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

Project No. C150062 37

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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. C150062 37

Project Title: Pua Sewage Pump Station - Pump Replacement

THIS INTERIM AGREEMENT, made and entered into as of the 15th day of January, 2012, 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 25 Aupuni Street, Room 210, Hilo, Hawaii 96720, (collectively the "parties"). The undersigned parties WITNESS THAT:

WHEREAS, under sections 342D-80 through 342D-87, Hawaii Revised Statutes (H.R.S.), 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, H.R.S., the DIRECTOR and his delegates administer the Water Pollution Control Revolving Fund (WPCRF) (also known as the Revolving Fund under Chapter 342D, H.R.S.; 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, Public Law (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 an 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. "Repayment" means the loan funds paid by the COUNTY to the DIRECTOR.

h. "Semiannual" means occurring every six (6) months.

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

2. PROJECT DESCRIPTION The **Project**, Pua Sewage Pump Station - Pump Replacement, C150062 37 consists of the construction of facilities to renovate existing facility to maintain the existing design capacity while providing alternate methods for accommodating average daily flows, modification of the pump control system, and water hammer mitigation efforts, 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 ONE MILLION, NINE HUNDRED EIGHTY-THREE THOUSAND, THREE HUNDRED SEVENTY-FIVE DOLLARS (\$1,983,375), and the estimated total eligible cost of the construction **project** is ONE MILLION, NINE HUNDRED EIGHTY-THREE THOUSAND, THREE HUNDRED SEVENTY-FIVE DOLLARS (\$1,983,375). Pursuant to Section 203(a) (2) of the **Clean Water Act**, 33 U.S.C. sec. 1283(a) (2), the only items eligible for State Revolving Fund (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 C.F.R. 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 a part hereof.

4. LOAN AMOUNT

a. Subject to the availability of federal funds and the meeting of the conditions specified in Section 7.f and 11.c, infra, the DIRECTOR shall loan the COUNTY a total amount not to exceed TWO MILLION, THREE HUNDRED THOUSAND DOLLARS (\$2,300,000), consisting of ONE MILLION DOLLARS (\$1,000,000) of federal funds under the Capitalization Grant, which shall be paid from Appropriation Account No. S-12-341-H-023206-00-398; and ONE MILLION, THREE HUNDRED THOUSAND DOLLARS (\$1,300,000) of state SRF match funds, which shall be paid from Appropriation Account No.

S-12-341-H-023206-00-396.

b. The Director has authorized a portion of the total loan amount in Section 4.a to be forgiven. The total principal forgiveness portion of the loan will not exceed \$1,000,000. The loan interest and loan fee rate shall be zero per cent (0.0%) interest. The principal forgiveness portion of the loan shall be disbursed in its entirety before the interest accruing portion of the loan.

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:

Stuart Yamada
Chief, Environmental Management Division
Hawaii State Department of Health
919 Ala Moana Boulevard #300
Honolulu, Hawaii 96814
Telephone: (808) 586-4294
Telefax: (808) 586-4300

Dora Beck
Acting Director
Department of Environmental Management
County of Hawaii
25 Aupuni Street, Room 210
Hilo, Hawaii 96720
Telephone: (808) 961-8083
Telefax: (808) 961-8086

7. **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, and 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 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.

8. 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 7.f and 11.c are not met.

9. INTEREST The loan interest rate is zero and fifty one hundredth per cent (0.50%) per annum.

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

10. 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. In the event that the Notice to Proceed is used to determine the first **repayment** due date for the **project** and the Notice to Proceed date falls on the 1st through the 14th day of the month, the Director shall use the 15th day of the previous month as the due date; if the Notice to Proceed date falls on the 15th through the 31st day of the month, the DIRECTOR shall use the 15th day of the month in which the Notice to Proceed date falls as the basis for the **repayment** due date.

c. 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.

d. The COUNTY shall repay the principal and interest on or before each **semiannual** due date. A forty-five (45) day grace period shall be allowed.

e. 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 loan fee amounts due under this Agreement.

f. 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.

g. 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.

h. 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.

11. 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 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. 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).

e. 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.

f. 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.

12. **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. Provide certification to the DIRECTOR that affirmative steps, in accordance with 40 C.F.R. 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.

13. 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.

14. 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 C.F.R. 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**.

15. 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.

