

**COLLECTIVE BARGAINING  
AGREEMENT**

**between**

**USDA RURAL DEVELOPMENT  
NEW MEXICO**

**and**

**AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES  
LOCAL 1032**

**Albuquerque, New Mexico**

**Effective Date: September 17, 2020**

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## **PREAMBLE**

It is the intent and purpose of the parties to:

Promote and improve the efficient and effective administration of programs by USDA, Rural Development New Mexico.

Improve the working conditions of employees within the meaning of the Federal Service Labor-Management Relations Statute (“the Statute”), Chapter 71, Title 5 of the U. S. Code, as amended, and 5 U.S.C. 5596, “The Back Pay Act”, as amended.

Establish and foster a basic understanding of personnel policies, procedures and practices, and matters affecting the conditions of employment; and,

Provide a means for amicable discussion and adjustment of matters of mutual interest at USDA Rural Development - New Mexico.

## **ARTICLE 1: GENERAL PROVISIONS**

**1.1 PARTIES TO THE AGREEMENT:** The parties to this Agreement are the US Department of Agriculture, Rural Development, State of New Mexico (“Employer”), and the American Federation of Government Employees, AFL-CIO (“AFGE”) and its designated bargaining agent, American Federation of Government Employees (AFGE) Local 1032 (“Union” or “AFGE 1032”).

**1.2 RECOGNITION:** The Employer recognizes that the Union is the exclusive representative of all employees in the unit described in Section 1.3 below.

**1.3 BARGAINING UNIT COVERAGE:** The appropriate unit of employees covered by this Agreement is described by the FLRA “Certification of Representative” issued February 8, 2000, in Case No. DA-RP-90043, as follows:

Included: All non-professional employees of the U.S. Department of Agriculture, Rural Development, State of New Mexico.

Excluded: All professional employees, management officials, supervisors and employees described in 5 U.S.C. 7112(b)(2)(3)(4)(6) & (7).

## **ARTICLE 2: PROVISIONS OF LAW AND REGULATIONS**

### **2.1 GOVERNING DIRECTIVES**

In the administration of all matters covered by this Agreement, management officials and employees are governed by existing or future laws and regulations of appropriate authorities, by existing government-wide regulations set forth, and by existing published Department and Employer rules and regulations, consistent with provisions of 5 USC Chapter 71. The Statute and Departmental Directives shall be the basis of resolving any issues not addressed by this Agreement.

### **2.2 EFFECT OF THIS AGREEMENT ON PREVIOUS AGREEMENTS, EXISTING DEPARTMENT/AGENCY POLICIES AND PRACTICES**

- A. Terms and conditions of this Agreement supersede conflicting past practices and previously negotiated agreements between the Union and Employer. When it becomes effective, this Agreement shall supersede and cancel all previous formal and informal agreements, excluding any mutually agreed upon past practices, and shall serve as the sole Agreement between the parties
- B. USDA or Agency policies that exist at the time this Agreement becomes effective shall continue in effect unless otherwise stated in this Agreement or changed as permitted by Article 20.

### **2.3 APPLICATION OF THIS AGREEMENT TO OTHER AGREEMENTS BETWEEN THE PARTIES**

The provisions of this Agreement shall apply to all supplemental, implementing and subsidiary agreements between the parties to the extent such other agreements do not amend this Agreement unless such an amendment is agreed to by both parties.

### **2.4 MEANING OF “DAYS” IN THIS AGREEMENT**

Days are calendar days unless otherwise noted.

## **ARTICLE 3: RIGHTS OF EMPLOYEES, UNION, AND EMPLOYER**

### **3.1 EMPLOYER RIGHTS**

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency--

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws--

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from--

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating--

(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the agency will observe in exercising any authority under 7106(a) of the statute; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under 7106(a) of the statute by such management officials.

### **3.2 UNION RIGHTS AND DUTIES**

The Union has the right to negotiate collective bargaining agreements covering all employees in the Unit. The Union is responsible for representing the interests of all

Employees in the Unit it represents without discrimination and without regard to labor organization membership.

The Union shall be given the opportunity to be represented at:

1. any formal discussion between one or more representatives of the Employer and one or more Employees in the Unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or
2. any examination of an Employee in the Unit by a representative of the Employer in connection with an investigation if:
  - a. the Employee reasonably believes that the examination may result in disciplinary action against the Employee; and
  - b. the Employee requests representation.

The Employer and the Union shall annually inform its Employees of their rights under paragraph 2 of this subsection.

### **3.3 EMPLOYEES' RIGHTS AND RESPONSIBILITIES**

A. PARTICIPATION: Each Employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely, and without fear of penalty or reprisal, and each Employee shall be protected in the exercise of such 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 U.S.C. 71.

B. RULES AND POLICIES. The Agency shall make available the rules, regulations and policies under which employees are obligated to work. It will periodically remind employees of these policies either via email, web-based training, or other cost-effective means.

C. Employee Attire.

1. While on duty, employees will dress in a professional manner conducive to safety and consistent with the environment in which they work. Employees' attire will be in good repair and will not be inconsistent with or distracting from the business purposes of the office environment.

2. The following are some examples of clothing that would be considered appropriate: clean shoes, suits, dress pants, trouser-like jeans in a dark wash, polo-shirts, dress shirts, skirts, dresses, blouses, and blazers. The following are some examples of clothing that would be considered inappropriate: flip-flops, tank tops, low-cut blouses, shirts or t-shirts with objectionable or offensive slogans, and faded pants.

3. Employees may be requested to dress in a more formal manner when there are visitors in the workplace. Employees will be provided prior notice regarding such visits.

4. Employees representing the Agency at a meeting or conference, making a formal presentation, or delivering formal training should dress in a more formal manner, as appropriate for the occasion.

### **3.4 EMPLOYEE ORIENTATION**

The Employer shall provide each new Bargaining Unit Employee with an electronic copy of:

1. the Collective Bargaining Agreement
2. any Union/Employer-wide supplemental agreement(s),
3. Union-provided and Employer-approved cover letter which includes a listing of Union Stewards and Officers.

## **ARTICLE 4: PROBATIONARY, PART-TIME, AND TEMPORARY EMPLOYEES**

All such employees of the bargaining unit shall be covered by the terms of this Agreement to the extent consistent with applicable laws and regulations.

## **ARTICLE 5: NEGOTIATED GRIEVANCE PROCEDURE**

### **5.1 COMMON GOAL**

It is the intent of the Employer and Union to have open discussions about disagreements in the workplace, to treat such matters seriously, and to cooperate in the spirit of mutual problem-solving to resolve disputes. Since grievances often arise from misunderstandings that can be settled promptly and satisfactorily on an informal basis, the Employer and Union shall encourage potential grievants to discuss their complaints with the responsible management or Union officials at the lowest level before filing a written grievance. The Union, if requested by the employee, has the right to participate either personally or telephonically in such discussions with management officials. However, informal efforts may not lead to resolution.

[NOTE: In the event the prohibitions of the E.O. 13839, "Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles" (May 25, 2018) are no longer in effect, the Union shall have the right during the term of this Agreement to reopen and renegotiate this Article.]

- A. For purposes of this Agreement, a grievance means any complaint as defined in 5 U.S.C. 7103(a)(9) of the Statute i.e., a grievance means any complaint:
  - 1. By any employee concerning any matter relating to the employment of the employee;
  - 2. By the Union concerning any matter relating to the employment of any employee;
  - 3. By any employee, the Union or the Employer concerning:
    - a. The effect or interpretation or claim of breach of a collective bargaining agreement;
    - b. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.
- B. This procedure shall be the exclusive procedure for resolving complaints except it shall not include a grievance concerning:
  - 1. any claimed violation relating to prohibited political activities;

2. retirement, life or health insurance;
  3. suspension or removal for National Security reasons;
  4. an examination, certificate, or appointment;
  5. the classification of any position which does not result in the reduction in grade or pay of any employee;
  6. any and all complaints concerning conditions of employment of non-bargaining unit positions.
  7. any matter that may be raised under a statutory appeal procedure.
  8. the issuance, or non-issuance, of an award of any nature.
  9. the assignment of ratings of record
- C. Complaints concerning an alleged prohibited personnel practice under 5 U.S.C. §2302(b)(1) subject to the jurisdiction of the Equal Employment Opportunity Commission, or concerning a matter covered by 5 U.S.C. §4303 and §7512 subject to the jurisdiction of the Merit Systems Protection Board shall be appealed under the respective appropriate statutory procedures. The Statute shall be the basis of resolving any issues not addressed by this Agreement.

## **5.2 REPRESENTATION**

Employee(s) utilizing the Negotiated Grievance Procedure shall have the right to be represented and/or advised by the Union. In addition, an employee and or group of employees have the right to present or process a grievance under this procedure on their own behalf. In such cases, the Union shall be afforded the opportunity to participate in the meeting between the Employer and the grievant(s) relating to the grievance filed.

**TIME LIMITS:** Time limits specified in this Article may be modified by mutual agreement of both parties. Failure of the grieving party to comply with time limits shall result in abandonment of the grievance. Failure of the party against which a grievance was filed to comply with time limits shall allow the grieving party to advance the grievance to the next step of the process.

## **5.3 PROCESS**

The following procedures are established for the resolution of grievances:

### **A. EMPLOYEE GRIEVANCES**

An employee requesting representation by the Union shall complete and submit a written request to the Union President with a copy to the Employer (usually his/her immediate supervisor).

#### STEP 1

An employee or the Union shall file a written grievance within fifteen (15) days after receipt of the notice of action, occurrence of the incident or knowledge of the incident (whichever occurs first).

At a minimum, the grievance shall contain:

The grievant(s) name, duty station, and telephone number;

The specific nature of the grievance, including the identification of any provisions of the Labor-Management Agreement alleged to have been violated, the provisions of any law, rule, and/or regulation affecting conditions of employment alleged to be violated;

The remedial action desired.

It shall be filed at the level of management that initiated the action which resulted in the grievance. A copy of all grievances must be provided to the Union Representative or designee and Employer Representative or designee simultaneously with the filing of the grievance. If the grievance is filed at a higher level than appropriate, the receiving office shall return the grievance to the employee with instructions as to the level at which it should be filed. The employee must then re-file the grievance within seven (7) days. To protect the rights of individuals and the integrity of the grievance process, individual grievance issues are to remain strictly confidential between the parties involved. Within fifteen (15) days of receipt of a properly filed written grievance, the supervisor or other management official shall review the matter being grieved and shall schedule and hold a meeting with the grievant to discuss the issues. A written response granting or denying the remedy requested shall be issued within fifteen (15) days of the meeting.

#### STEP 2

If the grievant or the Union is not satisfied with the Step 1 response, the grievance may be submitted to the State Director. The grievance must be presented in writing by the employee and/or designated representative to the State Director or his/her designee within ten (10) days after the decision rendered at the Step One. Upon request of the Union, the State Director or designee shall meet with the employee and/or the representative within fifteen (15) days of receipt of the grievance. If the issue is not resolved at the meeting, a final decision shall be issued in writing within twenty (20) days of the meeting. If the grievant is dissatisfied with the reply, the grievance may be submitted to arbitration by the Union.

