

SUPPLEMENTAL AGREEMENT
ALCOHOL AND CONTROLLED SUBSTANCE TEST
FOR EMPLOYEES COVERED UNDER SECTION 63A

This SUPPLEMENTAL AGREEMENT is entered into this 12TH day of OCTOBER 2018, by and between the State of Hawaii ("Employer") and the United Public Workers, AFSCME, Local 646, AFL-CIO ("Union") on behalf of the Employees of Bargaining Unit 1.

63A.01 **STATEMENT OF PURPOSE.**

Section 63A is intended to help keep the workplace free from the hazards resulting from the use of alcohol and controlled substances. Unless specifically provided otherwise, testing, medical review officer, and substance abuse procedures shall be administered following, to the extent possible, the protocols found in the U.S. DOT Rules, 49 CFR Part 40 (reference Section 63A.02i.), as may be amended.

Except where specific modifications have been made in this agreement to the protocols found in the U.S. DOT Rules, 49 CFR Part 40 (such as to the cut off levels used in the testing process), where it is found that a section does not follow, to the extent possible, the protocols found in the U.S. DOT Rules, 49 CFR Part 40, the parties shall renegotiate the section to ensure such protocols are observed.

The workplace shall be free from the risks posed by the use of alcohol and controlled substances for the safety of the public and the Employees.

Employees subject to alcohol and controlled substance tests and who are subject to disciplinary actions by Section 63A shall be afforded "due process" as provided in Section 63A.

63A.02 **DEFINITIONS.**

63A.02a. **ALCOHOL.**

The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl alcohol and isopropyl alcohol.

63A.02b. **ALCOHOL CONCENTRATION.**

The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath.

63A.02c. **ALCOHOL USE.**

The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

63A.02d. **CONTROLLED SUBSTANCE.**

Substance other than alcohol such as marijuana, cocaine, opiates, amphetamines, and phencyclidine, and other substances under the Controlled Substance Act (21 U.S.C.802) as may be revised.

63A.02e. **EMPLOYEE.**

An Employee in Unit 1 not subject to drug and alcohol testing under Section 63 - CMV Alcohol and Controlled Substance Test.

63A.02f. **EMPLOYER.**

The State of Hawaii.

63A.02g. **SUBSTANCE ABUSE PROFESSIONAL (SAP).**

A licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

63A.02h. **SUPERVISOR.**

The Employer designee who has passed requirements as provided in Section 63A.05.b.

63A.02i. **U.S. DOT RULES, 49 CFR PART 40.**

For the purpose of Section 63A , "U.S. DOT Rules, 49 CFR Part 40" shall mean the use of procedures and standards which follow, to the extent possible, the protocols found in the U.S. Department of Transportation Rules on Drug and Alcohol Testing for drivers of Commercial Motor Vehicles (Parts 382 and 40). The State Department of Health Rules on Substance Abuse Testing shall prevail if there is any conflict between the State Rules and the federal regulations and the law requires that the State Rules be followed. Notwithstanding the foregoing, the cutoff levels for controlled substance testing shall be at the levels specified in the U.S. DOT Rules. Except, testing for the marijuana metabolites cutoff level shall be in accordance with Section 11-113-18(f)(1) of the State Department of Health Rules on Substance Abuse Testing.

The tests under Section 63A are not required by the U.S. Department of Transportation and nothing in Section 63A shall be construed as asserting that the U.S. Department of Transportation is requiring, encouraging or endorsing the tests.

63A.02j. **WORK.**

Work means from the time the Employee begins to work or is required to be in readiness to work until the time the Employee ends work.

63A.03 **VOLUNTARY ADMISSION.**

Employees are encouraged to voluntarily admit to the Employer an alcohol and/or controlled substance problem before they are required to take an alcohol and/or controlled substance test or before they have engaged in conduct prohibited under Section 63A.

63A.03a. The provisions of 63A.03 are available only to Employees who voluntarily admit to having an alcohol and/or controlled substance abuse problem before they are notified to take an alcohol or controlled substance test pursuant to Section 63A and/or before they have engaged in behavior which is prohibited under Section 63A.

