

KATHY L. KAOHU  
County Clerk



JAMES G.M. KRUEGER  
Deputy County Clerk

**DEPT. COMM. NO. 384**

**OFFICE OF THE COUNTY CLERK**  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov/county/clerk](http://www.mauicounty.gov/county/clerk)

April 28, 2022

Honorable Ronald D. Kouchi, President  
Hawaii State Senate  
State of Hawaii  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Sir:

Transmitted herewith is a certified copy of Resolution No. 22-51,  
CD1, FD1, which was adopted by the Council of the County of Maui, State  
of Hawaii, on April 22, 2022.

Respectfully,

A handwritten signature in black ink that reads "Kathy L. Kaohu". The signature is written in a cursive style.

KATHY L. KAOHU  
County Clerk

/lks

Enclosure

# Resolution

**No. 22-51, CD1, FD1**

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

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

WHEREAS, the Development is subject to the requirements of the Findings of Fact, Conclusions of Law, and Decision and Order, entered on February 26, 2018, in Docket A15-798, which reclassified portions of Development from the State Land Use Agricultural District to the State Land Use Rural and Urban Districts ("DBA"); and

WHEREAS, the Development is also subject to the requirements of the Conditions of Zoning in Ordinance 4998 (2019), which changed the zoning for portions of the Development ("CIZ"); and

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

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

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

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

**Resolution No. 22-51, CD1, FD1**

WHEREAS, in accordance with Section 4-1 of the Revised Charter of the County of Maui (1983), as amended, the acts of the Council may be by resolution; now, therefore,

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

1. That it supports the concept of government providing infrastructure improvements for the Development in exchange for additional residential workforce housing units in the Development, subject to:
  - i. The Development returning to the Council to revise conditions to the CIZ and DBA;
  - ii. The Mayor exercising reasonable efforts to secure State funding as represented in the public private partnership agreement as the State's participation in the Development; and
2. That certified copies of this Resolution be transmitted to the Honorable David Y. Ige, Governor, State of Hawai'i; the Honorable Ronald D. Kouchi, President, Hawai'i State Senate; the Honorable Scott Saiki, Speaker, Hawai'i State House of Representatives; the County of Maui's delegation to the Hawai'i State Legislature; Keith Hayashi, Acting Hawai'i Superintendent of Education, Hawai'i State Department of Education; Ed Sniffen, Deputy Director, Hawai'i State Department of Transportation; Eric Nakagawa, Director, Department of Environmental Management, County of Maui; Michele McLean, Director, Department of Planning, County of Maui; Helene Kau, Acting Director, Department of Water Supply, County of Maui; Jordan Molina, Acting Director, Department of Public Works, County of Maui; Moana Lutey, Corporation Counsel, Department of the Corporation Counsel, County of Maui; Kauai Sang, Director, Office of Hawaiian Education, Hawai'i State Department of Education; Mike Atherton, Partner, Waikapu Properties, LLC; and the Honorable Michael P. Victorino, Mayor, County of Maui.

**Resolution No. 22-51, CD1, FD1**

APPROVED AS TO FORM AND LEGALITY:

/s/ Michael J. Hopper

Deputy Corporation Counsel  
County of Maui

paf:wal:22-088a

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "John A. Lee", is written above a horizontal line.

Upon the request of the Mayor

LAND COURT SYSTEM	REGULAR SYSTEM
Return by Mail (    )    Pickup (    )    To:	

TMK: (2) 3-6-004:003 & 006 (2) 3-6-005:007 (2) 3-6-006:036 (2) 3-6-002:003	Total No. of Pages: _____
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PUBLIC PRIVATE PARTNERSHIP AGREEMENT

County of Maui – Waikapu Country Town

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

WHEREAS, WCT intends to develop Waikapu Country Town (the “Development”), a mixed use residential community consisting of 1,433 dwelling units, with the potential for 146 ‘ohana units, commercial uses, an agricultural/conservation easement area, a park, and a school site, on approximately 1400 acres of land;

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, WCT is required to provide the Development's pro rata share for the total anticipated costs for design and construction of the Waiale Road Extension ("WRE") and other traffic improvements;

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

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

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

WHEREAS, before the terms of this agreement may take effect, WCT will be required to amend certain conditions of the DBA and CIZ to make them consistent with this agreement; and

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

#### **I. AMENDMENTS TO THE CIZ AND THE DBA**

The covenants herein shall not become effective until the conditions of the CIZ and DBA are amended to reflect the terms of this Agreement, including the use of RWHUs to satisfy infrastructure requirements. Nothing herein shall be deemed a commitment on the part of County to amend the terms of the CIZ or support an amendment of the DBA.

