concurrently close;

(h) That all material agreements, consents, and approvals of any persons necessary to the consummation of the Contemplated Transaction, or otherwise pertaining to the matters covered by it, shall have been obtained by Seller or Purchaser as the case may be, and delivered to the Parties; including without limitation, approval of the Commission and the consent of the County of Maui to the Assignment and Assumption of Wastewater Agreement (or in lieu thereof evidence to Purchaser's sole satisfaction that the County of Maui's consent is not required);

(i) that Purchaser has been satisfied with the conclusions and results of its due diligence;

(j) that Purchaser has received approval of its Board of Directors no later than the end of the Due Diligence Period;

(k) Purchaser shall be satisfied with all inspections and investigations concerning title to and surveys of the Real Property, Easements, Water Rights and other Acquired Assets. Failure of Purchaser to be satisfied under this section is not a breach of this Agreement by Seller.

(l) that Purchaser shall have received an irrevocable commitment from a title company of its choice for an ALTA Extended Owner's policy of title insurance for the Real Property and Easements to be issued to and acceptable to Purchaser, including such endorsements and in such amounts as Purchaser may reasonably require, effective as of the Closing Date.

9.2. Conditions to Seller's Obligation. All obligations of Seller hereunder are subject at the option of Seller, to the fulfillment of each of the following conditions at or prior to the Closing, and Purchaser shall exert its best efforts to cause such condition to be so fulfilled:

(a) All representations and warranties of Purchaser contained herein shall be true and correct in all material respects at and as of the date of the Closing (said representations and warranties to survive Closing);

(b) All covenants, agreements and obligations required by the terms of this Agreement to be performed by Purchaser at or before the Closing shall

have been duly and properly performed in all material respects and all deliverables to be provided by Purchaser at Closing as described in Section 6.2(b) shall have been duly executed and delivered;

(c) No action, suit or proceeding shall be pending or threatened before any court, governmental agency or authority to enjoin, restrain or prohibit this Agreement or the consummation of the Contemplated Transaction; and

(d) [intentionally omitted].

(e) That all material agreements, consents, and approvals of any persons necessary to the consummation of the Contemplated Transaction, or otherwise pertaining to the matters covered by it, shall have been obtained by Seller, and delivered to Purchaser.

(f) That approval for the transfer of the Acquired Assets and the Contemplated Transaction, including the ability of Purchaser to serve the Kapalua future expansion area, have been duly and properly obtained from the Commission in form and content acceptable to Seller in its discretion.

(g) That Seller has received approval of its Board of Directors no later than the end of the Due Diligence Period.

10. TERMINATION.

10.1. This Agreement may be terminated in the manner provided below, by written notice given by the party desiring to terminate to the other party:

(a) by mutual agreement of Purchaser and Seller at any time prior to the Closing;

(b) By Purchaser prior to the completion of its Due Diligence Period;

(c) by either Seller or Purchaser at any time prior to the Closing if a material default or breach shall be made by the other party hereto with respect to the due and timely performance of any of its covenants and agreements contained herein, or with respect to the due compliance with any of its representations, warranties or covenants, and such default cannot be cured and has not been waived;

(d) by either Seller or Purchaser if the conditions to such party's obligation to close have not all occurred in all material respects on or before the date established under this Agreement or, in the absence thereof, by scheduled Closing date, unless the failure results primarily from such party itself breaching any

representation, warranty, agreement, obligation, or covenant contained in this Agreement; and

(e) by either party if approval for the transfer of the Acquired Assets and the Contemplated Transaction have not been duly and properly obtained from the Commission in form and content acceptable to Purchaser and Seller within 24 months of the date of this Agreement;

10.2. Effect of Termination. In the event this Agreement is terminated as provided in the foregoing section, all obligations of the parties hereunder shall terminate, except for Sections 3.3 (Inspection; Inspection Indemnity), 4.2 (Capital Project Expenditures) and 12.9 (Specific Performance) shall survive; and provided further that if this Agreement is so terminated by a party because one or more of the conditions to such party's obligations hereunder is not satisfied as a result of another party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies for breach of contract or otherwise, including, without limitation, damages relating thereto, shall also survive such termination unimpaired.

11. POST-CLOSING OBLIGATIONS AND COVENANTS. Seller, MLP and Purchaser agree as follows with respect to the period following the Closing ("Post-closing"):

11.1. Prepaid Assets. All prepaid rent, utilities, taxes and other prepaid expenses and security deposits given ("Prepaid Assets") as of Closing shall be transferred to Purchaser. If Seller or MLP receives any payments which include amounts attributable to sales, deliveries or services made or performed by Purchaser after the Closing, Seller or MLP, as the case may be, shall promptly pay such amounts to Purchaser.

11.2. Transfer of Telephone Number. Purchaser shall be responsible for transferring the telephone number of the Business to Purchaser. Seller shall have no liability for any telephone charges from and after the Closing.

11.3. Obligations Related to Post-closing Easements. Seller's and MLP's obligations as set forth in Section 4.3 shall survive Closing.

11.4. Preservation of Records. The Parties agree that they shall preserve and keep the records of the Systems acquired pursuant to this Agreement for a period of four (4) years from the Closing, or for any longer period as may be required by any government agency or ongoing audit, administrative proceeding or litigation, and shall make such records available to the other as may be reasonably required by the other in connection with, among other things, the filing of any tax return or report by, or any insurance claims by, legal proceedings against or governmental investigations (including tax audits) of Purchaser or Seller. In the event that a party wishes to destroy

such records after that time, it shall first give 90 days prior written notice to the other party and the other party shall have the right, at its option and expense, upon prior written notice given within that 90-day period, to take possession of the records within 180 days after the date of such notice.

11.5 Litigation Support. From and after the Closing, Purchaser shall provide Seller, at Purchaser's cost, with such cooperation and access to records and personnel as Seller may reasonably request in connection with Seller's defense of any litigation or other judicial or quasi-judicial proceeding or investigation, whether commenced or threatened, involving Seller's prior ownership or operation of the Acquired Assets or the Systems.

11.6 Accounts Payable. From and after the Closing, Seller agrees to pay all accounts payable which were incurred by Seller in the ordinary course up to the Closing as well as all Retained Liabilities.

11.7 Rate Case Application. After Closing, Seller and MLP shall cooperate with Purchaser to develop support for filing a rate case application within two (2) years after the Closing Date.

11.8 Survival and Indemnification.

(a) Subject to Section 7.20 and Section 8.6, all representations, warranties, covenants and obligations of the Parties in this Agreement and any other certificate or document delivered pursuant to this Agreement shall survive the Closing and the consummation of the Contemplated Transactions, subject to Section 11.8(c)-(d).

(b) Seller and MLP jointly and severally agree to indemnify, defend and hold harmless Purchaser and Purchaser's representatives, officers, directors, employees and agents ("Purchaser Indemnitees") against any and all losses, claims, liabilities, damages, actions, costs or expenses, including attorney's fees and costs (the "Seller Indemnified Losses") arising from, in connection with, or with respect to the following items:

1. Any breach of any representation, warranty, covenant or agreement of Seller or MLP contained in this Agreement, or any agreement, certificate or document executed and delivered by them, or their affiliates pursuant hereto or in connection with any of the transactions contemplated in this Agreement;

2. Any failure by Seller to satisfy, perform or pay the Retained Liabilities;

3. Any and all actions, suits, proceedings, claims or demands by third parties ("Third Party Claims") and losses, liabilities, expenses or judgments relating

thereto, directly resulting from or arising from matters relating to Seller, its Business or the Acquired Assets which occurred or are alleged to have occurred prior to the Closing other than those specifically assumed by Purchaser as set forth in this Agreement.

(c) If the Closing occurs, Seller and MLP will have liability (for indemnification or otherwise) with respect to any breach of (i) a covenant or obligation to be performed or complied with or (ii) a representation or warranty only if on or before 5 P.M. Hawaii Standard Time on the third anniversary of the Closing Date, Purchaser notifies Seller or Seller's designee (such designee to be provided by Seller as appropriate) of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Purchaser.

(d) If the Closing occurs, Purchaser will have liability with respect to any breach of (i) a covenant or obligation to be performed or complied with, or (ii) a representation or warranty, only if on or before 5 P.M. Hawaii Standard Time on the third anniversary of the Closing Date, Seller or Seller's designee notifies Purchaser of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Seller or Seller's designee.

(e) Subject to subsections (c) and (d) above, the provisions of this Section 11.8 shall survive the Closing and be enforceable regardless of whether the liability is based upon past, present or future acts, claims, liabilities or legal requirements and regardless of whether any person or entity (including the person or entity from whom relief is sought) alleges or proves the sole, concurrent, contributory, or comparative negligence of the person or entity seeking relief, the sole or concurrent strict liability imposed upon the person or entity seeking relief.

12. MISCELLANEOUS.

12.1. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered if sent by overnight courier to, or served personally upon, the party for whom it is intended, or (b) on the fourth business day after mailing, if mailed by registered or certified mail (return receipt requested, postage prepaid), to such party at its address as hereinafter shown. Between the Effective Date and the last day of the Due Diligence Period, or if Purchaser shall elect to proceed with the Contemplated Transaction, the Closing Date, notices and communications, except for notices of the other party's default under this Agreement, may be provided by email to the addressee's email address below, and is deemed to have been received by the addressee within thirty (30) minutes after the time sent (as recorded on the sender's email) unless the sender receives an automated message that the email has not been delivered. If the email is sent after 5 p.m., Hawaii Standard Time, or on a day which is not a business day, the email shall be deemed to have been received at 9 a.m. on the next business day. For purposes hereof, the effectiveness of any notice or other communication shall not be defeated by the failure of the recipient to accept delivery of such notice.

To Seller and MLP: Maui Land & Pineapple Company, Inc.
Attention: Paulus Subrata
200 Village Road
Lahaina, Hawaii 96761
Email: psubrata@kapalua.com
Telephone: (808) 757-2666

To Purchaser: Hawaii Water Service Company, Inc.
Attention: General Manager
P.O. Box 384809
Waikoloa, HI 96738

With a CC: Hawaii Water Service Company, Inc.
Attention: General Counsel
1720 N. First Street
San Jose, CA 95112

Any party may change the address to which notices or other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

12.2. Non-assignability of Agreement. Except for Purchaser's assignment of this agreement to an affiliate of Purchaser, this Agreement shall not be assignable by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Purchaser in its sole and absolute discretion may assign its interest in this Agreement to an affiliate or subsidiary; provided, however, that all obligations of Purchaser under this Agreement shall be assumed by such assignee.

12.3. No Third Party Beneficiaries. The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the Parties hereto and their permitted successors and assigns, and they shall not be construed as conferring any rights on any other persons.

12.4. Entire Agreement. This Agreement and the instruments to be delivered by the parties pursuant to the provisions hereof constitute the entire agreement between the parties, other than (i) that certain Confidentiality Agreement between MLP and Purchaser dated October 29, 2019 (the "Confidentiality Agreement") and (ii) that certain Indemnity Agreement between MLP and Purchaser dated November 15, 2019 (the "Indemnity Agreement"). This Agreement supersedes all prior agreements and understandings between the parties with respect to the subject matter other than the Confidentiality Agreement and the Indemnity Agreement. Any amendments, alternative or supplementary provisions to this Agreement, or waiver of any term or provision hereof must be made in writing and duly executed by an authorized representative or agent of each of the parties hereto.

12.5. Counterparts, Telefacsimile/Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one instrument. Telefacsimile signatures or signatures affixed to the Agreement which are transmitted electronically via e-mail to the other party shall be fully binding and effective for all purposes (subject to the execution of this Agreement by all parties), whether or not the originally executed Agreement is delivered to the other party. Each party, however, agrees to promptly forward the executed Agreement bearing its original signature to the other party.

12.6. Counsel, Legal and Closing Fees. Each party shall be responsible for its own counsel and legal fees provided, as stated in Section 4.1(d) costs of legal counsel in seeking Commission authorization of the Contemplated Transaction shall be shared equally, including in the event of the use of joint legal counsel in such case. Notwithstanding the foregoing, at closing, Purchaser shall reimburse Seller its actual out of pocket attorney fees incurred over a threshold amount of \$75,000. Purchaser's reimbursement to Seller shall not exceed a cap of \$75,000. All other closing costs shall be borne by Purchaser and Seller on 50%-50% basis except as otherwise provided herein.

12.7. Governing Law. The internal laws of the State of Hawaii shall govern the interpretation and construction of this Agreement.

12.8. Further Assurances. The parties hereto shall execute such further documents and perform such further acts as may be necessary to transfer and convey the Acquired Assets to Purchaser, on the terms herein contained, and to otherwise comply with the terms of this Agreement and consummate the Contemplated Transaction.

12.9. Specific Performance. Seller and MLP each acknowledge and agree that Purchaser will be irreparably harmed and that there will be no adequate remedy at law in the event of a violation by Seller or MLP of any of its covenants or agreements which are contained in this Agreement. It is accordingly agreed that, in addition to any other remedies which may be available upon the breach of such covenants and agreements, Purchaser shall have the right to obtain injunctive relief to restrain any breach or threatened breach of or otherwise to obtain specific performance of Seller or MLP's covenants or agreements contained in this Agreement.

12.10. Mediation. Any and all matters in dispute arising from or relating to this Agreement, or the breach thereof, which remain unresolved after direct negotiation between the Parties, shall first be submitted to confidential mediation in accordance with the Rules, Procedures and Protocols for Mediation of Dispute Prevention & Resolution, Inc., then in effect. The parties agree that a good faith attempt to resolve all issues in mediation for a minimum of 30 days, but not more than 90 days, is a precondition to further adversarial proceedings of any kind. Each Party shall bear their own respective costs of such mediation, including attorneys' fees.

12.11. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

12.12. Board Approval. Seller's and Purchaser's obligations under this Agreement are subject to the approvals of Seller's and Purchaser's Board of Directors. Seller and Purchaser shall obtain approvals of this Agreement by their respective Board of Directors prior to end of the Due Diligence Period.

12.13. Public Announcements. Any public announcement press release or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued as the Parties may mutually agree upon, however Seller and MLP acknowledge that Purchaser is a subsidiary of a U. S. publicly traded corporation and that U. S. Securities and Exchange Commission ("SEC") rules require that announcements be made in a manner that meets SEC Regulatory Fair Disclosure requirements. In the event of any conflict between the previous sentence and similar provisions in the Confidentiality Agreement, the preceding sentence shall control. Seller and Purchaser will consult with each other concerning the means by which Seller's employees, customers, suppliers and others having dealings with Seller will be informed of the Contemplated Transactions, and Purchaser will have the right to be present for any such communication.

12.14 Time is of the Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

12.15 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

12.16 Amendment. This Agreement may be amended, modified or supplemented only by written agreement of the Parties.

12.17 Further Assurances. The Parties shall cooperate reasonably with each other and with their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the Contemplated Transactions.

12.18 Recovery of Litigation Costs. If any legal action or other proceeding is brought by Seller, MLP or Purchaser for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in

connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

12.19 MLP Guaranty. In consideration of the benefits to be provided pursuant to this Agreement to Seller, MLP does hereby guarantee the full, faithful and timely payment and performance by Seller of all the agreements, covenants and other obligations of Seller under this Agreement. If Seller shall default at any time in the payment of any amount due or perform any obligation required to be performed by either under this Agreement, then MLP, at its expense, shall on demand of Purchaser, fully and promptly, and well and truly, pay and or perform all such obligations of Seller under or pursuant this Agreement, and all damages and expenses (including attorneys' fees and costs) that may arise in consequence of Seller's non-performance under this Agreement. MLP hereby waives all requirements of notice of the acceptance of these obligations and all requirements of notice of breach or nonperformance by Seller.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

MLP:
**MAUI LAND & PINEAPPLE COMPANY,
INC.**, a Hawaii corporation

By Warren H. Haruki

Name: Warren H. Haruki
Title: Chairman & CEO

By 

Name: Paulus Subrata
Title: Vice President

KWC:
KAPALUA WATER COMPANY, LTD., a
Hawaii corporation

By 

Name: Paulus Subrata
Title: Vice President

Purchaser:
**HAWAII WATER SERVICE COMPANY,
INC.**, a Hawaii corporation

By _____

Name: _____
Title: _____

By _____

Name: _____
Title: _____

KWTC:
**KAPALUA WATER TREATMENT
COMPANY, LTD.**, a Hawaii corporation

By 

Name: Paulus Subrata
Title: Vice President

MLP:
**MAUI LAND & PINEAPPLE COMPANY,
INC.**, a Hawaii corporation

By _____
Name: _____
Title: _____

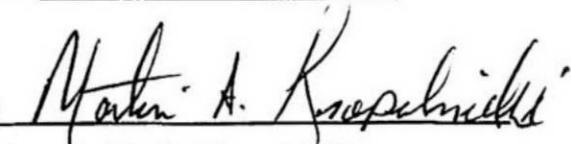
By _____
Name: _____
Title: _____

KWC:
KAPALUA WATER COMPANY, LTD., a
Hawaii corporation

By _____
Name: _____
Title: _____

Purchaser:
**HAWAII WATER SERVICE COMPANY,
INC.**, a Hawaii corporation

By 
Thomas Silliman
Name: Vice President,
Title: Chief Financial Officer

By 
Martin Kropelnicki
Name: Martin Kropelnicki
Title: President & CEO

KWTC:
**KAPALUA WATER TREATMENT
COMPANY, LTD.**, a Hawaii corporation

By _____
Name: _____
Title: _____

EXHIBIT A-1
SERVICE AREAS OF KWC

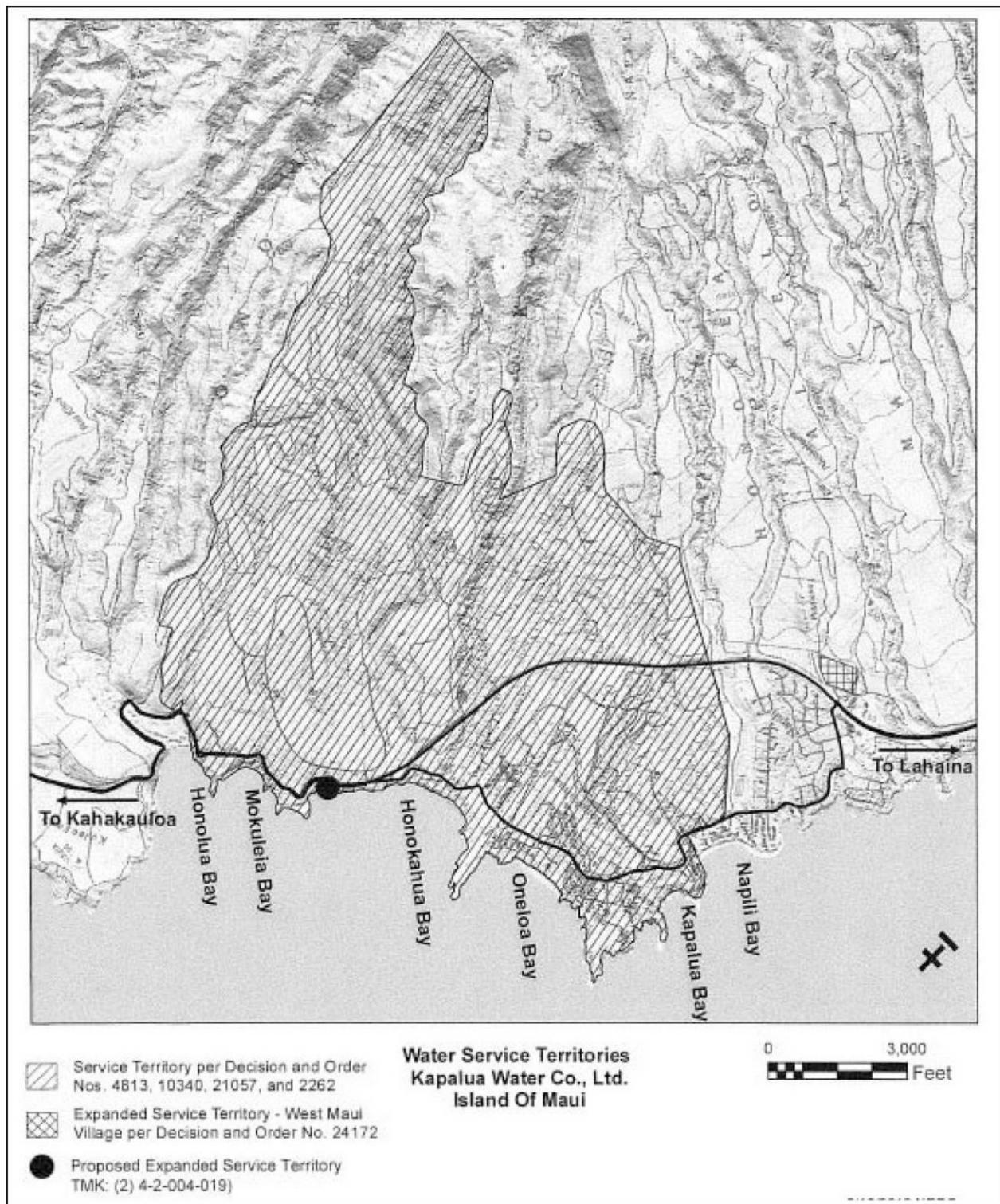


EXHIBIT A-2
SERVICE AREAS OF KWTC

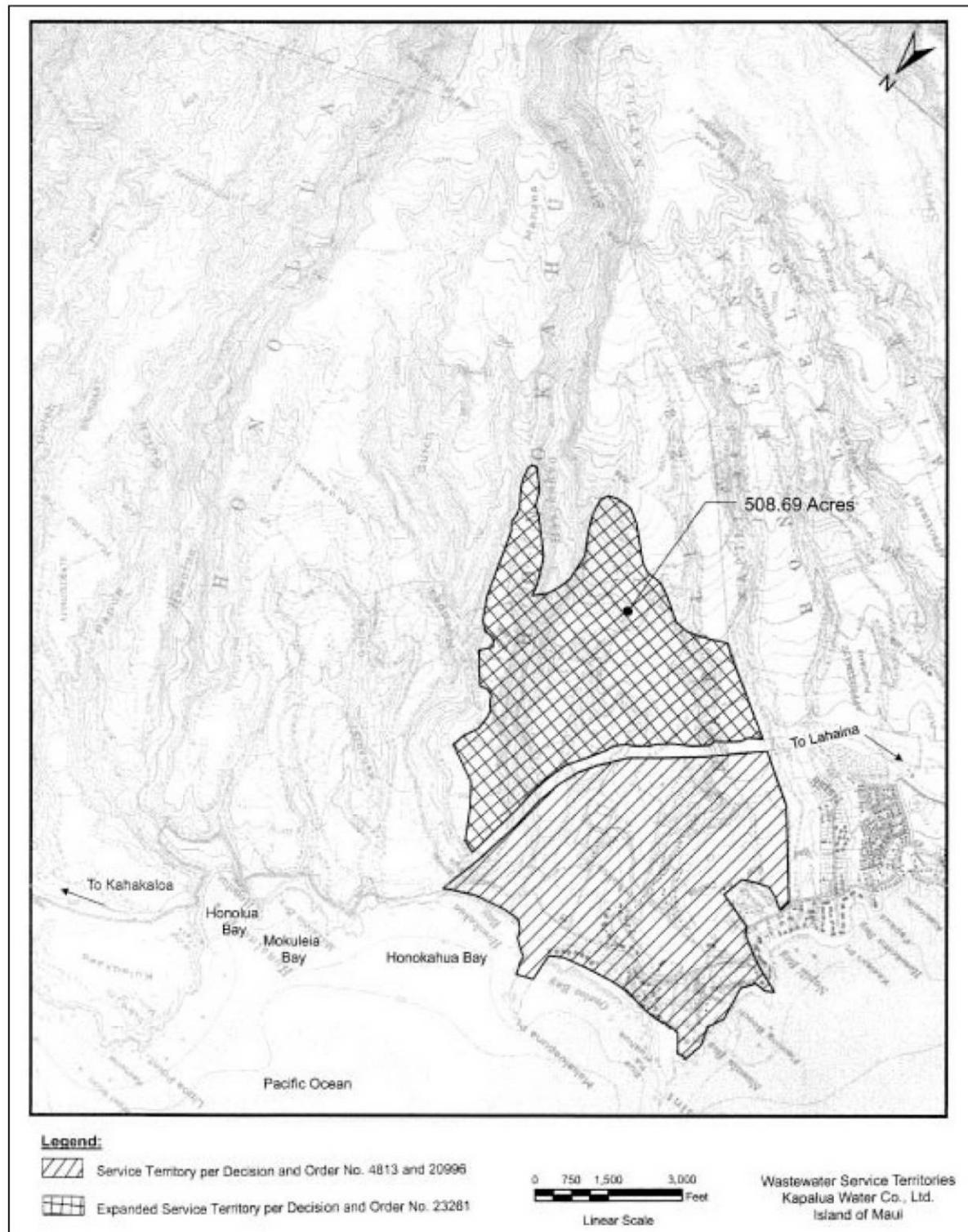


EXHIBIT B-1
ASSET LISTING OF KAPALUA WATER COMPANY, LTD

Line	Description	Year Acquired	PLANT AMOUNT 12-31-18	ADDITIONAL DEPRE EXP To 06-30-19	ACCUM DEPRE 06-30-19	NET PLANT 06-30-19
Included in the 2008 Rate Case - Plant with Balances & Fully Depreciated						
-Generator & Tank Building	1993	65,259	1,088	56,241	9,018	
-Control Tank	1993	56,538	942	49,000	7,538	
-Dual Water System	1994	69,932	874	43,416	26,516	
-Hydrant	1986	21,043	-	21,043	-	
-Controls Replacement	2006	26,631	666	17,088	9,543	
-4" Trash Pump	2007	60,847	-	60,847	-	
-Mains, Hydrants & Valves	FJD	5,494	-	5,494	-	
-Clay Valve	1996	11,969	-	11,969	-	
-Mains, Hydrants & Valves	1979	19,130	-	19,130	-	
-Transfer From Ridge A	1979	23,026	-	23,026	-	
-Transfer From Ridge B	1979	196,393	-	196,393	-	
--Honolulu Phase 1 - Submersible Booster Pump (P)						
--Honolulu Phase 1 - Submersible Booster Pump (P)						
--Honolulu Phase 2 - Submersible Booster Pump (P)						
--Honolulu Phase 2 - Submersible Booster Pump (P)						
--0 1 MG Tank - Concrete Reservoir (P)						
--0 1 MG Tank - Plantation Estates II (P)						
--0 04 MG Tank - Honolulu Ridge Phase I (P)						
--0 03 MG Tank - Honolulu Ridge Phase I (P)						
--0 03 MG Tank - Honolulu Ridge Phase II (P)						
--Plantation Estates I Offsite Submersible Pump (NP)						
--Plantation Estates II Offsite Submersible Pump (NP)						
--Honolulu Phase 1 - Submersible Booster Pump (NP)						
--Honolulu Phase 1 - Submersible Booster Pump (NP)						
--Honolulu Phase 2 - Submersible Booster Pump (NP)						
--Honolulu Phase 2 - Submersible Booster Pump (NP)						
--Tank 0 04 MG Glass/Steel - Plantation Estates II (NP)						
--Tank 0 01 MG Glass/Steel - Plantation Estates II (NP)						
--Tank 0 01 MG Glass/Steel - Honolulu Ridge I (NP)						
--Tank 0 57 MG Glass/Steel - Honolulu Ridge I (NP)						
--Tank 0 15 MG Glass/Steel - Honolulu Ridge II (NP)						
Transfer from Golf Villas A	1979	20,387	-	20,387	-	
Transfer From Golf Villas	1979	232,924		232,924	-	
Transfer From IronWoods	1979	347,614	4,345	343,993	3,621	
Transfer From IronWoods	1979	7,328	-	7,328	-	
Villa Links 8" Line	1982	40,459	506	37,003	3,456	
Pipelines	1993	395,909	4,949	256,277	139,632	
Dual Water System	1994	1,345,422	16,818	824,071	521,351	
--Water meters (Total 591)						
--Village Reservoir 4.5 MG Kapalua Village (NP)						
--Plantation Reservoir 8 MG - Irrigation (NP)						
Pump - Pipeline Addl cost	1994	24,078	241	12,079	11,999	
12 Dual Irrigation Line/Loop/Valve	1998	41,855	-	41,855	-	
Water Tank Exterior	2008	155,773	5,192	116,829	38,944	
Sub Total Page 1		3,168,011	35,621	2,396,394	771,617	
After 2008 Rate Case - Additions						
Meter Replacements	2009	32,090	-	32,090	-	
Meter Replacements	2008	63,757	2,125	44,630	19,127	
CH2MILL GIS Program	2007	97,794	-	97,794	-	
Relocate 12" Waterline from Kap	2009	199,493	6,650	134,103	66,390	
SCADA System Controls at KWC	2016	192,679	4,817	27,296	165,383	
Mahana Potable & Non-Potable	2017	3,998,800	49,985	199,940	3,798,860	
-- Mahana Potable						
----Transmission line						
----Distribution Lines						
----Service Connections						
----Meters						
----Pumping Equipment						
----Mahana Estates - Booster Pump						
----Mahana Estates - Booster Pump						
----0 1 MG Tank - Mahana Estates						
----1 0 MG Tank - Concrete Reservoir						
-- Mahana Non-Potable						
----Transmission line						
----Distribution Lines						
----Service Connections						
----Meters						
----Pumping Equipment						
----Mahana Estates - Booster Pump						
----Mahana Estates - Booster Pump						
----Tank 0 13 MG Mahana Estates						
----Tank 0 03 MG Mahana Estates						
CWIP at 12/31/18:						
--Water meter service lateral replacement	2019	106,336	-	-	106,336	
--Potable & Non-potable water highway bypass		69,932	-	-	69,932	
Sub Total Page 2		4,760,881	63,577	535,853	4,225,029	
TOTAL PLANT		\$ 7,928,892	\$ 99,198	\$ 2,932,247	\$ 4,996,646	
Less: CIAC - Mahana Potable & Non-Potable	2017	(3,998,800)	(49,985)	(199,940)	(3,798,860)	
RATE BASE		\$ 3,930,092	\$ 49,213	\$ 2,732,307	\$ 1,197,786	

EXHIBIT B-2

**ASSET LISTING OF
KAPALUA WASTE TREATMENT COMPANY, LTD**

Line #	Description	Year Acquired	Balance as of 12/31/17	Plant				Accumulated Depreciation At 6/30/2019	Net Plant 6/30/2019
				At 12/31/17	2018 Depreciation	Depreciation to 6/30/19	At 6/30/2019		
<u>Included in the 2008 Rate Case - Plant with Balances & Fully Depreciated</u>									
75HP Motor	2003	7,180	7,180	-	-	-	7,180	-	
Emergency Generator- Lift Station	1980	6,386	6,386	-	-	-	6,386	-	
Lift Station - Electrical System	1978	76,880	76,880	-	-	-	76,880	-	
Village Sewer Extension	1982	36,675	32,167	917	458	33,542		3,133	
Transfer Switch for Lift Station	1986	5,980	5,980	-	-	-	5,980	-	
Force Main Conversion	1986	31,458	31,458	-	-	-	31,458	-	
Renovation SPS 2	1989	29,272	29,272	-	-	-	29,272	-	
Backup Pump Motor SPS 3	1994	7,684	7,684	-	-	-	7,684	-	
Pump Station 3 Generator	1999	33,969	15,711	849	425	16,985		16,984	
Rebuild 75HP Pump Motor	2003	5,101	5,101	-	-	-	5,101	-	
Submersible Sewage Pump	2001	5,150	5,150	-	-	-	5,150	-	
Kohler Diesel Generator	2002	28,746	28,746	-	-	-	28,746	-	
Motor Control Unit - Lift Station	2005	8,101	8,101	-	-	-	8,101	-	
Emergency Generator - Lift Station	2006	23,491	13,605	1,175	587	15,367		8,124	
Transfer from Ironwoods	1979	119,691	113,956	2,992	1,496	118,444		1,247	
Transfer from Ridge	1979	80,648	76,784	2,016	1,008	79,808		840	
--SPS #2 - Pump Station									
--SPS #2 - Pump #1									
--SPS #2 - Pump #2									
--SPS #3 - Pump Station									
--SPS #3 - Pump #1									
--SPS #3 - Pump #2									
--SPS #5 - Pump Station									
--SPS #5 - Pump #1									
--SPS #5 - Pump #2									
--Collection System Flush									
 Sub Total Page 1		506,412	464,160	7,949	3,975	476,084		30,327	
<u>After 2008 Rate Case - Additions</u>									
Mahana Wastewater System	2017	2,682,200	33,528	67,055	33,528	134,110		2,548,090	
Station 5 Pump Replace	2018	14,975	-	1,123	749	1,872		13,103	
Smith & Loveless Pump Motor	2018	6,196	-	258	310	568		5,628	
Pump Station 2 Generator Replacement	2018	91,243	-	507	3,041	3,548		87,695	
 Sub Total Page 2		2,794,614	33,528	68,943	37,628	140,098		2,654,516	
TOTAL PLANT		3,301,026	497,687	76,892	41,602	616,182		2,684,843	
Less: CIAC - Mahana Wastewater System		(2,682,200)	(33,528)	(67,055)	(33,528)	(134,110)		(2,548,090)	
 RATE BASE		\$ 618,826	\$ 464,160	\$ 9,837	\$ 8,075	\$ 482,072		\$ 136,753	

EXHIBIT C

CAPITAL EXPENDITURE PROJECTS FOR KWC AND KWTC

Kapalua Water Company, Ltd.
Kapalua Waste Treatment Company, Ltd.
Capital Projects
To be Completed in 2019 to 2021

(1) (2)

Line #	Name	Description
KAPALUA WATER COMPANY		
1	Water Meters	Replace approximately 500 meters and boxes ranging in size from 5/8" to 4" in Kapalua Makai.
2	Potable & Non-potable Service Lines	Replace aging service lines in Pineapple Hill with new copper lines.
3	Potable & Non-potable Service Lines	Replace aging service lines in Kapalua Pl. with new copper lines.
4	Potable & Non-potable Bypass	Connect the potable waterline from the wall to the non-potable line before the chlorination station and create a bypass.
5	Complete Potable Well #3	Refresh the Well #3 capacity study and install pump/housing.
6		
7		
8		
9		
KAPALUA WASTE TREATMENT COMPANY		
10	Collection System Flush	Wastewater collection line flush is recommended to eliminate blockages before they occur.
11	Pump Stations	Replace pumps/motors at three KWT pump stations.
12		
13		

Term Sheet Attachments 10-2-18

EXHIBIT D

AGREEMENT FOR WATER DELIVERY (NON-POTABLE WATER)

THIS AGREEMENT ("Agreement") is made and entered into on this _____ day of _____, 2019 ("Effective Date"), by and between **MAUI LAND & PINEAPPLE COMPANY, INC.**, a Hawaii corporation, whose address is P. O. Box 187, Kahului, Hawaii 96733, hereinafter called "MLP", and [_____ **WATER COMPANY**, a _____ corporation], whose address is _____, hereinafter called "Water Company".

R E C I T A L S:

- A. MLP is the owner and operator of a water collection and transmission system (the "Ditch System") that collects untreated surface and transports it via the Honokohau Ditch and related infrastructure.
- B. Water Company is a regulated public utility company.
- C. Concurrently herewith, Water Company has acquired from MLP a non-potable water distribution system (the "Non-Potable System") that Water Company will use to serve consumers within its designated service area at the Kapalua Resort at Kapalua, Maui, Hawaii (the "Service Area").
- D. The parties desire to enter into this Agreement to formalize and set forth the terms and conditions upon which MLP will provide water from its Ditch System for Water Company's use and distribution via the Non-Potable System.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Delivery of Water; Delivery Points.** Subject to the terms and conditions herein, MLP does hereby undertake and agree to deliver from the Ditch System to Water Company, for the term of this Agreement, non-potable water in such quantities as Water Company may require to meet its service obligations in the Service Area. MLP shall deliver water to the Water Company at the delivery points shown on the map attached as Exhibit A, or such other locations as the parties may mutually agree to from time to time (each a "Delivery Point").

2. **Water Delivery Charges.** Water Company will pay to MLP for all water delivered to Water Company at the initial rate of \$260.00 per million gallons (i.e., \$0.26 per thousand gallons) plus the Hawaii general excise tax thereon, payable monthly in arrears (or such other time periods as may be mutually agreed upon by the parties in writing). Payments for each calendar month, or portion thereof, shall be due and payable no later than the 10th calendar day of the following month. On the third anniversary of the date of this Agreement, and each subsequent third anniversary, the rate then in effect shall be increased by a percentage equal to the percentage increase over the preceding twelve months in the Consumer Price Index for All Urban Consumers (CPI-U) for Honolulu published by the U.S. Department of Labor – Bureau of Labor Statistics (1982-84=100) ("CPI"); provided that if such index is discontinued MLP shall have the right to reasonably designate an alternative index of inflation, provided that the adjusted rate shall never be less than the rate payable for the immediately preceding period. Water Company shall pay to MLP together with each payment required hereunder which is

subject to the State of Hawaii general excise tax on gross income, as it may be amended from time to time, or any successor or similar tax, an amount which, when added to such payment (currently 4.166% of each such payment), shall yield to MLP, after deduction of all such tax payable by MLP with respect to all such payments, a net amount equal to that which MLP would have realized from such payments had no such tax been imposed.

3. **Water Meters.** Water Company shall, at its own expense, install and maintain suitable meters or gauges at accessible locations at each Delivery Point to assure an accurate and documented measurement of all water delivered to the Water Company. Together with each monthly payment under this Agreement, Water Company shall provide to MLP an accurate and complete written report of all water delivered at each Delivery Point. Representatives of MLP shall have access to such meters and all records of meter readings at all reasonable times for the purpose of checking the same and verifying Water Company's reports.

4. **Term.** The term of this Agreement commences on the date of this Agreement and terminates on the 20th anniversary of such date, whereupon this Agreement shall automatically renew for successive 10-year terms unless terminated by mutual agreement of the parties. Notwithstanding the foregoing, MLP's obligation to deliver irrigation water pursuant to this Agreement shall terminate if Water Company permanently ceases operation of the Non-Potable System or develops wells or other alternative sources of water adequate to meet Water Company's service obligations.

5. **Limits on Use.** Water delivered pursuant to this Agreement shall be used only for irrigation and other non-potable uses within the Service Area and may not be transmitted to or used at any lands outside of the Service Area. Water Company acknowledges that water delivered pursuant to this Agreement is not treated or suitable for human consumption and Water Company shall at all times take reasonable precautions to prevent any such use.

6. **Seller's Warranties, Representations & Covenants.** MLP warrants and represents to Water Company (a) that MLP is the owner in fee simple or holds recorded easements for all of the lands underlying the portions of the Ditch System necessary to deliver water to the Delivery Point, and (b) that MLP currently holds, and will use commercially reasonable efforts to at all times maintain, all permits and approvals required by law for the operation of the Ditch System, including those required by the Commission on Water Resource Management of the State of Hawaii and the County of Maui. Notwithstanding the foregoing, Water Company acknowledges that the Commission on Water Resource Management is currently working on amended Interim Instream Flow Standards for surface water sources that feed the Ditch System and that the outcome of that process, or subsequent similar processes, may affect the amount of water available to Water Company from the Ditch System, and Water Company assumes all risk of the same. Except as set forth throughout this Agreement, MLP makes no warranties, express or implied, as to the Ditch System, the quantity or quality of Ditch System water available to Water Company, or any other matters. Water Company expressly acknowledges and agrees that water in the Ditch System may contain soil, sediments, vegetation, debris and other contaminants and Water Company assumes all risk of the same.

7. **Ditch System Maintenance.** MLP will exercise commercially reasonable efforts to manage, repair and maintain the Ditch System in condition adequate for the reliable delivery of water to the Non-Potable System in accordance with this Agreement. Notwithstanding the foregoing, Water Company acknowledges that the Ditch System includes stream diversions, tunnels, ditches, siphons and

other improvements that are very old and that in case of major casualty to or other failure of such components repair or replacement may not be possible at a commercially reasonable cost, so MLP makes no assurances as to its ability to continually maintain the Ditch System in case of such events.

8. **Force Majeure.** Water Company and MLP agree and understand that the ability of MLP and Water Company to perform their respective obligations under this Agreement are made expressly subject to earthquake, hurricanes, drought, landslides, tunnel or ditch collapse, casualty to the Ditch System, or other natural disasters or events which render MLP's Ditch System temporarily or permanently inoperable, actions of the federal, state and county governments or agencies thereof, including without limitation enactment or enforcement of laws or governmental regulations, strikes, lock-outs, unavailability of labor or materials, wars, insurrections, rebellions, civil disorder, declaration of national emergencies, acts of God, or other causes beyond MLP's and/or Water Company's respective control. Neither party shall have any liability for failure or inability to perform its obligations hereunder to the extent such failure or inability is caused by any such cause or event.

9. **Use Priorities.** MLP has existing commitments to the County of Maui Department of Water Supply ("County") to provide a maximum of 2.5 MGD of water from the Ditch System that DWS uses at its Mahinahina Weir treatment plant to produce potable water for the DWS municipal system, and that MLP may from time to time upon the County's request commit additional Ditch System water to such use. Water Company acknowledges and agrees that the County's potable needs take priority in case drought or other conditions or events reduce the total flows in the Ditch System below levels necessary to meet the demands of all users. Water Company further acknowledges that MLP has existing commitments for irrigation water delivery to the owner of the golf courses and related facilities at the Kapalua Resort and other third-party irrigation water users, and in case of drought or other shortage Water Company and such other users shall have equal priority for the Ditch System's available capacity (after satisfaction of the County's potable needs).

10. **Pipe Fee.** In consideration of, and an essential inducement to MLP's entry into this Agreement, Water Company agrees that MLP may continue to use the Non-Potable System to deliver Ditch System water to the Kapalua Resort golf courses, golf academy and related golf facilities. MLP shall pay Water Company a "pipe fee" for such use, calculated as follows: [To be negotiated].

11. **Condemnation.** If the Ditch System or any part thereof shall be taken or condemned by any authority having the power of eminent domain, MLP shall be solely entitled to all compensation and damages payable with respect to the taking of the Ditch System, but Water Company shall be entitled to seek compensation and damages from the condemning authority for the loss of Water Company's rights and interests under this Agreement, including inverse condemnation damages arising from the diminution in value of the Non-Potable System from the loss of rights to obtain water from the Ditch System.

12. **Defaults and Remedies.** If a party fails to perform any of the terms, covenants and agreements contained herein, if such failure continues for a period of thirty (30) days after written notice, then the non-defaulting party shall be entitled to all remedies available to it at law or equity, including by way of example and not in limitation thereof, the right to sue such person for specific performance, injunctive relief and/or monetary damages, including without limitation, reasonable attorneys' fees, costs and expenses. Amounts due hereunder shall bear interest from the date due until the date paid at the rate of 1% per month.

13. **Indemnity.** Water Company agrees to indemnify, defend and hold MLP and its officers, directors, agents and employees harmless from and against any and all claims, losses, liabilities, damages attorneys' fees and costs arising from or related to the delivery of water under this Agreement, except to the extent caused by MLP's proven (not merely alleged) gross negligence or willful misconduct.

14. **Attorney's Fees.** Should any party hereto employ an attorney for the purpose of enforcing or construing this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all reasonable attorneys' fees and all costs, whether incurred at the trial or appellate level, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and the cost of any bonds, whether taxable or not, and such reimbursement shall be included in any judgment, decree or final order issued in that proceeding.

15. **Notices.** All communications hereunder will be in writing and shall be deemed duly communicated when delivered in person, or four (4) days after being sent by certified or registered mail, postage prepaid, addressed to:

if to MLP, to:

Maui Land & Pineapple Company, Inc.
200 Village Road
Lahaina, Hawaii 96761
Attention: President

if to Water Company, to:

16. **Assignment.** Except for an assignment made by Water Company in connection with the transfer by Water Company of the Non-Potable System, Water Company may not assign any rights hereunder without the prior written consent of MLP, which consent may be withheld in MLP's sole discretion. Except for an assignment made by MLP in connection with the transfer of the Ditch System subject to the terms and conditions of this Agreement, or to an affiliate or subsidiary of MLP that operates the Ditch System, MLP may not assign any rights hereunder without the prior written consent of Water Company, which consent may be withheld by Water Company in its sole discretion.

17. **Binding Effect.** This Agreement shall be binding on, and shall inure to the benefit of, the parties and their successors and permitted assigns.

