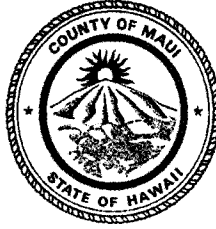


MICHAEL P. VICTORINO
Mayor

SANDY K. BAZ
Managing Director

JOSIAH K. NISHITA
Deputy Managing Director



DEPARTMENT OF MANAGEMENT
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

RECEIVED

2021 JUN -7 PM 12:03

OFFICE OF THE
COUNTY CLERK

June 7, 2021

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Gabe Johnson, Chair
Affordable Housing Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P. Victorino 6/7/21
Mayor Date

Dear Mr. Johnson:

**SUBJECT: WATER AND SEWER CREDITS TO THE DEPARTMENT OF
HAWAIIAN HOME LANDS FOR HOMESTEAD AND
AGRICULTURAL LOTS IN LAHAINA (AH-21)**

Thank you for your letter dated May 26, 2021 requesting information to the following:

1. What actions have been taken or are planned by the Administration and relevant County departments to establish, renew, or extend wastewater and water allocation agreements.

The Department of Water Supply (DWS) and the Department of Hawaiian Home Lands (DHHL) entered into the attached *Memorandum of Agreement for Licenses*, dated November 15, 2019, that provides 200,000 gallons per day of source allocation of potable water for DHHL lands in West Maui. Pursuant to the agreement, DHHL agreed to construct and install any necessary improvements for DWS to provide the 200,000 gallons per day to DHHL lands. As the agreement states that the source allocation may be used until it is reduced to zero, a renewal or extension of the agreement is not needed.

The Department of Environmental Management (DEM) has no current agreements that require renewal or extension. They are negotiating a new agreement which includes sewer easements in exchange for sewer capacity.

2. Please provide a projected timeline for any on-going or planned actions and also indicate any obstacles that may cause delay.

DHHL is proposing water system improvements to the DWS' existing system so that a portion of their 200,000 gallons per day of source allocation can be used for DHHL's Leali'i Phase I-B lands, to address the terms of the attached *Memorandum of Agreement for Licenses*, dated November 15, 2019. DWS has not been provided a timeline by DHHL for construction of water system improvements for their Leali'i Phase I-B lands. DEM expects an agreement to be in place within three to six months with DHHL's concurrence.

3. What other actions, if any, is the Administration taking to expedite or provide water, sewer, or other necessary infrastructure for residential housing on homestead and agricultural lots? For example, Resolution 21-31 references "establishing a perpetual license for the exchange of a source allocation from the Mahinahina Water Treatment Facility on DHHL lands in Honokowai."

DHHL is proposing to develop its Honokowai Well to serve its potable water needs in West Maui. It is also our understanding that the agricultural water needs of DHHL lands in West Maui will be served through a surface water reservation of 2.00 million gallons per day from the Honokohau Stream approved by the Commission on Water Resource Management (CWRM) on May 18, 2021. Further, pursuant to the attached *Memorandum of Agreement for Licenses*, dated November 15, 2019, DHHL agreed that the 200,000 gallons per day of source allocation of potable water to be served from the DWS' water system shall not be used to serve any agricultural water use needs of DHHL. DWS is not aware of any action that is needed by DWS at this time. DEM will work with DHHL as the need for sewer capacity is identified for housing projects.

4. What other actions, if any, is the Administration taking to address the housing needs and rights of applicants on the DHHL waiting list?

DWS is proposing the development of the Kahana Well situated in the Honolua Aquifer. The Kahana Well is intended to serve future potable water needs of West Maui and increase the reliability of DWS' existing water system that will be providing the 200,000 gallons per day of potable water source allocation to DHHL. DWS is diligently working on addressing comments by State Historic Preservation Division (SHPD) to secure funding from the State of Hawaii, Drinking Water State Revolving Fund program.

DWS is also proposing to drill additional wells in West Maui to withdraw ground water to reduce the amount of stream water DWS diverts in Kanaha Stream to address the Commission on Water Resource Management's Interim Instream Flow Standards (IIFS) for Kanaha Stream. As the purpose of these wells is to allow DWS to address the Kanaha Stream IIFS, any wells developed

for this purpose is not anticipated to provide additional potable water to serve future water needs in West Maui. The development of ground water sources to address the Kanaha Stream IIFS will be challenging due to the limited well sites, extensive improvements, and high capital costs.

Please do not hesitate to contact my office should you have any further questions or need any further clarification.

Sincerely,


Sandy Baz
Managing Director

MEMORANDUM OF AGREEMENT
FOR LICENSES

THIS MEMORANDUM OF AGREEMENT FOR LICENSES (this "Agreement") is made and entered this 15 day of November, 2019, by and between the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business and mailing address is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, hereinafter called "DHHL", and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, for its Department of Water Supply (the "Department"), whose principal place of business and mailing address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter called "County".

RECITALS

A. DHHL is the legal and equitable owner of certain real property situate at Mahinahina and Honokowai, Maui, Hawaii, designated as Tax Map Key Nos. (2) 4-4-002:003, 008, 015 and 018 ("DHHL's Honokowai") and (2) 4-5-021:020 ("DHHL's Villages of Leiali'i Phase I-B"), as well as other DHHL land in West Maui, hereinafter collectively referred to as "DHHL Lands".

B. The Department's existing Mahinahina Water Treatment Facility, transmission lines, and access road is located on the parcel designated as Tax Map Key No. (2) 4-4-002:018 (por.) and its associated existing raw water reservoir is located on the parcel designated as Tax Map Key No. (2) 4-4-002:015 (por.) (collectively referred to as "Mahinahina WTF"), as shown on the map attached hereto as Exhibit "A" and made a part hereof. The Mahinahina WTF provides potable drinking water to the Department's West Maui water customers.

C. The Department's existing Honokowai water tank ("Existing Honokowai Tank"), is located on the parcel designated as Tax Map Key No. (2) 4-4-002:018 (por.), as shown on Exhibit "A". A portion of the Honokowai Tank site amounting to 0.05 acres is currently excluded from Tax Map Key No. (2) 4-4-002:018. The Honokowai Tank provides domestic and fire protection storage demand for the Department's West Maui water customers.

D. The Department is proposing the construction of a future second storage tank adjacent to and on the same parcel and elevation as the Existing Honokowai Tank (Tax Map Key No. (2) 4-4-002:018 (por.)), as shown on Exhibit "A" ("Future Honokowai Tank"). The Future Honokowai Tank will provide for operational flexibility, increased reliability, and future domestic and fire protection storage demand for the Department's West Maui water customers.

E. The Department is also proposing the development of a ground water well source, also known as the West Maui Well Source Development project (the "Well Project"), to be located on State of Hawaii land, under the jurisdiction of the Department of Land and Natural Resources, such parcel designated as Tax Map Key No. (2) 4-4-

004:009 (por.), and on Maui Land & Pineapple Company, Inc. land, such parcel designated as Tax Map Key No. (2) 4-3-001:017, as shown on Exhibit "A". The Well Project will provide an additional potable source of water to meet the future needs of the Department's West Maui water customers. The components of the Well Project to be situated upon DHHL Lands would be the transmission lines, drainage lines, access roads, and the control tank.

F. The Department has requested easements from DHHL across portions of the DHHL Lands to access, construct, reconstruct, install, maintain, operate, and repair the existing Mahinahina WTF, a future control tank, expansion of the Mahinahina WTF, the Existing Honokowai Tank, the Future Honokowai Tank, the Well Project, transmission lines, drainage lines, access roads, and such potable water pipelines, valves, meters, appurtenances and equipment for the Department's existing and future infrastructure and facilities described herein.

G. DHHL, pursuant to the authority granted to it by Section 207(c)(1) of the Hawaiian Homes Commission Act, 1920, as amended (HHCA), is authorized to grant licenses as easements for railroads, telephone lines, electric power and light lines, gas mains and the like.

H. DHHL's Honokowai and Village of Leialii Phase I-B lands are situated near the Department's existing and future infrastructure and facilities described herein and could be served by the Department's West Maui water system.

I. The Hawaiian Homes Commission rejected the Department's offer to compensate DHHL with an appraisal value of the land upon which sits the Department's improvements in Honokowai, and instead sought "wet water" for homestead development use.

