



**COLLECTIVE BARGAINING  
AGREEMENT**

**Between**

**AFSCME Council 26, Local 3870**

**and**

**USDA Rural Development**

**Effective: July 16, 2010**

**Duration: 4 years**

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**Rural Development Forms referred to in this Agreement are available online:**

<http://www.rurdev.usda.gov/regs//formstoc.html#2>

## Preamble

The Parties recognize Management's right to assign work in accordance with Section 7106, Title 5, United States Code. Consistent with that right, the Parties acknowledge that this Agreement may contain work assignments to be performed by specific Agency officials referred to by position, e.g. supervisor, or specific organizational components, e.g. Human Resources Office. With the exception of Article 18, Negotiated Grievance Procedure, such language is not intended to contractually bind the Agency to assign the stated work to those officials or organizations. Rather, it is intended to reflect the Agency's decision to make those assignments in accordance with the reserved right to assign work. It is included in the Agreement as a matter of administrative convenience to promote full understanding of the processes and procedures contained herein.

## Past Practices

On the date of execution of this Agreement, all past practices affecting the conditions of employment of bargaining unit employees that are inconsistent with the terms of this Agreement shall be rendered null and void.

# Article 1

## Parties to the Agreement, Recognition, and Definition of Bargaining Unit

### 1.1 PARTIES TO THE AGREEMENT

The Parties to this Agreement are the U.S. Department of Agriculture (USDA), Rural Development (RD), Washington, D.C., after this known as the “Employer, Agency, or Management” and the American Federation of State, County, and Municipal Employees (AFSCME) Council 26, AFL-CIO, after this known as the “Union.”

### 1.2 UNIT OF RECOGNITION

The unit of recognition covered by this Agreement is that unit certified by the Federal Labor Relations Authority (FLRA) in Case Numbers WA-AC-50041, WA-RO-50044, and WA-RO-50058. The Employer recognizes AFSCME Council 26, AFL-CIO, as the exclusive representative of all employees (after this sometimes referred to as “employees” or “bargaining unit employees”) in the bargaining unit as defined below.

### 1.3 DEFINITION OF BARGAINING UNIT

- A. This Agreement covers all non-professional employees. This Agreement does not cover professional employees except for Rural Business-Cooperative Service (RBS). This Agreement does not cover Management officials, supervisors, confidential employees, employees engaged in federal personnel work in other than a purely clerical capacity, and employees described in Title 5, United States Code (USC), Section 7112(b)(6) and (7). In addition, the following groups of employees are excluded: stay-in-school, summer hires, cooperative education program students, and temporary employees with an appointment not to exceed one year. If temporary employees go beyond one year of consecutive service in their current appointment, they will be covered by the terms of this Agreement.
- B. The following employee classifications are examples of professional employees for purposes of this Agreement:

Economists - 110 Series  
Architects/Engineers — 800 Series

1.4 COVERAGE OF THE AGREEMENT

This Agreement covers only those positions included in the bargaining unit. When the term “employee” or “employees” is used, it is understood that it includes bargaining unit employees.

## Article 2 Dues Withholding

Voluntary allotment by employees for the payment of dues to the Union shall be authorized and processed according to the May 3, 1993, Memorandum of Understanding (MOU) between the USDA and the American Federation of State, County, and Municipal Employees covering employee dues deduction until superseded. If the MOU is modified or superseded, this Article will be reopened for negotiations as appropriate. A copy of this Memorandum of Understanding is incorporated into the contract and made a part hereof.

### **MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT OF AGRICULTURE AND THE AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 26**

The parties to this memorandum, the American Federation of State County and Municipal Employees, Council 26, hereinafter referred to as AFSCME, and the U.S. Department of Agriculture, hereinafter referred to as USDA, enter into this agreement for the purpose of establishing a mutually beneficial dues withholding agreement.

1. This Memorandum of Understanding is subject to and governed by 5 USC 7115, by regulations issued by the Office of Personnel Management (5 CFR 550.301, 550.311, 550.312, 550.321 and 550.322), and will be modified as necessary by any future amendments to said rules, regulations and law. Reference is also made to DPM 550, Subchapter 3 for procedural guidance.
2. The USDA will permit any employee of the USDA who is a member of AFSCME and included within a bargaining unit for which AFSCME has exclusive recognition to make a voluntary allotment for the payment of dues to AFSCME. Such deductions shall begin after certification of AFSCME by the Federal Labor Relations Authority, and upon request by the appropriate union official and shall be at no cost to AFSCME. This Memorandum of Understanding shall be made a part of every future local or Council 26 agreement and shall be the only authorized method for obtaining dues withholding.
3. The employee shall obtain a SF-1187, "Request for Payroll Deductions for Labor Organization Dues," from AFSCME and shall file the completed SF-1187 with the designated AFSCME representative. The employee shall be instructed by AFSCME to complete the top portion and Part B of the form. No number shall appear in block 2 of the form except the employee's Social Security number.
4. The President or other authorized official of the Local Union or the Council will certify on each SF-1187 that the employee is a member in good standing of AFSCME; insert the amount to be withheld, and the appropriate Local number; and submit the

completed SF-1187 to the Servicing Personnel Office (SPO) of the USDA Agency involved. The SPO shall certify the employee's eligibility for dues withholding, insert the AFSCME code (47) and, process the form through the automated Payroll/Personnel Processing System. An employee's initial dues deduction will become effective the first full pay period after the receipt by the SPO of the employee's certified SF-1187, provided it is received three working days before the beginning of the pay period. For SF-1187's received after this cut-off, an attempt shall be made to begin dues withholding effective the first full pay period after receipt. However, if this is not possible, dues withholding will become effective the following pay period. The SPO will promptly forward a copy of the SF-1187 to the AFSCME designated official. When the SPO determines that a SF-1187 cannot be processed, the SPO shall promptly return the form to the Union, annotated with the reason for its return. In most cases, this annotation will be one word, such as "confidential" or "supervisor." Dues deduction will not be made for an employee who does not receive compensation sufficient to cover the total amount of the allotment.

5. Deductions will be made each pay period and remittances will be made on the Department's pay day to the payee designated by the Union. A grace period of seven days will be permitted in unusual circumstances. The NFC shall also promptly forward to AFSCME, a listing of dues withheld. The listing shall be segregated by Local and shall show the name of each member employee from whose pay dues were withheld, the employee's Social Security number, the amount withheld the code of the employing agency, and the number of the Local to which each employee belongs. The listing will be in alphabetical order of the employee's last name. Each Local listing shall be summarized to show the number of members for whom dues were withheld, total amount withheld, and amount due to the Local. Each list will also include the name of each employee member for that Local who previously made an allotment for whom no deduction was made that pay period, whether due to leave without pay or other cause. Such employees shall be designated with an appropriate explanatory term.

6. In lieu of the listings provided for in Section 5 of this Memorandum of Understanding, USDA agrees to provide the National Office of the AFSCME a computer tape in a format to be agreed upon at such time as AFSCME has the facilities to process tapes. USDA will be given two (2) months notice to implement this change.

7. The amount of dues certified on the SF-1187 by the authorized Union official (see Section 4) shall be the amount of regular dues, exclusive of initiation fees, assessment, back dues, fines, and similar charges and fees. One standard amount for all employees or different amounts of dues for different employees may be specified. If there should be a change in the dues structure or amount, the authorized Union official shall notify the appropriate SPO. If the change is the same for all members of the Local, a blanket authorization may be used which includes only the Local number and the new amount of dues to be withheld. If the change involves a varying dues structure, then a revised rate schedule will be provided to the SPO. The SPO shall add the AFSCME code (47) and promptly forward the certification to the NFC. The change shall be effected at the beginning of the first full pay period after the certification is received by the NFC which shall be no later than 30 days after the Union provides written notification to the SPO of

the change in dues. Only one such change may be made in any 6-month period for a given Local.

8. An employee may voluntarily revoke an allotment for the payment of dues by completing a SF-1188, "Cancellation of Payroll Deductions for Labor Organization Dues" or by memorandum in duplicate, and submitting it to the appropriate SPO. If the employee uses a written request, it must contain all the information required by the SF-1188. The SPO shall process the revocation effective as of the first full pay period after September 1 of each year provided that the revocation was received by the SPO on or before August 29 of each year, and provided the employee has had AFSCME dues withheld for more that 1 year and certifies to that fact. The SPO shall verify the information and forward to the designated Union official a copy of each revocation received as appropriate notification of the revocation.

9. The USDA will terminate an allotment.

- (a) as of the beginning of the first full pay period following receipt of notice that exclusive recognition has been withdrawn;
- (b) at the end of the pay period during which an employee member is separated or assigned to a position not included in an AFSCME bargaining unit;
- (c) at the end of the pay period during which the SPO received a notice from the AFSCME or a Local of AFSCME that an employee member has ceased to be a member in good standing;
- (d) annually during the first full pay period after September 1, after receipt of the employee member's written revocation of allotment (SF-1188 or memorandum in duplicate), provided that the revocation is received by the SPO on or before August 29 of each year, and provided the employee verifies that he/she has had AFSCME dues withheld for more than one year.

10. The SPO and the employee members have a mutual responsibility to assure timely revocation of an employee's allotment for AFSCME dues when the employee is promoted or assigned to a position not included in a bargaining unit represented by AFSCME. If the dues allotments continue and the employee fails to notify his/her SPO, the retroactive recovery of dues withheld from AFSCME shall not be made, nor shall a refund be made to the employee.

11. The parties to this agreement recognize that problems may occur in the administration of this agreement and the dues withholding program. The parties agree to exchange names, addresses, and telephone numbers of responsible officials and/or technicians of AFSCME and USDA to facilitate resolution of problems. These individuals shall cooperate fully in an effort to resolve any issue relating to dues

withholding under the terms of this Memorandum of Understanding. This does not constitute a waiver of any legal, regulatory, or contractual right. Grievances or other appeals concerning this Memorandum of Understanding will be filed with or against the parties at the level of recognition.

12. This Memorandum of Understanding shall remain in effect for as long as AFSCME holds exclusive recognition in USDA, except that either party may propose amendments annually, before the anniversary date of the signing of this agreement.

13. The initial dues for the (Farmers Home Administration), Headquarters unit (Case No. WA-RO-30020) will be withheld no later than 6 weeks from the date that this Memorandum of Understanding is signed. For any other unit certified in USDA, initial dues will be withheld in accordance with Section 2.

Agreed to, signed at Washington, D.C. on May 3, 1993.

/S/

\_\_\_\_\_  
Director of Personnel  
Department of Agriculture

/S/

\_\_\_\_\_  
Executive Director Department of  
American Federation of State  
County and Municipal Employees,  
Council 26

## Article 3

### Rights of Employees, Union, and Agency

#### 3.1 EMPLOYEE RIGHTS

- A. The Federal Service Labor-Management Relations Statute (FSLMRS) provides that each bargaining unit employee has the right to become a Union member, to serve as a Union representative, and to be represented by the Union in grievances, negotiations, and other matters pertaining to collective bargaining.

In accordance with 5 USC Section 7114(a)(5), employees have the right to be represented by an attorney or other representative of their own choosing, other than the Union, when exercising grievance or appellate rights established by law, rule, or regulation. The Union remains the exclusive representative of employees in grievances filed under Article 18, Negotiated Grievance Procedure.

- B. An employee has the right to Union representation, upon request, at any examination of the employee in connection with an investigation that the employee reasonably believes could lead to disciplinary action (Weingarten meetings). The employee shall be given a reasonable time to obtain such representation. The determination of reasonableness shall be made on a case-by-case basis and shall be dependent upon the nature of the matter leading to the investigative meeting. The Agency will remind employees of this right on an annual basis. This right applies also to investigations by Office of Inspector General representatives.
- C. No employee will be disciplined or otherwise discriminated against for exercising his or her rights under the FSLMRS or for filing complaints or appeals under the terms of any other statute.
- D. Employees covered by this agreement, may, without fear of penalty or reprisal, engage in the disclosure of information which the employee reasonably believes evidences a violation of law, including, but not limited to law, the "No Fear Act," rule, or regulation; or evidences mismanagement, a waste of funds, an abuse of authority, or a danger to health or safety, in accordance with applicable laws and regulations.
- E. Employee counseling or cautions on conduct or unacceptable performance, or verbal warnings will be conducted in a setting that protects the employee's confidentiality.

- F. In accordance with applicable law, an employee may review any and all records about him/her upon request, and shall be given copies of the records upon proper request.

### 3.2 UNION RIGHTS

- A. The Union is the exclusive representative of the bargaining unit and is entitled to act on behalf of bargaining unit employees on all matters pertaining to collective bargaining. The Union is responsible to represent the interests of all bargaining unit employees whether or not they are dues-paying Union members.
- B. The Union President or a designee will be given reasonable notice of any formal discussion held by one or more representatives of the Agency with one or more bargaining unit employees concerning any grievance, personnel policy or practice, or general condition of employment. The determination of reasonableness will depend on the circumstances of each case, and to the extent possible, will normally be not less than 24 hours unless there is a compelling reason for a shorter notice period.
- C. Notifications of Changes in Conditions of Employment
  1. When the Agency decides to make a change that will have more than a *de minimis* impact on the conditions of employment of bargaining unit employees, it will notify the Union in writing promptly after the decision is made and it will provide the effective date on which it plans to implement the change. Such notification normally will be provided 30 days before the planned effective date of the change. In emergencies or other situations where it is not possible to provide 30 days notice, the Agency will provide the amount of notice that is reasonable under the circumstances.
  2. The notice will describe the reasons for the change and provide an effective date for the change. It will identify those organizations and employees likely to be affected. If applicable, the notice will identify the building(s), office(s), and workstation(s) that will be affected. The notice will specify how the change will be implemented.
  3. If the Union wishes to negotiate over the change, it will provide a written response within 10 work days. The response will either:
    - a. Request negotiations and contain negotiable bargaining proposals;

- b. Request additional information that is relevant and necessary for the preparation of bargaining proposals. Any request for information shall identify those aspects of the Agency's notice that were unclear or lacking sufficient information; or
  - c. Request additional time to present bargaining proposals and indicate the date on which those proposals will be provided. If additional time is requested, the Agency will respond in writing indicating whether the proposed date is acceptable. If the delay proposed by the Union is unreasonable, the Agency will advise the Union of the final date on which proposals will be accepted.
4. If the Agency provides additional information in response to the Union's request, the Union will submit its proposals within 10 days of its receipt of the information. If the Agency notifies the Union in writing that the information it seeks does not exist or is not reasonably available or necessary for the negotiation of the change, the Union shall submit its bargaining proposals within 10 days of receipt of such notification.

### 3.3 MANAGEMENT RIGHTS

Management rights are those enumerated in section 7106 of the FSLMRS.

### 3.4 BARGAINING UNIT LISTING

The Union will be provided with a list of bargaining unit employees on a semi-annual basis. The report is to be done as of pay periods 13 and the last pay period of the leave year, which is usually pay period 26, but in some cases, is pay period 27. The reports will be provided to the Union within 30 days of these timeframes.

## Article 4

### Official Time

All existing memoranda of understanding and settlement agreements between the Parties concerning official time are hereby rendered null and void.

#### 4.1 DEFINITION

- A. “Official Time” is duty time during which employees, without loss of pay or charge to leave, serving in their capacity as Union representatives, perform activities set forth in Section 4.3 below consistent with 5 U.S.C. 7131(D).
- B. Requests for Official Time for purposes other than those enumerated in Section 4.3 will be considered by Management and responded to in a timely manner. Such requests should be made by an appropriate union official to the Labor Relations Staff. If this office agrees that the request constitutes an appropriate use of Official Time, individual representatives may schedule its usage with their supervisors according to the provisions of Section 4.6 below.

#### 4.2 USE OF OFFICIAL TIME

##### A. Permitted Use of Official Time

Union representatives shall request official time from the Employer and shall be granted the use of reasonable official time, for purposes defined in Section 4.3. Official time will be approved unless it will interfere with the completion of key work assignments of the work unit.

##### B. Designation of Union Officials for Use of Official Time

The Union shall have the right to designate 18 representatives and alternates including the four elected officers, one of whom will be the Chief Steward. These representatives may be granted official time for representational purposes covered in Section 4.3 of this Article. The representatives and their alternates will provide geographic representation for the work area to which they are assigned. However, this will not preclude the Union from assigning a representative to matters outside of his or her normal area under special circumstances when mutually agreed by the Parties. Such circumstances could include a steward's unavailability due to leave, travel, training; and the need for a steward's special expertise; the regularly assigned steward has the grievance or problem; or the need for on-the-job training for a new steward. Management agrees to give serious consideration to such circumstances

when deciding whether to agree to assign a steward to a matter outside of his or her geographic area and will, not unreasonably withhold agreement. The regular assignment of representatives and alternates designated at each location will be determined by the Union. In the case where the Union cannot find a representative for a specific location, a temporary representative from another building may be assigned at the Union's election. Officers, including the Chief Steward, will not be restricted by geographic location.

C. List of Stewards and Officers

The Union agrees to provide Management with a list of officers, representatives, and their alternates designated to use official time in their assigned location. This list may be updated and modified from time to time. Normally, any changes to the list will be submitted in writing to the Employer's representative three working days before the individual will be recognized by the Employer as having authority to represent the Union and be granted official time for representational duties. In exceptional circumstances, such as when a new steward replaces an existing steward and is immediately confronted with a situation requiring union representation, the Union may notify the Employer's designated representative orally, but must send a written confirmation within three working days after the oral notification.

4.3 PURPOSES OF OFFICIAL TIME

Official time for representational purposes or representational activities is covered by 5 U.S.C. Section 7131 and shall include the following:

- A. Any formal discussion between one or more representatives of the Employer and one or more employees in the unit or their representatives concerning any grievance, personnel policy, practice, or other general condition of employment.
- B. Any examination of an employee in the unit by a representative of the Agency in connection with an investigation if:
  - 1. The employee reasonably believes that the examination may result in disciplinary action against the employee, and
  - 2. The employee requests representation.
- C. Any meeting between a union representative(s) and one or more representatives of the Employer that is initiated by either the Employer representative or the union representative.

