

**RESOLUTION NO. 2011-9-8**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE INLAND  
EMPIRE UTILITIES AGENCY\*, SAN BERNARDINO COUNTY,  
CALIFORNIA, APPROVING THE MEMORANDUM OF  
UNDERSTANDING FOR SUPERVISORS' UNIT EMPLOYEES**

**WHEREAS**, the representatives of the Board of Directors of Inland Empire Utilities Agency\* have met and conferred with duly authorized representatives of the Supervisors' Unit to make equitable adjustments to terms and conditions of employment, and

**WHEREAS**, a Memorandum of Understanding prepared by said representatives has been presented to the Board of Directors for ratification, and

**WHEREAS**, a majority of the unit members from this group voted to approve the Memorandum of Understanding.

**NOW, THEREFORE**, the Board of Directors of the Inland Empire Utilities Agency\* does hereby **RESOLVE, DETERMINE AND ORDER** as follows:

Section 1. That this Board of Directors does hereby approve and authorize its President and Secretary to sign the Memorandum of Understanding between the Inland Empire Utilities Agency and the Supervisors' Unit attached hereto as Exhibit 1, which shall be effective upon approval and remain in full force and effect until a successor Memorandum of Understanding or Personnel Manual is adopted after the parties have met and conferred.


Section 2. That this Board of Directors does hereby order that the Supervisors' Unit Salary Matrix be included herein as part of the MOU, attached hereto as Exhibit 2.

**ADOPTED** the 21<sup>st</sup> day of September, 2011.



Terry Catlin  
President of the Inland Empire  
Utilities Agency\* and of the  
Board of Directors thereof

ATTEST:



Steven J. Elie  
Secretary/Treasurer of the Inland Empire  
Utilities Agency\* and of the  
Board of Directors thereof

\*A Municipal Water District

STATE OF CALIFORNIA )  
COUNTY OF ) SS  
SAN BERNARDINO )

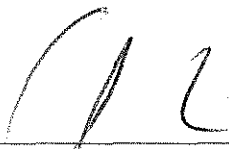
I, Steven J. Elie, Secretary/Treasurer of the Inland Empire Utilities Agency\*, DO  
HEREBY CERTIFY that the foregoing Resolution being No. 2011-9-8, was adopted at a regular  
Board Meeting on September 21, 2011, of said Agency by the following vote:

AYES: Santiago, Elie, Camacho, Koopman, Catlin

NOES: None

ABSTAIN: None

ABSENT: None



---

Steven J. Elie  
Secretary/Treasurer

(SEAL)

\*A Municipal Water District

**THE INLAND EMPIRE UTILITIES AGENCY\***

**MEMORANDUM OF UNDERSTANDING**

**SUPERVISORS' UNIT**

**FOR THE PERIOD OF SEPTEMBER 21, 2011 THROUGH JUNE 22, 2013**



## TABLE OF CONTENTS

<b>ARTICLE 1 - DESIGNATION OF PARTIES</b> .....	<b>1</b>
<b>ARTICLE 2 - PURPOSE</b> .....	<b>2</b>
<b>ARTICLE 3 - TERM</b> .....	<b>2</b>
<b>ARTICLE 4 - DEFINITIONS</b> .....	<b>2</b>
Section 4.01. - General .....	2
Section 4.02. - Appointment .....	2
Section 4.03. - Anniversary Year .....	2
Section 4.04. - Classification .....	3
Section 4.05. - Continuous Regular Employment .....	3
Section 4.06. - Exempt Employees .....	3
Section 4.07. - Holiday Leave .....	3
Section 4.08. - Holiday Pay .....	4
Section 4.09. - Hourly Rate of Pay .....	4
Section 4.10. - Immediate/Extended Family .....	4
Section 4.11. - Inactive Status .....	4
Section 4.12. - Job Abandonment .....	4
Section 4.13. - Non-Exempt Employees .....	4
Section 4.14. - Overtime .....	4
Section 4.15. - Overtime Pay .....	4
Section 4.16. - Personnel Officer .....	5
Section 4.17. - Position .....	5
Section 4.18. - Probationary Employee .....	5
Section 4.19. - Probationary Period .....	5
Section 4.20. - Promotion .....	5
Section 4.21. - Reclassification .....	5
Section 4.22. - Reemployment .....	5
Section 4.23. - Regular Employee .....	5
Section 4.24. - Reinstatement .....	6
Section 4.25. - Resignation .....	6
Section 4.26. - Step Advancement .....	6
Section 4.27. - Temporary Employee .....	6
Section 4.28. - Termination .....	6
Section 4.29. - Transfer .....	6
Section 4.30. - Unpaid Status .....	6
Section 4.31. - Work Schedule .....	6
<b>ARTICLE 5 - GENERAL PROVISIONS</b> .....	<b>7</b>
Section 5.01. - Equal Employment Opportunity .....	7
Section 5.02. - Harassment in Employment .....	7
Section 5.03. - Compliance With Law .....	8
Section 5.04. - Amendment of Memorandum of Understanding (MOU) .....	8
Section 5.05. - Labor/Management Meetings .....	8
Section 5.06. - Whistleblower Protection .....	8
Section 5.07. - Savings Clause .....	8
Section 5.08. - Zipper Clause .....	8
Section 5.09. - Re-opener Clause .....	9

Section 5.10. - Me-too Clause .....	9
<b>ARTICLE 6 - FILLING OF VACANCIES .....</b>	<b>9</b>
Section 6.01. - General .....	9
Section 6.02. - Filling of Vacancy .....	9
<b>ARTICLE 7 - EMPLOYMENT APPLICATIONS AND APPLICANTS .....</b>	<b>10</b>
Section 7.01. - Application Forms .....	10
Section 7.02. - Physical Examination and Condition .....	10
Section 7.03. - Employment Tests .....	11
Section 7.04. - Acceptance of Applicant .....	11
Section 7.05. - Rejection of Applicant .....	11
Section 7.06. - Background Investigations .....	12
<b>ARTICLE 8 - PERSONNEL RECORDS .....</b>	<b>12</b>
Section 8.01. - General .....	12
<b>ARTICLE 9 - PROBATIONARY PERIODS .....</b>	<b>13</b>
Section 9.01. - Regulations .....	13
Section 9.02. - Technical Probation .....	13
Section 9.03. - Dismissal During the Probationary Period .....	14
<b>ARTICLE 10 - CLASSIFICATION, COMPENSATION AND PAY PERIOD .....</b>	<b>14</b>
Section 10.01. - Classification/Compensation Plan .....	14
Section 10.02. - Classification Revision and Reclassification .....	15
Section 10.03. - New Positions .....	15
Section 10.04. - Compensation .....	15
Section 10.05. - Preparation of Compensation Plan .....	15
Section 10.06. - Adoption of Compensation Plan .....	16
Section 10.07. - Salary Adjustments and Step Advancements .....	16
Section 10.08. - Step Advancement/Performance .....	16
Section 10.09. - Denial of Step Advancement/Performance .....	17
Section 10.10. - Authority of General Manager .....	18
Section 10.11. - Acting Pay .....	18
Section 10.12. - Official Business Pay Authorization .....	19
Section 10.13. - Pay Periods .....	19
Section 10.14. - Salary Test of FLSA .....	19
Section 10.15. - Promotional Compensation .....	19
Section 10.16. - Direct Deposit .....	20
Section 10.17. - Shift Differential .....	20
Section 10.18. - Timesheets .....	20
Section 10.19. - Overtime Compensation .....	20
Section 10.20. - On-call .....	20
<b>ARTICLE 11 - BENEFITS .....</b>	<b>21</b>
Section 11.01. - Medical Benefits/Life Insurance Plans .....	21
Section 11.02. - Retirement Plan .....	23
Section 11.03. - Long-Term Disability .....	24
Section 11.04. - State Disability Insurance .....	24
Section 11.05. - Uniforms .....	25

Section 11.06. - Safety Shoes .....	25
Section 11.07. - Mileage Reimbursement.....	25
Section 11.08. - Professional Memberships.....	25
Section 11.09. - Educational Reimbursement.....	25
Section 11.10. - Certification and Licensing.....	25
Section 11.11. - Cellular Telephone Usage.....	256
Section 11.12. - 401 Governmental Money Purchase Plan & Trust (401a Plan).....	26
<b>ARTICLE 12 - PERFORMANCE APPRAISALS .....</b>	<b>26</b>
Section 12.01. - General.....	26
Section 12.02. - Duty of Departments.....	26
Section 12.03. - Employee's Responsibility.....	27
Section 12.04. - Grievance of Performance Appraisal.....	27
Section 12.05. - Demotions.....	27
<b>ARTICLE 13 - LEAVES OF ABSENCE .....</b>	<b>27</b>
Section 13.01. - Pre-approved Leaves of Absence.....	27
Section 13.02. - Leave of Absence With Pay.....	28
Section 13.03. - Leave of Absence Without Pay.....	28
Section 13.04. - Holidays.....	28
Section 13.05. - Vacation Leave.....	30
Section 13.06. - Sick Leave.....	33
Section 13.07. - Sick Leave Buy Back.....	35
Section 13.08. - Bereavement Leave.....	36
Section 13.09. - Industrial Injury Leave.....	36
Section 13.10. - Jury and Court Leave.....	36
Section 13.11. - Military Leave.....	37
Section 13.12. - Pregnancy, Childbirth & Other Related Medical Conditions Leave.....	37
Section 13.13. - Longevity Leave.....	37
Section 13.14. - Leave of Absence to Vote.....	37
Section 13.15. - Payment of Accrued Leave.....	38
<b>ARTICLE 14 - SEPARATION FROM SERVICE .....</b>	<b>38</b>
Section 14.01. - Discharge During Probationary Period.....	38
Section 14.02. - Layoff.....	38
Section 14.03. - Resignation.....	39
<b>ARTICLE 15 - EMPLOYEE CONDUCT .....</b>	<b>39</b>
Section 15.01. - Peaceful Performance of Duties.....	39
Section 15.02. - Recognition of Boycotts.....	39
Section 15.03. - Outside Employment.....	39
Section 15.04. - Personal Conduct.....	39
Section 15.05. - Financial Affairs.....	39
Section 15.06. - Employees Acting as Agents of the Agency.....	40
<b>ARTICLE 16 - GRIEVANCE PROCEDURE .....</b>	<b>40</b>
Section 16.01. - General.....	40
Section 16.02. - Grievance Initiation.....	41
Section 16.03. - Grievance Steps.....	41
Section 16.04. - Request for Hearing with the Finance, Legal and Administration Committee of the Board of Directors.....	42

Section 16.05. - Conduct of Grievance Hearings with the Finance, Legal and Administration Committee of the Board of Directors .....	43
Section 16.06. - Notice of Decision by the Finance, Legal and Administration Committee of the Board of Directors .....	45
<b>ARTICLE 17 - DISCIPLINARY ACTIONS AND APPEALS PROCEDURES .....</b>	<b>45</b>
Section 17.01. - Types of Discipline .....	46
Section 17.02. - Conduct Leading to Disciplinary Action(s) .....	46
Section 17.03. - Administrative Leave .....	48
Section 17.04. - Agency Authority .....	48
Section 17.05. - Employee's Receipt .....	49
Section 17.06. - Notice of Proposed Disciplinary Action .....	49
Section 17.07. - Right to Respond .....	50
Section 17.08. - Notice of Decision by the Department Manager .....	50
Section 17.09. - Effective Date of Disciplinary Action .....	50
Section 17.10. - Disciplinary Appeals to the Executive Manager .....	51
Section 17.11. - Conduct of Appeals Meeting with the Executive Manager .....	52
Section 17.12. - Notice of Decision by the Executive Manager .....	52
Section 17.13. - Effective Date of Disciplinary Action .....	53
Section 17.14. - Disciplinary Appeals to the General Manager .....	53
Section 17.15. - Conduct of Appeals Meeting with the General Manager .....	54
Section 17.16. - Notice of Decision by the General Manager .....	54
Section 17.17. - Effective Date of Disciplinary Action .....	55
Section 17.18. - Decision of General Manager Final and Binding .....	55
Section 17.19. - Disciplinary Appeals to the Board of Directors .....	55
Section 17.20. - Conduct of Appeals Hearing with the Finance, Legal and Administration Committee of the Board of Directors .....	56
Section 17.21. - Notice of Decision by the Finance, Legal and Administration Committee of the Board of Directors .....	59
<b>ARTICLE 18 - RULE MAKING AUTHORITY .....</b>	<b>59</b>
Section 18.01. - General .....	59
<b>ARTICLE 19 - NOTICE .....</b>	<b>60</b>
Section 19.01. - General .....	60
<b>ARTICLE 20 - MANDATORY SUBJECTS OF BARGAINING .....</b>	<b>60</b>
Section 20.01. - General .....	60

**THE INLAND EMPIRE UTILITIES AGENCY\***  
**MEMORANDUM OF UNDERSTANDING**

**SUPERVISORS' UNIT**

**YEARS 2011-2013**

The Agency does hereby adopt this Memorandum of Understanding (MOU) establishing rules, regulations and procedures for employees of the Supervisors' Unit.

Provisions of the MOU do not apply to part-time, temporary, limited term, contract or intern personnel (employees) unless specifically noted in this MOU, Agency Policy or the employee's contract. This MOU does not create any contract of employment, expressed or implied, or any rights in the nature of a contract.

- A. There are no provisions in this MOU that shall be deemed to limit or curtail the Agency in any way in the exercise of the rights, powers and authority which the Agency had prior to entering into this MOU unless and only to the extent that the provisions of this MOU specifically curtail or limit such rights, powers and authority.
  
- B. The exclusive rights of the Agency include, but are not limited to:
  - 1) Determine the mission of its constituent departments, commissions, and boards;
  - 2) Set standards of service;
  - 3) Determine the procedures and standards of selection for employment and promotion;
  - 4) Direct its employees;
  - 5) Relieve its employees from duty because of lack of work and/or for other legitimate reasons;
  - 6) Maintain efficiency of government operations;
  - 7) Determine the methods, means and personnel by which Agency operations are to be conducted;
  - 8) Determine the content of job classifications;
  - 9) Take all necessary actions to carry out its missions in emergencies;
  - 10) Exercise complete control, direction and discretion over its organization and the technology of performing its work;
  - 11) Discharge, suspend, demote, reprimand and withhold salary increases and benefits or otherwise discipline employees for cause;
  - 12) Establish reasonable employee performance standards, including but not limited to, quality standards, and required compliance herewith;
  - 13) Determine staffing plans and hours of operations for the best use of Agency resources; and,
  - 14) Enforce other management rights secured by the "Inland Empire Utilities Agency Employer-Employee Relations Resolution".

**ARTICLE 1 - DESIGNATION OF PARTIES**

The Supervisors' Unit is a recognized employee organization which represents a unit of representation established by the Board of Directors of the Agency, pursuant to the Agency's Employer/Employee Relations Resolution, and which includes the following classifications, as well as those which may be added, deleted or modified in the future pursuant to the

Employer/Employee Relations Resolution:

Accounting Supervisor	Operations Supervisor*
Administrative Coordinator	Pretreatment and Source Control Supervisor
Business Systems Supervisor	Process Automation and Control Supervisor
Compost Facility Superintendent	Senior Chemist
Construction Project Manager	Senior Water Resources Analyst
Construction Project Manager – PE	Supervising Contracts & Programs Administrator
Groundwater Recharge Coordinator	Supervising Management Analyst
Inventory Resource Coordinator	Supervising Warehouse Systems and Inventory
Materials Management Supervisor	Supervisor of Engineering Administration

\*Non-exempt classification

The provisions of this MOU shall apply to the above-referenced classifications, who shall receive all benefits agreed to in this MOU for the term of this contract.

## **ARTICLE 2 - PURPOSE**

The parties to this MOU agree that its purpose is to confirm and maintain a spirit of cooperation between the Agency and the Supervisors' Unit. The Agency and the Supervisors' Unit will strive to promote a harmonious relationship between the parties, through this MOU, that will result in benefits for the Agency and the Supervisors' Unit.

## **ARTICLE 3 - TERM**

This MOU shall be effective as of September 21, 2011. It shall remain in full force and effect through June 22, 2013, or until a successor MOU is adopted after the parties have met and conferred.

In or before March, 2013, the parties agree to initiate the meet and confer process on a successor MOU.

## **ARTICLE 4 - DEFINITIONS**

### Section 4.01. - General

Unless otherwise required by the context, various terms used in this document shall have the meanings set forth in this section. Terms expressed in the singular shall also include the plural.

### Section 4.02. - Appointment

The act of filling a vacant position with a person who has met the qualifications for the position.

### Section 4.03. - Anniversary Year

The year following the date of employment with the Agency and each successive year thereafter.

#### Section 4.04. - Classification

A group of positions sufficiently similar in duties, authority, and responsibility, to permit grouping under a common title in the application of common standards of selection, transfer, demotion and salary.

