

**COLLECTIVE BARGAINING
AGREEMENT**

between

**USDA RURAL DEVELOPMENT
ARKANSAS**

and

**AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES
LOCAL 108**

Effective July 12, 2021

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PREAMBLE

Pursuant to the policy set forth by Title 5 U.S. Code (U.S.C.) regarding Federal labor-management relations, the following Articles of this basic Agreement, together with any and all supplemental agreements and/or amendments which may be agreed to at later dates, constitute a total agreement by and between the United States Department of Agriculture, Rural Development, Little Rock, Arkansas, hereinafter referred to as the EMPLOYER and the American Federation of Government Employees, Local 108, hereinafter referred to as the UNION for the employees in the unit described below, hereinafter referred to as the EMPLOYEES.

ARTICLE 1 - GENERAL PROVISIONS

1.1 RECOGNITION: The Employer recognizes that the Union is the exclusive representative of all employees in the unit described in Section 1.2. The Union recognizes its responsibility to represent the interests of all unit employees with respect to grievances, personnel policies, practices, and procedures, or other matters affecting their general working conditions, subject to the express limitations set forth herein.

1.2 UNIT: All employees employed by USDA, Rural Development, in the State of Arkansas excluding all management officials, supervisors and employees engaged in Federal personnel work in other than a purely clerical capacity, or as amended by future certifications.

1.3 DAYS: Unless otherwise stated, all references to days in this Agreement are calendar days.

ARTICLE 2 - PROVISIONS OF LAW AND REGULATIONS

2.1 LAWS AND REGULATIONS: In the administration of all matters covered by the Agreement, officials and employees are governed by existing or future laws and regulations of outside authorities including policies set forth in Departmental Manuals and Directives; by published Agency policies and regulations in existence at the time the Agreement was approved; and by subsequently published Agency policies and regulations required by law or by the regulations of outside authorities or authorized by the terms of a controlling agreement at a higher Agency level.

2.2 PREVIOUS AGREEMENTS AND PAST PRACTICES: This Agreement supersedes all previous agreements, memorandum of agreements/memorandum of understandings signed before August 10, 2020 and past practices.

ARTICLE 3 – NEGOTIATIONS

3.1 RIGHTS AND OBLIGATIONS OF THE PARTIES: With the exception of changes mandated by law, rule, Government-wide regulation or changes flowing from the introduction of new technology, all matters covered by this Agreement will not be subject to change during the term of the Agreement. However, the Parties may mutually agree to reopen this Agreement at any time. When, because of mandated changes or the introduction of new technology, there is a need to reopen existing Articles or add new Articles, the procedures in this Article will be followed. The procedures in this Article will also be used when there is a change in conditions of employment (non-mandated changes) that are not covered by this Agreement, also referred to as mid-term bargaining.

The Agency has the right to make changes to conditions of employment in the exercise of its Management rights pursuant to 5 U.S.C. §7106, or for any other reason associated with the accomplishment of its mission. However, the Agency does recognize its potential obligation, consistent with applicable laws, rules, and regulations, to notify the Union of such changes and to negotiate, upon request of the Union, pursuant to 5 U.S.C. §7106(b)(2) and (3).

Subjects appropriate for negotiation between the Parties are personnel policies and practices and other matters relating to or affecting employee conditions of employment. The Employer agrees to give adequate notice, in accordance with Section 3.2(a)(1) and (2) below, to the Union and an opportunity to negotiate over any new policy or change affecting employee conditions of employment. If the substance of the change is not subject to negotiations, its impact upon employees and procedures for implementing the change will be negotiated. The Parties shall meet and negotiate in good faith for the purpose of arriving at mutual agreement.

3.2 APPLICABLE NEGOTIATION PROCEDURES: The procedures contained in this Section shall constitute the ground rules for all negotiations under this Article, unless the Parties mutually agree to do otherwise.

- (a) Notification Procedure: In issuing, revising or canceling rules and regulations relating to personnel policy, practices, procedures and matters affecting conditions of employment, the Employer shall give due regard to the obligations imposed by applicable laws, rules, regulations, and this Agreement. Before making changes to bargaining unit employees' conditions of employment, the Agency shall provide to the Union written notice of the proposed change(s) and the opportunity to negotiate the impact of such changes. Such notice may be provided to the Union by mail, hand delivery, e-mail or facsimile (fax) or by any other method mutually agreed upon by the Parties.

Specific procedures to be used pursuant to this Article are as follows:

- (1) Prior to implementation, the Agency will provide written notice to the Union of the Agency's intent to make a change(s) of bargaining unit employees' conditions of employment (that are not otherwise covered by the Parties' Agreement).
 - (2) The Union will have seven (7) calendar days to advise the Agency, in writing, of the Union's request to negotiate. After the Union's request to negotiate, the Union will then have seven (7) additional calendar days to provide the Agency with proposals. The Parties will then schedule a time and begin negotiating within fourteen (14) calendar days after the Agency's receipt of the Union's proposals.
- (b) Bargaining Procedure: After receipt of the Union's proposals, the Agency and Union will bargain, as appropriate and in accordance with applicable law, rule and regulation. If the Union's proposals are not provided to the Agency within the seven (7) calendar days as stated above, then the request to negotiate will be deemed waived and closed, and the Agency may proceed with implementation, unless an extension is requested and approved in advance.
 - (1) The Agency will determine the location to conduct the negotiations and may choose that the Parties conduct the negotiations virtually, e.g., via conference call or video technology.

- (2) The Union will be authorized the same number of bargaining representatives on official time as the Agency has representatives participating in the negotiations.
 - (3) Either party may have a technical expert (TE) present as necessary who can provide information necessary for the successful completion of bargaining. The TE will not count toward the bargaining team's representatives. The Union's TE will not be granted official time. The Agency will not reimburse or pay for travel expenses for the Union's TE.
 - (4) Negotiations shall take place as soon as practicable, but no more than fourteen (14) calendar days after the Union has provided proposals, unless the Parties mutually agree to extend the period. Bargaining shall occur during regular duty hours, unless otherwise mutually agreed by the Parties. The Parties will endeavor to reach agreement and conclude bargaining within fourteen (14) calendar days from the start of negotiations, but that period may be extended by mutual agreement of the Parties.
 - (5) Both Parties to this Agreement have the responsibility of conducting negotiations and other dealings in good faith and in such manner as will further the public interest.
 - (6) Names of the members and alternates on each negotiating committee will be exchanged by the Parties seven (7) days prior to the beginning of negotiations. Any changes regarding committee membership will be submitted to the other party as soon as possible, but prior to the beginning day's negotiation in that particular negotiation session.
 - (7) The Union may modify its initial proposals based upon negotiations or submit new proposals in response to information received through a 5 U.S.C. 7114(b)(4) request. The Union may not otherwise raise additional proposals or subjects of bargaining after submission of its initial proposals except by mutual agreement, or under the post implementation bargaining procedure under Section (c) of this Article.
 - (8) When the Employer declares a matter non-negotiable, it will immediately advise the Union.
 - (9) The Union has the right to proceed on a negotiability question to the Federal Labor Relations Authority in accordance with Section 7105 (a)(2) (E) of Title 5 U.S. Code and the regulations of the Authority and Section 7117 (a), (b), and (c) of Title 5 U.S. Code.
- (c) Post-Implementation Bargaining Procedure:
- (1) Definition. Post-implementation bargaining is bargaining after a Management-initiated change has been implemented. When the Agency determines that a particular change is necessary or

appropriate, in accordance with law, rule or regulation, and must be implemented by a certain date, post-implementation procedures will apply if the Parties are unable to reach agreement prior to the implementation date of the change.

- (2) Post Implementation Bargaining Procedure. The Union will be provided notice of change following the implementation date by the Agency and afforded the opportunity to bargain. The Union will have fifteen (15) calendar days to submit their demand to bargain accompanied by their bargaining proposals related to the implemented change. The Union will be afforded the opportunity to submit bargaining proposals concerning the change for up to thirty (30) calendar days following the date that implementation by the Agency has occurred. The Union shall not file unfair labor practice charges solely over the Agency implemented change. However, the Union reserves all other rights pursuant to applicable laws and regulations. Once Union proposals have been submitted to the Agency, the procedures in Section 3.2 (b) above will apply.
- (d) Agency Head Review: All negotiated agreements including amendments and supplements to this Collective Bargaining Agreement shall be subject to review by the head of the Agency (or his/her designee) pursuant to 5 U.S.C. §7114(c).

ARTICLE 4 - RIGHTS OF EMPLOYER, UNION AND EMPLOYEES

4.1 MANAGEMENT RIGHTS: Nothing in this Agreement shall affect the authority of any Management official:

- (a) To determine the mission, budget, organization, number of employees, and internal security practices of this agency; and
- (b) In accordance with applicable laws:
 - (1) 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;
 - (2) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
 - (3) 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;
 - (4) to take whatever actions may be necessary to carry out the agency mission during emergencies.

- (c) Nothing in this Section shall preclude the Agency and the Union 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 this Article;
 - (3) appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by such management officials.

4.2 RIGHTS OF THE UNION: The Union shall have the right to present its views to the Employer on matters of concern either orally or in writing, and to negotiate with respect to personnel policies and practices and matters affecting working conditions pertaining to employees covered by this Agreement. An exclusive representative of an appropriate unit in an Agency shall be given the opportunity to be represented at:

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

4.3 LIST OF EMPLOYEES: Semiannually, the Employer will furnish to the Union a list of the names, grades, and organizational locations of all personnel in the unit. This list will be furnished without charge to the Union.

