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FOR THE CONSTRUCTION OF WASTEWATER PROJECT,  
LOAN FROM STATE WATER POLLUTION CONTROL REVOLVING FUNDS

Project No. NPS0062 10

Project Title: Hawaii County Cesspool Conversion Project

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INTERIM  
AGREEMENT WITH THE COUNTY OF HAWAII  
FOR STATE REVOLVING FUND LOAN  
FOR THE CONSTRUCTION OF WASTEWATER PROJECT  
LOAN FROM STATE WATER POLLUTION CONTROL REVOLVING FUND

Project No. NPS0062 10

Project Title: Hawaii County Cesspool Conversion Project

THIS INTERIM AGREEMENT, made and entered into as of the 15th day of December, 2003, by and between the DIRECTOR OF THE DEPARTMENT OF HEALTH, STATE OF HAWAII (hereinafter the "DIRECTOR"), and the COUNTY OF HAWAII (hereinafter the "COUNTY"), a Hawaii municipality with principal offices at 101 Pauahi Street, Suite 7, Hilo, Hawaii 96720, (collectively the "parties"), WITNESSES THAT:

WHEREAS, under sections 342D-80 through 342D-87, Hawaii Revised Statutes (HRS), the DIRECTOR and his delegates are authorized to make loans to municipalities for the construction of necessary treatment works and for other projects intended for wastewater reclamation or waste management;

WHEREAS, under sections 342D-80 through 342D-87, HRS, the DIRECTOR and his delegates administer the Water Pollution Control Revolving Fund (WPCRF) (also known as the Revolving Fund under Chapter 342D, HRS; and the Clean Water State Revolving Fund or CWSRF under Chapter 11-65, Hawaii Administrative Rules (HAR));

WHEREAS, the COUNTY has made an application for a loan related to the construction of the Project, hereinafter described, and said Project has been tentatively determined by the DIRECTOR to be eligible for a loan, subject to meeting certain conditions, pursuant to applicable federal and state laws, rules, regulations, guidance, and the Operating Agreement for Activities and Functions in Managing the State WPCRF Program between the State of Hawaii and the United States Environmental Protection Agency, Region IX; and

WHEREAS, the DIRECTOR has conditionally authorized the loan funds for the Project;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. DEFINITIONS Unless the context in this Agreement indicates another meaning, the following terms shall have the following meaning:

a. "Clean Water Act" means the Federal Water Pollution Control Act of 1972, PL 92-500, as amended, 33 U.S.C. secs. 1251 - 1387, and rules and regulations promulgated thereunder.

b. "Construction Cut-off Date" means the date the project is capable of initiating operations as determined by the DIRECTOR. The date determined by the DIRECTOR controls in case of conflict.

c. "Debt Service" means the amount of money necessary to pay interest and principal, and loan fees

on an outstanding debt in accordance with the required contributions to a amortization schedule loan.

d. "Initiation of Operation" means the date specified by the COUNTY on which use of the project begins for the purpose for which it was planned, designed, and built.

e. "Payment" means the loan funds paid to the COUNTY based on COUNTY's WPCRF payment request.

f. "Project" means the activities or tasks concerning a wastewater facility described in the application and financed pursuant to this Agreement.

g. "Project Close-out" means the final actions taken by the DIRECTOR and the COUNTY to assure satisfactory completion of project work and to fulfill administrative requirements; including financial settlement, submission of final audit resolution, and resolution of any outstanding issues under this Agreement.

h. "Project Performance Standards" shall have the meaning assigned by 40 CFR sec. 35.2005(33).

i. "Repayment" means the loan funds paid by the COUNTY to the DIRECTOR.

j. "Semiannual" means occurring every six months.

Words defined in this section will, hereinafter, be in bold print.

2. PROJECT DESCRIPTION The **Project**, Hawaii County

Cesspool Conversion Project, NPS0062 10, consists of the construction of septic tank systems to replace existing cesspools that may be considered as large capacity cesspools for approximately 98 facilities. These facilities which are owned and operated by the County of Hawaii include parks, utility baseyards, police stations and fire stations as particularly described in the loan application of the COUNTY and the plans and specifications approved by the DIRECTOR.

3. ESTIMATED COST OF CONSTRUCTION The estimated cost of the construction is FIVE MILLION, EIGHT HUNDRED EIGHTY-EIGHT THOUSAND DOLLARS (\$5,880,000), and the estimated total eligible cost of the construction **project** is FIVE MILLION, EIGHT HUNDRED EIGHTY-EIGHT THOUSAND DOLLARS, (\$5,880,000). Pursuant to Section 203(a) (2) of the **Clean Water Act**, 33 U.S.C. sec. 1283(a) (2), the only items eligible for SRF participation will be those items specified as "eligible" in a Plans and Specifications Approval Letter, if any is issued, or those costs allowable under 40 CFR sec. 35.2250 (the DIRECTOR is deemed the "Regional Administrator" for the application here of this federal regulation). The **Project** Budget, which is the breakdown of the total eligible cost, is attached hereto as Exhibit "A" and made apart hereof.

4. LOAN AMOUNT Subject to the meeting of the conditions specified in Section 8.f and 12.c, the DIRECTOR shall loan the COUNTY a total amount not to exceed SEVEN MILLION, TWO HUNDRED FORTY-FIVE THOUSAND, EIGHT HUNDRED SIX DOLLARS (\$7,245,806), consisting of SEVEN MILLION, TWO HUNDRED FORTY-FIVE

THOUSAND, EIGHT HUNDRED SIX DOLLARS (\$7,245,806) of CWSRF principal loan **repayments** from federal funds, which shall be paid from Appropriation Account No. S-04-341-H-015206-00-402.

