



**STATE PROCUREMENT OFFICE
NOTICE OF AND REQUEST FOR EXEMPTION
FROM CHAPTER 103D, HRS**

1. TO: Chief Procurement Officer

2. FROM: DLNR/DOFAW

Department/Division/Agency

Pursuant to §103D-102(b)(4), HRS, and Chapter 3-120, HAR, the Department requests a procurement exemption to purchase the following:

3. Description of goods, services or construction:

The Conservation Reserve Enhancement Program (CREP) will be offering payment to landowners enrolled in the program as a federal requirement for program implementation. Under the terms of the federal program conditions, the State will pay an annual payment to landowners enrolled and approved by the USDA Farm Service Agency (FSA) in the CREP. Practice management plans for landowners will generated by the USDA Natural Resource Conservation Service (NRCS) and approved for payment by FSA. The State is required to provide a direct cash match payable to landowners as a match for the federal funds spent toward the program (10% match of federal funds spent). Federal funding will be provided to CREP landowners in the form of annual rental payments, cost-share reimbursement payments, and additional incentive payments. As a requirement of the direct cash match to landowners, the State has agreed to provide \$17/acre/year for the term of the 14-15 year federal CREP contract to landowners who enroll in the program and implement conservation practices on their CREP project area.

4. Name of Vendor: **TBD**
Address: **LA**

5. Price: \$17/acre
250,000 / yr est. CA

6. Term of Contract: From: **1 year CA** To:

7. Prior Exemption Ref. No.

8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State: Landowners enrolled and approved by FSA in CREP will be required to enter into a contract agreement with FSA, upon which the State will be required to provide the match funding to the landowner. The planning and approval process on the federal side involves the FSA and NRCS determination of landowner, project, and practice eligibility as well as the generation of a conservation plan for the landowner by NRCS. The landowner is required to follow the NRCS conservation plan for their CREP project. As the program approval is determined by the USDA and the State is required to provide the program match to landowners; an IFB, RFP, or other procurement method is not practicable for contracts administered under CREP.

9. Details of the process or procedures to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:

Landowners will be allowed to enroll in CREP over the course of 5 years. Program implementation will be phased with Hawaii and Maui Island being available for enrollment in the 1st year, Molokai and Lanai the second year; and Oahu and Kauai in the third year. The last two years of open enrollment will be available on all islands. With the initiation of the program, public announcement and press releases informing the public of the program and enrollment process will be issued. With each new island group open for enrollment, additional press released and public announcements will be made. Additionally, an information website on Hawaii CREP will be posted on the DLNR-DOFAW website and federal funding websites. The program will be open to all eligible landowners until the State meets its acreage cap (15,000 acres) or until funds are spent.

10. A description of the agency's internal controls and approval requirements for the exempted procurement:

Federal partner's are required to submit the approval and contract documents to DLNR-DOFAW prior to the authorization of State payment funds. Furthermore, federal partner's or the state will provide annual reports to representative partners regarding landowner progress in the program or default by landowners under contract conditions (if any).

REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS (Cont.)

12. A list of agency personnel, by position, who will be involved in the approval process and administration of the contract:		
Name	Position	Involvement in Process
Melissa Sprecher	Forester, CREP Coordinator	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Paul Conry	Administrator, DOFAW	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
Laura Thielen	Chairperson, DLNR	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration

13. Direct inquiries to: Department: DLNR-DOFAW
 Contact Name: Melissa Sprecher
 Phone Number: (808) 587-4167
 Fax Number: (808) 587-0160

Agency shall ensure adherence to applicable administrative and statutory requirements

14. *I certify that the information provided above is, to the best of my knowledge, true and correct.*

FJC
 for Department Head Kaw C. Kawa

05/16/08
 Date

Reserved for SPO Use Only

15. Date Notice Posted 5/23/08

The Chief Procurement Officer is in the process of reviewing this request for exemption from Chapter 103D, HRS. Submit written objections to this notice to issue an exemption from Chapter 103D, HRS, within seven calendar days or as otherwise allowed from the above posted date to:

Chief Procurement Officer
 State Procurement Office
 P.O. Box 119
 Honolulu, Hawaii 96810-0119

Chief Procurement Officer's comments:

This approval is based on the DLNR's representation that the Federal USDA approves the landowner's acceptance in the CREP and the selection is not done by the State.