## **B. EMPLOYER AND UNION GRIEVANCES**

When the Employer or the Union decides to file a grievance, it shall do so by filing the grievance in writing directly with the other party for resolution within thirty (30) days of the date that the Employer or the Union became aware or should have become aware of the act or occurrence or anytime if the act or occurrence is of a continuing nature. The submission of Union grievances shall be through the State Director or designee. The submission of Employer grievances shall be through the Union President or designee. As a minimum, the grievance shall indicate the specific nature of the grievance and the remedy desired and, where appropriate, the article(s) and section(s) of the agreement involved and any law, rule or regulation violated. The parties shall meet within twenty-one (21) days of receipt of the grievance and attempt to resolve the grievance. If the matter is not resolved at this meeting, a written decision shall be issued to the grievant within twenty-one (21) days of the close of the meeting.

If the grievant is dissatisfied with the reply, the grievant may submit the grievance to arbitration.

### **5.4 ALTERNATIVE DISPUTE RESOLUTION**

If both parties agree, the matter may be referred to an Alternative Dispute Resolution procedure, as outlined in Article 30 for possible resolution. The terms and timeframes for alternative resolution shall be jointly determined at the time the matter is referred.

### **5.5 MEDIATION**

Because mediation using the services of disinterested third-parties to assist in negotiating mutually acceptable resolutions may be an efficient, effective and economical method of resolving disputes:

- A. Either party may request mediation within ten (10) days of the final written response by the Employer as to an employee or Union-initiated grievance or by the Union as to a grievance initiated by the Employer.
- B. Such mediation shall be completed within thirty (30) days of the timely request. However, the parties may extend this time limit by mutual agreement. A party's request for mediation shall halt temporarily the running of time limits for processing that grievance. If a time limit is not extended and the grievance is not resolved, the running of the time limit resumes on the thirty-first (31st) day.
- C. Mediation shall occur only when FMCS or other mutually agreeable low-cost/no-cost mediators are available.

## **ARTICLE 6: ARBITRATION**

### **6.1 ADVANCING A GRIEVANCE TO ARBITRATION**

Any grievance that is not satisfactorily settled under the informal and formal procedures shall be subject to binding arbitration which may be invoked by either the Union or the Employer within fifteen (15) days of the formal decision or the conclusion of ADR.

### **6.2 THE COSTS OF ARBITRATION**

The expenses of the Arbitrator and any other arrangements for the proceeding as a whole (e.g., rental of a hearing room) shall be borne equally by the Union and the Employer. If either party requests a transcript, that party shall be responsible for the cost of the transcript.

### **6.3 JOINTLY REQUESTING A PANEL OF ARBITRATORS**

The moving party shall prepare one (1) form for the joint request to the Federal Mediation and Conciliation Service ("FMCS") to furnish the parties a list of seven (7) impartial persons qualified to act as arbitrators who practice in New Mexico. An information copy of the request shall be sent to the other party's primary point of contact (Union President or designee and Employer Representative or designee). The Union and Employer shall equally bear the cost of the FMCS list. Prior to selecting an arbitrator, either party may request a new list, at their expense.

### **6.4 SELECTING AN ARBITRATOR**

The two primary points of contact ("POCs") shall agree on an arbitrator within twenty-one (21) days after receipt of the list from FMCS. On the first occasion when the parties cannot agree on an arbitrator, the POC for the moving party shall strike a name from the list of arbitrators first, after which the POC for the other party shall strike a name. The POCs shall continue striking names until only one name remains, and that individual shall be the duly selected Arbitrator. For subsequent grievances where the parties cannot agree upon an arbitrator, the parties shall alternate striking a name from the list of arbitrators first.

### **6.5 IDENTIFYING THE ISSUE(S) TO BE RESOLVED**

If the parties fail to agree on a joint submission of the issue(s) for arbitration, each shall make a separate submission and the arbitrator shall determine the issue(s) to be heard.

### **6.6 ARBITRATOR'S AWARD FINAL AND BINDING**

The arbitrator's award shall be final and binding on both parties, except either party may file exceptions to an arbitrator's award with the Federal Labor Relations Authority ("FLRA") under regulations prescribed by the Authority. If exception is taken to an award, each party shall bear its own costs.

## **ARTICLE 7: HOURS OF WORK, BASIC WORKWEEK, AND ALTERNATIVE WORK SCHEDULES**

### **7.1 FAMILY-FRIENDLY WORKPLACE**

#### **1. PURPOSE**

- A. To establish a Family-Friendly Workplace authorizing alternative work schedules which enables the Employer to meet its mission needs while allowing employees sufficient flexibility to meet both work and family needs. The Employer benefits by improved employee effectiveness and morale while giving employees more control over their lives.
- B. In interpreting and applying this Article, the Parties shall follow the applicable laws, rules and regulations then in effect.

#### **2. DEFINITIONS**

- Official Hours - Are the hours when an office is open for business. This is normally 8:00 a.m. to 4:30 p.m.
- Core Hours - Are the designated hours (9:00 a.m. to 2:30 p.m.) during which all full-time employees must be present during their normal tour unless on approved leave, scheduled lunch period, or the tour of duty has been changed in accordance with paragraph 3(b)(1)(c) of this section.
- Lunch Band - Is the band of time, between the hours of 11:00 a.m. to 2:00 p.m. that a lunch period may be scheduled.
- Flexible Work Schedule (“FWS”) - A work schedule that:
  1. In the case of a full-time employee, has an 80-hour biweekly basic work requirement that allows an employee to determine their own schedule within the limits set by the Employer; or
  2. In the case of a part-time employee, has a biweekly basic work requirement of less than 80 hours that allows an employee to determine their own schedule within the limits set by the Employer.
  3. Is established between the hours of 6:00 a.m. to 12:00 a.m. However, on a regular basis the employee’s scheduled workday must be completed by 6:00 p.m.
- Maxiflex Schedule - A type of FWS that contains core hours on 10 or fewer workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay

period. Some employees shall not be allowed to participate fully in this plan because of unique position requirements or office coverage. Maxiflex schedule may be used to emulate a Compressed Work Schedule; however, if this emulation is detrimental to the Agency's mission, the employee will be advised of this detriment and will cease utilizing Maxiflex to emulate a Compressed Work Schedule. If Maxiflex is used to emulate a CWS schedule, employees must request change in Non-Work Day (NWD) greater than seven days in advance of the week in which the change would occur. Absent approval of the change, employees will be expected to submit leave requests to be absent from duty for any part of the day's core hours in which the employee is normally expected to be present.

- Compressed Work Schedule ("CWS") - Is always a fixed schedule.
  1. In the case of a full-time employee, an 80-hour biweekly basic work requirement that is scheduled by an Employer for less than 10 workdays; and
  2. In the case of a part-time employee, a basic work requirement of less than 80 hours that is scheduled by an Employer for less than 10 workdays and that may require an employee to work more than 8 hours a day.
- Credit Hours - Those hours within an FWS that an employee elects to work in excess of their basic work requirement to vary the length of a workweek or workday. Although credit hours are worked voluntarily, and are not ordered overtime, they are to be worked with the concurrence of the Employer (usually the employee's supervisor). Employees on CWS are not eligible to earn credit hours.

### 3. POLICY

- A. This policy is to implement alternative work schedules including Maxiflex and a fixed work schedule (Compressed). These options provide a full range of work schedules for employees.
- B. Official hours are the hours when an office is open for business. This is normally 8:00 a.m. to 4:30 p.m. Core hours are the designated hours (9:00 a.m. to 2:30 p.m.) during which all full-time employees must be present during their normal tour unless on approved leave, scheduled lunch period, or the tour of duty has been changed in accordance with paragraph 3(b)(1)(c) of this section. A lunch period of 30, 45, or 60, etc., minutes is requested by the employee and approved by the Employer (usually the employee's supervisor). The lunch band is between the hours of

11:00 a.m. to 2:00 p.m. With repeated evidence of abuse of the lunch period (exceeding the approved time), the Employer may require the employee to check in and to check out of the lunch periods.

1. Maxiflex Schedule

- a. The Employer (usually the employee's immediate supervisor), is responsible for determining whether conditions such as office coverage may restrict certain positions from Maxiflex participation.
- b. Employees select a starting time each day, e.g., 8:00 a.m. (so that the Employer may know generally when to expect the employee). However, the employee may change the starting times daily within the established flexible hours of 6:00 a.m. to 9:00 a.m. Supervisors may require that an employee provide advance notice when the employee will not be arriving within 30 minutes of their anticipated arrival time. The employee's scheduled number of hours for that day must be completed by 6:00 p.m. unless the tour of duty has been changed as described in paragraph 3(b)(1)(c) of this section. Full-time employees must schedule a minimum of 5 1/2 hours and a maximum of 10 hours (exclusive of lunch period) for each scheduled workday.
- c. The employee is responsible for choosing a biweekly schedule and submitting it in writing to the Employer (usually their immediate supervisor) for approval. The Employer may change the tour of duty to not later than 12:00 a.m. for days when employees are required to attend night meetings. Night pay differential shall apply to hours worked after 6:00 p.m. when the supervisor initiates the change in the work schedule.
- d. Hours an employee works under a Maxiflex schedule are to be recorded on a minute-to-minute basis. Exact arrival and departure times are to be recorded for each employee daily.
- e. Under Maxiflex, work schedules may vary. Employees may work:

Example 1:

1st week: M - 10 hours, T - 10 hours, W - 6 hours,  
Th - 10 hours, F - 8 hours;  
2nd week: M - 7 hours, T - 7 hours, W - 7 hours,  
Th - 7 hours, F - 8 hours.

Example 2: A traditional 8-hour, 5-day workweek.

Example 3:

1st week: M-F - 9 hours;

2nd week: M-W - 9 hours, Th - 8 hours.

While this appears to be a 5/4-9 CWS, the employee is under Maxiflex and is eligible to earn credit hours. In addition, the holiday pay the employee earns is eight (8) hours.

- f. Employees may not work more than twelve (12) hours in a day (exclusive of lunch period). This includes regular tour of duty and credit hours.
  - g. Employees shall be allowed to request Maxiflex schedule changes no more than 7 occurrences in any one calendar year.
2. Compressed Work Schedule ("CWS")
- a. CWSs are arranged to enable employees to fulfill their basic work requirements in less than 10 days during the biweekly pay period.
  - b. CWSs authorized is the 5/4-9 compressed plan.
  - c. There are no provisions for employee flexibility in reporting time or quitting time under CWS.
  - d. There is no legal authority for credit hours under CWS.
  - e. Employees shall be allowed to request a change in CWS not more than four times per year.
  - f. A full-time employee on a CWS who is relieved or prevented from working on a day designated as a holiday (or an "in lieu of" holiday) is entitled to their rate of basic pay for the number of hours of the CWS on that day.
  - g. If a part-time employee on a CWS is relieved or prevented from working on a day designated as a

holiday, he/she is entitled to their rate of basic pay for the number of hours of the CWS on that day. Part-time employees do not receive an "in lieu of" holiday.