4.4 CONSULTATION: Consultation means a verbal discussion or written communication between representatives of labor and Management for the purpose of exchanging views on matters of concern to the bargaining unit and the Employer. Consultations will be held on an as needed basis. The Union shall normally submit an agenda two (2) weeks in advance of the consultation, however, other subjects may be discussed.

4.5 RIGHTS OF THE EMPLOYEES: New employees, as part of the orientation process, will be advised of their right to join, or not to join, the Union. In addition, all employees 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. Except as otherwise provided under this Agreement such rights include:

- (a) The right 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 Government, the Congress, or other appropriate authorities. These activities will not take place on official duty time.
- (b) The right to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this Agreement.

The Employer and the Union agree that there will be no interference, restraint, coercion or discrimination against employees for exercising rights granted by law, rule, regulation or this Agreement.

All employees are entitled to assistance and representation by the Union without regard to labor organization membership. Nothing in this Agreement shall require an employee to become or to remain a member of a labor organization or to pay money to the organization except pursuant to a voluntary, written authorization by a member for payment of dues through payroll deductions.

Each employee or group of employees, regardless of Union membership, shall have the right to bring matters of personal concern to the attention of appropriate officials in accordance with applicable law, rule, regulation, established Employer policy or this Agreement.

All employees shall have access to an online version of the applicable Collective Bargaining Agreement.

ARTICLE 5 - UNION AND EMPLOYEE REPRESENTATION

5.1 UNION STEWARDS: The Employer will recognize one steward per area, one for the State office and additional stewards not to exceed fifteen (15) stewards appointed by the Union. Assignments will be made, as much as possible, consistent with adequate representation, to minimize official time spent on Union business.

Each steward will represent employees regularly assigned to the specific area the Union has designated; however, the Employer recognizes that there may be instances or circumstances that necessitate temporary designation of a steward who is not an employee's regular steward. The Union will make every effort to limit these situations.

The Employer will recognize the representatives of the Union and shall be kept advised in writing by the Union of the names and titles of its officers, stewards, and national representatives.

5.2 UNION REPRESENTATION: The Union shall be given the opportunity to be represented at formal discussions between Management and bargaining unit

employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.

5.3 NON-RURAL DEVELOPMENT EMPLOYEES: The Employer agrees that national representatives of the Union will be admitted to the Rural Development office to meet with the Employer or Union officials during working hours for purposes other than solicitation of membership dues or other internal business of the Union. It is agreed that the Union will notify the Employer prior to these visits.

5.4 EMPLOYEE CORRESPONDENCE: When the Union is designated as the representative of an employee in any complaint, grievance, adverse action or allegation of discrimination, Management will address all correspondence to the employee; concurrently, a copy of the correspondence will be sent to the designated Union representative. The Employer will make reasonable efforts to ensure that all correspondence that is mailed to the employee and his/her Union representative will be sealed in an envelope marked "to be opened by addressee only".

ARTICLE 6 - GRIEVANCES

6.1 COMMON GOALS: It is the intent of the Agency 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 Agency and Union will 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.

The Agency shall not construe the filing of grievances as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability to the organization, nor shall the Union or employees file grievances in order to affect adversely the perception of the person or reputation of any representative of the Agency. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination or reprisal, consistent with Title 5 U.S. Code and this Collective Bargaining Agreement in seeking adjustments of grievances.

6.2 SCOPE: This grievance procedure may apply to applicable matters of concern or dissatisfaction by bargaining unit employees, the Union, or the Agency regarding the interpretation, misinterpretation, application, misapplication, violation or claimed violation of law, rule or regulation affecting conditions of employment, or this Agreement.

6.3 EXCLUSIVITY: Representation of bargaining unit employees shall be the sole and exclusive province of the Union. This is the exclusive procedure available to bargaining unit employees, the Union, or the Agency for the resolution of grievances arising under this Agreement.

6.4 EXCLUSIONS: Based on statutory prohibition, case law, and the lack of harm, the Parties agree to preclude the following types of issues from the negotiated grievance procedure as not grievable / arbitrable:

- (a) Claimed violations relating to prohibited political activities;
- (b) Retirement, life insurance, or health insurance issues;
- (c) Suspension or removal for National Security reasons;
- (d) Appointment, certification, or examination issues;
- (e) The classification of any position which does not result in the reduction-in-grade or pay of the employee;
- (f) Proposal letters for disciplinary actions or proposal letters for adverse actions;
- (g) Proposed removal or reduction-in-grade;
- (h) Issues involving a non-bargaining unit position;
- (i) Issues which may be subject to the jurisdiction of the Equal Employment Opportunity (EEO) Commission;
- (j) Non-selection for promotion, temporary promotion, detail, or re-assignment;
- (k) Progress reviews, counseling sessions on performance concerns/ performance feedback, or notices of an opportunity to improve (OTI) / performance improvement plan (PIP)/ demonstration opportunity (DO);
- (l) Actions which terminate any employee serving under a probationary, temporary, part-time, or term appointment;
- (m) Position descriptions or performance work plan elements and / or standards;
- (n) Issues involving salary offset or garnishment;
- (o) Issues involving Veterans' preference; and
- (p) Issues involving oral warnings, cautions, or admonishments.

Absent these exclusions, or other alleged violations of this Agreement, conduct or performance issues may be grieved.

6.5 GRIEVABILITY: At any time, the Agency or the Union may raise questions of grievability or arbitrability of a grievance. All disputes of grievability or arbitrability will be referred as threshold issues in arbitration. The arbitrator will resolve these issues.

6.6 REPRESENTATION: Employee(s) utilizing this grievance procedure will 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 will be afforded the opportunity to participate, on official time, during any and all formal discussions/meetings, between the Agency and the grievant(s) relating to the grievance filed.

6.7 TIME LIMITS: All time limits in this Article may be extended by mutual agreement.

- (a) The Parties agree to respond to the grievance within the time frames allowed. However, if the Parties are unable to respond within the time frames, the reason for the delay will be stated in writing, and a mutually agreed upon extension of the time limits will be granted.
- (b) When information is requested from a Party which is needed to process a grievance or determine if a grievance exists, the party will supply a response within fifteen (15) days and the time limits will be extended equal to the amount of time required to receive the information.
- (c) Failure by the grievant to meet time limits or to request and receive an extension of time, shall automatically cancel the grievance, unless mitigating circumstances prevail.
- (d) Failure of the party against which a grievance was filed to comply with time limits will allow the grieving party to advance the grievance as provided below.

6.8 STEP 1 PROCEDURES: Employees who believe they have a grievance will present it in writing or electronically to their immediate supervisor or other Management official who initiated the action which resulted in the grievance within twenty-one (21) calendar days after the incident or event or the date the employee first became aware or should have become reasonably aware of the action.

- (a) The grievance must contain, but is not limited to, the following information:
 - (1) The name of the grievant;
 - (2) Specific nature of the grievance;
 - (3) The law, rule, regulation, policy, procedure, or contract article the Agency allegedly violated;
 - (4) A copy of documents related to the grievance;
 - (5) Dates and times of any prior attempt to resolve the issue, if applicable;
 - (6) Details of the violation (who, what, when, where, why, and how);

- (7) The specific relief / remedy requested; and
- (8) The name of the grievant's Union representative.

- (b) A copy of the grievance must be provided to the Union representative or designee and Agency representative with the filing of the grievance. If the grievance is filed at a higher level than appropriate, the receiving office will 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 fifteen (15) calendar days from notice of error. 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.
- (c) Within fifteen (15) calendar days of receipt of a properly filed written grievance, the supervisor or other Management official will review the matter being grieved and will schedule and hold a meeting with the grievant to discuss the issues. A written response granting or denying the remedy requested will be issued within fifteen (15) calendar days of the meeting.
- (d) If the supervisor in the Step One process is the State Director or designee, the grievance process ends at Step One and the Union may invoke arbitration in accordance with Article 7, Arbitration.

6.9 STEP 2 PROCEDURES: If the grievant or the Union is not satisfied with the Step One response from the supervisor or other Management official, they may, in writing or electronically, send the grievance to the State Director or designee within fifteen (15) calendar days after the decision was rendered or should have been rendered. This submission to the State Director must include a copy of the original grievance and Step One response, an explanation why the decision in Step One is unacceptable and any remaining requested relief. Upon request of the grievant and/or Union, the State Director or designee shall meet with the employee and/or the representative within fifteen (15) calendar days of receipt of the grievance. Within thirty (30) calendar days of receipt of the grievance, the State Director or designee will issue a decision in writing. This ends the grievance process and the Union may invoke arbitration in accordance with Article 7, Arbitration.

6.10 AGENCY AND UNION GRIEVANCES: If the Agency or the Union files a grievance, it will do so in writing or electronically, filing the grievance directly with the other party for resolution within twenty-one (21) calendar days of the date that the Agency or the Union became aware or should have become reasonably aware of the act or occurrence or anytime if the act or occurrence is of a continuing nature. The submission of Union grievances will be through the State Director or designee. The submission of Agency grievances will be through the Union President or designee.

