

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
HOH UTILITIES, LLC ) Docket No. \_\_\_\_\_  
and )  
HAWAII WATER SERVICE COMPANY, INC. )  
For Approval of (a) the Sale and Transfer of )  
Assets of HOH Utilities, LLC to Hawaii Water )  
Service Company, Inc.; (b) Expansion of Its )  
Service Territory; and (c) Related Matters. )

**APPLICATION**  
**EXHIBITS A THROUGH K**  
**ATTACHMENT A**  
**VERIFICATIONS**  
**AND**  
**CERTIFICATE OF SERVICE**

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APPLICATION

HOH UTILITIES, LLC, a Hawaii limited liability company ("HOH" or "Seller"), and HAWAII WATER SERVICE COMPANY, INC., a Hawaii corporation ("Hawaii Water" or "Buyer") (together, the "Applicants"), by and through their respective counsel, AM Pacific Group LLP and Watanabe Ing LLP, and pursuant to Hawaii Revised Statutes ("HRS") §§ 269-7.5, -16, -17, and -19, and, to the extent applicable HRS § 269-7,<sup>1</sup> and

<sup>1</sup> The subject transaction involves, among other things, the sale of HOH's assets to HWSC, as set forth in the Asset Purchase Agreement dated June 9, 2021, attached hereto as **Exhibit A** and the First Amendment to Asset Purchase Agreement, attached hereto as **Exhibit B** (as amended, the "Agreement") and incorporated herein by reference (hereinafter, the "Proposed Transaction"). As used in the Agreement, HOH is sometimes referred to herein as "Seller" and HWSC is sometimes referred to herein as "Buyer." Certain portions of **Exhibit A** and certain other exhibits attached hereto have been redacted as confidential and subject to the terms of a Protective Order to be issued in this docket. Subsequent to the filing of this Application, Applicants will file a motion with the Commission requesting the issuance of a Protective Order, pursuant to HAR § 16-601-50. Once the Commission approves and issues its Protective Order for this docket, the confidential portions of these exhibits will be filed pursuant and subject to the terms of that Protective Order.

Hawaii Administrative Rules ("HAR") Title 16, Chapter 601,<sup>2</sup> Subchapters 6, 9, and 10, hereby submit this Application requesting that the Hawaii Public Utilities Commission ("Commission"):

1. Approve the Agreement and the Proposed Transaction;
2. Approve, as set forth in the Agreement, the sale and transfer of Seller's Poipu Water Reclamation Facility and related assets located in Poipu, County of Kauai, State of Hawaii (collectively, the "Assets")<sup>3</sup> including, but not limited to, the transfer of HOH's Certificate of Public Convenience and Necessity ("CPCN")<sup>4</sup> to Buyer;
3. Approve and/or confirm that HOH's Commission-approved rules, regulations, tariffs and rates (collectively, the "Tariff") shall continue in effect following the closing of the Proposed Transaction, provided that Hawaii Water shall republish the Tariff in its own name with the same rules, regulations, tariffs, and rates as then currently approved by the Commission;
4. Approve and confirm that, following the closing of the Proposed Transaction, Hawaii Water shall have the right and authority to continue to provide utility services to HOH's existing Commission-authorized service territories in the Poipu area and portions of the Koloa Town area, on the island of Kauai, State of Hawaii, under the Tariff, as has been and/or may be amended from time to time;

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<sup>2</sup> Pursuant to Order No. 37043 *Setting Forth Public Utilities Commission Emergency Filing and Service Procedures Related to COVID-19*, filed March 13, 2020 (non-docketed), Applicants will serve via e-mail a copy of this Application on the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs, an *ex officio* party to this proceeding. HAR § 16-601-62.

<sup>3</sup> See Agreement, at 1.

<sup>4</sup> Id.

5. Approve: (a) an amendment of the CPCN by expanding its existing service territory in Koloa Town as described in more detail below, and (b) an amendment of its Rules and Regulations to reflect this expanded service territory;

6. Approve Buyer's proposed financing as described in Section G below; and

7. Grant such other relief as the Commission may deem applicable, required, and/or appropriate, just and/or reasonable under the circumstances.<sup>5</sup>

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

**A. COMMUNICATIONS REGARDING THIS APPLICATION.**

Pleadings, correspondence, and notices regarding this Application should be directed to Applicants' respective counsel as follows:

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<sup>5</sup> The Proposed Transaction involves the purchase and sale of assets, not stocks. Therefore, HRS § 269-18 is inapplicable. HRS § 269-17.5 is also inapplicable because HOH is not a Hawaii corporation and the entity acquiring the utility assets (i.e., Hawaii Water) is a Hawaii corporation.

**B. APPLICANTS.**

**1. HOH.**

HOH is a public utility providing wastewater collection and treatment services to bulk and individual customers within its authorized service territory located in the Poipu area<sup>6</sup> and including portions of the Koloa Town area.<sup>7</sup> on the island of Kauai, State of Hawaii.<sup>8</sup> HOH obtained its CPCN to operate as a public utility under a transfer from Poipu Wastewater Corporation, which was approved by the Commission pursuant to Decision and Order No. 17562, filed on February 25, 2000, in Docket No. 99-0343.<sup>9</sup>

HOH is a Hawaii limited liability company whose sole member is Ian Kagimoto. Mr. Kagimoto also serves as the current general manager of HOH and is responsible for managing and overseeing HOH's utility operations. HOH was formed on August 3, 1998, under the laws of the State of Hawaii. HOH is duly formed, validly existing, and in good standing under the laws of the State of Hawaii.

HOH currently provides wastewater collection and treatment services (collectively, "**wastewater utility services**") to approximately 218 bulk and individual

<sup>6</sup> In 2004, HOH obtained Commission approval to, among other things, further expand its existing territory to include additional properties in the Poipu area on the island of Kauai. See Decision and Order No. 22117, filed on November 10, 2005, in Docket No. 04-0340.

<sup>7</sup> By Decision and Order, filed on December 31, 2008, in Docket No. 2008-0103 ("2008 Decision and Order"), the Commission granted HOH's request to further expand its existing service territory to include certain properties in nearby Koloa Town.

<sup>8</sup> HOH's current authorized service territory is reflected in blue on Exhibit F (Proposed Expanded Service Area) provided to support HOH's request to expand its existing service area. The Commission's 2008 Decision and Order approved an amended map that was submitted to the Commission on June 6, 2008. HOH erroneously submitted the wrong map in its Compliance Filing on January 12, 2009 as Third Revised Sheet No. 25.

<sup>9</sup> The Commission granted the original CPCN to Poipu Wastewater Corporation pursuant to Decision and Order No. 16079, filed on November 14, 1997, in Docket No. 7265.

customers in the Poipu area, including the Kauai Sheraton Resort, Marriott Resort, Kiahuna Shopping Village, Kiahuna Tennis Club, Kiahuna Golf Clubhouse, Kiahuna Golf Village Subdivision, Kiahuna Plantation Condominium, Plantation Gardens Restaurant, the Poipu Kapili Condominium, the Poipu Beach Hotel, Poipu Shopping Village, Poipu Beach Estates, Wainani at Kiahuna, and Koloa Landing. A table reflecting the number of customers is shown below:

TYPE	CONNECTIONS	UNITS
Residential (SF)	192	N/A
Mi. ti-Family (MF)	11	815 Bulk MF Units
Estimated Meters	5	Un-Metered Commercial Flow
Resort Hotels	3	955 Bulk Resort Units
Metered	7	Metered Commercial
<b>Jan-21 Total Connections = 218</b>		

HOH's service territory was expanded in 2008<sup>10</sup> to include portions of the Koloa Town area, including, but not limited to, Old Koloa Town, Sueoka's Store, Big Save, Bendor Village, Koloa Cultural Center, Shops at Koloa Town, Village at Koloa Town, Hale Ohana, Koloa Neighborhood Center, Koloa Marketplace, Koloa Creekside, and Koloa Early School.<sup>11</sup> HOH also provides bulk processing of wastewater generated from the Kukui'ula development on behalf of Kukui'ula South Shore Community

<sup>10</sup> See supra, n. 7.

<sup>11</sup> At the time HOH sought to expand its service territory to include portions of Koloa Town in Docket No. 2006-0193, HOH disclosed that it plans to construct a new regional wastewater treatment facility to be located near the old Koloa Sugar Mill (the "**Regional Facility**"). HOH noted, however, that construction of the proposed Regional Facility would coincide with the wastewater capacity in the area and would be designed with the neighboring developments. See 2008 Decision and Order at 4-5. For additional information and updates regarding the plans of this Regional Facility, see Exhibit C attached hereto. As discussed further in Section E.2.a below, Hawaii Water is committed to assume HOH's plans to connect the Koloa Town area to sewer facilities, upgrade and maintain the Poipu Water Reclamation Facility to continue to support the Service Territory and provide R-1 water to the community. Hawaii Water is further committed to design, build, operate and maintain the proposed Regional Facility to meet future regional demand.

Services, LLC ("KSS").<sup>12</sup> HOH's facilities include its wastewater treatment plant (the "Poipu Water Reclamation Facility" or "PWRF").

To the extent necessary to satisfy the requirements of HAR § 16-601-105(c)(1), HOH's unaudited annual financial statements for 2020, filed with the Commission on or about March 12, 2021, are incorporated herein by reference.

## 2. Hawaii Water

Buyer, a Hawaii corporation with its principal place of business at 68-1845 Waikoloa Road, Unit 216, Waikoloa, Hawaii 96738, is a public utility that holds CPCNs to provide water service in Kaanapali, Maui<sup>13</sup> and Kapalua, Maui,<sup>14</sup> wastewater collection and treatment services in Pukalani, Maui<sup>15</sup> and wastewater collection services in Kapalua, Maui.<sup>16</sup> In addition, Buyer owns all of the stock of Waikoloa Sanitary Sewer Company, dba West Hawaii Sewer Company, Waikoloa Water Co., Inc., dba West

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<sup>12</sup> By Decision and Order No. 23564, filed on September 12, 2007, in Docket No. 2006-0492, the Commission approved the Wi-Serve Agreement entered into between HOH and KSS, which provides, among other things, that HOH will make available to KSS 200,000 gallons per day of treatment capacity at PWRF to treat wastewater generated from Kukui Ula, which treatment amount may be expanded to meet future demand upon the completion of the Regional Facility. In addition, by Decision and Order No. 36150, filed on February 7, 2019, in Docket No. 2018-0213, the Commission also approved a Wi-Serve Agreement between HOH and KSS related to the processing of 40,200 gallons per day of treatment capacity at PWRF for the County of Kauai's Koae Affordable Housing project.

<sup>13</sup> See Docket No. 3700, Decision & Order 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 20, 2003 (noting the name change from Kaanapali Water Corporation to Hawaii Water Service Company, Inc.).

<sup>14</sup> See Docket No. 2020-0086, Decision & Order No. 37665, issued March 8, 2021, at 64-65.

<sup>15</sup> See Docket No. 2007-0238, Decision & Order, issued June 12, 2008 (approving the transfer of Pukalani STP Co. Ltd.'s CPCN to Buyer).

<sup>16</sup> See Docket No. 2020-0086, Decision & Order No. 37665, issued March 8, 2021, at 64-65.

Hawaii Water Company, Waikoloa Resort Utilities, Inc., dba Waikoloa Utility Company,<sup>17</sup> and Kona Water Service Company, Inc.<sup>18</sup> Buyer also owns the membership interest in Kalaeloa Water Company, LLC.<sup>19</sup> Buyer also operates the Keauhou Community Services Inc. wastewater system in Keauhou.

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 Company (water and wastewater services), Texas Water Service Company, CWS Utility Services (non-regulated), and HWS Utility Services LLC (non-regulated). CWSG's audited financial statements are available on the SEC's website.<sup>20</sup>

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 wastewater system previously owned by HOH.

<sup>17</sup> See Docket No. 2008-0018, Decision & Order, issued August 20, 2008, at 25-27.

<sup>18</sup> See Docket No. 2008-0109, Decision & Order, issued December 1, 2008, at 24-27.

<sup>19</sup> See Docket No. 2019-0144, Decision & Order No. 37325, issued September 25, 2020, at 39.

<sup>20</sup> See California Water Service Group, Annual Report (Form 10-K) (Fec. 28, 2019) available at <https://www.sec.gov/Archives/edgar/data/1035201/00010352011900003/0001035201-19-00003-index.htm>

## C. BACKGROUND AND DESCRIPTION OF THE PROPOSED TRANSACTION.

The Agreement provides that upon satisfaction of the conditions stated therein, including approval by the Commission, HOH will sell, assign, transfer, deliver and convey to Hawaii Water all of HOH's rights, title and interest in the Assets including, but not limited to HOH's CPCN.<sup>21</sup> In connection with the Proposed Transaction, Hawaii Water will assume the public service obligation to provide wastewater utility services to HOH's customers in accordance with the Agreement.

The purchase price for the Assets is set forth in section 2.6 of the Agreement ("Purchase Price"). The Purchase Price for the Assets and other funds needed to consummate the Proposed Transaction (including closing and transaction costs) will be funded by Hawaii Water or its affiliates from an inter-company financing arrangement described in Section G herein.

### 1. SALE OF ASSETS; TRANSFER AND ASSIGNMENT OF CPCN; AND ADOPTION OF THE TARIFF.

Pursuant to the above, HRS § 269-19<sup>22</sup> and, to the extent applicable, HRS § 269-7.<sup>23</sup> Applicants jointly request the Commission's approval of the Agreement and the

<sup>21</sup> See generally Agreement, section 1.1.

<sup>22</sup> HRS § 269-19 states the following, in relevant part:

No public utility 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.

The purpose of this statute is to safeguard the public interest. In re Honolulu Rapid Transit Company, Ltd., 54 Haw. 402, 409 (1973). See also, In re Miller and Lieb Warner 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

Proposed Transaction, including, but not limited to, the sale and transfer of the Assets (and the transfer of HOH's CPCN) to Hawaii Water.<sup>24</sup> The closing of the Proposed Transaction is conditioned upon securing the Commission's approval.<sup>25</sup>

In addition, as set forth above, Applicants also request Commission approval and/or confirmation of the following:

(a) The Tariff shall continue in effect following the closing of the Proposed Transaction, and Hawaii Water shall be authorized to republish the Tariff in its own name with the same rules, regulations, tariffs, and rates as then currently approved for HOH; and

(b) Following the closing of the Proposed Transaction, Hawaii Water shall have the right and authority to provide wastewater utility services to its existing Commission-authorized service territory located in the Poipu area and including portions of the Koloa Town area, on the island of Kauai, State of Hawaii, under the Tariff, as has been and/or may be amended from time to time.

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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, Re GTE Corp. and Bell Atlantic Corp., 197 P.J.R. 4<sup>1</sup> 337, Docket No. 98-0345, Decision and Order No. 17377 (November 17, 1999); Re BHP Hawaii, Inc., Gasco, Inc. and Citizens Utilities Company, Docket No. 97-0035, Decision and Order No. 15899 (September 10, 1997).

<sup>24</sup> HRS § 269-7(a) 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." The Commission has in the past approved a proposed transaction under HRS § 269-7(a) if it is reasonable and consistent with the public interest. See In re ITC Deltacom Communications, Inc., Docket No. 02-0345, Decision and Order No. 19784 (December 13, 2002).

<sup>25</sup> The closing of the Proposed Transaction is conditioned on securing the Commission's approval. See Agreement, section 7.1(a). Other conditions precedent to closing are included in Article VII of the Agreement.

<sup>25</sup> id.

**D. HAWAII WATER IS FIT, WILLING, AND ABLE TO PROVIDE WASTEWATER SERVICES**

In support of the above requests. Applicants hereby contend and represent that Hawaii Water is or will remain sufficiently fit, willing and able to provide public utility services to HOH's service territory. to satisfy all of its public utility obligations. to conform to the terms, conditions, rules, and regulations of the Commission. and that the Proposed Transaction is reasonable and in the public interest.<sup>23</sup> Hawaii Water is committed to continuing to provide wastewater utility services to HOH's customers in a safe and reliable manner. Hawaii Water also intends to invest in maintenance and upgrading of the Assets if the Proposed Transaction is approved, including expanding the collection system to provide service to parts of Koloa Town, upgrading the PWRF plant, and the future construction and operation of the Regional Facility. As further discussed in this Application, Hawaii Water believes this acquisition will provide benefits to the public.

**1. Financial Fitness.**

Hawaii Water has the financial fitness to provide service to the service territory of HOH. 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

<sup>23</sup> See, In re Turtle Bay Wastewater Treatment, LLC et al., Docket No. 2017-0408, Decision and Order No. 35646 (August 16, 2018) ("In re Turtle Bay"). In In re Turtle Bay, the Commission applied a two-part analysis in determining whether to approve the subject transaction in that docket by determining that (1) the buyer was fit, willing and able to provide the utility service, and (2) the proposed transaction was reasonable and consistent with the public interest. Id. at 39-53.

financial statements are available on the SEC's website.<sup>27</sup> Hawaii Water's latest available balance sheet and income profit and loss statement are attached hereto as **Exhibit D.**

Hawaii Water 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 PWRF and related facilities ("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 CWSG, Hawaii Water'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.**

Hawaii Water and its affiliates have extensive experience in both the water and wastewater industries, and have the technical expertise necessary to operate the Utility Systems. Hawaii Water, either directly or through its subsidiaries, currently operates five water systems (Kaanapali, Kapalua, Kalaeloa, Waikoloa, and Kona) and six wastewater systems (Pukalani, Kapalua, Kalaeloa, Waikoloa, Kona, and Keauhou)

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<sup>27</sup> 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>

in Hawaii. As noted above, Hawaii Water's parent company has been providing high-quality utility services through its subsidiaries since 1926.

As a result of the foregoing, Hawaii Water 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. Hawaii Water will also have the ability to access the excellent technical, managerial and financial support CWSG provides to its subsidiaries and their systems.

### **3. Transition Planning.**

In order to ensure a smooth transition following the closing of the Proposed Transaction, Hawaii Water intends to allow Makai Water Services, LLC, a Hawaii limited liability company ("MWS"),<sup>22</sup> to continue operating the PWRF for a period of approximately five years. MWS has operated the PWRF since January 1, 2019 under the terms of that certain Agreement for Operations and Maintenance Services dated January 1, 2019 ("MWS Operating Agreement"). The current employees of MWS were previously employed by HOH and have been responsible for the operation of the PWRF since 2012. MWS currently operates five (5) water and wastewater treatment plants on Kauai including HOH, the Grand Hyatt (the second largest wastewater system in South Kauai), the Big Save in Koloa, the Kilauea Shops and the collection system and associated pump stations serving the Kukui'ula development and KSS.

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<sup>22</sup> MWS acquired all of the assets of HOH Services LLC, a non-regulated Hawaii limited liability company whose sole member is Mr. Kagimoto, effective as of January 1, 2019.

**4. Willingness to Provide Wastewater Service.**

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

**5. Ability to Provide Wastewater Service.**

As noted above, Hawaii Water 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, Hawaii Water will have the ability to access the excellent technical, managerial and financial support CWSG provides to its subsidiaries and their systems. For example, Hawaii Water can consult with other CWSG subsidiaries on issues relating to, among other things, operations, effluent quality, and engineering with no added cost to customers. This combined experience demonstrates the ability of Hawaii Water to successfully own, operate, manage, and maintain the Utility Systems.

**E. 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.<sup>29</sup>

### **1. Ratepayer Benefits**

Ratepayers will benefit from the Proposed Transaction. Buyer's expertise in the management and operation of water and wastewater systems, including long-term capital improvement planning, will lead to improvements in efficiency, safety, and reliability as improvements are made to the 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 Proposed Transaction.

### **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 Hawaii Water is subject to regulatory rate-making review to ensure that any losses are not passed on to ratepayers. Applicants also acknowledge the Commission's policy not to allow accounting deferral or recovery from utility customers of transaction and transition costs

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<sup>29</sup> 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.

arising from utility merger and acquisition transactions.<sup>33</sup> In accordance with this policy, Hawaii Water agrees that it will not seek rate recovery of any transaction or transition costs incurred as a result of the Proposed Transaction. Hawaii Water will record any transaction and transition costs associated with the Proposed Transaction in a "below the line" account.

a. Transition Planning and Customer Benefits.

Applicants are committed to ensuring the successful transition of the Assets from HOH to Hawaii Water without any degradation of service quality and with as minimal interruption to HOH's customers as possible. As noted above, Hawaii Water will allow MWS to continue operating the PWRF for a period of approximately five years. In addition and as previously discussed, Hawaii Water intends to invest in upgrading the Assets and expanding wastewater utility services (e.g., Regional Facility) to meet the growing demand for wastewater treatment services in the South Kauai community. The need for expanded wastewater treatment services in South Kauai is based on renewed development in the area and expected growth from entitled development projects as well as much needed upgrades to the PWRF which has lacked meaningful capital investment since 2008.

Hawaii Water's acquisition of the Assets will benefit customers in numerous ways, including, but not limited to, Hawaii Water's experience and expertise in building, acquiring, owning and financing wastewater infrastructure assets. Hawaii

<sup>33</sup> See, Decision and Order No. 15699 (citing and quoting In re Young Brothers, consolidated Dockets No. 7396 and No. 7506, Decision and Order No. 12479 (1993)); In re GTE Corporation et al., Docket No. 98-0345, Decision and Order No. 17377 (November 17, 1999); and In re Hawaiian Tug & Barge Corp., Docket No. 99-0231, Decision and Order No. 17283 (October 20, 1999).

