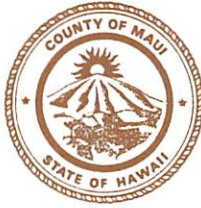


ALAN M. ARAKAWA  
MAYOR



**OFFICE OF THE MAYOR**

Ke'ena O Ka Meia  
COUNTY OF MAUI – Kalana O Maui

KEITH A. REGAN  
RECEIVED  
MANAGING DIRECTOR

2017 JUL 21 AM 9:22

OFFICE OF THE  
COUNTY CLERK

REFERENCE NO. BD-BA 18-11  
BD-BA 18-12

July 21, 2017

Honorable Alan Arakawa  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Michael White, Chair  
and Members of the Maui County Council  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

A handwritten signature in blue ink, appearing to be "Alan Arakawa", is written over a horizontal line. Below the line, the word "Mayor" is printed in green.

7/21/17  
Date

Dear Chair White and Members:

**SUBJECT: AMENDMENTS TO THE FISCAL YEAR 2018 BUDGET**

On behalf of the Department of Water Supply, I am transmitting the attached proposed bills for the purpose of appropriating \$150,000 in the Fiscal Year (FY) 2018 Budget for an appraisal of property and infrastructure owned by Wailuku Water Company. Attached is a Certification of Additional Revenues for Fiscal Year 2018 certifying the availability of Water Fund Carryover/Savings in the amount of \$150,000 to fund this request.

This funding request was first proposed in FY 2017, but failed to receive a decision by the end of the fiscal year. The Administration remains intent on purchasing the approximately 8,764 acres of land along with a surface water conveyance system as detailed in the attached proposal. A supplemental budget amendment will be requested for acquisition costs upon completion of the appraisal.

I respectfully request that this matter be referred to the appropriate Council committee for expeditious review, discussion and appropriate action.

Should you have any questions, please feel free to contact me at Ext. 7212.

Sincerely,

A handwritten signature in blue ink, appearing to be "Lynn A.S. Araki-Regan", is written over a horizontal line.

LYNN A.S. ARAKI-REGAN  
Budget Director

Attachments (4)

cc: Keith Regan, Managing Director  
Danny Agsalog, Director of Finance  
David Taylor, Director of Water Supply

COUNTY COMMUNICATION NO. 17-313

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2017)

A BILL FOR AN ORDINANCE AMENDING  
THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI  
AS IT PERTAINS TO ESTIMATED REVENUES;  
DEPARTMENT OF WATER SUPPLY,  
WAILUKU-KAHULUI COMMUNITY PLAN AREA, WATER SUPPLY,  
WAILUKU WATER COMPANY ACQUISITION;  
TOTAL CAPITAL IMPROVEMENT PROJECT APPROPRIATIONS; AND  
TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)

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

SECTION 1. Ordinance No. 4456, Bill No. 65 (2017), Draft 1, "Fiscal Year 2018 Budget", is hereby amended as it pertains to Section 2, Estimated Revenues, by increasing Carryover/Savings from the Water Fund in the amount of \$150,000; and by increasing Total Estimated Revenues in the amount of \$150,000, to read as follows:

"ESTIMATED REVENUES

FROM TAXES, FEES AND ASSESSMENTS:

Real Property Taxes	303,548,805
Circuit Breaker Adjustment	(373,138)
Charges for Current Services	142,393,137
Transient Accommodations Tax	21,204,000
Public Service Company Tax	8,500,000
Licenses/Permits/Others	38,694,419
Fuel and Franchise Taxes	21,000,000
Special Assessments	6,002,000
Other Intergovernmental	36,450,000

FROM OTHER SOURCES:

Interfund Transfers	49,705,630
Bond	45,705,000
Carryover/Savings:	
General Fund	6,273,867
Sewer Fund	5,023,222
Highway Fund	1,330,866
Solid Waste Management Fund	298,920
Golf Fund	363,433
Liquor Fund	722,099
Bikeway Fund	47,276
Water Fund	[18,325,916] <u>18,475,916</u>

TOTAL ESTIMATED REVENUES	[705,215,452] <u>705,365,452"</u>
--------------------------	-----------------------------------

SECTION 2. Fiscal Year 2018 Budget is hereby amended as it pertains to Section 4.K.4.a.(2), Department of Water Supply, Wailuku-Kahului Community Plan Area, Water Supply, Water Supply Fund – Unrestricted, by adding an appropriation for a capital project entitled, “Wailuku Water Company Acquisition”, in the amount of \$150,000, to read as follows:

“K. Department of Water Supply

1. Countywide

a. Water Supply

- |  |           |
|--|-----------|
| (1) Water Supply Fund - Restricted         |           |
| (i) Countywide Facility Improvements       | 274,000   |
| (ii) Countywide Upgrades and Replacements  | 2,255,000 |
| <br>(2) Water Supply Fund – Unrestricted   |           |
| (i) Countywide Conservation Program        | 1,000,000 |
| (ii) Countywide Facility Improvements      | 3,375,000 |
| (iii) Countywide Upgrades and Replacements | 3,855,000 |

2. Makawao-Pukalani-Kula Community Plan Area

a. Water Supply

- |  |           |
|--|-----------|
| (1) Water Supply Fund – Restricted   |           |
| (i) Upcountry Reliable Capacity  | 150,000   |
| <br>(2) Water Supply Fund – Unrestricted   |           |
| (i) Upcountry Reliable Capacity  | 3,150,000 |
| (ii) Upcountry Fire Protection Improvements, Phase I   | 860,965   |
| (1) Provided, that lapsed funds from this appropriation shall be transferred to the Upcountry Water System Expansion Capital Improvement Reserve Fund. |           |

3. Molokai Community Plan Area

a. Water Supply

- |                                      |         |
|--------------------------------------|---------|
| (1) Water Supply Fund – Unrestricted |         |
| (i) Molokai Reliable Capacity        | 500,000 |

4. Wailuku-Kahului Community Plan Area

a. Water Supply

- |   |                |
|---|----------------|
| (1) Water Supply Fund – Restricted            |                |
| (i) Kahului Tank II                           | 2,450,000      |
| <br>(2) Water Supply Fund - Unrestricted      |                |
| (i) Central Maui Reliable Capacity            | 500,000        |
| (ii) <u>Wailuku Water Company Acquisition</u> | <u>150,000</u> |

5. West Maui Community Plan Area

a. Water Supply

- |                                    |           |
|------------------------------------|-----------|
| (1) State Revolving Loan Fund      |           |
| (i) West Maui Reliable Capacity    |           |
| (1) Mahinahina Well #1 Development | 5,000,000 |

- (2) Water Supply Fund - Unrestricted  
(i) West Maui Reliable Capacity  
(1) Mahinahina Well #1 Development 5,000,000"

SECTION 3. Fiscal Year 2018 Budget is hereby amended as it pertains to the Total Capital Improvement Project Appropriations to reflect an increase of \$150,000, to read as follows:

"TOTAL CAPITAL IMPROVEMENT PROJECT APPROPRIATIONS [142,539,782] 142,689,782"

SECTION 4. Fiscal Year 2018 Budget is hereby amended as it pertains to the Total Appropriations (Operating and Capital Improvement Projects) to reflect an increase of \$150,000, to read as follows:

"TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS) [705,215,452] 705,365,452"

SECTION 5. Material to be repealed is bracketed. New material is underscored.