- h. Determining "in lieu of" holiday. Full-time employees on a CWS who are not scheduled to work on a holiday receive an "in lieu of" holiday on the preceding workday.

### 3. Credit Hours

- a. Credit hours are worked on a voluntary basis. However, they are worked with the concurrence of the Employer (usually the employee's immediate supervisor).
- b. Credit hours may be earned by employees on FWSs (Maxiflex).
- c. Full-time employees may carry over no more than 24 credit hours from pay period to pay period.
- d. Part-time employees are limited on a pro-rata basis and may carry over an amount of credit hours equal to one-fourth of their biweekly work requirement.
- e. Credit hours may be earned in the following manner:
  - 15-minute increments;
  - Monday - Friday between the hours of 6:00 a.m. to 6:00 p.m.;
  - After 6:00 p.m. to 12:00 a.m. to attend night meetings with supervisory approval;
  - There is no limit on the number of credit hours that may be earned in a workday so long as the total credit hours and regular tour of duty do not exceed 12 hours (exclusive of lunch period).
- f. Credit hours may not be earned by employees on CWS.

## 4. RESPONSIBILITIES

- a. Supervisors

1. Approve or disapprove the biweekly work schedule submitted by the employee. When a supervisor cannot honor an employee's request because of office coverage, the supervisor shall meet with the employee(s) involved to reach a mutually acceptable alternative schedule. If acceptable compromise cannot be reached at that time, the supervisor shall make a final determination concerning the work schedule.
2. Can change an employee's work schedule. After discussion with the employee, the supervisor may make changes to an employee's work schedule to assure adequate coverage or because of workload, training needs, attendance at meetings, travel, an opportunity to improve plan, an operational exigency, etc. These changes may be subject to premium pay per 5 CFR 610.121(b)(3).

b. Employees

1. Submit a biweekly work schedule in writing to their supervisor for approval. This schedule remains in effect until the employee submits and receives approval for a new schedule. Changes should be no more frequent than seven occurrences per year, unless an unforeseen life event occurs.
2. Choose a 30, 45, or 60, etc., minute lunch period. This choice should be communicated to the supervisor in writing. On occasion, with supervisory approval, employees on a Maxiflex 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.
3. Observe designated duty hours and must be punctual in reporting for work and returning from lunch.

## 7.2 BREAKS

1. Employees are authorized two (2) fifteen (15) minute breaks each day. The break periods shall be taken in the morning and the afternoon. Breaks cannot be added to arrival times, lunch periods, or closing time and cannot be carried over and accumulated.
2. The fifteen (15) minute break in each part of the day may be taken at one time or in shorter intervals but total time in each part of the day shall not exceed fifteen (15) minutes.

3. The Employee will remain in close proximity (within 3 miles) to the jobsite during breaks. Employer business shall, from time to time, interrupt breaks, with phone calls and walk in customers. Employees shall, in such cases, shorten breaks but still be authorized the fifteen (15) minutes each morning and afternoon.
4. Upon approval from their supervisor, Employees may participate in on-site wellness/exercise activities on duty time by extending one of their regular fifteen (15) minute break periods to twenty (20) minutes, as long as they remain available for work if needed. An employee who extends one of their regular fifteen (15) minute breaks for a wellness/exercise activity shall not take more than thirty (30) minutes of break during the day.
5. If it sees possible evidence of abuse of the break period (exceeding the fifteen (15) minutes per morning or afternoon, or 20 minutes as used in section 4 above), the Employer may require the employee to check in and to check out of the break periods.

### **7.3 CREDIT HOURS**

Credit hours provide flexibility for bargaining unit employees to meet Employer mission area needs, without increasing overtime costs. Credit hours are also a key element in meeting the Family Friendly objectives embedded in the RD Instruction 2051-F.

#### Credit Hours Worked

1. Those hours in excess of the employee's daily tour of duty which are performed at the employee's option with concurrence of the Employer.
2. Request to Work Credit Hours
  - a. Normally, the employee shall request to work credit hour(s) prior to the date the employee intends to work the credit hour(s) by submitting this request to the Employer (usually his or her immediate supervisor). In the supervisor's absence, the request shall be submitted to the next level supervisor. The Employer shall normally approve or deny the request before the employee works the credit hours. Requests and approvals can be verbal or written.
  - b. In the case of an employee who is on a flexible work schedule and, without specific prior supervisory approval, spends time to perform work within the Employer's tour of duty but outside the employee's schedule, the Employer shall count the time for credit hours under the following conditions:
    1. within two (2) workdays of the occurrence, the employee submits to the Employer (usually through his or her

immediate supervisor) a memorandum that justifies counting the time by showing:

- i. performing the work at that time was reasonably necessary, and
  - ii. the employee attempted to obtain supervisory approval but was unsuccessful because no supervisor was reasonably available; and
2. the supervisor concurs by signing the memorandum. Retroactive approval of credit hours may be justified for any individual employee no more than once per pay period except when the employee can demonstrate exceptional circumstances.

3. Use of Credit Hours

Credit hour leave requests shall be approved/disapproved in accordance with RD Instruction 2066-A, "Leave", dated February 23, 1990, and any of this regulations subsequent updates.

## **ARTICLE 8: OVERTIME AND COMPENSATORY TIME**

### **8.1 GENERAL**

Overtime and compensatory time shall be administered in accordance with the applicable law and/or regulation that applies to the employee, i.e. RD Instruction 2051-H; DPM regulation Chapter 550, Sub-chapter 1, Premium Pay; and the appropriate overtime provisions of 5 CFR 532-550-551.

Time under this article shall be earned or used in increments of fifteen (15) minutes. The provisions for fractional hours are contained in RD Instruction 2051-H.

The Employer determines the need for, approves, and assigns all overtime work, and also determines the employee qualifications required to perform such work.

### **8.2 PROCEDURE FOR ASSIGNMENT OF OVERTIME**

The Employer shall give an employee as much advance notice as possible in making overtime assignments, but the parties acknowledge that emergencies, operational exigencies, and unanticipated workload requirements may result in the Employer's inability to give advance notice. However, employees shall be allowed reasonable time under the circumstances to make arrangements necessary to minimize personal hardship.

### **8.3 COMPENSATORY TIME**

Compensatory time is considered overtime. All rules and procedures established in this article that govern the assignment and accrual of overtime are applicable to compensatory time, except as noted herein.

Employees who are "nonexempt" under the Fair Labor Standards Act ("FLSA") may be allowed to earn compensatory time rather than paid overtime provided that the employee requests, in writing, at the time overtime is requested/assigned. Compensatory time for FLSA nonexempt employees is granted at the discretion of the Employer; however, the Employer may not require that the employee earn compensatory time in lieu of paid overtime.

The use of compensatory time off shall be governed by the applicable provisions of 5 CFR Parts 550 and 551, and applicable USDA and Rural Development directives.

Compensatory time shall be used prior to annual leave unless in a year when annual leave is subject to forfeiture.

### **8.4 COMPENSATORY TIME OFF-TRAVEL**

The administration of compensatory time off for travel shall be governed by the provisions of 5 CFR Part 550 and applicable USDA and Rural Development directives.

## **ARTICLE 9: LEAVE**

The Agency shall continue to apply to bargaining unit employees:

1. the provisions of the RD Instruction 2066-A, "Leave";
2. the provisions of the current and any successor RD Instruction 2051-F, "Hours of Duty";
3. the statutory obligations of the Family and Medical Leave Act of 1993 ("FMLA") as it has been or may be amended; and
4. the statutory obligations of the Family Friendly Leave Act which became effective December 2, 1994, as it has been or may be amended.

## **ARTICLE 10: PROMOTION AND BARGAINING UNIT VACANCIES**

The principle of merit promotion is to ensure that employees are given full and fair consideration for advancement and to ensure selection from among the best-qualified candidates. The Employer recognizes the value of promoting from within and in creating promotion opportunity for Rural Development Employees. When filling bargaining unit positions the Employer shall follow USDA and RD policies, applicable laws, rules, and regulations then in effect, and the following additions.

### **10.1 GENERAL PROVISIONS**

Merit Promotion Panels may be used for all merit promotion positions filled. Should the Agency opt to utilize Merit Promotion Panels, those panels will be in accordance to USDA DR 4030-335-002. The employer will notify the union if the panel will be convened.

### **10.2 LATERAL REASSIGNMENT OR CHANGE TO LOWER GRADE**

A bargaining unit employee may request reassignment without paid relocation expenses to a known vacant position of equivalent grade or lower. Bargaining unit employees shall be given priority consideration for a lateral transfer in accordance with applicable laws and regulations.

### **10.3 NON-SELECTION**

Non-selectees may solicit from the selecting official information regarding the reason for their non-selection and how to improve the likelihood of being chosen in the future.

### **10.4 RESOLUTION OF DISPUTES**

A grievance may be filed under the Negotiated Grievance Procedure of the Collective Bargaining Agreement when there is an alleged violation of relevant Merit Promotion law, rule, regulation, or the provisions of this Article.

### **10.5 CAREER LADDER POSITIONS**

The Employer (usually the immediate supervisor of the employee) and employees in career ladder positions are jointly responsible for developing a plan for the employee to attain the full performance level of the position. If the employee is not progressing satisfactorily, it is the responsibility of the Employer to counsel the employee, and the employee should take steps to correct any deficiencies.

An employee shall be eligible for promotion to the next higher grade in the career ladder beginning with the first pay period after 52 weeks or whatever lesser time period may be applicable, provided:

1. Applicable time in grade, qualification, quality of experience requirements, and other appropriate statutory and administrative requirements have been met; and
2. A rating or progress review of the employee's overall performance for the time in grade is satisfactory; and
3. The Employer determines that the employee is capable of performing the higher graded duties.

Pursuant to applicable regulations, an employee may not advance on the career ladder for his or her position for failing to satisfy the previously-mentioned eligibility requirements or because the work available at the next higher grade in the position is insufficient.

## **10.6 NONCOMPETITIVE PROMOTION**

When the servicing personnel office determines that there has been an accretion of duties and responsibilities that warrants an increase in grade, the Employer shall notify the employee, supervisor, and Union representative and may promote the employee without competition if the employee is deemed qualified or may reassign the higher graded duties.

## **10.7 TEMPORARY PROMOTIONS**

In accordance with 5 CFR 335.103, the Employer shall temporarily promote employees detailed to higher graded duties for more than sixty (60) calendar days.

Selections for temporary promotions of 120 days or less shall normally be made from among well-qualified employees in accordance with 5 CFR 335.103. Where practicable, such promotions may be rotated among well-qualified employees.

## **ARTICLE 11: TRAINING**

Training shall be in accordance with RD Instruction 2057-A unless this contract provides otherwise.

### **11.1 TRAINING AND DEVELOPMENT**

The Employer and the Union agree that the training and development of employees within the unit is a matter of primary importance to the parties. The Employer shall make a reasonable effort to provide appropriate training and development for employees. The Employer and the Union also recognize that employees are individually responsible for applying reasonable effort, time, and initiative to increase their capabilities through self-development and training.

The Employer shall remind employees annually to include training requests in their Individual Development Plans ("IDPs").

### **11.2 SELECTION FOR TRAINING**

The Employer shall nominate employees for training and approve such nominations based on the employee's position, or IDP, or other criteria.

### **11.3 TYPES OF TRAINING PROVIDED**

Subject to the Employer's determination of its needs and the availability of funding, the types of training provided can include, but are not limited to, the following:

1. Job-related training is any type of training relating directly to the employee's current job duties. When the Employer determines that training directly related to those duties is necessary, the Employer shall send that employee to the appropriate training. Duty time shall be approved for job-related training, when it is scheduled during the employee's basic workweek.

When job-related training is approved, the Employer shall pay costs of tuition and required textbooks and other expenses as appropriate, and shall 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 shall be notified and given the option of attending the training without travel reimbursement and/or expense reimbursement.

2. The Employer shall consider employee-initiated requests which would result in better organizational or individual performance. The Employer may approve requests to use administrative leave, annual leave, compensatory time, credit hours or leave without pay for training which is not directly job-related.

3. Each employee shall develop their IDP and an appropriate Employer designee (usually the employee's immediate supervisor) shall review it at least annually. IDPs shall be reasonable and achievable.

## **ARTICLE 12: EQUAL EMPLOYMENT OPPORTUNITY**

### **12.1 RESPONSIBILITIES**

The Employer and the Union agree to: cooperate in providing equal opportunity in employment of all persons; prohibit discrimination because of race, color, national origin, sex (including gender identity and pregnancy), religion, age (40+), mental or physical disability, political beliefs, sexual orientation, marital or familial status, protected genetic information, or reprisal/retaliation for prior participation in the equal employment opportunity complaint process; and promote the full realization of equal employment opportunity (“EEO”) through a continuing affirmative action program. The Employer shall be responsible for taking necessary affirmative action with the objectives of ensuring a workplace free of discrimination based on any of the factors listed above and shall take appropriate remedial action when discrimination occurs. The parties agree that equal employment opportunity shall be administered in accordance with RD Instruction 2045-X and other applicable laws, rules and regulations.

The parties agree that the members of the Equal Employment Opportunity Advisory Committee (EEOAC) shall be appointed by the State Director to serve in accordance with RD Instruction 2045-X, and shall include one member nominated by the Union to serve as its representative.

### **12.2 EMPLOYEE RIGHTS**

Any employee who believes that he or she has been discriminated against on the grounds set forth in Section 12.1 may file a complaint under the appropriate complaint/appeals procedure.

Any employee who wishes to file or has filed a complaint shall be free from coercion, interference, and reprisal.

### **12.3 REPRESENTATION**

For complaints filed under EEO procedures, the representative may be a Union representative or an attorney, or another representative of their choice. Should a RD Union Official represent an employee in the EEO procedures, the time spent will not count as Union Time.

### **12.4 EEO INFORMATION**

EEO Poster shall be placed on designated bulletin boards.

### **12.5 STATISTICAL SUMMARIES**

Upon request, no more frequently than biannually, the Union shall be provided summary statistical data according to job series, grade level, race, sex, age, and disability data of:

1. Promotion actions

2. Awards (special and performance)
3. Disciplinary and adverse actions
4. Workforce profile
5. Training as tracked in AgLearn.

## **ARTICLE 13: CAREER ENHANCEMENT**

Rural Development employees shall continue to be covered by the applicable law, rules, and regulations then in effect, pertaining to career enhancement.

The Employer and the Union support Career Enhancement as an alternative means of staffing to meet specific Employer needs and provide training, educational and job opportunities to high quality employees in single-interval series positions GS-1 through GS-9 and Wage Grade equivalent to advance to positions of different and/or greater responsibility and remuneration. Career Enhancement provides opportunities for Rural Development employees to move into skilled or paraprofessional and professional positions through a combination of on-the-job training and formal skills training as prescribed by individualized training plans. Since the program provides for an extension of career ladders beyond the normal progression of the individual employee's current career ladder, it will nearly always result in a classification series change for the employee. Because Career Enhancement assignments are highly selective in the kinds and degree of developmental experiences provided, the selection for a Career Enhancement assignment always begins with an appropriate selection.

## **ARTICLE 14: HEALTH AND SAFETY**

Rural Development employees shall continue to be covered by the provisions of RD Instruction 2069-A dated 9/30/92, and RD Instruction 2069-B, "Safety and Injury Compensation" dated 7/25/84. Should either of these regulations be updated, the successor regulation will become effective after notification to the Union.

### **14.1 GENERAL**

Providing and maintaining safe and healthful working conditions for all employees is one of the Employer's highest priorities, and it agrees to do so to the extent of its authority and resources consistent with applicable law, Executive Order 12196, OSHA requirements, and other applicable health and safety codes. The Employer's State Safety Officer shall encourage employees to work in a safe manner, and receive and review reports of any unhealthful, hazardous, or unsafe conditions.

### **14.2 EMPLOYER ACTION**

With the assistance of the Union, the Employer 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 Employer 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.

### **14.3 UNION ACTION**

The Union shall encourage employees to care for and respect facilities, equipment and their own work environment. The Union shall advise the Employer promptly concerning known safety and health problems. Each bargaining unit employee has a duty and is encouraged to report any unsafe or unhealthy working conditions to their immediate supervisor as soon as they become aware of such conditions.

### **14.4 UNSAFE OR UNHEALTHY WORKING CONDITIONS**

Any employee who believes that an unsafe or unhealthy condition exists has the right to report it to their immediate supervisor. The Employer shall respond to an employee report of hazardous conditions and shall advise the appropriate Union point-of-contact immediately. It shall investigate the reported condition. It may refer the situation to:

- a. the appropriate RD or USDA office;
- b. GSA;
- c. the building manager; or
- d. other appropriate officials for further investigation

The Union shall be given an opportunity to accompany any inspector who responds on such a complaint during the inspector's physical inspection of the workplace. The Union representative shall be granted official time for this purpose separate from, and not

counted as, normal Union Time. During the course of any such inspection, an employee may bring to the attention of the inspector any unsafe or unhealthy working conditions.

The Employer shall assure that no employee shall be subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthy working condition, or other authorized participation in any Employer occupational safety and health program activity.

#### **14.5 OCCUPATIONAL INJURY OR ILLNESS**

Employees who become injured or ill because of the performance of their duties shall report the injury or illness to their supervisor as soon as possible. The Employer shall cooperate in promptly processing all paperwork in connection with compensation claims.

#### **14.6 OCCUPANT EMERGENCY EVACUATION PLAN**

Each building in which bargaining unit employees are headquartered shall have an Occupant Emergency Evacuation Plan. The Employer shall issue an annual reminder of the Occupant Emergency Evacuation Program Plan.

#### **14.7 FIRST AID**

The Employer shall provide first aid kits at RD building locations and ensure kits are maintained. All employees shall have reasonable access to these supplies.

The Employer may provide training, contingent upon availability of funds, to interested employees for cardiopulmonary resuscitation ("CPR") during duty or non-duty hours. If during duty hours, duty time shall be given to those approved for participation.

## **ARTICLE 15: PERFORMANCE MANAGEMENT**

### **15.1 Overview**

- a. The Agency will administer the Performance Management program in accordance with 5 U.S.C. Chapter 43 and 5 C.F.R. Part 430.
- b. Terms used in this Article that relate to the Performance Management System, such as “appraisal,” “critical element,” or “performance rating”, will have the same meaning as in 5 C.F.R. Part 430.

### **15.2 Critical Elements and Performance Standards**

- a. The Agency will comply with 5 C.F.R. Part 430 when making its reserved management right decision as to the number of levels of performance for each critical element, and when determining whether a rating level will have a written performance standard.
- b. Application of all performance standards shall be fair and equitable, and consistent with 5 C.F.R. Part 430.

### **15.3 Communications**

- a. Normally within the first thirty (30) calendar days of every rating period or within thirty (30) calendar days of employment or reassignment, the supervisor will discuss the performance plan with each employee. The supervisor will present to the employee a copy of the draft performance plan, which contains the Critical Elements and performance standards.
- b. Employees are encouraged, but not required, to provide input on the plan. The supervisor will give the employee a copy of the final performance plan and ask the employee to sign and date to acknowledge receipt.
- c. During the rating period, the supervisor will discuss with and notify the employee of any changes in the employee’s Critical Elements or performance standards, annotate them in the performance plan, and provide a copy of the revised performance plan to the employee.
- d. Performance discussions:
  1. A mid-year discussion and a closeout of current appraisal period and establishment of standards for the new appraisal period discussion must take place each appraisal period.
  2. Performance discussions should occur throughout the performance appraisal period. Discussions may be initiated by the supervisor or employee and may be held one-on-one or in a work group. Employees are encouraged to seek feedback from their supervisor about their

performance throughout the performance appraisal period.

3. Performance discussions between the supervisor and the employee will be aimed at improving the work process or product and developing the employee. As appropriate, the discussion will provide the opportunity to assess accomplishments and progress and identify and resolve problems.
4. Performance discussions are not formal discussions.

#### **15.4 Procedures**

- a. Normally within thirty (30) days of appointment, reassignment, or change in supervision, the employee will be issued a new performance plan.
- b. Employees will receive an annual performance rating for the performance appraisal period. Performance ratings are issued in writing to the employees as soon as practicable after the end of the rating period.
- c. Employees must be working under a performance plan for a minimum of ninety (90) days before a rating can be given.

#### **15.5 Addressing Unacceptable Performance**

The provisions in this Article shall not preclude the Agency from taking an action for unacceptable performance under 5 U.S.C. Chapter 75. A supervisor is not required to use the procedures in this Section or 5 U.S.C. Chapter 43 when taking an action for unacceptable performance.

- a. At any time during the rating period, if the supervisor identifies that an employee's performance in one or more Critical Elements is at the Unacceptable level, the supervisor may notify the employee of the Critical Elements for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance with the issuance of a Notice of Opportunity to Demonstrate Acceptable Performance (NODAP).
- b. The NODAP must inform the employee that unless his or her performance in the Critical Element(s) at issue improves and is sustained at an acceptable level of performance, the employee may be demoted or removed from employment.
- c. The NODAP will afford the employee generally no more than 30 calendar days to demonstrate acceptable performance under the Critical Elements at issue, commensurate with the duties and responsibilities of the employee's position.
- d. During the NODAP period, the supervisor may offer assistance to the employee in improving unacceptable performance.

- e. A supervisor can issue an Unacceptable rating prior to issuing a NODAP. However, no reduction in grade or removal action will be taken under 5 C.F.R. Part 432 until the completion of the NODAP period.
- f. Once the NODAP period has ended or the supervisor determines that the opportunity period is no longer needed, the supervisor will provide the employee with a written notice of his/her determination of the employee's level of performance at that time.

## **15.6 STATUTORY PROCEDURES PROVIDE EXCLUSIVE REDRESS**

Statutory procedures and appeals provide exclusive redress for alleged violations of employee rights involving appealable adverse and performance-based actions under this Article. Pursuant to 5 USC 7121(a)(2), disputes over appealable adverse and performance-based actions arising under this Article shall not be subject to the negotiated grievance and arbitration procedures.