J. In exchange for DHHL granting the County licenses for the use of its lands, DHHL has requested that the Department provide DHHL with 200,000 gallons per day ("GPD") of water service source to provide for DHHL's domestic demand for the development of DHHL Lands in West Maui (the "Source Allocation").

NOW, THEREFORE, DHHL and the County hereby agree as follows:

1. DHHL agrees to grant the licenses requested by the Department, in substantially the forms attached as Exhibits "B-1" and "B-2", in exchange for the Department providing 200,000 GPD of water service source to DHHL for DHHL's domestic demand for the development of the DHHL Lands in West Maui. Said Source Allocation shall not be used to serve any agricultural water use needs.

2. DHHL agrees that DHHL is responsible for constructing and installing any necessary improvements required for the Department to provide the 200,000 GPD of water service source to DHHL Lands from the Department's West Maui water system without detriment to the Department's existing customers. DHHL shall further be responsible for any improvements necessary to serve a specific tax map key parcel



requested to be served from the Department's West Maui water system, which includes, but is not limited to the construction and installation of water mains, tanks, valves, and booster pump stations for the specific tax map key parcel.

3. In exchange for the licenses requested, the Department agrees to provide 200,000 gallons per day of water service source ("Source Allocation") to DHHL, subject to the following:

a. The Source Allocation shall entitle DHHL to be issued Department water meters that have an aggregate average daily demand that is equal to the total amount of Source Allocation. The average daily demand of water meters shall be the amounts as set forth in Table 100-18, Domestic Consumption Guidelines of the Water System Standards 2002, as may be amended. The current Domestic Consumption Guidelines are attached hereto as Exhibit "C".

b. The Source Allocation may be used by DHHL until it is reduced to zero, subject to subsection 3.g below.

c. DHHL shall submit to the Department a completed Notice of Application of Source Allocation (the "Notice of Application of Source Allocation" or the "Notice of Application"), in the form attached as Exhibit "D", when it desires to use a portion of the Source Allocation to secure water service source for a parcel. The Department shall provide a copy of the approved Notice of Application to DHHL upon the Department's approval. Upon the Department's approval of the Notice of Application, the Source Allocation shall be reduced by the amount approved in the Notice of Application.

d. Use of Source Allocation for a Water Service Application. When an amount of Source Allocation is assigned to a parcel by DHHL and approved by the Department using the Notice of Application of Source Allocation, DHHL may use said approved amount as a credit towards the payment of the source component of the Water System Development Fee in effect at the time a water service application is approved by the Department. Full payment of the other components of the Water System Development Fee, i.e, the storage fee and transmission fee components of the Water System Development Fee, and all other fees and costs associated with the water meter installation shall be made by DHHL prior to water meter installation.

i. Upon water meter installation, the Source Allocation amount used is final and may not be returned to DHHL's Source Allocation.

ii. Prior to the installation of the water meter, DHHL may request cancellation of the water service application and the return of the amount of Source Allocation associated with the cancellation by submittal to the Department of a completed Notice of Modification of Application of Source Allocation (the "Notice of Modification"), in the form attached as Exhibit "E", for the return of said amount

to DHHL's Source Allocation. The Department shall provide a copy of the approved Notice of Modification to DHHL upon the Department's approval. Upon the Department's approval of the Notice of Modification, the Source Allocation shall be increased by the amount approved in the Notice of Modification. The return of any amount of Source Allocation to DHHL may be approved by the Department only where the water meter has not been installed and subject to the following:

- a) In the case of a withdrawal or cancellation of a building permit, upon verification by the Department of the withdrawal or cancellation, DHHL may request cancellation of the water service application and the return of the amount of Source Allocation associated with the cancellation.
- b) In the case of a subdivision with a reduction in the number of lots requiring water service from the Department, DHHL shall submit revised construction plans to the Department for its review and approval. Upon verification by the Department of DHHL's compliance with Chapter 14.12, Maui County Code ("MCC"), and its approval of the revised construction plans, DHHL may request cancellation of the water service application for the applicable lots eliminated from the subdivision and the return of the amount of Source Allocation associated with the cancellation.
- c) The Water System Development Fee and all other fees and costs paid to the Department prior to a cancellation of a water service application shall not be refunded to DHHL.

e. Use of Source Allocation for a Water Meter Reservation. When an amount of Source Allocation is assigned to a parcel by DHHL and approved by the Department using the Notice of Application of Source Allocation, DHHL may use said approved amount as a credit towards the payment of a deposit equal to the source component of the Water System Development Fee in effect at the time a water meter reservation is approved by the Department to reserve an allocation of water service source capacity. Full payment of the deposit of the other components of the Water System Development Fee and all other fees and costs associated with a water meter reservation shall be made by DHHL prior to approval of a water meter reservation.

- i. Upon water meter installation, the Source Allocation amount used is final and may not be returned to DHHL's Source Allocation.



ii. Prior to the expiration of a water meter reservation, DHHL may request cancellation or modification of the water meter reservation and the return of the amount of Source Allocation associated with the cancellation or modification by submittal to the Department of a completed Notice of Modification for the return of said amount to DHHL's Source Allocation. The Department shall provide a copy of the approved Notice of Modification to DHHL upon the Department's approval. Upon the Department's approval of the Notice of Modification, the Source Allocation shall be increased by the amount approved in the Notice of Modification. The return of any amount of Source Allocation to DHHL may be approved by the Department only where the water meter has not been installed and subject to the following:

- a) In the case of a withdrawal or cancellation of a building permit, upon verification by the Department of the withdrawal or cancellation, DHHL may request cancellation or modification of the water meter reservation and the return of the amount of Source Allocation associated with the cancellation or modification.
- b) In the case of a subdivision with a reduction in the number of lots requiring water service from the Department, DHHL shall submit revised construction plans to the Department for its review and approval. Upon verification by the Department of DHHL's compliance with Chapter 14.12, MCC, and its approval of the revised construction plans, DHHL may request modification of the water meter reservation and the return of the difference of Source Allocation used for the original water meter reservation and the modified water meter reservation.
- c) The deposit equal to the Water System Development Fee and all other fees and costs paid to the Department prior to a cancellation or modification of a water meter reservation shall not be refunded to DHHL.
- d) Modification of water meter reservations shall comply with County of Maui Administrative Rule 16-202-11.

f. Compliance with Chapter 14.12, Maui County Code - Water Availability. When an amount of Source Allocation is assigned to a parcel by DHHL and approved by the Department using the Notice of Application, DHHL may use said approved amount to comply, in whole or in part, with Chapter 14.12, MCC.



g. At the expiration or termination of the licenses granted by DHHL to the County, the amount of "credits remaining after this notice and available for future use" indicated on the last Department-approved Notice of Application or Notice of Modification shall be forfeited and shall revert to the Department for the Department's sole use.

h. The Department's approval of the Notice of Application of Source Allocation does not in and of itself constitute a pre-approval by the Department of any subdivision application, building permit application or water service application for any project, as the applicant of any such project will be required to complete all requirements of the Department pursuant to its then-current rules and regulations before any water meter is installed. This Agreement does not exempt any applicant from the Department's rules, regulations, and codes. For example, the applicant could be required to construct transmission pipelines, distribution pipelines and storage tanks for dedication or licensing to the Department.

i. When the Source Allocation is applied towards new or additional water service, the applicant must pay for the balance of the Water System Development Fee outstanding, i.e., the storage fee and transmission fee components of the Water System Development Fee, applicable at the time of water service approval.

j. The Department and DHHL shall use their best efforts to expedite the review and approval of the other party's construction plans and specifications for any improvements, modifications, alterations, or additions to be constructed on the easement area and on applicable Hawaiian home lands. In the event that the Department's construction plans and specifications for any improvements, modifications, alterations, or additions to be constructed on the easement area are not approved by the Chairman of the Hawaiian Homes Commission, any amount of "credits remaining after this notice and available for future use" indicated on the last Department-approved Notice of Application or Notice of Modification shall not be available to DHHL until the plans and specifications are approved.

4. Default. A party shall be in default of this Agreement if it fails to observe or perform any of such party's covenants or agreements contained herein, the other party gives written notice that such default must be cured, and (i) the defaulting party fails to cure within one hundred twenty (120) days of such notice, or (ii) in the case of a covenant or agreement that cannot reasonably be cured within one hundred twenty (120) days, the defaulting party fails to continuously and diligently prosecute cure to completion.

5. Remedies. If a party is in default of this Agreement, the other party may seek any remedies available at law or in equity, including without limitation damages and specific performance.