Water's access to capital will also allow it to efficiently and reliably provide its utility services to HOH's customers, including the future construction and operation of the Regional Facility. Hawaii Water has the capital necessary to invest in: (1) upgrading and expanding the PWRF and its related facilities as well as develop and build additional capacity at the proposed Regional Facility that is expected to become operational in the near future; (2) upgrading the PWRF so that it may continue to provide reliable wastewater utility services to HOH's customers while also meeting new demand scheduled to require wastewater service from PWRF, and (3) extending the collection system to serve Koloa Town and surrounding areas. Benefits to existing customers includes the ability to continue to provide the high quality and reliable service they have received from PWRF while meeting increased demand as tourism and incremental development have increased. A significant benefit to the Service Territory will be achieved through the expansion of the collection system to Koloa Town which will enable users in the area to connect to sewerage service and therefore reduce (and ultimately eliminate) the use of cesspools in order to (i) comply with the existing EPA Consent Decree, and (ii) protect the high value shoreline that supports substantial tourist revenue and land values.

b. Conformity with Commission's Rules and Orders.

Hawaii Water commits and agrees that it shall abide by and conform to all applicable Commission rules and orders upon closing of the Proposed Transaction, if approved. Hawaii Water will, subject to Commission order, continue to be subject to and abide by all rights and obligations currently imposed on HOH in connection with applicable Commission orders, rules, and regulations. Further, Hawaii Water will

assume and abide by the terms of all transferable permits used by HOH in the continuing operation of the system.

Applicants acknowledge the Commission's policy not to allow or recovery from utility customers of goodwill or acquisition premiums arising from utility merger and acquisition transactions.<sup>3</sup> In accordance with this policy, Hawaii Water agrees that it will not seek rate recovery of any goodwill amortization, acquisition premium costs or goodwill impairment charges incurred as a result of the Proposed Transaction.

### **3. Other Key Public Interest Points.**

HOH is a small wastewater system as noted by its plans to add the Regional Facility in order to serve the growing needs of Koloa Town. As such, it likely will face greater financial and operational challenges in the coming years due to increasingly stringent regulations and infrastructure needs. This provides additional support to Applicants' position that Hawaii Water is the right choice to take over HOH's Assets and service territory given Hawaii Water and its affiliates' experience and resources, all of which support Commission approval of the Proposed Transaction. Additionally, as discussed above, other key benefits include (i) reliability/capacity at PWRF. (ii) expanding sewerage service to Koloa Town which will allow Koloa Town businesses to be in compliance with the EPA consent decree and provide needed service to that community), (iii) Hawaii Water's ability to build the Regional Facility to support future growth, (iv) continuity of the operating team. (v) continued commitment to

<sup>3</sup> See, Decision and Order No. 15699 (citing and quoting In re Young Brothers, consolidated Dockets No. 7396 and No. 7506, Decision and Order No. 12479 (1993); In re GTE Corporation et al., Docket No. 98-0345, Decision and Order No. 17377 (November 17, 1999); and In re Hawaiian Tug & Barge Corp., Docket No. 99-0231, Decision and Order No. 17283 (October 20, 1999).

provide the highest quality service with 100% recycled water (limited use of injection wells), and (vi) broad community support which is already demonstrated by the number of commercial users in Koloa wanting to connect.

**F. PROPOSED NEW SERVICE AREA AND JUSTIFICATION.**

Pursuant to HRS §§ 269-7.5 and 269-16, as amended, Applicants seek Commission approval to amend its CPCN to include the New Service Area shown on **Exhibit E**. **Exhibit F** is a map showing the proposed Expanded Service Area (consisting of HOH's authorized service area<sup>32</sup> together with the proposed New Service Area). The proposed New Service Area consists of property owned by SKR LLC and leased by Koloa Rum Corp., located on Maluhia Road, Koloa, Hawaii, identified by Tax Map Key ("TMK") number (4) 2-8-006:001 (shown on **Exhibit E**) and upon which is located: (1) approximately 10 acres planted in sugarcane to support rum distillery operations; and (2) three structures (collectively, "Koloa Rum"). The lessee has requested expedited wastewater service from HOH based in part on potential regulatory compliance concerns related to the EPA's regulations concerning closure of large capacity cesspools.

**1. Description of New Service Area.**

The proposed New Service Area is not currently served by HOH nor any other public utility. Existing ratepayers would not be harmed by the requested service area expansion because all additions to capacity, distribution lines and related facilities would be funded by the new customers/developers.

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<sup>32</sup> HOH's authorized service area is reflected in blue in Exhibit F. HOH's compliance filing on January 12, 2009 attached the wrong map to HOH's tariff.

Koloa Rum occupies an approximately 18.5-acre site and includes the following structures: (i) a distillery; (ii) a warehouse, and (iii) an administrative office. Applicant estimates that the existing operations will generate approximately 3,865 gallons per day ("gpd") of wastewater.

**2. Proposed Amendments to HOH's Rules and Regulations.**

No amendments to HOH's tariffed rates as reflected in its existing Tariff/Rules and Regulations are required in order to serve the New Service Area. The customers in the New Service Area will be subject to the existing tariffed rates and the expansion of Applicants' existing service area will not generate the need for a new rate case. If this Application is approved, Applicants will immediately amend and replace Third Revised Sheet No. 25 of the existing Tariff/Rules and Regulations with the drawing included as **Exhibit F** to this Application for the purpose of showing the Expanded Service Area (i.e., both HOH's existing service area and the New Service Area). In that connection, Applicants propose to file revised tariff sheets to the existing Rules and Regulations for the purpose of reflecting the above changes.

**G. REQUEST FOR APPROVAL OF PROPOSED FINANCING**

Buyer requests Commission approval for the financing proposed herein ("Proposed Financing") pursuant to HRS § 269-17. The Proposed Financing involves Buyer issuing one or more long term notes to its parent company, CWSG. CWSG will issue unsecured debt securities and will then loan funds to Buyer pursuant to an inter-company promissory note. Under the intercompany promissory note, Buyer will pay the principal, interest, fees and costs related to the loan proceeds. A sample form of the inter-company promissory note is attached hereto as **Exhibit G**. The interest rate

payable by Buyer on the intercompany loan will be the same as the interest rate payable by CWSG at the time the debt is incurred or as is periodically charged in the case of a variable interest rate. Buyer will therefore not pay any premium for the loan and will benefit from the favorable interest rate that CWSG can obtain.

The debt will be issued by negotiated bid in accordance with prior decisions by the California Public Utilities Commission (the "CPUC").<sup>33</sup> CWSG does not exclusively obtain its debt via negotiated bids, but rather is allowed to secure financing via negotiated bids. CWSC's long-term credit facilities are negotiated with a lead bank (lead over our syndicate bank group) and it is the Holdco credit facility that will be used to finance the acquisition. CWSG will then issue a promissory note, negotiated between Hawaii Water (the buyer) and CWSG (the parent), i.e., a negotiated bid.

Without the benefit of an inter-company loan from its parent company, Buyer would have to issue its own debt instrument through either a negotiated or competitive bid process or attempt a private placement debt issuance. In either case, any such debt issuance, as compared to an inter-company promissory note, would be more costly to Buyer due to several factors: (i) the relatively small size of the debt issuance, which would be of limited interest to larger investors; (ii) the lower credit rating that would be assigned to Buyer as compared to CWSG, and (iii) Buyer would have to incur underwriting fees that would be cost prohibitive. Through the Proposed Financing, Buyer will get a more favorable interest rate and does not expect to incur expenses for

<sup>33</sup> The CPJC approved the issuance of debt by California Water Service Company ("CWSC") by negotiated bid, rather than competitive bid, in Application 04-03-003, Decision 04-09-002, issued on September 2, 2004. There have been additional financing applications filed with the CPJC since 2004, the most recent of which was filed in 2015 (Decision 16-05-013).

the proposed debt because the proposed debt will be an inter-company promissory note.<sup>34</sup>

The specific interest rate and the terms of the CWSG financing are not known at this time because they will be dependent on several variables that are currently undefined or otherwise unavailable. However, while the Buyer cannot know with certainty what the market will be like post-closing, Buyer anticipates that the specific terms of the long-term financing will fall within the following parameters:

Principal: Maximum loan amount of \$750 thousand, which includes the purchase price as well as future capital investment.

Interest rate: not to exceed 5.5%

Term: 10 to 30 years

Payment: \$7,483.36 per three quarters of a million in principal for a 10-year term on an amortizing loan (monthly interest ranging from \$2,306.25 at the beginning of the term to \$22.94 at the end of the term on a monthly basis as loan is amortized over 10 years). \$3,822.45 per three quarters of a million in principal for a 30-year term on an amortizing loan (monthly interest ranging from \$2,843.75 at the beginning of the term to \$14.45 at the end of the term on a monthly basis as loan is amortized over 30 years).

Unsecured.

Buyer can provide an update of any additional information it obtains during the information request process. Pursuant to HRS § 269-17, Buyer requests that the Commission approve the Proposed Financing for the purpose of acquiring property and the construction, completion, extension, or improvement of or addition to its facilities or service for the Utility Systems.

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<sup>34</sup> Because no expense is expected to be incurred, the requirement to provide a statement of all estimated expenses for issuance of securities, pursuant to HAR § 16-601-101(b)(9) is not applicable to this financing request.

## **H. EXHIBITS.**

Consistent with HAR § 16-601-105, Applicants hereby file and incorporate by reference the following exhibits:

- Exhibit A:** Asset Purchase Agreement between HOH and Hawaii Water dated June 9, 2021
- Exhibit B:** First Amendment to Asset Purchase Agreement dated September 15, 2021
- Exhibit C:** Information on Proposed Regional Facility
- Exhibit D:** Hawaii Water's Balance Sheet and Income Statement
- Exhibit E:** Map of New Service Area
- Exhibit F:** Map of Expanded Service Area (Authorized and New)
- Exhibit G:** Form of Inter-Company Promissory Note
- Exhibit H:** Financial Statement Information for Buyer
- Exhibit I:** Buyer's Board Resolution Authorizing Financing
- Exhibit J:** Buyer's Source and Application of Funds Statement for the Latest Year and for Each of the Succeeding Five Years
- Exhibit K:** Buyer's Statement of Capital Structure and Interest Coverage for Latest Year and for Each of the Succeeding Five Years, Including Notes Payable as Debt<sup>35</sup>

## **I. CONCLUSION.**

Consistent with the Commission's policy of securing the "just, speedy, and inexpensive determination of every proceeding" pursuant to HAR § 16-601-1 and recent

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<sup>35</sup> Exhibits G – K are being filed pursuant to HAR § 16-601-101(b) for the purpose of Hawaii Water's Proposed Financing.

precedent for similar proceedings.<sup>38</sup> Applicants respectfully request that the Commission issue a decision and order no later than June 30, 2022, to the extent possible:

1. Approving the Agreement and the Proposed Transaction;
2. Approving, in connection with the above, the sale and transfer of the Assets to Hawaii Water, including, but not limited to, the transfer of HOH's CPCN;
3. Approving and/or confirming the continuation of the Tariff, amended to reflect the Proposed Expanded Service Area, following the closing of the Proposed Transaction, provided that Hawaii Water shall republish the Tariff in its own name with the same rules, regulations, tariffs, and rates as then currently approved for HOH;
4. Approving and/or confirming that, following the closing of the Proposed Transaction, Hawaii Water shall have the right and authority to provide utility service within HOH's Commission-authorized service territories in the Poipu area and portions of the Koloa Town area on the island of Kauai, under the Tariff, as has been and/or may be amended from time to time;
5. Approve Buyer's Proposed Financing as described in Section G; and

<sup>38</sup> In In re Kapa ua Water Company, Ltd., et al., Docket No. 2020-0086, a proceeding that involved another purchase of utility assets by Buyer, the Commission took approximately nine months from the filing of the application to issue its decision and order. See Joint Application, filed on June 4, 2020, in Docket No. 2020-0086; Decision and Order No. 37665, filed on March 8, 2021, in Docket No. 2020-0086. Applicants' requested decision date of June 30, 2022 is approximately nine months from the date of this filing.

6. Granting such other relief as may be deemed applicable, required, and/or appropriate, just and/or reasonable under the circumstances.

DATED: Honolulu, Hawaii, September 22, 2021.

/s/ Michael H. Lau

MICHAEL H. LAU  
JOYCE T. TAKAHASHI

AM Pacific Group LLP  
Attorneys for HOH Utilities, LLC

/s/ David Y. Nakashima

JEFFREY T. ONO  
DAVID Y. NAKASHIMA

Watanabe Ing LLP  
Attorneys for Hawaii Water Service  
Company, Inc.

## **EXHIBIT A**

Asset Purchase Agreement between  
Hawaii Water Service Company, Inc. and  
HOH Utilities, LLC dated June 9, 2021

(Portions of Exhibit A have been redacted as confidential and will be provided  
confidentially under separate cover pursuant and subject to the terms of a protective  
order to be issued in the subject docket)

**ASSET PURCHASE AGREEMENT  
BETWEEN  
HAWAII WATER SERVICE COMPANY, INC.  
AND  
HOH UTILITIES, LLC  
DATED AS OF JUNE 9, 2021**

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (the “Agreement”) is made and entered into as of June 9, 2021 (the “Effective Date”), by and between **HAWAII WATER SERVICE COMPANY, INC.** a Hawaii corporation (“Buyer”), and **HOH UTILITIES, LLC**, a Hawaii limited liability company (“Seller”). Buyer and Seller are sometimes referred to herein as a “Party” and collectively as the “Parties.”

**WHEREAS**, Seller is the owner of the Poipu Water Reclamation Facility and related assets located in Poipu, on the Island of Kauai, State of Hawaii (collectively, the “System”);

**WHEREAS**, Seller is in the business of providing wastewater collection, treatment and disposal services (the “Business”) to Poipu and portions of Koloa, as reflected in Exhibit A (the “Existing Service Territory”) attached hereto, utilizing the System and in accordance with Seller’s Rules and Regulations Governing Rate Schedules and the Provision of Sewer Services to Customers (“Seller’s Tariff”);

**WHEREAS**, on January 1, 2019, Makai Water Services, LLC (“MWS”), a Hawaii limited liability company, acquired the assets of HOH Services, LLC, a Hawaii limited liability company affiliated with Seller, used in the business of providing non-regulated water and wastewater operations and maintenance services to water and wastewater facilities, including the System, in the County of Kauai, State of Hawaii;

**WHEREAS**, since January 1, 2019, MWS has been in possession, control and operating the System and the Business under an Agreement for Operations and Management Services dated January 1, 2019, by and between Seller, as owner, and MWS, as contractor; and

**WHEREAS**, Seller desires to sell and assign to Buyer, and Buyer desires to purchase and assume from Seller, all of the assets (other than the Excluded Assets, as defined herein) which relate to, or are used or held for use in connection with, the Business (the “Purchased Assets”), including the assets comprising the System, on the terms and subject to the conditions set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants, representations, warranties and agreements and the conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### **ARTICLE I** **DEFINITIONS**

For purposes of this Agreement, the following terms used herein will have the following meaning when used with initial capitalization, whether singular or plural:

“Accounts Payable” has the meaning set forth in Section 2.5(b).

“Accounts Receivable” means all unpaid bills for tariffed wastewater services furnished through the System prior to Closing and outstanding as of the Closing Date.

“Action” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Allocation Schedule” has the meaning set forth in Section 2.8.

“Agreement” has the meaning set forth in the preamble hereto.

“Applicable Law” means all Laws that apply to or relate to the System or the Business.

“Approved Capital Expenditures” means Capital Expenditures of Seller for the purpose of improving the System or Real Property which are approved by Buyer in advance of being incurred by Seller which approval shall not be unreasonably withheld, conditioned, or delayed.

“Assigned Contracts” has the meaning set forth in Section 2.1(e).

“Assignment of Easements” means the Assignment of Easements in the form of Exhibit B attached hereto.

“Assignment of Lease and Consent” means the Assignment of Lease and Consent in the form of Exhibit C attached hereto.

“Bill of Sale” means the Bill of Sale in the form of Exhibit D attached hereto.

“Books and Records” has the meaning set forth in Section 2.1(h).

“Bureau” means the Bureau of Conveyances of the State of Hawaii.

“Business” has the meaning set forth in the Recitals

“Business Day” means any day other than a Saturday or Sunday or legal holiday on which banks located in the State of Hawaii are authorized or required by Law to be closed.

“Buyer” has the meaning set forth in the preamble hereto.

“Buyer Closing Certificate” has the meaning set forth in Section 7.3.

“Buyer’s Closing Costs” shall have the meaning set forth in Section 3.5.

“Buyer Indemnitees” has the meaning set forth in Section 8.2.

“Buyer’s Survey” has the meaning set forth in Section 6.8(b)(iii).

“Cancellation Notice” has the meaning set forth in Section 6.8(b)(vi).

“Capital Expenditures” means expenditures made for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto which have a useful life of more than one (1) year.

“Closing” means the consummation of the transaction contemplated by this Agreement.

“Closing Date” has the meaning set forth in Section 3.1.

“Closing Payment” has the meaning set forth in Section 2.6.

“Commission” means the Public Utilities Commission of the State of Hawaii.

“Contemplated Transactions” means Buyer’s acquisition of the Purchased Assets and all other transactions contemplated by this Agreement.

“Contract” means any contract, lease, deed, mortgage, license, instrument, note, commitment, undertaking, indenture, joint venture and all other agreements, commitments and legally binding arrangements, whether written or oral.

“Cure Notice” has the meaning set forth in Section 6.9.

“Customer Information” has the meaning set forth in Section 2.1(d).

“Direct Claim” has the meaning set forth in Section 8.4(c).

“Disclosure Schedule” means the Disclosure Schedule prepared, initialed and delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement.

“Due Diligence Period” has the meaning set forth in Section 6.9(b).

“Due Diligence Review” has the meaning set forth in Section 6.9(b).

“Easements” means all easements, rights of way, permits and licenses, whether or not of record, used or held for use by Seller in the operation of the System.

“Effective Date” has the meaning set forth in the preamble hereto.

“Encumbrance” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Environment” means all forms of plant and animal life, natural resources, soil, sediments, land, ground, surface and subsurface strata (whether above or below water), water (including, without limitation, territorial, coastal, and inland surface waters, groundwater, streams, and water in drains), air

(including, ambient, workplace, outdoor and indoor air), soil vapor, and or any other environmental medium, and “Environmental” shall be construed as pertaining to the “Environment.”

“Environmental Claim” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any notice of a proposed violation or any settlement or judgment arising therefrom, by or from any Person alleging in any manner liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, testing, sampling, assessing, monitoring, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from an Environmental Condition.

“Environmental Condition” means a condition or circumstance resulting from one or more related actions, omissions, or events that exists or may exist which (a) relates to the actual or potential presence, Release of, or exposure to, any Hazardous Substance; or (b) is or is alleged to be an actual or potential violation or in non-compliance with applicable Environmental Law or term or condition of any Environmental Permit or any required Governmental Order, or which is subject to remedy under Environmental Law; or (c) which is or is alleged to be damaging or to pose an actual or potential threat to the Environment, property, natural resources, human health, welfare, or safety.

“Environmental Law” means all Laws pertaining to, regulating, relating to or imposing liability, standards or obligations of conduct) concerning pollution, contaminants, or pathogens, or protection of health, safety (including the health and safety of workers under the U.S. Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651 et seq.)), flora and fauna, the Environment or protection, allocation, use, preservation, or control of the quantity or quality of natural resources, including without limitation (a) any Law relating to any actual or threatened Release, manufacture, processing, distribution, use, treatment, storage, transport, or handling of any Hazardous Substance, (b) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) (“CERCLA”), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.); the Clean Air Act (42 U.S.C. §§ 7401 et seq.); the Clean Water Act (33 U.S.C. §§ 1251 et seq.) the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.); the Emergency Planning and Community Right to Know Act (42 U.S.C. §§ 11001 et seq.); the Oil Pollution Act of 1990 (33 U.S.C. §§ 2701 et seq.); and the Hazardous Materials Transportation Uniform Safety Act (49 U.S.C. §§ 5101 et seq.), the National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.), the Migratory Bird Treaty Act (16 U.S.C. §§ 701 et seq.), and the Endangered Species Act of 1973 (16 U.S.C. §§ 1531 et seq.) with any amendments or reauthorization thereto or thereof, and any and all regulations promulgated thereunder, and all analogous state and local counterparts or equivalents; (c) any other state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or the environment or dangerous toxic or hazardous substances, all as may be from time to time amended; and (d) all Environmental Permits issued under such Law.

“Environmental Notice” means any directive, notice of violation or infraction, or notice respecting any Environmental Claim, whether in written or oral form.

“Environmental Permit” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to any Environmental Law.

“Environmental Testing” has the meaning set forth in Section 6.8(b)(iv).

“Escrow” means Title Guaranty Escrow Services, Inc., Main Branch.

“Escrow Agent” means Barbara Paulo, Main Office, Title Guaranty Hawaii

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Liabilities” has the meaning set forth in Section 2.5.

“Extended Due Diligence Period” has the meaning set forth in Section 6.8(b)(v).

“Extension Notice” has the meaning set forth in Section 6.8(b)(v).

“GAAP” means generally accepted accounting principles for financial reporting in the United States.

“Good Utility Practice” means those practices, methods and acts which: (a) when engaged in are commonly used in engineering and operations to operate wastewater collection, treatment and disposal systems and associated mechanical and other facilities lawfully and with safety, reliability, efficiency and expedition or (b) in the exercise of reasonable judgment considering the facts known when engaged in, could have been expected to achieve the desired result consistent with Applicable Law, safety, reliability, efficiency and expedition. Good Utility Practice is not limited to the optimum practice, method or act, but rather a spectrum of possible practices, methods or acts.

“Governmental Authority” means any federal, state, or local government or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, policy, regulatory, or taxing authority or power of any nature over the Purchased Assets or the Business.

