

**RESOLUTION NO. 2013-9-3**

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

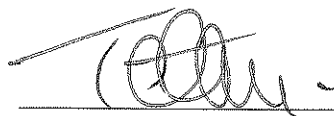
**WHEREAS**, a majority of the unit members from this group voted to approve the Memorandum of Understanding.

**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 Operators' 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 Operators' Unit Salary Matrix be included herein as part of the MOU, attached hereto as Exhibit 2.

**ADOPTED** the 4<sup>th</sup> day of September, 2013.



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. 2013-9-3, was adopted at a regular  
Board Meeting on September 4, 2013, of said Agency by the following vote:

AYES: Santiago, Elie, Camacho, Catlin, Koopman

NOES: None

ABSTAIN: None

ABSENT: None

  
\_\_\_\_\_  
Steven J. Elie  
Secretary/Treasurer

(SEAL)

\*A Municipal Water District

**THE INLAND EMPIRE UTILITIES AGENCY\***  
**MEMORANDUM OF UNDERSTANDING**  
**OPERATORS' ASSOCIATION**

**FOR THE PERIOD OF SEPTEMBER 1, 2013 THROUGH JUNE 30, 2018**

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

**OPERATORS' ASSOCIATION**

**YEARS 2013-2018**

The Agency does hereby adopt this Memorandum of Understanding establishing personnel Rules and Regulations for the Operators' Association ("employees") of the Agency. Provisions of the Manual do not apply to part-time, temporary, limited term, contract or intern personnel (employees) unless specifically noted in the Manual, Agency Policy or the employee's contract. This Manual does not create any contract of employment, expressed or implied, or any rights in the nature of a contract. This Manual shall be commonly referred to as the Operators' Association Memorandum of Understanding.

- A. There are no provisions in this Memorandum of Understanding 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 Memorandum of Understanding unless and only to the extent that the provisions of this Memorandum of Understanding 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 in accordance with Article 16, Disciplinary Actions,
  - 12) Establish reasonable employee performance standards, including but not limited to, quality standards, and require 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".
- C. The Operators' Association 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:

Operator-in-Training  
Operator I, II, III, IV, V  
Senior Operator III, IV, V

The provisions of this Memorandum of Understanding shall apply to the above referenced classifications, who shall receive all benefits agreed to in this Memorandum of Understanding.

## **ARTICLE 1 - DEFINITIONS**

### Section 1.01. - 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 1.02. - Appointment

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

### Section 1.03. - Anniversary Year

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

### Section 1.04. - 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 1.05. - 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 1.06. - Holiday Leave

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

Section 1.07. - Holiday Pay

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

Section 1.08. - 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 1.09. - 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), and 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 1.10. - Inactive Status

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

Section 1.11. - Job Abandonment

An employee who does not report or call-in to work as scheduled for three (3) or more consecutive work days, and has not been excused for compensatory time off, vacation leave, 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 16, Disciplinary Actions and Appeals Procedures.

#### Section 1.12. - 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 1.13. - Overtime

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

#### Section 1.14. - Overtime Pay

- A. A rate equivalent to one and one-half (1½) times an employee's hourly rate of pay.
- B. An employee who is required to work in excess of fourteen (14) consecutive hours and less than sixteen (16) consecutive hours shall be paid overtime at two (2) times the employee's hourly rate of pay.
- C. Except in the case of a Federal, State, local, or Agency (as deemed necessary by the General Manager, or designated representative(s) in the absence of the General Manager) emergency, no employee shall work in excess of sixteen (16) consecutive hours in any twenty-four (24) hour period and shall have at least an eight (8) hour continuous break between shifts and at least two 30 minute meal breaks within the sixteen (16) hours. An employee who is required to work in excess of sixteen (16) consecutive hours in a twenty-four (24) hour period shall be paid overtime at three (3) times the employee's hourly rate of pay for all hours, or portions of an hour greater than six (6) minutes, worked in excess of sixteen (16) consecutive hours.

#### Section 1.15. - 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 1.16. - 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 1.17. - 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 1.18. - 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 1.19. - Promotion

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

#### Section 1.20. - 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 1.21. - Reemployment

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

#### Section 1.22. - Regular Employee

An employee who has successfully completed the original probationary period.

#### Section 1.23. - 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 1.24. - Resignation

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

#### Section 1.25. - 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 1.26. - Temporary Employee

A person employed to meet a short-term need of the Agency. Temporary employees 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 Memorandum of Understanding .

#### Section 1.27. - Termination

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

### Section 1.28. - 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 1.29. - 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 1.30. - Workweek

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. 5/40 Work Schedule

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

#### B. 4/10 Standard Work Schedule

A 4/10 standard work schedule shall consist of four 10-hour days equaling forty (40) hours per workweek, and is defined as beginning at 12:00 a.m. on Sunday and ending at midnight the following Saturday. Management will determine an employee's standard work schedule to be Sunday through Wednesday, Monday through Thursday, Tuesday through Friday, or Wednesday through Saturday.

#### C. 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. All employees of the Agency are subject to call for emergencies that are inherent in the Agency's responsibilities.

### Section 1.31. - Business Day

A business day is any day that the Agency's Headquarters Building is open for business.

### Section 1.32. - Scheduled Work Day

A scheduled workday is an employee's regularly scheduled workday; or, when an employee is notified today, that he/she is scheduled to work tomorrow (normal day off), it is considered advanced notification and a scheduled workday.

### Section 1.33. - Unscheduled Work Day

An unscheduled workday is when an employee is notified today (normal day off), that he/she is scheduled to work today's shift, there is no advanced notification and it is determined to be an unscheduled workday.

## Section 1.34 – Standard Work Schedule

The standard work schedule under a 4/10 work week is defined as start time of 0600 and end time of 1600.

## **ARTICLE 2 - GENERAL PROVISIONS**

### Section 2.01. - 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 2.02. - 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 2.03. - 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 2.04. - Amendment of Memorandum of Understanding

This Memorandum of Understanding may be amended by the Agency Board of Directors subject to Government Code Section 3500, et. seq.

### Section 2.05. - Labor/Management Meetings

Representatives of the Association 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 representatives involved.

The Operators' Association shall be permitted to meet as a group for up to a maximum of two (2) hours on Agency time twice per calendar year.

The Agency and the Association agree to utilize the Labor/Management meetings to discuss revisions and modifications to the MOU for the purpose of establishing consistent language for all bargaining units. The labor/management process shall not result in any change in terms and conditions of employment absent a meet and confer process resulting in an agreement between the parties to do so.

### Section 2.06. - Personal Hygiene Time

Each employee who is required to wear an Agency provided uniform shall be provided up to twenty (20) minutes at the end of each workday to clean up. Said clean up time shall be used to change from Agency uniforms, shower and change into street clothing, etc.

### **ARTICLE 3 - FILLING OF VACANCIES**

#### Section 3.01. - General

Vacancies may be filled by appointment, transfer, demotion or promotion, or by the use of a temporary employee as deemed in the best interest of the Agency by the General Manager or designated representative(s).

#### Section 3.02. - Filling of Vacancy

Vacancies may be filled by appointment, transfer, demotion or promotion, as deemed in the best interest of the Agency by the General Manager or designated representative(s).

- 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 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.

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. An employee on original probation may apply for a promotion prior to the conclusion of his/her probationary period.

## **ARTICLE 4 – APPLICATION PROCESS FOR NEW APPLICANTS**

### Section 4.01. - Application Forms

Employment applications shall be made online and/or 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 4.02. - 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 4.03. - Employment Tests

Applicants for all positions, as determined by the General Manager, or designated representative(s), shall be subject 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 4.04. - 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 General Manager, or designated representative(s), deem pertinent to the position or classification. Refer to Section 2.01 of this Memorandum of Understanding for those items which shall not be adjudged pertinent.

### Section 4.05. - 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 carrier 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 4.06. - 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 5 - PERSONNEL RECORDS**

#### Section 5.01. - 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 or employee's designee, upon written authorization of the employee, upon court order, on a need to know basis to respective Manager/Supervisor, or legal representatives of the

Agency relative to personnel actions and only by the Manager of Human Resources or his/her designated representative(s). A written log will be maintained in each Operators' Association employee's personnel file identifying access to the file by anyone other than Human Resources staff.

- 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. Suspensions of six to ten (6-10) days will be removed after five (5) years and suspensions of eleven (11) days or more will remain in the employee's file permanently.
- G. Employees must provide the Agency with a current address and phone number.

## **ARTICLE 6 - PROBATIONARY PERIODS**

### **Section 6.01. - Regulations**

- A. Generally, original and promotional appointments shall have a probationary period of six (6) months. The General Manager can reduce or extend the original probation up to 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 1.17.A of this Memorandum of Understanding.
  - 2) Technical Probation - as defined in Section 1.17.B of this Memorandum of Understanding.
- B. Upon approval of the General Manager, or designated representative(s), either an original or technical probationary period may be extended a maximum of an additional six (6) months.
- C. Prior to the completion of a 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 6.02.B and 6.02.D.

- D. In the case of an original probationary period of one (1) year, employees who have completed six (6) months may use accrued sick, vacation leave and/or floating holiday.
- 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 6.02. - 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. An employee who satisfactorily completes Technical Probation and is on Step 1 shall receive a merit adjustment, based on his/her latest performance appraisal.
- D. If a vacancy exists in a different classification, said employee may be reclassified at the discretion of the General Manager, or designated representative(s).
- 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 the employee 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 6.03. - 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 7 - WORK SCHEDULE**

### **Section 7.01. - General**

- A. The Manager of Operations, or his/her designated representative(s), shall be empowered to determine all operation staff schedules and work locations. The Manager of Operations, with proper notification to staff, may make necessary adjustments to operation staff schedules and work locations to meet the needs of the Agency. Consideration shall be given to certification levels, qualifications and seniority. As much notice as possible, but not less than two (2) weeks' notice, will be given to employees before changes in the operation schedule of a plant will go into effect. The only exclusion to a two (2) week notice would be in the case of a situation or event deemed to be an emergency by the city, county, state, federal or other governmental agency. Management will *whenever feasible and in consideration of employees with special circumstances, first seek "qualified volunteers" in an effort to avoid undue hardship that may arise as a result of a change in work schedule.* The Agency shall impose this section in a manner that is consistent with the Fair Labor Standards Act (FLSA).
- B. Operations staff shall be required to take a paid thirty (30) minute lunch break per shift he/she works. All operators shall be required to eat lunch on-site during their shift with no reduction in pay. An employee working over twelve (12) consecutive hours in one shift must take an additional paid lunch break of thirty (30) minutes which may be on or off-site.
- C. "Rover operators" will be utilized as needed. The "rover operator" shall receive notice at least three (3) days prior to schedule change, except in emergency situations. The "rover operator" shall be utilized to provide coverage at various facilities for various shifts. Starting time and reporting locations shall be given to the "rover operator" within the timeline stated above. The "rover operator" will be selected/appointed as follows:
  - 1) The quantity of "rover operators" and the "home" facility for such "rover operators" shall be as determined by the Manager of Operations or his/her designated representative(s).
  - 2) Operators will have an opportunity to volunteer as a "rover operator".

Written request shall be submitted to the Manager of Operations or his/her designated representative(s).

- 3) If more than one operator volunteers to work as the "rover operator", selection shall be based on the needs of the Agency. Consideration shall be given to certification levels, qualifications and seniority.
  - 4) If there are no volunteers, the respective Manager of Operations, or his/her designated representative(s), shall appoint an employee to work as a "rover operator".
  - 5) The Manager of Operations or his/her designated representative(s) reserves the right to reassign or eliminate rover operator at anytime.
- D. Any transfers among plants shall be made on a voluntary basis. If no employee volunteers to transfer, the Manager of Operations, or his/her designated representative(s), shall determine which employee shall be transferred based on the needs of the Agency. Consideration shall be given to certification levels, qualifications and seniority.
- E. All employees are subject to call-out for emergencies which are inherent in the Agency's responsibilities.
- F. Shift Rotation – staff assignments and schedules will be maintained and/or adjusted based on the needs of the Agency. Consideration shall be given to certification levels, qualifications and seniority. Scheduling will be done primarily on a voluntary basis, however, the respective Manager of Operations, or his/her designated representative(s), shall determine the assignment of each employee based on the needs of the Agency. Consideration shall be given to certification levels, qualifications and seniority.
- G. An operator will be provided with at least two (2) weeks' notice when assigned to another facility for cross training.

#### Section 7.02. - Rest Periods

Each operator who works a full shift is provided two (2) twenty (20) minute rest periods (breaks) per shift.

### **ARTICLE 8 - CLASSIFICATION, COMPENSATION AND PAY PERIOD**

#### Section 8.01. - Classification/Compensation Plan

In addition to this Memorandum of Understanding, 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 8.02. - 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/compensation study of his/her position. Such request must be submitted in writing to the General Manager, or designated representative(s).

#### Section 8.03. - New Positions

Any new position and/or classification that is established shall comply with this Memorandum of Understanding. Such new position shall be allocated to the Agency's classification and compensation plans by the General Manager.

#### Section 8.04. - Compensation

- A. Adjustments, if any, to salary ranges of employees covered by this Memorandum of Understanding shall be made as negotiated between the Association and the Agency, and shall become part of this Memorandum of Understanding.
- B. Only those persons who are Agency employees and working for the Agency on the date this Memorandum of Understanding is approved by the Board of Directors or on the date the base salary increase is actually implemented, whichever is later.
- C. Effective September 1, 2013 the Agency shall implement a one-time \$3,500 compensation adjustment that shall be paid to all active regular full time equivalent (FTEs) employees who have successfully passed their original probationary period as of July 1, 2012. One-time compensation adjustment shall be included in pay period 19 and paid on September 20, 2013.
- D. Effective July 1, 2014, the Agency shall implement a 3.0% base salary increase for FY 2014-2015.
- E. Effective July 1, 2015, the Agency shall implement a 3.0% base salary increase for FY 2015-2016.
- F. Effective July 1, 2016, the Agency shall implement a 3.5% base salary increase for FY 2016-2017.
- G. Effective July 1, 2017, the Agency shall implement a 3.5% base salary increase

for FY 2017-2018.

- H. All base salary increases provided for in this Memorandum of Understanding shall be implemented on Step 1 of the salary matrix and incrementally implemented through Step 9.

#### Section 8.05. - 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 Memorandum of Understanding.

Any adjustments made relative to the compensation plan shall be subject to meet and confer in accordance with Government Code Section 3500, et. seq.

#### Section 8.06. - Adoption of Compensation Plan

The Nine 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).

#### Section 8.07. - 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. 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 8.08. Except in cases where employees have exhibited Outstanding performance as provided in Section 8.08.D, other advancements shall be based on performance as provided in Section 8.08, 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 except for approved vacation (see Section 10.01.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 in accordance with the Meet and Confer process.

#### Section 8.08. - 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. An employee who receives an overall performance rating of Meets Expectations may be eligible to receive a one (1) step advancement, an employee who receives an overall performance rating of Exceeds Expectations shall be eligible to receive a two (2) step advancement, and an employee who receives 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. An employee who receives an overall appraisal rating of Below Expectations or Unacceptable shall not receive a merit increase.
- C. Advancements that are delayed because of late filing of recommendations shall be retroactive to the employee's benefit date when approved.
- D. 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 8.08.E).
- E. 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 merit increase shall be the first day of the following pay period.

#### Section 8.09. - 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 evaluations to attain an overall rating of Meets Expectations or better.
- C. At such time as the merit increase is warranted, a formal appraisal will be prepared and submitted along with a written recommendation to grant the increase. The next step advancement will be contingent upon the completion of twenty-six (26) complete pay periods from the date the step advancement was granted as well as an acceptable



level of performance during that period.

- D. 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 16 as well as the reasons for the recommendation.

#### Section 8.10. - 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 and in accordance with the Meet and Confer process.

#### Section 8.11. - Overtime Compensation

- A. An 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 workweek shall be paid at one and one-half (1½) times the employee's hourly rate of pay. Only vacation leave, holiday and/or fatigue 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. Operators' Association employees shall have first opportunity for scheduled overtime. Overtime will be offered to employees of other units should an operator unit decline to take the overtime assignment.

#### Section 8.12. - Acting Pay

Any employee performing the duties of a higher job classification, in excess of two (2) complete pay periods, shall be designated as "Acting." An employee who is designated as acting shall receive a minimum increase of two (2) steps (approximately 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 not to exceed an additional thirteen (13) pay periods.
- 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 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 hourly rate of pay and the acting rate of pay becomes less than two (2) steps (approximately five percent (5%)). 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 8.12.F.
- F. If an employee who is receiving acting pay is promoted to permanently fill the position in which he/she is acting, the employee shall receive credit for time he/she began receiving acting pay, up to a maximum of seven (7) pay periods for Technical probation and merit increase purposes. If the employee must serve a Technical probationary period longer than seven (7) pay periods after being promoted, up to seven (7) pay periods of acting time may be credited to the technical probationary period. 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 a maximum of seven (7) pay periods of acting time). All subsequent merit increases will be awarded upon completion of twenty-six (26) complete pay periods in each step.

### Section 8.13. - Compensatory Time

- A. Compensatory time, in lieu of monetary overtime compensation, shall be provided, at the discretion of the employee, to regular and probationary employees at a rate equal to one and one-half (1½) hours of compensatory time for each hour of overtime worked to be taken as paid time off. Selection of compensatory time vs. overtime pay shall be made by the employee at the time he/she submits his/her timesheet.
- B. All regular and probationary employees may accrue up to a maximum of forty (40) hours each calendar year. All compensatory time accrued, but not yet taken as paid time off, (as of pay period twenty-six (26) of the current calendar year), shall be paid to the employee, at his/her current hourly rate of pay in pay period three (3). The forty (40) hour maximum will limit the amount of compensatory time that can be earned in one (1) calendar year. Employees using any part of the forty (40) hour bank may not add any additional compensatory time to the bank in order to bring the total back to forty (40) hours in the same calendar year. Once an employee has earned forty (40) hours of compensatory time in one (1) calendar year, the employee shall be paid overtime pay for the hours worked even if the employee has marked compensatory

time on his/her timesheet.

- C. The usage of compensatory time shall be approved in advance by the employee's manager and/or supervisor. Compensatory time usage may be denied by supervisory staff and/or management without right to appeal.
- D. In the event an employee is promoted/reclassified from a non-exempt position in which he/she was eligible for compensatory time to an exempt position, the employee shall have one hundred twenty (120) days from the date of promotion/reclassification to schedule and use his/her compensatory time. Any remaining compensatory time on the books shall be paid at the employee's current rate of pay.

#### Section 8.14. - Shift Differential Pay

- A. Shift differential shall be paid at the rate of six percent (6%) to Operations staff for actual hours worked at Agency facilities between the hours of 1800 and 0600. Shift differential shall also be paid at the rate of six percent (6%) to Operations staff who are on-call between the hours of 1800 and 0600 hours. Shift differential under this provision for on-call hours shall be paid for all hours paid to the employee for the on-call assignment.
- B. Shift differential shall be paid at the rate of six percent (6%) to operations staff for actual hours worked as a Rover operator.
- C. A five percent (5%) differential shall be paid to up to three (3) Operators who are regularly assigned to work at or provide coverage at an Agency operated desalter. For this Section, regularly assigned shall mean that an Agency Personnel Action Fact Sheet has been issued stating that the employee is responsible for working at or providing coverage at an Agency operated desalter. Said differential shall be in addition to the employee's normal salary for the shift he/she works and shall be paid for all hours worked during the pay period, whether or not the employee actually works at a desalter. In order to obtain a desalter differential, the employee must have and maintain at least a grade II water certification and a grade II wastewater certification.

#### Section 8.15. - Call Back Pay

- A. Whenever an off-duty employee is required to return to an Agency facility, said employee shall be entitled to not less than two (2) hours of pay computed at the employee's hourly rate of pay.
- B. In instances where the employee is called in early to work, said employee shall be compensated for the actual time from when they were called in and shall not receive a minimum two (2) hours.
- C. Whenever an on-call employee is required to return to an Agency facility, said employee shall be entitled to not less than two (2) hours of pay computed at the employee's hourly rate of pay from the time of the response that triggers the call back.

#### Section 8.16. - On-call Pay

- A. On-call duty is mandatory for members of the Operators' Association. Management has the right to assign employees to on-call duty to achieve the most

effective and efficient response time. An employee assigned to on-call duty will be assigned at a minimum a laptop and cell phone. On-call duty is not counted as hours worked when computing overtime.

- B. On call duty begins at the end of the employee's shift and ends at the start of their next shift. For employees assigned to work the "standard shift" (0600 – 1600); on call duty shall start at 1600 and end at 0600.
- C. On-call pay shall be paid at the employee's current hourly rate of pay for each day the employee is assigned to on-call duty. Management has the right to assign on-call duty to a qualified operator for multiple facilities. Employees assigned to on-call shall be compensated as follows:

North (RP1, RP4)	
One (1) facility	3 hours
Two (2) facilities	4 hours

South (RP2, RP5, Desalter, CC)	
One (1) facility	2 hours
Desalter Only	2 hours
Two (2) facilities	3 hours
Three (3) facilities	4 hours

For the purposes of this section, facility(ies) shall include regional plant(s) and associated remote stations (i.e. lift stations, wells, etc.).

Employees receiving a full day's pay from sick or vacation leave shall not be considered as available for duty. An employee may agree to be available for on-call duty while on vacation leave.

- D. An employee assigned to on-call duty is required to respond to and address alarm(s) immediately. Contact by the on-call operator with the supervisor is considered immediate response however the on-call employee is still responsible for responding fully to the alarm condition.
- E. An employee assigned to on-call duty must be reachable and available to respond to alarm(s). An employee who fails to respond to alarm(s) when assigned to on-call duty shall not receive on-call pay for that day, and may be subject to disciplinary action.
- F. If an employee who is scheduled for on-call duty works sixteen (16) consecutive hours (see section 1.14), on-call duty may be reassigned to another employee.

Section 8.17. - Laptop Response Pay

- A. An on-call Operator who responds to an alarm condition(s) via laptop shall receive a minimum of one (1) hour of pay computed at the employee's hourly rate of pay. Additional responses initiated within a span of one (1) hour of each other shall be included in the minimum compensation. If a response carries past the end of the one (1) hour period, the compensation shall be minimum compensation plus the

actual additional time spent (i.e. 1 hour plus increments of 1/10<sup>th</sup> of an additional hour). Any responses that are initiated outside the span of one (1) hour of each other, shall be compensated at a minimum of one (1) hour of pay computed at the employee's hourly rate of pay.

