MEMORANDUM OF AGREEMENT
Bargaining Unit 03
Act 253, SLH 2000, Compliance

This MEMORANDUM OF AGREEMENT is entered into this 13th day of July 2004, by and between the State of Hawaii, the Hawaii Health Systems Corporation, the Judiciary, the City and County of Honolulu, the County of Hawaii, the County of Maui, and the County of Kauai, ("Employer") and the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO ("Union") on behalf of the employees of Bargaining Unit 03.

The following amendments are made to the Unit 03 collective bargaining agreement as a result of negotiations between the parties in compliance with Act 253, SLH 2000. Note: With regard to the language contained herein, bracketed text indicates text that is to be deleted whereas bolded and underscored text indicates text that is to be added.

1. ARTICLE 35 – VACATION LEAVE

Paragraph B, Accumulation of Vacation Leave, subparagraph 2, is amended to read as follows:

2. Vacation leave shall be administered on a calendar year basis and recorded at the end of each calendar year. After the end of each year, the appointing authority will furnish each employee with a statement of the vacation leave credits remaining as of December 31.

A new subparagraph 7 is added to paragraph B, Accumulation of Vacation Leave, to read as follows:

7. Nothing contained in this Article shall be construed to require the forfeiture of vacation credits when an Employee terminates on or before the last working day of the calendar year, notwithstanding the fact that the recording of current accrued vacation for the year on the last day may result in an accumulation of more than ninety (90) working days.

Paragraph H, Effect of Transfer to Position in Which Vacation Allowance is Not Earnable, is amended to read as follows:

H. Effect of Transfer to Position in Which Vacation Allowance is Not Earnable. When an Employee is transferred from or otherwise relinquishes one position in which vacation allowance may be
earned, and accepts employment in another position in the service of the Employer in which vacation allowance may not be earned, the Employee may be deemed, for purposes of receiving pay in lieu of vacation, including any lapsed vacation in excess of the maximum allowed, to have terminated services. But in the event that the Employee is not eligible under the circumstances to receive pay in lieu of vacation, the acceptance of such new employment shall not of itself have the effect of forfeiting any vacation allowance to which the Employee is entitled. [Pay for lapsed vacation in excess of the maximum allowed may be granted only as permitted by law.]

Paragraph I, Pay for Vacation Allowance Upon Termination, is amended to read as follows:

I. Pay for Vacation Allowance Upon Termination and When Moving Between Jurisdictions of the State.

1. Whenever a termination of services takes place, the Employee is to be paid, in accordance with [law,] section 76-23, Hawaii Revised Statutes, for vacation allowance either in lump sum or in the normal manner [except] as provided in subsection 2.

2. When payment in a lump sum is made [.] to an Employee hired on or before June 30, 1997, the sum payable for vacation allowance shall be equal to the amount of compensation to which the Employee would be entitled or which would be allowed during the vacation period if the Employee were permitted to take the Employee's vacation in the normal manner. [It is provided that whenever] Whenever an Employee is discharged for cause [.,] or when payment in a lump sum is made to an Employee hired after June 30, 1997, the lump sum vacation allowance payable shall be computed on the basis of the Employee's accumulated vacation hours multiplied by the Employee's hourly rate of pay as of the effective date of discharge [.] or termination.

3. However, if the Employee is [immediately] rehired within seven (7) calendar days by the Employer and will continue to earn vacation allowance, such a payment shall not be made.
4. When an Employee moves from one Employer jurisdiction to another to accept employment in a position in which vacation allowance is earned, the Employee shall be given credit for the vacation earned or accumulated in the jurisdiction from which the Employee transferred, and the director of finance of the State or the equivalent officers of the counties, Judiciary, and the Hawaii Health Systems Corporation, as the case may be, shall make the appropriate transfer of funds to implement the transfer. However, the Employee may request and receive payment of a portion of or all of the Employee's vacation credits accumulated up to the effective date of the movement.

[4] 5. An Employee who, pursuant to the U.S. Universal Military Service and Training Act or other Federal statute is called or ordered and reports either voluntarily or involuntarily for active military duty with a branch of the U.S. Armed Forces shall be deemed to have terminated services for the purposes of this Article. The Employee's choice of lump sum payment for vacation allowance will not of itself cause the forfeiture of unused sick leave credits.

2. ARTICLE 36 - SICK LEAVE

Paragraph B, Accumulation of Sick Leave, subparagraphs 1 and 2, are amended to read as follows:

1. An Employee may accumulate the sick leave the Employee earns. The unused sick leave accumulated shall be credited to the Employee's account for subsequent use in the event of a sickness. Such unused sick leave may be accumulated without limitation.

2. [Such unused sick leave may be accumulated without limitation, and sick] Sick leave shall be administered on a calendar year basis and recorded at the end of each calendar year. After the end of each year, the appointing authority will furnish each employee with a statement of the sick leave credit remaining as of December 31.
A new paragraph, designated as paragraph M, Sick Leave Upon Separation from Service, is added to read as follows:

**M. Sick Leave upon Separation from Service.**

1. Upon separation from service, an Employee shall forfeit all sick leave allowance accrued and accumulated to the date of the separation except as otherwise provided by chapter 88, Hawaii Revised Statutes. This paragraph shall not be construed to provide for the forfeiture of sick leave accumulation when the employee is granted leave without pay, including military leave, or is rehired by the Employer within seven calendar days.

