



***COLLECTIVE BARGAINING
AGREEMENT***

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

AFGE LOCAL 0055

AND

**USDA, NATURAL RESOURCES CONSERVATION
SERVICE PUERTO RICO**

SAN JUAN, PUERTO RICO

2006

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Preamble

This Collective Bargaining Agreement (herein after referred to as the "Agreement") is entered into by and between the American Federation of Government Employees, Local 0055 (hereinafter referred to as the "Union") and the USDA, Natural Resources Conservation Service - Puerto Rico, (hereinafter referred to as the "Employer, Agency, or Management").

The parties mutually recognize that the Congress of the United States has expressed Public policy concerning labor relations in the federal government as follows:

"The right of employees to organize, bargain collectively and participate through labor organizations of their own choosing in decisions which affect them, safeguards the public interest, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlement of disputes between employees and their Employers involving conditions of employment; and the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the government."

Therefore, labor organizations and collective bargaining in the civil service are in the public interest. (5 USC 71)

Pursuant to this policy, the parties have agreed upon the various Articles hereinafter set forth. This Agreement constitutes a Collective Bargaining Agreement between USDA, NRCS - Puerto Rico and the American Federation of Government Employees - AFL-CIO (AFGE) Local 0055.

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

1. Promote and improve the efficient and effective administration of USDA, NRCS - Puerto Rico and the well being of employees within the meaning of the Federal Service Labor-Management Relations Statute;
2. Establish and foster a basic understanding of personnel policies, procedures and practices, and matters affecting the conditions of employment; and provide a means for amicable discussion and adjustment of matters of mutual interest at USDA, NRCS - Puerto Rico.

The parties of this Agreement recognize that they have a mutual and cooperative interest in accomplishing the mission of USDA, NRCS - Puerto Rico. They agree accomplishments will be greater by creating an atmosphere of cooperation and trust between labor and management.

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

Definitions:

The following definitions of terms used in this Agreement shall apply.

1. **Employees**: Employees of the bargaining unit.
2. **Union**: American Federation of Government Employees, AFL-CIO, Local 0055
3. **Agency/Management/Employer**: USDA, NRCS - Puerto Rico
4. **Grievance**: See Article 27, Section 2
5. **Emergency Situation**: An emergency situation is one which poses sudden immediate and unforeseen work requirements for the Employer or Agency as a result of natural phenomena or other circumstances beyond the Employer's or Agency's control or ability to anticipate.
6. **Days**: Calendar days unless otherwise noted.
7. **Conditions of Employment**: Personnel policies, practices and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices and matters relating to political activities prohibited under Subchapter III of Chapter 73, of Title VII, relating to the classification of any position, or to the extent such matters are specifically provided for by federal statute.
8. **Impasse**: The state of inability of the representatives of the Employer and the Union to arrive at a mutually agreeable position, concerning negotiable matters, through the bargaining process.
9. **Collective Bargaining**: The performance of the mutual obligation of the representative of an Agency and the exclusive representative of employees in an appropriate unit in the Agency to meet at reasonable times and consult and bargain in good-faith effort to reach agreement with respect to the conditions of employment affecting such employees. The representatives are obligated to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.
10. **Emergency Overtime**: Overtime ordered during the same workday.
11. **Grievance Arbitration Hearing**: An arbitration hearing where an individual employee or group of employees is seeking resolution through the arbitration process.
12. **Interest Arbitration Hearing**: An arbitration hearing where Management or the Union is seeking resolution on global issues through the arbitration process.

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

Section 1 - Parties to the Agreement

The parties to this Agreement are the American Federation of Government Employees (AFL-CIO) Local 0055, hereinafter referred to as the "Union" and the USDA, Natural Resources Conservation Service - Puerto Rico, hereinafter referred to as the "Employer, Agency, or Management".

Section 2 - Unit of Recognition

The unit of recognition covered by this Agreement is that unit certified by the Federal Labor Relations Authority (FLRA) in Case No. AT-RP-80016 approved on May 29, 1998. The Employer recognizes AFGE Local 0055 as the exclusive representative of all employees [hereinafter sometimes referred to as "employees" or "bargaining unit employee(s)"] in the bargaining unit as defined below.

Section 3 - Definition of Bargaining Unit

- A. This Agreement covers all professional and non-professional employees. This Agreement does not cover management officials, supervisors, confidential employees, employees engaged in federal personnel work in other than a purely clerical capacity, and employees described in Title 5, United States Code, Section 7112 (b) (6) and (7).
- B. In addition, the following groups of employees are excluded: student trainees, temporary and probationary employees, and Student Career Employment program students. If a temporary appointment goes beyond 1 (one) year of consecutive service in their current appointment, they will be covered by the terms of this agreement.

Section 4 - Coverage of the Agreement

- A. This Agreement covers only those positions included in the bargaining unit. Where the term "employee" or "employees" is used, it is understood that it includes bargaining unit employees.
- B. The Parties further agree that should AFGE request certification to include subsequently organized groups of employees in the unit, the Parties will meet and discuss the proposed petition, if necessary. Either Party may request involvement by the FLRA. Unresolved issues will be addressed by the FLRA in accordance with law and regulation.

Article 2 - Governing Laws and Regulations

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

- A. In the administration of all matters covered by this Agreement, the parties shall be governed by Federal laws and Government-wide rules, regulations and policies, as defined in 5 USC 71, and by subsequently enacted rules, regulations, and policies that do not conflict with this Agreement.
- B. Should future changes in law or regulations conflict with any portion of this Agreement the Provisions of this Agreement shall prevail and shall not be changed except pursuant to 5 USC 71.

Section 2- Agency Regulations

Where any Agency or Department regulation conflict with this Agreement and/or supplemental Agreement, this Agreement shall govern; however, either party may request to negotiate over new policies and regulations. Bargaining will begin as soon as possible and as agreed by the parties but not later than 10 workdays of the receipt of management proposal. Negotiations will last no more than 5 workdays or as agreed by the parties. During this time, the parties will explore all aspects of the proposed changes and will work diligently for a consensus. Any timeframe hereby established may be changed by mutual consent. The parties agree to utilize Alternative Dispute Resolution mechanisms, as appropriate, without waiving either party's statutory rights.

Section 3 - Past Practices

It is agreed that any unwritten rule or policy involving a condition of employment of unit employees is not covered by the terms of this collective bargaining agreement that is known to management and the union, has been permitted to occur and has continued for some significant period of time cannot be unilaterally changed by management.

Article 3 - Union and Management Rights

Section 1 - General

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

Section 2 - Restraint

There shall be no restraint, interference with or coercion against any Union official or representative in the exercise of their rights under 5 USC Chapter 71 because of the performance of duties within the scope of this Agreement, or against any bargaining unit member for filing a grievance/complaint, or acting as a witness under this Agreement, the law, or applicable regulations.

Section 3 - Representation

- A. The Union is the exclusive representative of the bargaining unit and is entitled to act on behalf of bargaining unit employees. The Union is responsible for representing the interests of all employees in the bargaining unit without discrimination and without regard to Union membership.
- B. Designated officers or representatives of the Union have the right to represent the employees within the entire bargaining unit in accordance with the provisions of Article 32 of this Agreement on Official Time. Management will recognize representatives designated by the Union. The Union will designate five Union officers for representational purposes on a geographical basis.

Section 4 - Union Rights and Responsibilities

- A. The Union has the right to represent an employee or group of employees in presenting a grievance or when raising matters of concern or dissatisfaction with Management.
- B. The Union has exclusive right to represent employees under the negotiated grievance procedure in this Agreement.
- C. When an employee or group of employees presents a grievance or complaint without representation by the Union, the Union shall be notified immediately.
- D. The Union shall be a party to all-formal discussions and grievance/complaint proceedings involving working conditions.

Section 5 - Formal Discussions

- A. Consistent with 5 USC 7114 (a)(2)(A), as the exclusive representative of bargaining unit employees, the Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Agency and one or more employees in the bargaining unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment.
- B. The Union President and/or designee will be given reasonable notice of, and provided reasonable time, to be present at formal discussions concerning any grievance, personnel policy or practice, or other general condition of employment. The determination of reasonableness will be based upon the circumstances of each case.

Section 6 - Working Relations

The parties, especially Union representatives and first-line supervisors, are encouraged to meet as necessary to informally discuss and attempt resolution of matters of concern.

Section 7 - Notification of Change in Conditions of Employment

The parties recognize that changes to personnel policies, practices and matters affecting working conditions may occur in the workplace on a regular basis. When changes occur the parties will be governed by the following provisions:

- A. Management will provide the Union at least 30 days advance notice, of anticipated implementation date on permanent changes and 15 days on other changes affecting working conditions of bargaining unit employees.
- B. If the Union wishes to negotiate on the proposed changes, it will notify management within 15 working days of receipt of management's notice. Bargaining will begin as soon as possible and as agreed by the parties but not later than 30 days of the receipt of management proposal. Negotiations will last no more than 5 workdays or as agreed by the parties. During this time, the parties will explore all aspects of the proposed changes and will work diligently for a consensus. Any time frame hereby established may be changed by mutual consent. The parties agree to utilize Alternative Dispute Resolution mechanisms, as appropriate, without waiving either party's statutory rights.

Section 8 - Notification to Employees of Exclusive Representation.

- A. The Union will provide a general notice to employees of the exclusive recognition granted to the Union, together with a list of Union-designated representatives and their work locations and telephone numbers to be posted on Union bulletin boards.
- B. Where the Union does not have access or there is no onsite representative, the Employer will post it.

Section 9 - Communications with Bargaining Unit Employees.

Consistent with 5 USC 71, the Employer will not communicate directly with employees regarding conditions of employment in a manner that will improperly bypass the Union, except as provided by Section 4 of this article.

Section 10 - Management Rights - General

The Agency has the authority:

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

Section 11 - Other Agreements

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

Section 12 - Management Rights to exercise independent judgement

The Employer reserves the right to exercise independent judgment, consistent with appropriate applicable statutes and regulations, with regard to all matters affecting employees and positions outside the bargaining unit.

Article 4 - Employee Rights

Section 1 - Organizational Rights

- A. Each employee in the bargaining unit shall have the right to form, join, or assist any labor organization, or to refrain from such activity, freely and without fear of penalty or reprisal; and each employee shall be protected in the exercise of such right.
- B. Except as otherwise provided under 5 USC Chapter 71, bargaining unit employees have the right:

To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities.

To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under 5 USC 71.

Section 2 - Personal Rights

The parties agree that in the interest of maintaining a congenial work environment, both supervisors and employees will deal with each other in a professional manner, with courtesy, dignity, and respect. To that end, all employees must refrain from coercive, intimidating, loud or abusive behavior.

- A. There shall be no restraint, interference with or coercion against any bargaining unit member in the exercise of their rights under 5 USC Chapter 71.
- B. The Employer and the Union shall annually inform bargaining unit employees of their rights under 5 USC 7114(a)(2)(B), including but not limited to, posting a notice on the official bulletin boards.
- C. The Labor Organization has the right to participate in informational picketing when such picketing does not interfere with Agency operations pursuant to 5 USC 7116.b.(7).
- D. This agreement does not prevent any employee, regardless of Union membership, from bringing any matters of personal concern to the attention of appropriate officials in accordance with applicable laws, regulations, or Agency policies, or from choosing his or her own representative in a statutory appeal action.
- E. Nothing in this agreement shall cancel or annul any employee right or require an employee to become or to remain a member of a labor organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.
- F. An employee shall not be disciplined or otherwise discriminated against because he/she has filed a complaint or given testimony under the Civil Service Reform Act, the grievance procedure, or any other redress procedure available.

- G. The parties agree that, to the extent possible, instructions, directives and orders communicated to employees by Management officials should be reasonably consistent. An Employee who does not understand an instruction, directive or order has the right to request clarification of that communication. To the extent possible, a supervisor's instruction, directive or order must be complied with once given, whether or not the employee believes those instructions to be consistent, fair or reasonable. Employees have the right to elect not to obey an order when the employee knows or has good reasons to believe the order is unlawful or that under the circumstances the ordered tasks pose an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek redress through normal hazard reporting and abatement procedures. The employee will immediately contact that Manager's supervisor to avoid a possible act of insubordination. An employee who concludes that a supervisor's instruction, directive or order is not consistent, fair or reasonable has the right to pursue his or her dissatisfaction through the negotiated grievance procedure.

Section 3 - Whistleblower Protection

Employees shall be protected against reprisal for the lawful disclosure of information that the employee reasonably believes evidences a violation of law, rule, or regulation, or evidences mismanagement, a waste of funds, an abuse of authority, or a danger to health or safety.

Section 4 - Right to Union Representation

- A. If the employee wishes to discuss a problem or potential grievance with a Union representative, the employee shall have the right to contact the Union representative on duty time. The employee may contact the Union Representative through or by telephone, e-mail, fax, or in person. It is understood that the employee in the exercise of this right will not interfere with the normal operations of the office. In the event, the employee is in need of more than normal use of the telephone, e-mail, fax, etc.; formal consultation with his/her immediate supervisor is necessary.
- B. If the Union representative is located outside the employee's duty station and a personal contact is needed, the employee and supervisor will agree on the appropriate time and date to meet with the Union Representative. The appropriate procedure to be used in such instances is covered in Article 31, Official Time.
- C. The Union shall be given the opportunity to be represented at any examination of an employee in the bargaining unit by a representative of the agency in connection with an investigation if:
- (1) The employee reasonably believes that the examination may result in disciplinary action against the employee.
 - (2) The employee requests representation.
 - (3) When an employee is being interviewed by a government official and criminal charges against the employee are being considered, the employee will be informed that criminal misconduct is involved and will be advised of his/her right to be represented by an attorney or Union representative, at the interview and of his/her right to remain silent.

- D. The right to Union representation is not intended to interfere with the routine interaction between supervisors and employees in the normal course of a workday.

Section 5 - Timely and Proper Compensation

- A. The Employer will make every effort to ensure that employees receive their salaries either personally or at locations designated by the employees, by the established payday, in accordance with U.S. Treasury Department rules and regulations.
- B. Employees are responsible for reviewing their Leave and Earnings Statements and notifying their supervisors of any unexplained changes.
- C. Employees are responsible for arranging for the timely repayment of overpayments. Where employees have been overpaid, the Employer will advise employees of the procedures available and provide the necessary forms for filing a request for waiver of overpayments.

Section 6 - Voluntary Activities

The parties agree that employee participation in the Combined Federal Campaign, blood donor drives, U.S. Savings Bond campaigns and other worthy projects will be on a voluntary basis. This does not preclude giving general publicity and encouragement to employees to contribute. The Employer will not require or coerce employees to invest their money, donate to charity or participate in these activities, participation or nonparticipation will not advantage or disadvantage employees.

Article 5 - Negotiations during the Term of the Agreement

Section 1 - Purpose

- A. The purpose of this Article is to establish a complete and orderly process to govern mid-term negotiations. The negotiators are encouraged to use an interest-based bargaining approach in all mid-term negotiations, ensuring that all team members are trained in this approach prior to the inception of bargaining.
- B. Recognizing that the Agreement cannot cover all aspects or provide definitive language on each subject addressed, it is understood that mid-term agreements may address bargainable subjects not already covered by the Agreement.

Section 2 - Matters Covered by this Agreement

The Parties agree that unless a matter of issue is covered by this Agreement, the subject is appropriate for mid-term bargaining and may be brought to the table by either party in accordance with 5 U.S.C. Chapter 71 and terms of this Agreement.

Section 3 - Matters Not Covered by this Agreement

- A. The Employer agrees to provide reasonable advance written notice of planned changes affecting conditions of employment, including information used to formulate its plan, to the Union President and/or designee prior to implementation of changes over matters not already covered by or contained in this Agreement, and which affect conditions of employment subject to bargaining under 5 USC Chapter 71. Upon receipt of the notice, the Union will notify the designated Management Representative of its desire to consult and/or negotiate on the change. The Union will not be required to submit written proposals in advance of the start of the bargaining period, but agrees to make good faith efforts to submit proposals, in part or in whole, prior to arriving at the bargaining site, whenever practical. Bargaining will begin as soon as possible and as agreed by the parties but not later than 15 days of the receipt of management proposal. Negotiations will last no more than five (5) workdays or as agreed by the parties. During this time, the parties will explore all aspects of the proposed changes and will work diligently for a consensus. Any timeframe hereby established may be changed by mutual consent. The parties agree to utilize Alternative Dispute Resolution mechanisms, as appropriate, without waiving either party's statutory rights.
- B. The Union President and/or designee will provide reasonable advance written notice to the Employer or Designee of the Union's intention to submit proposed written changes in conditions of employment over matters not contained in or covered by this Agreement nor waived by the parties during negotiations. Within 10 workdays of issuing the advance notice, the Union will submit its complete written proposal to the Employer or Designee.

Upon receipt of the Union's written proposal, the Employer will have 7 workdays to submit complete counter-proposals related to the Union's offer. The Union and Management will then meet within the next 5 workdays to bargain. Negotiations will last no more than 5 workdays. During this time, the parties will explore all aspects of the proposed subject and will work diligently for a consensus. If no agreement is reached, the parties will utilize the Alternative Dispute Resolution process contained in Article 40, or any successor arrangement mutually agreed upon. Any time frame hereby established may be changed by mutual consent. The parties agree to utilize Alternative Dispute Resolution mechanisms, as appropriate, without waiving either party's statutory rights.

- C. The parties recognize that the time frames set in this Agreement to initiate bargaining are based upon normal circumstances and may occasionally need to be shortened to meet compelling operational needs. Management agrees not to set artificial deadlines for implementing changes in order to circumvent the normal time frames.

Article 6 – Union Dues Payroll Deductions

- A. The Employer will process properly authorized dues withholding forms no later than the beginning of the first pay period following receipt in the servicing personnel office.
- B. An employee may only revoke his/her dues withholding within the 30-day period prior to the anniversary date after submission of the original allotment. To revoke an allotment, an employee must submit a SF-1188, Cancellation of Payroll Deduction for Labor Organization Dues, to the servicing personnel office within the 30-day period prior to the anniversary. Dues deduction termination requests not so submitted will not be processed, and will be returned to the employee advising him/her of the 30-day termination period.

Article 7 - Duration of Agreement

Section 1 - Effective Date

This Agreement will be implemented and become effective when it has been approved, ratified and signed by the Parties, including review pursuant to 5 U.S.C. 7114(c)(2).

Section 2 - Duration of Agreement

- A. This Agreement will remain in full force and effect for 3 years from its effective date and automatically renew itself from year to year thereafter. However, either party may give written notice and a list of proposals to the other party no more than 120 or less than 90 calendar days prior to the expiration date of its intention to reopen and amend, modify or terminate the Agreement. Such notice must be accompanied by written proposals for renegotiating, as applicable. Negotiations shall begin no later than 30 calendar days after these conditions have been met.
- B. In the event the Parties re-negotiate the Agreement, the current terms will remain in effect until superseded by a new Agreement.
- C. In the event that neither party submits a notice to re-negotiate, the Agreement will be renewed automatically for periods of one-year except for provisions which may be in conflict with applicable law, rule, or regulation.

Section 3 - Re-opener

Negotiations during the term of this Agreement to add, to amend or modify this Agreement may be conducted only by mutual consent of the Parties.

Section 4 - Printing and Distribution

Within 30 days of the signing of this Agreement, Management will print sufficient copies for the Union to distribute to all current bargaining unit members.

Article 8 - Official Travel

Section 1 - Compensation and Travel

To the maximum extent practicable, the Employer within the employee's normal working hours will schedule time spent in travel status away from the employee's official duty station. Where it's necessary that travel be performed during non-duty hours, the determination of when such travel constitutes hours of work will be made under 5 USC or the Fair Labor Standards Act, whichever is applicable. The employee will be paid accordingly.