5. COMPLETION OF THE PROJECT The COUNTY shall proceed with and complete construction of the **Project** in accordance with **Project** plans and specifications approved by the DIRECTOR. The COUNTY shall maintain progress of the **Project** as specified on the **Project** Schedule. The **Project** Schedule is attached hereto as Exhibit "B" and made a part hereof.

6. NOTIFICATION Whenever, under the terms of this Agreement, a notice, a report, **payment, repayment,** or loan fee is required to be given by one party to another, such notice, report, **payment, repayment,** or loan fee shall be directed to the individuals specified below, at the addresses given, unless a party gives a notice in writing to the other party that another individual has been designated to receive such communications:

Harold Yee  
Chief, Wastewater Branch  
Hawaii State Department of Health  
919 Ala Moana Boulevard #309  
Honolulu, Hawaii 96814  
Telephone: (808) 586-4294  
Telefax: (808) 586-4300

Bruce McClure  
Director  
Department of Public Works  
County of Hawaii  
101 Pauahi Street, Suite 7  
Hilo, Hawaii 96720  
Telephone: (808) 961-8321  
Telefax: (808) 961-8630

7. PROJECT CERTIFICATION The COUNTY shall notify the

DIRECTOR in writing of the date of **initiation of operation**. One year after **initiation of operation**, the COUNTY shall submit a **project** performance evaluation report and certify to the DIRECTOR that the **Project**, as of that date, meets the **project performance standards**. If the COUNTY cannot certify that the **Project** meets the **project performance standards** one year after **initiation of operation**, the COUNTY shall at its own expense, take corrective actions to allow affirmative certifications for the **Project**, and the COUNTY shall also submit to the DIRECTOR for the DIRECTOR's approval the following:

a. A corrective action report which includes an analysis of the cause of the **Project's** failure to meet the performance standards and an estimate of the nature, scope, and cost of the corrective action necessary to bring the **Project** within the **project performance standards**;

b. The schedule for undertaking the corrective action necessary to bring the **Project** within the **project performance standards**; and

c. The scheduled date for certifying to the DIRECTOR that the **Project** is meeting the **project performance standards**.

8. **PAYMENTS** The loan amount shall be paid as follows:

a. Funds from the loan amount shall be paid on a monthly basis to the COUNTY upon receipt of proper and

acceptable **payment** requests from the COUNTY.

b. The COUNTY shall not request **payment** for any **Project** cost until such cost has been incurred and is due and payable to **Project** contractors, although it is agreed that actual payment of such cost by the COUNTY is not required as a condition for submitting the **payment** request.

c. The COUNTY's **payment** request shall be submitted to the DIRECTOR on a monthly basis and include the following:

(1) Copies of the invoices or claims, and costs summary sheet with signatures certifying the invoices from the Construction Management firm and the Contractor as submitted to the COUNTY for **payment**.

(2) The COUNTY's estimate of per cent of completion of the **Project** to justify the progress **payment** requested.

(3) A spreadsheet summarizing contractor's invoices, consultant's invoices, administration costs, total eligible and ineligible costs. The spreadsheet is commonly known as the "Combined Voucher Register and Expenditure Distribution Journal."

d. Payment to the COUNTY's contractor(s) remains the responsibility of the COUNTY.



e. The DIRECTOR's obligation to pay any sum to COUNTY under any provision of this Agreement is contingent upon the availability of sufficient funds to permit the **payments** provided for herein. In the event that sufficient funds do not become available for reasons beyond the reasonable control of the DIRECTOR, such as failure of the federal or state government to appropriate funds necessary for **payments** of loan amounts, the DIRECTOR shall not be obligated to make any **payments** to the COUNTY under this Agreement. If any **payments** which are otherwise due to the COUNTY under this Agreement are deferred because of unavailability of sufficient funds, such **payments** will promptly be made to the COUNTY when sufficient funds do become available.

f. The Director's obligation to make **payments** of any sum to the COUNTY under any provision of this Interim Agreement is conditional upon:

- 1) The submittal by the COUNTY and approval by the DIRECTOR of a Site Certification, and Resolution, or Ordinance passed by the COUNTY Council which authorizes or ratifies the WPCRF loan application and identifies the dedicated source(s) of revenue which will fund the **Project** and **repayment** of the loan with interest and payment of loan fees;

2) The submittal by the COUNTY and approval by the DIRECTOR of the Pre-Award Package (Pre-Award Form and EPA form 4700-4, "Preaward Compliance Review Report for All Applicants Requesting Federal Financial Assistance");

3) The amendment or replacement of this agreement to identify security for this **Project** loan, interest, and loan fee, which shall be the dedicated source of revenue to fund the **Project** and repay the loan with interest, and pay loan fees, and such dedicated source shall include a COUNTY pledge of the COUNTY'S full faith and credit as shown in a Resolution or Ordinance to be attached to the Agreement as an exhibit; and

4) Completion, to the satisfaction of the DIRECTOR, of the planning phase described in the COUNTY SRF Manual (PROCEDURES TO PARTICIPATE IN THE HAWAII STATE REVOLVING FUND LOAN PROGRAM, dated June 1995), including proper Environmental Assessment Documents, completion of any applicable Environmental Review Process, and the DIRECTOR'S approval of the plans and specifications.

9. WITHHOLDING OF LOAN PAYMENTS The DIRECTOR may withhold all or any portion of the loan amount provided for by this Agreement in the event that:

a. The COUNTY has violated, or threatens to

violate, any term, provision, condition, or commitment of this Agreement; or

b. The COUNTY fails to maintain progress toward completion of the **Project** in accordance with the **Project** Schedule; or

c. Any costs incurred after the **construction cut-off date** shall be ineligible for WPCRF loan funding; or

d. sections 8.f and 12.c are not met.

