GOVERNMENT ACCOUNTABILITY PROJECT

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By Email

United States House of Representatives
Committee on Homeland Security
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United States Senate
Committee on Homeland Security and
Government Affairs
Washington, DC 20510

U.S. Office of Special Counsel
1730 M Street NW, # 218
Washington, DC 20036

Office of Inspector General
U.S. Department of Homeland Security
1120 Vermont Ave NW
Washington, DC 20005

February 1, 2021

Re: Protected Whistleblower Disclosures of Gross Mismanagement, Gross Waste of Government Funds and Abuse of Authority by Former DHS Political Appointee **Kenneth T. Cuccinelli**

To Whom It May Concern,

We represent a whistleblower who is a current federal employee who wishes to remain anonymous. Our client possesses information concerning significant acts of misconduct committed by Kenneth T. Cuccinelli II on January 19, 2021 constituting gross mismanagement, gross waste of government funds and abuse of authority – all protected disclosures under the federal whistleblower statute, 5 U.S.C. § 2302.

Mr. Cuccinelli served as the Senior Official Performing the Duties of the Deputy Secretary of the Department of Homeland Security (DHS) and the Senior Official Performing the Duties of the Director of the U.S. Citizenship and Immigration Services (USCIS) until noon on January 20, 2021 when his replacement was named.[1] On January 19, 2021 -- Mr. Cuccinelli's last full day

[1] DHS Press Release, *Tracy Renaud, Senior Official Performing the Duties of the Director, U.S. Citizenship and Immigration Services* (Jan. 20, 2021), available at https://www.uscis.gov/about-us/organization/leadership/tracy-renaud-senior-official-performing-the-duties-of-the-director-us-citizenship-and-immigration.

in office -- he signed, on behalf of U.S. Immigration and Customs Enforcement (ICE), agreements with AFGE National ICE Council 118 (NIC 118), the union representing over 7,500 ICE officers, agents and employees. NIC 118 endorsed President Trump's bids for election and reelection.[2]

The agreements grant NIC 118 extraordinary power and benefits -- far more than what DHS agreed upon with its other employee unions which did not endorse President Trump. The agreements confer on the union the ability to indefinitely delay changes to immigration enforcement policies and practices as well. Moreover, under the agreements, ICE expressly waives statutory management rights which negotiating parties know better than to waive.[3] Even more shockingly, the agreements attempt to prohibit any challenge to their validity for *eight years.*

Time is of the essence. By law, 5 U.S.C. § 7114(c), the agreements are subject to disapproval by the head of DHS, currently David Pekoske, *provided* it happens within 30 days of the date of the agreement – in this case February 17, 2021. In the event of no disapproval, the agreements take effect.

The Agreements

On January 19, 2019 Mr. Cuccinelli, for ICE, signed a Memorandum of Agreement (MOA) and Memorandum of Understanding Concerning the Ground Rules (MOU) with NIC 118. Copies of the signed MOU and the signed MOA are attached, respectively, as Exhibits 1 and 2.

Mr. Cuccinelli's involvement is suspicious. Six days earlier, on January 13, 2021, the then-Acting Director of ICE, Jonathan Fahey, unexpectedly resigned. His tenure ran two weeks. Mr. Fahey was appointed to run ICE when the prior Acting Director also unexpectedly resigned.[4] He held the job for all of five months. Mr. Fahey was replaced by ICE's current Acting Director,

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[2] Press Release, *National ICE Council Announces Endorsement of Donald J. Trump for President of the United States* (Nov. 1, 2020), available at https://iceunion.org/news/national-ice-council-announces-endorsement-donald-j-trump-president-united-states; Politico, *ICE Union Endorses Trump* (Sept. 26, 2016), available at https://www.politico.com/story/2016/09/immigration-customs-enforcement-union-endorses-trump-228664.

[3] Federal Labor Relations Authority, *Federal Bureau of Prisons and AFGE Local 817*, 70 FLRA No 83 (2018) ("negotiating parties know better than to agree to contract provisions that waive management rights") (DuBester, dissenting at footnote 17).

[4] BuzzFeed News, *ICE's Latest Leader Has Resigned after Just Two Weeks on the Job* (Jan. 13, 2021), available at https://www.buzzfeednews.com/article/hamedaleaziz/ice-leader-resigns-after-two-weeks.

Tae D. Johnson.[5] Reportedly, Mr. Fahey resigned because he was "being pressured to sign an agreement with ICE's union."[6] Mr. Johnson is not a signatory on the MOU or MOA.

The agreements purport to amend the master collective bargaining agreement between ICE and NIC 118 -- in place since June 2000 – via 19 separate provisions or articles, along with three additional side letters. The amendments purport to take effect immediately upon signing. Notably under the MOA, ICE and NIC 118 agree to "waive, irrevocably and for 8 years, their rights to challenge this aspect of the MOA."

Gross Mismanagement

The MOA grants unprecedented powers to NIC 118 and imposes limits on management which collectively constitute gross mismanagement. For instance, it:

- Expands the range of issues that ICE must bargain with the union over to include topics hitherto generally considered to be *de minimis* or inextricably intertwined with a subject that had already been negotiated. In other words, the agency will now be required to engage in formal bargaining on essentially any action, no matter how small, as well as to re-bargain subjects that were already thoroughly negotiated and agreed-upon;[7]

- Limits the agency's ability to take actions necessary for the functioning of the agency. Before these agreements and consistent with governing law, ICE could unilaterally change working conditions for its employees when such action was necessary to the

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[5] ICE Leadership Website, available at https://www.ice.gov/leadership.

[6] Washington Examiner, *Head of ICE, Jonathan Fahey, Resigns Abruptly after 13 Days in Position* (Jan. 13, 2021), available at https://www.washingtonexaminer.com/news/ice-head-jonathan-fahey-resigns-abruptly.

[7] Absurdly, the agreements signed by Mr. Cuccinelli violated the 2018 Executive Orders from President Trump -- still in effect on January 19, 2021 (the date of the agreements). For instance, Executive Order 13837, signed by President Trump on May 25, 2018 (along with two other related Executive Orders), expressly barred agencies from paying union travel and per diem expenses. See Federal Labor Relations Authority, *Patent Office Professional Association and U.S. States Patent and Trademark Office*, No. 71 FLRA 232 (2020). But the agreements make ICE responsible for the payment of such expenses.

It makes no sense for an administration to enter into agreements specifically prohibited by its own Executive Orders. However, the topic may now be moot because President Biden revoked the Executive Orders on his second full day in office. See *Executive Order on Protecting the Federal Workforce* (Jan. 22, 2021), available at https://www.whitehouse.gov/ briefing-room/presidential-actions/2021/01/22/executive-order-protecting-the-federal-workforce/.

functioning of the Agency.[8] In such cases, management could act or implement changes in employee working conditions first and subsequently complete its bargaining obligations under the master collective bargaining agreement. Now, the agreements significantly narrow of scope of post-implementation bargaining to: (1) an "emergency caused by natural disasters (such as hurricanes, earthquakes, floors, or volcanoes);" (2) "declarations of war;" and (3) changes in law not otherwise covered by the MOA; and

- Gives the union the added ability to slow and impede agency activities by requiring its express written approval prior to implementing changes in the conditions of employment if union members -- including policies, hours, functions and compensation. The agreements confer on the union the ability to delay negotiation and implementation of any interim or "mid-term" changes to policy or practices until after the completion of "term negotiations" for a new master collective bargaining agreement -- likely to take years.[9]

These and other provisions will directly and may adversely affect agency operations. Effectively giving the union unprecedented veto authority in many areas will necessarily impose substantially greater costs and further reduce agency efficiency. More resources will be used by the agency to address, among other items, bargaining, grievances, arbitrations, official time and overtime on a far wider range of lower-priority topics. Agency action will be further slowed.

Gross Waste of Government Funds

Among the extraordinary benefits conferred on NIC 118 are outsize grants of "official time" conservatively estimated to be worth more than $3 million annually -- $1.4 million more than what DHS pays to a sibling union of NIC 118 – one which is twice its size. This disparity is plainly indicative of a gross waste of government resources.

Official time, for example, is used by federal government unions to conduct union business on behalf of their members. The MOA grants NIC 118 each year 24,960 hours of official time along with an 8,320 hours NIC 118, at its sole discretion, can secure upon request. On top of that, each of the union's approximately 25 locals are granted 2,080 hours – 52,000 hours in all.

Thus, NIC 118 and its local officials are guaranteed no less than 85,280 hours of time each year – over 10,600 eight-hour days – paid for with taxpayer dollars. According to the Bureau of Labor (BLS) statistics the average hourly wage for all federal employees is $37.31,[10] which

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[8] Federal Labor Relations Authority, *Sport Air Traffic Controllers Association and Edwards AFB,* 70 FLRA No. 2 (2014).

[9] ICE and NIC 118 have already been negotiating years. Negotiations of terms for the successor to the June 2000 master service agreement began in 2007 and are not near completion.

means based on that estimate that the NIC and its locals receive nearly $3.2 million in wages for only the hours expressly guaranteed by the MOA. The actual cost is likely far higher given that the average salary for ICE employees is substantially higher.[11]

DHS is far less generous to its other employee unions. The 2016 the master agreement between the USCIS and AFGE National Citizenship and Immigration Services Council 119 (NCISC 119), which represents approximately 14,500 USCIS employees, provides an official time "base of 10,000 hours plus 2.7 hours per bargaining unit employee."[12] That totals 49,150 hours, $1.8 million in salary based on the same assumptions used above.

In other words, the NIC 1118's annual taxpayer-funded salary payments are at least $1.4 million larger than what NCISC 119 receives – even though NIC 118 is roughly half the size of NCISC 119. NCISC 119 did not endorse President Trump.

Abuse of Authority

Mr. Cuccinelli is also likely guilty of abuse of authority by entering into the agreements on behalf of ICE.

In March 2020, the U.S. District Court for the District of Columbia ruled that Mr. Cuccinelli was also not lawfully appointed to serve as the acting Director of U.S. Customs and Immigration Service.[13] The ruling was not appealed. Later, in August 2020, the Government Accountability Office (GAO) ruled that Mr. Cuccinelli's appointment as the Senior Official Performing the Duties of the Deputy Secretary was invalid -- he was serving in his role unlawfully and therefore had no lawful right to exercise the authority of his office.[14] Accordingly, Mr. Cuccinelli had no authority to bind ICE.

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[10] BLS, *May 2019 National Occupational Employment and Wage Estimates -- Federal Government, Including the U.S. Postal Service*, available at https://www.bls.gov/oes/current/999101.htm#00-0000.

[11] FederalPay.org, *Immigration and Customs Enforcement Salaries of 2018*, available at https://www.federalpay.org/employees/bur-of-immigration-and-customs-enforcement. The average annual 2018 salary for 19,783 ICE employees was $103,422.98.

[12] *Master Agreement Between U.S. Citizenship and Immigration Services and American Federation of Government Employees - National Citizenship and Immigration Services Council*, Article 7(d) (June 17, 2016), available at https://www.afge.org/globalassets/documents/cbas/c119---2016-uscis-ncisc-contract.pdf.

[13] *LLM v. Cuccinelli*, No. 19-cv-0276-RDM (D.D.C. Mar. 1, 2020) (ECF # 34).

These rulings make Mr. Cuccinelli's involvement with, let alone approval of the NIC 118 agreements all the more extraordinary. Presumably the head of the agency should have -- as a matter of law and prudent management -- signed the agreements. Yet one head, Jonathan Fahey, apparently refused to sign and instead resigned and his replacement, current Acting Director Johnson, did not sign. That speaks volumes.

* * *

This abuse of authority is shocking. When the evidence is collected -- the agreements' last-second timing, their out-sized conveyance of power and benefits, their purported invulnerability *and* Mr. Cuccinelli's extraordinary involvement -- it is clear that they are another example of the prior administration's effort in its waning hours to cement a legacy at taxpayer expense.

We urge you to investigate immediately and promptly act as you deem warranted.

Very truly yours,

/s/

DAVID Z. SEIDE

Government Accountability Project
davids@whistleblower.org

Attachments

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[14] GAO Decision, *Matter of Department of Homeland Security — Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security*, File No. B-331650 (Aug. 14, 2020), available at https://www.gao.gov/assets/710/708830.pdf.

EXHIBIT 1

MEMORANDUM OF UNDERSTANDING CONCERNING THE GROUND RULES

I) Preamble

A. This Memorandum of Understanding ("MOU") is entered into, by and between the U.S. Immigration and Customs Enforcement (hereinafter referred to as "the Agency" or "ICE") and AFGE Council 118 ICE, American Federation of Government Employees, AFL-CIO (hereinafter referred to as "AFGE," "the Council" or "the Union"). Together, the Agency and the Union shall be referred to as "the Parties."

B. This MOU sets forth the full and complete ground rules for the negotiation of a Master National Collective Bargaining Agreement between the Parties, covering all employees in the bargaining unit certified by the Federal Labor Relations Authority ("FLRA") in Case No. WA-RP-05-0029. Neither Party waives any of its statutory rights by entering into this MOU.

2) CBA terms in effect during negotiation and interpretation of the July 8, 2018 MOU, October 1, 2019 MOU, and January 19, 2021 MOA.

The Parties recognize that, notwithstanding its prior expiration, the provisions of the predecessor master collective bargaining agreement between the U.S. Immigration and Naturalization Service (INS) and the National Immigration and Naturalization Service Council {NINSC) signed on June 8, 2000, also known as Agreement 2000, shall, as modified by a Memorandum of Understanding in response to Case No. WA-RP-05-0029 ("2006 MOU"), generally remain in full force and effect, as if within term, and be applicable upon the Parties in accordance with relevant law until a new Master Agreement replaces it. Further, on July 8, 2018 and October 1, 2019, the Parties entered into memoranda of agreement to extend Articles 2, 5, 6, 7, 8, 9, 31, 32, 47, and 48 and Appendix 3 of Agreement 2000, as modified by the 2006 MOU, for a six (6) year term. See Attachment A, July 8, 2018 MOA; Attachment B, October 1, 2019 MOA. Then, on January 19, 2021, the Parties entered into a Memorandum of Agreement amending, only to the extent of any contradiction, Agreement 2000 with 19 Articles and 3 side letters that were attached to the MOA, all of which became effective upon execution of the MOA. These articles, appendices, and side letters shall be incorporated unmodified into the successor master agreement as stated in the three agreements. The Agency agrees to be bound by the permissive matters included in the articles, appendices and side letters mentioned above; no part of these agreements will be opened, amended or otherwise bargained without the express written consent of the Union.

3) Bargaining Teams

A. The Parties agree that only the Chief Negotiators or Alternate Chief Negotiators shall have the authority to negotiate on behalf of their respective

Party. The Parties agree that each Negotiating Team may include one (1) Chief Negotiator and five (5) additional members.

B. The Chief Negotiators will provide leadership and be responsible for the conduct of their members. Each Chief Negotiator is also responsible for the following, with respect to that Party's team:

1. Providing notice to the other Party of the Negotiating Team members;

2. Designating the alternate Chief Negotiator and Alternate members of the Negotiating Team;

3. Calling caucuses;

4. Determining travel, accommodations and other housekeeping matters.

C. The Chief Negotiators are jointly responsible for the following, by mutual agreement:

1. Determining the dates and starting and quitting times for all bargaining sessions (as consistent with this agreement);

2. Providing up to two (2) points of contact to receive counterproposals, emails and other communication covering all required areas of correspondence established in these ground rules;

3. Signing, Initialing, and dating all articles, on which the Parties have reached tentative agreements.

4) Conducting bargaining sessions (generally)

A. As specified below, bargaining sessions shall generally occur face-to-face unless mutually agreed upon to bargain remotely. If the Parties have mutually agreed to remote bargaining, the Union may at its election, meet in person with their bargaining team members for any remote bargaining session. During weeks where a formal bargaining session is not held, the Parties will still have the opportunity to engage through emailing questions and responses and through phone calls between the Chief Negotiators.

B. Sessions shall begin at 9:00 a.m. and end at 5:30 p.m., eastern time, Tuesday through Thursday, with a half hour unpaid lunch break, absent mutual agreement to the contrary.

C. Face-to-face bargaining sessions shall occur at a location mutually agreed to no later than four (4) weeks prior to the session. The fact that a session is face-to-face does not preclude either party from having team members attend

remotely if mutually agreed.

D. The Union may at its election, schedule a one-week preparation meeting with its team members prior to each bargaining session. Travel and per diem will be paid in accordance with these Ground Rules.

E. The Parties will meet within ninety (90) calendar days of execution of these ground rules to schedule bargaining session dates for the remainder of the calendar year. The Parties will meet each year thereafter no less than sixty (60) calendar days before the end of the calendar year to schedule bargaining sessions for the upcoming year.

F. Each Party may designate a note taker to keep notes and records during the sessions. The Parties further agree that they may jointly assign one person to serve in a knowledge capture role to facilitate and document certain discussions and agreements between the Parties.

G. The Parties shall meet at least once each day of negotiations, although these meetings may consist of as few people as the two Chief Negotiators and one additional person per Party to take notes. Cellular phones or any mobile device (i.e., incoming or outgoing emails, texting or calling) shall be placed on the silent mode during negotiations. A team requesting a caucus will leave the negotiations room to caucus in its respective caucus room. There is no limit on the number of caucuses that may be held, but each Party will make every effort to restrict the number and will provide a reasonable estimate on the anticipated length of the caucus and provide updates if more time is needed

H. Joint announcements of a general nature regarding the status of the ongoing negotiations may be released during negotiations. Additionally, the Union is not precluded from discussing the status of the negotiations with its bargaining unit. Neither party shall be precluded from sharing tentatively agreed Articles with its represented constituencies, so long as the Articles are labeled with a watermark indicating the Article is "not yet operative."

5) Conducting bargaining (substantively)
Bargaining Procedures

A. Each Party will notify the other party two weeks prior to each bargaining session of the articles it wishes to negotiate during the session.

B. During bargaining sessions, the Parties will engage in good faith bargaining in an effort to reach agreement, to include the exchange of proposals. Bargaining sessions will not be restricted to question and answer periods or proposal preparation;

C. The Parties may, by mutual agreement, mark Articles for impasse, when appropriate.

6) Bargaining specifics

A. Within one hundred and eighty (180) calendar days following execution of thisagreement, the Parties will exchange:

1. a list of all previously bargained articles each Party agrees to without further negotiation;

2. a list of all previously bargained articles each Party intends to continue bargaining about.

B. Absent mutual agreement, the articles which have been tentatively agreed upon, by both parties in 6.A.1, will not be countered/updated/reopened and will be deemed accepted by the Parties. Prior to designating articles tentatively agreed upon, the parties will review and make any necessary housekeeping changes. Examples of "housekeeping" changes are updating articles such that references to agencies, sub-agencies, or job titles are accurate.

C. The Parties will continue to bargain all articles which have not been tentatively agreed to by both Parties, as well as any additional new articles proposed by the Union later during bargaining.

D. The Parties may exchange an unlimited number of counter proposals on any open article.

7) Bargaining specifics as to concluding mediation session & mediation during bargaining sessions

A. Mediated Bargaining Session(s) Prior to Impasse

1. After having exhausted bargaining, if the Parties have been unable to reach an agreement, the Parties move to mediated bargaining;

2. During the mediated bargaining session(s), the Parties will meet for a minimum of five (5) one-week sessions with the assistance of an FMCS Mediator to resolve disputes and reach agreement, unless the parties agree to fewer sessions. Dates for all mediated bargaining sessions will be mutually agreed upon.

3. Following the mediated session, all unresolved matters will be submitted for impasse to the FSIP, in accordance with the Panel's regulations. Either Party may, at its election, submit its most recent

proposals to the impasse panel, or make changes to its last proposals, prior to submission to the Panel, so long as the parties engaged in bargaining over the proposals in question.

B. Use of Mediators Throughout the Bargaining Process

Mediators may be used at the election of either Party throughout the bargaining process. The Parties may, if mutually agreeable, adjust negotiation dates in order to have the mediator participate;

8) Travel costs

The Agency shall bear the reasonable travel costs for members of the Union and the Agency bargaining teams including any subject matter experts utilized by either team and lodging and per diem for all bargaining sessions and bargaining prep sessions.

9) Official time

All Union bargaining team members who are ICE employees will be on official time during both remote and face-to-face negotiations as well as for time spent preparing for such negotiations; management will make Union-requested shift adjustments for the Union bargaining team members so preparation and bargaining can be coordinated. This official time will not be charged against any amount of official time bank hours granted to Local or Council Union representatives.

10) Facilities for the Union during term negotiations

A. If bargaining sessions occur remotely by mutual consent, Union officials will be provided meeting space for caucusing or communicating with the Agency. This includes the fact that VTC equipment for video communications shall be provided, upon request, if operationally available (where a VTC, rather than telephonic, bargaining session has been arranged by the Parties).

B. At face-to-face sessions, the Agency shall provide the Union with a suitable and private room, in close proximity to the bargaining room, for purposes of caucusing and internal deliberations at no cost to the Union, as well as customary and routine office equipment, supplies and services, including, but not limited to, computers with Internet access, telephones, desks and/or tables and chairs, office supplies, color printer, and access to at least one photocopier. Access to the ICE Intranet will be limited to cleared ICE employees and contractors. All Agency equipment and unused supplies must be returned to the Agency at the end of the negotiations. Both Parties agree to abide by established DHS/ICE security protocols in accessing or using government equipment including laptops and the internet. Any issues arising

regarding services and/or facilities will be resolved expeditiously by the Chief Negotiators.