Section 2 - Per Diem Allowance and Actual and Necessary Subsistence Expenses

On scheduled travel, per diem will be paid up to the maximum prevailing GSA per diem rate for lodging, meals, and local incidentals, in accordance with Federal Travel Regulations. An employee scheduled to travel in an area for which a per diem allowance is prescribed may request advance authorization for travel on the basis of actual and necessary subsistence expenses. Any such request will normally be approved when the supporting justification showing the unusual and exceptional circumstances for the request meets agency-wide guidelines.

Section 3 - Continuation of Approved Travel Expenses

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

Section 4 - Advancement of Expenses

Employees are expected to use the Government issued travel card. However, if the employee does not have or has not been issued a card, the employee, shall file a request for a travel advance as soon as possible to be processed by the administrative office as expeditiously as possible, normally within 3 working days. If an employee does not have adequate funds, the Employer will make every effort to make alternative arrangements.

Section 5 - Use of Vehicles

- A. The parties agree to explore alternative methods to purchase fuel for the government vehicle. Reasonable periods of time spent by a traveling employee during regular duty hours to make

emergency repairs to or refueling of vehicles used to conduct government business will be considered duty time.

- B. When an employee uses a privately owned vehicle (POV) instead of an available government owned vehicle (GOV), mileage will be paid at the maximum reduced rate consistent with regulations of the General Services Administration (GSA).
- C. In all other cases, mileage for the use of the POV will be compensated at the maximum rate permitted by GSA for the type of travel done by the employee.
- D. The Employer won't require employees to drive or ride in unsafe vehicles. When an employee is assigned a GOV that is not functioning or equipped properly, the employee shall report the situation to the supervisor for immediate corrections.
- E. The parties agree to explore alternative methods to purchase fuel for government vehicles.

Section 6 - Protective Assistance

The Employer and the Union recognize that some travel job assignments could present a threat of imminent danger to the personal safety of employees. Appropriate measures will be taken on a case-by-case basis to assure the safety of employees.

Section 7 - Return to Duty Station

An employee on a long-term assignment may be authorized occasional return trips to his permanent duty station at government expense on non-workdays. Approval for such trips are at the administrative discretion of the authorizing official and may be authorized in accordance with published USDA, NRCS travel policy.

Article 9 - Health and Safety

Section 1 - Policy Statement

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 of prompt reporting of unsafe conditions. The Employer and the Union recognize that observing safe work practices 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.

- A. The Employer agrees, in the event an employee sustains a job related injury, disease, or illness, to provide advise and assistance from the State Office Administrative Division to the employee in completing and submitting a claim (for details see Article 35).
- B. The Employer will, to the extent of its authority and consistent with the applicable requirements of Title 29 Part 1960 of the Code of Federal Regulations, as well as other applicable health and safety codes, provide and maintain safe and healthful working conditions for all employees and will provide places of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm. The Union will cooperate to that end and will encourage all employees to work in a safe manner.
- C. The Union has the responsibility to advise management concerning safety and health problems.

Section 2 - Employer Responsibilities

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

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

Section 3 - Union Responsibilities

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

Section 4 - Employee Reports of Unsafe or Unhealthy Working Conditions

- A. Any employee who believes that an unsafe or unhealthy condition exists shall have the right and is encouraged to report the unsafe or unhealthy working condition to his/her immediate supervisor. The Employer will ensure a response to an employee report of hazardous conditions within twenty-four hours for imminent dangers, 3 working days for potential serious conditions, and 20 working days for other than serious health and safety conditions. No employee will be required to continue working in a situation posing the threat of imminent danger.

- B. The Employer will investigate the reported condition as soon as is possible, and may refer the situation to: (a) the appropriate NRCS or USDA office; (b) GSA; (c) the Occupational Safety and Health Administration (OSHA) of the Department of Labor; (d) the Public Health Service (PHS) Health Unit; or (e) other appropriate official for further investigation. The Union will be given an opportunity to accompany any inspector who responds on such a complaint during the inspector's physical inspection of the work place. The Union representative will be granted official time for this purpose.
1. Qualified Agency personnel shall conduct safety and Health inspections at least every other year for all work areas. High hazard areas jointly designated by Union and management shall be inspected monthly.
 2. When a work-place inspection is conducted by the Employer's safety representative or by an outside agency such as OSHA or NIOSH, the Union shall be invited and encouraged to participate. During the course of any such inspection, any employee(s) may bring to the attention of the inspector any unsafe or unhealthful working conditions.
- C. If an employee is assigned duties that he/she reasonably believes poses an imminent risk of death or serious bodily harm, they should advise their supervisor per Section 4.A, and if there is insufficient time to seek redress through normal abatement procedures contained in agency regulations and this Agreement, they may decline to perform the assignment. Where the supervisor does not agree with the employee's concerns, the employee has the right to consult the Union and the right to file a report in accordance with this agreement and the applicable agency and/or departmental regulations.
- D. If the Employer and/or the Partnership Council Committee believes that a hazardous condition exists which affects employees, the Employer shall advise the Union and the involved employees as soon as possible. Upon request, the Employer will meet with the Union and to the extent permitted by law, rule, and/or regulation, negotiate and/or consult with the Union regarding the matter.
1. The Employer agrees to post notices of hazardous conditions discovered in any work place. This notice shall be posted at or near the location of the hazard and shall remain posted until the cited condition has been corrected. Such notices shall contain a warning and description of the unsafe or unhealthful working conditions any required precautions required by applicable regulations.
- E. The Employer agrees to assure prompt abatement of unsafe or unhealthy working conditions found to exist by the Employer in conjunction with the Department, GSA, OSHA, PHS and/or other appropriate officials. When this cannot be accomplished, the Employer agrees to develop, following consultation with the Union, an abatement plan setting forth a timetable for abatement and a summary of interim steps to protect employees. Employees exposed to such conditions shall be informed of the abatement plan and the Union shall be consulted during the implementation of the plan. When the hazard cannot be abated without the assistance of GSA or other Federal lessor agency, the Employer agrees to work with the lessor agency to seek abatement.
- F. The Employer will inform the Union of toxic chemicals that will adversely affect the health or safety of employees, such as paint or pesticides, as soon as it is aware that such chemicals will be used. This notice will be given no later than one full workday before the chemicals are to be used. This notice will also include any warning statements given to the Employer by the organization using the chemicals or that it otherwise has in its possession.

- G. The Employer shall assure that no employee shall be subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthful working condition, or other authorized participation in an agency occupational safety and health program activities.
1. The Employer shall assure the right of anonymity for those employees or Stewards who report an unsafe or unhealthful working condition.
 2. The Employer, after consultation with the Union, shall establish procedures to investigate employee complaints concerning restraints, coercion or reprisal.

Section 5 - Occupation Injury or Illness

- A. When an employee sustains a job-related injury or occupational illness, the employee will report the injury or illness to his/her supervisor as soon as practicable. The supervisor will refer the employee to the Human Resources Staff (HRS), the Health Unit or other medical service as appropriate and as permitted by applicable law, rule, or regulation. The supervisor will also advise the employee to contact the HRS to obtain information on benefits under the Federal Employees' Compensation Act.
1. When an investigation is made of an occupation accident by anyone, the Union shall be invited and encouraged to participate.

Section 6 - Employee Assistance Program

- A. The Employer presently maintains an Employee Assistance Program (EAP), which provides counseling, information and other sources for employees troubled by alcoholism, substance abuse, emotional illness, marital/family problems or financial problems. The Employer will make employees and supervisors aware of the program at least annually.
- B. Employees whose performance is negatively affected by alcoholism or other forms of substance abuse may be given a reasonable opportunity to obtain professional assistance in overcoming the problem and to participate in programs, such as Alcoholics Anonymous. As required by the program, the Employer may make available to employees, on a completely confidential basis, the services of a qualified counselor specializing in alcohol and substance abuse problems. The EAP Office offers referral services to outside, local alcohol treatment programs, family counseling and substance abuse treatment programs, many of which are available free, or at a nominal cost.
- C. Employees undergoing a prescribed program of treatment for problems recognized under this Article might be granted the appropriate leave to the extent necessary to complete such program on the same basis as any other illness when absence from work is necessary.
- D. When the Employer determines that a conduct or performance problem exists that may be a result of substance abuse or alcohol related and refers the employee to EAP, the Employer may take appropriate disciplinary or adverse action, only consistent with fairness and the possibility to provide reasonable accommodation. The responsible supervisory official in determining any appropriate disciplinary and adverse action must consider the employee's involvement in the EAP.

- E. The Employer agrees to continue participating in the EAP as mandated by federal laws and regulations. Employees' participation in the EAP will be treated with the utmost confidentiality.

Section 7 - Occupant Emergency Plan

- A. The Employer shall maintain an Occupant Emergency Plan for all buildings in which bargaining unit employees work. The plan designates floor monitors, area monitors, stairwell monitors, elevator monitors, monitors to assist the disabled and restroom monitors for each floor, and describes the duties and responsibilities of these persons during an emergency. A copy will be given to the Union upon request.
- B. The Employer will establish such programs if they are not already in existence, in all buildings in which bargaining unit employees work, within 90 days of the effective date of this agreement. Copies of these plans will also be provided to the Union upon request.

Section 8 - Labor-Management Occupational Safety and Health Committee

- A. The Parties agree to establish a Labor-Management Occupational Safety and Health Committee composed of representatives of Management and, an equal number of representatives of labor. The Employer further agrees to develop and issue appropriate identification to all committee members, to assist them in carrying out their responsibilities.
 - 1. Committee members should serve overlapping terms.
 - 2. The committee chairperson shall be nominated from among and by the committee members. Management and labor members shall alternate as chairperson. Maximum service time as chairperson shall be one year.
 - 3. The committee shall meet quarterly provided there are agenda items. Special meetings shall be held as necessary.
 - 4. Written minutes of each meeting shall be maintained and distributed to each committee member and made available to employees upon request.
 - 5. The Employer shall make available to the committee all agency information relevant and necessary to its duties. Examples of such information include the agency's safety and health policies and Program, accident and illness data, epidemiological data, material safety data sheets, inspection reports, abatement plans, and internal and external evaluation reports.
 - 6. Union members shall be provided time prior to the meeting to caucus, so they can discuss and present their concerns in a clear and precise fashion.

B. Duties of the Committee shall include:

1. Monitor and assist in the operation of the safety and health program and make recommendations to the official in charge for improvement.
2. Monitor findings and reports of work-place inspections to ensure that appropriate corrective measures are implemented.
3. Participate in inspections of the establishment when in the judgment of either side of the committee such activity is necessary for monitoring establishment's inspection Procedures.
4. Review plans for abating hazards.
5. Review responses to reports concerned with allegations of hazardous conditions, alleged safety and health program deficiencies, and allegations of discrimination. If all the members of record on the committee are not substantially satisfied with the response, they may request an appropriate investigation to be conducted by OSHA.
6. Review procedures for handling safety and health suggestions and recommendations from employees.
7. Review reports of unsafe and unhealthful conditions where the hazard has been disputed.

Section 9 - Training

- A. The Employer agrees that wherever and whenever employees are required to perform duties that involve potential hazards, they will be provided training to perform the job safely. Such training shall include instruction, proper work methods to be used and proper use of protective equipment, and any applicable regulations or standards.
- B. The Employer will provide awareness training on matters such as earthquakes, bomb threats, fire, first aid, CPR, safe driving and others, to all employees at least once every 5 years or when necessary in case of new employees.
- C. The Employer agrees to provide official time for Union Stewards and Health and Safety Representatives to attend Union sponsored Health and Safety training.

Section 10 - Protective Clothing, Personal Protective Equipment, and Tools

In the event that any situation arises involving unsafe or hazardous conditions during the performance of official duties, the matter will be brought to the attention of the Health and Safety Committee who will recommend to the Employer if it is necessary to:

- A. Acquire, maintain, and provide approved safety equipment, approved personal protective equipment and clothing, including but not limited to raincoats, rubber gloves, face masks,

skin sun block, pest repellent, hats, and other devices necessary to provide protection of employees from hazardous conditions encountered during the performance of official duties, or as a result of the performance of such duties.

- B. The use of safety equipment, approved personal protective equipment, and clothing and other devices are only acceptable in conjunction with adequate employee training, equipment selection, and equipment maintenance programs.

Section 11 - Federal Field Safety Council

The Employer agrees to encourage and permit Union representatives to participate in activities and attend meetings of the OSHA's Puerto Rico Health and Safety Council and other Field Federal Safety Councils in the area on official time and with full administrative support.

Section 12 - Employer Safety and Health Records

The Employer agrees to compile and maintain records required under the Occupational Safety and Health Act and the USDA, NRCS Safety and Health Program, and to provide copies of the records to the Union consistent with the requirements of the Privacy Act.

Section 13 - Union Access

When coordinated and/or accompanied by an agency official serving as the designated health and safety inspector, union officials or other representatives designated by the Union shall be permitted to enter the premises of the Employer at any time during normal working hours to conduct safety-related building inspections, program evaluations and other safety-related representational duties in accordance with prescribed activities of the Safety and Health Committee. The Employer agrees to allow Union representatives who are not employees of the agency. To the maximum extent possible, Union will coordinate these visits with Management at the local/lower level.

Section 14 - Miscellaneous Health Provisions

- A. An employee who donates blood is entitled to receive up to 4 hours of administrative leave for recuperation purposes. In addition, administrative leave will be granted for travel to and from the donation site and for the time of actual blood donation. If necessary, additional recuperation time will be provided.

Section 15 – Protection from Foul Weather, Glare and Prevention of Eye Injuries

- A. Employees will be allowed the use of sunglasses, at their discretion, provided that they must wear sunglasses that meet ANSI standards in areas where use of eye protection is required.

- B. Employees will be allowed the use of lightweight poplin shirts or garments shirt year-round and comfortable pants, at their discretion.

Section 16 - Impact on Technology Change

Prior to agency implementation of new technology that impacts on the working conditions of unit employees, management will provide the Union with advance notification. The notification should include information concerning the nature of the new technology and what categories of employees would be affected by it.

Section 17 - Office Hazards

- A. Temperature. Should temperatures fall below 65 degrees Fahrenheit, or exceed 85 degrees Fahrenheit and no ventilation is present or it is inadequate, employees shall be removed from the work site until optimum temperatures can be restored. During this time, any absence shall not result in loss of pay or charges to leave. Management will provide thermometer in all needed or agreed spaces.
- B. Ventilation. Adequate ventilation shall be provided so as to reduce harmful concentrations of chemicals, chemical irritants, or any other type of uncomfortable odors in the workplace. Ventilation systems will be monitored every other year for microbial hazards and working efficiency.
- C. The Employer agrees that all copying machines that emit fumes shall be removed from employees' workstations or properly exhausted via a ventilation system. In the event that the copying machine cannot be adapted to/with a proper ventilation system, the Employer will replace the equipment with a new model that does not emit fumes.
- D. In the event that no water or electrical service is available at the office during more than 2 (two) hours, employees should be allowed to leave the affected work site.
- E. In conjunction with paragraph D, if hazardous condition exist, and no fieldwork is possible, then employees will be excused without loss of pay or charge to their personal leave.

Section 18 - Ergonomic Hazards

- A. The Employer shall provide employees with information about ergonomic hazards and how to prevent ergonomic related injuries. Agency, Departmental, OSHA Safety and Health Guidelines, and any other available material or literature could provide this information.
- B. The Employer agrees to the maximum extent possible to provide equipment (chairs, tables, workstations, etc.) that meets ergonomic design criteria. It is also agreed to the extent possible when equipment is purchased, that the vendor provides training on how to operate the equipment safely and properly.

Section 19 - Video Display Terminals (VDT)

Definition: A "Video Display Terminal" refers to a word processor or computer terminal that displays information on a television-like screen.

- A. The Employer shall provide safe and healthful workplaces for all USDA, NRCS employees. In keeping with this guideline and/or policy, the Employer acknowledges that there are certain ergonomic and environmental factors that can contribute to the health and comfort of VDT users. These factors involve the proper design of workstations and the education of managers, supervisors, and employees. The ergonomic job design and organizational solution to VDT problems are recommended in various studies published by the National Institute for Occupational Safety and Health (NIOSH); therefore, the Employer will within its budget constraints and limitation:
 - 1. Acquire VDT's and accessory equipment that, to the maximum extent possible, provide comfort to the user. Keyboards, worktables, and chairs would be height adjustable and provide proper back support.
 - 2. Provide for the laying out of workspaces that are properly illuminated to reduce glare and ensure visual comfort to VDT users while providing adequate lighting for traditional clerical or computer-like tasks.
 - 3. The Employer will seek and acquire information and technical assistance from appropriate resources on methods for most efficiently designing VDT workstation layouts; and
 - 4. The Employer will educate employees about the proper and safe operation of VDT's, including the value of interspersing prolonged periods of VDT use with other work tasks requiring less intensive visual concentration.
 - a. Management recognizes that at present not one of NRCS Puerto Rico employees is required to spend a full working day at VDT work. Although most employees have a computer at their work area their job tasks are diverse enough so flexibility is already there.
 - b. Employees who operate computer equipment shall be rotated during the workday between VDT work and other work assignments for which they are qualified.
 - c. Rest Break. Employees using VDT's for 2-4 continuous hours should interrupt their current work and have a 15-minute break.

d. Training. VDT operators shall be given training in the use and health hazards of VDT's. The Union will be provided with such time as is necessary to supplement the Employer's training. Workers will receive full compensation for this time.

e. Retraining. Workers will have the option of training for any new equipment or skills that will be introduced into the workplace. Training selection will be based on consensus within the work-unit. When consensus in the work-unit cannot be accomplished, the appropriate personnel will evaluate the situation and make appropriate changes/decisions to select participants. The Employer will pay the cost of training without loss of the worker's wages or benefits.

f. Radiation Hazards. The Employer must provide Video Display Terminals fitted with shielding to avoid radiation hazards. Management will conduct periodic (quarterly) tests of terminals for any emissions. Any terminal that tests above standard will be repaired to meet the standard or it will be removed from service.

g. Glare. Each VDT shall be fitted with a non-glare screen cover, hood, brightness, and contrast controls.

h. Lighting. To the maximum extent possible, VDT's will be located away from windows. Windows in the rooms where VDT's are used will have blinds or drapes. The work area will be painted with low-reflective colors and supplied with 500 lux of light (50 foot-candles) from indirect or recessed sources. Each VDT will be fitted with an adjustable light providing directed light so that the operator may adjust the brightness and direction of light falling on copy material.

i. Screen and Keyboard Position. The VDT keyboard will be adjustable and detachable. The VDT screen shall be adjustable so that the top level of print is between 10 and 20 degrees below the operator's horizontal vision plane and the bottom line no more than 10 degrees below the operator's horizontal vision plane. When adjusted, the screen shall be 18-20 inches away from the operator's eyes.

j. Noise. Acoustic screening will be used to reduce noise of printers used in the office. Ink-jet or Laser type printers should replace older model printers when printers are to be replaced.

k. Chairs and Desk. Chair and desk height will be matched to the individual characteristics of the operators. Chairs shall also have one-half length armrests.

l. Equipment Maintenance. Each VDT will be maintained by qualified personnel and checked for flicker, clarity of image, size of image, contrast, brightness, and adjustment. Each unit will be inspected every six months. Each VDT will be cleaned and otherwise maintained as often as is necessary to prevent glare and eye strain. The Employer will provide cleaning solutions, materials, and instructions to each operator of VDT's.

Section 20 - Health Related Issues

- A. Industrial hygiene. The Employer shall make industrial hygiene studies of environmental conditions that may impair employee health including excessive noise, dust, vapors and other potentially harmful conditions. Such studies will be initiated in response to employee or Union complaints.
- B. Medical Studies. The Employer agrees to provide administrative leave to employees who require physical examinations and medical testing because they may be or have been exposed to potentially dangerous or unhealthy working conditions when it has been determined that the exposure was work-related.

