

ATTACHMENT X:

ADDENDUM 5



**CHILDREN AND FAMILY JUSTICE CENTER
CONTRACT NUMBER C00863C13**

Addendum Number 5

Proposers are hereby notified that the solicitation documents of said Contract have been amended as hereinafter set forth:

Ref.	Page or Drawing	Location and Description of Change
		PART A – REQUEST FOR PROPOSAL
5.1	4	Appendix ADD “Q – Project Labor Agreement Template”
5.2	15	1.5.8 DELETE A, and REPLACE with: <p>“A. King County will require a Project Labor Agreement for this Project. The PLA will be executed between the Design-Builder and various labor unions. The County at its option will function as an observer, mediator or arbitrator based upon the issue. The County has provided the PLA Template (See Appendix Q). The PLA shall be negotiated and submitted for review as part of the submittal procedures in Division 01 prior to the County issuing the NTP for construction work.”</p>
5.3	44	3.1.2 Contents of the Proposal, Table 3.1.2 – Contents of the Proposal, Section 8 DELETE “To Be Determined”
5.4	53	3.3.2 Management, DELETE part “4. FINANCIAL CAPACITY (Section 4) (Pass/Fail)” and REPLACE with: <p>“4. FINANCIAL CAPACITY (Section 4) (Pass/Fail)</p> <ol style="list-style-type: none"> 1. Within the Executive Summary, the Proposer shall certify the following: <ol style="list-style-type: none"> a. The Proposer has sufficient financial resources to complete the Work and fulfill all contractual obligations for the Children and Family Justice Center C00863C13, within the Budgeted GMP of \$149,000,000 excluding Washington State Sales Tax. b. The top ranked Proposer will submit or make available for review, to the County, audited or reviewed financial statements prepared in accordance with the standards of the American Institute of Certified Public Accountants. This shall include balance sheets, unused lines of credit, statement of retained earnings, disclosure of the nature and status of pending claims or lawsuits and/or other matters as the County deems necessary to determine that this top ranked team has the financial resources to perform the Work. 2. The scope of financial information to be reviewed by the County will be made at the Clarification and Reconciliation meetings prior to Contract Execution held between the County and the top ranked team. 3. Information Use & Confidentiality <ol style="list-style-type: none"> a. The financial information requested will only be used by the County for the evaluation of the top ranked proposer and its

Ref.	Page or Drawing	Location and Description of Change
		team's financial capability and resources to perform and complete the Project. At the end of the selection process, all financial materials provided to the County shall either be destroyed by the County or returned to the top ranked team if requested. If a public disclosure request for such financial information is received by the County, the parties will follow the procedures set forth within the RFP Process, to determine if the financial information is disclosed."
5.5	60	<p>3.3.5, DELETE "1 Project Labor Agreement (PLA) (TBD points), "1. To Be Determined" and REPLACE with:</p> <p>"1. Project Labor Agreement (PLA) (Section 8) (500 points)</p> <p>A. Provide a detailed narrative demonstrating the Design Builder's knowledge and experience with PLA's for projects of similar scope and complexity as CFJC.</p> <p>1. Provide a list of projects with PLA's which the Design Builder and/or their key Sub-contractors have worked on.</p> <p>B. Submit a detailed narrative which demonstrates the Proposer's approach to developing and negotiating the PLA between the Design-Builder and the Unions using the PLA template. (see Appendix Q)</p> <p>C. Provide a detailed narrative demonstrating the Design Builder's approach to administration of PLA requirements for the management of Sub-contractors and labor to ensure the timeliness, safety and quality of the work."</p>
5.6	64	D. ADMINISTRATIVE REQUIREMENTS, ADD to the points column "1500"
5.7	64	<p>D. ADMINISTRATIVE REQUIREMENTS, Section 8 – Project Labor Agreement, DELETE "To Be Determined" and REPLACE with:</p> <p>"A) Project Labor Agreement (PLA)</p> <p>1. Knowledge and Experience</p> <p>2. Developing and negotiating PLAs</p> <p>3. Administration of PLA."</p>
5.8	64	<p>D. ADMINISTRATIVE REQUIREMENTS, Section 8 – Project Labor Agreement, points column DELETE "TBD points" and REPLACE with:</p> <p>"500 points"</p>
5.9	Appendix	ADD "Appendix Q – Project Labor Agreement Template" See attached.

Attached To This Addendum:

- Appendix Q - Project Labor Agreement Template.

This Addendum shall be attached to and form a part of the Contract Documents. All Proposers are reminded to acknowledge this Addendum on Form C of the RFP.

Date: March 11, 2014

Darren R. Chernick

Darren R. Chernick
Contract Specialist

FORM Q PROJECT LABOR AGREEMENT TEMPLATE

TEMPLATE

This Template is being provided to the Proposers to assist them in the future development of a final Project Labor Agreement between the selected Design Build Team and all applicable Unions. Selected Design Build Team will be required provide any changes to this document for Owner review during the submittal phase of the Project prior to construction.

Project Labor Agreement

for the

Children and Family Justice Center

March 2014

King County

PROJECT LABOR AGREEMENT

FOR THE

Children and Family Justice Center

BETWEEN

Design Builder

AND

SEATTLE/KING COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL

NORTHWEST CONSTRUCTION ALLIANCE, and

_____ (others) _____

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ARTICLE 1 - PREAMBLE

1.1

This Project Labor Agreement (hereinafter, the "PLA") is entered into on _____ by and between, the name of Design Build Team selected for the Project, as defined in Article 5.1 herein, (hereinafter "Contractor"), for and on behalf of themselves and their Sub-contractors (hereinafter Sub-contractor), and the Seattle/King County Building and Construction Trades Council and the Northwest Construction Alliance and the Local Unions who become signatory hereto with respect to the construction of the Children and Family Justice Center (the "Project"), who become signatory hereto (hereinafter, collectively called the "Union(s)" or "Local Union(s)") with respect to the construction of the Children and Family Justice Center.

For purposes of this Agreement the term Parties shall mean_____.

Nothing in this PLA shall modify, amend, or supersede any of the provisions set forth within the Contract between King County ("Owner") and the selected Contractor and its Sub-contractors, as identified within Contract C00863C13.

1.2

NOT USED

1.3

This PLA represents the complete understanding of the parties, and no Contractor or Sub-contractor is or will be required to sign any other agreement with a signatory Union as a condition of performing work within the scope of this Agreement.

1.4

It is understood that this Agreement constitutes a self-contained, stand-alone agreement. No practice, understanding or agreement between a Contractor or Sub-contractor and a Union party which is not specifically set forth in this Agreement will be binding on any other party except that if the PLA is silent on any issue the local crafts collective bargaining agreement (CBA) shall prevail.

1.5

The Unions hereby pledge to work cooperatively with all businesses awarded work governed by this PLA, despite any other dispute they may have with a business over, for example, trust or benefit payments that arose on non-covered work.

ARTICLE 2 - PURPOSE

2.1

The purpose of the PLA is to implement a formal agreement between the parties to insure that all construction work at the Project, and operation of the existing facility, will proceed continuously and without interruption, efficiently, economically, and with due consideration for the protection of labor standards, wages and working conditions.

2.2

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 PLA, the Parties agree to establish and put into practice effective and binding methods for settlement of all misunderstandings, disputes or grievances that may arise between the Contractor, its Sub-contractors, and the Unions, or their members, to the end that the Owner is assured of complete continuity of its operations and construction without slowdown or interruption of any kind. The Owner shall monitor the performance the Agreement to ensure compliance by the Parties.

2.3

The parties are committed to providing open access to procurement opportunities for all contractors and to assuring an adequate supply of craft workers possessing the requisite skills and training in order to provide the Owner a project of the highest quality.

ARTICLE 3 - RECOGNITION

The Contractor recognizes the signatory Unions are the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this PLA. This sub-section shall not alter the preexisting legal status of any bargaining relationship between any individual Contractor and signatory Union.

ARTICLE 4 - SCOPE OF AGREEMENT

4.1

This PLA shall apply and is limited to all new construction as defined in this Article and performed by those Contractor(s) and their Sub-contractor(s) of any tier who have been awarded contracts for such work, or for whom bids have been received for contracts on or after the effective date of this PLA and covering all Work (exclusive of design work) identified in the Contract. This PLA shall also apply to any art work installed by the Contractor or its Sub-contractors. Any work defined in RCW 39.12 will be subject to the PLA.

It is agreed that the Contractor shall require all Sub-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 PLA by executing the Letter of Assent (Attachment A) prior to commencing work. The Contractor shall assure compliance with this Agreement by the

Contractors. It is further agreed that, if the PLA is silent on any issue the local crafts CBA shall prevail; where there is a conflict, the terms and conditions of this PLA 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 _____.

It is understood that this is a self-contained, stand alone, PLA and that by virtue of having become bound to this Project Labor Agreement, neither the Contractor nor the Sub-Contractors will be obligated to sign any other local, area, or national agreement.

A critically important aspect of the construction work will be close coordination with the Owner to allow unimpeded Court and Detention operations throughout the Contract.

4.2

Items specially excluded from the scope of the Agreement include the following:

- (a) Work of non-manual employees, including but not limited to, superintendents, supervisors, assistant supervisors, staff engineer inspectors, quality control and quality assurance personnel, timekeepers, mail carriers, clerks, office workers, including messengers, guards, safety personnel, emergency medical and first aid technicians, and other professional, engineering, administrative, community relations or public affairs, environmental compliance, supervisory and management employees.
- (b) Artists retained by the Owner during the course of the Project.
- (c) Furniture, fixture and equipment installers retained by the Owner to be performed after building trades Sub-contractors have completed construction related work and or contract completion date.
- (d) Employers and their Employees controlled by the Owner.
- (e) Employees engaged in any work performed on or near, or leading to or into, the Project Site by State, County, City or other governmental bodies, their retained contractors, or by public utilities or their contractors, or by other public agencies or their contractors.
- (f) Employees engaged in maintenance on leased equipment and on-site supervision of such work.
- (g) Employees engaged in warranty functions and warranty work, and on-site supervision of such work.
- (h) Startup, testing and commissioning personnel employed by the Contractor or the Owner, Laboratory for specialty testing or inspections not ordinarily done by the signatory Local Unions.
- (i) All off-site manufacture of materials, equipment, or machinery except as identified in _____.

- (j) Non-construction support services contracted by the Owner or the Contractor in connection with this Project.
- (k) All employees, Sub-consultants and agents of the Owner for specialty testing, architectural/engineering design and other professional services.
- (l) Any work on the Project site that is not funded by the Children and Family Justice Center levy, such as ongoing Capital Projects within the existing Youth Services Center structures or separate contracts not covered by Contract C00863C13 CFJC. To avoid conflict and confusion, the Owner will provide notice of such work to the Project Administrative Committee (PAC) prior to commencement of that work.

4.3

None of the provisions of this PLA shall apply to the Owner and nothing contained herein shall be construed to prohibit or restrict the Owner, or their employees from performing work not covered by this PLA on the Project site. As areas and systems of the Project are inspected and construction tested by the Contractors and accepted by the Owner, the PLA shall not have further force or effect on such items or areas, except when the Contractors is directed by the Owner to engage in repairs, modifications, checkout and/or warranty functions required by its contract.

4.4

The Owner or the Contractor, as appropriate, has 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 contracts or collective bargaining agreement between such bidder and any party to this PLA: provided that, except as provided under Article 7 such bidder shall be willing, ready and able to execute and comply with this PLA should it be designated the successful bidder.

4.5

It is understood by the parties that the Owner may at any time and in its sole discretion determine to add, modify or delete facilities. If facilities are added to the Project scope, they would be automatically covered by this Agreement.