#### Section 4.05. - Continuous Regular Employment

That period of actual employment by the Agency following an employee's date of employment, or the employee's most recent date of reemployment or reinstatement, whichever is later. The term shall also include military leaves of absence and pre-approved leaves of absence, provided that on the day prior to such periods the employee was in the employ of the Agency and that during such periods the employee takes no action expressed or implied to terminate employment.

##### A. Break in Continuous Regular Employment

###### 1) Failure to Return to Work

A break in continuous regular employment for failure to return to work as required at the completion of one of the above authorized periods of absence shall, except in the event of the employee's death during such a period, be considered as voluntary termination as of the date the period of absence began.

###### 2) Termination of Employment

Termination of employment by resignation, discharge, or other means or failure to return to work at the completion of one of the above authorized periods of absence shall constitute a break in continuous regular employment.

###### 3) Other Employment

Employment by other than the Armed Forces of the United States or its Allies during a period of authorized absence shall constitute a break in continuous regular employment unless such other employment is approved by the Agency.

#### Section 4.06. - Exempt Employees

Employees in exempt positions who are excluded from FLSA overtime pay requirements and are compensated on a bi-weekly salary basis. Additional time worked during a workweek may be offset by an adjustment in subsequent working hours during the same pay period at management's discretion.

#### Section 4.07. - Holiday Leave

A holiday recognized by the Agency when employees will be granted a day off with pay.

#### Section 4.08. - Holiday Pay

Pay received by those employees who are required to work on an Agency recognized holiday.

#### Section 4.09. - Hourly Rate of Pay

The hourly rate of pay for non-exempt employees is the amount equal to the classification and step position an employee currently holds.

#### Section 4.10. - Immediate/Extended Family

- A. Immediate Family is limited to: Spouse, State Registered Domestic Partner, Parent (biological or an individual who stands or stood in loco parentis to an employee when the employee was a minor), Child (biological/adopted/foster/step child, a legal ward, or a child of a person standing in loco parentis who is under age 18), Brother and Sister.
- B. Extended Family is limited to: Aunt, Brother-in-law, Daughter-in-law, Ex-spouse (if children are involved), Father-in-law, Grandchild, Grandparent, Half-Brother, Half-Sister, Mother-in-law, Nephew, Niece, Sister-in-law, Son-in-law, Step-brother, Step-sister, and Uncle.

#### Section 4.11. - Inactive Status

An employee who is on an authorized leave of absence without pay for more than thirty (30) calendar days.

#### Section 4.12. - Job Abandonment

An employee who does not report or call-in to work as scheduled for two (2) or more consecutive work days, and has not been excused for vacation, floating holiday, sick leave or a leave of absence without pay, shall be considered as having abandoned his/her job. Such employee may be disciplined in accordance with Article 17, Disciplinary Actions and Appeals Procedures.

#### Section 4.13. - Non-Exempt Employees

Employees in non-exempt positions who are covered under FLSA regulations, including overtime pay requirements and are compensated on an hourly basis.

#### Section 4.14. - Overtime

Overtime shall be defined for non-exempt employees as all hours worked in excess of forty (40) hours per workweek.

#### Section 4.15. - Overtime Pay

A rate equivalent to one and one-half (1½) times an employee's hourly rate of pay.

#### Section 4.16. - Personnel Officer

The General Manager, or designated representative(s) of the Agency, or anyone the General Manager or the Agency Board of Directors may appoint to act on its behalf.

#### Section 4.17. - Position

A group of duties and responsibilities assigned by proper authority to be performed by one employee. A position may be full or part time, occupied or vacant, temporary or regular.

#### Section 4.18. - Probationary Employee

##### A. Original Probationary Employee

A person appointed to fill a regular position, but who has not yet completed the probationary period. The probationary period is a trial period in which a new employee is evaluated on the ability to fulfill the skills required by a position and the ability to establish an effective working relationship with co-workers.

##### B. Technical Probationary Employee

A regular employee appointed, through promotion or a lateral transfer, to a classification or position having duties other than the employee's current position.

#### Section 4.19. - Probationary Period

A period considered an integral part of the examination, recruiting, testing and selection process during which an employee is required to demonstrate fitness for the position to which the employee is appointed by actual performance of the duties and responsibilities of the position.

#### Section 4.20. - Promotion

The movement of an employee from one classification to another classification having a higher maximum base rate of pay.

#### Section 4.21. - Reclassification

The reallocation of a position, through a change in duties and responsibilities, based on the needs of the Agency, to a different classification and/or salary range.

#### Section 4.22. - Reemployment

The rehiring, other than reinstatement, of an individual who formally worked as an employee of the Agency.

#### Section 4.23. - Regular Employee

An employee who has successfully completed the original probationary period.

#### Section 4.24. - Reinstatement

The restoration, without competitive examination, of a former regular employee to a classification in which the employee formerly served as a regular, non-probationary employee.

#### Section 4.25. - Resignation

The termination, at the election of the employee, of employment with the Agency.

#### Section 4.26. - Step Advancement

A salary increase, based on Meets Expectations or better employee performance, which is within the limits of a pay range established for a classification.

#### Section 4.27. - Temporary Employee

A person employed to meet a short-term need of the Agency. An employee shall not be retained in this status more than six (6) months without the written approval of the General Manager, or designated representative(s). Temporary employees are not entitled to Agency benefits or any other provision stipulated in this MOU.

#### Section 4.28. - Termination

The termination of an employee at the discretion of the Agency by means of layoff, discharge, or other means.

#### Section 4.29. - Transfer

The movement of an employee from one position to another position in the same classification or in a comparable classification with the same maximum salary, involving the performance of similar duties and responsibilities and requiring substantially the same basic qualifications.

#### Section 4.30. - Unpaid Status

When an employee does not receive compensation for time not worked, or does not have any usable accrued leave time, or is not eligible for any other paid leave, such employee shall be considered as being in an unpaid status.

#### Section 4.31. - Work Schedule

A work period consists of a two (2) week period consisting of eighty (80) hours worked over fourteen (14) days.

A workweek is a fixed and regularly recurring period of one hundred and sixty-eight (168) hours consisting of seven (7) consecutive twenty-four (24) hour periods.

##### A. 9/80 Primary Work Schedule

A 9/80 work schedule shall consist of eighty (80) hours worked over a two (2) week period with four 9-hour days in one (1) week and four 9-hour days plus one 8-hour

day in the other. The 9/80 workweek, for purposes of computing overtime for non-exempt employees, is defined as beginning exactly four (4) hours into the eight (8) hour shift on the day of the week that corresponds with the employee's alternating regular flex day off.

Example: Friday On/Off:

<u>Wk</u>	F	Sa	S	M	T	W	Th	F		Total
1	0	0	0	9	9	9	9	4	=	40
2	4	0	0	9	9	9	9	0	=	40

**B. 5/40 Work Schedule**

A 5/40 work schedule shall consist of five 8-hour days equaling forty (40) hours per workweek, with the workweek defined as beginning at 12:00 a.m. on Sunday and ending at midnight the following Saturday.

**C. 4/10 Work Schedule**

A 4/10 work schedule shall consist of four 10-hour days equaling forty (40) hours per week, with the workweek defined as beginning at 12:00 a.m. on Sunday and ending at midnight the following Saturday.

**D.** The General Manager, or designated representative(s), shall be empowered to arrange work schedules in alternate time distributions provided that such alternate distributions are in the best interests of the Agency and that affected employees have been provided a minimum of fourteen (14) calendar days notice of said change. All employees of the Agency are subject to call for emergencies which are inherent in the Agency's responsibilities.

Staff assignments and schedules will be determined by management for the best use of agency resources to meet the needs of the Agency.

**ARTICLE 5 - GENERAL PROVISIONS**

**Section 5.01. - Equal Employment Opportunity**

The Agency provides equal employment opportunity to all employees and applicants without regard to sex, race, color, religion, national origin, age, ancestry, physical or mental disability, genetics, marital status, sexual orientation or veteran status.

**Section 5.02. - Harassment in Employment**

Harassment of an applicant or employee by a supervisor, management employee or co-worker on the basis of sex, race, color, religion, national origin, age, ancestry, physical or mental disability, genetics, marital status, sexual orientation or veteran status will not be tolerated. Harassment by or against any employee or applicant or from a person providing services pursuant to a contract on the basis of sex, race, color, religion, national origin, age, ancestry, physical or mental disability, genetics, marital status, sexual orientation or veteran status will not be tolerated

(refer to Agency Policy A-29 and A-30).

#### Section 5.03. - Compliance With Law

The Agency's Board of Directors and employees shall take no actions relative to personnel or labor relations matters that conflict with or attempt to circumvent applicable State or Federal Laws.

#### Section 5.04. - Amendment of Memorandum of Understanding (MOU)

This MOU may be amended by the Agency Board of Directors, after meeting and conferring with representatives of the unit.

#### Section 5.05. - Labor/Management Meetings

Representatives of the Unit and the Agency shall meet informally at the request of either party to discuss matters of mutual interest to each party. The time and place of the meeting shall be selected by the representatives involved. Three (3) designated Supervisors' Unit employees shall be allotted Association Leave time to prepare for MOU negotiations. Association Leave will equal two (2) meetings per month with a maximum of two (2) hours per meeting beginning in January prior to the expiration of current MOU and ending once negotiations begin provided that negotiations commence in March.

#### Section 5.06. - Whistleblower Protection

California law prohibits retaliation against any employee for opposing/reporting unlawful discriminatory/harassment prohibited by law or for filing a complaint with, or otherwise participating in an investigation, proceeding, or hearing conducted by the Agency or another Governmental Agency. Additionally, the Agency will not retaliate against any employee who files a complaint with the Manager of Human Resources of discrimination, harassment, malfeasance, misappropriation of Agency funds, violation of regulatory permit requirements, state or federal laws, or substantial and specific danger to the public health/safety. Such complaints must be submitted in writing to the Manager of Human Resources, and filed under penalty of perjury.

#### Section 5.07. - Savings Clause

If any article or section of this contract shall be held invalid by operation of laws or by any court of competent jurisdiction, the remainder of this contract shall not be affected thereby. In the event that any section is held invalid, the parties agree to immediately enter into negotiations for the purpose of arriving at a mutually satisfactory replacement of the invalidated section or article.

#### Section 5.08. - Zipper Clause

Both parties agree to meet and confer on any matter within the scope of the Meyers-Milias-Brown Act except that all subjects contained herein have been resolved by means of the meet and confer process. Neither party may be compelled by the other to renegotiate any part of the agreement except as listed above in the Savings Clause. Nothing in this section would preclude the parties from mutually agreeing to reopen a section of the contract for the purposes of improving a particular section.

#### Section 5.09. - Re-opener Clause

The parties agree to re-open the meet and confer process regarding the subject of a Cost of Living Adjustment for the Fiscal Year 2012/2013 only. This re-opener shall be exercised by the Association giving notice of its intent to re-open no earlier than March 1, 2012 and no later than May 1, 2012. The scope of the re-opener shall apply to no other subjects except as set forth herein. In no case, will the meet and confer result in a salary reduction or any other concession by the bargaining unit.

#### Section 5.10. - Me-too Clause

During the term of this MOU, there shall be no Cost of Living Adjustment. However, if the Agency negotiates a Cost of Living Adjustment for all classifications within any other recognized bargaining unit/employee group, it shall provide the same Cost of Living Adjustment to all classifications represented by the Association. A Cost of Living Adjustment shall be defined as a percentage increase to an employee's base salary that is applied across all classifications within a bargaining unit/employee group. This Me-too clause shall not apply to individual wage adjustments, merit increases or any other compensation increase that is not a Cost of Living Adjustment. In addition, if any other recognized bargaining unit/employee group receives a Cost of Living Adjustment during the term of this Agreement simultaneous with the bargaining unit/employee group agreeing to pay a percentage of the employee's CalPERS retirement contribution that is greater than the percentage agreed to by this bargaining unit, this bargaining unit shall have the option of accepting both the increase in salary and increase in the employee's retirement contribution, or in the alternative, to retain its current wages and employee contribution. This Me-too clause shall sunset and expire on June 22, 2013.

### **ARTICLE 6 - FILLING OF VACANCIES**

#### Section 6.01. - General

Vacancies may be filled by appointment, transfer, demotion or promotion or by the use of a temporary employee (not to exceed twelve (12) months), as deemed in the best interest of the Agency, by the General Manager, or designated representative(s).

#### Section 6.02. - Filling of Vacancy

Whenever a vacancy occurs in the Agency's staff or labor force, the General Manager, or designated representative(s), shall decide by what manner the vacancy is to be filled.

- A. Insofar as possible and practical and in keeping with the best interests of the Agency, vacancies may be filled with existing employees of the Agency, subject to the following conditions:
- 1) A current Agency employee submits a completed application form for the vacant position.
  - 2) The employee requesting consideration demonstrates or possesses the experience and/or education and other qualifications that the position requires.
  - 3) An employee scores competitively on examinations, if given.

- 4) In cases where more than one employee applies and all other factors are equal, seniority in terms of employment with the Agency shall prevail.
- B. Employees shall be evaluated for promotion or advancement based on the following criteria including but not limited to:
- 1) Overall work performance.
  - 2) Knowledge, training, ability, skill, efficiency and overall job performance.
  - 3) Job-related work experience and education including certificates and degrees.
  - 4) Cooperative working relationships with those contacted in the course of work.
  - 5) Physical and mental ability to perform, with reasonable accommodation if disabled, the essential functions of the job.
  - 6) Attendance records with the Agency.
  - 7) Seniority with the Agency.
  - 8) Completion of or on-going participation in TEAMS training.
- These criteria shall be evaluated only on the basis of the requirements of the position or classification for which the employee is being considered.
- C. Qualified Agency employees may apply for a transfer or promotional position within the Agency.

## **ARTICLE 7 - EMPLOYMENT APPLICATIONS AND APPLICANTS**

### **Section 7.01. - Application Forms**

Employment applications shall be made on forms approved by the General Manager or designated representative(s), and provided by the Agency's Human Resources Department. These forms shall require information regarding education, prior work experience, training, references and other information related to the job for which applying. All applications shall be signed and dated by the applicant under a penalty of perjury. Any falsification of information on an application form may disqualify an applicant.

### **Section 7.02. - Physical Examination and Condition**

After a conditional offer of employment has been made to a job applicant, and prior to the commencement of employment with the Agency, all selected applicants shall be required to undergo a physical examination and evaluation which may include drug and/or alcohol screening performed by a physician selected by the Agency. Employees, in certain classifications, may further be required to undergo additional periodic physical examinations and/or receive certain anti-toxin injections during their employment with the Agency. The expense involved in such an examination shall be borne by the Agency. The evaluation of an employee's physical ability to

perform the job shall be made only on the basis of the essential functions of the position for which the employee is applying.

#### Section 7.03. - Employment Tests

Applicants for all positions, as determined by the General Manager, or designated representative(s), shall be subjected to oral, written and/or performance tests. Only applicants who demonstrate an acceptable level of knowledge, skills and abilities required of the position shall be considered for employment. If there is a job-related requirement for the position, a working knowledge of written and spoken English must be demonstrated by all applicants.

#### Section 7.04. - Acceptance of Applicant

Prior to hiring, the application and pertinent information of the applicant shall be reviewed by the General Manager, or designated representative(s). Said applicant will be approved for, or recommended for, employment on the qualifications that the Manager, or designated representative(s), deem pertinent to the position or classification. Refer to Section 5.01 of this MOU for those items which shall not be adjudged pertinent.

#### Section 7.05. - Rejection of Applicant

The General Manager, or designated representative(s), may reject an application, or, after examination, may disqualify the applicant, if the applicant:

- A. Is found to lack any of the requirements, certifications, or qualifications for the position involved;
- B. Is physically or mentally incapable of performing the essential functions of the job, with or without reasonable accommodation, based on competent medical/psychological evidence, including, but not limited to, impairment caused by current illegal use of drugs; or current abuse of alcohol;
- C. Has made false statements of any material fact, or practiced any deception or fraud on the application, declarations or in securing eligibility or appointment;
- D. Is found by the Agency's automobile insurance program to be uninsurable if the essential functions of the job require the employee to be insured;
- E. Has been convicted of a crime, either a misdemeanor or felony, that relates to the position duties that the applicant would perform;
- F. Has used or attempted to use political pressure or bribery to secure an advantage in the employment testing or appointment;
- G. Has directly or indirectly obtained information, in advance, regarding employment tests;
- H. Has failed to complete and/or submit the employment application correctly or within the prescribed time limits;
- I. Has had the privilege to operate a motor vehicle in the State of California

suspended or revoked within the past twelve (12) months if operating a motor vehicle, requiring a driver's license, is an essential function of the job for which applying;

- J. Has a job history which, in the judgment of the General Manager, or designated representative(s), would render the applicant ineligible for the position, including a prior discharge from the Agency.