This approval is for the solicitation process only, HRS section 103D-310(c) and HAR section 3-122-112, shall apply.

16. **APPROVED** **DISAPPROVED** **NO ACTION REQUIRED**

Ann S. Fynn 6/2/08
 Chief Procurement Officer Date

AGREEMENT

BETWEEN

THE U.S. DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION

AND

THE STATE OF HAWAII

CONCERNING THE IMPLEMENTATION OF A
CONSERVATION RESERVE ENHANCEMENT PROGRAM
FOR THE ISLANDS OF MAUI, HAWAII, MOLOKAI, LANAI, KAUAI, AND OAHU

I. PURPOSE

This Agreement is between the Commodity Credit Corporation (CCC) of the United States Department of Agriculture (USDA) and the State of Hawaii (State) to implement a Conservation Reserve Enhancement Program (CREP) for the islands of Hawaii, Maui, Molokai, Lanai, Kauai and Oahu. The objectives of this CREP are to enhance stream water quality; reduce coral reef degradation and enhance near shore coastal waters; increase groundwater recharge; restore native, threatened and endangered species habitat; and control the spread of invasive species in upland areas in select areas of each the six (6) main Hawaiian Islands.

II. GENERAL PROVISIONS

The State of Hawaii has identified degraded stream water quality and quantity, reduced groundwater recharge, polluted runoff to near-shore waters and coral reefs, and degraded terrestrial and aquatic wildlife habitat as significant problems in important watersheds and riparian areas on the six (6) main islands in the State. This CREP Agreement (Agreement) is designed to help reduce the impact of these problems by restoring riparian buffer areas and restoring forests on up to fifteen thousand (15,000) acres. Additional benefits associated with these activities will accrue through habitat restoration for threatened and endangered species, the control of invasive species, native forest restoration, and preservation of open space.

This Agreement is consistent with the goals and objectives of USDA and CCC as established for the CREP. The State, represented by the Departments of Land and Natural Resources, Agriculture, Health, and the University of Hawaii at Manoa, will join with local watershed partnerships and other organizations to offer incentives to participants for the installation of riparian buffers, wetland restoration, and restoration of forests. The Department of Land and Natural Resources (DLNR) will be the lead State partnering agency for this project.

Specifically, Hawaii CREP will strive to enroll up to fifteen thousand (15,000) acres of marginal pastureland (MPL) and cropland to restore riparian buffer zones, wetlands, and native forest areas in critical groundwater recharge zones. Enrollment on the islands will be phased in over a five (5) year period as outlined in Section IV. A. Conservation Reserve Program (CRP) contracts offered under this Hawaii CREP agreement will be for fourteen (14) or fifteen (15) year durations. The non-Federal portion of this program will come from the State of Hawaii and in-kind contributions from local watershed partnerships and other organizations.

It is the intent of USDA-CCC and the State of Hawaii that this Agreement will seek to achieve the following goals for the six (6) main Hawaiian Islands as a whole when fully enrolled:

- A. A ten (10) percent reduction in sediment and nutrient runoff into streams from current levels.
- B. A five (5) percent increase in coral reef cover and substantial increases in coral diversity on coral reefs throughout the State from current levels.
- C. A ten (10) percent increase and improvement of wildlife and plant habitats of at least ten (10) endangered species through restoration of native forest ecosystems and riparian buffers from current levels.
- D. Substantial reforestation of native vegetation in riparian buffer zones as well as rare and declining native habitats from current levels.
- E. Substantial increases in groundwater recharge through the planting of trees in upland pastures from current levels.
- F. Substantial reduction in and control of invasive species in watersheds within the CREP target areas and on enrolled MPL and cropland from current levels.

