

DEPARTMENT OF WATER, COUNTY OF KAUAI RULES AND REGULATIONS

PART 1 RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

The following rules shall govern administrative practice and procedure before the Department of Water of the County of Kauai (hereinafter referred to as the "Department") and are promulgated pursuant to the provisions of Chapter 91, Hawaii Revised Statutes.

SECTION I - PUBLIC INFORMATION

1. The public may obtain information as to matters within the jurisdiction of the Department by inquiring at the office of the Department. Copies of rules and regulations shall be made available to the public at a price to be fixed by the Department to cover mailing and publication costs. Submittals or requests shall be made by addressing the same to the Manager and Chief Engineer.
2. Since the Department of Water has limited judicial functions, no formal rules of practice need be adhered to. No particular forms or instructions are prescribed.

In all matters concerning the affairs of the Department, any person affected by any action of the Department or by any action of the employees or agents of the Department shall first take up the matter with the Manager and Chief engineer. The affected person may, thereafter, write a letter to the Board of Water Supply, addressed to the Chairman of the Board, stating his grievance and the relief sought. The matter will then be put on the agenda of the Board at the earliest practicable time.

SECTION II - PROCEDURE FOR ADOPTION, AMENDMENT OR REPEAL OF RULES

All rules and regulations of the Department shall be adopted and shall take effect in accordance with Section 91-3 and Section 91-4, Hawaii Revised Statutes; provided, however, that such procedure for the adoption, amendment and repeal of rules shall not be applicable to the adoption, amendment and repeal of rules pertaining purely to the internal procedure of the Department.

SECTION III - PETITION FOR ADOPTION, AMENDMENT OR REPEAL OF RULES

1. Any petition submitted under Section 91-6, Hawaii Revised Statutes, requesting the adoption, amendment or repeal of a rule shall be made by letter addressed to the Board of Water Supply, County of Kauai. The letter shall state clearly and concisely the relief sought, the name, title and address of the person to whom correspondence or communication in regard to the request is to be addressed. The petition will be placed on the agenda for a meeting of the Board to be held at the earliest time practicable.
2. The petitioner will be notified of the time and date that he or his authorized representative may appear before the Board. Within 30 days of the receipt of the petition, the Board will either deny the petition in writing, stating its reasons for such denial, or initiate proceedings to effectuate the adoption, amendment or repeal requested.

SECTION IV - DECLARATORY RULINGS OF THE BOARD

1. Any petition submitted under Section 91-8, Hawaii Revised Statutes, requesting a declaratory ruling of the Board as to the applicability of any statutory provision or of any rule will be submitted by letter clearly presenting the views of the petitioner with respect to the questions raised or relief sought, addressed to the Board of Water Supply, County of Kauai. The letter shall also give the address of the person to whom correspondence or communication in regard to the request is to be addressed. The petition will be placed on the agenda for a meeting of the Board to be held at the earliest time practicable.
2. The petitioner will be notified of the time and date that he or his authorized representative may appear before the Board.
3. As soon as reasonably practicable after the appearance of the petitioner before the Board, the Board will make its ruling and inform the petitioner in writing.
4. If the ruling is contested, the petitioner shall so inform the Board by letter addressed as provided in Paragraph 1 above, and the Board will serve notice of and conduct a hearing in the manner prescribed in Section 91-9, Hawaii Revised Statutes.

SECTION V - DECISIONS AND ORDERS OF THE BOARD

Decisions and Orders of the Board shall be served by mailing certified copies to the party to the proceedings or his authorized representative. When service is not accomplished by mail, it may be made by delivery of a certified copy thereof to such party or his authorized representative.

SECTION VI - ADMINISTRATIVE HEARINGS PROCEDURE

I. DEFINITIONS

- A. **"Board"** shall mean the Department of Water and/or Board of Water Supply of the County of Kauai; the Board shall constitute the Board for purposes of Chapter 91, HRS.
- B. **"Board hearing"** refers only to such hearing held by the Board immediately prior to a judicial review of a contested case as provided in Section 91-14, HRS.
- C. **"Contested case"** means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for Board hearing.
- D. **"Party"** means each person or board named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any court or board proceeding.
- E. **"Persons"** includes, individuals, partnerships, corporations, associations, or public or private organizations of any character other than boards.
- F. **"Rule"** means each Board statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedures, or practice requirements of the Board. The term does not include regulations concerning only the internal management of the Board and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to Section 91-8, HRS, nor intra-board memoranda.

II. CONTESTED CASE HEARING OR "BOARD HEARING"

A. NOTICE OF HEARING

1. Content of Notice

- a. Date, time, place and nature of hearing.
- b. The legal authority under which the hearing is to be held.
- c. The particular sections of the statutes and rules involved.
- d. An explicit statement in plain language of the issues involved and the facts alleged by the Board in support thereof. If the Board is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application, a bill of particulars shall be furnished.
- e. The fact that any party may retain counsel if he so desires and the fact that an individual may appear on his own behalf, or a member of partnership may represent the partnership, or an officer of an authorized employee of a corporation or trade or association may represent the corporation, trade, or association.

2. Service of Notice

- a. All parties shall be given written notice of hearing by registered or certified mail with return receipt requested at least fifteen (15) days before the hearing.
- b. If service by registered or certified mail is not made because of the refusal to accept service, or the Board has been unable to ascertain the address of the party after reasonable and diligent inquiry, the notice of hearing may be given to the party by publication at least once in each of two successive weeks in a newspaper which is printed at least twice weekly in the county affected by the proposed action.
- c. Notwithstanding the requirements of this section, notice by publication shall be provided pursuant to Section 91-3, HRS, if the hearing also involves the adoption, amendment, or repeal of rules, or if otherwise required by law.

B. MODIFICATION OF PROCEDURES BY STIPULATION

Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

C. PROCEDURES IN CONDUCTING THE HEARING

1. Pre-hearing Motions and Conferences

- a. **Pre-hearing Motions.** The Board may, prior to the hearing, consider and rule on all motions filed by any party to a contested case.

- (1) **Notice.** All parties shall be informed in writing by the moving party, of the time, date, and place for the pre-hearing motion.
 - (2) **Certificate of Service.** The moving party shall be required to file with the motion, a certificate to the effect that notice was given.
- b. **Pre-hearing Conferences.** The Board may, at the request of an interested party, or on its own initiative, conduct a pre-hearing conference to define issues of law and fact, to stipulate to those issues which are not contested, to stipulate to the admission of certain evidence, and to settle other matters which would help expedite the hearing.
- (1) **Notice.** All parties shall be informed in writing by the moving party, of the time, date, and place for the pre-hearing conference.
 - (2) **Certificate of Service.** The moving party shall be required to file a certificate to the effect that written notice of the pre-hearing conference was given

2. **Convening the Hearing**

- a. **Presiding Officer.** The chairperson of the Board or one of the members, shall preside at the hearing. The presiding officer controls the course of the hearing, disposes of matters that normally and properly arise in the course of the hearing, and takes all other actions authorized by law that are deemed necessary to the orderly and just conduct of a hearing.
- b. **Calling the Hearing to Order.** The presiding officer will identify the case by name and number, state for the record a brief description of the nature and subject matter of the hearing including the authority therefore, and shall then briefly outline the procedures to be followed.
- c. **Identification of Parties and Counsel.** The presiding officer shall request all parties to identify themselves and their counsel. Where a party is represented by more than one counsel, only one counsel shall be permitted to cross-examine a witness or to state any objections or to make closing arguments.
- d. **Parties; Intervenor.** The Board shall determine and find on the record whether all parties, including intervenors, have a bona fide interest in the subject matter.
 - (1) **Who May Intervene.** All persons who can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the hearing is clearly distinguishable from that of the general public shall be admitted as parties.
 - (2) **Denial of Intervention.** Leave to intervene shall be freely granted, provided that the Board may deny intervention when in the Board's sound discretion, it appears that:
 - (a) the position of the applicant is substantially the same as the position of a party already admitted to the hearing; and

- (b) the admission of additional parties will render the hearing inefficient and unmanageable.
 - (3) **Opposition to Intervention.** If any party opposes the request for intervention, the party shall state the objection for the record.
 - (4) **Appeal from Denial.** An applicant who has been denied intervention may appeal such denial to the circuit court pursuant to Section 91-14, HRS.
 - e. **Reading of Rights.** The rights of all parties shall be carefully explained to all parties, including their right to counsel, to present evidence, and to cross-examine. All parties shall acknowledge on the record, their full understanding of these rights.
 - f. **Stating objections.** Before proceeding with the hearing, all parties shall be required to state for the record any objections they may have to any of the pre-hearing proceedings, and particularly the form and substance of the notice of the hearing.
 - g. **Accurate Record.** To insure an accurate record, a tape recorder or other reliable recording equipment may be used. The decision to hire a court reporter or stenographer is left to the discretion of the Board. It shall not be necessary to transcribe the record unless requested for the purposes of re-hearing or court review.
3. **Presenting the Case; Rules of Evidence**
- a. **Order of Appearance.** The party initiating the hearing and with the burden of proof has the right to open and close. Other parties, including intervenors, will be allowed to present their case in an order agreed upon or as decided by the presiding officer.
 - b. **Swearing in Witnesses.** Prior to giving testimony, the witnesses shall be sworn in by the presiding officer. (See Section 612-12, HRS).
 - c. **Testimony.** Each interested person shall before testifying, state his name, address and shall give such information respecting his appearance as the presiding officer may request. The presiding officer shall confine the testimony to the matters for which the hearing was called. In order to allow persons an equal amount of time to testify, or to prevent repetitious testimony, the presiding officer may limit the amount of time for testimony per individual or per issue. Each witness may be subject to questioning by the Board and all parties. A person may submit written comments during the hearing or for such period of time after the close of the hearing as determined by the presiding officer.
 - d. **Rebuttal.** After all parties have rested their case, each party will be allowed to present rebuttal evidence in the same order as they presented their case in brief.
 - e. **Rulings by Presiding Officer.** The presiding officer will make all rulings on points of law, including the admissibility of evidence, the merit of objections or motions, the granting of continuances, the limiting of testimony or witnesses, and other rulings authorized by law that are deemed necessary to the orderly and just conduct of the hearing and which

do not involve the final determination of the proceedings. Such rulings may be reviewed by the Board in determining the matter on its merits.

f. **Rules of Evidence.**

- (1) **Admissibility and Exclusion.** Any oral or documentary evidence may be received, but the Board shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.
- (2) **Record Supported by Evidence.** No sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence.
- (3) **Privileges.** The Board shall give effect to the rules of privileges as recognized by law.
- (4) **Marking of Evidence.** All evidence shall be marked for identification with the parties' name and number or letter.
- (5) **Copies.** Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request, parties shall be given an opportunity to compare the copy with the original.
- (6) **Cross-examination.** Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts.
- (7) **Official Notice.** The Board may take notice of judicially recognizable facts. In addition, the Board may take notice of generally recognized technical or scientific facts within their specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.
- (8) **Burden of Proof.** Except as otherwise provided by law, the party initiating the hearing shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion.
- (9) **Standard of Proof.** The degree or quantum of proof shall be a preponderance of evidence.

4. **Closing Arguments**

- a. Each party, including intervenors, shall be allowed to present closing arguments in the same order as they presented their case in chief. The party initiating the hearing and having the burden of proof may speak last. The presiding officer may set a time limit for closing arguments.