#### Section 7.06. - Background Investigations

After a conditional offer of employment has been made to a job applicant, and prior to the commencement of employment with the Agency, all selected applicants shall be required to allow the Agency to conduct a background investigation. Said investigation shall include verification of prior employment, verification of education, fingerprinting, credit check (for positions that regularly are involved in financial transactions) and any other information necessary to evaluate an applicant's qualifications for the position.

### **ARTICLE 8 - PERSONNEL RECORDS**

#### Section 8.01. - General

- A. Personnel records are by nature confidential, and the General Manager, or designated representative(s), shall establish procedures to maintain this confidential nature (refer to Agency Policy A-58).
- B. The contents of any personnel file or record shall only be released to the employee; the employee's designee upon written authorization of the employee; upon court order; on a need to know basis to the respective manager/supervisor; legal representatives of the Agency relative to personnel actions; and only with the approval of the Manager of Human Resources or designated representative.
- C. The General Manager, or designated representative(s), shall maintain as a portion of the personnel records the employee's qualifications, education, achievements and other classified and confidential information as well as the following standard forms:
  - 1) Application Form
  - 2) Employment Record
  - 3) Periodic Performance Appraisals
- D. A separate medical file shall be established by the Human Resources Department for each employee. This file shall be maintained in accordance with the Agency's records retention schedule, and in a confidential manner.
- E. The General Manager, or designated representative(s), and the employee shall be empowered and charged to cause entries to be made in the employee's personnel file and each employee shall have the right to review his/her file to assure said personnel file is current and complete.

- F. Disciplinary actions of less than and including a suspension of five (5) days or less will be purged from the employee's personnel file after two (2) years upon written request of the employee to the Manager of Human Resources if the employee has not been subject to any formal discipline during the two (2) year period.
- G. Employees must provide the Agency with a current address and phone number.

## **ARTICLE 9 - PROBATIONARY PERIODS**

### Section 9.01. - Regulations

- A. Generally, original and promotional appointments shall have a probationary period of six (6) months. The General Manager may, in special circumstances, establish an original probationary period of one (1) year. Said probationary period shall be declared in any offer letter. There are two (2) types of probationary periods:
  - 1) Original Probation - as defined in Section 4.18.A of this MOU.
  - 2) Technical Probation - as defined in Section 4.18.B of this MOU.
- B. Upon approval of the General Manager, or designated representative(s), the probationary period may be extended a maximum of an additional six (6) months.
- C. Prior to the completion of an original or technical probationary period, the probationer's supervisor or the manager of the department in which the employee works, shall prepare a performance appraisal reporting the quality of the required skills, knowledge and ability to successfully perform the job as stated in the probationer's job classification specification. This appraisal shall be reviewed with the probationary employee and a signed copy presented to the General Manager, or designated representative(s), along with a recommendation to retain the employee, or discharge the employee. In the case of the technical probationer, the employee may be reclassified or returned to the employee's former classification or position as provided for in Section 9.02.B and Section 9.02.C.
- D. In the case of an original probationary period of one (1) year, employees who have completed six (6) months may use accrued sick leave, vacation leave and/or floating holidays.
- E. The time required for original probationary periods shall be extended by any time an employee is on an authorized leave of absence, with or without pay, which exceeds ten (10) calendar days during the Original Probationary period or during the first six (6) months of employment in the event of a one (1) year original probationary period.

### Section 9.02. - Technical Probation

- A. In those cases where multiple changes in classification or position occur within said technical probation period, the maximum technical probation period will be at the discretion of the General Manager, or designated representative(s).
- B. A regular employee who is promoted shall be subject to a technical probationary

period of six (6) months (or up to one (1) year in the event of a special circumstance) during which time the employee shall demonstrate the ability to function in the new classification. If at any time during the technical probationary period the employee or the Agency feels the employee is not qualified or suited to said position, the employee may elect or the Agency shall return said employee to the employee's previous classification. A decision by the Agency to return an employee to the previous classification is not grievable.

- C. If a vacancy exists in a different classification, said employee may be reclassified at the discretion of the General Manager, or designated representative(s).
- D. An employee who satisfactorily completes Technical Probation and who is on Step 1 shall receive a merit adjustment based on his/her latest performance appraisal.
- E. Range placement and future step advancement dates upon unsuccessful completion of technical probation are as follows:
  - 1) The employee will be placed on the same range and step for the classification as the employee was on prior to the time he/she was promoted.
  - 2) The employee will be eligible for the next step advancement on the anniversary date of the original position prior to being promoted.

#### Section 9.03. - Dismissal During the Probationary Period

- A. During the original probationary period, an employee may be discharged by the General Manager, or designated representative(s), without cause and without right to appeal. Written notification of the discharge shall be served on the probationary employee by the immediate supervisor, or designated representative(s), and a copy shall be filed with the General Manager, or designated representative(s).
- B. If an opening exists in a different position or classification, the employee may, at the General Manager's, or designated representative(s), discretion, be offered the position in lieu of termination. The employee will be required to serve another six (6) month probationary period in the new position.
- C. The final decision of the above action(s) will be at the sole discretion of the General Manager, or designated representative(s).
- D. Any employee who is discharged during his/her original probationary period shall receive his/her final compensation, including any accrued vacation leave, at the time he/she is terminated.

### **ARTICLE 10 - CLASSIFICATION, COMPENSATION AND PAY PERIOD**

#### Section 10.01. - Classification/Compensation Plan

In addition to this MOU, the General Manager, or designated representative(s), shall maintain a file which shall contain the following:

- A. A nine (9) step compensation plan to include a listing of internal salary relationships among classifications, and benchmark classifications for purposes of establishing salaries for each classification within the Agency. The compensation plan shall also include salary and/or hourly rate schedules for all classifications.
- B. Classification specifications for each job classification utilized for making appointments to all positions within the Agency. Class specifications shall define the principal duties, responsibilities, and minimum qualifications required of each classification. The General Manager, or designated representative(s), shall determine and set forth the duties and responsibilities as they are to be presented in said class specifications. Assignments may be varied or interchanged to meet the needs of the Agency.

#### Section 10.02. - Classification Revision and Reclassification

- A. The initial classification established in the above plan may be amended, combined, or abolished and new classifications set forth by the General Manager, or designated representative(s). In addition, any position may be reclassified to a different classification by the General Manager, or designated representative(s), when there is a change in the duties and responsibilities of the position or other sufficient cause. Any non-voluntary reclassification of a position to a different classification shall result in an employee being placed into the appropriate pay range for the new position. A demotion is not considered a non-voluntary reclassification.
- B. If an employee believes that his/her duties and responsibilities have changed significantly, the employee may request a classification study of his/her position. Such request must be submitted in writing to the General Manager, or designated representative(s).

#### Section 10.03. - New Positions

Any new position and/or classification that is established shall comply with this MOU and shall be allocated to the Agency's classification and compensation plan by the General Manager.

#### Section 10.04. - Compensation

- A. Adjustments, if any, to salary ranges of employees covered by this MOU shall be made as negotiated between the Unit and the Agency, and shall become part of this MOU.
- B. If a COLA is awarded, only those persons who are Agency employees and working for the Agency on the date this MOU is approved by the Board of Directors or on the date the COLA is actually implemented, whichever is later.
- C. All COLA's provided for in this MOU shall be implemented on Step "1" of the salary matrix and incrementally implemented through Step "9".

#### Section 10.05. - Preparation of Compensation Plan

A nine (9) step compensation plan shall be prepared by the General Manager, or designated representative(s), to establish the rate of compensation and consideration for all

classifications and all positions within said classifications. In determining the compensation rates for the various classifications, considerations may be given to the Agency's financial status, the current cost-of-living, local prevailing rates of compensation for like or comparable employment in public or private agencies, working conditions, fringe benefits, and any other relevant factors. The rates of compensation shall be arranged in clear and understandable tables entitled "Hourly and/or Salary Rate Schedules" which shall be made a part of this MOU.

#### Section 10.06. - Adoption of Compensation Plan

The nine (9) step compensation plan shall be adopted by the Board of Directors of the Agency and made a part hereof, and will be on file with the General Manager, or designated representative(s). Such compensation plan may only be amended or revised after the parties have met and conferred on any proposed amendments and or revisions.

#### Section 10.07. - Salary Adjustments and Step Advancements

The procedures for step advancements within each salary range are set forth as follows:

- A. New employees shall be hired at Step "1" of the established salary range for their classification. Variable entrance steps may be established if justified by recruitment needs through Step "9" with the approval of the General Manager, or designated representative(s).
- B. Within the base salary range, all step advancements will be effective on the first day of a pay period. Approval for advancement shall be based upon merit and completion of required length of service in the classification. Step advancements within each salary range shall be in increments of approximately 2½%.
- C. Upon completion of a probationary period, advancement in step(s) shall be based on performance as provided in Section 10.08. Except in cases where employees have exhibited Outstanding performance as provided in Section 10.08.E, other advancements shall be based on performance as provided in Section 10.08.B, and are contingent upon completion of one (1) year.
- D. The time required for step advancement shall be extended by any time an employee is on an authorized leave of absence with or without pay, which exceeds thirty (30) calendar days (see Section 12.01.D).
- E. The General Manager, or designated representative(s), may authorize the adjustment of the range step or pay rate of an employee to maintain salary equity within the system, to prevent undue hardship or unfairness due to the application of any rule or policy, to correct any payroll error or omission including any such action which may have arisen in the prior fiscal year, or to correct any wage inequity.

#### Section 10.08. - Step Advancement/Performance

- A. The advancement of an employee within a classification shall be based on the employee exhibiting an increased ability, experience or educational level coupled with a history of meritorious service. The employee's supervisor shall evaluate the employee's qualifications and if merited, shall recommend advancement. The General Manager, or designated representative(s), shall have the authority to grant

or reject recommended advancements.

- B. Employees who receive an annual performance appraisal with an overall performance rating of Meets Expectations shall be eligible to receive a one (1) step advancement, employees who receive an overall performance rating of Exceeds Expectations shall be eligible to receive a two (2) step advancement, and employees who receive an overall performance rating of Outstanding shall be eligible to receive a three (3) step advancement. In no instance shall the advancement place the employee higher than Step "9" of his/her salary range.
- C. A Meets Expectations or better performance appraisal will not be considered as justification for automatic advancement for employees who pass original or technical probation. Should an employee not be awarded a step advancement upon conclusion of his/her probationary period, he/she shall be eligible for a step advancement upon completion of one (1) year in the position.
- D. Advancements that are delayed because of late filing of recommendations shall be retroactive to the employee's benefit date when approved.
- E. An early step advancement may be granted to employees who have exhibited Outstanding performance. The due date of the next merit increase shall be upon completion of one (1) year from the date of the early step advancement (and paid in accordance with Section 10.08.G).
- F. In addition to any step advancement, Unit members may receive a Performance Award (paid in one lump sum during pay period 22) of up to ten percent (10%) of the employee's base salary. Performance Awards when authorized by the Board of Directors shall be awarded based on performance during the previous fiscal year. All Performance Awards shall be awarded at the sole discretion of the General Manager. This Performance Award will be awarded to only those Unit members who are working for the Agency on the date the performance award is paid. The amount of the Performance Award to employees hired, promoted or reclassified after the beginning of a fiscal year shall be pro-rated based on the number of pay periods remaining in the fiscal year. An employee on an authorized leave of absence, with or without pay, that exceeds thirty (30) continuous calendar days shall have his/her Performance Award pro-rated by the amount of pay periods actually worked in the fiscal year.
- G. Merit adjustments shall become effective as follows:
  - 1) If a merit increase is due during the first week of a pay period, the effective date of the merit increase shall be the first day of that pay period.
  - 2) If a merit increase is due during the second week of a pay period, the effective date of the performance appraisal/merit increase shall be the first day of the following pay period.

#### Section 10.09. - Denial of Step Advancement/Performance

- A. An employee who receives an overall rating of Below Expectations or Unacceptable shall be denied his/her step advancement. A written performance appraisal identifying the areas of weakness and what steps/actions the employee

needs to take to improve his/her performance shall be provided to and discussed with the employee.

- B. After receiving an overall rating of Below Expectations or Unacceptable, the employee shall have a maximum of two 3-month feedback evaluations to attain an overall rating of Meets Expectations or better.
- C. At the end of the maximum two 3-month feedback evaluations, if the employee's performance is still not at an acceptable level, a formal performance appraisal will be prepared along with a written recommendation to extend the performance appraisal period up to a maximum of an additional six (6) months, or to discipline the employee in accordance with Article 17, as well as the reasons for the recommendation.

#### Section 10.10. - Authority of General Manager

The General Manager, or designated representative(s), is hereby authorized to employ personnel to fill openings allocated by the Board of Directors within the exempt and non-exempt classifications. Within a classification, the General Manager, or designated representative(s), shall have the authority to practice discretion in assigning the position in which the employee shall be employed. Additionally, he/she is authorized to establish new classifications provided that the total number of authorized positions does not exceed the number of positions authorized by the Board of Directors. The General Manager, or designated representative(s), is further empowered to promote, demote or transfer employees from one position to another and from one classification to another provided there is a vacancy in a classification allocated by the Board of Directors or established by the General Manager.

#### Section 10.11. - Acting Pay

Any employee performing the duties of a higher job classification, in excess of two (2) complete pay periods, may be designated as acting. An employee who is designated as acting shall receive a two (2) step minimum increase (approximately five percent (5%)) more than his/her hourly rate of pay, or shall be placed on Step "1" of the range established for the acting position, whichever is higher; however, the employee's salary shall not exceed Step "9" of the range established for the acting position at any time. An employee shall receive acting pay until officially released of those duties with the following conditions:

- A. Compensation shall be requested in writing by the employee, outlining the circumstances, and the request is subject to the approval of the General Manager, or designated representative(s).
- B. Compensation shall only be requested if the additional duties are to be undertaken for more than two (2) complete pay periods.
- C. Acting pay will be effective at the beginning of the first pay period following completion of two (2) complete pay periods from the effective date of placement in the higher job classification.
- D. An employee shall receive acting pay for a maximum of twenty-six (26) consecutive pay periods. Under special circumstances, the General Manager, or designated representative(s), may authorize an extension to meet the needs of the Agency.

- E. If the employee is scheduled to receive a merit increase for the position in which he/she normally fills while serving in an acting status, the necessary forms shall be completed to document such increase, and such increase shall be implemented upon conclusion of the acting status. Accordingly, the employee shall receive a corresponding increase in acting pay, not to exceed Step "9" of the acting salary. If the new spread between his/her new normal rate and the acting rate of pay becomes less than two (2) steps (approximately five percent (5%)) the employees compensation shall be adjusted, not to exceed Step "9" of the acting salary. The employee's merit review date shall not be affected by acting status unless they are appointed to the position in which they were acting. If such, their review date shall be adjusted to coincide with the date they started in the acting position or as provided for in Section 10.11.F.
  
- F. If an employee who is receiving acting pay is promoted to permanently fill the position in which he/she is acting, the date from which the employee began receiving acting pay shall be credited to the employee's total time worked in the position. Following the promotion, the employee's merit increase will be awarded at the conclusion of the technical probationary period, or upon the completion of working one (1) year in the position (including all time he/she was receiving acting pay). All subsequent merit increases will be awarded upon completion of twenty-six (26) complete pay periods in each step.

#### Section 10.12. - Official Business Pay Authorization

Any employee of the Agency may be authorized to attend business and other matters of interest to the Agency outside the Agency area and for time periods which exceed the normal work day on the date of attendance. Employees on such assignment, at the Agency's request, must have prior approval for compensation at his/her normal rate of pay for the number of hours they would normally work on the day of attendance.

#### Section 10.13. - Pay Periods

All employees of the Agency shall be paid biweekly. Paychecks shall be distributed every other Friday by 10:00 a.m. If a payday falls on a holiday, the payroll will be distributed on the preceding Thursday. At Thanksgiving, and when Christmas falls on a Thursday, the payroll will be distributed on the preceding Wednesday.

#### Section 10.14. - Salary Test of FLSA

Exempt employees will not have their pay docked or reduced in any manner that would be inconsistent with the salary test of FLSA.

#### Section 10.15. - Promotional Compensation

An employee who is promoted from one classification to a higher classification shall receive a minimum salary increase of two (2) steps (approximately five percent (5%)) more than his/her current rate of pay, or shall be placed on Step "1" of the range established for his/her new position, whichever is higher; however, the employee's salary shall not exceed Step "9" of the new salary range.

#### Section 10.16. - Direct Deposit

All employees of the Supervisors Unit shall be compensated only by the use of direct deposit. The only exception shall be when setting up a new employee into the payroll system, for a period not to exceed three (3) pay periods while an employee changes financial institutions, or final (retirement/resignation/termination) payrolls.

#### Section 10.17. - Shift Differential

Non-exempt employees working between the hours of 2000 and 0500 shall receive a five percent (5.0%) base salary differential, in addition to the employee's normal base salary, for all hours worked between the above stated hours.