SECTION 6. This Ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
JEFFREY UEOKA  
Deputy Corporation Counsel

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2017)

A BILL FOR AN ORDINANCE AMENDING  
THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI  
AS IT PERTAINS TO APPENDIX C - CAPITAL IMPROVEMENT PROJECTS,  
DEPARTMENT OF WATER SUPPLY,  
WAILUKU-KAHULUI COMMUNITY PLAN AREA,  
WAILUKU WATER COMPANY ACQUISITION

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

SECTION 1. Ordinance No. 4456, Bill No. 65 (2017), Draft 1, "Fiscal Year 2018 Budget", Appendix C – Capital Improvement Projects, is hereby amended as it pertains to the Department of Water Supply, Wailuku-Kahului Community Plan Area, by adding a capital improvement project entitled, "Wailuku Water Company Acquisition", in the amount of \$150,000, to read as follows:

"APPENDIX C - Capital Improvement Projects"		
Capital improvement project funding may not be used for any purpose other than as described in this appendix.		
CBS NO.	PROJECT TITLE/DESCRIPTION	APPROPRIATION
	<b>Department of Water Supply</b>	
	<b>1. Countywide</b>	
CBS-1075	<b>a. Countywide Facility Improvements</b>	3,649,000
	Replacement of well and booster pump station components, including installation of emergency booster pump connections at tanks serving the Lahainaluna Road service area. Replacement of water treatment facility and water tank components, including replacement of the roof at Piihola WTP due to leakage, replacement of the Mahinahina WTP control system, and refurbishing the Napili A and Honokowai Tanks. Conduct a Countywide facility assessment of all water treatment facilities to evaluate each facility's operational reliability and develop a twenty-year water treatment facility capital improvement plan	
CBS-2299	<b>b. Countywide Upgrades and Replacements</b>	6,110,000
	Improvements that will sustain the reliable operation of existing water infrastructure or mitigate inadequacies of the water system include: 1) Design and construction to replace the traveling screens at the Kamole WTP; 2) Design and construction to replace the 60,000-gallon Lower Kula 200 Water Tank; 3) Construction to upgrade electrical control systems at well and booster pump sites including Mokuahau Wells 1 and 2, Kula Ag Park Booster Pumps, Kepaniwai Well, Keanae Wells 1 and 2, and Kawela Well; 4) Construction to replace water lines and control valves including the 4-inch water line along Hobron Avenue to address leakage and substandard fire flow; 5) Construction to replace intake piping serving the Waikamoi Reservoirs to address leakage; 6) Design and construction to install a bypass system for the Waihee Tank for repair and maintenance purposes; 7) Design replacement of the 6-inch water line along Lunalilo Street and Liholiho Street, Wailuku; 8) Construction to replace/relocate 24" Raw Water Line to Iao Water Treatment Plant; and 9) Inspections of Mokuahau Wells 1 and 2, Kepaniwai Well, Keanae Wells 1 and 2, and Kawela Well.	

CBS-1076	<b>c. Countywide Conservation Program</b>	1,000,000
	Locate, replace, or repair leaking water lines (transmission, distribution, and service laterals) and repair leaking tanks. Design projects to provide supply side conservation, including a water audit.	
	<b>2. Makawao-Pukalani-Kula Community Plan Area</b>	
CBS-1106	<b>a. Upcountry Reliable Capacity</b>	3,300,000
	Design and construction to replace and expand booster pump stations at three sites along the Phase 10 booster pump system (Pookela Tank, Maluhia Tank, West Olinda Tank sites). Design of a new water tank to improve storage capacity for the Opaepilau water system (Haiku).	
	<b>b. Upcountry Fire Protection Improvements, Phase I</b>	860,965
CBS-xxxx	Construct fire protection improvements for the Upcountry water system including installation of an additional 70,000-gallon storage tank and booster pump adjacent to the existing 50,000-gallon storage tank located approximately 550 feet east of 18505 Haleakala Highway. Replacement of approximately 600 feet of existing 2 ½-inch waterline with an 8-inch waterline along the southern property line of TMK (2) 3-013-031-0000. Provided, that funds not utilized for the project shall be transferred to the Upcountry Water System Expansion Capital Improvement Reserve Fund.	
	<b>3. Molokai Community Plan Area</b>	
CBS-1098	<b>a. Molokai Reliable Capacity</b>	500,000
	Land acquisition for a backup well site at Kualapu'u and a replacement well site at Kawela. Design an exploratory well for replacement of the existing Kawela Well upon acquisition of the replacement well site.	
	<b>4. Wailuku-Kahului Community Plan Area</b>	
CBS-1102	<b>a. Central Maui Reliable Capacity</b>	500,000
	Land acquisition for a new tank site to improve storage for the Waihee Wells. Design an exploratory well for replacement of the existing Waiehu Heights Well 1 upon acquisition of the replacement well site.	
CBS-4622	<b>b. Kahului Tank II</b>	2,450,000
	Participate in construction of a new 2 million-gallon tank with Maui Lani.	
	<b>c. Wailuku Water Company Acquisition</b>	150,000
	<u>Appraisal for the land and surface water conveyance system, and improvements. TMK: (2) 3-2-14:01 (approximately 3,306 acres), TMK: (2) 3-3-3:03 (approximately 2,909 acres), and a portion of TMK: (2) 3-5-03:01 (approximately 2,549 acres).</u>	
	<b>5. West Maui Community Plan Area</b>	
CBS-1092	<b>a. West Maui Reliable Capacity</b>	10,000,000"
	Construction of the Mahinahina Well #1 Development.	

SECTION 2. New material is underscored.

SECTION 3. This Ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

  
 \_\_\_\_\_  
 JEFFREY UEOKA  
 Deputy Corporation Counsel

CERTIFICATION OF ADDITIONAL  
REVENUES FOR FISCAL YEAR 2018

I, KEITH A. REGAN, Managing Director of the County of Maui, who is authorized to sign on behalf of ALAN M. ARAKAWA, Mayor of the County of Maui, State of Hawaii, and, pursuant to Section 9-9.1 of the Revised Charter of the County of Maui (1983), as amended, do hereby certify that there is available for appropriation revenue received from anticipated sources but in excess of the budget estimates for Fiscal Year 2018. The amount available for appropriation is:

From Carryover/Savings:

Water Fund	\$150,000.00
------------	--------------

  
\_\_\_\_\_  
KEITH A. REGAN  
Managing Director, County of Maui

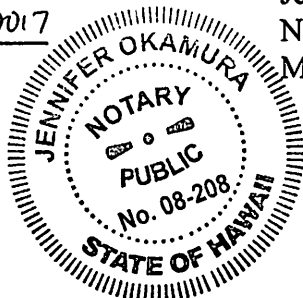
STATE OF HAWAII                     )  
  ) SS.  
COUNTY OF MAUI                 )


On this 21st day of July, 2017, before me appeared Keith A. Regan, to me personally known, who being by me duly sworn did say that he is the Managing Director of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 9-18 of the Charter of the County of Maui; and the said KEITH A. REGAN acknowledged the said instrument to be the free act and deed of said County of Maui.

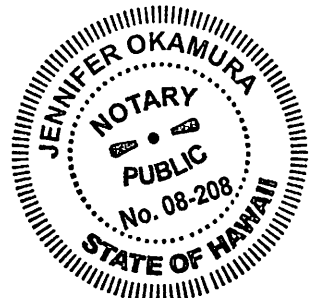
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Doc. Date: Undated      Notary # 1      Pages: 1  
Jennifer Okamura      Second Circuit  
Doc. Description Certification of  
Additional Revenues for  
Fiscal Year 2018

Jennifer Okamura      7/21/2017  
Notary Signature      Date  
NOTARY CERTIFICATION



  
\_\_\_\_\_  
Jennifer Okamura  
Notary Public, State of Hawaii  
My commission expires: June 29, 2020



**ACQUISITION AGREEMENT**  
**BY AND BETWEEN**  
**WAILUKU WATER COMPANY LLC**  
**AND**  
**COUNTY OF MAUI**



## TABLE OF CONTENTS

1.	<u>Effective Date</u> .....	1
2.	<u>Buyer/Seller</u> .....	1
3.	<u>Purchase of Assets</u> .....	1
4.	(a) <u>Brief Description of Land</u> .....	1
	(b) <u>Surface Water Conveyance System</u> .....	1
5.	<u>Acquisition Price</u> .....	2
6.	<u>TMK: (2) 3-5-03:01 (Iao South)</u> .....	2
7.	<u>Name and Address of Escrow Agent</u> .....	2
8.	<u>Earnest Money</u> .....	2
9.	<u>Inspection Period</u> .....	3
	(a) <u>Appraisal of Property</u> .....	3
	(b) <u>Notice of Council's Action</u> .....	3
	(c) <u>Notice of Council's Approval</u> .....	3
10.	<u>Date of Closing</u> .....	3
11.	<u>Seller's Condition of Closing</u> .....	3
12.	<u>Seller's Designated Agent/Buyer's Designated Agent</u> .....	3
13.	<u>Broker</u> .....	4
14.	<u>Notice Address of County/Notice Address of Seller</u> .....	4
 <u>ARTICLE 1, Disposition</u> .....		4
1.1	<u>Disposition</u> .....	4
1.2	<u>Property Defined</u> .....	5
1.3	<u>Permitted Exceptions</u> .....	5
1.4	<u>Acquisition Price</u> .....	5
1.5	<u>Payment of Acquisition Price</u> .....	5
1.6	<u>Earnest Money</u> .....	5
 <u>ARTICLE 2, Title and Survey</u> .....		5
2.1	<u>Title Examination; Commitment for Title Insurance</u> .....	5
2.2	<u>Title Objections; Cure of Title Objections</u> .....	5
2.3	<u>Conveyance of Title</u> .....	6
 <u>ARTICLE 3, Inspection Period</u> .....		6
3.1	<u>Right of Inspection</u> .....	6
3.2	<u>Inspection Period Right of Termination</u> .....	7
 <u>ARTICLE 4, Closing</u> .....		7
4.1	<u>Time and Place</u> .....	7
4.2	<u>Seller's Obligations at Closing</u> .....	7
4.3	<u>Buyer's Obligations at Closing</u> .....	8
4.4	<u>Credits and Prorations</u> .....	8
4.5	<u>Closing Costs</u> .....	9
4.6	<u>Conditions Precedent to Obligation of Buyer</u> .....	9

