

FEE AGREEMENT
BETWEEN
STATE OF HAWAII, DEPARTMENT OF BUDGET AND FINANCE
AND

(Name of Project Party)

In recognition of their relationship and until such time as this Agreement may be superseded, the State of Hawaii, Department of Budget and Finance (herein called the

"Department") and _____

(herein called the "Project Party") on this day ____ of _____ 19__ do hereby mutually covenant and agree as follows:

- (1) That the Project Party is applying to the Department for possible assistance in the form of financing through bonds or notes of the Department to be sold for the benefit of the Project Party;
- (2) That the Project Party has been furnished with the Department's Loan Application and Review Procedures which establish certain requirements of the Department, in law or otherwise, which requirements pertain to the Department's needs in relation to proper review of such Project Party's request for assistance;

In this regard, if a financial feasibility study is deemed necessary for the issuance of bonds or notes, the Project Party may select any feasibility consultant approved by the Department. The Project Party shall make copies of the proposal of, or contract for services with, such consultant available to the Department, which shall be in complete form and include fees for the entire study taking into account the time expected to be spent by the consultant in aiding the Project Party to complete a bond or note issue, such as: attendance at Department meetings, rating agency meetings, and the pre-closing and closing; review of legal documents and completion of all necessary consent and comfort letters. The Project Party shall notify the Department of any subsequent requested changes in the fee for the study, together with explanations therefor, prior to incurring the additional time or charges. Any feasibility consultant so selected shall include within the scope of work to be performed, and fee to be charged to the Project Party, consultation with the Department concerning the Department's determination as to whether the Project Party is a responsible party, as required by statute, and the feasibility consultant's review of the Project Party's estimate of benefits to be derived by the tax-exempt financing contemplated by this Agreement, which review shall include consultation with the Department.

- (3) That both the Department and the Project Party acknowledge that, in order to provide for certain of the requirements mentioned in (2) above, certain expenses may be incurred prior to the time, if any, when the Department shall issue its bonds or notes for the benefit of the Project Party;
- (4) That, without limiting the generality of any of the foregoing, such expenses may comprise the costs of studies of financial feasibility (whether in preliminary form or otherwise), certain legal fees, including the Department's bond counsel, the costs of printing of certain documents of the Department which relate specifically to the Project Party, costs related to the time spent by employees of the Department in reviewing the Project Party's application and documents and documents relating to the financing and any other costs, fees or other expenses which the Department shall incur relating to the Project Party;
- (5) That, with respect to such expenses as mentioned in (3) and (4) above, the Project Party shall be liable for payment of any and all such expenses, and the Project Party has submitted with this Fee Agreement a certified or cashier's check in the amount of \$1,000 made payable to the Department representing a nonrefundable fee to be applied to the payment of said expenses and, with respect to the expenses in excess of \$1,000, the Project Party shall pay all such expenses as the same become due and payable, and the Department shall in no way be liable for any such expenses or their payment;
- (6) That the Project Party may be reimbursed by the Department for certain of such expenses, if the Department and the Project Party shall so agree, in writing, but any such reimbursement may be made only from moneys of the Department received as proceeds from the issuance of bonds or notes of the Department sold for the benefit of the Project Party.
- (7) That, unless otherwise mutually agreed upon, costs of the Department for underwriters and investment bankers appointed by the Department, may be paid by the Department, but only from moneys of the Department received as proceeds from any bonds or notes of the Department sold and issued for the benefit of the Project Party.
- (8) Anything to the contrary notwithstanding, the amount reimbursed pursuant to (6) above and paid pursuant to (7) above shall not exceed that amount permitted to be paid from bond proceeds pursuant to applicable federal and state law. Unless otherwise mutually agreed upon, all costs as mentioned in (6) above and (7) above in excess of the amount permitted to be paid from bond proceeds pursuant to applicable federal and state law shall be the responsibility of the Project party.

- (9) That the potential financial liability of the Project Party to the Department under the terms of (3), (4), and (5) above is limited to the out-of-pocket costs incurred by the Department on behalf of the Project Party and the allocable cost of the time spent by employees of the Department in reviewing the Project Party's application and documents relating to the financing. The magnitude of these costs will necessarily vary according to a number of factors, the principal of which is the stage at which a withdrawal occurs. If withdrawal occurs at a very late date, for instance within a few days of the date of a potential bond sale, the reasonable expenses that will be charged to the Project Party may include, but will not necessarily be limited to, the costs of the preparation of the Trust Indenture, the Loan Agreement, Lease Agreement, Installment Sale Agreement, Guaranty, Mortgage, the preliminary and final Official Statement or Private Placement Memorandum, rating services fees and real estate counsel charges, if required. It is understood that the Project Party will be liable to the firm which prepares its financial feasibility studies, to its attorneys, and to any others with whom it has independently contracted; and
- (10) That nothing contained herein shall be construed as an agreement or indication of intent on the part of either the Department or the Project Party that the Department shall proceed to sell or issue bonds or notes of the Department for the benefit of the Project Party.

The Department and the Project Party each have signified their acceptance of the terms and conditions of this Agreement by causing its execution, in duplicate, in the appropriate spaces provided below.

(Seal) By: _____
Director of Finance
State of Hawaii

(Seal) _____
(Name of Project Party)

By: _____
Its

APPROVED AS TO FORM By: _____
Its

Deputy Attorney General
State of Hawaii

On this _____ day of _____ before me appeared _____, to me personally known, who, being by me duly sworn did say that he is a _____ of _____ and the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation by authority of its board of directors and _____ acknowledged the instrument to be the free act and deed of the corporation.

My commission expires:

On this _____ day of _____ before me appeared _____, to me personally known, who, being by me duly sworn did say that he is a _____ of _____ and the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation by authority of its board of directors and _____ acknowledged the instrument to be the free act and deed of the corporation.

My commission expires: