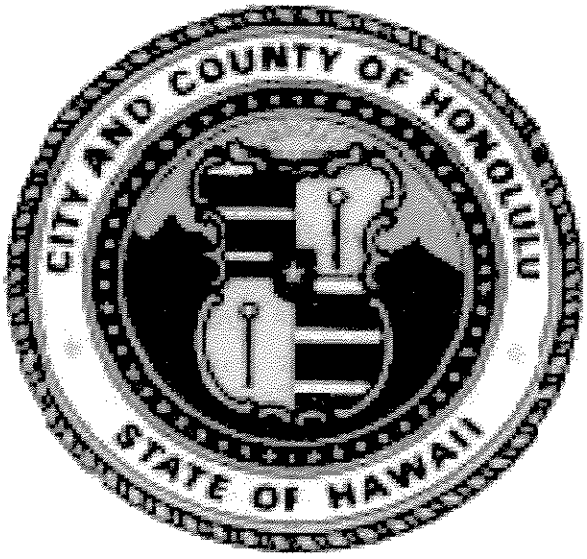

RAPID TRANSIT STABILIZATION AGREEMENT
Hawaii Building and Construction Trades Council Affiliates

For the

HONOLULU HIGH CAPACITY TRANSIT CORRIDOR PROJECT

NOVEMBER 17, 2009

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This Rapid Transit Stabilization Agreement ("RTSA") is entered into on the date hereinafter stated, by and between the City and County of Honolulu ("Owner"), the Unions that become signatories hereto ("Unions"), and Contractors with whom the Owner executes a construction contract for work to which this RTSA applies, hereinafter referred to as "Contractor-Employers."

Article 1 – Purpose and Findings

1.1 The successful and timely completion of the Project is of the utmost importance to the people of the City and County of Honolulu, who voted affirmatively in November 2008 to proceed with the construction of a fixed guideway system, and who have since 2007 been paying a local surcharge to support the financing of the Project. The Project, along with this RTSA, will also bring significant economic stimulus benefits to the local community through federal funding and the resulting creation of new jobs and increased commerce. The timely completion of the Project will allow development and increased commerce and mobility in the City and County of Honolulu.

The purpose of this RTSA is to promote efficiency of construction operations to ensure the successful and timely completion of the Project. This RTSA seeks to accomplish this in the following ways:

- Ensure that construction of the Project occurs without disruption due to labor disputes;
- Reducing the friction that may be caused when union and open shop employees of different employers are required to work together at a common job site.
- Ensure high quality, cost-effective and timely construction of the Project;
- Provide a large, dependable supply of skilled construction workers from various trades needed to complete a project of this magnitude, complexity and duration;
- Provide training opportunities for craft workers; and
- Ensure a safe workplace for the workers, contractors and the Owner through implementation of and compliance with health and safety policies and laws.

1.2 Large numbers of workers of various skills employed by contractors and subcontractors will be required in the performance of the construction work for the Project, including those to be represented by the Unions which become signatory to this RTSA. On a project of this magnitude, with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption would be substantial without any commitment to maintain continuity of the construction work.

1.3 It is in the best interest of the general public, the Owner, the Unions and the Contractor-Employers, defined herein, for the construction work to proceed in an orderly manner without Work Disruptions. Accordingly, the Unions and the Owner desire to mutually establish and stabilize the wages, hours and working conditions for the workers employed on the Project by Contractor-Employers.

1.4 The Owner remains committed to awarding contracts for each phase of the Project in accordance with the applicable provisions of federal and State law. The Owner has the absolute right to award contracts on this Project that provide bidding opportunities for all contractors and that promote an adequate supply of craft workers possessing the requisite skills and training in order to provide the taxpayers a project of the highest quality. Further, all parties agree to cooperate throughout the term of this RTSA to develop and utilize methods to reduce the Owner's construction and Project administration costs.

1.5 The Project depends upon federal and State funding, the receipt of which requires the satisfaction of applicable conditions and requirements of federal grants and regulations, including but not limited to the requirements of the United States Department of Transportation, Federal Transit Administration's Master Agreement (FTA Master Agreement). This RTSA shall be subordinate to any and all such requirements and conditions of federal or State funding.

Article 2 - Definitions

RTSA means this Agreement.

Artist means a person or firm developing aesthetic/artistic designs for the Project.

City means the City and County of Honolulu.

Construction Contract means, exclusively, the construction contracts for the completion of the Project. Specifically, Construction Contract does not include a contract between Owner or any of its contractors or consultants, and any firm or individual performing construction management, program management, project management, architectural or design services, engineering services, project inspection services, special inspection or testing services, landscape architectural services, or environmental evaluation services or any other services that are not "hands on" construction work on the Project.

Contractor-Employer means any individual firm, partnership, corporation, or any combination thereof, including but not limited to joint ventures, that has entered into a Construction Contract with the Owner or any of its contractors, at any tier, under contract terms and conditions approved by the Owner. The term Contractor-Employer as used in this RTSA shall therefore include any and all

subcontractors performing work on the Project pursuant to a Construction Contract.

Covered Employee means an employee who is working on the Project as an employee of a Contractor-Employer pursuant to a Construction Contract for this Project and whose work is covered by this RTSA, and further whose work is not excluded in Article 3.

Letter of Assent means the acceptance letter signed by each Contractor-Employer agreeing to be bound by the terms of this RTSA in the form attached hereto as Attachment "A".

Owner means the City and County of Honolulu or its assignee.

RTSA Administrator means the individual designated by the Owner to serve as the Owner's point of contact with the Unions and Contractor-Employers regarding the RTSA and who is authorized to appoint designee(s).

Project means the Owner's contracts for on-site construction of the 20 mile guideway transit system from East Kapolei to Ala Moana Center with future extensions planned for West Kapolei to East Kapolei, Salt Lake Boulevard and from Ala Moana Center to University of Hawaii at Manoa and to Waikiki, as described in the Final Environmental Impact Statement for the Honolulu High Capacity Transit Corridor Project, including the construction of 21 stations, and supporting facilities such as a vehicle maintenance and storage facility, transit centers, park-and-ride lots, traction power substations, a parking structure, and an access ramp from the H-2 Freeway to the Pearl Highlands park-and ride. Any pre-cast concrete fabrication yard located in the State of Hawaii that is dedicated solely to the work for a Construction Contract for this Project is included. The Project also includes any subsequent replacement, addition and renovation of construction undertaken pursuant to a Construction Contract that occurs within five (5) years of the date of the completion of the last Construction Contract.

State means the State of Hawaii.

Steward means the employee of Contractor-Employer working on the Project who is designated as the Union's representative for all Covered Employees working on the Project in the craft represented by the Union.

Trust Fund Agreement means a trust fund established under a Collective Bargaining Agreement for the contribution of payments for employee benefits.

Union means any labor organization which is a signatory to this RTSA.

Work Disruption means any strike, lockout, sympathy strike, slowdown, work stoppage, boycotting, picketing or similar activity that interferes with work on the Project.

Article 3 – Scope of RTSA

3.1 (a) The Owner shall require all Contractor-Employers to agree to be bound by this RTSA by executing the Letter of Assent as a condition of any future request for proposal issued on or after the effective date of this RTSA.

(b) The Unions agree that this RTSA will be made available to, and will fully apply to, any successful bidder for the Project work who becomes signatory hereto, without regard to whether the successful bidder performs work at other sites as either a union or open shop contractor, and without regard to whether employees of such bidder are or are not members of any union.

3.2 This RTSA shall be limited to work under Construction Contracts on the Project performed by Covered Employees of Contractor-Employers of any tier, for the Construction Contract entered into on or after the effective date of this RTSA and where such work is traditionally covered by a collective bargaining agreement with a Union. This RTSA shall not apply to any work performed or contracts issued at any time prior to the effective date, or after expiration or termination of the RTSA, or on any other projects or activities of the Owner.

3.3 This RTSA shall not apply to the following:

(a) Work for any Contractor-Employer by an employee who is not a Covered Employee.

(b) Work by employees of a manufacturer or vendor necessary to maintain such manufacturer's or vendor's warranty or guarantee, including the on-site supervision of such work.

(c) All work by employees of the Owner, contract employees of the Owner and/or consultants of the Owner associated with the Project.

(d) All support services, contracted by the Owner or its Contractor-Employers of any tier that are unrelated to construction work, even if the support services are contracted for or in connection with the Project.

(e) All off-site manufacture of materials, equipment, or machinery, including handling and delivery of materials, equipment and machinery to the Project. This exclusion shall not apply to any pre-cast concrete fabrication

yard located in the State of Hawaii that is dedicated solely to the work for a Construction Contract for this Project.

(f) Furniture, fixture, and equipment installers retained by the Owner, to perform work after a Contractor-Employer has completed construction of its work pursuant to Section 21.2.

(g) Artists retained by the Owner during the course of the Project.

(h) Employees engaged in any work performed on or near, or leading to or into, the Project site(s) by State, the Owner, or other governmental bodies or their contractors; or public utilities or their contractors; or other public agencies or their contractors.

(i) Employees engaged in maintenance on leased equipment and on-site supervision of such work.

(j) Startup, testing and commissioning personnel employed by the Contractor-Employer or the Owner, or laboratory for specialty testing or inspections not ordinarily performed by the Unions.

(k) All employees, subconsultants and agents of the design teams or any other consultants of the Owner for specialty testing, architectural/engineering design and other professional services.

3.4 As areas and systems of the Project are inspected and tested by the Contractor-Employer and accepted by the Owner, the RTSA shall not have further force or effect on such items or areas, except when the Contractor-Employer is directed by the Owner to engage in repairs, modifications, checkout and/or warranty functions required by the Construction Contract.

3.5 It is understood that this RTSA constitutes a stand-alone agreement, and by virtue of executing a Letter of Assent, Contractor-Employer will not be obligated to sign any other collective bargaining agreement as a condition of performing work within the scope of this RTSA.

3.6 Each Contractor-Employer shall provide Unions and Owner with a fully executed copy of the Letter of Assent as applicable prior to execution of the Construction Contract for work on this Project.

3.7 It is understood that each party to this RTSA acts independently of the other, and this RTSA does not give rise to any joint and several liability between or amongst the parties. The Unions agree that this RTSA does not have the effect of creating any joint employment status between and among the Owner and any Contractor-Employer.

3.8 Any Union or Contractor-Employer may contact the RTSA Administrator with a complaint or issue regarding the administration of the RTSA. The RTSA Administrator shall appoint designee(s) as appropriate who will expeditiously respond to and resolve any issue raised by the Union or the Contractor-Employer. If any issue is not satisfactorily resolved, the Union or the Contractor-Employer may invoke the provisions of Article 14 or Article 15 as applicable.

3.9 The Owner may at its sole discretion and at any time modify, delete, add to, terminate, delay and/or suspend the scope of work defined as the Project above; provided, however, that no work under the scope of the Project will be performed outside of the terms of this RTSA.

3.10 The Unions acknowledge that the Owner has the right to select any qualified contractor and award contracts to construct the Project without regard to the Contractor-Employer being a signatory to any collective bargaining agreement with any Union, or any other union so long as such Contractor-Employer agrees to be bound by this RTSA.

Article 4 - Union Recognition, Union Security and Union Representation: Obligations of Contractor-Employer and Unions

4.1 Union Recognition

The Contractor-Employer recognizes the respective Unions as the sole and exclusive bargaining representatives of all Covered Employees within the Unions' respective jurisdictions.

4.2 Union Security

(a) Any Covered Employee of a Contractor-Employer who is currently a member of a Union and who is working for a Contractor-Employer who is a signatory to a collective bargaining agreement other than this RTSA, shall remain a member in said Union so long as this RTSA is in effect.

(b) The Contractor-Employer agrees to deduct dues and fees in the amount designated by a particular Union, subject to applicable law, provided that the Covered Employee has executed a written assignment calling for such a deduction, which is provided to the Contractor-Employer, and provided further that the form of the written assignment is that form that is used for all operations by the particular Union for its members in the State. The Contractor-Employer will remit to the Union once a month, the dues and fees deducted on or before the fifteenth (15^{th}) day of each month following the month in which the deduction was made, as agreed upon between each Union and Contractor-Employer at the pre-job conference.

(c) All Covered Employees of Contractor-Employer who are not members of any Union shall pay dues and uniform assessments in accordance with the requirements of the applicable Union and applicable law. Such dues and assessments shall be limited to fees necessary for the performance for the Union's representation duties. Any employee failing to meet the above condition of employment shall upon written notice by the Union be discharged by the Contractor-Employer within five (5) working days.

(d) This RTSA shall not unlawfully deprive, nor shall it be construed to unlawfully deprive, any non-union or union employee of his or her rights under federal and State laws.

4.3 Union Representation

(a) Authorized Union representatives shall have reasonable access to the Project, whenever work covered by this RTSA is being performed by Covered Employees working in the craft represented by the Union, provided that such representatives do not interfere with the work of the employees and are not disruptive to work on the Project or other work of Owner and further provided that such representatives fully comply with the visitor, safety and security rules established for the Project. At the pre-job conference the Union and the Contractor-Employer who has a Construction Contract with the Owner shall mutually agree on a reasonable number of Union representatives on whose behalf access will be sought.

(b) Each Union shall have the right to designate for each Contractor-Employer one (1) Covered Employee per shift as Steward for the respective Union and the Steward shall be recognized as the Union's representative. Such designated Stewards shall be qualified workers assigned to a crew and shall perform the work of their trade. Under no circumstances shall there be a non-working Steward on the job.

(c) The Steward shall not be subjected to discrimination or discharge on account of performing proper union business. The Unions agree that such activities shall not unreasonably interfere with the Steward's work for the Contractor-Employer.

(d) The Contractor-Employer shall be notified in writing of the selection of each Union's Steward.

(e) The Steward shall not cause or encourage any Work Disruption and, if determined to have instigated, encouraged or participated in any way in such action, notwithstanding the provisions of Section 4.3 (c), will be subject to disciplinary action by the Contractor-Employer, up to and including discharge.

Article 5 - Management Rights of Contractor-Employer

5.1 Contractor-Employer retains full and exclusive authority for the management of its respective operations except as specifically set forth in this RTSA. The Contractor-Employer shall have the right to direct its work forces at its sole discretion, including but not limited to hiring, promotion, determining competency to perform work, transfer, lay-off, discipline or discharge for just cause; the selection of foremen and general foreman; the assignment and scheduling of work; the requirement of overtime work; the determination of when work will be done; and the number and identity of employees engaged to perform such work.

5.2 The Contractor-Employer may, in its sole discretion, utilize the most efficient method or techniques of construction, tools, or other labor-saving devices.

5.3 Except as otherwise expressly stated in this RTSA, there shall be no limitation or restriction upon the Contractor-Employer's choice(s) of materials or design, nor upon the full use, and installation and utilization of equipment, machinery, package units, pre-casts, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices. If there is any disagreement between the Contractor-Employer and a Union, concerning the manner or implementation of such device or methods of work, the implementation shall proceed as directed by the Contractor-Employer and the Union shall have the right to grieve and/or arbitrate the dispute as set forth in Article 14 of this RTSA.

Article 6 - Hiring Procedures, Referral and Employment: Obligations of the Contractor-Employer and Unions

6.1 Unless otherwise required by this RTSA, Contractor-Employer shall utilize the job referral system of the appropriate signatory Union to acquire employees to work on the Project. The job referral system will be operated in a non-discriminatory manner and in full compliance with federal, State, and local laws and regulations which require equal employment opportunities and non-discrimination.

A probationary period of ten (10) working days shall be established for all new employees; during such time period such named employees may be summarily discharged and such discharge is not subject to the grievance and arbitration process. Notwithstanding the above, the Contractor-Employer may reject any referral for any lawful nondiscriminatory reason provided it complies with this Article.

6.2 In the event that a Union is unable to fill a request for qualified employees within forty-eight (48) hours after such request is made by a Contractor-Employer (Saturdays, Sundays and Holidays excepted), the Contractor-Employer may employ applicants from any other available source. The Contractor-Employer shall inform the Union of the name and social security number of any applicant hired from the other sources and shall refer the applicant to the Union for dispatch to the Project within twenty-four (24) hours after hiring.

6.3 Except as required by law, the Unions shall not knowingly refer an employee currently employed by any Contractor-Employer working under this RTSA to any other Contractor-Employer. This provision shall not be applicable in any case in which the Covered Employee has given notice to the Contractor-Employer of his intent to quit.

6.4 The selection of craft foremen and/or general foreman and the number of such foremen and/or general foreman required shall be entirely the responsibility of the Contractor-Employer. Craft foremen shall be designated working foremen at the request of the Contractor-Employer and once so designated shall be allowed to perform work on the Project in their respective crafts.

6.5 The parties recognize the Owner's interest in providing opportunities to participate on the Project to emerging Contractor-Employers as well as other enterprises which may not have previously had a relationship with the Unions signatory to this RTSA. To ensure that Contractor-Employers will have an opportunity to employ their "core" employees on this Project, all "core" employees must register with the appropriate Union prior to employment. The parties agree that such Contractor-Employers may request by name, and the Union will honor, referral of such persons who have registered with the appropriate Union for Project work and who demonstrate the following qualifications:

(a) possess any license required by State or federal law for the Project work to be performed;

(b) have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;

(c) were on the Contractor-Employer's active payroll for at least sixty (60) out of the one hundred eighty (180) calendar days prior to the contract award;

(d) have the ability to perform safely the basic functions of the applicable trade.

The Union will refer to such Contractor-Employer one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer

one of such Contractor-Employer's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor-Employer's crew requirements are met or until such Contractor-Employer has hired seven (7) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor-Employer's work the ratio shall be maintained and when the Contractor-Employer's workforce is reduced, Covered Employees shall be reduced in the same ratio of "core" Covered Employees to hiring hall referrals as was applied in the initial hiring.

It is understood that Contractor-Employers that do not follow this process shall be subject to Article 14: Grievance Procedure of this RTSA. Further should a grievance be filed regarding Section 6.5, the fees and expenses of the Arbitrator shall be paid for by the losing party.

Article 7 - Apprenticeship Program: Obligations of Contractor-Employer and Unions

7.1 The Contractor-Employer shall employ apprentices in their respective craft to perform work customarily performed by the craft in which they are apprenticed and within their capabilities.

7.2 To promote training and employment opportunities for residents of Hawaii, the apprentices shall be given priority consideration for this training to the extent permitted by applicable laws and government regulations.

7.3 To promote training and employment opportunities for military veterans who are interested in careers in the building and construction trades, the Contractor-Employer and Unions agree, when appropriate, to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment and the Center's "Helmets to Hardhats" Program to serve as a resource for assessment of construction aptitude of the military veterans and for possible referral to apprenticeship programs.

7.4 Apprenticeship Goals. Consistent with any restriction contained in applicable federal and State law and regulations, including those governing equal employment opportunity, prevailing wage and apprenticeship requirements and limitations, the Contractor-Employer may employ registered apprentices. Apprentice pay scales and ratios on the Project shall be governed by the appropriate Union's joint apprenticeship program.

Article 8 - Work Stoppages and Lockouts: Obligations of Contractor-Employer and Unions

8.1 During the term of this RTSA there shall be no Work Disruption by any Union, any Covered Employee, or any Contractor-Employer. As soon as any Contractor-Employer or Union becomes aware of any such Work Disruption, the Contractor-Employer and Union shall immediately notify Owner, and RTSA Administrator in writing, regarding any such Work Disruption. Failure of any Union to cross any picket line established at the Project site is a violation of this Article.

8.2 The Union(s) shall not sanction, aid or abet, participate in, encourage or continue any violation of Section 8.1 at any Project site and shall undertake all reasonable means to prevent or terminate any such activity immediately upon being informed, in writing, of such activity or activities. No Covered Employee shall engage in activities which violate this Article. Any Covered Employee who participates in or encourages a violation of Section 8.1, including refusal to cross any picket line established at the Project site shall be subject to disciplinary action, up to and including discharge, at the discretion of the Contractor-Employer and shall not be eligible for rehire on the Project.

8.3 Immediately upon being informed in writing of a violation or a potential violation of this Article, the principal officer or officers of the Union shall immediately instruct, order and use any and all reasonable means and their individual best efforts to cause any and all of the Covered Employees that the Union represents to cease any violations of this Article. A Union deemed by the Owner to be in compliance with these obligations shall not be responsible for the unauthorized acts of Covered Employees it represents. The failure of the Contractor-Employer to exercise its rights in any instance shall not be deemed a waiver of its rights in any other instance.

8.4 In lieu of, or in addition to, any other action at law or equity, a Contractor-Employer may institute the following procedure when a breach of this Article is alleged, after the Union(s) has been notified in writing of the alleged breach.

(a) The party invoking this procedure shall notify, Clyde Matsui, who the parties agree shall be the permanent Arbitrator under this procedure. In the event the permanent Arbitrator is unavailable at any time, Patrick Yim, shall be the alternate Arbitrator. If neither the permanent Arbitrator nor the alternate Arbitrator is available, the permanent Arbitrator shall appoint an alternate. Notice to the Arbitrator shall be by the most expeditious means available, with notice by facsimile, telegram, electronic mail or any other effective written means, to the party alleged to be in violation and the Contractor-Employer.

(b) Upon receipt of said notice, the Arbitrator named above shall set and hold a hearing within twenty-four (24) hours.

(c) The Arbitrator shall notify the parties by facsimile, telegram, electronic mail or any other effective means, of the place and time he or she has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.

(d) The only issues at the hearing shall be whether a violation of Section 8.1, 8.2 and/or 8.3 has in fact occurred, and if so, by whom. The award shall be issued in writing to the parties, and the Owner, within three (3) hours after the end of the hearing, and may be issued without an opinion. If any party desires an opinion, it may request one, and a written opinion shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of the award. The Arbitrator may order cessation of the violation of this Article, and such award shall be served on all parties, including Owner and Unions, by the Arbitrator by hand delivery, facsimile, or messenger service ensuring delivery no later than noon the following day, upon issuance.

(e) Such award may be enforced in and by any court of competent jurisdiction in the State upon the filing of this RTSA and other relevant documents referred to hereinabove. Notice of the initiation of such enforcement proceedings shall be given to the other party by facsimile, messenger service, expedited mail or personal service. In the proceeding to obtain a temporary order enforcing the Arbitrator's award as issued under Section (d) above, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The court's order or orders enforcing the Arbitrator's award shall be served on the parties by hand or by delivery to their last known address by overnight mail.

(f) To the extent permitted by law any right created by statute or law including but not limited to Chapter 658A of the Hawaii Revised Statutes, governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance therewith, is hereby waived by parties to whom such right accrues.

(g) The fees and expenses of the Arbitrator shall be borne by the Union or Unions found in violation of this Article, or in the event no violation of this Article is found by the Arbitrator, such fees and expenses shall be borne by the Contractor-Employer. Each party to the procedure under this Section 8.4 will be responsible for its own legal fees and costs.

(h) If the Arbitrator determines in accordance with Section 8.4(d) above, that the Union has violated Section 8.1, 8.2 and/or 8.3 above, the Union shall pay as liquidated damages the sum of twenty-five thousand dollars ($25,000) to the Contractor-Employer, and shall pay an additional twenty-five thousand dollars ($25,000.00) per shift for each shift thereafter for which all Covered Employees of the Union have not returned to work. The Unions and the Contractor-Employer agree that twenty-five thousand dollars ($25,000) per shift is an appropriate amount for liquidated damages because the Contractor-Employer's actual damages are not readily ascertainable, in advance, and the calculation of the its actual damages is difficult, and that this amount is not a penalty, but instead their reasonable calculation of the minimum of the damages that the Contractor-Employer will incur for the breach by that Union of its obligations under this RTSA. The Arbitrator shall retain jurisdiction to determine compliance with this Section and Article.

8.5 (a) If it is determined by the Arbitrator that a Union has violated the provision relating to Work Disruption, in violation of Section 8.1, 8.2 and/or 8.3 of this RTSA, the Union will be required to pay the Owner liquidated damages in the amount of $50,000 per day until the breach is cured by the Union. The Unions and the Owner agree that $50,000 per day is an appropriate amount of liquidated damages because the Owner's actual damages are not readily ascertainable, in advance, and the calculation of its actual damages is difficult, and that this amount is not a penalty, but instead their reasonable calculation of the minimum of the damages that the Owner will incur for the breach by that Union of its obligations under this RTSA.

(b) The payment of liquidated damages is due upon demand by the Owner, and, payment shall not be deemed to negatively affect in any way the rights of the Owner to all available forms of relief, including but not limited to injunctive relief, declaratory relief, and damages.

8.6 (a) In the event a Union accrues cumulated damages of $250,000.00 or more in liquidated damages, pursuant to Sections 8.4(h) and 8.5(a), the Owner may, at its discretion, exercise its unilateral right to terminate this RTSA as to that Union for any Construction Contracts entered into thereafter and Union's name will be deleted from any Letter of Assent signed by the Contractor-Employer for such Construction Contracts.

(b) In the event the Unions collectively accrue cumulated damages of $1,000,000.00 or more in liquidated damages, pursuant to Sections 8.4 (h) and 8.5 (a), the Unions will be in material breach of this RTSA, and the Owner may, in its discretion exercise its unilateral right to terminate this RTSA in its entirety.

8.7 The procedures contained in Section 8.1 through 8.4 shall be applicable to violations of this Article 8 only. Disputes alleging violation of any other provision of this RTSA, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved exclusively under the grievance adjudication procedures of Article 14.

8.8 The parties acknowledge that the Owner is a party in interest in all proceedings arising under this Article and shall be sent copies of all notifications required under this Article, and has the right, at its option, to initiate or participate as a full party in any proceeding initiated under this Article.

Article 9- Hours of Work, Overtime, Shifts and Holidays: Obligations of Contractor-Employer and Unions

9.1 Workweek. The standard workweek shall be Monday through Friday, inclusive. Variations to the standard work week are only permissible to ensure the Project is delivered on-time and on-budget. All variations to the standard work week shall comply with HRS Chapter 104 and Davis Bacon Act, 40 U.S.C. § 276a et seq. Acceptable alternatives to the standard work week when permissible, are limited to Sections 9.2 and 9.10.

9.2 Compressed Work Week. The Contractor-Employer, may establish a compressed work week as follows:

(a) Four (4) consecutive ten (10) hour days during the period from Monday through Friday. Any hours worked before the regular established starting time or after the regular established quitting time, or hours over eight (8) consecutive hours, and any hours worked beyond the forty (40) hour workweek shall be compensated at the appropriate overtime rate.

(b) Four (4) nine (9) hour days during the period from Monday through Thursday plus four (4) hours on Friday. Any hours worked before the regular established starting time or after the regular established quitting time, or hours over eight (8) consecutive hours, and any hours worked beyond the forty (40) hour workweek shall be compensated at the appropriate overtime rate.

The provisions of subsections (a) and (b) above are not intended to be implemented or administered in such a manner wherein the Covered Employees' work week schedule is revised on a daily basis.

9.3 Workday. Except where shift work or night work is scheduled, the normal workday for Covered Employees covered by this RTSA shall begin between the hours of 6:00 a.m. and 8:00 a.m. The starting time for the Construction Contract

work shall be established by the Contractor-Employer prior to the start of the Construction Contract work and, once established, shall not be changed except by written notification from the Contractor-Employer to the Covered Employees and Unions. All hours of work shall comply with the directive and requirements of the Contractor-Employer who has a Construction Contract with the Owner.

Notwithstanding the provisions of this RTSA, the Contractor-Employer may require work to be performed at alternate hours when required by the Owner. Written notice of the alternate work hours shall be provided to the Covered Employees and the Unions. Any overtime hours shall be compensated at the appropriate overtime rate.

9.4 Overtime. Overtime, at the rate of one-and-one-half (1-1/2) times the straight time hourly rate shall be paid for all hours worked under the following circumstances.

(a) All hours worked in excess of the established eight (8);

(b) All hours worked in excess of forty (40) hours in any one work week;

(c) All hours worked by Covered Employees before their regularly scheduled starting time and after their regularly scheduled quitting time, provided the Covered Employee commenced work at the regularly scheduled starting time of the shift and worked the entire shift;

(d) All work performed on Saturdays and Sundays; and

(e) All work performed on Holidays described in this RTSA.

9.5 Calculation of Overtime Hours. Overtime hours shall be calculated at $1/10^{th}$ of an hour, i.e., six (6) minute increments and otherwise comply with all applicable federal and State laws.

9.6 No Pyramiding. Whenever two or more overtime or premium rates are applicable to the same hour or hours worked, there shall be no pyramiding or adding together of such rates and only the higher of the applicable rates shall be applied.

9.7 Assignment of Overtime Work. If overtime work is to be assigned, the work shall be assigned to the members of the crew (to the extent needed) who, during the regular workday, have been performing the particular work involved, except that the Steward will be afforded the opportunity to be included in that work, provided the Steward is qualified to perform the work required. The Contractor-Employer will notify all members of the crew as early as reasonable possible of any overtime work.

9.8 Meal Period.

(a) Covered-Employees shall be afforded a meal period of at least thirty (30) minutes, which will begin within the period from the third (3^{rd}) through the fifth (5^{th}) hour of a shift. Covered-Employees required to work more than five (5) hours without starting a meal period, shall be paid at the applicable overtime rate for all time worked after the fifth (5^{th}) hour or until such time as Covered Employees are afforded the opportunity to eat.

(b) Where Covered Employees are being paid the overtime rate by reason of Saturday, Sunday or holiday work, the aforementioned meal period premium shall be computed at two (2) times the regular rate for all hours worked after the fifth hour until such time as they are afforded the opportunity to eat.

(c) Whenever overtime work exceeds two-and-one-half (2-1/2) hours past the quitting time of the shift, Covered Employees will be afforded a meal period of at least thirty (30) minutes at the conclusion of the two-and-one-half (2-1/2) hour period of overtime work. This meal period shall not be paid for or counted as time worked. If overtime work continues for four (4) hours after the conclusion of this meal period, Covered Employees will be afforded an additional unpaid meal period at the end of the each subsequent four (4) hour period.

(d) If a Covered Employee qualifies for a meal period as provided in paragraph (c) of this Section 9.8, the Contractor-Employer shall provide a meal of suitable quality and nutrition.

(e) Covered Employees not afforded a meal period as provided for in paragraph (c) of this Section 9.8, shall be paid at two (2) times the Covered Employee's regular straight time rate for all time worked after the applicable period of overtime work until such time as said Covered Employee is afforded the opportunity to eat.

9.9 Show-up Time. Covered Employees ordered to report to work at a job site at which no employment is provided shall be entitled to one (1) hour's pay unless prevented from working for reasons beyond the control of the Contractor-Employer (including inclement weather).

The Contractor-Employer may require or request a Covered Employee to remain on the job for up to thirty (30) minutes past the Covered Employee's normal starting time pending possible abatement or cessation of inclement weather, or other cause which is preventing work from starting, without paying show up time to the employee. Should such requirement or request extend beyond thirty (30) minutes past the Covered Employee's normal starting time, the Covered Employee shall be entitled to show up time pay equal to one (1) hour's pay,

unless such employee quits, voluntarily lays out, or is suspended or discharged prior to the completion of a one (1) hour period. If the Contractor-Employer causes the Covered Employee to start work pursuant to such requirement or request, the Covered Employee will be entitled to a minimum of one (1) hour show up time unless such employee quits, voluntarily lays out, or is suspended or discharged prior to the completion of the one (1) hour period.

Show-up time shall not be considered as hours worked for purposes of making the Contractor-Employer contributions to any applicable benefits program; provided however, that if, after remaining on the job as provided above, Covered Employees are then put to work, show-up time shall be counted as hours worked for the purpose of making Contractor- Employer contributions to any applicable benefits program.

9.10 Shift Work. Shift work may be utilized to meet the Construction Contract schedule, or otherwise to comply with the Construction Contract requirements or written directive from the Owner. Shift work options under this RTSA include the following:

(a) Two-Shift Operation. Where a two-shift operation is scheduled, the first eight (8) hours of work per day (exclusive of no-paid meal period) shall be paid for at the Covered Employee's regular straight time rate of pay. Where a two-shift operation is scheduled on the basis of a workweek of four (4) consecutive ten (10) hour days, then the straight-time rate of pay shall prevail for the Covered Employee's first eight (8) hours of work (exclusive of non-paid meal period).

(b) Three-Shift Operation. Where a three-shift operation is scheduled, the first eight (8) hours of work per day (exclusive of a non-paid meal period) shall be paid at the Covered Employee's regular straight-time rate of pay. The length and schedule of working hours on any of the three shifts (whether 8, 7-1/2, or 7 hours) shall be as determined and scheduled at the Contractor-Employer's sole discretion provided;

That on each shift (whether scheduled on a 8, 7-1/2, or 7 hour basis), the Contractor-Employer shall provide Covered Employees with eight (8) straight-time hours of work opportunity (exclusive of meal periods) or pay for same. This does not apply where the Covered Employee quits, voluntarily lays out, or is suspended or discharged prior to the completion of an eight (8) hour period, or the Contractor-Employer is unable to provide such work due to weather conditions, equipment breakdown, power failure, work stoppage, labor disputes, accident, or other circumstances beyond the control of the Contractor-Employer.

The Contractor-Employer may address additional shift work options and configurations to respond to unique jobsite conditions, work impediments or

Construction Contract schedule restraints. Such agreements shall be reduced to writing outlining the specific details and reviewed with the Unions and may become a memorandum of agreement to this RTSA.

9.11 Special Weekend Pay Provisions: On shift work, Covered Employees working a shift who come off work on Saturday morning are to be considered working Friday. Covered Employees working a shift coming off work on Sunday morning are to be considered working Saturday. Covered Employees working a shift coming off work on Monday morning are to be considered working Sunday. The principle that applies is that the rate of pay (straight-time or overtime) in effect at the start of the shift shall continue until the end of that shift, notwithstanding, the "face time on the clock". However, this Section shall comply with HRS Chapter 104 and Davis Bacon Act, 40 U.S.C. Sec. 276a et seq.

9.12 Night Work. When night work is scheduled Monday through Friday, the first eight (8) hours of work per day (exclusive of an unpaid meal period) shall be paid at the regular straight-time rate of pay.

On dewatering, concrete pours, concrete curing, temporary heat and protection of concrete operations, all overtime shall be at a rate of one and one-half (1-1/2) times as required by HRS Chapter 104 and Davis Bacon Act 40 U.S.C. § 276a et seq. When shift work is established for such work operations, the shift premiums shall apply.

9.13 Emergency Call-Out. Covered Employees called out to perform emergency work and who so report at the time specified, shall be paid at the applicable overtime rate for all hours worked on such emergency call-out. Such Covered Employees shall receive a minimum of two (2) hours work, or if two (2) hours work is not furnished, a minimum of two (2) hours pay.

The minimum pay requirement referenced herein, shall not apply if Covered Employees quit, voluntarily lay out or are suspended or discharged prior to the completion of the two (2) hour period. Also, the minimum pay requirement shall not apply if the emergency work for which Covered Employees are called out continues up to the Covered Employees' normal starting time. In such situations, Covered Employees shall be paid at the overtime rate only for the actual number of hours worked (excluding any applicable travel time) up to the Covered Employees' normal starting time.

In computing time spent on emergency call-out work, such time shall include time spent in traveling from the Covered Employee's home or the place from which the Covered Employee was called, as the case may be, directly to the job site, but shall not include the return trip.

The provisions of Sections 9.6 and 9.8 shall apply to Covered Employees who are performing emergency call-out work.

9.14 Nothing in this Article 9 shall be construed as guaranteeing any Covered Employee eight (8) hours of work per day or forty (40) hours of work per week.

9.15 Holidays. Holidays recognized on this Project shall be the holidays recognized by the State. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday. In the event a holiday falls on Saturday, the preceding day, Friday, shall be observed as such holiday.

9.16 Reporting Pay. Any Covered Employee who reports for work and for whom no work is provided shall receive two (2) hours pay provided the Covered Employee remains available for work. Any Covered Employee who reports for work and for whom work is provided shall be paid for actual time worked but not less than four (4) hours provided the employee remains available for work. Procedures for prior notification of work cancellation shall be determined at the Contractor-Employer's pre-job conference.

9.17 Starting Time. The parties reaffirm their policy of a fair day's work for a fair day's wage. There shall be no pay for time not worked unless the Covered Employee is otherwise engaged at the direction of the Contractor-Employer. Covered Employees shall be at their place of work at the starting time and shall remain at their place of work, as designated by the Contractor-Employer, performing their assigned functions until the end of the Covered Employee's shift. The place of work shall be defined as the gang or tool box, or equipment at the Covered Employee's assigned work location or the place where the foreman gives instructions.

9.18 It shall not be a violation of this RTSA or a breach of any provision in the RTSA, when the Owner or Contractor-Employer determines it necessary to shut down work in whole or in part to avoid the possible loss of human life, because of an emergency situation that could endanger the life and safety of an employee. In such cases, Covered Employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Contractor-Employer requests Covered Employees to stand by, the Covered Employees will be compensated for the "stand by time".

9.19 In the event the Contractor-Employer deems it necessary, in keeping with Article 5, it may in its sole discretion develop systems for Covered Employees to check in and out of the Project.

9.20 Payment of Wages:

(a) Covered Employees shall be paid not later than quitting time on Friday of each week; provided, however, that in no event shall more than one (1) calendar week's wages be withheld at any one time. In the event Friday falls on any holiday (whether recognized under this RTSA or not) on which

local banks will be closed, the Contractor-Employer will make every effort to provide the employees with their paychecks by Thursday of that week. Contractor-Employers will make arrangements for Covered Employees to cash payroll checks at a local Hawaii bank or financial institution.

(b) Covered Employees discharged for cause shall be paid all wages due at the time of discharge. However, if the discharge occurs at a time and under conditions that prevent the Contractor Employer from making immediate payment, then all wages due must be paid to the Covered Employees no later than the working day following the discharge. Covered Employees who quit shall be paid all wages due no later than the next regular pay day, either through regular pay channels or, if requested by the Covered Employee, by mail. However, if a Covered Employee gives at least five (5) working days written notice of his intent to quit, the Employer shall pay all wages earned and due at the time of separation.

Article 10 - Wages and Benefits: Obligations of Contractor-Employer

10.1 Contractor-Employer shall comply with the following:

(a) Contractor-Employer shall observe and comply with all applicable provisions of HRS Chapter 104 and Davis Bacon Act, 40 U.S.C. § 276a et seq. relating to wages and hours, including fringe benefits. The Contractor-Employer shall pay all Covered Employees, not less than the prevailing wage rate in conformance with applicable federal and State laws. Where rates differ for any class of Covered Employees, the higher rate shall apply.

(1) The minimum federal wage rate applicable to each Construction Contract shall be those in the U.S. Department of Labor Wage Determination Decision and Modification in effect ten (10) days prior to the solicitation due date for that Construction Contract.

(2) The minimum State wage rate applicable to each Construction Contract shall be periodically increased during the performance of each Construction Contract in an amount equal to the increase in the prevailing wages as periodically determined by the State Director of Labor and Industrial Relations. Notwithstanding the provisions of the Construction Contract entered into, if the Director of Labor and Industrial Relations determines that the prevailing wage has increased, the minimum State wage rate applicable to the Construction Contract shall be raised accordingly.

10.2 Contractor-Employers shall contribute fringe benefits pursuant to the applicable Trust Fund Agreements of the respective Unions, and shall adopt and agree to be bound by the written terms of such legally established Trust Fund Agreements specifying the detailed basis on which such contributions are to be made into, and benefits paid out of such trust funds on behalf of its Covered Employees. All Contractor-Employers required to make contributions pursuant to this RTSA authorize the parties to the applicable Trust Fund Agreements to appoint employer trustees and successor employer trustees to administer the trust funds and hereby ratify and accept the employer trustees so appointed as if made by the Contractor-Employers. All Contractor-Employers contributing to trust funds required by this RTSA, shall as a condition of making such contributions be required to sign appropriate participation agreements with such trust funds, provided that nothing contained in such participation agreements or this RTSA is intended to require any Contractor-Employer to become a party to, or to be bound by a collective bargaining agreement, nor is the Contractor-Employer required to become a member of any employer group or association as a condition for making such contributions, nor will the term "jurisdiction of the collective bargaining agreement" as specified in section 4203(b)(2)(B)(i) of the Employee Retirement Income Security Act be defined as anything other than the Scope of the RTSA as delineated in Article 3 herein.

10.3 Payments of fringe benefits specified in Section 10.1 shall be made for actual hours worked. Except as specifically provided for in Sections 9.9 and 9.13, time that is paid for but not worked shall not be counted as hours worked for purposes of making said payments. When calculating contributions for any overtime hours, all fringe benefit contributions shall be paid on the basis of "hours worked" and no overtime multiplier shall apply.

10.4 All references in this Agreement to the payment of wage rates and fringe benefits shall, in all instances, be in strict compliance with HRS Chapter 104 and the Davis Bacon Act, 40 U.S.C. § 276a et seq., and related statutes. The Owner's Contractor-Employer shall monitor Contractor-Employers for compliance with HRS Chapter 104 and the Davis Bacon Act, 40 U.S.C. § 276a et seq. requirements as may be applicable to such Contractor-Employers.

10.5 Wage premiums such as those based on height of work, type of work or material, special skills, etc., shall not be paid unless recognized by the appropriate HRS Chapter 104 or Davis Bacon Act, 40 U.S.C. § 276a et seq. prevailing wage rate or classification.

10.6 Under the terms of this RTSA, no per diem, subsistence, zone pay or zone rates shall apply unless so recognized in the appropriate HRS Chapter 104 or Davis Bacon Act, 40 U.S.C. § 276a et seq. prevailing wage rate determination for the appropriate Construction Contract.

Article 11 - Assignment

11.1 No Contractor-Employer or Union may assign its rights and obligations under this RTSA without the express written consent of the other parties and written notification to the Owner. Any assignment shall include the adoption of the RTSA by the assignee of the assigning party.

Article 12 – Subcontracting: Obligations of Contractor-Employer

12.1 Contractor-Employer agrees that it will not subcontract any work to be performed on the Project by Covered Employees except to an individual, firm, partnership, corporation or any combination thereof or joint venture that signs a Letter of Assent and thereby agrees to become a Contractor-Employer subject to this RTSA. Any Contractor-Employer working on the Project shall, as a condition to working on said Project, perform all work under the terms of this RTSA.

Article 13 - General Work Rules: Obligations of Contractor-Employer and Unions

13.1 Slowdowns, standby crews and featherbedding practices will not be tolerated.

13.2 It is understood that Owner may establish reasonable project rules that will be uniformly applied and adhered to by all Contractor-Employers, the Unions and all employees. These rules will be provided by the Owner to all Contractor-Employers for the Contractor-Employer's pre-job conference and made available in writing to their Covered Employees. These rules shall be provided to the Unions.

Further, Contractor-Employers may also establish reasonable work rules that will be uniformly applied and adhered to by all employees employed by the Contractor-Employer on the Project. These rules shall be provided by the Contractor-Employer at its pre-job conference, to the Unions and the Owner, and made available to the Covered Employees, in writing. If any rule or change in rules conflicts with the RTSA, the RTSA shall prevail. Any disputes regarding rules shall be subject to Article 14 herein.

13.3 Security procedures for the control of tools, equipment and materials are the responsibility of the Contractor-Employer. Covered Employees having in their possession without authorization any property of the Contractor-Employer or of another employee shall be subject to immediate discharge by the Contractor-Employer. The Contractor-Employer will be responsible for the establishment of reasonable security measures for the protection of personal, company and Owner property.

13.4 There shall be no restrictions on the use of any tools by any qualified employee in any emergency situation endangering life, limb or property; or on the use of any tools or equipment for the performance of work within the jurisdiction, provided the employee can safely use the tools and/or the equipment involved.

13.5 The selection of a craft foreman and general foreman and the number of same required shall be entirely the right and responsibility of the Contractor-Employer. It is understood that in the selection of such individuals the Contractor-Employer will give primary consideration to the qualified individuals available in the City and County of Honolulu. If none are available, the Contractor-Employer is free to pick foremen/general foreman from out of the area.

13.6 The Contractor-Employer has the sole and exclusive right to assign specific Covered Employees and/or crews to perform overtime work when such overtime work is necessary to accomplish the job. The overtime work shall be assigned to Covered Employees and/or crew(s), to the extent needed, who performed the work involved during the regular work day or work shift.

13.7 The Contractor-Employer shall provide a convenient and sanitary supply of drinking water, and sanitary drinking cups.

13.8 The Contractor-Employer shall provide adequate sanitary toilet facilities, water, and clean up facilities to Covered Employees.

13.9 The Contractor-Employer shall provide a safe and secure place for storage of tools.

13.10 All required safety equipment will be provided by the Contractor-Employer.

13.11 Contractor-Employer shall provide on-site parking at no cost to Covered Employees. If there is no free parking available within 2,000 feet of the job site, the Contractor-Employer shall reimburse Covered Employee at the lowest parking rate within the 2,000 foot area, upon presentation by the Covered Employee of signed and dated receipts for each parking expenditure. At its option, the Contractor-Employer may furnish transportation from a designated free parking area to and from the job site, in lieu of the above reimbursement.

The Unions and Contractor-Employer shall meet prior to the commencement of the Project to work out mutually agreed provisions to take care of parking expenses in the event receipts for such expenses are not available.

Article 14 - Grievance Procedure: Obligations of Contractor-Employer and Unions

14.1 This RTSA is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without Work Disruption.

14.2 Contractor-Employer, Unions and Covered Employees, collectively and individually, recognize the importance of maintaining continuous and uninterrupted performance of the construction work on the Project, and agree to resolve disputes, except those subject to Article 8 and Article 15, in accordance with the grievance-arbitration provisions in this Section 14.

14.3 Any complaint or dispute arising out of and during the term of this RTSA, other than those subject to Article 8, and those trade jurisdictional disputes subject to Article 15, shall be considered a grievance and subject to resolution in accordance with the grievance-arbitration provision of this Article 14.

14.4 Grievances under this Article shall be presented to the Contractor-Employer, or to the Union, as the case may be, allegedly at fault within seven (7) working days after the alleged violation occurred or first became known to the grieving party; provided, however, that in cases of discharge, the grievance shall be submitted within seven (7) working days of the discharge. The time limit for grievances involving discharge shall not commence until such time as the Contractor-Employer provides a written reason for the discharge. Failure to so present the grievance shall be deemed as a waiver of remedy.

14.5 Grievance Procedure shall be as follows:

(a) First Step (Job Site Supervisor or Union Steward). A grievance shall first be presented to the job site supervisor or Union Steward who has authority to review and adjust grievances.

(b) Second Step (Contractor-Employer's Authorized Representative or Authorized Union Representative). If the matter is not settled in the First Step within three (3) working days after presentation to the job site supervisor or Union Steward, the Union or Contractor-Employer, if it wishes to pursue the grievance further shall submit it to the Contractor-Employer's authorized representative or Union representative. Such submittal must be made in writing no later than five (5) working days after expiration of the initial three (3) working days. Such written submittal shall specify the nature of the grievance.

(c) Third Step (Arbitration). If the matter is not settled in the Second Step within three (3) working days the matter shall be submitted to Arbitration.

14.6 Contractor-Employer and the Unions agree to the following permanent panel of five (5) arbitrators from which an Arbitrator shall be selected to hear and decide disputes arising under this Article 14. The members of the panel are:

R. Charles Bocken

E. John McConnell

Michael F. Nauyokas

Clyde Matsui

Patrick Yim

In the event any panel member is no longer available to serve under this RTSA, the Owner and the Unions collectively shall agree on a substitute panel member within thirty (30) calendar days of notification by the panel member of the member's unavailability to serve. If the parties cannot reach an agreement within the specified time, the remaining panel members shall establish a list of five (5) individuals from which the Owner and the Unions collectively shall select the substitute panel member by striking an individual from the list in an alternating and equal number of strikes. The remaining individual shall thereafter serve as the new panel member in substitution for the member who is no longer available to serve.

14.7 Selection of the Arbitrator from the panel shall be by mutual agreement of the Contractor-Employer and the Union(s) involved in the dispute. If an Arbitrator cannot be mutually agreed to by the parties, each party shall have an alternating and equal amount of strikes from the panel of five (5) and the remaining panel member shall serve in the dispute. The Contractor-Employer or Union(s) invoking this procedure shall notify the Arbitrator selected. In the event that the selected Arbitrator is unavailable, the Contractor-Employer and Union(s) shall mutually agree upon another Arbitrator.

14.8 The Arbitrator may consider and decide only the particular grievance presented to him/her by the Contractor-Employer and the Union, and the decision of the Arbitrator shall be based solely upon an interpretation of the provisions of this RTSA and the evidence presented at the hearing. The Arbitrator shall not have the right or authority to amend, take away, modify, add to, or change any of the provisions of this RTSA. In deciding the issue, the Arbitrator's decision shall be final and binding upon the parties provided it does not exceed the limitations contained herein.

14.9 Except as provided in Section 6.5 of Article 6 and Section 8.4(g) of Article 8, the parties will share, pro rata, the fees and expenses of the Arbitrator to hear

the dispute. Each party will be responsible for its own legal fees and costs. The Arbitrator shall conduct a hearing and issue a written decision resolving the grievance. The award by the Arbitrator shall be final and binding on the Parties to the Arbitration. Either party to the arbitration may elect to notify the Owner concerning the facts and content of the arbitration. If elected by the Owner, the parties agree that the Owner has the absolute right to attend and observe the arbitration.

Article 15 - Jurisdictional Disputes

15.1 The assignment of work will be solely the responsibility of the Contractor-Employer performing the work involved. Such work assignments will be in accordance with the plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

15.2 All Jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and Contractor-Employers, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other Plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decision rendered shall be final, binding and conclusive on the Contractor-Employers and Unions.

15.3 All jurisdictional disputes shall be resolved without the occurrence of a Work Disruption of any nature and the Contractor-Employer's assignment of work shall be adhered to until the dispute is resolved. Covered Employees violating this Section shall be subject to immediate discharge, and shall not be eligible for rehire on the Project by any Contractor-Employer.

15.4 Each Contractor-Employer will conduct a pre-job conference with the Unions prior to commencing the work. The Owner will be advised in advance of all such conferences and will attend and may participate in its sole discretion.

15.5 In accordance with Article 8 there shall be no Work Disruption of any kind, in protest of any such award or resolution of any jurisdictional dispute.

Article 16 - Safety, Environmental and Health

16.1 It shall be the responsibility of Contractor-Employer to ensure safe working conditions and employee compliance with any safety rules established by the Owner and the Owner's controlled insurance program (OCIP), if one is in place, and in accordance with applicable federal or State laws and regulations.

16.2 Covered Employees shall be bound by the safety, security and site access rules established by the Owner and Contractor-Employer for the Project. These rules will be published and given to each employee as part of their new-hire orientation, as well as posted throughout the Project. A violation of these rules shall constitute just cause subject to termination under this RTSA. If justifiably discharged for the above reason, the Covered Employee shall not be eligible for rehire on the project for a period of not less than ninety (90) days.

16.3 The Contractor-Employer shall conduct safety meetings at least once a week for all Covered Employees. Such mandatory meetings will be conducted on paid time. Attendance at such meetings is mandatory and employees who do not attend may be subject to disciplinary action.

16.4 Covered Employees shall use, maintain and care for personal protective equipment and other health and safety equipment issued or assigned them. Proper use of the equipment is mandatory, and failure to do so may result in disciplinary action up to and including discharge.

16.5 To further the health, safety and security of the work place, the Contractor-Employer and Unions agree to implement the policy covering drugs and other controlled substances pursuant to Article 17.

Article 17 – Substance Abuse Policy and Drug and Alcohol Testing Procedure

17.1 The Contractor-Employer and Unions shall implement the "Policy Covering Drugs and Other Controlled Substances For The Honolulu High-Capacity Transit Corridor Project" which is marked as Attachment C and which is in accordance with and in compliance with U.S. Department of Transportation Rules set forth in 49 CFR Part 40. The Contractor-Employer and the Unions shall agree to accept the Owner's revisions to this Policy to comply with any changes in the U.S. Department of Transportation Rules.

Article 18 – Joint Administrative Committee

18.1 The parties to this RTSA shall establish a four (4) person Joint Administrative Committee (JAC). This JAC shall be comprised of a management party made up of one (1) representative selected by the Owner and one (1) representative from the construction manager; and a labor party made up of two (2) representatives from the Unions. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this RTSA.

18.2 The JAC shall not be involved in or rule upon any individual grievances. Outside of the context of an individual grievance, the JAC will resolve any interpretations or clarifications of this RTSA that may be required by the Unions and/or the Contractor-Employers by majority vote with such resolutions to be binding on all signatories of this RTSA as provided herein. Any question regarding the meaning, interpretation, or application of the provisions of this RTSA, except relating to Article 8, shall be referred directly to the JAC for resolution prior to such question being referred to arbitration in the event the JAC is unable to resolve the question. Such resolutions or clarifications shall be reduced to writing, jointly signed by the JAC and distributed to the signatory parties to this RTSA. Labor and management shall each have one equal vote at JAC meetings regardless of the number of attendees. Labor and management shall jointly chair the JAC.

18.3 In addition to its charter to rule on interpretations or clarifications to this RTSA, the JAC shall annually review the effectiveness of the RTSA in meeting the RTSA goals of:

(a) No construction Work Disruption on this Project.

(b) Reducing friction that may arise when union and open shop employees are working at a common jobsite.

(c) High quality, cost effective construction work.

(d) Providing training opportunities for local craft workers.

(e) Ensuring compliance with health and safety policies and laws.

The annual review shall be the basis for the JAC to determine the feasibility of a project labor agreement for yet to be determined mixed-use transit oriented development zones as defined by Ordinance No. 09-4. Should the City and County of Honolulu have an ownership interest in the transit oriented development, it will strongly consider the adoption of a similar project labor agreement for that project based upon the JAC's recommendation.

Article 19 - No Discrimination

19.1 The Contractor-Employer and Unions shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, sexual orientation, marital status, ancestry, arrest or court record or any other protected status pursuant to federal or State law or regulation.

19.2 The Unions acknowledge and agree to use their utmost efforts to assist the Contractor-Employer with any legally prescribed goals for employment of females and minorities on the Project.

19.3 Any complaint regarding the application of these provisions shall be brought to the immediate attention of the Contractor-Employer and the Owner, and shall be promptly considered and resolved by the Contractor-Employer.

19.4 The use of the masculine or feminine gender in this RTSA shall be construed as applying to both genders.

Article 20 - Savings Clause

20.1 If any Article or provision of this RTSA shall be declared invalid, inoperative or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the federal or State government, the Contractor-Employers and the Unions, shall suspend the operation of such Article or provision during the period of its invalidity. Following written notice of the invalidity of the Article or provision, the Owner and the Unions shall in good faith and within seven (7) calendar days, negotiate a substitute Article or provision to replace the Article or provision declared invalid. If the parties are unable to reach agreement within the specified time, the Owner shall adopt, to the extent feasible, a substitute Article or provision which will meet the objections to address the invalidity and which will be in accord with the intent and purpose of the invalidated Article or provision. The parties agree to implement and abide by the amended Article or provision, but the Unions may elect arbitration under Article 14, if they disagree with the Owner's adoption. The parties will give notice of the new provision to the Contractor-Employers.

20.2 If any Article or provision of this RTSA shall be held invalid, inoperative or unenforceable by operation of law or by any of the above mentioned tribunals of competent jurisdiction, the remainder of this RTSA shall not be affected thereby.

20.3 If the Federal Acquisition Regulatory Council adopts rules to implement the Executive Order 13502 relating to Use of Project Labor Agreement for Federal Construction Projects that impacts the rights and relationships of parties to this RTSA, Sections 20.1 and 20.2 shall apply.

20.4 If there is a change in law resulting in the possibility of this RTSA jeopardizing the receipt by the Owner of any federal grant-in-aid or other federal allotment of money for the Project, the conflicting or contrary provision shall be deemed struck from this RTSA and the Owner and the Unions will follow the procedures in Sections 20.1 to determine whether and what modification to this RTSA should be made.

20.5 If any provision in this RTSA conflicts with or is contrary to the requirements and conditions for the receipt of federal or State funding and jeopardizes the receipt by the Owner of federal or State funding for the Project, the conflicting or contrary provision will be deemed struck from this RTSA and the Owner and the Unions will follow the procedures in Sections 20.1 to determine whether and what modification to this RTSA should be made.

20.6 In the event the Owner is required to formalize a small business program or is required to implement a disadvantaged business enterprise program for the receipt of federal or State funding, this RTSA shall be amended to comply with the goals of the program, and the Owner and the Unions may meet and confer for this purpose.

Article 21 – Duration

21.1 This RTSA shall be effective on the date hereinafter stated and shall continue in full force and effect for the duration of the Project construction work as described in Articles 2 and 3 of this RTSA, unless the Owner has elected to terminate this RTSA, in whole or in part, pursuant to Article 8.6 or as otherwise provided for by law.

21.2 Turnover. Construction of any phase, portion, section or segment of this Project shall be deemed complete when such phase, portion, section or segments has been turned over to the Owner by the Contractor-Employer as evidenced by the Owner's acceptance of such phase, portion, section or segment. As areas and systems of the Project are inspected and construction tested and/or approved and accepted by the Owner, the RTSA shall have no further force or effect on such items or areas, unless construction or renovation covered by this RTSA is subsequently performed.

21.3 Notice. Notice of each "acceptance" by the Owner will be provided to the Unions with a description of what portion, segment, etc., has been accepted. Final acceptance may be subject to a "punch list", and in such case, the RTSA will continue to apply to each such item on the list until it is completed to the satisfaction of the Owner, and Notice of Acceptance is given by the Owner to the Contractor-Employer(s).

21.4 Termination. Final termination of all obligations, rights and liabilities and disagreements shall occur, except for the processing and disposition of any then-pending grievances, upon delivery to Contractor-Employer and Union of a notice from the Owner stating that acceptance by the Owner has occurred for the Construction Contract for the Project.

Article 22 – Miscellaneous Provisions

22.1 Scheduled Re-Opening and Modification of this RTSA.

With respect to any Construction Contracts on the Project which are bid and awarded after the fifth anniversary of the effective date of this RTSA, and every five (5) years thereafter for the duration of this RTSA, the Owner and the Unions collectively may mutually agree to reopen specific provisions in the RTSA for such construction contracts.

If the Owner and the Unions feel that any provisions of this RTSA are not meeting the needs of the Project, by mutual agreement, they may agree to specific modifications to such provisions.

Any changes or modifications agreed upon by the Owner and the Unions collectively shall be memorialized in writing, dated and signed, and thereafter shall be incorporated as an amendment to this RTSA. Any Construction Contracts bid and awarded thereafter shall require the Contractor-Employers, together with their subcontractors or whatever tier, to execute a Letter of Assent, binding them to the amended RTSA.

This Article does not in any way impact the Owner's rights under Article 20 – Savings Clause.

22.2 Construction.

(a) Each party signatory to this RTSA has read, reviewed and fully understands the terms of this RTSA and agrees to be bound by this RTSA.

(b) Each party to this RTSA has had the opportunity to have their legal counsel and/or advisors review this document.

22.3 Delivery of Notice

When notice to a party is required under this RTSA, notice in writing or as otherwise provided, shall be provided to the party at the address set forth herein, or in any executed Letter of Assent:

To the Owner: Managing Director
City & County of Honolulu
530 South King Street, Room 306
Honolulu, Hawaii 96813

Director
Department of Transportation Services
City & County of Honolulu
650 South King Street, 3rd Floor
Honolulu, Hawaii 96813

RTSA Administrator
Department of Transportation Services
City & County of Honolulu
650 South King Street, 3rd Floor
Honolulu, Hawaii 96813

To the Contractor-Employer: (Letters of Assent shall set forth.)

To the Union: See Attachment B, attached.

Notice issued to each party at the address it provided shall satisfy the notice requirements of this RTSA unless the party prior thereto had notified all parties to this RTSA of any change to the party's address.

22.4 Applicable Law

Except to the extent controlled by federal law, this RTSA shall be construed in accordance with the laws of the State of Hawaii, without regard to its conflicts of laws provisions. Additionally, whenever state law is referred to in this RTSA, it is understood that the referenced state law is the law of the State of Hawaii.

22.5 Warranty of Authority

Each person signing this RTSA or a Letter of Assent warrants and represents that such person has the authority to sign on behalf of himself or herself or for the entity such person represents and that this RTSA has been validly authorized and constitutes a legally binding and enforceable obligation.

22.6 Entire Agreement.

This RTSA contains all of the agreements and terms agreed upon between and among the parties to this RTSA with regard to the matters set forth herein and supersedes and cancels each and every other prior conflicting agreement, promise and/or negotiation between any of the parties.

22.7 Counterparts.

Owner and Unions agree that this RTSA may be executed in any number of counterparts, and if executed in counterparts, said counterparts shall be

transmitted to the Owner by the Unions by the most expeditious means available provided that if an original signature page is not initially provided, the Unions shall thereafter transmit the original signature page to the Owner as soon as practicable. Each of the counterpart signatures when taken together will constitute one and the same document.

This RTSA is entered into on this 17th day of November, 2009, Honolulu, Hawaii.

CITY AND COUNTY OF HONOLULU

Mufi Hannemann
Mayor

APPROVED:

Rix Maurer III
Director
Department of Budget and Fiscal Services

APPROVED:

Wayne Y. Yoshioka
Director
Department of Transportation Services

APPROVED AS TO
FORM AND LEGALITY:

Carrie K.S. Okinaga
Corporation Counsel

Carpet, Linoleum & Softile Local 1926

Name: **Malcolm Ahlo**
Title: **Business Representative**

Glaziers Architectural Metal & Glass Workers Local 1889

Name: **Richard Tacgere**
Title: **Business Representative**

International Union of Painters & Allied Craft Workers Local 1791

Name: **Ronald Hayashi**
Title: **Business Representative**

Iron Workers Local 625

Name: **Joseph V. O'Donnell**
Title: **Financial Secretary – Treasurer**
Business Manager

Operative Plasterer's & Cement Masons International Association Local 630

Name: **Nolan G. Moriwaki**
Title: **Business Manager**

Drywall, Tapers & Finishers Local 1944

Name: **Joseph Bazemore**
Title: **Business Representative**

International Union of Bricklayers & Allied Craft Workers Local 1

Name: **Nolan G. Moriwaki**
Title: **Business Manager**

Ironworkers Shopmen Local 803

Name: **Eugene B. Paris**
Title: **Financial Secretary – Treasurer**
Business Manager

Laborers' International Union of North America, Local 368

Name: **Peter A. Ganaban**
Title: **Business Manager**

Roofers, Waterproofers & Allied Workers United Union of Roofers Local 221

Name: **Vaughn Chong**
Title: **Business Manager**

ATTACHMENT "A"
LETTER OF ASSENT

Director, Department of Transportation Services
City and County of Honolulu
650 S. King Street, 3rd Floor
Honolulu, Hawaii 96813

RTSA Administrator, Department of Transportation Services
City and County of Honolulu
650 S. King Street, 3rd Floor
Honolulu, Hawaii 96813

Dear Sir or Madam,

Subject: Project Labor Agreement for the Honolulu High-Capacity Transit Corridor Project

_____ RFP No._____
(title of contract)

This is to certify that the undersigned Contractor-Employer has examined a copy of the Rapid Transit Stabilization Agreement (RTSA) dated November 17, 2009, between the City and County of Honolulu and the Carpet, Linoleum & Softile Local 1926; Drywall, Tapers & Finishers Local 1944; Glaziers Architectural Metal & Glass Workers Local 1889; International Union of Bricklayers & Allied Craft Workers Local 1; International Union of Painters & Allied Craft Workers Local 1791; Ironworkers Shopmen Local 803; Iron Workers Local 625; Laborers' International Union of North America, Local 368; Operative Plasterer's & Cement Masons International Association Local 630; Roofers, Waterproofers & Allied Workers United Union of Roofers Local 221. The undersigned Contractor-Employer hereby agrees to comply with all of the terms and conditions of the RTSA as such RTSA may, from time to time, be amended or interpreted pursuant to its terms.

It is understood that the signing of the Letter of Assent shall be as binding on the undersigned Contractor-Employer as though the undersigned Contractor-Employer had signed the above-referenced RTSA. The Contractor-Employer agrees that all its subcontractors, of whatever tier, shall execute the Letter of Assent and agree to be bound by the RTSA for all work within the scope of the Construction Contract covered under the Project definition in the RTSA.

This Letter of Assent shall become effective and binding upon the undersigned Contractor-Employer on this _____day of _____, 20__, and shall

remain in full force and effect until the completion of the above-identified Contractor-Employer's Construction Contract. Upon signing this Letter of Assent, Contractor-Employer shall issue notice to the parties to the RTSA in the form attached as Attachment B (Union Addresses), providing the Contractor-Employer's address at which notice is to be provided when notice to the Contractor-Employer is required under the provisions of the RTSA.

Sincerely,

Contractor-Employer

By: _____
Its: _____

ATTACHMENT "B" UNION ADDRESSES

Carpet, Linoleum & Softile Local 1926

Malcolm Ahlo
Name
Business Representative
Title
2240 Young Street
Address
Honolulu, Hawaii 96826
Address

Drywall, Tapers & Finishers Local 1944

Joseph Bazemore
Name
Business Representative
Title
2240 Young Street
Address
Honolulu, Hawaii 96826
Address

Glaziers Architectural Metal & Glass Workers Local 1889

Richard Tacgere
Name
Business Representative
Title
2240 Young Street
Address
Honolulu, Hawaii 96826
Address

International Union of Bricklayers & Allied Craft Workers Local 1

Nolan G. Moriwaki
Name
Business Manager
Title
2251 North School Street
Address
Honolulu, Hawaii 96819
Address

International Union of Painters & Allied Craft Workers Local 1791

Ronald Hayashi
Name
Business Representative
Title
2240 Young Street
Address
Honolulu, Hawaii 96826
Address

Ironworkers Shopmen Local 803

Eugene B. Paris
Name
Financial Secretary – Treasurer
Business Manager
Title
94-497 Ukee Street
Address
Waipahu, Hawaii 96797
Address

ATTACHMENT "B" UNION ADDRESSES

Iron Workers Local 625

Joseph V. O'Donnell
Name
Financial Secretary – Treasurer
Business Manager
Title
94-497 Ukee Street
Address
Waipahu, Hawaii 96797
Address

Laborers' International Union of North America, Local 368

Peter A. Ganaban
Name
Business Manager
Title
1617 Palama Street
Address
Honolulu, Hawaii 96817
Address

Operative Plasterer's & Cement Masons International Association Local 630

Nolan G. Moriwaki
Name
Business Manager
Title
2251 North School Street
Address
Honolulu, Hawaii 96819
Address

Roofers, Waterproofers & Allied Workers United Union of Roofers Local 221

Vaughn Chong
Name
Business Manager
Title
2045 Kamehameha IV Road
Address
Honolulu, Hawaii 96819
Address

ATTACHMENT "C"

POLICY COVERING DRUGS AND OTHER CONTROLLED SUBSTANCES FOR THE HONOLULU HIGH CAPACITY TRANSIT CORRIDOR PROJECT

WHEREAS, the Unions and the Contractor-Employer recognize that drug and alcohol abuse is a problem that affects many employees, and wish to address this problem;

WHEREAS, especially in the construction industry, an employee who is under the influence of illegal drugs or alcohol while at the workplace or is abusing controlled substances while at the workplace is a danger not only to himself or herself but to his or her fellow employees;

WHEREAS, the Unions and the Contractor-Employer wish to make the workplace a better and safer place of employment by eliminating the danger that such employees create by being under the influence of drugs or alcohol at the workplace;

WHEREAS, such employees who are under the influence of drugs or alcohol have lower productivity than employees who are drug and alcohol free;

WHEREAS, the Unions and the Contractor-Employer wish to have Covered Employees working at normal capacity, doing an honest day's work for an honest day's pay;

WHEREAS, the Unions and the Contractor-Employer wish to comply with the Federal Law known as the "Drug-Free" Workplace Act of 1988," Public Law 100-690 in order to obtain a drug-free workplace.

A. Prohibition Against Alcohol and Controlled Substances At the Workplace

1. Every Covered Employee who is employed by the Contractor-Employer and who is covered by the Project Labor Agreement is prohibited from unlawfully manufacturing, distributing, dispensing, possessing, using or being under the influence of a controlled substance (paragraph J, below) or alcohol at the Contractor-Employer's workplace (paragraph O.5, below). Any Covered Employee who violates this prohibition shall be subject to immediate removal from the aforesaid workplace, as well as other disciplinary action, including discharge.

B. Use Of Over-The-Counter Medications Or Medications Prescribed By A Licensed Physician

1. Use of over-the-counter medications or of a medication prescribed by a licensed physician in accordance with the physician's orders, is NOT prohibited; but to avoid an unwarranted accusation and/or other misunderstanding, the Covered Employee is required to report the fact that he is taking such medication to his foreman and/or supervisor, prior to commencing work at the workplace.

2. Any Covered Employee who is lawfully using a controlled substance (paragraph O.4, below) at the workplace, i.e., taking prescription drugs (paragraph O.6, below) in accordance with a doctor's order, while not subject to disciplinary action, may nevertheless be required to leave the workplace, if consumption of that medication presents a safety hazard or prevents him from being able to properly perform his work.

C. Education and Awareness Program

To complement and foster the Joint Contractor-Employer and Unions Policy and Program of achieving a drug-free workplace and an alcohol-free workplace, the Contractor-Employer shall establish and implement a Drug Education And Awareness Program which shall include the following:

1. Dissemination of information to Covered Employees at least twice a year regarding the dangers of drugs in the workplace, the Contractor-Employer policy of maintaining a drug-free workplace; the penalties that may be imposed for drug or alcohol abuse violations; and any available substance counseling programs and services, substance abuse rehabilitation programs, employee assistance programs, and other community services that are available to those who have a drug or alcohol problem.

   In connection with the above, Covered Employees will be encouraged to seek counseling and other assistance from these agencies on a self-referral basis if they feel they have a need for it. A Covered Employee who voluntarily seeks help and undergoes treatment for drug or alcohol abuse prior to being required to undergo testing will NOT be subject to disciplinary action because of admitted substance abuse, provided he or she thereafter remains drug and alcohol free after commencing treatment. Failure to remain drug or alcohol free shall be considered as that Covered Employee's First Offense and subject the Covered Employee to the actions set forth under paragraph G.1.(a), below.

2. Top management and supervisory employees will also be trained to assist in identifying and addressing the matter of unlawful use of alcohol or of a controlled substance by Covered Employees, including the making of referrals to appropriate agencies.

D. Pre-Employment Testing

1. Effective thirty (30) days after execution of the Project Labor Agreement all current employees on the Contractor-Employers' payroll will not be required to undergo a pre-employment substance abuse test. However, an employee/applicant who has been laid off for thirty (30) calendar days or more or a new employee will be required to undergo a pre-employment substance abuse test as a condition of consideration of employment with the Contractor-Employer or prior to being approved to work at any Contractor-Employer facility or work area.

2. Pre-employment testing must be in place and such testing must actually be conducted before the Contractor-Employer can conduct Periodic and Random Testing (paragraph G.I.(b) and (c), below).

E. Additional Considerations Applicable To Companies Regulated By The U.S Department Of Transportation

In the event the Contractor-Employer is required to comply with U.S. Department of Transportation regulations regarding workplace drug testing programs, the Contractor-Employer and the Unions agree to comply with those regulations. It is understood and agreed that compliance with the U.S. Department of Transportation regulations shall include:

1. Pre-employment and post-accident testing of applicants and Covered Employees subject to U.S. Department of Transportation regulation;

2. Appointment of a Medical Review Officer (MRO) who will be responsible for making the final decision to verify a positive test result after review of all relevant data on the testing and any explanations offered by the individual tested;

3. Prohibiting Covered Employees who are subject to U.S. Department of Transportation regulation and who have tested positive from returning to work unless they are released to return to work by the Medical Review Officer;

4. Requiring Covered Employees who are subject to U.S. Department of Transportation regulation and who have tested positive to undergo increased, unannounced testing for up to 60 months; and

5. Retention of all positive test results for 5 years and retention of all negative results for 12 months.

F. Immediate Removal From Job/Substance Abuse Testing

1. The Contractor-Employer shall have the authority to immediately remove any Covered Employee from the workplace and to require that Covered Employee to immediately undergo, at Contractor-Employer's expense, drug or alcohol testing, in the manner set forth below, under the following circumstances:

   (a) For Cause. When a reasonable, objective basis exists to believe that a Covered Employee has engaged in the unlawful use of or is under the influence of a controlled substance or alcohol at the workplace as evidenced by such factors as, but not limited to, the following:

      (1) Unsafe work habits or practices that endanger the Covered Employee himself/herself and/or other employees;

      (2) Abnormal work performance;

      (3) Physical conditions and/or symptoms, such as unstable balance, alcohol on breath, glassy or reddened eyes;

      (4) Frequent or unexplained absence from the workplace or job site during the Covered Employee's shift;

      (5) Abnormal personal behavior and/or poor interpersonal relations on the job;

      (6) Discovery of controlled substances, alcohol, or controlled substances paraphernalia at the work area or on the job site, in the possession of or immediate proximity of a Covered Employee; and/or

      (7) Objective evidence of unlawful use of a controlled substance or unlawful sale of a controlled substance as provided by any Federal, State, or local enforcement agency.

   In utilizing the foregoing criteria of a "reasonable, objective basis," the parties hereto expressly agree that the Federal or State Constitutional law standards of "probable cause" or "reasonable suspicion" are not applicable.

   The Contractor-Employer shall complete the attached form (Appendix B) prior to sending a Covered Employee to be tested For Cause.

(b) Periodic Testing. Periodic, routine or intermittent testing shall be conducted at different times and at different intervals for all Covered Employees on the Project to determine the use of any illegal or unauthorized drug, alcohol or other substances prohibited by this Policy.

Post-counseling/rehabilitation or return-to-work medical examinations may be required when a Covered Employee returns to work after a long illness, disabling injury, extended absence, reduction in force or as a result of a condition of reinstatement upon completion of a drug and alcohol treatment or counseling program.

As part of an annual physical the Contractor-Employer may require testing for those Covered Employees who are required to undergo medical examinations due to regulatory requirements of local, state or federal agencies (DOT, ICC, DOD, etc.).

(c) Random Testing. Random Testing may be used at any time.

Workplace testing may be altered or changed whenever the Covered Employees' activities are regulated by either the Department of Transportation, Department of Defense or by contract with any other branch of government or private industry.

Random testing selection will be done on a fair and impartial basis.

2. Urine samples will be taken only under the direction of a licensed physician designated by a Contractor-Employer designated medical laboratory and the "Procedures For Medical Tests Of Urine Samples" as set forth in Appendix "A" as attached hereto shall be followed.

3. In addition, physicians and health care professionals who provide testing services for controlled substance and alcohol impairment shall adhere to the Code of Ethical Conduct For Physicians Providing Occupational Medical Services as adopted by the American Occupational Medical Association on July 23, 1976, as well as to the "Drug Screening In The Workplace Ethical Guidelines" as adopted by that same organization on July 25, 1986.

4. Refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, the refusal to undergo such a test, or the refusal to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union shall constitute an act of insubordination. This aforesaid insubordination shall be just and proper

cause for discharge. In addition, the refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, the refusal to undergo such a test, or the refusal to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union shall be considered a positive reading, as defined in Appendix "A" and subject to Section G.

(a) A Covered Employee who refuses to sign an authorization to submit to a drug, controlled substance, or alcohol test, or refuses to undergo such a test, or refuses to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union shall be discharged unless the Covered Employee agrees to a two (2) week suspension from work without pay and without fringe benefits accruing and to sign Appendix G, Last Chance Agreement, whereby the Covered Employee agrees to resign from employment in the event of a positive drug, controlled substance, or alcohol test, or a second refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, the refusal to undergo such a test, or the refusal to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union, within three (3) years of the first Refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, the refusal to undergo such a test, or the refusal to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union. Violation of the Last Chance Agreement shall constitute just cause for discharge.

(b) For purposes of this section, refusal to undergo such a test shall include the following:

(i) Fails to appear for any test within a reasonable time, as determined by the Contractor-Employer, after being directed to do so by the Contractor-Employer.

(i) Fails to remain at the testing site until the testing process is complete.

(iii) Fails to provide a urine specimen for any controlled substances test required by this agreement.

(iv) In the case of a directly observed or monitored collection in a controlled substances test, fails to permit the observation or monitoring of the specimen.

(v) Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure. For the purposes of this Section, when a Covered Employee does not provide a sufficient quantity of urine and the applicable procedures are being followed, the following shall apply to the determination of the beginning of the three hour period within which the Covered Employee must provide a specimen after he/she has provided an insufficient specimen: The three hour time limit shall begin when the Covered Employee provides a specimen of insufficient quantity. The three hour time limit does NOT begin with a no temperature specimen of sufficient quantity.

(vi) Fails to provide an adequate amount of breath for any alcohol test required by this agreement.

(vii) Fails to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.

(viii) Fails or declines to take an additional drug test the Contractor-Employer or collector has directed the Covered Employee to take (for example, if the MRO directs the Contractor-Employer to conduct a recollection under direct observation).

(ix) Fails to undergo a medical examination or evaluation as directed by the MRO as part of the verification process, or as directed by the Contractor-Employer in situations where an adequate specimen is not provided.

(x) Fails to undergo a medical examination or evaluation as directed by the Contractor-Employer as part of the insufficient breath procedure.

(xi) Fails to cooperate with any part of the alcohol testing process.

(xii) Fails to cooperate in any part of the controlled substances testing process (for example, refusing to empty his/her pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process). A refusal includes, but is not limited to, situations in which a Covered Employee provides an adulterated and/or

substituted specimen (as defined in the U.S. DOT Rules, 49 CFR Part 40). Such action shall constitute a refusal to test, in violation of Section F.4 and the Covered Employee shall be discharged unless the Covered Employee agrees to sign Appendix G, Last Chance Agreement.

5. A Covered Employee shall complete the "Consent For The Release Of Confidential Information" form as set forth in Appendix "C" prior to undergoing a substance abuse test. When a Covered Employee is tested, the Covered Employee, the Contractor-Employer and the Union shall be notified of the test results. Action against the Covered Employee shall be taken in accord with the disciplinary section herein if the Covered Employee's drug or alcohol test results are positive, as defined in Appendix "A" hereto.

6. The medical laboratory shall retain all positive specimens, in a frozen state, for twelve (12) months; all negative specimens for two (2) weeks. A Covered Employee shall have the right to have his or her sample as originally collected independently retested at his/her expense by a National Institute On Drug Abuse certified laboratory. The Covered Employee must exercise this right within fourteen (14) days from the time of the original sample collection and the Covered Employee must select a laboratory among those listed in Appendix "D" to conduct such retesting except as may be otherwise provided for in the Owner's controlled insurance program (OCIP). If the independent drug or alcohol retest results are not positive under the criteria set forth in Appendix "A": (a) the Covered Employee shall be put back to work immediately with reimbursement of full pay and benefits and with a rescission of any discipline imposed by reason of a positive drug or alcohol test result, along with an explanation for such rescission, and (b) the Contractor-Employer shall also reimburse the Covered Employee for the cost of the retest as paid for by the Covered Employee.

   Where the Covered Employee believes that the positive test result is not due to unlawful use of alcohol or a controlled substance, but due to exposure to a workplace substance, or that the accuracy of the test result was confounded by a workplace substance, he/she shall have the right, at the Contractor-Employer's expense to have an independent laboratory designated by the Contractor-Employer evaluate the specimen by mass spectrometry or other state-of-the-art technology. If the evaluation indicates that the positive test result was due to a workplace substance, or that a workplace substance confounded the accuracy of the test: (a) the Covered Employee will be put back to work immediately with full back pay and benefits, and with a rescission of any discipline imposed along with an explanation for

such rescission; and (b) the Contractor-Employer shall take immediate steps to insure that Covered Employees are not exposed to such substances at levels that may produce or cause such positive test results, or that may cause material impairment of health or functional capacity.

7. A Covered Employee who tests positive and is later allowed to return to work pursuant to paragraphs G.1.(a) or (b), below, shall be subject to unannounced testing by the Contractor-Employer until two (2) subsequent consecutive tests of this nature are negative. Such tests shall be conducted within twelve (12) months after the Covered Employee returns to work, and in any event shall cease after the expiration of the aforesaid time period.

G. Schedule Of Disciplinary Actions

The manufacture, distribution, dispensation, possession, use of, or being under the influence of alcohol or a controlled substance by a Covered Employee, the manufacture, distribution, dispensation, possession or use of the paraphernalia of a controlled substance by a Covered Employee, or the attempt to engage in any of the foregoing by a Covered Employee, is prohibited at the Contractor-Employer's workplace. The violation of this aforesaid prohibition by a Covered Employee shall constitute just and proper cause for discipline, including but not limited to discharge, as provided for in the Project Labor Agreement. In the event the Covered Employee engages in a separate act of misconduct, in addition to the violation of this Policy, (such as insubordination, fighting, etc.) or engages in conduct which results in physical injury or property damage, the Covered Employee may also be disciplined for such conduct or misconduct in addition to discipline for the drug or alcohol offense. Such discipline shall be in accord with principles of just and proper cause.

1. The following disciplinary actions shall be taken against a Covered Employee whose drug or alcohol test has a positive reading, as defined in Appendix "A" hereto, or who is guilty of using or being under the influence of a controlled substance or alcohol at the workplace, and hereinafter collectively referred to as an offense:

   (a) First Offense

      (1) Covered Employee Option 1 -- The Covered Employee shall be afforded the opportunity to enroll in a substance abuse assistance or rehabilitation program. If the Covered Employee enters such a program, his or her status as a Covered Employee will not be affected and he/she will be allowed to return to work and to continue to work as long as

he/she remains drug free, as indicated by a negative drug or alcohol test result.

(2) Covered Employee Option 2 -- A first-offense Covered Employee who does not choose to enroll in a substance abuse assistance or rehabilitation program shall be suspended for the length of time it takes to obtain a negative reading from a subsequent drug or alcohol test but in any case, no less than a two (2)-week suspension. The Covered Employee must make arrangements with his or her Contractor-Employer prior to undergoing drug or alcohol retesting. Should a subsequent drug or alcohol test fail to produce a negative reading within three (3) months after the first offense, then the Covered Employee shall be considered as having committed his or her second offense.

(b) Second Offense -- A suspension from work for the time it takes to obtain a negative reading from any subsequent drug or alcohol test but in any case, no less than a four (4)-week suspension from work. The Covered Employee must make arrangements with his or her Contractor-Employer prior to undergoing drug or alcohol retesting. Should a subsequent test fail to produce a negative reading within two (2) months after the beginning of such suspension, then the Covered Employee will be discharged and will not be eligible for re-employment by the Contractor-Employer until such time as the physician or medical laboratory that conducted the original test submits verification of a negative reading having been obtained from said person.

(c) Third Offense -- Any Covered Employee who tests positive for the third time shall be discharged and shall not be eligible for re-employment by the Contractor-Employer for a period of three years, unless the Covered Employee can establish through objective evidence that he or she is no longer a current alcohol or drug abuser whose current use of alcohol or drugs prevents such individual from doing his or her job, or would constitute a threat to property or the safety of others.

2. For purposes of administering this paragraph G (Schedule Of Disciplinary Actions), offenses shall be cumulative on a Contractor-Employer-wide basis. For example: A Covered Employee commits an offense while employed on Job A. Said Covered Employee is subsequently employed on Job B where he/she commits another offense. That offense shall be considered as his/her second offense.

H. Selling Of Controlled Substances

1. A Covered Employee who sells or attempts to sell a controlled substance and/or the paraphernalia of a controlled substance at the Contractor-Employer's workplace shall be immediately discharged from employment. In addition, any Covered Employee who engages in such conduct and is discharged for the same shall not be eligible for re-employment by the Contractor-Employer.

2. Any such incidents shall also be reported to appropriate enforcement agencies.

I. Additional Considerations Applicable To Work On Federal Construction Projects

The following additional provisions shall apply only to Covered Employees who are employed by the Contractor-Employer on a work project that constitutes a procurement by the Federal Government or a Federal Agency of any property or services of a value of twenty-five thousand dollars ($25,000.00) or more.

1. As a condition of employment, any Covered Employee convicted of a violation of a criminal drug statute for a violation occurring in the workplace must, as required by the Federal Drug-Free Workplace Act, notify the Contractor-Employer within five (5) days of that conviction. Failure to do so will subject the Covered Employee to disciplinary action, including discharge.

2. As required by the Federal Drug-Free Workplace Act, any Covered Employee who is convicted of a violation of a criminal drug statute occurring in the workplace shall be disciplined by the Contractor-Employer or shall be required by the Contractor-Employer to participate in an approved drug abuse assistance or rehabilitation program.

3. As required by the Federal Drug-Free Workplace Act, the Contractor-Employer must and will notify any Federal Contracting Agency on whose projects it is working of a workplace drug conviction within ten (10) days after receiving notice from the convicted Covered Employee or other official source of such conviction.

4. In compliance with the U. S. Department Of Defense Drug Free Workforce Clause (September 1988), any Covered Employee who has been granted access to secret or classified information -- or whose position and work involves national security, health, or safety and/or a high degree of trust and confidence -- will, at Contractor-Employer

expense, be subject to testing for the unlawful use of controlled substances and alcohol.

5. The Contractor-Employer shall not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of any work or contract.

J. Controlled Substance

A "controlled substance" is defined as: any drug listed in Schedules I through V of the Controlled Substances Act, at Section 202 thereof, 21 U.S.C., Section 812. These controlled substances include, but are not limited to, marijuana, cocaine, opiates, amphetamines and phencyclidine.

K. Application Of Grievance Procedure And Arbitration Provisions

Grievances of Covered Employees covered by the Project Labor Agreement involving the application of the terms and conditions of employment set forth herein shall be subject to the grievance and arbitration provisions as set forth in the Project Labor Agreement, Article 14, with the results thereof being final and binding.

L. Inclusion of Substance Abuse Treatment Benefits Under The Health & Welfare Plan

Where applicable, and if not already included, the parties hereto will recommend to the trustees that substance abuse treatment benefits be included under any jointly administered health and welfare plan, created under Section 302 of the Taft-Hartley Act.

M. Apprenticeship Requirements

Where applicable, the parties hereto will also recommend that the passage of a drug test for unlawful use of controlled substances be a part of the eligibility requirements for entry into and indenture under the apprenticeship program maintained by the Contractor-Employer and the Union pursuant to a trust fund created under Section 302 of the Taft-Hartley Act.