6. Rights and Remedies Cumulative. Each right and remedy provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy

that may be available at law or in equity. The exercise of any one or more of such rights or remedies shall not preclude the simultaneous or later exercise of any or all other rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity, or by statute or otherwise.

7. No Waiver. The failure or delay of any party in any case to enforce the provisions of any covenant, condition, restriction, or obligation contained in this Agreement shall not constitute a waiver by such party of any right to enforce any such provision in any other case.

8. Attorneys' Fees. If any legal action shall be brought by a party to enforce or interpret any portion of this Agreement or to redress any breach by the other party, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

9. Force Majeure. A party's failure to meet its obligations under this Agreement shall be excused if and to the extent that such failure was the direct result of earthquake, hurricane, flood, or other Acts of God, strikes, insurrection, litigation, court order, governmental action or inaction, or other events or occurrences beyond such party's control.

10. Governing Law. This Agreement shall be governed by the laws of the State of Hawaii and the law, codes, and rules of the County of Maui. References in this Agreement to any specific county, state, or federal laws, rules, ordinances, or codes shall include any amendments, replacements, successors, and restatements thereof.

11. Maui County Council Approval. Pursuant to Chapters 2.20 and 3.44, MCC, this Agreement is subject to Maui County Council approval by ordinance and resolution, respectively.

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

13. Assignees and Successors. The parties may not assign its rights and obligations hereunder to any other person or entity without the prior written consent of the other party. In the event of any permitted assignment, the assignee shall assume all of the assignor's obligations hereunder. The assignor shall in no event be released from its obligations hereunder by reason of any assignment. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.

14. Amendments. This Agreement may not be amended unless mutually agreed to in writing and signed by the parties hereto.



15. Notices. All notices or other communications given by either party hereto shall be deemed to be duly given and received by the other party by the earlier to occur of (a) actual receipt by a duly appointed officer, director or authorized employee of said other party, either by mail, courier, or hand-delivery, or (b) three (3) business days after having been deposited in the United States mail postage prepaid sent by registered or certified mail (whether or not actually received by the other party), addressed to the other party at the address set forth below, or to such other address as such other party may have given notice of to the sending party in accordance with the foregoing provision.

If to DHHL:

State of Hawaii
Department of Hawaiian Home Lands
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707
Attention: Chairman, Hawaiian Homes Commission

If to the County:

Department of Water Supply
200 South High Street, 5th Floor
Wailuku, Hawaii 96793
Attention: Director

16. No Third-Party Beneficiary. Except as may be expressly set forth herein, no third-party beneficiaries are intended to be created by this Agreement or by any of the terms hereof. No person or entity other than the County or DHHL, their successors or permitted assigns, shall be entitled to claim any rights hereunder, or to enforce any of the provisions hereof.

17. Construction. This Agreement shall be construed without regard to which party drafted the document or any particular provisions herein.

18. Counterparts. This Agreement may be executed in one or more counterparts, and said execution shall have the same effect as if all parties executed the same original copy hereof.

19. Exhibits. The following exhibits are attached hereto, incorporated herein, and made a part hereof:

Exhibit "A" Map showing Department of Water Supply Facilities
Exhibit "B-1" Form of License Agreement for Exclusive Right
Exhibit "B-2" Form of License Agreement for Non-Exclusive Right
Exhibit "C" Table 100-18 – Domestic Consumption Guidelines
Exhibit "D" Form of Notice of Application of Source Allocation



Exhibit "E" Form of Notice of Modification of Application of Source
Allocation

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK;
SIGNATURE PAGE FOLLOWS]**

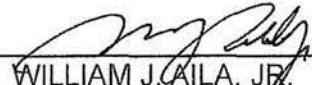



IN WITNESS WHEREOF, DHHL and the County have executed this Agreement as of the day and year first above written.

Approved by the
Hawaiian Homes Commission on:
October 15, 2018

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME
LANDS

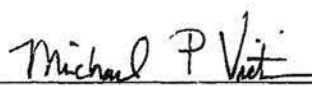
APPROVED AS TO FORM

By 
WILLIAM J. AILA, JR.
Its Chairperson


Name:
Deputy Attorney General
State of Hawaii

Approved by the
Maui County Council via
Ordinance No. 4999 and
Resolution No. 19-144 on:
9/20/19 & 9/6/19, respectively

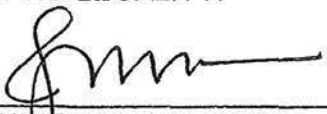
COUNTY OF MAUI

By 
MICHAEL P. VICTORINO
Its Mayor

APPROVED:


JEFFREY T. PEARSON
Director
Department of Water Supply

APPROVED AS TO FORM
AND LEGALITY:

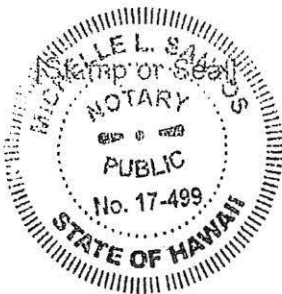

JENNIFER M.P.E. OANA
Deputy Corporation Counsel



STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On this 5th day of November 2019, before me personally appeared MICHAEL P. VICTORINO, to me personally known, who, being by me duly sworn or affirmed, did say that he is the Mayor 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 by authority of its Charter; and the said MICHAEL P. VICTORINO 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.



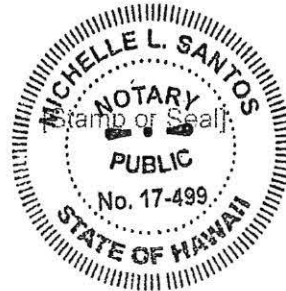
Michelle L. Santos

Notary Public, State of Hawaii

Print Name: MICHELLE L. SANTOS

My commission expires: 12-31

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>11-15-19</u>	# Pages:	<u>46</u>
Notary Name:	<u>MICHELLE L. SANTOS</u>	Judicial Circuit:	<u>2nd</u>
Doc. Description:	<u>Memorandum of Agreement for Revenues</u>		
Notary Signature:	<u>Michelle L. Santos</u>		
Date:	<u>11-15-19</u>		