10. INTEREST The loan interest rate is two and fifteen one hundredth per cent (2.15%) per annum.

Interest begins to accrue from the date of the State issued warrant or check for each loan amount paid to the COUNTY.

11. REPAYMENT OF LOAN The loan, including interest shall be repaid as follows:

a. After the DIRECTOR makes loan **payments** to the COUNTY, then the COUNTY shall repay the loan amount, together with all interest accruing thereon, in thirty nine (39) **semiannual** installments, with the first **repayment** due one year after the date of Notice to Proceed or the date of the Final Agreement, whichever is later, for this construction **project**. The actual **repayments** will be based on **payments** made to the COUNTY. The last **semiannual** installment of principal and interest shall be repaid to the DIRECTOR not later than twenty (20) years after the date of the Notice to

Proceed or the date of the Final Agreement, whichever is later.

b. The **semiannual repayments** shall be based on the following calculations:

(1) Calculate the **repayment** amount using the formula below for a standard fully amortized loan with equal **semiannual repayments**.

$$R = P \frac{i}{1 - (i+1)^{-n}}$$

i = interest rate

P = Balance of the principal amount paid to the COUNTY

R = **Repayment** amount

n = Term, thirty nine (39) **semiannual** installments less the number of **repayments** made.

(2) The actual interest accrued during the year shall be applied to the **repayment** amount. The remaining amount of **repayment** shall be applied to the principal.

c. The COUNTY shall repay the principal and interest on or before each **semiannual** due date. A fifteen (15) day grace period shall be allowed.

d. Following the final loan **payment**, a Loan **Repayment** Amortization and Fee Schedule shall be mailed to the COUNTY to accurately reflect the **repayment** of principal, interest and payment of loan fee amounts due under this Agreement.

e. The COUNTY may, with the DIRECTOR'S prior

approval, at any time prepay the loan and such prepayment will be applied to the principal of the loan. The prepayment amount will not reduce the amount of the **semiannual repayment**. The term of the loan, however, will be reduced and a revised Loan **Repayment** Amortization and Fee Schedule will be sent to the COUNTY.

f. The COUNTY shall repay the principal and interest by check or warrant, made payable to the STATE OF HAWAII, DIRECTOR OF THE DEPARTMENT OF HEALTH, and delivered to the address as specified in section 6.

g. In the event circumstances prevent the COUNTY from complying with this section, the DIRECTOR shall be entitled to collect interest from the COUNTY on the amount of the **semiannual repayment** at the effective rate of twelve per cent (12%) simple interest per year commencing on the first day following the **repayment** due date and ending on the date of the check or warrant issued by the COUNTY.

## 12. SECURITY AND DEFAULT

a. The DIRECTOR shall not approve new loan applications from the COUNTY if any current loan is in default. A default is deemed to exist if **repayments** or loan fees on current loans are not paid when due, if the COUNTY fails to fulfill its obligations under this Agreement, or if the COUNTY becomes financially

insolvent.

b. In the event the COUNTY fails to remit the **semiannual repayments** or loan fees as established in the Loan **Repayment** Amortization and Fee Schedule, the DIRECTOR shall deliver by certified mail a written notice of such failure to the COUNTY. In the event the COUNTY fails to cure **repayment** or loan fee delinquency within thirty (30) days after the receipt of such notice, the DIRECTOR shall notify the Attorney General of the State of Hawaii of the default of the COUNTY.

c. Security for this **Project** loan, interest, and loan fee shall be provided by the COUNTY. This Agreement shall be amended or replaced to identify such security to the DIRECTOR's satisfaction. Such security shall be the dedicated source of revenue to fund the **Project** and repay the loan with interest and loan fee, and such dedicated source shall include a COUNTY pledge of the COUNTY's full faith and credit as shown in a Resolution or Ordinance passed by the COUNTY Council and attached to the Agreement as an exhibit. When the COUNTY pledges its full faith and credit, this Agreement shall be amended or replaced so that the COUNTY will covenant that,

"The COUNTY shall exercise its general obligation authority as needed to pay the **semiannual repayments** and loan fee due hereunder.

As needed, the COUNTY shall establish, increase and collect such fees and taxes and make such adjustments to raise funds sufficient to pay such **semiannual repayments**, loan fees and costs. The COUNTY pledges its full faith and credit, and covenants to exercise that authority as needed, to the extent allowed by law."

d. The COUNTY shall maintain a dedicated source of revenue in an amount equal to the maximum annual **debt service** requirements under this Agreement.

e. A pledge of the COUNTY's full faith and credit is the COUNTY's "dedicated source of revenue" under 33 U.S.C § 1383 (d)(1)(C), 40 C.F.R § 35.3120(a)(1)(iv), and H.R.S. § 342D-87(d).

f. In addition to all rights and remedies provided by the laws of the State of Hawaii, the COUNTY agrees that in the event the COUNTY defaults in **repayments** or loan fee payments to be made to the DEPARTMENT OF HEALTH as required by this Agreement or defaults in the observance or performance of any other provisions of this Agreement, the DIRECTOR shall be entitled to an order or a writ of mandamus issued by a court of proper jurisdiction, compelling and requiring the COUNTY and its officers to observe and perform any covenant, condition or obligation prescribed in this Agreement.

g. No delay or omission to exercise any right or power shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. The specific remedy herein provided shall be cumulative of all other existing remedies and the specification of such remedy shall not be deemed to be exclusive.

13. USER CHARGE SYSTEM The COUNTY shall at all times maintain a User Charge System designed to produce adequate revenue required for operation and maintenance (including replacement) in accordance with 40 CFR sec. 35.2140 (the COUNTY is deemed the "grantee" and the DIRECTOR is deemed the "Regional Administrator" for the application here of this federal regulation).