The provisions of this PLA shall apply to the construction of the CFJC, notwithstanding the provisions of local, area and/or national agreements which may conflict or differ from the terms of this PLA. Where a subject covered by the provisions of this PLA is also covered by a conflicting provision of a collective bargaining agreement, the provisions of this PLA shall prevail.

4.6

This PLA shall only be binding upon the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party.

4.7

It is agreed that all contractors, who have been awarded contracts for work covered by this PLA that is bid and awarded after the effective date of this PLA shall be required to accept and to be bound by the terms and conditions of this PLA, and shall evidence their acceptance by the execution of a Letter of Assent, prior to the commencement of work. A copy of the Letter of Assent executed by the Sub-contractor shall be immediately transmitted to the signatory Local Unions prior to the dispatch of employees to the job site.

4.8

The Unions agree that this PLA does not have the effect of creating any joint employment status between or among the Owner, the Contractor or any of their Sub-contractors.

4.9

None of the provisions of this PLA shall apply to King County and nothing contained herein shall be construed to prohibit King County or its employees from performing their routine work on the Project Site. King County employees will not perform work which is covered by the terms of this PLA.

4.10

It is understood that the Owner, at its sole option, may terminate, delay and/or suspend any and all portions of the CFJC Contract C00863C13 at any time.

ARTICLE 5 - UNION REPRESENTATION

5.1

Authorized representatives of the Unions shall have reasonable access to the Project, provided they do not interfere with the work of employees, and further provided that such representatives fully comply with the visitor, safety and security rules and any environmental compliance requirements established for the Project, which shall be subject to review by the Project Administrative Committee (as described in Article 8). It is understood that because of the scope of the Project and the type of work being undertaken, all visitors will be required to check in and may be limited to certain times or areas. They may also be required to be accompanied at all times while on the Project Site. However, in such circumstances, project workers shall be allowed to confer privately with their authorized Union representatives. The Contractors recognize the right of access set forth in the Section and such access will not be unreasonably withheld from an authorized representative of the Union. Authorized representatives of the Unions will make a good faith effort to report to the Contractor supervision personnel prior to entering the Project Site.

5.2

The Unions signatory shall have the right to designate for each Sub-contractor for each craft type, one (1) working journeyman as a Steward for all related craft personnel, who shall be recognized as the Union's representative for a signatory hereto. Such designated Stewards

shall be a qualified worker assigned to a crew and shall perform the work of their craft. Under no circumstances shall there be a non-working Steward on the Project.

5.3

The working Steward will be paid at the applicable prevailing wage rate for the job classification in which he/she is employed.

5.4

The Union may appoint a Steward for each shift, should multiple shifts be utilized.

5.5

A Steward for each craft of the signatory Unions employed on the Project shall be permitted on the Project site at all times. They shall not be subjected to discrimination or discharge on account of proper Union activities. The Unions agree that such activities shall not unreasonably interfere with the Steward's work for the Contractor or its Sub-contractors.

5.6

It is recognized by the Contractor that the employee selected as Steward shall remain on the job as long as there is work within their craft for which they are qualified, willing and able to perform. The Contractor shall be notified in writing of the selection of each Steward. The Contractor shall be responsible for notifying the Unions prior to terminating a Steward as follows:

For Cause or Voluntary Quit	As soon as possible after it becomes known to the Contractor either by telephone call or electronic means.
Reduction in Force	48 Hours prior written notice

5.7

The Steward may not cause or encourage work stoppage, and, if found guilty of instigating such action, will be subject to discipline by the Contractor, and/or the Contractor's Sub-contractors, up to and including discharge or/and removal from the Project.

5.8

The Steward's duties shall not include hiring and termination, nor shall he/she cause any interference with work progress.

5.9

The Steward shall be given the option of working all reasonable overtime within his/her craft and shift providing he/she is qualified to perform the task assigned.

5.10

In addition to his/her work as an employee, the steward shall have the right to receive complaints or grievances and to discuss and assist in the adjustment of the same with the employee's appropriate supervisor.

ARTICLE 6 - MANAGEMENT RIGHTS

6.1

Subject to the terms of this PLA, the Contractor and the Contractor's Sub-contractors retain full and exclusive authority for the management of its operations. The Contractor and the Contractor's Sub-contractors shall direct their working forces at their sole prerogative, including, but not limited to, hiring, promotion, transfer, lay-off discipline or discharge for just cause; the selection of foremen and general foremen; the assignment and scheduling of work; the promulgation of reasonable work rules shall be subject to the review of the Project Administrative Committee (as described in Article 8); and, the requirement of overtime work, the determination of when it will be worked and the number and identity of employees engaged in such work. No rules, customs, or practices, which limit or restrict productivity, efficiency or the individual and/or joint working efforts of employees shall be permitted or observed.

6.2

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 Contractors and the Contractor's Sub-contractors may, in its sole discretion, utilize the most efficient method or techniques of construction, tools, or other labor-saving devices.

6.3

The foregoing enumeration of management rights shall not be deemed to exclude other functions not specifically set forth. The Contractors and the Contractor's Sub-contractors therefore, retain all legal rights not specifically covered by this Agreement.

6.4

Except as otherwise expressly stated in this PLA there shall be no limitation or restriction upon the Owner or the Contractor's choice of materials or design, nor, regardless of source or location upon the full use, and installation and utilization of equipment, machinery, package units, pre-casts, pre-fabricated, prefinished, or pre-assembled materials, tools, or other labor-saving devices. The Owner or the Contractor may without restriction install or otherwise use materials, supplies or equipment regardless of their source. The on-site installation or application of such items shall be generally performed by the craft having jurisdiction over such work. Provided, however, it is recognized that other personnel having special talents or qualifications may participate in the installation, check-off or testing of specialized or unusual equipment. If there is any disagreement between the Contractor and the Union concerning the manner or implementation of such device or method of work, the implementation shall proceed as directed by the Contractor and the Union shall have the right to grieve and/or arbitrate the dispute as set forth in Article 19 of this PLA.

ARTICLE 7 - PRE-JOB CONFERENCES

7.1

The Contractor and the Contractor's Sub-contractors at all tier levels shall be required to hold a pre-job jurisdictional mark-up meeting two (2) weeks prior to the commencement of construction activities including any expansion of the original scopes on the Project. The Contractor agrees to notify the Owner, two weeks in advance, of the time and date of the pre-job conferences to allow Owner's attendance. In addition to the information developed relative to jurisdiction of work at the pre-job conference, the Contractor and its Sub-contractors will present all information available regarding starting date for the work, duration of job, estimated peak employment and any other conditions deemed peculiar to the particular contract or subcontract.

7.2

The Contractor and any of its Sub-contractors who fail to hold such pre-job conference prior to the commencement of work shall be considered in violation of this PLA. The appropriate Building Trades Council and/or NCA representative shall immediately notify the Owner of this violation. The Owner may require the Contractor to take corrective action regarding this matter.

ARTICLE 8 - PROJECT ADMINISTRATIVE COMMITTEE

8.1

The parties to this PLA, and the Owner, hereby recognize the necessity of cooperation and the elimination of disputes, misunderstandings or unfair practices on the part of any party, and to secure this end, it is hereby agreed that a Project Administrative Committee (PAC) shall be established to be comprised of the Contractor's representatives and/or representatives of Sub-contractors at every tier level, as may be required, the Unions party to the PLA, a representative of the Building Trades Council, and the NCA who shall meet at the jobsite or other agreed location according to a mutually agreeable monthly schedule. The parties further agree that the Owner may attend these meetings as an interested third party. A Contractor representative shall serve as the chair of the PAC.

8.2

The Unions shall at such meetings present facts concerning any violations of any part of the PLA by the Contractors or its Sub-contractors. Additionally, the Unions agree to notify the Owner's Representative upon discovery of a potential violation of this PLA. They shall also bring up any practice by the Contractor or the Contractor's Sub-contractors, which in their opinion might lead to a misunderstanding or dispute between the parties. The Contractors or the Contractor's Sub-contractors shall bring in any complaints regarding failure of any employee or employees, or of the Unions to carry out any and all provisions of the PLA.

8.3

Any agreement or resolution reached pursuant to the preceding paragraph shall not supersede, alter, modify, amend, add to or subtract from this Agreement unless specifically expressed

elsewhere in this Agreement. Prior to being effective, any amendments or revisions to this PLA shall be in writing and signed by all the parties hereto.

8.4

All parties signatory to this PLA acknowledge the importance of attendance and active support of the Project Administrative Committee and agree to participate in the meetings as their responsibility on the Project requires.

8.5

The Administrative Committee shall meet as required, but not less than once each month, to review the operation of the PLA.

8.6

This Committee shall be convened within 48 hours on an emergency basis at the request of any party to the PLA.

8.7

The Owner is an interested third party to the PLA and shall be sent contemporaneous copies of all notifications required under this article. At the Owner's option, the Owner may participate as either a observer, mediator, or arbitrator to the proceedings initiated under this Article.

ARTICLE 9 - HIRING PROCEDURES

9.1

It is agreed that affirmative action shall be taken to afford equal employment opportunity to all qualified persons without regard to race, creed, color, sex, age, marital status, religion, sexual orientation, ancestry, veteran status, disability or national origin. This shall be applicable to all matters relating to hiring, training, promotion, transfer or termination of employees. Furthermore, the parties agree to cooperate to the fullest extent to achieve the intent and purpose of the applicable regulations of Title VII, Civil Rights Act of 1964, and Executive Order No. 11246, or such laws or Executive Orders as may supersede them. This Agreement is subordinate to the Equal Employment/Affirmative Action Resolutions and Apprenticeship Program requirements for the Project. To the extent the Contractors and its Sub-contractors, despite reasonable efforts, are unable to meet the objectives and requirements set forth in this Article 9 through use of craft employees represented by any Union signatory, the Contractors and its Sub-contractors shall be allowed to recruit from any other source and such recruits will have seven (7) days to join the applicable Local Union for the performance of work on this Project.

9.2

The Contractors shall have the right to determine the competency of all employees, the number of employees required and shall have the sole responsibility for selecting employees to be laid off, consistent with Article 9.3 below.

9.3

- (a) For Local Unions having a job referral system, the Contractors agree to comply with such system and it shall be used exclusively by the Contractor and its Sub-contractors. Such job referral system will be operated in a nondiscriminatory manner and in full compliance with federal, state, and local laws and regulations which require equal employment opportunities and nondiscrimination, and referrals shall not be affected by obligations of Union membership or the lack thereof.
- (b) The Contractor may reject any referral for any lawful nondiscriminatory reason, provided they comply with Article 10.8 regarding reporting pay.

9.4

In the event that Local Unions are unable to fill any request for employees within forty-eight (48) hours after such request is made by any contractor (with the exception of Saturdays, Sundays, and holidays), the Contractor may employ applicants from any other available source. The Contractor shall inform the Union in writing of the name and social security number of any applicants hired from other sources and shall refer the applicant to the Local Union for dispatch to the Project, and such applicant will have seven (7) days to join the Local Union for the performance of work on this Project.

9.5

Failure of an employee to pay or tender fees or dues as required by this Article shall, upon the request of the Union in writing, may result in the immediate termination of such employee.

9.6

Except as required by law, the Local Unions shall not knowingly refer an employee currently employed by the Contractor or its Sub-contractors working under this PLA to any other contractor.

9.7

The parties recognize the Owner's commitment to provide opportunities to participate on the Project to business enterprises which may not have previously had a relationship with the Unions signatory to this PLA. To ensure that such enterprises will have an opportunity to employ their "core" employees on this Project, the parties agree that in those situations where any contractor, not a party to a current collective bargaining agreement with the signatory Union having jurisdiction over the affected work is a successful contractor, such Contractor, or their Sub-contractor, may request by name, and the Local will honor, up to a maximum of _____ designated core employees, provided that the Contractor first demonstrate that those persons possess the following qualifications:

- (a) possess any license required by state or federal law for the Project work to be performed.
- (b) have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years.