5. **After Closing Arguments; Decisions and Orders**

- a. **Decision in Writing.** Every decision and order adverse to a party to the proceeding rendered by the Board in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law.
 - (1) If any party to the proceeding has filed proposed findings of fact, the Board shall incorporate in its decision a ruling upon each proposed finding so presented.
 - (2) Parties to the proceeding shall be notified by personal delivery or mailing, a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or attorney of record. With the personal delivery or certified mailing, the contested case is closed and the thirty-day period for court appeal pursuant to Section 91-14, HRS, begins to run.
- b. **Matters Outside Record.** No matters outside the record shall be considered by the Board in making its decision. No official of the Board in a contested case shall consult any person on any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex-parte matters authorized by law.
- c. **Decision-makers Not Present.** Whenever in a contested case, the officials of the Board who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the Board itself, shall not be made until a proposal for decision containing a statement of reasons and including the determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present arguments to the officials who are to render the decision, who shall personally consider the whole record or such portion thereof as may be cited by the parties.

III. **RULE MAKING HEARING OR “PUBLIC HEARING”**

A. **NOTICE OF HEARING.**

Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the Board shall give at least twenty (20) days' notice for a public hearing.

1. **Content of Notice**

- a. Date, time and place where the public hearing will be held.
- b. A statement of the substance of the proposed rule.

2. **Service of Notice**

- a. The notice shall be mailed to all persons who have made a timely written request of the Board for advance notice of its rule-making proceedings; and

- b. Notice shall be published at least once in a newspaper of general circulation published in the County of Kauai.

B. **PROCEDURES IN CONDUCTING THE HEARING**

1. **Convening the Hearing**

- a. **Presiding Officer.** The presiding officer shall be the Chairman of the Board, or in his absence, by another member designated by the Board. The presiding officer controls the course of the hearing, disposes of matters arising in the course of the hearing, and takes all other actions authorized by law that are deemed necessary to the orderly and just conduct of a hearing.
- b. **Accurate Record.** To insure an accurate record, a tape recorder or other reliable recording equipment may be used. The decision to hire a court reporter or stenographer is left to the discretion of the Board. It shall not be necessary to transcribe the record unless requested for the purpose of re-hearing or court review.
- c. **Order of Public Hearing.** At the commencement of the hearing, the presiding officer may acknowledge the notice of hearing and shall then conduct the proceeding in the following manner:
 - (1) Staff Findings. The Department shall present its findings.
 - (2) Questions of Staff Findings. Staff findings shall be subject to questioning by the Board.
 - (3) Open Hearing to Public. The presiding officer shall suspend the rules and the hearing shall then be opened to the public. Members of the public wishing to testify shall be subject to questioning by the Board. All interested persons shall be afforded the opportunity to submit data, views, or arguments, orally or in writing. The following procedure shall be followed when opened to the public:
 - (a) Anyone wishing to testify is required to register with the presiding officer prior to the presiding officer calling the meeting to order;
 - (b) Anyone testifying is entitled to the floor only when recognized by the presiding officer;
 - (c) Anyone testifying shall state his name, address, and whom they represent and if they are registered lobbyists in compliance with HRS Chapter 97, Lobbyist Law;
 - (d) The presiding officer shall confine the testimony to the matters for which the hearing was called;
 - (e) Anyone testifying shall refrain from direct questioning of the Board and shall direct any remarks or questions to the presiding officer;

- (f) Anyone with written testimony may be given priority at the discretion of the presiding officer;
 - (g) Oral presentation shall be limited to three (3) minutes per speaker; extended time may be granted by the presiding officer. The presiding officer shall have the prerogative to set the speaking time for each witness and may also set the order of speakers, speaking for or against any proposition, and may notify the speaker of the expiration of his speaking time, 30 seconds before such expiration;
 - (h) Anyone may speak a second time on the same question or subject, at the discretion of the presiding officer;
 - (i) The presiding officer shall grant to persons who have not registered, time to speak following the registered speakers;
 - (j) Anyone speaking may be subject to questioning by the Board. Questions by the Board shall be permitted only at the discretion of the presiding officer;
 - (k) The presiding officer may restrict or terminate the speakers' right to the floor for intemperate or abusive behavior or language;
 - (l) The presiding officer may ask for the removal of anyone who willfully disrupts a meeting to prevent and compromise the conduct of the meeting.
- d. **Admissibility.** The Board shall not be bound by technical rules of evidence.

2. **After the Hearing**

- a. The Board may make its decision at the public hearing or announce the date as to when it intends to make its decision.
- b. Upon adoption, amendment, or repeal of a rule, the Board shall, if requested to do so by an interested person, issue a concise statement of the principal reasons for and against its determination.
- c. The adoption, amendment, or repeal of any rule by the Board shall not be subject to the approval of the Mayor of the County of Kauai.
- d. Filing and publication of rules shall be in accordance with Chapter 91, HRS.

C. **EMERGENCY RULE.**

Notwithstanding the foregoing, if the Board finds that an imminent peril to the public health, safety, or morals or to livestock and poultry health requires adoption, amendment, or repeal of a rule upon less than twenty days' notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing upon such

abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal.

D. **FEDERAL REQUIREMENTS.**

The requirements of this section may be waived by the Chairman whenever the Board is required by federal provisions to promulgate rules as a condition to receiving federal funds and the Board is allowed no discretion in interpreting such federal provisions as to the rules required to be promulgated; provided that the Board shall make such adoption, amendment, or repeal known to the public by publishing a statement of the substance of the proposed rule at least once in a newspaper published in the County of Kauai prior to the waiver by the Chairman.

PART 2
RULES AND REGULATIONS FOR WATER SERVICE CONNECTIONS
within the County of Kauai
and Providing Penalties for the Violations Thereof

SECTION I – DEFINITIONS

For the purpose of these rules and regulations, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein are defined as follows:

1. The word "**DEPARTMENT**" shall mean the Department of Water, County of Kauai, State of Hawaii.
2. The word "**BOARD**" shall mean the Board of Water Supply of the Department, County of Kauai, State of Hawaii.
3. The term "**MANAGER AND CHIEF ENGINEER**" shall mean the person holding the office of Manager and Chief Engineer of the Department.
4. The word "**CONSUMER**" shall mean the person, firm, corporation, association, or governmental department, whether owner or tenant, whose name appears on the records of the Department as the party responsible and liable for receiving water service from the Department.
5. The term "**SERVICE CONNECTION**" shall mean the main tap, pipe fittings, meter and valve from the water main to and including the shut-off valve on the Consumer's side of the meter.
6. The term "**COST OF SERVICE CONNECTION**" shall mean the sum of the cost of the labor, materials, equipment, and road repair, if any, and other incidental charges necessary for the complete installation of a service connection, but excluding the cost of the meter.
7. The term "**CONSUMER'S SUPPLY PIPE**" shall mean the pipe extending from the consumer's end of the service connection.
8. The word "**MAIN**" or "**MAIN PIPE**" shall mean the Department's supply or distribution pipe to which service connections are made.
9. The term "**FACILITIES RESERVE CHARGE**" shall mean the fee to be paid by subdividers or, when applicable, new consumers as their proportionate share in improvements to the Department's water system.

SECTION II - GENERAL CONDITIONS

1. Any prospective consumer may obtain water service provided all of the following conditions are met:
 - a. In the event that service limits are established by the Department that the premises are within these limits.
 - b. The Department has a sufficient water system developed for domestic use and, if required by the Department, a sufficient water system for fire protection. In order to determine the

sufficiency of the water system, the Department may require the prospective consumer to estimate the amount of water to be used.

- c. The consumer agrees to design, construct, and install any component of the water system required by the Department in compliance with (1) all applicable statutes, ordinances, rules, and regulations of the State of Hawai'i and the County of Kaua'i, and (2) the 2002 Water System Standards ("Standards") developed by Hawai'i's four county departments of water, as amended by the Department's 2005 Amendments ("2005 Amendments") to the Standards. The Standards and the 2005 Amendments are hereby incorporated by reference into the Department's rules. The Manager and Chief Engineer may, for good cause shown, permit departure from the Standards or 2005 Amendments, or both.
- d. The consumer agrees to abide by these rules and regulations.
- e. All applicable charges have been paid.

2. **Extension of Mains.** Where an extension of mains is necessary or where large quantities of water are required or a substantial investment is necessary to provide service, the consumer will be informed by the Department as to the conditions and charges to be made for the particular area and situation in question before water service may be approved.

- a. When an extension of mains for service is necessary, the consumer shall install and pay for any extensions of water system required from the public water system to any particular area. All such water systems shall be designed and located in accordance with the standards of the Department. The consumer may be required to improve the public water system if the public water system is inadequate to serve the area.
- b. Whenever the Department finds it necessary that the water main extensions proposed to deliver water to any particular area should be of a greater capacity than is required to provide adequate service and fire protection for such area, in order to supply water and fire protection to other adjacent areas along the main extensions, the Department shall require the consumer to install mains of such greater capacity.
- c. When the consumer is required to install a larger sized main for the reasons set forth in the preceding paragraph, the Department will reimburse the consumer, as soon as practicable after the acceptance by the Department of the completed work, the additional cost of the installation over and above the cost of mains that would have been required, provided that reimbursement will not be made to the consumer where such larger main or mains will serve only areas under the same ownership as the area under consideration.

Before the consumer enters into a contract where a reimbursement for additional costs of main will be made, the Department shall review and either approve or disapprove the contract. If the contract is disapproved, the consumer shall revise the contract until its form and content is acceptable to the Department.

After the installation has been completed and accepted by the Department, the consumer shall furnish the Department with an affidavit itemizing the costs incurred by him in the installation of mains or larger main. The said costs and additional costs shall be determined by the Department.

- d. A pipeline will be considered a main extension if and only if:
 - (1) the pipe size is at least 6" in urban or rural residential areas, 8" in business, multi-family, resort or industrial areas, and 6" in agricultural areas;

- (2) it is installed along existing government road provided that the Department may consider a pipeline or main extension installed within an easement in favor of the Department and it is found non-feasible for the pipeline to be installed along existing government roads;
 - (3) it has the capacity and the potential of serving additional customers; and
 - (4) it is not adjacent to or within land owned by or developed by the consumer.
3. All water supplied by the Department will be measured by means of suitable meters registering in gallons. When it is impractical to meter the service, a flat rate may be charged. The amounts to be paid for water and water service shall be in accordance with the rates established by the Board. The Department will determine the location and size of all meters and service connections to its system. All service connections shall become the property of the Department for operation and maintenance after installation and new connections or disconnections may be made thereto by the Department at any time.

SECTION III - CONSERVATION MEASURES AND INTERRUPTION OF WATER SUPPLY

1. The Department will exercise reasonable diligence and care to deliver an adequate supply of water to the consumer and to avoid shortages or interruptions in water service, but will not be liable for any interruption, shortage, insufficiency of supply, or any loss or damage occasioned thereby.
2. Whenever, in the Department's opinion, special conservation measures are advisable in order to forestall water shortage and a consequent emergency, the Department may restrict the use of water by any reasonable method of control.
3. The Department reserves the right at any and all times to shut off water from the mains without notice for the purpose of making repairs, extensions, alterations, or for other reasons. Consumers depending upon a continuous supply of water shall provide emergency water storage and any check valves or other devices necessary for the protection of plumbing or fixtures against failure of the pressure or supply of water in the Department's mains. Repairs or improvements will be prosecuted as rapidly as practicable and, insofar as practicable, at such times as will cause the least inconvenience to the consumer.

SECTION IV - ELEVATION AGREEMENT, PRESSURE CONTROLS

1. The Department will make every effort to maintain pressure but will not accept responsibility for maintaining pressure in its water mains.
2. Where property is situated at such an elevation that it cannot be assured of a dependable supply or of adequate service from the Department's distribution system, the consumer, in consideration of connection with the Department's system, must agree to accept such water service as the Department is able to render from its existing facilities and to install, if necessary, and maintain at his expense a tank and pump of suitable design and of sufficient capacity to furnish an adequate and dependable supply of water. When required by the Department the consumer shall install an air gap or other protective devices between the consumer's supply pipe and the service connection. The consumer shall execute a written release in favor of the Department for all claims on account of any inadequacy in the Department's system or inadequacy of water supply to the consumer.
3. When the pressure of the Department's supply is higher than that for which individual fixtures are designed, the consumer shall protect such fixtures by installing and maintaining pressure reducing and relief valves. The Department will not be liable for damage due to pressure

conditions or caused by or arising from the failure or defective condition of such pressure regulators and relief valves or for damage that may occur through the installation, maintenance or use of such equipment.

