

NEIL ABERCROMBIE
GOVERNOR



Dean H. Seki
Comptroller

Maria E. Zielinski
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES


P.O. BOX 119, HONOLULU, HAWAII 96810-0119

January 17, 2014

COMPTROLLER'S MEMORANDUM NO. 2014-04

TO: All Department Heads

ATTN: Construction Project Managers

FROM: Dean H. Seki, Comptroller 

SUBJECT: Guidelines - Project Labor Agreements (PLA) for State Construction Projects

By Administrative Directive No. 12-05, Governor Abercrombie declared that the State of Hawaii will use PLA's on a variety of construction projects in order to address obstacles that might arise due to a lack of labor coordination. Administrative Directive No. 12-05 tasked the Department of Accounting and General Services to establish guidelines to implement the directive.

Attached are the "Guidelines for Implementing Administrative Directive No. 12-05 relating to Use of Project Labor Agreements for State Construction Projects". These guidelines shall be effective January 17, 2014.

Attachments

Guidelines for Implementing Administrative Directive No. 12-05 relating to Use of Project Labor Agreements for State Construction Projects

**Issued by the Department of Accounting and General Services
Effective January 17, 2014**

Discussion

Large-scale construction projects pose special challenges to efficient and timely procurement and administration by the State Government. Construction employers typically do not have a permanent workforce, which makes it difficult for them to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed.

Challenges may also arise due to the fact that construction projects can typically involve multiple employers at a single location and labor disputes involving one employer can delay the entire project. Furthermore, lack of coordination among various employers, or uncertainty about the terms and conditions of employment of various groups of workers, may create frictions and disputes in the absence of an agreed-upon resolution mechanism. These problems threaten the efficient and timely completion of construction projects undertaken by State contractors and, especially on larger projects, which are generally more complex and of longer duration, these problems tend to be more pronounced.

The use of a project labor agreement may prevent these problems from developing by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of State construction contracts.

Policy

Accordingly, in order to promote the efficient procurement, administration and completion of State construction projects, Governor Abercrombie issued Administrative Directive No. 12-05 (Directive) on May 22, 2012 encouraging all executive branch agencies to consider requiring the use of project labor agreements (PLA) in connection with large-scale construction projects (\$25 million and above) in order to promote economy and efficiency.

On a project-by-project basis, executive agencies may require the use of a PLA when such an agreement will: (i) advance the State Government's interest in achieving economy and efficiency in State procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and (ii) be consistent with law.

If an executive agency determines that the use of a PLA will satisfy the criteria in clauses (i) and (ii) above, the agency may, if appropriate, require that every contractor or subcontractor on the project agree, for that project, to become a party to a PLA with one or more appropriate labor organizations.

Any PLA reached pursuant to this directive shall:

- (a) Bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;
- (b) Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
- (c) Contain guarantees against strikes, lockouts, and similar job disruptions;
- (d) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the project labor agreement;
- (e) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and
- (f) Fully conform to all statutes, regulations, and executive orders.

This Directive does not require an executive agency to use a PLA on any construction project, nor does it preclude the use of a PLA in circumstances not covered by this directive, including leasehold arrangements and projects receiving Federal financial assistance.

Definitions

- (a) The term "labor organization" as used in this guideline means a labor organization as defined in 29 U.S.C. section 152(5).
- (b) The term "construction" as used in this guideline means construction, rehabilitation, alteration, conversion, extension, repair, or improvement of buildings, highways, or other real property.
- (c) The term "large-scale construction project" as used in this guideline means a construction project where the total cost to the State Government is \$25 million or more.
- (d) The term "executive agency" or "agency" as used in this guideline means all of the principal departments established in section 26-4 of Hawaii Revised Statutes and their offices, departments, instrumentalities and administratively attached agencies.
- (e) The term "project labor agreement" or "PLA" as used in this guideline means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. section 158(f).

Determining and Justifying PLA Use

Agencies should review proposed large scale construction projects to decide whether a PLA may be appropriate as early as practicable and before issuing an invitation for bids. The agency shall conduct an analysis and prepare written justification describing how a PLA will benefit and enhance the interests of the State on the basis of economy, efficiency, quality, safety and/or timeliness. The projects that exhibit some of the following criteria are good PLA candidates.