“Governmental Order” means any consent, approval, order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Ground Lessor” means collectively, First Hawaiian Bank, a Hawaii corporation, and Valdemar L’Orange Knudsen, Trustees under that certain Deed of Trust made by Eric A. Knudsen dated April 20, 1922, recorded in the Bureau in Liber 639, Page 326, and filed in the Land Court as Document No. 27057, as amended, and Bishop Trust Company, Limited, a Hawaii corporation, as Trustee under Deed of Trust made by Augustus F. Knudsen dated December 22, 1924, recorded in the Bureau in Liber 759, Page 399, as amended.

“Hazardous Substance” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under any Environmental Law, including but not limited to any hazardous waste as defined by 42 U.S.C. § 6903(5), hazardous substance as defined by 42 U.S.C. § 9601(14), hazardous material as defined by 49 U.S.C. § 5102(2), toxic pollutant as listed pursuant to 33 U.S.C. § 1317, or pollutant or contaminant as defined in 42 U.S.C. § 9601(33); and (b) any petroleum or petroleum-derived products including but not limited to any oil as defined by 33 U.S.C. § 2701(23), radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls,

or constituents that are regulated, controlled or restricted under any Environmental Law or by any Governmental Authority, or which may cause, contribute to or result in an Environmental Claim.

“HPUC Approval Order” means the order of the Commission approving the transactions contemplated by this Agreement. A decision by the Commission shall not be considered a HPUC Approval Order if the decision denies or defers ruling on any material part of the application for HPUC Approval Order unless agreed to by Buyer and Seller

“Indemnified Party” has the meaning set forth in Section 8.4.

“Indemnifying Party” has the meaning set forth in Section 8.4.

“Initial Deposit” has the meaning set forth in Section 2.6

“Interim Balance Sheet” has the meaning set forth in Section 4.4.

“Interim Balance Sheet Date” has the meaning set forth in Section 4.4.

“Interim Financial Statements” has the meaning set forth in Section 4.4.

“Knowledge” For Seller, means (i) the actual knowledge of Ian Kagimoto, with no imputed knowledge or (ii) such facts and matters of which Ian Kagimoto should be reasonably aware.

“Land Court” means the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority, including the Environmental Laws.

“Leased Premises” shall mean the premises demised under the Sewer Plant Lease.

“Liability” or “Liabilities” means any financial liability, legal liability, obligation, judgment or fine of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“Losses” means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; provided, however, that “Losses” shall not include punitive damages, except in the case of fraud or to the extent actually awarded to a Governmental Authority or other third party.

“Material Adverse Effect” means a material adverse change in the Purchased Assets, Liabilities, financial condition, operating results, customer, employee or supplier relations, business condition or prospects of Seller affecting or related to the Business, the Purchased Assets, System Customers or the System.

**“Non-appealable HPUC Approval Order”** means the HPUC Approval Order: (i) that is considered to be final because no party or participant to the subject HPUC proceeding intends to seek a change in such HPUC Approval Order through motion or appeal, or (ii) that is not subject to appeal to the Intermediate Court of Appeals of the State of Hawai‘i, or the Supreme Court of the State of Hawai‘i, because the period permitted for such an appeal has passed without the filing of notice of such an appeal, or (iii) that was affirmed on appeal to the Intermediate Court of Appeals of the State of Hawai‘i, or the Supreme Court of the State of Hawai‘i, or was affirmed upon further appeal or appellate process, and that is not subject to further appeal, because the jurisdictional time permitted for such an appeal and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari has passed without the filing of notice of such an appeal or the filing for further appellate process

**“Operations & Management Agreement”** means an agreement for operation and management of the System to be executed as of Closing by and between MWS and Buyer.

**“Opinion of Counsel”** has the meaning set forth in Section 7.2.

**“Ordinary Course of Operations”** means an action taken by or on behalf of Seller shall be deemed to have been taken in the “Ordinary Course of Operations” if, and only if:

(a) such action is recurring in nature, is consistent in nature, scope and magnitude with the past practices of Seller and is taken in the ordinary course of the normal day-to-day operations of the System;

(b) such action is taken in accordance with Good Utility Practice;

(c) such action is not required to be authorized by the board of directors or other governing, managing, or administrative body thereof, or any committee thereof, and does not require any other separate or special authorization of any nature; and

(d) such action is similar in nature, scope and magnitude to actions customarily taken, without any separate or special authorization, in the ordinary course of the normal, day-to-day operations of other Commission-regulated wastewater systems in Hawaii.

**“Outside Date”** has the meaning set forth in Section 9.1(b)(ii).

**“Parties” and “Party”** have the meanings set forth in the preamble hereto.

**“Permits”** means all permits, licenses, franchises, approvals, consents, authorizations, registrations, certificates, variances, waivers, and similar rights applicable to the System or the Business.

**“Permitted Encumbrances”** has the meaning set forth in Section 4.8.

**“Permitted Exceptions”** has the meaning set forth in Section 6.10.

**“Person”** means an individual, partnership, a corporation, an association, a limited liability company, a joint stock company, a trust, a joint venture, an unincorporated organization, an inter-local

cooperative, a Governmental Authority, or any department, agency or political subdivision thereof or any other entity.

“Purchase Price” has the meaning set forth in Section 2.6.

“Purchased Assets” has the meaning set forth in the Recitals.

“Real Property” has the meaning set forth in Section 2.1(a).

“Release” means any release, spilling, leaking, pumping, pouring, emitting, depositing, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to disperse or migrate into or through the Environment.

“Representatives” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Restricted Business” means the business of owning or operating a wastewater collection, treatment and disposal system.

“Restricted Period” has the meaning set forth in Section 6.10.

“Returns” has the meaning set forth in Section 4.14.

“Seller” has the meaning set forth in the preamble hereto.

“Seller Closing Certificate” has the meaning set forth in Section 7.2.

“Seller Indemnitees” has the meaning set forth in Section 8.3.

“Seller’s Surveys” has the meaning set forth in Section 6.7.

“Service Facilities” has the meaning set forth in Section 2.1(b).

“Sewer Plant Lease” means that certain Increment Lease No. 4 – Waste Water System dated January 1, 1986, by and between Ground Lessor, as lessor, and Poipu Waste Water Corporation, a Hawaii corporation, Waiohai Properties, a Hawaii general partnership, Ohbayashi Hawaii Corporation, a Hawaii corporation, and Moana Wastewater Corporation, a Hawaii corporation, as lessee, filed in the Land Court as Document No. 1426564, as assigned to Seller under the following: (a) Assignment of Lease dated May 4, 2000 filed as Land Court Document No. 2643187 (the undivided 1/3 interest of Moana Wastewater Corporation); (b) Assignment of Lease dated February 15, 2001, recorded in the Bureau as Document No. 2001-070045 (the undivided 1/6 interest of Marriott Ownership Resorts, Inc., received from Waiohai Resort Partners Limited Partnership); (c) an unrecorded Assignment of Wastewater Agreements dated March 2004, approved by the Commissions on September 3, 2004 by Decision and Order No. 21334 filed in Docket No. 04-0094 (the undivided interest of Ohbayashi Hawaii Corporation); and (d) an unrecorded Assignment of Lease dated January 1, 2006, from CTF Hawaii Hotel Partners Limited Partnership formerly known as SHC Hawaii Hotel Partners Limited Partnership, and CTF Hotel Sewage Treatment Corporation (the undivided 1/3 joint interest of Poipu Waste Water Corporation and Waiohai Properties).

“System” has the meaning set forth in the Recitals.

“System Customers” means those customers receiving service from Seller utilizing the System on or before the Transfer Time.

“Tangible Personal Property” has the meaning set forth in Section 2.1(c).

“Taxes” means all taxes, charges, fees, levies or other assessments, including, without limitation, all net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, social security, unemployment, excise, estimated, severance, stamp, occupation, property or other taxes, customs duties, fees assessments or charges of any kind whatsoever, including, without limitation, all interests and penalties thereon and additions to tax or additional amounts imposed by any taxing authority.

“Territory” means the Island of Kauai.

“Third Party Claim” has the meaning set forth in Section 8.4.

“Threat of Release” means a reasonable likelihood of a Release that may require action in order to prevent or mitigate damage to the Environment that may result from such Release.

“Title Company” means Title Guaranty of Hawaii, Inc.

“Title Objections” has the meaning set forth in Section 6.8(c).

“Title Policy” means an American Land Title Association Extended Owner’s policy of title insurance for the Real Property to be issued by Title Company to and acceptable to Buyer, including such endorsements and in such amounts as Buyer may reasonably require, effective as of the Closing.

“Title Report” has the meaning set forth in Section 6.8(b)(ii).

“Transfer Taxes” has the meaning set forth in Section 6.5.

“Transfer Time” has the meaning set forth in Section 3.3.

“Transaction Documents” means this Agreement, the Bill of Sale, the Assignment of Easements, the Assignment of Lease and Consent, and the other agreements, instruments and documents required to be delivered at the Closing.

“Unbilled Services” means amounts payable to Seller but not yet billed as of the Closing Date for tariffed wastewater services rendered to customers of the System prior to the Closing Date.

## **ARTICLE II PURCHASE AND SALE**

II.1     Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, transfer, convey, assign and deliver to Buyer, and Buyer shall

purchase from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller's right, title and interest in, to and under the Purchased Assets, including without limitation the following:

- (a) 100% of the interest of the "Lessee" under the Sewer Plant Lease, including the leasehold interest in the Leased Premises, Easements, and other interests in real property (together with the improvements, plant and fixtures thereon) used or held for use by Seller in the operation of the System (collectively, the "Real Property");
- (b) the System and all related and appurtenant facilities, equipment, supplies, spare parts and other personal property currently used or held for use by Seller for delivery of services to the System Customers, including the wastewater collection, treatment and disposal system and those assets set forth on Schedule 2.1(b) (collectively, the "Service Facilities");
- (c) all furniture, fixtures, equipment, machinery, tools, vehicles, office equipment, supplies, computers, telephones and other tangible personal property used in operation of the Business (the "Tangible Personal Property");
- (d) all customer-related information owned by or otherwise controlled by Seller and used in connection with the Business, including, without limitation, all customer lists, billing history, rate classifications and revenue calculations (collectively, the "Customer Information");
- (e) all Contracts set forth on Schedule 2.1(e) (the "Assigned Contracts");
- (f) all Permits, including Environmental Permits, set forth on Schedule 4.14(b), to the extent transferable;
- (g) all assets and rights relating to the proposed wastewater treatment and reclamation system to serve the needs of Koloa Town including the approved EIS;
- (h) all of Seller's records and other documents, instruments and information relating to the Business and the Purchased Assets (collectively, the "Books and Records");
- (i) all of Seller's rights to all intellectual property and intangible assets used in the Business (collectively, "Proprietary Rights");
- (j) all material licenses and permits owned or possessed and used by Seller in the business, including without limitation Seller's Certificate of Public Convenience and Necessity as more particularly described on Schedule 2.1(j) attached and incorporated herein by reference (collectively, the "Licenses");
- (k) all insurance benefits, including rights and proceeds, arising from or relating to the Assets prior to the Effective Date, unless expended in accordance with this Agreement;

(l) all existing manufacturer or other warranties for the System and the Tangible Personal Property to the extent that such warranties are capable of being transferred and do not require the consent of any third party for such transfer (“Manufacturers’ Warranties”).

(m) all of Seller’s goodwill associated with the Business (the “Goodwill”);

(n) customer deposits held by Seller arising out of operation of the Business, and any security, claim, remedy or other right related to any of the foregoing prior to the Closing Date (“Customer Deposits”); and

(o) all of Seller’s rights, claims, and Actions relating to the Purchased Assets.

II.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the following assets of Seller related to the Business (collectively, the “Excluded Assets”) are not part of the sale and purchase contemplated hereunder and shall remain the property of Seller after the Closing:

(a) Cash not included from contributions in aid of construction (“CIAC”), CIAC shall be transferred to Buyer;

(b) Accounts Receivable;

(c) Contracts that are not Assigned Contracts (the “Excluded Contracts”); and

(d) the assets, properties and rights specifically set forth on Schedule 2.2(e).

On or before the Closing Date, Seller shall remove all Excluded Assets from all facilities to be occupied by Buyer. Any damage to the Purchased Assets or to the facilities resulting from such removal shall be paid by Seller at the Closing

II.3 Sale Free of Encumbrances. Except for the Easements (which shall be subject to all of the Encumbrances of the underlying property owner), the Purchased Assets shall be as of the Closing free and clear of all Encumbrances, other than Permitted Encumbrances.

II.4 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge only the following Liabilities of Seller (collectively, the “Assumed Liabilities”), and no other Liabilities:

(a) all Liabilities in respect of the Assigned Contracts but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date, were incurred in the ordinary course of business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing; and

(b) Seller’s reasonable attorneys’ fees and costs of AM Pacific Group LLP actually incurred in the preparation, filing and processing of the Change of Control application with the Commission as described in Section 6.4(a), in an amount not to exceed \$25,000.00 and documented by unredacted bills provided to Buyer prior to Closing (“Regulatory Attorneys’ Fees”)

II.5 **Excluded Liabilities.** Notwithstanding the provisions of Section 2.4 or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Seller of any kind or nature whatsoever other than the Assumed Liabilities (the “Excluded Liabilities”). Seller shall pay and satisfy in due course all Excluded Liabilities which it is obligated to pay and satisfy. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) any Liabilities of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, and the transactions contemplated hereby;
- (b) any Liabilities associated with trade accounts payable of Seller to third parties in connection with the Business prior to the Closing Date, whether or not reflected on the Interim Balance Sheet (the “Accounts Payable”);
- (c) any Liability for (i) Taxes of Seller or relating to the Business, the Purchased Assets or the Assumed Liabilities for any pre-Closing period; (ii) Taxes that arise out of the consummation of the transactions contemplated hereby or that are the responsibility of Seller pursuant to Section 6.8; or (iii) other Taxes of Seller or the Business of any kind or description that become a Liability of Buyer under any common law doctrine, transferee or successor liability, or otherwise by operation of contract or Law;
- (d) any Liabilities relating to or arising out of the Excluded Assets;
- (e) any Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the operation of the Business or the Purchased Assets to the extent such Action relates to such operation on or prior to the Closing Date;
- (f) any Environmental Claims or other Liabilities under any Environmental Law, to the extent arising out of or relating to the operation of Seller’s Assets, the Business or Seller’s leasing, ownership or operation of real property or the condition of any of Seller’s property or facts, circumstances or conditions existing on or prior to the Closing Date;
- (g) any Liabilities under the Excluded Contracts or any other Contracts (i) which are not validly and effectively assigned to Buyer pursuant to this Agreement; (ii) which do not conform to the representations and warranties with respect thereto contained in this Agreement; or (iii) to the extent such Liabilities arise out of or relate to a breach by Seller of such Contracts prior to Closing;
- (h) any Liability arising out of any Action pending as of the Closing Date;
- (i) any Liability arising out of any Action commenced after the Closing Date and arising out of or relating to any occurrence or event happening prior to the Closing Date;
- (j) any Liabilities associated with debt, loans or credit facilities of Seller and/or the Business; and

**(k)** any Liabilities arising out of, in respect of or in connection with the failure by Seller to comply with any Law or Governmental Order prior to the Closing Date.

**II.6 Purchase Price.** The aggregate purchase price for the Purchased Assets shall be [REDACTED] plus (i) any expenses (as provided in Section 3.5) or prorations (as provided in Section 3.6), plus (ii) Approved Capital Expenditures made by Seller after the Effective Date up to the Closing Date, less the Depreciation on Approved Capital Expenditures prior to Closing (collectively, the “Purchase Price”). The Purchase Price shall be paid as follows:

**(a) Initial Deposit.** Within five (5) Business Days of the Effective Date, Buyer shall deposit with Escrow, by wire or intra-bank transfer of immediately available funds, an earnest money deposit in the amount of [REDACTED] (the “Initial Deposit”), constituting a deposit to be applied, subject to the provisions of this Agreement, toward the payment of the Purchase Price.

**(b) Closing Payment.** In reliance on the representations and warranties of Seller hereunder and in consideration of Seller’s sale, conveyance, transfer, assignment, and delivery of the Purchased Assets to Buyer and the other undertakings of Seller hereunder, Buyer shall pay the remainder of the Purchase Price (the “Closing Payment”) to the Escrow Agent on behalf of Seller by wire transfer to the account specified by Escrow Agent no later than two (2) Business Days prior to the Closing Date for disbursement as described in Section 2.7 provided the Contemplated Transactions Close.

**(c) Use of Initial Deposit—Buyer Refund.** The Initial Deposit and the interest earned thereon shall be refundable to Buyer (less Escrow costs and costs described in Section 2.4(c) incurred by Seller prior to such termination) if:

- i.** Buyer terminates this Agreement under Section 6.8(b)(vi);
- ii.** The Parties terminate this Agreement under Section 9.1(a);
- iii.** Buyer terminates this Agreement pursuant to Section 9.1(b);
- iv.** Either Party terminates this Agreement pursuant to Section 9.1(d);

or

- v.** Seller terminates this Agreement under pursuant to Section 9.1(c) (iii).

**(d) Use of Initial Deposit—Payment to Seller.** The Initial Deposit and the interest earned thereon shall be paid to Seller (less Escrow costs) if:

- i.** Seller terminates this Agreement under Section 9.1(c)(i);
- ii.** Seller terminates this Agreement under Section 9.1(c)(ii) if the conditions precedent set forth in Section 7.3 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Date, unless

such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing.; or

**iii. Upon Closing of the Contemplated Transactions as part of the Purchase Price.**

**II.7 Escrow.** The purchase and sale of the Assets shall be conducted through Escrow as a bulk sale transaction and pursuant to instructions consistent with the provisions of this Agreement. Within two (2) Business Days of the Effective Date, Seller shall deliver a copy of this Agreement to the Escrow Agent to establish the Escrow. All amounts payable to Seller shall be released by Escrow only upon Seller's delivery to Escrow and Buyer of an approved Report of Bulk Sale or Transfer (Form G-8A) from the State of Hawai'i Department of Taxation indicating that all taxes due and payable, including any taxes due as a result of the Contemplated Transactions have been paid and the satisfaction of all conditions to Closing; provided however, that Escrow shall deliver the Initial Deposit to Seller if the Contemplated Transactions fail to close after the expiration of the Due Diligence Period or Buyer's Due Diligence Waiver except as provided in Section 2.6(c).

**II.8 Allocation of Purchase Price.** Seller and Buyer agree that the Purchase Price and the Assumed Liabilities (plus other relevant items) shall be allocated among the Purchased Assets for Tax and financial accounting purposes as shown on the allocation schedule (the "Allocation Schedule"). A draft of the Allocation Schedule and the State of Hawaii Form G-8A Bulk Sales Report ("G-8A") shall be prepared by Buyer and delivered to Seller within thirty (30) days prior to the Closing Date. Within ten (10) Business Days after receipt of the Allocation Schedule and the G-8A, Seller shall notify Buyer in writing whether Seller accepts or rejects either or both the Allocation Schedule and G-8A, and if rejecting, the basis for such rejection. Upon Seller' rejection, Seller and Buyer shall negotiate in good faith to resolve Seller's basis for rejection; provided, however, that if Seller and Buyer are unable to resolve any dispute with respect to the Allocation Schedule or G-8A by Closing, such dispute shall be resolved by an independent accountant mutually acceptable to the Parties. The fees and expenses of such accounting firm shall be borne equally by Seller and Buyer. Buyer and Seller shall file all Tax returns (including amended returns and claims for refund) and information reports in a manner consistent with the Allocation Schedule and the G-8A.

**II.9 Accounts Receivable and Customer Deposits; Cooperation.** On the Closing Date, Seller shall provide to Buyer a true and correct schedule showing any pre-billings sent to customers of the System on Buyer's behalf, and the amount of Prepayments and Customer Deposits collected by Seller on Buyer's behalf, as of the Closing Date. Seller is not assigning any of its Accounts Receivable to Buyer at Closing, nor is Seller assigning to Buyer any of Seller's rights with respect to Unbilled Services. Seller reserves all rights to bill for and recover its Accounts Receivable after Closing and Buyer shall not have any rights with respect thereto. Buyer shall not interfere in any way with Seller's efforts to collect its Accounts Receivable and Unbilled Services after Closing. If any customer of the System pays Buyer after the Closing Date for any amount owing to Seller as Accounts Receivable or for Unbilled Services, Buyer shall promptly account to Seller for said payment and forward payment to Seller as soon as reasonably practicable, but not more frequently than once a month. If any customer of the System pays Seller after the Closing Date for any amount relating to services provided by Buyer to such Customer after the Closing Date, Seller shall promptly account to Buyer for said payment and forward payment to Buyer as soon as reasonably practicable, but not more frequently than once a month.

II.10 Disclaimer. EXCEPT FOR SUCH REPRESENTATIONS AND WARRANTIES THAT ARE EXPRESSLY SET FORTH IN THIS AGREEMENT SELLER DISCLAIMS ANY WARRANTY OR REPRESENTATION, EXPRESS, STATUTORY OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, INCLUDING WARRANTIES WITH RESPECT TO THE PRESENCE OF NATURALLY OCCURRING CONDITIONS AFFECTING ANY OF THE PURCHASED ASSETS AND PROPERTY (REAL, PERSONAL OR MIXED), OR EQUIPMENT (INCLUDING PIPELINE EQUIPMENT) CONVEYED TO AND ACQUIRED BY BUYER. SELLER DISCLAIMS ANY WARRANTIES WITH RESPECT TO THE PRESENCE OF ENVIRONMENTAL CONDITIONS AFTER THE CLOSING DATE. WITHOUT LIMITING THE FOREGOING, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING: (a) ANY REGULATORY MATTERS; (b) THE PRESENT OR FUTURE VALUE OF THE ANTICIPATED INCOME OF THE BUSINESS; (c) THE LOSS OR PROFITS, IF ANY, TO BE DERIVED FROM THE PURCHASED ASSETS; (d) ANY PROJECTIONS, ESTIMATES OR BUDGETS OF FUTURE REVENUES, RESULTS OF OPERATIONS OR ANY COMPONENT THEREOF, CASH FLOWS OR FINANCIAL CONDITIONS OF THE BUSINESS; (e) THE FUTURE BUSINESS OR OPERATION OF THE SYSTEM; AND (f) THE TAX ATTRIBUTES OF ANY ASSET.