11) Delays due to mid-term bargaining (and other delay provisions)
Effect of Mid-term Bargaining on National Term Negotiations:

A. All timelines and deadlines throughout the term negotiation process will be tolled for federal holidays.

B. Matters such as government shutdowns, natural disasters, pandemics, and national emergencies that impact work or bargaining sessions, likewise will toll all timelines and deadlines throughout the term negotiation process.

C. All deadlines included in this agreement may be extended by mutual consent.

D. If the Agency issues an Article 9.A or 9.F notice after the effective date of this agreement, the Agency will serve the notice in accordance with the collective bargaining agreement.

1. Upon the service of the 9.A, at the election of the Union, either: all term negotiations will be suspended pending resolution of mid-term bargaining pursuant to the collective bargaining agreement, or the negotiation and implementation of the 9A notice will be suspended pending resolution of term bargaining, or the Union may select dates for bargaining the 9.A. that do not interfere with its participation in term negotiations.

2. In the case of a 9.F Notice. all deadlines related to the 9.F notice will be tolled until a date for bargaining is selected by the Union.

E. Upon request, the agency will make every effort to ensure AUO certified members of the Union bargaining team do not suffer loss of AUO pay due to time spent in bargaining or prep sessions.

12) Universe of articles

A. The parties will follow the parameters described under Section 6.A.1 and 6.A.2 to determine the universe of articles for negotiations.

B. The Agency specifically withdraws its proposed Articles titled "Fraud, Waste and Abuse in Labor-Management Relations," "Assignment of Position Duties," "Revisions to the Master Agreement," and "Construction of the Agreement," and agrees that it will not introduce any proposals for new articles during bargaining or reintroduce any concepts which were included in the articles listed above. The Union reserves the right to introduce

proposals for new articles during bargaining.

C. Consistent with the July 8, 2018 and October 1, 2019 MOAs, Articles 6 and 32 and Appendix 3 of Agreement 2000, as modified by the 2006 MOU, shall be incorporated into the successor master agreement as Articles 6 and 32, and Appendix 3, respectively. Additionally, consistent with the January 19, 2021, MOA, which amended, only to the extent of any contradiction, Agreement 2000 with 19 Articles and 3 side letters that were attached to the MOA, all of which became effective upon execution of the MOA, the January 19, 2021, MOA shall be incorporated into the successor master agreement. Additionally, the three MOAs shall be attached to the master agreement as appendices. The Union may at its election, create an amended, electronic version of Agreement 2000 for use by employees until the collective bargaining agreement under negotiation is completed.

13) Reopening articles

Nothing in this agreement will be construed to prevent the Parties by mutual consent to reopen for bargaining any tentatively agreed upon completed article or tentatively agreed upon article section.

14) Formatting of proposals

A. Every proposal shall be submitted as a Microsoft Word document. Transmission shall be by email to the appropriate Chief Negotiator (and any bargaining team members the Chief designates and provides email addresses for), with the senders copying themselves (and any other persons from their own bargaining team whom they wish to be copied) for verification purposes. Proposals will have a header listing the topic and counter proposal number (e.g. Article XX- EAP - UCP 1), date and a footer with the page number and total (e.g. "1 of 3"). The general formatting and numbering scheme for all articles in the Master Agreement shall be the decimal outline style (i.e., Article 1.2.2.3), however, any revisions to comport to that formatting do not have to be tracked, colored or marked.

B. Articles determined to be within the universe of articles for negotiation will be split equally between the Parties prior to the first bargaining session. Both Parties will be responsible for providing “cleaned” articles for the first counterproposal with changes marked as described below.

1. For Agency’s counters: the prior proposal will first be "cleaned" (with all highlighting removed) and any changes made thereafter will be made with any new Agency proposed language in red text and yellow highlighting. Deleted language will be "struck through" and the black text will be shaded red.

2. Newly proposed Union language will be in blue colored text. If responding to new Agency language, the Union will leave the font coloring in the counter untouched, but will remove all yellow highlighting. The Union may strike-through any language (whether colored red or black) and shade it blue to show a proposed deletion. A proposal to revise an article that was previously tentatively agreed will similarly use a "clean" version, with the same color scheme. Any new articles will be formatted in black font.

3. Sections in Articles which have been agreed to by the Parties will be shaded in green. These sections will be considered as tentatively agreed to and further changes will not be made without mutual agreement.

4. Sections in Articles which are considered at impasse by the Parties will be shaded in orange.

15) Subject Matter Experts

A. Either Party may request subject matter experts (SMEs) to present information and provide specific subject matter expertise deemed necessary to resolve technical questions during the negotiations. The Chief Negotiators will work together to tailor agendas for bargaining sessions to accommodate SME schedules.

B. Whether bargaining occurs remotely or in-person, either party is permitted to bring their SME(s) to the negotiations.

16) Negotiability & Duty to Bargain

Neither Party waives its right to seek a negotiability determination from the FLRA, or Court review of such a determination. This includes Union appeals of provisions disapproved during Agency Head Review. Term negotiations over the article including the proposal at issue in negotiability proceedings will suspend during the pendency of any such negotiability proceedings. Term negotiations on affected articles will also be suspended during the pendency of any grievance or unfair labor practice proceedings arising from term or mid term bargaining.

A. Upon a decision on a negotiability appeal by the FLRA, or Court of appropriate jurisdiction, the prevailing party may, within fourteen (14) days of the final order, initiate negotiations over the proposal at issue. Negotiations shall be in accordance with the procedures of these ground rules and supersede any inconsistent provisions either mutually agreed or imposed by the FSIP.

B. Nothing in this section will preclude the right of judicial appeal. The Parties shall respect a final determination by the FLRA, or Court of appropriate

jurisdiction, regarding whether a proposal is negotiable. The remaining provisions of the Agreement shall remain in full force and effect, enforceable to the extent permitted by law.

17) Ratification

A. Within three (3) calendar days of the receipt of the resolution of all unresolved matters (including matters resolved following negotiability appeals), either by mutual agreement or through the order of the FSIP, and at such time as the Parties mutually agree they have a complete successor master agreement, the Union will submit all mutually agreed-to articles to its Locals for ratification pursuant to the Union's Constitutional procedures, as well as all articles imposed by the FSIP for context.

B. If the Union's Locals reject the Agreement, the Union will notify the Agency in writing and the Chief Negotiators will meet to arrange for resumption of negotiations over the rejected articles under the procedures set forth in these Ground Rules but based on the date of the notification of rejection.

A. If the Union ratifies the Agreement, the Union will notify the Agency in writing and the Chief Negotiators will execute the agreement and submit it for Agency head review.

B. The Parties recognize that matters imposed by the FSIP are not subject to ratification. Such articles will be deemed executed upon execution of the entire Agreement.

18) Agency Head Review

A. The head of the Agency, Department of Homeland Security, will review the agreement within thirty (30) calendar days of its execution. If the Agency Head approves, or otherwise does not disapprove the Agreement within thirty (30) calendar days of execution, the Agreement shall take effect to the extent that it is in compliance with applicable law and regulations. 5 USC § 7114(c)(3). The Master Agreement will be in effect when it has been ratified, executed and approved, and when all matters have been resolved as provided by law and these Ground Rules. The Agency will provide an email announcement to each bargaining unit employee and post the negotiated Agreement on the Agency Intranet within fourteen (14) days of the deadline to approve, unless the Department disapproves the agreement.

B. If the Agency Head disapproves an article or provision in the Agreement, the Agency Head will notify the Parties in writing. The Chief Negotiators will meet to arrange for resumption of negotiations over the rejected articles. The Union does not waive its right to appeal the rejection to the FLRA.

C. Consistent with section B, above, the Parties agree that any articles that do not contain provisions rejected upon Agency Head Review may go into effect 30 days after the Agency Head rejection if the Union affirmatively agrees, in writing, that the agreement on those non-rejected matters is final and the Union does not wish to engage in further bargaining on the matters. Articles that are returned to negotiation as a result of a rejection upon Agency Head Review shall be assigned a placeholder section in the master agreement that lists only the title of the article and text below it stating: "this Article is pending additional negotiations or other resolution." The Parties agree to retain the *status quo* on any matters rejected in Agency Head review until negotiations are complete.

19) Effective date of ground rules

A. This MOU shall become effective on the date that it is signed by at least one representative of each Party, or upon the date set forth through impasse procedures over these ground rules, subject to Agency Head Review.

B. The Parties may amend any provision of this MOU in writing by mutual consent.

C. The Parties agree that nothing in this MOU shall set any precedent for any substantive matters in any provision, article, or section of the collective bargaining agreement that is to be negotiated via the process set forth herein.

D. If any provisions of this MOU are determined to be non-negotiable, invalid or unenforceable pursuant to Federal law or regulation, the remaining provisions will remain in full force and effect, enforceable to the fullest extent of the law.

E. This MOU shall terminate when the new Collective Bargaining Agreement takes effect.

For the Agency:

Date: 1/19/2021

For the Union:

Chris Crane

Date: 1/19/2021

EXHIBIT 2

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
AND
ICE COUNCIL 118, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

MEMORANDUM OF AGREEMENT

The Parties, the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement ("the Agency" or "ICE") and ICE Council 118, American Federation of Government Employees (AFGE), AFL-CIO ("the Union") hereby enter into this Memorandum of Agreement ("MOA," "Agreement," or "Appendix 2021").

Background:

1. The Parties have been operating under the provisions of the predecessor master collective bargaining agreement between the U.S. Immigration and Naturalization Service (INS) and the National Immigration and Naturalization Service Council (NINSC) signed on June 8, 2000, also known as Agreement 2000, as modified by a Memorandum of Understanding in response to Case No. WA-RP-05-0029 ("2006 MOU").

2. In addition, the Parties entered into a Memorandum of Agreement on July 8, 2018 ("2018 MOA"), extending the provisions of Articles 7, 8, and 9 of Agreement 2000 as modified by the 2006 MOU, for a three (3) year term from July 8, 2018.

3. The 2018 MOA provided that Articles 7, 8, and 9 of Agreement 2000, as amended by the 2006 MOU, would be incorporated into the next master agreement but that the Parties could modify the articles by mutual agreement. The Parties thereafter entered into a Memorandum of Agreement on October 1, 2019 regarding Articles 2, 5, 6, 7, 8, 9, 31, 32, 47, and 48 and Appendix 3 of Agreement 2000, as modified by the 2006 MOU, extending those provisions for a six (6) year term and agreeing to incorporate the Articles and Appendix into the next master agreement but that the Parties could modify the articles by mutual agreement.

4. Each agreement provided that the Parties may amend any provision of this Agreement in writing, by mutual consent.

5. To amend and supplement the Parties' previous agreements, the Parties hereby agree to the following terms and conditions, as contained in the attached exhibits (including the three (3) side letters), which are incorporated herein by reference. The Parties further agree all existing Agreements between the parties remain in full force and effect, except to the extent modified by this MOA and the attached exhibits, including the three (3) side letters. The attached articles shall henceforth be known as "Appendix 2021 Article *X*," with *X* denoting the number of the pertinent article among the exhibits; or, in the case of an attached side letter, it shall henceforth be known as "Appendix 2021 SL *X*," with *X* denoting the number of the pertinent side letter among the exhibits.

6. The Parties agree that future negotiations over the next master agreement shall not substantively modify any terms of the articles included in the attached exhibits, including the three (3) side letters, or otherwise contain any inconsistent terms. The articles included in the attached exhibits, including the three (3) side letters, shall be placed into the term of the successor master agreement. The Parties may, by mutual agreement only, agree to allow additional substantive modifications to the articles included in the attached exhibits, including the three (3) side letters.

7. The Parties agree that negotiations over a collective bargaining agreement are ongoing and that the Parties will continue to negotiate in good faith over a collective bargaining agreement. Neither party intends this MOA and its exhibits, including the three (3) side letters, to constitute a complete, successor collective bargaining agreement.

8. The Parties agree that there may be some minor, housekeeping edits needed for the exhibits, including the three (3) side letters. These housekeeping edits are not substantive, but instead would be edits to items such as formatting or numbering. The parties will endeavor to raise any proposed non-substantive, housekeeping issues with the other party within 90 days of execution of this MOA. In the event that one side raises such housekeeping issues, the other side will engage in a good faith review of the housekeeping issues with the goal of resolving such issues. The fact that one side had raised non-substantive housekeeping edits and the other party has agreed to review and resolve them does not permit either party to reopen substantive negotiations over the provisions of the exhibits, including the three (3) side letters.

9. This Agreement shall become effective on the date that it is signed by at least one representative of each Party and the articles attached to this MOA shall be effective and in place as soon as this MOA is effective.

10. No modifications whatsoever concerning the terms of this MOA shall be implemented or occur without the prior affirmative consent of both parties to this MOA, all other sources of law, contract, and other authority notwithstanding. Such affirmative consent must be secured in writing and witnessed by at least two (2) disinterested witnesses from each side; neither sets of witnesses may, in any respect, overlap. The contracting parties waive, irrevocably and for 8 years, their rights to challenge this aspect of the MOA.

11. Any part, provision, representation, right or privilege contained in this Agreement which is prohibited or which is held to be void or unenforceable in any forum of competent jurisdiction shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. To the extent permitted by applicable law, the Parties hereto waive any provision of law which prohibits or renders void or unenforceable any provision hereof. If the invalidity of any part, provision, representation, right, or privilege of this Agreement shall deprive any party of any benefit intended to be conferred by this Agreement, the parties shall negotiate, in good-faith, to

develop a further Agreement which is as close as possible to the effect of this Agreement as permitted by law without regard to such invalidity.

12. The exhibits, including the three (3) side letters, hereunto attached supplement any and all previous agreements herein referenced and incorporated but to the extent there might be any inconsistency, conflict, or ambiguity between or among them as to the rights or obligations of the Parties, the exhibits, including the three (3) side letters, hereunto attached shall control and supersede any and all previous agreements herein referenced and incorporated.

For the Agency:

Kenneth T. Cuccinelli

Date: 1/19/2021

For the Union:

Chris Crane

Date: 1/19/2021

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
AND
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EXHIBIT 2

develop a further Agreement which is as close as possible to the effect of this Agreement as permitted by law without regard to such invalidity

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For the Agency

Kenneth T. Cuccinelli

Date: 1/19/2021

For the Union:

Chris Crane

Date: 1/19/2021

Article 1 UNION RIGHTS

1.1. Exclusive Representatives

The Union is the exclusive representative of the employees in the unit and is entitled to act for and represent the interests of all employees in the unit.

1.2. Union Representatives

The Union may designate its own representatives. Within 30 days of implementation of the agreement the Union will provide the Agency with a complete list of its national and local officers and representatives. The [illegible] the Union will notify the Agency's Director of Employee and Labor Relations on a quarterly basis of the name, title, work location, and contact information of its representatives. The Council will notify the Agency on the national level on a current basis of the name, title, duty station, and contact information of Council representatives. Local Unions will provide this information to local management within five working days of a change in designation of a representative. Management will post the local list of representatives on appropriate bulletin boards.

It is a union's right to assign union duties to union representatives. At no time will the Agency attempt to designate a union representative to perform any union function (e.g., attempt to dictate that a specific union representative will be the designated representative in an examination).

Union representatives will receive official time for the performance of representational duties in accordance with this Agreement.

1.3. Representational Requirements

Union officials are authorized to perform and discharge the duties and responsibilities which may be properly assigned to them under the terms set by 5 U.S.C. § 71 and by the Union in accordance with this Agreement and any supplemental agreement or agreements hereunder. Union officials shall be relieved from official duties during the period they are serving as union officials, in accordance with this Agreement.

The Agency shall not impose any restraint, interfe[illegible] or discrimination against employees in the exercise of their rights to organize and designate representatives of their own choosing for the purposes of collective bargaining, the presentation of grievances, appeals from adverse actions, Labor-Management Relations, or upon duly designated employee representatives acting on behalf of an employee or group of employe[illegible] within the bargaining unit.

The Agency recognizes that it may be necessary on occasion that a design[illegible] union official is required to communicate with employees or managers during duty hours. It is agreed that these

communications will be kept to a minimum and no request for official time is required (e.g. return phone calls and emails)

1.4. Union Right to Be Present at Certain Discussions with Bargaining Unit Employees

Specific Meetings

National Town Halls. For planning purposes, the Agency will notify the National Council of all scheduled town hall meetings conducted by senior level officials as soon as planned, but not less than seven days prior to the meeting, unless exigent circumstances require shorter notice. For unscheduled meetings the Agency will notify the National Council as soon as possible.

Local Town Halls. The Agency will notify the local Union of all scheduled town hall meetings as soon as planned, but not less than seven days in advance of any town hall meetings, unless exigent circumstances require shorter notice.

Union Town Halls. The Council or the local, as applicable, is permitted to schedule and hold town hall meetings with employees and will follow the same respective scheduling and notice procedures provided in Section 1.4.

1.5. Investigatory Examinations

Prior to any examination, bargaining unit employees will be advised of their right to have union representation. The term examination covers any instance where information, whether by verbal interviews or written memos or affidavits, is solicited from a bargaining unit employee.

The Union has the right to be represented at any examination of an employee in the bargaining unit by a representative of the Agency in connection with an investigation if the employee requests representation. For purposes of this Section a representative of the Agency includes investigators from any government entity if the examination either (1) occurs on Agency grounds, (2) includes a supervisory employee of the Agency, or (3) was scheduled, in part, with assistance of the Agency.

The Union will determine which representatives will be assigned to any particular investigatory examination. The Union is authorized up to two representatives present during investigatory examinations.

The Agency will ensure that the Union representatives will be given at least two workdays to arrive at the examination. Once the employee requests representation, no further questioning will take place until the representative arrive. If the representatives are not available due to work schedules or other representational business the examination will be postponed for at least two workdays until the designated representatives (or another representative) are available. If a Union representative is

unavailable due to a showing of exceptional circumstances (e.g., travel, operational requirements, conflicts of interest), the Agency will afford additional time, on a case by case basis, for the Union representative to arrive. Examinations of bargaining unit employees will be conducted in accordance with this Agreement and other binding agreements between the parties.

1.6. Access to Information

The Agency will furnish to the Union, or its authorized representatives, upon request, and to the extent not prohibited by law, data concerning the Bargaining Units and other matters of direct interest to the Union. The Union shall provide its reason(s) for each such request at the time such request is made.

1.7. Miscellaneous

The Union shall have the right to present its views, either orally or in writing, to the Employer on any matters of concern to include policies and practices and matters affecting working conditions.

The Agency agrees to investigate thoroughly and address seriously any form of harassment and retaliation by any management official or any management representative against a union representative.

Upon request, appropriate supervisors and managers, to include Field Office Directors and Agency leadership, will meet with Council Officers and local leaders to discuss matters of concern. The Parties will work in good faith to avoid unnecessary delays in the scheduling of meetings.

If at any time the Agency considers filing a unit clarification with the FLRA regarding BUEs covered by this Agreement, or considers proposing an exclusive action to remove positions from collective bargaining under Section 7103(b), it will notify the Council at the onset of discussions and in advance of a decision, to engage the Council in pre-decisional involvement.

The Union may refuse to represent employees in statutory appeals, e.g., before outside agencies such as Merit Systems Protection Board (adverse actions) or the Equal Employment Opportunity Commission (discrimination appeals). The Union may refuse to represent employees in other matters where employees have the statutory right to choose other representation (e.g., replies to proposed suspension adverse actions, reductions in grade or removals based on unacceptable performance).

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Article 2 OFFICIAL TIME

2.1. Purpose

Offic[illegible]nme in the Agency shall be adminisc[illegible] in accordance with 5 U.S.C. 7101 et seq. "The Federal Service Labor-Management Relations Statute" (the Statutc[illegible] as amended, and this Agreement

In adminstering labor management relations, Union officials will be authorized to carry out their representational responsibilities without fear or reprisal

The purpose of official time is to provide bargaining unit employees time in which to perform Union representational activitic[illegible] during normal working hours, without loss of pay to include AUO as addressed herein, or charge to annual leave This Article provides an equitable process for the allocation and approval of official time and recogtizes that the appropriate use of official time benefits both the Agency and the Union.

2.2 Representational Functions

Elected or appointed Union representatives may use official time for representational purposes as provided by 5 U.S.C. 7 I et seq during such time as they are otherwise in a duty status. This time will be without charge to leave and consistent with this Article

Employees who are not elected or appointed Union representatives may be released from duty on official time in accordance with this Article without charge to leave for appropriate representational purposes consistent with 5 U.S.C. 7101 et seq. This time will not be charged against any amount of official time bank hours granted to Local or Council Union representatives under this Article.

