

CONDITION OF EMPLOYMENT- Conditions of employment means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise affecting working conditions. It does not include policies, practices, and matters:

Relating to political activities prohibited under Subchapter III of Chapter 73 of Title

Relating to the classification of any position:

To the extent such matters are specifically provided for or excluded by Federal statute.

CONTRACT/AGREEMENT-This negotiated agreement.

DAYS - All references to "days" in this Agreement are to calendar days unless specifically stated otherwise.

DESIGNEE - Any person who is assigned, in writing by the Activity's Head or the Union President, the authority and power of either the Activity's Head or the Union President, respectively.

DETAIL- The temporary assignment of an employee to a different position for a specified period with the detailed employee returning to his or her regular duties at the end of the detail.

EXCLUSIVE REPRESENTATIVE - for purposes of this agreement, any labor organization which is certified as the exclusive representative of employees in an appropriate unit pursuant to Section 7111 of this title (Title VII, USC); or was recognized by an Activity immediately before the effective date of this chapter (5 USC 7103) as the exclusive representative of employees in an appropriate unit on the basis of an election, or any basis other than an election, and continues to be so recognized in accordance with the provisions of this chapter.

FORMAL DISCUSSIONS -- A meeting, or discussion, between an agency representative and one or more bargaining unit employees that is formal in nature and concerns a grievance, personnel policy or practice, or condition of employment.

GRIEVANCES - Any written complaint made in accordance with Article VII, Section 4 by: Any employee concerning any matter relating to the employment of the bargaining unit employee; any labor organization concerning any matter relating to the employment of any bargaining unit employee; or any bargaining unit employee, labor organization, or Activity concerning the effect or interpretation, or a claim of breach of a collective bargaining agreement or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment (sec5 USC, 7103, Definitions; application).

HE/SHE/HIM/HER - Means both genders unless otherwise indicated.

HEALTH CARE PROVIDER- Any individual who is authorized to provide health care under state law.

IMPASSE - The inability of the employer and the union to arrive at a mutually agreeable

decision concerning negotiable matters under this agreement through the negotiation process.

LOCAL UNION - National Federation of Federal Employees Local 1028.

THE MANAGEMENT OFFICIAL - An individual employed by the activity in a position, the duties and responsibilities of which include requiring or authorizing the individual to formulate, determine, or influence the policies of the activity.

MAY/CAN - Action is optional.

MUST/SHALL/WILL - Action is mandatory.

NORMAL DUTY HOURS - The regular assigned tour of duty in a workday for an employee.

OFFICIAL TIME - Time granted to the local Union officials for representational purposes without being charged to employee's leave or resulting in loss of pay, providing the employee would otherwise be in a duty status.

PAST PRACTICES-A term used to describe behavior that is consistent and of significant duration such that it takes the form of an unwritten but enforceable policy, if it concerns conditions of employment.

PROFESSIONAL EMPLOYEE- Professional employee means an Employee engaged in the performance of work requiring knowledge, of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (refer to 5 USC 7102(a)(15) for further definition

SENIORITY - The time of employment from Service computation Date (SCD) to present.

THE STATUTE - The Federal Service Labor Management Relations Statute, Chapter 71 of Title 5, United States Code.

SUPERVISOR - An individual employed by an activity having the authority in the interest of the Activity to: hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, remove employees; to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.

SUPPLEMENTS - Additional articles, negotiated during the term of this agreement, to cover matters not covered by this agreement that become amendments to, or amend this agreement.

UNION-EMPLOYER MEETINGS - Oral or written discussions or meetings which are held for communication and exchange of views between representatives of the employer and the Union for the purpose of obtaining the union's or management's views, policies, and procedures on matters of concern to employees of the unit. Discussions and meetings do not include complaints in progress under grievance and appeal procedures. It is not mandatory that the end result of the meeting/discussions be agreement between the parties.

UNION OFFICIAL - Any accredited National/District representative of NFFE and the duly elected or appointed official of NFFE Local 1028.

UNION REPRESENTATIVE - Any representative/steward identified as such in accordance with this Labor Management Agreement. Union Officials may or may not be identified as a representative.

ARTICLE III

THE EMPLOYER RIGHTS AND THE EMPLOYER'S OBLIGATION TO NEGOTIATE

Section 1 – General: In the administration of all matters covered by this Agreement, the parties shall be governed by all existing and future Federal laws and regulations. The Employer does not relinquish any rights provided under law, Presidential directive, or Executive Order. Nothing in this article shall preclude the Employer and the Union from negotiating matters covered by 5 U.S.C. 7106 (b), The requirements of this Article shall apply to all supplemental, implementing, subsidiary, or informal agreements between the Employer and the Union. The provisions of this article shall not nullify or abridge the rights of employees or the Union to proceed with grievances under the procedures set forth in Article 7 of this Agreement. In addition. any statutory right to bargain over the impact of any decision involving a retained right, and any statutory right to negotiate procedures for implementing such decisions. shall not be abridged by anything in this Article.

Section 2- Employer Rights: In accordance with 5 USC 7106(a), the Employer retains the right: To determine the mission. budget, organization, number of employees, and internal security practices of the Activity.

To, in accordance with applicable laws. hire. assign, direct, layoff: and retain employees in the Activity, or to suspend, remove. reduce in grade or pay. or take other disciplinary action against such employees.

To, in accordance with applicable laws. procure goods and services through contracts or by other authorized means.

To, in accordance with applicable laws. assign work, to make determinations with respect to contracting out, and to determine the personnel by which activity operations shall be conducted.