II.11 Purchased Assets Sold “AS IS” and “WHERE IS”. The Purchased Assets will be purchased by Buyer “AS IS” and “WHERE IS” and Seller will not make any repair to the Purchased Assets, relocate the Purchased Assets, or pay any expenses concerning the condition and location of the Purchased Assets except in the Ordinary Course of Operations. Upon Closing, Buyer shall assume responsibility for the physical condition and location of the Purchased Assets, and the Business’ compliance with all Applicable Laws, and shall assume all liability and responsibility resulting from any violation of Environmental Laws arising from any Release of any Hazardous Substances on or from any Purchased Asset occurring after the Closing Date.

## ARTICLE III CLOSING

III.1 Closing. Closing of the Contemplated Transactions shall occur in Honolulu, Hawaii, on the final day of Seller’s billing period occurring during the second full calendar month following the satisfaction or waiver of all of the closing conditions set forth in Article VII (other than those to be satisfied at the Closing), with Closing effective as of 12:01 a.m. of that same date or at such other time or date as Seller and Buyer may mutually agree upon in writing (the “Closing Date”). At least three (3) Business Days prior to the Closing Date, the Parties shall execute, and if applicable acknowledge, and deliver the Assignment of Easements and the Assignment of Lease and Consent shall be delivered via courier to Escrow based on Escrow’s standard requirements as modified due to State of Hawaii and City & County of Honolulu emergency proclamations in place prior to Closing, to be held until receipt of the Closing Payment and filed or recorded and released upon the Closing of the Contemplated Transactions as described in Section 2.7. All documentation to be filed or recorded will be handled through the Escrow Agent pursuant to written escrow instructions mutually acceptable to the parties.

### III.2 Closing Deliverables.

(a) At or prior to Closing, Seller will execute (where applicable) and deliver to Buyer (or Escrow Agent in the case of documents to be recorded) the following:

i. the Bill of Sale;

ii. the Assignment of Easements

iii. the Assignment of Lease and Consent;

iv. an Assignment and Assumption of Assumed Contracts, together with any required consents by third parties to each of the assignments, pursuant to which Seller shall assign all of its right, title and interest in and to the Assumed Contracts to Buyer, and Buyer shall assume all of Seller's rights and obligations under the Assumed Contracts arising from and after the Closing Date in the form of Exhibit E attached hereto (the "Assumed Contracts Assignment");

v. the Opinion of Counsel;

vi. the Seller Closing Certificate;

vii. the Seller Secretary Certificate;

viii. updated Schedules in form and substance acceptable to Buyer;

ix. 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 calendar days prior to the Closing Date;

x. Seller's Books and Records

xi. a Tax Clearance Certificate for Seller issued by the Department of Taxation of the State of Hawaii not more than three (3) days prior to the Closing Date and an approved Report of Bulk Sale or Transfer (Form G-8A) from the State of Hawai'i Department of Taxation indicating that all taxes due and payable, including any taxes due as a result of the Contemplated Transactions have been paid;

xii. Seller's calculation of the Approved Capital Expenditures as of the Closing Date; and

xiii. such other certificates, documents and instruments of sale, transfer, conveyance and assignment as Buyer may reasonably request.

**(b)** At or prior to Closing, Buyer will execute (where applicable) and deliver to Seller (or Escrow Agent in the case of documents to be recorded) the following:

i. the Closing Payment, paid in accordance with Section 2.6;

ii. any prorated pre-paid costs of the System and the Business allocated to Seller;

iii. Buyer's Closing Costs;

- iv. the Assignment of Easements;
- v. the Assumed Contracts Assignment;
- vi. the Assignment of Lease and Consent; and
- vii. the Buyer Closing Certificate.

III.3 Transfer of System Customers. Seller shall relinquish utility service to all of System Customers at 12:01 a.m. on the Closing Date (the “Transfer Time”), unless the Parties otherwise agree in writing, in accordance with this Agreement. Seller shall be obligated to continue to provide service and entitled to receive payment from the sale and delivery of utility service up to the Transfer Time and Buyer shall have the authority and the obligation to provide utility service to the System Customers and shall be entitled to receive payment from any System Customer for service from and after the Transfer Time, including without limitation any Prepayments collected by Seller at Buyer’s request unless otherwise agreed to by the Parties in writing. From and after the Transfer Time, service to the System Customers shall be provided by Buyer in accordance with the terms and conditions of all applicable tariffs and schedules.

III.4 Separation and Transfer. The Parties agree upon the following procedures for transferring possession and operation of the Purchased Assets:

(a) Unless the Parties otherwise agree in writing, Seller shall issue a final billing to System Customers for any services used prior to the Closing Date with instructions to remit such payment to Buyer.

(b) Immediately upon the Transfer Time, Buyer shall be responsible for the reliable provision of wastewater collection and treatment to, and all billings and collections from, the System Customers and for any and all maintenance obligations of the Purchased Assets.

(c) All revenues and expenses arising from the Business, including, without limitation, prepaid expenses, ad valorem and property taxes and assessments, and power and utilities charges shall be prorated between Seller and Buyer in accordance with GAAP to reflect the principle that Seller shall be entitled to all revenue and be responsible for all expenses arising from the Business through the Transfer Time and Buyer shall be entitled to all revenue and be responsible for all expenses arising from the Business after the Transfer Time. All amounts that are then determinable shall be settled at Closing. Amounts not settled at Closing shall be settled as soon as practicable thereafter.

III.5 Expenses of Closing. Except as otherwise provided herein, closing fees and costs, including but not limited to, legal fees, accounting fees, consulting fees, and other incidental expenses shall be borne by the Party incurring such fees. Buyer shall pay for the Title Policy, the Buyer’s Survey, the Environmental Survey, Seller’s attorney’s fees and costs for obtaining the Commission’s approval of the Contemplated Transactions in accordance with Section 2.4(b), and all Escrow Fees, conveyance taxes and recordation and filing fees (collectively, “Buyer’s Closing Costs”).

III.6 Closing Prorations. The following expenses shall be prorated as of the Transfer Time of the Closing Date:

- (a) Real Property Taxes (NOT APPLICABLE);
- (b) Utility charges incurred in operating the System; and
- (c) Account Payables for all Contracts assumed by Buyer from and after the Closing Date.

## **ARTICLE IV** **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer as follows:

IV.1 Organization and Qualification of Seller. Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of Hawaii and has full limited liability company power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to conduct the operations of the Business as currently conducted. Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Business as currently conducted makes such licensing or qualification necessary. There are no dissolution, disassociation, winding-up, liquidation or bankruptcy proceedings pending or threatened against Seller. There are no events which could result in a dissolution of Seller. Ian Kagimoto is the sole member of Seller.

IV.2 Authority of Seller. Seller has full limited liability company power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and upon receipt of approval from the Commission, to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms. Upon receipt of the Commission's approval of the transaction contemplated hereby, each other Transaction Document duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), shall constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms.

### IV.3 No Conflicts; Consents.

(a) Upon receipt of the Commission's approval of the transaction contemplated hereby, the execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other charter or organizational documents of Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the Business or the Purchased Assets; (c) except as set forth in Section 4.3(a) of the Disclosure Schedule, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of,

constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract or Permit to which Seller is a party or by which Seller or the Business is bound or to which any of the Purchased Assets are subject (including any Assigned Contract); or (d) result in the creation or imposition of any Encumbrance on the Purchased Assets.

**(b)** Except as set forth in Section 4.3(b) of the Disclosure Schedule, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

**IV.4 Financial Statements.** Seller has delivered to Buyer (a) balance sheets of Seller as of the end of each of the fiscal years 2017 through 2020 and the related statements of income and changes in cash flows for each of the fiscal years then ended, including in each case the notes thereto (the “Annual Financial Statements”), and (b) an unaudited balance sheet of Seller (the “Interim Balance Sheet”) as of April 1, 2021 (the “Interim Balance Sheet Date”) and the related unaudited statement of income for the April 1, 2021 months then ended (the “Interim Financial Statements”). Such financial statements delivered by Seller to Buyer pursuant to this Section 4.4 have been prepared in accordance with GAAP, consistently applied, and properly and accurately reflect the revenues and costs incurred in the operation of the Business in respect of the periods covered by such financial statements. The financial statements have been and will be prepared from and are in accordance with the accounting Records of Seller.

**IV.5 Undisclosed Liabilities.** To the Knowledge of Seller, Seller has no Liabilities with respect to the Business, except (a) those which are adequately reflected or reserved against in the Interim Financial Statements, and (b) those which have been incurred in the Ordinary Course of Operations since the Interim Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

**IV.6 Absence of Certain Changes, Events and Conditions.** To the Knowledge of Seller, from Seller’s acquisition of the System in 1999 to the Closing Date:

**(a)** The Business has been operated in the Ordinary Course of Operations and there has not been any event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; and

**(b)** Seller has not subjected the Purchased Assets to any Encumbrance, entered into any Contract with respect to the Business or Purchased Assets outside the Ordinary Course of Operations or taken any other action or entered into any other transaction with respect to the Business or Purchased Assets other than in the Ordinary Course of Operations and in accordance with regular past custom and practice.

**IV.7 Contracts and Commitments.** Prior to the date of this Agreement, Buyer has been supplied with a true and correct copy of (i) each unique material written agreement, Contract or commitment which relates to or arises from the Business or the Purchased Assets, and (ii) the form of each of its standard form written agreements or Contracts which relates to or arises from the Business or the Purchased Assets, and a list of the names, billing addresses and service addresses of each counterparty to a standard form written agreement or Contract, together with all amendments, waivers or

other changes thereto. Each Assigned Contract is in full force and effect and is valid and enforceable in accordance with its terms and Seller is not in default thereunder. Each other Person that has or had any obligation or liability under any Assigned Contract is, and at all times since January 1, 2018 has been, in full compliance with all applicable terms and requirements of such Assigned Contract.

**IV.8 Title to Sewer Plant Lease.** Seller has good, valid and insurable title to 100% of the leasehold interest (including the interest of the “Lessee”) under the Sewer Plant Lease, free and clear of Encumbrances except for the following (the “Permitted Encumbrances”):

- (a) liens for Taxes not yet due and payable;
- (b) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which are not, individually or in the aggregate, material to the System or the Purchased Assets, which do not prohibit or interfere with the current operation of any Real Property and which do not render title to any Real Property unmarketable;
- (c) encumbrances noted on the Land Court Certificate of Title for the Leased Premises prior to the recordation of the Ground Lease in the Land Court system but only to the extent such encumbrances are noted in Schedule B of the Title Report issued by the Title Company during the Due Diligence Review as contemplated in Section 6.8(c).

Notwithstanding the foregoing, failure of Seller to have good, valid and insurable title to 100% of the leasehold interest (including the interest of the “Lessee”) under the Sewer Plant Lease shall not be a Permitted Encumbrance and in such event, Buyer shall not be required to close the Contemplated Transactions.

**IV.9 Real Property.**

- (a) **Sewer Plant Lease.** The Leased Premises is the only real property leased by Seller and used in or necessary for the conduct of the operations of the System as currently conducted (other than the Easements):

i. Seller has good and marketable title to 100% of the interest of the “Lessee” under the Sewer Plant Lease and the Sewer Plant Lease is valid, binding, enforceable and in full force and effect, and Seller enjoys peaceful and undisturbed possession of the Leased Premises;

ii. Seller is not in breach or default under the Sewer Plant Lease, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and Seller has paid all rent due and payable under the Sewer Plant Lease;

iii. Seller has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by Seller under the Sewer Plant Lease and, to the Knowledge of Seller, no other party is in default thereof, and no party to the Sewer Plant Lease has exercised any termination rights with respect thereto;

**iv.** Seller has not subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Premises or any portion thereof; and

**v.** Seller has not pledged, mortgaged or otherwise granted an Encumbrance on its leasehold interest in any Leased Premises.

**(b)** Section 4.9(b) of the Disclosure Schedule sets forth each Easement, if any, used in or necessary for the current operations of the Business, and there are no Easements used in or necessary to the current operations of the Business except those listed on Section 4.9(b) of the Disclosure Schedule. With respect to the Easements listed on Section 4.9(b) of the Disclosure Schedule:

**i.** Seller owns or possesses all Easements necessary to conduct the operations of the Business as now being conducted, without any known conflict with the rights of others, but does not currently have recorded easements necessary for all aspects of the System;

**ii.** Seller is in compliance with the terms and conditions of all Easements; and

**iii.** Seller has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by the grantor or any other party under any of the Easements and, to the Knowledge of Seller, no other party is in default thereof, and no party to any Easement has exercised any termination rights with respect thereto.

**(c)** Seller has not received any written notice of (i) violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Real Property, (ii) existing, pending or threatened condemnation proceedings affecting the Real Property, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to adversely affect the ability to operate the Business as currently operated.

**IV.10 Legal Proceedings; Governmental Orders.** To the Knowledge of Seller:

**(a)** Except as set forth on Section 4.10(a) of the Disclosure Schedule, there are no notices of proposed violation, reports, audits or investigations (in each case, issued, undertaken, pending or to the Knowledge of Seller, threatened) by any Governmental Authority, or Actions pending or, to the Knowledge of Seller, threatened against or by Seller (i) relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities; or (b) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

**(b)** Except as set forth on Section 4.10(a) of the Disclosure Schedule, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Business. Seller is in compliance with the terms of each Governmental Order except as set forth on Section 4.10(a) of the Disclosure Schedule, and no event has occurred

or circumstances exist that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

IV.11 Compliance with Laws; Permits. To the Knowledge of Seller:

**(a)** Except as set forth on Section 4.11(a) of the Disclosure Schedule, Seller has complied, and is now complying, with all Laws applicable to the conduct of the operations of the Business as currently conducted or the ownership and use of the Purchased Assets.

**(b)** All Permits (including Environmental Permits) required for Seller to conduct the operations of the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Seller and are valid and in full force and effect. All fees and charges with respect to such Permits required to be paid as of the date hereof have been paid in full. Section 4.11(b) of the Disclosure Schedule lists all current Permits (including Environmental Permits) issued to Seller which are related to the conduct of the operations of the Business as currently conducted or the ownership and use of the Purchased Assets, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 4.11(b) of the Disclosure Schedule.

IV.12 Environmental Matters. To the Knowledge of Seller, during Seller's ownership of the Purchased Assets and the Business and prior to the Closing Date:

**(a)** Seller and the operations of Seller with respect to the Business and the Purchased Assets have been in compliance with all Environmental Laws.

**(b)** With respect to all Environmental Permits (each of which is disclosed on Section 4.12(b) of the Disclosure Schedule) necessary for the conduct of the operations of the Business as currently conducted: (i) Seller has obtained and is in compliance with all such Environmental Permits, (ii) all such Environmental Permits are valid and in good standing; (iii) Seller has not received any notice from any Governmental Authority seeking to modify, revoke or terminate any Environmental Permit.

**(c)** There are no Environmental Claims pending or, to the Knowledge of Seller, threatened in writing against Seller or any of the Purchased Assets. Except as set forth on Schedule 4.12.

**(d)** No Real Property has been listed on the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or on or in any other list, schedule, law, inventory or record of hazardous or solid waste sites maintained by any Governmental Authority.

**(e)** There are no Hazardous Substances present on or in the Environment at any of the Real Property of the improvements thereon or at any geologically or hydrologically adjoining property, including any Hazardous Substances contained in barrels, aboveground or underground storage tanks, landfills, land deposits, dumps, equipment (whether movable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps,

or any other part of the real Property or such adjoining property, or incorporated into any structure therein or thereon.

**(f)** There has been no Release or, to the Knowledge of Seller, Threat of Release, of any Hazardous Substances at or from any of the Real Property or improvements thereon or from any other property or asset (whether real, personal or mixed) in which Seller has or had an interest, or to the Knowledge of Seller any geologically or hydrologically adjoining property, whether by Seller or any other Person.

**IV.13 Employment Matters.** Seller has no employees and there are no outstanding wage, benefit, or similar obligations to any Person formerly employed by Seller.

**IV.14 Tax Matters.** Seller has timely filed, taking into account any extensions, all Tax returns required to be filed by it in respect of any Taxes (“Returns”), and all Taxes owed by Seller that may be due for the periods covered by the Returns with respect to the Purchased Assets and the Business have been paid. All Returns filed by Seller with respect to the Purchased Assets and the Business are accurate in all material respects. There are no Encumbrances with respect to Taxes upon any of the Purchased Assets. All Taxes owed by Seller as a result of its ownership of the Business and the Purchased Assets have been paid. To the Knowledge of Seller, the acquisition and operation of the Business and the Purchased Assets by Buyer will not result in any Taxes being levied upon Buyer that are due from or owing by Seller.

**IV.15 Insurance; Risk of Loss.** Seller has in full force and effect insurance policies with reputable insurance carrier(s), insuring against such hazards, risks and insurable Liabilities to any persons and/or property, including the Business, Service Facilities, Purchased Assets, and Real Property, to the extent and in the manner customary for Persons in similar businesses similarly situated. Seller shall bear the risk of loss or damage to the Purchased Assets prior to the Closing Date. All Policies are listed on Schedule 4.15. The 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. 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. 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 insurance coverage listed on Schedule 4.15 will or may not be available in the future on substantially the same terms as now in effect, and to the Knowledge of the Seller, there is no basis for the issuance of any such notice or for any such action.

**IV.1 Brokers.** Seller has not employed or retained any broker or finder in connection with the sale of the Purchased Assets hereunder. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission from Seller in connection with the transactions contemplated by this Agreement or any other Transaction Document.

**IV.2 Third Parties.** Information provided by, or representations and warranties made by, third parties to Buyer (including but not limited to MWS, WaterMark Resource Development, Inc., Jim Crabtree and/or Mark Lambert) shall not constitute the representation or warranties of Seller, except to the extent confirmed by Seller or by the existence of independent, extrinsic evidence substantiating such representation and warranty. Only information provided by, or representations and warranties made by, Ian Kagimoto shall constitute the representations and warranties of Seller.

IV.3 Disclosure. To the Knowledge of Seller, no representation or warranty by Seller in this Agreement and no statement contained in the Schedules to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading. In no event, shall the fact that Buyer had the opportunity to conduct due diligence be used by Seller as a defense or otherwise to Buyer's enforcement of a Seller representation, warranty or covenant.

IV.4 No Other Representations and Warranties. Except as set forth in this Article IV (including the Disclosure Schedule), Seller makes no other representation or warranty regarding the Business or the Purchased Assets. Except for the representations and warranties contained in this Article IV (including the Disclosure Schedule), the Purchased Assets are sold "as-is, where-is" and "with all faults."

IV.5 Sufficiency of Assets; Title. Seller has good and marketable title to the all of the Purchased Assets, including without limitation the System, the Leased Premises and the Easements, free and clear of any Encumbrances. The Purchased Assets constitute all of the Purchased Assets necessary to conduct Seller's Business in the manner presently conducted by Seller and include all of the operating assets of Seller. The Tangible Personal Property and the System Assets are in good operating condition and repair, and are adequate for all current operations of Seller.

IV.6 Books and Records. Seller's Books and Records are the true books and records of Seller and truly and accurately reflect the underlying facts and transactions reported on in such books and records in all material respects.

IV.7 Customers and Customer Contracts. Attached hereto as Schedule 4.22) is a true, accurate and complete list of the current customers of Seller ("Existing Customers"). The update to this Schedule to be delivered at the Closing will be a true, accurate and complete list of Existing Customers as of the Closing Date. To the extent that Seller has a written letter of intent or contract or agreement with all customers listed in Schedule 4.22, true, accurate and complete copies of all such written Customer Contracts will be delivered to Buyer before the Closing. Each written Customer Contract is in full force and effect and all obligations of Seller thereunder required to be performed prior to the Closing have been or will be performed prior to the Closing. Neither Seller nor Seller's respective customers are in breach of any of the Customer Contracts other than breaches by customers arising out of their failure to pay their respective Delinquent Accounts. There are no limitations, restrictions or prohibitions to the assignment of the Customer Contracts to Buyer. Upon consummation of the transaction contemplated hereby, Buyer will succeed to all of Seller's right, title and interest in and to the Customer Contracts.

IV.8 Solvency. Seller is not now insolvent and will not be rendered insolvent by any of the Contemplated Transactions. As used herein, "insolvent" means that the sum of the debts and other probable Liabilities of Seller exceeds the present fair saleable value of Seller's Assets.

## ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

V.1 Organization and Qualification of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Hawaii. Buyer is qualified to do business and is in good standing in the State of Hawaii.

V.2 Authority of Buyer. Buyer has full corporate power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and upon receipt of approval from the Commission to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate or limited liability company action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms. When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms.

V.3 No Conflicts; Consents.

(a) The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, operating agreement or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under any Contract to which Buyer is a party.

(b) Except for approval of the Commission, with respect to (i) the transfer of the Business and the Purchased Assets, (ii) the transfer or grant to Buyer of a certificate of convenience and necessity, and (iii) the confirmation by the Commission of rates and terms of service going forward with respect to the Business, no consent, authorization, order, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the performance of its obligations and the consummation of the transactions contemplated hereby and thereby, including but not limited to operating the Business and owning, leasing, operating, or using the Purchased Assets.

