

# MEMORANDUM OF UNDERSTANDING

CRAFT AND PLAN ENGINEER  
UNIT

2015-2018

COUNTY OF ORANGE  
AND  
THE INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 501, AFL-CIO

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CRAFT AND PLANT ENGINEER UNIT

This Memorandum of Understanding sets forth the terms of agreement reached between the County of Orange and the International Union of Operating Engineers, Local 501, AFL-CIO as the Exclusively Recognized Employee Organization for the County Craft and Plant Engineer Unit for the period beginning June 26, 2015 through June 22, 2018. Unless otherwise indicated herein, all provisions shall become effective March 1, 2016.



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## DEFINITIONS

The following terms used in this Memorandum of Understanding shall, unless the context clearly indicates otherwise, have the respective meanings herein set forth:

AGENCY/DEPARTMENT HEAD shall mean that individual or his or her designee.

BOARD shall mean Board of Supervisors of the County of Orange.

CHIEF HUMAN RESOURCES OFFICER shall mean the County of Orange Chief Human Resources Officer or his or her designee.

CONTINUOUS SERVICE shall mean employment in a regular position which has not been interrupted by resignation, discharge or retirement. Official Leaves of Absence shall not be credited toward continuous service.

COUNTY shall mean the County of Orange and the Orange County Flood Control District, the Orange County Harbor District and special districts governed by the Board of Supervisors.

DISABILITY RETIREMENT shall mean a service or non-service connected disability retirement pension under the Orange County Employee Retirement System.

EMERGENCY means an unforeseen circumstance requiring immediate action, a sudden unexpected happening, an unforeseen occurrence or condition, a pressing necessity.

EMPLOYEE shall mean a person employed by the County and covered by terms of this Memorandum of Understanding, except where the natural construction of this Memorandum of Understanding indicates otherwise.

EXTRA HELP EMPLOYEE shall mean an employee employed in an extra help position. An extra help employee serves at the pleasure of the County in an extra help position and may be removed from an extra help position at any time with or without notice or cause and without a hearing.

EXTRA HELP POSITION shall mean a position which is intended to be occupied on less than a year-round basis including, but not limited to, the following: to cover seasonal peak workloads; emergency extra workloads of limited duration; necessary vacation relief, paid Sick Leave and other situations involving a fluctuating staff. Ordinarily, a full-time extra help position will not be authorized for a period exceeding six (6) months. In unusual circumstances, and at the discretion of the County Executive Officer and the Chief Human Resources Officer, a full-time extra help position may be authorized for a period longer than six (6) months, provided such period shall not exceed one (1) year.

FULL-TIME EMPLOYEE shall mean an employee employed in one (1) or more regular or limited-term positions whose normally assigned work hours equal those of a full workweek or work period as described hereinafter.

LIMITED-TERM EMPLOYEE shall mean an employee employed in a limited-term position except where a regular position is converted to a limited-term position, the incumbent shall retain his or her former status. As an exception to this definition, a limited-term employee may also be used to fill a regular position when the incumbent employee is on Official Leave of Absence.

LIMITED-TERM POSITION shall mean a position which the County has determined has no anticipated long-range funding or has uncertain future funding.

PART-TIME EMPLOYEE shall mean an employee employed in one (1) or more regular or limited-term positions whose normally assigned work hours do not equal those required of a full-time employee.

PERSONAL EMERGENCY shall mean an unforeseen event or circumstance of a serious nature which is beyond an employee's control and which necessitates the employee's absence from County duty, including, but not limited to, those events and circumstances which require the employee's prompt attention to avoid possible financial loss to, or damage to the health of, either the employee or a member of his or her household.

PRACTICABLE means feasible; reasonably able to accomplish.

PRIMARY OPERATOR shall mean those employees who are assigned to a regular schedule with primary responsibility for the operation of the plant on such schedule.

PROBATIONARY EMPLOYEE shall mean an employee who is serving a probation period and is employed in a regular or limited-term position.

PROMOTION shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class where the new salary is higher than the old salary.

REASSIGNMENT shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class.

REDUCTION shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class where the new salary is lower than the old salary.

REGULAR EMPLOYEE shall mean an employee who is not on probation and is employed in a regular or limited-term position.

REGULAR POSITION shall mean a position established on a permanent year-round basis requiring work on a regular schedule unless otherwise authorized by minute order of the Board.

RELIEF OPERATOR shall mean those employees who are normally assigned to the day shift without primary responsibility for the operation of the plant.

RUNNING MAINTENANCE shall mean repair or maintenance duties that do not significantly distract the Plant Operating Engineer in charge of a shift from his primary responsibility of operating the Central Utility Plant.

SENIORITY shall mean total continuous full-time equivalent service as a regular employee.

STAND A WATCH shall mean work an assigned shift.

WORK SCHEDULES shall mean an employee's assigned hours of the day, days per week and/or shift rotation schedule.

Y-RATE shall mean a pay rate outside of the assigned salary level of a class.

ARTICLE I        PREAMBLE

A.    Recognition

Pursuant to the provisions of the Employee Relations Resolution of the County of Orange and applicable State law, International Union of Operating Engineers, Local 501, AFL-CIO, was certified on January 29, 1979 by the Chief Human Resources Officer as the Exclusively Recognized Employee Organization of County employees in the Craft and Plant Engineer Unit.

ARTICLE II      WORKWEEK, OVERTIME AND PREMIUM PAY

Section 1. Workweek

A. The official workweek shall be as follows:

1. The official workweek for full-time employees shall be forty (40) hours and shall begin on each Friday and end with the following Thursday at 12:00 midnight except for employees working alternate schedules, such as a 9/80. For these employees the beginning and end of the workweek shall be the mid-point of their eight (8) hour day. However, if operational needs require an alternate schedule that does not meet the parameters described above, a different workweek may be designated.

Work ordered and performed in excess of forty (40) hours actually worked in a workweek shall be overtime.

Overtime shall be calculated on hours paid in excess of forty (40) in a workweek when work ordered by a Manager causes an employee to work beyond the end of the normal scheduled work shift for purposes of completion of a specific job.

2. Employees shall receive compensation on a biweekly basis. The pay period for employees in specified agencies, departments or divisions shall start on a Friday and end on the second Thursday thereafter.

B. The regular hours of work each day shall be consecutive. Hours of work will be considered consecutive if divided only by normal meal breaks or rest periods.

C. The County agrees to give employees a fourteen (14) calendar day advance notice of a schedule change. Changes of three (3) days duration or fewer shall be permitted without the required advance notice if mutually agreed upon by both the County and the employee(s).

D. Employees assigned as "Relief Operators" may be assigned to another schedule when they are needed to cover an unscheduled absence. "Relief Operators" shall be given twenty-four (24) hours advance notice of a schedule change.

E. Work schedules for shift assignments showing employee's shifts, workdays and hours shall be posted on agency/department bulletin boards at all times.

- F. Employees in the classes of Plant Operating Engineer and Assistant Plant Operating Engineer may trade shifts only upon written request and permission of supervision.
- G. Work shall not be regularly scheduled on more than ten (10) calendar days during any pay period. The regular work schedule shall be one (1) of the following: ten (10) eight (8) hour days on and four (4) days off, five (5) eight (8) hour days on and two (2) days off, or four (4) ten (10) hour days on and three (3) days off or four (4) nine (9) hour days each week and one (1) additional eight (8) hour day on alternate weeks. All employees in the Unit shall be scheduled at least two (2) consecutive calendar days off.
- H. The County shall discuss with the Union any proposed changes in existing scheduled hours of work before such changes are put into effect.
- I. Except as otherwise provided, no employee may be employed in one (1) or more positions, full or part time, more than the total number of hours for the employee's work period as defined in Section 1.A., above, except on authorized overtime.
- J. In addition to any other position or positions that are held, an employee may also voluntarily work in a capacity authorized for the Registrar of Voters in the course of an election provided that such election work does not unduly interfere with the employee's regular assignment. Election work shall be compensated at the rate authorized for such work.

## Section 2. Rest Periods and Cleanup Time

- A. Employees may be allowed rest periods not to exceed fifteen (15) minutes during each four (4) consecutive hours of work. Such rest periods shall be scheduled in accordance with the requirements of the agency/department, but in no case shall rest periods be scheduled within one (1) hour of the beginning or the ending of a work shift or lunch period. The County may designate the location or locations at which rest periods may be taken. Rest periods shall be considered hours worked and employees may be required to perform duties, if necessary.
- B. Each employee shall, when necessary, be permitted up to fifteen (15) minutes of paid County time at the end of each work shift to perform such activities as cleaning up a work area, putting away tools, personal wash up and changing clothes.

A. and B., above, shall not apply to employees standing a watch.

## Section 3. Meal Breaks

- A. Employees standing a watch who are required to remain on the job at their work station for the full shift period shall be permitted to take a meal period while on the job when conditions permit, without such time being deducted from hours worked.
- B. All other employees shall be permitted to take a meal period, not to exceed thirty (30) minutes, at a time designated by the agency/department at or near the middle of the shift, with such time not being considered hours worked.

#### Section 4. Overtime

##### A. Notification of Employees of Work Required Beyond Normal Schedule

If in the judgment of the agency/department, work beyond the normal day, workweek or work period is required, the agency/department will notify any employee who may be asked to perform such work of the apparent need for such overtime as soon as practicable prior to when the work is expected to begin. When necessary to meet the needs of the County, the County shall have the right to require the performance of overtime including requiring Plant Operating Engineers or Assistant Plant Operating Engineers to remain at work after the end of their scheduled shift until relief is available. If this additional work results in hours worked in excess of forty (40) hours in the employee's designated workweek, the employee shall be compensated for these excess hours at the overtime rate as defined by Section 4.C.1. Work ordered and performed in excess of forty (40) hours of paid time in a workweek shall be paid as overtime if an emergency has been declared by the Board of Supervisors or the County's Emergency Operations Center (EOC) or agency Department Operations Center (DOC) have been activated.

Overtime scheduled but cancelled fewer than twelve (12) hours prior to the starting time shall entitle the employee to elect to work a minimum four (4) hours, or more as determined by the County, beginning at the originally scheduled time.

##### B. Distribution of Overtime and Call-Back

1. Whenever overtime work is required, not including overtime work required to maintain continuous coverage on twenty-four (24) hour, seven (7) day operation, the County shall make a reasonable effort to make voluntary overtime and call-back opportunities available on an equitable basis to qualified employees in appropriate classes.
2. The County shall prepare a separate overtime and a separate call-back list for each class and work location in each agency/department. Names shall be placed on the list in order of seniority within class,

showing offers and hours worked by each employee. An updated list will be posted and provided to the Union steward at least monthly.

3. Except in cases of emergencies, offers to work overtime or call-back shall be given in sequence going down the list from the last previous person working overtime/call-back, other emergency or project starting during an assigned shift until an employee agrees to work. An employee who declines the overtime/call-back, is not available, or cannot be reached at work or at home by phone, will be bypassed. When the bottom of the list is reached, overtime/call-back opportunities shall be offered to employees starting at the top of the list. Any employee who is inadvertently passed over for an overtime or call-back opportunity shall be offered a choice of one (1) of the next two (2) available opportunities.
4. If every employee on the list declines the overtime/call-back, the County may require employees to perform overtime/call-back in the reverse order of their seniority in the class.
5. If the overtime is necessary on a project that started during an assigned shift, or on a project that requires special skills or knowledge, the employee(s) working on the project may be required either to continue working on the project or to be scheduled to return to work on the project.

In cases of scheduled overtime work requiring more than one employee to return to a work site, the overtime list will be utilized as provided in 4.B.3. to obtain additional employees needed.

6. Employees shall be considered eligible for scheduled overtime or call-back except where:
  - a. Employee is on Workers' Compensation Leave.
  - b. Employee is on unapproved leave without pay.
  - c. Employee is required to obtain a medical clearance before returning to work.
  - d. Employee has submitted a written request to be excluded from scheduled overtime and/or call-back.
  - e. Employee is on paid vacation.

C. Payment for Overtime

1. Overtime shall be compensated at one and one-half (1 1/2) times the employee's regular base rate.



2. For all regular, limited-term and probationary employees, overtime may be converted to compensatory time or paid for at the option of the agency/department. Consideration shall be given to effectuating the wishes of the employee. Employees designated by the Chief Human Resources Officer as covered by the Fair Labor Standards Act shall be paid in accordance with that Act. Employees with existing compensatory time balances of eighty (80) hours shall be paid for all overtime work performed in excess of that amount unless a higher compensatory time balance is authorized for an agency, department, division or other work unit by the County Executive Officer. When a higher compensatory time balance is authorized, employees subject to such larger balance shall be paid for all overtime work performed in excess of the designated larger compensatory time balance. Except as provided in Section 4.C.8., below, lump sum payments for compensatory time balances shall be at agency/department discretion.
3. Employees who work overtime shall promptly and accurately report such time in a manner prescribed by the County.
4. Overtime hours worked by extra-help employees shall be paid.
5. Compensatory time earned and accrued by an employee in excess of thirty-two (32) hours may be scheduled off for an employee by his or her agency/department; however, consideration shall be given to effectuating the wishes of those employees requesting specific compensatory time off periods.
6. In no case may an employee's work schedule be changed during the workweek when the purpose of such change is to avoid overtime compensation.
7. Time worked as overtime shall not be used to earn fringe benefits or to serve out probation periods. Compensatory time off may be used as part of the established workweek to earn fringe benefits and to serve out probationary periods.
8. An employee separating from the County service for reasons other than paid County retirement shall be paid for accumulated compensatory time in a lump sum payment.

## Section 5. Premium Pay

### A. Night Shift Differential

For purposes of this Section, night shift shall mean an assigned work shift of seven (7) consecutive hours or more which includes at least four (4) hours of work between the hours of 4 p.m. and 8 a.m. Overtime which is worked

as an extension of an assigned day shift shall not qualify an employee for night shift differential. The rate of night shift differential shall be five and one-half (5 1/2) percent of the employee's basic hourly rate.

B. On-Call Pay

1. When an employee is assigned on-call duty by the County, the employee shall be informed in writing, in advance whenever practicable, of the dates and inclusive hours of such assignment; the employee shall be compensated at one-fourth (1/4) of his or her basic hourly rate for the entire period of such assignment.
2. On-call duty requires the employee so assigned: (1) to be reachable by telephone or other communications device, and (2) be able to report to work in a reasonable time fully able to perform the assigned duties.