- (a) The grievance must contain, but is not limited to, the following information:
 - (1) Specific nature of the grievance;
 - (2) The law, rule, regulation, policy, procedure, or contract article the Agency or Union allegedly violated;

- (3) A copy of documents related to the grievance;
 - (4) Dates and times of any prior attempt to resolve the issue, if applicable;
 - (5) Details of the violation (who, what, when, where, why, and how);
 - (6) The specific relief / remedy requested;
 - (7) The name of the Union or Agency representative; and
 - (8) The signature of the representative.
- (b) The Parties shall meet within fifteen (15) calendar days of receipt of the grievance in an attempt to resolve the grievance. If the matter is not resolved at this meeting, a written decision will be issued to the grievant within fifteen (15) calendar days of the close of the meeting.

ARTICLE 7 - ARBITRATION

7.1 INVOKING ARBITRATION: A grievance that remains unresolved after being processed under the preceding Article of this Agreement may be referred to arbitration as provided for in this Article. A referral to arbitration can be made only by the Union or the Employer, and shall be in writing. Such referral shall be made within thirty (30) calendar days after the written decision in the final step of an action processed under Article 6, Grievances is received or should have been received.

- (a) Within seven (7) calendar days from the date of the request for arbitration, the party invoking arbitration shall request from the Federal Mediation and Conciliation Service (FMCS) a list of seven (7) impartial persons qualified to act as arbitrators. The Parties shall, within ten (10) calendar days after receiving the list of names, select one of the arbitrators. If they cannot mutually agree upon a selection, the Parties shall alternately strike one name from the list until the list contains only one name. The initial strike on the list shall be made by the party who wins the flip of a coin. This person shall be the duly selected Arbitrator. If for any reason either party refuses to participate in the selection of the arbitrator, the other party chooses the arbitrator.
- (b) If the Parties fail to agree on a joint submission of the issue(s) for arbitration, each shall submit a separate submission and the arbitrator shall determine the issue(s) to be heard.

7.2 PROCEDURES:

- (a) The arbitration hearing shall be held during the regular dayshift work hours of the basic workweek. The grievant, representative, and any employee witnesses necessary to the proceedings who are otherwise in a paid duty status, shall be excused from duty without loss of pay or charge to annual leave to participate as necessary in the arbitration hearing.
- (b) The arbitrator's fee and all related expenses shall be borne equally by the Parties.

- (c) The Employer shall reimburse bargaining unit member representatives of the Union and witnesses for travel and related expenses in accordance with applicable rules and regulations.
- (d) The arbitrator shall be requested to render the decision as quickly as reasonably possible, but in any event not later than thirty (30) calendar days after the conclusion of the hearing, unless the Parties mutually agree to extend the time limit.
- (e) Issues concerning the arbitrability of a grievance presented for arbitration under the terms of this Agreement shall be resolved by the arbitrator.
- (f) As necessary to reach a decision, an arbitrator shall have the authority to interpret this Agreement, Agency instructions, Departmental Regulations and applicable laws. An arbitrator is bound to enforce the terms of this Agreement and may not change, alter, modify or delete any terms of this Agreement, Agency instructions, Departmental Regulations or applicable laws.
- (g) If the arbitrator requests a court reporter's transcript, the cost shall be borne equally by both Parties.
- (h) If either party requests a court reporter's transcript, that requesting party shall bear all costs. If the Parties both wish a copy of the court reporter's transcript, the costs shall be borne equally.
- (i) The arbitrator's findings shall be final and binding on both Parties, except that either party may file exceptions to arbitrators' awards as provided by the Federal Service Labor-Management Relations Statute.
- (j) Either party may seek judicial review of the arbitrator's decision on matters which could have been appealed to the Merit Systems Protection Board within thirty (30) days of the issuance of the decision. Such review will be sought in the United States Court of Appeals for the Federal Circuit in accordance with the provisions of Section 7703 of Title 5 U.S. Code.

ARTICLE 8 - BASIC WORKWEEK - HOURS OF WORK – OVERTIME

8.1 **BASIC WORKWEEK**: The basic workweek shall be forty (40) hours, consisting of eight (8) hours in each of the days, Monday through Friday, unless an employee is working under provisions of Section 8.2 and Section 8.3.

8.2 **FLEXIBLE WORK SCHEDULES (FWS)**: Each employee is eligible for a Maxiflex or Flexitour schedule as described in RD Instruction 2051-F as amended.

8.3 **COMPRESSED WORK SCHEDULE (CWS)**: All employees are allowed to participate if the following criteria can be met: service to the public cannot be diminished, productivity must not decrease, and costs of operations must not increase.

An office cannot be closed as a result of employees non-workday without prior approval from the State Director. Participation is voluntary in offices authorized to use CWS.

Two (2) types of CWS's are authorized: the 5/4/9 compress plan and the 4/10 workweek.

(a) FIVE-FOUR-NINE SCHEDULE (Compressed) - This is a fixed non-flexible schedule, which means that it does not vary from day to day. The arrival and departure times are according to a set schedule requested by the employee and approved by Management in advance. The schedule includes nine (9) workdays in each pay period. Eight (8) of the workdays are nine (9) hours in length and one workday is eight (8) hours long. A lunch period must be scheduled mid-day and be at least thirty (30) minutes in length. Once the schedule has been approved, the length of the lunch period is fixed and must be the same length each workday. The pay period will also include five (5) non-workdays. A 5/4/9 schedule may not include any combination of half-days or workdays of less than eight (8) hours.

(b) ESTABLISHING & CHANGING WORK SCHEDULES:

(1) Employees may request to participate in, make changes to, or cancel their participation in compressed work schedules up to four (4) times per year. Temporary adjustments that are necessary and in accordance with this Article are not considered a change for this purpose.

(2) HOLIDAYS - When a holiday falls on an employee's non-workday, the workday immediately preceding the employees non-workday is the legal holiday. (Example: a legal holiday falls on a Monday which is the employee's compressed day-off, the employee's in lieu of holiday is the preceding Friday; a legal holiday falls on a Friday which is the employee's compressed day-off, the employees in lieu of holiday is the preceding Thursday.)

(3) LEAVE - Leave hours taken for the entire day must agree with the employee's scheduled work hours for that day; for example, nine (9) hours of leave must be taken for a scheduled nine (9) hour workday.

(4) CWS NON-WORKDAY CONFLICTS - When an employee's presence is required at the office on the employee's scheduled non-workday, the employee's work schedule shall be adjusted to provide one of the following:

- (i) An alternate day off, if it can be scheduled within the same pay period; or
- (ii) Pay entitlement as determined under the overtime provisions of the Fair Labor Standards Act (FLSA).

(5) TRAVEL/TRAINING

- (i) When an employee's non-workday conflicts with training or travel activities, the employee is required to select one of the following work schedules:
 - (A) Choose an alternate day off, if it can be scheduled within the same pay period;
 - (B) Revert to the standard work schedule of ten (10) eight (8) hour days for the pay period; or
 - (C) Adhere to the work schedule of the training or travel site, if the training or travel is for the entire pay period.

- (ii) When an employee scheduled training/travel will be in excess of three (3) days, then the employee's CWS shall be changed to the traditional eight (8) hour day work schedule for the complete pay period.

(6) CWS OVERTIME

- (i) Must be requested and approved before being worked.
- (ii) Overtime will be those hours over:
 - (A) Eight (8) hours on a scheduled eight (8) hour workday.
 - (B) Nine (9) hours on a scheduled nine (9) hour workday.
 - (C) Eighty (80) hours in a pay period.

8.4 OVERTIME: Assignment of overtime is a Management function. Overtime is not a right by reason of employment. Overtime work is authorized to meet Agency needs. Employees will be expected to work overtime if requested; however, if an employee requests to be excused from working overtime on a specific occasion, the supervisor will make an effort to accommodate the employee's request to be excused. Consistent with this Section, the Employer will assign overtime, except in emergency situations, among employees who have similar skills, abilities, and grade levels and are in the same organizational location. Time and attendance records showing the overtime distribution will be maintained. In no case will overtime work be assigned to any employee as a reward or punishment.

8.5 REST PERIODS: Employees shall be allowed two (2) paid rest periods: one rest period during the middle of the first time period, and one rest period during the middle of the second time period of each basic workday. Those rest periods will be limited to fifteen (15) minutes each. The approximate times of the rest period will be at the discretion of the Employer. Unless the work situation will not permit, these rest periods will be staggered so that all employees are not on rest periods at the same time to enable the Employer to maintain continuous service to the public.

ARTICLE 9 - LEAVE

9.1 ANNUAL LEAVE AND VACATIONS: Ordinarily, and to the extent permitted by business needs, an employee whose request to use earned annual leave has been approved will be permitted to take that leave as scheduled. However, a supervisor may postpone approved leave due to the unexpected needs of the Employer. Earned, scheduled and approved annual leave shall not be denied if denial will result in forfeiture of the leave, provided leave was applied for and approved in writing before the end of the first pay period in November.

To the maximum extent possible, the leave schedule shall allow at least one period of eighty (80) hours for vacation purposes.

9.2 VOLUNTARY LEAVE TRANSFER PROGRAM: The Parties to this Agreement will adhere to RD Instruction 2066.25 as amended when administering the Voluntary Leave Transfer Program.

Consistent with Section (a) 3 of RD Instruction 2066.25, if the Employer requires medical certification from more than one source to verify an emergency, it will reimburse the employee or pay the practitioner directly for additional certification(s). In addition, the employee will be permitted reasonable duty time as is necessary to obtain the certification, not to exceed eight (8) hours. The employee will use a GOV, if available, to obtain the certification provided the practitioner is within a reasonable distance. If a GOV is not available or the certification is for a family member, a GOV will not be utilized and mileage for a reasonable distance will be reimbursed at the applicable GSA rate.