63A.03b. An Employee who voluntarily admits to the Employer to having an alcohol and/or controlled substance problem as provided in Section 63A.03a. shall be immediately removed from work. The Employee may elect sick leave, vacation leave, compensatory time or authorized leave without pay during this period, and shall comply with Sections 63A.07, 63A.05c. and 63A.05d. which include:

- 1) Mandatory participation in an Employer approved SAP evaluation and a SAP recommended rehabilitation program with successful completion of such program.
- 2) Mandatory return to work testing and unannounced follow-up testing as prescribed by the SAP.

63A.04 **PROHIBITIONS.**

63A.04a. **ALCOHOL.**

An Employee shall not:

63A.04a.1. Report to work or continue working while having an alcohol concentration of 0.04 or higher.

63A.04a.2. Possess alcohol while working.

63A.04a.3. Use alcohol while performing work.

63A.04a.4. Perform work within four (4) hours after using alcohol.

63A.04a.5. Refuse to submit to a required alcohol test.

63A.04b. **CONTROLLED SUBSTANCE.**

An Employee shall not:

63A.04b.1. Report to work or continue working when using a controlled substance, except when the controlled substance is prescribed by a physician who has advised the Employee the substance does not adversely affect the Employee's ability to perform work.

63A.04b.2. Possess controlled substance while working.

63A.04b.3. Use controlled substance while working.

63A.04b.4. Perform work after testing positive until a return to work test is administered and results in a negative test.

63A.04b.5. Refuse to submit to a required controlled substance test.

63A.05 **TYPES OF TESTS.**

63A.05a. **RANDOM TEST.**

The Employer shall conduct random alcohol and controlled substance tests on Employees at work.

RATE OF TEST.

The tests shall be conducted on an annual basis and the number of alcohol tests conducted each year shall not be less than ten per cent (10%) of the average number of Employee positions each selection period.

The number of controlled substance tests conducted each year shall not be less than twenty-five per cent (25%) of the average number of Employee positions each selection period.

SELECTION METHOD.

The selection of Employees shall be determined by a scientifically valid random number selection method. Each Employee within a designated pool shall have an equal chance of being tested each time the selections are made.

Prior to the initial implementation of the testing program the Employer shall consult with the Union on the random selection method and the composition of the pool.

An Employee shall only be randomly tested for alcohol and controlled substances while the Employee is performing work, as defined in Section 63A.02j.

63A.05b. REASONABLE SUSPICION TEST.

TRAINING OF SUPERVISORS.

Supervisors designated to determine whether reasonable suspicion exists must receive at least four (4) hours of training on alcohol misuse and controlled substance use and indicators of probable use and misuse.

Supervisors shall be trained at least once every four (4) years.

The Union shall be consulted periodically but at least once annually in developing current and new training plans including the use of trainers. Specific training programs shall be developed in consultation between the Union and the Employer.

AUTHORITY.

Supervisors who have received Reasonable Suspicion Test training as provided for in this Section may direct an Employee to submit to an alcohol and/or controlled substance test when that supervisor has reasonable suspicion to believe an Employee at work has violated a prohibition described in Sections 63A.04a.1., 3. or 4. or Sections 63A.04b.1., 3. or 4.

The reasonable suspicion must be based on a specific, contemporaneous, and articulable observation made by the supervisor making the reasonable suspicion determination concerning the appearance, behavior, speech, or body odor of the Employee.

The behavior giving rise to reasonable suspicion must be a recognized symptom of impairment of alcohol or controlled substance use and is not reasonably explained as the result of other causes.

CONFLICTS.

The supervisor who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the Employees.

DOCUMENTATION OF REASONABLE SUSPICION.

A written record shall be made of the observation leading to an alcohol or a controlled substance reasonable suspicion test, and signed by the supervisor who made the observation and acknowledged by the Employer within twenty four (24) hours of the observed behavior or in the case of a controlled substance, before the results of a controlled substance test is released, whichever is earlier.