- B. A laptop response which requires an operator to return to his/her assigned Agency facility shall not be compensated with the minimum laptop response pay.

#### Section 8.18. - 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 workday on the date of attendance. Employees on such assignment, at the Agency's request, must have prior approval for compensation at his/her hourly rate of pay for the number of hours they would normally work on the day of attendance.

#### Section 8.19. - Pay Periods

All employees of the Agency shall be paid biweekly. Payroll 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 8.20. - Reduction in Pay

If an employee reports to work not appropriately attired (uniform) when his/her shift is scheduled to commence, without prior approval, the employee's supervisor may reduce the employee's pay for each one-tenth (1/10<sup>th</sup>) of an hour that the employee is tardy. The tenth of the hour shall be rounded to the nearest six (6) minute increment. Examples: employee arrives five (5) minutes late for work, pay is reduced by one-tenth (1/10<sup>th</sup>) of an hour (6 minutes). Employee arrives twenty-six (26) minutes late for work, pay is reduced by four tenths (4/10<sup>th</sup>) of an hour (24 minutes).

For compelling reasons, the supervisor may approve the use of accrued vacation leave for lost time, and may require verification of reason for absence from work; otherwise, the employee shall not be permitted to use any other paid accrued leave in order to receive compensation for the lost time.

#### Section 8.21. - 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 8.22. - Direct Deposits

All employees in the Operators' Association 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/terminations) payrolls.



PEMHCA contribution under Section A above. Effective January 1, 2014, the maximum monthly contribution shall be \$715.50. 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 1.29, the employee shall not receive this allotment.

- 2) Effective January 1, 2015, and on January 1<sup>st</sup> of every calendar year thereafter, during the duration of this Memorandum of Understanding, any increase in the monthly contributions set forth above shall be based on the "blended rate" of the average increase in premiums, if any, of the two health benefit plans with the most Agency subscribers as of December 1 of the prior calendar month. The "blended rate" shall be calculated by averaging the annual percentage increase and/or decrease of the basic premium rates, as determined by CalPERS, of the two health plans with the most Agency subscribers on December 1 of each calendar year during the duration of this MOU. Any increase in the monthly contributions based upon the "blended rate" shall be capped at 6.5% per calendar year. If the "blended rate" percentage decreases, the then-current medical cap will remain unchanged.
- 3) 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 additional benefit.
- 4) Except as provided for in Section 9.01.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.
- 5) An Agency-paid \$30,000 life insurance policy is provided to each Association employee. Effective 1/1/15, the Agency will increase the Agency-paid life insurance policy to \$50,000.
- 6) Supplemental Life Insurance is available to employees at their expense through the Agency's life insurance carrier.
- 7) 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 Memorandum of Understanding.

C. Retiree Health Benefits

The Agency shall contribute the minimum monthly contribution established for contracting agencies by CalPERS or \$115.00, whichever is greater, plus administrative 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 monthly contribution effective 2013 \$115.00

- 1) Payment for the retiree health insurance benefit of \$115.00 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 \$115.00, 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	Benefit Level	Minimum Years of Agency Service	Benefit
Before Jan. 1, 1992	Employee and/or eligible dependent(s)	20	50% of applicable Kaiser Rate*
After Dec. 31, 1991	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 9.02. - 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 be subject to such terms and conditions as the Agency may contract with that system.
- B. Effective September 1, 2013, employees will pay an additional 1.0% of their PERS member contribution for a total of 3.0% for employees hired before January 1, 2012 and a total of 4% for employees subject to the second tier pension plan as set forth in subsection N, below.
- C. Effective the first pay period following July 1, 2014, employees will pay an additional 1.0% of their PERS member contribution, for a total of 4.0% for employees hired before January 1, 2012 and a total of 5.0% for employees subject to the second tier pension plan as set forth in subsection N, below.
- D. Effective the first pay period following July 1, 2015, employees will pay an additional 1.50% of their PERS member contribution, for a total of 5.5% for employees hired before January 1, 2012 and a total of 6.5% for employees subject to the second tier pension plan as set forth in subsection N, below.
- E. Effective the first pay period following July 1, 2016, employees hired before January 1, 2012 will pay an additional 1.5% of their PERS member contribution, for a total of 7.0% for employees hired before January 1, 2012. Employees subject to the second tier pension plan as set forth in subsection N below, shall pay an additional .5% of their PERS contribution for a total of 7.0%.
- F. Effective the first pay period following July 1, 2017, employees hired before January 1, 2012 shall pay an additional 1.0% of their PERS member contribution, for a total of 8.0%.
- G. All PERS member 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.
- H. Employees hired after January 1, 2013, and defined as "new members" under the Public Employees' Pension Reform Act of 2013 ("PEPRA"), Government Code section 7522, *et seq.*, will receive the 2% @ 62 formula and will pay one half (1/2) of their total normal cost rate as determined by CalPERS
- I. 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.
- J. 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.

- K. 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.
- L. 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).
- M. The Agency contracts with CalPERS for the 2.5% @ 55 Benefit Formula (Section 21354.4) for all employees hired prior to January 1, 2012.
- N. The Agency contracts with CalPERS for a second tier pension plan for employees hired on or after January 1, 2012 and prior to January 1, 2013, or who are hired after January 1, 2013, but were previously members in CalPERS or a reciprocal retirement system with less than 6 months gap in service, i.e. "classic members" pursuant to Section 20475 which provides for the 2.0% @ 55 Benefit Formula (Section 21354) with three year final compensation.

#### Section 9.03. - Long-Term Disability

All full time employees of the Agency are covered under an Agency paid 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 9.04. - 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 Program (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 9.05. - Uniforms

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

#### Section 9.06. - Safety Shoes

All members of the Operators' Association must wear appropriate safety shoes at all times. Payment and/or reimbursement for safety shoes shall be processed in accordance with the Safety Shoe policy contained in the Agency's Safety Manual.

#### Section 9.07. - Mileage Reimbursement

- A. The Agency shall pay all employees mileage reimbursement in the amount established by the United States Internal Revenue Service. The employee shall submit a check request to receive reimbursement for mileage costs.
- B. Call Backs. Employees who are called back to work pursuant to the call back provision shall be paid mileage as provided below:
  - 1) If the employee stays to work a scheduled shift after the call back, mileage reimbursement shall not be paid.
  - 2) If the employee returns home after completion of the call back, round-trip mileage reimbursement shall be paid.
  - 3) An employee may decline this mileage reimbursement.
  - 4) This provision does not apply to employees on an extended shift; i.e., called early for normal shift or required to stay longer than a normal shift.
- C. Unscheduled Overtime. If an employee is not given at least eight (8) hours prior notification to work unscheduled overtime on a day he/she is not scheduled to work, he/she shall be paid round trip mileage reimbursement, except as provided for in Section 9.07.B.

#### Section 9.08. - Professional Memberships

- A. Each certified Wastewater Treatment Operator may be reimbursed up to two hundred dollars (\$200) per fiscal year for the costs of joining and maintaining membership in Agency approved wastewater professional organizations. Additionally, each Operator who is certified in Water Treatment may be reimbursed up to an additional one hundred dollars (\$100) per fiscal year for the costs of joining and maintaining membership in Agency approved fresh water professional organizations. The total professional membership that may be reimbursed during any fiscal year shall not exceed three hundred dollars (\$300) per Association member.
- B. Professional memberships are only payable after the employee has satisfactorily completed his/her original probationary period. However, the Agency shall reimburse any Association member who successfully completes his/her original probation for professional memberships, paid by the employee within ninety (90)

calendar days before the end of his/her original probationary period.