ARTICLE 10 -TRAVEL

10.1 GENERAL: Travel expenses incurred will be reimbursed by the Employer in accordance with this Agreement, RD Instruction 2036-A as amended, and other related policy agreements, applicable laws, rules, and travel regulations. The Union will make every reasonable effort to keep travel expenses for administration of this Agreement to a minimum.

10.2 VEHICLE ACCIDENT: When accidents occur involving a Government-furnished vehicle, the operator of that vehicle, if medically qualified and physically and mentally able, should give aid to any persons injured in the accident, if appropriate, and if able, give warning to other motorists of anything resulting from the accident that, to the operator's knowledge, can have an affect on public safety. The Employer will consider furnishing medically certified first aid training for employees who execute commitments to use Government-furnished vehicles and also to employees in offices that have an assigned Government-furnished vehicle.

10.3 TRAVEL DELAYS: If an employee has a delay in official travel due to vehicle breakdown, the employee will, as soon as possible, contact his/her official duty station for instructions. Additional per diem will be authorized, if necessary.

10.4 RELOCATION: When the Employer agrees to pay relocation expenses, those expenses will be paid in accordance with Departmental Regulation 2300-002, Relocation Allowance Regulation, as amended.

Employees afforded paid relocation will be notified as to who their assigned Travel Management Specialist (TMS) is within the Travel Section of Rural Development. Employees should communicate directly with their TMS regarding matters relevant to relocation and associated expenses.

10.5 CREDIT CARD USE: Employees utilizing a Government issued credit card will be responsible for paying all charges not in dispute when due. To achieve

expediency in this area, travel vouchers will be promptly prepared, approved, and submitted to the National Finance Center (NFC) for payment.

10.6 VOUCHER PROCESSING: Approving officials are responsible for approving and assuring prompt transmission to NFC for payment. If corrections or revisions must be made to the voucher prior to transmission to NFC for payment, the employee shall be notified as soon as possible so that inordinate delays will be avoided.

10.7 TRAVEL EXPENSES: Mileage payments and per diem expenses will be paid for official travel in accordance with the Federal Travel Regulation and Rural Development Instruction 2036-A Travel Regulations and Policies or successor.

ARTICLE 11 – TELECOMMUNICATIONS

11.1 TELECOMMUNICATIONS POLICY: Usage of the Employer's telecommunications and internet services is governed by Departmental Regulation (DR) 3300-001, Telecommunications & Internet Services and Use, as amended.

11.2 PERSONAL USE: Limited personal use of the internet and the Government e-mail system is authorized provided that such use is in accordance with DR 3300-001 as amended and:

- (a) Does not adversely affect the performance of official duties by the employee or the Agency;
- (b) Is of reasonable duration and frequency, and whenever possible, made during the employee's personal time such as after-duty hours or lunch periods;
- (c) Serves a legitimate public interest (such as educating the employee on the use of the telecommunications system; enhancing the professional skills of the employee; job searching in response to Federal Government downsizing);
- (d) Does not put Federal Government telecommunications systems to uses that would reflect adversely on the Employer (such as uses involving pornography; hate speech; 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 the Employer;
- (f) Does not seek to gain unauthorized access to the resources of the internet, disrupt the intended use of the internet, waste resources through such actions, destroy the integrity of computer-based information or compromise the privacy of users; and
- (g) Is not used for partisan political purposes at any time.

11.3 NO EXPECTATION OF PRIVACY WHEN USING GOVERNMENT TELECOMMUNICATION SYSTEMS: 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 12 - OFFICIAL TIME, TRAVEL AND PER DIEM FOR UNION REPRESENTATIVES

12.1 POLICY: 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 time under the conditions described in this Article.

12.2 DESIGNATION: The Union will provide the Agency with electronic lists of all designated Union representatives within thirty (30) calendar days of the effective date of this Agreement and annually each January. The Union will provide an updated list when there is a change to a designated Union representative within five (5) calendar days. Each list will include the name, union position, component, council, local, duty location, and telephone number of each designated Union representative.

12.3 EXCLUSIONS:

- (a) Work schedules will not be altered so that Union officials are in duty status for the sole purpose of using official time. In unforeseen or exceptional circumstances, at the sole discretion of the Agency, work schedules may be altered. On a case-by-case basis and with advanced supervisory approval, Union representatives on a maxiflex schedule may change their starting and stopping times within the established hours of 6 a.m. and 6 p.m.
- (b) Union representatives are not authorized to earn premium or differential pay, overtime, compensatory time (to include travel compensatory time) or credit hours for their performance of union representational duties.
- (c) In accordance with 5 USC 7131 (b), the use of official time is prohibited for internal union business.
- (d) Official time is not permissible for Worker's Compensation or EEO complaint cases.
- (e) Individuals designated as Union representatives that are placed on a Notice of Opportunity to Demonstrate Acceptable Performance (NODAP) will not be authorized official time during the period of the NODAP.

12.4 PROVISIONS FOR OFFICIAL TIME:

- (a) Consistent with 5 U.S.C. 71 and this Agreement, employees and Union representatives will be granted reasonable official time, subject to availability as described below, for the following representational activities:
- (1) Term Negotiations—to prepare for and negotiate a collective bargaining agreement, in accordance with 5 U.S.C. 7131(a).
 - (2) Mid-Term Negotiations—to prepare for and bargain 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 perform miscellaneous representational activities authorized under 5 U.S.C. 7131(d).
- (b) Prior to a representative entering a work area or performing representational activities, the Union 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.
- (c) Representatives will make every effort to perform their union representational duties in a proper and expeditious manner.

12.5 OFFICIAL TIME REQUESTS AND REPORTING PROCEDURES

- (a) A request for official time must be made in the manner designated by Management normally 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 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 employees and Union representatives prior to their engaging in official time. Any employee who uses official time without advance supervisory/management approval will be considered absent without leave and subject to appropriate disciplinary action. The employee will 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 time, the reason for denial will be provided. If an operational need does not permit the employee to use the official time when requested, Management will generally make a reasonable effort to allow the employee to use the requested official time within two (2) 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 time on his/her time and attendance for pay purposes.

12.6 TRAVEL EXPENSES: The Employer agrees to pay the travel expenses incurred by employees while using official time under the terms of this Agreement. Any travel expenses incurred by such employees will be reimbursed by the Employer in accordance with applicable laws, rules and travel regulations. The Union will make every reasonable effort to keep travel expenses to a minimum.

12.7 OFFICIAL TIME FOR UNION TRAINING: The Employer agrees that Union representatives who are bargaining unit employees shall be granted official time, not to exceed fifty-six (56) hours per person annually, for union related training. Prior approval of the programs to be attended must be given by the Employer. If additional training hours are required, the Union will request, and the Employer may approve the time on a case-by-case basis. A maximum of six hundred forty (640) hours annually will be allowed for this training.

ARTICLE 13 - OFFICIAL FACILITIES AND SERVICES

13.1 SPACE: The Employer will make available to the Union conference rooms or other non-duty areas over which the Employer has control for the purposes of handling membership drives or after-hours meetings.

13.2 BULLETIN BOARDS: Space on official bulletin boards shall be made available to the Union for posting of official Union bulletins subject to the following conditions. Bulletin boards must be kept free of material which advertises a commercial product or firm; attacks or reflects adversely on the integrity of any Government official or employee; condemns or criticizes the policies of any Government agency; or implies official sponsorship or endorsement of the Union by the Employer.

This space shall be one-fourth of the space on each current bulletin board and shall be in the lower left-hand corner of the bulletin board. There shall be no unofficial bulletin boards.

In accordance with the above rules, bulletin board space will be made available in all local offices, area offices and in the State Office of the Employer.

13.3 TELEPHONES: The Union may use official Employer telephones for the purpose of representing employees. Use of the telephones for internal business is prohibited.

13.4 DISTRIBUTION OF UNION LITERATURE: Twice each month, the Union will be permitted to distribute literature and the local's newsletter through the Agency's e-mail system. This right will be subject to the following conditions:

(a) The literature will not: advertise a commercial firm or product; attack or reflect adversely on the integrity of any Government official or employee; condemn or criticize the policies of any Government agency; or imply official sponsorship or endorsement of the Union by the Employer.

(b) A copy of all material will be submitted to the Employer prior to distribution. If the Employer believes any of the above conditions have been violated, the Employer will confer with the Union on how to resolve the situation. Union literature questioned by the Employer will not be distributed until the Parties agree the literature has met the above conditions.

13.5 INTERNAL UNION BUSINESS: Internal Union business, such as attending Union meetings and posting or distributing Union literature, will be conducted during the lunch period, or non-duty hours of the employees involved. Official publications of the Union may be distributed on Agency property by Union representatives during the non-duty time of the Union representatives who are distributing and of the employees receiving the materials; distribution will not disrupt operations. All such materials will be properly identified as official Union issuances.

13.6 MEMBERSHIP DRIVES: The Union shall be granted authority to conduct no less than three (3) membership drives of five (5) days each, not to exceed fifteen (15) days duration, each year, before and after duty hours and at break periods and lunch periods.

ARTICLE 14 - UNFAIR LABOR PRACTICES

The Parties acknowledge the importance of resolving differences and disputes informally, at the lowest possible level. Therefore, it is agreed that prior to filing a charge of Unfair Labor Practice with the FLRA, the Union will provide the Employer with two (2) weeks advance notice. During that time the Parties will meet, discuss, and attempt to informally to resolve the matter.