4.7 <u>Conditions Precedent to Obligation of Seller</u> .....	10
ARTICLE 5, <u>Representations</u> .....	10
5.1 <u>Representations and Warranties of Seller</u> .....	10
5.2 <u>Survival of Seller's Representations and Warranties</u> .....	10
5.3 <u>Covenants of Seller</u> .....	11
5.4 <u>Representations and Warranties of Buyer</u> .....	11
5.5 <u>Covenants of Buyer</u> .....	11
ARTICLE 6, <u>Default</u> .....	12
6.1 <u>Default by Buyer</u> .....	12
6.2 <u>Default by Seller</u> .....	12
ARTICLE 7, <u>Risk of Loss</u> .....	12
7.1 <u>Damage</u> .....	12
ARTICLE 8, <u>Miscellaneous</u> .....	13
8.1 <u>Arbitration</u> .....	13
8.2 <u>Public Disclosure</u> .....	13
8.3 <u>Discharge of Obligations</u> .....	13
8.4 <u>Assignment</u> .....	13
8.5 <u>Notices</u> .....	13
8.6 <u>Binding Effect</u> .....	14
8.7 <u>Modifications</u> .....	14
8.8 <u>Calculation of Time Periods</u> .....	14
8.9 <u>Successors and Assigns</u> .....	14
8.10 <u>Entire Agreement</u> .....	14
8.11 <u>Further Assurances</u> .....	15
8.12 <u>Counterparts</u> .....	15
8.13 <u>Severability</u> .....	15
8.14 <u>Applicable Law</u> .....	15
8.15 <u>No Third Party Beneficiary</u> .....	15
8.16 <u>Exhibits</u> .....	15
8.17 <u>Captions</u> .....	15
8.18 <u>Construction</u> .....	16
8.19 <u>Termination of Agreement</u> .....	16
8.20 <u>No Recordation</u> .....	16

## ACQUISITION AGREEMENT

THIS ACQUISITION AGREEMENT (this "Agreement") is made as of the date set forth in the section (the "Basic Provisions") immediately below (the "Effective Date"), by and between Wailuku Water Company LLC, ("Seller") c/o Avery Chumbley, P.O. Box 2790, Wailuku, Hawaii, 96793 and County of Maui ("Buyer"), c/o Keith Regan, Managing Director, 200 South High Street, Wailuku, Hawaii, 96793.

### **BASIC PROVISIONS**

1. Effective Date: The Effective Date shall be the date that this Agreement is executed by Buyer and Seller.

2. Buyer: County of Maui, a Municipal Corporation  
c/o Keith Regan, Managing Director  
200 South High Street  
Wailuku, Hawaii 96793

Seller: Wailuku Water Company LLC  
P.O. Box 2790  
Wailuku, Hawaii 96793

3. Purchase of Assets: At Closing, subject to the terms and conditions set forth in this Agreement, Seller shall sell to Buyer and Buyer shall purchase from Seller, free and clear of any and all liens, claims and liabilities, except as provided herein, the following assets of the Seller, as defined herein.

(a) The Land of the Seller, comprising approximately 8,764 acres, the exact acreage to be confirmed at Closing through survey; and,

(b) Seller's Surface Water Conveyance System, Improvements and associated rights and liabilities.

4. (a) Brief Description of Land: The Land to be transferred from Seller to Buyer under this Agreement involves approximately 8,764 acres and includes parcels of TMK: (2) 3-2-14:01 (approximately 3,306 acres) and TMK: (2) 3-3-3:03 (approximately 2,909 acres) and a portion of TMK: (2) 3-5-03:01 (approximately 2,549 acres). The exact acreage will be defined by survey prior to closing. See Exhibit "A".

(b) Surface Water Conveyance System. In addition to the Land, the Seller shall also transfer and assign to Buyer all of Seller's Surface Water Conveyance System, including water system improvements, easements, entitlements, acreage and infrastructures, and associated rights and obligations, including water delivery contracts. See Exhibit "B", Surface Water Conveyance System.

Collectively, the Land and Surface Water Conveyance System shall be referred to as Buyer's "Property").

5. Acquisition Price: Buyer shall pay at Closing Nine Million Five Hundred Thousand Dollars (\$9,500,000), as adjusted at Closing, for Buyer's Property with an allocation of Six Million Five Hundred Thousand Dollars (\$6,500,000) at Seven Hundred Fifty Dollars (\$750) per acre for the Land to be transferred to Buyer at Closing, and Three Million Dollars (\$3,000,000) for transfer of the Surface Water Conveyance System.

6. TMK: (2) 3-5-03:01 (Iao South). TMK: (2) 3-5-03:01 comprises approximately 3,649 acres. A portion of this parcel, approximately 1,100 acres, is subject to sale to another party which may close prior to the Closing of this transaction or may close after the Closing of this transaction.

At closing of this transaction, the Buyer will obtain an undivided interest in TMK: (2) 3-5-03:01 which interest will provide the Buyer exclusive possession and control of the referenced portion of the parcel. At closing the Seller shall be obligated to institute proceedings to subdivide the parcel upon an agreed upon subdivision instructions and an agreed upon timetable with the Buyer. Buyer will cooperate and assist in the Seller's efforts to subdivide the parcel.

Upon final subdivision approval of the parcel, the Buyer shall obtain fee simple title to the referenced portion of the parcel. Prior to final subdivision of the referenced portion of the parcel, Buyer will be a co-tenant under a tenancy in common agreement with an undivided interest in the entire parcel with the reserved rights of exclusive possession and control of the referenced portion of the parcel. Upon final subdivision, the tenancy in common agreement will terminate and Buyer will obtain fee simple title to the referenced portion of the parcel.

7. Name and Address of Escrow Agent:

Title Guaranty Escrow Services, Inc.  
80 Puunene Avenue  
Kahului, Hawaii 96732  
Attention: Mark Renschen

8. Earnest Money: Buyer and Seller will establish Escrow at Title Guaranty Escrow Services, Inc. located at 80 Puunene Avenue, Kahului, Hawaii, 96732, Attention: Mark Renschen. A deposit in the amount of \$100,000 will be placed in Escrow within seven (7) calendar days after approval by the Council of the County of Maui and certification of funds available to close the transaction from the Director of Finance of the County of Maui. The deposit shall be deposited in an interest bearing account by the Escrow Agent, as directed by Seller, and the deposit and interest thereon shall be applied to purchase price in the event of closing.

If the Buyer fails to make the deposit to the Escrow Agent, this Agreement shall

automatically be cancelled and neither party shall have any further obligations to the other with respect to the transaction.

9. Inspection Period: The Buyer shall have an inspection period commencing on the date of the agreement to perform all investigations and studies that the Buyer deems prudent, necessary and appropriate in the purchase of the Property. At the commencement of the inspection period Seller shall transmit to Buyer all documentation concerning Seller's Surface Water Conveyance System including contracts, permits, easements, an identification of title to real and personal property interests and all documents requested by Buyer. All costs and expenses to be performed by the Buyer's investigation shall be borne by the Buyer. The Buyer's Inspection Period shall terminate on April 1, 2017. During the Buyer's due diligence period, Buyer shall achieve the following:

(a) Appraisal of Property. Buyer and Seller agree that to obtain Council approval of the transaction the Buyer must engage an appraiser and obtain an appraisal of the Property for the Council's consideration. The Buyer agrees to engage an appraiser for the appraisal of the Property and have the appraisal completed no later than March 15, 2017. Once the appraisal is completed the Buyer and Seller shall meet and confer on the appraisal valuation. If the appraised value of the Property is less than the Acquisition Price, Buyer and Seller will need to determine whether they wish to amend the price or terminate the agreement. Buyer and Seller shall meet to make such decisions no later than five (5) calendar days after the appraisal is completed.

