

# Resolution

No. 22-51

**AUTHORIZING THE MAYOR TO ENTER INTO A PUBLIC PRIVATE  
PARTNERSHIP AGREEMENT RELATING TO INFRASTRUCTURE  
IMPROVEMENTS AND RESIDENTIAL WORKFORCE HOUSING FOR THE  
WAIKAPU COUNTRY TOWN PROJECT**

WHEREAS, Waikapu Country Town (the “Development”), is intended to be developed as a mixed use residential community consisting of 1,433 dwelling units, with the potential for 146 `ohana units, commercial uses, a park, and a school site;

WHEREAS, the Development is subject to the requirements of the Findings of Fact, Conclusions of Law, and Decision and Order, entered on February 26, 2018, in Docket No. A15-798, which reclassified portions of Development from the State Land Use Agricultural District to the State Land Use Rural and Urban Districts (the “DBA”);

WHEREAS, the Development is also subject to the requirements of the conditions of zoning set forth in Ordinance 4998 (2019), the ordinance which changed the zoning for portions of WCT (the “CIZ”);

WHEREAS, in accordance with Chapter 2.96, Maui County Code (“MCC”), upon full buildout, the Development shall include a minimum of 287 residential workforce housing units (“RWHUs”) as part of the 1,433 permitted dwelling units, resulting in a breakdown of 287 RWHUs and 1,146 market units;

WHEREAS, the County and State recognize the housing crisis and desire additional RWHUs in the Development;

WHEREAS, the conditions of the CIZ and DBA place certain obligations relating to infrastructure on the Development;

WHEREAS, the Mayor in cooperation with Maui’s delegation of State legislators has developed a proposal in the form of a public private partnership agreement, a draft of which is attached hereto as Exhibit 1, where the State and County will assist the Development with its infrastructure obligations and therefore, additional RWHUs will be provided in the Development by the developer;

WHEREAS, pursuant to Section 4-1 of the Revised Charter of Maui 1983, as amended, the acts of the Council of the County of Maui may be by resolution; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That is support the concept of government providing infrastructure improvements for the Development in exchange for additional residential workforce housing units in the Development; and

2. The Council authorizes the Mayor to execute the Public Private Partnership Agreement, County of Maui – Waikapu Country Town, Exhibit 1, with the understanding that non-substantive changes are permitted.

3. That it does hereby authorize the Mayor or the Mayor's duly authorized representative, to execute all necessary documents in connection with the waiver; and

4. That certified copies of this Resolution be transmitted to the Mayor, the Director of Public Works, the Director of Environmental Management, the Planning Director, the Corporation Counsel, and Waikapu Properties, LLC.

APPROVED AS TO FORM  
AND LEGALITY:

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Deputy Corporation Counsel  
County of Maui

**Resolution No. 22-51**

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Greg K. Lee", written over a horizontal line.

Upon the request of the Mayor.

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

TMK: (2) 3-6-004:003 & 006  
(2) 3-6-005:007  
(2) 3-6-006:036  
(2) 3-6-002:003

Total No. of Pages: \_\_\_\_\_

## PUBLIC PRIVATE PARTNERSHIP AGREEMENT

County of Maui – Waikapu Country Town

THIS PUBLIC PRIVATE PARTNERSHIP AGREEMENT (the “Agreement”) made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between WAIKAPU PROPERTIES, LLC, a Hawaii limited liability company; MTP LAND PARTNERS, LLC, a Hawaii limited liability company; WAIALE 905 PARTNERS, LLC, a Hawaii limited liability company; and WILLIAM S. FILIOS, Trustee of the William S. Filios Separate Property Trust dated April 3, 2020, all of whose address is 1670 Honoapiilani Highway, Wailuku, Hawaii 96793 (collectively “WCT”), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793 (“County”).

WHEREAS, WCT intends to develop Waikapu Country Town (the “Development”), a mixed use residential community consisting of 1,433 dwelling units, with the potential for 146 ‘ohana units, commercial uses, a park, and a school site;

WHEREAS, the Development is subject to the requirements of the Findings of Fact, Conclusions of Law, and Decision and Order, entered on February 26, 2018, in Docket No. A15-798, which reclassified portions of Development from the State Land Use Agricultural District to the State Land Use Rural and Urban Districts (the “DBA”);

WHEREAS, the Development is also subject to the requirements of the conditions of zoning set forth in Ordinance 4998 (2019), the ordinance which changed the zoning for portions of WCT (the “CIZ”);

WHEREAS, the Development is currently configured with a 12-acre school site, however the State of Hawaii Department of Education (the “DOE”) desires to expand the area of school site;