2. When an Employee moves from one Employer jurisdiction to another to accept employment in a position in which sick leave allowance is earned, the Employee may request and be allowed to transfer any unused sick leave credits accumulated at the time of movement. Any sick leave credits used after the effective date of the movement shall be charged to the appropriation of the receiving Employer.

3. **ARTICLE 40 - OTHER LEAVES OF ABSENCE**

Paragraphs C through G are amended to read as follows:

[C. Leave Without Pay for Employees on Loan to Other Governments or for Government Programs Administered by Private and Public Agencies. Subject to the provisions of section 79-17, Hawaii Revised Statutes, a leave without pay may be granted a regular Employee so that the Employee may be employed by another government on a loan basis by contract. The leave without pay shall not exceed two (2) years. The Employee shall have return rights as provided in paragraph l.]

[D.] Leave Without Pay for Employees Serving Temporary Intergovernmental and Intragovernmental Assignments and Exchanges. Subject to the provisions of [Chapter 83] section 78-27, Hawaii Revised Statutes, Employees on temporary intergovernmental and intragovernmental assignments and exchanges may be granted leaves without pay. [ for up to two (2) years. Upon request by the Employee and upon approval of the director of personnel services, or the director of civil service, or the administrative director of the courts, as applicable, the leave
without pay may be extended up to an additional two (2) years.] The Employee shall have [return rights as provided in paragraph I.] the same rights and benefits as any other Employee of the sending agency who is on leave without pay status.

[E.] D. Educational Leave Without Pay. An appointing authority may grant a leave without pay to regular Employees for any of the following reasons:

1. To pursue a course of instruction which is related to the Employee's field of work;

2. To engage in research which has a beneficial effect on the skills or knowledges required in the Employee's field of work; or

3. To improve the Employee's ability and increase the Employee's fitness for public employment.

The duration of the educational leave without pay shall be for no more than twelve months. For good cause, as determined by the appointing authority, educational leave without pay may be extended an additional twelve months. The Employee shall have return rights as provided in paragraph [I] H.

Paragraph F, Industrial Injury Leave, is renamed as paragraph E.


1. An appointing authority may grant a leave without pay to a regular Employee to render services as a department head, agency head, deputy department head [or], as a secretary to a department head or a deputy department head, or as an appointee to any other position within the jurisdiction that is mutually agreeable between the Employer and the Union. The Employer shall compile a list of the appointive positions to which this section applies and maintain its currency.

Paragraph H, Other Leaves Without Pay, is renamed as paragraph G.

Paragraph I, Return Rights from a Leave Without Pay, is renamed as paragraph H.

Paragraph J, Other Rights and Conditions, is renamed as paragraph I.
Paragraph K, Unauthorized Leave, is renamed as paragraph J.

Paragraph L, Leave Pending Investigation of Charges, is amended to read as follows:


1. Whenever an investigation of charges against an Employee is pending and the Employee’s presence at the work site is deemed by the Employer to be detrimental to the proper conduct of the investigation or the operations of the work place, the Employee may be placed on a leave of absence without pay pending investigation subject to the following:

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b. The period of leave of absence without pay pending an investigation shall be for such length of time as may be necessary to conclude the investigation, but not exceeding thirty (30) days. In the event the investigation exceeds thirty (30) days, the appointing authority may exercise its options provided in subparagraph [L 2] K.2.

4. ARTICLE 42 - MILITARY LEAVE

Paragraph A is amended to read as follows:

A. Military Leave With Pay

1. Employees whose appointment is for six (6) months or more shall, while on active duty or during periods of camps of instruction or field maneuvers as members of the Hawaii national guard, air national guard, naval militia, organized reserves, including the officers' reserve corps and the enlisted reserve corps, under call of the President of the United States or the governor of the State, be placed on leave with pay status for a period not exceeding fifteen (15) working days in any calendar year, except as provided in subparagraph A.2. **No such person shall be subjected by any person, directly or indirectly, by reason of absence to any loss or diminution of vacation or holiday**
privileges or be prejudiced by reason of the absence with reference to promotion or continuance of employment or reemployment.

A new paragraph, designated as paragraph C, is added to read as follows:

C. Leave for Pre-Induction Examination. An Employee who is absent from work for the purpose of undergoing physical examination prior to induction into the United States Armed Forces shall be granted leave with pay for such purpose, and the leave shall not be charged against the Employee's vacation allowance.

5. ARTICLE 50 - MISCELLANEOUS

A new paragraph, designated as paragraph G, is added to read as follows:

G. Section 78-12, Hawaii Revised Statutes, relating to "salary withheld for indebtedness to the government" which also covers salary overpayment shall apply to affected Employees.

This MEMORANDUM OF AGREEMENT is effective on the day first set forth above, and shall continue in effect until such time that the provisions herein are incorporated into the BU 03 collective bargaining agreement with the printing of the next BU 03 collective bargaining agreement.

IN WITNESS WHEREOF, the parties hereto by their authorized representatives have executed this MEMORANDUM OF AGREEMENT as of the effective date written above.

FOR THE EMPLOYER:  

[Signature]

FOR THE HAWAII GOVERNMENT EMPLOYEES ASSOCIATION:

[Signature]

State of Hawaii

[Signature]

Office of Collective Bargaining
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APPROVED AS TO FORM

State Attorney General