Section 21 - Lunchrooms, Break-rooms, Restrooms, Lockers and/or Showers in Dirty or Toxic Environments.

- A. The Employer shall furnish a clean and adequate office space in a designated area at each NRCS Office, where employees may eat their meals or take breaks.
- B. The Employer shall provide and assure that employees have adequate sanitary washroom facilities with sufficient hot water, sanitary materials (soap, sanitary paper, disinfectants, air deodorants, etc), scrubbing materials (mops, brooms, buckets, etc.) and towels.
- C. Workers who come on contact with extremely dirty or hazardous materials shall be provided sufficient time during working hours to wash-up, shower, or change clothing prior to meals (such as lunch), prior to leaving the office or work environment. Such facilities will be kept clean. In the event that cleaning facilities are not available, the employee will be given reasonable time to cleanup or will be excused for the remainder of the day, without loss of wages or benefits. Employee will be given official time.

Section 22 - Work in Remote Areas or Enclosed Spaces

- A. In the event that employees are required to work in confined spaces where flammable and/or toxic materials may accumulate, employees shall be assigned in teams of at least two. No workers shall be allowed to work in an area beyond the visibility of others, without; periodic checks being made by the supervisor or other employees. If the space is so restricted as to prevent two employees, then a communication system shall be utilized to assure the maintenance of constant communication with the employee.
- B. No employee shall be allowed to work in confined or enclosed spaces without having someone posted outside, equipped with all necessary protective equipment to effect a rescue safely.
- C. When work is required to be performed in areas where flammable or toxic vapors exist, all work practices shall be consistent with ANSI Standard Z117.1 - 1977 and NIOSH Criteria Document 80-106. These areas will be designated high hazard areas and will be inspected at least quarterly.

Section 23 – Work in Potentially Dangerous Situations

When there is reason to believe that a worker may face a potentially dangerous situation involving personal harm he/she shall be accompanied by another employee.

Section 24- Repairs and Adjustments to Operating Equipment.

Employees shall not be required to perform repair work on any office equipment, unless they receive adequate instruction or training. Only qualified personnel shall repair or adjust operating or moving machinery/equipment. However, it is understood that employees may be requested to perform some computer repair work with written and/or telephone support from the Agency and/or manufacturer.

Section 25 - Public Contact

- A. Employees will not be required to divulge personally identifiable information to the public under circumstances where there is reason to believe harassment or physical abuse would result. In keeping with this principle, such employees may remove their name Plates/tags should the need arise.

Section 26 - Vehicle Safety

- A. If at any time a government owned motor vehicle is observed to be in need of repair, defective, or in any way unsafe, the vehicle shall be taken out of service by the Employer until it has been restored to a safe operating condition.
- B. Employees operating or riding in Government owned, leased, or privately owned vehicles on official business are to use safety belts (both seat and shoulder).

Section 27 - Cleaning of Air Conditioning Ducts

Clean A/C ducts (supply and return) supply diffuses and return registers. Replace filters of A/C system on buildings occupied by bargaining unit members according with OSHA 29 CFR Part 1910. 1000, Standard for Air Contaminant, and ASHARE Standard 62-1989, Ventilation for Acceptable Indoor Quality. OSHA/ASHARE both adopted B EPA.

Section 28 - Smoking Policy

All Federal employees will adhere to the agency's current Tobacco Policy as outlined in General Manual 360, part 420.250, Subpart V.

Section 29 - Water Coolers

The Employer will make every effort to install water coolers in each of the State and Field Offices. The Employer will contract for water, supplies (including cups) and replacement.

Article 10 - Hours of Duty

Section 1- Statement of Policy

Management and Union are committed to the implementation of GM Title 360 Part 427 "Hours of Duty." However, Union and Management agree that implementation of any of the alternative work schedules requires good judgement to guarantee that no one of the staff member within an office will have to carry the burden that such arrangement may cause. Furthermore implementation of any alternative work schedules must enable the Agency to meet the mission needs.

Section 2 - Definitions

A. Alternative Work Schedules (AWS)

AWS are comprised of compressed and flexible work schedules that allow an employee to complete their 80-hour requirement in less than 10 workdays (i.e. compressed), or up to 10 workdays (i.e. flexible).

B. Five-Four-Nine (5-4-9) 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 the supervisor in advance. The schedule includes 9 workdays in each pay period consisting of 5 in one week and 4 in the second week. Employees work 9 hours per day for 8 days and 8 hours on 1 day, excluding any scheduled lunch period, for a total of 80 hours per pay period.

C. Ten Hours (4-10) 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, written schedule requested by the employee and approved by the supervisor in advance. The schedule includes 8 workdays in each pay period. Each workday is 10 hours in length, excluding any scheduled lunch period. A 10-hour schedule may not include any combination of half-days or workdays of less than 10 hours.

D. Flexi-tour Schedule (Alternative 8-hour Schedule)

This is a fixed schedule, which does not vary from day-to-day. The arrival and departure times are according to a set, written schedule requested by the employee and approved by the supervisor in advance. The schedule includes 10 workdays in each pay period. Each workday is 8 hours in length, excluding the scheduled lunch period. This schedule differs from the normal 8-hour tour in that the scheduled arrival and departure times need not coincide with the basic 8-hour workday.

E. Flexi-time Schedule (Alternative 8-hour Schedule)

In conjunction with the core hours, see section I below, this is a fixed schedule, which does vary from day-to-day. Times during the workday, workweek, or pay period within the tour of duty during which an employee covered by a flexible work schedule may choose to vary his/her times of arrival to and departure from the work site consistent with the duties and requirement of the position (5 USC 6122(a)(2)). This schedule differs from the normal 8-hour tour in that the scheduled arrival and departure times need not coincide with the basic 8-tour workday.

F. Basic 8-hour Workday

The basic workday for full-time employees consists of 8 hours from 7:30 a.m. until 4:30 p.m.

G. Operating Hours

The operating hours are the specific hours of the Agency in which employees may begin or end the workday. Those hours are from 6:00 a.m. until 6:00 p.m., daily.

H. Customer Service Band

The customer service band is the span of time that clerical and professional coverage will be provided to serve customer needs. This span of time is from 8 a.m. until 4:30 p.m, Monday thru Friday.

I. Core Hours

Core hours are the hours in a workday when "all" full-time employees must be present for duty. The core hours are from 9 a.m. until 2:30 p.m.

J. AWS Quarters

The 4 AWS quarters are defined as:

- January, February, March
- April, May, June
- July, August, September
- October, November, December

K. Credit Hours

Credit hours are any hours within a flexible schedule, which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday. An employee may earn up to 2 (two) credit hours per workday.

Section 3 – Hours of Work

- A. The basic workweek for full-time employees shall consist of five consecutive 8-hour workdays, Monday through Friday (with the same starting and finishing time each day), except for those employees with Alternative Work Schedules (AWS) such as Flexi-time, Flexi-tour or Compressed Work Schedules. The function of these exceptions is to enhance the ability of the Agency to carry out the mission and to address employee needs.
- B. The basic workweek for part-time employees shall be in accordance with applicable laws and regulations. The Employer will make every possible effort to establish a workweek of 4 consecutive days for part-time employees. When changes within the basic workweek become necessary, Management will give employees at least 1 pay period's notice, after consideration of the employee's circumstances.
- C. Unless flexi-time, flexi-tour or compressed work schedules apply, the basic non-overtime workday for full-time employees shall be the same 8 hours each day.
- D. The occurrence of holidays shall not affect the designation of the basic workweek.
- E. Upon request from the Union, the Employer will fulfill its duty to bargain under 5 USC 71, concerning flexi-time, flexi-tour and/or compressed work schedules.
- F. A rest period of 15 minutes will be allowed each employee twice during each 8-hour day. A rest period of 10 minutes will be allowed each employee during each period of extended shift overtime of at least 2 hours duration. On days when all work is overtime, a rest period of 15 minutes will be allowed for each period of 4 hours worked. Rest periods will not be appended to periods of leave or the beginning or end of the employees work shift.

Section 4 – General Overtime Provisions

- A. Time spent performing official business in excess of 8 hours a day, 40 hours a week, or 80 hours per biweekly pay period shall be considered overtime when officially ordered or approved for employees exempt from the Fair Labor Standards Act (FLSA). An employee covered under the FLSA shall be considered to be in an overtime status when performing work in excess of 8 hours a day or 40 hours in a week as defined by the FLSA that has been ordered and approved and/or determined to have been "suffered or permitted" in accordance with Federal regulations. All employees shall be compensated for overtime work either by compensatory leave or overtime pay, in accordance with applicable laws and regulations (See Section 6, "Compensatory Time").
- B. Overtime shall be distributed fairly and equitably to all bargaining unit employees.
- C. Overtime shall not be distributed or withheld as a reward or penalty.

- D. When an employee, whether covered by the FLSA or exempt, works irregular overtime, such overtime will be scheduled and paid in increments of 15 minutes. Daily increments of less than 15 minutes, if such occur, will be accumulated during the workweek. At the end of the workweek, any increments of 7 minutes or fewer will be rounded down and any increments of 8 minutes or more will be rounded up to the next 15-minute interval.
- E. When an employee, whether covered by the FLSA or exempt, works regular overtime, such time will be scheduled and paid in accordance with 5 C.F.R. 550.112(a)(1) which requires that employees be compensated for every minute of regularly scheduled overtime.
- F. Employees covered by both the FLSA and Title 5 USC shall receive overtime compensation in accordance with whichever benefit is greater.
- G. Employees covered by Title 5 CFR, when approved by Management, can accrue and use compensatory time. When feasible, the Employer shall grant such an employee's request for compensatory time rather than payment for overtime. The request will be made in writing.
- H. It is agreed that non-bargaining unit employees shall not be scheduled on overtime to perform the duties of bargaining unit employees for the sole purpose of eliminating the need to schedule bargaining unit employees for overtime.
- I. Employees who are called back to perform a period of irregular overtime on a day when work is not scheduled or for which the employee is required to return to his place of employment are entitled to a minimum of 2 hours overtime pay.
- J. When scheduled overtime is to be mandated for all employees in a division or series, employees will be notified at least 3 days in advance. Notice of 2 days will be given for all other scheduled overtime work, whenever possible.
- K. Employees will not be scheduled to perform functions on overtime below their grade levels unless the number of volunteers at the lower level is insufficient, and the employee accepts the assignment.

Section 5 – Implementation of Alternative Work Schedule (AWS)

The AWS's available, to be considered by Management, to the bargaining unit employees are:

- 5-4-9
- 4-10
- Flexi-tour
- Flexi-time

A. Requesting AWS

Requests for AWS must be made in writing 2 pay periods before the beginning of the quarter.

B. Approval/Denial of AWS

Approval or denial of AWS requests must be communicated to the employee one pay period before the start of the quarter. The approval/denial shall be based on the “three prong test” which is defined as:

1. Service to the public cannot diminish.
2. Productivity cannot diminish.
3. Costs of operations must not increase.

C. Implementation of AWS

1. Employees may request to change their work schedule quarterly.
2. Because changes to the work schedule are implemented quarterly, new requests for AWS, or requests for changes in an existing AWS schedule, must be made in writing 2 pay periods before the beginning of the quarter.
3. No more than one third of work unit’s employees may be scheduled for a compressed day off at any one time.
4. AWS (flexitour, flexitime, 5-4-9, 4-10) for individual employees cannot be combined.
5. To implement AWS, in any organizational subdivision, three prerequisite criteria must be met. These are:
 - Service to the public cannot diminish.
 - Productivity cannot diminish.
 - Cost of operations must not increase.
6. To resolve conflicts in schedules:
 - The Parties encourage informal resolution within the employees work unit.
 - The Service Computation Date (SCD), as shown on SF-50, shall be used to determine order of priority in choosing the schedules and days off when informal resolution is not successful.
 - A new employee coming into the work unit cannot force a change in the existing employees’ work schedules.

Section 6 – Compensatory Time

A. Compensatory (comp) time is an alternative form of compensation for overtime work. Upon request, and in accordance with applicable law, and with the approval of the supervisor, employees may be granted comp time in lieu of payment for overtime. Normally, comp time is restricted to irregular or occasional overtime work. Irregular or occasional overtime work is work that is scheduled after the beginning of the administrative workweek. Employees who work flexible schedules may be granted comp time whether or not the overtime work is irregular or occasional. Comp time earned is to be used prior to annual or sick leave and

must be used prior to the end of the leave year in which it was earned. Before changing an employee's work hour or tour of duty, consider granting comp time.

- B. Employees who are covered under the FLSA may elect comp time in lieu of payment of overtime. FLSA employees who fail to take comp time within the time limits must be paid overtime at the rate in effect when the overtime was earned.

Section 7 – Credit Hours

- A. Employees may earn credit hours by working beyond their normal tour of duty. They may then use the hours just like annual leave. Credit hours may not subsequently be converted to overtime pay. An employee may carry over a maximum of 24 credit hours at the end of any pay period. There is no time limit for using credit hours. However, should an employee leave NRCS he/she should use the hours before the last day of service or the hours will be paid in a lump sum at the employee's current regular hourly rate of pay.
- B. Credit hours will be earned in one-quarter hour (15 min.) increments. An employee may earn as much as two hours of credit per day.
- C. An employee may not earn credit hours on the same day that he/she uses credit hours or leave. An employee must earn credit hours within the regular workday. The Agency will only approve credit hour work during operating hours.
- D. Once an employee has earned some credit hours, he/she may use the credit hour in one-half hour increments by submitting a leave request for (SF-71) to the supervisor. Employees should check the "Other" block on the SF-71 and write in "credit hours".
- E. Part-time employees may also earn credit hours by working extra hours beyond their normal tour of duty. The maximum carryover for part-time employees is $\frac{1}{4}$ of the hours in their normal pay period. For example, a part-time employee who works 32 hours per week (64 hours per pay period) would carry over a maximum of 16 credit hours (instead of 24 which full time employees may earn).
- F. For approval purposes, credit hours are treated in the same manner as annual leave
- G. Employees may also use credit hours in lieu of sick leave, but employees on formal leave restrictions, which require documentation for use of sick leave, must submit such documentation.
- H. Requests to use credit hours have the same priority as annual leave. In the event of conflicts over a day off, it does not matter whether annual leave or credit hours have been requested.

Article 11 - Pay Administration

Section 1 - Minimal Background

The parties acknowledge that at the time this Contract was bargained, the Department is finalizing a Common Policy on Pay Administration.

The parties further acknowledge that until the Department issues this new policy on pay, NRCS Puerto Rico employees will be continued to be regulated under the current policy.

Section 2 - Policy Statements

However, the following policy statements about overtime are hereby approved and agreed:

- Overtime shall be distributed fairly and equitably to all bargaining unit employees;
- Overtime shall not be distributed or withheld as a reward or penalty;
- The Employer will, to the maximum extent possible, notify the employees of the opportunity to overtime work.
- The Employer also will, to the maximum extent possible, give a three day prior notification to the employees required to work after their normal duty so the employees can plan accordingly.

Section 3 - Future Bargaining

The parties agree that as soon as the Department issues the Common Policy on Pay Administration, the parties will meet to fully bargain its impact and implementation. The parties also agree that the new Article will be part of this Contract for the term of its duration.

Article 12- Holiday Work

Work on holidays will be avoided to the maximum extent possible. In the event, that holiday work is needed, the Employer or Designee or designated officials acting in this position may approve work on holidays; however, employees shall voluntarily perform holiday work.

- A. First consideration for holiday work assignments will be given to employees currently assigned to the office in need of the overtime work. Second consideration will be given to other employees who have the required skills to do the job. Work on holidays will not be assigned as a reward or penalty, but solely in accordance with actual needs.
- B. The Employer agrees that, upon reasonable request, the Employer or Designee, in order to ensure consistency, will consider excusing employees from working on a holiday if another employee with the required skills is readily available and willing to work.
- C. The business rationale concerning holiday hours worked will be made available, when requested, to employees and/or the Union to aid in resolving specific complaints concerning distribution of work on holidays. If a dispute arises, the grievance procedure will be followed.
- D. The Employer will notify those employees who are needed for holiday work assignments at least 3 days in advance.
- E. If an employee is not more than 30 minutes late in reporting for a holiday work assignment, he/she will not be denied the remainder of the holiday work assignment. It is further agreed and understood that if an employee who has been assigned holiday work cannot report for the assignment due to illness or emergency, such employee shall notify the appropriate available supervisor. However, the Employer agrees to give consideration to an employee who, because of special or unique circumstances, is unable to meet these requirements. In this connection, all employees shall be informed as to the proper procedure to use for notification of absence.
- F. The following Federal designated holidays will be granted to all bargaining unit members unless changed by law and/or regulations.

Holidays by Federal Statute

New Year's Day - January 1
Martin Luther King - Third Monday in January
Washington's Birthday - Third Monday in February
Memorial Day - Last Monday in May
Independence Day - July 4
Labor Day - First Monday in September
Columbus Day - Second Monday in October
Veterans Day - November 11
Thanksgiving Day - Fourth Thursday in November
Christmas Day - December 25

In the event that any future Federal Holiday not listed above is designated by Federal Statute, the same will also be granted to all bargaining unit employees. In addition to the designated Federal holidays, when offices are closed on a local holiday, such as Three Kings Day, Good Friday, or Constitution Day, in accordance with agency policy, absence on such day is not chargeable to leave. Such approved time off is considered an authorized absence without charge to leave.

Article 13- Use of Official Facilities

Section 1 - Office Space and Furnishings

- A. The Employer will provide adequate space for confidential discussions between bargaining unit members and designated Union representatives, held in accordance with the terms of this Agreement. When available, during and after duty hours, the Union may reserve and use the Employer's conference rooms or other suitable spaces for official or internal business meetings of its officers, stewards, and members.
- B. The Employer will provide the Union with a private office space, with a telephone line, a fax machine, a personal computer and printer, a desk with two chairs, not more than 4 (four) filing cabinets with locks, and a table with five additional chairs.
- C. If Union office is not within the commuting area, Article 8, Section 2 will apply.

Section 2 - Issuances

- A. Although the Union has been provided with free internet access, the Employer may still provide the Union access to current Agency or Departmental written issuance on personnel policies, practices, or working conditions, organizational structures, labor-management materials, or any written document that is related to, or may have an impact on bargaining unit employees, the Union or the Agency. A copier will be made available to the Union for the purpose of duplicating one copy of the documents referred to in this Agreement.
- B. The Union will be provided with access to personnel manuals and guidelines, and upon request, to copy materials from personnel manuals and guidelines.
- C. Usually, all distribution of issuance under this Article will be at no cost to the Union.

Section 3 - Non-Duty Use of Facilities

The Employer agrees that where there are facilities, they shall be made available for local meetings before or after duty hours or during lunch periods if such space is not already committed. The Union must give sufficient advance notice to ensure no disruption to the normal mode of business.

Section 4 - Telecommunications Systems

- A. The Employer will make telephones available to the Union for representational purposes of NRCS Puerto Rico employees including for issues related to USDA Service Centers or Service Center Initiatives within the Department.
- B. The Union agrees that the use of telephones will not be used for internal Union business.
- C. The Union will be provided a computer with access to the Internet.

Section 5 - Other Facilities and Services

The Employer agrees to furnish customary routine services that are consistent with the best interest of the Employer, employees and the Union. Such services include internal mail (for other than mass mailing), minimal photocopy equipment, and the like. This will include Union representatives on official time conducting representational duties away from their permanent duty station.

Article 14 - Communications

Section 1 - Bulletin Boards

- A. The Employer will provide Union bulletin board space, not less than 36 inches x 36 inches.
- B. Union bulletin boards will be prominently identified as such by the Union, and will be located in areas accessible to bargaining unit employees. All posting will be marked prominently as "Union Notices", and only the designated Union bulletin boards will be used for such posting.
- C. The Union bulletin board will be used solely for Union materials. Management may not post any material on the bulletin board without the consent of a Union elected official.

Section 2 - Distribution of Union Publications

- A. Official publications of the Union may be distributed on USDA, NRCS property by Union representatives during the non-duty time of the Union representatives who are distributing, and the employees receiving the materials, distribution shall not disrupt operations. All such materials shall be properly identified as official Union issuance.
- B. The Union may distribute Union publications

Section 3 - Contents of Literature

Union literature, whether posted on bulletin boards or distributed, must not violate any law, regulations, security of the office, or provisions of this agreement. Union Statements will not include defamatory or derogatory remarks that undermine the authority of the agency and its officials, when the remarks have no reasonable nexus to legitimate representational issues. A duly selected arbitrator will address any disagreement over what constitutes defamatory or derogatory remarks.

Section 4 - Space for Pamphlet Racks

To the extent practicable, the Employer will provide space for Union-supplied publication racks.

Section 5 - Addressing New Employees

The Employer will provide the Union an opportunity to address new employees during orientation sessions, and will introduce new employees to the Union representative.

Section 6 - Use of fax machines and office copying equipment

The Employer will permit reasonable use of fax machines and office copying equipment to reproduce material related to the Labor-Management process.

Article 15 - Parking and Parking Areas

- A. The Employer agrees, insofar as possible, to collocate offices in areas where there is sufficient parking space for all employees and prospective clientele.
- B. Union Officials will be notified and will negotiate all aspects related to the assignment of parking spaces.
- C. The required number of reserved spaces will be made available to accommodate physically handicapped personnel after the employee has requested a space in writing and it has been certified that the employee's handicap is of such a nature as to warrant a reserved parking space.

Article 16 - Reduction-In-Force and Transfer of Function

Section 1 - Negotiations

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

Section 2 - Notification to the Union

When it is anticipated that a RIF will affect bargaining unit employees, the Union President will be given the earliest possible preliminary notification in writing. To the maximum extent possible, this notification will be given at least 180 days in advance of the anticipated implementation date. The preliminary notification will include the following information:

1. Specific functions to be transferred and identification of employees assigned to this function.
2. The reason for the RIF.
3. The competitive area and levels (type of positions and approximate number of employees) that the Employer proposes may be affected initially in a RIF.
4. The anticipated effective dates that the action will occur.
5. The manner in which Management anticipates exercising its discretion under 5 CFR 351.

Section 3 - Impact and Notification to Employees

- A. The Employer will attempt to minimize actions that adversely affect employees, which often follow a reduction-in-force by studying, to the maximum extent possible, all feasible solutions before accomplishing reductions. All reductions-in-force will be carried out in strict compliance with all applicable laws and regulations.
- B. The Employer will give an advance general notice of 120 calendar days to employees who may be affected by a reduction-in-force action, and a specific notice of 90 calendar days to individual employees who will be affected by a reduction-in-force action.
- C. Employees receiving a reduction-in-force notice have the right to review retention lists pertaining to all positions for which they are qualified within their competitive area. This

includes the retention register for their competitive level and those for other positions for which they are qualified, down to and including those in the same or equivalent grade as the position offered by the Agency. If separation occurs, this includes all positions to or below the grade level of their current positions in their competitive areas. Affected employees shall have the right to the assistance of the Union when reviewing such lists or records.

- D. Any career or career-conditional employees who are separated because of RIF will be placed on the re-employment priority list for all competitive positions in the commuting area for which qualified and available in accordance with applicable rules and regulations. It is understood that acceptance of a temporary appointment will not alter the employee's right to be offered permanent employment.
- E. Bargaining unit employees have the right to outplacement services described in the Department of Agriculture and NRCS Career Transition Assistance Plans and 5 CFR 351.

Article 17 - Contracting Out Bargaining Unit Work

Management shall not contract with the private sector to perform any work currently or last performed by bargaining unit employee without holding a competition in compliance with OMB Circular A-76. Upon commencement of preliminary competition, management shall notify the union and the potentially affected employees in writing. The Union shall be allowed to review the function descriptions and function groupings prepared during the preliminary planning stage and submit comments to management on these items, and management will review and provide a written response to these comments.

The Agency shall allow the union to appoint a union representative to serve on every Most Effective Organization (MEO) and Performance Work Statement (PWS) team formed under the rules of A-76 that affects bargaining unit employees or positions. The Agency agrees that the assignment of the Union's designee will be treated as assignment of work for the purposes of duty time to participate. Time spent participating on these teams will not be deducted from the Union's bank of official time.

If a decision is made under A-76 to contract out work performed by bargaining unit employees, or if an A-76 decision results in an in-house win but FTE cuts, the Union will be notified in writing, not more than 7 workdays after the decision is received by management. The Union will be allowed to submit alternate suggestions to RIF procedures within 2 weeks of the written notification, and management will consider those suggestions and respond in writing before the beginning RIF procedures.

The Union will be invited by management to participate in all applicable phases of the competitive sourcing process as required and/or permitted by law, regulation, or directive, including OMB Circular A-76, the portions of the Federal Acquisition Regulation referred to in OMB Circular A-76, and all guidance released by OMB in relation to OMB Circular A-76.

Management will provide to the Union, upon request, all applicable information regarding contracts awarded related to outsourcing bargaining unit positions, to include the length of the awarded contract.

Management will agree to consider insourcing any function that is currently performed by the bargaining unit but is later contracted out to any entities other than federal employees (including private sector, federal reimbursable, or other non-governmental entities) if that entity's actual fees charged to the agency surpass the fees estimated at the time the contract was let by more than 10% per year, for the life of the contract, or for the portion of the contract period already expired. "Insourcing" means bringing the work back in-house so that it will be performed by federal employees in the bargaining unit. Management consideration of insourcing and the resulting conclusion will be provided to the Union, in writing, within 60 days of the end of the contract, upon request.

If management contracts with the private sector to perform any work currently or last performed by bargaining unit employees without holding a competition in compliance with OMB Circular

A-76 due to (1) statutory exemption, (2) prior written permission from OMB, (3) violation of Federal policy, or (4) any other reason, then management shall notify the affected bargaining unit employees and the Union within 60 days prior to any such contract being signed by the agency, except in emergency situations in accordance with 5 USC 7106(a)(2)(d). If such a decision will result in adverse employee action or any change in employee working conditions, the Union will be allowed to submit alternatives to such adverse action or change in working conditions and management must consider these alternatives and provide a written response to the union regarding these alternatives.

Article 18 - Training and Career Development

Section 1 - Statement of Policy

The parties agree that the primary function of training is to assure the optimum use of human resources in attaining organizational needs and, when feasible, to provide career development opportunities to employees. While it is understood that determination of training needs is the responsibility of the Employer, the parties agree that the Employer should provide training necessary for the performance of employee's assigned duties, and, where appropriate, for improvement of organization and individual performance. The Employer will provide a share of its training resources to prepare for existing and projected staffing needs.

Section 2 - Non-Discrimination

The parties agree that nomination and/or selection of employees to participate in training and career development programs and courses shall be non-discriminatory and made without regard to sex, race, religion, age, marital status, ethnic group, handicap and Union membership or activity, and shall be in accordance with equal employment opportunity guidelines, and consistent with other applicable laws.

Section 3 - Training Programs

The parties will establish a Training Committee. This committee will assess training needs per location and recommend a suitable program considering the agency's needs and budget constraints. The committee shall have representation from the field, the Union and a representative for State Office. The Union will recommend the names of the members to the Employer or Designee who will approve them. Members of this committee will serve two-year terms.

- A. The Employer will remind employees, at least annually of the criteria for approval of training, and the nomination procedures.
- B. Training nominations and/or approval will be based on the potential use of the training in the employee's current position, or individual development plan (IDP), and other criteria established by applicable law, rule or regulation. Nominating and approving officials will apply such criteria equitably.

Section 4 - Individual Development Plan

- A. Career development for individual employees shall be encouraged through establishment of an Individual Development Plan (IDP).
- B. The Employer agrees to provide information to employees, on an annual basis, on the purpose and means of establishing Individual Development Plans, and the designated approving officer.
- C. Employees may initiate Individual Development Plans with their supervisors. The supervisor will assist the employee in the preparation of the IDP and will review it with the employee to assure conformance with organizational needs and individual career needs. The plan will be referred to the designated approving official and the employee will be notified of the approval/disapproval or the need for modification.

Section 5 - Employee Training Counseling

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

Section 6 - Training Expenses

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

Article 19 - Incentive Awards

Section 1 - Purpose and Policy

- A. The parties agree that a motivational Incentive Awards Program is a necessary and useful mechanism through which employees' accomplishments shall be recognized. Employees and Managers are strongly encouraged to take an active part in the program by objectively recognizing and rewarding contributions which increase productivity, empower employees, and promote team building.
- B. The parties also agree that an effective incentive awards program should result in a more effective workforce, higher productivity, and improved working environment. Within the context of budgetary considerations and limitations, the Employer may provide incentive awards to employees whose performance is substantially in excess of normal expectation and to employees who submit suggestions that result in measurable improvements in efficiency. The Employer should let the employee choose if he/she prefers a cash award or a "time off" award.

Section 2 - Awards Committee

- A. The parties will establish an Incentive Awards Review Committee consisting of 4 members. The Employer will have 3 representatives and the Union will have 1 representative.
- B. This Committee is established to perform annual post-reviews and analyses of the Incentive Awards issued by the Agency.
- C. This Committee will receive nominations from any NRCS employee.
- D. The Committee will initially meet within 60 days of the signing of this agreement. The committee will perform the following activities:
 - 1. Review written justifications for awards.
 - 2. Develop trend analyses, by organization, which will identify as a minimum:
 - Any perceived disparate treatment in issuing or receiving of awards.
 - Awards that might be based on factors other than merit.

- Fair and equitable distribution by grade, race, gender, and organizational component.
 - Timeliness
3. Submit written analyses, findings, and recommendations to the Employer or Designee or his/her designate.
- E. The Committee has no veto power but serves only in an advisory capacity. As an advisory committee it is responsible for promoting fairness and equity in the distribution of awards of all types. The Committee will recommend that awards be used to improve the quality of work life and provide incentive to employees to improve their performance and increase efficiency of NRCS operations.
- F. The Committee will recommend usage of time-off awards in lieu of monetary awards, whenever possible and at the request of the employee.

Article 20 - Equal Employment Opportunity

Section 1 - Equal Employment Opportunity

- A. The Employer and the Union affirm their commitment to the policy of providing equal employment opportunities to all employees and to prohibit discrimination because of race, color, religion, gender, political affiliation, sexual orientation, marital or family status, national origin, age, or disability, and to promote the full realization of equal employment opportunity (EEO) through a continuing Affirmative Employment Action Program.
- B. The Employer will have a positive, continuing and results-oriented program of affirmative action. The parties agree that Equal Employment Opportunity shall be administered in accordance with Title 5 USC, Executive Order 11478, authorizing legislation, and applicable regulations.
- C. The Employer will be responsible for taking necessary affirmative action with the objectives of ensuring a work-place free of discrimination based on any of the factors listed above and will take appropriate remedial action when discrimination occurs. The Agency also agrees to provide reasonable accommodation in accordance with law and regulations.
- D. The parties agree that all reasonable efforts will be made to avoid adverse impact on any group of employees who are protected under the EEO laws within the limits prescribed by law, fiscal considerations, and work-related conditions. The Employer agrees to engage in impact and implementation bargaining in this regard.
- E. The Employer and the Union will conduct an on-going campaign to eradicate every form of discrimination.
- F. In the administration of the Federal Equal Opportunity Recruitment Program (FEORP) and the Multi-Year Affirmative Employment Program Plan (AEP), the Employer agrees to place special emphasis on internal recruitment and promotion. The Employer will develop, establish, and maintain contact with the minority and female workforce, community groups, schools, universities, and other public and private groups to improve employment status of minorities and women in the workplace.

Section 2 - Affirmative Action Plan

- A. Establishment and implementation of the Affirmative Action Plan (AAP) is a fundamental Employer objective. The Employer will continue to provide overall management support and budgetary planning to achieve affirmative action objectives throughout the organization.
 - 1. The Employer will provide the Union with the procedures for developing the Affirmative Action Plan, including time frames set by both the Equal Employment Opportunity Council and the Employer.

2. Union and Management in partnership will review the AEP during its final stages of development for the purpose of providing comments and input affecting bargaining unit employees. The multi-year AEP should reflect a mutually acceptable; results oriented program for affirmative action intended to resolve to problems of under-utilization and under-representation of the protected groups listed above according to laws and regulations.
 3. The Employer will publicize affirmative action measures, including the Multi-Year AEP to all employees. Employees who wish to read the Multi-Year AEP will be allowed to review the office copy.
- B. Consistent with the EEOC Guidelines for Agency AAP'S, the Employer's Plan shall include as appropriate:
1. Identification of the most populous GS occupations that shall be analyzed for under-representation when compared to the Civilian Labor Force or SMSA, whichever is most appropriate.
 2. Identification of designated target occupations.
 3. Analysis to identify impediments to the elimination of under-representation for target occupations.
 4. Determination of anticipated vacancies, over the period of the plan in targeted occupations.
 5. Identification of innovative staffing techniques to increase pools of qualified internal and external candidates for targeted occupations.

Section 3 - Information and Data

- A. The Employer or its designate shall make available to employees written information describing the Affirmative Action Plan and the EEO complaint procedure including access through the Internet.
- B. The Employer agrees to furnish the Union the following EEO information on a yearly basis:
1. Work-Force Profile by grade levels according to sex and race. Should age and handicap data become available, it will be provided to the Union.
 2. Work-Force Profile by selected occupations according to sex and race.
 3. Promotion trend data for selected positions according to sex and race.
 4. Outside hiring statistics for selected positions according to sex and race.

Section 4 - Complaints

- A. Any employee who wishes to file or has filed a complaint shall be free from coercion, interference, and reprisal, and shall be entitled to expeditious processing of the complaint within the time limits prescribed by regulations. Any employee who seeks to file a complaint shall have the right to select a representative of his/her choosing.
- B. An employee has the option of filing a complaint under the Negotiated Grievance Procedure (Article 27) or under the Agency EEO complaint procedure, but not both. EEO counselors will provide employees with written descriptions of both procedures.

Section 5 - Duty status

Union representation and Employer participation in EEO under this article shall be on official time as outlined in Article 32 (Official Time) of this Agreement.

Section 6 - EEO Advisory Committees

The EEO advisory committee, consisting of 3 union and 3 management officials, will continue to carry out EEO responsibilities in order to assure that the appropriate personnel will be provided with all relevant information discussed in this Article in accordance with all applicable laws, rules and regulations. This committee will submit semi-annual reports to the Employer or Designee.

Article 21 - Upward Mobility

Section 1 - Goal

The parties agree that the goal of upward mobility is to provide employees the opportunity to compete for USDA, NRCS positions so as to advance and perform at their full potential.

Section 2 - Objective

In implementing upward mobility programs, the Employer will consider the following approaches that will provide for:

- A. Identification of job patterns and promotional opportunities commensurate with employee skills and potential.
- B. Lateral reassignments and bridge positions for employees whose current jobs do not provide an opportunity for further advancement.
- C. Education and training to provide employees the opportunity to enhance promotional qualifications.
- D. Staffing techniques.
- E. Elimination of non-performance related impediments as promotion factors.

Section 3 - Affirmative Action Planning

Upward mobility objectives are to be an integral consideration in affirmative action planning and will be consistent with equal employment opportunity goals and objectives.

Section 4 - Educational Programs

The Employer, where practicable, will establish programs with local institutions or other training sources that increase the opportunity for employees to participate in continuing education programs.

Article 22 - Child/Dependent Care

Section 1 - Policy and Planning

This article addresses the child or dependent care needs of USDA, NRCS - Puerto Rico employees. The parties recognize that working parents may have special child or dependent care needs during working hours. The parties recognize the need for such employees to secure appropriate child/dependent care arrangements.

Section 2 - Day Care Information

The Employer will provide inquiring employees with information regarding USDA offered benefits, not State, Local, or Private businesses.

Section 3 – Employee Needs

The Employer recognizes that it may be necessary for employees to contact child or elderly care providers during duty hours. Employees will be allowed at least one phone call daily to child/elderly care providers.

Section 4 - On-going Support

The Employer will participate with USDA, and other entities, in providing support to various activities to meet on-going child/dependent care needs. These may include, but are not limited to, such things as child-care and parenting information, elderly care, workshops, counseling and fund-raising support. The parties will work together in disseminating this information to employees and inviting their support and/or participation.

Section 5 - Orientation

During the orientation of new employees, the Employer will discuss the subject of the availability of information from social service, health care agencies or related organizations on adequate child and dependent care centers. The Union may raise the subject if the Employer does not comply with the requisite.

Section 6 – Leave

The Employer agrees to consider and respond quickly to emergency leave without pay requests brought about by unexpected changes in childcare or dependent care arrangements. Approval of such leave requests will normally be granted unless the Employer determines the employee's services are necessary to perform agency work.

Article 23 - Performance Management System

Section 1 - Statement of Policy

Management and the Union has agreed that the purpose of the performance management system is to improve individual and organizational performance, program effectiveness, and accountability by focusing on results, service quality, and customer satisfaction, and by aligning standards and elements with organizational goals and strategic plans

Section 2 – Employee Participation

Employees will be provided the opportunity to meet with their supervisor to provide input into the establishment of their performance elements and standards. Work performance will be discussed with the employee in private at least once during appraisal period. As a minimum, this progress review will be accomplished during midpoint of the appraisal period.

The Union will be given the opportunity to participate in studies conducted on employees in the development or revision of the performance management system. Employer agrees to notify, in writing, AFGE Local 0055, of any changes in personnel policies and practices affecting the working conditions according to Article 3, Section 7(a).

Section 3 – Appraisal System Principles

- A. In General: Performance standards must be consistent with the duties and responsibilities contained in the employee's position description. The application of performance standards and the critical and non-critical elements must be fair, reasonable, and to the maximum extent feasible, objective. Performance standards will be applied in a fair and equitable manner.
- B. Performance Standards: Performance standards must be in writing and provided to the employee at the beginning of the appraisal period and given to the employee at that time. Standards will be established in such a way that performance can be accurately evaluated. When feasible, terms such as timeliness, quantity, quality, and accuracy will be expressed to indicate how well, how accurate, how soon, or when, how many or how much.
- C. Measuring Performance: When statistical data is utilized in order to evaluate employee performance, the procedures that are used must reasonably insure the accurate evaluation of performance.
- D. Appraising Employees: When rating employees or otherwise apply performance standards, the Employer shall consider factors, which affect performance that is beyond the control of the employee. Employees will be evaluated and receive ratings only for those performance elements contained in their performance appraisal plan, with ratings based on accomplishments evaluated against established performance standards. Employees who use authorized official time in labor relations' activities will not be disadvantaged on their appraisals for approved absences or use of official time for labor relations

Article 24 - Within Grade Increases

Section 1 - General

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

Section 2 - Definition of Acceptable Level of Competence

For within-grade purposes, acceptable level of competence means where a performance is at or above the fully successful level in the performance standards for all critical elements.

Section 3 - Basis for Granting or Denying

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

Section 4 - Supervisory Responsibilities

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

Section 5 - Decisions

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

- A. A statement of the reasons for the negative determination.
- B. Identification of the areas in which the employee must improve in order to be granted a within-grade increase.
- C. The rights to file a written request for reconsideration no more than 15 calendar days after receiving the negative determination.
- D. The name and address of the official who will reconsider the official determination and with whom the request for reconsideration should be filed. This individual shall be at an organizational level higher than that of the supervisor or the reviewing official, if such a level exists.

