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STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE:

Case No:

Date Filed:

INSTRUCTIONS: File this charge form via the e-PERB Portal, with proof of service. Parties exempt from using the e-PERB Portal may file the original charge in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE?

YES

If so, Case No.

NO

1. CHARGING PARTY:

EMPLOYEE

EMPLOYEE ORGANIZATION

EMPLOYER

PUBLIC¹

a. Full name:

b. Mailing address:

c. Telephone number:

d. Name and title of

person filing charge: Angela Yahaira Breining, Attorney

Telephone number:

E-mail Address:

e. Bargaining unit(s)
involved:

2. CHARGE FILED AGAINST: (mark one only)

EMPLOYEE ORGANIZATION

EMPLOYER

a. Full name:

b. Mailing address:

c. Telephone number:

d. Name and title of

agent to contact:

Telephone number:

E-mail Address:

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

a. Full name:

b. Mailing address:

c. Agent:

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

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Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No Unknown

6. STATEMENT OF CHARGE

- a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)
 - Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)
 - Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
 - Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
 - Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
 - One of the following Public Utilities Code Transit District Acts: San Francisco Bay Area Rapid Transit District Act (SFBART Act) (Pub. Util. Code, § 28848 et seq.), Orange County Transit District Act (OCTDA) (Pub. Util. Code, § 40000 et seq.), and Sacramento Regional Transit District Act (Sac RTD Act) (Pub. Util. Code, § 102398 et seq.)
 - The Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Supervisory Employees of the Los Angeles County Metropolitan Authority (Pub. Util. Code, § 99560 et seq.)
 - Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
 - Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)
- b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are: Unknown
- c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are **(a copy of the applicable local rule(s) MUST be attached to the charge):**
- d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent’s conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. *(Use and attach additional sheets of paper if necessary.)* See attached

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on _____ (Date)

at _____ (City and State)

(Type or Print Name and Title, if any)

(Signature)

Mailing Address:

E-Mail Address:

Telephone Number:

ATTACHMENT 6(d)

TO

UNFAIR PRACTICE CHARGE

American Federation of State, County and Municipal Employees, Local 101 (“AFSCME” or “the Union”) alleges that the Santa Clara Valley Water District (“the District”) has committed unfair practices under the Meyers-Milias-Brown Act (“MMBA”) by disciplining an employee for engaging in protected activity and interfering with employees’ rights under the MMBA.

Parties

1. AFSCME Local 101 (the “Union”) is a labor organization within the meaning of the Meyers-Milias-Brown Act (“MMBA”), Cal. Gov. Code § 3500 *et seq.* At all relevant times, the Union has been the exclusive representative for the Employees Association (“EA”) bargaining unit of employees at the Santa Clara Valley Water District.
2. The Santa Clara Valley Water District (the “District”) is a public agency within the meaning of the MMBA.
3. At all relevant times, Tyson Enzweiler has been employed as a Senior Water Treatment Plant Operator for the District and is employed in the EA bargaining unit, represented by the Union.

Statement of Facts

4. The Union and the District are parties to a Memorandum of Understanding (“MOU”) governing terms and conditions of employment for employees in the bargaining unit, effective January 1, 2022 through December 31, 2025. A true and correct copy of the MOU is attached hereto as Exhibit 1. A list of all classifications covered in the bargaining unit is set forth in Attachment I to Exhibit 1.
5. On January 13, 2022, the District sent an email notifying its employees of its Covid-19 vaccination requirement. In relevant part the policy states that “Valley Water will require staff that are not fully vaccinated (not vaccinated, partially vaccinated, or decline to state) to submit proof of full vaccination by Tuesday, March 1, 2022.” A true and correct copy of the email is attached hereto as Exhibit 2.
6. On January 29, 2022, Tyson Enzweiler, a Senior Water Treatment Plant Operator and bargaining unit employee, sent an email with the subject line “Reverse the Vaccine Mandate” requesting that the District reconsider its decision to mandate the Covid-19 vaccine to all employees. A true and correct copy of this email is attached hereto as Exhibit 3, pp.2-3. Enzweiler sent this email to the District’s Labor Relations Department, to the District’s Chief Executive Officer (CEO) Rick Callender, and copied all of his fellow Water Utility Enterprise employees.

7. On January 31, 2022, Callender responded to Enzweiler's email and included Labor Relations and the Water Utility Enterprise employees. (Exhibit 3, pp. 1-2) In the email Callender told Enzweiler to refrain from using the District's email to discuss the District's Covid-19 policy and alleged that Enzweiler's email was in violation of the District's email policy. Callender also told Enzweiler that "[he] was extremely disappointed that you would question the directive that was given above, and that you chose to share your frustration with the directive with others, including Labor Relations and the entire Water Utility team." (Exhibit 3, pp.1-2)
8. Later that day on January 31, 2022, Bryant Welch, the District's Labor Relations Manager sent an email to the Union saying, "We want to make sure we're on the [s]ame page because if an employee engages in the same or similar conduct in the future as [Enzweiler], that employee will be in violation of a number of policies and will be formally disciplined." (Exhibit 3, p. 1)
9. On August 16, 2022 the District sent an email notifying its employee of its booster shot requirement. A true and correct copy of this email is attached hereto as Exhibit 4.
10. On August 20, 2022 Enzweiler sent an email to all Water Utility Enterprise employees and copied the District's Board of Directors with the subject line "VW not requiring new hires to have a booster." (Exhibit 5) In that email Enzweiler stated "[The District] is not requiring newly hired employees to have a booster as part of terms of employment according to the job postings and the attached mandate notification. Attached is the CDC definition of being fully vaccinated. Fully vaccinated does not include a booster." A true and correct copy of this email is attached hereto as Exhibit 5. Enzweiler included the CDC link and attached the August 16th booster requirement email.
11. On or about August 24, 2022 Labor Relations was alerted of Enzweiler's August 20th email and subsequently investigated Enzweiler. Prior to the District investigation on Enzweiler the Union emailed Welch notifying him that Enzweiler was engaged in protected activity by asking a recruitment/working condition question and discussing worker safety conditions. A true and correct copy of this email is attached hereto as Exhibit 6.
12. The District conducted Enzweiler's investigation on August 26, 2022. The District submitted an Investigation Report on September 27, 2022 with its findings. A true and correct copy of the Investigation Report is attached hereto as Exhibit 7. The findings stated that Callender's January 31st email was a directive, to cease sending emails that were contrary to the District management team's directives and to cease from using the District's email system to send correspondence that contradicted the District's vaccination mandate directives and to comply with the District's e-mail policy. (Exhibit 7)

13. The District also stated in the Investigation Report that a correct reading of “the CEO’s email (dated 1/31/22) is that Enzweiler was given a formal directive to cease and desist from sending information to Valley Water employees that was not supportive of Valley Water’s vaccination mandate and Enzweiler was given a formal directive to cease using Valley Water’s email system to communicate his personal disagreements, opinions, and/or statements regarding Valley Water’s vaccination mandate.” (Exhibit 7)
14. On September 30, 2022 the District sent Enzweiler a Notice of Recommended Disciplinary Action recommending that Enzweiler be suspended without pay for five days from his position as a Senior Water Plant Operator pursuant to the violations found in the Investigation Report. A true and correct copy of the Notice of Recommended Disciplinary Action (“NORDA”) is attached hereto as Exhibit 8.

Argument

15. The MMBA grants public employees the right to “form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. (Cal. Gov. Code § 3502.)
16. It is an unfair labor practice for a public agency to “interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights under Section 3502.” (Cal. Gov. Code § 3506.) The MMBA further prohibits a public agency from any of the following: “Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. (Cal. Gov. Code § 3506.5.)

Interference

17. The test for whether a respondent has interfered with the rights of employees under the MMBA does not require that unlawful motive be established, only that at least slight harm to employee rights result from the conduct. (*County of Imperial* (2007) PERB Dec. No. 1916-M, p. 19.) “To establish an interference violation of section 3506 [a charging party must prove] (1) employees were engaged in protected activity; (2) the employer engaged in conduct that tends to interfere with, restrain, or coerce employees in the exercise of those activities; and (3) the employer’s conduct was not justified by legitimate business reasons.” (*Public Employees Assn. of Tulare County v. Board of Supervisors*, 167 Cal. App. 3d 797, 807 (1985).)
18. Employee speech is protected if it is “related to matters of legitimate concern to the employees as employees so as to come within the right to participate in the activities of an employee organization for the purpose of representation on matters of employer-employee relations.” (*City and County of San Francisco* (2020) PERB Dec. No. 2712-M, p. 18 (*County of San Francisco*), citing *Rancho Santiago Community College District* (1986) PERB Dec. No. 602, p. 12.) Furthermore, “[A]n individual employee’s criticism

of management or working conditions is protected when its purpose is to advance other employees' interests or when it is a logical extension of group activity." (*County of San Francisco*, supra, citing *Trustees of the California State University* (2017) PERB Dec. No. 2522-H, p. 16.)

19. Here, Enzweiler, sent two emails to the District and all Water Utility Enterprise employees concerning the Covid-19 vaccination and booster requirements as conditions of employment. These emails concerning vaccinations are matters of legitimate concerns to employees as the mandates set terms and conditions of employment and impact an employees' continued employment with the District. Therefore, Enzweiler's conduct is protected.
20. The District first engaged in conduct that interferes with Enzweiler's protected rights when it issued a directive informing Enzweiler to not use District email regarding this matter and specifically stating that he should not have expressed his disagreement regarding the policy while including other employees. Such directive was an attempt to interfere with Enzweiler's right to engage in speech critical of management related to matters of legitimate concern. Furthermore, the Employer investigated that matter in August 2022, further interfering with his rights.
21. The District also engaged in conduct that interferes with Enzweiler's protected rights by issuing him a Notice of Recommended Disciplinary Action informing him of its intent to suspend him without pay for five days for sending emails critical of the District's vaccine mandate. The District violated his right to speak in the workplace on matters of legitimate concern.
22. The District's conduct is not justified by legitimate business reasons such as violation of their email policy since the email policy states that an employee's email address is for sending work-related emails and receiving incidental non-work-related information. A true and correct copy of the email policy is attached hereto as Exhibit 9. Enzweiler's emails were work related as they were related to constituted conditions of employment and were in response to emails that management sent to District employees about mandatory conditions of employment.
23. Furthermore, PERB has held that employees who have access to their employer's e-mail system have a right to use the e-mail system to engage in protected communication. (*Napa Valley Community College District* (2018) PERB Decision No. 2563; *Yvellez v. Chula Vista Elementary School District*, (2018) PERB Decision No. 2586). Enzweiler had access to the email system and as discussed above, used it for protected communication regarding legitimate purposes.

24. Thus, by the above-described conduct, the District interfered with Enzweiler's rights under the MMBA.

Retaliation

25. To establish a prima facie case of retaliation, the charging party has the burden to prove, by a preponderance of the evidence, that (1) one or more employees engaged in activity protected by a labor relations statute that PERB enforces; (2) the respondent had knowledge of such protected activity; (3) the respondent took adverse action against one or more employees; and (4) the respondent took the adverse action "because of" the protected activity, which PERB interprets to mean that the protected activity was a substantial or motivating cause of the adverse action. (*County of San Francisco* (2020), supra, PERB Decision No. 2712-M, p. 15.)
26. As discussed above, Enzweiler engaged in protected activity when he sent the January 29th and August 20th emails to other employees about matters of legitimate concern as the emails related to the vaccination requirements as a condition of employment. The District knew of this activity as they were included as recipients to both emails and the CEO and Labor Relations both sent emails to Enzweiler and the Union admonishing him for the emails. Nevertheless, the District took adverse action on September 30, 2022 when it suspended Enzweiler without pay for five days specifically for sending these emails that were protected.
27. Here, there is a direct nexus between Enzweiler's protected activity as the District specifically disciplined him for sending the emails and for criticizing the District's CEO's vaccine mandates. The Notice of Recommended Disciplinary action specifically said that they intend to suspend him for sending emails and for violating the District's email policy. As discussed above, both of these rationales are protected and the discipline is therefore in retaliation for engaging in protected activity.
28. Furthermore, the unlawful motive is also established through the wording of the District's email in response to Enzweiler and in its Investigation Report. In his January 31st email Callender said that "[he] was extremely disappointed that [Enzweiler] would *question* the directive that was given above, and that [Enzweiler] chose to share [his] frustration with the directive with others, including Labor Relations and the entire Water Utility team." (Exhibit 3, pp.1-2)(emphasis added)
29. In the Investigation Report one of the findings was that Enzweiler was "given a formal directive to cease and desist from sending information to Valley Water employees that was *not supportive* of Valley Water's vaccination mandate and Enzweiler was given a formal directive to cease using Valley Water's email system to communicate his personal disagreement, opinions, and/or statements regarding Valley Water's vaccination mandate." (Exhibit 7) (emphasis added)

30. In the Notice of Recommended Disciplinary Action, the Employer specifically stated it was intending to suspend him because he failed to follow the directive not to send emails that were “*contradictory* to Valley Water’s management team directives” or that “*contradicted* Valley Water’s vaccination mandate directives.” (Exhibit 8)(emphasis added)
31. Such statements show that the District was directly punishing the content of the emails because they were “questioning” and “not supportive” of the District. Would the emails have been in support of the District there would have been no adverse action. Therefore, Enzweiler’s participation in his protected activity motivated the District’s adverse action.
32. The District has, at this time, only issued an intent to discipline. Even though there has been no actual discipline and the Skelly has not yet occurred, such actions listed above still constitute adverse action if a reasonable person would consider the action to have an adverse impact on the employee’s employment. (*Newark Unified School District* (1991) PERB Decision No. 689) This applies equally when the adverse action is a threat, including when the employer gives unequivocal notice of likely discipline. (*San Diego Unified School District* (2018) PERB Decision No. 2538)
33. In this case, the District’s action of conducting a disciplinary investigation and then issuing a Notice of Recommended Discipline is adverse action and any reasonable employee would consider the action to be adverse.
34. By the above described conduct, the District engaged in unlawful retaliation against Enzweiler.

Remedy

Wherefore, the Charging Party requests that the District be ordered to:

1. Cease and desist from interfering against Enzweiler in violation of the MMBA;
2. Cease and desist from retaliating against Enzweiler in violation of the MMBA;
3. Make Enzweiler whole for all lost wages;
4. Post and distribute a notice informing all members of the bargaining unit of the District’s unlawful conduct, describing its actions to remedy the unlawful conduct, and assuring them that they have the right to engage in protected activity. The notice shall also inform members that they may raise legitimate issues regarding terms and conditions of employment and that the District will not interfere with those rights, will not retaliate against employees for engaging in protected activity, and will comply with its MMBA obligations in the future;
5. Comply with any other remedy that PERB deems just and proper.

EXHIBIT 1

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Memorandum of Understanding

Between

Santa Clara Valley Water District

and

AFSCME Local 101, AFL-CIO

Employees Association

2022– 2025

(January 1, 2022 through December 31, 2025)

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APPENDIX A – SALARY SCHEDULES

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ARTICLE I. RECOGNITION

Section 1. Recognition

The Santa Clara Valley Water District ("District") formally recognizes the Union as the majority representative of those classes of employees and units listed in Attachment I, hereto.

Section 2. Dues Check-Off

- A. The District agrees to check-off Union dues from member paychecks. Such check-off shall be in uniform amounts and be authorized in writing by the employee on a form supplied by the Union, provided that the employee's earnings are regularly sufficient after other legally required deductions are made to cover the amount of dues check off authorized. Dues withheld by the District will be transmitted to the officer or depository designated by the Union.
- B. The dues transmitted to the Union by the District shall include the names of any employees who did not have dues transmitted for reasons such as the employees having transferred out of the bargaining unit, the employee being on leave, or otherwise being in an unpaid status. The District shall identify the specific reason(s) an employee's dues was not transmitted to the Union.
- C. The Union will supply the District with a certified list of employees who have authorized dues and/or PEOPLE deductions and the amounts to be remitted to the Union. The Union shall send the District an as needed report indicating any changes to membership including new union members who have dropped their membership and shall no longer have dues withheld. The District will provide the Union the home address for members upon request. An employee has the right to file a statement with the District to withhold release of the home address to AFSCME Local 101.
- D. The Union agrees to indemnify, defend, and hold the District harmless from any and all claims, demands, suits, or other action arising from the provisions of this Section or from compliance with employee cancellations of check-off authorizations.

Section 3. Political Payroll Deduction

Any worker may sign and deliver to the Union an authorization card for payroll deduction of voluntary contributions to Public Employees Organized to Promote Legislative Equality (PEOPLE). The District agrees to remit monthly to the Union all monies deducted for PEOPLE accompanied by a list of employees for whom such deductions have been made. Such authorization may be invoked or revoked in writing by the employee at any time by contacting the union. A copy of such letter shall be provided to the District upon receipt by the Union .

Section 4. Union Security

- A. **Maintenance of Membership**—Any employee who is a Union member and is tendering dues through payroll deduction as of the date of execution of this Memorandum of Understanding (MOU), or who becomes a Union member during the term of this MOU, shall remain a member and continue dues deduction for the duration of this MOU and

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each subsequent MOU thereafter. For the period of ninety to seventy (90–70) days prior to the expiration of this or any subsequent MOU, an employee who is a Union member shall have the right to withdraw from the Union by discontinuing dues deduction, such withdrawal to be communicated in writing by the employee to the Union on a form provided by the Union during the ninety to seventy (90–70) day period. An employee who moves to a position outside the Union’s bargaining unit shall not be required to continue dues deduction.

1. The Union agrees to indemnify, defend, and hold the District harmless from any and all claims, demands, suits, or other actions arising from the provisions of this Section or from compliance with employee cancellations of check-off authorizations.

Section 5. Time Off for Representation

- A. The District will notify the Union when members’ participation as volunteers in District directed committees/projects is desired. When requesting Union member participation, District management will provide the Union a description of skills/expertise needed, number of hours anticipated, and duration of service needed, and budget code.
- B. Union representatives may be given specified release time for the following:
 1. **Meet and Confer/Consult**—Up to three (3) designated Union members are allowed time off without loss of compensation for purposes of meeting and conferring or meeting and consulting with District representatives on matters within the scope of representation.
 2. **Negotiations**—The District will provide release time for up to seven (7) designated Union members for purposes of meeting and conferring on a successor MOU. Release time for up to four (4) additional hours per week shall be granted for bargaining preparation after the commencement of negotiations.
 3. **Board Meeting Attendance**—Up to two (2) designated Union representatives are allowed time off without loss of compensation to hear items before the Board of Directors within the scope of representation. A Union representative must notify the Labor Relations Officer before using release time to attend Board meetings.
 4. **Meetings of District–Authorized Committees**—Up to three (3) Union representatives are allowed time off without loss of compensation to attend meetings of District–authorized committees when representatives are serving on such committees as a representative of the Union.
 5. **Grievances**—One (1) designated Union representative is allowed time off without loss of compensation for purposes of representing an employee in a meeting with District representatives relative to an employee grievance.
 - a. One (1) designated Union representative is allowed time off without loss of compensation for the purpose of discussing or investigating a grievance with an employee; provided that the District finds there is no undue interruption of the work of either the Union representative or the

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grievant and both the Union representative and the grievant have notified their respective supervisors of such time off.

- b. An employee has the right to discuss a grievance with a Union representative during working hours provided there is no disruption of the workload and the employee has notified and received authorization from the first-line manager/supervisor.
 - c. Release time will be provided to new stewards to receive training on grievance handling, including observing the actual grievance process.
6. **Representation**—The Union President and/or a designee will have release time without loss of compensation for the purpose of conducting Union business as specified below. Compensated release time shall be limited to formal meetings with District Management personnel and the investigation and presentation of grievances. Release time must be scheduled in advance with the President’s or designee’s supervisor.
7. **Release Time**—Union representatives shall notify their unit manager/supervisor of their intention to be on release time as far in advance as reasonably possible, but no later than the end of normal business hours the day before such meeting except in the case of emergency situations. Union representatives must log the time they leave their work assignments and the time they return to work in order to qualify for compensated release time. Union will provide the District a list of all officers, stewards, and representatives/alternative representatives. Permission to perform Union functions shall not be unreasonably denied.

Section 6. Access to Work Locations

The Union shall have reasonable access to work locations for purposes of processing grievances or concerning matters within the scope of representation provided that the supervisor of such work location is notified prior to entry. Such access shall not interfere with the work process, safety, or security of the work location.

Section 7. Mail/Bulletin Boards

- A. The Union may utilize existing bulletin boards in accordance with existing District procedures, provided posted information relates solely to Union activities and services. The bulletin board shall not be used to post material which endorses or supports political candidates or positions in elections. If no bulletin board exists in one of the below listed work locations, the District shall provide and install a bulletin board provided that the size and location are in accordance with existing District procedures as established by the Facilities Maintenance Unit.

District Locations:

- Santa Teresa Water Treatment Plant – Common Area/Ready Room
- Rinconada Water Treatment Plant – Common Area/Ready Room
- Penitencia Water Treatment Plant – Common Area/Ready Room
- Silicon Valley Advanced Water Treatment Plant – Common Area/Ready Room
- Headquarters Building – Lunchroom

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Administration Building – Near Break Room
Maintenance Building – Ready Room
Crest Building – Lunchroom
Blossom Hill Annex – Near Meeting Room Area
Coyote Pumping Plant – Shop Area
Lab – Mailroom
Vasona Pumping Station – Main Hallway
Warehouse – Office Area
Santa Teresa Office Building

- B. Further, the Union may use District mail, facsimile, and electronic mail for the distribution of information in accordance with existing District procedures.

Section 8. District Facilities

The Union has reasonable use of District facilities and equipment for meetings in accordance with District policies and procedures.

Section 9. Access to Information

The Union has access to such non-confidential information pertaining to employee relations that is subject to disclosure under the California Public Records Act.

Section 10. Written Notice

- A. Written notice of any ordinance, rule, regulation or resolution relating to matters within the scope of representation proposed to be adopted by the Board of Directors or otherwise implemented shall be given to the Union reasonably prior to such action to solicit Union response and to afford an opportunity to meet with the District regarding the issue. In the case of an emergency, when reasonable prior notice is not possible, the District shall provide such notice as soon as possible and an opportunity to meet at the earliest practical time to discuss the issue.
- B. Any communication in accordance with Section 10(A) above shall be submitted to the Union President, Vice-President, and to the Union office by the District through its Labor Relations Unit.

Section 11. New Hire Information

The Union shall be notified of the name, classification, unit, and work location of all new hires into coded positions in the classifications listed in Attachment I within the first pay period following the new employee's starting date.

Section 12. Orientation

- A. The District will provide the Union, on an annual basis, the new hire orientation schedule. If it is later determined that the schedule must be amended, an updated copy will be provided.