WHEREAS, in accordance with Chapter 2.96, Maui County Code (“MCC”), upon full buildout the Development shall include a minimum of 287 residential workforce housing units (“RWHUs”) as part of the 1,433 permitted dwelling units, resulting in a breakdown of 287 RWHUs and 1146 market units;

WHEREAS, the State of Hawaii and the County desire additional RWHUs in the Development;

WHEREAS, pursuant to Chapter 2.96, MCC, the sales price for RWHUs are established by the County’s Affordable Housing Price Guidelines;

WHEREAS, the Development is limited in the total number of units that may be developed;

WHEREAS, by committing to provide the additional RWHUs, WCT is foregoing the opportunity to sell those same units at market prices, the potential opportunity cost is shown on Exhibit “A”, attached hereto;

WHEREAS, the State of Hawaii and the County propose to fund infrastructure improvements in the general vicinity of the Development in order to facilitate the development of additional RWHUs;

WHEREAS, WCT anticipates that the Development will produce, on average, 650,000 gallons per day of wastewater;

WHEREAS, WCT originally intended to construct a private wastewater treatment facility for the Development;

WHEREAS, the State of Hawaii has committed matching funds for the construction of a Central Maui Regional Wastewater Treatment Facility (“Central WWTF”);

WHEREAS, County and WCT now desire the Development to connect to the Wailuku/Kahului Wastewater Treatment Facility (“Kahului WWTF”) in the interim while the Central WWTF is being constructed;

WHEREAS, WCT is required to provide the Development’s pro rata share for the total anticipated costs for design and construction of the Waiale Road Extension (“WRE”);

WHEREAS, the County and State of Hawaii are working together to secure a funding source for the construction of the WRE;

WHEREAS, the County and WCT desire to establish an agreement where WCT will provide additional RWHUs along with additional acreage for the school site in the Development in-lieu of monetary contributions for infrastructure improvements;

WHEREAS, WCT requires a commitment from the County in regards to its ability to deliver the Development’s wastewater to a County treatment facility prior to the commencement of subdivision improvements for the Development; and

NOW THEREFORE, County and WCT, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, hereby agree as follows:

**I. WRE and CAPACITY RESERVATION AT THE KAHULUI WWTF**

In consideration of WCT providing an additional 63 RWHUs (the “Initial RWHUs”) in the Development, resulting in 350 RWHUs and 1,083 market units at full buildout, the County agrees as follows:

- A. The opportunity cost of the Initial RWHUs shall be considered an in-lieu contribution for WCT’s obligations under this Section I and is an adequate amount to justify the County’s obligations in this Section I.
- B. County and WCT shall enter into a Traffic Memorandum of Agreement, discussed further in Section II, below, where WCT’s traffic impact mitigation obligations and the associated costs will be agreed upon by the County and WCT. County shall assume WCT’s obligations as follows:
  - 1. Contribute the Development’s pro rata share of the total anticipated costs for design and construction of the WRE, in accordance with Condition 3(b) of the CIZ;
  - 2. Mitigate all traffic impacts generated by the Development as recommended or required by the County per Condition 8(b) of the DBA;
  - 3. Fully fund the intersection at Honoapiilani Highway and the WRE, per Condition 1(b) of the CIZ; and
  - 4. Provide a pedestrian crossing at the intersection of Honoapiilani Highway and the WRE, per Condition 1(d) of the CIZ.

C. Upon execution of this Agreement and the authorization of the County Council, County shall reserve capacity in the amount of 100,000 gallons per day at the Kahului WWTF for the Development (the "Capacity Reservation"), guaranteeing WCT the ability to connect at least 300 dwelling units to the Kahului WWTF. The opportunity cost of the Initial RWHUs is an in-lieu contribution for WCT's participation in the funding and/or construction of adequate public wastewater source, storage, and transmission facilities to accommodate the proposed uses of the Development, as well as for the obligations under Section I.B, above.

## **II. TRAFFIC MEMORANDUM OF AGREEMENT**

County and WCT shall enter into a memorandum of agreement ("MOA") concerning WCT's satisfaction of the conditions of the CIZ and the DBA relating to traffic impact mitigation, including, but not limited to those listed in Section I.B, above, through the contribution of the Initial RWHUs.

WCT's pro rata share for the total anticipated cost for the design and construction of the WRE shall be based on the County's cost, as agreed to by the parties, less any State or Federal funds received for such purposes.

