

# **Collective Bargaining Agreement**

**between**

**the American Federation**

**of Government Employees, AFGE Local 2831**

**and**

**USDA, Rural Development – New York**



**American Federation  
of Government Employees,  
AFGE Local 2831**



**USDA Rural Development,  
New York**

**Effective July 9, 2019 to July 8, 2022**

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## Preamble

The Union (American Federation of Government Employees, Local 2831) and the Employer (USDA, Rural Development – New York, also referred to herein as the “Agency”, or “Management”) hereby enter this Collective Bargaining Agreement (hereinafter referred to as the “Agreement”).

The parties completely adopt the Labor-Management Relations Statute, 5 USC Chapter 71, which states in its section 7101 the purpose and findings of Congress regarding labor and management relations and concludes that labor organizations and collective bargaining in the civil service are in the public interest.

It is the intent and purpose of both parties to the Agreement to:

1. Promote and improve the efficient and effective administration of the Employer and the well-being of its employees as defined by the Federal Service Labor-Management Relations Statute (“the Statute”);
2. Establish and foster a basic understanding of personnel policies, procedures and practices, and matters affecting the conditions of employment;
3. Provide a means for amicable discussion and adjustment of matters of mutual interest at USDA, Rural Development - New York; and
4. Promote and develop, as partners, new ways to better serve our customers in the rural communities in New York, who are our reason to be as civil service employees.

The parties to this Agreement recognize that they have a mutual and cooperative interest in accomplishing the mission of USDA Rural Development – New York. They agree accomplishments will be greater by creating an atmosphere of cooperation and trust between labor and management.

By entering into this Agreement, both parties agree to work towards the creation of a work environment in which each individual treats all others with respect, consideration and dignity. In an atmosphere of mutual respect and trust, all parties shall be treated fairly and equitably in the administration of personnel policies, practices, procedures and matters affecting conditions of employment with proper regard for their privacy and their legal and constitutional rights.

## DEFINITIONS:

As used in this Agreement, the following terms (**in bold and underlined**) are intended to have the definitions that follow them.

1. **Agency** (or “**Management**” or “**Employer**”): USDA, Rural Development – New York.
2. **Amendments**: modifications to the basic Agreement to delete, change portions, sections,

or articles of the Agreement.

3. **Authority**: “Authority” means the Federal Labor Relations Authority described in section 7104(a) of the Federal Service Labor-Management Relations Act (Chapter 71 of the Civil Service Reform Act of 1978).
4. **Arbitration**: a method for settling a dispute by having an impartial third party decide the issue. The decision of the third party (arbitrator) is usually binding.
5. **Bargaining Unit**: generally, a group of workers who have chosen a labor organization to be their exclusive representative for bargaining with their employer about their working conditions. Here, the group of employees of the Agency who voted to be represented by the “Union” as defined below (see Article 1, “Parties to the Agreement, Recognition, Definition of Bargaining Unit, and Coverage of the Agreement”).
6. **Collective Bargaining**: the performance of the mutual obligation of the representative of an Agency and the exclusive representative of employees in an appropriate unit to meet at reasonable times and consult and bargain in good-faith effort to reach agreement with respect to the conditions of employment affecting such employees. The representatives are obligated to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.
7. **Conditions of Employment**: personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices and matters: (a) relating to political activities prohibited under subchapter III of Chapter 73 of Title VII; (b) relating to the classification of any position; or (c) to the extent such matters are specifically provided for by federal statute.
8. **Days**: calendar days unless otherwise noted.
9. **de minimis**: small enough to be ignored; too unimportant or trivial to be taken seriously.
10. **Disciplinary Action**: suspension of fourteen (14) days or less or letters of caution, warning, or reprimand.
11. **Emergency Overtime**: overtime ordered during the same workday.
12. **Emergency Situation**: an emergency situation is one which poses sudden immediate and unforeseen work requirements for the Employer or Agency as a result of natural phenomena or other circumstances beyond the Employer’s or Agency’s control or ability to anticipate.
13. **Employees**: individuals who are both (a) “Employees” within the meaning of the Federal Service Labor-Management Relations Statute and (b) members of the bargaining unit covered by this Agreement.

14. **Employer**: see “Agency” above.
15. **Grievance**: see Article 25, “Negotiated Grievance Procedure”, section 2.
16. **Grievance Arbitration Hearing**: an arbitration hearing where an individual employee, group of employees, the Union, or the Employer seeks to obtain resolution through the arbitration process under Article 26, “Arbitration”, of a dispute arising from differing claims about rights created by contract, regulation or statute.
17. **Impasse**: the condition when the representatives of the Employer and Union have, after a thorough exchange of views in bargaining about negotiable matters, been unable to arrive at a mutually agreeable resolution of their differences.
18. **Mid-Term Bargaining**: negotiations between the Agency and the Union, dealing with conditions of employment of the bargaining unit employees covered by this agreement which are not currently contained in the Agreement. See Article 5, “Negotiations During the Term of the Agreement”.
19. **Management**: see “Agency” above.
20. **Official Time**: time granted to an employee pursuant to section 7131 of title 5, United States Code.
21. **Seniority**: the length of an employee’s: (a) federal government service as measured by Service Computation Date; then (b) continuous seniority in Rural Development agencies; then (c) continuous USDA seniority.
22. **Shall**: used herein to express what is mandatory.
23. **Union**: American Federation of Government Employees, Local 2831.
24. **Union Representative**: elected or appointed officials of AFGE Local 2831, including stewards and other designated representatives. Also includes, but is not limited to, staff members of AFGE District 2 and National Headquarters of AFGE.
25. **“Unofficial” Personnel Records and Files**: any collection of information on a bargaining unit employee not identified either by regulation or statute.

**Article 1**  
**Parties to the Agreement, Recognition, Definition of Bargaining Unit,**  
**and Coverage of the Agreement**

**Section 1 - Parties to the Agreement**

The parties to this Agreement are the Union and the Agency as defined above.

**Section 2 - Recognition**

The Employer recognizes American Federation of Government Employees, Local 2831, as the exclusive representative of all employees (hereinafter sometimes referred to as “employees” or “bargaining unit employee(s)”) in the bargaining unit as defined below.

**Section 3 - Bargaining Unit**

This Agreement applies to all members of the following bargaining unit:

INCLUDED: All employees employed by the United States Department of Agriculture, Rural Economic and Community Development, located in the State of New York;

EXCLUDED: Management officials, supervisors, and employees described in Title 5, U.S.C. § 7112(b)(2), (3), (4), (6) and (7).

**Section 4 - Coverage of the Agreement**

This Agreement covers only those positions described in the bargaining unit.

## **Article 2**

### **Governing Laws and Regulations**

#### **Section 1 - Relationship to Laws, Government-wide Rules and Regulations**

- A. In the administration of all matters covered by this Agreement, the parties shall be governed by: (i) Federal laws and Government-wide rules and regulations; and (ii) Employer policies, procedures, and practices, as they have been and may in the future be amended, so long as they do not conflict with Federal laws and Government-wide rules and regulations.
  
- B. In the event any present or future Departmental Regulation or Rural Development Instruction conflicts with any portion of this Agreement, this Agreement shall prevail except as may be provided by 5 USC 71 and shall not be changed except pursuant to Article 5, "Negotiations During the Term of the Agreement".

#### **Section 2 - Past Practices**

Upon approval, this Agreement and Memoranda of Understanding/Agreement incorporated herein shall supersede and cancel all other previous formal and informal labor agreements, including any past practices, and will serve as the sole Agreement between the parties.

## **Article 3**

### **Union and Management Rights**

#### **Section 1 - General**

In matters relating to personnel policies, practices and other conditions of employment, the parties shall have due regard for the responsibilities and obligations imposed by 5 USC Chapter 71, this Agreement, and supplements thereto.

#### **Section 2 - Restraint**

The Agency shall not restrain, interfere with or coerce any Union official or representative in the exercise of their rights under 5 USC Chapter 71 because of the performance of duties within the scope of this Agreement, or against any bargaining unit member for filing a grievance/complaint, or acting as a witness under this Agreement, the Law, or applicable regulations.

#### **Section 3 - Representation**

- A. The Union is the exclusive representative of the bargaining unit and is entitled to act on behalf of bargaining unit employees. The Union is responsible for representing the interests of all employees in the bargaining unit without discrimination and without regard to Union membership.
- B. Designated officers or representatives of the Union have the right to represent the employees within the entire bargaining unit on Official Time in accordance with the provisions of Article 30. Management shall recognize representatives designated by the Union.
- C. The Union shall provide management current listings of officers and stewards, and the office each holds. To the extent reasonably possible, the Union shall assign stewards to the Agency's facility in which or nearest to the facility in which the individual works.
- D. Following reasonable notice, the Agency shall permit Union representatives to enter and visit any Agency space during normal working hours for representational purposes. To the extent reasonably possible, the Union shall coordinate these visits with Management at the premises where the visit is to occur. Once the Union provides management a current listing that shows an individual as an officer and/or steward, that individual shall not be required to provide advanced notice of a visit in order to attend a meeting called by the Agency or required by this agreement or the law.

#### **Section 4 - Union Rights and Responsibilities**

- A. The Union has the right to represent an employee or group of employees in presenting a grievance or when raising matters of concern or dissatisfaction with Management.
- B. The Union has the exclusive right to represent employees under the Negotiated Grievance Procedure in this Agreement and any other appeals process established as a result of bargaining.
- C. An employee or group of employees may present a grievance or complaint without representation by the Union, by notifying the Agency and Union in writing that they have chosen to represent themselves in the proceeding.
- D. The Union shall be a party to all “formal discussions”, and all grievance/complaint proceedings, and all resolutions concerning any condition of employment.

#### **Section 5 - Formal Discussions**

- A. Consistent with 5 USC 7114(a)(2)(A), the Agency shall give the Union, as the exclusive representative of bargaining unit employees, an opportunity to be represented at any “formal discussion” between one or more representatives of the Agency and one or more employees in the bargaining unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment.
- B. The Agency shall give the Union such opportunity to be present by delivering to its President or designee written reasonable advance notice of the “formal discussion”. At a minimum, the notice shall identify the expected: (a) date and time of the meeting; (b) facility and room in which the meeting shall be held; (c) employee(s) with whom the meeting is to be held; (d) agency representative(s) who will attend; and (e) general subject of the meeting. In each case, whether written advance notice of a “formal discussion” was reasonable depends on the specific circumstances of that case.
- C. The Agency shall also approve, on request, reasonable official time for the Union’s President or designee to attend the “formal discussion”.

#### **Section 6 - Notice of Changes in Conditions of Employment/Working Conditions**

The parties recognize that changes may occur in the workplace on a regular basis. Whenever either party decides to change a matter affecting conditions of employment/working conditions subject to bargaining under 5 USC Chapter 71, it shall give the other party notice as required by Article 5, “Negotiations During the Term of the Agreement”.

## **Section 7 - Notice to Employees of Exclusive Representation**

The Union shall provide a general notice to employees of the exclusive recognition granted to the Union, together with a list of Union-designated representatives and their work locations and telephone numbers to be posted on Union bulletin boards.

## **Section 8 - Communications with Bargaining Unit Employees**

Consistent with 5 USC 71, the Agency shall not communicate directly with employees regarding conditions of employment/working conditions in a manner that improperly bypasses the Union.

## **Section 9 - Management Rights - General**

Subject to the obligation to bargain established by 5 USC Chapter 71, nothing in this Agreement shall affect the authority of the Agency:

- A. To determine the mission, budget, organization, number of employees, and internal security practices.
- B. In accordance with applicable laws:
  - 1. To hire, assign, direct, layoff, and retain employees, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
  - 2. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Agency's operations shall be conducted;
  - 3. With respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion or from any other appropriate source, and
  - 4. To take whatever actions may be necessary to carry out the Agency mission during emergencies.

## **Section 10 - Other Agreements**

The provisions of this article shall apply to all supplemental, implementing, or subsidiary agreements between the Agency and the Union.

## **Section 11 - Management Rights With Respect to Non-Bargaining Unit Employees**

The Agency retains its statutory and all other rights concerning all matters affecting employees and positions outside the bargaining unit.

## **Article 4**

### **Employee Rights**

#### **Section 1 - Organizational Rights**

- A. Each employee in the bargaining unit shall have the right to form, join, or assist any labor organization, or to refrain from such activity, freely and without fear of penalty or reprisal; and each employee shall be protected in the exercise of such right.
- B. Except as otherwise provided under 5 USC Chapter 71, bargaining unit employees have the right:
  - 1. To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and
  - 2. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under 5 USC 71.

#### **Section 2 - Personal Rights**

- A. There shall be no restraint, interference with or coercion against any bargaining unit member in the exercise of their rights under 5 USC Chapter 71.
- B. The Employer and the Union shall annually inform bargaining unit employees of their rights under 5 USC 7114(a)(2)(B), including but not limited to posting a notice on the official bulletin boards.
- C. Pursuant to 5 USC 71, employees have the right to participate in picketing against the Employer or any other organization, when such picketing does not interfere with agency operations.
- D. This agreement shall not prevent any employee, regardless of Union membership, from bringing any matter of personal concern to the attention of appropriate officials in accordance with applicable laws, regulations, or Agency policies, or from choosing his or her own representative in a statutory appeal action.
- E. Nothing in this agreement shall cancel or annul any employee right or require an employee to become or to remain a member of a labor organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.
- F. An employee shall not be disciplined or otherwise discriminated against because he or

she has filed a complaint or given testimony under the Civil Service Reform Act, the Negotiated Grievance Procedure, or any other procedure available to redress complaints.

- G. The parties agree that, to the extent possible, instructions, directives and orders communicated to employees by Management officials should be reasonably consistent. An Employee who does not understand an instruction, directive or order has the right to request clarification of that communication. To the extent possible, a supervisor's instruction, directive or order must be complied with once given, whether or not the employee believes those instructions to be consistent, fair or reasonable. An employee who concludes that a supervisor's instruction, directive or order is not consistent, fair or reasonable has the right to pursue his or her dissatisfaction through the Negotiated Grievance Procedure.

### **Section 3 - Whistle-Blower Protection**

The Employer shall not take any action against an employee in reprisal for the employee's lawful disclosure of information that the employee reasonably believes evidences a violation of law, rule, or regulation, or evidences mismanagement, a waste of funds, an abuse of authority, or a danger to health or safety.

### **Section 4 - Right to Union Representation**

- A. If an employee wishes to discuss a problem or potential grievance with a Union representative, the employee shall have the right to contact the Union representative on duty time, and may do so by means of telephone, e-mail, fax, or in person, so long as the employee's exercise of this right does not interfere with the normal operations of the office. If the employee needs to use the telephone, e-mail, fax, etc., for more than fifteen (15) minutes, the employee must first consult with his/her immediate supervisor, Area Director, or State Office official.
- B. If the Union representative is located outside the employee's duty station and a personal contact is needed, the employee and supervisor will agree on the appropriate time and date to meet with the Union Representative. The appropriate procedure to be used in such instances is covered in Article 30, "Official Time".
- C. The exclusive representative shall be given the opportunity to be represented at any examination of an employee in the bargaining 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.

- D. The right to Union representation is not intended to interfere with the routine interaction between supervisors and employees in the normal course of a workday.
- E. The Employer will not designate an employee who has not been properly trained as an in-house investigator to conduct a formal investigation, nor will the investigator be an employee's co-worker in the same office.

### **Section 5 - Voluntary Activities**

The parties agree that employee participation in the Combined Federal Campaign, blood donor drives, Feds Feed Families and other worthy projects will be voluntary. This does not preclude the Employer giving general publicity and encouragement to employees to contribute. The Employer will not require or coerce employees to invest their money, donate to charity or participate in these activities. The Employer will not treat employees more or less favorably because the employee chooses or does not choose to participate in such campaigns or projects.

## **Article 5**

### **Negotiations During the Term of the Agreement**

To the extent that, in the Employer's business judgment, conferring and consulting with the Union before the Employer makes a significant decision (sometimes called "pre-decisional involvement" or "PDI") brings tangible benefits to the Agency, the Employer will practice PDI.

#### **Section 1 - Purpose**

The purpose of this Article is to establish a process to govern mid-term negotiations.

#### **Section 2 - Matters Covered by This Agreement**

- A. At any time during the life of this Agreement, the Parties may bargain about and enter into memoranda of agreement or of understanding concerning matters covered by this Agreement voluntarily.
- B. In addition, during the thirty (30) calendar days preceding the first and second anniversaries of the effective date of this Agreement, either party may reopen up to two (2) Articles by giving the other party: (a) written notice of its intent to do so; and (b) a copy of its proposed Article(s).

#### **Section 3 - Matters Not Covered by This Agreement**

Recognizing that the Agreement cannot cover all aspects or provide definitive language on each subject addressed, it is understood that the obligation to engage in mid-term bargaining is limited to Articles reopened pursuant to Section 2-B above and to matters not covered by this Agreement.

- A. Whenever the Agency decides to make a change which affects a condition of employment and is more than *de minimis*, it shall provide the Union President or designee reasonable written notice of the change at least fifteen (15) working days in advance of the anticipated date of implementation unless: (a) the change is already covered by this Agreement; and/or (b) the Union has already waived its right to bargain about the change.
  - 1. The notice shall include a statement of: (a) the specific changes; (b) the general identity of the employees who will be impacted; and (c) the Agency's designated representative for the issue.

2. If the Union wishes to negotiate on the proposed change, it shall notify management in writing within ten (10) workdays of receiving management's notice.
  3. The Union is not required to submit written proposals in advance of the start of bargaining, but shall make a good faith effort to do so.
  4. Bargaining shall begin as soon as reasonably possible and as agreed by the parties but not later than fifteen (15) workdays after the Union's receipt of management's notice. Negotiations during which the parties make a good faith effort to reach agreement shall last no more than five (5) workdays or as agreed by the parties.
  5. If no agreement is reached, each party shall have the full right of exercising its statutory and/or contractual rights, including moving the matter to mediation and to impasse.
- B. The parties recognize that the timeframes set in this Agreement to initiate bargaining are based upon normal circumstances and may occasionally need to be shortened to meet compelling operational needs. Management agrees not to set artificial deadlines for implementing changes in order to circumvent the normal timeframes.
- C. The foregoing is not intended, and shall not be interpreted, in any way so as to limit the Union's right to demand to bargain over subjects not covered by this Agreement.

**Article 6 -  
Dues Withholding/Revocation**

- A. **Dues Withholding.** In order to initiate union dues withholding by payroll deduction, a bargaining unit employee must complete a Standard Form (“SF”) 1187, “Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues”. The SF-1187 can be obtained from either the Union or the Human Resources Contact or OPM website. The employee must complete the appropriate spaces, sign it, and submit it to the Union. A receipt will be provided to the employee, indicating the pay period in which the deduction is to be effective, i.e., the anniversary date of the pay period in which the employee’s allotment began.
  
- B. **Dues Revocation.** A bargaining unit employee may terminate union dues withholding on:
  - 1. the initial one-year anniversary date of the pay period in which the allotment began; and
  - 2. thereafter, each subsequent anniversary date, or as required by law.
  
- C. To cancel the dues allotment, the employee must submit a completed SF 1188, “Cancellation of Payroll Deductions for Labor Organization Dues”. The SF 1188 can be obtained from either the Union or the Human Resources Contact. The employee must complete the form, sign it, and submit it to the Union.

**Article 7**  
**Effective Date, Duration and Distribution of Agreement,**  
**and Training**

Each Party shall have its own original of this Agreement.

**Section 1 - Effective Date and Duration of Agreement**

This Agreement shall become effective for a period of three (3) years on the earlier of the following two dates: (1) the 31<sup>st</sup> day from the date it was executed by the Parties unless it has been disapproved by the Agency head pursuant to 5 U.S.C. 7114(c)(2); or (2) the day it is approved after review by the Agency head.

**Section 2 - Expiration and Renewal or Reopening of Agreement**

- A. This Agreement shall expire at the end of the third year it is in effect, except that it shall renew itself automatically if neither party gives written notice of its desire to terminate, modify or reopen the Agreement not more than 105 days and not less than 60 days before the expiration date. Following receipt of such written notice, the Parties shall meet within thirty (30) calendar days to begin negotiations on ground rules.
- B. Any supplements or amendments to this Agreement concluded by the Parties shall become part of this Agreement and shall terminate at the same time as this Agreement unless the Parties expressly provide otherwise in writing.

**Section 3 - Printing and Distribution**

Within 30 days of the signing of this Agreement, the Employer shall: (a)°distribute electronic copies to all current bargaining unit employees; (b)°post the Agreement on a SharePoint site accessible to bargaining unit employees; and (c)°notify employees of where to access the Agreement.

**Section 4 - Training**

- A. The Agency and Union shall train bargaining unit employees on the meaning and application of this Agreement at state-approved meetings (virtual and/or in-person).

- B. The orientation of new bargaining unit employees shall include providing each employee: (a) an electronic copy of this Agreement; and (b) information about how to contact the Union.
- C. The Agency shall notify the Union of any new employee within five (5) business days after the new employee reports for duty.
- D. The Agency shall permit the Union to meet (for up to 1 hour virtually and/or in-person) with new employees so the Union can provide such employees with information on employee rights, the Union, and this Agreement. The Union shall arrange any such meetings through the appropriate supervisors.

## **Article 8 Official Travel**

The compensation and reimbursement of employees for travel shall be governed by the Federal Travel Regulations.

### **Section 1 - Compensation and Travel**

Whenever practicable, time spent in travel status away from the employee's official duty station will be scheduled by the Agency within the employee's normal working hours. When travel is performed during non-duty hours, the determination of whether such travel constitutes hours of "work" will be made under 5 USC or the Fair Labor Standards Act, whichever is applicable. The employee will be compensated accordingly.

### **Section 2 - Actual Subsistence**

Requests for actual subsistence expenses will normally be approved when the supporting justification showing the unusual and exceptional circumstances complies with the government-wide Federal Travel Regulations.

### **Section 3 - Continuation of Approved Travel Expenses**

Employees who are unable to arrive at or return from their destination during regular duty hours will be reimbursed for authorized travel expenses provided said inability to arrive or return is due to arduous travel conditions beyond the employee's control resulting from natural calamity, unavailability of transportation, or severe weather.

### **Section 4 - Advancement of Expenses**

Normally, the Agency does not pay advances for travel, and employees are expected to use government-issued credit cards to pay such expenses. However, employees may request travel advances in accordance with the Federal Travel Regulations, the most current USDA Departmental Regulation 2300-001, and the most current Rural Development Instruction 2036-A.

### **Section 5 - Use of Vehicles**

- A. Reasonable periods of time spent by a traveling employee during regular duty hours to make emergency repairs to, or refueling of, vehicles used to conduct government business will be considered duty time.
- B. In situations where a traveling employee is required to pick up or return a government owned vehicle without first checking in or out of the permanent duty station, the Agency will schedule the travel assignments so, whenever practicable and previously authorized by the supervisor, that the traveler may leave home at the same hour he/she would normally leave to report to the office, and so, upon return, wherever practicable and previously authorized by the supervisor, that he/she may arrive home at the same time he/she would ordinarily arrive had he/she worked at the office.
- C. When an employee is authorized to use a privately-owned vehicle (“POV”) instead of an available government-owned vehicle (“GOV”) the Agency shall reimburse the employee for mileage using:
  - 1. the maximum rate consistent with regulations of the General Services Administration (“GSA”) when the employee’s use of the POV has been authorized because doing so is advantageous to the government; or
  - 2. the maximum reduced rate permitted by GSA when the employee’s use of the POV has been authorized for some reason other than the government’s advantage.
- D. The Agency will not require employees to drive or ride in unsafe vehicles. When an employee is assigned a GOV that is not functioning or equipped properly, the employee shall report the situation to the Associate Director or designee.
- E. If any employee is assigned to use a specific GOV which the employee, because of physical trait, health condition or handicap, cannot operate safely or without suffering injury (e.g., an employee who is seven feet tall assigned to use a sub-compact vehicle), the Agency shall permit the employee, on request, to use his/her POV and be reimbursed under section 5(C)(1) above. The Agency may require the employee to provide appropriate documentation supporting his/her request when the trait, condition or handicap is not known or apparent.

## **Section 6 - Protective Assistance**

The Agency and the Union recognize some travel job assignments could present a threat of danger to the personal safety of employees. Management shall take the steps necessary to assure the safety of employees when conditions arise to necessitate this need.

## **Section 7 - Return to Duty Station**

An employee, on a long-term assignment outside the commuting area, may be authorized

occasional return trips to his or her permanent duty station at government expense on non-workdays. Approval for such trips is at the administrative discretion of the authorizing official and may be granted in accordance with published USDA and Rural Development travel policy.

### **Section 8 - Resolution of Disputes**

Disputes over matters under the jurisdiction of the Civilian Board of Contract Appeals may be resolved using procedures provided by the: (1) Civilian Board of Contract Appeals; or (2) Negotiated Grievance Procedure in Article 25 of this Agreement.

## **Article 9 Health and Safety**

### **Section 1 - Policy Statement**

The Agency and the Union have a common interest in promoting safe working habits and safe working conditions. The Agency has an obligation to provide safe working conditions. All employees are responsible to report unsafe conditions promptly. The Agency and the Union recognize that observing safe work practices is primarily the responsibility of each employee. The Agency shall ensure that the poster titled “Occupational Safety and Health Protection for USDA Employees” identifying the appropriate office Point of Contact (“POC”) is displayed in each office. The Agency and the Union shall cooperate in encouraging employees to work in a safe manner and to report promptly any unsafe or unhealthy conditions to their appropriate POCs.

- A. The Agency shall, in the event an employee sustains a job-related injury, disease, or illness, provide advice and assistance from the State Office Administrative Division to the employee in completing and submitting a claim (for details, see Article 33, “Workers’ Compensation Program”).
- B. The Agency shall, 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 healthful working conditions for all employees and shall 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 shall cooperate to that end and encourage all employees to work in a safe manner.
- C. The Union has the responsibility to advise the Agency concerning safety and health problems.

### **Section 2 - Agency Responsibilities**

- A. Assisted by the Union, the Agency shall 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 Agency and the Union shall 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 Agency shall:
  - 1. Provide information concerning Federal Employee Health Benefits and Life Insurance Programs, and occupational health services;

2. 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. Provide and maintain in each office adequate fire and disaster plans and equipment, including smoke detection devices and exit signs that are visible during power failure;
4. Work with the building manager, the Department, GSA, and private lessors, to have safe electrical equipment and adequate ventilation in all work areas;
5. Follow GSA regulations in providing facilities appropriate and adequate to accommodate the needs of qualified disabled employees.

### **Section 3 - Union Responsibilities**

- A. The Union shall take appropriate action to encourage all bargaining unit employees to work safely with due consideration for the safety, health and comfort of all fellow employees. To avoid preventable unhealthy or unsafe working conditions, the Union shall encourage respect and care by bargaining unit employees for the Agency's facilities and equipment and their own work environment.
- B. Bargaining unit employees have a duty and are encouraged to report unsafe or unhealthy working condition(s) to the office POC as soon as any such conditions come to their attention.
- C. In the event the office POC is a bargaining unit employee, the POC shall notify the appropriate supervisor of the safety concern.

### **Section 4 - Employee Reports of Unsafe or Unhealthy Working Conditions**

- A. Employees who believe that an unsafe or unhealthy working condition exists have the right and are encouraged to report the condition to their office Lead Specialist. The Agency shall not require any employee to work in a situation posing the threat of imminent danger.
- B. If any employee reports the existence of an unsafe or unhealthy working condition to a Lead Specialist in the office or an Area Director, the Agency shall make reasonable efforts to investigate the condition as soon as reasonably possible and, if necessary, to report the condition for further investigation.
- C. When an inspector conducts a physical inspection of the work place, the Union shall be given an opportunity to accompany the inspector during the inspection on official time.

1. Safety and Health inspections for all work areas shall be conducted by the New York Rural Development Safety and Occupational Health Manager or other qualified individual.
  2. When a work-place inspection is conducted by the Agency's safety representative or by an outside agency, the Union shall be invited to accompany the inspectors. During the course of any such inspection, any employee may call the attention of the inspector to any unsafe or unhealthful working conditions.
- D. Employees shall perform properly assigned duties unless they reasonably believe that compliance or performance poses an imminent risk of death or serious bodily harm.
- E. If a hazardous condition is discovered in any work place, the Agency shall post and maintain notices of the condition to employees at or near the location of the hazard until the condition has been corrected. Such notices shall: (a) contain a warning; (b) describe the unsafe or unhealthful working condition; and (c) describe any precautions that applicable regulations require employees to take.
- F. The Agency shall assure prompt abatement of unsafe or unhealthy working conditions found to exist. When prompt abatement cannot be accomplished, the Agency shall develop, following consultation with the Union, a plan setting forth a timetable for abatement and a summary of interim steps to protect employees. Employees exposed to such conditions shall be informed of the abatement plan and the Union shall be consulted during the implementation of the plan. When the hazard cannot be abated without the assistance of GSA or other Federal lessor agency, the Agency shall work with the lessor agency to seek abatement.
- G. Whenever reasonably possible, the Agency shall inform the Union no later than one (1) full workday in advance when paints or pesticides are to be used in the presence of, or in close proximity to, employees. This notice shall also include any warning statements given to the Agency by the organization using the paints or pesticides or that the Agency otherwise possesses.
- H. The Agency shall not subject any employee to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthful working.

## **Article 10**

### **Hours of Work**

#### **Section 1 - Preamble**

- A. Employees' hours of work shall be administered in accordance with 5 United States Code Chapter 61, 5 Code of Federal Regulations Part 610, and this Agreement. This Article prescribes the policies covering hours of work for employees in accordance with applicable law and regulation. The implementation of any Alternative Work Schedule ("AWS"); NOTE: for different types of AWS, see section 7-B below) requires good judgment to guarantee that the arrangement does not make it necessary for a staff member within an office to carry an unreasonable burden, while also enabling the Agency to meet its mission needs and provide customer service during the hours of 8:00 a.m. to 4:30 p.m.
- B. AWSs increase the number of possible work-life arrangements employees may make. No office or employee is automatically excluded from participating in any available AWS, so supervisors must review each work schedule request before approving it to see that approval would not affect the Agency's mission and office operations adversely.

#### **Section 2 - General Provisions**

- A. The administrative pay period shall be a period of fourteen (14) consecutive calendar days beginning on a Sunday and ending on a Saturday.
- B. The basic workweek shall be Monday through Friday. Exceptions may occur when mission requirements make it necessary temporarily to include Saturdays or Sundays as part of the basic workweek for certain employees.
- C. The core hours shall be 9:00 a.m. to 2:30 p.m.
- D. All full-time employees are required to take an unpaid lunch break of between 30 and 60 minutes daily between 11:00 a.m. and 2:00 p.m. The supervisor and employee shall determine the approximate time at which the employee takes his/her meal period. In those rare instances when an employee is prevented from taking a lunch break between 11:00 a.m. and 2:00 p.m., the Agency shall permit the employee to take his/her meal period outside those times. The lunch break may not be scheduled at the end of the work day.
- E. All full-time employees shall request supervisory approval for times for their tour of duty: (1) arrival (or "in") and departure (or "out") times; and (2) lunch break starting and ending times.
- F. In the case of any part-time employees, the Agency shall apply governing law,

government-wide regulations, USDA Departmental Regulations, and Rural Development Instruction 2051-F, "Hours of Duty".

### **Section 3 - Schedule Changes**

- A. The Agency shall not change the work schedule of an employee without a justifiable business-related reason.
- B. The Agency shall notify both the affected employee(s) and the Union of all changes, whether permanent (i.e., indefinite) or temporary (e.g., the suspension of an AWS under Section 8 below), in the work schedules of bargaining unit employees. Unless circumstances require that notice be shorter, the Agency shall give such notice at least fourteen (14) calendar days in advance of the pay period in which the change is to be effective.

### **Section 4 - Voluntary Schedule Adjustments**

An employee seeking to adjust or change temporarily their tour of duty within a pay period because of extenuating circumstances shall (a) draft a request that specifies the desired adjustment/change as well as the major foreseeable likely impact, if any, on the agency's mission, and (b) present the request to the supervisor for the supervisor's approval/disapproval.

### **Section 5 - Adjusting Work Schedules For Religious Observances**

- A. On request, the Agency shall permit an employee whose personal religious beliefs require that he/she abstain from work at certain times of the workday or workweek to work alternative hours so the employee can meet the religious obligation. The employee shall submit his/her request in writing and at least one (1) pay period in advance. If the alternate work hours would cause an undue hardship on the Agency's mission, the Agency may refuse to permit the change by sending the employee and Union notice in writing.
- B. When deciding whether an employee's request for an adjusted work schedule should be approved to accommodate a religious observance, a supervisor should not make any judgment about the employee's religious beliefs or his or her affiliation with a religious organization. A supervisor may disapprove an employee's request if modification of the employee's work schedule would interfere with the efficient accomplishment of the Agency's mission. Disapprovals shall be given to the employee in writing.

## **Section 6 - Traditional Fixed Work Schedule (non-AWS) available to bargaining unit employees**

- A. All full-time employees may work a “traditional” or non-AWS fixed work schedule, i.e., 8 hours per day/40 hours per week with fixed “in”/“out” and lunch break starting/stopping times, to fulfill their basic work requirement.
- B. The “out” time of the employee’s work day is determined by adding the scheduled work time to the scheduled length of the lunch break. For example, the ending or “out” time for a non-AWS employee who begins work at 8:00 a.m. and elects a 45-minute lunch break, is 4:45 p.m.

## **Section 7 - Alternative Work Schedules (AWSs) available to bargaining unit employees**

### **A. General**

- 1. The use of AWSs can improve productivity and morale while providing greater service to the public. Subject to adverse agency impact, AWSs shall be available to bargaining unit employees except as set forth in this Article.
    - a. The work schedules of employees shall be consistent with staffing that is adequate as determined by the Agency.
    - b. Due to the nature of their duties and requirements of some positions, not every employee may have the option of working every AWS.
  - 2. Working under a telework agreement shall not in and of itself disqualify an employee from working an AWS.
- B. All eligible employees may work any of the following AWS options (flexible or “FWS” and compressed or “CWS”) to fulfill their basic work requirement:
- 1. Flexitour. The Flexitour schedule is a type of FWS on which full-time employees work daily during the core hours established in this Article according to a schedule fixed in advance of the pay period, but with “in”/“out” and lunch break starting/stopping times which may, as agreed between the employee and supervisor, differ from one another freely. Thus, employees may choose “in” and “out” times within the periods of 6:00 a.m.-9:00 a.m., and 2:30 p.m.-6:00 p.m. respectively. Employees work eight (8) hours each work day for a total of 80 hours each biweekly pay period, e.g., 8:00 a.m.-4:30 p.m., or 8:15 a.m.-4:45 p.m. Flexible lunch breaks are available for employees working a Flexitour schedule so, subject to work needs, the employee does not have fixed lunch break starting/stopping times but elects when to take his/her lunch break starting no earlier than 11:00 a.m. and ending no later than 2:00 p.m., subject to work needs.

2. Gliding. The Gliding schedule is a type of FWS on which full-time employees work daily during the core hours established in this Article according to a schedule of workdays fixed in advance, but with freedom during the pay period to alter freely their “in”/“out” and lunch break starting/stopping times. Thus, employees may, if they wish: (a) choose different “in”/“out” times within the periods of 6:00 a.m.-9 a.m., and 2:30 p.m.-6:00 p.m. respectively for each workday during the pay period; and (b) work eight (8) hours each work day for a total of 80 hours each biweekly pay period, e.g., 8:00 a.m.-4:30 p.m. on Monday, 8:15 a.m.-4:45 p.m. on Tuesday, etc. Flexible lunch breaks are available for employees working a Gliding schedule so, subject to work needs, the employee does not have fixed lunch break starting/stopping times but elects when to take his/her lunch break starting no earlier than 11:00 a.m. and ending no later than 2 p.m.
3. The “Maxiflex 5/4-9” schedule is a type of FWS on which full-time employees work eight 9-hour workdays and one 8-hour workday for a total of 80 hours in a biweekly pay period according to a schedule fixed in advance of the pay period. The employee may flex his/her “in” and “out” times each workday within the periods of 6:00 a.m.-9 a.m., and 2:30 p.m.-6:00 p.m. respectively.

A part-time employee fulfills his/her work requirement (as established in his/her appointment) on nine (9) days during a biweekly pay period. The employee must obtain supervisory approval of the number of hours the employee must work each day, based on the particular part-time appointment.

Both full-time and part-time employees must obtain supervisory approval of the fixed starting/stopping times of their lunch breaks, subject to work needs.

4. Compressed 5/4-9. The Compressed 5/4-9 schedule is a type of CWS on which full-time employees work eight 9-hour workdays and one 8-hour workday during the core hours established in this Article according to a schedule fixed in advance of the biweekly pay period for a total of 80 hours in the pay period. Thus, the employee chooses: (a) fixed “in” and “out” times between 6 a.m.–9 a.m. and 2:30 p.m.–6:00 p.m. respectively; and (b) fixed lunch break starting/stopping times.

A part-time employee fulfills his/her work requirement (as established in his/her appointment) on nine (9) days during a biweekly pay period. The employee must obtain supervisory approval, based on the particular part-time appointment, of the number of hours the employee must work each workday.

Both full-time and part-time employees must obtain supervisory approval of the fixed starting/stopping times of their lunch breaks, subject to work needs.

5. Compressed 4-10. The Compressed 4-10 schedule is a type of CWS on which full-time employees work 4 10-hour workdays in each work week during the core hours established in this Article according to a schedule fixed in advance of the biweekly pay period for a total of 80 hours in the pay period. Thus, the employee

chooses: (a) fixed “in” and “out” times between 6 a.m.-7:30 a.m. and 4:30 p.m.-6:00 p.m. respectively; and (b) fixed lunch break starting/stopping times.

A part-time employee fulfills his/her work requirement (as established in his/her appointment). The employee and supervisor negotiate, based on the particular part-time appointment, the number of hours the employee must work each workday.

Both full-time and part-time employees negotiate with their supervisors the fixed starting/stopping times of their lunch breaks, subject to work needs.

C. Requests for AWSs

1. Employees may request to change their schedules once before the beginning of each calendar quarter that begins in January, April, July, and October. Requests must be submitted at least two (2) full pay periods before the first workday of the first full pay period in the quarter. Employee may submit a request to change their schedule more often when a hardship exists. In any event the employee will not change their schedule more than four (4) times a calendar year.
2. An employee who requests a FWS must indicate which FWS he or she is requesting. Employees who request FWSs must select anticipated “in” and “out” times within the periods of 6:00 a.m.-9 a.m., and 2:30 p.m.-6:00 p.m., respectively.
3. An employee who requests a CWS must indicate which schedule he or she is requesting, which day is requested as the non-workday(s), and in the case of the 5/4-9 schedule, which workday is requested to be the eight-hour day. The employee must also select a starting and stopping time within the arrival and departure time bands. Once these times have been selected and approved, the employee may not vary these times until a new request is submitted and approved (at the calendar quarter) except under extenuating circumstances.

D. Subject to supervisory approval, employees who work a FWS may “flex out and in” both inside and outside the core hours of 9:00 a.m.-2:30 p.m. Absent the supervisor’s approval the employee must both cover core hours and work the required number of hours each workday. Therefore, if the combination of an employee’s starting time and the amount of time the employee is away from the worksite precludes coverage of core hours and/or the completion of a full workday prior to the completion of the Agency’s latest departure time, the employee shall take the appropriate leave at his/her request. On occasion, with supervisory approval, employees on the Maxiflex 5/4-9 work schedule may expand their lunch period within the established lunch band and make it up at the end of the day without a charge to leave.

E. If a supervisor denies a request for an established AWS or proposes to terminate an individual employee’s participation in an AWS, he or she shall notify the employee in writing, provide the basis for the denial or termination and provide an alternate schedule to the employee. The supervisor may deny an employee’s request for or

propose to terminate an employee's participation in a particular AWS if the supervisor determines that the employee's participation could negatively impact the mission's work, coverage requirements or the need to respond to the public. Denials of requests to work AWSs shall not be arbitrary or capricious. An employee may challenge a supervisor's denial as set forth in Article 25, "Negotiated Grievance Procedure".

### **Section 8 - Temporary Suspension or Interruption of AWSs**

- A. The Agency shall make a reasonable effort to continue the participation of employees in AWSs without interruption. However, occasions may arise when, because of a need created by unusual and/or unanticipated workload or operational demands, the Agency must suspend or interrupt AWSs temporarily. The suspension shall be no longer than is necessary to meet the temporary need. If an employee's FWS is suspended temporarily, the Agency shall restore it automatically as soon as possible after the temporary need has ended. For the purposes of this Agreement, a FWS suspended "temporarily" is one that is suspended for a period of 28 days or less. If the Agency believes it will be necessary to repeat any suspension or start a new suspension without first restoring the participation of an employee in AWSs, the Agency shall notify the Union before the end of the suspension. The Agency shall not suspend AWSs without good cause.
- B. A supervisor may require that employees revert back to the basic eight (8) hour day and 40-hour work week for a full pay period when an AWS is inconsistent with a need to accommodate (i) temporary assigned duties, or (ii) training/travel, or (iii) military leave, or (iv) any similar temporary factor.
- C. To meet unforeseen urgent mission requirements, employees may be required to work on their scheduled day off. In those instances, employees who are not "exempt" under the Fair Labor Standards Act ("FLSA") shall be compensated for such work by, at the election of the employee, receiving either (i) payment at overtime rates or (ii) compensatory time off. Employees who are "exempt" under the FLSA, and whose rate of basic pay is above the rate for GS-10, shall be compensated for such work by receiving compensatory time off.
- D. Employees temporarily assigned to other parts of the organization shall work a schedule that meets the mission, operational, and customer service requirements of their assignments.

### **Section 9 - Terminating AWSs**

If the head of the Agency finds that a particular AWS has had an "adverse Agency impact" as defined in 5 U.S.C. 6131(b), the appropriate Agency representative (e.g., State Director or other designated representative) shall promptly notify the Union of its desire to reopen the Agreement to terminate the availability of that particular AWS to employees. Upon demand by the Union, the parties shall then negotiate over the Agency's proposal.

## Section 10 - Credit Hours

- A. Employees who work FWSs, including the “Maxiflex 5/4-9”, may earn credit hours. Employees who are in designated fixed schedule positions and employees who work CWSs are not eligible to earn credit hours.
- B. Employees who wish to work credit hours must request to do so in advance. Supervisors shall approve or deny such requests promptly. Upon request of the employee, the earning of credit hours may be approved retroactively where the circumstances warrant (e.g., where it was impractical for the employee to obtain advance approval and performing the work was necessary).
  - 1. Employees shall not be authorized to work credit hours on holidays unless the employee is already scheduled to work.
  - 2. Employees shall not normally be authorized to earn credit hours on a regular scheduled day off, except in situations where the employee has a substantiated need to build time to account for an anticipated unusual need for time off.
- C. If credit hours are approved and overtime is subsequently made available prior to the working of the credit hours, the employee shall be afforded the opportunity to elect to work the overtime.
- D. Eligible employees may be authorized to earn up to four (4) credit hours per day, and up to twelve (12) credit hours per week, provided work that can be performed at the requested time is available for the employee and it can be performed at the requested time(s).
- E. Credit hours may be earned and used in increments of one-quarter hour (15 minutes).
- F. Full-time employees may accumulate and carry over from one pay period to another a total of no more than 24 credit hours. Part-time employees may accumulate and carry over from one pay period to another a total of no more than  $\frac{1}{4}$  of the hours in their biweekly basic work requirement. A full-time employee who has accumulated more than 24 credit hours (or a part-time employee who has accumulated more than the maximum allowed) is subject to forfeiture of the excess hours if they are not used prior to the end of the pay period.
- G. The use of credit hours shall be subject to the same criteria as annual or sick leave. An employee may use earned credit hours for all or any part of any approved leave. Credit hours must be earned before they may be used.

## Section 11 - Holidays

- A. All employees shall be entitled to all Federal holidays, declared by law or Executive Order.
  - 1. For full time employees working a Monday-Friday schedule, if a holiday falls on a Saturday, it shall be observed the preceding Friday. If a holiday falls on a Sunday, it shall be observed the following Monday. This is referred to as an “in lieu of” holiday.
  - 2. When a holiday falls on a non-work day of a part-time employee, that employee is not entitled to an “in lieu of” day for that holiday.
  
- B. Regular Schedule
  - 1. Full-time employees on a regular schedule (neither FWS nor CWS) who are relieved or prevented from working on a workday designated as a holiday shall receive their regular rate of basic pay for eight (8) hours on that workday.
  - 2. A full-time employee who performs work on overtime on a holiday is entitled to his or her rate of basic pay plus premium pay equal to his or her rate of basic pay (double time) for that holiday work. Holiday premium pay is limited to a maximum of (8) hours on that workday.
  - 3. A part-time employee who performs work on a holiday shall receive his or her regular rate of basic pay for the hours the employee is scheduled to work that day, not to exceed eight (8) hours on that workday.
  
- C. FWSs
  - 1. Full-time employees performing work on a FWS under this Article who are relieved from working on a day designated as a holiday shall receive their regular rate of basic pay for eight (8) hours on that day.
  - 2. A full-time employee who has been approved to perform work on overtime on a holiday is entitled to his or her rate of basic pay plus premium pay equal to his or her rate of basic pay (double time) for that holiday work. Holiday premium pay is limited to a maximum of eight (8) hours.
  - 3. A part-time employee working a FWS who is relieved from working on a holiday shall receive his or her regular rate of basic pay for the hours the employee is scheduled to work that day, not to exceed eight (8) hours. For example, an employee who works ten (10) hours on a holiday (including one (1) hour of overtime work ordered by a supervisor) and who has a 9-hour basic work requirement on that day would earn holiday premium pay for the eight (8) holiday hours, his or her regular rate of basic pay for one (1) hour within the basic work requirement), and one (1) hour of overtime pay.

4. A part-time employee working a FWS who performs approved work on a holiday is entitled to holiday premium pay only for work performed during his or her basic work requirement.

D. CWSs

1. Full-time employees working a CWS in accordance with this Article (see § 7-B-3 above) who are relieved from working on a workday designated as a holiday shall receive their regular rate of basic pay for the number of hours of their CWS on that workday.
2. The Agency shall not require employees to move their regularly scheduled workdays off solely in order to avoid paying holiday premium pay or to reduce the number of holiday hours included in the basic work requirement.

**Section 12 - Reporting FWS in/out times**

All employees working under FWSs shall record their exact daily arrival (or “in”) and departure (or “out”) times in the Agency’s designated system (presently “WebTA”) for recording time and attendance.

**Section 13 - Breaks**

- A. Employees are authorized two (2) breaks lasting up to fifteen (15) minutes each day. No more than one (1) break period shall be taken in the morning or in the afternoon. Breaks may not be used to delay arrival times, extend lunch periods, or advance departure times, and may not be carried over or accumulated.
- B. Break periods are part of the duty day and are compensable. It may be necessary, from time to time, to interrupt an employee’s break because of Agency business, e.g., phone calls, or walk-in customers. In such cases, the employee shall shorten that break but is still authorized a total of fifteen (15) minutes at some time each morning and again each afternoon. Breaks shall be scheduled so as to maintain appropriate office coverage.
- C. Employees shall: (1) inform supervisors or the Office if they anticipate deviating from their normal break time; and (2) remain reasonably accessible during break periods.

## **Article 11**

### **Pay Administration**

#### **Section 1 - Applicable regulations**

Bargaining unit employees will be regulated by RD Instruction 2051-H, "Overtime Pay".

#### **Section 2 - Guidelines**

- A. Overtime shall be distributed fairly and equitably to all bargaining unit employees.
- B. Overtime shall not be distributed or withheld as a reward or penalty.
- C. The Employer will, to the maximum extent reasonably possible, notify the employees of the opportunity to work overtime work.
- D. The Employer will, to the maximum extent reasonably possible, give notice three (3) days in advance to employees who will be required to work after their normal tour of duty.

## **Article 12 Holiday Work**

The Agency shall, to the maximum extent reasonably possible, avoid requiring employees to work on holidays. However, in the event the Agency decides holiday work is needed, the State Director or other authorized official may approve such work. The Agency shall not assign employees to work on a holiday as a reward or penalty, but solely in accordance with actual needs, and normally only to employees who volunteer.

- A. In the event the Agency decides holiday work is needed, the Agency shall consider assigning the work to those employees whom the Agency decides are qualified to perform the work of the assignment in the following order: (1) those who are currently assigned to the office needing the work; and (2) those from other offices.
- B. In order to ensure consistency, the Agency shall normally, upon reasonable request, excuse employees from working on a holiday if another employee with the required skills is readily available and willing to work.
- C. The business rationale concerning holiday hours worked shall be made available, when requested, to employees and/or the Union to aid in resolving specific complaints concerning distribution of work on holidays. If a dispute arises, the grievance procedure shall be followed.
- D. The Agency shall notify those employees who are needed for holiday work assignments as far in advance as reasonably possible.
- E. If an employee is not more than thirty (30) minutes late in reporting for a holiday work assignment, he/she shall not be denied the remainder of the holiday work assignment. If an employee who has been assigned holiday work cannot report for the assignment due to illness or emergency, such employee shall notify the appropriate available supervisor. However, the Agency shall give consideration to an employee who, because of special or unique circumstances, is unable to meet these requirements. In this connection, all employees shall be informed as to the proper procedure to give notice of absence.
- F. The following Federal designated holidays shall be granted to all bargaining unit members unless changed by law and/or regulations.

### **Holidays by Federal Statute**

New Year's Day - January 1  
Martin Luther King - third Monday in January  
Washington's Birthday - third Monday in February  
Memorial Day - last Monday in May  
Independence Day - July 4  
Labor Day - first Monday in September  
Columbus Day - second Monday in October  
Veterans Day - November 11

Thanksgiving Day - fourth Thursday in November  
Christmas Day - December 25

**In the event Congress creates by statute a Federal Holiday not listed above, the same shall be granted to all bargaining unit employees.**

## **Article 13**

### **Use of Facilities**

#### **Section 1 - Office Space and Furnishings**

- A. The Employer will make available adequate space for confidential discussions between bargaining unit members and designated Union representatives, when such discussions are part of or reasonably necessary so the Union can perform its representational role. When available, suitable and allowable under any existing lease agreement, during and after duty hours, the Union may reserve and use the Employer's conference rooms or other suitable spaces for meetings of its officers, stewards, and members to conduct internal union business so long as employees of the Employer are neither in duty status nor on official time. The Union agrees to pay for any extra cost of using facilities outside of normal business hours, if such payment is required by the lease contract. The payment will not exceed the net cost to the Agency.

#### **Section 2 - Issuances**

- A. The Employer will permit the Union to use a copier to make one copy of any non-confidential document issued by the Employer or the Department concerning personnel policies, practices, or working conditions, organizational structures, labor-management relations, or any other matter that may have an impact on the conditions of employment of bargaining unit employees. Confidential documents shared by either party will be based in trust and respect and must not be duplicated or shared with others without the sharing party's express consent.
- B. The Union will be permitted access to personnel manuals and guidelines, and may, on request, make copies of such materials.
- C. Usually, all distribution of issuances under this Article will be at no cost to the Union.

#### **Section 3 - Other Facilities and Services**

The Employer will continue to furnish Union representatives, including those performing representational duties on official time away from their permanent duty stations, customary routine services that are consistent with the best interest of the Employer, employees and the Union. Such services include the use of the internal mail distribution (for other than mass mailing), trivial amounts of photocopying, and the like.

**NOTE:** The Union's use of official facilities under this Article will ONLY be for the purpose of representing employees of Rural Development New York, except to the extent that issues related to USDA Field Service Centers or Service Center Initiatives within the Department may affect

those employees. Any misuse of equipment and facilities may result in the temporary or permanent loss of these privileges.

## **Article 14 Communications**

### **Section 1 - Distribution of Union Publications**

Official publications of the Union may be distributed on USDA, Rural Development property by Union representatives during the non-duty time of the Union representatives who are distributing, and of the employees receiving the materials; distribution shall not disrupt operations. All such materials shall be properly identified as official Union issuances.

### **Section 2 - Contents of Literature**

Union literature, whether posted on bulletin boards or distributed, must not violate any law, regulations, security of the office, or provisions of this agreement. Union Statements will not include defamatory or derogatory remarks that undermine the authority of the agency and its officials, when the remarks have no reasonable nexus to legitimate representational issues. Any complaint concerning the Union's compliance with these requirements may be made the subject of a grievance in the Negotiated Grievance Procedure.

### **Section 3 - Addressing New Employees**

During orientation sessions held by the Employer to orient new employees, the Employer will introduce a Union representative designated by the Union and will provide the Union's representative an opportunity, usually not lasting more than thirty (30) minutes, to address the employees.

### **Section 4 - Use of E-Fax and Office Copying Equipment**

The Employer will permit reasonable use of e-fax and office copying equipment to reproduce materials for use in Labor-Management relations.

## **Article 15**

### **Parking and Parking Areas**

- A. The Agency shall, insofar as reasonably possible, locate offices in facilities with sufficient parking space for all employees.
- B. At each facility, the Agency shall clearly identify any parking space reserved for limited/preferential use that is not available to bargaining unit employees.
- C. Parking space limited to/reserved for handicapped employees.
  - 1. Any employee seeking the use of a parking space reserved for handicapped employees shall submit to the Agency documentation showing that: (a) they have requested handicapped vehicle identification (e.g., a hanging tag, a special license plate, etc.) from the government of the state in which they reside; and (b) the government of that state issued such vehicle identification to them.
  - 2. When the Agency receives such a properly documented request, the Agency shall respond by approving the request and permitting the preferential use of a parking space within ten (10) workdays. The space shall be: (a) the closest available to the employee's normal workplace entry; and (b) sufficient to accommodate the employee's documented handicap.
  - 3. In order to continue using a parking space reserved for handicapped employees, the employee shall reaffirm their handicapped eligibility status annually by submitting current documentation of the type identified in the preceding paragraph.
- D. When the limited/preferential use of parking spaces is to be assigned to individual bargaining unit employees, the Agency shall: (a) notify the Union; and (b) permit the Union an opportunity to demand to bargain about the matter.

## **Article 16**

### **Reduction-In-Force and Transfer of Function**

#### **Section 1 - Negotiations**

- A. The Employer and the Union recognize that unit employees may be seriously and adversely affected by a reduction-in-force (“RIF”) and/or transfer of function (“TOF”). In the event of a RIF and/or TOF, the Employer will notify the Union and fulfill its obligation to bargain consistent with 5 USC 71.
- B. The Employer shall provide the Union with all available information relevant to bargaining about the RIF and/or TOF in accordance with 5 USC 7114(b)(4).

#### **Section 2 - Notification to the Union**

When it is anticipated that a RIF and/or TOF will affect bargaining unit employees, the Union President will be given the earliest reasonably possible preliminary notification in writing prior to employee notice. The preliminary notice will, as applicable, include the following information:

- A. Specific functions to be transferred and identification of employees assigned to this function;
- B. The reason for the RIF or TOF;
- C. The competitive area and personnel levels (type of positions and approximate number of employees) that may be affected initially;
- D. The anticipated effective date that the action will occur; and
- E. The manner in which Management anticipates exercising its discretion under 5 CFR 351.

#### **Section 3 - Impact and Notification to Employees**

- A. The Employer will attempt to minimize the adverse effects on employees of actions exercising management rights. All RIFs will be carried out in strict compliance with all applicable laws and regulations.
- B. The Employer will give an advance general notice of 90 calendar days to employees who may be affected by a RIF, and a specific notice of 60 calendar days to individual employees who will be affected by a RIF.

- C. Employees receiving a RIF notice have the right to review retention lists pertaining to all positions for which they are qualified within their competitive area. This includes the retention register for their competitive level and those for other positions for which they are qualified, down to and including those in the same or equivalent grade as the position offered by the Agency. If separation occurs, this includes all positions to or below the grade level of their current positions in their competitive areas. Affected employees shall have the right to the assistance of the Union when reviewing such lists or records.
- D. Any career or career-conditional employees whose last performance rating of record is above unacceptable and who are separated because of a RIF must be given information concerning their right to reemployment consideration and career transition assistance plans, among other rights to which they may be entitled. It is understood that acceptance of a temporary appointment will not alter the employee's right to be offered permanent employment.
- E. Bargaining unit employees have the right to outplacement services described in the Department of Agriculture and Rural Development Career Transition Assistance Plans and 5 CFR 351.

## **Article 17**

### **Contracting Out Bargaining Unit Work**

#### **Section 1 - Notification to the Union**

- A. When the Employer anticipates contracting out work presently being performed by bargaining unit employees and that doing so would result in a RIF or in the demotion of any bargaining unit employee, it will notify the Union at least 60 days in advance. The notice will identify in general terms the employees who may be affected. Time frames hereby established may be extended by mutual consent.
- B. Following such notice, upon request from the Union, the Employer will meet with the Union to discuss the information contained in the notice.

#### **Section 2 - Management Decisions**

Any Employer decision to possibly contract out work presently being performed by bargaining unit employees will be made in accordance with OMB Circular A-76, applicable rules and regulations, and in keeping with those will ensure the Union is represented in any "Most Efficient Organization" ("MEO") team established as the MEO competes with private enterprises to perform the duties described in the Statement of Work.

#### **Section 3 - Statement of Work**

The Employer will provide the Union with a copy of any Statement of Work which has been developed for the proposed contracting out, and which deals with work currently performed by bargaining unit employees. The Union will be given ten (10) days to comment regarding the Statement of Work. Time frames hereby established may be extended by mutual consent.

#### **Section 4 - Impact and Implementation**

The Employer agrees that prior to implementing a decision to contract out, the Union will be given the opportunity to timely negotiate regarding the impact and procedures for implementing such decision.

Management and Union officials will meet for no more than five (5) workdays to resolve any differences and reach agreement. Time frames hereby established may be extended by mutual consent.

### **Section 5 - Access to Regulations**

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

### **Section 6 - Adverse Effects on Bargaining Unit Employees**

If bargaining unit employees are adversely affected (RIF or demotion) by the decision to contract out work presently being performed by bargaining unit employees, the Employer will proceed in accordance with Article 16 of this Agreement.

### **Section 7 - Placement Assistance**

The Agency shall, on request by any bargaining unit employee who is displaced as a result of contracting out, assist the employee in locating suitable employment for the employee. Such assistance shall include:

1. Giving priority consideration for suitable vacant positions within Rural Development – New York in accordance with Agency policies and procedures;
2. Paying reasonable costs for relocation, according to Federal Travel Regulations;
3. Making reasonable efforts to arrange for gradual transition when conversions are made to provide greater opportunity for attrition and placement; and
4. Implementing the Career Transition Assistance Plan (“CTAP”) and the Interagency Career Transition Assistance Plan (“ICTAP”) programs.

## **Article 18**

### **Training and Career Development**

#### **Section 1 - Statement of Policy**

The primary function of training is to assure the optimum use of human resources in attaining organizational needs. The Employer is responsible for determining training needs, and will consider input from employees when doing so. The Employer should provide training necessary for the performance of employee's assigned duties, and for improvement of organization and individual performance. Given the likely future limitation of funds and the need to provide training, USDA is relying on the robust capabilities of AgLearn to meet most USDA RD training needs.

#### **Section 2 - Non-Discrimination**

Nomination and/or selection of employees to participate in training and career development programs and courses shall be non-discriminatory and made without regard to race, color, national origin, ethnicity, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, Union membership or activity, or reprisal or retaliation for prior civil rights activity, and shall be in accordance with equal employment opportunity guidelines, and consistent with other applicable laws.

#### **Section 3 - Individual Development Plan**

Employees will complete Individual Development Plans ("IDPs") via AgLearn with the Employer (usually their supervisors) at the beginning of each performance review period. The supervisor will assist the employee in the preparation of the IDP and will review it with the employee to assure conformance with organizational needs and individual career needs. The plan will be referred to the designated approving official and the employee will be notified of the approval/disapproval or the need for modification.

#### **Section 4 - Employee Training Counseling**

The Employer and the Union recognize that each employee should apply effort, time, and initiative in increasing his/her potential through self-development, training, and job performance. When requested by an employee, the Employer (usually the supervisor) will provide counseling concerning skills the employee might consider developing.

## **Section 5 - Training Expenses**

When local training is approved, the Employer will pay the costs of tuition and required textbooks and other expenses as appropriate whenever reasonably possible, and may pay travel costs, subject to travel regulations and fiscal considerations. If travel funds are not authorized and the training would otherwise be approved, the employee will be notified and given the option of attending the training without travel reimbursement. Duty time will be approved for training, when it is scheduled during the employee's basic workweek, unless the training is deferred or cancelled.

## **Section 6 - Training Needs**

The appropriate supervisory officials will compile training needs as identified in employees' Individual Development Plans ("IDPs") and program trainings and report them to the respective subject area program directors and/or Human Resources Training Coordinator. Based on these needs, and in consideration of changes in regulations, results of internal and external audits, and changes in technology, the Employer will plan training subject to funding availability.

## **Article 19**

### **Incentive Awards**

#### **Section 1 - Purpose and Policy**

- A. To promote team-building and to motivate, reward and recognize employees for their accomplishments thereby increasing the effectiveness of the workforce, raise agency productivity, and improve the working environment, the Employer may use an appropriate Incentive Awards Program in which both Employees and Managers participate.
- B. Within the limits set by policy, budgetary and other legitimate management considerations, the Agency shall follow DR 4040-451-1, "USDA Employee Awards and Recognition Program", to provide incentive awards to:
  - 1. employees whose individual and/or team performance substantially exceeds normal expectations; and
  - 2. employees who submit suggestions resulting in measurable improvements in productivity.
- C. At the Union's request, the Agency shall disclose to the Union data detailing the awards granted to bargaining unit employees identified, to the extent that the Agency maintains such information, by: (i) gender; (ii) race; (iii) grade; and (iv) occupation.
- D. All information disclosed to the Union about individual persons employed by the Agency shall be treated as confidential.

## **Article 20**

### **Equal Employment Opportunity**

#### **Section 1 - Equal Employment Opportunity**

- A. Equal Employment Opportunity (“EEO”) shall be advanced in accordance with Title 5 USC, Executive Order 11478, authorizing legislation, applicable USDA regulations, and RD Instructions.
- B. The Employer shall make available to employees written information describing the EEO complaints procedure.
- C. The Employer shall make available to the Union as requested, information concerning the workforce profile (i) by grade according to gender and race, (ii) by occupation according to gender and race, and (iii) concerning promotions according to gender and race.
- D. Guidelines on EEO policies and related subjects are disseminated by the Agency through AgLearn.

#### **Section 2 - Complaints**

- A. Any employee who wishes to file or has filed a complaint shall be free from coercion, interference, and reprisal, and shall be entitled to expeditious processing of the complaint within the time limits prescribed by regulations. Any employee who seeks to file a complaint shall have the right to select a representative as provided by 29 CFR 1614.
- B. An employee has the option of filing a complaint under the Negotiated Grievance Procedure (Article 26) or under the Agency EEO complaint procedure, but not both. An employee shall be deemed to have exercised his or her option at such time as the employee timely files under the statutory procedure or the Negotiated Grievance Procedure, whichever occurs first. EEO counselors will provide employees with written descriptions of both procedures.

#### **Section 3 - Duty Status**

Union representatives participating in discussions of informal EEO complaints under this article shall be on official time as outlined in Article 30, “Official Time”, of this Agreement.

#### **Section 4 - Reasonable Accommodation**

The Employer shall provide reasonable accommodation in accordance with law and regulations. Employees are responsible for communicating the need for accommodation and for following established procedures. Employees should initiate requests for reasonable accommodations with their immediate supervisors who shall work with the appropriate Manager to meet the employee's needs.

**Article 21**  
**Telework**

Bargaining unit employees shall be covered by the provisions of the USDA Departmental Regulation 4080-811-002, "Telework Program", then in effect.

**Article 22**  
**Performance Management System**

The Agency and Union share the goal of affording bargaining unit employees a reasonable opportunity to attain and maintain performance at the level of “Fully Successful” (hereinafter “FS”).

**Section 1 – The Governing Directive**

Bargaining unit employees shall be covered by the provisions of the USDA Department Regulation 4040-430, “Employee Performance Management” (February 6, 2019) (hereinafter “DR 4040-430”).

**Section 2 – The Agency’s Intent to Anticipate and Deal with Potentially Problematic Performance Before Acting as Required by DR 4040-430**

- A. The Agency intends to continue and strengthen its practice of assessing employee performance continuously and using quarterly performance review discussions with employees to identify possible gaps and weaknesses in the job-related knowledge and skills of individual employees before the performance of those employees on any critical element: (i) fails to attain the level of “FS” timely; or (ii) falls to a level below that of “FS”.
- B. When a supervisor identifies any such anticipated gap and/or weakness in an individual employee’s performance, management shall work collaboratively with the employee to develop a plan of training and/or mentoring lasting from one (1) to 90 days that has been tailored to meet the needs of that individual employee. The Union may offer input for improving performance, but understands that management assigns the level of employee performance in Summary Ratings.
- C. If, despite following a plan of training and/or mentoring, the employee receives a Summary Rating which indicates that his/her performance has been less than FS, or if the supervisor decides the employee’s progress is unsatisfactory, the supervisor shall develop and implement a Demonstration Opportunity as required by subsection 14-f-(1) of Section 14, “Addressing Performance Problems”, in DR 4040-430.
- D. The Agency’s compliance with this Section of this Article shall not be a pre-condition to its acting in accordance with DR 4040-430, Section 14, “Addressing Performance Problems”.

## **Article 23**

### **Within Grade Increases**

#### **Section 1 - General**

Pursuant to 5 USC 5335, an employee is entitled to receive a within-grade increase subject to completion of the appropriate waiting period and a determination that the employee's work is of an acceptable level of competence (performance). Such determination must be made upon completion of the waiting period.

#### **Section 2 - Basis for Granting or Denying**

Within-grade increases will be granted or denied on the basis of whether an employee attains an acceptable level of competence (performance) and meets other statutory requirements.

#### **Section 3 - Supervisory Responsibilities**

- A. The decision to grant or withhold a within-grade increase must be supported by the employee's most recent rating of record.
- B. Denial of a within-grade increase may not be used in lieu of disciplinary action.

#### **Section 4 - Decisions**

After completion of the waiting period, if the within-grade increase is to be denied, the employee will be given the supervisor's official determination in writing. The determination will include:

- A. A statement of the reasons for the negative determination;
- B. Identification of the areas in which the employee must improve in order to be granted a within-grade increase;
- C. The right to file a written request for reconsideration not more than fifteen (15) days, or any other time frame that may be required by regulation, after receiving the negative determination;
- D. The name and address of the official, usually the State Director or the State Director's designee, who will reconsider the official determination and with whom the request for reconsideration should be filed.

## **Section 5 - Appeal Rights**

When the agency has affirmed its initial decision on reconsideration that an employee's performance is not at an acceptable level and the determination is final, an employee may file a grievance/complaint or appeal the adverse action to the Merit Systems Protections Board.

## **Section 6 - Effective Date/Administrative Error**

A within-grade increase shall be effective on the first day of the first pay-period following completion of the required waiting period and the employee meets conditions for eligibility, within technical limitations by the National Finance Center. When, due to administrative error, oversight or delay, a positive determination made after the waiting period is completed, the effective date of the within-grade increase shall be retroactive to the original due date.

## **Article 24**

### **Disciplinary and Adverse Actions**

#### **Section 1 - Statement of Assumptions, Purpose and Policy**

- A. The objective of discipline is to correct and improve employee behavior so as to promote thereby promoting the efficiency of the Agency. The Agency usually disciplines progressively for the purpose of correcting and improving employee behavior. However, there may be circumstances when progressive discipline is not appropriate and more immediate action is required.
- B. Early communication between the affected employee and supervisor to achieve resolution is encouraged. The employee may request the participation of a union official if he/she believes doing so would result in a faster resolution. A reasonable effort shall be made to assure that actions/agreements are fair and equitable to both parties involved.

#### **Section 2 - Obligations: General**

- A. Bargaining unit employees shall be subjected to disciplinary or adverse action only for just cause.
- B. All disciplinary and adverse actions shall be consistent with government-wide regulations and laws in effect at the time.

#### **Section 3 - Definitions**

For the purpose of this Article:

- A. Day - refers to a calendar day unless otherwise specified.
- B. Disciplinary action - refers to a letter of official reprimand or a suspension for fourteen (14) days or less as outlined in 5 U.S.C. Chapter 75, Subchapter I.
- C. Adverse action - refers to a removal, suspension for more than fourteen (14) days, reduction in grade, reduction in pay or furlough of thirty (30) days or less as outlined in 5 U.S.C. Chapter 75, Subchapter II.

#### **Section 4 - Counseling and Warnings**

- A. Discipline may be preceded by counseling and assistance including warnings that are

verbal/informal and/or written/formal.

- B. Counseling, assistance and warnings shall be conducted privately and in a manner that avoids embarrassing the employee.

### **Section 5 - Reprimand**

- A. An official reprimand is a written disciplinary action that specifies the reasons for the action. The reprimand shall specify that: (1)°the employee may be subject to more severe disciplinary action upon any further offense; and (2)°a copy of the reprimand shall be a part of the personnel folder for up to two (2) years.
- B. The letter of reprimand shall inform the employee that he/she has: (1) the right to grieve the reprimand under the Negotiated Grievance Procedure; and (2)°the right to Union representation.

### **Section 6 - Short-term Suspensions**

- A. An employee against whom a suspension for fourteen (14) calendar days or less is proposed is entitled to:
  - 1. An advance written notice stating the specific reasons for the proposed action; and
  - 2. A copy of all documentation and evidence relied on in proposing the action; and
  - 3. Ten (10) calendar days to answer orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer; and
  - 4. Be represented by the Union.
- B. After considering the employee's response, the Agency shall issue a written decision. If the decision is unfavorable to the employee, the decision may be grieved, beginning at the last step of the grievance procedure, i.e., the State Director.

### **Section 7 - Removal, suspension for more than fourteen (14) days, Reduction-in-Grade, Reduction-in-Pay, Furlough of 30 days or less**

- A. An employee against whom such action is proposed is entitled to:
  - 1. Thirty (30) calendar days advance written notice stating the specific reasons for the proposed action. This does not apply in instances where the Agency invokes the "Crime Provision" (see 5 CFR 752.404(d)).

2. A copy of all documentation and evidence relied on in proposing the action.
  3. Ten (10) calendar days to answer orally and in writing, and to furnish affidavits and other documentary material evidence in support of the answer; and
- B. After considering the employee's response, the Agency shall issue a written decision.
1. If the decision is to effect an action specified in this section, it shall specify the reason therefore, the effective date, the action to be taken, and the right to grieve or appeal the decision but not both.
  2. In accordance with 5 U.S.C. chapter 71, the employee may either: (1)° appeal the matter to the Merit Systems Protection Board or (2)° grieve the matter under the terms of this Agreement beginning at the last step of the grievance procedure, i.e., the State Director. The choice of forum is irrevocable. An employee shall be deemed to have exercised his or her option at such time as the employee timely files under the statutory procedure or the negotiated grievance procedure, whichever occurs first.
- C. Employees shall be entitled to representation consistent with §°7114(a)(5) of the Federal Service Labor-Management Relations Statute in all phases of the procedure.

## **Article 25**

### **Negotiated Grievance Procedure**

#### **Section 1 - Purpose**

The purpose of this Article is to provide a mutually acceptable method for the prompt and equitable settlement of grievances filed by bargaining unit employee(s), the Union, or the Agency. The Agency shall not construe the filing of grievances as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability to the organization, nor shall the Union or employees file grievances in order to affect adversely the perception of the person or reputation of any representative of the Agency.

#### **Section 2 - Definitions, Coverage, and Scope**

A grievance means any complaint:

- A. By an employee in the bargaining unit concerning any matter relating to the employment of the employee;
- B. By the Union concerning any matter relating to the employment of any employee in the bargaining unit; and
- C. By any employee in the bargaining unit, the Union, or the Agency concerning:
  1. The effect or interpretation, or a claim of breach, of this Collective Bargaining Agreement; or
  2. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.
- D. Grievances on the following matters are excluded from the scope of this procedure:
  1. Any claimed violation of 5 USC 73 relating to prohibited political activities;
  2. Retirement, life insurance, or health insurance;
  3. A suspension or removal under 5 USC 7532 relating to national security;
  4. Any examination, certification, or appointment; or
  5. The classification of any position which does not result in the reduction in grade or pay of an employee; or
  6. Reductions In Force

### **Section 3 - Exclusivity**

Grievances may be initiated by employee(s) covered by this Agreement and/or their Union representative, or by the Agency. Representation of bargaining unit employees shall be the sole and exclusive province of the Union. This is the exclusive procedure available to bargaining unit employees, the Union, or the Agency for the resolution of grievances arising under this Agreement.

### **Section 4 - Representation**

- A. Absent an employee stating in writing they will be self-represented, bargaining unit employees filing grievances under this procedure shall be considered as being represented by the Union and all arrangements for meetings, communications, and resolution discussions shall be made through the designated union representative.
- B. Bargaining unit employees may elect to represent themselves in processing a grievance filed under this article by submitting timely notice in writing to the Agency and the Union.
- C. When an employee is self-represented at proceedings under this article, the Union has a right to be present in order to represent the bargaining unit.

### **Section 5 - Resolution of Grievances and Employee Standing**

- A. Employees dissatisfied with an order properly grounded in supervisory authority must follow the order first and then grieve the matter unless obeying the order would be unsafe, immoral, or unlawful.
- B. Because grievances should be settled in an orderly, prompt, and equitable manner so as to maintain Agency efficiency and employee morale unimpaired, the Agency and the Union will attempt to settle grievances at the lowest appropriate level of supervision. Employees and employee representatives seeking to adjust grievances shall be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal, consistent with 5 USC 71 and this Agreement.

### **Section 6 - Grievability/Arbitrability Questions**

- A. In the event either party declares a grievance to be non-grievable or non-arbitrable, the original grievance shall be considered amended to include this issue. All disputes of grievability/arbitrability shall be referred as threshold issues in the related grievance,

except where the parties agree to hear the threshold issue and merits of the grievance separately.

- B. If either party declares that a complaint is non-grievable and/or that a grievance is non-arbitrable, it must do so no later than the Step 2 written response, unless the event or issue giving rise to the claim occurred after the Step 2 written response. If either party makes such a declaration following the Step 2 written response, it must do so before the parties select the arbitrator.

### **Section 7 - Time Limits**

- A. In order to be timely, a grievance must be presented within the period of time specified by, as appropriate, Section 9 or 10 below.
- B. Proof of service shall be either: (1) a return post office receipt executed by the person served; or (2) a written acknowledgment from the person served when hand-delivered; or electronic receipt or confirmation.
- C. All the time limits in this Article may be extended by mutual consent if done so in writing.

### **Section 8 - Options**

- A. In accordance with 5 USC 7121, an employee at his/her option may raise matters covered under Section 4303 (Unacceptable Performance) and 7512 (Adverse Actions) under the appropriate statutory procedures or the Negotiated Grievance Procedure, but not both. An employee shall be deemed to have exercised his/her option at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing, whichever event occurs first. Similarly, an employee who claims to have been affected by a prohibited personnel practice under Section 2302(b)(1) of the Civil Service Reform Act may raise the matter under a statutory procedure or the Negotiated Grievance Procedure, but not both. An employee shall be deemed to have exercised his/her option at such time as he/she timely files a grievance in writing or files a written formal complaint under the statutory EEO procedure, whichever event occurs first.
- B. If the employee elects to file under the Negotiated Grievance Procedure, he/she shall proceed under Section 9 of this Article within fifteen (15) working days after the alleged discriminatory act. Starting with the Step 2 official or higher, that official shall have thirty (30) days to attempt to resolve the matter and issue a decision.

## **Section 10 - Union-Agency Grievances**

- A. The Union and the Agency may each submit institutional grievances (i.e., grievances (i)°concerning the unit generally and/or (ii)°an alleged violation of the rights of the Union or Agency).
- B. A grievance concerning a particular act or occurrence must be presented to the other party within fifteen (15) working days of (a) the action or incident underlying the complaint or (b) the date the moving party became aware of it. A grievance concerning a current continuing practice may be presented at any time.
- C. When a grievance is filed, the parties shall meet and/or discuss the matter within ten (10) working days. The party against whose action the grievance was filed shall issue a written decision within ten (10) working days of the meeting/discussion.
- D. If either party fails to meet any of the timeliness requirements of this procedure, or if the grievance is not settled by the written decision, either party may invoke arbitration within 30 working days as provided in Article 27, “Arbitration”. If neither party invokes arbitration, the grievance shall be considered closed.

## **Section 9 - Procedures for Employee Grievances**

- A. A complaining employee shall first raise the matter to be grieved with the appropriate Union official in person, if on site, or by telephone. The Union shall raise the issue with the complaining employee’s immediate supervisor by filing a written grievance within fifteen (15) working days of (a) the date of the incident underlying the complaint or (b) the date the employee became aware of it. A grievance concerning a current continuing practice may be presented at any time. The written grievance shall include: (a) specific detail sufficient to permit the Agency to investigate and confirm or deny the complaint; (b) the specific remedy being sought; and (c) the designation of the Union Representative with whom the Agency should deal in connection with the grievance.
- B. Within seven (7) days of receiving the written grievance, the supervisor shall review the matter being grieved and hold a Step 1 meeting to discuss the grievance. Those invited to the Step 1 meeting shall include the supervisor, the Grievant, and the designated Union representative. The supervisor may have a labor relations advisor present to advise the supervisor. Within ten (10) days of that Step 1 meeting, the supervisor shall respond to the grievance in writing: (a) with sufficient specificity to allow the Employee and/or the Union to confirm or deny the response; and (b) granting and/or denying the requested remedy in whole or in part.
- C. If not satisfied with the supervisor’s response at Step 1, the Union shall have fifteen (15) days to request in writing that the State Director review the supervisor’s response. Within ten (10) days of receiving the Union’s request, the Agency shall schedule a Step 2 meeting to discuss the grievance. Those invited to the Step 2 meeting shall include the Union’s representative and the Grievant, together with the State Director or their

designee and one representative of their choosing. Within fifteen (15) days of that Step 2 meeting, the State Director or his designee shall respond to the grievance in writing: (a) with sufficiently specificity to allow the employee and /or the Union to confirm or deny the decision; and (b) granting or denying the requested remedy in whole or in part.

- D. If the Union is not satisfied with the State Director's response at Step 2, it may proceed as provided in Article 27, "Arbitration", within 30 days.
- E. The Agency's failure to meet any of the timeliness requirements of this procedure shall permit the Grievant to advance the grievance to the next step. If the Grievant fails to timely pursue the grievance to the next step in accordance with the terms of this agreement, the grievance shall be closed.

## **Article 26 Arbitration**

### **Section 1 – Invoking Arbitration**

- A. A grievance that remains unresolved after being processed under Article 26, “Grievance Procedure”, of this Agreement may be referred to arbitration as provided for in this Article. A referral to arbitration can be made only by the Union or the Employer, and shall be in writing. Such referral shall be made within thirty (30) days after receipt of the written decision rendered, or when a decision was due, at the final step of a grievance processed under Article 26, “Grievance Procedure”.
- B. Within seven (7) days from the date of the request for arbitration, the party invoking arbitration shall request from the Federal Mediation and Conciliation Service (“FMCS”) or other source of qualified labor arbitrators as mutually agreed upon by the parties, a list of seven (7) impartial persons qualified to act as arbitrators. The parties shall, within seven (7) days after receiving the list of names, select one of the arbitrators. If they cannot mutually agree upon a selection, the parties shall alternatively strike one name from the list until the list contains only one name. The initial strike on the list shall be made by the party who wins the flip of a coin. This person shall be the duly selected Arbitrator. If for any reason either party refuses to participate in selecting an Arbitrator, the other party shall choose the Arbitrator.
- C. The party invoking arbitration shall bear any costs charged by the FMCS or other source for supplying the list so long as the other responding party provides any relevant information and agrees to receive the list by email. If the responding party insists on receiving the list by regular mail, any costs charged by the source shall be split equally.
- D. If the parties fail to agree on a joint submission of the issue(s) for arbitration, each shall submit a separate submission stating the issue(s) and the Arbitrator shall determine the issue(s) to be heard.
- E. A grievance of the kind described by Section 4-A of this Article shall be processed under the Expedited Arbitration Procedures unless the parties agree otherwise.

### **Section 2 - Procedures**

- A. The arbitration hearing shall be held during the regular day-shift work hours of the basic workweek. The grievant, representative, and any employee witnesses necessary to the proceedings who are otherwise in a paid duty status shall be excused from duty without loss of pay or charge to annual leave to participate as necessary in the arbitration hearing.
- B. The Arbitrator’s fee and all related expenses shall be borne equally by the parties.

- C. The Employer shall reimburse bargaining unit member representatives of the Union and witnesses for travel and related expenses when required by law.
- D. The Arbitrator shall be requested to render the decision as quickly as reasonably possible after the conclusion of the hearing, unless the parties mutually agree to establish a specific deadline or time limit. The Arbitrator shall submit all findings in writing, and this report shall decide all issues raised by any party, including arbitrability.
- E. Issues concerning the arbitrability of a grievance presented for arbitration under the terms of this Agreement shall be resolved by the Arbitrator. If the Employer declares a grievance non-grievable or non-arbitrable, the original grievance shall be considered amended to include that issue.
- F. If the Arbitrator requests a transcript, the cost shall be borne equally by both parties. Otherwise, the party requesting a transcript shall bear the cost of the transcript.

### **Section 3 - Effect of Arbitrator's Award**

In considering those grievances concerning actions based on unacceptable performance and adverse actions that are appealable under the statutory appeals procedure, the Arbitrator shall be bound by the policy and the precedents of the Merit Systems Protection Board ("MSPB"), and apply the same appellant standards (e.g., 'substantial evidence' for unacceptable performance, 'preponderance of evidence' for adverse actions, and 'arbitrary and capricious abuse of management discretion' for the penalty of an adverse action). The Arbitrator shall have the authority to resolve any question of arbitrability and to interpret this Agreement. The Arbitrator is bound by and shall apply the "harmful error" concept as developed by MSPB. The Arbitrator shall have no authority to add to or otherwise modify the terms of this agreement or Department of Agriculture policy. Either party may file exceptions to an award with the Federal Labor Relations Authority ("FLRA") or the appropriate court under regulations prescribed by the Civil Service Reform Act or the FLRA.

## **Article 27**

### **Merit Promotion**

The parties recognize that the Agency retains the right to fill bargaining unit positions by using any proper method including non-competitive sources and OPM-authorized lists of eligible applicants. If the Employer chooses to fill a bargaining unit position by merit promotion, the Agency will follow all current laws and government-wide regulations, USDA Departmental Regulation DR 4030-335-002, "Merit Promotion and Internal Placement" (dated July 22, 2015), and this Agreement.