- E. The right of the employee to contest, orally and/or in writing, the basis for the negative determination.
- F. The right of the employee and/or his/her representative, to be granted a reasonable amount of official time to review material relied upon to support the negative determination and to prepare a response to the determination.
- G. That an extension of the time period for making a reconsideration presentation may be granted upon request to the reconsideration official.

Section 6 - Reconsideration

- A. When a request for reconsideration of a negative determination is received, the Personnel Office shall establish an employee reconsideration file which shall contain all pertinent documents relating to the negative determination including copies of the written determination and the basis therefore; the employee's written request for reconsideration; the report of investigation if an investigation was made; the decision of the reconsideration official; any other documents the employee may have submitted regarding the determination; and a summary of the oral presentation, if applicable.
- B. The reconsideration file shall not contain any document that has not been made available to the employee and his or her representative with an opportunity to submit a written exception, including any exception the employee may have had to the written summary of his or her personal presentation.
- C. The management official to whom a timely request for reconsideration has been filed will give the employee and his or her representative an opportunity to explain, personally, why he/she believes the negative determination is erroneous.
- D. The management official shall reconsider the official determination of the supervisor, taking into consideration any personal and/or written response from the employee and/or his/her representative.
- E. The management official, after reconsideration, will issue a decision in writing on the negative determination, within 15 calendar days after meeting with the employee and his or her representative. If this decision sustains the initial negative determination, the decision letter shall notify the employee of his or her right to grieve or appeal to the MSPB that decision. The notice of decision shall inform the employee that the Union, on behalf of the employee, may timely file a written request to invoke arbitration no later than 30 days after the decision on reconsideration.
- F. A copy of the decision of the management official will be sent promptly to the employee, his or her representative, and to the Personnel Office.
- G. An employee has the right to request and be given a separate consideration for each negative official determination, if there is a subsequent denial of a within grade increase 12 or more months later.
- H. If the reconsideration decision reverses the initial determination, the within-grade increase shall be effective retroactive to the original due date.

Section 7 - Appeal Rights

When a determination is made that an employee's job related activities are not at an acceptable level and the determination is final, an employee may file a grievance/complaint or appeal the adverse action to the Merit Systems Protections Board.

Section 8 – Union Notification

At the employee's discretion, the Union will be notified when a within-grade increase is withheld with the name and position of the affected employee at the time of the proposal.

Section 9 - Effective Date/Administrative Error

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

Article 25 – Actions based on Unacceptable Performance

Section 1 – Scope Definition

- A. An action based on unacceptable performance is defined as the reduction in grade or removal of an employee whose performance fails to meet established performance standards in one or more critical elements of the employee's position.
- B. This Article applies only to employees who have completed their probationary or trial period. It does not apply to employees serving a temporary appointment, except as defined in Article 1, Section 3 of this Agreement.

Section 2 – Procedural Requirements

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

Section 3 – Opportunity to Improve (OTI) Plan

- A. As early as possible, the employee's attention will be directed to areas of performance needing improvement, and steps will be initiated to assist the employee in meeting performance standards.
- B. When informal efforts discussed above do not result in acceptable performance, a (OTI) will be developed with the participation of the employee.
- C. The OTI will include the following:
 - 1. Identification of the critical element(s) and performance standard(s) for which performance is unacceptable.
 - 2. Specific examples of how the employee's performance is failing to meet the standard.
 - 3. Advice as to what the employee must do to bring their performance up to an acceptable level.
 - 4. A statement that the employee has a reasonable period of time, but never less than 90 days in which to bring the performance up to an acceptable level.
 - 5. The OTI should include the supervisor's biweekly assessment, in writing, of the employee's progress in meeting the required level of performance.
- D. When an employee requests a change to a lower grade because of his/her inability to perform the duties of the current position, the supervisor will make a reasonable effort to place the

employee in a lower graded position, if available, in which the supervisor believes the employee can successfully perform.

Section 4 – Written Notices

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

Section 5 – Employee Response

- A. After a proposal has been issued, the employee will be given the opportunity to respond orally and/or in writing prior to a decision. Any oral or written reply must be received by the supervisor within 10 workdays.
- B. If the employee elects to make an oral reply, the supervisor will document the oral reply and provide a copy to the employee.

Section 6 – Decision Letter

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

Section 7 – Time Extensions

Except for the written notice period in Section 4, any of the time limits set forth in this Article may be extended or waived by mutual agreement of the Parties.

Section 8 – Removal of “Unacceptable” Performance Information in Personnel Files

If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed and the employee’s performance continues to be acceptable for (1) year from the date of the advance notice, any entry or other notation regarding the “unacceptable” performance for which the action was proposed shall be removed from any Agency record relating to the employee.

Article 26 - Disciplinary and Adverse Actions

Section 1 - Statement of Purpose and Policy

- A. The parties agree that the objective of discipline is to correct and improve employee behavior so as to promote the efficiency of the service. The parties agree to the concept of progressive discipline designed primarily to correct and improve employee behavior. Bargaining unit employees will be the subject of disciplinary or adverse action only for just cause and when such action will promote the efficiency of the service.
- B. All disciplinary and adverse actions will be consistent with Agency regulations and existing laws. Early communication between the affected employee and supervisor to achieve resolution is encouraged. If either party (employee or supervisor) believes that resolution would be aided if the Union were involved in these early discussions, he/she is encouraged to contact the applicable Union Steward. Every effort will be made to assure that actions/agreements are fair and equitable to both parties involved.

Section 2 - Definitions

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

Section 3 - Counseling and Warnings

Counseling and assistance including oral warnings that are informal in nature may precede discipline. Counseling and warnings will be conducted privately and in such a manner so as to avoid embarrassment of the employee.

Section 4 - Reprimand

- A. An official reprimand is a written disciplinary action, which specifies the reasons for the action. The reprimand will specify that the employee may be subject to more severe disciplinary action upon any further offense and that a copy of the reprimand will be made a part of the personnel folder for up to 18 months. If a discussion is to be held when a reprimand is to be given the supervisors will advise the employee of his/her right to Union representation prior to the start of the discussion.

- B. The letter of reprimand will inform the employee that he/she has the right to file a grievance on the reprimand under the negotiated grievance procedure, and the right to Union representation.

Section 5 - Short-term Suspensions

- A. An employee against whom a suspension for 14 days or less is proposed is entitled to:
1. An advance written notice stating the specific reasons for the proposed action.
 2. A reasonable time, usually not to exceed 10 workdays, to answer orally and/or in writing and to furnish affidavits and other documentary evidence in support of the answer.
 3. Be represented.
- B. After considering the employee's response, the Employer will issue a written decision. If the decision is unfavorable to the employee, the decision may be grieved, beginning with the last step of the grievance procedure.

Section 6 - Removal, suspension for more than 14 days, Reduction-in-Grade, Reduction-in-Pay, Furlough of 30 days or less.

- A. An employee against whom such action is proposed is entitled to:
1. 30 (thirty) days advance written notice stating the specific reasons for the proposed action.
 2. 10 (ten) workdays to answer orally and in writing, and to furnish affidavits and other documentary material evidence in support of the answer. Time extensions will be granted on a case-by-case basis and will not be unreasonably denied.
 3. Be represented.
- B. After considering the employee's response, the Employer will issue a written decision.
1. If the decision is to effect an action specified in this section, it will specify the reason therefore, the effective date, the action to be taken, and the right to grieve or appeal the decision.
 2. The employee may appeal to either the Merit Systems Protection Board in accordance with 5 U.S.C. Chapter 71 or grieve under the terms of this negotiated Agreement at the final pre-arbitration step. The choice of forum is irrevocable. An employee shall be deemed to have exercised his or her option at such time as the employee timely files under the statutory procedure or the negotiated procedure, whichever occurs first. Arbitration must be invoked no later than 30 days after the effective date of the action.
- C. Employees shall be entitled to representation in all phases of the procedure.

Section 7 – Timeliness of Discipline

If the Employer feels that disciplinary or adverse action is necessary, such action will be initiated timely after the offense was committed or made known to the Employer.

Article 27 - Grievance Procedure

Section 1 - Purpose

The purpose of this Article is to provide a mutually acceptable method for the prompt and equitable settlement of grievances filed by bargaining unit employee(s), the Union or the Employer.

Section 2 - Definitions, Coverage and Scope

A grievance means any complaint subject to the control of the Employer, which seeks personal relief:

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

Section 3 - Exclusivity

Grievances may be initiated by employee(s) covered by this Agreement and/or their Union representative, or by the Employer. 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 Employer for the resolution of negotiated grievances.

Section 4 - Representation

- A. Bargaining unit employees filing a grievance under this procedure, may represent themselves or be represented only by a designate of the Union.
- B. Upon filing of a grievance, and when an employee is self-represented, the Union has the right to be present during the grievance proceedings as an observer.
- C. Where the grievant elects Union representation, meetings and communications with regard to the grievance attempts at resolution shall be made through the designated Union representative.

Section 5 - Resolution of Grievances and Employee Standing

- A. The Union and the Employer agree that grievances should be settled in an orderly, prompt and equitable manner so that the efficiency of the Employer may be maintained and morale of employees shall not be impaired. The Employer and the Union will make a sincere effort to resolve grievances at the first level of supervision. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination or reprisal, consistent with 5 USC 71 and this Agreement, in seeking adjustment of grievances.
- B. Both the Union and the Employer will conduct themselves according to the articles on Union/Management rights and responsibilities, and/or Alternative Dispute Resolution.

Section 6 - Grievance/Arbitration Questions

In the event either party should declare a grievance non-grievable or non-arbitrable the original grievance shall be considered amended to include this issue. All disputes of grievance/arbitration shall be referred as threshold issues in the related grievance, except where the parties agree to hear the threshold issue and merits of the grievance separately.

Section 7 - Time Limits

- A. Grievances must be presented within 15 workdays of the action or date the party became aware of it.
- B. Proof of service shall be a return post office receipt executed by the person served; or a written acknowledgment from the person served when hand delivered.
- C. All the time limits in this Article may be extended by mutual consent.

Section 8 - Options

- A. In accordance with 5 USC 7121, an employee at his/her option may raise matters covered under Section 4303 (Unacceptable Performance) and 7512 (Adverse Actions) under the appropriate statutory procedures or the negotiated grievance Procedure, but not both. An employee shall be deemed to have exercised his/her option at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing, whichever event occurs first. Similarly, an employee affected by a prohibited personnel practice under Section 2302(b) (1) of the Civil Service Reform Act may raise the matter under a statutory procedure or the negotiated procedure but not both. An employee shall be deemed to have exercised his/her option at such time as he/she timely files a grievance in writing or files a written complaint under the statutory EEO procedure, whichever event occurs first.
- B. Before filing a grievance that alleges discrimination, the employee may first discuss the allegation with an EEO counselor. Time limits for filing such complaint must be in accordance with all applicable current and future laws, rules and regulations governing EEO. If the employee elects to file under the negotiated Procedure, he/she shall proceed under Section 9 of this Article within 15 working days. Starting with the Step 3 official or higher, that official will have 30 days to attempt to resolve the matter and issue a decision.

Section 9 - Procedures for Employee Grievances

- A. The Employer and the Union agree that a sincere effort will be made to resolve grievances at the lowest possible level. Employees are encouraged to resolve concerns between themselves and their immediate supervisor without resorting to the grievance procedure. The filing of grievances shall not be constructed as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability to the organization, nor is it intended to reflect personally on any representative of the Employer. Employees dissatisfied with an order properly grounded in supervisory authority must follow the order first and then grieve the matter if they believe relief should be granted, except in situations which pose a real and immediate hazard to the employee's health and safety.
- B. A grieving employee will first raise the matter to be grieved to the appropriate Union official in person, if on site, or by telephone. The Union will raise the issue with the grievant's immediate Supervisor within 15 workdays of the date of the incident giving rise to the grievance. The written grievance will include the known details of the incident being grieved, the personal remedy being sought, and the designation of a Union Representative.
- C. Within 7 workdays of receipt of the written grievance, the Supervisor will review the matter being grieved and hold a meeting to include the supervisor, the grievant and/or Union Steward. The Supervisor may have a labor advisor present to discuss the issue(s). Within 10 workdays of that meeting, the Supervisor will forward a written response granting or denying the remedy requested.
- D. If not satisfied with the Supervisor's response, the Union has 15 workdays to request in writing a review by the Employer or Designee of the supervisor's decision. Within 10

workdays of receipt of the Union's request, the Employer or Designee will schedule a meeting to include the Union's principal point of contact and the grievant, together with the Employer or Designee. Within 10 workdays of that meeting, the Employer or Designee will forward a written decision granting or denying the remedy requested.

- E. If the Union is not satisfied with the Employer or Designee's response, it may proceed to arbitration within 30 calendar days after receipt of that final response. The Union will request the Federal Mediation and Conciliation Service (FMCS) to furnish the parties a list of 5 impartial, qualified arbitrators who practice in Puerto Rico. If either party fails to agree on a joint submission of the issue(s) for arbitration, each shall make a separate submission and the arbitrator shall determine the issue(s) to be heard. The Agency and the Union shall share the arbitrator's fee and expenses.
- F. A Union or a Management initiated grievance will be processed under sections D & E herein.

Section 10 - Union-Management Grievances

- A. Either party may opt to submit grievances through their respective representatives.
- B. A grievance concerning a continuing practice may be presented at any time. A grievance concerning a particular act or occurrence must be presented to the other party within 15 working days of the action or date the moving party became aware of it.
- C. When a grievance is filed, the parties will meet and/or discuss the matter within 10 working days after receipt. A written decision will be issued within 10 working days of the meeting. If the grievance is not settled by this method, any party may invoke arbitration within 30 working days after receipt of the final decision. However, prior to involving arbitration, each party will consult with appropriate levels within its respective organization.

Section 11 - Failure to Meet Requirements

- A. In employee grievances, failure on the part of the Employer to meet any of the time requirements of this procedure will permit the grievance to advance to the next step.
- B. If a decision is not issued, the grievance will not terminate. If the grievant fails to timely pursue the grievance to the formal step in accordance with the terms of this agreement, the grievance will be closed. If the grievant wishes to pursue the grievance the Union may submit the matter to arbitration within 30 days of the missed deadline.

Section 12 - Withdrawal

The Union, acting as the responsible representative of all employees in the bargaining unit, may, at any step of this procedure, withdraw on a nondiscriminatory basis from the grievance.

Article 28 - Arbitration

Section 1 - Invoking Arbitration

- A. A grievance processed under any article of this Agreement, if unresolved 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 30 days after receipt of the written decision rendered in the final step of an action processed under Article 26 Grievance Procedure or under the conditions specified elsewhere in this Agreement.
- B. Within 7 days from the date of the request for arbitration, the party invoking arbitration will request from the Federal Mediation and Conciliation Service (FMCS) a list of five impartial persons qualified to act as arbitrators. The parties shall confer within seven days after receiving the list of names from FMCS and select one of the arbitrators. If they cannot mutually agree upon a selection, the parties will alternatively strike one name from the list until the list contains only one name. The party who wins the flip of a coin shall make the initial strike on the list. 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.
- C. Within 7 days from the date of the request for arbitration, the parties shall try to define the issue(s). If the parties fail to agree on a joint submission of the issue for arbitration, each shall submit a separate submission and the arbitrator shall determine the issues to be heard.

Section 2 - Procedures

- A. The arbitration hearing shall be held during the regular day-shift work hours of the basic workweek. The grievant, representative, and any employee witnesses necessary to the proceedings, who are otherwise in a paid duty status, shall be excused from duty without loss of pay or charge to annual leave to participate as required in the arbitration hearing.
- B. The arbitrator's fee and all related expenses shall be borne equally by the parties.
- C. The Employer reserves the right, in accordance with applicable rules and regulations, to reimburse or not, bargaining unit members and witnesses for travel and related expenses. In this respect, bargaining unit members will receive the same treatment as non-bargaining unit members representing management.
- D. The arbitrator will be requested to render the decision as quickly as possible, but in any event no later than 30 days after the conclusion of the hearing, unless the parties mutually agree to extend the time limit. The arbitrator shall submit all findings in writing, and this report shall decide all issues raised by any party, including arbitration.

- E. Issues concerning the arbitration of a grievance presented for arbitration under the terms of this agreement shall be resolved by the arbitrator on written motion, or, if either party requests a hearing, in advance of any scheduled arbitration to decide the merits of the case. The arbitrator's decision on any such issue shall be communicated in writing to the respective parties at least 14 days prior to scheduling an arbitration hearing. Unless otherwise mutually agreed to by the parties, no arbitration hearing may proceed unless and until the arbitrator has rendered a written decision on issues of arbitration. If the Employer declares a grievance non-grievable or non-arbitrable, the original grievance shall be considered amended to include that issue.
- F. If the arbitration award is unclear to both parties, and if mutually agreed, the award shall be returned to the arbitrator for clarification.
- G. If the arbitrator requests a transcript, the cost shall be borne equally by both parties.

Section 3 - Effect of Arbitrator's Award

In considering those grievances concerning actions based on unacceptable performance and adverse actions that are appealable under the statutory appeals procedure, the arbitrator will be bound by the policy and the precedents of the Merit Systems Protection Board, and apply the same appellant standards, i.e., "substantial evidence" for unacceptable performance and a "preponderance of evidence" for adverse actions. The penalty of an adverse action may be reviewed only for "arbitrary and capricious abuse of management discretion". The arbitrator shall have the authority to resolve any question of arbitration and to interpret this agreement. The arbitrator is bound by and will apply the "harmful error" concept as developed by MSPB. The arbitrator shall have no authority to add to or otherwise modify the terms of this agreement or Department of Agriculture policy.

Section 4 - Expedited Arbitration Procedures

- A. The following expedited arbitration procedure is hereby adopted with respect to any grievance which involves:
 - 1. An employee's formal performance appraisal, other than demotions or removals for unacceptable performance under 5 USC Chapter 43.
 - 2. Final decision to withhold a within-grade salary increase.
 - 3. Reprimands and suspensions of 14 days or less.
 - 4. Actions imposing sick leave restriction.
 - 5. Any other matter mutually agreed upon.

- B. The parties agree that the primary purpose of this supplemental arbitration procedure is to provide a swift and economical method for the resolution of identified disputes. The parties agree to take positive action to see that this purpose is fulfilled; and, in addition, the arbitrator shall have the authority to take steps necessary to see that the purpose is fulfilled.
1. The hearing shall be informal.
 2. No briefs shall be filed or transcripts made.
 3. There shall be no formal evidence rules.
 4. Normally, at least 2 cases a day will be scheduled and heard.
- B. A single case should normally not require more than 4 hours to be heard with each party being allowed up to 2 hours to examine witnesses and make opening and closing statements. The arbitrator shall ensure that the length of the hearing is not unnecessarily extended because of irrelevant or repetitious testimony. The arbitrator may also waive the time limits for good and sufficient reasons.
- C. The arbitrator may issue a bench decision at the hearing. This decision shall be based on the record developed by the parties before and at the hearing and shall include a brief written explanation of the decision.
- D. The arbitrator's findings and awards shall be final and binding on both parties. However, either party may file exceptions to an award with the Federal Labor Relations Authority (FLRA) or the appropriate court under regulations prescribed by the Civil Service Reform Act or the FLRA.

Article 29 - Merit Promotion Plan

Section 1 – Purpose and Policy

The Parties agree that the purpose and intent of the provisions contained herein are to ensure that merit promotion principles are applied in a consistent manner with equity to all employees and without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, disabling condition, or age, and shall be based solely on job-related criteria. This Article sets forth the Merit Promotion System, policies and procedures applicable to bargaining unit positions in the USDA, NRCS.