1. The overall size, scope, sequencing, logistics or other aspects of the Project make it particularly challenging to manage, and use of a PLA is expected to help assure that the construction work is performed properly and efficiently under the circumstances.
2. The nature of the Project results in a heightened need for labor force continuity and stability over a substantial period of time.
3. There is a firm construction completion date established for the Project thereby increasing the adverse consequences of any work stoppage or other labor disruption.
4. The time required to complete the Project is expected to extend beyond the expiration date of one or more existing collective bargaining agreements covering trades likely to be involved in the Project, thereby increasing the likelihood of work stoppage(s) or other labor disruption(s) during construction of the Project.
5. In the absence of a PLA, there is an increased likelihood of jurisdictional disputes among unions or of conflict between unionized and non-unionized workers on the Project that could have a potentially material adverse effect on the time, cost, or quality of work performed on the Project.
6. Use of a PLA is expected to result in improved access to skilled labor, improved efficiency, or improved safety performance on the Project.

Solicitation Guidelines

Use of a PLA on the Project shall comply with state procurement rules and follow the competitive bidding process. The agency shall make executing and complying with the PLA part of the bid specifications for the project. The instructions to bidders shall provide that the agency has the right to select any qualified bidders for the award of project contracts without reference to whether the bidders are unionized, so long as the bidders execute and comply with the PLA.

The instructions to bidders shall provide that the PLA shall be binding on all contractors and subcontractors on the project through inclusion of appropriate bid specifications in all relevant bid documents. Following award of the contract for the project, the PLA shall be finalized and executed by the contractor and all subcontractors.

If an agency determines to use a PLA, the agency should include the following statement in the solicitation notice:

The Department of ____ has determined, according to Administrative Directive No. 12-05, that use of a project labor agreement on this project will (i) advance the State Government's interest in achieving economy and efficiency in State procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and (ii) be consistent with law. The Contractor who is awarded the project shall be required to submit to the Department of _____ a complete, fully executed Project Labor Agreement within fourteen (14) days of project award. The required Project Labor Agreement is available at _____. The Contractor must also obtain Letters of Assent from each subcontractor of whatever tier who may be employed on the project and submit copies of such Letters to DAGS within 14 days of project award. Any project labor agreement reached, whether modified or not, does not change the terms of this contract or provide for any price increase by the department.

Drafting the PLA

The agency shall use the attached model PLA as a template, when the agency decides that a PLA is appropriate on a particular project. An agency may seek the views of, confer with, and exchange information with prospective bidders and union representatives as part of the agency's effort to identify appropriate terms and conditions of a PLA for a particular construction project and facilitate agreement on those terms and conditions.

Conditions

Any PLA reached pursuant to this guideline does not change the terms of the contract or provide for any price adjustment by the Government.

The Contractor shall maintain in a current status throughout the life of the contract the PLA entered into.

Agencies shall remain impartial concerning any dispute between labor and contractor management and not undertake the conciliation, mediation, or arbitration of a labor dispute. To the extent practicable, agencies should ensure that the parties to the dispute use all available methods for resolving the dispute, including the services of the National Labor Relations Board, Federal Mediation

and Conciliation Service, the National Mediation Board and other appropriate Federal, State, local, or private agencies.

Effective Date

This Guideline shall apply to all solicitations for contracts issued on or after the effective date.

Dean H. Seki, Comptroller

PROJECT LABOR AGREEMENT

ARTICLE I

PURPOSE

This Agreement is entered into this [day] day of [month], 20[year], by and between [General Contractor], its successors or assigns (“Project Contractor”), the Building and Construction Trades Department, AFL-CIO, the Hawaii Building and Construction Trades Council and affiliate International ad/or Local Unions and other signatory unions to this Agreement, acting on their own behalf and on behalf of their respective affiliates and members whose names are subscribed hereto and who have, through their duly authorized officers, executed this Agreement, hereinafter collectively called the “Union or Unions,” with respect to the construction of the [Project], hereinafter “Project.”