III. AUTHORITY

The CCC has the authority under provisions of the Food Security Act of 1985, as amended (1985 Act) (16 U.S.C. § 3830 *et seq.*), and the regulations at 7 CFR Part 1410 to perform all its activities contemplated by this Agreement.

Various participating agencies of the State of Hawaii are provided statutory authority to perform all activities contemplated by this Agreement and by provisions of the Hawaii Revised Statutes, Chapters 141, 152, 171, 180, 183, 183D, and 195D. Other authorities may also apply.

This Agreement is not intended to, and does not, supersede any rules or regulations, which have been or may be promulgated by USDA/CCC, the State of Hawaii, or any other governmental

entity participating in the CREP. This Agreement is intended to aid in the administration of the CRP. Other authorities may also apply.

IV. PROGRAM ELEMENTS

USDA, CCC and the State agree that:

- A. The Hawaii CREP will consist of a Continuous USDA CRP sign-up into the CREP and a Hawaii incentive payment and technical assistance component. This project will seek to enroll eligible MPL and cropland under Water Resources practices and Forest Restoration practices within degraded watersheds in the counties of Hawaii, Maui, Kauai and of the City & County of Honolulu.

Offers for enrollment into the Hawaii CREP will be accepted according to the following:

- Years 1 & 2: Islands of Hawaii and Maui
- Year 3: Islands of Molokai and Lanai (and above islands)
- Year 4: Island of Kauai (and above islands)
- Year 5: Island of Oahu (and above islands)

Offers for enrollment will not be accepted from any other locations. See Exhibit 1, which is attached hereto and incorporated herein by reference, for CREP project area.

- B. To be eligible land must meet the eligibility criteria set forth in this Agreement, and in the Farm Services Agency's (FSA) National CRP Directives, and must be located in the CREP project area islands listed in Section IV. A.
- C. The following Water Resources and Forest Restoration provisions shall apply to eligibility criteria, Federal payment incentives, and practices for land enrolled under this agreement:
- (1) Water Resources Practices - Approximately thirteen thousand (13,000) acres of MPL and cropland acres will be targeted for enrollment as Water Resources practices. These practices will be offered primarily to achieve water quality and water conservation. Additional wildlife benefits are also planned to be achieved through these practices.
- a. Available Practices - For lands that qualify for Water Resources practices, the available CRP conservation practices (CP), as detailed in FSA National Directives as amended by State supplements, shall be:

- CP22 - Riparian Buffer (for Cropland and MPL)
 - CP23 - Wetland Restoration, Floodplains (for Cropland only)
 - CP23A - Wetland Restoration, Non-Floodplains (for Cropland only)
 - CP25 - Rare and Declining Habitat (for Cropland only)
 - CP29 - Marginal Pastureland Wildlife Habitat Buffer (for MPL only)
 - CP30 - Marginal Pastureland Wetland Buffer (for MPL only)
- b. Eligible Land - Riparian buffer practices CP22, CP29 and CP30 shall meet all eligibility criteria established in National CRP Directives, except that the average widths for these buffers shall have a minimum of thirty (30) feet and shall not exceed one thousand three hundred twenty (1,320) feet. The portion of the buffer extending past one hundred eighty (180) feet up to one thousand three hundred twenty (1,320) feet must be determined highly erodible land by USDA. Additional infeasible-to-farm buffer width criteria shall apply to maximum average buffer widths for cropland enrolled under practice CP22 as outlined in National CRP Directives. The cropland-only practice CP25 shall only be eligible on cropland, as defined by National CRP Directives, and on land that is determined highly erodible land by USDA or is located within a state conservation priority area, and meets all other eligibility criteria established in National CRP Directives.
- c. Federal Payment Incentives - Land enrolled under Water Resources practices shall receive a higher incentive in per acre Annual Rental Payment calculations as outlined in Section V. B. of this agreement. Practice incentive, signing incentive, and wetland hydrology restoration incentive payments shall be available for applicable practices as provided in Section V. E. of this agreement.
- d. Practice Provisions - All practices enrolled under Water Resources practices shall adhere to practice standards and criteria outlined in National CRP Directives, as enhanced by State FSA directive supplements. All installed practices must also be implemented in accordance with USDA polices for similar enrollments. Other practice provisions, to be outlined in a published State FSA directive supplement for the Hawaii CREP, shall also apply.
- (2) Forest Restoration Practices - Approximately two thousand (2,000) cropland acres will be targeted for enrollment as Forest Restoration

