

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT  
AND  
SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT  
EMPLOYEES ASSOCIATION  
FOR  
June 29, 2009 to June 27, 2010

August 20, 2009

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### **Acronyms**

APCD	Santa Barbara County Air Pollution Control District
APCO	Air Pollution Control Officer
CSR	Civil Service Rules of Santa Barbara County as they existed on July 1, 1994 or as subsequently modified by the APCD Board
EERP	Employer Employee Relations Policy, Resolution 99-or as subsequently modified by the APCD Board
SBCAPCDEA	Santa Barbara County Air Pollution Control District Employees Association
FLSA	Fair Labor Standards Act
IRC	Internal Revenue Code
IRS	Internal Revenue Service
MMBA	Meyers Miliias Brown Act
MOU	Memorandum of Understanding
SDI	State Disability Insurance

**Memorandum of Understanding  
Between  
Santa Barbara County Air Pollution Control District  
and  
Santa Barbara County Air Pollution Control District Employees Association**

Pursuant to the provisions of Government Code Sections 3500-3510 and the Santa Barbara County Air Pollution Control District Employer Employee Relations Policy, Resolution 99-9 (EERP), agreement has been reached between the Santa Barbara Air Pollution Control District of Santa Barbara (hereinafter referred to as "APCD") and the Santa Barbara County Air Pollution Control District Employees Association (hereinafter referred to as "SBCAPCDEA").

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**

- A. Pursuant to the provisions of the EERP and applicable State law, the APCD hereby recognizes the Santa Barbara County Air Pollution Control District Employees Association as the majority bargaining representative of the employees in the following representation unit:

Unit 29            –Santa Barbara County Air Pollution Control District  
Employees Association

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 throughout the provisions of the EERP or applicable State law.

Classes of employees represented by SBCAPCDEA are: Planning & Technology Supervisor, Air Quality Engineering Supervisor, Public Information and Community Programs Supervisor and Air Pollution Inspector Supervisor.

- B. SBCAPCDEA agrees to provide the APCO, or his/her designee, with a list of SBCAPCDEA officers and representatives who are authorized to meet and confer in good faith. SBCAPCDEA shall also provide the above official with a list of all authorized staff representatives. In addition, SBCAPCDEA shall provide a list of council representatives who can post materials on behalf of SBCAPCDEA. These lists shall be kept current by SBCAPCDEA.

**ARTICLE 2**  
**TERM OF AGREEMENT**

The APCD and SBCAPCDEA agree that this MOU shall not be binding upon the parties either in whole, or in part, unless and until ratified by SBCAPCDEA members and formally approved by a majority vote of the APCD Board. This MOU shall remain in full force and effect to and including June 27, 2010.

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 (60) days prior to the termination date of the 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. If either party timely serves notice to meet and confer, the first negotiating session shall not commence earlier than one hundred fifty (150) days nor less than sixty (60) days prior to the last Board hearing before termination date of this agreement, unless the parties mutually agree otherwise. The initial meeting shall be held within two weeks of the request to meet and confer. Any request to meet and confer made earlier than one hundred (100) days prior to the last Board meeting before termination of this agreement must be accompanied by written proposals as an indication of readiness to meet and confer. The responding party will to the best of its ability provide its own proposals by the third meeting.

**ARTICLE 3**  
**SALARIES**

Effective June 29, 2009, the base salaries of all position classifications represented by SBCAPCDEA and for each incumbent in said positions shall 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 2009 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 MOU shall be applied equally to all employees covered hereby without discrimination because of race, color, sex, age and marital status (except as provided by law), disability, national origin, religious affiliation, or SBCAPCDEA membership or non-membership.

**ARTICLE 5**  
**RIGHTS OF THE APCD**

- A. 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 APCD divisions, boards and councils and to 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.

- B. 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 Salary Ordinance; 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 applicable Civil Service Rules and Procedures, of the qualification and competence of its officers and employees.
- C. Before implementing any decision to contract out work or to transfer work out of the unit, the APCD shall notify SBCAPCDEA 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.
- D. If SBCAPCDEA requests to negotiate a decision to contract out work or transfer work out of the unit, the subjects of bargaining shall include: the reasons, the expected financial impact, the anticipated impact on the quality of services provided, and the comparative costs of contractor versus employee, including the impact on APCD overhead.
- E. 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 thirty (30) days notice to SBCAPCDEA, unless the parties mutually agree.
- F. The APCD reserves the right to take whatever action may be necessary in an emergency situation; however, a recognized employee organization affected by the action shall be notified promptly of any such emergency action which affects matters within the scope of representation.
- G. 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.

## **ARTICLE 6**

### **RIGHTS OF THE ASSOCIATION**

- A. 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 of 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, or discriminated against because of his/her exercise of these rights.

- B. Management employees shall not represent non-management employees on matters within the scope of representation.
- C. Confidential employees shall not represent non-confidential employees on matters within the scope of representation.

## **ARTICLE 7**

### **ASSOCIATION SECURITY**

- A. Dues and insurance premiums will be deducted from employees in the above-mentioned representation unit who have authorized said dues deductions and insurance premiums in writing on forms prescribed by APCD. The APCD will transmit such deductions to SBCAPCDEA.
- B. APCD will ensure that payroll/dues deductions from employees represented by SBCAPCDEA shall be changed quarterly upon written authorization from SBCAPCDEA, when authorized in advance by the employee. APCD will ensure that payroll deductions for SBCAPCDEA insurance and benefit programs shall be changed upon written authorization from SBCAPCDEA, when authorized in advance by the employee.
- C. SBCAPCDEA 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 SBCAPCDEA, or its failure to do so.
- D. The SBCAPCDEA paid representative is authorized to visit work stations of SBCAPCDEA officers to obtain signatures on official SBCAPCDEA documents within the provision of the EERP.
- E. Upon request, the APCD shall, once every quarter, provide mailing labels of unit employee names and addresses at a cost of \$25 per year to SBCAPCDEA.
- F. The APCD agrees that the SBCAPCDEA negotiating team shall consist of no more than three (3) employees. Employees shall not suffer a loss in compensation in accordance with the EERP and State law.
- G. Upon written request by SBCAPCDEA, the APCD may provide meeting space to be used outside working hours, provided such space is available and SBCAPCDEA receives approval of the APCO and complies with APCD policies. Request for use of facilities will be made in advance to the APCO and will indicate the date, time and general purpose of the meeting(s) and facilities needed.

- H. The APCD will allow a representative member of SBCAPCDEA to present a twenty (20) minute new hire orientation to any new employee in a classification represented by SBCAPCDEA.

## **ARTICLE 8**

### **BULLETIN BOARDS**

The APCD shall provide designated bulletin board space for use by SBCAPCDEA. The size and location will be determined jointly by management and SBCAPCDEA. All materials to be posted must be non-defamatory in nature, must be approved and signed by an SBCAPCDEA official and shall be used for the following subjects:

1. SBCAPCDEA recreational, social and related news bulletins;
2. Scheduled SBCAPCDEA meetings;
3. Information concerning SBCAPCDEA elections or the results thereof;
4. Reports of official business of SBCAPCDEA, including reports of committee or the SBCAPCDEA Council.

## **ARTICLE 9**

### **MEDICAL AND DENTAL, LONG-TERM DISABILITY, EMPLOYEE ASSISTANCE PLANS, AND MANAGEMENT LIFE**

- A. The APCD and SBCAPCDEA agree that medical and dental plan(s) shall be made available to employees.

The APCD and SBCAPCDEA agree that the availability of a choice between two health and dental plans are preferable to one plan alone.

- B. The APCD shall create a Committee to review and make recommendations to management on benefits for APCD employees. SBCAPCDEA shall be allowed to have one representative as a member of this Committee. This provision shall not be construed to waive the APCD's obligation to meet and confer on this item.
- C. The APCD and the SBCAPCDEA 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 District employees, the APCD shall be allowed to implement this plan in place of the plan with the lowest enrollment. This provision shall not be construed to waive the APCD's obligation to meet and confer on this item.
- D. The APCD shall continue to provide employees with an Employee Assistance Program (EAP). This program shall be paid for by the APCD.
- E. The APCD shall continue to provide employees with Long Term Disability (LTD) program. This program shall be paid for by the APCD.