ARTICLE 15 - SAFETY

15.1 GENERAL: The Employer and the Union have a common interest in promoting safe working habits and safe working conditions. The Employer has an obligation to provide safe working conditions. All employees are responsible for prompt reporting of unsafe conditions. The Employer and the Union recognize that observing safe work practices and wearing of prescribed protective equipment is primarily the responsibility of each employee. The Employer will ensure that the poster titled "Occupational Safety and Health Protection for USDA Employees" is displayed in each office with appropriate contact persons identified. The Employer and the Union will cooperate in encouraging employees to work in a safe manner and to report promptly any unsafe or unhealthy conditions to appropriate supervisors. The Employer agrees, in the event an employee sustains a job-related injury, disease, or illness, to provide advice and assistance from the State Office Human Resources Section to the employee

in completing and submitting a claim. When the Agency or other appropriate authority determines that a dangerous or potentially dangerous condition exists at a worksite, employees at that worksite will be notified as soon as practicable so that precautionary steps can be taken.

15.2 SAFETY INSPECTIONS: Each office of the Employer will receive an annual safety inspection. In each Area, the Steward designated by the Union as representative of the employees in that Area will be afforded an opportunity to accompany the Rural Development official making the annual safety inspection of the Area Office and the Area's local offices.

The Steward designated by the Union as representative of the employees in the State Office will be afforded an opportunity to accompany the Rural Development official making the annual safety inspection of all offices in the State Office. The State Director will forward a copy of the inspection reports prepared to the Union. All safety inspections will be conducted in accordance with this Agreement and applicable law, rule and regulation.

15.3 SMOKING POLICY: This policy is designated primarily to protect the non-smoking worker's and public building visitor's right to not be exposed, involuntarily, to secondhand tobacco smoke at the Federal work site.

- (a) A designated smoking area will be established at each Local and Area office and State office in accordance with GSA Regulation, 41 CFR Part 101-20 as amended. These and the non-smoking areas will be clearly designated and posted in clear view.
- (b) An employee's status as a smoker or a non-smoker will not be a consideration in his/her performance appraisal.

ARTICLE 16 - DISCIPLINARY AND ADVERSE ACTIONS

16.1 GENERAL: The Employer shall determine when the need arises for disciplinary or adverse actions. Adverse and disciplinary actions will be taken by the Employer for such cause as will promote the efficiency of the service and in accordance with applicable law, rule, and regulation 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.

16.2 PENALTY DETERMINATION:

- (a) In order to determine the appropriate penalty for an employee such as a disciplinary or adverse action, the Employer will, subject to applicable law, rule, and regulation, consider the relevant factors e.g., 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 discipline may be progressive in nature, however the progressive sequence of discipline is not required. 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 DISCIPLINARY ACTIONS: For the purpose of this Agreement, disciplinary actions are defined as written reprimands and suspensions of fourteen (14) calendar days or less.

- (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 and include the name of the Union President and his/her contact information. A reprimand will remain in an employee's Official Personnel Folder (OPF) for up to two (2) 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 fourteen (14) days or less: An employee, against whom a suspension of fourteen (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, informs the employee of his/her rights to review the material that was relied upon to support the reason for the action and includes the name of the Union President and his/her contact information;
 - (2) Not less than twenty-four (24) hours, but no more than seven (7) calendar days, to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of his/her 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 will 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 in person 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 fourteen (14) days, reductions-in-grade or pay, and removals. Furloughs will be governed by applicable law, rule, and regulation.

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

- (a) Thirty (30) 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 action. 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 thirty (30) calendar days from the receipt of the advance written notice;
- (b) Receive an original and one copy of the notice of proposed adverse action. The second copy will state, "THIS COPY MAY AT YOUR OPTION BE FURNISHED TO YOUR UNION REPRESENTATIVE" and include the name of the Union President and his/her contact information. If an employee chooses to be represented in an adverse action procedure, his/her representative will have the right to be present at all conferences at which the employee answers the specifications in the notice of proposed adverse action;
- (c) Seven (7) calendar days to respond orally and/or in writing and to furnish affidavits and other documentary evidence in support of his/her 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 will designate an official to hear the employee's oral answer who has authority to make a final decision on the proposed adverse action;
- (d) Be represented by an attorney or other representative; and
- (e) A written decision at the earliest practicable date, containing the specific reasons for the decision and informing the employee of his/her appeal rights.

16.6 NOTICE 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 (2) 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 or damage to Government property; or
 - (4) Otherwise jeopardize legitimate Government interests.
- (b) Before using either Investigative or Notice leave, the Employer will 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; carrying the employee in absent without leave (AWOL) status if the employee is absent from duty without approved leave; and curtailing the notice period 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 U.S.C. § 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) Alternative discipline may, under the right circumstances, be an efficient and effective approach in lieu of or in addition to traditional discipline. The parties (the Employer and the employee) 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 will 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 (LWOP) 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.
 - (5) A Last Chance Agreement (LCA), in which the Employer agrees to hold an adverse action decision in abeyance in exchange for an employee's:
 - (i) Commitment to abide by a certain set of behaviors or conditions for a set period of time as determined by the Employer;
 - (ii) Waiver of his/her rights to challenge the decision; and
 - (iii) Agreement that if the employee fails to fulfill the terms of the agreement, the decision will 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 the Federal Mediation and Conciliation Service/Federal Service Impasses Panel for resolution.

ARTICLE 17 - EQUAL EMPLOYMENT OPPORTUNITY AND CAREER ENHANCEMENT

17.1 **GENERAL:** The Employer and the Union agree that no individual will be a victim of discrimination because of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), disability, genetic information, national origin, marital status, age, political affiliation, labor organization affiliation or non-affiliation, status as a parent, or any other non-merit based factor, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available and to promote equal opportunity through continuing affirmative action. Discrimination complaints will be processed solely through the complaint system established by applicable laws and regulations.

17.2 **EEO COMMITTEE:** The Employer's Equal Employment Opportunity Advisory Committee (EEOAC) will be established in accordance with RD Instruction 2045-X, Equal Employment Opportunity, as amended. The Union may have one representative on the EEOAC.

17.3 **CAREER ENHANCEMENT:** The Employer will implement the Career Enhancement Program prescribed by the Agency. As the Employer has need, the program will attempt to make maximum use of the skills and potential of employees currently in the Employer's workforce. The program will be limited to the occupational series designated by the Administrator of the Agency.

ARTICLE 18 - MERIT PROMOTION PLAN

18.1 PURPOSE AND POLICY:

- (a) The Parties agree that the purpose of the provisions contained herein is to ensure that vacancies in unit positions will be filled on the basis of merit, fitness, qualifications and without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex (including gender identity, sexual orientation, and pregnancy), national origin, disability, genetic information, status as a parent, age or any other non-merit based factor, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available. This Article encompasses broad requirements pertaining to the implementation of Departmental Regulation 4030-335-002 Merit Promotion and Internal Placement or successor for positions within the bargaining unit.
- (b) It is agreed that the Employer will make every reasonable effort to utilize the skills and talents of its employees in order to achieve the resulting benefits of higher morale and reduced turnover, and to move toward attaining a mix of employees representative of all segments of society.

18.2 FILLING VACANCIES:

- (a) All vacancies in the unit which are to be filled competitively and training requiring competitive procedures will be announced. Vacancy announcements will be open for a minimum period of ten (10) calendar days. The announcement will contain a brief description of the position and of the basic eligibility requirements. Supervisors will be responsible for proper notification of eligible employees who will be absent from their duty station beyond the closing date of the announcement. If an insufficient number of best qualified applicants are referred to the selecting official the Employer retains the right to re-announce the vacancy. The Employer has the right to choose from among best qualified employees, including unit and outside employees.
- (b) The Employer also has the right to fill a position noncompetitively in accordance with applicable law, rule and regulation.
- (c) If the vacancy announcement is cancelled, a notice of cancellation will be posted in the same areas as the original announcement appeared.
- (d) Management recognizes the benefit of promoting from within Arkansas Rural Development whenever appropriate. Accordingly, Management will give fair consideration to Arkansas Rural Development applicants.

18.3 NOTIFICATION: The Agency will send a reminder email once every six (6) months to the employees that includes instructions on how to sign up for vacancy notifications through the One RD Portal or successor. The Employer will notify the Union President of who was selected for promotion or competitive placement.

18.4 REFERRAL AND SELECTION:

- (a) The selecting official may select from among any of the candidates on a promotion certificate. The selecting official may also elect not to fill the position from the promotion certificate.
- (b) An employee's use of approved annual or sick leave should not be considered by the selecting official as a basis for selection/non-selection.
- (c) All certified promotional applicants will be sent to the selecting official in alphabetical order. The expiration of certificates will be in accordance with the Departmental Regulation. As of the effective date of this Agreement, certificates will be valid for fifteen (15) calendar days. Extensions may be granted in fifteen (15) day increments up to a total of ninety (90) calendar days.

18.5 AREA OF CONSIDERATION: The Employer will determine the area of consideration for merit promotion vacancy announcements in accordance with Departmental Regulation 4030-335-002 Merit Promotion and Internal Placement or successor.

18.6 MULTI-LEVEL ANNOUNCEMENTS: When advertising a position at multi-grades, qualification requirements for each grade level will be outlined in the vacancy announcement. The announcement will also require candidates to specify the lowest grade they will accept. Candidates will be grouped separately by grade level for each certificate.

