

MEMORANDUM OF UNDERSTANDING

BETWEEN

COUNTY OF SACRAMENTO

AND

SACRAMENTO COUNTY ATTORNEYS' ASSOCIATION

COVERING ALL EMPLOYEES IN THE

SUPERVISORY AND NON-SUPERVISORY ATTORNEYS UNITS

2018 - 2021

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PURPOSE

This Memorandum of Understanding contains the terms negotiated between the County of Sacramento and the Sacramento County Attorneys Association in respect to salaries, hours, and other terms and conditions of employment for employees in the Non-Supervisory Attorneys and the Supervisory Attorneys Units, and has as its purpose the promotion of harmonious labor relations between the County and the Association.

JOINT LABOR-MANAGEMENT COMMITTEE

In order to encourage open communication, promote harmonious labor relations, and resolve matters of mutual concern, the parties agree to create a joint labor-management committee. The committee will be governed by the following principles:

- a. The committee will meet every other month or more often if mutually agreed to by the parties.
- b. The agenda for each meeting will be decided five (5) working days in advance of the meeting, unless otherwise mutually agreed to by the parties.
- c. The County will release a reasonable number of officially designated Association stewards or representatives for attendance as needed at the meetings. The number of stewards in attendance will be mutually agreed upon before each meeting.
- d. This section is not grievable within the meaning of the grievance procedure as defined in Article VIII of this Memorandum.

ARTICLE I ASSOCIATION RIGHTS

1.1 ASSOCIATION SECURITY

a. It is the intent of this section to provide for payroll deductions of Association members to be deducted from their warrants insofar as permitted by law, and not to exceed \$99.99 each pay period including dues. The County agrees to deduct and transmit to the Association all authorized deductions from all Association members within the foregoing units who have signed an approved authorization card or cards for such deductions in a form agreed upon by the County and the Association.

- b. (1) The written authorization for Association dues deductions shall remain in full force and effect, during the life of this Memorandum between the County and the Association, unless canceled in writing.

- (2) The written authorization for approved insurance and benefit programs and the amount of dues deducted from the Association members' warrants shall be changed by the County upon written request of the Association.
- (3) The Association agrees to indemnify, defend and hold the County harmless against any claims made of any nature and against any suit instituted against the County arising from its check-off for the dues, insurance or benefit programs of the Association.

c. "Approved insurance and benefit programs" are those which the County has approved as being non-competitive or non-duplicative of County-offered programs. The County reserves the right to disapprove any insurance program, in advance, if competitive or duplicative; and, to cancel all Association insurance and benefit program payroll deductions where they are established without prior County approval. It is understood that life insurance, except for accidental death and dismemberment, is competitive and duplicative of County-offered programs.

d. Solicitation and/or servicing of Association insurance and benefit programs shall not interrupt on-duty employees nor be conducted in County facilities without prior approval of the County.

1.2 ASSOCIATION NOTICES AND MEETINGS

a. The Association may use County conference rooms and similar building facilities for meetings with employees in the unit it represents; may post material on bulletin boards provided to serve employees in the unit it represents; and may visit work locations to confer with its members regarding grievances or other business within the scope of representation or otherwise provided for within this Memorandum.

b. Use of County meeting facilities requires reasonable advance notice to the appropriate County official and is subject to County use of such facilities; provided, however, that once scheduled, such Association meetings may not be canceled by the County except under emergency situations. The County may establish reasonable regulations governing the use of County facilities as provided by this section.

c. The Association shall be entitled to reasonable use of bulletin boards at all offices and work locations where they are established or where they may be reasonably necessary.

d. Duly authorized representatives of the Association shall be permitted, at all times that employees in the unit it represents are working, to enter offices to transact business within the scope of representation and to observe conditions under which employees are employed and carry out their responsibilities; provided, however, that the Association representative shall, upon arrival at the facility, notify the person in charge of

the areas he/she wishes to visit. Access shall not be unreasonably denied. If denied, the reason or reasons for denial must be stated.

1.3 AGENCY SHOP ELECTION

An agency shop shall be implemented in the Supervisory and Non-Supervisory Attorneys Units only after certification of separate secret ballot elections for each unit, conducted by the California State Mediation and Conciliation Service, in which a simple majority of those voting vote to implement an agency shop in each unit. Such elections shall be held as soon as is administratively feasible.

- a. An election to implement the provision of this section shall not prohibit or restrict an election to rescind this provision as provided by Section 3502.5 of the Government Code.
- b. The Association and the County mutually agree that the election provided for in Subsection b. of Section 3502.5 of the Government Code:
 - (1) Shall be determined by a simple majority of those voting; and
 - (2) Shall be conducted following election security procedures that apply to the conduct of employee representation elections that are subject to Chapter 2.79 of the Sacramento County Code.
- c. All employees in classifications included in the Supervisory and Non-Supervisory Attorneys Units, on a date thirty (30) days prior to the holding of the elections, shall be eligible to vote in such elections.

1.4 AGENCY SHOP CONDITION OF EMPLOYMENT

Subject to Section 1.3, each regular and limited-term employee in the representation unit shall, as a condition of continued employment, beginning with the second full pay period after notice is given to employees in accordance with Section 1.8 and until the termination of the Agreement, either:

- a. Become a member of the Association; or
- b. Pay to the Association a fair share fee for services rendered by the Association in an amount equal to the monthly periodic dues of the regular membership, less costs which are not related to the administration of this Agreement and the representation of employees, but in no event to exceed 90% of the regular membership dues, provided, however, that each employee will have available to him/her membership in the Association on the same terms and conditions as are available to every other member of the Association; or

- c. (1) Execute a written declaration that the employee is a member of a bona fide religion, body, or sect which holds a conscientious objection to joining or financially supporting any public employee organization as a condition of employment; and
- (2) Pay a sum equal to the agency fee described in Subsection 1.4-b. to a non-religious, non-labor charitable fund chosen by the employee from those charities listed within United Way or CHAD. The employee shall furnish written proof to the County and the Association that this contribution has been made.
- d. Any solicitations or representations made to an employee for the purposes of the Association membership or payment of fair share fees shall clearly state that such membership or requirements for fair share fee relate solely to the Association and to no other organization.

1.5 SEPARATION FROM UNIT EXCEPTION

The condition of employment specified above shall not apply during periods of separation from the representation unit by any such employee but shall reapply to such employee commencing with the third full pay period following the return of the employee to the representation unit. The term separation includes transfer out of the unit, layoff, and leaves of absence with a duration of more than two (2) full pay periods. The condition of employment specified above shall not apply to a newly-hired employee until the beginning of the third full pay period of employment.

1.6 FAIR SHARE SERVICE FEE DETERMINATION AND DISCLOSURE

Only the costs of the following activities shall be considered by the Association when making a determination of the amount of the fair share service fee of non-members:

- a. Expenditures for labor contract negotiations on behalf of employees in the unit (for example, the fees and expenses of the Association representative and staff support, including research of and preparation for a negotiating position).
- b. Expenditures for contract administration (for example, meetings and discussions with management concerning grievances under the contract, meetings with employees as part of grievance resolution, and costs of representatives for arbitration, shorthand reporters, or attorneys in enforcing the Agreement and staff support including research and preparation).
- c. Other expenditures allowable under the law.

1.7 EXPENDITURES NOT INCLUDEABLE IN DETERMINATION OF THE FAIR SHARE FEE

a. Under no circumstances shall expenditures for the following purposes and activities be included in any way in the calculation or determination of the fair share fee:

- (1) Lobbying or other political activity, including support for individual candidates or political parties.
- (2) Organizing and recruiting activities outside of the Supervisory and Non-Supervisory Attorneys Unit.
- (3) Payments to affiliates, except for payments for activities under Section 1.6 above.
- (4) Social activities.
- (5) Charitable and philanthropic activities.
- (6) Insurance and other benefit programs.
- (7) Any strike or concerted activity fund.

b. Costs other than those described in Section 1.6 above shall not be considered when making a determination of the fair share service fee of non-members.

1.8 FAIR SHARE FEE EXPLANATION AND NOTICE OF RIGHT TO CHALLENGE

Within sixty (60) calendar days after the end of its fiscal year, the Association shall mail to the County and to each employee within the bargaining unit a "Fair Share Fee Explanation and Notice of Right to Challenge." Such notice shall also be given to each new employee hired into the unit prior to the solicitation or collection of any membership dues or fair share fees. Such notice shall include:

- a. An accounting prepared and signed by an auditor, who is a certified public accountant for the overall purpose of providing an itemization of the expenditures of the Association in detail necessary for an employee to be able to reasonably determine what portion of regular membership dues would be allocable to the cost of negotiation and contract administration as defined in Section 1.6 above.

- (1) The accounting will utilize data from the prior fiscal year and shall include the following information:
 - (a) A breakdown of the Association's actual revenue by source.
 - (b) A breakdown of each major category within the Association's budget and indicating the actual expenditures within each category including the portion of each category allocable to the costs of negotiation and contract administration as defined in Section 1.6.
 - (c) Where the Association expenditures are for employee compensation, the auditor shall determine what portion of the employee's salary is clearly allocated to the actual negotiation and contract administration as defined in Section 1.6.
 - (d) The auditor shall prepare a statement itemizing which of the Association expenditures are clearly allocated to negotiation and contract administration as defined in Section 1.6 and which expenditures are not so allocated.
 - (e) The auditor shall then calculate the proportion of dues which are clearly allocable to negotiation and contract administration as defined in Section 1.6, expressed as a percentage of regular membership dues.
 - (2) To enable the auditor to prepare the accounting, the Association shall provide the auditor access to all records reasonably necessary for such preparation including a record of the employee's activities in sufficient detail to enable the auditor to make the necessary determination in Subsection a. above. In the event that payments are made to any other organization, the auditor shall be provided access to such organizations' records when reasonably necessary to prepare the above accounting.
- b. The amount of the fair share service fee: Such fee shall not exceed the proportion of dues calculated in Subsection 1.8-a.(1)(e) above.
 - c. Instructions on filing a challenge to the amount of the fair share service fee with the Association:
 - (1) Non-members who wish to challenge collection of the fair share fee because the amount identified contains expenditures for activities not within the definition of Section 1.6, or because the procedures set forth herein have not been complied with, must file "Fair Share Fee Challenge Petition" with the Association and with copy to the County.

- (2) The petition shall be signed by the challenger or the challenger's agent under penalty of perjury and must state with specificity the particular expenditures or procedures being challenged. The petition must include the name, address, and social security number of the challenger. Such petition must be submitted no later than thirty (30) days after the postmark of the Fair Share Fee Explanation and Notice of Right to Challenge for such petition to be valid.
- (3) During the pendency of the challenge, the amount of the fair share fee reasonably in dispute shall be placed in an escrow account established by the Association.
- (4) The dispute described in the challenge petition shall be heard by the Association within thirty (30) calendar days after the closing of the challenge period referenced in this section. If the written response of the Association is not satisfactory to the employee, such employee shall have the right to refer the matter to binding arbitration in accordance with procedures established by the Association.
- (5) The arbitrator shall be selected in accordance with the procedures of the American Arbitration Association.
- (6) The costs of the arbitration shall be borne by the Association.
- (7) At the Association's sole discretion, the hearing of all appropriately submitted and valid challenge petitions may be consolidated into one (1) arbitration.

1.9 FAILURE TO PROVIDE FAIR SHARE FEE EXPLANATION AND NOTICE OF RIGHT TO CHALLENGE

Should the Association fail to provide the information needed for the annual accounting required by Subsection 1.8-a.(2), or fail to provide to each employee and to the County the required annual Fair Share Fee Explanation and Notice of Right to Challenge set forth above within the required sixty (60) days after the end of its fiscal year, the County shall have the right to give the Association two (2) pay periods' notice to provide the required notice. If the Association fails to provide the required notice by the expiration of the two (2) pay periods, then the County shall make no further payroll deductions of any kind on behalf of the Association (dues, fair share fees, insurance, et cetera) until such time as the Association provides the required notice.