## **ARTICLE 16: ADVERSE AND DISCIPLINARY ACTIONS**

### **16.1 POLICY**

The Employer shall determine when the need arises for disciplinary or adverse actions. Disciplinary actions and adverse actions shall be taken in accordance with applicable laws, rules, and regulations in effect at the time of the action. The specific penalty for an instance of misconduct shall be tailored to the facts and circumstances of the situation. Disciplinary and adverse actions against all employees must be based on “cause” as defined in the applicable laws and regulations.

### **16.2 PENALTY DETERMINATION**

- A. In order to determine the appropriate penalty for an Employee such as a disciplinary or adverse action, the Employer shall, subject to applicable law, rule, and regulation, consider the relevant factors as determined by governing law (for example, applying the factors articulated by the Merit Systems Protection Board in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981) to applicable adverse actions).
- B. The Parties recognize that the use of progressive discipline is at management’s sole and exclusive discretion. It is understood, however, that progressive discipline need not follow any specific sequence of disciplinary actions and that some offenses may be cause for severe action, including removal, irrespective of whether previous disciplinary or adverse actions have been taken against the offending Employee.

### **16.3 ADMONISHMENTS/COUNSELING**

Admonishments and counselings are not formal disciplinary actions to which the procedures in this Article apply. Admonishments and counselings, which may be oral or written, may be used when an Employee’s conduct or performance is less than acceptable and it is likely that an informal action will result in improvement. Admonishments and counselings are neither grievable nor appealable.

### **16.4 REPRESENTATION**

When it delivers to a bargaining unit employee a notice of proposed or final disciplinary or adverse action, the Employer will advise the employee that he or she is entitled to self-representation, to Union representation, or to other appropriate representation. When the employee chooses to be represented by the Union, the Union will be allowed to be present via physically or via other means at any meeting between the employee and the Employer to discuss the action

- A. Reprimands

A reprimand is a written letter to an Employee based on unacceptable conduct or poor performance. Prior notice is not required before the issuance of a reprimand. A reprimand shall state the specific reasons for the action. A reprimand shall remain in an Employee's Official Personnel Folder ("OPF") for up to two years, but may be removed by the Employer, at its sole discretion, anytime within the two-year period. A reprimand shall inform the Employee of his/her appeal/grievance rights as required by law.

B. Suspensions of 14 calendar days or less

An Employee against whom a suspension of 14 days or less is proposed is entitled to:

1. Advance written notice of the proposed action that specifies the reasons for the proposed action and informs the Employee of his/her rights to review the material that was relied upon to support the reason for the action;
2. Not less than 24 hours, but no more than 14 calendar days, to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of their response. The deciding official may extend the reply period if he/she determines that good cause exists for an extension based on extenuating circumstances. The Employer shall designate an official to hear the Employee's oral response who has the authority to make a final decision on the proposed adverse action. The right to answer orally does not include the right to a formal hearing with examination of witnesses;
3. Be represented by an attorney or other representative; and
4. A written decision at the earliest practicable date, containing the specific reasons for the decision and notifying the Employee of his/her appeal rights.

## **16.5 ADVERSE ACTIONS**

For the purpose of this agreement, adverse actions are defined as suspensions of more than 14 days, reductions-in-grade or pay, removals, and furloughs. Adverse actions shall be governed by applicable laws, rules, and regulations.

An Employee against whom an adverse action is proposed is entitled to:

- A. Thirty calendar days advance written notice of the proposed action, which specifies the nature of the proposed action and informs the Employee of his/her rights to review the material that was relied upon in proposing the suspension. If there is reasonable cause to believe that the Employee has committed a crime for which a sentence of imprisonment may be imposed, the proposed action may be effected less than 30 calendar days from the receipt of the advance written notice;
- B. Fourteen calendar days to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of their response. The deciding official may extend the reply period if he/she determines that good

cause exists for an extension based on extenuating circumstances. The Employer shall designate an official to hear the Employee's oral answer who has authority to make a final decision on the proposed adverse action.

- C. Be represented by an attorney or other representative; and
- D. A written decision at the earliest practicable date, containing the specific reasons for the decision and informing the Employee of his/her appeal rights. To the extent practicable, an agency should issue a decision on a proposed removal within 15 business days of the conclusion of the employee's opportunity to respond to the proposed removal.

## **16.6 NOTICE LEAVE AND INVESTIGATIVE LEAVE**

- A. Pursuant to 5 U.S.C. § 6329(b), the Employer may place an Employee on Investigative and/or Notice Leave when the Employer determines that an Employee must be removed from the workplace while under investigation or during a notice period (i.e., the period after the Employee has received a proposed notice of disciplinary/adverse action before a final decision is made and takes effect). These two types of leave may be used when the Employer has determined that the Employee's continued presence may:
  - 1. Pose a threat to the Employee or others;
  - 2. Result in the destruction of evidence relevant to an investigation;
  - 3. Result in loss of damage to Government property; or
  - 4. Otherwise jeopardize legitimate Government interests.
- B. Before using either Investigative leave or Notice leave, the Employer shall consider options to avoid or minimize the use of paid leave, such as assigning the Employee to duties in which the Employee no longer poses a threat; allowing the Employee to take another form of eligible leave for an Employee if there is reasonable cause to believe the Employee has committed a crime for which a sentence of imprisonment may be imposed.
- C. The use of Notice and Investigative Leave is subject to the time limitations and special approvals for extensions pursuant to 5 USC 6329(b).
- D. Nothing in this section shall be construed to impose additional requirements on the agency not specifically outlined in applicable statutes, regulations, and local policy.

## **16.7 ALTERNATIVE DISCIPLINE**

- A. The Employer and the Employee (the Parties) agree that alternative discipline may, under the right circumstances, be an efficient and effective approach in lieu

of or in addition to traditional discipline. The Parties may consider and/or propose an alternative form of discipline at any stage during the disciplinary process. If the Employer and the Employee and/or his/her representative come to an agreement on an alternative form of discipline, the terms of the alternative discipline shall be set forth in a signed resolution/settlement agreement. The agreement may include, but is not limited to:

1. The specific form of the alternative discipline;
2. The date by which it is to be completed;
3. The charged misconduct and the proposed traditional discipline;
4. Recognition by the Parties that the alternative discipline may be referenced in any subsequent disciplinary action; and
5. A voluntary waiver of any appeal rights the Employee may have regarding the matter.

B. The following is a non-exhaustive list of types of alternative discipline the Parties may consider:

1. A leave donation by the Employee through the Employer's leave donation program equal to the amount of time that would have been spent on suspension;
2. Attendance by the Employee at an appropriate counseling program approved by the Employer's Employee Assistance Program;
3. Placing the Employee on Leave Without Pay in lieu of a formal disciplinary action;
4. A "paper suspension" whereby the Employee does not serve a suspension or lose pay, but the suspension may be relied on in future disciplinary actions for purposes of progressive discipline.
5. A Last Chance Agreement, in which the Employer agrees to hold an adverse action decision in abeyance in exchange for an Employee's:
  - a. Commitment to abide by a certain set of behaviors or conditions for a set period of time as determined by the Employer;
  - b. Waiver of his/her rights to challenge the decision; and
  - c. Agreement that if the Employee fails to fulfill the terms of the agreement, the decision shall be implemented.

- C. Nothing in this section shall require the Employer to use alternative discipline in lieu of formal disciplinary action. The failure of the parties to reach agreement regarding the use of alternative discipline is not a bargaining impasse that could be funneled to FMCS/FSIP for resolution.

## **16.8 STATUTORY REMEDIES**

Statutory procedures and appeals (e.g., before the Merit Systems Protection Board) provide exclusive redress for alleged violation of employee rights involving appealable adverse actions under this Article. Pursuant to 5 USC 7121(a)(2), disputes over appealable adverse actions arising under this Article shall not be subject to the negotiated grievance and arbitration procedures.

## **16.9 EVIDENCE DISCLOSURE**

On written request to Human Resources, to the extent permitted by applicable law, rule and regulation, the employee or the employee's representative will be provided with the evidence, and only that evidence, on which the Employer relied in proposing a disciplinary or adverse action.

## **ARTICLE 17: REDUCTION IN FORCE (“RIF”) AND TRANSFER OF FUNCTION (“TOF”)**

### **17.1 GENERAL RULES**

The Employer and the Union recognize that employees may be seriously and adversely affected by a reduction-in-force and/or transfer of function. In the event of a reduction-in-force and/or transfer of function, the Employer shall notify the Union and fulfill its obligation to bargain consistent with 5 USC 71.

### **17.2 NOTIFICATION TO UNION**

- A. When the Employer is anticipating a RIF or TOF, it shall provide the following to the Union thirty (30) days in advance of any official notice provided to the affected employees as required by 5 CFR 351:
  - 1. The reason(s) why the actions may be taken.
  - 2. The approximate number of employees who may be affected.
  - 3. The types of positions anticipated to be affected; and
  - 4. The anticipated effective date that action will be taken.
- B. The Employer shall provide the Union, upon request, with information in accordance with 5 U.S.C. 7114(b)(4).
- C. All RIF(s) and TOF(s) shall be conducted in accordance with 5 CFR 351.

## **ARTICLE 18: OFFICIAL/UNION TIME**

### **18.1 POLICY STATEMENT**

Each employee's foremost responsibility is the completion of the duties of his/her Agency position of record. However, the parties recognize that in the furtherance of good labor-management relations as provided for in the Civil Service Reform Act of 1978, union representatives may use limited amounts of official/union (herein simply "union") time under the conditions described in this Article.

### **18.2 LIST OF DESIGNATED UNION REPRESENTATIVES**

- A. The Union shall provide the Agency with electronic lists of all designated union representatives within 30 days of the effective date of this Agreement. The Union shall provide an updated list when there is a change to a designated union representative within two (2) business days. Each list shall include the name, union position, component, council, local, duty location, and telephone number of each designated union representative.
- B. Only those employee-union representatives identified on the list provided by the Union shall be authorized to use official/union time.

### **18.3 EXCLUSIONS**

- A. Absent advance approval from management, official/union time is not appropriate for use by a union representative for work performed at home, including under an authorized telework agreement, or outside the time the union representative would otherwise be in duty status. Approved official/union time can only be used in an Agency facility or a third-party litigation facility absent advance approval from management.
- B. Work schedules shall not be altered so that Union officials are in duty status for the sole purpose of using official/union time. In unforeseen or exceptional circumstances, at the sole discretion of the Agency, work schedules may be altered.
- C. Union representatives are not authorized to earn premium or differential pay, overtime, credit hours, or compensatory time (to include travel compensatory time) for their performance of union representational duties.
- D. In accordance with 5 USC 7131 (b), the use of official/union time is prohibited for internal union business.
- E. Official/Union time is not permissible for Worker's Compensation or EEO Complaint Cases.