*EXPLANATORY NOTE: within the Merit Promotion Program, Rural Development primarily staffs two occupational series: Loan Technician, GS-1101 and Loan Specialist, GS-1165. Loan Technicians are graded GS-07 at full performance level. Loan Specialists are primarily graded at GS-09 through GS-13. Because of the grade limits for Loan Technicians, many apply for Merit Promotion opportunities as GS-1165 at GS-09 and face qualification challenges.*

*Experience as a GS-1101-07 Loan Technician provides specialized experience required for a one-grade interval GS-1101 Technician position but does not provide specialized experience to be qualified for a two-grade interval GS-1165-09 Loan Specialist position. If the position is offered at GS-1165-07, Loan Technicians are generally reviewed only for GS-1165-07 eligibility.*

*In accordance with U.S. Office of Personnel Management (OPM) Classification Standards, the GS-1101-07 Loan Technician classifies as a one-grade interval position performing clerical and administrative support type work. Clerical occupations involve structured work in support of office, business, or fiscal operations and are performed in accordance with established policies, procedures, or techniques; and require training, experience, or working knowledge related to the tasks to be performed. Clerical occupations series follow a one-grade interval pattern (e.g. GS-1, 2, 3, 4, 5, 6, 7, 8, 9). The work requires knowledge of an organization's rules, some degree of subject matter knowledge, and skill in carrying out clerical processes and procedures.*

*In contrast, the OPM Classification Standards classify the GS-1165 Loan Specialist series as a two-grade interval series performing administrative work. Administrative work involves the exercise of analytical ability, judgment, discretion, and personal responsibility, and the application of a substantial body of knowledge of principles, concepts, and practices applicable to one or more fields of administration or management. While these positions do not require specialized education, they do involve the type of skills (analytical, research, writing, judgment) typically gained through a college level education or through progressively responsible experience. Administrative work may be performed as a part of the principal mission or program of an agency or subcomponent, or it can be performed as a service function which supports the agency's mission or program. Employees engaged in administrative work are concerned with analyzing, evaluating, modifying, and developing the basic programs, policies, and procedures which facilitate the work of Federal agencies and their programs. They apply knowledge of administrative analysis, theory, and principles in adapting practice to the unique requirements of a particular program. Administrative occupational series*

*typically follow a two-grade interval pattern (e.g., GS-5, 7, 9, 11, 12).*

## **Article 28**

### **Details and Reassignments**

#### **Section 1 - Details**

- A. The Employer has the right to assign work and to detail bargaining unit employees in a manner that does not compromise the merit principles of federal employment, and the Union has a responsibility to represent employees with respect to the adverse impact on employees of such details. The Employer shall make reasonable efforts, consistent with meeting its business needs, to consider employee claims of personal hardship, minimize the adverse effects of details, and confine the duties assigned to detailed employees having medical limitations to duties within the capacity of the employee.
  
- B. Definitions.
  - 1. Detail – a detail is the temporary assignment of an employee to a different or equal position within the employee’s same or a different duty station, for a specified period of time, after which the employee returns to his/her regular duties.
  
  - 2. Commuting Area – the commuting area is 50 miles from the duty station or the principal residence of the employee.
  
- C. Details for the purpose of training and professional development shall be handled in accordance with the Article (“Training and Career Development”) of this Agreement devoted to that subject.
  
- D. All other details shall be handled in the following manner.
  - 1. The Employer shall notify the Union in writing of its intent to detail an employee when the alternate duty location is outside the employee’s commuting area. Details should not compromise the open competitive principles of the Merit Promotion System.
  
  - 2. The Union shall have five (5) work days after receiving written notice to request to bargain.
  
  - 3. The Employer may require employees who claim medical limitations on their capacities to submit reasonable medical documentation in support of the claim.
  
  - 4. Merit promotion procedures do not apply when a detail is to a position of the same grade and promotion potential.
  
  - 5. Employees shall be assigned to details, including special project assignments, for business reasons and not in order to reward or punish the individual.

6. Generally, the State Director or designee may designate an acting official for any position.
  7. To the extent that doing so is reasonably practicable, the Employer shall not detail employees to lower-graded duties.
  8. The Employer shall make reasonable efforts to avoid placing a Union official on a detail that would prevent that official from performing his/her representational functions.
  9. When it is necessary to detail an employee for the purpose of improving the job performance of that employee, the Employer shall prepare the training program and explain the program to the employee, and give the employee the opportunity to be represented by a Union Official at the discussion.
  10. The Employer shall provide the detailed employee adequate work space, equipment, and access to computer systems at the detail location.
- E. This section shall not be construed in a manner that restricts the Employer's exercise of rights enumerated in §7106(a) of the Federal Service Labor-Management Relations Statute or that is inconsistent with applicable law, government-wide regulation, and other provisions of this Agreement.

## **Section 2 - Reassignments**

- A. Whenever any employee submits a request for reassignment and documentation to demonstrate the existence of hardship, the Employer shall consider the request and documentation in light of the needs of the Agency. The Employer shall not pay the expenses of relocations that result from voluntary reassignments.
- B. Whenever a reassignment results from the Employer agreeing to an employee request or from the employee's response to the Employer's solicitation of volunteers, the Employer shall not be required to provide notice in advance or bargain about the impact and implementation of the reassignment as might otherwise be required by contract, regulation, or statute.

## **Article 29**

### **Position Description and Additional Duties**

#### **Section 1 - Position Descriptions Generally**

- A. All existing and new Position Descriptions (“PDs”) shall reflect accurately the principal duties and responsibilities of positions and what is necessary to accomplish the duty successfully. If the duties of a position change significantly, the Agency shall provide the employee(s) occupying such a position with an accurate, updated PD.
- B. PDs shall contain the principal duties and responsibilities of positions for the purpose of classification. Each bargaining unit member shall be provided with an official description of his/her duties and responsibilities in the form of a PD within 30 calendar days after the employee assumes their duties or the employee’s position changes significantly.
- C. Disputes about the appropriate schedule, title, series or grade of an employee’s position are covered by statutory classification appeal procedures.
- D. When an employee believes the PD of his or her position does not accurately reflect his or her regularly assigned responsibilities and regularly performed duties, the employee may: (1) talk to his or her supervisor to resolve the alleged discrepancy; and/or (2) request a desk audit by the servicing Human Resources Office; and/or (3) file a classification appeal to OPM. Any employee may file a statutory classification appeal of his/her position at any time in accordance with appropriate rules and regulations.
- E. Phrases such as “other related duties” or “other duties as assigned” used in PDs mean assignments reasonably related to duties or responsibilities or qualifications for the particular position.
- F. A reclassification to a higher grade shall be effective at the conclusion of the first full pay period following final approval by the servicing Human Resources Office if the incumbent of that position is promoted non-competitively to the position whenever budget and staffing ceilings allow it.
- G. Collateral duties may be part of PDs. The time permitted by the Agency for employees to complete collateral duty assignments shall be reasonable.

#### **Section 2 - Additional Duties**

- A. With respect to all significant additional duties, collateral duties and any other duties which are not referenced in the PDs of employees but which are assigned regularly to employees either at present or in the future, the Agency shall:

1. Identify all those bargaining unit employees who are qualified to perform each duty; and
  2. Solicit a list of volunteers for each duty; and
  3. Select the senior volunteer(s) for each duty, until the number of employees who have been tasked is sufficient.
  4. In the event there are insufficient volunteers, the Agency shall select the least senior non-volunteer(s).
- B. Employees who are assigned additional duties shall receive documented information sufficient to inform an employee of how the Agency will determine an employee has performed the additional duties successfully, how the duty will be rated and/or impact on an employee's performance rating in performing the additional duty, and special skills and/or training that are needed to accomplish the duty.
- C. If an employee and/or the Union believes the Agency has treated employees unfairly, inequitably, arbitrarily or capriciously, the Union shall be free to file a grievance using the Negotiated Grievance Procedure contained in this Agreement.
- D. When assigning additional duties, the Agency shall abide by all applicable laws, government wide rules and/or regulations and this Agreement.

## **Article 30 Official Time**

Union representative employees (hereinafter “employees”) shall use official time in a manner consistent with the requirements of effective and efficient government as provided by this Article.

### **Section 1. Definitions.**

For the purpose of this Article:

- A. “Agency business” means work performed by Federal employees, including detailees or assignees, on behalf of the Agency, but does not include work performed on official time.
- B. “Paid time” means time for which an employee is paid by the Federal Government, including both duty time, in which the employee performs Agency business, and official time. It does not include time spent on paid or unpaid leave, or an employee’s off-duty hours.
- C. “Official time” means time granted to an employee to perform non-Agency business during duty hours pursuant to section 7131 of title 5, United States Code without loss of pay or charge to leave in order to represent the Union and/or bargaining unit employees.
- D. “Union time rate” means the total number of duty hours in the fiscal year that employees in the bargaining unit used for official time, divided by the number of employees in that bargaining unit.

### **Section 2. Reasonable and Efficient Use of Official Time.**

To ensure that Federal resources are used in an effective and efficient manner consistent with the public interest:

- A. The union time rate shall not exceed 200 hours. For the purpose of this paragraph, time spent by Union officials shall not count toward the union time rate if it is spent:
  - (i) for the purpose identified by 5 USC § 7131(a), i.e., “representing an exclusive representative in the negotiation of a collective bargaining agreement”;
  - (ii) for the purpose identified by 5 USC § 7131(c), i.e., “participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority”;
  - (iii) attending a meeting pursuant to 5 USC § 7114(a)(2)(A), i.e., a formal discussion;
  - (iv) representing an employee pursuant to 5 USC § 7114(a)(2)(B), i.e., by attending a so-called *Weingarten* interview; and
  - (v) representing the Union at a meeting to discuss a grievance filed against the Union.

- B. Employees may not engage in lobbying activities during paid time, except in their official capacities as employees.
- C. Except as provided in the following subparagraph (2), employees shall spend at least three-quarters of their paid time, measured each fiscal year:
  - (i) performing Agency business; or
  - (ii) attending necessary training, as required by the Agency, in order to ensure that they develop and maintain the skills necessary to perform their Agency duties efficiently and effectively.

### **Section 3. Using Official Time.**

- A. Employees may not use official time without advance written authorization, except:
  - (a) where obtaining prior approval is deemed impracticable under regulations and/or guidance issued by the Office of Personnel Management (OPM); and (b) according to this Article.
- B. Completing and submitting requests to use official time
  - 1. Ordinarily, a requesting employee shall submit, in hardcopy or electronically, his/her request using Exhibit 'A', "Request for Official Time" at least 48 hours in advance of the intended time of use. However, for brief (less than 10 minutes) incoming and outgoing telephone calls and/or personal visits with the Union Representative by an employee or representative of the Employer to discuss a representational matter, no prior approval is required so long as the "Request for Official Time" is completed and submitted promptly immediately afterward.
  - 2. In addition to the information requested by the "Request for Official Time" form, the requesting employee shall specify: (i) the number of hours to be used and (ii) the specific purposes for which such time will be used, providing sufficient detail identifying the tasks the employee will undertake as to permit the authorizing official to assess whether it is reasonable and necessary to grant such amount of time to accomplish such tasks.
  - 3. The requesting employee shall not be required to betray confidences or compromise the privacy of the Union's representational activities.
- C. The official to whom the requesting employee submits the "Request for Official Time" form shall approve/disapprove the request with or without modification and return the form to the employee.
- D. For continuing or ongoing use of official time, the requesting employee shall renew the request for authorization not less than once per pay period.

- E. For any use of official time in excess of previously authorized hours or for purposes for which such time was not previously authorized, the requesting employee shall submit a separate advance authorization.
- F. The employee who has used official time shall, after doing so: (1) complete the 4<sup>th</sup> column of the “Request for Official Time” form; (2) record his/her use in the Agency’s time and attendance recording system (currently webTA); and (3) return the completed “Request for Official Time” form to the approving official.
- G. The completed “Request for Official Time”, shall be forwarded to and preserved by an official designated by the Agency.

EXHIBIT A

**Request for Official Time**

**Part A – to be completed by Union representative/employee as soon as possible after the need for official time is recognized.**

Name of Union Representative/employee: \_\_\_\_\_ Date: \_\_\_\_\_

I hereby request official time on \_\_\_\_\_ from \_\_\_\_\_ a.m./p.m. to \_\_\_\_\_ a.m./p.m.  
(Column 1 is an estimate of official time needed.)

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b><u>Hours:</u> <u>Request</u></b>	<b><u>Activity</u></b>	<b><u>Additional Information</u> <b>(optional case-by-case if needed)</b></b>	<b><u>Hours:</u> <u>Actual</u></b>
	Grievance (on behalf of self) OR Training OR Consultation by telephone (circle one)	_____ _____ _____	
	Other	_____ _____	
	“representing an exclusive representative in the negotiation of a collective bargaining agreement”	_____ _____ _____	
	“participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority”;	_____ _____ _____	
	attending a meeting pursuant to §7114(a)(2)(A), i.e., a formal discussion	_____ _____ _____	
	representing an employee pursuant to §7114(a)(2)(B), i.e., a so-called <i>Weingarten</i> interview	_____ _____ _____	
	representing the Union at a meeting to discuss a grievance filed against the Union	_____ _____	

Union Representative’s  
signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Part B – to be completed by authorizing official**

Request approved: \_\_\_\_\_ (or) disapproved: \_\_\_\_\_. Specific reason(s) for disapproval (if applies): \_\_\_\_\_

Authorizing Official's

signature: \_\_\_\_\_ Date: \_\_\_\_\_

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Part C – to be completed by Union representative/employee on returning to duty

Time actually began performing non-Agency business: \_\_\_\_\_ a.m./p.m.

Time returned to performing Agency business: \_\_\_\_\_ a.m./p.m.

(Complete Column 4 in table of Part A)

Amount of time used: \_\_\_\_\_ Hours \_\_\_\_\_ Minutes

Signature of Union Representative/employee: \_\_\_\_\_ Date: \_\_\_\_\_

## **Article 31 Time and Leave**

This article supplements the relevant provisions of applicable statutes, government-wide regulations and Department Regulations which govern the resolution of all disputes concerning matters covered by this article.

### **Section 1 - General**

Employees shall accrue and use sick and annual and other types of leave in accordance with applicable statutes, OPM regulations, and this Agreement.

- A. All leave charges shall be in increments of one-quarter hour.
- B. For clearly compassionate and appropriate reasons, the Agency may increase the stated limits applicable to all forms of leave in accordance with applicable government-wide regulation and law.
- C. Employees shall not be denied leave based solely on their accrued leave balance.
- D. No arbitrary or capricious restraints shall be established to restrict when leave may be requested.
- E. Changes to the time and attendance system shall be negotiated in accordance with government-wide laws, regulations and this Agreement.
- F. Employees who wish to request their supervisor's approval to use leave may do so by using the Agency's on-line Time & Attendance system, the OPM Form 71, email, or by speaking directly to the supervisor in person or by telephone.
- G. Leave shall be denied only for appropriate reasons and not as a form of discipline. No approved leave or approved absence shall be a basis for disciplinary action except when it is clearly established that the employee submitted fraudulent documentation or misrepresented the reasons for the absence.
- H. Employees shall not be adversely affected in any employment decision solely because of their leave balances.

### **Section 2 - Annual Leave**

Annual leave is provided to allow employees extended leave for rest and recreation and to provide periods of time off for personal and unscheduled purposes. Subject to supervisory approval, all employees are entitled to request and take at least two (2) consecutive weeks of annual leave per year.

- A. The use of accrued annual leave and the timing of such use must be approved in advance by the Agency.
- B. Employees should submit requests for annual leave as far in advance as possible. The Agency shall render timely decisions on employees' leave requests. The Agency shall make a reasonable effort to accommodate employee requests, consistent with valid operational needs.
  - 1. Vacation - Employees should submit requests for vacation leave as far in advance as possible. The Agency shall render timely decisions on employees' leave requests typically by the end of each pay period. The vacation plan for each calendar quarter (January-March, etc.) shall be completed by the end of the second month of the preceding quarter (e.g., end of November for the January-March quarter). The procedures for vacation leave shall be appropriate for local negotiations; where current practices are acceptable to the local parties, such negotiations need not occur.
  - 2. Unplanned Leave - When needs arise and the employee requests annual leave, employees must contact their supervisor or designee to request the leave. During operational hours of the Agency, there shall always be someone available who is authorized to receive and act on such a request.
  - 3. Serious Personal Needs Situations - If the leave is requested to begin immediately, employees must contact their supervisor or designee to request the leave. The employee shall be informed whether leave is approved or disapproved at the time it is requested. During operational hours of the Agency, there shall always be someone available who is authorized to receive and act on the request.
- C. Conflicts between employees' annual leave requests shall be resolved based on seniority as defined in the "Definitions" that precede Article 1 of this Agreement.
- D. When the Agency has approved an employee's request for annual leave in conjunction with scheduled days off at the beginning and/or end of the leave period, the Agency shall not change that employee's days off except where necessary to meet valid operational needs.
- E. The Agency recognizes the needs of employees to plan vacation and personal time off. However, the Agency may cancel previously approved annual leave if doing so is necessary to meet valid operational needs.
- F. Carryover (restored) leave shall be addressed in accordance with applicable government-wide regulation and law. Annual leave in excess of 240 hours shall be forfeited. Annual leave in excess of 240 hours may only be restored due to an exigency of the public business or sickness of the employee AND **only** if the annual leave was scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year. Annual leave that was scheduled after that date shall be forfeited if not used by the final day of the leave year. Annual leave that was not scheduled in advance may be restored

only under very limited conditions such as administrative error, or prolonged sickness of the employee. Supervisory approval is required. It is the responsibility of the employee to utilize their annual leave and adhere to the 240-hour limit on carryover.

- G. All employees shall be excused or receive appropriate pay for all holidays prescribed by Federal law, and any that may be added by Federal law, or that may be designated by Executive Order.
- H. If the Agency denies an employee's request for annual leave, the Agency shall provide the employee with a written statement of the reason for denial. If the employee wishes, he/she may resubmit a request for alternate dates of annual leave and initiate action to reschedule annual leave that was denied. The times at which such rescheduled leave is used must be approved by the supervisor.
- I. The Agency shall allow the maximum number of employees to use leave consistent with coverage requirements.
- J. The Agency shall track vacation schedules on the respective office SharePoint calendars. All approved annual leave shall be conspicuously posted on the calendar and remain posted and up-to-date for the leave year. Each employee shall also maintain his/her individual Outlook calendar and make it available to his/her supervisor.

### **Section 3 - Excused Absence**

Supervisors may excuse, without charge to leave, the tardiness/absences of employees who are not on a Flexible Work Schedule when the tardiness/absences are brief, infrequent, and for good cause. Supervisors' exercise of their discretion to excuse such absences shall be fair and equitable.

### **Section 4 - Sick Leave**

- A. It is the responsibility of the employee who is incapacitated for duty to notify the immediate supervisor or designee (or to have a responsible person give the notice on behalf of the employee) at the work site as soon as possible but no later than one (1) hour after the employee is scheduled to report for duty unless mitigating circumstances exist. The Agency shall assure a designated number is established for the supervisor or designee to receive such notifications: the employee's obligation is to successfully contact the supervisor or designee (e.g., complete one phone call or communicate with the supervisor/designee by any other acceptable means) to either the established number, or to an alternate number the employee was notified to use. In the event that the supervisor or designee is not available, employees may use voice mail to notify the supervisor or designee of the type of leave requested. However, the request is not approved until the supervisor informs the requesting employee of his/her decision.

- B. An employee who expects to be absent more than one workday shall inform the supervisor or designee of the expected date of return to duty and notify the supervisor of any change. In the case of extended illness, employees shall not be required to call in and report daily.
- C. An employee is entitled to use sick leave which shall be granted for appropriate absences, e.g., when the employee:
  - 1. Seeks medical, dental or optical examination or treatment;
  - 2. Is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth;
  - 3. Is caring for a family member who is incapacitated by a medical or mental condition, or is attending to a family member who is receiving medical, dental, or optical examination or treatment, or is providing care for a family member with a serious health condition. NOTE: no more than 104 hours of sick leave may be used per leave year for this purpose, and the request must be coded as Family Friendly Sick Leave (FFSL) in WebTA.
  - 4. Making arrangements necessitated by the death of a family member or attending the funeral of a family member (this includes use of sick leave to make arrangements for and attend a funeral or memorial service, necessary travel, pre-funeral and after funeral/burial gatherings or ceremonies, memorial services, and reading of the will).
  - 5. Has been exposed to a contagious disease and, as determined by the health authorities having jurisdiction or by a health care provider, his/her presence on duty would jeopardize the health of others.
  - 6. Adoption-related purposes including appointments with adoption agencies, social workers, and attorneys, court proceedings, required travel, and any other activities necessary to allow the adoption to proceed.
- D. The Agency should make an effort to accommodate employees who request in advance, a change in his/her daily Tour of Duty to meet medical, optical or dental appointments (see Article 4, "Hours of Work", section 4, "Voluntary Schedule Adjustments").
- E. If an employee has insufficient sick leave accrued, the employee may request that the supervisor approve Leave Without Pay ("LWOP") or other available leave for an absence for which sick leave would otherwise be appropriate.
- F. Employees shall not be required to reveal the specific nature of the illness as a condition for approval of sick leave unless there is reasonable suspicion of either leave usage abuse or fraudulent use of sick leave.

## Section 5 - Documentation for Sick Leave

- A. Where an employee requests sick leave, or annual leave, or LWOP in lieu of sick leave, the employee must make an appropriate request and may be required to furnish evidence of the need for sick leave upon return to duty. An employee may support the request for sick leave by submitting administratively acceptable:
  - 1. Employee self-certification (will usually be sufficient for absences not exceeding three (3) workdays, and may be sufficient in instances where the illness was not treated by a health care provider if the statement indicates why a health care provider was not seen, e.g., remoteness of area, general condition of the illness, or other specific reasons. The supervisor may request clarification should the employee's written statement not be sufficient to support the request); or
  - 2. Medical certification from the employee's health care provider (for most absences exceeding three (3) workdays).
- B. An employee with a chronic medical condition that does not require medical treatment but does result in periodic absences from work shall not be required to furnish a health care provider certificate on a continuing basis if the employee is:
  - 1. Is not on leave restriction; and
  - 2. Every six (6) months provides, if requested, an administratively acceptable medical certificate which clearly states the continuing need for periodic absences.
- C. In general, administratively acceptable medical certification of sick leave is a statement on medical stationery saying the employee was incapacitated for work and giving the date(s) of the incapacitation. Ordinarily, employees shall not be required to reveal the specific nature of the illness as a condition for approval of sick leave.
- D. Documents regarding employee absence for sick leave purposes are highly sensitive. The Agency shall ensure that they are maintained in a secure and confidential manner.
- E. Where there is substantial reason to believe that an employee is abusing sick leave entitlement, medical certificates may be required for any period of absence provided the employee has been formally notified in writing that the Agency has established such a requirement for him/her.
- F. If an employee has not used sick leave for three months after the notification in Paragraph E, the employee may request that the requirement be reviewed. If it is determined that a medical certificate is no longer warranted for sick leave of three consecutive workdays or less, the Agency shall notify the employee formally in writing.

- G. The requirement for medical certification must be reviewed six (6) months after such requirement is imposed. If the requirement is not lifted, the employee may request a review of the certification requirement three (3) months after a previous review. If it is determined that a medical certificate is no longer warranted for sick leave of three (3) consecutive workdays or less, the employee shall be formally notified in writing.
- H. The Agency shall not base a determination that an employee has abused sick leave on: (1) frequency of leave use solely; or (2) amount of leave used solely; or (3) leave for which acceptable medical documentation has been provided.
- I. When the Agency determines that an employee's sick leave abuse has ceased, the Agency shall remove the restriction and notify the employee in writing of this action.
- J. If the restriction is to be continued beyond six months, the Agency shall send the employee written notice of the reasons.

## **Section 6 - Sick Out**

Employees may be required to furnish evidence of illness to support approval of sick leave for periods of less than three (3) consecutive workdays when the Agency has reasonable evidence that a "sick-out" has occurred. Under these circumstances, before the Agency requires the employees' evidence, the Union shall be provided with the reasonable evidence for the Agency's allegations that a "sick-out" has occurred.

## **Section 7 - Registration and Voting**

When the voting polls are not open at least three (3) hours before or after employees' regular hours of work, the Agency shall grant employees an amount of excused leave to vote, or to register to vote, that is sufficient to permit them to report to work three (3) hours after the polls open or leave work three (3) hours before the polls close, whichever requires the lesser amount of time, so long as the absence does not seriously interfere with valid operational needs. Where release of an employee at the beginning or end of the day would seriously interfere with valid operational needs, the supervisor, to the extent possible shall make other arrangements to allow the employee a reasonable amount of time during the workday to vote or register to vote.

## **Section 8 - Unavoidable Delay While on Official Business**

- A. If an employee who is away on official government business finds he/she is unable to return to his/her home station through no fault of his/her own, the employee shall notify his/her supervisor as soon as possible and obtain appropriate instructions. In such instances, the employee shall be paid overtime or approved compensatory time,

as appropriate, for any time beyond normal duty hours when he/she performed official duties. If the employee is unable to return to his/her duty station and must stay overnight at some other location, per diem expenses shall be paid when appropriate.

- B. Employees also shall be entitled to compensatory time for time spent in travel, in accordance with the Workforce Flexibility Act of 2004, as amended.

## **Section 9 - Employee Absences for Court or Court-Related Services**

- A. In accordance with applicable law and government-wide regulations, an employee summoned or subpoenaed in connection with a judicial proceeding by a court or other authority responsible for the conduct of that proceeding shall be authorized to attend the judicial proceeding without charge to leave or loss of USDA salary in the following instances:
  - 1. To serve on a jury;
  - 2. To appear as a witness on behalf of the Federal government, District of Columbia, state, or local government;
  - 3. To appear as a witness on behalf of a private party in an official and job-related capacity or to produce official records; or,
  - 4. To appear as a witness on behalf of a private party in an unofficial capacity and one of the parties to the proceeding is either the United States, District of Columbia, or a state, or local government.
- B. Even though no compensation is received for serving on jury duty in a federal court, employees may keep expense money received for mileage, parking, or required overnight stay. Money received for performing jury duty in state or local courts must be submitted to the Agency and may not be retained by the employee.
- C. The Agency shall not change an employee's days off and/or schedules in order to avoid granting absence for court or court-related services.
- D. An employee who is granted court leave and is excused or released by the court for any workday or substantial portion of a workday is expected to return to the employee's regular Agency duties except when:
  - 1. Only a small portion of the work day would be involved and thus no appreciable amount of Agency service would be rendered; or,
  - 2. The distance from the court to the place of duty is such that this would be an unreasonable requirement;

## **Section 10 - Leave Without Pay (“LWOP”)**

- A. The Agency shall give serious, bona fide consideration to requests for LWOP.
- B. LWOP may be requested in the same manner and for the same purposes as annual leave and sick leave. LWOP may be granted even though the employee has a sick or annual leave balance.
- C. Upon written request from the appropriate Union office, an employee may be granted LWOP to engage in Union activities on the national, district or local level or to work in programs sponsored by the Union or the American Federation of Labor - Congress of International Organizations (AFL-CIO). Such requests shall be referred to the appropriate Agency official. Such employees shall continue to accrue benefits in accordance with applicable OPM regulations. LWOP for this purpose is limited to one year.
- D. Employees granted LWOP for more than 30 calendar days shall be notified that they can usually expect to return to their former position. However, it may become necessary in the interest of the service to reassign them to other positions at the same grade and pay within the commuting area of the employee’s current duty station during their absence or upon their return.
- E. Employees may request LWOP for educational purposes.
- F. LWOP is granted at the discretion of the Agency, except in the following cases:
  - 1. When a disabled veteran requests LWOP for medical treatment;
  - 2. When requested by a reservist or National Guard member for military duties in accordance with appropriate military orders and/or documentation. Employees may request such leave after their military leave has been exhausted (38 USC 4316(d));
  - 3. When requested by an employee who has suffered an incapacitating job-related injury or illness and is waiting adjudication of a claim for employee compensation by the OWCP; or,
  - 4. When an employee makes a request pursuant to the Family and Medical Leave Act (FMLA) and meets the criteria for that program.

## **Section 11 - Adverse Weather/Emergency Conditions**

Unless otherwise notified, employees shall assume offices are functioning normally and should report to work or meet requirements previously agreed upon. However, emergency conditions in New York occasionally require that an office remain closed for the day, delay opening, or allow early dismissal. Thus, it is desirable to have and follow a consistent policy (though it

is possible that, on rare occasions, unusual and/or unforeseeable circumstances may justify departing from that policy) in emergency conditions in order to minimize travel risks for employees while also ensuring that the needs of the Employer's customers are met to the maximum extent reasonably possible.

- A. The Food and Agriculture Councils (FACs) for each Service Center in which RD maintains an Area Office are required to meet, in person or virtually, to determine whether hazardous conditions (e.g., extreme weather conditions, serious interruptions in public transportation, earthquake, and disasters such as flood, fire or other natural phenomena) will cause a Service Center to be closed for the day, delay its starting time, or close early. The FAC (or the appropriate Agency supervisor, e.g., Area Director, if requested) considers weather conditions in the physical location of the office, not in the communities in which employees reside. It is not necessary that FAC decisions be unanimous, but they are binding on staff.
- B. The decision to close, delay opening, or open for normal business hours shall be made at the earliest practicable time to allow adequate time to notify employees of the closure before they depart for work. Each RD office shall establish methods of communication that will enable employees to be notified of closures or delayed openings before they leave their residences.
- C. If the FAC declines to close an office, delay start time or allow early dismissal, RD staff of an Area Office may contact the appropriate Agency supervisor and request that he/she close that office.
- D. When the FAC or appropriate Agency supervisor decides to close, delay start time, or allow early dismissal:
  1. Management shall enact a liberal leave policy.
  2. Employees with approved telework agreements (Core/Regular or *Ad hoc*/Situational) will continue to work at their approved alternative worksite, or they may elect to request leave.
  3. Affected employees who are non-teleworkers (opted out) will be granted the appropriate excused administrative leave in accordance with OPM guidance and/or government-wide regulations.
  4. After they have reviewed the Flexible Work Schedule section of OPM's "Handbook on Alternative Work Schedules" for guidance in determining normal arrival and departure times, employees with flexible work schedules impacted by this section shall, at their request, receive guidance from the Administrative Staff.
  5. Pre-Approved Leave: employees with pre-approved leave for the entire workday or employees who have requested unscheduled leave before early departure is announced shall, as applicable, be charged leave for the entire workday or the remainder of the workday.

- F. When a Service Center is neither closed nor delayed from opening:
1. Employees without telework agreements or who have opted out will need to request leave or Leave Without Pay (LWOP) for needed absence.
  2. Employees with approved Telework Agreements should expect to work from home or request leave.
  3. If an employee experiences difficulty traveling to work, all travel time will be in unpaid status. Travel time from home to work and back home is not considered to be in paid status under Federal Statute or OPM's policy on pay.
- H. Individual Excusal. It is recognized that individual circumstances, such as the location of an employee's residence, may require excusals through liberal leave approval in times of inclement weather or hazardous conditions. The Agency shall consider such factors as the distance between an employee's home and the office, availability of public transportation, road closures near the employee's home but not near the office, efforts made by the employee to report to work on time, and the success of other similarly situated employees to get to the office.
- I. Communications. Whenever reasonably possible, the Agency shall: (a) advise local media of an office closure or delayed opening; and (2) notify customers who have scheduled appointments that will be affected of the closure/opening.
- J. When the Agency declares that hazardous weather/emergency conditions exist, it shall inform the designated Union official and all bargaining unit employees, by phone, or email, or other electronic means.

## **Section 12 - Accommodation for Religious Observances**

- A. An employee whose personal religious beliefs require abstention from work during certain periods of time, may elect to engage in compensatory/credit hours work to compensate for time lost by meeting those religions requirements. Such requests require prior supervisory approval.
- B. To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the Agency mission, the Agency shall, in each instance: (1)°afford the employee the opportunity to work compensatory/credit time; and (2)°grant compensatory or credit time off.
- C. For the purpose stated in Paragraph B of this section, the employee may work such compensatory time before the granting of compensatory time off. Compensatory overtime shall be credited in one-quarter hour increments.
- D. Appropriate records shall be kept by the employee and the supervisor of compensatory/credit time earned and used.

### **Section 13 - Military Leave**

- A. Military leave shall be granted consistent with government-wide rules and regulations.
- B. Full-time permanent and part-time permanent employees who are members of the National Guard or the Armed Forces Reserves are entitled to fifteen (15) calendar days of regular military leave in a fiscal year for active duty or active duty for training.
- C. The Agency shall not arbitrarily deny an employee's request for military leave.
- D. Employees who do not use the entire 15 days may carry over any unused military leave (not to exceed 15 days) to the next fiscal year. Military leave may never exceed 30 days in any one calendar year.
- E. In accordance with the Presidential Memorandum dated November 14, 2003, Federal civil servants returning from active duty in the support of the Overseas Contingency Operations (OCO) (formerly the Global War on Terrorism) shall be granted five (5) work days of excused absence, without charge to leave upon their return from each deployment.

### **Section 14 - Advanced Annual/Sick Leave**

- A. An employee may be advanced all annual leave that shall accrue up to the end of the leave year. However, advanced annual leave may not be granted to a temporary employee beyond the anticipated accrual as of the date set for the expiration of the employee's temporary appointment, nor to any employee if there is a likelihood that the employee will retire, be separated, or resign from the Agency before the date the employee will have earned the leave. Upon separation, employees must repay the balance of any remaining advanced annual leave; however, an employee may submit a written request that the Agency waive repayment.
- B. An employee may be advanced sick leave not to exceed 240 hours. However, advanced sick leave may not be granted to a temporary employee beyond the anticipated accrual by the date set for the expiration of the employee's temporary appointment, nor to any employee if there is a likelihood that the employee will retire, be separated, or resign from the Agency before the date the employee will have earned the leave. Upon separation, employees must repay the balance of any remaining advanced sick leave; however, an employee may submit a written request that the Agency waive repayment.
- C. Advanced sick leave may be combined with annual leave or LWOP when necessary to cover one continuous period of absence.
- D. Denials of requests for advance leave shall be conveyed to the employee promptly and

shall contain an explanation of the reasons for the denial.