1.10 LABOR ORGANIZATION ANNUAL REPORT

Annually, the Association shall file with the Director of Labor Relations a fully completed copy of the U.S. Department of Labor LM-2 (Labor Organization Annual Report) which shall serve as the required financial disclosure pursuant to Government Code Section 3502.5 (d). If the Association has paid or distributed all or a portion of the dues or fees collected to any other organization for the purpose of providing direct and ongoing representation to employees in the unit, the Association shall also be required to submit fully completed LM-2 forms from those employee organizations at the same time the Association submits its completed LM-2. All LM-2's submitted pursuant to this section shall be signed by a certified public accountant and shall be made available to employees in the unit.

1.11 FAILURE TO FILE LABOR ORGANIZATION ANNUAL REPORTS

The Association shall submit the required LM-2('s) no later than sixty (60) calendar days after the end of its fiscal year. If the Association fails to provide the County with the required LM-2('s), then the County shall have the right to give the Association two (2) pay periods' notice to provide the required LM-2('s). If the Association fails to provide the required LM-2('s) at the expiration of the two (2) pay periods, then the County shall make no further payroll deductions of any kind on behalf of the Association (dues, fair share fees, insurance, et cetera) until such time as the Association provides the required LM-2('s).

1.12 JUST CAUSE FOR TERMINATION

The parties agree that any failure of an obligated employee to pay a fair share service fee shall constitute reasonable and just cause for discharge.

1.13 PROCEDURE FOR FAIR SHARE TERMINATION

The procedure in cases of discharge for violation of the obligation to pay a fair share service fee shall be as follows:

- a. The Association shall notify the employee (a copy to the appointing authority) of non-compliance by certified mail, return receipt requested. Said notice shall detail the non-compliance by explaining that the employee is delinquent in not tendering a fair share service fee, specifying the amount of the delinquency, and warning the employee that unless such fees are tendered within thirty (30) calendar days, the Association will request that the employee be terminated as provided in this section.
- b. If the employee fails to comply, the Association shall file with the appointing authority, in writing, proof of compliance with Subsection a., the specific charges, and a demand that the employee be terminated. The charges shall include:

- (1) A statement that it is proposed that the employee be discharged from employment;
 - (2) A statement of the cause of the proposed discharge of the employee;
 - (3) A statement in ordinary and concise language of all specified facts or omissions upon which the cause is based;
 - (4) A copy of the Association documents relevant to the proposed action or a statement advising the employee and his/her appointing authority of the time and place where they may have access to such documents.
- c. In the case of a regular employee, the appointing authority shall serve a copy of the written charges upon the employee either personally or by certified mail, return receipt requested. The appointing authority shall give written notice to the Association and the employee of the scheduled date of a hearing by the appointing authority.
- d. The parties to the hearing shall be the Association and the employee.
- e. The appointing authority shall determine whether the Association has established cause to terminate the employee because of the violation of this section. If the appointing authority determines that there is cause for termination of the employee, the appointing authority shall terminate said employees within ten (10) days after making such determination. A permanent employee may appeal the order of termination through the discipline arbitration procedure (Article XIII of this Agreement).
- f. The Association shall bear all costs of terminating the employee, including all costs of the County in defending any appeal of an employee from the County's termination of such employee for failure to pay a fair share service fee. Such reimbursed costs shall not include payment of the attorney selected by the County to prosecute and defend the termination action.
- g. This provision shall be controlling for this section only. The hearing cost provisions in Section 13.17 of this Agreement are exclusive to their respective articles.

ARTICLE II SALARIES

2.1 SALARIES

a. Fiscal Year 2018-19: Effective the first pay period after Association ratification and Board of Supervisors approval of this MOU.

1. Salaries shall be increased by 3%.
2. Salaries shall be increased by 1%

b. Fiscal Year 2019-20: Effective the first pay period of July 2019:

1. Salaries shall be increased based on the average percent of year to year change in the Consumer Price Index (CPI) U.S. City Average, Urban Wage Earners and Clerical Workers) reported for each of the twelve (12) months ending with the month of March 2019, rounded to the nearest one-tenth of one percent (1/10%), provided, however, such increase shall not be less than two percent (2%) no more than four percent (4%); and

2. Salaries shall be increased by 1%

c. Fiscal Year 2020-21: Effective the first pay period of July 2020:

1. Salaries shall be increased based on the average percent of year to year change in the Consumer Price Index (CPI) U.S. City Average, Urban Wage Earners and Clerical Workers) reported for each of the twelve (12) months ending with the month of March 2020, rounded to the nearest one-tenth of one percent (1/10%), provided, however, such increase shall not be less than two percent (2%) no more than four percent (4%); and

2. Employees shall receive a market adjustment of 2.5%.

2.2 EQUITY ADJUSTMENTS

There will be no equity adjustments.

2.3 MANAGEMENT BENEFIT MAINTENANCE

During the term of this Memorandum, any benefits specifically referred to in the provisions of this memorandum shall not be reduced. In addition, the following management benefits shall not be reduced:

- a. Vacation Cash-in: Attorneys can "cash-in" up to forty (40) hours/year

vacation after ten (10) years of service and 240 hours accrued vacation.

- b. Sick Leave Payoff: Upon retirement, attorneys may cash-in one-half (50%) accrued sick leave. The remaining balance of sick leave is credited as service towards retirement. In the event of an active employee's death prior to retirement from the County, the beneficiary will be paid the monetary value of all accrued sick leave at the time of death.
- c. Management Benefit Differential: 3.35% of salary.
- d. 401 (a) Deferred Compensation: The County will provide a 401 (a) plan 1% match.
- e. Bi-lingual/Bi-cultural Pay: The County will provide Bilingual/cultural pay with appointing authority approval.

2.4 PAY DIFFERENTIAL - ACTING SUPERVISOR

- (a) When an Attorney is formally assigned in writing by the appointing authority to a supervisory position, as designated in the County Salary Resolution, for relief necessitated by the supervisory position incumbent's absence from duty or pending the filling of a vacant supervisory position, the Attorney so assigned shall receive a five percent (5%) pay differential beginning with the fifth day of such assignment.
- (b) The five percent (5%) differential shall cease (1) when the absent supervisor returns to duty, (2) when the vacant supervisory position is filled, or (3) when the assignment is terminated by the appointing authority, whichever occurs first. No compensation shall be paid unless the supervisory position has at least two (2) subordinates. However, under no circumstance may any temporary assignment continue nor is any compensation authorized in excess of five months and twenty-nine days in a rolling calendar period which starts on the first day of the assignment. For example, if an employee is assigned to work out of class on August 15, 2011, he/she can work in that assignment for five (5) months and twenty-nine (29) days between the rolling calendar period of August 15, 2011 and August 14, 2012.
- (c) This pay differential shall not be utilized to circumvent the civil service process.

3.1 SALARY STEP INCREASES

- a. Only regular employees shall be eligible for salary step increases. Increase to steps above the entry step shall be based on performance and length of

service. The employee must have earned the equivalent of at least twenty-six (26) biweekly pay periods of full-time eligible service since his or her step increase date.

b. Except as otherwise provided below, an employee's step increase date shall be the first day of the first full biweekly pay period in any class or the date of his or her last step increase, whichever is most recent.

c. Upon change in class which results in a salary decrease, an employee shall retain the same step increase date.

d. Upon promotion from outside the unit to a class in the unit, an employee shall receive a new step increase date when the salary increase received is 9.5% or higher. Employees in the unit shall be governed by the salary administration provisions.

e. An employee in Step "9" shall have no step increase date, and service in Step "9" shall not be considered as eligible service for future step increases.

f. Continuous extra-help employment up to twenty-six (26) biweekly pay periods of full-time service, or the equivalent, shall be considered as eligible service for a step increase for an employee who is appointed to a regular position without a break in service. Such extra-help employment shall be subject to all other provisions of this section governing step increases.

g. Overtime work shall not be considered as eligible service.

h. A step increase may be denied only for just cause.

3.2 SALARY ADMINISTRATION

a. Entry Step:

(1) The entry step within the established range for each class shall be Step "4" unless specifically designated as Step "5", "6", "7", "8", or "9". Except as otherwise provided below, any person appointed to a class shall receive the entry step of the range of such class and shall accrue other benefits as a new employee.

(2) Transition of Employees in Salary Steps "2," "3," and "4": Effective July 2, 2000, employees in salary Steps "2," "3" and "4" shall be moved as follows:

(a) Employees in salary Steps "2" and "3" will be moved to salary Step "5" with no change in step increase date.

(b) Employees in salary Step "4" will be moved to salary Step "6" with a new step increase date of July 2, 2000.

b. Reemployment: Any person appointed in accordance with the rule governing reemployment following layoff shall receive compensation and benefits as though he/she had been on leave without pay.

c. Reinstatement: Any person appointed in accordance with the rule governing reinstatement following resignation in good standing shall be considered a new employee. At the discretion of the appointing authority, a reinstated employee may receive a starting salary higher than Step "5" but not exceeding the step that he/she received at the time of resignation.

d. Return to Former Class: An employee who is returned to a former class following promotion, transfer or demotion due to layoff, shall receive that step of the range which he/she would have received had he/she never left the former class.

e. Promotion: Advancement from a position in one (1) class to a position in a higher class, defined as one having a maximum salary rate at least one (1) step (at least 5%) higher than the employee's former class.

(1) Upon promotion of an employee within the unit to a higher class, the employee shall receive the lowest step in the new class which provides an increase of at least 5%.

(2) Upon promotion of an employee from outside the unit to a class in the unit, the employee shall receive the lowest step in the new class which provides an increase of at least 5%.

f. Transfer: Upon transfer of an employee, the employee shall receive the same step in the new range as he or she received in the former range. For purposes of this provision, a transfer is a change between classes where the maximum salary rate of the class to which transfer is made is less than 5% higher or less than 5% lower.

g. Demotion: A demotion is a change to a class which has a maximum salary rate which is at least 5% lower than the maximum salary rate of the former class. Whenever an employee is demoted due to layoff, without cause or inability on his/her part, his/her salary shall be that step in the new range which provides an equal salary, or in the absence thereof, the nearest lower salary, to that received prior to the demotion. In all cases of demotion for cause, the employee shall receive the same step in the lower range as he/she received in the higher range. An employee with permanent status in a class who, with the approval of the appointing authority, voluntarily demotes to a lower class shall receive the step in the lower range which provides an equal salary or, in the absence thereof, the nearest lower salary to that which was received prior to demotion.

h. Return from Leave without Pay: Return following leave without pay is not an appointment, but is a continuation of service; however, salary and benefits, other than

employment status, shall be based on actual service. This provision shall not apply to employees returning from military leave.

i. Y-Rate: The Board of Supervisors may adopt a Y-rate to apply to: (1) an employee who would suffer an actual decrease in salary as a result of action taken by the County, without fault or inability on the part of the employee, or (2) an employee who is changing from one (1) class series to another, as a normal consequent of career development through the County's upward mobility program, and the salary of the class the employee enters in the new class series is less than the salary the employee was receiving in the former class. A Y-rate means a salary rate, for an individual employee, which is greater than the established range for the class.

j. Y-Rate Salary Increase: An employee for whom a Y-rate is established shall not receive any increase in salary until such time as his/her rate of compensation is within the established range for the class, at which time the employee shall receive the highest step of the range. The employee shall receive a proportionate decrease in salary whenever a lower range is established for the class in this Memorandum.