SECTION V - APPLICATION FOR WATER SERVICE AND SERVICE CONNECTION

1. When applying for water service and service connection, each prospective consumer shall:
 - a. complete a standard application form;
 - b. pay any applicable charges due at the time of application. The Department shall state what the applicable charges are at the time of application;
 - c. If applicable, complete all infrastructure requirements, as determined by the Department; and
 - d. Any other requirements as determined by the Department.
2. The Department shall inform the prospective consumer, in writing, that the application is complete and accepted for filing, or that the application is deficient and what specific information is necessary to make the application complete. If the application is deficient, computation of time for accepting or denying the request shall not begin until all requirements are met.
3. Once completed and filed, the Department shall approve or deny the application within forty-five (45) working days. The application shall be deemed approved, pursuant to Hawaii Revised Statutes 91-13.5 if the Department fails to take any action at the end of the forty-fifth working day. Upon approval of the application, the applicant shall pay all applicable charges prior to receiving water service and service connection.
4. Each prospective consumer shall be required to sign the standard application form for the water service desired, assuming responsibility for the payment of future charges for water service to the designated location before water is turned on for any use whatsoever. The prospective consumer signing the standard application form shall be (held) liable for the payment of all charges for water and water service at the designated location.
5. An advance deposit equal to the Department's estimate of three months' water charges will be required of tenants, lessees, and purchasers of property under an agreement of sale. When water service is discontinued, the advance deposit will be returned less all unpaid or outstanding water charges.
6. Charges for water will begin when the water service is established and will continue until due notification from the consumer or until discontinued by the Department for failure of the consumer to comply with these rules and regulations.
7. When an application for water service is made by a consumer who was responsible for and failed to pay all bills previously rendered, regardless of location or time incurred, the Department may refuse to furnish water service to such consumer until the outstanding bills are paid.

SECTION VI – NEW SERVICE CONNECTIONS

1. **Installation.** When the application for service connection has been approved, such connection will be installed by the Department at the expense of the applicant and thereafter will be maintained by the Department at its expense. There shall be one meter for each service connection, unless the

Department, because of operating necessity, installs two or more meters in parallel. All meters will be sealed by the Department before installation and no seal shall be altered or broken except by one of its authorized employees.

2. **Charges.**

- a. The Department may establish fixed charges for the installation of various sizes of new service connections and meters. These fixed charges shall approximate the average of such installations, using present and anticipated costs for the next twelve months. Payment of the applicable fixed charge shall be made by the applicant before installation. If the actual cost of installation exceeds or is less than the fixed charge, no adjustment will be made.
- b. For the installation of new service connections or meters for which fixed charges have not been established, the applicant shall deposit an amount equal to the Department's estimate before installation. If the actual cost is in excess of the deposit, the applicant will be billed and shall pay for the difference. If the actual cost is less than the deposit, the applicant will be refunded the difference. A purchase order from County, State and Federal agencies will be accepted in lieu of a cash deposit.
- c. In addition to the charges for the installation of the service connection and meters, the applicant shall pay the applicable facilities reserve charge. In the case of increasing the size of an existing meter, the difference between the large and smaller facilities reserve charges shall be paid. No refund will be made in the case of reducing the size of an existing meter.
- d. In the event a temporary service connection is installed for construction or other purposes, the facilities reserve charge need not be paid provided that such service will be limited to a 6-month period unless extended by the Department.
- e. The facilities reserve charge will not be charged against the consumer if the facilities reserve charge was previously paid by the developer or subdivider and the consumer requests the meter size for which the facilities reserve charge was previously paid.

3. **Consumer's Supply Pipe.** The consumer shall install and connect at his expense his supply pipe to the shut-off valve or outlet installed by the Department. The consumer's supply pipe shall at all times remain the sole property of the consumer, who shall be responsible for its maintenance and repair. If the consumer's supply pipe is installed before the service connection is set, the Department will make the connection to it; provided, however, it is requested by the consumer prior to the installation of the service connection.
4. **Connection to Main.** Only employees of the Department will be allowed to connect or disconnect the service connection to or from the Department's main.
5. **Compensation.** Employees of the Department are strictly forbidden to demand or accept personal compensation for services rendered.
6. **Pipe through Basement Wall.** Where the applicant requires his supply pipe extended through a basement wall, he shall provide entrance-way through such wall. The Department will not be responsible for any damage caused by leakage through or inside such entrance-way.
7. **Location of Service Connection or Main.** No service connection or water main will be installed by the Department in any private road, lane, street, alley, court or place until such private streets are open to the public and brought to proper grade and the Department is given proper easements for the main or service connection. Otherwise, an applicant desiring water service to property fronting on such private roads, lanes, etc., must extend his supply pipe to the nearest public street on which a main exists.

8. **Location of Meters.**

- a. All meters shall be installed in the public roadway at the property line, preferably in the concrete sidewalk, unless the Department, because of operating necessity, installs the meters elsewhere.
- b. When the meters are placed within private property for reasons of operating necessity, the land owner shall give to the Department a permit and right-of-entry for the purposes of meter reading and maintenance prior to the installation of said meter.
- c. In the event the Department finds it necessary or finds it in the best interest of the Department to relocate a water meter serving a customer, the Department will, at no cost to the customer, revise or extend the customer's piping to conform to the new meter location.

9. **Change in Location or Size of Service Connection.**

- a. When the proper size of service connection for any premises has been determined and the installation has been made, the Department has fulfilled its obligations insofar as the size of the service and the location thereof are concerned. If thereafter the consumer desires a change in size of the service connection or a change in the location thereof, he shall bear all costs of such change; provided, however, that in the case of a consolidation of existing meters to one of larger size or, conversely, in the case of changing from a larger meter to two or more smaller meters, the consumer shall be given credit for the facilities reserve charge of the existing meter(s) but not to exceed the cost of the facilities reserve charge for the new installation, provided that no credit will be allowed unless payment of the additional facilities reserve charge is made within 365 days following consolidation or change in meter size.
- b. In the event the Department determines that an increase in size of service connection is required because flow rates exceed meter designs, the consumer will be required to pay for the cost of the proper sized service connection plus the applicable difference in facilities reserve charge between the larger and smaller meters. If an application for the larger size service connection is not made within 30 days after notification in writing from the Department, the consumer's service may be discontinued.

10. **Shut-Off Valve.**

A readily accessible shut-off valve controlling all outlets will be installed by the Department at the expense of the consumer at a location to be determined by the Department. The valve before the meter is installed for the use of employees of the Department. The Department will install a shut-off valve and charge only for the cost of the valve (i.e., no charge for cost of labor, transportation, equipment or overhead) on those service connections installed prior to the adoption of these rules which do not have a shut-off valve.

11. **Alteration to Public Water System.**

- a. All work and materials in connection with the change in location or elevation of any part of the existing public water system made necessary by the new service connection shall be at the expense of the applicant.

- b. Pipelines within the shoulder area which were installed prior to adoption of these rules will be lowered free of charge for the property owner in the event the Department determines such lowering is necessary for the construction of a driveway into the property.
12. **Contours or Elevations.** When required by the Department, contours or elevations shall be furnished by the applicant based upon U. S. Coast and Geodetic Survey Datum or the County of Kauai Datum.
13. **Size of Meter and Service Connection.** The Department will determine the location and size of all meters and service connections to its systems.
14. **Boundary Location.** An applicant for water service shall indicate his boundary before installation of any meter and any relocation of said meter due to discrepancy in boundary location shall be at the expense of the applicant.
15. **Abandonment.** Service connections which have not been in use for 365 days or more shall be considered abandoned. The Department may require the complete installation of a new service connection or any part thereof depending on the condition of the existing installation and whether or not it meets the Department's standard, current at the time of application.

SECTION VII - METER READING AND RENDERING OF BILLS

1. Meters are read and bills are rendered regularly. Special readings will be made when necessary for closing of accounts or for other reasons.
2. Closing bills for short periods of time since the last meter reading date will ordinarily be determined by the amount of water actually used, as indicated by the meter reading, plus a proration of the service charge. In prorating service charges a billing month shall be considered to be 30 days.
3. Readings of Separate Meters Not Combined. For the purpose of computing charges, all meters serving the consumer's premises shall be considered separately and the readings thereof shall not be combined except in cases where the Department, because of operating necessity, installs two or more meters in parallel to serve the same consumer's supply pipe.

SECTION VIII - PAYMENT OF BILLS

All bills shall be due and payable upon deposit in the United States mail or upon other presentation to the consumer. Payment shall be made at the office of the Department or, at the Department's option, to duly authorized collectors of the Department.

SECTION IX - ADJUSTMENT OF BILLS FOR UNDETECTED LEAKS AND UNFORESEEN DAMAGES

1. The Department will reduce high water bills caused by undetected leaks in the consumer's supply pipe by one half of the excess over the consumer's normal bill based on the previous six months' average. Adjustments will also be allowed where the high water bill was caused by some unforeseen circumstance such as a storm, flood, explosion, fire and others.
2. Adjustment will be allowed only if the consumer exercises diligence in repairing the leak within the period of one week after knowledge of leakage.

3. No adjustments will be made for leakage due to faulty plumbing fixtures and exposed waterlines within his property.
4. Before adjustment is made under this section, the owner shall first request an adjustment and submit substantiating data to warrant such an adjustment if required by the Department. The Department shall make their determination based on the data presented and any other evidence as collected by the Department, if necessary.

SECTION X - METER INACCURACIES AND ADJUSTMENT OF BILLS

1. **Non-Registering Meters.** If a meter fails to register due to any cause except the non-use of water, an average bill may be rendered. Such average bill will be subject to equitable adjustment taking into accounts all factors before, during, and after the period of said bill.
2. **Meter Tests.** All meters are tested prior to installation. Any consumer who, for any reason, doubts the accuracy of the meter serving his premises may request a test of the meter. The consumer, if he so requests, will be notified as to the time of the test may witness the test if he so desires. No charge will be made for meter tests.
3. **Adjustment of Bills for Meter Inaccuracy.** If, as the result of the test, the meter is found to register more than two percent fast under conditions of normal operation, the Department will refund to the consumer the overcharge based on past consumption, for a period not exceeding six months; unless it can be proved that the error was due to some cause, the date of which can be fixed. In this latter case, the overcharge shall be computed back to, but not beyond, such date.

SECTION XI - DISCONTINUATION OF WATER SERVICE

Water Service may be discontinued for the following reasons:

1. **Nonpayment of Bills.** Water service may be discontinued for the nonpayment of a bill within thirty (30) days after the mailing or presentation thereof to the consumer.
2. **Non-compliance with the Board's Rules and Regulations.** If the consumer fails to comply with any of these rules and regulations, the Department will have the right to discontinue the service.
3. **Consumer about to Vacate Premises.** Each consumer about to vacate any premises supplied with water by the Department shall give notice of his intention to vacate prior thereto, specifying the date service is desired to be discontinued, otherwise he shall be held responsible for all water service furnished to such premises until the Department has received such notice of discontinuance. Before buildings are demolished, the Department should be notified so the service connection can be closed.
4. **Unauthorized Use of Water.** The Department will refuse or discontinue water service to any premises or consumer, if necessary, without giving notice to protect itself against fraud, abuse, or unauthorized use of water. A surcharge may be established and assessed by the Department.
5. **Wasteful Use of Water.** Where negligent or wasteful use of water exists on any premises, the Department may discontinue the service if such conditions are not corrected after giving the consumer written notice of intent to do so.
6. **Discontinuation of Water Service for Non-payment of Sewer Service Charges.** The Department is authorized to discontinue and terminate water service for delinquency in payment of County of Kaua'i sewer service charges when so directed by the County Director of Finance.