18. **Entire Agreement.** This Agreement is the entire agreement between the parties with respect to the delivery of non-potable water to Water Company and supersedes all prior agreements, correspondence and negotiations.

19. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original; such counterparts shall together constitute but one agreement. A facsimile copy of a signature shall constitute an original signature for purposes of the execution of this Agreement.

20. **Amendment.** No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

DATED: _____, 2019.

**MAUI LAND & PINEAPPLE COMPANY,
INC.**

By _____
Name:
Its:

MLP

By _____
Name:
Its:

Water Company

EXHIBIT A - MAP OF DELIVERY POINTS TO THE WATER COMPANY'S NON-POTABLE SYSTEM [TO BE ATTACHED]

EXHIBIT E

AGREEMENT FOR WATER DELIVERY (WELL WATER)

THIS AGREEMENT ("Agreement") is made and entered into on this _____ day of _____, 2019 ("Effective Date"), by and between **MAUI LAND & PINEAPPLE COMPANY, INC.**, a Hawaii corporation, whose address is P. O. Box 187, Kahului, Hawaii 96733, hereinafter called "MLP", and [_____ **WATER COMPANY**, a _____ corporation], whose address is _____, hereinafter called "Water Company".

R E C I T A L S:

- A. MLP is the owner of the Kapalua No. 1, 2 & 3 wells shown on the map attached hereto as Exhibit A ("Wells").
- B. Water Company is a regulated public utility company.
- C. Concurrently herewith, Water Company has acquired from MLP a potable water distribution system (the "Potable System") that Water Company will use to serve consumers within its designated service area at the Kapalua Resort at Kapalua, Maui, Hawaii (the "Service Area").
- D. The parties desire to enter into this Agreement to formalize and set forth the terms and conditions upon which MLP will provide water from its Wells for Water Company's use and distribution via the Potable System.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Delivery of Water; Delivery Points.** Subject to the terms and conditions herein, MLP does hereby undertake and agree to deliver water from the Wells to Water Company. MLP shall deliver water to the Water Company at the delivery points shown on the map attached as Exhibit A, or such other locations as the parties may mutually agree to from time to time (each a "Delivery Point"). Water Company shall not without MLP's prior approval draw more than 1.0 million gallons per day ("MGD") of water from the Wells in the aggregate.

2. **Water Delivery Charges.** Water Company will pay to MLP for all water delivered to Water Company at the following initial rates: (a) for total draws of water from the Wells in any calendar month between zero and 45 million gallons, \$2.59 per thousand gallons; (b) for total draws of water from the Wells in any calendar month between 45 million gallons and 60 million gallons (if permitted), \$3.12 per thousand gallons; and (c) for total draws of water from the Wells in any calendar month in excess of 60 million gallons (if permitted), \$3.63 per thousand gallons; all plus the Hawaii general excise thereon, payable monthly in arrears (or such other time periods as may be mutually agreed upon by the parties in writing). Payments for each calendar month, or portion thereof, shall be due and payable no later than the 10th calendar day of the following month. On the third anniversary of the date of this Agreement, and each subsequent third anniversary, the rates then in effect shall be increased by a percentage equal to the percentage increase over the preceding twelve months in the Consumer Price Index for All Urban Consumers (CPI-U) for Honolulu published by the U.S. Department of Labor – Bureau of Labor Statistics (1982-84=100) ("CPI"); provided that if such index is discontinued MLP shall

have the right to reasonably designate an alternative index of inflation, provided that the adjusted rate shall never be less than the rate payable for the immediately preceding period. Water Company shall pay to MLP together with each payment required hereunder which is subject to the State of Hawaii general excise tax on gross income, as it may be amended from time to time, or any successor or similar tax, an amount which, when added to such payment (currently 4.166% of each such payment), shall yield to MLP, after deduction of all such tax payable by MLP with respect to all such payments, a net amount equal to that which MLP would have realized from such payments had no such tax been imposed.

3. **Water Meters.** Water Company shall, at its own expense, install and maintain suitable meters or gauges at accessible locations at each Delivery Point to assure an accurate and documented measurement of all water delivered to the Water Company. Together with each monthly payment under this Agreement, Water Company shall provide to MLP an accurate and complete written report of all water delivered at each Delivery Point. Representatives of MLP shall have access to such meters and all records of meter readings at all reasonable times for the purpose of checking the same and verifying Water Company's reports.

4. **Term.** The term of this Agreement commences on the date of this Agreement and terminates on the 20th anniversary of such date, whereupon this Agreement shall automatically renew for successive 10-year terms unless terminated by mutual agreement of the parties. Notwithstanding the foregoing, MLP's obligation to deliver water pursuant to this Agreement shall terminate if Water Company permanently ceases operation of the Potable System, proposes to dedicate the Potable System to the County of Maui or other governmental entity, or develops new wells adequate to meet Water Company's service obligations.

5. **Limits on Use.** Water delivered pursuant to this Agreement shall be used only within the Service Area and may not be transmitted to or used at any lands outside of the Service Area.

6. **Seller's Warranties, Representations & Covenants.** MLP warrants and represents to Water Company (a) that MLP is the owner in fee simple of the Wells, and (b) that MLP currently holds, and will use commercially reasonable efforts to at all times maintain, all permits and approvals required by law for the operation of the Wells, including those required by the Commission on Water Resource Management of the State of Hawaii and the County of Maui. Except as set forth throughout this Agreement, MLP makes no warranties, express or implied, as to the Wells, the quantity or quality of Wells water available to Water Company, or any other matters. Water Company accepts the water delivered under this agreement "as is" and Water Company shall be solely responsible for any treatment necessary to render such water useable for Water Company's intended uses.

7. **Wells Maintenance.** MLP will exercise commercially reasonable efforts to manage, repair and maintain the Wells, their pumps, and the transmission lines from the Wells to the Delivery Points in condition adequate for the reliable delivery of water to the Potable System in accordance with this Agreement.

8. **Force Majeure.** Water Company and MLP agree and understand that the ability of MLP and Water Company to perform their respective obligations under this Agreement are made expressly subject to earthquake, hurricanes, drought, landslides, casualty to the Wells, or other natural disasters or events which render the Wells temporarily or permanently inoperable, actions of the federal, state and county governments or agencies thereof, including without limitation enactment or enforcement

of laws or governmental regulations, strikes, lock-outs, unavailability of labor or materials, wars, insurrections, rebellions, civil disorder, declaration of national emergencies, acts of God, or other causes beyond MLP's and/or Water Company's respective control. Neither party shall have any liability for failure or inability to perform its obligations hereunder to the extent such failure or inability is caused by any such cause or event.

9. **Condemnation.** If the Wells or any part thereof shall be taken or condemned by any authority having the power of eminent domain, MLP shall be solely entitled to all compensation and damages payable with respect to the taking of the Wells, but Water Company shall be entitled to seek compensation and damages from the condemning authority for the loss of Water Company's rights and interests under this Agreement, including inverse condemnation damages arising from the diminution in value of the Potable System from the loss of rights to obtain water from the Wells.

10. **Defaults and Remedies.** If a party fails to perform any of the terms, covenants and agreements contained herein, if such failure continues for a period of thirty (30) days after written notice, then the non-defaulting party shall be entitled to all remedies available to it at law or equity, including by way of example and not in limitation thereof, the right to sue such person for specific performance, injunctive relief and/or monetary damages, including without limitation, reasonable attorneys' fees, costs and expenses. Amounts due hereunder shall bear interest from the date due until the date paid at the rate of 1% per month.

11. **Indemnity.** Water Company agrees to indemnify, defend and hold MLP and its officers, directors, agents and employees harmless from and against any and all claims, losses, liabilities, damages attorneys' fees and costs arising from or related to the delivery of water under this Agreement, except to the extent caused by MLP's proven (not merely alleged) gross negligence or willful misconduct.

12. **Attorney's Fees.** Should any party hereto employ an attorney for the purpose of enforcing or construing this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all reasonable attorneys' fees and all costs, whether incurred at the trial or appellate level, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and the cost of any bonds, whether taxable or not, and such reimbursement shall be included in any judgment, decree or final order issued in that proceeding.

13. **Notices.** All communications hereunder will be in writing and shall be deemed duly communicated when delivered in person, or four (4) days after being sent by certified or registered mail, postage prepaid, addressed to:

if to MLP, to:

Maui Land & Pineapple Company, Inc.
200 Village Road
Lahaina, Hawaii 96761
Attention: President

if to Water Company, to:

14. **Assignment.** Except for an assignment made by Water Company in connection with the transfer by Water Company of the Potable System to a transferee other than the County of Maui or another governmental entity, Water Company may not assign any rights hereunder without the prior written consent of MLP, which consent may be withheld in MLP's sole discretion. Except for an assignment made by MLP in connection with the transfer of the Wells subject to the terms and conditions of this Agreement, or to an affiliate or subsidiary of MLP that operates the Wells, MLP may not assign any rights hereunder without the prior written consent of Water Company, which consent may be withheld by Water Company in its sole discretion.

15. **Binding Effect.** This Agreement shall be binding on, and shall inure to the benefit of, the parties and their successors and permitted assigns.

16. **Entire Agreement.** This Agreement is the entire agreement between the parties with respect to the delivery of Well water to Water Company and supersedes all prior agreements, correspondence and negotiations.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original; such counterparts shall together constitute but one agreement. A facsimile copy of a signature shall constitute an original signature for purposes of the execution of this Agreement.

18. **Amendment.** No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

DATED: _____, 2019.

**MAUI LAND & PINEAPPLE COMPANY,
INC.**

By _____

Name:

Its:

MLP

By _____

Name:

Its:

Water Company

**EXHIBIT A - MAP OF THE WELLS AND DELIVERY POINTS TO THE WATER COMPANY'S
POTABLE SYSTEM [TO BE ATTACHED]**

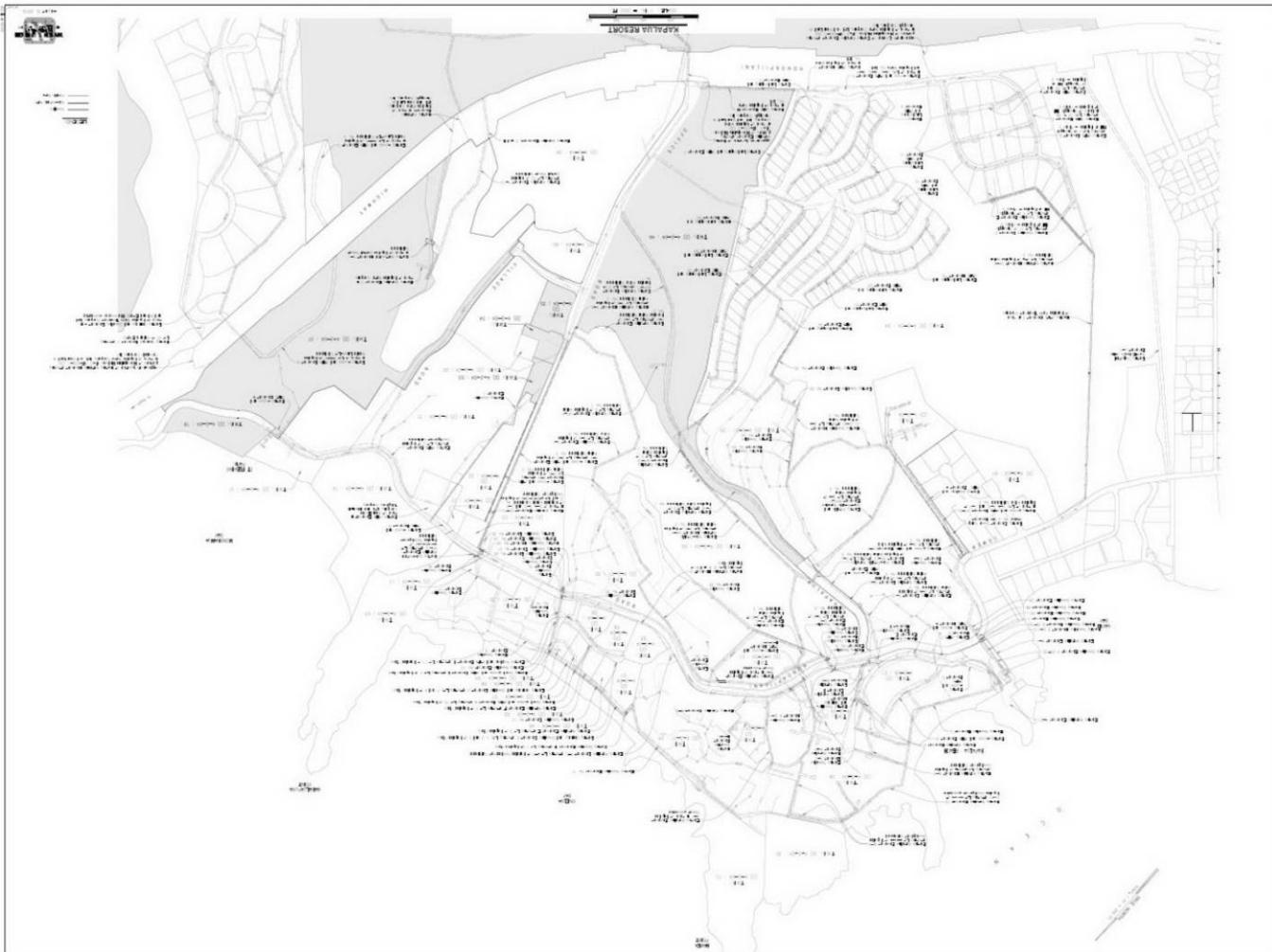


EXHIBIT F-2
MAUKA EASEMENT MAP
PREPARED BY WARREN S. UNEMORI ENGINEERING, INC.

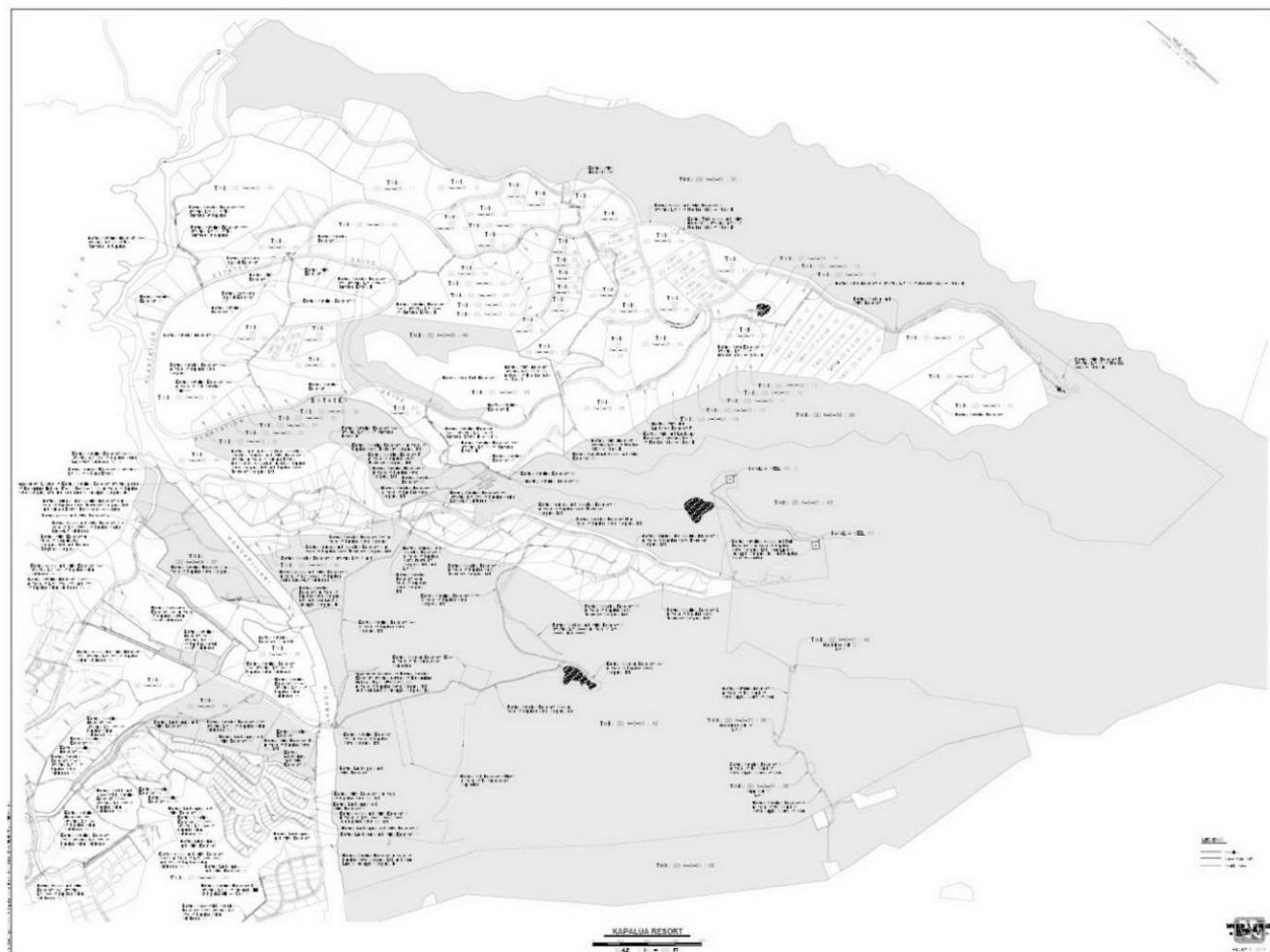


EXHIBIT G
[RESERVED]

EXHIBIT H

ASSIGNMENT AND ASSUMPTION OF WASTEWATER TREATMENT AGREEMENT

ASSIGNMENT AND ASSUMPTION OF SEWER AGREEMENT AND EXPANSION AGREEMENT

This Assignment and Assumption of Sewer Agreement and Expansion Agreement (this "Assignment") is made as of _____, 2019 (the "Effective Date"), by and between MAUI LAND & PINEAPPLE COMPANY, INC. ("ML&P"), a Hawaii corporation and KAPALUA WASTE TREATMENT COMPANY, LTD. ("KWTC"), a Hawaii corporation (ML&P and KWTC shall collectively be referred to herein as the "Assignor"), and HAWAII WATER SERVICE COMPANY, INC. a Hawaii limited liability company, doing business as "Kapalua Waste Treatment Company" ("Assignee").

Recitals:

(a) Assignor and the County of Maui, a political subdivision of the State of Hawaii (the "County"), are parties to that certain Sewer Agreement dated April 23, 1987 (the "Sewer Agreement"), which sets forth the terms and conditions upon which the County will accept wastewater from Assignor for treatment at the County's Lahaina Wastewater Treatment Plant ("Lahaina Facility"). A copy of the Sewer Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.

(b) Assignor and the County also entered into that certain Lahaina Wastewater Reclamation Facility Expansion Agreement dated January 20, 1994 (the "Expansion Agreement") which, among other things, increased the amount of wastewater that KWTC could dispose at the County's Lahaina Facility from 300,000 gallons per day (average daily flow) to 680,000 gallons per day (average daily flow). A copy of the Expansion Agreement is attached hereto as **Exhibit B** and incorporated herein by reference.

(c) Pursuant to that certain Asset Purchase Agreement having an effective date of December 20, 2019, by and between Assignor and Assignee (the "Purchase Agreement"), Assignor has agreed to assign to Assignee the Sewer Agreement and the Expansion Agreement pursuant to the terms and conditions as set forth below.

Assignments:

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Assignment.** Effective as of the Effective Date, Assignor hereby assigns, sells, transfers and sets over to Assignee all of Assignor's right, title, and interest in and to the Sewer Agreement and Expansion Agreement, to have and to hold the same unto Assignee and its successors and assigns.

2. **Assumption.** Effective as of the Effective Date, Assignee hereby accepts the above assignment of the Sewer Agreement and Expansion Agreement, and hereby assumes

and agrees to perform the duties and obligations of Assignor under the Sewer Agreement and Expansion Agreement, but only to the extent first arising on or after the Effective Date. Any, liability or obligation arising out of any breach of the Sewer Agreement or Expansion Agreement by Assignor or any act or omission of Assignor that occurred prior to the Effective Date shall remain the sole responsibility of Assignor. Any claim, liability or obligation arising out of any breach of the Sewer Agreement or Expansion Agreement by Assignee or any act or omission of Assignee, to the extent occurring on or after the Effective Date, shall be the sole responsibility of Assignee.

3. Further Actions. Each of the parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of the other party hereto, such further instruments of transfer and assignment and to take such other action as such other party may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Assignment.

4. Successors and Assigns. This Assignment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

5. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. The submission of a signature page transmitted by facsimile or similar electronic transmission facility (e.g., e-mail) shall be considered as an "original" signature page for purposes of this Assignment so long as the original signature page is thereafter transmitted by mail or by other delivery service and the original signature page is substituted for the facsimile signature page in the original and duplicate originals of this Assignment.

[Signatures are on following page.]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the Effective Date.

MAUI LAND & PINEAPPLE COMPANY, INC,
a Hawaii corporation

By _____
Name:
Its:

**KAPALUA WASTE TREATMENT
COMPANY, LTD.,** a Hawaii corporation

By _____
Name:
Its:

Assignor

HAWAII WATER SERVICE COMPANY, INC.,
a Hawaii limited liability company

By _____
Name:
Its:

Assignee

ACKNOWLEDGED ON THIS ____ DAY OF
_____, 20____.

**COUNTY OF MAUI, through its Department
Of Environmental Management**

By _____
Name: _____
Title: _____

EXHIBIT I
[RESERVED]

EXHIBIT J

PURCHASER'S PROPOSED LOCATION FOR NEW OFFICE AND STORAGE AREA



EXHIBIT K
RESERVED

EXHIBIT L

[RESERVED]

EXHIBIT M

**FORM OF ASSIGNMENT AND ASSUMPTION OF
CUSTOMER AGREEMENTS AND
WILL SERVE LETTERS**

Seller to prepare form within 15 days for Purchaser's review and approval.

EXHIBIT N

LIST OF CUSTOMER AGREEMENTS AND WILL SERVE LETTERS

AGREEMENT	CUSTOMER	SERVICE
Agreement for Water Delivery (Kapalua Bay Golf Course) dated September 30, 2010	TY Management Corporation	Non-potable water
Water Service Connection Agreement effective January 31, 2012, amended by First Amendment of Water Service Agreement (Engel) dated April 22, 2014	William E. Engel and Marla A. Engel	Potable water
KWC Water Transmission Agreement dated September 30, 2010	TY Management Corporation	Backup non-potable water storage and transmission system
Agreement for Water Delivery (Kapalua Plantation Golf Course) dated March 27, 2009	TY Management Corporation	Non-potable water
Agreement for Water Delivery Between Maui Pineapple Company, Ltd. And Kapalua Land Company, Ltd., dated June 21, 2006, amended by Amendment to Agreement for Water Delivery Between Maui Pineapple Company, Ltd., and Kapalua Land Company, Ltd., dated November 7, 2007, (assigned by Maui Pineapple Company, Ltd. To Maui Land & Pineapple Company, Inc. by Assignment of Agreement for Water Delivery dated December 30, 2007), and Second Amendment to Agreement for Water Delivery Between Maui Land & Pineapple Company, Inc. and Kapalua Land Company, Ltd., dated March 27, 2009.	Kapalua Land Company, Ltd.	Non-potable water
Will Serve Commitment for Kapalua Bay Golf Course, Lahaina, Maui, TMK (2) 4-2-004-24, 43 & 36 dated September 30, 2010	TY Management Corporation	Wastewater disposal services
Memorandum of KWC Water Transmission Agreement Kapalua Bay Golf Course and Golf Academy dated September 30, 2010	TY Management Corporation	Non-potable water lines, infrastructure and easements
Will Serve Commitment KWC for Kapalua Bay Golf Course and Golf Academy, Lahaina, Maui, TMK (2) 4-2-004-24, 43, 36 & 48 dated September 30, 2010	TY Management Corporation	Potable and Non-potable water
Will Serve Commitment KWT for Kapalua Bay Golf Course and Golf Academy, Lahaina, Maui, TMK (2) 4-2-004-24, 43 & 36 dated September 30, 2010	TY Management Corporation	Wastewater
Will Serve Commitment KWC for Lot 1C-1-A, Kapalua Central Resort Subdivision, Lahaina, Maui, dated 2019	TY Management Corporation	Potable and Non-potable water

Will Serve Commitment KWT for Lot 1C-1-A, Kapalua Central Resort Subdivision, Lahaina, Maui, dated 2019	TY Management Corporation	Wastewater
Kapalua Wastewater Allocation for Kapalua Bay Residences, Lahaina, Maui, TMK (2)4-2-004-027	KWT	Wastewater allocation
Will Serve Commitment KWC for Kapalua Site 6.0, Lahaina, Maui, TMK (2)4-2-004-048 dated 2019	Ensign Peak Investment LLC	Potable and Non- potable water
Will Serve Commitment for Kapalua Plantation Golf Course, Lahaina, Maui, TMK (2) 4-2-005-37, 38, 39, 43, 44, 45, 47 &49 dated March 27, 2009freser	TY Management Corporation	Potable and Non- potable water

EXHIBIT 4.3(a)

PURCHASER'S STANDARD GRANT OF EASEMENT FORM

LAND COURT REGULAR SYSTEM
(AREA ABOVE RESERVED FOR RECORDING INFORMATION)

After Recordation, Return by Mail or Pick-up (Phone #: _____) to:

**Hawaii Water Service Company, Inc.
P. O. Box 384809
Waikoloa, Hawaii 96738**

DOCUMENT CONTAINS ____ PAGES

TITLE OF DOCUMENT: **GRANT OF EASEMENT**

PARTIES TO DOCUMENT:

GRANTOR:

GRANTEE: **HAWAII WATER SERVICE COMPANY, INC.**
P.O. Box 384809
Waikoloa, Hawai'i 96738

AFFECTS TAX MAP KEY:

GRANT OF EASEMENT
([INSERT HAWAII ENTITY NAME])

THIS GRANT OF EASEMENT is made on _____, by and between
whose mailing address is _____
("Grantor") and HAWAI'I WATER COMPANY, INC., whose principal place of business is 68-1845
Waikoloa Road, Waikoloa, Hawai'i 96738 and mailing address is P.O. Box 384809, Waikoloa, Hawai'i
96738 ("Grantee").

W I T N E S S E T H:

THAT Grantor, in consideration of the sum of Ten Dollars (\$10.00) to it paid by Grantee, the receipt of which is hereby acknowledged, and the covenants and agreements herein contained and on the part of Grantee, its successors and assigns, to be observed and performed, does hereby grant unto Grantee, its successors and assigns, a right in the nature of a perpetual, non-exclusive easement for the construction, installation, reinstallation, operation, use, maintenance, replacement, improvement, repair and removal of water pipelines, meters, valves, hydrants, pumps and other appurtenances and related equipment necessary or convenient to Grantee's business as a public water utility (said water pipelines, meters, valves, hydrants, pumps and other appurtenances and related equipment hereinafter referred to as the "Facilities") over, under, upon, across, and through that certain Easement ___, more particularly described on **Exhibit A** attached hereto and shown on **Exhibit A** (the "Easement Area"). The Easement Area is located on those certain premises situate at _____, District of _____, Island and County of _____, State of Hawai'i, described in **Exhibit B** attached hereto (the "Property");

TOGETHER, ALSO, with the right of ingress and egress to and from the Easement Area over the land of Grantor for all purposes in connection with the exercise of the rights hereby granted;

TO HAVE AND TO HOLD the same unto Grantee, its successors and assigns, forever.

AND in consideration of the rights hereby granted and the covenants and agreements herein contained, Grantee hereby agrees to keep all Facilities of Grantee in the Easement Area in good condition and repair, subject to ordinary wear and tear. In the event Grantee damages the surface of the Easement Area or improvements thereon, permitted by this Grant of Easement and installed by or for Grantor, Grantee shall, at Grantee's cost, repair the damage caused by Grantee and restore the surface of the Easement Area as nearly as is reasonably possible to the condition in which such surface area and improvements existed immediately prior to such damage by Grantee. In no event shall Grantee be obligated to repair damage caused by activities or causes other than the activities of Grantee.

IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED by and between the parties hereto:

(A) That any Facilities constructed, installed, reinstalled, maintained, repaired or removed by Grantee within the Easement Area shall be and remain the property of Grantee.

(B) That Grantee shall have no obligation to relocate any of the Facilities constructed, maintained or installed within the Easement Area. In the event that development plans of Grantor or Grantor's heirs, personal representatives, successors and assigns require the relocation of any portion of the Facilities, Grantor may relocate the Facilities provided that (a) Grantor obtains Grantee's prior written approval of Grantor's plans and specifications for such relocation which consent may be withheld in Grantee's sole discretion; (b) Grantee shall have the right to inspect and approve the relocated Facilities; (c) Grantor shall bear all costs and expenses of such relocation, including, without limitation, all attorneys' fees and other costs associated with amending this Grant of Easement and/or any necessary governmental approvals; and (d) Grantor shall perform all such relocation work without causing any material interruption of or interference with Grantee's services and operations. Alternatively, upon prior written agreement of Grantee and Grantor, Grantee may be permitted to relocate the Facilities to the location specified by Grantor, and Grantor shall reimburse Grantee for all costs and expenses of such relocation. In the event of any such relocation, Grantor and Grantee shall execute such documents as are reasonably necessary to dedicate the relocated Facilities to Grantee and to amend this Grant of Easement to cover the relocated Facilities.

(C) That Grantor shall not engage in activities that damage or are reasonably likely to damage, Grantee's Facilities. Without limiting the foregoing, Grantor shall not perform or permit any digging, tunneling or other forms of construction activity within or on the Easement Area which may disturb the compaction of the soil or unearth Grantee's Facilities located within the Easement Area or endanger the lateral support to such Facilities.

(D) That Grantor shall not at any time during the continuance of this Grant of Easement erect any building foundation of any kind below the surface of the land within the Easement Area or at any time erect any building or structure of any kind, other than roads, walks, curbs, driveways, fences (but not walls with footings or foundations) or appurtenances thereof, on the surface of the Easement Area. The owner of a fence in the Easement Area shall be solely responsible for the removal and replacement of such fence if removal is required in order for Grantee to exercise any of its rights under this Grant of Easement. If the owner of a fence fails to remove the fence at the request of Grantee, Grantee shall have the right to remove the fence and recover the cost of such removal from the owner. Only lawn grass shall be planted within the Easement Area and no tree shall be planted within twenty (20) feet of the Facilities. Grantee shall have the right to require Grantor and its successor and assigns to remove any tree that is planted on property owned by Grantor and within twenty (20) feet of the Facilities, and Grantor shall pay for repairs to the Facilities if such tree damages the Facilities.

(E) That if at any time the Easement Area, or any part thereof, shall be condemned or taken by any authority exercising the power of eminent domain, Grantee shall have the right to claim and recover from the condemning authority, but not from Grantor, such compensation as is payable for the easement and right of way for the Facilities of Grantee used in connection with the water system, which shall be payable to Grantee. All other compensation and damages payable for or on account of the Easement Area so taken or condemned shall be paid to and be the property of Grantor.

(F) Grantee shall have the right to assign its rights herein to any corporation or other entity which controls, is controlled by, or is under common control with Grantee, or to any corporation or other entity resulting from a merger, sale, reorganization or consolidation with Grantee, or to any person or entity which acquires a controlling interest in Grantee's stock, either by private sale or as the

result of a public stock offering, or substantially all of the assets of Grantee as a going concern without obtaining Grantor's written consent.

(G) That Grantor covenants with Grantee that Grantor is the fee simple owner of the Property and that Grantor has good right and title to grant the Easement Area, and that Grantor will and its successors and assigns shall warrant and defend the same unto Grantee, its successors and assigns, forever, against the lawful claims and demands of all persons.

(H) The term "Grantor," or any pronouns used in place thereof, shall mean and include Grantor and its successors and assigns, and the term "Grantee," or any pronouns used in place thereof, shall mean and include Grantee and its successors and assigns. When referring to the parties hereto, reference herein to the singular shall include the plural, the plural the singular, and reference to any gender shall include either or both of the other genders.

(I) The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument the day and year first above written.

[INSERT NAME OF GRANTOR]

By _____
Name:
Its _____

[INSERT HAWAII ENTITY NAME],
a Hawai'i corporation

By _____
Name:
Its General Manager

STATE OF HAWAI'I)
) SS.
COUNTY OF HAWAI'I)

On this _____ day of _____, 20_____, before me personally appeared
_____, to me known to be the person described in and who executed the
foregoing instrument and acknowledged that _____ executed the same as
_____ 's free act and deed, and if applicable, in the capacity shown, having been duly
authorized to execute such instrument in such capacity.

Notary Public, State of Hawai'i

Print name

My commission expires: _____

NOTARY CERTIFICATION	
Doc.	
Date:	_____
Notary	_____
Name:	_____
Doc.	
Description:	_____

Notary Signature	Date

STATE OF HAWAI'I)
) SS.
COUNTY OF HAWAI'I)

On this _____ day of _____, 20_____, before me personally appeared
_____, to me known to be the person described in and who executed the
foregoing instrument and acknowledged that _____ executed the same as
_____ 's free act and deed, and if applicable, in the capacity shown, having been duly
authorized to execute such instrument in such capacity.

Notary Public, State of Hawai'i

Print name

My commission expires: _____

NOTARY CERTIFICATION	
Doc.	
Date:	_____
Notary	_____
Name:	_____
Doc.	
Description:	_____

Notary Signature	Date

EXHIBIT A

DESCRIPTION OF THE EASEMENT AREA AND MAP OF THE EASEMENT AREA

EXHIBIT B

DESCRIPTION OF THE PROPERTY

EXHIBIT 7.1

SELLER'S CURRENT ORGANIZATIONAL DOCUMENTS

To be delivered within five days.

**FIRST AMENDMENT
TO
ASSET PURCHASE AGREEMENT**

THIS FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT (“First Amendment”) is made effective as of May 19, 2020, by and between HAWAII WATER SERVICE COMPANY, INC., a Hawaii corporation or its designee entity (“Purchaser”), KAPALUA WATER COMPANY, LTD., a Hawaii corporation (“KWC”), KAPALUA WASTE TREATMENT COMPANY, LTD., a Hawaii corporation (“KWTC”) (KWC and KWTC, jointly and severally, “Seller”), and MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation (“MLP”) (collectively “Parties”).

Recitals

A. The Parties entered into that certain Asset Purchase Agreement dated December 20, 2019 (the “Agreement”). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

B. Pursuant to the Agreement, the Parties have negotiated and agreed to certain forms of documents so required to be mutually agreed to during the Due Diligence Period as described in Sections 1 through 5 of this Amendment (the “Agreed Forms”).

C. The parties desire to amend the Agreement to document the Agreed Forms, make various other amendments and agreements and to ratify the Agreement.

NOW THEREFORE, in consideration of the terms and conditions herein, the Parties agree as follows:

1. Non-Potable Water Delivery Agreement. Pursuant to Section 3.4 of the Agreement, the Parties have agreed to the form of Agreement for Water Delivery (Non-Potable), attached hereto as Exhibit 1 (“Non-Potable WDA”).

2. Potable Water Delivery Agreement. Pursuant to Section 3.5 of the Agreement, the Parties have agreed to the form of Agreement for Water Delivery (Well Water), attached hereto as Exhibit 2 (“Potable WDA”). The Non-Potable WDA and Potable WDA are together referred to herein as the “Water Delivery Agreements”.

3. Well Operation and Maintenance Service Agreement. Pursuant to Section 3.8 of the Agreement, the Parties have agreed to the form of the O&M Agreement for Wells, attached hereto as Exhibit 3 (“Wells OMA”).

4. Ditch System Operation and Maintenance Service Agreement. Pursuant to Section 3.9 of the Agreement, the Parties have agreed to the form of the O&M Agreement for Ditch System, attached hereto as Exhibit 4 (“Ditch OMA”). The Wells OMA and Ditch OMA are together referred to herein as the “O&M Agreements”.

5. Form of Limited Warranty Deed. Pursuant to Section 6.2(a)(2), the Parties have agreed to the form of Limited Warranty Deed attached hereto as Exhibit 5.

6. Easement Matters. Section 4.3 of the Agreement shall be amended and restated in its entirety as follows:

4.3 Pre-Closing and Post-Closing Easements. Seller, Purchaser and MLP agree as follows:

(a) Existing Easements. Purchaser acknowledges that Purchaser has had a full opportunity to investigate all of the easements to be assigned to Purchaser at Closing that are listed on Schedule 4.3(a) attached hereto (“Existing Easements”) and Purchaser accepts the Existing Easements AS-IS.

(b) Missing Easements. As soon as reasonably practical, and in any event prior to Closing, MLP shall at its expense secure and record easements for any existing KWC or KWTC assets, facilities and Systems located in the properties listed on Schedule 4.3(b) attached hereto that are not covered by existing appropriate recorded grants of easements (“Missing Easements”).

(c) Further Investigation of Easements and Actions of MLP and Seller. Prior to and after Closing, Purchaser may, at its expense and with MLP and Seller’s cooperation, conduct such additional investigations of KWC and KWTC’s easements as it deems appropriate and if Purchaser identifies any easements that are missing or not properly aligned MLP and Seller shall cooperate reasonably upon Purchaser’s request to document any easements or amendments, at no material cost to MLP or Seller. The obligations of MLP and Seller under this Section 4.3(c) shall survive Closing and completion of such documentation shall not be a condition of Closing. At Closing, Seller and MLP shall assign to Purchaser all of the Existing Easements and any additional easements created pursuant Sections 4.3(b) and 4.3(c) prior to Closing. For avoidance of doubt, the right of Purchaser to conduct additional investigations under this Section does not give Purchaser any further right or option to terminate the Agreement.

(d) Post-closing Missing Easement Actions Deposit. In consideration of the commitments in this Section 4.3, at Closing Purchaser may elect to instruct Escrow to retain from the Purchase Price, a sum equal to the estimated sum necessary to pursue, process, grant and record any Missing Easements not granted prior to Closing in the amount set forth in the following sentence (“Post-closing Easement Deposit”). For purposes of establishing the Post-closing Easement Deposit, Seller and Purchaser agree that Escrow shall retain \$25,000 from the Purchase Price otherwise payable to Seller as security for Seller and MLP’s obligations to Purchaser to complete each grant of the seven (7) Missing Easements listed in Schedule 4.3(d) attached hereto, i.e., \$25,000 for each of the seven (7) Missing Easements listed on Schedule 4.3(d) not conveyed to Purchaser at Closing (the “Post-closing Easements”). Post-closing Easements shall not be deemed complete unless and until Seller or MLP have secured recorded grants of easement in form reasonable acceptable to Purchaser and for which Title Guaranty of Hawaii is willing to insure

Purchaser's title to the easements ("Insurable Easements"). When Seller or MLP complete each Post-Closing Easement, Escrow shall promptly disburse to Seller or MLP from the Easement Deposit the amount of \$25,000, less reasonable expenses of escrow, conveyance and recordation paid by Escrow with respect to the Post-Closing Easement in question. Seller and MLP agree that Seller and MLP shall exercise best efforts to obtain and record all Post-closing Easements or Assignments to Purchaser of the Post-closing Easements within twenty four (24) months of the Closing Date. Seller, MLP and Purchaser agree that if, despite such efforts on the part of Seller and MLP, Seller and MLP are still unable to obtain all of the Post-closing Easements twenty four (24) months following Closing, Purchaser shall have the right, following notice to Seller, to have Escrow disburse to Purchaser all the Post-closing Easement Deposit remaining for the Post-closing Easements which Seller or MLP have not then yet completed and Purchaser elects to pursue on its own. Seller and MLP shall thereafter be released from any further obligation to pursue the applicable Post-closing Easement(s) and Seller and MLP shall have no further obligation or liability with respect to each Post-closing Easement which were identified prior to Closing for which \$25,000 was paid to Purchaser except that Seller and MLP shall not be released with respect to their lands or lands of Seller, MLP or any of their respective owners, affiliates or related parties, and as to unrelated third-parties, Seller and MLP shall cooperate and assist Purchaser, including without limitation by exercise of any rights held by Seller or MLP to obtain or grant easements, unless commercially unreasonable.

(e) Good Faith Efforts to Provide all Easements. Notwithstanding the foregoing provisions of Sections 4.3, so as to minimize the need to pursue Post-closing Easements, Seller and MLP, jointly and severally, shall use good faith efforts to assign and provide to Purchaser at Closing all easements necessary to operate the Systems.

7. Agreement for Purchaser's Acquisition of New Office and Storage Area. The Parties acknowledge that the Agreement contemplated in Section 4.5 of the Agreement with respect to Purchaser's lease or purchase of a site for Purchaser's long-term use ("New Office Purchase Agreement") has not been documented at this time. The parties agree to negotiate such agreement as provided in Section 4.5 by August 30, 2020.

8. Bill of Sale. Pursuant to Section 6.2(a)(3) of the Agreement, the Parties have agreed to the form of Bill of Sale conveying Seller's non-real estate assets, together with any interest of MLP, Honolua Ridge LLC or Kapalua Land Company in non-real estate assets, including without limitation, the Systems, attached hereto as Exhibit 6. To the extent that any part of the System or Acquired Assets (including but not limited to equipment and fixtures) is not conveyed to Purchaser by another instrument delivered at Closing, the Bill of Sale shall also include such items.

9. Closing Certificates. Pursuant to Section 6.2(a)(16) and 6.2(b)(9) of the Agreement, the Parties have agreed to the forms of closing certificates attached here to as Exhibit 7 and Exhibit 8, respectively.

10. MLP Indemnity Regarding Subdivision Agreements and Private Water System Agreements. The Real Property is subject to certain (i) County of Maui Subdivision Agreements that are recorded in the Bureau of Conveyances of the State of Hawaii as Document Nos. 90-038761, 90-038762 and 90-042408 and (ii) Private Water System Agreements that are recorded in the Bureau of Conveyances of the State of Hawaii at Liber 23288, page 80 and as Document No. 91-023833 (the “Maui County Agreements”). MLP agrees that if at any time after Closing the County of Maui seeks to enforce any of the Maui County Agreements against Purchaser by virtue of Purchaser’s ownership of the Real Property, MLP shall indemnify, defend and hold Purchaser harmless against any such claims of the County of Maui. This indemnity shall not be subject to the time limitations set forth in Section 11.8(c).

11. Purchaser’s Waiver of Due Diligence Termination Right. Purchaser hereby waives its right to terminate the Agreement under Section 3.4 of the Agreement.

12. Assigned Contracts. Section 1.1(i) of the Agreement is hereby amended and restated in its entirety to read as follows:

(i) the contracts relating to the Business set forth in Exhibit N (“Assigned Contracts”), books, files, financial records, tax returns, customer information, and accounts, for the Business, excluding the Aqua O&M Agreements. Seller shall terminate the Aqua O&M Agreements prior to or at Closing. Except for the KWC and KWTC tariffs approved by the Commission and Assigned Contracts, Purchaser shall not be obligated to assume any other contracts or obligations of Seller at Closing. For avoidance of doubt, while Commission approval of Purchaser’s use of KWC’s and KWTC’s tariffs are a condition to Purchaser’s Closing obligations, after Closing, Purchaser shall have the right to modify rates and KWC’s and KWTC’s respective tariffs with the approval of the Commission.

The parties agree that Exhibit N attached to the original Agreement is replaced in its entirety with Exhibit N attached hereto and Seller and MLP jointly and severally represent and warrant the attached Exhibit N is true and complete and lists all of KWC’s and KWTC’s contractual obligations to customers of the Business, including without limitation, will-serve letters and similar arrangements.

13. Assignment of Contracts. Pursuant to Section 6.2(a)(4) of the Agreement, the Parties have agreed to the forms of Assignment and Assumption of Contracts attached hereto as Exhibit 9 that Seller will execute and deliver to Purchaser at Closing.

14. Assignment of Easements. Pursuant to Section 6.2(a)(4) of the Agreement, the Parties have agreed to the forms of Assignment and Assumption of Easements attached hereto as Exhibit 10 that Seller will execute and deliver to Purchaser at Closing to convey the Existing Easements.

15. Assignment of Intangible Rights of KWC and KWTC. Pursuant to Section 6.2(a)(4) of the Agreement, the Parties have agreed to the forms of Assignment and Assumption of Intangible Rights of KWC and KWTC attached hereto as Exhibit 11 that Seller will execute and deliver to Purchaser at Closing (“Assignment of Intangibles”).