(b) Notice of Council's Action. No later than April 1, 2017 the Buyer shall notify the Seller in writing that the Buyer has approved the Property and that the Council has either approved or not approved the transaction and if approved, that the County Finance Director has provided a certification of funds for Closing. If such notice is not received by the Buyer by April 1, 2017, the Buyer shall notify Seller and Escrow with a written notification of termination of the agreement.

(c) Notice of Council's Approval. If prior to April 1, 2017 the Council of the Buyer has approved the transaction and the Director of Finance of the County of Maui has certified funds to close the transaction, then the Buyer shall notify Seller and Escrow of the same in writing and the Buyer shall make the deposit to the Escrow Agent of \$100,000.

10. Date of Closing: Closing will take place on July 1, 2017 or at another time agreed to in writing between Buyer and Seller.

11. Seller's Condition of Closing. The obligations of Buyer to close are subject to the approval of the transaction by members of the Buyer and the withdrawal of the Public Utilities Commission (P.U.C.) application, currently pending, and the consent of the P.U.C. for such withdrawal.

12. Seller's Designated Agent: Avery B. Chumbley.

Buyer's Designated Agent: Keith Regan

13. Broker: Not applicable.

14. Notice Address of County:

County of Maui  
c/o Keith Regan, Managing Director  
200 South High Street  
Wailuku, Hawaii 96793

With a copy to: Patrick Wong, Corporation Counsel  
Department of the Corporation Counsel  
200 South High Street, 3<sup>rd</sup> Floor  
Wailuku, Hawaii 96793

Notice Address of Seller:

Avery B. Chumbley  
P.O. Box 2790  
Wailuku, Hawaii 96793

With a copy to: Paul R. Mancini, Esq.  
Mancini Welch & Geiger  
305 E. Wakea Avenue, Suite 200  
Kahului, Hawaii 96732

ARTICLE 1

DISPOSITION

1.1 Disposition. Subject to the terms and conditions hereinafter set forth, Seller agrees to convey and Buyer agrees to acquire the following:

(a) The Land more particularly described on Exhibit "A" attached hereto and made a part hereof, together with all rights and appurtenances pertaining to such Land, including the property to be subdivided by the Buyer under Section 6 of the Basic Provisions, (TMK: (2) 3-5-03:01); and the Surface Water Conveyance System and all rights, obligations and appurtenances pertaining to the same as described in Exhibit "B", attached hereto and made a part hereof.

(b) All existing studies, plans, records, permits and entitlements pertaining to the Property and not otherwise excluded from delivery to the Buyer herein.

1.2 Property Defined. The Land and Surface Water Conveyance System are hereinafter sometimes referred to collectively as the "Property").

1.3 Permitted Exceptions. The Property shall be conveyed subject to the matters which are, or are deemed to be, Permitted Exceptions pursuant to Article 2 hereof (herein referred to collectively as the "Permitted Exceptions").

1.4 Acquisition Price. Seller is to convey and the Buyer is to acquire the Property for the amount set forth in the Basic Provisions (the "Acquisition Price"). Seller and the Buyer agree that the Acquisition Price is the agreed market value of the Property and that the Acquisition Price shall be allocated as referenced in Section 5 of the Basic Provisions.

1.5 Payment of Acquisition Price. The Acquisition Price, as increased or decreased by prorations and adjustments as herein provided, shall be payable in full at Closing in cash by wire transfer or certified check of immediately available federal funds to Escrow.

1.6 Earnest Money. At the date identified in Section 8 of the Basic Provisions, Buyer shall deposit with the escrow agent set forth in the Basic Provisions (the "Escrow Agent"), having its office at the address set forth in the Basic Provisions, the sum set forth in the Basic Provisions (the "Earnest Money") in good funds, either by cashier's check or wire transfer of immediately available federal funds. The Escrow Agent shall hold the Earnest Money in an interest-bearing account. All interest accruing on such sum shall become a part of the Earnest Money and shall be distributed as Earnest Money in accordance with the terms of this Agreement.

## ARTICLE 2

### TITLE AND SURVEY

2.1 Title Examination; Commitment for Title Insurance. Buyer shall have until the expiration of the Inspection Period (defined in Section 9 hereof) to examine title to the Property.

2.2 Title Objections; Cure of Title Objections. Buyer shall have until the expiration of the Inspection Period to notify Seller, in writing, of such objections as the Buyer may have to anything contained in the Title Commitment. In the event the Buyer shall timely notify Seller of objections to any item contained in the Title Commitment, Seller shall have the right, but not the obligation, to cure such objections. If Seller elects not to cure any objections specified in the Buyer's notice, or if such are not satisfied prior to the end of the Inspection Period, Buyer shall have the following options: (i) to accept a conveyance of the Property subject to the Permitted Exceptions, specifically including any matter objected to by Buyer which Seller is unwilling or unable to cure, and without reduction of the Acquisition Price; or (ii) to terminate this Agreement by sending written notice thereof to Seller no later than the end of the Inspection Period, and upon delivery of such notice of termination, this Agreement shall terminate and the Earnest Money shall be returned to Buyer and thereafter neither party hereto shall have any

further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. If Buyer fails to timely deliver notice of termination under clause (ii) above, Buyer will be deemed to have elected to proceed to closing under clause (i) above.

2.3 Conveyance of Title. At Closing, Seller shall convey and transfer to Buyer such title to the Property as will enable the Title Company to issue to Buyer an Owner's Policy of Title Insurance (the "Title Policy") with coverages covering the Property, in the full amount of the Acquisition Price. Seller shall be required at Closing to remove or cause the Title Company to insure over any monetary liens other than real property taxes and governmental assessments not then due and payable. Notwithstanding anything contained herein to the contrary, the Property shall be conveyed subject to the following matters, which shall be deemed to be Permitted Exceptions:

(a) the lien of all ad valorem real property taxes and assessments not yet due and payable as of the date of Closing, subject to adjustment as herein provided;

(b) local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and zoning laws, ordinances and regulations, nor or hereafter in effect relating to the Property; and

(c) items appearing of record and, in either case, not objected to by Buyer or waived or deemed waived by Buyer in accordance with Sections 2.2 and 2.3 hereof.

### ARTICLE 3

#### INSPECTION PERIOD

3.1 Right of Inspection. During the Inspection Period, Buyer shall have the right to review all non-physical aspects of the Property, including but not limited to title, zoning, entitlements, subdivision conditions and all other issues which do not require physical investigation of the Property; provided, however, such review may involve examination at the offices of Seller or elsewhere as the same may be located, any operating file maintained by Seller or its property manager in connection with the maintenance and/or management of the Property, but excluding materials not directly related to the maintenance and/or management of the Property such as Seller's internal memoranda, financial projections, budgets, appraisals, accounting and tax records and similar proprietary or confidential information. Seller shall promptly provide to Buyer, to the extent in Seller's possession or control and without any warranty or representation as to accuracy or completeness other than as set forth in Section 5.1 below, copies of Seller's existing documentation pertaining to (a) all plans and governmental approvals; (b) applications and submittals for pending subdivision; (c) information concerning public access rights; (d) information concerning existing water meter assignments; (e) copies of any leases; (f) the environmental condition of the Property, including any presently existing violations of law within Seller's knowledge; and (g) existing technical studies, reports, and work product in Seller's possession or control relating to topography, soils, surface water, ground



water exploration and development, and drainage. On-site inspections may including, without limitation, soils tests, engineering studies and such feasibility and other studies regarding the condition of the Property, as Buyer considers prudent. Buyer agrees to indemnify against and hold Seller harmless from any claim for liabilities, costs, expenses (including reasonable attorneys' fees actually incurred) damages or injuries arising out of or resulting from the inspection of the Property by Buyer or its agents, and notwithstanding anything to the contrary in this Agreement, such obligation to indemnify and hold harmless Seller shall survive Closing or any termination of this Agreement. All inspections shall occur at reasonable times agreed upon by Seller and Buyer and shall be conducted so as not to interfere unreasonably with use of the Property by Seller.

3.2 Inspection Period Right of Termination. Seller agrees that in the event Buyer determines (such determination to be made in Buyer's sole and absolute discretion) that the Property is not suitable for its purposes, Buyer shall have the right, in Buyer's sole and absolute discretion, to terminate this Agreement by giving written notice thereof to Seller, prior to the end of the Inspection Period. If Buyer gives such notice of termination within the Inspection Period, this Agreement shall terminate and the Earnest Money shall be returned to Buyer. Time is of the essence with respect to the provisions of this Section 3.2. If Buyer fails to give Seller notice of termination prior to the expiration of the Inspection Period, Buyer shall no longer have any right to terminate this Agreement under this Section 3.2 and shall be bound to proceed to Closing and consummate the transaction contemplated hereby pursuant to the terms of this Agreement.