Water service may be discontinued for delinquencies in payment of such sewer charges no earlier than thirty (30) days after the mailing or presentation of such delinquent charges to the consumer.

Water service may be restored when all such delinquencies have been paid or at the request of the County Director of Finance. All Departmental charges for re-opening, re-installation, or re-connection shall be paid before water service is restored."

SECTION XII - RESTORATION OF WATER SERVICE

If water service is turned off because of failure to pay a water bill, for violation of any of the regulations of the Department, or for other reasons, arrangements must be made to pay all outstanding accounts against the consumer before his water service will be restored.

SECTION XIII - DEPARTMENT'S EQUIPMENT ON CONSUMER'S PREMISES

All equipment belonging to the Department and installed upon the consumer's premises for measurement, test, check or any other purpose, shall continue to be the property of the Department, and may be repaired, replaced or removed by the Department at any time without the consent of the consumer. The consumer shall exercise reasonable care to prevent damage to meters and other equipment of the Department upon said premises and shall in no way interfere with the operation of the same.

SECTION XIV - DAMAGE AND ACCESSIBILITY TO DEPARTMENT'S PROPERTY METER DAMAGED BY HOT WATER

1. Any damage to water mains, service connections, valves, fire hydrants, or other property of the Department shall be paid for by the person or organization responsible for the damage.
2. When a meter or service connection is found to have been damaged by hot water or steam emanating from the premises served, the consumer shall pay for all costs of repairs.
3. No obstruction shall be placed on or around any water meter, fire hydrant, or valve so as to render it inaccessible.

SECTION XV - INGRESS AND EGRESS FROM CONSUMER'S PREMISES

Any properly identified officer or employee of the Department shall have the right of ingress to and egress from the consumer's premises at all reasonable hours for any purpose reasonably connected with the furnishing of water or other service to said premises and the exercise of any and all rights secured to it by law or these rules and regulations. In case any such officer or employee is refused admittance to any premises, or, being admitted, shall be hindered or prevented from making such inspection, the Department may cause the water to be turned off from said premises after giving 24 hours notice to the owner or occupant of said premises of its intention to do so.

SECTION XVI - RESPONSIBILITY FOR WATER RECEIVING EQUIPMENT

1. The consumer shall at his own risk and expense furnish, install, and keep in good and safe condition all equipment that may be required for receiving, controlling, applying and utilizing water, and the Department will not be responsible for any loss or damage caused by the improper installation of such equipment, or the negligence, want of proper care, or wrongful act of the

consumer or of any of his tenants, agents, employees, contractors, licensees or permittees in installing, maintaining, using, operating or interfering with any of such equipment.

2. Water service may be discontinued to any consumer whose water system includes plumbing fixtures, or water containers in any form, or of any use, which, in the opinion of the Department, may endanger the Department's water supply from a public health standpoint. Any such discontinuation of service shall continue until objectionable installations have been corrected and the Department has been assured that the objectionable uses and practices will not be resumed.
3. The Department will not be responsible for damage to property caused by spigots, faucets, valves and other equipment that may be open when water is turned on at the meter, either when turned on originally or when turned on after a temporary shutdown.

SECTION XVII - ABATEMENT OF NOISES

Where it has been determined that noises emanating from a consumer's premises are caused by plumbing fixtures or other equipment attached to water pipes and such noises are being transmitted through the water pipes and causing annoyance to other consumers, the Department may issue a notice in writing to the offending consumer or to the owner of such premises, or to his agent, giving reasonable time within which to correct or to remove the cause of complaint. Failure on the part of such consumer, owner, or person responsible to correct or remove the cause of noise will be sufficient reason for discontinuance of water service to the consumer until such time as the condition complained of has been remedied.

SECTION XVIII - ELECTRICAL GROUNDING

1. The Department will not be responsible for the maintaining of a continuous metallic water piping system and reserves the right, without liability to public utility electric companies, electric consumers, or any other agency or individual to create a physical break in its service connections and mains, or to incorporate non-metallic pipes and appurtenances in its system and to make joints of any materials, without regard to their efficiency as conductors of electricity and without giving notice.
2. In the event that protective grounding of alternating current secondary distribution circuits are made to the water system, the grounding installation shall conform in all details with the National Electrical Code of the National Board of Fire Underwriters and with the Kauai County Building Code then in existence. The Department shall not be responsible for any damage or injury caused by any electrical grounding.
3. No grounding of direct current system to any portion of the water shall be permitted.

SECTION XIX - CONSUMER'S PUMPING INSTALLATIONS

1. Consumers shall not be permitted to install or operate pumps pumping water directly from the mains of the Department's system except in cases approved in writing. No such approval will be given in cases where it is the opinion of the Department that such an installation and the operation thereof may adversely affect the water service extended by the Department to other consumers.
2. Approvals given by the Department under this section will be qualified by clauses making them revocable upon ninety (90) days' notice during which period the consumer, if he desires to continue the operation of the pump, shall eliminate the objectionable features causing the giving of such notice.

3. No pump shall be equipped with a direct water supply connection for priming purposes except with the written permission of the Department.

SECTION XX - CROSS-CONNECTIONS AND BACKFLOW PROTECTION

1. **Prohibition of Certain Conditions and Installations.** In order to provide proper sanitary protection to the Department's water supply and to comply with the applicable regulations of the United States Public Health Service and of the State Department of Health, as adopted or amended from time to time, the Department will require that following the effective date of these rules and regulations no cross-connections with other water supplies, or other physical connections, shall exist, or be installed, located, maintained or operated which could permit backflow of contaminated water or any other dangerous, impure, unsanitary, or unpotable substance from the consumer's premises into the Department's water supply system, except as provided below:
 - a. **Cross-Connections with Other Water Supplies.** Owners (or operators) of presently existing water supplies which are in active use and cross-connected to the Department's system will be required to secure permits for the continuance of such cross-connections. Permits will be granted on a provisional basis renewable yearly, under the following conditions:
 - (1) Where such water supplies are regularly examined by the Department, or other agencies satisfactory to the Department and are approved by the Department as acceptable, safe and sanitary supplies and continue as such at all times while connections are in existence.
 - (2) Where such water supplies do not meet the requirements of (1) above, are not normally under pressure and are maintained solely for the fire fighting purposes, and where adequate protection against backflow to the Department's water system is provided by mechanical, or other methods or devices satisfactory to the Department.
 - (3) The Department may waive the requirement of a permit and allow cross-connections to be continued or established if the connections are with water supplies defined as primary or community supplies by the State Department of Health as acceptable, safe and sanitary supplies.
 - b. **Other Physical Connections.** Other physical connections may be permitted if, in the judgement of the Department, adequate protection can be provided the water supply of the Department against backflow by the installation of mechanical, or other methods or devices approved by the Department and installed, maintained and operated by the consumer in a manner satisfactory to the Department at all times; provided, however, that the Department may require the consumer to eliminate or re-arrange designated plumbing or piping connections or fixtures, or to install a backflow device at the meter or other location, subject to the approval of the Department, as an added safety measure in addition to any and all other backflow protection required or provided by mechanical, or other methods of devices, whenever (1) the consumer is engaged in the handling of dangerous or corrosive liquids or industrial or process waters, highly contaminated water or sewage, or is engaged in the medical or dental treatment of persons who might have diseases transmittable by water, or whenever (2) in the judgement of the Department there exists a danger of backflow in the Department's mains because of the possibility of unauthorized connections being created through noncompliance or inadvertence on account of the complexity of the system or systems, or for any other sufficient reason or cause.

2. **Separate Pressure System.** The Department will require the installation of mechanical, or other, methods or devices on the consumer's side of the meter to prevent backflow whenever the consumer maintains a separate pressure system or a separate storage facility, or in any way increases the pressures of the water within his premises above the pressure furnished by the Department or has such equipment devices or arrangement of piping, storage or industrial methods or processes that might under certain conditions raise the pressure of the water within his premises above the pressure of the water in the mains of the Department. Plans for such installation must be approved by the Department.
3. **Pressure Regulation required of Consumer.** As a protection to the consumer's plumbing system, a suitable pressure relief valve must be installed and maintained by him at his expense when backflow devices are installed on the consumer's side of the meter.
4. **Location and Inspection of Protective Devices.** Any device installed for the prevention of backflow, as may be required under these rules and regulations, shall, unless the Department approves otherwise in writing, be located above ground and in such a manner as to be safe from flooding or submergence in water or other liquids, properly protected from external damage, freely accessible and with adequate working room for inspections, testing and repairing.

All such devices shall be tested at least annually and inspected internally not less than once every two years. Repairs, replacement of parts, etc., shall be made whenever necessary at the expense of the consumer. Making of tests and annual inspections shall be the responsibility of the consumer and shall be made by the consumer or other qualified person or persons in accordance with methods acceptable to the Department. Record of tests and inspections shall be made on forms prescribed by the Department and a copy of such records shall be furnished to the Department. Failure of the consumer to make the proper tests and submission of records may, at the option of the Department, result in the Department's making tests, needed repairs and replacements and charging the costs thereof to the consumer.
5. **Affidavits of Compliance.** Upon request of the Department, the consumer shall present an affidavit either certifying to the fact that there are no connections or other installations of the type prohibited in paragraph 1 of this Section on his premises or describing in detail all non-conformity connections or installations.
6. **Conformance with Laws and Ordinances.** The several conditions relative to the installation and maintenance of cross-connections and other physical connections referred to in this Section shall be subject to change to meet changing requirements of the State and Federal health authorities and of the Kauai County Building Code then in existence.
7. **Discontinuance of Water Service for Non-Compliance.** Failure on the part of the consumer to comply with the Department's requirements relative to cross-connections and backflow protection will be sufficient reason for discontinuing water service until such time as the requirements have been met.
8. The standards booklet, entitled "**The Cross-Connections and Backflow Protection**" shall be used in conformance with Paragraphs 1 through 7 of this section.
Copies of the booklet can be picked up at the Department of Water.

SECTION XXI - INSTALLATION OF AUTOMATIC FIRE SERVICE

1. Private fire service will be furnished only where adequate provision is made to prevent diversion of water through such service to other purposes. The fire service connection will be installed by the Department and shall be paid for by the consumer in accordance with the provisions for the installation of new service connections. After the water is turned on, the Department assumes no

liability for damage of any kind whatsoever that may occur to the premises served, regardless of cause.

2. No charge will be made for water used through such connection for fire protection purposes but any water lost through leakage or used in violation of the conditions contained herein shall be paid for by the consumer at the regular schedule of water rates and charges. The Department may, without giving notice, disconnect and remove the said service connection if water is used for other than fire protection purposes, or if leaks are not corrected. Whenever such disconnection is in effect, the Department shall not be held in any way liable for loss or damage sustained due to such condition.
3. Service charges will be enforced if such charges are called for in the rates established by the Department from time to time.
4. The service connection for automatic fire service shall be installed and paid for by the consumer in the same manner as that provided for regular water service described in Part 2, Section VI, except that no facilities reserve charge will be made. Private fire service may be metered with a detector check valve and a by-pass meter which will be furnished by the Department without cost to the consumer. The service connection shall become the property of the Department after the installation.

SECTION XXII - SHIPPING SERVICE

An application for the purchase of water by a ship shall be made at the office of the Department or to an authorized agent of the Department by an authorized officer or agent of the ship before water is delivered to said ship. A receipt for the quantity of water delivered to the ship at the pier, dock or wharf shall be signed before departure by the authorized officer or agent of said ship. All water shall be measured by water meters and the authorized officer or agent of the ship shall check the meter readings both at the start and at the finish of each delivery of water. In the event that the meter readings are not taken by said officer or agent, the readings of the Department's authorized agent will be final. The Department will not be held responsible for any damage to property or injury to persons arising from the delivery of water to ships at piers, docks or wharves. The amount to be paid for water shall be in accordance with the rates established by the Board.