practices. These practices will be offered to achieve forestry and wildlife benefits.

- a. Available Practices - For lands that qualify for Forest Restoration practices the available CRP CP shall be:
 - CP3A – Hardwood Tree Planting (for Cropland only)
 - CP25 – Rare and Declining Habitat (for Cropland only)
 - b. Eligible Land - Cropland practices CP3A and CP25 shall only be eligible on cropland that has either determined to be highly erodible by USDA or is located within a state conservation priority area, and meets all other eligibility criteria established in National CRP Directives.
 - c. Federal Payment Incentives - Refer to Section V.B. for incentive calculations of this agreement. Practice incentive, signing incentive and wetland hydrology restoration incentive payments shall not be available for Forest Restoration practices.
 - d. Practice Provisions - All practices enrolled under Forest Restoration practices shall adhere to practice standards and criteria outlined in National CRP Directives, as enhanced by State FSA directive supplements. All installed practices must also be implemented in accordance with USDA policies for similar enrollments. Other practice provisions, to be outlined in a published State FSA directive supplement for the Hawaii CREP, shall also apply.
- D. In determining USDA's share of the cost of practice establishment, USDA shall follow National CRP Directives.
- E. The CRP contracts for acres enrolled in this CREP will be for a period of fourteen (14) or fifteen (15) years. For purposes of the Hawaii CREP, all practices shall be eligible for enrollment on a year-round continuous signup basis.
- F. Eligible producers in the CREP project area may also continue to offer other eligible acreage for enrollment during any applicable CRP general and continuous enrollment periods.
- G. No lands may be enrolled under this program until the USDA CREP Program Manager concurs with a detailed State FSA directive supplement for the Hawaii CREP, which will provide a thorough description of this program, applicable practice provisions, and operating procedures, and until completion of the appropriate level of documentation required by the National Environmental Policy Act of 1969, as amended and in accordance with 7 CFR 799.

- H. For purposes of the Hawaii CREP, lands enrolled in the CRP may also be voluntarily entered into a State, County or Private perpetual conservation easement program to run concurrent with and beyond the CRP contract period. All such easements filed will provide that the CRP contract provisions shall prevail during the CRP contract period. Landowners may also participate in other state landowner assistance programs, provided that there is no overlap for practices or matching funds. In no case will CREP participants be eligible to receive over one hundred percent (100%) of the cost of conservation practice implementation.
- I. CRP contracts executed under this Agreement will be administered in accordance with, and subject to, the CRP regulations at 7 CFR Part 1410, and the provisions of this Agreement. In the event of a conflict, the CRP regulations will be controlling.
- J. Eligible offers for enrollment shall be accepted under this agreement on a “first-come, first-approved” basis.

V. FEDERAL COMMITMENTS

Subject to the availability of funds and statutory limitations USDA agrees to:

- A. Determine land and producer eligibility for participation in the CRP portion of this CREP project consistent with, and subject to, the regulations at 7 CFR part 1410, and administer those CRP contracts that are executed.
- B. Make annual rental payments under the CRP contracts. This per acre annual payment shall be determined using the sum of two components:
 - (1) A rental payment calculated as follows:
 - (i) A Soil Rental Rate (SRR) for all enrolled eligible cropland according to FSA National Directives based on the weighted average soil rental rate of the three predominant soils offered,
 - (ii) A MPL Rental Rate of Forty Three and No/100 Dollars (\$43.00) per acre for MPL enrolled in this CREP, except that for
 - (iii) Eligible MPL located within or immediately adjacent to a Federally designated critical or recovery habitat area shall receive a rental payment equivalent to the current posted CRP MPL per acre rental rate. Eligible MPL that qualifies for this rate will consist only of lands within or immediately adjacent to Federally listed critical or recovery habitat for

threatened and endangered species as designated by the US Fish and Wildlife Service.

