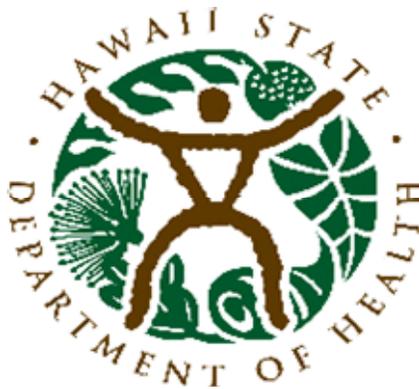


APPLICANT SRF MANUAL

PROCEDURES TO PARTICIPATE IN THE HAWAII STATE WATER POLLUTION CONTROL REVOLVING FUND LOAN PROGRAM



**Prepared by the State of Hawaii
Department of Health Wastewater Branch**

**June 1995
(Revised July 2013)**

TABLE OF CONTENTS

	Page
I. Introduction	3
II. CWSRF Program Organization	3
III. Eligible Projects	4
IV. Applying for a CWSRF Loan	4
V. Required Submittals	5
VI. Environmental Documents	6
VII. Federal and State Requirements	7
VIII. Loan Policies	7
IX. Obtaining the Final Loan	8
X. Project Construction	8
XI. Payments to Loan Recipient	9
XII. Loan Repayment	9
XIII. Loan Recipient Records	9
XIV. Annual Fiscal Requirements	10
XV. Disputes	10
 <u>APPENDICES:</u>	
A. Definitions	11
B. Program Contacts	14
C. Project Report Criteria	15
D. Criteria for Eligible Costs	16
E. Design Allowance Calculation	18
F. Change Order Eligibility	19
G. Loan Recipient Fiscal Records	22
H. Sample Loan Application - Final Agreement	24

I. INTRODUCTION

The Clean Water State Revolving Fund (CWSRF) was provided for by the federal Water Quality Act of 1987. In 1988, the Hawaii State Legislature established the State Water Pollution Control Revolving Fund (WPCRF) to receive CWSRF federal grants.

The CWSRF Program supports the construction of publicly owned wastewater treatment works and the management of non-point source pollution and national estuary issues by providing financial assistance in the form of low interest loans. (Appendix A contains definitions of terms used in the program.)

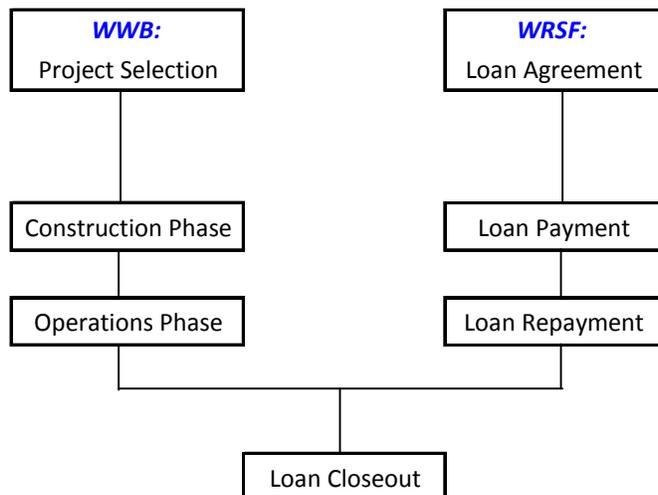
The purpose of this manual is to assist applicants in obtaining a CWSRF loan. ***Unless otherwise stated, all current program documents and forms are available on the CWSRF website:***

<http://health.hawaii.gov/wastewater/home/cwsrf>

II. CWSRF PROGRAM ORGANIZATION

The CWSRF Program is administered by the Department of Health (DOH) Wastewater Branch which handles program requirements, project selection, review of construction plans, specifications, environmental documents, construction inspections, and enforcement of federal and state loan requirements.

The Water Revolving Fund Staff (WRFS), under the DOH Environmental Resources Office, manages fiscal issues, loan agreements, amortization schedules, payments to loan recipients, repayments, and program accounting. Program contacts are listed in Appendix B, and the following diagram shows the organizational responsibilities:



III. ELIGIBLE PROJECTS

The following types of projects are eligible for CWSRF funding:

1. Point Source Projects
 - a. New, expanded, or rehabilitated publicly-owned wastewater treatment plants.
 - b. Publicly-owned water reuse systems and distribution lines.
 - c. New or rehabilitated collector, trunk, and interceptor sewers.
 - d. Sludge reuse, treatment, and disposal facilities.
 - e. Septage handling, marine vessel pump out, and treatment facilities.
2. Non-Point Source (NPS) Projects
 - a. Assessment or implementation of projects needed restore NPS impaired watersheds.
 - b. Cesspool replacement with septic tanks, aerobic units, constructed wetlands or treatment plants.
 - c. Equipment purchase of street sweepers and catch basin vacuum vehicles, sediment traps and basins.
 - d. Capping and closure of municipal solid waste landfills, landfill reclamation, landfill leachate collection, storage and treatment, and landfill gas collection and control systems.
 - e. Brownfield projects including site assessments, underground storage tank removal and disposal, contaminated soil or sediment removal and disposal, capping wells, soil remediation, stormwater runoff control, and ground or surface water monitoring for contaminants.

IV. APPLYING FOR A CWSRF LOAN

A ***Proposed Project for Funding*** form is first submitted for each project that the applicant would like the CWSRF Program to consider funding within the next five years.

The WWB ranks all projects based on its ranking criteria and compiles a ***Project Priority List***. Projects are selected for funding based on their rank and readiness to proceed. In the event

that a selected project is unable to proceed, a replacement project will be selected from the Priority List.

Project selection is documented in the program's *Intended Use Plan* (IUP) which is posted on the CWSRF website and subject to a 30-day public comment period. If warranted based on public comments, the WWB will schedule a public meeting. After considering all comments, the final IUP is completed and provided to EPA along with an application for a capitalization grant.