SECTION XXIII - USE OF AND DAMAGE TO FIRE HYDRANTS, CHANGE IN HYDRANT LOCATION, RESPONSIBILITY FOR MAINTENANCE AND OPERATION OF PRIVATE HYDRANTS

1. **Use of Fire Hydrant.** Any use of a fire hydrant or tampering therewith or the taking of water therefrom for purposes other than fire protection by persons other than authorized employees of the Fire Department or of the Department is prohibited, except upon prior application to and written permit by the Department. The Fire Department shall have the prior right to use any hydrant at any time and shall have the authority to remove peremptorily, if necessary, in case of fire, any connection that may be made to a hydrant under a permit and the connection thereto shall be subject to the direction and approval of the Department. The consumer shall not use hydrant main line valves to control flows.
2. **Application for Permit.** Application for a permit for the use of a fire hydrant for purposes other than fire protection shall be made in writing to the Department and, when required, shall be accompanied by a deposit in cash. It shall be non-transferable and shall be shown upon demand by the permittee, its agents or employees. The Department reserves the right to reject any application, to refuse to issue any permit and to revoke any permit at any time. The Department also reserves the right to perform for the permittee at his expense the work of installing and removing the connections and of operating the hydrant. No permit will be issued unless the permittee agrees to notify the Department as soon as the use of the hydrant is finished. In the event that a permit shall

be revoked the use of the hydrant thereunder shall cease immediately and all connections thereto shall be properly removed forthwith. The Department will inspect each hydrant which has been used under a permit, and all costs of repairs which the Department may adjudge to be due to such use and the cost of inspection shall be paid for by the permittee. All water drawn from a hydrant under permit shall be metered or estimated as to quantity in a manner satisfactory to the Department and shall be paid for by the permittee at the current water rates. The permittee shall pay all of the costs of connecting to and disconnecting from the hydrant.

3. **Hydrant Wrenches.** Only regulation fire hydrant wrenches which shall have been approved by the Department shall be used for the operation of fire hydrants. The use of any other type of wrench or operating device shall not be permitted. The permit will be revoked if other than approved regulation fire hydrant wrenches are used.
4. **Damage to Hydrant or Property.** The permittee shall report promptly any defect in or damage to the hydrant. The cost of any damage to property or of any injury to persons resulting from the use of the hydrant shall be paid for by the permittee. The Department will not be held responsible for any damage to property or injury to persons arising from the use of any hydrant for any cause whatsoever. Any damage to fire hydrants shall be paid for by the person or organization responsible for the damage.
5. **Change in Hydrant Location.** The Department will, if it approves the request for a change in location of hydrant, change such location provided the cost of all labor, material, equipment and all other charges are paid by the person requesting such change. The change in location of fire hydrants that were installed prior to the adoption of these rules and were not installed according to present standards of the Department and which interfere with the reasonable use of the property or hydrants which cause a traffic hazard may be allowed at no expense to the person making such request.

SECTION XXIV - RESALE OF WATER

Unless specifically agreed upon, the consumer shall not resell any water received by him from the Department.

SECTION XXV - PENALTY

1. Any consumer violating any of the provisions hereof shall be liable to a suspension or termination of "WATER SERVICE" and such service shall not be renewed until all water rates due, together with costs and expense incurred in connection with such violation, shall have been paid in full.
2. Any person found tampering with the water system shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than Five Hundred Dollars (\$500.00) for each violation.

SECTION XXVI - SEVERABILITY

If any rule, section, sentence, clause, or phrase of these rules and regulations or its application to any person or circumstance or property is held to be unconstitutional or invalid, the remaining portions of these rules and regulations or the application of these rules and regulations to other persons or circumstances or property shall not be affected. The Department hereby declares that it would have adopted these rules and regulations and each and every rule, section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other rules, sections, sentences, clauses, or phrases be declared unconstitutional or invalid

SECTION XXVII- CONSTRUCTION DRAWINGS FOR WATER SERVICE AND SERVICE CONNECTIONS

1. The consumer shall be required to identify the number of residential dwelling units and/or development to be served by each service connection in order to allow the Department to determine the proper location and size of the service connection. The Department may require construction drawings if (a) the service connection or water system will be connected within a state highway or intersect any underground utility; or (b) the meter will not be located at the boundary pin. The Department may require construction drawings if, in the Department's determination, the Department will have difficulty in determining the development to be served or other difficult conditions may arise.
 - a. **Preparation of Plans.** All construction plans shall be prepared by a professional engineer or architect licensed in the State of Hawaii.
 - b. **Information to be shown on Construction Plans.** The construction plans, insofar as the water system is concerned, shall conform to these rules and regulations and the standards of the department.
 - c. **Approval of plans.** No construction of a water system, or any portions thereof, shall be undertaken prior to approval of the final construction plans by the Manager and Chief Engineer, the County Engineer of the Department of Public Works, and the State Department of Health. After said approval, the subdivider shall transmit four (4) sets of all final construction plans to the Manager and Chief Engineer.

In areas where there is a substandard or no public water supply available to serve the property, plans and specifications for the development of water sources, including wells, tunnels, shafts, pumps, buildings, mains and other appurtenances structures and devices, shall be in conformance with the standards of the Department and shall be approved by the Department in their entirety prior to the construction.

The Department shall review the plans and either approve, reject plans, or reject plans with specific corrections within sixty (60) calendar days of submission. If the returned plans are submitted, the Department shall review the plans and either approve or return the plans within sixty days of resubmission.

It shall be the consumer's responsibility to determine if the proposed construction requires the approval of any additional governmental agencies.
 - d. **Delays in Construction.** The approved construction plans shall be valid for one (1) year. If construction is not completed within one year, the plans shall be deemed invalid and shall be resubmitted for approval. The Department may, for good cause, extend the deadline for completion of construction.
2. Charges for water will begin when the water service is established and will continue due notification from the consumer or until discontinued by the department for failure of the consumer to comply with these rules and regulations.
3. When an application for water service is made by a consumer who was responsible for and failed to pay all bills previously rendered, regardless of location or time incurred, the department may refuse to furnish water service to such consumer until the outstanding bills are paid.

PART 3
ESTABLISHING STANDARDS FOR SUBDIVISION WATER SYSTEMS

*within the County of Kauai
and Providing Penalties for the Violations Thereof*

SECTION I – DEFINITIONS

For the purpose of these rules and regulations, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein are defined as follows.

1. The word "**DEPARTMENT**" shall mean the Department of Water, County of Kauai, consisting of a board of water supply, a manager and chief engineer and the necessary staff.
2. The word "**BOARD**" shall mean the Board of Water Supply of the Department.
3. The term "**MANAGER AND CHIEF ENGINEER**" shall mean the person holding the office of Manager and Chief Engineer of the Department.
4. The word "**SUBDIVIDER**" shall mean a person, firm, corporation, partnership, association, trust or other legal entity, or a combination of any thereof who or which causes land to be divided into a subdivision for himself, itself or for others.
5. The word "**SUBDIVISION**" shall mean improved or unimproved land or lands divided or proposed to be divided into two or more lots, parcels, sites, or other divisions of land for the purpose, whether immediate or future, of sale, lease, rental, transfer of title to or interest in, any or all of such parcels, and shall include re-subdivision, and when appropriate to the context shall related to the process of subdividing of the land or territory subdivided.
6. The word "**COMMISSION**" shall mean the Planning Commission of the Planning Department, County of Kauai.
7. The words "**PUBLIC WATER SYSTEM**" shall mean the water system owned and operated by the Board.
8. The words "**SUBDIVISION WATER SYSTEM**" shall mean the water system, to and within any subdivision, including mains, valves, hydrants, laterals, pumps, tanks, reservoirs and all appurtenances necessary to provide water and fire protection for such subdivision and, where necessary, sources of supply.
9. The word "**DIRECTOR**" shall mean the person holding the office of the Planning Director of the Planning Department, County of Kauai.
10. The term "**FACILITIES RESERVE CHARGE**" shall mean the fee to be paid by subdividers or, when applicable, new consumers as their proportionate share in improvements to the Department's Water System.
11. The word "**MAIN**" or "**MAIN PIPE**" shall mean the Department's supply or distribution pipe to which service connections are made.
12. The term "**SERVICE CONNECTION**" shall mean the main tap, pipe fittings, meter and valve from the water main to and including the shut-off valve on the consumer's side of the meter.

SECTION II - AVAILABILITY OF WATER AND APPROVAL OF SUBDIVISION MAP

1. Extensions from and connections to the public water system will be approved by the Department where pressure conditions permit, provided the following have been met:
 - a. The Department has a sufficient water system developed for domestic use and, if required by the Department, a sufficient water system for fire protection.
 - b. The additional service on the existing system will not be detrimental to people already being served in that area. In order to determine if the additional service will be detrimental to present consumers, the department may require the subdivider to estimate the amount of water to be consumed by the subdivision water system.
 - c. The subdivision water system complies with these rules and regulations, and is designed and constructed in compliance with (1) all applicable statutes, ordinances, rules, and regulations of the State of Hawai'i and the County of Kaua'i, and (2) the 2002 Water System Standards ("Standards") developed by Hawai'i's four county departments of water, as amended by the Department's 2005 Amendments ("2005 Amendments") to the Standards. The Standards and the 2005 Amendments are hereby incorporated by reference into the Department's rules. The Manager and Chief Engineer may, for good cause shown, permit departure from the Standards or 2005 Amendments, or both.
 - d. The facilities reserve charge for the subdivision has been paid, or a bond posted in lieu thereof, as provided under Section XIII of this Part.
2. In areas where there is no public water supply available, or where large quantities of water are required or a large investment is necessary to provide service, the subdivider will be informed as to the conditions under which the subdivision may be approved and, where appropriate, refunds made.
3. After the Director submits the subdivision map to the Department, the Department will inform the Director in writing of its approval, requirements for approval, or its disapproval of a subdivision map after taking the above into consideration.

SECTION III - FACILITIES RESERVE CHARGE

1. The subdivider shall pay to the Department the facilities reserve charge established in Part 4 of the Rules and Regulations of the Department, for each (additional) parcel created by the subdivision, including the first lot, except (as provided below) when facilities reserve charges have already been paid by the developer or subdivider.
2. No facilities reserve charge will be made for lots created by the subdivision which will not be served by the Department's water system. In the event that the Department determines that the subdivision will not be serviced by the Department's water system, but later water service is requested, full payment of the then applicable facilities reserve charge must be paid. A statement to this effect shall be clearly lettered on the subdivision map.
3. No facilities reserve charge will be made for any parcel which is already serviced by an existing meter or which was serviced by a meter within 365 days prior to formal submittal of the subdivision request to the Planning Department.
4. The subdivider shall pay the facilities reserve charge to the Department prior to subdivision approval by the Department except that subdivision approval may be given prior to construction

of required improvements and the payment of the facilities reserve charge by the posting of a bond, as described in Section XIII of this Part.

5. In the event the facilities reserve charge has been paid for a subdivision and subsequently the subdivision is consolidated, the facilities reserve charge will be returned provided the consolidation is completed within 365 days following the prior subdivision approval.

SECTION IV - EXTENSIONS TO SUBDIVISION

1. **General Requirement.** The subdivider shall install and pay for the subdivision water system required from the public water system to the subdivision. All such subdivision water systems shall be designed and located in accordance with the standards of the Department. The subdivider may be required to improve the public water system if the public water system is inadequate to serve the subdivision.
2. **Increase in Size of Water Main Extensions for Service to Other Areas.** Whenever the Department finds it necessary that the water mains proposed to deliver water to a subdivision should be of a greater capacity than is required to provide adequate service and fire protection for such subdivision, in order to supply water and fire protection to property not in the subdivision, the Department shall require the subdivider to install mains of such greater capacity.
3. **Reimbursement to Subdivider for Additional Costs of Mains to Subdivisions.** When the subdivider is required to install a larger sized main for the reasons set forth in the preceding paragraph, the Department will reimburse the subdivider, as soon as practicable after the acceptance by the Department of the completed work, the additional cost of the installation over and above the cost of the mains that would have been required; provided, that reimbursement will not be made to the subdivider where such larger main or mains will serve only areas under the same ownership as the subdivision under consideration.

