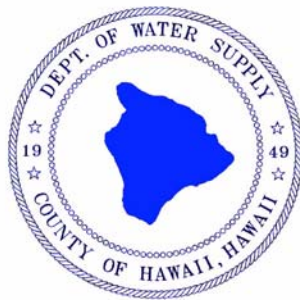


**RULES**

**AND**

**REGULATIONS**



**DEPARTMENT OF WATER SUPPLY**  
**COUNTY OF HAWAI'I**

*Effective October 21, 2004*

## **RULES AND REGULATIONS**

Adoption of these rules has been pursuant to the authority expressed in: Hawai'i Revised Statutes, Section 54-53, as amended; Section 8-2(b) of the Revised Charter of the County of Hawai'i; and, in accordance with procedures established and prescribed in Hawai'i Revised Statutes, Chapter 91, as amended.

*Effective October 21, 2004*

Department of Water Supply  
County of Hawai'i

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**RULES AND REGULATIONS  
OF THE DEPARTMENT OF WATER SUPPLY OF THE COUNTY  
OF HAWAI‘I AS ADOPTED BY THE WATER BOARD OF  
THE COUNTY OF HAWAI‘I**

**RULE 1 - GENERAL**

**Section 1-1. Definitions**

For the purpose of these Rules and Regulations:

(1) “AGENT(S)” means the person(s) authorized by the owner to act on behalf of the owner.

(2) “AIR-GAP” means a physical break between a supply pipe and a receiving vessel. Dimension of the air gap shall be approved by the Department.

(3) “APPLICANT” means the person(s) requesting water service.

(4) “APPROVED BACKFLOW PREVENTION ASSEMBLY” means a collection of components which together as a unit, is approved for use by the Department for the prevention of backflow.

(5) “AUXILIARY WATER SUPPLY” means any water supply other than the Department’s water supply.

(6) “AWWA” means the American Water Works Association.

(7) “BACKFLOW” means a flow condition, caused by a differential in pressure, that causes the flow of water or other liquids, gases, mixtures or substances into the distributing pipes of the Department’s water supply from any source or sources other than the Department’s water supply source.

(8) “BOARD” means the Water Board of the County of Hawai‘i as established by the Charter of the County of Hawai‘i.

(9) “CAPITAL ASSESSMENT FEE” means the special purpose fee, over and beyond the facilities charge, approved by the Board and to be paid to the Department by the developer, subdivider or consumer as their share to cover the cost of constructing a water system or portion thereof, to provide water service to the development. Fees shall be based upon the additional number of lots, dwelling units or equivalent units in the development or on the property.

(10) “CERTIFIED GENERAL TESTER” means someone who is trained and qualified to perform testing and inspection of all backflow prevention assemblies. The tester’s qualifications shall be approved and recognized by the Department.

(11) “CONSUMER” means any person(s) receiving water service from the Department.\_

(12) “CONTAMINANTS” means any foreign substances in the water supply which create a hazard to the public health.

(13) “CONTRACTOR” means a person or persons possessing a current and valid contractor’s license for the appropriate work as determined by the Department and pursuant to Chapter 444, Hawai‘i Revised Statutes, as amended, and Chapter 8, Rules and Regulations of the Contractor License Board, State of Hawai‘i, as amended.

(14) “CROSS-CONNECTION” means any actual and unprotected connection between the Department’s water system and any other source or auxiliary water supply.

(15) “DELINQUENT” means an indebtedness to the Department unpaid for 30 days from billing date.

(16) "DEPARTMENT" means the Department of Water Supply of the County of Hawai'i as defined by the Hawai'i County Charter.

(17) "DEVELOPER" means an owner or other person, agent or legal entity who intends to improve, or to construct any improvements on real property. The term shall also mean a subdivider.

(18) "DEVELOPMENT" means any improvement on a parcel of real property. The term shall include but not be limited to subdivisions, cluster developments, condominiums, commercial, and resort projects which may be further defined under the Zoning Code of the County of Hawai'i.

(19) "DEVELOPMENT WATER SYSTEM" means the water system to and/or within any development, including but not limited to water source and treatment facilities, mains, valves, hydrants, laterals, pumps, tanks, reservoirs and all appurtenances necessary to provide water services and fire protection for such development.

(20) "DOUBLE CHECK VALVE ASSEMBLY" means an assembly incorporating two internally loaded, independently operating check valves, including resilient seated shut-off valves on each end of the assembly and test cocks for testing the water tightness of each check valve.

(21) "DWELLING UNIT" means one or more rooms designed for or containing or used as the complete facilities for the cooking, sleeping and living area of a single family only and occupied by no more than one family.

(22) "EQUIVALENT UNIT" means anticipated maximum daily water usage of that development divided by a maximum daily water usage factor of 600 gallons per day or as determined by the Department. Any fractions thereof shall be considered an additional equivalent unit. Anticipated maximum daily water usage of the development shall be recommended by a registered engineer. Final determination shall be made by the Department.

(23) "FACILITIES CHARGE" means the fee to be paid by a developer, subdivider or owner (in addition to the costs of service connection or service lateral) as their share of the cost of capital expenditures for the public water system and debt service payments on bonds issued to finance such capital expenditures. The fee is based on the maximum size of the meter and type of service the service lateral can support or by the number of lots, dwelling units or equivalent units in the development, whichever cost is larger.

(24) "GATED COMMUNITY" means a development serviced by a public water system within a private road or easement whose access is restricted.

(25) "MAIN" or "MAINLINE" means the Department's supply or distribution pipe to which service laterals are connected.

(26) "MANAGER" means the person appointed by the Board as the administrative head of the Department.

(27) "MULTIPLE DWELLING" means a building containing two (2) or more dwelling units.

(28) "OWNER" means the person(s) possessing legal title to the property.

(29) "PARTY" means each person named and or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any proceeding before the Board.

(30) "PERSON(S)" includes individuals, partnerships, corporations, associations, trusts, estates, or public or private organizations of any character other than the Department or Board.

(31) "POLLUTANTS" means any foreign substance in the water supply which does not create a hazard to the public health.

(32) "POTABLE WATER" means water which conforms to the drinking water standards of the U.S. Environmental Protection Agency (EPA) and the State of Hawai'i. All other water which, although suitable for beneficial uses excluding human consumption, is non-potable.

(33) "PUBLIC WATER SYSTEM" means the water system owned and/or operated by the Department and Board.

(34) "RATE SCHEDULE" refers to the schedule of charges assessed consumers by the Department.

(35) "REDUCED PRESSURE PRINCIPLE (RP) ASSEMBLY" means an assembly incorporating two internally loaded, independently operating check valves, an automatically operating differential relief valve located between the two check valves, including resilient seated shut-off valves on each end of the assembly, and equipped with necessary test cocks for testing the assembly.

(36) "SERVICE CONNECTION" means the complete installation of pipes, fittings, appurtenances, meter box, meter and customer valve necessary to provide water service.

(37) "SERVICE LATERAL" means the main tap, pipe, fittings, and valves, from the water main to and including the meter box and excluding the meter.

(38) "SERVICE LIMITS" shall mean the maximum relative elevation to which adequate water service is available to lots that are immediately adjacent to a distribution pipeline. The service limit shall be that elevation which is 100 feet in elevation below the spillway elevation of the Department's reservoir supplying the area.

(39) "STANDARDS" means Standards for Public Water Systems Construction in the County of Hawai'i, prepared by the Department and adopted by the Water Board of the County of Hawai'i in accordance with applicable laws and as amended.

(40) "STANDPIPE SERVICE" means the installation of a meter at a standpipe facility owned and maintained by the Department.

(41) "SUBDIVIDER" means a person(s) who owns or possesses any interest in land and causes the land to be divided into a subdivision.

(42) "SUBDIVISION" means improved or unimproved land or lands divided or proposed to be divided into two (2) 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 lots, and shall include resubdivisions, and when appropriate to the context shall relate to the process of subdividing of the land or territory subdivided.

(43) "TENANTS" means person(s) under contract with owner or agent to temporarily occupy premises.

(44) "WATER SERVICE" means the delivery of water by the Department.

(45) "WATER SUPPLY SYSTEM" means the "PUBLIC WATER SYSTEM".

(46) Use of the terms "CONSUMER", "DEVELOPER", and "SUBDIVIDER", as and when used in these Rules and Regulations, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, and individuals or corporations.

## Section 1-2. The Department and Board

(1) All communications to the Department or Board shall be addressed to the Department of Water Supply, at its offices located at 345 Kekūanaō‘a Street, Suite 20, Hilo, Hawai‘i 96720 or such other address as it may in some time have.

(2) The main office of the Department and Board shall be open from 7:45 a.m. to 4:30 p.m. daily except Saturday, Sunday, and legal holidays. Branch offices in Waimea, Kona, Ka‘ū and the Department’s Operations Division in Hilo may open at such times as shall be posted on the front doors of their respective premises.

(3) The rules of procedure necessary for the conduct of Board business are:

(a) All meetings of the Board shall be held in public places determined by the Board and the Board shall take official action in a meeting open to the public. Where confidential or personal matters affecting the privacy of a person are to be considered, the Board may, at the request of the person involved, consider such matters in a closed session. Any action made by a majority of the members of the Board, or an actual vote by a majority of the members of the Board, when sitting as a body or an entity, upon any matter before the Board shall be acted upon in an open meeting.

(b) A Chairperson and Vice-Chairperson of the Board shall be elected by the members of the Board annually.

(c) The affirmative vote of a majority of the entire membership of the Board shall be necessary to make any action of the Board official and valid.

(d) Before entering upon the duties of his office, the Manager, his Deputy, and each member of the Board shall subscribe to the oath or affirmation before some person duly qualified to administer oaths: “I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States of America, the Constitution of the State of Hawai‘i, and the Department’s Rules and Regulations, and that I will faithfully discharge my duties as \_\_\_\_\_ to the best of my ability.”

(e) Regular meetings of the Board for the transaction of its business shall be held at 10:00 a.m. on the fourth Tuesday of each month, or as scheduled by the Board at any duly noticed and convened meeting.