- D. Participation in bargaining, including mediation and/or the resolution of any bargaining impasse and/or negotiability question.
- E. Participation in proceedings of the Federal Labor Relations Authority, Federal Mediation and Conciliation Service, Federal Services Impasses Panel, Merit Systems Protection Board and Arbitration.
- F. Preparation time for the following:
  - 1. Filings to the agencies referenced in Section 4.3, Paragraph E above.
  - 2. Preparation of grievances, adverse actions and other appeals under the relevant USDA/Rural Development regulations, and this Agreement.
  - 3. Preparation of any other negotiation (impact and implementation), grievance or arbitration procedures as outlined in this Agreement.
- G. Presentation of grievances, adverse actions, and other appeals under the relevant USDA/Rural Development regulations, and this Agreement.
- H. Union representatives may be allowed up to 500 hours per year to attend union-sponsored Labor-Management relations training. Joint Labor-Management training will not count toward the cap. Requests for such official time shall be submitted with an agenda that includes the actual hours and course content of the training.
- I. In accordance with precedent established by the Federal Labor Relations Authority, in effect on the date of execution of this Agreement, the Agency recognizes the Union's right to use official time in accordance with the provisions of this Article to visit, phone and write elected representatives concerning pending or desired legislation which would impact the conditions of employment of bargaining unit employees represented by AFSCME Local 3870.
- J. The Union recognizes the Agency's responsibility to ensure that all official time approved under this provision is used for legitimate representational purposes.

#### 4.4 PROHIBITED USE OF OFFICIAL TIME

Official time shall not be permitted, used, granted or utilized for internal Union business, including, but not limited to, the following:

- A. The attendance at meetings for internal Union business;

- B. The solicitation of membership;
- C. The collection of dues;
- D. The election of union officials;
- E. The preparation and distribution of Union newspapers, flyers, bulletins or other publications; or
- F. The discussion of internal Union business by telephone, in person or otherwise.

#### 4.5 AMOUNT OF OFFICIAL TIME

The union representative's supervisor may approve official time for the purposes set forth in Section 4.3 in amounts that are reasonably necessary to accomplish the purpose for which official time is requested.

#### 4.6 PROCEDURES FOR REQUESTING USE OF OFFICIAL TIME

- A. The following procedures shall be followed for requesting the use of official time for the purposes set forth in Section 4.3.
  - 1. All requests for the use of official time shall be for finite periods of time and must be made in advance and recorded on Part A of Form LR-100 or electronic time and attendance system, Request for Official Time.
  - 2. Requests for the use of official time shall be made by the union representative completing Part A of Form LR-100 or electronic time and attendance system and submitting it to his/her immediate supervisor or the second level supervisor if the immediate supervisor is absent or unavailable.
  - 3. Supervisory approval of the period of official time must be obtained prior to the use of such official time and recorded on Part B of Form LR-100 or electronic time and attendance system.
  - 4. In the event the person entitled to the use of official time requires additional time due to unforeseen circumstances, the person shall request an extension of time by telephone or other appropriate means. The request shall be made to the approving supervisor or in that supervisor's absence, to any available supervisor of the person's unit, section or division.

5. Upon the completion of a period of official time that is reasonable and necessary, the union representative shall promptly return to work and notify the supervisor who approved the official time and complete Part C of Form LR100.
6. It is understood by the Parties that unforeseen needs may arise precluding advance approval, such as unexpected telephone calls to a union representative. On such occasions, the union representative will notify the supervisor as soon as possible and fill out Parts A and C of Form LR-100 or electronic time and attendance system by close of business on the same day.
7. Requests for official time will be responded to in a timely manner, normally within 48 hours, unless sufficient extenuating and unforeseeable circumstances prevent Management from acting upon the request.

B. Availability of Official Time in the Case of Disapproval

In the event that a request for the use of official time by a union representative is disapproved in whole or in part, the decision making official shall notify the representative in writing with the basis for the denial as much in advance as possible, so that the Union may select an alternate representative, and so that the selected alternate will have sufficient time to prepare, if necessary. If after making a good-faith effort, the Union is unable to designate an alternative representative, management will make a reasonable effort to reschedule events or modify deadlines.

4.7 OFFICIAL TIME FOR UNION PRESIDENT

- A. The Union shall designate one elected official, the President, 100% official time to conduct Union business two (2) days per week. The designated official will serve in that capacity for a two-year term and notify the Agency prior to assuming the responsibility.
- B. The designee will, for administrative purposes, remain in the current position of record, at the current title, series, and grade.
- C. The official is eligible to attend training or conferences necessary to maintain professional skills of the assigned permanent position. Criteria for approval or disapproval will be the same as applied to other employees in that work unit. Training related to Union responsibilities is covered by this agreement.

- D. The designated official will report to the Union office during the designated two (2) days. To assure confidentiality required by the duties, the Union office will be a private office.
- E. This article may be reopened by either party, at any time, for renegotiation. If an issue arises delaying implementing of this section, the existing contract will remain in effect until such time the article can be negotiated.

## Article 5 Use of Official Facilities and Services

- 5.1 The Employer agrees to provide furnishings and equipment such as, computers, printer/fax/copier (may be an all-in-one machine), telephone with speaker and conferencing capabilities, email access, carpet, window coverings, conference table and chairs, desks, and desk chairs, file and storage cabinets with locks, etc. The Agency will allot additional private office space to the Union if there is any available.
- 5.2 When available, and during non-duty hours, the Union may reserve and use the Employer's conference rooms or other suitable space for internal business meetings of its officers, stewards, and members subject to official needs. The Employer will not be obligated to incur any additional expenses for use of such facilities, such as heating and air conditioning.
- 5.3 The Union will have access to a bulletin board outside of Room 1330 in South Ag Building, Wing 3, first floor. Union may post material on bulletin boards. The Union President is fully responsible for any and all material posted. The Union agrees these materials will comply with USDA Regulation 1600-2, "Posting of Notices and Information Bulletins."
- 5.4 The Union may distribute Union publications in working areas during non-duty hours. The Union will have access to the internal mailing system for distribution of the Union Newsletter throughout the work area provided the Union prepares the material for mailing; this applies to sorting, addressing, bundling, etc.
- 5.5 The Employer will permit reasonable use of fax machines and office copying equipment to reproduce material related to Rural Development Labor-Management Programs.
- 5.6 The Employer agrees to provide the Union access to all current Agency written issuances on personnel policies, practices, and working conditions, and upon request, furnish the Union one (1) printed copy.
- 5.7 The Union office shall have use of an Agency-provided functioning telephone which is equipped with the following:
  - A. Full access to current government phone service used by Rural Development.
  - B. "Voice mail" capabilities which are currently used by other Agency telephones in the Washington, D.C., National Office.

5.8 For the purpose of fostering effective and efficient communications between the Parties, the Employer shall provide the Union access to the electronic mail system to facilitate communications between the Union and the Labor Relations Staff.

## Article 6 Duration and Distribution

### 6.1 EFFECTIVE DATE

This Agreement shall take effect no later than 30 days after signature by both Parties unless disapproved by Agency Head review pursuant to the provisions of 5 USC 7114(c)(2).

### 6.2 DURATION

This Agreement shall remain in effect for four (4) years from its effective date.

### 6.3 RENEGOTIATION AND RENEWAL

- A. The Employer or the Union may request to renegotiate the Agreement by submitting notice in writing to the other Party at least 60 days, but not more than 120 days, prior to the expiration date. In the event the Parties renegotiate the Agreement, the current terms will remain in effect until superseded by a new Agreement. In the event that neither Party submits a notice to renegotiate, the Agreement will be renewed automatically for periods of one (1) year except for provisions which may be in conflict with applicable law, rule, or regulation.
- B. The Parties will meet within 15 days following the notice in 6.3A to negotiate ground rules.

### 6.4 DISTRIBUTION

Within 15 days of the effective date of this Agreement, the employer will provide an electronic copy of the Agreement to the Union to distribute to all current dues paying members.

## Article 7 Mid-Term Reopener

### 7.1 RIGHT TO REOPEN

Either Party may reopen negotiations after the end of the 18th month and end of the 36th month of this Agreement in accordance with the following:

- A. At least 30 but not more than 60 days prior to the end of the 18th month and end of the 36th month of this Agreement, the moving Party will serve the other Party with written notice of its intent to reopen negotiations, citing the specific article(s) it wishes to renegotiate and providing a brief explanation of its interests underlying the renegotiation of those articles. The moving Party may reopen up to four (4) articles.
- B. The other Party is then free to reopen four (4) additional articles and will notify the moving Party in writing within 15 days of receipt of the notice described in A above whether it intends to do so. The Party will specify which article(s), if any, it chooses to reopen, and provide a brief explanation of its interests underlying the renegotiation of those articles.
- C. Until agreement is reached in accordance with the terms of this provision, the current provisions of the Agreement shall remain in full force and effect.

### 7.2 PROCESS

- A. The Agency will notify the Union of the size of its bargaining team and the Union will be allowed to have an identical number of bargaining unit members on its team on official time. Official time shall be governed by the provisions of Article 4, Official Time. At all negotiating sessions and impasse proceedings, each Party will be represented by a chief negotiator with the authority to reach a binding agreement.
- B. If both Parties are making proposals, they will exchange their written proposals within 15 days of the moving Party's receipt of the notice described in section 7.1B of this Article. If only one Party is moving to reopen Agreement provisions it shall provide its proposals to the other Party within the same 15-day timeframe. Proposals will be structured in the form of contract articles and will contain desired contract language. They will not merely present a concept.
- C. Negotiations will begin no later than 15 days after the receipt of proposals. During the initial round of negotiations, the Parties will discuss

the proposals presented by each Party. The purpose of the initial discussion will be to develop an understanding of the other Party's position and underlying interests for each of its proposals. The Parties will question each other about the meaning and intent of the proposals and will identify potential problems with the other Party's proposals. Although the initial round of negotiation is to develop an understanding of each Party's positions and interests, either Party is free to make counter offers, agreements, or modifications to its proposals at any time. The goal of the Parties is to complete the initial round of discussions in two sessions.

- D. After the initial round of discussion, there will be a one-week break in negotiations. During the break, the Parties will modify their proposals and develop counter proposals to the extent possible.
- E. After the break, negotiations on the second round of bargaining will begin. The Parties will discuss each article and attempt to reach agreement. The goal of the Parties is to complete this phase of negotiations in three sessions.
- F. After all articles have again been discussed, there will be a one-week break. At the conclusion of that period, the final phase of bargaining will begin. The Parties will again discuss all articles. After three sessions in this final phase, if agreement has not been reached, all articles for which there is not agreement will be considered at potential impasse.
- G. If a potential impasse is reached, either Party may contact the Federal Mediation and Conciliation Service (FMCS) for assistance. If the mediator is unsuccessful at resolving all items at impasse, either Party may request assistance from the Federal Service Impasses Panel (FSIP). The Parties will then proceed in accordance with the Panel's directives.

### 7.3 NEGOTIATING SESSIONS

- A. Negotiations will be conducted on the Agency's premises. The Agency will notify the Union orally at the close of each negotiating session of the location of the next session.
- B. Negotiations shall take place on Tuesday, Wednesday, and Thursday of each week from 10 am to 3:30 pm. By mutual consent, negotiations during any day may be cancelled, shortened, extended, or rescheduled at any time by the chief negotiators.

### 7.4 AGREEMENTS

When the Parties reach a tentative agreement on an article, they will develop final contract language for that article. The chief negotiators will

initial and date the article signaling tentative agreement. It is understood that no final agreement is reached until all articles reopened for bargaining have been agreed to and all impasses have been resolved.

#### 7.5 DISPUTES OVER NEGOTIABILITY

- A. The Parties will make every attempt to resolve negotiability disputes through discussion and possible rephrasing of proposals.
- B. The Agency will provide a written allegation of non-negotiability in accordance with the regulations of the Federal Labor Relations Authority (FLRA). The Union may then challenge the Agency's allegation through the appropriate FLRA procedures.
- C. A dispute over the negotiability of a proposal shall not preclude the Parties from putting into effect agreements on articles that have been reopened for negotiation that are not influenced by the negotiability issue. However, absent mutual agreement of the Parties, agreements made within the article(s) impacted by the negotiability dispute will not be implemented until the negotiability issue is resolved by the FLRA or the Agency withdraws its allegation of non-negotiability. When the negotiability issue is resolved, either by a ruling of the FLRA or agreement of the Parties, the Parties shall return to the table to negotiate the remaining article(s).

#### 7.6 UNION RATIFICATION AND AGENCY HEAD REVIEW

- A. The Union reserves the right to ratify the Agreement concerning the reopened provisions, and will have obtained such ratification before the reopened Agreements are presented to the Agency Head for review. If the membership rejects any portion of the Agreement, all reopened provisions are considered rejected.
- B. The Union will have 15 days to accomplish ratification. This 15-day period will commence upon signing of the Agreement by the chief negotiators.
- C. Once ratified, the Agreement on the reopened provisions will be forwarded to the Agency Head in accordance with the terms of section 7114 (c) of the Statute. If the Agency Head rejects any portion of the Agreement, the Union is free to challenge that decision through FLRA negotiability procedures or to return to the table to renegotiate only the rejected portion(s) of the Agreement.

## Article 8

### Work Schedules and Hours of Work

The work schedule arrangements for bargaining unit employees shall be governed solely by the provisions of law, Government-wide regulations, and the terms of this Agreement. The Union agrees to abide by current Rural Development Instruction 2051-F and any further amendments to such Instruction. However, any proposed amendment shall be provided to the Union to bargain prior to implementing change.

#### 8.1 GENERAL PROVISIONS

Employees will be given the opportunity to request a flexitour work schedule or a compressed work schedule (5/4-9 or 4-10).

- A. The Agency shall determine its official hours, i.e. the hours during which it is open for business, which are 8:00 am – 4:30 pm. All full-time employees must be present during their normal tour during the core hours, 9:00 am to 2:30 pm, unless on approved leave or a scheduled lunch period, or the tour of duty has been temporarily changed in accordance with the provisions of this Article.
  
- B. Employees will request a flexible or compressed schedule by submitting Form AD-2001, “Designation of Tour of Duty – Biweekly Schedule” to their supervisors. Employees will also request a lunch period on the Form AD-2001. The lunch period must be taken between the hours of 11:00 am and 2:00 pm. The Agency may disapprove an employee’s request for a 5/4-9, 4-10, or Flexitour work schedule if such schedule will result in increased costs, reduced productivity, or a decrease in customer service. Once approved, the Agency may cancel such a schedule only for the same reasons. Disapproval or cancellation of compressed or Flexitour work schedules are subject to the requirements of the Federal Employees Flexible and Compressed Work Schedules Act.

The Agency’s approval or disapproval of employees’ requests for particular compressed days off or start/quit times will be dependent upon workload, office coverage, and customer service needs of each office.

- C. If the Agency cannot honor an employee’s request for a particular compressed day off or start/quit time, the supervisor or other management official will meet with the employee in an attempt to reach a mutually acceptable alternative schedule. If no agreement can be reached, the Agency will make the final determination concerning the schedule.

- D. The Agency may temporarily change an employee's work schedule after discussion with the employee. A temporary change may be made based upon an employee's demonstrated attendance or performance problems. Temporary changes may also be made to accommodate such matters as workload, training needs, attendance at meetings, travel, office coverage needs, and operational exigencies. Employees may be required to adjust or change their work schedule or tour of duty for the pay period(s) affected by official travel or training.
- E. Arrival and departure times shall not be required to be recorded on a daily basis except as may be provided by law or Government-wide regulation. Time and attendance shall be recorded using the Agency's electronic Time and Attendance system.
- F. A holiday is a day on which the Agency is closed because of the occurrence of a legal public holiday or when ordered by Federal statute or Executive Order. Except as provided in law and government-wide regulation, if a holiday falls on an employee's scheduled non-work day, the "in lieu of" holiday shall be the workday before the holiday regardless of the pay period it affects. Part-time employees are not entitled to "in lieu of" holidays.

## 8.2 FLEXITOUR SCHEDULE

- A. Employees will choose a biweekly schedule within the hours of 6:00 am and 6:00 pm and submit their request to their supervisors on Form AD-2001. The requested hours are limited to an 8-hour, 5-day workweek.
- B. Employees on Flexitour have a fixed starting and ending time.
- C. Employees on Flexitour are eligible to earn credit hours.
- D. Employees may request to change to another work schedule throughout the year. However, to avoid disruption, changes normally may not be made more than four times during the year – once each quarter. In emergency situations or in cases of personal hardship, the Agency may approve an employee's request for more than four schedule changes during a year or more than one change each quarter. Requested changes are subject to Agency approval under the terms of subsections 8.1B and 8.1D. Requests for change in work schedule must be made at least two (2) pay periods in advance of the change, unless the employee's personal situation does not allow for such time.

### 8.3 COMPRESSED WORK SCHEDULES

- A. Compressed work schedules are arranged to allow employees to fulfill their basic work requirements in fewer than 10 days during a biweekly pay period. There are two types of CWS – the 5/4-9 plan and the 4-10 plan.
- B. Employees on CWS have a fixed starting time between 6:00 and 9:00 am and a fixed ending time not later than 6:00 pm.
- C. Employees on compressed work schedules may not earn credit hours.
- D. Full-time employees working a CWS who are relieved or prevented by Federal statute or Executive Order from working on a day designated as a holiday (or an “in lieu of” holiday) are entitled to their rate of basic pay for the number of hours of the CWS on that day.
- E. Part-time employees working a CWS who are relieved or prevented by Federal statute or Executive Order from working on a day designated as a holiday are entitled to their rate of basic pay for the number of hours on the CWS on that day. Part-time employees are not entitled to an “in lieu of” holiday.
- F. Employees may request to change to another work schedule throughout the year. However, to avoid disruption, changes normally may not be made more than four times during the year – once each quarter. In emergency situations or in cases of personal hardship, the Agency may approve an employee’s request for more than four schedule changes during a year or more than one change each quarter. Requested changes are subject to Agency approval under the terms of subsections 8.1B and 81 81.D. Requests for change in work schedule must be made at least two (2) pay periods in advance of the change, unless the employee’s personal situation does not allow for such time.

<b>Fixed Work Schedules Available</b>		
Type of Schedule	Flexitour	Compressed Work Schedule
Tour	8-hour day	5/4-9 OR 4/10 as established
Start time(Arrival and departure time cannot vary)	6:00 to 9:00 a.m.	5/4-9: 9-hour day: 6:00 to 9:00 a.m. 8-hour day: 6:00 to 9:00 a.m. 4/10: 6:00 to 8:30 a.m.
Non-work day	Ineligible	5/4-9: One (1) day per pay period as established 4/10: One day per week as established
Holiday Pay	Eight (8) hours	5/4-9: One (8) hours on short day Nine (9) hours on long day 4/10: Ten (10) hours

#### 8.4 MAXIFLEX

- A. The supervisor is responsible for determining whether conditions such as office coverage may restrict certain positions from Maxiflex participation.
- B. Employees select a starting time each day, e.g., 8:00 am (so that the supervisor may know generally when to expect the employee). However, the employee may change the starting times daily within the established flexible hours of 6:00 am to 9:00 am. Supervisors may require that an employee provide advance notice when the employee will not be arriving within 30 minutes of their anticipated arrival time. The employee's scheduled number of hours for that day must be completed by 6:00 pm. Full-time employees must schedule a minimum of 5 1/2 hours and a maximum of 10 hours (exclusive of lunch period) for each scheduled workday.
- C. The employee is responsible for choosing a biweekly schedule and submitting it in writing to their supervisor for approval. Supervisors may change the tour of duty to not later than 12:00 am for days when employees are required to attend night meetings. Night pay differential will apply to hours worked after 6:00 pm when the supervisor initiates the change in the work schedule.
- D. Hours an employee works under a Maxiflex schedule are to be recorded on a minute-to-minute basis. Exact arrival and departure times are to be recorded for each employee on a daily basis.
- E. Under Maxiflex, work schedules may vary.

- F. Employees may not work more than 12 hours in a day (exclusive of lunch period). This includes regular tour of duty and credit hours.
- G. Employees will be allowed to request Maxiflex schedule changes as needed throughout the year.

<b>Flexible Work Schedules Available</b>		
Type of Schedule	Maxiflex	Gliding Schedule (Flexitime)
Tour	As scheduled up to ten (10) hour days	Eight (8) hour work day
Non-work day	One (1) or more as established	Ineligible
Start time	6:00 to 9:00 a.m.	6:00 to 9:00 a.m.
Credit hours	Eligible up to 2 hours per day (Not before 6:00 a.m. or after 6:00 p.m.)	Eligible up to 2 hours per day (Not before 6:00 a.m. or after 6:00 p.m.)
Holiday Pay	Eight (8) hours	Eight (8) hours

## 8.5 CREDIT HOURS

- A. Credit hours are earned by working in excess of the basic workday or workweek requirement on a voluntary basis. Employees do not receive overtime pay for these extra hours. Although credit hours are worked voluntarily, the length of time to be worked and the type of work to be completed must be approved in advance by the supervisor.
- B. Credit hours may be earned by employees on a Flexitour schedule only. They may not be earned by employees on compressed work schedules – 5/4-9 or 4-10.
- C. There is no limit to the total number of credit hours that may be worked in a workday so long as the total hours worked including regular tour of duty and credit hours does not exceed 12 hours.
- D. Full-time employees may carry over no more than 24 credit hours from pay period to pay period. Part-time employees are limited on a pro-rata basis and may carry over an amount of credit hours equal to one-fourth of their biweekly work requirements.
- E. Credit hours may be earned in 15-minute increments on Monday through Friday between the hours of 6:00 am and 6:00 pm.

- F. Credit hours may not be earned while employees are traveling because travel in connection with Government work is not voluntary in nature. Credit hours may not be earned by working on Saturday or Sunday.
- G. An employee requesting to use earned credit hours must obtain advance authorization by submitting request via the Agency electronic Time and Attendance system.
- H. If an employee transfers to another Agency or separates, the employee will be paid for his/her balance of credit hours at the employee's basic hourly rate.

#### 8.6 BREAKS

Employees shall receive two daily rest breaks of 15 minutes duration, one to be taken in the morning and one in the afternoon, or one break for each four hours worked. The time for breaks shall be determined by the supervisor in consultation with the employee. Breaks shall not be taken during the first or last hour of an employee's work day. Breaks cannot be combined to create one 30-minute break during the work day, nor can they be combined with an employee's lunch period. Break time cannot be accumulated (banked) for future use.

#### 8.7 BASIC OVERTIME PROVISIONS

- A. Overtime pay will be administered consistent with the applicable provisions of Title 5 of U.S. Code, the Fair Labor Standards Act (FLSA), and Government-wide regulations, 5 CFR Part 550 and Part 551. An employee who has performed overtime work is entitled to overtime pay or may elect compensatory time off in lieu of overtime pay, as appropriate. The Agency agrees to provide an employee with as much advance notice as possible when assigning overtime.
- B. For employees on an approved flexible work schedule (i.e., Flexitour), overtime hours are all hours of work in excess of 8 hours in a day or 40 hours in a week which are officially ordered and approved in advance. This applies to non-exempt and exempt employees under the Fair Labor Standards Act (FLSA). Employees on flexible work schedules may not earn overtime pay as a result of including "suffered or permitted" hours (under FLSA) as hours of work.
- C. For employees on an approved compressed work schedule, overtime hours are all officially ordered and approved hours of work in excess of the compressed work schedule. Overtime work for non-exempt employees will also include any hours worked outside the compressed work schedule that are "suffered and permitted." Overtime work for a part-time

employee is hours in excess of the compressed work schedule for a day (must be more than 8 hours) or for a week (but must be more than 40 hours).

## 8.8 BASIC COMPENSATORY TIME OFF PROVISIONS

- A. Compensatory time off is time off in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work. There must be an entitlement to overtime before compensatory time off may be granted. The Agency retains final approval authority for granting compensatory time off.
- B. Compensatory time off must be granted to an employee within a reasonable time after overtime is worked and must be approved in advance in the same manner as annual leave. Compensatory time off must be taken before annual leave is granted, except in cases when an employee will forfeit annual leave that cannot be carried forward into the next leave year. Compensatory time off must be taken by the end of the leave year in which it was earned. If compensatory time off is not taken within the specified time limit, the employee will be compensated at the overtime rate in effect during the pay period in which the overtime was earned.
- C. Employees on an approved flexible work schedule (i.e., flexitour) may request compensatory time off in lieu of payment whether or not irregular or occasional in nature.

The Agency may require an exempt employee whose basic rate of pay exceeds the maximum rate established by law or Government-wide regulation to be compensated for irregular or occasional overtime work with compensatory time off. However, an exempt employee whose basic rate of pay is less than the maximum rate established by law or Government-wide regulation cannot be required to accept compensatory time off in lieu of overtime pay as compensation.

The Agency may grant compensatory time off in lieu of overtime payment to a non-exempt employee, regardless of grade level, only when specifically requested by the employee.

- D. Employees on an approved compressed work schedule may request compensatory time off in lieu of overtime pay only for irregular or occasional work performed by the employee. If the overtime work was not irregular or occasional, the employee will be compensated with overtime pay for the overtime hours worked.

The Agency may require an exempt employee whose basic rate of pay exceeds the maximum rate established by law or Government-wide

regulation to be compensated for irregular or occasional overtime work with compensatory time off. However, an exempt employee whose basic rate of pay is less than the maximum rate established by law or Government-wide regulation cannot be required to accept compensatory time off in lieu of overtime pay as compensation.

The Agency may grant compensatory time off in lieu of overtime payment to a non-exempt employee, regardless of grade level, only when specifically requested by the employee.

## Article 9

### Merit Promotion

The Merit Promotion Program affecting bargaining unit positions will be governed solely by the provisions of law and Government-wide regulations and the terms of this Agreement. Previously issued Agency instructions shall not apply.

#### 9.1 POLICY

The purpose of this Article is to ensure that all competitive promotions and other covered placement actions to bargaining unit positions are consistent with merit system principles and are made without discrimination based on any non-merit reason.

#### 9.2 COVERAGE

- A. The competitive procedures outlined in this Article apply to the following actions:
1. Competitive promotion
  2. Reassignment or demotion to a position with more promotion potential than the highest actual grade held by an employee on a permanent basis under a career or career-conditional appointment
  3. Transfer to a higher-graded position or a position with higher promotion potential than the highest actual grade previously held by an employee on a permanent basis under a career or career-conditional appointment
  4. Reinstatement to a higher-graded position or a position with higher promotion potential than the highest actual grade held by an employee on a permanent basis under a career or career-conditional appointment
  5. Selection for detail for more than 120 days to a higher-graded position or to a position with known promotion potential
  6. Selection for training that is any one of the following:
    - a. Part of an authorized training agreement
    - b. Part of a promotion program, although the promotion may not immediately follow the training

- c. Required before an employee is qualified for reassignment to a different occupational series
  - d. Part of a Career Enhancement Program
  - e. Designed primarily to prepare employees for advancement or to fulfill specific qualification requirements for a position with known promotion potential
7. Time-limited promotion for more than 120 days to a higher-graded position or a position with higher promotion potential, unless the selectee has held the grade previously on a permanent basis
- B. The following actions are excepted from the competitive procedures outlined in this Article:
- 1. Competitive selection from an Office of Personnel Management (OPM) certificate or a certificate issued by the Agency under delegated examining authority
  - 2. Promotion resulting from an employee's position being reclassified to a higher grade because of accretion of duties and responsibilities
  - 3. Promotion resulting from upgrading a position, without significant change in the duties and responsibilities, because of the issuance of a new classification standard or the correction of an initial classification error
  - 4. Career-ladder promotion when an employee was previously selected for an assignment intended to prepare him/her for the position being filled. Sources of initial selection may be an OPM certificate, a list of employees issued under delegated examining authority, selection under competitive promotion procedures, or any direct hire authority
  - 5. Promotion, reassignment, demotion, transfer, reinstatement or detail to a position having promotion potential no greater than the potential of a position the employee currently holds or previously held on permanent basis in the competitive service, provided the employee was not demoted or separated from that grade because of deficiencies in performance or "for cause" reasons
  - 6. Detail or temporary promotion, not longer than 120 days, to a higher-graded position or to a position with known promotion potential. If a detail is expected to be extended beyond 30 days, the

employee will be temporarily promoted to cover the period of time not to exceed 120 days inclusive of the detail and temporary promotion. This only applies if the employee meets the qualification requirements of the position, other regulatory requirements governing temporary promotions, funding is available, and there are no imposed freeze requirements. Short details will not be used for the sole purpose of avoiding temporary promotion opportunities.

7. Detail at the same or lower grade
8. Action taken as a remedy for failure to receive proper consideration in a competitive promotion action
9. Promotion of an employee upon exercise of reemployment rights if the employee's former position was reclassified during his/her absence
10. Selection of a candidate from the Reemployment Priority List (RPL) for a position up to the highest grade previously held in the competitive service
11. Position change permitted by Reduction-in-Force (RIF) regulations
12. Repromotion to a grade or position from which an employee was demoted as a result of RIF
13. Selection by reassignment to a position with the same or less promotion potential than a position previously held under a career or career conditional appointment
14. Permanent promotion to a position held under temporary promotion when: (1) the assignment was originally made under competitive procedures; and (2) it was made known under competitive procedures to all competitors at the time that it might lead to a permanent promotion
15. Voluntary change to a lower grade with the same or less promotion potential than previously held under a career or career-conditional appointment
16. Selection of an eligible Career Transition Assistance Plans (CTAP) or Interagency Career Transition Assistance Plan for Displaced Employees (ICTAP) candidate

### 9.3 METHODS FOR FILLING VACANCIES

Vacancies may be filled by any appropriate method including, but not limited to, special placement programs, new appointment, reassignment, transfer, reinstatement, or promotion.

### 9.4 ORDER OF REFERRAL

A. When a position is announced with an area of consideration limited to all or some portion of the USDA workforce, the order of consideration for priority and other candidates is as follows:

- Agency CTAP eligibles
- USDA CTAP eligibles
- Agency/USDA repromotion eligibles
- Agency priority consideration eligibles
- All other applicants within the area of consideration, and
- RPL registrants at the option of the selecting official

B. When a position is announced with an area of consideration which exceeds the current USDA workforce, e.g. Government-wide or all sources, the order of consideration for priority and other candidates is as follows:

- Agency CTAP eligibles
- USDA CTAP eligibles
- USDA RPL registrants
- USDA ICTAP applicants
- Agency/USDA repromotion eligibles
- Agency priority consideration eligibles
- ICTAP eligibles (other than those displaced by USDA), and
- All other applicants

### 9.5 USDA REPROMOTION PLACEMENT PLAN

Employees downgraded through no fault of their own are entitled to priority consideration for a period of 2 years from the effective date of the downgrade.

### 9.6 PRIORITY CONSIDERATION

A. Employees are entitled to priority consideration when reconstruction of a promotion action shows that, but for an error, e.g. incorrect qualification determination, failure to consider, improper rating, failure to follow required competitive procedures, the employee would have appeared on a promotion certificate. The employee shall be entitled to one *bona fide*

consideration for the type of position affected by the error (same grade, same type of position, same promotion potential).

- B. A priority consideration certificate will be forwarded to the selecting official prior to the issuance of a competitive certificate. If no priority consideration candidate is selected, the selecting official must provide a job-related justification for the non-selection.

#### 9.7 POSTING OF VACANCY ANNOUNCEMENTS

- A. Vacancy announcements will normally be posted for a minimum of 21 calendar days. However, announcements with the area of consideration limited to CTAP/ICTAP candidates may be open for 5 calendar days.
- B. Vacancy announcements will be posted on the automated system prescribed by OPM. In addition, announcements will be distributed through electronic mailing (e-mail) and facsimile.

#### 9.8 SUBMITTING APPLICATIONS

- A. Employees wishing to be considered for posted vacancies must submit an application and any supplemental documents as specified in the vacancy announcement.

Failure on the part of an applicant to submit the required material will result in the applicant not being considered for the position. Additional materials not specified in the vacancy announcement, e.g. position descriptions, publications, award certificates, will not be considered in the ranking process.

- B. Applications must be submitted in accordance with the instructions provided on the specific vacancy announcement. Exceptions to this requirement may be made by the Human Resources Office for reasons such as extended power outages and severe weather.

Applications submitted by facsimile or other electronic means as specified in the announcement will be accepted.

- C. Applications will normally be accepted from candidates under special hiring authorities such as, but not limited to, Veterans Readjustment Act (VRA) appointments, 30% Disabled Veteran, Persons with Disabilities. Qualified candidates will be referred on the appropriate certificate as non-competitive referrals.

## 9.9 EVALUATION TO DETERMINE ELIGIBILITY, BASIC QUALIFICATIONS

- A. Minimum qualification requirements will be determined using approved OPM Qualification Standards, time-in-grade requirements, 90-day after competitive appointment restriction, any other requirements such as selective placement factors, e.g. ability to communicate in a foreign language, and a summary performance rating of “Results Achieved” or equivalent.

Qualifications of each applicant will be determined using the application package submitted by the applicant.

- B. Applicants must meet minimum qualification requirements by the closing date of the vacancy announcement.
- C. Normally information submitted after the closing date will not be considered. Exceptions may be made by the HR office and acceptance of materials will be applied consistently to all applicants for the specific vacancy announcement.

## 9.10 RATING AND RANKING PROCEDURES

- A. Either a merit promotion panel or a human resources/subject matter specialist may be used to rate and rank applicants. A panel may be used for any vacancy regardless of the number of applicants for the position. The merit promotion panel or subject matter expert will be provided specific written and oral instructions on how to rate and rank applications.

The same method will be used for a position advertised at multiple grade levels.

- B. The merit promotion panel, human resources specialist, or subject matter expert has the final responsibility for determining the best qualified applicants based on valid, job-related criteria and employees’ application packages.

The merit promotion panel, human resources specialist, or subject matter expert will use the application, KSAs, performance appraisal, related awards, training and self-development to determine each candidate’s possession of each identified KSA and the level of proficiency attained.

Each basically qualified candidate will be evaluated against criteria developed through a job analysis process conducted prior to the rating. Each candidate is given a score based on experience, education, related

awards, training and self-development. Scores are combined and recorded on a master score sheet.

Selecting officials may not make a selection from among candidates who have not been rated best qualified.

#### 9.11 SELECTION PROCESS

- A. The names of the best qualified candidates will be listed on the Promotion Certificate by grade level in alphabetical order. The selecting official will be provided with all best qualified candidates' KSA supplemental statements, applications and other related material.
- B. The selecting official has the option to interview or not interview the best qualified candidates on a Promotion Certificate. If one best qualified candidate is interviewed, all best qualified candidates must be interviewed. Each promotion certificate by grade level for a specific vacancy announcement is treated separately.
- C. Selecting officials are not obligated to interview non-competitive referrals and may choose to interview some but not all noncompetitive referrals.
- D. The selecting official is entitled to make a selection from any of the candidates listed on the promotion certificate based on the selecting official's judgment of how well the candidate will perform in the job. The selecting official is under no obligation to make a selection from the promotion certificate and may select from any other appropriate source.
- E. In the event a like vacancy (same title, series and grade) occurs within 90 days from the date the promotion certificate was issued, the same certificate may be used to fill the subsequent vacancy without readvertising the position.

#### 9.12 INFORMATION

Upon request to the Human Resources Office, employees are entitled to the following information.

- Explanation and supporting regulations concerning this merit promotion plan
- Qualifications required for a position
- Whether the employee was considered and basically qualified, and if not, an explanation of the reasons

- Whether the employee was among the best qualified and how the employee was evaluated by the merit promotion panel or human resources/subject matter specialist
- The cut-off score for best qualified
- Scores of other candidates, not identified by name
- The number of qualified candidates
- The number of candidates certified as best qualified
- The name of the selectee

# Article 10

## Reassignments and Details

### 10.1 DEFINITIONS

- A. Lateral Reassignment – a lateral reassignment is the permanent movement of an employee from one position or duty station to another at the employee's current grade level.
- B. Detail – a detail is the temporary assignment of an employee to a different position for a specified period with the employee returning to his/her regular duties at the end of the detail.
- C. Loan – a loan is the temporary assignment of an employee to a different location within the work organization to perform duties consistent with the employee's current position, grade, and series. No prior notification to the employee is required.
- D. Reassignment – a change of an employee from one position to another within the Agency without promotion while serving continuously within the Agency

### 10.2 PROCEDURES

- A. The Employer agrees to give an employee who is going to be reassigned or detailed as much notice as possible before effecting the reassignment or detail. Directed reassignments out of the commuting area require a minimum of 30 days advance notice.
- B. When possible, prior to effecting an involuntary reassignment or detail, the Employer agrees to solicit for qualified volunteers. The Employer will provide the necessary qualifications for the detail or reassignment at the time of solicitation. Responsibility for soliciting for volunteers rests with the individual supervisor who has the authority to effect the reassignment or detail. Initially, volunteers will be solicited from the organizational component of the supervisor who has the authority to recommend reassignments or details. When no volunteers are available, the supervisor may designate a qualified individual.
- C. When the designated employee indicates that the reassignment or detail may result in undue personal hardship, the Employer will give reasonable consideration to the employee's substantiated claim.

- D. Merit promotion procedures do not apply when a detail is to a position of the same grade and promotion potential.

### 10.3 REQUESTED REASSIGNMENTS AND DETAILS

- A. The Employer agrees that any eligible employee who submits a request for reassignment will be provided:
  - 1. *Bona fide* consideration of the reasons for requesting the assignment,
  - 2. Appropriate consideration of any documented hardship reasons submitted in support of the request,
  - 3. Within 20 working days, the employee will receive written notice that he/she was considered for a position and whether he/she was selected, and
  - 4. If not reassigned, the employee is also entitled, upon request, to be advised in writing of the job-related reason(s) for not being reassigned.
- B. When the employee's request for lateral reassignment documents an adverse effect (i.e., health-related, child care, or transportation hardship) which is impacting the employee in his/her current job assignment and may reasonably be expected to be alleviated by reassignment, the Employer will grant the request unless there are substantive employment reasons for not complying with the request. Health-related reasons used as a basis for requesting reassignment must be supported by medical documentation. Child care problems refer to employees who have sole responsibility for the care of children (i.e., preteens) or other dependents, during the hours/days in question. Transportation problems refer specifically to problems arising from dependence on public transportation.
- C. Training and professional development details will be handled according to Article 12, Professional Development and Training, Section 12.4.

### 10.4 SELECTION OF EMPLOYEES

- A. Detail assignments, reassignments, special project assignments, and loans, will not be made or denied solely to punish or reward an employee or used instead of taking appropriate disciplinary action.
- B. The provisions of this Article are not intended to restrict the Employer from detailing or reassigning an employee or otherwise adjusting the work assignment of an employee because of demonstrated performance

problems taken according to the provisions of this Agreement. It is appropriate to detail or reassign an employee when such action is being taken to avert a disruption to the safety or security of the employees or the work area. It is also appropriate when an employee's conduct is the subject of a disciplinary inquiry and the employee's reassignment or detail is determined to be consistent with providing a safe and secure environment for the Agency and its employees. Such action will be taken consistently with the provisions of law, controlling regulations, and this Agreement.

## Article 11

### Space and Related Issues

- 11.1 Bargaining unit employees will be provided with adequate space and equipment to perform assigned duties.
- 11.2 Office or workstation space and storage for files, bookcases, office supplies, and equipment shall be in compliance with Departmental guidelines as specified in DR 1620-2, USDA Space Management Policy. Employees shall be provided adequate storage for files.
- 11.3 At their election, employees will be given ergonomic chairs.
- 11.4 Employees having special needs (e.g., wheelchair or other medical needs, etc.) shall be provided with a work environment that accommodates their needs to the extent such accommodation does not pose an undue burden on the agency.
- 11.5 Carpeting shall meet the prescribed accessibility standards, where required, as specified in the Uniform Federal Accessibility Standards (UFAS). Carpeting shall be maintained to ensure employees' safety (e.g. to avoid potential trip hazards).
- 11.6 Subject to the needs of the organizational work unit, adequate space will be provided for mail staging, faxing, copying, binding, etc.
- 11.7 The parties agree that it is desirable to house employees in facilities that provide access to a health unit and fitness center, except for those employees participating in telecommuting or other work-at-home arrangements. It is recognized, however, that such decisions may at times be outside the Agency's control and are also subject to the availability of funds.
- 11.8 Bargaining unit employees will be provided with a "break" area.
- 11.9 Nothing in this section shall interfere with the Agency's right to determine the location where its work will be performed.
- 11.10 The Union will be notified and given an opportunity to bargain working condition changes involving new configuration of space that involves one or more organizational units, e.g. a branch.

## Article 12

### Professional Development and Training

#### 12.1 POLICY

Professional development and training is defined as any Rural Development mission-related formal or on-the-job training which enables employees to develop to their maximum potential and contributes to increased Agency efficiency and effectiveness. Rural Development is committed to providing professional development and training opportunities to all employees through a positive, proactive approach. The Agency also encourages the continuous upgrading and maintenance of skills in specialized occupational areas and is committed to providing training and developmental assignments through various sources, including other Agencies, to accomplish these objectives. The employee and supervisor will jointly develop an Individual Development Plan (IDP) to assure that the training needs of the employee in obtaining career goals are being met and that Agency training needs are planned and budgeted. The employee and supervisor will mutually commit to meet the objectives of the IDP. Where costs are involved, training will be paid for by Rural Development, subject to the availability of funds. However, due to constraints in the training budget, employees may need to share in the cost of some training activities. This article does not apply to performance improvement plans in accordance with Article 16.3 of this contract.

#### B. Authorities

1. The Government Employee Training Act (5 U.S.C. 4101-4118) and regulations issued pursuant thereto;
  2. The Equal Employment Opportunity Act (5 U.S.C. 2000-e), as amended;
  3. The Affirmative Employment Plan;
  4. Other applicable statutory or regulatory provisions.
- C.. The Parties will encourage employees to take advantage of educational opportunities and training that enhance work efficiency and provide needed skills for advancement based on Agency priorities and availability of training funds.
- D. The Agency agrees that the Labor Relations Office will notify employees directly of selection or non-selection for Agency-controlled training or educational opportunities for which they applied or were nominated within

fifteen (15) work days of the closing date, or two (2) work days prior to the beginning of the training, whichever is sooner.

## 12.2 DEFINITIONS

- A. Training: means the process of providing for and making available to an employee, and placing or enrolling the employee in, a planned, prepared, and coordinated program, course, curriculum, subject, system, or routine of instruction or education, in scientific, professional, technical, mechanical, trade, clerical, fiscal, administrative, or other fields which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals.
- B. Career Development Training: An educational activity undertaken to increase the knowledge, competency, ability, and skill of employees in the performance of those duties which support the Agency mission and performance goals. These include potential duties in a different job or occupation at the same or higher level than the one currently held.

## 12.3 TRAINING

- A. It shall be a major goal to improve in general the job performance of all employees through the establishment of fair and equitable opportunities for training within clearly defined career fields.
- B. The following approaches to employee training will be utilized, as appropriate:
  - 1. in-house, external, or on-the-job training to improve employee capabilities to perform their current duties;
  - 2. training, detail and rotational assignments in complementary positions;
  - 3. enrollment of employees in part-time job-related or career related development educational programs at local educational institutions and/or in correspondence courses; and
  - 4. competitive long-term training in Federal and non-Federal educational institutions, i.e., training which, because of its duration and/or scope, provides development beyond the needs of an employee's position.
  - 5. The Agency agrees to maintain information and furnish guidance about suitable and available education, training, and career development resources.

6. If the training or developmental assignment is denied, the approving official will respond in writing stating the reasons for denial.
- C. Normally at the time of the interim review, as well as immediately subsequent to the performance evaluation, or at any other time necessary, supervisors shall discuss with employees training needs and opportunities that would help the employee to improve performance in his/her current position. Unscheduled discussions concerning an employee's training needs and performance improvement opportunities may be initiated by the employee or supervisor.
- D. Employees shall receive training and/or orientation appropriate for any job in which they are placed or to which they are reassigned under Article 9, Reassignments.
- E. When training is requested primarily to prepare employees for advancement, or if the requested training would fulfill specific qualification requirements for a position with known promotion potential, selection for such training will be made under competitive promotion procedures, including those contained in Article 8, Merit Promotion.
- F. Employees in career-ladder positions who have not yet reached the highest grade level in the career ladder usually shall not be required to compete for training which the Agency deems it necessary for their accession to the next grade level in the career ladder.
- G. When membership in a professional organization is not a trainer-determined or vendor-determined prerequisite for attendance at a training session, the Agency shall not consider membership as the sole factor in determining which employees will receive the training.

#### 12.4 NEW PROCESSES AND TRAINING

When it is determined that new skills are necessary to perform in a current bargaining unit position as a result of the introduction of new equipment or new processes which are more than *de minimis* and which are changes in the working conditions of employees, the Agency will notify the Union in accordance with Article 3.2 C 1-4.

#### 12.5 CAREER DEVELOPMENT COUNSELING

- A. Employees shall be given reasonable opportunity and reasonable time necessary to discuss their career development with their supervisors.

- B. Both Parties recognize that an employee may become dissatisfied with his/her job because of limited advancement possibilities or changing career goals. In such cases the Agency agrees that:
  - 1. An employee may request a meeting with the appropriate Agency representative for the purpose of career counseling;
  - 2. An employee's request for a lateral reassignment to a different job or a change to a lower-grade job shall not be considered a factor in any adverse action under Article 16, Disciplinary and Adverse Actions, concerning that employee.

#### 12.6 INDIVIDUAL DEVELOPMENT PLAN (IDP)

- A. Concurrent with the issuance of the performance plan within 30 days of the start of employment, new employees will be informed of the necessity to develop and IDP and discuss such IDP with their supervisor.
- B. Supervisors and their employees shall discuss and identify skill sets for short and medium term training needs. The results will provide the framework for the IDP. Training needs for both the duties the employee currently performs and career development will be considered with priority given to the former. The employee shall have the opportunity to explain why particular job related and career development training was requested and the most appropriate timing for the proposed training.
- C. An IDP is a living document which can be updated as necessary.

#### 12.7 TUITION ASSISTANCE

An eligible employee (career or career-conditional employee who has completed one (1) year of current, continuous federal service) who initiates a request for tuition assistance and obtains prior approval from the Agency will have tuition costs (tuition is defined as the cost of the course per credit hour) paid at educational institutions during their work and non-work hours, provided that:

- A. The course will enable the employee to increase his/her ability in presently assigned duties or duties the employee will be performing (i.e., the course is job- or Agency mission-related). If the latter, the course will be reviewed on a case by case basis by the Agency;
- B. For courses of eighty (80) or more classroom hours, the employee must agree in writing to stay with the Agency three (3) times the actual length of the course. Failure to complete this required service will result in the employee being required to repay costs incurred by the Agency. This requirement may be waived at the Agency's discretion;

- C. An employee who fails to complete a course or receives a grade of less than C, shall reimburse the Agency unless a waiver is granted by the Agency;
- D. The employee agrees to complete an HRD/TRD provided course evaluation if requested;
- E. If a college course, the employee is required to provide a copy of the official final grade report;

#### 12.8 VARIANCE IN WORK HOURS

Requests for a variance in regular working hours and/or appropriate leave for training purposes may be granted unless it would interfere with the performance of the critical day-to-day mission of the work unit or does not conform to existing laws, regulations or this Agreement.

#### 12.9 CROSS-TRAINING AND DEVELOPMENTAL ASSIGNMENTS

- A. In furtherance of effective mission accomplishment and to develop and maintain a highly skilled and motivated work force, the Agency encourages the use of in-service, out-service, on-the-job training, cross-training, and developmental or rotational assignments.
- B. The employee will request such training in writing, and the training will be as agreed upon by the employee and supervisor on the IDP. The length of this training will be agreed to by the employee and the supervisor. The length and timing of the training will be approved provided it does not interfere with the work of the unit.
- C. If the training or developmental assignment is denied, the approving official will respond in writing stating the reasons for denial.

#### 12.10 CAREER ENHANCEMENT

- A. Career enhancement is a system which focuses on Federal personnel policies and practices in the development and implementation of specific career opportunities for lower-level employees who are in positions or occupational series that do not enable them to realize their full potential.

Federal agencies are required to establish training and education programs designed to provide a maximum opportunity for employees to advance and perform at their highest potential. To implement this, the Employer will conduct a "Career Enhancement Program" (CEP) for the purpose of developing and implementing specific career opportunities for employees (GS-1 through GS-9) who are in a one-grade interval job series.

B. The goals of the CEP are to:

1. Provide a vehicle through which employees with demonstrated potential may be competitively selected and thereafter trained for new career fields;
2. Provide the opportunity for further career enhancement in the chosen field, depending on work performance and capabilities;
3. Provide a planned selection, training, and development process for employees who have demonstrated the talent and potential to move to a more technically advanced job and to qualify them in the career area;
4. Obtain a more effective use of the employee's capabilities;
5. Provide employees with opportunities to enhance their qualifications in their career fields;
6. Motivate employees and create a climate conducive to an increase in productivity;
7. Prepare the trainee to function effectively in a target position and to utilize the skills of the employee while he or she is functioning in the trainee position; and
8. Provide a broader base for the selection of personnel for technical, administrative, program, and professional positions and thus, diversify the employee population in those careers.

C. The following definitions apply:

1. Trainee position is the position in a technical, professional, program, or administrative career area to which a CEP participant will be assigned when selected for the program. In the position, the trainee will receive on-the-job and/or formal training necessary to achieve the skills, knowledge, and technical ability to successfully perform in the target position.
2. Target position is the position in a technical, professional, program, or administrative career area that a participant selected for a trainee position will normally be promoted into after the successful completion of training and demonstrated performance at intermediate grade levels.

- D. At least 30 percent of the Rural Development bargaining unit vacancies advertised at the grade GS-9 or below level shall be initially announced as career enhancement positions. The Employer shall seek to achieve this rate on a regular ongoing basis as vacancies or new positions arise. All qualified applicants within the Agency must be given careful consideration for such positions. Nothing in this Article shall be construed to limit the Employer's right to fill positions from any appropriate source, including sources outside the bargaining unit once the position has been announced internally. Employees shall have served for at least one year as permanent, career, or career-conditional employees in Rural Development before becoming eligible for the CEP.
  
- E. Following selection for a career enhancement position, the Employer will ensure that an employee assigned to a career enhancement position will be provided such assistance as would normally be necessary to assure success in the position. Upon satisfactory completion of training and successful performance on the job, the employee will normally progress at a regular rate through job levels toward and into the target position. Ordinarily, the target position will be one or two grades higher than the trainee's present grade. This is dependent upon whether the target position is normally classified at one- or two-grade intervals. This does not preclude the Employer from establishing a target position more than two grades higher than the trainee position. Additional development of program participants beyond the target position will follow normal promotion procedures. As soon as possible after being selected, the trainee will be reassigned to the appropriate office and begin in the trainee portion of the program.
  
- F. Once an employee has been accepted into the program, the Employer will make every effort to ensure that funding is continuously made available for the trainee.

## Article 13

### Health, Wellness and Safety

#### 13.1. POLICY STATEMENT

- A. The Employer and the Union agree that the good health, wellness, safety and comfort of all employees are essential to the performance of the Employer's mission, and are a matter of highest priority. Accordingly, the Employer and the Union agree to work cooperatively to ensure that a healthy and safe working environment is maintained.
  
- B. The Employer will, to the extent of its authority and consistent with the applicable requirements of Title 29 Part 1960 of the Code of Federal Regulations, as well as other applicable health and safety codes, provide and maintain safe and healthy working conditions for all employees. The Employer will also provide places of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm. The Union will cooperate to that end and will encourage all employees to work in a safe manner.

#### 13.2 EMPLOYER RESPONSIBILITIES

- A. The Employer will work with all persons, entities, or organizations which own and/or control work space to which bargaining unit employees are assigned to ensure that healthy and safe working conditions are maintained and to ensure compliance with applicable laws, rules, and regulations. The Employer will also take appropriate action to ensure that any reported hazardous or unsafe working conditions are examined and, if necessary, corrected in a timely manner.
  
- B. The Employer agrees to the following:
  - 1. To provide information concerning Federal Employee Health Benefits and Life Insurance Programs, pre-retirement planning, retirement benefits information, and occupational health services;
  
  - 2. To make reasonable efforts to provide clean restrooms in which normal supplies shall be available at all times and in which all equipment is in working order;
  
  - 3. To provide and maintain adequate fire and disaster plans and equipment on each floor, including smoke detection devices and exit signs that are visible during power failure;

4. To work with the building manager, the Department, General Services Administration (GSA), and private lessors, to have safe electrical equipment and adequate ventilation in all work areas;
5. To provide an environment free of roaches and rodents through a regular extermination program and by other measures as may be necessary for the purpose of pest control. Spraying for extermination of pests will be accomplished during non-duty hours or employees will be given the opportunity to work an appropriate distance from his/her work site during such extermination. All employees will be given the opportunity to work away from the site of spraying for a period of 12 hours following such spraying. In addition, employees will be given the opportunity to work away from the site of painting or other activity adversely affecting air quality for a period of 12 hours following such activity;
6. To follow the Americans with Disabilities Act and GSA regulations in providing facilities appropriate and adequate to accommodate the needs of qualified persons with disabilities; and
7. To inform the Union of any decision to introduce new office equipment into the work place so that the Union may, thereafter, request bargaining on impact and implementation of the new equipment on working conditions.

### 13.3 UNION RESPONSIBILITIES

- A. The Union agrees that it will take appropriate action to encourage all bargaining unit employees to work safely with due consideration for the safety, health, wellness, and comfort of all fellow employees. To avoid preventable unhealthy or unsafe working conditions, the Union will encourage respect and care by bargaining unit employees for the Employer's facilities and equipment and their own work environment.
- B. Each bargaining unit employee has a duty and is encouraged to report any unsafe or unhealthy working condition(s) to his/her immediate supervisor as soon as any such condition(s) come to his/her attention.

### 13.4 EMPLOYEE REPORTS OF UNSAFE OR UNHEALTHY WORKING CONDITIONS

- A. Any employee who believes that an unsafe or unhealthy condition exists shall have the right and is encouraged to report the unsafe or unhealthy working condition to his/her immediate supervisor. The Employer will ensure a response to an employee report of hazardous conditions within 24

hours for imminent dangers, three working days for potentially serious conditions, and 20 working days for other than serious health, wellness and safety conditions. No employee will be required to continue working in a situation posing the threat of imminent danger.

- B. The Employer will investigate the reported condition as soon as is practicable, and may refer the situation to (a) the appropriate Rural Development or USDA office, (b) GSA, (c) the Occupational Safety and Health Administration (OSHA) of the Department of Labor, (d) the Public Health Service (PHS) Health Unit, or (e) other appropriate official for further investigation. The Union will be given an opportunity to accompany any inspector who responds to such a complaint during the inspector's physical inspection of the work place. The union representative will be granted official time for this purpose.
- C. If an employee is assigned duties which he/she reasonably believes could possibly endanger his/her health or well-being, the employee will immediately notify his/her immediate or second-line supervisor of the situation. If the supervisor cannot solve the problem and agrees with the employee, the supervisor will, under normal circumstances, delay the assignment and refer the matter through the proper channels for appropriate action, unless the delay would unduly interfere with the Employer's operation. Where the supervisor does not agree with the employee's concerns, the employee has the right to consult the Union and the right to file a report according to applicable Agency or Departmental regulations.
- D. The employee has the right to decline to perform his/her assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures.
- E. If the Employer determines that a hazardous condition exists which affects employees, the Employer shall advise the Union and the involved employees as soon as possible. Upon request, the Employer will meet with the Union and to the extent permitted by law, rule, regulation, and/or Executive Order, negotiate and/or consult with the Union regarding the matter.
- F. The Employer will take measures to ensure prompt abatement of unsafe or unhealthy working conditions found to exist by the Employer in conjunction with the Department, GSA, OSHA, PHS, and/or other appropriate officials. When this cannot be accomplished, the Employer agrees to develop an abatement plan setting forth a timetable for abatement and a summary of interim steps to protect employees. When

the hazard cannot be abated without the assistance of GSA or another Federal lessor agency, the Employer agrees to work with the lessor agency to seek abatement.

- G. The Employer will inform the Union of toxic chemicals that will adversely affect the health or safety of employees, such as paint or pesticides, as soon as it is aware that such chemicals will be used. This notice will be given no later than one full workday before the chemicals are to be used. This notice will also include any warning statements given to the Employer by the organization using the chemicals, or that it otherwise has in its possession.
- H. No employee shall be subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthy working condition, or other authorized participation in occupational safety and health program activities.

### 13.5 OCCUPATIONAL INJURY OR ILLNESS

When an employee sustains a job-related injury or occupational illness, the employee will report the injury or illness to his/her supervisor as soon as practicable. The supervisor will refer the employee to the Human Resources (HR) Staff, the Health Unit, or other medical service as appropriate and as permitted by applicable law, rule, or regulation.

The supervisor will also advise the employee to contact the HR Staff to obtain information on benefits under the Federal Employees' Compensation Act (5 U.S.C. 8101-8193). The Agency and employee shall cooperate in promptly processing all paperwork in connection with compensation claims.

### 13.6 EMPLOYEE ASSISTANCE PROGRAM

- A. The Employer presently maintains an Employee Assistance Program (EAP), which provides counseling, information and other sources for employees troubled by alcoholism, substance abuse, emotional illness, marital/family problems or financial problems. The Employer will make employees and supervisors aware of the program at least annually.
- B. Employees whose performance is negatively affected by alcoholism or other forms of substance abuse will be given a reasonable opportunity to obtain professional assistance in overcoming the problem and to participate in programs, such as Alcoholics Anonymous. As required by the program, the Employer will make available to employees, on a completely confidential basis, the services of a qualified counselor specializing in alcohol and substance abuse problems.

- C. The EAP offers referral services to outside, local alcohol treatment programs, family counseling and substance abuse treatment programs, many of which are available free, or at a nominal cost.
- D. Employees undergoing a prescribed program of treatment for problems recognized under this Article will be granted the appropriate leave to the extent necessary to complete such program on the same basis as any other illness when absence from work is necessary.
- E. Employees with substance abuse or alcohol problems who voluntarily request assistance and participate in a prescribed program of treatment will not be disciplined for substance abuse or alcohol problems, which are construed to be health-related problems. When the Employer determines that a conduct or performance problem exists which may be substance abuse or alcohol related and refers the employee to EAP, the Employer may take appropriate disciplinary or adverse action, only consistent with fairness and the obligation to provide reasonable accommodation. The employee's involvement in the EAP must be considered by the responsible supervisory official in determining any appropriate disciplinary and adverse action.
- F. The Employer agrees for the life of this Agreement to continue participating in the EAP. Employees' participation in the EAP will be treated with the utmost confidentiality.

### 13.7 OCCUPANT EMERGENCY PLAN

- A. The Employer shall maintain an Occupant Emergency Plan for all buildings in which bargaining unit employees work. The plan designates floor monitors, area monitors, stairwell monitors, elevator monitors, monitors to assist persons with disabilities, and restroom monitors for each floor, and describes the duties and responsibilities of these persons during an emergency. A copy will be given to the Union upon request. The Employer will establish such programs, if they are not already in existence, in all buildings in which bargaining unit employees work within 120 days of the effective date of this Agreement. Copies of these plans will also be provided to the Union upon request.
- B. The Agency may provide for training to interested employees for cardiopulmonary resuscitation (CPR) during duty or non duty hours.

### 13.8 JOINT HEALTH, WELLNESS, AND SAFETY COMMITTEE

A joint Health, Wellness and Safety Committee, comprised of Employer and Union personnel, will be established to study and make recommendations to the Employer concerning issues related to the Parties' mutual efforts to ensure the

good health, wellness, and safety of all employees. This Committee will consist of four members: the Director of the Support Services Division or his/her designee, the Agency's Safety and Health Coordinator, and two members from the Union. This Committee will conduct an annual walk-through inspection of the work place. The time for this inspection will be set by the Committee members. The inspection will consist of checks for health and safety conditions of the work place. Upon completion of this inspection, a report of the findings will be submitted to the Under Secretary and Union officials.

### 13.9 WELLNESS

- A. The Agency and the Union agree that accessibility to an affordable and adequate fitness/health facility is a concern for Rural Development employees and is a component in the existence of a friendly workplace.
- B. The Agency agrees to continue to support Rural Development employees' ready access and utilization of the fitness/health facility located at the South Building or any work site where the majority of Rural Development employees are located. The Agency also agrees to the following:
  - 1. Employees will be given up to two and one half hours of exercise time per week
  - 2. The Agency will reimburse the employees half of the annual fitness/health facility fee at least 30 days prior to the end of each Fiscal Year, subject to the availability of funds.
- C. The Union reserves the right to bargain to the fullest extent permitted by law and executive order, over fitness and health facilities if bargaining unit members' access to fitness and health facilities changes.

## Article 14

### Performance Management System

#### 14.1 POLICY

The performance management system covering bargaining unit employees shall be governed solely by the provisions of law and Government-wide regulations and the terms of this Agreement. Previously issued Agency instructions shall not apply.

The purpose of performance management is to improve individual and organizational performance, program effectiveness and accountability by focusing on results, service quality and customer satisfaction, and by aligning performance standards and elements with organizational goals and strategic plans.

Individual and organizational goals will be communicated to employees; individual responsibility for accomplishing team and organizational goals will be identified; employees will be provided feedback regarding performance; performance will be evaluated; and performance appraisal results will be used as a basis for appropriate personnel actions.

Communication between rating officials and employees is essential throughout the process. Rating officials and employees should work together to assure there is a common understanding of performance expectations.

#### 14.2 DEFINITIONS

Appraisal. The process under which performance is reviewed and evaluated.

Appraisal Period. The established period of time, normally 12 months, for which performance will be reviewed and a rating of record will be prepared.

Critical Element. A work assignment or responsibility of such importance that unacceptable performance of the element would result in a determination that an employee's overall performance is unacceptable. Such elements must be used to measure performance only at the individual level

Decision Table. A matrix used for deriving a summary rating from appraisal of individual performance elements.

Element Rating. The level of performance assigned to an employee's performance for an individual performance element as measured by a comparison of accomplishments to the performance standards established for that element.

Interim Appraisal. A written appraisal of an employee's performance conducted during the appraisal period. Interim appraisals are also referred to as advisory ratings.

Non-Critical Element. A dimension or aspect of individual, team, or organizational performance, exclusive of a critical element, that is used in assigning a summary level. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.

Performance Improvement Plan. A written plan that provides an employee an opportunity to demonstrate an acceptable level of performance in one or more critical elements previously rated as unacceptable.

Performance Plan. All of the written, or otherwise recorded, performance elements that set forth expected performance. A plan must include all elements, critical and non-critical elements if used, and their performance standards.

Performance Standard. The management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, cost-efficiency, timeliness, and manner of performance.

Progress Review. Communicating with the employee about performance compared to the performance standards for critical and non-critical elements.

Rating of Record. The performance rating prepared at the end of an appraisal period for performance of assigned duties over the applicable period and the assignment of a summary rating.

#### 14.3 PERFORMANCE RATING PERIOD

The performance rating year is October 1 through September 30. All employees will be issued a rating of record annually. Normally, the rating of record is issued for the period ending September 30. However, employees not serving under established performance standards for the minimum appraisal period of 90 calendar days shall have the rating period extended to meet this minimum. Appraisals must cover a minimum period of 90 days but no more than 15 months.

#### 14.4 PERFORMANCE PLANS

- A. Standards and elements will be developed by Management and will be communicated to each employee, and as they are applied to employees, will be consistent with law and Government-wide rules and regulations.

- B. Performance plans are developed on Forms AD-435A and B, Performance Plan, Progress Review and Appraisal Worksheet, and will include the designation of critical and non-critical elements. Normally, they will be developed within 30 days of an employee's appointment, reassignment, promotion, or detail for more than the minimum appraisal period. A new performance plan may also be established when an employee's duties change substantially during the appraisal period. Performance plans will document progress reviews and specify the elements and standards on which employees will be rated.
- C. Elements contained in the performance plan shall be based solely on the individual's performance of the employee, and may address the employee's performance as a member of a team. Team performance may only be rated as a non-critical element. Individual performance on a team may be rated as either non-critical or critical. Only those elements included in the performance plan will be used in arriving at the summary performance rating.
- D. Performance plans will include any mandatory performance elements specified for the position and may include generic performance elements and/or other specific, job-related performance elements. Where appropriate, timeframes and appropriate procedures when referenced in elements are derived directly from applicable regulatory guidelines, procedural guides, and/or agency program instructions, etc. When not sufficiently specific and guidelines, timeframes, quantity, quality, cost-effectiveness, or manner of performance must be included with applicable elements.
- E. Performance plans will contain the number of performance elements prescribed in Agency's Performance Management Program/System, including at least one critical and any non-critical elements. Elements and standards must be based on the requirements of the employee's position.
  - 1. Critical elements are work assignments or responsibilities of such importance that "Does Not Meet" performance in the element could result in a determination that the employee's overall performance is "Unacceptable." Critical elements are weighted with a 2.
  - 2. Non-Critical elements should directly relate back to the employee's duties, but not necessarily a major duty. Non-critical elements are weighted with a 1.
- F. The employee and rating official shall sign and date the performance plan indicating it has been discussed and the employee has had an opportunity to obtain an understanding of expectations. If there is a disagreement over the content of the performance plan, the rating official's decision

prevails. An employee's refusal to sign the plan does not negate its implementation. The content of performance plans is not subject to the provisions of the negotiated grievance procedure.

- G. Pursuant to 5 USC Section 4302, performance work plans will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria, related to the position in question.

#### 14.5 EMPLOYEE INVOLVEMENT

- A. Supervisors will encourage employees to be involved in the development of new performance work plans or when there will be substantial revisions to performance work plans. Joint participation may be accomplished by means including, but not limited to, the following:
- Employee(s) and supervisor discuss and develop performance plan together
  - Employee(s) provide supervisor a draft performance plan
  - Employee(s) comment on draft performance plan prepared by supervisor. Employees should be provided up to 5 working days to comment on draft performance plans; or
  - Employee(s) who occupy similar positions prepare performance plan(s).
- B. Meetings held between one or more agency officials and a group of bargaining unit employees to determine the content of performance work plans are formal discussions as defined in the labor-management relations statute. The Union shall be notified of such meetings and given an opportunity to attend,
- C. The above procedures do not preclude individual employees from discussing the content of performance work plans with their supervisors, without the involvement of the Union, in order to ask questions and obtain clarification of performance expectations.

#### 14.6 PROGRESS REVIEWS

- A. The rating official shall meet periodically with the employee throughout the appraisal period to provide feedback relating to the employee's performance. At a minimum, feedback must be documented and provided through at least one progress review, occurring at approximately the mid-

point of the appraisal period, and a discussion of the summary rating at the end of the rating cycle. Other performance discussions may occur at the discretion of the rating official or upon an employee's request.

- B. A progress review is a discussion of an employee's strengths and/or weaknesses in relation to the performance work plan. It does not involve the issuance of a summary rating. The rating official may make written comments concerning the employee's performance on the Forms AD-435A and Bs at the time of the progress review in order to provide a more formal identification of the employee's performance in relation to the performance plan. Because no formal rating is given at the progress review, its content is not subject to the negotiated grievance procedure. An employee or the Union may, however, initiate a grievance over an employee's failure to receive a progress review.

#### 14.7 RATINGS OF RECORD

- A. The Agency has decided to employ a five-tiered performance rating system. Ratings of record will be assigned individual element ratings (on Forms AD-435A and Bs) as well as an overall summary rating (on form AD-435, Performance Appraisal).
- B. Element Ratings  

Each critical or non-critical element is rated at one of three levels; Exceeds, Fully Successful, or Does Not Meet. Any element rated at the Exceeds or Does Not Meet level requires documentation. The documentation must show clearly and specifically how the employee's performance exceeded or failed to meet the fully successful standard of the element. If performance in any element is at the "Fully Successful" level, no documentation is required, but may be included.
- C. Summary Rating  

Summary ratings are derived by using the Decision Table on Form AD-435, Performance Appraisal. An employee's summary rating will be one of five summary rating levels: Outstanding, Superior, Fully Successful, Marginal, or Unacceptable.
- D. A rating of record may be grieved through the negotiated grievance procedure. An employee's signature on the rating form indicates receipt of the rating and not necessarily agreement with the rating. The appraisal is official whether or not it is signed by the employee.
- E. It is recognized that the determination of the number of rating levels used in a performance management systems is a Management right. Should the

Agency, during the life of this Agreement, exercise its right to change the number of summary rating levels used in the performance management system, the Union shall have the opportunity to negotiate the impact of such change on the working conditions of bargaining unit employees.

14.8 ADDITIONAL PERFORMANCE FEEDBACK

Employees will receive an interim rating after certain position changes or supervisory changes, provided they have performed under a performance plan for a minimum appraisal period of 90 days. The losing supervisor will forward the interim rating to the employee's new supervisor of record for appropriate consideration in deriving the next rating of record. Interim ratings will be provided when an employee serves under a detail or temporary promotion for 90 calendar days or more, or when an employee leaves a position he/she occupied for at least 90 days.

14.9 TIMING OF REVIEW AND APPRAISAL

The mid-year performance review and the end-of-year appraisal (rating of record) normally will be completed within 30 days of the established date. However, the mid-year review or final appraisal may be delayed for good cause, e.g. illness, travel, the need to extend the rating period under Section 14.3 of this provision.

## Article 15

### Employee Awards and Recognition

The employee recognition program covering bargaining unit employees shall be governed solely by law and Government-wide regulations and the terms of this Agreement. Previously issued Agency instructions shall not apply. Recognitions not listed in this Agreement that are approved by the Department or instituted by individual Agency organizational components during the life of this Agreement may be awarded to bargaining unit employees without further negotiation of this provision.

#### 15.1 PURPOSE

The employee recognition program is designed to recognize and reward individuals and groups for excellence in service. The program acknowledges contributions that lead to achievement of organizational, team, and individual results. Outstanding accomplishments should be recognized in a timely manner and approved recognition of employees should be widely publicized. Recognition may be given for a specific outstanding accomplishment such as a superior contribution on a short-term assignment or project or a significant cost savings.

#### 15.2 RECOGNITIONS AVAILABLE

Bargaining unit employees are eligible for all of the following recognitions:

- A. Monetary Extra Effort Awards provide recognition for a particular accomplishment. The value of the benefit and the application of the contribution to the Agency's or Department's mission or goals determine dollar amounts. Cash awards categories include Individual Cash Award, Individual Cash Award - Spot, Group Cash Award, and Group Cash Award – Spot.
1. Individual or Group Cash Award recognizes individuals or groups who make significant one-time contributions. The amount of the award can range from \$50 to \$10,000, depending on the application and value of benefit of the contribution. Awards may not exceed 10% of an employee's annual salary.
  2. Individual or Group Cash Award – Spot is a monetary award designed to grant "immediate" recognition to individuals or groups of employees for their day-to-day extra efforts and contributions. Examples include one-time noteworthy achievements which may not meet the criteria for other types of awards; volunteering for an extra or emergency assignment while maintaining own workload;

using personal initiative and creativity to solve an unusual problem; or producing a work product of exceptionally high quality under tight deadlines.

Spot awards range from \$50 to \$500 (in any dollar amount within that range) with no award exceeding \$500. Taxes will be added to the award amount and will be paid by the Agency. An employee may not receive spot awards totaling more than \$500 in any 12-month period.

B. Nonmonetary Extra Effort Awards provide recognition for a particular accomplishment. These may include Certificates – Merit and Appreciation, Keepsake Items, Letters of Commendation, Thank You Cards and Letters, Individual Time-Off Award, Group Time-Off Award, and honorary awards.

1. Certificates – Merit and Appreciation, Letters of Commendation, and Thank You Cards and Letters may be given to employees for noteworthy contributions.
2. Keepsake items emphasize symbolic recognition of significant contributions. Keepsakes can include such items as paperweights, key chains, clocks, plaques, jackets, T-shirts, coffee mugs, pens and pencil sets, etc.

No more than \$250 may be spent on any one item. The cost of customizing the item must be included in the total cost.

3. Time-Off Award is another nonmonetary recognition category for which all employees are eligible. A full-time employee may be granted up to 80 hours of time-off during a leave year. A part-time employee or an employee with an uncommon tour of duty may be granted up to the average number of hours worked in a pay period or the employee's scheduled tour of duty. Awards are in full hour increments.

The amount of time-off that can be granted for a single contribution is one-half the maximum that may be granted during the leave year.

A time-off award must be scheduled and used within 26 pay periods from the effective date of processing. After the 26th pay period, any unused time-off will be automatically forfeited and may not be restored or otherwise substituted. A time-off award may only be taken after it has been entered in the payroll/personnel system and is available in the National Finance Center database.

Before using any time off, the supervisor must approve the requested dates.

Any unused time-off will be forfeited once an employee separates or transfers to another USDA or other Federal agency. If forfeited, no other award or compensation may be substituted. Under no circumstances does time-off convert to cash nor transfer to another USDA or other Federal agency.

4. Length of Service Award is given to recognize an employee's Federal service. Employees may receive recognition at 5 years of service and each 5-year increment thereafter. Recognition should be timely, as close to the anniversary date as possible. Keepsakes may also accompany Length of Service certificates. Keepsakes should be appropriate, of nominal value (not exceeding \$100), and be commensurate with the length of service.
5. Agency Honorary Awards may be established by each Agency along with the criteria for attaining such awards.