The User Charge System may include ad valorem taxes, user charges based on actual use, or other sources of income which are consistent with federal requirements.

The COUNTY guarantees that revenues from the User Charge System will be set aside for operation and maintenance (including replacement) and not used for other purposes.

The COUNTY further agrees to annually review and if necessary, modify the User Charge System in accordance with 40 CFR sec. 35.2122. (The COUNTY is deemed the "applicant" and the DIRECTOR is deemed the "regional Administrator" for the application here of this Federal Regulation.) The User Charge



System and all modifications thereof shall be consistent with applicable guidelines established by the DIRECTOR.

14. PROJECT PROCUREMENT The COUNTY shall:

a. Procure the architectural/engineering services in accordance with Chapter 103D of the Hawaii Revised Statutes and County of Hawaii Consultant Selection Procedures.

b. Procure the construction contractor(s) in accordance with Chapter 103D of the Hawaii Revised Statutes.

c. Not consider contractors debarred, suspended or voluntarily excluded from participating in federally assisted programs.

d. Award the prime construction contract for the **Project** no later than ninety (90) days after the date of the Final Loan Agreement. The COUNTY shall promptly submit a copy of the Notice to Proceed to the DIRECTOR.

e. Provide the DIRECTOR an executed copy of the contract between the COUNTY and contractor(s).

f. Submit the following documents with the contract:

(1) An affidavit of publication from the newspaper agencies of the bid solicitation as proof of advertising.

(2) Detailed bid tabulation, bid proposals, and the award recommendation, certified by the

engineer responsible for overseeing construction.

(3) Detailed cost breakdown supporting each item of the **project** cost.

g. Submit subagreements for Construction Management work and services during construction to the DIRECTOR for approval. No **payments** for the affected engineering work shall be made to the COUNTY under this loan until the subagreements have been approved.

h. Provide certification to the DIRECTOR that affirmative steps, in accordance with 40 CFR sec. 35.3145(d), were taken to encourage participation of small, minority, and women's business enterprises in **Project** construction and documentation of the intended use of such enterprises therein. The COUNTY is deemed as "grantee" for the application here of this federal regulation.

15. INSURANCE

a. The COUNTY shall ensure that contractor(s) obtain and keep in force the following until the **construction cut-off date**:

(1) Performance and payment bonds for the full amount of the contracts.

(2) Insurance against customary risks during the period of construction shall also be provided.

(3) Builder's risk or similar types of insurance in an amount equal to the full

replacement cost of the **Project**, to the extent that such insurance is obtainable for the duration of the construction period against any one or more of such risks.

b. The COUNTY shall acquire and maintain, upon the **initiation of operation**, any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, for the useful life of the **Project**. This condition shall not be applicable if the **Project** location is outside the boundaries of a special flood hazard area delineated on a Flood Hazard Boundary Map of Flood Insurance Rate Map which has been issued by the Federal Emergency Management Agency. This condition shall not be applicable if the total value of improvements insurable under the National Flood Insurance Act is less than \$10,000.

c. As documentation of insurance coverage, the COUNTY shall submit to the DIRECTOR copies of the bonding and insurance certifications or policies.

16. CONSTRUCTION ACTIVITIES The COUNTY shall promptly notify the DIRECTOR in writing of:

a. Any proposed change in scope of the **Project**. No change will be undertaken until written notice of the proposed change has been provided to the DIRECTOR and the DIRECTOR has given written approval for such change.

b. Any construction change order when the change will increase construction costs. Change orders shall comply with 40 CFR sec. 35.938-5. The COUNTY is deemed the "grantee" for the application here of this federal regulation. The COUNTY is responsible for additional costs that are ineligible for loan funding or when the loan funds are unavailable.

c. Cessation of all major construction work on the **Project** where such cessation of work is expected or does extend for a period of thirty (30) days or more.

d. Any circumstance, combination of circumstances, or condition which is expected to or does delay completion of construction for a period of ninety (90) days or more beyond the estimated date of completion of construction previously provided to the DIRECTOR.

e. Completion of construction of the **Project**.

17. ARCHEOLOGICAL AND HISTORICAL PRESERVATION Should the discovery of potential archaeological or historical resource occur during construction, all works in the area of the find will stop and the construction consultant shall be called in to evaluate the situation and make recommendations to the State Historic Preservation Officer, Department of Land and Natural Resources, State of Hawaii. Said Historic Preservation Officer shall determine what shall be necessary for construction to proceed.

18. RECORDS MAINTENANCE, RETENTION, AND ACCESS The COUNTY shall maintain, retain, and allow access to the **Project** records in accordance with 40 CFR sec. 31.42 (the COUNTY is deemed the "grantee" for the application here of this federal regulation) and in the following manner:

a. Establish an official file for the construction phase which shall document all significant actions regarding the **Project**.

b. Establish accounts to record all amounts received and expended on the **Project**, including all loan funds received under this Agreement.

c. Establish accounts to record all income received for the **Project**, specifically including any income attributable to loan amounts received under this Agreement.

d. Establish an accounting system which will depict final total costs of the **Project**, including both direct and indirect costs. The accounting system shall conform to Generally Accepted Accounting Principles (GAAP) as contained in "Codification of Governmental Accounting and Financial Reporting Standards" as published by Governmental Accounting Standards Board.

e. Establish such accounts and maintain such records as may be necessary for the DIRECTOR to fulfill federal reporting requirements, including any and all reporting requirements under federal tax

statutes or regulations.

f. Allow the DIRECTOR, the Comptroller of the State of Hawaii, the federal granting agency, the Comptroller General of the United States, and any of their authorized representatives, the committees (and their staffs) of the Congress and Legislature of the State of Hawaii, and the Legislative Auditor of the State of Hawaii to have the right of access to any book, document, paper, file, or other record of the COUNTY (and of any of its subcontractors) that is related to the performance of the provisions under this Agreement in order to conduct an audit or other examination or to make excerpts and transcripts for the purposes of monitoring and evaluating the COUNTY's performance of the provisions and the COUNTY's program, management, and fiscal practices to assure the proper and effective expenditure of funds under this Agreement. The right of access shall not be limited to the required retention period but shall last as long as the records are retained.

g. The COUNTY shall retain all records related to the COUNTY's performance of the provisions under this Agreement for at least three (3) years after the date of submission of the COUNTY's final expenditure report, except that if any litigation, claim, negotiation, investigation, audit, or other action

involving the records has been started before the expiration of the three-year period, the COUNTY shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year retention period, whichever occurs later.