16. RECORDS MAINTENANCE, RETENTION, AND ACCESS The COUNTY shall maintain, retain, and allow access to the **Project** records in accordance with 40 C.F.R. 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.

17. 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.

18. REPORTS The COUNTY shall submit to the DIRECTOR by December 31st 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 these reports is to update the DIRECTOR on the COUNTY's financial status.

19. AUDITS The COUNTY shall conduct an annual audit performed by an independent auditor in accordance with Office of Management and Budget (OMB) Circular No. A-133, "Audits of State, Local Governments, and Non-Profit Organizations" (June 1997), and the Single Audit Act of 1984, PL 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.

20. 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.

21. 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.

22. 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.

23. 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 Laws and Authorities (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 C.F.R. Part 6, Subpart E and 40 C.F.R. sec. 35.3140.

c. Comply with Davis-Bacon labor wage provisions to construct necessary treatment works and for other projects intended for wastewater reclamation or waste management. Wages paid must conform to the prevailing wage rates established for the locality by the U.S. Department of Labor under the Davis-Bacon Act, 29 C.F.R. Part 5, section 5.5, which is attached as Exhibit "D."

24. 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 PL 96-74, 93 Stat. 575 (Sept. 29, 1979).

25. 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.

26. 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.

27. 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.

28. 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 28.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 7.f (3) and 11.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 7.f and 11.c.

29. 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.

30. 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 zero and one hundred twenty-five one thousandth per cent (0.125%) 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 subsections 10.a and 10.b of this Agreement. A forty-five (45) 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.

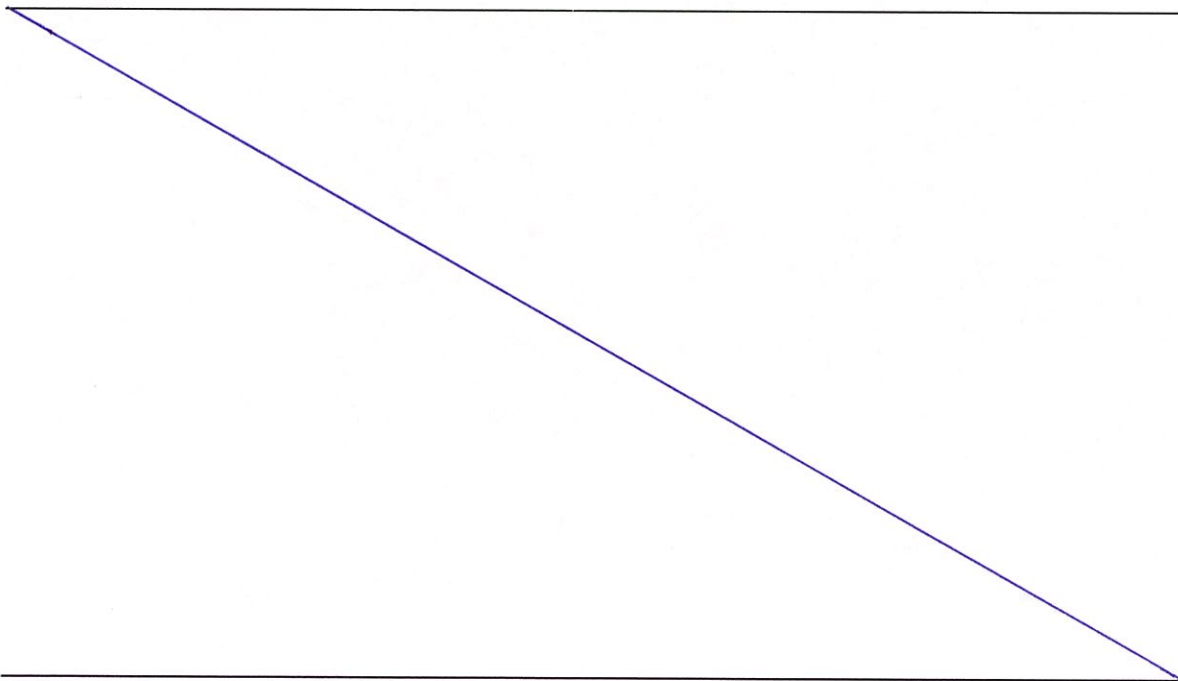
d. The COUNTY shall repay the loan fee by check or warrant, made payable to the STATE OF HAWAII, DIRECTOR OF THE DEPARTMENT OF HEALTH, and delivered to the address as specified in section 6.