Once a project is selected for funding, the applicant submits a *loan application* and *Project Report*. All documents, criteria, forms, reports, and other requirements are available on the CWSRF website.

After approval of the loan application and project report, the applicant receives a *binding commitment* which constitutes a legal obligation to provide an SRF loan. This binding commitment can be in the form of an interim loan agreement or a formal commitment letter.

V. REQUIRED SUBMITTALS

Following are the documents required to obtain a final loan. Note that a binding commitment is issued once the first two submittals are approved:

1. Loan application
2. Project report (or Preliminary Engineering Report)
Appendix C contains report criteria.
3. Construction plans for project
Reviewed for scope of work and compliance with applicable requirements.
4. Project specifications
Federal requirements for Consultants and Contractors (also known as the *CWSRF boilerplates*) must be included in the specifications or contract.
5. Environmental documents - discussed in Section VI.
6. Resolution or Ordinance
Passed by the County Council, this document authorizes the CWSRF loan application and identifies the dedicated sources of revenue (i.e. general obligation bonds, etc.) which will repay the loan.

7. Site certification
For all real property, including easements required for the project, the applicant's authorized representative must certify that sufficient interest or rights to all property have been obtained to ensure undisturbed use and possession for the project's useful life. Any applicable inter-governmental or private agreements (eg: Memorandum of Understanding) can be issued to delineate state versus county work. A right-of way may also be granted for the applicant to temporarily work on the property.
8. Preaward Compliance Review report (EPA form 4700-4)
This report is reviewed to ensure that a loan applicant complies with federal requirements such as non-discriminatory policies and accommodation of those with special needs.
9. Construction contract
The "Federal Requirements for Consultants and Contractors," also referred to as the CWSRF boilerplates must be inserted into all construction and consultant contracts. Neither EPA nor DOH is responsible for resolving bid disputes.
10. Contractor's itemized bid
11. MBE/WBE form
A report on the contract amounts awarded to a woman or minority business.
12. DBE forms (currently not applicable until EPA issues revised forms)
Reports on the use of disadvantaged businesses in the project.
13. Notice to Proceed
An official notice to contractor indicating the start date of the contracted work.

VI. ENVIRONMENTAL DOCUMENTS

For each CWSRF project, the loan applicant shall provide the following documents to the DOH WWB no later than the day the applicant provides these documents to the State Office of Environmental Quality Control:

1. Environmental assessment (EA) and any prior-decision documents and/or reaffirmations.
2. Notice of Determination (eg: Finding of No Significant Impact)
3. Environmental Impact Statement (EIS) and/or the Negative Declaration, if applicable.

The ***Environmental Assessment Documents Criteria*** provide state and federal criteria for EAs. If an EA is required, the ***EA Checklist and Certification*** form shall also be submitted. In order to encourage public participation, the applicant must provide public notice of all environmental assessment determinations in either the community newspaper or in the OEQC newsletter.

For projects that are categorically exempt from an EA, the applicant must submit the ***Exempt Projects Certification*** form.

The DOH WWB reserves the right to refuse to provide an SRF loan if it feels that the proposed project has the potential to impact the environment in ways that the applicant has not considered, addressed, and/or prepared mitigation measures for.

VII. FEDERAL AND STATE REQUIREMENTS

All SRF projects must comply with applicable federal and state requirements. Federal regulations are outlined and incorporated into the loan application, environmental documents criteria, ***Federal Requirements for CWSRF Loan Applications***, the loan agreement, and other required submittals including the ***Preaward Compliance Report*** and ***MBE/WBE*** form.

State regulations, included in the loan application and agreement, also require that any county receiving SRF loan funds take steps to reduce polluted runoff into state waters through educational and regulatory programs.

In signing the loan application and agreement, the applicant certifies compliance or intention to comply with all the federal regulations applicable to the project and the "cross-cutter" authorities involving applicable environmental, social, economic and other federal regulations.

VIII. LOAN POLICIES

Following are the CWSRF financial loan policies:

1. Loans are issued for 100% of allowable project costs, assuming availability of funds.
2. Projects are assessed an interest rate and an administrative fee, also know as a loan fee. The loan fee covers costs directly related to the CWSRF Program and indirect costs

for various water quality related programs such as wastewater treatment plant inspections, the biosolids and reuse programs, and permitting of individual wastewater systems.

3. Each loan is subject to a simple interest total loan rate which consists of the interest rate and loan fee. The total loan rate remains fixed over the life of the loan. Since both interest and loan fees vary with time, please contact the Wastewater Branch for current rates.
4. The principal amortization on loans begins one year after the Notice To Proceed (NTP) or one year after the date of the final loan agreement, whichever is later.
5. The maximum loan repayment period is 20 years. Repayments shall be made at least semi-annually.

IX. OBTAINING THE FINAL LOAN

The WWB reviews and approves the required submittals, focusing on the scope of work, the environmental impacts, compliance with federal and state loan program requirements, and determination of allowable project costs (Appendix D).

Once all documents have been approved, the applicant will receive a plan approval letter, indicating that the applicant has qualified for a final loan.

A **final loan agreement** is drafted indicating the costs allowed for various categories such as design and construction. A design allowance for construction projects may be provided if requested. (Appendix E contains tables to determine design allowance.) A category for contingencies may also be provided for up to 10% of the eligible construction cost to fund eligible change orders. Requests to fund change orders must be submitted to the WWB to determine funding eligibility (Appendix F discusses change order eligibility).

The final loan agreement is sent out for required signatures. Once executed, the loan recipient receives an executed copy of the agreement with original signatures. Appendix H provides a sample loan agreement.

X. PROJECT CONSTRUCTION

During construction of the CWSRF-funded project, the WWB conducts construction inspections, approximately every calendar quarter, or as needed. The purpose of the inspections is to correlate completed work with progress payments and to determine compliance with requirements. Once the project is substantially complete, a final inspection is conducted, and the recipient reports the date of the project's initial operation.

