ORIGINAL

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LABOR RELATIONS BOARD

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	) CASE NO. OSH 2011-18
	) (Inspection No. 313082836)
DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS,	) STIPULATION AND SETTLEMENT
	) AGREEMENT; EXHIBITS A and B;
Complainant,	) APPROVAL AND ORDER
vs.	)
NAKAMURA ELECTRIC, INC.,	)
Respondent.	)

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and Respondent NAKAMURA ELECTRIC, 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 June 27, 2011, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located

at Huliko'a Drive, Kailua-Kona, Hawaii 96740.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on September 12, 2011 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of $1,350.00. 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 Huliko'a Drive, Kailua-Kona, Hawaii 96740.

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.

4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22 as indicated in the completed Abatement Certification attached hereto as Exhibit B.

5. The violations and corresponding characterizations as stated in the Citation are affirmed. See Exhibit A.

6. The aggregate penalty of $1,350.00 shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. The Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, shall become a final order of the Director.

8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

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

10. Nothing in this 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.

11. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

DATED: Honolulu, Hawaii, October 26, 2011.

NAKAMURA ELECTRIC, INC.

By: _____
MELVIN K. NAKAMURA
Its President

APPROVED AS TO FORM:

_____
LAWRENCE H. NAKANO
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS

_____
DWIGHT TAKAMINE

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 456

DATED: November 28, 2011

JAMES B. NICHOLSON, Chair

SESNITA A.D. MOEPONO, Member

ROCK B. LEY, Member

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: 7006 2150 0000 0119 6574

Citation and Notification of Penalty

To:
Nakamura Electric Inc
and its successors
2298 Alahao Pl Unit 6 P
Honolulu, HI 96819-2271

Inspection Site:
Huliko'a Dr
Kailua Kona, HI 96740

Inspection Number:	313082836
Inspection Date(s):	06/27/2011- 06/27/2011
Issuance Date:	09/12/2011
OSHCO ID:	X8851
Optional Report No.:	05511
Inspection Type:	Referral
Scope of Inspection:	Partial Inspection

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.**

EXHIBIT A

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 5, 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** violations 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 (examples: 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 12-51-22 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 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. If you have any dispute with the accuracy of the information displayed, please contact this ofice.

ABATEMENT CERTIFICATION

JENNIFER SHISHIDO, ADMINISTRATOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Nakamura Electric Inc
2298 Alahao Pl Unit G
Honolulu, HI 96819-2271

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

_____
Signature

_____
Typed or Printed Name

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

NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 09/12/2011. 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.

Citation and Notification of Penalty

Company Name: Nakamura Electric Inc
Inspection Site: Huliko'a Dr, Kailua Kona, HI 96740

Citation 1 Item 1 Type of Violation: Serious

29 CFR 1926.501(b)(1) [Refer to chapter 12-121.2, HAR] was violated because:

Four employees working 18 feet above the lower level on a commercial roof were not protected from fall hazards by the use of conventional fall protection.

29 CFR 1926.501(b)(1) states "Unprotected sides and edges. Each employee on a walking/working surface (horizontal and vertical surface) with an unprotected side or edge which is 6 feet (1.8 m) or more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems."

Location: Site

Date By Which Violation Must be Abated:	09/16/2011
Penalty:	$ 750.00

Citation and Notification of Penalty

Company Name: Nakamura Electric Inc
Inspection Site: Huliko'a Dr, Kailua Kona, HI 96740

The alleged violations below (2a & 2b) have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 2a Type of Violation: Serious

29 CFR 1926.1053(a)(8) [Refer to chapter 12-154.1, HAR] was violated because:

Two portable step ladders used to gain access to the upper roof did not have the spreader bars locked in the open position.

29 CFR 1926.1053(a)(8) states "A metal spreader or locking device shall be provided on each stepladder to hold the front and back sections in an open position when the ladder is being used."

Location: Site

Date By Which Violation Must be Abated:	09/16/2011
Penalty:	$ 600.00

Citation and Notification of Penalty

Company Name: Nakamura Electric Inc
Inspection Site: Huliko'a Dr, Kailua Kona, HI 96740

Citation 2 Item 1 Type of Violation: Other

29 CFR 1926.503(b)(1) [Refer to chapter 12-121.2, HAR] was violated because:

The employer did not verify that employees exposed to fall hazards had completed the required fall protection training.

29 CFR 1926.503(b)(1) states "The employer shall verify compliance with paragraph (a) of this section by preparing a written certification record. The written certification record shall contain the name or other identity of the employee trained, the date(s) of the training, and the signature of the person who conducted the training or the signature of the employer. If the employer relies on training conducted by another employer or completed prior to the effective date of this section, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training."

Location: Site

Date By Which Violation Must be Abated:	09/30/2011
Penalty:	$ 0.00

JENNIFER SHISHIDO
Administrator

ABATEMENT CERTIFICATION

JENNIFER SHISHIDO, ADMINISTRATOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Nakamura Electric Inc
2298 Alahao Pl Unit G P
Honolulu, HI 96819-2271

The hazard referenced in Inspection Number 313082836 for the violation identified as Citation 1 1926.501 (b)(1) and Item 1 was corrected on 9-13-11.
How corrected: A conventional fall protection was installed.

The hazard referenced in Inspection Number 313082836 for the violation identified as Citation 1 1926.1053 (a)(8) and Item 2A was corrected on 9-13-11.
How corrected: used Nakamura Electric Inc's ladders, mounted to pegs exceeding 3' above platform, No longer used ladders belonging to another entity.

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____.
How corrected: ~~N/A~~

The hazard referenced in Inspection Number 313082836 for the violation identified as Citation 1 and Item 2b was corrected on 9/13/11.
How corrected: USED TALLER LADDER, EXCEED 3' OVER LANDING, TIE DOWN LADDER TOP & BOTTOM LANDING

The hazard referenced in Inspection Number 313082836 for the violation identified as Citation 2 and Item 1 was corrected on 9/13/11.
How corrected: ANSI/OSHA COMPLIANT ROOFING KIT WE WERE ALL ADEQUATE ON THE JOB

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

Signature

Randie Ganir
Typed or Printed Name

EXHIBIT B