- (2) A Maintenance Payment as outlined in National CRP Directives.
- C. Cost-share with producers up to fifty percent (50%) of the eligible reimbursable costs of all approved CRP conservation practices. Cost-share will be made available for exclusionary fencing and alternative livestock watering facilities for all Hawaii CREP conservation practices as determined in accordance with current policies for riparian buffers. Cost-share rates used will be rates established following National CRP Directives.
- D. Make midcontract management payments of up to Four Hundred Fifty and No/100 Dollars (\$450) per acre over the life of the CRP contract, including invasive species control measures, to be established and determined in accordance with National CRP Directives.
- E. Make a one-time Sign-up Incentive Payment, Practice Incentive Payments and one-time incentive payment for restoration of wetland hydrology only for the applicable practices as outlined in National CRP Directives, and as calculated and determined according to National CRP Directives.
- F. Administer CRP contracts for lands approved under this CREP.
- G. Develop and review CRP conservation plans to address identified natural resource problems by devoting eligible land to approved CRP practices for applicants offering to enroll eligible acreage in the CREP.
- H. Conduct normal annual compliance reviews in accordance with National CRP Directives to ensure compliance with the CRP contract.
- I. Provide information to landowners concerning the Hawaii CREP program.
- J. Permit successors-in-interest for enrolled lands to enroll in CRP contracts under this CREP in the same manner as allowed for under normal CRP contracts.

VI. STATE COMMITMENTS

The State agrees to:

- A. Contribute matching funds equal to not less than twenty percent (20%) of the total project cost for this Agreement, subject to annual appropriation. For purposes of

this obligation, not less than ten percent (10%) of the State's contribution will be in the form of direct incentive payments to landowners to encourage participation in conservation practices and payment for Hawaii's CREP Administrative Coordinator, as detailed in Sections VI. B. and VI. C.; and not less than ten percent (10%) of the State's contribution will be in the form of in-kind contributions, including contributions of associated non-Federal and non-participating private partners, as detailed in Section VI. D. The State and private partners will contribute in-kind services and supportive state expenditures for watershed management, invasive species control, stream restoration, reforestation and program administration. The State shall also provide personnel to oversee implementation, monitoring, and evaluation of the project on a statewide basis, the cost of which shall be counted toward the State's direct incentive contribution to the project cost.

- B. Make contributions in the form of a direct incentive payment to participants as follows:
- (1) This payment will be made in the form of an annual Hawaii CREP Incentive Payment (HCIP) in the amount of Seventeen and No/100 Dollars (\$17.00) per acre per year for enrollment into any approved CRP practices for the fourteen (14) or fifteen (15) year CRP contract duration. The State's total HCIP outlays may be limited at the State's discretion to Two Hundred Fifty Thousand and No/100 Dollars (\$250,000) annually, or Three Million Seven Hundred Fifty Thousand and No/100 Dollars (\$3,750,000) over the term of this agreement, and shall be subject to annual appropriation;
 - (2) HCIP funds not used for CRP contracts may be made available to landowners in CREP watersheds for the purchase of permanent Conservation Easements (CE). All interested landowners shall have the opportunity to donate a CE in a CREP watershed. The State's contribution may also include new funds provided in conjunction with the State of Hawaii Legacy Land Conservation Fund for purchase of CEs in CREP watersheds, and shall be counted toward the State's obligation to meet the direct incentive contribution requirement; and
 - (3) HCIP funds not used for CRP contracts may also be used as a payment for reimbursement of eligible cost-share practices. Eligible practices are to be determined by the State each year and will be available to enrolled participants.
- C. Appoint a State CREP Administrative Coordinator responsible for, during the life of this Agreement, administering the State's obligations under this Agreement and facilitating enrollment and program success. Expenditures for salary and overhead of State CREP Coordinator, estimated at Fifty Thousand and No/100 Dollars

(\$50,000) annually, shall be subject to annual appropriation, and shall count toward the State's direct incentive contribution requirement.