(c) were on the Contractor's active payroll for at least sixty (60) out of the one hundred eighty (180) calendar days prior to the Contract Execution.

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

9.8

Core employees who meet the aforementioned qualifications will be dispatched as follows:

(a) The Contractor or Sub-contractors may request by name, and the Union will honor by referral, up to a maximum of _____ designated core employees on an alternating basis with the Contractor or its Sub-contractors selecting first.

All subsequent referrals will be through the respective Union hiring hall.

(b) It is agreed that specific terms and conditions governing hiring and assignment of Union workers in supplement to small Contractors existing core employees (who would be displaced by the local referral procedure) may be negotiated jointly by the Contractor and applicable local Union.

(c) For the duration of the Contractor's work the ratio of "Core" employees to hiring hall referrals shall be maintained and when the Contractor's workforce is reduced, employees shall be reduced in the same ratio as was applied in the initial hiring.

(d) The Contractor and any of its Sub-contractors attempting to circumvent the hiring provisions of this PLA by misclassifying any of its employees as supervisors or foremen shall forfeit their right to employ "Core" employees on this project.

(e) No "Core" employee covered by this PLA shall be required to join any Union as a condition of being employed on the Project; provided, however, that an employee who is a member of the referring Union at the time of the referral shall maintain that membership in good standing while employed under the PLA. All Core employees not currently a member of the appropriate Union signatory to this PLA shall, however, be required to pay a representational fee equal to ___% of the regular dues of the appropriate Union, for the period during which they are performing on-site work. The Contractor agree to deduct Union dues or representation fees, whichever is applicable, from the pay of any employee who executes a voluntary authorization for such deductions and to remit the dues or fees to the Union(s).

9.9

The selection of craft foremen and/or general foremen and the number of such foremen and/or general foremen required shall be entirely the responsibility of the contractors. Craft foremen shall be designated working foremen at the request of the contractors. Craft workers covered by this PLA will, in the normal day-to-day operations, take their direction and supervision from their foreman.

ARTICLE 10 - HOURS OF WORK, OVERTIME, SHIFTS, HOLIDAYS

10.1 Hours of Work

Eight (8) hours shall constitute a standard work day. Five days, Monday through Friday, shall constitute a standard work week. Standard shift workday shall be worked between the hours of _____ a.m. to _____ p.m. Monday through Friday for first shift with one-half hour unpaid lunch period. The Contractor may vary the start time to take advantage of daylight hours, weather conditions or shifts, to permit an even and manageable flow of workers to the jobsite. Nothing herein shall be construed as guaranteeing any employee eight (8) hours per day or forty (40) hours per week. Notification of change in hours of work will be given to the Union and the Owner in writing five (5) working days prior to implementation. Work hours shall be uniform for all crafts.

10.2 4/10 Work Schedule

A Contractor may elect to work a four ten-hour day schedule ("4/10"), Monday through Thursday or Tuesday through Friday. Ten (10) hours, between _____ a.m. and _____ p.m., shall constitute a workday on a 4/10 schedule. Any 4/10 schedule must be worked for a minimum of two (2) weeks. The Contractor shall contact the Union and the Owner to notify them of which shift they will be using.

10.3 Lunch Period

The Contractor and its Sub-contractors will schedule an unpaid meal period of not more than one-half (1/2) hour's duration at the work location approximately at the midpoint of the scheduled work shift.

1. Any employee required to work through the regularly established lunch period shall be paid an additional one-half (1/2) hour at the applicable overtime rate and shall eat their lunch on the Contractor's time.
2. By mutual agreement between the Union and the Contractor an additional hour of overtime pay may be provided in lieu of above.
3. Employees required to work more than two (2) hours after the end of the regular eight (8) hour shift or one (1) hour after the end of the regular four (4) tens (10), ten (10) hour shift shall be furnished a meal and paid one-half (1/2) hour at the applicable wage rate and every five (5) hours thereafter, employees shall be given time for a meal. Mealtime shall be paid at the regular overtime rate and adequate lunch be provided by the Employer at the job site.
4. By mutual agreement between the Union and the Contractor an additional hour of overtime pay may be provided in lieu of above.

Break periods will be in accordance with applicable Washington State laws/rules and regulations.

10.4 Shifts

Shift work may be performed at the option of the Contractor upon five (5) working days' prior written notice to the Union(s) and shall continue for a period of not less than five (5) working days. If two shifts are worked, each shall consist of eight (8) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period and shall be paid at the regular rate of pay.

10.5 Saturday and Sunday Work

Saturday and Sunday work hours shall be as allowed by the local authorities having jurisdiction. If Contractors elects to work Saturday or Sunday notice shall be provided to both Unions and Owner at least five (5) working days prior to the commencement of Work.

10.6 Overtime

Except as otherwise required by the applicable prevailing wage determination, overtime will be paid at the rate of one and one-half (1-1/2) times the applicable straight-time hourly rate for work performed by an employee in excess of eight (8) hours daily, Monday through Friday on a five eight-hour day schedule, or for work performed in excess of ten (10) hours daily, Monday through Thursday or Tuesday through Friday, on a four ten-hour day schedule, or forty (40) hours per week. All work on Saturday, Sunday and holidays will be paid at the applicable overtime calculation rate as required by RCW 39.12. There will be no restriction on the Contractors' scheduling of overtime or the non-discriminatory designation of employees who will work the available overtime. There shall be no pyramiding of overtime pay under any circumstances.

10.7 Holidays

Recognized holidays shall be as follows: (1) New Year's Day, (2) Martin Luther King's Birthday, (3) Memorial Day, (4) Fourth of July, (5) Labor Day, (6) Thanksgiving Day and (7) Friday after Thanksgiving Day and (8) Christmas Day. Recognized holidays under this PLA shall be celebrated on the date the holiday is celebrated by the Owner. Work may be performed on Labor Day when circumstances warrant, i.e. the preservation of life and/or serious property damage. There shall be no paid holidays. If employees are required to work on a holiday, they shall receive the appropriate overtime rate as provided for by RCW 39.12.

10.8

It will not be a violation of the PLA when the Contractor considers it necessary to shut down the project 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 or the Sub-contractors requests employees to stand by, the employees will be compensated for the stand by time as per the provisions of Article 10.9(a).

10.9 Reporting Time (Show-Up Time)

- (a) Reporting Pay. Employees reporting for work and for whom no work is provided, except when given notification, two (2) hours prior, not to report to work, shall receive two (2) hours pay at the regular straight-time hourly rate. Employees who are directed to start work shall receive four (4) hours pay at the regular straight time hourly rate. Employees who work beyond four (4) hours, shall be paid for actual

hours worked. Whenever reporting pay is provided for employees, they may be required to remain at the Project site available for work for such time as they receive pay, unless released earlier by their supervisor. Each employee shall furnish his/her Contractor with his/her current address and telephone number, and shall promptly report any changes in each to the Contractor. When an employee is sent to the jobsite from the Union referral facility in response to a request from the Contractor for an employee for one (1) day and starts work at the designated starting time for his/her shift, the employee will be paid a minimum of eight (8) hours for that day.

- (b) Make-up Day. Should any of the Contractors be unable to work forty (40) hours in any workweek due to weather or other conditions over which they have no control, the Contractor(s) may, to the extent permitted by the applicable prevailing wage law, schedule a make-up day (Saturday for 5/8 schedule; Friday or Monday for 4/10 schedule). All hours worked on a make-up to complete the forty (40) hours for the standard workweek shall be paid at the straight time rate of pay. Any hours in excess of the standard workweek worked on Saturday shall be paid at time and one-half the straight time rate of pay. For make-up day work, the full crew must be scheduled. The make-up day may not be utilized on an individual employee basis or to make up holidays. Make-up days are voluntary and should a crew member decline the make-up day's work, the Contractor may select a member of another crew as a replacement, or allow the crew to work without the regular crew member. All make-up day work will be scheduled for a full work day.
- (c) Discharge Departure. When an employee leaves the job or work location of his/her own volition or is discharged for cause or is not working as a result of any contractor's invocation of Article 10.8, the employee shall be paid only for actual time worked.
- (d) Premium Rate Day. In all cases, if the employee is reporting on a day on which an overtime rate is paid, reporting pay shall be calculated at that rate.

10.10 Project Security

In the event the Contractor and Owner deem it necessary the parties agree, as part of the Project Security Plan, as required in Division 01, Section 01 35 50 Contract Documents, to develop a mutually acceptable system for employee verification for checking in and out of the Project site. If necessary, the system will be developed by the Project Administrative Committee.

ARTICLE 11 - APPRENTICESHIP

11.1

The parties recognize the need to maintain continuing support of apprenticeship programs designed to develop adequate numbers of competent workers in the construction industry. Such programs enable workers to enter the labor pool fully qualified to earn a family wage on construction jobs. The Unions agree to support and to enhance such programs to provide training and job opportunities to these new work force entrants. The Contractors will employ apprentices in their respective craft to perform work customarily performed by the craft in which they are registered and within their capabilities.

11.2. Apprenticeship Requirements and Utilization Goals

Consistent with any restrictions contained in applicable state or federal law and regulations, including those governing equal employment opportunity, prevailing wage and apprenticeship requirements and limitations, the parties will jointly use good faith efforts to meet or exceed the following Project goals for apprenticeship utilization:

- (a) The Contractor and the Sub-contractors at all tier levels shall be required to make good faith efforts to achieve a requirement of 15% of all labor hours to be performed by apprentices on their particular contract or subcontract.
- (b) "Good faith efforts" means the strongest possible efforts that the Contractor and its Sub-contractors can reasonably make to meet the established apprentice requirements and goals.
- (c) The following identifies the diversity goals for this project:
 - a. Minorities 21%
 - b. Women 25%
 - c. Persons with disabilities 2%
 - d. Economically disadvantaged youth 7%

11.3 Development of a Skilled Construction Workforce

King County supports the development of a skilled construction workforce through appropriate apprenticeship and training organizations, particularly for minorities, women and others facing significant employment barriers. The County also supports pre-apprenticeship programs such as the Seattle Vocational Institute Pre-Apprenticeship Construction Training program (PACT), ANEW and Helmets to Hard Hats in their goals to assist workers with particular barriers.

11.4 Apprentice Utilization Plan

The Contractor and the Contractor's Sub-contractors shall prepare and submit a plan for participation of SAC-registered apprentices to the Owner at the pre-job conference. The Contractor and each Sub-contractor shall estimate the total contract labor hours to be worked on the construction contract awarded to it and shall establish the anticipated apprenticeship participation by craft and hours. Diversity goals for the use of apprentices are identified in Section 11.2 of this Article.

During the contract construction phase, the Contractor shall submit a monthly report for its self and all Sub-contractors to King County's online Contract and Apprenticeship Report Tracking System (CARTS) on the numbers of apprentices used by craft and trade at each tier and level of work.

11.5 Support for Pre-Apprenticeship through Preferred Entry

The parties agree to construct and expand pathways to livable wage jobs and careers in the construction industry for community residents through collaborative workforce development systems involving community-based training providers and Union-based apprenticeship programs. The purpose of this program is to facilitate a workforce reflective of the diversity of the County's population.

The Preferred Entry program, as defined by this agreement will identify individuals meeting certain criteria, and who are compliant with the entry standards for those apprenticeship programs that allow for preferred entry of qualified applicants into their programs. Preferred Entry candidates shall be placed with contractors working on the CFJC Project utilizing an interview process, as first period apprentices. The purpose of this program is to facilitate a workforce reflective of the population of King County, supporting goals of workforce inclusiveness.