To, in accordance with applicable laws and, with respect to filling positions, make selections for appointments from among properly ranked and certified candidates for promotion, or any other appropriate source. To take, in accordance with applicable laws. whatever actions may be necessary to carry out the Activity's mission during emergencies.

Section 3 - Employer Prohibitions: The Employer cannot bargain matters affecting conditions of employment which are barred from the bargaining process by law, presidential directive, or Executive Order, including matters which are relating to political activities prohibited under 5 U.S.C. Section 7321, relating to the classification of any position. or fo the extent such matters are specifically provided for by government-wide rules, regulations. or Federal Statute.

ARTICLE IV
EMPLOYEE RIGHTS

Section 1- General: Employees in the Units shall be protected in the exercise of their right, freely and without fear of penalty or reprisal, to form, join, and assist in Union activities, or to refrain from such activities. This agreement does not prevent any employee, regardless of employee organization membership, from bringing matters of personal concern to the attention of their Supervisor in accordance with applicable laws, regulations, or policies, or from choosing his or her own representative in a statutory appeal action. Nothing in this Agreement shall abolish or annul any employee right or require an employee to become or to remain a member of a labor organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions. The Employer shall not discipline or otherwise discriminate against any employee because he or she has filed a complaint or given testimony under the Agreement, or the grievance procedure set in Article VII, for redressing wrongs to an employee,

Section 2 -Publicity of the Union to Employees: The Employer shall take such action consistent with law or regulation, as may be required, in order' to inform employees of their rights and obligations; as prescribed in the Act, and this Article. See Article XVIII for additional publicity information.

Section 3 - Employee Accountability: An employee is accountable only for the performance of official duties as cited in the position description and compliance with standards of conduct for Federal employees.

Section 4-Participation in Unofficial Activities: The Employer will not in any manner require employees to invest their money, donate to charity, or participate in. activities. meetings, or undertaking not related to their performance of official duties.

Section 5 - Right to Grieve: Employees have the right to grieve a supervisor's directive if that directive is grievable; however, they must first comply with the directive, if legal, and then grieve afterward. Grievance procedures are covered in Article VII of this agreement.

Section 6- Privacy Act: The Employer and the Union will maintain the confidentiality required in the Privacy Act to prevent the disclosure of employee protected information.

Section 7 - Right to Union Representation: Each unit employee, if he/she chooses, may be represented by the Union at any investigatory examination of an employee by the Employer, if the employee reasonably believes that the examination may result in a disciplinary or adverse action. Employees have the right to be represented by the Union in the presentation of any grievance, as defined in Article VII, Grievance procedure, Union Members may be represented by the Union in complaints not covered. by this Agreement, before other tribunals or forums (for example. EEOC. Office Special Counsel, MSPB, and OPM.)

Section 8 - Right to Official Time to Prepare for Complaints, Grievances and Appeals:

Bargaining Unit Employees may use reasonable amounts of official time when preparing for complaints, grievances, and appeal proceedings as defined by the Agreement. The employee shall first notify their supervisor via electronic mail or in writing and an estimate of the amount of time required will be provided. If work requirements preclude an immediate release. the employee and supervisor will work together to establish a reasonable amount of time for official time to prepare. The employee may utilize the approved official time at the work site or away from the work site or official place of duty, with approval of the supervisor.

Section 9 - Personal Appearance: The parties agree that the items of clothing worn by an employee shall be neat, clean and well maintained.

ARTICLE V
RIGHTS OF THE UNION AND REPRESENTATION

Section 1: Recognition. The Employer will recognize representatives of the NFFE National Office and agrees to meet with authorized local and national representatives of the Union at reasonable times on appropriate business provided that the matters to be discussed are given in advance to the Employer. The time of such Union-Employer meetings will be mutually agreed upon.

Section 2 - Rights:

- a. The Employer agrees that the Union has the right to represent all employees in the Units in negotiations and meetings with the Employer all matters affecting their conditions of employment under this agreement, except as to those rights reserved for management in Article III of this Agreement, and under 5 USC 7106.
- b. The Employer agrees to respect the rights of the Union and to meet jointly and negotiate with the Union on such matters, and further agrees to inform the Union regarding formulation and implementation of new policy or change in policy affecting Unit employees and/or their conditions of employment.
- c. The Employer recognizes the right of the Union to submit proposals or views directly to the Chief Mission Support Activity and/or Activity Head for consideration when changes in organizational and managerial procedures are proposed by the Employer. If cessation of the Mission Support Division chief position occurs, the parties may mutually agree to another position/individual to whom the Union may make submissions.
- d. The Union, in consonance with its right to represent, has the right to propose new policy, changes to policy, or resolutions to problems and to be present at formal discussions or meetings with employees pertaining to policy or other general matters affecting the employees in the Units.
- e. The Union will be provided an opportunity to be represented at any examination by a representative of the Employer of an employee in the Units in connection with an investigation if (1) the employee reasonably believes that the examination may result in

disciplinary action against the employee; and (2) the employee requests representation. Once a union officer has received a request for representation by an employee and has notified the Chief, Mission Support Activity or the Activity Head of the representation request, the employer shall cease examination or inquiry until representation is available.

f. The Employer will recognize the duly-elected Local Union Officials.

g. The Union will supply the Employer in writing, and will maintain on a current basis, a list of Union Officers, Officials, and Stewards, including the area of representation of each Steward.