k. Class Salary Range Changes: When the salary range for a class is changed in the Memorandum, employees in the class shall change to the new range but shall remain at the same step. When changes in an employee's class or salary, or both, occur simultaneously with salary range adjustments in the Memorandum, the employee changes shall precede the Memorandum adjustments in application.

l. Entry Step Adjustments: When the entry step for a class is adjusted to above Step "4" in the Memorandum, the salary step for each employee in the class shall be increased in proportion to the change in entry step; provided, however, that no employee shall advance beyond Step "9".

m. Biweekly Salaries: The pay period for all employees shall cover fourteen (14) calendar days, starting on a Sunday and ending with the second Saturday thereafter. Salaries shall be paid on the Friday following the end of the pay period; except that if Friday falls on a holiday, salaries shall be paid on Thursday. Salaries shall be computed as provided in this Memorandum.

n. Salary Computation: The regular salary for each employee shall be based on the actual number of days or hours worked in the pay period, including authorized absences with pay, multiplied by the employee's daily or hourly rate. Such payments shall not exceed the biweekly rate as determined by the employee's range and step.

o. Special Pay: Special payment, including standby, overtime, premium, and other special payments, shall be calculated in accordance with the applicable provisions of this Memorandum.

p. Payment in Full: Compensation paid pursuant to this Memorandum shall be payment in full for services rendered in a County position. No employee shall accept any other compensation for services performed in such position.

q. Exceptional Qualifications: At the request of the appointing authority and subsequent to a recommendation by the Personnel Director, the County Executive may approve a salary above the established entry step for the class in order to recruit an individual who has demonstrated superior knowledge and ability and whose combined education and experience represent substantially better preparation for the duties of the class than required by the minimum employment standards. In the application of this provision, consideration shall be given to current employees in the same class who possess comparable qualifications, and, if determined equivalent, adjustments shall be made by the County Executive.

3.3 PAYROLL ERRORS

a. This provision applies when the Director of Personnel Services determines that an error has been made in relation to the base salary, overtime cash payment, paid leave accruals, balances, or usage, or for medical insurance premiums or life insurance premiums. In such cases the County shall, for purposes of future compensation, adjust such compensation to the correct amount. The Director also shall give written notice to the employee.

b. As used in this section:

- (1) "Base salary" means the biweekly rate of pay including special pay allowances and differentials but excluding overtime cash payment.
- (2) "Overtime cash payment" means authorized pay for working in excess of a prescribed number of hours, usually eight (8) hours per day or forty (40) hours per week.
- (3) "Paid leave" means vacation, sick leave, compensating time off (CTO) and all other types of authorized leave with pay.
- (4) "Overpayment" means any cash or leave (balance, usage or accruals) that has been overpaid or overcredited to an employee regardless of the reason, including but not limited to, administrative, clerical or system errors.
- (5) "Underpayment" means any cash or leave (balance, usage or accruals) that has been underpaid or undercredited to an employee regardless of the reason, including but not limited to, administrative, clerical or system errors.

c. If the error has resulted in an overpayment or underpayment, reimbursement shall be made to the County if the error was an overpayment, or by the County if the error was an underpayment, in the amount which has occurred within one (1) year prior to the date of the Director's initial written notice to the employee.

- (1) In the case of overpayment, reimbursement of the overpayment shall be made through one (1) or a combination of the following methods:
 - (a) In cash payment(s) mutually agreed to by the employee and the Department of Personnel Services.
 - (b) In case of overcrediting of paid leave accruals, balances, or usage, a one-time only leave adjustment to CTO or vacation equivalent to the dollar amount of overpayment (sick leave may not be used unless the overpayment involved the use of sick leave). If the balances are not sufficient to cover the overpayment, payroll deductions of the overpayment from the employee's future salary shall be made in installments until the overpayment is fully reimbursed, or the employee may make a single cash payment. A charge against future accruals shall not be permitted.
 - (c) Installments through payroll deduction to cover the same number of pay periods over which the error occurred. If the installments exceed 10% of the employee's base salary (including incentives, et cetera), lower deductions may be made providing the lower deduction is at least 10% of the employee's base salary including incentives, et cetera.
- (2) In the case of an underpayment, the County will expedite reimbursement to the employee via an in lieu warrant, a gross pay adjustment or a leave balance adjustment, whichever applies and is most appropriate.
- (3) An employee whose employment terminated prior to full reimbursement of an overpayment shall have withheld from any salary owing the employee upon termination an amount sufficient to provide full reimbursement. If that amount is not sufficient to provide full reimbursement, the County shall have the right to exercise other legal means to recover the additional amount owed.
- (4) Any amount of overpayment or underpayment for any period earlier than one (1) year prior to the date of the Director's initial written notice to the employee, shall be deemed waived and not reimbursable.

d. The provisions of this section do not apply to grievance disputes which contend that the County has underpaid by misapplying or incorrectly interpreting the terms of this or any previous memorandum. The time limits for the filing and processing of any grievance shall not be deemed to be excused, extended or otherwise modified by the provisions of this section. Nor shall the relief available through the grievance procedure be enlarged by or as a result of the provisions of this section.

e. The provisions of this section apply only to errors involving base salary or overtime cash payment and paid leave accruals, balances, or usage. No provision of this Memorandum shall preclude the correction or recovery by the County of past overpayments or other losses which result from errors involving other matters, such as retirement, social security and court-ordered payments.

f. The previous Agreement between the parties for 2006-11 contained a Section 2.3 (deleted in the current 2011-13 agreement) that provided Compensation parity between specified classes in the Attorney and Supervising Units of representation and Attorney Civil Classes. Due to Administrative error, on the pay period beginning June 20, 2010 the class of Attorney (Level IV) Criminal received a salary increase that was 1% less than the salary increase received by comparable class of Attorney (Level IV, Range A) Civil. To remedy this administrative error, the parties agree, rather than provide a 1% salary increase to Attorney (Level IV) Criminal retroactive to June 20, 2010, to instead provide a 0.5% salary increase to all classes in the Supervising and Non-Supervising Attorney units beginning the pay period starting June 19, 2011. The adjusted salary ranges are contained in Attachment "A". The parties also agree that the five Attorney IV employees who were promoted to Attorney V in the District Attorney's Office during Fiscal Year 2010-11 will be moved from Step 8 to Step 9 of the promotional salary range effective the implementation date of this agreement. The parties recognize this is a remedy to an administrative error and not a salary increase. The parties also recognize that this remedy has more favorable cost impacts on the Fiscal Year 2011-12 budgets of the Departments of District Attorney and Public Defender than the retroactive 1% salary increase otherwise owed to Attorney (Level IV) Criminal.

ARTICLE IV HEALTH AND WELFARE

4.1 GENERAL PROVISIONS

a. Eligibility: All regular full-time employees of the unit shall be eligible to participate in County-sponsored insurance and benefit programs defined in this article. Regular part-time employees who work a minimum of forty (40) hours per biweekly pay period shall also be eligible to participate.

b. Dependent Eligibility: For all programs covered in this article, eligible dependents are an employee's lawful spouse or domestic partner (as defined by Section 297 of the California Family Code), and unmarried children (natural, step, adopted, legal

guardianship, and/or foster) of the employee or domestic partner, who are qualified IRS dependents of the employee or domestic partner, up to twenty-three (23) years of age. Disabled dependents may be able to continue coverage beyond the limiting age if the disability occurred while the dependent was covered under a County-sponsored medical plan or prior to the dependent's 19th birthday, and is certified by a licensed physician.

c. Enrollment In Benefits Plans:

- (1) All new employees shall automatically be enrolled in the default level of medical, dental, and basic life insurance coverage. Employees shall be charged the applicable level of employee contribution, if any, for each plan. During the first thirty (30) days of employment, an employee may waive coverage under the medical plan by providing proof satisfactory to the plan that the employee has other group medical insurance coverage. An employee may also change their health plan or coverage option under the plan (for example, from employee only coverage to an option that includes dependent coverage) during the first thirty (30) days of County employment. Failure to make any change within the thirty (30) day initial enrollment period shall be considered an irrevocable election for the default coverage.
- (2) Employees subsequently desiring to make a coverage change may do so only under the following circumstances: (1) during any annual enrollment period for coverage effective on the first day of the following calendar year; (2) upon the occurrence of certain qualifying events as prescribed by the Health Insurance Portability and Accountability Act; or (3) upon the occurrence of certain specified family status change events as governed by Internal Revenue Code Section (IRC) 125 and authorized under the County's Section 125 qualified cafeteria benefits plan. Employees seeking to waive coverage shall show proof satisfactory to the plan that the employee has other group medical insurance coverage.

d. Taxes on Benefits: Employee contributions for health insurance shall be deducted from employee pay on a pre-tax basis unless otherwise prohibited by the Internal Revenue Code. The employee will be responsible for any tax consequences resulting from the inclusion of a registered domestic partner and the child of registered domestic partner under the health and welfare benefits offered pursuant to this Agreement.

4.2 MEDICAL INSURANCE AND HEALTH PLANS

The County shall pay a monthly contribution for any of the medical insurance or health plans made available to employees pursuant to this Agreement. The County contribution shall be applicable to the coverage level selected by the employee. If the

cost of the coverage exceeds the maximum County contribution, the employee shall pay the additional cost.

- a. Tier A: Employees hired prior to January 1, 2007, will be placed in Tier A. Effective January 1, 2007, employees in Tier A will receive a maximum County contribution of 80% of the Kaiser family rate for 2007. Effective January 1, 2008, the County insurance contribution shall be frozen at the level in effect on December 31, 2007 (\$826.90), as well as entitlement to cash back, cash back maximums, plan selection incentive and FICA reductions, if applicable. This County contribution arrangement shall be henceforth referred to as Tier A. Employees in Tier A shall remain in this tier unless they voluntarily elect to move to Tier B. Such election by an employee to move to Tier B shall be irrevocable once made.
- b. Tier B: The County shall provide an insurance contribution, henceforth known as Tier B, for employees starting employment with the County on or after January 1, 2007, and employees who were in Tier A and have voluntarily elected to participate in Tier B. The County contribution shall be reset annually on January 1 of each year. The County contribution amount shall be 80% of the premium amount for the health plan and level of coverage selected provided, however, that the maximum amount of the contribution shall be 80% of the premium amount for the least expensive, full coverage HMO health plan option offered by the County, for the level of coverage selected by the employee. The employee shall pay through payroll deduction any additional premium not paid by the County contribution that is required for the plan option and level of coverage selected by the employee, or the default coverage if the employee did not select another plan or waive coverage as specified under the provisions of this Agreement.
- c. Effective January 1, 2008, or later, as determined by the County, employees shall be provided with at least the following:
 - (1) Medical Plan Options:
 - (a) A traditional Kaiser Foundation health maintenance organization plan
 - (b) A traditional non-Kaiser Foundation health maintenance organization plan
 - (c) Up to two (2) high-deductible health plan options, with a voluntary health savings account.
 - (2) Elimination of the Catastrophic health plan.

(3) Coverage Levels: Status quo shall continue for employees desiring coverage under the County medical insurance plans. Employees may elect coverage under one (1) of the following levels:

(a) Employee only

(b) Family

Premiums for insurance coverage shall be based on the level of coverage selected.

d. The default medical plan enrollment shall be the County's lowest premium high deductible health plan, employee only coverage. The employee shall be responsible for paying 20% of the premium for this coverage on a pre-tax, payroll deduction basis.

e. All co-payments will remain at their respective 2006 levels for the duration of the Agreement.

4.3 RETIREE HEALTH SAVINGS PLAN

Effective, December 24, 2006, or as soon as administratively possible, the County shall establish a retiree health savings plan (RHSP) by contributing an amount of \$25.00 to the employee's RHSP each biweekly pay period.