19. PROJECT ACCESS The COUNTY shall ensure that the Environmental Protection Agency and the DIRECTOR, or any authorized representative thereof, will have access to the **Project** site at all reasonable times during **Project** construction and thereafter for the useful life of the **Project**. Inspections may be unannounced.

20. REPORTS The COUNTY shall submit to the DIRECTOR by September 30th of each year, an Annual Report of the **debt service** and loan fees of the **Project** during the course of the loan **repayment** period. These reports shall summarize all income and expenses (operating and non-operating) of the **Project** for the year and include any revisions to the projected income and expenses for the remainder of the loan **repayment** period. The purpose of the reports is to update the DIRECTOR on the **Project's** financial status and to determine whether the **Project** is able to meet its **repayment** and loan fee obligation.

21. AUDITS The COUNTY shall conduct an annual audit performed by an independent auditor in accordance with OMB Circular No. A-133, "Audits of State, Local Governments, and Non-Profit Organizations" (June 1997), and the Single Audit Act of

1984, Public Law 98-502, as amended (31 U.S.C. secs. 7501-7). Audits may be conducted in conjunction with the COUNTY's annual audit.

The COUNTY shall deliver to the DIRECTOR the audit report annually.

22. INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES

In the performance of the provisions required under this Agreement, the COUNTY shall be an "independent contractor" with the authority and responsibility to control and direct the performance and details of the work required under this Agreement; however, the DIRECTOR shall have a general right to inspect work in progress to determine whether, in the DIRECTOR's opinion, the provisions are being performed by the COUNTY in accordance with the provisions of this Agreement. All persons hired or used by the COUNTY shall be the COUNTY's employees and agents and the COUNTY shall ensure that such persons are qualified to engage in the activity in which they participate. The COUNTY shall be responsible for the accuracy, completeness, and adequacy of any and all work performed by the COUNTY's employees and agents and shall ensure that all applicable licensing and operating requirements of the state, federal, and county governments and all applicable accreditation and other standards of quality generally accepted in the field of the COUNTY's activities are complied with and satisfactorily met. Furthermore, the COUNTY intentionally, voluntarily, and knowingly assumes the sole and entire liability (if any such liability is



determined to exist) for its employees and agents or to other persons for all loss, damage, or injury caused by the COUNTY's employees and agents in the course of their employment. The mere participation in the performance of provisions under this Agreement shall not constitute nor be construed as employment with the State of Hawaii and shall not entitle the COUNTY or the COUNTY's employees, agents, or subcontractors to vacation, sick leave, retirement, worker's compensation, or other benefits afforded state employees by statute. The COUNTY shall be responsible for payment of applicable income, social security, and any other federal, state, or county taxes and fees.

23. DEFENSE AND INDEMNIFICATION The COUNTY shall defend, indemnify, and save harmless the State of Hawaii, the DIRECTOR, and their officers, employees, and agents from and against any and all actions, claims, suits, damages, and costs arising out of or resulting from the acts or omissions of the COUNTY or the COUNTY's officers, employees, agents, contractors, or subcontractors occurring during or in connection with the performance of the COUNTY's services under this Agreement. The COUNTY shall defend and indemnify the State of Hawaii, the DIRECTOR, and their officers, and agents against any such action or claim unless the action or claim involves an act or omission solely of the State or the DIRECTOR, their officers, employees, or agents.

24. ASSIGNMENTS The COUNTY shall not assign any part or all of the provisions to be performed under this Agreement

without the prior written consent and approval of the DIRECTOR. The DIRECTOR may condition any consent and approval upon such terms and provisions that the DIRECTOR may deem necessary. Furthermore, no assignment of claims for money due or to become due to the COUNTY under this Agreement shall be effective unless the assignment of such claims is first approved by the DIRECTOR and the Comptroller of the State of Hawaii.

25. COMPLIANCE WITH LAWS, REGULATIONS, ETC. The COUNTY shall:

a. Comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements to include, but not be limited to, the list of federal "cross-cutting" authorities as identified in Exhibit "C" and made a part hereof. In particular, no person performing work under this Agreement, including any subcontractor, employee, or agent of the COUNTY, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

b. Conduct an environmental review of the **Project** that meets the requirements of the U.S. Environmental Protection Agency's 40 CFR Part 6, Subpart E and 40 CFR sec. 35.3140.

c. Adopt and maintain a user charge system and sewer use ordinance for the useful life of the **Project**.

The user charge system and sewer use ordinance shall comply with the requirements of 40 CFR sec. 35.2140 and shall be reviewed and approved by the DIRECTOR annually. The COUNTY is deemed the "applicant" and the DIRECTOR is deemed the "Regional Administrator" for the application here of this federal regulation.

26. LOBBYING No portion of this loan shall be used for lobbying or propaganda purposes as prohibited by 18 U.S.C.A. sec. 1913 (West 1984), or section 607(a) of Public Law 96-74, 93 Stat. 575 (Sept 29, 1979).