#### Section 10.18. - Timesheets

Each employee shall complete a biweekly timesheet. All timesheets are to be filled out in ink and shall not contain any changes that have not been initialed by the employee. Either party may during the term of this MOU reopen this section, to establish new and/or additional timesheet requirements due to changes in payroll processing.

#### Section 10.19. - Overtime Compensation

- A. A non-exempt employee who is required by the nature of his/her position or by emergency situations to work in excess of forty (40) hours during his/her standard work schedule shall be paid overtime at one and one-half (1½) times the employee's standard rate of pay. Only holiday time that falls within the employee's regular shift shall count as hours worked when computing overtime. If a holiday falls outside of an employee's regular shift and the employee does not actually work on the day of the holiday, the holiday shall not count as hours worked.
- B. The General Manager, or designated representative(s), is authorized to determine the circumstances where overtime pay is justified in rare and unusual circumstances.
- C. A non-exempt employee who works overtime during the period of time that a shift differential is paid, shall receive the differential when working overtime. For the purpose of such computation, the shift differential shall be added to the employee's standard hourly rate before the hourly rate is multiplied by one and one-half (1½).

#### Section 10.20. - On-call

- A. Operations Supervisors assigned to Agency facilities shall receive one and one half (1½) hours on-call compensation at his/her current hourly rate of pay for each night he/she is assigned to on-call duty.
- B. On-call shall first be assigned to operators.
- C. In the event that the Operations Supervisor is not available to be on on-call, it is incumbent upon him/her to make prior arrangements with a qualified Operator to serve in such capacity in his/her absence.
- D. If the Operations Supervisor is receiving a full day's pay from sick, vacation, and/or

floating holiday, he/she shall not receive on-call compensation.

- E. Operations Supervisors are expected to respond to emergency phone calls twenty-four (24) hours a day, seven (7) days a week at various locations if necessary. Operations Supervisors are not expected to respond to non-emergency communications unless they are assigned to on-call duty.

**ARTICLE 11 - BENEFITS**

Section 11.01. - Medical Benefits/Life Insurance Plans

A. Health Benefits

The Agency shall contribute the minimum health premium contribution established for contracting agencies by CalPERS or \$111.41, whichever is greater, towards the cost of premiums for health insurance under the CalPERS Public Employees Medical and Hospital Care Act (PEMHCA) for each employee and his/her eligible dependents. The contribution shall be adjusted annually by CalPERS to reflect any changes in the medical care component of the CPI-U and shall be rounded to the nearest dollar by CalPERS. For employees who do not purchase Agency provided health insurance, the PEMHCA minimum or \$111.41, whichever is greater, shall be paid to the employee as ordinary income.

PEMHCA minimum contribution effective 2011	\$108.00
PEMHCA minimum contribution effective 2012	\$112.00

B. Additional Benefit

The Agency shall make a monthly contribution for each employee as follows, minus the minimum PEMHCA contribution or \$111.41, whichever is greater.

Employee +1	100% of applicable Kaiser Rate \$900.00 effective January 1, 2012
Employee Family	95% of applicable Kaiser Rate \$1113.00 effective January 1, 2012

- 1) For employees who purchase employee only health insurance, or who do not purchase Agency provided health insurance, the maximum monthly contribution shall be \$675.00 minus the PEMHCA contribution under Section A above. If the cost of the combined premiums for health, dental, vision and life insurance (including dependent coverage) is less than the maximum allotment, the Agency shall pay the difference to employees as ordinary income, provided that the employee is enrolled and maintains membership in a CalPERS health plan for him/herself and his/her eligible dependent(s), or is able to show proof that he/she obtains and maintains health insurance through another source for him/herself and his/her eligible dependent(s). The Agency may require proof of health insurance at any time. While on Unpaid Status, as defined in Section 4.30, the employee shall not receive this allotment.
- 2) Should an employee's work hours be reduced by 25% or more of his/her

normal working schedule due to a light duty assignment and/or doctor's orders for more than twelve (12) weeks or as provided under FMLA, the employee shall receive the difference between the monthly insurance allotment and the actual cost of his/her health, dental, vision and/or life insurance benefits on a pro-rated basis (i.e., works 75%, receives 75% of the difference between the monthly insurance allotment and the actual insurance costs). The Agency shall continue to pay the PEMHCA contribution from Section A above. Any adjustment shall be made to the amount of the additional benefit.

- 3) Except as provided for in Section 11.01.B.2, an employee must be in a paid status for a minimum of sixty (60) hours per pay period to receive the difference between the monthly insurance allotment and the actual cost of his/her health, dental, vision and/or life insurance benefits. The Agency shall continue to pay the PEMHCA contribution from Section A above.
- 4) An Agency-paid \$50,000 life insurance policy is provided to each Unit employee.
- 5) Supplemental Life Insurance is available to employees at their expense through the Agency's life insurance carrier.
- 6) Effective June 24, 2001, the Agency will provide Domestic Partnership health insurance coverage as provided through CalPERS and California State law. The extension of health insurance through CalPERS shall not change or modify any other benefit offered by the Agency unless said benefit is specifically authorized by this MOU.

C. Retiree Health Benefits

The Agency shall contribute the minimum contribution established for contracting agencies by CalPERS or \$111.41, whichever is greater, plus administration costs towards the cost of premiums for health insurance under the CalPERS Public Employees Medical and Hospital Care Act (PEMHCA) for each annuitant who retired from the Agency through CalPERS and who enrolls in a CalPERS health plan as a retiree. The contribution shall be adjusted annually by CalPERS to reflect any changes in the medical care component of the CPI-U and shall be rounded to the nearest dollar by CalPERS.

PEMHCA minimum contribution effective 2011	\$108.00
PEMHCA minimum contribution effective 2012	\$112.00

- 1) Payment for the retiree health insurance benefit of \$111.41 or the minimum PEMHCA contribution, whichever is greater, shall be made directly to CalPERS for the benefit of the retiree each month.
- 2) Only employees who retire after July 4, 2004, shall have the option of purchasing health insurance from CalPERS or a provider of his/her choice without any loss in benefit. If the retiree so chooses to purchase his/her health insurance from a provider other than CalPERS, the retiree will be reimbursed on a monthly basis for his/her benefit via direct deposit to the retiree's (or surviving spouse's) bank account, up to the maximum benefit

provided. Retirees are responsible for any taxes that may be due on retiree health benefits.

D. Additional Retiree Longevity Benefits

The Agency shall contribute an additional monthly benefit to each retiree minus the minimum PEMHCA contribution or \$111.41, whichever is greater, according to the chart below who simultaneously retires from the Agency through CalPERS and who is a minimum age of fifty-five (55).

Hire Date	Retirement Date	Benefit Level	Minimum Years of Agency Service	Benefit
Before July 2, 1980	N/A	Employee and/or eligible dependent(s)	15	100% of applicable Kaiser Rate*
Before Jan. 1, 1992	N/A	Employee and/or eligible dependent(s)	20	50% of applicable Kaiser Rate*
After Dec. 31, 1991	After July 3, 2004	Employee only or surviving spouse	12	50% of applicable Kaiser Rate*

\*The applicable Kaiser rate is equal to the rate for the region in which the retiree resides, plus administration costs.

The longevity benefit is available to qualifying retirees whether they enroll in a CalPERS medical plan or not. The retiree will be reimbursed on a monthly basis for his/her retiree longevity benefit via direct deposit to the retiree's (or surviving spouse's) bank account, up to the maximum benefit provided. Retirees are responsible for any taxes that may be due on reimbursement of retiree longevity benefits.

Section 11.02. - Retirement Plan

- A. Each probationary and regular employee of the Agency shall participate with the Agency in a retirement plan under the California Public Employees' Retirement System (CalPERS) and subject to such terms and conditions as the Agency, in its sole discretion, may contract with that system.
- B. Effective October 2, 2011, all Supervisors' Unit employees shall contribute 2% of the employee contribution to CalPERS. All Supervisors' Unit employees hired on or after January 1, 2012 shall contribute 3% of the employee contribution to CalPERS. All employee contributions shall be deducted on a pre-tax basis. Said contribution shall not be considered special compensation for the calculation of the employee's retirement benefits.
- C. The Agency contracts with CalPERS for the Pre-retirement Optional Settlement 2 Death Benefit (Section 21548). This benefit provides that, upon the death of a member who was eligible to retire, the spouse may receive an allowance equal to the amount the member would have received if the member had retired for service retirement on the date of death and elected option 2W.

- D. The Agency contracts with CalPERS for the 1 Year Final Compensation Benefit (Section 20042) for all employees hired prior to January 1, 2012. This benefit provides that the final compensation used to calculate a member's retirement allowance is the average full-time monthly pay rate for the highest twelve (12) consecutive months.
- E. The Agency contracts with CalPERS for Military Service Credit Purchases (Section 21024). This benefit allows members to elect to purchase up to four (4) years of service credit for any continuous active military or merchant marine service prior to employment.
- F. The Agency has adopted Resolution #2009-4-2 which allows employees who make payments by payroll deduction for CalPERS service credit purchases to defer state and federal income taxes in accordance with IRC 414(h)(2).
- G. The Agency contracts with CalPERS for the 2.5% @ 55 Benefit Formula (Section 21354.4) for all employees hired prior to January 1, 2012
- H. The Agency contracts with CalPERS for a second tier pension plan for employees hired on or after January 1, 2012 pursuant to Section 20475 which provides for the 2.0% @ 55 Benefit Formula (Section 21354) with three year final compensation..

#### Section 11.03. - Long-Term Disability

All regular employees of the Agency are covered under an Agency paid for long-term disability plan with the following elements:

- A. Sixty (60) day elimination period.
- B. Sixty percent (60%) of the first ten thousand dollars (\$10,000) of monthly salary.
- C. The maximum benefit period is determined by the employee's age when disability begins.

The choice of carrier and other plan elements rests with the Agency. The Agency may elect to self-insure the plan.

#### Section 11.04. - State Disability Insurance

- A. State Disability Insurance (SDI) - Any employee who becomes disabled due to a non-work related illness or injury will receive compensation benefits as established by the State Disability Insurance Fund.
- B. Paid Family Leave (PFL) - All California workers who are covered by the State Disability Insurance (SDI) program will also be covered for Paid Family Leave (PFL). The PFL program provides a maximum of six (6) weeks of paid family leave benefits for workers who take time off as provided for by State law. Employees who utilize this program are not required to use vacation time prior to receiving benefits. PFL runs concurrently with State and Federal Family Leave.

#### Section 11.05. - Uniforms

Employees in authorized classifications shall be provided with uniforms. Employees who are provided with a uniform are required to wear the provided uniform during all working hours.

#### Section 11.06. - Safety Shoes

All members of the Supervisors Unit identified in the Agency's Safety Manual as requiring safety shoes must wear appropriate safety shoes at all times while on duty. Reimbursement for safety shoes shall be processed in accordance with the Safety Shoe policy contained in the Agency's Safety Manual.

#### Section 11.07. - Mileage Reimbursement

The Agency shall pay all employees mileage reimbursement in the amount established by the Internal Revenue Service. The employee shall submit a check request to receive reimbursement for mileage costs.

#### Section 11.08. - Professional Memberships

- A. The Agency will reimburse each unit member up to a maximum of three hundred dollars (\$300.00) per fiscal year for the costs of joining and maintaining memberships in Agency-approved professional organizations related to their work at the Agency.
- B. Professional memberships are only payable after the employee has satisfactorily completed his/her original probationary period. However, the Agency shall retroactively reimburse any Unit member who successfully completes his/her original probation for Professional Memberships paid by the employee during his/her original probationary period.

#### Section 11.09. - Educational Reimbursement

The Agency shall reimburse each member of the Unit up to two thousand two hundred dollars (\$2200) per fiscal year for the cost of educational expenses that are related to the employee's work at the Agency in accordance with the Educational Reimbursement program as provided for in Policy No. A-39.

#### Section 11.10. - Certification and Licensing

The Agency agrees to reimburse unit members for certification and licensing expenses in accordance with Agency Policy No. A-70 (Certification and Licensing).

All Operations Supervisors will receive an one time incentive of two-thousand dollars (\$2000) upon their receipt of their next level above Grade III of their Wastewater Treatment Certification.

Exempt supervisors will receive an annual incentive payment of seven hundred fifty dollars (\$750) for a California Water Environment Association Grade III Certification and one thousand dollars (\$1000) for a California Water Environment Association Grade IV Certification.

Payment will be made on a separate check from payroll on the first pay date in December (see Agency Policy A-70). This annual incentive will only be awarded to exempt unit employees

hired, promoted, or reclassified prior to June 27, 2010.

#### Section 11.11. - Cellular Telephone Usage

In order to be available for emergency responses, Supervisors' Unit employees may receive an Agency provided cellular telephone in accordance with Agency Policy A-73.

#### Section 11.12. - 401 Governmental Money Purchase Plan & Trust (401a Plan)

Upon separation from service, all Supervisors' Unit employees who participate in the Agency's 401 Governmental Money Purchase Plan & Trust (401a Plan) shall contribute one hundred percent (100%) of paid leave accruals to the 401a Plan up to the annual contribution limit in effect at the time of separation.

### **ARTICLE 12 - PERFORMANCE APPRAISALS**

#### Section 12.01. - General

The procedures for performance appraisals are set forth as follows:

- A. Each employee will be reviewed by his/her supervisor. This review will be made on a standard Agency performance appraisal form. The purpose of this appraisal is to cause a periodic dialogue between the supervisor and the employee. The supervisor shall take this opportunity to discuss the employee's performance. At this time, the employee may have the opportunity to converse with the supervisor without cause for jeopardy to the employee's position.
- B. The performance appraisal shall become part of each employee's official personnel file.
- C. All Unit members shall have a performance appraisal review at least once a year on September 15. In the event an employee receives a Below Expectations or Unacceptable rating he/she will receive a follow-up review in ninety (90) days unless otherwise stipulated (see Section 12.01.F).
- D. The due date for a performance appraisal and/or a merit increase shall be extended by the number of days the employee is actually out on an authorized leave of absence, with or without pay, that exceeds thirty (30) continuous calendar days (i.e., the employee is off for thirty-one (31) calendar days, the date of the appraisal/merit date is advanced thirty-one (31) calendar days. If the employee is off thirty (30) calendar days or less, no adjustment is made.
- E. In cases where no performance appraisal is filed, the employee should contact the Manager of Human Resources.
- F. All employees who receive an overall appraisal rating of Below Expectations or Unacceptable shall be reviewed ninety (90) days after the Below Expectations or Unacceptable appraisal was received by the employee.

#### Section 12.02. - Duty of Departments

It is the duty of the Supervisor to evaluate the work accomplishments and conduct of

employees, to inform employees of their appraisals in writing, and to provide positive assistance to employees in improving work effectiveness.

#### Section 12.03. - Employee's Responsibility

It is the responsibility of the employee to meet standards established for work accomplishment and conduct, and to strive to improve work effectiveness.

#### Section 12.04. - Grievance of Performance Appraisal

Any dispute arising out of the content of a performance appraisal may be processed in accordance with the Grievance Procedure up through the General Manager, Step 4.

#### Section 12.05. - Demotions

- A. If, in the opinion of an employee's supervisor, the employee is unable to perform duties and responsibilities which are within the requirements of his/her position, the supervisor may recommend a demotion without following the progressive discipline steps. The General Manager, or designated representative(s), shall have the authority to act on such recommendations and accept or reject such a demotion at his/her sole discretion in the best interest of the Agency.
- B. If an employee's classification or position is to be eliminated, in accordance with the Agency's classification plan, the employee may be offered a demotion to a lower classification or position for which the employee possesses the minimum qualifications.
- C. If an employee who is to be demoted has achieved regular status in his/her present position, such status shall be maintained after demotion. However, when demoted the regular employee's salary shall be adjusted to the salary range of his/her new position, representing a two (2) step salary reduction or Step 9, whichever is lower.
- D. Any demotion to prevent layoff may be reversed when the employee's previous position is reopened. In the case of preventing a layoff, the employee being demoted will accept the pay rate of the new position.
- E. An employee who is to be demoted shall be given at least two (2) weeks written notice prior to demotion and shall be advised of his/her Skelly Rights.

### **ARTICLE 13 - LEAVES OF ABSENCE**

#### Section 13.01. - Pre-approved Leaves of Absence

Pre-approved leaves of absence are leaves granted by the General Manager, or designated representative(s), in writing, before the absence, for any purpose, including but not limited to pregnancy, sickness, accident or other casualty, at the convenience of the Agency, provided that the employee returns to work before or at the expiration of such leave of absence or any extension thereof. Special cases will be at the discretion of the General Manager, or designated representative(s). The Agency in granting leaves of absence shall treat alike all participants in similar circumstances.

Section 13.02. - Leave of Absence With Pay

- A. Any supervisor may authorize leave to any employee within the supervisor's department. This includes granting vacation, sick, court leave, bereavement or floating holiday within the terms of this MOU except unpaid leaves of absence.
- B. The authority for granting of all other leaves with pay and non-routine leaves with pay is at the sole discretion of the General Manager, or designated representative(s).