C. Call-Back Pay

1. When an employee returns to work because of an agency/department request made after the employee has completed his or her normal work shift and left the work station, the employee shall be credited with four (4) hours work plus any hours of work in excess of four (4) hours in which the employee is continuously engaged in work for which he or she was called back, beginning at the time the employee reports to the work site and ending at the time the employee leaves the work site. An employee shall report his or her arrival at the work site to the appropriate facility and shall report the completion of the job to the appropriate facility prior to his or her departure from the work site.
2. Call-back shall be paid at one and one-half (1 1/2) times the regular rate.
3. There shall not be any duplication or pyramiding of rates paid under this Section.
4. An employee credited with four (4) hours pursuant to this Section may be assigned other work appropriate for employee's position classification until the guaranteed time has elapsed.

D. Elevated Work Pay

Employees who work upon scaffolds or hanging platforms, at or above twenty (20) feet above grade (i.e., swing stages and bosun's chairs) including work upon a platform while rigging, shall receive an elevated work pay differential. The differential will be paid only for those hours actually worked under these conditions provided that there shall be a minimum payment of four (4) hours for any day in which qualifying work is performed.

Travel time shall not be considered qualifying for this differential. The rate of elevated work pay differential shall be five (5) percent of the employee's basic hourly rate.

E. Water Craft Differential Pay

Employees in positions in the classes of Painter and Carpenter regularly assigned to work on County watercraft, shall receive a differential of fifty (50) cents per hour for each hour actually worked.

F. Relief Operator Pay

An employee assigned as Relief Operator shall receive an additional one dollar (1.00) per hour for each hour actually worked.

G. Jail Supplemental Pay

1. Except as provided below, an employee who is regularly assigned to the Central Jail, Theo Lacy Branch Jail or James Musick Facility shall be paid an additional one-dollar (\$1.00) per hour for all hours actually paid.
2. Jail Supplement Pay shall not apply to Workers' Compensation pay or be used as a base rate for overtime, other premium pay, etc.

H. Plant Air Conditioning Mechanic Pay

An employee in the class of Air Conditioning Mechanic assigned to the Central Utility Facility shall receive an additional one dollar (1.00) per hour for each hour actually worked.

I. Confined Spaces Pay

Employees will be paid one-dollar (\$1.00) per hour for all hours worked in a permit-required confined space as defined consistent with California Code of Regulations Title 8, General Industrial Safety Orders, Article 108, Section 5157. Time taken at the confined space worksite wearing safety gear in preparation for entering a permit-required confined space shall count as time spent actually working in confined spaces. Time worked will be calculated to the nearest quarter hour.

J. Backflow Testing Certificate Pay

Plumbers who maintain a valid Backflow Testing Certificate and who are willing to perform the related work will be paid \$100.00 per month (approximately \$46.15 per pay period).

K. Underground Tank Certification Pay

Electricians employed in the Sheriff's Department who maintain a valid California Underground Storage Tank System Operator Certificate and who are willing to perform the related work shall be paid \$100.00 per month (approximately \$46.15 per pay period).

## ARTICLE III

## PAY PRACTICES

### Section 1. Compensation for Employees

- A. Employees shall receive compensation at the biweekly or hourly rate for the rate assigned to the class in which they are employed.
- B. Salary Increases
  - 1) Effective the first day of the pay period following Board adoption of the 2015-18 MOU, salaries will be increased by 3.0%. In addition, full-time employees on the payroll as of the date of adoption of this 2015-18 MOU will receive a one-time, off schedule lump sum payment of \$500. Part time employees on the payroll as of the date of adoption of this 2015-18 MOU will receive a pro-rated amount of the lump sum payment set forth above.
  - 2) Effective July 8, 2016, salaries will be increased by 2.75%. In addition, employees on the payroll as of the payroll period immediately preceding the December 9, 2016 pay period will receive a one-time off schedule lump sum payment of \$500. Part-time employees on the payroll as of the payroll period immediately preceding the December 9, 2016 pay period will receive a pro-rated amount of the lump sum payment set forth above.
  - 3) Effective July 7, 2017, salaries will be increased by 2.75%. In addition, full-time employees on the payroll as of the payroll period immediately preceding the December 9, 2017 pay period will receive a one-time off schedule lump sum payment of \$500. Part-time employees on the payroll as of the payroll period immediately preceding the December 9, 2017 pay period will receive a pro-rated amount of the lump sum payment set forth above.
  - 4) Extra Help employees are not eligible to receive the one-time off schedule lump sum payments referenced above.

### Section 2. Salary on Promotion

- A. Except as modified by B., below, a regular, limited-term or probationary employee who is promoted to a position in a class with a higher salary range shall receive the salary for the higher class.
- B. Any employee who is promoted to a class from which the employee was previously reduced without a salary decrease shall be placed at the salary of the class to which the employee promotes.

### Section 3. Salary on Reassignment

- A. When a regular, limited-term or probationary employee is reassigned to a class with the same salary, such employee shall have the same probation status which would have been achieved if the employee had been in the new class throughout the period of such service in the old class.
- B. When a regular, limited-term or probationary employee is reassigned to a class with a higher salary, such employee's salary shall be advanced to that higher salary. Such employee shall have the same probation status that would have been achieved if the employee had been in the new class throughout the period of such service in the old class.
- C. When a regular or limited-term regular employee is reassigned to a class with a lower salary, such employee shall have the same probation status that would have been achieved if the employee had been in the new class throughout the period of such service in the old class.
- D. When a probationary or probationary limited-term employee is reassigned to a class with a lower salary, such employee shall have the same salary and probation status as would have been achieved if the employee had been in the new class throughout the period of such service in the old class.

#### Section 4. Salary on Reduction

- A. When a probationary employee, an employee who has been on a temporary promotion or regular employee who was promoted to a limited-term position at the direction of the employee's Agency/Department Head is reduced to a class not previously occupied by the employee, the employee shall receive the recruiting step for the lower class, or the flat-rate salary, as applicable.
- B. When a regular or limited-term regular employee is reduced to a position in a lower class by demotion for reasons of unsatisfactory performance, the employee's salary shall be reduced to the salary that applies to the lower class.
- C. When a regular or limited-term employee in good standing is reduced to a position in a lower class for physical disability or reasons other than unsatisfactory performance, the employee shall receive the salary of the new classification.
- D. When a regular, limited term or probationary employee is reduced because the position the employee occupied is reclassified, the applicable salary shall be determined as follows:
  - 1. If the salary of the employee is greater than the maximum salary of the new class, the salary of the employee shall be designated as a Y-Rate and shall not change during continuous regular service until the

maximum of the new salary exceeds the salary of the employee or until the period of calendar time indicated in the schedule below has elapsed, whichever is sooner. If, at the end of the calendar period indicated below, the salary of the employee still exceeds the maximum of the new salary range, the salary of the employee shall be reduced to the salary for the new class.

#### Y-RATE SCHEDULE

<u>Years of Full-Time Continuous Service</u>	<u>Duration of Y-Rate</u>
Fewer than 5 years	Two years from the date of reclassification
5 years but fewer than 10 years	Three years from the date of reclassification
10 years but fewer than 15 years	Four years from the date of reclassification
15 years but fewer than 20 years	Five years from the date of reclassification
20 years but fewer than 25 years	Six years from the date of reclassification
25 years or more	Seven years from the date of reclassification

2. When an employee on Y-Rate accepts a voluntary reduction, the employee's salary shall be reduced by the amount of the difference between the salary of the class from which the employee is being reduced and the salary of the new class.

#### Section 5. Salary on Reclassification

The salary of a regular, limited-term or probationary employee whose position is reclassified shall be determined as follows:

- A. If the position is reclassified to a class with a higher salary range, the salary of the employee shall be governed by Article III, Section 2.A. or B.
- B. If the position is reclassified to a class with a lower salary range, the salary of the employee shall be governed by Article III, Section 4.D.

## Section 6. Salary on Reemployment

- A. A person who is reemployed in the same occupational series in which the person held regular status and was separated in good standing may, upon approval of the Chief Human Resources Officer, be appointed at the salary set for the class in which the employee is reemployed.
- B. A former County employee on paid County retirement may be reemployed for the maximum allowable time, pursuant to Government Code provisions, in any one (1) fiscal year in a position requiring special skills and knowledge and will be appointed to the position at the flat rate salary of the class.

## Section 7. Changes in Salary Allocation

If a class is reassigned to a lower salary the salary of each employee shall be determined in accordance with Article III, Section 4.D., above.

## Section 8. Additional Compensation

Notwithstanding anything in this Memorandum of Understanding to the contrary, when, in the judgment of the Board, it becomes necessary or desirable to utilize the services of County employees in capacities other than those for which they are regularly employed, the Board may authorize and, if appropriate, fix an additional rate of compensation for such employees.

## Section 9. Pay Check Deposit

The County will permit an employee to authorize automatic deposit of his or her pay check to a financial institution of the employee's choice, if and when the Chief Human Resources Officer and Auditor-Controller determine it is feasible.



## ARTICLE IV            GENERAL PERSONNEL PROVISIONS

### Section 1. Probation

#### A. New Probation

##### 1. Full-Time Employee

A new or reemployed employee employed in a regular or limited-term position shall be placed on new probation for twenty-six (26) weeks from the date of appointment ending with the first day of the pay period following completion of said period.

##### 2. Part-Time Employee

A new or reemployed employee employed in a part-time regular or limited-term position shall be placed on new probation for one thousand forty (1040) paid hours, exclusive of overtime, ending with the first day of the pay period following completion of said period.

#### B. Promotional Probation

1. A regular or limited-term employee who is promoted, excluding a temporary promotion, shall be placed on promotional probation, except as provided in B.2., below. A full-time employee shall be placed on promotional probation for twenty-six (26) weeks from date of promotion, ending with the first day of the pay period following completion of said period. A part-time employee shall be placed on promotional probation for one thousand forty (1040) paid hours, exclusive of overtime, ending with the first day of the pay period following completion of said period.
2. When a regular or regular limited-term employee is promoted as a result of the employee's position being reclassified to a higher class and the class from which the employee is promoted is subsequently deleted or abolished, the incumbent employee shall not serve a promotional probation period.
3. When an employee who has been on a temporary promotion or a regular employee who was promoted to a limited-term position at the direction of the employee's Agency/Department Head is reduced to a class the employee formerly occupied, the employee shall serve the remainder of any uncompleted probationary period in that class.

4. Except as provided in B.2., above, when a regular, limited-term or probationary employee from another bargaining unit voluntarily reduces or reassigns to a class in this bargaining unit in which the employee has never passed probation, such employee shall be placed on promotional probation for a period equal to the new probation periods set forth in Section 1.A.1. and 1.A.2., above.

C. Failure of Probation

1. New Probation

An employee on new probation may be released at the sole discretion of the agency/department at any time without right of appeal or hearing except as provided in C.3., below.

2. Promotional Probation

- a. An employee on promotional probation may be failed at any time without right of appeal or hearing except as provided in C.3., below.
- b. An employee who fails promotional probation shall, upon request, receive a performance evaluation which shall be grievable only to Step 2 in the grievance procedure, stating the reason for failure of promotional probation.
- c. When an employee fails his or her promotional probation, the employee shall have the right to return to the employee's former class provided that the employee was not in the previous class for the purpose of training for a promotion to a higher class.

When an employee is returned to the employee's former class under the provisions of this Section, the employee shall serve the remainder of any uncompleted probationary period in the former class. A regular employee who accepts promotion to a limited-term position other than at the direction of the employee's Agency/Department Head shall not have the right to return to his or her former class.

- d. If the employee's former class has been deleted or abolished, the employee shall have the right to return to a class in the employee's former occupational series closest to, but no higher than, the salary of the class that the employee occupied immediately prior to promotion and the employee shall serve the remainder of any probationary period not completed in the former class.

3. An employee who alleges that his or her probationary release/failure was based on discrimination by the County in violation of Article XV, NONDISCRIMINATION, may submit a grievance at Step 2 of the grievance procedure within ten (10) days after receipt of notice of failure of probation.

D. General Provisions

1. When an employee's record consists of a combination of full-time and part-time service in regular or limited-term positions, except as provided in Section 4.D., below, part-time service shall be applied proportionately by using total hours worked to appropriate full-time requirements. For purposes of this Section, one thousand forty (1040) hours shall equal twenty-six (26) weeks and two thousand eighty (2080) hours shall equal fifty-two (52) weeks.
2. When an Agency/Department Head or his or her representative passes an employee on probation, that determination shall be based upon a written performance evaluation and shall be discussed with the employee. A probation period may not be extended, except as provided in Section 1.E. of this Article, below, and an employee who is permitted by the agency/department to work beyond the end of a probation period shall be deemed to have passed such probation period.
3. An employee who is on probation may not transfer from one (1) agency/department to another in the same class without the approval of the Chief Human Resources Officer.

E. Extension of Probation Periods

1. The granting of an Official or Military Leave of Absence shall cause the employee's probation period to be extended by the length of the Official Leave or by the length of the Military Leave if the leave is in excess of fifteen (15) calendar days. If the employee is on probation, the extended probation period resulting from the Official or Military Leave of Absence shall end with the first day of the pay period after said extended date. An employee who is suspended shall have his or her probation extended by the length of the suspension, with the extended probation period ending with the first day of the pay period after said extended date.
2. The Chief Human Resources Officer shall extend the new or promotional probationary periods of incumbents appointed as a result of a selection procedure which is appealed. Such probationary periods shall be extended no more than sixty (60) calendar days from the date on which the County receives the Appeals Officer's findings and

decision. In the event an employee's probationary period is extended by the provisions of this Section, and such an employee has served a probationary period that is longer than the probationary period normally prescribed for new or promotional probation, such an employee may fail probation during the extended period only upon recommendation of the Appeals Officer and final determination of the Board of Supervisors.

3. Upon the recommendation of the agency/department or the request of the employee with the concurrence of the agency/department, the probation period of an employee may be extended at the sole discretion of the Chief Human Resources Officer for a period not to exceed ninety (90) calendar days provided such action is approved by the Chief Human Resources Officer before the normal probation period is completed.

Denial of a request to extend a probation period shall not be subject to appeal or hearing.