Official time is prohibited for any activities performed by any employee relating to the internal business of the Union including the solicitation of membership, elections of Union officials, and collection of dues

Employe[illegible] and re[illegible]sentatives who participate in certain statutory processes, including but not limited to proceedings before the Federal Labor Relations Authority, Merit Systems Protection Board and the Equal Employment Opportunity Commission will be granted official duty time Such official time is not limited by this Article, and will not be charged against any amount of official time bank hours granted to the Union under this Article

2.3. Release Procedures for Official Time Use

2.3.1. Request for Official Time (Other than Bank Hours)

Each Union representative/employee will be required to complete Form G 826 (011/20), Request for Official Time, in order to request official time Union representatives/employees are required to generally identify the issue being considered and will provide a telephone number where they can be reached There is no limit to the amount of official time under this section that the Union/employees can use, at the local or national level Union representatives are not precluded in any way from utilizing official time under this section when assigned bank hours by the designated Council or Local official in accordancewith this Article

2.3.2. Acted upon in a Timely Manner

Requests for official time will be acted upon in a timely manner but no later than one workday after receipt by the supervisor. Supervisors will take into consideration the time constraints the Union representative/employee may be bound by. The Union representative/employee will prepare the form pursuant to this Article and submit the form to the first line supervisor or designee. The supervisor will endorse the form indicating approval or denial, retain one copy and return one copy to the Union representative/employee.

2.3.3. Official Time Approval/Completion

Union representatives will be permitted to leave their assigned work area on official time as authorized in accordance with this Article and Agreement after receiving approval from their immediate supervisor or appropriate management official. Representatives will be released unless the representative's absence would create an adverse impact on the Agency's work requirements. Upon completion of the authorized activity and upon return to duty, the Union representative will advise the supervisor, either verbally or in writing, of the date and time of the return to duty. The supervisor will complete the original request to reflect the total time (hours/dates) used. The supervisor will be responsible for forwarding the completed form to the Office of Human Capital Union representatives are required to record their official time in the Time and Attendance system (e.g., WebTA). Non-representative employees granted official time will also be permitted to leave their assigned work area when needed in order to make possible the activities approved for the official time (e.g., meet privately with a Union representative regarding an alleged grievance). The Agency will engage the Council in pre-decisional involvement to create clear guidance for Union representatives and employees when entering official time guidance into the Time and Attendance system.

EXHIBIT 2

2.3.4. **Official Time Denial**

Should an occasion arise when a request must be denied, in whole or in part, the supervisor will note the reason for denial on the form and return it to the Union representative/employee. At that time, the representative/employee and the supervisor will arrive at a mutually agreeable time to schedule the requested official time. If the representative cannot be released for representational purposes and either had previously represented the employee or the situation requires a specific Union representative's expertise, the Agency will postpone the event requiring Union representation; e.g., grievance meeting, investigative interview, etc., until the representative is released to attend. Except as specifically provided, Union representatives and employees will be authorized reasonable official time to perform functions outlined in this Agreement.

2.3.5. **Supervisor's Absence**

When the Union representative needs to leave the work site and the supervisor is temporarily absent from the site, the representative can telephonically or electronically request official time from any supervisor or management official and receive verbal approval in lieu of submitting the form "Request for Official Time" at that time. Approvals and denials will be consistent with this Article.

2.3.6. **Request for Extension**

On occasion, discussions between the Union representative and the employee may take longer than originally anticipated. In these cases, both may contact their supervisors telephonically or by e-mail to notify them of the need to extend the anticipated return time. Requests for an extension of the representative's or employee's time will not be denied unless their absence would create an adverse impact on the Agency's work requirements. If an extension is denied, the requested time will be rescheduled by mutual agreement.

2.4. Allocation of Official Time (Bank Hours)

The Council will be granted a total of 24,960 bank hours of official time per calendar year which will be distributed and utilized by the Council on an as needed basis and in the amount necessary to meet the workload of the Council.

24,960 hours of official time will be granted to the Council on January 1 of each year. Any unused bank hours of official time from the previous year will expire on the same date.

The Council shall be granted a total of ten 100% official time positions which the Council will assign. However, at its discretion, the Council may assign an additional two official time positions, for a total of 12 100% official time positions. The Council may, at its discretion, utilize these 100% official time positions to appoint official time positions ranging from 25% to 100%, in increments of

5%. For example, the Council may create two 50% positions from one 100% position, or four 25% positions from one 100% position, and so on.

The Council agrees to provide the Agency with a list of Council representatives who are allocated bank hours of official time and the number of hours allocated to each. The Council will provide an updated list when changes occur.

The Council can distribute any of its remaining bank hours of official time to local representatives on an as-needed basis in the amount necessary to meet the workload of the Locals, in addition to Local bank hours provided in Section 2.4. Absent mutual agreement between the Parties, no more than one individual in each Local will be assigned Council bank hours of 100% official time for Local use. Locals may allocate and schedule bank hours among representatives in no less than 40-hour increments.

Employees utilizing official time, even those designated at 100% official time, are not precluded from performing regular duties, details, training, and scheduled or unscheduled overtime.

Local Bank Hours. Each Local will be granted a total of 2,080 bank hours of official time per calendar year which will be distributed and utilized by the Local to its ICE representatives on an as-needed basis and in the amount necessary to meet the workload of the Local. In Locals where the local president is a CIS employee, the ICE Council President will distribute bank hours to the local's ICE representatives.

Each Local Secretary Treasurer/ Treasurer will be granted 208 hours per calendar year to complete necessary reports and forms required by other Federal agencies for the operation of the Local.

2,080 hours of official time will be granted to the Local on January 1 of each year. Any unused bank hours of official time from the previous year will expire on the same date.

208 hours of official time will be granted to the Local Secretary Treasurer or Treasurer on January 1 of each year. Any unused bank hours of official time from the previous year will expire on the same date.

Each Local agrees to provide the Agency with a list of its Local representatives who are allocated Local bank hours of official time and the number of hours allocated to each. The Local will provide an updated list when changes occur.

Union representatives utilizing official time, even those designated at 100% official time, are not precluded from performing regular duties, details, training, and scheduled or unscheduled overtime.

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EXHIBIT 2

2.5. Bank Time Notification

2.5.1. Introduction

Upon distribution of any of the time authorized in Section 2.4 above, the Council or Local as appropriate will notify the Director of Human Capital of the representatives who will be assigned to the bank time and the approximate amount of time that may be utilized. Such notice will normally be given three workdays before the requested bank time is to commence. The Agency will be responsible for making the appropriate notification to the individual's supervisor within two workdays after receiving the Union's notification. Representatives will be released within forty-eight (48) hours unless adverse impact requires the beginning of the bank time to be delayed.

2.5.2. Reporting Bank Hour Usage

The Council President will be responsible for reporting the utilization of Council bank hours to the Director of Human Capital on a quarterly basis. The Local President (or BCE designee where the Local President is a CIS employee) will be responsible for reporting the utilization of Local bank hours to the Director of Human Capital on a quarterly basis.

2.6. Additional Hours

Upon request, if the Council determines in the Council's sole discretion, that it does not have sufficient bank hours to fully participate in PDI and/or bargaining and adequately look after the interests of BUEs, the Council will be granted an additional 8,320 bank hours of official time per year. Any additional hours required are subject to national negotiations, as applicable, in accordance with this Agreement.

2.7. Time Not Charged

Time for the following activities will not be charged to the amount of official time in Section 2.4 above, but will be made available to properly designated representatives, who would otherwise be in a duty status. Consistent with 5 U.S.C. 7131(a) and this Agreement, Union representatives will be granted reasonable and necessary time to carry out the following functions:

1. Term agreement bargaining in accordance with 5 U.S.C. 7131(a) and this Agreement, and any related third-party proceedings;
2. Mid-term bargaining on management initiated or Union initiated changes in conditions of employment, and any related third-party proceedings; or
3. Representation of employees, including Union officials, in statutory EEO complaints under 29 CFR 1614

2.8 Travel Time

Council representatives or Local representatives authorized to use Council bank hours by the Council will be authorized travel for meetings with the Agency. The Agency will be responsible for the payment of travel and per diem. The Council President or designee will coordinate travel authorization with the Director of Human Capital.

A Union representative will be granted reasonable travel time for the purpose of traveling to assist in representing BUEs within their area of jurisdiction. If the representation is outside the local commuting area of the representative, the Agency will pay travel and per diem expenses.

The Agency will grant travel time and pay travel and per diem expenses for Union representatives who serve as representatives, witnesses, or grievants in arbitration cases.

2.9. Travel for Union Designees

Union representative official time and travel and per diem provisions of this agreement shall normally apply only to designated Union representatives. However, it is also understood that the Union at the local and national level may from time to time designate other employees to represent its interests and to participate in activities including, but not limited to, rating panels, labor management meetings, partnership activities, committees, bargaining, or any other such meetings scheduled by the Agency. Such employees shall, to the extent possible, be local to the meeting in question, and such employees may use Council bank hours as consistent with Article 40 of this Agreement for such meetings, and be authorized travel and per diem as necessary for participation in such activities.

2.10. Training

The Agency agrees that an employee who has been designated by the Local President (or designee) will be granted a minimum of forty (40) hours of official time per calendar year for attendance at labor relations training or other training related to employees' conditions of employment and the administration of the Agreement. Official time granted under this section is in addition to the hours granted in Section 2.4 of this Article. Training under this section will generally cover such areas as contract administration, handling of statutory actions such as grievances and information related to Federal personnel or labor relations laws, regulations, procedures and Department of Labor requirements.

Written requests, including an agenda, will be forwarded no later than fifteen workdays in advance of the training to the Union representative's immediate supervisor. Official time may be used for travel to and from the training. The Agency will respond to the request no later than five workdays from the date it is made.

Official time for training will be approved unless the absence would create a significant adverse impact on the Agency's work requirements. When a request for official time for training is disapproved for any reason, the particular reasons for such disapproval will be furnished to the representative who made the request and to the Council or Local Union President at the time of disapproval.

2.11. Trips

The Council will be authorized up to a combined total of thirty trips annually (i.e., equivalent of 30 individuals taking 1 trip each) for the purpose of improving the employee and labor management relationship within the Agency. These trips are separate from other Council travel provided in this Agreement. The trips will be authorized and coordinated with the Labor Management Relations Office in Washington, D.C..

U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement

Request for Official Time for Union Activities

To Supervisory Official: (Designated by Agency to approve official time)	**From Union Representative:** (Name, Union title and duty location)

I. Pursuant to the negotiated agreement, Official Time is hereby requested as follows:

Date and Time requested	Total Hours Anticipated	Activity to be Performed (XX ( ) if Bargaining, or specify)

Place of Contact/ Phone Number:

(If the information is not provided, explain why)

II. Endorsement by Supervisor:

The above requested official time is: ☐ **Approved** ☐ **Denied** (check one)

Return two copies. Return one copy to requester

If Denied, provide reason for denial:

III Final endorsement as recorded on time and attendance report:

For Date	Total Hours	Charged to Transaction Code (See Instructions below)
Actual Time Began	Actual Time Returned to Duty	

(After Completion of Section III, forward a copy to the Office of Employee and Labor Relations)

INSTRUCTIONS

Transaction Codes	Type of Official Time
35	Union Contract Negotiations
36	Union/Mid-Term Negotiations
37	Union On-Going Labor Management Relations Activities
38	Union/Grievance/Appeals/Representation

Employee/Supervisors: Enter appropriate Transaction Code at **Section III** on the form above

Timekeepers: Enter the appropriate Transaction Code for all Union time used on line **03** of the Time and Attendance report.

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Article 3 IMPACT BARGAINING AND MID-TERM BARGAINING

3.1. Partnership

The Agency must keep the Union informed on an ongoing basis of all policies, guidance, and changes to working conditions being considered as well as the different stages of the drafting and review process.

The Agency must provide a policy list to the Union on the first working day of each month listing all policies and guidance under consideration, their most recent status, and their anticipated dates of completion and implementation. If, between monthly updates, a new policy or guidance comes under consideration or a previously reported completion date advances, the Council must be provided the update as soon as possible, but not later than two days after the Agency became aware of the update.

Additionally, the Parties must work collaboratively on creating and maintaining a joint schedule and calendar of events with the purpose of ensuring that bargaining and other events are properly scheduled at a time convenient for both Parties.

3.2. Pre-Decisional Involvement

From time to time during the life of the Agreement, either Party may propose changes in policies, practices, or working conditions not covered by this Agreement. The Agency recognizes the benefit of the Union being involved in pre-decisional involvement (PDI) to the maximum extent possible. Accordingly, whenever the Agency seeks to make changes in policies, practices, conditions of employment, or working conditions not covered by this Agreement, the Agency will first engage in PDI with the Union followed by formal bargaining if an agreement was not reached in PDI. The Agency agrees that it will engage in PDI without regard to whether the change is negotiable, permissively negotiable, or non-negotiable, and that PDI will begin when ideas are still forming. The parties will exhaust pre-decisional involvement prior to either parties' formal presentation of proposals for working conditions under this Article. All activities identified in this Article related to PDI and formal bargaining will be conducted by way of face-to-face meetings, unless mutually agreed upon between the Parties.

3.3. Initiation

The Union, in accordance with law and the terms of this Agreement, has the right to initiate bargaining on its own and engage in mid-term bargaining over proposed changes in conditions of employment except for matters (1) explicitly addressed in this Agreement or another negotiated agreement between the Parties; and (2) where there is a clear and unequivocal waiver of the right to bargain by the Union, including those issues clearly and unmistakably bargained away as part of the

legal implementation of other conditions of employment including the negotiation of this Agreement.

3.4. Agency Initiated PDI and Bargaining – Procedures

As applicable, PDI and mid-term bargaining initiated by the Agency shall be conducted in accordance with the following procedures and time frames:

1. The Agency recognizes that its statutory notice and opportunity to bargain obligations exist at the National and Local level based upon where the change is initiated and the Council's determination of bargaining level.

2. **Agency Notice of Intent to Engage in PDI.** The Agency will serve all notices of intent to engage in PDI on the Council President, as well as any relevant Local President (or designees). For all proposed changes, the Council has the right to determine whether National level or Local level PDI/bargaining is appropriate. Agency notice will include at least the nature and scope of the proposed change and its proposed implementation date. If the Agency proposes that the changes are Local level changes, the Agency will provide a detailed written explanation of why the change is believed to be a Local level change. Upon request, the Council and any relevant Local President, or their designees, will be provided a briefing and opportunity to ask questions to gain a better understanding of the nature of the proposed changes and determine the appropriate level of bargaining. The Agency will provide written notice of PDI not less than sixty workdays prior to the proposed implementation date.

3. The Parties recognize that sufficient details may not exist before or during PDI for the Council to accurately assess if a matter is appropriate for PDI or bargaining at the Local or National level. Therefore, the Council reserves the right to have Local and Council representatives engage in PDI and/or monitor its progress, and the Council may delay issuance of a final determination on the level of bargaining until after PDI has concluded and the parties have moved forward with formal bargaining. In such instances where the Council has not determined the appropriate level of bargaining, any agreement reached during PDI will require Council review and signature.

4. The parties will mutually agree upon dates and locations for no less than three (3) sessions of PDI with each session lasting no less than three days per session, not

including travel days. The parties may mutually agree to fewer or extended PDI sessions.

5. **Agency Notice to Initiate Formal Bargaining (Notice of Proposed Change).** If the parties are unable to reach an agreement through PDI, the Agency shall present the changes in policies, practices, or working conditions not covered by this Agreement to the Union without regard to whether the Agency believes that the change is non negotiable or *de minimis*. In all instances, the Union will be permitted the opportunity to review the proposed changes and submit Demands to Bargain, request information and briefings, and otherwise follow the bargaining procedures agreed upon in this Article. The parties recognize that the Agency's initial proposals may have changed during or after PDI, and therefore the written notice will, at minimum, contain the following information:

   a. The nature and scope of the proposed change;

   b. A description of the change;

   c. An explanation of the initiating Party's plans for implementing this change;

   d. An explanation of why the proposed change is being sought;

   e. The planned or proposed implementation date;

   f. Relevant policies, to include current, changed and draft policies; and

   g. Other applicable documentation necessary to understand the scope of the proposed change.

6. The Agency will serve notice of all proposed changes on the Council President, as well as any relevant Local President (or their designees). If the Council determines that a change is National in scope, it will inform the Agency of its intent to bargain the change at the National level. For all proposed changes, the Council has the right to determine whether National or Local bargaining is appropriate.

7. **Union Demand to Bargain/Information and/or Briefing Request.** Within thirty workdays after being served with the notice of the proposed change, and after the Council's final determination regarding whether bargaining is appropriate at the National or Local level, the President of the Council or Local President (or their designees), as appropriate, may reasonably request any additional information and the briefings necessary to clarify or determine the impact of the proposed change. At the same time, the Union shall serve any bargaining demand in writing upon the

appropriate Agency official. Service related to National Level bargaining will be made to the Chief, Labor and Employee Relations (or designee) and may copy the Agency Director. Service related to Local Level bargaining will be made to the Field Office Director (or designee).

8. **Union Proposals.** The Union will submit bargaining proposals with its demand to bargain. If the Union has requested additional information or a briefing from the Agency related to the proposal from management, amendments to the original proposals and additional proposals may be made within thirty workdays of receipt of the briefing, or receipt of all requested information, whichever occurs last.

9. **Negotiations.** If, following any informal discussions, the Parties are unable to reach agreement on the proposed change, they shall commence negotiations on a mutually agreeable date and site. Absent mutual agreement on a date for bargaining, such negotiations shall commence at a mutually agreed upon site at 9:00 a.m. on the thirtieth workday following the date the Union served its final proposals on the Agency after the Agency provided all requested information and briefings.

10. Implementation shall be postponed allowing for the completion of bargaining, up to and including negotiability disputes and/or impasse proceedings, except as required by law.

3.5. Union Initiated PDI and Bargaining - Procedures

As applicable, PDI and mid-term bargaining initiated by the Union shall be conducted in accordance with the following procedures and time frames:

1. **National Service.** Service related to National Level PDI or mid-term bargaining initiated by the Council will be made to the Chief, Labor and Employee Relations (or designee) and may copy the Agency Director.

2. **Local Service.** Service related to PDI or mid-term bargaining initiated by a Local will be made to the Field Office Director (or designee).

3. **Union Notice of Intent to Engage in PDI.** In accordance with service requirements listed in Section 3.5(1) and (2), the Union will serve all notices of its intent to engage in PDI on the appropriate Agency official. Notice will at minimum include the nature and scope of the proposed change and the planned or proposed implementation date. Upon request, the Agency will be provided a briefing and opportunity to ask questions to gain a better understanding of the nature of the

EXHIBIT 2

proposed changes. The Union will provide written notice of PDI not less than sixty workdays prior to the proposed implementation date.

4. The parties will mutually agree upon dates and locations for no less than three sessions of PDI with each session lasting no less than three days per PDI session, not including travel days. The parties may mutually agree to fewer or extended PDI sessions

5. **Union Notice to Initiate Formal Bargaining (Notice of Proposed Change).** If the parties are unable to reach an agreement through pre-decisional involvement, and absent a mutual agreement to extend PDI, the Union shall provide notice to the Agency of its proposed changes in policies, practices, and/or working conditions not covered by this Agreement. Service of the Union's Notice to Initiate Formal Bargaining will be made to the appropriate Agency official. The parties recognize that the Union's initial proposals may have changed during or after PDI, and therefore the written notice will, at minimum, contain the following information:

   a. The nature and scope of the proposed change;

   b. A description of the change;

   c. An explanation of the initiating Party's plans for implementing this change;

   d. An explanation of why the proposed change is being sought;

   e. The planned or proposed implementation date;

   f. Relevant policies, to include current, changed and draft policies; and

   g. Other applicable documentation necessary to understand the scope of the proposed change

6. **Agency Demand to Bargain/Information and/or Briefing Request.** Within thirty workdays after being served with the notice of the proposed change, the appropriate National or Local management official identified in 5(1) and (2) or designee may request any additional information and briefings necessary to clarify or determine the impact of the proposed change. At the same time, the Agency shall serve any bargaining demand and information and briefing request in writing upon the appropriate Union official. Service related to National Level bargaining will be made to the Council President (or designee). Service related to Local Level bargaining will be made to the Local President (or designee).

7. **Agency Proposals.** The Agency will submit bargaining proposals with its demand to bargain. If the Agency has requested additional information or a briefing from the Union related to the proposal from the Union, amendments to the original proposals and additional proposals may be made within thirty workdays of receipt of the briefing, or receipt of all requested information, whichever occurs last.

8. **Negotiations.** If, following any informal discussions, the Parties are unable to reach agreement on the proposed change, they shall commence negotiations on a mutually agreeable date and site. Absent mutual agreement on a date for bargaining, such negotiations shall commence at a mutually agreed upon site at 9:00 a.m. on the thirtieth workday following the date the Agency serves its final proposals on the Union after the Union provided all requested information and briefings.

9. Implementation shall be postponed allowing for the completion of bargaining, up to and including negotiability disputes and/or impasse proceedings, except as required by law.

3.6. Mediation Requests

When required, the Parties will arrange for mediation services from the Federal Mediation and Conciliation Services (FMCS) during and/or after negotiations.

3.7. Ground Rules for Mid-Term Bargaining

3.7.1. Ground Rules Apply Unless Changed by Mutual Consent

Except as provided in this Article, the following ground rules apply to all mid-term bargaining entered as a result of proposed changes initiated by either Party or any corresponding obligation to bargain over such changes under 5 U.S.C. Chapter 71. These ground rules may only be changed by mutual consent

3.7.2. Briefing Sessions

On occasion, there may be a requirement for a second briefing for the Receiving Party to obtain clarification of documentation or other information provided by the Initiating Party. This briefing will be scheduled as soon as practicable to avoid delaying bargaining when possible.

3.7.3. Arrangements

Negotiations will be held in a suitable meeting room provided by the Agency at a mutually agreed upon site. At the National and Local level, the Agency will provide the Union negotiation team with a caucus room, such as a conference room or other private meeting space which is near the negotiation room.