XI. PAYMENTS TO LOAN RECIPIENT

All construction costs must be substantiated by providing copies of the contractor's monthly progress payments which have been approved, certified, and disbursed to the contractor or consultant. Scanned progress payments (rather than hard copies) are preferred.

On a quarterly basis, or as needed, the loan recipient should request payment to receive reimbursement for funds already paid out for the project. To request payment, submittal of the **SRF Payment Request** form and **Combined Voucher Register** is required. The register reflects all costs, identifying eligible and ineligible costs. If the recipient has provided scanned progress payments which pertain to the payment requested, no other documents are required. Forms are available on the CWSRF website.

Payment requests shall be sent to the Wastewater Branch. Once received, the WWB reviews the payment requests for eligibility, approves the appropriate amount, and forwards the request to the WRFS (fiscal staff) for further review and processing. At any time, payment requests may be audited and/or adjusted for errors or ineligible items.

After **final payment** for a project is made, the DOH WWB will issue a construction cut-off date after which no further payments are allowed. A supplemental agreement, signed by DOH and the loan recipient will then be issued, providing the final loan amount, amortization schedule, and semi-annual payments due.

XII. LOAN REPAYMENT

Beginning one year after the date of Notice to Proceed, or of the final loan agreement (whichever is later), the loan recipient shall begin to repay the loan. All loan repayments should be sent to the Environmental Resource Office.

Loan repayments are provided a 15-day grace period from the due date. If the payment is not received by the end of the grace period, a penalty of 1% per month simple interest will be assessed from the repayment due date. Penalties assessed will not be credited toward the principal balance of the loan contract, but will be treated as a separate amount in addition to the repayment due.

With DOH prior approval, the recipient may prepay all or any portion of the project loan. When the final repayment is made, DOH will send a letter, certifying that the loan has been repaid in full.

XIII. LOAN RECIPIENT RECORDS

Loan recipients must maintain project records including:

1. Planning, design and environmental documents
2. Total project costs and documentation supporting eligibility for CWSRF funding.
3. Amounts expended on the project and funds received from the CWSRF.
4. Data on program income.

These records must be maintained for at least three years after project close-out, or until the resolution of any disputes, including audit findings.

After the three year period, the loan recipient must still maintain records on principal, interest and administrative fees paid on the loan. All records shall be accessible to DOH, EPA and the State Controller.

Appendix G discusses maintenance of fiscal records for CWSRF-funded projects.

XIV. ANNUAL FISCAL REQUIREMENTS

The following fiscal activities are required each year. Results of the audit and review may possibly affect future eligibility of certain costs or eligibility to receive a CWSRF loan.

1. **Single Audit Requirement:** By December 31 of each year, the loan recipient shall submit an Annual Single Audit Report performed by an independent auditor to the DOH ERO in accordance with OMB Circular A-128. This report must contain an audit of the SRF funds received by the loan recipient during the state fiscal year. If the audit report includes a qualified opinion, DOH will resolve any discrepancies with the loan recipient. If the auditor's determination of the final eligible project cost is less than the total SRF funds paid, DOH will request reimbursement from the recipient and amend the loan to indicate the actual eligible project cost.
2. **Financial Capability Review:** DOH will evaluate the financial capability of CWSRF loan recipient to prevent loan default. This review will be conducted confidentially, evaluating basic financial indicators concerning municipal debt, financial operations, and socioeconomic conditions. These indicators will be compared with those from prior years and any available benchmarks.

XV. DISPUTES

Any dispute may be directed to the DOH WWB as provided in Appendix B.

APPENDIX A SRF DEFINITIONS

annual report - DOH annual report to EPA which describes how the State met the goals and requirements set forth in its Intended Use Plan for the previous fiscal year

binding commitment - a legal obligation to provide an SRF loan

capitalization grant - grant funds provided by EPA to DOH for the SRF program

Clean Water Act, Title VI - the statutory authority for the SRF program

construction cut-off date - the date after which no payments to the recipient are allowed

contingency - an allowance for eligible change order costs equal to 10% of the eligible construction costs identified in the executed construction contract

cross-cutters - requirements of federal laws and executive orders that may not be specifically identified in the Clean Water Act, Title VI, but which broadly apply to federally funded first round projects

debt services - the amount of money necessary to pay principal and interest on an outstanding SRF loan, as identified in each loan amortization schedule

default - failure to make a loan payment

design allowance - an allowance for eligible design costs which is calculated using 40 CFR 35, Subpart I, Appendix B, Table 2. (See Appendix D.)

design-build project - project that uses one contractor to design and build the project. Eligible design and construction costs may be funded by an SRF loan if DOH approves the plans and specifications.

DOH - Hawaii State Department of Health

enforceable requirements of the Act - provisions of the federal Clean Water Act that, if violated, could result in an administrative or judicial enforcement action

EPA - the United States Environmental Protection Agency

exempt projects - projects or classes of projects which have minimal or no significant effect on the environment (see the OEQC Guidebook and HAR 11-200-8) and which are exempt from environmental review requirements

federal fiscal year - October 1 through September 30

final loan agreement – a binding agreement wherein the State commits to funding the recipient's project after all conditions, and required submittals have been met and approved

initiation of operation - the date when use of the project begins

intended use plan (IUP) - a document prepared by DOH each year which describes program goals and intended use of SRF funds

interim loan agreement – an agreement between the State and the Applicant wherein the State commits to funding an eligible after approving the applicant's loan application and project report

National Pollutant Discharge Elimination System (NPDES) - program operated by the State under delegation from EPA which involves issuance of permits with specific limits for discharges into State waters

nonpoint source (NPS) Pollution - pollution caused by rainfall runoff or leaks from various storage facilities or sites (eg: construction sites, animal feeding operations, individual wastewater systems, landfill sites, etc.), either above or underground which carry natural or manmade pollutants into surface and groundwater resources

payment - loan funds paid to the recipient after receipt and approval of a payment request

project close-out - final actions to assure satisfactory project completion and fulfill administrative requirements which include financial settlement, submission of final audit resolution, and any outstanding issues