Overall the Contractor would need to demonstrate how one (1) of each five (5) Apprentices would come from Pre-Apprenticeship programs including Seattle Vocational Institute Pre-Apprenticeship Construction Training program (PACT), Apprenticeship and Non-Traditional Employment Program for Women and Men (ANEW), Helmets to Hard Hats Program or others serving primarily low-income communities of color or women.

The Unions and the Contractors agree to hire preferred entry apprentices as early as possible in the Project. The provisions of this agreement will include Preferred Entry qualified applicants hired from Local Pre Apprenticeship Training Programs. To give preferred entry apprentices an opportunity to become established in their apprenticeship training, Contractors are required to provide a minimum of 700 hours of work, after

hiring, unless terminated for cause. Contractors will provide a minimum of 700 hours of work for all preferred entry apprentices.

If preferred entry apprentices are available, proceed with the hiring process and provide appropriate documentation to Contractor and the Owner.

If preferred entry of the candidate(s) into the SAC approved apprentice program is denied, request and obtain documentation of the denial from the SAC approved program. Forward this documentation of contacts with recruitment/referral agencies and other efforts to recruit targeted apprentices to Contractor and the Owner.

ARTICLE 12 – HELMETS TO HARDHATS

The Contractors 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 Contractors and Unions agree to utilize the services of the Center or 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.

The Unions and Contractors 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 13 - PAYDAY

13.1

All employees covered by this PLA may be paid by check and shall be paid no later than the end of the work shift Friday. Paychecks shall be drawn on a local bank, or the Contractors shall make local check-cashing facilities available to the employees. No more than five (5) days' wages may be withheld. Any employee who is discharged or laid off shall be entitled to receive all accrued wages immediately upon discharge or layoff. Notification of layoff shall be at the Contractor's discretion but shall not be given later than the end of the work shift on the date the layoff is to be effective. Such notification may be verbal.

13.2

A penalty of two (2) hours taxable, straight time pay for each 24 hour period or portion thereof (Saturdays and Sundays included) following the day in which the payroll became delinquent, shall be paid in addition to all wages due to the employee based upon when settlement is made up to, but not exceeding two (2) weeks. Penalty payment may be made by jointly issued checks.

ARTICLE 14 - CRAFT JURISDICTION AND JURISDICTIONAL DISPUTES ADJUSTMENT

14.1

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.

14.2

All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions, NCA Unions, parties to this PLA, 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 PLA. Written notification and a copy of the decision shall be provided to the Owner within five (5) days of the decision being rendered.

14.3

All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractors assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

14.4

Any award or resolution made pursuant to this procedure, shall be final and binding on the disputing Unions and the involved Contractor under this PLA only, and may be enforced in any court of competent jurisdiction in accordance with the Plan. Such award or resolution shall not establish a precedent on any construction work not covered by this PLA. In all disputes under this Article, the Contractor shall be considered a party in interest.

ARTICLE 15 - WORK RULES

15.1

Employment begins and ends at the jobsite.

15.2

Employees shall be at their place of work at the designated starting time and shall remain at their place of work until the designated quitting time. Place of work shall mean gang boxes, change shacks or other designated tool storage areas or at assigned equipment. Employees shall remain on the Project and at their place of work through the work day except during breaks and lunch, at which time employees may access vending areas or snack trucks.

15.3

There shall be no limit on production by workers nor restrictions on the full use of tools or equipment. Craftsmen using tools shall perform any of the work of the trade and shall work under supervision of craft foremen. There shall be no restrictions on efficient use of manpower

other than as may be required by safety regulations: provided, however, legitimate manning practices that are a part of national and/or local agreements shall be followed.

15.4

Security procedures for control of tools, equipment and materials are solely the responsibility of the Contractors and/or its Sub-contractors. Employees having any company property or property of another employee in their possession without authorization are subject to immediate discharge. The Contractors will be responsible for the establishment of reasonable job security measures for the protection of personal company and client property.

15.5

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

15.6

Recognizing the nature of the work being conducted on the site, employee access by private automobile may be limited to certain roads and/or parking areas.

15.7

The Owner or the Contractor(s) may establish reasonable Project rules, as they deem appropriate and not inconsistent with this Agreement, however, such rules shall be subject to review by the Joint Administration Committee. These rules will be explained at the pre-job conference and posted at the Project site by the Contractor(s) and may be amended thereafter as necessary. Failure to observe these rules and regulations by any employee may be grounds for discipline, including discharge.

ARTICLE 16 - MISCELLANEOUS PROVISIONS

16.1

All inspection of incoming shipments of equipment, apparatus, machinery and construction materials of every kind shall be performed at the sole discretion of the Owner, or Contractors by persons of their choice.

16.2

The Owner or Contractors shall have the right to have equipment, apparatus, machinery and construction materials of every kind delivered to the jobsite by persons of their choice except as otherwise set out herein.

16.3

The Owner shall have the right to test, operate, maintain, remove and replace all equipment, apparatus or machinery installed, or to be used in connection with such installation on the work site with employees, agents or representatives of the Owner who shall work under the direct supervision of the Owner, as applicable if such supervision is deemed desirable.

16.4

Any employee who willfully damages the work of any other employee, or any material, equipment, apparatus, or machinery shall be subject to immediate termination.

16.5

In the interest of the future of the construction industry in the Puget Sound area, of which labor is a vital part, and to maintain the most efficient and competitive posture possible, the Unions pledge to work with management on this Project to produce the most efficient utilization of labor and equipment in accordance with this PLA.

ARTICLE 17 - SAFETY, HEALTH AND SANITATION

17.1

The Contractor, its Sub-contractors and the Unions signatory to this Agreement will form a Joint Labor/Management Safety Committee that shall be incorporated into the Project Administrative Committee. At this meeting reports will be given on safety programs instituted by the Contractor, the Contractor and the individual contractors on the Project site and to discuss and advise such parties of the PLA with regard to recommended safety programs and procedures in order to maintain the highest level of occupational safety possible on the Project Site.

17.2

The Contractor, the Contractor's Sub-contractors and their respective employees shall comply with all applicable provisions of State and Federal laws and regulations including the Occupational Safety and Health Act of 1970 as amended.

17.3

The Contractor or its Sub-contractors shall provide a convenient and sanitary supply of drinking water, cooled in the summer months, and sanitary drinking cups.

17.4

The Contractor or its Sub-contractors shall provide adequate sanitary toilet facilities, water and clean up facilities for the employees. Dry shacks for breaks and employee's personal equipment storage shall be per the local CBAs.

17.5

Violators of the safety program will be subject to termination for cause and may be rehired after 90 days.

17.6

All required safety equipment shall be provided by the Contractor or its Sub-contractors.

ARTICLE 18 - NO STRIKE - NO LOCKOUT

18.1

During the term of this PLA there shall be no strikes, including sympathy strikes, picketing including informational picketing, work stoppages, slowdowns 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.

18.2

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.

18.3

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.

18.4

In the event of any work stoppage, strike, picketing or other disruptive activity in violation of this Article, the Contractor may suspend all or any portion of the Project work affected by such activity at the Contractor's discretion and without penalty.

18.5

There shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity affecting the Project site during the duration of this PLA. Any Union or Local Union which initiates or participates in a work stoppage in violation of this Article, or which recognizes or supports the work stoppage of another Union or Local Union which is in violation of this Article, agrees as a remedy for said violation, to pay liquidated damages in accordance with Section 18.6 of this Article.

18.6

In lieu of, or in addition to, any other action at law or equity, any party may institute the following procedure when a breach of this Article is alleged, after the Union(s) or Local Union(s) has been notified of the fact. The party instituting the following procedures shall also notify, in writing, the Owner, and provide to the Owner a written explanation of the factual and legal grounds for use of this procedure. The contractors and/or Unions instituting the procedure shall allow the Owner to observe and comment on and during the course of the procedure to the arbitrator.

- (a) The party invoking this procedure shall notify (to be mutually determined) who the parties agree shall be the Arbitrator under this procedure. Notice to the Arbitrator

shall be by the most expeditious means available, with notice by facsimile, email or any other effective written means, to the party alleged to be in violation and the International Union President and/or Local Union.

- (b) Upon receipt of said notice, the Arbitrator shall set and hold a hearing within twenty-four (24) hours if it is contended the violation still exists.
- (c) The Arbitrator shall notify the parties by email, facsimile, or any other effective written means, of the place and time he or she has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.
- (d) The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The award shall be issued in writing within three (3) hours after the end of the hearing, and may be issued without an Opinion. If any party desires an Opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of the award. The Arbitrator may order cessation of the violation of this Article, and such Award shall be served on all parties by hand or registered mail upon issuance.
- (e) Such award may be enforced by any court of competent jurisdiction upon the filing of this PLA and all other relevant documents referred to herein above in the following manner. Facsimile or expedited mail or personal service of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's award as issued under Section 6 of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the Arbitrator's Award shall be served on all parties by hand or by delivery to their last known address by registered mail.
- (f) Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance therewith, are hereby waived by parties to whom they accrue.
- (g) The fees and expenses of the Arbitrator shall be borne by the party or parties found in violation, or in the event no violation is found, such fees and expenses shall be borne by the moving party.
- (h) If the Arbitrator determines that a work stoppage has occurred in accordance with Section 18.6 d above, the party or parties found to be in violation shall pay as liquidated damages the following amounts: For the first shift in which the violation occurred, \$10,000; for the second shift, \$15,000; for the third shift, \$20,000; for each shift thereafter on which the craft has not returned to work, \$25,000 per shift. The specific damages in this Section shall be paid to the Owner. The Arbitrator shall retain jurisdiction to determine compliance with this Section and Article.

18.7

The procedures contained in Section 18.6 through 18.6 (h) shall be applicable to violations of this Article. Disputes alleging violation of any other provision of this PLA, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved under the grievance adjudication procedures of Article 19 Grievance Procedure.

18.8

The Owner and Contractor are each a party of interest in all proceedings arising under this Article and Articles 14 and 19 and shall be sent copies of all notifications required under these Articles and shall initiate or participate as a full party in any proceeding initiated under this Article.

ARTICLE 19 - GRIEVANCE PROCEDURE

19.1

This PLA 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.

19.2

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.

19.3

Any question or dispute arising out of and during the term of this PLA (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following steps:

- (a) Step 1. When any employee subject to the provisions of this PLA feels they have been aggrieved by a violation of this PLA, through their local Union business representative or job steward, shall, within five (5) working days after receiving notice of 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 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 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 PLA alleged to have been violated. Should the Local Union(s) or any contractor(s) 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.

- (b) Step 2. The International Union Representative and the involved Contractor(s) 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) working days thereafter.
- (c) Step 3. If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) working days thereafter that the grievance be submitted to the mutually agreed upon Arbitrator. 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(s) and the involved Local Union(s). 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, and shall not have authority to change, amend, add to or detract from any of the provisions of this PLA.

19.4

The Owner and Contractor shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

ARTICLE 20 - GENERAL SAVINGS CLAUSE

20.1

If any article or provisions of this Agreement shall be declared invalid, inoperative or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the Federal or any State government (including such authorities as established within Project enabling legislation referred to under Article I within this Agreement). The Contractors and the Union shall suspend the operation of such article or provision during the period of its invalidity and shall substitute, by mutual consent in its place and seal an article or provision which will meet the objections to its validity and which will be in accord with the intent and purpose of the article or provision in question.

20.2

If any article or provision of this Agreement shall be held invalid, inoperative or unenforceable by operation of law or by any of the above mentioned tribunals of competent jurisdiction, the

remainder of this agreement or the applications of such article or provision to persons or circumstances other than those as to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.