4. The Chief Human Resources Officer shall extend the probation period of employees with an employment authorization document which has an expiration date which would occur after the end of the probation period. Such probation periods shall be extended to coincide with the expiration date of the employment authorization document. In the event an employee's probation period is extended by the provisions of this Section, and such an employee serves a probation period which is longer than the normal probation period, such an employee may fail probation during the extended period only for failure to obtain a new, valid employment authorization document by the expiration date of the expiring employment authorization document.

## Section 2. Performance Evaluation

- A. The County shall maintain a system of employee performance ratings designed to give a fair evaluation of the quantity and quality of work performed by an employee. Except as modified by Section 2.C. of this Article, below, such ratings shall be prepared and recorded in the employee's personnel file for all regular and limited-term full and part-time employees at least once each year; and in addition, for employees on probationary status, at least once near the middle of the probation period.
- B. Except for employees covered by the provisions of Section 2.C. of this Article, below, the County shall discuss with the employee the specific ratings prior to such ratings being made part of the employee's personnel file.

- C. For employees whose overall performance rating would be at least standard, the employee's performance may be recorded as standard and no narrative or rating will be required.
- D. When a performance evaluation is recorded in the personnel file of an employee, a copy of such evaluation, together with any attachment relating thereto, shall be given to the employee.

### Section 3. Contents of Personnel File

- A. Adverse statements prepared by the County shall not be included in an employee's official personnel file unless a copy is provided to the employee.
- B. An employee shall have the right to inspect and review the contents of his or her official personnel file at reasonable intervals except those materials designated as confidential by law. Authorized Union representatives may inspect the official personnel file with the written permission of the employee.
- C. In addition, an employee shall have the right to inspect and review the contents of his or her official personnel file in any case where the employee has a grievance related to performance, to a performance evaluation or is contesting his or her suspension or discharge from County service.
- D. Letters of reference and reports concerning criminal investigations concerning the employee shall be excluded from the provisions of B. and C., above.
- E. An employee shall have the right to respond in writing or personal interview to any information contained in his or her official personnel file, such reply to become a permanent part of such employee's personnel file.
- F. Any contents of an employee's official personnel file may be destroyed pursuant to an agreement between the Chief Human Resources Officer and the employee concerned or by an order of an arbitrator, court or impartial hearing officer unless the particular item is otherwise required by law to be kept. As used herein, the term "personnel file" means any employee file in any County agency/department where the person is or has been employed, or any central personnel file.
- G. An employee's official personnel file shall only be open to inspection by authorized persons who have established a legitimate need to know or if such files are required to be disclosed by the court.

### Section 4. Status of Limited-Term Employees

- A. The provisions of this Section shall be applicable to all employees entering limited-term positions.

- B. All limited-term employees shall be subject to the same hiring standards and shall earn all benefits, except Article XI, LAYOFF PROCEDURE, which accrue to employees in regular positions.
- C. A regular employee who transfers, promotes or reduces to a limited-term position on a voluntary basis and not at the direction of the Agency/Department Head shall become a limited-term regular employee.
- D. All limited-term employees who transfer to permanent funded positions shall serve a new probation period. Limited-term regular employees who transfer to permanent positions shall maintain their original hire date for purposes of vacation and Sick Leave accrual, retirement and layoff. Such limited-term regular employees who are serving a new probationary period in permanent positions when a layoff occurs shall be considered to have the same employment status as regular and promotional probationary employees for the purpose of determining order of layoff, provided that the total new probation period served exceeds six (6) months.
- E. When funding ceases for a limited-term position or when the position is no longer necessary, the limited-term position shall be abolished and the incumbent shall be removed from the payroll except as provided in F., below.
- F. Regular employees who transfer, promote or reduce to limited-term positions at the direction of the Agency/Department Head shall retain their former status and retain their layoff benefits in their former layoff unit. The Agency/Department Head shall make such an order in writing prior to the date of transfer or promotion.

#### Section 5. Temporary Promotion

- A. A regular, probationary or limited-term employee who is assigned on a temporary basis to a higher level vacant regular or limited-term position shall be promoted on a temporary basis to that class when such employee has been assigned to the higher class for one hundred twenty (120) consecutive regularly scheduled hours of work and the employee has been performing all of the significant duties and responsibilities of the higher class unless the employee requests to be reassigned to his or her former class. In such case the employee shall be reassigned within five (5) working days.
- B. An agency/department may, at its option, waive the one hundred twenty (120) hour requirement when it is necessary to utilize a regular, probationary or limited-term employee in a higher level vacant regular or limited-term position for a period that is expected to be at least one hundred twenty (120) regularly scheduled hours but less than one (1) year.

- C. An employee on temporary promotion shall not be placed on promotional probation. Upon return from temporary promotion, an employee shall serve the remainder of any uncompleted probationary period in the employee's former class.
- D. At the end of the employee's assignment to the higher class, the employee shall have the right to return to his or her former class and agency/department. A temporary promotion shall not exceed a period of one (1) year.

#### Section 6. Reemployment of Employees on Disability Retirement

- A. The County will advise employees retired for physical disability to contact the Orange County Employees Retirement System (OCERS) to determine the impact of reemployment on their disability retirement benefits prior to accepting reemployment.
- B. Employees retired for physical disability who have contacted OCERS for advice and counsel under Section A, above, within two (2) years from their date of retirement, or date their disability retirement is discontinued, request and have been counseled as required above and qualify for positions in the County service shall be placed on the County Preferred Eligible List with respect to such positions. They will be placed on such list in chronological order of retirement but following the last person on layoff status. They will remain on such list for a period of two (2) years from date of retirement, or date their disability retirement is discontinued, except that:
  - 1. a person appointed to a regular position in the County service shall be removed from the list;
  - 2. a person who, on two (2) separate occasions, rejects or fails to respond within three (3) calendar days to offers of employment in a class for which he or she is qualified shall be removed from the list;
  - 3. a person who on three (3) separate occasions, declines referral for interviews in a class for which he or she is qualified shall be removed from the list.

#### Section 7. Reemployment of Regular Employee

A regular employee who leaves County employment and is reemployed within fifteen (15) calendar days shall be deemed to have been on Departmental Leave for such period of time.

## Section 8. Time Off for Selection Procedures

A regular, limited-term or probationary employee shall be entitled to necessary time off with pay to participate in tests of fitness, examinations and interviews required by the Chief Human Resources Officer during working hours for the purpose of determining eligibility for movement to another class in the County service or transfer from one (1) agency/department to another.

## Section 9. Training

- A. Upon approval of the Agency/Department Head, employees may participate in various County sponsored training programs.
- B. During the term of this Memorandum, the Union may request specific training or development opportunities for various employees in this Unit. The County agrees to discuss such requests with the Union and consider implementation.
- C. Employees in the class of Trades Helper II assigned to the Facilities Operations Division of the Orange County Public Works Department, or its successor, may opt to bid on other vacant Trades Helper II assignments in order of their seniority in the Trades Helper II class.

The employee may request to be reassigned after sixty (60) days. Management may reassign an employee after sixty (60) days or discontinue the assignment based on economic operational or other necessity (after consultation with the Union, the sixty [60] day period may be waived if unforeseen circumstances arise). Except as provided above, all assignments shall be considered permanent.

## Section 10. Requirement to Perform Running Maintenance

Primary Engineers standing a watch shall be required to perform running maintenance duties.



## ARTICLE V

## LEAVE PROVISIONS

### Section 1. Sick Leave

#### A. Accumulation of Sick Leave

1. During the first three (3) years of employment, an employee shall earn .0347 hours of sick leave with pay for each paid hour in a regularly scheduled workweek or period to a maximum of eighty (80) hours in a pay period (approximately seventy-two [72] hours per year).
2. After an employee has been paid for six thousand two hundred forty (6240) regularly scheduled hours, approximately three (3) years, the employee shall earn .0462 hours of sick leave with pay for each paid hour in a regularly scheduled work period to a maximum of eighty (80) hours in a pay period (approximately ninety-six [96] hours per year).
3. Sick leave earned shall be added to the employee's sick leave accumulation account upon the completion of the pay period, with no credit to be applied during the progress of the pay period or for a portion of the pay period during which the employee terminates County service.
4. Except as required by law, extra help employees shall not earn sick leave.

#### B. Permitted Uses of Sick Leave

Sick leave may be applied to:

1. An absence necessitated by employee's personal illness, injury or disability due to pregnancy or childbirth.
2. Medical and dental office appointments when absence during working hours for this purpose is authorized by the agency/department.
3. Absence due to exposure to a contagious disease when quarantine is imposed by health authorities or when it is determined by a physician designated by the County that the presence of the employee on duty would endanger the health of others.
4. Absence from duty because the employee's presence is needed to attend to the critical illness of a member of his or her immediate family, provided that such absence shall be limited to a maximum of twenty-four (24) working hours for each occurrence. For purposes of this Subsection, immediate family shall mean father, father-in-law, mother,

mother-in-law, brother, sister, wife, husband, registered domestic partner, child, grandparent, grandchild or legal guardian.

5. Absence from duty because: (1) the employee's presence is needed to attend to the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member; or (2) an employee is a victim of domestic violence, sexual assault, or stalking and the employee uses the leave time for the purposes described in Labor Code sections 230(c) and 230.1(a). Use of this leave is limited to the time period specified in Labor Code section 233, except as to extra help employees, who will be limited to three (3) days provided they meet the requirements set forth in the Healthy Workplaces, Healthy Families Act of 2014 (Labor Code sections 245-249). For purposes of this Subsection "family member" means child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling as those terms are defined by Labor Code section 245.5(c).
6. Illness while on paid vacation will be charged to sick leave rather than vacation only under the following conditions:
  - a. The illness or injury of the employee was of a nature that would preclude the effective use of vacation and would prevent the employee from performing his or her normal duties.
  - b. The employee must notify his or her supervisor within four (4) calendar days of the beginning of the illness or prior to the end of his or her vacation leave, whichever is sooner, to request that his or her illness on vacation be charged to sick leave.
  - c. The agency/department shall be under no obligation to extend the vacation beyond the original scheduled vacation ending date.
  - d. Upon the employee's return to work, the employee must furnish the agency/department with a certificate signed by a licensed physician or registered nurse or other satisfactory evidence of illness, injury or medical condition stating the nature of the illness or injury and the period of disablement.
7. Absence from duty because of personal emergencies or personal business not to exceed thirty (30) working hours during the payroll year.
8. An absence due to an air pollution alert which prevents the employee from traveling to his or her work location.

#### C. Prohibited Uses of Sick Leave

Sick leave shall not be applied to:

1. Absence caused by illness or injury to a member of the employee's family except as provided in B.4., B.5 B.6., or B.8., above.
2. Absences which occur on a County holiday.

D. General Provisions

1. In any use of sick leave, an employee's account shall be charged to the nearest quarter hour.
2. An employee may be required to furnish a certificate issued by a licensed physician or registered nurse or other approved evidence of illness, injury, medical condition or medical or dental office calls when the agency/department has notified the employee in advance of such a requirement or when the employee has been under the care of a physician.

Section 2. Bereavement Leave

Upon request, regular, limited-term or probationary employees shall receive necessary time off with pay, not to exceed five (5) days in any one (1) instance, to arrange for or attend a funeral of a member of their immediate family. For purposes of this Section, immediate family shall mean father, father-in-law, mother, mother-in-law, brother, sister, wife, husband, child, step-child, grandchild, grandparent or legal guardian.

Section 3. Authorized Leave Without Pay

A. Agency/Departmental Leave

Upon request, a regular, limited-term or probationary employee may be granted an Agency/Departmental Leave Without Pay for a period of time not to exceed fifteen (15) calendar days. The granting of such Leave shall be at the discretion of the agency/department except in cases where Official Leave has been authorized pursuant to Sections 10, 11.A., and 12., below. The Agency/Department Head may require that all accumulated compensatory leave time be used prior to granting of Agency/Departmental Leave. The use of earned vacation prior to the obtaining of Agency/Departmental Leave shall be at the option of the employee.

B. Official Leave

1. Upon request, a regular, limited-term or probationary employee may be granted an Official Leave of Absence Without Pay. Such Leave, if

granted, shall not exceed one (1) year except as provided in subsections 2. and 3., below. Such Leave may be authorized only after an employee's completion of an Agency/Departmental Leave and after all compensatory time and vacation accruals have been applied toward payment of the absence.

2. An Official Leave of Absence may be extended for up to an additional year at the discretion of the agency/department, except that requests for Official Leave which qualify as Family Leave pursuant to applicable law shall be granted to the extent required by such law. If the agency/department denies the extension of such Leave, the provisions of subsections 5. and 6., below, shall not apply.
3. An employee who has requested and identified a valid need for Family Leave pursuant to Article V, Section 12, and applicable law, shall be granted Official Leave to the extent required by such law. Such Leave shall be authorized only after use of leave balances as specified below:
  - a. When Official Leave involves the employee's own serious health condition – after all accumulated compensatory time, vacation and sick leave have been used;
  - b. When Official Leave involves the circumstances covered by Section 1, subsections.B.4, B.5 or B6 of this Article – after all accumulated compensatory time, vacation and sick leave (to the extent available to the employee for such use) have been used;
  - c. When Official Leave is used for all other reasons - after all accumulated compensatory time and vacation accruals have been applied toward the absence.
4. An employee shall give notice two (2) weeks prior to the date he or she wants to return to work, except that an employee returning from Family Leave shall give the lesser of two (2) weeks' notice or the maximum notice allowable under applicable law. If an employee does not give the required notice prior to the date he or she wants to return to work, the agency/department shall not be required to return the employee to work until the employee gives such notice; however, the agency/department may waive the notice or reduce the notice period at its discretion.
5. Except as to leaves which must be granted pursuant to sections 10, 11 and 12 in this Article, the agency/department shall: (a) indicate on the request its decision as to whether the request should be granted, modified or denied; (b) promptly transmit the request to the Chief Human Resources Officer; and (c) deliver a copy to the employee.

6. If the agency/department modifies or does not approve a request for Official Leave, the employee may, within fifteen (15) calendar days of said action, file a request for review by the Chief Human Resources Officer. The decision of the Chief Human Resources Officer on such appeals shall be final.
7. An Official Leave shall not be credited toward continuous service.