Priority List - a list of point source and nonpoint source water pollution control projects which are ranked in priority to receive funding from the SRF program

repayment - the loan recipient's payment of principal and interest for an SRF loan

SRF – State Revolving Fund also known as the *Water Pollution Control State Revolving Fund* or the *Clean Water State Revolving Fund*

state allotment - portion of the total monies appropriated by Congress each federal fiscal year designated for Hawaii's SRF program

state fiscal year - July 1 to June 30

state match - the required state contribution equal to 20% of the federal capitalization grant

state over-match - any state contributions to the SRF, in excess of the required 20% state match

treatment works - a system or devices for the storage, conveyance, treatment, recycling, reclamation, or disposal of municipal sewage, as further defined by 40 CFR 35.2005

water quality standards - standards established by State regulation classifying beneficial uses and prescribing specific allowable limits of constituents in surface waters

**APPENDIX B
PROGRAM CONTACTS**

Issue	Contact	Phone No.
General Program Information Priority List, Project Report Environmental Review Plans, Specifications Construction Change Orders	April Matsumura Environmental Engineer Wastewater Branch	(808) 586-4294
Fiscal Matters, Loan Application, Loan Payments, or Repayments	Adrian Lau, Susan Yuen Business Loan Officers Water Revolving Fund Staff Environmental Resource Office	(808) 586-4575
Loan Agreements for: County of Maui County of Hawaii	Adrian Lau Business Loan Officer Water Revolving Fund Staff Environmental Resource Office	(808) 586-4575
Loan Agreements for: City and County of Honolulu County of Kauai	Susan Yuen Business Loan Officer Water Revolving Fund Staff Environmental Resource Office	(808) 586-4575
Fiscal Matters	Kevin Yoshioka, Supervisor Water Revolving Fund Staff Environmental Resource Office	(808) 586-4575
Disputes	Sina Pruder, P.E., Chief Wastewater Branch	(808) 586-4294

Office Addresses:

Wastewater Branch

919 Ala Moana Blvd. Rm. 309
Honolulu, HI 96814
(808) 586-4294

Environmental Resource Office

919 Ala Moana Blvd. Rm. 219
Honolulu, HI 96814
(808) 586-4575

APPENDIX C
PROJECT REPORT CRITERIA

The Project Report should describe the project scope and include the following:

1. Statement of the project needs and benefits, including discussion of the water quality benefits and/or public health problems to be corrected.
2. Description of the proposed pollution control project and, if applicable, the waste treatment system of which it is a part.
3. Evaluation of the alternatives considered to address the project needs.
4. Description of the selected alternative and basis for the decision, including relevant design criteria.
5. Cost information on the estimated total capital costs and annual operation and maintenance costs for the project (if applicable).
6. Evaluation of the impact of the project on the water supply (if applicable).
7. Evaluation of opportunities to reclaim or reuse treated wastewater, nonpoint source pollution control project waters, or sludge material resulting from the project.

APPENDIX D
CRITERIA FOR ELIGIBLE COSTS

Eligible project costs, determined during the review of the plans and specifications, must be:

1. Necessary and reasonable for the proper and efficient administration of the loan project, allocable to the project, and not constituting a general expense to cover the applicant's overall responsibilities.
2. Authorized or not prohibited under State or County laws, regulations, or ordinances.
3. Consistent with federal and state policies, regulations, and procedures.
4. Accorded consistent treatment through the application of generally accepted accounting principles appropriate to the circumstances.
5. Not allocable to, or included as, a cost of any other federal or state financed project.

Ineligible costs include:

1. Costs outside the approved project scope.
2. Costs due to the applicant's mismanagement.
3. Personal injury compensation or damages arising from the project, and costs caused by the applicant's vicarious liability for the improper actions of others.
4. Bonus payments, not legally required for completion of a project before a contractual completion date.
5. Additional costs (e.g., building, engineering, legal, or administrative) incurred because of a contractor's lack of timely performance. These costs are ineligible whether or not they are offset by liquidated damages and whether or not the liquidated damages are sufficient to cover the applicant's additional costs.
6. Costs to provide additional professional liability insurance for a specific project, beyond that which is normally carried by a contractor.
7. Costs of local travel and commuting expenses between living quarters and the construction site for persons employed by either the applicant or the contractor, and travel not directly related to a specific project, such as travel to professional meetings, technology seminars, conferences, symposia, lectures, etc.
8. Costs for small and onsite systems including: (a) modification to the physical structure

of homes or commercial establishments; (b) pipes and other conveyance systems from the house to the treatment unit located on a user's property; and (c) wastewater generating fixtures such as commodes, sinks, tubs, and drains.

9. Costs of land acquisition (including associated legal, administrative and engineering costs) of sewer rights-of-way, waste treatment plant sites (including small system sites), sanitary landfill sites and sludge disposal areas. However, the cost of land that will be integral part of the treatment process or pollution control project or that will be used for the ultimate disposal of residues resulting from such treatment or pollution control may be allowable. Land acquisition costs necessary to comply with the requirements of the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as implemented by EPA under 40 CFR Part 4, may also be allowable.
10. Applicant's ordinary operating expenses including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies.
11. Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts, or other governmental units.
12. Costs of approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance the project and the interest on it.
13. Costs of replacing, through reconstruction or substitution, treatment works that received assistance under the Clean Water Act (Pub. L. 92-500), as amended, and that fail to meet project performance standards. This provision applies to failures that occur either before or after the initiation of operation, but does not apply to innovative and alternative treatment works eligible for funding or treatment works that fail before its design life.
14. Fines and penalties due to violations of, or failure to comply with, federal, state or local laws, regulations or procedures.
15. Costs of preparing a corrective action report for a project that does not meet the project performance standards.
16. Administrative costs of salaries, benefits, and expendable materials the applicant incurs for the project.
17. Construction costs incurred after the construction cut-off date.

