

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT  
AND  
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 620  
FOR  
JUNE 27, 2011 TO JUNE 24, 2012

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**Memorandum of Understanding  
Between  
Santa Barbara County Air Pollution Control District  
and  
Service Employees International Union, Local 620**

Pursuant to the provisions of Government Code Sections 3500-3510 and Santa Barbara County Employee Relations Policy, Resolution 99-9, agreement has been reached between the Santa Barbara County Air Pollution Control District (hereinafter referred to as "APCD") and Service Employees International Union, Local 620 (hereinafter referred to as "Union") recognized as the majority bargaining representative for the following representation units and classifications:

- Unit 23        (Agency Shop) Non-Supervisory Clerical Employees; Office Technician,
  
- Unit 24        (Agency Shop) Non-Supervisory Administrative, Technical, and Office Employees; Permit Technician I/II, Systems Programmer Analyst I, II, III, Accounting Technician I/II/III, Network Technician I/II.

SEIU shall not represent employees in the above classifications that have been designated as confidential.

It is the general purpose of this Memorandum of Understanding to promote the mutual interest of the APCD and its employees and to establish rates of pay, and certain other terms and conditions of employment.

**ARTICLE 1 - RECOGNITION**

Pursuant to the provisions of the APCD's Employer-Employee Relations Policy, Resolution 99-9 and applicable State law, the APCD hereby recognizes the Service Employees International Union, Local 620 as the certified majority representative of the employees in each of the above representation units. The term "employee" or "employees" as used herein shall refer only to employees employed by the APCD (excluding temporary or extra help) as well as such classes of employees as may be added hereafter through the provisions of the APCD's Employer-Employee Relations Policy or applicable State law.

The Union agrees to provide the Air Pollution Control Officer, or his/her designee, with a list of Union officers and representatives who are authorized to meet and confer in good faith. The Union shall also provide the above officials with a list of all authorized staff representatives. In addition, the Union shall provide a list of stewards who can post materials on behalf of the Union. These lists shall be kept current by the Union.

**ARTICLE 2 - TERM OF AGREEMENT**

The APCD and the Union agree that this Memorandum of Understanding shall not be binding upon the parties either in whole, or in part, unless and until ratified by Local 620 Membership and formally approved by a majority vote of the APCD Board. This

Memorandum of Understanding shall remain in full force and effect to and including June 24, 2012. Either party may serve written notice to meet and confer concerning possible changes in the provisions of this agreement. Such notice shall be submitted in writing at least sixty days prior to the termination date of this agreement. It is the intent of the parties to conduct negotiations in such a manner as to reach a new agreement on or before the termination date of this agreement.

This contract supersedes and replaces all provisions contained in the MOU between SEIU, Local 620 and the APCD for June 28, 2010 – June 26, 2011.

### **ARTICLE 3 – SALARIES**

Effective the first pay period following Board approval, the base salaries of all position classifications represented by SEIU and for each incumbent in said positions shall not be increased by an amount equivalent to the change in the California Consumer Price Index (CPI) for all urban consumers for the year ending April 2011, over the base salaries in effect on the preceding day. In the event of a negative change to the California CPI, said increase shall be zero.

### **ARTICLE 4 - NON-DISCRIMINATION**

The provisions of this Memorandum shall be applied equally without discrimination to all employees protected by State or Federal law.

### **ARTICLE 5- RIGHTS OF THE PARTIES**

#### **A. APCD Rights**

The APCD retains, among other management rights, the exclusive right to determine the methods, means, and personnel by which APCD operations are to be conducted, as well as to exercise complete control and discretion over its organization, operations, and technology of performing its work; to determine the mission, function and necessity of all or part of each of its constituent divisions, boards and commissions and take all necessary actions to carry out their mission, functions and necessity, or any part thereof, as well as set standards of service to the public.

The APCD also retains the sole right to administer the Civil Service system, to classify or reclassify positions, add or delete positions or classes to or from the Classification and Salary Plan Resolution; to establish standards for employment, promotion, and transfer of employees; to direct its employees, establish rules and regulations, take disciplinary action for proper cause, to establish work schedules and work assignments, contract out work, transfer work out of the unit, and to relieve its employees from duty for lack of work or other legitimate reasons. The APCD retains the right to be the sole judge, subject to its Civil Service Rules and Procedures, of the qualification and competence of its officers and employees.

Before implementing any decisions to contract out work or to transfer work out of the unit, the APCD shall notify the Union and upon request, negotiate the impact of

such decision on employees' terms and conditions of employment, to the extent such terms and conditions are within the scope of representation.

For purposes of this agreement, "contracting out work" and "transferring work out of the unit" refer to situations in which the APCD decides to contract out or transfer work out of the unit, pursuant to State law, and which results in the layoff, reduction in hours or otherwise directly impacts the wages, hours or other terms and conditions of employment (within the scope of representation) of APCD employees. Furthermore, "contracting out work" and "transferring work out of the unit" shall also refer to situations in which vacant bargaining unit positions are contracted out or transferred out of the unit.

If the Union requests to negotiate the impacts of a decision to contract out work or transfer work out of the unit, the subjects of bargaining shall be limited to: the reasons, the expected financial impact and the anticipated impact on the quality of services provided.

The APCD shall have the right to initiate the foregoing contracting out procedure three times during each year (July, October, and February). If the decision to contract out services would result in an employee being subject to layoff, the contract shall not be implemented any earlier than 30 days after notice to the Union, unless the parties mutually agree.

The APCD reserves the right to take whatever action may be necessary in an emergency situation; however, the Union shall be notified promptly of any such emergency action which affects matters within the scope of the representation.

This section is not intended to restrict consultation with employees or employee representatives about the practical consequences that decisions on these matters may have on wages, hours, and other terms and conditions of employment.

## B. Employee Rights

Employees of the APCD shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations. Employees shall also have the right to represent themselves individually in their employment relations with the APCD. No employee shall be interfered with, intimidated, restrained, coerced, unduly influenced or discriminated against because of his/her exercise of these rights.

Management employees shall not represent non-management employees on matters within the scope of representation. Confidential employees shall not represent non-confidential employees on matters within the scope of representation. This provision does not otherwise limit the right of confidential employees to be members of and to hold office in employee organizations of their choice.

## ARTICLE 6 - UNION SECURITY

- A. The APCD will ensure that dues and insurance premiums will be deducted from employees in the above-mentioned representation units who have authorized said dues deductions and insurance premiums in writing on forms prescribed by the APCD and will transmit such deductions to the Union.
- B. The APCD will ensure that payroll/dues deductions from employees represented by the Union shall be changed quarterly upon written authorization from the Union, when authorized in advance by the employee. The APCD will ensure that payroll deductions for Union insurance and benefit programs shall be changed upon written authorization from the Union, when authorized in advance by the employee.
- C. Agency Shop
  - 1. Agency Fees - Agency shop as used in this article means an organizational security agreement as defined in Government Code Section 3502.5 and applicable law.

Continuing throughout the term of this agreement, each employee hired into an applicable unit subsequent to the conduct of the election shall be required within 30 days of his/her first day of employment with the APCD to choose to: a) become a member in good standing of the Union; or, b) satisfy the agency fee financial obligations set forth below, unless he/she qualifies for the religious exemption set forth in subsection 2 below.

Unless the employee has: a) voluntarily submitted to the APCD an effective dues deduction request; b) individually made direct financial arrangements satisfactory to the Union as evidenced by notice of the same by the Union to the APCD; or, c) qualified for exemption upon religious grounds as provided below, upon notice from the Union the APCD shall ensure that a mandatory agency fee payroll deduction in the appropriate amount is processed and forward that amount to the Union.

The amount of the fee to be charged shall be determined by the Union subject to applicable law; and shall therefore be an amount not to exceed the normal periodic membership dues, initiation fee, and general assessments applicable to Union members.

As to non-members objecting to the Union spending their agency fee on matters unrelated to collective bargaining and contract administration, the amount of the agency fee charged shall not reflect expenditures which the Courts have determined to be non-chargeable, including political contributions to candidates and parties, members only benefits, charitable contributions and ideological expenditures and, to the extent prohibited by law, shall not reflect expenditures for certain aspects of lobbying, ballot measures, publications, organizing, and litigation.

The Union shall comply with applicable law regarding disclosure and allocation of its expenses, notice to employees of their right to object, provision for agency fee payers to challenge the Union's determinations of amounts chargeable to the objecting non-members, and appropriate escrow provisions to hold contested amounts while the challenges are underway. The Union shall make available, at its expense, an expeditious administrative appeals procedure to unit employees who object to the payment of any portion of the representation service fee. Such procedure shall provide for a prompt decision to be made by an impartial decision-maker jointly selected by the Union and the objecting employee. A copy of such procedure shall be made available upon request by the Union to non-Union-member employees and the APCD.