27. OTHER CONDITIONS The COUNTY shall comply with the Other Conditions listed in Exhibit "D", attached hereto and made a part hereof, to maximize the beneficial use of this loan Agreement.

28. WAIVERS OF VIOLATIONS It is expressly understood and agreed that no waiver granted by the DIRECTOR on account of any violation of any promise, term, or condition of this Agreement shall constitute or be construed in any manner as a waiver of the promise, term, or condition or of the right to enforce the same as to any other or further violation.

It is further expressly understood and agreed that the failure of the DIRECTOR to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the DIRECTOR's right to enforce the same in accordance with this Agreement.

29. DISPUTES Any dispute arising out of this Agreement, which is not disposed of by mutual agreement within thirty (30) calendar days, shall, unless both the COUNTY and the DIRECTOR mutually agree to an arbitration, be decided by the DIRECTOR or his designated representative, who shall reduce the decision to writing and mail or otherwise furnish a copy of the decision to the COUNTY. The decision of the DIRECTOR, or his designated representative, or the agreed upon arbitrator(s), shall be final and conclusive. Pending final decision of such a dispute, the COUNTY shall proceed diligently with the performance of the provisions under this Agreement in accordance with the DIRECTOR's requests. The COUNTY shall pay for any DIRECTOR's expenses, including legal fees and collection fees, arising from nonpayment or late **repayments** of principal, interest, and loan fees of this Agreement.

30. MODIFICATION OF AGREEMENT Any modification, alteration, or change to this Agreement, including modification of the provisions to be performed, increase (subject to the availability of funds) or decrease in the amount of the loan, shall be made only by written supplemental agreements executed by the parties.

31. TERMINATION OF AGREEMENT

a. This Agreement may be terminated by the DIRECTOR upon written notice to the COUNTY during construction of the **Project**, or thereafter at any time prior to complete **repayment** of principal, interest and

payment of loan fees by the COUNTY, upon violation by the COUNTY of any material provision of this Loan Agreement after such violation has been called to the attention of the COUNTY and after failure of the COUNTY to bring itself into compliance with the provisions of this Agreement within a reasonable time.

b. In the event of such termination under Section 31.a, above, the COUNTY agrees, upon demand, to immediately repay to the DIRECTOR an amount equal to the current balance due on the loan, including accrued interest and loan fees.

c. This Interim Agreement may be terminated at any time by either the COUNTY or the DIRECTOR before written modification of this Interim Agreement in compliance with Sections 8.f (3) and 12.c. Such termination shall be effective by receipt of notice from the terminating party.

d. The parties intend to replace this Interim Agreement with a Final Agreement or Amend this Interim Agreement to become a Final Agreement, after COUNTY compliance with the conditions in sections 8.f and 12.c.

32. SEVERABILITY In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.

33. LOAN FEE

a. The COUNTY shall pay the DIRECTOR a **semiannual** loan fee which shall be computed based on the outstanding principal balance, and be payable on, the same dates that corresponding **repayments** of the principal and interest on the loan are due. The **semiannual** loan fee is calculated by taking one half per cent (0.5%) of the outstanding principal balance at the time the **semiannual repayment** is due.

b. Each loan fee shall be paid when the **semiannual repayment** is due, as specified in subsection 11.a of this Agreement. A fifteen (15) day grace period shall be allowed.

c. Following the final loan **payment**, a Loan **Repayment** Amortization and Fee Schedule shall be mailed to the County to accurately reflect the **repayment** and loan fee amounts due under this Agreement.

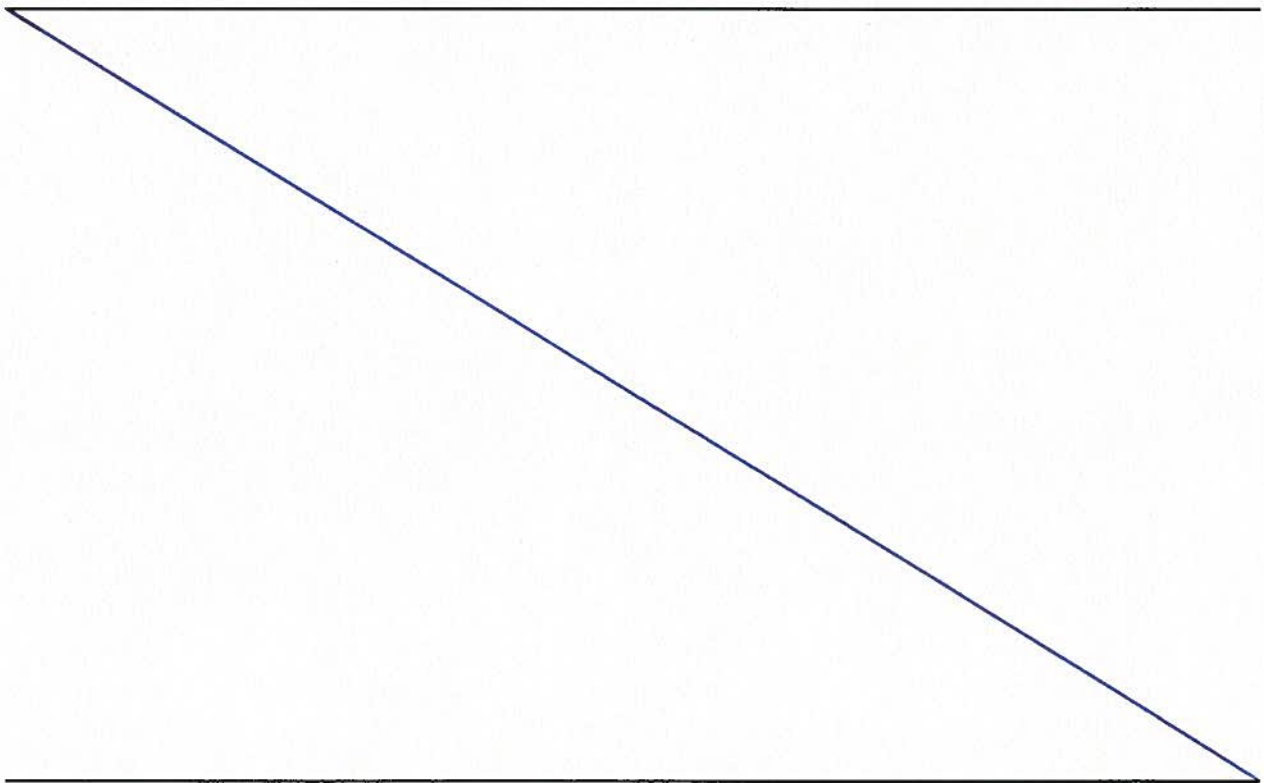
d. The COUNTY shall repay the loan fee by check or warrant, made payable to the STATE OF HAWAII, DIRECTOR OF THE DEPARTMENT OF HEALTH, and delivered to the address as specified in section 6.

