

7. Construction, Bonding and Insurance. All of Grantee's construction work shall be performed in accordance with all applicable governmental law, rules and regulations, including those of Grantee. This includes the performance of all construction work by appropriately qualified contractors, the provision of performance and payment bond(s), and the maintenance of all insurance coverage for the duration of any construction period. Grantor shall be named as an additional insured under all insurance policies and bonds, including comprehensive general liability insurance and such coverage shall be required in the bid specifications for the construction work.

8. Operation: Discharge of Water into Wailoa Ditch. The BWS will operate the Well on a full-time basis (consistent with the BWS's normal daily pumping management practices) to discharge water into the Wailoa Ditch or into the Haiku domestic water system.

Grantor hereby grants permission to Grantee to discharge water from the Well into Grantor's Wailoa Ditch (in a location and manner to be approved by EMI), subject to the following conditions:

- (a) Grantee hereby agrees to indemnify, defend and hold harmless Grantor, its affiliates, and their employees from any and all claims (and all costs and expenses resulting therefrom, including reasonable attorneys' fees), including without limitation claims by third parties for environmental or other liabilities and claims for injury, damage or loss to person or property of the Grantor's employees or agents, in any way arising out of or connected with such discharge of water from said Well into the Wailoa Ditch (including the entry of the Grantee's employees or agents onto Grantor's property to carry out such discharge). Grantee acknowledges that Grantor has made no representation or warranty regarding the flow in the Wailoa Ditch, and in particular regarding whether the flow is such as to dilute significantly the chloride level of the well water. The Grantee also hereby releases Grantor, its affiliates and their employees from any and all claims (and all costs and expenses resulting therefrom, including reasonable attorneys' fees) for injury, damage or loss to the Grantee's property, in any way arising out of or connected with such discharge.
- (b) Grantee shall provide Grantor with weekly written reports disclosing the daily amounts pumped from the Well, discharge amounts from the Well into Wailoa Ditch and the results of the water quality monitoring described below.
- (c) Grantee shall monitor on a monthly basis (or other periodic basis acceptable to Grantor) the quality (including the chloride level) of

water from the Well and shall notify Grantor immediately if there is a material change in the chloride level or if it has any reason to believe the quality of the water is such that its use by Grantor may damage Grantor's sugar cane or other crops, its hydroelectric power plants or its mills. If Grantor has reason to believe, in its sole discretion, that the quality of the Well water may damage Grantor's sugar cane or other crops, its hydroelectric power plants or its mills, then upon notice from Grantor, Grantee shall cease (or cause to be ceased) the discharge of Well water into Wailoa Ditch immediately until Grantor is satisfied that the quality is safe.

9. Tank Site. Grantor recognizes the Grantee's potential need for a storage tank in this area, to operate in connection with the Well, together with appurtenant pipelines. At such time as Grantee desires to move forward with tank development, the Grantor agrees to make a suitable site available for it with a mutually acceptable size and location and on terms mutually acceptable to Grantee and Grantor. In this endeavor, the parties agree to cooperate with each other.

10. Taxes. The Grantee shall pay as and when due all real estate taxes and assessments which shall become due with respect to and are properly allocable to Grantee's facilities and those areas of Grantor's land encumbered by the Grantee's facilities.

11. Property "As Is". This Easement is granted subject to the encumbrances affecting Grantors' land as set forth in Section 3 above. Grantee accepts the physical condition of the land and all Easement Areas in "as is" condition. Grantor makes no representations or warranties whatsoever, as to the physical condition of the Easement Area, the suitability of the land for the Grantee's intended purposes, the availability, quantity or quality of any developed or undeveloped water resources, or the applicability of any laws, rules or regulations.

12. Attorney's Fees. If any legal action or arbitration shall be brought by a party to enforce or interpret any provision of this agreement or to redress any breach by the other party, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

13. Appurtenance and Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. The terms "Grantor" and "Grantee" herein shall include their respective successors.

14. Governing Law. This Agreement shall be governed by the laws of the State of Hawaii.