The foregoing description of permissible agency fee charges and related procedures is included herein for informational purposes and is not intended to change applicable law. The APCD will ensure that all monies deducted are promptly remitted to the Union, accompanied by a list of employees for whom such deductions have been made.

The APCD will make every effort to distribute to each new employee in a unit in which an agency shop provision is in effect, a letter supplied by the Union which describes the agency fee obligation.

2. Religious Exemption from Agency Fee Obligations
  - a. Any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to meet the above agency fee obligations, but shall pay by means of mandatory payroll deduction an amount equal to the agency fee (proportionate share of the Union's cost of legally authorized representational services), to a non-religious, non-labor charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as designated by the employee from a list provided by the County Auditor-Controller.
  - b. To qualify for the religious exemption the employee must provide to the Union, with a copy to the County Auditor-Controller, a written statement of objection, along with verifiable evidence of membership in a religious body as described above. The APCD will implement the change in status within thirty days unless notified by the Union that the requested exemption is not valid.
  - c. Any of the above-described payment obligations shall be processed by the APCD in the usual and customary manner and time-frames.
3. Leave Without Pay/Temporary Assignment Out of Unit - Employees on an unpaid leave of absence or temporarily assigned out of the unit for an entire pay period or more shall have agency shop fees suspended. Fee



deductions shall have the same priority as dues deductions in the current hierarchy for partially compensated pay periods.

4. Rescission of Agency Shop - The agency shop provision may be rescinded pursuant to the procedures contained in Government Code Section 3502.5 (d)
5. Maintenance of Membership - All regular unit employees who on the effective date of this MOU are members of the Union in good standing and all such employees who thereafter voluntarily become members of the Union shall maintain their membership in the Union in good standing during the term of this MOU, subject however, to the right to resign from membership during Pay Period 17 annually.

Cancellations of dues deductions will not be honored for employees covered by this Agreement during the term of the MOU except during the window period specified above. Any Union member may exercise his/her right to resign by submitting a notice in writing to the Union and to the APCD during the resignation period.

Cancellation forms received from employees covered by this Agreement outside of the resignation period described above shall be transmitted to the Union in the usual manner and time frames. The Union shall then promptly provide any and all members for whom it has received a cancellation form a letter explaining the Maintenance of Membership provision, a copy of the MOU and a reference to this Article of the agreement describing the window period.

Union members who cancel their membership during the term of this MOU shall be required to pay an agency fee if an agency shop provision is in effect in the unit member's bargaining unit, unless the employee qualifies for a religious exemption set forth under subsection 2.

6. Indemnification/Hold Harmless Clause - The Union agrees to fully indemnify and defend the APCD and its officers, employees, and agents against any and all claims, proceedings and liability arising, directly or indirectly out of any action taken or not taken by or on behalf of the APCD under this Article.
- D. The Union agrees to indemnify, defend, and hold the APCD harmless against any claims made of any nature and against any suit instituted against the APCD arising from its check off for the dues, insurance, or benefit programs of the Union, or its failure to do so.
  - E. Upon any new hire of an individual to a classification represented by Union, the APCD will provide to the Union the employee name, date of hire, work city, classification, department, and representation unit.
  - F. Upon request, the APCD agrees to provide the Union with mailing labels containing the names, department name, job class title, and number and

worksheet location code for all employees within Union represented units once each fiscal year during the term of this agreement.

- G. The Union shall have the right to make a 15 minute presentation to new hires at APCD scheduled orientations.

The APCD will provide a list of new hires represented by Local 620 not less than two weeks prior to the orientation along with the date, location and time of the orientation.

APCD staff shall be allowed to witness the Union's orientation presentations. The Union may have a Union staff member and, or one Steward present to introduce themselves and give a brief overview of the union and the labor contract.

### **ARTICLE 7 - BULLETIN BOARDS**

- A. The APCD shall provide designated bulletin board space on existing bulletin boards for the Union, the size and location to be determined jointly by departmental management and the Union. All materials to be posted must be non-defamatory in nature, must be approved and signed by a Union official and shall be used for the following subjects:
  - 1. Union recreational, social and, related news bulletins;
  - 2. Scheduled meetings;
  - 3. Information concerning Union elections or the results thereof;
  - 4. Reports of official business of the Union, including reports of committee or the Union Board of Directors.
- B. In cases where the Union, in whole or part, represents more than one bargaining unit at a work location, the space described above will become the bulletin board space for all employees represented by the Union at the work location.
- C. The Union may use bulletin boards in the APCD main Santa Barbara office and the APCD North County office. The use of these bulletin boards shall be governed by A above.

### **ARTICLE 8- MAINTENANCE OF BENEFITS**

Except as set forth in this Memorandum of Understanding, and unless the Union agrees to reopen negotiations on a particular bargaining subject, the APCD and the Union agree that there shall be no changes during the life of this Memorandum of Understanding in the wage rates, benefits, or other terms and conditions of employment subject to the meet and confer process established by this Memorandum of Understanding or by any APCD Regulation, Ordinance or Resolution, except by mutual agreement of the parties, or as required by Federal or State law or regulations. In addition, the parties specifically agree that APCD Civil Service Rules shall be exempt from this provision. The APCD agrees to consult with the Union on matters where Federal or State changes would significantly affect employees covered by this Memorandum of Understanding.

The APCD shall notify the Union of any proposed change in APCD Rules, Regulations, Ordinances or Resolutions on subjects which are beyond the scope of the meet and confer process, but the practical application of which directly affects employees represented by the Union. The APCD agrees to meet and consult with the Union on any such proposals, upon request of the Union.

## **ARTICLE 9 - VOLUNTARY FURLOUGH**

Employees may participate in a voluntary furlough program.

The Air Pollution Control Officer may grant a permanent or probationary employee a voluntary leave of absence without pay with right of return to the same position subject to the following conditions.

1. The employee must be in a pay status for at least one full day in each pay period for benefit calculations and to provide earnings from which normal employee deductions can be made. Additional paid time in each pay period may be required in order to generate sufficient earnings to cover salary deductions.
2. Leave may be taken in increments of one hour for FLSA non-exempt employees and in increments of one full work day for FLSA exempt employees.
3. Such leave shall be available only during a period(s) designated by the APCD Board as a time of economic hardship.
4. The appointing authority may exercise reasonable discretion and approve or deny a request for voluntary furlough based upon his/her determination of feasibility, including but not limited to workload, fiscal impact, and operational concerns. The decision of the appointing authority to approve or deny a request to participate in this program is final and as such shall not be appealable.
5. Credits toward sick leave and vacation shall accrue as though the employee were in a paid status.
6. The employee shall be paid for regular holidays occurring during an approved voluntary furlough as if he/she were in a paid status.
7. Credit towards retirement benefits shall accrue as though the employee were in a paid status (full-time employees only).
8. Credit towards APCD contribution for any prorated benefit (i.e. health insurance contribution, additional cash, etc.) shall accrue as though the employee were in a paid status.
9. Credit shall apply toward time in service for step advancement. Voluntary furlough shall not count as a break in service and shall not affect seniority. Probationary periods shall not be affected unless the amount of voluntary furlough exceeds 80 hours.

10. Regardless of how many unpaid leave hours are requested and approved, the employee shall make his/her same contributions to all employee benefits such as retirement and dependent health premiums, as if he/she were in a paid status. In accordance with #1 above, the employee must consider how much paid time in each pay period is required to generate sufficient earnings to cover benefit contributions. Voluntary deductions such as for union dues, credit union, deferred compensation, etc., will be deducted if earnings are sufficient.
11. Employees in other leaves without pay during a pay period shall not be eligible for this voluntary furlough program.
12. Such leave is available only to employees who are in paid status the scheduled workday before as well as the scheduled workday after the voluntary furlough.
  - A. All employees shall be notified of the Voluntary Furlough program described above in a timely manner and of those periods designated as available for participation.
  - B. While the APCD shall promote and encourage employee participation in this program, it is understood that an employee's participation shall be completely voluntary.
  - C. The Air Pollution Control Officer will seriously and adequately consider all requests to participate in this program. However, the decision of the appointing authority to approve or deny a request for voluntary furlough is final and not appealable.
  - D. If in the event that mandatory work furloughs are required, employees having participated in the APCD Voluntary Furlough Program shall receive hour for hour credit for time already furloughed in the last twelve months.
  - E. The APCD shall provide, on a quarterly basis, a summary of voluntary furlough savings to participating employee organizations.
  - F. The APCD acknowledges and recognizes that by employees participating in this program, less work will be performed and that certain delays and/or reductions in service may result.

#### **ARTICLE 10 – MEDICAL, DENTAL, LONG TERM DISABILITY AND EAP COVERAGE**

- A. The APCD and the Union agree medical and dental plans shall be available to employees.

The APCD and SEIU agree that the availability of a choice between two health plans and dental plans is preferable.

The APCD shall maintain a Committee to review and make recommendations to management on benefits for District employees. SEIU shall be allowed to have

one representative as a member of this Committee. This provision shall not be construed to waive the District's obligation to meet and confer on this item.

The APCD and the SEIU agree to explore and discuss alternate medical plans outside of the traditional HMO and PPO type plans. It is further agreed that in the event an alternate plan is evaluated and found to be more beneficial to APCD employees, the APCD shall be allowed to implement this plan in place of the plan with the lowest enrollment. The HMO plan shall remain in effect during the term of this agreement. This provision shall not be construed to waive the APCD's obligation to meet and confer on this item.

The District shall continue to provide employees with an Employee Assistance Program (EAP). This program shall be paid for by the District.

The District shall continue to provide employees with Long Term Disability Program (LTD). This program shall be paid for by the District.

B. The District shall continue to contribute \$165.96 bi-weekly toward the cost of the bi-weekly premium for employee only medical plan coverage. The APCD shall also continue to contribute \$12.69 bi-weekly toward the cost of the biweekly premium for employee-only dental plan coverage. These contributions are based on full-time employment; part-time employees shall receive a prorated contribution based on their percentage of full-time employment. Insurance plan premiums that exceed the APCD biweekly contribution shall be paid by the employee through payroll deductions.

C. Employees may select coverage from the following options:

Medical

- HMO Medical Plan
- PPO Medical Plan

D. Employees may insure their eligible dependents under medical and dental plans in accordance with the rules and regulations applicable to obtaining said dependent coverage.

If two regular District employees are married to each other and are both eligible for contributions from the District toward employee only medical and dental coverage, they may consolidate the District's contributions toward the premium cost for "employee plus two or more dependents" coverage held by one of the employees. In this situation, one employee (referred to below as the "spouse") becomes a dependent on the other employee's (referred to below as the "primary employee") medical and dental coverage.

In order to be eligible under this provision, all of the following conditions must be met:

- Both employees are covered by the same medical and dental plan:

- The spouse is insured as a dependent on the primary employee's medical and dental plan insurance;
- The spouse has waived employee-only coverage;
- Both employees have authorized the consolidation of contributions on a form prescribed by the District.

The amount of the consolidated contributions shall be that amount which would otherwise be contributed by the District toward the employee's and the spouse's employee-only premiums for the respective medical and dental plans.

- E. The Union acknowledges that health insurance is a valuable benefit to employees and a major cost to the APCD and that the increase in health insurance costs is included in the cost of living index or CPI. The Union pledges its full cooperation to the APCD in the implementation of measures to control the costs of employee health insurance.

## **ARTICLE 11 – HEALTH INSURANCE BENEFITS DURING MEDICAL LEAVE OF ABSENCE**

While on an approved medical and/or pregnancy leave, an employee will continue to be covered by APCD's group health insurance to the same extent that coverage is provided while the employee is on the job for a period not to exceed 12 months. This coverage will continue to the extent the employee continues to meet eligibility requirements as set forth in the Health Benefits Group Agreement(s) and/or Evidence of Coverage document(s), and in accordance with State and Federal leave laws. In the event an employee no longer meets eligibility requirements under a plan, the APCD will send a written notice to the employee informing them of their status and available options (such as COBRA rights). An employee will also continue to be covered under APCD's non-health benefit plans in the same manner to the extent the employee continues to meet eligibility requirements set forth by the plans (e.g. Long Term Disability).

In order for the coverage to be maintained, employees must make the appropriate contributions for continued coverage under the preceding health and non-health benefit plans by payroll deductions or by direct payments to the Fiscal Division for these plans. For each benefit plan an employee is enrolled in, APCD will inform the employee of the amount owed to APCD to continue coverage.

An employee's coverage for a particular plan may be canceled if he/she is more than 30 days late in making a premium payment. The cancellation date will be retroactive back to the last covered date for which the employee paid. Employee contribution rates are subject to any changes in premiums that occur while the employee is on leave.

Payment of cafeteria dollars is prorated based on the amount of accrued leave balances used each pay period, and if an employee is in a paid leave status, accrued leave may be used to pay employee benefit premiums due as provided in APCD policies. In order to avoid loss of benefits, arrangements for direct payments to the Fiscal Division should be made as soon as the leave period is known. If coverage is canceled during the leave, an employee may not be able to re-enroll until the next open enrollment period for the canceled plan.

## **ARTICLE 12 - FLEXIBLE SPENDING ACCOUNT PLAN**

- A. All full-time and part-time employees in Union represented classifications shall be eligible to participate in the Flexible Spending Account Plan. Said plan shall be administered in compliance with Section 125 of the Internal Revenue Code (IRC).

The Flexible Spending Account Plan will include salary reduction options for the following:

1. Pre-Tax Health Insurance Premium(s) for employees and their dependents;
2. Pre-Tax Health Care Spending Account;
3. Pre-Tax Dependent Care Spending Account;
4. Pre-Tax Life Insurance Premium (for amounts up to \$50,000);
5. Pre-Tax Personal Accident Insurance
6. Pre-Tax Catastrophic Care Programs.

These options are described in detail in the Flexible Spending Plan legal document which is available to all employee organizations. Compensation received in accordance with Article 13 (Cafeteria Dollars) may be used by employees to fund the options described above. All salary reduction amounts are included in base salaries for the purpose of computing retirement earnings and are subject to appropriate Internal Revenue Service regulations.

The APCD shall meet and confer with the Union prior to revising the benefit options unless mandatory by law to change benefit options.

- B. Benefits selected under this Plan cannot be changed during the plan year except for a change in family status consistent with the benefit change. Enrollment in the Plan shall be offered on an annual basis at the beginning of the Plan year. New employees may enroll within the first thirty (30) days of employment. Continued operation of the program shall be subject to APCD administrative procedures and the IRC.

## **ARTICLE 13 - CAFETERIA DOLLARS**

- A. The APCD shall continue to contribute \$143.66 per pay period (26 pay period year or \$3,735.16 annually) per employee as cafeteria dollars. Regular part-time employees are eligible for this allowance based on a prorated equivalent of their employment status. The benefit allowance, which is received in cash, has the primary purpose of allowing employees to fund employee and dependent health insurance costs. Employees may also use the dollars to fund options in the Flexible Spending Account Plan and/or receive the remainder in cash.
- B. This allowance will be paid on a biweekly basis to each regular employee based on the prorated number of non-premium hours paid in a pay period. Benefits under this program will be paid only for each full biweekly pay period employed, no payments for partial pay periods will be made. Employees hired or promoted into

a position eligible for participation during the calendar year shall begin earning the appropriate allowance the first full pay period of their appointment.

#### **ARTICLE 14 - SICK LEAVE**

- A. Each regular full-time or regular part-time employee shall accrue sick leave at the rate of .0463 hours for each hour in a regular pay status excluding overtime, call-back and standby duty.
- B. Unused sick leave shall be cumulative from year to year, with no accrual limit.
- C. Sick leave usage may not exceed the employee's accrued sick leave balance reported at the end of the prior pay period.
- D. The Air Pollution Control Officer, or his/her designee, may require evidence in the form of a physician's certificate, or otherwise, of the adequacy of the reason for any employee's absence during the time for which sick leave was requested. Under no circumstances is sick leave to be used in lieu of, in addition to, or as vacation. A physician's certificate may also be required in order to determine correctness of payroll records.
- E. When a member of their immediate family is seriously ill or injured and requires their presence and attendance, employees may be allowed by their appointing authority to use their accumulated sick leave to attend to such family member.
- F. Notwithstanding Article 17 A, a maximum of up to five days (40 hours) of accumulated sick leave may be granted by the appointing authority to employees for absences from duty because of any and each death in their immediate family.
- G. For the purpose of E and F above, "immediate family" is defined as spouse, parent, brother, sister, child, stepchild, grandparent, grandchild, and mother-in-law or father-in-law of the employee. Immediate family shall also include registered domestic partners (as defined by AB 205) and domestic partner's children.
- H. An employee may, when necessary and at the discretion of the Air Pollution Control Officer, be granted up to two hours leave with pay to make voluntary non-remunerated blood donations to non-profit blood banks in the county. Time off in excess of two hours and up to an additional two hours may be used for this purpose, but such additional time off shall be charged to accumulated sick leave. Leave for the purpose of donating blood shall not exceed five times in any one calendar year.
- I. No payment shall be made to any employee for unused sick leave balances at the time of their termination from APCD service.

#### **ARTICLE 15 - FAMILY CARE LEAVE**

The APCD shall provide a Family Leave Care benefits program consistent with State and Federal Law.



## ARTICLE 16 - VACATION

- A. For each hour in a regular pay status, excluding overtime, call-back, and stand-by, each regular full-time or regular part-time employee shall accrue vacation based on continuous APCD service as provided in the chart below.

