

**MEMORANDUM  
OF  
*UNDERSTANDING***

*Between*

*County of Monterey*

*And*

***MONTEREY COUNTY  
PROBATION ASSOCIATION  
(MCPA)  
Units M & N***

**July 1, 2016 through June 30, 2019**



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
- Monterey County Human Resources Department, 168 W. Alisal St., 3<sup>rd</sup> floor, Salinas, CA 93901
- Monterey County Job Hotline (831) 755-5126 or (831) 647-7726

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## **PREAMBLE**

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

## **ARTICLE 1 RECOGNITION**

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

The County recognizes MCPA as the sole and exclusive bargaining agent for all employees in classifications of:

- Deputy Probation Officer I/II/III
- Juvenile Institution Supervisor (JIS)
- Senior Juvenile Institution Officer (SJIO)
- Juvenile Institution Officer (JIO) I/II

### **1.2 Relationship Affirmation**

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

This Article shall not be subject to the grievance procedure.

## **ARTICLE 2 TERM**

The term of this Memorandum of Understanding is from July 1, 2016 through June 30, 2019 when said Memorandum shall expire with the terms and conditions to remain in effect until a successor agreement has been ratified.

## **ARTICLE 3 NON DISCRIMINATION**

The provisions of this Memorandum of Understanding 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 MCPA membership.

Employees may elect to exercise their right to join and participate in the activities of the MCPA 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 MCPA. The County and MCPA agree that each employee shall be treated equally, fairly and with dignity and respect.

MCPA 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.



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

## **ARTICLE 4 ASSOCIATION RIGHTS**

### **4.1 Representation**

MCPA has the right to represent employees in the representation unit as specified by state law and pursuant to the County Employer-Employee Relations Resolution. MCPA 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. MCPA President and Vice President are authorized to act as official representatives.

Official representatives shall represent MCPA 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**

MCPA official representatives (MCPA Board members) who are County employees may utilize time during normal working hours for meeting and conferring and other MCPA related business, with authorized representatives of the County subject to advanced scheduling. However, no more than two (2) MCPA representatives may assist in the investigation or processing of a grievance at a given time. Before performing grievance and disciplinary appeal work, the MCPA representative will obtain the verbal permission of his/her supervisor and shall report back to his/her supervisor when the grievance or disciplinary work is completed.

Representatives shall not receive overtime for time spent performing a function of an MCPA representative.

MCPA agrees that the issues which give rise to a proposed disciplinary action are confidential in nature and will not be discussed with others who do not have a direct need to know the details of a proposed discipline.

### **4.3 Association Access**

Authorized MCPA staff representatives shall have reasonable access to work locations for the purpose of transmitting information or representation purposes. Authorized MCPA 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.

### **4.4 Association Dues**

All employees who are, or hereafter voluntarily choose to become members of MCPA shall maintain such membership in good standing as a condition of continued employment for the duration of this Memorandum of Understanding; provided, however, that withdrawal from

membership shall be allowed during the month which precedes the month in which this Memorandum of Understanding expires. Employees may withdraw by sending written notice of withdrawal to MCPA (with a copy to the Director of Human Resources) during the withdrawal period.

#### **4.4.1 Financial Documentation**

1. MCPA shall present documentation to the County of the legally permissible costs that may be charged as a service fee to a nonmember.
2. MCPA shall, within ninety (90) days after the end of each fiscal year, make available to the County financial documentation, which shall meet the requirements of Government Code Section 3502.2.
3. The County agrees to provide MCPA the name, department, class, and payroll deduction status of all unit employees on a monthly basis.

#### **4.4.2 Hold Harmless**

MCPA agrees to indemnify and defend the County and its officers, employees and agents against all claims, proceedings and liability arising, directly or indirectly, out of any actions taken or not taken by or on behalf of the County under this article.

#### **4.5 Department Meetings**

Upon agreement regarding an agenda, MCPA and Department representatives may meet as often as mutually agreed upon to discuss issues of mutual concern. This article is not subject to the grievance procedure.

#### **4.6 Bulletin Board**

It is agreed MCPA may post bulletin boards for the purpose of communicating with their members. The Department shall approve the size and location of the bulletin boards. Such bulletin board space shall be used only for the following subjects:

- MCPA recreational, social, and related news bulletins;
- Scheduled MCPA meetings;
- Information concerning MCPA elections or the results thereof;
- Reports of official business of MCPA including reports of committees or the Board of Directors; and
- All material shall clearly state that it is prepared and authorized by MCPA.

MCPA agrees that notices posted on County bulletin boards shall not contain anything that may reasonably be construed as maligning the County or its representatives.

### **ARTICLE 5 COMPENSATION**

#### **5.1 Compensation**

##### **Fiscal Year 2016-17:**

- 2.5% across the board wage increase effective the first full pay period following Union ratification and Board of Supervisors approval of this agreement.

**Fiscal Year 2017-18:**

- 2.0% across the board base wage increase effective the first full pay period following July 1, 2017.
- Effective the first full pay period following July 1, 2017 Juvenile Institution Officer I/II, Senior Juvenile Institution Officer and Juvenile Institution Supervisor classifications shall receive a one-time base wage increase of \$0.05/hour in exchange for the elimination of the Uniform Allowance provision (Article 7.5 Uniform Allowance).

**Fiscal Year 2018-19:**

- 2.5% across the board base wage increase effective the first full pay period following July 1, 2018.

**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**

Members of Units M & N who possess a four-year (or equivalent) Bachelor of Arts or Science Degree (BA/BS) shall receive a stipend of 5% of base pay which shall be effective the first pay period following receipt of the diploma by the Appointing Authority.

As used in this Agreement, the term “Appointing Authority” shall mean the person or group of persons lawfully authorized to make appointments or to remove persons from positions in the County service.

**5.3 Deferred Compensation**

The deferred compensation program shall continue to be made available to permanent employees in the Unit.

**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.

**5.6 Overtime**

Overtime shall be defined as time actually worked in excess of eighty (80) hours in a two (2) week period for all members of Units M & N who are classified as non-exempt in accordance with the provisions of the Fair Labor Standards Act.

If in the judgment of an appointing authority, extra hours are required to be worked by an employee for the accomplishment of County business, the Appointing Authority may authorize and require the performance of said extra hours.

The Probation Department Safety employees shall work schedules under exemptions allowed by the Fair Labor Standards Act.

For the purposes of this section, paid hours associated with a County holiday (whether actually worked or not), vacation, Standards and Training for Corrections (STC) Leave and compensatory time off shall be considered as hours worked for the purpose of determining overtime.

An individual employee's work schedule shall not be altered for the purpose of eliminating overtime compensation equal to that earned as a result of the employee using approved vacation or compensatory time off hours.

An Appointing Authority requiring extra hours to be worked by an employee may, with no less than thirty (30) hours' notice to the employee require the employee to use unpaid compensatory time off equal to the extra hours worked.

**5.6.1** All County job classes shall be designated as either 1) overtime eligible, or 2) overtime exempt. Each of the above categories shall be assigned a special code that shall appear beside each class as listed in the County salary resolution.

Except as otherwise provided herein, employees in overtime eligible classes shall be compensated for overtime authorized by their Appointing Authority by either 1) compensatory time off at the rate of one and one-half (1-1/2) hours credit for each hour of overtime or, 2) in cash at the rate of one and one-half (1-1/2) times the employee's base rate of pay.