Section 2 - Definitions

For the purpose of this Article, the definitions contained in CFR Chapter 335 and related chapters of the manual shall be incorporated as a part of this Agreement.

Section 3 – Applicability of Competitive Procedures

- A. Promotion. Any selection for promotion must be made on a competitive basis unless it is excluded by Section 6, below.
- B. Reassignments/Changes to Lower Grade. Any selection to a position that provide specialized experience that the employee does not already have and is required for subsequent promotion to a designated higher grade position and/or to a position with known promotional potential must be made on a competitive basis.
- C. Details. Competitive procedures will be applicable to any selection for details of more than 120 days to a higher graded position, to a position with known promotional potential, or a position which provides specialized experience required for subsequent promotion to a designated higher grade position.
- D. Training. Competitive procedures will be applicable to selections for training when eligibility for promotion to a particular position depends on whether the employee has completed that training.
- E. Appointments. Competitive procedures will be applicable in case of the transfer of a federal employee or reinstatement of a former federal employee to higher grade position than the candidate's last permanent position held under a career-conditional or career appointment or to a position at the same grade with known promotion potential. Such an action may be taken only if the candidate ranks among the best qualified with eligible USDA, NRCS employees under competitive procedures. To the extent feasible, the same qualification standards and the same methods of evaluation will be applied to USDA, NRCS employees

and persons being considered for appointment to a higher graded position by transfer or reinstatement. If it is determined that these methods are not feasible, the Parties will meet and confer on the methods to be utilized.

Section 4 – Applicability of Non-Competitive Actions

A. Promotions. The following promotions may be taken on a non-competitive basis unless otherwise provided:

1. Promotion of the incumbent of a position that is reclassified at a higher grade due to the accretion of additional duties and responsibilities and not on planned Management action. To be eligible for a non-competitive promotion in this situation, the employee must have continued to perform the same basic function, and the employee's former position must be absorbed administratively into the new position.
2. Promotion of an incumbent or an individual entitled to reemployment rights to position that is reclassified to a higher grade without significant change in duties or responsibilities, either on the basis of a new classification standard or as a result of correction of an original classification error. When the incumbent of the upgraded position meets the legal requirements and qualification standards for promotion to the higher grade, the incumbent will be promoted.
3. Promotion of an employee previously selected competitively for a lower step of a career ladder.
4. Promotion after receiving priority consideration.
5. Promotion of an employee when directed by authorized authorities (i.e., judges, arbitrators, FLRA, and other appropriate authorities).
6. Re-promotion of an employee to a grade previously held on a non-temporary basis and from which the employee was downgraded without personal cause, i.e., where downgrade was not due to misconduct, inefficiency, or at the employee's own request. This applies only when the employee was downgraded in the USDA, NRCS and the re-promotion is to a grade formerly held in the USDA, NRCS. A non-competitive promotion also may be made to an intervening grade.
7. Temporary promotions to a higher grade totaling 120 days or less during any 12-month period. If a temporary promotion, which was not expected to exceed 120 days, was originally made on a non-competitive basis, any extension beyond 120 days must be made under competitive procedures.
8. Career ladder promotions following non-competitive conversion of a cooperative education student in accordance with the requirements of applicable OPM policy.

9. Promotion of an employee covered by an approved training agreement.
10. Promotion of an employee placed competitively in a trainee position.

B. Reassignment/Changes to a Lower Grade

A reassignment or change to lower grade to a position that does not provide specialized experience that the employee does not already have, and is required for subsequent promotion to a designated higher grade position, or to a position having no known promotion potential may be taken on a noncompetitive basis.

C. Promotion Panels

1. When vacancy announcements result in 3 or less basically qualified applicants, all basically qualified applicants will be certified to the selecting official.
2. When vacancy announcements result in more than 3 qualified applicants, a panel will be convened to rate basically qualified applicants. A reasonable number of the best-qualified applicants (minimum of 3) will be certified to the selecting official.

D. Details with Temporary Promotions

1. Employees assigned to higher grade positions for more than 30 consecutive days will be temporarily promoted and receive the higher rate of pay effective on the first day of the detail. Short details shall not be used to avoid temporary promotions. Management will make every reasonable effort to attempt to assign qualified employees for such positions.
2. Details, such as described above, which do not exceed 120 days, will be handled in accordance with the guidelines as set forth in Article 30 – Details, of this Agreement.
3. Promotional credit or points will not be given for such details.

E. Other

1. Conversion of an employee from a temporary promotion to a permanent promotion in the same position and office provided the vacancy announcement for the temporary promotion indicated that the promotion could later become permanent.
2. Selection from an OPM approved register.
3. Transfer of a federal employee or reinstatement of a former federal employee to a position at the same or lower grade than the candidate's last permanent position held under a career or career-conditional appointment provided the position does not have known promotional potential to a grade higher than the last permanent position held.

4. Reinstatement to the same career ladder position for which an employee was previously selected competitively or to a similar career ladder position having similar qualification requirements and having no greater known promotion potential.
5. A position change permitted by RIF regulations.

Section 5 – Vacancy Announcements and Areas of Consideration

- A. Positions and Training to be Announced – All sections requiring the use of competitive procedures under this Agreement will be announced and posted throughout the area of consideration.
- B. If a vacancy announcement is canceled, the Human Resources staff will notify the Union that the announcement is canceled, providing a written reason and explanation for the cancellation.
- C. Areas of Consideration – The area of consideration for a position vacancy is that area in which the Employer should reasonably expect to locate enough well qualified candidates. Employees within an area of consideration are given the opportunity to be considered by means of the vacancy announcement and application procedure and/or by being automatically considered without having to submit an application. Unless otherwise indicated in this Article, areas of consideration applicable when filling bargaining unit position vacancies are as follows:
 1. For positions at GS-11 and below, including wage rate positions: Area-wide, however, if there are at least three highly qualified candidates within the bargaining unit, the area of consideration will be USDA, NRCS, Puerto Rico, as long as present rules and regulations do not provide for other mandatory consideration.
 2. When a position is established at the grade of a full performance level, together with one or more trainee grades, the grade of the full performance level will be used to determine the area of consideration for the trainee positions regardless of the grade at which it is being filled at any given time.

3. Reducing the Area of Consideration

- a. **Mandatory Reduction** – Where a position is re-engineered to a higher grade, the area of consideration must be restricted to those employees performing the duties, which form the basis for the higher grade. (In filling such positions, competitive procedures must be used, rather than through a vacancy announcement and application procedure). The term “re-engineered position” means a new position resulting from restructuring of the duties of one or more already established positions through planned Management action.
- b. **Optional Reduction** – When solicitation throughout the normal area would be clearly impractical because extenuating and unique circumstances exist, the promotion record must contain complete documentation justifying the smaller area, which shall only be instituted by mutual consent of the Parties.

4. Extending the Area of Consideration – When the area of consideration does not or is not expected to produce an adequate number of well-qualified candidates for the selecting official’s consideration; the Employer may extend it. The vacancy announcement will identify the extended area of consideration.

- a. Well-qualified candidates are those who could be expected to perform in the vacant position at a level significantly above the minimum performance requirements.
- b. An “adequate” number of well-qualified candidates will be considered to be 3 for the first vacancy plus 2 for each additional vacancy. However, if the area of consideration yields a lesser number of well-qualified candidates and the selecting official decides to make his/her selection(s) from them, extension is not necessary.

5. Consideration of USDA, NRCS candidates for reinstatement – Where a former USDA, NRCS employee applies for reinstatement and is eligible for consideration, the Puerto Rico State Office will determine the bargaining unit positions for which the individual can be considered and whether consideration must be competitive. When consideration is given, non-competitive referral will initially be made for the last grade held. If vacancies do not exist at the last grade held, or if the employee requests it, referrals may be made to a lower grade position. Last grade is defined as the grade of the last position held under a non-temporary appointment for reinstatement candidates. If applicants accept referral to the lower level position, they must sign a statement that they fully understand and accept the referral. However, the employee will also be informed that he/she does not have to accept a lower position in order to be reinstated. Consideration for bargaining unit positions above the last grade permanently held must be competitive.

6. Automatic Areas of Consideration

- a. An area of automatic consideration consists of employees who are identified as candidates for a vacancy without being required to apply. An area of automatic consideration will be used together with a vacancy posting procedure and applicants

will be evaluated and ranked with those in the automatic area of consideration. If the area of automatic consideration and the normal area of consideration are the same, and the employees are not required to apply, a vacancy announcement will still be posted for informational purposes.

- b. When the Employer determines that certain employees can be expected to be interested in, and qualified for, a vacancy, these employees may be identified as being in an area of automatic consideration.
 - i) Applicants in the area of automatic consideration need not file in order to be considered for such a vacancy unless the announcement specifies that they must file in order to ensure receiving credit for certain factors such as incentive awards or training programs completed.
 - ii) An area of automatic consideration will consist of all qualified and eligible employees in the area of consideration at the next grade level below that of the vacancy, except that for positions in a line of work classified at two-grade intervals or for which there are no other positions within the organization entity at the next lower grade, the area of automatic consideration still consists of employees two grades lower.

D. Information on Vacancy Announcements – Vacancy announcements will include, as a minimum:

1. Statement of non-discrimination.
2. Announcement number and opening and closing dates.
3. Position number(s), title(s), series and grade(s).
4. Number of vacancies to be filled.
5. Promotional test to be used, if any and where applicable, positions in the “same line of work”.
6. Selective placement factors, if any.
7. Geographic and organization location and tour of duty hours.
8. Time in grade requirements, if any.
9. Area of automatic consideration, if any.
10. Summary of qualification requirements.
11. If appropriate, a statement that the vacant position is a trainee position leading to a non-competitive promotion.
12. Permanent or temporary nature, and duration, if temporary.
13. Name and telephone number of the personnel specialist or other individual to contact for information relating to the announcement.
14. The Servicing Personnel Office or the address where the application is to be submitted.

E. Announcing Career Ladder Vacancies and Vacancies Covered by Training Agreements – These vacancies may be announced at any or all grades. The Union will be provided with written notice of any change in the posting of these announcements, prior to being posted.

- F. Posting and Distribution of Vacancy Announcements – The Employer agrees to provide a copy of the following at the time of or prior to posting: Vacancy announcements will be provided to the Union, as well as the factors and weights applied. The Employer agrees to post vacancy announcements within the area of consideration and to make copies available to employees, upon request, in accordance with the following:
1. Individual vacancy announcements will be posted and remain posted for a pay period after closing date.
 2. Open continuous announcements will remain posted at all times unless the Employer determines to discontinue the usage of these announcements in which case the Union will be provided proper notice prior to notice to employees.
- G. Amending Vacancy Announcements – If a vacancy announcement has been posted and is later found to contain a substantial error concerning items listed in Section 5 D, then the announcement will be amended, if the selecting official still intends to fill the position under the competitive process. The amendment should cite the change(s) and indicate whether or not the original applicants need to re-file in order to be considered. Vacancy announcements will not be amended for the sole purpose of preventing or discouraging otherwise qualified employees from applying.

Section 6 – Factors and Weights

Factors and weights used by the Employer to rank candidates must be fair, job related, applied equitably and the sole basis for determining best qualified individuals in the merit promotion plan.

Section 7 – Employee Applications

- A. Who must file: To be considered for an announced vacancy, an employee must file the appropriate application (as described in the announcement) unless the employee is in an area of automatic consideration. When an area of automatic consideration is used, an employee need not file unless the announcement specifies that an application is necessary in order to receive credit for specific items such as incentive awards received, or training/education programs completed.
- B. Time Limits: The time limits for filing for an announced vacancy are as follows:
1. Open-Continuous Announcements – An employee may file at any time as outlined in the vacancy announcement. The list of eligible established from open-continuous announcements will be updated every 2 months. The cutoff date for applicants to be considered for a specific vacancy will be the date the request to fill the vacancy is received in the Servicing Personnel Office. Applications received after that date would be considered for future vacancies.

2. Individual Announcements – For an individual announcement, an employee’s application must be received by the Servicing Personnel Office, or postmarked by the closing date shown on the vacancy announcement.
 - a. Delayed Filing – If an employee’s filing of an application is delayed beyond the closing date because the employee was awaiting information which a Management official had agreed to furnish, the employee will have 3 work days to submit the application following receipt of the information. The employee should attach to the late application a brief not by his/her supervisor verifying the delay.
 - b. Scheduled Absence over 3 Weeks – Employees scheduled to be absent in excess of 3 weeks for any of the following reasons will be considered for vacancies which occur during their absence. Prior to departure, employees should complete an application with a written request and submit to their Servicing Personnel Office who will ensure that the application is considered for vacancies for which the employee is eligible
 - i) Approved leave
 - ii) Details
 - iii) Training course
 - iv) Official business
 - v) Compensable injury
 - vi) Service with the military, public international organizations, or with state or local governments
 - c. Scheduled Employee Absence of Weeks or Less – Employees temporarily absent on approved leave, detail, at training courses, or on official business for periods not to exceed 3 weeks may, upon their return, review position vacancies announced and closed during their absence, and make application for such vacancies in which they are interested. Such late applications must be submitted within 3 work days after return to duty and must be accompanied by a statement prepared and signed by the employee, and also signed by his/her supervisor, explaining the dates and reason(s) for the employee’s absence. Employees filing delayed applications under this provision will be considered only for those vacancies for which a best-qualified list has not yet been prepared.
3. Filing Extension Due to Delayed Posting – If a vacancy is not posted on official bulletin boards timely, employees will be granted an equal extension of time to file their application, to compensate for the amount of time the posting was late. Employees requesting an extension for this reason should attach to their applications a brief note by their supervisor verifying the late posting. Employees filing delayed applications under this provision will be considered only for those vacancies for which a best-qualified list has not yet been prepared. If a vacancy was not posted at all, employees filing delayed applications under this provision will be considered fully, if the position(s) has not yet been filed.

- C. Completing the Applications – Employees will complete written applications, when required, and in accordance with instruction in the vacancy announcement, using such forms as are prescribed.
- D. Multiple Applications – When an employee has applied for, or been automatically considered for more than one announcement, he/she will be bound by the first promotion or reassignment (the case of a career ladder) for which the employee has reported unless:
 - 1. He/she has accepted a reassignment and another vacancy leads to a promotion to a higher grade.
 - 2. Another vacancy is in a career ladder or a trainee position leading to a higher grade.
 - 3. He/she has accepted a temporary promotion or reassignment and another vacancy is being filled permanently or if temporary, has a later expiration date.
- E. Wage Grade – Wage grade employees may compete for General Schedule positions and vice versa, but must meet applicable legal requirements including minimum qualification requirements.

Section 8 – Priority Consideration

- A. Definition. For the purposes of this Article, priority consideration is the bona fide consideration for non-competitive selection given to an employee on account of previous failure to properly consider the employee for selection because of procedural, regulatory, or program violation. Selection will normally be made in favor of priority consideration cases.
- B. Priority consideration consists of a promotion certificate, which contains an employee's name alone being sent to the selecting official before the official considers other applicants for a position.
- C. If more than one employee is entitled to consideration, the names of only those employees will be submitted on the single certificate to the selecting official for the next appropriate vacancies.
- D. An employee will be entitled to a separate priority consideration for each vacancy announcement for which the employee was improperly considered.
- E. Under normal circumstances priority consideration will be given prior to a vacancy being announced. If the appropriate vacancy has already been announced, the selecting official will consider the employees due the priority consideration before other applicants are rated or referred for selection.
- F. If the selecting official declines to select the priority consideration employee, documentation must be presented showing legitimate job-related reasons for the non-selection.

- G. Once a deadline for filing a grievance or other complaint has passed, employees who have not filed a grievance or other complaint or had one filed on their behalf may only be given priority consideration pursuant to an order issued by an official at the Deputy Administrator level or higher.
- H. Eligibility. The following employees will receive priority consideration in accordance with the procedures set forth.
1. Where the erroneous selection was allowed to stand, those employees who were not properly considered (as identified below) because of the violation will receive priority consideration for the next 3 vacancies for which the employee is qualified.
 2. If the action taken to correct an erroneous promotion was to require that the position be vacated, employees who were not promoted or given proper consideration because of the violation (that is, employees in the best qualified group who were not selected or employees who should have been in this group but were not) will be considered for promotion to the vacated position before candidates are considered under a new promotion or other placement action.
 3. The following employees will receive priority consideration, in accordance with the procedures set forth below. Employees under these provisions will receive a priority consideration for each grade for which they were demoted or downgraded.
 - a. Employees who are in a retained grade status under Title VIII of the Civil Service Reform Act as a result of action taken in the USDA, NRCS and who:
 - i) Are serving on a full-time or part-time basis under career or career-conditional appointments at GS-09 or below, or a wage equivalent, in the competitive service.
 - ii) Are serving under excepted career or excepted career-conditional appointments (except that their eligibility for priority selection consideration is limited to position which can be filed under the same excepted authority as the one used for their appointment).
 - iii) Are career or career-conditional employees serving on a part-time basis (except that their eligibility for priority selection consideration is limited to other part-time assignments).
 - b. Employees who were downgraded without personal cause, i.e., where downgrade was not due to misconduct, inefficiency, or at the employee's own request. Re-promotion may be made to a grade previously held on a non-temporary basis or to an intervening grade. This applies only when the employee was downgraded in the USDA, NRCS and the re-promotion is to a grade formerly held in the USDA, NRCS.
- I. Processing. The procedures for processing priority consideration(s) shall be:

1. The authorized Management official will notify employees in writing of their entitlement to priority consideration. Such notice will advise employees that, if a vacancy is announced and posted and the employees wish to exercise their priority consideration, they should submit the necessary application to the Servicing Personnel Office with a written request that they wish priority consideration for the vacancy.
 2. Priority consideration is to be exercised by the selecting officer at the option of the employee for (an) appropriate vacancy (ies). An appropriate vacancy is one for which the employee is eligible, which leads to the same grade level of the vacancy for which proper consideration was not given.
 3. Prior to completion of the best-qualified list, the name(s) of the employee(s) requesting to exercise priority consideration will be referred to the selecting office. The selecting officer will make a determination on the requests prior to receiving a best-qualified list.
 4. The fact that the employee chooses to exercise a priority consideration does not prevent that employee from also filing a regular application.
- J. Union Notification. In order to assure compliance with this section, the Union will be furnished statistics on priority considerations granted, exercised, and the results. Statistics will be kept and provided to the Union on a quarterly basis. The Union will also be notified in writing of each individual priority consideration completed.

Section 9 – Establishing the Best-Qualified List

- I. The personnel specialist or designated official will refer to the selecting official the necessary information concerning all eligible applicants. If there are no more candidates that could constitute the number of individuals on a best-qualified list, their names will be referred to the selecting officer in accordance with 10 (c) below. Eligible applicants who have been referred to the promotion committee will be evaluated in relation to the weights and factors and ranked from the highest to the lowest.
- J. For a single vacancy, the highest 3 ranking individuals, plus those tied for the last score will comprise the best-qualified list. For more than one vacancy the 3 top ranking, plus 2 additional for each additional vacancy, plus those tied for the last score, will comprise the best-qualified list.
- K. After the candidates for the best-qualified list have been determined, they will be arranged in alphabetical order showing the date of grade attainment and certified and referred to the selecting official.
- L. The Parties may agree through mutual consent to extend the best-qualified list for good and sufficient reasons as shall promote the intent of this Agreement and mission of the Agency.