A copy of the record of facts and observations shall be given to the Employee and the Union.

COMPLIANCE.

A test which does not follow, to the extent possible, the protocols found in the U.S. DOT Rules, 49 CFR Part 40, the State Department of Health Rules on Substance Abuse Testing where they prevail, or violates the Employee's rights, shall not be used for discipline.

63A.05c. RETURN TO WORK TESTS.

RETURN TO WORK - ALCOHOL TEST.

An Employee who has violated a prohibition described in Sections 63A.04a.1., 3., 4. or 5. who desires to return to work shall be subject to a return to work alcohol test with a result indicating an alcohol concentration of less than 0.02.

The Employee shall be subject to a return to work controlled substance test if the Substance Abuse Professional (SAP) recommends the test.

RETURN TO WORK - CONTROLLED SUBSTANCE TEST.

An Employee who has violated a prohibition described in Sections 63A.04b.1., 3., 4. or 5. who desires to return to work shall be subject to a return to work controlled substance test with a verified negative test for controlled substance.

An Employee who is subject to a return to work controlled substance test that tests positive for a second (2nd) consecutive time after completion of each SAP's recommended rehabilitation program shall be discharged.

The Employee shall be subject to a return to work alcohol test if the SAP recommends the test.

63A.05d. FOLLOW-UP TESTS.

An Employee who has returned to work after a verified negative Return to Work Test shall be subject to Follow-Up Testing as prescribed by the SAP.

The Employee shall be subject to unannounced follow up alcohol and controlled substance tests as prescribed by the SAP.

The number of follow up alcohol and controlled substance tests shall be prescribed by the SAP and consist of at least six (6) tests in the first twelve (12) months following the Employee's return to work.

Follow up tests shall not exceed sixty (60) months from the date of the Employee's return to work.

The SAP may terminate the requirement for follow up tests at any time after the first six (6) tests have been administered, if the SAP determines that tests are no longer necessary.

63A.06 **TEST PROCEDURES.**

63A.06a. **ALCOHOL TEST.**

Test procedures and practices shall follow the protocols, to the extent possible, found in the U.S. DOT Rules, 49 CFR Part 40.

Test procedures shall protect the privacy of the Employee and ensure that the tests are attributable to the correct Employee.

Alcohol tests shall be conducted by breath analysis and shall be performed by laboratories that are licensed by the State Department of Health for substance abuse testing or certified by the U.S. Department of Health and Human Services.

Test devices that meet the requirements of the U.S. Department of Transportation shall be used.

A test which does not follow, to the extent possible, the protocols found in the U.S. DOT Rules, 49 CFR Part 40 or violates the Employee's rights, shall not be used for discipline.

63A.06b. CONTROLLED SUBSTANCE TEST.

Test procedures and practices shall follow, to the extent possible, the protocols found in the U.S. DOT Rules, 49 CFR Part 40 and the State Department of Health Rules on Substance Abuse Testing where they prevail.

Test procedures shall protect the privacy and dignity of the individual, ensure the integrity of the test process, safeguard the validity of the test through confirmatory test, and ensure that the tests are attributable to the correct Employee.

The marijuana metabolites cutoff level shall be in accordance with Section 11-113-18(f)(1) of the State Department of Health Rules on Substance Abuse Testing.

Controlled substance tests shall be by urinalysis and shall be performed by laboratories that are licensed or certified by the State Department of Health or the U.S. Department of Health and Human Services.

For the purposes of this Section, when an 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 Employee must provide a specimen after he/she has provided an insufficient specimen:

The three hour time limit always begins when the donor provides a specimen of insufficient quantity.

The three hour time limit does NOT begin with a no temperature specimen of sufficient quantity.

The Employee shall inform the Employer of any over-the-counter medication or other therapeutic drug use when the use affects the Employee's ability to work or when the Employee is using a substance which is prescribed by a physician who has advised the Employee that the substance may adversely affect the Employee's ability to work.