ARTICLE 21 - TERMS OF AGREEMENT

21.1

This Project Labor Agreement shall become effective on _____, and shall continue only until the Project is completed or abandoned by the Owner, or by the Contractors for the Project.

- (a) Turnover. Construction of any phase, portion, section or segment of the Project shall be deemed complete when such phase, portion, section or segments has been turned over to the Owner by the Contractor(s) and the Owner has accepted such phase, portion, section or segment. As areas and systems of the Project are inspected and construction tested and/or approved by the Owner, the Agreement shall have no further force or effect on such items or areas, except when a Sub-contractor is directed by the Contractor(s) or the Owner to engage in repairs or modifications required by its contract(s) with the Owner.
- (b) Notice. Written notice of each final acceptance received by the Contractor(s) will be provided to the Building Trades Council(s) with a description of what portion, segment, etc. has been accepted. Final acceptance may be subject to a "punch list," and in such case, the Agreement will continue to apply to each such item on the list until it is completed to the satisfaction of the Owner and a letter of completion/Final Acceptance is given by the Owner to the Contractor(s). A copy of the "punch list" will be available to the Unions.
- (c) Termination. Final termination of all obligations, rights and liabilities and disagreements shall occur upon receipt by the Building Trades Council(s) of a written notice from the Owner or Contractor(s) saying that no work remains within the scope of the Agreement for the Contractor(s) or their successor(s).

ARTICLE 22 - WAGE SCALES AND FRINGE BENEFITS

22.1

In consideration of the desire of the Owner, the Contractors and the Unions for all construction work to proceed efficiently and economically and with due consideration for protection of labor standards, wages and working conditions, all parties agree that:

22.2

All employees covered by this Agreement shall be classified in accordance with work performed and paid the hourly wage rates for those classifications in compliance with the applicable prevailing rates as required by Chapter 39.12 of the Revised Code of Washington, as amended. This requirement applies to laborers, workers and mechanics, employed by the Contractors, or by any other person who performs a portion of the work contemplated by this Agreement and which is covered by the terms hereof.

22.3

The Contractor(s) and its Sub-contractors will recognize the applicable Federal and/or State Prevailing Wage Rate Determinations as the minimum rates to be paid to all craft employees, including general foreman, foreman and apprentices during the life of the project. Further, the Contractor(s) and its Sub-contractors will recognize all changes of wages and fringes on the effective date(s) of the individual craft local collective bargaining agreement. It is further agreed that any retroactive increases will be recognized provided it is part of the negotiated settlement.

22.4

The current Washington State Prevailing Wage Rates (PWR) for the inception of this project are dated _____. Such Washington State PWR which have been provided to the parties hereto by the industrial statistician of the Washington State Department of Labor and Industries will be available for review at the L&I website at: <http://www.lni.wa.gov/prevailingwage/> and are incorporated into this Agreement as if set forth herein.

22.5

In case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives the matter shall be referred for arbitration to the DIRECTOR OF THE DEPARTMENT OF LABOR AND INDUSTRIES of the State of Washington, and the Directors decision therein shall be final and conclusive and binding on all parties involved in the dispute, as provided for by Section 39.12.060 of the Revised Code of Washington as amended.

22.6

The Contractor(s) and its Sub-contractors adopt and agree to be bound by the written terms of the legally established trust agreements, for each craft hired, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractor(s) and its Sub-contractors authorize the parties to such Trust Funds to appoint Trustees and successor Trustees to administer the Trust Funds and hereby ratifies and accepts the Trustees so appointed as if made by the Contractor(s) or its Sub-contractors.

22.7

If any Sub-contractor is delinquent in any Trust Fund contributions, the Union or the Trust Fund shall first make every effort to resolve the delinquency. After all efforts have been exhausted, the Union or Trust Fund shall provide timely notification to the Owner and the Contractor(s), together with all documentary evidence of the delinquency endorsed by the Fund. Upon such notification, the Contractor(s) will attempt to resolve the delinquency among its Sub-contractor, the Union and the Fund. If the delinquency is not resolved within ten (10) days thereafter, the Contractor(s) shall withhold an amount to cover the delinquency from any retained funds otherwise due and owing to the Sub-contractor and shall not release such withholding until the Sub-contractor is in compliance. If the delinquent amounts are undisputed in whole or in part between the Fund and the delinquent Sub-contractor, the Contractor(s) shall issue a joint check to the Fund and the Sub-contractor in the amount of the undisputed delinquency.

22.8

Copies of the Union Trust Agreements are available upon request.

ARTICLE 23 - DRUG FREE WORKPLACE

23.1

The parties to this PLA agree that the Contractor shall implement a Drug Free Workplace Policy and Program for the duration of this PLA. Such policy will be administered in accordance with the provisions of the ALCOHOL AND DRUG POLICY included as an Exhibit to this PLA. The drug and alcohol testing program implemented must be equal to or better than the King County program. All drug and alcohol testing procedures must be administered by an independent third party agency reviewed in advance by the Owner. The Owner has the right and authority to conduct an audit of the administration of the drug and alcohol testing procedures being implemented.

ENDORSEMENTS

The authorized signature by the undersigned affirms the approval of this Agreement by _____ and its adoption of this Agreement as a bid specification for contracts covering all work within the scope of this Agreement.

**ATTACHMENT 1
LETTER OF ASSENT
PROJECT LABOR AGREEMENT
FOR THE
Children and Family Justice Center**

The undersigned, as a Contractor or Sub-contractor on the CFJC Project, for and in consideration of the award of a Contract to perform work on said Project, and in further consideration of the mutual promises made in the Project Labor Agreement (PLA), a copy of which was received and is acknowledged, hereby:

1. On behalf of itself and all its employees, accepts and agrees to be bound by the terms and conditions of the PLA, together with any and all amendments and supplements now existing or that are later made thereto, and understands that any act of non-compliance with all such terms and conditions, will subject the non-complying Contractor or employee(s) to being prohibited from the Project site until full compliance is obtained.
2. Certifies that it has no commitments or agreements that would preclude its full compliance with the terms and conditions of said PLA.
3. Agrees to secure from any Sub-contractor, of any tier (as defined in said PLA), a duly executed Letter of Assent in form identical to this document prior to commencement of any work.

Dated: _____

(Name of Contractor/Company)

(Signature of Authorized Representative)

(Print Name and Title)

(Phone Number)

(Billing Address)

(City, State and Zip Code)

(General Contractor)

C00863C13

(King County Contract Number)

EXHIBITS

Exhibit 1: King County Drug & Alcohol Policy

Exhibit 1: King County Drug & Alcohol Policy

Modification to Appendix 9.1 and 9.2

The following sections have been modified from the revised policy dated February 2000. These revisions reflect additional language required by the Federal Department of Transportation, Transit and Motor Carrier Safety Administrations, 49 CFR Parts 40, 655 and 382 as amended, and merely clarify what is current practice. The Federal Transit Administration has combined 49 CFR parts 653 and 654 and replaced them with 49 CFR Part 655. All revisions have been made pursuant to Section XV – Modifications.



Lori Jones
Drug & Alcohol Program Manager

Policy Statement

A-4. is prohibited from consuming alcohol for specified on-call hours when on call; and

Section IV Substances Tested

B. All verified negative-dilute results will be treated as verified negative results.

Section V Types of Testing

The King County alcohol and drug testing procedures will incorporate all requirements outlined *in the federal regulations 49 CFR Part 40 as amended* to ensure employee confidentiality, the integrity of the testing process, safeguard the validity of the test results, and ensure that test results are attributed to the correct covered employee. Prior to performing each test, King County will notify each employee that the alcohol or controlled substances testing is required by the FTA or FMCSA.

Section VI Pre-employment Tests

- C.1. e. refuse to consent to allow King County to obtain the driver's previous employers' information on positive controlled substances and/or alcohol test results and refusal to be tested within the previous two (2) years; or
- C. 3. Persons who are disqualified from the position that required the pre-employment test shall be disqualified from applying for any covered King County position for a period of six (6) months. Applications from such persons will thereafter only be accepted if accompanied by a current, written statement from a qualified substance abuse professional *verifying that he/she has successfully completed a referral, evaluation and treatment plan.*
- C. 4. When a covered employee/applicant has not performed a safety-sensitive function for 90 consecutive calendar days, regardless of the reason, and the employee has not been in the random pool, the employee shall take a pre-employment drug test. *King County must have a verified negative result prior to the employee performing safety-sensitive work.*

Section VII Post-Accident Tests

- A. 3. a non-fatal accident involving a non-transit commercial motor vehicle operating on a public road that requires the driver to carry a commercial driver's license (CDL) has occurred in which
 - a. the driver receives a citation for a moving traffic violation within 8 hours (to test for alcohol) or within 32 hours (to test for controlled substances)
- C. An employee required to submit a post-accident drug and alcohol testing must be testing as soon as possible. Drug tests must be conducted within thirty-two (32) hours following the accident; alcohol tests must be conducted within eight (8) hours of the accident. *If an alcohol test is not completed within two hours, King County shall prepare and maintain a record stating the reason. If an alcohol test is not completed within 8 hours, King County shall cease attempt to administer test and maintain a record stating the reason.* A covered employee who is required to submit to a reasonable suspicion alcohol and drug test under Section IX need not be required to also submit to a separate post-accident drug and alcohol test under this Section.

Section VIII Random Tests

- B. A computer based random number generator, which is a scientifically valid method, is used for random selections. All covered employees shall have an equal chance of being selected each time selections are made. The random testing rate requirement for Federal Transit and **Federal Motor Carrier Safety Administrations** is to annually complete drug tests equivalent to 50% of the number of covered employees and complete alcohol tests equivalent to 10% of the number of covered employees.
- C. + *Previous language deleted*
- C. Employees selected for random alcohol and/or drug tests will be provided with transportation and are required to report immediately to the collection site where they will be required to provide a breath and/or urine sample.
- D. Employees may be randomly tested for prohibited drug use anytime while on duty.

Section X Return to Work Testing

Employees who have been disciplined in accordance with Section XIII as a result of their first positive test indicating the presence of one or more of the substances listed in Section IV, **or return to work after a violation other than a first positive through the grievance process**, will be required, prior to returning to work, to take a return to duty alcohol and/or drug test with a verified negative result in accordance with King County alcohol and drug testing procedures.

Section XII Refusal to Test

The following are behaviors which constitute a refusal to test. A refusal to test constitutes a violation of this policy and the Federal regulations and a verified positive drug/alcohol test result.

- A. Refusal to submit (to an alcohol test). A covered employee is considered to have refused to take an alcohol test if s/he:
 - 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 attempt to provide a breath specimen for any test required by 49 CFR Parts 382 or 655;
 - 4. 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;
 - 5. Fails to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined in 40.265;
 - 6. Fails to sign the certification at Step 2 of the Alcohol Testing Form (ATF); or
 - 7. Fails to cooperate with any part of the testing process.

If an employee refuses to take an alcohol test, s/he has violated DOT agency regulations and incurs the consequences specified under those regulations.
- B. Refusal to submit (to a drug test). A covered employee is considered to have refused to take a drug test if s/he:
 - 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 attempt to provide a urine specimen for any test required by 49 CFR Parts 382 or 655;
 - 4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the specimen;

Exhibit 1: King County Drug & Alcohol Policy

5. Fails to provide a sufficient amount of urine when directed, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
6. Fails or declines to take a second test the employer or collector has directed him/her to take;
7. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" procedures outlined in 40.193;
8. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process.)

If the MRO reports that an employee has a verified adulterated or substituted test result, the employee has refused to take a drug test.

If an employee has refused to take a drug test, s/he has violated DOT agency regulations and incurs the consequences specified under those regulations.