## ARTICLE 4

### CLOSING

4.1 Time and Place. The consummation of the transaction contemplated hereby ("Closing") shall occur upon recordation of the Deed, at 8:00 a.m. (local time at the Property) on the date set forth in the Basic Provisions. At Closing, Seller and Buyer shall perform the obligations set forth in, respectively, Section 4.2 and Section 4.3, the performance of which obligations shall be concurrent conditions.

4.2 Seller's Obligations at Closing. At Closing, Seller shall:

(a) deliver to Buyer a duly executed limited warranty deed in the form reasonably acceptable to the Buyer, as well as all other documents of conveyance to close the transaction including, but not limited to the required easements, bill of sale for personal property to be transferred, permits/entitlements, pending applications, assumption of contracts, and other documentation to transfer the Surface Water Conveyance System;

(b) deliver to Buyer such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Seller; and

(c) deliver to Buyer an affidavit duly executed by Seller stating that Seller is

not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code") and the Treasury Regulations thereunder and an affidavit that Seller is a resident under the Hawaii Real Property Tax Act.

(d) certifications on compliance with Section 11 of the Basic Provisions that Seller's members have approved the transaction and that the P.U.C. has approved the withdrawal of Seller's application before the P.U.C.

4.3 Buyer's Obligations at Closing: At Closing, Buyer shall:

(a) pay to Seller the full amount of the Acquisition Price, as increased or decreased by prorations and adjustments as herein provided, all funds required of the Buyer to close the transaction under Section 4.5 herein, all in immediately available wire transferred funds or cashier's check pursuant to Section 1.5 above, it being agreed that at Closing, the Earnest Money Deposit(s) shall be delivered to Seller and applied towards payment of the Acquisition Price;

(b) join Seller in execution of the instruments described in Section 4.2(a);

(c) deliver to Seller such evidence as Seller's counsel and/or the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Buyer; and

(d) deliver such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement.

4.4 Credits and Prorations.

(a) The following shall be apportioned between Seller and Buyer with respect to the Property as of 12:01 a.m. on the day following the day of Closing, as if Buyer were vested with title to the Property during the entire day following the day upon which Closing occurs:

(i) real property taxes and governmental assessments levied against the Property;

(ii) utility charges for which Seller is liable, if any, such charges to be apportioned at Closing on the basis of the most recent meter reading occurring prior to Closing;

(iii) any other operating expenses or other items pertaining to the Property which are customarily prorated in the area in which the Property is located.

(b) Notwithstanding anything contained in the foregoing provisions, any taxes paid at or prior to Closing shall be prorated based upon the amount actually paid. If taxes and assessments for the current year have not been paid at or prior to Closing, Seller shall be charged at Closing an amount equal to that portion of such taxes and assessments which relates to the

period before Closing. Any such apportionment made with respect to a tax year for which the tax rate or assessed valuation, or both, have not yet been fixed shall be based upon the tax rate and/or assessed valuation last fixed. To the extent that the actual taxes and assessments for the current year differ from the amount apportioned at Closing, the parties shall make all necessary by appropriate payments between themselves following Closing.

(c) The provisions of this Section 4.4(b) shall survive Closing.

4.5 Closing Costs. Seller shall pay (a) the fees of any counsel representing Seller in connection with this transaction; (b) one-half of the fee for the issuance of a Hawaii Standard Owner's Policy of title insurance in the amount of the Acquisition Price, without endorsement; (c) one-half of any escrow fees charged by the Escrow Agent; (d) recording fees for the Deed; and (e) parties agree that the Hawaii conveyance tax shall be exempt from the transaction pursuant to HRS, Section 247-3(9) and the provisions therein are applicable to the transaction. Buyer shall pay (a) the fees of any counsel representing Buyer in connection with this transaction; (b) the remainder of the premium for the Owner's Policy of Title Insurance (including all endorsements thereto and all costs of any upgrade to such policy) to be issued to Buyer by the Title Company at Closing; (c) one-half of any escrow fees charged by the Escrow Agent; and (d) the cost of engineering and surveying services to obtain subdivision approval, which shall be reimbursed by the Buyer to Seller at Closing.

4.6 Conditions Precedent to Obligation of Buyer. The obligation of Buyer to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of Closing of all of the following conditions, any or all of which may be waived by Buyer in its sole discretion:

(a) Seller shall have delivered to Buyer (or the Title Company in escrow) all of the items required to be delivered to Buyer pursuant to the terms of this Agreement, including but not limited to, those provided in Section 4.2.

(b) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the date of Closing (with appropriate modifications permitted under this Agreement or not materially adverse to Buyer).

(c) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the date of Closing.

(d) The Title Company shall issue the Title Policy in the form the Title Company committed to issue prior to the expiration of the Non-Physical Inspection Period.

(e) Certifications on compliance with Section 11 of the Basic provisions that Seller's members have approved the transaction and that the P.U.C. has approved the withdrawal of Seller's application before the P.U.C.

4.7 Conditions Precedent to Obligation of Seller. The obligation of Seller to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of Closing of all of the following conditions, any or all of which may be waived by Seller in its sole discretion:

(a) Seller (or the Title Company, in escrow) shall have received the Acquisition Price as adjusted pursuant to and payable in the manner provided for in this Agreement.

(b) Buyer shall have delivered to Seller (or the Title Company, in escrow) all of the items required to be delivered to Seller pursuant to the terms of this Agreement, including but not limited to, those provided for in Section 4.3.

(c) All of the requirements and warranties of Buyer contained in this Agreement shall be true and correct in all material respects as of the date of Closing.

(d) Buyer shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Buyer as of the date of Closing.

## ARTICLE 5

### REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Buyer as of the Effective Date:

(a) Seller has been duly organized and is validly existing as a limited liability company under the laws of Hawaii. Seller has the full right and authority to enter into this Agreement and, to transfer all of the Property to be conveyed by Seller pursuant hereto and to consummate or cause to be consummated the transactions contemplated herein to be made by Seller. The persons signing this Agreement on behalf of Seller are authorized to do so.

(b) Except as disclosed to the Buyer, to Seller's knowledge, there is no action, suit or proceeding pending or threatened against Seller or the Property, relating to any alleged violation of law or any environmental rules or Seller's legal duty to third parties or governmental agencies in connection with Seller's ownership, operation or use of the Property.

(c) Other than disclosed to Seller to Buyer, to Seller's knowledge, Seller has delivered or made available to Buyer all documentation Seller is required to provide Buyer pursuant to this Agreement.

5.2 Survival of Seller's Representations and Warranties. The representations and warranties of Seller set forth in Section 5.1 are true on the Effective Date and shall be true as of the Date of Closing.

5.3 Covenants of Seller. Seller hereby covenants with Buyer as follows:

(a) From the Effective Date hereof until the Closing or earlier termination of this Agreement, Seller shall use reasonable efforts to operate and maintain the Property in a manner generally consistent with the manner in which Seller has operated and maintained the Property prior to the date hereof.

5.4 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller:

(a) Buyer has the full right, power and authority to purchase the Property as provided in this Agreement and to carry out Buyer's obligations hereunder, and all requisite action necessary to authorize Buyer to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been, taken. The person signing this Agreement on behalf of Buyer is authorized to do so.

(b) There is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Buyer which, if adversely determined, could individually or in the aggregate materially interfere with the consummation of the transaction contemplated by this Agreement.

5.5 Covenants of Buyer. If Buyer, in connection with its investigation of the Property during the Inspection Period, elects to inspect the Property for the presence of Hazardous Substances (as hereinafter defined), Buyer shall furnish to Seller copies of any reports received by Buyer in connection with any such inspection. Buyer hereby assumes full responsibility for such inspections and irrevocably waives any claim against Seller arising from the presence of Hazardous Substances in, on, under or contiguous to the Property. Buyer shall pay all costs and expenses of any such investigation and testing and shall indemnify and hold Seller and the Property harmless from and against all injury and damages suffered or incurred by Seller caused by Buyer in Buyer's investigations, but if Buyer does not acquire the Property, such indemnification shall exclude any clean-up costs for any existing environmental condition discovered by Buyer in said investigation. Buyer shall further repair and restore any damage to the Property caused by or occurring during Buyer's testing, and shall return the Property to substantially the same condition as existed prior to such injury. As used herein, the term "Hazardous Substances" means any toxic, noxious, or hazardous wastes or substances of any kind or form including, without limitation of the generality of the foregoing, asbestos, PCB's, and all substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9061 et seq., Hazardous Materials Transportation Act, 49 U.S.C. §1802, The Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. and in the Toxic Substance Control Act of 1976, as amended, 15 U.S.C. §2601 et seq., or in any other applicable environmental law and all substances regulated as "pollutants" or "contaminants" in any applicable environmental law.