<u>Continuous APCD Service</u>	<u>Hourly Annual Accrual</u>	<u>Max Allow. Accrual</u>
0 - 2 yrs. ( 0 - 24 mo.)	0.0463 hrs/96 hrs.	288 hrs.
3 - 4 yrs. ( 25 - 48 mo.)	0.0616 hrs/128 hrs.	288 hrs.
5 – 10 yrs. ( 49 - 120 mo.)	0.0731 hrs/152 hrs.	360 hrs.
11 – 14 yrs. (121 - 168 mo.)	0.0847 hrs/176 hrs.	390 hrs.
15+ yrs. (169 + mo.)	0.0962 hrs/200 hrs.	420 hrs.

- B. Annual vacation accrual may accumulate up to the Maximum Allowable Accrual provided for in the chart in A above.
- C. Notwithstanding the provisions of Sections A, and B above, an employee absent due to a work-related injury, receiving Workers' Compensation Temporary Disability and unable to take vacation may accrue vacation above the Maximum Allowable Accrual. Following his/her return to work, the employee shall make every reasonable effort to promptly take vacation in excess of the Maximum Allowable Accrual.
- D. Employees who have taken at least forty hours of vacation within the last 12 months may, once during each calendar year and with the approval of the Air Pollution Control Officer, request pay for up to forty hours of accrued vacation in lieu of vacation time off. Such vacation conversion shall be based on the employee's hourly rate in effect at the time of payment. Vacation conversion shall not be allowed if it would reduce an employee's vacation balance to below forty hours.
- E. No payment in lieu of vacation shall be made to any employee except upon termination of employment or as provided for in Section D. Terminating employees shall be paid for accumulated vacation as of the date of termination.
- F. An employee is not entitled to utilize vacation accrual unless or until they have been a regular employee for six (6) continuous months. A person failing to complete such service shall receive payment for vacation accrual upon termination.
- G. Vacation shall not include any regular holidays taken during a vacation period.
- H. Vacation shall be taken at the time designated by the appointing authority. A reasonable effort shall be made to allow vacations to be taken at times convenient to the employee, so long as such use is consistent with the needs of the service and work load of the APCD.
- I. Vacation usage may not exceed the accrued vacation balance reported at the end of the prior pay period.

- J. Effective September 5, 2011, all regular employees, including probationary employees, in a paid status shall have twenty-four (24) hours credited to their vacation accounts subject to section B above. Regular part-time employees shall receive a prorated equivalent.

### **ARTICLE 17 – BEREAVEMENT LEAVE**

- A. An employee shall be entitled to a maximum of 48 hours of paid bereavement leave of absence per calendar year due to the death of an immediate family member.
- B. Authorized bereavement leave under this article shall not be charged against an employee's accrued sick or vacation balances.
- C. The APCO and/or his designee may require proof of the need for bereavement leave in the form of a published obituary or copy of an official death certificate.
- D. For the purpose of A above, "immediate family" is defined as spouse, parent, brother, sister, child, stepchild, grandparent, grandchild, and mother-in-law or father-in-law of the employee. Immediate family shall also include registered domestic partners (as defined by AB 205) and domestic partner's children.

### **ARTICLE 18 - LEAVE DONATION**

#### Purpose

To provide a mechanism for assisting employees who have exhausted paid leave due to their own serious or catastrophic illness or injury or a serious or catastrophic illness or injury of their spouse, child, parent, domestic partner, or domestic partner's child; or for bonding with a new child in connection with a birth, adoption, or foster care placement of that child. This provision allows a regular APCD employee to donate the monetary value of accrued vacation, holiday, or overtime hours to a specific employee who has exhausted his/her own available leave balances. Serious or catastrophic illness or injury is defined as an adverse medical condition which requires the employee to be absent from work for more than twenty (20) consecutive work days.

#### Conditions

- A. To receive leave donations, an employee:
- must be absent from work due to a single illness or injury for more than twenty consecutive work days (as verified by a physician's statement); or be absent from work to bond with a new child (1) within the first year of birth or (2) in connection with an adoption or foster care placement of a child; and
  - must have exhausted all earned leave balances (including sick leave, vacation, overtime, TDM, and holiday credits); except however, the appointing authority may approve the solicitation/acceptance of leave donations prior to all balances being exhausted, when the physician's statement and leave balances indicate the probable exhaustion of balances within two pay periods; and

- must apply, or have applied, for State Disability Insurance (SDI) or Paid Family Leave (PFL) benefits. Denial of SDI or PFL benefits by the Employment Development Department will not disqualify an employee from participating in this program.
- B. Donated leave shall be changed to its cash value at the donor's base rate of pay and then credited to the recipient in equivalent hours of vacation at the recipient's base rate of pay.
- C. Donations:
- are voluntary;
  - are made from accrued vacation, holiday or overtime balances; donation of sick leave is not permitted;
  - must be for a minimum of four (4) hours, in whole hour increments;
  - are irrevocable, and if any donated hours remain at the end of the recipient's catastrophic leave, they shall remain available for the sole use of the recipient; and
  - are taxable on the part of the recipient, in accordance with IRS regulations, and are subject to withholding as required by law.
- D. An employee may not donate more than eighty (80) hours to any other individual employee.
- E. The total donations received into his/her vacation balance by an employee shall normally not exceed 1040 hours; however, donations in excess of 1040 hours may be considered and approved by the APCO.
- F. Upon approval of a request for donations, the APCO (or his/her designee) shall, at the employee's request, post a notice of the eligible employee's need for donations on departmental bulletin boards accessible to employees and/or by e-mail; confidential medical information shall not be included in the notice.
- G. Donations will be accepted for a period of 21 calendar days. Subsequent requests for donations will be sent out once the recipient's donated leave balances are exhausted. The APCO may approve the solicitation of subsequent donations prior to all leave balances being exhausted when a physician's statement indicates the probable exhaustion of leave.
- H. Donations shall be administered according to procedures established by the APCD, and requested on a form prescribed by the APCD. Signed approvals of the receiving and donating employees must be properly provided before a donation is processed.
- I. Nothing in this Article shall be construed to modify the employment relationship between the APCD and the receiving employee, or to restrict the APCD's management rights. Neither shall this Article modify existing APCD rules, policies, or agreements regarding unpaid leave of absence or family care leave.

- J. Upon request the employee shall provide the APCD with documentation from a physician indicating that the illness or injury is serious or catastrophic.

## **ARTICLE 19 – OVERTIME AND EXCESS TIME**

Regular employees shall be eligible for overtime compensation in accordance with the following provisions.

- A. Overtime shall be authorized in advance by the Air Pollution Control Officer or his/her designee.
- B. Overtime for non-exempt employees under the Fair Labor Standards Act (hereafter referred to as FLSA) will be defined as any hours worked beyond forty (40) hours in a seven day work period, exclusive of standby and call-back time. For the purpose of computing overtime, all regular, scheduled work hours including paid leave time shall be considered time worked.
- C. Overtime work is compensable at the rate of time and one-half the regular rate as computed in accordance with FLSA. Hours worked shall accrue in increments of tenths (1/10) of an hour (6 minutes), subject to a minimum of two-tenths (2/10) of an hour (12 minutes) and shall either be placed in a Compensatory Overtime account or paid in the pay period in which earned. The maximum hourly accrual in this account shall be 240 hours.
- D. Compensatory time off or cash payment shall be granted at the discretion of the Air Pollution Control Officer or their designated representative. Compensatory time off shall be scheduled in the same manner as vacation. Compensatory overtime shall be used before any leave-without-pay is granted.
- E. Overtime eligible part-time employees, who work beyond their regularly scheduled work hours but less than the maximum allowable in their work period, shall be paid at straight time.
- F. Except upon termination of employment, hours in the Compensatory Overtime account as of pay periods 4 and 19 shall be paid off in cash based on the employee's regular hourly rate of pay in effect at the time of payment. Payments for compensatory overtime hours are taxable as lump sum payments in accordance with IRS and State Franchise Tax Board regulations and are subject to withholding as required by law. Overtime earned in the pay period where a cash payoff is made shall accrue in the Compensatory Overtime account.
- G. The APCD shall determine and identify those classifications which are exempt from overtime compensation. The determination shall be in accordance with the requirements of the Fair Labor Standards Act. Classifications which have been designated as exempt shall not receive overtime, except in an emergency as provided in subsections I and J below. The Union and the APCD acknowledge that the APCD does not claim its exemption under the FLSA for some classifications.

- H. In the event APCD operations require extraordinary work assignments for employees in classifications exempt from overtime compensation, the Air Pollution Control Officer or their designee may authorize administrative leave, not to exceed 108 hours per year. This provision in no way establishes any right to overtime compensation or time off for such employees. The Air Pollution Control Officer, upon written request of such an employee's Division Manager, may approve additional administrative leave upon showing of special circumstances. Such approval shall be in writing.
- I. Regular employees in classifications exempt from overtime compensation and therefore not otherwise eligible for overtime pursuant to this agreement shall be paid for excess time worked (time in excess of 40 hours per week) during an emergency as follows:
  - 1. No excess time compensation shall be paid for excess time work during an emergency for the first twelve (12) hours of such emergency excess time work;
  - 2. Excess time compensation shall be paid at straight time for the second twelve (12) hours of emergency excess time work; and
  - 3. Excess time compensation shall be paid at the rate of time and one-half for all hours of excess time worked in excess of twenty-four (24) hours during any such emergency.
- J. "Emergency" for the purposes of Section I of this Article shall mean an emergency in the County of Santa Barbara, duly declared in writing by the Board of Supervisors, the County Administrator, or Deputy County Administrator, and by other jurisdictions in the State of California (including the cities within Santa Barbara County), when the emergency is approved in writing by the Air Pollution Control Officer as an emergency that requires APCD staff participation.

#### **ARTICLE 20 - MILEAGE REIMBURSEMENT**

Employees who, when authorized by the Air Pollution Control Officer, or his/her designee, use their personal vehicle for APCD business shall be reimbursed for each mile driven on APCD business. Said reimbursement shall be at the amount per mile exempted by the Internal Revenue Service for reporting of income.

#### **ARTICLE 21 - SHIFT DIFFERENTIAL PAY**

- A. An employee shall receive additional compensation at the rate of seventy five cents (75¢) per hour for all hours worked on a shift when the majority of hours worked on the shift are between 5:30 p.m. and 7:30 a.m. and in locations where these classes are regularly assigned shift work.
- B. In lieu of compensation set forth in paragraph A above, employees shall receive additional compensation at the rate of one dollar and fifty cents (\$1.50) per hour for all hours worked on a shift when the majority of hours worked on the shift are

between 12:00 midnight and 7:00 a.m. and in locations where these classes are regularly assigned shift work.

- C. Notwithstanding A and B above, in a situation where an employee works a shift evenly divided before and after 12:00 midnight, the employee shall receive additional compensation in the amount of seventy-five (75¢) per hour for one-half the hours worked on the shift, and one dollar and fifty cents (\$1.50) for one-half the hours worked on the shift.

## **ARTICLE 22 - VOLUNTARY CALL BACK**

An employee who is eligible to receive overtime pay, but who is not assigned to or restricted by "Stand-By Duty" per Article 23 of this Memorandum, shall receive a minimum credit of two hours of work time as provided by the overtime policy if the employee reports to a job site in response to a call from the departmental supervisor or other authorized official. Such employee shall not be considered to be in a stand-by status or eligible for stand-by pay.

## **ARTICLE 23 - STAND-BY PAY**

Employees assigned to stand-by duty by the Air Pollution Control Officer, or his/her designee, shall be compensated and governed by the following:

- A. Stand-by duty requires that employees so assigned:
  - 1. Be ready and take steps immediately to respond within a reasonable time to calls for their service;
  - 2. Be readily reachable by telephone or paging device;
  - 3. Remain within a specified distance or time from their work stations; and
  - 4. Refrain from activities which might impair their ability to perform their assigned duties.
- B. Compensation shall be at the rate of \$2.00 per hour for each hour on such stand-by duty and shall be paid at the same time as scheduled for the pay period in which the stand-by duty was performed.
- C. Stand-by pay, when properly authorized, shall be paid for a minimum of one hour.
- D. Employees other than those exempted from overtime compensation shall, when called to active duty while on stand-by status, be compensated for such active duty at the applicable overtime rate. Work time for an employee called to active duty while on stand-by status shall begin at the time of notification to report to a job site and shall continue until the employee stops work. A minimum of one hour at the appropriate rate shall be paid in those cases when an employee on stand-by status is required to report to a job site, but the minimum shall not apply for work performed at another location.
- E. No employee shall be paid for stand-by duty time and other compensable duty time simultaneously.

## **ARTICLE 24 - BILINGUAL ALLOWANCE**

- A. An employee, whose duty assignments require regular and frequent use of bilingual language skills in Spanish and English shall be designated by the Air Pollution Control Officer to receive a bilingual allowance. The Air Pollution Control Officer shall designate the employee in writing to the Human Resources Manager prior to being effective. The employee shall retain such bilingual designation only until a change in assignments is reported in writing by the Air Pollution Control Officer to the Human Resources Manager. Additional compensation for bilingual duties is payable as an allowance and not as part of basic salary, but shall be payable at the same time as a regular compensation. When a full-time employee is assigned by the Air Pollution Control Officer to duties requiring regular and frequent use of bilingual language skills, they shall receive an allowance of \$57.29 per pay period. When a part-time employee is assigned to bilingual duties, the bilingual allowance shall be prorated and paid on the same basis that the part-time position is filled and compensated.

Employees in classifications in which the primary responsibility is to interpret/translate between English and Spanish shall not be eligible for this allowance.

- B. As used in this Article, the phrase "regular and frequent" means at least once each working day, or at least five times each work week. Payment for the bilingual language skill is restricted to the actual needs of the position. An employee's ability to read, write, or speak Spanish, occasional or incidental use of language skills in Spanish or the use of bilingual language skills other than for the purpose of meeting the requirements of the job shall not warrant a bilingual allowance.

## **ARTICLE 25 - HOLIDAYS**

- A. Holidays regularly observed by the APCD for represented employees are:

New Year's Day, January 1  
Dr. Martin Luther King Jr.'s Birthday, 3rd Monday in January  
President's Day, 3rd Monday in February  
Cesar Chavez Birthday (March 31)  
Memorial Day, last Monday in May  
Independence Day, July 4  
Labor Day, 1st Monday in September  
Veterans Day, November 11  
Thanksgiving Day, 4th Thursday in November  
Thanksgiving Day Friday, the day after Thanksgiving  
Christmas Day, December 25  
Floating Holiday (see section B below)

- B. All regular employees in a pay status (including paid leave) for any portion of pay period one of each year shall be credited with eight (8) hours holiday leave. This holiday leave shall accrue to the employee's vacation bank. The floating holiday

credit may be used in the same pay period in which it is accrued, subject to the provisions of Paragraph E below. Regular part-time employees shall receive a prorated equivalent.

- C. All regular employees, including probationary employees shall receive December 23, 2011 off as an eight (8) hour paid holiday. Regular part-time employees shall receive a prorated equivalent.
- D. All regular employees, including probationary employees, shall receive December 30, 2011 off as an eight (8) hour paid holiday. Regular part-time employees shall receive a prorated equivalent.
- E. Holiday leave shall be subject to the approval and/or taken at the direction of the appointing authority or designee.
- F. Each holiday which falls on Saturday shall be observed on the preceding Friday; and, in this event, the Saturday shall not be considered as a holiday for purposes of compensation and/or time off. Each holiday which falls on Sunday shall be observed on the following Monday; and, in this event, the Sunday shall not be considered as a holiday for purposes of compensation and/or time off.
- G. Regular employees leaving APCD service shall be paid all compensatory holiday time which has accrued but has not been otherwise compensated.
- H. In the following sections reference to eight (8) hours shall apply to regular full-time employees and in the case of regular part-time employee the eight (8) hours shall be a prorated equivalent.
- I. When a holiday falls on an employee's regularly scheduled work day, the employee shall be paid eight (8) hours cash payment for the holiday. When a holiday falls on an employee's regularly scheduled day off, the employee shall accrue eight (8) hours of compensatory holiday time to the employee's vacation bank.
- J. When an employee who is overtime exempt is required to work on a holiday which falls on the employee's regularly scheduled work day, the employee shall accrue the holiday time to the employee's vacation bank.
- K. When an employee who is eligible for overtime is required to work on a holiday, the employee shall, in addition to eight (8) hours regular cash payment for the holiday, accrue compensatory holiday time (said time shall accrue to the employee's vacation bank) at straight time and cash payment at one half time for all hours worked up to eight (8) hours.
- L. In order to receive holiday compensation, an employee must be in paid status on the scheduled work day immediately prior to and/or after the holiday. Notwithstanding the above, neither the first day of employment nor the last day of employment may be a holiday.



## **ARTICLE 26 - RETIREMENT**

- A. APCD employees are part of the Santa Barbara County Employees' Retirement System (SBCERS). The SBCERS offers the following retirement plans:
1. Employees Hired Before July 1, 1995
    - Contributory Retirement Plan (APCD Plan I)
  2. Employees Hired On or After July 1, 1995
    - Contributory Retirement Plan (APCD Plan II)

Contributory Retirement Plans are based on an Actuary Report, recommended by the Retirement Board and approved by the Board of Supervisors. Prior to implementing employee contribution rate adjustments, the APCD shall give notice and upon request provide an opportunity to meet and confer with the Union.

The purpose of the meeting will be to discuss the implementation of the contribution rate changes. The effective date of the rate adjustments shall be in accordance with the applicable provisions of the County Employees Retirement Law of 1937.

- B. The APCD shall deduct employee contributions toward retirement from employee salaries on a pre-tax basis.
- C. During the term of this agreement, either party may request to reopen negotiations on the issue of retirement plans. If either party reopens negotiations on this subject, the proposed changes will not be implemented unless the parties mutually agree.

## **ARTICLE 27 - TUITION REIMBURSEMENT**

To the extent funding is available, the APCD shall, for those employees represented by the Union, provide for tuition and textbook reimbursement for regular full-time employees up to a maximum of \$500 per fiscal year and in accordance with administrative regulations governing this program as determined by the APCD. Before implementing any changes to the administrative regulations, the APCD shall notify the Union and upon request, negotiate the changes to the extent those changes are within the scope of representation.

Tuition reimbursement for regular part-time employees shall be prorated based on their part-time percentage.

## **ARTICLE 28 - TRANSPORTATION DEMAND MANAGEMENT (TDM)**

Employees shall be eligible to participate in the TDM program and receive related benefits including the Alternative Commute Incentive.

## **ARTICLE 29 - EMPLOYEE PERFORMANCE EVALUATION**

Employees shall be given an opportunity to read and sign their Professional Development Plan and/or their Employee Performance Evaluation (Short Form) prior to placement of the evaluation in the employee's official personnel files. It is acknowledged that the fact the employee has signed either evaluation plan does not necessarily mean the employee agrees with the evaluation, but that such signature shall be evidence of the employee's knowledge of the completed evaluation. The employee shall receive a copy of the evaluation within thirty (30) working days of the date of the evaluation. A Professional Development Plan or Short Form may not be utilized by the APCD to affect an employee's job status unless and until the employee has been given an opportunity to review such evaluation.

## **ARTICLE 30 - REASSIGNMENT**

An employee, who wishes to be considered for reassignment within the same classification from one program, or from division to division, shall make a written request for such reassignment to the division management concerned for its consideration. The APCD will acknowledge receipt of the request and maintain it in its file for a period of one (1) year. In considering an employee's request for reassignment, the APCD will consider such factors as operational needs, job related qualifications, skills, job performance, length of service, and affirmative action goals.

## **ARTICLE 31 - CLASSIFICATION STUDY PROCEDURE**

The parties reaffirm that the APCD retains the sole responsibility and authority for the classification of the various positions in the APCD service.

It is the intention of the parties that this Article is included only to inform employees of established process and procedures to follow when requesting a classification study on their own behalf.

The request for a reclassification study by an employee who believes his/her position is misclassified must be submitted in writing through his/her Division. Within thirty (30) days, the Division Manager will either return the request to the employee or forward it on to Human Resources for consideration and recommendation to the Air Pollution Control Officer. If the Division Manager returns the request to the employee, the employee may request that it be submitted to the Air Pollution Control Officer for consideration without the endorsement of the Division Manager.

This Article is not in any way modifying Section 418 (salary on temporary assignment out of class) of the Civil Service Rules. An employee's right to grieve this Article shall be limited to allegations that the APCD has failed to comply with the procedures set forth herein.

## **ARTICLE 32 – SALARY INEQUITY STUDY**

Each April during the term of this MOU, the SEIU can request one inequity study of one classification or classification series contingent on one or more of the following criteria:

- Significant difficulty in recruitment or retention in a classification or class series. (Both parties acknowledge that SBCAPCD management is in the best position to determine this).
- Internal misalignment with classifications with similar duties and responsibilities.
- Salary compaction within a series below 10% based on the “E” step.
- Significant external misalignment (“significant” is to be defined as at least 8% under the median value) with classifications with similar responsibilities or duties based on the median of the following agencies:

- ❖ County of San Luis Obispo
- ❖ City of Santa Maria
- ❖ City of Lompoc
- ❖ City of Santa Barbara
- ❖ County of Santa Barbara
- ❖ County of Ventura

**ARTICLE - 33 USE OF APCD COMPUTER RESOURCES**

Employees’ rights and obligations regarding the use of the APCD’s computers and computing resources are governed by the APCD’s Computer System Acceptable Use Policy (P&P # 1100.074.02). The parties agree that occasional and incidental use of the APCD’s computing resources for SEIU business is allowable within the parameters of the Computer System Acceptable Use Policy, so long as such use does not interfere with the performance of work duties, the effective delivery of service, result in any cost to the APCD, or unduly compromise the security of APCD systems.

**ARTICLE 34 - CIVIL SERVICE RULES**

The parties agree to meet and confer on all proposed Civil Service Rule changes within the scope of bargaining during the term of this agreement.

It is agreed that any required negotiations over the proposed rule changes shall be concluded with the Union prior to presentation of proposed rule changes to the APCD Board.

**ARTICLE 35 - EMPLOYER EMPLOYEE RELATIONS MEETING**

The Air Pollution Control Officer and the Union Executive Director and/or their designee, shall meet once per month (as requested), for one hour on issues of mutual interest. The Air Pollution Control Officer and the Union Executive Director and/or their designee shall be entitled to one additional participant each. Other participants, if any, shall be subject to the mutual agreement of the parties.

## ARTICLE 36 - GRIEVANCE PROCEDURE

### Subsection 1. Purpose

- A. To promote improved employer employee relations by establishing that grievances shall be heard and settled as informally as possible and as promptly and as closely as possible to the point of origin.
- B. The Union agrees to encourage an employee to discuss their grievance with their immediate supervisor. The immediate supervisor will, upon request of an employee, discuss the employee's complaint and attempt to adjudicate same at a mutually satisfactory time.

### Subsection 2. Grievance, Defined

- A. A grievance shall be defined as a claim by an employee or group of employees adversely affected by an alleged violation, misinterpretation or misapplication of APCD-wide policy or practice or APCD rules, regulations, resolutions, ordinances, or memoranda of understanding applicable to the employee, except as follows:
  - 1. Appeals of the disciplinary actions of demotion, suspension, or dismissal and appeals relating to recruitment examinations shall be filed and processed pursuant to APCD Civil Service Rules.
  - 2. Complaints related to Affirmative Action, occupational health and safety, or Workers' Compensation shall be processed pursuant to established County/APCD complaint procedures in these areas.
- B. The Union recognizes management's right to establish policies governing the operation of the APCD. However, allegations also subject to the grievance procedure are those in which the complaint concerns an inconsistent application of policy where the inconsistency results in a denial of the employees' rights under those policies defined in "A" above.

### Subsection 3. Basic Rules

- A. The procedure in this Subsection shall be the exclusive means for the disposition of all written grievances arising under this Memorandum, and the APCD shall not be liable to the Union or to any employee in any respect except as may be determined under said procedure.
- B. Any employee (meaning a grievant), as that term is defined above, may file a grievance or may authorize by signature the filing of grievance on his behalf without fear of restraint, interference, coercion, discrimination, or reprisal.
- C. Union stewards shall not be discriminated against in their employment relationship because of their activity in the investigation and processing of grievances on behalf of other employees. This Subsection shall not be construed to confer any special

privileges to Union stewards nor to relieve them of their obligation to fully perform all of the duties of their APCD position in a timely and competent manner.

- D. Formal grievance forms shall be made available to the employee through Human Resources and the Union, and all formal grievances shall be submitted on these forms. Any changes in the form shall be by mutual agreement.
- E. Formal grievance forms shall be complete upon filing and must explicitly specify the policy or the particular Article of the agreement, rule, resolution, or ordinance, the violation of which is being alleged as the basis for the grievance. The remedy requested must also be specified. No modifications in the violation being alleged shall be made subsequent to filing unless mutually agreed to by both the APCD and the grievant, or their Union Representative.
- F. The employee has the right to the assistance of one Union steward in addition to the Union staff representative in the preparation and/or presentation of his written grievance. An employee is also entitled to represent themselves individually at any step of the formal grievance procedure, provided, however, supervisory employees shall not represent non-supervisory employees where such activity results in a conflict of interest and further provided that the employee may not change their designation of representation other than designating themselves during the grievance procedure. In the event the Union determines there is no violation or the proposed settlement is just, the Union is not under an obligation to represent a grievant beyond Step 3 of this procedure.

If the employee is represented in a formal grievance meeting, the APCD may designate a management representative to be present in such meeting.