- F. Individuals designated as Union Representatives who are placed on a Demonstration Opportunity shall not be authorized official/union time during the period of the Demonstration Opportunity.
- G. Union sponsored training is not an appropriate representational activity for which official/union time may be used. The Agency shall not pay for official/union time or any associated expenses for union sponsored training.
- H. Lobbying or political activities are not appropriate activities for which official/union time may be used. The Agency shall not pay for official/union time or any associated expenses for any lobbying or political activities.
- I. Pursuing grievances or binding arbitration, except in cases of whistleblower retaliation, are not appropriate activities for which official/union time may be used. The Agency shall not pay for official/union time or any associated expenses for pursuing grievances or binding arbitration, except in cases of whistleblower retaliation or for activities covered by 5 U.S.C. 7131(c).

#### **18.4 PROVISIONS FOR OFFICIAL/UNION TIME**

- A. Consistent with 5 U.S.C. 71 and this Agreement, union representatives shall be granted official/union time, subject to availability as described below, for only the following representational activities:
  - 1. Term Negotiations—to negotiate a collective bargaining agreement, in accordance with 5 U.S.C. 7131(a).
  - 2. Mid-Term Negotiations—to negotiate over issues raised during the life of a term agreement, in accordance with 5 U.S.C. 7131(a).
  - 3. Dispute Resolution—to appear in proceedings before the Federal Labor Relations Authority during such time as an employee would otherwise be in a duty status, in accordance with 5 U.S.C. 7131(c).
  - 4. General Labor-Management Relations—to prepare for term and mid-term negotiations and perform miscellaneous representational activities authorized under 5 U.S.C. 7131(d), subject to availability of hours in the Union Bank as described below.
- B. Union Bank. Total available hours of official/union time per fiscal year for activities covered by 5 U.S.C. 7131(d) is calculated by one-fifth hour per bargaining unit employee (e.g., 1/5-hour x 500 bargaining unit employees = 100 hours available) as of October 1 for the activities identified above in Section 4-A. Unused Union Bank hours do not carry over into the next fiscal year.
- C. Union representatives may be authorized official/union time hours and Leave Without Pay as discussed in Section 6, “Leave Without Pay”, on a fiscal year basis, not to exceed 25% of their established annual tour of duty (subject to the

bank noted in Section 4-B) in the performance of union representational activities as described in Section 4-A, with the exception of Section 4-D below.

- D. Union reps who reach the 25% cap shall be authorized official/union time in accordance with sections 7131(a) or 7131(c) of title 5, United States Code. Time for these activities are charged to the Union Bank for that fiscal year, notwithstanding that time in the Union Bank would otherwise be used for activities covered by 7131(d). However, if the Union Bank has been exhausted, time shall be charged to the Union Bank for the following fiscal year (or years).
- E. Prior to a representative entering a work area or performing representational activities, the representative must obtain the consent of the immediate supervisor in charge of the work area. The representative shall provide the supervisor with the name of the employee, the general purpose of the visit, and how long the employee is expected to be away from duty. The employee must obtain agreement of the supervisor or designee prior to meeting with the union representative.
- F. No more than 5% of employees in any branch, division or directorate may be assigned as Union Representatives in order to prevent an operational burden.
- G. Representatives shall make every effort to perform their union representational duties in a proper and expeditious manner.

#### **18.5 PROCEDURES FOR REQUESTING AND REPORTING OFFICIAL/- UNION TIME**

- A. A request for official/union time must be made in the manner designated by management at least one workday in advance in order to allow management to be able to consider and plan for agency mission requirements. Sufficient information (start and stop time, date, representational category, contact telephone number, and specific location, if other than the normal duty station or union office) must be included with each request to use official/union time to allow the approving official to determine if the time requested and activity described meet the criteria outlined in this Article.
- B. Approval from an authorized supervisor/management official must be obtained by an employee prior to their engaging in official/union time as a representative. Any employee who uses official/union time without advance supervisory/management approval shall be considered absent without leave and subject to appropriate disciplinary action. The employee shall immediately inform the supervisor when he/she returns to work after completion of the representational activity using the method determined by the supervisor.
- C. If management is unable to approve a request for official/union time, the reason for denial shall be provided. If an operational need does not permit the employee to use the official/union time when requested, management shall generally make a reasonable effort to allow the employee to use the requested official/union time

within two workdays, keeping in mind the interests of the union, as well as the needs of the employer.

- D. An employee serving as a Union Representative is responsible for accurately recording official/union time on their time and attendance for pay purposes. An employee's failure to accurately record official/union time on their time and attendance creates a financial burden on the agency, as the agency will incur a cost to correct the time and attendance record. In such an instance, the Union shall reimburse the agency for the actual cost of processing the correction.

## **18.6 LEAVE WITHOUT PAY**

A union representative may request leave without pay to engage in union activities (LWOPUA) that would be permitted under 7131(d). LWOPUA does not count against the Union Bank. No agency employee shall be permitted to spend more than 25% of their established annual tour of duty on official/union time, LWOPUA, or any combination thereof, except as provided for by Section 5D of this article. Management shall consider requests for LWOPUA and determine whether to grant the leave without pay. The denial of LWOPUA for union representational activities cannot be grieved or disputed in any forum.

## **ARTICLE 19: FURLOUGHS**

### **19.1 - General**

Sometimes there are circumstances beyond the control of the Employer which may make it necessary to furlough employees.

The Employer has complete authority and responsibility with respect to all decisions regarding the furloughing of employees, including but not limited to, the specific employees furloughed, the days, dates, and times of the furlough, and the duration of the furlough.

Seniority will be considered in the furlough process. For purposes of this Article, in determining an employee's seniority, the Employer shall use the Retirement Service Computation Date.

By agreeing to this Article, the Union does not waive any individual employee's rights.

The Employer shall implement furloughs in accordance with the applicable governing statutes, rules and/or regulations, and Office of Personnel Management Guidelines (hereinafter referred to collectively as "law") current at the time of the furlough.

This Article addresses the policy and procedures associated with two (2) types of furlough: (a) Shutdown or Emergency Furloughs; and (b) Save Money Furloughs.

Upon receiving official notice of a potential furlough, the Employer shall notify the Union, as soon as practical, of the following:

1. Whether the furlough is a Shutdown (also called "Emergency") or a Save Money Furlough;
2. The expected beginning date of the furlough; and
3. The expected duration of the furlough.

For every furlough, the Employer shall compile a list of excepted employees (those employees not subject to the furlough). After it approves a finalized list, the Employer shall provide the Union with a list of the excepted employees at or around the same time it provides the information to the excepted employees.

During the period of a Shutdown (or Emergency) Furlough, an employee shall be regarded as in furlough status during the employee's normal Tour of Duty and Work Schedule, including Compressed Work Schedules, Alternative Work Schedules, Part-Time Work Schedules and associated Off Days. To the best of the Employer's ability, the Employer shall refer to furlough periods in terms of hours rather than days.

During a furlough, and unless contrary to law, leave status shall be handled as follows:

1. Annual, sick, court, military leave, credit or compensatory time shall be suspended during the term of the furlough.
2. Employees on approved leave without pay (LWOP) shall remain on LWOP.
3. Employees on Continuation of Pay (COP) status shall remain on COP status.
4. Employees may accept outside employment while on furlough provided such employment does not pose a conflict of interest with their official USDA RD duties. Employees wishing to engage in outside employment should refer to the Office of Ethics website at [www.usda.gov/ethics](http://www.usda.gov/ethics); and
5. Employees on LWOP under the Family Medical Leave Act (FMLA) during the furlough shall continue to be charged LWOP or be placed in a furlough status. However, employees on FMLA but in a pay status must be placed on furlough instead; the furlough time shall not reduce the 12-week entitlement period.

Based on the length of the furlough, the Employer shall adjust Performance Plan Standards accordingly.

The Employer shall not use furloughs as punishment or discipline in lieu of other means of addressing behavior, conduct, or performance.

All time periods within which a party or employee may or must act pursuant to the terms of the Collective Bargaining Agreement shall be tolled for the duration of any furlough.

## **19.2 - Save Money Furloughs**

If the Employer must furlough employees as a means of addressing a budget shortfall, the Employer may solicit volunteers to be placed in extended LWOP status; or

If the Employer must furlough employees as a means of saving or reducing expenditures, the Employer shall:

1. Solicit volunteers to work reduced hours in conjunction with LWOP; and
2. Allow affected employees to choose which work days shall serve as their furlough days, with advanced approval of a supervisor and in accordance with Employer leave request requirements.

Management reserves the right to deny a request for LWOP.

Should an insufficient number of employees in a work unit volunteer for LWOP and the Employer must furlough employees in that work unit, the Employer shall furlough employees by reverse seniority, where the least senior employees are the first employees furloughed. In determining an employee's seniority, the Employer shall use the Retirement Service Computation Date.

### **19.3 - Shutdown (Emergency) Furloughs**

As soon as a Shutdown (or Emergency) Furlough is announced, the Employer shall provide all non-essential employees with all relevant and necessary instruction and information available to the Employer.

If directed by the Employer, all furloughed employees shall report to work on the first day of the Shutdown (or Emergency) Furlough for a period of either four (4) hours or as long as is required to complete those tasks necessary for an orderly shutdown, whichever is less. If a furloughed employee has any telework agreement in place (scheduled or ad hoc), they may seek approval from their supervisor to telework on the first day and complete their shutdown activities remotely.

As often as practical, the Employer shall keep employees apprised of the status of the furlough.

Employees on scheduled leave at the conclusion of the furlough may remain on leave until their previously scheduled return to duty date.

Non-essential employees shall be paid for the Shutdown (Emergency) Furlough days only to the extent permitted by Congress. Excepted employees and non-essential employees shall be paid for any time worked pursuant to the second paragraph above of this Section, but not until a continuing resolution or appropriation is enacted.

## **ARTICLE 20: TERM OF AGREEMENT, NEGOTIATION OF AMENDMENTS AND OF CHANGES IN CONDITIONS OF EMPLOYMENT**

### **20.1 EFFECTIVE DATE AND DURATION OF THE AGREEMENT**

Pursuant to 5 USC 7114(c), this Agreement shall become effective on the date it is approved by the Agency Head or on the 31<sup>st</sup> day after execution, whichever occurs first.

This Agreement shall remain in effect for a term of three (3) years from its effective date. Thereafter, it shall automatically renew in increments of one (1) year unless either party serves the other with written notice of a desire to re-negotiate or modify this agreement in whole or in part. Such notice shall be provided to the party not more than one hundred and five (105) calendar days nor less than sixty (60) calendar days prior to the expiration date of this agreement.

### **20.2 EFFECT OF THE AGREEMENT**

Matters covered by this Agreement shall not be subject to change by either party during the Agreement's term, absent mutual consent of the Parties, except for changes mandated by law, as permitted by 20.3, or as permitted by this agreement.

With respect to conditions of employment not covered by this Agreement, the Agency has the right, pursuant to 5 USC 7106, "Management Rights", to change such conditions of employment as permitted by 20.4.

When engaging in bargaining during the term of this Agreement, the parties shall follow the procedures in this article or procedures agreed to at the time of bargaining.

### **20.3 MID-TERM REOPENING OF THE AGREEMENT TO ALTER/AMEND/-RENEGOTIATE ARTICLES**

By mutual agreement, the parties may reopen an Article or Articles at any time in this Agreement's duration.