3.7.4. **Office Equipment**

The Agency will provide the Union negotiation team with customary and routine office equipment, supplies, and services, including but not limited to computers with Internet access, telephones, office supplies, at least one color printer and photocopier, chairs, and desks or tables.

3.7.5. **Date and Time**

The starting date and the daily schedule for negotiations will be established by the Chief Negotiators, consistent with this Article.

3.7.6. **Alternates**

Each Party may appoint alternates to substitute for their negotiating team members when absent.

3.7.7. **Documenting Agreement**

During negotiations, the Chief Negotiator for each Party will signify agreement on each section by initialing the agreed upon section. The Chief Negotiator for each Party will retain his/her copies and will initial the other Party's copy. This will not preclude the Parties from reconsidering or revising any agreed upon section by mutual consent. Chief negotiators may agree to utilize confirmation by email to signify the agreement of sections during bargaining.

3.7.8. **Caucuses**

It is agreed that either team may take caucuses and may leave the negotiation room to caucus. There is no limit on the number of caucuses which may be held, but each Party will attempt to restrict the number and length of caucuses.

3.7.9. **Agreement**

The agreement shall not be completed and finalized until all proposals have been disposed of by mutual consent. Negotiation disputes, including questions of negotiability and resolution of impasse will be processed in a manner consistent with 5 USC Chapter 71 and implementing regulations. This will not serve as a bar to the Parties concluding by mutual consent a general agreement on those items which have been or remain to be negotiated.

3.7.10. **Consistent with Master**

Agreements reached pursuant to Local Level mid-term bargaining may not be inconsistent with the terms of this Master Labor Agreement.

3.7.11. **Chief Negotiators**

Each Party shall always be represented at the negotiations by one duly authorized Chief Negotiator/Chief Spokesperson who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign off on agreements for their respective Party.

3.7.12 **Bargaining Teams**

The Union will be authorized at least the same number of Union representatives on official time as the Agency has representatives at the negotiations table, however not less than six representatives. The designated Union negotiators will be on official time for all time spent during negotiations, including attendance at impasse proceedings and for other related duties during negotiations, such as preparation time and time spent developing and drafting proposals.

3.7.13 **Negotiability Disputes**

If either Party intends to declare a proposal is nonnegotiable, it will first convey the basis for the negotiability claim to the other Party in an effort to resolve, to include allowing the other Party to revise any proposal to overcome questions of scope of bargaining or duty to bargain during the period of negotiations.

If any proposal is claimed to be nonnegotiable by either Party and subsequently determined to be negotiable, or the declaring Party withdraws its allegations of non negotiability, the proposal will, upon request, be reopened within a reasonable period of time. Such request must be made within twenty workdays from when written notice is served on the other Party indicating the proposal is declared to be negotiable or the claim that the proposal is nonnegotiable is withdrawn. Nothing in this section will preclude the right of judicial appeal.

3.7.14 **Modification**

All timeframes in these ground rules may be modified by mutual consent.

3.8.15. **Travel and Per Diem**

The Agency will pay travel and per diem expenses for Union negotiators, bargaining team members and subject matter experts.

3.8.16. **Work Hours**

Absent mutual agreement, the alternate work schedules and flexitour schedules of the Union representatives will be converted to regular tours of duty (i.e., Monday through Friday) and work hours adjusted according to the agreed upon hours of negotiations. Upon request, the Agency will

make every effort to ensure National and Local representatives suffer no loss of pay due to loss of scheduled or unscheduled overtime when participating in and preparing for negotiations.

3.7.17. **Observers**

Observers shall be permitted in negotiating sessions when invited by either Party. Absent mutual agreement, the Parties will provide each other a minimum of 48 hours' notice of observer attendance.

3.8. Service of Notices and Demands

Service of all notices, requests, demands or documents provided for under this Article shall be accomplished by electronic mail or personal delivery. When service is by personal delivery the date of service will be the date the recipient signed on the notice of service. When service is by email, service will be made and the delivery date is the next business day after the email was sent, unless there is affirmative evidence that the email did not reach its intended recipient.

3.9. Post Implementation Bargaining

The Parties agree that effective management of the Agency and its resources is a mutual concern. The Parties further agree that on very rare occasions the Agency may have to engage in expedited implementation of matters affecting conditions of employment. In those rare instances, the Parties agree that they will engage in the full range of post implementation bargaining provided by this Article, in an expedited manner as soon as practicable. The Parties agree that the rare instances referred to in this section are: (1) emergencies caused by natural disasters (such as hurricanes, earthquakes, floods, or volcanoes), declarations of war, or building condemnation; or (2) changes in law that are not otherwise covered by this Agreement.

Any time the Agency seeks to rely on this Section to implement a change to conditions of employment prior to bargaining, the Agency will provide the Union, as soon as possible, with a document explaining, with specificity, the reasons that the implementation had to occur prior to bargaining. If the Union files a grievance challenging whether the Agency violated its bargaining obligations by implementing a change in working conditions prior to bargaining, the Agency bears the burden of establishing that it complied with this Section.

3.10. Pilot Programs

The Parties agree that, should the Agency determine it will utilize pilot programs involving and/or impacting bargaining unit employees, it will serve notice on the Council President and Local Presidents involved, or their designees, to initiate PDI at the time ideas on the pilot and its subject matter are first forming. The Agency agrees that the starting and ending date for the pilot program

will be shared with the Union as soon as is practicable and will be discussed during PDI. During the pilot, the Agency is responsible for maintaining a list of all matters piloted and ensuring all practices and policies piloted cease on the pilot's end date. If agreement is not reached through PDI, the Agency will provide notice to the Union and the Parties will bargain the changes prior to implementation in accordance with this Article.

3.11. Department Level Changes

In accordance with this Article, the Agency will provide notice and opportunity to conduct PDI and bargaining to the Union when Department level changes are issued to the Agency for implementation. Nothing in this Section waives any right of the Union to contend that the Agency cannot implement the proposal because, for example, it is already covered by a negotiated agreement.

3.12. Unique Initiatives

The Parties acknowledge that the Agency may, during the life of this Agreement, engage in unique initiatives that have the intent or potential to create changes in policy and working conditions involving bargaining unit employees. The unique nature of some initiatives (e.g., ERO 2.0, ERO 2.0 "Style") may require specially tailored ground rules to ensure the initiative is conducted in compliance with the provisions of this Article. In accordance with this Article, the Agency will notify the Union of any initiatives while ideas are still forming and provide notice to initiate PDI. The Agency agrees that the starting and ending date for the initiative will be shared with the Union as soon as is practicable and will be discussed during PDI. If the parties are unable to reach an agreement through PDI, upon request by the Union, the Parties will initiate ground rules bargaining, prior to beginning the initiative to address the unique nature of the initiative and reach agreement on provisions that ensure all provisions of this Article are adhered to during the initiative and prior to engaging in traditional bargaining over the initiative. During the initiative, the Agency is responsible for maintaining a list of all changes implemented and tested, and the offices where it occurred, and ensuring all changes, practices and policies involved cease on the initiatives end date. These lists will be provided to the Council upon request. If agreement is not reached through PDI, the Agency will provide notice to the Union and the Parties will bargain the changes prior to implementation in accordance with this Article.

3.13. Waivers

Nothing in this Agreement shall be deemed to waive either Party's statutory rights unless such waiver of the lawful rights given to the Agency or the Union by the Federal Labor Management Relations Statute, 5 U.S.C. 71, is clearly and unmistakably set forth in this Agreement and

understood to be waived by both the Union and the Agency.

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Article 4 OFFICE SPACE AND FURNISHINGS

The Agency will provide dedicated office space, equipment and furnishings to each local. T Agency will continue to provide established office space, equipment and furnishings to those locals that already have offices as it had prior to the effective date of this Agreement, if it complies with the requirements of this Article.

In those locations where the Agency is unable to provide dedicated local union office space, equipment and furnishings, the Parties will bargain over space, equipment and furnishing requirements that are reasonable and necessary for the local to perform its representational duties at that work location including maintaining its files; conducting private conversations with employees, while still having the ability to conduct other business; and conducting meetings. When office space becomes available in a work location where there was previously none for that local, the Agency will make space available to the local and the Partie will bargain consistent with this Article.

The Union's office space will be conveniently located to allow most employees easy access.

Council Office Space. Within 30 days of the effective date of this Agreement, the Agency will provide the C with de office space in the Washington, DC Metropolitan Area at the same facility where the IC Dir tor and the Executive Associate Director of Enforcement and Removal Ope are located. The space will be consistent with this Article and will be separate from any Local Union space at that location. Additionally, the spac will be cient for a conferen room table seating at least 6 individuals. The Parties will utilize pre-decisional involvement when selecting the space, and if unsuccessful, will negotiate in accordance with this Agreement and other binding agreements between the parties.

Furnishings. The Union office space will be furnis with desks, chair lockable file cabinets, bookcases, conference tables, printer cans, and other furnishings commensurate with what is generally used in that work location.

Cleaning and Maintenance. T Agency will provide routine cleaning and maintenance service in all Union occupied space where it is located in Agency facilities. The Union is responsible for ensuring accessibility to its space during normal cleaning and maintenance schedules

4.1. No Charge

There will be no charge to the Union for space, furnishings, cleaning, maintenance and equipment.

4.2. Ongoing Negotiations

The Parties agree that negotiations over a Facilities and Service Article are ongoing and that the Parties will continue to negotiate in good faith over that article for inclusion in the new collective bargaining agreement.

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Article 5 PRE-IMPLEMENTATION BARGAINING

No modifications whatsoever concerning the policies, hours, functions, alternate work schedules, resources, tools, compensation, and the like of or afforded employees or contractors shall be implemented or shall occur without the prior affirmative consent of both parties to this Agreeme all other sources of law, contract, and other authority notwithstanding. Such affirmative consent must be secured in writing.

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Article 6 NO BYPASS OF THE UNION

Consistent with Article 1, Union Rights of this Agreement and U.S.C. C 71, the Agency will not communicate directly with employees regarding conditions of employment in a manner that will council bypass the Union.

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Article 7 EMPLOYEE ASSISTANCE PROGRAM

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7.1. Policy

The Parties agree and recognize that some e es in the workplace may experience situations in their personal lives such as divorce, death or financial problems which may impact their ability to perform their duties in an acceptable manner. The Parties further recognize that some employees may s fer from treatable illne and disorders that occur as a result of alcohol, drug and substance abuse. Therefore, it is the policy of the Ag and the Union to work together to encourage employees whose performance and conduct are adversely affected to seek counseling assistance or medical treatment.

7.2. Employee Assistance Program

The Agency agrees to establish an Employee Assistance Program (EAP) and make this service available to all employees at no cost during the first eight sessions. The EAP will be staffed with

certified professional counselors who will assist employees in addr problems that may have had an adverse effect on their job performance, reliability and health.

The Parties will encourage employees to seek employee assistance and recognize that in addition to this Agreement, the EAP can be important in preventing and intervening in workplace violence incidents; delivering critical incident stress debriefings; and providing assistance to management and employees during Agency restructuring or other major organizational transitions or developments.

The EAP services provided by the Agency will consist of the following:

1. Confidential, free, short term counseling to identify and assess problems and help employees in problem solving;
2. Referral, where appropriate, to a community service or professional resource that provides treatment and/or rehabilitation;
3. Follow up services to help an employee readjust to his or her job during and after treatment, e.g., back to work conferences;
4. Training sessions for managers and supervisors on handling work related problems that may be relate to substance abuse or other personal, and/or health related problems;
5. Briefings to educate management and union officials on the role of EAPs; and
6. Briefing and a brochure during orientation for new employees on the availability and services provided by the EAP program.

Supervisors s offer the availability of the EAP to employees who are experiencing situations that hav adversely affecti an employee performance and conduct; howe er, supervisors will not atte pt to diagnose employee problems, e , alcohol or drug abuse, depression, etc.

The Agency will publicize and post information regarding the EAP in those areas that are frequented by employees such as break and lunchrooms, bulletin boards, etc. The information will include, at a minimum, the telephone number, location, and hours of operation of the EAP.

7.3. Voluntary Participation and Employee Responsibility

Although the existence and functions of the EAP will be publicized to employees, no employee will be required to participate or be penalized for declining referral to the program.

Prior to leaving the workplace to meet with an EAP counselor, the employee should request permission from his or her supervisor. Employees who do not want their supervisors to know of their attendance must plan for EAP appointments outside of duty hours or request leave in accordance with this Agreement and the other binding agreements between the parties.

7.4. Access to EAP Services

The Agency may grant periods of excused absence to an employee for participation in the EAP for problem identification and referral to an outside resource and for general employee orientation or

education activities provided that the employee informs the supervisor of the appointment. Employees will be excused from duty without charge to pay or leave, to meet with an EAP counselor for a minimum of eight sessions with the actual number being based on sound clinical judgment as determine by the EAP counselor.

When necessary, employees who are referred to local community services beyond the number of sessions authorized without charging leave, for the long term treatment of alcohol, drug related, or personal problems will request leave e.g. Sick Leave, Annual Leave or Leave without Pay (LWOP).

If after the completion of at least the initial eight sessions, the EAP counselor determines that additional sessions are required, the Agency will be responsible for providing the continuing assistance. An employee may initiate a new initial eight sessions if a new issue arise requiring EAP assistance.

7.5. Confidentiality of the Program

The Parties recognize that all confidential information and re concerning an employee's counseling and treatment through the EAP will be kept confidential and maintained in accordance with The Privacy Act of 1974 (5 U S C 552a)

Without an employee's specific written consent, the Age may not obtain information about the substance of the employee's involvement with the EAP. The EAP staff will provide the employee with a written notice concerning the confidential nature of EAP records along with the conditions where information discussed in counseling may be disclosed and inform the employee that there are three types of disclosure:

1. **Disclosure with consent**. The employee's written consent is obtained before any information is released, e pt where disclosure without the consent of the client is allowed;
2. **Disclosure without consent**. This disclosure is only permissible in a few instances, such as the following:
   a. To comply with Executive Order 12564, "*Drug Free Federal Workplace*;"
   b. An EAP is required by law to report incidents of suspected child abuse and neglect (in some States, elder and spouse abuse) to the appropriate State and local authorities; and
   c. An EAP may make a disclosure to appropriate individuals, such as law enforcement authorities and persons being threatened, if the employee has committed, or threatens to commit, a crime that would physically harm

someone. This can be done only if the disclosure does not identify the employee as an alcoholic or drug abuser.

3. **Secondary disclosure**. Any information disclosed with the employee's consent must be accompanied by a statement that prohibits further disclosure unless the consent expressly permits further disclosures.

7.6. Confidentiality and its Relationship to Unacceptable Performance, Disciplinary and Adverse Action

Any information obtained from the EAP with the employee's authorization may not serve as the basis for disciplinary or adverse actions unless required to enforce the law or terms of last chance agreements. Disciplinary actions should be based on job behavior or performance problems, not progress in a counseling program. In evaluating an employee's work performance and job related conduct as part of a last chance agreement, the supervisor will consider whether an employee referred to counseling is cooperating with a recommended plan of counseling.

If an employee receives a proposed disciplinary or adverse action, and the employee notifies the Agency for the first time that

1. the employee has a substance abuse or a physical medical problem, e.g. sleep apnea, that significantly contributed to the misconduct; and
2. the employee is seeking the services of the EAP;

management will consider placing the proposed action in abeyance for a period of not more than one year while the employee undergoes treatment under terms and conditions agreed to by the employee. This provision only applies in the first instance of substance abuse and does not apply if severe, egregious or criminal misconduct is involved.

If a decision is made by the Agency to hold an action in abeyance in accordance with this Section above, and there are no further instances of related performance or conduct problems at the end of the specified period, the Agency will consider rescinding and closing the pending action.

Should the employee violate any terms of the agreed upon conditions or is involved in additional misconduct during the abeyance period, the proposed action will continue to be processed in accordance with the procedures outlined in 5 CFR 752 and elsewhere in this Agre

Should the Agency consider a last chance agreement, the Union and employee will receive a minimum of 20 workdays advanced written notice of the agency's decision to offer a last chance agreement.

Article 8 TRAINING AND DEVELOPMENT

8.1. Employee Development

The Agency and the Union agree that the training and development of employees within the unit is a matter of primary importance to the parties. The Agency agrees to develop and maintain forward looking effective policies and programs designed to achieve this purpose and engage the Union in partnership when developing, implementing and administering training policies, practices and guidance. Employees are encouraged to take advantage of training and educational opportunities which will add to the skills and qualifications needed to increase their efficiency in the performance of their duties and for possible advancement in the Agency.

8.2. Fair and Equitable / Service Needs

The solicitation and nomination of employees to participate in training and career development programs and courses will be transparent, fair, equitable and free of personal favoritism.

8.3. Schedule Variations

Employees may be granted variations within the normal workweek, including leave without pay, for educational purposes.

8.4. Individual Development Plan

The Agency encourages the individual employee to develop a personal plan for career self development. In developing this plan, the employee may seek counseling and advice from the supervisor. The Agency agrees to provide lists and catalogs on available Agency training at the local and national level.

8.5. Eliminated Positions

The Agency agrees that, when an employee is reassigned due to the position previously held having been eliminated, sufficient training will be given to the employee to enable him or her to perform the duties of the new position.

8.6. Out-Service Training

The Agency will pay authorized expenses for out-service training at a facility, approved by the Agency when the following conditions have been met:

1. The training has been applied for and approved in advance;
2. Such training will enable the employee to increase his or her proficiency in the current position (i.e., the training is job related);

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3. Funds are available to pay for the training program (or the training is at no cost);
4. The course is not being taken solely for the purpose of obtaining a degree; and
5. The approval of such training will not create undue interference with operational requirements or an imbalance in staffing patterns.

8.7. Training Records

The Agency will maintain records for all employees who receive Agency training. The Agency will assign training for trainee level positions consistent with applicable policy and the needs of the Agency.

8.8. Partnership

The Agency will engage the Union at the local and national level on all training related matters, first through pre-decisional involvement, and then through formal bargaining, in accordance with Article 16, Pre-Decisional Involvement and Article 3, Impact Bargaining and Mid-Term Bargaining.

8.9. Fair and Equitable Selection

Supervisors will make assignments based on Agency needs but will make every effort to be fair and equitable in this regard. To the extent permitted by law, the Agency will bargain wheels and other methods with the Union for making selections from a group of qualified candidates.

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Article 9 UNIFORMS AND APPEARANCE

9.1 Appearance and Attire

9.1.1. Definitions

Attire refers to the clothing that employees wear to work.

Protective Clothing and Equipment refers to special clothing and equipment for the protection of personnel in the performance of their assigned tasks, pursuant to 5 U.S.C. § 7903.

9.1.2. Appearance of Employees

Subsection A

All employees, including officers, will maintain a neat and clean appearance.

Subsection B

Employees not wearing a uniform may wear work appropriate casual attire, such as pants or jeans and a blouse, sweater, or shirt, consistent with the prevailing norms in the community unless performing duties that require more formal attire, such as testifying in court.

ICE HQ, OPLA and CFO officers will maintain the status quo on appropriate work attire unless a change is bargained at the local level.

Subsection C

Provisions for employees wearing a uniform, such as mechanics, are outlined in the Uniforms Section of this Article beginning at 9.2.

Although the Parties recognize that ICE officer and agent positions are not uniformed positions, in some instances officer safety dictates that the officers be distinctly and readily marked and identifiable to each other, the public, and officers from other law enforcement agencies (i.e. visible badges, patches and agency jackets and caps). Law enforcement officers will not be required to wear a uniform but will be required to wear articles of clothing identifying them as law enforcement officers when the Agency or individual officers determine that doing so promotes officer safety or better serves the needs of the Agency. Not all duties require officers to wear clothing that easily identifies them as law enforcement officers.

Subsection D

The clothing, accessories, jewelry, and appearance of law enforcement officers must not compromise their safety, ability to perform their duties, or their reputation as federal officers sworn to enforce the law.

Subsection E

Nothing in these provisions or provisions related to grooming and jewelry is intended to prevent employees from expressing their sincerely held religious beliefs, consistent with applicable law, rules and regulations.

9.1.3. Grooming

Hair and facial hair must be neat and clean and not interfere with the employee's ability to perform their duties or compromise safety. [illegible] signed [illegible] (

9.1.4 Issuance of Law Enforcement Attire/Equipment

Allowance. Within ninety days of the effective date of this Agreement, the agency will provide an allowance of $250 per officer, minus any amount already provided in the fiscal year of this allowance, to purchase ICE marked shirts, jackets, hats, wind or rain jackets, cold weather jackets, raid vests, tactical gloves and other items the officers select from an authorized provider. Every officer is required to maintain, in a minimum, two ICE marked shirts, one jacket, and one hat so to be ready to perform his or her duties. The agency will provide new ERO officers with the same allowance. Annually, commencing with FY 2022 and no later than two months before the end of

each fiscal year, the agency will provide an allowance to existing officers to maintain shirts, jackets, and other items through an authorized provider. In addition, the agency will supply officers with the equipment listed in Section 9.1.6. The parties will negotiate an allowance amount for FY 2022 and beyond for inclusion in the new master labor agreement

New Officers/Agents. ICE Academy trainees will receive their law enf attire/equipment allowance at least three weeks prior to departing the academy. They will receive the remainder of their law enforcement equipment as provided in Section 9.1.6 prior to departing the academy or upon arrival at their duty location. Upon reporting to their Field Office, officers transferring from another DHS Law Enforcement Agency who are not required to attend the ICE Academy will receive their law enforcement attire/equipment allowance and be issued all equipment identified in Section 9.1.6 of this Article. No individual employee may exceed the maximum amount allowed by statute and regulation by the cumulative total of uniform allowances.

9.1.5 **Marked Clothing for Law Enforcement Officers**

Subsection A

If another Agency's policies require law enforcement officers to be marked in order to enter its institution or facilities, ERO officers will be properly marked or identifiable

Subsection B

ERO officers may be required to wear professional, business attire for ceremonial occasions, or other events which likely dictate professional attire.

Subsection C

Items available to officers on the Uniform Website or otherwise do not require branding such as "ERO" or "ICE." The Agency will work with the Union through pre decisional involvement to determine which items will be branded. The Parties will also seek items for the website that allow branding to be removed and reattached, or concealed.

9.1.6. **Tactical/Protective Clothing and Equipment**

Law enforcement officers will be issued at a minimum, the following items:

1. One duty holster;
2. One duty belt;
3. One concealed carry holster;
4. Four ammunition magazine pouches;
5. Two handcuffs and pouches;
6. Handcuff key;
7. Flashlight with holder/pouch;
8. Collapsible steel baton with holster/pouch to baton certified officers only;

9. Chemical spray with holster/pouch to chemical spray certified officers only;
10. Electronic defense modules/electro muscular disruption devices (i.e., Taser) and holster; if authorized and training is developed
11. CPR mask and pouch, if current CPR training advises their provision and use;
12. PPE glove pouch;
13. Tactical gloves;
14. Body armor with carrier with tactical [illegible] Velcro panel set; and
15. Badge holder with neck chain

9.1.7. **Additional Equipment**

The Agency will provide additional equipment if needed based on an officer's assigned duties. Law enforcement officers that routinely perform high risk field operations (e.g., Task Forces or Special Teams) will be issued all necessary equipment including Level III body armor or other appropriate protective gear.

9.1.8. **Replacement of Law Enforcement Items**

If any law enforcement equipment issued to an officer pursuant to Section 9.1.6 no longer fits, is unserviceable, or is lost or missing, the officer will notify their immediate supervisor so that the items can be repaired or replaced in a timely manner, as appropriate. Body Armor will be tracked by the Agency and replaced in a timely manner prior to expiration. The Agency will make every reasonable effort to ensure that replacement items will be provided within thirty calendar days

Law enforcement officers will not be prohibited from performing daily work and will not be denied available overtime opportunities if the Agency does not provide uniform items or equipment in a timely manner, provided the officer did not substantively contribute to the delay.

9.1.9 **Exemptions**

The Parties recognize that threats to employee safety, medical issues, or religious needs may call for the employee to be exempt from attire and appearance policies. The Agency may temporarily exempt an employee to address the concern.

9.1.10. **Casual Dress Days**

Provisions in this Article will not preclude employees from participating in casual dress days such as "dress down Fridays" consistent with the duties assigned that day.

9.1.11. **Tattoos**

Inappropriate tattoos will not be visible. If a dispute arises involving interpretation of this provision, either the Agency or the Union may refer the matter to the National Parties to consult the bargaining history about the meaning of the word "inappropriate." A joint response from the National Parties will be binding on the Local Parties. Grievances may be filed in accordance with

Article 11, Grievance Procedure.

9.1.12. **Jewelry**

Jewelry that creates a health or safety hazard, impedes the employee's ability to carry out their duties, or is inappropriate in nature, is prohibited.

9.1.13 **Changes to Attire and Appearance**

Prior to making any changes to existing policies concerning appearance and attire, the Parties will engage in pre-decisional involvement (PDI), and if PDI is unsuccessful, negotiate in accordance with Article 3, Impact Bargaining and Mid-Term Bargaining.

The Parties agree that in order to facilitate implementation of any proposed changes to policies concerning appearance and attire, the Agency will engage the Union in pre-decisional involvement in accordance with Article 3, Impact Bargaining and Mid-Term Bargaining.

9.1.14. **Concerns About Attire and Appearance Policies**

If the Union has concerns about attire and appearance policies, the Union and the Agency will meet and engage in pre-decisional involvement to address the Union's concerns.

9.1.15. **Alternate Sources of Items and Equipment**

Law enforcement officers are permitted to purchase and wear marked attire, identifying items and tactical equipment from other manufacturers/sources as long as they meet the same basic requirements as an issued item and/or are approved to do so by a supervisor beforehand. Employees will be notified in writing if items are deemed not to meet the same basic requirements as the issued item.

9.1.16 **Grievance Procedures**

Any disputes resulting from this Article may be grieved in accordance with Article 11, Grievance Procedure.

9.1.17. **Uniforms**

Uniform issuance for non-LEO uniformed employees and limited uniform issuance for specialized ERO Law Enforcement Instructors, teams and ceremonial details is outlined in the Uniforms Section of this Article beginning at 9.2.

9.2. Uniforms

9.2.1. **Definitions**

Uniform refers to a specified article or articles of clothing that may include, but is not limited to,

such items as shoes, boots, hats, shirts, slacks, skirts, or outerwear an employee is required by an agency to wear to provide a distinctive and easily identifiable appearance in performing his or her job. A "uniform" does not include protective equipment required for the employee's safety under 5 U.S.C. 7903 or normal business or work attire purchased at the discretion of the employee.

Protective Clothing and Equipment refers to special clothing and equipment for the protection of personnel in the performance of their assigned tasks, pursuant to 5 U.S.C. 7903.

9.2.2. **Uniformed Positions**

Non-LEO Positions. For any non-LEO position (i.e., Mechanics, Maintenance, etc.) that require the employee to wear specific uniform or articles of clothing, the Agency will provide the necessary uniform and/or laundry service so they have clean, serviceable uniforms available and in advance of when they perform their duties. Alternatively, the Agency will provide an annual uniform allowance of $500 per fiscal year contingent on the continued legislative authorization and not to exceed the maximum amount allowed by statute and regulation. The Agency will also provide basic protective gear (such as safety glasses and boots) to these non-LEO employees. The Agency will provide additional equipment based on an employee's assigned duties.

Special Teams. Specialized law enforcement teams (e.g., Special Response Team, Crisis Negotiation Team, Disturbance Control Team), requiring mission specific uniforms and tactical equipment will be provided the necessary uniforms and equipment. The Agency will also provide basic protective gear (such as safety glasses and boots) to these special teams as needed.

Instructors. Firearms, defensive tactics, and other tactical instructors will be provided an allowance to purchase the necessary uniform items for their duties. For full time instructors (1) within ninety days of the effective date of this Agreement, the Agency will provide an initial allowance of $300 for all existing instructors; (2) upon certification, the Agency will provide an initial allowance of $300 to all new instructors; and (3) annually, and no later than two months before the end of the fiscal year, the agency will provide an allowance of $250 to all instructors to maintain their uniforms and/or to purchase new uniform items. For all other instructors: (1) within ninety days of the effective date of this Agreement, the Agency will provide an initial allowance of $200 for all existing instructors; (2) upon certification, the Agency will provide an initial allowance of $200 to all new instructors; and (3) in subsequent years, and no later than two months before the end of the fiscal year, the agency will provide an annual allowance to all instructors to maintain their uniforms and/or to purchase new uniform items. This allowance is in addition to the allowance the officer receives pursuant to Section 9.1.1 above, if the officer is reasonably expected to perform dual duties. No individual employee may exceed the maximum amount allowed by statute and regulation by the cumulative total of uniform allowances. The parties will negotiate an allowance amount for FY 2022 and beyond for

EXHIBIT 2

inclusion in the new master labor agreement.

Ceremonial Dress For honor guards and other ceremonial teams that perform duties which require team members to wear ceremonial or dress uniforms, the Agency will issue ceremonial uniforms and associated uniform items and will reimburse all laundry c associated with maintaining the ceremonial uniforms. The Agency will also provide all related equipment (e.g., spats, frog, bagpipes, flag, flag carrier, aiguillettes, rain gear, belts).

9.3. Maternity Uniforms

Upon notification to the Agency by the employee of a pregnancy, maternity uniforms will be issued to the employee as needed as long as the employee performs work assignments normally assigned to uniformed employees

9.4. Additional Equipment

The Agency will provide additional equipment if needed based on an officer's assigned duties. Law enforcement officers that routinely perform high risk field operations (e.g., Task Forces or Special Teams) will be issued all necessary equipment including Level III body armor or other appropriate protective gear.

9.5. Uniform and Equipment Provisioning

Employees will not be prohibited from performing daily work and will not be denied available overtime opportunities if the Agency does not provide uniform items or equipment in a timely manner, provided the employee did not substantively contribute to the delay

9.6. Exemptions

The Parties recognize that threats to employee safety, medical issues, or religious needs may call for the employee to be exempt from uniform policies. The Agency may temporarily exempt an employee to address the concern.

9.7. Casual Dress Days

Provisions in this Article will not preclude employees from participating in casual dress days such as "dress down Fridays" consistent with the duties assigned that day

9.8. Concerns About Uniform Policies

If the Union has concerns about uniform policies or the uniform contract, the Union and the Agency will meet and engage in pre-decisional involvement to address the Union's concerns.

9.9. Alternate Sources of Uniforms and Equipment

Employees may purchase and wear uniform items from other manufacturers/sources, as long as they meet the same basic requirements as an issued item and have approval from a supervisor beforehand. Employees will be notified in writing if items are deemed not to meet the same basic requirements as the issued item.

9.10. Changes to Uniforms & Uniform Website

Prior to making any changes to existing policies concerning uniforms and appearance, the Parties will engage in pre-decisional involvement (PDI), and if PDI is unsuccessful, negotiate in accordance with Article 3, Impact Bargaining and Mid-Term Bargaining. The Agency will fully engage the Union on all aspects of the Uniform Website, to include the selection of items available on the website, through ongoing pre-decisional involvement.

The Parties agree that in order to facilitate implementation of any proposed changes to policies concerning uniforms and appearance, the Agency will engage the Union in pre-decisional involvement in accordance with Article 3, Impact Bargaining and Mid-Term Bargaining.

9.11. Grievance Procedures

Any disputes resulting from this Article may be grieved in accordance with Article 11, Grievance Procedure.

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Article 10 Overtime (Other than Administratively Uncontrollable Overtime)

10.1. Laws, Regulations, and Policies

The Agency will comply with all applicable laws, regulations and policies when administering the payment of overtime to employees. Overtime for "FLSA non-exempt" employees is governed by the Fair Labor Standards Act (FLSA) and this Agreement. Overtime for "FLSA exempt" employees is governed by 5 U.S.C. 5542 (Title 5 Overtime) and this Agreement. The Agency will bargain in accordance with 5 U.S.C. Chapter 71 and Article 3, Impact Bargaining and Mid-Term Bargaining if it intends to change any existing policies.

10.2. Definitions.

Administrative Workweek. The meaning as defined in 5 CFR 610 and Article 29, Hours of Work of Agreement 2000

FLSA Exempt. Employees not covered by the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA or Act).

FLSA Nonexempt. Employees covered by the minimum wage and overtime provisions of the Fair Labor Standards Act.

Regularly Scheduled Overtime. Hours of overtime that were scheduled for an employee in advance of the administrative workweek, or could have been scheduled, during which the overtime occurs.

Irregular or Occasional Overtime. Hours of overtime that were not regularly scheduled for an e[illegible]. For employees certified to receive AUO, all irregular and occasional overtime work, regardless of the time of day, that is suffered or permitted, regardless of whether it is driven by an administratively uncontrollable event, is paid with AUO and is factored into the calculation of an employee's AUO rate. However, pursuant to 5 CFR 610.121(b)(3), hours of irregular overtime (i.e., which were not regularly scheduled) must be tre[illegible] as if they had been regularly scheduled if it is shown that the scheduling manager, in advance of an administrative workweek (a) had knowledge of the specific days and specific hours when the overtime work would occur, and (b) had the opportunity to determine which e[illegible] would be scheduled or re scheduled to perform the overtime work.

10.3. Fair and Equitable Distribution

Overtime work assignments will be offered and distributed fairly and equitably among eligible and qualifie[illegible] employees. Management will manage overtime (whether regular or irregular) in good faith, and not assign overtime work to employees as a reward or a pe[illegible] but solely in accordance with the Agency's need, taking into account any procedures for fair and equitable distribution of overtime work. Complaints or disagreements regarding overtime shall be processed in accordance with Article 11, Grievance Procedure. The Parties recognize that what constitutes "fair and equitable" distribution is not self defining and can be impacted by numerous considerations. Accordingly, additional procedures, such as overtime wheels, for fairly and equitably distributing regularly scheduled overtime assignments among eligible and qualified employees are an appropriate subject for local supplemental bargaining. Local management may also propose to bargain supplemental policies on distribution of overtime (not inconsistent with any applicable SLA) via the procedures set out in Article 3, Impact Bargaining and Mid-Term Bargaining.

10.4. Effect on Performance Appraisal

The participation or non-participation of an employee in overtime work, where such work is voluntary, will not be cited as a deficiency in an employee's appraisal.

10.5 Impact on Leave

Leave usage or balance will not be a factor in offering or assigning employees overtime. However, employees in a leave status may be offered but not mandated to work overtime until they return to duty, unless they are needed for an unforeseen emergency. Overtime in conjunction with leave usage in the same day/pay period is permitted.

Employees on Military Leave under 5 U.S.C. 6323(a) or Court Leave under 5 U.S.C. 6322 are **entitled** to the same compe[illegible] they would have otherwise received but for their absence on military or court leave, including overtime duty. This overtime duty must be regularly scheduled overtime work which would have otherwise required the employee to work overtime.

10.6. Duty Restrictions and Routine "Within Unit" Overtime

Consistent with Article 14, Limited/Light Duty, an employee who is on limited/light duty is not precluded from participating in overtime if there is a need for duties that the employee has not been medically restricted to perform to be performed on an ove[illegible] basis. The same is true for restrictions to administrative duties or similar limitations.

A Union Official on full or partial official time bank hours will be eligible for routine "within unit" overtime assignments, irregular or regular consistent with this Article.

10.7. Overtime Assignment Procedures.

10.7.1. Posting

The Agency will post each office's available or projected overtime availability both electronically and in written form. Written notices will be posted in the same locations where employee schedules are posted. The Agency will contact all employees for overtime assignments to include employees that are in a leave status or on official time.

10.7.2. Selection

Overtime will be offered to volunteers first. If there are sufficient volunteers, individual employees will not be mandated to work overtime. In the absence of sufficient eligible volunteers, the Agency will adhere to locally negotiated procedures for mandating overtime.

10.7.3. Mandated Overtime

When an employee is mandated to perform overtime work, the Agency will notify the affected employees as soon as the requirement for overtime work is known.

EXHIBIT 2

10.7.1. **Overtime Limit**

To the maximum extent possible, no employee will be required to work more than four hours of overtime on a regular workday or more than eight hours of overtime on a Sunday, holiday, or other day on which the employee is not regularly scheduled to work. This provision does not waive the ability of employees to voluntarily work additional hours of available overtime.

10.7.5. **Break in Overtime Hours**

Breaks in hours of work will not be [illegible] or assigned in any overtime day, unless there is mutual agreement between the employee and management.

10.7.6. **Local Bargaining**

Local procedures (i.e., overtime wheels, distribution plans) for equitably distributing voluntary and/or mandatory overtime assignments among eligible employees will be negotiated at the local level.

10.8. Overtime/Premium Pay Caps.

Premium pay earnings are subject to the biweekly and annual premium pay caps set forth in 5 U.S.C. §5547 and 5 CFR Part 550 and any annual overtime limitation prescribed by the applicable annual Appropriations Act. Congress establishes pay limitations on overtime/premium pay earnings. Managers will manage employees' overtime earning to ensure that they do not exceed any biweekly limitations, any annual limitations and any Appropriation Act limitations. Employees covered by the FLSA cannot be suffered or permitted to perform work for free even if they have exceeded the biweekly or annual premium pay caps set forth in 5 U.S.C. § 5547 and 5 C.F.R. Part 550. It is the intent of the Parties that to the maximum extent possible, employees will not be required to work for free even if they have exceeded the applicable caps. All overtime assignments will be distributed fairly and equitably without regard to the applicable overtime cap unless (1) the employee is within $500 of the annual appropriations cap; or (2) the projection, at or after 3 months before the end of the overtime year (i.e., June 15 for fiscal year, September 15 if calendar year is utilized), is within $500 of the annual appropriations cap.

The Agency may grant waiver throughout each year, extending overtime assignments for employees, when the full participation in overtime assignments for the remainder of the overtime year is restricted in accordance with the overtime cap procedures established in the paragraph above. When an employee requests a waiver, the Agency will grant it unless good cause exists not to do so. If the Agency does not grant a waiver, it will provide the employee with a written explanation for why the waiver was not granted, setting forth with specificity the reasons for the waiver denial. Employee requests for waivers will be made by email through their first line supervisor. Each Field

Office will maintain a record of requests, denials and approvals which will be available to the Union upon request. The Agency agrees to issue guidance to bargaining unit employees explaining its procedures for processing waiver requests.

Should the Agency change the overtime year from fiscal year to calendar year (or subsequently back to fiscal year), it will notify all affected employees in writing as soon as practicable, and it will bargain the change in accordance with Article 3, Impact Bargaining and Mid-Term Bargaining.

Additional procedures for capping overtime earnings, approving waivers and notifying employees will be bargained locally. [illegible] scheduled

10.9 Time Spent in Travel.

10.9.1. **Time Spent in Travel Status Under Title 5 of the U.S. Code**

The following time spent in a travel status outside of an employee's regularly scheduled administrative workweek is compensable hours of work for all employees, for purposes of overtime computation, regardless of whether the employee is FLSA exempt or not, as set forth in Title 5 of the U.S. Code:

1. Travel that involves the performance of work while traveling;
2. Travel that is incident to travel that involves the performance of work while traveling;
3. Travel that is carried out under arduous and unusual conditions; and
4. Travel that results from an event that could not be scheduled or controlled administratively by any individual or Agency in the executive branch of Government.
5. All time spent in a travel status during an employee's regularly scheduled administrative workweek is compensable.

10.9.2. **Time Spent in Travel for FLSA Non-Exempt Employees**

Time spent in travel will be considered hours of work, and thus compensable, if:

1. The employee is required to travel during regular working hours;
2. The employee is required to drive a vehicle or perform other work while traveling;
3. The employee is required to travel as a passenger on a one day assignment away from the official duty station; or
4. The employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on non-working days that correspond to the employee's regular working hours.

In addition to the four situations listed above, FLSA non-exempt employees are entitled to compensation for time spent in a travel status in any of the situations set forth in Article 10 regarding travel time under Title 5. Additionally, FLSA non-exempt employees are entitled to compensation for all time spent traveling that is part of their continuous workday, such as time spent traveling directly between work locations.

EXHIBIT 2

10.10. Disputes

Disputes regarding overtime (e.g., distribution, denial of waivers) can be raised under Article 11, Grievance Procedure. Employees, however, also retain all rights to file a lawsuit regarding the violation of any overtime laws. If an employee or the Union files a grievance concerning a violation of an overtime law, such as the FLSA or Title 5, the applicable statute of limitations will be either the timeframe set forth in Article 11, Grievance Procedure, or the applicable overtime statute, whichever is longer.

Nothing in this Article precludes or impairs FLSA exempt employees from filing a claim for "induced" overtime or FLSA non-exempt employees from filing a claim for "suffered or permitted" overtime. When an employee is denied overtime work in violation of the provisions of this Agreement the employee will receive back pay plus interest for the overtime work not performed, along with any other remedies available under law.

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Article 11 GRIEVANCE PROCEDURE

11.1. General

The purpose of this Article is to provide a fair, simple and expeditious means of processing grievances. Any employee or group of employees in the unit may present such grievances to the Agency and have them adjusted. Any resolution of a grievance filed by an employee who proceeds without Union representation will be consistent with law and the terms of the parties' Agreement. The Union will be provided copies of all grievance replies in such cases with the names of the employees redacted. The grievant may, if he or she desires, be assisted in the presentation and adjustment of grievances by Union representatives and legal counsel authorized by the Union.

The initiation or presentation of a grievance by employees or Union representatives will not cause any reflection on their standing with or their loyalty to the Agency, or result in any form of retaliation.

No letter from an employee designating the Union as his or her representative in pursuing a grievance will be required in those cases where the Union is presenting a grievance concerning the Union's rights under the contract or law, or in those cases where the Union files a grievance on behalf of an employee and the election of the grievance procedure does not represent a choice between the grievance procedure and other administrative or judicial procedures that may be available to the employee.

11.2. Definitions.

11.2.1 Employee Grievance - a complaint by a unit employee, or by the Union on the employee's behalf concerning his or her conditions of employment.

11.2.2 Institutional Grievance - a complaint by the Union on its own behalf concerning conditions of employment of any employee, or alleged contractual violations by the Agency, or by the Agency concerning alleged contractual violations by the Union.

11.2.3 National Grievance - a complaint raised by the parties at the National Level regarding matters in dispute between the Council and Headquarters, or between two (2) or more Locals and the Agency, concerning conditions of employment of any employee, or alleged contractual violations.

11.3. Coverage

Unless excluded below, grievances may concern the adverse impact of (1) Violation of Agreements: The effect of interpretation, or claim of breach of this master Agreement, or other written agreement between the parties; or (2) Violation of Law, Rule, or Regulation: Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

11.4. Exclusions solution

This procedure does not cover grievances concerning:

1. Bargaining Authority. Matters which are contrary to a government wide regulation in effect as of the date of this agreement;
2. Political Activities. The claimed violation of Subchapter III of Chapter 73 of Title 5 U.S.C. (relating to prohibited political activities);
3. Benefits, Retirement, life insurance, or health insurance;
4. National Security. A suspension or removal under Section 7532 of Title 5 U.S.C. for reasons of national security;
5. Hiring Authority. Any examination, certification, or appointment;
6. Classification. The classification of any position which does not result in a reduction in grade or pay of any employee;
7. Statutory Discrimination Appeal. A complaint of discrimination which is listed in 5 U.S.C. Section 2302(b)(1) if the employee has elected to use the statutory appeal procedure;
8. Statutory Adverse Action Appeal. An appeal of an adverse action based on performance under 5 U.S.C. 4302 or for efficiency under 5 U.S. C. 7512 if the employee elects the statutory appeal procedure provided under 5 U.S.C. 7701;

EXHIBIT 2

9. Union Appeal of Non-represented Statutory Process. A Union appeal of an adverse action or an allegation of discrimination against any employee if the Union is not expressly designated by the employee as his or her representative on the matter;

10. Already Filed. Issues which can be raised under the grievance procedure or as an unfair labor practice may, in the discretion of the aggrieved party, be raised under either procedure but not under both procedures;

11. Probation. The removal of a probationary employee during his or her probationary period;

12. Temporary Appointments. The termination of a temporary appointment; and

13. Proposed Actions. Notices of proposed disciplinary/adverse actions, furloughs, or removals. Issues relating to such proposal notices may, however, be raised in connection with any grievance over the final decision on the proposed action.

11.5. Identical Grievances

In the case of an identical grievance involving a group of employees, one employee's grievance may be selected by the Union for processing. All decisions for that grievance will be binding on the other grievance(s). The Parties agree that for the purposes of this section identical grievances are ones arising from a common set of circumstances which adversely affect the grievants in the same manner where all of the witnesses would be testifying to the same or substantially similar facts. The term "substantially similar" means facts which are sufficiently alike so that a reasonable person would conclude that application of the same rules to the facts in each grievance would result in the same conclusions with regard to the outcome of those grievances.

11.6. Identifying Violations

After becoming aware of a potential violation of the Agreement, the President of the Council, the Local President, or his or her designee, may request any additional information necessary to clarify or determine if a violation has been committed in accordance with Article 17, Union Requests for Information.

11.7. Resolve at Lowest Possible Level

The Agency and the Union agree that every effort will be made by Management and the aggrieved party(s) to settle grievances at the lowest possible level. It is agreed that the employee and his or her representative will be given a reasonable amount of time to present the grievance.

11.8. Grievance Procedure: Local Grievances

11.8.1. Step I

Grievances must be filed within forty-five (45) calendar days after the party filing the grievance becomes aware of the incident giving rise to the grievance.

a. Employee Grievances: An employee grievance shall first be taken orally by the concerned employee, including with the Union's representation and assistance if the employee desires, with the first level of supervision in an attempt to settle the matter. If the first level supervisor is also the official designated as a Step II official, the grievance will be filed with that official. The grievant may, if he or she desires, be assisted in the presentation by the Union.

The Union representative(s) must be present if the employee so desires. Within five (5) workdays after receiving the employee's grievance, the immediate supervisor (or designee) shall complete such inquiry as he or she deems necessary and render his or her decision to the grieving employee. After receiving the decision of the immediate supervisor, the employee may, at his or her option, pursue his or her informal grievance to the next higher level of supervision, if that level is not one of the Management officials cited in Step II.

b. Institutional Grievances: If a dispute arises between a Local and the Agency, the party raising the dispute may initiate a Local Level grievance at this step through verbal presentation to the first level supervisor or Union Official in an attempt to settle the matter. The Parties agree that neither party is obligated to initiate a grievance at Step I and can instead initiate the grievance at Step II with a written grievance in accordance with Step II.

All aforementioned procedures for Step I shall apply to the parties at this level for informal resolution of the grievance. The party raising the dispute may, at their option, reduce the grievance to writing.

11.8.2. Step II

a. Employee Grievances: If the employee with a grievance is dissatisfied with the decision of the immediate supervisor and desires to proceed to Step II, the employee (or the employee's Union representative(s) acting on behalf of the employee, if so requested by the employee) must submit a written grievance, to the Step II official as specified below, within fifteen (15) calendar days after receiving the immediate supervisor's decision on the grievance.

Submission of Step II Grievances: The Agency will, in a timely manner, inform the Union of the appropriate position titles for receipt of grievances at various local offices, e.g., FOD, Finance Center Director, Chief Counsel

EXHIBIT 2

The employee shall set forth what his or her grievance is by completing and submitting Appendix A, Grievance Form

Within twenty five (25) calendar days after receiving the grievance, the Deciding Official (or designee) shall hold such meetings and complete such inquiry as he or she deems necessary and shall render his or her written decision on the grievance. The written decision shall set forth, in precise terms, the basis of the decision

b. Institutional Grievances: (Continued from Step I): If the party raising the dispute attempted to informally resolve the dispute at Step I, and it is dissatisfied with the decision of the immediate supervisor and desires to proceed to Step II, the President of the Local or appropriate Agency official (or their respective designees) may file a written grievance with the other party within twenty five (25) calendar days after receiving the decision on the grievance

The party against whom the grievance was filed shall render a written decision on the grievance within twenty five (25) calendar days after receipt of the grievance. If the decision on the grievance is unacceptable, the matter may be escalated to Step III

c. Institutional Grievances: Local Level (Initiated at Step II): If a dispute arises between a Local and the Agency, either the President of the Local or appropriate Agency official (or their respective designees) may file a written grievance with the other party starting at Step II, provided such grievance is filed within forty five (45) calendar days after the party filing the grievance becomes aware of the incident giving rise to the grievance

The party against whom the grievance was filed shall render a written decision on the grievance within twenty-five (25) calendar days after receipt of the grievance. If the decision on the grievance is unacceptable, the matter may be escalated to Step III.

11.8.3 **Step III**

a. Employee Grievances – Local Level: If the employee with a grievance is dissatisfied with the decision at Step II and desires to proceed to Step III, the employee (or the employee's Union representative acting on behalf of the employee) must submit a written grievance, to the appropriate official as specified below, within fifteen (15) calendar days after receiving the Step II decision

The written grievance must include the information specified at Step II above, including also a copy of the Step II decision. Within thirty (30) calendar days after receiving the grievance, the Deciding Official (or designee) shall complete such inquiry as he or she deems necessary and render a written decision on the grievance. Such written decision shall set forth, in precise terms, the basis for the decision. If the employee is dissatisfied with this decision, he or she may submit the grievance to the appropriate Local for a decision by the Union as to whether to proceed the case through arbitration as provided in Article 12 Arbitration

If a dispositive issue in the grievance involves interpretation of this agreement either the Step III Official or the Union may refer the grievance to the national parties for an interpretation of the contract within thirty (30) calendar days of the Step III decision. A joint response from the national parties will be binding on the local/regional parties, absent which the matter shall proceed to arbitration.

b. Institutional Grievances – Local Level: If the decision on an institutional grievance at Step II is unacceptable, the matter may be escalated to Step III, provided that the grieving party submits a Step III grievance in writing within twenty five (25) calendar days after receiving the Step II decision

A copy of the original grievance and response shall be included in the grievance when it is escalated to the next step. The Council President or appropriate Agency official (or their respective designees) shall render a written decision on the grievance within twenty-five (25) calendar days of receipt. If the grievance is not resolved to the mutual satisfaction of the parties, either party to the grievance may refer the matter to arbitration within the time frame as described in Article 12, Arbitration

EXHIBIT 2

11.9. Grievance Procedure: National Gric

In the event of a National grievance, either the Council President or the appropriate Agency official (or their respective designees) may file a written grievance with the other party within ninety (90) calendar days after the party filing the grievance becomes aware of the incident giving rise to the grievance. In an effort to resolve national level complaints in an expeditious manner, the ICE Labor Relations Chief (or National President if the Agency is the moving party) or designee will schedule a meeting within fifteen (15) days of receiving the grievance. Within thirty (30) days of this meeting, a substantive written decision (e.g., addresses each allegation in the grievance) will be provided to the Union (or Agency). If the grievance is not resolved to the mutual satisfaction of the parties, either party to the grievance may refer the matter to arbitration within the time frame as described in Article 1. Arbitration.

11.10. Grievance Meetings and Settlements

Absent mutual agreement, all grievance meetings will be held at the employee's work location during regularly scheduled work hours. Meetings will be attended by the designated Union representative, as appropriate, and the manager designated with the authority to address the grievance. The grievant and the manager alleged to have taken the grieved action may also attend. Either party may choose to have an additional advisor/representative participate. Participants are encouraged to hold such meetings face to face; individuals unable to be physically present at such meetings will participate in them through telephone conferencing or some other audio visual technology.

11.11. Requested Relief Granted

In no case in which the precise relief requested is granted, will the grievance be continued on to the next Step, including the invoking of arbitration.

11.12. Exceptions to Step I

Except as otherwise specified below or in Section 11.8.Ib, all local level grievances are to be initiated at Step I of the grievance procedure within the time frame as stated at Step I:

a. Policy of Management. Grievances that are based on the written decision or policy of the Agency are to be initiated at Step I or II of the grievance procedure within the time frame specified at Step I.

b. Reprimands. Grievances concerning written repri[illegible] are to be initiated at Step III of the grievance procedure within the time frame specified at Step I.

c. Suspensions and Adverse Actions. Grievances concerning suspensions and adverse actions are to be initiated at the arbitration stage of the grievance

procedure. **tvanced** suspensions of one (1) to fourteen (14) days will be stayed throughout the grievance procedure. When expedited arbitration is invoked by the Union for a suspension of one (1) to fourteen (14) days, the suspension will be stayed until an award is issued.

d. Merit Promotion Plan Violations. Employee grievances concerning alleged violations of the Agency's merit promotion plans are to be initiated at Step II of the grievance procedure within the time frame specified at Step I.

11.13. Grievability / Arbitrability

When the Agency or the Union has reason to believe that a grievance is not grievable or arbitrable, it will endeavor to so inform the other party as soon as possible. If the Union or the Agency elects to proceed to arbitration of the grievance, such grievability/arbitrability questions are to be decided as a threshold issue by the arbitrator who decides the merits of the grievance. The final written decision of the arbitrator in such a case shall consist of two parts. In the first part, the arbitrator shall decide the grievability/arbitrability issue in the case. In the second part, he or she will pass upon the merits of the grievance. If the arbitrator [illegible] determine that the grievance is either not grievable or not arbitrable, however, the decision shall consist of one part, the determination on grievability/arbitrability, and no consideration of the merits of the grievance shall be provided.

If either party raises a grievability/arbitrability question later than fourteen (14) calendar days prior to the date scheduled for a hearing, the other party shall have the right to postpone the hearing, if it deems postponement necessary. Any additional costs by the arbitrator for cancellation required by the late notification as to the arbitrability issue [illegible] be borne by the party raising the question.

Any denial of requested information in contemplation or connection with a grievance will be automatically joined to the grievance as a threshold issue for the arbitrator to resolve.

Issues not raised and actions not requested in the initial filing of the Step II grievance form may not be introduced at arbitration absent mutual agreement. Filings containing the language "any other remedies that may be appropriate in accordance with law and regulation" are sufficient to identify the action requested. Evidence and witnesses that are relevant to the resolution of the grievance may be introduced at any stage of the grievance procedure prior to arbitration.

The parties acknowledge the highly serious nature of [illegible] awards in the grievance and arbitration processes, the significant costs involved, and the need to treat both processes with the utmost professionalism and highest ethical standards. The parties will act in good faith when con[illegible]g and responding to grievances, challenging the grievability/arbitrability of a case, and when denying a grievance and/or

its remedies, in whole or in part, and ensure the reasons and facts provided in all responses are accurate, complete and truthful. Grievance responses will not contain misleading or ambiguous statements designed to mislead or deceive others.

11.14. Time Limits

Extensions. Reasonable extensions to the timelines of the negotiated grievance procedure will be granted upon request. If a grievant should fail to meet an applicable time limit for moving a grievance forward, the grievance shall be deemed to have been withdrawn. If an Agency deciding official fails to meet the time limit for rendering a decision on the grievance at any step the remedy requested shall be deemed granted.

An exception to the rule that local grievances must be filed within forty five (45) days and national grievances within ninety (90) days is when the grievance involves an alleged continuing violation. A continuing violation is a claimed pattern of ongoing conduct, even when the conduct occurred before the applicable time frames for filing a grievance. To be considered a continuing violation there must be a related violation and at least one instance of the conduct being grieved must have occurred within the applicable local or national time frames for filing. Remedies for grievances alleging a continuing violation must be in accordance with applicable law, rule, and regulation.

Service of Process. All time limits of this grievance procedure including arbitration, shall be controlling. Service of grievances and the decisions thereon, including arbitration notices, shall be accomplished either by personal delivery or by electronic service (email). As applicable, time limits shall begin to run from the date of receipt of the document that triggers the particular time limit. Service will be deemed timely if the required document is either personally or electronically served within the specified time limit specified in the Article 11, Grievance Procedure. Email service will not be utilized until the parties have negotiated procedures for email service.

Service will be deemed timely if the required document is either personally or electronically delivered within the specified time limit. The parties agree that they will act in good faith in receipting for documents and will not attempt to evade the service of documents upon them. The parties agree that they will act in good faith in receipting for documents and will not attempt to evade the service of documents upon them.

As used in this Article, "days" refers to calendar days unless otherwise expressly provided herein. If the day an action must be completed under this Article falls on a Saturday, Sunday or Federal holiday, the due date shall be by 11:59 pm the next regular business day (Monday through Friday).

APPENDIX A: GRIEVANCE FORM

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement (ICE)
GRIEVANCE FORM

		1A. GRIEVANCE TRACKING NUMBER	1B. DATE FILED
2. FILER (EMPLOYEE NAME OR UNION CHAPTER)		3. EMPLOYEE POSITION AND DUTY STATION	
4. EMPLOYEE'S IMMEDIATE SUPERVISOR (NAME)			
5. EMPLOYEE'S REPRESENTATIVE (CHECK ONE) ☐ SELF ☐ UNION (IF UNION SELECTED, COMPLETE 5A & 5B)		5A. NAME OF UNION REPRESENTATIVE 5B. UNION REPRESENTATIVE PHONE NUMBER	

6A. SPECIFIC ARTICLE(S) OF THE AGREEMENT ALLEGED TO HAVE BEEN VIOLATED; SECTIONS OF APPLICABLE LAW OR REGULATION ALLEGED TO HAVE BEEN VIOLATED; OR THE SPECIFIC NATURE OF THE EMPLOYMENT CONDITION IN DISPUTE. (DO NOT USE "ALL")

6B. IF ALLEGATION OF UNFAIR LABOR PRACTICE, INDICATE SPECIFIC SECTION(S) OF 5 USC 7116(A) THAT HAVE BEEN VIOLATED BY CHECKING APPLICABLE BOX(ES). IT IS AN UNFAIR LABOR PRACTICE FOR THE AGENCY:

☐ (1) to interfere with, restrain or coerce any employee in the exercise by the employee of any right under this chapter;

☐ (2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

☐ (3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

☐ (4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

☐ (5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

☐ **(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;**

☐ **(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or**

☐ **(8) to otherwise fail or refuse with any provision of this chapter**

6C PROHIBITED PERSONNEL PRACTICE ☐

7. STATEMENT OF THE C GIVING RISE TO THE GRIEVANCE (PROVIDE NATURE OF THE INCIDENT, PERSONS INVOLVED, TIME, DATE, PLAC ETC.)

8. ACTION/REMEDY REQUESTED

9. EMPLOYEE SIGNATURE

10. UNION REPRESENTATIVE SIGNATURE

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Article 12 ARBITRATION

12.1. Invoking Arbitration

Only the Union or the Agency may invoke the procedures set forth in this Article.

If the Agency and the Union fail to settle any grievance processed under the negotiated gri procedures, such grievance, upon written request by the Union or the Agency, may be submitted to arbitration within 30 workdays from the date the Agency or the Union's final decision is received. In cases involving suspensions of less than fifteen days or adverse actions, requests for arbitration must be filed after receipt of the Notice of Decision, but not later than 30 workdays after the effective date of the action. Reasonable ex ions to these timelines will be granted upon request. Requests for arbitration filed by the Union will be submitted to the Ag 's designated representative. Issues involving Agency wide interpretation or application of this agreement will be filed with the Chief Labor Employee Relations Policy Section at Headquarters and the Office of the ICE Director. Only

the Party that filed the grievance (i.e. either the Union, either on its own behalf or on behalf of a bargaining unit employee, or the Agency) can invoke arbitration. A Party cannot invoke arbitration of a grievance that the other party filed.

Once arbitration is invoked, the invoking Party may request an arbitrator at any time in accordanc with Section 12.2 without abandoning the arbitration.

No later than twenty days after invocation the Parties will meet in person, by telephone or by videoconference and will use their best efforts to reach settlement.

12.2. Selection of Arbitrator

The Parties agree to use the Federal Mediation and Conciliation Service (FMCS) for purposes of identifying an arbitration panel for grievances. The Party not invoking arbitration will be notified in accordance with Article 11, Grievance Procedure.

The invoking Party shall ask FMCS to provide a list of seven eligible arbitrators for the matter. To be eligible to serve as an arbitrator for the matter, the individual must be re with FMCS. The parties will split the cost of the request to FMCS.

As an alternative to requesting a panel or as an alternative to the panel provided by FMCS, the Parties may agree inc ndently to the selection of an arbitrator and request a direct appointment of that arbitrator by FMCS.

If the Parties request a panel from FMCS the Parties shall confer re the selection of an arbitrator. Either Party may reject the panel, in which case the Parties may request a second panel from FMCS. Either Party may reject the second panel, in which case a third panel may be requested from FMCS. Once there is a panel that is not rejected, then the Parties will select an arbitrator from the panel by alternately striking from the panel until one name remains. The Agency will strike first and the Union second when alternating strikes.

On a monthly basis, the Agency will provide to the Council a list of all Local and National level grievances that have been invoked to arbitration with the assigned arbitrator, invoking Party, date of invocation, assigned Agency attorney, and status in the arbitration process including the date of the most recent action.

12.3. Threshold Issues

In cases where there is a threshold issue, such as jurisdiction, the Parties may agree that an initial decision be requested on the threshold issue.

Arbitrators Decision. The Parties may agree to use stipulations and / or briefs to obtain the arbitrator's dec on the threshold issue. If there is no agreement and either Party elects to

proceed to arbitration of the grievance, such grievability / arbitrability questions are to be decided by the arbitrator after the close of the record. If the arbitrator should determine that the grievance is either not grievable or not arbitrable, the decision shall consist of one part and no consideration of the merits of the grievance shall be provided.

Postponement. If either Party raises an arbitrability question later than fourteen calendar days prior to the date scheduled for a hearing, the other Party shall have the right to postpone the hearing, if it deems postponement necessary. Any additional costs by the arbitrator for cancellation required by the late notification, as to the arbitrability issue, shall be borne by the Party raising the que

12.4 Transcripts

Each Party will inform the other no later than fourteen calendar days prior to the start of the arbitration hearing whether it desires a transcript of the hearing. If the Parties mutually agree upon the need for a transcript, they shall equally share the cost of the transcript and management will make the arrangements for securing a transcript. If they do not agree on the need for a transcript, the Party desiring a transcript will arrange for the transcript and will bear the full cost. However, should the other Party change its mind prior to the close of the arbitration hearing and indicate its desire for a copy, it shall then be responsible for half of the costs.

12.5. Proceedings

The arbitrator will be requested to render his or her decision as quickly as possible but, in any event, no later than 22 workdays after the record is closed unless the Parties mutually agree to extend the time limit. Each Party has the obligation to cooperate promptly with the designated arbitrator in setting a date for a hearing. Failure of either Party to proceed with due diligence in responding to an offer of dates may serve as a basis for establishment of a hearing date by the arbitrator or dismissal of the grievance. At the request of either Party, the Agency or the Union shall be provided a complete list of the other's known witnesses no later than five workdays prior to the hearing, along with a brief synopsis of the topics of their anticipated testimony. The Parties retain the right to call rebuttal witnesses at hearing not listed on their witness lists.

12.6. Docket Review

Discussion of any cases where arbitration has been requested and pending in the Locals involved, or the Council where it is a Party to the arbitration, will be conducted upon advance request by the Council. Such discussions may include possible settlements in pending cases or in pending grievance matters.

12.7. Expedited Procedure

The Parties recognize the importance of promptly handling grievances that involve, *inter alia*, demotions, indefinite suspensions, suspensions of 30 days or more, removal cases, and Mid-Term Bargaining Disputes. These expedited arbitration procedures shall be used in the following actions at the election of the grieving party: demotions, indefinite suspensions, suspensions of 30 days or more, removal cases, Mid-Term Bargaining Disputes, all non adverse disciplinary actions (e.g., suspensions of one to fourteen days and written reprimands), within grade appeals, performance evaluation disputes, outside employment denials, denials of annual or sick leave or leave without pay, denials of official time requests by union representatives under this agreement, improper maintenance of personnel records, decisions by the Agency concerning bulletin board postings or literature distribution, placement of employees concerning rotation and assignment, and denial of an employee's requested AWS or tour schedule. These timelines may be used in other cases where it is mutually agreeable. For such cases, the Parties have agreed to ask the arbitrator to adhere to the following timelines when the invoking Party requests:

Hearing. Arbitrators are to conduct a hearing within fifteen working days of selection, subject to the arbitrator's availability.

Briefs. Post hearing briefs will be submitted within fifteen workdays after completion of hearing or receipt of transcript, whichever is later, unless the Parties agree to an extension. Reply briefs will be submitted within ten workdays after post hearing briefs are submitted, unless the Parties agree to an extension.

Decision. Arbitrators are to render a decision within fifteen workdays of closing of the record. The record will be considered closed upon receipt of briefs, receipt of transcript, or completion of hearing, whichever is latest.

12.8. Costs

The arbitrator's fee and the expenses of the arbitration, if any, shall be borne equally by the Agency and the Union except as provided in this section. Fees to be paid by the Agency will be governed by regulations existing at the time this Agreement is executed by the Parties.

If an arbitrator grants a Union or Employee grievance in full or in part, the arbitrator shall order the Agency to pay the arbitrator's fees and expenses and any court reporter fees.

12.9. Cancellation

The Parties will share cancellation costs equally when notice is provided at least 96 hours prior to the scheduled hearing date. The Party seeking the cancellation will pay arbitration costs incurred for canceling less than 96 hours prior to any hearing.

12.10. Location

Arbitration hearings will be held, if possible, on the Agency's premises during the regular day shift of the basic workweek. Local level arbitrations will normally be held within the commuting area of the grievants unless the grievants has transferred from the site of the dispute and in such cases the hearing will be held at the site of the dispute unless both Parties agree to hold it in another location. National level arbitrations will be held at a mutually agreed upon location.

Arbitration hearings shall normally be open hearings. Either Party may request that the hearing be closed to persons having no interest in the dispute. Upon good cause shown the arbitrator may close the hearing.

12.11. Participants

Duty Status. All participants in the hearing shall be on duty status. If a hearing is scheduled on what would otherwise be a participant's day off, the Agency will adjust the employee's schedule so that the employee would be in a duty status unless the e requests otherwise.

Travel and Per Diem. Where the g vants or relevant witnesses are not within the commuting area of the hearing site, the Agency will pay travel and per diem. Should there be a disagreement as to the relevance of a witness where travel and per diem is required, the Agency will pay travel expenses and the issue will be presented to the arbitrator who will decide on the rele of the testimony. If the arbitrator decides that the witness is not relevant, the arbitrator will so state in the decision and the Union will pay travel and per diem at a rate no greater than that authorized by government travel regulations. In addition to travel for grievants and witnesses in Local arbitrations, the Agency will pay travel and per diem for at least two Council represe to attend and assist in Local arbitration hearings.

12.12. Binding Awards

If the arbitrator's decision has not been received within 60 days after the closing of the record, the Parties will go forward with a joint request to the FMCS calling for prompt issuance of the decision.

The arbitrator's award shall be binding on the Parties unless either Party files a with the Federal Labor Relations Authority, under the regulations prescribed by the Authority. However, any adverse action appeals shall be presented to the appropriate appellate jurisdiction.

Article 13 ADMINISTRATIVELY UNCONTROLLABLE OVERTIME PAY (AUO)

13.1. Policy

Administratively Uncontrollable Overtime Pay (AUO) will be administered in accordance with all applicable statutes, government-wide regulations, and this Agreement.

If changes are required to the Agency's AUO policy (e.g., as a result of subsequent government-wide regulations), the Agency will provide the Union with notice and an opportunity to bargain consistent with its obligations under governing law and the procedures set forth in Article 3, Impact Bargaining and Mid-Term Bargaining.

13.2. Definitions

AUO. The premium pay paid on an annual basis, to an employee in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty (e.g. the hours of duty cannot be controlled by such administrative devices such as hiring additional personnel). The AUO percentage rates range from 10 to 25 percent of an employee's rate of basic pay. AUO pay is con d basic pay for purposes of retirement benefits for law enforcement officers, as defined in 5 U.S.C. 8331(20) and 8401(17).

Basic Administrative Workweek. The administrative workweek shall be seven consecutive calendar days, Sunday through Saturday. The basic administrative workweek shall be scheduled on five days, Monday through Friday, where possible, and the two days outside the basic workweek shall be consecutive.

Regularly Scheduled Administrative Workweek. The 40 hour basic workweek established in accordance with paragraph (a)(1) of 5 CFR 610.111, plus the period of regular overtime work, if any, required of each employee. Except as provided in paragraphs (b), (c), and (d) of 5 CFR 610.111, the written Agency policy statement, for purposes of leave and overtime pay administration, will specify by days and hours of each day, the periods included in the regularly scheduled administrative workweek that do not constitute a part of the basic workweek.

Tour of Duty. An employee's basic administrative workweek, (i.e., the days and hours within which the employee is expected to be on duty, day shift Monday through Friday) and shifts as defined in this Article.

Shift. The particular hours which define an employee's daily work schedule (e.g., day shifts which start at 8:00 a.m. and end at 4:00 p.m.)

Premium Pay. The dollar value of earned hours of compensatory time off and additional pay authorized by 5 U.S.C. Chapter 55 and 5 CFR 550 for overtime, night, Sunday, or holiday work; or for standby duty, administratively uncontrollable overtime work, and availability for duty. This excludes overtime pay paid to employees under the Fair Labor Standards Act (FLSA) and compensatory time off earned in lieu of such FLSA overtime pay.

Rate of Basic Pay. The rate of pay fixed by law or administrative action for the position held by an employee, including any applicable locality pay adjustments and applicable special rate or similar payment or supplement under other legal authority before any deductions and exclusive of additional pay of any other kind.

Irregular or Occasional Overtime. Hours of overtime that were not regularly scheduled for an employee. For employees certified to receive AUO, all irregular and occasional overtime work, regardless of the time of day, that is suffered or permitted, regardless of whether it is driven by an administratively uncontrollable event, is paid with AUO and is factored into the calculation of an employee's AUO rate. However, pursuant to 5 CFR 610.121(b)(3), hours of irregular overtime (i.e., which were not regularly scheduled) must be treated as if they had been regularly scheduled if it is shown that the scheduling manager, in advance of an administrative workweek had (1) knowledge of the specific days and specific hours when the overtime work would occur, and (2) had the opportunity to determine which employee would be scheduled or required to perform the overtime work.

Excludable Day. Any full day that is excluded from the total number of workdays used to compute the weekly average of AUO hours worked by an employee.

Computation Period. The interval used to compute an employee's AUO rate by application of a formula based on the number of AUO hours worked over a period of time to compute a weekly average of AUO hours. The computation is applied on a sliding scale over the course of the next Eligibility Period.

13.3. AUO Certification

13.3.1. Authorization

Pursuant to 5 CFR 550.151, the Agency may authorize AUO pay on an annual basis, instead of other premium pay prescribed in 5 CFR 550 subpart A (except premium pay for regularly scheduled overtime work, work at night, on Sundays, and on holidays), to an employee "…in a position in which the hours of duty cannot be controlled administratively and which requires substantial

amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty."

13.3.2. Determination of AUO Eligible Positions

For existing and newly established positions within the Agency, a determination will be made by the Agency whether the positions is AUO eligible. Each employee occupying a position which has been classified as an AUO eligible position will receive appropriate AUO payment upon certification and will continue to receive AUO while occupying that position and while properly certified for AUO.

13.3.3. Initial Certification of AUO

Each employee occupying a position which has been determined as an AUO eligible position will be eligible to receive AUO pay upon certification by his or her supervisor. Upon entering on duty with the Agency, or upon completion of required initial training, an employee in an AUO eligible position will be certified for AUO based upon the average AUO rate received by other employees occupying the same position in the same area of responsibility.

13.3.4. AUO Qualifying Duties

To the maximum extent possible, the Agency will make every effort to ensure that each officer's assignment includes AUO qualifying duties. Ensuring the assignment of AUO qualifying duties to all officers, to the maximum extent possible, does not require the Agency to pay AUO in individual cases in which law or regulation prohibits such payment; however, it is the intent of the Parties that AUO qualifying duties will be distributed as fairly and equitably as practicable. If AUO stops being utilized, to the maximum extent possible, there will be a fair and equitable distribution among employees of whatever premium pay replaces AUO.

13.4. AUO Computation and Eligibility Period

The computation period is the 25 pay period interval used to compute the average number of hours of AUO worked during the administrative workweek. This average number of hours worked is used to determine the percentage rate of AUO to be earned by the employee. The computation period ends four pay-periods before the eligibility period for which the determination is made.

The eligibility period is the four pay-period interval during which an employee is compensated for AUO at the rate at which he was certified eligible until a subsequent determination is made. With the exception of an employee initially assigned to an authorized position, each eligibility period consists of the four pay-period intervals beginning four pay-periods after the end of the computation period.

Employees will be informed in writing of the Agency's chart of AUO computation and eligibility periods which will clearly identify which pay periods will be used to determine AUO eligibility and rate computation prior to the beginning of each calendar year.

Employees certified to receive AUO will be able to view the following information in the Agency's online time and attendance system: their current AUO percentage, the number of AUO hours worked during the preceding computation period, the number of AUO hours worked during the current computation period, the employee's AUO rate if the current eligibility period ended, the starting and ending dates of all computation and eligibility periods within the next year, and the number of AUO hours necessary for an employee to maintain his or her current AUO rate for the next eligibility period. The Agency agrees that, if its time and attendance system is unable to contain the above information, the Agency will make the AUO records available to its supervisors, and upon request, supervisors will make the information available to each individual bargaining unit employee. When an employee requests to review his or her AUO records, the supervisor will provide the records within one workday.

13.5. Excludable Days

For bargaining unit employees working in a position authorized to receive AUO, excludable days identified in the next paragraph of this Article will not be factored into any AUO rate computation.

The Parties agree that days that will be excluded are those allowed by law, in increments of a full day, include but not limited to the following: (1) temporary assignments to non-AUO eligible duties for a period of not more than ten consecutive prescribed workdays and not more than 30 workdays in a calendar year; (2) advanced training for an aggregate period of not more than 60 prescribed workdays in a year; and (3) temporary assignments directly related to a national emergency declared by the President.

The Parties agree that, if federal law or regulations change to permit types of excludable days, other than those listed above, the Parties will meet to negotiate and amend the provisions of this Article related to excludable days within twenty workdays of the change in law or regulation becoming effective, unless the parties mutually agree on a later date.

Employees must report all hours of work regardless of whether a day is excludable to ensure that the employee is properly compensated for all hours of work. For example, if an employee performs unscheduled overtime on a day that is excludable, the employee must still report the day as excludable and those hours of work to ensure that they are properly compensated under applicable pay laws including, but not limited to, the Fair Labor Standards Act. This provision does not obviate

the Agency's duty to ensure that employees are compensated for all hours of work suffered or permitted, as required by the FLSA.

13.6. Payment of AUO

Employees working in a position authorized to receive AUO and who are AUO certified will be paid the appropriate AUO rate in the appropriate eligibility period.

The Agency will make a reasonable effort to assist employees seeking certification/recertification of AUO to do so.

Rates of AUO Premium Pay. As defined in 5 CFR 550.154(a), AUO is paid as a percentage of the employee's rate of basic pay. When an employee is certified for AUO, the employee will receive AUO at the following rates:

A position which requires an average of at least three but not more than five hours per week of irregular or occasional overtime work will be paid at ten percent of basic pay;

- A position which requires an average of at least three but not more than five hours per week of irregular or occasional overtime work will be paid at ten percent of basic pay;
- A position which requires an average of more than five but not more than seven hours per week of irregular or occasional overtime work will be paid at fifteen percent of basic pay;
- A position which requires an average of more than seven hours but not more than nine hours per week of irregular or occasional overtime work will be paid at twenty percent of basic pay;
- A position which requires an average of more than nine hours per week of irregular or occasional overtime work will be paid at 25 percent of basic pay.

Fair and Equitable Rotation. Overtime work assigned to be performed on AUO, will be offered and distributed fairly and equitably among eligible and qualified employees. Overtime assignments, including overtime assignments made during the administrative workweek, will be made without regard to whether the employee is certified for AUO. Management will not assign overtime work to employees as a reward or a penalty, but solely in accordance with the Agency's need, taking into account any procedures for fair and equitable distribution of overtime work.

Limited/Light Duty. An employee on limited/light duty is not excluded from performing AUO duties if the employee is capable of performing AUO duties. Example,

Overtime Limit. To the maximum extent possible, no employee will be required to work more than four hours of AUO on a regular workday or more than eight hours of AUO on a Sunday, holiday, or other day on which the employee is not regularly scheduled to work. This provision does not waive the ability of employees to voluntarily work additional hours of AUO.

13.7. Reduction of AUO Pay Rate

When the Agency has determined that an employee's AUO pay rate is to be reduced, it will provide advanced written notification to the employees that his or her AUO pay rate will be reduced. The notification will include instructions on the number of AUO hours that would need to be worked to maintain or increase the AUO pay rate for the succeeding eligibility periods. Notification will be provided to the employee at the end of the computation period, prior to the projected reduction and will contain the reasons that the determination was made to reduce the AUO pay rate. A decision to reduce an employee's AUO pay rate may be grieved in accordance with Article 11, Grievance Procedures.

13.8. Decertification of AUO Pay

The Agency agrees that, once a position is certified to receive AUO, individuals will only be decertified from receiving AUO if either (1) all employees holding the position are decertified from receiving AUO or (2) the employee's actual records of hours of work in the preceding computation period establish that an employee has not worked at least three hours of AUO per week in the preceding computation period.

When the Agency has determined that an employee's AUO rate will be decreased or the employee is to be decertified from AUO pay, it will provide written notification to the employee that his or her AUO pay will be lowered or decertified at least eight pay periods in advance. The notification will include instructions on the number of AUO hours that would need to be worked to maintain or increase the AUO pay rate for the succeeding eligibility periods. Notification will be provided to the employee at the end of the computation period, prior to the decrease or decertification and will contain the reasons that the determination was made to decrease or decertify the AUO pay. A decision to decrease an employee AUO rate or decertify an employee from AUO pay may be grieved in accordance with Article 11, Grievance Procedure.

When an employee is decertified due to a lack of AUO qualifying hours, the employee will be recertified after the first complete pay period of working the sufficient number of AUO qualified overtime hours to at minimum qualify for AUO certification at the 10% level. Alternatively, employees decertified due to a lack of AUO qualifying hours may also request that his/her supervisor recertify the employee due to the AUO that the employee is anticipating working going forward. The supervisor must respond to the request within 5 workdays. Denials will be provided in writing and will contain the particular reasons for the decision.

Employees who are decertified from AUO for any reason but later recertified will begin receiving the appropriate rate of AUO pay the pay period following recertification. The AUO rate following recertification will be set in accordance with procedures established in Section 13.3.3.

Officers involuntarily decertified from AUO for reasons unrelated to a lack of qualifying AUO hours worked (e.g., OPR inquiry) will be immediately recertified upon return to duty at the AUO certification rate received prior to decertification.

When an employee is decertified from receiving AUO, the Agency is no longer permitted to apply the Section 207(k) partial FLSA exemption to the employee. Accordingly, as soon as an employee is decertified from AUO, the Agency is required to compensate the employee at the FLSA overtime rate, *i.e.*, for all hours of work suffered or permitted to be performed on a non-workday, and all hours of work suffered or permitted to be performed in excess of eight hours in a workday.

13.9. Other Overtime and Premium Pay

The Agency will make a reasonable effort not to change an employee's schedule during an administrative workweek and will make a reasonable effort to make any changes in advance of the workweek. The Agency will not change an employee's schedule if the only reason is to avoid payment of premium pay.

Premium Pay Authorizations. An employee receiving AUO pay cannot receive premium pay for irregular or occasional overtime work under any other section of 5 CFR 550 subpart A, except as provided below:

- Regularly scheduled overtime pay under 5 U.S.C. 5542 and 5 C.F.R. 550;
- Regularly scheduled night pay under 5 U.S.C. 5545 and 5 CFR 550;
- Regularly scheduled Sunday pay under 5 U.S.C. 5546 and 5 CFR 550 for non-overtime work when any part of a shift falls on a Sunday;
- Holiday pay under 5 U.S.C. 5546 and 5 CFR for ordered or approved non-overtime work on a holiday which corresponds to their regular tours of duty; and
- Employees receiving AUO are eligible to earn travel compensatory time for official travel. An employee who receives AUO pay under 5 U.S.C. 5545(c)(2) can receive compensatory time off for travel if the employee's travel time is not compensable under 5 CFR 550.112(g) or 5 CFR 551.422, as applicable, and meets the requirements in 5 CFR 550, Subpart N.

Overtime/Premium Pay Caps. Provisions regarding procedures for the application of overtime/premium pay caps are found in this Agreement.

Advanced Training. For periods spent in advanced training directly related to duties for which AUO is payable up to sixty workdays in a calendar year are excludable for AUO rate computation purposes as per Section 13.5 of this Article. For periods of time spent in training during a calendar year that exceed sixty workdays, adjustments, if any, should be made to the employee's AUO rate

based on the number of AUO hours actually worked during the preceding Computation Period and not the curre Computation Period in which the employee exceeded the sixty day annual cap on training days.

13.10. Temporary Assignments

In accordance with this Article, the Agency will continue to pay AUO while employees are on temporary assignments to non-AUO eligible duties or assigned to a training program. AUO is allowed: (1) while on approved advanced training, for up to 60 workdays in a calendar year or (2) while on temporary assignment to non-AUO eligible duties: (a) for a period of up to en consecutive workdays, and (2) for a total of not more than 30 workdays in a calendar year.

When notifying employees of available temporary assignments, details or rotations, the Agency will inform the e yees of whether the assignment, detail, or rotation will include AUO eligible duties. Absent a particularized need for specific skills or qualifications the Agency shall utilize volunteers before requiring employees to participate on temporary assignments, details, or rotations involuntarily unless management determines that there is a need for a specific volunteer to continue to perform his or her regular duties.

13.11. Work Hours

There is no minimum number of hours in a workday that an employee must perform regular work before being eligible to perform AUO on that workday. F example, if an employee takes leave to attend a doctor's appointment for six hours during a regular workday and then works four hours after arriving at work, the employee would record two hours of AUO, as long as the additional work was not scheduled in advance of the administrative workweek. Similarly, if an employee performs unscheduled work on a non-workday, the time is recorded as AUO because the work was not scheduled in advance of the administrative workweek.

Employees, who are certified to receive AUO, are paid AUO for *all hours of irregular or occasional overtime* no matter what work is performed during those hours of work. All irregular or occasional overtime, whether performed before or after a scheduled shift or on a non-workday, is considered in calculating the appropriate AUO percentage. Although the determination of whether a position is to be c ified to receive AUO may be based on the specific types of duties listed in 5 C.F. § 550.153(a), once a position is certified to receive AUO, there is no limitation on what work tasks can be performed during AUO hours because otherwise an employee would not receive compe n for all irregular or occasional overtime work.

Employe on official time, including employees designated 100 percent official time, are not precluded from performing regular duties or AUO qualifying duties and being certified to receive

AUO. Employees on official time, including employees designated 100 percent official time, will coordinate with their first-line supervisors when working regular duties and/or AUO qualifying duties. The Agency will make every effort to work with and accommodate employees on official time seeking to perform regular duties and/or AUO qualifying duties.

13.12. Notice to the Union

If the Agency elects to no longer certify a position for AUO, to the maximum extent possible, the Agency will provide notice to both the National Council and the affected bargaining unit employees at le six pay periods prior to the proposed decertification date. In accordance with Article 3, Impact Bargaining and Mid-Term Bargaining, and Article 16, Pre-decisional Involvement, the parties will engage in pre-decisional involvement and upon the Union's request, mid-term bargaining, prior to any Agency action that will have an impact on bargaining unit employe The parties agree that, absent a change in law, circumstances do not exi that would justify making a change to whether positions are certifie to receive AUO prior to the conclusion of bargaining. This provision also applies if changes are made to AUO laws or regulations, or a new form of premium pay replaces AUO.

13.13. Disputes

Any dispute that may arise regarding application or interpretation of this Article may be ieved in accordance with Article 11, Grievance Procedure, or

13.14. Discontinuation of AUO

If AUO is discontinued for bargaining unit employees, the Parties agree to ne new provisions to replace any provisions in the Collective Bargaining Agreement related to AUO, or that are otherwise impacted by the change, in accordance with Article 3, Impac Bargaining and Mid-Te Bargaining, and Article 16, Pre-decisional Involvement. The Parties agree that these provisions include all provisions related in any way toward AUO. Such provisions are not limited only to Article 13, AUO of this Agreement but also include, *inter alia*, the articles regarding hours of work, leave, tours of duty, and overtime assignments.

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Article 14 Limited/Light Duty Assignments

14.1. Limited/Light Duty Purpose nsatio

The Parties recognize that Limited/Light duty assignments are a tool for the Agency to continue the productivity of employees who have incurred injuries or illnesses that temporarily prevent them from performing their assigned duties. Limited/Light duty assignments allow employees to return to

work and utilize their valuable knowledge, skills and ability to accomplish the Agency mission while temporarily limited by illness or injury.

As provided by the Federal Employees' Compensation Act, 20 CFR 10, Claims for Compensation, as amended, Subparts A-E, workers injured or incapacitated on the job will be assisted in returning to work consistent with their medical condition. In addition, although not pursuant to the Federal Compensation Act or other pertinent regulations, the Agency will assist workers injured or incapacitated off the job in returning to work consistent with their medical condition and this Article. The Parties agree that the length of employee absence from the job because of illnesses or injuries may be reduced by making Limited/Light duty or telework assignments available to affected employees in a manner consistent with their prescribed medical condition or limitations and the needs of the Agency.

Any employee who has been injured or incapacitated and is able to perform Limited/Light duty will be permitted to conduct such duties that he or she is able to perform when such duty is available, until he or she has recovered from the injury or incapacitation. This option is for injuries of a temporary, rather than permanent nature (with the exception of pregnancy). Employees assigned to temporary/light duty will not lose their eligibility for promotion while performing Limited/Light duty assignments.

Notwithstanding this Article, an employee may pursue a reasonable accommodation at any time if they believe their medical condition will present more than a temporary obstacle.

14.2. Definition

Limited/Light Duty is defined as specific duties and responsibilities that may include all or part of an employee's regular position or may be outside an employee's position and that do not conflict with the employee's current work restrictions as identified by the employee's attending physician or practitioner. Duties may be performed for a full work shift or for shorter time periods and may include telework assignments. Limited/Light duty assignments may or may not require interaction with detainees.

14.3. Limited/Light Duty Procedures (Including Workers' Compensation)

An assignment to Limited/Light duty appropriate to an employee's specific medical condition will be granted for a temporary period, if such work is available and the assignment will not unduly disrupt work operations.

When an employee is injured or incapacitated on or off the job and is ordered by his or her attending physician or practitioner to work a Limited/Light duty assignment, the employee will provide the immediate supervisor with a written request and either a signed handwritten or typed

note from a physician or practitioner, which describes the employee's restrictions and the duration of the noted restrictions. Upon receipt of the note from the physician or practitioner, the supervisor will respond within two workdays by either notifying the employee of the duties that will be made available consistent with the stated restrictions, or by denying the request. Prior to the expiration of the time period provided by the physician or practitioner, the employee must request an extension supported by a new note from their physician or practitioner. For employees injured on the job, the Agency will also follow any requirements under the Federal Employee's Compensation Act and Office of Workers' Compensation Programs' regulations, including use of the Duty Status Report, Form CA-17.

When a supervisor denies a request for Limited/Light duty, the supervisor will notify the employee of the particular reasons for the denial. If denied for medical reasons, the employee will be informed that he or she may at the employee's discretion, provide supporting medical documentation directly to the Agency Medical Officer for reconsideration and recommendation.

Any supporting medical documentation provided to the Agency will be submitted by the employee directly to the Agency Medical Officer in charge of medical determinations. Medical information and/or documentation will be handled appropriately and reasonably.

After review of the employee's medical documentation, the Agency Medical Officer will provide the employee and his or her supervisor with a decision and a summary of the reasons for the decision. The summary of the reasons will not contain diagnosis or prognosis of the employee's medical condition and will not be released to any other Agency official prior to the employee's written consent. If the employee signs a release with his or her private physician or practitioner and his or her physician or practitioner is amenable, the Agency Medical Officer may consult with the employee's physician or practitioner prior to making his or her decision.

Employee concerns regarding breach of privacy by the Agency may be addressed to the ICE Privacy Office or DHS Privacy Officer through civil lawsuit or pursue any other avenues of redress.

14.4. Informal Appeal of Limited/Light Duty

Upon request, an employee will meet with the supervisor to discuss any concerns regarding the Limited/Light duty assignment and, if he or she so desires, provide these objections to the supervisor in writing. The employee may elect to have union representatives present at the meeting. The employee may take reasonable time to consult with a physician in order to resolve disputes. The Agency will provide the employee with a point of contact with information about his or her leave status and the effect of being in a non-pay status on the following:

1. health and life insurance;

2. Thrift Savings Plan accounts and/or contributions;
3. within grade increases;
4. leave;
5. retirement; and
6. buying back annual or sick leave used in lieu of compensation.

An employee injured on the job will be provided with information about Office of Workers' Compensation Programs.

14. Limited/Light Duty due to Pregnancy

A request for accommodation due to pregnancy to protect the health of a pregnant employee and/or her unborn child is also covered by this Article. Upon an employee's belief that she may be pregnant and always subsequent to the confirmation of said pregnancy, the employee may request Limited/Light duty excusal from wearing a uniform, and other accommodations. The period of accommodation may continue for the duration of the pregnancy without the need for additional medical documentation. A pregnant employee will not be involuntarily restricted from performing her regular duties solely because of her pregnancy.

14.6. AUO While on Limited/Light Duty

Employees holding positions certified for Administratively Uncontrollable Overtime (AUO) pay who are on Limited/Light duty will not lose their eligibility to receive AUO pay and/or AUO excludability when consistent with Article 13, AUO, applicable law, rule and regulation.

14.7. Overtime While on Limited/Light Duty.

Employees will not be precluded from being assigned overtime work associated with their light duty assignment based solely on their assignment to Limited/Light duty, if not inconsistent with the employee's medical restrictions.

14.8. Leave for Medical Appointments

During the time the employee is on Limited/Light duty, necessary time will be approved for medical and physical therapy appointments. Leave for such appointments will be taken or provided appropriately and reasonably.

14.9. Limited/Light Duty Notifications

The local Union President will be notified of all Limited/Light duty assignment approvals and denials. The Council President or designee will be notified by the Parties of all Limited/Light duty assignment approvals and denials related to on the job injuries and incapacitation.

14.10. Grievance Rights

The employee may initiate a grievance following any denial for Limited/Light duty in accordance with Article 11, Grievance Procedure.

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Article 15 HARASSMENT, REPRISAL AND WHISTLEBLOWER PROTECTIONS

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15.1. General

15.1.1. Prevention

The Agency will work in partnership with the Union on matters related to retaliation and harassment against bargaining unit employees.

15.1.2. Committees

The Agency encourages the Union's use of review committees made up of employees, former employees, and members of the public, to review reported instances of harassment and retaliation affecting the bargaining unit, and submit reports to the Director of ICE, and DHS Secretary regarding their findings. The Agency commits to take the committee findings seriously, and to review and respond in good faith. A practice of defending the Agency by defending the inappropriate behavior of supervisors does not serve the overall health of the Agency. With respect to work that occurs in these committees bank hours official time will be used to the extent that the work occurs during duty hours.

15.1.3. Reporting and Outside Consultation

Employees often feel there is no safe or effective way to report allegations of harassment or retaliation, and that doing so will result in increased harassment and retaliation and negatively impact their careers. Among other efforts, ICE is committed to working with the Union to do the following:

1. Develop a new means of reporting harassment and retaliation that also provides ongoing support for employees making reports;
2. Develop a means of tracking all reports and monitoring the activity level of reported harassment and retaliation by office, AOR and individuals allegedly involved;
3. Jointly select outside consultants to advise the Agency and Union in their joint efforts broadly, and investigate reports of individual and sy[illegible] harassment and retaliation;
4. Jointly develop and submit to the Office of Professional Responsibility suggested practices that may be used by ICE internal affairs investigators at any level to more

effectively and consistently investigate allegations of harassment and retaliation and report their findings;

5 Jointly develop and implement after action reports to be completed by employees reporting harassment or retaliation to receive input from the employees on their perception of the initiative's success;

6 Conduct joint, ongoing communication to the field by way of broadcast messages, training, townhalls, etc. of IOE's expectations and progress under its zero-tolerance initiative.

15.1.4. **Gener. Prohibition of Reprisal and Harassment Not Covered by the Whistleblower Protection Act or EEO Laws**

In addition to adhering to the Whistleblower Protection Act and EEO laws, the Agency remains committed to the policy and practice of prohibiting any form of retaliation or harassment including, but not limited to, improper hiring practices or subjecting employees to disparate or adverse treatment. This will include ensuring that reprisal and harassment of all types against bargaining unit employees union members and representatives, will not be tolerated and is unacceptable Retaliation and harassment against union members for their participation in Union activities is unacce thus the Agency commits to a general practice of promptly investigating allegations of retaliation and harassment and disciplining supervisors found to have engaged in retaliatory actions Employees will not be subject to retaliation for exercising any rights under law, government-wide regulation or Agency regulation, or the collective bargaining agreement

15.2. Whistleblower Protection

15.2.1. **Commitment**

The Parties recognize their commitment to the policy and practice of prohibiting reprisal against any employee based on disclosures prote by the Whistleblower Protection Act, as amended.

15.2.2. **Whistleblower Protection Act**

Consistent with the Whistleblower Protection Act, currently codified at 5 USC 2302(b)(8), employees will be protected against retaliatory personnel actions due to the disclosure of information not prohibited by law that the employee reasonably believes evidences a violation of law, rule or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or substantial and specific danger to public or employees' health or safety If the disclosure of information is specifically prohibited by law or is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs, in accordance with 5 CFR 1209.4(b), the employee will be protected against retaliatory personnel actions so long as the

disclosure is made to Congress, the Office of Special Counsel, the Office of Inspector General, or another employee designated by the head of the agency to receive such disclosures.

15.2.3. **Complaint, Appeal, Grievance**

Any employee who believes that he or she has been retaliated against for disclosures protected by the Whistleblower Protection Act, as amended, may pursue one of the following three options:

A complaint with the Office of Special Counsel (OSC)

1. An individual who is subject to a personnel action that is directly appealable to the Merit Systems Protection Board (MSPB), and claims that the action was taken because of whistleblowing, may elect to file a complaint with the OSC first

2. If an individual is subject to a personnel action as described in 5 USC §2302(a)(2)(A) and claims the action was taken because of whistleblowing, but the action is not one that is directly appealable to the Merit Systems Protection Board (MSPB), the individual must file a complaint with the OSC first

3. If the OSC decide the Agency committed a prohibited personnel action, the OSC will report its findings to the Merit Systems Protection Board (MSPB); or if the OSC notifies the employee that the OSC is terminating the investigation of the complaint and declining to seek corrective action on the employee's behalf, the employee may file an individual right of action appeal with the MSPB within 60 days of receipt of the OSC's decision, or 65 days from the date of the OSC's written notice, whichever is later.

4. If the OSC does not contact the employee within 120 days of filing a complaint, the employee can file an individual right of action appeal with the MSPB anytime thereafter.

An appeal with the MSPB

1. If an employee is subject to a personnel action that is directly appealable to the MSPB, pursuant to 5CFR 1201.3(a), and the individual claims that the action was taken because of whistleblowing, it is considered an "otherwise appealable action" and the employee may file an appeal directly with the Board within 30 calendar days of the effective date of the action or receipt of the decision, whichever is later

2. If the employee filed with the OSC first, then time limits for appealing to the MSPB are the same as for an individual right of action appeal as described in number 3 and 4 of the OSC Complaint Section above.

A grievance pursuant to Article 11, Grievance Procedure

15.2.4. **Standards of Evidence and Burden of Proof**

In reviewing grievances related to this Article, arbitrators will apply the same standards of evidence and burden of proof as those applied by the Merit Systems Protection Board to Whistleblower Protection Act cases.

EXHIBIT 2

15.2.5. **Notification and Training**

The Agency will provide the following:

1. Annual notification and posted notice to employees regarding their rights under the Whistleblower Protection Act;
2. An electronic link permanently posted on the Agency intranet for the U.S. Office of Special Counsel (OSC) website which contains forms and information for filing disclosures;
3. Training on the Whistleblower Protection Act;
4. Official duty time to complete training on the Whistleblower Protection Act, when conducted; and
5. A notice in employee work areas and on bulletin boards in locations frequented by bargaining unit employees (e.g., break rooms, cafeterias, or interior lobbies), which identifies the telephone numbers for OSC and the electronic link for the OSC website.

15.2.6. **Records of Complaints**

The agency will track and maintain records of all complaints of reprisal filed with the Office of Special Counsel as well as all other complaints of reprisal filed, to include but not limited to, grievances, EEO, MSPB, OPR and OIG. Reports containing the following data will be provided to the Union at the Local and National level on a quarterly basis:

1. Number of complaints filed under each type of filing (e.g. EEO, MSPB, grievance and OPR);
2. Case number, disposition and status of each case/complaint;
3. Reported basis for the reprisal (e.g., Whistleblower reprisal, reprisal against Union Representatives);
4. Office or facility where the incident occurred;
5. Corrective actions taken, if any;
6. Date complaint filed and case completion date; and
7. Average case processing time.

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Article 16 PRE-DECISIONAL INVOLVEMENT (PDI)

16.1. Recitals

Because bargaining unit employees and their Union representatives are an essential source of front line ideas and information about the realities of delivering Government services to the American people, the Parties agree to engage in PDI to the maximum extent possible.

PDI is a non-adversarial forum for managers, bargaining unit employees, and Union representatives to discuss Government operations that will promote satisfactory labor relations and improve the productivity and effectiveness of the Federal Government.

PDI is a complement to the existing collective bargaining process where managers and employees collaborate in continuing to deliver the highest quality services to the American people.

During the PDI process, the Agency will discuss policies, working conditions, workplace challenges, and problems with Union representatives and endeavor to develop solutions jointly, rather than propose and then bargain over predetermined solutions.

16.2. Conduct

Agency must engage in PDI without regard to whether a topic is negotiable, permissively negotiable, or non-negotiable, and do so early when ideas are still forming.

During PDI, Management must disclose all relevant information as part of the problem solving process without requiring statutory information requests.

Participants must have the opportunity to present their thoughts as equals without regard for work-related titles or roles.

Participants must not be harassed, and the Parties must establish a reporting process for harassment complaints.

16.3. Procedures

The Agency will pay for required travel and per diem. Bargaining unit participants will be selected by the Union and granted Official Time (Other Than Bank Hours) for participation in accordance with Article 3, Official Time.

Co-Chairs (one appointed by the Union, one by Management), in consultation with participants, will establish meeting procedures.

16.4. Limitation

PDI does not waive the rights of labor, employees, or management under the Statute or waive the obligations set forth in the Collective Bargaining Agreement.

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Article 17 UNION REQUESTS FOR INFORMATION

17.1. Scope of Union's Right to Information

Except as provided elsewhere in this Agreement, the Agency will provide the Union, upon written request and to the extent not prohibited by law, information and documents, relevant to the parties' collective bargaining relationship, related to matters of interest or concern to the Union or related to

EXHIBIT 2

the conditions of employment of bargaining unit employees. The Union shall provide its reason(s) for e such request at the time such request is made.

The Parties agree that, under this Article, in addition to requesting documents, the Union is entitled to request that the Agency answer a reasonable number of questions related to matters relevant to the partic collective bargaining relationship, or related to the conditions of e of bargaining unit employe and other matters of interest or concern to the Union. The Agency will provide written responses to the questions within twenty calendar days, to the extent not prohibited by law.

The parties agree that the information request pro cedure se forth in this Article supplements and expands upon the Union's right to request information under 5 U .C. 7114(b)(4).

17.2. Content of Union Information Requests

No specific form is required for the Union to make a request under this Article. Request under this Article can be served by the Union upon the Agency's designee via electronic mail.

Union information requests will e plain the information and documents requeste in sufficient detail to allow the Ag to identify responsive information and documents.

The Union is not required to divulge names of possible grievants/witnesses or the Union's grievance strategies when seeking information under this Article.

17.3. Agency's Response Obligations

Upon receipt of a Union information request for information, unless production of the requ information is prohibited by law, the Ag will provide the requested information within twenty days of re pt of the request, absent mutual agreement to extend the response deadline. Upon request, the Agency will be granted re extensions when the Agency is unable to re m such time pe iod without negatively impacting specific responsibilities of the Agency.

If the Agency denies any part of a Union information request, it will within twenty days of the Union's reque provide to the Union a written response to the Union's request that explains with specificity the grounds for denying the request.

Agency refusal to provide particular information on specific grounds will not delay the Agency from providing the rest of the requested information to the Union within twenty days of the Union's information request.

Deadlines, for matters (such as Notice of Debts Owed, Discipline/Adverse Action Proposal Responses, Grievances, etc.) which require additional information by the Union or employees, will be tolled or extended pending receipt of requested information.

17.4. Union Reply to Agency's Response

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The Union has fifteen days to submit a written reply to the Agency's response to its request for information. In such a reque st, the Union may: (1) contest the validity of any grounds presente in the Agency's response for not producing requested information; or (2) presen proposed modifications to its original request to which the Agency would then have fifteen days to respond with responsive information.

17.5. Resolution of Information Request Disputes

The Union may grieve any denial of information requested under this Article pursuant to Article 11, Grievance Procedure. The Union may, at its election, pur e the g through expedited arbitration.

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Article 18 UNION REPRESENTATIVES PERMITTED ON GOVERNMENT PROPERTY

National representatives of the Union, Council Officers and Council employe s be permitte upon all Agency installations. It is understood that such Union representatives shall, whe ever possible, give advance notice to the supervisor in charge of the installation of their impending visit. Upon arrival, Council representatives shall attempt to advise the supervisor, if available, of their presence.

Council Officers, Counc l employe and National re resentatives of the Union shall be permitted to participate in meetings be tween Local representatives and the Agency and/or hold their own meetings with the Agency.

Council Offic are permitted in all employe work areas and may speak with and observe employe s in the performance of their duties without interfering with the work of employees. If scheduled in advance, Council Officers may conduct ride along visits and observe other operations in the are

Local representatives of the Union and Union employe working with the Local shall be permitted on all Agency installations in the same manner and with the s privileges as Counc Officers and employees provided in this Article.

All Union representatives are free to come and go from facilities in their own AOR as any other employee is permitted.

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EXHIBIT 2

ARTICLE 19 OTHER PROVISIONS

19.1 Severability

In the event that a court of competent jurisdiction finds any term or clause in this Agreement to be invalid, unenforceable, or illegal, the same will not have an impact on other terms or clauses in the Agreement or the entire Agreement. However, such a term or clause may be revised to the extent required according to the opinion of the court to render the Agreement enforceable or valid, and the rights and responsibilities of the parties shall be interpreted and enforced accordingly, so as to preserve their agreement and intent to the fullest possible extent.

19.2 Timing

The contracting parties waive, irrevocably and for six (6) years from the formation of this MOA, their rights to dispute or challenge this Agreement except through negotiation.

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SIDE LETTER 1 WORKFORCE TRANSFORMATION INITIATIVE

On or about June 25, 2020, ICE announced the Workforce Transformation Initiative (WTI). In short, the announcement outlined significant changes to everything ICE employees currently experience in the workplace, and committed to work with the Union in honoring its bargaining obligations.

As an extension of that commitment to work with the Union, the Parties have agreed to develop the WTI (or its successor) in partnership and continue that work as the WTI is implemented and continues in the field for years to come.

The Agency will begin engaging the Union in pre-decisional involvement within 30 days of the execution of this Agreement and bargain as required in accordance with Article 16, Pre-decisional Involvement and Article 3, Impact Bargaining; and Mid-Term Bargaining prior to implementation.

Once the WTI is fully implemented in the field, the Agency will continue to engage the Union in a pre-decisional environment as the initiative advances and addresses different ICE worksites, and bargain changes in accordance with the collective bargaining agreement.

EXHIBIT 2

SIDE LETTER 2 FIELD DELIVERED TRAINING

On or about 2019, the Agency initiated an On the Job (OJT) Working Group, and detailed its work on the Field Delivered Training Policy, Field Training Officer Handbook, Police Problem Based Learning, OJT Studies and Job Analysis, etc

The project represents perhaps the largest scale and most dynamic shift in training in ERO since its establishment, affecting every officer in the field in some way perhaps for the rest of his or her career due to its ongoing training approach and use of bargaining unit employees as instructors

The Parties agree to develop all associated training and policy (or that of its successor program) in partnership and continue that work as the training program is implemented and continues in the field for years to come.

The Agency will be ginengaging the Union in pre-decisional involvement within 30 days of the execution of this Agreement and bargain changes in accordance with Article 16, Pre-decisional Involvement and Article 3, Impact Bargaining and Mid-Term Bargaining prior to implementation

Once the training program is fully implemented in the field, the Agency will continue to engage the Union in a pre-decisional environment to as the program advances, and bargain proposed changes in accordance with the collective bargaining agreement

SIDE LETTER 3 POSITION DUTIES, TRAINING FOR COUNCIL OFFICERS

The Agency acknowledges that the schedules of Council officers are extremelydemanding, especially for those working significant amounts of official time. Council officers sacrifice much of their personal lives and careers to serve their fellow employees and the Agency. It is often a struggle for Council officers to keep current on law enforcement practices and other duties, which can also negatively impact the intense policy work they are often engaged in.

In acknowledgement of the sacrifices and difficulties experienced by Council officers on official time in scheduling time to perform their regular job duties and keep up to date on the ever changing workplace, the Agency commits to allow maximum flexibility to Council officers to come into their offices and perform duties related to their positions, receive training, and otherwise be permitted to work various duties to gain job experience they miss as a result of their other commitments. This flexible approach better prepares Council officers if called upon to return during government shutdowns, etc. Nothing herein requires the Agency to assign overtime hours to accomplish the goals of this side letter.

EXHIBIT 2