C. Performance Bonuses are recognition given for performing, over the course of the rating cycle, such as consistently high productivity, high quality work or exceptionally prompt and courteous service to customers, clients and coworkers, well above that expected at the "results achieved" level. This category of recognition includes the Individual Cash Award – Performance, and Quality Step Increases (QSIs). Both types of awards must be supported by a properly documented performance appraisal and documentation that specifically describes:

- the actual results(s) achieved and their linkage to established targets;
  - how the employee substantially exceeded the performance standards and expected work results communicated to the employee by the supervisor; and
  - how the employee's performance has been sustained at such a high level throughout the performance appraisal period.
1. The Individual Cash Award – Performance is a monetary recognition given to an employee for having performed well above their normal day-to-day duties. The award amount may not exceed 10% of an employee's annual salary. This type of award will generally be granted within 90 days of the end of the performance cycle, subject to the availability of funds. Eligible employees may receive only one lump-sum performance bonus during a 52-week period.

2. A Quality Step Increase (QSI) is an additional within-grade increase that may be granted to employees, except wage grade employees, for having performed well above their normal day-to-day duties. Eligible employees may receive only one (1) Quality Step Increase within a 52-week period.

Quality Step Increases are not appropriate when it is known an employee is in step 10 of the pay range or when it is known that the employee is about to receive a promotion or vacate a position within 60 days. A QSI may be appropriate if the employee is moving to a similar position at the same grade level and performance is expected to continue at the same level of effectiveness. Since QSIs are in addition to within-grade increases, an employee who receives a quality increase does not start a new waiting period to meet the time requirements for a regular within-grade increase. The time the employee served in the previous pay step (before the quality increase was effective) will count toward the total waiting period for the next within-grade increase.

When the QSI places the employee into a step at which the waiting period becomes longer (e.g., at the step 4 the waiting period becomes 104 weeks, and at the step 7 the waiting period becomes 156 weeks), the waiting period for the next within-grade increase is extended 52 weeks; however, the employee receives the benefit of the quality increase during this period.

- D. Additional awards may be established by individual organizations. New awards may also become available as authorized by law, Government-wide regulation, or Department policy.

### 15.3 NOMINATION PROCEDURES

- A. Any employee may nominate another employee or group of employees for any recognition, except performance bonuses, quality step increases, and time-off awards. Nominations for performance bonuses, QSIs, and time-off may be made only by supervisors or managers in the chain of command of the employee(s) being nominated.

Nominations for recognition will be made by completing Form AD-287-2, Recommendation and Approval of Awards. An employee nominating another employee or group of employees for recognition shall submit the completed form to the immediate supervisor of the employee(s) being nominated. The supervisor will process the nomination in accordance with delegations of approval authority established by the Agency.

- B. An employee nominating another employee or group of employees for recognition shall specify the time of performance covered by the

nomination and provide an explanation of the accomplishment. The employee should explain how the nominee(s) exceeded expectations in one or more of the following areas:

- Improving quality
- Timely completion of a project
- Increasing productivity
- Overcoming adverse obstacles or working under unusual circumstances
- Using unusual creativity
- Saving the Agency time and/or money
- Increasing program effectiveness

The nomination should specify to the extent possible the results achieved through the efforts of the nominated employee(s), e.g. a project accepted, technological advancement realized.

- C. An employee nominating another employee or group of employees for cash recognition must address the items covered in 15.3B and must include the amount of cash the employee or group should receive using either the Measurable Benefits Scale or the Nonmeasurable Benefits Scale which follows this paragraph.

**Measurable Benefits Scale**

<b>Savings to Government</b>	<b>Award Amount</b>
Up to \$10,000	10 percent of the benefits
\$10,001 – \$100,000	\$1,000 for the first \$10,000 in benefits, plus 3 percent of benefits over \$10,000
\$100,001 or more	\$3,700 for the first \$100,000 in benefits plus .005 of benefits over \$100,000. Award amount should not exceed recipient's annual salary

### Nonmeasurable Benefits Scale

Contribution Level	Definition	Amounts
<b>Moderate</b>	Moderate change or modification of operating procedures meeting minimum standard for cash award, simple modification of methods, or limited service to the public, which affect the functions, mission, or employees of a specific work unit (e.g., easing a backlog or completing a project of short duration).	Certificate, or < \$500, or 1 to 24 hours of time off.
<b>Substantial</b>	Substantial change or modification of an operating procedure. An important improvement to value of a product, activity, program, or service to the public, which affect an entire state, or several divisions, offices, or counties.	\$501 - \$2,500, or 25 to 40 hours of time off
<b>High</b>	Major improvement, usually affecting major problems; major changes in methods, or procedures, which affect numerous states, regions, or divisions.	\$2,501 - \$5,500
<b>Exceptional</b>	Initiation of a new principle or major program. Superior improvement to the quality of a critical activity, program, or service to the public, which affect more than one agency, is Department-wide, or is in the public interest throughout the United States.	\$5,501 - \$10,000

- D. Supervisors nominating employees for recognition, including performance bonuses, QSIs, and time-off awards shall also follow the procedures described in 15.3A through C of this Article, and if required by delegations of authority established by the Agency, shall obtain higher level approval of nominations.
- E. Employees working as a team may be recognized when team contributions and results exceed expectations. Team recognition may be approved only when a strong interdependence exists among team members and team outcomes and clear team goals were established in advance of the team performance and evaluation. Team recognition will not necessarily be distributed to team members equally. Instead, recognition may be based on individual performance within the team.
- F. Nothing in this provision guarantees that award nominations will be approved. Final decisions on the availability of funds as well as the merits of award nominations will be made by the Agency and are not subject to the grievance procedure except as provided in Article 18.4E of this Agreement.

15.4 PEER TO PEER INCENTIVE AWARDS COMMITTEE

- A. Each Agency Administrator is encouraged to develop and implement a peer to peer incentive awards committee.
- B. The Parties agree that an incentive awards system is a necessary and useful mechanism through which employee's accomplishments shall be recognized. Employees and managers are strongly encouraged to take an active part in the system by objectively recognizing and rewarding contributions which increase productivity, empower employees, and promote team building. This section is subject to 15.3 above.

## Article 16

### Actions Based on Unacceptable Performance

#### 16.1 DEFINITIONS AND SCOPE

- A. An action based on unacceptable performance is defined as the reduction in grade or removal of an employee whose performance fails to meet the Agency's minimally acceptable performance standards in one or more critical elements of the employee's position.
- B. This Article applies only to employees who have completed their probationary or trial period. It does not apply to employees serving on a temporary appointment, except as defined in Article 1.
- C. For purposes of this Article, acceptable performance means performance meets an employee's performance requirement(s) or standard(s) at a level of performance above "unacceptable" or "does not meet" in the critical element(s) at issue.
- D. Unacceptable performance means performance that does not meet one or more of the critical element(s) contained within the Performance Work Plan. For example, the employee has not met time constraints, quantities, and/or quality requirements.

#### 16.2 PROCEDURAL REQUIREMENTS

The procedural requirements prescribed by USDA/Rural Development regulations and this Agreement apply in processing unacceptable performance actions. At a minimum, the employee will be given written notice of the proposed action stating the specific reasons of unacceptable performance, the penalty proposed, and the procedure for response. The notice will also state that the employee may review all the evidence relied upon by the supervisor in preparing the notice and that the employee is entitled to Union representation in preparing and presenting their oral and/or written response.

#### 16.3 PERFORMANCE IMPROVEMENT PLAN

- A. As early as possible, the employee's attention will be called to areas of performance needing improvement and steps will be initiated to assist the employee in meeting performance standards.

When informal efforts discussed above do not result in acceptable performance, a Performance Improvement Plan (PIP) will be developed

with the participation of the employee. See Article 14, Performance Appraisal Program.

- B. The PIP will be developed in writing and the employee will be given two days to comment on the PIP prior to its implementation. Final authority for the establishment and the content of the PIP rests with Management.
- C. The PIP will include the following:
  - 1. Identification of the critical element(s) and performance standard(s) for which performance is unacceptable,
  - 2. Specific examples of how the employee's performance is failing to meet the standard,
  - 3. Advice as to what the employee must do to bring performance up to an acceptable level,
  - 4. A statement that the employee has a reasonable period of time but never less than 90 days in which to bring the performance up to an acceptable level, and
  - 5. The supervisor's written assessment bi-weekly stating the employee's progress in meeting the required level of performance.
- D. When employees request changes to lower grades due to their inability to perform the duties of their current positions, the supervisor will make a reasonable effort to place the employees in lower-graded positions which the supervisor believes the employees can successfully perform.

#### 16.4 WRITTEN NOTICE

- A. In all cases of proposed action based on unacceptable performance, the employee will be given written notice of the specific reasons of unacceptable performance on which the proposed action is based 30 days in advance of the action.
- B. The advance written notices proposing either to remove, downgrade, or reassign an employee for unacceptable performance include the following:
  - 1. Specific instances of unacceptable performance by the employee, on which the proposed action is based,
  - 2. The critical element and performance standard,
  - 3. The employee's right to be represented,

4. The employee's right to answer orally and/or in writing, and
  5. The employee's right to review the material relied upon to support the specific reasons.
- C. The Union or employee will not grieve either the substance or the procedural aspects of this notice; however, a final decision may be grieved.

#### 16.5 EMPLOYEE RESPONSE

- A. The employee will be given the opportunity to respond orally and/or in writing prior to a decision. Any request for an oral reply must be submitted within five days; a written reply must be submitted within 15 days.
- B. If the employee elects to make an oral reply, the supervisor will document the oral reply and provide a copy to the employee.

#### 16.6 DECISION LETTER

- A. The deciding official will set forth findings with a response to each reason listed in the letter proposing the action.
- B. The decision letter will also:
  1. Address factual disputes, if any, raised in the employee's reply by stating the reasons why each factual dispute was rejected;
  2. State whether the employee has a right to appeal the final decision to the Merit Systems Protection Board or through the Negotiated Grievance Procedure; and
  3. Indicate the effective date of the action.

#### 16.7 TIME EXTENSIONS

Any of the time limits set forth in this Article may be extended or waived by mutual Agreement of the Parties.

16.8 REMOVAL OF “UNACCEPTABLE” PERFORMANCE INFORMATION IN PERSONNEL FILES

If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed and the employee’s performance continues to be acceptable for one year from the date of the advance notice, any entry or other notation with regard to the “unacceptable” performance for which the action was proposed shall be removed from any Agency record relating to the employee.

# Article 17

## Disciplinary and Adverse Actions

### 17.1 GENERAL

- A. This Article is applicable to bargaining unit employees only.
- B. All disciplinary and adverse actions will be consistent with Agency regulations and existing laws. Early communication between the employee involved and the supervisor to achieve resolution is encouraged. If either Party believes that resolution would be aided if the Union were involved in these early discussions, they are encouraged to contact the applicable Union steward. Every effort will be made to assure that actions/agreements are fair and equitable to both parties involved.

### 17.2 DEFINITIONS

- A. Disciplinary action – Refers to a letter of official reprimand or a suspension for 14 days or less as outlined in Subchapter I, Chapter 75 of Title 5 United States Code (USC).
- B. Adverse action – Refers to a removal, suspension for more than 14 days, reduction in grade, reduction in pay or furlough of 30 days or less as outlined in Subchapter II, Chapter 75, Title 5 USC.

### 17.3 OTHER PROVISIONS

- A. When disciplinary action is appropriate, officials should initiate such action within 45 days after receiving the report or having been advised to take action by Human Resources or Employee Relations. Employee Relations is responsible for reviewing, analyzing, and notifying the appropriate Management official in a timely manner.
- B. An employee may appeal an adverse action under the Negotiated Grievance Procedure or to the Merit Systems Protection Board, but not both. Disciplinary actions are appealable only under the Negotiated Grievance Procedure. However, certain actions are not grievable, including oral counselings and warnings. Proposed actions are also not grievable.
- C. All written documentation that Management provides to the employee will be provided in duplicate. The employee will be responsible for providing such documentation to the employee's representative.

- D. Letters of reprimand will be maintained in the employee's Official Personnel Folder (OPF) for one year.
- E. Management and the Union will cooperate in determining the method of delivering adverse action notices on a case-by-case basis.
- F. In emergencies, notwithstanding any provisions of this Article, Management has the right to take any action necessary to protect the health and safety of the work force.

## Article 18

### Negotiated Grievance Procedure

#### 18.1 PURPOSE

The purpose of this Article is to provide a mutually acceptable method for the prompt resolution of grievances filed by bargaining unit employees, the Union, or the Agency, in an atmosphere of cooperation and respect.

Every effort will be made to resolve grievances at the lowest possible level. Employees are encouraged to resolve concerns between themselves and their supervisors without resorting to the grievance procedure. However, the Agency recognizes an employee's right to file a grievance and such action will not reflect unfavorably upon an employee. The efforts of an employee to informally resolve a problem shall not negate the time limit for filing a formal grievance.

#### 18.2 GENERAL

- A. Grievances which involve more than one employee but having the same issue and arising from the same set of facts or actions may, by agreement of the Agency and Union, be joined and processed as one.
- B. The time limits delineated in this Article may be modified by written agreement of the Agency and Union, or, if the grieving employee is not represented by the Union, between the Agency and the employee.
- C. When a due date specified in this Article falls on a non-work day, the due date shall be the first regularly scheduled work day following that date.

#### 18.3 DEFINITION

- A. A grievance is any complaint filed by a bargaining unit employee or the Union on behalf of one or more unit employees concerning any matter within the Agency's control relating to the employment of the employee(s). A grievance must request some form of personal relief for the employee(s). Failure to request a specific remedy for the employee(s) will not result in denial of the grievance, but the Agency may return the grievance and request a remedy or clarification which may result in the Union requesting a meeting.
- B. A grievance may also be filed by the Union as an institution claiming the Agency violated, misinterpreted, or misapplied law, regulation, or the terms of this Agreement. While not required to request personal relief for any employee, the Union must identify the remedy it seeks in filing the

grievance. Failure to request a specific remedy will not result in denial of the grievance, but the Agency may return the grievance and request a remedy or clarification which may result in the Union requesting a meeting.

- C. A grievance filed by or on behalf of an individual employee(s) may not also be filed by the Union as an institutional grievance if both involve the same issue and factual circumstances.
- D. A grievance may also be filed by the Agency as an institution claiming the Union violated, misinterpreted, or misapplied law, regulation, or the terms of this Agreement. The Agency must identify the remedy it seeks in filing the grievance. Failure to request a specific remedy for the Agency will not result in a denial of the grievance, but the Union may return the grievance and request a remedy or clarification which may result in the Agency requesting a meeting.

#### 18.4 SCOPE

The procedures in this Article shall be the exclusive procedures available for resolution of grievances covered under the terms of this Agreement except as expressly limited by the following:

- A. Employees who believe they have been subjected to a prohibited personnel practice as defined in 5 United States Code (USC) Section 2302 which also falls under the coverage of this grievance procedure have the option of raising the matter under a statutory procedure or this grievance procedure, but not both.
- B. Employees aggrieved by an action taken by the Agency under 5 USC Chapter 43 – actions for unacceptable performance – or 5 USC Chapter 75 – adverse actions – which are appealable to the Merit Systems Protection Board have the option of appealing to the Board or filing a grievance under the negotiated grievance procedure, but not both.
- C. Allegations of unfair labor practices under 5 USC Section 7116(a) or (b) made by an employee, the Union, or the Agency may be processed under the unfair labor practice provisions of the Federal Service Labor-Management Relations Statute (FSLMRS) or this negotiated grievance procedure, but not both.
- D. An election covered by subsections A, B, and C of this section is made when a Party files a written grievance under this Article or a written appeal or complaint under the statutory process.

E. Exclusions

Complaints or dissatisfactions regarding the following matters are excluded from the scope of the negotiated grievance procedure.

1. Non-selection for promotion from a list of best qualified candidates. However, if such action is alleged to have been taken for discriminatory reasons prohibited by statute, the issue of discrimination may be grieved under this procedure
2. A violation relating to prohibited political activities
3. Retirement, life insurance, or health insurance
4. An examination, certification, or appointment
5. The classification of any position that does not result in the reduction in grade or pay of an employee
6. A suspension or removal under section 7532 of Title 5 U.S. Code
7. Counseling, warning, or a proposal of an action that, if effected, would be grievable under this procedure or appealable under a statutory procedure
8. A progress review under the Agency's performance management system
9. The termination, demotion, or reassignment of a probationary or temporary employee, and any other matter excluded by law or Federal Labor Relations Authority (FLRA) or court precedent

F. Performance Improvement Plans (PIPs)

Employees may file a grievance on a limited basis over the Agency's decision to issue a formal performance improvement plan under 5 USC Chapter 43. Such grievance must be based only on an allegation that the Agency's decision to issue the PIP was arbitrary, capricious, or the product of unlawful discrimination. The content of the performance standard(s) upon which the PIP is based may not be grieved. The length and content of the PIP also are not proper matters for the grievance procedure.

## 18.5 REPRESENTATION

The Union is the exclusive representative of employees in grievances filed under this procedure. An employee, however, may elect to process a grievance through the internal steps of the grievance procedure without Union representation. The Union has the right to be present at any formal discussion of the grievance between an Agency representative and an employee who has elected self-representation. An employee who chooses not to be represented by the Union is not entitled to a personal representative, e.g. an attorney, unless such representative is approved in writing by the Union, and the Union has waived its right to represent the employee on that particular matter.

## 18.6 INDIVIDUAL GRIEVANCE PROCEDURE

### A. Step One

A grievance filed by an employee or the Union on behalf of one or more employees must be in writing on Form LR-103, Request for Filing a Grievance/Mediation. The grievance must be filed within 30 work days of the incident that gave rise to the grievance or within 30 work days of the date the employee became aware of the incident or reasonably should have become aware of the incident. If the employee/Union fails to file the grievance in a timely manner, it will be denied.

The grievance must be presented to the Labor Relations Staff. However, the Labor Relations Staff will not decide grievances, except for those where Labor Relations made the decision leading to the grievance, e.g. denial of an information request, refusal to bargain.

The grievance must specifically state the alleged violation of law, regulation, or term of this Agreement as well as the remedy sought. A grievance that does not set forth a specific claim will be denied. The grievance may also name the management official the employee or Union believes has the immediate authority to resolve the matter.

Within 30 days of receipt of the grievance, the Agency will hold a meeting to discuss the grievance. The meeting normally will be conducted by the employee's immediate supervisor or second level supervisor. If the grievant has named another management official the employee or Union believes is responsible for resolving the matter, the Agency will give consideration to having that official hold a grievance meeting. One or more members of the Labor Relations or Human Resources Staff may also attend. The grievant(s) and/or one Union representative will attend. If the grievant chooses not to be represented by the Union, and the Union has not waived its rights on that particular matter, the

Union will be notified of the grievance meeting and provided an opportunity to attend on its own behalf.