The term “Contractor” shall include all construction contractors and subcontractors of whatever tier engaged in onsite construction work within the scope of this Agreement, including the Project Contractor when it performs construction work within the scope of this Agreement. Where specific reference to [General Contractors] alone is intended, the term “Project Contractor” is used.

The term “Employee” shall mean someone who is working on a “Project” as an employee of a “Contractor” performing work covered by this Agreement. “Trust Fund Agreement” means a trust fund established under a collective bargaining agreement for the contribution of payments for employee benefits. “Collective Bargaining Agreement” means a negotiated labor agreement between a Union and a Contractor or Contractor Association.

The Parties to this Project Labor Agreement (“Agreement”) acknowledge that the construction of the Project is important to the development of the economy and providing for operation of the [executive or administrative office, department, instrumentality or administrative attached agency involved]. The Parties recognize the need for the timely completion of the Project without interruption or delay. This Agreement is intended to enhance this cooperative effort through the establishment of a framework for labor-management cooperation and stability.

The Contractor(s) and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction and

supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craft workers for the construction of the Project.

Further, the parties desire to mutually establish and stabilize wages, hours and working conditions as well as to provide workforce development opportunities and a safe and drug-free workplace for the craft workers on this Project and to encourage close cooperation between the Contractor(s) and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist between the parties to this Agreement.

Therefore, in recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. Further, the Contractor(s) and all contractors of whatever tier, agree not to engage in any lockout, and the Unions agree not to engage in any strike, slow-down, or interruption or other disruption of or interference with the work covered by this Agreement absent the existence of a civil defense emergency.

ARTICLE II

SCOPE OF AGREEMENT

Section 1. This Agreement shall apply and is limited to the recognized and accepted historical definition of construction work under the direction of and performed by the Contractor(s), of whatever tier, which may include the Project Contractor, who have contracts awarded for such work on the Project. Such work shall include site preparation work and dedicated off-site work.

The Project is defined as:

[definition of project]

It is agreed that the Project Contractor shall require all Contractors of whatever tier who have been awarded contracts for work covered by this Agreement, to accept and be bound by the terms and conditions of this Project Agreement by executing the Letter of Assent (Attachment A) prior to commencing work with a copy of each executed Letter of Assent under this

Agreement to be mailed to all Parties to this Agreement. The Project Contractor shall assure compliance with this Agreement by the Contractors. It is further agreed that, where there is a conflict, the terms and conditions of this Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTD Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Articles V, VI, and VII of this Agreement, which shall apply to such work. It is understood that this is a self-contained, stand alone, Agreement and that by virtue of having become bound to this Agreement, neither the Project Contractor nor the Contractors will be obligated to sign any other local, area, or national agreement. If any collective bargaining agreement(s) with any of the respective Unions covering construction work in the State of Hawaii contain provisions that are not covered by this Agreement, such collective bargaining agreement provisions shall bind the parties to that collective bargaining agreement and the employees covered thereby only. Further, the Contractor(s) shall not be required to become a member of, and/or pay any fees to, any contractor or employer organization association.

Section 2. Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work, or function which may occur at the Project site or be associated with the development of the Project.

Section 3. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.

Section 4. The Owner and/or the Project Contractor have the absolute right to select any qualified bidder for the award of contracts on this Project without reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement; provided, however, only that such bidder is willing, ready and able to become a party to and comply with this Agreement, should it be designated the successful bidder.

Section 5. The provisions of this Agreement shall not apply to the State of Hawaii, and nothing contained herein shall be construed to prohibit or restrict State of Hawaii or its employees from performing work not covered by this Agreement on the Project site. The provisions of this Agreement shall not apply

to any construction of public work that is not covered by HRS Chapter 104. As areas and systems of the Project are inspected and construction tested by the Project Contractor or Contractors and accepted by the Owner, the Project Agreement will not have further force or effect on such items or areas, except when the Project Contractor or Contractors are directed by the Owner to engage in repairs, modifications, check-out, and warranty functions required by its contract with the Owner during the term of this Agreement.