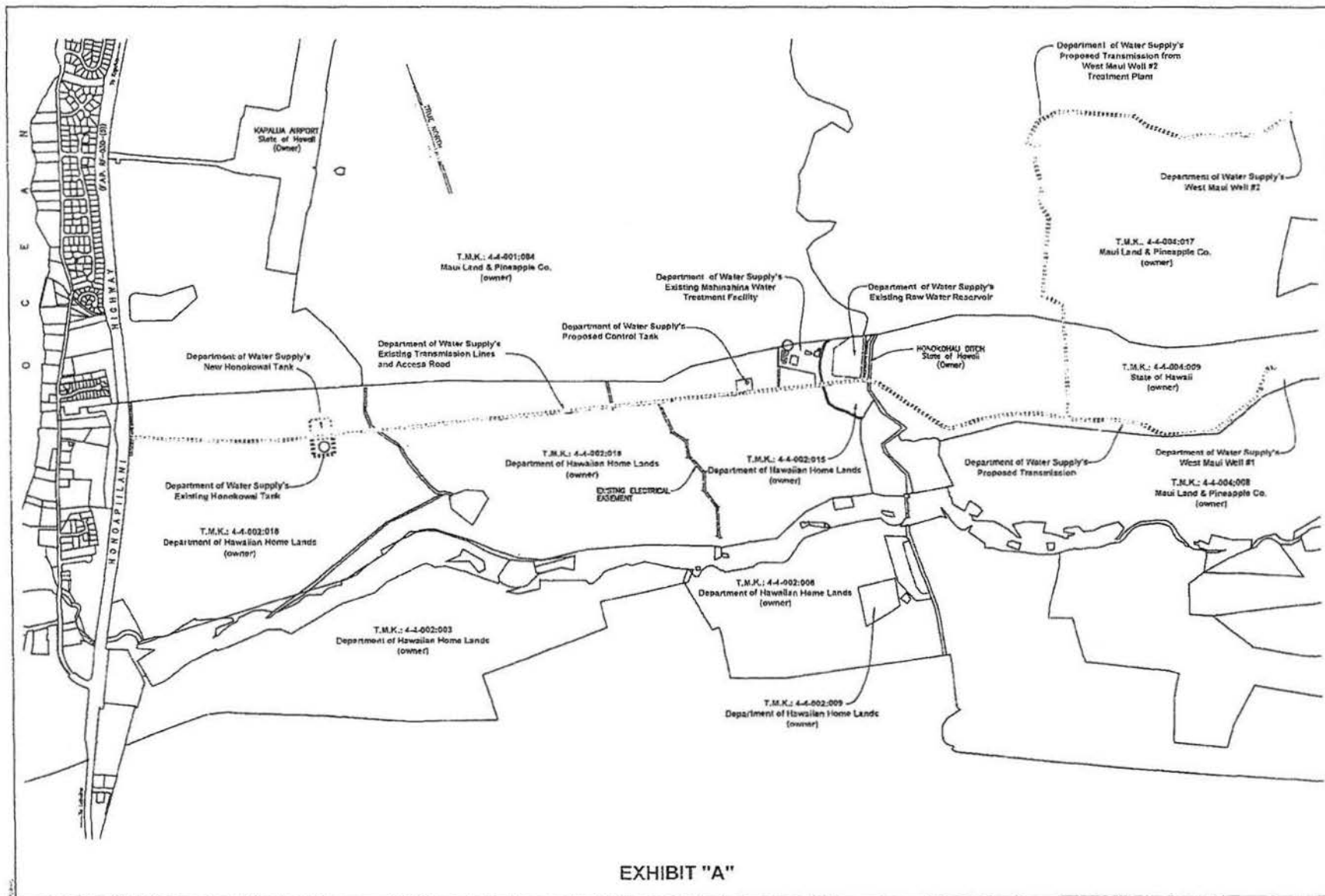


EXHIBIT "A"

EXHIBIT "B-1"
(Form of License Easement for Exclusive Right)

REFER TO EXCLUSIVE LICENSE NO. 827



After Recordation Return By: Mail (X) Pickup ()

To: Land Management Division
Department of Hawaiian Home Lands
P.O. Box 1879
Honolulu, Hawaii 96805

Department of Water Supply
County of Maui
200 South High Street
Wailuku, Hawaii 96793

Document contains ____ pages,
including cover.

Affects Tax Map Key: Second Division, 4-4-002:015 (por.)
4-4-002:018 (por.)

LICENSE NO. 827
(Exclusive Right)
Between

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
as "LICENSOR"

and

COUNTY OF MAUI
A POLITICAL SUBDIVISION OF THE STATE OF HAWAII
as "LICENSEE"

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

License No. 827
(Exclusive Right)

This LICENSE No. 827 is made and issued this ____ day of _____, 20____, by the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business and mailing address is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, hereinafter called "LICENSOR," and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter called "LICENSEE."

WITNESSETH THAT:

WHEREAS, pursuant to the authority granted to it by Section 207(c)(1) of the Hawaiian Homes Commission Act, 1920, as amended (HHCA), LICENSOR is authorized to grant licenses as easements (hereinafter called "LICENSE") for railroads, telephone lines, electric power and light lines, gas mains and the like;

WHEREAS, LICENSEE has requested an exclusive license easement for the use of Hawaiian home lands for its existing Mahinahina Water Treatment Facility, the existing Mahinahina Water Treatment Facility Reservoir, a future control tank, expansion of the Mahinahina Water Treatment Facility, the existing Honokowai water tank, a future second storage tank, and their respective appurtenances;

WHEREAS, LICENSOR has determined that the easements established herein are essential in order to provide potable water services for the LICENSOR'S beneficiaries within the Villages of Leialii and Honokowai land holdings; and

WHEREAS, LICENSOR and LICENSEE have entered into a Memorandum of Agreement for Licenses, dated ____, 2019 ("Memorandum of Agreement for Licenses"), whereby LICENSOR agreed to grant this LICENSE, and LICENSEE agreed to issue certain water source credits to LICENSOR.

NOW THEREFORE, pursuant to Sections 3.44.015.C and 3.44.015.F.2, Maui County Code, and in consideration of the terms and conditions herein contained to be kept, observed and performed by the LICENSEE, its successors and approved assigns,

and other valuable consideration, the receipt whereof is hereby acknowledged, and the terms and conditions of the Memorandum of Agreement for Licenses, LICENSOR hereby grants, bargains, and conveys to LICENSEE, its successors and assigns, this LICENSE as perpetual, exclusive easements over, under, across, through, and upon portions of those certain parcels of Hawaiian home lands in Honokowai, Island of Maui, identified as Tax Map Key Nos. (2) 4-4-002:015 and (2) 4-4-002:018, for the exclusive use of approximately 18.382 acres (more or less) of Hawaiian home lands, which easements are identified as: 1) Mahinahina Water Treatment Plant Lot 3, as more particularly described in Exhibit "A" and shown on Exhibit "B"; 2) Mahinahina Water Treatment Plant Land Adjacent to Lot 3, as more particularly described in Exhibit "C" and shown on Exhibit "D"; 3) Mahinahina Water Treatment Plant Lot 5, as more particularly described in Exhibit "E" and shown on Exhibit "F"; 4) Mahinahina Water Treatment Plant Control Tank Lot, as more particularly described in Exhibit "G" and shown on Exhibit "H"; 5) Mahinahina Water Treatment Plant Honokowai Water Tank Lot 1, as more particularly described in Exhibit "I" and shown on Exhibit "J"; and 6) Mahinahina Water Treatment Plant Future Tank Lot 2, as more particularly described in Exhibit "K" and shown on Exhibit "L"; all of said easements collectively shown on Exhibit "M"; all of said exhibits being attached hereto and made a part hereof, hereinafter collectively referred to as "Premises".

The easements granted hereunder shall be for the existing Mahinahina Water Treatment Facility, the existing Mahinahina Water Treatment Facility Reservoir, a future control tank, expansion of the Mahinahina Water Treatment Facility, the existing Honokowai water tank, a future second storage tank, and their respective appurtenances, which shall include the right to construct, reconstruct, install, modify, repair, replace, maintain and operate such treatment facility, reservoir, tanks, and pipelines, including other equipment and appurtenances necessary or expedient for the proper maintenance and operation of such treatment facility, reservoir, tanks, and appurtenances (collectively, the "Water System Improvements") located or to be located over, under, across, through and upon the Premises and also including the right to remove, trim and keep trimmed any vegetation, shrubbery, bushes, trees and rocks within the Premises.

TOGETHER with the right of ingress to and egress from the Premises over the land of the LICENSOR, as reasonably required for all purposes in connection with this LICENSE.

AND the LICENSOR hereby covenants with the LICENSEE that the LICENSOR has full rights and authority to enter into this LICENSE.

TO HAVE AND TO HOLD the same unto the LICENSEE, its successors and assigns, in perpetuity, commencing on _____, unless sooner terminated as hereinafter provided, the LICENSOR agreeing and LICENSEE understanding that this LICENSE is subject to the full execution and compliance with the terms and conditions set forth in the Memorandum of Agreement for Licenses made and entered by and between the LICENSOR and LICENSEE on _____, attached hereto and made a part hereof as Exhibit "N".

In consideration of the rights hereby granted and the acceptance thereof and the obligations hereby assumed, the LICENSOR and the LICENSEE hereby covenant and agree that the foregoing LICENSE is made upon the following restrictions and conditions, which shall be binding upon, as applicable, the LICENSOR, the LICENSEE, and their respective successors and assigns:

1. EXCLUSIVE LICENSE. The LICENSEE shall have exclusive use of the Premises. The LICENSEE shall have the right to fence and secure the Premises and may restrict or prevent access to the Premises from all persons or entities, including the LICENSOR. No structures, utilities, facilities, plantings, or easements shall be located within the Premises without prior written consent of the Director of the Department of Water Supply.

2. DUE CARE AND DILIGENCE. The LICENSEE shall use due care and diligence in the construction, operation, repair, renewal, and maintenance of the Water System Improvements and shall keep the same in good and safe condition and repair; should said Water System Improvements cause any damage or nuisance or waste or spoil the Premises, the LICENSEE shall restore the surface or the ground within the Premises to its original condition to the extent that such restoration is reasonably possible, and within a reasonable time thereafter.

Notwithstanding the foregoing, when the pavement within any portion of the Premises shall be excavated or removed by the LICENSEE in connection with the repair or maintenance of the Water System Improvements, the LICENSEE shall be obligated

to restore the surface of the pavement only by "cold patch" method.