4.4 DENTAL PLAN

Employees in the unit shall enroll in the County's dental insurance plan. The County shall pay 100% of the cost for dental coverage for employees and covered dependents. The default level of dental insurance coverage shall be employee only coverage.

4.5 LIFE INSURANCE

a. Basic Benefit: **The County will pay for \$50,000 life insurance for the employee.** This shall be the default level of life insurance coverage, which shall be provided at no cost to the employee.

b. Voluntary Options: The County shall provide additional options to permit employees to elect up to three (3) times their annual salary to a maximum of \$500,000 of provided and purchased life insurance. Premium rates for these supplemental options shall be determined by the County based on the quotation from the insurance carrier selected by the County to provide the life insurance.

c. Living Benefit: The life insurance benefit includes a “living benefit” option. To be eligible for this “living benefit,” the claimant must be under the age of seventy (70); be diagnosed terminally ill (with life expectancy of twelve [12] months or less); not have assigned his or her employee life benefits; and not have a court order in force which affects the payment of life insurance benefits. The life insurance benefit will pay a benefit of up to 50% of the combined basic and any supplemental life amounts. The maximum amount of the living benefit is \$250,000 and the minimum is \$7,500. Should the employee recover, the amount paid under this provision would be subtracted from the face amount of his/her full benefit at the time of death.

d. Dependent Benefit: A life insurance benefit of \$5,000 (\$0 from birth to fourteen [14] days of age; \$200 from age fourteen [14] days to six [6] months) is provided for each dependent in addition to the basic life benefit provided to employees. No enrollment of dependents is generally required. Domestic partners and/or their dependents must be enrolled in the program as the dependents of an employee in order to be eligible for the dependent benefit. The Dependent benefit will be reduced from \$5,000 to \$2,000 effective January 1, 2008.

e. Conversion of Coverage. The life insurance may be converted from group coverage to private coverage upon termination of employment, or a dependent’s loss of eligibility for coverage under the plan. It is the sole responsibility of the employee to notify the County within thirty (30) days of a dependent’s loss of eligibility due to marriage or reaching the limiting age for coverage. Upon timely notification, a dependent losing coverage will be offered the opportunity to convert to an individual policy. Failure to notify the County within thirty (30) days of a dependent’s loss of eligibility shall result in loss of conversion privileges.

4.6 EMPLOYEE ASSISTANCE PROGRAM

a. The County will make an employee assistance program (EAP) available to each eligible employee. The EAP will provide personal counseling for employees and/or their dependents. The counseling is intended to assist employees and eligible dependents who are experiencing personal problems such as family/marital problems, personal/emotional problems, substance abuse problems, and work-related problems.

b. The County will pay the cost of short-term counseling, not to exceed six (6) sessions of approximately one (1) hour each per incident per calendar year for each employee and each covered dependent. Participation in the Employee Assistance Program shall be confidential unless written consent is given by the employee or family member.

c. Enrollment of dependents is generally automatic; no enrollment form shall be required. Domestic partners and/or their dependents must be enrolled as the dependents of an employee in order to be eligible for dependent benefits under this program.

d. It is understood that the County will provide EAP services through an independent contractor. The County may from time-to-time in its sole discretion change contractors for this service.

4.7 FLEXIBLE SPENDING ACCOUNTS

Employees in the unit shall have access to the County's flexible spending account program, which provides employees with the options of dependent care assistance benefits with a calendar year maximum of \$5,000, and medical expense reimbursement benefits with a calendar year maximum of \$2,400. The County shall maintain this plan in compliance with IRC §125. Employee premiums for flexible spending account benefits shall be deducted on a pre-tax basis from employee pay.

4.8 STATE DISABILITY INSURANCE

a. The County shall maintain State Disability Insurance (SDI), at the employee cost, for employees in classes covered by the Agreement. This section shall not be valid if the membership elects to withdraw from SDI during the term of this Agreement and the State has approved withdrawal from SDI.

b. Employees who are absent from duty because of illness or injury and have been authorized to use County-paid leave benefits, sick leave, vacation, compensating time off, holidays and holiday-in-lieu time, shall be eligible to integrate the payment of State Disability Insurance benefits with such County-paid leave benefits. No integration of County-paid leave benefits and State Disability Insurance shall occur unless the appointing authority has approved the use of the County-paid leave benefits by the employee requesting integration.

c. Integration of County-paid leave benefits with State Disability Insurance will require detailed procedures which the County shall, in its sole discretion, implement to ensure the equitable application of the program consistent with this Agreement provision. In accordance with current County policy, integration of County-paid leave balances and State Disability Insurance shall not be paid in a retroactive manner.

d. Integration of County-paid leave balances and State Disability Insurance shall take place subject to the following conditions:

- (1) The intent of this program and contract provision is to insure that those employees who participate in the program comply with all applicable laws, policies, and procedures established to provide integration of County-paid leave balances and State Disability Insurance so as to provide a combined biweekly adjusted net income equivalent to 100% of regular net income - gross income less required deductions, such as taxes, retirement, State Disability Insurance premiums, and other mandatory deductions - as long as such eligible disability qualifies and available leave balances are

authorized by the appointing authority. Other employee authorized deductions shall be deducted from the resultant net pay.

- (2) Upon approval of the use of County-paid leave benefits by the appointing authority and the employee's established eligibility for State Disability Insurance, the County shall make leave accrual payments to the employee in the usual manner except that the net pay, including State Disability Insurance benefits and net County pay, shall not exceed 100% of the regular net pay. If State Disability Insurance benefits equal or exceed 100% of the regular net pay, no County payment shall be made. County-paid leave benefits shall be used in the following order: sick leave, vacation, compensating time off, and holiday-in-lieu time.
- (3) Special pay allowances not of a permanent nature, such as overtime compensation, standby, night shift differential, call back or out-of-class pay, shall not be counted in determining the employee's gross or net pay.
- (4) Sick leave, vacation, and holiday-in-lieu shall not accrue during any pay period in which the employee receives County-paid leave benefits integrated with State Disability Insurance payments, except that the employee shall accrue sick leave, vacation, and holiday-in-lieu for any actual hours worked during a pay period in which integration occurs. Service credits toward seniority and step increase eligibility shall not be affected by any pay period during which an employee is on the integrated leave and State Disability Insurance program.
- (5) When an employee exhausts all available County-paid leave balances, the employee shall either return to work or request an unpaid leave of absence from his/her appointing authority. Regardless of whether the employee continues to receive State Disability Insurance payments, once all County-paid leave balances are exhausted, County compensation shall cease unless the employee returns to work.
- (6) The County shall continue its contributions towards the employee's health, dental, life and retirement contributions in accordance with established laws and practices during the pay periods which include County payment for integrated leave balances. The employee shall be responsible for payment of premiums required to maintain insurance coverage when County contributions cease.
- (7) Eligible part-time employees shall be included in this program on a prorated basis.

e. In the event the County determines that legislative or judicial determinations cause changes which in any way restrict, reduce or prohibit this program operation, it shall immediately and automatically terminate without any further action by either party to this Agreement.

4.9 JOINT LABOR-MANAGEMENT HEALTH AND WELFARE COMMITTEE

The parties agree to work cooperatively in an ongoing joint labor-management health and welfare committee forum to review and address health and welfare issues that are of vital interest to both parties. The parties acknowledge that the health insurance marketplace is constantly changing and it is imperative that they remain engaged in ongoing dialogue and discussions regarding benefits issues.

4.10 RETIREE HEALTH CONTRIBUTIONS

Beginning the pay period that starts June, 30 2013, the County will not provide a subsidy toward the payment of insurance premiums for medical or dental insurance of retirees.

4.11 HEALTH AND WELFARE

a. The parties recognize that during the term of this Agreement, it may be necessary for the County to make changes to health care benefits including but not limited to, changing plan offerings, medical coverage, changes required by law, and other technical changes to the health care plans or offerings. Where the County finds it necessary to make such changes, the County shall notify SCAA in writing. SCAA shall request to meet and confer over any proposed changes within 10 work days. The parties agree to meet and confer in good faith pursuant to G.C. 3500 et seq. Current health care benefits and coverage shall be maintained to the extent possible.

b. Any agreement resulting from such negotiations shall become an addendum to this Agreement.

c. Any changes resulting from this section will only be implemented if such change is applied to all bargaining units.

ARTICLE V HOLIDAYS

5.1 HOLIDAYS

a. All regular employees shall be entitled to such holidays with pay as enumerated herein. All holidays proclaimed by the Governor, other than Thanksgiving

Day, shall not be deemed County holidays unless affirmatively made so by resolution of the Board of Supervisors.

- (1) The holidays as of January 1, 2002, are:
 - (a) January 1 – New Year’s Day
 - (b) Third Monday in January – Martin Luther King, Jr.’s Birthday observed
 - (c) February 12 – Lincoln’s Birthday
 - (d) Third Monday in February – Washington’s Birthday observed
 - (e) March 31st – Cesar Chavez Birthday Observed
 - (f) Last Monday in May – Memorial Day
 - (g) July 4 – Independence Day
 - (h) First Monday in September – Labor Day
 - (i) Second Monday in October – Columbus Day
 - (j) November 11 – Veteran’s Day
 - (k) Fourth Thursday in November – Thanksgiving Day
 - (l) Day after Thanksgiving
 - (m) December 25 – Christmas Day
- (2) When January 1, February 12, March 31, July 4, November 11, or December 25 holidays fall on Sunday, regular employees who work in a unit for which the normal work schedule does not include Saturday and Sunday shall be entitled to the Monday following as a holiday with pay.
- (3) When January 1, February 12, March 31, July 4, November 11, or December 25 holidays fall on Saturday, regular employees who work in a unit for which the normal work schedule does not include Saturday and Sunday shall be entitled to the preceding Friday as a holiday with pay.

b. It is the intent of the parties that County employees shall take off from work the Fridays enumerated herein except where the needs of the service require otherwise.

c. Regular employees who work in a unit for which the normal work schedules include Saturdays, Sundays, and holidays shall be granted one (1) day off for every four (4) weeks in lieu of prescribed holidays. Such time off shall be designated in the employee's regular work schedule. If not scheduled and taken every four (4) weeks, such time shall accrue at the rate of (4.3) hours for each biweekly pay period.

d. Except as provided in Subsection a. and Subsection b., regular employees required to work on a holiday shall receive overtime compensation in addition to holiday pay.

e. Employees shall be allowed four (4) hours off work with pay on the last working day before Christmas or the last working day before New Year's. If the employees are unable, because of the needs of the service, to take such time off, they shall be credited with four (4) hours compensatory time off. This benefit shall be prorated for part-time employees.

f. Changes or additions to the holidays listed above which are generally applicable to all County employees shall also be applicable to employees covered by this Memorandum.

ARTICLE VI LEAVES

6.1 VACATION

a. Vacation with pay shall be earned by regular and extra-help employees based on the equivalent of full-time service from the date of appointment. Vacation credit shall accrue to the employees upon completion of the regular work assignment on the last day of the biweekly pay period in which it is earned.

b. All employees hired on or after June 28, 1992, shall accrue vacation and accumulate vacation in accordance with the following schedule:

<u>Years of Service</u>	<u>Biweekly Accrual Rate</u>	<u>Approximate Number Annual Days*</u>
During first 3 years	3.1 hours	10
After completion of 3 years	4.6 hours	15
After completion of 6 years	5.5 hours	18
After completion of 9 years	5.8 hours	19
After completion of 10 years	6.2 hours	20
After completion of 11 years	6.5 hours	21

After completion of 12 years	6.8 hours	22
After completion of 13 years	7.1 hours	23
After completion of 14 years	7.4 hours	24
After completion of 15 years	7.7 hours	25
*eight-hour day		

c. Employees may accumulate vacation to a maximum of 400 hours on an accrual date.

d. Consistent with the requirements of the department as determined by the appointing authority, accrued vacation time may be taken by employees as soon as it is accrued (even during the first six [6] months of County service). After six (6) months from the date of hire, the procedure as set forth in Subsections e. and f. shall apply. Reinstated employees may use accrued vacation during the first six (6) months of service, subject to the needs of the department. Employees who separate or are terminated from County service or who take military leave in excess of one hundred eighty (180) days shall be paid the monetary value of their full terminal vacation.

e. Whenever possible, vacations shall be granted at the time requested by the employees. In order to avoid undue disruption of work activities or to minimize conflicts with other employees' vacations, the appointing authority may place reasonable seasonal or other restrictions on the use of accrued vacation.