C. General Provisions

1. A request for a Leave of Absence shall be made upon forms prescribed by the Chief Human Resources Officer and shall state specifically the reason for the request, the date when it is desired to begin the Leave of Absence, and the probable date of return.
2. A request for Leave of Absence Without Pay shall normally be initiated by the employee, but may be initiated by the employee's agency/department only where the employee is unable to initiate such action, except in cases where the provisions of Section 11.A. apply.
3. An employee who has been absent without pay for twelve (12) months due to a Leave granted pursuant to Sections 3, 4 and/or 10 of this Article shall be considered to have automatically resigned his or her employment with the County under the provisions of Section 9, below, unless he or she returns to work at the end of the twelve (12) months or receives approval for an extension of his or her leave.

Section 4. Official Leave for Non-occupational Disability

- A. A regular, limited-term or probationary employee shall be granted upon request an Official Leave of Absence Without Pay for up to six (6) months for a non-occupational disability including disabilities related to pregnancy and childbirth provided that the employee meets the following conditions:
1. A medical statement setting forth the need for the leave, start date of the leave, the expected date of return and the period of disability shall be submitted with the Leave request.
  2. Such Leave shall begin after all accrued sick leave, compensatory time and vacation time have been applied toward the absence.
  3. Unless otherwise required by law, the employee has been paid for six thousand two hundred forty (6240) regularly scheduled hours or more. This provision does not apply to pregnancy disability leave.
  4. For employees who are disabled because of pregnancy, as defined by state law, the County will maintain and pay for an eligible employee's coverage under the County's group health plan for the

duration of the leave, not to exceed four (4) months over the course of a 12-month period, at the level and under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave.

- B. If additional Leave is desired, the employee may request additional Leave in accordance with Official Leave, Section 3.B., above.
- C. Unless otherwise required by law, an employee shall not be entitled to more than one (1) such Leave per twelve (12) month period.

Section 5. Absences Caused by Medical Conditions

An employee who is absent from work for a period of more than fourteen (14) consecutive calendar days due to a medical condition shall not be permitted to resume work until and unless the employee obtains a medical clearance from a physician designated by the County.

Section 6. Jury Duty Leave

A regular, limited-term or probationary employee who is called for jury duty or for examination for jury duty shall be compensated at the employee's regular rate of pay for those hours of absence due to the jury duty which occur during the employee's regularly scheduled working hours provided the employee deposits the employee's fees for such hours of jury duty, exclusive of mileage, with the County Treasurer. Fees for jury duty performed during hours other than regularly scheduled working hours may be retained by the employee. Any hours worked beyond the regularly scheduled workday shall be subject to the workweek and overtime provisions (Article II). Employees called for jury duty shall have their regular schedule converted to a Monday through Friday day shift during the jury duty period.

Section 7. Witness Leave

A regular, limited-term or probationary employee who is called to answer a subpoena as a witness for court appearances, during the employee's work hours, except where the employee is a litigant or where the subpoena is related to the employee's employment with another employer, shall be compensated at his or her regular rate of pay for all hours of absence from work due to answering the subpoena provided the employee shows proof of such subpoena and deposits witness fees received for such hours, exclusive of mileage, with the County Treasurer. Fees for answering a subpoena as a witness during hours other than regularly scheduled working hours may be retained by the employee.

Section 8. Leave for Union Business

A. Leave Without Pay - Subject to the staffing needs of the County, employees who have been officially appointed or elected by Local 501, AFL-CIO, to serve as officers or delegates may, upon written request of the Union, be granted a temporary Leave(s) of Absence Without Pay, not to exceed an aggregate total of fourteen (14) calendar days annually for the Unit, to attend official Union functions, provided that:

1. The Leave is requested in writing at least three (3) days in advance. Such request shall be made for a specified purpose and length of time, and
2. the Union shall not request that such Leave be effective for more than three (3) employees on any workday, and
3. the services of such an employee are not immediately required by the County, and other competent employees are available to do the employee's usual work.

B. Reasonable Released Time – Employees shall be entitled to (paid) released time under the following circumstances:

1. When attending negotiations meetings with the County, including a reasonable amount of time before and after such meetings to plan with bargaining team colleagues (generally not to exceed two hours);
2. When attending meetings with County officials regarding employee grievances, discipline or arbitration hearings (See Article X, Section 5.A);
3. When attending Union Board of Directors meetings (as a member of the Board of Directors)

An employee who wishes to attend one of the foregoing meetings shall provide his/her supervisor with reasonable advanced notice of the time, location and expected duration of the meeting. An employee may not interrupt or leave his or her job to attend one of the foregoing meetings if his or her supervisor determines that the interruption or absence will unduly interfere with the work of the employee's unit. However, an effort will be made to grant such time off as soon as it is feasible to do so.

C. Attendance at other Union Meetings – employees may attend other union-related meetings, such as general membership meetings, union trust meetings, union steward meetings, union training and committee meetings, provided the employees provides reasonable advance notice of the time, location and expected duration of the meeting, and the supervisor determines that attendance at the meeting would not adversely affect County operations. An employee must use accrued paid leave time (eg.,

vacation or compensatory leave time) to attend such meetings if the meetings are held during the employee's scheduled work day.

Section 9. Absence Without Authorization

- A. Absence without authorization, whether voluntary or involuntary, for three (3) consecutive working days shall be considered an automatic resignation from County employment as of the last date on which the employee worked or the last date the employee was to return to work from an authorized absence.
- B. If an employee does not have prior authorization to be absent from work, such employee may request specific authorization from the Agency/Department Head prior to the expiration of the time limit specified in subsection A., above.
- C. When an employee has been absent without authorization and the County plans to invoke the provisions of section 9.A., above, at least ten (10) calendar days prior to accepting and entering an automatic resignation, the County shall send written notice to the employee's last known address by certified mail with return receipt requested, and shall deposit such notice in the United States mail with postage fully prepaid. Notice is complete upon mailing. Such written notice shall contain:
  - 1. a statement of the County's intention to accept and enter the employee's automatic resignation and its effective date;
  - 2. a statement of the reasons for considering the employee to have automatically resigned;
  - 3. a statement of the employee's right to respond, either orally or in writing, prior to the effective date of such proposed action;
  - 4. a statement of the employee's right to representation;
  - 5. a copy of the automatic resignation provisions which apply to the employee;
  - 6. a statement that if the employee fails to respond to the written notice before the effective date of the automatic resignation, the employee has waived any right to appeal the automatic resignation.
- D. An automatic resignation shall not be accepted and entered if the employee 1) responds to the notice before the effective date, 2) provides an explanation satisfactory to the agency/department as to the cause of the unauthorized absence, and reasons for failing to obtain an authorized leave, and submits any pertinent documentation to substantiate such reasons, and



3) is found by the agency/department to be ready, able and willing to resume the full duties of his or her position.

- E. An employee who is permitted to continue his or her employment pursuant to subsection C. and/or D., above, shall not be paid for the period of his or her unauthorized absence and shall be treated as if on a Leave of Absence for purposes of continuity of employment and other appropriate benefits, unless the agency/department determines it is appropriate to use sick leave, compensatory time, vacation or other paid leave to cover the absence.
- F. Notwithstanding any other provision of this Section, the County may rescind an automatic resignation.
- G. Automatic resignations shall not be considered a discharge under the provisions of Article IX, DISCIPLINARY ACTION.

Section 10. Parenthood Leave

- A. A regular, limited-term or probationary employee shall be granted, upon request, a Parenthood Leave Without Pay of up to six (6) months in connection with the birth or placement for legal adoption of a child provided the employee meets the following conditions:
  - 1. The requested Leave is commenced within six (6) months before or after the expected date of birth or placement for legal adoption of the child.
  - 2. Sufficient documentation of such birth or placement for legal adoption is submitted with the request for Leave.
  - 3. Such employee has completed new probation.
  - 4. All accrued vacation and compensatory time has been applied toward the absence.
- B. Unless otherwise required by law, employees shall not be eligible for more than one (1) such Leave within any twelve (12) month period.
- C. Sick leave must be applied toward any portion of the absence which qualifies under Section 1.B.1. of this Article provided the employee has furnished the agency/department with a certificate signed by a licensed physician stating the nature of the medical condition and period of disability.
- D. Pregnant employees may also apply for a Non-occupational Disability Leave for the term of disability as provided in Section 4. of this Article.
- E. Parenthood Leave shall not be credited toward continuous service.

- F. For employees on Parenthood Leave, probation periods and performance evaluation dates shall be treated as if the employee were on Official Leave.

Section 11. Workers' Compensation Leave

- A. When an injury is determined to be job-related in accordance with Article XII, Section 1.B., a regular, limited-term or probationary employee shall be placed on Workers' Compensation Leave. If such determination cannot readily be made, or there is a subsequent disagreement regarding the determination of Workers' Compensation Leave, and all sick leave has been applied to the absence, the employee shall be placed on Official Leave until a final determination is made notwithstanding the provisions of Section 3.B., above.
- B. Workers' Compensation Leave shall terminate when the employee:
  - 1. is determined to be physically able to return to work by a County-designated physician; or
  - 2. is determined to be physically able to return to work with medical restrictions which the agency/department can accept; or
  - 3. accepts employment outside the County; or
  - 4. accepts employment in another County position; or
  - 5. is permanently disabled; or
  - 6. elects retirement as provided by law.
  - 7. an employee who does not return to work within two (2) weeks of the end of his or her Workers' Compensation Leave pursuant to this provision, shall be considered to have automatically resigned his or her employment with the County under the provisions of Section 9, above.
- C. If practicable, an employee on Workers' Compensation Leave will give notice two (2) weeks prior to the date he or she wants to return to work. If an employee does not give two (2) weeks' notice prior to the date he or she wants to return to work, the agency/department shall not be required to return the employee to work until such notice is given; however, the agency/department may waive the notice or reduce the notice period at its discretion.
- D. If an employee's Workers' Compensation Leave expires and the employee is absent without authorization, the provisions of Section 9. of this Article shall apply.

- E. For employees on Workers' Compensation Leave, probation periods and performance evaluation dates shall be treated as if the employee were on Official Leave.

Section 12. Family Leave

A. General Provisions

1. Family Leave shall be granted to the extent required by law. The following provisions set forth certain of the rights and obligations with respect to this leave. Rights and obligations which are not specifically set forth below are set forth in the U.S. Department of Labor regulations implementing the federal Family and Medical Leave Act of 1993 (FMLA) and the regulations of the Department of Fair Employment and Housing implementing the California Family Rights Act (CFRA). Unless otherwise provided by this Section "family leave" under this Agreement shall mean leave pursuant to the FMLA and CFRA.
2. Family Leave may be used in the following situations:
  - a. An employee's serious health condition which makes the employee unable to perform the functions of his/her job, except for leave taken for disability of account of pregnancy, childbirth or related medical conditions.
  - b. The birth of a child and in order to care for the newborn child within one year of birth.
  - c. Placement of a child for adoption or foster care within one year of the placement.
  - d. An employee's presence is needed to attend to a serious health condition of the employee's child, spouse, parent or a child of an employee standing in loco parentis (those with day-to-day responsibilities to care for and financially support a child).
  - e. Leave for a qualifying exigency arising out of the fact that the employee's spouse, registered domestic partner, child or parent is on covered active duty or called to active duty status in the Armed Forces.
  - f. Leave to care for a spouse, registered domestic partner, child, parent, or "next of kin" who is a covered servicemember of the Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces.

3. Employees must request and identify their need for Family Leave. The County and IUOE agree that certain other types of leaves available to employees under this Agreement may meet the requirements of Family Leave pursuant to applicable law. The County may apply any time during which an employee is on such leave against the amount of Family Leave to which the employee is entitled.
4. Eligibility for Family Leave will be determined according to the requirements of applicable law.
5. Family leave shall not exceed twelve (12) work weeks for situations covered by subsection A(2)(a) – (d) above or twenty-six (26) weeks to care for a covered service member (subsection A(2)(e) and (f) above) during any calendar year. Where Family Leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.
6. Leave taken under the FMLA for a disability due to pregnancy shall run concurrently with leave taken under the California Pregnancy Disability Act (See Section 4 of this Article). A family member may also be entitled to an additional twelve (12) weeks of bonding time under the CFRA.
7. The twelve (12) month period for calculating leave entitlement will be based on the calendar year (January 1 to December 31).
8. When a request for Family Leave is approved, the agency/department shall determine whether sick leave, compensatory, and/or vacation time is to be applied. Such determination shall be consistent with other leave provisions of this Agreement and shall give consideration to the circumstances and the wishes of the employee. The use of sick leave shall be restricted to those circumstances which qualify under the provisions of Article V., Section 1.B.

**B. Notification Requirements**

1. If the Family Leave is foreseeable, the employee must provide the agency/department with thirty (30) calendar days' notice of his or her intent to take Family Leave.
2. If the event necessitating the Family Leave becomes known to the employee less than thirty (30) calendar days prior to the employee's need for Family Leave, the employee must provide as much notice as

possible. In no case shall the employee provide notice later than five (5) calendar days after he or she learns of the need for Family Leave.

3. For foreseeable leave due to a qualifying exigency, an employee must provide notice of the need for leave as soon as practicable, regardless of how far in advance such leave is foreseeable.
4. When the Family Leave is for the purpose of the scheduled medical treatment or planned medical care of a child, parent, spouse or registered domestic partner, the employee shall, to the extent practicable, schedule treatment and/or care in a way that minimizes disruption to agency/department operations.

#### C. Verification

1. As a condition to the approval of Family Leave, an employee may be required to furnish certification from the health care provider which states: (1) the date on which the condition commenced; (2) the probable duration of the condition; (3) an estimate of time that the employee needs to be off; (4) that the employee cannot perform his/her duties because of the employee's own serious health condition or that care is needed when the leave is for an eligible family member pursuant to applicable law.
2. Employees who request leave to care for a covered servicemember who is a child, spouse, registered domestic partner, parent or "next of kin" of the employee must provide written certification from a health care provider regarding the injured service member's injury or illness.
3. The first time an employee requests leave because of a qualifying exigency, the employee is required to provide the County with a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military members is on active or called to active duty in a foreign country with the dates of active duty service. New active duty orders or similar documentation shall be provided to the County if the need for qualifying exigency leave arises out of a different active or call to active duty status of the same or a different covered military member.
4. Failure to provide satisfactory verification of the necessity for Family Leave is grounds for denial of the Family Leave.

#### Section 13. Catastrophic Leave

The County will administer a Catastrophic Leave procedure designed to permit limited individual donations of vacation and/or compensatory leave time to an employee who is required to be on an extended unpaid leave due to a catastrophic medical condition or other serious circumstances.