e. In the event circumstances prevent the COUNTY from complying with this section, the DIRECTOR shall be entitled to collect interest from the COUNTY on the amount of the loan fee at the effective rate of twelve per cent (12%) simple interest per year commencing on

the first day following the **repayment** due date and ending on the date of the check or warrant issued by the COUNTY.

34. EFFECTIVE AND TERMINATION DATES The effective date of this Agreement is the date first above written. This Agreement shall remain in effect for the useful life of the **Project** or until the date of the final loan **repayment** and loan fee payment are received, whichever period is longer, unless this agreement is sooner terminated or extended.

35. AUTHORIZATION The parties certify that their undersigned representatives are fully authorized to enter into this Agreement, to execute it on behalf of the parties, and to legally bind the parties to its terms.



IN VIEW OF THE ABOVE, the parties execute this Agreement by their signatures, to be effective as of the date above written.

DEPARTMENT OF HEALTH,  
STATE OF HAWAII

By *Janet Kadokura*  
for Its Director of Health

COUNTY OF HAWAII

By *Maalo*  
Its Mayor ~~Managing Director~~ *MD*

By *William*  
Its Director of Finance

APPROVED AS TO CONTENT:

*Bruce C. McClure*  
Director  
Department of Public Works  
COUNTY OF HAWAII

APPROVED AS TO FORM:

*William B. Powell*  
Deputy Attorney General  
State of Hawaii

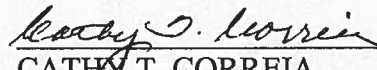
APPROVED AS TO FORM AND LEGALITY:

*Miaue A. Rode*  
Deputy Corporation Counsel  
COUNTY OF HAWAII

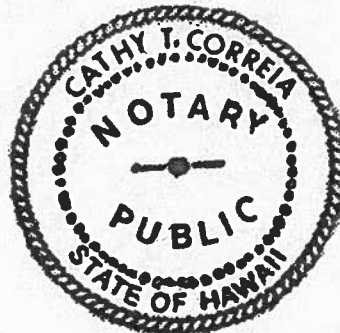


STATE OF HAWAII            )  
  ) SS.  
COUNTY OF HAWAII        )

On this 12th day of January, 2004, before me personally appeared DIXIE KAETSU, to me personally known, who, being by me duly sworn, did say that she is the Managing Director of the County of Hawaii, a municipal corporation of the State of Hawaii; that the seal affixed to the foregoing instrument is the corporate seal of said County of Hawaii; that the foregoing instrument was signed and sealed in behalf of the County of Hawaii by authority given to said Mayor of the County of Hawaii by Section 5-1.3(g) of the County Charter, County of Hawaii (2000), as amended, and assigned by the Mayor to the Managing Director pursuant to Section 6-1.3(h) of the County Charter; and said DIXIE KAETSU acknowledged said instrument to be the free act and deed of said County of Hawaii.

  
CATHY T. CORREIA  
Notary Public, State of Hawaii

My commission expires: 10/13/06



## PROJECT BUDGET

The COUNTY and the DIRECTOR acknowledge that the actual cost of the **Project** has not been determined as of the effective date of this Agreement. **Project** cost adjustments may be made as a result of construction bidding or mutually agreed upon **Project** changes. The final cost shall be established after all **Project** costs are reviewed subsequent to **Project** performance certification. Changes in **Project** costs may also occur as a result of the COUNTY's **Project** audit or an independent audit under the Single Audit Act. Until this Agreement is amended, the COUNTY agrees to the following estimates for the **Project** cost:

1. Architectural engineering basic fees (Design Allowance)	\$ 307,406
2. Other architectural engineering fees	
3. <b>Project</b> inspection fees - CM (Estimate - 8% of construction costs)	470,400
4. Construction and <b>project</b> improvement	5,880,000
5. Equipment	
6. Total (Line 1 through 5)	6,657,806
7. Less: Ineligible Exclusions	
8. Add: Contingencies	588,000
9. Total Eligible <b>Project</b> Amount	
10. SRF loan requested of Line 9	7,245,806
11. County share	
12. Other shares	
13. Total <b>project</b> costs (Lines 10,11,& 12)	7,245,806

Exhibit "A"

PROJECT SCHEDULE

	Est. Date
A. Notice to Proceed	5/2004
B. Completion of Construction	5/2005
C. <b>Project</b> Duration from start to finish (months)	12

Exhibit "B"

LIST OF FEDERAL LAWS AND AUTHORITIES  
(FEDERAL "CROSS-CUTTING" AUTHORITIES)

Federal Law in effect when the Agreement is signed shall apply. References below from years of publication and page numbers may have been superseded.