Section 6. It is understood that the Owner, at its sole option, may terminate, delay and/or suspend any or all portions of the Project at any time.

Section 7. It is understood that the liability of any employer and the liability of the separate Unions under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any joint employer status between or among the Owner, Contractor(s) or any employer.

ARTICLE III

UNION RECOGNITION

Section 1. The Contractor(s) recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.

Section 2. There shall be no discrimination against any employee or applicant for employment because of his or her membership or non-membership in the Union or based upon race, creed, color, sex, age or national origin of such employee or applicant, or any other factor prohibited by state or federal law.

Section 3. All Employees shall, as a condition of continued employment, pay Union dues, assessments and administrative fees, or an equivalent amount regardless of whether an employee is a member of a union. The contractor(s) agree to deduct such dues, assessments and administrative fees, or equivalent amount, as designated by the appropriate Union, provided the Employee has executed a written assignment. The Contractor(s) will remit to the Union once a month, the dues and fees deducted on or before the fifteenth (15th) day of each month following the month in which the deduction was made. The Contractor(s) further agree that the rights of all employees shall be adhered to.

ARTICLE IV

MANAGEMENT'S RIGHTS

Section 1. The Project Contractor and Contractors of whatever tier retain full and exclusive authority for the management of their operations. Except as otherwise limited by the terms of this Agreement, the Contractors shall direct their working forces at their prerogative, including, but not limited to hiring, promotion, transfer, lay-off or discharge for just cause. No rules, customs, or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees. The Contractor shall utilize the most efficient method or techniques of construction, tools, or other labor saving devices. There shall be no limitations upon the choice of materials or design, nor any limit on production by workers or restrictions on the full use of tools or equipment. There shall be no restriction, other than may be required by safety regulations, on the number of employees assigned to any crew or to any service.

Section 2. The Contractor(s) agree to notify the Unions of all opportunities for employment on the Project. Contractor(s) shall have the right to determine the competency of all employees, the number of employees required, the duties of such employees within their craft jurisdictions, and select employees to be laid off. The Contractor shall be the sole judge of the employee's qualification for the work to be performed and shall have the right to reject any applicant referred by a Union for any reason provided that the Contractor shall not discriminate against such applicant by reason of age, race, color, religion, sex, national origin, by reason of membership or nonmembership in any labor organization or any other reason prohibited by state law.

Section 3. Whenever a Contractor requires employees to perform work that may be covered by this Agreement, the Contractor may request that the Union refer up to five specific employees to work for the Contractor upon the following procedure. The Union shall refer the first specific employee requested by the Contractor to work for the Contractor before the Union refers any other employees under its referral procedure. The Union shall then refer the next specific employees requested by the Contractor on a one to one basis (i.e., first one employee under its referral procedure and then one specific employee requested by the Contractor, and so forth).

Section 4. In the event that referral facilities and processes maintained by the Unions are unable to fill the requisition of employees requested by the Contractor within a forty eight (48) hour period from the time such request is received by the

Union, the Contractor shall be free to obtain such employees from any source but remain obligated to meet all provisions herein.

ARTICLE V

WORK STOPPAGES AND LOCKOUTS

Section 1. During the term of this Agreement there shall be no strikes, picketing, work stoppages, slow-downs or other disruptive activity for any reason by the Union, its applicable Local Union or by any employee, and there shall be no lockout by the Contractor. Failure of any Union, Local Union or employee to cross any picket line established at the Project site is a violation of this Article.

Section 2. The Union and its applicable Local Union shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Contractor's project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than ninety (90) days.

Section 3. Neither the Union nor its applicable Local Union shall be liable for acts of employees for whom it has no responsibility. The International Union General President or Presidents will immediately instruct, order and use the best efforts of his office to cause the Local Union or Unions to cease any violations of this Article. An International Union complying with this obligation shall not be liable for unauthorized acts of its Local Union. The principal officer or officers of a Local Union will immediately instruct, order and use the best efforts of his office to cause the employees the Local Union represents to cease any violations of this Article. A Local Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

ARTICLE VI

DISPUTES AND GRIEVANCES

Section 1. This Agreement 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 interruptions, delays, or work stoppages.