ARTICLE VI      VACATION

Section 1.      Accumulation of Vacation

- A. During the first three (3) years of employment, a full-time employee in a regular or limited-term position shall earn .0385 hours of vacation for each hour of pay during his or her regularly scheduled workweek (approximately two [2] weeks per year). Part-time employees will earn vacation on a prorated basis.
  
- B. Commencing with the pay period following that in which a full-time employee completes three (3) years of continuous County service (6240 hours), a full-time employee in a regular or limited term position shall earn .0577 hours of vacation for each hour of pay during his or her regularly scheduled workweek (approximately three [3] weeks per year). Commencing with the pay period in which a part-time employee completes 6240 hours of continuous County service, a part-time employee in a regular or limited term position shall earn .0577 hours of vacation for each hour of pay during his or her regularly scheduled workweek.
  
- C. Commencing with the pay period following that in which a full-time employee completes ten (10) years of continuous full-time County service (20800 hours), an employee in a full-time regular or limited-term position shall earn .077 hours of vacation for each hour of pay during his or her regularly scheduled workweek (approximately four [4] weeks per year). Commencing with the pay period in which a part-time employee completes 20800 hours of continuous County service, a part-time employee in a regular or limited term position shall earn .077 hours of vacation for each hour of pay during his or her regularly scheduled workweek.
  
- D. The maximum allowable vacation credit an employee may accrue at any one (1) time for a full-time employee with less than ten (10) years of full-time continuous service shall be two hundred forty (240) hours or a prorated amount equal to six (6) weeks of vacation for part-time employees. The maximum allowable vacation credit an employee may accrue at any one (1) time for a full-time employee with ten (10) or more years of full-time continuous service shall be three hundred twenty (320) hours and a prorated amount equal to eight (8) weeks of vacation for part-time employees. An employee who has accrued the maximum allowable vacation credit will not accrue additional credit until the employee's vacation credit drops below the maximum allowed.

Section 2.      General Provisions

- A. Not more than eighty (80) hours of paid time may be credited toward accumulation of vacation credit in any pay period.

- B. An Official Leave of Absence shall cause the aforementioned ten (10) years (Article VI, Section 1.C.) of full-time County service to be postponed a number of calendar days equal to the Official Leave.
- C. When an employee's County service consists of part-time regular service or a combination of full-time regular and part-time regular service, both periods of service shall apply towards the required ten (10) years (Article VI, Section 1.C.) of County service, with the part-time service being applied proportionately to the appropriate full-time interval.
- D. Additional vacation earned during the period of vacation may be taken consecutively.
- E. In any use of vacation, an employee's account shall be charged to the nearest quarter hour.
- F. Vacation shall be scheduled for employees by their agency/department; however, consideration shall be given to effectuating the wishes of those employees requesting specific vacation periods.
- G. No scheduled vacation will be cancelled except in cases of emergency.
- H. Illness while on paid vacation will be charged to Sick Leave rather than vacation only under the conditions specified in Article V, Section 1.B.5.
- I. No employee shall be permitted to work for compensation for the County in any capacity during the time of his or her paid vacation from the County service except as an Election Board Officer or Election Night Help.
- J. An employee separating from County service for reasons other than paid County retirement shall be paid for all accrued vacation in a lump sum payment. An employee who is separating from County service by way of paid County retirement may elect either to take time off for his or her vacation or to be paid for his or her vacation in a lump sum payment.
- K. Vacation Scheduling
  - 1. Vacations shall be scheduled by the agency/department. The County shall schedule on a County seniority basis those vacation requests which have a sum total for the calendar year of less than or equal to the vacation entitlement earned in two thousand eighty (2080) hours.
  - 2. After all vacation requests for the one (1) year entitlement are scheduled, the County shall schedule on a County seniority basis the portion of vacation requests for a calendar year which exceed the amount of vacation earned in two thousand eighty (2080) hours.



3. Vacation requests for the calendar year must be submitted by March 1 to receive consideration on a seniority basis.
  4. All vacation scheduling shall be done by the agency/department with due regard to the needs of the County work schedule. When circumstances require, the agency/department may reject an employee's request for vacation scheduling subject to the grievance procedure.
  5. Employees in the classes of Plant Operating Engineer and Assistant Plant Operating Engineer shall request vacation time off at least twenty-eight (28) calendar days before the beginning of the pay period in which the requested time off falls, except in emergencies. Employees shall request compensatory time off at least seven (7) calendar days before the beginning of the pay period in which the requested time off falls, except in emergencies.
- L. An employee may opt to be paid in either two (2) separate increments of up to twenty (20) hours each or one (1) increment of up to forty (40) hours of accrued vacation in each fiscal year.

ARTICLE VII      HOLIDAYS

Section 1.    Holidays Observed

A.    Except as modified below, County employees shall observe the following holidays:

2015:    Independence Day, July 4  
          Labor Day, September 7  
          Columbus Day, October 12  
          Veteran's Day, November 11  
          Thanksgiving Day, November 26  
          Day after Thanksgiving, November 27  
          Christmas Day, December 25

2016:    New Year's Day, January 1  
          Martin Luther King, Jr.'s Birthday, January 18  
          Lincoln's Birthday, February 12  
          Washington's Birthday, February 15  
          Memorial Day, May 30  
          Independence Day, July 4  
          Labor Day, September 5  
          Columbus Day, October 10  
          Veteran's Day, November 11  
          Thanksgiving Day, November 24  
          Day after Thanksgiving, November 25  
          Christmas Day, December 25

2017:    New Year's Day, January 1  
          Martin Luther King, Jr.'s Birthday, January 16  
          Lincoln's Birthday, February 12  
          Washington's Birthday, February 20  
          Memorial Day, May 29  
          Independence Day, July 4  
          Labor Day, September 4  
          Columbus Day, October 9  
          Veteran's Day, November 11  
          Thanksgiving Day, November 23  
          Day after Thanksgiving, November 24  
          Christmas Day, December 25

2018:    New Year's Day, January 1  
          Martin Luther King, Jr.'s Birthday, January 15  
          Lincoln's Birthday, February 12  
          Washington's Birthday, February 19  
          Memorial Day, May 28

- B. When a holiday falls on a Sunday, the next day shall be observed as the holiday.
- C. When Christmas Day or New Year's Day falls on a Saturday, the Friday immediately preceding each day shall be observed as the holiday.

Section 2. Eligibility for Holiday Pay

- A. An employee must be paid for all of both the regularly scheduled working assignment immediately prior to a holiday and the regularly scheduled working assignment immediately after that holiday in order to receive holiday pay. With County approval, compensatory time earned for working on a holiday or for a holiday falling on a regularly scheduled day off may be taken on the first scheduled working day after the holiday.
- B. A new employee whose first working day is the day after a holiday shall not be paid for that holiday.
- C. An employee who elects paid County retirement on a holiday shall be paid for the holiday.
- D. An employee who is terminating employment for reasons other than paid County retirement and whose last day as a paid employee is the day before a holiday shall not be paid for that holiday.
- E. Only regular, limited-term and probationary employees shall be eligible for holiday pay.

Section 3. Holiday Pay

- A. On each of the holidays designated above, each full-time employee scheduled to work but permitted to take the day off shall receive pay computed at the employee's basic hourly rate for the number of hours the employee was regularly scheduled to work on the holiday. A part-time employee scheduled to work but permitted to take the day off shall receive pay computed at the employee's basic hourly rate for the number of hours the employee was regularly scheduled to work on the holiday.
- B. Compensation for Holidays Falling on Scheduled Days Off
  - 1. When a holiday falls on a full-time employee's regularly scheduled day off, the employee will be given the following options:
    - a. The employee may request to change his or her schedule and take another day off in the same pay period; or;

- b. The employee may request to go on an eight-hour day schedule for the workweek in which the holiday falls; or
- c. The employee may bank eight (8) hours of non-cashable compensatory time.

A request for a schedule change is subject to approval by the employee's supervisor; however, the department will attempt to accommodate the wishes of the employee. Accordingly, the supervisor will grant the request if the modified schedule is operationally feasible.

2. A part-time employee shall receive compensatory time at the rate of one (1) hour for each five (5) hours of regularly scheduled work in the workweek to a maximum of eight (8) hours of compensatory time.

C. Compensation for Work on Holidays

1. An employee who is required to work on Columbus Day, Veteran's Day, Day after Thanksgiving, Martin Luther King, Jr.'s Birthday, Lincoln's Birthday and/or Washington's Birthday and who meets the eligibility requirements contained herein shall receive his or her regular pay for each hour worked. Work performed on a holiday which is overtime as defined in Article II, Section 1, shall be compensated as provided in Article II, Section 3.
2. An employee who is required to work on Christmas Day, New Year's Day, Memorial Day, Independence Day, Labor Day or Thanksgiving Day shall receive pay computed at one and one-half (1 1/2) times the employee's basic hourly rate for the number of hours actually worked.
3. An employee who is required to work on a holiday and who meets the eligibility requirements contained herein shall receive, in addition to pay as provided in C.1. or 2. of this Section, compensatory time for each hour worked to a maximum of eight (8) hours.

D. Holidays which fall during an employee's vacation period shall not be charged against the employee's vacation balance.

E. Full-time employees who are on a pay status during the pay period which includes March 1 each fiscal year during the term of this Agreement, shall be credited with two (2) hours of compensatory time at the end of the pay period which includes that date. Part-time employees whose regularly assigned work schedule is at least twenty (20) hours per week shall, in like manner, earn and be credited with one (1) hour of compensatory time.

F. Compensatory time earned under the provisions of this Section may be granted as compensatory time off or paid for at the discretion of the County, as provided in Article II, Section 4.C.2. of this Agreement.

ARTICLE VIII REIMBURSEMENT PROGRAMS

Section 1. Mileage Reimbursement

- A. Subject to the current Vehicle Rules and Regulations established by the Board, an employee who is authorized to use a private automobile in the performance of duties, including mileage driven to respond to an unscheduled Call Back (per Article II, Section 5.C) shall be paid at the Internal Revenue Service Standard Mileage Rate for the Business Use of a Car.

Section 2. Personal Property Reimbursement

Employees shall, in proper cases, be reimbursed for the repair or replacement of personal property damaged in the line of duty without fault of the employee. The amount of reimbursement for articles of clothing shall be the depreciated value based on the age and condition of the article. Reimbursement for a watch shall be limited to the functional value of the watch.

Section 3. Tools/Safety Work Boots

- A. Crafts persons who are required to furnish their own tools and/or safety work boots shall be eligible for reimbursement for tool and/or safety work boot purchases to replace tools or safety work boots in their County required complement to a maximum of two hundred fifty (250) dollars per fiscal year.

Approved classes for reimbursement shall include:

Metalsmith	Facilities Mechanic
Carpenter	Facilities Mechanic Leadworker
Plumber	Locksmith
Electrician	Air Conditioning Mechanic
Elevator Mechanic I	Trades Helper I, II and III
Elevator Mechanic II	
Environmental Control Systems Specialist I and II	

- B. Effective July 2, 1999, employees in the below listed classes who are required to furnish their own safety work boots became eligible for reimbursement to a maximum of one hundred and fifty (150) dollars per fiscal year.

Assistant Plant Operating Engineer  
Painter  
Plant Operating Engineer

- C. The County shall replace or furnish insurance protection for employee owned trades and crafts tools, required by the agency/department to be

used in the performance of the employee's duties, against loss sustained on County owned or controlled property, resulting from theft, and arising out of the activities related to the employee's regularly assigned work duties, provided that loss attributable to negligence of the employee shall not be covered. For each incident, a deductible of twenty-five (25) dollars will be applied to each employee's loss. The payment of claims under such coverage shall not be appealable under the grievance procedure.

- D. If stolen tools are recovered in an undamaged condition and replacement tools have been secured, the employee shall return to the County the replacement tools. When the replacement tools are returned to the County, the employee shall receive from the County a twenty-five (25) dollar cash refund in consideration of the twenty-five (25) dollar deductible. If replacement tools have not been secured, the employee shall return all reimbursement funds received from the County.

ARTICLE IX      DISCIPLINARY ACTION

Section 1.      Reprimand and Substandard Performance Evaluation

- A. No regular, limited-term regular or promotional probationary employee shall receive a written reprimand or a substandard performance evaluation except for reasonable cause.
- B. A written reprimand or substandard performance evaluation (i.e. a rating of "does not meet performance objectives") given to a regular, limited-term regular or promotional probationary employee may be appealed through the grievance/appeal procedure. Such appeal shall be initiated at Step 1 of the grievance/appeal procedure.

Section 2.      Notice and Pre-Disciplinary Hearing Procedures for Suspension, Reduction or Discharge

- A. In situations involving (1) a suspension of a regular or, limited-term employee for more than five (5) days; (2) a reduction (demotion) of a regular or limited-term employee; or (3) the discharge of a regular or limited-term employee, a written notice of such proposed disciplinary action shall be served on the employee personally, or by certified mail, at least ten (10) calendar days prior to the effective date of the proposed action. Such written notice shall contain:
  - 1. a description of the proposed action and its effective date(s);
  - 2. a statement of the reasons for such proposed action, including the acts or omissions on which the proposed action is based;
  - 3. copies of material on which the proposed action is based;
  - 4. a statement of the employee's right to respond, either orally or in writing, prior to the effective date of such proposed action;
  - 5. a statement of the employee's right to representation;
  - 6. a statement of the employee's right to appeal should such proposed action become final.
- B. In suspending a regular, limited-term regular or promotional probationary employee for five (5) days or less, the above notice requirements shall be complied with not more than ten (10) days after the effective date of the suspension.

However, if an employee is notified of a suspension which will be effective before the above notice is given, the employee shall:

1. whenever practicable, be given an opportunity to respond to the proposed suspension to a designated agency/department representative with the authority to make an effective recommendation on the proposed suspension prior to the suspension becoming effective;
  2. be informed of the employee's right to representation in the response;
  3. be informed of the employee's right to appeal should the proposed suspension become final.
- C. Prior to the effective date of such suspension of more than five (5) days, or reduction or discharge, an employee will be given an opportunity to respond, either orally or in writing, at the employee's option, to a designated agency/department representative with the authority to make an effective recommendation on the proposed disciplinary action.
- D. An employee shall be given reasonable time off without loss of pay to attend a disciplinary hearing.
- E. An employee may represent him or herself or may be represented in the disciplinary hearing by IUOE.
- F. An employee shall receive written notice sustaining, modifying or canceling a proposed discharge on or prior to the effective date of such action.
- G. An employee shall receive written notice either sustaining, modifying or canceling a proposed suspension, reduction or discharge prior to the effective date of such action except that such written notice may be given after the notice referenced in Section 2.
- H. Should a proposed reduction or suspension become final, an employee shall have the right to appeal such action pursuant to Sections 3. and 4. of this Article.
- I. Should a proposed discharge become final, an employee shall have the right to appeal such action pursuant to Section 5. of this Article.