Prior to making a final decision to verify or report a positive test, the Medical Review Officer (MRO) shall give the Employee an opportunity to discuss the test. If the MRO determines there is a legitimate medical explanation, such as medical marijuana prescribed by a licensed physician, for the positive test, the MRO shall take no further action and report the test as negative.

A test which does not follow, to the extent possible, the protocols found in the U.S. DOT Rules, 49 CFR Part 40, the State Department of Health Rules on Substance Abuse Testing where they prevail, or violates the Employee's rights, shall not be used for discipline.

SPLIT SAMPLE.

An Employee may request an analysis of the split sample within seventy two (72) hours of having been informed of a verified positive test.

The Employee may instruct the MRO to have the analysis be at another laboratory that is licensed or certified by the State Department of Health or by the U.S. Department of Health and Human Services for analysis.

The Employer shall pay for the cost of the test analysis of the first split sample as a result of a positive test. The Employee shall pay for the cost of the test analysis of the split sample of all subsequent tests. However, the Employee shall be reimbursed if the results of the test is negative.

63A.07

EVALUATION, REFERRAL AND REHABILITATION.

An Employee who has engaged in conduct prohibited by Sections 63A.04a.1., 3., 4. or 5. or Sections 63A.04b.1., 3., 4. or 5. shall be advised by the Employer of the resources available to the Employee in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substance, including the names, address, and telephone numbers of SAP's and counseling and rehabilitation programs.

An Employee who is engaged in conduct prohibited by Sections 63A.04a.1., 3., 4. or 5. or Sections 63A.04b.1., 3., 4. or 5. shall be referred to the SAP for evaluation.

The Employer shall select the SAP, provided that the SAP shall not be an Employee of the Employer. The cost for the SAP services shall be borne by the Employer.

The Employee shall be responsible for the cost of the rehabilitation program and treatment prescribed by the SAP, including any drug and alcohol test required as part of such program or treatment.

The Employee shall be allowed to use sick leave, vacation leave, compensatory time or authorized leave without pay during the period of the SAP recommended rehabilitation program. The Employee must successfully complete such rehabilitation program.

63A.08

ADMINISTRATIVE AND CORRECTIVE ACTIONS.

The cost of the alcohol and controlled substance tests ordered by the Employer and for which the Employer receives the results, shall be borne by the Employer.

The time spent in completing the testing, including travel time, shall be considered as time worked.

When tests are required as the result of a rehabilitation program, or the return to work test, the time spent in completing the tests, including travel time, shall not be considered as time worked.

CALL BACK NOTICE.

An Employee on non-work status who is called back to work shall report to the Employer the consumption of alcohol within the previous four (4) hours or the Employee's belief that the Employee's alcohol concentration level would be 0.02 or greater. In such event, the Employee shall not be offered work and shall not be required to submit to an alcohol test or be subject to disciplinary action.

REMOVAL FROM WORK.

An Employee who has tested positive as a result of an alcohol test with an alcohol concentration of 0.02 or greater but less than 0.04 shall be removed immediately from work. The Employee may elect sick leave, vacation leave, compensatory time or authorized leave without pay during this period. The Employee is prohibited from working for at least twenty four (24) hours.

An Employee with a positive alcohol test of 0.04 or greater or a positive controlled substance test shall be removed immediately from performing work and shall be scheduled for immediate evaluation by the SAP. The SAP shall complete the evaluation within a reasonable period of time after the Employee has been removed from work. Before returning to work the Employee shall be subject to the SAP's recommended rehabilitation program and take a return to work test as provided in Section 63A.05c. An Employee with a positive test shall be immediately placed on sick leave, vacation leave, compensatory time or authorized leave without pay as elected by the Employee.

DISCIPLINE, RESIGNATION AND LAST CHANCE AGREEMENTS.

NOTICE OF TEST RESULTS.

An Employee who tests positive for alcohol or controlled substance shall be given written notice of the test with a copy of the documents to verify the chain of custody.

INITIAL PROBATION.