**APPENDIX E
DESIGN ALLOWANCE CALCULATION**

To calculate the design allowance, multiply the eligible construction cost by the design allowance percentage. (Interpolate design allowance values, based on the construction cost.)

Construction Cost (\$)	Allowance (%)
100,000 or less	8.5683
120,000	8.3808
150,000	8.1570
175,000	8.0059
200,000	7.8772
250,000	7.6668
300,000	7.4991
350,000	7.3602
400,000	7.2419
500,000	7.0485
600,000	6.8943
700,000	6.7666
800,000	6.6578
900,000	6.5634
1,000,000	6.4300
1,200,000	6.3383
1,500,000	6.1690
1,750,000	6.0547
2,000,000	5.9574
2,500,000	5.7983
3,000,000	5.6714
3,500,000	5.5664
4,000,000	5.4769
5,000,000	5.3306

Construction Cost (\$)	Allowance (%)
6,000,000	5.2140
7,000,000	5.1174
8,000,000	5.0352
9,000,000	4.9637
10,000,000	4.9007
12,000,000	4.7935
15,000,000	4.6655
17,500,000	4.5790
20,000,000	4.5054
25,000,000	4.3851
30,000,000	4.2892
35,000,000	4.2097
40,000,000	4.1421
50,000,000	4.0314
60,000,000	3.9432
70,000,000	3.8702
80,000,000	3.8080
90,000,000	3.7540
100,000,000	3.7063
120,000,000	3.6252
150,000,000	3.5284
175,000,000	3.4630
200,000,000	3.4074

APPENDIX F CHANGE ORDER ELIGIBILITY

Change orders may be eligible for CWSRF Program funding if they are determined to be justifiable and within the project's scope of work. Change order costs which exceed the contingency allotment are not eligible for SRF funding unless the Director approves a loan amendment to increase the loan amount. Change orders which propose a substantial increase in project capacity or work unrelated to the original project scope are also ineligible unless a supplemental loan is executed to increase the project's work scope.

1. Request to Fund Change Orders

A request to fund a change order must be submitted to the DOH WWB for review in a timely manner. Change order work performed after the construction cutoff date will not be funded.

2. Required Submittals

Each change order submitted to DOH for review must include the following:

- a. Project name and number.
- b. Change order number.
- c. Contact names and phone numbers of relevant contacts, such as the project engineer, construction manager, contractor, or owner.
- d. Name and title of the person requesting the change order, and approval and signature of the loan recipient's authorized representative.
- e. Itemized and total costs.
- f. Date of change order execution.
- g. Description of the change and its location (if applicable). Submit relevant drawings, sketches, specifications, and/or design calculations.
- h. Change order justification addressing:
 - 1) why the change order is necessary
 - 2) why the change was not foreseen during project preparation
 - 3) alternatives considered, if applicable

- 4) cost-effectiveness
 - 5) other relevant information justifying the work
- i. Time extension for the change order work.

If no time extension is given, the change order should state so.

DOH approval of a change order for time extension means approval to fund extended engineering and inspection costs.

The loan recipient may, at times, have a legal obligation to grant a time extension for extraordinary conditions outside of the contractor's, subcontractor's or supplier's control such as natural disasters, severe weather conditions, floods, and labor strikes. Change orders for these types of time extensions are generally eligible.

3. Ineligible Change Orders

The following are generally ineligible for funding:

- a. Extended engineering and inspection costs outside the scope of work.
- b. Operation, maintenance and routine repairs or renovation of any existing wastewater treatment facilities not included in the original project scope.
- c. Equipment damage, damage to completed work, and personal injuries.
- d. Acceleration costs are ineligible unless facility operation by a certain date is essential for reasons such as public safety concerns or health disaster prevention. This assumes that project completion was not delayed due to negligence or project mismanagement by the loan recipient or authorized representative.
- e. Cost of purchasing and installing any item obtained in violation of contract specifications.

4. Conditioned Acceptance

The loan recipient should attempt to settle all elements of a given change order on a one time basis. In the event that a contractor conditions his acceptance of a change order on the inclusion of costs for impact and delay to be determined in the future, DOH shall include the following disclaimer on the change order approval form:

"Any payment made on this conditional change order is in no way a commitment to fund additional amounts claimed by the contractor arising from this change order. Requests for additional funding, after payment specified here is made, will be subject to reevaluating the eligibility of the entire change order including impact delay costs."

APPENDIX G
LOAN RECIPIENT FISCAL RECORDS

The loan recipient is responsible for establishing and maintaining adequate accounting and fiscal records to show the receipt and expenditure of project funds. These accounting records must be maintained in accordance with generally accepted accounting principals and the following guidelines:

1. Construction Account

Upon loan acceptance, the recipient shall establish a "Construction Account" to which all project payment receipts, regardless of source, shall be credited and all disbursements shall be charged. At all times, this account shall reflect: total receipts, disbursements, account balance, and purpose for each disbursement. The above items shall be identified by cost categories provided in *Exhibit A* of the loan agreement.

2. Supporting Documents

Documents supporting each entry in the "Construction Account" shall be kept intact and available for 3 years from the date of the final settlement. During this period, representatives of the State and Federal government shall have access to the facilities, premises, and all project-related records.

3. Custody and Disbursement

State and local laws, regulations, and procedures governing the custody and disbursement of the loan recipient's funds shall apply to the SRF funds. If not inconsistent with local laws and regulations, the following recommendations are made regarding the receipt and expenditure of SRF loan funds.

- a. The loan recipient's official treasurer should serve as the custodian for all cash received and expended in the wastewater treatment construction program.
- b. The custodian's records should reflect the cash received from SRF loan payments, and checks or warrants issued or paid.
- c. The reconciliation statements should be prepared at the end of each month to reconcile the cash balance, as shown by the bank statement, with the cash balance carried on the custodian's books.