#### Section 9.09. - Certification and Licensing

All Operators will receive a one-time incentive payment of two thousand dollars (\$2000) upon their receipt of the next level of wastewater treatment certification from Grade I through Grade V (maximum incentive total per operator is eight thousand dollars (\$8000)), to be paid in the pay period following the Agency's receipt of certification from the employee. The Agency agrees to reimburse unit members for certification and licensing expenses in accordance with Agency Policy No. A-70 (Certification and Licensing).

#### Section 9.10. - Educational Reimbursement

The Agency shall reimburse each Operators' Association employee up to twenty-five hundred dollars (\$2500) per fiscal year for the cost of educational courses that are related to the employee's work at the Agency (as stated in Agency Policy A-39).

#### Section 9.11. - 401 Governmental Money Purchase Plan & Trust (401a Plan)

Upon separation from service, all Operators' Association 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.

#### Section 9.12 – Wellness Reimbursement

Unit members shall be entitled to a wellness reimbursement of up to \$350 per fiscal year. The reimbursement shall be subject to the limitations and terms set forth in Agency Policy A-78.

#### Section 9.13 – Deferred Compensation

Unit members may borrow against their qualifying 457 plans, if allowed by the plan, subject to the terms and conditions of the deferred compensation plan.

### **ARTICLE 10 - PERFORMANCE APPRAISALS**

#### Section 10.01. - 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 regular employees shall have a performance appraisal review at least once a

year, to be conducted at the employee's merit review date. Said review shall occur every twelve (12) months from the anniversary of his/her last merit review date unless said employee receives an overall rating of Below Expectations or Unacceptable (see Section 10.01.F).

- D. The due date for a performance appraisal 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 except for approved vacation (i.e., the employee is off for 31+ days, the date of the appraisal/merit is advanced the number of calendar days the employee is actually out including the first thirty (30) days. If the employee is off thirty (30) 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 10.02. - 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 10.03. - 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 10.04. - 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 to the level of the Administrative Appeals Committee.

#### Section 10.05. - 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. 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 new position.
- E. An employee who is to be demoted shall be given at least two (2) weeks written notice prior to demotion.

## **ARTICLE 11 - LEAVES OF ABSENCE**

### Section 11.01. - 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 11.02. - Leave of Absence With Pay

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

### Section 11.03. - 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 11.04. - 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 in Nov.	2 days
Christmas Day & Day After	December 25th & 26th	2 days
Floating Holiday	Employee's Option	4 days per FY

A. All Agency facilities will be operated at minimum staffing levels during holidays as defined by the Manager of Operations or his/her designated representative(s).

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) An employee scheduled to work a normal shift at Agency facilities on a holiday as defined above (with the exception of floating holidays) 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 regular holiday pay. An employee scheduled to work a normal shift at Agency facilities on Christmas Day or New Year's Day shall be paid a holiday premium of two (2) times his/her hourly rate of pay for all hours worked, in addition to his/her regular holiday pay. Employees shall be paid this premium pay for shift(s) worked and recorded on the actual holiday beginning at 12:00am and ending at 11:59pm on the day of the holiday.

This holiday premium shall be paid to employees for a maximum of one (1) shift, unless an employee is requested to work overtime by his/her supervisor. The employee must work on the holiday as defined above in order to receive this holiday premium.

C. For the purposes of holiday compensation, a day shall equal the number of hours that the employee customarily would have worked if not for the holiday.

D. The employee must work the entire scheduled work day before and after the

holiday or be in approved pay status the entire scheduled day before or after the holiday (i.e., vacation, compensatory time off) 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. See Sections 1.32 and 1.33 for definitions of scheduled and unscheduled workdays.

- E. If an employee is scheduled to work on the holiday as defined above, and the employee fails to work any portion or all of the holiday due to illness/injury, such employee shall not be paid holiday premium pay for the work time missed. See Sections 1.32 and 1.33 for definitions of scheduled and unscheduled workdays.
- F. An employee whose regularly scheduled day off falls on the actual holiday who does not work due to the holiday may either receive compensation for ten (10) hours straight time or vacation accrual, at the employee's option.
- G. Floating Holidays will be credited to each employee on the first pay date in July and must be used by the end of the pay period corresponding with the last pay date in June of the following year. Any remaining time will be forfeited. The amount of floating holiday 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. 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 probationary period. An employee on original probation who is not permitted to use his/her floating holiday prior to the end of the pay period corresponding with the last pay date in June shall have his/her pro-rated hours carried over to the following fiscal year. Prior approval to take floating holiday(s) must be obtained from the employee's manager. In cases where an employee must forfeit his/her floating holiday time at the request of the Agency, the employee shall be compensated for his/her unused portion at his/her current hourly rate of pay at the end of the pay period corresponding with the last pay date in June. Every effort will be made to allow the Operators' Association 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 notice of separation, he/she shall not be permitted to utilize floating holiday(s). If he/she gives the Agency 30+ days advance notice of separation, he/she may be permitted to utilize floating holiday. Unused floating holiday time shall not be paid out upon separation from employment.

Section 11.05. - 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 during 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>
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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 and 180th month	6.154
During 181th month through 239 <sup>th</sup> month	6.769
During 240 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 60th month of employment (vacation accrual = 80 hours per year), the maximum amount of vacation that may be accumulated shall be 160 hrs.

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 180th month of employment (vacation accrual = 160 hours per year), the maximum amount of vacation that may be accumulated shall be 320 hours.

During the 181th month through the 239th month of employment (vacation accrual = 176 hours per year), the maximum amount of vacation that may be accumulated shall be 352 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 sixteen (16) 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 hourly 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 hourly 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. Vacation leave requests that are less than six (6) months away shall be responded to within fourteen (14) days of submittal. Vacation leave requests that are more than six (6) months away shall be responded to within twenty-one (21) days of submittal.
- 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 hourly rate of pay at the time of separation.
- K. An employee who is on Unpaid Status, as defined in Section 1.29, 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 11.05.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:  
  

$$\text{Accrual rate} \div 80 \text{ hrs/pay period} = \text{adjusted accrual rate}$$

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

For example: An employee in his/her 30<sup>th</sup> 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 or his/her designated representative, 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 his/her current rate of pay, provided that he/she has used at least thirty percent (30%) of his/her respective yearly 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 or his/her designated representative. A payroll staffer will be sent out to all employees during the last pay period in February or as approved by the General Manager or his/her designated representative, 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 or his/her designated representative.
- 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.
- 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 11.06. - Sick Leave

All regular and probationary 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 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. 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) Death in the employee's immediate family. Up to ten (10) working days of sick leave may be used for bereavement purposes (see Section 11.08).
  - 5) Illness or injury in the employee's immediate family (see Section 1.09.A).
  - 6) 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 the employee or co-workers are being exposed to the hazard of illness or injury. If it is determined by a physician or other qualified medical practitioner that the employee is not ill or injured, the Agency shall bear any expenses incurred including lost wages, mileage, and medical fees. If the employee is found to be ill or injured, the employee shall be responsible for such expenses.
- 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 or injury 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 consecutive work days in duration must be accompanied with a verification by the employee's physician, dentist or other involved medical practitioner that he/she is well enough to return to work. If reasonable cause exists and with the approval of the Manager of Human Resources or his/her designated representative(s), 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 shall 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 11.03.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 MAX 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 & thereafter	736	50%

Employees who are terminated from the Agency, for cause, or who resign or retire in lieu of termination (must have been served with letter, from the Agency, of intention to terminate employment) shall not receive this benefit.