Section 13.03. - Leave of Absence Without Pay

- A. The General Manager, or designated representative(s), shall have the authority to grant leaves of absence without pay. No employee shall be eligible for a leave of absence without pay until the employee has two (2) or more years of continuous regular employment, except in cases where the law provides otherwise or as determined by the General Manager. In special cases, the General Manager, or designated representative(s), may waive the two (2) year employment requirement if in the best interest of the Agency.
- B. Unless otherwise provided by law, an employee shall not be eligible for a leave of absence without pay until all of the employee's accrued leave time with pay has been used, and he/she has obtained the prior approval of the General Manager, or designated representative(s).
- C. An employee on inactive status may request, in writing, to continue participation in the Agency's insurance plans, at the employee's own expense for a defined period of time; i.e. until return to work on "active" status, or until a terminating event; i.e. permanent and stationary disability.
- D. An employee granted leave must return to work not later than the start of the first working day following the end of the leave.
- E. During the period of a leave of absence without pay, the employee shall not accept any other employment except with express written permission of the General Manager, or designated representative(s).

Section 13.04. - Holidays

Subject to the conditions specified in this Section, the Agency designates the holidays specified as follows:

<u>Holiday</u>	<u>Date</u>	<u>Duration</u>
New Year's Day	January 1st	1 day
Presidents' Day	3rd Monday in Feb.	1 day
Memorial Day	Last Monday in May	1 day
Independence Day	July 4th	1 day
Labor Day	1st Monday in Sept.	1 day
Thanksgiving Day & Day After	4th Thursday & Friday in November	2 days
Christmas Day &	December 25th &	2 days

Day After Floating Holiday	December 26th Employee's Choice	9 days 8 days (eff. June 24, 2012)
-------------------------------	------------------------------------	---------------------------------------

- A. If the holiday should fall on Saturday, the holiday will be observed on the preceding Friday. If the holiday should fall on Sunday, the holiday will be observed on the following Monday. If Christmas falls on Friday, the day after Christmas shall be observed on the following Monday. If Christmas falls on Saturday, it will be observed on the preceding Friday and the day after will be observed on the following Monday. If Christmas falls on a Sunday, Christmas day and the day after shall be observed on the following Monday and Tuesday.
- B. All employees will be granted leave with pay for all holidays recognized by the Agency, with the exception of the following:
- 1) Appointees whose first day of work would have fallen on the holiday.
  - 2) A non-exempt employee scheduled for a normal shift at Agency facilities on a holiday as defined above (with the exception of floating holiday) shall be paid a holiday premium of one and one-half (1½) times his/her hourly rate of pay for all hours actually worked, in addition to his/her holiday pay. If the day of the observed holiday is different from the day of the actual holiday, only those employees working on the day of the actual holiday shall be entitled to this premium pay. Employees shall be paid this premium pay for hours worked beginning at 12:00am and ending at 11:59pm on the day of the actual holiday. This premium pay shall be paid to employees for a maximum of one shift, unless an employee is requested to work overtime by his/her supervisor.
- C. A non-exempt employee must work the entire scheduled work day before and after the holiday or be in approved pay status the entire scheduled day before and after the holiday (i.e., vacation) in order to receive pay for holiday leave. Unscheduled absences and sick leave shall not count as time worked on the day before and after the holiday unless medical certification is provided by a qualified medical examiner. In the event that the day before or after the holiday is the employee's regular flex day, the unscheduled absences and sick leave taken on the day before or after the flex day shall not count as time worked on the day before and after the holiday (e.g., The July 4<sup>th</sup> holiday is Thursday and the employee's flex day is Friday, the employee must be in an approved paid status on Wednesday and Monday to receive the holiday pay).
- If an exempt employee is sick the day before or after a holiday and is unable to provide verification of such illness from a qualified medical examiner, the employee shall be required to utilize vacation leave for the time missed.
- D. An employee whose regularly scheduled flex day off falls on an Agency recognized holiday who does not work due to the holiday, shall receive compensation or an increase in his/her vacation accrual, at the employee's option, equal to the number of hours of the employee's working flex day (e.g., Employee's flex day off is Friday and he/she works 8 hours on the other Friday of the same pay period, he/she will accrue an extra 8 hours of vacation time or holiday pay).

- E. For the purposes of holiday compensation, a day shall equal the number of hours that the employee normally would have worked other than for the holiday.
- F. Floating holidays will be credited to each employee on the first pay date in July. floating holidays cannot be used during the Original Probationary period or during the first six (6) months of employment in the event of a one (1) year original probation and must be used by the end of the pay period corresponding with the last pay date in June of the following fiscal year. Any remaining time will be forfeited. Prior approval to take floating holidays must be obtained from the employee's manager/supervisor. In cases where an employee must forfeit his/her floating holiday at the request of the Agency, the employee shall be compensated for his/her unused portion at his/her current rate of pay at the end of the pay period corresponding with the last pay date in June. The amount of floating holidays credited to employees hired or promoted after the pay period corresponding with the first pay date in July of each year shall be pro-rated based on the number of pay periods remaining in the fiscal year. Every effort will be made to allow those Supervisor Unit employees desiring Veteran's Day off the use of one floating holiday on Veteran's Day (November 11). Once an employee has tendered his/her resignation, he/she may not be permitted to utilize floating holidays. If he/she gives the Agency 30+ days advance notice of separation, he/she may be permitted to utilize. Unused floating holidays time shall not be paid out upon separation from employment.

Section 13.05. - Vacation Leave

All employees shall accrue vacation leave time, but may not use the accrued leave during the same pay period in which said leave is accrued. All original probationary employees shall accrue vacation leave but will not be able to use the accrued leave until completion of the original probationary period or completion of the first six (6) months of employment in the event of a one (1) year original probation. In case of a family emergency, an employee on original probation shall be permitted to utilize accrued vacation leave. Vacation leave is computed and administered as follows:

- A. All employees shall be entitled to accrue vacation leave with pay as follows:

<u>Duration of Continuous Regular Employment</u>	<u>Hours Accrued per Pay Period</u>
During 1st through 60th month	3.077
During 61st through 72nd month	3.692
During 73rd through 84th month	4.308
During 85th through 108th month	4.923
During 109th month through 239th	6.154
During 240th month and thereafter	7.692

- B. The maximum accrual of vacation leave time that may be accumulated without approval by the General Manager shall be as follows:

During the 1st through the 60th month of employment (vacation accrual = 80 hours per year), the maximum amount of vacation that may be accumulated shall be 160 hours.

During the 61st through the 72nd month of employment (vacation accrual = 96 hours per year), the maximum amount of vacation that may be accumulated shall be 192 hours.

During the 73rd through the 84th month of employment (vacation accrual = 112 hours per year), the maximum amount of vacation that may be accumulated shall be 224 hours.

During the 85th through the 108th month of employment (vacation accrual = 128 hours per year), the maximum amount of vacation that may be accumulated shall be 256 hours.

During the 109th month through the 239th month of employment (vacation accrual = 160 hours per year), the maximum amount of vacation that may be accumulated shall be 320 hours.

During the 240th month and thereafter of employment (vacation accrual = 200 hours per year), the maximum amount of vacation that may be accumulated shall be 400 hours.

- C. The maximum length of a continuous vacation leave, which is not interrupted by working on the Agency's behalf, shall be equal to twenty (20) working days.
- D. Vacation leave periods which exceed the limits specified in Paragraph C above and any combination of vacation leave periods to be taken in one anniversary year, which exceed the total vacation leave earned by an employee in his/her current anniversary year must be approved in writing by the General Manager, or designated representative(s), and in the best interest of the Agency.
- E. Vacation leave shall be limited to those days already earned by the last day of the vacation period. No advance of vacation leave shall be permitted, without the expressed written consent of the General Manager, or designated representative(s).
- F. Holidays that occur during an employee's vacation period shall not be considered as a vacation day.
- G. In cases where an employee forfeits vacation leave time at the request of the Agency, upon approval of the General Manager, said employee shall be compensated for forfeited vacation leave time at the employee's current rate of pay. It is the employee's responsibility to schedule vacation time well in advance to avoid forfeiting his/her vacation or to avoid any conflicts.
- H. Employees who are on vacation leave shall be compensated at their current rate of pay.
- I. Vacation leave shall be pre-approved by the employee's supervisor. The employee's wishes shall be considered in evaluating leave requests; however, the Agency's needs shall take precedence.
- J. Regular and probationary employees who leave Agency employment shall be compensated for all vacation leave time accrued but not yet taken to the maximum

of the vacation leave the employee is entitled to accrue. Compensation shall be at the employee's rate of pay at the time of separation.

- K. An employee who is on unpaid status as defined in Section 4.30 shall not accrue vacation leave.
- L. Should an employee become ill or injured while on vacation leave, the employee shall be entitled to use sick leave upon approval of the employee's supervisor. The Agency reserves the right to investigate any illness or injury or require verification of any illness or injury for which an employee is claiming sick leave benefits.
- M. An employee must be in a paid status for a minimum of sixty (60) hours per pay period to receive the vacation accrual rates outlined in Section 13.05.A. Vacation accrual rates will be reduced for an employee who is not in a paid status for a minimum of sixty (60) hours per pay period using the following formula:

Accrual rate ÷ 80 hrs/pay period = adjusted accrual rate  
Adjusted accrual rate x hrs paid = reduced accrual amount

For example: An employee in his/her 30th month of employment, who is receiving pay for 43 hours in a pay period, shall accrue vacation at the following rate:

$3.077 \div 80 \text{ hrs/pay period} = 0.0385$   
 $0.0385 \times 43 \text{ hours} = 1.6555$

In this example, the employee would accrue 1.655 hours of vacation, rather than the regular amount of 3.077, for this pay period.

- N. **Vacation Leave Cash Out.** During March of each year or as approved by the General Manager, an employee may, at his/her option, request to convert up to a maximum of seventy percent (70%) of his/her respective annual vacation leave accrual to receive a cash payment at their current rate of pay provided he/she has used at least thirty percent (30%) of his/her respective annual vacation leave accrual during the previous twenty-six (26) pay periods.
  - 1) It is the employee's responsibility to track his/her own accruals and make a written request for said conversion by the conclusion of the last pay period in March or as approved by the General Manager. A payroll stuffer will be sent out to all employees during the last pay period in February or as approved by the General Manager reminding employees of this option.
  - 2) Payment shall be made to qualified employees on a separate check from payroll on the first pay date in April or as approved by the General Manager.
  - 3) Qualification for vacation leave cash out shall be based on accruals as of the end of the pay period corresponding with the last pay date in February or as approved by the General Manager.
  - 4) Cashing out of vacation leave accrual shall only be available to employees who have completed thirty-six (36) months of service with the

Agency as of the end of the pay period corresponding with the last pay date in February.

#### Section 13.06. - Sick Leave

All regular employees shall accrue sick leave time, but may not use the accrued leave during the same pay period in which said leave is accrued. All original probationary employees shall accrue sick leave time; however, such employees will not be able to use the accrued leave until completion of the original probationary period or the first six (6) months in the event of a one (1) year original probation, except in emergency situations when approved in writing by the General Manager, or designated representative(s). Should an employee fail to complete the original probationary period, any advance of sick leave shall be deducted from the employee's final pay.

Paid sick leave is a privilege the Agency grants to employees to allow the continuation of pay and fringe benefits in case of personal (or family) illness and, as such, its usage should not be abused. Maintaining good attendance is a condition of employment and an essential function of your job. To minimize hardships that may result from illness or injury, the Agency provides paid sick time benefits in case of personal (or immediate family) illness/injury. However, periodic sick leave taken on a repeated basis may be viewed as abuse of the system. It is your responsibility to establish legitimate illness or injury to receive sick leave pay. This leave time is computed as follows:

- A. All regular and probationary employees shall accrue sick leave time at the rate of 3.692 hours per pay period or equivalent to ninety-six (96) hours per anniversary year.
- B. Regular employees shall be permitted to expend accrued sick leave time for the following reasons:
  - 1) Employee is suffering illness or injury.
  - 2) Employee is placed on quarantine due to exposure to contagious disease.
  - 3) Employee requires medical treatment or examination including, but not limited to, health, dental, or vision.
  - 4) Illness or injury in the employee's immediate family.
  - 5) Special cases require approval of the General Manager, or designated representative(s).
- C. An employee who is ill or injured may be required to take sick leave if, in the opinion of the employee's supervisor, the employee or co-workers are being exposed to the hazard of illness or injury.
- D. Any employee who needs to take advantage of sick leave benefits shall notify his/her supervisor prior to or at the start of the employee's work shift on each day (unless he/she has submitted a physician's off work order, or made prior arrangements with his/her immediate supervisor) when such benefits are desired. Failure to comply with this requirement may result in loss of benefits for the work shift in which proper notification was not provided.

- E. No employee is entitled to receive sick leave or benefits from the Agency for any condition arising from or due to employment or business dealings, other than Agency employment, that is undertaken for monetary gain or other consideration.
- F. The Agency reserves the right to investigate any illness or injury or require verification of any illness or injury for which an employee is claiming sick leave benefits including requiring verification by the employee's attending physician, dentist or other involved medical practitioner. Any sick leave periods for illness or injury which are three (3) or more days in duration may be verified by the employee's physician, dentist or other involved medical practitioner. If reasonable cause exists, the Agency may require verification from the employee's medical practitioner for absences of less than three (3) days.
- G. All regular and probationary employees may accrue sick leave to an unspecified maximum amount and all accumulated accruals may be carried from one anniversary year to the next.
- H. An employee who is recognized under the terms of this section as ill or injured shall use all accrued sick leave and vacation leave to receive compensation for the time that such illness or injury requires the employee to be absent from work (also see Section 13.03.B).

The total amount of compensation that will be paid by the Agency is limited to the value of the sum of the employee's accrued sick leave and vacation leave.

- I. Sick leave benefits shall be limited to the accumulated sick leave the employee has accrued by the end of the employee's sick leave period. No sick leave benefit will be paid in advance.
- J. Employees who resign or are laid off from Agency employment after being employed by the Agency for five (5) or more years of continuous regular employment, shall be compensated for accumulated, unused sick leave as follows:

<u>YEARS</u>	<u>MAXIMUM REIMBURSABLE HOURS ACCRUABLE</u>	<u>PERCENT PAYABLE</u>
5	320	25%
6	360	25%
7	400	25%
8	440	25%
9	480	25%
10	544	50%
11	608	50%
12	672	50%
13 & 14	736	50%
15 through 19	800	50%
20 and thereafter	850	100%

Employees who are terminated from the Agency for cause, or who resign or retire in lieu of termination, shall not receive this benefit.

- K. When an employee has been continuously employed by the Agency for a

minimum of five (5) years, has reached age 55, and retires from the Agency and the California Public Employees' Retirement System (CalPERS), the employee shall be compensated for accumulated, unused sick leave based on the years of service as indicated below:

<u>COMPLETED YEARS OF CONTINUOUS SERVICE</u>	<u>MAXIMUM REIMBURSABLE HOURS ACCRUABLE</u>	<u>PERCENT PAYABLE</u>
5	320	50%
6	360	50%
7	400	50%
8	440	50%
9	480	75%
10	544	100%
11	608	100%
12	672	100%
13 & 14	736	100%
15 through 19	770	100%
20 and thereafter	850	100%

- L. An employee who is on unpaid status as defined in Section 4.30 shall not accrue sick leave.
- M. An employee must be in a paid status for a minimum of sixty (60) hours per pay period to accrue sick leave at the rate of 3.692 hours per pay period. The sick leave accrual rate will be reduced for an employee who is not in a paid status for a minimum of sixty (60) hours per pay period using the following formula:

$$3.692 \div 80 \text{ hrs/pay period} = 0.0462$$

$$0.0462 \times \text{hrs paid} = \text{reduced accrual amount}$$

For example: An employee who is receiving pay for 43 hours in a pay period, shall accrue sick leave at the following rate:

$$0.0462 \times 43 \text{ hours} = 1.9866$$

In this example, the employee would accrue 1.986 hours of sick leave, rather than the regular amount of 3.692, for this pay period.

#### Section 13.07. - Sick Leave Buy Back

Each November, an employee may, at his/her option, convert up to a maximum of ninety-six (96) hours of accrued sick leave to receive up to a maximum of seventy-two (72) hours cash at his/her current rate of pay; provided that at least four hundred eighty (480) hours of accrued sick leave remains on the books after the cash out. For each hour cashed out, sick leave accruals shall be reduced by 1 1/3 hours.

- A. Requests for said conversion must be made during pay period twenty-four (24).
- B. Payment shall be made to qualified employees on a separate check from payroll on the first pay date in December.

- C. Qualification for sick leave conversion shall be based on accruals as of the end of pay period twenty-four (24).
- D. To receive payment for the buy back of sick leave the individual must be a current employee on the day actual payment is made.