Either party may reopen up to three (3) Articles of this Agreement at the mid-term by giving the other written notice of its desire to do so during the ninety (90) calendar days immediately preceding the eighteen (18) month anniversary (or "monthiversary") of the Agreement's effective date. The timeframes and procedures for mid-term negotiations shall be those provided by 20.4 of this Article for end-of-duration negotiations.

### **20.4 NEGOTIATIONS DURING THE TERM OF THIS AGREEMENT ABOUT MATTERS THIS AGREEMENT DOES NOT COVER**

- A. In the event the Employer decides to make a change affecting conditions of employment subject to bargaining under 5 USC Chapter 71, and not covered by existing federal laws, government-wide rules and regulations or Department/Employer policies at the time the Agreement was executed, or by

this Agreement, the Employer shall provide the Union advance written notice as described below before implementation unless exigent circumstances exist.

## **20.5 General Bargaining Procedures.**

- A. Management shall provide the Union with ten (10) days advance notice of changes in working conditions subject to bargaining with the Union. Such notice shall be provided in writing to the Union.
- B. Following the Union's receipt of notice of proposed changes in working conditions, the Union shall have seven (7) days to submit a demand to bargain concerning the proposed changes. The Union will submit proposals within fourteen (14) after its demand to bargain is received by the Agency.
- C. Following receipt of the Union's proposals, Management shall have ten (10) days to present its written counter-proposals to the Union.
- D. Bargaining shall commence as soon as possible following the Union's receipt of Management's counterproposals, but in no case later than 14 days.
- E. The Parties may alter any of the above time frames by mutual agreement.
- F. The Parties shall be represented at any negotiations by duly authorized representatives.
- G. If, due to a bargaining impasse, the parties are unable to reach agreement within ten (10) days following the initiation of bargaining, either Party may declare impasse and request the services of a mediator from the Federal Mediation and Conciliation Service ("FMCS").
- H. If the Parties are unable to resolve their differences assisted by the efforts of the FMCS mediator and the mediator declares an impasse, either Party may submit remaining disputes to the Federal Service Impasses Panel ("FSIP"), if necessary.

## **20.6 Post-Mediation Procedures**

When both parties have the right to submit remaining disputes to the FSIP, they also have the right to propose the use of Alternative Dispute Resolution ("ADR"; see Article 30, "Alternative Dispute Resolution").

If the Agency intends to implement the proposed change in working conditions, it shall give the Union appropriate notice including the effective date. Such notice shall provide the Union a reasonable opportunity to seek Panel assistance before the Agency implements the change.

## **20.7 REOPENING OR AUTOMATIC RENEWAL AT THE END OF THE AGREEMENT'S TERM**

At the end of its three (3) year duration, this Agreement shall automatically renew for periods of one (1) year unless either party serves the other with written notice of its desire to reopen and renegotiate/modify this Agreement in whole or in part. A party wishing to serve such notice on the other shall do so not more than one hundred five (105) calendar days nor less than sixty (60) calendar days prior to the expiration date of this Agreement. This Agreement will remain in effect during periods of renegotiation and until a new agreement is in effect. This Agreement becomes null if it is determined that the Union is no longer entitled to exclusive recognition in accordance with the provisions of 5 USC, Chapter 71.

The Parties shall exchange Ground Rules proposals simultaneously within thirty (30) days of a notice to renegotiate.

Negotiations shall begin no later than fourteen (14) days after the Parties exchange Ground Rule proposals. The Parties may mutually agree to extend these timeframes.

## **ARTICLE 21: DUES/PAYROLL DEDUCTION/WITHHOLDING**

### **21.1 GENERAL**

Bargaining Unit Employees (“BUEs”) who occupy positions represented by the Union may have their dues withheld through payroll deduction. Dues withholding is to be voluntary on the part of the individual employee. The Union is responsible for informing the BUE of the voluntary nature of dues withholding and the conditions governing a BUE revocation of dues withholding.

In implementing the dues deduction program, the Employer and Union shall be governed by the provisions of 5 USC 7115 and this Article.

### **21.2 SUPPLY OF FORMS**

The Union shall be responsible for the distribution of Standard Form (“SF”) 1187 for the use by an eligible member of the Union who wishes to authorize the deduction of his/her dues. SF 1188 shall also be available through the Union, and online for employees who wish to revoke the allotment as described in Section 8.

### **21.3 REQUESTING DUES WITHHOLDING**

In order to initiate dues withholding, a BUE must complete and sign an SF-1187. BUEs must themselves submit the completed, signed and certified SF-1187 forms to the HR for concurrence. The Union, its representatives, or another individual may not submit the forms on the BUE’s behalf. HR shall in turn forward the approved dues allotment form to PAYROLL for processing. Dues shall be withheld beginning no later than three pay periods following receipt of Standard Form 1187 at PAYROLL.

### **21.4 DUES SCHEDULE**

The Union certifies that the dues schedule applicable to its members shall be provided to each member prior to membership enrollment. Dues schedules may be changed pursuant to Section 7 below. The Agency shall apply the appropriate dues schedule to Union members who authorize deduction of dues.

### **21.5 UNION MEMBERS NOT IN GOOD STANDING**

If the Union suspends or expels a Union member, or if a BUE otherwise ceases to be a member in good standing, it shall notify HR by email of that determination within five business days. HR shall subsequently notify PAYROLL to cease dues deduction effective the next pay period for that employee and copy the Union.

### **21.6 DUES WITHHOLDING FEES AND ACCOUNTS**

The Employer’s Headquarters Finance Office shall remit by Electronic Funds Transfer the amount of dues withheld to a single account provided by the Union. The Employer shall also send to the Union a listing of names and amounts withheld.

## **21.7 CHANGE IN AMOUNT OF DUES**

The Union may not change the amount of dues more than once in a twelve-month period. When the amount of regular dues changes, the Union shall notify HR of that change in writing. HR shall acknowledge and forward by email to PAYROLL for inclusion in future allotments and the Union shall be copied. This should take effect within four pay periods of notification to PAYROLL.

## **21.8 AUTOMATIC TERMINATION OF DUES WITHHOLDING**

All allotments of Union dues withholding shall be automatically terminated in the following events:

- A. Non-renewal. If the BUE does not reauthorize their deduction in accordance with Section 10 of this Article, the deduction shall automatically terminate in accordance with the provisions of that section.
- B. Loss of Exclusive Recognition. All deductions of Union dues provided for in this Article shall automatically terminate in the event of loss of exclusive recognition.
- C. Temporary assignment to a non-BUE position. If the employee is on a temporary assignment to a non-BUE position, the Employer shall notify Payroll to cease the allotment of Union dues deduction and so inform the Union. The employee shall be responsible for submitting a new SF-1187 upon returning to a BUE position if they elect to voluntarily continue to pay Union dues through Payroll deduction.
- D. Separation or transfer. Any individual allotment for dues withholding shall automatically terminate upon the separation of the employee from the Agency or transfer of the employee from the bargaining unit.
- E. Change in membership status. The Union shall certify to management any member who ceases to be a member in good standing. Refer to Section 5.

## **21.9 CORRECTION OF ERRORS**

The Employer agrees that the total error in the amount of dues withheld from BUE shall be adjusted as soon as practicable after the Employer has discovered the error or has received written notification from the Union of the error. The parties agree that the Agency shall be held harmless for any corrected errors.

If a BUE has been improperly separated and is ordered reinstated by the appropriate authority to a BUE position, the employee is required to initiate a new SF-1187 to restart dues withholding if they voluntarily elect to do so.

## **21.10 PROCEDURE TO REAUTHORIZE DUES DEDUCTIONS:**

- A. Consistent with 5 U.S.C. 7115(a), authorization for dues allotments shall last for one year and shall be irrevocable during this period, except as stated in 5 U.S.C.

7115(b) and subsection 11(d) of this Article.

- B. At the first pay period after the anniversary of the first deduction, the allotment shall expire unless the BUE submits a new, completed, signed and certified SF-1187 to HR within 30 days of the annual anniversary of their initial authorization. If a BUE does not submit the SF-1187 within the thirty (30) calendar day period of the anniversary date of the first deduction, the allotment shall expire. An SF-1187 that is not received in a timely fashion shall be treated as a new request under Section 3 of this Article.

### **21.11 PROCEDURE TO CEASE DEDUCTIONS**

A Union member may revoke his/her allotment for Union dues by failing to reauthorize it pursuant to procedures set forth in Section 10 of this Article or by submitting to LM a completed and signed Standard Form 1188. Other written notification of revocation signed and dated by the member shall also be accepted.

- A. **WITHIN THE FIRST YEAR:** A revocation received by LM during the course of the employee's first year of dues allotment shall become effective no later than the second pay period after the first anniversary of the pay period the Union dues deductions began, except as provided in subsection (d) of this section. LM is responsible for submitting the SF-1188 to Payroll.
- B. **AFTER THE FIRST YEAR:** Any subsequent voluntary revocation after the first year of Union dues deductions shall take effect in the first pay period after the earliest date permitted by law.
- C. Upon receipt of an SF-1188 or revocation document, LM shall provide the Union with a copy of the Standard Form 1188 or revocation document submitted in lieu thereof. Only LM can send an SF-1188 to Payroll to effect this action. Payroll shall be advised that it cannot take any dues revocation action without concurrence from LM.
- D. If a reviewing court holds unconstitutional the 12-month irrevocability period following an initial dues authorization, employees may rescind their dues authorization at any time and such rescission shall be promptly honored.

## **ARTICLE 22: DISTRIBUTION**

After review and approval by appropriate officials, the Employer shall distribute via email copies of this Agreement to each current and new Bargaining Unit Employees and Supervisors. Likewise, any subsequent supplemental agreements or amendments occurring during the term of this Agreement shall be distributed to all Bargaining Unit Employees and Supervisors. Employees are permitted to print personal copies of this Agreement utilizing the Employer's printers and facilities.

## **ARTICLE 23: EMPLOYEE ASSISTANCE PROGRAM (“EAP”)**

### **23.1 POLICY STATEMENT**

Rural Development employees shall be covered by applicable provisions of law, rule, regulation and departmental policy.

The Employer recognizes that many personal problems include alcoholism which is a treatable illness and other personal problems such as substance abuse (drugs) or family, financial, legal, personal or interpersonal difficulties may impair the health or interfere with the job performance, of some employees.

The purpose of this policy is to encourage employees to take advantage of the services of this program. Employees may also voluntarily request referral or refer themselves to the EAP whether job performance, attendance, or conduct is affected or not.

### **23.2 SUPERVISORY RESPONSIBILITIES**

The Employer shall immediately inform an employee of the EAP when the employee acknowledges having a problem which may be under the coverage of the Program.

It is recognized that supervisors and other management officials do not have the professional qualifications to make any diagnosis or judgments as to the cause of an employee’s job performance and/or conduct, but may assess job performance and conduct and may take appropriate corrective action.

### **23.3 EMPLOYEE RIGHTS AND RESPONSIBILITIES**

Employees shall not be denied employment or deprived of job security or promotional opportunities solely on the ground of prior alcohol, drug or emotional problems, nor when or because an employee requests counseling and/or referral assistance. (The foregoing sentence shall not be construed as limiting the Employer’s right to take appropriate action with respect to the employment of any employee based on past or present alcohol, drug or emotional problems, conduct, and performance that are materially relevant to the employee’s present and future employment and to the proper functioning of the employee in that employment.)