### Section 3. Suspension

- A. No regular, limited-term regular or promotional probationary employee shall be suspended except for reasonable cause.
- B. A written notice of such suspension stating specifically the cause of the suspension shall be given to the employee.



- C. In accordance with the provisions of Article X, an appeal of suspension shall be initiated at Step 2 of the grievance/appeal procedure, except for suspensions imposed by the County Executive Officer, which may be referred directly to arbitration.

Section 4. Reduction

- A. No regular employee or limited-term employee shall be reduced to a position in a lower class except for reasonable cause.
- B. A written notice of such reduction stating specifically the cause of the reduction shall be given to the employee.
- C. In accordance with the provisions of Article X, an appeal of reduction shall be initiated at Step 2 of the grievance/appeal procedure, except for reductions imposed by the County Executive Officer which may be referred directly to arbitration.

Section 5. Discharge and Right of Appeal

- A. No regular or limited-term regular employee shall be discharged except for reasonable cause. No proposed discharge shall be effected unless approved by the Chief Human Resources Officer except for discharges imposed by the County Executive Officer.
- B. A written notice of such discharge stating specifically the cause of the discharge shall be given to the employee.
- C. In accordance with the provisions of Article X, a discharge may be appealed directly to arbitration.

Section 6. Polygraph Examination

No employee shall be compelled to submit to a polygraph examination. No disciplinary action shall be taken against an employee refusing to submit to a polygraph examination; nor shall any comment be recorded indicating that an employee offered to take, took or refused to take a polygraph examination unless otherwise agreed to in writing by the parties; nor shall any testimony or evidence regarding an employee's offer to take, or refusal to take or the results of a polygraph examination be admissible in any proceeding pursuant to this Agreement, unless otherwise agreed to in writing by the parties.

ARTICLE X            GRIEVANCE PROCEDURE AND DISCIPLINARY APPEALS

Section 1.        Scope of Grievances

- A. A grievance may be filed if a management interpretation or application of the provisions of this Memorandum of Understanding adversely affects an employee's wages, hours or conditions of employment.
- B. Specifically excluded from the scope of grievances are:
  - 1. subjects involving the amendment or change of Board of Supervisors resolutions, ordinances, or minute orders, which do not incorporate the provisions of this Memorandum of Understanding.
  - 2. matters which have other means of appeal including, but not limited to, matters which may be appealed through the Orange County Merit System Selection Rules and Appeals Procedure or the Workers' Compensation Appeals Board.
  - 3. position classification.
  - 4. performance evaluations with a rating of "meets" or "exceeds" performance objectives.

Section 2.        Basic Rules

- A. If an employee does not present a grievance/appeal or does not appeal the decision rendered regarding his or her grievance/appeal within the time limits, the grievance/appeal shall be considered resolved.
- B. If a County representative does not render a decision to the employee within the time limits, the employee may within seven (7) calendar days thereafter appeal to the next step in the procedure.
- C. If it is the judgment of any management representative that he or she does not have the authority to resolve the grievance/appeal, the employee shall be informed in writing and the employee may file the grievance at the next step in the procedure. By mutual agreement of the County and the Union, Steps 1 of the grievance procedure may be waived.
- D. The Chief Human Resources Officer may temporarily suspend grievance/appeal processing on a section-wide, unit-wide, division-wide, department-wide or County-wide basis in an emergency situation. IUOE may appeal this decision to the Board of Supervisors.
- E. Upon written consent of the parties, (i.e., the representatives of the County and the employee or his or her representative) the time limits at any step in the procedure may be extended.

- F. Every reasonable effort shall be made by the employee and the County to resolve a grievance/appeal at the lowest possible step in the grievance/appeal procedure.
- G. No claim shall be granted for retroactive adjustment of any grievance prior to sixty (60) calendar days from the date of filing the written grievance at Step 1.
- H. In order to encourage frank discussion and compromise in attempting to resolve grievances, the County and Local 501 agree that the grievance files of the respective parties shall be confidential.

Section 3. Submission of Grievances

- A. Any employee or group of employees shall have the right to present a grievance. No employee or group of employees shall be hindered from or disciplined for exercising this right.
- B. If any two (2) or more employees have essentially the same grievance they may, and if requested by the County must, collectively present and pursue their grievance if they report to the same immediate supervisor.
- C. If the grievant is a group of more than three (3) employees, the group shall, at the request of the County, appoint one (1) or two (2) employees to speak for the collective group.

Section 4. Employee Representation

- A. An employee may represent him or herself or may be represented by IUOE in the formal grievance/appeal procedure. An employee is not entitled to be represented by privately retained counsel during the grievance process or arbitration hearing.
- B. Authorized grievance/appeal representatives shall be regular employees in the same Representation Unit as the grievant/appellant who are members of and are designated by IUOE to represent employees for purposes of the grievance/appeal procedure. IUOE shall notify Agency/Department Heads of the names and titles of such representatives and send a copy of such notice to the Chief Human Resources Officer.
- C. IUOE staff representatives may represent the employee at Steps 1 and 2 of the internal grievance/appeal procedure and in arbitration.

- D. If an employee chooses not to be represented by the Union, the Union may have a Union staff representative present at applicable final step of the grievance procedure and, if necessary, shall have the right to present the Union's interpretation of provisions of this Agreement at issue. Such presentation shall not include comments regarding the merits of the grievance.

Section 5. Time Off for Processing Grievances/Appeals

- A. Reasonable time off without loss of pay shall be given to:

1. an employee who has a grievance/appeal, in order to attend a meeting with his or her supervisor or other person with authority to resolve the matter, as prescribed herein, or to meet with his or her grievance/appeal representative;
2. an authorized grievance/appeal representative, in order to attend a meeting with the represented grievant's/appellant's supervisor or other person with authority to resolve the grievance/appeal, as prescribed herein, or to investigate the action grieved/appealed through discussion with the grievant/appellant or other employees, or through review of appropriate County records relating to the grievance/appeal.

- B. The following restrictions shall apply in all cases to activity authorized in Section 5.A., above:

1. Before performing grievance/appeal work, the grievant/appellant or grievance/appeal representative shall obtain permission of his or her supervisor and shall report back to the supervisor when the grievance/appeal work is completed.
2. Neither the grievant/appellant nor the grievance/appeal representative shall interrupt or leave his or her job to perform grievance/appeal work unless his or her supervisor determines that such interruption or absence will not unduly interfere with the work of the unit in which the grievant/appellant or representative is employed. However, an effort will be made to grant such time off as soon as it is feasible to do so.
3. When an authorized grievance/appeal representative must go into another section or unit to investigate a grievance/appeal, the representative shall be permitted to do so provided that:
  - a. the representative checks in and checks out with the supervisor of the unit; and
  - b. such investigation does not unduly interfere with the work of the unit.

Section 6. Informal Discussion

If an employee has a problem relating to a work situation, the employee is encouraged to request a meeting with his or her immediate supervisor to discuss the problem in an effort to clarify the issue and to work cooperatively towards settlement.

Section 7. Internal Grievance/Appeal Steps

The grievance/appeal procedure shall consist of the following steps, each of which must be completed prior to any request for further consideration of the matter unless waived by mutual consent or as otherwise provided herein.

Step 1: Agency/Department

If an employee has a problem relating to an interpretation or application of this Memorandum of Understanding, the employee may formally submit a grievance to the Agency/Department Head or their designee within fourteen (14) calendar days from the occurrence which gives rise to the problem. Such submission shall be in writing and shall state the nature of the grievance and the suggested solution. Within seven (7) calendar days after receipt of the written grievance, the Agency/Department Head or their designee shall meet with the grievant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant.

Step 2: Chief Human Resources Officer

If the grievance/appeal is not settled under Step 1 and it concerns:

- A. an interpretation or an application of this Memorandum of Understanding;
- B. a performance evaluation with a rating of "does not meet performance objectives";
- C. a written reprimand; or
- D. a probationary release alleging discrimination;

it may be appealed in writing to the Chief Human Resources Officer within seven (7) calendar days after receipt of the written decision from Step 1. Appeal of a suspension and/or a reduction ordered by an Agency/Department Head or his or her designated representative may be submitted in writing at Step 2 within ten (10) calendar days after receipt of the notice of suspension and/or reduction. Within fourteen (14) calendar days after receipt of the written grievance/appeal, the

Chief Human Resources Officer or his or her representative shall meet with the grievant/appellant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant/appellant. The decision of the Chief Human Resources Officer in B., and C., above, shall be final and binding and shall not be referable to arbitration.

Section 8. Referrals to Arbitration

A. Grievances

1. If a grievance is not resolved under Step 2, an arbitration request may be presented in writing by IUOE to the Chief Human Resources Officer within seven (7) calendar days from the date a decision was rendered at Step 2. As soon as practicable thereafter, or as otherwise agreed to by the parties, an arbitrator shall hear the grievance.
2. The parties shall either sign a joint issue submission statement or else execute and sign separate alternative issue statements after discussing the issue(s). In either case the parties shall send copies of their joint or separate submission statement(s) to the agreed upon arbitrator and to each other within fourteen (14) calendar days before the first scheduled date of the arbitration hearing.

B. Disciplinary Appeals

1. Submission Procedure

- a. If an appeal from suspension or reduction is not settled at Step 1, it may be presented to the Chief Human Resources Officer within seven (7) calendar days from the date the decision was rendered.
- b. An appeal from any discharge or from a suspension or reduction imposed by the County Executive Officer may be presented to the Chief Human Resources Officer within ten (10) calendar days from the date the action becomes final.
- c. All disciplinary appeals shall be signed by a representative of IUOE and shall be submitted in writing as follows:  
  
Was (employee's name) suspended/reduced/discharged for reasonable cause? If not, to what remedy is the appellant entitled under the provisions of Article X, Section 8. of this Memorandum?
- d. As soon as practicable after a suspension, reduction or discharge appeal is presented to the Chief Human Resources Officer, an arbitrator shall hear the appeal.

## 2. Findings of Facts and Remedies

### a. Findings of Facts

An arbitrator's decision shall set forth the findings of fact as to each of the charges and the reasons therefore. The arbitrator may sustain, modify or rescind an appealed disciplinary action as follows and subject to the following restrictions:

### b. Remedies

1) If the arbitrator finds that the disciplinary action was taken for reasonable cause, he or she shall sustain the action.

### 2) Suspensions/Reductions

If the action is modified or rescinded, the appellant shall be entitled to restoration of pay and/or fringe benefits in a manner consistent with the arbitrator's decision.

### 3) Discharges

1. If the arbitrator finds that the order of discharge should be modified, the employee shall be restored to a position in his or her former class subject to forfeiture of pay and fringe benefits for all or a portion of the period of time the employee was removed from duty, as determined by the arbitrator.

2. If the arbitrator finds that the order of discharge should be rescinded, the employee shall be reinstated in a position in his or her former class and shall receive pay and fringe benefits for all of the period of time he or she was removed from duty.

### d. Restriction on Remedies

1. The County shall not be liable for restoring pay and fringe benefits for any period(s) of time the employee was reduced or removed from duty, which results from the appealing party's request for written briefs and/or a transcript of the arbitration proceedings.

2. Restoration of pay and benefits shall be subject to deduction of all unemployment insurance (if not deducted by Employment Development Department) and outside earnings which the employee received since the date of discharge.

C. Probationary Releases Alleging Discrimination

1. The issues to be submitted to the arbitrator in grievances filed pursuant to Article IV, Section 1.C.1.a. shall be as follows and shall be submitted consistent with Section 8.A., above.

- a. Was the probationary release of (employee's name) in whole or in part the result of discrimination in violation of Article XV, NONDISCRIMINATION, of the Memorandum of Understanding between the County and IUOE?
- b. If so, what shall the remedy be under the provisions of Article X, Section 8, B.2., Findings of Facts and Remedies, of the Memorandum of Understanding between the County and IUOE?

2. Findings of Facts and Remedies

- a. In the event the arbitrator finds no violation of Article XV, NONDISCRIMINATION, the grievance shall be denied and the issue of remedy becomes moot.
- b. In the event the arbitrator finds a violation of Article XV, NONDISCRIMINATION, but also finds such violation was not a substantial cause of the employee's probationary release, the grievance shall be denied and the issue of remedy becomes moot.
- c. In the event the arbitrator finds a violation of Article XV, NONDISCRIMINATION, and also finds that the violation was a substantial cause of the probationary release of the employee, the arbitrator's award shall depend upon the significance of the violation and shall be in keeping with the following alternatives:
  1. Sustain the probationary release.
  2. Reinstate the employee in a position in his or her former class subject to forfeiture of pay and fringe benefits for all or a portion of the period of time the employee was removed from duty. The employee may be required to serve the remainder of any outstanding probation period.
  3. Reinstate the employee in a position in his or her former class with full back pay and benefits for all of the period of time the employee was removed from duty. The employee may be required to serve the remainder of any outstanding probation period.