V.4 Legal Proceedings. There are no Actions pending or, to the knowledge of Paul Townsley, Vice President of Buyer, threatened against or by Buyer or any Affiliate of Buyer that

challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

V.5     **Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

## **ARTICLE VI** **COVENANTS**

### **VI.1     Conduct of Business Prior to the Closing.**

**(a)**     From the date of this Agreement until the Closing, Seller shall and shall cause MWS to (x) operate the Business in the Ordinary Course of Operations consistent with past practice; and (y) use commercially reasonable efforts to maintain and preserve intact the Business and its operations and to preserve the rights, franchises, goodwill and relationships of the employees, customers, suppliers, regulators and others having relationships with the Business. From the date hereof until the Closing Date, Seller shall and shall cause MWS to:

- i.**     maintain the Business and the Purchased Assets in the Ordinary Course of Operations but in any event consistent with Good Utility Practices and Applicable Law, including but not limited to, maintenance, repair, replacement or changes to the Purchased Assets;
- ii.**     pay or otherwise satisfy in the Ordinary Course of Operations all of its Liabilities and obligations;
- iii.**     confer with Buyer prior to implementing operational decisions of a material nature;
- iv.**     respond within five (5) days to reasonable inquiries of Buyer concerning the status of the Business, operations and finances;
- v.**     keep in full force and effect, without amendment, all material rights relating to the Business;
- vi.**     comply with all Applicable Law and contractual obligations applicable to the operations of the Business;
- vii.**     continue in full force and effect the Business's insurance coverage;
- viii.**     cooperate with Buyer and assist Buyer in identifying the consents, authorizations, orders, approvals, Permits, Governmental Orders, declarations or filings with, or notices to, all Governmental Authorities required by Buyer to operate the Business and own the Purchased Assets from and after the Closing and either transferring existing governmental authorizations of Seller to Buyer, where permissible, or using commercially reasonable efforts to assist Buyer in obtaining new governmental authorizations for Buyer;

**ix.** upon request from time to time, use commercially reasonable efforts to execute and deliver all documents, make all truthful oaths, testify in any legal or administrative proceedings and do all other commercially reasonable acts that may be reasonably necessary or desirable in the opinion of Buyer to consummate the contemplated transactions, all without further consideration; including without limitation, taking such commercially reasonable actions as necessary and appropriate to cause the Land Court Certificate of Title for the Leased Premises to reflect the fact that Seller holds transferrable title to one hundred percent (100%) of the leasehold interests under the Sewer Plant Lease such that the Title Company shall issue at Closing to Buyer the Title Policy covering 100% of the interest of the "Lessee" under the Sewer Plant Lease free and clear of all encumbrances except for the Permitted Encumbrances. Seller understands that such action may require that Seller file and appropriate petition with the Land Court and obtain an order directing that said Certificate of Title note that Seller holds 100% of said interest;

**x.** maintain all books and records of Seller relating to the Business and the Purchased Assets in the Ordinary Course of Operations, including, without limitation, all maps, service line locations and customer records;

**xi.** give Buyer prompt notice of any event or condition of any kind learned by Seller between the Effective Date of this Agreement and the Closing pertaining to and adversely affecting the Business or the Purchased Assets, excepting events or conditions affecting the wastewater utility business generally; and

**xii.** perform all of its obligations under all Assigned Contracts.

**(b)** From the date of this Agreement until the Closing, Seller shall not do, or agree to do, and cause MWS not to do or agree to do, any of the following acts without the prior written consent of Buyer:

**i.** enter into any agreement or contract to provide utility services, including "will serve" letters;

**ii.** Enter into any Contract or transaction not in the Ordinary Course of Business, except, however, Buyer 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);

**iii.** Enter into any Contract or transaction in the Usual and 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, Buyer 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);

**iv.** Make any capital expenditures in excess of ten thousand dollars (\$10,000), for any single item or in the aggregate, or enter into any leases of capital equipment or property under which the annual lease charge is in excess of two thousand five hundred dollars (\$2,500), except, however, Buyer shall not unreasonably withhold

written consent in the event that expenditures are necessary to correct an interruption in service to any customer(s);

v. pay any obligation or Liability, fixed or contingent, other than current Liabilities,

vi. waive or compromise any right or claim

vii. cancel, without full payment, any note, loan or other obligation owing to Seller, or

viii. 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.

VI.2 No Solicitation of Other Bids. Seller shall not directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, discuss or negotiate with, provide any nonpublic information to, or consider the merits of any inquiries or proposals from any Person (other than Buyer) relating to any transactions involving the Purchased Assets or the Business, except as otherwise required by law. Seller shall not solicit or accept back-up offers once Seller and Buyer shall file their application for the Commission's approval of the sale and purchase of the Assets and the Business. Notwithstanding the foregoing, from September 1, 2021 until the filing of the Change of Control application with the Commission, Seller may directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, discuss or negotiate with, provide any nonpublic information to, or consider the merits of any inquiries or proposals from any Person relating to any transactions involving the Purchased Assets or the System and may terminate this Agreement any time therein, with or without cause, upon delivery of written notice thereof to Buyer.

VI.3 Notice of Certain Events.

(a) From the date of this Agreement until the Closing, Seller shall promptly notify Buyer in writing if it becomes aware of:

i. any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Seller hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 7.2;

ii. any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

iii. any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

**iv.** any Action commenced or, to the Knowledge of Seller, threatened against, relating to or involving or otherwise affecting the Business, the Purchased Assets or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.13 or that relates to the consummation of the transactions contemplated by this Agreement.

**(b)** Buyer's receipt of information pursuant to this Section 6.3(a) shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement, unless and until:

**i.** If Seller's notice is provided during the Due Diligence Period or the Extended Due Diligence Period and Buyer fails to deliver the Cancellation Notice prior to the expiration of the Due Diligence Period or the Extended Due Diligence Period as the case may be; and

**ii.** If Seller's notice is provided after the Due Diligence Period or Extended Due Diligence Period and Buyer fails to deliver to Seller written notice of termination of the Contemplated Transactions by the earlier of (A) thirty (30) Business Days of receipt of information pursuant to this Section 6.3; or (B) five (5) Business Days following the Commission's approval of the transfer of the Purchased Assets and Business from Seller to Buyer.

#### VI.4 Governmental Approvals and Consents.

**(a)** Seller and Buyer shall use commercially reasonable efforts to secure the Commission's approval of the transaction contemplated herein. Seller shall retain AM Pacific Group LLP and Buyer shall retain Watanabe Ing LLP to jointly prepare the application and other documentation reasonably necessary to obtain Commission approval and Buyer shall be responsible for all legal fees and costs related to obtaining Commission approval of the transaction contemplated herein up to \$25,000 as set forth in Section 2.4(c). Buyer acknowledges and agrees that the application for Commission approval shall include a request that Seller's rules, regulations and tariff rates in effect as of the Effective Date shall be adopted by Buyer until such time as Buyer shall seek Commission approval to change or otherwise modify such rules, regulations or rates to be charged by Buyer to the System Customers. The Parties shall use commercially reasonable efforts to file the change in control application no later than thirty (30) days from the Effective Date.

**(b)** In addition to obtaining Commission approval of the transaction contemplated herein as provided in Section 6.4(a), each Party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions required under any Law applicable to such Party or any of its Affiliates; and (ii) cooperate fully with the other Party and its Affiliates and otherwise use reasonable best efforts to promptly obtain, or cause to be obtained, all consents, authorizations, orders, approvals, Permits, Governmental Orders, declarations or filings with, or notices to, all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the other Transaction Documents and the performance of its obligations and the consummation of the transactions contemplated hereby and thereby, including

but not limited to operating the Business and owning, leasing, operating, or using the Purchased Assets at Buyer's sole cost and expense.

**(c)** Seller and Buyer shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 4.3(a) of the Disclosure Schedule and Section 5.3(a).

**(d)** All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either Party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Seller or Buyer with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other Party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each Party shall give notice to the other Party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other Party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

**(e)** Notwithstanding the foregoing, nothing in this Section 6.4 shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer or any of its Affiliates, or to consent to dispose of any part of or make changes to the Business; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement and the other Transaction Documents; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

**VI.5 Taxes and Transfer or Assignment Cost.** Except as provided herein, any sales, transfer, purchase, use, or similar tax or fees (other than capital gains tax) that may be payable by reason of the sale of all or a portion of the Purchased Assets ("Transfer Taxes") shall be borne by the Party who is liable for such tax under the law.

**VI.6 Procurement of Easements and Rights-of-Way.** Seller agrees to use commercially reasonable efforts to assist Buyer, and its successors and assigns, in the necessary procurement or acquisition of easements or rights-of-way if such easements or rights-of-way are necessary and prudent for the supply of utility service to System Customers and that are not included in the Easements.

**VI.7 Survey.** Within ten (10) days after the Effective Date, Seller shall make available for Buyer's review, any surveys in Seller's possession for the Leased Premises at Seller's offices. All surveys described in this paragraph are hereinafter referred to as the "Seller's Surveys".

**VI.8 Due Diligence Review.**

**(a)** Within ten (10) days after the Effective Date Seller shall also make available any of the following documents in Seller's possession for Buyer's review at Seller's offices:

- i.** the Sewer Plant Lease;
- ii.** all plans for the System;
- iii.** all easements or similar instruments under which Seller is the grantee where the easement or real property right evidenced is utilized in any manner by Seller for the placement, maintenance, repair, operation or improvement of the System;
- iv.** all environmental reports and investigations that Seller owns, has obtained, or has ordered with respect to the System, the Purchased Assets or the Real Property;
- v.** an inventory of all tangible personal property owned or leased by Seller and used in connection with the Business;
- vi.** any reports or other correspondence related to the condition of the Purchased Assets;
- vii.** certificates of occupancy and other governmental licenses or approvals relating to any portion of the System, including any necessary distribution system operating permits and all other Permits;
- viii.** service records or bills for repairs to any part of the System for the prior three (3) years; and
- ix.** warranties relating to the System.

**(b)** The obligation of Buyer to close the Contemplated Transactions shall be subject to Buyer's satisfactory review and approval of the Purchased Assets, the Business, Assigned Contracts, Assumed Liabilities, the Contemplated Transactions, and anything related to the Contemplated Transactions contemplated hereby, in Buyer's sole and absolute discretion. From the Effective Date until the earlier of the Closing or termination of this Agreement, Seller shall give Buyer and its independent contractors, 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 and operations. Seller shall furnish to Buyer and its representatives such additional data and information concerning its business, operations and assets that may be reasonably requested as part of a customary due diligence review (“Due Diligence Review”) and as may be requested after such Due Diligence Review provided that Buyer shall not have delivered the Cancellation Notice as provided in Section 6.8(b)(vi) below. Buyer has ninety (90) days from date of this Agreement (“Due Diligence Period”) to conduct the Due Diligence Review. Without limiting Buyer may terminate this Agreement and not proceed with the Contemplated Transactions during the Due Diligence Period for any reason or no reason. In connection with the Buyer's Due Diligence Review the Parties agree as follows:

**i. Access to Employees and Contractors.** Seller shall make commercially reasonable efforts to cause its employees, agents, independent contractors, and consultants, including without limitation, MWS, to cooperate with Buyer and Buyer's representatives and consultants in conducting the Due Diligence Review and to provide such information related to the Business and the Purchased Assets that Buyer may request.

**ii. Title Report.** At any time prior to the expiration of the Due Diligence Period, Buyer may obtain, from Title Company, a title report covering the Real Property ("Title Report"), as Buyer deems necessary or appropriate to confirm the title of such properties, including without limitation, the Sewer Plant Lease. The fees of such Title Report shall be borne solely by Buyer.

**iii. Survey.** At any time prior to the expiration of the Due Diligence Period, Buyer may obtain a survey of the Real Property, as Buyer deems necessary or appropriate ("Buyer's Survey"). The fees of Buyer's Survey shall be borne solely by Buyer.

**iv. Environmental Testing.** At any time prior to the expiration of the Due Diligence Period, Buyer may engage a reputable third-party environmental consulting company to perform a Phase I and Phase 2 environmental site assessment and/or any non-destructive testing of the soil, groundwater, building components, tanks, containers and equipment on the Real Property, as Buyer deems necessary or appropriate to confirm the condition of such properties ("Environmental Testing"). Buyer shall indemnify Seller for any damage caused by the Environmental Testing. The fees for such environmental consulting company shall be borne solely by Buyer. Upon reasonable advance notice to Seller, Seller shall permit the environmental consulting company to have access to the Real Property for purposes of conducting any Environmental Testing.

**v. Extension of Due Diligence Period.** If, through no fault of Buyer, (i) the Title Report, Buyer's Survey, and/or the Environmental Testing is not completed prior to the end of the Due Diligence Period, or (ii) Buyer has not received sufficient verification that all necessary easements are in place or will be in place at Closing as reasonably necessary to operate the Business and the System, the Due Diligence Period for only those items that are not completed and/or for only those easements not sufficiently verified, as the case may be, may be extended to the earlier of the date which is: (A) ten (10) Business Days after the completed Title Report, Buyer's Survey, or Environmental Testing, or sufficient verification of easements is delivered to Buyer; or (B) sixty (60) days after the last day of the Due Diligence Period ("Extended Due Diligence Period"). In order to extend the Due Diligence Period, Buyer must give written notice to Seller and to Escrow Agent by 4:00 p.m., Hawai'i Standard Time on or before the last day of the Due Diligence Period, of (1) Buyer's specific reason for the requested extension (non-receipt of Title Report, Buyer's Survey, Environmental Testing, and/or sufficiency of verification of specific easements), (2) Buyer's current intention to continue with the Contemplated Transactions, (3) Buyer's acceptance and satisfaction of Buyer's Due Diligence Review (except for the Title Report, Buyer's

Survey, and/or Environmental Testing for which the extension is being sought); (4) the date which Buyer anticipates receiving the Title Report, Buyer's Survey, and/or Environmental Testing, and/or sufficiency of verification of specific easements, as the case may be and as identified in such notice, and (5) Buyer's agreement that Buyer may only elect not to proceed with the Contemplated Transactions based on the Title Report, Survey, and/or Environmental Testing, and/or sufficiency of verification of specific easements for which the extension is being sought or failure of the conditions precedent to Closing ("Extension Notice"). This provision only applies to the Due Diligence Period. This does not allow for extension beyond the Extended Due Diligence Period, if any.

**vi. Cancellation Notice.** If Buyer does not wish to proceed with the Contemplated Transactions, Buyer shall deliver notice of cancellation to Seller on or before 4:00 p.m. (Hawai'i Standard Time) on the last day of the Due Diligence Period or the Extended Due Diligence Period as applicable ("Cancellation Notice"). If Buyer delivers the Cancellation Notice in a timely manner, then this Agreement shall terminate, Escrow shall return the Initial Deposit to Buyer, less Buyer's share of escrow cancellation fees, if applicable, and this Agreement will terminate and be of no further force or effect, except for matters that expressly survive termination. In the event Buyer does not timely deliver the Cancellation Notice, this Agreement shall remain in full force and effect and Buyer shall have no further right to terminate this Agreement, except as otherwise set forth herein.

**(c)** Buyer shall have the right to object in writing to any Encumbrances which are disclosed in the Title Report or Buyer's Survey within fifteen (15) Business Days after receipt of the Title Report and Buyer's Survey. Any Encumbrances which are timely objected to by Buyer shall be herein collectively called the "Title Objections." Seller may elect (but shall not be obligated) to remove or remedy, at its expense, any Title Objections. Seller shall notify Buyer in writing at least fifteen (15) Business Days prior to the end of the Due Diligence Period or Extended Due Diligence Period, whether Seller elects to remove or remedy the same. If Seller is unable to remove or remedy any Title Objection prior to the Closing, or if Seller elects not to remove or remedy one or more Title Objections, Buyer may elect to either (a) terminate this Agreement or (b) notify Seller that Buyer has elected to waive such Title Objections. If Seller fails to give Buyer written notice of Seller's election as to whether it will remove or remedy any Title Objection identified by Buyer, then Seller shall be deemed to have elected to not remove such Title Objections. If, before the end of the Due Diligence Period or the Extended Due Diligence Period, Buyer fails to give Seller written notice of Buyer's election as to termination or waiver of the Title Objections, then Buyer shall be deemed to have elected to waive such Title Objections.

#### VI.9 Transition and Non-Disparagement.

**(a)** Seller will not take any action that is designed or intended to have the effect of discouraging any lessor, customer, supplier or other business associate of Seller from maintaining the same business relationships with Buyer after the Closing as it maintained with Seller prior to the Closing. Seller will refer all inquiries or requests relating to the Business or the Purchased Assets (or any portion thereof) to Buyer from and after the Closing.

**(b)** Seller shall use commercially reasonable efforts to cooperate with Buyer to transition the Purchased Assets to Buyer.

**(c)** For a period of five (5) years after the Closing, neither Party will disparage in any manner the other Party or its Representatives, the Purchased Assets, the Business, the business conducted by the other Party using the Purchased Assets, or any of the products, services or business practices of the other Party.

VI.10 Non-Competition.

**(a)** For a period of three (3) years commencing on the Closing Date (the “Restricted Period”), Seller shall not, and shall not permit any of its Affiliates to, directly or indirectly, (i) engage in or assist others in engaging in the Restricted Business in the Territory; (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in the Territory in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant; or (iii) cause, induce or encourage any material actual or prospective client, customer, supplier or licensor of the Business (including any existing or former client or customer of Seller and any Person that becomes a client or customer of the Business after the Closing), or any other Person who has a material business relationship with the Business, to terminate or modify any such actual or prospective relationship. Notwithstanding the foregoing, Seller may: (i) provide engineering consulting services to individuals, businesses, and government agencies on water and wastewater matters, including the design of individual wastewater systems done by Kagimoto & Associates, Inc., a Hawaii corporation, in which Seller’s sole member is president and a shareholder; and (ii) own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if Seller is not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own 5% or more of any class of securities of such Person.

**(b)** Seller acknowledges that a breach or threatened breach of this Section 6.10 would give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Seller of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

**(c)** Seller acknowledges that the restrictions contained in this Section 6.10 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 6.10 should ever be adjudicated to exceed the time, geographic, product or service or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service or other limitations permitted by applicable Law. The covenants contained in this Section 6.10 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such

invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

VI.11 Bulk Sales Laws. In compliance with HI Rev. Stat. § 237-43, Seller shall give notice of the bulk sale contemplated by this Agreement to the Hawaii Department of Taxation by filing therewith form G-8A, Report of Bulk Sale or Transfer.

VI.12 Further Assurances. Following the Closing, each of the Parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

VI.13 Closing Schedule. Upon full execution of this Agreement by the Parties, Seller shall provide to Buyer a schedule reflecting the due date for various items in this Agreement whether based upon Business Days or calendar days for the Parties' review and acceptance.

VI.14 Filing of HI DOTAX Form D-37. Seller agrees Buyer may file Hawaii State Tax Department Form D-37 at any time prior to Closing but after the receipt of a Non-appealable HPUC Approval Order.

## **ARTICLE VII CONDITIONS TO CLOSING**

VII.1 Conditions to Obligations of All Parties. The obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of the following condition. Buyer may waive any or all of these conditions (in whole or in part); provided, however, that no such waiver of a condition shall constitute a waiver by Buyer of any other condition.

**(a)** The Commission shall have issued a Non-Appealable HPUC Order approving the transfer of the Purchased Assets and the Business from Seller to Buyer on terms and conditions acceptable to Buyer in its sole discretion; and

**(b)** No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

VII.2 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions. Buyer may waive any or all of these conditions (in whole or in part); provided, however, that no such waiver of a condition shall constitute a waiver by Buyer of any of its other rights or remedies, at law or in equity, if Seller shall be in default of any of their representations, warranties, covenants or agreements under this Agreement.:

**(a)** the representations and warranties of Seller contained in this Agreement and any certificate or other writing delivered pursuant hereto (considered collectively and each one individually) shall be true and correct in all material respects on and as of the date hereof and on and as of the Closing Date.

**(b)** Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions (considered collectively and each one individually) required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

**(c)** No Action shall have been commenced or threatened (i) involving any challenge to, or seeking damages or other relief in connection with, any of the transactions contemplated by this Agreement, or (ii) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions or otherwise interfering with any of the transactions contemplated by this Agreement.

**(d)** Buyer shall have received all consents, authorizations, orders, approvals, Permits, Governmental Orders, declarations or filings with, or notices to, the Governmental Authorities referred to in Section 5.3(b), in each case final, non-appealable, and in form and substance satisfactory to Buyer in its sole discretion, and no such consent, authorization, order or approval shall have been revoked.

**(e)** From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

**(f)** Buyer shall have received all Permits that are necessary for it to conduct the operations of the Business as conducted by Seller as of the Closing Date.

**(g)** Evidence of remediation and resolution of all matters reflected, or required to be reflected, on Section 4.13 of the Disclosure Schedule or Section 4.14 of the Disclosure Schedule shall have been received and be satisfactory in all respects to Buyer in its sole discretion.

**(h)** Buyer shall have received a favorable opinion of Seller's counsel, in form and substance acceptable to Buyer, as to Seller's limited liability company status, power and action, enforceability, no conflicts, consents and approvals, and such other matters as Buyer shall reasonably request (the "Opinion of Counsel").

**(i)** Buyer shall have received written evidence acceptable to Buyer indicating that the Purchased Assets have been, or upon payment as contemplated by Section 2.6 will be, discharged and released from all Encumbrances other than Permitted Encumbrances.

**(j)** Buyer shall have received a tax clearance certificate from the Hawaii Department of Taxation, as of a date not more than thirty (30) days prior to the Closing Date.

**(k)** Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in Section 7.2(a), Section 7.2(b) and Section 7.2(e) have been satisfied (the "Seller Closing Certificate").