- G. The grievant may withdraw the grievance at any stage of the formal grievance procedure by affixing their signature in the proper space on the grievance form which shall then become a part of the personnel records.
- H. If the employee's grievance is resolved at Step 1, 2, or 3 in the formal grievance procedure, as provided in subsection 7, the matter will be closed and the grievance resolved at that step. The grievant(s) concerned shall indicate acceptance of the resolution of the grievance by affixing their signature in the appropriate space indicated on the formal grievance form.
- I. By mutual agreement, the parties may revert the grievance to a prior level for reconsideration. In such an event, the grievant shall have the rights of appeal set forth in this Article, if the grievance is not settled at the prior level.
- J. Employees with common supervision and with essentially identical grievances, including remedy, may initiate a single grievance. Employees with essentially similar grievances may be required, at the APCD's discretion, to consolidate to a single proceeding at Steps 3 through 6 of the formal grievance procedure.

- K. All terms used herein will have the meaning as defined in the Employer-Employee Relations Policy when used in connection with this document, unless the context indicates or dictates otherwise.

#### Subsection 4. Time Off for Processing of Grievances

The grievant and/or Union steward shall be granted reasonable time off with pay from regularly scheduled duty hours to process a grievance, provided that the time off will be devoted to the prompt and efficient investigation and handling of grievances, subject to the following:

- A. Any grievant or representative, when said representative is an APCD employee, shall not log compensatory time earned or premium pay time for any time spent in the processing or investigation of a grievance.
- B. When a grievant's Union Representative is a steward, the representative shall be employed in the same work unit or location as the grievant. When it is impossible to meet the foregoing condition, a grievant's representative who is a steward may be employed outside the same work unit or location, provided that said representative is no longer than thirty (30) minutes away, by the most practical and common mode of transportation, from the grievant's work location. This time limit may be waived by mutual agreement when the grievant is assigned to a remote work location. In no case shall APCD vehicles be used for transportation in connection with the processing of grievances, nor will reimbursement be considered for use of private vehicles.
- C. Before performing any grievance work during scheduled duty hours a grievant or a grievant's steward shall obtain permission from their supervisor and shall report back to their supervisor when the grievance work is completed.
- D. A grievant or grievant's steward shall not leave their job to perform any grievance work unless their supervisor determines that their absence will not unduly interfere with the work of the unit in which they are employed. However, every reasonable effort will be made to grant such time off within two (2) working days and shall not be unreasonably denied for a period longer than three (3) days.
- E. When a grievant or any Union Representative must go into a section, division, or work unit to investigate or process a grievance, they shall be permitted to do so provided that:
1. They explain the purpose of their visit, who they are visiting, and checks in and checks out with the supervisor of the section, division, or work unit, and
  2. Such investigation or processing does not unduly interfere with the work of the section, division, or work unit. However, an effort will be made to grant such access within two (2) working days and shall not be unreasonably denied for a period of longer than three (3) working days.

3. Management retains the right to have an APCD representative accompany a Union Representative when they are granted access to APCD work sites.
- F. An APCD employee who has direct first-hand knowledge of the event giving rise to the grievance and whose testimony is necessary in establishing the facts of a particular grievance may be called as a witness in a formal grievance hearing. If the grievance hearing is held during the employee witness's work schedule, the attendance of such witness at the grievance hearing shall be conditional upon:
1. Providing 48 hours' notice to the APCD of their proposed attendance;
  2. Such proposed attendance not unduly interfering with the operation of the APCD;
  3. Needed witnesses up to 3 may attend mutually called formal grievance hearings on paid APCD time to present their testimony when necessary.

#### Subsection 5. Time Limits

- A. Time limits specified in Subsection 7 may be extended by mutual consent, in writing, of the grievant and/or the Union Representative, and the APCD.
- B. Failure by a grievant or the Union Representative to file an appeal within the specified time limits provided in Subsection 7, unless extended, shall constitute acceptance of the decision rendered at the lower level and the grievance shall not be subject to further appeal or reconsideration.
- C. Failure by management to respond to the employee's grievance within the time limit specified automatically grants to the employee or their representative the right to process the grievance to the next level.

#### Subsection 6. Informal Procedure

Any employee having a grievance should verbally present same directly to their supervisor in an effort to clarify the grievance and mutually achieve settlement. The initial presentation should be without the benefit of representation; however, one (1) subsequent presentation may be made with the benefit of representation.

The APCD management has the responsibility to:

- A. Inform an employee of any limitation of the APCD's authority to fully resolve the grievance; and
- B. Supply the employee with the necessary information to process their grievance to the proper agency, organization, or authority.

## Subsection 7. Formal Procedure

### Step 1: Immediate Supervisor

An employee may submit a formal grievance, on forms provided by the APCD or Union as provided in Subsection 3, paragraph D, by filing one copy with their immediate supervisor and one copy with Human Resources not more than ten (10) working days from the date of the action or incident claimed to be the basis for the grievance, or not more than ten (10) working days from the date of discovery of such action or incident, but in no event shall any grievance be accepted for consideration more than one year from the action or incident claimed as its basis regardless of the date of discovery. If the grievance is not presented within the time limitation herein provided, it shall be deemed not to exist. Within seven (7) working days of receipt of the grievance, the immediate supervisor shall deliver their written decision to the grievant. Any grievance settled at this step shall be subject to the review and confirmation of the Air Pollution Control Officer before the settlement may become effective. Such review will occur within seven (7) working days or the grievance shall automatically be moved to Step 2. In the event the Air Pollution Control Officer does not confirm the settlement, the grievant may initiate Step 2 of this procedure.

### Step 2: Human Resources /APCO Review

If the grievance is not settled or an answer not forthcoming, the grievant and/or the Union Representative may appeal, in writing, within seven (7) working days from the receipt of the decision of the Immediate Supervisor or within seven (7) working days from the expiration of the time limit for such decision under Step 1, to Human Resources /Air Pollution Control Officer. Within ten (10) working days from receipt of appeal, Human Resources, in consultation with the Air Pollution Control Officer, or his/her designated representative shall deliver his/her written decision to the grievant and the Union Representative.

### Step 3: Mediation

If within ten (10) working days after receipt of the written decision of Human Resources /Air Pollution Control Officer or his/her failure to respond to the grievance, the grievant is still dissatisfied, he or she may request the services of a mediator from the State Mediation and Conciliation Service.

### Step 4: Arbitration

- A. If the grievance is not settled or disposed of at Step 3, the grievance may be submitted within ten (10) working days, to Human Resources for arbitration. Within ten (10) working days from receipt of the request for arbitration, Human Resources shall request a panel of arbitrators from the State Mediation & Conciliation Service and provide the Union with a copy of the request. The Arbitrator shall be selected from a panel provided by the State Conciliation Service. The hearing shall be conducted in accordance with the rules and regulations of the American Arbitration Association



unless the parties mutually agree to other rules or procedures for the conduct of such arbitration.

- B. Except as provided in subsection E below, the fees and expenses of the Arbitrator shall be shared equally by the parties involved, it being understood and agreed that all other expenses including, but not limited to, fees for witnesses, transcripts, and similar costs incurred by the parties during arbitration, will be the responsibility of the individual party involved. Where the individual is representing themselves, they shall be solely responsible for their share of the fees and expenses as outlined above.
- C. The Arbitrator shall have jurisdiction and authority to interpret the provisions of this Memorandum of Understanding. They shall not have jurisdiction or authority to alter, in any way, the provisions of this Memorandum.
- D. Except as provided in Step 5, the decision of the Arbitrator shall be final and binding on both parties. Not more than one grievance shall be submitted to arbitration in the same proceeding without the consent of the parties, except that grievances that are based on the same set of facts which must necessarily be decided in the same way can be submitted in a single arbitration. If the Union fails, or the employee individually fails, refuses, or declines to demand arbitration of any such grievance, the affected employee or employees shall be conclusively bound thereby.
- E. Thereupon, the APCD and the Union shall endeavor to make a submission agreement, setting forth the issue or issues to be submitted to arbitration and any agreed stipulated relevant facts and principles. In the event of disagreement between the APCD and the Union, the issue or issues of the grievant as set forth in the written grievance shall be an issue to be submitted to arbitration.

In the event that there is a dispute as to arbitrability, the arbitrator shall hear that issue prior to opening the record on the merits of the dispute. If the arbitrator determines that the issue is not arbitrable the grievance will be dismissed and the matter considered closed. If the arbitrator determines that the issue is arbitrable, the matter will then be set for hearing on the merits. The cost of the arbitrator for this threshold phase of the process shall be borne by the losing party.