D. General Provisions



1. If the grievance/appeal is decided by an arbitrator the grievant/appellant and IUOE relinquish any current or future claim to seek or obtain remedy through any other County appeal procedure.
2. Except as required by law, the cost of an arbitrator shall be shared equally in all cases by the County and the appealing party except when the appealing party solely alleges discrimination under Article XV, in which case the County shall bear the full cost. When the grievance involves both discrimination and other arbitrable issues, the proper division of costs shall be determined by the arbitrator.
3. Grievance/Appeal hearings by an arbitrator shall be private.
4. Arbitration appeal hearings of suspensions of less than forty (40) hours shall be limited to one (1) day unless both parties agree that a longer hearing is necessary. Both parties shall be allotted equal time during arbitration hearings involving such suspensions. The one (1) day limitation for arbitration appeal hearings shall not apply to suspensions imposed by the County Executive Officer.
5. The arbitrator shall be selected by the mutual agreement of the parties. If the parties cannot agree upon an arbitrator, a list of seven (7) arbitrators shall be obtained from the California State Mediation and Conciliation Service, the American Arbitration Association or some other agreed upon source, and each party shall alternately strike one (1) name from the list until only one (1) name remains.
6. Upon written request by the opposing party in a pending hearing given at least twenty (20) calendar days prior to the scheduled hearing date, the party requested shall supply to the party submitting the request copies of all documentary evidence to be used by that party at the hearing. Such evidence shall be provided no later than ten (10) calendar days prior to the scheduled hearing date. Any evidence not so provided may not be admitted or offered as evidence at the subsequent hearing except that any such documentary evidence discovered by a party after such a request for copies but not soon enough to comply with the above time limits may be admitted providing it could not have been discovered sooner by reasonable means and provided further that a copy or copies of such evidence be afforded the requesting party as soon as practicable after such discovery. Nothing contained herein shall operate to prevent either party from presenting additional documents by way of rebuttal.
7. An employee shall not suffer loss of pay for time spent as a witness at an arbitration hearing held pursuant to this procedure. The number of witnesses requested to attend, and their scheduling, shall be

reasonable. It is the responsibility of the party requesting the witness' testimony to arrange for that witness to be present.

8. At the hearing, both the appealing employee and the County shall have the right to be heard and to present evidence. The following rules shall apply:
  - a. Oral evidence shall be taken only on oath or affirmation.
  - b. 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 regardless of which party first called the witness to testify, and to rebut the evidence against the witness. If the employee does not testify in his or her own behalf, the employee may be called and examined as if under cross-examination.
9. 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 have made improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.
10. By the mutual agreement of the parties, the County shall be allowed to have at least one (1) employee, who may be called upon to testify as a witness, present at the arbitration hearing at all times. The Union shall not unreasonably withhold agreement.
11. The decision of the arbitrator shall be final and binding on all parties.

## ARTICLE XI      LAYOFF PROCEDURE

### Section 1.      General Provisions

- A. This procedure shall not apply to a temporary layoff of fewer than four (4) consecutive weeks.
- B. This procedure shall not apply to employees who have special or unique knowledge or skills which are of special value in the operation of the County business. Such skills or knowledge must be required on a regular and repetitive basis for this exemption to apply.
- C. When two (2) or more agencies/departments are consolidated, or when one (1) or more functions of one (1) agency/department are transferred to another agency/department, employees in all involved agencies/departments shall be subject to layoff if one is necessary.
- D. Section 7., Reemployment Lists, and Section 8., Status on Reemployment, of this Article, shall not apply if the County has a written agreement with an employer, public or private, which guarantees the County employee an offer of reasonably comparable employment with the new employer who is taking over a function formerly performed by County employees and the new employer does make such an offer in writing to the employee.

### Section 2.      Order of Layoff

- A. When a reduction in the work force is implemented, employees in regular positions and those occupying limited-term positions at the direction of their Agency/Department Head shall be laid off in an order based on consideration of:
  - 1. employment status;
  - 2. past performance;
  - 3. length of continuous service with the County in the class designated for layoff except that an employee with the equivalent of five (5) or more years of continuous service with the County, either in the class designated for layoff or in the Trades Helper III class, shall receive credit for all continuous service with the County.
- B. Layoffs shall be made by class within an agency/department except that:
  - 1. Where a class has a dual or multiple concept, the Chief Human Resources Officer may authorize a layoff by specialty within the class.

2. Where appropriate, the Chief Human Resources Officer may authorize a layoff by division or smaller unit of an agency/department.

C. Within a class, employees shall be subject to layoff in the following order:

<u>Employment Status</u>	<u>Layoff Order</u>
First - Temporary Promotion	Determined by Agency/Department
Second - New Probationary	Determined by Agency/Department
Third - Regular/Promotional Probationary	Layoff Points

After all new probationary employees and employees on temporary promotion have been removed from a class within a layoff unit, the employee with the lowest number of layoff points shall be subject to layoff first. When two (2) or more employees have the same number of layoff points, the agency/department shall determine the order of layoff for these employees.

D. If a layoff is going to be made in a class from which an employee has left through a temporary promotion, the employee on temporary promotion shall be returned to his or her former class and shall be subject to layoff in accordance with this procedure.

### Section 3. Computation of Seniority/Layoff Points

Seniority/Layoff Points:

equivalent of each year of full-time continuous service with the County shall earn two hundred sixty (260) seniority/layoff points.

The equivalent of each regularly scheduled full day of continuous service of a partial year shall earn one (1) seniority/layoff point.

Demerit Points

For a rating of “does not meet performance objectives” on the last “Final Review of Performance” for the class currently held by the employee, the employee shall earn two hundred sixty (260) demerit points. Demerit points shall only be used in the currently held class of an employee. Demerit points shall not be applied to an employee seeking to enter a lower class through voluntary reduction in lieu of layoff.

Section 4. Notification of Employees

- A. Written notice of layoff shall be given to an employee or sent by mail to the last known mailing address at least fourteen (14) calendar days prior to the effective date of the layoff. Notices of layoff shall be served on employees personally at work whenever practicable.
- B. It is the intent of the parties that the number of layoff notices initially issued shall be limited to the number of positions by which the work force is intended to be reduced. Additional notices shall be issued as other employees become subject to layoff as a result of employees exercising reduction rights under Section 5.
- C. The notice of layoff shall include the reason for the layoff, the proposed effective date of the layoff, the employee's hire date, the employee's layoff points, a list of classes in the employee's occupational series within the layoff unit, the employee's rights under Sections 5. and 6., and the right of the employee to advise the County of any objection to the content of the layoff notice prior to the proposed effective date of the layoff.

Section 5. Voluntary Reduction in Lieu of Layoff

- A. A promotional probationary or regular employee who is subject to layoff may request a reduction to a lower class within the same occupational series in the layoff unit provided the employee possesses the minimum qualifications for the class and passes any required performance tests. The reduction shall be made if there is a vacant position in the layoff unit or an incumbent in the lower class in the layoff unit has fewer layoff points than the employee requesting the reduction. In the latter case, the incumbent in the lower class with the fewest number of layoff points shall be subject to layoff.
- B. 1. Employees who receive notice of layoff by personal service at work shall have until the end of their third regularly scheduled day of work following actual receipt of the notice to notify their agency/department in writing of their intent to exercise rights under this Section. Employees whose third regularly scheduled day of work is more than three (3) calendar days after receipt of the notice shall have three (3) calendar days, excluding weekends and holidays, to notify their agency/department of their intent to exercise rights under this Section; and where such notification is not in writing, the employee shall confirm the notification in writing as soon as practicable.

2. Employees who receive notice other than by personal service at work shall have five (5) calendar days, excluding weekends and holidays, following the date the person is personally served, or if service is made by mail, five (5) calendar days, excluding weekends and holidays, following date of proof of service by mail, to notify their agency/department of their intent to exercise rights under this Section. Where such notification is not in writing, the employee shall confirm the notification in writing as soon as practicable.
3. Failure by an employee to respond to his or her agency/department pursuant to this Section shall result in a rebuttable presumption that the employee does not intend to exercise any right of reduction to a lower class, and that the employee's hire date stated in the layoff notice was correct.
4. No employee action or inaction referred to in this Section shall be considered a waiver of an employee's right to file grievances concerning any matter within the scope of the grievance procedure.

Section 6. Voluntary Reduction from Classes Designated as Vulnerable to Layoff

An employee in a class designated by the County as vulnerable to layoff may request a voluntary reduction to any class provided the employee possesses the minimum qualifications and has passed any required performance tests for the class to which reduction is requested. Such employees shall be eligible for consideration for available positions in the class to which reduction is requested. If appointed, such an employee shall be placed on AGENCY/DEPARTMENTAL REINSTATEMENT LISTS pursuant to Section 7.A.3., below.

Section 7. Reemployment Lists

A. The following persons shall be placed on AGENCY/DEPARTMENTAL REINSTATEMENT LISTS as provided in 1., 2. and 3., below, in the order of their respective layoff points with the person having the largest number of layoff points listed first.

1. Persons Laid Off

The names of persons laid off shall be placed on an AGENCY/DEPARTMENTAL REINSTATEMENT LIST for each class in the occupational series at or below the level of the class from which laid off.

2. Persons Who Exercise Their Rights Under Section 5.

The names of persons who exercise their rights under Section 5. shall be placed on an AGENCY/DEPARTMENTAL REINSTATEMENT LIST

for each class in the occupational series at or below the level of the class from which reduced, excluding any classes at or below the level of the class currently held.

3. Persons Who Voluntarily Reduced Under the Provisions of Section 6.

The names of persons who were voluntarily reduced under the provisions of Section 6. shall be placed on an AGENCY/DEPARTMENTAL REINSTATEMENT LIST for the class from which reduced and for each class in the occupational series below the level of the class from which they voluntarily reduced, provided they request to be placed on such lists.

Positions to be filled shall be offered first to persons on the AGENCY/DEPARTMENTAL REINSTATEMENT LIST for that class, starting at the top of the list. If reinstatement is offered to a class other than that from which the person was laid off or reduced, such person must first meet the minimum qualifications and pass any required performance tests for that class.

- B. The names of persons laid off shall be placed on a COUNTY PREFERRED ELIGIBLE LIST for the class from which they were laid off, and for any class from which they previously voluntarily reduced pursuant to Section 5., in the order of their layoff scores, going from highest to lowest. When one (1) vacant position in an agency/department, other than the agency/department from which the employee was laid off, is to be filled in that class, ten (10) names shall be certified from the COUNTY PREFERRED ELIGIBLE LIST, starting at the top. When more than one (1) vacant position in an agency/department, other than the agency/department from which the employee was laid off, is to be filled in that class, the number of names certified, starting at the top of the COUNTY PREFERRED ELIGIBLE LIST, shall be equal to twice the number of vacancies plus seven (7). If there is a tie among layoff points at the last name to be certified, all tied eligibles shall be certified. Eligibles certified from COUNTY PREFERRED ELIGIBLE LISTS shall be considered prior to eligibles certified from lower ranking eligible lists. Appointments shall be made only from eligibles certified pursuant to Section 7.B. Appointments need not be made in the order of layoff points; any eligible certified in accordance with this provision may be appointed to a vacant position.
- C. Names of persons placed on the AGENCY/DEPARTMENTAL REINSTATEMENT LIST and the COUNTY PREFERRED ELIGIBLE LIST shall remain on the lists for two (2) years, except that:
1. A person who on two (2) separate occasions rejects or fails to respond within five (5) calendar days to offers of employment in a particular class shall be removed from the lists for that class.

2. A person who on three (3) separate occasions declines referral for interviews in a particular class shall be removed from the lists for that class.
  3. An employee who upon retirement signs a statement electing not to be eligible for reemployment under this provision shall have his or her name excluded from the aforementioned lists
- D. In the event two (2) or more agencies/departments are consolidated while AGENCY/DEPARTMENTAL REINSTATEMENT LISTS are in effect, such lists shall be combined and treated as one (1) list in accordance with the preceding provisions of this Section. When a transfer of one (1) or more functions of one (1) agency/department to another agency/department occurs, employees previously laid off from such function(s) who are on an AGENCY/DEPARTMENTAL REINSTATEMENT LIST for the agency/department losing such function(s), shall be removed from such list and shall be placed on a reinstatement list for the agency/department acquiring such function(s) and treated in accordance with the preceding provisions of this Section.
- E. Reemployment lists shall be available to IUOE and affected employees upon reasonable request.

Section 8.      Status on Reemployment

- A. An employee who has been laid off under the provisions of this Article and subsequently reemployed in a regular or limited-term position within a two (2) year period from the date of his or her layoff shall receive the following considerations and benefits:
1. All Sick Leave credited to the employee's account when laid off shall be restored.
  2. All seniority points held upon layoff shall be restored.
  3. All prior service shall be credited for the purpose of determining Sick Leave and vacation, earning rates and service awards.
  4. The employee shall be placed in the salary range as if the employee had been on a Leave of Absence Without Pay.
  5. The probationary status of the employee shall be as if the employee had been on a Leave of Absence Without Pay except that a probation period shall be established as determined by Article IV, Section 1.B. if reemployment is in a higher class or an occupational series different from that employed in at the time of layoff.



- B. An employee who has voluntarily reduced under the provisions of this Article and subsequently is reemployed in a regular or limited-term position in the class from which the employee reduced within a two (2) year period from the date of reduction shall receive the following considerations:

The employee shall be placed at the salary level as if the employee had been on a Leave of Absence Without Pay. The probationary status of the employee shall be as if the employee had been on a Leave of Absence.

- C. When an employee is reduced under the provisions of this Article and is subsequently reemployed in a class higher than the one (1) from which the employee was reduced, the employee shall be deemed returned to the class from which the employee had been reduced as provided above and the employee's salary shall be determined by treating the employee as though he or she is being promoted from such class.

Section 9. Seniority for Union Stewards and Officers

The Union may designate up to three (3) stewards to receive super-seniority solely for purposes of layoffs. Employees so designated shall receive two hundred sixty (260) layoff points in addition to layoff points computed pursuant to Section 3., above.

ARTICLE XII      ON-THE-JOB INJURY, WORKERS' COMPENSATION  
SUPPLEMENT PAY

Section 1.      On-the-Job Injury

A.      Treatment of Industrial Injuries

Whenever an employee sustains an injury or disability arising out of and in the course of County employment and requires medical care, the employee shall obtain treatment according to the provisions of the California Labor Code Section 4600 et seq.

B.      Workers' Compensation Supplement Pay [this provision will be in effect for all injuries which arose before October 21, 2014]

1. Whenever an employee is compelled to be absent from duty by reason of injury or disease arising out of and in the course of County employment, the employee shall receive workers' compensation supplement pay which, when added to workers' compensation temporary disability benefit, shall equal eighty (80) percent of the employee's base salary for a period not to exceed one (1) year including holidays.
2. Workers' compensation supplement pay shall begin the same day as the workers' compensation temporary disability benefits. Prior to qualifying for workers' compensation temporary disability benefits, an injured employee may, at his or her option, use any accrued sick leave, compensatory time and/or vacation, in that order.
3. While an employee receives workers' compensation supplement pay, no deductions nor payments shall be made from any sick leave, compensatory time or vacation time previously accumulated by the employee. The employee shall not accrue sick leave or vacation credit during the period in which the employee receives workers' compensation temporary disability benefits.
4. When an injury is determined to be job-related by the County or by the Workers' Compensation Appeals Board, eighty (80) percent of all sick leave, compensatory time and/or vacation expended since the fourth day of disability shall be restored to the employee's account(s), except that if the injury required the employee's hospitalization or caused disability of more than fourteen (14) days, eighty (80) percent of all sick leave, compensatory time and/or vacation expended since the first day of disability shall be restored to the employee's account(s).