4. Suggested Organization of Accounting Records

Accounts shall be organized to show the purpose of each expenditure and facilitate auditing and report preparation. Records shall reflect all fiscal transactions between the recipient and the contractor/vendor, and between the recipient and the DOH. The

following are examples of financial transactions that should be included in the recipient's accounting system:

- a. Recipient's appropriations or authorizations for the project.
- b. Allocations of SRF funds for the project.
- c. Contracts entered into, orders placed, and project costs for acquisition of assets.
- d. Disbursements to engineers, contractors, and vendors in liquidation of liabilities.
- e. SRF payments received.

5. Cost Categories

The following are guidelines to categorize costs on the Payment Request Form.

- a. *Construction and Project Improvement Costs* include costs associated with the actual construction of, addition to, or restoration of a facility.
- b. *Architectural/Engineering Basic Fees* include costs incurred for preparation of: 1) preliminary plans and studies; 2) project reports; 3) environmental assessments or impact statements; 4) operation and maintenance manuals; 5) construction drawings, specifications, estimates, bid documents, and construction contracts; 6) fees for preliminary engineering work such as surveys, tests and borings, foundation investigations, and other work required prior to construction.
- c. *Other Architectural/Engineering Fees* include all fees for architectural and/or engineering services not included in the basic fee. "Other Fees" are usually costs incurred after construction contract award such as project inspection and construction survey fees.
- d. *Equipment* includes costs of eligible equipment, not included in the construction contract; these costs must have prior written approval for direct purchase.
- e. *Contingencies* are unforeseen costs, such as eligible change orders within the project scope.

APPENDIX H

SAMPLE LOAN - FINAL AGREEMENT

TABLE OF CONTENTS

FINAL AGREEMENT FOR STATE REVOLVING FUND LOAN
FOR THE CONSTRUCTION OF WASTEWATER PROJECT
LOAN FROM STATE WATER POLLUTION CONTROL REVOLVING FUNDS

Project No. _____
Project Title: _____

	<u>Page</u>
Recitals	1
1. Definitions	3
2. Project Description	4
3. Estimated Cost of Construction	4
4. Loan Amount	5
5. Completion of the Project	5
6. Notification	6
7. Project Certification	6
8. Payments	7
9. Withholding of Loan Payments	9
10. Interest	10
11. Repayment of Loan	10
12. Security and Default	12
13. User Charge System	16
14. Project Procurement	17
15. Insurance	18
16. Construction Activities	20
17. Archeological and Historical Preservation	21
18. Records Maintenance, Retention, and Access	21
19. Project Access	23
20. Reports	24
21. Audits	24
22. Independent Contractor Status and Responsibilities	25
23. Defense and Indemnification	26
24. Assignments	26
25. Compliance With Laws, Regulations, Etc.	27
26. Lobbying	28
27. Other Conditions	28
28. Waivers of Violations	28
29. Disputes	29
30. Modification of Agreement	29
31. Termination of Agreement	30
32. Severability	30
33. Loan Fee	30
34. Effective and Termination Date	32
35. Authorization	32
Signature Page	33
Exhibit A. Project Budget	
Exhibit B. Project Schedule	
Exhibit C. List of Federal "Cross-Cutting" Authorities	
Exhibit D. Other Conditions	
Exhibit E. COUNTY OF _____ Ordinance/Resolution	

FINAL

AGREEMENT WITH THE _____ (specify county)

FOR STATE REVOLVING FUND LOAN

FOR THE CONSTRUCTION OF WASTEWATER PROJECT

LOAN FROM STATE WATER POLLUTION CONTROL REVOLVING FUND

Project No. _____

Project Title: _____

THIS FINAL AGREEMENT, made and entered into as of the 15th day of _____, _____, by and between the DIRECTOR OF THE DEPARTMENT OF HEALTH, STATE OF HAWAII (hereinafter the "DIRECTOR"), and the _____ (specify COUNTY) (hereinafter the "COUNTY"), a Hawaii municipality with principal offices at _____, (the DIRECTOR and the COUNTY are collectively the "parties"). The COUNTY has jurisdiction over the (specify county department - for example DEPARTMENT OF ENVIRONMENTAL SERVICES) and the division - for example Wastewater Treatment and Disposal division and/or operational fund - for example Wastewater System Enterprise Revenue) (hereinafter the "COUNTY DEPARTMENT"), which is an agency of the _____ (specify county) _____, WITNESSES THAT:

WHEREAS, under sections 342D-80 through 342D-87, Hawaii Revised Statutes (HRS), the DIRECTOR and his delegates are

authorized to make loans to municipalities for the construction of necessary treatment works and for other projects intended for wastewater reclamation or waste management;

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

WHEREAS, the COUNTY has made an application for a loan related to the construction of the Project, hereinafter described, and said Project has been tentatively determined by the DIRECTOR to be eligible for a loan under an Interim Agreement dated _____;

WHEREAS, the COUNTY has met the conditions of the Interim Agreement, particularly Sections 8.f and 12.c, and said project has been determined by the DIRECTOR to be eligible for the loan, 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 authorized the loan funds for the Project;

NOW, THEREFORE, the parties hereto mutually agree as

follows:

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

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

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

c. "Debt Service" means the amount of money necessary to pay interest and principal, and loan fees on an outstanding debt in accordance with the required contributions to a amortization schedule loan.

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

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

f. "Project" means the activities or tasks concerning a wastewater facility described in the

application and financed pursuant to this Agreement.

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

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

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

j. "Semiannual" means occurring every six months.