- K. 1) 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 Employee's Retirement System (CalPERS), the employee shall be compensated for 50% of accumulated, unused sick leave based on the years of service as indicated in number 3 of this section.
- 2) When an employee has been continuously employed by the Agency for a minimum of twelve (12) years, has reached age 55, and retires from the Agency and the California Public Employee's Retirement System (CalPERS), the employee shall be compensated for 100% of accumulated, unused sick leave based on the years of service as indicated in number 3 of this section.
- 3) Pursuant to number 1 and 2 of this section, the maximum reimbursable hours accruable is based on the number of years employed with the Agency as follows:

<u>COMPLETED YEARS OF 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	75%
11	608	75%
12	672	100%
13 & 14	736	100%
15	770	100%
20 & thereafter	850	100%

L. An employee who is on Unpaid Status, as defined in Section 1.29, 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.

N. Employees shall be entitled to use up to 80 hours of accrued sick leave during any rolling 12-month period for absences that qualify for “bonding” leave under the Family Medical Leave Act and/or California Family Rights Act. Only employees eligible for “bonding” leave under these laws may utilize up to 80 hours of sick leave for such absences.

#### Section 11.07. - 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 remain on the books after the cash out. For each hour cashed out, sick leave accruals shall be reduced by one and one-third (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 11.08. - Bereavement Leave

- A. In the event of a death in the employee's immediate family (see Section 1.09.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 1.09.B), the employee shall be granted up to three (3) work days of paid bereavement leave to attend funeral or related services.
- C. All authorized bereavement leave shall be charged against the Agency's bereavement bank.
- D. 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.
- E. Vacation time can be used to attend the funeral of a person not included in the definition of immediate/extended family (see Section 1.09) or a former Agency employee.

#### Section 11.09. - 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 11.10. - Jury and Court Leave

- A. Jury Leave - Any employee 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 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(s) off for the employee, he/she may retain any compensation paid by the court for that day(s). 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 jury or court leave, the employee shall present a certificate of service to his/her supervisor. If the employee is excused by the court at least three (3) hours prior to the end of his/her shift, the employee shall be required to report to work. If an employee is scheduled to work night shift, and he/she is required to report as a trial juror or witness, the employee will be re-scheduled to day shift for each day he/she is required to report to jury duty.

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 11.11. - 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 11.12. - Pregnancy, Childbirth & Other Related Medical Conditions Leave

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

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 11.13. - Longevity Leave

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

- 10 years - 20 hours
- 15 years - 30 hours
- 20 years - 40 hours
- 25 years - 50 hours
- 30 years - 50 hours
- 35 years - 50 hours
- 40 years - 50 hours
- 45 years - 55 hours
- 50 years - 60 hours

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

#### Section 11.14. - 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 11.15. - Payment of Accrued Leave

Upon the death of an active employee, all wages earned in addition to all accrued vacation leave, sick leave and/or compensatory time shall be paid in accordance with the guidelines set forth in this Memorandum of Understanding 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 12 - LAYOFF PROCEDURES**

#### Section 12.01. - Elimination of Positions

- A. Whenever, in the judgment of the Board of Directors, it becomes necessary, in the interest of economy or because the necessity for the position or employment involved no longer exists, the Board of Directors may abolish any position or employment in the competitive service and layoff, demote or transfer an employee holding such position or employment without filing written charges and without the right of appeal. Alleged violations of the layoff procedure may be grieved in accordance with Article 15.
- B. Employees being laid-off shall receive four (4) weeks (sixteen (16) 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.

#### Section 12.02. - Definitions

- A. Merit. Merit is defined as an employee's performance in his/her position. Performance is rated during the probationary period and an employee's review date and six (6) months thereafter. Unit employees shall be ranked in order of performance. In the event of a layoff, this list of employees, in order of highest performance evaluation to lowest performance evaluation, shall be used to determine which employees shall be subject to layoff.
- B. Seniority. Seniority is defined as the length of continuous service from the last date

of hire by the Agency. If a tie occurs, priority shall be determined by the lowest employee number.

#### Section 12.03. - Layoff Procedure

At no time shall a position be abolished if such reduction would cause or could potentially cause the Agency to be in non-compliance with plant permits. All proper levels of certification required to operate Agency facilities shall be maintained in the event of layoff.

A. Unit employees with less than five (5) years of seniority with the Agency shall be subject to layoff as follows:

1) Merit shall be observed in effecting such reduction in personnel and the order of layoff shall be based on the lowest to highest performance ratings.

B. Unit employees with more than five (5) years of seniority with the Agency shall be subject to layoff as follows:

Seniority shall be observed in effecting such reduction in personnel and the order of layoff shall be in the reverse order based on length of continuous service from the last day of hire in the Agency service upon the effective date of the layoff. For the purpose of determining order of layoff, total cumulative time shall include time served on military leave of absence.

Layoff of regular employees shall only occur after layoffs pursuant to Section "B" of these procedures have been completed. The order of layoff shall then be initiated pursuant to paragraph 1 of this Section.

1) Employees affected by a layoff shall have the right to placement in:

a. A class within the Unit which they have previously worked. Such placement may only occur if the displaced (bumped) employee has less seniority than the employee who is displacing (bumping) them.

b. Any vacant position with the same or lower salary as the class from which they were laid off and for which they possess the minimum qualifications.

C. Specially Funded Positions

1) When a position is created and is funded by a grant of funds from the State or the Federal Government, the position shall be automatically abolished when the funding is terminated. The incumbent of the position shall be laid off on the date upon which the position is abolished and the layoff procedures prescribed in these rules are not applicable.

2) Any employee hired or promoted to fill a vacancy in a regular, full-time Agency position resulting from the assignment of a regular employee to a specially funded position, may be demoted or laid off in accordance with this procedure at the time the regular employee returns to his/her former position.

D. Reemployment Procedure

- 1) The names of regular employees laid off shall be placed on a reemployment list in reverse order of layoff, and shall remain on such lists for a period of one (1) year unless reemployed sooner.
- 2) An employee called back to an Association classification which he/she previously held shall be returned to employment status without having to requalify for the position.
- 3) An employee called back to fill a vacant position in a classification he/she have not previously held must successfully complete all qualifying examinations for that classification.

## **ARTICLE 13 - SEPARATION FROM SERVICE**

### Section 13.01. - Resignation

An employee who wishes to leave the Agency's employ in good standing should file a written resignation with his/her supervisor at least two (2) weeks prior to the date of resignation. Once the 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.

### Section 13.02. - Training Travel Time

In the event that it is necessary for an employee to attend pre-approved training on his/her scheduled day off, said employee shall receive one (1) hour of compensation at his/her regular rate of compensation for travel time to said training.

## **ARTICLE 14 - EMPLOYEE CONDUCT**

### Section 14.01. - Peaceful Performance of Duties

Participation by a public employee in an unlawful strike, work stoppage or work slowdown may subject the employee to disciplinary action as allowed by state law up to and including discharge. As used in this section, "strike, work stoppage or slowdown" means the concerted failure to report for work, the willful absence from one's place of employment, the refusal to work, the stoppage of work being done by others, the abstinence in whole or part from the full and faithful performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in the conditions of compensation, or the rights, privileges or obligations of employment.