6.2 SICK LEAVE

a. Sick leave credits shall be earned by a regular employee based on the equivalent of full-time service from the date of appointment. Sick leave credit shall accrue to the employee upon completion of the regular work assignment on the last day of the biweekly pay period in which it is earned. Sick leave credit shall accrue on the basis of four and six-tenths (4.6) hours per biweekly pay period of service, and may be accumulated without limitation.

b. Sick leave credits shall accrue at the rate stated above and may be used for sick leave with pay as provided below:

- (1) A regular employee may use sick leave for personal purposes or family purposes as provided in this section.
- (2) For personal purposes, a regular employee may use sick leave for:
 - (a) Absence from duty when quarantined because of exposure to a contagious disease or when incapacitated from performing duties because of personal illness, injury, dental work or pregnancy; and,

- (b) Absence from duty for examination or treatment by a medical doctor or dentist, under circumstances not involving quarantine or incapacity, provided; however, whenever feasible, such absence shall be scheduled at the discretion of the appointing authority; or
 - (c) For a period of time, not to exceed four (4) hours, to donate blood. Absence from duty for donating blood will be approved only upon return to the supervisor of an official receipt reflecting the donation.
- (3) For family purposes, a regular employee may use leave credits for:
- (a) Attendance upon an eligible family member who is incapacitated because of illness or injury and definitely requires personal care. The length of such absence shall be limited by the appointing authority to the time reasonably required to either provide care or to make other arrangements for such care.
 - (b) For the purposes of this Subsection (3), an eligible family member is the employee's spouse, child, parent, grandparent, domestic partner (as defined by Section 297 of the California Family Code), or domestic partner's child. Additionally, under this subsection, an eligible family member is any other close relative or child who resides with the employee.
 - (c) To transport an eligible family member to and from a local hospital for medical treatment or operation, including childbirth.
 - (d) To attend an eligible family member, at any location, during serious medical treatment or operation, including childbirth.
- (4) The appointing authority may require reasonable substantiation of the need for, and use of, sick leave.

6.3 FAMILY DEATH LEAVE

a. The County shall authorize family death leave with pay, for a regular employee, when needed, due to the death of his/her:

- (1) spouse
- (2) registered domestic partner
- (3) child

- (4) child of registered domestic partner
- (5) parent
- (6) grandparent
- (7) grandchild
- (8) brother
- (9) sister
- (10) brother-in-law; brother of registered domestic partner; registered domestic partner of brother
- (11) sister-in-law; sister of registered domestic partner; registered domestic partner of sister
- (12) mother-in-law; mother of registered domestic partner
- (13) father-in-law; father of registered domestic partner
- (14) any child or close relative who resided with the employee at the time of death.

b. The employee shall give notice to his/her immediate supervisor prior to taking such leave.

c. Such absence for family death shall be limited to time which is definitely required and shall not exceed five (5) days for any one (1) death. Family death leave benefits will be prorated for a part-time employee based upon the number of hours worked (for example, a half-time employee to a maximum of twenty [20] hours, four-fifths employee to a maximum of thirty-two [32] hours, a full-time employee to a maximum of forty [40] hours).

d. The intent of this benefit is that it be used within reasonable proximity of the death of the relative unless there are circumstances present which are clearly beyond the control of the employee.

6.4 ASSIGNMENT OF LEAVE FOR CATASTROPHIC ILLNESS AND OTHER PURPOSES

Regular employees shall be eligible to participate in the County's program of assignment of leave for catastrophic illness and other purposes. The County will provide

the Association a copy of the standardized County Policies and Procedures regarding the implementation of this program.

6.5 PARENTAL LEAVE

a. Each regular County employee with at least one (1) year of continuous service shall be entitled to schedule paid parental leave upon the birth of the employee's child, the birth of the employee's registered domestic partner's child or during the process of an adoption of a minor child by an employee. In the case of an adoption, the entitlement shall arise upon both: (1) verification of the intent to adopt established by provision of legal documentation and (2) the placement of the child in the employee's home for the purpose of adoption. The purposes of parental leave are to facilitate parental bonding, family adjustment, and child care, and such leave shall be used consistent with these purposes.

b. Each regular County employee with at least one (1) year of continuous service shall be entitled to schedule paid parental leave upon the birth of the employee's child or during the process of an adoption of a minor child by an employee. In the case of an adoption, the entitlement shall arise upon both: (1) verification of the intent to adopt established by provision of legal documentation and (2) The purpose of adoption the placement of the child in the employee's home. The purposes of parental leave are to facilitate parental bonding, family adjustment, and child care, and such leave shall be used consistent with these purposes.

c. Parental leave shall be approved by the employee's appointing authority, except where the granting of the parental leave request would unduly interfere with or cause severe hardship upon department operations. Wherever possible, departments shall make reasonable accommodations to permit parental leave, either on a full-time or part-time basis.

d. The maximum paid parental leave for a full-time regular employee shall be 160 hours. Parental leave shall be prorated for a part-time regular employee. Parental leave shall not extend beyond six (6) months from either: (1) the date of birth of the employee's child, or (2) in the case of adoption, the entitlement shall arise upon both: (1) verification of the intent to adopt established by provision of legal documentation and (2) the placement of the child in the employee's home for the purpose of adoption. The maximum 160 hours shall apply to each birth or adoption, regardless of the number of children born (twins, triplets, et cetera) or adopted.

e. Parental leave is separate and distinct from the use of sick leave for pregnancy, since it is not based upon disability. Parental leave is available to be scheduled at the conclusion of the use of sick leave for pregnancy.

f. An employee must make a written request to use parental leave. The written request shall be made at least thirty (30) calendar days prior to the anticipated start of the parental leave, except in cases of an unanticipated early childbirth or adoption, in which case the employee shall make the written request with as much

advance notice as possible. The written request shall also provide such information or substantiation as may be required by the Director of Personnel Services.

g. An employee who while on parental leave is incapacitated for one (1) or more days due to personal illness or injury may charge such days to sick leave. In such event, the employee promptly shall notify their department, and shall submit substantiation of the need for and use of sick leave.

h. Use of parental leave does not reduce or adversely affect the maximum one (1) year unpaid leave of absence that an employee may request for child care or family reasons following the birth or adoption of a child.

i. If the birth or adoption of a minor child takes place while the employee is on military leave, an extension may be granted. The extension is equal to the amount of time taken for military leave but cannot exceed six additional months.

ARTICLE VII MILEAGE REIMBURSEMENT/BAR DUES

7.1 MILEAGE REIMBURSEMENT

The County shall reimburse an employee who agrees mutually with the County to provide their private cars for use on official business in lieu of using a County-owned car. All private vehicle travel will be reimbursed at the current internal revenue Service standard mileage rate. The mileage claim shall be submitted to the employee's supervisor no later than 60 days after the last day of the month being claimed in order for a non-taxable reimbursement.

7.2 BAR DUES BILL

Upon timely submission of his/her bar dues bill, the County will pay directly to the California State Bar the dues (minus any optional payments, which if paid, must be paid by the Attorney).

7.3 TRANSIT PASS

Effective July 1, 2014 the County subsidy for transit passes under the County's Transit Pass Program shall be \$75 per month.

7.4 TUITION REIMBURSEMENT

The County will provide education reimbursement for education costs incurred by regular employees who apply for such reimbursement in accordance with the policies and procedures governing the education reimbursement program. The maximum reimbursement shall be limited to \$1,200 per year.

7.5 PROFESSIONAL REIMBURSEMENT

a. Each regular employee shall be reimbursed for expenses related to professional development, which shall include electronic devices and/or software, tuition, fees, travel expenses, and other necessary incidental expenses related to attendance at educational courses, workshops, seminars, and conferences. This may also include online internet continuing legal education courses and equipment. Reimbursement shall be in accordance with the policies and procedures developed by the hiring authority for the professional reimbursement program.

b. Expenditures shall be at the employee's discretion, but must be related to the employee's work as an attorney employed by Sacramento County, subject to approval by the department. Reimbursement shall be limited to one thousand two hundred dollars (\$1,200) per fiscal year.

c. Employees can choose to utilize either this current article or article 7.4 Tuition Reimbursement but not both.

ARTICLE VIII GRIEVANCES

8.1 PURPOSE OF EMPLOYEE AND ASSOCIATION GRIEVANCE POLICY

a. Employees' and Association grievances shall be recognized and reviewed in accordance with this policy.

b. The purposes of this policy are:

- (1) To resolve grievances informally at the employee-supervisor level, if possible;
- (2) To provide an orderly procedure for reviewing and resolving grievances promptly;
- (3) To determine and correct, if possible, the causes of grievances; and,
- (4) To encourage communication between employees and those of higher authority.

8.2 DEFINITIONS

a. A grievance is a complaint of one (1) or a group of employees, or a dispute between the County and the Association, involving the interpretation, application, or enforcement of the express terms of the Memorandum.

b. As used in this procedure the term "immediate supervisor" means the individual who assigns, reviews and directs the work of an employee.

c. As used in this procedure the term "party" means an employee, the Association, or the County.

d. As used herein, representative or Association representative, if an employee of the County, refers to an employee designated as such pursuant to Subsection 1.2-d.

8.3 GENERAL PROVISIONS

a. Each party involved in a grievance shall act quickly so that the grievance may be resolved promptly. Every effort should be made to complete action within the time limits contained in the grievance procedure, but with the written consent of both parties the time limitation for any step may be extended.

b. An employee may be assisted in presenting a grievance by a representative of their choice.

c. An employee may present a grievance while on duty. An employee while on duty may present another employee's grievance. The use of County time for this purpose shall be reasonable. The appointing authority shall determine what constitutes reasonable time. The County Executive may issue general instructions on what constitutes reasonable time.

d. An employee shall bring only grievances as defined in Subsection 8.2-a. to the formal grievance procedure. If an employee's complaint does not fall within the definition of a grievance, the appointing authority shall advise the employee how to proceed if he/she wishes to pursue the complaint.

e. The grievance procedure may be used by an employee without fear of prejudice. Reprisals shall not be taken against an employee for submitting a grievance. Supervisors and other management representatives shall not delay or suppress submission and orderly consideration of a grievance.

f. At any step in the grievance procedure, the appointing authority, or designated representative, may consult with the County Executive, Director of Personnel Services, County Counsel or other County administrative official in an effort to clarify an issue, or to interpret personnel policy or rules and regulations.

g. All communications pertaining to employee grievances shall be confidential and shall not be discussed except with the employee or representative and the appropriate supervisory personnel.

h. The County Executive and the appointing authority each may issue such supplemental procedures and instructions as may be necessary to implement this policy.

8.4 GRIEVANCE POLICY

a. Informal Grievance - Discussion with Immediate Supervisor:

- (1) The employee first shall discuss the grievance informally with his/her supervisor. Within five (5) workdays, the immediate supervisor shall give a decision or response to the employee.
- (2) An employee may initiate an informal grievance at a level within the department above the immediate supervisor when there is reason to believe that the nature of the grievance is such that it should not be discussed with the immediate supervisor. In such case, the employee must have a reason for bypassing the immediate supervisor.