16. Purchaser’s Closing Conditions. Section 9.1 of the Agreement is hereby amended and restated to read in its entirety as follows:

9.1. Conditions to Purchaser's Obligation. All obligations of Purchaser hereunder are subject at the option of Purchaser, to the fulfillment of each of the following conditions at or prior to the Closing, and Seller and MLP shall exert their best efforts to cause such condition to be so fulfilled:

- (a) All representations and warranties of Seller and MLP contained herein shall be true and correct in all material respects on the Effective Date and as of the Closing Date (and said representations and warranties shall survive Closing) except for changes in the ordinary course of business;
- (b) All covenants, agreements and obligations required by the terms of this Agreement to be performed by Seller or MLP at or before the Closing shall have been duly and properly performed in all material respects and all deliverables to be provided by Seller and MLP at Closing as described in Section 6.2(a) or elsewhere in this Agreement shall have been duly executed and delivered;
- (c) No action, suit or proceeding shall be pending or threatened before any court, governmental agency or authority to enjoin, restrain or prohibit this Agreement or the consummation of the Contemplated Transaction or threaten the Acquired Assets in a material manner;
- (d) No Material Adverse Change shall have occurred with respect to the operation, condition, finances or prospects of the Business or the Acquired Assets since the Effective Date;
- (e) The Commission shall have duly and properly approved by way of written nonappealable order in form and content with all terms and conditions acceptable to Purchaser in its sole and absolute discretion the transfer of the Acquired Assets and the Contemplated Transaction, including without limitation (i) the KWC Water Transmission Agreement dated September 30, 2010 between KWC and TY Management Corporation, (ii) the Water Delivery Agreements, (iii) the O&M Agreements, and (iv) the ability of Purchaser to serve the present and future service areas as contemplated by the Agreement.; provided, however, if the Commission approves the acquisition of the Acquired Assets but disapproves of any of the agreements in clauses (i)-(iii) above, Purchaser shall have the option to terminate this Agreement.

- (f) Purchaser shall have obtained State of Hawaii Department of Health authorization for Purchaser to operate the Systems and such authorization shall be in full force and effect on the Closing;
- (g) That the transfers of the Acquired Assets, except for such Post-closing Easements that may be completed after Closing as provided in Section 4.3, concurrently close;
- (h) That all material agreements, consents, and approvals of any persons necessary to the consummation of the Contemplated Transaction, or otherwise pertaining to the matters covered by it, shall have been obtained by Seller or Purchaser as the case may be, and delivered to the Parties; including without limitation, approval of the Commission and the consent of the County of Maui to the Assignment and Assumption of Wastewater Agreement (or in lieu thereof evidence to Purchaser's sole satisfaction that the County of Maui's consent is not required);
- (j) that Purchaser shall have received an irrevocable commitment from a title company of its choice for an ALTA Extended Owner's policy of title insurance for the Real Property and Easements to be issued to and acceptable to Purchaser, including such endorsements and in such amounts as Purchaser may reasonably require, effective as of the Closing Date;
- (i) MLP and Purchaser shall have agreed on the terms and conditions of the New Office Purchase Agreement by August 30, 2020.

17. Seller's Conditions to Closing. Section 9.2 of the Agreement is amended and restated in its entirety to read as follows:

9.2. Conditions to Seller's Obligation. All obligations of Seller hereunder are subject at the option of Seller, to the fulfillment of each of the following conditions at or prior to the Closing, and Purchaser shall exert its best efforts to cause such condition to be so fulfilled:

- (a) All representations and warranties of Purchaser contained herein shall be true and correct in all material respects on the Effective Date and as of the Closing Date (said representations and warranties to survive Closing);
- (b) All covenants, agreements and obligations required by the terms of this Agreement to be performed by Purchaser at or before the Closing shall have been duly and properly performed in all respects and all deliverables to be provided by Purchaser at Closing as described in Section 6.2(b) or elsewhere in this Agreement shall have been duly executed and delivered;
- (c) No action, suit or proceeding shall be pending or threatened before any court, governmental agency or authority to enjoin, restrain or prohibit this Agreement or the consummation of the Contemplated Transaction;

(d) That all material agreements, consents, and approvals of any persons necessary to the consummation of the Contemplated Transaction, or otherwise pertaining to the matters covered by it, shall have been obtained by Seller, and delivered to Purchaser.

(e) That approval for the transfer of the Acquired Assets and the Contemplated Transaction, including the ability of Purchaser to serve the Kapalua future expansion area, have been duly and properly obtained from the Commission in form and content acceptable to Seller in its discretion.

18. Termination. Section 10.1 of the Agreement is hereby amended and restated in its entirety as follows:

10.1. Termination. This Agreement may be terminated in the manner provided below, by written notice given by the party desiring to terminate to the other party:

(a) by mutual agreement of Purchaser and Seller at any time prior to the Closing;

(b) by either Seller or Purchaser at any time prior to the Closing if the other party is in default or breach (“Defaulting Party”) with respect to the due and timely performance of any of its covenants or agreements contained herein, or with respect to any of its representations, warranties or covenants, and such default is not timely cured by the Defaulting Party and has not been waived by the non-Defaulting Party;

(c) by either Seller or Purchaser if the conditions to such party's obligation to close have not all occurred and been satisfied on or before the Closing Date or if the satisfaction of any such condition is or becomes impossible, unless the failure results primarily from the party seeking termination breaching any representation, warranty, agreement, obligation, or covenant contained in this Agreement;

(d) by either party if approval for the transfer of the Acquired Assets and the Contemplated Transaction (including without limitation, each of the various agreements described in Section 9.1(e)) have not been duly and properly obtained from the Commission in form and content acceptable to Purchaser and Seller within 24 months of the date of this Agreement.

19. Survival and Indemnification. Section 11.8(a) shall be amended and restated to read in its entirety as follows:

(a) Subject to Section 7.20 and Section 8.6, all representations, warranties, covenants and obligations of the Parties in this Agreement and any other certificate or document delivered pursuant to this Agreement shall survive the Closing and the consummation of the Contemplated Transactions, subject to Section 11.8(c)-(d); provided, however, the provisions of Section 11.8(c)-(d) shall not apply to any covenant or obligation of any Party set forth in this

CONFIDENTIAL INFORMATION
DELETED PURSUANT TO
PROTECTIVE ORDER NO. _____

Agreement to be performed after the Closing, including without limitation, the obligations of MLP in Sections 4.3 (Post-closing Easements), 4.4 (Service Area), 11.9 (Regulatory Indemnity) and 12.19 (MLP Guaranty) but only to the extent MLP's Guaranty applies to Seller obligation that are not subject to the limitations in Section 11.8 (c) – (d).

20. Modification of Purchase Price Pursuant to Seller's Capital Expenditures.

The image consists of five horizontal bars arranged vertically. Each bar is black with a small white rectangular notch cut out at its left end. The length of each bar decreases progressively from top to bottom. The top bar is the longest, followed by the second, third, fifth, and finally the fourth bar which is the shortest.

Exhibit C to the Agreement shall be replaced in its entirety with Exhibit C attached to this Amendment

21. Regulatory Indemnity. A new Section 11.9 shall be added to the Agreement to read in its entirety as follows:

11.9. Regulatory Indemnity. Seller, MLP and their respective affiliates and their successors and assigns (“Seller Group”), jointly and severally agree to at all times indemnify, defend and hold harmless Purchaser Indemnitees from and against any and all claims, lawsuits, proceedings, actions, dockets, losses, liability, damages, sanctions, fines, penalties, and other adverse economic impacts (collectively “Claims”) arising from or related to (a) use of any part of the Systems by MLP or others for the transmission of water other than pursuant to a Commission approved tariff, (b) MLP’s or its affiliates use at any time of any part of the Systems to deliver water to anyone (including but not limited to any golf courses, golf academies, and related golf facilities), (c) orders issued by the Commission and other regulatory actions relating to or because of any of the foregoing, (d) claims asserted by a third party relating to or because of any of the foregoing, and/or (e) Purchaser’s collection of a “pipe fee” or other amounts from MLP for the use of any part of the Systems. The foregoing obligations of Seller Group are herein called the “Indemnity”. The Claims covered by this Indemnity include, but are not limited to, the imputation to Purchaser by the Commission in a subsequent rate case of the loss of revenue from the difference between the “pipe fee” and the applicable tariff rate for such water services. Such Claims shall be covered by this Indemnity notwithstanding any agreement or action by Purchaser to accept said losses as part of a settlement entered into with the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawaii. This indemnity will be in addition to any other indemnity obligations of Seller and MLP and shall not be subject to the time limitations set forth in Section 11.8(c) and survive the Closing.

22. Capital Expenditures. Section 5.1 shall be amended and restated in its entirety to read as follows:

5.1 Expenditures by the Business. All capital expenditures funded by Seller or MLP on behalf of the Business between the Effective Date and the Closing Date in excess of \$10,000, other than Emergency Capital Expenditures as defined in Section 2.1(d), shall be subject to Purchaser’s pre-approval and adjust the Purchase Price as set forth in Section 2.1 above. Seller and MLP shall make a reasonable attempts to obtain preapproval for all Emergency Capital Expenditures.

23. Description of Systems. Section 1.1(a)(1),(2) shall be amended to read as follows:

(1) all potable and non-potable water transmission facilities, pumping equipment, conduits, connections, tanks, mains, pipelines, meters and other equipment and appliances used and/or owned by KWC for the provision of potable and non-potable water to the Service Areas, including without limitation, the above described facilities shown on Annex 1.1(a)(1) (collectively, “Water System”);

(2) all wastewater collection and transmission equipment and facilities, wells, pumping equipment, conduits, connections, tanks, lagoons, sewage pumping stations, mains, pipelines, meters, and other equipment and appliances used and/or owned by KWTC for

the provision of wastewater collection and transmission from the Service Areas to the connection to the county sewer system located on or near Lower Honoapiilani Road by the parking lot for Merriman's Kapalua, One Bay Club Place, Lahaina, HI 96761 (collectively, "Wastewater System");

24. Full Force and Effect. Except as specifically amended herein, all of the terms and conditions contained in the Agreement remain in full force and effect. In the event of any conflict with provisions with the original Agreement, the provisions of this Amendment shall control.

25. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature in any form or medium (including without limitation any electronic or digital signature or symbol) shall have the same legal effect, validity and enforceability as a manually handwritten original signature.

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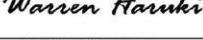
Signature Page Follows

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the effective date.

MLP:

**MAUI LAND & PINEAPPLE COMPANY,
INC.**, a Hawaii corporation

DocuSigned by:

By 

AD76C21C345F443...

Name: Warren H. Haruki

Title: Chairman & CEO

Purchaser:

**HAWAII WATER SERVICE COMPANY,
INC.**, a Hawaii corporation



By _____

Name: Tom Smegal

Title: VP, CFO & Treasurer

By 

Name: Michael Luu

Title: CIO & VP, Customer Service

KWC:

KAPALUA WATER COMPANY, LTD., a Hawaii corporation

DocuSigned by:

By 

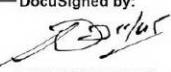
Name: Paulus Subrata

Title: Vice President

KWTC:

KAPALUA WATER TREATMENT COMPANY, LTD., a Hawaii corporation

DocuSigned by:

By 

Name: Paulus Subrata

Title: Vice President

Exhibit 1

Agreement for Water Delivery (Non-Potable)

AGREEMENT FOR WATER DELIVERY (NON-POTABLE WATER)

THIS AGREEMENT ("Agreement") is made and entered into on this ____ day of _____, 202____ ("Effective Date"), by and between **MAUI LAND & PINEAPPLE COMPANY, INC.**, a Hawaii corporation, whose address is 200 Village Road, Lahaina, Hawaii 96761, hereinafter called "MLP", and **HAWAII WATER SERVICE COMPANY, INC.**, a Hawaii corporation, whose address is 68-1845 Waikoloa Rd #216, Waikoloa Village, HI 96738, hereinafter called "Water Company".

R E C I T A L S:

A. MLP is the owner and operator of a water collection, transmission system and storage (the "Ditch System") that collects untreated surface water and transports it via the Honokohau Ditch and related infrastructure more particularly described on Exhibit A attached hereto.

B. Water Company is a regulated public utility company.

C. Concurrently herewith, Water Company has acquired from Kapalua Water Company, Ltd., a non-potable water distribution system (the "Non-Potable System") that Water Company will use to serve consumers within (i) its Hawaii Public Utilities Commission ("HPUC") approved service area at or near the Kapalua Resort at Kapalua, Maui, Hawaii, (ii) the "Kapalua Mauka" future expansion area (TMK 4-2-001-042 and TMK 4-3-001-006) that is more particularly described in the County of Maui's zoning code as "West Maui Project District 2 -- Kapalua Mauka subject to HPUC approval (collectively, the "Initial Service Area") and any additional service areas as contemplated by Section 1 below.

D. The parties desire to enter into this Agreement to formalize and set forth the terms and conditions upon which MLP will provide water from its Ditch System for Water Company's use and distribution via the Non-Potable System.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Delivery of Water; Delivery Points.** Subject to the terms and conditions herein, MLP does hereby undertake and agree to deliver from the Ditch System to Water Company, for the term of this Agreement, non-potable water in such quantities as Water Company may require to meet its service obligations in effect from time to time within (i) Water Company's Initial Service Area, and (ii) expansions of the Initial Service Area to Seller's future developments in Kapalua, as approved by the HPUC (collectively the "Service Area"). MLP shall deliver water to the Water Company at the delivery points shown on the map attached as Exhibit A, or such other locations as the parties may mutually agree to from time to time (each a "Delivery Point").

2. Water Delivery Charges. Water Company will pay to MLP for all water delivered to Water Company at the initial rate of \$260.00 per million gallons (i.e., \$0.26 per thousand gallons) plus the Hawaii general excise tax thereon, payable monthly in arrears (or such other time periods as may be mutually agreed upon by the parties in writing). Payments for each calendar month, or portion thereof, shall be due and payable no later than 30 days after receipt of invoice from MLP. On the first anniversary of the date of this Agreement, and each subsequent anniversary, the rate then in effect shall be increased by the lesser of (a) three percent (3%), or (b) the greater of (i) two percent (2%) or (ii) a percentage equal to the percentage increase over the preceding twelve months in the Consumer Price Index for All Urban Consumers (CPI-U) for Honolulu published by the U.S. Department of Labor – Bureau of Labor Statistics (1982-84=100) (“CPI”); provided that if such CPI index is discontinued MLP shall have the right to reasonably designate an alternative index of inflation. In addition, MLP reserves the right, no more frequently than once per year at the anniversary of the Effective Date, to adjust the rate in effect to be commensurate with any material increase in MLP’s costs in operating, maintaining and repairing the Ditch System (including material increases in the amounts payable for “Additional Services” under the Kapalua Honokohau Ditch Maintenance and Services Agreement between Water Company and MLP), but not including the cost of any capital improvements or replacements to the Ditch System, provided that such an increase shall be permitted only to the extent that the increases in MLP’s costs in operating, maintaining and repairing the Ditch System exceed the increases in the rate as provided in the preceding sentence. MLP shall provide Water Company with no less than thirty (30) days’ notice of such rate adjustment which notice shall include reasonably detailed information supporting such increase; Water Company may request additional documentation and shall be reasonably satisfied that such increase was calculated in accordance with this Section 2 before such increased rate is paid. Water Company shall pay to MLP together with each payment required hereunder which is subject to the State of Hawaii general excise tax on gross income, as it may be amended from time to time, or any successor or similar tax, an amount which, when added to such payment (currently 4.166% of each such payment), shall yield to MLP, after deduction of all such tax payable by MLP with respect to all such payments, a net amount equal to that which MLP would have realized from such payments had no such tax been imposed.

3. Water Meters. Except as otherwise provided herein, Water Company shall, at its own expense, install and maintain suitable meters or gauges at accessible locations at each Delivery Point to assure an accurate and documented measurement of all water delivered to the Water Company. Together with each monthly payment under this Agreement, Water Company shall provide to MLP and to the best of its ability accurate and complete written report of all water delivered at each Delivery Point. Provided that Water Company diligently repairs or replaces meters known to be defective, Water Company shall have no liability for malfunctioning or inaccurate meters. Representatives of MLP shall have access to such meters and all records of meter readings at all reasonable times upon not less than forty-eight (48) hours’ notice for the purpose of checking the same and verifying Water Company’s reports. In the event access is not available, Water Company shall make a good faith estimate of meter readings, but shall not be liable for inaccuracies of the same.

4. Term. The term of this Agreement commences on the date of this Agreement and shall automatically renew on the 20th anniversary of such date, thereafter this Agreement shall automatically renew for successive 10-year terms unless terminated by mutual agreement of the parties. Notwithstanding the foregoing, MLP’s obligation to deliver irrigation

water pursuant to this Agreement shall terminate if Water Company (or its successor and assigns) acquires the Ditch System from MLP, permanently ceases operation of the Non-Potable System, dedicates the Non-Potable System to the County of Maui or other governmental entity, or develops wells or other alternative sources of water adequate to meet Water Company's service obligations.

5. Limits on Use. Water delivered pursuant to this Agreement shall be used only for irrigation and other non-potable uses within the Service Area as the same may be modified from time to time with the approval of the HPUC and may not be transmitted to or used at any lands outside of the Service Area. Water Company acknowledges that water delivered pursuant to this Agreement is not treated or suitable for human consumption and Water Company shall at all times take reasonable precautions to prevent any such use.

6. Seller's Warranties, Representations & Covenants. Except as set forth in Schedule 6 attached hereto MLP warrants, represents and covenants to Water Company:

- (a) that MLP is the owner in fee simple or holds recorded easements for all of the lands underlying the portions of the Ditch System necessary to deliver water to the Delivery Point;
- (b) that MLP currently holds, and will use commercially reasonable efforts to at all times maintain, all permits and approvals required by law for the operation of the Ditch System, including those required by the Commission on Water Resource Management of the State of Hawaii and the County of Maui;
- (c) Except for ongoing Hawaii Commission on Water Resource Management ("CWRM") proceedings referenced below, there are presently no citations, summons, complaints, penalties, actions, suits, investigations or other proceedings pending or threatened against MLP in connection with the operation or maintenance of the Ditch System that may adversely affect MLP's or Water Company's ability to perform its obligations under this Agreement; and
- (d) MLP acknowledges that Water Company is regulated by the HPUC and MLP shall cooperate with Water Company at no material expense to MLP, in Water Company's efforts to obtain approvals and to comply with all laws and HPUC related requirements applicable to the Ditch System and the supply of water to the Non-Potable System, including but not limited to the provision and confirmation of documents and information as required by the HPUC.

Notwithstanding the foregoing, Water Company acknowledges that the Commission on Water Resource Management is currently working on amended Interim Instream Flow Standards for surface water sources that feed the Ditch System and that the outcome of that process, or subsequent similar processes, may affect the amount of water available to Water Company from the Ditch System, and Water Company assumes all risk of the same. Further, Water Company acknowledges that many components of the Ditch System are extremely old and/or are subject to damage, breakage or failures for a variety of reasons. Accordingly, except as set forth throughout this Agreement, MLP makes no warranties, express or implied, as to the Ditch System, the quantity or quality of Ditch System water available to Water Company, or any other

matters. Water Company expressly acknowledges and agrees that water in the Ditch System may contain soil, sediments, vegetation, debris and other contaminants and Water Company assumes all risk of the same.

7. Reciprocal Representations and Warranties. Each of MLP and Water Company, with respect to itself, does hereby represent, warrant and covenant to the best of their knowledge, information and belief, with such representations, warranties and covenants being true as of the date hereof, as follows:

- (a) it has the legal authority to enter into this Agreement;
- (b) is authorized to do business and in good standing under the laws of the State of Hawaii;
- (c) the persons signing this Agreement on its behalf have the power and authority to execute and deliver this Agreement pursuant to the Party's respective governing documents, and the execution, delivery and performance of this Agreement have been duly authorized and approved by all requisite action;
- (d) the execution and delivery of this Agreement and the performance of such Party's obligations hereunder: (i) will not conflict with or result in a violation of its governing documents, (ii) shall not violate or result in a default, immediately or with the passage of time, under any agreement contract or instrument to which such Party is a party or by which it is, or may be, bound; and (iii) shall not conflict with or violate any order, writ, judgment, or decree, issued by a governmental agency having jurisdiction, to which such Party is subject;
- (e) no additional approval, authorization or other action by, or filing with, any governmental authority is required in connection with such Party's execution and delivery of this Agreement by such Party; and
- (f) each of the provisions, covenants, and obligations contained in this Agreement is enforceable against such Party under Applicable Law

8. Ditch System Maintenance. MLP will at all times exercise commercially reasonable efforts to manage, repair and maintain the Ditch System in condition adequate for the reliable delivery of water to the Non-Potable System in accordance with this Agreement. Notwithstanding the foregoing, Water Company acknowledges that the Ditch System includes stream diversions, tunnels, ditches, siphons and other improvements that are very old and that in case of major casualty to or other failure of such components repair or replacement may not be possible at a commercially reasonable cost, so MLP makes no assurances as to its ability to continually maintain the Ditch System in case of such events.

9. Force Majeure. Water Company and MLP agree and understand that the ability of MLP and Water Company to perform their respective obligations under this Agreement are made expressly subject to earthquake, hurricanes, drought, landslides, tunnel or ditch collapse, casualty to the Ditch System, or other natural disasters or events which render MLP's Ditch System temporarily or permanently inoperable, actions of the federal, state and county

governments or agencies thereof, including without limitation enactment or enforcement of laws or governmental regulations, strikes, lock-outs, unavailability of labor or materials, wars, insurrections, rebellions, civil disorder, declaration of national emergencies, acts of God, pandemics, epidemics, and other reasons beyond the reasonable control of the party. Neither party shall have any liability for failure or inability to perform its obligations hereunder to the extent such failure or inability is caused by any such cause or event, and delays in performance shall be excused only for such period of delay as proximately caused by such cause or event.

10. Use Priorities. MLP has existing commitments to the County of Maui Department of Water Supply (“County”) to provide a maximum of 2.5 MGD of water from the Ditch System that DWS uses at its Mahinahina Weir treatment plant to produce potable water for the DWS municipal system, and that MLP may from time to time upon the County’s request commit additional Ditch System water to such use. Water Company acknowledges and agrees that the County’s potable needs take priority in case drought or other conditions or events reduce the total flows in the Ditch System below levels necessary to meet the demands of all users. Water Company further acknowledges that MLP has existing commitments for irrigation water delivery to the owner of the Kapalua Resort’s Plantation and Bay golf courses, golf academy and related golf facilities (“Golf Facilities”) and other third-party irrigation water users, and in case of drought or other shortage Water Company and such other users shall have equal priority for the Ditch System’s available capacity (after satisfaction of the County’s potable needs).

11. Transport of Water. Water Company agrees to accept water from the Ditch System and transmit that water, less transmission, evaporation and other operational losses, through the Non-Potable System to the Golf Facilities. Notwithstanding the foregoing, Water Company’s obligation to deliver water to the Golf Facilities shall remain in effect only so long as MLP’s delivery agreements with the owner or Golf Facilities remain in effect or as otherwise provided below.

- (a) As consideration for use of the Non-Potable Water System, MLP will pay Water Company a fee for such use of the Non-Potable System equal to five percent (5%) of the following amount: (x) the total number of gallons of water received by Water Company at the Delivery Point for transport to the Golf Facilities multiplied by (y) the amount per gallon MLP invoices the Golf Facilities for delivered water ($x \times y$), to which shall be added an amount sufficient to receive such amount net of any applicable Hawaii general excise tax and public service company tax (collectively “Pipe Fee”). No deduction or offset for water losses within the Non-Potable System shall be included in the Pipe Fee payments to Water Company.
- (b) Water Company shall assess the Pipe Fee for each calendar month by the 15th calendar day of the following month. MLP shall pay the Water Company invoice in full within 20 calendar days. HWSC shall have the right, without liability, to suspend transport of water pursuant to this section so long as the amounts remain unpaid.
- (c) All water delivered under this Section 11 shall not be subject to the water delivery charges set forth in Section 2 above and shall be delivered in

accordance with the specifications in Exhibit B attached hereto and incorporated herein.

- (d) Water Company's obligations to deliver water to the Golf Facilities shall terminate on October 1, 2070.

12. Condemnation. If the Ditch System or any part thereof shall be taken or condemned by any authority having the power of eminent domain, MLP shall be solely entitled to all compensation and damages payable with respect to the taking of the Ditch System, but Water Company shall be entitled to seek compensation and damages from the condemning authority for the loss of Water Company's rights and interests under this Agreement, including inverse condemnation damages arising from the diminution in value of the Non-Potable System from the loss of rights to obtain water from the Ditch System.

13. Defaults and Remedies. If a party fails to perform any of the terms, covenants and agreements contained herein, if such failure continues for a period of thirty (30) days after written notice, then the non-defaulting party shall be entitled to all remedies available to it at law or equity, including by way of example and not in limitation thereof, the right to sue such person for specific performance, injunctive relief and/or monetary damages, including without limitation, reasonable attorneys' fees, costs and expenses. Amounts due hereunder shall bear interest from the date due until the date paid at the rate of 1% per month. If MLP fails to maintain and repair the Ditch System and related water facilities to the Delivery Point in accordance with the requirements of this Agreement and such failure is not the result of the breach by Water Company (or any affiliate or subsidiary of Water Company) of its obligations under any applicable operations and maintenance agreement regarding the Wells, then upon such written notice and expiration of such 30-day period, Water Company shall have the right to enter such land and facilities as is necessary to do what MLP should have done, and in such event MLP shall promptly pay Water Company for the actual documented fully-allocated direct and indirect costs (including overhead) reasonably incurred by Water Company to do so plus an administrative fee of 15% of such costs.

14. Indemnity. Water Company agrees to indemnify, defend and hold MLP and its officers, directors, agents and employees harmless from and against any and all claims, losses, liabilities, damages attorneys' fees and costs arising from or related to Water Company's negligence, willful misconduct or breach of this Agreement. MLP agrees to indemnify, defend and hold Water Company and its officers, directors, agents and employees harmless from and against any and all claims, losses, liabilities, damages attorneys' fees and costs arising from or related to MLP's negligence, willful misconduct or breach of this Agreement.

15. Dispute Resolution; Submission to Jurisdiction; Attorney's Fees.

- (a) The parties shall first seek to negotiate, in good faith and in timely fashion, a resolution of any dispute. If the Parties are unable to resolve the dispute with negotiations within thirty (30) days, the Parties agree to mediate any dispute with non-binding mediation conducted in Honolulu, Hawaii. The Parties may agree that a mediated resolution is binding. If the Parties cannot agree upon a mediator, each shall select one name from a list of mediators maintained by Dispute Prevention and

Resolution, Inc., the two selected shall then choose a third person who will serve as mediator. The Parties shall have twenty (21) days within which to commence the first mediation session following the conclusion of their good faith negotiations. The Parties shall each fund half the cost of the mediator(s) and shall bear their own costs incurred in connection with any such mediation unless agreed otherwise as a result of the mediation.

- (b) If the mediation does not result in resolution of the dispute within forty-five (45) days after any Party's request for mediation, or sooner if reasonably necessary to prevent irreparable or substantial ongoing damage or losses, then the Parties may pursue other remedies available at law or in equity in the Second Circuit Court of the State of Hawaii and the Parties consent to the venue and jurisdiction of such courts. In addition to any other right or remedy to which a Party may be entitled, at law or in equity, any Party shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.
- (c) Should any party hereto employ an attorney for the purpose of enforcing or construing, because of disagreement with the other party, this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all reasonable attorneys' fees and all costs, whether incurred at the trial or appellate level, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and the cost of any bonds, whether taxable or not, and such reimbursement shall be included in any judgment, decree or final order issued in that proceeding.

16. Notices. All notices or other communications required hereunder to be given shall be in writing and shall be (i) delivered personally, (ii) deposited with the U.S. Postal Service, duly certified or registered, postage prepaid, (iii) delivered by a nationally recognized overnight courier, or (iv) transmitted by electronic mail ("e-mail"), if a copy of such electronic mail transmission is also delivered pursuant to one of the other transmission methods prescribed above. All notices / communications hereunder shall be addressed as set forth below:

To MLP: Maui Land & Pineapple Company, Inc.
200 Village Road
Lahaina, Hawaii 96761
Attention: Paul Subrata
E-Mail Address: psubrata@kapalua.com

To Water Company: Hawaii Water Service Company, Inc.
P.O. Box 384809
Waikoloa, Hawaii 96738
Attention: General Manager

E-Mail Address: acarrasco@hawaiwaterservice.com

With a Copy to:
California Water Service Company
1720 N. First Street
San Jose, CA 95112
Attn: Associate General Counsel
E-mail Address: jkelsey@calwater.com

17. Assignment. Except for an assignment made by Water Company in connection with the transfer of the Non-Potable System, subject to the terms and conditions of this Agreement, or to an affiliate or subsidiary of Water Company, Water Company may not assign any rights hereunder without the prior written consent of MLP, which consent may not be unreasonably withheld by MLP. Except for an assignment made by MLP in connection with the transfer of the Ditch System, subject to the terms and conditions of this Agreement, MLP may not assign any rights hereunder without the prior written consent of Water Company, which consent may not be unreasonably withheld by Water Company.

18. No Rights or Interests in the Ditch System. Nothing contained herein or in any other agreement between MLP and Water Company gives Water Company any interest in or right to acquire the Ditch System or the land on which the Ditch System is located.

19. Binding Effect, Recordation. This Agreement shall be binding on, and shall inure to the benefit of, the parties and their successors and permitted assigns.

20. Entire Agreement. This Agreement is the entire agreement between the parties with respect to the delivery of non-potable water to Water Company and supersedes all prior agreements, correspondence and negotiations except for that certain Asset Purchase Agreement dated December 20, 2019 between MLP, Water Company, Kapalua Water Company, Ltd. and Kapalua Water Treatment Company, Ltd., as amended by that certain First Amendment to Asset Purchase Agreement dated May 18, 2020 which is hereby incorporated by reference.

21. Counterparts. This Agreement may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute one instrument. A signature in any form or medium (including without limitation any electronic or digital signature or symbol) shall have the same legal effect, validity and enforceability as a manually handwritten original signature. The Parties agree that if this Agreement is transmitted electronically, the electronic transmittal of the original execution signatures shall be treated as original signatures and given the same legal effect as an original signature.

22. Amendment. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

23. Governing Law. This Agreement and its interpretation shall be governed by the laws of the State of Hawaii without regard to conflicts of laws principles.

24. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction or any governmental body, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

25. HPUC Commitments. This Agreement shall be effective upon approval by the HPUC. MLP acknowledges that the obligations of Water Company herein may be amended or may change from time to time by order or approval of the HPUC. If the obligations of Water Company herein are at any time determined by the HPUC to require modification, then MLP and Water Company shall use reasonable best efforts and diligence to implement said modification or to obtain other authorization from the HPUC. Notwithstanding the foregoing, MLP's agrees, unless otherwise ordered by the HPUC or court order, that MLP will continue to provide water to Water Company in the amounts specified in this Agreement and under all other terms and conditions of this Agreement.

[SIGNATURES FOLLOW]

DATED: _____, 202__.

**MAUI LAND & PINEAPPLE COMPANY,
INC.**

By _____
Name:
Its:

MLP

**HAWAII WATER SERVICE COMPANY,
INC.**

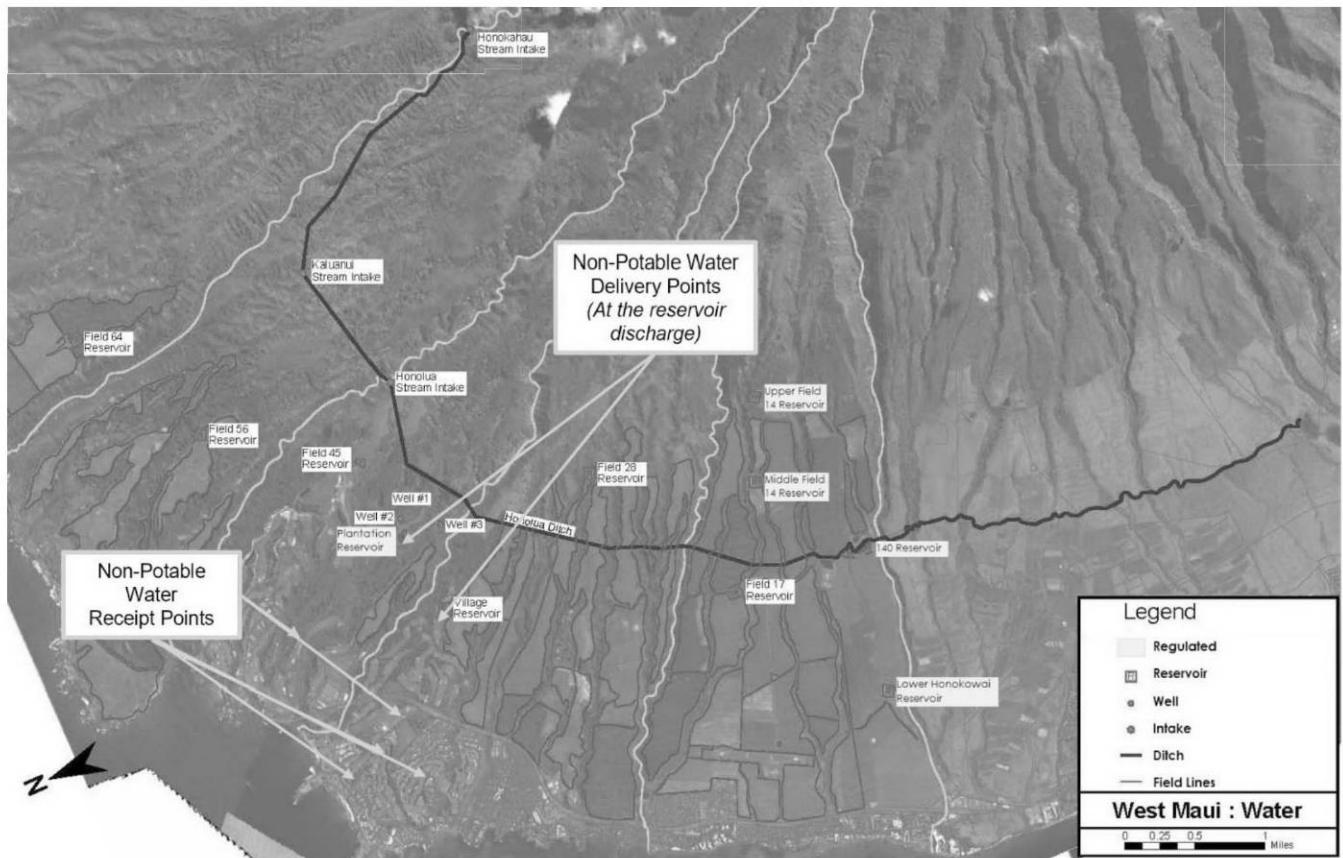
By _____
Name:
Its:

By _____
Name:
Its:

Water Company

EXHIBIT A

Map of Delivery Points to the Water Company's Non-Potable System



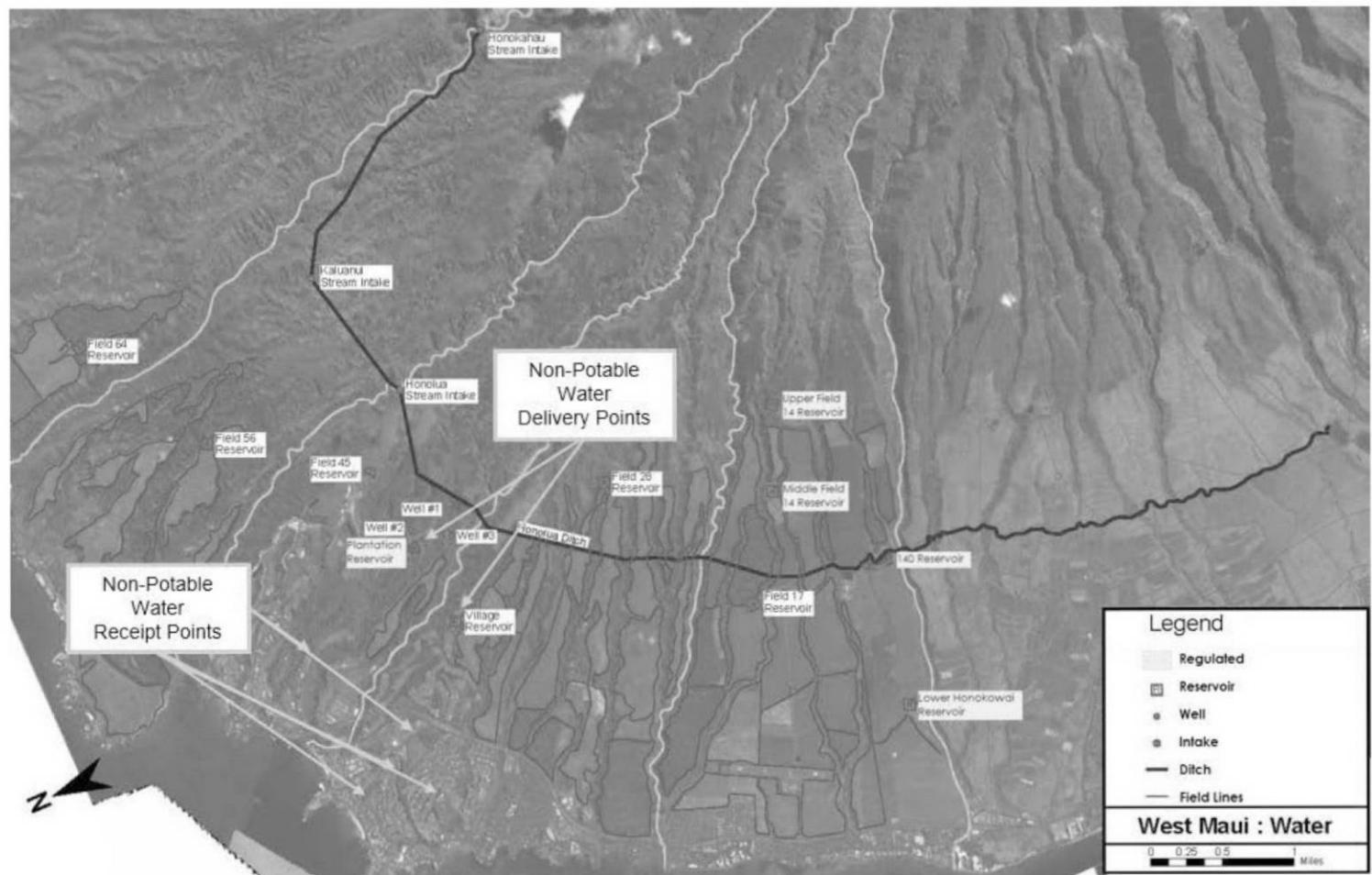


EXHIBIT B

Specifications for Transport of Water

1. **Delivery Point(s).** The point(s) designated on Exhibit A hereto indicate where water is delivered to the Non-Potable System from MLP. MLP, at its expense, is responsible for the construction and maintenance of connection facilities conveying water to the Delivery Point.
2. **Receipt Point(s).** The point(s) designated on Exhibit A hereto indicate where water is diverted from the Non-Potable System for receipt by the Golf Facilities. Water Company, at its expense, is responsible for the maintenance of equipment to measure water at the Receipt Point except for replacement of meter(s).
3. **Volume of Water.** Water Company agrees to use the Non-Potable System to transport up to 60 million gallons of water per month from the Delivery Point to the Receipt Point. Water Company and MLP will arrange between them a schedule and volume of delivery for the water. Water Company shall not be liable for any inability to deliver water at any agreed to schedule or volume.
4. **Interruptions and Disruptions.** Water Company's obligation to deliver water to the Golf Facilities shall be subject to the availability of water at the Delivery Point, as determined by MLP. Water Company may discontinue or reduce the quantity of water delivered to the Golf Facilities to investigate, replace or repair the Non-Potable System. Water Company shall coordinate any discontinuance or reduction with MLP and shall endeavor to provide at least twenty-four (24) hours' advance notice except in cases of emergency. Water Company shall not be liable for any damages when such reduction or interruption occurs.
5. **Measurement of Water.** Water Company will measure the total quantity of water delivered using the meter at the Receipt Point and will report such water quantities to MLP for each water billing cycle. MLP is responsible for invoicing the Golf Facilities for water deliveries.

Exhibit 2

Agreement for Water Delivery (Well Water)

AGREEMENT FOR WATER DELIVERY (WELL WATER)

THIS AGREEMENT ("Agreement") is made and entered into on this ____ day of _____, 202____ ("Effective Date"), by and between **MAUI LAND & PINEAPPLE COMPANY, INC.**, a Hawaii corporation, whose address is 200 Village Road, Lahaina, Hawaii 96761, hereinafter called "MLP", and **HAWAII WATER SERVICE COMPANY, INC.**, a Hawaii corporation, whose address is 68-1845 Waikoloa Rd #216, Waikoloa Village, HI 96738, hereinafter called "Water Company".

R E C I T A L S:

- A. MLP is the owner and operator of the Kapalua No. 1 and 2 wells and related facilities and equipment necessary to provide water to Water Company at the delivery points all as shown on the map attached hereto as Exhibit A ("Wells").
- B. Water Company is a regulated public utility company.
- C. Concurrently herewith, Water Company has acquired from Kapalua Water Company, Ltd. a potable water distribution system (the "Potable System") that Water Company will use to serve consumers within (i) its Hawaii Public Utilities Commission ("HPUC") approved service area at or near the Kapalua Resort at Kapalua, Maui, Hawaii, (ii) the "Kapalua Mauka" future expansion area (TMK 4-2-001-042 and TMK 4-3-001-006) that is more particularly described in the County of Maui's zoning code as "West Maui Project District 2 -- Kapalua Mauka subject to HPUC approval (collectively, the "Initial Service Area") and any additional service areas as contemplated by Section 1 below.
- D. The parties desire to enter into this Agreement to formalize and set forth the terms and conditions upon which MLP will provide water from its Wells for Water Company's use and distribution via the Potable System.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Delivery of Water; Delivery Points; Additional Wells.

- (a) Subject to the terms and conditions herein, MLP does hereby undertake and agree to deliver water from the Wells to Water Company. MLP shall deliver water to the Water Company at the delivery points shown on the map attached as Exhibit A, or such other locations as the parties may mutually agree to from time to time (each a "Delivery Point") at all times such amounts Water Company may require to meet its service obligations in effect from time to time; provided, however, that (a) Water Company shall not without MLP's prior approval draw more than a calendar year average of 1.0 million gallons per day ("MGD") of water from the Wells in the aggregate, and (b) Water Company shall use water from the Wells only to service

(1) the Water Company's Initial Service Area and (2) expansions of the Initial Service Area to Seller's future developments in Kapalua, as approved by the HPUC (collectively the "Service Area").

(b) Such 1.0 MGD limit shall be increased from time to time by mutual agreement of the parties if, when and to the extent that actual or reasonably projected potable water demand in the Service Area exceeds an annual average of 1.0 MGD, but only to the extent that available capacity of the Wells exists at such time (nothing contained herein obligating MLP to reserve any such capacity). Use of water from the Wells for emergencies shall not be deemed to violate such 1.0 MGD limit.

(c) If the capacity of the existing Wells is reasonably determined by Water Company to be insufficient to meet the existing or forecast demand for potable water in the Service Area, MLP shall, upon Water Company's request and at no charge to Water Company, make available one or more sites on lands owned by MLP for such additional Well(s) and related improvements, equipment, connections and other related facilities (collectively, the "Facilities") to the Potable System as are reasonably needed to meet the potable water demand of the Service Area. MLP shall cooperate reasonably in Water Company's efforts to develop and construct such additional Well(s) and integrate them into the Potable System. Any such additional Well(s) shall be subject to all of the terms and conditions of this Agreement. MLP shall be responsible and liable for all of the costs of the development and construction by Water Company of any such additional Well(s) and Facilities that Water Company incurs in accordance with a budget prepared by Water Company and approved by MLP (which approval shall not be unreasonably withheld, conditioned or delayed), as well as cost of repairs for all existing and additional Wells and Facilities. Water Company may elect to extend credit to MLP consisting of a term loan to finance said costs of construction and development of such additional Wells upon terms mutually acceptable to Water Company and MLP. In consideration of MLP's commitments herein to at MLP's expense assure continued availability of sufficient water, Water Company agrees to issue such service commitments (including "will serve letters" or County of Maui "show me the water" certifications) as MLP may reasonably request from time to time provided the issuance complies with all laws and will not adversely impact the safety or reliability of the Potable System.