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

2. **PROJECT DESCRIPTION** The **Project**, _____, C1500 _____, consists of the construction of facilities to _____ 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 _____ (\$_____), and the estimated total eligible cost of the construction **project** is _____, (\$_____). Pursuant to Section 203(a) (2) of the

Clean Water Act, 33 U.S.C. sec. 1283(a) (2), the only items eligible for SRF participation are those items specified as "eligible" in the Plans and Specifications Approval Letter dated _____ or those costs allowable under 40 CFR sec. 35.2250 (the DIRECTOR is deemed the "Regional Administrator" for the application here of this federal regulation). The **Project** Budget, which is the breakdown of the total eligible cost, is attached hereto as Exhibit "A" and made apart hereof.

4. LOAN AMOUNT (Subject to the availability of federal funds), (NOTE: delete the "Subject to..." phrase if no Fed Fund involved.) The DIRECTOR shall loan the COUNTY a total amount not to exceed _____ (\$_____), consisting of _____ (\$_____) of federal funds under the Capitalization Grant, which shall be paid from Appropriation Account No. S-____-341-H-00____206-00-398; _____ (\$_____) of state SRF match funds, which shall be paid from Appropriation Account No. S-____-341-H-00____206-00-396; and _____ (\$_____) of state funds, which shall be paid from Appropriation Account No. S-____-341-H-00____206-00-395.

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:

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

[Insert name, address, telephone, and telefax numbers of Respondent]

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

the COUNTY shall also submit to the DIRECTOR for the DIRECTOR's approval the following:

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

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

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

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

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

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

is not required as a condition for submitting the **payment** request.

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

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

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

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

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

e. The DIRECTOR's obligation to pay any sum to COUNTY under any provision of this Agreement is

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

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

- a. The COUNTY has violated, or threatens to violate, any term, provision, condition, or commitment of this Agreement; or
- b. The COUNTY fails to maintain progress toward completion of the **Project** in accordance with the **Project** Schedule; or
- c. Any costs incurred after the **construction**

cut-off date shall be ineligible for WPCRF loan funding;

10. INTEREST The loan interest rate is _____ one hundredth per cent (____%) per annum.

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

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

a. 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 this 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 this Agreement, whichever is later.

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

(1) Calculate the **repayment** amount using the

formula below for a standard fully amortized loan with equal **semiannual repayments**.

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

i = interest rate
P = Balance of the principal amount paid to the COUNTY
R = **Repayment** amount
n = Term, thirty nine (39) **semiannual** installments less the number of **repayments** made.

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

The remaining amount of **repayment** shall be applied to the principal.

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

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

e. The COUNTY may, with the DIRECTOR'S prior approval, at any time prepay the loan and such prepayment will be applied to the principal of the

loan. The prepayment amount will not reduce the amount of the **semiannual repayment**. The term of the loan, however, will be reduced and a revised Loan **Repayment** Amortization and Fee Schedule will be sent to the COUNTY.

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

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

12. SECURITY AND DEFAULT

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

Agreement, or if the COUNTY becomes financially insolvent.

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

c. As security for this **Project** loan, interest, and loan fee the COUNTY pledges its COUNTY DEPARTMENT's revenues and full faith and credit, as shown in the attached Exhibit E, Ordinance/Resolution No. _____
_____. This agreement and the loan **payments** made under it are secured by revenue of the COUNTY DEPARTMENT. This agreement and the loan **payments** made under it constitute a lien and charge upon: (i) the COUNTY DEPARTMENT's gross revenue and (ii) the COUNTY DEPARTMENT's assessments, as authorized in a Resolution or Ordinance No. (Example: 98-197, CD1) passed by the COUNTY council.

The COUNTY covenants that the COUNTY DEPARTMENT shall exercise its revenue bond, revenue, assessment, and other authority as needed, to the extent allowed by law, to pay the **semiannual repayments** and loan fees under this agreement. As needed, the COUNTY DEPARTMENT shall establish, increase and collect such fees, assessments, and taxes and make such adjustments to raise funds sufficient to repay the loan and pay loan fees under this agreement. The COUNTY pledges its COUNTY DEPARTMENT's full faith and credit, and covenants to exercise that authority as needed, to the extent allowed by law.

d. The COUNTY DEPARTMENT shall maintain a dedicated source of revenue in an amount equal to the maximum annual **debt service** (principal **repayment** and interest) and the maximum annual amount of loan fees.

e. The COUNTY represents that it has exercised due regard for operation and maintenance expenses and the debt service requirements of any lien obligations and any other outstanding obligations pledging the gross revenues of the COUNTY DEPARTMENT, and the COUNTY DEPARTMENT has not obligated itself to set aside and pay more for **semiannual repayments** and loan fees under

this agreement than in its judgment will be available over and above its operation and maintenance expenses, other debt service obligations, or other obligations.

f. The foregoing pledges, covenants, and promises in sections 12.c, 12.d, and 12.e are 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).

g. 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 fees 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.

h. No delay or omission to exercise any right or power shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as

often as may be deemed expedient. The specific remedy herein provided shall be cumulative of all other existing remedies and the specification of such remedy shall not be deemed to be exclusive.

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

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

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

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

14. PROJECT PROCUREMENT The COUNTY shall:

a. Procure the architectural/engineering services in accordance with Chapter 103D of the Hawaii Revised Statutes and _____ 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 this Agreement. The COUNTY shall promptly submit a copy of the Notice to Proceed to the DIRECTOR.

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

f. Submit the following documents with the contract:

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

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

engineer responsible for overseeing construction.

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

g. Submit subagreements for Construction

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

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

15. INSURANCE

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

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

(2) Insurance against customary risks during

the period of construction shall also be provided.

(3) Builder's risk or similar types of insurance in an amount equal to the full replacement cost of the **Project**, to the extent that such insurance is obtainable for the duration of the construction period against any one or more of such risks.

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

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

16. CONSTRUCTION ACTIVITIES The COUNTY shall promptly

notify the DIRECTOR in writing of:

a. Any proposed change in scope of the **Project**.

No change will be undertaken until written notice of the proposed change has been provided to the DIRECTOR and the DIRECTOR has given written approval for such change.

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

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

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

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

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

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

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

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

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

Agreement.