At the time of initial hire, the Employee shall agree to sign Exhibit 63A.09a. Resignation Agreement, or be discharged, whereby the Employee agrees to resign from employment when the Employee is first tested positive for alcohol or controlled substance while on an initial probationary period.

FIRST POSITIVE ALCOHOL TEST.

An Employee with a positive alcohol test of 0.04 or greater for the first time shall be suspended for five (5) working days.

The Employee shall be referred to the SAP and must comply with the SAP's recommended rehabilitation program.

SECOND POSITIVE ALCOHOL TEST.

An Employee who tests positive for 0.04 or greater of alcohol for the second time shall be discharged unless the Employee agrees to sign Exhibit 63A.09b. Alcohol Last Chance Agreement, whereby the Employee agrees to resign from employment in the event of a third positive alcohol test occurring within three (3) years of the first positive alcohol test exclusive of time from the date the Employee has been removed from work, including time spent in evaluation and treatment, until the date the Employee has returned to work following a negative return to work test(s).

When the Employee signs Exhibit 63A.09b. Alcohol Last Chance Agreement, the Employee shall be suspended for ten (10) workdays.

The Employee shall be referred to the SAP and must comply with the SAP's recommended rehabilitation program as provided in Exhibit 63A.09b. Alcohol Last Chance Agreement.

THIRD POSITIVE ALCOHOL TEST.

An Employee who tests positive for 0.04 or greater of alcohol for a third time within three (3) years of the first positive alcohol test exclusive of time from the date the Employee has been removed from work, including time spent in evaluation and treatment, until the date the Employee returned to work following a negative return to work test(s) shall be deemed to have resigned as provided in Exhibit 63A.09b. Alcohol Last Chance Agreement.

FIRST POSITIVE CONTROLLED SUBSTANCE TEST.

An Employee who tests positive for controlled substance for the first time shall be suspended for ten (10) working days.

The Employee shall be referred to the SAP and must comply with the SAP's recommended rehabilitation program.

SECOND POSITIVE CONTROLLED SUBSTANCE TEST.

An Employee who tests positive for controlled substance for the second time within three (3) years of the first positive test result shall be discharged unless the Employee agrees to sign Exhibit 63A.09c. Controlled Substance Last Chance Agreement, whereby the Employee agrees to resign from employment in the event of a third positive controlled substance test occurring within three (3) years of the first positive controlled substance test exclusive of time from the date the Employee has been removed from work, including time spent in evaluation and treatment, until the date the Employee has returned to work following a negative return to work test(s).

When the Employee signs Exhibit 63A.09c. Controlled Substance Last Chance Agreement, the Employee shall be suspended for twenty (20) working days instead of being discharged.

The Employee shall be referred to the SAP and must comply with the SAP's recommended rehabilitation program as provided in Exhibit 63A.09c. Controlled Substance Last Chance Agreement.

THIRD POSITIVE CONTROLLED SUBSTANCE TEST.

An Employee who tests positive for controlled substance for a third time within three (3) years of the first positive controlled substance test exclusive of time from the date the Employee has been removed from work, including time spent in evaluation and treatment, until the date the Employee has returned to work following a negative return to work test(s) shall be deemed to have resigned as provided in Exhibit 63A.09c. Controlled Substance Last Chance Agreement.

REFUSAL TO TEST.

An Employee who refuses to submit to a required alcohol test in violation of Section 63A.04a.5. shall be discharged unless the Employee agrees to sign Exhibit 63A.09b., Alcohol Last Chance Agreement, whereby the Employee agrees to resign from employment in the event of a positive alcohol test of 0.04 or greater or second refusal to be tested within three (3) years of the first refusal to test.

An Employee who refuses to submit to a required controlled substance test in violation of Section 63A.04b.5. shall be discharged unless the Employee agrees to sign Exhibit 63A.09c., Controlled Substance Last Chance Agreement, whereby the Employee agrees to resign from employment in the event of a positive controlled substance test or second refusal to be tested within three (3) years of the first refusal to test.