2. Water Delivery Charges. Water Company will pay to MLP for all water delivered to Water Company from the Wells at the following initial rates: (a) for total draws of water from the Wells in any calendar month between zero and 45 million gallons (if permitted to draw in excess of the permissible draw), \$2.59 per thousand gallons; (b) for total draws of water from the Wells in any calendar month between 45 million gallons and 60 million gallons (if permitted), \$3.12 per thousand gallons; and (c) for total draws of water from the Wells in any calendar month in excess of 60 million gallons (if permitted), \$3.63 per thousand gallons; all plus the Hawaii general excise thereon, payable monthly in arrears (or such other time periods as may be mutually agreed upon by the parties in writing). Payments for each calendar month, or portion thereof, shall be due and payable no later than 30 days after receipt of invoice from MLP. On the first anniversary of the date of this Agreement, and each subsequent anniversary, the rates then in

effect shall be increased by the lesser of (a) three percent (3%), or (b) the greater of (i) two percent (2%) or (ii) a percentage equal to the percentage increase over the preceding twelve months in the Consumer Price Index for All Urban Consumers (CPI-U) for Honolulu published by the U.S.

Department of Labor – Bureau of Labor Statistics (1982-84=100) (“CPI”); provided that if such CPI index is discontinued MLP shall have the right to reasonably designate an alternative index of inflation. In addition, MLP reserves the right, no more frequently than once per year at the anniversary of the Effective Date, to adjust the rate in effect to be commensurate with any material increase in MLP’s costs in operating, maintaining and repairing the Wells (including material increases in the amounts payable for “Additional Services” under the Kapalua Wells Maintenance and Services Agreement between Water Company and MLP), but not including the cost of any capital improvements or replacements to the Wells, provided that such an increase shall be permitted only to the extent that the increases in MLP’s costs in operating, maintaining and repairing the Wells exceed the increases in the rate as provided in the preceding sentence. MLP shall provide Water Company with no less than thirty (30) days’ notice of such rate adjustment which notice shall include reasonably detailed information supporting such increase; Water Company may request additional documentation and shall be reasonably satisfied that such increase was calculated in accordance with this Section 2 before such increased rate is paid.

Water Company shall pay to MLP together with each payment required hereunder which is subject to the State of Hawaii general excise tax on gross income, as it may be amended from time to time, or any successor or similar tax, an amount which, when added to such payment (currently 4.166% of each such payment), shall yield to MLP, after deduction of all such tax payable by MLP with respect to all such payments, a net amount equal to that which MLP would have realized from such payments had no such tax been imposed.

3. Water Meters. Water Company shall, at its own expense, install and maintain suitable meters or gauges at accessible locations at each Delivery Point to assure an accurate and documented measurement of all water delivered to the Water Company under this Agreement. Together with each monthly payment under this Agreement, Water Company shall provide to MLP and to the best of its ability accurate and complete written report of all water delivered at each Delivery Point under this Agreement. Provided that Water Company diligently repairs or replaces meters known to be defective, Water Company shall have no liability for malfunctioning or inaccurate meters. Representatives of MLP shall have access to such meters and all records of meter readings at all reasonable times upon not less than forty-eight (48) hours’ notice for the purpose of checking the same and verifying Water Company’s reports. In the event access is not available, Water Company shall make a good faith estimate of meter readings, but shall not be liable for inaccuracies of the same.

4. Term. The term of this Agreement commences on the date of this Agreement and shall automatically renew on the 20th anniversary of such date, thereafter this Agreement shall automatically renew for successive 10-year terms unless terminated by mutual agreement of the parties. Notwithstanding the foregoing, MLP’s obligation to deliver water pursuant to this Agreement shall terminate if Water Company (or its successor and assigns) acquires the Wells from MLP, permanently ceases operation of the Potable System, dedicates the Potable System to the County of Maui or other governmental entity, or develops new water supplies adequate to meet Water Company’s service obligations.

5. Limits on Use. Water delivered pursuant to this Agreement shall be used only within the Service Area as the same may be modified from time to time with the approval of the HPUC and may not be transmitted to or used at any lands outside of the Service Area.

6. Seller's Warranties, Representations & Covenants. Except as set forth in Schedule 6 attached hereto MLP warrants, represents and covenants to Water Company:

- (a) that MLP is the owner of the Wells and the owner in fee simple or holds recorded easements for all of the lands underlying the portions of the Wells necessary to deliver water to the Delivery Point;
- (b) that MLP currently holds, and will exercise commercially reasonable efforts to maintain, all permits and approvals required by law for the operation of the Wells, including those required by the Commission on Water Resource Management of the State of Hawaii and the County of Maui;
- (c) there are presently no citations, summons, complaints, penalties, actions, suits, investigations or other proceedings pending or threatened against MLP in connection with the operation or maintenance of the Wells that may adversely affect MLP's or Water Company's ability to perform its obligations under this Agreement; and
- (c) MLP acknowledges that Water Company is regulated by the HPUC and MLP shall cooperate with Water Company, at no material expense to MLP, in Water Company's efforts to obtain approvals and to comply with all laws and HPUC related requirements applicable to the Wells and the supply of water to the Potable System, including but not limited to the provision and confirmation of documents and information as required by the HPUC;

Except as set forth in this Agreement, MLP makes no warranties, express or implied, as to the Wells, the quality of Wells water available to Water Company, or any other matters. Water Company accepts the water delivered under this agreement "as is" and Water Company shall be solely responsible for any treatment necessary to render such water useable for Water Company's intended uses.

7. Reciprocal Representations and Warranties. Each of MLP and Water Company, with respect to itself, does hereby represent, warrant and covenant to the best of their knowledge, information and belief, with such representations, warranties and covenants being true as of the date hereof, as follows:

- (a) it has the legal authority to enter into this Agreement;
- (b) is authorized to do business and in good standing under the laws of the State of Hawaii;
- (c) the persons signing this Agreement on its behalf have the power and authority to execute and deliver this Agreement pursuant to the Party's respective governing

documents, and the execution, delivery and performance of this Agreement have been duly authorized and approved by all requisite action;

(d) the execution and delivery of this Agreement and the performance of such Party's obligations hereunder: (i) will not conflict with or result in a violation of its governing documents, (ii) shall not violate or result in a default, immediately or with the passage of time, under any agreement contract or instrument to which such Party is a party or by which it is, or may be, bound; and (iii) shall not conflict with or violate any order, writ, judgment, or decree, issued by a governmental agency having jurisdiction, to which such Party is subject;

(e) no additional approval, authorization or other action by, or filing with, any governmental authority is required in connection with such Party's execution and delivery of this Agreement by such Party; and

(f) each of the provisions, covenants, and obligations contained in this Agreement is enforceable against such Party under applicable law.

8. Wells Maintenance. MLP will at all times exercise commercially reasonable efforts to manage, repair and maintain the Wells, their pumps, and the transmission lines from the Wells to the Delivery Points in condition adequate for the reliable delivery of water without degrading of the quality of the ground water in its natural state to the Potable System in accordance with demands of the Potable System.

9. Force Majeure. Water Company and MLP agree and understand that the ability of MLP and Water Company to perform their respective obligations under this Agreement are made expressly subject to earthquake, hurricanes, drought, landslides, casualty to the Wells, or other natural disasters or events which render the Wells temporarily or permanently inoperable, actions of the federal, state and county governments or agencies thereof, including without limitation enactment or enforcement of laws or governmental regulations, strikes, lock-outs, unavailability of labor or materials, wars, insurrections, rebellions, civil disorder, declaration of national emergencies, acts of God, pandemics, epidemics, and other reasons beyond the reasonable control of the party. Neither party shall have any liability for failure or inability to perform its obligations hereunder to the extent such failure or inability is caused by any such cause or event, and delays in performance shall be excused only for such period of delay as proximately caused by such cause or event.

10. Condemnation. If the Wells or any part thereof shall be taken or condemned by any authority having the power of eminent domain, MLP shall be solely entitled to all compensation and damages payable with respect to the taking of the Wells, but Water Company shall be entitled to seek compensation and damages from the condemning authority for the loss of Water Company's rights and interests under this Agreement, including inverse condemnation damages arising from the diminution in value of the Potable System from the loss of rights to obtain water from the Wells.

11. Defaults and Remedies. If a party fails to perform any of the terms, covenants and agreements contained herein, if such failure continues for a period of thirty (30)

days after written notice, then the non-defaulting party shall be entitled to all remedies available to it at law or equity, including by way of example and not in limitation thereof, the right to sue such person for specific performance, injunctive relief and/or monetary damages, including without limitation, reasonable attorneys' fees, costs and expenses. Amounts due hereunder shall bear interest from the date due until the date paid at the rate of 1% per month. If MLP fails to maintain and repair the Wells and related water facilities to the Delivery Point in accordance with the requirements of this Agreement and such failure is not the result of the breach by Water Company (or any affiliate or subsidiary of Water Company) of its obligations under any applicable operations and maintenance agreement regarding the Wells, then upon such written notice and expiration of such 30-day period, Water Company shall have the right to enter such land and facilities as is necessary to do what MLP should have done, and in such event MLP shall promptly pay Water Company for the actual documented fully-allocated direct and indirect costs (including overhead) reasonably incurred by Water Company to do so plus an administrative fee of 15% of such costs.

12. Indemnity. Water Company agrees to indemnify, defend and hold MLP and its officers, directors, agents and employees harmless from and against any and all claims, losses, liabilities, damages attorneys' fees and costs arising from or related to Water Company's negligence, willful misconduct or breach of this Agreement. MLP agrees to indemnify, defend and hold Water Company and its officers, directors, agents and employees harmless from and against any and all claims, losses, liabilities, damages attorneys' fees and costs arising from or related to MLP's negligence, willful misconduct or breach of this Agreement.

13. Dispute Resolution; Submission to Jurisdiction; Attorney's Fees.

(a) The parties shall first seek to negotiate, in good faith and in timely fashion, a resolution of any dispute. If the Parties are unable to resolve the dispute with negotiations within thirty (30) days, the Parties agree to mediate any dispute with non-binding mediation conducted in Honolulu, Hawaii. The Parties may agree that a mediated resolution is binding. If the Parties cannot agree upon a mediator, each shall select one name from a list of mediators maintained by Dispute Prevention and Resolution, Inc., the two selected shall then choose a third person who will serve as mediator. The Parties shall have twenty (21) days within which to commence the first mediation session following the conclusion of their good faith negotiations. The Parties shall each fund half the cost of the mediator(s) and shall bear their own costs incurred in connection with any such mediation unless agreed otherwise as a result of the mediation.

(b) If the mediation does not result in resolution of the dispute within forty-five (45) days after any Party's request for mediation, or sooner if reasonably necessary to prevent irreparable or substantial ongoing damage or losses, then the Parties may pursue other remedies available at law or in equity in the Second Circuit Court of the State of Hawaii and the Parties consent to the venue and jurisdiction of such courts. In addition to any other right or remedy to which a Party may be entitled, at law or in equity, any Party shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and

permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

(c) Should any party hereto employ an attorney for the purpose of enforcing or construing, because of disagreement with the other party, this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all reasonable attorneys' fees and all costs, whether incurred at the trial or appellate level, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and the cost of any bonds, whether taxable or not, and such reimbursement shall be included in any judgment, decree or final order issued in that proceeding.

14. Notices. All notices or other communications required hereunder to be given shall be in writing and shall be (i) delivered personally, (ii) deposited with the U.S. Postal Service, duly certified or registered, postage prepaid, or (iii) delivered by a nationally recognized overnight courier, or (iv) transmitted by electronic mail ("e-mail"), if a copy of such electronic mail transmission is also delivered pursuant to one of the other transmission methods prescribed above. All notices / communications hereunder shall be addressed as set forth below:

To MLP: Maui Land & Pineapple Company, Inc.
200 Village Road
Lahaina, Hawaii 96761
Attention: Paul Subrata
E-Mail Address: psubrata@kapalua.com

To Water Company: Hawaii Water Service Company, Inc.
P.O. Box 384809
Waikoloa, Hawaii 96738
Attention: General Manager
E-Mail Address: acarrasco@hawaiwaterservice.com

With a Copy to:
California Water Service Company
1720 N. First Street
San Jose, CA 95112
Attn: Associate General Counsel
E-mail Address: jkelsey@calwater.com

15. Assignment. Except for an assignment made by Water Company in connection with the transfer of the Potable System, subject to the terms and conditions of this Agreement, or to an affiliate or subsidiary of Water Company, Water Company may not assign any rights hereunder without the prior written consent of MLP, which consent may not be unreasonably withheld by MLP. Except for an assignment made by MLP in connection with the

transfer of the Wells, subject to the terms and conditions of this Agreement, MLP may not assign any rights hereunder without the prior written consent of Water Company, which consent may not be unreasonably withheld by Water Company.

16. No Rights or Interests in the Wells. Nothing contained herein or in any other agreement between MLP and Water Company gives Water Company any interest in or right to acquire the Wells or the land on which the Wells are located.

17. Binding Effect, Recordation. This Agreement shall be binding on, and shall inure to the benefit of, the parties and their successors and permitted assigns. The parties agree to record a short form of this Agreement in the Bureau of Conveyances as an encumbrance on the real property upon which the Wells are located.

18. Entire Agreement. This Agreement is the entire agreement between the parties with respect to the delivery of Well water to Water Company and supersedes all prior agreements, correspondence and negotiations, except for that certain Asset Purchase Agreement dated December 20, 2019 between MLP, Water Company, Kapalua Water Company, Ltd. and Kapalua Waste Treatment Company, Ltd., as amended by that certain First Amendment to Asset Purchase Agreement dated May 18, 2020 which is hereby incorporated by reference.

19. Counterparts. This Agreement may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute one instrument. A signature in any form or medium (including without limitation any electronic or digital signature or symbol) shall have the same legal effect, validity and enforceability as a manually handwritten original signature. The Parties agree that if this Agreement is transmitted electronically, the electronic transmittal of the original execution signatures shall be treated as original signatures and given the same legal effect as an original signature.

20. Amendment. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

21. Governing Law. This Agreement and its interpretation shall be governed by the laws of the State of Hawaii without regard to conflicts of laws principles.

22. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction or any governmental body, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

23. HPUC Commitments. This Agreement shall be effective upon approval by the HPUC. The Parties acknowledge that their respective obligations herein may be amended or may change from time to time by order or approval of the HPUC. If the obligations of any Party herein are at any time determined by the HPUC to require modification, then the Parties shall use reasonable best efforts and diligence to implement said modification or to obtain other authorization from the HPUC. Notwithstanding the foregoing, MLP's agrees, unless otherwise

ordered by the HPUC or court order, that MLP will continue to provide water to Water Company in the amounts specified in this Agreement and under all other terms and conditions of this Agreement.

[SIGNATURES FOLLOW]

DATED: _____, 202_.

**MAUI LAND & PINEAPPLE COMPANY,
INC.**

By _____
Name:
Its:

MLP

**HAWAII WATER SERVICE COMPANY,
INC.**

By _____
Name:
Its:

By _____
Name:
Its:

Water Company

EXHIBIT A

Map of the Wells and Delivery Points to the Water Company's Potable System

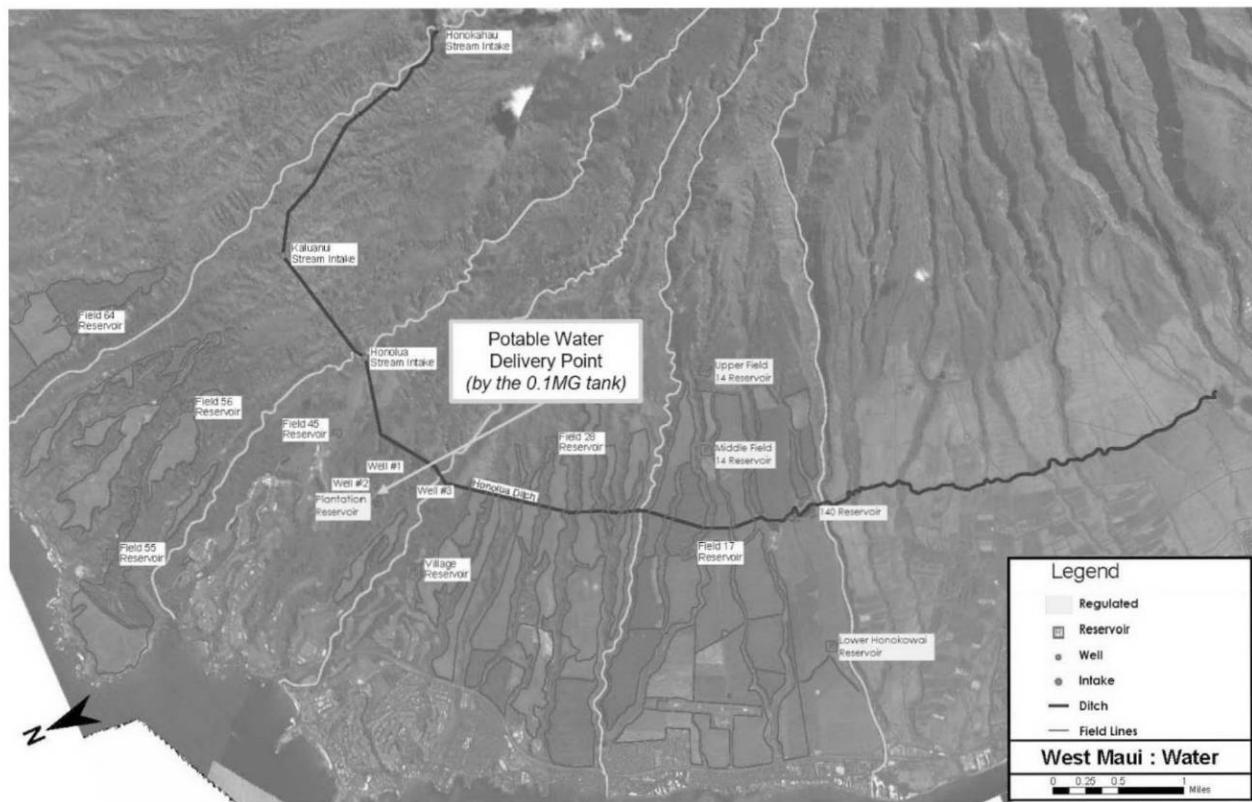


Exhibit 3

O&M Agreement for Wells

KAPALUA WELLS OPERATION, MAINTENANCE AND SERVICES AGREEMENT

THIS KAPALUA WELLS OPERATION, MAINTENANCE AND SERVICES AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 202_____ (the "Effective Date") by and between HAWAII WATER SERVICE COMPANY, INC., a Hawaii corporation ("Contractor"), and MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation ("Owner"). Contractor and Owner are sometimes hereafter individually referred to as "Party" and collectively as "Parties".

RECITALS

A. Owner owns and operates the Kapalua Potable Well 1 and Kapalua Potable Well 2 and related infrastructure as more particularly described in the attached Exhibit A (the "Facilities").

B. Contractor is in the business of providing water utility services, including the provision of operation, maintenance and management support for the owners of water systems.

C. Pursuant to that certain Asset Purchase Agreement dated as of December 20, 2019 as amended by First Amendment to Asset Purchase Agreement dated _____, 2020 (the "APA") between Contractor, Owner, Kapalua Water Company ("KWC") and Kapalua Waste Treatment Company, Ltd., Contractor has purchased all of the assets of KWC and will provide potable water service to the Service Area of Contractor as described more particularly in the APA and pursuant to tariffs approved by the State of Hawaii Public Utilities Commission ("HPUC").

D. The Facilities provide potable water to the Service Area pursuant to an Agreement for Water Delivery (Well Water) dated _____, 2020 between Owner and Contractor (the "Delivery Agreement") and Owner wishes to obtain the services of Contractor to perform certain operation and maintenance services in relation to the Facilities.

E. Subject to the terms and conditions hereof, Contractor is willing and able to provide the services requested by Owner.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Owner agree as follows:

1. **Definitions.** For purposes of this Agreement, the following definitions shall apply:

a. "**Additional Services**" shall mean any work, products or services provided by Contractor that are in addition to the Basic Services more particularly addressed in Section 3.b. below.

b. "**Agreement Price**" shall mean the sum of (i) the Base Fee and (ii) any additional fees or costs payable to Contractor under this Agreement, all as more particularly addressed in Section 4. below.

c. "**Applicable Law**" shall mean any federal, state or local statute, regulation, ordinance, rule, order, decree, permit, code, license requirement or other governmental requirement or

restriction, or any interpretation or administration of any of the foregoing by any governmental authority, which applies to the services or obligations of either Party under this Agreement.

d. **"Base Fee"** shall mean the fee payable by Owner to Contractor in consideration of Contractor's performance of the Basic Services, all as more particularly addressed in Section 4.a, below.

e. **"Basic Services"** shall mean the agreed operation, maintenance and management services to be performed by Contractor on a scheduled or recurring basis, all as more particularly addressed in Section 3.a, below and described in the attached Exhibit B.

f. **"Capital Improvement"** shall mean the purchase and installation of new equipment, facilities structures or other facilities components, or the rehabilitation of existing equipment, facilities structures or other facilities components, which are planned and non-routine relating to the Facilities.

g. **"Change in Law"** shall mean the enactment, adoption, amendment, promulgation, issuance, modification, repeal or change of any Applicable Law that takes effect after the Effective Date of this Agreement.

h. **"Consumables"** shall mean non-durable (or "soft") goods used in connection with the operation of the Facilities (which may include, by way of example only, oil, grease, hardware and repair parts, fuel, air filters, belts, paper products, hand soap, counter and floor cleaners, log books, batteries, flow charts, pens, gloves, laboratory testing reagents, and pH buffer solutions).

i. **"Contractor Services"** shall mean all Basic Services, Additional Services and other work provided or otherwise performed by Contractor pursuant to this Agreement.

j. **"Ditch O&M Agreement"** means the Kapalua Honokohau Ditch, Maintenance and Services Agreement between Owner and Contractor executed and dated concurrently with this Agreement.

k. **"Emergency"** shall mean any situation or condition that would disrupt the supply of potable water to the users of Owner's water system, place the health or safety of the public at risk, or, if not corrected immediately, cause extensive damage to the Facilities or the environment.

l. **"Maintenance"** shall mean those routine or repetitive activities, including preventive and predictive activities required by the equipment guidelines or manuals and those activities recommended by Contractor to maximize the service life and performance of the equipment and components that comprise the Facilities, which includes replenishment of Consumables.

m. **"Owner's Knowledge"** shall mean the actual knowledge of Paulus Subrata and Daniel Pomaikai Crozier.

n. **"Repair"** shall mean those unplanned, non-routine and non-repetitive activities required for operational continuity, safety and performance, generally due to failure (or to avert a failure) of equipment, structures, the Facilities or a component thereof.

o. **"Replacement"** shall mean the complete substitution of a piece of equipment, a component of a piece of equipment, structures, or a component of the Facilities due to wear, breakage or other failure in order to return the equipment, structure, Facilities or some component thereof to designed functionality.

p. **"Uncontrollable Circumstance"** shall mean any act, event, condition or circumstance that (i) is beyond the reasonable control of Contractor, (ii) by itself or in combination with other acts, events, conditions or circumstances adversely affects, interferes with or delays Contractor's ability to perform its obligations under this Agreement, expands the scope of Contractor's obligations under this Agreement, or increases Contractor's cost of performing its obligations under this Agreement, and (iii) is not the direct result of the willful or negligent act, intentional misconduct, failure to exercise proper due diligence or breach of this Agreement by Contractor. Subject to clauses (ii) and (iii) above, an Uncontrollable Circumstance shall include, but not be limited to, the following:

- i. a Change in Law;
- ii. any change that takes place between the Effective Date and the date that Contractor commences performance of the Contractor Services under this Agreement, which impacts Contractor's performance of the Contractor Services;
- iii. any injunction or similar order issued by a governmental or regulatory body;
- iv. delays or denials of any licenses permits and approvals that are required to be maintained by Contractor in order to perform Contractor Services pursuant to this Agreement;
- v. the existence of a concealed or latent environmental condition at the Facilities (or any of them) or any adjoining sites;
- vi. contamination of the Facilities' site(s) from groundwater, soil or airborne substances migrating from sources outside of the Facilities;
- vii. naturally-occurring events such as earthquakes, hurricanes, tornadoes, floods, fires, landslides, underground movement, lightning, epidemics and other acts of nature;
- viii. war, terrorism, explosion, sabotage, extortion, blockade, insurrection, riot, civil disturbance, or acts of a declared public enemy;
- ix. labor disputes or strikes, except labor disputes involving employees of Contractor;
- x. the failure of any vendor or third party to furnish services, materials, chemicals, equipment or otherwise perform its contractual obligations;
- xi. the result of any act, error or omission of any other contractor engaged by Owner to perform work or services at the Facilities (or any portion/element thereof);

xii. the failure of any governmental body or private utility having operational jurisdiction in the area in which the Facilities are located to provide and maintain utilities or telephone and telecommunication services;

xiii. a defect in title or placement of any encumbrance on the Facilities or necessary for use of the Facilities (including, but not limited to, failure - or non-existence - of any easement or other land right that is necessary in connection with the performance of any service/activity under this Agreement);

xiv. the receipt of influent at the Facilities other than acceptable influent, or the presence of hazardous substances or biological toxic substances in the influent;

xv. any breach by a Party, other than the Party claiming the occurrence of an Uncontrollable Circumstance, of its representations, warranties and covenants as set forth in this Agreement;

xvi. any failure, non-performance or non-compliance by a Party, other than the Party claiming the occurrence of an Uncontrollable Circumstance, with respect to its obligations and responsibilities under this Agreement;

xvii. the failure of Owner to proceed with a Replacement or Capital Improvement, after notification to Owner by Contractor, that Contractor determines is necessary to provide the Contractors Services pursuant to this Agreement;

xviii. any Replacement or Capital Improvement that interferes with Contractor's obligations and responsibilities under this Agreement;

xix. the action of any third party; or

xx. any other circumstance, cause or occurrence of any kind whatsoever beyond the reasonable control of a Party.

2. Term of Agreement.

a. Initial Term. This Agreement shall commence on the Effective Date and shall continue for three (3) years (the "Initial Term Expiration Date"), unless this Agreement is earlier terminated as herein provided.

b. Renewal. This Agreement will automatically renew for successive one (1) year terms beginning on the Initial Term Expiration Date and continuing thereafter on each anniversary of the Initial Term Expiration Date unless either of the Parties elects to terminate this Agreement by providing notice of termination to the other Party at least ninety (90) days prior to the expiration of the then-applicable term.

3. Scope of Services.

a. Basic Services. Throughout the term of this Agreement, Contractor shall provide, in accordance with Applicable Law, the services identified in the attached Exhibit B, as may be amended from time to time by mutual agreement of the Parties (the "Basic Services") Contractor shall

provide the Basic Services in consideration for which Owner shall pay Contractor the "Base Fee" as identified in the attached Exhibit C. Contractor shall not be required to perform any services necessary to operate, maintain or manage the Facilities other than the Basic Services, or pay any costs relating to services other than the Basic Services, including, without limitation, those services, costs and expenses identified in the attached Exhibit E (collectively, the "**Owner's Responsibilities**"). Owner shall be responsible for providing all Owner's Responsibilities at its sole cost and expense.

b. Additional Services. During the term of this Agreement, Contractor shall upon Owner's request, or as otherwise contemplated by this Agreement or the Exhibits attached hereto, perform services that are in addition to the Basic Services upon the terms and conditions set forth in the attached Exhibit D (each, an "**Additional Service**" and collectively, the "**Additional Services**"). Contractor shall perform Additional Services, and shall invoice Owner for the price of the Additional Service as an element of the Agreement Price, all in accordance with the provisions of Section 4, below.

c. Certified Personnel; Subcontractors. Contractor shall provide Contractor Services under the direct supervision of personnel who possess valid water operator certifications as required by Applicable Law; or if no such certification is required, by personnel whom Contractor deems qualified to perform the Contractor Services. Owner acknowledges and agrees that Contractor may retain subcontractors to assist Contractor in the performance of any/all Contractor Services hereunder. The use of subcontractors shall not relieve Contractor of its obligations or responsibilities under this Agreement.

4. Compensation.

a. Agreement Price. Commencing on the Effective Date, Owner shall pay to Contractor the Agreement Price, which includes a monthly fee for performing the Basic Services, as more particularly identified in Exhibit C ("Base Fee"), for which Contractor will invoice Owner on a monthly basis. In addition, Owner shall pay Contractor for (i) any Additional Services, (ii) any costs or expenses attributable to a change in the scope of services to be provided by Contractor, including any Capital Improvements, as may be agreed to by the Parties ("Change in Scope"), and (iii) any general excise, public service company, sales, use, gross receipts or other tax, excluding net income taxes and employee related taxes, that may be imposed on Contractor in connection with Contractor's receipts under this Agreement or the performance of its obligations under this Agreement, which, when added to such required payment shall yield to Contractor, after deduction of all taxes payable by Contractor with respect to all such payments, a net amount equal to that which Contractor would have realized from the payments had no such taxes been imposed. If the Parties are unable to agree upon the amount of the increase in costs and expenses attributable to a Change in Scope, the dispute will be submitted for resolution in accordance with Section 16, hereof.

b. Owner's Responsibilities; Contractor's Offices. Owner shall be responsible for providing all Owner's Responsibilities at its sole cost and expense. In addition, Owner shall provide Contractor an on-site office and garage area of approximately 1,000 sq. feet for the on-site office and approximately 4,000 sq. feet for the garage area (the "Contractor Offices"). Contractor is not required to pay Owner rent for the Contractor Offices. Within thirty (30) days of Owner's invoice, Contractor will pay Owner for all utility services to the Contractor Offices and Owner's real property taxes, building maintenance and property insurance costs that are assessed to or otherwise reasonably allocated by Owner to the Contractor Offices (to the extent any such payment is subject to Hawaii general excise

tax, Contractor shall as part of such payment pay Owner an amount (currently 4.166%) in reimbursement for such tax payable by Owner). Upon Contractor's request, Owner shall provide to Contractor documentation for such charges. Contractor shall be responsible at its expense for maintaining the Contractor Offices in condition substantially equal to that which existed on the date Owner gave Contractor possession, reasonable wear and tear excepted. Contractor shall indemnify, defend and hold Owner harmless from and against any claims, losses or liabilities directly resulting from the use or occupancy of the Contractor Offices by Contractor. Owner shall indemnify, defend, and hold harmless Contractor and its affiliates, subsidiaries, parent company, officers, directors, beneficiaries, shareholders, partners, agents, and employees from all fines, suits, procedures, claims, injuries, diseases, death, damages, liabilities, and actions of every kind, and all costs and expenses (including attorneys' and consultants' fees) arising out of or in any way connected with any presence, deposit, spill, discharge, or other release of Hazardous Substances that were in, on or about the Contractor Offices as of the Effective Date. Contractor shall indemnify, defend, and hold harmless Owner and its affiliates, subsidiaries, parent company, officers, directors, beneficiaries, shareholders, partners, agents, and employees from all fines, suits, procedures, claims, injuries, diseases, death, damages, liabilities, and actions of every kind, and all costs and expenses (including attorneys' and consultants' fees) arising out of or in any way connected with any presence, deposit, spill, discharge, or other release of Hazardous Substances brought to the Contractor's Offices by Contractor after the Effective Date. The Parties' obligations and liabilities under this section shall survive the termination of this Agreement. The term "Hazardous Substances", as used in this Agreement, shall include, without limitation, flammables, explosives, radioactive materials, asbestos, lead paint, polychlorinated biphenyls (PCBs), chlorofluorocarbons (CFCs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any government authority.

c. Payment of Invoices. All invoices submitted by Contractor shall be paid by Owner no later than thirty (30) days after the date of the invoice (for each invoice, "Due Date"). If Owner disputes any portion of an invoice in good faith, Owner shall pay the undisputed portion to Contractor by the Due Date and shall provide Contractor with written notice of the disputed amount and basis therefore by the Due Date. Disputes will be submitted for resolution in accordance with Section 16, hereof. Failure of Owner to provide timely and detailed written notice of any such dispute will act as a waiver of any defense or justification for failing to pay the full amount of the invoice by the Due Date.

d. Interest on Unpaid Invoices. Invoiced amounts not paid within fifteen (15) days after receipt of an invoice shall bear interest at the rate of ten percent (10%) per annum until paid.

e. Right to Suspend Performance. Notwithstanding any default provision contained hereunder, if Owner fails to pay any sum owed to Contractor within fifteen (15) days of the Due Date, then Contractor, without limiting any other remedies that it may have under this Agreement or Applicable Law, upon five (5) days written notice to the Owner, and provided the Owner does not remedy such failure within such five (5) day period, may elect to immediately suspend performance of its obligations under this Agreement until any and all amounts due to Contractor, including interest, are paid in full by Owner. Failure of Contractor to suspend performance of its obligations under this Agreement shall not constitute a waiver of any default or the right to pursue any remedies that may be available to Contractor.

5. **Capital Improvements.** During the term of this Agreement, Contractor shall on an annual basis provide Owner with a listing of recommended Capital Improvements, identifying the Capital Improvements that are necessary to:

- improve the performance or increase the capacity of the Facilities;
- address or anticipate the obsolescence of portions of the Facilities;
- reduce the cost to Contractor of performing this Agreement;
- produce cost savings or efficiency innovations to the Facilities; or
- comply with existing or anticipated changes to Applicable Law

(each, "Capital Improvement Project" and collectively, "Capital Improvement Projects"). The decision to proceed with construction and implementation of any such Capital Improvement Project shall be at the sole discretion and decision of Owner. If Owner decides not to proceed with construction and implementation of a Capital Improvement Project recommended by Contractor that is necessary to address or anticipate the obsolescence of portions of the Facilities or comply with existing or anticipated changes to Applicable Law or to address safety/security issues, then that decision may be deemed at the reasonable discretion of Contractor to be an Uncontrollable Circumstance. If Owner implements a Capital Improvement Project, such implementation may be considered or lead to an Uncontrollable Circumstance, as more particularly set forth hereunder.

6. **Representations and Warranties.**

a. **Owner's Representations, Warranties and Covenants.** Except as set forth in Exhibit F and Section 7, Owner hereby warrants, represents and covenants that:

i. Owner has valid, legal title to the Facilities and real property interests where the Facilities are located, clear of all encumbrances, and has authority to provide Contractor access to the Facilities for the entire term of this Agreement;

ii. the Facilities have been designed and constructed and Owner has the valid right to draw water from the Facilities in accordance with all Applicable Law, governmental permits and all approvals issued therefore;

iii. the Facilities have the capacity to process and produce potable water in accordance with Applicable Law, and owner holds all governmental statutes, regulations, permits, and approvals required for same;

iv. to Owner's Knowledge, the Facilities are in good working order, operating within the parameters required by Applicable Law and their intended use, and are without any known defect or damage;

v. there are presently no citations, summons, complaints, penalties, actions, suits, investigations or other proceedings pending or threatened against Owner in connection with the operation or maintenance of the Facilities that may adversely affect Owner's or Contractor's ability to perform its obligations under this Agreement;

vi. all land titles, easements, licenses, permits, certificates, approvals, registrations and authorizations necessary for Contractor's operation of the Facilities as set forth

hereunder will be obtained and maintained by Owner and provided by Owner to Contactor for the entire term of this Agreement;

vii. as of the Effective Date, the operation and maintenance of the Facilities are currently in compliance with all licenses, permits, certificates, approvals, registrations and authorizations necessary for the operation of the Facilities, as well as all provisions of Applicable Law; and

viii. the execution and delivery of this Agreement and the performance of Owner's obligations hereunder will not conflict with or result in a violation of any Applicable Law. regulation.

b. Contractor's Representations and Warranties. Contractor hereby warrants, represents and covenants that:

i. Contractor will comply with all Applicable Laws now in force, or which may hereafter be in force, related to Contractor's provision of all Contractor Services pursuant to this Agreement;

ii. Contractor will promptly provide Owner with copies of any regulatory notices or orders for the Facilities received by Contractor;

iii. Contractor will perform all of its obligations under this Agreement with the care and skill ordinarily exercised by professionals in the same field in accordance with generally accepted professional practices and standards and the requirements of Applicable Laws; and

iv. during the term of this Agreement, Contractor shall maintain all licenses and permits required to perform all of Contractor's obligations under this Agreement.

c. Reciprocal Representations and Warranties. Each of Contractor and Owner, with respect to itself, does hereby represent, warrant and covenant to the best of their knowledge, information and belief, with such representations, warranties and covenants being true as of the Effective Date, as follows:

i. It has the legal authority to enter into this Agreement;

ii. Is authorized to do business and in good standing under the laws of the state in which it is formed and the state in which the Facilities are located;

iii. the persons signing this Agreement on its behalf have the power and authority to execute and deliver this Agreement pursuant to the Party's respective governing documents, and the execution, delivery and performance of this Agreement have been duly authorized and approved by all requisite action;

iv. the execution and delivery of this Agreement and the performance of such Party's obligations hereunder:

1. will not conflict with or result in a violation of its governing documents;

2. shall not violate or result in a default, immediately or with the passage of time, under any agreement contract or instrument to which such Party is a party or by which it is, or may be, bound; and

3. shall not conflict with or violate any order, writ, judgment, or decree, issued by a governmental agency having jurisdiction, to which such Party is subject;

v. no additional approval, authorization or other action by, or filing with, any governmental authority is required in connection with such Party's execution and delivery of this Agreement by such Party; and

vi. each of the provisions, covenants, and obligations contained in this Agreement is enforceable against such Party under Applicable Law.

7. **Permits, Approvals and Certifications.** Application for the renewal, modification, and payment of charges and fees in connection with any governmental permit, approval or certification for the Facilities required by Applicable Law are the sole responsibility of Owner. Any such governmental permits, approvals or certifications will be held in the name of Owner and Owner will procure and maintain at all times all such governmental permits, approvals or certifications as may be required by Applicable Law for the operation of the Facilities; provided, however, that Contractor shall assist Owner with the same.

8. **License.** During the term of this Agreement, Contractor shall have (and Owner hereby grants to Contractor) a license to enter onto all premises, easements and properties of Owner to perform Contractor's duties and responsibilities under this Agreement. This license granted herein is limited to premises, easements and properties directly related to the Facilities.

9. **Identification of Unsafe Conditions; Emergencies.**

a. **Unsafe Conditions.** During the term of this Agreement, should Contractor become aware of any unsafe conditions or safety violations at the Facilities arising from the construction or condition of the Facilities, Contractor will notify Owner of such condition within a reasonable time after such discovery. If the actions needed to correct such conditions fall outside of the Basic Services or require a Capital Improvement Project, Owner shall determine the actions needed to correct such conditions and proceed diligently, at Owner's sole cost and expense, to implement such corrective measures. Owner will notify Contractor in writing of the steps Owner shall take to correct these conditions and the proposed time for implementing same. Should Contractor disagree with the steps or the proposed time to implement the corrective measures, Contractor will notify Owner of such disagreement and the reasons therefore; whereupon, the Parties will negotiate in good faith for a period not to exceed ten (10) business days to arrive at a mutually agreeable program for safety upgrades and a schedule therefore. Failing such agreement, Contractor shall have the right to terminate the Agreement upon thirty (30) days written notice to the Owner. Nothing herein shall prevent Contractor from performing Initial Repairs without Owner preapproval as described in Exhibit B.

b. **Emergencies.** In the event of an Emergency involving any part of the Facilities which, in Contractor's judgment, requires immediate action, Contractor shall have the right to perform, or cause to be performed, any repairs, regardless of the estimated cost. Contractor shall notify Owner as soon as possible as to the work done and proposed to be done as a result of such Emergency and

of Contractor's estimated cost of the repairs. Contractor shall invoice Owner for (and Owner shall pay) all fully allocated direct and indirect cost (including overhead) and expense incurred by Contractor to perform the such emergency services; said invoice shall be processed, transmitted and paid as an element of the Agreement Price, all in accordance with the provisions of Section 4, above.

10. Uncontrollable Circumstances.

a. Rights and Obligations upon Occurrence of Uncontrollable Circumstance. If an Uncontrollable Circumstance occurs, Contactor shall be entitled to any or all of the following:

- relief from its performance obligations under this Agreement to the extent that the occurrence of the Uncontrollable Circumstance prevents Contractor's performance of such obligations;
- an extension of time to perform its obligations under this Agreement to the extent that the occurrence of the Uncontrollable Circumstance prevents Contractor's ability to perform such obligations in the time specified in this Agreement; and
- an increase in the Agreement Price or other fee to be paid under this Agreement, in a mutually agreed amount, to the extent that the occurrence of the Uncontrollable Circumstance increases Contractor's costs of performance of its obligations under this Agreement.

The occurrence of an Uncontrollable Circumstance shall not, however, excuse or delay Owner's obligation to pay monies previously accrued and owing to Contractor under this Agreement, or for Contractor to perform any obligation under this Agreement not affected by the occurrence of the Uncontrollable Circumstance. Owner shall continue to pay the Agreement Price to Contractor during the continuance of any Uncontrollable Circumstance, except to the extent that the occurrence of the Uncontrollable Circumstance decreases Contractor's costs of performance of its obligations under this Agreement; in which case any decrease in expense shall be passed onto Owner in the form of a temporarily reduced Agreement Price.

b. Notification to Owner. Contractor shall notify Owner by telephone or electronic mail after Contractor first learns of the occurrence of an Uncontrollable Circumstance. As soon as reasonably feasible after learning of the Uncontrollable Circumstance, Contractor shall provide Owner with a written description of the Uncontrollable Circumstance, the cause thereof (to the extent known), the date the Uncontrollable Circumstance began, its expected duration and an estimate of the specific relief requested or to be requested by Contractor.

c. Other Contractor Duties. Contractor shall use reasonable efforts to reduce costs resulting from the occurrence of the Uncontrollable Circumstance, fulfill its performance obligations under the Agreement, and otherwise mitigate the adverse effects of the Uncontrollable Circumstance. While the Uncontrollable Circumstance continues, Contractor shall give Owner periodic updates of the information previously submitted. Contractor shall also provide written notice to Owner of the cessation of the Uncontrollable Circumstance.

11. Default.

a. Events of Default -- Definition. Each of the following shall constitute an "Event of Default" under this Agreement:

- i. The failure of Owner to make any payment by the Due Date; and
- ii. The failure of either Party ("Defaulting Party") to perform any other material term, covenant or condition of this Agreement or in the event of a breach of any representation and warranty given by such Party and the default or breach continues for more than thirty (30) days following the other Party ("Non-Defaulting Party") giving notice of such default to the Defaulting Party; provided, however, that if the default or breach cannot reasonably be cured within such thirty (30) day period and the Defaulting Party has attempted to cure the default or breach within such thirty (30) day period and thereafter continues to diligently attempt to cure the default or breach, then the cure period provided for herein shall be extended for a reasonable period of time to allow completion of the cure. The foregoing cure period shall not apply to any failure by Owner to make any payment by the Due Date. An Event of Default under the Ditch O&M Agreement shall constitute an Event of Default under this Agreement, without requirement for further notice hereunder.

b. Occurrence of Event of Default; Rights of Non-Defaulting Party. If an Event of Default occurs, the Non-Defaulting Party shall have the right to (i) terminate this Agreement upon written notice to the Defaulting Party and (ii) enforce any and all rights and remedies it may have against the Defaulting Party under Applicable Law. In the event of termination of this Agreement, the provisions of Section 17.b. shall apply.

12. Fines and Penalties.

a. Responsible Party. Except in the case of Uncontrollable Circumstances, Contractor shall be responsible for all fines and penalties relating to and arising from Contractor's failure to provide services in accordance with its obligations hereunder, but only to the extent of and in proportion to the degree of fault, failure or negligence of Contractor. Owner shall be responsible for all other fines and penalties relating to and arising from the Facilities including, without limitation, Owner's failure to perform its obligations hereunder.

b. Non-Responsibility of Contractor. Contractor will not be responsible for fines, claims or penalties resulting from violations or a failure to meet water quality requirements of Owner's Permit for any period(s) and subsequent recovery period(s) in which:

i. The Facilities (or any portion thereof) are inoperable or can operate only at a reduced capacity due to construction, equipment failure or maintenance activities, fire, flood, adverse weather conditions, labor disputes, pandemics or other causes beyond Contractor's control;

ii. The raw water characteristics exceed the Facilities' design parameters and/or reasonable industry standards; or

iii. Owner (a) fails to make necessary Capital Improvements or other improvements that are needed to meet permit requirements, or equipment repair or replacement, or (b) delays authorizations for items needed to meet permit requirements.

c. **Notice of Fine or Penalty.** If a fine or penalty is assessed against Contractor or Owner with regard to the Facilities, the Party receiving such fine or penalty ("Notifying Party") shall promptly notify the other Party ("Receiving Party") in writing of such fine and penalty and include a copy of any documents received. Such notice shall also contain a statement of the Notifying Party's position as to which party or parties bear responsibility for the fine or penalty. The Notifying Party's notice shall include assumption of all or partial responsibility of such fine or penalty, if applicable, or its rejection of any responsibility. If the notice asserts that the Receiving Party is either wholly or partially responsible, then, within five (5) business days of receipt of such notice, the Receiving Party shall either (i) assume all responsibility if that Party is wholly responsible, (ii) assume partial responsibility for its portion of such fine or penalty or (iii) reject such assertion in writing. If both Parties are partially responsible for the fine or penalty, then they shall apportion the costs of the fine or penalty in proportion to the percentage of their respective responsibility. If either Party denies responsibility or the Parties are unable to come to an agreement as to the allocation of responsibility, the Parties shall attempt to resolve the dispute amicably, failing which the Parties shall submit the matter to dispute resolution in accordance with Section 16.

d. **Appeal of Fine or Penalty.**

i. **Where Responsibility Is Accepted.** As to any fine or penalty for which Owner or Contractor assumes responsibility, the Party or Parties assuming responsibility shall be entitled to request and pursue an appeal or administrative hearing to review the fine or penalty at the sole cost and expense of the responsible Party or Parties; provided, however, that the Parties shall cooperate in providing access to documents and information and the execution of any consents or authorizations reasonably required.

ii. **Where Responsibility is Disputed.** As to any fine or penalty for which responsibility is disputed, either Owner or Contractor, or jointly, may request and pursue an appeal or administrative hearing to review the fine or penalty without prejudice to the allocation of ultimate responsibility between them, which would be submitted for resolution in accordance with Section 16.

e. **Defense to Allegations; Cooperation.** Owner and Contractor shall cooperate in assertion of any appropriate affirmative defenses to any alleged permit violation prior to assessment of a fine or penalty. At Owner's expense, Contractor will arrange for preparation and submittal of documentation to assert an affirmative defense. Any testimony, investigations, reports, representation and advisory services provided by Contractor in asserting appropriate affirmative defenses, if not included in the Basic Services or Additional Services, will be provided at an additional cost to Owner, in accordance with Contractor's per diem rates then in effect and any actual third-party costs incurred by Contractor in connection therewith, unless it is ultimately determined that Contractor is responsible for the fine or penalty.

13. Indemnification; Limitation of Liability.

a. **By Contractor.** Contractor shall indemnify and hold Owner, its shareholders, employees, officers, directors, agents, consultants, contractors and representatives harmless from and against all liability, including attorneys' fees and/or consultant's fees and costs, for all claims, losses, liabilities or damages of any nature whatsoever, including employee-related injury or illness, any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to (i) a material breach of this Agreement by

Contractor, or (ii) the negligent or wrongful act or omission of Contractor, its employees, officers, directors, agents, consultants, subcontractors and representatives for which Contractor may be responsible in the performance or purported performance of its obligations under this Agreement, or that directly results from such person's entry onto the lands or other property of Owner in connection with their performance of Contractor's obligations under this Agreement but only to the extent of, and in proportion to, the degree of negligent or wrongful act or omission of Contractor, its employees, officers, directors, agents, consultants, subcontractors and representatives.

b. By Owner. Owner shall indemnify and hold Contractor, its affiliates, employees, officers, directors, agents, consultants, contractors, subcontractors and representatives harmless from and against all liability, including attorneys' fees and/or consultant's fees and costs, for all claims, losses, liabilities or damages of any nature whatsoever, including employee-related injury or illness, any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to (i) a material breach of this Agreement by Owner or (ii) the fault, failure, error, omission, negligent or wrongful act of Owner, its members, employees, officers, directors, agents, consultants, contractors, subcontractors and representatives for which Owner may be responsible in the performance or purported performance of its obligations under this Agreement, but only to the extent of and in proportion to the degree of fault, failure, error, omission, negligent, or wrongful act of the Owner, its shareholders, employees, officers, directors, agents, consultants, contractors, subcontractors and representatives.

c. Casualty Loss to Facilities. Contractor shall not be responsible or liable for any casualty loss to the Facilities unless the casualty loss is due to Contractor's or its employees', officers', directors', agents', consultants', subcontractors' and representatives' negligence, but only to the extent of and in proportion to the degree of negligent or wrongful act of Contractor, its employees, officers, directors, agents, consultants, subcontractors and representatives.

14. Consequential Damages. In no event shall the Parties be liable to each other, and each Party specifically waives as against the other, any and all claims for consequential, incidental, indirect, special, or punitive damages resulting in any way from performance or non-performance of this Agreement, whether such damages are characterized as arising under breach of contract or warranty, tort (including negligence), fault, strict liability, indemnity or any other theory of legal liability.

15. Insurance.

a. Contractor's Insurance Obligations.

i. Workers Compensation. Contractor will provide Workers Compensation Insurance for its employees at the statutory limit for Hawaii.

ii. Commercial General Liability. Contractor and its subcontractors will procure and maintain, in full force and effect during the term of this Agreement, Commercial General Liability Insurance with limits of liability of \$1,000,000 each occurrence and in the aggregate, along with an excess liability umbrella policy with limits of liability of \$5,000,000 each occurrence and in the aggregate, protecting Contractor and its subcontractors and Owner from liability resulting from bodily injury, death and property damage arising out of the acts of Contractor or its subcontractors. Such

acquired insurance shall extend to liability risks relating to this Agreement. Owner shall be named as an additional insured under such insurance. Upon execution of this Agreement, and thereafter from time to time upon MLP's reasonable request, Contractor shall provide Owner with a certificate reasonably satisfactory to Owner evidencing such insurance.

iii. Automobile Liability Insurance. Contractor will procure and maintain, in full force and effect during the term of this Agreement, Automobile Liability Insurance with a combined single limit in the amount of \$1,000,000 each occurrence.

b. Self-Insurance. Contractor shall have the right to self-insure the coverage obligations identified in Section 15.a., above.

c. Insurance Covering Facilities. Contractor shall not be required to carry, and will not carry, any property insurance covering the Facilities and such property insurance shall be the responsibility of Owner at its expense.

16. Dispute Resolution.

a. Non-Binding Mediation. The parties shall first seek to negotiate, in good faith and in timely fashion, a resolution of any dispute. If the Parties are unable to resolve the dispute with negotiations within thirty (30) days, the Parties agree to mediate any dispute with non-binding mediation conducted in Honolulu, Hawaii. The Parties may agree that a mediated resolution is binding. If the Parties cannot agree upon a mediator, each shall select one name from a list of mediators maintained by Dispute Prevention and Resolution, Inc., the two selected shall then choose a third person who will serve as mediator. The Parties shall have twenty (21) days within which to commence the first mediation session following the conclusion of their good faith negotiations. The Parties shall each fund half the cost of the mediator(s) and shall bear their own costs incurred in connection with any such mediation unless agreed otherwise as a result of the mediation.

b. Litigation and Submission to Jurisdiction. If the mediation does not result in a resolution of the dispute within forty-five (45) days after any Party's request for mediation, or sooner if reasonably necessary to prevent irreparable or substantial ongoing damage or losses, then the Parties may pursue other remedies available at law or in equity in the First Circuit Court of the State of Hawaii and the Parties consent to the venue and jurisdiction of such courts. In addition to any other right or remedy to which a Party may be entitled, at law or in equity, any Party shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

c. Attorneys' Fees. Should any party hereto employ an attorney for the purpose of enforcing or construing, because of disagreement with the other party, or breach by the other party of this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all reasonable attorneys' fees and all costs, whether incurred at the trial or appellate level, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and the cost of any bonds, whether taxable or not, and such reimbursement shall be included in any judgment, decree or final order issued in that proceeding.

17. Termination.

a. Right to Terminate "For Cause". Notwithstanding any provision herein to the contrary, either Party may terminate this Agreement "For Cause" under any of the following conditions:

i. the other Party becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors, or the other Party commences any case, proceeding or other action seeking reorganization or receivership, or adopts an arrangement with creditors, under any bankruptcy, insolvency, reorganization or similar law of the United States or any state thereof for the relief of creditors or affecting the rights or remedies of creditors generally;

ii. insolvency, receivership, reorganization, or bankruptcy or similar proceedings are commenced against the other Party and such proceeding is not dismissed or stayed within a period of sixty (60) days.

iii. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to terminate this Agreement upon written notice to the Defaulting Party as set forth in Section 11.b.

iv. In the event Contractor no longer provides potable water service to the Service Area of KWC as described more particularly in the APA and pursuant to tariffs approved by HPUC.

b. Contractor's Right to Terminate Under Section 9.a. Contractor may terminate this Agreement as set forth in Section 9.a.

c. Effects of Termination. Upon termination of this Agreement, for any reason, Contractor shall return to Owner all property of Owner, and shall not deny Owner access to the Facilities and deliver to Owner all other items related to the operation, maintenance and access to the Facilities, including, but not limited to, all books, records, manuals, logs, designs, plans, instructions, notices, guides, maps, schematics, usernames, passwords, locks, keys, entry codes, security codes, security devices, documents, and any and all other items required to operate, maintain, and have access to all parts of the Facilities. Upon termination of this Agreement, Contractor shall be entitled to all compensation as shall have been earned by performance of Contractor Services as of the date of termination (including payment of any unpaid invoices, late fees and interest charges). The provisions of Section 13 and 16 shall survive termination.

18. Designated Representatives.

a. Contractor's Representative. Anthony Carrasco ("Contractor's Representative") is Contractor's designated primary point of contact for all questions related to Contractor's performance of its obligations pursuant to this Agreement. Contractor's Representative may be contacted as follows:

- Telephone Number: 808-883-2065

- E-Mail Address: acarrasco@calwater.com

b. Owner's Representative. Paul Subrata ("Owner's Representative") is Owner's designated primary point of contact for all questions related to Owner's performance of its obligations pursuant to this Agreement. Owner's Representative may be contacted as follows:

- Telephone Number: (808) 757-2666
- E-Mail Address: psubrata@mlpmaui.com

c. Change of Identity of /Contact Information for Representatives. The Parties may change the identities of, and contact information for, their respective representatives by providing written notice of such change(s) to the other Party in accordance with the provisions of Section 19, below.

19. Notices. All notices or other communications required hereunder to be given shall be in writing and shall be (i) delivered personally, (ii) deposited with the U.S. Postal Service, duly certified or registered, postage prepaid, (iii) delivered by a nationally recognized overnight courier, or (iv) transmitted by electronic mail ("e-mail"), if such electronic mail transmission. All notices / communications hereunder shall be addressed as set forth below:

To Owner: Maui Land & Pineapple Company, Inc..
200 Village Road
Lahaina, Hawaii 96761
Attention: Paul Subrata
E-Mail Address: [psubrata@kapalua.com\]](mailto:psubrata@kapalua.com)

To Contractor: Hawaii Water Service Company, Inc.
P.O. Box 384809
Waikoloa, Hawaii 96738
Attention: General Manager
E-Mail Address: acarrasco@calwater.com

With a Copy to:
California Water Service Company
1720 N. First Street
San Jose, CA 95112
Attn: Associate General Counsel
E-mail Address: jkelsey@calwater.com

Addresses may be changed or supplemented by written notice given as above provided. Any such notice or communication sent by mail shall be deemed to have been received by the addressee on the third (3rd) business day after posting with the U.S. Postal Service, or if by a priority service, on the first (1st) business day after transmittal. If any notice or communication is delivered personally or by private commercial courier, said notice/communication shall be deemed to have been received on the date of such delivery. If the notice/communication is delivered by e-mail, then the notice /communication shall be deemed received on the date of such delivery.

20. Other Provisions.

a. Title. Contractor shall have no title to, or ownership interest in, the Facilities or any part thereof whatsoever as a result of the services Contractor provides in this Agreement. Contractor may assert a lien against the Facilities for any amounts unpaid under this Agreement.

b. Ownership of Records. All regulatory and operational records relating to the Facilities are the property of Owner; however, Contractor shall be entitled to copies of such records and reasonable use thereof.

c. Governing Law. This Agreement and its interpretation shall be governed by the laws of the state of Hawaii without regard to conflicts of laws principles.

d. Entire Agreement. No oral agreement or conversation with any officer, agent or employee of Owner or Contractor, either before or after the Effective Date, shall affect or modify any of its terms or obligations herein contained. This Agreement constitutes the entire agreement between the Parties hereto and supersedes all previous or contemporaneous communications, representations or agreements with respect to the subject matter hereof. The terms and conditions of this Agreement may be amended by and between Contractor and Owner; however, no changes, alterations or modifications to this Agreement shall be effective unless in writing and signed by both Parties hereto. Any changes, alterations, or modifications to this Agreement, including agreed upon interpretation of meaning and other mutually agreed upon conditions provided for in this Agreement, shall be covered by a written amendment signed by both Parties.

e. Binding Effect. The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the Parties to the Agreement and their respective administrators, executors, personal representatives, successors and assigns.

f. Assignment. Contractor may assign this Agreement with the prior written consent of Owner, which consent shall not be unreasonably withheld by Owner; provided, however, that the consent of Owner shall not be required if assignment of this Agreement by Contractor is to an affiliate, subsidiary or related entity of Contractor. Owner may assign this Agreement without the consent, but with at least ninety (90) days' notice to Contractor in connection with any conveyance of the Facilities. Any other assignment of this Agreement by Owner requires the prior written consent of Contractor or its assignee, which consent shall not be unreasonably withheld by Contractor or its assignee..

g. Force Majeure. No Party shall be held liable nor be deemed to have breached this Agreement for failure or delay caused by or resulting from causes beyond its reasonable control, including but not limited to, fire, floods, embargoes, acts of war, civil commotions, labor disturbances, acts of God, pandemics, epidemics, or acts, omissions or delays in acting by any governmental authority; provided, however, it is understood that this paragraph is intended only to suspend and not discharge obligations under this Agreement and that when the causes of the failure or delay are removed or alleviated, performance shall resume; provided further that this paragraph shall not apply to any obligation of Owner to pay Contractor any sum of money when due.

h. Waiver. The failure on the part of either Party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provision in the future.

i. Conflicts. To the extent there are any conflicts, inconsistencies or discrepancies between the terms and conditions contained in the main body of this Agreement and the Exhibits attached hereto, the terms and conditions of the main body of this Agreement shall govern.

j. Recitals. The Recitals set forth above are hereby incorporated into and made part of this Agreement.

k. Paragraph Headings. Paragraph headings in this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

l. Time. Time is of the essence in this Agreement.

m. Counterparts; Electronic Transmittals. This Agreement may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute one instrument. The Parties agree that if this Agreement is transmitted electronically, the electronic transmittal of the original execution signatures shall be treated as original signatures and given the same legal effect as an original signature. A signature in any form or medium (including without limitation any electronic or digital signature or symbol) shall have the same legal effect, validity and enforceability as a manually handwritten original signature.

n. No Joint Venture. This Agreement shall not be construed as creating a relationship of a partnership or joint venture among the parties.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties thereto have executed this Agreement as of the Effective Date first-above written.

"OWNER"

MAUI LAND & PINEAPPLE COMPANY, INC.,
a Hawaii corporation

By: _____
Name: _____
Its: _____

"CONTRACTOR"

HAWAII WATER SERVICE COMPANY, INC.,
a Hawaii corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT A**Description of the Facilities**

The Facilities to be operated consist of Kapalua Wells Nos. 1 & 2 and associated equipment which are located on parcel T.M.K. (2) 4-2-01:43. Both wells are located outside and have submersible pumps. Adjacent to each well is a metal building which houses piping, electrical equipment and controls equipment.

The Facilities also include the piping from these two well sites to a 0.1 Million Gallon tank site also located on T.M.K. (2) 4-2-01:43. The piping covered under this agreement ends at the location where sodium hypochlorite is injected for disinfection purposes at this take site.

Contractor will own and operate the rest of the water system, including this point of sodium hypochlorite injection and all piping, tanks and other facilities downstream of this injection point. The facilities owned by Contractor are not considered Facilities subject to this Agreement.

EXHIBIT B**Description of the Basic Services**

Contractor shall provide utility operations and maintenance services for the Facilities identified in this Agreement.

Facilities operations and maintenance services will be performed in accordance with state and federal guidelines for operations of potable water wells. Close attention shall be taken to meet public health and compliance monitoring requirements specific to the Facilities. Contractor will be responsible for all communications, reporting, and submittal of information required by the Hawaii State Department of Health (DOH) and Commission of Water Resources Management (CWRM).

Operational tasks will be performed by or with the direct supervision of a state certified distribution system operator in accordance with state and federal guidelines for operations of a public water system. When necessary, Contractor shall be responsible for all scheduling, sampling and shipment of water samples to a State Certified Laboratory as required by DOH.

Maintenance tasks will be performed in accordance with the manufacturer specifications and recommended time intervals. Should for any reason the manufacturer's operating and maintenance specification cannot be obtained, Contractor shall provide Owner with maintenance and repair recommendations regarding the maintenance of the specific assets. Incidents and emergency repairs are not Basic Services and shall be managed by Contractor as described in Section 9 of the Agreement.

If following initial inspection of the Facilities by Contractor upon commencement of Contractor's performance under this Agreement the Facilities are not in "good working order" as more particularly represented by Owner pursuant to Section 6a.iv. of this Agreement, any work reasonably required to restore the Facilities to normal operations and good working order will be beyond the scope of Basic Services and may be performed by Contractor immediately without the requirement of preapproval of such services by Owner. Such work shall be performed and billed to Owner (and payable by Owner) at Contractor's fully allocated direct and indirect cost (including overhead) and expense plus a 15% mark-up ("Initial Repairs").

The following sections outline the requirements for operating, maintaining, and servicing the Facilities. Contractor shall provide these and any other services to ensure that the Facilities are being operated in accordance with all applicable laws, permits, rules and regulations and in good working order and condition for the intended uses of the Facilities.

A. Deep Well Pumps

1. Performance check – a visual check shall be performed on each well not less than three times a week. This check shall include the following:
 - a. Discharge pressure
 - b. Flow Rate (GPM)
 - c. Meter Reading
 - d. Lubrication (according to manufacturer's recommendations)
 - e. Log well pump motor loads, voltage, current, and runtimes
 - f. Log all readings on computer for graphical comparison

2. Compare performance data with field and factory curves, troubleshoot when necessary.
3. Investigate any unusual noises or vibrations in the equipment.
4. Coordinate any sub-contractors necessary for pump/motor repair.
5. Clean and adjust all pump control blow off valves to ensure proper operation.
6. Check lube oil systems, if any, and adjust oil feed rates if necessary.
7. Log maintenance and repair work.

B. Laboratory Testing and Reporting

In addition to the DOH sampling and analysis requirement for the potable wells, Contractor shall sample all potable wells in accordance with CWRM requirement and shall perform conductivity measurements and chloride determinations on these samples in accordance with the following:

- The sampling protocol will be as specified by CWRM to ensure that the samples are representative.
- Conductivity measurements will be performed using an USEPA approved conductivity meter which shall be calibrated in accordance with the manufacturer's recommended procedure.
- Chloride testing will be performed using an USEPA approved testing method.

As needed Contractor shall collect and ship samples from all wells to a State certified laboratory for testing.

C. Monthly Reporting

1. Usage Accounting
 - Read master meter(s) at deep well pumps
 - Read master meter(s) at reservoir tanks
2. Issue Reports regarding:
 - a. Water utilization
 - Master meters vs. water metered to determine unaccounted for water
 - Average daily use
 - b. Performance on all water system operations and maintenance
 - c. Report all problems and actions taken
 - d. Submit monthly well usage reports to Commission of Water Resource Management

D. Weekly Reporting

Well Usage of Totalized Gallons for each well.

E. Capital Budget Plan

Contractor shall submit a Capital replacement budget annually that has a capital project schedule for a five year time frame. Owner will review and approve or modify the schedule accordingly. Approved projects will be implemented under the supervision of Contractor as Additional Services as described in Exhibit D. Contractor will submit monthly status updates on approved projects.

EXHIBIT C**Base Fee**

1. **Monthly Fee:** \$4,916.66 plus Hawaii general excise tax for the Initial Term; provided that Contractor and Owner shall meet and confer prior to the Initial Term Expiration regarding an increase in the Monthly Fee; and further provided that upon the filing of the notice of intent (NOI) to file a rate case, whether by Contractor or Owner, that Contractor shall be paid a Monthly Fee that reflects its actual costs and appropriate markup.
2. **Consumables:** Billed at actual cost plus a 15% handling fee.
3. **Laboratory and shipping:** Billed at actual cost plus a 15% handling fee.

Annual Adjustment of Base Fee: For the Initial Term and all subsequent renewals, as may be increased pursuant to the terms of this Agreement, the Base Fee shall be increased annually on each anniversary of the Effective Date by the lesser of:

- (a) three percent (3%); or
- (b) the greater of two percent (2%) or a percentage equal to the percentage increase over the preceding twelve months in the Consumer Price Index for All Urban Consumers (CPI-U) for Honolulu published by the U.S. Department of Labor – Bureau of Labor Statistics (1982-84=100) ("CPI"). If such CPI index is discontinued Contractor shall have the right to reasonably designate an alternative index of inflation. Each annual adjustment shall be cumulative through the term of this Agreement.

EXHIBIT D**Additional Services**

Additional Services, including but not limited to, minor repairs below the amount of \$1,500 and those requested by Owner pursuant to Section 3.b, will be billed to the Owner at completion of the project or at the end of each month as Additional Services. The costs for these services will be at Contractor's fully allocated direct and indirect costs and expenses (including overhead), plus a 15% markup for all such costs and expenses, including labor.

Additional Services in excess of including but not limited to, major repairs above the amount of \$1,500 not specifically requested by Owner will be addressed as follows. Contractor will submit cost estimates via email to the Owner for approval prior to the start of work. If Owner does not respond within 48 hours, Contractor will commence such Additional Service work. Owner will be billed for such work as provided above.

Additional Services may include, but are not limited to:

- 1.) Annual panel board maintenance.
- 2.) Road maintenance.
- 3.) Building repairs such as roofing or siding replacement.
- 4.) Housekeeping of Motor Control Center (MCC) and Radio Transmitter Unit (RTU) cabinet.
- 5.) Initial Repairs.

Contractor shall maintain an inventory of tools, equipment, materials and supplies necessary to meet normal operations and maintenance requirements. Owner will be billed for any parts or consumable used at cost with a markup of 15% as set forth in Exhibit C.

When Additional Services are performed, the following labor rates apply. These will be adjusted annually based on actual labor rates adjusted by Contractor and the changes to rates will be communicated to Owner. Regular work hours will be defined as Monday through Friday from 7am to 3:30pm. Any work performed outside of the defined "Regular Work Hours" will be considered "off-hours" and will be subject to overtime labor rates set forth below.

HWSC COMPENSATION SCHEDULE

HWSC Personnel	Hourly Rate
Utility Worker	\$50.00
Utility Operator	\$80.00
Superintendent	\$110.00

Accounting Manager	\$105.00
Manager	125.00

Overtime will be at 1 ½ times the hourly rate after 8 hours of continuous work. Double-time will be at 2 times the rate after 12 hours of continuous work.

EXHIBIT E**List of Owner's Responsibilities**

Owner shall be solely responsible for arrangement, payment and implementation of all services and items set forth below:

- Maintain access and safe passage to the Facilities.
- Provide Contractor with key cards and keys for entry points.
- Use commercially reasonable efforts to maintain all land titles and easements necessary for Contractor's operation of the Facilities as set forth hereunder and the provision of potable water.

Owner shall coordinate with Contractor in the performance of its Owner's Responsibilities and perform all of its Owner's Responsibilities on a timely basis in compliance with all Applicable Law.

EXHIBIT F

None.

Exhibit 4

O&M Agreement for Ditch System

KAPALUA HONOKOHAU DITCH MAINTENANCE AND SERVICES AGREEMENT

THIS KAPALUA HONOKOHAU DITCH, MAINTENANCE AND SERVICES AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 202_____ (the "Effective Date") by and between HAWAII WATER SERVICE COMPANY, INC., a Hawaii corporation ("Contractor"), and MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation ("Owner"). Contractor and Owner are sometimes hereafter individually referred to as "Party" and collectively as "Parties".

RECITALS

A. Owner owns and operates the "Honokohau Ditch" surface water collection, transmission and storage improvements and related infrastructure as more particularly described and shown in the attached Exhibit A (the "Honokohau Ditch System"), including, but not limited to those portions of such systems for which Contractor shall provide services hereunder which are denoted thereon and defined herein as the "Facilities".

B. Contractor is in the business of providing water utility services, including the provision of operation, maintenance and management support for the owners of water systems.

C. Pursuant to that certain Asset Purchase Agreement dated as of December 20, 2019. As amended by First Amendment to Asset Purchase Agreement dated _____, 2020 (the "APA") between Contractor, Owner, Kapalua Water Company ("KWC") and Kapalua Waste Treatment Company, Ltd., Contractor has purchased all of the assets of KWC ("KWC") and will provide non-potable water service to the Service Area of KWC as described more particularly in the APA and pursuant to tariffs approved by the State of Hawaii Public Utilities Commission ("HPUC").

D. The Honokohau Ditch System, including the Facilities, provide non-potable water to the Service Area pursuant to an Agreement for Water Delivery (Non-Potable Water) dated _____, 2020 between Owner and Contractor (the "Delivery Agreement") and Owner wishes to obtain the services of Contractor to perform certain operation and maintenance services in relation to the Facilities.

E. Subject to the terms and conditions hereof, Contractor is willing and able to provide the services requested by Owner.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Owner agree as follows:

1. **Definitions.** For purposes of this Agreement, the following definitions shall apply:

a. "**Additional Services**" shall mean any work, products or services provided by Contractor that are in addition to the Basic Services more particularly addressed in Section 3.b, below.

b. "**Agreement Price**" shall mean the sum of (i) the Base Fee and (ii) any additional fees or costs payable to Contractor under this Agreement, all as more particularly addressed in Section 4, below.

c. **"Applicable Law"** shall mean any federal, state or local statute, regulation, ordinance, rule, order, decree, permit, code, license requirement or other governmental requirement or restriction, or any interpretation or administration of any of the foregoing by any governmental authority, which applies to the services or obligations of either Party under this Agreement.

d. **"Base Fee"** shall mean the fee payable by Owner to Contractor in consideration of Contractor's performance of the Basic Services, all as more particularly addressed in Section 4.a., below.

e. **"Basic Services"** shall mean the agreed operation, maintenance and management services to be performed by Contractor on a scheduled or recurring basis, all as more particularly addressed in Section 3.a., below and described in the attached Exhibit B.

f. **"Capital Improvement"** shall mean the purchase and installation of new equipment, facilities structures or other facilities components, or the rehabilitation of existing equipment, facilities structures or other facilities components, which are planned and non-routine relating to the Facilities.

g. **"Change in Law"** shall mean the enactment, adoption, amendment, promulgation, issuance, modification, repeal or change of any Applicable Law that takes effect after the Effective Date of this Agreement.

h. **"Consumables"** shall mean non-durable (or "soft") goods used in connection with the operation of the Facilities (which may include, by way of example only, oil, grease, hardware and repair parts, fuel, air filters, belts, paper products, hand soap, counter and floor cleaners, log books, batteries, flow charts, pens, gloves, laboratory testing reagents, and pH buffer solutions).

i. **"Contractor Services"** shall mean all Basic Services, Additional Services and other work provided or otherwise performed by Contractor pursuant to this Agreement.

j. **"Emergency"** shall mean any situation or condition that would disrupt the supply of potable water to the users of Owner's water system, place the health or safety of the public at risk, or, if not corrected immediately, cause extensive damage to the Facilities or the environment.

k. **"Maintenance"** shall mean those routine or repetitive activities, including preventive and predictive activities required by the equipment guidelines or manuals and those activities recommended by Contractor to maximize the service life and performance of the equipment and components that comprise the Facilities, which includes replenishment of Consumables.

l. **"Owner's Knowledge"** shall mean the actual knowledge of Paulus Subrata and Daniel Pomaikai Crozier.

m. **"Repair"** shall mean those unplanned, non-routine and non-repetitive activities required for operational continuity, safety and performance, generally due to failure (or to avert a failure) of equipment, structures, the Facilities or a component thereof.

n. **"Replacement"** shall mean the complete substitution of a piece of equipment, a component of a piece of equipment, structures, or a component of the Facilities due to wear, breakage

or other failure in order to return the equipment, structure, Facilities or some component thereof to designed functionality.

o. “**Uncontrollable Circumstance**” shall mean any act, event, condition or circumstance that (i) is beyond the reasonable control of Contractor, (ii) by itself or in combination with other acts, events, conditions or circumstances adversely affects, interferes with or delays Contractor’s ability to perform its obligations under this Agreement, expands the scope of Contractor’s obligations under this Agreement, or increases Contractor’s cost of performing its obligations under this Agreement, and (iii) is not the direct result of the willful or negligent act, intentional misconduct, failure to exercise proper due diligence or breach of this Agreement by Contractor. Subject to clauses (ii) and (iii) above, an Uncontrollable Circumstance shall include, but not be limited to, the following:

- i. a Change in Law;
- ii. any change that takes place between the Effective Date and the date that Contractor commences performance of the Contractor Services under this Agreement, which impacts Contractor’s performance of the Contractor Services;
- iii. any injunction or similar order issued by a governmental or regulatory body;
- iv. delays or denials of any licenses permits and approvals that are required to be maintained by Contractor in order to perform Contractor Services pursuant to this Agreement;
- v. the existence of a concealed or latent environmental condition at the Facilities (or any of them) or any adjoining sites;
- vi. contamination of the Facilities’ site(s) from groundwater, soil or airborne substances migrating from sources outside of the Facilities;
- vii. naturally-occurring events such as earthquakes, hurricanes, tornadoes, floods, fires, landslides, underground movement, lightning, epidemics and other acts of nature;
- viii. war, terrorism, explosion, sabotage, extortion, blockade, insurrection, riot, civil disturbance, or acts of a declared public enemy;
- ix. labor disputes or strikes, except labor disputes involving employees of Contractor;
- x. the failure of any vendor or third party to furnish services, materials, chemicals, equipment or otherwise perform its contractual obligations;
- xi. the result of any act, error or omission of any other contractor engaged by Owner to perform work or services at the Facilities (or any portion/element thereof);
- xii. the failure of any governmental body or private utility having operational jurisdiction in the area in which the Facilities are located to provide and maintain utilities or telephone and telecommunication services;

xiii. a defect in title or placement of any encumbrance on the Facilities or necessary for use of the Facilities (including, but not limited to, failure - or non-existence - of any easement or other land right that is necessary in connection with the performance of any service/activity under this Agreement);

xiv. the receipt of influent at the Facilities other than acceptable influent, or the presence of hazardous substances or biological toxic substances in the influent;

xv. any breach by a Party, other than the Party claiming the occurrence of an Uncontrollable Circumstance, of its representations, warranties and covenants as set forth in this Agreement;

xvi. any failure, non-performance or non-compliance by a Party, other than the Party claiming the occurrence of an Uncontrollable Circumstance, with respect to its obligations and responsibilities under this Agreement;

xvii. the failure of Owner to proceed with a Replacement or Capital Improvement, after notification to Owner by Contractor, that Contractor determines is necessary to provide the Contractors Services pursuant to this Agreement;

xviii. any Replacement or Capital Improvement that interferes with Contractor's obligations and responsibilities under this Agreement;

xix. the action of any third party; or

xx. any other circumstance, cause or occurrence of any kind whatsoever beyond the reasonable control of a Party.

2. Term of Agreement.

a. Initial Term. This Agreement shall commence on the Effective Date and shall continue for three (3) years (the "Initial Term Expiration Date"), unless this Agreement is earlier terminated as herein provided.

b. Renewal. This Agreement will automatically renew for successive one (1) year terms beginning on the Initial Term Expiration Date and continuing thereafter on each anniversary of the Initial Term Expiration Date unless either of the Parties elects to terminate this Agreement by providing notice of termination to the other Party at least ninety (90) days prior to the expiration of the then-applicable term.

3. Scope of Services.

a. Basic Services. Throughout the term of this Agreement, Contractor shall provide, in accordance with Applicable Law, the services identified in the attached Exhibit B, as may be amended from time to time by mutual agreement of the Parties (the "Basic Services"). Contractor shall provide the Basic Services in consideration for which Owner shall pay Contractor the "Base Fee" as identified in the attached Exhibit C. Contractor shall not be required to perform any services necessary to operate, maintain or manage the Facilities other than the Basic Services, or pay any costs relating to

services other than the Basic Services, including, without limitation, those services, costs and expenses identified in the attached Exhibit E (collectively, the “Owner’s Responsibilities”). Owner shall be responsible for providing all Owner’s Responsibilities at its sole cost and expense.

b. Additional Services. During the term of this Agreement, Contractor shall upon Owner’s request, or as otherwise contemplated by this Agreement of the Exhibits attached hereto, perform services that are in addition to the Basic Services upon the terms and conditions set forth in the attached Exhibit D (each, an “Additional Service” and collectively, the “Additional Services”). Contractor shall perform Additional Services, and shall invoice Owner for the price of the Additional Service as an element of the Agreement Price, all in accordance with the provisions of Section 4, below. Except as otherwise provided herein, services for tunnels, siphons or ditches fall under Additional Services.

c. Certified Personnel; Subcontractors. Contractor shall provide Contractor Services under the direct supervision of personnel who possess valid water operator certifications as required by Applicable Law; or if no such certification is required, by personnel whom Contractor deems qualified to perform the Contractor Services. Owner acknowledges and agrees that Contractor may retain subcontractors to assist Contractor in the performance of any/all Contractor Services hereunder. The use of subcontractors shall not relieve Contractor of its obligations or responsibilities under this Agreement.

4. Compensation.

a. Agreement Price. Commencing on the Effective Date, Owner shall pay to Contractor the Agreement Price, which includes a monthly fee for performing the Basic Services, as more particularly identified in Schedule C (“Base Fee”), for which Contractor will invoice Owner on a monthly basis. In addition, Owner shall pay Contractor for (i) any Additional Services, (ii) any costs or expenses attributable to a change in the scope of services to be provided by Contractor, including any Capital Improvements, as may be agreed to by the Parties (“Change in Scope”), and (iii) any general excise, public service company, sales, use, gross receipts or other tax, excluding net income taxes and employee related taxes, that may be imposed on Contractor in connection with Contractor’s receipts under this Agreement or the performance of its obligations under this Agreement, which, when added to such required payment shall yield to Contractor, after deduction of all taxes payable by Contractor with respect to all such payments, a net amount equal to that which Contractor would have realized from the payments had no such taxes been imposed. If the Parties are unable to agree upon the amount of the increase in costs and expenses attributable to a Change in Scope, the dispute will be submitted for resolution in accordance with Section 16, hereof.

b. Owner’s Responsibilities. Owner shall be responsible for providing all Owner’s Responsibilities at its sole cost and expense.

c. Payment of Invoices. All invoices submitted by Contractor shall be paid by Owner no later than thirty (30) days after the date of the invoice (for each invoice, “Due Date”). If Owner disputes any portion of an invoice in good faith, Owner shall pay the undisputed portion to Contractor by the Due Date and shall provide Contractor with written notice of the disputed amount and basis therefore by the Due Date. Disputes will be submitted for resolution in accordance with Section 16, hereof. Failure of Owner to provide timely and detailed written notice of any such dispute

will act as a waiver of any defense or justification for failing to pay the full amount of the invoice by the Due Date.

d. Interest on Unpaid Invoices. Invoiced amounts not paid within fifteen (15) days after receipt of an invoice shall bear interest at the rate of ten percent (10%) per annum until paid.

e. Right to Suspend Performance. Notwithstanding any default provision contained hereunder, if Owner fails to pay any sum owed to Contractor within fifteen (15) days of the Due Date, then Contractor, without limiting any other remedies that it may have under this Agreement or Applicable Law, upon five (5) days written notice to the Owner, and provided the Owner does not remedy such failure within such five (5) day period, may elect to immediately suspend performance of its obligations under this Agreement until any and all amounts due to Contractor, including interest, are paid in full by Owner. Failure of Contractor to suspend performance of its obligations under this Agreement shall not constitute a waiver of any default or the right to pursue any remedies that may be available to Contractor.

5. Capital Improvements. During the term of this Agreement, Contractor shall on an annual basis provide Owner with a listing of recommended Capital Improvements, identifying the Capital Improvements that are necessary to:

- improve the performance or increase the capacity of the Facilities;
- address or anticipate the obsolescence of portions of the Facilities;
- reduce the cost to Contractor of performing this Agreement;
- produce cost savings or efficiency innovations to the Facilities; or
- comply with existing or anticipated changes to Applicable Law

(each, "Capital Improvement Project" and collectively, "Capital Improvement Projects"). The decision to proceed with construction and implementation of any such Capital Improvement Project shall be at the sole discretion and decision of Owner. If Owner decides not to proceed with construction and implementation of a Capital Improvement Project recommended by Contractor that is necessary to address or anticipate the obsolescence of portions of the Facilities or comply with existing or anticipated changes to Applicable Law or to address safety/security issues, then that decision may be deemed at the reasonable discretion of Contractor to be an Uncontrollable Circumstance. If Owner implements a Capital Improvement Project, such implementation may be considered or lead to an Uncontrollable Circumstance, as more particularly set forth hereunder.

6. Representations and Warranties.

a. Owner's Representations, Warranties and Covenants. Except as set forth in Exhibit F and Section 7 Owner hereby warrants, represents and covenants that:

i. Owner has valid, legal title to the Facilities and real property interests where the Facilities are located, clear of all encumbrances, and has authority to provide Contractor access to the Facilities for the entire term of this Agreement;

ii. Subject to certain ongoing Commission on Water Resource Management proceedings, as disclosed to Contractor in writing on or before [date of APA amendment] ("CWRM Proceedings") to Owner's Knowledge, as of the Effective Date Owner has the valid right to draw water

from the Honokohau Ditch System, including without limitation, the Facilities, in accordance with all Applicable Law, and Owner holds all required governmental permits and approvals;

iii. Except for the CWRM Proceedings there are presently no citations, summons, complaints, penalties, actions, suits, investigations or other proceedings pending or, to Owner's Knowledge, threatened against Owner in connection with the operation or maintenance of the Honokohau Ditch System, including without limitation, the Facilities, that may adversely affect Owner's or Contractor's ability to perform its obligations under this Agreement;

iv. To Owner's Knowledge, as of the Effective Date, the operation and maintenance of the Facilities are currently in compliance with all licenses, permits, certificates, approvals, registrations and authorizations necessary for the operation of the Facilities, as well as all provisions of Applicable Law.

v. the execution and delivery of this Agreement and the performance of Owner's obligations hereunder will not conflict with or result in a violation of any Applicable Law. regulation.

vi. Other than as listed in Exhibit F, Owner has disclosed to Contractor (i) all non-compliant or unsafe conditions existing at the Facilities as of the Effective Date, and (ii) all prior non-compliant or unsafe conditions that previously existed at the Facilities. To Owner's Knowledge, all non-compliant or unsafe conditions have been corrected to the satisfaction of all governing agencies exercising authority over the Facilities.

b. Contractor's Representations and Warranties. Contractor hereby warrants, represents and covenants that:

i. Contractor will comply with all Applicable Laws now in force, or which may hereafter be in force, related to Contractor's provision of all Contractor Services pursuant to this Agreement;

ii. Contractor will promptly provide Owner with copies of any regulatory notices or orders for the Facilities received by Contractor;

iii. Contractor will perform all of its obligations under this Agreement with the care and skill ordinarily exercised by professionals in the same field in accordance with generally accepted professional practices and standards and the requirements of Applicable Laws; and

iv. during the term of this Agreement, Contractor shall maintain all licenses and permits required to perform all of Contractor's obligations under this Agreement.

c. Reciprocal Representations and Warranties. Each of Contractor and Owner, with respect to itself, does hereby represent, warrant and covenant to the best of their knowledge, information and belief, with such representations, warranties and covenants being true as of the Effective Date, as follows:

i. It has the legal authority to enter into this Agreement;

ii. Is authorized to do business and in good standing under the laws of the state in which it is formed and the state in which the Facilities are located;

iii. the persons signing this Agreement on its behalf have the power and authority to execute and deliver this Agreement pursuant to the Party's respective governing documents, and the execution, delivery and performance of this Agreement have been duly authorized and approved by all requisite action;

iv. the execution and delivery of this Agreement and the performance of such Party's obligations hereunder:

1. will not conflict with or result in a violation of its governing documents;

2. shall not violate or result in a default, immediately or with the passage of time, under any agreement contract or instrument to which such Party is a party or by which it is, or may be, bound; and

3. shall not conflict with or violate any order, writ, judgment, or decree, issued by a governmental agency having jurisdiction, to which such Party is subject;

v. no additional approval, authorization or other action by, or filing with, any governmental authority is required in connection with such Party's execution and delivery of this Agreement by such Party; and

vi. each of the provisions, covenants, and obligations contained in this Agreement is enforceable against such Party under Applicable Law.

7. Permits, Approvals and Certifications. Application for the renewal, modification, and payment of charges and fees in connection with any governmental permit, approval or certification for the Honokohau Ditch System, including without limitation, the Facilities, required by Applicable Law are the sole responsibility of Owner. Any such governmental permits, approvals or certifications will be held in the name of Owner and Owner will procure and maintain at all times all such governmental permits, approvals or certifications as may be required by Applicable Law for the operation of the Honokohau Ditch System, including without limitation the Facilities provided, however, that Contractor shall assist Owner with the same with respect to the Facilities.

8. License. During the term of this Agreement, Contractor shall have (and Owner hereby grants to Contractor) a license to enter onto all premises, easements and properties of Owner to perform Contractor's duties and responsibilities under this Agreement. This license granted herein is limited to premises, easements and properties directly related to the Facilities.

9. Identification of Unsafe Conditions; Emergencies.

a. **Unsafe Conditions.** During the term of this Agreement, should Contractor become aware of any unsafe conditions or safety violations at the Facilities arising from the construction or condition of the Facilities, Contractor will notify Owner of such condition within a reasonable time after such discovery. If the actions needed to correct such conditions fall outside of

the Basic Services or require a Capital Improvement Project, Owner shall determine the actions needed to correct such conditions and proceed diligently, at Owner's sole cost and expense, to implement such corrective measures. Owner will notify Contractor in writing of the steps Owner shall take to correct these conditions and the proposed time for implementing same. Should Contractor disagree with the steps or the proposed time to implement the corrective measures, Contractor will notify Owner of such disagreement and the reasons therefore; whereupon, the Parties will negotiate in good faith for a period not to exceed ten (10) business days to arrive at a mutually agreeable program for safety upgrades and a schedule therefore. Failing such agreement, Contractor shall have the right to terminate the Agreement upon thirty (30) days written notice to Owner. Nothing herein shall prevent Contractor from performing Initial Repairs without Owner preapproval as described in Exhibit B.

b. Emergencies. In the event of an Emergency involving any part of the Facilities which, in Contractor's judgment, requires immediate action, Contractor shall have the right to perform, or cause to be performed, any repairs, regardless of the estimated cost. Contractor shall notify Owner as soon as possible as to the work done and proposed to be done as a result of such Emergency and of Contractor's estimated cost of the repairs. Contractor shall invoice Owner for (and Owner shall pay) all fully allocated direct and indirect cost (including overhead) and expense incurred by Contractor to perform the such emergency services; said invoice shall be processed, transmitted and paid as an element of the Agreement Price, all in accordance with the provisions of Section 4, above.

10. Uncontrollable Circumstances.

a. Rights and Obligations upon Occurrence of Uncontrollable Circumstance. If an Uncontrollable Circumstance occurs, Contactor shall be entitled to any or all of the following:

- relief from its performance obligations under this Agreement to the extent that the occurrence of the Uncontrollable Circumstance prevents Contractor's performance of such obligations;
- an extension of time to perform its obligations under this Agreement to the extent that the occurrence of the Uncontrollable Circumstance prevents Contractor's ability to perform such obligations in the time specified in this Agreement; and
- an increase in the Agreement Price or other fee to be paid under this Agreement, in a mutually agreed amount, to the extent that the occurrence of the Uncontrollable Circumstance increases Contractor's costs of performance of its obligations under this Agreement.

The occurrence of an Uncontrollable Circumstance shall not, however, excuse or delay Owner's obligation to pay monies previously accrued and owing to Contractor under this Agreement, or for Contractor to perform any obligation under this Agreement not affected by the occurrence of the Uncontrollable Circumstance. Owner shall continue to pay the Agreement Price to Contractor during the continuance of any Uncontrollable Circumstance, except to the extent that the occurrence of the Uncontrollable Circumstance decreases Contractor's costs of performance of its obligations under this Agreement; in which case any decrease in expense shall be passed onto Owner in the form of a temporarily reduced Agreement Price.

b. Notification to Owner. Contractor shall notify Owner by telephone or electronic mail after Contractor first learns of the occurrence of an Uncontrollable Circumstance. As soon as

reasonably feasible after learning of the Uncontrollable Circumstance, Contractor shall provide Owner with a written description of the Uncontrollable Circumstance, the cause thereof (to the extent known), the date the Uncontrollable Circumstance began, its expected duration and an estimate of the specific relief requested or to be requested by Contractor.

c. Other Contractor Duties. Contractor shall use reasonable efforts to reduce costs resulting from the occurrence of the Uncontrollable Circumstance, fulfill its performance obligations under the Agreement, and otherwise mitigate the adverse effects of the Uncontrollable Circumstance. While the Uncontrollable Circumstance continues, Contractor shall give Owner periodic updates of the information previously submitted. Contractor shall also provide written notice to Owner of the cessation of the Uncontrollable Circumstance.

11. Default.

a. Events of Default -- Definition. Each of the following shall constitute an "Event of Default" under this Agreement:

i. The failure of Owner to make any payment by the Due Date; and

ii. The failure of either Party ("Defaulting Party") to perform any other material term, covenant or condition of this Agreement or in the event of a breach of any representation and warranty given by such Party and the default or breach continues for more than thirty (30) days following the other Party ("Non-Defaulting Party") giving notice of such default to the Defaulting Party; provided, however, that if the default or breach cannot reasonably be cured within such thirty (30) day period and the Defaulting Party has attempted to cure the default or breach within such thirty (30) day period and thereafter continues to diligently attempt to cure the default or breach, then the cure period provided for herein shall be extended for a reasonable period of time to allow completion of the cure. The foregoing cure period shall not apply to any failure by Owner to make any payment by the Due Date. An Event of Default under the Wells O&M Agreement shall constitute an Event of Default under this Agreement, without requirement for further notice hereunder.

b. Occurrence of Event of Default; Rights of Non-Defaulting Party. If an Event of Default occurs, the Non-Defaulting Party shall have the right to (i) terminate this Agreement upon written notice to the Defaulting Party and (ii) enforce any and all rights and remedies it may have against the Defaulting Party under Applicable Law. In the event of termination of this Agreement, the provisions of Section 17.b. shall apply.

12. Fines and Penalties.

a. Responsible Party. Except in the case of Uncontrollable Circumstances, Contractor shall be responsible for all fines and penalties relating to and arising from Contractor's failure to provide services in accordance with its obligations hereunder, but only to the extent of and in proportion to the degree of fault, failure or negligence of Contractor. Owner shall be responsible for all other fines and penalties relating to and arising from the Facilities including, without limitation, Owner's failure to perform its obligations hereunder.

b. Non-Responsibility of Contractor. Contractor will not be responsible for fines, claims or penalties resulting from violations or a failure to meet water quality requirements of Owner's Permit for any period(s) and subsequent recovery period(s) in which:

i. The Facilities (or any portion thereof) are inoperable or can operate only at a reduced capacity due to construction, equipment failure or maintenance activities, fire, flood, adverse weather conditions, labor disputes, pandemics or other causes beyond Contractor's control;

ii. The raw water characteristics exceed the Facilities' design parameters and/or reasonable industry standards; or

iii. Owner (a) fails to make necessary Capital Improvements or other improvements that are needed to meet permit requirements, or equipment repair or replacement, or (b) delays authorizations for items needed to meet any permit requirements.

c. Notice of Fine or Penalty. If a fine or penalty is assessed against Contractor or Owner with regard to the Facilities, the Party receiving such fine or penalty ("Notifying Party") shall promptly notify the other Party ("Receiving Party") in writing of such fine and penalty and include a copy of any documents received. Such notice shall also contain a statement of the Notifying Party's position as to which party or parties bear responsibility for the fine or penalty. The Notifying Party's notice shall include assumption of all or partial responsibility of such fine or penalty, if applicable, or its rejection of any responsibility. If the notice asserts that the Receiving Party is either wholly or partially responsible, then, within five (5) business days of receipt of such notice, the Receiving Party shall either (i) assume all responsibility if that Party is wholly responsible, (ii) assume partial responsibility for its portion of such fine or penalty or (iii) reject such assertion in writing. If both Parties are partially responsible for the fine or penalty, then they shall apportion the costs of the fine or penalty in proportion to the percentage of their respective responsibility. If either Party denies responsibility or the Parties are unable to come to an agreement as to the allocation of responsibility, the Parties shall attempt to resolve the dispute amicably, failing which the Parties shall submit the matter to dispute resolution in accordance with Section 16.

d. Appeal of Fine or Penalty.

i. Where Responsibility Is Accepted. As to any fine or penalty for which Owner or Contractor assumes responsibility, the Party or Parties assuming responsibility shall be entitled to request and pursue an appeal or administrative hearing to review the fine or penalty at the sole cost and expense of the responsible Party or Parties; provided, however, that the Parties shall cooperate in providing access to documents and information and the execution of any consents or authorizations reasonably required.

ii. Where Responsibility is Disputed. As to any fine or penalty for which responsibility is disputed, either Owner or Contractor, or jointly, may request and pursue an appeal or administrative hearing to review the fine or penalty without prejudice to the allocation of ultimate responsibility between them, which would be submitted for resolution in accordance with Section 16.

e. Defense to Allegations; Cooperation. Owner and Contractor shall cooperate in assertion of any appropriate affirmative defenses to any alleged permit violation prior to assessment of a fine or penalty. At Owner's expense, Contractor will arrange for preparation and submittal of

documentation to assert an affirmative defense. Any testimony, investigations, reports, representation and advisory services provided by Contractor in asserting appropriate affirmative defenses, if not included in the Basic Services or Additional Services, will be provided at an additional cost to Owner, in accordance with Contractor's per diem rates then in effect and any actual third-party costs incurred by Contractor in connection therewith, unless it is ultimately determined that Contractor is responsible for the fine or penalty.

13. Indemnification; Limitation of Liability.

a. **By Contractor.** Contractor shall indemnify and hold Owner, its shareholders, employees, officers, directors, agents, consultants, contractors and representatives harmless from and against all liability, including attorneys' fees and/or consultant's fees and costs, for all claims, losses, liabilities or damages of any nature whatsoever, including employee-related injury or illness, any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to (i) a material breach of this Agreement by Contractor, or (ii) the negligent or wrongful act of Contractor, its employees, officers, directors, agents, consultants, subcontractors and representatives for which Contractor may be responsible in the performance or purported performance of its obligations under this Agreement or that directly results from such person's entry onto the lands or other property of Owner in connection with their performance of Contractor's obligations under this Agreement, but only to the extent of, and in proportion to, the degree negligent or wrongful act or omission of Contractor, its employees, officers, directors, agents, consultants, subcontractors and representatives.

b. **By Owner.** Owner shall indemnify and hold Contractor, its affiliates, employees, officers, directors, agents, consultants, contractors, subcontractors and representatives harmless from and against all liability, including attorneys' fees and/or consultant's fees and costs, for all claims, losses, liabilities or damages of any nature whatsoever, including employee-related injury or illness, any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to (i) a material breach of this Agreement by Owner or (ii) the fault, failure, error, omission, negligent or wrongful act of Owner, its members, employees, officers, directors, agents, consultants, contractors, subcontractors and representatives for which Owner may be responsible in the performance or purported performance of its obligations under this Agreement, but only to the extent of and in proportion to the degree of fault, failure, error, omission, negligent, or wrongful act of the Owner, its shareholders, employees, officers, directors, agents, consultants, contractors, subcontractors and representatives.

c. **Casualty Loss to Facilities.** Contractor shall not be responsible or liable for any casualty loss to the Facilities unless the casualty loss is due to Contractor's or its employees', officers', directors', agents', consultants', subcontractors' and representatives' negligence, but only to the extent of and in proportion to the degree of negligent or wrongful act of Contractor, its employees, officers, directors, agents, consultants, subcontractors and representatives.

14. Consequential Damages. In no event shall the Parties be liable to each other, and each Party specifically waives as against the other, any and all claims for consequential, incidental, indirect, special, or punitive damages resulting in any way from performance or non-performance of this Agreement, whether such damages are characterized as arising under breach of contract or warranty, tort (including negligence), fault, strict liability, indemnity or any other theory of legal liability.

15. Insurance.

a. Contractor's Insurance Obligations.

i. Workers Compensation. Contractor will provide Workers Compensation Insurance for its employees at the statutory limit for Hawaii.

ii. Commercial General Liability. Contractor and its subcontractors will procure and maintain, in full force and effect during the term of this Agreement, Commercial General Liability Insurance with limits of liability of \$1,000,000 each occurrence and in the aggregate, along with an excess liability umbrella policy with limits of liability of \$5,000,000 each occurrence and in the aggregate, protecting Contractor and its subcontractors and Owner from liability resulting from bodily injury, death and property damage arising out of the acts of Contractor or its subcontractors. Such acquired insurance shall extend to liability risks relating to this Agreement. Owner shall be named as an additional insured under such insurance. Upon execution of this Agreement, and thereafter from time to time upon MLP's reasonable request, Contractor shall provide Owner with a certificate reasonably satisfactory to Owner evidencing such insurance.

iii. Automobile Liability Insurance. Contractor will procure and maintain, in full force and effect during the term of this Agreement, Automobile Liability Insurance with a combined single limit in the amount of \$1,000,000 each occurrence.

b. Self-Insurance. Contractor shall have the right to self-insure the coverage obligations identified in Section 15.a. above.

c. Insurance Covering Facilities. Contractor shall not be required to carry, and will not carry, any property insurance covering the Facilities and such property insurance shall be the responsibility of Owner at its expense.

16. Dispute Resolution.

a. Non-Binding Mediation. The parties shall first seek to negotiate, in good faith and in timely fashion, a resolution of any dispute. If the Parties are unable to resolve the dispute with negotiations within thirty (30) days, the Parties agree to mediate any dispute with non-binding mediation conducted in Honolulu, Hawaii. The Parties may agree that a mediated resolution is binding. If the Parties cannot agree upon a mediator, each shall select one name from a list of mediators maintained by Dispute Prevention and Resolution, Inc., the two selected shall then choose a third person who will serve as mediator. The Parties shall have twenty (21) days within which to commence the first mediation session following the conclusion of their good faith negotiations. The Parties shall each fund half the cost of the mediator(s) and shall bear their own costs incurred in connection with any such mediation unless agreed otherwise as a result of the mediation.

b. Litigation and Submission to Jurisdiction. If the mediation does not result in a resolution of the dispute within forty-five (45) days after any Party's request for mediation, or sooner if reasonably necessary to prevent irreparable or substantial ongoing damage or losses, then the Parties may pursue other remedies available at law or in equity in the First Circuit Court of the State of Hawaii and the Parties consent to the venue and jurisdiction of such courts. In addition to any other right or remedy to which a Party may be entitled, at law or in equity, any Party shall be entitled to enforce any

provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

c. Attorneys' Fees. Should any party hereto employ an attorney for the purpose of enforcing or construing, because of disagreement with the other party, or breach by the other party of this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all reasonable attorneys' fees and all costs, whether incurred at the trial or appellate level, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and the cost of any bonds, whether taxable or not, and such reimbursement shall be included in any judgment, decree or final order issued in that proceeding.

17. Termination.

a. Right to Terminate "For Cause". Notwithstanding any provision herein to the contrary, either Party may terminate this Agreement "For Cause" under any of the following conditions:

i. the other Party becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors, or the other Party commences any case, proceeding or other action seeking reorganization or receivership, or adopts an arrangement with creditors, under any bankruptcy, insolvency, reorganization or similar law of the United States or any state thereof for the relief of creditors or affecting the rights or remedies of creditors generally;

ii. insolvency, receivership, reorganization, or bankruptcy or similar proceedings are commenced against the other Party and such proceeding is not dismissed or stayed within a period of sixty (60) days.

iii. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to terminate this Agreement upon written notice to the Defaulting Party as set forth in Section 11.b.

iv. In the event Contractor no longer provides potable water service to the Service Area of KWC as described more particularly in the APA and pursuant to tariffs approved by HPUC.

b. Contractor's Right to Terminate Under Section 9.a. Contractor may terminate this Agreement as set forth in Section 9.a.

c. Effects of Termination. Upon termination of this Agreement, for any reason, Contractor shall return to Owner all property of Owner, and shall not deny Owner access to the Facilities and deliver to Owner all other items related to the operation, maintenance and access to the Facilities, including, but not limited to, all books, records, manuals, logs, designs, plans, instructions, notices, guides, maps, schematics, usernames, passwords, locks, keys, entry codes, security codes,

security devices, documents, and any and all other items required to operate, maintain, and have access to all parts of the Facilities. Upon termination of this Agreement, Contractor shall be entitled to all compensation as shall have been earned by performance of Contractor Services as of the date of termination (including payment of any unpaid invoices, late fees and interest charges). The provisions of Section 13 and 16 shall survive termination.

18. Designated Representatives.

a. Contractor's Representative. Anthony Carrasco ("Contractor's Representative") is Contractor's designated primary point of contact for all questions related to Contractor's performance of its obligations pursuant to this Agreement. Contractor's Representative may be contacted as follows:

- Telephone Number: 808-883-2065
- E-Mail Address: acarrasco@calwater.com

b. Owner's Representative. Paul Subrata ("Owner's Representative") is Owner's designated primary point of contact for all questions related to Owner's performance of its obligations pursuant to this Agreement. Owner's Representative may be contacted as follows:

- Telephone Number: (808) 757-2666
- E-Mail Address: psubrata@mlpmaui.com

c. Change of Identity of /Contact Information for Representatives. The Parties may change the identities of, and contact information for, their respective representatives by providing written notice of such change(s) to the other Party in accordance with the provisions of Section 19, below.

19. Notices. All notices or other communications required hereunder to be given shall be in writing and shall be (i) delivered personally, (ii) deposited with the U.S. Postal Service, duly certified or registered, postage prepaid, (iii) delivered by a nationally recognized overnight courier, or (iv) transmitted by electronic mail ("e-mail"), if such electronic mail transmission. All notices / communications hereunder shall be addressed as set forth below:

To Owner: Maui Land & Pineapple Company, Inc..
200 Village Road
Lahaina, Hawaii 96761
Attention: Paul Subrata
E-Mail Address: [psubrata@kapalua.com\]](mailto:psubrata@kapalua.com)

To Contractor: Hawaii Water Service Company, Inc.
P.O. Box 384809
Waikoloa, Hawaii 96738
Attention: General Manager
E-Mail Address: acarrasco@calwater.com

With a Copy to: California Water Service Company

1720 N. First Street
San Jose, CA 95112
Attn: Associate General Counsel, Director of Real Estate
E-mail Address: Jkelsey@calwater.com

Addresses may be changed or supplemented by written notice given as above provided. Any such notice or communication sent by mail shall be deemed to have been received by the addressee on the third (3rd) business day after posting with the U.S. Postal Service, or if by a priority service, on the first (1st) business day after transmittal. If any notice or communication is delivered personally or by private commercial courier, said notice/communication shall be deemed to have been received on the date of such delivery. If the notice/communication is delivered by e-mail, then the notice /communication shall be deemed received on the date of such delivery.

20. Other Provisions.

a. Title. Contractor shall have no title to, or ownership interest in, the Facilities or any part thereof whatsoever as a result of the services Contractor provides in this Agreement. Contractor may assert a lien against the Facilities for any amounts unpaid under this Agreement.

b. Ownership of Records. All regulatory and operational records relating to the Facilities are the property of Owner; however, Contractor shall be entitled to copies of such records and reasonable use thereof.

c. Governing Law. This Agreement and its interpretation shall be governed by the laws of the state of Hawaii without regard to conflicts of laws principles.

d. Entire Agreement. No oral agreement or conversation with any officer, agent or employee of Owner or Contractor, either before or after the Effective Date, shall affect or modify any of its terms or obligations herein contained. This Agreement constitutes the entire agreement between the Parties hereto and supersedes all previous or contemporaneous communications, representations or agreements with respect to the subject matter hereof. The terms and conditions of this Agreement may be amended by and between Contractor and Owner; however, no changes, alterations or modifications to this Agreement shall be effective unless in writing and signed by both Parties hereto. Any changes, alterations, or modifications to this Agreement, including agreed upon interpretation of meaning and other mutually agreed upon conditions provided for in this Agreement, shall be covered by a written amendment signed by both Parties.

e. Binding Effect. The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the Parties to the Agreement and their respective administrators, executors, personal representatives, successors and assigns.

f. Assignment. Contractor may assign this Agreement with the prior written consent of Owner, which consent shall not be unreasonably withheld by Owner; provided, however, that the consent of Owner shall not be required if assignment of this Agreement by Contractor is to an affiliate, subsidiary or related entity of Contractor. Owner may assign this Agreement without the consent, but with at least sixty (60) days' notice to Contractor in connection with any conveyance of the Facilities. Any other assignment of this Agreement by Owner requires the prior written consent of

Contractor or its assignee, which consent shall not be unreasonably withheld by Contractor or its assignee.

g. Force Majeure. No Party shall be held liable nor be deemed to have breached this Agreement for failure or delay caused by or resulting from causes beyond its reasonable control, including but not limited to, fire, floods, embargoes, acts of war, civil commotions, labor disturbances, acts of God, pandemics or epidemics, or acts, omissions or delays in acting by any governmental authority; provided, however, it is understood that this paragraph is intended only to suspend and not discharge obligations under this Agreement and that when the causes of the failure or delay are removed or alleviated, performance shall resume; provided further that this paragraph shall not apply to any obligation of Owner to pay Contractor any sum of money when due.

h. Waiver. The failure on the part of either Party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provision in the future.

i. Conflicts. To the extent there are any conflicts, inconsistencies or discrepancies between the terms and conditions contained in the main body of this Agreement and the Exhibits attached hereto, the terms and conditions of the main body of this Agreement shall govern.

j. Recitals. The Recitals set forth above are hereby incorporated into and made part of this Agreement.

k. Paragraph Headings. Paragraph headings in this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

l. Time. Time is of the essence in this Agreement.

m. Counterparts; Electronic Transmittals. This Agreement may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute one instrument. The Parties agree that if this Agreement is transmitted electronically, the electronic transmittal of the original execution signatures shall be treated as original signatures and given the same legal effect as an original signature. A signature in any form or medium (including without limitation any electronic or digital signature or symbol) shall have the same legal effect, validity and enforceability as a manually handwritten original signature.

n. No Joint Venture. This Agreement shall not be construed as creating a relationship of a partnership or joint venture among the parties.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties thereto have executed this Agreement as of the Effective Date first-above written.

"OWNER"

MAUI LAND & PINEAPPLE COMPANY, INC.,
a Hawaii corporation

By: _____
Name: _____
Its: _____

"CONTRACTOR"

HAWAII WATER SERVICE COMPANY, INC.,
a Hawaii corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT A

Description of the Facilities

The system of surface water diversions, intakes, ditches, tunnels, siphons and pipes that is commonly referred to as the "Honokohau Ditch" together with the off-takes from the Ditch, pipelines and three non-potable reservoirs identified in Exhibit B, all of which are owned by Owner and which constitute the "Facilities" for purposes of this Agreement.

EXHIBIT B**Description of the Basic Services**

Contractor shall provide operations and maintenance services for the Facilities identified in this Agreement and management of any subcontractors retained by Contractor for those purposes.

System and Utility maintenance will be performed in accordance with state and federal guidelines for operations of portions of a non-potable ditch system. Close attention shall be taken to meet all public health and compliance monitoring requirements specific to the Facilities. Contractor will be responsible for all communications, reporting, and submittal of information required by the United States Environmental Protection Agency (USEPA) and Hawaii Commission of Water Resources Management (CWRM).

Operational tasks will be performed by or with the direct supervision of a state certified distribution system operator in accordance with state and federal guidelines. When necessary Contractor shall be responsible for all scheduling, sampling and shipment of water samples to a State Certified Laboratory as required by Hawaii Commission of Water Resources Management (CWRM) or other regulatory agencies.

Maintenance tasks will be performed in accordance with the manufacturer specifications and at time intervals reasonably necessary to at all times keep the Facilities in good working order and condition for the intended uses of the Facilities. Should for any reason the manufacturer's operating and maintenance specification cannot be obtained, Contractor shall provide Owner with maintenance and repair recommendations regarding the maintenance of the specific assets. Incidents and emergency repairs are not Basic Services shall be managed by Contractor as described in Section 9 of the Agreement.

If following initial inspection of the Facilities by Contractor upon commencement of Contractor's performance under this Agreement the Facilities are not in "good working order" as more particularly represented by Owner pursuant to Section 6a.iv. of this Agreement, any work reasonably required to restore the Facilities to normal operations and good working order will be beyond the scope of Basic Services and may be performed by Contractor immediately without the requirement of preapproval of such services by Owner. Such work shall be performed and billed to Owner (and payable by Owner) at Contractor's fully allocated direct and indirect cost (including overhead) and expense plus a 15% mark-up ("Initial Repairs").

The following sections outline the requirements for operating, maintaining, and servicing the Facilities. Contractor shall provide these and any other services to ensure that the Facilities are being operated in accordance with all applicable laws, permits, rules and regulations and in good working order and condition for the intended uses of the Facilities.

A. Honokohau Ditch #1 Maintenance:

- Weed / vegetation control from Atake gate trail to maintenance shack.
- 30' of weed / vegetation cleaning completely around maintenance shack.
- Weed / vegetation / tree / debris removal from maintenance shack to exit of 4th tunnel.
- Weed / vegetation / tree / debris removal from entrance of 4th tunnel to exit of 3rd tunnel.
- Weed / vegetation / tree / debris removal from entrance of 3rd tunnel to exit of 2nd tunnel.

- Weed / vegetation / tree / debris removal from entrance of 2nd tunnel to exit of 1st tunnel.

B. Honokohau Ditch #1 Data Collection:

- Gather / download data, collect staff gauge readings / time at selected sites, and monthly meter readings and compile all information gathered into an Excel spreadsheet and submit to ML&P Accounting.

C. Honokohau Ditch #1 Inspection:

- Inspection checks on polyurethane / PVC pipelines.
- Inspection on Atake gate / river conditions.
- Inspection conditions of Air Relief Valves.

D. Reservoirs Maintenance:

Field # 14 (Upper Pond) and (Middle Pond):

- Weed / vegetation / tree / debris removal from inside fenced reservoir area.
- Weed / vegetation / tree / debris removal from 5' outside of reservoir fence. (North, South and East sides)
- Weed / vegetation / tree / debris removal from 30' of embankment (makai side) of reservoir.

E. Reservoirs Inspection:

- Locations # 14 (Upper Pond and Middle Pond)
- Monitor reservoir levels.
- Inspect reservoir infrastructure.
- Inspect conditions of reservoir lining
- Assist DLNR with annual reservoir inspections.

Note the following Items Are Not Included in Basic Services:

- Repair and replacement of failed equipment or infrastructure.
- Maintenance/Vegetation removal on roadway leading to ditch # 1 infrastructure.
- Inventory of replacement components.
- After-hours emergency call outs or service calls in addition to routine inspections
- The water system may be incrementally expanded or improved to meet the needs of the Owner's development. Owner and Contractor will negotiate additional service fees based upon the additional man hours required to service the expansion if necessary.
- Increased costs to repair damage to roadways, trails, or infrastructure due to storm events
- Inspection or maintenance of Napili Intake or Siphon. Roadway improvements required.

- Field # 55 reservoir inspections or weed / vegetation / tree / debris removal
- Field # 28 inspections or reservoir weed / vegetation / tree / debris removal
- Intakes 1 and 2 Clean screens and remove debris at intakes and outflows to include gravel, branches, leaves. Weed / vegetation / tree / debris removal from access trail and 25' proximity to the intake.
- Inspect intakes for issues to ensure steady flows and accurate readings
- Inspect active water lines for leaks and damaged piping including; Mailepai waterlines, Mahinahina (dorm) waterlines, Field 33 and Field 32
- Initial cleaning.
- Inspection or maintenance of the connecting water conduits (whether tunnels, siphons, ditches or otherwise).

EXHIBIT C**Base Fee**

1. **Monthly Fee:** \$14,416.66 plus Hawaii general excise tax for the Initial Term; provided that Contractor and Owner shall meet and confer at least ninety (90) days prior to the Initial Term Expiration regarding an increase in the Monthly Fee; and further provided that upon the filing of the notice of intent (NOI) to file a rate case, whether by Contractor or Owner, that Contractor shall be paid a Monthly Fee that reflects its actual costs and appropriate markup.
2. **Consumables:** Billed at actual cost plus a 15% handling fee.
3. **Laboratory and shipping:** billed at actual cost plus a 15% handling fee.

Annual Adjustment of Base Fee: For the Initial Term and all subsequent renewals, the Base Fee, as may be increased pursuant to the terms of this Agreement, shall be increased annually on each anniversary of the Effective Date by the lesser of

(a) three percent (3%), or

(b) the greater of two percent (2%) of a percentage equal to the percentage increase over the preceding twelve months in the Consumer Price Index for All Urban Consumers (CPI-U) for Honolulu published by the U.S. Department of Labor – Bureau of Labor Statistics (1982-84=100) ("CPI"). If such CPI index is discontinued Contractor shall have the right to reasonably designate an alternative index of inflation.

Each annual adjustment shall be cumulative through the term of this Agreement.

EXHIBIT D**Additional Services**

Additional Services, including but not limited to, minor repairs below the amount of \$1,500 and those requested by Owner pursuant to Section 3.b, will be billed to the Owner at completion of the project or at the end of each month as Additional Services. The costs for these services will be at Contractor's fully allocated direct and indirect costs and expenses (including overhead), plus a 15% markup for all such costs and expenses, including labor.

Additional Services in excess of including but not limited to, major repairs above the amount of \$1,500 not specifically requested by Owner will be addressed as follows. Contractor will submit cost estimates via email to the Owner for approval prior to the start of work. If Owner does not respond within 48 hours, Contractor will commence such Additional Service work. Owner will be billed for such work as provided above.

Additional Services may include, but are not limited to:

- 1.) Road maintenance.
- 2.) Housekeeping of and Radio Transmitter Unit (RTU) cabinet.
- 3.) Maintenance of screening Structure for intake and outtake
- 4.) Initial Repairs.

The Contractor shall maintain an inventory of tools, equipment, materials and supplies necessary to meet normal operations and maintenance requirements. The Owner will be billed for any parts or consumable used at a markup of 15% as set forth in Exhibit C.

When Additional Services are performed, the following rates apply. These will be adjusted annually based on actual labor rates adjusted by the Contractor and the changes to rates will be communicated to the Owner. Regular work hours will be defined as Monday through Friday from 7am to 3:30pm. Any work performed outside of the defined "Regular Work Hours" will be considered "off-hours" and will be subject to overtime labor rates set forth below.

HWSC COMPENSATION SCHEDULE

HWSC Personnel	Hourly Rate
Utility Worker	\$50.00
Utility Operator	\$80.00
Superintendent	\$110.00
Accounting Manager	\$105.00

Manager	\$125.00
---------	----------

Overtime will be at 1 ½ times the hourly rate after 8 hours of continuous work. Double-time will be at 2 times the rate after 12 hours of continuous work.

EXHIBIT E**List of Owner's Responsibilities**

Owner shall be solely responsible for arrangement, payment and implementation of all services and items set forth below:

- Maintain access and safe passage to the Facilities.
- Provide Contractor with key cards and keys for entry points.
- Use commercially reasonable efforts to maintain all land titles and easements necessary for Contractor's operation of the Facilities as set forth hereunder and the provision of non-potable water.
- Maintain and operate the Honokohau Ditch System (including connecting water conduits, tunnels or siphons) except for the Facilities.

Owner shall coordinate with Contractor in the performance of its Owner's Responsibilities and perform all of its Owner's Responsibilities on a timely basis in compliance with all Applicable Law.

EXHIBIT F

None.

Exhibit 5

Limited Warranty Deed

LAND COURT SYSTEMReturn by Mail Pickup To:

REGULAR SYSTEM

Tax Key: (2) 4-2-008-026 As to ITEM I Total No. of Pages: _____
Tax Key: (2) 4-2-008-027 As to ITEM II
Tax Key: (2) 4-2-009-027 As to ITEM III

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That KAPALUA WATER COMPANY, LTD., a Hawaii corporation, hereinafter called the "Grantor," in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by HAWAII WATER SERVICE COMPANY, INC., a Hawaii corporation, whose address is P. O. Box 384809, Waikoloa, Hawaii 96738, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does hereby grant and convey unto the Grantee, as a tenant in severalty, the real property described in Exhibit "A" attached hereto and by this reference incorporated herein; subject, however, to all encumbrances noted on said Exhibit "A".

TO HAVE AND TO HOLD the same, together with any improvements thereon and the rights, easements, privileges, and appurtenances thereunto belonging or appertaining unto the

Grantee, the heirs, representatives, administrators, successors and assigns of the Grantee, forever.

AND the Grantor covenants with the Grantee that the former is now seised in fee simple of the property granted; that the title to the property is free from all encumbrances made by persons claiming by, through or under the Grantor, except the liens and encumbrances hereinbefore mentioned and real property taxes not yet due and payable, and except also the liens and encumbrances created or permitted by the Grantee after the date hereof; and that the Grantor will WARRANT and DEFEND the Grantee against the lawful claims and demands of all persons claiming by, through or under the Grantor and none other, except as aforesaid.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives, and permitted assigns, according to the context hereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

IN WITNESS WHEREOF, the Grantor has executed these presents on this _____ day of _____, 20 _____.

KAPALUA WATER COMPANY, LTD.

By _____

Its _____

By _____

Its _____

Grantor

STATE OF HAWAII)
)
COUNTY OF MAUI)

On _____, before me personally appeared
_____, to me personally known, who, being by me duly sworn or affirmed,
did say that such person(s) executed this ____-page
dated _____, in the Second Circuit of the State
of Hawaii, as the free act and deed of such person(s), and if
applicable, in the capacity(ies) shown, having been duly
authorized to execute such instrument in such capacity(ies).

Print Name: _____
Notary Public, State of Hawaii.

My commission expires: _____

EXHIBIT "A"ITEM I (Tax Key: (2) 4-2-008-026:

All of that certain parcel of land situate at Honolua, Lahaina, Island and County of Maui, State of Hawaii, being portion of Lot 2-B of the Kapalua Mauka Large Lot Subdivision No. 2, being LOT 26 of the "HONOLUA RIDGE - PHASE I" Subdivision, as shown on File Plan Number 2375, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 0.651 acre, more or less.

Together with a non-exclusive easement for access over Lots 26 through 31, inclusive, as shown on File Plan No. 2375; provided, however, that in the event said roadway lots or any portion or portions thereof, are conveyed or dedicated to the County of Maui, the State of Hawaii, or other governmental authority for use as public roadways, then said easement rights over and across said roadway lots, or any portion or portions thereof so conveyed or dedicated, shall automatically terminate; and subject further to the rules and regulations that may be adopted by the Plantation Estates Lot Owners' Association and/or the Grantor governing the use, maintenance and operation of the roadway lots.

Said Lots 27 to 30, inclusive, have been conveyed to Plantation Estates Owners Association, by instrument dated July 14, 2011, recorded as Document No. 2011-117913.

Together with a non-exclusive easement for access over Lots 52, 53, 54, 55 and 56, as shown on File Plan No. 2006, and over Lots 44 and 45, as shown on File Plan No. 2040, as granted by Grant of Access Easement dated April 26, 2004, recorded as Document No. 2004-097793, as amended by instrument dated July 14, 2011, recorded as Document No. 2011-117915, and subject to the terms and provisions contained therein; provided, however, that in the event said roadway lots or any portion or portions thereof, are conveyed or dedicated to the County of Maui, the State of Hawaii, or other governmental authority for use as public roadways, then said easement rights over and across said roadway lots, or any portion or portions thereof so conveyed or dedicated, shall automatically terminate; and subject further to the rules and regulations that may be adopted by the Plantation Estates Lot Owners' Association and/or the Grantor governing the use, maintenance and operation of the roadway lots.

Said Lots 52 to 56, inclusive, and Lots 44 and 45, have been conveyed to Plantation Estates Owners Association, by instrument dated September 30, 1993, recorded as Document No. 93-175922, and instrument dated April 26, 2004, recorded as Document No. 2004-097792.

Being one of the premises acquired by the Grantor herein by Warranty Deed (Honolua Ridge - {Phase I, Lots 26 and 31) of Honolua Ridge LLC, a Hawaii limited liability company, dated March 23, 2009, recorded as Document No. 2009-054119.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature held by the State of Hawaii.

3. The terms and provisions contained in Amended and Restated Declaration of Covenants and Restrictions dated September 30, 1987, recorded in Liber 21185 on Page 173.

The foregoing Restated Declaration restates the original Declaration dated December 29, 1976, recorded in Liber 11922 at Page 26 and any amendments thereto.

The foregoing includes, but is not limited to, matters relating to any charges or assessments which at any time may be unpaid and owing to the Kapalua Resort Association.

Said Amended and Restated Declaration was amended by instruments dated December 6, 1989, recorded in Liber 24012 at Page 17. Said Declaration was supplemented by instrument dated April 5, 1990, recorded as Document No. 90-049427, dated October 22, 1990, recorded as Document No. 90-164621, and supplemented by instrument dated May 23, 1991, recorded as Document No. 91-067724, dated October 4, 1999, recorded as Document No. 99-160407, dated November 29, 2006, recorded as Document No. 2007-109432, dated December 12, 2008, recorded as Document No. 2009-034141, and dated effective July 19, 20016, recorded as Document No. A-60450585.

4. The terms and provisions contained in Private Water System Agreement dated May 8, 1989, recorded in Liber 23288 on Page 80, by and between Maui Land and Pineapple Co., Inc. and the County of Maui.

5. The terms and provisions contained in Subdivision Agreement dated March 15, 1990, recorded as Document No. 90-038761, by and between Maui Land and Pineapple Company, Inc., a Hawaii corporation, and the County of Maui.

6. The terms and provisions contained in Subdivision Agreement dated March 15, 1990, recorded as Document No. 90-038762, by and between Maui Land and Pineapple Company, Inc., a Hawaii corporation, and the County of Maui.

7. The terms and provisions contained in Agreement dated March 15, 1990, recorded as Document No. 90-042408, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and the County of Maui.

8. The terms and provisions contained in Private Water System Agreement dated December 27, 1990, recorded as Document No. 91-023833, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and the Department of Water Supply of the County of Maui.

10. The terms and provisions contained in Agreement for Allocation of Future Subdivision Potential dated September 16, 2002, recorded as Document No. 2002-170353, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and County of Maui, through its Department of Public Works and Waste Management.

11. The terms and provisions contained in Agreement for Allocation Of Future Subdivision Potential dated December 30, 2003, recorded as Document No. 2004-000992, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and County of Maui, through its Department of Public Works and Environmental Management, re: maximum number of future lots.

12. The terms and provisions contained in Agreement for Allocation of Future Subdivision Potential dated December 31, 2003, recorded as Document No. 2004-009681, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and County of Maui, through its Department of Public Works and Environmental Management, re: maximum number of future lots.

13. The terms and provisions contained in Subdivision Agreement (Agricultural Use) dated --- (acknowledged March 3, 2004 and April 2, 2004), recorded as Document No. 2004-072458, by and between Maui Land & Pineapple Company, Inc., a Hawaii

corporation, and County of Maui, through its Department of Planning, a body politic and corporate, and a political subdivision of the State of Hawaii, re: restriction on uses.

14. The terms and provisions contained in Warranty Deed with Reservations and Covenants dated May 7, 2004, recorded as Document No. 2004-097794.

The foregoing includes, but is not limited to, matters relating to agricultural activities, utility and access easements, water rights and flowage.

Assignment of Easements and Agreements dated March 27, 2009, by and between Maui Land & Pineapple Company, Inc., and Kapalua Land Company, Ltd. (collectively, "Assignor") and TY Management Corporation ("Assignee"), recorded as Document No. 2009-046259.

15. Grant to Maui Electric Company, Limited, and Verizon Hawaii Inc., now known as Hawaiian Telcom, Inc., dated April 12, 2005, recorded as Document No. 2005-105383, granting a right and easement for utility purposes.

16. Designation of Easement "E-1" for utility purpose referenced on File Plan No. 2375.

ITEM II (Tax Key: (2) 4-2-008-027:

All of that certain parcel of land situate at Honolua, Lahaina, Island and County of Maui, State of Hawaii, being portion of Lot 2-B of the Kapalua Mauka Large Lot Subdivision No. 2, being LOT 31 of the "HONOLUA RIDGE - PHASE I" Subdivision, as shown on File Plan Number 2375, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 0.823 acre, more or less.

Together with a non-exclusive easement for access over Lots 26 through 31, inclusive, as shown on File Plan No. 2375; provided, however, that in the event said roadway lots or any portion or portions thereof, are conveyed or dedicated to the County of Maui, the State of Hawaii, or other governmental authority for use as public roadways, then said easement rights over and across said roadway lots, or any portion or portions thereof so conveyed or dedicated, shall automatically terminate; and subject further to the rules and regulations that may be adopted by the Plantation Estates Lot Owners' Association and/or

the Grantor governing the use, maintenance and operation of the roadway lots.

Said Lots 27 to 30, inclusive, have been conveyed to Plantation Estates Owners Association, by instrument dated July 14, 2011, recorded as Document No. 2011-117913.

Together with a non-exclusive easement for access over Lots 52, 53, 54, 55 and 56, as shown on File Plan No. 2006, and over Lots 44 and 45, as shown on File Plan No. 2040, as granted by Grant of Access Easement dated April 26, 2004, recorded as Document No. 2004-097793, as amended by instrument dated July 14, 2011, recorded as Document No. 2011-117915, and subject to the terms and provisions contained therein; provided, however, that in the event said roadway lots or any portion or portions thereof, are conveyed or dedicated to the County of Maui, the State of Hawaii, or other governmental authority for use as public roadways, then said easement rights over and across said roadway lots, or any portion or portions thereof so conveyed or dedicated, shall automatically terminate; and subject further to the rules and regulations that may be adopted by the Plantation Estates Lot Owners' Association and/or the Grantor governing the use, maintenance and operation of the roadway lots.

Said Lots 52 to 56, inclusive, and Lots 44 and 45, have been conveyed to Plantation Estates Owners Association, by instrument dated September 30, 1993, recorded as Document No. 93-175922, and instrument dated April 26, 2004, recorded as Document No. 2004-097792.

Being one of the premises acquired by the Grantor herein by Warranty Deed (Honolua Ridge - {Phase I, Lots 26 and 31) of Honolua Ridge LLC, a Hawaii limited liability company, dated March 23, 2009, recorded as Document No. 2009-054119.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature held by the State of Hawaii.

3. The terms and provisions contained in Amended and Restated Declaration of Covenants and Restrictions dated September 30, 1987, recorded in Liber 21185 on Page 173.

The foregoing Restated Declaration restates the original Declaration dated December 29, 1976, recorded in Liber 11922 at Page 26 and any amendments thereto.

The foregoing includes, but is not limited to, matters relating to any charges or assessments which at any time may be unpaid and owing to the Kapalua Resort Association.

Said Amended and Restated Declaration was amended by instruments dated December 6, 1989, recorded in Liber 24012 at Page 17. Said Declaration was supplemented by instrument dated April 5, 1990, recorded as Document No. 90-049427, dated October 22, 1990, recorded as Document No. 90-164621, and supplemented by instrument dated May 23, 1991, recorded as Document No. 91-067724, dated October 4, 1999, recorded as Document No. 99-160407, dated November 29, 2006, recorded as Document No. 2007-109432, dated December 12, 2008, recorded as Document No. 2009-034141, and dated effective July 19, 20016, recorded as Document No. A-60450585.

4. The terms and provisions contained in Private Water System Agreement dated May 8, 1989, recorded in Liber 23288 on Page 80, by and between Maui Land and Pineapple Co., Inc. and the County of Maui.

5. The terms and provisions contained in Subdivision Agreement dated March 15, 1990, recorded as Document No. 90-038761, by and between Maui Land and Pineapple Company, Inc., a Hawaii corporation, and the County of Maui.

6. The terms and provisions contained in Subdivision Agreement dated March 15, 1990, recorded as Document No. 90-038762, by and between Maui Land and Pineapple Company, Inc., a Hawaii corporation, and the County of Maui.

7. The terms and provisions contained in Agreement dated March 15, 1990, recorded as Document No. 90-042408, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and the County of Maui.

8. The terms and provisions contained in Private Water System Agreement dated December 27, 1990, recorded as Document No. 91-023833, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and the Department of Water Supply of the County of Maui.

10. The terms and provisions contained in Agreement for Allocation of Future Subdivision Potential dated September 16, 2002, recorded as Document No. 2002-170353, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and County of Maui, through its Department of Public Works and Waste Management.

11. The terms and provisions contained in Agreement for Allocation Of Future Subdivision Potential dated December 30, 2003, recorded as Document No. 2004-000992, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and County of Maui, through its Department of Public Works and Environmental Management, re: maximum number of future lots.

12. The terms and provisions contained in Agreement for Allocation of Future Subdivision Potential dated December 31, 2003, recorded as Document No. 2004-009681, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and County of Maui, through its Department of Public Works and Environmental Management, re: maximum number of future lots.

13. The terms and provisions contained in Subdivision Agreement (Agricultural Use) dated ---(acknowledged March 3, 2004 and April 2, 2004), recorded as Document No. 2004-072458, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and County of Maui, through its Department of Public Works and Environmental Management, a political subdivision of the State of Hawaii, re: restriction on uses.

14. The terms and provisions contained in Warranty Deed with Reservations and Covenants dated May 7, 2004, recorded as Document No. 2004-097794.

The foregoing includes, but is not limited to, matters relating to agricultural activities, utility and access easements, water rights and flowage.

Assignment of Easements and Agreements dated March 27, 2009, by and between Maui Land & Pineapple Company, Inc., and Kapalua Land Company, Ltd. (collectively, "Assignor") and TY Management Corporation ("Assignee"), recorded as Document No. 2009-046259.

15. Grant to Maui Electric Company, Limited, and Verizon Hawaii Inc., now known as Hawaiian Telcom, Inc., dated April 12, 2005, recorded as Document No. 2005-105383, granting a right and easement for utility purposes.

ITEM III (Tax Key: (2) 4-2-009-027:

All of that certain parcel of land situate at Honolua, Lahaina, Island and County of Maui, State of Hawaii, being LOT 27 of the "HONOLUA RIDGE - PHASE II SUBDIVISION", as shown on File Plan Number 2418, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 5.437 acres, more or less.

Together with a non-exclusive easement for access over Lots 28 through 32, inclusive, as shown on File Plan No. 2418.

Together with a non-exclusive easement for access over Lots 26 through 31, inclusive, as shown on File Plan No. 2375.

Together with a non-exclusive easement for access over Lots 52, 53, 54, 55 and 56, as shown on File Plan No. 2006, and over Lots 44 and 45, as shown on File Plan No. 2040, as granted by Grant of Access Easement dated April 26, 2004, recorded as Document No. 2004-097793, as amended by instrument dated July 14, 2011, recorded as Document No. 2011-117915; and subject to the terms and provisions contained therein.

Together with a non-exclusive easement for access as granted by Grant of Roadway and Underground Utility Easement dated May 25, 2005, recorded as Document No. 2005-109188; and subject to the terms and provisions contained therein.

Being the premises acquired by the Grantor herein by Warranty Deed of Honolua Ridge LLC, a Hawaii limited liability company, dated July 27, 2006, recorded as Document No. 2006-155216.

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature held by the State of Hawaii.

2. The terms and provisions contained in Private Water System Agreement dated May 8, 1989, recorded in Liber 23288 on Page 80, by and between Maui Land and Pineapple Co., Inc. a Hawaii corporation, "Applicant", and Department of Water Supply of the County of Maui.