**(l)** Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller (the “Seller Secretary Certificate”) (i) certifying that attached thereto are true and complete copies of all resolutions adopted by the governing board of Seller authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby, and (ii) certifying the names and signatures of the officers of Seller authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

**(m)** Seller shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement (including an affidavit of non-foreign status if determined to be necessary).

**(n)** An Operations and Management Agreement by and between Buyer and MWS for the operations and management of the System in form and substance acceptable to Buyer shall have been executed and delivered by the parties thereto and be in effect, subject only to the Closing of the Contemplated Transactions.

**(o)** At or prior to the Closing, Buyer shall have received a Uniform Commercial Code (“UCC”) search report dated as of a date not more than five (5) days before the Closing Date that there are no filings under the UCC on file with the Bureau which name Seller as debtor or otherwise indicating any lien on the Purchased Assets. At the Closing, the Title Company shall be irrevocably committed to issuing the Title Policy to Buyer at Closing in form and substance in all respects satisfactory to Buyer and with such endorsements required by Buyer, including without limitation insuring title to one hundred percent (100%) of the leasehold interests (including 100% of the interest of the “Lessee”) under the Sewer Plant Lease.

**(p)** Buyer shall be satisfied with all inspections and investigations concerning title to, surveys and condition of the Real Property, Easements, and other Purchased Assets. Failure of Buyer to be satisfied under this section is not a breach of this Agreement by Seller.

**VII.3 Conditions to Obligations of Seller.** The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller’s waiver, at or prior to the Closing, of each of the following conditions:

**(a)** the representations and warranties of Buyer contained in this Agreement and any certificate or other writing delivered pursuant hereto (considered collectively and each one individually) shall be true and correct in all material respects on and as of the date hereof and on and as of the Closing Date.

**(b)** Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions (considered collectively and each one individually) required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

**(c)** Seller shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 4.3(b) of the Disclosure

Schedule, in each case final, non-appealable, and in form and substance reasonably satisfactory to Seller, and no such consent, authorization, order or approval shall have been revoked.

**(d)** Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 7.3(a) and Section 7.3(b) have been satisfied (the “Buyer Closing Certificate”).

## **ARTICLE VIII** **INDEMNIFICATION**

**VIII.1 Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing indefinitely. All covenants and agreements of the Parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein.

**VIII.2 Indemnification by Seller.** Subject to the other terms and conditions of this Article VIII, Seller shall indemnify, hold harmless and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the “Buyer Indemnitees”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

**(a)** any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement, the other Transaction Documents or in any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date;

**(b)** any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement, the other Transaction Documents or any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement;

**(c)** any Excluded Asset or any Excluded Liability; or

**(d)** any Third Party Claim, Action or Liability based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Seller or the Business (other than Assumed Liabilities) conducted, existing or arising on or prior to the Closing Date, including without limitation, any violation of Environmental Law, Environmental Claim or Environmental Condition.

**VIII.3 Indemnification by Buyer.** Subject to the other terms and conditions of this Article VIII, Buyer shall indemnify and defend each of Seller and its Affiliates and their respective Representatives (collectively, the “Seller Indemnitees”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

**(a)** any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of

Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement;

(c) any Assumed Liability; or

(d) any Third Party Claim, Action or Liability based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Buyer or the Business conducted or arising after the Closing Date.

**VIII.4 Indemnification Procedures.** The party making a claim under this Article VIII is referred to as the “Indemnified Party”, and the party against whom such claims are asserted under this Article VIII is referred to as the “Indemnifying Party”.

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a Party to this Agreement or an Affiliate of a Party to this Agreement or a Representative of the foregoing (a “Third Party Claim”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail and indicate an estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; provided, that if the Indemnifying Party is Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a System Customer, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.4(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, provided, that if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its

election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 8.4(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

**(b)      Settlement of Third Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 8.4(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 8.4(b), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

**(c)      Direct Claims.** Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “Direct Claim”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail and indicate an estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its Representatives to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access to the Indemnified Party’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its Representatives may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the

Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

VIII.5 Payments. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article VIII, the Indemnifying Party shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds.

VIII.6 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for tax purposes, unless otherwise required by Law.

VIII.7 Effect of Investigation. The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Party's waiver of any condition set forth in Section 7.2 or Section 7.3, as the case may be.

VIII.8 Exclusive Remedies. Subject to Section 10.12, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or intentional misconduct on the part of a Party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article VIII. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article VIII. Nothing in this Section 8.8 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct.

## **ARTICLE IX TERMINATION**

IX.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Seller and Buyer;

(b) by Buyer by written notice to Seller if:

i. Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in

Article VII and such breach, inaccuracy or failure has not been cured by Seller within ten (10) days of Seller's receipt of written notice of such breach from Buyer; or

**ii.** any of the conditions set forth in Section 7.1 or Section 7.2 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by June 1, 2023 (the "Outside Date"), which may be extended by written agreement of the parties, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

**(c)** by Seller by written notice to Buyer if:

**i.** Seller is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article VII and such breach, inaccuracy or failure has not been cured by Buyer within ten (10) days of Buyer's receipt of written notice of such breach from Seller; or

**ii.** any of the conditions set forth in Section 7.1 or Section 7.3 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Date, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

**iii.** any time after September 1, 2021 until the filing of the Change of Control Application with the Commission, with or without cause.

**(d)** by Buyer or Seller in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

**(e)** By Buyer pursuant to Section 6.9(b)(vi).

**IX.2 Effect of Termination.** In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any Party except:

**(a)** as set forth in this Article IX and Article X hereof; and

**(b)** that nothing herein shall relieve any Party hereto from liability for any breach of any provision hereof.

## ARTICLE X MISCELLANEOUS

X.1 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

X.2 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); or (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested). Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.2):

Notices to Buyer:

Hawaii Water Service Company  
General Manager  
P.O. Box 384809  
Waikoloa, Hawai‘i 96738  
[acarrasco@calwater.com](mailto:acarrasco@calwater.com)

With a copy (which shall not constitute legal notice) to:

General Counsel  
1720 N. First Street  
San Jose, CA 95112  
[lmcghee@calwater.com](mailto:lmcghee@calwater.com)

Notices to Seller:

HOH Utilities, LLC  
P.O. Box 383  
Lawai, Hawaii 96765  
Attn: Ian Kagimoto  
Email: ikagimoto@hawaii.rr.com

With a copy (which shall not constitute legal notice) to:

AM Pacific Group LLP  
841 Bishop Street, Suite 400  
Honolulu, Hawaii 96813  
Attention: Michael H. Lau  
Email: [mlau@amgrouphi.com](mailto:mlau@amgrouphi.com) and  
[jtakahashi@amgrouphi.com](mailto:jtakahashi@amgrouphi.com)

X.3 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections,

Schedules and Exhibits mean the Articles and Sections of, and Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

X.4 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

X.5 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

X.6 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Schedules (other than an exception expressly set forth as such in the Schedules), the statements in the body of this Agreement will control.

X.7 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that prior to the Closing Date, Buyer may, without the prior written consent of Seller, assign all or any portion of its rights under this Agreement to one or more of its Affiliates. No assignment shall relieve the assigning party of any of its obligations hereunder.

X.8 No Third-party Beneficiaries. Except as provided in Article VIII, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

X.9 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure,

breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

X.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

**(a)** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Hawaii without giving effect to any choice or conflict of law provision or rule (whether of the State of Hawaii or any other jurisdiction).

**(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF HAWAII IN EACH CASE IN OR FOR KAUAI COUNTY, HAWAII, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.**

**(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.10(c).**

X.11 Limitation of Remedies. UNDER NO CIRCUMSTANCES (SAVE FOR FRAUD) SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES, LOST PROFITS OR

**ECONOMIC LOSSES ARISING OUT OF ANY CLAIM, DEMAND, OR ACTION BROUGHT WITH RESPECT TO THIS AGREEMENT.**

X.12 Specific Performance. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

X.13 Attorneys' Fees. Except as and to the extent stated otherwise in this Agreement, if a Party commences an action against the other Party because of a breach by that Party of its obligations under this Agreement or any documents executed in consummation of the transactions contemplated by this Agreement, the prevailing Party in any such action shall be entitled to recover from the losing Party its expenses, including reasonable attorneys' fees, incurred in connection with the prosecution or defense of such action, and any appeal thereof.

X.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

X.15 No Personal Liability. This Agreement has been executed by or on behalf of each Party in their capacities as officers, members or managers of their respective Party, and not in their individual capacities. Except in case of fraud, no personal liability or obligations under this Agreement shall be imposed or assessed against any of said officers, member or managers in their individual capacities.

X.16 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 acknowledges that Buyer 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. Except with the prior consent of the other party or as permitted by this Agreement, neither party shall disclose (a) the fact that any Confidential Information of Seller has been disclosed to Buyer or its Representatives, that Buyer or its representatives have inspected any portion of the Confidential Information of Seller, that any Confidential Information of Buyer has been disclosed to Seller or their representatives or that Seller or their representatives have inspected any portion of the Confidential Information of Buyer or (b) any information about the Contemplated Transactions, including the status of such discussions or negotiations, the execution of any documents (including this Agreement) or any of the terms of the Contemplated Transactions or the related documents (including this Agreement). Seller and Buyer 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 Buyer will have the right to be present for any such communication.

X.17 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.

**[SIGNATURES ON FOLLOWING PAGE]**

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

**SELLER:**

**HOH UTILITIES, LLC**, a Hawaii limited liability company

By: Ian Kagimoto  
Name: Ian Kagimoto  
Its Sole Member

**BUYER:**

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

By: Marty Kropelnicki  
Name: Marty Kropelnicki  
Its: President and CEO

By: Thomas F. Smegal, III  
Name: Thomas F. Smegal, III  
Its: Vice-President and CFO

**Schedule 2.1(b)**

**Certain Service Facilities**

The wastewater system consists of two lift stations located on TMK (4) 2-8-016:003 and TMK (4) 2-8-016:007, a wastewater treatment plant located on TMK (4) 2-8-014:027 along with collection system piping and associated appurtenances.

The recycled water system consists of a booster pumping station located at the treatment plant and distribution system piping, including associated appurtenances to deliver the reuse water to the storage pond located at the Kiahuna Golf Course. Piping is owned by the utility up to and including the meter assembly.

These facilities include pumping equipment, storage facilities, piping, waste processing and handling equipment, power delivery equipment, monitoring and controls equipment, odor control equipment, laboratory equipment, and office space/equipment. It also includes buildings and shelters to house this equipment.

**Schedule 2.1(e)**

**Assigned Contracts**

1. Recycled Water – “Will Serve” Letter dated March 25, 2008, between HOH Utilities, LLC and Kiahuna Kanahiku, LLC c/o Mr. Jim Peterson, V.P.
2. Wastewater Services – “Will Serve” Commitment re Koa‘e Affordable Housing – TMK (4) 2-6-004:019 letter dated July 5, 2018, between HOH Utilities (“HOH”) and Kukui‘ula South Shore Community Services, LLC (“KSSCS”).
3. Wastewater Facilities and Services Agreement dated December 6, 2007, between Koloa Marketplace LLC (“Developer”) and HOH Utilities, LLC (“HOH”).
4. Wastewater Services – “Will Serve” Letter re Sheraton Kauai Resort at Poipu, dated June 12, 2007, between HOH Utilities, LLC and SVO Pacific, Inc.
5. Confirmation of Wastewater Service (Will Serve Commitment 300,000 gpd) for Kiahuna Mauka Partners Development, Poipu, Kauai letter dated December 1, 2005, between HOH Utilities, LLC and Kiahuna Mauka Partners.
6. Letter Agreement – Dedication of Certain Kiahuna Sewer Lines dated June 15, 2011, between KW Kiahuna, LLC, Kiahuna Homesites Community Association-I, Poipu Palms Limited Partnership, Kiahuna Players, LLC, Kiahuna Mauka Partners LLC, Eric A Knudsen Trustee of the Eric A. Knudsen Trust, John Horwitz Successor Co-Trustee, Matthew B. Guard Successor Co-Trustee, George R. Robinson Successor Co-Trustee and Peter Baldwin Successor Co-Trustee.
7. Irrigation Water Facilities Agreement dated May 14, 2008 between HOH Utilities, LLC and Kiahuna Players, LLC.

**Schedule 2.2(e)**

**Certain Excluded Assets**

List of Personal Property (assets) Owned by Makai Water Services, LLC:

- Miller welder
- Miscellaneous hand tools
- Line camera
- Well depth monitor
- Honda portable pump
- GMC Sierra 1500 pickup truck
- Aluma Trailer
- PC Computer and Monitor

List of Personal Property (assets) Owned by Ian Kagimoto:

- Bobcat Skid Steer
- Kodiak flatbed

**Schedule 2.1(j)**

**Licenses**

1. Certificate of Public Convenience and Necessity dated \_\_\_\_\_.
2. State DOH Underground Injection Control Permit No. UK-2388, Facility ID No. 2-5227.08 for PWRF issued 10/9/2018 expires 10/8/2023.
3. Non-Hazardous Waste Acceptance Approval 341023HI Wastewater Sludge (WM001A) PWRF (expires 11/16/2019).
4. State DOH Permit dated \_\_\_\_\_

**Schedule 4.15**

**Seller's Insurance**

1. Policy Number EPK-132009 issued to HOH Utilities, LLC by Crum & Forster dated 8/19/2020 with following limits:

General Aggregate Limit (Other than Products/Completed Operations):	\$3,000,000
Products/Completed Operations Aggregate Limit:	\$3,000,000
Personal & Advertising Injury Limit:	\$3,000,000
Commercial General Liability Each Occurrence Limit:	\$3,000,000
Damage To Premises Rented To You Limit:	\$250,000
Medical Expense Limit:	\$5,000
Third Party Pollution Liability Each Pollution Condition Limit	\$1,000,000
Onsite Cleanup Each Pollution Condition Limit:	\$1,000,000

**Schedule 4.22**

**List of Customers**

## DISCLOSURE SCHEDULE

### **Section 4.3 No Conflicts; Consents**

1. Ground Lessor's consent to Assignment of Sewer Plant Lease.
2. Approval of the Commission.

### **Section 4.9(b) List of Easements**

1. Right-of-Entry Agreement, dated June 15, 2011, made by HOH Utilities, LLC ("HOH") as Grantor and Poipu Beach Estates Community Association ("PBE") as Grantee, unrecorded.
2. Grant of Sewer Easement, dated January 4, 2013, made by Melvin Andrew Yavinsky II and Carolyn Diane Yavinsky as Grantors and HOH Utilities, LLC as Grantee, recorded in the Office of the Assistant Registrar, Land Court the State of Hawaii as Document Number T-8428185.
3. Grant of Sewer Easements, dated January 4, 2013, made by Frederick William Wendler, Jr. and Alison Kay Wendler as Grantors, and HOH Utilities, LLC as Grantee, recorded in the Office of the Assistant Registrar, Land Court the State of Hawaii as Document Number T-8430277.
4. Grant of Sewer Easement, dated August 8, 2013, made by Ed Todeschini and John Ferrante, Co-Trustees of the Todeschini Ferrante Trust dated March 5, 2013 as Grantors, and HOH Utilities, LLC as Grantee, recorded in the Office of the Assistant Registrar, Land Court the State of Hawaii as Document Number T-8670394.
5. Grant of Sewer Easement, dated January 10, 2013, made by KW Kiahuna, LLC as Grantor, and HOH Utilities, LLC as Grantee, recorded in the Office of the Assistant Registrar, Land Court the State of Hawaii as Document Number T-8437412 and the Bureau of Conveyances of the State of Hawaii as Document Number A-47850953.
6. Grant of Sewer Easement, dated August 8, 2013, made by Kiahuna Players, LLC as Grantor, and HOH Utilities, LLC as Grantee, recorded in the Office of the Assistant Registrar, Land Court the State of Hawaii as Document Number T-8691308 and Bureau of Conveyances of the State of Hawaii as Document Number A-50390577.
7. Grant of Sewer Easement, dated January 4, 2013, made by Kiahuna Homesites Community Association-I, LLC as Grantor, and HOH Utilities, LLC as Grantee, recorded in the Office of the Assistant Registrar, Land Court the State of Hawaii as Document Number T-8697221 and Bureau of Conveyances of the State of Hawaii as Document Number A-50450749.
8. Grant of Sewer Easement, dated August 8, 2013, made by John Horwitz, Matthew B. Guard, George R. Robinson and Peter Baldwin, Successor Co-Trustees of the Eric A. Knudsen Trust as Grantor, and HOH Utilities, LLC as Grantee, recorded in the Office of the Assistant Registrar, Land Court the State of Hawaii as Document Number T-8921213.

9. Grant of Sewer Easement, dated January 10, 2013, made by Poipu Palms Limited Partnership as Grantor, and HOH Utilities, LLC as Grantee, recorded in the Office of the Assistant Registrar, Land Court the State of Hawaii as Document Number T-8443329.

**Section 4.10 Legal Proceedings; Governmental Orders**

**None**

**Section 4.11 Compliance with Laws; Permits**

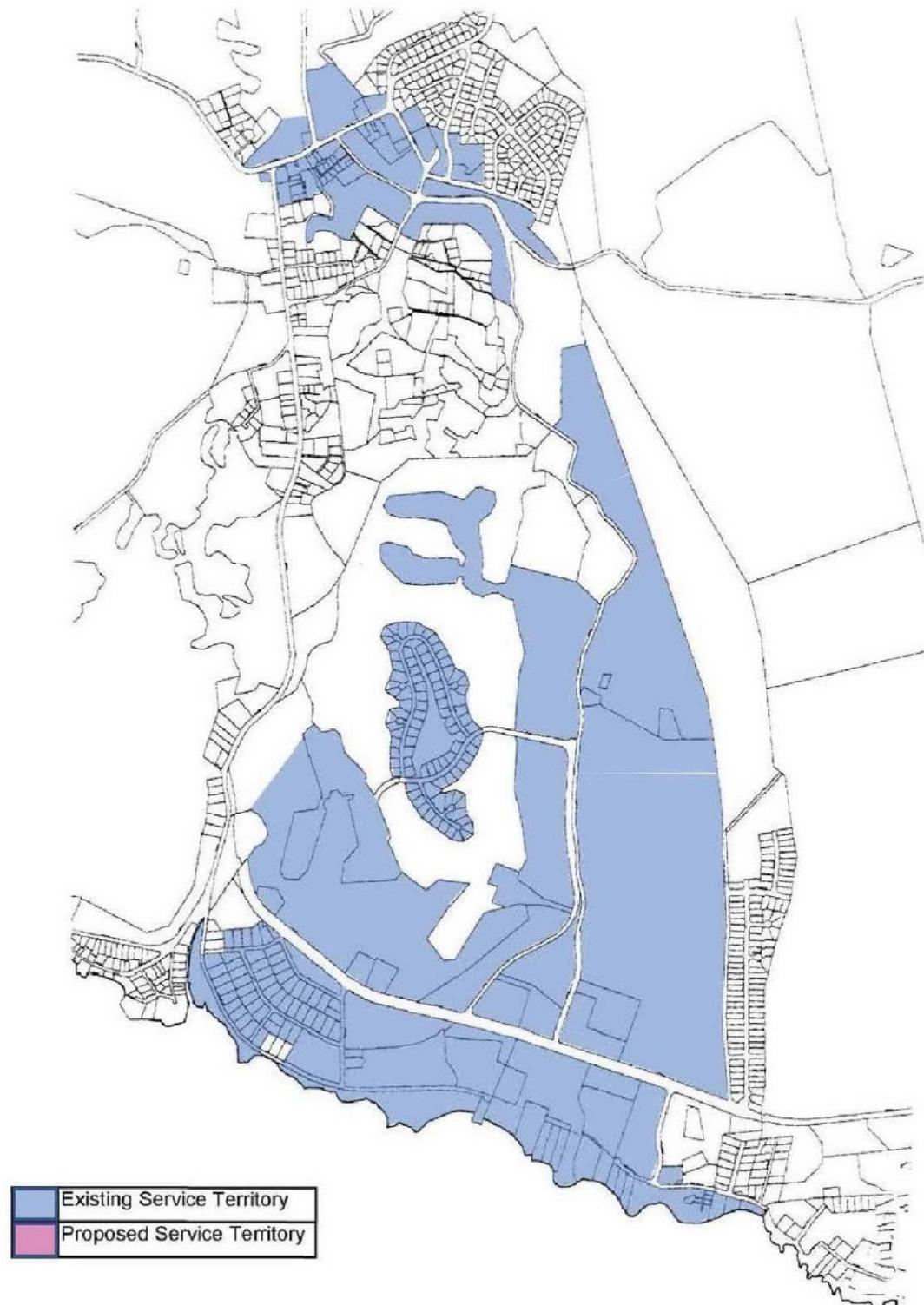
**(a) Exceptions to compliance with all applicable laws**

**None**

**(b) all current Permits**

See Schedule 2.1(j).

**Exhibit A**  
**Existing Service Territory**



**Exhibit B**  
**Form of Assignment of Easements**  
*[Document begins on next page]*

**Exhibit C**

**Form of Assignment of Lease and Consent**

*[Document begins on next page]*

**Exhibit D**

**Form of Bill of Sale**

*[Document begins on next page]*

**Exhibit E**  
**Assignment of Contracts**

[*Document begins on next page*]

## **EXHIBIT B**

First Amendment to Asset Purchase Agreement  
dated September 15, 2021

## FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

**THIS FIRST AMENDMENT ASSET PURCHASE AGREEMENT** (the “First Amendment”) is made and entered into as of September 15, 2021, by and between **HAWAII WATER SERVICE COMPANY, INC.** a Hawaii corporation (“Buyer”), and **HOH UTILITIES, LLC**, a Hawaii limited liability company (“Seller”). Buyer and Seller are sometimes referred to herein as a “Party” and collectively as the “Parties.”