A refusal to take an alcohol or control substance test is when an Employee:

- 1) Fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer.
- 2) Fails to remain at the testing site until the testing process is complete.
- 3) Fails to provide a urine specimen for any controlled substances test required by this agreement.
- 4) 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.
- 5) 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 an 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 Employee must provide a specimen after he/she has provided an insufficient specimen:

The three hour time limit always begins when the donor provides a specimen of insufficient quantity.

The three hour time limit does NOT begin with a no temperature specimen of sufficient quantity.

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

- 7) 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.
- 8) Fails or declines to take an additional drug test the employer or collector has directed the employee to take (for example, if the MRO directs the employer to conduct a recollection under direct observation).
- 9) Fails to undergo a medical examination or evaluation as directed by the MRO as part of the verification process, or as directed by the Employer in situations where an adequate specimen is not provided.
- 10) Fails to undergo a medical examination or evaluation as directed by the employer as part of the insufficient breath procedure.
- 11) Fails to sign the certification at Step 2 on the alcohol test form.
- 12) Fails to cooperate with any part of the alcohol testing process.
- 13) 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 an 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 63A.04a.5. or Section 63A.04b.5. and the Employee shall be discharged unless the Employee agrees to sign Exhibit 63A.09b. Alcohol Last Chance Agreement or Exhibit 63A.09c. Controlled Substance Last Chance Agreement, whereby the Employee agrees to

resign from employment in the event of a positive alcohol test of 0.04 or greater, or a positive controlled substance test, or second refusal to be tested for alcohol or controlled substance within three (3) years of the first refusal to test.

REFUSAL TO COMPLETE THE REHABILITATION PROGRAM.

An Employee who refuses to complete the SAP's recommended rehabilitation program shall be discharged.

OTHER TESTING PROGRAMS - COMPLETION OF THE RETURN TO WORK AND FOLLOW UP TESTING PROCESS.

An Employee who is subject to Section 63A and tests positive, refuses to submit to a test, or engages in other prohibited behavior described in Section 63A.04a.1., 3., 4., or 5. or Section 63A.04b.1., 3., 4., or 5. under Section 63A, shall be required to complete all of the procedures outlined in Section 63A notwithstanding that the Employee may have moved to another position not covered by Section 63A.

63A.10 EDUCATIONAL MATERIALS.

The Employer shall provide detailed educational materials to Employees that explains the protocols being used (which are similar to the extent possible to the U.S. DOT Rules, 49 CFR Part 40) and Section 63A. At a minimum, the materials shall include the following:

- 1) The categories of Employees who are subject to the regulations.
- 2) Specific information on conduct that is prohibited.
- 3) The circumstances under which an Employee may be subject to an alcohol and controlled substance test.
- 4) The procedures that will be used to test for alcohol or controlled substance.

- 5) The requirement that an Employee submit to a test.
- 6) An explanation of what constitutes a refusal to submit to a test.
- 7) The consequences for an Employee found to have violated Section 63A.
- 8) Information on the effects of alcohol and controlled substance.
- 9) The Employer designee to be contacted for questions or additional information.

The Employer shall obtain a signed statement from each Employee that indicates that each Employee has been advised of the requirements of Section 63A and has received educational materials as provided in Section 63A.10 prior to the beginning of the test.

63A.11 **INFORMATION.**

The Employer shall transmit annually to the Union, without cost, by the end of March of each year, the following:

- 1) A list showing a statistical account of the alcohol and controlled substance test results conducted as provided in Section 63A which shall indicate the number of negative and positive tests and the dates and numbers of Employees tested in the previous one (1) year period for each form of test.
- 2) The names and addresses of the Laboratories hired to do alcohol and controlled substance tests.
- 3) The names and addresses of the Substance Abuse Professionals (SAP) and a copy of the certification.

- 4) The names and addresses of the Medical Review Officer (MRO) and a copy of the certification.
- 5) The names of the supervisors who are authorized to recommend a reasonable suspicion test.
- 6) The names of the Employer designee to provide information to the Employees as provided in Section 63A.