#### Section 13.08. - Bereavement Leave

- A. In the event of a death in the employee's immediate family (see Section 4.10.A), the employee shall be granted up to five (5) work days paid bereavement leave.
- B. In the event of a death in the employee's extended family (see Section 4.10.B), the employee shall be granted up to three (3) work days of paid bereavement leave to attend funeral or related services.
- C. Agency employees may also be excused by immediate supervisors to attend the funeral of a deceased Agency employee who was an active employee at the time of death, without loss of pay.
- D. Vacation time can be used to attend the funeral of a person not included in the definition of immediate/extended family (see Section 4.10) or a former Agency employee.
- E. All authorized bereavement leave shall be charged against the Agency's bereavement bank.

#### Section 13.09. - Industrial Injury Leave

Any employee who is injured within the scope of employment with the Agency will receive workers' compensation benefits as provided for under the California Labor Code.

#### Section 13.10. - Jury and Court Leave

- A. Jury Leave - Any employee of the Agency who is called or required to serve as a trial juror, witness, or who is a victim of a crime or domestic violence will be excused from work during the period of such service or while present in court as a result of such a call. Any employee on such a call will continue to receive normal salary for a maximum of one hundred (100) work hours in any one calendar year or as required pursuant to FLSA, provided any and all consideration (except mileage) received for such service is relinquished to the Agency. If the employee receives pay from the court for time served on a day that would have been a scheduled day off for the employee, he/she may retain any compensation paid by the court for that day. Under special circumstances, the General Manager, or designated representative(s), may authorize additional paid time if said time will not interfere or become a burden to Agency activities. Upon return from court duty, the employee shall present a certificate of service to his/her supervisor. If the employee is excused by the court prior to 2:00 p.m., the employee shall be required to return to work.

The employee shall provide a minimum of ten (10) working days notice prior to the date he/she is summoned to serve as a trial juror or witness to his/her

supervisor in order for the supervisor to make arrangements to cover his/her normal shift.

- B. Court Leave – Pursuant to Government Code Section 1230.1, an employee who is subpoenaed to appear in court as a witness, shall be allowed to do so without loss of compensation unless the employee is appearing as a party or an expert witness.

Section 13.11. - Military Leave

- A. Military leave is a temporary leave of absence for ordered military training or for active military duty in the Armed Forces of the United States or its Allies or of the National Guard or the Naval Militia, during a proclamation of war or national emergency by the President of the United States or congress, an order or request of the United Nations that the Armed Forces of the United States serve outside of the United States or their territories, or any national conscription act in effect.
- B. The Agency shall comply with all federal and state laws relative to military leaves.

Section 13.12. - Pregnancy, Childbirth & Other Related Medical Conditions Leave

The Agency shall comply with all federal and state laws relative to pregnancy disability leave.

Any employee who plans to take a leave of absence pursuant to this section shall give the Agency reasonable notice of the date such leave shall commence and the estimated duration of such leave.

If the employee requests a temporary transfer to a less strenuous or hazardous position for the duration of the pregnancy, with the written advice of her treating physician, the Agency will grant the request where such transfer can be reasonably accommodated.

Section 13.13. - Longevity Leave

Employees shall receive the following paid leave hours on the employees' designated anniversary dates:

- 10 years – 20 hours
- 15 years – 29 hours
- 20 years – 38 hours
- 25 years – 47 hours
- 30 years – 47 hours
- 35 years – 47 hours
- 40 years – 52 hours
- 45 years – 57 hours
- 50 years – 62 hours

Longevity leave shall apply only to the employment year indicated and shall not carry over to intermediate years.

Section 13.14. - Leave of Absence to Vote

Employees who are registered voters may claim necessary time off to vote at elections as follows:

If an employee does not have sufficient time outside of working hours to vote at an election, the employee may, without loss of pay, take off enough working time which, when added to the voting time available outside of working hours, will enable the employee to vote.

No more than two (2) hours of the time taken off for voting shall be without loss of pay. The time off for voting shall be only at the beginning or end of the regular working shift, whichever allows the most free time for voting and the least time off from the regular working shift, unless otherwise mutually agreed.

If the employee on the third working day prior to the day of election, knows or has reason to believe that time off will be necessary to be able to vote on election day, the employee shall give the Agency at least two (2) working days' notice that time off for voting is desired, in accordance with the provisions of this section.

#### Section 13.15. - Payment of Accrued Leave

Upon the death of an active employee, all wages earned in addition to all accrued vacation leave and/or sick leave shall be paid in accordance with the guidelines set forth in this MOU which apply to other types of employment separation. Such benefits shall be payable to the employee's beneficiary if designated, or if not, the employee's survivor(s) as follows:

- A. Spouse; or, if none,
- B. Child(ren); or, if none,
- C. Employee's estate.

### **ARTICLE 14 - SEPARATION FROM SERVICE**

#### Section 14.01. - Discharge During Probationary Period

An employee who is within the original probationary period may be discharged at any time without cause by the General Manager, or designated representative(s). The employee shall be compensated for accrued vacation leave as defined in Section 13.05.J of this MOU.

#### Section 14.02. - Layoff

- A. Any regular employee of the Agency may be laid off at any time as the result of a changed work load within the Agency. Any layoff which may occur for any reason will be based on ability and seniority at the discretion of the General Manager, or designated representative(s), and in the best interest of the Agency. Employees being laid-off shall receive four weeks (20 working days) notice and shall receive two (2) days of severance pay for every complete year of service for the Agency, up to a maximum of four (4) weeks. Severance pay shall be paid at the employee's current rate of pay.
  - 1) The Agency will meet and confer to consider the impact of any proposed layoffs.
  - 2) If layoffs are put into place, they will be effected by reverse seniority order (last hired, first laid off).
  - 3) Seniority is defined as time since the original hire date with the Agency.

- 4) If a more senior employee is targeted for layoff, he/she may bump a less senior employee so long as he/she is qualified for the position being bumped to.
- 5) If an employee is separated from the Agency because of layoff, he/she shall have first rights of rehire for a period of 365 calendar days to any position for which he/she is qualified. If the employee fails to respond within fourteen (14) calendar days to a certified notice of rehire, he/she shall be deemed to have waived this right of rehire.

#### Section 14.03. - Resignation

An employee who wishes to leave the Agency's employment in good standing should file a written resignation with his/her supervisor at least two (2) weeks prior to the date of resignation. Once an employee has tendered his/her resignation, he/she shall not be eligible to utilize bereavement, floating holiday, longevity, or sick leave during the last two (2) weeks of employment. Resignations may be withdrawn by the employee up to two (2) business days after they are first submitted. After the two (2) business day period, a resignation may not be rescinded by the employee without the approval of the General Manager. Should an employee who rescinds his/her resignation later resign, he/she shall not be permitted to withdraw future resignations.

### **ARTICLE 15 - EMPLOYEE CONDUCT**

#### Section 15.01. - Peaceful Performance of Duties

Members of the Unit may only participate in labor actions as provided for under State and/or Federal law or as provided for by a court of competent jurisdiction.

#### Section 15.02. - Recognition of Boycotts

While on duty no employee shall support, instigate, or honor any boycott impressed on any company, agency, individual or employer, which the Agency normally deals with or provides services to.

#### Section 15.03. - Outside Employment

Full-time Agency employees may not carry on concurrently with their public service any private business or undertaking, attention to which affects the time or quality of their work or which casts discredit upon or creates embarrassment for the Agency. Outside employment must be authorized in writing by the supervisor and the General Manager, or designated representative(s).

#### Section 15.04. - Personal Conduct

Employees are required at all times to conduct themselves in such a manner as to reflect no discredit upon Inland Empire Utilities Agency.

#### Section 15.05. - Financial Affairs

Employees shall be required to conduct their personal financial affairs in such a manner that creditors and collectors will not have to make use of the Agency offices or employee times for the purpose of collecting legal debts.

## Section 15.06. - Employees Acting as Agents of the Agency

Any employee who is required by the duties assigned to his/her position to act as an agent of the Agency shall not be empowered or authorized to bind the Agency to any expressed or implied contract. Any contract or offers that an agent of the Agency negotiates with a third party shall be subject to ratification by the Agency prior to acceptance. Any commitments made by an agent of the Agency shall be approved by the Agency prior to being consummated.

## **ARTICLE 16 - GRIEVANCE PROCEDURE**

### Section 16.01. - General

- A. A grievance is an alleged violation, misinterpretation, inequitable application or noncompliance of Agency ordinances, resolutions, policies, and/or provisions of the MOU of a non-disciplinary nature. Refer to Article 17, Disciplinary Actions and Appeals Procedures, for disciplinary appeals.
- B. No punitive action will be assessed against an employee for utilizing the grievance procedure.
- C. An employee may select another person as his/her representative to assist the employee in processing a grievance at any step in the grievance procedure.
- D. In a hearing or meeting called to resolve a grievance, up to one (1) employee, in addition to the employee instituting the grievance, may be excused from work, with the exception of those called as witnesses, when both parties agree they are necessary to determine certain facts. In all instances, the supervisor, and/or Department Manager of the employee who has filed a grievance may be present. Names of Agency employees requesting pay for attendance to a hearing or meeting should be given to the Manager of Human Resources three (3) working days prior to the hearing/meeting.
- E. A grievance is expected to be prepared on the employee's own time. However, the Agency recognizes that some tasks can only be accomplished during working hours. In recognition of this need, an employee may use up to two (2) hours (per grievance) to prepare his/her grievance.
- F. Organizational channels shall be utilized at all times during the grievance process.
- G. No individual member of the Board of Directors may be approached by the employee, or his/her representative, at any time regarding a grievance.
- H. The failure to process a grievance within the time limits set forth in this Article shall cause the grievance to be deemed settled in accordance with the Agency's last reply.
- I. Any limit may be extended upon the mutual agreement of both parties.
- J. An employee shall initially attempt settlement of a grievance at the employee-supervisor level.
- K. All grievances shall be treated as confidential by all parties, and no publicity will be

given until the final resolution of the grievance.

#### Section 16.02. - Grievance Initiation

Within twenty (20) workdays after the employee knows or should have known of a grievance, the employee shall commence the grievance procedure specified herein. Failure to commence the grievance procedure within the twenty (20) day period shall be deemed a waiver by the employee of his/her right to grieve the matter.

#### Section 16.03. - Grievance Steps

- A. Grievances involving salaries, promotions, and performance appraisals may be processed up through Step 4 of this procedure.
- B. The following procedures outlined herein constitute the steps necessary to address an employee's grievance:

#### INFORMAL GRIEVANCE PROCEDURE

Step 1 The employee having a grievance shall personally discuss the grievance with his/her immediate supervisor. Within three (3) workdays, the immediate supervisor shall orally give a decision to the employee.

If the employee believes that the grievance has not satisfactorily been resolved, the employee may proceed to Step 2 within ten (10) workdays after receiving the oral decision of his/her immediate supervisor.

#### FORMAL GRIEVANCE PROCEDURES

Step 2 The employee shall submit a written statement to his/her Department Manager outlining the grievance, specifying the ordinance, resolution, policy and/or provision of the MOU claimed to be violated, the date of the event, the names of individuals involved, the corrective action requested, and any other pertinent data that may be necessary to fully understand and resolve the grievance.

If the employee's grievance relates to the contents of his/her performance appraisal, the employee shall submit a written rebuttal outlining the Section(s) of the appraisal with which he/she disagrees, and the reason(s) for the disagreement. The employee shall submit the rebuttal along with the original performance appraisal form to his/her Department Manager within ten (10) working days after receiving the oral decision of his/her immediate supervisor.

The scope of the employee's grievance appeal is limited to the written statement or rebuttal.

Within ten (10) working days after receipt of the written statement or rebuttal, the Department Manager shall meet with the employee to discuss the grievance. The Department Manager shall render a written decision to the employee within ten (10) workdays after discussion with the employee.

If the employee believes that his/her grievance has not satisfactorily been resolved, the employee may proceed to Step 3 within ten (10) workdays after receiving the written

decision from the Department Manager.

Step 3 The employee shall submit a written statement to his/her Executive Manager within ten (10) workdays after receipt of a written decision of the Department Manager containing at a minimum the information required in Step 2 above. Receipt shall mean the date the notice was postmarked, delivered to a courier service or was hand-delivered to the employee, depending on the method of delivery. Within ten (10) workdays after receipt of the written statement of the employee, the Executive Manager shall meet with the employee to discuss the grievance. The Executive Manager shall render a written decision to the employee, within ten (10) workdays after discussion with the employee.

If the employee believes that the grievance has not been satisfactorily resolved, the employee may proceed to Step 4 within ten (10) workdays after receiving the written decision of the Executive Manager.

Step 4 The employee shall submit a written statement to the General Manager within ten (10) workdays after receipt of a written decision of the Executive Manager requesting a meeting with the General Manager and explaining the basis of the request and the corrective action requested. Receipt shall mean the date the notice was postmarked, delivered to a courier service or was hand-delivered to the employee, depending on the method of delivery. Within ten (10) workdays after receipt of the written statement of the employee, the General Manager shall meet with the employee to discuss the grievance. The General Manager shall render a written decision to the employee, within ten (10) workdays after discussion with the employee.

If the employee believes that the grievance has not been satisfactorily resolved, the employee may proceed to Step 5 within ten (10) workdays after receiving the written decision of the General Manager, except as provided for in Section 16.03.A.

Step 5 The employee shall file a written request within ten (10) working days of receipt of the Notice of Decision from the General Manager with the Board Secretary, for a hearing before the Finance, Legal and Administration Committee of the Board of Directors. Receipt shall mean the date the notice was postmarked, delivered to a courier service, or was hand-delivered to the employee, depending on the method of delivery. Within sixty (60) calendar days from receiving the request for hearing, the Finance, Legal and Administration Committee of the Board of Directors shall hear the grievance and render a written decision. All appeals to the Board of Directors shall be heard by the Finance, Legal and Administration Committee of the Board of Directors, and shall be final and the employee will have exhausted all of his/her administrative remedies. All other grievances such as, but not limited to working conditions, safety matters, interpretation of Agency ordinances, resolutions, policies and/or provisions of this MOU, etc., may be processed through the Finance, Legal and Administration Committee. No matter that is processed through the procedures provided for in Article 17 may be grieved under the procedures in this Article.

#### Section 16.04. - Request for Hearing with the Finance, Legal and Administration Committee of the Board of Directors

- A. The request for a hearing shall be signed by the employee, or his/her representative, and shall contain:
  - 1) A statement describing the basis of the request;

- 2) The corrective action requested; and,
  - 3) The name and address to which further communications shall be sent to the employee, or his/her representative.
- B. Failure of the employee, or his/her representative, to file a complete and timely request shall constitute a waiver of the employee's rights to a hearing.
  - C. Any employee who proceeds with a request to the Finance, Legal and Administration Committee of the Board of Directors, where any provision(s) or requirement(s) of this Article has not been complied with, and who fail to object, in writing or on the record prior to making the request, shall be deemed to have waived his/her right to object to said irregularity.
  - D. A time for the hearing shall be established by the Board Secretary and shall not be less than ten (10) working days, or more than sixty (60) working days, from the date of the filing of the request.
  - E. All interested parties shall be notified in writing of the date, time, and place of the hearing, at least five (5) working days prior to the hearing date.
  - F. The parties to any hearing before the Finance, Legal and Administration Committee of the Board of Directors may mutually agree in writing, with the permission of the Finance, Legal and Administration Committee of the Board of Directors, to waive oral testimony. Submission may be by affidavits, declarations, depositions, or other documents, mutually exchanged. The Finance, Legal and Administration Committee of the Board of Directors, will receive and take action on requests to waive oral testimony prior to or at the scheduled hearing date.
  - G. With the exception of Agency employees, the expenses of witnesses to appear at a hearing for either side shall be paid by the party producing such witnesses. Agency employees required to testify at said hearing shall be on call and shall be relieved of regular duties to report, when summoned by the Finance, Legal and Administration Committee of the Board of Directors to the hearing. Agency employees shall receive their regular compensation for time necessary to testify or such compensation as may be set forth in his/her applicable Memorandum of Understanding.
  - H. Any time frames specified in the Article may only be waived by the written mutual consent of both parties.
  - I. The failure of the employee, and/or a representative of the employee, to appear in person at any hearing shall be deemed a withdrawal of the employee's grievance, unless otherwise excused by the Finance, Legal and Administration Committee of the Board of Directors, respectively.

Section 16.05. - Conduct of Grievance Hearings with the Finance, Legal and Administration Committee of the Board of Directors

- A. All hearings shall be conducted in closed session, unless prohibited by the Brown Act.