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.

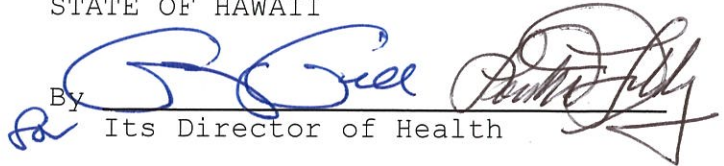
31. EFFECTIVE AND TERMINATION DATES The effective date of this Agreement is the date first above written. This Agreement shall remain in effect for the useful life of the **Project** or until the date of the final loan **repayment** and loan fee payment are received, whichever period is longer, unless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

32. 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 
Its Director of Health

COUNTY OF HAWAII

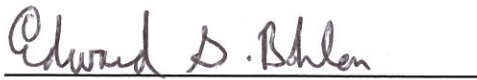
By 
Its Mayor

By 
Its Director of Finance

APPROVED AS TO CONTENT:


Acting Director
Department of Environmental Management
COUNTY OF HAWAII

APPROVED AS TO FORM:


Deputy Attorney General
State of Hawaii

APPROVED AS TO FORM AND LEGALITY:

 2/2/12
Deputy Corporation Counsel
COUNTY OF HAWAII

Approved as to Availability of Funds
in the amounts and for the purposes
set forth herein.


RHS DIRECTOR OF FINANCE

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)	\$ 118,287
2. Other architectural engineering fees	
3. Project inspection fees - CM	
4. Construction and project improvement	1,983,375
5. Equipment	
6. Total (Lines 1 through 5)	2,101,662
7. Less: Ineligible Exclusions	
8. Add: Contingencies	198,338
9. Total Eligible Project Amount	2,300,000
10. SRF loan requested of Line 9	2,300,000
11. County share	
12. Other shares	
13. Total project costs (Lines 10,11,&12)	2,300,000

Exhibit "A"

PROJECT SCHEDULE

	Est. Date
A. Notice to Proceed	12/2011
B. Completion of Construction	05/2012
C. Project Duration from start to finish (months)	6

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
- CLEAN AIR ACT, 42 U.S.C.A. sec. 7506(c)
- COASTAL BARRIER RESOURCES ACT, 16 U.S.C.A. secs. 3501-3510
- COASTAL ZONE MANAGEMENT ACT OF 1972, 16 U.S.C.A. secs. 1451-1464
- ENDANGERED SPECIES ACT 16 U.S.C.A. secs. 1531-1543
- ENVIRONMENTAL JUSTICE, EXECUTIVE ORDER 12898
- ESSENTIAL FISH HABITAT CONSULTATION PROCESS UNDER THE MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT, 16 U.S.C.A. sec 1801 et. seq.
- FARMLAND PROTECTION POLICY ACT, 7 U.S.C.A. secs. 4201-4209
- FISH AND WILDLIFE COORDINATION ACT, 16 U.S.C.A. secs. 661-664
- FLOODPLAIN MANAGEMENT, EXECUTIVE ORDER 11988, 3 C.F.R. 117 (1978), reprinted in 42 U.S.C.A. sec. 4321, ann. at 286-288, 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
- NATIONAL HISTORIC PRESERVATION ACT OF 1966, 16 U.S.C.A. secs. 470-470w-6
- PROTECTION OF WETLANDS, EXECUTIVE ORDER 11990, as amended by EXECUTIVE ORDER 12608, reprinted in 42 U.S.C.A. sec. 4321 app. at 244-245

Exhibit "C"

- SAFE DRINKING WATER ACT, 42 U.S.C.A. secs. 300f-300j-9
- WILD AND SCENIC RIVERS ACT, 16 U.S.C.A. sec. 1271 et. seq.