18.7 VACANCY ANNOUNCEMENT INFORMATION AVAILABILITY:

- (a) The following information may be made available to employees, at their request, who applied for the position in question and were not selected:

- (1) Explanations and supporting regulations concerning the Merit Promotion Plan.
- (2) The qualifications required for a position.
- (3) If the employee was considered basically qualified.
- (4) If the employee was among the best qualified and how the employee was evaluated by the merit promotion panel or human resources specialist.
- (5) Cut-off score for best qualified.
- (6) Scores of other candidates (not identified by name).
- (7) Number of qualified candidates.
- (8) Number of candidates certified as best qualified.
- (9) The name of the individual hired.

- (b) The following information will not be released to applicants or their representatives:

- (1) Information provided by applicants that is subject to the provisions of the Privacy Act.
- (2) Crediting plans.

(3) Individual panel members' names and their individual ratings.

18.8 MAINTENANCE OF RECORDS: All records are to be kept for two (2) full fiscal years or longer if a grievance, appeal, or complaint is pending. If a complaint is filed, the case file must be maintained until the complaint is formally closed, including any appeals or civil actions. Retention is to be in accordance with the National Archives and Records Administration's General Records Schedule and may be in either hardcopy or electronic format, or a combination of both. A complete list of the records to be retained may be found in Departmental Regulation 4030-335-002 Merit Promotion and Internal Placement or successor.

18.9 MISCELLANEOUS:

- (a) Effective Date and Release to Position: An employee who has been selected for a competitive promotion will have his/her promotion effective no later than one complete pay period following selection unless circumstances require otherwise, e.g. within-grade increase; relocation; urgent needs of the Employer.
- (b) Consideration: Selection, and all procedures leading to selection, must be made without consideration for any non-merit reasons such as race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, political affiliation, marital status, disability, genetic information, age, membership/non-membership in a labor organization, status as a parent, or any other non-merit based factor, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available. Each manager and supervisor have the obligation to ensure all candidates receive full consideration and should take no action which would either discourage or give the appearance of discouraging potential candidates from applying for a position. Supervisors and selecting officials will avoid practices that give employees the impression that a person was preselected for a job or that a selection was based on favoritism.

ARTICLE 19 - POSITION DESCRIPTION AND CLASSIFICATION

19.1 POSITION DESCRIPTION: The Employer will provide each employee a copy of his/her position description, including revisions which may occur.

19.2 CLASSIFICATION APPEALS: When an employee alleges, in writing, that his/her position is not properly classified, the employee will be furnished information on available appeal rights. The employee may be represented by the Union in discussing the matter with Management or in presenting an appeal.

19.3 REDRESS: Neither position descriptions nor classification are subject to the negotiated grievance procedure.

ARTICLE 20 - TRAINING

20.1 TRAINING AND DEVELOPMENT: It is the policy of Rural Development that all employees will be given the opportunity to receive appropriate training to better enable them to effectively perform their assigned duties in an effective manner in accordance with RD Instruction 2057-A, A Rural Development Employee Training and Development Program, as amended. Training opportunities will be made known to all employees.

20.2 RECORDS: The Employer will record official training received in the official AgLearn or successor record of the employee. This does not relieve the employee of individual responsibility to maintain current and complete records to fully reflect total employment experience, training, and education.

20.3 EXPENSES: For employees who are to take training courses for official purposes, Rural Development may pay costs of salary, tuition, travel, per diem, books, registration fees, and laboratory fees during the period of training to the extent funds are available.

ARTICLE 21 - EMPLOYEE RECOGNITION/AWARDS PROGRAM

The Union and the Employer acknowledge the importance of timely recognition of employees for high quality contributions to the Agency and its mission. Recognition, awards and encouragement by the Employer is an important incentive that increases employee job satisfaction and contributes to the overall quality of work performance.

While awards are discretionary in nature, they will be granted in a consistent and objective manner without discrimination, and in accordance with applicable law, rule, and regulation. There are no entitlements to awards and all awards will be issued in the best interest of the Agency, its mission and its employees. While it is anticipated that there will be annual budget allocations for monetary awards, should budgetary restrictions not permit monetary recognition, the Employer will notify the employees.

Awards may include but are not limited to the following: performance awards, quality step increases (QSIs), time off awards, on-the-spot awards, and special act awards to individuals or groups. Awards must be in accordance with current Department policy and applicable law, rule, and regulation. Criteria for awards and recognition can be found in Departmental Regulation 4040-430 Employee Performance and Awards or successor.

The Union may periodically evaluate and review the Rural Development Arkansas Employee Recognition/Awards Program and make recommendations to ensure effectiveness and understanding of the Awards Program.

The Employee Recognition Program will be administered in accordance with Rural Development Instruction 2063-B Recognition Program and Departmental Regulation 4040-430 Employee Performance and Awards or successors.

ARTICLE 22 - PERFORMANCE APPRAISAL SYSTEM

22.1 PURPOSE: Continual and consistent job performance of the Agency's employees is essential to the efficient operation of the Agency and is necessary for the achievement of the goals and programs for which it is responsible. The purpose of this Article is to set forth procedure to be utilized by supervisors in informing employees of their performance and in aiding employees to reach an optimum level of performance.

22.2 POLICY: The Agency will administer the Performance Management program in accordance with 5 U.S.C. Chapter 43 and 5 C.F.R. Part 430.

- (a) 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.

22.3 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.
- (c) Performance standards should be consistent with the duties and responsibilities actually assigned to employees and will be consistent with their position descriptions.

22.4 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.

22.5 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.

22.6 ADDRESSING 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 will notify the employee of the critical element(s) 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/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 thirty (30) calendar days to demonstrate acceptable performance under the critical element(s) at issue, commensurate with the duties and responsibilities of the employee's position.
- (d) During the NODAP period, the supervisor will 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) Employee performance at the unacceptable level is a reason for denial of within grade increases. Employees will receive a NODAP, an out of cycle rating and written notification of the denial. Employees will be given fifteen (15) calendar days to request reconsideration of the denial.

22.7 NOTICE TO EMPLOYEE

- (a) 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.
- (b) After the NODAP, if it is determined that the employee should be removed or reduced in grade, the employee is entitled a thirty (30) calendar day advance written letter which:
 - (1) Specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based;
 - (2) Specifies the critical elements of the employee's position involved in each instance of unacceptable performance;
 - (3) Includes the right to be represented by an attorney or other representative of his/her choice; and
 - (4) Provides a reasonable time (ten (10) calendar days) to answer orally and/or in writing. Employees may request an extension due to extenuating circumstances.
- (c) Should the proposal to remove or reduce in grade be sustained, the employee will receive a written decision.
- (d) The provisions in this Article shall not preclude the Agency from taking an action for unacceptable performance under 5 U.S.C. Chapter 75.

ARTICLE 23 - REDUCTION IN FORCE AND TRANSFER OF FUNCTION

23.1 GENERAL: This Article governs:

- (a) a transfer of function (TOF), and
- (b) the release of a competing employee by furlough for more than thirty (30) days; by separation; by demotion; or by reassignment requiring displacement, because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of re-employment rights or restoration rights; or reclassification of an employee's position due to erosion of duties when such action will take effect after an agency has formally announced a reduction in force (RIF) in the employee's competitive area and when the RIF will take effect within one hundred eighty (180) days. The RIF/TOF will be in accordance with statutory

requirements, Government-wide rules and regulations and this Agreement. Management will also utilize its authority to the extent feasible to take action to minimize the need to RIF in accordance with law, regulation and this Agreement. The Employer will make every reasonable effort to minimize hardship on bargaining unit employees who are adversely affected.

23.2 NOTIFICATION:

(a) Preliminary Notification to the Union: When it is anticipated that a TOF or RIF affecting bargaining unit employees will be necessary, the Employer will notify the Union in writing at least thirty (30) calendar days in advance, where possible, and in any case will notify the Union prior to any notification to bargaining unit employees. This notification will include the following information:

- (1) Type of action to be taken.
- (2) The reasons for the RIF or TOF.
- (3) The competitive areas.
- (4) The competitive levels of affected positions.
- (5) The approximate numbers, types, and grades of positions in the bargaining unit to be affected.
- (6) The expected or approximate date of such action/step.
- (7) A copy of any economic impact study or any other study made in conjunction with the action.
- (8) Positions that have been identified as essential and must be retained.
- (9) Specific function to be transferred and identification of employees assigned to this function.
- (10) The manner in which the Employer anticipates exercising its discretion under 5 CFR 351, if known.
- (11) Information obtained about possible resignations, retirement, and other separation actions, and determinations made as to the extent to which the work force is likely to be reduced through normal attrition without personal identifiers.

The Employer will provide the Union, upon request, with information in accordance with 5 USC 7114(b)4.

(b) Notice to Employees: The Employer will notify employees sixty (60) calendar days prior to the effective date of a RIF and provide the Union a copy. The specific notices will include the following information:

- (1) A general statement of reasons the RIF is being conducted.
- (2) A statement of the specific action to be taken: demotion, furlough or reassignment.
- (3) The effective date of the action.
- (4) The employee's competitive area, competitive level, subgroup, service date, and three (3) most recent annual performance ratings of record received during the last four (4) year period prior to the date of issuance of RIF notice.
- (5) The place where the employee may inspect the regulations and records pertinent to his/her case.