(f) Special meetings may be called by the Chairperson of the Board when the date, time, and place of such special meetings are announced prior to adjournment of a regular meeting, otherwise special meetings shall be called only upon the publication of a notice of such meetings in a newspaper of general circulation in this County in conformance with HRS § 92-7 or § 92-8, as amended, for an emergency meeting. If the requirement with respect to publication of a notice cannot be met because of insufficient time, the meeting notice shall be made by broadcasting a minimum of three (3) announcements in the English language over F.C.C.-licensed public radio stations in this County or television stations with local audience. Such announcements shall be broadcast at least twenty-four (24) hours in advance of such meeting. To assure the widest possible coverage, the meeting notice shall be released to radio stations in this County and the announcements shall be programmed to be heard between the hours of 7:00 a.m. to 5:00 p.m. In addition to the above requirements, notice of such special meetings shall be conspicuously posted on the bulletin board of the Hawai‘i County Building and other building maintained as offices for the

Department. A brief resume of the principal business to be taken up at such meetings shall be stated in the posted notice as well as in the notice released to the news media.

(g) All decisions, orders and other official acts of the Board, including contracts, shall be signed by the Chairperson or Acting Chairperson of the Board and be authenticated by the Manager or his Deputy. All written contracts to which the Department or Board is a party shall be approved by the Corporation Counsel as to form and legality and shall not require the signature of the Mayor or the approval of the Director of Finance.

(h) All books, minutes, records, rules, regulations, orders, findings, and decisions of the Department and Board shall be open to the inspection of any person any time during business hours, except as otherwise provided by law. Certified copies or extracts thereof shall be given by the Manager to any person requesting such copies or extracts and paying or tendering a reasonable fee as fixed by the Department (see Section 2-2).

(i) The Board shall have the power to adopt such other rules of procedures as may be necessary for the conduct of its business. Robert's Rules of Order, Revised Edition, shall govern the rules of proceeding and debate unless otherwise provided for under these Rules and Regulations.

(j) The following procedures shall be followed when the public intends to provide oral testimony during meetings of the Water Board:

1. All those desiring to speak on matters listed on the Order of Business will register with the secretary prior to the convening of the meeting giving their name, address, the organization they represent, if any, and the subject they wish to speak on.
2. The person testifying shall provide their name and residence address.
3. The person testifying shall also indicate if testimony is on their own behalf or as a representative of a group or organization.
4. The person testifying shall direct their remarks to the Board and not to any individual Board member or individual present at the meeting or hearing.
5. No profanity or abusive remarks will be allowed during the course of the testimony.
6. The Chairperson or Vice-Chairperson may require any person desiring to provide oral testimony, to do so under oath. The oath shall be administered by the Chairperson or Vice-Chairperson.
7. The Chairperson or Vice-Chairperson may limit testimony which is irrelevant or unduly repetitious.
8. Oral testimony shall be limited to five minutes subject to the discretion of the Chairperson or Vice-Chairperson.
9. Any person who does not abide by these procedures shall be ruled out of order.

(k) The Chairperson or Vice-Chairperson may remove any person or persons from a meeting or hearing who willfully or flagrantly disrupts a meeting or hearing.

(4) The powers and duties of the Manager are:

(a) With the advice and consent of the Chairperson of the Board, to prepare an agenda for all meetings and hearings held by the Board.

(b) To have custody of the Department's seal and official records and to be responsible for the maintenance and safekeeping of all the files and records of the Department and Board, including the transcripts of testimony and exhibits, with all papers and requests filed in the proceedings, the minutes of all official acts taken by the Board, and all of its findings, determinations, reports, decisions, orders, rules, regulations, and forms.

(c) With the approval of the Board, to appoint and remove a Deputy and a private secretary, to appoint the necessary staff for which appropriations have been made by the Board, to take all personnel actions including the assignment or reassignment of duties to employees without obtaining the written approval of the Mayor and without submitting a report thereon to the County Council, to prescribe such rules as are necessary for the organization and internal administration of the Department, and to supervise the performance of duties by all employees of the Department pursuant to the civil service laws.

(d) To prepare and present to the Board at such time as may be prescribed by the Board full annual reports of the principal transactions of the Department during the last completed year.

(e) To administer the affairs of the Department.

(f) To expend such available funds of the Board, for emergency repairs of the water supply system without competitive bidding, and if public health, safety or welfare is being impaired or imperiled as a result in an interruption in the furnishing of water services to residents of the County of Hawai'i, the Manager shall report such action to the Board at its next regularly scheduled meeting.

(g) To have such other powers and duties as may be prescribed by law.

(5) The powers and duties of the Board shall be as described in Section 8-2, Article VIII of the Charter. Operating within the framework of a semi-autonomous department, the Board, in managing, controlling and operating the public water system of the County and all property thereof, shall have the power:

(a) To fix the annual salaries of the Manager, Deputy and all other employees of the Department not covered by the civil service classification plan.

(b) To create new positions and abolish positions for the Department.

(c) To adopt rules and regulations which shall have the force and effect of law relating to the management, control, operation, preservation and protection of the public water system of the County.

## **RULE 2 - RULES OF PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT AND BOARD**

### **Section 2-1. Rules of General Applicability**

These Rules and Regulations shall regulate the practice and procedure before the Department and Board under the Hawai'i Administrative Procedures Act, Title 8, Chapter 91 of the Hawai'i Revised Statutes, as amended; the Charter of the County of Hawai'i; and other related acts as may now or hereafter be administered by the Department and Board. They shall be construed to secure the just, speedy, and efficient determination of every proceeding.

### **Section 2-2. Methods Whereby Public May Obtain Information**

The public may obtain information as to matters within the jurisdiction of the Department and Board by inquiring at the Department of Water Supply, 345 Kekūanaō'a Street, Suite 20, Hilo, Hawai'i. All rules, regulations, orders, findings and decisions of the Department and Board are on file and available for public inspection at the Department. If that which is being requested is for a period more than two years from the date of the request, the person making the request shall pay a fee based on an hourly rate for the time taken by the Department to search for, retrieve and/or compile the material or information sought. The hourly rate will be fixed from time to time by the Department. Copies of any rules, regulations, orders, findings and decisions of the Department and Board as well as any other documents available for public inspection are available to any person requesting such copies and paying or tendering a reasonable fee as fixed from time to time by the Department. The fees set must be in conformance with HRS Chapter 92, 92F, and with Hawai'i Administrative Rules, Title 2, Subtitle 7, Chapter 71, Subchapter 3, as amended.

### **Section 2-3. Petition for Adoption, Amendment or Repeal of Rules**

- (1) Any person may petition the Board and request for the adoption, amendment or repeal of any rule of the Department.
- (2) The petition shall be submitted in twelve (12) copies to the Manager and shall contain:
  - (a) A statement of the nature of the person's interest;
  - (b) A draft or the substance of the proposed rule or amendment or a designation of the provisions sought to be repealed; and
  - (c) An explicit statement of the reasons in support of the proposed rules, amendment or repeal.
- (3) The Board shall within thirty (30) days after the submission of the petition either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with Section 91-3 of the Hawai'i Revised Statutes, as amended, for the adoption, amendment or repeal of the rule as the case may be.

## **Section 2-4. Declaratory Ruling by Board**

- (1) Any person may petition the Board for a declaratory ruling order, or judgment as to the applicability of any statute, ordinance or of any rule or order of the Board.
- (2) The petition shall be submitted in twelve (12) copies to the Manager and shall contain:
  - (a) The name, address, and telephone number of the person;
  - (b) A statement of the nature of person's interest;
  - (c) A designation of the specific provision, rule or order in question;
  - (d) A specific, complete statement of facts;
  - (e) A statement of the position or contention of the person; and
  - (f) A memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position or contention.
- (3) A petition that does not conform to the foregoing requirements may be rejected.
- (4) The Board may for cause refuse to issue a declaratory ruling. Without limiting the generality of the foregoing, the Board may so refuse when:
  - (a) The question is speculative or hypothetical and does not involve or pertain to existing fact or facts which can reasonably be expected to exist in the near future.
  - (b) The person's interest is not of the type which would give the person standing to maintain an action if the person were to seek judicial relief.
  - (c) The issuance of the declaratory ruling may adversely affect the interests of the County, the Department, or the Board or any of their officers or employees in any litigation which is pending or which may reasonably be expected to arise.
  - (d) The matter is not within the jurisdiction of the Department or Board.
- (5) Where any question of law is involved, the Board may refer the matter to the corporation counsel or any other attorney employed as its legal adviser. The Board may also obtain the assistance of other agencies where necessary or desirable.
- (6) Upon the disposition of the petition, the person shall be promptly informed in writing thereof by the Manager.
- (7) The order disposing of a petition shall have the same status as any other order issued by the Board. The order shall be applicable only to the fact situations alleged in the petition or set forth in the order. They shall not be applicable to different fact situations or where additional facts not considered in the order exist.
- (8) The intent and purpose of declaratory rulings under this rule is to give prospective guidance for the petitioner's future actions. Declaratory ruling procedures are not intended to substitute for an appeal or to otherwise seek adjudication of disputed rights under adversarial contested case procedures.

## **Section 2-5. Rules of Practice**

In any proceeding involving the denial of an application for water service, the suspension, revocation, or refusal or renewal of water service or of a license, or any other matter, which by law is required to be determined after an opportunity for a hearing, the following rules of practice shall apply:

- (1) The owner, consumer, agent, or applicant, as the case may be, shall be notified in writing of the hearing and of his opportunity to be heard thereat. The notice shall conform to the

requirements of Section 91 of the Hawai‘i Revised Statutes, as amended. The hearing notice shall be sent in accordance with Section 91 of the Hawai‘i Revised Statutes, as amended.

(2) The hearing shall be conducted in conformity with the applicable provisions of Sections 91-9, 91-10 and 91-11 of the Hawai‘i Revised Statutes, as amended.

(3) No member of the Board shall consult any person on any issue of fact except upon notice to and opportunity for all parties to participate.

(4) The determination shall be subject to such limitations or standards as may be prescribed by law.

If the Board decides in favor of the owner, consumer, agent, or applicant, it shall issue an appropriate decision and order, stating its reasons therefor if the Board decides otherwise, it shall issue an appropriate decision and order accompanied by a findings of fact and conclusions of law. The Manager shall send a certified copy of the decision and order to the party.

(5) Any of the foregoing procedures may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by means of a stipulation, agreed settlement, consent order or default.

(6) Judicial review shall be as provided by law.