+ *Previous language deleted*

Section XIII Consequences

- B.1. c) attends an appropriate King County approved education and/or treatment program and signs a monitoring agreement with King County's EAP to ensure successfully completion of the education/treatment program specified by the substance abuse professional; and

Section XIV Confidentiality

The laboratory and MRO shall maintain strict confidentiality of all test results in accordance with *Section 655.73* of FTA regulations and with Section 382.401 of *FMCSA* regulations.

Safety Sensitive Positions

A. Department of Transportation

Transit Division	Roads Division*
Operations	Traffic Engineering*
Power and Facilities	Fleet Administration*
Safety	Airport Division*
Vehicle Maintenance	

B. Department of Natural Resources and Parks

Wastewater Treatment Division*

Employees who are required to operate vehicles which require the possession of a commercial driver's license (CDL). Specific employees subject to testing will be identified by **WTD** management and notified of the testing requirements.

Solid Waste Division* **Parks Division***

C. Department of Public Health

North Rehabilitation Facility*

(*see page 23)

Exhibit 1: King County Drug & Alcohol Policy



King County Administration Policies and Procedures

Executive Orders
Policies and Procedures

Title	King County Prohibited Drug Use and Alcohol Misuse Education and Testing Program	Document Code No.	PER 15-2-1 (AEP)
Department/Issuing Agency	Drug and Alcohol Program	Effective Date	October 25, 1995
Approved	<i>Gary Locke</i>		

- 1.0 **SUBJECT TITLE:** Policy for King County Prohibited Drug Use and Alcohol Misuse Education and Testing Program
 - 1.1 **EFFECTIVE DATE**
 - 1.2 **TYPE OF ACTION:** Supersedes PER 15-2 (AEP)
 - 1.3 **KEYWORDS:** Drug Use, Alcohol Misuse, Safety Sensitive, Testing Program, Education
- 2.0 **PURPOSE:** To establish the King County Program for Prohibited Drug Use and Alcohol Misuse Education and Testing Program Policy. This policy ensures King County compliance with the Omnibus Transportation Act of 1991.
3. **ORGANIZATIONS AFFECTED:** Applicable to all Executive Departments
- 4.0 **REFERENCES:**
 - 4.1 Omnibus Transportation Act of 1991
 - 4.2 49 CFR Parts 40, 382, 655 as amended
 - 4.3 U.S. Drug Free Workplace Act of 1988
- 5.0 **DEFINITIONS:** Included in Appendix 9.1
- 6.0 **POLICIES:**
 - 6.1 King County is committed to maintaining a drug-free workplace to promote both the quality of its services and the safety of its employees, its customers and the public. Every King County employee or employee of a transit contractor who holds a position which could be defined as safety-sensitive is subject to regulations issued pursuant to the Omnibus Transportation Employee Testing Act of 1991; and, each employee, in accordance with this Act and under King County Authority shall follow policies as defined in Appendix 9.1.
 - 6.2 Questions about this Prohibited Drug Use and Alcohol Misuse Policy, King County's Employees Assistance Programs and/or the attached Prohibited Drug Use and Alcohol Misuse Education and Testing Program should be addressed to Lori Jones, Program Manager for the King County Drug and Alcohol Program at (206) 684-1750.
- 7.0 **PROCEDURES:** N/A
- 8.0 **RESPONSIBILITIES:**
 - 8.1 The Program Manager for the King County Drug and Alcohol Program is responsible for ensuring that a Prohibited Drug Use and Alcohol Misuse Education and Testing Program Policy for covered employees is written in the King County Council Ordinance format.
- 9.0 **APPENDICES:**
 - 9.1 Prohibited Drug Use and Alcohol Misuse Education and Testing Program
 - 9.2 Safety Sensitive Positions

Appendix 9.1

Prohibited Drug Use And Alcohol Misuse Education And Testing Program

Policy Statement

- A. King County is committed to maintaining a drug-free workplace to promote both the quality of its services and the safety of its employees, its customers and the public. Every King County employee or employee of a transit contractor who holds a position which would be defined as safety-sensitive (covered employee) is subject to regulations issued pursuant to the Omnibus Transportation Employee Testing Act of 1991 (the Act); and each covered employee, in accordance with the Act, is:
1. prohibited from using, possessing, selling, purchasing, manufacturing, distributing, or transferring alcoholic beverages (except off-duty use at public events) or controlled substances or other performance-impairing substances while on duty or on King County property; and
 2. is prohibited from being present on King County property (except off-duty alcohol use at public events), reporting to work or performing work while that employee is under the influence of alcohol or has any controlled substance or other performance-impairing substance in his/her system; and,
 3. is prohibited from the consumption of alcohol within four (4) hours of the employee's scheduled time to report for work, or within eight (8) hours following an accident or until the employee takes a post-accident alcohol and/or drug test, whichever occurs first; and,
 4. is prohibited from consuming alcohol for specified on-call hours when on-call; and,
 5. is required to submit to an alcohol and/or drug test when directed by King County; and, prohibited from tampering or attempting to tamper with such alcohol and/or drug test.
- B. Each King County covered employee, pursuant to the Drug Free Workplace Act is required to notify his/her supervisor, within five (5) calendar days of any conviction, that he/she has been convicted of a drug crime occurring in the workplace; and
- C. Each covered employee, under King County's own authority:
1. is responsible for informing his/her physician when being prescribed medication(s) that he/she is covered under the terms of this policy. The employee shall use medically authorized drugs or over the counter medications in a manner which will not impair on the job performance.
 2. shall promptly report to his/her supervisor whenever he/she observes or has knowledge of another employee who poses a hazard to the safety and welfare of others.
- D. In accordance with the Omnibus Transportation Employee Testing Act of 1991 and the regulations issued pursuant to this Act:
1. It is King County policy that every covered King County employee comply with the Prohibited Drug and Alcohol Misuse Education and Testing Program which details King County's program.
 2. Employees must understand that strict compliance with King County's Alcohol and Drug Misuse Policy and Education and Testing Program is a condition of employment with King County.
 3. Under King County's own authority, violations will result in discipline in accordance with Section XIII.

Section II – Covered Employees

As required by the regulations issued pursuant to the Omnibus Employee Testing Act of 1991, King County must conduct drug and alcohol testing for all covered employees. Covered employees are those employees who occupy positions which perform a 'safety-sensitive' function and applicants for a safety-sensitive position. 'Safety-sensitive' functions are defined as:

1. operating revenue service vehicles, including operation when the vehicle is not in revenue service;
2. operating nonrevenue service vehicles when operation of such vehicles requires the driver to hold a Commercial Driver's License (CDL);
3. controlling the dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service; or
5. carrying a firearm for transit security purposes.

A list of all covered positions/classifications, by King County Department, is attached as Appendix 9.2. In addition, all employees of independent contractors who perform services for King County Department of Transportation, Transit Division in positions which are safety-sensitive as outlined above will also be subject to the testing requirements outlined in this program.

Section III – Education

Every covered King County employee will receive a copy of King County's Prohibited Drug Use and Alcohol Misuse Policy and this Prohibited Drug and Alcohol Misuse Education and Testing Program. Transit employees will receive a minimum of sixty (60) minutes of training regarding the Prohibited Drug Use and Alcohol Misuse Education and Testing Program and the effects of prohibited drug use and alcohol misuse. Detailed information on alcohol misuse will be provided, specifically referencing the effects of alcohol misuse which impacts an individual's biological, emotional, psycho-social well being. The effects of misuse can be seen in an individual's work performance, attitude and social interaction.

All King County supervisory personnel who are designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol and/or drug testing will also receive a minimum of one-hundred and twenty (120) minutes of training on the physical, behavioral, speech, and performance indicators of probable prohibited drug use and alcohol misuse.

Section IV – Substances Tested

A. Alcohol

Employees subject to alcohol testing will have a sample of their breath tested for the presence of the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol. Alcohol testing must be accomplished just before a covered employee performs safety sensitive duties, during that performance, or just after a covered employee has performed safety sensitive duties. King County, under its own authority, considers a breath alcohol level of .02 or greater a positive test.

Any refusal to submit to an alcohol test, and all positive alcohol tests, will be reported immediately by the testing facility to the King County Drug and Alcohol Program Manager as required by law.

B. Drugs

Employees subject to drug testing will have a sample of their urine tested for the presence of five (5) drugs, as follows:

1. Marijuana
2. Cocaine
3. Opiates
4. Amphetamines
5. Phencyclidine

Exhibit 1: King County Drug & Alcohol Policy

All drug tests will be reported by the testing laboratory to a medical review officer (MRO) who will evaluate the results. After evaluation and interpretation, all verified positive test results will be reported by the MRO to the employee and the King County Drug and Alcohol Program Manager. Any refusal to submit to a drug test, will be immediately reported by the collection site to the King County Drug and Alcohol Program Manager. All verified negative-dilute results will be treated as verified negative results.

With respect to verified positive drug tests, employees will be notified by the MRO that they have seventy-two (72) hours following this notification in which they can request, at their own expense, that a split urine specimen be tested by another Department of Health and Human Services (DHHS) certified testing laboratory. However, in the event that the split sample test is negative, the employee will be reimbursed for the test.

Failure to request testing of the split specimen within seventy-two (72) hours of being notified of a positive test by the MRO will result in the test results from the original specimen being accepted as the final test results.

Section V – Types of Testing

The following tests will be required of all covered employees in accordance with King County alcohol and drug testing procedures:

1. Pre-employment tests
2. Post-accident tests
3. Random tests
4. Reasonable suspicion tests
5. Return to duty/Follow-up tests

The King County alcohol and drug testing procedures will incorporate all requirements outlined in the federal regulations 49 CFR Part 40 as amended to ensure employee confidentiality, the integrity of the testing process, safeguard the validity of the test results, and ensure that test results are attributed to the correct covered employee. Prior to performing each test, King County will notify each employee that the alcohol or controlled substances testing is required by the FTA or FMCSA.

Section VI – Pre-employment Tests

A. The following persons will be subject to pre-employment testing in accordance with King County alcohol and drug testing procedures:

1. Applicants selected for hire into one of the covered positions listed in Section II.
2. Current King County employees selected for assignment into one of the covered positions listed in Section II, if not previously employed in one of these positions, and if the assignment is intended to be for thirty (30) or more consecutive days.

B. Individuals identified in Section VI.A. will be informed that they are subject to pre-employment drug testing at the time they apply for a covered position. Such persons, once a job offer is made will have urine sample collected and tested for evidence of the substances listed in Section IV.B. For individuals noted in Section VI.A.1. and 2, tests may be conducted as part of a routine pre-employment physical examination. The time, date and location of the physical examination and drug test will be announced in advance of the test. Individuals applying for positions which do not require a routine pre-employment physical examination will be notified, in advance, of the time, date and location of the drug test only. King County must receive a negative drug test result prior to employee performing a safety-sensitive function. If a test is canceled, King County shall require employee/applicant to take another pre-employment test and must receive a verified negative result.

C. Disqualification from King County Employment

1. It is King County policy that applicants for initial hire will be disqualified from King County employment if they:

Exhibit 1: King County Drug & Alcohol Policy

- a. fail to appear for the physical examination and urine collection on the designated day unless excused by King County for good and verifiable cause;
 - b. refuse to test as defined in Section XII;
 - c. attempt to alter, taint, or otherwise provide a false sample; or
 - d. test positive for the presence of one of the substances listed in Section IV.B.
 - e. refuse to consent to allow King County to obtain the drivers' previous employers' information on positive controlled substances and/or alcohol test results and refusal to be tested within the previous two (2) years; or
 - f. have tested positive or have refused to be tested when required by a previous employer within the last (2) years and have not successfully completed required recommendations of a substance abuse professional.
2. Current employees subject to pre-employment testing will be disqualified from the position they are seeking if they commit one of the acts listed in 1.a - 1.f. of Section VI.C.1 above. Current employees subject to pre-employment testing will also be subject to discipline in accordance with Section XIII if they commit one of the acts listed in 1.c and 1.d in Section VI.C.1 above.
 3. Persons who are disqualified from the position that required the pre-employment test shall be disqualified from applying for any covered King County position for a period of six (6) months. Applications from such persons will thereafter only be accepted if accompanied by a current, written statement from a qualified substance abuse professional verifying that s/he has successfully completed a referral, evaluation and treatment plan.
 4. When a covered employee/applicant has not performed a safety-sensitive function for 90 consecutive calendar days, regardless of the reason, and the employee has not been in the random pool, the employee shall take a pre-employment drug test. King County must have a verified negative result prior to the employee performing safety-sensitive work.