## ARTICLE 6

### DEFAULT

6.1 Default by Buyer. The Buyer and Seller agree that in the event the Buyer defaults in the Buyer's obligations hereunder to close its purchase of the land, which default remains uncured five (5) days following written notice from Seller specifying the nature of said default, then the Buyer shall be deemed to be in breach of this Agreement, and Seller shall thereafter be entitled to terminate this Agreement and the Escrow upon written notice to the Buyer and the Escrow Agent, who shall terminate the Escrow and immediately release to Seller the Earnest Money, inclusive of any amount of interest thereon. The Buyer shall pay to Escrow Agent any charges incurred by the Escrow Agent in the course of administering the Escrow which, in accordance with this Agreement, were payable by the Buyer or Seller. This foregoing remedy of Seller for the Buyer's breach of this Agreement is as Liquidated Damages, and not as a penalty, the parties agreeing that Seller's actual damages, if any, which may occur in the event the Buyer breaches this Agreement, would be difficult or impractical to ascertain, but a reasonable estimate of which is stipulated to be equal to the amount of the Earnest Money, inclusive of any interest thereon. Seller's remedy described in this paragraph shall be Seller's sole remedy in the event of the Buyer's breach of this Agreement, and Seller hereby waives the remedy of specific performance.

6.2 Default by Seller. In the event that Seller fails to consummate this Agreement for any reason other than Buyer's default or the permitted termination of this Agreement by Seller or Buyer as herein expressly provided, Buyer shall be entitled, as its sole remedy, either (a) to receive the return of the Earnest Money, which return shall operate to terminate this Agreement and release Seller from any and all liability hereunder, or (b) to enforce specific performance of Seller's obligation to execute the documents required to convey the Property to Buyer, it being understood and agreed that the remedy of specific performance shall not be available to enforce any other obligation of Seller hereunder. Buyer expressly waives its rights to seek damages in the event of Seller's default hereunder. Buyer shall be deemed to have elected to terminate this Agreement and receive back the Earnest Money if Buyer fails to file suit for specific performance against Seller in a court having jurisdiction in the county and state in which the Property is located, on or before one hundred twenty (120) days following the date upon which Closing was to have occurred.

## ARTICLE 7

### RISK OF LOSS

7.1 Damage. In the event of material loss or damage to the Property or any portion thereof occurring prior to Closing and after the expiration of Buyer's contract termination right under Section 3.2 above, Buyer shall have the right to terminate this Agreement and receive a full refund of Buyer's deposit. Upon Closing, full risk of loss with respect to the Property shall pass to Buyer.

## ARTICLE 8

### MISCELLANEOUS

8.1 Arbitration. Any dispute between the Parties arising out of or relating to the terms and conditions or subject matter of this Agreement, at the option of either party, shall be submitted to mediation. If the dispute cannot be resolved within ten (10) days after the commencement of the mediation process, or neither party desires to submit the matter to the mediation process, the dispute, at the option of either party, shall be submitted to binding arbitration. The Parties shall attempt to select a single arbitrator by mutual agreement. If the Parties cannot reach an agreement on the selection of an arbitrator, a single arbitrator shall be selected in accordance with Chapter 658A of the Hawaii Revised Statutes. The Parties agree that the decision of the arbitrator shall be binding, final, enforceable and not appealable to any court except as provided in Chapter 658A of the Hawaii Revised Statutes. All proceedings shall be held in Honolulu, Hawaii. The arbitrator shall determine which and to what extent each Party shall be responsible for costs and expenses, including reasonable attorneys' fees. The Parties shall use the services of Dispute Prevention and Resolution, Inc. to conduct the arbitration, but if such organization is not able to so serve, the Parties shall jointly select a similar alternative dispute resolution organization with offices in Honolulu, Hawaii to provide such services.

8.2 Public Disclosure. Prior to Closing, any release to the public of information with respect to the sale contemplated herein or any matters set forth in this Agreement will be made only after informing Seller of the same.

8.3 Discharge of Obligations. The acceptance of the Deed by Buyer shall be deemed to be a full performance and discharge of every representation and warranty made by Seller herein and every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement, except those which are herein specifically stated to survive Closing.

8.4 Assignment. Buyer may not assign its rights under this Agreement to anyone other than a Permitted Assignee without first obtaining Seller's written approval which may be given or withheld in Seller's sole discretion.

8.5 Notices. Any notices pursuant to this Agreement shall be given in writing by (a) personal delivery, or (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (d) legible facsimile transmission sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile transmission, as of the date of the facsimile transmission provided that an original of such facsimile is also sent to the intended addressee by means described in clauses (a), (b) or (c) above. Unless changed in accordance with the preceding sentence, the addressees for notices

given pursuant to this Agreement shall be as follows:

If to Seller:

Wailuku Water Company LLC  
c/o Avery B. Chumbley  
P.O. Box 2790  
Wailuku, Hawaii 96793

with a copy to:

Paul R. Mancini, Esq.  
Mancini, Welch & Geiger  
305 E. Wakea Avenue, Suite 200  
Kahului, Hawaii 96732

If to Buyer:

County of Maui  
c/o Keith Regan, Managing Director  
200 South High Street  
Wailuku, Hawaii 96793

with a copy to:

Patrick Wong, Corporation Counsel  
Department of the Corporation Counsel  
200 South High Street, 3<sup>rd</sup> Floor  
Wailuku, Hawaii 96793

8.6 Binding Effect. This Agreement shall not be binding in any way upon Seller and/or the Buyer until the Council of the County of Maui has approved the Agreement and has provided authorization and funding to proceed with the Acquisition of the Property.

8.7 Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

8.8 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of the State in which the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., local time.

8.9 Successors and Assigns. The terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the parties hereto.

8.10 Entire Agreement. This Agreement, including the Exhibits, contains the



entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

8.11 Further Assurances. Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Buyer shall, if requested by Seller, execute acknowledgments of receipt with respect to any materials delivered by Seller to Buyer with respect to the Property. The provisions of this Section 8.10 shall survive Closing.

8.12 Counterparts. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

8.13 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

8.14 Applicable Law. This Agreement is performable in the state in which the Property is located and shall in all respects be governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of such state. Seller and Buyer hereby irrevocably submit to the jurisdiction of any state or federal court sitting in the state in which the Property is located in any action or proceeding arising out of or relating to this Agreement and hereby irrevocably agree that all claims in respect of such action or proceeding shall be heard and determined in a state or federal court sitting in the state in which the Property is located. Buyer and Seller agree that the provisions of this Section 8.13 shall survive the Closing of the transaction contemplated by this Agreement.

8.15 No Third Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Buyer only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

8.16 Exhibits. The following exhibits attached hereto shall be deemed to be an integral part of this Agreement:

- |     |                  |  |
|-----|------------------|--|
| (a) | <u>Exhibit A</u> | Description of Land                      |
| (b) | <u>Exhibit B</u> | Map of Land and Surface Water Conveyance |
- System

8.17 Captions. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or

define the text of any section or any subsection hereof.

8.18 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

8.19 Termination of Agreement. It is understood and agreed that if either Buyer or Seller terminates this Agreement pursuant to a right of termination granted hereunder (for any reason other than the other party's breach of contract), such termination shall operate to relieve Seller and Buyer from all obligations under this Agreement, except for such obligations as are specifically stated herein to survive the termination of this Agreement.

8.20 No Recordation. Neither this Agreement nor any memorandum of the terms hereof shall be recorded or otherwise placed of public record and any breach of this covenant shall entitle the party not placing same of record to pursue its rights and remedies under Article 6.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement as of the Effective Date.