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

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

f. Allow the DIRECTOR, the Comptroller of the State of Hawaii, the federal granting agency, the Comptroller General of the United States, and any of their authorized representatives, the committees (and their staffs) of the Congress and Legislature of the State of Hawaii, and the Legislative Auditor of the State of Hawaii to have the right of access to any book, document, paper, file, or other record of the COUNTY (and of any of its subcontractors) that is related to the performance of the provisions under this Agreement in order to conduct an audit or other

examination or to make excerpts and transcripts for the purposes of monitoring and evaluating the COUNTY's performance of the provisions and the COUNTY's program, management, and fiscal practices to assure the proper and effective expenditure of funds under this Agreement. The right of access shall not be limited to the required retention period but shall last as long as the records are retained.

g. The COUNTY shall retain all records related to the COUNTY's performance of the provisions under this Agreement for at least three (3) years after the date of submission of the COUNTY's final expenditure report, except that if any litigation, claim, negotiation, investigation, audit, or other action involving the records has been started before the expiration of the three-year period, the COUNTY shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year retention period, whichever occurs later.

19. **PROJECT ACCESS** The COUNTY shall ensure that the Environmental Protection Agency and the DIRECTOR, or any authorized representative thereof, will have access to the **Project** site at all reasonable times during **Project** construction

and thereafter for the useful life of the **Project**. Inspections may be unannounced.

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

21. AUDITS The COUNTY shall conduct an annual audit performed by an independent auditor in accordance with OMB Circular No. A-133, "Audits of State, Local Governments, and Non-Profit Organizations" (June 1997), and the Single Audit Act of 1984, Public Law 98-502, as amended (31 U.S.C. secs. 7501-7). Audits may be conducted in conjunction with the COUNTY's annual audit.

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

22. INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES
In the performance of the provisions required under this

Agreement, the COUNTY shall be an "independent contractor" with the authority and responsibility to control and direct the performance and details of the work required under this Agreement; however, the DIRECTOR shall have a general right to inspect work in progress to determine whether, in the DIRECTOR's opinion, the provisions are being performed by the COUNTY in accordance with the provisions of this Agreement. All persons hired or used by the COUNTY shall be the COUNTY's employees and agents and the COUNTY shall ensure that such persons are qualified to engage in the activity in which they participate. The COUNTY shall be responsible for the accuracy, completeness, and adequacy of any and all work performed by the COUNTY's employees and agents and shall ensure that all applicable licensing and operating requirements of the state, federal, and county governments and all applicable accreditation and other standards of quality generally accepted in the field of the COUNTY's activities are complied with and satisfactorily met. Furthermore, the COUNTY intentionally, voluntarily, and knowingly assumes the sole and entire liability (if any such liability is determined to exist) for its employees and agents or to other persons for all loss, damage, or injury caused by the COUNTY's employees and agents in the course of their employment. The mere participation in the performance of provisions under this Agreement shall not constitute nor be construed as employment

with the State of Hawaii and shall not entitle the COUNTY or the COUNTY's employees, agents, or subcontractors to vacation, sick leave, retirement, worker's compensation, or other benefits afforded state employees by statute. The COUNTY shall be responsible for payment of applicable income, social security, and any other federal, state, or county taxes and fees.

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

24. ASSIGNMENTS The COUNTY shall not assign any part or all of the provisions to be performed under this Agreement without the prior written consent and approval of the DIRECTOR. The DIRECTOR may condition any consent and approval upon such terms and provisions that the DIRECTOR may deem necessary.

Furthermore, no assignment of claims for money due or to become due to the COUNTY under this Agreement shall be effective unless the assignment of such claims is first approved by the DIRECTOR and the Comptroller of the State of Hawaii.

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

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

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

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

The user charge system and sewer use ordinance shall

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

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

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

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

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

this Agreement.

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

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

31. TERMINATION OF AGREEMENT

a. This Agreement may be terminated by the

DIRECTOR upon written notice to the COUNTY during construction of the **Project**, or thereafter at any time prior to complete **repayment** of principal, interest, and payment of loan fees by the COUNTY, upon violation by the COUNTY of any material provision of this Loan Agreement after such violation has been called to the attention of the COUNTY and after failure of the COUNTY to bring itself into compliance with the provisions of this Agreement within a reasonable time.

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

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

33. LOAN FEE

a. The COUNTY shall pay the DIRECTOR a **semiannual** loan fee which shall be computed based on the outstanding principal balance, and be payable on, the same dates that corresponding **repayments** of the

principal and interest on the loan are due. The **semiannual** loan fee is calculated by taking one half per cent (0.5%) of the outstanding principal balance at the time the **semiannual repayment** is due.

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

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

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

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

the COUNTY.

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

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

IN VIEW OF THE ABOVE, the parties execute this

Agreement by their signatures, to be effective as of the date above written.

DEPARTMENT OF HEALTH,
STATE OF HAWAII

By _____
Its Director of Health

COUNTY OF (SPECIFY THE COUNTY)

By _____
Its Mayor

By _____
Its Director of Finance

APPROVED AS TO CONTENT:

Director and Chief Engineer
Department of Public Works
(Specify the County)

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel
(Specify the County)

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

Exhibit "A"

PROJECT SCHEDULE

Est. Date

- A. Notice to Proceed
- B. Completion of Construction
- C. **Project** Duration from start to finish (months)

Exhibit "B"

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

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

ENVIRONMENTAL:

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

Exhibit "C"

-1-

ECONOMIC:

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

SOCIAL LEGISLATION:

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

Exhibit "C"

-2-

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

MISCELLANEOUS AUTHORITY:

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

Exhibit "C"

-3-

OTHER CONDITIONS

Project No. _____

Project Description: _____

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

2. The COUNTY shall take the necessary actions to maximize the benefits of this **Project** such as assuring the timely hookup of existing residences of the community for which this **Project** is serving.

Exhibit "D"

ADM. SERV. OFFICE
LOG NO. 11-27-01