Section VII – Post-Accident Tests

All employees in covered positions as identified in Section II will be subject to post-accident alcohol and drug testing in accordance with King County alcohol and drug testing procedures.

- A. A King County safety officer, supervisor or other qualified person shall be responsible for making a determination as to whether a post-accident drug and alcohol test is required at the time any covered employee is involved in an accident. An 'accident' requiring an alcohol and drug test is any accident where:
 1. a fatality has occurred;
 2. a non-fatal accident involving a transit diesel or trolley bus, automobile, van or commercial motor vehicle that requires the driver to carry a commercial driver's license (CDL) has occurred in which
 - a. injuries were sustained requiring the injured person to immediately receive medical attention away from the scene or any vehicle involved in the accident is disabled and towed away unless it is determined, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident.
- OR
3. a non-fatal accident involving a non-transit commercial motor vehicle operating on a public road that requires the driver to carry a commercial driver's license (CDL) has occurred in which
 - a. the driver receives a citation for a moving traffic violation within 8 hours (to test for alcohol) or within 32 hours (to test for controlled substances)

AND

Exhibit 1: King County Drug & Alcohol Policy

- b. injuries were sustained requiring the injured person to immediately receive medical attention away from the scene or any vehicle involved in the accident is disabled and towed away

OR

- 4. a non-fatal accident involving the waterfront streetcar has occurred in which
 - a. injuries were sustained which required the injured person to immediately receive medical attention away from the scene

OR

- b. the waterfront streetcar is removed from revenue service

- B. King County will also test any covered employee whose performance could have contributed to the accident.
- C. An employee required to submit to post-accident drug and alcohol testing must be tested as soon as possible. Drug tests must be conducted within thirty-two (32) hours following the accident; alcohol tests must be conducted within eight (8) hours of the accident. If an alcohol test is not completed within two hours, King County shall prepare and maintain a record stating the reason. If an alcohol test is not completed within 8 hours, King County shall cease attempt to administer test and maintain a record stating the reason. A covered employee who is required to submit to a reasonable suspicion alcohol and drug test under Section IX need not be required to also submit to a separate post-accident drug and alcohol test under this Section.
- D. A covered employee must remain readily available for post-accident drug and alcohol testing, including notifying King County of his/her location is he/she leaves the scene of an accident prior to submission of these tests. Failure to remain readily available for post-accident testing constitutes a refusal. Post-accident testing is delayed while the covered employee assists in the resolution of the accident or receives medical attention following the accident.
- E. An employee required to submit to a post-accident drug and alcohol test, will be transported by King County to the collection site and will be required to sign a consent form. The employee must provide a urine and breath sample unless it is determined by medical personnel present that the employee is medically unable to provide the required samples. Following the test, the employee will be relieved of duty with pay pending King County's receipt of the results of the tests from the MRO.
- F. It is King County's policy that employees who are required to submit to a post-accident drug and alcohol test will be subject to discipline in accordance with Section XIII if they:
 - 1. refuse to sign a consent form or refuse to provide a breath and/or urine sample;
 - 2. attempt to alter, taint, or otherwise provide a false sample; or
 - 3. test positive for the presence of one or more of the substances listed in Section IV.

Section VIII – Random Tests

- A. King County will maintain a listing of the names of all employees in the covered positions listed in Section II. During each calendar year, alcohol and/or drug tests will be administered to these employees on a random-selection basis in accordance with the federal alcohol and drug testing regulations and King County's alcohol and drug testing program. King County shall insure that random drug and alcohol tests conducted will be unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year. Testing can be conducted on all days and hours during which safety sensitive work is performed.
- B. A computer based random number generator, which is a scientifically valid method, is used for random selections. All covered employees shall have an equal chance of being selected each time selections are made. The random testing rate requirement for Federal Transit and Federal Motor Carrier Safety Administrations is to annually complete drug tests equivalent to 50% of the number of covered employees and complete alcohol tests equivalent to 10% of the number of covered employees.

Exhibit 1: King County Drug & Alcohol Policy

- C. Employees selected for random alcohol and/or drug tests will be provided with transportation and are required to report immediately to the collection site where they will be required to provide a breath and/or urine sample.
- D. Employees may be randomly tested for prohibited drug use anytime while on duty.
- E. It is King County policy that employees will be subject to discipline in accordance with Section XIII if they:
 - 1. do not appear immediately and complete a random drug and/or alcohol test within two (2) hours following notification to appear for such tests, refuse to sign a form or refuse to provide a breath and/or urine sample;
 - 2. attempt to alter, taint, or otherwise provide a false sample; or
 - 3. test positive for the presence of one or more of the substances listed in Section IV.

Section IX – Reasonable Suspicion Test

- A. All employees in the covered positions listed in Section II may be required to submit to a reasonable suspicion alcohol and/or drug test.
- B. Employees who are reasonably suspected by a supervisor of violating King County's Prohibited Drug Use and Alcohol Misuse Policy will be required to submit to an alcohol and/or drug test in accordance with King County alcohol and drug testing procedures. A trained supervisor who makes a determination that a test is required will be required to complete a form indicating the grounds for his/her suspicion. The determination must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the employee.
- C. Employees will be transported by King County to the collection site and will be required to provide a breath and/or urine sample. Following completion of the test, employees will be transported home and relieved of duty with pay pending King County's receipt of the results of the test from the MRO.
- D. It is King County's policy that employees will be subject to discipline in accordance with Section XIII if they:
 - 1. refuse to sign a form or refuse to provide a urine and/or breath sample;
 - 2. attempt to alter, taint, or otherwise provide a false sample; or
 - 3. test positive for the presence of one or more of the substances listed in Section IV.

Section X – Return to Work Testing

Employees who have been disciplined in accordance with Section XIII as a result of their first positive test indicating the presence of one or more of the substances listed in Section IV, or return to work after a violation other than a first positive through the grievance process, will be required, prior to returning to work, to take a return to duty alcohol and/or drug test with a verified negative result in accordance with King County alcohol and drug testing procedures.

Section XI – Follow-up Testing

Current employees who have been disciplined in accordance with Section XIII as a result of a positive alcohol and/or drug test required under Section V, except for random alcohol tests with a level of .02-.039 whose initial test was greater than the confirmation test, upon return to work shall be subject to a minimum of six (6) unannounced drug and/or alcohol follow up tests during the first twelve (12) months following the employee's return to work, and further testing as recommended by the substance abuse professional up to a maximum of sixty (60) months. In addition, employees who have been disciplined in accordance with Section XIII will also be subject to the testing requirements of Section V.

Exhibit 1: King County Drug & Alcohol Policy

Section XII – Refusal to Test

The following are behaviors which constitute a refusal to test. A refusal to test constitutes a violation of this policy and the Federal regulations and a verified positive drug/alcohol test result.

A. Refusal to submit to submit (to an alcohol test). A covered employee is considered to have refused to take an alcohol test if s/he:

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 (except for pre-employment);
2. Fails to remain at the testing site until the testing process is complete;
3. Fails to attempt to provide a breath specimen for any test required by 49 CFR Parts 382 or 655;
4. 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;
5. Fails to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined in 40.265;
6. Fails to sign the certification at Step 2 of the Alcohol Testing Form (ATF); or
7. Fails to cooperate with any part of the testing process.

If an employee refuses to take an alcohol test, s/he has violated DOT agency regulations and incurs the consequences specified under those regulations.

B. Refusal to submit (to a drug test). A covered employee is considered to have refused to take a drug test if s/he:

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 (except for pre-employment test);
2. Fails to remain at the testing site until the testing process is complete (except for pre-employment when an employee/applicant leaves before the testing process begins);
3. Fails to attempt to provide a urine specimen for any test required by 49 CFR Parts 382 or 655;
4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the specimen;
5. Fails to provide a sufficient amount of urine when directed, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
6. Fails or declines to take a second test King County or collector has directed him/her to take;
7. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the “shy bladder” procedures outlined in 40.193;
8. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process.)

If the MRO reports that an employee has a verified adulterated or substituted test result, the employee has refused to take a drug test.

If an employee has refused to take a drug test, s/he has violated DOT agency regulations and incurs the consequences specified under those regulations.

Section XIII – Consequences

Current employees who have a confirmed positive drug or alcohol test, or who have refused to a test as defined in Section XII, will be immediately removed from duty. The employee will be provided with information from King County's employee assistance program (EAP) regarding resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses and telephone numbers of substance abuse professionals and treatment programs as required by 49 CFR Part 40.

A. Termination

It is King County's policy that current employees will be terminated if the employee:

1. uses, possesses, sells, purchases, manufactures, distributes, or transfers alcoholic beverages (except off-duty use at public events) or controlled substances or other performance-impairing substances while on duty or on King County property; or,
2. consumes alcohol within four (4) hours of the employee's scheduled time to report for work, or within eight (8) hours following an accident or until the employee takes a post-accident alcohol and/or drug test, whichever occurs first; or,
3. refuses to submit to an alcohol and/or drug test (as defined in Section XII) when directed by King County; or, tampers or attempts to tamper with an alcohol and/or drug test; or,
4. does not notify his/her supervisor, within five (5) calendar days of any conviction, that he/she has been convicted of a drug crime occurring in the workplace; or
5. tests positive and was involved in an accident resulting in death, serious injury or extensive property damage; or
6. tests positive and is also being terminated for other misconduct which could independently result in their discharge; or
7. tests positive and has not completed their initial probationary period following hire into their first King County position.
8. does not appear and complete a random or follow-up drug and/or alcohol test within two (2) hours following notification to appear for such tests, refuses to sign a BAT form or refuses to provide a breath and/or urine sample;
9. has a second confirmed positive drug or alcohol test, except random alcohol tests with a level of .02-.039 where the initial test was greater than the confirmation test;
10. has a third confirmed positive random alcohol test with a level of .02-.039, where the initial test was greater than the confirmation test.

B. Consequences for a Positive Drug or Alcohol Test

1. Conditional Retention

It is King County's policy that current employees, who have a verified positive drug or alcohol test and are not subject to the terms under Section XIII.A., will be offered conditional retention of employment if the employee:

- a) submits to an evaluation by a substance abuse professional approved by King County's EAP;
- b) signs a conditional retention of employment agreement;
- c) attends an appropriate King County approved education and/or treatment program and signs a monitoring agreement with King County's EAP to ensure successful completion of the education/treatment program specified by the substance abuse professional; and
- d) prior to returning to work, is subject to a return to duty drug and/or alcohol test with a verified negative result(s). Follow up tests are required as recommended by the substance abuse professional.

Exhibit 1: King County Drug & Alcohol Policy

The employee who is conditionally retained must fully comply with the conditions of retention of employment, including successful completion of the treatment program specified by the substance abuse professional.

2. Discipline for a Positive Drug or Alcohol Test

Current employees who have a confirmed positive drug or alcohol test will be removed from duty and disciplined as follows:

A) Consequences for a Positive Drug or Alcohol Test (Except for Random Alcohol Tests of .02-.039 where the initial test was greater than the confirmation test).