## **RULE 3 - RULES REGULATING WATER SERVICE TO CONSUMERS**

### **Section 3-1. General Conditions**

(1) Any applicant whose premises is located within service limits established by the Department and adjacent to a distributing main, where pressure conditions permit, may obtain water service; provided, that the existing water system facilities servicing the area are adequate for such intended use without impairing service to existing consumers, that all applicable fees and deposits for such service have been paid in full, applicant is not delinquent on other services in his name, and the applicant agrees to abide by the Rules and Regulations and Standards of the Department.

Application for service shall include applicable information regarding owner, tenant(s), and agent(s) as prescribed by the Department, including but not limited to: name, addresses, tax map key of property to be served, telephone numbers, and employers. Verification of information provided may be required. Such information shall be considered confidential and to be used for billing and collection purposes only.

(2) Where extensive water system improvements are necessary or where large quantities of water are required or a substantial investment is necessary to provide water service, the prospective applicant, developer, and/or subdivider shall be informed as to the conditions and charges to be made for the particular area and situation in question. A capital assessment fee may be charged for the required improvements, which fee shall be prorated based upon the number of lots, dwelling units or equivalent units in the development.

(3) All water service supplied by the Department shall be measured by means of meters furnished by the Department. The amounts to be paid for water service shall be in accordance with the rates established by the Board. Copies of these rates shall be on file and available at the Department. The Department shall determine the final location and size of the service connection. All service connections and service laterals shall become the property of the Department and shall be operated and maintained by the Department.

(4) The Department shall evaluate each application for potential usage. For those water systems where the Department has determined that water is available, each dwelling unit or lot shall use a separate 5/8-inch meter at a minimum.

(5) The Department shall only be responsible for the operation and maintenance of public water systems.

### **Section 3-2. Conservation Measures and Interruption of Water Supply**

(1) While the Department shall exercise reasonable diligence and care to deliver an adequate supply under reasonable pressure of potable water, the Department, the Board, and its Manager and employees, shall not be financially liable for any direct or consequential damages resulting from water supply interruption, shortage, insufficiency of supply, inadequate or excessive water pressure, leakage on the consumer's premises, including temporary colored and turbid water quality conditions caused by emergency repair of water mains. The Department further disclaims all warranties, expressed or implied, and reserves the right to shut off water mains for repairs, extensions, alterations, termination of water service as provided herein, for conservation measures, and for other reasons deemed by the Board to be necessary and proper, without notice.

(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. The Department shall also have the right to limit the quantity of water taken from any of its facilities, including but not limited to temporary standpipes, outlets and hose bibbs. In determining the priorities in restricting the use of water, the health and safety of the public shall be given first consideration over other uses.

(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 deemed necessary or in the best interest of the Department. Consumers depending upon a continuous supply of water shall provide for their own 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 shall be completed as rapidly as practicable.

### **Section 3-3. Elevation Agreement, Pressure Conditions**

(1) The Department shall make every effort to maintain sufficient pressure in its water mains, but accepts no responsibility for maintaining such pressure.

(2) Where property is situated at such an elevation or location that it cannot be assured of a dependable supply or of adequate service from the Department's distribution system, the owner, in consideration of connection to the public water system, shall 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 the owner's own expense a tank and pump of suitable design and of sufficient capacity to furnish an adequate and dependable supply of water:

(a) If any portion of the lot or premises is not within the service limit, then an elevation agreement is required;

(b) If the pressure at the highest elevation of the lot is 0-20 psi, then an elevation agreement and schematic drawing is required;

(c) If the pressure at the highest elevation of the lot is 21-40 psi, no schematic drawing is required; and

(d) Install approved backflow prevention assembly as required per Section 3-21.

The owner shall, on behalf of the owner's heirs, administrators, successors, and assigns, execute an elevation agreement releasing the Department from all claims on account of any inadequacy in the public water supply or inadequacy of water pressure or water supply to the owner.

The Department will record the agreement with the Bureau of Conveyances or Land Court of the State of Hawai'i. Any and all costs relating to the filing of such elevation agreements with the Bureau of Conveyances shall be borne by the Department.

(3) When the pressure of the Department's supply is higher than that for which individual fixtures are designed, the owner shall protect such fixtures by installing and maintaining pressure reducing and relief valves. The Department shall 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 3-4. Application for Water Service and Service Connection**

(1) Each applicant shall be required to sign an application for the water service desired, before water is turned on for any use. The consumer and/or applicant shall be held liable for the payment of all charges for water service at the designated location, including collection fees, late payment penalties, and service charges, if any.

A deposit as determined by the Department shall be collected from each applicant who has not previously established satisfactory credit with the Department.

(2) Restoration of water service at an existing location or providing a water service at a new location for a consumer whose water service was disconnected because of nonpayment will be made when the consumer has complied as follows:

(a) Paid the required deposit, and

(b) Paid all outstanding accounts and all charges described in Section 3-12.

(3) The deposit shall be returned to the applicant at the time of termination of service, or after a 12-consecutive month period in which the Department has determined payment history to be satisfactory. A payment of interest shall accompany each refund of deposit to the applicant at a rate to be determined and fixed annually by the Department.

(4) Charges shall begin when the water service is established and shall 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.

(5) When an application for water service is made by a person who was responsible for and failed to pay any bills previously rendered, regardless of location or time incurred, the Department may refuse to furnish water service to such applicant until the outstanding bills and all charges described in Section 3-12 are paid in full. The Department reserves the right to transfer applicant's previous unpaid balances to the applicant's current account(s).

### **Section 3-5. Connections**

(1) When the application for water service has been approved, the service connection shall be installed by the Department at the expense of the applicant and thereafter shall be maintained by the Department at its expense. There shall be one (1) meter for each service connection. All meters shall be sealed by the Department before installation and no seal shall be altered or broken except by authorized employees of the Department.

(2) The charge for service lateral or service connection installation of a 5/8-inch meter service shall be based on the cost of installation as established from time to time by the Board. Additional costs shall be charged under special or unusual conditions as described in the rate schedule. These costs shall be paid by the applicant before the installation of the service lateral or service connection. Copies of the prevailing rate schedule are on file and available for public inspection at the Department. If a second service lateral is requested for the same lot, the Department will install the second lateral at the installation charge established by the Board. Any additional service lateral or laterals to the same lot shall be installed by a contractor at the expense of the consumer or applicant.

(3) If there is an existing service lateral and an application is made for water service which requires the installation of a meter, shut-off valve, and/or meter box, a fee equal to the Department's estimate of the cost of said installation shall be paid for by the applicant before installation.

(4) If an application is made for water service for other than single family residential service and which requires the installation of a service lateral and service connection for one-inch (1") meter service or larger, such application shall be supported by water demand calculations prepared by a registered engineer. A deposit equal to the Department's estimate of the cost shall be paid for by the applicant before the meter and appurtenances are installed by the Department. If the actual cost of the installation, excluding the cost of the meter, is in excess of the deposit, the applicant shall pay the difference. If the actual cost is less than the deposit, the applicant shall be refunded the difference.

(5) The applicant shall install and connect at his expense his supply pipe to the shut-off valve. A fee equal to the Department's estimate of the cost shall be paid for by the applicant before the meter is installed by the Department. The supply pipe shall at all times remain the sole property of the applicant and/or owner, and the applicant and/or owner shall be responsible for its maintenance and repair. If the supply pipe is installed before the service connection is set, the Department shall make the connection to it; provided, that it is requested by the applicant prior to the installation of the service connection.

(6) Only employees of the Department shall be allowed to connect or disconnect the service connection or service lateral to or from the Department's main. Any person connecting, attempting to obtain, or obtaining water without permission of the Department, or tampering with the water meter or breaking the seal thereon shall be fined \$500.00 per occurrence, except that in cases where the offense shall be of a continuing nature each day's continuance of the same, after written notice from the Department to remedy the same, shall constitute a separate offense. Furthermore, any person who tampers with a public water system, attempts to tamper with a public water system, or threatens to tamper with a public water system shall be subject to the penalties set forth in Hawai'i Revised Statutes, Section 340E-4.5, and/or Section 26-4 of the Hawai'i County Code, as amended.

(7) No service connection, service lateral or water main shall be installed by the Department in any private road, lane, street, alley, court, or place, until such are open to the public and brought to proper grade, or Section 3-28 is complied with by a gated community, 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) 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/she shall bear all actual costs of such change. The applicant shall pay a fee equal to the Department's estimate of the cost for the change before commencement of work and also any applicable additional facilities charges.

(9) The Department shall install a shut-off valve immediately after the meter and within the meter box at the expense of the consumer if it deems it necessary, and thereafter it shall be maintained by the Department at its expense. The shut-off valve is for emergency use only. The consumer shall install other valves for purposes of controlling intermittent use within the consumer's premises.

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

(11) When required by the Department, contours or elevations shall be furnished by the applicant, based upon United States Geological Surveys or County of Hawai‘i Datum.

(12) The Department shall determine the location and size of all meters, service connections and laterals to its system.

(13) When it is determined by the Department, that additional water usage for other than single family residential service within the premises has increased such that the flow of water through the meter has exceeded the safe rated capacity of the meter thereby causing undue wear and tear or damage of the meter, the Department shall require the applicant and/or consumer to increase the size of the meter or to install additional meter or meters at the expense of the applicant and/or consumer within 60 days of notification by the Department {refer to Section 3-5(4)}. The Department may suspend or terminate water service for failure to comply with said requirement to increase meter size or install additional meter or meters.

(14) When the Department determines that water usage for other than single family residential service or for consumers who have been approved for the agricultural rate as outlined in Section 3-29, exceeds the units of water paid for by the consumer’s facilities charge and other applicable fees, the Department will determine if the water system can support the additional usage. If the system can support the additional usage, the consumer may be required to install an additional or larger meter at his expense within 60 days of the notification by the Department. In addition, the applicant will be required to pay the prevailing facilities charge and other applicable fees. If the system can not support the additional usage, the Department will inform the consumer and may install a flow-reducing device on the meter.

(15) An applicant for water service from a Department of Water Supply standpipe facility shall pay a fee, prior to installation, equal to the Department’s estimate of the cost to install, maintain and remove the meter. In addition, the applicant shall pay the monthly standby and consumption charge at rates established by the Board.