63A.12 **RECORDS.**

CONFIDENTIALITY.

The Employer and the Union shall follow, to the extent possible, the protocols found in the U.S. DOT Rules, 49 CFR Part 40 or the State Department of Health Rules with regard to the confidentiality and release of information. All records pertaining to actual alcohol and controlled substance tests shall be confidential, and shall be kept separate from other employee records.

When a release is required, the Employer shall not require an Employee to sign a release form for information and records unless the specific reasons are stated on the release form. Information and records request shall be on an as needed basis.

MAINTENANCE AND DESTRUCTION.

Information and records maintained pertaining to the Employee concerning alcohol and controlled substance testing shall be maintained in a secure location except as otherwise specified following, to the extent possible, the protocols found in the U.S. DOT Rules, 49 CFR Part 40.

The information and records shall be destroyed at the end of the required retention period as provided in the U.S. DOT Rules, 49 CFR Part 40 unless there is a pending litigation or grievance.

SUBPOENAS.

The Employer shall notify the Employee and the Union of the receipt of a subpoena for information concerning an Employee's alcohol and/or controlled substance tests.

INDEMNIFICATION AND DEFENSE.

The Employer shall be responsible for defending all statutory and constitutional challenges to the enforceability of Section 63A.

The Employer shall defend the Union against any claim or action arising out of the Employer's administration of Section 63A.

Subject to the recommendation of the Employer and the express approval of the appropriate legislative body, the Employer shall pay all damages awarded against the Union because of a claim or action.

63A.13

INFORMATION AND ACKNOWLEDGEMENT.

All current and new Employees subject to the Supplemental Agreement shall receive a copy of the Supplemental Agreement and educational material from the Employer before being required to submit to an alcohol or controlled substance test.

The Employer shall obtain a signed acknowledgement from each Employee that indicates that the Employee has been advised of the provisions and requirements of the Supplemental Agreement. Whether the Employee signs or refuses to sign the acknowledgement, the Employer shall be considered to have given proper notice and information in accordance with this Section. The Employee's refusal to sign shall be noted on the acknowledgement form.

This SUPPLEMENTAL AGREEMENT is effective from July 1, 2017 and shall end on June 30, 2021.

In witness whereof, the parties hereto, by their authorized representatives have executed the SUPPLEMENTAL AGREEMENT on the day and year first written above.

STATE OF HAWAII

UNITED PUBLIC WORKERS,
AFSCME, Local 646, AFL-CIO



Director of Human Resources
Development and Chief Negotiator



State Director

EXHIBIT 63A.09a.
RESIGNATION AGREEMENT

This Agreement entered into this ____ day of _____, _____ by and between the Employee, _____, and the Employer.

1. The Employee agrees to sign Exhibit 63A.09a. Resignation Agreement instead of being discharged and whereby the Employee agrees to resign from employment in the event of a first positive alcohol or controlled substance test occurring during the initial probationary period.
2. The Employee agrees that Exhibit 63A.09a. Resignation Agreement has been carefully read and voluntarily accepts Exhibit 63A.09a. Resignation Agreement with full knowledge and understanding of its contents and meaning.
3. The Employee agrees that a resignation from employment deprives the Employee of the right to grieve as provided in Section 15 of the Unit 1 Agreement or challenge the resignation.
4. The Employee's resignation from employment as provided in Section 63A.09 – Initial Probation. shall be reported in the Employee's personnel file as resignation without fault.
5. Exhibit 63A.09a. Resignation Agreement shall be confidential, except as may be necessary to ensure compliance with its terms.