3. DAMAGE TO WATER SYSTEM IMPROVEMENTS. The LICENSOR, regardless of any prior approval granted by the Director of the Department of Water Supply to make improvements within the Premises, shall be responsible for all costs and expenses incurred by the LICENSEE in connection with the repair of damages to the Water System Improvements when and to the extent such damages result from or arise out of an act or omission of the LICENSOR, or of any person for whose acts or omissions LICENSOR shall be legally responsible, and shall reimburse the LICENSEE for costs and expenses, including reasonable attorney's fees, incurred by the LICENSEE in enforcing this provision.

4. RESPONSIBILITY. The LICENSEE shall be responsible for damages or injury caused by LICENSEE'S agents, officers, and employees in the course of their employment to the extent that the LICENSEE'S liability for such damage or injury has been determined by a court of competent jurisdiction or otherwise agreed to by the LICENSEE, and the LICENSEE shall pay for such damages and injury to the extent permitted by law and approved by the Maui County Council pursuant to Chapter 3.16, Maui County Code, as amended.

The LICENSOR shall be responsible for damages or injury caused by the LICENSOR'S agents, officers, and employees in the course of their employment to the extent that the LICENSOR'S liability for such damage or injury has been determined by a court of competent jurisdiction or otherwise agreed to by the LICENSOR. LICENSOR shall pay for such damages and injury to the extent that funds have been authorized and appropriated by the Legislature for such purpose, and the funds have been allocated by the executive budget process.

5. CONDEMNATION. If at any time the Premises across which the LICENSE extends, or any part thereof, shall be condemned or taken for any public project by any governmental authority, the LICENSEE shall have the right to pursue recovery from the condemning authority, but not from the LICENSOR, such compensation as is payable for the LICENSE and for the LICENSEE'S infrastructure, facilities, appurtenances and equipment, if any, in connection with this LICENSE, which shall be payable to the LICENSEE as its interest appears.

6. ABANDONMENT. In the event the Premises, hereby granted, shall be abandoned or shall remain unused for the

purpose granted for a continuous period of five years, all rights granted hereunder shall terminate, and the LICENSEE will remove its appliances, equipment, and improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements, if any, the LICENSOR hereby consenting and agreeing to such removal. Failure of LICENSEE to remove its appliances, equipment and improvements and/or to restore the land within three (3) years after written notification to do same from LICENSOR by certified mail at LICENSEE'S last known address, will constitute a breach and LICENSOR may remove LICENSEE'S appliances, equipment and improvements and/or restore the land to a condition similar to that existing immediately prior to the time of installation and LICENSEE will reimburse LICENSOR for all reasonable costs in connection with the removal and/or restoration.

7. RELOCATION. If the LICENSOR shall determine that the continued exercise of the easement rights granted constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the LICENSOR shall have the right to terminate the easement granted to the extent necessary to eliminate such interference, provided, that it shall grant to the LICENSEE a substitute easement within the reasonable vicinity to permit the LICENSEE to effect relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions as contained in this LICENSE. All costs of any such relocation of any facility or portion thereof, including the cost of any replacement facility, shall be borne by the LICENSOR.

8. BREACH. If the LICENSEE shall fail to observe or perform any of the covenants, terms, and conditions herein contained, and on its part to be observed and performed, the LICENSOR shall deliver written notice of the breach or default by service as provided by section 634-35 or 634-36, Hawaii Revised Statutes, or by registered mail or certified mail to the LICENSEE at its last known address, making demand upon the LICENSEE to cure or remedy the breach or default within sixty (60) days from the date of the receipt of the notice. Upon failure of the LICENSEE to cure or remedy the breach or default within the time period provided herein or within such additional period as LICENSOR may allow for good cause, the LICENSOR may terminate this LICENSE without prejudice to any other remedy or right of action.

9. STRUCTURES/CONSTRUCTION. The LICENSOR shall not at any time during the term of this indenture erect or place any building foundation of any kind below the surface of the Premises, erect or place any building or structure of any kind, or stockpile any material, above or on the surface of the Premises, raise or lower the present ground level of the Premises, plant any hedges or trees within the Premises, or allow any person or entity other than the LICENSEE to conduct such activities within the Premises, unless the LICENSOR receives prior written approval from the Director of the Department of Water Supply; provided, however, that any building foundation, building, structure, hedge, tree, or other object of any kind, situated within the Premises may be removed by the LICENSEE without liability or damages arising therefrom.

The LICENSOR shall timely provide as-built drawings of all existing and future improvements within the Premises and the vicinity of the Premises to the LICENSEE.

10. MAINTENANCE AND REPAIR. During the term of this LICENSE, LICENSEE shall at its expense repair and maintain any Water System Improvements within the Premises including water, gas, plumbing, piping, electrical wiring, glass and all other fixtures in or on the Premises; shall keep the Premises and all Water System Improvements thereon in a strictly clean and sanitary condition; shall comply with all laws, ordinances, rules and regulations of the Federal, State, County or municipal governments that are applicable to the Premises and Water System Improvements; and shall allow LICENSOR or its agents or employees at all reasonable times, free access to the Premises for the purpose of examining the same or determining whether the conditions herein are being fully observed and performed, and shall make good, or commence to make good, at its own cost and expense all defects within sixty (60) days after the mailing of written notice by registered mail to the last known address of LICENSEE.

11. APPROVAL OF CONSTRUCTION. All plans and specifications for any improvements, modifications, alterations, or additions to be constructed on the Premises, to include clearing, grading, grubbing, fencing, building construction, parking and signage now or hereafter erected on the Premises, must be submitted to and approved by the Chairman of the Hawaiian Homes Commission prior to commencement. Approval shall not be unreasonably withheld, delayed, or further conditioned. LICENSOR shall approve such plans and specifications within forty-five days of

its receipt of the documents or the plans and specifications shall be deemed acceptable as submitted to LICENSOR.

12. CONSTRUCTION STANDARDS. LICENSEE shall utilize only new materials and be in full compliance with all laws, ordinances, rules and regulations of the Federal, State and County governments and be approved and licensed by all applicable government agencies.

13. OWNERSHIP/RIGHT TO REMOVE IMPROVEMENTS. All buildings or structures or other major improvements of whatever kind that the LICENSEE constructs or erects on the Premises shall remain the property of the LICENSEE during the term of this LICENSE. LICENSEE shall have the right, prior to the termination of this LICENSE, or within such additional period as LICENSOR in its reasonable discretion may allow, to remove its property from the Premises. If LICENSEE fails to remove its property within three (3) years after written notification to do same from LICENSOR by certified mail at LICENSEE'S last known address, LICENSOR may at its option retain the property or remove the same and charge the cost of removal and storage, if any, to the LICENSEE. All insurance and condemnation proceeds pertaining to improvements on the Premises shall be the sole property of LICENSEE.

If LICENSOR becomes aware that a transfer of the Premises will occur, LICENSOR will promptly notify LICENSEE and shall ensure that the transferee will not interfere with LICENSEE'S use of the Premises as set out in this LICENSE. LICENSOR shall not voluntarily transfer its rights to such transferee without written assurance from such transferee that such transferee will not interfere with LICENSEE'S rights under this LICENSE.

14. INSURANCE. LICENSEE shall, at its own expense, effect, maintain and keep in force throughout the life of this License, a comprehensive public liability insurance policy, with limits of not less than \$1,000,000.00 for each occurrence, including property damage, personal injury and advertising injury; \$100,000.00 for fire damages to the Premises for any one fire; \$10,000.00 in medical expenses for any one person, and an aggregate limit of \$2,000,000.00 per policy year. The specification of these limits as contained herein shall not be construed in any way to be a limitation on the amount of liability of LICENSEE for fees, interest or other charges under this License.

LICENSEE at its own expense shall maintain and keep in force Workers Compensation Insurance to include Employer's Liability. Such coverage shall apply to all of its employees.

LICENSEE at its own expense shall maintain and keep in force Automobile Insurance, covering all owned, non-owned and hired automobiles in the following amounts: Bodily Injury: \$1,000,000.00 per person and \$1,000,000.00 per occurrence; Property Damage: \$1,000,000.00 per accident; or a combined single limit of \$1,000,000.00.