- M. If an announcement pertains to more than one grade level, a separate best-qualified list will be prepared for each grade level based on the number of vacancies for that grade.
- N. When additional vacancies occur within 90 calendar days after the initial vacancy(ies) is announced, the personnel specialist may increase the number of candidates on the best-qualified list to conform to paragraph B above, provided that a best-qualified list has not been established.
- O. In an employee is determined to be not basically qualified for the position, the employee may request an explanation from the Human Resources Staff. If requested, the Human Resources staff will provide a written explanation to the employee.
- P. In an employee does not make the best-qualified list for the position, the employee may request an explanation from the Human Resources Staff. If requested, the Human Resources staff will provide a written explanation to the employee.
- Q. In an employee is on the best-qualified list but is not selected for the position, the employee may request an explanation from the selecting official. If requested, the selecting official will provide a written explanation to the employee.

Section 10 – Selection

- A. The personnel specialist's actions will be completed in accordance with this Article and the best-qualified list will be forwarded to the selecting official.
- B. If the selecting official wishes to interview the candidates, all candidates will be offered an interview.
- C. The selecting official shall utilize the following procedures in selecting individuals for posted vacancies:
 - 1. If the vacancy is one for which an under representation exists and is a targeted occupation as identified in the Affirmative Action Plan, and the best-qualified list contains highly qualified candidates, which would reduce the under representation, the selecting official will give serious consideration to those individuals who would reduce, the under-representation.
 - 2. If an under representation is not present, then the selecting official will consider providing upward mobility for those highly qualified candidates who have been stagnated in grade.
- D. The selecting official may use an existing best-qualified list to fill any unanticipated vacancies (beyond the number cited in the vacancy announcement) occurring in the same position (i.e., same position number) as listed on the vacancy announcement for a period of 90 calendar days from the date the vacancy was posted.

- E. When selecting for the posted vacancies, if the best-qualified list is reduced to fewer than the number indicated in Section 9 B, because of employee declinations or resignations, additional candidates may be added in order of the highest ranking remaining candidates.
- F. When a selection has been made, the Administration will arrange a release date, notify the employee, and ensure that the appropriate personnel forms are processed. The effective date of a promotion action, other than promotion within a career ladder, will be the first day of the pay period in which the employee is scheduled to report. If an employee has been selected for promotion, has accepted the offer, and a reporting date has been established, and the resultant request for personnel action (SF-52) is not timely received and/or acted upon by the appointing official, the action shall be made retroactive to the reporting date.

Section 11 – Employee Information

- A. General. Employees are entitled to the following information upon request about vacancies filled under the competitive provisions of this Article and for which they are/were under consideration.
 - 1. The factors and weights used in filling the vacancy.
 - 2. Whether they meet minimum requirements.
 - 3. What points were awarded to them, in each category.
 - 4. What was the best-qualified list cutoff score.
 - 5. Whether or not they were on the best-qualified list.
 - 6. The name(s) of the employee(s) who were selected for the vacancy.

Section 12 – Union Review of Competitive Actions

- A. The Union will be permitted to conduct audits of promotion packages for all bargaining unit positions, when it has reason to believe a discrepancy exists or when requested to do so by an employee. Any requests to review a promotion package must be made within 15 workdays of notification of application status.
- B. Employees who believe they were improperly excluded from a best-qualified list may request a review of the promotion package through the Union review procedure described below.
- C. The designated official responsible for the package will make a sincere effort to make the pertinent records from that package available to the Union auditor, subject to Privacy Act case law, within 10 working days of the receipt of the review request. An auditor shall treat information confidentially.
- D. If an error is discovered, and is concurred with by the appropriate management official, which resulted in an employee's exclusion from the best-qualified list, the provisions of Section 8 of this Article will apply.

- E. Any grievances filed as a result of the review process must be filed in accordance with Article 27, Grievance Procedure.

Section 13 – Career Ladder Positions

- A. The Parties agree that career ladder and sequential positions help to develop internal candidates to successfully perform in higher level positions.
- B. The Employer will ensure that procedures for administration of career ladders will be consistent with published policy. Career ladder plans must show the promotion criteria at each grade level of the plan, which employees must meet to be promoted. A copy of the plan will be given to employees as they enter each level of the plan.
- C. When career ladder plans are established or revised, the Employer will notify the Union prior to implementation.
- D. At the time an employee meets time-in-grade and any other legal promotion requirements, the Employer will make a decision to promote or not to promote.
 - 1. If an Employer is meeting the promotion criteria in the career ladder plan, the Employer will certify the promotion which will be effective at the beginning of the first pay period after the pay period in which the requirements are met.
 - 2. If the employee is not meeting the promotion criteria in the career ladder plan, he/she will be given written notices which will reflect the tasks which must be successfully performed and skills which must be demonstrated before promotion can be effected.

Section 14 – Announcement of Selections

Competitive selections will be announced throughout the area of consideration by posting announcements on designated bulletin boards. Normally, such announcements should be made within 10 workdays after the close of the pay period during which the selection(s) was/were made effective.

Section 15 – Temporary Promotions

- A. When employees are temporarily assigned to a position of a higher grade for a period in excess of 30 days, the assignment must be made via temporary promotion effective the first day of the assignment.
- B. Employees assigned to higher grade positions for more than 30 consecutive days will be temporarily promoted and receive the higher rate of pay effective on the first day of the detail.

Section 16 – Miscellaneous

Personnel Data Summary. An Employee Qualifications Form will be prepared by the Employer and distributed to all unit employees every 2 years. However, employees may receive a copy at any time, upon request, in order to verify and update the listing. Employees will be given a reasonable amount of official time to review and update the information shown.

ATTACHMENT 1

EMPLOYEE, SUPERVISOR AND PERSONNEL RESPONSIBILITIES

Employee Responsibility:

1. Review announcements under the Merit Promotion Program.
2. Review announcements and, if they feel they meet specific experience and training requirements for the position, properly complete and forward all required application material by the closing date for each position for which they wish to be considered, keeping in mind that the Promotion Certificate can be used for another like (same Agency, official title, series, grade, and geographic location) vacancy that occurs within 90 calendar days.
3. Keep supervisors informed of career interests. Before departure on temporary duty, scheduled leave, and other absences, provide supervisor with a telephone number, e-mail address and/or facsimile number at which they may be contacted.
4. Take advantage of self-development and training opportunities, both on and off the job.
5. Demonstrate competence and readiness for advancement by diligent and effective performance in current assignment.
6. When requested, participate in applying OPM regulations to establish reasonable job-related evaluation criteria (KSA's), and participate on promotion panels for determining best-qualified candidates.
7. Assure that official personnel records reflect all experience, education and training.
8. Keep informed of the provisions of this Plan.

Supervisor Responsibility:

1. Maintain a current copy of this plan, make it available to their employees, and exert every effort to ensure that employees fully understand the plan.
2. Inform new employees where position vacancy announcements are posted.
3. Periodically inform employees, either orally or in writing, that questions about the Plan or specific promotion actions should be referred to the servicing Personnel office for informal handling; that formal means for resolving promotion complaints are available through Agency Grievance Procedures.
4. Anticipate personnel vacancies and initiate action in a timely manner so that sufficient qualified applicants can be found to facilitate the best selection.

5. Participate in applying OPM regulations to establish reasonable job-related evaluation criteria (KSA's).
6. Participate in or make employees available for rating panels.
7. Give fair, equitable, and full consideration to all candidates referred and make a final selection from the list without discrimination for any non-merit reason and without favoritism based on personal relationship or patronage.
8. Under the provisions of this plan, release a selected employee for assignment to his or her new job.
9. On a fair and equitable basis, guide and assist employees in developing skills and abilities through cross-training, special assignments, and formal education, as needed. Encourage and advise employees regarding self-development needs and opportunities, and on areas where improvement should be made to increase chances for future promotion.

Human Resources Responsibility:

1. Develop and administer the Merit Promotion Plan.
2. Ensure the quality and effectiveness of the merit promotion program and management/employee understanding and acceptance.
3. Through job-analysis, develop and administer selective placement factors for basic eligibility and identification of job-related criteria.
4. Determine and/or develop appropriate evaluation methods and instruments to be included in crediting plans.
5. Provide technical advice and assistance to panel members responsible for rating candidates.
6. Publicize the program to keep management and employees well informed.
7. Furnish advice and assistance to employees interested in advancing or transferring to new career fields.
8. Evaluate program effectiveness to include initiation of improvements or necessary changes.
9. Maintain records in accordance with OPM and USDA requirements.
10. Give new employees general information on the program as a part of employee orientation.
11. Advise of methods and procedures for filling all vacancies.

12. Advise candidates who apply for promotion whether they meet basic eligibility requirements and inform them of action taken on their applications.
13. Ensure that position vacancy announcements are published.

Article 30 - Details

Section 1 – Preamble

This shall govern the procedures for bargaining detail assignments of USDA, NRCS, bargaining unit employees to the maximum extent of the Law, with the intent of reducing potential area of misunderstanding and disputes.

Section 2 - Process

- A. The parties hereby agree that it is in their mutual interests to bargain over, and to make a good-faith effort to reach an agreement concerning the details of bargaining unit employees from their permanent duty stations to temporary duty stations (“details”).
- B. The parties acknowledge that under the Federal Service Labor-Management Relations Statute, as amended (the “Statute”), USDA has the right to assign work and to detail bargaining unit employees, and that the Union has an interest in minimizing the adverse impact on employees.
- C. In addition, it is the intent of Article 30 to establish the procedures for detailing employees within the prevailing staffing plan while the Agency assures compliance with the proper notification to Union Officials, Merit Promotion Procedures, Travel and Per Diem Allowances, Hours of Work and/or any other legitimate concerns of employees impacted by the detail assignments.

Section 3 –Definitions

- A. Detail. A detail is the temporary assignment of an employee to different or equal position within the same or different duty station, for a specified period, with the employee returning to his/her regular duties at the end of the detail.
- B. Family Member. Any of the following: Spouse and his/her parents; children, including adopted children, and their spouses; parents, brothers and sisters, and their spouses; and individuals related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Section 4 – Procedures

- A. The Employer agrees to notify the Union Vice-President, in writing, of its intent to implement a detail assignment and give the Union the opportunity to negotiate the impact and implementation, as appropriate of such details, in accordance with 5 U.S.C. 71, herein referred to as the “Statute”.

- B. The Union shall have 10 workdays after the receipt of any written notice described in item A above to request to bargain. In order to trigger USDA's obligation to bargain thereunder, the Union's request to bargain must be received by USDA by or before Close of Business (COB) of the tenth work day of the 10-day period.
- C. The Caribbean Area Employer or Designee of USDA, NRCS or his/her designee shall provide notification of any future detail assignments to the Union "reasonably in advance" of any proposed implementation date in order to allow the Parties an opportunity to engage in meaningful negotiations concerning the future details. The notice shall contain the proposed implementation date of the detail assignment.
- D. For the purposes of defining "reasonably in advance" as described in item C, the Union establishes that detail assignments outside the commuting area of employee's permanent workplace, or overseas, require a minimum of 15 days advance notice.
- E. The Employer or Designee may detail employees for 2 days or less, and without regard to time limits in order to carry out mission critical functions during emergencies. Appropriate notice will be provided to the union along with any post-implementation impact and implementation bargaining. The details therefore, are authorized with simultaneous notification of the employee and the Union.
- F. For all other detail assignments, the Employer agrees to notify the Union prior to notifying the employee who is going to be detailed.
- G. The Employer will consider the names of qualified volunteers supplied in advance by the Union prior to making a selection for a detail assignment.
- H. When the designated employee indicates that the detail may result in undue personal hardship either to the employee or a family member, as defined, the Employer will give reasonable consideration to the employee's claim. If the employee indicates that the hardship is due to medical reasons, the Employer will make every reasonable effort to assign limited duties to an employee who is temporarily unable to perform the full range of his/her assigned duties because of medical reasons. The Employer may require reasonable medical documentation in support of the claim, but shall not challenge medical recommendations or orders.
- I. Merit promotion procedures do not apply when a detail is to a position of the same grade and promotion potential.
- J. Detail assignments, including special project assignments, will not be made or denied solely to reward an employee or punish an employee instead of taking appropriate disciplinary action.
- K. Details in excess of 30 calendar days will be reported on Standard Form 52 – "Request for Personnel Action", Standard Form 50-B – "Notification of Personnel Action", or similar document and filed in employee's personnel folder.

- L. Details to higher-grade positions for more than 120 days will be made through competitive procedures.
- M. The Employer may designate employees to serve in an acting capacity as necessary to conduct business operations. The parties recognize such assignments may serve to provide employees with valuable experience and on-the-job training. The employer will attempt to rotate such assignments amongst those employees deemed qualified to serve in that capacity.
- N. The Employer is responsible for keeping details within the shortest practicable time limits and assuring that details do not compromise the open competitive principles of the Merit Promotion System.
- O. To the maximum extent possible and practical, employees shall not be detailed to lower-graded duties.
- P. The Employer will make every effort to avoid placing Union Official on a detail that would prevent that official from performing his/her representational functions. The Employer agrees to notify the Union prior to placing any designated Union Representatives on detail away from the representative's normal duty station.
- Q. Whenever it is necessary to make details assignment for the purpose of improving job performance of an employee, the Employer will prepare the training program, present the program to the employee, and give the employee the opportunity to be represented by a Union Official at the discussion.
- R. These provisions are not intended to restrict the employer's right to assign work according to the Federal Service Labor-Management Relations Statute; however, all details must be consistent with the provisions of law, controlling regulations, and this Agreement.

Article 31 - Position Description/Classification

Section 1 - General

The parties agree that position descriptions shall accurately reflect the principal duties and responsibilities of the position. If the duties of a position change significantly, the employee will be provided with an accurate, updated Position Description (PD).

Section 2 - Position Description

- A. PD will be prepared by the Employer and will contain the principal duties and responsibilities for the purpose of classification. Duties and responsibilities for employees with the same title and grade position should be standard. Each bargaining unit member will be provided with an official description of his/her duties and responsibilities in the form of a PD within 30 days of the employee assuming their duties. When appropriate, the PD will identify any special qualifications and/or requirements of the position.
- B. Management agrees that a bargaining unit listing consisting of each employee's name, series, grade, title, and organizational unit will be supplied annually to the Union.
- C. Disputes that may arise over whether or not an employee's PD is accurate, if unresolved between the employee and the supervisor may be processed through the negotiated grievance procedure. Disputes regarding the appropriate schedule, title, series or grade are covered under established classification appeal procedures and may only be appealed through these procedures.
- D. When an employee believes that significant changes have occurred in his or her regularly assigned responsibilities and regularly performed duties, the employee will discuss the situation with his/her supervisor. If the supervisor cannot resolve the Employer's concerns to the employee's satisfaction, the employee may request that the supervisor arrange for an appropriate Personnel specialist to provide further information to the employee. This should include information concerning the results of any recent reviews and audits. The specialist may audit the position if an audit has not been conducted recently. A copy of the audit report will be given to the employee upon request. Upon request, the Employer will make a reasonable effort to allow the employee an opportunity to talk with the personnel specialist. Any employee may file a statutory classification appeal of his/her Position at anytime in accordance with appropriate rules and regulations.
- E. The Parties agree that phrases such as "other related duties" or "other duties as assigned" should be eliminated from the PD.
- F. The Employer will maintain a complete and up-to-date file of position descriptions of all Classified Positions in the bargaining unit, and will provide each employee with a copy of his/her job description upon any change in position.
- G. A reclassification to a higher grade shall be effective at the conclusion of the first full pay period following final approval by the Servicing Personnel Office if the incumbent of that position is promoted non-competitively to the position.

- H. Collateral duties may be part of Position Descriptions; in as much as these duties do not require more than 25% of the employee's total productive work-time. Employees will be afforded reasonable time to complete collateral duty assignments.
- I. A PD Review will be performed once per year, to eliminate unnecessary functions and add necessary tasks by the supervisor.
- J. PD will contain specific information and work assignments. No employee will have law enforcement or protection functions as part of their title or description, unless the position includes law enforcement functions.
- K. Projects will be assigned in writing, with expected results, which will be considered in the performance appraisal for that fiscal year.

Article 32 - Official Time

1. The Parties agree that official time is authorized as outlined below only when the union representative is otherwise in a duty status.
2. For the purposes of using official time, the Employer will recognize representatives designated by the Union in writing. For purposes of using official time for negotiations, the Employer will recognize up to five (5) representatives and one (1) observer designated by the Union in writing.
3. The Union agrees to furnish the Employer with a list of employees designated to serve as union representatives with their appropriate work location and telephone number. The Union further agrees to keep this list current.
4. The Union shall be granted a bank of 350 hours of official time [as described in Part 5-A, B, and C below] per month for its officials designated in Part 2 above. Official time shall not accumulate from month to month. Official time will be requested in advance, using an agreed to format developed by the parties.
5. Recognized union officials are authorized official time while:
 - A. Serving as a Union representative during meetings of appropriate councils and other committees established by the Agency or agreed by the parties;
 - B. Negotiating labor management agreements on behalf of the NRCS bargaining unit they represent;
 - C. Participating for or on behalf of the Union, or individual employees, in any phase of proceedings before the Federal Labor Relations Authority (FLRA);
 - D. Representing a bargaining unit member in replying to a notice of proposed adverse action or performance based action or replying to and requesting reconsideration of a denied within-grade increase;
 - E. Representing bargaining unit members in any phase of the grievance procedure, including arbitration.
 - F. Receiving labor management relations training in accordance with the provisions outlined below.
 - i. Training sessions must be for the purpose of orienting and briefing officers and stewards on matters within the scope of Title VII of the Civil Service Reform Act, and/or of mutual concern to the Employer and the Union.

- ii. The number of hours used in training will not be used against the number of hours the Union receives per month for other activity.

G. If the Union believes that the amount of official time authorized is insufficient to carry out its obligations, additional time will not be unreasonably denied. The Union shall notify Management, in writing. The parties will meet to discuss and negotiate an increase to the number of hours authorized for official time.

Article 33 - Time and Leave

Section 1 – Leave Increments

All absences will be charged in increments of ¼ hour or 15 minutes.

Section 2 – Annual Leave

- A. Employees shall accrue leave in accordance with statute and regulations of the Office of Personnel Management. Annual leave is provided and used to allow employees an annual vacation period of extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes. The use of accrued annual leave is the right of the employee. Employees should apply in advance for approval of all anticipated leave to permit the orderly scheduling of leave to avoid leave forfeitures, which might otherwise result.
- B. Normally, leave requested in advance will be granted except where conflicts of scheduling or undue interference with the work of the Employer would prevent it. Leave may also be granted when it is not scheduled in advance and business permits. Leave for personal emergencies, ordinarily infrequent in number, will be granted unless there is an operational exigency, which requires the employee's presence.
- C. At the beginning of each calendar year, employees will be notified to submit requests for extended annual leave of 1 calendar weeks or more. Such written requests should be submitted to the appropriate leave-approving official.

Section 3 – Excused Absence

Infrequent tardiness of less than 1 hour shall normally be excused, if the reasons are acceptable. Infrequent is defined as once per month with exceptions for justifiable reasons.

Section 4 – Infrequent Sick Leave

- A. Employees may use sick leave accrued in accordance with the statute and regulation of the CFR in the following situations:
 - 1. Incapacity due to physical or mental illness or injury.
 - 2. Receive medical, dental, optical or surgical examination or treatment.
 - 3. Emergency medical, dental, optical or surgical examination or treatment.
 - 4. Incapacity due to pregnancy or childbirth.
 - 5. Because of expose to a communicable disease.

6. Required giving care and attendance to a member of the immediate family who is afflicted with a contagious disease. Contagious disease means one which is ruled as subject to quarantine, isolation or restricted movement as prescribed by the health authorities having jurisdiction.
7. Presence at the office would jeopardize the health of other because of exposure to a contagious disease as described above.
8. For adoption-related activities.

B. In addition, you may use a limited amount* of sick leave to:

1. Provide care for a family member as the result of physical or mental illness, injury, pregnancy, childbirth, or medical, dental, or optical examination of treatment.
2. Make arrangements necessitated by the death of a family member or attend the funeral of a family member.