#### **II. WRE and TEMPORARY CONNECTION TO THE KAHULUI WWTF**

If allowed by the DBA and CIZ conditions, in consideration of WCT providing an additional 63 RWHUs (the "Initial RWHUs") in the Development, resulting in 350 RWHUs and 1,083 market units at full buildout, the County agrees as follows:

- A. The opportunity cost of the Initial RWHUs shall be considered an in-lieu contribution for WCT's obligations under this Section II.
- B. Pursuant to condition 8(b) of the DBA, County and WCT shall enter into a Traffic Memorandum of Agreement, discussed further in Section III, below, where WCT's traffic impact mitigation obligations and the associated costs will be agreed upon by the County and WCT, including a determination in regards to the Project's pro rata share of the total anticipated costs for design and construction of the WRE, in accordance with Condition 3(b) of the CIZ. The Traffic Memorandum of Agreement shall allow WCT to



provide RWHUs in lieu of cash contributions to satisfy the requirements of said Agreement, including WCT's obligations to:

1. Contribute the Development's pro rata share of the total anticipated costs for design and construction of the WRE, in accordance with Condition 3(b) of the CIZ;
  2. Mitigate all traffic impacts generated by the Development as recommended or required by the County per Condition 8(b) of the DBA;
  3. Fully fund the intersection at Honoapiilani Highway and the WRE, per Condition 1(b) of the CIZ; and
  4. Provide a pedestrian crossing at the intersection of Honoapiilani Highway and the WRE, per Condition 1(d) of the CIZ.
- C. Upon execution of this Agreement, provided the DBA and CIZ conditions are amended to allow the Initial RWHUs to satisfy WCT's obligations to fund adequate wastewater facilities, WCT shall be able to temporarily connect and transmit a maximum amount of 100,000 gallons per day of wastewater to the Kahului WWTF for the Development (the "Temporary Connection"), granting WCT the ability to connect at least 300 dwelling units to the Kahului WWTF. Upon completion of the Central WWTF, the Temporary Connection shall expire and the wastewater shall be diverted to the Central WWTF. If allowed by the DBA and CIZ conditions, the opportunity cost of the Initial RWHUs shall be considered an in-lieu contribution for WCT's participation in the funding and/or construction of adequate public wastewater source, storage, and transmission facilities to accommodate the proposed uses of the Development.

### **III. TRAFFIC MEMORANDUM OF AGREEMENT**

As required by conditions 8(b) of the DBA, County and WCT shall enter into a memorandum of agreement ("MOA") concerning WCT's satisfaction of the conditions of the CIZ and the DBA relating to traffic impact mitigation, including, but not limited to those listed in Subsection II.B, above, through the contribution of the Initial RWHUs.

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

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

Upon execution of the MOA, WCT shall be deemed to have satisfied the requirement of Condition 8(b) of the DBA and Condition 1(a) of the CIZ for the purpose of allowing subdivision of the property, provided such conditions are amended to allow WCT to provide RWHUs in lieu of cash contributions to satisfy the requirements of the conditions, as each relates

to the execution of a MOA with the County. WCT will still be required to perform its obligations under such agreement even after subdivision approval, and failure to perform the terms of the agreement may constitute a violation of the conditions.

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

Nothing in this Agreement shall limit the ability of the County to negotiate the terms of the MOA, provided however, the conditions of the CIZ and DBA, and any amendments thereto, as well as the opportunity cost of the Initial RWHUs, as shown on Exhibit A, shall not be subject to further negotiation, as long as the opportunity cost is consistent with the DBA and CIZ conditions as amended.

#### **IV. PRIVATE WASTEWATER TREATMENT FACILITY**

The County and WCT recognize that it is the County's intent to construct the Central WWTF and that the construction of the Central WWTF eliminates the need for WCT to construct a private wastewater treatment facility to service the Development. Upon completion of the Central WWTF, the County acknowledges that the Development is within the service area of the Central WWTF and the remainder of the Development shall be able to connect to the Central WWTF (the "Central Connection"). In the event that WCT elects to utilize the Central Connection, an additional 150 RWHUs (the "Private WWTF RWHUs") shall be provided in the Development, resulting in 500 RWHUs and 933 market units at full buildout. If allowed by the DBA and CIZ conditions, the opportunity cost of the Private WWTF RWHUs shall be considered an in-lieu contribution for WCT's participation in the funding and/or construction of adequate public wastewater source, storage, and transmission facilities to accommodate the proposed uses of the Development, along with those matters discussed in Sections V and VIII, below. In the event that WCT does not utilize the Central Connection, the Private WWTF RWHUs will not be provided in the Development.

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

#### **V. WASTEWATER ASSESSMENT FEES**

In addition to the matters discussed in Section II above, and if allowed by the DBA and CIZ conditions, the opportunity cost of the Initial RWHUs, shall be considered an in-lieu contribution for all wastewater assessment fees, including any connection fees, assessed to those units utilizing the initial 100,000 gallons per day of wastewater transmission.