- (6) If applicable, the reasons for retaining a lower standing employee.
 - (7) If applicable, a statement that employees are being separated under liquidation procedures without regard to standing within the subgroup, and the date the liquidation will be complete.
 - (8) The employee's appeal or grievance rights, time limits and appropriate procedures.
 - (9) If applicable, the employee's rights, entitlements, and responsibilities with respect to the out-placement programs.
 - (10) Notice to the employee of the right to re-employment placement and all programs and benefits available from OPM.
 - (11) Information on applying for unemployment compensation.
 - (12) Information on the employee's eligibility to continue health and life insurance benefits after RIF separation.
 - (13) Notice to the employee of the entitlement to a copy of OPM's retention regulations in 5 C.F.R. Part 351.
 - (14) Employee's entitlement to grade, and/or pay retention.
- (c) When a RIF is caused by circumstances not reasonably foreseeable, the Agency may request approval from the Office of Personnel Management (OPM) for a shortened employee notice period of less than sixty (60) days. This shortened period must cover at least thirty (30) full days before the effective date of release. The Union will be provided a copy of the request to OPM, which specifies:
- (1) The specific RIF.
 - (2) The number of days by which the period will be shortened.
 - (3) The reasons for the request.
 - (4) Any other material requested by OPM.

A copy of OPM's response will be provided to the Union upon receipt by Management.

23.3 USE OF PERFORMANCE APPRAISALS IN RIF/TOF: Annual performance appraisals will be frozen as of the date the specific RIF notices are issued in accordance with Government-wide rules and regulations.

- (a) An employee's entitlement to additional service credit for performance shall be based on the employee's three (3) most recent performance ratings of record received during the four (4) year period prior to the date of the issuance of the RIF.
- (1) Employees who receive an improved rating following an opportunity to demonstrate acceptable performance as provide for in 5 C.F.R. 432 shall have the improved rating considered as the current annual performance rating of record if the improved rating is received prior to the issuance of the RIF notice.
 - (2) An employee who has received at least one but fewer than three (3) previous ratings of record during the four (4) year period shall receive credit for performance on the basis of the value of the actual rating(s) of record divided by the number of actual ratings received.

23.4 NEGOTIATIONS: Upon receipt of preliminary written notification of an anticipated RIF or TOF affecting the bargaining unit employees, the Union may request negotiations concerning the impact and implementation of the RIF for any matter not already covered by this Article.

23.5 EARLY RETIREMENT: The Employer agrees to request implementation of the early retirement provisions of Title 5 U.S. Code in order to minimize the impact of the RIF.

23.6 PERSONNEL FILES: The Union and the Employer will jointly encourage each employee to see that the employee's electronic official personnel file (e-OPF) is up to date as soon as the RIF or transfer of function is announced. The Employer will add to the e-OPF appropriate changes or amendments requested by the employee. The Agency may waive non-mandatory qualification requirements in accordance with appropriate regulations for otherwise eligible employees. Employees will be allowed duty time to review and update their e-OPF.

23.7 DOCUMENTS: Retention registers and other transfer of function documents will be made available to affected employee(s) and/or Union representative(s). Upon request, the affected employee(s) and/or Union representative(s) will be given the opportunity to review retention registers listing other employees that may be entitled to displace the employee and those the employee may be entitled to displace, and review registers for positions for which the employee is qualified and related records to the extent that these apply to the employee's situation.

23.8 MULTIPLE SKILLS: Employees possessing skills in more than one area will be considered for positions in such areas which are similar enough in duties, qualification requirements, pay schedules, and working conditions to prevent undue interruption, i.e. the employee would need only to be able to perform at fully successful within ninety (90) days to satisfy the undue interruption requirement.

23.9 PRIORITY CONSIDERATION: All employees demoted or separated without personal cause, misconduct or inefficiency, will receive priority consideration for repromotion/rehire in their competitive area before seeking other applicants.

23.10 EXISTING VACANCIES: The Employer will utilize existing vacancies to place qualified displaced bargaining unit employees to the maximum extent possible before seeking other applicants.

23.11 REEMPLOYMENT PROGRAMS: The Employer will maintain a Displaced Employee Program consistent with OPM Regulations. The Employer will also provide a program of outplacement assistance. The primary aim of the program will be to assist in finding continuing Federal employment for affected employees. The Employer will establish and maintain a Reemployment Priority List for eligible employees. The Employer's program will go beyond entering affected employee names on various reemployment and priority placement lists. This effort will include employee counseling and contacts with other Federal agencies, State employment sources, as well as employers in the private sector. Employees being separated because of a RIF will be given thirty (30) hours off without charge to leave to participate in job interviews with other Federal or private sector employers.

Reasonable amounts of time off without charge to leave also will be made available to employees seeking career counseling or Employee Assistance Program services. Reasonable being defined to take into consideration all related factors such as the commuting distance, set appointment or first come first seen basis, etc., this is not an all-inclusive listing. Employees will be allowed to use Government equipment and duty time to prepare resumes and job applications.

23.12 REPROMOTION: When the position previously held by an employee demoted through RIF becomes vacant and is being filled, the demoted employee will be considered for repromotion noncompetitively to the position provided the employee has continued to work at an acceptable level. If more than one employee meets the above criteria, the employee with the highest retention standing when the RIF was affected will be considered first.

23.13 TRAINING: It shall be the responsibility of the Employer to develop and execute a plan for the maximum feasible retraining of adversely affected bargaining unit employees in the positions to which they will be assigned.

23.14 UNION REPRESENTATION UNDER RIF/TOF: Union representatives who are employees of the Employer will be entitled to reasonable official time to assist employees adversely affected by RIF actions in accordance with Article 12 Official Time and as mutually agreed by the Parties. Such time will include but is not limited to:

- (1) Preparation time for, and necessary official time for a Union representative to attend each meeting or briefing conducted by the Employer in connection with RIF/TOF.
- (2) Official time to review retention records and other RIF/TOF records.

23.15 RELOCATION: Employees who are relocated by the Employer to a different geographic area after having been notified of their involuntary separation incident to RIF/TOF actions covered by this Article will be authorized relocation expenses and a reasonable amount of relocation leave for pre-moving and post-moving arrangements (including a house hunting trip when appropriate) in accordance with law, rule and regulation (Departmental Regulation 2300-002, Relocation Allowance Regulation or successor).

ARTICLE 24 - CONTRACTING OUT

24.1 GENERAL: The Parties acknowledge that the right to contract out is a management right under 5 USC 7106. Any Agency decision to contract out work presently being performed by bargaining unit employees will be made in accordance with current rules, regulations, policies, and procedures.

24.2 NEGOTIATIONS: The Union shall have the right to negotiate on the impact of a decision to contract out bargaining unit work, in accordance with Article 3 Negotiations.

24.3 NOTIFICATION: When the Agency anticipates contracting out work that is currently being performed by bargaining unit employees and an adverse impact will result, the Union will be notified prior to the request for proposals or the invitation for bids. The notice will include:

- (1) Information concerning the employees who may be adversely affected.
- (2) Copy of Statement of Work.

24.4 PLACEMENT: The Employer will make a reasonable effort to place employees adversely affected by a decision to contract bargaining unit work, in accordance with Article 23, Reduction In Force and Transfer of Function.

ARTICLE 25 - DISTRIBUTION

After review and approval by appropriate officials, the Employer shall distribute via email copies of this Agreement and the website where it can be found, to each current and new bargaining unit employee and supervisor. 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 encouraged to utilize electronic copies of this Agreement, however if needed are permitted to print one personal copy each utilizing the Employer's printers and facilities.

ARTICLE 26 - DUES DEDUCTIONS

26.1 GENERAL: Bargaining unit employees 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 employee of the voluntary nature of dues withholding and the conditions governing an employee revocation of dues withholding.

In implementing the dues deduction program, the Employer and Union will be governed by the provisions of 5 U.S.C. 7115 and this Article.

26.2 SUPPLY OF FORMS: The Union will be responsible for the distribution of Standard Form (SF)-1187 for use by an eligible member of the Union who wishes to authorize the deduction of his/her dues. SF-1188s will also be available through the Union, the Employment Services Division (ESD), and online for employees who wish to revoke the allotment as described in Section 26.10.

26.3 REQUESTING DUES WITHHOLDING: In order to initiate dues withholding, an employee must complete and sign a SF-1187. Completed, signed and certified SF-1187 forms shall be submitted to ESD for concurrence. ESD will in turn forward the approved dues allotment form to Payroll for processing. Dues will be withheld beginning no later than three (3) pay periods following receipt of the SF-1187 at Payroll.

26.4 DUES SCHEDULE: The Union certifies that the dues schedule applicable to its members will be provided to each member prior to membership enrollment. Dues schedules may be changed pursuant to Section 26.7 below. The Agency will apply the appropriate dues schedule to Union members who authorize deduction of dues.

26.5 UNION MEMBERS NOT IN GOOD STANDING: If the Union suspends or expels a Union member, or if an employee otherwise ceases to be a member in good standing, it will notify ESD by email of that determination within seven (7) calendar days. ESD will subsequently notify Payroll to cease dues deduction effective the next pay period for that employee and copy the Union.

26.6 DUES WITHHOLDING FEES AND ACCOUNTS: The Employer will remit by electronic funds transfer the amount of dues withheld to a single account provided by the Union. The Employer will also send to the Union a listing of names and amounts withheld.

26.7 CHANGE IN AMOUNT OF DUES: The Union may not change the amount of dues more than once in a twelve (12) month period. When the amount of regular dues changes, the Union Treasurer will notify ESD of that change in writing. ESD will acknowledge and forward by email to Payroll for inclusion in future allotments and the Union will be copied. This should take effect within four (4) pay periods of notification to Payroll.