Section 2. The Contractors, Unions, and the employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

Section 3. Any question or dispute arising out of and during the term of this Agreement (other than trade jurisdictional disputes and payment of trust fund contributions) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When any employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within five (5) working days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Contractor and the Project Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Project Contractor) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

(b) Should the Local Union(s) or the Project Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute

may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Union Representative, and other representatives as needed, and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request Dispute Prevention & Resolution to provide them with a list of arbitrators from which the Arbitrator shall be selected. The rules of Dispute Prevention & Resolution shall govern the conduct of the arbitration hearing. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

Section 4. The Project Contractor shall be notified of all actions at Steps 2 and 3.

ARTICLE VII

JURISDICTIONAL DISPUTES

Section 1. The assignment of work will be solely the responsibility of the Contractor performing the work involved; and 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, to the extent the Plan or any successor Plan is consistent with this Agreement.

Section 2. Should a jurisdictional dispute arise, there shall first be an attempt to resolve the dispute at the Project level by the Contractor and the Unions involved in the dispute. If the dispute is not resolved within seven (7) days, it will be referred for settlement to the International Presidents of the Unions involved. If after a period of fifteen (15) working days it is not resolved by the International Presidents, a complaint may be filed according to the Plan for the Settlement of Jurisdictional Disputes.

Section 3. All jurisdictional disputes on this Project, between or among all Unions signatory to this Agreement and Employers 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. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.

- (a) For the convenience of the parties, and in recognition of the expense of travel between Hawaii and Washington, DC, at the request of any party to a jurisdictional dispute under this Agreement an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at a mutually acceptable location within the state of Hawaii. All other procedures shall be as specified in the Plan.

Section 4. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved by agreement or arbitration award covering all employees who are involved. Individuals violating this section shall be subject to immediate discharge.

Section 5. Each Contractor will conduct a pre-job conference with the appropriate Building and Construction Trades Council and Unions signatory to this Agreement prior to commencing work. The Project Contractor and the Owner will be advised in advance of all such conferences and may participate if they wish.

ARTICLE VIII

SUBCONTRACTING

The Project Contractor agrees that neither it nor any of its Contractors will subcontract any work to be done on the Project except to a person, firm or corporation who is or agrees to become party to this Agreement. Any Contractor working on the Project shall, as a condition to working on said Project, become signatory to and perform all work under the terms of this Agreement.

ARTICLE IX

HOURS OF WORK, SHIFTS, OVERTIME, HOLIDAYS

Section 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. Acceptable alternatives to the standard work week when permissible, are limited to Article IX, Sections 2 and 10.

Section 2. Compressed Work Week. The Contractor 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.

(c) 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.

Section 3. Workday. Except where shift work or night work is scheduled, the normal workday for Employees covered by this Agreement shall begin between the hours of 6:00 a.m. and 8:00 a.m. The starting time for the Project work shall be established by the Contractor prior to the start of the Project work and, once established, shall not be changed except by written notification from the Contractor to the Employees and Unions. All hours of work shall comply with the directive and requirements of the Contractor who has a Project with the Owner.

Notwithstanding the provisions of this Agreement, the Contractor 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 Employees and the Unions. Any overtime hours shall be compensated at the appropriate overtime rate.

Section 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 Employees before their regularly scheduled starting time and after their regularly scheduled quitting time, provided the 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 recognized by the State of Hawaii.

Section 5. Calculation of Overtime Hours. Overtime hours shall be calculated at 1/10th of an hour, i.e., six (6) minute increments and otherwise comply with all applicable federal and State laws.

Section 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.

Section 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 will notify all members of the crew as early as reasonable possible of any overtime work.

Section 8. Meal Period.

(a) Employees shall be afforded a meal period of at least thirty (30) minutes, which will begin within the period from the third (3rd) through the fifth (5th) hour of a shift. 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 (5th) hour or until such time as Employees are afforded the opportunity to eat.