In addition to the matters discussed in Sections IV and VIII, and if allowed by the DBA and CIZ conditions, the opportunity cost of the Private WWTF RWHUs, shall be considered an

in-lieu contribution for all wastewater assessment fees, including connection fees, assessed to the remainder of the Development and no wastewater assessment fees, including connection fees, shall be assessed to the remainder of the Development.

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

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

The Initial RWHUs and the potential Private WWTF RWHUs (hereinafter collectively the "Additional RWHUs") shall be subject to the terms and conditions of the Residential Workforce Housing Agreement, and any amendments thereto, that is required by Section 2.96.080, MCC. The Additional RWHUs shall not be considered a requirement of the Development per Condition 3 of the DBA or Condition 5 of the CIZ. The Additional RWHUs shall be "for-sale" units and shall be marketed and sold in accordance with the Residential Workforce Housing Agreement. 2.96.060, MCC requires that RWHUs be made available for occupancy either before or concurrently with market rate units at the same ratio required of the development, and that certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the RWHUs concurrently or sooner. The income group distribution for the Initial RWHUs and the Private WWTF RWHUs are set forth in Exhibit B, attached hereto and made a part hereof.

#### **VII. SATISFACTION OF REQUIREMENT FOR WASTEWATER SERVICE**

County and WCT agree that if allowed by the DBA and CIZ conditions, the opportunity cost for the Additional RWHUs shall be considered an in-lieu contribution for WCT's participation in the funding and/or construction of adequate public wastewater source, storage, and transmission facilities to accommodate the proposed uses of the Development in satisfaction of the DBA and CIZ conditions. The Temporary Connection and any determination made in Section IV, above, if applicable, shall satisfy the requirement of Condition 6 of the CIZ relating to the availability of County wastewater facilities prior to the issuance of building permits, for the first 300 units or the remainder of the Development, as applicable.

#### **VIII. RECLAIMED WATER FROM THE CENTRAL WWTF**

The Development shall be required to construct a reclaimed water storage/distribution system and shall utilize reclaimed water in an amount approximately equal to the amount of wastewater delivered to the Central WWTF for irrigation purposes. In consideration of the Private WWTF RWHUs, and if allowed by the DBA and CIZ conditions, connection fees for reclaimed water service shall not be assessed to the Development in addition to the matters discussed in Sections IV and VI, above.

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

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

**X. MISCELLANEOUS**

- A. Binding Effect. All the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors in interest and assigns and shall run with the land. This Agreement shall be for the benefit of parties herein.
- B. Severability. If any provision of this Agreement, or any section, sentence, clause, phrase or word or the application thereof in any circumstances, shall be held invalid, the validity of the remainder of this Agreement and of the application of such provision, sentence, clause, phrase or word under any other circumstances shall not be affected.
- C. Applicable Law: Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of Hawaii. Any legal action under this Agreement shall be filed in the Hawaii judicial system only, and the parties hereby unconditionally submit themselves to the jurisdiction of the courts of the State of Hawaii and the United States District Court for the District of Hawaii, and waive the right to assert that such courts are in an inconvenient forum.
- D. Entire Agreement; Amendments; Interpretation. This Agreement constitutes the entire agreement between the parties regarding subject matter. Any modifications of this Agreement must be in writing and signed by the parties hereto. The headings of sections in this Agreement are inserted only for convenience and shall in no way define, describe or limit the scope or intent of any provision of this Agreement. As used herein, the singular shall include the plural and the masculine shall include the feminine and neuter.
- E. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. Duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

*(Signatures on the following page)*

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

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

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

Its \_\_\_\_\_

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

Its \_\_\_\_\_

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

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

Its \_\_\_\_\_

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

Its \_\_\_\_\_

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

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

Its \_\_\_\_\_

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

Its \_\_\_\_\_

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

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

**COUNTY OF MAUI**

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

**APPROVAL RECOMMENDED:**

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

\_\_\_\_\_  
JORDAN MOLINA  
Acting Director of Public Works

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

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

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

**APPROVED AS TO FORM  
AND LEGALITY:**

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



## **EXHIBIT A**

### **OPPORTUNITY COST OF ADDITIONAL RWHUS**

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

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

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

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

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

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

## **EXHIBIT B**

### **INCOME GROUP DISTRIBUTIONS**

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

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

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

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

# COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

## CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 22-51, CD1, FD1, was adopted by the Council of the County of Maui, State of Hawaii, on the 22nd day of April, 2022, by the following vote:

MEMBERS	Alice L. LEE Chair	Keani N. W. RAWLINS- FERNANDEZ Vice-Chair	Gabriel JOHNSON	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK