

***MEMORANDUM  
OF  
UNDERSTANDING***

*Between*

***County of Monterey***

*And*

***PROBATION MANAGERS' ASSOCIATION***

**July 1, 2021 – June 30, 2024**



The following resources for answers to employment related questions are available at <http://www.co.monterey.ca.us/personnel>:

- Personnel Policies and Practices Resolution No. 98-394 (PPPR)
- Administrative Procedures
- Salary Schedule
- Benefits Summary Sheets
- Current Memorandum of Understanding (MOU) and Side letters
- Health Insurance Links

## Table of Contents

PREAMBLE .....	6
ARTICLE 1 RECOGNITION .....	6
1.1 Sole and Exclusive Agent .....	6
1.2 Relationship Affirmation .....	6
ARTICLE 2 TERM .....	6
ARTICLE 3 NON-DISCRIMINATION .....	6
ARTICLE 4 ASSOCIATION RIGHTS .....	7
4.1 Representation.....	7
4.2 Association Official Representatives .....	7
4.3 Association Access .....	7
4.4 Voluntary Dues Deduction .....	7
ARTICLE 5 COMPENSATION .....	7
5.1 Compensation .....	7
5.1.1 Me Too Clause.....	8
5.1.2 Wage Reopener.....	8
5.2 Education Incentive .....	8
5.3 Bilingual Skill Pay .....	8
5.4 Mileage Allowance .....	9
5.5 No Pyramiding.....	9
ARTICLE 6 PROBATIONARY PERIOD.....	9
6.1 Term of Probationary Period .....	9
6.2 Employees Terminated During Probation in a Promotional Class .....	9
ARTICLE 7 HOLIDAYS .....	10
ARTICLE 8 ANNUAL LEAVE.....	10
8.1 Annual Leave Cash Out (Employees with 1-9 years of service) .....	11
8.2 Annual Leave Cash Out (Employees with ten (10) years or more of service) .....	11
8.3 Election to Cash Out Annual Leave.....	11
ARTICLE 9 LEAVE PROVISIONS .....	12
9.1 Professional Leave .....	12
9.2 Frozen Sick Leave Balances .....	12
9.3 Bereavement Leave.....	12
9.4 Verification of Sick Leave .....	12
9.5 Involuntary Leave with Pay .....	13
ARTICLE 10 BENEFITS .....	13
10.1 All Insurance.....	13
10.2 Medical Insurance Contributions .....	14

10.3	Dental Insurance Contribution.....	15
10.4	Vision Insurance Contribution.....	15
10.5	Life Insurance .....	15
10.6	Health Insurance Committee.....	15
10.7	Conditional Reopener .....	15
10.8	Long-Term Disability Insurance.....	15
ARTICLE 11	RETIREMENT .....	15
11.1	Retirement.....	15
11.2	Deferred Compensation .....	16
11.3	Retirement Sick Leave Cash Out.....	16
ARTICLE 12	TRANSFER POLICY.....	16
ARTICLE 13	DISCIPLINE.....	17
13.1	Disciplinary Actions .....	17
13.2	Notice of Proposed Disciplinary Action .....	17
13.3	Employee Response to Proposed Disciplinary Action .....	18
13.4	Notice of Disciplinary Action.....	18
13.5	Written Reprimand.....	18
13.6	Disciplinary Review.....	19
13.7	Involuntary Leave Without Pay .....	19
13.8	Involuntary Leave Pending Investigation for Disciplinary Action.....	19
13.9	Reduction in Salary.....	20
13.10	Disciplinary Demotion.....	20
13.11	Dismissal.....	20
13.12	Absence Without Leave Separation.....	20
13.13	Statute of Limitations.....	20
13.14	Appeals from Disciplinary Action .....	20
ARTICLE 14	GRIEVANCE PROCEDURE.....	22
ARTICLE 15	LAYOFF PROCEDURE .....	22
15.1	Policy .....	22
15.2	Procedure .....	22
15.3	Rank in Class Defined .....	22
15.4	Order of Layoff, Exception to Ranking Sequence.....	23
15.5	Ranking in Previous Class .....	23
15.6	Demotion in Lieu of Layoff.....	23
15.7	Transfer .....	23
15.8	Notice.....	23
15.9	Reemployment of Employees Laid Off .....	24
15.10	Status of Employees Reemployed from a Preferred Eligible List .....	24
15.11	Restoration of Benefit for Recalled Employees.....	25

15.12	Insurance Coverage.....	25
15.13	Appeal Procedure.....	25
ARTICLE 16	USE OF VOLUNTEERS.....	25
ARTICLE 17	HEALTH AND SAFETY.....	26
17.1	Work Environment.....	26
17.2	Health and Safety Committee.....	26
ARTICLE 18	USE OF COUNTY MAIL SYSTEM.....	26
ARTICLE 19	POLYGRAPH EXAMS.....	26
ARTICLE 20	PERSONAL PROPERTY REIMBURSEMENT.....	26
ARTICLE 21	PERSONNEL RECORDS.....	26
ARTICLE 22	PERFORMANCE EVALUATIONS.....	27
ARTICLE 23	SEPARABILITY.....	27
ARTICLE 24	COUNTY RIGHTS.....	27
ARTICLE 25	CONCERTED ACTIVITIES.....	28
ARTICLE 26	EMERGENCY AUTHORITY.....	28
ARTICLE 27	FULL UNDERSTANDING, MODIFICATION, WAIVER.....	28

## **PREAMBLE**

This Agreement is made and entered into between the County of Monterey (herein called the "County"), and the Monterey County Probation Managers' Association, (herein called the "Association").

## **ARTICLE 1 RECOGNITION**

### **1.1 Sole and Exclusive Agent**

The County recognizes the Association as the sole and exclusive bargaining agent for all employees in classifications of Probation Service Manager and Probation Division Manager.

### **1.2 Relationship Affirmation**

The Association recognizes its obligation to cooperate with the County to assure maximum service of the highest quality and efficiency to the citizens of Monterey County, in keeping with its obligations to the workers it represents. The County and the Association agree that each employee shall be treated equally, fairly, and with dignity and respect.

This section shall not be subject to the grievance procedure.

## **ARTICLE 2 TERM**

The term of this Memorandum of Understanding (MOU) is from July 1, 2021 to June 30, 2024 when said MOU shall expire and be of no further force or effect.

## **ARTICLE 3 NON-DISCRIMINATION**

The provisions of this MOU shall be applied equally to all employees covered hereby without discrimination because of race, color, sex, sexual orientation, marital status, disability, age, national origin, religious affiliation, political belief or Association membership.

Employees may elect to exercise their right to join and participate in the activities of the Association for the purposes of representation in all matters of their working conditions and employer-employee relations. The parties agree that there shall be no restraint, coercion, or interference with any employee with respect to or because of the employee's membership in said Association. The County and the Association agree that each employee shall be treated equally, fairly and with dignity and respect.

The Association and the County agree to support the Equal Opportunity Program established by the County and that there shall be no discrimination within their respective organizations because of race, color, sex, sexual orientation, marital status, disability, age, national origin, religious affiliation or political belief.

Any party alleging a violation of this article shall have the burden of proving the existence of a discriminatory act or acts and or proving that, but for such act or acts, the alleged injury or damage to the grievant would not have occurred.

Complaints based on race, color, sex, sexual orientation, marital status, disability, age, national origin, religious affiliation or political belief shall not be subject to the grievance or arbitration provisions of this agreement. Such complaints shall be processed utilizing the discrimination complaint procedure adopted by the Board of Supervisors. Discrimination complaints based on

Association membership and/or activity shall continue to be subject to the grievance procedure and arbitration.

## ARTICLE 4 ASSOCIATION RIGHTS

### **4.1 Representation**

The Association has the right to represent employees in the representation unit as specified by state law and pursuant to the Monterey County Employer-Employee Relations Resolution. The Association will notify the County and maintain such notice during the term of this Agreement of its elected officers and directors as well as its staff employees. The Association President and Vice President are authorized to act as official representatives.

Official representatives shall represent the Association in jointly scheduled meetings with the County to address matters of mutual concern.

In addition, up to two (2) additional employees directly affected by the matters under consideration may participate in these joint scheduled meetings.

### **4.2 Association Official Representatives**

Association official representatives who are County employees may utilize time during normal working hours for meeting and conferring with authorized representatives of the County subject to advanced scheduling.

### **4.3 Association Access**

Authorized Association staff representatives shall have reasonable access to work locations for the purpose of transmitting information or representation purposes. Authorized Association representatives desiring access shall first request permission from the appropriate management representative. The authorized representative shall inform the management representative of the purpose of the visit. Management may deny access to the work location if, in his or her judgment, it is deemed that a visit at that time will interfere with the operations of the department or facility, in which event, management will offer an alternative time and/or location for the visit.

### **4.4 Voluntary Dues Deduction**

The Association shall submit the form and amount of dues deduction to the Auditor's office for processing, which will occur as soon as reasonably possible after receipt of said forms. The County agrees to deduct, as a single deduction, dues for employees in the unit and such other deductions as authorized in writing by the individual employees concerned. The County agrees to provide the Association the name, department, job class, and deduction status of all unit employees on a monthly basis.

## ARTICLE 5 COMPENSATION

### **5.1 Compensation**

The County will provide a wage increase to the base salary schedule to members of the Association as follows:

**2021:** 2.0% base wage increase effective the first full pay period following Association ratification and Board of Supervisor's approval of this agreement.

**2022:** 2.0% base wage increase effective the first full pay period following July 1, 2022.

**2023:** 2.0% base wage increase effective the first full pay period following July 1, 2023.

### **5.1.1 Me Too Clause**

“Me too” on economics with the Monterey County Probation Officer’s Association (MCPOA), Units M and N, over the term of the MOU, meaning if MCPOA receives an across the board salary increase from the date of this agreement through June 20, 2024 that is greater than 5%, the Probation managers shall receive the economic difference between the 5% wage adjustment noted and the increase realized by MCPOA.

### **5.1.2 Wage Reopener**

The County agrees to reopen negotiations to meet and confer on wages, no earlier than July 2017, if the marijuana tax revenue results in more than \$29 million in additional ongoing annual revenue.

### **5.2 Education Incentive**

Any member of the unit who has earned a four-year college degree will receive an additional compensation of 5% of base wage.

### **5.3 Bilingual Skill Pay**

For the purposes of implementing this newly negotiated provision, employees who are currently receiving bilingual pay shall not be required to recertify under the same examination. All other provisions of this article shall remain in full force and effect.

#### **5.3.1 Qualifications**

Ability to qualify for certification of demonstrated proficiency in the required language shall be a requirement for employment in a bilingual position, and obtaining certification appropriate for the position within the initial thirty (30) days of employment shall be a condition of continued employment.

An employee who has received certification of proficiency appropriate for one position may be required to meet new proficiency requirements if he/she moves to a bilingual designated position that utilizes a different specialized or technical vocabulary. The Department retains the right to renew the employee’s proficiency certification every five (5) years.

#### **5.3.2 Bilingual Pay**

Members of Unit L who successfully pass a bilingual proficiency test as fluent (verbal, reading and writing) shall receive a stipend equal to four percent (4%) of base salary effective the first full pay period following certification.

Members of Unit L who successfully pass a bilingual proficiency test as conversational (verbal only) shall receive a stipend equal to two percent (2%) of base salary effective the first full pay period following certification.

The bilingual proficiency tests shall be administered by the Department and administration responsibilities include the periodic review of the number and location of bilingual position designations. The Department retains the right to limit participation in the bilingual program.



#### **5.4 Mileage Allowance**

A unit employee who is required to operate his or her own or a privately-owned automobile for the execution of official duties, shall be allowed, reimbursed, and paid the IRS rate for each mile necessarily traveled each month.

No claim for mileage allowance shall be allowed by the Auditor-Controller unless and until it is accompanied by such report and form as may be required by the County Administrative Officer.

#### **5.5 No Pyramiding**

At no time during the term of this contract will there be any duplication or pyramiding of benefits.

<b>ARTICLE 6 PROBATIONARY PERIOD</b>
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#### **6.1 Term of Probationary Period**

Upon each appointment to a permanent position, an employee, except as outlined below, shall serve a probationary period of nine (9) months dating from the date of his/her appointment. During the probation period, an employee has no right to appeal and serves at the pleasure of the Appointing Authority.

Prior to the conclusion of the nine (9) month probationary period and with approval of the County Administrative Office, the Appointing Authority may, for cause, extend the probationary period upon furnishing the employee with a statement of the reasons for such extension and the standards that must be met in order for the employee to successfully complete the probationary period.

During the nine (9) month probationary period, a minimum of two (2) performance evaluations shall be completed no later than four (4) and eight (8) months after the initial appointment date.

An employee who has successfully completed the probationary period will be eligible for advancement to the next higher step in a salary range upon completion of one (1) year of continuous service in his/her class. If the County Administrator determines that due to an administrative or clerical error or omission an employee failed to complete probation or to receive a step advancement on the date on which he/she was otherwise eligible, the employee shall be removed from probation or advanced one step effective on the date he/she became eligible.

#### **6.2 Employees Terminated During Probation in a Promotional Class**

The parties reaffirm their understanding that an employee who has been promoted and thereafter released from probation (not related to a disciplinary action) enjoys no procedural or substantive rights. However, to lessen the impact of a probationary release and so that the skills of the employee may be retained, the employee will be returned to their former class.

No action taken by the County concerning an employee released while serving a probationary period shall be subject to appeal, review, or to any grievance procedure or arbitration procedure whether such procedure be contained in this Memorandum of Understanding, the Personnel Policies and Practices Resolution of the County of Monterey, the Employee Relations Resolution of the County of Monterey, or any other statute, ordinance, resolution or agreement.

This article shall not impair the liberty interest rights of any employee.

**ARTICLE 7 HOLIDAYS**

**7.1 County Holidays**

Below is a list of County holidays:

January 1	New Year's Day
Third Monday in January	Martin Luther King Jr.'s Birthday
Third Monday in February	President's Day
Last Monday in May	Memorial Day
June 19 <sup>th</sup>	Juneteenth Day
July 4	Independence Day
First Monday in September	Labor Day
November 11	Veterans Day
Fourth Thursday in November	Thanksgiving
Fourth Friday in November	Day After Thanksgiving
December 24 *	Christmas Eve
December 25**	Christmas

If any of the above listed holidays falls on a Saturday, the preceding Friday shall be the holiday in lieu of the day observed. If one of the above listed holidays falls on a Sunday, the following Monday shall be the holiday in lieu of the day observed.

\*When December 24<sup>th</sup> (Christmas Eve) actually falls on a Saturday or Sunday, the preceding Friday shall be the holiday in lieu of the day observed.

\*\* When December 25<sup>th</sup> (Christmas) actually falls on a Saturday or Sunday, the following Monday shall be the holiday in lieu of the day observed.

All employees shall receive an equal number of holidays.

**7.2 Floating Holiday**

Effective calendar year 2022 one floating holiday (equivalent to 8 hours for a full-time employee) per calendar year may be taken before or on December 31 of each year. This holiday will not carry

over from year to year and no compensation will be paid for this unused holiday. To use the floating holiday, the employee must provide reasonable advance notice and receive prior approval, which approval shall not be unreasonably withheld or delayed.

<b>ARTICLE 8 ANNUAL LEAVE</b>
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The following Annual Leave schedule shall apply to permanent employees:

Years of Service	Days per Year	Per Pay Period
0-2	23	7.05
2-6	25	7.42
6-10	27	8.19
10-15	30	9.14
15-18	32	9.51
18-20	33	10.09
20-25	34	10.28
Over 25	37	11.23

The maximum annual accrual for employees in this unit shall be eight hundred fifty (850) hours.

**8.1 Annual Leave Cash Out (Employees with 1-9 years of service)**

Permanent employees with at least one (1) year of service in Units L and one (1) to nine (9) years of service in County employment may sell back to the County up to one hundred twenty (120) hours of their Annual Leave once in any calendar year if the following conditions are met:

1. The employee has used (taken) at least one hundred twenty (120) hours of combined annual and professional leave during the preceding calendar year provided:
2. The employee must have at least forty (40) hours of Annual Leave remaining after the “cash out” of some of their Annual Leave and,
3. No more than one request for partial “cash out” may be made in any calendar quarter.

**8.2 Annual Leave Cash Out (Employees with ten (10) years or more of service)**

Permanent employees with over one (1) year of service in Units L and over ten (10) years of service in County employment may sell back to the County an additional 40 hours of Annual Leave; up to one hundred sixty (160) hours of their Annual Leave once in any calendar year if the following conditions are met:

1. The employee has used (taken) at least one hundred twenty (120) hours of combined annual and professional leave during the preceding calendar year provided:
2. The employee must have at least forty (40) hours of Annual Leave remaining after the “cash out” of some of their Annual Leave and,
3. No more than one request for partial “cash out” may be made in any calendar quarter.

**8.3. Election to Cash Out Annual Leave**

In order to cash out or otherwise require the County to buy back Annual Leave, the employee must first meet the eligibility criteria set forth in the applicable provision of the bargaining

agreement. If such criteria are met, only then the employee may request and be granted compensation in lieu of Annual Leave for up to the amounts set forth in the bargaining agreement under the terms set forth below. If such criteria are not met as of December 31<sup>st</sup> of the calendar year in which the election is required to be made, then the employee has no right to elect to cash out accrued time in the next calendar year.

An eligible employee must elect to pre-designate an irrevocable cash-out amount of up to the maximum number of hours of Annual Leave for the upcoming calendar year as set forth for his/her respective class. Requests for cash out must be made prior to December 1 of the calendar year before the cash out will be made (for example, requests for the 2023 calendar year will be made before December 1, 2022).

Cash out designations shall be made in hours, not dollar amounts, and must be in increments of eight (8) hours.

Any such request will be subject to the following:

Any employee utilizing this provision will be required to submit an irrevocable election by December 1<sup>st</sup> of the calendar year prior to the calendar year in which the Annual Leave hours to be cashed out are earned.

An employee who elected to receive the cash out as set forth above, may request a full or a partial payment of the cash out at any time in the designated calendar year.

For employees who have pre-designated cash out amounts and who have not requested actual payment(s) of the entire designated cash out amount by December 1<sup>st</sup> of that calendar year, the County will automatically pay out the pre-designated amount (or remaining amount designated but not paid) by the last paycheck of the calendar year.

Employees who have not elected to pre-designate a cash out by the applicable deadline (December 1<sup>st</sup> of the prior calendar year) will be deemed to have waived their right and will not be eligible to cash out any Annual Leave in the following calendar year (for example, if no designation is made by December 1, 2022, no cash out is available in 2023).

## **ARTICLE 9 LEAVE PROVISIONS**

### **9.1 Professional Leave**

Employees shall be granted ten (10) days of professional leave on January 1 of each year. Employees permanently hired or promoted into a classification in this unit shall, on the first pay period concurrent with or following their date of hire, be given a pro rata amount to the nearest full hour of professional leave based on the number of pay periods remaining in the calendar year in which they became unit employees (i.e., hired at the beginning of pay period No. 8:  $26-7=19$ ,  $19/26 \times 40=29$  hours) but in no event shall less than eight (8) hours be credited.

This leave must be taken in the calendar year in which it is granted. No carry-over of unused professional leave to future years is allowed.

### **9.2 Frozen Sick Leave Balances**

Sick leave balances shall be frozen at the amount credited to the employee as of the date that the employee becomes a member of bargaining unit L. Sick leave may be used until the sick leave balance is exhausted.

### **9.3 Bereavement Leave**

Use of accrued Annual Leave with pay may be granted per the provisions of the current Personnel Policies and Practices Resolution.

### **9.4 Verification of Sick Leave**

The County may require medical certification or other substantiating evidence of illness for any period of time for which sick leave is sought. Medical certification for an absence of a single day will be required only if a pattern of abuse or excessive use of sick leave exists which requires said certification.

### **9.5 Involuntary Leave with Pay**

An employee may be placed on Involuntary Leave with Pay and benefits upon a determination by the County Administrative Officer that circumstances exist that make the immediate removal of the employee to be in the best interests of the County and that the employee cannot be effectively used in his/her job classification within the department.

### **9.6 Standards and Training for Corrections (STC) Leave**

During each twelve (12) month period beginning January 1, employees in Unit L may, with prior approval of their Appointing Authority, take up to four (4) days (equivalent to 32 hours for a full-time employee) of STC leave.

STC leave may be taken only during the twelve (12) month period in which it was granted and it may not be carried over into any subsequent period. No payment or other compensation for unused STC leave shall be allowed.

The decision of the Appointing Authority, approving or denying requests for STC leave shall not be subject to the grievance procedure.

Employees hired on a permanent basis after the beginning of the calendar year shall be given a pro rata amount – to the full hour of STC leave based on the number of pay periods remaining in the calendar year in which the employee was hired (e.g., hired at the beginning of pay period No. 8:  $26 - 7 = 19$ ,  $19/26 \times 24 = 18$  hrs.).

## **ARTICLE 10 BENEFITS**

### **10.1 Flexible Benefit Plan**

The County will make available a Flexible Benefits Plan to eligible employees. Employees may elect medical, dental, and /or vision for themselves and their eligible dependents, or decline coverage.

The provisions, rules and regulations governing the administration of the Flexible Benefits Plan are contained in the Flexible Benefits Plan document. Changes may be required from time to time to maintain the integrity of this flexible benefits plan as a lawful IRS Section 125 plan. The County and the Union agree that the County shall have discretion to make such changes to ensure this plan is eligible for favorable treatment under the Internal Revenue Code. The County may add or remove benefit options to or from this plan during the term of this agreement, subject to the obligation of the parties to meet and confer only over the impact of such changes. Removal of a benefit shall occur only if the benefit is deemed contrary to public law or regulation governing IRS Section 125 benefit plans, is no longer available by vendor, or becomes insolvent.

The County continues to have the right and the obligation to administer the various insurance programs. These rights and obligations include but are not limited to the right to select the carriers and insurance claims administrators after consideration of the recommendations of the Health Insurance Review Committee and prior meeting and consultation with the Association. Changes in insurance carriers or administrators shall not result in any appreciable reduction in benefits. In the event a change in insurance carriers is made, an open enrollment period will be authorized for those benefits affected by the change in carriers. The County shall provide Association and employees thirty (30) day written notice for premium rate changes for the County's self-funded plans.

Should any increases to the County contribution for Management Unit (X-Unit) employees be realized during the term of this Agreement, those increases shall also be provided to employees of this bargaining unit (L-Unit).

### **A. Eligibility**

Permanent unit employees with a minimum Full Time Equivalent (FTE) of 0.50 or more will be eligible to participate in any of the County's health insurance programs.

### **10.2 Medical Insurance Contributions**

The County will provide medical insurance through the Public Employees' Retirement System (PERS) medical insurance program. All rules, regulations and procedures with respect to plan eligibility, benefits, claims payments and customer service procedures, etc. for the CalPERS plans are established by CalPERS. The County makes no representations or guarantees whatsoever with respect to the CalPERS health insurance plans.

Full time, permanent employees with a minimum FTE of 0.80 or more will receive the full County contribution as indicated below.

Part time, permanent employees with a minimum FTE of 0.50, but less than 0.80 FTE, will receive half (1/2) of the County contributions received by a full-time permanent unit employee.

Pursuant to this Agreement, the County shall provide a fixed elective contribution towards the cost of CalPERS healthplans as follows:

- \$1,160 for employee only
- \$1,782 for employee plus one
- \$2,190 for employee plus family

Any balance of elective funds remaining after the employee elects health insurance may be utilized, at the employee's discretion, toward the purchase of dependent dental, and/or dependent vision insurance which may be made available by the County through this Flexible Benefits Plan. The use of any elective contributions toward the purchase of the benefits stated above is subject to the employee first selecting employee health insurance coverage under a PERS plan offered through employment with the County of Monterey.

#### *In-Lieu Payout:*

For each month that the County elective contribution is not used by an employee to obtain benefit options under this plan, the full amount of funds not utilized shall be paid out, provided the employee has purchased at least individual only health insurance through CalPERS or any other County offered health plan.

The Association and the County agree to reopen the Insurance Section to meet and confer on employee contributions as follows:

- In 2022 if the 2023 premium rate increase for CalPERS Gold (Region 1) exceeds six percent (6%) of the 2022 CalPERS Gold (Region 1) premiums
- In 2023 if the 2024 premium rate increase for CalPERS Gold (Region 1) exceeds six percent (6%) of the 2023 CalPERS Gold (Region 1) premiums

### **10.3 Dental Insurance Contribution**

The County's maximum contribution to the Flexible Benefits Plan for dental coverage will be equal to the cost of the employee only monthly premium for all eligible permanent employees. Dependent coverage is available at employee cost.

### **10.4 Vision Insurance Contribution**

The County's maximum contribution to the Flexible Benefits Plan for vision coverage will be equal to the cost of the employee only monthly premium for all eligible permanent employees. Dependent vision coverage is available at employee cost.

### **10.5 Life Insurance**

The County agrees to provide \$50,000 in group term life insurance for unit employees in a paid status.

### **10.6 Long-Term Disability Insurance**

This unit participates in the County's long-term disability plan. In the event of cancellation, by mutual agreement, the County and the Association agree to reopen on this matter.

<b>ARTICLE 11 RETIREMENT</b>
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### **11.1 Retirement**

Due to implementation of the Public Employees' Pension Retirement Act (PEPRA) CalPERS has designated members as either "Classic" or "PEPRA." The employee designation is determined by CalPERS.

**PEPRA Safety Members:** Are defined as employees hired on or after January 1, 2013, and those who prior to that date were not members of CalPERS or a retirement system that has reciprocity with CalPERS.



Retirement Formula	2.7% @ 57
Employee Contribution	11.5% (subject to yearly change based ½ of normal cost as determined by CalPERS)
Final Compensation	Highest three-year average, subject to CalPERS compensation limits

**Classic Safety Members:** Are defined as employees hired prior to January 1, 2013 or were members of CalPERS or a retirement system that has reciprocity with CalPERS.

Retirement Formula	3% @ 50 ( <i>hired prior to 11/5/2011</i> )
Employee Contribution	9%
Employee’s Share of Employer Contributions	3%
Final Compensation	Single highest year, subject to CalPERS compensation limits

Retirement Formula	3% @ 55 ( <i>hired on or after 11/5/11</i> )
Employee Contribution	9%
Employee’s Share of Employer Contributions	3%
Final Compensation	Highest three-year average, subject to CalPERS compensation limits

Should changes be made to the current tax and retirement laws and administrative agency interpretations which alter the status of the employee's retirement contribution, the County shall upon request be required to meet and confer on the impact of these possible changes. However, the County shall not be obligated to assume any additional financial obligation in the form of back payments, interest or penalties or to make the employee whole, should such changes be made which alter the status of the employee's retirement contribution. Accordingly, the Association agrees to indemnify the County and hold it harmless from payment of any interest, penalties and/or back payments, and to cooperate in the defense of the County in the case of any litigation, including an administrative proceeding, which arises out of the implementation of this paragraph and subsection.

**11.2 Deferred Compensation**

The County’s deferred compensation program shall continue to be made available to employees in accordance with the Monterey County 457(b) Deferred Compensation Plan.

**11.3 Retirement Sick Leave Cash Out**

An employee may, upon retirement or death, cash out up to seven hundred fifty (750) hours of sick leave.

**11.4 Retiree Health Insurance**

The County will contribute toward the monthly premium for eligible retirees enrolled in a PERS health insurance program as directed by CalPERS.

<b>ARTICLE 12 TRANSFER POLICY</b>
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The County retains the sole right to transfer employees from one (1) job assignment/work location to another. Except when an immediate transfer is necessary to meet the requirements of

the department, employees shall receive notice five (5) working days prior to the effective date of the transfer.

Employees who desire to be transferred within their respective job classes to a specific job assignment/work location within their own department may submit a written request for transfer to the appropriate department representative. The request shall be retained for a period of two (2) years from date of filing and must be renewed if the employee still desires to be considered for reassignment beyond that date. Management shall respond to the request for transfer by notifying the employee of the status of their request within ninety (90) calendar days of its receipt.

When management contemplates filling vacancies and/or openings by transferring employees from one job assignment/work location to another, the Appointing Authority will consider the following criteria:

- The overall needs of the department
- Requirements of job
- Ability to perform job
- The duration and/or permanence of the transfer
- Length of service with the department

## **ARTICLE 13 DISCIPLINE**

### **13.1 Disciplinary Actions**

The Appointing Authority or his/her designee may take disciplinary action against any employee in a department who is subject to this MOU and California Government Code 3300 et al, provided that the rules and regulations prescribed herein are followed. As used in this section, disciplinary or punitive action shall mean dismissal, suspension without pay, disciplinary demotion, reduction in salary, transfer for purposes of punishment, or written reprimand.

### **13.2 Notice of Proposed Disciplinary Action**

In order to institute disciplinary action, the Appointing Authority or his/her designee shall serve written notice of the proposed disciplinary action in accordance with the following procedures:

Except when emergency or other special circumstances require immediate action, a notice of proposed disciplinary action (other than a written reprimand), shall be delivered to the employee, either personally or by the United States Postal Service, to the current address listed on the employee's most recent Personnel Action Form, no less than five (5) calendar days prior to the effective date of any punitive action against the employee.

The notice of proposed disciplinary action shall include the following:

- a. The nature of the disciplinary action;
- b. The effective date of the action;
- c. The causes for the action in ordinary, concise language with the dates and places thereof, when known;
- d. A statement that identifies the material upon which the action is based and states that it is available for inspection; and

- e. A statement advising the employee of his/her right to respond either verbally or in writing to the Appointing Authority or his/her designee imposing the disciplinary action prior to the effective date, the right to be represented in that response, and that members of the bargaining unit are represented by the Association and the address and telephone number of the Association office.

### **13.3 Employee Response to Proposed Disciplinary Action**

The employee has a right to respond either verbally or in writing to the Appointing Authority or his/her designee imposing the disciplinary action prior to the effective date of the discipline. The employee must contact the Appointing Authority within ten (10) days of the employee's receipt of the Notice of Proposed Disciplinary Action to request review.

If the employee chooses to respond verbally or in writing, the response must be submitted by the date set forth in the Notice of Proposed Disciplinary Action.

### **13.4 Notice of Disciplinary Action**

In the case of an involuntary leave without pay of three (3) working days or less or an involuntary leave with pay of twenty (20) working days or less, the involuntary leave may be imposed by a single notice containing items a, b, c, and d of the Section titled Notice of Disciplinary Action above. This notice shall be delivered to the employee on or as soon after the effective date of the suspension as possible.

To implement the proposed disciplinary action or a lesser disciplinary action based on the same cause(s), a notice of disciplinary action shall be delivered to the employee, either personally or by the United States Postal Service to the current address listed on the employee's most recent Personnel Action form, on or before the effective date of the disciplinary action.

The notice of disciplinary action shall contain:

- The information in items a, b, c and d of the Notice of Proposed Disciplinary Action section above and
- a statement as to the right of appeal and representation by a party of his/her own choice;
- a referral to the section of this agreement concerning appeals from disciplinary action; and
- a statement that members of the bargaining unit are represented by the Association with the address and the telephone number of the Association office.

### **13.5 Written Reprimand**

The Appointing Authority or his/her authorized designee may reprimand an employee by furnishing the employee with a written statement of the specific reasons for the reprimand. A copy of the reprimand shall be included in the employee's personnel file. The employee has the right to an administrative appeal and the employee and/or his/her representative shall have the right to discuss the reprimand with the Appointing Authority or his/her designee. The Appointing Authority or his/her designee may correct the reprimand, or notice of reprimand, at his/her discretion. The employee may submit a written response that shall be placed in his/her personnel file.

### **13.6 Disciplinary Review**

An employee may be placed on disciplinary review for a specified period of time not to exceed six (6) months for each such instance with the understanding that should the causes for such action not be satisfactorily corrected or remedied during the period, subsequent disciplinary action may be taken.

The six (6) month restriction shall apply only to managerial imposition of discipline and is not intended to restrict the ability of a third (3rd) party neutral to invoke a greater period of disciplinary probation.

An employee on disciplinary probation shall serve at the pleasure of his/her Appointing Authority during such period of probation.

In the case of an employee serving disciplinary probation, the forfeiture of appeal rights shall extend only to acts or omissions related to the conditions of such disciplinary probation.

### **13.7 Involuntary Leave Without Pay**

Any involuntary leave without pay invoked as a disciplinary action under this section against any employee in the County service, whether for one or more periods, shall not exceed sixty (60) calendar days in any one (1) calendar year; provided, however, that where an employee is placed on involuntary leave without pay because of criminal information or indictment filed against such employee, the period of involuntary leave may exceed sixty (60) calendar days and continue until, but not after, the expiration of thirty (30) calendar days after the dropping of charges, or the judgment or conviction or acquittal of the offense charged in the complaint, or indictment has become final. An employee placed on such involuntary leave shall forfeit all rights, privileges, and salary while on involuntary leave.

The sixty (60) day restriction shall apply only to managerial imposition of discipline and is not intended to restrict the ability of a third-party neutral to invoke a greater period of involuntary leave.

### **13.8 Involuntary Leave Pending Investigation for Disciplinary Action**

An Appointing Authority or his/her designee may place an employee under his/her control on involuntary leave from his/her position at any time for reasons of investigation for disciplinary action. Such involuntary leave may be either with or without pay subject to the limits set forth in the section Involuntary Leave Without Pay of this article.

Written notice of such involuntary leave shall be given to the employee as soon as possible but not later than seventy-two (72) hours after such action is taken. Such involuntary leave is not a disciplinary action and shall not be subject to appeal unless it, or any portion of it, subsequently becomes a disciplinary action. In the event an employee is placed on involuntary leave without pay under this section and the Appointing Authority takes no disciplinary action, he/she shall reinstate the employee to his/her position and restore all rights and privileges and back pay for the time lost during the involuntary leave.

### **13.9 Reduction in Salary**

An Appointing Authority may reduce the salary of an employee, for disciplinary reasons, provided that such reduction shall be to a step within the salary range of the classification of the position held by the employee. An employee so reduced in salary shall retain his/her anniversary date but shall not be eligible for advancement to a higher step in the salary range of his/her job classification for a period of six (6) months from the date such reduction in salary became effective.

### **13.10 Disciplinary Demotion**

An Appointing Authority may demote an employee, for disciplinary reasons, to any position with a lower salary range, provided the employee meets minimum qualifications for the lower-level position. Such demoted employee shall not be eligible for promotion for a period of six (6) calendar months.

### **13.11 Dismissal**

The continued tenure of each employee who has permanent status shall be subject to his/her satisfactory conduct and the rendering of efficient service. Should the cause for disciplinary action so warrant, an employee may be dismissed.

### **13.12 Absence Without Leave Separation**

An employee absent from duty for a period which exceeds three (3) working days without authorized leave shall be considered to have abandoned his/her position and to have automatically resigned.

Such resignation shall be rescinded by the Appointing Authority if the employee can show to the satisfaction of the Appointing Authority that it was impossible to contact the department of employment, provided the employee contacts the department within five (5) working days of notice of separation under this section through United States Mail.

### **13.13 Statute of Limitations**

Any disciplinary action for cause against a county employee shall not be valid unless the notice of disciplinary action is served within one (1) year of the date of discovery of the event, which gave rise to the cause of discipline. Matters of serious nature (e.g., fraud, embezzlement, falsification of records) shall require written notice to the employee of disciplinary action within three (3) years after the event that gave rise to the disciplinary action. Disciplinary action based on fraud, embezzlement, or the falsification of records shall be valid, if the notice of such action is served within the three (3) years after the discovery of such fraud, embezzlement, or falsification.

Nothing herein shall preclude the County from disciplining an employee for cause that consists of a course of conduct or history of performance that began more than three (3) years prior to the notice of disciplinary action. Such disciplinary and/or performance record of beyond three (3) years shall be used only to determine the disciplinary penalty to be imposed.

### **13.14 Appeals from Disciplinary Action**

- a. The disciplinary actions of written reprimand and suspension without pay for a period of three (3) days or less shall not be subject to any disciplinary appeal except as provided in "b" below.

- b. Employees (other than temporary employees, or probationary employees, or employees who serve at the pleasure of their Appointing Authority) occupying a permanent position may file a written appeal from disciplinary actions other than those set forth in a) above. Said appeal must be filed in writing within a period of ten (10) calendar days after notification of the decision to take disciplinary action.
- c. Said written appeal shall be filed with the Clerk to the Board of Supervisors and state the basis of the appeal and shall contain a specific admission or denial of the material allegations contained in the notice of disciplinary action.
- d. Within thirty (30) days after the filing of the appeal with the said Clerk, the Board of Supervisors shall appoint a hearing officer. The hearing officer shall commence a hearing on the appeal as soon as possible. The appellant and the Appointing Authority may appear personally and may be represented by counsel at the hearing. The hearing shall be public unless the appellant requests a private hearing.
- e. Before the hearing has commenced and during the course of the hearing, the hearing officer shall issue subpoenas *duces tecum* at the request of either party. Oral evidence shall be taken only on oath or affirmation. The appellant and the Appointing Authority shall each have the right to call and examine witnesses, to cross-examine opposing witnesses on any matter relevant to the issues, to impeach any witness and to rebut the evidence against him/her. Technical rules relating to evidence and witnesses do not have to apply to such hearings. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. At the hearing, the burden of proof shall be upon the County.
- f. At the conclusion of the hearing, the hearing officer shall prepare a summary record of the proceedings and prepare recommended findings, conclusions and decision. The hearing officer shall submit a copy of said record of findings, conclusions and decision to the Board of Supervisors.
- g. Within thirty (30) days after the filing of the record and recommended findings, conclusions and decision of the hearing officer with the Board of Supervisors, the Board shall adopt such recommended findings, conclusions and decision, or shall reject the recommendations of the hearing officer and adopt its own findings, conclusions and decision after a review of the record. The Board shall affirm, modify or reverse the order of the Appointing Authority causing the disciplinary action.
- h. The decision of the Board shall be final. In the event that the Board shall modify or reverse the order of the Appointing Authority imposing disciplinary action, the Board shall, at the request of an Appointing Authority who is required to file an individual official bond, require the employee to file an individual bond, said bond to be executed by said employee as principal, in an amount equal to the official bond filed by the Appointing Authority, said bond to inure to the benefit of the Appointing Authority. The premium cost of said bond shall be charged against the County.

## **ARTICLE 14 GRIEVANCE PROCEDURE**

The grievance procedure shall be administered in accordance with the Personnel Policies and Practices Resolution (PPPR).

## **ARTICLE 15 LAYOFF PROCEDURE**

### **15.1 Policy**

The County may lay off an employee because of lack of work, lack of funds, material change in duties or organization, or in the interest of economy or causes outside the County's direct control.

The County shall inform the Association regarding the effects of any planned reduction in force or layoffs that will affect a department's work force.

The department shall contact the Association and offer to discuss the possible reduction and to invite suggestions for possible cost saving alternatives to layoffs. If alternatives to layoffs are not developed by the time the department determines a layoff should occur, the procedure outlined below shall be followed.

Departments and employees covered by other layoff procedures; i.e., Local Agency Personnel Standards, State Merit System, or Anti-recession Federal Regulations, shall be governed by those procedures.

### **15.2 Procedure**

Layoffs will be determined within County departments, not the County as a whole. In the event of a reduction in force in a department, the department head shall designate the classes, positions, and number of employees to be eliminated. The department, at this time, shall provide the Association with a current seniority list for those employees and classes affected.

Layoffs shall be made among all representation unit employees in the same class series within a County department in the following order:

- a. Temporary employees.
- b. Probationary new employees (excluding promotional probationary employees.)
- c. Permanent employees.

No permanent employee within a department shall be laid off in any class if there are temporary employees in an active status in the same class within that department.

Layoff shall be by ranking sequence of employees except as otherwise provided herein.

### **15.3 Rank in Class Defined**

For purposes of layoff rank shall be defined as the length of continuous service in a class series as determined by County personnel records while occupying a permanent position within the County. Continuous service for purposes of ranking for layoff shall be defined to include work related injury leave of up to one (1) year's duration.

A class series is defined as a group of classes having common characteristics and/or promotional opportunities (e.g. as it applies to employees of the Probation Department covered by this Agreement, a class series is identified by the first two digits of the County's class code.)

#### **15.4 Order of Layoff, Exception to Ranking Sequence**

Layoffs of employees within each category of employment status within a department and within a class series shall be based on ranking sequence unless it can be demonstrated that: 1) an employee possesses special skills, training, or abilities, or 2) the employee's past job performance or disciplinary record justifies an alternative ranking, (albeit, it may not violate the Peace Officers' Procedural Bill of Rights Act) or 3) the employee may be, by virtue of ranking sequence, subject to disparate treatment.

#### **15.5 Ranking in Previous Class**

A permanent full-time employee may elect to be ranked with employees in any class in the same department with the same or lower salary in which the employee has served in permanent status in the County service. An employee must notify his/her Appointing Authority within two (2) days after receipt of written notice of layoff of election of this option except if the second day following notice of layoff is not a regularly scheduled work day, the employee may give notice on the next work day.

#### **15.6 Demotion in Lieu of Layoff**

In lieu of layoff, the department head may offer a permanent employee a demotion to any class for which the employee is qualified. Employees demoted in lieu of layoff pursuant to this paragraph shall not be eligible for the "Y" rating procedure. An employee who accepts a demotion in lieu of layoff shall have the right of restoration to his or her former class when an opening occurs and his or her ranking sequence warrants restoration subject to the provisions set forth below.

#### **15.7 Transfer**

Employees may also request a transfer in accordance with the County's Transfer Policy, as found in the County's Personnel Policies and Practices Resolution.

#### **15.8 Notice**

Written notice of layoff shall be served on the affected employees in person or mailed by the United States Postal service to the employee's latest address on file with the County. The layoff notice shall be served or mailed at least twenty-one (21) calendar days prior to the expected effective date of separation unless delay results from consideration of demotion under the provisions below. The notice shall include:

- a. The reason for the layoff.
- b. The effective date of the action.
- c. A reference to the provisions governing reemployment.
- d. Notice that employment counseling is available.

A copy of the notice shall be given to the Association.



### **15.9 Reemployment of Employees Laid Off**

The names of persons laid off under these procedures shall be maintained on a departmental recall list for the class series from which the employee was laid off for a period of one (1) year from the date of layoff. When filling using a departmental recall list to fill a position in a class from which layoffs have occurred within the one (1) year recall period, the department head shall reemploy laid off employees from the appropriate departmental recall list in inverse order of layoff. During the one (1) year recall period, no new employee shall be hired nor shall any employee be promoted to a class from which layoffs have occurred until all employees on layoff status in that class have had the opportunity to return to work.

However, when the best interest of the County requires an employee with demonstrated special qualifications, skills or training, the department head may make an exception to the above order of recall in order to appoint an employee out of ranking sequence.

Every employee given notice of layoff may request employment counseling and evaluation in order to determine those job classes within the County for which the employee meets employment eligibility requirements and desires to be considered for employment from a preferred eligible list. Such counseling and evaluation shall be available by appointment in order of request. Following the counseling and evaluation, laid off employee's name shall be placed on a preferred eligible list for each class designated as a result of the counseling and evaluation. When the Human Resources Department receives a request to refer applicants to a department for a vacant position in a class for which there exists a preferred eligible list, the laid off employee on the list shall be considered for employment prior to any job applicant. A competitive job related selection process may be used to determine the order in which laid off employees on a preferred eligible list for a class will be referred for an interview.

A laid off employee may be removed from the department recall list or a preferred eligible list for any of the following reasons:

- a. The expiration of one (1) year from the date of layoff;
- b. Reemployment within the County;
- c. Failure to accept employment or report to work;
- d. Failure to appear for a job interview after notification by telephone or by mail addressed to the employee's last address on file with the County;
- e. Failure to respond within seven (7) days to a communication regarding availability of employment; and
- f. Request in writing by the laid off employee to be removed from the list.

### **15.10 Status of Employees Reemployed from a Preferred Eligible List**

Employees who are reemployed from a preferred eligible list shall serve a new probationary period and otherwise be treated as a new employee with the following exceptions:

Former employees who are hired from a preferred eligible list shall be entitled to:

- a. Placement up to the highest step in the class into which they are hired provided that the salary upon rehire does not exceed the salary the employee was receiving at the time of layoff;

- b. Reinstatement of credit for service time (ranking) as of the date of separation from County service;
- c. Credit for all prior service for the purpose of determining vacation and sick leave accrual rates; and
- d. Restoration of any sick leave balance credited to the employee's account on the date of layoff.

**15.11 Restoration of Benefit for Recalled Employees**

Any employee who has been laid off and is hired from a departmental recall list under the terms of this article within one (1) year from the date of layoff shall be entitled to:

- a. Restoration of permanent status for employees who are rehired from a departmental recall list and class from which they were laid off, and who have completed their probationary period. For employees who have not completed their probationary period, credit for that portion which has been completed shall be given if rehired from a departmental recall list;
- b. Restoration of all sick leave credited to the employee's account on the date he/she was laid off;
- c. Credit for all prior service for the purpose of determining Annual Leave accrual rates;
- d. Placement in the same step of the salary range the employee held at the time of layoff;
- e. Reinstatement of credit for service time (ranking) as of the date of layoff.

**15.12 Insurance Coverage**

Each permanent employee who is enrolled in the County Health Plan at the time of layoff may, prior to the effective date of the layoff, elect to enroll in a health insurance conversion plan offered by our then current health plan administrative carrier. In the event the laid off employee so elects, the County will pay an amount equal to two (2) times the employee only premium at the time of layoff toward the cost of the health insurance conversion plan. The above insurance provision does not apply to employees who retire coincidental to their layoff.

**15.13 Appeal Procedure**

An employee directly affected by the operation of this policy may, within five (5) working days after a notice of layoff is received, request a meeting with a department head or the department head's designated representative to review the application of this policy as it affects the employee's status. The employee may be accompanied by a representative of the Association.

The Association, and only the Association, after making an attempt to resolve the matter informally, may within seven (7) days of the date of an alleged violation of this policy file a grievance for final consideration and determination at the department head level in accordance with the provisions of the grievance procedure in effect between the County and the Association. A grievance filed in accordance with this paragraph shall not be subject to "Arbitration," as set forth in this Agreement.

<b>ARTICLE 16 USE OF VOLUNTEERS</b>
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No volunteer program shall have the effect of displacing any county employee. The County shall meet with the Association to discuss any countywide volunteer program before implementing such a program.

## **ARTICLE 17 HEALTH AND SAFETY**

### **17.1 Work Environment**

The County recognizes its obligation and is committed to providing a safe place of employment for its employees. To assist in accomplishing this goal, it is agreed that the County reserves the right to adopt reasonable departmental rules and regulations that become effective when posted.

The Association agrees that it is the duty of all employees to comply with all reasonable rules and regulations and to be alert to all unsafe places, equipment and conditions and to report any such unsafe practices or conditions to their immediate supervisor.

### **17.2 Health and Safety Committee**

The County and the Association shall participate in a county-wide Health and Safety Committee which may meet on a bimonthly basis to review county safety records, policies and programs, and make recommendations for the resolution of health and safety issues brought before them by either the County or the Association. Each party shall furnish the other the agenda items they wish to discuss one (1) week prior to any scheduled meeting.

Sections on Work Environment and Health and Safety Committee are not subject to the grievance procedure.

## **ARTICLE 18 USE OF COUNTY MAIL SYSTEM**

The Association may use the County mail system in compliance with the Information Technology Appropriate Use Policy.

The County email system may be used for reasonable Association business as long as the communication is not political in nature nor maligns the County, its employees or officials.

## **ARTICLE 19 POLYGRAPH EXAMS**

It is agreed that the use of polygraph examinations shall be limited to pre-employment background investigations.

No bargaining unit employee shall be required to cooperate with, participate in or submit to any polygraph examinations as a condition of continuing employment except as specified above.

## **ARTICLE 20 PERSONAL PROPERTY REIMBURSEMENT**

Personal Property Reimbursement shall be granted in accordance with the provisions of the current Personnel Policies and Practices Resolution.

## **ARTICLE 21 PERSONNEL RECORDS**

The County and the Association agree that personnel records for peace officer employees shall be generated, handled and maintained in accordance with applicable statutes and/or regulations.

It is mutually recognized that all performance related materials contained within an employee's personnel file may provide material substance and support for proposed and imposed disciplinary actions. Nothing in this Agreement shall preclude the use of any material, which complies with the above paragraph, in an employee's personnel file from being used in any proceeding

involving the decision of the Appointing Authority to take disciplinary action against the employee.

#### **ARTICLE 22 PERFORMANCE EVALUATIONS**

An employee who does not agree with the overall rating that he/she receives on his/her written performance evaluation shall discuss and attempt to resolve the differences with his/her immediate supervisor.

If discussion with his/her immediate supervisor does not result in resolution of the differences, the employee may file a written request to meet with the next level of management. Said request shall state the unresolved issues and the specific changes in the written performance evaluation that the employee is seeking. The appropriate manager shall meet with the employee to discuss the unresolved issues.

If the issues are not resolved to the employee's satisfaction following discussion with the appropriate manager, the employee may within ten (10) working days file a written request for a meeting with the department head. Within ten (10) working days of receipt of a written request stating the unresolved issues and the desired changes in the written performance evaluation, the department head shall meet with the employee to discuss the issues. Within ten (10) working days of said meeting, the department head shall respond in writing to the employee. The decision of the department head shall be final and not subject to the grievance procedure.

Within thirty (30) days from the final decision, an employee has the right in accordance with the Peace Officer Bill of Administrative Rights (POBAR) to write a response to the evaluation that will be attached to the employee's evaluation in the personnel file.

#### **ARTICLE 23 SEPARABILITY**

If any section, subsection, paragraph, clause or phrase of this Agreement is, for any reason, held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Agreement, it being hereby expressly declared that this document, each section, subsection, paragraph, sentence, clause and phrase thereof, would have been adopted irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

#### **ARTICLE 24 COUNTY RIGHTS**

The County will continue to have, whether exercised or not, all the rights, powers and authority heretofore existing, including, but not limited to the following: Determine the standards of services to be offered by the constituent departments; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; issue and enforce rules and regulations; maintain the efficiency of governmental operations; determine the methods, means and personnel by which the County operations are to be conducted; determine job classifications of county employees; exercise complete control and discretion over its work and fulfill all of its legal responsibilities. All the rights, responsibilities and prerogatives that are inherent in the County by virtue of all federal, state, and local laws and regulations provisions cannot be subject to any grievance or arbitration proceeding.

The exercise of the foregoing powers, rights, authority, duties, and responsibilities by the Board of Supervisors, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement and then only to the extent such specific and express terms hereof are in conformance with the Constitution and Laws of the United States and the Constitution and Laws of the State of California.

The exercise by the County through its Board and management representatives of its rights hereunder shall not in any way, directly or indirectly, be subject to the grievance procedure set forth herein.

#### **ARTICLE 25 CONCERTED ACTIVITIES**

The parties to this Agreement recognize and acknowledge that the services performed by the County employees covered by this Agreement are essential to the public health, safety, and general welfare of the residents of the County of Monterey. The Association agrees that under no circumstances will the Association recommend, encourage, cause or permit its members to initiate, participate in, nor will any member of the bargaining unit take part in, any strike, sit-down, stay-in, sick-out, slow-down, or picketing (hereinafter collectively referred to as work-stoppage), in any office or department of the County, nor to curtail any work or restrict any production, or interfere with any operation of the County. In the event of any such work-stoppage by any member of the bargaining unit, the County shall not be required to negotiate on the merits of any dispute that may have given rise to such work-stoppage until said work-stoppage has ceased.

The County shall have the right to discipline, up to and including termination, any employee involved in concerted activities as described in paragraph one of this section. The County shall also have the right to seek full legal redress, including damages against any such employee.

#### **ARTICLE 26 EMERGENCY AUTHORITY**

Nothing contained herein shall be construed to limit the authority of the County to make changes for the purpose of preparing for or meeting an emergency. For the purposes of this article, any change in law or circumstances that significantly reduces currently existing or anticipated revenue levels, shall be included within the definition of an emergency. Such emergency actions shall not extend beyond the period of the emergency.

Whenever practicable, the County will meet and consult with the Association prior to taking action under the authority of this section. After taking action under the authority of this section, the County, upon request, will meet and confer with the Association over the practical consequences that the emergency action taken had on those terms and conditions of employment that are within the scope of representation.

#### **ARTICLE 27 FULL UNDERSTANDING, MODIFICATION, WAIVER**

It is intended that this Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any other prior or existing understanding or agreements by the parties, whether formal or informal, regarding any such matters are hereby superseded or terminated in their entirety.

Existing matters within the scope of representation which are not referenced in the Memorandum of Understanding and which are subject to the meet and confer process shall continue without change unless modified subject to the meet and confer process. The County assures the Association that unless changes are warranted by operational necessity it does not intend, nor does it anticipate, during the term of this Memorandum of Understanding any change, modification or cancellation of wages, hours, and working conditions which are subject to meet and confer and which are presently in effect or contained in this Memorandum.

Except as specifically provided, the parties may mutually agree to negotiate on any matter covered herein or on any other matter within the scope of negotiations during the term of this Agreement.

Any agreement, alteration, understanding, variation, waiver, or modification of any of the terms or provisions contained herein shall not be binding upon the parties hereto unless made and executed in writing by all parties hereto, and if required, approved and implemented by the County's Board of Supervisors.

The waiver of any breach, term or condition of this Agreement by either party shall not constitute a precedent in the future enforcement of all its terms and provisions.

For Probation Managers' Association:

For County of Monterey:

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