(b) Where 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, 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, Employees will be afforded an additional unpaid meal period at the end of the each subsequent four (4) hour period.

(d) If an Employee qualifies for a meal period as provided in paragraph (c) of this Section 8, the Contractor shall provide a meal of suitable quality and nutrition.

(e) Employees not afforded a meal period as provided for in paragraph (c) of this Section 8, shall be paid at two (2) times the Employee's regular straight time rate for all time worked after the applicable period of overtime work until such time as said Employee is afforded the opportunity to eat.

Section 9. Show-up Time. 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 (including inclement weather).

The Contractor may require or request an Employee to remain on the job for up to thirty (30) minutes past the 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 Employee's normal starting time, the 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 causes the Employee to start work pursuant to such requirement or request, the 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 contributions to any applicable benefits program; provided however, that if, after remaining on the job as provided above, Employees are then put to work, show-up time shall be counted as hours worked for the purpose of making Contractor contributions to any applicable benefits program.

Section 10. Shift Work. Shift work may be utilized to meet the Project schedule, or otherwise to comply with the Project requirements or written directive from the Owner. Shift work options under this Agreement 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 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 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 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 sole discretion provided;

That on each shift (whether scheduled on a 8, 7-1/2, or 7 hour basis), the Contractor shall provide Employees with eight (8) straight-time hours of work opportunity (exclusive of meal periods) or pay for same. This does not apply where the Employee quits, voluntarily lays out, or is suspended or discharged prior to the completion of an eight (8) hour period, or the Contractor 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.

The Contractor may address additional shift work options and configurations to respond to unique jobsite conditions, work impediments or Project 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 Agreement.

Section 11. Special Weekend Pay Provisions: On shift work, Employees working a shift who come off work on Saturday morning are to be considered working Friday. Employees working a shift coming off work on Sunday morning are to be considered working Saturday. 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.

Section 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.

Section 13. Emergency Call-Out. 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 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 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 Employees are called out continues up to the Employees' normal starting time. In such situations, Employees shall be paid at the overtime rate only for the actual number of hours worked (excluding any applicable travel time) up to the Employees' normal starting time.

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

The provisions of Article IX Sections 6 and 8 shall apply to Employees who are performing emergency call-out work.

Section 14. Nothing in this Article IX shall be construed as guaranteeing any Employee eight (8) hours of work per day or forty (40) hours of work per week.

Section 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.

Section 16. Reporting Pay. Any Employee who reports for work and for whom no work is provided shall receive two (2) hours pay provided the Employee remains available for work. Any 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 pre-job conference.

Section 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 Employee is otherwise engaged at the direction of the Contractor. 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, performing their assigned functions until the end of the Employee's shift. The place of work shall be defined as the gang or tool box, or equipment at the Employee's assigned work location or the place where the foreman gives instructions.

Section 18. It shall not be a violation of this Agreement or a breach of any provision in the Agreement, when the Owner or Contractor 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, Employees will be compensated only for the actual time worked. In the case of a situation described above whereby the

Contractor requests Employees to stand by, the Employees will be compensated for the "stand by time."

Section 19. In the event the Contractor deems it necessary, in keeping with Article 5, it may in its sole discretion develop systems for Employees to check in and out of the Project.

Section 20. Payment of Wages:

(a) 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 Agreement or not) on which local banks will be closed, the Contractor will make every effort to provide the employees with their paychecks by Thursday of that week. Contractor will make arrangements for Employees to cash payroll checks at a local Hawaii bank or financial institution.

(b) 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 from making immediate payment, then all wages due must be paid to the Employees no later than the working day following the discharge. 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 Employee, by mail. However, if an Employee gives at least five (5) working days written notice of his intent to quit, the Contractor shall pay all wages earned and due at the time of separation.

ARTICLE X

WAGES AND BENEFITS:

Section 1. Contractor shall comply with the following:

(a) Contractor shall observe and comply with all applicable provisions of HRS Chapter 104 relating to wages and hours, including fringe benefits. The Contractor shall pay all Employees, not less than the prevailing wage rate in conformance with applicable State law. Where rates differ for any class of Employees, the higher rate shall apply.