Before the subdivider enters into a contract where a reimbursement to the subdivider for additional costs of mains to the subdivision will be made, the Department shall review and either approve or disapprove the contract. If the contract is disapproved, the subdivider shall revise the contract until its form and content is acceptable to the Department.

After the installation has been completed and accepted by the Department, the subdivider shall furnish the Department with an affidavit itemizing the costs incurred by him in the installation of the said larger mains. The said additional costs shall be determined by the Department.

SECTION V - INSTALLATIONS WITHIN SUBDIVISION

1. **General Requirement.** The subdivider shall install in accordance with these rules and regulations and the standards of the Department and pay for the subdivision water system required within a subdivision.
2. **Increase in Size of Water Mains with Subdivisions for Benefit of Other Areas.** Whenever, in order to provide for existing or future services beyond the boundaries of a subdivision, the Department finds that the mains to be installed within the subdivision should be of greater capacity than would be required to provide adequate service within such subdivision, the Department will require the subdivider to make installations of such greater capacity.
3. **Reimbursement to Subdivider for Additional Costs of Water Mains within Subdivisions.** When the subdivider is required to install a larger-sized main for the reasons set forth in the preceding paragraph, the Department will reimburse the subdivider, as soon as

practicable after acceptance by the Department of the completed work, the additional cost of the installation over and above the cost of the mains that would have been required; provided, however, that in no case will reimbursement be made of any portion of the cost of a main of less than 6-inch-in diameter; provided, further, that reimbursement will not be made to the subdivider where such larger main or mains will serve only areas under the same ownership as the subdivision under consideration.

After the installation has been completed and accepted by the Department, the subdivider shall furnish the Department with an affidavit itemizing the costs incurred by him in the installation of the said larger mains. The said additional costs shall be determined by the Department.

SECTION VI - SIZES OF MAINS, HYDRANT SPACING, FIRE PROTECTION

1. **Sizes of Mains.** Any subdivision, except where fire protection facilities are not required by the Department, hereafter to be laid out within the County shall provide 6-inch water mains or larger in residential districts and 8-inch water mains or larger in business, industrial and hotel and apartment districts. Sizing of mains within agricultural subdivisions and subdivisions where fire protection facilities are not required shall be determined by the Department.
2. **Hydrant Spacing.** Fire hydrants shall be spaced not more than 350 feet in business, industrial, hotel and apartment districts, 500 feet in urban residential districts and 600 feet in rural residential district (Urban and rural refer to boundaries established by the State Land Use Commission). Fire hydrants may not be required in agricultural subdivision as determined by the Department. The Department will determine the location of all hydrants. All fire hydrants required for adequate fire protection of a subdivision will normally be located within the subdivision.

If, in the interest of better fire protection, it is determined that one or more of the required hydrants will serve the subdivision to better advantage if located outside the subdivision, they may be so located and the cost shall still be borne by the subdivider, subject to the limitation that the cost to the subdivider shall not exceed the cost to him which would have resulted had all the hydrants been located inside the limits of the subdivision.

3. **Fire Protection.** In fixing the standards for fire protection insofar as water supply is concerned, the Department will be guided by the standards of the National Board of Fire Underwriters in "Grading Cities and Towns of the United States with Reference to Their Fire Defenses and Physical Conditions" and by any specific recommendations made by the said National Board with respect to the County.

SECTION VIII - SERVICE CONNECTIONS, DEAD-ENDS, ALTERATIONS TO PUBLIC WATER SYSTEMS, CONTOURS

1. **Service Connections.** Where water main construction is necessary, the subdivider shall provide each lot in a subdivision with a service connection from the water main to the property line adjacent to the lot or as directed by the Department's engineer. As an alternate, one service connection may be installed for each two lots.

Where the lots to be created front along an existing water main, a service connections as required above shall be paid for by the subdivider and installed by the Board, except that the service connection installation may be deferred and paid for by the consumer at the time the request for water service is made for agricultural lots and other subdivisions for which the Department determines that it is impractical to require such installations prior to the request for water service.

2. **Dead-Ends.** Where water mains proposed by a subdivider would result in dead-ends, the subdivider shall correct the condition by the installation of such interconnections as may be required by the Board.
3. **Alterations to Public Water System.** All work and materials in connection with the change in location or grade of any part of the existing public water system made necessary by the subdivision shall be at the expense of the subdivider.
4. **Contours.** When required by the Board, contours or elevations shall be furnished by the subdivider, based upon mean sea level.

SECTION IX - PREPARATION OF PLANS, INFORMATION ON PLANS, ELEVATION AGREEMENT, APPROVAL OF PLANS, DELAYS IN CONSTRUCTION

1. **Preparation of Plans.** All construction plans shall be prepared by a registered engineer to the extent of his professional qualifications under the laws of the State. Preliminary maps and final maps of subdivisions to be reviewed by the Department shall fully conform to the definitions and requirements of the Rules and Regulations of the Commission.
2. **Information to be shown on Construction Plans.** The construction plans, insofar as the water system is concerned, shall show the following on County of Kauai standard size sheet or sheets:
 - a. Name of subdivision, name of subdivider, name of engineer and location of subdivision.
 - b. Date, north arrow, scale, tax key.
 - c. The proposed subdivision water system complete, in both plan and profile, and its inter-relationship with street lines, lot lines, curb grades, sewers and drains, both existing and proposed, as well as any other features natural or artificial necessary for a complete understanding of the water system design.
 - d. Plan and profile views drawn to a scale of one inch equals 40 feet and one inch equals 5 feet, respectively, or as approved by the Department. Manhole, fire hydrant, lateral and other details drawn to a scale of one-half equals one foot or larger.
 - e. The designation, including alignment and width, of all easements for parts of the water system which will not be in street areas to be dedicated to the public.
 - f. A general layout map showing the locations of lots and streets within the subdivision and its near vicinity together with existing and proposed water system.
 - g. A small key location inset or vicinity map showing the proposed subdivision in relationship to streets and water mains in the area.
 - h. In cases in which the owner or subdivider also owns areas contiguous to the proposed subdivision, or separated therefrom by a street, a sketch of the future street and lot pattern and the water system proposed to serve such contiguous areas shall be furnished for study with the construction plans.

3. **Elevation Agreement.** Whenever a lot or lots within a subdivision are at such an elevation that they cannot be assured of a dependable water supply, the approval of the construction drawings will be subject to each owner of such lot or lots signing an "elevation agreement" whereby such lot owner agrees to accept such water service as the Department is able to render, and such owner agrees to construct, if necessary, and maintain at his expense, a tank or a pump with a tank, all in accordance with the standards and requirements of the Department, of sufficient capacity to furnish a supply of water at such times as the pressure in the water mains may be insufficient to supply such lot or lots with water. When required, a statement as to this conditional approval will be clearly lettered on the subdivision map.
4. **Approval of Plans.** No construction of a subdivision water system, or any portions thereof, shall be undertaken prior to approval of the final construction plans by the Manager and Chief Engineer, the Director, the County Engineer of the Department of Public Works, and the State Department of Health. After said approval, the subdivider shall transmit four sets of all final construction plans to the Manager and Chief Engineer.

In areas where there is no public water supply available to serve the subdivision, plans and specifications for the development of water sources, including wells, tunnels, shafts, pumps, buildings, mains and other appurtenances structures and devices, shall be in conformance with the standards of the Department and shall be approved by the Department in their entirety prior to the construction.
5. **Delays in Construction.** If any period exceeding one year or such extension as may be granted passes without substantial progress in the construction of the water facilities, after approval of plans by the Department, the plans thereof shall be resubmitted to the Department for review and for making such changes as it deems proper because of changed conditions or revision of standards.

SECTION X - MATERIALS AND CONSTRUCTION STANDARDS, INSTALLATION OF WATER SERVICE, INSPECTION OF WORK

1. **Materials and Construction Standards.** All materials, design and construction procedures, and workmanship, with respect to any subdivision water system, or any portion thereof shall be in accordance with the requirements of the "Standard Specifications for Waterworks Construction" of the Board of Water Supply, County of Kauai, dated 10/1/63 or as later amended and with the requirements of the State Department of Health and all applicable laws. The Manager and Chief Engineer shall determine the capacity and location of any of the component parts of the subdivision water system.
2. **Installation of Water Service.** No water service will be approved until the subdivision water system has been completed and accepted by the Department and the FRC has been paid to the Department. Service for subdivision construction purposes such as site work and roadways (excluding construction work for individual lots) may be approved.
3. **Inspection of Work.** The Manager and Chief Engineer or any employee representing him shall have free access at all times to all installations made for the subdivision and shall be given any assistance required and every facility, information and means of thoroughly inspecting the work to be done and the materials used or to be used.

SECTION XI - OWNERSHIP OF INSTALLED WATER SYSTEM

Before the Department will provide water service within the subdivision, the subdivider shall convey the subdivision water system to the Department and said subdivision water system thereafter will be maintained and operated as a part of the public water system; provided, however, that the Department

may refuse to operate and maintain facilities installed without the Department's prior approval. Prior to the commencement of water service, and as a prerequisite to such service, the subdivider shall also deliver to the Department perpetual easements for all portions of the subdivision water system installed in other than publicly owned property. The subdivider shall also convey to the Department fee simple title to all sites on which are located tanks, reservoirs, sources of supply, and pumps constructed by the subdivider and connected to the public water system together with easements for ingress and egress. The subdivider shall also convey to the Department a breakdown of costs of the subdivision water system on forms provided by the Department.

SECTION XII - MODIFICATION OF REQUIREMENTS

When conditions pertaining to any subdivision are such that the public may be properly served with water and with fire protection without full and strict compliance with these rules and regulations, or where the subdivision site or layout is such that the public interest will be adequately protected, such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations, may be made by the Department.

SECTION XIII - CONSTRUCTION AGREEMENT AND BOND

To secure final approval prior to construction of the required improvements in a subdivision, the subdivider shall enter into a written agreement with the County and the Department to make, install and complete all of the required improvements within a specified time. In addition thereto, a Surety Bond or other security as hereinafter specified shall be filed with and attached to the agreement by the subdivider.

A. Construction Agreement:

- (1) The Agreement shall specify that the subdivider will complete the subdivision to the satisfaction of the Manager and Chief Engineer.
- (2) The Agreement shall further specify that the Department may complete the work at the expense of the subdivider where the subdivider fails to complete the work to the satisfaction of the Manager and Chief Engineer, or fails to complete the work within the time specified.