### **Section 3-6. Facilities Charge**

(1) In addition to the installation cost, the applicant shall pay a facilities charge as defined in Section 1-1 of these Rules and Regulations or as described in paragraph (a) of this section, except under conditions as described in paragraph (b) of this section. This charge shall be established by the Board. Copies of the Facilities Charge Schedule are on file and available at the Department. (See Rule 4 for section governing Subdivision Facilities Charge Requirements.) The monies realized from the facilities charge shall be used to defray the cost of capital expenditures for the public water system and debt service payments on bonds issued to finance such capital expenditures.

(a) Increase in Meter or Service Lateral Size, Number of Lots, Dwelling Units or Equivalent Units.

1. When the size of the existing meter is increased using the existing service lateral and the facilities charge for the larger meter has not been paid, the applicant shall pay a facilities charge based on the difference between the facilities charges at prevailing rates for the existing meter and the larger meter or on the number of additional lots, dwelling units or equivalent units, whichever cost is larger.

2. When the sizes of the existing service lateral and meter are increased and the existing service lateral is removed or abandoned, the entire cost of the

new service lateral shall be paid by the applicant. The applicant shall pay a facilities charge based on the difference between the facilities charge at prevailing rates for the existing service lateral and the larger service lateral or on the number of additional lots, dwelling units or equivalent units, whichever cost is larger.

3. When a larger service lateral and meter are installed and the existing service lateral is to remain in place, the entire cost of the new service lateral and the facilities charge at prevailing rates for the larger service lateral or number of additional lots, dwelling units or equivalent units, whichever cost is larger, shall be paid for by the applicant. No facilities charge credit will be allowed for the existing service lateral.

(b) Exceptions.

1. The facilities charge shall not be charged against the applicant if the facilities charge or storage fees were previously paid for by the developer or subdivider and the applicant requests the meter size for which the facilities charge or storage fees were previously paid. {See Section 3-6 (1) (a) for Charges or Credit Regarding Any Increase in Meter or Service Lateral Size, Number of Lots, Dwelling Units or Equivalent Units.}

2. A facilities charge will not be charged for temporary and standpipe meter connections.

3. The facilities charge will not be charged for any lot, dwelling unit or equivalent unit with an existing service lateral, provided that the meter size requested is not larger than 5/8 inch. {See Section. 3-6 (1)(b)(1).}

(2) In addition to the installation cost, a facilities charge shall be levied for new service connections to the public water system except when the facilities charge has been heretofore paid for by the subdivider or developer. This charge shall be as established by the Board and based on the maximum size of the meter and type of service the service lateral can support or on the number of lots, dwelling units or equivalent units, whichever cost is larger.

### **Section 3-7. Meter Reading and Rendering of Bills**

(1) Meter readings and billings shall be on at least a bi-monthly basis, except for closing of accounts and for special conditions with the approval of the Manager.

(2) Closing bills for shorter periods of time shall be determined by the sum of the charges per water meter reading and prorating of the monthly service charge. If a meter cannot be read, an estimated bill will be rendered.

(3) Billings for metered water service shall be on a per meter basis, and several separate meter readings shall not be combined in the event that a consumer has more than one (1) metered installation on his premises.

### **Section 3-8. Payment of Bills**

(1) All bills shall be due and payable within 30 days from the bill date. Payment shall be made at the office of the Department or, at the Department's option, to duly authorized collectors of the Department. If any bill is not paid within thirty (30) days from the bill date, it shall be considered delinquent and the water service shall be subject to discontinuance.

(2) In all cases of nonpayment of water bills within thirty (30) days from the bill date, the Department shall add a late payment penalty equal to a rate of one percent (1%) per month on the outstanding balance of the prior bill at the time the new billing is rendered.

(3) In all instances where money due the Department is paid by check or other negotiable instrument and the check or other negotiable instrument is dishonored when presented for payment, a service charge in an amount established by the Department shall be assessed against the account it was intended to be applied and/or collected from the maker of the check or negotiable instrument. Payment of this service charge shall be made in United States currency or other form acceptable to the Department.

### **Section 3-9. Non-Registering Meters**

If a meter fails to register due to any cause except the non-use of water, a bill equal to the average of the last three billing periods may be rendered. Such average bills shall be subject to equitable adjustment taking into account all factors before, during, and after the period of the bill.

### **Section 3-10. Meter Tests and Adjustments of Bills**

(1) All meters are tested prior to installation. Any consumer who has reasonable doubts of the accuracy of the meter serving his premises may request a test of the meter. The consumer, if he so requests, shall be notified as to the time of the test and may witness the test if he so desires. No charge shall be made for meter tests.

(2) If, as the result of the test, the meter is found to register more than two percent (2%) fast under conditions of normal operation, the Department shall refund to the consumer the overcharge based on past consumption, for a period not exceeding six (6) months, unless it can be proven that the error was due to some cause, the date of which can be determined and established. In this latter case, the overcharge shall be computed back to, but not beyond, such date.

(3) The consumer has sole control of the water delivered beyond the Department's meter and the Department is not responsible for the maintenance and repairs to pipes and fixtures beyond the meter. However, adjustments may be granted for excessive bills caused by leakages. The adjustments shall be limited to one-half (1/2) of the consumer's excessive water use billed over and above the previous 6-month average water use and shall be granted only when repairs shall have been duly made. Additional adjustment over and above the one-half (1/2) of the consumer's excessive water use over and above the previous 6-month average water use may be granted where the cause of leakage is directly due to earthquakes, flooding, high winds, or other acts of nature. This additional adjustment shall not exceed forty-percent (40%) of the consumer's excessive water use over and above the previous 6-month average water use. Consumers shall also be limited to one (1) adjustment per 3-year period for each service. Special adjustments over and above the one-half (1/2) of the consumer's excessive water use over and above the previous 6-month average water use may be granted when the cause of leakage is due to criminal acts by third parties as documented by a police report.

In the case where the consumer has been given a notice of high consumption, or has received their billing indicating high consumption, the consumer shall be given thirty (30) days

within which to make the necessary repairs and shall be given sixty (60) days within which to apply for an adjustment of water bills.

### **Section 3-11. Discontinuation of Water Service**

(1) Each consumer about to vacate any premises supplied with water by the Department shall give notice of his intention to vacate, specifying the date service should be discontinued. Otherwise, the consumer and/or applicant shall be responsible for all water service furnished to such premises until the Department has received a notice of discontinuance. The consumer and/or applicant shall be responsible for all charges resulting from non-notification. Before buildings are demolished, the Department should be notified so the water service can be closed.

(2) Water service may be discontinued for any of the following reasons:

(a) Nonpayment of Bills. Water service may be discontinued for nonpayment of a bill after written notice is given to the consumer and as provided by these Rules and Regulations.

(b) Noncompliance with Rules and Regulations. If the consumer fails to comply with any of these Rules and Regulations, the Department has the right to discontinue service.

(c) Unauthorized Use of Water. The Department may refuse or discontinue water service to any premises or consumer in order to protect the Department against fraud, abuse or unauthorized use of water. For unauthorized use of water, a surcharge may be assessed as established by the Department. See Section 3-5(6).

(d) Wasteful Use of Water. Where negligent or wasteful use of water exists on any premises, the Department may discontinue service if such conditions are not corrected within a reasonable time after giving the consumer written notice of said conditions.

(e) Service Detrimental to Others. The Department may refuse to furnish water, and may discontinue the service to any premises, where the demands are beyond the usage allotted to the consumer and results in inadequate service to others.

(3) Where discontinuation of water service for any of the above reasons is proposed, the Department shall, prior to the proposed shut-off, give to the consumer at least fifteen (15) days notice.

(4) When the Department encounters water use that represents a clear and immediate hazard to the Department's water supply that is not immediately abated by the consumer, the Department may terminate service to the premises immediately. See Section 3-21(10a).

(5) Procedures for contesting shut-off:

(a) If the consumer wishes to have a proposed shut-off reconsidered, the consumer shall schedule and attend or have his representative attend a hearing or request a telephone conference in lieu thereof, after notice of shut-off has been delivered by the Department.

(b) At the hearing or conference, the consumer shall have the right to submit evidence, present and cross-examine witnesses and bring in an interpreter, or representative to aid in presenting his case. The consumer shall have the right to see the Department's records concerning his account, and the consumer has the right to reasonable explanation by the Department for any matter concerning the proposed shut-off. The Department personnel conducting the hearing or conference shall be

empowered to correct any errors in the account and to take whatever remedial action is necessary including a stay in order to make a just and fair resolution of the matter. The Department personnel conducting the conference shall make a final written decision and separate findings of fact and conclusions of law within five (5) working days of the hearing or conference.

(c) If the consumer is dissatisfied with the decision by the Department personnel conducting the hearing or conference, the consumer shall have the right to appeal the decision as provided by Section 2-5 of these Rules and Regulations of the Department of Water Supply and Hawai'i Revised Statutes, Chapter 91, as amended.

(6) When the consumer is delinquent and the consumer is a tenant, a notice of discontinuation of the tenant's water service for nonpayment of bill(s), as described in Section 3-11(3) shall be delivered to the tenant or to the respective premises prior to shut-off.

### **Section 3-12. Restoration of Water Service**

Water service shall not be resumed until all delinquent accounts against the consumer, including the amounts described in Section 3-4(2), and reinstallation charges (which shall include the cost of labor, materials, transportation, holiday pay, overtime pay, and all other incidental charges) for reinstalling the meter and turning on the water, have been paid or until the consumer has entered into and signed an approved payment plan.

### **Section 3-13. 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 the Department may access the consumer's premises at all reasonable times so that the equipment may be repaired, replaced or removed by the Department 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 3-14. Damage and Accessibility to Department's Property, Meter Damaged by Hot Water**

(1) Any cost to repair 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) The consumer shall be liable for any damage to a meter or other equipment or property of the Department caused by the consumer or the consumer's tenants, agents, employees, contractors, licensees or permittees, on the consumer's premises, and the Department shall be promptly reimbursed by the consumer for any such damage upon presentation of a bill thereof. In the event settlement for such damage is not promptly made within thirty (30) calendar days, the Department reserves the right to discontinue water service to such premises.

(3) When a meter is found to have been damaged by hot water or steam emanating from the premises served, the consumer shall pay for all costs required to repair the meter.

(4) No obstruction shall be placed on or around any water meter, fire hydrant, or valve so as to render it inaccessible. Any such obstruction, if not removed within two weeks upon written notification by the Department, shall be grounds for termination of water service.