8.5 FORMAL GRIEVANCE

a. Step 1:

- (1) If an informal grievance is not resolved to the employee's satisfaction within five (5) workdays, the employee may initiate a formal grievance. If a formal grievance pertains to a particular action, it must be initiated in a timely manner. A formal grievance may be initiated by completing a grievance appeals form and filing it with the person designated by the appointing authority as the first level of appeal. The first level of appeal may be the appointing authority. The grievance appeal form and instructions relating to its use shall be provided by the County Executive.
- (2) Within five (5) workdays after the filing, the person designated as the first level of appeal shall schedule a grievance meeting with the employee who may be represented by the Association. Within ten (10) workdays after the grievance meeting, the written decision will be made and given to the employee, the Association, and the immediate supervisor.

b. Step 2:

- (1) If the employee is not satisfied with the decision rendered in Step 1, the employee may appeal the grievance within five (5) workdays to the appointing authority or designated representative. If the appointing authority is the first level of appeal, the employee may bypass Step 2.
- (2) Within five (5) workdays after the filing, the appointing authority or designated representative, shall schedule a grievance meeting with the employee who may be represented by Association. Within ten (10) workdays after the grievance meeting, the written decision will be made and given to the employee and the Association.

c. Step 3:

- (1) If the grievant is not satisfied with the decision rendered pursuant to Step 2, the grievant may appeal the decision within fourteen (14) calendar days. The grievant may be represented by an Association representative.
- (2) There shall be two (2) tracks to solve the grievance at Step 3. The Association shall reserve the right to choose either:
 - (a) Mediation as described in 8.6.; or
 - (b) Third step appeal as described in Section 8.7.

8.6 MEDIATION

a. Grievances appealed to Step 3 may be submitted by the Association to mediation. Mediation shall be scheduled by mutual agreement. Subsequent days for mediation will be scheduled, if necessary. The parties agree to mutually select a panel of mediators. If the parties are unable to select a panel of mediators, they shall utilize the State Mediation and Conciliation Service.

b. Under no case shall the adjustment or resolution of the grievance at this level exceed sixty (60) calendar days from the date of their appeal to Step 3, unless extended by mutual agreement of the parties.

c. Mediators who have been selected by the parties to mediate grievance disputes may be scheduled on a rotating and available basis.

d. The parties agree to meet annually in May to review the mediators listed above. The list of mediators for the subsequent year shall be mutually agreed upon, but should the parties be unable to agree on a new list, the previous list will continue until such time as a new list is agreed to or the State Mediation and Conciliation Service is utilized.

e. All costs of the mediator, if any, shall be borne equally by the parties. No party shall purposely withhold information at this level but shall disclose all information relevant to the grievance for consideration by the other party.

f. Mediation Procedures: The mediation procedure shall be entirely informal in nature. However, copies of exhibits upon which either party bases its case shall be shared with the other party. The relevant facts should be elicited in a narrative fashion to the extent possible, rather than through examination and cross-examination of witnesses. The rules of evidence will not apply and no record of the proceedings will be made. All persons involved in the events giving rise to the grievance should be encouraged to participate fully in the proceeding, both by stating their views and by asking questions of the other participants at the mediation hearing.

g. The primary effort of the mediator shall be to assist the parties in settling the stated grievance in a mutually satisfactory fashion. In attempting to achieve a settlement, the mediator is free to use all of the techniques customarily associated with the mediation process, including private conferences with only one (1) party. If settlement is not possible, the mediator shall provide the parties with an immediate bench opinion, based on the stated grievance and the expressed terms of the Memorandum of Understanding. That opinion would not be final or binding, but would be advisory to the parties. It would be delivered orally and would be accompanied by a statement of the reasons for the mediator's opinion. The advisory opinion may be used as the basis for further settlement discussions or for withdrawal or granting of the grievance. Neither court reporters or any other type of note taker shall be allowed to be present at the proceedings.

h. If the parties agree to be bound by a mediator's recommendation, the subsequent agreement shall be reduced to writing and signed by the parties.

8.7 HEARING AND RESPONSE - STEP 3

a. The County Executive or his/her designated representative shall, within fourteen (14) calendar days of receipt of the appeal, schedule and conduct a grievance hearing unless extended by mutual agreement of the parties.

b. The County Executive or his/her representative shall render a written response to the grievance within thirty (30) calendar days following the date of the grievance hearing unless extended by mutual agreement of the parties.

8.8 ARBITRATION - STEP 4

If the response of the County Executive or his/her designated representative is not satisfactory to the Association, the Association shall have the right to refer the matter to binding arbitration. Such referral shall be made by written demand submitted to the

County Executive or his/her designated representative within ten (10) workdays of receipt of his/her decision.

8.9 RESPONSE

If the County fails to respond to a grievance within the time limits specified for that step, the Association shall have the right to appeal the matter to binding arbitration.

8.10 COPY OF DECISION

At each step of the formal grievance procedure, a copy of the decision shall be sent to the Association at the same time as the decision is sent to the grievant.

8.11 SELECTION OF ARBITRATOR

a. An impartial arbitrator shall be selected jointly by the parties within ten (10) workdays of receipt of the written demand.

b. In the event the parties are unable to agree on an arbitrator within the time stated, the parties shall solicit from the State of California Mediation and Conciliation Service a list of nine (9) arbitrators.

c. After receipt of the list, the parties shall alternately strike arbitrator's names from the list until one (1) arbitrator's name remains.

d. If an arbitrator selected declines appointment or is otherwise unavailable, a new list shall be requested as per Subsection b. above, and the selection shall be made as in Subsection c. above, unless an arbitrator can be mutually agreed upon.

8.12 DECISION

a. The decision of the arbitrator shall be final and binding.

b. The arbitrator shall have no authority to add to, delete or alter any provision of this Agreement nor shall the arbitrator substitute his/her discretion in any case where the County is given or retains such discretion. The arbitrator shall limit his/her decision to the application and interpretation of the provisions of this Agreement.

8.13 COSTS

a. The fees and expenses of the arbitrator shall be shared equally by the Association and the County.

b. The fees and expenses of a court reporter if required by the arbitrator and agreed to by the Association and the County shall be shared equally by the Association and the County.

8.14 WITNESSES

The County agrees that an employee shall not suffer loss of compensation for time spent as a witness at an arbitration hearing held pursuant to this Agreement. The Association agrees that the number of witnesses requested to attend and their scheduling shall be reasonable. The County shall cooperate in making witnesses available for the arbitration hearing.

ARTICLE IX RETIREMENT, RESIGNATION, REINSTATEMENT

9.1 DEFERRED COMPENSATION - TEMPORARY EMPLOYEES

a. An employee covered by this Memorandum who is not a member of, or currently earning benefits under, the Sacramento County Employees' Retirement System shall become a participant in the Deferred Compensation Plan set forth in County Code Sections 2.83.200 through 2.83.360.

b. The employee shall contribute 3.75% of his/her compensation for any period of service performed for the County while a participant in this plan. The County shall additionally credit an amount equal to 3.75% of the employee's compensation to the Investment Account maintained for each participant.

c. The Deferred Compensation Plan and participation by the County and specified employees described above is in lieu of each party paying FICA taxes as permitted by IRC Section 3121(b)(7)(f).

9.2 RETIREMENT TIER 3

a. Effective the pay period beginning June 27, 1993, the County shall establish a new retirement tier. This new retirement Tier 3 shall be the same as the existing Tier 2, except that Tier 3 shall have a 2% post-retirement cost-of-living adjustment factor pursuant to Government Code Section 31870, whereas Tier 2 has no post-retirement cost-of-living adjustment factor.

b. Employees hired prior to June 27, 1993, who are members of Tier 2, shall be given a one-time opportunity to transfer to Tier 3. These employees who elect to

transfer to Tier 3 also transfer their prior service credit in Tier 2 to Tier 3 with no additional employee contributions being required for the transfer of this prior service.

c. The above employees shall be given a period of sixty (60) calendar days to submit in writing to the County their election to transfer to Tier 3. The employees' elections to transfer to Tier 3, or failure to elect to transfer to Tier 3 and remain in Tier 2, shall be irrevocable and shall apply to all periods of future service.

d. Employees hired on June 27, 1993, or after, shall upon hire be placed into Tier 3.

9.3 RETIREMENT ENHANCEMENT FOR MISCELLANEOUS

Effective June 27, 2004, or sooner if agreement reached with all other recognized employees organizations representing miscellaneous members, the County will implement the 2% @ age 55-1/2 plan and employee purchase of prior service credits to a maximum of four (4) years. The election to purchase shall be open ended with the employee purchase of the employee's share, County's share and accumulated interest.

9.4 TIER 4 MISCELLANEOUS EMPLOYEE RETIREMENT

a. The County shall establish a Miscellaneous Employee Retirement Tier 4 based upon Government Code Section 31676.1, with a final compensation based upon the highest three-year average compensation pursuant to Government Code Section 31462, and shall have a post-retirement cost-of-living adjustment factor pursuant to Government Code Section 31870 to a maximum annual 2%. This retirement tier shall apply exclusively to employees first hired after implementation of the Miscellaneous Employee Retirement Tier 4.

b. This provision will be implemented at the same time, or as soon as practicable after the County implements Miscellaneous Employee Retirement Tier 4 for the new hires within represented units and unrepresented units which comprise a majority of County positions covered by miscellaneous retirement within the Sacramento County Employee Retirement System.

9.5 RESIGNATION

a. If an employee is absent without leave for five (5) consecutive workdays, such employee shall be required to submit a written statement to his/her appointing authority stating that he/she desires to retain his/her employment. If the employee fails to submit such a written statement to the appointing authority within two (2) workdays after notice has been served on the employee, such failure shall constitute automatic resignation from County service.

b. The notice to the employee may be personally served or it may be served by mail to the last known address of the employee and is complete on mailing. The last

known address shall be deemed to be that address which is within the personnel file of the employee within the department to which he/she is assigned.

c. The written statement of the employee must be either personally handed to the appointing authority or delivered to the appointing authority by registered mail return receipt requested.

d. A permanent employee may within fifteen (15) calendar days of the effective date of such separation, file a written request with the appointing authority for reinstatement. Reinstatement may be granted only if the employee makes a satisfactory explanation to the appointing authority as to the cause of his/her absence and his/her failure to obtain leave therefor, and the appointing authority determines that he/she is ready, able, and willing to resume the discharge of the duties of his/her position or, if not, that his/her appointing authority consents to a leave of absence to commence upon reinstatement.

9.6 REINSTATEMENT

a. A former employee who held permanent status in a class at the time of resignation in good standing may be appointed to a vacancy in that class or, with the approval of the Director of Personnel Services, to a lower class for which he/she is qualified. Reinstatement may take place only within three (3) years of the effective date of resignation. Reinstatement is subject to the discretion of the appointing authority.

b. A former employee who is reinstated to a temporary position, within three (3) years of resignation in good standing, may at the discretion of the appointing authority, and with the approval of the Director of Personnel Services, be further reinstated to a permanent position in the same class even though more than three (3) years has passed since the person resigned from the permanent position, provided there has been no break in the temporary service.

c. A permanent employee who has vacated a regular position to accept another position in a higher class in the same department, or in a class on the same level in the same department, under a provisional or temporary appointment, shall have a right to reinstatement to his/her former class upon the termination of his/her provisional or temporary appointment. With the written agreement of the appointing authorities of both departments, this provision shall apply also to an employee who accepts a provisional or temporary appointment in a department other than his/her department of permanent assignment.