B. Surety Bond:

- (1) The Surety Bond shall be filed with the agreement and shall be for the following purposes:
 - (a) The Surety Bond shall assure to the County and the Department that the actual construction and installation of the improvements and utilities specified will be carried out.
 - (b) The Surety Bond shall further assure to the Department that the facilities reserve charge will be paid, if said charge is not already paid.
- (2) The Surety Bond shall be executed by the subdivider as principal and the surety shall be a company authorized to transact a surety business in the State of Hawaii.
- (3) The bond or other security shall be one of the following:
 - (a) A Surety Bond in a sum equal to the cost of the work required to be done as estimated by the Manager and Chief Engineer; payable to the County and the Department, and shall be conditioned upon the faithful performance of all work

required to be done by the subdivider, and shall be further conditioned to the effect that should the subdivider fail to complete all work required to be done within a specified reasonable time, the Department may cause all required work which is not finished to be completed, and the parties executing the bond shall be firmly bound for the payment of all necessary costs, therefore; or

- (b) Where the subdivider has entered into a contract with a reputable contractor, and has filed with the Director all three of the following: 1) a certified copy of his said contract and specifications; 2) a certified copy of the performance bond of his said contractor; and 3) a surety bond in a sum equal to at least 50 per cent of the cost of all work required to be done by the subdivider as estimated by the Manager and Chief Engineer, and shall be payable and conditioned as above set forth; or
 - (c) The subdivider shall make a deposit of money with the Director as agent of the County and the Department, in an amount equal to the cost of the construction of said improvements as estimated by the Manager and Chief Engineer. Under this arrangement, the agreement may provide for progress payments to be made to the contractor for materials used and services and labor performed, out of said deposit as the work progresses; provided that said progress payments shall at no time exceed the value of the completed portion of said improvements as determined by the Manager and Chief Engineer and the County Engineer of the County; or
 - (d) In lieu of said surety bond or deposit in escrow mentioned in Paragraphs 3 (a) (b) (c) above, the subdivider may deposit with the Director bonds or other negotiable securities in the amount as provided by Paragraphs 3 (a) (b) (c) respectively of this Section and acceptable to the Manager and Chief Engineer.
- (4) Facilities Reserve Charge. All bonds or other securities as provided in Paragraphs 3 (a) (b) (c) (d) above shall include the assurance of payment of the facilities reserve charge except for the following:
- (a) This paragraph shall not be applied where the facilities reserve charge has already been paid.
 - (b) A separate bond primarily for the purpose of paying the facilities reserve charge may be filed by the subdivider.
- (5) All bonds or securities posted under this Section shall not be canceled except with approval of the County and the Department

SECTION XIV – NON-DEVELOPMENT AGREEMENTS

1. **Purpose.** The purpose of this section is to assist families who wish to transfer interests in real property between themselves without immediately complying with Departmental rules and construction standards and specifications imposed when family members request subdivision approval.
2. **Definitions.** As used within this section:
"Development" includes, but is not limited to:
 - (1) the construction, reconstruction, alteration, remodeling, renovation, or repairing of single-family residences, additional dwelling units, or any other dwelling, building, or structure of any kind on or within the property being subdivided, or

- (2) the construction of additions or extensions to any dwelling, structure, or building existing as of the date of this agreement, or
- (3) the construction, reconstruction, installation, alteration, or repair of piping, waste-water systems, landscaping or irrigation systems.

which result in increased fire protection requirements arising because of the property's development, increased consumption of water upon the property being subdivided, calculated from the date of the agreement described in this section, or which may, in the Department's judgment, possibly contaminate existing potable water-well sources located in the vicinity of the property being subdivided.

"**Hanai child**" means a person for whom an adult once provided food, nourishment, and support for a minimum period of at least one year prior to the time that the applicant applied for subdivision approval and who is generally acknowledged as the adult's child among friends, relatives, and the community.

"**H.R.S**" means Hawaii Revised Statutes, as amended.

"**Non-development agreement**" means the agreement required to be executed under this section.

"**Rule**" or "**Rules**" mean the Rules and Regulations of the County of Kauai Department of Water.

"**Water System Facilities**" means all water infrastructure of the Department determines to be necessary to provide adequate residential water service and fire protection for the property being subdivided and shall include, but not be limited to, any and all necessary wells, pumps, storage tanks, water transmission and distribution lines and related meters, valves, and other water system improvements and equipment.

3. **Authorization to defer subdivision improvements under certain terms and conditions.** The Manager and Chief Engineer may approve requests for subdivision approval and temporarily defer subdivision requirements imposed by the Department's rules and construction standards and specifications for the sole and limited purpose of allowing a subdivision applicant to transfer interests in real property from the applicant to others, provided the applicant satisfies or complies with the following conditions:

- a. Property interests may be transferred only between: natural persons who are related to the applicant by birth, blood, adoption, marriage, or prior marriage. Eligible transferees are limited to:

- Spouse,
- Ex-spouse,
- Parents,
- Grandparents,
- Children,
- Hanai children,
- Grandchildren,
- Brothers, and
- Sisters.

The preceding list of terms shall be understood according to their most widely-known and usual significance, without attending so much to the literal and strictly grammatical construction as to their general, ordinary, or popular use or meaning.

- b. The Manager and Chief Engineer shall not approve subdivision requests under this section if development will occur as a result of the subdivision.

- c. With respect to the property being subdivided, the Department shall not approve further subdivision requests, requests for water service when apartments within the property have been created pursuant to Chapter 514A, H.R.S., or development of any kind, unless and until adequate water system facilities, as may be determined by the Department when development occurs, are constructed, in place and complete, to provide adequate residential water service and fire protection for the property being subdivided.
- d. The Department shall not approve residential building permits for any property which is subject to a non-development agreement unless adequate water-system facilities are constructed pursuant to subparagraph 3.c. of this section.

If the Department erroneously or inadvertently approves a building permit before necessary water-system facilities are constructed, the Department shall, upon learning of its action, immediately rescind its approval.

- e. If, before necessary water-system facilities are constructed to service the property being subdivided, the Department erroneously or inadvertently approves the issuance of a building permit for any development within the subdivision and development occurs, the developer shall either construct the necessary water-system facilities or remove the development at the developer's own cost and expense.

Should the Department be required to enforce the provisions of this subparagraph through civil court action, the developer shall pay to the Department and be jointly and severally liable for any and all attorneys' fees, court costs, and other related fees, costs, and expenses necessary to prosecute and defend such an action.

- f. The subdivision applicant and all persons to whom an interest in the property may be transferred shall release the Department of any and all liability arising from the Department's decision to recommend subdivision approval under this section.

The applicant and all persons to whom an interest in the property may be transferred shall also forever indemnify, defend, save, and hold harmless the Department from and against any and all injury to persons and damage to property, deaths, claims, fines, suits, actions, economic and non-economic damages, costs, losses, and liabilities of every nature and kind arising or growing out of the Department's decision to recommend subdivision approval of the applicant's property under this section.

- g. The provisions of this section shall be implemented through an agreement executed between 1) the Manager and Chief Engineer, and 2) the subdivision applicant and all persons to whom an interest in the property may be transferred. The agreement shall contain terms and conditions determined to be necessary by the Manager and Chief Engineer and the County Attorney. The covenants and servitudes created by the agreement shall constitute covenants which shall run with the land and constitute notice to all who may claim an interest in the property being subdivided.

Any subdivision approval granted under this section shall be null, void, and of no legal effect unless 1) the Department receives a non-development agreement containing original signatures executed by all of the parties to the agreement, and 2) the agreement has been recorded in the State of Hawaii Land Court or Bureau of Conveyances.

- h. The documents conveying title or an interest in real property shall specifically incorporate by reference the non-development agreement. Further, the agreement shall be attached to the conveyance documents as an exhibit.

- i. The final subdivision map shall contain a brief and concise statement stating that the lots created by the subdivision are subject to a non-development agreement. The statement shall further summarize the major terms and conditions of the agreement.
4. **Applicability.** This section shall apply only to subdivisions served by County water systems, and not to private water systems not served by the County.
5. **Fees, Charges, and costs under this section.** Notwithstanding any other section or provision in the Rules to the contrary including, but not limited to, Paragraph 1, Section III, Part 3 of the Rules, any and all applicable Departmental fees, charges, and costs, including facilities reserve charges, shall be paid at such future time that development occurs at the amount in effect at the time that development occurs, and not at the time that the non-development agreement is entered into by the County.
6. **Changed development conditions.** The applicant or subsequent transferees of the applicant shall be responsible for checking with the Department and determining whether water infrastructure development requirements have so changed such that necessary water-system facilities no longer need to be constructed. The Department shall not be responsible for informing the applicant or subsequent transferees of the applicant of such changed development conditions."

SECTION XV - SEVERABILITY

If any rule, section, sentence, clause, or phrase of these rules and regulations or its application to any person or circumstance or property is held to be unconstitutional or invalid, the remaining portions of these rules and regulations or the application of these rules and regulations to other persons or circumstances or property shall not be affected. The Department hereby declares that it would have adopted these rules and regulations and each and every rule, section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other rules, sections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION XVI - PENALTIES

Any person, firm or corporation which violates any rule or regulation herein shall be fined not more than \$500.00, except that in cases where the offense shall be of a continuing nature, each day's continuance of the same, shall constitute a separate offense.

PART 4 <u>FIXING RATES FOR THE FURNISHING OF WATER SERVICE IN THE</u> <u>COUNTY OF KAUAI</u>
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SECTION I - GENERAL USE RATES

1. **Service Charge.** For each service there shall be a charge per month based on the size of the meter, or its service capacity equivalence in the case of parallel meters, as follows:

<u>Meter Size</u>	<u>Amount (per month):</u> <u>Effective July 1, 2001</u>	<u>Effective January 1, 2006</u>
5/8"	\$ 9.00	\$ 12.00
3/4"	\$ 12.00	\$ 16.00
1"	\$ 18.00	\$ 25.00
1 1/2"	\$ 35.00	\$ 45.00
2"	\$ 55.00	\$ 75.00
3"	\$ 100.00	\$ 130.00
4"	\$ 165.00	\$ 220.00
6"	\$ 325.00	\$ 430.00
8"	\$ 520.00	\$ 680.00

2. **Use Charge.** In addition thereto, for all water drawn, there shall be a Consumption Charge per 1,000 gallons as follows:

	<u>Effective July 1, 2001</u>	<u>Effective January 1, 2006</u>
First Block	\$ 2.10	\$ 2.76
Second Block	\$ 2.40	\$ 3.20
Third Block	\$ 3.40	\$ 4.50

The First, Second and Third Block Thresholds varies with the size of the meter and are as follows:

<u>Meter Size</u> <u>(inches)</u>	<u>First Rate Block</u> <u>(gallons) used</u> <u>bi-monthly</u>	<u>Second Rate Block</u> <u>(gallons) used</u> <u>bi-monthly</u>	<u>Third Rate Block</u> <u>(gallons) used</u> <u>bi-monthly</u>
5/8"	First 20,000	20,001 – 40,000	over 40,000
3/4"	First 70,000	70,001 – 140,000	over 140,000
1"	First 200,000	200,001 – 400,000	over 400,000
1 1/2"	First 600,000	600,001 – 1,200,000	over 1,200,000
2"	First 1,200,000	1,200,001 – 2,400,000	over 2,400,000
3"	First 3,000,000	3,000,001 – 6,000,000	over 6,000,000
4"	First 6,000,000	6,000,001 – 12,000,000	over 12,000,000
6"	First 15,000,000	15,000,001 – 30,000,000	over 30,000,000
8"	First 30,000,000	30,000,001 – 60,000,000	over 60,000,000

3. **Wharfage Fee.** Where applicable, the Department of Transportation's wharfage fee shall be charged in addition to the above use and service charges.

SECTION II - BULK RATES

Bulk rates for specified areas may be established by the Board providing the following conditions are met:

1. The area consists of existing dwellings or business establishments more than ten (10) years old.
2. The system has been offered to the Board but refused because of substandard or obsolete pipeline and fixtures.
3. The lots or parcels are under diversified ownership and not under a single or limited number of owners (three (3) and less).
4. There is a savings to the Board in maintenance and operating costs in contrast to accepting the system.
5. All bulk rates shall be renegotiated biennially and may continue upon concurrence of both parties.