- D. Document expenditures made toward the State's in-kind contribution requirement for the CREP from various sources, to the extent they are expended in CREP watersheds, shall include, but are not limited to, the following sources:
- (1) Management and control of invasive species, restoration of watersheds, or erosion control in CREP watersheds (Natural Area Reserve funding, State Forest Stewardship Program funding, Watershed Partnership funding);
 - (2) Invasive species control and monitoring in CREP watersheds (Invasive Species Committee expenditures, DLNR-DOFAW field crews invasive species control expenditures, Natural Area Partnership Program funding, Watershed Partnership funding);
 - (3) Watershed restoration funding in CREP watersheds (Natural Area Reserves Partnership Program funding, State Forest Stewardship Program funding to private landowners, Watershed Partnership funding);
 - (4) Near shore marine and coral reef monitoring and management funds in areas below CREP watersheds; and
 - (5) Conservation easements on private land in CREP watersheds donated by private landowners and other landowner contributions.
- E. Enter into a memorandum of understanding with private partners to coordinate the portion of the program that will provide non-state funding or in-kind services for the Hawaii CREP program such as watershed partnership agreements.
- F. Identify which lands and watersheds that may be considered for enrollment in CREP for the purpose of this Agreement. Assist federal partners with seeking applicants willing to offer eligible and appropriate land for enrollment in the CREP.
- G. Assist the USDA's Natural Resource Conservation Service (NRCS) and other conservation partners, where resources are available, in providing technical assistance to develop conservation plans for applicants offering to enroll eligible acreage in the CREP.
- H. Convene and participate in meetings of a CREP Advisory Committee that shall be scheduled to meet at least annually to review the Hawaii CREP and shall consist of state representatives involved in the Hawaii CREP from FSA, NRCS, DLNR, and other state agencies as appropriate. The CREP Advisory Committee shall discuss, but is not limited to, the program's functioning and technical aspects, and

will provide recommendations on the improvement of CREP to maximize participation and overall environmental benefits. The CREP Advisory Committee shall provide their findings to the FSA to be included in the annual report outlined in Section VI. J. The State will also coordinate between other state administered committees concerning CREP implementation and accomplishments as appropriate.

- I. Implement, in collaboration with federal partners, a communication plan within other state and federal agencies for the purposes of outreach to landowners, coordination between other agricultural and natural resources conservation programs administered in the State, and to provide public information and education regarding the CREP.
- J. Provide summaries of annual water quality monitoring and evaluation reports as they relate to the CREP watersheds. And, by October 1st of each year provide a report to the USDA FSA summarizing the status of enrollments under the CREP and progress on other commitments of this program, including goals outlined in Section II. The annual report to FSA shall include:
 - (1) The level of program participation;
 - (2) The results of the annual water quality monitoring program;
 - (3) Amount of acres enrolled under watershed and habitat restoration programs;
 - (4) Results of coral reef assessment and monitoring programs;
 - (5) Invasive species control targeted acreages;
 - (6) A summary of non-Federal CREP program expenditures; and
 - (7) Recommendations to improve the program as identified by the CREP Advisory Committee.
- K. Provide a summary report, by October 1st of each year, of the federal and State monies spent for the program. In order to determine the combined costs of CREP for purposes of the twenty percent (20%) State match requirement, the following costs will be used:
 - (1) The total land rental cost, which will include the CRP payments made by USDA;
 - (2) One-time cost-share and incentive payments paid by USDA;

- (3) The direct incentive contributions made by the State as detailed in Section VI. A., VI. B., and VI. C, including costs associated with the administration of the project by the CREP Administrative Coordinator, whose responsibilities include but are not limited to the items outlined in Section VI. F., VI. H., VI. I., VI. J., and VI. K.;
- (4) Cost of conservation easements incurred by the State and associated monitoring costs, if any; and
- (5) In-kind contributions made by the State, including costs of administering the program and technical assistance, and items outlined in Sections VI. D., VI. E., and VI. G.