9.7 TIER 5 MISCELLANEOUS EMPLOYEE RETIREMENT

The County shall establish a Miscellaneous Employee Retirement Tier 5 based upon California Public Employees' Pension Reform Act of 2013, resulting in a 2% at age 62 formula, with a final compensation based upon the highest three-year average compensation pursuant to California Public Employees' Pension Reform Act of 2013.

This retirement tier shall apply exclusively to employees hired on or after January 1, 2013.

9.8 RETIREMENT CONTRIBUTIONS

a. 2014-15: Effective the first pay period after approval of this MOU by the Board of Supervisors, but not sooner than the first pay period of July 2014, employees will pay twenty five percent (25%) of the difference, if any, between the present employee contribution and (50%) of the combined employee and employer normal cost as defined in the County Employees' Retirement Law of 1937 (1937 Act).

b. 2015-16: Effective the first pay period of July 2015, employees will pay half of the difference, if any, between the present employee contribution and 50% of the combined employee and employer normal cost as defined in the County Employees' Retirement Law of 1937 (1937 Act).

c. 2016-17: Effective the first pay period of July 2016, employees will pay seventy five percent (75%) of the difference, if any, between the present employee contribution and 50% of the combined employee and employer normal cost as defined in the County Employees' Retirement Law of 1937 (1937 Act).

d. Effective the first pay period of July 2017, all employees will pay 50% of the combined employee and employer normal cost as defined in the County Employees' Retirement Law of 1937 (1937 Act).

ARTICLE X ATTORNEY TIME AND ALTERNATE WORK HOURS

10.1 ATTORNEY TIME

a. Attorneys are expected to work whatever time reasonably is required to perform the duties of their position.

b. Attorneys shall not earn overtime pay. Except as provided in Article V, Attorneys shall not accrue compensating time off.

b. Attorneys are authorized, subject to approval of their immediate supervisor, to take reasonable time off for personal use during normal working hours without loss of compensation.

10.2 9/80 WORK SCHEDULES

a. An appointing authority, with the prior approval of the County Executive, may approve requests of employees covered by this Memorandum in their department to work a 9/80 work schedule.

b. The 9/80 work schedule is a schedule which during one (1) week of the biweekly pay period the employee is scheduled to work four (4) nine-hour workshifts for a total of thirty-six (36) hours, and during the other week of the pay period, is scheduled to work four (4) nine-hour workshifts and one (1) eight-hour workshift.

c. An employee working a 9/80 schedule shall take an unpaid meal period in the middle of their nine-hour and eight-hour workshifts. An employee may receive one (1) rest period during the first half of the employee's nine-hour or eight-hour workshift and one (1) rest period during the second half of the nine-hour or eight-hour workshift.

d. An employee shall be granted a holiday that falls on the employee's scheduled eight-hour workshift. If the holiday falls on the scheduled nine-hour work shift, the remaining hour must be taken off as leave first from accumulated compensating time off or holiday in lieu, and second from accumulated vacation time; and, if there are no leave balances, then leave without pay. If a holiday falls on an employee's scheduled day off, the employee shall accrue eight (8) hours compensating time off.

e. Full shift absences on vacation, sick leave, compensating time off, or holiday in lieu taken by an employee on a scheduled nine-hour workshift shall result in the deduction of nine (9) hours from the employee's accrued leave balances. Full shift absences on the eight-hour workshift shall result in the deduction of eight (8) hours from the employee's accrued leave balances.

f. An employee may return to the standard five-day, forty-hour workweek upon the approval of their appointing authority.

g. The appointing authority shall have the right to return an employee(s) to the standard five-day, forty-hour workweek schedule after providing advance written notice of two (2) full pay periods to the affected employee(s).

10.3 FOUR-DAY, FORTY-HOUR WORKWEEK – DEPARTMENT OF CHILD SUPPORT SERVICES

The Director of Child Support Services may approve a request of an employee in the Department of Child Support Services covered by this Memorandum to work a work schedule consisting of four (4) ten-hour workdays per week, subject to the following conditions:

- a. Sick Leave: Sick leave with pay shall be accrued, and accumulated, and taken in accordance with Section 6.2 of this Memorandum and Subsection d. below.
- b. Vacation Leave: Vacation leave with pay shall be accrued and used in accordance with Section 6.1 and Subsection d. below.
- c. Leave Usage: Full shift absences on vacation, sick leave, compensating time off, or holiday in lieu taken by an employee on a scheduled ten-hour workshift shall result in the deduction of ten (10) hours from the employee's accrued leave balance.
- d. Holidays: An employee shall be granted the day off in accordance with Section 5.1 of the Memorandum if a holiday falls on an employee's scheduled workday, except that the remaining two (2) hours must be taken off as leave first from accumulated time off, and second from holiday in lieu or accumulated vacation time; and, if there are no leave balances, then leave without pay. If a holiday falls on an employee's scheduled day off during the normal Monday through Friday workweek, the employee shall accrue eight (8) hours of compensating time off.
- e. Other Provisions: All other provisions of this Memorandum shall apply to an employee who works a ten-hour day/forty-hour workweek in the same manner as such provisions apply to an employee who works a regular eight-hour/forty-hour workweek.
- f. Return to Normal Five-Day Schedule: The County shall have the right to discontinue the four-day work schedule by giving the Association two (2) pay periods' written notice.

ARTICLE XI UNPAID FURLOUGHS

11.1 UNPAID FURLOUGHS

Employees shall not be furloughed during the term of this Memorandum of Understanding unless the parties meet and confer as to how any proposed furloughs would be implemented.

ARTICLE XII MISCELLANEOUS

12.1 PROPOSED CHARTER AMENDMENT, ABOLISHMENT OF CIVIL SERVICE COMMISSION

a. The County agrees to notice the Association prior to the approval by the Board of Supervisors of any proposed ballot measure to amend the County Charter, if such amendment would have the effect of abolishing the Civil Service Commission of Sacramento County. If the Association demands to meet and confer, the County shall do so.

b. If a valid Charter Amendment is passed by the voters of Sacramento County which has the effect of abolishing the Civil Service Commission of Sacramento County, the County shall, upon demand of the Association, meet and confer on the impact of the Charter Amendment and attempt to negotiate an alternate dispute resolution process for disciplinary appeals as well as other impacted areas.

ARTICLE XIII DISCIPLINE AND DISCHARGE

13.1 PURPOSE

It is the intent of the parties that the provisions of this article, shall substitute for any and all appeal procedures provided by the Civil Service Commission relating to the discipline, as defined in Section 13.2 below, of employees in a class included in the Supervisory and Non-Supervisory Attorneys Units.

13.2 DEFINITION

a. As used herein, "disciplinary action" means demotion, reduction in pay step in class, suspension or discharge, of an employee with permanent civil service status.

b. As used herein, "parties" means the County and Sacramento County Attorneys' Association. If an individual employee covered by this Memorandum files an appeal of discipline and the Association does not pursue such appeal, the employee may pursue such appeal and shall assume all of the rights and obligations of the Association in the appeal process pursuant to this article including costs as outlined in Section 13.17.

13.3 PERSONS AUTHORIZED TO INITIATE DISCIPLINARY ACTION

The employee's appointing authority or the designated representative of the appointing authority may initiate disciplinary action against an employee.

13.4 APPLICATION

- a. This article shall only apply to an employee with permanent civil service status.
- b. Probationary Status: This article shall not apply to an employee in probationary status who shall have no right to grieve or arbitrate release from such probationary appointment except as otherwise provided by law.
- c. Temporary Employee: An employee in a temporary position shall have no right to grieve or arbitrate release from such temporary appointment.
- d. Temporary Upgrade: An employee in a temporary upgrade status shall have no right to grieve or arbitrate release from such temporary upgrade status.
- e. Provisional Appointment: An employee with provisional status shall have no right to grieve or arbitrate release from such a provisional appointment.

13.5 CAUSE FOR DISCIPLINARY ACTION

No disciplinary action shall be taken against a permanent employee without good cause. "Good cause" is defined as any facts which, based on relevant circumstances, may be reasonably relied on by the appointing authority in the exercise of reasonable discretion as a basis for disciplinary action. "Good cause" includes, but is not limited to:

- a. Fraud in securing appointment.
- b. Incompetency.
- c. Inefficiency.
- d. Inexcusable neglect of duty.
- e. Insubordination.
- f. Dishonesty.
- g. Drunkenness on duty.
- h. The use of narcotics or habit-forming drugs.
- i. Inexcusable absence without leave.
- j. Conviction of a felony or conviction of a misdemeanor which is of such a nature as to adversely affect the employee's ability to perform the duties and responsibilities of the employee's position. A plea of guilty, or a

conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

- k. Discourteous treatment of the public or other employees.
- l. Political activity prohibited by state or federal law.
- m. Willful disobedience.
- n. Refusal to take and sign any oath or affirmation which is a federal, state or County requirement.
- o. Any failure of good behavior either during or outside of duty hours which is of such nature that it causes discredit to the County or his/her employment.
- p. Failure to possess or keep in effect any license, certificate or other similar requirement specified in the employee's position specification.
- q. Any violation of Civil Service Commission Rule 6.6-a which prohibits the solicitation of waivers.
- r. Failure to pay a service fee, or a contribution required in lieu of a service fee, pursuant to an agency shop provision in a labor agreement between the County and a recognized employee organization, where the disciplinary action in question is provided for in such agreement.

13.6 CAUSES FOR PERSONNEL ACTION DUE TO PHYSICAL OR MENTAL DISABILITY

For non-disciplinary reasons, a permanent employee's employment may be terminated or a permanent employee may be reduced in rank because of physical or mental disability which disability precludes the employee from the proper performance of the essential duties of his/her job with or without accommodation within the meaning of the American with Disabilities Act. Any such action shall be subject to the same provisions of this article as are applicable to actions taken pursuant to Section 13.5.

13.7 NOTICE REQUIREMENT AND EFFECTIVE DATE OF ORDER

a. The appointing authority or designee shall file a written proposed order and final order of disciplinary action with the Director of Labor Relations.

b. A copy of the proposed and final notice of disciplinary action shall be served upon the employee either personally, or by registered or certified mail, return receipt requested, to the last known address of the employee. The last known address shall be deemed to be the address which is within the personnel file of the employee within the department to which he/she is assigned. If notice is provided by mail, the employee

should be deemed to have received notice five (5) days after the date of mailing. At the same time, service shall be made to the Association.

c. The order shall be approved as to form by the Office of Labor Relations and shall include:

- (1) A statement of the nature of the disciplinary action;
- (2) The effective date of the disciplinary action;
- (3) A statement in ordinary and concise language of all specified facts or omissions upon which the disciplinary action is based; and
- (4) A statement advising the employee of the right to appeal the action through the arbitration procedure of this article, of the manner and time of which said appeal must be made, and the required content of the appeal.

d. The disciplinary action shall be effective on the date and time specified in the order of disciplinary action filed with the Director, provided notice is served as specified in this action.

13.8 APPEAL

a. The employee who is subject to the disciplinary action shall have the right, within fifteen (15) calendar days after receiving the final order of disciplinary action, to appeal from such order by filing a written notice of appeal signed by the employee or the employee's representative with the employee's consent with the Director of Labor Relations. The notice of appeal shall contain the name and address of the person to whom all written communication regarding this appeal shall be sent.

b. The Director of Labor Relations shall promptly provide the appointing authority with a copy of the employee's notice of appeal.

c. An employee who files a notice of appeal as provided herein shall be entitled to a hearing, as provided in this article and shall have no other remedy rights for disciplinary action provided under this Memorandum of Understanding.

d. An appeal of a disciplinary action is a complaint of a permanent employee with permanent civil service status regarding whether there was good cause for the disciplinary action taken against that employee.

e. If the employee who has been served with an order of disciplinary action fails to file a notice of appeal within the time specified in Subsection a. of this section, the disciplinary action shall become final without further action.