County and WCT shall reach an agreement regarding the cost of the various traffic impact mitigation obligations set forth in Section I.B, above. In the event that the agreed upon cost exceeds the opportunity cost of the Initial RWHUs, as shown on Exhibit A, by more than fifteen percent (15%), then WCT shall have the ability to 1) elect to re-assume specific traffic impact mitigation obligation(s); 2) adjust the number of Initial RWHUs to satisfy the deficit; or 3) come to an agreement with the County in the MOA to satisfy the deficit.

Upon execution of the MOA, WCT shall be deemed to have satisfied the requirement of Condition 8(b) of the DBA and Condition 1(a) of the CIZ as each relates to the execution of an MOA with the County.

WCT and the State of Hawaii shall enter into a separate MOA in regards to the requirements of the State of Hawaii.

## **III. PRIVATE WASTEWATER TREATMENT FACILITY**

The County and WCT recognize that it is the County's intent to construct the Central WWTF and that the construction of the Central WWTF eliminates the need for WCT to construct a private wastewater treatment facility to service the Development. Upon completion of the Central WWTF, County shall offer to WCT a capacity reservation for the remainder of the Development (the "Central Capacity Reservation"), should WCT accept the Central Capacity Reservation, an additional 150 RWHUs (the "Private WWTF RWHUs") shall be provided in the

Development, resulting in 500 RWHUs and 933 market units at full buildout. The opportunity cost of the Private WWTF RWHUs is an in-lieu contribution for WCT's participation in the funding and/or construction of adequate public wastewater source, storage, and transmission facilities to accommodate the proposed uses of the Development, along with those matters discussed in Sections IV and VII, below. In the event that WCT declines the County's offer for the Central Capacity Reservation, the Private WWTF RWHUs will not be provided in the Development.

Upon request by WCT, County shall provide updates to WCT on the capacity of the Kahului WWTF and the status of construction of the Central WWTF. In the event that WCT utilizes the entire Capacity Reservation prior to the completion of the Central WWTF, the Director is authorized to permit the Development to connect to the Kahului WWTF upon application for building permit, provided capacity is available at the Kahului WWTF.

#### **IV. WASTEWATER ASSESSMENT FEES**

In addition to the matters discussed in Section I, above, the opportunity cost of the Initial RWHUs, shall be considered an in-lieu contribution for all Wastewater Assessment Fees assessed to those units utilizing the initial 100,000 gallons per day of wastewater transmission.

In addition to the matters discussed in Sections III and VII, the opportunity cost of the Private WWTF RWHUs, shall be considered an in-lieu contribution for all wastewater assessment fees assessed to the remainder of the Development and no wastewater assessment fees shall be assessed to the remainder of the Development.

This Agreement shall not exempt the Development from the County's monthly rates and fees for wastewater service.

#### **V. ADDITIONAL RESIDENTIAL WORKFORCE HOUSING UNITS**

The Initial RWHUs and the potential Private WWTF RWHUs (hereinafter collectively the "Additional RWHUs") shall be subject to the terms and conditions of the Residential Workforce Housing Agreement that is required by Section 2.96.080, MCC. The Additional RWHUs shall not be considered a requirement of the Development per Condition 3 of the DBA or Condition 5 of the CIZ. The Additional RWHUs shall be "for-sale" units and shall be marketed and sold in accordance with the Residential Workforce Housing Agreement. Section 2.96.060.A, MCC, requires that RWHUs be made available for occupancy either before or concurrently with market rate units at a 4:1 ratio, this ratio shall apply to the Additional RWHUs also. The income group distribution for the Initial RWHUs and the Private WWTF RWHUs are set forth in Exhibit B, attached hereto and made a part hereof.



**VI. SATISFACTION OF REQUIREMENT FOR WASTEWATER SERVICE**

County and WCT agree that the opportunity cost for the Additional RWHUs is also an in-lieu contribution for WCT's participation in the funding and/or construction of adequate public wastewater source, storage, and transmission facilities to accommodate the proposed uses of the Development in satisfaction of Condition 4 of the DBA and Condition 6 of the CIZ. The Capacity Reservation and any determination made in Section II, above, if applicable, shall satisfy the requirement of Condition 6 of the CIZ relating to the availability of County wastewater facilities prior to the issuance of building permits.

The parties agree that representations were consistently made by WCT that it would continue to work with the County to connect to the Kahului WWTF or the proposed Central WWTF. County recognizes and agrees that if a private wastewater treatment facility is not constructed by WCT as County intends to construct its Central WWTF, that WCT is not required to comply with, satisfy, or otherwise fulfill any representations made to the County Council or the State Land Use Commission in regards to a private wastewater facility.