SECTION III - AGRICULTURAL RATES

1. In addition to the service charge, for all water drawn, where such water is used for agriculture, stock raising, or dairy farming on a commercial basis, there shall be charged, as of the effective dates indicated, the following water use rates:

<u>Gallons Used Bi-Monthly</u>	<u>Charge Per 1,000 Gallons</u>
<u>Effective July 1, 2001:</u>	
First 25,000 gallons	\$2.10
Over 25,000 gallons	\$0.70
<u>Effective January 1, 2006:</u>	
First 25,000 gallons	\$2.76
Over 25,000 gallons	\$1.38

2. In order to obtain the above-agricultural rates, the applicant shall file annually with the Department of Water a written application and shall furnish annually satisfactory proof, including State of Hawaii General Excise Tax License for the engagement of business in agriculture, stock raising or dairy farming on a commercial basis. The bi-monthly usage of 25,000 gallons is based on the assumption that only one dwelling exists on the farm premises. In the event that more than one dwelling is served, then the higher rate shown for each period shall apply to the product of 25,000 gallons times the number of dwellings served. The applicant for agricultural rates must agree to accepting service from the Department of Water on an interruptible basis; i.e., the Department retains the right to limit or restrict water flow for agricultural uses in the event of water shortage or in the event water service to domestic users is curtailed due to agricultural uses. The agricultural rates shall not apply to processing activities, such as canneries, mills, markets or other establishments engaged in the conversion, treatment or packaging of agricultural products.

SECTION IV - SHIPPING RATES

1. For each vessel served, there shall be both an opening charge and a closing charge as follows:

A. <u>Opening Charge:</u>		<u>Effective July 1, 2001</u>	<u>Effective January 1, 2006</u>
1.	During regular field working hours	\$42.00	\$ 56.00
2.	Other than regular working hours, Saturdays, Sundays or holidays	\$98.00	\$130.00
B. <u>Closing Charge:</u>			
1.	During regular field working hours	\$42.00	\$ 56.00
2.	Other than regular working hours, Saturdays, Sundays or holidays	\$98.00	\$130.00

In addition thereto, for all water drawn, there shall be a charge effective July 1, 2001, a \$2.40 per thousand gallons plus the Department of Transportation's wharfage fee (presently \$0.32 per thousand gallons). Further, effective January 1, 2006, there shall be a charge of \$3.20 per thousand gallons plus the Department of Transportation's wharfage fee (presently \$0.32 per thousand gallons);

SECTION V - PRIVATE FIRE SERVICE CHARGES

For each connection for automatic fire sprinklers or other private fire protection, there shall be a charge per month based on the size of the connection as follows:

	<u>Effective July 1, 2001</u>	<u>Effective January 1, 2006</u>
2-inch.....	\$ 9.00	\$ 12.00
3-inch.....	\$ 20.00	\$ 25.00
4-inch.....	\$ 40.00	\$ 50.00
6-inch.....	\$ 105.00	\$ 140.00
8-inch.....	\$ 200.00	\$ 260.00

SECTION VI - PUBLIC FIRE SERVICE CHARGES

For each fire hydrant or standpipe connected to operating pipelines of the Department of Water, there shall be a charge against the County of Kauai as follows:

	<u>Effective July 1, 2001</u>	<u>Effective January 1, 2006</u>
6-inch hydrant.....	\$ 18.00 per month	\$ 23.00 per month
4-inch hydrant.....	\$ 6.75 per month	\$ 9.00 per month
Standpipes less than 4-inch and greater than 2-inch.....	\$ 3.25 per month	\$ 4.50 per month

SECTION VII - FACILITIES RESERVE CHARGE

1. The water system facilities reserve charge shall be assessed against all new developments and subdivisions requiring supply of water from the County of Kauai, Department of Water, and existing developments requiring additional supply of water from the Department's system. The facilities reserve charge must be paid before water services are made available to the new or existing development.
2. The water system facilities reserve charge shall be paid by all applicants for water service, including but not limited to the following:
 - a. All irrigation services and/or meters.
 - b. Additional buildings to be connected to existing services where additional demands or supplies are indicated. The charges shall be based on the meter sizes required if the buildings were metered separately.
 - c. Additional units connected to existing services and meters under the categories of single family and multi-family residential units. The charges will be based on the established schedule of charges for the respective categories.
3. The water system facilities reserve charges shall apply to all applicants for water service as follows:
 - a. For each parcel created by subdivision, including the first lot created; and for every new single family residential dwelling unit not yet metered and a facilities reserve charge has not yet been paid, the charge shall be \$4,600.00.
 - b. For each unit in a multi-family residential development and/or resort development, the charge shall be \$4,600.00.
 - c. For all other uses, the facilities reserve charge shall be determined by the size of the meter as follows:

<u>Meter Size</u>	<u>Amount</u>
5/8"	\$ 4,600.00
3/4"	\$ 14,300.00
1"	\$ 26,400.00
1 1/2"	\$ 53,200.00
2"	\$ 90,700.00
3"	\$ 170,000.00
4"	\$ 283,400.00
6"	\$ 566,800.00
8"	\$ 907,000.00

Meter sizes shall be determined by the Department and not by the Developer or Applicant. The facilities reserve charge for multi-family and/or resort development will be determined by the approved meter size or the number of units, whichever number is larger.

Facilities reserve charges are periodically adjusted by the Department. These adjustments may increase or decrease existing facilities reserve charge amounts. Where adjustments to facilities reserve charges result in decreases of such charges, no refund will be made of the difference between the higher, pre-existing charges and the lower, adjusted charges.

4. FRC Offsets.

- a. Definitions and construction of words. As used in this paragraph 4, the following definitions shall apply:

"Applicant" means any person, individual, corporation, partnership, business, organization, association, or other entity whatsoever that applies for water service from the Department.

"Consumer" has the meaning ascribed to it under Section I of Part 2 of the Department's Rules and Regulations.

"FRC" means the facilities reserve charges described in section VII of Part 4 and Section III of Part 3 of the Department's rules.

"Offset" means reduced or reduction.

"Subdivider" has the meaning ascribed to it under section I of Part 3 of the Department's Rules and Regulations.

"Subdivision" has the meaning ascribed to it under section I of Part 3 of the Department's Rules and Regulations.

"Water transmission main" or "main" means a main extension under paragraph 2.a.(4) of section II of Part 2 of the Department's Rules and Regulations.

As used in this Paragraph 4, the following rules of construction shall apply:

Number. Words in the singular or plural number signify both the singular and plural number.

"Or", "and". Each of the terms "or" and "and", has the meaning of the other or of both.

- b. When an applicant, consumer, or subdivider is required to construct and dedicate water source or water storage facilities, or water transmission mains, to the Department, the following rules shall apply.

Subject to the provisions of this paragraph 4, the applicable FRC liability of such applicants, consumers, or subdividers shall be offset by up to 33% each where water source or water storage improvements are constructed, and up to 50% where water transmission mains are constructed; provided that the total amount of all offsets that an applicant, consumer, or subdivider receives shall not exceed 100% of the applicant's, consumer's, or subdivider's FRC liability, and provided further that the offset for any source or storage improvement or transmission main shall not exceed the actual cost of the source or storage improvement or transmission main.

The Department, and not the applicant, consumer, or subdivider, shall calculate and determine the total amount of an applicant's, consumers, or subdivider's FRC offset in any given case. The Department may require the applicant, consumer, or subdivider to submit documentation verifying the actual cost of a source or storage improvement or transmission main.

- c. The offsets described in this Paragraph 4 "FRC Offsets" shall not apply to water transmission mains constructed by a subdivider, applicant or consumer which are within or adjacent to a subdivision or lands either 1) owned by the applicant or consumer, or 2)

developed by the applicant or consumer for uses such as, but not limited to, residential, agricultural, commercial, resort, industrial, governmental, religious, or educational uses. Where water transmission mains are constructed within, adjacent to, or outside of such subdivisions or lands, the offsets shall apply only to mains constructed outside of and off-site from such subdivisions or lands."

SECTION VIII - OTHER CHARGES

1. **Restoration of Water Service.** If a consumer's water service is turned off for failure to pay a bill, for violation of any of the provisions of these rules and regulations, or for other reasons, all outstanding accounts against said consumer plus the charge for reopening, reinstallation or reconnection must be paid before water service be restored. Said charges shall be as established by the Department.

2. **Fire Hydrant and Other Temporary Meters.** In addition to regular meter service charge and water consumption charge, there shall be installation, removal, testing and user charges for all Fire Hydrant and other temporary meters as established by the Department.

3. **Pass Through of Private Charges.**

a) As used in this Paragraph 3:

"Private charge" or "private charges" means charges, fees, assessments, exactions, and all other moneys a private water company may require the Department to pay to permit the Department to purchase water from the company. The terms include contribution-in-aid-of-construction charges that a company may assess against the Department.

"Private water company" or "company" means any department or agency of the federal government or the State of Hawaii, any private person, trust, association, corporation, partnership, or business, and any water utility regulated by the Hawaii Public Utilities Commission.

(b) Whenever the Department purchases water from a private water company for end use by any of the Department's consumers or prospective consumers and the company imposes private charges in excess of any similar charge or fee imposed under the Department's administrative rules, the Department shall require a consumer or prospective consumer to pay, in addition to the Department's charge or fee, the difference between the charge or fee imposed under the Department's rules and the similar private charge imposed by the company. If the private charge imposed is less than the similar charge or fee imposed under the Department's administrative rules, the consumer or prospective consumer shall not be entitled to the difference between the private charge imposed and the similar charge or fee imposed under the Department's rules.

Whenever the Department purchases water from a private water company for end use by any of the Department's consumers or prospective consumers and the company imposes private charges that are dissimilar to any charge or fee imposed under the Department's administrative rules, the Department shall require a consumer or prospective consumer to pay an amount equal to the dissimilar private charge imposed by the company."

SECTION IX - TEMPORARY GRANTS OF WATER

1. **Purpose.** The purpose of this section is to establish standards for temporary grants of water to support the initial development of county or state public beautification projects or the initial or further development of county or state public parks and public ways.

2. **Temporary Grants of Water.** The Board of Water Supply may, in its discretion, authorize temporary grants of water to support the initial development of county or state public beautification projects or the initial or further development of county or state public parks and public ways.

Any county or state department, office, or agency wishing to receive such temporary grants of water shall apply to the Board of Water Supply for such temporary grants. The application shall explain or describe in detail the contemplated project, why a temporary grant of water from the Department is necessary, what other efforts the applicant has made to obtain water from other sources, for what specific purposes the water will be used, and how the water provided will yield public benefits. The applicant shall also certify that there were no other available sources which can be used to support the project in question.

For each application, the Board shall determine and establish a maximum time limit that water may be provided to an applicant and a quantity limit on the amount of water that may be drawn.

The Board and the Manager and Chief Engineer may prescribe conditions under which water may be drawn so that the provision of water to the applicant does not adversely affect the Department's ability to provide water to its other users.

SECTION X - COST OF POWER ADJUSTMENT CLAUSE

Cost of Power Adjustment

All water consumption (for general use, agriculture use and ships) shall be subject to the imposition of a Cost of Power Adjustment as part of all water consumption charges.

As part of the Department's annual budget review process, the Department will review the actual unit costs of power for each twelve month period ending March 31st. At this time, the power cost adjustment for the upcoming fiscal year will be calculated as the sum of the following two components: (1) the difference (plus or minus) between budgeted unit power costs for the upcoming fiscal year and the anticipated unit power costs shown in Schedule A below, and (2) the difference (plus or minus) between the actual unit power costs incurred during the twelve-month period ending March 31st as previously described and the anticipated unit power costs effective during the same twelve month periods as shown in Schedule A below. The sum of these two components, calculated on a dollars per thousand gallons basis, will be applied to all water consumption charges.

Any power cost adjustments will be implemented on July 1st of each year.

Schedule A Anticipated Unit Power Costs

Implementation Date	Anticipated Unit Power Cost (per 1,000 gallons)¹
July 1, 2001	\$ 0.40
July 1, 2002	\$ 0.41
July 1, 2003	\$ 0.43
July 1, 2004	\$ 0.44
July 1, 2005	\$ 0.45
¹ Projections based on November 2000 power cost assumptions.	