Within 30 days of the meeting, the official who presided over the grievance meeting will issue a written response to the grievance. The response will be provided to the Union representative, if the employee has chosen Union representation. If the employee has not been represented by the Union, the response will be provided directly to the employee and a copy will be provided to the Union.

If the Agency fails to meet the timeframes imposed by this Agreement at Step One, the employee/Union has the option of excusing the delay or elevating the grievance to Step Two.

#### B. Step Two

The employee/Union may appeal the Agency's decision at Step One. To do so, the employee/Union must file Form LR-103 with the Labor Relations Staff within 30 days of receipt of the Step One decision. If the Agency has failed to answer the grievance at Step One in a timely manner, and the employee/Union wishes to elevate the grievance to Step Two, the grievance must be filed within 30 days of the date the Step One decision was due.

The decision at Step Two will be made by the management official immediately above the official who made the decision at Step One. The decision maker may hold a meeting within 30 days with the grievant and Union representative to discuss the matter or may decide the grievance on the written record. The decision maker may have present at the meeting any management official he or she believes necessary. If the grievant is not represented by the Union, the Agency will inform the Union of any meeting held to discuss the grievance and provide the Union an opportunity to attend.

The Step Two decision will be issued in writing within 30 days of the receipt of the Step Two grievance, or within 30 days of the grievance meeting if one is held. If the employee has been represented by the Union, the decision will be issued to the Union representative. If the employee has elected self-representation, the decision will be provided directly to the employee and a copy will be provided to the Union.

If the employee/Union fails to present the grievance within the timeframe established for Step Two, the decision issued at Step One will become the final resolution of the matter, and will not be subject to further review. If the Agency fails to provide a written answer to the Step Two grievance within the timeframe specified herein, the Union may excuse the delay and wait for a decision or it may elevate the grievance to the next step.

By written agreement, the Parties may waive Step Two.

### C. Step Three

If an Agency Administrator or the Deputy Administrator for Operations & Management (O&M) was not the deciding official at Step One or Two, the employee/Union may appeal the Agency's decision to Step Three. To do so, the employee/Union must file Form LR-103 with the Labor Relations Staff within 30 days of receipt of the Step Two decision, or if Step Two has been waived, within 30 days of receipt of the Step One decision. If the Agency has failed to answer the grievance at Step Two in a timely manner, and the employee/Union wishes to elevate the grievance to Step Three, the grievance must be filed within 30 days of the date the Step Two decision was due.

Except as provided in 18.6D of this Article, a grievance shall not be processed above the level of Agency Administrator or Deputy Administrator O&M.

The Agency Administrator or Deputy Administrator O&M, or a designee with the authority to effectively recommend the final decision, may hold a meeting within 30 days of receipt of the grievance with the grievant and Union representative to discuss the matter or may decide the grievance on the written record. The decision maker or designee may have present at the meeting any management official he or she believes necessary. If the grievant is not represented by the Union, the Agency will inform the Union of any meeting held to discuss the grievance and provide the Union an opportunity to attend.

A designee may not be an official who made the decision at any previous step of the grievance procedure.

The Step Three decision will be issued in writing within 30 days of the receipt of the Step Three grievance, or within 30 days of the grievance meeting if one is held. If the employee has been represented by the Union, the decision will be issued to the Union representative. If the employee has elected self-representation, the decision will be provided directly to the employee and a copy will be provided to the Union.

If the employee/Union fails to present the grievance within the timeframe established for Step Three, the decision issued at Step Two will become the final resolution of the matter, and will not be subject to further review. If the Agency fails to provide a written answer to the Step Three grievance within the timeframe specified herein, the Union may excuse the delay and wait for a decision or it may elevate the grievance to arbitration in accordance with Article 19.

If the Union is dissatisfied with the decision issued at Step 3 or the decision of the Agency Administrator or Deputy Administrator O&M any step of this grievance

procedure, it may invoke arbitration in accordance with the provisions of Article 19.

D. Grievances over Adverse Actions

Grievances over matters covered by 5 USC Section 7512 (removal, suspension for more than 14 days, reduction in grade, reduction in pay, furlough for 30 days or less) or by 5 USC Section 4303 (reduction in grade or removal for unacceptable performance) may be elevated to the office of the Under Secretary if the Agency Administrator or Deputy Administrator O&M has issued a decision on the matter at Step One or Two of the grievance procedure. If a grievance reaches the office of the Under Secretary it will be decided by the Under Secretary or an official designated by the Under Secretary.

To file a grievance with the office of the Under Secretary, the employee/Union must file Form LR-103 with the Labor Relations Staff within 30 days of receipt of the decision of the Agency Administrator or Deputy Administrator O&M. If the Agency Administrator or Deputy Administrator O&M has failed to answer the grievance in a timely manner, and the employee/Union wishes to elevate the grievance to the office of the Under Secretary, the grievance must be filed within 30 days of the date the decision was due.

The designated official in the Office of the Under Secretary may hold a meeting within 45 days with the grievant and Union representative to discuss the matter or may decide the grievance on the written record. The decision maker may have present at the meeting any management official he or she believes necessary. If the grievant is not represented by the Union, the Agency will inform the Union of any meeting held to discuss the grievance and provide the Union an opportunity to attend.

The decision will be issued in writing within 30 days of the receipt of the grievance at this step, or within 30 days of the grievance meeting if one is held. If the employee has been represented by the Union, the decision will be issued to the Union representative. If the employee has elected self-representation, the decision will be provided directly to the employee and a copy will be provided to the Union.

If the office of the Under Secretary fails to issue a written decision within the time frame specified herein the employee/Union may choose to wait for a decision or may invoke arbitration in accordance with the terms of Article 19. If the employee/Union is dissatisfied with the decision of the office of the Under Secretary, it may invoke arbitration.

## 18.7 INSTITUTIONAL GRIEVANCE PROCEDURE

- A. A grievance filed by the Union against the Agency shall be presented to the Labor Relations Staff on Form LR-103 within 30 work days of the occurrence of the action that is the subject of the grievance or within 30 work days of the date the Union became aware or reasonably should have become aware of the action. The Union may name the management official it believes responsible for the resolution of the matter. If requested by either Party, a meeting will be held within 30 days with the Union President or his or her designee to discuss the grievance. The meeting will be conducted by an Agency official having the authority to resolve the matter or to effectively recommend the resolution of the matter. The Agency will issue a written response to the grievance within 30 days of its receipt of the grievance or within 30 days of the grievance meeting if one is held. If the Agency fails to respond in a timely manner, the Union may excuse the delay and wait for a response or it may invoke arbitration.
  
- B. A grievance filed by the Agency shall be presented to the Union President on Form LR-103 within 30 work days of the occurrence of the action that the subject of the grievance or within 30 work days of the date the Agency became aware or reasonably should have become aware of the action. If requested by either Party, a meeting will be held within 30 days with the Agency official who filed the grievance. The Union will issue a written response to the grievance within 30 days of its receipt of the grievance or within 30 days of the grievance meeting if one is held. If the Union fails to respond in a timely manner, the Agency may excuse the delay and wait for a response or it may invoke arbitration.

## 18.8 DENIAL BASED ON QUESTIONS OF GRIEVABILITY

- A. The Party against whom a grievance is filed may deny the grievance on the grounds that it is untimely, that the grievance does not conform to the procedures outlined in this Article (e.g. failure to cite a violation), or that the grievance concerns a matter not within the scope of this negotiated grievance procedure. Denial on any of these grounds must be in writing and must occur within 30 days of the grievance meeting held at Step One or within 30 days of the date the Step One decision was due. Failure to deny a grievance within 30 days of the grievance meeting shall constitute a waiver of the Party's right to raise questions of grievability at any later stage of the grievance procedure.

- B. If the Party whose grievance has been denied wishes to contest that action, the question of grievability shall be heard in accordance with the provisions of Article 19.12.

## Article 19 Arbitration

- 19.1 Arbitration may only be invoked by the Employer or the Union. Any unresolved grievance processed under Article 18, Negotiated Grievance Procedure, of this Agreement shall, upon written request, be submitted to binding arbitration. The request for arbitration shall be delivered by hand or faxed to the President of AFSCME Local 3870 or the Agency's Labor Relations Staff. The request for arbitration must be made within 30 days of receipt of the final level written decision of the grievance process as evidenced by the signed written receipt of the decision, or in the case of delivery to the Agency's Labor Relations Staff, the receipt date shown on the fax transmission to the dedicated fax machine located in the Labor Relations Staff.
- 19.2 Within seven days of the date of the request for arbitration, the Party invoking arbitration will request from the Federal Mediation and Conciliation Service (FMCS) a list of seven impartial persons qualified to act as arbitrators.
- 19.3 The Parties shall confer within seven days after receiving the list of names from the FMCS and select one of the listed arbitrators. If they cannot mutually agree upon a selection, the Parties will alternately strike one name from the list until the list contains only one name. This person shall be the duly selected arbitrator. If for any reason either Party refuses to participate in the selection of the arbitrator, the other Party chooses the arbitrator.
- 19.4 If the Parties fail to agree on a joint submission of the issue for arbitration, each shall submit a separate submission and the arbitrator shall determine the issue or issues to be heard.
- 19.5 The Parties agree that only those parties necessary and relevant to the hearing will participate in the hearing, including witnesses. The arbitrator has the final authority to determine the witnesses.
- 19.6 The Parties shall exchange lists of proposed witnesses, representatives, and observers no later than 48 hours in advance of the hearing.
- 19.7 The Union and Management agree that a maximum of six observers (three from Management and three from the Union) is permitted at arbitrations for institutional cases only (e.g. cases impacting more than one bargaining unit employee or cases arising from grievance actions initiated by the union, except in instances where only one bargaining unit employee is involved). Observers are not permitted at individual hearings. An observer may not be a witness. Bargaining unit observers must either be on approved annual leave or approved official time. Official time for bargaining unit observers may be granted only for training purposes and is included in the limits provided for in

section 4.3H of Article 4, Official Time. Requests for official time will be processed according to Article 4 and requests for annual leave will be processed according to Article 20 of this Agreement.

- 19.8 Either Party may request a verbatim transcript of the hearing. The Party requesting the transcript will pay the costs and it becomes the property of that Party. If both Parties request a transcript, the costs will be shared equally.
- 19.9 The arbitrator's fee and expenses, if any, shall be borne by the losing party. In "split decisions," the arbitrator shall decide who is the "losing party" for purposes of this section. The arbitration hearing shall be held, if possible, on the Employer's premises during regular business hours—Monday through Friday.
- 19.10 The arbitrator shall have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement.
- 19.11 The arbitrator will be requested to render the decision as quickly as possible, but in any event not later than 30 days after the conclusion of the hearing, unless the Parties mutually agree to extend this time limit. The arbitrator shall submit all findings in writing, and this award shall decide all issues raised by either Party, including arbitrability. However, a failure to issue an award within 30 days shall not result in the arbitrator's losing authority to issue an award.
- 19.12 If the Party against whom the grievance is filed believes the matter to be outside the scope of the grievance procedure or otherwise non-grievable, it will declare the matter non-grievable when the Step One written response to the grievance is due, considering any extensions of time for such response mutually agreed to by the Parties. Failure to do so will preclude the Parties from later claiming that the matter is non-grievable or non-arbitrable.  
  
The arbitrator shall have the authority to make all grievability and/or arbitrability determinations. Threshold questions of arbitrability shall be heard by the arbitrator on the same hearing date as the hearing on the merits of the case, unless otherwise agreed by the Parties.
- 19.13 The arbitrator's findings and award shall be binding upon all Parties. However, either Party may file exceptions to an award with the Federal Labor Relations Authority (FLRA). If the FLRA affirms the arbitrator's award, the aggrieved party may appeal to the appropriate court pursuant to the provisions of Chapter 71 of Title 5.
- 19.14 If a clarification of an arbitrator's decision is necessary, the requesting party will pay for the additional arbitration fees and expenses. The arbitrator will be requested to complete the clarification within thirty (30) work days. If jointly requested, the costs will be shared.

- 19.15 An employee who is found to have been affected by an unjustified or unwarranted personnel action, which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee; is entitled appropriate relief in accordance with the decision of the arbitrator.
- 19.16 In considering grievances concerning actions based on unacceptable performance and adverse actions appealable to the Merit Systems Protection Board (MSPB), the arbitrator must apply the same standards in deciding the case as would be applied if the action were appealed to the MSPB.
- 19.17 The Parties may mutually agree to expedited arbitration or a formal hearing. If the Parties do not agree on the process, a formal hearing shall be held.
- 19.18 Upon selection of the arbitrator in a particular case, the respective representatives for the Parties will communicate with the arbitrator and each other in order to select a mutually agreeable date for the arbitration hearing.
- 19.19 Expedited Arbitration:
- A. A stipulation of facts to the arbitrator can be used when both Parties agree to the facts at issue and a hearing would serve no purpose. In this case, data, documentation, etc., are jointly submitted to the arbitrator with a request for a decision based upon the facts presented.
  - B. An arbitrator inquiry may be used to expedite the resolution of the grievance. In this case, the arbitrator would make such inquiries as deemed necessary; prepare a brief summary of the facts and render an on-the-spot decision with a summary opinion. The parties may mutually agree to eliminate the summary opinion.
  - C. Mini-Arbitration: In this case, an oral hearing will be held. The arbitrator will prepare a brief summary of the facts and render a decision with a summary opinion. The Parties may mutually agree to eliminate the summary opinion.
- 19.20 Formal hearing: A submission to arbitration hearing should be used when a formal hearing is necessary to develop and establish the facts relevant to the issue. In the case, a formal hearing is convened and conducted by the arbitrator.

## Article 20 Leave

### 20.1 GENERAL PRINCIPLES

- A. Leave will be administered in accordance with law, Government-wide regulations, and the provisions of the Rural Development Instruction governing leave, currently RD Instruction 2066-A, to the extent these provisions are consistent with Federal law and Government-wide regulations. All leave will be documented using the Agency electronic time and attendance system.
- B. Employees may request to use leave, e.g., annual, sick, compensatory, and credit leave, in 15-minute increments.
- C. Employees are normally required to request leave in advance by submitting electronic time and attendance system to their supervisor or other designated leave approving official. This includes leave for scheduled medical appointments. In cases of illness or emergency when it is not possible to obtain advance approval of leave, employees are normally responsible for contacting their supervisor within the first hour of their normal tour of duty. If the supervisor is not available, employees must speak with the next level supervisor or another official designated to approve leave requests. Leave approval is not obtained by leaving a voice-mail, e-mail, or a message with a non-supervisory employee. If no leave approving official is available, employees must leave a phone number where they can be reached.
- D. Employees who fail to provide proper notice of their absence, as specified in 20.1C above, may be considered in an absent without leave (AWOL) status. This can be changed to an approved leave category upon acceptable explanation.
- E. Employees will normally request scheduled or non-emergency leave a sufficient time in advance to allow supervisors to consider the request and to plan for the employee's absence. The Agency, in turn, will make a reasonable effort to respond in sufficient time to allow the employee to finalize leave plans.

### 20.2 SCHEDULING ANNUAL LEAVE

If more than one employee requests annual leave for the same time period and the Agency is not able to approve all requests, employees will be given the opportunity to work out the problem among themselves, subject to the

Agency's approval. If a conflict still exists, the supervisor will decide which employee(s) will be approved for leave.

### 20.3 SCHEDULING SICK LEAVE

- A. Normally, an employee's signature on the electronic time and attendance system will constitute sufficient documentation of leave use. The Agency may also require additional documentation in cases of suspected leave abuse, for a period of illness in excess of three consecutive days, when leave requested for family-friendly purposes exceeds three consecutive days, or when an employee on leave restriction claims to be ill. The documentation required for the purposes listed in this subsection shall consist of a general statement from a health care provider that the employee, or in the case of family-friendly leave, the family member, has been treated for a medical condition. This documentation will be delivered to and reviewed by the supervisor or other leave approving official.
- B. Additional medical documentation may also be required:
1. when an employee requests leave without pay for a medical condition,
  2. when an employee seeks reasonable accommodation for a disability,
  3. when an employee requests a health-related reassignment under Article 10 of this Agreement, or
  4. when required by law, e.g., Family and Medical Leave Act (FMLA) and other family-friendly leave policies.

Additional medical documentation provided under this subsection will be delivered to the Human Resources Office. While medical records are protected under the Privacy Act and will be safeguarded in accordance with the statutory provisions, this information may be reviewed by those involved in the consideration of the request.

Applying the criteria contained in 5 CFR Part 339.104(a)-(g), the agency will advise the employee on a case-by-case basis of the specific information necessary to make a decision. That information may include the following:

- (a) The history of the medical conditions, including references to findings from previous examinations, treatment, and responses to treatment;

- (b) Clinical findings from the most recent medical evaluation, including any of the following which have been obtained: Findings of physical examination; results of laboratory tests; X-rays; EKG's and other special evaluations or diagnostic procedures; and, in the case of psychiatric evaluation of psychological assessment, the findings of a mental status examination and the results of psychological tests, if appropriate;
- (c) Diagnosis, including the current clinical status;
- (d) Prognosis, including plans for future treatment and an estimate of the expected date of full or partial recovery;
- (e) An explanation of the impact of the medical condition on overall health and activities, including the basis for any conclusion that restrictions or accommodations are or are not warranted, and where they are warranted, an explanation of their therapeutic or risk avoiding value;
- (f) An explanation of the medical basis for any conclusion which indicates the likelihood that the individual is or is not expected to suffer sudden or subtle incapacitation by carrying out, with or without accommodation, the tasks or duties of a specific position;
- (g) Narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well stabilized and the likelihood that the individual may experience sudden or subtle incapacitation as a result of the medical condition. In this context, "static or well stabilized medical condition" means a medical condition which is not likely to change as a consequence of the natural progression of the condition, specifically as a result of the normal aging process, or in response to the work environment or the work itself. "Subtle incapacitation" means gradual, initially imperceptible impairment of physical or mental function whether reversible or not which is likely to result in performance or conduct deficiencies. "Sudden incapacitation" means abrupt onset of loss of control of physical or mental function.

Medical information which is obtained from the employee will be carefully evaluated, and when it is sufficient, additional information will not be requested. When necessary to make a

determination on the leave request or accommodation requested, the Human Resources Office will consult with the Department Medical Officer or other competent medical authority.

- C. The Agency will accept medical documentation as provided in 5 CFR Part 630.403. The Agency agrees to accept photocopies and facsimile transmissions of the medical documentation from the health care provider.