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
- DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966, 42 U.S.C.A. secs. 3311-3339, 3371, and 3374
- FEDERAL PROCUREMENT, CLEAN AIR ACT, sec. 306, 42 U.S.C.A. sec. 7606
- FEDERAL PROCUREMENT, **CLEAN WATER ACT**, sec. 508, 33 U.S.C.A. sec. 1368

SOCIAL LEGISLATION:

- AGE DISCRIMINATION ACT, 42 U.S.C.A. secs. 6101-6107
- CIVIL RIGHTS ACT OF 1964, 42 U.S.C.A. secs. 2000a-2000h-6
- DEPARTMENT OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1993 Public Law 102-389
- 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
- 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
- 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

- 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
- SMALL BUSINESS ADMINISTRATION REAUTHORIZATION AND AMENDMENT ACT OF 1988, 15 U.S.C.A. sec. 697c
- 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
- REHABILITATION ACT OF 1973, 29 U.S.C.A. sec. 794
- DISADVANTAGED BUSINESS ENTERPRISE RULE, 2008, 40 C.F.R. Part 33

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
- PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS CONTRACTOR'S LABOR RELATIONS ON FEDERAL AND FEDERALLY FUNDED CONSTRUCTION PROJECTS - EXECUTIVE ORDER NO. 13202 (2001), AS AMENDED BY EXECUTIVE ORDER NO. 13208 (2001)
- UNIFORM RELOCATION AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970, 42 U.S.C.A. secs. 4601-4655

COMPLIANCE WITH DAVIS-BACON

Wage Rate Requirements Under FY 2010 Appropriations

Preamble

With respect to the Clean Water and Safe Drinking Water State Revolving Funds, Environmental Protection Agency (EPA) provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

I. Requirements under FY 2010 Appropriations For Subrecipients That Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the FY 2010 Appropriations with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact the EPA Region 9 DB Coordinator at (415)972-3761 for guidance. The recipient or subrecipient may also obtain additional guidance from Department of Labor (DOL)'s web site at <http://www.dol.gov/esa/whd/recovery/>.

Exhibit "D"

1. Applicability of the DB prevailing wage requirements.

Under the FY 2010 Appropriation, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day

period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the Clean Water State Revolving Fund (CWSRF) or a construction project under the Drinking Water State Revolving Fund (DWSRF) financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject

to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2010 appropriation, the following clauses:

(1) Minimum wages.

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the DB Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the DB poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. DOL's web site, www.dol.gov.

- (ii) (A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where the request, including the local wage determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. DOL, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree

Exhibit "D"

on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the DB Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the DOL, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to DB prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and

Exhibit "D"

mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the DB Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the DB Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on

request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee's social security number). The required employee (e.g., the last four digits of the weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the DOL for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the

Exhibit "D"

full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. DOL, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized

by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined

Exhibit "D"

rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. DOL, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1)

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through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with DB and Related Act requirements. All rulings and interpretations of the DB and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the DOL set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. DOL, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the DB Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the DB Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The

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subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the DOL, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy

any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Hawaii Department of Health, EPA, and the DOL, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification.

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29.CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

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(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract.

Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract.

Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S DOL or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks

and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

II. Requirements under FY 2010 Appropriations Act For Subrecipients That Are Not Governmental Entities

The following terms and conditions specify how recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under the FY2010 Appropriations Act with respect to subrecipients that are not governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact the EPA Region 9 DB Coordinator at (415)972-3761 for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's website at <http://www.dol.gov/esa/whd/recovery/>.

Under these terms and conditions, the subrecipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

1. Applicability of the DB prevailing wage requirements.

Under the FY 2010 Appropriation, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients must obtain proposed wage determinations for

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specific localities at www.wdol.gov. After the Subrecipient obtains its proposed wage determination, it must submit the wage determination to the Hawaii Department of Health's CWSRF Environmental Engineer at (808)586-4294 or DWSRF Environmental Engineer at (808)586-4258 for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors ordering instruments unless subsequently directed otherwise by the State recipient Award Official.

(b) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the subrecipient carries out activity subject to DB by

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issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(d) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2010 appropriation, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by

the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the DB Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the DB poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. DOL's web site, www.dol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore

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only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. DOL, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period

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that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the DB Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s) shall upon written request of the EPA Award Official or an authorized representative of the DOL, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to DB prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

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(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the DB Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the DB Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The

required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the DOL for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form

WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. DOL, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the

wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. DOL, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be

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paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with DB and Related Act requirements. All rulings and interpretations of the DB and Related Acts contained

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in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the DOL set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. DOL, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the DB Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the DB Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work

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in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient shall upon the request of the EPA Award Official or an authorized representative of the DOL, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above,

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in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including of wages paid, daily and weekly number of hours guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Hawaii Department of Health, EPA, and the DOL, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification.

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract.

Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct

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necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practical the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract.

Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S DOL or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.