N. Disclosure Of information

1. The Contractor-Employer and the Unions shall be required to disclose to one another any and all information in their possession that is necessary to enforce this Policy. The foregoing duty to disclose information is included herein in order for the Contractor-Employer and the Unions to comply with their respective duties to bargain in good

faith under Sections 8(a)(5) and 8(b)(3) respectively of the National Labor Relations Act, as amended.

2. The records maintained by the Contractor-Employer for its employee assistance program are confidential and protected by federal law and regulations. The Contractor-Employer cannot disclose information identifying an employee as a participant in its program except in the following limited circumstances:

   (a) The Covered Employee participants consent to the disclosure in writing as set forth in Appendix "E" attached hereto and made a part hereof;

   (b) The disclosure is required by a court order;

   (c) The information is necessary to meet a medical emergency involving the Covered Employee-participant; or

   (d) The information is required by qualified personnel for research, audit or program evaluation.

3. The Contractor-Employer will provide each Covered Employee who participates in the employee assistance program with a written summary, as requested, of the federal law and regulations governing disclosure as set forth in Appendix "F" attached hereto and made a part hereof.

4. A Covered Employee's participation in the employee assistance program will not prohibit the Contractor-Employer and/or employee assistance program provider from reporting any crimes committed by the Covered Employee-participant either at the program or against any person who works for the program or from reporting any threats to commit such crimes, to the appropriate federal, state or local authorities.

5. A Covered Employee's participation in the employee assistance program will not prohibit the Contractor-Employer and/or employee assistance plan provider from reporting any information about suspected child abuse or neglect under state law to the appropriate state or local authorities.

O. Additional Definitions

As utilized herein, the following terms have the following meanings:

1. The term "conviction" means the finding of guilt (including a plea of nolo contendere or no contest) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of Federal or State criminal drug statutes;

2. The term "criminal drug statute" means a criminal statute involving manufacture, distribution, dispensation, use, or possession of any controlled substance;

3. The term "Federal Agency" means an agency as that term is defined in Section 552(f) of Title 5, United States Code;

4. The terms "unlawful use of a controlled substance," "illegal use of a controlled substance," or "illegal use of drugs" means the use, consumption or ingestion of any controlled substance under any circumstances except when directed by a physician or dentist;

5. The term "workplace" means any site for the performance of the work of the Contractor-Employer or any location where the Covered Employee may be during paid Contractor-Employer time or when the Covered Employee is under the care, control, and custody of the Contractor-Employer; and

6. The terms "drug" or "drugs" mean a controlled substance as defined herein.

P. Entire Agreement

This document contains the entire agreement and no other substance abuse testing shall be allowed unless by mutual written agreement between the parties.

APPENDIX A

PROCEDURES FOR MEDICAL TESTS OF URINE SAMPLES

Urine samples shall be handled in the following manner:

A. Collection shall be by a physician or health care professional. The presence of a Union representative is not necessary when the collection of urine is made. Specimen containers shall be labeled with a number, and if the Covered Employee chooses, the Covered Employee's signature, and shall be closed with a tamper-proof seal initialed by the Covered Employee and collecting agent. The labeling shall be done in the Covered Employee's presence and in the presence of a Union representative if the Covered Employee chooses.

B. The specimen number and identifying information on the donor shall be entered on a log and signed by the collecting technician in the presence of the Covered Employee -- and in the presence of a Union representative if the Covered Employee chooses -- and the Covered Employee shall initial the proper line on the log entry.

C. The volume of each sample shall be such that sufficient amounts of urine will exist for both initial tests, confirmation tests and independent testing.

D. Samples shall be stored in a scientifically acceptable manner.

E. All handlers and couriers of the sample must complete entries and identify themselves on a proper chain of custody form.

F. Confirmation tests in accordance with the Guidelines as established by the National Institute On Drug Abuse (NIDA) must be performed. After testing and confirmation testing, the facility must retain a sufficient portion of the sample for independent retesting and store that portion in a scientifically acceptable, preserved manner for the period of time as set forth in the Guidelines as issued from time to time by the National Institute On Drug Abuse (NIDA) -- unless the Covered Employee or the Union requests of the facility that it retain the sample for a longer period of time.

G. Results of the testing shall be communicated in writing to the Contractor-Employer, Union and the Covered Employee within seventy-two (72) hours after the results are determined. The laboratory may only report a positive drug or alcohol test result if the appropriate test indicates that the specimen contains levels of drugs or alcohol in excess of the following levels:

    1. Blood alcohol level in excess of the State of Hawaii Standard giving rise to a legal presumption of intoxication.

2. Drug levels in excess of those levels as set forth in the Guidelines as established by the National Institute On Drug Abuse (NIDA).

H. Information on test results and the fact that testing was done shall be kept confidential by the Contractor-Employer, Union, and tester, and shall be communicated only to those who must know the information in order to ensure safety at the workplace and enforce the terms and conditions set forth in the Project Labor Agreement. Copies of all documents -- including but not limited to test results, computer printouts, graphs, interpretations, and chain of custody forms shall -- be delivered to the Covered Employee from whom the samples of the bodily fluids were taken.

I. On the day that the sample is taken when tested For Cause, the Contractor-Employer shall send the Covered Employee home for the remainder of the day, and shall arrange transportation home for that Covered Employee and not allow the Covered Employee to drive home. The Covered Employee shall not be allowed to return to work until his or her test results are known.

J. As utilized herein, the terms "drugs" or "drug" mean a controlled substance as defined in Attachment B, Policy Covering Drugs and Other Controlled Substances For the Honolulu High Capacity Transit Corridor Project, Paragraph J.

APPENDIX B

SUBSTANCE ABUSE TESTING

TYPE: _____

LOCATION
CODE: _____

SUBSTANCE ABUSE TESTING

TO:_____ DATE: _____

POSITION:_____ DEPT/PROJECT:_____

1. As a Covered Employee, you are ordered to be tested for substance abuse in accordance with Contractor-Employer policy and procedures, based on reasonable suspicion.

2. An appointment has been made for you to be tested at:

   _____

   _____

   _____

   Date: _____

   Time: _____

3. You will be escorted to the collection site by a Contractor-Employer official or representative. You will be provided transportation to the collection site and provided transportation to your residence upon completion of the specimen collection. Any costs accrued for transportation will be paid by the Contractor-Employer.

4. You will be required to sign a form voluntarily consenting to submit to testing to provide specimen(s) as part of testing and to release the test results to the Contractor-Employer and its Medical Review Officer. Failure to sign this form shall

result in disciplinary action as set forth in the program and procedures for disciplinary action.

5. You are hereby placed on indefinite suspension without pay pending the results of the substance abuse test. If the results are negative, you will be returned to work immediately and reimbursed for all lost time, and no record of the testing or indefinite suspension will be placed in your personnel file.

All substance abuse testing required by the Contractor-Employer will be in accordance with any applicable local, federal and state laws or regulations.

Unless you are advised otherwise in writing by the Contractor-Employer, substance abuse testing for cause shall be for the presence of alcohol in the system or for the following substances of abuse: marijuana, cocaine, amphetamines, opiates and phencyclidine.

You are advised that over-the-counter medications or prescribed drugs may result in a positive test result. For this reason, the Contractor-Employer's Medical Review Officer may need your assistance in identifying which medications or drugs you may be taking at the present time and may have taken within the past thirty (3O) days to ensure accuracy of testing results.

If you would like to voluntarily disclose that you are currently taking any medication, please list them below:

***Please take a picture ID with you for identification at the time of testing.**

If you have any questions, please contact the undersigned. Failure to undergo substance abuse testing as required by the Contractor-Employer may result in disciplinary action.

_____

Personnel Manager, or designee

cc: Medical Review Officer

APPENDIX C

CONSENT FOR THE RELEASE OF CONFIDENTIAL INFORMATION

I, _____,
(Name of patient)

authorize _____ to disclose to
(Name of Testing Facility)

_____ information
(Name of Contractor-Employer and Name of Union)

regarding the results of any substance abuse test taken by me under the Policy Covering Drugs and Other Controlled Substances For the Honolulu High Capacity Transit Corridor Project. The purpose of the disclosure authorized herein is to determine whether I have complied with the provision of the Policy.

I understand that my records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, and cannot be disclosed without my written consent unless otherwise provided for in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically upon my termination from employment with the above-referenced Contractor-Employer.

_____ _____
Signature of patient Date

APPENDIX D

COLLECTION STATIONS FOR DRUG TESTING

LOCATION	CONTACT PERSON
Straub Occupational Health Services 845 S. Beretania Street Honolulu, HI 96814	Dr. Michael Kusaka (MRO) Ph: 522.-381 3
Reliable Drug Testing Services, Inc. 1524 Ala Puumalu Street Honolulu, HI 96818-1547	Kalfreda Mae Wataoka Ph: 833-5973
Concentra Medical Centers 545 Ohohia Street Honolulu, HI 96819	Dr. Ronald Kienitz (DO) Ph: 831-3000

Any facility that adheres to the Standard of Substance Abuse Testing established by the Department of Health and Human Services (DHHS) and Substance Abuse and Mental Health Services Administration ("SAMHSA") as set forth in 49 CFR Part 40 or Hawaii Revised Statutes Sections 329B-4, -5 and -6 may be used as a collection station for Substance Abuse Testing.

APPENDIX E

WRITTEN CONSENT FOR DISCLOSURE OF INFORMATION CONTAINED IN THE CONTRACTOR-EMPLOYER'S RECORDS CONCERNING PARTICIPATION IN EMPLOYEE ASSISTANCE PROGRAM FOR ALCOHOL OR DRUG ABUSE

I, _____ request/authorize
(Name of employee-patient)

_____ to disclose to _____
(Name of Contractor-Employer) (Name of party to receive information)

the following information:_____

_____

for the limited purpose of _____

I understand that this consent is subject to revocation at any time except to the extent that the Contractor-Employer has already disclosed such information in reliance upon this consent form. If not previously revoked, this consent will terminate upon _____.
(Specific date, event or condition)

_____
Signature of Employee

_____
Date signed

Original to employee's file

APPENDIX F

MEMORANDUM

TO: _____

FROM: _____
(Name of Contractor-Employer)

DATE: _____

RE: CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS.

The records maintained by _____
(Name of Contractor-Employer)

("The Contractor-Employer") in relation to its employee assistance program for alcohol or drug abuse are protected by federal law and regulations.

("The Contractor-Employer") cannot disclose information identifying you as a patient or participant in such program except that in the following limited circumstances:

1. You (the participant) have consented in writing;

2. The disclosure is required by a court order:

3. The information is necessary to meet a medical emergency involving you;

4. The information is required by qualified personnel or research, audit or program evaluation.

Violation of the federal law and regulations by a program is a crime. Suspected violations may be reported to appropriate authorities in accordance with federal regulations.

Federal law and regulations do not protect any information about a crime committed by a patient either at the program or against any person who works for the program or about any threat to commit such a crime.

Federal law and regulations do not protect any information about suspected child abuse or neglect from being reported under state law to appropriate state or local authorities.

Original to employee's file

APPENDIX G

LAST CHANCE AGREEMENT

This Agreement entered into this _____ day of _____, 2009, by and between _____, the Covered Employee and _____, the Contractor-Employer.

1. The Covered Employee has refused to sign an authorization to submit to a drug, controlled substance, or alcohol test, refused to undergo such a test, or refused to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union as provided in Section F.4.

2. The Covered Employee agrees to sign Appendix G, Last Chance Agreement instead of being discharged and whereby the Covered Employee agrees to resign from employment on a no-fault basis in the event of a positive drug, controlled substance or alcohol test occurring within three (3) years of the Covered Employee's refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, refusal to undergo such a test, or refusal to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union as provided in Section F.4.

3. The Covered Employee agrees that when the Covered Employee signs Appendix G, Last Chance Agreement, the Employee shall be suspended for two (2) weeks from work without pay and without fringe benefits accruing workdays instead of being discharged.

4. Before being permitted to back to work, the Covered Employee shall have passed a return to duty test.

5. The Covered Employee agrees that Appendix G, Last Chance Agreement has been carefully read and voluntarily accepts Appendix G, Last Chance Agreement with full knowledge and understanding of its contents and meaning.

6. The Covered Employee agrees that a resignation from employment deprives the Covered Employee of the right to grieve as provided in Article 14 of the Project Labor Agreement or challenging the resignation.

7. Appendix G, Last Chance Agreement shall be confidential, except as may be necessary to ensure compliance with its terms.

_____
Signature of Employee

_____
Date signed

Original to employee's file