**VII. RECLAIMED WATER FROM THE CENTRAL WWTF**

The Development shall be required to receive reclaimed water in an amount approximately equal to the amount of wastewater delivered to the Central WWTF. In consideration of the Private WWTF RWHUs, installation fees for reclaimed water meter(s) shall not be assessed to the Development in addition to the matters discussed in Sections III and V, above.

**VIII. EXPANDED SCHOOL SITE**

WCT desires to accommodate the DOE's request for additional acreage for the school site. County recognizes the community benefit of this additional land and shall cooperate with DOE and/or WCT in any and all necessary land use entitlement actions to allow for the expansion of the school site and to ensure that the Development is in compliance with all requirements, including, but not limited to the DBA, the CIZ, and Chapter 19.96, MCC. County understands that the Education Contribution Agreement for the Development, undated but executed as of January 17, 2017, may be amended in regards to the additional contribution of acreage. The County shall recognize an amended Education Contribution Agreement as satisfying Condition 1 of the DBA and Condition 8 of the CIZ.

County also agrees that by WCT providing additional acreage for the school site, the County shall not make the determination that the Development is not in compliance with any representations made to the Maui County Council or the State Land Use Commission in regards to the originally contemplated 12-acre school site.

**IX. REPRESENTATIONS**

County certifies that the terms and covenants contained herein are not in conflict with any representations made to the Maui County Council or the State Land Use Commission.

**X. DEVELOPMENT OF PRIVATE WASTEWATER TREATMENT FACILITY**

Nothing in this Agreement shall preclude WCT from constructing a private wastewater treatment facility for the Development.

**XI. COMPLIANCE WITH THE CONDITIONS OF THE CIZ THE DBA.**

Upon the completion of construction and the offer for sale of the Initial RWHUs, WCT shall be deemed to have satisfied the Conditions of the DBA and the CIZ related to traffic impact mitigation, as shown on Exhibit C. Upon completion and construction and offer for sale of the Private WWTF RWHUs or upon completion of the construction of a private wastewater treatment facility, WCT shall be deemed to have satisfied the conditions of the DBA and the CIZ related to WCT's participation in the funding and/or construction of adequate private or public wastewater source, storage, and transmission facilities to accommodate the development, as shown on Exhibit C.

County recognizes and agrees that the Development may take many years to build out. WCT shall make its reasonable good faith efforts to construct and offer for sale the Additional RWHUs, with the understanding that County shall not withhold any future approvals and permits on the basis that the Conditions of the DBA and CIZ have not been satisfied in the event that the Additional RWHUs have not been constructed and offered for sale at the time of application.

**XII. MISCELLANEOUS**

- A. Binding Effect. All the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors in interest and assigns and shall run with the land. This Agreement shall be for the benefit of parties herein.
- B. Severability. If any provision of this Agreement, or any section, sentence, clause, phrase or word or the application thereof in any circumstances, shall be held invalid, the validity of the remainder of this Agreement and of the application of such provision, sentence, clause, phrase or word under any other circumstances shall not be affected.

- C. Applicable Law: Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of Hawaii. Any legal action under this Agreement shall be filed in the Hawaii judicial system only, and the parties hereby unconditionally submit themselves to the jurisdiction of the courts of the State of Hawaii and the United States District Court for the District of Hawaii, and waive the right to assert that such courts are in an inconvenient forum.
- D. Entire Agreement; Amendments; Interpretation. This Agreement constitutes the entire agreement between the parties regarding subject matter. Any modifications of this Agreement must be in writing and signed by the parties hereto. The headings of sections in this Agreement are inserted only for convenience and shall in no way define, describe or limit the scope or intent of any provision of this Agreement. As used herein, the singular shall include the plural and the masculine shall include the feminine and neuter.
- E. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. Duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