- B. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner most conducive to determination of the truth.
- C. Any relevant evidence may be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions.
- D. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
- E. The rules or privileges shall be effective to the same extent that they now or hereafter may be recognized in civil actions, and immaterial, irrelevant, or unduly repetitious evidence may be excluded at the sole discretion of the Finance, Legal and Administration Committee of the Board of Directors.
- F. The Finance, Legal and Administration Committee of the Board of Directors shall rule on the admission or exclusion of evidence.
- G. Decisions made by the Finance, Legal and Administration Committee of the Board of Directors shall not be invalidated by any informality in the proceedings, and the Finance, Legal and Administration Committee of the Board of Directors shall not be bound by technical rules of evidence.
- H. Each party shall have the right to:
  - 1) Be represented by a person of his/her choice;
  - 2) Call and examine witnesses;
  - 3) Introduce evidence;
  - 4) Cross-examine opposing witnesses on any matter relevant to the issues; and,
  - 5) Impeach any witness, regardless of which party first called him/her to testify.
- I. Oral evidence shall be taken only on oath of affirmation. The witness shall raise his/her right hand and the hearing officer shall ask the witness "do you swear/affirm to tell the truth and nothing but the truth".
- J. The hearing shall proceed in the following order, unless the Finance, Legal and Administration Committee of the Board of Directors, for special reason(s), otherwise directs:
  - 1) Introductions of the parties present;
  - 2) The employee, or his/her representative, shall be permitted to make an opening statement;

- 3) The General Manager, or his/her representative, shall be permitted to make an opening statement;
  - 4) The employee, or his/her representative, may then offer his/her evidence in support thereof;
  - 5) The General Manager, or his/her representative, shall produce the evidence on which his/her decision is based; and,
  - 6) Oral arguments or post hearing briefs shall be permitted at the discretion of the Finance, Legal and Administration Committee of the Board of Directors.
- K. The Finance, Legal and Administration Committee of the Board of Directors shall determine relevancy, weight, and credibility of the evidence, and shall base their findings on the preponderance of the evidence.
- L. Mechanical transcription of the proceedings may be made by either party, provided it is not disruptive to the proceedings.
- M. At its sole discretion, the Finance, Legal and Administration Committee of the Board of Directors, prior to or during a hearing, may grant a continuance(s) for any reason it believes to be important in reaching a fair and proper decision.
- N. Each party to the proceedings shall provide ten (10) complete copies of all documents, evidence, and/or photographs to be submitted for the record.

**Section 16.06. - Notice of Decision by the Finance, Legal and Administration Committee of the Board of Directors**

- A. The Finance, Legal and Administration Committee of the Board of Directors shall render its written decision as soon after the conclusion of the hearing as possible, and in no event, later than ten (10) working days after completion of the hearing, unless otherwise stipulated by the parties. The decision of the Finance, Legal and Administration Committee of the Board of Directors shall be binding and final.

Said decision shall also contain an advisory that the Board of Directors has adopted Agency Resolution No. 88-10-1 adopting the provisions of Section 1094.6 of the Code of Civil Procedure applicable to certain administrative decisions, and providing for time limits on the judicial review of such administrative decisions.

**ARTICLE 17 - DISCIPLINARY ACTIONS AND APPEALS PROCEDURES**

No disciplinary action may be imposed on any employee covered by this MOU, with the exception of oral counseling, until said action has been reviewed by the Manager of Human Resources or his/her designated representative(s) or as provided for in Section 17.03, without compliance with the procedures set forth in this Article. In the event of a serious infraction, some or all steps of progressive discipline can be bypassed. The type of discipline imposed will be based upon the seriousness of the event as jointly decided between the Manager of Human Resources and the General Manager.

## Section 17.01. - Types of Discipline

Where appropriate, discipline imposed by the Agency may consist of one or more of the following:

- A. Oral Counseling. Instruction to the employee by the employee's supervisor to correct workplace behavior or performance.
- B. Oral Reprimand. A warning from the employee's supervisor to the employee to correct workplace behavior or performance which is documented as having occurred.
- C. Written Reprimand. A written notice from the employee's supervisor to the employee that the employee must correct workplace behavior or performance or be subject to more serious disciplinary action.
- D. Suspension. The temporary separation from service of an employee without pay for disciplinary reasons.
- E. Reduction in Pay. A decrease in an employee's pay to a lower Step within the employee's current pay range for a specified period of time.
- F. Demotion. An involuntary moving of an employee to a lower-paying classification or position for disciplinary reasons. Failure to meet the requirements of promotional (technical) probation is not considered a disciplinary demotion.
- E. Termination. The discharge, for cause, of an employee at the discretion of the Agency.

## Section 17.02. - Conduct Leading to Disciplinary Action(s)

Following are **EXAMPLES** of conduct which could result in disciplinary action up to and including termination. This list is not exhaustive and employees may be disciplined for other inappropriate activities or behavior:

- A. Absenteeism. Excessive unscheduled absences from the workplace.
- B. Tardiness. Arriving late for work, leaving work early without approval of the employee's supervisor, taking excessively long break and/or lunch periods.
- C. Job Abandonment (see Section 4.12) .
- D. Violation of Agency/Division/Department Rules and/or Policies.
- E. Uninsurability. Becoming uninsurable by the standards of the Agency's automobile insurance program for any reason if insurability is an essential requirement of the employee's job.
- F. Use of Work Phone and/or personal cell phone for Personal Business. The excessive receipt or placement of non-emergency personal telephone calls during working hours.

- G. Reading Non-Work Related Material During Work Hours.
- H. Discourteous Treatment of the Public or Other Employees.
- I. Violation of MOU Provisions.
- J. Conduct Outside Working Hours. Any conduct outside of working hours that would have an adverse impact on the employee's job, would be injurious to the interests of the Agency, would be in a manner incompatible with the due and faithful discharge of the employee's duties or would be significantly prejudicial to the reputation of the Agency.
- K. Failure To Perform Job. Failure to perform assigned tasks that are within the scope of the employee's position in an effective and timely manner.
- L. Fraudulent Actions. Falsifying employment applications, time cards, production records, overtime sheets, or other work records or the practice of fraud of any type.
- M. Mishandling/Maintenance of Agency Materials or Equipment. Careless, negligent or intentional mishandling of any Agency property, vehicles, materials or equipment or failure to maintain equipment assigned to the employee for use or operation.
- N. Careless or Negligent Actions. Careless, negligent, abusive or other actions that endanger or threaten to endanger the employee or other employees or the public including placing the Agency in a position of liability for the damage or injury to another person or their property.
- O. Violation of the Provisions of the Agency's Safety Manual.
- P. Sleeping on the Job.
- Q. Illegal Strike Against the Agency. Participating in an illegal strike, work stoppage or slow down against the Agency.
- R. Violations of Laws. A violation of any municipal, county, State or Federal law by an employee while acting as an agent or employee of the Agency.
- S. Carrying a firearm or other weapon while on Agency owned or controlled property or while on duty.
- T. Willfully or negligently damaging Agency property.
- U. Criminal Conduct. The commission of a felony or a misdemeanor committed during the course of employment, which jeopardizes the Agency's property, security, or its public reputation, the interests of the other employees, or results in the employee not being available for work. Also, the commission of a felony or a misdemeanor committed during the employee's off-duty hours which is related to the employment relationship between the Agency and the employee which significantly prejudices any one of these interests.
- V. Disruption of Agency business through willful misconduct.

- W. Altercations with a member of the public or another employee during working hours or while on Agency owned or controlled property.
- X. Action by or behavior of the employee which presents a danger to the safety or welfare of the employee, co-workers, or the public.
- Y. Sexual activity on the job.
- Z. Release of confidential information (i.e., Unauthorized release/distribution of confidential material/data, unauthorized opening of confidential/personal material data).
- AA. Insubordination. An employee's refusal or failure to obey a directive from a designated supervisor or to comply with an established work procedure. Under certain circumstances, use of objectionable language or abusive behavior toward supervisors may be deemed insubordination when it directly challenges or undermines management's authority.
- BB. Theft or misappropriation of any property or funds of the Agency or its employees.
- CC. Possess, sell, buy, distribute, offer to possess, sell, buy, distribute, or use, or having in the employee's system, any illegal or purported to be illegal substance, alcohol, or any legal drug or substance not properly obtained by the employee while on or about Agency time and/or property. Reference Agency Policy A-63, Drug/Alcohol Free Workplace.

#### Section 17.03 - Administrative Leave

- A. The Agency reserves the right to place any employee on administrative leave with pay pending an investigation of his/her acts, or failure to act, which may be grounds for disciplinary action. The placement of an employee on administrative leave is not a disciplinary act. The employee shall be considered as being on a paid leave of absence for purposes of pay, benefits, and seniority. An employee on administrative leave shall receive pay until such time as the Notice of Decision has been issued by the Department Manager, or in the case of an appeal, until such time as the Notice of Decision has been issued by the Executive Manager.
- B. In emergency situations as defined in Sections 17.02.K through 17.02.CC, it may be necessary to take immediate disciplinary action, up to and including termination. If administrative leave is in the best interest of all parties involved, the Agency reserves the right to place the employee on administrative leave without prior written notice (oral notice shall be sufficient, provided that written notice is given to the employee within three (3) working days of when oral notice was given).
- C. In an emergency situation in which an employee is immediately suspended and the employee is cleared of any wrongdoing, or it is determined by the General Manager, or designated representative(s), that the employee was wrongfully suspended, the employee shall be restored to his/her position with no loss of pay, benefits, or seniority.

#### Section 17.04. - Agency Authority

- A. The Agency retains full authority for discipline and discharge. The Agency agrees that employees will only be disciplined for just cause, and that the principles of progressive discipline, where possible and reasonable, will be followed.
- B. It is understood that based on individual circumstances, and/or the nature or severity of an alleged violation, progressive discipline steps may be repeated or, in some cases, bypassed.

#### Section 17.05. - Employee's Receipt

Employee's receipt of any and all notices shall be defined as the date the notice was postmarked, delivered to a courier service, or was hand-delivered to the employee, depending on the method of delivery.

#### Section 17.06. - Notice of Proposed Disciplinary Action

- A. Except in emergency situations as provided for in Section 17.02 and 17.03 of this Article, when disciplinary action proposed that would invoke Skelly rights against a regular full-time employee, the respective Department Manager shall give the employee the Notice of Proposed Disciplinary Action at least five (5) working days prior to the effective date of the proposed action. Said written notice shall contain at least the following information:
  - 1) The name, address or Agency facility, and title of the affected employee;
  - 2) The proposed disciplinary action, and the date and time when said action shall become effective;
  - 3) The specific ground(s) for the proposed action;
  - 4) A description of the employee's acts or omissions supporting the proposed action, and/or a description of the events or circumstances upon which the proposed action is based;
  - 5) Copies of the materials and/or documents upon which the proposed action is based; and,
  - 6) An advisory that the employee shall have an opportunity to file a written response to said action, and/or meet with the respective Department Manager, at the option of the employee, prior to the effective date and time of the proposed disciplinary action, provided the response is submitted, and/or a request for a meeting is made, within five (5) working days of the employee's receipt of the Notice of Proposed Disciplinary Action. The advisory shall also inform the employee that his/her failure to file a written response and/or meet with the Department Manager within the stated time frame shall waive his/her right to respond to the proposed action.
- B. Oral notice by the Department Manager is insufficient as complete notice to an employee of a proposed disciplinary action and may only be given as the initial notice in emergency situations which call for immediate action as provided for in Section 17.03 of this Article.

#### Section 17.07. - Right to Respond

Should the disciplinary action consist of a written reprimand the employee may file a written rebuttal within five (5) working days of receipt. Rebuttal shall be filed with the disciplinary action in the employee's personnel file. An employee shall have no further right to respond or appeal a written reprimand beyond filing the written rebuttal. An employee's failure to respond to a written reprimand in the specified time period shall waive the employee's right to respond to the written reprimand.

An employee served with a Notice of Proposed Disciplinary Action (other than for a written reprimand) shall, at his/her option, have the right to file a written response to said action, and/or meet with the respective Department Manager, provided the response is submitted, or a request for a meeting is made, within five (5) working days of the employee's receipt of the notice of Proposed Disciplinary action.

An employee's failure to respond to a Notice of Proposed Disciplinary Action in the specified time periods shall waive the employee's right to further appeal the proposed disciplinary action, and the disciplinary action shall become effective on the date and time originally set forth in the notice of proposed disciplinary action.

#### Section 17.08. - Notice of Decision by the Department Manager

- A. The Department Manager shall, before making a final decision regarding the proposed action, consider any evidence and/or arguments against the proposed action presented by the employee or his/her representative.
- B. After considering all of the facts regarding said action and any responses presented by the employee or his/her representative, the Department Manager may rescind, modify, or impose the proposed action as he/she deems appropriate; however, the proposed action cannot be increased.
- C. After reaching a final decision regarding said action, the Department Manager shall notify the employee of his/her decision within five (5) working days following receipt of any written response provided by the employee and/or after any meeting conducted with the employee, whichever is later, by forwarding to the employee, by certified mail, return receipt requested, by courier service, or by personal delivery, a Notice of Decision.
- D. The Notice of Decision shall contain an advisory that the employee has the right to file an appeal of the Department Manager's decision to the employee's Executive Manager. The employee must request an appeal in writing to the Executive Manager within five (5) working days of the employee's receipt of the Notice of Decision.

The advisory shall also inform the employee that his/her failure to file an appeal within the stated time frame shall waive his/her rights to appeal the proposed action.

#### Section 17.09. - Effective Date of Disciplinary Action

- A. If the Department Manager imposes any disciplinary action, it shall become effective on the date and time originally set in the Notice of Proposed Disciplinary

Action or five (5) working days following the employee's receipt of the Notice of Decision, whichever is later.

- B. Should the employee request an appeal to the Executive Manager, implementation of any disciplinary action imposed on the employee by the Department Manager shall be stayed until such time as the Executive Manager reaches his/her decision on such action. During the stay, the employee shall remain in the status he/she was in when the action was proposed; i.e., in service, on Administrative Leave, or on suspension.

#### Section 17.10. - Disciplinary Appeals to the Executive Manager

- A. A regular full-time employee against whom a disciplinary action has been proposed (other than a decision to impose oral counseling or an oral or written reprimand) may appeal such action by filing a written request with the employee's Executive Manager. The request for an appeal must be made within five (5) working days of the employee's receipt of the Notice of Decision by the Department Manager.
- B. The request for an appeal meeting shall be signed by the employee, or his/her representative, and shall contain:
  - 1) A statement describing the basis of the appeal;
  - 2) The corrective action requested; and,
  - 3) The name and address to which further communications shall be sent to the employee, or his/her representative.

The scope of the employee's disciplinary appeal shall be limited to the written request for appeal filed with the Executive Manager.

- C. Failure of the employee, or his/her representative, to file a timely request for an appeal meeting shall constitute a waiver of the employee's rights to an appeal.
- D. An employee who proceeds with an appeal to the Executive Manager, where any provision(s) or requirement(s) of this Article has not been complied with, and who fails to object, in writing or on the record prior to the appeal, shall be deemed to have waived his/her right to object to said irregularity.
- E. The parties to any appeal before the Executive Manager may mutually agree in writing, with the permission of the Executive Manager, to waive oral testimony. Submission may be by affidavits, declarations, depositions, or other documents, mutually exchanged. The Executive Manager will receive and take action on requests to waive oral testimony prior to or at the scheduled meeting.
- F. With the exception of Agency employees, the expenses of witnesses to appear at any appeal meeting for either side shall be paid by the party producing such witnesses. Agency employees required to testify at said meeting shall be on call and shall be relieved of regular duties to report, when summoned by the Executive Manager to the appeal meeting. An Agency employee shall receive his/her regular compensation for time necessary to testify or such compensation as may be set forth in his/her applicable Memorandum of Understanding.

- G. Any time frames specified in this Section may only be waived by the written mutual consent of both parties.
- H. The failure of the employee, and/or a representative of the employee, to appear in person at any appeal meeting shall be deemed a withdrawal of the employee's appeal, unless otherwise excused by the Executive Manager respectively.

Section 17.11. - Conduct of Appeals Meeting with the Executive Manager

- A. The Executive Manager shall schedule and conduct an appeal meeting with the employee, within five (5) working days of receipt of the employee's written request for said meeting.
- B. For an appeal meeting with the Executive Manager, the following procedures shall be observed:
  - 1) The affected employee may either represent him/herself, or may be represented by a party of his/her own choice; and,
  - 2) Each party shall be given a reasonable opportunity to be heard on relevant issues, including the right to question and cross-examine witnesses, unless oral testimony has been waived in accordance with Section 17.10.E.