Acknowledgment:

Employee

Employer

Signature

Signature

Date: _____

Date: _____

EXHIBIT 63A.09b.
ALCOHOL LAST CHANCE AGREEMENT

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

1. The Employee has tested positive for alcohol as provided in Section 63A for the second time.
2. The Employee agrees to sign Exhibit 63A.09b. Alcohol Last Chance Agreement instead of being discharged and whereby the Employee agrees to resign from employment on a no-fault basis in the event of a third positive alcohol test occurring within three (3) years of the first positive test exclusive of time from the date the Employee has been removed from performing work, including time spent in evaluation and treatment, until the date the Employee has returned to work following a negative return to work test(s).
3. The Employee agrees that when the Employee signs Exhibit 63A.09b. Alcohol Last Chance Agreement the Employee shall be suspended for ten (10) workdays instead of being discharged.
4. The Employee shall be referred to a Substance Abuse Professional. The Employee shall follow and successfully complete the program prescribed by the Substance Abuse Professional before being allowed to return to duty. The Employee's failure to see the Substance Abuse Professional or to follow and successfully complete the program prescribed by the Substance Abuse Professional shall result in the Employee's discharge pursuant to Section 63A.09 – Refusal to Complete the Rehabilitation Program.
5. Before being permitted to back to work, the Employee shall have passed a return to duty test.

6. Upon return to work, the Employee shall be subject to follow up testing as may be prescribed by the Substance Abuse Professional.
7. The Employee agrees that Exhibit 63A.09b. Alcohol Last Chance Agreement has been carefully read and voluntarily accepts Exhibit 63A.09b. Alcohol Last Chance Agreement with full knowledge and understanding of its contents and meaning.
8. The Employee agrees that a resignation from employment deprives the Employee of the right to grieve as provide in Section 15 of the Unit 1 Agreement or challenging the resignation.
9. The Employee's resignation from employment as provided in Section 63A.09 – Third Positive Alcohol Test shall be reported in the Employee's personnel file as a resignation without fault.
10. Exhibit 63A.09b. Alcohol Last Chance Agreement shall be confidential, except as may be necessary to ensure compliance with its terms.

Employee:

Employer:

Signature

Signature

Date: _____

Date: _____

EXHIBIT 63A.09c.

CONTROLLED SUBSTANCE LAST CHANCE AGREEMENT

This Agreement entered into this ____ day of _____, _____ by and between the Employee, _____, and the Employer.

1. The Employee has tested positive for controlled substance as provided in Section 63A for the second time.
2. The Employee agrees to sign Exhibit 63A.09c. Controlled Substance Last Chance Agreement instead of being discharged and whereby the Employee agrees to resign from employment on a no-fault basis in the event of a third positive controlled substance test occurring within three (3) years of the first positive test exclusive of time from the date the Employee has been removed from work, including time spent in evaluation and treatment, until the date the Employee has returned to work following a negative return to work test(s).
3. The Employee agrees that when the Employee signs Exhibit 63A.09c. Controlled Substance Last Chance Agreement the Employee shall be suspended for twenty (20) workdays instead of being discharged.
4. The Employee shall be referred to a Substance Abuse Professional. The Employee shall follow and successfully complete the program prescribed by the Substance Abuse Professional before being allowed to return to duty. The Employee's failure to see the Substance Abuse Professional or to follow and successfully complete the program prescribed by the Substance Abuse Professional shall result in the Employee's discharge pursuant to Section 63A.09 – Refusal to Complete the Rehabilitation Program.
5. Before being permitted to back to work, the Employee shall have passed a return to duty test.

6. Upon return to work, the Employee shall be subject to follow up testing as may be prescribed by the Substance Abuse Professional.
7. The Employee agrees that Exhibit 63A.09c. Controlled Substance Last Chance Agreement has been carefully read and voluntarily accepts Exhibit 63A.09c. Controlled Substance Last Chance Agreement with full knowledge and understanding of its contents and meaning.
8. The Employee agrees that a resignation from employment deprives the Employee of the right to grieve as provided in Section 15 of the Unit 1 Agreement or challenge the resignation.
9. The Employee's resignation from employment as provided in Section 63A.09 – Third Positive Controlled Substance Test shall be reported in the Employee's personnel file as a resignation without fault.
10. Exhibit 63A.09c. Controlled Substance Last Chance Agreement shall be confidential, except as may be necessary to ensure compliance with its terms.

Employee:

Employer:

Signature

Signature

Date: _____

Date: _____