Section 3 - Union Stewards: The Union may designate stewards in the various organizations having employees in the Units. The Union shall determine the number and location of stewards; however, the maximum number of three (3) stewards may be designated for the Norfolk District area. Stewards to support the field offices other than the Norfolk District area may be designated as required, but not to exceed one (1) per field office. The Stewards will represent the employees of their designated area(s) in dealings with supervisors about the impact and implementation of personnel practices and policies, and other matters affecting working conditions of employees in the designated area(s).

Section 4 - Union Officials as Representatives: Local Union Officials are authorized to represent individuals in any part of the bargaining units provided the representation is in compliance with the provisions of the Privacy Act. Upon request from either party, stewards and supervisors shall discuss items of concern in the application of this Agreement to avoid misunderstandings and to deter complaints from either party. The Union will be provided an opportunity to be represented at all formal discussions regarding general Activity personnel policies or other matters affecting the overall working conditions.

Section 5 -- Labor Relations Training Sessions: The Employer agrees to grant administrative leave to employees who are Local Union Officials and Stewards for the purpose of attending Union-sponsored training sessions, provided the training is of mutual benefit to the Union and the Employer. Administrative leave for this purpose will not exceed a total of one hundred sixty (160) hours total among all Union Officials and Stewards within a twelve (12) month period and does not count against the Union's allocation of authorized official time as described in Section

of this article. A written request for administrative leave will be submitted at least one (1) week in advance by a Union Officer to Chief. Mission Support Division subject to supervisor's approval. The request will contain information about the duration, purpose, and nature or the training.

Section 6 - Annual Allocation of Official Time: The local Union will be provided 760 hours of official time in a 12-month period and the Commander may grant such additional official time to the Union at his or her discretion. The Union's Allocation of Official Time will be used for Union activities including but not limited to Negotiations, Representations, Meetings, Administrative Tasks, and Labor-Relations Meetings. The Union is the sole deciding authority over how to distribute this time amongst its members. Union Officials and Stewards will be provided reasonable time for receiving, preparing and presenting a complaint, grievance or appeal; and the official time required must necessarily depend on the facts and circumstances of each case - e.g. number and nature of allegations, number and complexity of supporting evidence, the volume of supporting evidence, availability of documents and witnesses and similar considerations.

Section 7 - Time and Attendance: For the purposes of time and attendance a cost code for official union time will be designated and provided to the Union each year, and used when attending meetings described in Section 6 and for other official union duties. Neither Local Union Officials nor Bargaining Unit Employees who are union members acting on behalf of the union will use any other code. Union official time will not be project funded.

Section 8 - Reasonable Time to Conduct Union Business: Union Officials, including Stewards, shall be permitted reasonable time during working hours without loss of leave or pay to effectively represent employees in the units in accordance with this agreement. Use of official time will include the time required to represent employees in the units and the travel required to meet the needs of the individual case.

Section 9 - Union Meetings and Membership Drives: Internal Union business, such as attending Union meetings, will be conducted during the non-duty hours of the employees involved. Upon request, and subject to normal security limitations, the Union shall be granted authority to conduct no less than two (2) membership drives of up to thirty (30) days duration each per year, before and after duty hours and at break periods and lunch periods. Union Officials may conduct membership drives during duty hours, but this time must be charged against the Union's annual official time allocation as described in Section 6. Upon request, the Employer shall provide the Union with tables, bulletin boards, and easels for use in such drives.

Section 10 - Restraint: There shall be no restraint, coercion or discrimination against any Union Official because of the performance of duties in consonance with this Agreement and the Act, or against any employee for filing a complaint or acting as a witness under this Agreement, the Act or applicable regulations.

Section 11 - Periodic Labor Relations Meetings, Being that periodic discussions between the Employer and the Union can foster good working relationships and keep both parties informed of areas of concerns, the parties agree to meet on the first day of each quarter, for not more than an hour, unless both parties agree to extend the meeting beyond one hour. Either party may suggest five (5) work days prior to each meeting that the meeting is not necessary and Upon agreement by the other party, the meeting will be cancelled, The Union agrees to have its Officials and, if practicable, a Representative from NFFE, present for each meeting. The Employer agrees that the Chief, Mission Support Division or the Activity military deputy will be present for each meeting, along with the Activity Head if practicable. The Employer agrees to provide the location for the meeting, with preference for the 4th floor conference room in the Waterfield Building as the first option.

Section 12 -Assignment of Military Incumbents: Management agrees that they will notify the Union when assigning military incumbents to civilian positions and negotiate in good faith the impact on unit members adversely affected.

ARTICLE VI
COLLECTIVE BARGAINING NEGOTIATIONS

Section 1- Policy Additions and Changes: Both parties to this Agreement agree to conduct negotiations in good faith. The Employer agrees to give a notice of thirty (30) days to the Union

prior to an addition or change to an established Agency policy during the life of this Agreement,

except as to those changes in policy that relate to security or are mandated by law or regulation.

For additions or changes to Agency policy that must be implemented prior to a 30 day notice, the

Employer shall notify the Union for Impact and Implementation bargaining and will provide full

and good faith negotiations for Union suggestions and comments after the fact, Notification by the Employer shall be provided via email to all Union Officials. Should the Union desire negotiation of the impact and implementation of the policy addition or change; it will request be when a Union officer notifies Chief, Mission Support Division and/or CPAC via email of

receipt of the proposal; or twelve (12) days have passed. The effective date of the implementation shall be extended until negotiations have been concluded; except for government-wide rules, laws. or regulations, where matters involving security or safety, or the Employer can establish a compelling need. Within seven (7) days after such a request for negotiations, the Union will submit written proposals for agreement language to the Employer.

Section 2 - Scope of Negotiations: Negotiation will be in accordance with subjects appropriate for negotiation except as limited by 5 U.S.C. 7106, 5 U.S.C. 7103(a)(14), and other applicable federal laws. If the change itself is not subject to negotiations, its impact upon the employees and procedures for implementing the change shall be negotiated, inappropriate.

Section 3 - Conduct of Negotiations: Negotiations may be requested by either party. Such requests shall state the specific subject matter to be considered. Reasonable official time for preparation for negotiations will be mutually agreed to on a case-by-case basis, based on the number and complexity of the issues to be negotiated. The following apply to negotiations: will be conducted during normal Activity duty hours.

- a. Will be conducted during normal Activity duty hours.
- b. Will be on official time with the Union using the designated Union cost code for Local Union Officials and Stewards.
- c. Will be in at a facility provided by the Employee unless otherwise agreed upon by all parties.
- d. Will be balanced in participation with the total number of Union representatives not exceeding the number of Employer representatives.

Section 4 - Impasses: When the parties to the Agreement cannot agree on a negotiable matter and an impasse has been reached, the item shall be set aside. After all negotiable items on which agreement can be reached have been disposed of; the parties shall again attempt to resolve the previously set aside issues at impasse. Either or both parties may seek the services of the Federal Mediation and Conciliation Service. When the services of mediation do not resolve the impasse, either party may seek the services of the Federal Service Impasses Panel. When the Employer believes that a matter is nonnegotiable, it will immediately advise the Union in writing of its rationale. The Union has the right to proceed to the Federal Labor Relations Authority in accordance with applicable laws and regulations to determine whether or not a compelling need exists if that is the reason cited by the Employer for the claim of non-negotiability.

Section 5- Executive Orders. DoD. HODA and USACE Policy: Executive Orders. Department of Department of Defense, Department of the Army and Corp of Engineers Orders. Directives. Regulations and Policy that come into effect during the life of the Agreement shall be implemented in accordance with 5 U.S.C. Chapter 71, Section 7117 (a)(2), thus requires impact and implementation bargaining at the local level (NFFE 1028).

Section 6- Past Practices: Those privileges of employees which by custom, tradition, and known past practices have become an integral part of their working conditions shall not be abridged as a result of not being enumerated in this Agreement, Neither the union nor USACE waives the right to bargain over quality initiatives.

ARTICLE VII
GRIEVANCE PROCEDURES

Section 1 - Settling Disagreements: The expeditious resolution of grievances at the lowest possible level is in the best interest of the government service. This procedure is designed to provide an ethical, orderly, and equitable means for resolving complaints and grievances. Unit employees covered by this agreement may present a grievance which may be adjusted with or without Union representation at the grievant's discretion. However, the Union shall have the right to have its representative present at the adjustment. This right to individual representation does not include the right to take the matter to arbitration, unless the Union agrees to do so.

Section 2 - Negotiated Grievance Procedure:

The Union has the right under the Statute (5 U.S.C. 7121) as amended to establish a grievance procedure; however, the following items are not included:

- a. Claimed violation of statute related to prohibited political activities.
- b. Retirement, life insurance, or health insurance.
- c. Suspension or removal for national security under 5 United States Code, Section 7532.
- d. Examinations for employment, certification, or appointment.
- e. Classification of any position which does not result of the reduction in grade or pay of any employee.
- f. Termination of a temporary promotion.
- g. Termination of probationary employees.
- h. Adoption of or failure to adopt an employee suggestion or invention.

In addition, bargaining unit employees, who are dues paying members of NFFE/IAMAW Local 1028, shall be entitled to Union representation in the following areas that are outside the scope of the grievance procedure:

- a. Merit Systems Protection Board (MSPB) reviews and investigations.
- b. Office of Workers' Compensation Programs (OWCP).
- c. Equal Employment Opportunity matters and EEOC charges and investigations.

d. Federal Labor Standards Act (FLSA) status and deliberations.

c. GAO and other appeal procedures established by law or regulations

Nothing in this section will prevent employees from exercising the option of appealing certain adverse actions to the MSPB, or reporting any prohibited personnel practice defined in law through the statutory appeals process, provided that the employee has not filed a formal grievance on the matter in accordance with this Agreement.

Presenting and Representing a Grievance; A grievance may be undertaken by the Union, an employee, or group of employees. The Union has the right to represent the employee in such grievances if requested by the employee. However, any employee or group of employees may personally, present a grievance and have it heard without representation by the Union provided that the Union is given the opportunity to be present at all discussions during the grievance process. Because such grievances will fall under this CBA, the Union's role in being present at grievances where it is not representing an employee(s), is to observe the proceedings and resolutions as they relate, impact, or influence this Agreement to ensure fairness, consistency, and that this Agreement is not damaged or diminished. In exercising their rights to present a grievance, employee representatives shall be unimpeded and free from restraint, coercion, discrimination, and/or reprisal from the Union and/or the Employer's agents.

Section 4 - Grievance Resolution Procedure/Process: The following procedures are established for the resolution of grievances:

Informal Resolution. Grievances shall normally first be discussed informally by the employee and his representative, if any, and the immediate supervisor involved. The grievant has informally discussed the matter with his/her first line supervisor without resolution. Grievances must be presented within twenty-one (21) calendar days after the date of the event which precipitated the grievance. Such grievances shall not be presented or considered i.it a later date except where circumstances beyond control of the employee prevent timely presentation.

STEP 1: This step is also an informal procedure/step of grievance if the matter is not resolved within seven (7) days of the first-line supervisor's final decision, or lack of a decision, the grievant/union may file a written grievance to the second-line supervisor within seven (7) days. The second level supervisor shall respond in writing to the written grievance and this written response shall be given to the grievant within seven (7) days after receipt of the grievance. The grievance issue(s) submitted in Step 1 shall be the only issue(s) considered at any further step in the grievance procedure. Additional issues can be initiated at Step 1 as a separate grievance,

STEP 2: This step is also informal procedure/step of grievance if step 1 does not resolve the matter, a request (by management and/or the union) will be made within ten (10) days of receipt or the Step 1 decision to the Federal Mediation and Conciliation Service (FMCS) for the assistance of a mediator. The mediation session(s) will be held at the earliest mutually agreeable time. The parties (supervisor and employee) will make an earnest effort to resolve grievance(s) in this dispute resolution step. During this step:

- a. There will be no formal record of mediation meetings made by either party; mediation attempts will not be part of subsequent arbitration.
- b. Mediation will begin with a mediation conference which will be attended by all grievant and the first-line level supervisor. only
- c. Mediation meetings will be held at the Headquarters, Norfolk District or mutually agreed location.
- d. Any charges imposed for services by FMCS will be equally covered management and union.
- c. The mediator may not be a party to any subsequent proceeding should mediation fail.
- f. Any materials presented to the mediator shall be returned to the party presenting the materials at the termination of mediation.
- g. The mediator will be asked to submit a recommendation in writing to both parties.

STEP 3: This is a formal step. The grievance, materials presented to the mediator, final arguments by the parties, and the recommendation of the mediator will be presented to the Activity Head within seven (7) days of the end of mediation. The Activity Head will issue a

decision within seven (7) days after receipt of this information. The decision of the Activity Head is final unless the Union invokes arbitration.

Formal STEP 4: Arbitration per Article 8 of this Agreement.

Section 6 Advanced Placement of Grievances: An employee may initiate a grievance at a higher step than the above procedure when the requested relief or corrective action is beyond the control or authority of the Employer official at a lower step. The grievance must be initiated within seventeen (17) days of the time the grievant could reasonably have been expected to be aware of the incident.

Section 7 - Extensions: Extension for up to seven (7) days of the deadlines in this article will generally be granted with written consent by the other party.

Failure of officials of the Employer to act within the agreed upon time frames will allow the grievant to proceed to the next step of the grievance procedure. Failure of the grievant to act within agreed upon times frames will allow the Employer to reject the grievance from consideration. Extension will be granted for unusual cases provided it is mutually agreed upon by the parties.

ARTICLE VIII ARBITRATION

Section 1 - Referring to Arbitration: Should the parties fail to reach a satisfactory adjustment of issues through the grievance procedure defined in Article 7, the Union or the Employer may exercise the option to refer the matter to arbitration. To be considered timely, the party requesting arbitration, Within twenty (20) days after receipt of the final grievance decision, must deliver the request to refer the matter to arbitration to the Union or Chief, the Management Support Division.

Section 2--Arbitrator Selection: Within seven (7) days from the date of the request for arbitration either party may request the Federal Mediation and Conciliation Service (FMCS)

provide a list of seven (7) impartial persons qualified to act as arbitrators. The parties shall arrange to meet within ten (10) days after the receipt of such list. If not able to mutually agree upon one of the listed arbitrators, then the Employer and the Union shall each strike one (1) arbitrator's name from the list of seven (7) names repeating this procedure until only one (1) name remains. This striking of arbitrators shall take place in a single meeting, either in person or by telephone. The remaining individual shall be the duly selected arbitrator. The parties will toss a coin to determine which party shall have the first strike. Should either party refuse to participate in the selection of an arbitrator, fail to take action, or unduly delay the proceedings, the other party shall be entitled to unilaterally select an arbitrator. Should the other party, the non-delaying party, not desire arbitration, the matter shall be dismissed from arbitration, closed, and the grievance decision shall stand.

Section 3 -- Arbitration Date Selection and Modification: After an arbitration hearing date has been agreed to by the parties, if it becomes necessary to postpone, either party may notify the arbitrator. If there is a charge, the party requesting the postponement will pay said charges. The party (the Union or the Employer) referring the issue to arbitration may withdraw the request for arbitration at any time, provided the party withdrawing the request for arbitration, agrees to bear the cost of all fees and expenses of the arbitrator accrued to that point.

Section 4 - Arbitrability:

The arbitrator shall have the authority to resolve any questions of arbitrability and interpret and define the explicit terms of this Agreement and agency policy, as necessary to render a decision. The arbitrator shall have no authority to add to or modify any terms of this Agreement or agency policy. Subject to Section 8 of this Article, the decision of the arbitrator shall be final and binding on the parties of this Agreement.

Section 5 - Arbitration Funding: The arbitrator's fee and expenses of arbitration including cost of the arbitrator's reasonable travel expenses (based upon DoD Joint Travel Regulations) and per diem, shall be paid by the losing party. Further the Employer and Union shall share equally the expenses of any mutually agreed upon services in connection with an arbitration; not related to the arbitrators' cost. In those cases where the arbitrator's decision

does not clearly establish the "losing party", costs will be shared equally by both parties. The arbitration hearing will be held on the Employer's premises during the regular day shift hours of the basic work week. The aggrieved employee's representative(s), the employee and employee witnesses shall be in a pay status without charge to leave while participating in the arbitration hearing.

Section 6 - Limited Powers: The arbitrator shall have no power to add or subtract from, or to modify any of the terms of this agreement.

Section 7 - Arbitration Scope: Arbitration under this Article will be one of the following circumstances:

- a. A stipulation of facts to the arbitrator can be used when both Parties agree to the facts at issue, and further agree that a hearing would serve no useful purpose. In this case, all facts, data, documentation, etc., are jointly submitted to the arbitrator with a request for a decision based upon the facts presented.
- b. An arbitrator inquiry can be used when the Parties agree that a formal hearing would serve no useful purpose. In this case, the arbitrator would make such inquiries as he/she deemed necessary (e.g., inspecting the work sites, taking statements).

An arbitration hearing should be used when a formal hearing is necessary to clarify the matter in dispute and develop the facts that are in dispute between the Parties, and/or when the Parties cannot agree to the procedures set forth in the previous two paragraphs of this Section. In this case, a formal hearing will be covered and conducted by the arbitrator.

Section 8 - Arbitration Decision: The Arbitrator will be requested to render a written decision as quickly as possible, but in any event not later than thirty (30) days after conclusion of the hearing unless the parties otherwise agree.

Section 9 -- Arbitration Exceptions/Review: Either party may seek judicial review of the arbitrator's decision on matters under MSPB Jurisdiction which could have been appealed to the MSPB within thirty (30) days of the issuance of the decision. Such review will be sought in the United States Court of Appeals for the Federal Circuit in accordance with the provisions

of 5 USC, Section 7703. Either party may file an exception with the FLRA to the arbitrator's award in any matter other than those described above. Such exception must be filed within thirty (30) days of the issuance of the decision in accordance with Authority procedures. If no exception to an Arbitrator's award is filed during the thirty (30) day period beginning on the date of the award, the award shall be final and binding. The Employer or the Union shall take the action required by an arbitrator's award.

ARTICLE IX
DISCIPLINARY AND ADVERSE ACTIONS

Section 1 - General: The Employer shall Discipline in accordance with AR 690-700, Subchapter 751 (Discipline). A disciplinary action is defined as an official letter of reprimand or a suspension of fourteen (14) days or less. An adverse action is defined as a suspension of fifteen (15) days or more, removal, reduction in grade, or a furlough of thirty (30) days or less. Disciplinary and adverse actions must be undertaken only to promote the efficiency of the service, shall be fair and equitable.

Section 2 - Employee Right to Union Representation: Employees of the Units are entitled to Union representatives at any examination by officials of the Employer, if they reasonably believe the discussion could result in disciplinary action and request such representation. Employees will be notified of this right annually in accordance with the Weingarten Act.

Section 3 - Notice: All proposed disciplinary or adverse actions, except in the case of a letter of reprimand, shall be preceded by a written notice to the Employee who is subject of the action, and this notice shall inform the employee:

- a. Of the specific incident or reasons for the proposed action;
- b. Of the name of the deciding official to whom the employee may respond;
- c. That the employee may answer orally and in writing and may submit affidavits or other written statements in support of that answer;
- d. That the employee's response will be considered by the deciding official;
- e. That the employees may be represented by a Union representative; an attorney; or other representative;
- f. Of the employee's status during the notice period;
- g. That the employee and/or representative shall be granted a reasonable amount of official time to receive copies of and review the material relied on to support the reasons in the notice, to secure affidavits or other written statements, and to prepare an answer to the notice. An employee will be given at least thirty (30) days advance written notice of an adverse

action. The thirty (30) days advanced written notice does not apply where the Employer is taking action pursuant to the "crime provision" (5 U.S.C. Section 7513(b)(1)) or in the event of an emergency furlough.

Section 3 - Notice for Removal: Concerning performance-related issues, please see Article XIV of this Collective Bargaining Agreement.

Section 4 - Employee's Answer and Extension: The employee will have a maximum of nine (9) days from receipt of the proposal to transmit a reply to the deciding official. This period may be extended by the deciding official upon request of the employee. Every effort shall be made to approve reasonable requests for extension. The opportunity to reply does not apply to actions taken in the event of an emergency furlough.

Section 5 - Action by the Deciding Official: The deciding official shall be at a higher level in the Activity than the proposing official. If the deputy district commander believes the effected Employee's chain of command has been involved in approving or deciding to initiate the proposed action, the Activity shall appoint another similarly situated Supervisor from another division or branch to be the deciding official. Deciding officials must be within the Norfolk District Chain of Command. After investigating the incident and carefully considering the evidence and the employee's response and any mitigating factors, the deciding official shall make an impartial decision on the merits of the case, and will withdraw the proposed action, institute a lesser action, or institute the proposed action.

Section 6 - Final Notice: The Employer shall provide the Employee with a copy of all proposed disciplinary actions. The Union shall receive notice of these proposed actions, but not including the Employee's name, work location, or immediate supervisor's name. A formal written reprimand is not permanent in nature and will be withdrawn from the official personnel folder per one or more of the following circumstances:

a. Expiration of the period specified in the letter of reprimand as per AR 690-700 Chapter 751, Subchapter 3.

b. Determination through an appropriate adjudicatory procedure or by an appropriate management official of the involved activity that the reprimand is unwarranted and should be withdrawn,

c. Determination by the initiating supervisor that the employee has sufficiently corrected his or her behavior and the letter of reprimand has served its purpose.

Section 7 – Appeal: The employee shall be advised in the decision referenced in Section 5 above of their right to appeal the action to the MSPB or grieve under the negotiated grievance procedure, but not both. The appropriate MSPB address and the names of the Union Officers will be included .in the final decision. If the disciplinary or adverse action is found to be unwarranted on appeal, the Employer will take all required corrective actions .in accordance with the OPM and the MSPB.

Section 8 - Counseling/Letter of Warning: Counseling is an Employer's tool to identify and change performance and/or behavior. The Employer may use verbal or written counseling/warning/admonishment to assist an Employee to change performance and/or behavior, i.e. tardiness, excessive unscheduled absence, etc. The Parties agree that at times it may be necessary for an Employer to provide a written confirmation of a verbal counseling, for record keeping. If substance abuse is suspected, counseling will include an offer of assistance through a mental health professional or the Employee Assistance Program (EAP) as described in Article XXV of this agreement. Counseling with an EAP counselor is strictly confidential unless the Employee implies or directly threatens to harm himself/herself or others.

Section 9- Stay of Suspension Action: In any disciplinary actions resulting in suspension of more than fourteen (14) days without pay, such action shall not be effected against the employee until his/her rights are fully exercised. Finality of appeal rights shall mean the receipt of a decision from the Merit Systems Protection Board or the arbitrator. The Employer and The Union agree that this section does not apply to a removal from the Federal Service.

ARTICLE X
EQUAL EMPLOYMENT OPPORTUNITY

Section 1- General: The strength of the Army's and the Corps of Engineers Equal Opportunity Program is founded on trust and confidentiality. As such, management agrees to provide the Union with any command climate surveys that, once released by the Activity, are authorized to be posted in the public domain.

Section 2 - Policy: The Employer shall not in any way discriminate for or against an individual regarding employment or conditions of employment because of race, color, religion, sex, national origin, age, disability, genetic information, or other illegal basis such as reprisal for participation in or opposition to a protected activity. The Activity EEO process shall be in adherence with all EEO laws and applicable laws and regulations.

Section 3 - Reports: Upon the request of a Union Officer., Management will provide the Activity's Annual Management Directive-715 Report which includes employee recognition and awards by Performance Rating-Distribution by Disability, Distribution of awards by supervisory status; supervisor-Permanent Workforce Distribution; and Statistical Report and Complaints Processing Summary. The Union can request in writing, to the Commander, additional information on any aspect of the District's EEO Program.

Union and Management recognizes the importance of required training for Sexual Harassment and Assault Response Program (SHARP), the Notification and Federal Employee Anti-discrimination and Retaliation Act (No Fear Act), and Alternative Dispute Resolution (ADR)

Section 4 - Disciplinary Actions: Anyone found to have engaged in discriminatory practices against any employee of this activity may be subject to disciplinary action per applicable laws, regulations, and policy statements. The Activity's EEO Policy is captured in Policy Letter_ and is published in the Employee Handbook and on multimedia sources throughout the Activity. Employees have the right to meet with EEO and be briefed on the findings and corrective actions of their particular case to the extent that they are releasable under the Privacy Act.

Section 5- Official Time for EEO Complaints: An employee or his/her representative, if the representative is an employee, shall be given a reasonable amount of time to prepare and present an EEO complaint. A complainant and/or representative shall use official time to prepare or attend any conference, meeting, hearing, investigation or trial in connection with an EEO complaint. The complainant and/or complainant representative should discuss the need for time with each individual's respective supervisor and provide an approximation of time needed and a rough schedule of objectives and dates. The complainant and/or complainant representative need not specify the details of their case or details on what they plan to do when requesting official time. For the complainant, time will be charged to the office from which the complaint arose. If a Union Official is representing the complainant, official time will be charged to the Union Cost Account and not to an office or Unit of the Norfolk District. If a Union Official is not representing, but monitoring proceedings, said Official's official time will be charged to the Union Cost Account, and not to an office or Unit of Norfolk District. The Union's annual allocation is set forth in Article 5, Section 6 of this agreement.

ARTICLE XI
MERIT SYSTEM - PROMOTION AND DETAIL

Section 1 - General: Promotions and details to positions will conform to Merit Promotion Procedures, 5 CFR 335.103 (b)(1) and all other applicable laws and regulations. The Employer agrees to conduct training sessions for all employees to enhance their understanding of the merit system and to assure fair, equitable, and consistent practices in carrying out the merit promotion procedures. The Employer will ensure that all qualified people have equal opportunity for promotion in accordance with the Article on Equal Employment Opportunity.

Section 2 - Equal Consideration: Equal consideration will be given to all Employees within the Activity who apply, consistent with provisions of the Merit Promotion Procedures.

Section 3 - Vacancies: All unit vacancies filled under the Merit Promotion Program shall be appropriately publicized to ensure that all employees have an equal opportunity to participate in the merit promotion program. Vacancies within the Waterfield Building and at all field construction and regulatory offices shall be advertised via the Activity's email system to all eligible employees and published during the Command and Staff notes. All employees will have access to the current vacancies concurrent with the posting. Unit employees shall receive equal consideration for selection under the merit promotion program.

Section 4 - Hiring Actions: When a position is to be filled under the provisions of the Merit Promotion Plan, it shall be fully identified as to grade, title, organizational location, and whether permanent or temporary. If a position is announced as temporary and the announcement does not state that it may become permanent, the position will be re-announced if it does become permanent.

Section 5 - Classification, Qualification and Promotion: Management assigns details as a work right and understands that neither details nor the position classification process will be used as a method to circumvent competitive promotions. The qualification requirements and selective placement factors for positions to be filled through merit promotion procedures shall be fully

relevant to such positions, as determined by OPM. Promotion procedures will apply to selection by transfer, reinstatement or reassignment to positions with known advancement opportunity. If the positions evolve into a higher grade, the positions will be considered merit-based and follow merit-based promotion factors.

Section 6 -Vacancy Announcement Windows: All vacancy announcements will be advertised for at least seven (7) days through the use of the automated vacancy list, with the exception of the CP18 program; vacancy announcements. That program will be advertised for a minimum of 14 days.

Section 7- Selection Panels: DELETED per review of higher authority/DOD Civilian Personnel Advisory Service, July 2, 2014.

Section 8 - Promotion Factors: Determination of methods and forms to be used in the evaluation and ranking of candidates shall be per applicable Army regulations. Mission Support Division will notify the Union in advance of any selection or appointment when a unit position is to be filled as an exception to the Merit Promotion Plan. Appraisals of promotion candidates shall be used. in the selection process per AR-690-335-1.

Section 9 - Non-Selected Employee Rights: A unit employee who grieves a Merit Promotion Action under Article VII may request representation by the Union. The following information about specific promotion actions shall be available to an employee and/or representative upon request:

- a. Whether the employee was considered for promotion and, if so, whether he/she was eligible on the basis of the minimum qualification requirements for the position;
- b. Whether the employee was one of those in the group from which the selection was made and the number of the candidates in the group;
- c. The name of the selected individual;

d. Any and all documents used in evaluating his or her individual performance for promotion purposes. Subject to the provisions of the Privacy Act, he/she will be furnished copies of these documents upon request.

Section 10 - Career Ladder Promotions: Employees within a career ladder (for example GS-5/7/9/11) who have performed satisfactorily will be considered for promotion to the next step of that ladder as soon as they have met time-in-grade requirements.

Section 11 - Scope and Processes for Details: Management has the right to assign work, in accordance with 5 USC2302, to best meet the requirements of the Activity's mission. Employees to be detailed shall be given at least a three-day advance notice before assignment to the new position. Details of thirty (30) days or more shall be recorded in the employee's official personnel folder, and copies of the record forwarded to the employee.

Section 12 -Temporary Promotion: An employee temporarily placed in a higher grade position or assigned to a group of duties warranting a higher grade shall be temporarily promoted, if qualified and shall be paid commensurate with the position or duties from the first day of the assignment, provided it is known in advance that the temporary assignment will last thirty (30) days or more. Temporary promotions of one hundred twenty-one (121) days or more will be made based on competitive procedures.

ARTICLE XII
POSITION DESCRIPTION AND CLASSIFICATION

Section 1 - General: Each employee is entitled to a complete and accurate position description that reflects the actual and intended duties of the position. The duties and responsibilities of each position, as documented in the position description, are determined by the Employer. Position descriptions and the classification of position descriptions will be conducted within the guidelines issued and authority delegated by the Office of Personnel Management and appropriate Army guidance. Each Employee's position description and classification shall be reviewed/discussed bi-annually by the Employee and the Supervisor. The purposes of this review/discussion include a dialogue between Employer and Employee about the accuracy of the job description, as well as the work progress of the Employee.

Section 2 - Other Duties as Assigned: Management has the right to assign work. The term "Other Duties as Assigned" is intended to cover only incidental and irregular duties associated with the employee's job that are not specifically described in the job description and do not exceed 25% of the Employee's work.

Section 3 - Work Load Work Force Alignment: In the event of a decrease in project work for the Activity, the Employer will use every authorized method to manage the workforce to meet workload requirements that require similar skills. Employees must understand that this procedure is managed at Division and Headquarters USACE level and often time remedies will be regional in nature.

Section 4 - Position Description Clarification: Position classification is a management right. Bargaining unit members may consult with Chief Mission Support Division, at any time on an informal basis for the purpose of obtaining, correcting, or clarifying their job description. If an employee is dissatisfied with their position description, he/she, after exhausting the remedies within this Article, has the right to grieve the matter pursuant to this Agreement, or appeal the matter to OPM; and may be assisted by the Union.

Section 5 - Position Description Review: An Employee who believes that his or her Position Description is inaccurate or improperly classified shall have the right to request that their supervisor review the Position Description and/or classification. If the supervisor and employee agree that the position description should be revised, the supervisor shall re-draft the position description and submit the new draft to Chief, Mission Support Division for review within a reasonable amount of time of the request, not to exceed 20 days from submittal of the agreed to draft unless granted an extension by the Commander or Deputy Commander.

Section 6- Position Description Redress: Classification is a management right. However, if the supervisor and employee do not agree upon the Position Description (hereinafter "PD") or Classification; or the supervisor does not respond to the Employee's request for review within 20 days, the employee should contact Chief, Mission Support Division for resolution, and may elect to have a Union representative present. Chief, Mission Support Division will provide an answer within twenty (20) days unless an extension is granted by the Commander or Deputy Commander. If the PD/Classification issue remains unresolved, the Employee may appeal through DOD to OPM. General Schedule employees can appeal directly to OPM at their discretion. Chief, Mission Support Division will notify the Union of all appeals to OPM.

Section 7 - Downgrading: Employees of the unit whose positions are downgraded as a result of re-classification may appeal to the MSPB within 30 days of notice of the downgrade. Notices to the Employee of such actions shall include an explanation of the Employee's options for review, including how and where to appeal to the MSPB.

ARTICLE XIII

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