LICENSEE shall agree to provide certificate(s) of insurance necessary to evidence compliance with the insurance provisions required under this License. LICENSEE shall keep such insurance in effect and the certificate(s) on deposit with LICENSOR during the entire term of this License. In addition:

a. Failure of LICENSEE to provide and keep in force such insurance shall be regarded as material default under this License. LICENSOR shall be entitled to exercise any or all of the remedies provided in this LICENSE for default of LICENSEE.

b. The procuring of such required insurance policies shall not be construed to limit LICENSEE'S responsibility under this License.

c. LICENSOR, DEPARTMENT OF HAWAIIAN HOME LANDS, is a self insured State agency. LICENSEE's insurance shall be primary. Any insurance maintained by LICENSOR and/or the State of Hawaii shall apply in excess of, and shall not contribute with, insurance provided by LICENSEE.

Such insurance policy shall (a) be issued by an insurance company or surety company authorized to do business in the State of Hawaii or approved in writing by LICENSOR; (b) name the LICENSOR as an additional insured; (c) provide that LICENSOR shall be notified at least thirty (30) days prior to any termination, cancellation or material change in the insurance coverage; and (d) cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of LICENSEE, its officers, agents, employees, invitees or licensees in connection with LICENSEE'S use or occupancy of the Premises.

LICENSEE shall insure during the term of this LICENSE the entire Premises, including all buildings now existing and hereafter built or located on the Premises, improvements and grounds, and all roadways and sidewalks on or adjacent to the

Premises in the control or use of the LICENSEE. The insurance shall cover loss or damage by fire and other hazards, casualties and contingencies, including vandalism and malicious mischief. The insurance shall be for the full insurable value of such improvements.

LICENSEE shall furnish to LICENSOR upon the execution of this LICENSE, certificates showing such insurance policy or policies to be in favor of LICENSOR and to be in force, and shall furnish like certificates upon each renewal thereof. In the event of loss, damage or destruction, LICENSOR shall retain from the proceeds of the policies such amounts deemed by it to be necessary to cover the loss, damage or destruction of or to the improvements and the balance of such proceeds, if any, shall be delivered to LICENSEE.

The procuring of any insurance policy or policies shall not release or relieve LICENSEE of its responsibility under this LICENSE as set forth herein or limit the amount of its liability under this LICENSE.

15. HAZARDOUS MATERIALS. LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials. LICENSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of LICENSEE'S business, and then only after written notice is given to the LICENSOR of the identity of such materials and upon LICENSOR'S consent, which consent may be withheld at the LICENSOR'S sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by LICENSEE, then LICENSEE shall be responsible for the costs thereof. In addition, LICENSEE shall execute affidavits, representations and the like from time to time at LICENSOR'S request concerning LICENSEE'S best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LICENSEE.

For the purpose of this LICENSE, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statutes, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive

Environmental Response, Compensation, and Liability Act, as amended, and the Federal Clean Water Act, as amended from time to time, and also including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-biphenyls ("PCB"), formaldehyde, and also including any substance designated by federal, state or local regulations, now or in the future, as presenting a risk to human health or the environment.

Prior to the termination of the subject LICENSE, LICENSEE may be required to conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health and LICENSOR.

16. ASSIGNMENT. The LICENSEE shall not assign any right herein granted or otherwise given, except to a successor or permitted assigns, without the written consent of the LICENSOR.

17. COSTS OF LITIGATION. In case either party shall, without any fault on its part, be made a party to any litigation commenced by or against the other (other than condemnation proceedings), the party at fault shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the other. The prevailing party in any dispute between the parties shall be entitled to recover its attorney's fees.

18. EXTENSION OF TIME. That notwithstanding any provision contained herein to the contrary, wherever applicable, the LICENSOR may for good cause shown, allow additional time beyond the time or times specified herein to the LICENSEE, in which to comply, observe and perform any of the terms, conditions and covenants contained herein.

19. SINGULAR/PLURAL. The singular or plural depends on its appropriate use.

20. DEFINITION OF PREMISES. The word "Premises" when it appears in this LICENSE includes and shall be deemed to include the lands described above and all buildings and improvements whenever and wherever erected or placed thereon.

21. AGREEMENT. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal successor and permitted assigns.

22. MISCELLANEOUS.

a. Consents. Whenever under the terms of this LICENSE the consent or approval of either party shall be required, such consent or approval shall not be unreasonably or arbitrarily withheld.

b. Applicable Law; Severability. This LICENSE shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this LICENSE is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.

c. Paragraph Headings. The headings of paragraphs in this LICENSE are inserted only for convenience and shall in no way define, describe or limit the scope or intent or any provision of this LICENSE.

d. Incorporation of Agreements. This LICENSE incorporates all agreements between the parties relating to the subject matter hereof, and supersedes all other prior oral or written letters, agreements or understandings relating to the subject matter hereof, except for the Memorandum of Agreement for Licenses. This LICENSE may not be modified or amended, not any of the provisions hereof waived, except by an instrument in writing signed by the parties hereto.

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

23. SPECIAL CONDITIONS:

a. LICENSEE shall exercise due care and diligence to prevent injury to persons and damages to or destruction of property belonging to LICENSOR.

b. LICENSOR shall exercise due care and diligence to prevent injury to persons and damages to or destruction of property belonging to LICENSEE.

c. LICENSEE shall be responsible for the security of the Premises and all of LICENSEE'S personal property thereon.

d. Any material breach of the Memorandum of Agreement for Licenses shall be considered a material breach of this LICENSE.

[REMAINDER OF PAGE BLANK - SIGNATURE PAGE FOLLOWS]



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

On this ____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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

[Stamp or Seal]

Notary Public, State of _____

Print Name: _____

My Commission Expires: _____

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

Notary Signature: _____	
Date: _____	

[Stamp or Seal]

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me personally appeared MICHAEL P. VICTORINO, to me personally known, who, being by me duly sworn or affirmed, did say that he is the Mayor 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 by authority of its Charter; and the said MICHAEL P. VICTORINO 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.

[Stamp or Seal]

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

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

[Stamp or Seal]	
Notary Signature: _____	
Date: _____	

EXHIBIT "B-2"
(Form of License Easement for Non-Exclusive Right)

After Recordation Return By: Mail(X) Pickup()

To: Land Management Division
Department of Hawaiian Home Lands (Owner)
P.O. Box 1879
Honolulu, Hawaii 96805

Department of Water Supply
County of Maui
200 South High Street
Wailuku, Hawaii 96793

Document contains ____ pages,
including cover.

Affects Tax Map Key: Second Division, 4-4-002:015 (por.)
4-4-002:018 (por.)

LICENSE NO. 828
(Non-Exclusive Right)
(Municipal Corporation - Benefit [B])
(HHCA S207 (c)(1) easement)
between

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
as "LICENSOR"

and

COUNTY OF MAUI
A POLITICAL SUBDIVISION OF THE STATE OF HAWAII
as "LICENSEE"

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

License No. 828
(Non-Exclusive Right)
(Municipal Corporation - Benefit [B])
(HHCA S207 (c) (1) easement)

This LICENSE No. 828 is made and issued this ____ day of _____, 20____, by the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business and mailing address is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, hereinafter called "LICENSOR", and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter called "LICENSEE".

WITNESSETH THAT:

WHEREAS, pursuant to the authority granted to it by Section 207(c)(1) of the Hawaiian Homes Commission Act, 1920, as amended (HHCA), LICENSOR is authorized to grant licenses as easements (hereinafter called "LICENSE") for railroads, telephone lines, electric power and light lines, gas mains and the like;

WHEREAS, LICENSOR has determined that the easements established herein are essential for LICENSEE to maintain, operate, and access the existing Mahinahina Water Treatment Facility, the existing Mahinahina Water Treatment Facility Reservoir, the existing Honokowai water tank, a future second storage tank, a future control tank, expansion of the Mahinahina Water Treatment Facility, and the proposed West Maui Source Development Project, that may be capable of providing potable water service for the LICENSOR's beneficiaries within Leialii and Honokowai, Lahaina, Maui, Hawaii; and

WHEREAS, LICENSOR and LICENSEE have entered into a Memorandum of Agreement for Licenses, dated _____, 2019 ("Memorandum of Agreement for Licenses") whereby LICENSOR agreed to grant this LICENSE, and LICENSEE agreed to issue certain water source credits to LICENSOR.