### **Section 3-15. Relief Valves**

Wherever a check valve or pressure reducing valve is installed on the consumer's cold water supply line between the meter and a hot water storage tank or heater, there shall be installed on the consumer's hot water distribution system a suitable pressure relief valve.

### **Section 3-16. Ingress To and Egress From Consumer's Premises**

Any 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 is hindered or said officer or employee is otherwise prevented from carrying out his duties, the Department may cause the water to be turned off from said premises after giving at least twenty-four (24) hours' notice to the consumer or occupant of said premises of its intention to do so.

### **Section 3-17. Responsibility for Water Receiving Equipment**

(1) The owner and 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 shall 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 owner and consumer or of any tenants, agents, employees, contractors, licensees or permittees in installing, maintaining, using, operating, or interfering with any 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 contaminate the Department's water supply. 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 shall not be resumed.

(3) The Department shall 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 3-18. 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 of discontinuance of water service in writing to the offending consumer, owner, or person responsible, to correct or remove the cause of the noise. The discontinuation of

water service shall be enforced until such time as the condition complained of has been remedied.

### **Section 3-19. Electrical Grounding**

(1) Protective grounding of alternating current secondary distribution circuits made to the water system shall conform in all details with the National Electrical Code of the National Board of Fire Underwriters and with the County of Hawai‘i’s Building Code. The Department shall not be responsible for any damage or injury caused by any electrical grounding.

(2) No grounding of direct current to any portion of the water system shall be permitted.

(3) No grounding other than as provided in Paragraph (1) of this section shall be made to any portion of the water system without the Department’s written approval.

(4) The Department shall 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, consumer, 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.

### **Section 3-20. Consumer’s Pumping Installations**

(1) Consumers shall not be permitted to install or operate pumps which pump water directly from the main of the Department’s system except in cases approved by the Manager. No such approval shall 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 may be revoked by the Department upon thirty (30) 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.

### **Section 3-21. Cross-Connections and Backflow Protection**

(1) No cross-connections with other water supplies shall exist or be installed, located, maintained or operated that could permit the flow of water or other liquids, mixtures, gases or other substances from the consumer’s premises into the Department’s water system.

(2) It is unlawful for any person to make, maintain, or cause temporarily or permanently, any cross-connection that has a potential for backflow between their plumbing pipes or water fixtures and the Department’s water system. Existing cross-connections between the Department’s water system and any auxiliary water supply shall be eliminated or protected by means of an approved backflow prevention assembly. Cross-connection control and backflow prevention requirements for facilities and/or premises shall be in accordance to the Department’s Standards. The following conditions shall be adhered to:

(a) The Department shall require the consumer to install an approved backflow prevention assembly at his own expense for continued service or before a new service will be provided, whenever the consumer has an actual or potential situation for

backflow condition within their premises and/or for any reason or cause deemed in the best interest of the Department. The assembly shall be located immediately downstream of the meter.

(b) If there is a need for uninterrupted water service, an additional backflow prevention assembly shall be installed in an approved manner to ensure continued water service whenever inspection, testing and repair procedures is being performed on any one of these assemblies.

(3) The consumer is solely responsible for the installation, maintenance, testing and repair of his backflow prevention assembly as required by these Rules and Regulations. The Department will not be responsible for any loss or damage incurred by the consumer or owner as a result of non-compliance with the Department's Rules and Regulations.

(4) It is the responsibility of the consumer/owner to maintain all backflow prevention assemblies on the consumer's premises in good working order. No piping or other arrangement for the purpose of bypassing backflow prevention assemblies shall be permitted. Upon request by the Department, the consumer shall present an affidavit certifying that there are no cross-connections with other water supplies or other physical cross-connections installed, located, maintained or operated that could permit backflow.

(a) The Department shall establish periodic testing and inspection schedules for all backflow prevention assemblies. Intervals between such testing, inspections and overhauls of each assembly shall be established in accordance with the degree of hazard, age and condition of the backflow assembly and the cost to do it shall be the responsibility of the consumer. The following maintenance requirements shall apply:

1. All backflow prevention assemblies shall be inspected and tested upon initial installation.
2. All backflow prevention assemblies shall be inspected and tested yearly, repaired if necessary, and re-tested before being placed back into service. Wastewater facilities' backflow prevention assemblies shall be inspected and tested every 4 months, repaired if necessary, and re-tested before being placed back into service.
3. A Certified General Tester acceptable to the Department shall perform the inspection and testing. A current list of approved testers will be available upon request by the consumer.
4. Inspections and tests of backflow prevention assemblies may be required at more frequent intervals as required by the Department.
5. Test equipment shall be certified by University of Southern California Foundation for Cross Connection Control and Hydraulic Research, calibrated by the manufacturer every 2 years, and shall maintain a precision of +/- 5% of the actual reading.

(b) When a backflow prevention assembly fails in service, the consumer/owner shall notify the Department. Repairs are the responsibility of the consumer. A Certified General Tester approved by the Department shall perform the testing. Backflow prevention assembly test forms shall be completed and sent to the Department for confirmation that the device has been properly repaired and functioning as required. Inspection and approval by the Department shall be conducted before the device is put back into operation.

(c) Records of tests, repairs, parts and inspections shall be made on forms prescribed by the Department. The consumer shall furnish a copy of such records to the Department. Failure of the consumer to make the proper tests and submission of records may result in termination of service. The Department has the option to schedule tests, needed repairs, replacements, at the expense of the consumer. Failure to pay for such costs shall be cause for termination of water services.

(d) Conditions relative to the installation and maintenance of cross-connection control and backflow prevention referred to in this section shall be subject to change to meet changing requirements of the State and Federal Health authorities, the County's Building and Plumbing Codes and the Department's Rules & Regulations.

(5) All installations shall conform to the Uniform Plumbing Code and the County of Hawai'i County Code, and the Department's Standards.

(a) Details of the backflow prevention assemblies, showing both plan and elevation views, including size and location of devices, shall be submitted to the Manager for review and approval prior to installation. The backflow prevention assemblies shall be installed on the consumer/owner side of the property line immediately downstream of the water meter. Connections between the meter and the backflow prevention assembly are not permitted. Installation heights shall conform to the Department's Standards.

(b) Backflow assemblies shall be installed above ground unless otherwise approved by the Manager.

(c) The Manager reserves the right to determine the type of backflow prevention installation based on a case-by-case evaluation. In situations where the hazard cannot be readily determined or access is restricted, a Reduced Pressure Principle Assembly or air-gap separation shall be required.

(6) Temporary water meter installations shall require installation of an approved backflow prevention assembly to protect the Department's water system. The following conditions shall apply:

(a) Applications for temporary meter installations shall be made at the Department on appropriate forms provided by the Department. All costs and fees for the installation of the temporary water meter, backflow prevention assembly and water use shall be paid by the consumer.

(b) The Department shall furnish and install the backflow prevention assembly and the installation fee shall be determined on the Department's rate schedule.

(7) Premises having an irrigation system only, with no fertilizers or chemicals added into their system shall require protection by a Double-Check-Valve Assembly (DCV), unless the nature of the facility or premises requires a Reduced-Pressure-Principle Assembly (RP).

Premises having an irrigation system with fertilizers or chemicals added into their system shall require protection by a Reduced-Pressure-Principle Assembly.

(8) A fire suppression system with a direct connection to the Department's water system shall be required to have an approved backflow prevention assembly installed in accordance with the Department's Standards.

(9) Harbor and marine facilities shall have approved backflow prevention assemblies installed at the meter locations.

(10) When the Department encounters water uses that represent a clear and immediate hazard to the Department's water supply that cannot be immediately abated, the Department may

terminate water service at the premises immediately. A written notice will be given to the consumer after water service termination.

(a) Conditions or water uses that create a basis for immediate water service terminations include, but are not limited to the following:

1. Refusal to install or to test a backflow prevention assembly, or to repair or replace a faulty backflow prevention assembly.
2. Direct or indirect connections between the Department's water system and a sewer line.
3. Unprotected direct or indirect connections between the Department's water system and a system or equipment containing pollutants and/or contaminants.
4. Unprotected direct or indirect connections between the Department's water system and an auxiliary water system.

(b) For all other situations requiring backflow protection where there is no apparent and immediate hazard to the water supply, the Department will terminate water service to a consumer's premises after proper notification has been sent. The termination steps are the following:

1. The consumer will be notified by letter of the Department's intent to terminate water service, allowing 30 calendar days to remedy the situation.
2. If compliance has not been met, a letter to terminate water service will be issued stating that water services will be terminated within five (5) calendar days. Water service will not resume until the corrective action has been completed and approved by the Department.

(11) All premises wholly or partially within flood zones shall have approved backflow prevention protection.

### **Section 3-22. Automatic Fire Sprinkler Service**

(1) Automatic fire sprinkler service shall be furnished only where adequate provisions are made to prevent diversion of water through such service to other purposes. The fire service connection shall 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 shall be made for water used through such connection for fire protection purposes, but any water lost through leakage or used in violation shall be paid for by the consumer at the regular schedule of water rates and charges. The Department may disconnect and remove the said service connection if water is used for other than fire protection purposes or if leaks are not corrected within thirty (30) days of notification by the Department for high consumption. 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 shall be in accordance with the rates established by the Board from time to time. A facilities charge shall not be charged for such service connection.

(4) All automatic fire sprinkler services shall be metered with a detector check valve and a by-pass meter of a type approved by the Department. The meter required therefor shall be furnished by the Department without cost to the consumer, but the meter box and all installation

costs shall be paid for by the consumer. All service connections shall become the property of the Department after installation.

### **Section 3-23. Harbor Service**

Harbor facilities providing water service to ships shall apply at the Department for a master meter. Fees shall be determined by the Department at the time of application in accordance with the Department's rate schedule. The harbor facility shall be billed for all consumption and be held responsible for payment.

### **Section 3-24. Use Of and Damage To Fire Hydrants, Change In Hydrant Location, Responsibility for Maintenance and Operation of Private Hydrants**

(1) 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 approved by the Department. The use of any hydrant under a permit and the connections thereto shall be subject to the direction and approval of the Department. Hydrant main line valves shall not be used to control flows.