#### 20.4 LEAVE RESTRICTION

- A. Employees whose unplanned absences are affecting their ability to accomplish assigned duties, interfering with the ability of the organization to accomplish its mission, or placing an undue burden on coworkers, may be placed on leave restriction.
- B. An employee will be counseled at least once and given an opportunity to improve. A memorandum for record of the counseling will be given to the employee. An employee who receives a leave restriction letter will be required to follow the instructions in the letter. Failure to follow such I instructions may lead to disciplinary action.
- C. Leave restrictions will be reviewed at least every six months and may be removed at any time if the employee's leave use improves. If an employee who has been removed from leave restriction again experiences similar problems within a twelve-month period following the removal of the leave restrictions, the leave restrictions may be imposed without additional counseling.

#### 20.5 ADVANCED SICK LEAVE

Requests for advanced sick leave will be handled in accordance with the provisions of RD Instruction 2066-A, which provides that sick leave may be advanced only to an individual with a serious disability or ailment. The Agency agrees to consider requests for advanced sick leave even when an employee has not exhausted all sick leave, annual leave, or previously advanced sick leave. However, it is understood that the Agency is under no obligation to approve an employee's request for advanced sick leave.

In order to evaluate a request for advanced sick leave, the Agency may require medical documentation that includes a general description of the disability or ailment and an indication of when the employee will be able to return to work.

Medical documentation supporting requests for advanced sick leave will be delivered to the Human Resources Office and handled in accordance with the provisions of Section 20.3B of this Article.

## 20.6 ADVANCED ANNUAL LEAVE

Requests for advanced annual leave will be handled in accordance with the provisions of RD Instruction 2066-A. A permanent employee who expects to remain in service through the leave year may request advancement of annual leave in an amount not to exceed that which the employee will accrue for the remainder of the leave year. An employee who wishes to request advancement of annual leave shall request it using webTA and provide a written explanation of the reason for the request.

## 20.7 ADMINISTRATIVE LEAVE

- A. Administrative leave is an excused absence from duty administratively authorized without loss of pay and without charge to other types of leave. The Agency may grant administrative leave in accordance with law, Government-wide regulations, USDA policy, and the provisions of Rural Development Instruction 2066-A.

For inclement weather or other emergency situations, the Agency will follow the OPM issued Washington, D.C. Area Emergency Dismissal or Closure Procedures developed in consultation with the Metropolitan Washington Council of Governments. The procedures are updated annually and can be viewed or printed from the OPM website: <http://www.opm.gov/>. (This paragraph is for informational purposes only and is not intended to be substantive).

For USDA-sanctioned health care screenings in accordance with §2066.12 of RD Instruction 2066-A

## Article 21

### Telecommuting

Telecommuting arrangements for bargaining unit employees will be governed solely by the provisions of law and Government-wide regulation and the terms of this Agreement. Previously issued Agency instructions on telecommuting are not applicable.

#### 21.1 GENERAL PROVISIONS

- A. Telecommuting (also called flexiplace or telework) is paid employment away from the official Government office, either at an employee's home or at an approved satellite office (telecenter) for an agreed upon portion of the workweek. Telecommuting may occur on a recurring basis or on an infrequent basis. No employee will be approved for telecommuting, whether on a recurring or infrequent basis, unless the employee has a signed telecommuting agreement. The request for Telework should be responded to within 15 work days of its submission to the first line supervisor. Telecommuting agreements between individual employees and the Agency must be recertified by all parties on an annual basis.
- B. Telecommuting is not an entitlement. It requires a written agreement signed by the employee and two management officials. In order for a telecommuting agreement to be approved, all provisions of this Article must be met. Telecommuting agreements may be terminated at the discretion of the Agency for reasons personal to the employee, e.g. poor performance, misconduct, or for the operational needs of the Agency, e.g. if the employee is needed to provide office coverage or for other business needs.
- C. No employee will be approved for telecommuting, whether on a recurring or infrequent basis, unless the employee has a signed telecommuting agreement.
- D. A telecommuting arrangement does not alter the terms and conditions of appointment, including an employee's salary, benefits, individual rights, or obligations. All pay, leave, and travel entitlement shall be based on the official duty station. The telecommuting arrangement shall not affect other conditions of employment (e.g. hours of work) unless specified in the telecommuting agreement. An employee's official duty station shall remain the location of the employee's main or reporting office so long as the employee is commuting into that office at least once per week. In certain temporary situations, such as when an employee is recovering from an injury or medical condition, and coming into the office once a week is not possible, the official duty station will remain the office or location to which the employee normally reports.

- D. Employees approved to work at home or at a telecenter may conduct Agency business only. Employees are subject to the same laws, rules, and regulations as apply at the normal work site, as well as the policies in effect at the telecenter.

## 21.2 APPROVAL

In order for the Agency to approve a telecommuting agreement for any employee, the following criteria must be met.

- A. The benefit to the Agency must exceed the cost. Adequate financial resources and IT equipment must be available. While the Agency may provide IT equipment, if available, nothing in this Agreement shall obligate the Agency to provide such equipment.
- B. Telecommuting by any employee must not adversely affect other employees in terms of work assignments or responsibilities. There must be no adverse impact on office coverage or service to internal or external customers.
- C. An employee's duties must consist of tasks and work activities that are portable and must be such that they can be performed as effectively outside the office.
- D. Job tasks and work activities are easily quantifiable or primarily project oriented. Tasks and work activities generally suitable include, but are not limited to thinking and writing; policy development; research; analysis (e.g. investigating, program analysis, policy analysis, financial analysis); report writing; telephone-intensive tasks; computer-oriented tasks (e.g. programming, data entry, word processing, web page design); or data processing.
- E. The technology and other materials needed to perform away from the job site are available.
- F. Security and confidentiality of data can be adequately assured.

## 21.3 EMPLOYEE ELIGIBILITY

- A. Employees eligible for telecommuting are those who have demonstrated motivation, independence, dependability, time management skills, and the ability to work with minimal supervision. Employees serving in a formal training program and employees serving a probationary period are not eligible.

- B. Employees who have been officially disciplined (letter of reprimand or more severe action) during the previous two years will not be approved for telecommuting. Employees under leave restrictions are also not eligible. To obtain approval, an employee must have performed at the fully successful (or equivalent, i.e. "results achieved") or higher level for the previous three years. If three years of performance appraisals are not available, all ratings of record must be at the fully successful (or equivalent, i.e. "results achieved") or higher level. Performance ratings alone do not determine an employee's qualification for telecommuting.
- C. Employees requesting to work at home must have a home workstation that is adequate to meet the terms of the telecommuting agreement. The Agency reserves the right to inspect home work stations in accordance with the terms of section 21.3C of this provision.

#### 21.4 EMPLOYEE RESPONSIBILITIES

- A. Employees are responsible for adhering to the terms of the telecommuting agreement. Failure to do so may result in immediate cancellation of the agreement and, depending on the nature of the violation, can result in disciplinary action.
- B. Employees must maintain an acceptable level of conduct, productivity, and customer service. The Agency may cancel the telecommuting agreement of any employee whose performance declines. The Agency may cancel the telecommuting agreement of any employee whose conduct or record of attendance declines. The supervisor and employee will make a bona-fide effort to work out specific problems before any decision is made to remove the employee from the telework program.
- C. Employees are responsible for following established procedures for obtaining approval of leave and for certifying their time and attendance. Credit hours normally may not be earned while telecommuting. However, in unique situations, the supervisor may concur in an employee's request to accrue credit hours within the hours of 6:00 am to 6:00 pm.
- D. Employees who are telecommuting may not work overtime without advance supervisory approval. The existing rules on overtime and compensatory time under title 5 of the U.S. Code and the Fair Labor Standards Act apply to telecommuting employees. Failure to obtain a supervisor's specific advance approval to work overtime may result in the immediate termination of telecommuting privileges.
- E. Employees working at home must certify to the safety and adequacy of the work site and be in compliance with applicable building and safety codes and local permits. This includes but is not limited to ensuring

that the electrical system and safeguards are adequate to protect Agency computers, printers, and other equipment.

- F. Computers and other equipment provided by the Agency are for the conduct of official business only. Agency policies governing the use of Government computers, supplies, and equipment at the employee's normal duty station apply at any alternative work site.
- G. Employees working at home must certify that they have obtained insurance coverage, business use permits, and/or variances from local municipalities, homeowners' associations, or similar entities, if required by these jurisdictions. The Agency will not be liable for any penalties levied by local jurisdictions for employees' failure to do so. The Government will not be liable for damages to personal property such as house, carpet, furniture, or automobile while the employee is working at the approved alternative worksite.
- H. Telecommuting is not a substitute for family care. Employees working at home must certify that they will not provide child or elder care during work hours unless an in-home care provider is present. Employees working at approved telecommuting centers other than their home may not bring children or other individuals to the site except for special occasions approved by the site owner.
- I. In case of weather closings of the Government office or other emergencies requiring office closing or early dismissal, employees working at a telecommuting center may be required to continue working. This will be decided on a case-by-case basis by the Agency. Employees must not assume that they are excused from work simply because the official Government office is closed. Employees working at home will normally be required to continue working.
- J. The Agency, at its sole discretion, may change, cancel, or suspend scheduled telecommuting days and require employees to report to their normal duty station or some other location for such purposes as meetings, training, or other operational needs of the Agency. The Agency, at its sole discretion, may change or cancel telecommuting agreements and require employees to report to their normal duty station if employees are needed to provide office coverage, meet customer service needs, meet changing workload requirements, or for other operational needs. Telecommuting arrangements may be suspended to meet cyclical workload needs of the Agency, e.g. end of year activities.

## 21.5 COMPLIANCE

In order for the telecommuting program to meet its objectives, it is in the interest of both the Agency and employees that the Agency review employee work accomplished while telecommuting and ensure full compliance with telecommuting agreements. The Parties recognize the following measures are necessary.

- A. Individual organizations will establish methods to monitor employees' work assignments and will establish reporting requirements to facilitate contact for employees to receive or turn in assignments. An organization may establish specific tasks, objectives, or work products that are to be accomplished in a particular telecommuting instance.
- B. The Agency will provide reasonable assurances that employees are working when scheduled by using the following techniques:
  - supervisory telephone calls and/or e-mails to employees at times they are scheduled to be on duty
  - determining reasonable work output for the time spent
  - the Agency may also make visits during work hours to the alternative work site. Employees will normally be given at least 24 hours notice before the Agency conducts an inspection or other visit to a home work site. However, when the Agency has reasonable cause to believe an employee is not abiding by the terms of this Article or the telecommuting agreement, an inspection/visit may be conducted without notice.
- C. The Agency will ensure that home work sites meet acceptable standards by requiring employees to complete a self-certification safety inspection form.

## 21.6 SUPPLIES AND EQUIPMENT

Subject to availability of both equipment and funds, the Agency may provide the necessary equipment at the alternative worksite. The Agency is not required to provide the necessary equipment. Employees may volunteer the use of their own equipment in order to facilitate approval of telecommuting. Government-owned equipment will be serviced and maintained by the Government at its cost. Employees may be required to transport Government equipment to the official Government office for servicing. Employees using their own equipment will be responsible for its service and maintenance and for the cost of such service and maintenance. The Agency will provide approved electronic media.

The Agency will not be responsible for operating costs, home maintenance, home modifications, or any other incidental cost, except the Agency may pay for additional telecommunication expenses incurred on behalf of the Government with prior approval. The Agency will not pay for the installation of additional phone lines.

21.7 MODIFICATION OR TERMINATION OF TELECOMMUTING AGREEMENT

The Agency may cancel, suspend, or modify a telecommuting agreement at any time. Such action shall occur when the employee fails to abide by the terms and conditions of the telecommuting agreement or this Article, or when the agreement fails to benefit the Agency. In doing so, the Agency, at its discretion, may consider the success of the arrangement in achieving Agency objectives; changes in budget, staffing and workload demands; or any other business-related factors.

A notice of cancellation will be in writing and normally provided to the employee at least ten (10) days prior to its effective date. A notice from the supervisor will state the reason(s) for the decision to terminate the employee's participation in Telework.

When it is necessary to require employees to report to the normal office location or another location on days they would normally be telecommuting, the Agency agrees to provide as much advance notice as possible under the circumstances.

## Article 22

### Employee Subsidies

#### 22.1 TRANSIT SUBSIDY

Mass transit subsidies will continue to be implemented in accordance with the Department's Commuter Transit Subsidy Benefit Directive, DR 4080-811-04, dated December 7, 2004.

#### 22.2 CHILD CARE SUBSIDY

Both parties recognize that the implementation of this Article will require multiple levels of approval and intergovernmental coordination. As such, parties agree to work in partnership to seek required approval, and if approval is granted, will continue working to implement the pilot as outlined in Section 22.2 of this Article.

The Agency favors a Child Care Tuition Assistance Program (CCTAP) as provided in Section 630 of Public Law 107-67 and DR 4080-811-01.

If adequate funds are available in the Fiscal Year 2012 budget, the Parties will negotiate a Memorandum of Understanding that will establish a CCTAP pilot of not more than one year's duration for eligible bargaining unit employees.

During the pilot, the Parties will gather and analyze data concerning the number of employees participating in the program, the cost and the effect of the program on Agency operations, e.g. recruiting and retention. At the conclusion of the one-year pilot, at the request of either Party, and subject to the availability of funds, the Parties will attempt to negotiate a permanent program. As negotiations proceed the Agency may choose to continue the pilot program, if adequate funds are available.

## Article 23

### Contracting Out

#### 23.1 NOTIFICATION TO UNION

This Article refers to work currently being performed by bargaining unit employees.

- A. Involving Reductions-in-Force (RIFs). The Agency will notify the Union at least 60 days prior to implementing a decision to contract out resulting in RIF of bargaining unit employees.
- B. Federal Activities Inventory Reform (FAIR) Act. The Agency will provide the Union with a copy of the public notice providing bargaining unit position designations under the FAIR Act at the time it is published in the Federal Register.
- C. Inter-Service Support Agreements (ISSAs). If the Agency decides to fill bargaining unit positions through ISSAs, the Agency will provide advance notice to the Union.

#### 23.2 COMPLIANCE

The Agency agrees to comply with all controlling laws and regulations relating to contracting out work performed by bargaining unit employees, including OMB Circular A-76 as it may be revised during the term of this Agreement. The Agency will make every effort to assist employees subjected to a RIF as a result of a contracting out decision.

#### 23.3 PERFORMANCE WORK STATEMENT (OR EQUIVALENT)

Unless prohibited by existing or future provisions of OMB Circular A-76 or other Government-wide regulations, the Agency will provide the Union a copy of any public announcement in FedBizOpps (or equivalent) that has been advertised for solicitation and includes work currently performed by bargaining unit employees that may result in the contracting out of bargaining unit positions. The Union will be given at least 10 days to comment.

#### 23.4 IMPACT AND IMPLEMENTATION

The Agency agrees that prior to implementation of a decision to contract out, except when it involves the necessary functioning of the Agency, the Union will be given the opportunity to timely negotiate regarding the impact and implementation of such a decision as required by law.

23.5 ACCESS TO REGULATIONS

The Agency agrees to provide the Union access to all regulations relevant to contracting out that are maintained on-site.

23.6 ADVERSE EFFECTS ON BARGAINING UNIT EMPLOYEES

If bargaining unit employees are subjected to RIF as a result of a decision by the Agency to contract out work presently performed by bargaining unit employees, the provisions of applicable laws and regulations will apply.

## Article 24

### Equal Employment Opportunity

- 24.1 Consistent with current law, Government-wide and Departmental regulations, the Employer affirms its commitment to the policy of providing equal employment opportunities (EEO) for employees and preventing discrimination against employees. The Union agrees to cooperate with the Employer in assuring equal employment opportunity.
- 24.2 The Parties agree that the equal employment opportunity program shall be administered in accordance with Government-wide, Departmental, and Agency regulations. As such, employees will continue to be covered by the provisions of RD Instruction 2045-X, Equal Employment Opportunity. Employees have a right to have a representative of his/her choice present at all EEO counseling sessions, including the first one.
- 24.3 The Agency will provide a copy of the most recent MD-715 (or equivalent) and Federal Employment Opportunity Recruitment Plan (FEORP) to the Union. As soon as possible after a written request is received from the Union, the Agency will provide other statistical data as requested by the Union. This data may include such issues as promotions, training, accessions, disciplinary/ adverse actions, awards, etc. The Employer will adhere to the provisions of the Privacy and Freedom of Information Acts in providing such data.
- 24.4 The Union shall have one (1) representative designated by the Union, to serve on the Equal Employment Opportunity Advisory Committee (EEOAC).
- 24.5 Official time for representational activities under this Article shall be requested in accordance with Article 4, Official Time.

## Article 25

### Labor-Management Forums

In the spirit of Executive Order 13522, dated December 9, 2009, and so long as it exists, the Parties agree to continue their existing partnership arrangements on a formal basis. The existing arrangement will be referred to as “Rural Development Labor-Management Partnership Council”, hereinafter, “The Partnership Council”. The Parties further agree to develop operational guidelines with terms and conditions that will govern the Partnership Council and set the tone for labor-management forums.

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## SIGNATURE PAGE

IN WITNESS THEREOF, the Parties hereto have caused this Labor Management Relations Agreement to be executed on the 18<sup>th</sup> day of June, 2010.

For Rural Development

For AFSCME Local 3870



DALLAS TONSAGER

Under Secretary  
Rural Development



DEBRA ARNOLD

President and Chief Negotiator  
AFSCME Local 3870



CLYDE THOMPSON

DAOM and Chief Negotiator  
Rural Development



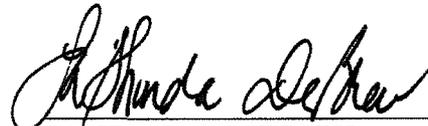
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Bargaining Team Member  
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ALLEN HATCHER

Bargaining Team Member  
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NORMA VALDES

Bargaining Team Member  
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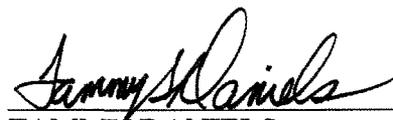
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JOHN C. CLAYA

Bargaining Team Member  
Rural Development



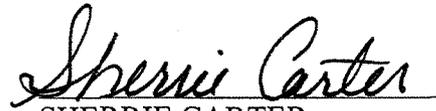
TAMMY DANIELS

Bargaining Team Member  
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SIGNATURE PAGE  
PAGE TWO

  
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Bargaining Team Member  
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