- F. A grievance not appealed to arbitration within ten (10) working days after the Mediator terminates mediation or his/her written disposition of the grievance, shall be barred for all purposes. The limits set forth herein may be extended by mutual agreement.
- G. Only those grievances which directly concern or involve the interpretation or application of the specific terms and provisions of a Memorandum of Understanding currently in effect may be submitted to arbitration hereunder as set forth in Step 4. In no event shall such arbitration extend to:

1. The interpretation application, or legality of any federal, state or local law, ordinances or resolutions adopted by the Santa Barbara County Air Pollution Control District Board; however, if the Arbitrator, in his/her discretion, finds it necessary to interpret or apply such federal, state or local law or ordinance or resolutions in order to resolve the grievance which has been submitted to arbitration, they may do so.
2. The interpretation, application, or legality of any or all of the County/APCD of Santa Barbara Civil Service Rules as they existed on July 1, 1994 or as subsequently modified by the APCD Board. However, if the Arbitrator, in his/her discretion, finds it necessary to interpret or apply such Civil Service Rules in order to resolve the grievance which has been submitted to the Arbitrator, they may do so.
3. The interpretation, application, or the legality of the rules or regulations of the APCD; however, if the Arbitrator, in his/her discretion, finds it necessary to interpret or apply such rules or regulations in order to resolve the grievance which has been submitted to the Arbitrator, they may do so.

#### Step 5: APCD Board Right to Final Decision

The Arbitrator's decision and award provided for in Step 4 shall be final and binding on the parties unless the APCD Board, by majority vote, votes to set aside the decision and award of the Arbitrator. In such event, the APCD Board shall deliberate the grievance and, within a reasonable period of time (not to exceed 2 scheduled Board hearings), shall arrive at a decision which shall be final and binding. During such deliberations the Air Pollution Control Officer, or his/her designated representative, and the Union Representative shall make their presentations to the APCD Board. Where possible, such presentations shall be made at the next APCD Board hearing from the date of the issuance of the Arbitrator's award. In the event the APCD Board sets aside the decision and award of the Arbitrator, the APCD shall pay the Arbitrator's fee. Each party to the arbitration will still be responsible for their own expenses and costs of arbitration.

### **ARTICLE 37 - EMPLOYEE PERSONNEL FILES**

- A. All personnel files on an employee maintained by the APCD will be open for inspection by that individual and his/her authorized representative at his/her request during business hours by appointment. He/she will be shown all contents of the file except those materials designated confidential by law. Copies will be provided to the individual upon his/her request.
- B. No material relating to performance appraisal or disciplinary action shall be placed in the personnel file of an employee represented by the Union without the employee first being given an opportunity to read such material and attach a reply if the employee desires, which shall remain with said material.

- C. Employees shall have the right to have commendations placed in their file upon request.

### **ARTICLE 38 - NOTICE AND CONSULTATION REGARDING LAYOFFS**

The APCD agrees to consult with the Union when technological or economic changes occur which result in a substantial number of layoffs or would significantly affect the employees covered by this Memorandum of Understanding. The APCD shall also provide the Union with a designation of classes affected the number of positions in the affected classes and an abstract of the employees in the classes affected by the layoff at least thirty (30) calendar days prior to the effective date thereof.

### **ARTICLE 39 - STATE DISABILITY INSURANCE (SDI) AND STATE PAID FAMILY LEAVE INSURANCE**

- A. All employees must participate in the State Disability Insurance (SDI) and State Paid Family Leave (PFL) programs. The employee shall pay all costs associated with these programs.
- B. Employees may apply for SDI or PFL benefits with the State of California Economic Development Department (EDD). To be eligible for benefits, the employee must meet all applicable State requirements. Depending on eligibility, an employee may receive:
  - a. Up to 52 weeks of wage replacement benefits for the employee's own disability, and/or
  - b. Up to 6 weeks of wage replacement benefits for providing the required care for the serious health condition of a child, parent, spouse, or domestic partner or for bonding with a new child.
- C. Employees who receive SDI or PFL benefits must integrate available SDI and PFL benefits with available paid sick leave, vacation, and compensatory time. Documentation of the SDI/PFL benefits received must be provided to the fiscal department for this purpose.
- D. Employees on a medical or family medical leave of absence who are eligible to use their leave accruals during the leave of absence must exhaust available leave balances before using unpaid leave. Employees must use available sick and compensatory time off before using vacation balances.
- E. Employees who coordinate SDI/PFL paid leave benefits with District payroll benefits will receive District retirement contributions, time off accruals, and other non-insurance benefits based on the District-paid portion of wage replacement only. For non-insurance benefits purposes, the SDI/PFL portion of wage replacement will be treated as unpaid leave.

## **ARTICLE 40 - WORKERS' COMPENSATION**

Employees eligible for Workers' Compensation benefits may use their available sick leave credits to supplement their Workers' Compensation benefits so that the sum of the Workers' Compensation benefits and sick leave credits used equals 100% of their gross salary. Upon request, the employee is required to submit copies of correspondence from Workers' Compensation related to benefits earned and periods covered.

## **ARTICLE 41- AUTOMATIC PAYROLL DEPOSIT**

All employees covered by this agreement shall participate in the automatic payroll deposit program. Participation shall mean the employee's execution of a payroll authorization form and submission of a bank deposit slip to the APCD. It shall be the employee's choice as to which bank he/she designates as the institution receiving the payroll funds.

When both the authorization form and bank deposit are properly executed and filed, the APCD shall automatically deposit in the employee's designated bank account the net amount of pay each designated biweekly payday.

## **ARTICLE 42 - RETURN TO WORK**

During the term of this Agreement, upon request of the APCD, the APCD and the Union will meet and confer regarding the adoption of a temporary assignment of modified or alternate duties program for employees temporarily unable to perform some or all the duties of their position due to illness or injury.

## **ARTICLE 43- NO STRIKE CLAUSE**

Employees represented by the Union shall not take part in any unlawful strike, work action, or other concerted activity of any kind which will result in curtailing or restricting APCD services during the term of this Agreement, and until negotiation and impasse procedure obligations in connection with a successor agreement are exhausted.

The Union agrees not to sanction, encourage, or support any such strikes, work actions, or other concerted activity.

The term "strike, work action or other concerted activity" means any concerted failure to report for duty, any concerted absence from position (including sympathy strikes), any concerted stoppage of work, any concerted slowdown, sick-out, refusal to work, interruption, call-in or failure in whole or in part to carry out the full, faithful, and proper performance of the duties of employment. The term "strike", "work action", "concerted activity" also means any participation in an action curtailing or restricting the operation of the APCD for the purposes of inducing, influencing, or coercing a change in the working conditions, compensation, and rights, privileges, and obligations of employment; provided, however, that nothing herein shall preclude employees from engaging in informational picketing or attending Union rallies so long as such activity does not curtail or restrict APCD operations.

In the event that a strike, work action, or other concerted activity occurs in violation of this Agreement, the Union shall, on written notice by the APCD, issue a statement addressed to the employees, a copy of which shall be delivered to the APCD, declaring the strike or other concerted activity not sanctioned, unlawful, and directing them to immediately return to work, or cease and desist.

In the event any employee covered under this Agreement violates the terms of the No Strike provision, the APCD retains the right to discharge or otherwise discipline any such employee.

#### **ARTICLE 44 - CONCLUSIVENESS OF AGREEMENT**

- A. The provisions contained in this Agreement shall prevail over APCD practices and procedures and over State laws to the extent permitted by State law.
- B. This Agreement sets forth the full understanding of the parties regarding the matters set forth herein. Any prior Board resolution or ordinance, agreement between the parties, or any agreement between an employee (or group of employees) and a supervisor/manager, which is inconsistent with provisions of this Agreement, is hereby superseded.

#### **ARTICLE 45 - SAVINGS CLAUSE**

Should any provision of this agreement be held inoperative, void or invalid by any court of competent jurisdiction, the remaining provisions of this agreement shall not be affected thereby, and the parties shall meet and confer for the sole purpose of arriving at a mutually satisfactory replacement of such provision.

#### **ARTICLE 46 - OBLIGATION TO MEET AND WAIVER CLAUSE**

Except as otherwise expressly provided in this agreement or where the parties mutually agree to meet and confer on the matter, the APCD and the Union expressly waive and relinquish the right, and each agrees that the other shall not be obligated during the term of this Memorandum to meet and confer with respect to any subject or matter, including mandatory subjects of negotiation, whether referred to or covered in this agreement, even though such subjects or matter was proposed and later withdrawn.

In the event any new practice, subject or matter arises during the term of this agreement and an action is proposed by the APCD, the Union shall be afforded all possible advance notice and shall have the right to meet and confer upon request. In the absence of agreement on such a proposed action, the APCD reserves the right to take necessary action by management direction and the Union reserves the right to then take whatever lawful action deemed necessary. The waiver of any breach of any term or condition of this Memorandum of Understanding by either party shall not constitute a precedent in the future enforcement of all its terms and conditions.

SANTA BARBARA COUNTY  
AIR POLLUTION CONTROL DISTRICT

SERVICE EMPLOYEES  
INTERNATIONAL UNION,  
LOCAL 620

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DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

APPROVED AS TO FORM:  
DENNIS A. MARSHALL  
COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy County Counsel