13.9 MEDIATION OF A DISCIPLINARY ACTION

a. Prior to the arbitration hearing the Association may request mediation. Mediation shall take place on the first and third Tuesday of each calendar month. Subsequent days for mediation will be scheduled, if necessary. The parties agree to mutually select a panel of mediators. If the parties are unable to select a panel of mediators, they shall utilize the State Mediation and Conciliation Service.

b. Under no case shall the adjustment of resolution of the discipline at this level exceed forty (40) working days from the date of their appeal, unless extended by mutual agreement of the parties.

c. Mediators who have been selected by the parties to mediate disputes will be scheduled on a rotating and available basis.

d. The parties agree to meet annually in May to review the mediators listed above. The list of mediators for the subsequent year shall be mutually agreed upon, but should the parties be unable to agree on a new list, the previous list will continue until such time as a new list is agreed to, or the State Mediation and Conciliation Services are utilized.

e. All costs of the mediator, if any shall be borne equally by the parties. No party shall purposely withhold information at this level but shall disclose all information relevant to the appeal for consideration by the other party.

f. The mediation procedure shall be entirely informal in nature. However, copies of exhibits upon which either party bases its case shall be shared with the other party. The relevant facts should be elicited in a narrative fashion to the extent possible, rather than through examination and cross-examination of witnesses. The rules of evidence will not apply and no record of the proceedings will be made. All persons involved in the events giving rise to the appeal should be encouraged to participate fully in the proceedings, both by stating their views and by asking questions of the other participants at the mediation hearing.

g. The primary effort of the mediator shall be to assist the parties in settling the stated appeal in a mutually satisfactory fashion. In attempting to achieve a settlement, the mediator is free to use all of the techniques customarily associated with the mediation process, including private conferences with only one (1) party. If settlement is not possible, the mediator shall provide the parties with an immediate bench opinion, as to how the appeal would be decided if it went to arbitration. That opinion would not be final or binding, but would be advisory. It would be delivered orally and would be accompanied by a statement of the reasons for the mediator's opinion. The advisory opinion may be used as the basis for further settlement discussions or for withdrawal or granting of the appeal. If the appeal is not settled, granted or withdrawn, the parties are free to arbitrate. If they do, the mediator shall not serve as arbitrator, and

no offers or concessions made by the parties or the mediator during mediation can be used against a party during arbitration.

h. Neither attorneys nor court reporters or any other type of note-taker shall be allowed to be present at the proceedings.

i. If the parties agree to be bound by a mediator's recommendation, the subsequent agreement shall be reduced to writing and signed by the parties.

j. If the issue is not resolved during mediation, and in accordance with established timeliness the appeal shall move to arbitration.

13.10 ASSIGNMENT OF AN ARBITRATOR

a. The parties to the hearing and to the selection of the arbitrator shall be the employee, who may be represented by the Association or independent counsel, and the County.

b. Permanent Arbitration Panel: Except as otherwise provided in this Memorandum, the parties agree to the selection of the following persons as a permanent panel of arbitrators: Bonnie Bogue, Alexander Cohn, and Kathleen Kelly.

c. Arbitration Selection: Where this section is used to determine the selection of an arbitrator, the arbitrator to hear a particular dispute shall be determined on a straight rotation basis, based upon the above listed order. If the selected arbitrator is unavailable, the next listed arbitrator shall be the selected arbitrator to be contacted. Either party shall have the right to declare an arbitrator as unavailable if the arbitrator cannot conduct the hearing within ninety (90) calendar days of being contacted by the parties. If a party makes such a declaration, that arbitrator will be bypassed and the next listed arbitrator shall be the selected arbitrator to be contacted.

d. If none of the arbitrators are able to serve based upon this selection process, the parties may mutually select any arbitrator. If the parties are unable to mutually agree upon an arbitrator, a list of five (5) arbitrators shall be requested from the State Mediation and Conciliation Service. The parties shall alternately strike one (1) name from this list and the remaining name shall be the selected arbitrator.

13.11 AMENDED OR SUPPLEMENTAL ORDER

At any time after a hearing has commenced on a disciplinary action and prior to the time the appeal is submitted for decision, the appointing authority may, with the consent of the arbitrator, serve on the employee and file with the Director of Labor Relations, an amended or supplemental order of disciplinary action. Consent is not required for an amended or supplemental order filed prior to commencement of the hearing. If the amended or supplemental order presents new causes or allegations, the employee shall be afforded a reasonable opportunity to prepare a defense thereto. Any

new causes or allegations shall be deemed denied and any objections to the amended or supplemental causes or allegations may be made orally at the hearing.

13.12 DISCOVERY

a. Permissible Discovery: Pursuant to the procedure set forth in Subsection c. below, any party to the arbitration hearing may obtain the following information in the hands of or which may reasonably be obtained by the responding party or the responding party's representative (As used herein, "responding party" shall mean the person of whom the information is requested.):

- (1) Those allegations in the order of disciplinary action which are admitted by the employee and those allegations in the order of disciplinary action which are denied by the employee;
- (2) The name, address and telephone number of each witness whom the responding party intends to call to testify at the hearing.
- (3) Copies of statements by any person whom the responding party intends to call as a witness.
- (4) All writings relevant to the issues involved in the appeal including but not limited to reports of mental, physical and blood examinations which the responding party intends to introduce into evidence. "Writings" as used herein shall have the meaning defined in Evidence Code Section 250 which states: "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds or symbols, or combinations thereof.
- (5) A statement specifically defining the issues in dispute.
- (6) The foregoing does not apply to witnesses or exhibits used for impeachment or rebuttal.

b. Confidential or Privileged Matter: If the responding party determines that the writing or other material requested is confidential or privileged, the response to the discovery request shall specifically so state, and shall set forth in detail the grounds upon which confidentiality or privilege is claimed. If the requesting party disputes the claim of privilege or confidentiality, the arbitrator shall resolve the claim. In resolving the claim, the arbitrator may order that the writing or other material be deposited with the arbitrator in a sealed container. In ruling on such claims, the arbitrator may grant or deny the claim of confidentiality or privilege in whole or in part. The arbitrator shall have no authority to resolve any claim concerning material which by statute may only be released by court order. If the arbitrator determines that the material is confidential, but limited disclosure is

necessary, the arbitrator may impose conditions upon the use or disclosure of the item by the requesting party. If the arbitrator determines that the material requested is subject to an evidentiary privilege, the decision regarding disclosure of the matter shall be strictly governed by the provisions of the Evidence Code.

c. Procedure for Discovery:

- (1) Personal Service: At any time after the hearing date has been set for an appeal, but in no event later than thirty (30) calendar days before the date set for such hearing, any party may personally serve a written request upon the responding party, or representative of record, for any or all of the information set forth in Subsection a. above.
- (2) Service by Mail: At any time after the hearing date has been set for an appeal, but in no event later than thirty-five (35) calendar days before the date set for such hearing, any party may serve, by first-class mail, a written request upon the responding party, or representative of record, for any or all of the information set forth in Subsection a. above. The effective date of service shall be the date of the postmark.
- (3) Response: Within twenty (20) calendar days of receiving the request mentioned in (1) and (2) above, the responding party shall prepare and serve a response to the request. Such response shall be served upon the requesting party, or representative of record, by the same means as service of the request was made.
- (4) Request to be Deemed Continuing Request: The discovery request is a continuing request, which requires a continuous response. Where new or additional information becomes available to the responding party, such information shall forthwith be furnished to the requesting party, or representative of record.
- (5) Negative Response: In the event the responding party does not have an item of the information requested, the responding party shall give a written negative response as to that particular item within the time specified for response, but shall respond fully as to the information which the responding party does possess. The responding party shall comply with (4) above after such negative response.
- (6) Disputes: Any dispute between parties regarding discovery shall be resolved by the arbitrator.

- (7) Penalties for Failure to Comply: The arbitrator shall impose penalties for failure to comply with this subsection. These penalties shall be based upon the seriousness of the failure to comply, the good or bad faith of the non-complying party, and the extent to which the non-compliance results in surprise to the requesting party and handicaps the requesting party in preparing the case. The following penalties may be imposed:
- (a) Exclusion of evidence;
 - (b) Continuing the hearing at any stage; or
 - (c) Upon proof of a willful or repeated violation, the arbitrator shall determine the issue against the noncomplying party.

13.13 TIMING AND CONDUCT OF HEARING

a. The arbitration hearing shall be held at the earliest administratively convenient date, taking into consideration the availability of the arbitrator and the availability of counsel and witnesses. The arbitration hearing shall be private, unless mutually agreed by the parties to be public.

b. The employee shall be entitled to be represented by the Association and counsel chosen by the Association; or, if the employee chooses not to be represented by the Association, the employee may be self-represented. The employee has the further right to pay for and retain independent counsel for representation at the hearing.

c. The employee shall be entitled to appear personally at the hearing and produce evidence.

d. The Association shall have the right to attend the hearing if the Association is not chosen by the employee as his/her representative.

e. The appointing authority may also be represented by counsel.

f. At the hearing, the appointing authority shall have the burden of going forward first with evidence in support of the allegations contained in the order of disciplinary action and shall have the burden of establishing the facts by a preponderance of the evidence. The arbitrator may administer oaths and take official notice of facts as authorized by law.

g. Oral evidence shall be taken only on oath or affirmation.

h. A court reporter shall take a transcript of the hearing.

i. The arbitrator may consider the records or any relevant prior disciplinary actions against the employee which are final, and any records contained in the employee's personnel files if such records were introduced at the arbitration hearing.

j. Each Party Shall Have These Rights: To call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness; and to rebut evidence. The appellant may be called and examined as if under cross-examination.

k. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

13.14 SUBPOENAS

Before the hearing has commenced, or during the hearing, the arbitrator shall have the power to issue subpoenas in accordance with Section 1282.6 of the Code of Civil Procedure.

13.15 DECISION

a. Following the hearing, the arbitrator shall promptly prepare and submit to the parties to the hearing a decision in the case within thirty (30) calendar days. The decision shall contain and be limited to specific factual findings relating to the facts alleged in the disciplinary order and any facts asserted by the appellant for purposes of defense or mitigation; a determination of legal issues, if any; a determination of whether the facts found constitute good cause for discipline; and an order that affirms, modifies or sets aside the order of disciplinary action imposed by the appointing authority.

b. In determining whether there is cause for discipline, the arbitrator shall independently review the sufficiency of the evidence supporting the charges. If good cause for the disciplinary action is found under this independent review standard, the arbitrator shall not reduce the penalty imposed by the appointing authority unless the arbitrator makes written findings that said penalty would result in a level of discipline that exceeds the bounds of reason.

13.16 FINALITY OF DECISION

The decision of the arbitrator shall be final and binding.

13.17 COSTS

The fees and expenses of the arbitrator, the court reporter, and the transcript, if any, shall be shared equally by the Association and the County. If an individual employee not represented by the Association files an appeal of discipline and he/she retains independent counsel, he/she shall be responsible for all costs of retaining said counsel.

**ARTICLE XIV
TERM**

14.1 TERM


a. The provisions of this Agreement shall be effective on July 1, 2018, except as otherwise specifically provided.

b. This Agreement shall remain in full force and effect from July 1, 2018, to and including June 30, 2021.

DATED: _____

SACRAMENTO COUNTY
ATTORNEYS' ASSOCIATION

COUNTY OF SACRAMENTO

BY: 
Joseph M. Cress, President

BY: 
Dennis Batchelder, Chief Negotiator


Robert Bonner