(2) Application for the use of a fire hydrant for purposes other than fire protection shall be made in writing to the Department and shall be accompanied by payment of all applicable fees in accordance with the Department's rate schedule. The Department reserves the right to reject any application, and/or to revoke approval at any time. Approval shall be withheld unless the applicant agrees to notify the Department as soon as the use of the hydrant is finished. If approval is revoked, the Department shall remove any connections to the hydrant after notice to the consumer is made. The Department shall inspect each hydrant and all costs of repair which the Department has determined to be due to consumer use as well as the cost of inspection shall be paid for by the consumer. All water drawn from a hydrant shall be metered or estimated as to quantity in a manner satisfactory to the Department and shall be paid for by the consumer at the current water rates. The permittee shall pay all of the costs of connecting to and disconnecting from the hydrant.

(3) The consumer and/or permittee shall report promptly any defect in or damage to the hydrant. Any cost to repair damage to fire hydrants shall be the responsibility of the permittee.

The Department shall not be held responsible for any damage to property or injury to persons arising from the use of any hydrants for any cause whatsoever. Any damage to fire hydrants shall be paid by the person or organization responsible for the damage.

(4) The Department shall, if it approves the request for a change in location of a hydrant, change such location; provided, that the cost of all labor, material, equipment and all other charges are paid in advance by the consumer.

(5) The Department shall not be responsible for any costs of operation or maintenance of any private water system or part thereof.

(6) Fees in accordance with the Department's rate schedule may be assessed to government agencies in order to maintain fire hydrants and make them available for fire protection.

### **Section 3-25. Sale of Water**

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

### **Section 3-26. Master Meter**

(1) A master meter is defined as the installation of water meter for the purpose of providing water service, now or in the future, to more than one lot. It is intended that the water meter or service connection serve only those lots the consumer stated on the application. Unless specifically or previously agreed upon, the Department will not grant water service to a prospective consumer requesting a master meter. If a consumer has a master meter service connection for which prior approval was not granted by the Department then:

- (a) Notice shall be given to the consumer on their non-compliance; and
- (b) If the consumer fails to make satisfactory corrections as determined by the Department, the Department shall initiate procedures for discontinuance of water service.
- (c) The consumer with a master meter shall not provide water to an additional person, dwelling unit, or lot without the Department's written approval and payment of the applicable facilities charge and capital assessment fee if required.

(2) The Consumer with a master meter shall annually, or upon request, provide the Department with a complete list of those they provide water to and those lots that received water at some time during the last twelve (12) months. The listing shall be as of the anniversary date of the original meter installation and shall show the user's name and their tax map key. The listing shall be submitted to the Department no later than thirty (30) calendar days after the anniversary date of the original meter installation or written request from the Department.

(3) Failure of the consumer with the master meter to comply with either Section 3-26(1) or Section 3-26(2) above may result in the termination of water service.

### **Section 3-27. Water Service to Lots Out of The Service Limits**

(1) Where a lot is not immediately adjacent to a distributing main and where the applicant applies for water service and needs to acquire permits, easements, or clearances from any government agency or person for the installation of the consumer supply pipe, before water service is granted, the applicant shall:

- (a) Enter into an Elevation Agreement with the Department if there is less than 40 psi at the meter, or if the property is situated at an elevation that it cannot be assured of adequate service from the Department's water system. In all situations, the Department is not responsible for pressure or flow conditions after the meter.
- (b) Obtain all necessary permits from the Department of Public Works for the installation of the consumer's supply pipe within the County road right-of-way.
- (c) Secure any other permits, clearances, easements from any other affected agency or party for the installation of the consumer's supply pipe.

(2) Water service granted pursuant to this Section is restricted to the lot(s) for which the application is made.

(3) The consumer shall be responsible for the repair and maintenance of the consumer's supply pipe.

### **Section 3-28. Water Service to a Gated Community**

As a condition of water service to any lot within a gated community, the following must be complied with:

(1) Execution and recordation at the Bureau of Conveyances or Land Court, State of Hawai'i, of an indemnification agreement between the Board and the homeowner's association or an agent legally responsible for all the lot owners within the community;

(2) Installation of a locking device for the gate in compliance with the Department's Standards; and

(3) The distribution system and its appurtenances within the gated community must comply with the Department's Rules and Regulations, its Standards, and all applicable County, State, and Federal Regulations before being accepted by the Department.

### **Section 3-29. Agricultural Use Rates**

(1) For purposes of this section, "Agricultural activities" means crop production, flower and other ornamental growing, fruit and other orchard growing, stock raising, dairy farming, and/or aqua-cultural farming, on a commercial basis. "Agricultural activities" do not include canneries, mills, markets or establishments engaged in the conversion, treatment or packaging of agricultural products.

(2) Agricultural Use Rates as adopted by the Board shall be provided to a consumer who is engaged in commercial agricultural activities if the following requirements are met:

(a) The consumer files annually with the Department an Application for Agricultural Use Rate, with a copy of the consumer's current State of Hawai'i General Excise Tax License. The consumer shall note with specificity the agricultural activities engaged in on the Application.

(b) The consumer installs and maintains a back-flow prevention assembly at the consumer's own expense and in accordance with the requirements established by the Department.

(c) The consumer submits, upon request by the Department, a copy of the State of Hawai'i, Department of Taxation Form G-45, General Excise/Use Tax Return, and/or Form G-49, Annual Return & Reconciliation.

(3) The consumer shall notify the Department immediately if agricultural activities cease for a period of more than 120 days.

(4) The cessation of agricultural activities, falsification of the information provided on the Application for Agricultural Use Rate, not complying with the provisions of the Application for Agricultural Use Rate or the provisions of this section shall result in immediate termination of the Agricultural Use Rate.

(5) The Department may limit or restrict water flow to all agricultural water users, whether or not they receive the Agricultural Use Rate, in the event water service to domestic water users is detrimentally impacted due to agricultural water use or water shortage.

## **RULE 4 - RULES REGULATING WATER AND WATER SYSTEM REQUIREMENTS OF DEVELOPMENTS**

### **Section 4-1. Availability of Water and Approval of Development Map**

(1) Any developer whose proposed development is within the service limits established by the Department and where pressure conditions permit, may obtain new or additional water service; provided, that the Department's existing water system facilities are adequate to accommodate the proposed development without impairing service to existing customers, and that the development water system otherwise conforms to these Rules and Regulations and the Department's Standards.

The Department may establish guidelines regarding the availability of water based on the existing water system capacity and anticipated development.

(2) Where large quantities of water are required or a large investment is necessary to provide service, the developer shall be informed as to the conditions under which public water service may be provided to the development. A capital assessment fee, determined and approved by the Board, may be charged for the required improvements, and shall be prorated to the developer and based upon the number of lots, dwelling units or equivalent units in the development.

(3) After the Planning Department submits the development map to the Department, the Department shall inform the Planning Department in writing of its approval, requirements for approval, or its disapproval of the development map.

### **Section 4-2. Development Water System Requirements**

(1) The developer shall install and pay for any onsite and applicable offsite water system elements required for development as determined by the Department. All such elements including, but not limited to, source(s), reservoirs, pipelines, and booster pumps shall be designed and located in accordance with the Department's Standards.

(2) Whenever the Department determines that the elements of the water system proposed to service the development should be of greater capacity than is required by the Department's Standards in order to supply water and fire protection to property not within the development, the Department shall require the developer to oversize the elements.

(3) When the developer is required to install and pay for such oversizing as set forth in the preceding paragraph, the Department may reimburse the developer for the additional cost of the installation over and above the cost of the elements that would have been required as soon as practicable after the acceptance by the Board of the completed work. In no case shall the reimbursement be made for any portion of the cost of an eight-inch (8") main or of a main of lesser size in residential areas or of any portion of the cost of a twelve-inch (12") main or of a main of lesser size in other areas. Reimbursement shall not be made to the developer where such oversizing shall serve only areas under the same ownership as the development under consideration at the time the oversizing is proposed.

After the installation has been completed and dedicated to the Board, the developer shall furnish the Department with an affidavit itemizing the costs incurred for the installation of the oversized elements within thirty (30) days after the dedication. The additional costs, to be reimbursed to the developer shall be determined by the Department.

(4) The Department may make refunds to the developer for their investment in main extensions. Such refunds shall be made upon approval of the Board if the extension meets the following criteria: the main extension size is at least eight (8) inches in diameter; the main extension is part of the Department's overall master plan; and the extension serves the entire general area and not only the areas under the same ownership of the development under construction and on the following basis:

(a) The Department shall, for a period not exceeding five (5) years after the date of dedication of the main extension, refund to the developer seventy (70) percent of all revenues received by the Department after all power and other production charges have been deducted from the revenues, without interest, from water sales and service charges resulting from:

1. All new service connections to the main extension between the public water system and the development, excepting that extensions to other developments shall not be eligible for refund unless approved by the Department;
2. All new service connections made to the mains installed by the developer within the development;
3. All reconnections of existing services to the main extension.

(b) After the work has been completed and accepted, the developer shall furnish the Department with an affidavit itemizing the costs incurred by him in the installation of said main extension. Said affidavits must be submitted no later than thirty (30) days after the dedication of the main extension for the developer to be eligible for the refund.

(c) The Department shall make the final determination as to the cost of the main extension installed by the developer and refunds shall be based upon said estimates of the Department, less any reimbursement made under subparagraph (3) of this section.

(d) Such refunds shall be made as soon as practicable after January 1 of each year and shall be computed on the basis of the revenues received, less the cost of power and production charges, as set forth in subparagraph (1) of this section, for the preceding calendar year for the period of five (5) years after the dedication of the main extension. Under no condition shall an aggregate amount exceeding the refundable amount so computed be refunded. If revenues from such sources are insufficient, an amount less than the amount computed shall be refunded.

(e) All refunds shall be made to the original developer entering into the agreement with the Department.

(f) Refunds shall not be made to developers for mains installed within a development. (See Section 4-3. Installations Within Developments, for reimbursement to developer for increased size of mains installed within developments.)

(g) Refunds shall not be made to a developer for mains installed in a development where such mains were not approved by the Department prior to their installation.

(5) Where water main installation is necessary, the developer shall provide each lot in the development with a service lateral and meter that is adjacent to the lot or an appropriate easement and in conformance with the Department's Standards.

### **Section 4-3. Installations Within Developments**

(1) The developer shall install a development water system in accordance with these Rules and Regulations and the Department's Standards, and shall pay for the cost of the water system required for the development.