ENVIRONMENTAL:

- ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974, 16 U.S.C.A. secs. 469-469b (West 1985)
- CLEAN AIR ACT, 42 U.S.C.A. sec. 7506(c) (West 1983 and Supp. 1990)
- COASTAL BARRIER RESOURCES ACT, 16 U.S.C.A. secs. 3501-3510, (West 1985 and Supp. 1990)
- COASTAL ZONE MANAGEMENT ACT OF 1972, 16 U.S.C.A. secs. 1451-1464 (West 1985 and Supp. 1990)
- ENDANGERED SPECIES ACT 16 U.S.C.A. secs. 1531-1543 (West 1985 and Supp. 1990)
- FARMLAND PROTECTION POLICY ACT, 7 U.S.C.A. secs. 4201-4209 (West 1988)
- FISH AND WILDLIFE COORDINATION ACT, 16 U.S.C.A. secs. 661-664 (West 1985 and Supp. 1990)
- FLOODPLAIN MANAGEMENT, EXECUTIVE ORDER 11988, 3 C.F.R. 117 (1978), reprinted in 42 U.S.C.A. sec. 4321, ann. at 286-288 (West Supp. 1993), as amended by FEDERAL EMERGENCY MANAGEMENT, EXECUTIVE ORDER 12148, sec. 5-207, 3 C.F.R. 412 (1980), reprinted in 50 APP. U.S.C.A. sec. 2251, ann. at 169-174 (West 1991)
- NATIONAL HISTORIC PRESERVATION ACT OF 1966, 16 U.S.C.A. secs. 470-470w-6 (West 1985 and Supp. 1990)
- PROTECTION OF WETLANDS, EXECUTIVE ORDER 11990, 3 C.F.R. 121 (1978), reprinted in 42 U.S.C.A. sec. 4321, ann. at 288-289 (West Supp. 1993)
- SAFE DRINKING WATER ACT, 42 U.S.C.A. secs. 300f-300j-9 (West 1982)

ECONOMIC:

- ADMINISTRATION OF THE CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS, EXECUTIVE ORDER 11738, 3 C.F.R. 799 (1971-1975), reprinted in 42 U.S.C.A. sec. 7606, ann. at 693-694 (West 1983)
- DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966, 42 U.S.C.A. secs. 3311-3339, 3371, and 3374 (West 1977 and Supp. 1990)
- FEDERAL PROCUREMENT, CLEAN AIR ACT, sec. 306, 42 U.S.C.A. sec. 7606 (West 1983)
- FEDERAL PROCUREMENT, **CLEAN WATER ACT**, sec. 508, 33 U.S.C.A. sec. 1368 (West 1986)

SOCIAL LEGISLATION:

- AGE DISCRIMINATION ACT, 42 U.S.C.A. secs. 6101-6107 (West 1983 and Supp. 1990)
- CIVIL RIGHTS ACT OF 1964, 42 U.S.C.A. secs. 2000a-2000h-6 (West 1981 and Supp. 1990)
- EQUAL EMPLOYMENT OPPORTUNITY, EXECUTIVE ORDER 11246, 3 C.F.R. 339 (1964-1965), reprinted in 42 U.S.C.A. sec. 2000(e), ann. at 19-24 (West 1981)
- MINORITY BUSINESS ENTERPRISE DEVELOPMENT, EXECUTIVE ORDER 12432, 3 C.F.R. 198 (1984), reprinted in 15 U.S.C.A. sec. 637, ann. at 155 (West Supp. 1990)
- NATIONAL PROGRAM FOR MINORITY BUSINESS ENTERPRISE, EXECUTIVE ORDER 11625, 3 C.F.R. 616 (1971-1975), reprinted in 15 U.S.C.A. sec. 631, ann. at 175-177 (West 1976)
- NATIONAL WOMEN'S BUSINESS ENTERPRISE POLICY AND NATIONAL PROGRAM FOR WOMEN'S BUSINESS ENTERPRISE, EXECUTIVE ORDER 12138, 3 C.F.R. 393 (1980), reprinted in 15 U.S.C.A. sec. 631, ann. at 60-62 (West Supp. 1990)

- PROHIBITION AGAINST SEX DISCRIMINATION UNDER THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972, sec. 13, Public Law 92-500, reprinted in 33 U.S.C.A. sec. 1251, ann. at 518 (West 1986)
- REHABILITATION ACT OF 1973, 29 U.S.C.A. sec. 794 (West 1985 and Supp. 1990)

MISCELLANEOUS AUTHORITY:

- DEBARMENT AND SUSPENSION, EXECUTIVE ORDER 12549, 3 C.F.R. 189 (1987), reprinted in 31 U.S.C.A. sec. 6101, ann. at 96 (West Supp. 1990)
- DEBARMENT AND SUSPENSION, EXECUTIVE ORDER 12689, 3 C.F.R. 235 (1990) (54 Federal Register 34131, Aug. 16, 1989), reprinted in 31 U.S.C.A. sec. 6101, ann. at 97 (West Supp. 1990).
- UNIFORM RELOCATION AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970, 42 U.S.C.A. secs. 4601-4655 (West 1983 and Supp. 1990)

OTHER CONDITIONS

**Project** No. NPS0062 10

**Project** Description: Hawaii County Cesspool Conversion Project

1. When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing **projects** or programs funded in whole or in part with State Water Pollution Control Revolving Fund (WPCRF) money, all grantees receiving WPCRF funds including but not limited to State and local governments shall clearly state: 1) the percentage of the total costs of the program or **project** which will be financed with WPCRF money; 2) the dollar amount of WPCRF funds for the **project** or program; and 3) the percentage and dollar amount of the total costs of the **project** or program that will be financed by non-governmental sources.

Exhibit "D"