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HAWAII  
LABOR RELATIONS BOARD

Attorneys for Director of Labor  
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. OSH 2005-10
DIRECTOR, DEPARTMENT OF LABOR	)	(Inspection No. 308485507)
AND INDUSTRIAL RELATIONS,	)	
	)	STIPULATION AND SETTLEMENT
Complainant,	)	AGREEMENT; EXHIBIT A; APPROVAL
	)	AND ORDER
vs.	)	
	)	
KINGDOM BUILDERS, INC.,	)	
	)	
Respondent.	)	
	)	

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**STIPULATION AND SETTLEMENT AGREEMENT**

Complainant Director of Labor and Industrial Relations  
("Director") and Respondent KINGDOM BUILDERS, INC.  
("Respondent") having reached a full and complete settlement of  
the above-captioned contested case presently pending before the  
Hawaii Labor Relations Board ("Board") stipulate and agree as  
follows:

On or about April 18, 2005, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 94-1040 Waipio Uka Street, Waipahu, Hawaii, 96797.

As a consequence of said inspection the Director issued a Citation and Notification of Penalty on May 24, 2005 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$300.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 94-1040 Waipio Uka Street, Waipahu, Hawaii, 96797.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

5. The Citation is amended by the withdrawal of citation 1, item 1b, alleging a serious violation of 29 CFR

1926.651(k)(1). Citation 1, item 1a, alleging a serious violation of 29 CFR 1926.651(c)(2), and citation 1, item 1c, alleging a serious violation of 29 CFR 1926.652(a)(1), are affirmed.

6. The aggregate penalty of \$300.00 is withdrawn.

7. As a part of this Stipulated Agreement Respondent will provide training to all of its field employees. The training will occur once a month beginning December 2005 and shall continue for at least one (1) year. Respondent shall verify training by preparing a written certification record, which shall contain the name or other identity of the employee trained, the date of the training, the topic of the training session, and the signature of the person who conducted the training. Respondent has secured the services of Safety Services Company to provide guidance in the provision of training to its field employees. Topics of training shall include ladder safety, back injury prevention, jobsite evaluations, moving and erecting scaffolds, safety rules for power tools, and excavation and open trenches on the jobsite.

8. Except for the stipulated amendments described in paragraphs 5 through 7 above, the Citation is confirmed in all other respects, and upon approval by the Board this Stipulated Agreement and the Citation, as amended, shall become a final order of the Director.

9. Respondent shall post a copy of this Stipulated Agreement and Order in a prominent place at or near the location

of the posting of the Citation, and the Stipulated Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

10. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

11. Nothing in this Stipulated Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, December 5, 2005.

KINGDOM BUILDERS, INC.

By: 

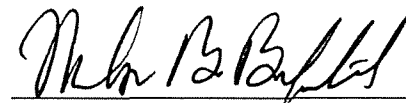
Its PMO

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS



HERBERT B.K. LAU  
Deputy Attorney General  
Attorney for Director of Labor  
and Industrial Relations,  
State of Hawaii



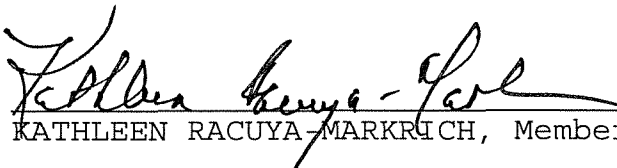
NELSON B. BEFITEL

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

  
\_\_\_\_\_  
BRIAN K. NAKAMURA, Chair

ORDER NO: 165

DATED: DECEMBER 20, 2005

  
\_\_\_\_\_  
KATHLEEN RACUYA-MARKRICH, Member

  
\_\_\_\_\_  
EMORY J. SPRINGER, Member

\_\_\_\_\_  
*Director of Labor and Industrial Relations v. Kingdom Builders,  
Inc., Case No. OSH 2005-10, Inspection No. 308485507 -  
Stipulation and Settlement Agreement*

State of Hawaii  
Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division  
830 PUNCHBOWL STREET, ROOM 425  
Honolulu, HI 96813  
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7003 1680 0004 2962 6846

## Citation and Notification of Penalty

To:  
Kingdom Builders Inc  
and its successors  
617 Iliaina St  
Kailua, HI 96734

Inspection Number: 308485507 (Hervie Messier)  
Inspection Date(s): 04/18/2005 - 04/18/2005  
Issuance Date: 05/24/2005  
OSHCO ID: U5995  
Optional Report No.: 09105  
Inspection Type: Referral  
Scope of Inspection: Partial Inspection

Inspection Site:  
94-1040 Waipio Uka St  
Waipahu, HI 96797

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Employers' Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

**All abatement verification documents must contain the following information:** 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Employees' Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.





## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 05/24/2005. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on \_\_\_\_\_ at \_\_\_\_\_. Employees and/or representatives of employees have a right to attend an informal conference.

**STATE OF HAWAII**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

**Inspection Number:** 308485507  
**Inspection Dates:** 04/18/2005 - 04/18/2005



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

**Issuance Date:** 05/24/2005

**Citation and Notification of Penalty**

**Company Name:** Kingdom Builders Inc  
**Inspection Site:** 94-1040 Waipio Uka St, Waipahu, HI 96797

The alleged violations below (1a-1c) have been grouped because they involve similar or related hazards that may increase the potential for illness or injury resulting from an accident.

**Citation 1 Item 1a** Type of Violation: **Serious**

29 CFR 1926.651(c)(2) [Refer to chapter 12-132.2, HAR] was violated because:

An employee working in a 5 ½ feet deep 35 feet long trench excavation did not have a stairway or ladder within 25 feet of his work area. The lack of a safe means of egress from the trench exposed the employees to injuries from trench cave-ins.

29 CFR 1926.651(c)(2) states "A stairway, ladder, ramp or other safe means of egress shall be located in trench excavations that 4 feet (1.22 m) or more in depth so as to require no more than 25 feet (7.62 m) of lateral for employees."

Location: Trench excavation on the north center of construction site

**Date By Which Violation Must be Abated:** 05/31/2005  
**Penalty:** \$300.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

# STATE OF HAWAII

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

Inspection Number: 308485507  
Inspection Dates: 04/18/2005 - 04/18/2005



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Issuance Date: 05/24/2005

## Citation and Notification of Penalty

Company Name: Kingdom Builders Inc  
Inspection Site: 94-1040 Waipio Uka St, Waipahu, HI 96797

### Citation 1 Item 1b Type of Violation: **Serious**

29 CFR 1926.651(k)(1) [Refer to chapter 12-132.2, HAR] was violated because:

The 5 ½ feet deep 35 feet long trench excavation had not been inspected by a competent person prior to the work being done in the trench. The lack of the inspection by a competent person for trenching and excavations exposed the employees to injuries from trench cave-ins.

29 CFR 1926.651(k)(1) states "Daily inspections of excavations, the adjacent areas, and protective systems shall be made by a competent person for evidence of situations that could result in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions. An inspection shall be conducted by the competent person prior to the start of work and as needed throughout the shift. Inspections shall also be made after each rainstorm or other hazard increasing occurrence. These inspections are only required when employee exposure can be reasonably anticipated."

Location: Trench excavation on the north center of construction site

**Date By Which Violation Must be Abated: 05/31/2005**

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**STATE OF HAWAII**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

Inspection Number: 308485507  
Inspection Dates: 04/18/2005 - 04/18/2005



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Issuance Date: 05/24/2005

**Citation and Notification of Penalty**

Company Name: Kingdom Builders Inc  
Inspection Site: 94-1040 Waipio Uka St, Waipahu, HI 96797

**Citation 1 Item 1c Type of Violation: Serious**

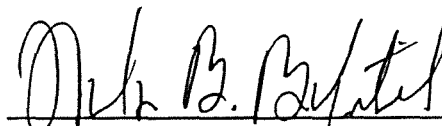
29 CFR 1926.652(a)(1) [Refer to chapter 12-132.2, HAR] was violated because:

The worker in the 5 ½ feet deep 35 feet long trench excavation was not protected from cave-ins by a protective system. The lack of the use of a protective system in the excavation exposed the employee to injuries from trench cave-ins.

29 CFR 1926.652(a)(1) states "Each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) or (c) of this section..."

Location: Trench excavation on the north center of construction site

**Date By Which Violation Must be Abated: 05/31/2005**

  
NELSON B. BEFTEL  
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of Hawaii**

Department of Labor and Industrial Relations

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

830 PUNCHBOWL STREET, ROOM 425

Honolulu, HI 96813

**SUMMARY OF PENALTIES**

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**Company Name:** Kingdom Builders Inc  
**Inspection Site:** 94-1040 Waipio Uka St  
Waipahu, HI 96797  
**Issuance Date:** 05/24/2005

<b>Summary of Penalties for Inspection Number</b>		308485507
<b>Citation 01, Serious</b>	=	\$300.00
<b>TOTAL PENALTIES</b>	=	\$300.00

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Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.