For all unit job classes that are overtime eligible:

1. The Appointing Authority shall determine the method of compensation after consulting the affected employee as long as the employee's compensatory time off accrual balance is no more than forty (40) hours.
2. If an employee has a compensatory time off accrual balance of at least forty (40) hours but no more than one hundred twenty (120) hours, the employee shall have the choice of compensation for overtime by either compensatory time off or cash.
3. An employee shall not be allowed to accumulate more than one hundred and twenty (120) hours of compensatory time off above which maximum all overtime compensation shall be paid in cash.

Credit for compensatory time off shall be reported on payroll sheets submitted to the Auditor-Controller each pay period, and a balance shall be kept on the employee's check stub. The Appointing Authority shall administer the use of compensatory time off.

## ARTICLE 6 RETIREMENT

### **6.1 Retirement Formulas**

#### **PEPRA Safety Member 2.7% @ 57**

Employee Cost: half of normal cost as determined annually by CalPERS

Final Compensation: Three Year Average

#### **Classic Safety Member (Hired Prior to 11/5/2011) 3% @ 50**

Employee Cost: 9%

Employee's Share of Employer Contribution: 3%

Final Compensation: Single Highest Year

#### **Classic Safety Member (Hired between 11/5/2011 and 12/31/2012) 3% @ 55**

Employee Cost 9%

Employee's Share of Employer Contribution 3%

Final compensation Three Year Average

CalPERS will have final determination of Classic vs. PEPRA membership.

### **6.2 CalPERS Contributions**

MCPA and the County agree to a pension cost-sharing arrangement pursuant to PERL 20516(f) under which, in addition to the nine percent (9%) currently paid by classic members of Units M & N as the employees' contribution, bargaining unit employees shall pay an amount equal to three percent (3%) towards the employer's PERS contribution for a total of twelve percent (12%) contribution.

MCPA and the County agree that the three percent (3%) contributed by classic MCPA members will be implemented on a pre-tax basis pursuant to IRS Code 414(h)(2). However, it is understood that, should it be determined that the contribution cannot be made on a pre-tax basis, or IRS issues an adverse opinion in this or another jurisdiction addressing the issue, individual members shall be liable for any taxes due. In such case, the parties agree to meet and confer on the impact of such determination, and alternative means of achieving the savings contemplated by this agreement in a manner that minimizes the tax impact on covered employees to the extent possible.

### **6.3 Survivor's Benefits Program**

Employees covered by this Agreement are also entitled to 1959 Level 4 Survivor's Benefits at \$0.93 per pay period cost to the employee, as determined by the standard policies and practices of CALPERS.

### **6.4 Retirement Sick Leave Cash Out**

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

## ARTICLE 7 SPECIAL PAY PRACTICES

### **7.1 Shift Differential**

Unit employees who are assigned to and work six (6) consecutive hours or more between 2:00 P.M. and 8:00 A.M. shall be eligible for shift differential pay at the rate of two dollars (\$2.00) per hour for actual hours worked.

An employee who is called back to work a partial shift for an employee who is regularly assigned to a shift which is eligible for shift differential pay shall be eligible for shift differential pay for hours worked between 5:00 P.M. and 8:00 A.M.

### **7.2 Standby**

An Appointing Authority may place employees on Standby duty. Standby duty refers to a situation where an off-duty employee holds him or herself available for immediate response as directed by management.

No employee shall be paid for standby duty time and other compensable duty time simultaneously.

Employees placed on Standby duty shall be paid two dollars and fifty-five cents (\$2.55) per hour while on Standby duty. Holidays shall be compensable for Standby duty.

### **7.3 Call-Back**

In those situations where an employee who is not on Standby duty or otherwise being compensated and who, following the completion of his/her work day and departure from his/her place of employment, is unexpectedly called back and must report to a work site in response to a directive from management because of unanticipated work requirements, that employee shall be compensated at the regular rate of pay for a minimum of two (2) hours. If the actual time worked is greater than two (2) hours, compensation reverts to normal reporting standards.

### **7.4 Bilingual Skill Pay**

#### **7.4.1 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.

#### **7.4.2 Bilingual Pay**

Members of Units M & N 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 Units M & N 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.

#### **7.5 Uniform Allowance- Eliminated**

This provision was eliminated as part of the 2016 contract negotiations in exchange for a one-time base wage increase of five cents (\$0.05) per hour for Juvenile Institution Officer I/II, Senior Juvenile Institution Officer and Juvenile Institution Supervisor classifications.

#### **7.6 Show Up Time**

If a permanent full-time employee reports to work for their regularly scheduled shift and is not permitted to work because of circumstances within the control of the County, that employee shall be entitled to two (2) hours of pay.

#### **7.7 Y-Rate Procedure**

"Y-rating" is a procedure whereby an employee who is reclassified to a class having a lower salary range than his/her current class may retain his/her current salary after the reclassification to the lower class. The employee's salary at the time of the Y-rate shall not increase until such time as the maximum salary of the class to which the employee was reclassified exceeds the employee's salary.

When an employee's current rate of pay falls between the step authorized for the lower paid class, he or she shall continue to receive the current rate of pay until such time as an authorized increase in pay or step increase can be granted which places the employee at a step in the range without increasing his/her salary by an amount more than that normally provided by the salary increase or step advancement.

The salary on Y-rate shall be only the rate of pay in effect for the employee's class and step on the day prior to the effective date of the Y-rate action, as shown in appendices A and B of the Salary and Benefits Resolution.

Bilingual, float and charge pay differentials shall not be added to the Y-rate.

The Human Resources Director shall have the sole authority to approve or deny a Y-rate for an employee who is reclassified to a lower class.

A permanent employee with over one (1) year of continuous service and who is not on probation in a class at the time of his/her reclassification to a lower class, who is denied the application of a Y-rate by the Human Resources Director, may appeal such denial to a joint committee consisting of a designee of the Human Resources Director, a representative chosen by MCPA and a third party chosen by the first two appointees. All other employees not Y-rated shall have no appeal. Y-rating is not subject to the grievance procedure.

#### **7.8 Salary on Reassignment of Bargaining Unit Employee**

If a bargaining unit employee voluntarily accepts reassignment to another County position of equal or lower pay for which he/she meets the minimum qualifications, and such reassignment is deemed by the County Administrative Officer to be in the best interest of the County, salary and benefit placement will be made in accordance with the County's regular Y-Rating procedures.

## **7.9 Professional Development Stipend**

Bargaining unit employees are eligible for a Professional Development Stipend of one hundred dollars (\$100) payable the first pay period of each new calendar year. Employees in unpaid leave of absence status as of the first pay period of each new calendar year shall also be entitled to this stipend in the pay period following that in which the employee return to active paid status.

# **ARTICLE 8 CLASSIFICATION PLAN MAINTENANCE**

## **8.1 Classification Study Requests**

In response to a written request from MCPA for a reclassification study on a form prescribed by the Human Resources Department, the Human Resources Department shall acknowledge receipt of said request, and if a study is justified, indicate the target date for completion of the study, within thirty (30) calendar days of receipt of said request.

If the request for a study is denied or if the results of a completed study are not satisfactory to MCPA, MCPA may file a written appeal of the denial or the results with the assigned personnel analyst. The personnel analyst must receive written appeals within ten (10) working days of receipt of the denial or results of the study.

If the denial or results of a study are not satisfactorily resolved with the analyst, MCPA may appeal in writing to the Human Resources Director indicating the specific justification for appeal. The Human Resources Director must receive written appeals within ten (10) working days of MCPA receipt of a response at the previous level. The decision of the Human Resources Director shall be final.

The Human Resources Director or his/her designee will periodically review the status of pending classification studies requests with a staff member of MCPA. This review will be scheduled to allow at least two (2) weeks between the time of review and the time of any action by the Board of Supervisors.

The provisions of this Article shall not be subject to the grievance procedure article of this Agreement.

## **8.2 Working Out of Class Pay**

In order for an employee to receive working out of class pay all of the following criteria must be met:

- 1.** The employee must be assigned to a higher classification whose salary range is at least five percent (5%) higher than the range of the employee's regular classification.
- 2.** The assignment must be to a vacant permanent position or to a permanent position whose incumbent is absent from work.
- 3.** The assignment must be for over twenty (20) consecutive working days.
- 4.** The employee must perform all of the duties of the higher classification.

For working out of class the employee shall be compensated at the step in the higher classification that provides an increase to the assigned employee of at least five percent (5%). Such compensation shall begin on the twenty-first (21st) working day after the assignment to the higher classification.



## **ARTICLE 9 PROBATIONARY PERIOD**

### **9.1 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.

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

The parties reaffirm their understanding that an employee who has been promoted from bargaining unit M to bargaining unit N 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 in bargaining unit M.

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 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 10 SHIFT PREFERENCE**

Institutional staff (JIO I / II, SJIO and JIS) will choose their days off and hours of work every six months in January and July, pursuant to seniority. Seniority, for the purposes of this Article, is defined as date of hire by the department for all JIO I /II staff and by time in classification (effective promotion date) for the SJIO and JIS classifications. The department retains the right to assign area and work locations of employees in this bargaining unit.

## ARTICLE 11 HOLIDAYS

### 11.1 Regular Holidays

The following listed days shall be observed during the term of this Memorandum as legal holidays. A holiday shall be equal to eight (8) hours for a full-time employee and prorated for part-time employees.

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
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. \* Christmas Eve shall be observed as a holiday only on those days when an employee would normally not be scheduled to be off. For example, an employee working a Monday through Friday schedule would observe Christmas Eve as a holiday when December 24th actually falls on a Monday, Tuesday, Wednesday or Thursday. All employees shall receive an equal number of holidays.

All employees, except as provided below, who work on a holiday shall be entitled to compensatory time off (CTO) on an hour-for-hour basis for up to eight (8) hours of such work on a holiday, unless the employee is paid for the holiday in cash, in which case no compensatory time off shall be granted. Overtime eligible employees who, on a holiday, work in excess of either eight (8) hours or their normal daily schedule, whichever is greater, shall be entitled to overtime compensation for the time worked in excess of eight (8) hours or their normal work day, if greater.

For clarification purposes, all employees hired into M/N after March 1, 2012, shall only accrue CTO in accordance with Article 5.6.1.

## 11.2 Floating Holiday

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.

## ARTICLE 12 VACATION

**12.1** The following vacation schedule shall apply to employees appointed to a permanent or seasonal position:

0-2 years of service	3:42 hours per pay period (12 days per year)
After 2 years of service	4:38 hours per pay period (15 days per year)
After 10 years of service	6:09 hours per pay period (20 days per year)
After 18 years of service	7:05 hours per pay period (23 days per year)
After 21 years of service	7:23 hours per pay period (24 days per year)
After 25 years of service	7:42 hours per pay period (25 days per year)

The maximum annual accrual for M unit employees shall be three hundred (300) hours. The maximum annual accrual for N unit employees shall be three hundred and forty (340) hours. Vacation shall continue to be administered in accordance with the procedures set forth in the Personnel Policies and Practices Resolution, except that vacation may be taken as earned during the first six (6) months of employment.

## 12.2 Vacation Cash Out

Unit M- Unit employees may receive a straight-time cash payment for up to forty (40) hours of vacation per calendar year. This vacation buy back shall be subject to the following requirements:

- A. Vacation can be cashed out only in increments of eight (8) hours.
- B. The employee must have taken (used) ten (10) vacation days during the previous calendar year.
- C. Employee must maintain a minimum of forty (40) hours combined vacation and sick time upon cash out.

Unit N- Unit employees may receive a straight-time cash payment for up to one hundred twenty (120) hours of vacation per calendar year. This vacation buy back shall be subject to the following requirements:

- A. Vacation can be cashed out only in increments of eight (8) hours.
- B. The employee must have taken (used) ten (10) vacation days during the previous calendar year.
- C. Employee must maintain a minimum of forty (40) hours combined vacation and sick time upon cash out.

### **12.3 Election to Cash Out Vacation**

In order to cash out or otherwise require the County to buy back vacation, annual leave or paid time off, 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 vacation/annual leave/PTO 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.

- a) An eligible employee must elect to pre-designate an irrevocable cash-out amount of up to the maximum number of hours of vacation/annual leave/PTO 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 2018 calendar year will be made before December 1, 2017).
- b) Cash out designations shall be made in hours, not dollar amounts, and must be in increments of 8 hours.

Any such request will be subject to the following:

- i. 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 vacation/annual leave/PTO hours to be cashed out are earned.
- ii. 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, but only once per calendar quarter. For requested cash out occurring in 2016, a full or partial cash out payment is not guaranteed in the month of January.
- iii. 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.
- iv. 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 vacation/annual leave/PTO in the following calendar year (for example, if no designation is made by December 1, 2016, no cash out is available in 2017).

<b>ARTICLE 13 LEAVE PROVISIONS</b>
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#### **13.1 Jury Duty**

In accordance with the provisions of Government Code Section 1230.1, deductions in the amount paid as witness or jury fees shall be made from the salary of an employee who is

subpoenaed or appears as a witness or is called to jury duty. If the employee takes vacation or other leave or has waived or remitted said fee to the County or appears on his/her off duty hours with no loss of work time, no such deduction shall be made.

Employees summoned to jury or witness duty shall only receive their regular salary and shall, unless they elect to take vacation or other leave, be excused from their regular job duty only to the extent necessary to fulfill their obligations as jurors or witnesses. Except as provided below, no time spent as a juror or witness shall count or be credited toward overtime eligibility, nor shall any other form of premium or extra compensation be paid for any time spent while serving as a witness or juror.

If an employee is subpoenaed as a witness in connection with his/her official duties as a County employee, the time actually spent serving as a witness shall be considered work time and any witness fees shall be waived or remitted to the County, or a deduction equal to said fee shall be made from the employee's regular salary. This Article shall not apply to any employee who is a party or an expert witness.

### **13.2 Supervisory Leave – Unit N Only**

During each twelve (12) month period beginning January 1, employees in Unit N may, with prior approval of their Appointing Authority, take up to three (3) days of leave with pay. This 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 Supervisory Leave shall be allowed.

The employee shall give reasonable notice for the use of such Supervisory Leave and approval shall not be unreasonably withheld.

Approval by the Appointing Authority for leave that is used for training or educational purposes shall not in any way be construed to imply that the costs of the educational or training program shall be paid for the County or that the employee shall be eligible for tuition reimbursement.

The decision of the Appointing Authority in approving or denying requests for Supervisory Leave shall not be subject to the grievance procedure.

### **13.3 Education Leave – Unit N Only**

During the twelve (12) month period beginning January 1, employees in Unit N may, with prior approval of their Appointing Authority, take one (1) day of Educational Leave for training or activities related to his/her career interests. This 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 Education Leave shall be allowed.

The employee shall give reasonable notice for the use of such educational leave and approval shall not be unreasonably withheld.

Approval by the Appointing Authority for leave that is used for training or educational purposes shall not in any way be construed to imply that the costs of the educational or training program shall be paid for the County or that the employee shall be eligible for tuition reimbursement.

The decision of the Appointing Authority in approving or denying requests for Education Leave shall not be subject to the grievance procedure.

### **13.4 Sick Leave**

#### **13.4.1 Accrual Rate**

Unit employees hired prior to February 18, 1984 shall continue to accrue sick leave at a rate of approximately twelve (12) days per year. Employees hired after February 18, 1984 shall continue to earn sick leave at the rate of approximately ten (10) days per year.

#### **13.4.2 Administration of Sick Leave**

Use of accrued sick leave with pay can be granted upon the recommendation of the Appointing Authority in the case of bona fide illness of an employee or for certain family members as permitted by County resolution, state or federal law. Illness shall not include any illness or injury for which the employee received any benefits pursuant to Section 4850 of the Labor Code.

Sick leave shall be taken in increments of not less than one-quarter (1/4) hour.

Employees shall receive the same sick leave benefits to care for a registered domestic partner as provided for employees to care for a spouse. For purposes of this policy, children of domestic partners shall be treated the same as children or stepchildren of employees.

#### **13.4.3 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.

#### **13.4.4 Family Sick Leave**

The Family Medical Leave Act (FMLA) and California Family Rights Act (CFRA) provide leave to qualified employees in the case of an employee's own serious health condition, the serious health condition of an immediate family member (as defined by the FMLA and CFRA) or for the birth or adoption of a child. FMLA/CFRA Leave may be granted in accordance with County policies and procedures and the provisions of the FMLA and CFRA.

In addition to the FMLA and CFRA, an employee's Appointing Authority may grant use of accumulated sick leave because of the illness of a family member, as defined below, provided in the judgment of the Appointing Authority, a medical condition exists which warrants the employee's personal attendance.

Pursuant to the California Kin Care Law (California Labor Code Section 233), permanent and seasonal employees shall be entitled to use up to ten (10) days of the employee's accrued sick leave days in any calendar year for the illness of an employee's child, parent, spouse, eligible domestic partner or child of a domestic partner. The Appointing Authority may require a physician's certificate or other substantiating evidence that such illness exists.

The Appointing Authority may require a physician's certificate or other substantiating evidence that such illness exists. Such absence by the employee shall be limited to ten (10) working days in any calendar year of paid leave when used for such purpose.

Family members are defined as Spouse/Registered Domestic Partner, child, sibling, parent, parent-in-law, grandparent, or grandchild.

Employees may qualify for additional leave under federal, state or county law.

#### **13.4.5 Bereavement Leave**

Use of any accumulated leave balances shall be granted by the Appointing Authority because of the death of a member of the employee's immediate family. 'Immediate family' shall mean the spouse/registered domestic partner, parents, siblings, child, grandparent, grandchild.

At the discretion of the Appointing Authority such leave may be granted for the death of other relations; such absence by the employee shall be limited to five (5) working days per occurrence.

It is the intent of the County to attempt to accommodate newly hired employees who have not accumulated leave balances and are faced with the death of an immediate family member as defined above by granting leave without pay. As a condition of granting leave for bereavement purposes, the Appointing Authority may request written verification of the loss.

#### **13.4.6 Parental Leave**

##### ***Maternity (this Article applies only to the pregnant individual)***

Normal pregnancy and/or complications arising from pregnancy shall be considered an illness and shall be included within the provisions of this Article. An employee shall be eligible for leave of absence without pay for maternity leave of up to six (6) months regardless of whether or not said employee has used all accrued sick, vacation and paid-time-off leave. Said leaves of absence shall be approved in accordance with the provisions for approval of other types of leaves of absence without pay.

Employees who elect to participate under the FMLA / CFRA during any period of absence resulting from a disability due to pregnancy are required to use accruals and exhaust all accruals before entering unpaid status during any period of disability covered by the FMLA/CFRA.

##### ***Other Parental Leave for non CFRA/FMLA eligible employees***

A unit employee may request a leave of absence without pay in addition to any vacation or sick leave taken in the event of the birth of a son or daughter or the adoption of a son or daughter less than thirteen (13) years of age. Said leave shall:

- Not be granted in addition to any maternity leave.
- Be granted to any one employee no more than one (1) time in any two (2) year period.
- Be granted to no more than one (1) employee as a result of the same birth or adoption.

Said leave shall be approved in accordance with the provisions for approval of other types of leave of absence without pay.

##### ***Other Parental Leave – Baby Bonding***

A unit employee may request a leave of absence in the event of the birth of a son or daughter or the adoption of a son or daughter in accordance with State and Federal laws pertaining to adoption. This leave, when taken concurrent with FMLA/CFRA shall:

- Be identified as Baby Bonding (under CFRA, if eligible);
- Be identified as Baby Bonding (under FMLA if eligible);

- May be granted to any one employee for up to 12 weeks of absence within 12 months of birth or placement for adoption;
- If both parents are eligible for FMLA/CFRA *and* employed by the County, the employees may not exceed a combined total of 12 weeks of absence;
- Require the use of accruals, other than sick leave;
- In the event accruals are exhausted, the employee may be approved for unpaid FMLA/CFRA.

*Other Parental Leave (FMLA/CFRA, certified, serious health condition of a child)*

A unit employee may request a leave of absence in the event of a certified, serious health condition of their child. This leave, when taken concurrent with FMLA/CFRA shall:

- Be granted to any one eligible employee for up to 12 weeks of absence within a 12-month period defined by the calendar year;
- If both parents are eligible for FMLA/CFRA *and* employed by the County, the employees may not exceed a combined total of 12 weeks of absence;
- Require the use of accruals, other than sick leave;
- In the event accruals are exhausted, the employee may be approved for unpaid FMLA/CFRA.

#### **13.4.7 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.

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

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

This 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.).

<b>ARTICLE 14 BENEFIT PROGRAMS</b>
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Permanent unit employees who are regularly scheduled to work twenty (20) hours per week will be eligible to participate in any of the County's health insurance programs.



## **14.1 Flexible Benefits Plan**

### **A. General Provisions**

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

#### *Additional Payroll Deduction*

For each month when the benefit options selected by the employee under this plan exceed the appropriate County non-elective and elective contributions for that employee, that employee shall pay by pre-or post-tax payroll deduction the full cost (100%) which exceeds the County's contributions for that employee.

#### *In-Lieu Payout*

##### **Unit M: In-Lieu Payout**

For each month that the full County non-elective and elective contributions are not used by an employee to obtain benefit options under this plan, the full amount of funds not utilized shall be forfeited.

##### **Unit N: In-Lieu Payout**

For each month that the County elective contribution is not used in full to obtain benefit options under the Flexible Benefit Plan, the full amount of funds not utilized shall be paid out, provided the employee has purchased at least employee-only health insurance through a CalPERS plan offered through the County of Monterey.

#### *Flexible Benefits Plan Administration*

A. 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.

### **B. County Non-Elective Contributions**

The County maximum non-elective contributions toward the Flexible Benefits Plan will be as indicated below.

The County shall not contribute any non-elective amounts toward the employee's purchase of any other optional benefits which may be provided by the County through the Flexible Benefits Plan.

Employees shall not have the option of using the non-elective contributions for any other purpose other than for purchasing county offered employee medical, employee dental and employee vision insurance. Non-elective contributions not used to purchase employee medical, dental, and vision insurance will be forfeited.

### CalPERS Health Insurance Contribution

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.

The County's maximum non-elective contribution to the Flexible Benefits Plan for health insurance coverage will be increased as directed by CALPERS in accordance with SB 1464. The maximum non-elective contribution will be determined annually and communicated by CalPERS according to the Consumer Price Index (CPI).

### Dental Insurance Contribution

The County's maximum non-elective 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.

### Vision Insurance Contribution

The County's maximum non-elective 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.

## **C. County Elective Contributions**

### Unit M Only:

Pursuant to this Agreement, the County elective contribution towards the cost of CalPERS Choice enrollment for a full-time, permanent employee in Unit M shall result in an employee out-of-pocket amount of: \$0.21/mo. (employee only); \$60.62/mo. (employee plus one); and \$100.27/mo. (employee plus family).

Part-time, permanent unit employees who are scheduled to work a minimum of forty (40) hours, but less than sixty-four (64) hours will receive half (1/2) of the County elective contributions received by the full-time permanent unit employee.

### Unit N Only:

Full-time, permanent employees of Unit N shall receive an additional two hundred and ten dollars (\$210.00) towards their flex credits.

The County elective contribution, when combined with the two hundred and ten dollars (\$210.00) stipend and applied towards the cost of CalPERS Choice enrollment for a full-time, permanent employee in Unit N shall result in an employee cash back amount of: \$349.79/mo. (employee only); \$149.38/mo. (employee plus one); and \$109.73/mo. (employee plus family).

Part-time, permanent unit employees who are scheduled to work a minimum of forty (40) hours, but less than sixty-four (64) hours will receive half (1/2) of the County elective contributions received by the full-time permanent unit employee and do not receive the additional two hundred and ten-dollar (\$210.00) stipend.

MCPA, Unit N, and the County agree to reopen the Insurance Benefits Article to meet and confer on employee contributions as follows:

- In 2017 if the 2018 premium rate increase for CalPERS Choice (Region: Other Northern California) exceeds six percent (6%) of the 2017 CalPERS Choice (Region: Other Northern California) premiums.
- In 2018 if the 2019 premium rate increase for CalPERS Choice (Region: Other Northern California) exceeds six percent (6%) of the 2018 CalPERS Choice (Region: Other Northern California) premiums.

#### Units M & N:

The elective amounts for Units M & N may be applied toward medical, dental and/or vision coverage for the employee and dependents. Any future increases in health insurance premiums that exceed the County's elective contribution will be paid by the employee through salary deduction.

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 health, dependent dental, or dependent vision insurance and/or any other eligible optional benefits 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 is subject to the employee first selecting employee health insurance coverage under PERS offered through employment with the County of Monterey.

#### **14.2 All Insurance**

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 Union*. 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. The County shall provide Union and employees, a thirty (30) day written notice for premium rate changes for the County's self-funded plan.

#### **14.3 Retiree Health Insurance**

Retired employees and eligible dependents, dependent upon group coverage conditions, may be eligible for group health care coverage. If a retired employee meets all eligibility requirements and requests health insurance coverage, the County will contribute toward the monthly premium for eligible retirees enrolled in a PERS health insurance program as directed by CalPERS.

#### **14.4 Life**

The County agrees to provide twenty thousand dollars (\$20,000) in group term life insurance.

#### **14.5 Health Insurance Committee**

MCPA and the County agree to commence a joint insurance committee to make appropriate recommendations regarding possible changes in insurance coverage during the term of this agreement and any changes will be subject to the meet and confer process.

#### **14.6 Conditional Re-opener**

In the event the Health Committee Human Resource Director recommends plan modification to the County Administrative Officer, and the parties (i.e., Association and the County) agree on the

modifications, the parties will reopen this Agreement to allow implementation of the agreed upon modifications.

#### **14.7 Physical Examinations**

Permanent full-time employees in Units M & N shall be entitled to a physical examination by appointment at Natividad Medical Center on a biennial basis (i.e., an examination every other year). Results of the examination shall be treated confidentially.

As required by state and federal law, the County shall provide all Unit employees immunizations that are required to be provided by an employer.

#### **14.8 Disability Leave of Absence**

##### State Disability Income Protection (SDI) Leave

When an employee is on leave of absence and he/she is receiving State Disability Income (SDI) protection plan benefits, in addition to the period of time for which County contributions to health insurance continue as a result of the employee's use of twenty (20) hours or more sick leave per pay period, he/she shall receive one (1) additional month of County paid medical insurance for the employee only for every eighty (80) hours of sick leave accrual balance he/she had as of the first day of continuous absence resulting from the condition which qualifies him/her for SDI benefits.

##### Workers Compensation

When a bargaining unit employee on approved leave of absence is receiving Workers Compensation payments he/she shall receive County paid medical, dental and vision insurances and his/her regular County flexible benefit contribution, if any.

#### **14.9 Long Term Disability Insurance**

The County will facilitate the provision of voluntary long-term insurance via the payroll deduction process.

It is understood that long-term disability insurance is wholly voluntary between the employee and the insuring company and that provision of such insurance is subject to the conditions set by the insurance company and may be cancelled by the insurer if its minimum enrollment standards are not met.

In the event of cancellation, the County will no longer facilitate long-term disability insurance.

#### **14.10 State Disability Income Protection Plan**

It is agreed that unit employees shall be covered by the State Disability Income (SDI) Protection Plan at their expense. The SDI benefit will be integrated with County sick leave benefits.

<h3><b>ARTICLE 15 TRANSFER POLICY</b></h3>
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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 16 DISCIPLINE**

### **16.1 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 seq., provided that the rules and regulations prescribed herein are followed. As used in this Article, disciplinary or punitive action shall mean dismissal, suspension without pay, disciplinary demotion, reduction in salary, transfer for purposes of punishment, or written reprimand.

### **16.2 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:

1. The nature of the disciplinary action;
2. The effective date of the action;
3. The causes for the action in ordinary, concise language with the dates and places thereof, when known;
4. A statement that identifies the material upon which the action is based and states that it is available for inspection; and
5. 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 MCPA and the address and telephone number of the MCPA office.

### **16.3 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.

### **16.4 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 1, 2, 3, and 4 of the Article 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:

1. The information in items 1, 2, 3 and 4 of Article Notice of Proposed Disciplinary Action above;
2. A statement as to the right of appeal and representation by a party of his/her own choice;
3. A referral to the section of this Agreement concerning appeals from disciplinary action; and
4. A statement that members of the bargaining unit are represented by MCPA with the address and the telephone number of the MCPA office.

### **16.5 Written Reprimand**

An Appointing Authority or his/her designee may reprimand an employee by furnishing the employee with a statement, in writing, of the specific reasons for such reprimand. A copy of notice of the reprimand shall be included in the employee's personnel file and the employee and/or his/her representative shall have the right to discuss the reprimand with the Appointing Authority or his/her designee and such rights as outlined in Article 16.14. 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.

### **16.6 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.

### **16.7 Involuntary Leave without Pay**

Any involuntary leave without pay invoked as a disciplinary action under this article 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.

### **16.8 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.

### **16.9 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.

#### **16.10 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.

#### **16.11 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.

#### **16.12 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 article through United States Mail.

#### **16.13 Statute of Limitations**

No disciplinary action shall be taken against any peace officer employee of the Department for any cause unless the notice of the proposed disciplinary action is served within one (1) year of the Department's discovery of an act, omission, or other misconduct or non-performance, by a person authorized to initiate an investigation of the allegation(s), with the exception of those circumstances set forth in government Code §3304(d) and (g), or other applicable law.

Nothing herein shall preclude the County from disciplining an employee for cause, which consists of a course of conduct or history of performance that began more than one (1) year prior to the notice of disciplinary action. Such disciplinary and/or performance record of beyond one (1) year shall be used only to determine the level of discipline to be imposed.

#### **16.14 Appeals from Disciplinary Action**

Only permanent employees who are not serving their initial probationary period shall have the right of appeal from disciplinary action. Appeals from the various disciplinary actions including dismissal, suspension without pay, disciplinary demotion, reduction in salary, transfer for purposes of punishment, or written reprimand shall be taken in accordance with the following provisions:

1. An employee who receives a transfer for the specific purpose of punishment, that does not involve a reduction in salary or loss of pay, may request an evidentiary



- hearing before the Appointing Authority, or his/her authorized designee. The decision of the Appointing Authority or his /her authorized designee shall be final and binding.
2. An employee who receives a transfer for the specific purpose of punishment that involves a loss of pay may request a full evidentiary hearing before the Appointing Authority, or his/her authorized designee, whose decision in the matter shall be final and binding.
  3. An employee who receives a written reprimand that does not involve a reduction in salary or loss of pay may request an evidentiary hearing with the next level of supervision/management above the individual issuing the written reprimand. The employee shall also retain his/her right of rebuttal. If it is in writing, the rebuttal shall be attached to the reprimand and placed in the employee's personnel file. If after the hearing, the Appointing Authority, or his/her authorized designee decides to remove the written reprimand from the employee's personnel file, the employee's rebuttal (if any) shall likewise be removed.
  4. A "full evidentiary hearing" under the provisions of 16.14.1 above, when requested by the employee, shall involve the right to be represented, the calling and cross-examination of witnesses, and the issuance of subpoenas duces tecum. The individual hearing the matter must not have been involved in the initial decision to issue the discipline. The individual who took the disciplinary action shall be present, and Department shall have the burden of proof. An "evidentiary hearing" under the provisions of 16.14.1 or 16.14.3 above, where the action taken results in neither reduction in salary nor loss of pay, when requested by the employee, shall involve the right to be represented, to produce evidence, and to present argument; but it shall not include the right to confront or cross-examine witnesses. The individual who took the disciplinary action shall be present, and Department shall have the burden of proof.
  5. A disciplinary appeal to arbitration may be filed only by an employee who is not a probationary employee and who occupies a permanent position, and only from disciplinary actions listed in 16.14 other than those set forth in 16.14.1-4 above.
  6. The appeal to arbitration must be filed in writing within a period of ten (10) calendar days after the employee is notified of the decision to take disciplinary action. The failure to file the appeal within the prescribed time limit shall constitute an irrevocable waiver of the employee's disciplinary appeal rights, and the discipline imposed shall become final and binding at the expiration of the ten-day time period. A disciplinary appeal to arbitration shall be filed with the County Administrative Officer, shall be handled confidentially, and a copy of the appeal filed shall promptly be sent to both the Appointing Authority and the County Counsel's Office.
  7. Within twenty (20) days after the appeal is filed with the County Administrative Officer, the parties shall begin the process to select a mutually acceptable arbitrator. The parties shall then select a mutually agreeable hearing date. Except as otherwise mutually agreed upon by the parties in a specific case, an arbitrator shall be selected and a hearing shall be scheduled within sixty (60) calendar days after the appeal is filed.
  8. The appellant and the Appointing Authority may appear personally and may be represented by counsel at the hearing. The hearing shall be private unless the appellant requests a public hearing.

9. Before the hearing has commenced and during the course of the hearing, the arbitrator may issue subpoenas deuces 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 Appointing Authority.
10. As soon as may be practicable after the conclusion of the hearing, the arbitrator shall prepare a summary record of the proceedings and prepare recommended findings, conclusions and a decision. The hearing officer shall submit a copy of said record of findings, conclusions and decision to the Board of Supervisors. The arbitrator's decision shall not add to, subtract from, or otherwise modify the terms and conditions of this Agreement.
11. Within thirty (30) days after the filing of the record and recommended findings, conclusions and decision of the hearing officer with the Board, 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. Upon rejection of the recommendation by the Board, the entire administrative record shall be delivered to the Board, and the Board shall have an additional ninety (90) days from the date of rejection to review the entire administrative record and adopt its own findings, conclusions and decision in the matter.
12. The decision of the Board shall be final.
13. Except as otherwise required by law, each party shall bear its/his/her own costs in the disciplinary appeal. Except that the expense of the arbitrator, the cost of a certified court reporter and the expense of a transcript of the hearing for the arbitrator shall be shared equally by the parties involved in the action being appealed. All other expenses including, but not limited to, fees for witnesses, transcripts for a party and similar or other costs incurred by a party during the disciplinary appeal shall be the responsibility of that individual party.

## **ARTICLE 17 GRIEVANCE PROCEDURE**

### **17.1 Grievance Defined**

A grievance is defined as a dispute over the interpretation or application of this Memorandum of Understanding by an employee adversely affected thereby, but shall not include the following:

Disciplinary actions as defined herein that shall be subject to appeal through the procedure contained in this Agreement for the appeal of disciplinary actions;

Complaints regarding Equal Opportunity, Occupational Health and Safety, Workers' Compensation or discrimination complaints based on age, race, color, religion, sex, national origin, marital status, ancestry, disability or sexual orientation or the applicable procedures for such complaints;

The exercise of any County rights as specified in this Agreement, so long as the exercise of such rights does not conflict with other provisions of this Agreement;

Any impasse or dispute in the meeting and conferring process, or any matter within the scope of representation;

Any matter for which a different appeals procedure is provided either by statutes, ordinances, resolutions, or agreements.

MCPA shall be entitled to file a grievance on behalf of an employee adversely affected by a grievable matter.

MCPA may file a grievance on its own behalf only on those matters which pertain to the rights of MCPA as an organization as specified in Article 5 of this Agreement.

### **17.2 Limited Grievance Procedure Application**

An employee shall be entitled to file a grievance which alleges that the County has failed to provide a specific condition of employment which is established by the Personnel Practices and Policies Resolution provided that the enjoyment of such right is not made subject to the discretion of the department head or the County, and provided further that the condition of employment which is the subject matter of the grievance is a matter within the scope of representation as defined in California Government Code Section 3504. Such limited grievances may not be appealed to arbitration.

### **17.3 No Discrimination**

There shall be no restraint, interference, coercion, discrimination or reprisal against any employee for exercising any rights under the grievance procedure.

### **17.4 Time Limits**

The time limits set forth herein are essential to the grievance procedure and shall be strictly observed. The time limits may be extended by agreement of the parties; however, any such extension must be confirmed in writing.

The grievant has the right to promptly proceed to the next step within the prescribed time limits if the appropriate management representative fails to respond within the time limits specified.

Failure of the aggrieved employee to file an appeal within the prescribed time limits for any step of the procedure shall constitute abandonment of the grievance.

### **17.5 Grievance Procedure Steps**

#### **Step 1: Discussion with Immediate Supervisor**

1. The grievant shall first discuss the grievance informally with his/her immediate supervisor. The discussion shall be held within fifteen (15) working days of the action causing the grievance or of the date the action reasonably could have been expected to be known to the grievant. In no event shall any grievance be accepted for consideration more than six (6) months from the date of the action causing the grievance, regardless of the date the action became known to the grievant.

2. Every reasonable effort shall be made to resolve the grievance at this level. The immediate supervisor shall verbally respond to the grievant within five (5) working days of the informal discussion between the grievant and supervisor.

3. An employee may request a meeting with the Office of the Chief Probation Officer before filing a written grievance

### **Step 2: Formal Written Grievance**

1. In the event the employee believes the grievance has not been satisfactorily resolved, the employee shall submit the grievance in writing to the department head within ten (10) working days after receipt of the immediate supervisor's verbal response or the response of the Office of the Chief Probation Officer. The grievant shall file one (1) copy with the Human Resources Department. Such written grievance shall:

- a) Fully describe the grievance and how the employee(s) was/were adversely affected;
- b) Set forth the section(s) of the Memorandum of Understanding, allegedly violated;
- c) Indicate the date(s) of the incident(s) grieved;
- d) Specify the remedy or solution to the grievance sought by the employee(s);
- e) Identify the grievant and be signed by the grievant;
- f) Identify the person, if any, chosen by the grievant to be his/her representative.

2. No modifications in the basic violation being alleged pursuant to this grievance procedure shall be made subsequent to filing of a grievance unless mutually agreed to by both the County and the grievant or the grievant's representative. However, corrections in citations or other clarifying amendments can be made at any time by the grievant or the grievant's representative.

3. The department head or his/her designee shall hold a meeting and discuss the grievance with the grievant within seven (7) working days of the receipt of the appeal. The department head or his/her designee shall deliver his/her written decision to the grievant and/or his/her representative within three (3) working days of the date of the grievance meeting. The department head's or his/her designee's decision shall include the reasons on which the decision is based and the remedy or correction which has been offered, if any, to the grievant.

### **Step 3: Human Resources Director/Mediation**

1. If a grievance is not settled at Step 2 of the procedure, the grievance may be appealed, in writing to the Human Resources Director or his/her designee within ten (10) working days from the receipt of the department head's or his/her designee's written decision. Said grievance appeal must specifically set forth the reason the answer(s) previously provided by management is/are not satisfactory. A meeting may be held by mutual agreement of the parties.

2. The Human Resources Director or his/her designee shall hold a meeting with the grievant within seven (7) working days of the receipt of the appeal. The Human Resources Director or his/her designee shall deliver his/her written decision within ten (10) working days of the date of the meeting.

3. In the event a represented employee chooses to waive a hearing by the Human Resources Director or his/her designee, MCPA on behalf of the employee may, within the ten (10) day appeal period, make a written request to the Human Resources Director or his/her designee to seek within ten (10) working days the assistance of a mediator from the State Conciliation Service in an attempt to resolve the grievance.

The mediator shall have no authority to resolve the grievance except by mutual agreement of MCPA and the County. In the event the grievance is not resolved, neither evidence nor concessions agreed to or offered during mediation shall be admissible at the subsequent hearing. If the grievance is not resolved through mediation, the Human Resources Director or his/her designee shall issue a written decision.

#### **Step 4: Arbitration**

1. If a grievance is not settled at Step 3 of the procedure, MCPA and only MCPA may appeal the grievance in writing to the County Administrative Officer within ten (10) working days from the receipt of Human Resources Director or his/her designee's written decision.

2. The parties shall select a mutually acceptable arbitrator through the services of the State of California, Office of Mediation and Conciliation. Either the County or MCPA may request a list of arbitrators. Each party shall have the right to alternately strike an arbitrator's name from the list until the name of an arbitrator has been agreed upon, or no name has been mutually agreed upon. In the case that no arbitrator from the list has been mutually selected, another list shall be requested from State Mediation. The process of requesting a list and alternately striking names shall continue until both the County and MCPA has mutually agreed upon an arbitrator. The fees and expenses of the arbitrator; the transcript for the arbitrator; and the court reporter shall be shared equally by the parties, it being understood and agreed that all other expenses including, but not limited to, fees for witnesses, transcripts and similar costs incurred by the parties during such arbitration, will be the responsibility of the individual party involved.

3. The decision of an arbitrator shall be final and binding upon the parties but shall not add to, subtract from, nor otherwise modify the terms and conditions of this Agreement.

The parties expressly agree that the term of this section shall expire as of the expiration date of this contract and that the status quo shall revert to a situation where there is no arbitration of grievances that occur after the expiration date of this agreement until or unless the Board of Supervisors approves a successor agreement.

#### **17.6 Notice of Meetings**

The County and the grievant or the grievant's representative shall be responsible for giving notice of meetings and conferences to their representative parties at least twenty-four (24) hours prior to any meeting regarding a grievance whenever possible.

#### **17.7 Representation**

1. The employee has the right to the assistance of one (1) employee representative/job Association representative in addition to a staff representative of MCPA in the preparation and/or presentation of his/her grievance in Steps 1 through 4 of this procedure provided, however, that supervisory employees shall not represent non-supervisory employees.

2. An employee is also entitled to represent him/herself individually at any step of the grievance procedure, except in the arbitration procedure outlined in this Agreement. Only MCPA may file for arbitration of a grievance.

3. A grievant may not change his/her designation of representative organization during the processing of a grievance, except by mutual agreement of the parties.

4. If the employee is represented in a formal grievance meeting, the department may also designate a management representative to be present in such a meeting.

### **17.8 Grievance Withdrawal**

The grievant and his/her representative may withdraw the grievance at any stage of the grievance procedure by giving written notice to the County representative who last took action on the grievance, with a copy to the Human Resources Department.

### **17.9 Grievance Resolution**

If a grievance is resolved at Step 2 or 3 in the procedure as provided herein, the grievant concerned shall indicate acceptance of the resolution by affixing his/her signature in the appropriate space on the grievance form or appropriate document. If the employee has been represented by MCPA at the Step of the procedure at which a resolution is reached, MCPA representative shall also sign the appropriate document acknowledging that the employee has accepted the resolution.

Decisions on grievances where an employee represents him/herself shall not be considered precedent setting or binding with regard to any future grievances filed with respect to the same or similar matters.

### **17.10 Consolidation**

The County may consolidate grievances, where, in its discretion, the grievances present substantially similar issues.

MCPA may file group grievances at the second step of the grievance procedure by listing each person who claims to be adversely affected and all other data required in this article.

### **17.11 Processing Grievances**

The grievant shall be granted reasonable time off with pay from regularly scheduled duty hours to process a grievance, provided that the time off will be devoted to the prompt and efficient investigation and handling of grievances, subject to the following:

1. Neither a grievant nor a grievant's representative who is a county employee shall suffer any lost pay for attending any regularly scheduled grievance hearing required by the procedure herein set forth.
2. A grievant or a grievant's representative shall notify their supervisor as soon as possible of scheduled grievance hearings and of any changes in the time or date of scheduled hearings in which they must participate.
3. In no event shall a grievant be represented by more than one (1) county employee at the grievance hearings.

## **ARTICLE 18 LAYOFF PROCEDURE**

### **18.1 Policy**

The County may layoff 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 MCPA regarding the effects of any planned reduction in force or layoffs that will affect a department's work force.

The department shall contact MCPA 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 in Section 18.2 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.

## **18.2 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 MCPA 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:

1. Temporary employees
2. Probationary new employees (excluding promotional probationary employees)
3. Seasonal employees
4. 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.

### **18.2.1 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.

### **18.2.2 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, or 3) the employee may be, by virtue of ranking sequence subject to disparate treatment.

### **18.2.3 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.

#### **18.2.4 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 of Section 18.4 below.

#### **18.3 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 of Section 18.2.4. The notice shall include:

1. The reason for the layoff.
2. The effective date of the action.
3. A reference to the provisions governing reemployment.
4. Notice that employment counseling is available.

A copy of the notice shall be given to MCPA.

#### **18.4 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:

1. The expiration of one (1) year from the date of layoff,
2. Reemployment within the County,
3. Failure to accept employment or report to work,
4. 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,
5. Failure to respond within seven (7) days to a communication regarding availability of employment,
6. Request in writing by the laid off employee to be removed from the list.

### **18.5 Status of Employees Re-employed From a Preferred Eligible List**

Employees who are re-employed 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:

1. Placement at up to step 5 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,
2. Reinstatement of credit for service time (ranking) as of the date of separation from County service,
3. Credit for all prior service for the purpose of determining vacation and sick leave accrual rates, and
4. Restoration of any sick leave balance credited to the employee's account on the date of layoff.

### **18.6 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:

1. 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.
2. Restoration of all sick leaves credited to the employee's account on the date he/she was laid off.
3. Credit for all prior service for the purpose of determining vacation accrual rates.
4. Placement in the same step of the salary range the employee held at the time of layoff.
5. Reinstatement of credit for service time (ranking) as of the date of layoff.

### **18.7 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.

### **18.8 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. A representative of MCPA may accompany the employee.

MCPA, and only MCPA 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 MCPA. A grievance filed in accordance with this paragraph shall not be subject to the Article on "Arbitration," of this Agreement.

## **ARTICLE 19 USE OF VOLUNTEERS**

No volunteer program shall have the effect of displacing any county employee. The County shall meet with MCPA to discuss any countywide volunteer program before implementing such a program.

## **ARTICLE 20 HEALTH AND SAFETY**

### **20.1 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.

MCPA 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.

### **20.2 Health and Safety Committee**

The County and MCPA 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 MCPA. 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 21 COUNTY MAIL SYSTEMS**

MCPA may use the County mail system in compliance with the Policy for Acceptable Use of Monterey County Computing and Information Resources.

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

## **ARTICLE 22 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 23 PERSONAL PROPERTY REIMBURSEMENTS**

### **23.1 General Provisions**

Whenever an employee engaged in assigned official duties on behalf of the County sustains a loss of personal property, through no fault of the employee, that employee shall be eligible for reimbursement for such personal property.

The employee shall at all times bear the burden of proving the extent of any loss and the absence of any contributing negligence on the employee's part.

### **23.2 Claims for Reimbursement**

A request for reimbursement must be submitted by claim to the Appointing Authority no later than thirty (30) days from the date of loss. Management shall review the claim and if circumstances warrant, reimbursement shall be made.

### **23.3 Exclusion from Reimbursement**

- Claims based on cash losses or losses due to lost or stolen credit cards shall not be considered.
- Claims based upon damage to automobiles may be considered under the provisions of this section:
- The provisions of paragraphs 24.1 and 24.2 of this section must be satisfied.
- The employee shall have named the County as an additional insured on their automobile insurance policy as of the date the employee sustained the loss to his/her automobile.
- Reimbursement will be limited to two hundred dollars (\$200) and will be made only upon the presentation of an invoice for work completed along with evidence of the required insurance coverage.
- The damage must have occurred while the employee was actually using the automobile on authorized County business, away from the employee's regularly assigned work place.
- No reimbursement shall be granted for losses covered by some other source, insurance policy or agency.

#### **23.4 Maximum Reimbursement**

A maximum limit of two hundred dollars (\$200) per incident shall apply to all claims for reimbursement.

#### **23.5 Minimum Claim**

No claims for reimbursement for items having a present value of less than ten dollars (\$10) shall be considered.

#### **23.6 Uniform Exclusion**

No claims for reimbursement shall be paid for damage to uniforms.

### **ARTICLE 24 PERSONNEL RECORDS**

The County and MCPA 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 25 REST PERIODS**

Employees are entitled to a fifteen (15) minute duty free rest period during each four (4) hours of continuous work.

A rest period shall count as fifteen (15) minutes of time worked for calculation of pay.

Rest periods may be suspended when unusual emergency conditions require continuous performance of duties in order to protect or preserve life or property.

Rest periods may be suspended for up to five (5) continuous days when short term staffing shortages require continuous work in order to provide essential services; additional suspension of rest periods within thirty (30) days due to staffing shortages requires approval by the Human Resources Director or his/her designee.

### **ARTICLE 26 PROFESSIONAL MEMBERSHIPS**

Eliminated Professional memberships provision in exchange for the addition of a Professional Development Stipend of one hundred dollars (\$100) payable the first pay period of each new calendar year.

### **ARTICLE 27 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, which 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 28 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 29 MANAGEMENT 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 30 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. Association agrees that under no circumstances will MCPA 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.

In the event of any work-stoppage, during the term of this Agreement, whether by MCPA or by any member of the bargaining unit, MCPA by its officers, shall immediately declare in writing and publicize that such work-stoppage is illegal and unauthorized and further direct its members in writing to cease the said conduct and resume work. Copies of such written notice shall be served upon the County. In the event of any work stoppage MCPA promptly and in good faith performs the obligations of this paragraph, and providing MCPA had not otherwise authorized such work-stoppage, MCPA shall not be liable for any damages caused by the violation of this provision.

The County shall have the right to discipline, to include discharge, any employee who instigates, participates in, or gives leadership to, any work-stoppage activity herein prohibited, and the County shall also have the right to seek full legal redress, including damages, as against any such employee.

### **ARTICLE 31 EMERGENCY AUTHORITIES**

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 MCPA 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 MCPA 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 32 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 MCPA 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 herein, it is agreed and understood that each party hereto voluntarily and unqualifiedly waives its right, and agrees that the other shall not be required, although they may mutually agree otherwise, to negotiate with respect to any subject or matter covered herein or with respect to 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 Association:

For County of Monterey:

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