The minimum State wage rate applicable to each Project shall be periodically increased during the performance of each Project 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 Agreement 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 Project shall be raised accordingly.

Section 2. Contractor(s) 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 Employees. All Contractors required to make contributions pursuant to this Agreement, 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. All Contractors contributing to trust funds required by this Agreement, shall as a condition of making such contributions be required to sign appropriate participation agreements with such trust funds if applicable, provided that nothing contained in such participation agreements or this Agreement is intended to require any Contractor to become a party to, or to be bound by a collective bargaining agreement, nor is the Contractor 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 Agreement as delineated in Article II herein.

Notwithstanding the previous paragraph or anything else in this Agreement, if the Contractor and/or any of its subcontractors are not bound by a separate collective bargaining agreement with a Union, then this Agreement shall not require them to pay contributions for work by any employee who they requested according Article IV Section 3 to any particular Trust Fund according to Article X, Section 2 unless the employee benefits provided by the particular fund immediately accrue to the direct benefit of such requested employee. If the Trust Fund benefits provided by a particular fund do not immediately accrue to the direct benefit of such a requested employee, then the Contractor or its subcontractors shall pay an amount equal to the contributions otherwise required by this Agreement, on a monthly basis, to a separate benefit plan

which they shall establish on their own that provides benefits which immediately accrue to such requested employees, such as a 401k or individual health care plan. This Agreement shall not require contractors or subcontractors not signatory to a separate collective bargaining agreement with a Union to make any contributions to any fund not covered by the applicable prevailing wages determination (such as an industry improvement or market recovery plan) or based on such contributions required under a collective bargaining agreement to a separate benefit plan. Contractors and subcontractors bound by a separate collective bargaining agreement with a Union shall contribute to the Trust Funds according to that separate collective bargaining agreement.

Section 3. Payments of fringe benefits specified in Article X, Section 1 shall be made for actual hours worked. Except as specifically provided for in Article IX, Sections 9 and 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.

Section 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 related statutes. The Project Contractor shall monitor Contractor(s) for compliance with HRS Chapter 104 requirements as may be applicable to such Contractor(s).

Section 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 prevailing wage rate or classification.

Section 6. Under the terms of this Agreement, no per diem, subsistence, zone pay or zone rates shall apply unless so recognized in the appropriate HRS Chapter 104 prevailing wage rate determination for the appropriate Project.

ARTICLE XI

HELMETS TO HARDHATS

Section 1. The Employers and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment

and Veterans Employment (hereinafter “Center”) and the Center’s “Helmets to Hardhats” program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

Section 2. The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE XII

SAFETY AND HEALTH

Section 1. It is the responsibility of each Contractor to ensure safe working conditions and employee compliance with any safety rules contained herein or established by the Contractor in accordance with the State of Hawaii, Hawaii Revised Statute 396-18 and Hawaii Administrative Rules Title 12, Subtitle 8, Part 3. It is understood that the employees have an individual obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the Contractor and the State of Hawaii.

Section 2. Employees shall be bound by the safety, security and visitor rules established by the Contractor. These rules will be published and posted in conspicuous places throughout the work site. An employee’s failure to satisfy the obligations under this Section will subject him/her to discipline up to and including, possible discharge.

Section 3. The Parties to this Agreement acknowledge the prohibition of the use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms while on Project premises. Additionally, all Parties to this Agreement agree to a “drug free” work place policy, which prohibits those working on this Project from having a level of alcohol which could indicate impairment, and/or any level of controlled substances (i.e., illegal drugs) in their system. No employee shall be permitted to work on the Project under the influence of intoxicants or drugs and shall be removed from the Project if found under the influence of intoxicants or drugs.