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- B. The District will provide the Union written notice of the employee name, employee number, scheduled start date, position title, position code, unit name, unit number and supervisor within two business days of the completion of the recruitment process. This written notice will be sent via email.
- C. The Union will be provided with twenty (20) minutes during the new employee orientation meeting to meet with the newly hired employee(s). The Union will have from 8:00 a.m. until 8:20 a.m. on the day of the orientation to meet with the employee(s). Under no circumstances will the Union continue the meeting with the newly hired employee(s) past 8:30 a.m. If for some reason the Union cannot attend the orientation, the Employee Benefits and Recruitment Unit will be notified no later than 8:00 a.m. on the orientation day.
- D. The District agrees to provide the Union with employee contact information for all employees in the bargaining unit by the 10th calendar day of each month. The information that will be provided is as follows:
 - 1. Employee name
 - 2. Employee job title
 - 3. Unit name or department
 - 4. Work location
 - 5. Home address
 - 6. Work phone extension
 - 7. Home or cell phone number (whichever is provided to the District by the employee)

Personal email addresses are not collected or retained by the District therefore, none are available to provide to the Union.

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ARTICLE 2. DISTRICT/EMPLOYEE RIGHTS

Section 1. Employee Rights

Employees of the District shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer–employee relations including, but not limited to, wages, hours, and other terms and conditions of employment. Employees of the District also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the District. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against by the District or by any employee organization because of their exercise of these rights.

Section 2. District Rights

- A. The rights of the District include, but are not limited to those listed herein, except where such rights are limited by clear and explicit language of this Agreement:
1. The right to determine the mission of the District, including without limitation, the District’s departments, divisions, institutions, boards and commissions;
 2. The right of full and exclusive control of the management of the District; supervision of all operations; determinations of methods, means, location and assignments of performing all work; and the composition, assignment, direction, location and determination of the size and mission of the workforce;
 3. The right to determine the work to be done by employees, including establishment of service levels, appropriate staffing and the allocation of funds for any position(s) within the District;
 4. The right to review and inspect, without notice, all District–owned facilities and equipment, including without limitation desktop computers, work areas and desks, email, computer storage drives, voicemail systems, vehicles, and filing cabinets and systems;
 5. The right to change or introduce different, new or improved operations, technologies, methods or means regarding any District work, and to contract out for work;
 6. The right to establish and modify qualifications for employment, including the content of any job classification, job description or job announcement, and to determine whether minimum qualifications are met;
 7. The right to maintain and modify the District’s job classifications;
 8. The right to establish and enforce employee performance standards;
 9. The right to schedule and assign work, make reassignments, and assign overtime work;

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10. The right to hire, fire, promote, reassign, transfer, release, discipline, layoff, terminate, demote, suspend or reduce in step or grade, all employees;
11. The rights to establish and modify bargaining units; to assign new or amended classifications to particular bargaining units; and to designate any position confidential, management or otherwise for bargaining unit assignments pursuant to the MMBA;
12. The right to inquire and investigate regarding complaints or concerns about employee performance deficiencies or misconduct of any sort, including the right to require employees to appear, respond truthfully and cooperate in good faith regarding any District investigation;
13. The right to maintain orderly, effective, and efficient operations; and
14. The right to take any appropriate lawful measure to ensure the best delivery of services to the public in response to any work stoppage, including without limitation; (a) altering work schedules or locations to ensure coverage; and (b) investigating absences to ensure no violation of District policies.

Section 3. Nonstrike/Lockout Provision

- A. During the term of this agreement, the District agrees to not lock out employees and the Union nor its agents nor any District employee, for any reason, will authorize, institute, aid, condone or engage in a work slowdown, work stoppage, strike, or any other interference with the work and statutory functions or obligations of the District.
- B. The Union agrees to notify all of its officers, stewards and staff of their obligation and responsibility for maintaining compliance with this section, including the responsibility to remain at work during any activity which may be caused or initiated by others and to encourage employees violating this section to return to work.
- C. Violation of this section by the Union shall result in cancellation of dues checkoff and the District will be free to seek any other appropriate remedies for such actions.

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ARTICLE 3. COMPENSATION

Section 1. Salaries

A. Across the Board Salary Adjustments (ABSA) will be effective as follows:

Pay Period 14 Year 2022	Pay Period 14 Year 2023	Pay Period 14, Year 2024	Pay Period 14 Year 2025
3.0%	3.0%	3.0%	3.0%

All employees covered by the 2.0% @ 62 (2.5% @ 67) PEPRA retirement formula shall receive a one-time lump sum and non-PERSable payment of \$1,000 the first full pay period in January 2022.

All employees whose position mandated that they report to work onsite (i.e. did not telework) at least 50% of the time during March 1, 2020 to May 30, 2021 of the COVID-19 pandemic shall receive a one-time lump sum and non-PERSable payment of \$1,000 the first full pay period in January 2022.

- B. Payday shall be the Thursday following the last day of the pay period for which the pay was earned. In the event a regularly scheduled payday falls on a holiday, the workday immediately preceding the holiday will be observed as the official payday.
- C. Employees will be notified by email at the end of each pay period when direct deposit paycheck stubs are available for web-friendly viewing and printing. Employees who receive paper paychecks can continue to pick-up their paycheck from the Payroll department on the designated payday.
- D. The District shall continue to offer direct deposit to all eligible employees, as available.

Section 2. Step Placement

- A. Employees will be compensated on a salary range consisting of seven (7) steps. The salary percentage differential for the seven steps is as follows:
1. Between steps 1 and 2, the salary assigned to Step 2 is 5% greater than the salary assigned to Step 1.
 2. Between steps 2 and 3, the salary assigned to Step 3 is 5% greater than the salary assigned to Step 2.
 3. Between steps 3 and 4, the salary assigned to Step 4 is 5% greater than the salary assigned to Step 3.
 4. Between steps 4 and 5, the salary assigned to Step 5 is 5% greater than the salary assigned to Step 4.
 5. Between steps 5 and 6, the salary assigned to Step 6 is 2.5% greater than the salary assigned to Step 5.

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6. Between steps 6 and 7, the salary assigned to Step 7 is 2.5% greater than the salary assigned to Step 6.
- B. The first step is the minimum rate and shall be the usual hiring rate for all classes. In cases where it is difficult to secure qualified personnel, or a person of unusual qualifications is employed, the District may authorize appointment at a rate other than the first step. An overall annual review rating of “Needs Improvement” or “Unsatisfactory” will result in the denial of a step increase until the employee’s overall performance is rated at least “Achieved” in a future evaluation period.
- C. An employee shall be eligible for advancement to:
 1. The second step after completion of 2,080 hours (typically twelve (12) months) of competent service in the first step and approval of the District.
 2. The third, fourth, or fifth steps after completion of 2,080 hours of competent service in the preceding step and approval of the District.
 3. The sixth and seventh steps after completion of 5,200 hours (typically thirty (30) months) of competent service in the preceding step and approval of the District.
- D. Approved salary adjustments will be made retroactive to the first pay period of eligibility, unless the adjustment is withheld due to less than satisfactory performance.

Section 3. Step Placement Upon Promotion, Demotion, Lateral Transfer, Reassignment or Reclassification

- A. For informational purposes, each salary range is approximately 2.5% above the next lower salary range.
- B. All appointments to a class shall be to a step within the salary range for that class.
- C. Upon promotion or reclassification, an employee’s salary shall be adjusted as follows:
 1. For a promotion or reclassification where the seventh step salary of the higher class is less than 10% above the seventh step salary of the present class, the employee shall be placed at the same step in the higher class that they are at in the present class (i.e., if the employee is at the third step in the present class, they will be placed at the third step in the higher class; if the employee is at the sixth step in the present class, they will be placed at the sixth step in the higher class).
 2. For a promotion or reclassification where the seventh step salary of the higher class is 10% or more above the seventh step of the present class, the employee shall be placed in the first step in the new range or the step in the new range which provides for a minimum 10% increase, whichever is greater.
 3. For a demotion, including a voluntary demotion, the employee shall be placed at the highest step in the lower range which does not provide an increase in salary.

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- D. For a lateral transfer or reassignment within the same class or to a comparable class, the employee's salary shall remain unchanged.

Section 4. Salary Adjustment and Service Time

- A. An employee placed in the first step of a new range or receiving a 10% or more increase as a result of promotion or reclassification shall receive a new salary anniversary date as of the date of promotion or reclassification for purposes of determining future step increases.
- B. In all other cases of promotion, demotion, lateral transfer, reassignment or reclassification, employees shall not lose the time served in their former salary step. The time served in the former step shall be included when computing the required months of service needed to be eligible for their next step increase.

Section 5. Pay Differentials

- A. Incumbents in the class of Assistant Water Plant Operator who have or obtain a Grade 3 license shall be compensated five percent (5%) higher than that to which the employee is normally entitled, provided the incumbent is not in a probationary status and received an overall rating of at least "Achieved" on the most recent performance evaluation. Employees hired by the District after January 1, 2012, are ineligible for this differential.
- B. Incumbents of the classes of Senior Water Plant Operator and Water Plant Operator shall be compensated two and one-half percent (2.5%) higher than that to which they are entitled when they possess a valid Water Treatment Plant Operator Certificate issued by the State Water Resources Control Board, of one (1) or more grades higher than that required by their class.
- C. Incumbents of the classes of Senior Water Plant Operator, Water Plant Operator, Systems Control Operator III, or Systems Control Operator II, shall be compensated five percent (5%) higher than that to which they are entitled when assigned to a "relief" schedule for periods of not less than a twelve (12) week duration.
 - 1. The Union and Valley Water agree that incumbents of the classes of Senior Water Plant Operator, Water Plant Operator, and Operations Liaison shall be compensated two and one-half percent (2.5%) higher than that to which they are entitled when they possess a valid Water Treatment Plant Operator Certificate issued by the State Water Resources Control Board, of one (1) or more grades higher than that required by their class.
- D. Incumbents of classes who are assigned to work in the Vegetation Management Unit and who possess, maintain, and use in the regular course of their duties, a Qualified Applicators Certificate (QAC—pesticide spray card), shall be compensated five percent (5%) higher than that to which they are otherwise entitled.
- E. A swing shift differential of seven and one-half percent (7.5%) over the base hourly rate shall be paid to all District employees who work other than the 12-hour shift schedule and at least five-eighths ($\frac{5}{8}$) of the shift between 3:30 p.m. and 12 a.m. This premium pay shall not be allowed for time spent on vacation, sick leave, or leave with pay.

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- F. A graveyard shift differential of ten percent (10%) over the base hourly rate shall be paid to all District employees who work other than the 12-hour shift schedule and of which at least five-eighths ($\frac{5}{8}$) of a shift falls between 12 a.m. and 8:30 a.m. This premium pay shall not be allowed for time spent on vacation, sick leave, or leave with pay.
- G. A night shift differential of fifteen percent (15%) over the base hourly rate shall be paid to all District employees who work on a 12-hour shift schedule for all hours worked between either 5:30 p.m. and 5:30 a.m. or 6:00 p.m. and 6:00 a.m. This premium pay shall not be allowed for time spent on vacation, sick leave, or leave with pay.
- H. Incumbents in the classes of System Control Operator III shall continue receiving their current differential as specified under previous agreements as long as they maintain their T-2 or higher certification. Any pay for such differential shall cease when an incumbent vacates the Systems Control Operator III class for any reason. Appointments made after November 17, 2008 to the Systems Control Operator series are ineligible for T-2 or higher differentials. Incumbents and future appointments to the Systems Control Operator series are ineligible for reimbursement for expenses entailed in taking courses, examinations, or annual maintenance fees for Water Treatment Plant Operator certificates.
- I. Incumbents in the classes of Maintenance Worker III and Heavy Equipment Operator who obtain and maintain a valid crane certification shall be compensated five percent (5%) higher than that to which they are normally entitled. Senior Maintenance Workers that carried the crane certification prior to their appointment to that position will also be included for this differential.
1. Within the current District-established staffing guideline of a maximum of 12 crane operators eligible for a crane differential, the District has the option to specifically recruit for crane certification within any of these classes (the class specification would so indicate) and retains discretion to modify the staffing guideline if justified by future business needs and after consultation with the Union.
- J. Incumbents in the classes of Water Measurement Technician II, Water Measurement Technician III, and/or Senior Water Measurement Technician who obtain, maintain, and use in the regular course of their duties a valid certification as a backflow tester shall be compensated at a rate of two and one-half percent (2.5%) higher than that to which they are normally entitled.
1. Within the current District-established guideline of a maximum of three (3) Water Measurement Technicians eligible for backflow certification differential, the District has the option to specifically recruit for backflow certification within the above-mentioned classes and retains discretion to modify the staffing guideline if justified by future business needs and after consultation with the Union.
- K. Upon written approval of the Appointing Authority and the Deputy of Human Resources, an employee in a budgeted position in the class of Program Administrator shall receive a differential of two and one-half percent (2.5%) (i.e., equivalent to one salary range) in base salary when assigned on a continuing basis to provide direct supervision (i.e., develop work plans, complete performance evaluations, take disciplinary action) to one

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or more full-time equivalent (FTE) employees in budgeted positions. Such assignments and approvals are at management discretion and apply prospectively. The differential shall be effective the beginning of the first full pay period after all approvals and shall cease the end of the first full pay period when the required supervision is no longer exercised or approval ceases.

- L. Incumbents in the Plant/Pipeline Mechanical Technician series shall receive a one-time lump sum bonus equal to two and one-half percent (2.5%) of their annual salary upon obtaining D-2 certification.
- M. Plant/Pipeline Mechanical Technician II's shall receive a lump sum bonus equal to 2.5% of their annual salary upon obtaining a D-3 certification, Senior Plant/Pipeline Mechanical Technician shall be compensated at a range of two and one-half percent (2.5%) higher than that to which they are normally entitled for obtaining a D-3 certification. Supervising Plant/Pipeline Mechanical Technician shall be compensated at a range of five percent (5%) higher than that to which they are normally entitled for obtaining a D-4 certification.
- N. A confidential differential of five percent (5%) of base pay will be paid to employees, assigned by management, pursuant to the Employer/Employee Rules.
 - 1. The Union and the District agree that during the life of the MOU the District will not designate any Union Officers as confidential employees pursuant to the District's Employer-Employee Relations Rules – Resolution No. 11-60.
- O. The parties will discuss the Association's interest in making the Senior Management Analyst classification eligible for supervisory differential pay at the Labor Management Committee (LMC) within six (6) months of the effective date of this MOU.
- P. The parties will discuss the Association's interest in increased certification pays at the Labor Management Committee (LMC) within six (6) months of the effective date of this MOU.
- Q. The Union and the District agree that upon written approval of the Appointing Authority and the Deputy of Human Resources, positions in the following classes will be eligible to receive a Supervising Differential of 2.5% when assigned, on a continuing basis, to provide direct supervision to two or more full-time equivalent employees in budgeted positions.

- | | |
|---------------------------------|---|
| 1. Senior Accountant | 5. Senior Microbiologist |
| 2. Senior Biologist | 6. Senior Real Estate Agent |
| 3. Senior Chemist | 7. Senior Water Conservation Specialist |
| 4. Senior Environmental Planner | 8. Senior Management Analyst |

The incumbent must attend supervisor training as designated by management. If management withdraws the supervisory responsibility, the differential will be removed. The differential is not eligible for retroactivity.

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Section 6. On Call Pay

- A. Non-exempt employees required to remain On Call during non-working hours shall receive one (1) hour pay for the first 5–8 hours, within a single twenty-four (24) hour period, and one-half (1/2) hour pay for each additional 5–8 hours within the same twenty-four (24) hour period. An employee who is On Call for the entire weekend (i.e., from Friday after their normal shift ends until Monday beginning of their normal shift) shall receive eight (8) hours pay for the entire weekend.
- B. Employees On Call shall be readily accessible by cell phone, pager, landline, or other means of communication and will report to duty within a reasonable amount of time as determined in writing by their supervisor/manager, but in no case should an employee be provided with less than 20 minutes to report to work.
- C. Employees who are On Call found not readily accessible, who refuse, or are unable to report to duty within the time frame determined by their manager, upon attempted notification by the District, shall not receive the On Call pay for the period they were supposed to be On Call and may be subject to progressive discipline.
- D. When an employee responds by cell phone, landline or computer and does not return to a District facility, they shall be paid their applicable rate of pay to the nearest quarter hour (i.e., 5-minute phone call—employee can charge 15 minutes) while engaged in this activity.

Section 7. Call Back Pay

- A. Non-exempt employees reporting to work from on-call status or who are called back to work from off-duty hours shall be paid on a portal-to-portal basis. Portal-to-portal means the time from when the employee enters the District facility to which they are to report when called back to the time when the employee leaves the District facility.
- B. Non-exempt employees not On Call, who are called back and report to work to a District facility (or alternative place designated) shall be compensated for two (2) hours, or the actual time worked, whichever is greater, at time and one-half the employee's base rate, provided such Call Back duty does not immediately precede or follow their normal shift.

Section 8. Translation Services Pay

- A. Employees who successfully demonstrate the ability to communicate effectively in English and any other language used by a significant portion of the population the District serves may be compensated at the rate of \$75.00 per month for providing occasional use of bilingual skills such as written or oral language translation on behalf of the District. Such translation services may be in addition to the employee's usual duties and responsibilities.
- B. The CEO or designee will determine the need and number of employees allowed to participate in this program. In order to receive translation service pay, the employee must document the time used to provide translation services on a form provided by the District, approved by their supervisor and submitted to payroll each month to receive the differential.

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Section 9. Job Site Reporting

- A. Employees shall be eligible for job site reporting pay of twenty dollars (\$20) per day where an employee is, in advance, temporarily assigned by a department manager to perform work on a project or campus other than the employee's regular base of reporting, and the employee must be at the location at the start or end of a shift. Except for Construction Inspectors, temporarily means the assignment does not exceed six (6) months.
- B. When job site conditions warrant, the employee may request or the Deputy may assign an assigned District vehicle for the purpose of job site reporting.
- C. The employee's regular base of reporting is defined as the office campus where the employee would normally report in the absence of the project activity, usually where the employee's supervisory and support staff are located.
- D. No other compensation including overtime shall be paid for any additional commute times or mileage incurred by the employee for reporting to a temporarily assigned job site within any geographic location of the District's jurisdiction.

Section 10. Temporary Assignment-Temporary Upgrade Pay

- A. An Appointing Authority may temporarily assign an employee to a higher-level classification for which they are qualified by education, training, or experience and possess the required license(s) and/or certification(s) required by the position for the following reasons:
 - 1. Vacant Position
 - a. Assignment must be to backfill a vacant position code.
 - b. Length of assignment shall be thirty-one (31) days or more, not to exceed 960 hours in a fiscal year or twelve (12) months, whichever occurs first.
 - c. Employee will have full authority and responsibility of the new position, must assume 100% of the higher-level duties, and will not continue to perform their current duties in addition to the new duties.
 - d. Compensation shall be at the first step of the range of the Temporary Assignment position or ten percent (10%) above the employee's current salary, whichever is higher, provided that the salary does not exceed step 7 of the higher class.
 - e. Compensation for Temporary Assignment pay will be reported to CalPERS as special compensation if the employee is a Classic CalPERS Member. Employees enrolled in the 2% @ 62 formula are not eligible for Temporary Assignment pay to be reported to CalPERS .

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- f. Employees on a Temporary Assignment in an exempt position will not be eligible to earn overtime.
- g. Paid leave while on Temporary Assignment shall be paid at the Temporary Assignment pay rate.
- h. Pay differentials held prior to the Temporary Assignment will not be retained, unless specifically required by the Temporary Assignment position.

2. Leave of Absence

- a. Length of assignment shall be thirty-one (31) days or more, not to exceed twelve (12) months.
 - b. Employee will have full authority and responsibility of the new position, must assume 100% of the higher-level duties, and will not continue to perform their current duties in addition to the new duties.
 - c. Compensation shall be at the first step of the range of the Temporary Assignment position or ten (10%) above the employee's current salary, whichever is higher, provided that the salary does not exceed step 7 of the higher class.
 - d. Compensation for Temporary Assignment pay will be reported to CalPERS as special compensation if the employee is a Classic CalPERS Member. Employees enrolled in the 2% @ 62 formula are not eligible for Temporary Assignment Upgrade pay to be reported to CalPERS.
 - e. Employees on a Temporary Assignment in an exempt position will not be eligible to earn overtime.
 - f. Paid leave while on Temporary Assignment shall be paid at the Temporary Assignment pay rate.
 - g. Pay differentials held prior to the Temporary Assignment will not be retained, unless specifically required by the Temporary Assignment position.
- B. When granting a Temporary Assignment, Valley Water will use reasonable efforts to ensure such Temporary Assignment occurs on a fair and equitable basis and are reserved for qualified employees.
- C. Valley Water shall not use a Temporary Assignment as a means of permanently filling a position that requires a regular full-time employee.
- D. Time Served in the Temporary Assignment will be counted towards minimum qualifications for permanent appointment; however, time served does not automatically qualify the employee to be minimally qualified for the permanent appointment.

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- E. Valley Water will notify the Union when making a Temporary Assignment into a position represented by the Union.

Section 11. Temporary Assignment-Special Assignment Pay

- A. An Appointing Authority may temporarily assign an employee to a higher-level classification for which they are qualified by education, training, or experience and possess the required license(s) and/or certification(s) required by the assignment for the following

- 1. Vacation/Sick Leave Coverage

- a. Length of assignment shall be made for a minimum of five (5) consecutive eight (8) hours work days, four (4) consecutive nine (9) hour work days, four (4) consecutive ten (10) hour work days, or three (3) consecutive twelve (12) hour work days/shifts, not to exceed twelve (12) months.
- b. Employee will not have full authority or responsibility of the new position and will continue to perform their current duties in addition to the new duties.
- c. Compensation shall be at the first step of the salary range of the Temporary Assignment position or 5% above the employee's current salary, whichever is higher, provided that the salary does not exceed step 7 of the higher class. If the employee is acting for unclassified staff, compensation shall be 7.5% higher than the employee's current salary.
- d. Temporary Assignment pay earned is not reportable to CalPERS.
- e. Pay differentials held prior to the Temporary Assignment will be retained.
- f. Paid leave while on Temporary Assignment will be paid at the employee's regular rate of pay.
- g. If the employee's regular classification is eligible for overtime and the Temporary Assignment is for an exempt position, the employee will continue to be eligible to earn overtime.

- 2. Coverage for Staff on Temporary Assignment

- a. Length of assignment shall be thirty-one (31) days or more, not to exceed twelve (12) months.
- b. Employee may have full authority and responsibility of the new position and assume 100% of the higher-level duties, or may not assume 100% of the higher-level duties and continue to perform their current duties in addition to the new duties.

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- c. Compensation shall be at the first step of the salary range of the Temporary Assignment position or 10% above the employee's current salary, whichever is higher, provided that the salary does not exceed step 7 of the higher class.
- d. Temporary Assignment pay earned is not reportable to CalPERS.
- e. Pay differentials held prior to the Temporary Assignment will not be retained, unless specifically required by the Temporary Assignment position.
- f. Paid leave while on Temporary Assignment will be paid at the Temporary Assignment pay rate.
- g. Employees on a Temporary Assignment in an exempt position will not be eligible to earn overtime.

3. Special Project

- a.Length of assignment shall be thirty-one (31) days or more, not to exceed twelve (12) months.
- b.Employee may have full authority and responsibility of the new position and assume 100% of the higher-level duties, or may not assume 100% of the higher-level duties and continue to perform their current duties in addition to the new duties.
- c. Compensation shall be at the first step of the salary range of the Temporary Assignment position or 10% above the employee's current salary, whichever is higher, provided that the salary does not exceed step 7 of the higher class.
- d. Temporary Assignment pay earned is not reportable to CalPERS.
- e. Pay differentials held prior to the Temporary Assignment will not be retained, unless specifically required by the Temporary Assignment position.
- f. Paid leave while on Temporary Assignment will be paid at the Temporary Assignment pay rate.
- g. Employees on a Temporary Assignment in an exempt position will not be eligible to earn overtime.