WAILUKU WATER COMPANY LLC

\_\_\_\_\_  
By: Avery B. Chumbley  
Its: Manager

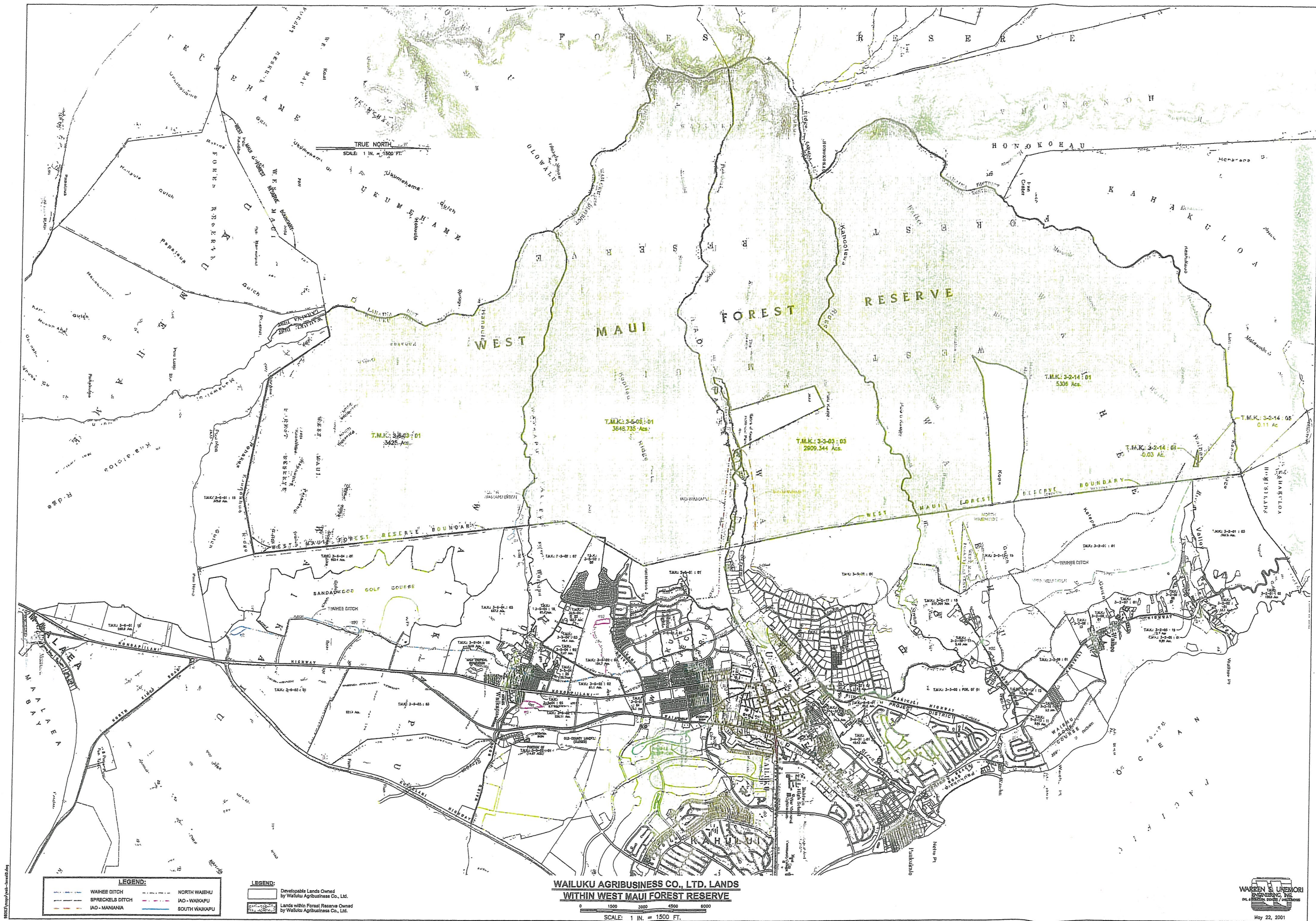
COUNTY OF MAUI

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT "A"**

**DESCRIPTION OF LAND**

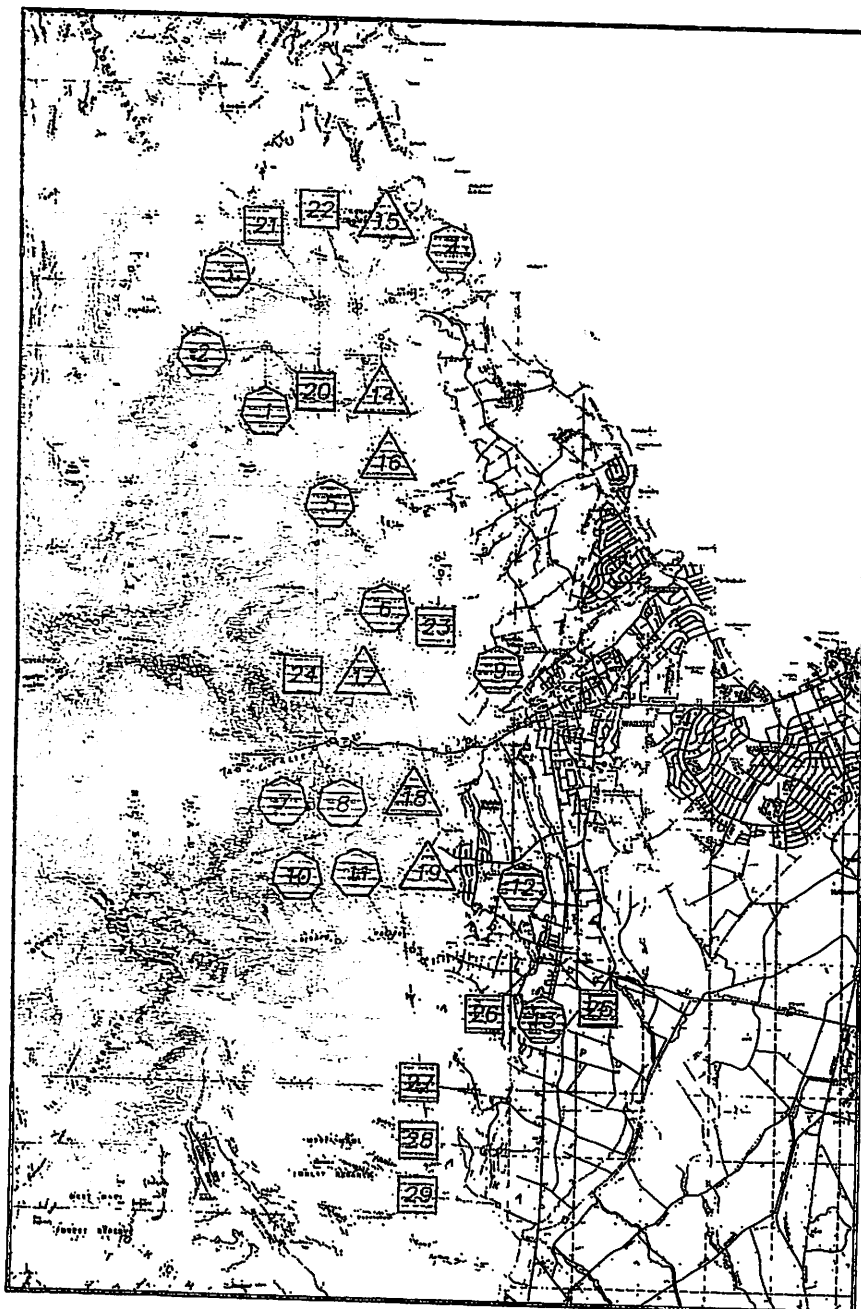






**EXHIBIT "B"**

**MAP OF LAND AND SURFACE WATER CONVEYANCE SYSTEM**



# Wailuku Agribusiness Co., Inc. Water System GPS Points

## ○ Stream Diversions

- 1 Waihee Ditch @ Waihee Stream
- 2 Spreckels Ditch @ Waihee Stream
- 3 Field #1 Intake Ditch @ Waihee Stream
- 4 North Waiehu Ditch @ Waiehu Stream
- 5 Waihee Ditch @ Waiehu Stream
- 6 Iao-Maniania Ditch @ Iao Stream
- 7 Iao-Waikapu Ditch @ Iao Stream
- 8 Kama Ditch @ Iao Stream
- 9 South Waikapu Ditch @ Waikapu Stream
- 10 Everett Ditch @ Waikapu Stream
- 11 Waihee Ditch @ Waikapu Stream
- 12 Reservoir #6 Intake @ Waikapu Stream