26.8 AUTOMATIC TERMINATION OF DUES WITHHOLDING: All allotments of Union dues withholding will be automatically terminated in the following events:

- (a) Loss of exclusive recognition. All deductions of Union dues provided for in this Article will automatically terminate in the event of loss of exclusive recognition.
- (b) Temporary assignment to a non-bargaining unit position. If the employee is on a temporary assignment to a non-bargaining unit position, the Employer will notify Payroll to cease the allotment of Union dues deduction and so inform the Union. The employee will be responsible for submitting a new SF-1187 upon returning to a bargaining unit position if he/she elects to voluntarily continue to pay Union dues through payroll deduction.
- (c) 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.
- (d) Change in membership status. The Union will certify to Management any member who ceases to be a member in good standing. Refer to Section 26.5 above.

26.9 CORRECTION OF ERRORS: The Employer agrees that the total error in the amount of dues withheld from employee(s) 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 will be held harmless for any corrected errors.

If an employee has been improperly separated and is ordered reinstated by the appropriate authority to a bargaining unit position, the employee is required to initiate a new SF-1187 to restart dues withholding if he/she voluntarily elects to do so.

26.10 PROCEDURE TO CEASE DEDUCTIONS: A Union member may revoke his/her allotment for Union dues by submitting a completed and signed SF-1188 to the Union who will submit it to ESD in a timely manner. If it is:

- (a) WITHIN THE FIRST YEAR: 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 26.8 of this Article. A revocation received by ESD during the course of the employee's first year of dues allotment will become effective no later than the second pay period after the first anniversary of the pay period the Union dues deductions began. ESD 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 will take effect in the first pay period after the earliest date permitted by law.
- (c) Only ESD can send a SF-1188 to Payroll to affect this action. Payroll will be advised that it cannot take any dues revocation action without concurrence from ESD.

ARTICLE 27 – FURLOUGHS

27.1 GENERAL

- (a) Sometimes there are circumstances beyond the control of the Employer which may make it necessary to furlough employees.
- (b) 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.
- (c) By agreeing to this Article, the Union does not waive any individual employee's rights.
- (d) 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.
- (e) This Article addresses the policy and procedures associated with two (2) types of furlough:
 - (1) Shutdown/Emergency Furloughs; and
 - (2) Save Money Furloughs.
- (f) 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/Emergency or a Save Money Furlough;
 - (2) The expected beginning date of the furlough; and

- (3) The expected duration of the furlough.
- (g) For every furlough, the Employer shall compile a list of excepted employees, i.e. 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.
- (h) During the period of a Shutdown/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.
- (i) During a furlough, and unless contrary to law, leave status shall be handled as follows:
- (1) Annual, sick, court, military leave, credit and 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 duties. Employees wishing to engage in outside employment should refer to the Office of Ethics website at 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.
- (j) After a furlough, and unless contrary to law, leave status shall be handled as follows:
- (1) At the conclusion of the furlough, the suspension of using and reporting credit hours, compensatory time, annual leave, sick leave, court leave, and military leave (see 25.1-i-1 above) shall end.
 - (2) Any credit hours, compensatory time, annual leave, sick leave, court leave, and military leave that is suspended during the term of the furlough (see Section 27.1(i)(1) above) shall not be charged.
- (k) Based on the length of the furlough, the Employer shall adjust Performance Plan Standards accordingly.

- (l) The Employer shall not use furloughs as punishment or discipline in lieu of other means of addressing behavior, conduct, or performance.
- (m) All tollable 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.

27.2 SAVE MONEY FURLOUGHS

- (a) 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
- (b) 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.
- (c) Management reserves the right to deny a request for LWOP.
- (d) 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 Service Computation Date for leave.

27.3 SHUTDOWN/EMERGENCY FURLOUGHS

- (a) As soon as a Shutdown/Emergency Furlough is announced, the Employer shall provide all furloughed employees with all relevant and necessary instruction and information available to the Employer.
- (b) If directed by the Employer, all furloughed employees shall report to work on the first day of the Shutdown/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*), he/she may seek approval from his/her supervisor to telework on the first day and complete his/her shutdown activities remotely.
- (c) As often as practical, the Employer shall keep employees apprised of the status of the furlough.
- (d) Furloughed employees shall be paid for the Shutdown/Emergency Furlough days only to the extent permitted by Congress.

- (e) Excepted employees shall be paid, and furloughed employees shall be paid for any time worked pursuant to Section 27.3 (b) above, but not until a continuing resolution or appropriation is enacted.

ARTICLE 28 - TELEWORK

The Parties agree 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.

ARTICLE 29 - REASSIGNMENTS AND DETAILS

29.1 DEFINITIONS

- (a) Reassignment - the permanent movement of an employee from one position or duty station to another at the employee's current grade level. A reassignment may be either directed (involuntary) or requested (voluntary).
- (b) Detail - the temporary assignment of an employee to a different position for a specified period with the employee returning to his/her regular duties at the end of the detail.

29.2 PROCEDURES

- (a) The Employer agrees to give an employee who is going to be reassigned or detailed as much notice as possible before effecting the reassignment or detail. Directed reassignments out of the commuting area require minimum advance notice of thirty (30) calendar days.
- (b) When possible, prior to effecting a directed reassignment or detail, the Employer shall solicit for qualified volunteers. The Employer shall identify the necessary qualifications for the detail or reassignment at the time of solicitation.

Responsibility for soliciting for volunteers rests with the individual supervisor who has the authority to effect the reassignment or detail. Solicitation of volunteers shall be in writing and issued to all qualified employees from the organizational component of the supervisor who has the authority to recommend reassignments or details. When no volunteers are available, the supervisor may designate a qualified individual.

- (c) When the designated employee indicates that the reassignment or detail may result in undue personal hardship, the Employer shall give reasonable consideration to the employee's substantiated claim.
- (d) Merit promotion procedures do not apply when a detail is at the same or lower grade level.

- (e) Employees will be paid relocation expenses for directed reassignments in accordance with the Federal Travel Regulations and Departmental Regulation 2300-002 USDA Relocation Allowance Regulation or successor.

29.3 REQUESTED REASSIGNMENTS AND DETAILS

- (a) Any eligible employee who submits a request for reassignment or detail shall be provided:
 - (1) Bona fide consideration of the reasons for requesting the assignment,
 - (2) Appropriate consideration of any documented hardship reasons submitted in support of the request,
 - (3) Within thirty (30) calendar days, written notice that he/she was considered for a position and whether he/she was selected, and
 - (4) If not reassigned, upon request, to be advised in writing of the job-related reason(s) for not being reassigned.
- (b) When the employee's request for reassignment documents an adverse effect, i.e., health-related, child care, or transportation hardship, which is impacting the employee in his/her current job assignment and may reasonably be expected to be alleviated by reassignment, the Employer shall grant the request unless there are substantive business reasons for not complying with the request. Health-related reasons used as a basis for requesting reassignment must be supported by medical documentation. Childcare problems refer to employees who have sole responsibility for the care of children, i.e., preteens, or other dependents, during the hours/days in question. Transportation problems refer specifically to problems arising from dependence on public transportation.

29.4 SELECTION OF EMPLOYEES

- (a) Details, assignments, and reassignments shall not be made or denied solely to punish or reward an employee or be used instead of taking appropriate disciplinary action.
- (b) The provisions of this Article are not intended to restrict the Employer from detailing or reassigning an employee or otherwise adjusting the work assignment of an employee:
 - (1) because of demonstrated performance problems; or
 - (2) when such action is being taken to avert a disruption to the safety or security of the employees or the work area; or
 - (3) when an employee's conduct is the subject of a disciplinary inquiry and the employee's reassignment or detail is determined to be consistent with providing a safe and secure environment for the

Employer and its employees. Such action shall be taken consistent with the provisions of law, controlling regulations, and this Agreement.

ARTICLE 30 - DURATION OF THE AGREEMENT

30.1 EFFECTIVE DATE AND TERM: The effective date of this Agreement and all supplements and amendments shall be the date of Agency Head approval, or on the 31st day after the Agreement is executed, whichever occurs first. It shall remain in effect for three (3) years. The Agreement will be automatically extended upon the expiration of the initial period for one year, and from year-to-year thereafter, unless either Party gives written notice to the other of its desire to effect changes in the Agreement at least sixty (60) calendar days and no more than one hundred and five (105) calendar days prior to the anniversary date. The notice must be acknowledged within ten (10) days of receipt, and negotiations for an amended agreement shall begin at least twenty (20) days prior to the anniversary date. This Agreement shall remain in effect until a new agreement becomes effective.

30.2 AMENDMENTS: The Parties may affect amendments or may add provisions to this Agreement at times other than provided for above if such action is necessary to reflect legal or Government-wide rules or regulations for which a compelling need exists.

30.3 SUPPLEMENTAL AGREEMENTS: Supplemental agreements or memorandum of understanding pertaining to personnel practices, policies, and working conditions may be entered into when the Employer initiates changes. A copy of such agreements or memorandum will be distributed by the Employer to all unit employees within thirty (30) calendar days after approval.

IN WITNESS WHEREOF, the undersigned adopt this Collective Bargaining Agreement on this 8th day of July 2021.

**For American Federation of
Government Employees (AFGE)**

For USDA Rural Development

Wyonia Golden
President AFGE Local 108

Karen Petrus
Acting Arkansas State Director
USDA, Rural Development