(2) The minimum water main size shall be six (6) inches. The standards of the Insurance Services Office in "Grading Schedule for Municipal Fire Protection" and the specific recommendations of the Department shall be used as a guide in the design requirements for fire protection.

(3) When in order to provide for existing or future water services beyond the boundaries of a development, the Department finds that the mains to be installed within the development should be of greater capacity than would be required to provide adequate service within such development, the Department shall require the developer to make installations of such greater capacity.

(4) When the developer is required to install a larger size main for the reasons set forth in the preceding paragraph, the Department shall reimburse the developer 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, that in no case shall reimbursement be made of any portion of the cost of a six-inch (6") main in residential areas or of any portion of the cost of an eight-inch (8") main in other areas; and provided, further that reimbursement shall not be made to the developer where such a larger main or mains shall serve only areas under the same ownership as the development under consideration.

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

(5) Where water main installation is necessary, the developer shall provide each lot in the development with a service lateral and meter that is adjacent to the lot or an appropriate easement, and in conformance with the Department's Standards.

(6) The boundaries of the various zones and districts shall be designated by the State Land Use Commission and the Zoning Code of the County of Hawai'i.

(7) No land use application may proceed unless all lots contain in such application information about the Department's water supply system.

#### **Section 4-4. Sizes of Mains, Hydrants Spacing, Fire Protection**

The minimum main size for all developments, for fire protection, regardless of zoning, shall be six (6) inches.

Hydrant spacing shall be in accordance with the Department's Standards, unless otherwise approved by the Fire Chief of the Fire Department of the County of Hawai'i.

If in the interest of improved fire protection, it is determined that one (1) or more of the required hydrants serve the development if located outside the development, they may be so located and the cost shall still be borne by the developer, subject to the limitation that the cost to the developer shall not exceed the cost to him which would have resulted had all the hydrants been located inside the limits of the developments.

#### **Section 4-5. Materials and Construction Standards, Installation of Water Service, Inspection of Work**

(1) All materials, design and construction procedures, and workmanship, with respect to any development water system, or any portion thereof, that is to be connected to the public water system shall be in accordance with the requirements and standards used by the Department for the construction of the public water system and with the requirements of the State Department of Health and all applicable laws. The Department shall determine the capacity, location, type of materials, and proper construction methods of any of the component parts of the development water system.

If it is anticipated that the development water system or any portion thereof is to be connected to the public water system or will be dedicated or conveyed to the County of Hawai‘i, then the construction of the water system or any portion thereof to be connected to the public water system or be dedicated or conveyed to the County of Hawai‘i must be constructed by a licensed contractor.

(2) No water service shall be approved, excepting a service for development construction purpose, until the development water system has been completed and accepted by the Department and all the improvements required by the Rules and Regulations of the Department have been completed.

(3) The Department shall have free access at all times to all installations made for the development 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.

(4) A development water system not dedicated or conveyed to the Department shall nevertheless be reviewed and inspected by the Department. Prior to the beginning of construction of the required improvements or prior to final approval of a development map, when a suitable bond is posted, the developer shall be required to pay a fee of four-tenths (0.4) of one percent (1%) of the estimated cost of the construction work of the development water system but not less than fifty dollars (\$50.00) to cover the costs of plan review, testing and inspection.

#### **Section 4-6. Facilities Charge**

The developer shall pay the prevailing facilities charge and applicable capital assessment fee for each lot, dwelling unit or equivalent unit of the development prior to final subdivision approval at rates established from time to time by the Board. Copies of the Facilities Charge Schedule, containing the facilities charge rates established by the Board, shall be on file and available at the Department.

Credits towards the total facilities charge may be granted by the Department for elements of the water system which will benefit the Department according to the following schedule:

<b><u>Elements Contributed by the Developer</u></b>	<b><u>Credit</u></b>
(1) Drill and case well	22% of facilities charge
(2) Outfit well - electrical, control building, etc.	15% of facilities charge
(3) Reservoirs	26% of facilities charge
(4) Transmission Pipelines	24% of facilities charge
(5) Booster pumps (per station, 6.5% if one pump)	13% of facilities charge

To receive a credit for any of the above elements, the developer’s contribution must be more than the facilities charge.

#### **Section 4-7. Reservoirs**

(1) Developers shall install and pay for storage tanks, appurtenances, and pipelines from the tank site to the development property. Storage tanks shall be of concrete construction. Storage capacity required shall be determined on the basis of 600 gallons per unit within the area served by the reservoir.

(2) Whenever the developer is required to install a reservoir, together with appurtenances, of greater capacity than is necessary to serve his development, the Department shall make a lump sum reimbursement to the developer of the difference in cost, excluding the cost of appurtenances, of such larger reservoir and the reservoir that would otherwise have been required; provided, that no reimbursement shall be made where such larger reservoir shall serve only areas of the land under the same ownership as the development in question.

(3) If it is determined by the Department that the development does not warrant separate storage facilities or if the storage facilities are already available, the Department may waive the requirement of storage facilities construction, and the developer shall be charged an appropriate facilities charge for each lot or unit of the development.

#### **Section 4-8. Preparation of Plans, Information on Plans, Approval of Plans, Delays in Construction.**

(1) All construction plans governing water system shall be prepared by a registered engineer to the extent of his professional qualifications under the laws of the State.

(2) The construction plans, insofar as the water system is concerned, shall show the following on standard 22" x 36" (with border) sheet or sheets:

(a) Name of development, name of developer, name of engineer, and location of development.

(b) Date, North arrow, scale, and tax map key designation.

(c) The proposed development 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 views drawn to scale of one inch (1") equals one hundred (100), fifty (50), forty (40), or twenty (20) feet. Profile views drawn to a vertical scale of one inch (1") equals ten (10), five (5), or four (4) feet. Manhole, fire hydrant, lateral and other details drawn to a scale of one-half inch (1/2") equals one (1) foot or larger.

(e) The designation, including alignment and width, of all easements. For parts of the water system which shall not be in street areas to be dedicated to the public.

(f) A general layout map showing the location of lots and streets within the development and its near vicinity together with existing and proposed water system.

(g) A small key location inset or vicinity map showing the proposed development in relationship to streets and water mains in the area.

(h) In cases in which the owner or developer also owns areas contiguous to the proposed development or separation therefrom by a street, a sketch of the future street and lot pattern and water system proposed to serve such contiguous areas shall be furnished for study with the construction plans.

(i) When required by the Department, contours or elevations shall be furnished by the developer, based upon the United States Geological Survey or the County of Hawai‘i datum.

(3) All approved and completed plans shall be submitted in an electronic format acceptable by the Department.

(4) No construction of a development water system, or any portions thereof, to be connected to the public water system shall be undertaken prior to approval of the final construction plans and specifications by the Director of the Department of Public Works, County of Hawai‘i, Director of the Hawai‘i County Planning Department, State Department of Health, and when required, all other agencies. After the approval, the developer shall transmit four (4) sets of all final construction plans and specifications to the Manager.

(5) If any period exceeding one (1) year or such extension as may be granted passes without substantial progress in the construction of the water facilities, after approval plans and specifications by the Department, the plans and specifications 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 or amendments of these Rules and Regulations.

#### **Section 4-9. Maximum Time Limit for Review of Development Water System Construction Plans.**

(1) In accordance with Chapter 91-13.5, Hawai‘i Revised Statutes, as amended, this section provides the terms and conditions whereby the Department will specify the maximum time limits for the review of development water system construction plans for business or development related permits. During this period, the Department will either approve, will not approve, or will return the plans for revision and resubmittal.

(2) The maximum time limit for the initial review and for each subsequent review as required will be thirty (30) working days.

(3) The following terms and conditions shall apply. For purposes of this section, when the term “developer” is used it will also include the licensed Architect or Engineer.

- (a) The developer shall be responsible to initially submit all of the following:
  - 1. Complete plans which shall meet the requirements of Section 4-8, all other sections of the rules and regulations, standards, and prevailing policies of the Department;
  - 2. Applicable construction drawings for all underground utilities and facilities which may affect the water system construction;
  - 3. Applicable construction drawings by all other architectural and engineering disciplines;
  - 4. Applicable anticipated maximum daily and peak hour water demands;
  - 5. Applicable water system design analyses; and
  - 6. Any other materials specified by the Manager in writing as necessary for the review of the project.

(b) If the Department determines that the initial submittals are incomplete, the submittals will be returned to the developer without further review, with a written explanation of the deficiencies of the submittal.

(c) The period of time for review shall begin to run upon official receipt at the Department of Water Supply, 345 Kekūanaō‘a Street, Suite 20, Hilo, Hawai‘i, of

satisfactory submittals and shall end when the plans have been approved, denied, or returned to the developer for revisions or additional information. This period of review shall end on the date when the Department sends the notice to the developer of said approval, denial, or return. When a submittal has been returned to the developer for revision or additional information, a new maximum period of time for review shall begin upon resubmittal. The developer shall be informed of the Department's approval, denial, or return to the developer for revision or additional information in writing, or by other electronic notification.

(d) Development water system plans shall be deemed incomplete if the developer has not secured proper clearances from other agencies or if the developer has not secured the necessary water commitments for the development under review.

(e) The maximum period of time for review established pursuant to this section shall be extended, for the period of time affected, in the event of a national disaster, state emergency, union strike, any department emergency, or other circumstance beyond the Department's control which would prevent the developer or department from fulfilling review and approval requirements.

(4) If the plans have neither been approved, disapproved, nor returned for revisions and resubmittal within the maximum time limits specified in this section, then in accordance with Chapter 91-13.5, Hawai'i Revised Statutes, as amended, the plans shall be deemed approved subject to the following reservations. In the interest of public health, safety, and welfare, this automatic approval shall not relieve the developer from the requirement of constructing the development water system in accordance with the standards, rules, prevailing policies, and guidelines of the Department. The developer shall complete and submit the certified as-built development water system plans to the Department. The Department reserves the right to refuse acceptance and dedication of the development water system should the developer fail to comply with these requirements.