**If you are a full-time employee, you may use up to 40 hours (5 days) of your sick leave each leave year for family care and bereavement purposes. An additional 64 hours (8 days) may be used as long as you maintain a balance of at least 80 hours of sick leave in your sick leave account. Part-time employees are also covered, and the amount of sick leave they may use for these purposes is prorated.*

- C. Employees normally shall not be required to furnish a medical certificate to substantiate a request for approval of sick leave unless sick leave exceeds 3 consecutive workdays. In cases where the nature of the illness is such that an employee did not need to see a medical practitioner, a medical certificate may not be required, if the employee provides an acceptable explanation.
- D. In individual cases, if there is evidence that an employee's leave pattern may indicate that an abuse of sick leave exists, the employee shall first be advised by an interview, which shall be recorded by the supervisor, of the reasons a medical certificate may be required for each subsequent absence of sick leave. If the employee's pattern continues, the employee will be advised in writing as to whether an acceptable medical certificate may be required for each subsequent absence for which sick leave is requested. The sick leave usage of all employees under sick leave restrictions will be reviewed at least every 6 months; if the review shows significant improvement, the supervisor will lift it.
- E. Employees who are incapacitated for duty because of serious illness or disability may be advanced sick leave for up to 30 days. The employee will not be required to utilize any annual leave prior to utilizing the advanced leave. Sick leave will be advanced when the following required conditions have been satisfied.
1. The employee is serving under a career or career-conditional appointment.
 2. The employee has a minimum of 1 year of federal civilian service.
 3. All available accumulated sick leave to his/her credit has been exhausted.

4. There is no expectation that the employee is contemplating separation by retirement or resignation.
5. A medical certificate substantiates that a serious illness or injury exists, and that the employee will be capable of subsequently returning to work and fulfilling the full scope of his/her job.
6. There is no expectation that the employee will not remain employed after his/her return to duty long enough to repay the advance of sick leave.
7. The employee does not have a current letter of warning or disciplinary action properly proposed or effected for abuse of sick leave.

Section 5 – Unanticipated Use of Leave

If the use of annual leave or sick leave cannot be anticipated, the request for approval shall be called in within 2 hours after the start of the employee's normal tour of duty, or core time when flexi-time is in effect, or as soon as possible thereafter. Contact will be made with the employee's immediate supervisor or other designated official.

Section 6 – Leave Balances

Employees will not be denied leave usage solely because of their leave balances, unless current leave balance will not cover the amount of leave requested.

Section 7 – Leave for Maternity, Paternity and Adoption Reasons

- A. The Employer will be liberal when granting leave for maternity reasons and will apply its policies fairly. Such leave may include LWOP, sick leave (when appropriate) or annual leave. Employees shall qualify to receive donated hours of sick leave from other USDA employees for maternity reasons.
- B. The following conditions apply to granting of leave to cover a period of absence for maternity reasons.
 1. Accrued sick leave will be granted for the period of incapacitation due to pregnancy a confinement. Additional periods of annual leave and LWOP may be granted in whatever order the employee requests for a non-incapacitated period.
 2. The employee may also request and be granted annual leave or LWOP instead of sick leave for the period of incapacitation. The total absence for maternity reasons may be authorized for a period up to 180 consecutive days. Requests for additional leave following the end of the regular period of leave will be handled, in accordance with applicable regulations and this Agreement. Once requested and approved, the order or leave may be changed only on approval by the proper supervisory authority.

3. In considering requests for sick leave, annual leave and/or LWOP for maternity reasons, the proper supervisory authority will apply pertinent laws, regulations, and this Agreement in the same way they would apply them in any other cases. No arbitrary cutoff date requiring an employee to cease work or prevent an employee from returning to work will be established.
 4. The employee should submit notice, at least 3 months in advance, of the prospective need for leave for maternity reasons.
- C. Accrued annual leave and LWOP may be granted to a male employee for the purpose of assisting and caring for the mother of his child or minor children during the mother's incapacitation for maternity reasons according to the regulations of the Office of Personnel Management. Requests for advanced leave will be handled on a case-by-case basis.
- D. Annual leave and LWOP may be appropriate for adoption or proceedings for adoption.

Section 8 – Family and Medical Leave

- A. The Employer will be liberal when granting leave under the *Family and Medical Leave Act* (FMLA). Under FMLA of 1993, employees are entitled to 12 weeks of unpaid leave (LWOP) during any 12-month period for:
1. The birth of a son or daughter and care of a newborn.
 2. The placement of a son or daughter with the employee for adoption or foster care.
 3. The care of your spouse, son, daughter, or parent with a serious health condition.
 4. Employee's own serious health condition that makes them unable to perform the duties of the position.
- B. Upon return from FML, employees shall return to the same or equivalent position. While on FML, employees are entitled to maintain health benefits coverage. If the employee is on LWOP under the FML, the Employer is responsible for paying the employee share of the health benefits premium. However, during this time an employee will become indebted for the employee's share paid by the Agency.
- C. Employees may choose to substitute annual leave for unpaid leave under the FMLA. They may also substitute sick leave in those situations in which the use of sick leave is permitted.

Section 9 – Leave for Bone Marrow or Organ Donation

The Employer will be liberal when granting leave for bone marrow or organ donation. Federal employees are entitled to use 14 days of paid leave each calendar year (in addition to annual or sick leave) to serve as bone marrow or organ donor.

Employees must provide medical documentation that is certified by their attending physician, donor hospital, or medical center that includes:

- 1) Date of scheduled donor procedure;
- 2) Period required for post-operative recuperation; and
- 3) Post-operative certification that the procedure has been performed.

Section 10 – Other Leave

Other types of exiting leave such as leave under the leave transfer program will be requested according to USDA, NRCS existing law or regulation.

Article 34 – Leave of Absence for Union Officials

Section 1 – AFGE Officer or Representative

Management agrees to consider and provide a timely response to a request for a leave of absence for any bargaining unit employee who is elected to a position of National Officer of the American Federation of Government Employees, AFL-CIO, for the purpose of serving full time in the elected position or who is selected as an AFGE National Union Representative.

Section 2 – Period of Leave of Absence

If granted, the leave of absence granted under Section 1 of this Article will be for a period concurrent with the term of office of the elected official or representative and will be considered for renewal by Management upon receipt of a written request from the elected official or representative that he/she has been reelected or re-selected and wishes to continue in a leave of absence status.

Section 3 – Conditions and Return Rights

- A. The Union agrees that all the leave of absence granted or approved in accordance with this Article are subject to the following conditions in addition to such other conditions, as may be imposed by law or higher regulation:
 - 1. Without pay.
 - 2. Access to Departmental premises by such employees will be in accordance with the terms of this Agreement or Department Regulations, whichever is applicable.

- B. Management, to the extent of this authority, will attempt to accomplish the following:
 - 1. Place an employee returning from leave of absence in a position held at the time that the time the leave of absence began; failing this,
 - 2. An effort will be made to place the employee in a similar position with the district area; or failing either of the foregoing.
 - 3. The employee will be placed in a similar position within the Agency.

Article 35 – Fitness for Duty

Section 1 – Scope

The Union and the Employer recognize that performance and conduct problems can be caused by the poor health of employees and that employees may be subject to fitness-for-duty examinations in those circumstances. Employees will not be subject to fitness-for-duty examinations where an alleged health problem does not affect performance or conduct on the job.

Section 2 – Relationship to Adverse Action

Evidence obtained in the fitness-for-duty procedures cannot be used as a basis for demotion or termination for unacceptable performance (5 USC 43), however it may be used to support such action. If in the course of a disciplinary or adverse action proceeding, the employee or a third party raises an issue concerning the employee's health, such evidence obtained in the fitness-for-duty procedures may be used by Management.

Section 3 – Prerequisite Conditions

When there are reasonable grounds to believe that a health problem is causing performance or conduct problems of the employee, the employee shall be given an opportunity through counseling, as provided in Article 38, for referral to appropriate medical experts of his/her choosing and/or an opportunity to voluntarily initiate an application for disability retirement on his/her own behalf.

Section 4 – Procedures

In seeking a fitness-for-duty examination, which may or may not lead to a disability application, the following rules and procedures apply:

- A. In all discussions with any Management official, the employee shall be entitled to Union representation, prior to any discussion the employee shall be notified of this right, given an opportunity to contact and discuss that matter with his/her Union representative, and permitted the right of representation in such discussion. This will not prevent an employee from having another representative of his/her choosing.
- B. Should a fitness-for-duty examination be necessary, the Employer shall designate 2 qualified physicians from which the employee shall choose one to conduct the examination. The employee will be offered an opportunity to also have medical documentation submitted from his/her personal physician, which the Employer will fully consider. The Employer shall pay all fees or other costs of the examination, shall pay any reasonable travel expenses, and the employee shall not suffer any loss of part or charge to leave for any absence related to the examination completed by the physician designated by the Employer, but shall be permitted such time as is necessary during his/her normal duty hours.

- C. During these procedures, the employee will be apprised of his/her rights and, where supported by appropriate medical evidence, given the opportunity to suitable interim adjustments in his/her work assignments.
- D. When the result of the medical examination reveals that the employee cannot satisfactorily perform useful and efficient service in his/her regularly assigned position, the Employer will follow reasonable accommodation procedures, whenever possible.

Section 5 – Counseling

- A. When the Employer determines that the medical evidence reveals:
 - 1. That the employee is totally disabled for service in his/her current position.
 - 2. That reasonable accommodation for another position cannot be made; the Employer will so advise the employee and provide appropriate counseling.
- B. When such a disabled employee has 5 or more years of Federal Service and would meet existing disability retirement requirements, the Employer will counsel him/her concerning disability retirement and explain the procedure for voluntarily applying for disability retirement. In the event that such an employee is unable or unwilling to file on his/her behalf, the Employer may initiate an application for the employee as required by the circumstances and appropriate regulations. The Employer shall provide the employee proper notice, and shall permit the employee 30 days to respond in writing.
- C. If the medical evidence and performance records establish that the employee retains the capacity to perform satisfactorily in a vacant lower grade position, which the Employer seeks to fill, the employee will be informed of his/her option to request such a demotion.

Section 6 – Confidentiality of Records

All records pertaining to the employee's examination and, as applicable, any subsequent personal information included with an application for disability retirement are confidential and may be disclosed only to those with an administrative need to know or as specifically authorized by the subject employee in writing.

Article 36 – Part-time and Permanent Conversions

Section 1 - General

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

Section 2 - Part-time Employees

- A. If a full-time employee wishes to convert to part-time, he/she shall make a request to his/her supervisor. The Employer will give consideration to the employee's request based on the employee's circumstances.
- B. Employees who accept or convert to part-time positions have no guarantee that they will subsequently be converted to full-time employment, but the Employer agrees to consider the employee's request based on the employee's circumstances.
- C. The Employer will advise the employee of the effects of change to part-time employment and, in case of a change in grade the salary of the part-time appointment.
- D. Requests for changes to part-time and full-time employment can be made in writing and will be retained and considered for at least 6 months.
- E. An employee who is denied a conversion from full-time to part-time shall be notified in writing, upon request.
- F. The Employer agrees to establish regular tours of duty for part-time permanent appointees that are consistent with appropriate law, rules and regulations. Tours of duty for part-time employees will be established or changed by Standard Form 52. Tours of duty determine the employee's eligibility for pay on holidays as well as other benefits and entitlements under law.

Section 3 – Permanent Employees

The Employer will notify the Union of the conversion of a temporary employee into a permanent, bargaining unit position within 14 days of the effective date.

Article 37 - Office Workers Compensation Program

Section 1 - Employee Disability Compensation (OWCP)

- A. The Employer agrees that when an employee suffers job-related illness or injury in the performance of duties and reports it to his or her supervisor, the supervisor and/or the appropriate management official will counsel the affected employee as to the following:
1. The employee's right to file for compensation benefits;
 2. The types of benefits available;
 3. The procedure for filing claims; and
 4. The option to use compensation benefits in lieu of sick or annual leave.
 5. The Employer will provide annual training on OWCP.
- B. An employee who has filed for compensation benefits will be counseled, upon request, by his/her supervisor, the Employer, and/or Union officials, at any stage in the processing of the case concerning such options as may be available to the employee at that point.

Section 2 - Employee Options

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

Section 3 - Placement of OWCP Claimants

- A. Where the employee requests and supports his/her request with appropriate medical information, the Employer will make a reasonable effort to assign the employee on a temporary basis to duties consistent with the employee's medical limitations, pending resolution of his or her claim. The Employer will consider any requests to provide reasonable accommodations.
- B. Where the employee requests and supports his or her request with an approved OWCP claim and appropriate medical information, the Employer will make a reasonable accommodation consistent with Article 29 - Merit Promotion Plan.
- C. When an employee who has been determined by OWCP to be disabled has recovered sufficiently that he/she is required or permitted to seek reemployment, the Employer will consider any requests to provide reasonable accommodation, of appropriate employment within 1 year of recovery.

Article 38 - Employee Assistance and Counseling

Section 1 - Policy Statement

- A. The Employer recognizes that a wide range of persistent problems, not directly associated with one's job function, can and usually does have an effect on an employee's job performance. The Employer believes it is in the best interests of its employees, the employee's family, and the organization, to provide an Employee Assistance Program that deals with such persistent problems. It shall be the policy of the Employer to handle such problems in accordance with applicable laws, regulations, and this Agreement. The Employer agrees to consult with the Union regarding proposed program changes and to negotiate, as appropriate, and in accordance with laws and regulations.
- B. The Employer recognizes that almost any personal problem, including alcoholism, which is a disease, can be successfully treated if it is identified early and the individual accepts appropriate assistance. Other personal problems arising as a result of substance abuse (drugs) or family, financial, legal, personal or interpersonal difficulties that also may adversely affect an Employee's job performance, conduct or attendance, can be successfully treated as well.
- C. The purpose of this policy is to assure employees that if such personal problems are the cause of deteriorating job performance, conduct, and/or attendance, careful consideration and an offer of assistance will be given to an employee to help him/her solve such problems in an effective and confidential manner. Employees may also voluntarily request referral to the Employee Assistance Program whether or not job performance, attendance or conduct is affected.

Section 2 - Referrals/Community Resources

- A. The Employer agrees to assist employees in securing counseling services when work performance, attendance, reliability or conduct is adversely affected as a result of alcohol, drug or dangerous substance abuse. This may be accomplished through providing information and encouragement to the employee to use any of the following types of service where available:
 - 1. Referrals to available counseling services in the local community through the National Office contract for these services.

Section 3 - Voluntary Participation and Employee Responsibility

Although the existence and functions of counseling and referral programs will be publicized to employees, no employee will be required to participate or be penalized for merely declining referral to a counseling service. Should any counseling appointment or treatments require an absence from duty, the employee must request leave approval or make other appropriate arrangements with his/her supervisor.

Section 4 - Confidentiality/Relationship to Disciplinary and Adverse Action

- A. The parties recognize that all confidential information and records concerning employee counseling and treatment will be maintained in accordance with applicable laws, rules and regulations.
- B. Without an employee's specific written consent, the supervisor may not obtain information about the substance of the employee's involvement with a counseling program. Information obtained with the employee's authorization from such counseling programs may not serve as the basis for disciplinary or adverse actions. Should disciplinary action be necessary, job behavior or performance problems will be the basis, not progress, in a counseling program as such. In evaluating an employee's work performance and job-related conduct, the supervisor may take into account whether an employee referred to counseling is cooperating with a recommended plan of counseling.

Article 39 - Official Personnel Records and Files

Section 1 - Collection and Storage

No official personnel folder (OPF) or record may be collected, maintained, or retained except in accordance with law, government-wide regulation, and this Agreement. All personnel records are confidential, shall be viewed or disseminated only by officials and employees with a legitimate administrative need to know, and must be retained in a secure location by the servicing Personnel Office.

Section 2 - Review, Copying, and Annotation

- A. Employees and/or their authorized representatives have the right, and shall be granted a reasonable amount of duty and official time respectively, to examine and photocopy any of their personnel records in the presence of a management official. In accordance with applicable regulations, the employee shall have the right to prepare and enter in the records, while on duty time, a response to material placed in such personnel records. This right also applies to the merit promotion files, employee performance files, and any file maintained because of a grievance, adverse action or equal employment opportunity (EEO) complaint.
- B. Other than records that are exempt, any record that has not been disclosed to an employee on a timely basis and placed in his/her personnel folder cannot be used in a disciplinary or adverse action without prior discussion with the employee.

Section 3 - Access

Access to personnel records of the employee by the employee and their authorized representative shall be granted as soon as possible but no later than 2 workdays of the receipt of the request for such records.

Section 4 - Notice

Employees should be made aware of the nature and purpose of their official personnel file and their locations. Employees who review their official personnel folder may request a copy of material not routinely furnished to them.

Such copies will be provided normally within 2 working days, provided the Personnel Office work schedule and applicable laws, rules and regulations permit. Employees should acknowledge receipt of such copies by signature. It is understood such acknowledgment doesn't constitute agreement with the contents.

Section 5 - Timeliness

When a supervisor believes that an employee may have engaged in misconduct, he/she will speak timely with the employee, providing an opportunity to the employee to explain the situation. If the supervisor decides to counsel the employee, the supervisor will provide a written record of the counseling to the employee within five (5) working days, and before the counseling document is placed in the supervisor's working files or provided to any other agency official. Employees have the right to elevate matters brought up in counseling through any means and to file grievances/complaints herein provided.

Article 40 - Alternative Dispute Resolution

Section 1 - Commitment

The Employer and the Union are committed to the use of Alternative Dispute Resolution (ADR) problem-solving methods to foster a good labor-management relationship. Union and Management at all levels should be committed to explore the use of ADR problem-solving methods as a priority to resolve disputed matters.

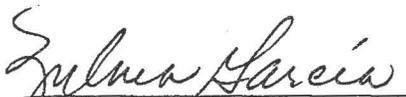
Section 2 - Definitions and Intentions

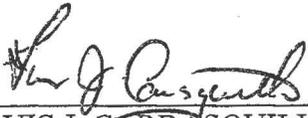
- A. ADR is an informal process which seeks early resolution of employees(s), Union, and Management disputes.
- B. Union and Management must jointly design any ADR process. ADR should be effective, timely, and efficient. It should focus on conflict resolution and problem solving and foster a cooperative labor and management relationship. Participation in the ADR process must be voluntary with the mutual consent of the parties.
- C. ADR resolution shall not be precedential unless specifically agreed to by the parties.

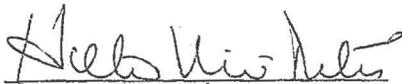
In witness whereof the parties hereto have entered into this Agreement on this 26th day of July 2005.

For the Union:

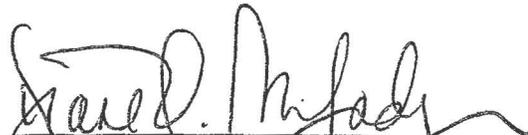

PEDRO ROMERO
Chief Negotiator

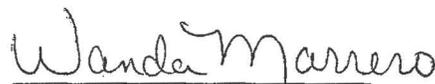

ZULMA GARCÍA
Negotiator, Vice President
AFGE, Local 0055

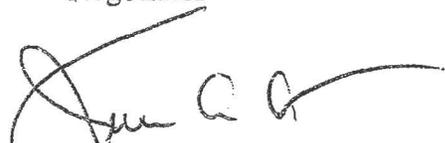

LUIS J. CARRASQUILLO
Negotiator


HILTON MIRO
Negotiator

For Management:


DIANE MCFADGEN
Chief Negotiator


WANDA MARRERO
Negotiator


JUAN A. MARTINEZ
Director, Caribbean Area