Section 4. To that end, the Parties agree that all employees performing work under this Agreement shall be obligated and bound to their employer's drug and alcohol prevention policies and programs, whether those policies and procedures are contained in separate collective bargaining agreement between the Union and Contractor or policies and procedures of a contractor that has no separate collective bargaining agreement with the union. If a Contractor with no separate collective bargaining agreement with a union has drug and alcohol prevention policies and procedures, those policies and procedures shall be just as effective in preventing drug and alcohol abuse as the policies and procedures contained the corresponding collective bargaining agreement with the union, and shall have no lower testing standards than contained in that agreement. The Contractor shall provide a copy of those policies and procedures to the Union upon request. If a Contractor with no separate collective bargaining agreement with a union has no drug and alcohol prevention policies and procedures, those policies and procedures contained the corresponding collective bargaining agreement with the union shall apply.

ARTICLE XIII

UNION REPRESENTATION

Section 1. Each Union shall have the right to designate a working craft employee as steward for each Contractor employing such craft on the Project. Such designated steward shall be a qualified workman assigned to a crew and shall perform the work of the craft. The steward shall not perform supervisory duties. Under no circumstances shall there be non-working stewards. Stewards shall be permitted a reasonable amount of time during work hours to perform applicable Union duties related to the work being performed by the craft employees of his Contractor and not to the work being performed by the other Contractors or their employees.

Section 2. Authorized representatives of the Union(s) shall have access to the Project, provided that such representatives fully comply with the posted visitor, security, and safety rules and the environmental compliance requirements of the Project, provided they do not unnecessarily interfere with the employees or cause them to neglect their work. The Contractor recognizes the right of the access set forth in this Section and such access will not unreasonably be withheld from an authorized representative of the Union.

ARTICLE XIV

JOINT ADMINISTRATIVE COMMITTEE

Section 1. The parties to this Agreement shall establish a four (4) person Joint Administrative Committee (JAC). This JAC shall be comprised of a management party made up of two (2) representatives selected by the Project Contractor; and a labor party made up of two (2) representatives from the Unions of which at least one representative shall be a member in good standing, officer or administrator of the Hawaii Building and Construction Trades Council. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement.

Section 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 Agreement that may be required by the Unions and/or the Contractor by majority vote with such resolutions to be binding on all signatories of this Agreement as provided herein. Any question regarding the meaning, interpretation, or application of the provisions of this Agreement, 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 Agreement. 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.

Section 3. In addition to its charter to rule on interpretations or clarifications to this Agreement, the JAC shall annually review the effectiveness of the Agreement in meeting the Agreement 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.

ARTICLE XV

WARRANTY OF AUTHORITY

Each person signing this Agreement 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 Agreement has been validly authorized and constitutes a legally binding and enforceable obligation.

ARTICLE XVI

DURATION

It is agreed that the duration of this Agreement shall be from the commencement of construction, as evidenced by a notice to proceed and will continue for the duration of the Project regardless of whether corresponding collective bargaining agreements expire. All wages and benefits and terms and conditions of employment shall continue for the duration of this Project regardless of whether corresponding collective bargaining agreements expire. In the event any collective bargaining agreements expire without timely agreement by the parties, wages will thereafter be increased in accord with the applicable prevailing wages as provided for in Hawaii Revised Statutes Chapter 104.

ARTICLE XVII

MODIFICATIONS TO THIS AGREEMENT

If the Project Contractor, Contractor(s) or the Unions feel that any provisions of this Agreement are not meeting the needs of the Project, they may agree to specific modifications to such provisions as provided herein, provided that all affected parties must agree in writing to those modifications.

Any modification to this Agreement shall be executed in writing and signed by the contractual representative of each Party. Any modification that creates an additional or reduced commitment for either Party must be incorporated by amendment and signed by the contractual representative of all Parties signatory to this Agreement.

ARTICLE XVIII

SAVINGS CLAUSE

This document contains the entire agreement of the parties and neither party has made any representations to the other which are not contained herein. This Agreement is intended to fully conform to all statutes, regulations, and Executive Orders and to the Contract between the State of Hawaii and the Project Contractor. Should any provision herein contained be rendered or declared invalid by reason of any existing legislation or by any decree of a court of competent jurisdiction, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions thereof, and they shall remain in full force and effect. The parties shall immediately meet to renegotiate the portion or portions thereof rendered invalid. This Agreement shall be governed by the laws of the State of Hawaii.

SEPARATE SIGNATURE PAGE

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