### Section 14.02. - Recognition of Boycotts

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

### Section 14.03. - 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 14.04. - 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 14.05. - 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 14.06. - 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 15 - GRIEVANCE PROCEDURE**

#### Section 15.01. - General

- A. A grievance is an alleged violation, misinterpretation, inequitable application or noncompliance of Agency ordinances, resolutions, policies, and/or provisions of the Memorandum of Understanding of a non-disciplinary nature. Refer to Article 16, 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 or organization 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 five (5) calendar days prior to the hearing/meeting.
- E. A grievance shall be prepared on the employee's personal time, not during working hours.
- 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 time 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 15.02. - Grievance Initiation

Within thirty (30) calendar days 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 thirty (30) day period shall be deemed a waiver by the employee of his/her right to grieve the matter.

#### Section 15.03. - Grievance Steps

- A. Grievances involving salaries and performance appraisals may be processed up through Step 3 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 respective Deputy Manager. Within seven (7) calendar days, the Deputy Manager 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 seven (7) calendar days after receiving the oral decision of his/her Deputy Manager.

##### INFORMAL GRIEVANCE PROCEDURE (Step 2)

The employee having a grievance shall personally discuss the grievance with his/her respective Department Manager. Within seven (7) calendar days, the Department Manager 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 3 within seven (7) calendar days after receiving the oral decision of his/her Department Manager.

##### ADMINISTRATIVE APPEALS COMMITTEE GRIEVANCE PROCEDURE (Step 3)

The employee shall submit a written statement to the Manager of Human Resources outlining the grievance, specifying the ordinance, resolution, policy and/or provision of the Memorandum of Understanding 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 the Manager of Human Resources within seven (7) calendar days after receiving the oral decision of his/her respective Department Manager, or his/her designated representative(s).

Within seven (7) calendar days after receipt of the written statement or rebuttal, the Manager of Human Resources shall convene a committee made up of one Executive Manager mutually agreed to by the Manager of Human Resources and the employee, one Association representative selected by the employee, and the Manager of Human Resources. Said committee shall meet with the employee to discuss the grievance within fourteen (14) calendar days after receipt of the written statement or rebuttal. The scope of the employee's grievance appeal is limited to the written statement/rebuttal. The Committee shall render a written advisory decision to the General Manager within seven (7) calendar days after meeting with the employee. If an Executive Manager cannot be mutually agreed to, the selection of an Executive Manager shall be made by the employee Association representative and then the Manager of Human Resources each alternately striking names of Executive Managers from a list until only one name remains. The list shall be made up of all Executive Managers, excluding the Executive Manager over the Department that the employee is assigned and the General Manager.

The Administrative Appeals Committee's decision shall be advisory to the General Manager who may accept or reject the committee's decision in his/her discretion. The General Manager shall thereafter render a final written Step 3 decision to the employee within seven (7) calendar days after receiving the committee's decision.

If the employee believes that his/her grievance has not satisfactorily been resolved, the employee may proceed to Step 4 (except as provided for in Section 15.03.A) within seven (7) calendar days after receiving the written decision from the General Manager.

#### FORMAL GRIEVANCE PROCEDURE (Step 4)

The employee shall file a written request within fourteen (14) calendar 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.

#### Section 15.04. - 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 fails 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 fourteen (14) calendar days, or more than sixty (60) calendar 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 seven (7) calendar 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 15.05. - 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 respective Executive 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 Executive 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 its 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 15.06. - 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 fourteen (14) calendar 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.

- B. All other grievances such as, but not limited to, working conditions, safety matters, interpretation of Agency ordinances, resolutions, policies, and/or provisions of this Manual., may be processed through Step 3 of the procedure. **No matter that is processed through the procedures provided for in Article 16 may be grieved under the procedures in this Article.**

## ARTICLE 16 - DISCIPLINARY ACTIONS AND APPEALS PROCEDURES

No disciplinary action may be imposed on any Agency employee covered by this Manual 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 16.03, without compliance with the procedures set forth in this Article. In the event of an emergency situation, 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 16.01. - 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 or 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.
- G. Termination. The discharge for cause of an employee at the discretion of the Agency.

#### Section 16.02. - 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 1.11).
- 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 Memorandum of Understanding 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 16.03. - 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 16.02.K through 16.02.CC, it may be necessary to take immediate disciplinary action, up to and including termination. If administrative leave is in the best interests of all parties involved, the Agency reserves the right to place the employee on paid 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 placed on administrative leave 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 placed on administrative leave, the employee shall be restored to his/her former position with no loss of pay, benefits, or seniority.

#### Section 16.04. - 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 16.05. - Employee's Receipt

Employee's receipt of any and all notices shall be defined as the date the notice was: 1) postmarked if sent certified mail, return receipt requested; 2) delivered to a courier service, or; 3) hand-delivered to the employee.

#### Section 16.06. - Notice of Proposed Disciplinary Action

- A. Except in emergency situations as provided for in Section 16.02 and 16.03 of this Article, when disciplinary action is 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 seven (7) calendar 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 seven (7) calendar 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 16.02 and 16.03 of this Article.

#### Section 16.07. - Right to Respond

Should the disciplinary action consist of a written reprimand, the employee may file a written rebuttal to the Department Manager within seven (7) calendar days of receipt. The 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.

All employees 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 seven (7) calendar days of the employee's receipt of the Notice of Proposed Disciplinary action.

An employee's failure to respond to the 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 16.08. - 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 seven (7) calendar 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 Administrative Appeals Committee. The employee must request an appeal in writing to the Administrative Appeals Committee within seven (7) calendar 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 16.09. - 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 seven (7) calendar days following the employee's receipt of the Notice of Decision, whichever is later.

- B. Should the employee request an appeal of the Department Manager's decision (other than a decision to impose oral counseling or an oral or written reprimand), said appeal shall be made to the Administrative Appeals Committee and the implementation of any disciplinary action imposed on the employee by the Department Manager shall be stayed until such time as the Committee reaches their 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 16.10. - Disciplinary Appeals to the Administrative Appeals Committee

- 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 with the Manager of Human Resources a written request for an appeal with the Administrative Appeals Committee. The request for an appeal must be made within seven (7) calendar days of the employee's receipt of the Notice of Decision by the Department Manager.
- B. Within seven (7) calendar days after receipt of the written request for an appeal, the Manager of Human Resources shall convene a committee made up of one Executive Manager mutually agreed to by the Manager of Human Resources and the employee, one Association representative selected by the employee, and the Manager of Human Resources. Said committee shall meet with the employee to discuss the appeal with the employee within seven (7) calendar days after receipt of the written request. If an Executive Manager cannot be mutually agreed to, the selection of an Executive Manager shall be made by the employee Association representative and then the Manager of Human Resources each alternately striking names of Executive Managers from a list until only one name remains. The list shall be made up of all Executive Managers, excluding the Executive Manager over the Department that the employee is assigned and the General Manager.
- C. 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 employee's disciplinary appeal shall be limited to the written request for appeal filed with the Manager of Human Resources.

- D. Failure of the employee, or his/her representative, to file a timely request for an appeal shall constitute a waiver of the employee's rights to an appeal.
- E. An employee who proceeds with an appeal to the Committee, 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.

- F. The parties to any appeal before the Committee may mutually agree in writing, with the permission of the Committee, to waive oral testimony. Submission may be by affidavits, declarations, depositions, or other documents, mutually exchanged. The Committee will receive and take action on requests to waive oral testimony prior to or at the scheduled meeting.
- G. 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 Committee to the appeal meeting. 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 this section 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 appeal meeting shall be deemed a withdrawal of the employee's appeal, unless otherwise excused by the Committee respectively.