NOW THEREFORE, pursuant to Sections 3.44.015.C and 3.44.015.F.2, Maui County Code, and in consideration of the Memorandum of Agreement for Licenses made and entered by and between LICENSOR and LICENSEE on _____, attached

hereto and made a part hereof as Exhibit "A", and other valuable consideration, the receipt whereof is hereby acknowledged, LICENSOR hereby grants, bargains, and conveys to LICENSEE, its successors and assigns, this LICENSE as perpetual, non-exclusive easements over, under, across, through, and upon portions of those certain parcels of Hawaiian home lands in Honokowai, Island of Maui, identified as Tax Map Key Nos. (2) 4-4-002:015 and (2) 4-4-002:018, for the use of approximately 6.709 acres (more or less) of Hawaiian home lands, which easements are identified as: 1) Mahinahina Water Treatment Plant Easement A for Access and Utility Purposes, as more particularly described in Exhibit "B" and shown on Exhibit "C"; 2) Mahinahina Water Treatment Plant Easement B-2 for Waterline Purposes, as more particularly described in Exhibit "D" and shown on Exhibit "E"; 3) Mahinahina Water Treatment Plant Easement C for Access and Utility Purposes, as more particularly described in Exhibit "F" and shown on Exhibit "G"; 4) Mahinahina Water Treatment Plant Easement D for Access and Utility Purposes, as more particularly described in Exhibit "H" and shown on Exhibit "I"; 5) Mahinahina Water Treatment Plant Easement F for Access and Utility Purposes, as more particularly described in Exhibit "J" and shown on Exhibit "K"; 6) Mahinahina Water Treatment Plant Easement N for Access and Utility Purposes, as more particularly described in Exhibit "L" and shown on Exhibit "M"; and 7) Mahinahina Water Treatment Plant Easement 3 for Access and Utility Purposes, as more particularly described in Exhibit "N" and shown on Exhibit "O"; all of said easements collectively shown on Exhibit "P"; all of said exhibits being attached hereto and made a part hereof, hereinafter collectively referred to as the "Easement Area".

The easements granted hereunder shall be for access, maintenance, utility, water pipeline, grading and drainage purposes, which shall include the right to construct, reconstruct, install, modify, repair, replace, maintain and operate such pipelines and facilities, including other equipment and appurtenances necessary or expedient for the proper maintenance and operation of such facilities, utilities, and appurtenances (collectively, the "Water System Improvements") located or to be located over, under, across, through and upon the Easement Area.

Together with the right of ingress to and egress from the Easement Area over the land of the LICENSOR, as reasonably required for all purposes in connection with this LICENSE.

AND the LICENSOR hereby covenants with the LICENSEE that the LICENSOR has full rights and authority to enter into this LICENSE.

TO HAVE AND TO HOLD the same unto the LICENSEE, its successors and assigns, in perpetuity, commencing on _____, unless sooner terminated as hereinafter provided, the LICENSOR agreeing and LICENSEE understanding that this LICENSE is subject to the terms and conditions set forth in the Memorandum of Agreement for Licenses.

In consideration of the rights hereby granted and the acceptance thereof and the obligations hereby assumed, the LICENSOR and the LICENSEE hereby covenant and agree that the foregoing LICENSE is made upon the following restrictions and conditions, which shall be binding upon, as applicable, the LICENSOR, the LICENSEE, and their respective successors and assigns:

1. NON-EXCLUSIVE LICENSE. LICENSOR reserves unto itself, and its successors, the full use and enjoyment of the Easement Area, and to grant to others rights and privileges for any and all purposes affecting the Easement Area, provided however that the rights herein reserved shall not be exercised by LICENSOR or any agent, representative or assign of the LICENSOR, in a manner which interferes unreasonably with LICENSEE's use of the Easement Area for the purposes for which these easements are granted.

2. STRUCTURES/CONSTRUCTION. The LICENSOR shall not at any time during the term of this indenture erect or place any building foundation of any kind below the surface of the Easement Area, erect or place any building or structure of any kind, or stockpile any material, above or on the surface of the Easement Area, raise or lower the present ground level of the Easement Area, plant any hedges or trees within the Easement Area, or allow any person or entity other than the LICENSEE to conduct such activities within the Easement Area, unless the LICENSOR receives prior written approval from the Director of the Department of Water Supply; provided, however, that this provision shall not prohibit the LICENSOR from planting or maintaining grass and ground cover within said Easement Area, or from laying, maintaining, operating, repairing or removing its own water pipelines, valves, meters and appurtenances below the surface of the said Easement Area insofar as such uses do not

interfere with the exercise by the LICENSEE of the rights herein granted.

The LICENSOR shall timely provide as-built drawings of all existing and future improvements within the Easement Area to the LICENSEE.

3. DUE CARE AND DILIGENCE. The LICENSEE shall use due care and diligence in the construction, operation, repair, renewal, and maintenance of the Water System Improvements and shall keep the same in good and safe condition and repair; should said Water System Improvements cause any damage or nuisance or waste or spoil the Easement Area, the LICENSEE shall restore the surface or the ground within the Easement Area to its original condition to the extent that such restoration is reasonably possible, and within a reasonable time thereafter.

4. MAINTENANCE OF THE EASEMENT AREA. This LICENSE for easements does not obligate or charge the LICENSEE with any duties or responsibilities with regard to the ownership, condition, repair, and/or maintenance of the Easement Area, except as provided in section 3 above.

5. DAMAGE TO WATER SYSTEM IMPROVEMENTS. The LICENSOR, regardless of any prior approval granted by the Director of the Department of Water Supply to make improvements within the Easement Area, shall be responsible for all costs and expenses incurred by the LICENSEE in connection with the repair of damages to the Water System Improvements when and to the extent such damages result from or arise out of an act or omission of the LICENSOR, or of any person for whose acts or omissions LICENSOR shall be legally responsible, and shall reimburse the LICENSEE for costs and expenses, including reasonable attorney's fees, incurred by the LICENSEE in enforcing this provision.

6. RESPONSIBILITY. The LICENSEE shall be responsible for damages or injury caused by the LICENSEE's agents, officers, and employees in the course of their employment to the extent that the LICENSEE's liability for such damage or injury has been determined by a court of competent jurisdiction or otherwise agreed to by the LICENSEE, and the LICENSEE shall pay for such damages and injury to the extent permitted by law and approved by the Maui County Council pursuant to Chapter 3.16, Maui County Code, as amended.

The LICENSOR shall be responsible for damages or injury caused by the LICENSOR's agents, officers, and employees

in the course of their employment to the extent that the LICENSOR's liability for such damage or injury has been determined by a court of competent jurisdiction or otherwise agreed to by the LICENSOR. LICENSOR shall pay for such damages and injury to the extent that funds have been authorized and appropriated by the Legislature for such purpose, and the funds have been allocated by the executive budget process.

7. HAZARDOUS MATERIALS. LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials. LICENSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Easement Area any such materials except to use in the ordinary course of LICENSEE's business, and then only after written notice is given to the LICENSOR of the identity of such materials and upon LICENSOR's consent, which consent may be withheld at the LICENSOR's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by LICENSEE, then LICENSEE shall be responsible for the costs thereof. In addition, LICENSEE shall execute affidavits, representations and the like from time to time at LICENSOR's request concerning LICENSEE's best knowledge and belief regarding the presence of hazardous materials on the Easement Area placed or released by LICENSEE.

For the purpose of this LICENSE, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present or future federal, state or local statutes, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Federal Clean Water Act, as amended from time to time, and also including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-biphenyls ("PCB"), formaldehyde, and also including any substance designated by federal, state or local regulations, now or in the future, as presenting a risk to human health or the environment.

Prior to the termination of the subject LICENSE, LICENSEE may be required to conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the

Federal Environmental Protection Agency, the Department of Health and LICENSOR.

8. CONDEMNATION. If at any time the Easement Area across which the LICENSE extends, or any part thereof, shall be condemned or taken for any public project by any governmental authority, the LICENSEE shall have the right to pursue recovery from the condemning authority, but not from the LICENSOR, such compensation as is payable for the LICENSE and for the LICENSEE'S infrastructure, facilities, appurtenances and equipment, if any, in connection with this LICENSE, which shall be payable to the LICENSEE as its interest appears.

9. ASSIGNMENT. That the LICENSEE shall not assign any right herein granted or otherwise given, except to a successor or permitted assigns, without the written consent of the LICENSOR.

10. RELOCATION. If the LICENSOR shall determine that the continued exercise of the easement rights granted constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, the LICENSOR shall have the right to terminate the easement granted to the extent necessary to eliminate such interference, provided, that it shall grant to the LICENSEE a substitute easement within the reasonable vicinity to permit the LICENSEE to effect relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions as contained in this LICENSE. All costs of any such relocation of any facility or portion thereof, including the cost of any replacement facility, shall be borne by the LICENSOR.