#### **Section 4-10. Ownership of Installed Water System**

As a condition precedent to connecting the development water system to the public system, the developer shall dedicate or convey the water system to the Board, and the water system thereafter will be maintained and operated as a part of the public water system; provided, that the Board may refuse to accept dedication or conveyance of the development water system if the Department is of the opinion that the operation and maintenance of the facilities are not in the best interest of the Department and the County. Where the Board refuses to accept dedication or conveyance of the development water system, the development shall be served by a master meter installed within the public right-of-way or the Department's easement. The developer shall on behalf of the buyer or consumer, their heirs, successors and assigns execute a written agreement accepting full responsibility for the maintenance and operation of the development water system and release the Department from all claims on account of the lack of maintenance and operations of the development water system.

If the property in question involves Land Court registered property, the developer or consumer shall record the agreement with the Land Court of the State of Hawai'i. If the property does not involve the Land Court, the Department will record the agreement with the Bureau of Conveyances of the State of Hawai'i. For those development water systems to be conveyed or dedicated to the Department and prior to the commencement of water service, and as a

prerequisite to such service, the developer shall deliver to the Board perpetual easements for all portions of the development water system installed in other than publicly-owned property. The developer shall also convey to the Board fee simple title to all sites on which are located tanks, reservoirs, and pumps constructed by the developer and connected to the public water system together with easements for ingress and egress.

#### **Section 4-11. Modification of Requirements**

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

#### **Section 4-12. Construction Agreement and Bond**

(1) The Department may require a developer to secure a performance bond to guarantee that the developer shall fully complete the development water system and that the development water system be constructed in full compliance with the approved final construction plan and specifications. The bond shall be equal to the cost of the work required to be done by the developer as estimated by the Department. A performance bond is not required where the developer has entered into a contract with a reputable contractor, and has filed with the Department;

- (a) A certified copy of the contract,
- (b) A certified copy of the performance bond of the contractor; and
- (c) A surety bond in a sum equal to at least fifty percent (50%) of the cost of all work required to be done by the developer as estimated by the Department.

(2) If the developer is required to post a performance bond, then the developer shall make a deposit of money with the Department or a responsible escrow agent designated by the Department, in an amount equal to the full cost of the construction of the improvements as estimated by the Department. As an alternate, the developer may make a deposit of negotiable bonds with the Department in an amount equal to the full cost of the construction of the improvements as estimated by the Department.

(3) The developer shall enter into an agreement with the Department to make, install, and complete all of the required improvements, which agreement shall be filed with the Department with the surety bond or other security as specified, and the agreement shall conform to all the requirements of the Rules and Regulations of the Department and the bond shall be conditioned as set forth in the Rules and Regulations of the Department.

#### **Section 4-13. Acceptance of Existing Private Water Systems**

- (1) The Board shall not accept dedication of the following existing private water systems:
  - (a) A stand-alone water system that has its own source, treatment, storage, transmission and/or booster pump(s);

(b) A water system that was a result of a variance from water system improvements granted by the Planning Department, unless the water system is upgraded to comply with the current standards and all Rules and Regulations; and

(c) A system that was constructed to DWS standards, as evidenced by the Final Inspection being granted, more than 20 years prior to the date of the request for dedication.

(2) Dedication to the Board of an existing private water system other than those outlined in paragraph (1) above, is contingent on the following. All cost for compliance shall be borne by the owner(s) of the water system.

(a) Water System Assessment and Evaluation

1. The existing private water system must have been built to prevailing water system standards and the Rules and Regulations at the time the system was initially installed and granted Final Inspection by DWS.

2. A registered land surveyor and engineer, both licensed in the State of Hawai‘i, shall prepare and submit to DWS an up-to-date “AS-BUILT” plan. The AS-BUILT plan shall show all existing features of the water system and other utilities, in addition to the existing roadway, property lines, individual lot boundaries fronting the roadway, and other features as required by the DWS.

3. The DWS shall inspect the existing water system to verify its physical/operating condition, and its conformance with the prevailing water system standards and Rules and Regulations at the time the system was initially installed and granted Final Inspection by DWS. Verification of the physical/operation conditions shall include spot checks of existing pipeline conditions, including exposing the waterline to verify cover, type of pipe material/wrap, and other conditions. DWS reserves the right to enforce the current Standards and all Rules and Regulations for critical elements of the water system. Critical elements are those items that are necessary for the health, safety and welfare of the public as well as those elements that are required by law. If improvements are required, the owner’s engineer shall prepare construction plans showing all needed improvements to the existing water system. The owner(s)’ engineer shall submit the proposed water system improvement plan to the DWS for review and approval prior to construction. The owner(s) shall submit copies of their water system maintenance and private water consumption records for review for the time period specified by DWS.

(b) Construction and Inspection Upon Final Construction Plan Approval:

1. The owner(s) shall construct water system improvements, if required, in conformance with the approved plans, by a contractor licensed in the State of Hawai‘i.

2. The DWS shall inspect the improvements in accordance with the approved plans.

3. The owner(s) shall pressure test and disinfect the water system to the satisfaction of the DWS. The DWS reserves the right to determine the areal extent and method of pressure testing and disinfection. Disinfection includes follow-up water quality tests and submittal of the test results to DWS.

(c) Documents and Fees Required for Final Acceptance of the Existing Private Water System Improvements by DWS:

1. The owner(s) shall execute all required agreements and/or documents required by the Rules and Regulations, which may include, but not be limited to:
  - a) Indemnification Agreement;
  - b) Irrigation Agreement;
  - c) Grant of Easement;
  - d) Elevation Agreement;
  - e) Out of Bounds Agreement;
  - f) Bill of Sale;
  - g) Individual customers' water service application; and
  - h) Any other applicable agreements and/or documents.
2. The owner(s) shall submit all applicable documents, including, but not limited to:
  - a) A one-year written Warranty in favor of DWS for any defects or malfunction in the water system;
  - b) Chlorination certificate, if applicable;
  - c) Maintenance service contract and list of all equipment installed, if applicable;
  - d) "AS BUILT" drawings of the completed water system improvements on electronic file in a format acceptable to the Department;
  - e) Certificates of acceptance from multi-agencies (Government, utility companies) involved with the water system improvements, if applicable;
  - f) Written DWS Final Acceptance of the water system and improvements;
  - g) The age and original cost of the components of the entire existing water system;
  - h) Provide all catalog cut sheets and pump curves for pump equipment and controls, if applicable; and
  - i) Other applicable documents.
3. Remit all applicable Facilities Charges, Capital Assessment Fees, and any other fees.

## **RULE 5 - WATER COMMITMENTS**

If the Department, on the basis of population data, availability of water, existence of water sources, waterlines or other facilities, engineering requirements, and other related and relevant data, anticipates that a consumer, developer or subdivider can be provided with sufficient water for the estimated usage of a proposed new project or development, meeting the Department's minimum standards, the Department may commit to the consumer, developer or subdivider that there is, or it is anticipated that there will be, sufficient water to service the proposed new project or development. The Department, in giving such a water commitment, may impose time limits and other conditions for the use of such commitment upon the consumer, developer or

subdivider, as the Department deems necessary. The Board may establish guidelines and policies for the issuance of formal written water commitments.

(1) Guidelines for Issuing Water Commitments

(a) All water commitments shall be based on the availability of water, at the time the application is made, from the water system which will serve the proposed project.

(b) In determining the availability of water, the Department shall consider population, projections, environmental constraints, past water usage, zoning, land use districting, water system constraints, outstanding water commitments, capital improvement program scheduling, undeveloped available water resources, regulatory requirements of ground water control areas, and any other significant factors.

(c) Where the estimated water requirements of a project exceed 120,000 gallons per day (GPD), the applicant may be required to enter into a Water Development Agreement with the Board as specified in the following paragraph.

(d) Where the Department has determined that the water is not available but could be available with some improvement, the applicant may be required to enter into a Water Development Agreement with the Board should the applicant want a water commitment. The agreement will include, among other things, provisions for the payment for the development of additional sources and system improvements, duration of water commitment, and quantity of water allocated to the project.

(e) Water commitments granted pursuant to Water Development Agreements, shall remain appurtenant to the original parcel which is subject to the Water Development Agreement, and shall only be assignable to successors in interest to that original parcel.

(f) Water Development Agreements as used herein refers to agreements between a developer and the Water Board which set forth the terms and conditions for acceptance of a water system from a developer.

(2) Application for Water Commitment

Water commitments, in the case of subdivisions, rezoning requests, Land Use change requests, all other project development requests and meter requests will be acted upon only after a formal application has been submitted to the proper reviewing agency, hereafter referred to as “reviewing agency,” and a water commitment deposit is paid to the Department.

(3) Water Commitment Deposit

The water commitment deposit shall be \$150.00 per additional lot or per equivalent unit, subject to further change by the Board.

(4) Terms of the Water Commitment

(a) The initial water commitment shall be valid for 3 years and shall automatically expire unless a request for an extension is submitted and approved. Extensions to water commitments will be no longer than 1 year each extension.

(b) Should the Department certify the availability of water on an application made to the County Planning Department, County Planning Commission, or the State Land Use Commission and said application is denied by the agency, the water commitment automatically expires.

(c) Where the applicant has contributed to the cost of improving the system, terms of the water commitment will be made by the Water Development Agreement.

(d) A water commitment issued for a specific lot cannot be transferred to another lot.

(e) Where a lot or land is issued a water commitment and that land changes ownership, the new owner will be subject to the terms of the commitments given to the previous owner.

(5) Extension of Water Commitment

Requests for extension of a water commitment shall be submitted to the Department in writing by the applicant prior to the commitment expiration date. The request for extension shall include a justification report indicating the project status and reasons for the delay.

Notice of the Department's action shall be made in writing to the applicant. An approved extension shall be valid for a period of no more than 1 year from the previous commitment expiration date. Extensions will be subject to an additional water commitment deposit payment as determined in subparagraph (3) of this section. Extensions will be considered for applicants who have sincerely and in good faith proceeded with their project. No extensions will be given to applicants when little or no progress on their development has been made.

(6) Refund for Payment of Water Commitment Deposit

Should the applicant's request be denied by the reviewing agency, 80% of the payment made for the water commitment deposit, as specified in subparagraph (3) of this section, will be refunded to the applicant. Should the applicant voluntarily withdraw or does not proceed with his development within a reasonable time and an extension of time for his commitment is denied, the deposit will be forfeited.

## **RULE 6 - 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 appliance of these Rules and Regulations to other persons or circumstances or property shall not be affected. The Board 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.