3. The terms and provisions contained in Subdivision Agreement (Three Lots or Less) dated March 15, 1990, recorded as Document No. 90-038761, by and between Maui Land and Pineapple Company, Inc., a Hawaii corporation, "Owner", and the County of Maui, a body politic and corporate, and a political subdivision of the State of Hawaii.

4. The terms and provisions contained in Subdivision Agreement dated March 15, 1990, recorded as Document No. 90-038762, by and between Maui Land and Pineapple Company, Inc., a Hawaii corporation, and the County of Maui, a body politic and corporate, and a political subdivision of the State of Hawaii.

5. The terms and provisions contained in Agreement dated March 15, 1990, recorded as Document No. 90-042408, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and the County of Maui, a body politic and corporate, and a political subdivision of the State of Hawaii.

6. The terms and provisions contained in Private Water System Agreement dated December 27, 1990, recorded as Document No. 91-023833, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and the Department of Water Supply of the County of Maui.

7. The terms and provisions contained in Agreement for Allocation of Future Subdivision Potential dated September 16, 2002, recorded as Document No. 2002-170353, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and County of Maui, through its Department of Public Works and Waste Management, a political subdivision of the State of Hawaii.

8. The terms and provisions contained in Agreement for Allocation Of Future Subdivision Potential dated December 31, 2003, recorded as Document No. 2004-009681, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and County of Maui, through its Department of Public Works and Environmental Management, a political subdivision of the State of Hawaii, re: maximum number of future lots.

9. The terms and provisions contained in Subdivision Agreement (Agricultural Use) dated --- (acknowledged March 3, 2004 and April 2, 2004), recorded as Document No. 2004-072458, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, and County of Maui, through its Department of Public Works and Environmental Management, a political subdivision of the State of Hawaii, re: restriction on uses.

10. The terms and provisions contained in Warranty Deed with Reservations and Covenants dated April 15, 2005, recorded as Document No. 2005-079362.

The foregoing includes, but is not limited to, matters relating to utility and access easements, water rights and flowage easement.

11. The terms and provisions contained in Agreement for Allocation of Future Subdivision Potential dated May 12, 2005, recorded as Document No. 2005-100576, by and between Honolua Ridge LLC, a Hawaii limited liability company, and County of Maui, through its Department of Public Works and Environmental Management, political subdivision of the State of Hawaii; re: maximum number of future lots.

12. Utility Easement to Maui Electric Company, Limited and GTE Hawaiian Telephone Company, Incorporated, now known as Hawaiian Telcom, Inc., dated April 12, 2005, recorded as Document No. 2005-105386, granting right and easement for utility purposes.

13. Grant of Roadway and Underground Utility Easement to Honolua Ridge LLC, a Hawaii limited liability company, dated May 25, 2005, recorded as Document No. 2005-109188, granting a non-exclusive easement for pedestrian and vehicular access to and from Lot 2-A, and for the installation, use, operation, maintenance, repair, and replacement of underground electrical, telephone, cable television, and similar utility lines serving Lot 2-A over Easement "1" affecting Lot 1 of Kapalua Mauka Large-Lot Subdivision, more particularly described therein.

14. The terms and provisions contained in Subdivision Agreement (Agricultural Use) dated June 15, 2005, recorded as Document No. 2005-119285, by and between Honolua Ridge LLC, a Hawaii limited liability company, and County of Maui, through its Department of Planning, a body politic and corporate, and a political subdivision of the State of Hawaii.

END OF EXHIBIT "A"

Exhibit 6

Bill of Sale Form for each of KWC and KWTC.

BILL OF SALE

KAPALUA WATER COMPANY, LTD., a Hawaii corporation ("Seller") and **HAWAII WATER SERVICE COMPANY, INC.**, a Hawaii corporation ("Buyer"), for good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, convey, transfer, set over and deliver unto said Buyer, pursuant to that certain Asset Purchase Agreement dated as of December 20, 2019, between Seller, Buyer, Kapalua Waste Treatment Company, Ltd, and Maui Land & Pineapple Company, Inc. as amended by First Amendment to Asset Purchase Agreement dated _____, 2020 (the "Purchase Agreement"), all of the assets listed on Exhibit A attached hereto ("Transferred Assets").

TO HAVE AND TO HOLD the same unto said Buyer and its successors and assigns, absolutely and forever.

Seller, in consideration of these premises, does hereby covenant with Buyer and its successors and assigns, that Seller is the lawful owner of the Transferred Assets hereby sold and transferred and has good right to sell and transfer the same as aforesaid, that the same are free and clear of and from all liens and encumbrances, and that Seller will and its successors and assigns shall defend and indemnify the same unto said Buyer and its successors and assigns against all claims and demands of all persons whomsoever.

AND MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation ("MLP"), KAPALUA LAND COMPANY, LIMITED, a Hawaii corporation ("KLC") and HONOLUA RIDGE LLC, a Hawaii limited liability company ("HR") do hereby quitclaim, remise and release to Buyer any and all interests they have in the Transferred Assets and in the Water System.

Seller, MLP, KLC and HR do hereby covenant with Buyer and its successors and assigns, that Seller, MLP, KLC and HR, at the request of Buyer, shall execute and deliver further instruments of transfer and assignment and take such other action as Buyer may reasonably request to more effectively transfer and assign to and vest in Buyer the Transferred Assets and the Water System, all at the sole cost and expense of Seller.

Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement. Except for the actual conveyance of the Transferred Assets purchased, nothing set forth in this Bill of Sale is intended to or shall expand, enlarge, modify, restrict, limit, or abridge any of the terms, representations, warranties, covenants, conditions, agreements, provisions, rights, benefits, obligations, or liabilities of any party beyond that set forth in the Purchase Agreement. In the event of any conflict, ambiguity, or discrepancy between the terms or conditions of the Purchase Agreement and this Bill of Sale, the terms and conditions of the Purchase Agreement shall be controlling in all respects.

IN WITNESS WHEREOF, the Seller has executed this Bill of Sale on this ____ day of

_____, _____.
KAPALUA WATER COMPANY, LTD.,
a Hawaii corporation

By _____
Its

MAUI LAND & PINEAPPLE COMPANY, INC.,
a Hawaii corporation

By _____
Its

KAPALUA LAND COMPANY, LTD.,
a Hawaii corporation

By _____
Its

HONOLUA RIDGE LLC,
an administratively terminated Hawaii
limited liability company, by Kapalua Land
Company, Ltd., a Hawaii corporation,
as its sole remaining Member

By _____
Its

BILL OF SALE

KAPALUA WASTE TREATMENT COMPANY, LTD., a Hawaii corporation ("Seller") and **HAWAII WATER SERVICE COMPANY, INC.**, a Hawaii corporation ("Buyer"), for good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, convey, transfer, set over and deliver unto said Buyer, pursuant to that certain Asset Purchase Agreement dated as of December 20, 2019, between Seller, Buyer, Kapalua Water Company, Ltd, and Maui Land & Pineapple Company, Inc. as amended by First Amendment to Asset Purchase Agreement dated _____, 2020 (the "Purchase Agreement"), all of the assets listed on Exhibit A attached hereto ("Transferred Assets").

TO HAVE AND TO HOLD the same unto said Buyer and its successors and assigns, absolutely and forever.

Seller, in consideration of these premises, does hereby covenant with Buyer and its successors and assigns, that Seller is the lawful owner of the Transferred Assets hereby sold and transferred and has good right to sell and transfer the same as aforesaid, that the same are free and clear of and from all liens and encumbrances, and that Seller will and its successors and assigns shall defend and indemnify the same unto said Buyer and its successors and assigns against all claims and demands of all persons whomsoever.

AND MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation ("MLP") and KAPALUA LAND COMPANY, LIMITED, a Hawaii corporation ("KLC") do hereby quitclaim, remise and release to Buyer any and all interests they have in the Transferred Assets and in the Water System.

Seller, MLP and KLC do hereby covenant with Buyer and its successors and assigns, that Seller, MLP and KLC, at the request of Buyer, shall execute and deliver further instruments of transfer and assignment and take such other action as Buyer may reasonably request to more effectively transfer and assign to and vest in Buyer the Transferred Assets and the Wastewater System, all at the sole cost and expense of Seller.

Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement. Except for the actual conveyance of the Transferred Assets purchased, nothing set forth in this Bill of Sale is intended to or shall expand, enlarge, modify, restrict, limit, or abridge any of the terms, representations, warranties, covenants, conditions, agreements, provisions, rights, benefits, obligations, or liabilities of any party beyond that set forth in the Purchase Agreement. In the event of any conflict, ambiguity, or discrepancy between the terms or conditions of the Purchase Agreement and this Bill of Sale, the terms and conditions of the Purchase Agreement shall be controlling in all respects.

IN WITNESS WHEREOF, the Seller has executed this Bill of Sale on this ____ day of

_____, _____.
KAPALUA WASTE TREATMENT COMPANY, LTD.,
a Hawaii corporation

By _____
Its _____

MAUI LAND & PINEAPPLE COMPANY, INC.,
a Hawaii corporation

By _____
Its

KAPALUA LAND COMPANY, LTD.,
a Hawaii corporation

By _____
Its

Exhibit 7

Purchaser Closing Certificate

PURCHASER'S OFFICER CLOSING CERTIFICATE

This certificate is delivered pursuant to Section 6.3(a)(9) of that certain Asset Purchase Agreement dated as of December 20, 2019, as amended by that certain First Amendment dated _____, 2020 (the "Agreement"), by and among HAWAII WATER SERVICE COMPANY, INC., a Hawaii corporation or its designee entity ("Purchaser"), KAPALUA WATER COMPANY, LTD., a Hawaii corporation ("KWC"), KAPALUA WASTE TREATMENT COMPANY, LTD, a Hawaii corporation ("KWTC") (KWC and KWTC, jointly and severally, "Seller"), and MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation ("MLP").

The undersigned, as the duly authorized _____ of Purchaser hereby certifies to Seller and MLP that (i) the representations and warranties in the Purchase Agreement of Purchaser were accurate in all respects as of the date of the Purchase Agreement and are accurate in all respects as of the Closing Date as if made on the Closing Date, (ii) Purchaser has performed and complied in all material respects with all covenants, agreements and conditions under this Agreement to be complied with by such parties on, or prior to, the Closing Date, and (iii) _____ and _____, respectively the _____ and _____ of Purchaser are each duly authorized to execute any and all agreements or instruments necessary to consummate the transactions contemplated by the Purchase Agreement on behalf of Purchaser.

DATED: _____, 2020.

Exhibit 8

Seller/MLP Closing Certificate

SELLER AND MLP'S OFFICER CLOSING CERTIFICATE

This certificate is delivered pursuant to Section 6.2(a)(16) of that certain Asset Purchase Agreement dated as of December 20, 2019 as amended by that certain First Amendment dated _____, 2020 (as so amended, the “**Agreement**”), by and among HAWAII WATER SERVICE COMPANY, INC., a Hawaii corporation or its designee entity (“**Purchaser**”), KAPALUA WATER COMPANY, LTD., a Hawaii corporation (“**KWC**”), KAPALUA WASTE TREATMENT COMPANY, LTD, a Hawaii corporation (“**KWTC**”) (KWC and KWTC, jointly and severally, “**Seller**”), and MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation (“**MLP**”).

The undersigned, as the duly authorized _____ of each of KWC, KWTC and MLP hereby certifies to Purchaser that (i) the representations and warranties in the Agreement of each of KWC, KWTC and MLP were accurate in all respects as of the date of the Agreement and are accurate in all respects as of the Closing Date as if made on the Closing Date, (ii) each of KWC, KWTC and MLP have each performed and complied in all material respects with all covenants, agreements and conditions under the Agreement to be complied with by such parties on, or prior to, the Closing Date, and (iii) _____ the _____ of each of KWC, KWTC and MLP is duly authorized to execute any and all agreements or instruments necessary to consummate the transactions contemplated by the Agreement on behalf of KWC, KWTC and MLP.

DATED: _____, 2020.

Exhibit 9

Assignment of Contracts Form

ASSIGNMENT OF CONTRACTS (KWC)

THIS ASSIGNMENT is made effective as of _____, 2020 by and between **KAPALUA WATER COMPANY, LTD.**, a Hawaii corporation, whose address is 200 Village Road, Lahaina, Hawaii 96761 ("Assignor") and **HAWAII WATER SERVICE COMPANY, INC.**, a Hawaii corporation, whose address is c/o General Manager, P.O. Box 384809, Waikoloa, Hawaii 96738 ("Assignee");

WITNESSETH:

THAT THIS ASSIGNMENT is made pursuant to that certain Asset Purchase Agreement dated as of December 20, 2019, between Assignor, Assignee, Kapalua Water Company, Ltd, and Maui Land & Pineapple Company, Inc. ("MLP") as amended by First Amendment to Asset Purchase Agreement dated _____, 2020 (the "Purchase Agreement").

THAT THE ASSIGNOR, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid to Assignor, the receipt and sufficiency of which is hereby acknowledged, and of the covenants and agreements of Assignee hereinafter contained and on the part of Assignee to be faithfully kept and performed, does hereby sell, assign, transfer, set over and deliver unto Assignee all of the interests of Assignor under those certain agreements more fully described in Exhibit A attached hereto and made a part hereof by reference (the "Assigned Agreements").

TO HAVE AND TO HOLD the same, unto the Assignee, and its successors and assigns, forever.

AND THE ASSIGNOR, in consideration of the premises, does hereby covenant and agree to and with Assignee and its successors and assigns as follows: (i) Assignor is the lawful holder of the interests hereby assigned under the Assigned Agreements; (ii) Assignor has good right to assign the Assigned Agreements; (iii) each of the Assigned Agreements is in full force and effect and is valid and enforceable in accordance with its terms; (iv) neither Assignor or, to the knowledge of Assignor, the other parties to the Assigned Agreements is in default of the Assigned Agreements; (v) any, liability or obligation arising out of any breach of any of the Assigned Agreements or any act or omission of Assignor that occurred prior to the date hereof shall remain the sole responsibility of Assignor; and (vi) Assignor will WARRANT AND DEFEND the foregoing unto Assignee against the lawful claims and demands of all persons except as otherwise provided herein.

AND THE ASSIGNEE, does hereby promise, covenant and agree to and with Assignor, that from and after the date hereof that (i) Assignee will faithfully observe and perform all of the terms, covenants and conditions contained in the Assigned Agreements which are to be observed and performed by the Assignor, but only to the extent arising from and after the date hereof; and (ii) will at all times hereafter indemnify, defend and hold Assignor harmless from and against the nonobservance of the terms, covenants and conditions contained in the Assigned Agreements that would be the obligation of Assignor under said agreements to observe and perform absent this assignment arising from and after the date hereof; provided, however, Assignee's foregoing obligations are conditioned on customers complying with tariffs imposed by the Hawaii Public Utilities Commission, and MLP providing water to Assignee and

the County of Maui accepting wastewater from Assignee in each case sufficient to meet with commitments under the Assigned Agreements.

IT IS MUTUALLY AGREED that the terms "Assignor" and "Assignee" as and when used herein shall mean and include the masculine, feminine, singular, plural, individuals, associations, trustees, corporations or partnerships, and each of their respective successors in interest, successors in trust, heirs, personal representatives, executors, administrators and permitted assigns, according to the context thereof, and that if this instrument is signed by two or more assignors or by two or more assignees, all covenants and agreements of such parties shall be and for all purposes be deemed to be joint and several.

IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

KAPALUA WATER COMPANY, LTD., a Hawaii corporation

By _____
Paulus Subrata
Its Vice President

Assignor

HAWAII WATER SERVICE COMPANY, INC., a Hawaii corporation

By _____
Name:
Its:

By _____
Name:
Its:

Assignee

ASSIGNMENT OF CONTRACTS (KWTC)

THIS ASSIGNMENT is made effective as of _____, 2020 by and between **KAPALUA WASTE TREATMENT COMPANY, LTD.**, a Hawaii corporation, whose address is 200 Village Road, Lahaina, Hawaii 96761 ("Assignor") and **HAWAII WATER SERVICE COMPANY, INC.**, a Hawaii corporation, whose address is c/o General Manager, P.O. Box 384809, Waikoloa, Hawaii 96738 ("Assignee");

WITNESSETH:

THAT THIS ASSIGNMENT is made pursuant to that certain Asset Purchase Agreement dated as of December 20, 2019, between Assignor, Assignee, Kapalua Waste Treatment Company, Ltd, and Maui Land & Pineapple Company, Inc. ("MLP") as amended by First Amendment to Asset Purchase Agreement dated _____, 2020 (the "Purchase Agreement").

THAT THE ASSIGNOR, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid to Assignor, the receipt and sufficiency of which is hereby acknowledged, and of the covenants and agreements of Assignee hereinafter contained and on the part of Assignee to be faithfully kept and performed, does hereby sell, assign, transfer, set over and deliver unto Assignee all of the interests of Assignor under those certain agreements more fully described in Exhibit A attached hereto and made a part hereof by reference (the "Assigned Agreements").

TO HAVE AND TO HOLD the same, unto the Assignee, and its successors and assigns, forever.

AND THE ASSIGNOR, in consideration of the premises, does hereby covenant and agree to and with Assignee and its successors and assigns as follows: (i) Assignor is the lawful holder of the interests hereby assigned under the Assigned Agreements; (ii) Assignor has good right to assign the Assigned Agreements; (iii) each of the Assigned Agreements is in full force and effect and is valid and enforceable in accordance with its terms; (iv) neither Assignor or, to the knowledge of Assignor, the other parties to the Assigned Agreements is in default of the Assigned Agreements; (v) any, liability or obligation arising out of any breach of any of the Assigned Agreements or any act or omission of Assignor that occurred prior to the date hereof shall remain the sole responsibility of Assignor; and (vi) Assignor will WARRANT AND DEFEND the foregoing unto Assignee against the lawful claims and demands of all persons except as otherwise provided herein.

AND THE ASSIGNEE, does hereby promise, covenant and agree to and with Assignor, that from and after the date hereof that (i) Assignee will faithfully observe and perform all of the terms, covenants and conditions contained in the Assigned Agreements which are to be observed and performed by the Assignor, but only to the extent arising from and after the date hereof; and (ii) will at all times hereafter indemnify, defend and hold Assignor harmless from and against the nonobservance of the terms, covenants and conditions contained in the Assigned Agreements that would be the obligation of Assignor under said agreements to observe and perform absent this assignment arising from and after the date hereof; provided, however, Assignee's foregoing obligations are conditioned on customers complying with tariffs imposed by the Hawaii Public Utilities Commission, and MLP providing water to Assignee and

the County of Maui accepting wastewater from Assignee in each case sufficient to meet with commitments under the Assigned Agreements.

IT IS MUTUALLY AGREED that the terms "Assignor" and "Assignee" as and when used herein shall mean and include the masculine, feminine, singular, plural, individuals, associations, trustees, corporations or partnerships, and each of their respective successors in interest, successors in trust, heirs, personal representatives, executors, administrators and permitted assigns, according to the context thereof, and that if this instrument is signed by two or more assignors or by two or more assignees, all covenants and agreements of such parties shall be and for all purposes be deemed to be joint and several.

[Remainder of page left intentionally blank; signature page follows]

IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

**KAPALUA WASTE TREATMENT
COMPANY, LTD., a Hawaii corporation**

By _____
Paulus Subrata
Its Vice President

Assignor

HAWAII WATER SERVICE COMPANY, INC.,
a Hawaii corporation

By _____
Name:
Its:

By _____
Name:
Its:

Assignee

Exhibit 10

Assignment of Easements Form

Return by Mail () Pickup () To:

This document contains ____ pages.

ASSIGNMENT OF EASEMENTS AND AGREEMENTS (KWC)

THIS ASSIGNMENT is made effective as of _____, 2020 by and between **KAPALUA WATER COMPANY, LTD.**, a Hawaii corporation, whose address is 200 Village Road, Lahaina, Hawaii 96761 ("Assignor") and **HAWAII WATER SERVICE COMPANY, INC.**, a Hawaii corporation, whose address is c/o General Manager, P.O. Box 384809, Waikoloa, Hawaii 96738 ("Assignee");

WITNESSETH:

THAT THE ASSIGNOR, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid to Assignor, the receipt and sufficiency of which is hereby acknowledged, and of the covenants and agreements of Assignee hereinafter contained and on the part of Assignee to be faithfully kept and performed, does hereby sell, assign, transfer, set over and deliver unto Assignee all of the interests of Assignor under those certain easements and agreements more fully described in **Exhibit A** attached hereto and made a part hereof by reference.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith unto the Assignee, and its successors and assigns, for and during the full unexpired terms of the easements and agreements listed in **Exhibit A**; SUBJECT, HOWEVER, to the observance and performance by the Assignee of all of the terms, covenants and conditions contained in the easements and agreements, which, according to the

terms and provisions thereof, are or ought to be observed and performed by the Assignor as grantee, lessee, licensee or other holder of the right to use land owned by another party (in any case, herein called "Grantee") under said easements and in Assignor's capacity under said agreements.

AND THE ASSIGNOR, in consideration of the premises, does hereby covenant and agree to and with Assignee as follows: (i) Assignor is the lawful owner of the interests of Grantor under the easements and agreements listed in Exhibit A; (ii) the interests created by the easements and agreements are free and clear of all encumbrances other than those herein mentioned, and except for assessments for real property taxes not yet by law required to be paid; (iii) Assignor has good right to sell and assign the interests created by the easements and agreements; and (iv) Assignor will WARRANT AND DEFEND title to the interests created by the easements and agreements unto Assignee against the lawful claims and demands of all persons except as otherwise provided herein. And Assignor hereby acknowledges, verifies and confirms that Assignor faithfully observed and performed all of the terms, covenants and conditions contained in the easements and agreements which were or ought to have been observed and performed by the Assignor as Grantee under said easements and agreements, and will at all times hereafter indemnify, defend and hold Assignee harmless from and against the nonobservance of the terms, covenants and conditions contained in the easements and agreements that would be the obligation of Assignor as Grantee under said easements or in Assignor's capacity under said agreements to observe and perform arising before the date hereof.

AND THE ASSIGNEE hereby acknowledges, verifies and confirms that Assignee has reviewed the easements and agreements listed in Exhibit A and, in consideration of the premises, does hereby promise, covenant and agree to and with Assignor, and to and with the other parties under the easements and agreements, that from and after the date hereof that Assignee will faithfully observe and perform all of the terms, covenants and conditions contained in the easements and agreements which are or ought to be observed and performed by the Assignor as Grantee under said easements or in Assignor's capacity under said agreements absent this assignment, and will at all times hereafter indemnify, defend and hold Assignor harmless from and against the nonobservance of the terms, covenants and conditions contained in the easements and agreements that would be the obligation of Assignor as Grantee under said easements or in Assignor's capacity under said agreements to observe and perform absent this assignment arising from and after the date hereof.

IT IS MUTUALLY AGREED that the terms "Assignor" and "Assignee" as and when used herein shall mean and include the masculine, feminine, singular, plural, individuals, associations, trustees, corporations or partnerships, and each of their respective successors in interest, successors in trust, heirs, personal representatives, executors, administrators and permitted assigns, according to the context thereof, and that if this instrument is signed by two or more assignors or by two or more assignees, all covenants and agreements of such parties shall be and for all purposes be deemed to be joint and several.

[Remainder of page left intentionally blank; signature page follows]

IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

KAPALUA WATER COMPANY, LTD., a Hawaii corporation

By _____
Paulus Subrata
Its Vice President

Assignor

HAWAII WATER SERVICE COMPANY, INC., a Hawaii corporation

By _____
Name: Martin Kropelnicki
Its: President & CEO

By _____
Name: Thomas Strong
Its: Vice President & CFO

Assignee

STATE OF HAWAII)
)
COUNTY OF MAUI)

On this ____ day of _____, 2020, before me personally appeared Paulus Subrata, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

Printed Name:

My commission expires:

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Assignment of Easements and Agreements

Doc. Date: _____ or Undated at time of notarization.

No. of Pages: _____ Jurisdiction: Second Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary

(Official Stamp or Seal)

STATE OF HAWAII)
COUNTY OF _____) SS:
)

On this ____ day of _____, 2020, before me personally appeared
_____, to me personally known, who, being by me duly sworn or affirmed, did
say that such person executed the foregoing instrument as the free act and deed of such person,
and if applicable in the capacity shown, having been duly authorized to execute such instrument in
such capacity.

Notary Public, State of Hawaii

Printed Name:

My commission expires:

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Assignment of Easements
and Agreements

Doc. Date: _____ or Undated at time of
notarization.

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary _____ Date of Notarization and
Certification Statement

Printed Name of Notary _____

(Official Stamp or Seal)

STATE OF HAWAII)
COUNTY OF _____) SS:
)

On this ____ day of _____, 2020, before me personally appeared
_____, to me personally known, who, being by me duly sworn or affirmed, did
say that such person executed the foregoing instrument as the free act and deed of such person,
and if applicable in the capacity shown, having been duly authorized to execute such instrument in
such capacity.

Notary Public, State of Hawaii

Printed Name:

My commission expires:

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Assignment of Easements
and Agreements

Doc. Date: _____ or Undated at time of
notarization.

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary

Date of Notarization and
Certification Statement

Printed Name of Notary

(Official Stamp or Seal)

EXHIBIT A
Easements and Agreements

1. Water Facilities and Transmission Line Land Lease dated August 2, 1977, made by Maui Land & Pineapple Company, Inc. ("MLP"), as Lessor and Kapalua Water Company, Ltd. ("KWC"), as Lessee, recorded in the Bureau of Conveyances of the State of Hawaii (the "Bureau") in Liber 12492 at Page 453.

(a) Partial Cancellation of Water Facilities and Transmission Line Land Lease dated October 10, 1985, made by MLP, as Lessor and KWC, as Lessee, recorded in the Bureau in Liber 19011 at Page 579.

(i) Partial Cancellation, Surrender, and Quitclaim of Easement Rights dated June 1, 2006, made by MLP and Kapalua Bay, LLC ("KB"), collectively as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2006-102289.

(b) Partial Cancellation of Water Facilities and Transmission Line Land Lease dated September 8, 1987, made by MLP, as Lessor and KWC, as Lessee, recorded in the Bureau in Liber 21151 at Page 689.

(c) Partial Release of Water Facilities and Transmission Line Land Lease dated July 21, 2004, made by MLP, as Lessor and KWC, as Lessee, recorded in the Bureau as Document No. 2004-165522.

(d) Partial Release of Water Facilities and Transmission Line Land Lease dated April 29, 2005, made by MLP, as Lessor and KWC, as Lessee, recorded in the Bureau as Document No. 2005-095636.

2. Easement dated September 9, 1987, made by Kapalua Land Company, Ltd. ("KLC"), as Grantor and KWC, as Grantee, recorded in the Bureau in Liber 21133 at Page 62.

3. Cancellation and Termination of Water Facilities and Transmission Line Land Lease and Grant of Non-Exclusive Easement dated November 17, 1988, made by MLP and KWC, recorded in the Bureau in Liber 22586 at Page 768.

(a) Partial Cancellation of Non-Exclusive Easement; and Grant of New Waterline Easement (Kapalua Place Subdivision; Water System) dated July 6, 1989, made by KLC, as Grantor and KWC, as Grantee, recorded in the Bureau in Liber 23470 at Page 767.

(b) Partial Release of Grant of Non-Exclusive Easement dated November 1, 1999, made by KWC, recorded in the Bureau as Document No. 99-183333.

(c) Partial Release of Grant of Non-Exclusive Easement dated August 29, 2000, made by KWC, recorded in the Bureau as Document No. 2000-122679.

(d) Partial Release of Grant of Non-Exclusive Easement dated September 7, 2000, made by KWC, recorded in the Bureau as Document No. 2000-126808.

(e) Partial Cancellation, Surrender, and Quitclaim of Easement Rights dated May 16, 2006, made by MLP, KB and KWC, recorded in the Bureau as Document No. 2006-093081.

(f) Partial Cancellation and Release of Cancellation and Termination of Water Facilities and Transmission Line Land Lease and Grant of Non-Exclusive Easement dated September 20, 2010, made by MLP and KWC, recorded in the Bureau as Document No. 2010-142781.

(i) Cancellation and Release dated August 2, 2011, made by MLP and KWC, recorded in the Bureau as Document No. 2011-128264.

4. Waterline Easement dated ---- (acknowledged March 8, 1990), made by the State of Hawaii, represented by its Director of Transportation, as Grantor and KWC and MLP, as Grantee, recorded in the Bureau as Document No. 91-018362.

5. Private Water System Agreement dated March 14, 1996, made by the Board of Directors of the Association of Apartment Owners of the Bay Villas, Inc., as Applicant, KWC, as Purveyor and the Department of Water Supply of the County of Maui ("DWS"), as the Department, recorded in the Bureau as Document No. 96-116456.

6. Private Water System Agreement dated August 14, 1996, made by MLP, as Owner, KLC, as Applicant, KWC, as Purveyor and DWS, as the Department, recorded in the Bureau as Document No. 96-131740.

7. Private Water System Agreement dated October 22, 1996, made by MLP, as Owner, KLC, as Applicant, KWC, as Purveyor and DWS, as the Department, recorded in the Bureau as Document No. 97-007138.

8. Grant of Easement dated April 29, 2005, made by Honolua Ridge LLC ("HR"), as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2005-095633.

9. Grant of Easement dated April 29, 2005, made by HR, as Grantor and KWC as Grantee, recorded in the Bureau as Document No. 2005-095634.

10. Grant of Easement dated February 9, 2006, made by HR, as Grantor and KWC as Grantee, recorded in the Bureau as Document No. 2006-038331.

11. Grant of Easements for Water Utility Purposes dated May 2, 2006, made by KB, as Grantor and KWC as Grantee, recorded in the Bureau as Document No. 2006-082390.

12. Grant of Easement dated July 27, 2006, made by HR, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2006-155214.

13. Grant of Waterline Easement dated March 27, 2007, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2007-054520.

14. Grant of Underground Waterline Easement dated March 27, 2009, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2009-046246.

15. Grant of Underground Waterline Easement dated August 28, 2009, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2009-146215.
16. Grant of Easement dated August 28, 2009, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2009-146216.
17. Grant of Easements for Water Utility Purposes dated October 7, 2009, made by KB, as Grantor, KWC, as Grantee and the Association of Apartment of Apartment Owners of Kapalua Bay Condominium, Kapalua Bay Vacation Owners Association, recorded in the Bureau as Document No. 2009-154008.
18. Grant of Easement for Water Utility Purposes dated October 7, 2009, made by MLP, as Grantor, KWC, as Grantee and KB, as Ground Lessee, recorded in the Bureau as Document No. 2009-154012.
19. Grant of Easement for Water Utility Purposes dated October 7, 2009, made by MLP, as Grantor, KWC, as Grantee and KB, as Ground Lessee, recorded in the Bureau as Document No. 2009-154013.
20. Grant of Waterline Easement ----- (acknowledged October 1, 2009), made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2009-156250.
21. Grant of Easement (Kapalua Water Co. Facilities in Kapalua Mauka) dated September 15, 2010, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2010-142993.
22. Grant of Underground Waterline Easement dated September 10, 2010, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2010-143013.
23. Grant of Underground Waterline Easement dated September 20, 2010, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2010-143611.
 - (a) Agreement to Correct Typographical Errors in Property Descriptions dated November 18, 2010, made by MLP and TY Management Corporation ("TY"), recorded in the Bureau as Document No. 2010-187579.
 - (b) First Amendment to Grant of Underground Waterline Easement dated November 29, 2010, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2010-187580.
24. Unrecorded KWC Water Transmission Agreement dated September 30, 2010, made between KWC and TY Management Co., a memorandum of which is September 30, 2010, and recorded in the Bureau as Document No. 2010-145882.
25. Grant of Underground Waterline Easement dated February 7, 2011, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2011-027394.

26. Grant of Underground Waterline Easement dated February 7, 2011, made by MLP, as Grantor, and KWC, as Grantee, recorded in the Bureau as Document No. 2011-027395.
27. Grant of Underground Waterline Easement dated February 7, 2011, made by KLC, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2011-027396.
28. Grant of Underground Waterline Easement dated June 27, 2011, made by HR, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2011-117912.
29. Grant of Maintenance Access Easement dated July 14, 2011, made by KWC, as Grantor and Plantation Estates Lot Owners' Association ("PELOA"), as Grantee, recorded in the Bureau as Document No. 2011-117917.
30. Grant of Landscaping & Detention Basin Maintenance Easement dated July 14, 2011, made by KWC, as Grantor and PELOA, as Grantee, recorded in the Bureau as Document No. 2011-117918.
31. Grant of Underground Waterline Easement dated March 29, 2012, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-44820559.
32. Grant of Underground Waterline Easement dated May 2, 2014, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-52350461.
33. Memorandum of Water Service Connection Agreement, As Amended (Engel) effective as of April 22, 2014, made by KWC, William Edward Engel (also known as William E. Engel) and Marla Ann Engel (also known as Marla A. Engel), husband and wife, recorded in the Bureau as Document No. A-52600770.
34. Grant of Underground Waterline Easement dated February 2, 2017, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-62700700.
35. Grant of Underground Waterline Easement dated February 2, 2017, made by SMC Mahana LLC, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-66620991.
36. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400697.
37. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400699.
38. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400701.

39. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400703.
40. Grant of Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400704.
41. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400708.
42. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400709.
43. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400710.
44. Grant of Utility Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400711.

Return by Mail () Pickup () To:

This document contains ____ pages.

ASSIGNMENT OF EASEMENTS AND AGREEMENTS (KWTC)

THIS ASSIGNMENT is made effective as of _____, 2020 by and between **KAPALUA WASTE TREATMENT COMPANY, LTD.**, a Hawaii corporation, whose address is 200 Village Road, Lahaina, Hawaii 96761 ("Assignor") and **HAWAII WATER SERVICE COMPANY, INC.**, a Hawaii corporation, whose address is c/o General Manager, P.O. Box 384809, Waikoloa, Hawaii 96738 ("Assignee");

WITNESSETH:

THAT THE ASSIGNOR, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid to Assignor, the receipt and sufficiency of which is hereby acknowledged, and of the covenants and agreements of Assignee hereinafter contained and on the part of Assignee to be faithfully kept and performed, does hereby sell, assign, transfer, set over and deliver unto Assignee all of the interests of Assignor under those certain easements and agreements more fully described in **Exhibit A** attached hereto and made a part hereof by reference.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith unto the Assignee, and its successors and assigns, for and during the full unexpired terms of the easements and agreements listed in **Exhibit A**; SUBJECT, HOWEVER, to the observance and performance by the Assignee of all of the terms, covenants and conditions contained in the easements and agreements, which, according to the

terms and provisions thereof, are or ought to be observed and performed by the Assignor as grantee, lessee, licensee or other holder of the right to use land owned by another party (in any case, herein called "Grantee") under said easements and in Assignor's capacity under said agreements.

AND THE ASSIGNOR, in consideration of the premises, does hereby covenant and agree to and with Assignee as follows: (i) Assignor is the lawful owner of the interests of Grantee under the easements and agreements listed in Exhibit A; (ii) the interests created by the easements and agreements are free and clear of all encumbrances other than those herein mentioned, and except for assessments for real property taxes not yet by law required to be paid; (iii) Assignor has good right to sell and assign the interests created by the easements and agreements; and (iv) Assignor will WARRANT AND DEFEND title to the interests created by the easements and agreements unto Assignee against the lawful claims and demands of all persons except as otherwise provided herein. And Assignor hereby acknowledges, verifies and confirms that Assignor faithfully observed and performed all of the terms, covenants and conditions contained in the easements and agreements which were or ought to have been observed and performed by the Assignor as Grantee under said easements and agreements, and will at all times hereafter indemnify, defend and hold Assignee harmless from and against the nonobservance of the terms, covenants and conditions contained in the easements and agreements that would be the obligation of Assignor as Grantee under said easements or in Assignor's capacity under said agreements to observe and perform arising before the date hereof.

AND THE ASSIGNEE hereby acknowledges, verifies and confirms that Assignee has reviewed the easements and agreements listed in Exhibit A and, in consideration of the premises, does hereby promise, covenant and agree to and with Assignor, and to and with the other parties under the easements and agreements, that from and after the date hereof that Assignee will faithfully observe and perform all of the terms, covenants and conditions contained in the easements and agreements which are or ought to be observed and performed by the Assignor as Grantee under said easements or in Assignor's capacity under said agreements absent this assignment, and will at all times hereafter indemnify, defend and hold Assignor harmless from and against the nonobservance of the terms, covenants and conditions contained in the easements and agreements that would be the obligation of Assignor as Grantee under said easements or in Assignor's capacity under said agreements to observe and perform absent this assignment arising from and after the date hereof.

IT IS MUTUALLY AGREED that the terms "Assignor" and "Assignee" as and when used herein shall mean and include the masculine, feminine, singular, plural, individuals, associations, trustees, corporations or partnerships, and each of their respective successors in interest, successors in trust, heirs, personal representatives, executors, administrators and permitted assigns, according to the context thereof, and that if this instrument is signed by two or more assignors or by two or more assignees, all covenants and agreements of such parties shall be and for all purposes be deemed to be joint and several.

[Remainder of page left intentionally blank; signature page follows]

IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

**KAPALUA WASTE TREATMENT
COMPANY, LTD., a Hawaii corporation**

By _____
Paulus Subrata
Its Vice President

Assignor

**HAWAII WATER SERVICE COMPANY, INC.,
a Hawaii corporation**

By _____
Name: Martin Kropelnicki
Its: President & CEO

By _____
Name: Thomas Strong
Its: Vice President & CFO

Assignee

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

On this _____ day of _____, 2020, before me personally appeared Paulus Subrata, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

Printed Name:

My commission expires:

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Assignment of Easements and Agreements

Doc. Date: _____ or Undated at time of
notarization.

No. of Pages: Jurisdiction: Second Circuit
(in which notarial act is performed)

Signature of Notary

**Date of Notarization and
Certification Statement**

Printed Name of Notary

(Official Stamp or Seal)

STATE OF HAWAII)
COUNTY OF _____) SS:
)

On this ____ day of _____, 2020, before me personally appeared
_____, to me personally known, who, being by me duly sworn or affirmed, did
say that such person executed the foregoing instrument as the free act and deed of such person,
and if applicable in the capacity shown, having been duly authorized to execute such instrument in
such capacity.

Notary Public, State of Hawaii

Printed Name:

My commission expires:

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Assignment of Easements
and Agreements

Doc. Date: _____ or Undated at time of
notarization.

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary _____ Date of Notarization and
Certification Statement

Printed Name of Notary _____

(Official Stamp or Seal)

STATE OF HAWAII)
COUNTY OF _____) SS:
)

On this ____ day of _____, 2020, before me personally appeared
_____, to me personally known, who, being by me duly sworn or affirmed, did
say that such person executed the foregoing instrument as the free act and deed of such person,
and if applicable in the capacity shown, having been duly authorized to execute such instrument in
such capacity.

Notary Public, State of Hawaii

Printed Name:

My commission expires:

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Assignment of Easements
and Agreements

Doc. Date: _____ or Undated at time of
notarization.

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary _____ Date of Notarization and
Certification Statement

Printed Name of Notary _____

(Official Stamp or Seal)

EXHIBIT A
Easements and Agreements

1. Sewer Facilities and Transmission Line Land Lease dated August 2, 1977, made by Maui Land & Pineapple Company, Inc. ("MLP"), as Lessor and Kapalua Waste Treatment Company, Ltd. ("KWTC"), as Lessee, recorded in the Bureau of Conveyances of the State of Hawaii (the "Bureau") in Liber 12492 at Page 439.

(a) Partial Cancellation of Sewer Facilities and Transmission Line Land Lease and Grant of Easement dated October 10, 1985, made by MLP, as Lessor and KWTC, as Lessee, recorded in the Bureau in Liber 19011 at Page 554.

(i) Partial Cancellation, Surrender, and Quitclaim of Easement Rights dated May 16, 2006, made by MLP and Kapalua Bay, LLC ("KB"), collectively as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2006-093079

(b) Cancellation and Termination of Sewer Facilities and Transmission Line Land Lease and Grant of Non-Exclusive Easement dated November 17, 1988, made by MLP, as Lessor and KWTC, as Lessee, recorded in the Bureau in Liber 22586 at Page 751.

(i) Partial Cancellation of Non-Exclusive Easement; and Grant of New Sewerline Easement (Kapalua Place Subdivision; Sewer System) dated July 6, 1989, made by Kapalua Land Company, Ltd. ("KLC"), as Grantor and KWTC, as Grantee, recorded in the Bureau in Liber 23470 at Page 749.

(ii) Partial Release of Grant of Non-Exclusive Easement dated August 29, 2000, made by KWTC, recorded in the Bureau as Document No. 2000-122680.

(iii) Partial Cancellation, Surrender, and Quitclaim of Easement Rights dated May 16, 2006, made by MLP and KB, collectively as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2006-093082.

(iv) Partial Cancellation, and Release of Cancellation and Termination of Sewer Facilities and Transmission Line Land Lease and Grant of Non-Exclusive Easement dated September 20, 2010, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2010-142782.

2. Easement dated September 9, 1987, made by KLC, as Grantor and Kapalua Waste Water Treatment Company, Ltd., as Grantee, recorded in the Bureau in Liber 21133 at Page 67.

(a) Correction of Grant of Easement dated August 17, 1988, made by KLC, as Grantor and KWTC, as Grantee, recorded in the Bureau in Liber 22289 at Page 669.

3. Encroachment Agreement dated December 16, 1998, made by KWTC, as Grantor and Kai Alii LLC, as Grantee, recorded in the Bureau as Document No. 98-188651.

4. Encroachment Agreement dated January 12, 2004, made by KWTC and Thomas Rosenquist, recorded in the Bureau as Document No. 2004-025516.

5. Grant of Easements for Waste Treatment Purposes dated May 2, 2006, made by KB, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2006-082389.

6. Grant of Wastewater Easement dated March 27, 2007, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2007-054521.

(a) Correction of Grant of Wastewater Easement dated September 9, 2009, made by W2005 Kapalua/Gengate Hotel Realty, L.L.C., as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2009-144440.

7. Grant of Easement for Drainage Purposes dated October 7, 2009, made by KB, as Grantor, KWTC, as Grantee, Association of Apartment Owners of Kapalua Bay Condominium and Kapalua Bay Vacation Owners Association, recorded in the Bureau as Document No. 2009-154011.

8. Grant of Easement for Waste Treatment Purposes dated October 7, 2009, made by MLP, as Grantor, KWTC, as Grantee and KB, as Ground Lessee, recorded in the Bureau as Document No. 2009-154014.

9. Grant of Easement for Drainage Purposes dated October 7, 2009, made by MLP, as Grantor, KWTC, as Grantee and KB, as Ground Lessee, recorded in the Bureau as Document No. 2009-154015.

10. Grant of Underground Wastewaterline Easement dated September 10, 2010, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2010-143014.

11. Grant of Underground Wastewaterline Easement dated February 7, 2011, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2011-027397.

12. Grant of Underground Wastewaterline Easement dated March 29, 2012, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-44820560.

13. Grant of Underground Wastewaterline Easement dated May 2, 2014, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-52350462.

14. Grant of Underground Wastewaterline Easement dated March 31, 2017, made by SMC Mahana LLC, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-66620990.

15. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-74400696.

16. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-74400698.

17. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-74400700.

18. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-74400702.

19. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-74400705.

20. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-74400706.

21. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-74400707.

Exhibit 11

Assignment of Intangibles Form

ASSIGNMENT OF INTANGIBLES (KWC)

THIS ASSIGNMENT is made effective as of _____, 2020 by and between **KAPALUA WATER COMPANY, LTD.**, a Hawaii corporation, whose address is 200 Village Road, Lahaina, Hawaii 96761 and **MAUI LAND & PINEAPPLE COMPANY, INC.**, a Hawaii corporation (collectively "Assignor") and **HAWAII WATER SERVICE COMPANY, INC.**, a Hawaii corporation, whose address is c/o General Manager, P.O. Box 384809, Waikoloa, Hawaii 96738 ("Assignee"), pursuant to that certain Asset Purchase Agreement dated as of December 20, 2019, between Assignor, Assignee, Kapalua Waste Treatment Company, Ltd, and Maui Land & Pineapple Company, Inc. as amended by First Amendment to Asset Purchase Agreement dated _____, 2020 (the "Purchase Agreement");

WITNESSETH:

THAT THE ASSIGNOR, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid to Assignor, the receipt and sufficiency of which is hereby acknowledged, and of the covenants and agreements of Assignee hereinafter contained and on the part of Assignee to be faithfully kept and performed, does hereby sell, assign, transfer, set over and deliver unto Assignee all of the interests of Assignor in and to the intangible property owned by Assignor that is included in the Acquired Assets under the Purchase Agreement (the "Intangibles"), including without limitation all of the Intangibles described in Exhibit A attached hereto and made a part hereof by reference, provided however that nothing contained herein shall be deemed to convey any interest in or right to use the name "Kapalua" except as otherwise provided in the Purchase Agreement with respect to the transfer to Assignee of the tradename "Kapalua Water Company, Ltd."