**WHEREAS**, Buyer and Seller are parties to that certain Asset Purchase Agreement dated June 9, 2021 (the “Agreement”) and capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement; and

**WHEREAS**, Buyer and Seller desire to amend the Agreement to amend and restate certain Schedules, address missing easements and address resolution of the title issues related to the Sewer Plant Lease;

**NOW, THEREFORE**, in consideration of the mutual covenants, representations, warranties and agreements and the conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller hereby agree as follows:

**1. Amended and Restated Schedules.** Schedules 2.1(b), 2.1(c), 2.1(e), and 2.1(j) are each hereby amended and restated in their entirety and replaced with the respective Schedules 2.1(b), 2.1(c), 2.1(e) and 2.1(j) attached to this Amendment.

**2. Missing Easements and Pipeline Dedications.** Buyer and Seller recognize and agree that certain easements and pipeline dedications will need to be obtained by Seller and other third parties prior to Closing for conveyance to Buyer at Closing. In that regard, Buyer and Seller agree that the missing easements and related pipeline dedications identified to date are listed on Schedule A to this Amendment and that additional ones may be identified prior to Closing by Buyer.

a. In that regard, Buyer and Seller hereby amend Section 6.6 of the Agreement to read in its entirety as follows:

**6.6 Procurement of Easements and Rights-of-Way.** Seller agrees to use commercially reasonable efforts to assist Buyer, and its successors and assigns, in the acquisition of easements or rights-of-way and associated pipeline dedications that are necessary or prudent for the supply of utility service to System Customers and including, but not limited to, those that are not listed in Disclosure Schedule Section 4.9(b), including without limitation, those listed on Schedule A attached hereto. Buyer reserves the right to amend Schedule A from time to time to reflect those easements or rights-of-way and associated pipeline dedications that are necessary or prudent for the supply of utility service to System Customers.

b. The definition of Easements in Article I is hereby amended to read as follows:

**"Easements"** means all easements, rights of way, permits and licenses, whether or not of record, used or held for use by Seller in the operation of the System or necessary or prudent for the supply of utility service to System Customers, including without limitation those listed on Disclosure Schedule 4.9(b) and those listed on Schedule A as it may be amended from time to time.

c. Further, Buyer and Seller hereby amend Section 7.2(p) of the Agreement to read in its entirety as follows:

**7.2(p)** Buyer shall be satisfied with all inspections and investigations concerning title to, surveys and condition of the Real Property, the Easements, including those additional easements rights of way and pipeline dedications identified in Schedule A as the same may be amended from time to time and other Purchased Assets. Upon Closing Buyer will hold valid transferable title to all easements, rights-of-way and pipeline dedications as necessary and prudent for the supply of utility service to System Customers, including those identified listed in Disclosure Schedule Section 4.9(b) and Schedule A attached hereto as amended from time to time. Failure of Buyer to be satisfied under this section is not a breach of this Agreement by Seller.

d. Further, Buyer and Seller hereby amend Section 4.2(b) of the Agreement to read in its entirety as follows:

(b) Section 4.9(b) of the Disclosure Schedule and Schedule A sets forth each Easement, if any, used in or necessary for the current operations of the Business, and there are no Easements used in or necessary to the current operations of the Business or necessary or prudent for the supply of utility service to System Customers except those listed on Section 4.9(b) of the Disclosure Schedule or Schedule A. With respect to the Easements listed on Section 4.9(b) of the Disclosure Schedule and as of Closing for the Easements listed on Schedule A:

i. Seller owns or possesses all Easements necessary to conduct the operations of the Business as now being conducted, without any known conflict with the rights of others, but does not currently have recorded easements necessary for all aspects of the System;

ii. Seller is in compliance with the terms and conditions of all Easements; and

iii. Seller has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by the grantor or any other party under any of the Easements and, to the Knowledge of Seller, no other party is in default thereof, and no party to any Easement has exercised any termination rights with respect thereto.

**3. Full Force and Effect.** Except as specifically amended by this Amendment, all of the terms and conditions contained in the Agreement remain in full force and effect. In the event

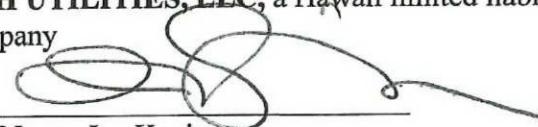
of any conflict between provisions of the Amendment with the original Agreement, the provisions of this Amendment shall control.

**4. Counterparts.** This Amendment may be executed in multiple counterparts, each of which shall be deemed a duplicate original, but all of which taken together shall constitute one and the same instrument. The Parties hereto agree that this Amendment may be executed (whether by original ("wet-ink") signature or an electronic signature (including through e-sign services providers such as DocuSign)) and the signature pages transmitted by facsimile, electronic image scan transmission (such as emailing a "pdf" file), or other electronic transmission. The delivery of such signature pages via facsimile, electronic image scan transmission, or other electronic transmission shall constitute effective execution and delivery hereof. If so executed and delivered by one or both Parties hereto, the effectiveness of this Amendment shall not be affected by the non-delivery of any manually-signed signature page.

**IN WITNESS WHEREOF,** the Parties have duly executed this First Amendment to Asset Purchase Agreement effective on the date first shown above.

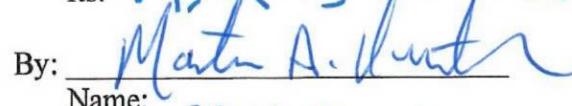
**SELLER:**

**HOH UTILITIES, LLC**, a Hawaii limited liability company

By:   
Name: Ian Kagimoto  
Its Sole Member

**BUYER:**

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

By:   
Name: THOMAS SMEETH  
Its: Vice President  
By:   
Name: Martin A. Kropelnicki  
Its: President

**Schedule 2.1(b)**  
**Certain Service Facilities**

The wastewater system consists of two lift stations located on TMK (4) 2-8-016:003 and TMK (4) 2-8-016:007, a wastewater treatment plant located on TMK (4) 2-8-014:027 along with collection system piping and associated appurtenances. Notwithstanding the foregoing, the pipeline from Kukui'ula and the subdivision piping in the Poipu Estates Subdivision are not part of the wastewater system.

The recycled water system consists of a booster pumping station located at the treatment plant and distribution system piping, including associated appurtenances to deliver the reuse water to the storage pond located at the Kiahuna Golf Course. The piping from the treatment plant to the storage pond is owned by HOH.

These facilities include pumping equipment, storage facilities, piping, waste processing and handling equipment, power delivery equipment, monitoring and controls equipment, odor control equipment, laboratory equipment, and office space/equipment. It also includes buildings and shelters to house this equipment.

**Schedule 2.1(e)**

**Assigned Contracts**

1. Recycled Water – “Will Serve” Letter dated March 25, 2008, between HOH Utilities, LLC and Kiahuna Kanahiku, LLC c/o Mr. Jim Peterson, V.P.
2. Will Servc Agreement dated August 23, 2006 between HOH Utilities, LLC (“HOH”) and Kukui‘ula South Shore Community Services, LLC (“KSS”) and Kukui‘ula Development Company (Hawaii), LLC (“KDCII”).
3. Wastewater Services - - “Will Serve” Commitment re Koa‘e Affordable Housing – TMK (4) 2-6-004:019 letter dated July 5, 2018, betwen HOH Utilities (“HOH”) and Kukui‘ula South Shore Community Services, LLC (“KSSCS”).
4. Wastewater Facilities and Services Agreement dated December 6, 2007, between Koloa Marketplace LLC (“Developer”) and HOH Utilities, LLC (“HOH”).
5. Wastewater Services – “Will Serve” Letter re Sheraton Kauai Resort at Poipu, dated June 12, 2007, between HOH Utilities, LLC and SVO Pacific, Inc.
6. Wastewater Services – “Will Servc” Commitment TMK No.: (4) 2-8-017:015 letter dated August 26, 2011, between HOH Utilities, LLC and Poipu Inn Inc.
7. Wastewater Services – Conditional “Will Serve” Commitment: TMK No.: (4) 2-8-17:01, dated April 2, 2012 between HOH Utilities, LLC and County of Kauai Department of Parks and Recreation.
8. Confirmation of Wastewater Service (Will Serve Commitment 300,000 gpd) for Kiahuna Mauka Partners Development, Poipu, Kauai letter dated December 1, 2005, between HOH Utilities, LLC and Kiahuna Mauka Partners.
9. Letter Agreement – Dedication of Certain Kiahuna Sewer Lines dated June 15, 2011, between KW Kiahuna, LLC, Kiahuna Homesites Community Association-I, Poipu Palms Limited Partnership, Kiahuna Players, LLC, Kiahuna Mauka Partners LLC, Eric A Knudsen Trustee of the Eric A. Knudsen Trust, John Horwitz Successor Co-Trustee, Matthew B. Guard Successor Co-Trustee, George R. Robinson Successor Co-Trustee and Peter Baldwin Successor Co-Trustee.
10. Agreement to Continue Payments dated February 15, 2001, between Marriott Ownership Resorts, Inc. (“MORI”) and HOH Utilities, LLC (“HOH”).
11. Irrigation Water Facilities Agreement dated May 14, 2008 between HOH Utilities, LLC and Kiahuna Players, LLC.

12. Wastewater Services Conditional Will Serve Letter for Koloa Village LLC – TMK (4) 2-8-011 dated June 13, 2020 between HIOH Utilities, LLC and Koloa Village LLC.

**Schedule 2.2(e)**

**Certain Excluded Assets**

List of Personal Property (assets) Owned by Makai Water Services, LLC:

- Miller welder
- Miscellaneous hand tools
- Line camera
- Well depth monitor
- Honda portable pump
- GMC Sierra 1500 pickup truck
- Aluma Trailer
- PC Computer and Monitor
- Ford F-150 pickup truck

List of Personal Property (assets) Owned by Ian Kagimoto:

- Bobcat Skid Steer
- Kodiak flatbed

**Schedule 2.1(j)**

**Licenses**

1. Certificate of Public Convenience and Necessity.
2. State DOH Underground Injection Control Permit No. UK-2388. Facility ID No. 2-5227.08 for PWRF issued 10/9/2018 expires 10/8/2023.
3. Non-Hazardous Waste Acceptance Approval 341023III Wastewater Sludge (WM001A) PWRF (expires 11/16/2019).
4. State DOH Permit

**Schedule A**

1. Easement for Lift Station 2 -- TMK 4-2-8-016-003.
2. Easement for Lift Station 1 – TMK 4-2-8-016-007.
3. Easements for the gravity sewer line crossing multiple parcels where there are hotels TMKs 4-2-8-017-007, TMK 4-2-8-017-009, TMK 4-2-8-017-026.
4. Easements for the gravity sewer line crossing a single house parcel – TMK 4-2-8-030-018.
5. Easements for the recycled water system over TMKs 4-2-8-014-036, 4-2-8-031-197, 4-2-8-031-191, 4-2-8-031-195.
6. Easements for the force main from Brennecke's and related pipeline dedications over TMK 4-2-8-017-014 (the parking lot for Poipu Beach) and TMK 4-2-8-017-011 (the Marriott.)

## **EXHIBIT C**

Information on Proposed Regional Facility

## INFORMATION ON PROPOSED REGIONAL FACILITY

The regional wastewater treatment facility was conceived in 2008 to provide much needed sewer service to the Koloa Town Area in order to comply with EPA regulatory requirements and meet anticipated growth in the area. There are currently single family homes, 192 multi-family homes and [Z] commercial development entitled and in process to be delivered between 1Q2021 and 4Q2022, which will put further pressure on the area's wastewater management capacity.

Progress on the regional facility was subsequently delayed during the economic downturn in 2008-2012. In addition to delaying the development of the regional facility, the economic downturn also resulted in a lack of financing to support on-going operations of the PWRF from developer contributions.

In order to address these issues, Hawaii Water, in conjunction with the change of control, intends to undertake and implement three critical wastewater treatment infrastructure components to support the health and growth of the South Kauai community including: (i) building the collection system infrastructure that will provide sewer connection to the Koloa Town Area and also interconnect the PWRF with a future regional wastewater treatment facility, (ii) perform important upgrades to the PWRF to maintain current service levels and establish redundancy of operations, and (iii) build a regional facility to meet future demand and also accept flows from PWRF to maintain proper treatment volumes at PWRF.

## **EXHIBIT D**

Hawaii Water Service Co.  
Balance Sheet and Income Statement

**HAWAII WATER SERVICE CO.**  
**Balance Sheet**  
**July 31, 2021 AND 2020**

<b>ASSETS</b>	<b>2021</b>	<b>2020</b>
<b>Utility Plant:</b>		
Land	\$ 1,196,437	\$ 1,196,437
Depreciable plant and equipment	125,517,160	108,790,761
Construction work in progress	10,984,565	12,533,027
Intangible assets	752,514	679,829
	138,450,676	123,200,054
Less: Depreciation of plant and equipment	(32,483,008)	(26,737,004)
Amortization of intangibles	(681,347)	(664,700)
	(33,164,355)	(27,401,704)
<b>Net utility plant</b>	105,286,321	95,798,350
<b>Current assets:</b>		
Cash	3,775,669	4,968,274
Working funds, deposits,temporary cash investments	0	0
Accounts receivable:		
Customers, less allowance for doubtful accounts	2,631,330	1,625,084
Taxes Receivable	158,691	62,047
Unbilled revenue	2,122,466	1,055,811
Other Accounts Receivable	94,444	53,662
Materials and supplies	875,253	750,108
Prepaid expenses	261,390	124,441
Intercompany Transfers	109,880	150,608
Clearing accounts	473,470	1,590,368
<b>Total current assets</b>	10,502,592	10,380,403
<b>Other assets:</b>		
Regulatory assets	1,708,209	1,656,096
Other Intangible assets	6,267,114	2,614,707
Long Term Intercompany Receivable	0	0
Investment In Non-Utility Property	0	0
Other	1,007,351	1,486,923
<b>Total other assets</b>	8,982,674	5,757,726
	<b>\$ 124,771,587</b>	<b>\$ 111,936,479</b>

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**HAWAII WATER SERVICE CO.**  
**Balance Sheet**  
**July 31, 2021 AND 2020**

<b>CAPITALIZATION AND LIABILITIES</b>	<u>2021</u>	<u>2020</u>
<b>Capitalization</b>		
Common stockholders' equity		
Common stock	\$ 62,674,583	\$ 62,674,583
Equity Earnings of Subsidiary	0	0
Retained Earnings - Beginning Balance	-9,728,516	(10,252,004)
Net Income - YTD	1,630,596	799,401
Dividends	-753,675	(831,607)
Retained earnings	<b>(8,851,595)</b>	<b>(10,284,210)</b>
Noncontrolling Interests	0	0
Accumulated other comprehensive loss	0	0
	53,822,989	52,390,373
	72.8%	73.2%
First mortgage bonds	0	0
Unamortized debt premium and expense	0	0
Senior Notes	0	0
Long Term Intercompany Debt	20,148,897	19,218,384
Other Long-Term Debt	0	0
Total Long Term Debt	20,148,897	19,218,384
	27.2%	26.8%
<b>Total capitalization</b>	<b>73,971,886</b>	<b>71,608,757</b>
	100.0%	100.0%
<b>Current liabilities:</b>		
Current maturities of LT Debt	0	0
Notes payable	0	0
Payable to Affiliates	704,707	651,787
Accounts payable	3,854,194	3,055,961
Accrued interest	0	0
Accrued general taxes	0	0
Income taxes	124,963	53,182
Short Term Intercompany Debt	16,108,216	13,408,216
Unearned revenue - charges billed in advance	0	0
Accrued and deferred compensation	496,471	406,466
Accrued pension and post retirement benefits	460,838	851,093
Accrued benefit and worker's compensation	253,855	278,900
Other	<b>(85,568)</b>	163,248
<b>Total current liabilities</b>	<b>21,917,676</b>	<b>18,868,852</b>
<b>Unamortized investment tax credit</b>	0	0
<b>Deferred income taxes</b>	5,224,647	4,105,034
<b>Regulatory liabilities</b>	<b>(2,381,059)</b>	<b>(3,433,165)</b>
<b>Advances for construction</b>	48,160	48,160
<b>Contributions in aid of construction</b>	23,529,216	17,998,489
<b>Other long-term liabilities</b>	<b>2,461,061</b>	<b>2,740,351</b>
	<b>\$ 124,771,587</b>	<b>\$ 111,936,479</b>



## **EXHIBIT E**

Map of New Service Area

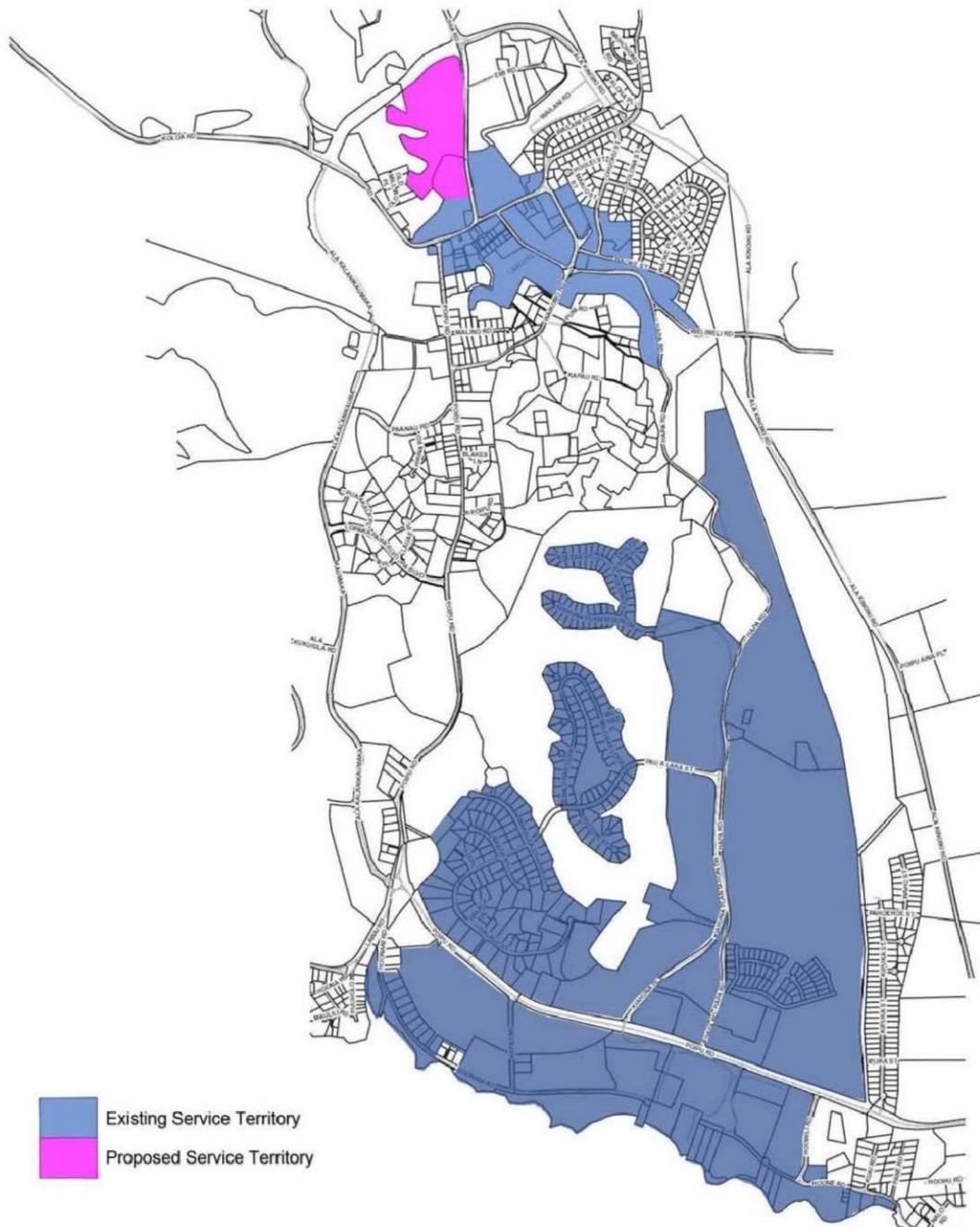
## MAP OF NEW SERVICE AREA



## **EXHIBIT F**

Map of Expanded Service Area (Authorized and New)

MAP OF EXPANDED SERVICE AREA (AUTHORIZED & NEW)



{00154373-3}

{00155072-16}

## **EXHIBIT G**

Form of Inter-Company Promissory Note

**PROMISSORY NOTE  
LONG TERM BORROWINGS**

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Borrower:

Lender: California Water Service Gp  
1720 North First Street  
San Jose, CA 95112

LOAN TYPE. This is a fixed rate (\_\_\_\_%) Nondisclosable Loan to a Corporation for  
\$ \_\_\_\_\_ due on \_\_\_\_\_.

PRIMARY PURPOSE OF LOAN. Refinancing of existing debt.

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PROMISE TO PAY. \_\_\_\_\_ ("Borrower") promises to pay California Water Service Group ("Lender"), or order, in lawful money of the United States of America, the principal amount of \_\_\_\_\_ Dollars & no cents (\$\_\_\_\_\_) together with interest at the rate of \_\_\_\_% per annum on the unpaid principal balance from \_\_\_\_\_, until paid in full.

PAYMENT. Borrower will pay this loan in payments of \$\_\_\_\_\_ each payment and a final last payment estimated at \$\_\_\_\_\_. Borrower's first payment is due \_\_\_\_\_ and all subsequent payments are due on the same day each month after that. Borrower's final payment will be due on \_\_\_\_\_, and will be for all principal and all accrued interest not yet paid. Payments include principal and interest. Unless otherwise agreed or required by applicable law, payment will be applied first to accrued unpaid interest, then to principal and any remaining amount to unpaid collection costs and late charges. Interest on this Note is computed on a 360/360 simple interest basis; that is, by applying the ratio of the annual interest rate over the number of days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as lender may designate in writing.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payment under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments.