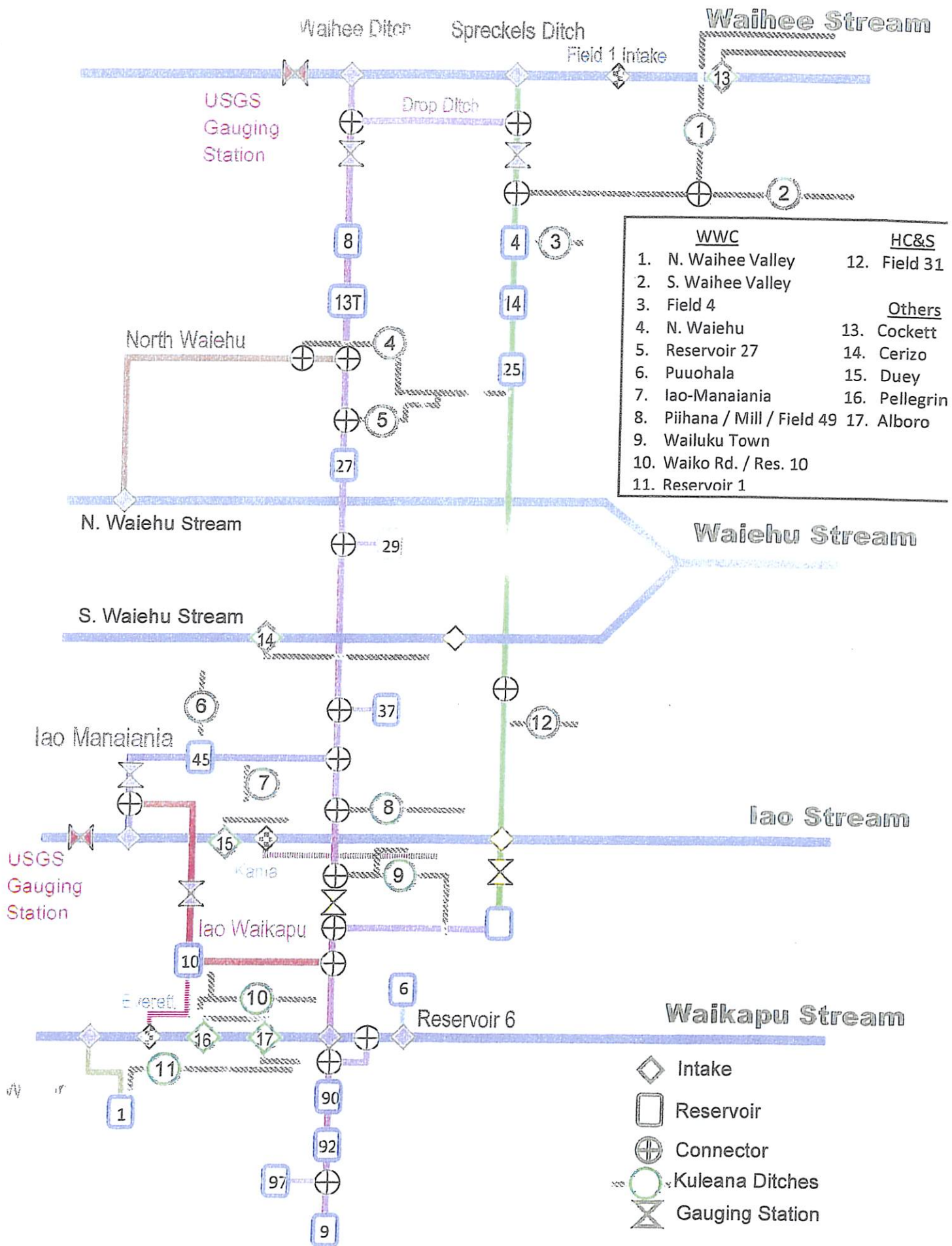
## △ Gauging Stations

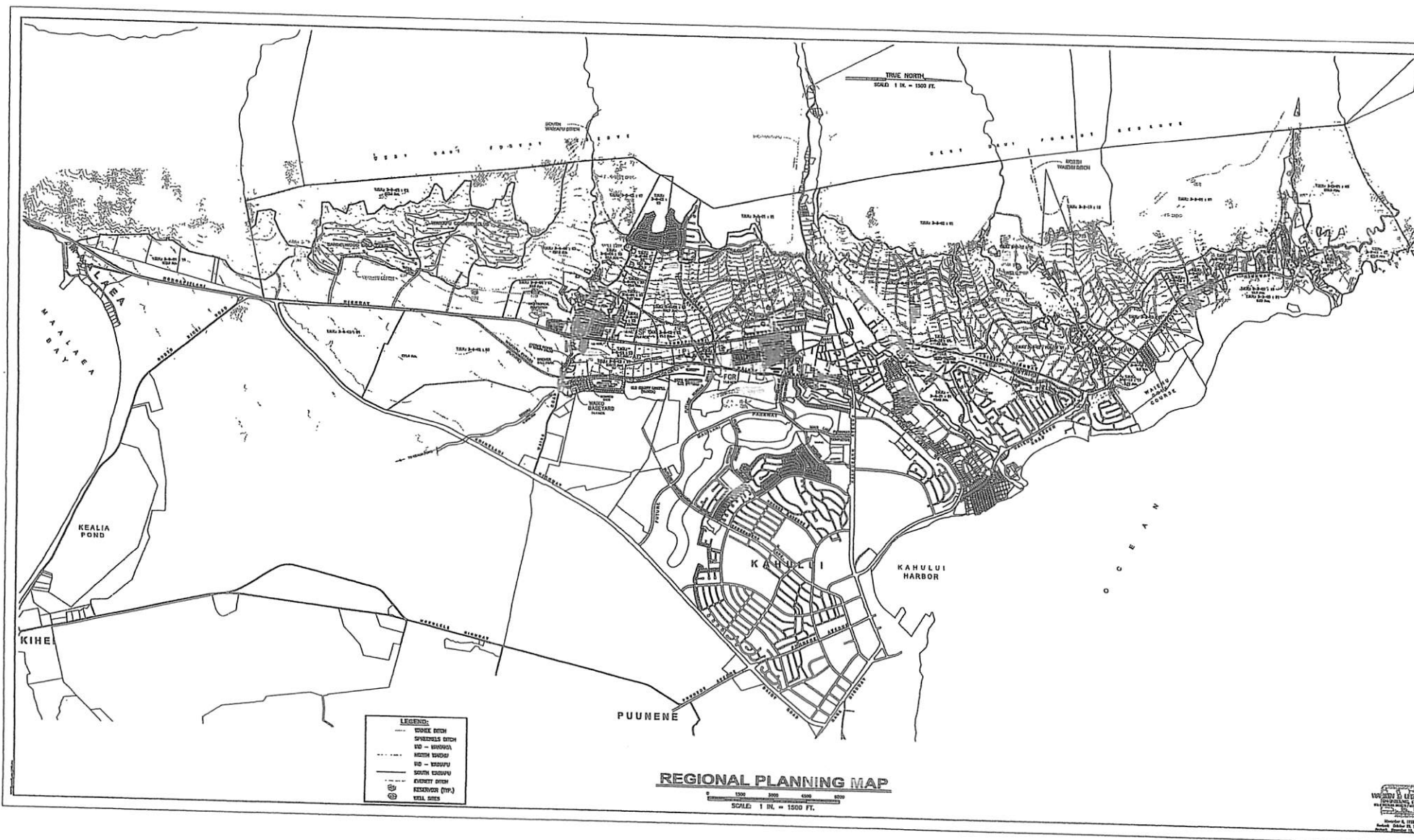
- 13 Waihee Ditch @ Waihee Stream
- 14 Spreckels Ditch @ Waihee Stream
- 15 North Waiehu Ditch @ Waiehu Stream
- 16 Iao-Maniania Ditch @ Iao Stream
- 17 Iao-Waikapu Ditch @ Iao Stream
- 18 South Waikapu Ditch @ Waikapu Stream

## □ Control Points and Sluice Gates or Valves

- 19 Waihee Ditch Control Gate @ Waihee Valley
- 20 Spreckels Ditch Control Gate @ Waihee Valley
- 21 Waihee Ditch Sluice Gate @ South Waiehu Stream
- 22 Iao Ditch Control Gate @ Iao Stream
- 23 Reservoir 6 Sluice Gate @ South Waikapu Stream
- 24 Waihee Ditch Sluice Gate @ South Waikapu Stream
- 25 Waihee Ditch Sluice Gate @ Field 96
- 26 Waihee Ditch Sluice Gate @ Field 97
- 27 Waihee Ditch Sluice Gate @ Maalaea-Reservoir 9

Scale: 1" = 6000'





UNIVERSITY OF HAWAII  
DEPARTMENT OF PLANNING  
KAPLAN CAMPUS  
HONOLULU, HAWAII  
1964