B. When granting a Temporary Assignment, Valley Water will use reasonable efforts to ensure such Temporary Assignment occurs on a fair and equitable basis.

C. No Temporary Assignment shall be made that would place the employee above their direct supervisor or manager.

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D. Time served in the Temporary Assignment will be counted towards minimum qualifications for permanent appointment; however, time served does not automatically qualify the employee to be minimally qualified for the permanent appointment.

E. Temporary Assignments are limited to one level above in the unit's business area's hierarchical structure. If no qualified candidate, by either education, training, or experience is available within the unit's business area, the Appointing Authority shall assign an appropriate person. In assigning an appropriate person, the Appointing Authority shall consider attributes such as experience, related knowledge and abilities, past performance, and employee work and career plans.

F. Valley Water will notify the Union when making a Temporary Assignment into classes represented by the Union.

G. Nothing herein shall prohibit the training of an employee in work of a more advanced nature without additional compensation, as long as full duties are not substantially assumed.

Section 12. Organizational Performance Incentive

The parties recognize the need to provide incentives to improve organizational performance with the goals of creating a more cost conscious work force; realizing savings bringing increased focus on team and/or organizational rewards; and improving management of expenditures. The District, at its sole discretion, may continue to offer such programs as the On the Spot Awards (FLOW), the Recognition Awards Program and Service Awards.

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ARTICLE 4. WORKWEEK/OVERTIME/COMPENSATORY TIME

Section 1. Workweek and Lunch Break

- A. The workweek of unit personnel shall be regular recurring periods of 168 consecutive hours in the form of seven (7) consecutive 24-hour periods, as designated by the District. Eighty (80) hours shall constitute a full pay period of work. The workday and the pay periods shall be designated by the District. Work hours shall be as designated by the District. Employees shall be notified of any change in work hours/days at least five (5) calendar days in advance except in cases of emergency.
- B. Except as noted in paragraph C below, employees who work five (5) hours per day or more, must take an unpaid lunch break of at least one-half (1/2) hour. This lunch break should be taken at or about midway through the workday.
- C. Due to the nature of their work, individuals in the Water Plant Operator series, and System Control Operators series, agree to remain at their assigned work site during their work shift. These individuals are entitled to a 30 minute paid on-duty lunch break during their work shift.
- D. Employees in exempt classes are considered exempt professionals and as such are not required to be compensated for overtime work. Commensurate with the exempt class, employees may be required to work outside of their work schedule and may in consultation with their supervisor, adjust their daily work schedule as they deem appropriate in order to meet the responsibilities of the assigned position.

Section 2. Work Schedules

- A. The District recognizes the importance of work-life balance for employees, in accordance with the District Values Statement.
- B. Work schedules include the 8-9-8 and 5-8 schedules. Upon the recommendation of the Unit Manager and the approval of the CEO or designee, other alternative work schedules may be established. . Prior to establishing any new schedule, the District shall give notice to the Union and afford the opportunity to meet and confer.
- C. An employee's work hours shall be as designated by the District. Employees shall be notified of any temporary change in designated work hours/days at least five (5) calendar days in advance except in cases of emergency.
- D. The manager may change the regular work schedule of an employee with thirty (30) calendar days' notice. Decisions to change a work schedule, or denial of a request by an employee to change their schedule, shall be based on business needs.
- E. Employees accrue vacation, sick and personal leaves according to hours of service. When a holiday falls on an employee's work day, the employee is given holiday pay for the number of hours regularly scheduled in that shift not to exceed nine (9) hours (12 hours for assigned continuous facility operation employees only). When the holiday falls on an employee's scheduled day off, eight (8) hours shall be added to the

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employee's vacation balance. Employees will be charged time off based on the number of hours in the work day missed.

Section 3. Overtime/Compensatory Time

- A. An employee must obtain the supervisor's approval prior to working overtime. In exceptional or emergency circumstances where overtime is required and there is not opportunity to obtain supervisory authorization an employee must report the hours worked, purpose, and circumstances to the supervisor during the employee's next scheduled shift.
- B. Overtime is defined as hours worked in excess of 40 hours in a work week or hours worked in excess of those regularly scheduled in a full-time shift, excluding authorized meal periods. Part-time employees will be paid overtime for hours worked in excess of 40 hours in a work week, or hours worked in excess of their regularly scheduled shift or 8 hours in a day, whichever is greater. Except as noted in paragraphs C, D and E below, overtime compensation shall be at one and one-half (1½) of the employee's regular hourly rate of pay including hourly premium and bonus wages.
- C. Employees may request and earn compensatory time off in lieu of paid time. Compensatory time shall be accumulated at the rate of one and one-half (1½) hour accumulation for each hour worked, not to exceed a total accumulation of eighty (80) hours of compensatory time. Accumulated compensatory overtime must be taken before any accumulated vacation time is used and is to be taken under the same terms and conditions as vacation.
- D. Overtime/compensatory time payment shall be as defined above except that continuous overtime worked in excess of 8 hours shall be compensated at two (2) times the regular hourly rate of pay and continuous overtime worked in excess of sixteen (16) hours shall be compensated at two and one-half (2½) times the regular rate.
- E. An employee who is required to work overtime on Sundays or a District holiday will be paid at the rate of two (2) times the regular hourly rate.

Section 4. Overtime Meal Breaks

- A. In addition to regular scheduled breaks, employees will be provided a one-half (½) hour unpaid meal break after eleven (11) continuous hours of work.
- B. After sixteen (16) continuous hours worked, a paid one (1) hour meal break will be provided. After 21 continuous hours worked, an additional one-half (½) hour paid meal break will be provided.
- C. The break is earned at the completion of the 16th and 21st continuous hours worked.

Section 5. Overtime Meal Allowances

- A. Employees earn a meal allowance in accordance with paragraph B below, after completion of three (3) hours of overtime, when such overtime is contiguous with a full day's work. Employees also earn a meal allowance after completion of any eight

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(8) hours of continuous overtime and an additional allowance will be earned after completion of every four (4) hours of continuous overtime thereafter.

- B. Allowances for meals are determined by when the meal is earned and are limited as follows:
 - 1. A meal allowance earned between the hours of 12:01 a.m. and 8:00 a.m. shall be paid at thirteen dollars (\$13) for breakfast.
 - 2. A meal allowance earned between the hours of 8:01 a.m. and 4:00 p.m. shall be paid at fifteen dollars (\$15) for lunch.
 - 3. A meal allowance earned between the hours of 4:01 p.m. and 12 midnight shall be paid at twenty-five dollars (\$25) for dinner.
- C. Employees are not eligible for an overtime meal allowance if the District provides a meal consistent with the employee's reasonable dietary needs and within reasonable proximity to the time in which the allowance or break would be earned.
- D. Employees shall be reimbursed for actual meal expenses incurred while traveling on District business in accordance with and subject to the limitations of District procedures for travel reimbursements.

Section 6. Rest Period

- A. One (1) paid twenty (20) minute rest break with pay shall be provided to an employee for each four (4) hour period that employee is required to work during the workday. For full time employees, the first twenty (20) minute rest break must be taken during the first half of the workday and the second twenty (20) minute rest break must be taken during the second half of the workday. Supervisors are responsible for scheduling rest periods. It is recognized that many positions have an assignment that requires coverage for a full shift which would not permit the employee to actually leave their post. In those cases, it is recognized that the employee can "rest" while the employee physically remains in the geographic location of their duty post.
- B. An employee may not accumulate unused rest period nor shall rest periods be authorized for covering an employee's late arrival on duty or early departure from duty.

Section 7. Fatigue Time

- A. If an employee works four (4) or more continuous hours of overtime with less than an eight (8) hour rest period before their next regular scheduled work shift, they shall receive fatigue time subject to the provisions of this Section. The purpose of fatigue time is to allow an employee an eight (8) hour rest period before requiring them back to work. The employee will not lose the regular work pay they would otherwise be entitled to. A maximum of eight (8) hours of fatigue time is allowed.

EXAMPLE: An employee whose normal start time is 8 a.m. works four (4) hours continuous overtime from 10 p.m. until 2 a.m. Since there are only six (6) hours between the end of the overtime worked and the start of

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the normal shift, the employee is eligible for two (2) hours of fatigue time. The employee may arrive at work at 10 a.m. and can code the two (2) hours missed (8:00–10:00) to fatigue time and receive the normal full day's pay.

- B. Employees requesting fatigue time are responsible for providing advanced notification to their supervisor, or person in charge that they will be utilizing fatigue time.
- C. Employees are not eligible for fatigue time if the overtime work begins within four (4) hours of their next regularly scheduled shift.

Section 8. Flextime

- A. In order to efficiently carry out District work and serve the public, managers will establish designated start and end times for their areas of oversight.
- B. Employees are expected to report to work at their designated starting time. On occasions when an employee is not able to report to work on time due to commute difficulties, unanticipated responsibilities, or family care issues, the employee may have up to a fifteen (15) minute grace period provided it does not affect the necessary work and responsibility of the District. This grace period is not to be exercised on an ongoing basis, but is intended for unexpected difficulties. An employee who reports to work late must make up the time by working a corresponding number of minutes at the end of the regularly scheduled shift.
- C. Employees may request flexible time up to two (2) hours before or after the designated start and end times. Flextime may be approved unless, in the sole discretion of the District, the time would significantly affect the necessary work and/or public responsibility of the District.
- D. Each non-exempt employee must complete their full scheduled number of hours required per day. Lunch and/or break times may not be used to complete the number of hours in a shift.

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ARTICLE 5. BENEFIT PROGRAMS

Section 1. Maintenance of Benefits

Benefit plans currently in effect will continue during the term of this MOU unless; (1) a benefit plan is canceled by the Plan/Insurer; or (2) a benefit plan is added, deleted, or amended by the District and after consultation with the Union. The District will notify all employees and the Unions of any changes, including, but not limited to, any amendment, deletion, or cancellation of a benefit plan no later than ten (10) working days prior to the effective date of such amendment, deletion, or cancellation.

Section 2. Medical

- A. The District agrees to continue medical coverage at the level provided in this MOU. Employees will pay 15% and the District will pay 85% of the cost of the premium. Coverage will be for all employees and their dependents, including domestic partners. During the life of the MOU, any increases or decreases in premium rates will also increase or decrease the total amount paid by the established cost-sharing. Employee paid medical premiums may be paid on a pre-tax basis in accordance with the IRS Section 125 Plan.
- B. The District agrees to provide all regular District employees with medical coverage. District employees may only receive coverage under one plan; either as single coverage or family coverage either as the primary beneficiary or as a dependent under the plan of a spouse or domestic partner who is a regular District employee. Also, an employee's eligible dependents will only be covered under one employee's medical plan.
- C. Effective April 1, 2018 the following plan design changes will be implemented:
1. Co-pay for office visits for Kaiser plan will be \$10.00.
 2. Co-pay for office visits for Blue Shield HMO plan will be \$10.00.
 3. Prescription coverage for Kaiser plan will be \$10.00 generic; \$15.00 name brand; \$30.00 non-formulary; 30-day supply for retail; 90-day supply for mail order with two co-payments.
 4. Emergency room services for all plans will be \$100.00 per visit in addition to any applicable calendar year deductible. Co-pay will be waived if hospitalized.
- D. Effective April 1, 2019 the following plan design changes will be implemented:
1. Calendar year deductibles for Blue Shield PPO plan will be \$250.00 per person/maximum \$500.00 per family.
 2. Out-of-pocket limits for all plans will be \$2,000.00 per person/maximum \$4,000.00 per family.

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- E. A District employee who chooses to be covered as a dependent under another District employee's plan rather than opting for coverage as a primary beneficiary, will receive an in-lieu payment equivalent to 50% of the cost of the least expensive single coverage plan which is taxable income.
- F. Such District employees are eligible to enroll in any plan in the event one spouse or partner leaves the District, or a change in their marital/partnership status occurs.
- G. Upon retirement, such employees would have the same rights to medical benefits as other employees.

Section 3. Vision Care

The District agrees to continue the Vision Service Plan vision care coverage for employees and dependents enrolled in the Blue Shield medical plan, and pay the premium thereof, including any increases in the cost of premiums which may occur during the term of this MOU. Employees enrolled in the Kaiser medical plan will receive vision care coverage as part of their medical plan, subject to premium sharing pursuant to Section 2-A above.

Section 4. Dental

- A. The District agrees to continue the Delta Dental Plan of California dental coverage for employees and dependents and pay the premium thereof, including any increases in the cost of premiums which may occur during the term of this MOU.
- B. The benefits of the District-paid Delta Dental Service Plan will have the basic dental coverage benefit of \$2,000 per each eligible employee and each dependent per year, and the lifetime orthodontic benefit of \$1,500 per each eligible employee and each dependent.

Section 5. Life Insurance

The District agrees to furnish life insurance equal to an employee's annual salary up to a maximum benefit of \$100,000. This policy includes AD&D coverage for the employee. Additional life insurance at employee's cost will be available at group rates at 1x, 2x, 3x or 4x annual salary to a maximum benefit of \$500,000.

Section 6. Disability Insurance

- A. The District provides basic Short-Term Disability (STD) and Long-Term Disability (LTD) insurance which provides a benefit of 66 2/3% up to the first \$9,000 in monthly base pay. For STD, benefits start after the 14-day elimination period and are paid on a weekly basis. If necessary, STD may transition into LTD after 180 days of disability and then paid on a monthly basis.
- B. Employees who have a gross salary of more than \$9,000 per month are eligible to purchase supplemental STD/LTD coverage up to a maximum of \$18,000 in monthly salary.

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- C. Employees may use their sick leave during the waiting period and to supplement disability payments.

Section 7. Personal Accidental Death and Dismemberment

The District agrees to make personal accidental death and dismemberment group insurance available to employees at no cost to the District.

Section 8. Part–Time Classified Benefits

- A. Regular District employees who have received management approval to work a reduced work week or part–time schedule and who work a minimum of 40 hours per pay period and participate in the Public Employees Retirement System are entitled to receive the following benefits on the same terms as full-time regular District employees:

- 1. Medical
- 2. Vision Care
- 3. Dental
- 4. Life Insurance
- 5. Disability Insurance

- B. They may also participate in any classified employee benefit program wholly funded through employee contributions for which they are eligible under the terms of the agreement with the provider (i.e., optional Personal Accidental Death and Dismemberment Insurance).

Section 9. Dependent Care Assistance Program

The District agrees to continue the Dependent Assistance Program as provided by the Internal Revenue Code Section 129. Said program provides that a limited value of child and dependent care costs provided under an employer’s non–discriminatory plan is not included in an employee’s gross income for income tax purposes.

Section 10. Health Care Reimbursement Program

The District agrees to continue the Health Care Reimbursement Program as provided by the Internal Revenue code (IRC) 125. In accordance with the Program, a limited value of un-reimbursed medical costs provided under an employer’s non–discriminatory plan is not included in an employee’s gross income for income tax purposes.

Section 11. Employee Assistance Program

The District will continue the Employee Assistance Program providing employees access to confidential assistance in the solving of personal problems. Such program will be operated primarily by personnel outside of the District. Maintenance of confidentiality and anonymity will be considered a primary goal of the program.

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Section 12. Benefits Handbook

The District's Benefits Handbook, describing the employee benefit plans, will be made available to employees.

Section 13. Benefits Collaboration

The District will continue a dialogue with the Union in an effort to control costs and optimize the value of the employee benefits programs and to facilitate the approval of meet and confer items related to those programs.

ARTICLE 6. PENSION BENEFITS

Section 1. PERS Pension

- A. The District will continue to participate in the Public Employees' Retirement System (PERS) with benefits as currently provided at the 2.5% @ 55 Formula Benefit Level for employees hired prior to March 19, 2012. Employees hired March 19, 2012 or thereafter, will participate in the Public Employees' Retirement System (PERS) with benefits provided in the contract with PERS at the 2% @ 60 formula Benefit Level. Employees hired January 1, 2013 or thereafter who qualify as new members will be placed in the PEPRA PERS formula of 2.0% @ 62 (2.5% @ 67). All pension benefits are subject to the provisions of the contract with PERS, as amended from time to time, the terms of which are incorporated by reference as if fully set forth herein.
- B. Employees participating in the PERS 2.5% @ 55 formula and the PERS 2.0% @ 60 formula (Classic) will pay 11% towards their pension benefits which includes the employee required contribution as well as an additional amount 3.0% for PERS 2.5% @ 55 formula and 4.0% for PERS 2.0% @ 60 formula) towards the employer's contribution. These deductions will be pre-tax to the extent allowable by law.

Effective the first full pay period in July of 2022, employees participating in the PERS 2.5% @ 55 formula will contribute only the 8.0% employee contribution rate and will no longer contribute any additional amount toward the employer contribution. Effective the first full pay period in July of 2022, employees participating in the PERS 2.0% @ 60 formula will contribute only the 7.0% employee contribution rate and will no longer contribute any additional amount toward the employer contribution. These deductions will be pre-tax to the extent allowed by law.

- C. Employees participating in the formula of 2.0% @ 62 (2.5% @ 67) (PEPRA) will pay 50% of the total normal cost as determined by CalPERS plus an additional 2.0% toward their pension benefits. Effective the first full pay period in July of 2022, employees participating in the 2.0% @ 62 (2.5% @ 67) will only be required to pay 50% of the total normal cost as determined by CalPERS toward their pension benefits. These deductions will be pre-tax to the extent allowable by law.
- D. The District will continue to include an option in the retirement contract which allows retirement credit for military service under the terms and conditions as specified by PERS.
- E. The PERS Retirement Plan will include Post Retirement Survivor Continuance and Retirement Credit for Unused Sick Leave for the 2.5% @ 55 plan.
- F. The employee survivor benefits will be Level 4 as specified in the 1959 Survivor Benefits Report of the California Public Employees Retirement System for the 2.5% @ 55 plan.
- G. The PERS Retirement Plan Final Compensation will be calculated by using the average monthly rate over the highest consecutive 12 month period for the 2.5% @ 55 plan. The PERS Retirement Plan Final Compensation for the 2% @ 60 plan will be calculated by using the average monthly rate over the highest consecutive thirty-six (36) month period.

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The PERS Retirement Plan Final Compensation for the PEPRA PERS plan of 2.0% @ 62 (2.5% @ 67) will be calculated by using the average monthly rate over the highest consecutive thirty–six (36) month period.

- H. The District will continue implementing the provisions of Internal Revenue Code 4140(h) (2) which allows the employee’s salary to be reduced by the amount of the employee’s retirement contribution only for the purposes of computing Federal and State income tax. The employee PERS contribution will be taken against the actual base salary prior to reduction for taxation purposes.

Section 2. Retiree Health Benefits

- A. This section does not apply to those District employees who retired from the District prior to July 1, 1988.
- B. Eligibility requirements for retiree medical coverage are as follows:
 - 1. Eligible retirees hired prior to March 1, 2007:
 - a. Eligible retirees with a minimum of ten (10) years (20,800 hours) of continuous District service will receive medical coverage.
 - b. Eligible retirees with a minimum of fifteen (15) years (31,200 hours) of continuous District service will receive medical coverage for the employee plus one eligible dependent.
 - 2. Eligible retirees hired on or after March 1, 2007:
 - a. Eligible retirees with fifteen (15) years (31,200 hours) of continuous service will receive medical coverage.
 - b. Eligible retirees with twenty (20) years (41,600 hours) or more years of continuous service will receive medical coverage for the employee plus one eligible dependent.
 - 3. Eligible retirees – service credit for prior public agency employment:
 - a. For purposes of satisfying the continuous District service requirement in Section 2(B)(1) or (2) above, District employees employed or hired during any portion of the term of this Memorandum of Understanding shall be credited for any prior employment at the State of California or any political subdivision thereof, including any city, county, or special district.
 - b. This provision shall not apply retroactively to former District employees who left District employment prior to the effective date of this Memorandum of Understanding.
 - c. To be eligible for the Service Credit, employees shall have a minimum of five (5) years (10,400 hours) of actual and continuous employment at the District prior to the date of retirement with CalPERS. For employees

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hired during the term of this Memorandum of Understanding, completion of the aforementioned five-year (10,400 hours) requirement following expiration of this Memorandum of Understanding shall be sufficient to trigger the survival clause in subsection (e) below.

- d. Eligibility for the service credit under this subsection is further conditioned upon employees' full cooperation with the District in any reasonable efforts to obtain records or other proof of employees' prior public agency service.
 - e. Service credit awarded during the term of this Memorandum of Understanding pursuant to this Section 2(B)(3) shall survive expiration of this Memorandum of Understanding. However, nothing in this Section 2(B)(3) is intended to create any other duties or obligations of the District for future employees hired after the expiration of this Memorandum of Understanding.
- C. A retired employee has the option to continue coverage for additional eligible dependents by paying the premium to the District.
 - D. Retirees who live outside the Kaiser service area will not be permitted to enroll in the Kaiser plan.
 - E. The District will include this assumption in conducting an actuarial analysis to estimate the impact on reducing the unfunded liability.
 - F. During periods when an eligible retiree has medical coverage from another employer, that coverage will be primary and the District's coverage will become secondary.
 - G. Upon the retiree's death, the District will continue medical coverage for the retiree's surviving eligible dependent. District-paid continuation of a second eligible dependent will cease upon the retiree's death.
 - H. Any other surviving eligible dependents that were on the plan at the time of the retiree's death have the option to continue coverage by paying the premium to the District. New or additional dependents cannot be added after the retiree's death.
- 1. An eligible District retiree is defined as:
 - a. An employee who retired from the District on and after July 1, 1988, and is eligible for California Public Employees' Retirement System (CalPERS) service retirement (age fifty (50) or over with a minimum of five (5) years of CalPERS service credit); and
 - b. Subject to section 2(B)(3) above, an employee with a minimum of ten (10) years (20,800 hours) of continuous District service; or
 - c. An employee with a minimum of five (5) years (10,400 hours) of continuous District service who is eligible for CalPERS disability retirement.

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- I. It is understood that by entering into this MOU, neither party waives any legal rights, including the Union's or an employee's right to assert that retiree health benefits are vested, or what the vested benefit constitutes, as to employees working or who retired at any point between December 30, 2006, and December 31, 2011.
- J. The retiree health benefits provided to eligible District retirees will be the same health benefits that the District provides its active regular full time employees. Except as noted below, retiree premium sharing will be based on the premium sharing percentage required of active employees on the same premium amounts that apply to the medical plans for active employees, or retiree rates, whichever is less. Retiree premium sharing shall not apply to employees hired by the District prior to December 30, 2006.

Section 3. Medicare Enrollment

As of August 1, 2007, all current retirees not yet 65 years of age and Medicare eligible and all future retirees who are Medicare eligible, must enroll themselves in Medicare when they reach the eligibility date for Medicare (presently at age 65). Their Medicare eligible dependents, who are enrolled in the District's health plan, must also enroll in Medicare upon their eligibility date. Failure to enroll in Medicare Part B will result in termination of retiree medical benefits. The District will reimburse the ongoing Medicare Part B cost incurred by the retiree and/or dependent. The method of reimbursement shall be developed by the District, but reimbursements shall be made no less frequent than quarterly. The District will also include this assumption in conducting its actuarial analysis to estimate the impact on reducing the unfunded liability.

Section 4. Deferred Compensation

- A. The District agrees to continue to make available reasonable deferred compensation programs.
- B. The Union will have the right to representation on the District's deferred compensation committee.
- C. For the term of this contract, which expires on December 31, 2025, the District agrees to match up to the amount outlined in the Engineers Society MOU or one thousand eight hundred (\$1,800) dollars, whichever amount is greater, per calendar year. The match payments will be contributed to the employee's 401(a) account.
- D. The current maximum deferred compensation amount allowed by law for the 401a plan is \$58,000 and the current maximum amount of deferred compensation allowed by law for the 457 b plan is \$19,500 for those under 50 and \$27,000 for those over 50. Both plans are subject to change per IRS rules.

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ARTICLE 7. PAID LEAVES

Section 1. Holidays

A. Employees will have the following paid holidays:

Holiday	Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Cesar Chavez Day	March 31
Memorial Day	Last Monday in May
Juneteenth	June 19
Independence Day	July 4
Labor Day	First Monday in September
Indigenous Peoples' Day	Second Monday in October
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	The Friday after Thanksgiving
Christmas Day	December 25

- B. In addition to section 1A above, any day, subject to prior approval by the District Board of Directors, appointed by the President of the United States or the Governor of California for a public fast, Thanksgiving, or holiday.
- C. Holidays falling on Saturday are observed on the preceding Friday. Holidays falling on Sunday are observed on the following Monday. Holidays falling during periods of paid leave, such as vacation or sick leave shall not be deducted from the accumulated leave time. Holidays falling on an employee's scheduled day off shall be added to the employee's vacation balance.
- D. Continuous operations shift employees who work on a Saturday or Sunday on which a holiday would normally fall, will be paid at the holiday rate. The Friday preceding or Monday following shall not be considered a holiday for continuous operations shift employees.
- E. A continuous shift operator who works four (4) hours or less on a shift falling on a holiday shall be compensated by adding eight (8) hours to their accumulated vacation leave balance instead of holiday pay.
- F. When work is required on a holiday, such time shall be compensated at the rate of two (2) times the regular rate of pay including premium pay for shift differential, or any other pay differentials, plus the regular holiday pay to which the employee is entitled.
- G. An employee in a leave without pay status immediately preceding and following the holiday will not be eligible to be compensated for the holiday.

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- H. When the holiday falls on an employee’s regular day off, the employee will have eight (8) hours of vacation added to their vacation balance. Regardless of the employee’s scheduled work hours for that regular day off (i.e., 9 hours or 10 hours), only eight (8) hours of vacation is added to the existing vacation balance.

Section 2. Absence Notification

- A. Employees must obtain advance approval for use of vacation, personal leave, compensatory time off or sick leave for cases other than an unanticipated disabling illness or injury or for the need to care for a family member who becomes ill or injured.
- B. In circumstances where it is not possible to anticipate an absence and secure prior approval, the employee should notify their supervisor in a timely manner to report the absence. In most circumstances, the call should be made within one (1) hour of the scheduled starting time. Non-emergency medical appointments, sick leave, vacation, compensatory time off and personal leave are to be scheduled and approved sufficiently ahead of time so as to minimize the impact on unit operations.
- C. The District shall not require an employee to give a reason as a condition for approving the use of vacation, compensatory time, sick leave, or personal leave provided prior approval is requested.
- D. Any unauthorized absence by an employee shall be deemed to be an absence without pay and will be grounds for disciplinary action by the appointing authority. Any employee who is absent for three (3) consecutive days or more without authorized leave shall be deemed to have resigned.

Section 3. Vacation

Years of Service	Rate of Annual Accumulation
Through 1st year	80 hours/year
Beginning with the 2nd year	96 hours/year
Beginning with the 5th year	128 hours/year
Beginning with the 10th year	144 hours/year
Beginning with the 15th year	168 hours/year
Beginning with the 20th year	176 hours/year

- A. Vacation may be accumulated not to exceed three (3) times the annual entitlement except when the employee:
 - 1. Is absent on full salary due to a work-related injury or illness; or
 - 2. Is earning vacation while using sick leave due to an illness or injury; or
 - 3. Is unable to take vacation because they as an employee of the District are responding to extreme emergencies such as fire, flood, or similar disaster.
- B. The monetary value of accumulated vacation time will be paid to an employee whose employment is terminated with the District. In the event of termination due to death, the value of accumulated vacation time will be paid to an employee’s beneficiary.

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- C. Whenever operationally practical, vacations will be scheduled for the time requested by the employee. In order to avoid undue disruption of work activities or to minimize conflicts with other employees' vacations, the manager may place seasonal or other restrictions on the use of vacation.
- D. Supervisors may prepare a schedule of available vacation periods for each class in their organizational unit in relation to estimated workload. Each employee shall indicate, by order of preference, the vacation period desired. Supervisors shall review vacation requests and resolve any conflicts in favor of the employee with the most District seniority, provided, however, if an employee requests their vacation be taken in two or more non-continuous vacation periods, such employee may exercise their seniority only for the first period of vacation.
- E. An employee on vacation who becomes ill may request a conversion of vacation time used while ill to sick leave if such illness is supported by a written statement from a medical provider or if the employee was hospitalized for the illness or injury.
- F. If an employee's requested vacation must be denied or cancelled due to operational reasons and for that reason the employee reaches the vacation accrual maximum, an exception of time will be granted before the vacation accrual maximum is enforced.

Section 4. Vacation Cash Out

An employee may cash out their accrued vacation hours not to exceed 80 hours or the number of hours equal to 100% of their vacation annual accrual rate whichever is greater. The cash out timelines must be in accordance with District policy. The MOU is the superseding document concerning the hours and percentage of cash out.

Section 5. Personal Leave

- A. Effective the first pay period of each fiscal year, employees in active status shall be credited twenty-four (24) hours of personal leave. Employees beginning District employment or returning from unpaid leave after that date shall have a prorated amount of personal leave credited to them, computed on a twenty-six (26) pay period basis.
- B. Personal leave must be approved for use in advance by the employee's supervisor.
- C. Personal leave shall not be accumulated from one (1) year to the next. Any personal leave remaining to the employee's credit at the end of the pay period prior to that pay period when the next year's personal leave is credited shall be lost.

Section 6. Sick Leave

- A. Sick leave with pay will be accrued at the rate of 3.693 hours per pay period (96 hours/year). Unused sick leave may be accumulated without limit. The District may require substantiation of any sick leave when the employee has a demonstrable pattern of sick leave abuse or the supervisor has good reason to believe the absence was for an unauthorized reason. Sick leave for three shifts in a row must be substantiated to the

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District with a note from an accredited attending physician or medical provider. Eligible uses of sick leave are:

1. The employee's illness or injury;
 2. Medical or dental appointments for employees;
 3. Providing care for a spouse, domestic partner, child, parent or other legal dependent of the employee pursuant to the District's FMLA/CFRA/PDL Policy (such care could include medical or dental appointments);
 4. Extending the term of an employee's bereavement leave for up to 10 consecutive working days per Section 9 of this Article 7; or
 5. An employee on vacation who becomes ill may request a conversion of vacation time to sick leave if the illness is supported by a statement from an accredited physician or if such employee is hospitalized for any period due to accident or illness.
- B. Upon death of the employee, sick leave balance will be paid at 100% of cash value.
- C. Upon retirement from the District, there are three options for payout/conversion of sick leave balances, provided that the employee has filed for a CalPERS Retirement.
1. Option 1: Cash out up to 480 hours of sick leave at 50%. If applicable, remaining balance is converted to CalPERS for additional service credit.
 2. Option 2: Convert all hours to CalPERS for additional service credit (e.g., balance is 600 hours which equates to an additional 75 days of CalPERS service time).
 3. Option 3: Convert up to 480 hours of sick leave at 50% to Deferred Compensation. If applicable, remaining balance is converted to CalPERS for additional service credit.
- D. Upon resignation with ten or more years of service, or upon separation by layoff regardless of service, up to 480 hours of accrued sick leave shall be paid off at the rate of 25% of the cash value.
- E. Other than as provided in paragraphs B, C, and D above, all rights to sick leave shall be cancelled upon separation, provided, however that:
1. If an employee resigns and is not entitled to a sick leave payoff and is reinstated or re-employed within one year from the date of resignation, the employee shall have their former sick leave balances restored.
 2. Employees receiving a sick leave payoff shall, if reinstated or employed within six months, be required to repay the full amount of the sick leave payoff received and have their former sick leave balances restored. A written agreement for repayment in full must be made before reinstatement or re-employment.

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Section 7. Sick Leave Conservation Program

- A. The Union and the District, in an effort to provide employees with an incentive to conserve sick leave, have agreed to the following:
 - 1. ***Payoff Provision***
 - a. At the end of Pay Period No. 26 of each year, all employees with a minimum of one (1) year of service who have used no more than twenty-seven (27) hours (exclusive of non-deductible bereavement leave) of sick leave during the preceding twelve (12) month period may convert up to twenty-four (24) additional hours of accumulated sick leave in eight (8) hour increments, to cash equal to the number of sick leave hours converted, multiplied by the employee's normal hourly rate. Employees in a part time status or on leave of absence during the eligibility period will have their hours pro-rated.
 - b. The employee must have been in paid status for the full twelve (12) month period.
 - c. Any sick leave used for bereavement purposes shall not be charged against the employee's sick leave conservation hours.
 - d. Payment shall be made in Pay Period 06, following the eligibility period.

Section 8. Sick Leave Donation Program

- A. ***Donor***
 - 1. An employee shall be allowed to donate their sick leave to other employees in accordance with District Policy.
 - 2. Sick leave donations will be on an "hour for hour" basis.
 - 3. The number of sick leave hours donated by an employee will not be considered when determining the employee's eligibility for cashing out sick leave under the District's Sick Leave Conservation Program.
- B. ***Recipient***
 - 1. Must exhaust all of their own paid time off before donated time can be used.
 - 2. Must be on an approved medical leave of absence lasting more than twenty-five (25) calendar days.
 - 3. No lifetime max on the number of donated hours that an employee can receive.
 - 4. Employees on medical leave of absence who have received vacation/sick donation hours will not be considered in an unpaid status until complete exhaustion of their accrued time and all donated hours.

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Section 9. Bereavement Leave

In the event of death in an employee's immediate family (parent (including in-law), grandparent, spouse, child (including grandchild), sibling (including in-law), or other permanent member of the employee's immediate household or any person sharing a comparable relationship resulting from marriage or a domestic partner relationship), the employee shall be granted bereavement leave not to exceed three (3) days. Additional time may be charged to sick leave for a total leave (i.e., bereavement plus sick leave), not to exceed ten (10) consecutive working days. The non-working days are not charged to any leave.

Section 10. Jury/Witness Leave

- A. Any employee who is subpoenaed as a witness is entitled to their regular pay while serving as a subpoenaed witness provided that any fees the employee receives for being a witness are deposited into District funds. Such leave will be unpaid if the employee is the plaintiff or defendant or if the court appearance is for domestic relations matters. Appropriate leave time accruals may be used to cover such time.
- B. Any employee summoned to appear for jury service is entitled to their regular pay while on jury duty. The employee must sign the Juror Fee Waiver Form per the California Code of Civil Procedure, Section 215, which states that a juror who is employed by a government entity and receives regular salary and benefits while on jury duty must waive the daily juror fee.
- C. Employees working evening or night shifts shall be entitled to release time from their own work schedule for the number of hours spent on jury duty during the day.

Section 11. Military Leave

The District shall grant military leave in accordance with the California Military and Veterans Code, unless District policies are more generous.

Section 12. Industrial Injury Leave

- A. When an employee is unable to perform assigned duties by reason of sickness or disability, as defined in the Worker's Compensation Act of the State of California, the employee is eligible to receive the regular salary for eighty (80) hours of such disability, conditioned upon the use of a District-designated medical provider for the duration of the services needed for the care of the employee, without loss of sick leave and/or vacation benefits. This benefit may be referred to in this section as "Code 30" benefits.
 - 1. If the employee uses a District-designated medical provider, the industrial accident leave compensation is a maximum of eighty (80) hours.
 - 2. If the employee uses their own medical provider, such provider must be pre-designated prior to the injury meeting the requirements of the workers' compensation statute and the industrial accident compensation is a maximum of forty (40) hours.

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3. If the employee starts treatment with the District–designated medical provider and after thirty (30) days chooses to treat with an out–of–network physician, the maximum compensation will be forty (40) hours. Any excess hours used beyond forty (40) hours will be reimbursed to the District.
4. The eighty (80) or forty (40) hours must only be used for time off related to the industrial injury for which the hours are assigned. Examples of legitimate use include: doctor’s appointments, physical therapy appointments, meetings with investigators, and Temporary Total Disability. Time off that is not authorized by a physician will not be eligible for this benefit.
5. At the end of this leave (depletion of 40 or 80 hours), and if unable to return to work, the employee will elect whether to receive payment of any accumulated sick, vacation, or other earned leave benefits, or to receive workers’ compensation Temporary Disability Payments (TTD).
6. If the employee elects to receive payment of any accumulated sick, vacation or their earned leave benefits, any TTD for this period is assigned to the District.
7. Code 30 benefits will be in effect for six (6) months from date of injury regardless of the number of hours actually used.
8. Alternatively, up to ten (10) hours of Code 30 benefits may be authorized for a “first aid only” work related injury contingent upon an objective medical evaluation to determine whether the incident is industrial in causation. Must be “As a Result of Employment” (AOE) or “In the Course of Employment” (COE) to qualify as industrial. Use of this time will be at the discretion of the unit manager, in consultation with the first level Deputy and the Worker’s Compensation Administrator.
9. The employee is responsible to ensure that they do not exceed the hours expressed in this section. Excess payments resulting from Code 30 benefits and regular payroll must be reimbursed by the employee to the District on a dollar per dollar basis.
10. If for any reason the claim is denied, these benefits cease.

Section 13. Part Time Classified Employee Paid Leaves

- A. The following paid leave benefits are accrued on a prorated basis: Holidays, Vacation, Sick Leave, and Personal Leave.
- B. Proration of paid leave benefits will be based on the established percentage of a full 80 hour per pay period the employee is approved to work (i.e., employee normally works 20 hours a week = half time, so employee receives 50% of the paid leave benefits). In order to ensure that the prorated formula is appropriate, an employee must either work the scheduled hours per pay period or use accrued leave balances to make up the difference. The sole exception to this formula shall be in the case of holidays for which the employee shall not be required to use accrued leave balances to meet their established reduced hour schedule as long as a minimum of 40 hours has been met for

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the pay period. The actual number of hours worked in any given pay period, regardless of the employee's regular schedule, shall be recorded and credited for purposes of service accrual (i.e., determining eligibility for rate of annual accumulation of vacation, seniority, etc.) up to 40 hours per week.

- C. The following paid leave benefits are provided on a prorated basis as follows:
1. Jury/Witness leave—employees will be compensated for those hours that fall within their regular specified work hours, provided that the fees for such service are deposited into District funds.
 2. Bereavement leave—employees will be compensated for those hours that fall within their regular specified work hours.
 3. Military leave—will be as provided for in the California Military and Veteran's Code.

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ARTICLE 8. LEAVES OF ABSENCE

Section 1. General Provisions

- A. The District will provide leave of absence as required by law under the Family and Medical Leave Act (FMLA), California Family Rights Act (CFRA) and Pregnancy Disability Leave (PDL).
- B. A leave of absence starts on the first scheduled work day on which the employee is absent from work.
- C. A leave of absence may be revoked upon evidence that the cause for granting it was misrepresented or has ceased to exist.
- D. Leave of absence without pay will not be considered as service time in determining eligibility for vacation, sick leave, salary increases, or other circumstances where service is a factor unless expressly required by law.
- E. Leave of absence without pay shall not be credited toward the completion of the employee's probationary period.
- F. Persons responsible for approving leaves of absence shall approve such leaves in a consistent and equitable manner.
- G. District contributions toward insurance premiums will continue for up to twelve (12) months of a leave of absence, or as otherwise required by FMLA, ACA, ADA and/or CFRA. Employees on a leave of absence lasting longer than twelve (12) months may have their coverage extended as required by law.

Section 2. Medical Leave of Absence

- A. A medical leave of absence for an employee's own medical condition not to exceed six (6) months may be granted by the employee's first level manager. An extension not to exceed six (6) months may be approved by the Deputy or designee. An additional extension not to exceed six (6) months may be approved by the Chief.
- B. Appropriate medical documentation must be provided.
- C. All or a portion of a medical leave of absence will be designated as FMLA and/or CFRA as applicable.
- D. An employee is required to utilize all available sick leave for the duration of the medical leave of absence or until exhausted. Use of other accrued time may be used at the employee's option.
- E. Employees on medical leave of absence who have received vacation/sick leave donation hours will not be considered in an unpaid status until complete exhaustion of their accrued time and all donated hours.

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- F. Employees taking a medical leave of absence must provide a District approved medical provider's release upon return to work.
- G. Intermittent medical leave of absence will be granted up to the equivalent of FMLA or CFRA requirement.
- H. Upon return to work, an employee on medical leave shall be reinstated to their former or comparable level position.

Section 3. Family Care Leave of Absence

- A. A family care leave of absence to care for an immediate family member (spouse/domestic partner, child, parent) not to exceed six (6) months may be granted by the employee's first level manager. An extension not to exceed six (6) months may be approved by the Deputy or designee. An additional extension not to exceed six (6) months may be approved by the Chief.
- B. Appropriate medical documentation must be provided.
- C. All or a portion of a family care leave of absence may be designated as FMLA and/or CFRA as applicable.
- D. An employee is required to utilize all available sick leave for the duration of the family care leave or until exhausted. Use of other accrued time may be used at the employee's option.
- E. Intermittent family care leave of absence will be granted up to the equivalent of FMLA and/or CFRA requirement.
- F. Upon return to work, an employee on family care leave shall be reinstated to their former or a comparable level position.

Section 4. Parental Leave

- A. Upon employee request, a parental leave of absence not to exceed six (6) months (or as required by law) may be granted by the employee's first level manager for disability related to the birth of the employee's child; for the employee to bond with their newborn child; or for the placement of a child with an employee for adoption or foster care of the child.
- B. All or a portion of parental leave of absence will be designated as FMLA, CFRA and/or PDL as applicable.
- C. An employee is required to utilize all available sick leave during the period of disability of the parental leave of absence. Use of other accrued time for parental leave, or use of sick leave for parental leave subsequent to the period of parental disability, may be used at the employee's option.
- D. Upon return to work, an employee on parental leave shall be reinstated to their former or a comparable level position.

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Section 5. Personal Leave of Absence

- A. A personal leave of absence, not to exceed six (6) months may be granted by an employee's Deputy or designee for urgent or substantial personal reasons. Personal leave of absence may be extended by a Chief for a further period of not to exceed six (6) months for exceptional circumstances.
- B. Employees on a personal leave of absence are required to exhaust accrued time per applicable MOU provisions. Sick leave cannot be utilized during a personal leave of absence.

Section 6. Educational Leave of Absence

- A. A three (3) month leave of absence may be granted for educational or training purposes when the Chief determines that such training or education is of obvious and direct benefit to the District, is not locally available during the employee's non-working hours, and it can be shown that the employee's absence will not unduly affect the work of that employee's unit of assignment. Such leave may be extended for additional three (3) month intervals not to exceed an aggregate leave of one (1) year.
- B. Employees on an educational leave of absence are required to exhaust accrued time per applicable MOU provisions. Sick leave cannot be utilized during an educational leave of absence.

Section 7. Union Leave

- A. The Union may request up to a three (3) month leave of absence for a Union Officer, Steward, or Chief Steward. The District may, in its sole discretion, approve the request. Union leave which is granted will be subject to the following conditions:
 - 1. Upon termination of the Union leave, the employee will return to their position.
 - 2. The District may terminate the leave early in the event of emergency or changed circumstances.
 - 3. Employees on Union leave will not suffer any loss of compensation or benefits. The Union will reimburse the District for the full amount of the employee's salary and benefits during the leave.
 - 4. All time spent on Union leave will be counted as service credit by the District.

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ARTICLE 9. REIMBURSEMENTS

Section 1. Uniforms

1. The District will provide a uniform allowance of \$335 per fiscal year in accordance with the District's *Warehouse Material Request Instructions Including Uniforms* work instruction document W-741023. Classifications eligible for this allowance are listed below. It is understood that receipt of a uniform allowance requires that the employee must wear the uniform at all times when they are in the field, including a shirt that identifies the District. The maximum allowable dollar amount for an individual pair of work pants shall be \$75.00.

Associate Real Estate Agent
 Biologist (Ast I/II, Asc, Sr)
 Carpenter
 Chemist (I/II/III, Sr)
 Construction Inspector (I/II, Chief, Resident)
 Engineering Technician (I/II/III, Sr)
 Environmental Health and Safety Technician
 Environmental Planner (Ast I/II, Asc, Sr)
 Equipment Mechanic (I/II, Sr)
 Facilities Maintenance Administrator
 Facilities Maintenance Technician (I/II/III)
 Field Construction Supervisor
 Field Operations Administrator
 Heavy Equipment Operator
 HVACR Mechanic (Supv)
 Hydrographer (I/II, Sr, Supv)
 Industrial Coating Specialist (I/II)
 Industrial Electrician (I/II, Sr, Supv)
 Instrumentation and Controls Technician (I/II, Sr, Supv)
 Inventory Control Technician (I/II, Sr, Supv)
 Laboratory Technician (I/II)
 Maintenance Liaison
 Maintenance Worker (I/II/III, Sr)
 Microbiologist (I/II/III, Sr)
 Operations Liaison
 Plant/Pipeline Mechanical Technician (I/II, Sr, Supv)
 Public Information Rep (I/II/III)
 Recycled Water Facility Supervisor
 Senior Corrosion Control Technician
 Surveyor (Ast I/II/III, Sr, Chief)
 Systems Control Operator (I/II/III, Supv)
 Vegetation Program Specialist (I/II)
 Water Conservation Specialist (I/II/III, Sr)
 Water Measurement Technician (I/II/III, Sr, Supv)
 Water Plant Operator (Ast I/II, Sr, Supv)
 Water Resources Technician (I/II, Sr, Supv)
 Welder (I/II)

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Well Ordinance Compliance Inspector (I/II, Supv)

Section 2. Safety Shoes/Glasses

- A. All safety equipment provided by the District must meet CAL/OSHA standards where a CAL/OSHA standard has been adopted. The District Process “Personal Protective Equipment” will be applied during the term of this agreement.

- B. All employees are required to wear footwear appropriate to duties of their class. Employees whose job duties require safety shoes will be reimbursed for up to two hundred and twenty-five dollars (\$225.00) of the cost of safety shoes once yearly (calculated from the date of purchase), provided the shoes meet safety standards which are approved by the District and are purchased pursuant to the Personal Protective Equipment Policy and Procedure. In addition, safety shoes for which the District has reimbursed the employee must be worn on the job. The District shall reimburse two hundred and ten dollars (\$210.00) contribution for prescription safety glasses for those employees whose job duties are found to require such equipment. Prescription glasses must be purchased pursuant to the Personal Protective Equipment Policy and Procedure.

Section 3. Travel and Subsistence Policy

District policies regarding travel and subsistence, will be applied during the term of this agreement.

ARTICLE 10. HIRING/EMPLOYMENT

Section 1. Hiring Process Policy and Procedures

It is District policy that there shall be appointed to District service those persons competent to carry out the District's public responsibility. Appointments to District positions shall be made on an objective basis considering merit, qualifications, competency, and ability to perform the essential functions of the position, pursuant to District policy. It is also District policy of equal employment opportunity to all employees and applicants for employment, regardless of any individual's sex (which includes pregnancy, childbirth, breastfeeding, and medical conditions related to pregnancy, childbirth, or breastfeeding), race, religion, religious creed (including religious dress and grooming practices), gender, national origin (including language use restrictions), ancestry, marital status, veteran status, sexual orientation, gender identity, gender expression, color, age (over 40), medical condition, parental status, pregnancy, the exercise of family and medical care leave rights, the exercise of pregnancy disability leave, political affiliation, physical disability (including HIV and AIDS), mental disability, or the request, exercise, or need for reasonable accommodation.

Section 2. Physical Examinations

- A. Prior to the appointment or within a reasonable period following appointment to a different class as a result of promotion, demotion, transfer or reclassification, the appointee may be required by the District, at the expense of the District, to undergo a medical examination to determine the employee's medical fitness for the position.
- B. The District may require an employee to undergo a physical examination, at the expense of the District, to determine the employee's fitness for the currently assigned position.
- C. The common understanding of physical examination includes both physical and psychological examinations/assessments in determining an employee's fitness for duty. The District will notify the employee and the union that a physical examination will be required to determine the employee's fitness for duty.

Section 3. Administrative Reassignment

- A. The District may administratively reassign employees.
- B. Administrative reassignments may be implemented at the request of an employee or District Management and at the sole discretion of the appropriate Appointing Authority under the following conditions:
 - 1. An employee may request a reassignment at any time. The District may, at its sole discretion, grant a reassignment provided a position is available;
 - 2. Employee requesting administrative reassignment must have completed their probationary period;
 - 3. Employee requested administrative reassignment shall not be permitted more than once in a two-year period; and

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4. The employee(s) meet the minimum qualifications of the class to which the employee is transferred.
- C. District shall notify Union of employee requested administrative reassignment.

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ARTICLE 11. WORKFORCE DEVELOPMENT

Section 1. Tuition Reimbursement

A. The Union and Valley Water agree that it is in the best interest of both, for not only the employee to initiate but Valley Water to provide, training and other opportunities to further facilitate an employee's career development.

B. In accordance with Valley Water policy, employees with six (6) or more months of continuous service may be reimbursed for tuition or expense payments incurred in taking courses outside of normal working hours related to Valley Water employment. All such requests for reimbursement must be approved by Valley Water prior to taking the course. The course content must have some direct relationship to the work of Valley Water.

C. Upon approval of a course/program and completion with a passing grade of C or better (Pass in the cases where only Pass/Fail is given or evidence of attending the course/program in full where no grade or Pass/Fail is given) the employee will be reimbursed the cost of the tuition and other costs such as laboratory fees and assigned textbooks. Total tuition reimbursement shall not exceed three thousand, five hundred dollars (\$3,500) in a fiscal year. No unpaid balances over the maximum will be carried forward to the next fiscal year.

Section 2. Certification and Professional Memberships and Materials and License Reimbursement

A. EA classifications are eligible for professional reimbursement in the amount of three hundred dollars (\$300) per fiscal year. To receive payment, the employee must provide an original receipt for reimbursement. To qualify for reimbursement, the money must be spent on professional associations, conferences, subscriptions, professional licenses not covered under Section 2-B below, meetings or other reference materials related to the employee's area of responsibility or development goals consistent with work performed at the District and included in the employee's annual Goal Setting online form, approved by their manager. Requests will not be unreasonably denied.

B. During the course of this MOU, if the District or legal requirements require licenses or certificates or if any course work is required to renew such licenses or certificates, fees for the licenses, certificates, and/or course work will be paid by the District.

Section 3. Rotation

An eligible employee may, upon approval of the appropriate Appointing Authority(ies), rotate into another unit in the District. The purpose of the rotation is for orientation and learning purposes and employee career development. During rotation, employee will be compensated at their current level. Upon completion of the rotation, the employee will return to their originally assigned position.

A. Eligible employee is defined as an employee who has:

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1. Successfully completed probation, and;
 2. Has a development plan on file in their Employee Development Performance Program.
- B. Rotations shall not exceed twelve (12) months and shall occur no more than once in a three-year period.

Section 4. Education Records

Employees may have placed in their personnel file any records of the satisfactory completion of an educational program given outside the District which is found to be directly related to their duties.

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ARTICLE 12. EMPLOYEE PERFORMANCE/EVALUATION

Section 1. Personnel Records

- A. The District may maintain such personnel records of an individual employee as is deemed necessary. Personnel records may be viewed by the employee's Appointing Authority, potential Appointing Authority, performance evaluation rater and reviewers, and Human Resources Division staff only. Further, an employee, or the employee's authorized representative, may view the employee's personnel record at any time with written consent by the employee.
- B. Material placed in a personnel file which affects an employee's work record negatively may be removed by the District upon petition from the employee and upon evidence that the incident or cause outlined in the material has not recurred and has been on file for a period of not less than two (2) years, except an employee who has received a notice of disciplinary action which was appealed successfully shall have the notice removed from their file immediately after the successful appeal and upon request of the employee.
- C. Evaluations shall not be removed from an employee's file.

Section 2. Employee Performance Evaluations

- A. General: An employee's performance shall be evaluated based on criteria as set forth in the Employee Development and Performance Program (EDPP).
- B. Annual evaluations shall be considered in matters of transfer, promotion, salary increase, demotion, dismissal, and other personnel actions. Evaluations shall be placed in the employee's personnel record. In the event the employee's performance falls below acceptable standards, the employee shall be notified in writing including suggestions for corrective action. The union will be notified when an employee is going to be placed on a Performance Improvement Plan (PIP) prior to the meeting with the employee to present the PIP.
- C. Denial of Step Increase: An overall annual evaluation rating of "Needs Improvement" or "Unsatisfactory" will result in the denial of a step increase until the employee's overall performance is rated at least "Achieved" in a future evaluation period.
- D. Appeals Process: Evaluations are not subject to the grievance procedure. Employees may attach a response to their evaluation, which will be placed in their personnel file. Only evaluations that receive an overall rating of "Needs Improvement" or "Unsatisfactory" may be appealed.
 - 1. To appeal an evaluation, including a decision that denies a step increase, the following process will be used:
 - a. Employee completes an Appeals form which can be accessed on the District's Labor Relations Intranet site.

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- b. Employee files the completed Appeals Form with their First Level Unclassified Manager (or one level above if the rater is an Unclassified Manager) within 15 working days from receipt of the evaluation.
- c. Employee submits a copy of the completed Appeals Form with the Labor Relations Unit also within 15 working days from receipt of the evaluation.
- d. After submitting an appeal, a meeting with the Unclassified Manager to discuss the evaluation will be scheduled by Labor Relations.
- e. The Unclassified Manager will either affirm or revise the rating. The decision by the Unclassified Manager regarding the appeal shall generally be made in writing within fifteen (15) working days from the Unclassified Manager's receipt of the appeal, depending on the complexity and detail level of the case.
- f. Evaluations that are revised as a result of an appeal are not appealable. Evaluations are not subject to the grievance procedure. Decisions by the Unclassified Manager are final.

Section 3. Probation

- A. It is the policy of the District that all new hires, promotions, reclassifications and administrative transfers shall have a probationary period, except as noted below.
- B. The standard probationary period for all classified positions is twelve (12) months or 2,080 hours. Prior to the expiration of the 2,080 hour probationary period, an initial probationary employee may be released from District service at any time. Such rejection is not a disciplinary action and may not be grieved.
- C. An employee who has already passed their initial probationary period and is appointed, promoted, or demoted to another classification (excluding flexibly staffed classes) must satisfactorily complete a probationary period of six (6) months or 1,040 hours. An employee serving a promotional probationary period may be returned to their former classification if it is determined by the Appointing Authority that the employee is not passing their probationary period. Such rejection is not a disciplinary action and may not be grieved.
- D. Employees who have already passed their initial probationary period and are reclassified to a new class who are found by the District to have been performing the duties of the new class for at least twelve (12) months or 2,080 hours will not be placed in probationary status.
- E. In addition, an employee who is administratively transferred or competitively promotes from a position in one class to another position in the same class does not need to complete a probationary period unless the initial probationary period has not been concluded or it is requested by the Appointing Authority. In cases where the administrative transfer is management initiated, the employee will not need to complete a probationary period.

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- F. New Hires or Initial Probationary Employees shall have all rights under this MOU except in cases of suspension, demotion, or termination, or as specifically excluded.
- G. An employee who applies for and accepts a competitive promotion, lateral transfer, or voluntary demotion prior to completion of their twelve-month (2,080 hour) initial probationary period will be subject to a new twelve-month (2,080 hour) initial probationary period. The new twelve-month (2,080 hour) initial probationary period will begin on the first day of appointment in the new position. Hours worked during the prior initial probationary period will not count towards the new initial probationary period and employee will not become regular, non-probationary employee until successful completion of the new initial probationary period. Prior to the expiration of the new initial probationary period, an employee may be released from Valley Water service at any time. Such rejection is not a disciplinary action and may not be grieved.
- H. An employee who has successfully completed their initial probationary period and who is serving a six-month (1,040 hours) promotional probationary period, will be subject to an entirely new six-month (1,040 hours) promotional probationary period of the employee, through a competitive process, applies for and accepts a new promotion, lateral transfer, or voluntary demotion. The new six-month (1,040 hour) promotional probationary period will begin on the first day of appointment in the new position. Hours worked during the prior promotional probationary period will not count towards the new promotional probationary period. Until successful completion of the new promotional probationary period, employee may be rejected from probation at any time and will have no right to return to the prior promotional position. In such cases, employee will be returned to the last classification held where probation was successfully completed. After such rejection from probation is not a disciplinary action and may not be grieved.

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ARTICLE 13. CLASSIFICATION

Section 1. Overview

- A. The Union and the District recognize the need to conduct classification studies due to changes in business needs and/or workforce strategy, and the need to conduct periodic maintenance of the classification system.
- B. The Union recognizes the right of the District to establish new job class(as) and job descriptions and to amend existing class specifications and job descriptions to reflect changes in assigned duties and responsibilities. In the event a substantial change is made in the specification or job description of a class represented by the Union, the District will provide the Union with notice of such changes and the salary for the class. The Union will have fifteen (15) working days of such notice to request a meeting to consult with the District on said class changes. If requested by the Union, the parties shall meet and confer on the salary for the class as soon as practicable after the request is received. Establishment of the salary is not subject to the grievance process as contained in this contract.
- C. At the request of the District, the parties agree to meet and confer over District proposed changes to this section.

Section 2. Reclassifications

- A. When a manager determines that the body of work for a position(s) in the unit is significantly different, they may request a reclassification study. A reclassification study is a study of the body of work of one or several individual existing positions to determine the appropriate classification.
- B. Every effort should be made by the manager to have a reclassification study done on the body of work before assigning work to staff. Management will work with the Classification Unit to determine whether the body of work in question will require a higher or different class.
- C. Should the reclassification study determine the body of work to require a higher or different class, the manager can then determine the staffing mechanism to fulfill this work which may include out of class pay, allocating duties within the unit, or submitting the position to the unmet needs process, and reassignment.
- D. Reassignments may require reclassification to an appropriate class of comparable level.

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ARTICLE 14. DISCIPLINE PROCESS

The following procedure is established as a result of a mutual interest on the part of the District and the Union to resolve disciplinary matters. The District will issue no discipline without just cause.

Section 1. Right to Representation

If a situation arises where an employee will be formally disciplined by an applicable manager, the employee will be notified that they have the right to have Union representation. Any employee who reasonably believes that a meeting with their manager/supervisor may result in disciplinary action against them may request to have a representative in the meeting. If a Union representative is not available at the time of the meeting, the applicable manager will arrange an alternative meeting as soon as possible, but at least within (5) five working days. It is the employee and/or the Union's responsibility to arrange for representation within the five (5) working day requirement.

Section 2. Examples of Employee Misconduct

Examples of employee misconduct include, but are not limited to, chronic absenteeism, incompetence, failure to follow work rules, insubordination, and misstatement of facts on an application or other personnel documents, falsification of work or time records, absence without authorized leave and without just cause.

Section 3. Progressive Discipline

The District shall follow the principles of progressive discipline, as appropriate.

Section 4. Disciplinary Actions

Disciplinary actions should be designed to fit the nature of the issue and may include counseling, oral and written reprimands, suspension, demotion, discharge, or other appropriate action. The particular action imposed shall depend on the severity of the misconduct and the particular factual circumstances involved.

Section 5. Pre-Disciplinary Procedures

- A. An employee who will be investigated for possible misconduct by the Labor Relations Unit shall be notified by management within fifteen (15) working days of the start of the formal disciplinary investigation by the Labor Relations Unit. Management shall make every effort to complete the investigation within sixty (60) days. If the investigation will take longer to complete, management shall update the employee and the Union every thirty (30) days until the investigation is completed. The time limits identified in this section are not grievable.
- B. Following the completion of the employer's formal disciplinary investigation where formal discipline (demotion, suspension, or termination) is being recommended, the appropriate authority shall prepare a Written Notice of Recommended Disciplinary action to be served on the employee in person or by registered mail. A copy will be sent to the Union

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- and Labor Relations Unit. No Written Notice of Recommended Disciplinary action shall be required for informal discipline (counseling, oral and written reprimands).
- C. For matters of formal discipline (demotion, suspension, or termination), the appropriate level of authority for preparing such recommended discipline shall be the Appointing Authority or designee in consultation with the Labor Relations Unit. For all informal disciplinary matters (counseling, oral and written reprimands), the appropriate level of authority for preparing such recommended discipline shall be the applicable manager in consultation with the Labor Relations Unit.
 - D. The Written Notice of Recommended Disciplinary action shall state the specific grounds and facts upon which the action is based and will be provided to the employee, Union, and the Labor Relations Unit.
 - E. Copies of any known materials, reports, or other documents upon which the intended action is based shall be served with the Written Notice of Recommended Disciplinary action to the employee, and copies shall be provided to the Union and the Labor Relations Unit.
 - F. Employee shall be accorded the right to respond in writing to the Written Notice of Recommended Disciplinary action, and any such written response shall be served by employee within fifteen (15) working days from the District's service of the Written Notice of Recommended Disciplinary action. A copy of any such written response will be provided to the Union.
 - G. For matters of formal discipline, (suspension, demotion, termination), within fifteen (15) working days of receipt of the Written Notice of Recommended Disciplinary action, employee shall be accorded the right to request a Skelly Hearing with the Appointing Authority. The Appointing Authority shall designate a Skelly Hearing Officer who has the authority to recommend to uphold, modify or revoke the recommended disciplinary action. A copy of the Skelly hearing notice will be provided to the Union and the Labor Relations Unit. The Skelly Hearing will be scheduled and held as soon as practicable after receipt of the request.
 - H. Following the Skelly hearing, the appropriate Appointing Authority shall issue the Notice of Final Disciplinary action, including the effective date of any discipline to be imposed. The notice is to include the Hearing Officer decision as an attachment.
 - I. At any time in the discipline process the failure of the Union to adhere to the time limits set forth in the MOU shall cause forfeiture for their case.
 - J. Adverse entries on the employee record more than three (3) years old shall not be admitted into evidence or considered to support the charges at any level of the grievance or arbitration procedures. The three (3) year limitation will not apply to previous disciplinary actions related to egregious conduct such as harassment (including sexual harassment), retaliation, potential criminal activity, violence, willful destruction of property, or potential injury to the employee or others.

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Section 6. Counseling

- A. Managers/supervisors shall advise an employee as early as possible when it is determined that their performance or conduct is approaching an unacceptable level.
- B. Counseling should be done by the employee's manager/supervisor. The counseling session should be an open, two-way conversation, keeping in mind that the main objective is to improve the employee's performance and/or conduct.
- C. During these sessions, a problem-solving discussion should be held between the employee and the manager/supervisor and may include the Union with the employee being given an opportunity to state any circumstances which have affected their performance record. While such circumstances may not excuse the performance problems, the parties may find ways to eliminate them in the future.
- D. Specific details and examples should be developed for an action plan. Follow-up and follow-through timelines should also be established if applicable.
- E. The manager/supervisor must establish and maintain appropriate documentation.

Section 7. Oral Reprimand

- A. The manager/supervisor should advise the employee what specific behavior is unacceptable, what is expected and what will happen if improvement does not occur or if conduct continues. At this stage the employee is being put on notice that a failure to correct the problem will lead to further progressive disciplinary action. The manager/supervisor must fully document the oral reprimand including the matter discussed and any agreed on remedial measures.
- B. Specific details and examples should be developed for an action plan and follow-up and follow-through timelines should be established if applicable.
- C. The manager/supervisor must establish and maintain appropriate documentation.

Section 8. Written Reprimand

- A. If the employee has previously been counseled or orally reprimanded, or if the situation warrants this as a first level discipline, a written reprimand must be completed.
- B. The written reprimand should refer to any previous counseling and/or oral reprimand and should include a statement that will put the employee on notice that a failure to correct the problem will lead to further progressive disciplinary action. A copy of the written reprimand will be given to the employee and a copy will be placed in the employee's personnel file. A copy will also be provided to the Union and the Labor Relations Unit.
- C. The written reprimand will include a statement indicating that the employee has received a copy and that the employee has the right to attach a written response. The written response must be submitted to the Labor Relations office within twenty (20) working days from receipt of the written reprimand. The employee may also file an appeal of a

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written reprimand with their first level Unclassified manager. The appeal must be submitted within twenty (20) working days from receipt of the written reprimand.

Section 9. Administrative Leave

- A. **Notification**—If the District elects to place an employee on Paid Administrative Leave, the District shall notify both the employee and the Union. Paid Administrative Leave shall normally not exceed forty-five (45) working days. The notification shall include:
 - 1. The reason why the employee was placed on Paid Administrative Leave.
 - 2. The steps to be taken during the time the employee is on Paid Administrative Leave.
- B. **Leave Extension**—If Paid Administrative Leave needs to be extended beyond forty-five (45) working days, the District shall notify the employee and the Union in writing of the reasons for the change.
- C. Within fifteen (15) working days after commencement of Paid Administrative Leave, both the employee and the Union will be notified in writing of the status of the case.

Section 10. Compulsory Leave

Criminal Charges: The District may require an employee who has been charged in a court of competent jurisdiction with a commission of a felony, or a misdemeanor involving moral turpitude, provided the crime as charged is related to the employee’s employment status, to take a leave of absence without pay pending termination by a way of a plea, finding or verdict at the trial court level as to the guilt or innocence of such employee. Upon a finding of not guilty, the employee may be reinstated to the regularly assigned position with return of all benefits, including salary, that were due for the period of such leave; subject, however, to appropriate disciplinary action if warranted. Any disciplinary action shall be imposed effective as of the commencement date of such leave. If the determination is one of guilt, the District may take appropriate disciplinary action effective as of the commencement date of such leave.

Section 11. Arbitration

- A. Appeal of Final Disciplinary Action resulting in suspension, demotion, or discharge shall be through Arbitration, but only with concurrence of the employee’s Union.
- B. For matters of arbitration, the District and the Union agree to select an arbitrator from the following list of nine (9):

- Norm Brand
- Margie Brogan
- Andrea Dooley
- Matt Goldberg
- Catherine Harris
- Ron Hoh
- John Kagel
- David S. Weinberg
- Barry Winograd

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Section 12. Arbitration Procedure

- A. A written request to proceed to arbitration must be filed by the Union with the Deputy of Human Resources within fifteen (15) working days of the date of the Notice of Final Disciplinary Action. A copy of the written request for arbitration will be provided to the Union and the Labor Relations Unit.
- B. Within five (5) working days following the receipt of the request for arbitration, the parties shall confer to select the Arbitrator from the agreed upon permanent panel of arbitrators. The obligation to strike the first name shall be determined by lot, and the parties shall alternately strike one name from the list until only one name remains, and that person shall be the Arbitrator.
- C. The hearing shall be scheduled as soon as possible, consistent with the arbitrator's schedule. A copy of the hearing notice will be provided to the Union, Deputy of Human Resources, and the Labor Relations Unit.
- D. It is recommended that the Arbitrator render their decision within sixty (60) working days of the conclusion of the aforementioned hearing. The decision shall be in writing, and copies shall be directed to the Deputy of Human Resources or designee, the Union, and the Labor Relations Unit.
- E. The fees and expenses of the Arbitrator shall be shared equally by the District and the Union, it being understood and agreed that all other expenses including, but not limited to, fees for non-District employee witnesses, transcripts, and similar costs incurred by the parties during the arbitration, will be the responsibility of the individual party involved.
- F. The arbitration shall be informal, and the rules of evidence prescribed for duly constituted courts shall not apply.
- G. Subject to the above, hearings shall be conducted in accordance with any additional rules and procedures adopted or specified by the Arbitrator, unless the parties hereto mutually agree to other rules or procedures for the conduct of such hearings.
- H. The decision of the Arbitrator may sustain, modify or revoke the recommended disciplinary action and shall be final and binding on the parties.

Section 13. Probationary Employees

Initial probationary employees may be subject to release from District service and are not subject to review under any provisions of this agreement.

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ARTICLE 15. GRIEVANCE PROCEDURE

The following procedure is established as a result of a mutual interest on the part of the District and the Union to settle grievances quickly and fairly. Employees and/or their representative shall not be discriminated against, coerced, or interfered with in any way as a result of filing a grievance. An employee may request representation by the Union at any stage of the grievance procedure. At any point in the grievance process the parties may agree to extend the timelines. The party's request for an extension must be in writing and will not be unreasonably denied by either party.

Section 1. Grievance Defined

- A. A grievance is any dispute between the District and an employee or the Union concerning the interpretation or application of this Agreement; or rules or regulations governing personnel practices or working conditions within the scope of representation.
- B. Matters excluded from the grievance process include, counseling, oral and written reprimands, performance improvement plans, evaluation process, release of an employee during their initial probationary period, hiring decisions, and items requiring capital expenditure. Written reprimands and performance evaluations are appealable to the next higher level of supervision.
- C. Employees are entitled to representation during the grievance process. Employees shall have the right to represent their own grievance or do so through a Union representative. If an employee chooses to take the grievance on their own, it shall be at the employee's expense.

Section 2. Informal Grievance Procedure

Employees are encouraged to act promptly to attempt to resolve disputes with their manager/supervisor through an informal procedure. A meeting between the manager/supervisor and the employee should take place whenever requested by either party to assist, to clarify or resolve the grievance. The employee may be accompanied by their Union representative at the informal meeting. Any resolution reached at the informal step must be in accordance with the provisions of this agreement, or other rule or ordinance and shall not set precedent.

Section 3. Formal Grievance Procedure

- A. *Step 1.* Within twenty (20) working days of the occurrence or discovery of an alleged grievance, the formal grievance procedure may be initiated by employee or Union filing an appropriate Notice of Grievance form with the Deputy of Human Resources or designee. A copy shall be provided to the Labor Relations Unit and the Union.
 - 1. A meeting with the employee, Union, Labor Relations Unit, the applicable manager, and other parties shall take place for the purpose of attempting to resolve and/or clarify the issues of the grievance within fifteen (15) working days of receipt of the formal grievance.

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2. The Deputy of Human Resources or their designated representative shall issue a decision in writing within fifteen (15) working days of the formal grievance meeting. A copy shall be directed to the Union, grievant, applicable Manager and Labor Relations Unit.
 3. All steps of the grievance procedure shall be utilized unless the parties mutually agree to waive one or more steps. If the employee or the Union fails to process a grievance within the specified time limits, the grievance shall be deemed concluded on the basis of the last decision reached. If the District fails to respond within the specified time limits, the grievant may appeal to the next step, within the specified time limits. Time limits in this article may be extended if mutually agreed upon by the parties in writing.
- B. *Step 2.* Within fifteen (15) working days from the Step 1 decision and with concurrence of the Union, the formal grievance may be submitted to the Chief Operating Officer of Administrative Services (COOAS).
1. If agreed to by the parties involved, a meeting with the COOAS, Union, Labor Relations Unit, applicable Manager. and parties shall take place for the purpose of attempting to resolve and/or clarify the issues of the grievance. The COOAS or their designated representative shall issue a decision within fifteen (15) working days after the termination of Step 2.
 2. ***Decision/Recommendation***

If the Union is not satisfied with the decision of the COOAS or their designated representative, the Union may, within fifteen (15) working days after receipt of the Step 2 decision, request in writing that the grievance be referred to an impartial arbitrator.

Section 4. Arbitration

- A. If arbitration is requested, an arbitrator shall be selected from a permanent panel of arbitrators, as listed below:
- Norm Brand
Margie Brogan
Andrea Dooley
Matt Goldberg
Catherine Harris
Ron Hoh
John Kagel
David S. Weinberg
Barry Winograd
- B. Within five (5) working days following the receipt of the request for arbitration, the parties shall confer to select the arbitrator from the agreed upon permanent panel of arbitrators. The obligation to strike the first name shall be determined by lot, and the parties shall alternately strike one (1) name from the list until only one (1) name remains, and that person shall be the arbitrator.

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- C. Management and the Union shall alternately strike one (1) name from the list until one name remains. The remaining name shall be the Arbitrator.
- D. The arbitrator's decision shall be binding upon both parties. Arbitration shall be scheduled during normal District office hours, if possible. The grievant may attend the entire hearing during their regular working hours without loss of compensation. In the event of a grievance involving a group of employees, one representative designated by the Union involved shall be authorized to attend the entire hearing without loss of compensation. Witnesses called by either party will be authorized to attend the hearing when active participation is required without loss of compensation. Any disputes concerning the definition of the grievance (Section 1) shall be resolved by the arbitrator.

Section 5. Duty of Arbitrator

Except when an agreed statement of facts is submitted by the parties, it shall be the duty of the arbitrator to hear and consider evidence submitted by the parties and thereafter make written findings of fact and a disposition of the grievance, which shall be binding. The decision of the arbitrator shall not add to, subtract from or otherwise modify the terms and conditions of this MOU.

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ARTICLE 16. LAYOFF

Section 1. Reason for Layoff

An employee may be separated from District employment by reduction in force due to lack of work, retrenchment, or lack of funds.

Section 2. Definitions

- A. For the purposes of this Article, the following definitions are used:
1. *Class* means a position or group of positions, having duties and responsibilities sufficiently similar that (i) the same job title is used, (ii) the same qualifications may be required, and (iii) the same schedule of compensation is used.
 2. *Lack of Funds* means the District has a current or projected deficiency of funding to maintain its current or sustain projected levels of staffing and operations.
 3. *Layoff* means terminating a classified employee for non-disciplinary reasons due to lack of work, retrenchment, or lack of funds.
 4. *Probationary Employee* means a District employee in a budgeted classified position who has not successfully completed their initial probationary period.
 5. *Regular Employee* means a District employee in a budgeted classified position who has successfully completed their probationary period.
 6. *Reinstatement* means the reemployment of an employee who was laid off.
 7. *Retrenchment* means the situation where the District deems that it has an excess of employees because of changed operational or economic circumstances.
 8. *Series* means closely related Classes (for example: Office Specialist 1, Office Specialist 2, and Senior Office Specialist).
 9. *Seniority*:
 - a. Seniority means continuous regular total District service time (not just by Class but by total service time at the District) in hours.
 - b. Calculation of service time will exclude Leaves Without Pay. Seniority will be retained but will not accrue during any period of leave without pay except authorized military leave.
 10. Individuals in temporary assignments include: temporary workers, intermittent workers, graduate student interns, undergraduate student interns, student trainees and unpaid student interns.

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The District is currently contemplating the development of a Public-Private Partnership (P3) for the expedited purified water program. Should the P3 project transition into operation, and if there is a shift of existing SVAWPC responsibilities to the P3 entity, the employees working in the following job classifications (Recycled Water Facility Supervisor, Water Plant Operator, Senior Plant Mechanic, Control Systems Technician) and working at the SVAWPC at the time of the operational transition, shall be transferred to positions with similar responsibilities within the District. Such employees will suffer no loss in wages or benefits as a result of such transfers.

If during the transition to the P3, any other District positions are materially or adversely affected with respect to wages and benefits, the District shall satisfy any meet and confer requirements as required by law.

Section 3. Order of Layoff

- A. The District will review and prioritize the vacant budgeted positions and the existing filled positions. All non-priority, vacant budgeted positions shall be eliminated prior to layoffs. Priority, vacant budgeted positions do not need to be filled prior to beginning layoffs.
- B. Layoffs in a given Class will be from all positions within that impacted Class in a particular work unit/division, based on total seniority.
- C. Layoffs will affect positions in the following order:
 - 1. Temporary Employees (Individuals in temporary assignments);
 - 2. Initial Probationary Employees; and
 - 3. Regular Employees
- D. Prior to a Layoff, the COOAS or designee will calculate the Seniority of each Regular Employee occupying the Class(es) impacted by the Layoff. A list that identifies the Regular Employees included in the Class(es) impacted by the Layoff and their associated Seniority level will be prepared by the District and posted on the District Intranet. The District will work with the Union to ensure the accuracy of this list.
- E. In the event a tie exists between two or more Regular Employees having the same level of Seniority, the Regular Employee that worked the most hours as a temporary employee at the District will be deemed the more senior Regular Employee.
- F. The COOAS in conjunction with the CEO and Chiefs will determine the class(es) and work unit/division(s) impacted by the Layoff.
- G. In the event there are two or more Regular Employees in the class impacted by the Layoff, those Regular Employees having the lowest level of Seniority will be laid off first.

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Section 4. Notice

- A. When the District determines that a Layoff is necessary, it will notify in writing the affected Regular Employees and Unions at least 45 calendar days in advance of the effective date of Layoff. The District will offer to meet with the Union at least 30 calendar days prior to the effective date of Layoff.
- B. The notice of Layoff will include:
 - 1. A statement that the Regular Employee's position is being eliminated due to the Layoff or they are being laid off due to another Regular Employee's exercise of their displacement rights.
 - 2. The effective date of the Layoff.
 - 3. The Seniority level of the Regular Employee as of the date of the notification.
 - 4. A description of the Regular Employee's displacement rights.
 - 5. A description of the Regular Employee's reinstatement rights.
 - 6. A description of the Regular Employee's severance rights.
 - 7. A description of the Regular Employee's right to receive assistance in pursuing outside employment opportunities by requesting a referral to an out-placement service firm for up to five days of out-placement coaching and counseling service.

Section 5. Displacement (Bumping) Rights

- A. A Regular Employee who will lose their position due to a Layoff may elect to:
 - 1. Displace an employee in the same class with less seniority; or
 - 2. Bump to a lower class within the employee's current class series; or
 - 3. To a class within a series (not higher) in which the employee previously occupied and has more seniority than a regular employee in the class.
- B. Because displacement by Seniority is a sequential operation, it is anticipated that the notices of Layoff will be furnished to Regular Employees at different times. Under no circumstances will the maximum salary level for the new position of Regular Employees bumping into a lower Class exceed the maximum salary level for the position they held before exercising their bumping rights.

Section 6. Reinstatement

- A. Regular Employees who have been laid off from the District pursuant to this provision will have their name placed on a recall list in order of their Seniority for a period of twenty four (24) months. In the event a budgeted vacant position becomes available, the Regular Employee who is still on the recall list with the most Seniority will be offered

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reinstatement into that budgeted vacant position, provided that such budgeted vacant position is in a Class the Regular Employee previously held. The District will provide such offers of reinstatement in writing and send them via certified mail. The offer of reinstatement will expire fourteen (14) calendar days from the date it was sent by the District. Laid off Regular Employees who accept offers of reinstatement must report to work within fourteen (14) calendar days following the date of their acceptance. Failure to comply with these requirements will be deemed a rejection of the offer of reinstatement and result in the Regular Employee's name being removed from the recall list. All laid off Regular Employees are responsible for keeping the District's Human Resources office advised of their current mailing address.

- B. Each Regular Employee who is reinstated will:
1. Be rehired at their last previously held pay step or in the case of a previously held position, the step closest to the step the employee held when laid off;
 2. Have their accrued sick leave that was not cashed out, reinstated; and
 3. Have the same vacation accrual rate that they had when laid off from the District, provided that the vacation accrual rate was not lowered for all Regular Employees during the period the Regular Employee was laid off.

Section 7. Reassignment or Voluntary Demotion in Lieu of Layoff

- A. The Union and District will meet at least thirty (30) days prior to the effective date of the Layoffs. Reasonable steps (including training) will be taken to assist Regular Employees to locate and apply for other budgeted vacant positions through the District's hiring process in lieu of Layoffs, provided that this will not restrict the District's authority to reduce its force due to Lack of Work, Retrenchment, or Lack of Funds.
- B. The District may post a position through the District's Hiring process allowing a Regular Employee subject to Layoff, to apply for a budgeted vacant position.
- C. Any laid off Employee will be considered for any funded temporary position in their Class. The pay rate for the particular temporary position will be the same pay rate of the Regular Employee's former salary so long as that pay rate is within the maximum range for that temporary position.

Section 8. Severance Pay

- A. Each Regular Employee with a minimum of five (5) continuous years of Seniority who is laid off due to a Layoff will receive severance compensation of: (i) five (5) workdays for each full year of Seniority; and (ii) 5/12 of a workday per month for a partial year of Seniority. For example, if a Regular Employee has 5 years and 6 months of Seniority, that Regular Employee would receive severance compensation equal to 27.5 workdays of pay (i.e., 25 workdays for the full 5 years of Seniority, and 2.5 workdays for the 6 full months of Seniority).

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- B. Each workday of severance pay is equal to the Regular Employee's daily base pay at the time of Layoff, which will be exclusive of any premium pay, overtime pay, compensation time, differential pay, or on-call pay.

Section 9. Appeal

- A. A dispute raised by a Regular Employee or the Union as to the application or interpretation of this procedure will be heard by an Appeal Board consisting of one (1) District management representative chosen by the District, one (1) representative from the Union chosen by the Regular Employee, and a third person agreed to by the District and the Union.
- B. The notice of appeal will be in writing and filed with the District within ten (10) days of notification of Layoff. The Appeal Board will hear the appeal and render a majority opinion within ten (10) days of the hearing. The majority finding of the Appeal Board will be final and binding. Proceedings of the Appeal Board will be open to the Regular Employee, the Regular Employee's representative, the District's representative, and witnesses during the period of testimony. Any costs of the third member of the Appeal Board will be shared by the Union and the District.
- C. It is the responsibility of the District to ensure and maintain a recordkeeping system necessary to accurately implement a Layoff should it be necessary.

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ARTICLE 17. COLLABORATIVE EFFORTS

- A. The parties have established various collaborative committees and councils. Union representation will continue including, but not limited to, the following:
1. *Labor Management Committee (LMC)*: The Committee shall meet at least quarterly, or upon the written request of either party, for the purpose of discussing matters of mutual concern. Grievances and adverse actions shall not be discussed at such meetings. Matters subject to the duty to bargain and not appropriately discussed in another forum such as the Safety Committee, may be discussed. However, the LMC shall not have the authority to add to, amend or modify this MOU.
 2. *Safety Committee*: The District Employee Safety Committee (Safety Committee) reviews, discusses, and recommends action on safety issues that have not been resolved at the work site level, as well as safety issues that are broad in scope or complex in nature. This committee proactively looks for and eliminates safety hazards and responds to safety concerns that are brought forward by employees.
 3. *Deferred Compensation Committee*: The District will continue the practice of including one union member on the District's Deferred Compensation Committee in accordance with the District's Human Resources Management Deferred Compensation Plan Work Instruction W-621-003.

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ARTICLE 18. PRACTICES, POLICIES, AND PROCEDURES

The District will continue the practice of including the Union in the review cycle for the issuance of new procedures or for making changes to existing procedures that impact terms and conditions of employment. The District shall provide the Union with reasonable written notice and an opportunity to bargain prior to implementing any change in policy that is within the scope of representation as defined by the Meyers-Milias-Brown Act. Where the District's proposed change in policy is not within the scope of representation but will have a foreseeable effect on matters within the scope of representation, the District shall also provide such reasonable notice. In cases of emergency, where the District has determined that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice to the Union, the District shall provide notice to the Union and an opportunity to meet at the earliest practicable time following the adoption of the ordinance, rule, resolution or regulation.

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ARTICLE 19. NON-DISCRIMINATION/HARASSMENT (GENERAL)

The Union and the District agree that there shall be no discrimination (except as allowed by law) against an employee because of sex (which includes pregnancy, childbirth, breastfeeding, and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, religious creed including religious dress and grooming practices), gender, national origin (including language use restrictions), ancestry, marital status, veteran status, sexual orientation, gender identity, gender expression, color, age (over 40), medical condition, parental status, pregnancy, the exercise of family and medical care leave rights, the exercise of pregnancy disability leave, political affiliation, physical disability (including HIV and AIDS), mental disability or the request, exercise, or need for reasonable accommodation. Sexual harassment is a form of prohibited discrimination. Complaints of discrimination are encouraged to be brought to the attention of the Ethics and Equal Opportunity Program Administrator, supervisor or other manager.

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ARTICLE 20. ACCOMMODATION OF DISABLED EMPLOYEES

The District has a lawful obligation under the Americans with Disabilities Act and the California Fair Employment and Housing Act to make reasonable accommodations for qualified individuals with disabilities. Any accommodation will be on a case-by-case basis and will not be precedential nor will constitute a past practice for anyone other than a qualified individual with disabilities.

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ARTICLE 21. DRUG FREE WORKPLACE

To be administered in accordance with District Policies and Procedures.

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ARTICLE 22. DEPARTMENT OF TRANSPORTATION (DOT) DRUG TESTING PROGRAM

To be administered in accordance with District Policies and Procedures.

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ARTICLE 23. CONFLICT OF INTEREST

- A. No District employee shall engage in compensated employment outside of employment with the District if such employment is found to interfere with the performance of District duties, or to be detrimental to the general interests of the District, or to create a conflict of interest with employment by the District.
- B. Employees intending to engage in outside employment must submit a written notification to their immediate supervisor and appointing authority, stating the type of employment and the amount of time that will be spent on such employment. If employment continues, the notification must be resubmitted annually, by the anniversary date of the initial notification for review.

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ARTICLE 24. POLITICAL RIGHTS

During working hours, District employees shall not take an active part in opposing or supporting any ballot proposition or candidate for political office nor, during working hours, shall an employee solicit or seek from any fellow employee or other person, any assessment, subscription or contribution for the support of or opposition to any ballot proposition or political candidate.

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ARTICLE 25. CONTRACTING OUT

The right to contract and subcontract are vested exclusively in the District provided; however, if such contracting or subcontracting work would result in the layoff of an employee, the District will follow the provisions of Article 16, Layoff.

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ARTICLE 26. MISCELLANEOUS

Section 1. Full Agreement

It is understood that this MOU represents a complete and final understanding on all negotiable issues between the District and the Union. This MOU supersedes all previous MOUs, Side Letters or Letters of Agreement between the District and the Union except as specifically referred to in this MOU. This MOU shall have precedence over all ordinances or rules covering any practice, subject or matter specifically referred to in this MOU to the extent they conflict with this MOU. All ordinances or rules covering any practice, subject or matter not specifically referred to in this MOU shall not be superseded, modified, or repealed by implication or otherwise by the provisions hereof. The parties, for the term of this MOU, voluntarily and unqualifiedly agree to waive the obligation to negotiate with respect to any practice, subject or matter not specifically referred to or covered in this MOU even though such practice, subject or matter may not have been within the knowledge or contemplation of the parties at the time this MOU was negotiated and signed. In the event any new practice, subject or matter arises during the term of this MOU and an action is proposed by the District, the Union shall be afforded all possible notice and shall have the right to meet and confer upon request. In the absence of agreement on such a proposed action, the District reserves the right to take action by Management direction.

Section 2. Savings Clause

If any provision of this Agreement should be held invalid by operation of law, or by any court of competent jurisdiction, or if compliance with, or enforcement of any provision should be restrained by any tribunal, the remainder of this Agreement shall not be affected thereby, and the parties shall enter into negotiations when requested by either party, for the sole purpose of arriving at a mutually satisfactory replacement for such provision.

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10/28/22 14:44 PM

ARTICLE 27. TERM

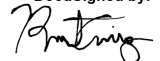
This MOU shall become effective January 1, 2022 and shall remain in effect through December 31, 2025 and from year-to-year thereafter unless either party serves written notice on the other of its desire to terminate this MOU or amend any provision thereof at least one hundred twenty (120) days prior to December 31, 2025, or one hundred twenty (120) days prior to December 31 of any successive year.

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REPRESENTING THE UNION

DocuSigned by:

D5726353A46A466...
7/16/2022
Date
Derek Tanguay

DocuSigned by:

0EF60E83EA2D45E...
7/18/2022
Date
Robert Ewing

DocuSigned by:

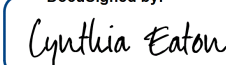
ABB26E2C1FA940A...
7/18/2022
Date
Glenna Brambill

DocuSigned by:

412039F3AB26481...
7/18/2022
Date
Benjamin Gonzalez

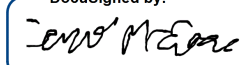
DocuSigned by:

EF1D6C593396436...
7/20/2022
Date
Lidya Tesfaye

DocuSigned by:

9948A7DE595641C...
7/22/2022
Date
Cynthia Eaton

DocuSigned by:

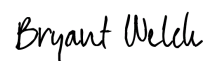
D967B8099D4F423...
7/26/2022
Date
Thomas Drinkard

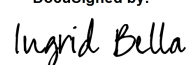
DocuSigned by:

D28F43C4D657454...
7/26/2022
Date
Carol McEwan
AFSCME

REPRESENTING THE DISTRICT

DocuSigned by:

494EFB72AD8C4F9...
7/27/2022
Date
Rick Callender

DocuSigned by:

EF64B7D7354D4BE...
7/26/2022
Date
Bryant Welch

DocuSigned by:

60E943BE7C52466...
7/26/2022
Date
Ingrid Bella

DocuSigned by:

75030BCEAAEA4D0...
7/26/2022
Date
Emily Meeks

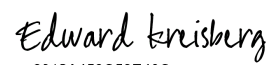
DocuSigned by:

6812A459C53E48C...
7/27/2022
Date
Edward L. Kreisberg
Kreisberg Law Firm

EXHIBIT 2

Emily Meeks

From: Employee Communications
Sent: Thursday, January 13, 2022 4:47 PM
To: All Users
Subject: Full vaccination is required by March 1, 2022

Employee Communications

From: Ingrid Bella, Interim Human Resources Officer

Date: Jan. 13, 2022

Re: Full vaccination is required by March 1, 2022

On Aug. 2, 2021, the County of Santa Clara issued a Public Health Order, wherein the County strongly urged that business and governmental entities implement mandatory vaccination requirements for all personnel. Vaccination remains the best and most effective tool to protect the vaccinated person from infection, hospitalization, or death from COVID-19, as well as to prevent harm to others by reducing the risk of transmission of COVID-19.

Valley Water chose to implement a mandated weekly testing requirement for all staff and provided an exception from the requirement for fully vaccinated staff. The mandatory testing requirement includes taking a PCR COVID-19 test on a weekly basis and uploading the results each week. We also implemented a mandatory vaccination policy for all new hires requiring they provide proof of full vaccination absent an approved medical or religious exemption prior to their start date.

Both efforts have enabled us to reach a vaccination rate of over 92%; however, increasing the vaccination rate remains the most productive action we can take to enhance the safety in the workplace for our employees and the public we serve.

Policy

In accord with the aforementioned Public Health Order's recommendations, to create the safest work environment possible, and in response to the ongoing health emergency related to lingering and/or rapid surges of variants of COVID-19, Valley Water will require staff that are not fully vaccinated (not vaccinated, partially vaccinated, or decline to state) to **submit proof of full vaccination by Tuesday, March 1, 2022.**

A person is "fully vaccinated" at least two weeks after receiving a second dose of the Pfizer or Moderna COVID-19 vaccine or two weeks after receiving a single dose of the Johnson & Johnson COVID-19 vaccine.

- Until this March 1, 2022 deadline, the weekly testing requirement for unvaccinated staff will remain in place.

Unvaccinated staff may request an exemption for medical or religious reasons and a separate email, with forms attached, will be sent to all unvaccinated employees.

Exemption requests must be submitted by **Jan. 31, 2022**. Forms will be sent to the Ethics/EEO office for review, and an interactive interview with the requestor may be required.

Proof of Vaccination Process

Unvaccinated staff that become fully vaccinated, are required to upload a copy of their vaccination card as soon as it is complete but no later than March 1, 2022. The easiest way to upload is to take a photo with your phone, email it to yourself, and paste it on a Word Document. You can then securely upload the photo as a document.

- If you are having trouble finding the upload link, click here: http://svfrmprd.scvwd.gov:7001/ords/f?p=CVS:LOGIN_DESKTOP

Non-Compliance

Failure to provide proof of full vaccination by March 1, 2022, absent an approved medical or religious exemption or other good cause, will result in disciplinary action up to and including termination.

EXHIBIT 3

Emily Meeks

From: Bryant Welch
Sent: Monday, January 31, 2022 5:54 PM
To: Derek Tanguay; Robert Ewing; carol.mcewan@ca.afscme57.org; Samantha Greene; Andrew Garcia; Ryan McCarter; Vanessa De La Piedra; Stanley Young
Cc: Emily Meeks
Subject: Reverse the Vaccine Mandate

Good evening,

Let me start by thanking you all for working with us pursuant to our vaccination mandate. Please take a look at the attached e-mails below. Want to make sure we're on the same page because if an employee engages in the same or similar conduct in the future as the employee below, that employee will be in violation of a number of policies and will be formally disciplined. We believe that the employee who chose to send this ill-fated e-mail may be an aberration, but out of an abundance of caution request that you let your members know that conduct like this is a violation of Valley Water policies and protocols and the potential ramifications.

I apologize for sending this e-mail to you so late in the evening and sincerely appreciate your working with us so that all employees are in full compliance with the mandate.

Kindest Regards,

Bryant Welch
Manager Labor Relations
Santa Clara Valley Water District
408 630-2383 (direct)
bwelch@valleywater.org (e-mail)



SANTA CLARA VALLEY WATER DISTRICT
5750 Almaden Expressway, San Jose CA 95118
www.valleywater.org

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From: Rick Callender <rcallender@valleywater.org>
Sent: Monday, January 31, 2022 5:02 PM
To: Tyson Enzweiler <TEnzweiler@valleywater.org>; Labor Relations <laborrela@valleywater.org>
Cc: ***Water Utility Enterprise - All WUE Employees*** <WaterUtilityEnterprise@valleywater.org>; Bryant Welch <BWelch@valleywater.org>
Subject: RE: Reverse the Vaccine Mandate

Good evening,

I am in receipt of the e-mail below that you chose to send to Labor Relations, the entire Water Utility team, and me because you disagree with Valley Water's decision to require all employees to either become fully vaccinated OR receive

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10/28/22 14:44 PM

a legally approved exemption if they are not fully vaccinated. I have received multiple complaints from employees who you included on your email and did not find your email welcome.

So that we are clear, the decision to require all Valley Water employees to become fully vaccinated or receive an approved exemption has been made. The choices that unvaccinated employees have are to become fully vaccinated or to apply for and receive an exemption. While I have no doubt that you were well-intended in sending the information on to Labor Relations, the entire Water Utility team, and me, after carefully read through the information that you chose to send on to everyone, I was extremely disappointed that you would question the directive that was given above, and that you chose to share your frustration with the directive with others, including Labor Relations and the entire Water Utility team.

To that end, I have instructed our Labor Relations team to reach out to all bargaining units and remind them that they are to remind their members that the vaccination mandate is a directive and failure to comply will lead to disciplinary action. With respect to the distribution of your email to the entire Water Utility team, please note that Valley Water's Information Management Electronic Mail (E-Mail) Policy (AD 7.5) holds that the District's email system is to be used for business purposes in serving the interests of the District and its customers. The policy further holds that e-mail is not to be used for gossip, sharing of personal information, or for emotional responses to business correspondence or work situations. Your email does not appear to adhere to this policy. While I again have no doubt that you did not intend to violate Valley Water policies, in the future I would encourage you to think before you react before sending out information that is not in compliance with all policies at Valley Water.

Please refrain from continuing to use Valley Water email to continue this conversation, to email the entire Water Utility, or others at Valley Water for non-business purposes which violate policy.

r

Rick L. Callender, Esq.
Chief Executive Officer
Santa Clara Valley Water District
Office: [408-630-2017](tel:408-630-2017)
Cell: [408-406-5203](tel:408-406-5203)



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5750 Almaden Expressway, San Jose CA 95118
www.valleywater.org

From: Tyson Enzweiler <TEnzweiler@valleywater.org>
Sent: Saturday, January 29, 2022 1:14 PM
To: Labor Relations <laborrela@valleywater.org>; Rick Callender <rcallender@valleywater.org>
Cc: ***Water Utility Enterprise - All WUE Employees*** <WaterUtilityEnterprise@valleywater.org>
Subject: Reverse the Vaccine Mandate

The District has a chance to reverse its decision to mandate the Covid-19 vaccine to all employees.

Under 21 code of federal regulations section 50.23 and 24 it is illegal to make anybody participate in an experimental program using coercion. Coercion is illegal and we need to call it what it is. It is not leverage or pressure.

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10/28/22 14:44 PM

So, I ask, is the District violating 21 code of federal regulations section 50.23 and 24 by forcing the employees to take the Covid-19 shot to keep their job?

Covid vaccine injuries are not rare but real. I have experienced firsthand the passing of my Grandmother days after receiving the second dose of the Covid-19 vaccination and my neighbor now with heart complications. I have also experienced fully vaccinated individuals die of Covid-19.

I am simply an adult who wishes to make medical decisions independently. If it is this easy for the District to change our terms of employment, then we all have to ask ourselves, will our terms of employment soon change again?

I am asking the District to allow the employees to make their own medical decision and not be forced to choose between taking a medicine (the Covid-19 vaccine) or lose their job.

<https://youtu.be/eqqClQh1cyU>

<https://www.react19.org/research>

Tyson Enzweiler

Sr. Water Treatment Plant Operator

Santa Teresa Water Treatment Plant
7011 Graystone Lane
San Jose CA, 95120
Desk (408) 630-2553

Santa Clara Valley Water District is now known as:



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www.valleywater.org

EXHIBIT 4

PERB Received
10/28/22 14:44 PM

From: [Employee Communications](#)
Subject: Booster Shot Verification Now Required
Date: Tuesday, August 16, 2022 5:12:47 PM
Attachments: [image001.png](#)

Employee Communications

From: Ingrid Bella, Human Resources Manager
RE: Booster Shot Verification Now Required

Date: Aug. 16, 2022

Mandate

Evidence indicates that many new variants of COVID-19 are significantly more transmissible than prior variants of the virus. COVID-19 vaccination remains the safest strategy against infection and preventing complications leading to hospitalization, with a booster dose offering the highest level of protection. Individuals who have received a booster shot increase their immunity as the booster confers greater protection from all circulating SARS-CoV-2 variants.

Valley Water is now including boosters as a condition of employment for the district. Employees who are eligible for a booster must provide a digital vaccination record from the state of California by Sept. 16, 2022. Employees who obtained an approved medical/disability or religious belief exemption will be contacted individually to determine whether there are any changes to the exemption process and approval applicable to the booster mandate. This employment condition applies to temporary staff, interns, and retiree annuitants as well.

Individuals aged 18 or older who received their second dose of the Pfizer or Moderna COVID-19 vaccine (mRNA COVID-19 vaccines) more than 5 months ago are eligible for and must obtain a booster shot to be considered compliant to the booster mandate.

For individuals aged 18 or older that received the Johnson & Johnson (J&J/Janssen) COVID-19 Vaccine (one dose), the CDC advises a booster dose of either Pfizer or Moderna (mRNA COVID-19 vaccines) at least 2 months after their initial first dose of J&J/Janssen COVID-19 Vaccine to be considered compliant to the booster mandate.

Deadline

If you did not have a booster when you last submitted your digital vaccination record or have yet to receive a booster, please upload your digital record and/or receive your first booster by Sept. 16, 2022. *If you are part of the few new hires that have just recently received your COVID Vaccination, please send an email to [Ingrid Bella](#), with your deadline based on your full-vaccination date (see *Up-to-date requirements* above).*

Reminders will be sent via email based upon the date of booster eligibility.

Submitting Proof of Booster

The process for submitting proof of booster will require employees to upload a digital copy of their COVID-19 vaccination record from the State of California Digital COVID-19 Vaccine Record website at myvaccinerecord.cdph.ca.gov/ instead of a screenshot, scan or photograph of their vaccination card received at time of vaccination.

If you haven't done so already, go to the myvaccinerecord.cdph.ca.gov website and set up an account; it is very easy to do. You will be prompted to provide your name, date of birth, whether you want the digital file sent to your mobile phone or email, and to create a four-digit PIN to access. Your digital record will either be texted or emailed to you based on your choice.

All healthcare providers are submitting vaccination status to the state website except for Veteran's Affairs. If you received your vaccination from the Veterans Affairs, you may need to contact them directly to get a digital vaccination record.



Next, go to our [Valley Water COVID Vaccination Status Tool \(CVS, requires VPN\)](#) and update your information regarding the type and date of your COVID Vaccination Booster.

Finally, follow the link inside CVS to [upload your Digital COVID-19 Vaccination Record](#).

Exemption Requests

Just like vaccinations, employees can request an exemption from the booster based on medical/disability or religious belief. Employees who receive an exemption to the original COVID-19 vaccination mandate will be deemed exempt from the booster mandate as well.

Requests for exemption for the booster must be sent to [Ingrid Bella](#). Requestors will be sent the appropriate forms and will be given two weeks to complete their forms for review.

CA-Supplemental Paid Sick Leave (CA-SPSL) covers time off for Vaccine related reasons. An employee who is attending a vaccine or vaccine booster appointment for themselves or for the employee's family member; cannot work or telework due to the employee's own vaccine-related symptoms; or cannot work or telework due to caring for a family member who has vaccine-related symptoms is eligible for CA-SPSL. It is Limited to 24 hours for each occurrence of symptoms from a vaccination or vaccine booster unless documentation is provided. Employees should request time-off via the [CA-SPSL Request Form](#) or contact Benefits for questions.

Non-Compliance

Failure to fully comply with the above requirements, absent an approved medical or religious exemption or other good cause, will result in disciplinary action up to and including termination.

For any questions related to this booster verification, please contact Ingrid Bella at 408-630-3171 or ingridbella@valleywater.org.

EXHIBIT 5

Michelle Critchlow


From: Board of Directors
Subject: FW: VW not requiring new hires to have a booster

From: Tyson Enzweiler <TEnzweiler@valleywater.org>
Sent: Saturday, August 20, 2022 6:16 PM
To: ***Water Utility Enterprise - All WUE Employees*** <WaterUtilityEnterprise@valleywater.org>
Cc: Board of Directors <board@valleywater.org>
Subject: VW not requiring new hires to have a booster

VW is not requiring newly hired employees to have a booster as part of terms of employment according to the job postings and the attached mandate notification.

Attached is the CDC definition of being “fully vaccinated”. Fully vaccinated does not include a booster.

<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html>

Am I still considered “fully vaccinated” if I don’t get a booster? 

Yes, the definition of fully vaccinated does not include a booster. Everyone, except those who are moderately or severely immunocompromised, is still considered fully vaccinated two weeks after their second dose in a two-dose series, such as the Pfizer-BioNTech and Moderna vaccines, or two weeks after the single-dose J&J/Janssen vaccine. Fully vaccinated, however, is not the same as having the best protection. People are best protected when they [stay up to date with COVID-19 vaccinations](#), which includes getting boosters when eligible.

Executive Assistant

Salary ⓘ	\$7,817.33 - \$10,013.47 Monthly	Location ⓘ	CA, CA
Job Type	Full-Time	Division	Watersheds
Job Number	01514-E		
Closing	8/26/2022 11:59 PM Pacific		

DESCRIPTION **BENEFITS** **QUESTIONS**

Description

Office of the Chief Operating Officer - Watersheds (Position Code 0194)

COVID-19 vaccination requirement:

*To protect our most valuable assets, our employees, as well as the communities we serve, Valley Water requires **all newly hired Valley Water personnel to be fully vaccinated (for COVID -19)** or to be formally excused from the requirement through the

**reasonable accommodation process (for details, see bottom of job posting)

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10/28/22 14:44 PM

From: [Employee Communications](#)
Subject: Booster Shot Verification Now Required
Date: Tuesday, August 16, 2022 5:12:47 PM
Attachments: [image001.png](#)

Employee Communications

From: Ingrid Bella, Human Resources Manager
RE: Booster Shot Verification Now Required

Date: Aug. 16, 2022

Mandate

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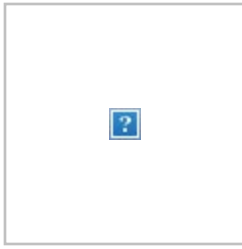
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Non-Compliance

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For any questions related to this booster verification, please contact Ingrid Bella at 408-630-3171 or ingridbella@valleywater.org.

EXHIBIT 6

Angela Breining

Subject: FW: Protected activity - Tyson Enzweiler and Eric Karo

From: Bryant Welch <BWelch@valleywater.org>

Sent: Friday, August 26, 2022 2:04 PM

To: Salam Baqleh <SBaqleh@valleywater.org>

Cc: Robert Ewing <REwing@valleywater.org>; Derek Tanguay <DTanguay@valleywater.org>; Paulino Ochoa <POchoa@valleywater.org>; carol.mcewan@ca.afscme57.org; Emily Meeks <Emeeks@valleywater.org>; Samantha Rivera <SRivera@valleywater.org>; Alejandra Flores-Sanchez <AFlores-Sanchez@valleywater.org>

Subject: RE: Protected activity - Tyson Enzweiler and Eric Karo

Good Afternoon,

Acknowledging your email, thank you for attending the meeting, and Valley Water will address any and all issues pertaining to the two (2) individuals below during their respective meetings.

Thank you.

Kindest Regards,

Bryant Welch
Manager Labor Relations
Santa Clara Valley Water District
408 630-2383 (direct)
bwelch@valleywater.org (e-mail)



SANTA CLARA VALLEY WATER DISTRICT
5750 Almaden Expressway, San Jose CA 95118
www.valleywater.org

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From: Salam Baqleh <SBaqleh@valleywater.org>

Sent: Friday, August 26, 2022 2:00 PM

To: Bryant Welch <BWelch@valleywater.org>

Cc: Robert Ewing <REwing@valleywater.org>; Derek Tanguay <DTanguay@valleywater.org>; Paulino Ochoa <POchoa@valleywater.org>; carol.mcewan@ca.afscme57.org

Subject: Protected activity - Tyson Enzweiler and Eric Karo

Bryant,

We are disheartened by the investigations into Tyson Enzweiler and Eric Karo. We believe that both of these members were engaged in protected activity (i.e., asking a recruitment/working condition question and discussing worker safety

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10/28/22 14:44 PM

conditions) for which they have the right. While we are working with AFSCME regarding this matter, we will continue to support our members by attending the meetings that have been scheduled.

Salam

SALAM BAQLEH

PROGRAM ADMINISTRATOR

Purchasing & Consultant Contracts Services Unit

sbagleh@valleywater.org

Ext. 2773 Cell (408) 630-0874



SANTA CLARA VALLEY WATER DISTRICT

5750 Almaden Expressway, San Jose CA 95118

www.valleywater.org

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EXHIBIT 7

CONFIDENTIAL

Investigation Report – Tyson Enzweiler

September 27, 2022

Investigated by: Emily Meeks – Labor Relations Program Administrator

BACKGROUND

This memorandum presents findings from an investigation performed by Labor Relations (LR) on Tyson Enzweiler (Enzweiler), Senior Water Plant Operator, in the South Water Treatment Operations Unit.

INVESTIGATION

On or about 8/24/22, LR was alerted that Enzweiler may have violated Valley Water policies and/or work instructions when Enzweiler sent an inappropriate email to all Water Utility Enterprise (WUE) employees regarding Valley Water's COVID-19 booster vaccination mandate (Attachment 1), which was included in the 8/26/22 board meeting non-agenda packet; Enzweiler also copied the Board of Directors (Attachment 2). This investigation was launched, as it was alleged Enzweiler had been directed in the past to discontinue use of Valley Water email for non-business and inappropriate purposes, specifically regarding Valley Water's COVID-19 vaccination mandate (Attachment 3). With regards to the email, it was alleged that Enzweiler did not agree with the manner in which Valley Water managed the vaccination mandate.

Note: On 1/29/22, Enzweiler also emailed Valley Water's Chief Executive Officer (CEO) and LR, and copied all of Valley Water's WUE regarding Valley Water's COVID-19 vaccination mandate (Attachment 4) and it was clear in his email on 1/29/22 that Enzweiler did not agree with Valley Water's decisions regarding the vaccination mandate. On 1/31/22, Valley Water's CEO responded to Enzweiler's email and gave Enzweiler a formal directive that he was not to use Valley Water's email system for non-business purposes, such as this, as he used the email system because he personally disagreed with the manner in which Valley Water managed the vaccination mandate (Attachment 4). Further, Enzweiler was directed to discontinue the conversation in January 2022 and discontinue emailing the entire WUE and others for non-business purposes. Enzweiler was also directed by the CEO to think before sending information that is not compliant with Valley Water policies, specifically citing Valley Water's Information Management Electronic Mail (E-Mail) Policy (AD 7.5) (Attachment 5), and Enzweiler was also notified by the CEO, in the email dated 1/31/22, that failure to comply with the CEO's directives would result in disciplinary action.

In addition to Enzweiler receiving the email on 1/31/22, LR also contacted Enzweiler's union, the Employees Association (EA), and notified his union that if an employee engaged in similar conduct in the future, that employee would be formally disciplined (Attachment 4).

During the formal investigation that began in August 2022, LR noted the following:

RESPONDENT'S STATEMENT

8/26/22 – Investigative Meeting

Attendees: Enzweiler, Paulino Ochoa - EA Director of Grievance, Sam Bogale, Deputy Operating Officer - WUE, Lotina Nishijima, Water Treatment Manager – WUE, Bryant Welch - LR Manager, Meeks

During the investigative meeting, Enzweiler stated:

- He sent the email (Attachment 2) to make everyone aware and be transparent about Valley Water not requiring new hires to have the COVID-19 booster.



Enzweiler, Tyson
September 27, 2022

- He does not have an opinion as to whether or not new hires should not be required to have a COVID-19 booster.
- After his union representative (Ochoa) claimed that Enzweiler's email was an attempt to ask a question regarding workplace conditions, Enzweiler contradicted this when he stated that he did not ask a question in his email about workplace conditions and rather made a statement.
- He recalled receipt of the CEO's email on 1/31/22 and stated he thought the CEO's directives pertained only to that specific conversation [1/29/22 email].
- He did not violate the CEO's directive to not email the entire WUE because he does not have restricted access and he was not gossiping, sharing personal information, showing an emotional response, and his email was business-related.
- His current role could include alerting the entire WUE of booster requirements as his job description states "other activities".
- He followed all of the CEO's directives given to him on 1/31/22 and thought it was okay to send the email to the entire WUE on 8/20/22.
 - This was because he believed that the last sentence of the CEO's email to him on 1/31/22 was a summary of the CEO's expectations and the directives only pertained to the email he sent on 1/29/22.
- He was not asked to opine by management (i.e., email) on anything related to the COVID-19 vaccination mandate.
- He had not previously gotten, and now understands certain details of the CEO's directives that were sent to him in January 2022.

FINDINGS

1. The correspondence sent by the CEO to Enzweiler on 1/31/22 was a directive to (a) cease sending emails that were contrary to Valley Water's management team's directives; (b) to cease using the Valley Water email system to send correspondence that contradicted Valley Water's vaccination mandate directives; and (c) to comply with Valley Water policies including Valley Water's e-mail policy (AD 7.5) (Attachment 5).
 - a. Enzweiler's correspondence on 8/20/22 violated these directives when Enzweiler sent the email on 8/20/22; and
 - b. Enzweiler violated Valley Water's email policy (AD 7.5) as no part of Enzweiler's email on 8/20/22 complies with the policy as it states: "The District's e-mail system is to be used for business purposes in serving the interests of the District and its customers...All messages communicated over the District's electronic systems must be courteous and professional in nature. E-mail is not to be used for gossip, sharing of personal information, or for emotional responses to business correspondence or work situations."
2. The 1/31/22 correspondence sent from the CEO to Enzweiler does not state that it is intended to *only* apply to the single email and instance when Enzweiler sent the email on 1/29/22, and a more appropriate reading of the CEO's email (dated 1/31/22) is that Enzweiler was given a formal directive to cease and desist from sending information to Valley Water employees that was not supportive of Valley Water's vaccination mandate and Enzweiler was given a formal directive to cease using Valley Water's email system to communicate his personal disagreements, opinions, and/or statements regarding Valley Water's vaccination mandate.
 - a. A recipient of the CEO's email to Enzweiler on 1/31/22, including Enzweiler, should have understood that the CEO's directives applied for any and all future instances.
3. The COVID-19 booster vaccination mandate (Attachment 1) is a continuation of Valley Water's directive that all employees must be fully vaccinated or be approved for a Reasonable

Accommodation which provides exemption from the COVID-19 vaccination mandate (Attachment 3). Although Enzweiler stated he had no opinion regarding Valley Water's booster vaccination mandate for new hires, a more consistent reading of what Enzweiler wrote on 8/20/22 is that he made objections regarding the booster vaccination mandate on 8/20/22 in the same manner that he made his objections known to all with respect to the vaccination mandate on 1/29/22. Enzweiler's response that he had no opinion regarding the booster mandate is not credible because if true, it would not make sense for Enzweiler to send any correspondence to anyone because he has no opinion on the matter. However, it does make sense for Enzweiler to send correspondence to the entire WUE because he disagreed with the manner in which Valley Water was managing the vaccination mandate by allowing new hires to be exempt from parts of the vaccination mandate that apply to regular employees.

4. No part of Enzweiler's job description in his current position as a Senior Plant Operator (Attachment 6) requires or allows Enzweiler to comment on any part of the COVID-19 vaccination mandate and/or booster vaccination mandate. Enzweiler's response during the investigatory interview in that he felt that his job description allows him to comment on the booster vaccination mandate with respect to new hires because part of his job description includes language to the effect of "other duties as assigned" is not credible and dishonest as "other duties as assigned" refers to duties that are in some way tangentially related to one's job. Enzweiler's definition would mean that anything that any employee ever does, whether it be performing a surgical procedure or a scientific study on water purification that requires a degree from MIT to perform, would fit into the same category. The investigator believes that Enzweiler fully knows, or should have known this, and is making a self-serving statement by claiming "other duties as assigned" applies to this incident to avoid responsibility for his actions.
5. Enzweiler's comment that management never told him to email the entire WUE at any time, and on 8/20/22, is problematic because the highest member of the management team, Valley Water's CEO, gave Enzweiler a clear and unambiguous directive to cease and desist from sending emails that questioned Valley Water's vaccination mandate and to cease using Valley Water's email system to email the entire WUE on 1/31/22. Despite being given these clear and unambiguous directives by the CEO, Enzweiler still elected to send the email on 8/20/22 which countermanded the CEO's directives and Valley Water's directives regarding the COVID-19 vaccination mandate.

VIOLATIONS

Mr. Enzweiler's conduct in Findings #1-#5 violated the following:

1. Employees Association MOU, Article 14, Section 2 (Attachment 7) with respect to "Examples of employee misconduct include...failure to follow work rules, insubordination...";
2. Valley Water's Disciplinary Process (W-621-180) (Attachment 8) with respect to "Examples of employee misconduct include...failure to follow work rules, insubordination...". and including:
 - a. Ethics Conduct
 - i. Dishonesty (e.g., lying, intentional omission of known facts, falsification of facts, intentional defrauding, deceit).
 - b. Personal Conduct
 - i. Insubordination (e.g., Refuse to obey some order with a manager, supervisor, or lead to give and have obeyed); and
 - ii. Violation of other Valley Water policies or regulations (i.e., Information Management Electronic Mail (E-Mail) Policy (AD 7.5) (Attachment 5)

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10/28/22 14:44 PM

Enzweiler, Tyson
September 27, 2022

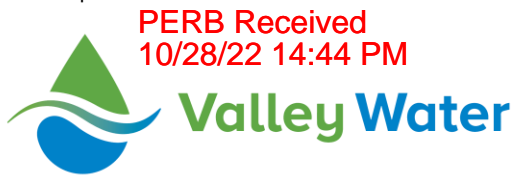
END OF REPORT

cc: Aaron Baker, Chief Operating Officer, Water Utility
Sam Bogale, Deputy Operating Officer
Lotina Nishijima, Water Treatment Manager
Office of District Counsel
Bryant Welch, Labor Relations Manager
Employees Association
Personnel File

Attachments:

1. Email "Booster Shot Verification Now Required" dated 8/16/22
2. Email "FW: VW not requiring new hires to have a booster" dated 8/20/22
3. Email "Full vaccination is required by March 1, 2022" dated 1/13/22
4. Email "Reverse the Vaccine Mandate" last dated 1/31/22
5. Information Management Electronic Mail (E-Mail) Policy (AD 7.5), Revision D, dated 05/14/2019
6. Senior Water Plan Operator Class Specification dated 12/2020
7. Employee Association MOU, Article 14, Discipline Process
8. Valley Water Disciplinary Process (W-621-280) Revision B, dated 2/11/2020

EXHIBIT 8



PERB Received
10/28/22 14:44 PM

Clean Water • Healthy Environment • Flood Protection

September 30, 2022

Tyson Enzweiler
465 San Joaquin Court
Hollister, CA 95023

Subject: **Notice of Recommended Disciplinary Action**
[sent via email to tenzweiler@valleywater.org]

Dear Mr. Enzweiler:

This letter is to advise you that I am recommending that you be suspended without pay for **5 days (40 hours)** from your position as a Senior Water Plant Operator at the Santa Clara Valley Water District (Valley Water) for the charges substantiated via the investigation conducted regarding your misconduct in the workplace. This disciplinary action is recommended for the reasons set forth below and substantiated by the investigation report (Attachment 1).

ISSUE

Mr. Enzweiler exhibited personal misconduct when he failed to follow work directives (Attachment 2) issued to him by Valley Water's CEO regarding the use of Valley Water's email system contrary to Valley Water's management team's directives, that contradicted Valley Water's vaccination and booster mandate directives, and that did not comply with Valley Water's email policy; and Mr. Enzweiler exhibited ethical misconduct when he stated the email he sent was part of his job duties by:

1. sending an email to all Water Utility Enterprise (WUE) employees (Attachment 3) regarding Valley Water's COVID-19 booster vaccination mandate (Attachment 4); and
2. using Valley Water's email system for non-business, in no way job-related, and for inappropriate purposes (i.e., personal objections).

INVESTIGATION

The issue above was investigated by Labor Relations (LR) and the following was noted pursuant to the investigation as Mr. Enzweiler stated the following:

1. Mr. Enzweiler sent the email (Attachment 3) to make everyone aware and be transparent about Valley Water not requiring new hires to have the COVID-19 booster vaccination.
2. Mr. Enzweiler does not have an opinion as to whether or not new hires should not be required to have a COVID-19 booster vaccination.
3. After his union representative (Mr. Paulino Ochoa) claimed that Mr. Enzweiler's email was an attempt to ask a question regarding workplace conditions, Mr. Enzweiler contradicted this when he stated that he did not ask a question in his email about workplace conditions and rather made a statement.
4. Mr. Enzweiler recalled receipt of the CEO's email on 1/31/22 and stated he thought the CEO's directives pertained only to that specific conversation [1/29/22 email] (Attachment 2).
5. Mr. Enzweiler did not violate the CEO's directive to not email the entire WUE because he does not have restricted access and he was not gossiping, sharing personal information, showing an emotional response, and his email was business-related.



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10/28/22 14:44 PM

Enzweiler, Tyson – Notice of Recommended Disciplinary Action

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6. Mr. Enzweiler's current role could include alerting the entire WUE of booster requirements as his job description states "other activities".
7. Mr. Enzweiler followed all of the CEO's directives given to him on 1/31/22 and thought it was okay to send the email to the entire WUE on 8/20/22.
 - a. Mr. Enzweiler believed the last sentence of the CEO's email to him on 1/31/22 was a summary of the CEO's expectations and the directives only pertained to the email he sent on 1/29/22.
8. Mr. Enzweiler was not asked to opine by management (i.e., email) on anything related to the COVID-19 vaccination or booster mandates.
9. Mr. Enzweiler had not previously gotten, and then understood certain details of the CEO's directive that was sent to him in January 2022 during the meeting with LR.

On August 26, 2022, LR met with Mr. Enzweiler and his union representatives as part of the investigational process with respect to the allegations that Mr. Enzweiler may have violated Valley Water policies for failure to follow work rules, dishonesty, and insubordination. Attendees included Mr. Enzweiler, Paulino Ochoa (EA Director of Grievance), Carol McEwan (EA Business Agent), Sam Bogale (Deputy Operating Officer – WUE) Lotina Nishijima (Water Treatment Manager – WUE), Bryant Welch (LR Manager), and Emily Meeks (LR Program Administrator).

This meeting was held to discuss the issue above to determine if Mr. Enzweiler's conduct violated the Employees Association, AFSCME Local 101, Memorandum of Understanding (EA MOU) and/or other Valley Water policies and/or procedures (including policies and/or procedures outlined within the EA MOU).

During the investigational meeting, Mr. Enzweiler gave answers (see **CHARGES** below) pursuant to the investigatory report (Attachment 1) that were found to be in violation of Valley Water policies and procedures, as well as the Employee Misconduct section of the EA MOU.

CHARGES

1. Mr. Enzweiler was insubordinate when he violated the CEO's directives noted below when Mr. Enzweiler sent the email on 8/20/22 after the CEO gave the following directives on 1/31/22 (Attachment 2):
 - a. To cease sending emails that were contrary to Valley Water's management team directives;
 - b. To cease using Valley Water's email system to send correspondence that contradicted Valley Water's vaccination mandate directives; and
 - c. To comply with Valley Water policies including Valley Water's e-mail policy (AD 7.5) (Attachment 7).
2. Mr. Enzweiler was insubordinate as the 1/31/22 correspondence sent from the CEO to Mr. Enzweiler does not state that the directives only applied to the single email and instance when Mr. Enzweiler sent the email on 1/29/22 and Mr. Enzweiler was required to comply with the CEO's directives for any and all future instances; and Mr. Enzweiler failed to follow these directives when he opined and made a statement in his email correspondence on 8/20/22 to Valley Water employees.
3. Mr. Enzweiler was insubordinate after given a formal directive to cease and desist from sending information to Valley Water employees that was not supportive of Valley Water's vaccination mandates and the email Mr. Enzweiler sent on 8/20/22 violated this directive as he opined and made a statement in this correspondence to Valley Water employees.
4. Mr. Enzweiler was insubordinate after given a formal directive to cease using Valley Water's email system to communicate his personal disagreements, opinions, and/or statements regarding

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Valley Water's vaccination mandate and the email Mr. Enzweiler sent on 8/20/22 violated this directive as he opined and made a statement in this correspondence to Valley Water employees.

5. Mr. Enzweiler was insubordinate as he made objections regarding the COVID-19 booster vaccination mandate on 8/20/22 in the same manner he made objections with respect to the COVID-19 vaccination mandate (Attachment 5) on 1/29/22 (and was given the directive to cease on 1/31/22) as the booster mandate is a continuation of Valley Water's directive that all employees must be fully vaccinated or be approved for a Reasonable Accommodation which provides exemption from the vaccination mandate.
6. Mr. Enzweiler violated Valley Water's Information Management Electronic Mail (E-Mail) Policy (AD 7.5) (Attachment 7) as no part of Mr. Enzweiler's email on 8/20/22 complies with the policy as the policy states: "The District's e-mail system is to be used for business purposes in serving the interests of the District and its customers...All messages communicated over the District's electronic systems must be courteous and professional in nature. E-mail is not to be used for gossip, sharing of personal information, or for emotional responses to business correspondence or work situations."
7. Mr. Enzweiler's position as a Senior Plant Operator (Attachment 9) does not require or allow Mr. Enzweiler to comment or make a statement on any part of the COVID-19 vaccination mandate or booster vaccination mandate.
8. Mr. Enzweiler was dishonest, not credible and made an attempt to avoid responsibility for his actions when Mr. Enzweiler stated that his job description allows him to comment or make a statement (i.e., email) on the COVID-19 vaccination and booster mandates because it states "other duties as assigned".
9. Mr. Enzweiler was insubordinate when he elected to send the email on 8/20/22 after given clear and unambiguous directives by the CEO and Mr. Enzweiler's actions countermanded the CEO's directives and Valley Water's directives as Mr. Enzweiler did not receive authorization to send the email by management.
10. Mr. Enzweiler's conduct in Findings #1 - #9 violated provisions of the EA MOU, Article 14, Section 2 (Attachment 6), Examples of Employee Misconduct, with respect to failure to follow work rules and insubordination.
11. Mr. Enzweiler's conduct in Findings #1 - #9 violated Valley Water's Disciplinary Process, W-621-180 (Attachment 7), with respect to failure to follow work rules and insubordination; and including:
 - a. Ethics Conduct – Dishonesty (e.g., lying, intentional omission of known facts, falsification of facts, intentional defrauding, deceit).
 - b. Personal Conduct – Insubordination (e.g., Refusal to obey some order which a manager, supervisor, or lead is entitled to give and have obeyed).

MATERIALS RELIED UPON

Nine (9) NORDA Attachments (noted below).

EMPLOYEE ASSISTANCE PROGRAM (EAP)

I also would like to remind you about our CONCERN - Employee Assistance Program (EAP) which provides confidential services to address issues that you may believe are affecting your work. EAP may be reached at 1-800-344-4222; group number: 245/company code: scvwd.

CONFIDENTIALITY/PRIVACY RIGHTS

You are instructed not to violate any privacy rights of Valley Water employees who are mentioned or involved in these charges.

RETALIATION

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10/28/22 14:44 PM

Enzweiler, Tyson – Notice of Recommended Disciplinary Action

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September 30, 2022

Valley Water policy prohibits any form of retaliation against employees who have filed claims or have been party to an investigation, regardless of whether a complaint is sustained.

NOTICE OF RIGHT TO APPEAL

If you believe my recommendation is not appropriate, you have the right to respond to this notice orally (i.e., Skelly Hearing) or in writing. Your deadline for requesting a pre-disciplinary Skelly Hearing or providing a written response is fifteen (15) working days from your receipt of this Notice of Recommended Disciplinary Action. If you timely request a Skelly Hearing, you will have an opportunity to respond to these charges orally with an individual who has the authority to recommend to uphold, modify, or revoke the recommended disciplinary action. You have the right to request bargaining unit representation or to have a representative of your choice at the Skelly Hearing. A copy of the Skelly Hearing notice will be provided to the Bargaining Unit and the Labor Relations Unit. Upon conclusion of the Skelly Hearing, the District shall issue a Notice of Final Disciplinary Action, including the effective date of any discipline to be imposed. Failure to respond within the deadlines described above shall be deemed an intentional and knowing waiver of your right to a Skelly Hearing. If you fail to respond orally or in writing to the proposed disciplinary action in this notice, it shall become final.

DocuSigned by:

Aaron Baker

D2DE768878814FE

Aaron Baker
Chief Operating Officer
Water Utility

9/29/2022


Date

cc: Sam Bogale, Deputy Operating Officer
Lotina Nishijima, Water Treatment Manager
Office of District Counsel
Labor Relations
Employees Association
Personnel File

Attachments:

1. Investigation Report dated 9/27/22 (including eight (8) Investigation Report Attachments)
2. Email "Reverse the Vaccine Mandate" last dated 1/31/22
3. Email "FW: VW not requiring new hires to have a booster" dated 8/20/22
4. Email "Booster Shot Verification Now Required" dated 8/16/22
5. Email "Full vaccination is required by March 1, 2022" dated 1/13/22
6. Employees Association MOU, Article 14, Discipline Process
7. Valley Water Disciplinary Process, W-621-280, Revision B, dated February 11, 2020
8. Information Management Electronic Mail (E-Mail) Policy (AD 7.5), Revision D, dated 05/14/2019
9. Senior Water Plan Operator Class Specification dated 12/2020

EXHIBIT 9

 INFORMATION MANAGEMENT ELECTRONIC MAIL (E-MAIL)	DOCUMENT NO.: AD 7.5
	REVISION: D
	EFFECTIVE DATE: 05/14/2019
	PROCESS OWNER: Michael Cook
Page 1 of 5	

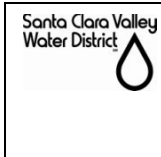
Downloaded or printed copies are for reference only. Verify this is the current version prior to use. See the District website for released version.

1. POLICY STATEMENT

This policy addresses retention of electronic mail (e-mail), employee compliance obligations, and appropriate use of the e-mail system, privacy and confidentiality of information, e-mail system security, and actions to be taken for violations of this policy.

This policy applies but is not limited to e-mail messages, attachments to e-mails, instant messages, weblogs or blogs, and text messages.

- The District e-mail system and all messages, attachments, and images are the sole property of the District. This includes any and all messages, attachments, and images of any kind sent during regular work hours, an employee's break, or after-hours.
- Because all communications on the e-mail system are the property of the District, messages of a confidential or sensitive nature should not be delivered by e-mail. Marking a message "private" does not guarantee confidentiality
- There is no expectation of privacy with regard to employee use of the District's e-mail systems. The District can periodically and randomly examine the contents of e-mail to ensure compliance with this policy. Any apparent violations of District policy will be reported to the Ethics Officer for review. If a policy violation is found, disciplinary action consistent with District procedures and policies will result
- E-mail messages may constitute a District record subject to District Administrative Policy Ad-7.11 Records Management, and subject to potential disclosure under the California Public Records Act, pending or actual litigation, investigations, audits, or claims.
- Electronic records, including but not limited to e-mail messages, may be disclosed by the District to outside parties in connection with litigation, investigations, audits, requests for public records under the California Public Records Act, or by any other law or policy. The District will comply and will not be liable or responsible for the disclosure of any electronic record or part thereof.
- The District's e-mail system is not intended to function as an information storage device or electronic filing system. The system shall be used for transmission and temporary short-term storage. Accordingly, the District may limit the storage capacity of employee's mailboxes and limit the size of email attachments.
- The District's e-mail system is to be used for business purposes in serving the interests of the District and its customers.
- All messages communicated over the District's electronic systems must be courteous and professional in nature. E-mail is not to be used for gossip, sharing of personal information, or for emotional responses to business correspondence or work situations.



INFORMATION MANAGEMENT ELECTRONIC MAIL (E-MAIL)

DOCUMENT NO.: **AD 7.5**
REVISION: **D**
EFFECTIVE DATE: **05/14/2019**
PROCESS OWNER: **Michael Cook**

Page 2 of 5

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- The District recognizes that an employee's e-mail address is subject to receiving both work-related and non-work-related information, and the District recognizes that some incidental personal use and receipt of non-work-related e-mail is difficult to avoid. Employees are responsible for exercising good judgment regarding the reasonableness of personal use. If there is any uncertainty, employees should consult with their supervisors or managers.
- The District has an obligation to take necessary actions to ensure the e-mail system is consistently and reliably available and operates efficiently in a safe and secure environment that is free from unauthorized users, unauthorized use, and virus/malware attacks. Accordingly, the District may limit the type of email attachments and apply unsolicited commercial email (UCE) blocking.
- All messages communicated over the District's electronic systems must be business-appropriate, courteous and professional in nature and not to be used:
 - In any way that does not comply with the District's non-discrimination policies, or to harass or disparage others based on their sex, race, sexual orientation, age, national origin, religion, disability, marital status, or veteran status.
 - For intentionally misleading, inaccurate, embarrassing, harassing, sexually explicit, profane, obscene, intimidating, and defamatory remarks, or that violates any law, regulation, or District policy.
- The default "Outlook Calendar View" shall be configured to display "free/busy/subject/location" for all calendar entries. Staff listed in Addendum A are excluded from this standard.

2. PURPOSE

The purpose of the policy to ensure that information sent or received by District employees, or anyone working on behalf of the District, who is using the District's electronic mail systems, is managed consistently across the organization and in compliance with District policies and the law.

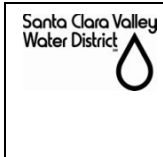
3. SCOPE, ASSUMPTIONS & EXCEPTIONS

N/A

4. ROLES & RESPONSIBILITIES

Information Technology

- Provide and manage the e-mail system
- Establish e-mail passwords and mailbox accounts



INFORMATION MANAGEMENT ELECTRONIC MAIL (E-MAIL)

DOCUMENT NO.:	AD 7.5
REVISION:	D
EFFECTIVE DATE:	05/14/2019
PROCESS OWNER:	Michael Cook
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Recipient of an e-mail

- Employees receiving e-mail must retain the message and all attachments, unaltered, in accordance with District Administrative Policy Ad-7.11 Records Management, and with the record series to which the e-mail message pertains.

Sender of an e-mail

- Employees sending e-mail must retain the message and all attachments, providing the message is complete and un-altered. If the message is altered (edited, additional attachments added), the receiver is responsible for maintaining it.

5. REQUIREMENTS

- **Governance Policies**

EL-6: The BAOs shall protect and adequately maintain corporate assets.

Further, a BAO shall:

- 6.1. Not unnecessarily expose the organization, its Board and staff to claims of liability.
- 6.2. Protect intellectual property, information and files from loss or significant damage.

- **Governing Laws**

Government Code §6250, et seq, California Public Records Act

- **Other Requirements (District Policies, MOUs, Standards, Audit, etc.)**

Ad-7.11 Records Management

Ad-7.2 Computer and Electronic Communication Support Services

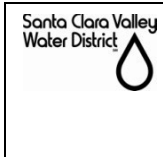
Ad 7.8 Security of Computer Resources

6. ASSOCIATED FORMS & PROCEDURES

DOCUMENT TITLE/ID #	DOCUMENT LOCATION(S)
N/A	

7. DEFINITIONS

Electronic Mail – Electronic Mail (e-mail) may include non-interactive communication of text, data, images, or voice messages between a sender and designated recipient(s) by systems utilizing telecommunications links. It may also include correspondence transmitted and stored electronically using software facilities called “e-mail, facsimile, or messaging” systems; or voice messages transmitted and stored for later retrieval from a computer system.



**INFORMATION MANAGEMENT
ELECTRONIC MAIL (E-MAIL)**

DOCUMENT NO.:	AD 7.5
REVISION:	D
EFFECTIVE DATE:	05/14/2019
PROCESS OWNER:	Michael Cook
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Incidental Personal Use –Personal communications of an unanticipated, sporadic, and non-recurring nature such as those to alert household members about working late or other schedule changes; communications to make alternative child care arrangements; communications with doctors, hospital staff, or day care providers; communications to determine the safety of family or household members, particularly in an emergency; communications to reach businesses or Government agencies that can only be contacted during work hours; and communications to arrange emergency repairs to vehicles or residences. Incidental personal use of communications wireless devices must not adversely affect the performance of employee's official duties or the organization's work performance, must not be disruptive of co-workers, must be of limited duration and frequency and should be restricted to matters that cannot be addressed during non-duty hours. The incidental personal use of District communication wireless devices shall be kept to an absolute minimum. Employer reserves the right to monitor communications wireless device use periodically for abuses.

Record - A record consists of information, regardless of storage medium, detailing the transaction of business. Records include books, papers, maps, photographs, completed forms, machine-readable materials, and other documentary materials, regardless of physical form or characteristics, made or received (by the District) in connection with the transaction of public business and preserved or appropriate for preservation (by the District) as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities (of the District) or because of the value of data in the record.

Unsolicited Commercial Email – Unsolicited Commercial Email (UCE) or E-mail spam, also known as junk e-mail

8. CHANGE HISTORY

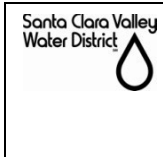
DATE	REVISION	COMMENTS
1/4/2011	A	Updated to new format. Includes content of old Ad-7.5 and 2010-02. No substantive changes to content.
10/01/2012	B	Updated linkage to Board Governance
12/22/2015	B.1	Updated reference to Records Management policy due to name & number change.
11/22/2016	C	Updated process owner.
05/14/2019	D	Updated process owner

9. Addendum A

Title	Nature of Confidential Work
Risk Management Admin Risk Management Program	Works with confidential information regarding liability and Workers' Compensation claims, as well as general legal/litigation and employment matters.

PERB Received
10/28/22 14:44 PM

Sr Management Analyst (2) Risk Management Program	Works with confidential information regarding liability and Workers' Compensation claims, as well as general legal/litigation and employment matters.
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**INFORMATION MANAGEMENT
ELECTRONIC MAIL (E-MAIL)**

DOCUMENT NO.:	AD 7.5
REVISION:	C
EFFECTIVE DATE:	05/14/2019
PROCESS OWNER:	Michael Cook
Page 5 of 5	

Downloaded or printed copies are for reference only. Verify this is the current version prior to use. See the District website for released version.

Title	Nature of Confidential Work
Program Administrator EEOB	Names of those involved in medical accommodations or Ethics/EO investigations.
Management Analyst II (2) EEOB	Names of those involved in medical accommodations or Ethics/EO investigations.
Senior Office Specialist EEOB	Names of those involved in medical accommodations or Ethics/EO investigations.
District Counsel Office of District Counsel	Attorney work product privilege applies
Sr Assistant District Counsel (2) Office of District Counsel	Attorney work product privilege applies
Assistant District Counsel Office of District Counsel	Attorney work product privilege applies
Legal Analyst II Office of District Counsel	Attorney work product privilege applies Meyers-Milias-Brown Act
Executive Assistant Office of District Counsel	Attorney work product privilege applies Meyers-Milias-Brown Act
Administrative Assistant Office of District Counsel	Attorney work product privilege applies Meyers-Milias-Brown Act
Human Resources Unit Manager Labor Relations	Meyers-Milias-Brown Act (MMBA)
Human Resources Tech I/II Labor Relations	Meyers-Milias-Brown Act (MMBA)
Senior Management Analyst Labor Relations	Meyers-Milias-Brown Act (MMBA)
Management Analyst I/II Labor Relations	Meyers-Milias-Brown Act (MMBA)
Program Administrator Classification Compensation	Meyers-Milias-Brown Act (MMBA)
Employment Services Unit Manager Recruitment, Examination & Classification	Meyers-Milias-Brown Act (MMBA)
Program Administrator Benefits Administration	Meyers-Milias-Brown Act (MMBA)
Administrative Assistant Human Resources Administration	Meyers-Milias-Brown Act (MMBA)
Executive Assistant to the CEO Office of the CEO	Meyers-Milias-Brown Act (MMBA)
Executive Assistant Administration	Meyers-Milias-Brown Act (MMBA)

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento,
State of California. I am over the age of 18 years. The name and address of my
Residence or business is Beeson, Tayer & Bodine, 520 Capitol Mall, Suite 300
Sacramento, California

On October 28, 2022, I served the PERB Unfair Practice Charge [PERB-61];
(Date) (Description of document(s))

Attachment 6(d) and Exhibits 1-9 in Case No. _____
(Description of document(s) continued) PERB Case No., if known)

on the parties listed below by (check the applicable method(s)):

- placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- personal delivery;
- electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).)

(Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.)

Rick Callender, Chief Executive Officer
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 28, 2022,
(Date)
at Sacramento, California
(City) (State)

Cynthia J. Belcher, Legal Secretary
(Type or print name)


(Signature)