LATE CHARGE. If payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$25.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the interest rate on this Note 3.000 percentage points. The interest rate will not exceed the maximum rate permitted by law.

**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

**Payment Default.** Borrower fails to make any payment when due under this Note.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Default in Favor of Third Parties.** Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of the borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note, or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Cure Provision.** If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of the Note within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSARY NOTE.

**BORROWER**

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By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

## **EXHIBIT H**

Financial Statement of  
Hawaii Water Service Company, Inc.

Financial Statement of  
**Hawaii Water Service Company, Inc.**

As of June 30, 2021

Hawaii Water Service Company, Inc. ("HWSC"), a subsidiary of California Water Service Group ("CWSG") hereby submits the following information pursuant to Hawaii Administrative Rules ("HAR") § 6-61-75(a):

**Stock Authorized and Outstanding:**

<u>Description</u>	<u># of Shares Authorized</u>	<u># of Shares Issued</u>	<u>PAR Value Per Share</u>	<u>Total PAR Value</u>
Preferred Stock	None	None	N/A	N/A
Common Stock*	1000	1000	\$1.00	\$1,000.00

\*All shares of stock are owned by California Water Service Group

All stock is CWSG common stock (NYSE: CWT).

**Terms of Preference of Preferred Stock:**

HWSC has no preferred stock.

**Security Agreements, Mortgages, and Deeds of Trusts:**

HWSC has no mortgages or deeds of trust.

**Bonds Authorized and Issued:**

HWSC has no bonds.

**Notes Outstanding:**

HWSC has the following notes currently outstanding:

- Promissory Note for Long Term Borrowings between Hawaii Water Service Company, Inc., as Borrower, and California Water Service Group, as Lender, dated December 31, 2011 for a fixed rate (5.50%) loan for \$3,000,000.00 due on December 20, 2041. Approved by Decision and Order issued June 12, 2008

in Docket No. 2007-0238 in connection with the replacement of the Pukalani wastewater treatment plant and filed in Docket No. 2007-0238 on April 26, 2013.

- Promissory Note for Long Term Borrowings between Hawaii Water Service Company, Inc., as Borrower, and California Water Service Group, as Lender, dated December 31, 2011 for a fixed rate (5.50%) loan for \$3,182,999.00 due on December 20, 2041. Approved by Decision and Order issued December 1, 2008 in Docket No. 2008-0109 in connection with the acquisition of the assets of KWS a of certain assets by Kona Water Service Company, Inc. and filed in Docket No. 2008-0109 on April 26, 2013.
- Promissory Note for Long Term Borrowings between Hawaii Water Service Company, Inc., as Borrower, and California Water Service Group, as Lender, dated December 31, 2011 for a fixed rate (5.50%) loan for \$5,000,000.00 due on December 20, 2041. Approved by Decision and Order No. 21211 issued August 5, 2004 and Order No. 21340 issued September 1, 2004 in Docket No. 2003-0275 in connection with capital improvements to the Kaanapali Water Division and filed in Docket No. 2003-0275 on April 26, 2013.
- Promissory Note for Long Term Borrowings between Hawaii Water Service Company, Inc., as Borrower, and California Water Service Group, as Lender, dated May 31, 2012 for a fixed rate (5.50%) loan for \$9,069,804.00 due on May 20, 2022. Approved by Decision and Order issued August 20, 2008 in Docket No. 2008-0018 in connection with HWSC's acquisition of the stock of Waikoloa Resort Utilities and filed in Docket No. 2008-0018 on April 23, 2013.
- Promissory Note for Long Term Borrowings between Hawaii Water Service Company, Inc., as Borrower, and California Water Service Group, as Lender, dated May 31, 2012 for a fixed rate (5.50%) loan for \$609,768.00 due on May 20, 2022. Approved by Decision and Order issued August 20, 2008 in Docket No. 2008-0018 in connection with HWSC's acquisition of the stock of Waikoloa Water Sanitary Sewer Company and filed in Docket No. 2008-0018 on April 23, 2013.
- Promissory Note for Long Term Borrowings between Hawaii Water Service Company, Inc., as Borrower, and California Water Service Group, as Lender, dated October 30, 2020 for a fixed rate (4.35%) loan for \$1,250,000.00 due on October 30, 2030. Approved by Decision and Order issued September 25, 2020 in Docket No. 2019-0144 in connection with HWSC's acquisition of the membership interest of Kalaeloa Water Company, LLC and filed in Docket No. 2019-0144 on July 3, 2019.

**Other Indebtedness:**

HWSC has no other indebtedness.

**Dividends Paid:\***

Year	Amount
2021 (Q1)	\$234,901
2020	\$1,042,532
2019	\$617,212
2018	\$546,733
2017	\$674,108

\*all dividends were paid by Hawaii Water to CWSG

In addition, pursuant to HAR § 6-61-75(b), CWSG's consolidated audited balance sheet and income statement, are provided in Note 16 of CWSG's 2020 Annual Report.<sup>1</sup>

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<sup>1</sup> See California Water Service Group, Annual Report (Form 10-K) (Feb. 25, 2021), available at <https://ir.calwatergroup.com/node/21006/html>.

## **EXHIBIT I**

Hawaii Water Service Company's Board Resolution  
Authorizing Financing

**RESOLUTIONS  
OF  
THE BOARD OF DIRECTORS  
OF  
HAWAII WATER SERVICE COMPANY  
(a Hawaii corporation)**

**May 26, 2021**

**Transaction Approval**

**WHEREAS**, the Board of Directors (the “Board”) of Hawaii Water Service Company, Inc., a Hawaii corporation (the “Corporation”) and a wholly owned subsidiary of California Water Service Group, a Delaware Corporation, has considered the transactions described in these resolutions;

**WHEREAS**, the proposed agreement (the “Transaction Agreement”) by and between the Corporation and HOH Utilities, LLC, a Hawaii limited liability company (the “Seller”) provides for the sale to the Corporation by the Seller of the assets described in the Transaction Agreement on the terms and conditions in the Transaction Agreement;

**WHEREAS**, the Corporation has a need to obtain long-term funding to finance ongoing capital projects at Poipu and portions of Koloa, in the County of Kauai, (the “Existing Service Territory”) after its proposed acquisition; and

**WHEREAS**, the Board has determined that it is in the best interests of the Corporation to authorize the officers of the Corporation (the “Authorized Officers”), or any of them acting individually, to review and consider debt financing options for the Corporation on such terms as shall be approved the Board; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Board hereby (1) declares that the transaction identified in the Transaction Agreement is advisable and in the best interests of the Corporation and its parent company, California Water Service Group, and (2) approves the execution, delivery and performance by the Corporation of the Transaction Agreement; and

**RESOLVED FURTHER**, that the Authorized Officers of the Corporation be, and each of them acting singly hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation, to execute and deliver the Transaction Agreement, with such changes, additions and modifications thereto as the Authorized Officer or Officers of the Corporation executing and delivering the same shall approve, such execution and delivery to be conclusive evidence of such approval on behalf of the Corporation; and

**RESOLVED FURTHER**, the Authorized Officers, or any of them acting individually, are hereby authorized to review and consider debt financing options on such terms as shall be approved by the Board; and

**RESOLVED FURTHER**, that the Authorized Officers of Corporation be, and each of them acting singly hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation, to execute, acknowledge, deliver, record and/or file any and all additional documents and instruments, including, without limitation, as may be required by any governmental or other regulatory agencies, and to do all other acts as may be necessary to effectuate the transaction contemplated by the Transaction Agreement and debt financing options.

**General**

**RESOLVED FURTHER**, that any specific resolutions that may be required to have been adopted by the Board in connection with any of the actions contemplated by the foregoing resolutions be, and the same hereby are, adopted, and that each Authorized Officer of the Corporation be, and hereby is, authorized in the name and on behalf of the Corporation to certify as to the adoption of any and all such resolutions;

**RESOLVED FURTHER**, that the Authorized Officers of the Corporation be, and each of them acting singly hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation, to execute and deliver, or to cause to be executed and delivered, all such other agreements, instruments, certificates and documents, to do or cause to be done all such further acts and things, and to pay or cause to be paid all necessary fees and expenses, as they or any of them may deem necessary or advisable in connection with the transaction contemplated by the Transaction Agreement and debt financing options or to effectuate the purpose and intent of the foregoing resolutions, such approval to be conclusively evidenced by the taking of any such action or the execution and delivery of any such instrument by such officer; and

**RESOLVED FURTHER**, that any actions heretofore taken, and any agreements, instruments or documents heretofore executed, by any officer of the Corporation within the scope of the authority granted to such officer by the foregoing resolutions be, and hereby is, authorized, approved, ratified and confirmed.

## **EXHIBIT J**

Hawaii Water Service Company Source and  
Application of Funds Statement for the Latest Year  
and for Each of the Succeeding Five Years

	2025	2024	2023	2022	2021	2020
<b>Operating activities:</b>						
Net income	2,787,560.83	2,642,512.64	2,504,751.31	2,374,171.86	2,250,399.87	1,566,006.80
Adjustments to reconcile net income to net cash provided by operating activities:						
Depreciation and amortization	4,472,412.07	4,306,847.38	4,146,104.95	3,990,044.35	3,838,529.19	2,254,130.77
Changess in normalized income to debt premium and expenses	1,533,317.96	1,453,381.95	1,377,613.22	1,305,794.52	1,237,719.93	4,794,362.00
Changes in other assets and liabilities	0.00	0.00	0.00	0.00	0.00	0.00
Changes in operating assets and liabilities:						
Depreciation and amortization	(213,805.44)	(202,659.19)	(192,094.01)	(182,079.53)	(172,587.33)	(120,099.96)
Changess in normalized income to debt premium and expenses	(915,331.12)	(867,612.44)	(822,381.46)	(779,508.49)	(738,870.61)	(514,164.80)
Changes in receivables						
Taxes, prepaid expenses, and other assets	(593,716.47)	(562,764.43)	(533,426.00)	(505,677.06)	(479,257.88)	(333,505.66)
Other current liabilities	96,231.17	842,706.04	798,773.49	757,131.27	717,559.98	499,404.76
Accrued expenses	(1,635,682.77)	(1,588,051.52)	(1,551,787.89)	(90,707.11)	88,065.16	85,500.15
Net cash provided by operating activities	6,420,331.10	6,117,798.75	5,828,260.74	5,551,120.53	5,285,810.35	3,392,613.20
<b>Investing activities:</b>						
Proceeds from sale of non-utility assets	(5,627,544.05)	(5,463,635.00)	(5,304,500.00)	(5,150,000.00)	(5,000,000.00)	(4,916,141.38)
Net cash used in investing activities						
Payable to affiliates	1,944,794.99	1,944,651.23	1,946,141.45	482,586.56	(52,544.92)	470,816.16
Net change in Long-term Intercompany Debt	(442,485.48)	(420,191.58)	(399,031.32)	(326,693.32)	(239,242.89)	881,524.57
Issuance of Long-term debt, net of expenses	0.00	0.00	0.00	0.00	0.00	0.00
Retirement of Long-term debt, net of expenses	(401,038.47)	(401,038.47)	(401,038.47)	(401,038.47)	(401,038.47)	(401,038.47)
Net change in Advances and contributions in aid of construction	0.00	0.00	0.00	0.00	0.00	0.00
Change in long-term debt	(1,855,945.77)	(1,759,190.31)	(1,667,478.96)	(1,580,548.78)	(1,498,150.50)	(1,042,532.04)
Dividends paid	0.00	0.00	0.00	0.00	0.00	0.00
Change in common stock	0.00	0.00	0.00	0.00	0.00	0.00
Net cash provided by financing activities	(754,674.74)	(585,769.13)	(521,407.31)	(1,825,694.01)	(2,190,976.79)	(91,229.74)
Change in cash, cash equivalents, and restricted cash	38,112.31	68,394.62	2,353.43	(1,424,673.48)	(1,905,166.44)	(1,614,157.92)
Cash, cash equivalents, and restricted cash at beginning of year	2,765,979.10	2,695,231.05	4,119,804.53	6,024,970.97	7,639,728.89	
Cash, cash equivalents, and restricted cash at end of Year	2,804,091.41	2,697,584.48	2,695,231.05	4,119,804.53	6,024,970.97	

## **EXHIBIT K**

Hawaii Water Service Company Statement of Capital  
Structure and Interest Coverage for Latest Year and for  
Each of the Succeeding Five Years, Including Notes  
Payable as Debt

Capital Structure and Interest Coverage													
	Reference	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent		
1	LTD - Hawaiian Water Service Co (Kona) Promissory Note 2011	2,697,540	3.7%	2,627,779	3.6%	2,553,054	3.4%	2,474,642	3.3%	2,391,087	3.2%		
2	LTD - Waikoloa Waste Water Promissory Note 2011	2,542,552	3.5%	2,476,730	3.4%	2,406,272	3.3%	2,332,369	3.1%	2,254,296	3.0%		
3	LTD - Kauai Water Promissory Note 2011	4,199,028	5.7%	4,086,193	5.5%	3,967,609	5.4%	3,842,200	5.2%	3,709,346	5.0%		
4	LTD - Waikoloa Water Promissory Note 2012	9,093,084	12.4%	9,093,084	12.3%	8,985,252	12.1%	8,835,052	11.9%	8,677,551	11.6%		
5	LTD - Waikoloa Waste Water Promissory Note 2012	609,768	0.8%	609,768	0.8%	597,033	0.8%	577,202	0.8%	556,459	0.7%		
6	LTD - Kalaleoa Promissory Note 2020	1,233,303	1.7%	1,130,544	1.5%	1,023,224	1.4%	911,142	1.2%	794,086	1.1%		
7	Equity	Subtotal	Sum 1-5	\$ 20,351,895	27.8%	\$ 20,000,117	27.1%	\$ 19,532,445	26.4%	\$ 18,972,426	25.5%	\$ 18,383,946	24.6%
8	Common - Capital Stock	62,674,583	85.5%	62,674,583	85.0%	62,674,583	84.7%	62,674,583	84.4%	62,674,583	84.0%	62,674,583	83.7%
9	Retained Earnings	(10,252,004)	-14.0%	(9,728,529)	-13.2%	(8,976,280)	-12.1%	(8,182,657)	-11.0%	(7,345,385)	-9.8%	(6,462,062)	-8.6%
10	Net Income (Loss)	1,566,007	-14.0%	1,566,007	-13.2%	1,566,007	-12.1%	1,566,007	-11.0%	1,566,007	-9.8%	1,566,007	-8.6%
11	Dividends Paid	Subtotal	Sum 6-10	\$ 52,946,054	72.2%	\$ 53,698,303	72.9%	\$ 54,193,266	73.6%	\$ 55,329,190	74.5%	\$ 56,212,521	75.4%
12	Interest Coverage Ratio	TOTAL LTD & Equity	\$ 73,297,949	100.0%	\$ 73,698,420	100.0%	\$ 74,024,372	100.0%	\$ 74,596,467	100.0%	\$ 74,909,967	100.0%	
13	Net Income Expense	1,180,718	2,250,400	2,374,172	2,504,751	2,642,513	2,696,233	2,787,851	2,923,041	2,995,588	3,041,187	3,118,588	
14	Income Tax Expense	1,180,718	1,096,923	1,026,344	957,568	929,304	949,879	975,748	999,588	999,588	1,026,344	1,057,568	
15	Earnings Before Interest & Tax (EBIT)	Sum 1-3	\$ 3,319,893	\$ 787,688	\$ 830,960	\$ 876,663	\$ 923,176	\$ 943,892	\$ 957,568	\$ 999,588	\$ 1,026,344	\$ 1,057,568	
16	Interest Expense	\$ 1,180,718	\$ 1,096,923	\$ 1,026,344	\$ 957,568	\$ 929,304	\$ 949,879	\$ 975,748	\$ 999,588	\$ 999,588	\$ 1,026,344	\$ 1,057,568	
* This schedule makes no assumptions for changes to tax laws, mergers or acquisitions, changes to regulatory law, or other unpredictable events.													
17	Interest Coverage Ratio	INTEREST COVERAGE RATIO	115 / 116	2.81	3.77	4.12	4.53	4.84	5.18	5.43	5.78		

In the Matter of the Application of HOH Utilities, LLC and Hawaii Water Service Company, Inc.  
for Approval of Sale and Transfer of Assets, etc.  
CONFIDENTIALITY LOG

Document Name/ Reference	Page Number; Line Number(s) or Section Redacted	Designation	Identification	Basis of Confidentiality	Cognizable Harm
Exhibit A	Portion of page 14	Confidential	Purchase price and initial deposit information.	Confidential business and financial information not publicly disclosed	Public disclosure of the purchase price agreed to by HOH Utilities, LLC. ("HOH") and Hawaii Water Service Company, Inc. ("HWSC") may cause substantial harm to HOH and 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 HOH and HWSC in their ability to negotiate with investors or acquisition targets who could adjust their pricing and commercial terms based on nonpublic information.

**VERIFICATION OF MICHAEL H. LAU**

STATE OF HAWAII )  
                      )  
CITY AND COUNTY OF HONOLULU     )

MICHAEL H. LAU, being first duly sworn, deposes and says: That he is an attorney for HOH Utilities, LLC in the above proceeding; that the managing member of HOH Utilities, LLC is not present within the City and County of Honolulu; that he has read the foregoing Application, and knows the contents thereof, and that the same are true of his own knowledge except as to those matters stated on information and belief, and that as to those matters he believes them to be true.

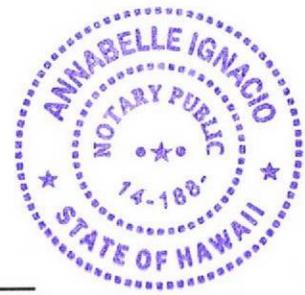
  
MICHAEL H. LAU

This one (1) page Verification to Applicants' Application dated September 22, 2021 was subscribed and sworn to before me on September 24, 2021, in the First Circuit, State of Hawaii by Michael H. Lau.

  
\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
Annabelle Ignacio  
Print Name of Notary Public

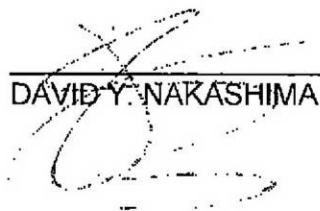
My Commission Expires: June 8, 2022



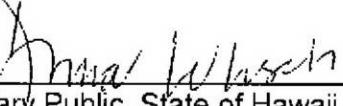
## VERIFICATION OF DAVID Y. NAKASHIMA

STATE OF HAWAII )  
                      )  
CITY AND COUNTY OF HONOLULU ) SS.

DAVID Y. NAKASHIMA, being first duly sworn, deposes and says: That he is an attorney for Hawaii Water Service Company, Inc. in the above proceeding; that the officers of Hawaii Water Service Company, Inc. are not present within the City and County of Honolulu; that he has read the foregoing Application, and knows the contents thereof, and that the same are true of his own knowledge except as to those matters stated on information and belief, and that as to those matters he believes them to be true.

  
DAVID Y. NAKASHIMA

This one (1) page Verification to Applicants' Application dated September 27, 2021 was subscribed and sworn to before me on September 22, 2021, in the First Circuit, State of Hawaii by David Y. Nakashima.

  
\_\_\_\_\_  
Notary Public, State of Hawaii

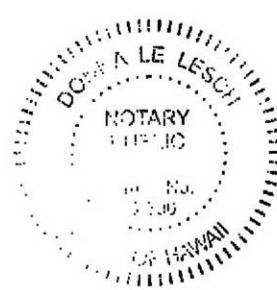
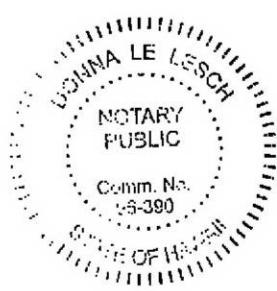
Print Name of Notary Public

DONNA LE LESCH

Commission No. 96-390

Notary Public, State of Hawaii

My Commission Expires: My commission expires July 18, 2024



Doc. Date:	<u>07/22/2021</u>	# Pages	<u>1</u>
Notary Name:	<u>Donna Le Lesch</u>	1 <sup>st</sup> Circuit	
Doc. Description	<u>Verification of</u>		
<u>David Y. Nakashima</u>			
<u>Donna Le Lesch</u>		Date	<u>07/22/21</u>
Notary Signature			

**CERTIFICATE OF SERVICE**

I hereby certify that on this date a copy of the foregoing document was duly served on the following party electronically to the email addresses shown below pursuant to HAR § 16-601-21(d), as modified by Order No. 37043 Setting Forth Public Utilities Commission Emergency Filing and Service Procedures Related to COVID-19, filed on March 13, 2020.

DEPARTMENT OF COMMERCE AND  
CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
335 Merchant Street, Room 326  
Honolulu, Hawaii 96813

dnishina@dcca.hawaii.gov  
consumeradvocate@dcca.hawaii.gov

DATED: Honolulu, Hawaii, September 24, 2021.

/s/ Michael H. Lau  
MICHAEL H. LAU  
JOYCE T. TAKAHASHI

AM Pacific Group LLP  
Attorneys for HOH Utilities, LLC

/s/ David Y. Nakashima  
JEFFREY T. ONO  
DAVID Y. NAKASHIMA

Watanabe Ing LLP  
Attorneys for Hawaii Water Service  
Company, Inc.

FILED

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PUBLIC UTILITIES  
COMMISSION

The foregoing document was electronically filed with the State of Hawaii Public Utilities Commission's Document Management System (DMS).