- (1) Employees with their first confirmed positive drug or alcohol test, except random alcohol tests with a level of .02-.039 where the initial test was greater than the confirmation test, will be suspended for one (1) week without pay.

B) Consequences for a Random Alcohol Level of .02-.039 (where the initial test was greater than the confirmation test).

- (1) Employees who have their first confirmed positive random alcohol test with a level of .02-.039, where the initial test was greater than the confirmation test, will be removed from duty for two (2) days without pay.
- (2) Current employees who have their second confirmed positive random alcohol test with a level of .02-.039, where the initial test was greater than the confirmation test, will be suspended for one (1) week without pay.

C) Employees who have a confirmed positive alcohol test with a level of .02-.039 where the initial test was lower than the confirmation test will be disciplined in accordance with Section XIII.B.2.a.(1).

Section XIV – Confidentiality

All testing will be conducted in accordance with the federal regulations to ensure test results are accurate and reliable. Further, King County will carry out this policy in a manner which respects the dignity and confidentiality of those involved.

King County takes seriously its commitment to provide safe conditions to the public and its employees. Recognizing this commitment, King County maintains employee assistance programs which can provide access to professional services in an effort to aid any employee who has an alcohol or chemical dependency problem. All employees who suspect they may have alcohol or substance abuse problems are encouraged to utilize employee assistance program resources before the problem affects their employment status. Participation in this program is voluntary and confidential.

The laboratory and MRO shall maintain strict confidentiality of all test results in accordance with Section 655.73 of FTA regulations and with Section 382.401 of FMCSA regulations. This confidentiality shall be maintained at all times. At a minimum the contractor will:

1. Store all specimens that test verified for drugs in a secure locked freezer for one (1) year or as required by law. Evidence shall be stored in the original specimen container in which it arrived in order to guard against court claims of improperly conducted testing.
2. Store test results and chain of custody documents for five (5) years or as required by law in a secured area complying with legal requirements.
3. Test results shall be reported to the King County Program Manager or designee via a secure fax machine, or other means as appropriate, on a daily basis.
4. Any specimen that has a chain of custody problem is tested only with prior approval from the designated King County Program Manager.

The laboratory, MRO and King County shall disclose information related to a positive drug test of an individual to the individual, the employer or the decision maker in a law suit, grievance or other proceeding initiated by or on behalf of the individual and arising from a verified positive drug test.

Exhibit 1: King County Drug & Alcohol Policy

Questions about King County's prohibited drug use and alcohol misuse education and testing program and/or King County's employee assistance programs should be addressed to Lori Jones, Drug and Alcohol Program Manager.

Section XV – Modifications

It is King County policy that the Program Manager is authorized and directed to promulgate such modifications, amendments and revisions to the King County Drug and Alcohol Program as s/he deems necessary after a review process and concurrence by the affected departments to carry out the provisions of regulations issued pursuant to the Omnibus Transportation Employee Testing Act of 1991 and to enact such additional policies and procedures as may be necessary to insure King County's compliance with state and federal law affecting drug and alcohol matters. Nothing herein is intended to waive a union's legal right to bargain over modifications, amendments and revisions to the extent that they are mandatory subjects of bargaining.

Section XVI – Effects of Alcohol

For information regarding the effects of alcohol refer to King County Drug and Alcohol Program Handbook (June 2003), page 87 Alcohol Fact Sheet. In addition, if an alcohol problem is suspected, please contact King County Employee Assistance Program or refer to the handbook, page 112 – Where to Get Help.

Section XVII – Information Disclosure

King County Drug & Alcohol Program Manager may only release drug and alcohol testing records and results under the following circumstances:

- When an employee gives written instruction that King County may release information or copies of records regarding his/her test results to a third party or subsequent employer;
- When, due to a lawsuit, grievance, or proceeding initiated on behalf of the employee tested, the result may be released to the decision-maker in the case;
- When an employee provides a written request for copies of his/her records relating to the test(s);
- When an accident investigation is being performed by the National Transportation Safety Board (NTSB) and the post-accident results are needed for the investigation;
- When the DOT or any DOT agency with regulatory authority over the employer or any of its employees requests records.

An employee request for release of information must specifically identify the person to whom the information is to be released, the circumstances under which the release is authorized, and the specific kind of information to be released. A separate release must be signed each time information is to be disclosed.

Terms and Definitions

Accident means an occurrence associated with the operation of a vehicle, if as a result:

- (1) An individual dies;
- (2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;
- (3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle;
- (4) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from revenue service;
- (5) With respect to an occurrence in which a commercial motor vehicle (non-transit) operating on a public road in interstate or intrastate commerce and one or more motor vehicles incurs disabling damage as the result of the accident and is transported away from the scene by a tow truck or other vehicle.

Actual Knowledge (FMCSA) means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in § 382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under § 382.307.

Adulterated Specimen means a specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be presented but is at a concentration so high that it is not consistent with human urine. **Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

Alcohol Concentration (or content) means the amount of alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

Alcohol Use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Blind Sample or Blind Performance Test Specimen. A urine specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.

Breath Alcohol Technician (BAT). An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.

Cancelled Test means a drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which 49 CFR part 40 otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

CDL Commercial Driver's License

Chain of Custody. Procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. With respect to drug testing, these procedures shall require that an appropriate drug testing custody and control form be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory Custody and Control form(s) account(s) for the sample or sample aliquots within the laboratory.

CFR Code of Federal Regulations

Exhibit 1: King County Drug & Alcohol Policy

Commercial Motor Vehicle (FMCSA-Non-Transit). Means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle 1) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or 2) Has a gross vehicle weight rating of 26,001 or more pounds; or 3) Is designed to transport 16 or more passengers, including the driver; or 4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmation or Confirmatory Test.

- (1) In drug testing, a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines and phencyclidine.)
- (2) In alcohol testing, a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.

Confirmed Drug Test means a confirmation test result received by an MRO from a laboratory.

Controlled Substances means those substances identified in 49 CFR 40.85.

Contractor (FTA) means a person or organization that provides a safety-sensitive service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered Employee means a person, including an applicant, or transferee, who performs or will perform a safety-sensitive function for an entity subject to 49 CFR Parts 382 or 655.

Designated Employer Representative (DER) is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the company. Service agents cannot serve as DERs.

DHHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

Dilute Specimen means a specimen with creatinine and specific gravity values that are lower than expected for human urine.

Disabling Damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

- (1) Inclusion. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.
- (2) Exclusions
 - (a) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
 - (b) Tire disablement without other damage if no spare tire is available.
 - (c) Headlamp or taillight damage.
 - (d) Damage to turn signals, horn, or windshield wipers which make them inoperative.

DOT Agency. An agency of the United States Department of Transportation administering regulations related to drug or alcohol testing, including the United States Coast Guard, the Federal Aviation Administration, the Federal Railroad Administration, the FMCSA, the Federal Transit Administration, the Research and Special Program Administration, and the Office of the Secretary.

Exhibit 1: King County Drug & Alcohol Policy

Drug Metabolite. The specific substance produced when the human body metabolizes a given prohibited drug as it passes through the body and is excreted in urine.

Drug Test. The laboratory analysis of a urine specimen collected in accordance with 49 CFR part 40 and analyzed in a DHHS-approved laboratory.

EBT or Evidential Breath Testing Device. An EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's 'Conforming Products List of Evidential Breath Measurement Devices' (CPL).

Employee Assistance Program (EAP). A program provided directly by an employer, or through a contracted service provider, to assist employees in dealing with drug or alcohol dependency and other personal problems. Rehabilitation and reentry to the work force are usually arranged through an EAP.

FTA means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

FMCSA means the Federal Motor Carrier Safety Administration, an agency of the U.S. Department of Transportation.

Initial Test or Screening Test. In drug testing, an immunoassay screen to eliminate 'negative' urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.

Licensed Medical Practitioner means a person who is licensed, certified and/or registered, in accordance with applicable Federal, State, local or foreign laws and regulations, to prescribe controlled substances and other drugs.

Medical Review Officer (MRO). A medical review officer is a medical doctor who not only has knowledge of substance abuse disorders, but who also has been trained to interpret and evaluate laboratory test results in conjunction with an employee's medical history. A medical review officer verifies a positive test result by reviewing a laboratory report and an employee's unique medical history to determine whether the result was caused by the use of prohibited drugs or by an employee's medical condition.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which s/he is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Prohibited Drug. The Controlled Substances Act has determined the following drugs to be a risk to public safety: marijuana, opiates, amphetamines, cocaine, or phencyclidine.

Qualified Laboratory. A laboratory certified by the DHHS to conduct urine drug testing and which permits unannounced inspections by the recipient, operator, or FTA Administrator.

Refuse to Submit (to an alcohol test). A covered employee is considered to have refused to take an alcohol test if s/he:

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 attempt to provide a breath specimen for any test required by 49 CFR Parts 382 or 655;
4. 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;
5. Fails to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined in 40.265;
6. Fails to sign the certification at Step 2 of the Alcohol Testing Form (ATF); or
7. Fails to cooperate with any part of the testing process.

If an employee refuses to take an alcohol test, s/he has violated DOT agency regulations and incurs the consequences specified under those regulations.

Exhibit 1: King County Drug & Alcohol Policy

Refuse to Submit (to a drug test). A covered employee is considered to have refused to take a drug test if s/he:

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 attempt to provide a urine specimen for any test required by 49 CFR Parts 382 or 655;
4. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the specimen;
5. Fails to provide a sufficient amount of urine when directed, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
6. Fails or declines to take a second test the employer or collector has directed him/her to take;
7. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" procedures outlined in § 40.193;
8. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process.)

If the MRO reports that an employee has a verified adulterated or substituted test result, the employee has refused to take a drug test..

If an employee has refused to take a drug test, s/he has violated DOT agency regulations and incurs the consequences specified under those regulations.

Safety Sensitive Function (FTA-Transit). Any of the following duties:

- Operating a revenue service vehicle, including when not in revenue service;
- Operating a non-revenue service vehicle, when required to be operated by a holder of aCDL;
- Controlling dispatch or movement of a revenue service vehicle;
- Maintaining a revenue service vehicle or equipment used in revenue service, unless the recipient receives section 18 funding and contracts out such services;
- Carrying a firearm for security purposes.

Safety Sensitive Function (FMCSA-Non-Transit).

- Means all time from the time a driver begins work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety sensitive function shall include:
- All time at an employer shipper, plant, facility or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- All time inspecting equipment as required by 49 CFR Part 392.7 and 49 CFR Part 392.8 or otherwise inspecting, servicing, or conditioning any motor vehicle at any time, all time spent at the driving controls of a commercial motor vehicle in operation;
- All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 CFR Part 393.76);
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Exhibit 1: King County Drug & Alcohol Policy

Screening Test or Initial Test. In drug testing, an immunoassay screen to eliminate 'negative' urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.

Shy Bladder. The inability to produce a sufficient (45 ml) urine specimen.

Shy Lung. The inability to produce a sufficient breath sample.

Split Specimen. An additional specimen collected with the original specimen, to be tested in the event the original specimen tests positive.

Substance Abuse Professional (SAP). A licensed physician (medical doctor or doctor of osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

Substituted Specimen. A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

Vehicle means a bus, electric bus, van, automobile, rail car, trolley car, or vessel. A mass transit vehicle is a vehicle used for mass transportation or for ancillary purposes.

Verified Negative Drug Test Result. A drug test result reviewed by a Medical Review Officer and determined to have no evidence of prohibited drug use.

Verified Positive Drug Test Result. A drug test result reviewed by a Medical Review Officer and determined to have evidence of prohibited drug use.