- E. Advanced leave, both sick and annual, may be approved in accordance with the employee's type of appointment. The employee shall not be required to utilize any annual leave prior to utilizing the advanced sick leave.
- F. It is agreed that advance leave, including both sick and annual, shall be fairly and equitably administered.

### **Section 15 - Voluntary Leave Transfer Program (VLTP)**

- A. As authorized by 5 CFR 630, Subpart I and consistent with this Agreement, employees are entitled to donate leave to an approved VLTP recipient. An employee must apply and be approved under the VLTP as a recipient before such employee may receive donated leave.
- B. The VLTP allows an employee to transfer annual leave to an approved leave recipient. The amount transferred may not exceed one-half of the amount of annual leave the employee will accrue during the leave year.
- C. Annual leave may not be transferred to an employee's immediate supervisor.
- D. The Agency shall assist employees in preparing, or shall prepare, the employee's solicitation memorandum which is directed to employees whom the employee designates. The Agency shall advise employees of how and where to receive such assistance.
- E. When an employee receives donated leave, it may be used only for the medical emergency for which it was donated.
- F. If an employee has "use-or-lose" annual leave at the end of the leave year and would like to donate it, the employee should contact an appropriate Agency official.
- G. Each bargaining unit employee shall be advised of the VLTP and the Agency's POC for each phase of the program.
- H. The Agency is in the best position to determine whether donated annual leave is needed by its employees in disaster situations and can quickly facilitate the transfer of donated annual leave. The Agency is responsible for:
  - 1. Determining whether, and how much, donated annual leave is needed by affected employees; and
  - 2. Approving leave donors and/or leave recipients within the Agency; and, facilitating the distribution of donated annual leave.

- I. Forms for donating and receiving annual leave under the VLTP can be accessed on OPM's web site at <http://www.opm.gov>.

## **Section 16 - Family and Medical Leave Act (FMLA)**

- A. Employees are entitled to maternity and paternity leave under the Family Medical Leave Act (FMLA) and this Agreement. Bargaining unit employees are entitled to twelve (12) weeks of leave (annual, sick, advanced annual, advanced sick, LWOP or any combination thereof) during any twelve (12) month period for the following reasons:
  - 1. Birth of a son or daughter and the care of such son or daughter; and
  - 2. Placement of a son or daughter for adoption or foster care.
- B. Supervisors are encouraged to approve additional leave as circumstances warrant.
- C. Other family medical leave under FMLA and this Agreement: bargaining unit employees are entitled to twelve (12) weeks of leave (annual, sick, advanced annual, advanced sick, LWOP or any combination thereof) during any twelve (12) month period for one or more of the following reasons:
  - 1. The care of a family member of the employee with a serious health condition. Family member is defined as:
    - a. Spouse, same sex spouse, and parents of spouse;
    - b. Children, including adopted children;
    - c. Parents; and
  - 2. A serious health condition of the employee that makes the employee unable to perform the functions of the position of such employee.
- D. Substitution of Paid Leave - The employee may elect to substitute annual leave, sick leave, compensatory time off, or credit hours for unpaid FMLA leave for any part of the applicable period consistent with governing laws and regulations. Employees may also combine annual leave, compensatory time, sick leave or credit hours with unpaid Family and Medical Leave for any period of approved leave. An employee may not substitute paid time off for unpaid FMLA leave retroactively.
- E. Notice of Leave - The employee shall make an appropriate request for use of unpaid Family and Medical Leave.
- F. When the need for unpaid FMLA leave is foreseeable and the employee fails to give 30 days-notice with no reasonable excuse for the delay of notification, the Agency

may delay the taking of unpaid Family and Medical Leave until at least 30 days after the date the employee provides notice of his/her need for FMLA leave. The time frame may be waived for good cause.

- G. If the need for leave is not foreseeable, the employee shall provide notice within a reasonable period of time appropriate to the circumstances involved. If necessary, notice may be given by an employee's personal representative (e.g., a family member or other responsible party). If the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his/her control, to provide notice of his/her need for leave, the leave may not be delayed or denied.
- H. Medical certification to the Agency in a timely manner. The written medical certification shall include:
  - 1. The date the serious health condition commenced;
  - 2. The probable duration of the serious health condition;
  - 3. The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition including a statement as to the incapacitation, examination, or treatment that may be required; and,
  - 4. A statement that the employee is unable to perform the functions of his/her position.
- I. The Agency shall not require any personal or confidential information in the written medical certification other than that required by Paragraph H-1, H-2, H-3 and H-4 of this section.
- J. If the Agency doubts the validity of the original certification, the Agency may require, at the Agency's expense, that the employee obtain the opinion of a second health care provider designated or approved jointly by the Agency and the employee concerning the information certified under Paragraphs H-1, H-2, H-3, and H-4 of this section.
- K. If the opinion of the second health care provider differs from the original certification, the Agency may require, at the Agency's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the Agency and the employee concerning the information certified under Paragraph H-1, H-2, H-3 and H-4 above. The opinion of the third health care provider shall be binding on the Agency and the employee.
- L. "Health Care Provider" is defined as any of the following: Physician; Physician Assistant; Chiropractor; Dentist; Physical Therapist; Nurse Practitioner; Registered Professional Nurse; Podiatrist; Optometrist; Psychologist; Clinical Social Worker; Occupational Therapist; Midwife; Mental Health Practitioner; Speech-language Pathologist; and Audiologist.
- M. To remain entitled to leave under FMLA, an employee or the employee's spouse, son, daughter, or parent must comply with any requirement from the Agency that he/she

submit to examination (not treatment) to obtain a second or third medical certification from a health care provider other than the individual's health care provider.

- N. If the employee is unable to provide the requested medical certification before leave begins or before the Agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the Agency shall grant provisional leave pending final written medical certification.
- O. As required by this section, an employee must provide a written medical certification signed by the health care provider no later than fifteen (15) calendar days after the date the Agency requests such medical certification. If it is not practicable to provide the requested medical certification not later than fifteen (15) calendar days after the date requested by the Agency and the employee has made a diligent, good faith effort, the employee shall provide the medical certification no later than 30 calendar days after the date the Agency requests such medical certification.
- P. If, after the leave has commenced, the employee fails to provide the requested medical certification, the Agency may charge the employee as AWOL, unless:
  - 1. The reason for not providing the medical certification was beyond the control of the employee; or
  - 2. The employee made a good faith effort to provide the certification.
- Q. Prior to being placed on AWOL, an employee shall be provided written advance notice of at least ten (10) working days and given the reasons why AWOL is being charged. During this period, the employee may comply with the Agency's request for certification, and the AWOL charges shall be rescinded; or allow the employee to request that the provisional leave be charged to LWOP or charged to the employee's annual and/or sick leave account, as appropriate.
- R. Medical Recertification may be required by the Agency while an employee is using leave under FMLA. Subsequent medical recertification shall be at the Agency's expense from the health care provider only if the circumstances described in the original certification change significantly or if the Agency receives bona fide information that casts doubt upon the continuing validity of the medical certification. Such requests for medical recertification shall not occur more frequently than every six (6) weeks.
- S. An employee eligible under the Agency's FMLA Leave Program may request to participate in the telework program consistent with Telework provisions in this Agreement and by requesting a Reasonable Accommodation.
- T. Protection of Employment and Benefits: upon return from Family and Medical Leave, the employee shall be restored to the same position as occupied before the leave or to an equivalent position in the same commuting area with equivalent benefits, pay, status, and other terms and conditions of employment.
- U. The Agency shall inform its employees of their entitlements and responsibilities under

FMLA, including the requirements and obligations of employees upon request from the employee.

- V. An employee who meets the criteria for leave and has complied with the requirements under this section may not be denied leave, consistent with all applicable rules governing annual or sick leave, as appropriate.

### **Section 17 - Blood, Bone Marrow and Organ Donor Leave**

Donor leave shall be granted consistent with government-wide rules and regulations.

- B. Employees who make free blood donations may be granted up to four (4) hours of excused absence for rest and recuperation. The excused period shall be exclusive of the time required for actual blood donation. If the circumstance warrants, supervisors may require medical evidence of blood donations. Employees who receive pay for donating blood and who wish to take time off from duty shall be charged annual leave or LWOP.
- C. Upon request, subject to certification by a health care provider, leave-approving officials shall approve excused absence for employees who serve as living donors for bone marrow, organ, and tissue donation and transplantation. The use of excused absence may cover time off for activities such as donor screening, the actual medical procedure, and recovery time. Leave-approving officials shall approve: An employee may use up to seven (7) days of paid leave each calendar year to serve as a bone-marrow donor. An employee also may use up to 30 days of paid leave each calendar year to serve as an organ donor. Leave for bone marrow and organ donation is a separate category of leave that is in addition to annual and sick leave and includes:
  - 1. Up to seven (7) workdays per donation of absence without charge to leave or loss of pay per calendar year by employees participating as living bone marrow donors; or
  - 2. Up to 30 workdays of absence without charge to leave or loss of pay per calendar year for employees participating as living organ and tissue donors.
- D. The length of absence from work can vary depending on the medical procedure involved in the donation. Therefore, for longer periods of incapacitation, leave-approving officials shall approve annual and/or sick leave or LWOP in combination with the maximum amounts of excused absence specified as above in this section.

### **Section 18 - Leave for Bereavement**

- A. Upon request, subject to any documentation requirements, leave-approving officials shall approve up to five (5) days of annual leave, sick leave, and/or LWOP for

employees to mourn the death of the following family members:

1. Spouse, and parents thereof;
  2. Sons and daughters, and spouses thereof;
  3. Parents, and spouses thereof;
  4. Brothers and sisters, and spouses thereof;
  5. Grandparents and grandchildren, and spouses thereof;
  6. Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and
  7. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”
- B. Upon request, subject to any documentation requirements, leave approving officials shall approve one (1) day of annual leave, sick leave, and/or LWOP for employees to mourn the death of a grandparent or parent of their spouse.
- C. The supervisor has discretion to require documentation (e.g., obituary, death certificate) prior to final approval of bereavement leave. However, this documentation shall normally be required only in unusual circumstances.

#### **Section 19 - Funeral Leave**

- A. Funeral leave is granted to allow an employee to make arrangements for, or to attend, the funeral or memorial service for an immediate relative who died as the result of a wound, disease, or injury incurred while serving as a member of the armed forces in a combat zone. The Agency shall grant employees such funeral leave as is needed and requested, not to exceed three (3) workdays of excused absence, without loss of or reduction in pay. The three (3) workdays need not be consecutive but if not, the employee shall furnish the approving authority satisfactory reasons justifying a grant of funeral leave for nonconsecutive workdays.
- B. The Agency may grant funeral leave only from a prescribed tour of duty, including regularly scheduled overtime, from a period during which, except for absence on funeral leave, the employee would have worked.

## **Article 32**

### **Temporary, Probationary, Part-time, and Permanent Employees**

#### **Section 1 - Temporary Employees**

- A. Temporary employees who serve in excess of 90 consecutive days will be covered by the provisions of this Agreement in accordance with Article 1, section 3 (B).
- B. To be members of the bargaining unit, temporary employees must have been employed 90 consecutive calendar days.
- C. Temporary employees may be separated at any time upon notice in writing from the Agency. When the Employer determines that a temporary employee is to be separated, it will make a reasonable effort to give the employee notice two (2) weeks in advance.

#### **Section 2 - Probationary Employees**

- A. Probationary employees shall be entitled to ongoing counseling about their conduct and performance and their standing through completion of their probationary period.
- B. Probationary employees have the right to Union representation in accordance with applicable laws, rules, regulations and this Agreement.
- C. The Employer will give probationary employees notice of termination two (2) weeks in advance, whenever reasonably possible, or such notice as the remaining probationary period permits.

#### **Section 3 - Part-time Employees**

- A. If a full-time employee wishes to convert to part-time, he/she shall make a request to his/her supervisor. The Employer will consider the employee's request and circumstances in light of the needs of the Agency.
- B. Employees who accept or convert to part-time positions have no guarantee that they will subsequently be converted to full-time employment, but the Employer agrees to consider the employee's request based on the employee's circumstances and the needs of the organization. The Employer will advise the employee of the effects of changing to part-time employment.
- C. Requests for changes to part-time and full-time employment will be made in writing.

## **Article 33**

### **Workers' Compensation Program**

#### **Section 1 - Workers' Compensation Program**

When an employee suffers illness or injury that the employee believes is job-related and reports it to his or her supervisor, the Employer will make available to the employee, on request, information and counseling or directions for obtaining information and counseling, about their rights and responsibilities under the Workers' Compensation Program including utilization of the online filing procedure.

#### **Section 2 - Employee Options**

- A. An employee with a job-related injury/illness (including conditions aggravated by job-related factors) may request to be placed on sick or annual leave instead of leave without pay, pending approval or disapproval of his/her compensation claim.
- B. Employees shall have the option of buying back the leave used and having it reinstated to their account if their claim for compensation is approved.

## **Article 34**

### **Official and “unofficial” Personnel Records and Files**

#### **Section 1 - Collection and Storage**

- A. The Agency shall not collect, maintain, or retain any official personnel file (“OPF”) or other record except in accordance with law, government-wide regulation, and this Agreement. All personnel records are confidential, shall be viewed or disseminated only by officials and employees with a legitimate administrative need to know, and shall be kept secure. Any such record that is electronic shall be retained in the file on the website designated for the electronic OPF (“eOPF”).
  
- B. If a supervisor decides to keep and/or maintain an “unofficial” file on an employee: (1) the Agency shall notify the employee; and (2) the employee shall have the right, at any time, to ask to examine the contents of the file and make copies of documents therein in the presence of an Agency representative. After the Agency receives an employee’s request to review a file, the Agency shall respond to the request within three (3) working days and schedule a time for examining the file that is convenient for both that employee and the Agency representative. An employee who has any concerns about the contents of the supervisor’s file may raise those concerns at any time by addressing his/her supervisor about them.

#### **Section 2 - Unfavorable Material**

- A. Before the Agency places any material that is unfavorable to an employee in that employee’s individual eOPF, a representative of the Agency shall notify the employee in accordance with law, government wide rules, regulations, and the provisions of this Agreement.
  
- B. The Agency shall remove information in the supervisor’s “unofficial” file that may be unfavorable to an employee when that information is no longer potentially relevant to any Agency action against the employee.

#### **Section 3 - Performance Information**

- A. The employee’s supervisor may retain copies of the employee’s annual performance rating of record for up to four (4) years in a supervisor’s “unofficial” file. If the employee has indicated an intent to grieve or appeal an appraisal or any other performance related material, the Agency shall preserve such records as may be relevant until the grievance or appeal is finally resolved.

- B. If there is information in the file relevant to a subject to be discussed at a meeting concerning the employee's performance which the employee is scheduled to attend, the employee may request that information and the Agency shall disclose that information to the employee at least five (5) work days before the meeting.

#### **Section 4 - Access, Copying, and Printing**

- A. Individual employees using government equipment shall have full access to their own eOPFs according to procedures and conditions established on a uniform basis nation-wide for all employees of USDA Rural Development and may print any desired eOPF documents as often as they like.
- B. Aggrieved employees may authorize the Agency to disclose information contained in a supervisor's "unofficial" file to their designated representative by submitting to the Agency a written statement to that effect.
- C. When the Agency investigates the conduct of an employee and/or proposes an action, the Agency shall permit the employee to examine the contents of the file and make copies of documents therein. This provision shall not alter or diminish any other Agency obligation to provide/disclose information/evidence.

## **Article 35**

### **Alternative Dispute Resolution**

#### **Section 1 - Commitment**

The Employer and the Union believe the use of Alternative Dispute Resolution (“ADR”) problem-solving methods to resolve disputes is effective, timely, efficient, and fosters a good labor-management relationship when appropriately applied, and they pledge themselves to exploring the possible use of such methods whenever reasonably possible.

#### **Section 2 - Definitions and Intentions**

- A. ADR is a collection of informal processes and techniques by which parties may seek early resolution of disputes in a manner other than formal litigation.
- B. Any ADR process must be acceptable to both Union and Management.
- C. A resolution achieved by ADR shall not establish a precedent unless the parties specifically agree to the fact and manner in which it establishes or established a precedent.

#### **Section 3 - Selecting Process to be Applied**

- A. When the parties agree that an issue is appropriate to be addressed by an ADR process, they shall seek to agree on a process from among those identified by OPM (see OPM.gov), or shall develop a mutually acceptable process that complies with applicable law. If the parties are not able to agree on an acceptable ADR process, the issue shall be deemed not appropriate for ADR under this Agreement.
- B. When the parties agree to use an ADR process, all applicable time frames are considered held in abeyance, except for statutory or regulatory time frames the parties do not control or are unable to waive.

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Date  
Scott Collins  
Associate Director  
Rural Development Business Center

Margaret Russo 6/28/19  
Date  
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