Employees experiencing personal problems such as those identified in 23.1, which interfere with job performance and/or conduct, are encouraged to voluntarily seek confidential counseling and assistance through the EAP.

It shall be the employee’s responsibility to comply with referrals for diagnosis and cooperate with prescribed treatment. When an employee refuses to accept diagnosis and treatment or fails to respond to treatment and his/her job performance, and/or conduct, continues to be unsatisfactory, disciplinary action against the employee may be initiated by the Employer. In the case of an employee who is experiencing personal problems that interfere with his/her job performance and/or conduct but who is

cooperating and progressing in the EAP, the Employer shall consider delaying corrective action and/or mitigating any penalties.

In accordance with Article 3, "Rights of Employees, Union, and Employer" and Article 5, "Negotiated Grievance Procedure", of this Agreement, employees have a right to grieve disciplinary action and may seek Union representation.

#### **23.4 CONFIDENTIALITY**

- A. All matters associated with any employee's participation in the EAP, shall remain confidential.
- B. Without the expressed written consent of the employee, the Parties shall not share any information regarding an employee's participation in the EAP, or any information collected/gathered as a result of the employee's participation in the EAP, with anyone not having a "need to know."
- C. Any violation of this confidentiality shall subject the violator to Disciplinary or Adverse Action.

#### **23.5 LEAVE**

It is the policy of the Employer to grant the use of annual leave and/or sick leave, including advanced leave in accordance with RD Instruction 2066-A for the purpose of treatment or rehabilitation.

#### **23.6 EMPLOYEE NOTIFICATION**

Availability of EAP shall be posted on official bulletin boards and appropriate notification of changes to the EAP shall be made to all RD employees.

## **ARTICLE 24: EMPLOYEE RECOGNITION/AWARDS PROGRAMS**

The Union and the Employer acknowledge the importance of timely recognition of employees for high quality contributions to the Department and its mission. Recognition and encouragement by the Employer are important incentives that increase employee job satisfaction and contribute to the overall quality of work performance.

Management retains their right to exercise discretion to issue or to not issue employee awards. It is recognized by the Parties that there are no entitlements to awards, and all awards should be issued in the best interest of the Department, its employees and the American taxpayer. If the Agency issues awards to employees, it shall do so in a consistent and objective manner without discrimination, and in accordance with current Department policy, applicable laws, rules, and regulations.

## **ARTICLE 25: REASSIGNMENTS AND DETAILS**

### **25.1 PURPOSE**

Reassignments/Details of RD employees shall be made by the Employer in accordance with 5 CFR, Part 335, Promotion and Interim Placement, Subpart A, and in accordance with RD Instruction 2045-C, "Merit Promotion Program", and this Agreement. This Article provides noncompetitive procedures to be followed by the Employer when temporarily or permanently assigning bargaining unit employees to other bargaining unit positions or locations within RD, and when assigning bargaining unit employees to "special project assignments". These procedures shall not apply when the competitive procedures described in Article 10 of this Agreement are being utilized or the following occurs:

1. The position is being filled by an Employer-initiated or employee-initiated demotion or reassignment of an employee (e.g., in response to performance deficiencies in the current position)
2. The position is being filled by directive of a third party (e.g., arbitrator, EEOC, MSPB, FLRA, etc.) or is being filled as a resolution to a formal grievance, complaint, or appeal.
3. The position is being filled by an individual due special consideration as a result of reduction-in-force, re-promotion rights, re-employment priority rights, return from military furlough/leave, etc.
4. The Employer is otherwise required by law, regulation, or controlling Labor-Management Relations Agreement to select a specific individual for the position.

### **25.2 SELECTION OF EMPLOYEES**

Informal details are those which do not exceed thirty (30) calendar days. The Employer shall submit a memorandum to the employee documenting the duties of any detail in excess of two (2) weeks. A copy shall be forwarded to the Personnel Office for inclusion in the employee's Official Personnel Folder. Formal details shall be documented in the Official Personnel File by memorandum and appropriate supporting attachments. Special projects which exceed thirty (30) calendar days shall be documented in the employee's Official Personnel File by memorandum.

### **25.3 EMPLOYER-INITIATED REASSIGNMENTS/DETAILS**

The parties acknowledge that the Employer has the right to detail and to reassign employees as necessary. This agreement in no way waives that right. In those instances where the Employer has determined that a reassignment, or detail expected to last more than thirty (30) consecutive days is appropriate, the Employer shall determine the qualifications and skills necessary to perform the assignment, shall solicit volunteers from among those qualified, and shall consider those volunteers prior to

making its selections. In determining whether volunteers shall be considered for the assignment, the Employer shall determine the qualifications necessary to successfully function in the position and to meet the needs of the Employer. The Employer shall also determine whether volunteers for the assignments meet those qualifications. The Employer shall not be required to select from the list of volunteers.

The detail of an employee to a position at the same grade level shall normally not exceed one hundred twenty (120) days, although it may be extended for additional time. Employees detailed to a position at the same grade level for more than one hundred twenty (120) days shall be provided with a copy of the position description and a performance plan for the position. For details of one hundred twenty (120) days or less, performance requirements should be incorporated and reflected in the existing performance plan. Formal details shall be documented with SF-52, "Request For Personnel Action."

Details shall not be used to circumvent competitive procedures or be used to give an unfair competitive advantage to the employee detailed to a higher graded position. Employees detailed to a higher graded position for more than thirty (30) days shall be provided with a copy of the position description and a performance plan for the position within thirty (30) days of the beginning of the detail. An employee may not be non-competitively detailed to a higher graded position for more than one hundred twenty (120) days. A detail to a higher graded position for more than sixty (60) days requires a temporary promotion. Rotating an employee in and out of a detailed position may not circumvent this provision.

**ARTICLE 26: Intentionally left Blank**

## **ARTICLE 27: USE OF THE INTERNET AND E-MAIL SYSTEM**

### **27.1 LIMITS ON PERSONAL USE OF GOVERNMENT E-MAIL**

Usage of the Employer's telecommunications and internet services is governed by USDA DR 3300-001. Further, limited personal use of the Internet and the Government e-mail system is authorized provided that such use:

- A. Does not adversely affect the performance of official duties by the USDA employee or the USDA employee organization;
- B. Is of reasonable duration and frequency, and whenever possible, made during the USDA employees personal time such as after-duty hours or lunch periods;
- C. Serves a legitimate public interest (such as educating the USDA employee on the use of the telecommunications system; enhancing the professional skills of the USDA employee; job searching in response to Federal Government downsizing);
- D. Does not put Federal Government telecommunications systems to uses that would reflect adversely on USDA or the Employer (such as uses involving pornography; playing on-line games; for purposes of private business; chain letters; unofficial advertising, soliciting or selling except on authorized bulletin boards established for such use; violations of statute or regulation; inappropriately handled sensitive information; and other uses that are incompatible with public service);
- E. Does not overburden the telecommunications system (such as may be the case with broadcasts and group mailings), and creates no significant additional cost to USDA or to the Employer;
- F. Follow the policy of the Internet Activities Board ("IAB") as stated in RFC 1087; and
- G. Is not used for partisan political purposes at any time.

### **27.2 NO EXPECTATION OF PRIVACY WHEN USING GOVERNMENT EMAIL**

Bargaining unit employees and the Union shall use Federal Government telecommunications systems with the understanding that such use serves as consent to monitoring of any type of use, including incidental and personal uses, whether authorized or unauthorized. In addition, access of such systems is not anonymous. For example, for each use of the Internet over Federal Government systems, these systems may capture information transmitted, received or stored on the system.

## **ARTICLE 28: OFFICIAL PERSONNEL FILES**

Rural Development employees shall continue to be covered by the provisions of the RD Instruction 2054-V, "Basic Personnel Records and Files System".

## **ARTICLE 29: POSITION DESCRIPTION AND CLASSIFICATION**

Rural Development employees shall continue to be covered by RD Instruction 2048-A, "Position Classification."

### **29.1 POSITION DESCRIPTION**

Each employee shall be provided with a copy of their Official Position Description which accurately reflects the major duties and responsibilities of that position within fifteen (15) days of assignment to the position. Employees are encouraged to discuss with the Employer (usually the employees' immediate supervisors) any discrepancies between their position descriptions and their actual duties assigned and submit draft revisions. The Employer shall be responsible to make adjustments where appropriate.

### **29.2 POSITION CLASSIFICATION**

An employee who feels that their position is improperly classified is encouraged to first discuss the matter with the Employer (usually their immediate supervisor). If dissatisfied, the employee shall confer with the proper personnel representative in an effort to resolve the matter informally. This effort to informally resolve the matter must include consideration of a desk audit/classification review. If the matter cannot be informally resolved, the employee shall be furnished with information on appeals as located in RD Instruction 2048-A. Employee may request assistance from Union representatives on classification appeals.

## **ARTICLE 30: ALTERNATIVE DISPUTE RESOLUTION**

### **30.1 POLICY**

Alternative Dispute Resolution (“ADR”) is the name given to informal conflict-resolution methods which seek early settlement of workplace differences as an alternative to protracted and costly formal procedures. The Employer and the Union are committed to the use of ADR to foster a good labor-management relationship. The Union and the Employer shall always explore the usefulness of ADR methods to resolve disputed matters.

### **30.2 NATURE AND DESIGN OF ADR**

Any ADR process shall be jointly designed by Union and the Employer. ADR should be effective, timely, and efficient. ADR should focus on conflict resolution, problem-solving, and fostering a cooperative labor-management relationship. Participation in ADR shall be voluntary by both parties.

### **30.3 AGENCY SUPPORT FOR USE OF ADR**

To the extent budgetary and mission constraints permit, the Employer shall support ADR training and shall pay for such training as well as authorize Official Time. Each party shall be responsible for selecting those representatives who are to receive training.

### **30.4 ADR RESOLUTIONS NON-PRECEDENTIAL**

ADR resolution shall not be precedential unless specifically agreed to by the parties.

## **ARTICLE 31: TELEWORK**

### **31.1 AGENCY POLICY**

Bargaining unit employees may telework consistent with the Agency's telework policy subject to mission requirements and applicable laws, government-wide rules and regulations, and OPM policy.

The Parties Witness this document's execution on \_\_3rd\_ day of September 2020.

For the Agency:

**ERIC VIGIL** Digitally signed by ERIC VIGIL  
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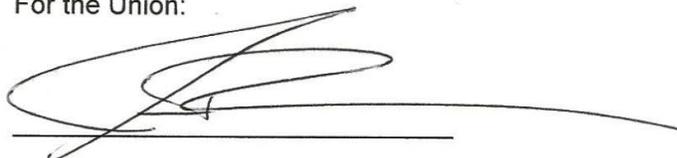
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Eric Vigil

Associate Enterprise Director

USDA Rural Development-NM

For the Union:



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Jerald A. Rule

National Representative

AFGE District 10<sup>th</sup>

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Donald W. Gambill

Labor Relations Specialist

Rural Development