The State may treat, in furtherance of the provisions of this Agreement, contributions in connection with the program by non-Federal and non-participating private partners as contributions by the State.

- L. Temporarily release participants from any contractual or easement restriction on crop production during the CRP contract period if such release is determined necessary by the U.S. Secretary of Agriculture or the State of Hawaii in order to address a state or national emergency.

VII. MISCELLANEOUS PROVISIONS

- A. All CRP contracts executed under this Agreement shall be subject to all limitations set forth in the regulations at 7 CFR part 1410 including, but not limited to, such matters as economic use, transferability, violations, and contract modifications. Agreements between participants and the applicable agencies of Hawaii may impose additional conditions not in conflict with those applicable under the regulations at 7 CFR part 1410, and which may be subject to review by USDA.
- B. Neither Hawaii, nor the USDA, shall assign or transfer any rights or obligations under this Agreement without prior written approval of the other party.
- C. Hawaii and the USDA agree that, to the extent possible under applicable law, each party will be solely responsible for its own acts, omissions, and the results thereof, and shall not be responsible for the results thereof caused by the acts or omissions of the other party.
- D. Hawaii and the USDA agree to enter into a data sharing agreement to facilitate the evaluation of CREP offers and implementation of signed agreements, and agree to keep the data confidential in a manner that is consistent with State and Federal law. Data sharing will also be in accordance with procedures, restrictions, and

exemptions established under the federal Freedom of Information Act, federal and state privacy laws, the Hawaii Uniform Information Practices Act, and other applicable laws, with the State of Hawaii to facilitate Hawaii's review of offers and monitoring and evaluation efforts.

- E. USDA may enter into CREP contracts for fully eligible persons and land provided that the CREP project enrollment limit has not been reached, and that such actions are otherwise authorized by law.
- F. All financial commitments of the USDA/CCC and Hawaii are subject to the availability of funds. In the event either party is subject to a funding limitation or cannot otherwise secure the necessary funding for this Agreement, it will notify the other party within thirty (30) days and any necessary modifications or termination will be made to this Agreement. This Agreement may be terminated by either party at any time after written notice. Such termination of this Agreement will not alter responsibilities regarding existing contractual obligations established under the Hawaii CREP and all Hawaii payments between participants and USDA or CCC, or between participants and Hawaii.
- G. The Deputy Administrator for Farm Programs, Farm Service Agency or the Deputy Administrator's designee or successor, is delegated authority to carry out this Agreement and, with the Governor of Hawaii, the Governor's designee or successor, or the Board of Land and Natural Resources, may further amend this Agreement consistent with the provisions of the 1985 Act, as amended, and the regulations at 7 CFR part 1410. The provisions of this Agreement may only be modified by written agreement between the parties.
- H. The U.S. Department of Agriculture prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact the USDA, Office of Communications at 202-720-5881 (voice) or 202-720-7808 (TDD.) To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC, 20250, or call 202-720-7327 (voice) or 202-720-1127 (TDD). USDA is an equal employment opportunity employer.

IT IS SO AGREED:

FOR THE U.S. DEPARTMENT OF AGRICULTURE AND THE COMMODITY CREDIT CORPORATION

Ed Schafer
Secretary of Agriculture

Date

FOR THE STATE OF HAWAII

Linda Lingle
Governor of the State of Hawaii

Date

Laura H. Thielen, Chairperson
Board of Land and Natural Resources
State of Hawaii

Date

Approved as to Form:

Deputy Attorney General
State of Hawaii

Date