Section 17.12. - Notice of Decision by the Executive Manager

- A. After considering all of the facts regarding said action and any responses presented by the employee, the Executive Manager shall, within five (5) working days, rescind, modify, or sustain the disciplinary action as he/she deems appropriate; however, the action cannot be increased.
- B. If the disciplinary action is rescinded, the employee shall be restored to his/her position, with no loss of pay, benefits or seniority.
- C. If the disciplinary action is modified, the employee's pay, benefits, and/or seniority shall be adjusted accordingly. The effective date of the modified discipline shall be set forth in the Notice of Decision.
- D. After reaching a decision regarding said action, the Executive Manager shall notify the employee of his/her decision within five (5) working days following receipt of any written response provided by the employee and/or after any appeal meeting conducted with the employee, whichever is later, by forwarding to the employee, by certified mail, return receipt requested, by courier service, or by personal delivery, a Notice of Decision.
- E. The Notice of Decision shall contain an advisory that the employee has the right to file an appeal of the Executive Manager's decision to the General Manager. The employee must request an appeal in writing to the General Manager within five (5) working days of the employee's receipt of the Notice of Decision.

The advisory shall also inform the employee that his/her failure to file an appeal within the stated time frame shall waive his/her rights to appeal the proposed action.

### Section 17.13. - Effective Date of Disciplinary Action

- A. If the Executive Manager sustains a disciplinary action, it shall become effective on the date and time originally set in the Notice of Proposed Disciplinary Action by the Department Manager, or five (5) working days following the employee's receipt of the Executive Manager's Notice of Decision, whichever is later.
- B. Should the employee request an appeal to the General Manager, implementation of any disciplinary action imposed on the employee by the Executive Manager shall be stayed until such time as the General Manager reaches his/her decision on such action. During the stay, the employee shall remain in the status he/she was in when the action was proposed; i.e., in service, on Administrative Leave, or on suspension.

### Section 17.14. - Disciplinary Appeals to the General Manager

- A. A regular full-time employee against whom a disciplinary action has been proposed (other than a decision to impose oral counseling or an oral or written reprimand) may appeal such action by filing a written request with the General Manager. The request for an appeal meeting must be made within five (5) working days of the employee's receipt of the Notice of Decision by the Executive Manager.
- B. The request for an appeal meeting shall be signed by the employee, or his/her representative, and shall contain:
  - 1) A statement describing the basis of the appeal;
  - 2) The corrective action requested; and,
  - 3) The name and address to which further communications shall be sent to the employee, or his/her representative.

The scope of the employee's disciplinary appeal shall be limited to the written request for appeal filed with the General Manager.

- C. Failure of the employee, or his/her representative, to file a timely request for an appeal meeting shall constitute a waiver of the employee's rights to an appeal meeting.
- D. An employee who proceeds with an appeal to the General Manager, where any provision(s) or requirement(s) of this Article has not been complied with, and who fails to object, in writing or on the record prior to the appeal, shall be deemed to have waived his/her right to object to said irregularity.
- E. The parties to any appeal before the General Manager may mutually agree in writing, with the permission of the General Manager, to waive oral testimony. Submission may be by affidavits, declarations, depositions, or other documents, mutually exchanged. The General Manager will receive and take action on requests to waive oral testimony prior to or at the scheduled meeting.
- F. With the exception of Agency employees, the expenses of witnesses to appear at any appeal meeting for either side shall be paid by the party producing such

witnesses. Agency employees required to testify at said meeting shall be on call and shall be relieved of regular duties to report, when summoned by the General Manager to the appeal meeting. An Agency employee shall receive his/her regular compensation for time necessary to testify or such compensation as may be set forth in his/her applicable Memorandum of Understanding.

- G. Any time frames specified in this Section may only be waived by the written mutual consent of both parties.
- H. The failure of the employee, and/or a representative of the employee, to appear in person at any appeal meeting shall be deemed a withdrawal of the employee's appeal, unless otherwise excused by the General Manager respectively.

#### Section 17.15. - Conduct of Appeals Meeting with the General Manager

- A. The General Manager shall schedule and conduct an appeal meeting with the employee, within five (5) working days of receipt of the employee's written request for said meeting.
- B. For an appeal meeting with the General Manager, the following procedures shall be observed:
  - 1) The affected employee may either represent him/herself, or may be represented by a party of his/her own choice; and,
  - 2) Each party shall be given a reasonable opportunity to be heard on relevant issues, including the right to question and cross-examine witnesses, unless oral testimony has been waived in accordance with Section 17.14.E.

#### Section 17.16. - Notice of Decision by the General Manager

- A. After considering all of the facts regarding said action and any responses presented by the employee, the General Manager shall, within five (5) working days, rescind, modify, or sustain the disciplinary action as he/she deems appropriate; however, the action cannot be increased.
- B. If the disciplinary action is rescinded, the employee shall be restored to his/her position, with no loss of pay, benefits or seniority.
- C. If the disciplinary action is modified, the employee's pay, benefits, and/or seniority shall be adjusted accordingly. The effective date of the modified discipline shall be set forth in the Notice of Decision.
- D. After reaching a decision regarding said action, the General Manager shall notify the employee of his/her decision within five (5) working days following receipt of any written response provided by the employee and/or after any appeal meeting conducted with the employee, whichever is later, by forwarding to the employee, by certified mail, return receipt requested, by courier service, or by personal delivery, a Notice of Decision.
- E. In the event of disciplinary actions sustaining suspension without pay in excess of five (5) days, demotion or termination of employment, the Notice of Decision shall

contain an advisory that the employee has the right to file an appeal of the General Manager's decision to the Board of Directors, provided the request is submitted in writing to the Board Secretary within five (5) working days of the employee's receipt of the Notice of Decision.

The advisory also shall inform the employee that his/her failure to file an appeal within the stated time frame shall waive his/her rights to appeal the General Manager's decision.

#### Section 17.17. - Effective Date of Disciplinary Action

If the General Manager sustains a disciplinary action, it shall become effective on the date and time originally set in the Notice of Proposed Disciplinary Action by the Department Manager, or five (5) working days following the employee's receipt of the General Manager's Notice of Decision, whichever is later.

#### Section 17.18. - Decision of General Manager Final and Binding

- A. Except for disciplinary actions imposing suspension without pay in excess of five (5) days, demotion or termination of employment, the decision of the General Manager shall be final and binding, and shall not be appealable to the Board of Directors.
- B. Disciplinary actions which are appealable to the Board of Directors will not be stayed during the appeal process to the Board of Directors.

#### Section 17.19. - Disciplinary Appeals to the Board of Directors

This section shall apply only to disciplinary actions sustaining suspension without pay in excess of five (5) days, demotion, and/or termination of employment.

- A. All requests for an appeal hearing before the Board of Directors shall be made in writing to the Board Secretary within five (5) working days of the employee's receipt of the Notice of Decision from the General Manager. All appeals to the Board of Directors shall be heard by the Finance, Legal and Administration Committee of the Board of Directors.
- B. The request for an appeal shall be signed by the employee, or his/her representative, and shall contain:
  - 1) A statement describing the basis of the appeal;
  - 2) The corrective action requested; and,
  - 3) The name and address to which further communications shall be sent to the employee, or his/her representative.

The scope of the employees appeal shall be limited to the written request for appeal filed with the Board Secretary and cannot raise new issues that were not within the scope of the original appeal before the General Manager.

- C. Failure of the employee, or his/her representative, to file a timely appeal shall

constitute a waiver of the employee's rights to an appeal hearing.

- D. Either party who proceeds with an appeal to the Finance, Legal and Administration Committee of the Board of Directors, knowing that any provision(s) or requirement(s) of this Article has not been complied with, and who fail to object, in writing or on the record, shall be deemed to have waived his/her right to object to said irregularity.
- E. A time for the appeal hearing shall be established by the Board Secretary and shall not be less than five (5) working days, or more than sixty (60) working days, from the date the request for an appeal hearing is received.
- F. All interested parties shall be notified in writing of the date, time, and place of the hearing, at least five (5) working days prior to the hearing date.
- G. The parties to any appeal hearing before the Finance, Legal and Administration Committee of the Board of Directors may mutually agree in writing, with the permission of the Finance, Legal and Administration Committee of the Board of Directors, to waive oral testimony. Submission may be by affidavits, declarations, depositions, or other documents, mutually exchanged. The Finance, Legal and Administration Committee of the Board of Directors, will receive and take action on requests to waive oral testimony prior to or at the scheduled hearing date.
- H. With the exception of Agency employees, the expenses of witnesses to appear at an appeal hearing for either side shall be paid by the party producing such witnesses. Agency employees required to testify at said hearing shall be on call and shall be relieved of regular duties to report when summoned by the Finance, Legal and Administration Committee of the Board of Directors to the appeal hearing. Agency employees shall receive their regular compensation for time necessary to testify or such compensation as may be set forth in his/her applicable Memorandum of Understanding.
- I. Any time frames specified in the Section may only be waived by the written mutual consent of both parties.
- J. The failure of the employee, and/or a representative of the employee, to appear in person at any appeal hearing shall be deemed a withdrawal of the employee's appeal, unless otherwise excused by the Finance, Legal and Administration Committee of the Board of Directors.

Section 17.20. - Conduct of Appeals Hearing with the Finance, Legal and Administration Committee of the Board of Directors

- A. All hearings shall be conducted in closed session; however, the employee may request a hearing open to the public, unless a public hearing would violate the confidentiality and privacy rights of any party named in the action.
- B. Charges against an employee appealed to the Finance, Legal and Administration Committee of the Board of Directors shall not be public record or open to public inspection unless an open public hearing has been conducted.
- C. The hearing need not be conducted in accordance with technical rules relating to

evidence and witnesses, but hearings shall be conducted in a manner most conducive to determination of the truth.

- D. Any relevant evidence may be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions.
- E. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
- F. The rules or privileges shall be effective to the same extent that they now or hereafter may be recognized in civil actions, and immaterial, irrelevant, or unduly repetitious evidence may be excluded at the sole discretion of the Finance, Legal and Administration Committee of the Board of Directors.
- G. The Finance, Legal and Administration Committee of the Board of Directors shall rule on the admission or exclusion of evidence.
- H. Decisions made by the Finance, Legal and Administration Committee of the Board of Directors shall not be invalidated by any informality in the proceedings.
- I. Each party shall have the right to:
  - 1) Be represented by legal counsel, or other person of his/her choice;
  - 2) Receive a witness list from the opposing party five (5) days prior to the date of the hearing;
  - 3) Call and examine witnesses;
  - 4) Introduce evidence;
  - 5) Cross-examine opposing witnesses on any matter relevant to the issues;
  - 6) Impeach any witness, regardless of which party first called him/her to testify; and,
  - 7) Rebut the evidence against him/her.

If the employee does not testify on his/her own behalf, he/she may be questioned as if under cross-examination. The employee must be present at the appeal hearing or the appeal shall be deemed withdrawn.

- J. Seven (7) working days prior to the date set for the hearing, each party shall serve upon the other party a list and copy of all exhibits. An original and nine (9) copies of the exhibits shall be presented to the Finance, Legal and Administration Committee in 3 hole notebooks which are tabbed down the side with the exhibit numbers. The Agency's exhibits shall be designated by number. The employee's exhibits shall be designated by alphabet letters. Neither party will be permitted to call during the hearing a witness not identified pursuant to this section nor use any

exhibit not provided pursuant to this section unless that party can show that they could not reasonably have anticipated the prior need for such witness or such exhibit.

- K. The Finance, Legal and Administration Committee is authorized to issue subpoenas at the request of either party prior to the commencement of the hearing. After the commencement of the hearing, the Committee shall issue subpoenas only for good cause. The Finance, Legal and Administration Committee will prepare subpoenas for all witnesses; however, they will only serve subpoenas on individuals who are currently employed by the agency. It will be the responsibility of the employee and the Agency to submit the names of current Agency employees to be subpoenaed at least ten (10) working days before the date of the hearing in which they are requesting the witnesses to appear.
- L. Oral evidence shall be taken only on oath or affirmation. The witness shall raise his/her right hand and the hearing officer shall ask the witness "do you swear/affirm to tell the truth and nothing but the truth".
- M. The hearing shall proceed in the following order, unless the Finance, Legal and Administration Committee of the Board of Directors, for special reason(s), otherwise directs:
  - 1) Introductions of the parties present;
  - 2) The Department Manager imposing discipline, or his/her representative, shall be permitted to make an opening statement;
  - 3) The employee appealing, or his/her representative, shall be permitted to make an opening statement;
  - 4) The Department Manager imposing disciplinary action, or his/her representative, shall produce the evidence on which the disciplinary action is based;
  - 5) The employee appealing such disciplinary action, or his/her representative, may then open his/her defense and offer his/her evidence in support thereof;
  - 6) Each party may then, in order, respectively offer rebutting evidence only, unless the Finance, Legal and Administration Committee of the Board of Directors, for good reason, permits them to offer evidence upon their original case; and,
  - 7) Oral arguments or post hearing briefs shall be permitted at the discretion of the Finance, Legal and Administration Committee of the Board of Directors.
- N. The Finance, Legal and Administration Committee of the Board of Directors shall determine relevancy, weight, and credibility of the testimony and evidence, and shall base their findings on the preponderance of the evidence.
- O. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon motion of either party.

- P. No still photographs, videos, moving pictures, or television pictures shall be taken in the hearing room during the hearing, unless an open public hearing is being conducted.
- Q. Mechanical transcription of the proceedings may be made by either party, provided it is not disruptive to the proceedings.
- R. At its sole discretion, the Finance, Legal and Administration Committee of the Board of Directors, prior to or during a hearing, may grant a continuance(s) for any reason it believes to be important in reaching a fair and proper decision.
- S. Each party to the proceedings shall provide ten (10) complete copies of all documents, evidence, and/or photographs to be submitted for the record.
- T. All appeal hearings shall be recorded by a certified court reporter, selected by the Agency. Alternatively, the parties may agree to have proceedings recorded by an audio recording device.

Section 17.21. - Notice of Decision by the Finance, Legal and Administration Committee of the Board of Directors

- A. The Finance, Legal and Administration Committee of the Board of Directors shall render its written decision as soon after the conclusion of the hearing as possible, and in no event, later than ten (10) working days after completion of the hearing, unless otherwise stipulated by the parties. The Finance, Legal and Administration Committee of the Board of Directors shall set forth its decision as to each of the charges and the reasons therefore.  
  
Said decision shall also contain an advisory that the Board of Directors has adopted Agency Resolution No. 88-10-1 adopting the provisions of Section 1094.6 of the Code of Civil Procedure applicable to certain administrative decisions, and providing for time limits on the judicial review of such administrative decisions.
- B. The Finance, Legal and Administration Committee of the Board of Directors may sustain, rescind, or modify any or all of the disciplinary action imposed against the employee; however, the action cannot be increased.
- C. If the disciplinary action is modified, the employee's pay, benefits and/or seniority shall be adjusted accordingly. The effective date of the modified discipline shall be set forth in the Notice of Decision.
- D. If the disciplinary action is rescinded, the employee shall be restored to his/her position, with no loss of pay, benefits or seniority.

**ARTICLE 18 - RULE MAKING AUTHORITY**

Section 18.01. - General

The General Manager, or designated representative(s), may adopt and administer personnel rules and regulations which are supplementary to and consistent with the terms set forth in this MOU and the policies of the Agency.

**ARTICLE 19 - NOTICE**

Section 19.01. - General

Within ninety (90) working days of the adoption of this MOU a copy shall be presented to each Supervisor's Unit employee of the Agency, and to each newly hired Supervisors' Unit employee at the time of appointment.

**ARTICLE 20 - MANDATORY SUBJECTS OF BARGAINING**

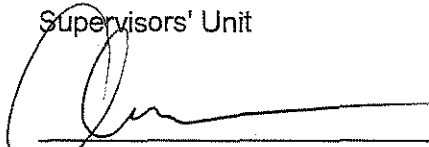
Section 20.01. - General

The parties agree that wages, hours and other terms and conditions of employment not specifically changed or modified by this MOU shall remain in full force and effect unless otherwise mutually agreed to by the parties.

IN WITNESS WHEREOF, the parties have executed this agreement, by their duly authorized representatives, on the day and the year first above written.

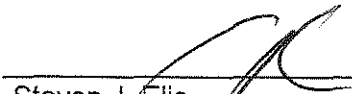
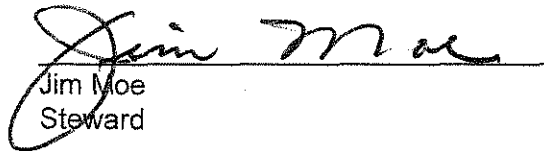
Supervisors' Unit

Inland Empire Utilities Agency



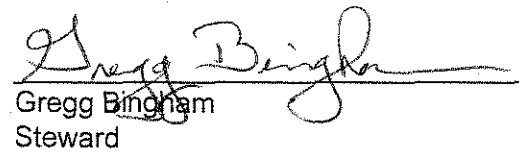
Charlie Batongmalaque  
Steward

Terry Catlin  
President of the Inland Empire  
Utilities Agency\* and of the Board  
of Directors thereof



Jim Moe  
Steward

Steven J. Elie  
Secretary of the Inland Empire  
Utilities Agency\* and of the Board  
of Directors thereof



Gregg Bingham  
Steward

\*A Municipal Water District