11. BREACH. If the LICENSEE shall fail to observe or perform any of the covenants, terms, and conditions herein contained, and on its part to be observed and performed, the LICENSOR shall deliver written notice of the breach or default by service as provided by section 634-35 or 634-36, Hawaii Revised Statutes, or by registered mail or certified mail to the LICENSEE at its last known address, making demand upon the LICENSEE to cure or remedy the breach or default within sixty (60) days from the date of the receipt of the notice. Upon failure of the LICENSEE to cure or remedy the breach or default within the time period provided herein or within such additional period as LICENSOR may allow for good cause, the LICENSOR may terminate this LICENSE without prejudice to any other remedy or right of action.

12. COSTS OF LITIGATION. In case either party shall, without any fault on its part, be made a party to any litigation commenced by or against the other (other than condemnation proceedings), the party at fault shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the other. The prevailing party in any dispute between the parties shall be entitled to recover its attorney's fees.

13. EXTENSION OF TIME. That notwithstanding any provision contained herein to the contrary, wherever applicable, the LICENSOR may for good cause shown, allow additional time beyond the time or times specified herein to the LICENSEE, in which to comply, observe and perform any of the terms, conditions and covenants contained herein.

14. SINGULAR/PLURAL. The singular or plural depends on its appropriate use.

15. AGREEMENT. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal successors and permitted assigns.

16. MISCELLANEOUS.

a. Consents. Whenever under the terms of this LICENSE the consent or approval of either party shall be required, such consent or approval shall not be unreasonably or arbitrarily withheld.

b. Applicable Law; Severability. This LICENSE shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this LICENSE is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.

c. Paragraph Headings. The headings of paragraphs in this LICENSE are inserted only for convenience and shall in no way define, describe or limit the scope or intent or any provision of this LICENSE.

d. Incorporation of Agreements. This LICENSE incorporates all agreements between the parties relating to the subject matter hereof, and supersedes all other prior oral or written letters, agreements or understandings relating to the subject matter hereof, except for the Memorandum of Agreement for Licenses. This LICENSE may not be modified or amended, not

any of the provisions hereof waived, except by an instrument in writing signed by the parties hereto.

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

17. SPECIAL CONDITIONS:

a. LICENSEE shall exercise due care and diligence to prevent injury to persons and damages to or destruction of property belonging to LICENSOR.

b. LICENSOR shall exercise due care and diligence to prevent injury to persons and damages to or destruction of property belonging to LICENSEE.

c. Any material breach of the Memorandum of Agreement for Licenses shall be considered a material breach of this LICENSE.

[REMAINDER OF PAGE BLANK - SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

Approved by the Hawaiian
Homes Commission on:
October 15, 2018.

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

By _____
JOBIE M. K. MASAGATANI, CHAIRMAN
Hawaiian Homes Commission

"LICENSOR"

APPROVED:

COUNTY OF MAUI

JEFFREY T. PEARSON
Director
Department of Water Supply

By _____
MICHAEL P. VICTORINO
Its Mayor

REVIEWED AND APPROVED:

"LICENSEE"

ROWENA DAGDAG-ANDAYA
Director
Department of Public Works

ACCEPTED:

SCOTT K. TERUYA
Director
Department of Finance

APPROVED AS TO FORM AND LEGALITY:

JENNIFER M. P. E. OANA
Deputy Corporation Counsel

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

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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

[Stamp or Seal]

Notary Public, State of _____

Print Name: _____

My Commission Expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____ _____ _____ _____	
[Stamp or Seal]	
Notary Signature: _____	
Date: _____	

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 20____, before me personally appeared MICHAEL P. VICTORINO, to me personally known, who, being by me duly sworn or affirmed, did say that he is the Mayor 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 by authority of its Charter; and the said MICHAEL P. VICTORINO 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.

[Stamp or Seal]

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____ _____ _____ _____	[Stamp or Seal]
Notary Signature: _____	
Date: _____	

EXHIBIT "C"
(Table 100-18)
(Domestic Consumption Guidelines of the Water System Standards 2002)

DIVISION 100 - PLANNING

Table 100-18 - DOMESTIC CONSUMPTION GUIDELINES				
AVERAGE DAILY DEMAND*				
ZONING DESIGNATION	HAWAII	KAUAI	MAUI	OAHU
RESIDENTIAL:				
Single Family or Duplex	400 gals/unit	500 gals/unit	600 gals/unit or 3000 gals/acre	500 gals/unit or 2500 gals/acre
Multi-Family Low Rise	400 gals/unit	350 gals/unit	560 gals/unit or 5000 gals/acre	400 gals/unit or 4000 gals/acre
Multi-Family High Rise	400 gals/unit	350 gals/unit	560 gals/unit	300 gals/unit
COMMERCIAL:				
Commercial Only	3000 gals/acre	3000 gals/acre	6000 gals/acre	3000 gals/acre
Commercial/Industrial Mix	--	5000 gals/acre	140 gals/1000 sq. ft.	100 gals/1000 sq. ft.
Commercial/Residential Mix	--	3000 gals/acre	140 gals/1000 sq. ft.	120 gals/1000 sq. ft.
RESORT (To include hotel for Maui only)	400 gals/unit (1)	350 gals/unit	350 gals/unit or 17000 gals/acre	350 gals/unit or 4000 gals/acre
LIGHT INDUSTRY:	4000 gals/acre	4000 gals/acre	6000 gals/acre	4000 gals/acre
SCHOOLS, PARKS:	4000 gals/acre or 60 gals/student	4000 gals/acre or 60 gals/student	1700 gals/acre or 60 gals/student	4000 gals/acre or 60 gals/student
AGRICULTURE:		2,500 gals/acre	5000 gals/acre	4000 gals/acre

- * - Where two or more figures are listed for the same zoning, the daily demand resulting in higher consumption use shall govern the design unless specified otherwise.
- (1) - Subject to special review and control by the Manager.

EXHIBIT "D"

NOTICE OF APPLICATION OF SOURCE ALLOCATION
FOR DEPARTMENT OF HAWAIIAN HOME LANDS
HONOKOWAI AND VILLAGES OF LEIALI'I PHASE I-B

Pursuant to the Agreement for Licenses between the COUNTY and DEPARTMENT OF HAWAIIAN HOME LANDS, dated _____, the undersigned hereby requests water meters, which will use the Source Allocation under said Agreement, to be assigned to the following tax map key parcel and project:

TAX MAP KEY ASSIGNED: (2) ____ - ____ - ____ : ____

PROJECT NAME: _____

1. Credits originally allocated to the undersigned:
2. Credits used before the date of this notice:
3. Credits to be used by this notice:
4. Credits remaining after this notice and available for future use:

Gallons Per Day
200,000

SUBMITTED BY:

ACKNOWLEDGMENT:

DEPARTMENT OF
HAWAIIAN HOME LANDS

DEPARTMENT OF
WATER SUPPLY

By: _____

Director

Its: _____

Request Date: _____

Acknowledgment Date: _____

EXHIBIT "E"

NOTICE OF MODIFICATION OF APPLICATION OF SOURCE ALLOCATION
FOR DEPARTMENT OF HAWAIIAN HOME LANDS
HONOKOWAI AND VILLAGES OF LEIALI'Ī PHASE I-B

Pursuant to the Agreement for Licenses between the COUNTY and DEPARTMENT OF HAWAIIAN HOME LANDS, dated _____, and the revised construction plans, dated _____, being submitted to the County for approval, the undersigned hereby requests modification of water meters previously reserved and assigned to the following tax map key parcel and project:

TAX MAP KEY PREVIOUSLY ASSIGNED: (2) _____ - _____ - _____ : _____

PROJECT NAME: _____

5. Credits originally allocated to the undersigned:
6. Credits used before the date of this notice:
7. Credits to be returned to DHHL by this notice:
8. Credits remaining after this notice and available for future use:

Gallons Per Day
200,000

SUBMITTED BY:

ACKNOWLEDGMENT:

DEPARTMENT OF
HAWAIIAN HOME LANDS

DEPARTMENT OF
WATER SUPPLY

By: _____

Director

Its: _____

Request Date: _____

Acknowledgment Date: _____

Reason for modification: _____