TO HAVE AND TO HOLD the same, unto the Assignee, and its successors and assigns, forever.

AND THE ASSIGNOR, in consideration of the premises, does hereby covenant and agree to and with Assignee as follows: (i) Assignor is the lawful holder of the Intangibles hereby assigned; (ii) Assignor has good right to assign the Intangibles; (iii) any, liability or obligation arising out of Assignor's ownership of the Intangibles or any act or omission of Assignor that occurred prior to the date hereof shall remain the sole responsibility of Assignor (iv) Assignor will WARRANT AND DEFEND the foregoing unto Assignee against the lawful claims and demands of all persons except as otherwise provided herein.

AND THE ASSIGNOR does further covenant with Assignee and its successors and assigns, that Assignor, at the request of Assignee, shall execute and deliver further instruments of transfer and assignment and take such other action as Assignor may reasonably request to more effectively transfer and assign to and vest in Assignee the Intangibles, all at the sole cost and expense of Assignor.

IT IS MUTUALLY AGREED that the terms "Assignor" and "Assignee" as and when used herein shall mean and include the masculine, feminine, singular, plural, individuals, associations, trustees, corporations or partnerships, and each of their respective successors in interest, successors in trust, heirs, personal representatives, executors, administrators and permitted assigns, according to the context thereof, and that if this instrument is signed by two or more assignors or by two or more assignees, all covenants and agreements of such parties shall be and for all purposes be deemed to be joint and several.

IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

KAPALUA WATER COMPANY, LTD., a Hawaii corporation

By _____
Paulus Subrata
Its Vice President

Assignor

HAWAII WATER SERVICE COMPANY, INC., a Hawaii corporation

By _____
Name: Martin Kropelnicki
Its: President & CEO

By _____
Name: Thomas Strong
Its: Vice President & CFO

Assignee

ASSIGNMENT OF INTANGIBLES (KWTC)

THIS ASSIGNMENT is made effective as of _____, 2020 by and between **KAPALUA WASTE TREATMENT COMPANY, LTD.**, a Hawaii corporation, whose address is 200 Village Road, Lahaina, Hawaii 96761 and **MAUI LAND & PINEAPPLE COMPANY, INC.**, a Hawaii corporation (collectively "Assignor") and **HAWAII WATER SERVICE COMPANY, INC.**, a Hawaii corporation, whose address is c/o General Manager, P.O. Box 384809, Waikoloa, Hawaii 96738 ("Assignee"), pursuant to that certain Asset Purchase Agreement dated as of December 20, 2019, between Assignor, Assignee, Kapalua Water Company, Ltd, and Maui Land & Pineapple Company, Inc. as amended by First Amendment to Asset Purchase Agreement dated _____, 2020 (the "Purchase Agreement");

WITNESSETH:

THAT THE ASSIGNOR, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid to Assignor, the receipt and sufficiency of which is hereby acknowledged, and of the covenants and agreements of Assignee hereinafter contained and on the part of Assignee to be faithfully kept and performed, does hereby sell, assign, transfer, set over and deliver unto Assignee all of the interests of Assignor in and to the intangible property owned by Assignor that is included in the Acquired Assets under the Purchase Agreement (the "Intangibles"), including without limitation all of the Intangibles described in Exhibit A attached hereto and made a part hereof by reference, provided however that nothing contained herein shall be deemed to convey any interest in or right to use the name "Kapalua" except as otherwise provided in the Purchase Agreement with respect to the transfer to Assignee of the tradename "Kapalua Waste Treatment Company, Ltd."

TO HAVE AND TO HOLD the same, unto the Assignee, and its successors and assigns, forever.

AND THE ASSIGNOR, in consideration of the premises, does hereby covenant and agree to and with Assignee as follows: (i) Assignor is the lawful holder of the Intangibles hereby assigned; (ii) Assignor has good right to assign the Intangibles; (iii) any, liability or obligation arising out of Assignor's ownership of the Intangibles or any act or omission of Assignor that occurred prior to the date hereof shall remain the sole responsibility of Assignor (iv) Assignor will WARRANT AND DEFEND the foregoing unto Assignee against the lawful claims and demands of all persons except as otherwise provided herein.

AND THE ASSIGNOR does further covenant with Assignee and its successors and assigns, that Assignor, at the request of Assignee, shall execute and deliver further instruments of transfer and assignment and take such other action as Assignor may reasonably request to more effectively transfer and assign to and vest in Assignee the Intangibles, all at the sole cost and expense of Assignor.

IT IS MUTUALLY AGREED that the terms "Assignor" and "Assignee" as and when used herein shall mean and include the masculine, feminine, singular, plural, individuals, associations, trustees, corporations or partnerships, and each of their respective successors in interest, successors in trust, heirs, personal representatives, executors, administrators and permitted assigns, according to the context thereof, and that if this instrument is signed by two or more assignors or by two or more assignees, all covenants and agreements of such parties shall be and for all purposes be deemed to be joint and several.

IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

**KAPALUA WASTE TREATMENT
COMPANY, LTD., a Hawaii corporation**

By _____
Paulus Subrata
Its Vice President

Assignor

**HAWAII WATER SERVICE COMPANY, INC.,
a Hawaii corporation**

By _____
Name: Martin Kropelnicki
Its: President & CEO

By _____
Name: Thomas Strong
Its: Vice President & CFO

Assignee

Exhibit N**LIST OF ASSIGNED CONTRACTS**

AGREEMENT	CUSTOMER	SERVICE
Water Service Connection Agreement effective January 31, 2012, amended by First Amendment of Water Service Agreement (Engel) dated April 22, 2014	William E. Engel and Marla A. Engel	Potable water
KWC Water Transmission Agreement dated September 30, 2010	TY Management Corporation	Backup non-potable water storage and transmission system
Memorandum of KWC Water Transmission Agreement Kapalua Bay Golf Course and Golf Academy dated September 30, 2010	TY Management Corporation	Non-potable water lines, infrastructure and easements
Will Serve Commitment KWC for Kapalua Bay Golf Course, Golf Academy, Lahaina, Maui, TMK (2) 4-2-004-24, 43, 36 & 48 dated September 30, 2010	TY Management Corporation	Potable and Non-potable water
Will Serve Commitment KWT for Kapalua Bay Golf Course, Golf Academy and Maintenance Facility, Lahaina, Maui, TMK (2) 4-2-004-24, 43 & 36 dated September 30, 2010	TY Management Corporation	Wastewater
Will Serve Commitment KWC for Lot 1C-1-A, Kapalua Central Resort Subdivision, Lahaina, Maui, dated 2019	TY Management Corporation	Potable and Non-potable water
Will Serve Commitment KWT for Lot 1C-1-A, Kapalua Central Resort Subdivision, Lahaina, Maui, dated [execution pending]	TY Management Corporation	Wastewater
Kapalua Wastewater Allocation for Kapalua Bay Residences, Lahaina, Maui, TMK (2)4-2-004-027	KWT	Wastewater allocation
Will Serve Commitment KWC for Kapalua Site 6.0, Lahaina, Maui, TMK (2)4-2-004-048 dated 2019	Ensign Peak Investment LLC	Potable and Non-potable water
Will Serve Commitment KWC for Kapalua Plantation Golf Course, Lahaina, Maui, TMK (2) 4-2-005-37, 38, 39, 43, 44, 45, 47 &49 dated March 27, 2009	TY Management Corporation	Potable and Non-potable water
Will Serve Commitment KWC for Kapalua Central Resort (TMK (2) 4-2-4-49) and approximately 250-portion of Kapalua Mauka (TMK (2) 4-2-1-42) dated June 3, 2015	Maui Land & Pineapple Company, Inc.	Potable and Non-potable water
Will Serve Commitment KWC for Kapalua Central Resort (TMK (2) 4-2-4-49) and approximately 250-portion of Kapalua Mauka (TMK (2) 4-2-1-42) dated June 10, 2015	Maui Land & Pineapple Company, Inc.	Potable and Non-potable water

Will Serve Commitment KWC for Plantation Course Maintenance Facility TMK (2) 4-2-1-46 dated May 2, 2014	TY Management Corporation	Potable and Non- potable water
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SCHEDULE 4.3(a)**List of Existing Easements****Kapalua Waste Treatment Company Easements**

1. Sewer Facilities and Transmission Line Land Lease dated August 2, 1977, made by Maui Land & Pineapple Company, Inc. ("MLP"), as Lessor and Kapalua Waste Treatment Company, Ltd. ("KWTC"), as Lessee, recorded in the Bureau of Conveyances of the State of Hawaii (the "Bureau") in Liber 12492 at Page 439.

(a) Partial Cancellation of Sewer Facilities and Transmission Line Land Lease and Grant of Easement dated October 10, 1985, made by MLP, as Lessor and KWTC, as Lessee, recorded in the Bureau in Liber 19011 at Page 554.

(i) Partial Cancellation, Surrender, and Quitclaim of Easement Rights dated May 16, 2006, made by MLP and Kapalua Bay, LLC ("KB"), collectively as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2006-093079

(b) Cancellation and Termination of Sewer Facilities and Transmission Line Land Lease and Grant of Non-Exclusive Easement dated November 17, 1988, made by MLP, as Lessor and KWTC, as Lessee, recorded in the Bureau in Liber 22586 at Page 751.

(i) Partial Cancellation of Non-Exclusive Easement; and Grant of New Sewerline Easement (Kapalua Place Subdivision; Sewer System) dated July 6, 1989, made by Kapalua Land Company, Ltd. ("KLC"), as Grantor and KWTC, as Grantee, recorded in the Bureau in Liber 23470 at Page 749.

(ii) Partial Release of Grant of Non-Exclusive Easement dated August 29, 2000, made by KWTC, recorded in the Bureau as Document No. 2000-122680.

(iii) Partial Cancellation, Surrender, and Quitclaim of Easement Rights dated May 16, 2006, made by MLP and KB, collectively as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2006-093082.

(iv) Partial Cancellation, and Release of Cancellation and Termination of Sewer Facilities and Transmission Line Land Lease and Grant of Non-Exclusive Easement dated September 20, 2010, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2010-142782.

2. Easement dated September 9, 1987, made by KLC, as Grantor and Kapalua Waste Water Treatment Company, Ltd., as Grantee, recorded in the Bureau in Liber 21133 at Page 67.

(a) Correction of Grant of Easement dated August 17, 1988, made by KLC, as Grantor and KWTC, as Grantee, recorded in the Bureau in Liber 22289 at Page 669.

3. Encroachment Agreement dated December 16, 1998, made by KWTC, as Grantor and Kai Alii LLC, as Grantee, recorded in the Bureau as Document No. 98-188651.

4. Encroachment Agreement dated January 12, 2004, made by KWTC and Thomas Rosenquist, recorded in the Bureau as Document No. 2004-025516.

5. Grant of Easements for Waste Treatment Purposes dated May 2, 2006, made by KB, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2006-082389.

6. Grant of Wastewater Easement dated March 27, 2007, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2007-054521.

(a) Correction of Grant of Wastewater Easement dated September 9, 2009, made by W2005 Kapalua/Gengate Hotel Realty, L.L.C., as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2009-144440.

7. Grant of Easement for Drainage Purposes dated October 7, 2009, made by KB, as Grantor, KWTC, as Grantee, Association of Apartment Owners of Kapalua Bay Condominium and Kapalua Bay Vacation Owners Association, recorded in the Bureau as Document No. 2009-154011.

8. Grant of Easement for Waste Treatment Purposes dated October 7, 2009, made by MLP, as Grantor, KWTC, as Grantee and KB, as Ground Lessee, recorded in the Bureau as Document No. 2009-154014.

9. Grant of Easement for Drainage Purposes dated October 7, 2009, made by MLP, as Grantor, KWTC, as Grantee and KB, as Ground Lessee, recorded in the Bureau as Document No. 2009-154015.

10. Grant of Underground Wastewaterline Easement dated September 10, 2010, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2010-143014.

11. Grant of Underground Wastewaterline Easement dated February 7, 2011, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. 2011-027397.

12. Grant of Underground Wastewaterline Easement dated March 29, 2012, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-44820560.

13. Grant of Underground Wastewaterline Easement dated May 2, 2014, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-52350462.

14. Grant of Underground Wastewaterline Easement dated March 31, 2017, made by SMC Mahana LLC, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-66620990.

15. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-74400696.

16. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-74400698.

17. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-74400700.

18. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-74400702.

19. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-74400705.

20. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-74400706.

21. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWTC, as Grantee, recorded in the Bureau as Document No. A-74400707.

Kapalua Water Company Easements

1. Water Facilities and Transmission Line Land Lease dated August 2, 1977, made by Maui Land & Pineapple Company, Inc. ("MLP"), as Lessor and Kapalua Water Company, Ltd. ("KWC"), as Lessee, recorded in the Bureau of Conveyances of the State of Hawaii (the "Bureau") in Liber 12492 at Page 453. [*DID THIS LEASE NOT EXPIRE?]

(a) Partial Cancellation of Water Facilities and Transmission Line Land Lease dated October 10, 1985, made by MLP, as Lessor and KWC, as Lessee, recorded in the Bureau in Liber 19011 at Page 579.

(i) Partial Cancellation, Surrender, and Quitclaim of Easement Rights dated June 1, 2006, made by MLP and Kapalua Bay, LLC ("KB"), collectively as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2006-102289.

(b) Partial Cancellation of Water Facilities and Transmission Line Land Lease dated September 8, 1987, made by MLP, as Lessor and KWC, as Lessee, recorded in the Bureau in Liber 21151 at Page 689.

(c) Partial Release of Water Facilities and Transmission Line Land Lease dated July 21, 2004, made by MLP, as Lessor and KWC, as Lessee, recorded in the Bureau as Document No. 2004-165522.

(d) Partial Release of Water Facilities and Transmission Line Land Lease dated April 29, 2005, made by MLP, as Lessor and KWC, as Lessee, recorded in the Bureau as Document No. 2005-095636.

2. Easement dated September 9, 1987, made by Kapalua Land Company, Ltd. ("KLC"), as Grantor and KWC, as Grantee, recorded in the Bureau in Liber 21133 at Page 62.

3. Cancellation and Termination of Water Facilities and Transmission Line Land Lease and Grant of Non-Exclusive Easement dated November 17, 1988, made by MLP and KWC, recorded in the Bureau in Liber 22586 at Page 768.

(a) Partial Cancellation of Non-Exclusive Easement; and Grant of New Waterline Easement (Kapalua Place Subdivision; Water System) dated July 6, 1989, made by KLC, as Grantor and KWC, as Grantee, recorded in the Bureau in Liber 23470 at Page 767.

(b) Partial Release of Grant of Non-Exclusive Easement dated November 1, 1999, made by KWC, recorded in the Bureau as Document No. 99-183333.

(c) Partial Release of Grant of Non-Exclusive Easement dated August 29, 2000, made by KWC, recorded in the Bureau as Document No. 2000-122679.

(d) Partial Release of Grant of Non-Exclusive Easement dated September 7, 2000, made by KWC, recorded in the Bureau as Document No. 2000-126808.

(e) Partial Cancellation, Surrender, and Quitclaim of Easement Rights dated May 16, 2006, made by MLP, KB and KWC, recorded in the Bureau as Document No. 2006-093081.

(f) Partial Cancellation and Release of Cancellation and Termination of Water Facilities and Transmission Line Land Lease and Grant of Non-Exclusive Easement dated September 20, 2010, made by MLP and KWC, recorded in the Bureau as Document No. 2010-142781.

(i) Cancellation and Release dated August 2, 2011, made by MLP and KWC, recorded in the Bureau as Document No. 2011-128264.

4. Waterline Easement dated ----- (acknowledged March 8, 1990), made by the State of Hawaii, represented by its Director of Transportation, as Grantor and KWC and MLP, as Grantee, recorded in the Bureau as Document No. 91-018362.

5. Private Water System Agreement dated March 14, 1996, made by the Board of Directors of the Association of Apartment Owners of the Bay Villas, Inc., as Applicant, KWC, as Purveyor and the Department of Water Supply of the County of Maui ("DWS"), as the Department, recorded in the Bureau as Document No. 96-116456.
6. Private Water System Agreement dated August 14, 1996, made by MLP, as Owner, KLC, as Applicant, KWC, as Purveyor and DWS, as the Department, recorded in the Bureau as Document No. 96-131740.
7. Private Water System Agreement dated October 22, 1996, made by MLP, as Owner, KLC, as Applicant, KWC, as Purveyor and DWS, as the Department, recorded in the Bureau as Document No. 97-007138.
8. Grant of Easement dated April 29, 2005, made by Honolua Ridge LLC ("HR"), as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2005-095633.
9. Grant of Easement dated April 29, 2005, made by HR, as Grantor and KWC as Grantee, recorded in the Bureau as Document No. 2005-095634.
10. Grant of Easement dated February 9, 2006, made by HR, as Grantor and KWC as Grantee, recorded in the Bureau as Document No. 2006-038331.
11. Grant of Easements for Water Utility Purposes dated May 2, 2006, made by KB, as Grantor and KWC as Grantee, recorded in the Bureau as Document No. 2006-082390.
12. Grant of Easement dated July 27, 2006, made by HR, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2006-155214.
13. Grant of Waterline Easement dated March 27, 2007, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2007-054520.
14. Grant of Underground Waterline Easement dated March 27, 2009, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2009-046246.
15. Grant of Underground Waterline Easement dated August 28, 2009, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2009-146215.
16. Grant of Easement dated August 28, 2009, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2009-146216.
17. Grant of Easements for Water Utility Purposes dated October 7, 2009, made by KB, as Grantor, KWC, as Grantee and the Association of Apartment Owners of Kapalua Bay Condominium, Kapalua Bay Vacation Owners Association, recorded in the Bureau as Document No. 2009-154008.
18. Grant of Easement for Water Utility Purposes dated October 7, 2009, made by MLP, as Grantor, KWC, as Grantee and KB, as Ground Lessee, recorded in the Bureau as Document No. 2009-154012.
19. Grant of Easement for Water Utility Purposes dated October 7, 2009, made by MLP, as Grantor, KWC, as Grantee and KB, as Ground Lessee, recorded in the Bureau as Document No. 2009-154013.
20. Grant of Waterline Easement dated ----- (acknowledged October 1, 2009), made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2009-156250.

21. Grant of Easement (Kapalua Water Co. Facilities in Kapalua Mauka) dated September 15, 2010, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2010-142993.
22. Grant of Underground Waterline Easement dated September 10, 2010, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2010-143013.
23. Grant of Underground Waterline Easement dated September 20, 2010, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2010-143611.
 - (a) Agreement to Correct Typographical Errors in Property Descriptions dated November 18, 2010, made by MLP and TY Management Corporation (“TY”), recorded in the Bureau as Document No. 2010-187579.
 - (b) First Amendment to Grant of Underground Waterline Easement dated November 29, 2010, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2010-187580.
24. Unrecorded KWC Water Transmission Agreement dated September 30, 2010, made between KWC and TY Management Co., a memorandum of which is September 30, 2010, and recorded in the Bureau as Document No. 2010-145882.
25. Grant of Underground Waterline Easement dated February 7, 2011, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2011-027394.
26. Grant of Underground Waterline Easement dated February 7, 2011, made by MLP, as Grantor, and KWC, as Grantee, recorded in the Bureau as Document No. 2011-027395.
27. Grant of Underground Waterline Easement dated February 7, 2011, made by KLC, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2011-027396.
28. Grant of Underground Waterline Easement dated June 27, 2011, made by HR, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. 2011-117912.
29. Grant of Maintenance Access Easement dated July 14, 2011, made by KWC, as Grantor and Plantation Estates Lot Owners’ Association (“PELOA”), as Grantee, recorded in the Bureau as Document No. 2011-117917.
30. Grant of Landscaping & Detention Basin Maintenance Easement dated July 14, 2011, made by KWC, as Grantor and PELOA, as Grantee, recorded in the Bureau as Document No. 2011-117918.
31. Grant of Underground Waterline Easement dated March 29, 2012, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-44820559.
32. Grant of Underground Waterline Easement dated May 2, 2014, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-52350461.
33. Memorandum of Water Service Connection Agreement, As Amended (Engel) effective as of April 22, 2014, made by KWC, William Edward Engel (also known as William E. Engel) and Marla Ann Engel (also known as Marla A. Engel), husband and wife, recorded in the Bureau as Document No. A-52600770.
34. Grant of Underground Waterline Easement dated February 2, 2017, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-62700700.

35. Grant of Underground Waterline Easement dated February 2, 2017, made by SMC Mahana LLC, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-66620991.
36. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400697.
37. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400699.
38. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400701.
39. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400703.
40. Grant of Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400704.
41. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400708.
42. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400709.
43. Grant of Underground Waterline Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400710.
44. Grant of Utility Easement dated May 12, 2020, made by MLP, as Grantor and KWC, as Grantee, recorded in the Bureau as Document No. A-74400711.

Schedule 4.3(c)

List of Missing Easements by TMK

- (2) 4-2-6-1 (Coconut Grove)
- (2) 4-2-4-048 (Pailolo Place)
- (2) 4-2-4-024 (TY Management Corp.)
- (2) 4-2-4-051 (Island Acquisitions Kapalua LLC)
- (2) 4-2-4-043 (TY Management Corp.)
- (2) 4-2-4-036 (TY Management Corp.)
- (2) 4-004-037 (MLP)
- (2) 4-2-03 : 43 through -45, -048 through -058 (Pineapple Hill Subdivision)
- (2) 4-2-08 : 28
- (2) 4-2-04 : 40
- (2) 4-2-07 : 32
- (2) 4-2-07 : 33
- (2) 4-2-04 : 21 (sewer lift station)
- (2) 4-2-09 : 26 (tank, booster station and reservoir)

Schedule 4.3(d)

List of 7 Missing Easements by TMK that May Be Subject to \$25,000 Holdback

- (2) 4-2-04 : 25 – Restaurant area near the coast
- (2) 4-2-04 : 50 – Crossing a golf course, Makai side of the highway
- (2) 4-2-04 : 52 (no easement shown on the Unemori Map) – Commercial, near the Ritz Carlton
- (2) 4-2-05 : 25 – Residential, between two homes
- (2) 4-2-05 : 35 – Residential, between two homes
- (2) 4-2-05 : 49- Gulch area, with forest. This is a critical pipeline serving a large portion of the system
- (2) 4-2-05 : 68 - Gulch area, with forest. This is a critical pipeline serving a large portion of the system

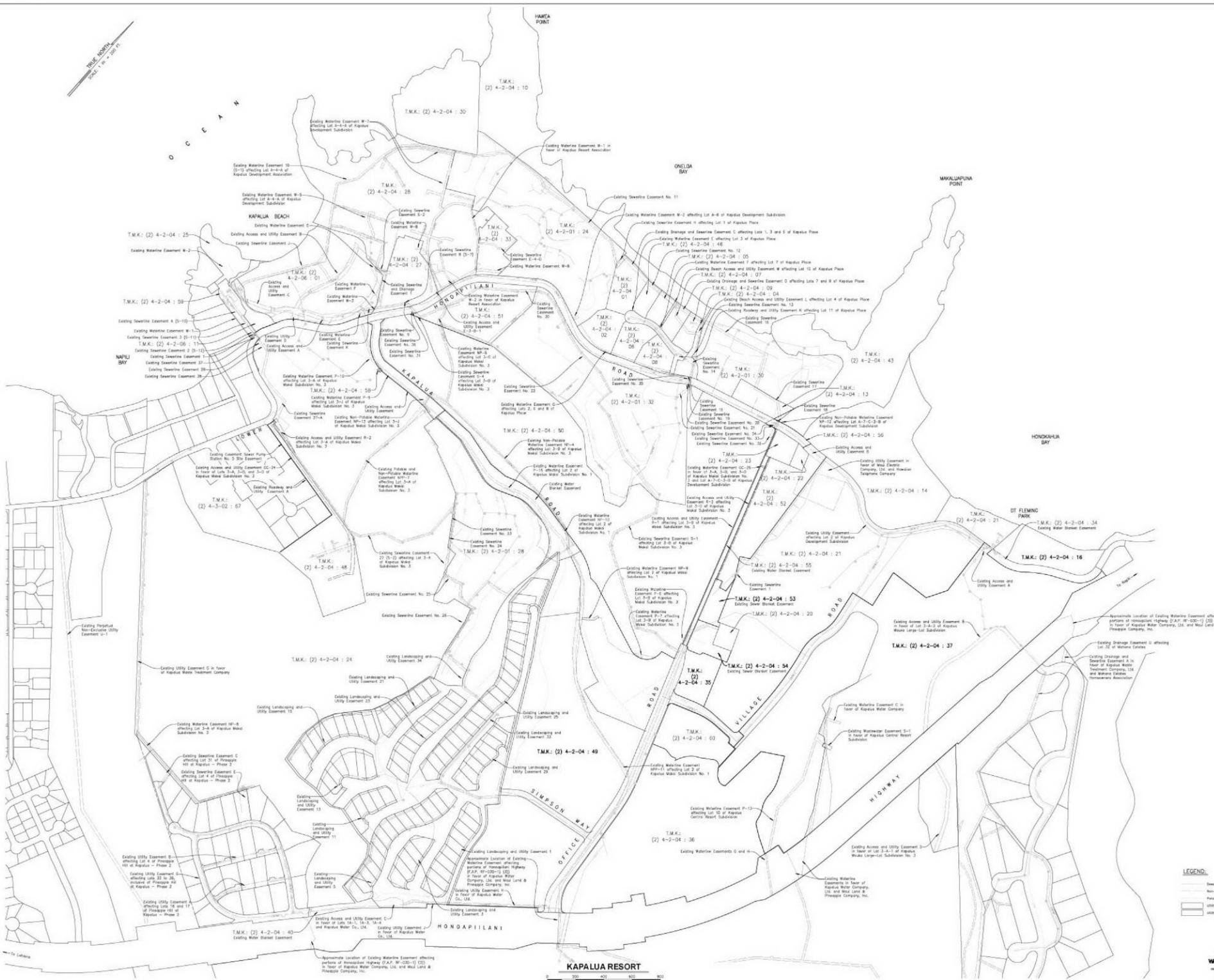
EXHIBIT C

Capital Projects for KWC and KWTC, to be completed in 2019 to 2021 which affect the Purchase Price pursuant to Section 2.1.

Company	Project Name	Description
KWC	Water Meters	Replace approximately 500 meters and boxes ranging in size from 5/8" to 4" in Kapalua Mauka
KWC	Potable and Non-potable service lines	Replace aging service lines in Pineapple Hill with new copper lines
KWC	Potable and Non-potable service lines	Replace aging service lines in Kapalua Pl. with new copper lines
KWTC	Collection System Flush	Wastewater collection line flush is recommended to eliminate blockages before they occur
KWTC	Pump Stations	Replace pumps/motors at three KWT pump stations

Annex 1.1(a)(1)

Water System Plan



CITRIX
RightSignature
**SIGNATURE
CERTIFICATE**



REFERENCE NUMBER
8D162A02-81F8-4D04-BE2B-FEEAE74D72E6

TRANSACTION DETAILS

Reference Number
8D162A02-81F8-4D04-BE2B-FEEAE74D72E6

Transaction Type
Signature Request

Sent At
05/19/2020 22:00 EDT

Executed At
05/19/2020 22:01 EDT

Identity Method
email

Distribution Method
email

Signed Checksum

fc89222271a9e927e04411784267c85d15038058648b3c287ebc4483eb34d4c8

Signer Sequencing
Disabled

Document Passcode
Disabled

DOCUMENT DETAILS

Document Name
First Amendment To Apa Kapalua 5-19-20 Executed By Mlp

Filename
first_amendment_to_apa_kapalua_5-19-20_executed_by_mlp_.pdf

Pages
163 pages

Content Type
application/pdf

File Size
6.95 MB

Original Checksum

3bd099029029308959b01d6cc521e8ab196f7a5dc5bae38a1eddb05962fab10

SIGNERS

SIGNER	E-SIGNATURE	EVENTS
Name Tom Smegal	Status signed	Viewed At 05/19/2020 22:01 EDT
Email tsmegal@calwater.com	Multi-factor Digital Fingerprint Checksum ce870b2d14054e4451a694cd0273f13bcdffbc1fe6af45e4eab42e06bb4ccb9	Identity Authenticated At 05/19/2020 22:01 EDT
Components 1	IP Address 174.194.196.192	Signed At 05/19/2020 22:01 EDT
	Device Mobile Safari via iOS	
	Drawn Signature 	
	Signature Reference ID 349B5D88	
	Signature Biometric Count 103	
Name Michael Luu	Status signed	Viewed At 05/19/2020 22:01 EDT
Email mluu@calwater.com	Multi-factor Digital Fingerprint Checksum 782d0ce6c350a1f40f5c926a309e115f639d9914e712eb71fe82605b50081497	Identity Authenticated At 05/19/2020 22:01 EDT
Components 1	IP Address 73.63.182.45	Signed At 05/19/2020 22:01 EDT
	Device Mobile Safari via iOS	
	Drawn Signature 	
	Signature Reference ID 9D391AEC	
	Signature Biometric Count 70	

AUDITS

TIMESTAMP	AUDIT
05/19/2020 22:01 EDT	Tom Smegal (tsmegal@calwater.com) signed the document on Mobile Safari via iOS from 174.194.196.192.
05/19/2020 22:01 EDT	Tom Smegal (tsmegal@calwater.com) authenticated via email on Mobile Safari via iOS from 174.194.196.192.
05/19/2020 22:01 EDT	Michael Luu (mluu@calwater.com) signed the document on Mobile Safari via iOS from 73.63.182.45.
05/19/2020 22:01 EDT	Michael Luu (mluu@calwater.com) authenticated via email on Mobile Safari via iOS from 73.63.182.45.
05/19/2020 22:01 EDT	Tom Smegal (tsmegal@calwater.com) viewed the document on Mobile Safari via iOS from 174.194.196.192.
05/19/2020 22:01 EDT	Michael Luu (mluu@calwater.com) viewed the document on Mobile Safari via iOS from 73.63.182.45.

TIMESTAMP	AUDIT
05/19/2020 22:00 EDT	Michael Luu (mluu@calwater.com) was emailed a link to sign.
05/19/2020 22:00 EDT	Tom Smegal (tsmegal@calwater.com) was emailed a link to sign.
05/19/2020 22:00 EDT	Isin Gallmann (igallmann@calwater.com) created document 'first_amendment_to_apa_kapalua_5-19-20_executed_by_mlp_.pdf' on Chrome via Windows from 99.73.32.187.

Pursuant to Order No. 37043, we are
only providing an electronic version
consistent with the recently imposed
emergency procedures.



Maui Land & Pineapple Company, Inc.

March 31, 2020

The Honorable Chair and Members of the
Hawaii Public Utilities Commission
Hawaii Public Utilities Commission
465 South King Street
Kekuanaoa Building, Room 103
Honolulu, Hawaii 96813

Re: 2019 Kapalua Water Company, Ltd. Annual Utility Financial Report

Dear Commissioners and staff:

Enclosed is the "PUC Annual Utility Financial Report" for Kapalua Water Company, Ltd., for the year ended December 31, 2019.

If you have any questions, please contact me at (808) 877-1616 or psubrata@mlpmaui.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Paulus Subrata".

Paulus Subrata
Vice President

Enclosure

c: Consumer Advocate

KAPALUA WATER COMPANY, LTD.
STATEMENT OF OPERATIONS (UNAUDITED)
FOR THE YEAR ENDED DECEMBER 31, 2019

Operating Revenues	\$ 1,686,531
Operating Expenses	
Cost of water	709,682
Administration expenses	509,081
Cost of power	84,454
Repairs and maintenance	113,704
Insurance	30,000
Professional services	10,168
Supplies	-
Total	<u>1,457,089</u>
Operating Income	229,442
Depreciation Expense	(100,217)
Taxes Other Than Income Taxes	<u>(72,707)</u>
Net Income (Loss)	56,518
Retained Earnings, Beginning of Year	<u>1,399,403</u>
Retained Earnings, End of Year	<u>\$ 1,455,921</u>

KAPALUA WATER COMPANY, LTD.
BALANCE SHEET (UNAUDITED)
DECEMBER 31, 2019

ASSETS

Utility in Service	\$ 8,562,298
Accumulated Depreciation	(3,169,816)
Utility in Service - net	<hr/> <u>5,392,481</u>
Current Assets	
Customer accounts receivable	161,472
Prepaid expenses	-
Total Current Assets	<hr/> <u>161,472</u>
TOTAL	<hr/> <u>\$ 5,553,953</u>

EQUITY CAPITAL AND LIABILITIES

Equity Capital	
Common stock, par value \$1.00 per share	\$ 1,000
Retained earnings	<hr/> <u>1,455,921</u>
Total Equity Capital	<hr/> <u>1,456,921</u>
Current Liabilities	
Accrued taxes	4,530
Other accrued liabilities	<hr/> <u>51,726</u>
Deferred income	<hr/> <u>64,270</u>
Total Current Liabilities	<hr/> <u>120,526</u>
Contribution in Aid of Construction	3,998,800
Accumulated Amortization	<hr/> <u>(249,925)</u>
Contribution in Aid of Construction - net	<hr/> <u>3,748,875</u>
Due to Affiliates	227,632
TOTAL	<hr/> <u>\$ 5,553,953</u>

Pursuant to Order No. 37043, we
are only providing an electronic
version consistent with the recently
imposed emergency procedures.



Maui Land & Pineapple Company, Inc.

March 31, 2020

The Honorable Chair and Members of the
Hawaii Public Utilities Commission
Hawaii Public Utilities Commission
465 South King Street
Kekuanaoa Building, Room 103
Honolulu, Hawaii 96813

Re: 2019 Kapalua Waste Treatment Company, Ltd. Annual Utility Financial Report

Dear Commissioners and staff:

Enclosed is the "PUC Annual Utility Financial Report" for Kapalua Waste Treatment Company, Ltd., for the year ended December 31, 2019.

If you have any questions, please contact me at (808) 877-1616 or psubrata@mlpmaui.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Paulus Subrata".

Paulus Subrata
Vice President

Enclosure

c: Consumer Advocate

KAPALUA WASTE TREATMENT COMPANY, LTD.
STATEMENT OF OPERATIONS (UNAUDITED)
FOR THE YEAR ENDED DECEMBER 31, 2019

Operating Revenues	\$ 1,518,436
Operating Expenses	
Cost of sales - county fees	1,102,097
Administration expenses	122,038
Cost of Power	26,234
Insurance	12,000
Repairs and maintenance	5,586
Professional services	3,753
Total	<hr/> 1,271,707
Operating Income	246,729
Depreciation & Amortization	(16,480)
Taxes Other Than Income Taxes	(66,736)
Income Taxes	<hr/> (42,088)
Net Income	121,425
Retained Earnings, Beginning of Year	<hr/> (5,030,770)
Retained Earnings, End of Year	<hr/> \$ (4,909,345)

KAPALUA WASTE TREATMENT COMPANY, LTD.
BALANCE SHEET (UNAUDITED)
DECEMBER 31, 2019

ASSETS

Utility in Service	3,348,299
Accumulated Depreciation	(704,640)
Utility in Service - net	<u>2,643,659</u>
Current Assets	
Customer accounts receivable	166,922
Total Current Assets	<u>166,922</u>
TOTAL	<u>\$ 2,810,581</u>

EQUITY CAPITAL AND LIABILITIES

Equity Capital	
Common stock, par value \$1.00 per share	\$ 1,000
Deficit	(4,909,345)
Total Equity Capital	<u>(4,908,345)</u>
Current Liabilities	
Accrued taxes	42,088
Other accrued liabilities	515,151
Total Current Liabilities	<u>557,239</u>
Contribution in Aid of Construction	2,682,200
Accumulated Amortization	(167,638)
Contribution in Aid of Construction - net	<u>2,514,563</u>
Due to Affiliates	4,647,125
TOTAL	<u>\$ 2,810,581</u>

HAWAII WATER SERVICE CO.
Balance Sheet
April 30, 2020 AND 2019

ASSETS	<u>2020</u>	<u>2019</u>
Utility Plant:		
Land	\$ 1,196,437	\$ 1,196,437
Depreciable plant and equipment	108,091,026	105,956,132
Construction work in progress	12,673,214	9,768,125
Intangible assets	679,829	679,829
	<u>122,640,506</u>	<u>117,600,523</u>
Less: Depreciation of plant and equipment	(26,601,523)	(23,551,172)
Amortization of intangibles	(663,459)	(608,116)
	<u>(27,264,981)</u>	<u>(24,159,288)</u>
Net utility plant	95,375,525	93,441,235
Current assets:		
Cash	5,475,352	7,000,533
Working funds, deposits, temporary cash investments	0	1,400
Accounts receivable:		
Customers, less allowance for doubtful accounts	1,343,144	1,348,245
Taxes Receivable	62,047	13,211
Unbilled revenue	981,349	1,094,025
Other Accounts Receivable	66,078	138,953
Materials and supplies	689,286	504,934
Prepaid expenses	94,923	43,628
Intercompany Transfers	114,114	(0)
Clearing accounts	1,235,552	631,468
Total current assets	10,061,846	10,776,397
Other assets:		
Regulatory assets	1,656,317	1,186,936
Other Intangible assets	2,614,707	2,614,707
Long Term Intercompany Receivable	0	0
Investment In Non-Utility Property	0	0
Other	1,503,589	709,771
Total other assets	5,774,613	4,511,414
	\$ 111,211,983	\$ 108,729,047

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BALSHT2

HAWAII WATER SERVICE CO.
Balance Sheet
April 30, 2020 AND 2019

CAPITALIZATION AND LIABILITIES	<u>2020</u>	<u>2019</u>
Capitalization		
Common stockholders' equity		
Common stock	\$ 62,674,583	\$ 62,674,583
Retained earnings	(10,560,533)	(11,192,596)
Accumulated other comprehensive loss	0	0
	<u>52,114,051</u>	<u>51,481,987</u>
	73.0%	72.4%
First mortgage bonds	0	0
Unamortized debt premium and expense	0	0
Senior Notes	0	0
Long Term Intercompany Debt	19,277,174	19,612,289
Other Long-Term Debt	0	0
Total Long Term Debt	<u>19,277,174</u>	<u>19,612,289</u>
	27.0%	27.6%
Total capitalization	<u>71,391,224</u>	<u>71,094,276</u>
	100.0%	100.0%
Current liabilities:		
Current maturities of LT Debt	0	0
Notes payable	0	0
Payable to Affiliates	543,035	1,068,239
Accounts payable	3,077,267	3,052,547
Accrued interest	0	0
Accrued general taxes	0	0
Income taxes	6,054	80,945
Short Term Intercompany Debt	13,408,216	13,408,216
Unearned revenue - charges billed in advance	0	0
Accrued and deferred compensation	470,329	427,829
Accrued pension and post retirement benefits	485,333	373,333
Accrued benefit and worker's compensation	410,049	97,665
Other	203,744	29,320
Total current liabilities	<u>18,604,028</u>	<u>18,538,096</u>
Unamortized investment tax credit	0	0
Deferred income taxes	(156,426)	(853,844)
Regulatory liabilities	628,493	348,437
Advances for construction	48,160	48,160
Contributions in aid of construction	17,963,124	17,601,790
Other long-term liabilities	<u>2,733,366</u>	<u>1,952,131</u>
	<u>\$ 111,211,970</u>	<u>\$ 108,729,047</u>

Docket No. 2020-_____

Kapalua Water Company, Ltd. et al., Application for Approval of Sale and Transfer of Assets

CONFIDENTIALITY LOG

Document Name/ Reference	Page Number; Line Number(s) or Section Redacted	Designation	Identification	Basis of Confidentiality	Cognizable Harm
Exhibit A	Portions of pages 5-6 (Sections 2 and 2.1 of the Asset Purchase Agreement) and portion of page 85 (Section 20 of the First Amendment to Asset Purchase Agreement)	Confidential	Text containing details of the purchase price contained in the Asset Purchase Agreement	Confidential business and financial information not publicly disclosed	<p>Public disclosure of the purchase price agreed to by Kapalua Water Company, Ltd. ("KWC"), Kapalua Waste Treatment Company, Ltd. ("KWTC"), and Hawaii Water Service Company, Inc. ("HWSC") may cause substantial harm to KWC, KWTC, HWSC, and/or their affiliates because other utility investors that compete with them for investment opportunities would be able to use the pricing information to adjust their own commercial positions to benefit from the confidential information. Such disclosure may also harm KWC, KWTC, and HWSC in their ability to negotiate with investors or acquisition targets who could adjust their pricing and commercial terms based on nonpublic information.</p> <p>The confidential information: (1) has not been previously publicly disclosed or otherwise disseminated; (2) is not of the kind of information that KWC, KWTC, and HWSC would customarily disclose to the public; and (3) is of the nature that its disclosure could cause substantial harm to KWC, KWTC, and/or HWSC as described above.</p>

VERIFICATION

I, Paulus Subrata, do declare and state as follows: That I am the Vice President of Kapalua Water Company, Ltd. and Kapalua Waste Treatment Company, Ltd., each an Applicant in the above proceeding; that I have read the foregoing documents, and know the contents thereof; that I am authorized to make this verification on behalf of Kapalua Water Company, Ltd. and Kapalua Waste Treatment Company, Ltd. and do hereby verify the contents of the foregoing filing, and that the same are true to the best of my knowledge, information, and belief except as to matters specific to Hawaii Water Service Company, Inc.

I declare under penalty of law that the foregoing is true and correct. Executed this 3rd day of June, 2020.



Name: Paulus Subrata
Title: Vice President
Kapalua Water Company, Ltd.
Kapalua Waste Treatment Company,
Ltd.

VERIFICATION

I, Tom Smegal, do declare and state as follows: That I am the Vice President, Chief Financial Officer, and Treasurer of Hawaii Water Service Company, Inc., an Applicant in the above proceeding; that I have read the foregoing documents, and know the contents thereof; that I am authorized to make this verification on behalf of Hawaii Water Service Company, Inc. and do hereby verify the contents of the foregoing filing, and that the same are true to the best of my knowledge, information, and belief except as to matters specific to Kapalua Water Company, Ltd. and Kapalua Waste Treatment Company, Ltd.

I declare under penalty of law that the foregoing is true and correct. Executed this 3rd day of June, 2020.



Name: Tom Smegal
Title: VP, CFO, and Treasurer
Hawaii Water Service Company, Inc.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Joint Application of)
KAPALUA WATER COMPANY, LTD.,) DOCKET NO. _____
KAPALUA WASTE TREATMENT COMPANY,)
LTD.)
and)
HAWAII WATER SERVICE COMPANY, INC.)
For Approval of: (a) the Sale and Transfer of)
Assets of Kapalua Water Company, Ltd. and)
Kapalua Waste Treatment Company, Ltd.; and)
(b) the Proposed Financing Arrangements.)

)

CERTIFICATE OF SERVICE

I hereby certify that on this date copies of the foregoing document, together with this Certificate of Service, were duly served on the following parties as set forth below:

Parties	U.S. Mail	Hand Delivery	E-Mail
Dean Nishina Executive Director Division of Consumer Advocacy Department of Commerce and Consumer Affairs consumeradvocate@dcca.hawaii.gov dnishina@dcca.hawaii.gov	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

DATED: Honolulu, Hawaii, June 4, 2020.

/s/ David Y. Nakashima

JEFFREY T. ONO
DAVID Y. NAKASHIMA
JOHN E. DUBIEL
Counsel for KAPALUA WATER COMPANY,
LTD., KAPALUA WASTE TREATMENT
COMPANY, LTD., and
HAWAII WATER SERVICE COMPANY, INC.

FILED

2020 Jun 04 AM 10:57

PUBLIC UTILITIES
COMMISSION

2020-0086

The foregoing document was electronically filed with the State of Hawaii Public Utilities Commission's Document Management System (DMS).