Section 16.11. - Conduct of Appeals Meeting with the Administrative Appeals Committee

- A. The Committee shall schedule and conduct an appeal meeting with the employee, within seven (7) calendar days of receipt of the employee's written request for said meeting.
- B. For an appeal meeting with the Committee, 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 16.10.F.

Section 16.12. - Notice of Decision by General Manager Following Appeal to the Administrative Appeals Committee

- A. After considering all of the facts regarding said action and any responses presented by the employee, the Committee shall, within seven (7) calendar days, issue an advisory written decision to the General Manager making a recommendation to rescind, modify, or sustain the disciplinary action as he/she deems appropriate; however, the proposed action cannot be increased.

The Administrative Appeals Committee's decision shall be advisory to the General Manager who may accept or reject the committee's decision in his/her sole discretion. The General Manager shall thereafter render a final written Notice of Decision.

- 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 seven (7) calendar days following receipt of the Committee's written decision, 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 seven (7) calendar 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 16.13. - 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 seven (7) calendar days following the employee's receipt of General Manager's Notice of Decision, whichever is later.

#### Section 16.14. - 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 16.15. - 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, 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 seven (7) calendar 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 employee's 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 Administrative Appeals Committee (other than matters which first arose in the Administrative Appeals Committee meeting).

- 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 seven (7) calendar days, or more than sixty (60) calendar 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 seven (7) calendar 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 16.16. - 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. Each party shall submit a list of witnesses, seven (7) calendar days prior to the hearing, to the Manager of Human Resources, or designated representative(s) to allow the Manager of Human Resources, or designated representative(s) to submit a notice to appear to the employees.
- K. 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".
- L. 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.
- M. 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.
- N. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon motion of either party.
- O. 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.

- P. Mechanical transcription of the proceedings may be made by either party, provided it is not disruptive to the proceedings.
- Q. 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.
- R. Each party to the proceedings shall provide ten (10) complete copies of all documents, evidence, and/or photographs to be submitted for the record.
- S. All appeal hearings shall be recorded by a certified court reporter selected by the Agency. Alternatively, the parties may agree to have the proceedings recorded by an audio recording device.

**Section 16.17. - 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 fourteen (14) calendar 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 17 - RULE MAKING AUTHORITY**

**Section 17.01. - General**

Subject to those provisions that fall under Government Code Section 3500, et. seq., 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 Memorandum of Understanding and the policies of the Agency.

**ARTICLE 18 - NOTICE**

## Section 18.01. - General

Within three (3) months of the adoption of this Memorandum of Understanding , a copy shall be presented to each Operator's Association employee of the Agency, and to each newly hired Operators' Association employee at the time of appointment.

## **ARTICLE 19– MODIFIED AGENCY SHOP**

### Section 19.01 – General

- A. Current employees in the Operators' Association who are now IEUA Operators' Association members shall remain IEUA Operators' Association members for the period of this Memorandum of Understanding.
- B. An employee who is hired after July 1, 2001 in a job classification within the IEUA Operators' Association representation covered by this Memorandum of Understanding shall become a member of the IEUA Operators' Association, or pay a fee in an amount equal to the IEUA Operators' Association's biweekly dues upon completion of his/her original probationary period. Such fee shall be by payroll deduction.
- C. Dues withheld by the Agency shall be transmitted to the IEUA Operators' Association officer designated in writing by the IEUA Operators' Association as the person authorized to receive such funds, at the address specified.
- D. The Agency shall not be obligated to put into effect any new, changed or discontinued deduction until a payroll deduction card or a petition signed by the members of the IEUA Operators' Association is submitted to the Agency in sufficient time to permit normal processing of the change or deduction.
- E. No Association member shall be required to join the IEUA Operators' Association or make an Agency fee payment if the Association member is an actual, verified member of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting employee organizations; this exemption shall not be granted unless and until such Association member has verified the specific circumstances. Such employee must, instead, arrange with the IEUA Operators' Association to satisfy his/her obligation by donating the equivalent amount to any one of the following tax exempt (under Section 501(c)(3) of the Internal Revenue Code), non-labor, non-religious charitable funds: (a) Mount Baldly United Way, (b) Salvation Army, and (c) the City of Hope. The IEUA Operators' Association shall be responsible for determinations under this paragraph.
- F. The IEUA Operators' Association shall be fully responsible for expending funds received under this provision consistent with all legal requirements for expenditures of employee dues which are applicable to public sector labor organizations.
- G. Whenever an Association member shall be delinquent in the payment of dues or fees, the IEUA Operators' Association shall give the Association member written notice thereof and fifteen (15) days to cure the delinquency.

- H. The Agency shall not deduct monies specifically earmarked for a Political Action Committee or other political activities.
- I. The IEUA Operators' Association shall keep an adequate itemized record of its financial transactions and shall make available annually to the Agency and, upon request to the employees who are members of the IEUA Operators' Association within sixty (60) days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to its accuracy by its President and Treasurer or corresponding Principal Officer or by a Certified Public Accountant. A copy of financial reports required under or referred to in the Labor-Management Disclosure Act of 1959 or Government Code Section 3546.5 shall satisfy this requirement.
- J. This organizational security arrangement shall be null and void if rescinded by a vote of employees in the Association pursuant to Government Code Section 3502.5(b).
- K. The IEUA Operators' Association hereby agrees to defend, indemnify and hold harmless the Inland Empire Utilities Agency and its officers and employees from any claim, loss, liability or cause of action of any nature whatsoever arising out of the operation of this provision.
- L. The IEUA Operators' Association's indemnity and liability obligation is more fully set forth as follows:
  - 1) The IEUA Operators' Association shall defend, indemnify and hold harmless the Inland Empire Utilities Agency and its officers and employees from any claim, loss, liability, cause of action or administrative proceeding arising out of the operation of this agreement. Upon commencement of such legal action, administrative proceeding, or claim, the IEUA Operators' Association shall have the right to decide and determine whether any claim, administrative proceeding, liability, suit or judgment made or brought against the Agency or its officers and employees because of any application of this provision shall or shall not be compromised, resisted, defended, tried or appealed. Any such decision on the part of the IEUA Operators' Association shall not diminish the IEUA Operators' Association's defense and indemnification obligations of the Agreement.
  - 2) The Agency, immediately upon receipt of notice of such claim, proceeding or legal action shall inform the IEUA Operators' Association of such action, provide the IEUA Operators' Association with all information, documents, and assistance necessary for the IEUA Operators' Association's defense or settlement of such action and fully cooperate with the IEUA Operators' Association in providing all necessary employee witnesses and assistance necessary for said defense. The cost of any such assistance shall be paid by the IEUA Operators' Association.
  - 3) The IEUA Operators' Association upon its compromise or settlement of such action or matter shall immediately pay the parties to such action all sums due under such settlement or compromise. The IEUA Operators' Association, upon final order and judgment of a Court of competent jurisdiction awarding damages or costs to any employee, shall pay all sums owing under such order and judgment.


## ARTICLE 20 - CONTRACT TERM

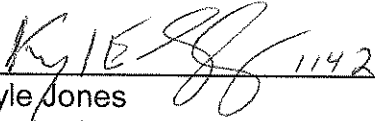
### Section 20.01. - General

This MOU shall be effective as of September 1, 2013 and shall remain in full force and effect through June 30, 2018, or until a successor MOU is implemented after meeting and conferring.

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

Operators' Association

  
\_\_\_\_\_  
Agustin Nieto  
Steward

  
\_\_\_\_\_  
Kyle Jones  
Steward

Inland Empire Utilities Agency

  
\_\_\_\_\_  
P. Joseph Grindstaff  
General Manager

\*A Municipal Water District