- F. The APCD shall continue to provide employees with a \$20,000 life insurance policy (Management Life Policy). This program shall be paid for by the APCD.
- G. The APCD shall contribute \$147.62 biweekly toward the cost of the biweekly premium for employee-only medical plan coverage. The APCD shall contribute \$12.69 biweekly 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 status. Insurance plan premiums that exceed the APCD's biweekly contribution shall be paid by the employee through payroll deductions.
- H. Employees may insure their eligible dependents under medical and dental plans in accordance with the rules and regulations applicable to obtaining said dependent coverage.
- I. 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.

- J. Employees who are placed on a leave of absence resulting from a medical condition including injury, illness, pregnancy or childbirth shall receive the APCD contribution toward medical and dental plan coverage for a leave period up to twelve (12) months. Health insurance premium amounts exceeding the APCD contribution and for dependents shall be the responsibility of the employee during the leave period. If an employee has paid leave in excess of twelve (12) months, the APCD will continue to make its contribution toward medical and dental plan coverage until such time as the leave is exhausted.

Said benefit shall not be construed as a guarantee of employment.

## **ARTICLE 10**

### **STATE DISABILITY INSURANCE (SDI)**

- A. All employees must participate in the State Disability Insurance (SDI) and State Paid Family Leave (PFL programs). The employee shall pay all associated 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 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 11**

### **FLEXIBLE SPENDING ACCOUNT PLAN**

- A. All full and part-time employees in SBCAPCDEA represented classifications shall be eligible to participate in the APCD sponsored 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(s) (up to \$50,000 coverage);
5. Pre-Tax Personal Accident Insurance;
6. Pre-Tax Catastrophic Care Insurance.

These options are described in detail in the Flexible Spending Plan brochure and in the legal plan document which is available to all employees. Compensation received in accordance with Article 12 (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 subject to appropriate Internal Revenue Service regulations.

The APCD shall meet and confer with SBCAPCDEA prior to revising the benefit options unless mandated 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 12**

### **CAFETERIA DOLLARS**

- A. Effective June 29, 2009 the APCD shall contribute \$134.28 per pay period (based on a 26 pay period year) per employee as cafeteria dollars. Regular part time employees are eligible for this allowance based on a prorated equivalent of their employment status. Cafeteria dollars, which are received as cash, have 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. These dollars will be paid on a biweekly basis to each regular employee based on the prorated number of non-premium, regular, hours paid in a pay period. Employees hired or promoted into a position during the calendar year shall begin earning the appropriate dollars the first full pay period of their appointment.
- C. Effective the first pay period following Board approval of this MOU, the APCD shall make a onetime contribution of \$520.00 to cafeteria dollars in addition to the regular bi-weekly amount.

## **ARTICLE 13**

### **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 APCO 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 an SBCAPCDEA represented employee's immediate family is ill or injured and requires his/her presence and attendance, an employee may be allowed by the APCO to use his/her accumulated sick leave to attend such family member.
- F. Up to a maximum of five days (40 hours) of his/her accumulated sick leave may be allowed by the APCO to an employee for absence from duty because of any and each death in the employee's immediate family.
- G. For the purposes of Section 13E and 13F above, "immediate family" is defined as husband, wife, domestic partner, parent, brother, sister, child, stepchild, grandparent, grandchild, and mother-in-law or father-in-law of the employee.
- H. An employee may, when necessary and at the discretion of the APCO, 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 accumulated to his/her credit at the time of his/her termination from APCD service.
- J. Employees who retire from the APCD shall have their accumulated sick leave credit of up to 2,088 hours added to their term of service for purposes of calculating retirement benefits.

**ARTICLE 14**  
**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.

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

- B. Annual vacation accrual may accumulate up to the Maximum Allowable Accrual provided for in chart 14A above.
- C. Notwithstanding the provisions of Section 14B above, an employee absent due to a work-related injury, receiving Workers' Compensation Temporary Disability and unable to take vacation may accrue vacation up to the Maximum Allowable Accrual.
- D. Employees who have taken at least 40 hours of vacation within the last 12 months may, once during each calendar year and with the approval of the APCO, 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. Vacation conversion is subject to availability of funds.
- E. No payment in lieu of accrued vacation shall be made to any employee except upon termination of employment or as provided for in Section 14D. Terminating employees shall be paid for accumulated vacation as of the date of termination.
- F. An employee is not entitled to utilize vacation credits or 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 credits 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 APCO or his/her designee. A reasonable effort shall be made to allow vacations to be taken at a time 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.

**ARTICLE 15**  
**LEAVE DONATION**

The purpose of this program is to provide a mechanism for assisting employees who have exhausted paid leave due to a serious or catastrophic illness or injury. This section 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.

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); and
- must have exhausted all earned leave balances (including sick leave, vacation, overtime and holiday credits); except however, the APCO 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.

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; confidential medical information shall not be included in the notice.

- G. Donations shall be administered according to procedures established by the APCO, or his/her designee, and requested on a form prescribed by the APCO, or his/her designee. Signed approvals of the receiving and donating employees must be properly provided before a donation is processed.

Donors and hours donated shall be maintained as confidential payroll information.

- H. Nothing in this section 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 policy modify existing APCD rules, policies or agreements regarding unpaid leave of absence or family care leave.

## **ARTICLE 16**

### **FLSA/ADMINISTRATIVE LEAVE**

- A. 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 FLSA. Classifications which have been designated as exempt shall not receive overtime.
- B. In recognition of exempt employees' special responsibilities and commitment of time, the APCO or designee may authorize administrative leave for up to 108 hours in any fiscal year. This provision in no way establishes any right to overtime compensation or time off for such employees. The APCO, 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.

## **ARTICLE 17**

### **MILEAGE**

Employees who, when authorized by the APCO or 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 IRS for reporting of income.

## **ARTICLE 18**

### **STAND-BY DUTY**

Employees assigned to stand-by duty by the APCO 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 services;
  2. be available 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. No employee or other qualified person shall be paid for stand-by duty time and other compensable duty time simultaneously.

## **ARTICLE 19**

### **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 APCO to receive a bilingual allowance. The APCO shall designate the employee in writing prior to the allowance being effective. The employee shall retain such bilingual designation only until a change in assignments is reported in writing by the APCO to the Human Resources Manager.
- B. 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 APCO to duties requiring regular and frequent use of bilingual language skills he/she shall receive an allowance of \$25.38 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.
- C. As used in Section 19.A above, 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 20**

### **HOLIDAYS**

- A. Holidays regularly observed by the APCD for employees represented by this agreement are:
  - New Year's Day, January 1
  - 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, 4th Friday in November  
Christmas Day, December 25  
Floating Holiday (see Section 20 B below)

- B. All regular employees, including probationary employees, in a pay status (including paid leave) for any portion of pay period one each year, shall be credited with eight (8) hours holiday leave. Said leave shall accrue to the employee's vacation bank. Regular part-time employees shall receive a prorated equivalent. The floating holiday credit may be used in the same pay period in which it is accrued, subject to Section E below.
- C. All regular employees, including probationary employees, in a pay status (including paid leave) shall receive December 24, 2009 off as a one-time 8-hour holiday.
- D. All regular employees, including probationary employees, in a pay status (including paid leave) shall receive December 31, 2009 off as a one-time 8-hour holiday.
- E. Holiday leave shall be subject to the approval and/or taken at the direction of the APCO or designee.
- F. Each APCD 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 APCD 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 based on employment status.
- 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.
- J. When a holiday falls on an employee's regularly scheduled day off, the employee shall accrue eight (8) hours of compensatory holiday time. Said leave shall accrue to the employee's vacation bank.

- K. 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, 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) on an hour for hour basis for all hours worked up to eight (8) hours.
- L. 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.
- M. Holiday compensation shall be paid for a portion of a pay period as follows:
  - 1. Any regular employee who is absent-without-pay on a scheduled workday immediately preceding a holiday shall not have compensation reduced by reason of absence on the paid holiday.
  - 2. Any regular employee who is absent-without-pay on a scheduled workday immediately following a holiday shall not have compensation reduced by reason of absence on said regular holiday.
  - 3. Any regular employee who is absent-without-pay on a scheduled workday preceding and following a holiday shall be deemed to have been absent-without-pay on said holiday and shall not be compensated for said holiday.
- N. Notwithstanding of Section M, neither the first day of employment nor the last day of employment may be a holiday.

## **ARTICLE 21**

### **RETIREMENT**

- A. The APCD 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)
- B. The APCD may adjust the employee contribution rates to the Contributory Retirement Plans when such adjustments are based on an Actuarial 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. 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.

- C. The APCD shall deduct employee contributions toward retirement from employee salaries on a pre-tax basis.

## **ARTICLE 22**

### **TUITION AND TEXTBOOK REIMBURSEMENT**

To the extent funding is available, the APCD shall provide for tuition and textbook reimbursement for regular full-time employees up to a maximum of \$500 per fiscal year and in accordance with existing administrative regulations governing this program. Tuition reimbursement for regular part-time employees shall be prorated based on their part-time percentage.

## **ARTICLE 23**

### **JURY DUTY OR WITNESS LEAVE OF ABSENCE**

A leave of absence with pay not chargeable to sick leave or vacation shall be granted to an employee who serves on a jury or who is subpoenaed as a non-party witness for a civil or criminal proceeding in a court or administrative tribunal. All fees and perquisites collected by any officer or employee as a juror or a non-party witness shall be paid into the APCD Treasury in accordance with the procedures established by the APCD.

## **ARTICLE 24**

### **SPECIAL EQUIPMENT**

The APCD agrees that if employees are required by APCD to purchase special equipment that the cost of such equipment shall be paid for by the APCD. Any equipment purchased by the APCD shall be retained as APCD property.

## **ARTICLE 25**

### **PROFESSIONAL DEVELOPMENT PLAN**

- A. Employees shall be given an opportunity to read and sign their Professional Development Plan or 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 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 performance review.
- B. The employee shall receive a copy of the signed evaluation within thirty (30) working days of the date of the document.
- C. 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.

- D. The employee's supervisor shall complete the Professional Development Plan or Short form no later than the end of the pay period following the regular employee's anniversary date or the scheduled date of a special evaluation. If such special evaluation has been scheduled, the Professional Development Plan is the tool utilized. The time period may be extended if the supervisor or the employee is not available or an emergency situation exists.

## **ARTICLE 26**

### **REASSIGNMENT**

- A. An employee who wishes to be considered for reassignment within the same classification from one program or division to another program or division shall make a written request for such reassignment to the APCO or his/her designee. The request will be maintained for a period of one (1) year.
- B. Before any bargaining unit member is moved permanently from one location to another, the APCD shall provide the following notice:
  - 1. change in work site -- five (5) working days notice
  - 2. change in work station -- three (3) working days notice

In addition, the supervisor of the work area shall discuss the impact of the move with the affected employee(s).

## **ARTICLE 27**

### **CLASSIFICATION AND PROCEDURE**

- A. The parties reaffirm that the APCO or designee retains the sole responsibility and authority for the classification of the various positions in the APCD service.
- B. It is the intention of the parties that this section be included only to inform employees of established process and procedures to follow when requesting a classification study on their own behalf.
- C. 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 Manager. Within thirty (30) days, the Division Manager will either return the request to the employee or forward it on to Human Resources for his/her consideration and recommendation to the APCO. If the Division Manager returns the request to the employee, the employee may request that it be submitted to the APCO for consideration without the endorsement of the Division Manager.
- D. This section is not in any way modifying Section 418 (salary on temporary assignment out of class) of the CSRs.

**ARTICLE 28**  
**CIVIL SERVICE RULES**

Prior to implementing any modification(s) to the CSRs, the APCD shall notify SBCAPCDEA of any such change(s) and provide an opportunity to meet and confer. Any required negotiations regarding the proposed rule change(s) shall be concluded prior to presenting such change(s) to the APCD Board for its determination.

**ARTICLE 29**  
**AUTOMATIC PAYROLL DEPOSIT**

All employees covered by this agreement shall participate in the APCD's 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 30**  
**GRIEVANCE PROCEDURE**

30.1 Purpose

- a) To promote improved employer-employee relations by establishing grievance procedures on certain matters for which an appeal, hearing, or process is not provided by other existing regulations.
- b) To provide that grievances shall be heard and settled as informally as possible.
- c) To enable grievances to be settled as promptly and as closely as possible to the point of origin.
- d) To afford employees, individually or through qualified representation, a systematic means of obtaining consideration of complaints and disputes which constitute grievances as hereinafter defined.
- e) The SBCAPCDEA agrees to encourage an employee to discuss his/her grievance with his/her 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.

30.2 Grievance, Defined

For employees of the representation units covered by this MOU a grievance shall be defined and processed as indicated below. This definition and procedure shall prevail over any other grievance definition and procedure for employees whose classification is included in the representation units covered by this Memorandum.

- a) Issues subject to the grievance procedure are those involving an alleged violation, misinterpretation or misapplication of either this MOU or an established APCD policy expressed in rules, regulations, resolutions, ordinances, or a written agreement between the parties; except for those issues that provide their own means of appellate procedure such as, but not limited to, Workers' Compensation, Occupational Safety and Health Act, Fair Employment Practice Commission, or any of the management rights currently enumerated in the EERP and the impact or consequences of the exercise of said rights.
- b) SBCAPCDEA 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.

### 30.3 Basic Rules

- a) The procedure in this section shall be the exclusive means for the disposition of all written grievances arising under this MOU, and the APCD shall not be liable to SBCAPCDEA 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/her behalf without fear of restraint, interference, coercion, discrimination or reprisal.
- c) SBCAPCDEA representatives 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 section shall not be construed to confer any special privileges to SBCAPCDEA Representatives nor to relieve them of his/her obligation to fully perform all of the duties of his/ her APCD position in a timely and competent manner.
- d) Formal grievance forms shall be made available to the employee through the Human Resources representative and through SBCAPCDEA, 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 section 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 his/her SBCAPCDEA representative.

- f) Both the APCD and the grievant or his/her SBCAPCDEA representative shall be responsible for giving notice of meetings and conferences to their representative parties at least twenty-four (24) hours prior to any meeting regarding a grievance whenever possible.
- g) The employee has the right to the assistance of one SBCAPCDEA employee representative in addition to the SBCAPCDEA staff representative in the preparation and/or presentation of his/her written grievance. An employee is also entitled to represent himself/herself 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 his/her designation of representation other than designating himself/herself during the grievance procedure. In the event SBCAPCDEA determines there is no violation or the proposed settlement is just, SBCAPCDEA is not under an obligation to represent a grievant beyond Step 3 (Section 30.7 Formal Procedure) 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.
- h) The grievant may withdraw the grievance at any stage of the formal grievance procedure by affixing his/her signature in the proper space on the copy of the grievance form which shall then become a part of the APCD personnel records.
- i) If the employee's grievance is resolved at Step 1, 2, or 3 in the formal grievance procedure, as provided in Section 30.7, 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 his/her signature in the appropriate space indicated on the formal grievance form.
- j) 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 section, if the grievance is not settled at the prior level.
- k) 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 5 of the formal grievance procedure.
- l) All terms used herein will have the meaning as defined in the EERP when used in connection with this document, unless the context indicates or dictates otherwise.

#### 30.4 Time Off for Processing of Grievances

The grievant and/or his/her SBCAPCDEA representative 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 his/her 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 SBCAPCDEA representative is an APCD employee, 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 an APCD employee may be employed outside the same work unit or location, provided that said representative is no longer than ten (10) 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 SBCAPCDEA representative who is an APCD employee shall obtain permission from his/her supervisor and shall report back to his/her supervisor when the grievance work is completed.
- d) A grievant or grievant's SBCAPCDEA representative who is an APCD employee shall not leave his/her job to perform any grievance work unless his/her supervisor determines that his/her absence will not unduly interfere with the work of the unit in which he/she is 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 SBCAPCDEA representative must go into a division, section, or work unit to investigate or process a grievance, he/she shall be permitted to do so provided that:
  - 1. He/she explains the purpose of his/her visit, who he/she is visiting, and checks in and checks out with the supervisor of the division, section, or work unit, and
  - 2. Such investigation or processing does not unduly interfere with the work of the division, section, 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 an SBCAPCDEA representative when he/she is 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' work schedule, the attendance of such witness at the grievance hearing shall be conditional upon:
  1. Providing 48 hours notice to his/her APCD Division Manager of his/her proposed attendance;
  2. Such proposed attendance not unduly interfering with the operation of the APCD;
  3. Up to 3 needed witnesses may attend mutually called formal grievance hearings on paid APCD time to present their testimony when necessary.

### 30.5 Time Limits

- a) Time limits specified in Section 30.7 may be extended by mutual consent, in writing, of the grievant and/or the SBCAPCDEA representative, and the APCD.
- B. Failure by a grievant or SBCAPCDEA representative to file an appeal within the specified time limits provided in Section 30.7, 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 his/her representative the right to process the grievance to the next level.

### 30.6 Informal Procedure

Any employee having a grievance should verbally present same directly to his/her 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, including names and phone numbers, to process his/her grievance to the proper agency, organization, or authority.

### 30.7 Formal Procedure

#### Step 1. Immediate Supervisor

An employee may submit a formal grievance, on forms provided by the APCD or SBCAPCDEA as provided in Section 30.3, paragraph D, by filing one copy with his/her 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 his/her written decision to the grievant. Any grievance settled at this step shall be subject to the review and confirmation of the APCO 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 APCO does not confirm the settlement, the grievant may initiate Step 2 of this procedure.

#### Step 2. Human Resources/APCO review

If a grievance is not settled or an answer is not forthcoming, the grievance may be appealed in writing to Human Resources within seven (7) working days from the receipt of the decision of the immediate supervisor or his failure to respond to the grievance. Within ten (10) working days from the receipt of the appeal, the APCO and the human resource representative shall meet with the employee to discuss the grievance unless the parties agree not to meet. Human Resources - in consultation with the APCO, shall deliver a written decision to the grievant and his/her SBCAPCDEA representative within ten (10) working days from the meeting or from the date the parties agreed not to meet.

#### Step 3. Mediation

If within ten (10) working days after receipt of the written decision of the APCO, or his/her failure to respond to the grievance, the grievant is still dissatisfied, he/she may request the services of a mediator from the State Mediation and Conciliation Service. If both parties waive the right to mediation they may proceed directly to Step 4 Arbitration.

#### 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 who will arrange for arbitration. The Arbitrator shall be selected from a panel provided by the State Mediation and 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. 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. Individuals representing themselves shall be solely responsible for his/her share of the fees and expenses as outlined above.
- C. The Arbitrator shall have jurisdiction and authority to interpret the provisions of this MOU. The Arbitrator shall not have jurisdiction or authority to alter, in any way, the provisions of this MOU.
- D. Except as provided in Step 4G and 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 SBCAPCDEA 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 SBCAPCDEA 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 SBCAPCDEA, the issue or issues of the grievant as set forth in the written grievance shall be an issue to be submitted to arbitration.
- F. A grievance not appealed to arbitration within ten (10) working days after the mediator terminates mediation, 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

MOU 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 state or local law, ordinances or resolutions adopted by the APCD Board; however, if the Arbitrator, in his/her discretion, finds it necessary to interpret or apply such state or local law or ordinance or resolutions in order to resolve the grievance which has been submitted to arbitration, he/she may do so.
2. The interpretation, application, or legality of any or all of the CSR's; however, if the Arbitrator, in his 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, he/she may do so.
3. The interpretation, application, or the legality of the rules or regulations of the APCO; however, if the Arbitrator, in his 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, he/she 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 within forty (40) days from the date of the issuance of the award and decision of the Arbitrator. In such event, the APCD Board shall deliberate the grievance and, within a reasonable period of time (not to exceed an additional forty (40) days), shall arrive at a decision which shall be final and binding. During such deliberations the APCO, or his designated representative, and the SBCAPCDEA 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.

### **ARTICLE 31**

#### **TECHNOLOGICAL AND ECONOMIC CHANGES**

The APCD agrees to consult with SBCAPCDEA when technological or economic changes occur which would significantly affect the employees covered by this MOU or would result in a substantial number of layoffs of employees represented by SBCAPCDEA. For purposes of this Article, "substantial" shall be defined as being in excess of 3% of the unit size. The APCD shall also provide SBCAPCDEA with a

designation of affected classes, the number of positions in each affected class and an abstract of the employees affected by a layoff at least thirty (30) calendar days prior to the effective date thereof.

### **ARTICLE 32**

#### **USE OF APCD COMPUTER RESOURCES**

Employee's 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) issued March 12, 2002. The parties agree that occasional and incidental use of the APCD's computing resources for SBCAPCDEA 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 33**

#### **TRANSPORTATION DEMAND MANAGEMENT (TDM)**

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

### **ARTICLE 34**

#### **NO STRIKE CLAUSE**

Employees represented by SBCAPCDEA shall not take part in any 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.

SBCAPCDEA 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, 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, or other 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.

In the event that a strike, work action or other concerted activity occurs in violation of this agreement, SBCAPCDEA 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.

**ARTICLE 35**  
**RETURN TO WORK**

APCD may adopt programs, such as the County Department of Public Works' "Modified or Alternate Temporary Disability Duties Program," which allow the temporary assignment of modified or alternate duties to an employee temporarily unable to perform some or all the duties of his/her position due to illness or injury. Prior to implementing a new program, the APCD shall notify the SBCAPCDEA and, if requested, meet and confer with SBCAPCDEA on elements of the proposed program within the scope of representation.

**ARTICLE 36**  
**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. In the absence of specified provisions in this Agreement such practices and procedures are discretionary.
- B. This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any other prior or existing understandings or agreements by the parties, whether formal or informal, regarding any such matters are hereby superseded or terminated in their entirety.
- C. This Section does not apply to the Civil Service System or to the rules adopted to administer the Civil Service System.

**ARTICLE 37**  
**SEPARABILITY**

Should any provision of this agreement be held inoperative, void or invalid by the state or federal legislature or 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 38**  
**OBLIGATION TO MEET AND WAIVER CLAUSE**

- A. 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 SBCAPCDEA expressly waive and relinquish the right, and each agrees that the other shall not be obligated during the term of this MOU 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.

- B. In the event any new practice, subject or matter arises during the term of this agreement and an action is proposed by the APCD, SBCAPCDEA 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 SBCAPCDEA reserves the right to then take whatever lawful action it deems necessary. The waiver of any breach of any term or condition of this MOU by either party shall not constitute a precedent in the future enforcement of all its terms and conditions.

### **ARTICLE 39**

#### **MEDIATION AT TIME OF IMPASSE**

- A. If the management representatives and SBCAPCDEA fail to reach an agreement on matters within the scope of representation, and the parties are unable to agree on a method of solving the dispute, an impasse meeting shall be scheduled promptly by the parties involved, unless they mutually agree to extend the impasse date. The purpose of such impasse meeting is to permit review of the positions, needs and interests of SBCAPCDEA and the APCD.
- B. At that meeting either party may request mediation. SBCAPCDEA and the APCD shall then proceed to mediation to assist the parties in the resolution of the dispute with a mediator from the State Mediation and Conciliation Service.
- C. The mediator shall review the information presented by SBCAPCDEA and the APCD and shall obtain such other information as considered necessary. The mediator shall hold meetings and attempt to resolve areas of disagreement between SBCAPCDEA and the APCD.
- D. The mediator shall make no public recommendations nor take any public position regarding issues. All mediation sessions shall be confidential.
- E. The cost of mediation and related administrative costs, if any, shall be divided equally between SBCAPCDEA and the APCD.
- F. In the event mediation is not successful, SBCAPCDEA and the APCD may mutually agree to submit the relevant facts and issues to a fact-finder(s) in accordance with the procedures established in the EERP.

SANTA BARBARA COUNTY  
AIR POLLUTION CONTROL DISTRICT

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

SANTA BARBARA COUNTY  
AIR POLLUTION CONTROL DISTRICT  
EMPLOYEES ASSOCIATION

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