*(Signatures on the following page)*

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

**WAIKAPU PROPERTIES, LLC,  
a Hawaii limited liability company**

\_\_\_\_\_  
By \_\_\_\_\_

Its \_\_\_\_\_

\_\_\_\_\_  
By \_\_\_\_\_

Its \_\_\_\_\_

**MTP LAND PARTNERS, LLC,  
a Hawaii limited liability company**

\_\_\_\_\_  
By \_\_\_\_\_

Its \_\_\_\_\_

\_\_\_\_\_  
By \_\_\_\_\_

Its \_\_\_\_\_

**WAIALE 905 PARTNERS, LLC,  
a Hawaii limited liability company**

\_\_\_\_\_  
By \_\_\_\_\_

Its \_\_\_\_\_

\_\_\_\_\_  
By \_\_\_\_\_

Its \_\_\_\_\_

**WILLIAM S. FILIOS SEPARATE PROPERTY  
TRUST DATED APRIL 3, 2020**

\_\_\_\_\_  
William S. Filios, Trustee

**COUNTY OF MAUI**

By \_\_\_\_\_  
MICHAEL P. VICTORINO  
Its Mayor

**APPROVAL RECOMMENDED:**

\_\_\_\_\_  
LORI TSUHAKO  
Director of Housing and Human Concerns

\_\_\_\_\_  
ROWENA DAGDAG-ANDAYA  
Director of Public Works

\_\_\_\_\_  
MICHELE CHOUTEAU MCLEAN  
Director of Planning

\_\_\_\_\_  
SCOTT TERUYA  
Director of Finance

\_\_\_\_\_  
ERIC NAKAGAWA  
Director of Environmental Management

**APPROVED AS TO FORM  
AND LEGALITY:**

\_\_\_\_\_  
Deputy Corporation Counsel

## EXHIBIT A

### OPPORTUNITY COST OF ADDITIONAL RWHUS

Assumption that “market” price is the sales price for a 3-bedroom unit using a 4% interest rate, which is priced for the 180% area median income group, estimated to be \$951,500 (based on 2021 Maui County Affordable Sales Price Guidelines).

#### Initial RWHUs (63) – \$22,368,100

|                                      | <b>Below-Moderate<br/>81-100</b> | <b>Moderate<br/>101-120</b> | <b>Above-Moderate<br/>121-140</b> |
|--------------------------------------|----------------------------------|-----------------------------|-----------------------------------|
| <b>Number of RWHUs</b>               | 19                               | 32                          | 12                                |
| <b>Average Sales Price</b>           | \$502,200                        | \$607,900                   | \$713,650                         |
| <b>Opportunity Cost of Each RWHU</b> | \$449,300                        | \$343,600                   | \$237,850                         |
| <b>Total Value of Add’1 RWHUs</b>    | \$8,491,770                      | \$10,823,400                | \$2,996,910                       |

#### Private WWTF RWHUs (150) – \$53,124,000

|                                      | <b>Below-Moderate<br/>81-100</b> | <b>Moderate<br/>101-120</b> | <b>Above-Moderate<br/>121-140</b> |
|--------------------------------------|----------------------------------|-----------------------------|-----------------------------------|
| <b>Number of RWHUs</b>               | 45                               | 75                          | 30                                |
| <b>Average Sales Price</b>           | \$502,200                        | \$607,900                   | \$713,650                         |
| <b>Opportunity Cost of Each RWHU</b> | \$449,300                        | \$343,600                   | \$237,850                         |
| <b>Total Value of Add’1 RWHUs</b>    | \$20,218,500                     | \$25,770,000                | \$7,135,500                       |

The total opportunity cost for the Additional RWHUs is **\$75,510,100**.

## **EXHIBIT B**

### **INCOME GROUP DISTRIBUTIONS**

The income group distribution for Initial RWHUs shall be as follows:

- i. 19 units shall be marketed to “below-moderate income” residents;
- ii. 32 units shall be marketed to “moderate income” residents; and
- iii. 12 units shall be marketed to “above-moderate income” residents.

The income group distribution for Private WWTF RWHUs shall be as follows:

- i. 45 units shall be marketed to “below-moderate income” residents;
- ii. 75 units shall be marketed to “moderate income” residents; and
- iii. 30 units shall be marketed to “above-moderate income” residents.



## **EXHIBIT C**

### **COMPLIANCE WITH THE CONDITIONS OF THE CIZ THE DBA**

- A. Condition 4 of the DBA and Condition 6 of the CIZ as each relates to WCT's required participation in the funding and construction of adequate public wastewater facilities for the Development.
- B. Condition 1(a) of the CIZ and Condition 8(b) of the DBA as both relate to the mitigation of all traffic impacts generated by the Development to the satisfaction of the County of Maui.
- C. Condition 1(b) of the CIZ as it relates to WCT fully funding the intersection at Honoapiilani Highway and the WRE.
- D. Condition 1(d) of the CIZ as it relates to WCT being required to provide a pedestrian crossing at the intersection of Honoapiilani Highway and the WRE.
- E. Condition 3(b) of the CIZ as it relates to WCT providing the Development's pro rata share of the total anticipated costs for the design and construction of the WRE.
- F. All representations relating to contributions for the Development in regards to traffic impact mitigation and wastewater facilities.