5. The probation period of any employee who receives workers' compensation benefits shall be extended by the length of time the employee receives such benefits, except that the first fifteen (15) consecutive calendar days from the date of the injury shall be considered County service for completion of the probation period.
6. When an employee is no longer entitled to receive workers' compensation supplement pay, the employee may, at his or her option, use sick leave, compensatory time, and vacation, in that order, if the employee is compelled to be absent from duty as set forth in paragraph B.2., above.
7. Time during which an employee receives workers' compensation temporary disability benefits shall be counted toward the computation of County seniority and determination of sick leave and vacation earning rates.

C                    Workers' Compensation Supplement Pay [this provision will be in effect for all injuries which arise on or after October 21, 2014]

1. Prior to qualifying for workers' compensation temporary disability benefits, an injured employee may, at his or her option, use any accrued sick leave, compensatory time, and vacation in that order.
2. When an injury is determined to be job-related by the County or by the Workers' Compensation Appeals Board, 66.667% of all sick leave, compensatory time and/or vacation expended since the fourth (4th) day of disability shall be restored to the employee's account(s), except that if the injury required the employee's hospitalization or caused disability of more than fourteen (14) days, 66.667% of all sick leave, compensatory time, or vacation expended or since the first day of disability shall be restored to the employee's account(s).
3. The probation period of any employee who receives workers' compensation benefits shall be extended by the length of time the employee receives such benefits, except that the first fifteen (15) consecutive calendar days from the date of the injury shall be considered County service for completion of the probation period.
4. While an employee is receiving temporary disability payments, the employee may, at his or her option, use sick leave, compensatory time, and vacation, in that order, to supplement such pay so that the employee receives not more than his/her regular salary during the employee's industrial injury leave.
5. Time during which an employee receives workers' compensation temporary disability benefits shall be counted toward the computation

of County seniority and determination of sick leave and vacation earning rates.

D. Exposure to Contagious Diseases

Whenever an employee is compelled by direction of a County-designated physician to be absent from duty due to an on-the-job exposure to a contagious disease, the employee shall receive full compensation for a period not to exceed eighty (80) working hours for a full-time employee or fourteen (14) calendar days for a part-time employee. If the absence extends beyond the applicable period, sick leave, compensatory time and vacation may be used, at the employee's option, in that order.

E. Injury to Paid Call Firefighter or Deputy Sheriff - Emergency Service

Whenever a Paid Call Firefighter or Deputy Sheriff - Emergency Service, employed by the County is compelled to be absent from his or her regular employment due to injury arising out of and in the course of his or her employment as a Paid Call Firefighter or Deputy Sheriff - Emergency Service, he or she shall receive temporary disability and/or permanent disability benefits as set forth under California Labor Code, Section 4458 or 4458.2 as applicable.

ARTICLE XIII     SAFETY

Section 1.     General Provisions

Recognizing that a safe work environment is of substantial benefit to both the County and employees, the County and the Union mutually agree to the following safety program:

- A. No employee shall be required to work under conditions dangerous to the employee's health or safety.
- B. The County shall make every reasonable effort to provide and maintain a safe place of employment. The Union shall urge all employees to perform their work in a safe manner. Employees shall be alert to unsafe practices, equipment and conditions and report any such unsafe practices, equipment or conditions to their immediate supervisors. Employees shall follow safe practices and obey reasonable safety rules during the hours of their employment. Violation of reasonable safety rules shall be cause for disciplinary action, including discharge.
- C. Any employee who either does not receive an answer to a safety-related question from his or her supervisor within three (3) days or receives an answer which the employee deems unsatisfactory may directly contact the County Safety Engineer.
- D. Any employee who is directed to perform a task which the employee in good faith feels is unsafe may request an immediate investigation from the Safety Engineer. During the period that the Safety Engineer is conducting an investigation, the employee will be assigned to other work at no loss of earnings. If the Safety Engineer concludes the task complained of is safe, the employee shall perform the work as instructed.
- E. The County shall furnish all equipment which is necessary for employees to perform their job in a safe manner. Protective clothing and devices currently available to employees shall remain available.
- F. Wherever practicable, the County shall provide the necessary first aid kits in each location.
- G. Wherever practicable, the County shall provide first aid training for one (1) employee at each new work location.

Section 2.     Safety Inspection

During inspection of County facilities conducted by the State Division of Industrial Safety for the purpose of determining compliance with the California OSHA requirements, a Union designated employee shall be allowed to accompany the inspector while the inspector is in the employee's agency/department. The employee so designated shall suffer no loss of pay when this function is performed during the employee's regularly scheduled work hours.

Section 3.     Abatement of Violations

In any instance in which the County is cited for a violation of CAL/OSHA, the County shall abate the cited hazard to health or safety within the abatement period required.

Section 4.     Safety Representatives

- A. Safety Representatives may be selected by the Union to meet at least once a month, upon request, with a County designated supervisor or manager for each County facility to discuss matters affecting employee health and safety.
- B. The Union may designate up to four (4) safety representatives, one of whom shall be from the Sheriff's Department, one from the Airport and two from OC Public Works.
- C. A Safety Representative who has received a safety or health complaint shall be given reasonable time off without loss of pay to gather appropriate information on such complaint provided that:
  - 1. The Safety Representative obtains permission from his or her supervisor prior to performing such work, and reports back to the supervisor when the work is completed.
  - 2. The Safety Representative shall not leave his or her job to perform such work unless his or her supervisor determines that the employee's absence will not unduly interfere with the work of the unit in which the employee is employed. However, an effort will be made to grant such time off as soon as it is feasible to do so.
  - 3. When an authorized Safety Representative must go into another section or unit to gather information regarding a safety or health complaint, the Safety Representative shall be permitted to do so provided that:
    - a. the Safety Representative checks in and checks out with the supervisor of the unit; and

- b. he or she does not unduly interfere with the work of the unit.

Section 5. Resolution of Safety or Health Complaints

If a safety or health complaint is not satisfactorily resolved, the Safety Representative may request to meet with the County Safety Officer to resolve the complaint.

ARTICLE XIV      UNIFORMS AND WORKCLOTHES

The County will provide and/or launder three (3) sets of uniforms or coverall type garments per week for employees in the classes of Painter and Metalsmith.

The County will continue the current system of making available or providing appropriate clothing and/or laundering of clothing for all employees in the unit who are currently receiving that service.



ARTICLE XV      NONDISCRIMINATION

Section 1.

The County and the International Union of Operating Engineers, Local 501, agree that the provisions of this Memorandum of Understanding shall be applied to employees without discrimination as required by state and federal law.

Section 2.

The International Union of Operating Engineers, Local 501, shall not discriminate in membership or representation as required by state and federal law.

ARTICLE XVI     INSURANCE

Section 1.     Health Plans and Premium Contributions

A.   Full Time Employees

1.   Except as modified in Section 1.C., D., E., and F., below, the County will offer health plans to all full-time regular, limited term, and probationary employees and their eligible dependents.
2.   The County will pay the following percentage premium for employees electing any health insurance plan other than the Sharewell Choice PPO plan:
  - a.   Employee Only Coverage – eighty-five (85) percent of the employee’s premium or ninety (90) percent of the employee’s premium if the employee completes the Healthy Steps (wellness incentive) program;
  - b.   Employee and Dependent Coverage - seventy (70) percent of the total health plan premium for each employee and such employee’s eligible dependents or seventy-five (75) percent of the employee’s premium if the employee completes the Healthy Steps (wellness incentive) program.
  - c.   Employees will pay the remaining portion of the total plan premium and consent to have their portion deducted from their County regular or supplemental payroll checks.
3.   Employees who elect the Sharewell Choice PPO plan will not only have their insurance premium fully paid by the County but will also receive a payroll credit per plan guidelines. In addition, those employees who elect the Sharewell Choice PPO plan are not required to participate in the Healthy Steps program.
4.   The health plans and their premiums are adopted by, and may be modified by, the Board of Supervisors. Plan descriptions are contained in the plan documents available through HRS/Employee Benefits.

B.   Part-time Employees

1.   Except as modified in Section 1.C., D., E., and F., below, the County will offer health plans to all part-time regular, limited term, and probationary employees. Enrollment of part-time employees shall be restricted to employees whose normal workweek consists of at least twenty (20) hours.

2. The County will pay the following percentage of the premium for employees electing any health insurance plan other than the Sharewell Choice PPO plan:
  - a. Employee Only Coverage – forty-five (45) percent of the employee's premium or fifty (50) percent of the employee's premium if the employee completes the Healthy Steps (wellness incentive) program;
  - b. Employee and Dependent Coverage – thirty-two and one-half (32.5) percent of the total health plan premium for each employee and such employee's eligible dependents or thirty-seven and one-half (37 1/2) percent of the total health plan premium for each employee and such employee's eligible dependents if the employee completes the Healthy Steps (wellness incentive) program.
  - c. Employees will pay the remaining portion of the total plan premium and consent to have their portion deducted from their County regular or supplemental payroll checks.
3. The County will pay the following percentage of the premium for employees electing the Sharewell Choice PPO plan:
  - a. Employee Only Coverage – one hundred (100) percent of the premium;
  - b. Employee and Dependent Coverage – per subsection B.2.b above

In addition, those employees who elect the Sharewell Choice PPO plan are not required to participate in the Healthy Steps program.

4. Coverage shall be terminated for any employee whose normal assigned hours are reduced to less than twenty (20) in a full workweek.
  5. The health plans and their premiums are adopted by, and may be modified by, the Board of Supervisors. Plan descriptions are contained in the plan documents available through HRS/Employee Benefits.
- C. Two married full-time employees who are enrolled in the same health plan must be enrolled as Employee Married to Employee (EME). While enrolled as EME, the County will pay the full cost of employee and dependent coverage for each EME. Employees must report any subsequent changes in marital status such as legal separation or divorce, within 30 days of the event. Failure to report legal separation or divorce from a covered spouse

shall require repayment of all premiums paid by the County under this program during the period in which the employees were ineligible due to legal separation or divorce.

- D. Dual Coverage: If two married employees are enrolled in separate health plans neither employee may be covered as a dependent on their employee spouse's health plan. Eligible employees may choose to enroll in different health plans and choose to cover eligible dependent children on one or both health plans, subject to employee contributions for coverage.
- E. For employees who are on approved leave which meets the requirements of Family Leave pursuant to Article V, Section 15 and applicable law, the County shall continue to pay health insurance premiums as provided in A and B, above, to the extent required by applicable law.
- F. For employees who are on approved leave which meets the requirements of Pregnancy Disability Leave pursuant to Government Code section 12945, the County shall continue to pay health insurance premiums as provided in A and B, above, to the extent required by applicable law.
- G. Effective January 1, 2008, active employees are pooled separately from retirees for purposes of setting premiums for participation in County offered health plans.

## Section 2. Health Plan Enrollment

- A. New eligible employees will be enrolled in the health plans of their selection effective the first day of the month following the first thirty (30) days of employment. Eligible full-time employees failing to elect a plan will be enrolled in the Wellwise Choice PPO Health Plan, employee only. Eligible part-time employees failing to elect a plan will be enrolled in the Sharewell Choice PPO Health Plan, employee only. Employees who go out on leave of absence prior to satisfying the waiting period for coverage shall not be eligible for coverage until returning to work unless required by state/federal law. Upon return to work, coverage will become effective the first day of the month following thirty (30) days from the date of return, unless otherwise required by state/federal law.
- B. Terminated employees will be continued with coverage in all health plans until the last day of the calendar month in which they terminate. Terminated employees may be eligible for continuation of health insurance through the Consolidated Omnibus Budget Reconciliation Act (COBRA) and/or by other state/federal law.

- C. The County shall provide for an open enrollment period once each calendar year for employees, employees' eligible dependents, and retirees to change their enrollment in a County health plan.
- D. Employees who are enrolled in a County health plan at the time of retirement will be given the opportunity to elect and enroll in a Retiree health plan.

Section 3. Dental and Vision Insurance Coverage

- A. All full-time regular and limited-term employees will be covered by the "Operating Engineers, Local 501, Security Fund" Dental Program "Plan A", and Vision Plan.
- B. Effective the first pay period after adoption of this 2015-18 MOU by the Board of Supervisors, the County will increase its contribution into the Operating Engineers, Local 501, Security Fund by \$16.24 per pay period, for a total amount of fifty dollars and eighty-seven cents (\$50.87) per pay period (exclusive of the third payday in any month) for each employee.
- C. To be eligible for the above payment, the employee must have been paid for at least seventy-two (72) regularly scheduled hours during the pay period for which the payment is being made.
- D. In the event the cost of maintaining the existing benefits exceeds \$50.87 per pay period, the excess shall be paid by the employee through payroll deduction.
- E. Insurance coverages provided through the Security Fund with monies contributed by the County shall be made available by the Union to all eligible employees in the Representation Unit on an equal basis regardless of membership status.
- F. The Union shall indemnify and hold the County harmless from any claims or legal actions brought under this Section.
- G. IUOE will operate their insurance programs in accordance with applicable State and/or federal laws and regulations. Once each year, upon request of the County the IUOE Trustees shall provide the County with the following no later than December of each year:
  - 1. Summary Annual Report of the Operating Engineers Local 501 Security Fund

2. Form 5500
3. Additionally, the County shall have the right to receive a copy of the full annual report, or any part thereof. The following is included in the report:
  - a. an independent auditor's report
  - b. assets held for investment
  - c. transactions in excess of 5% of plan assets and
4. A letter from the Certified Public Accountant verifying that all transactions of the trust have been reviewed and that all payments have been made consistent with the contractual agreements and the required tax returns have been filed in accordance with applicable laws.

Section 4. Other Insurance

The County will provide to all regular, limited-term, and probationary employees the following:

- A. Basic life insurance and accidental death and dismemberment insurance will be provided in the amount of ten thousand (10,000) dollars per full-time employees in the Unit without proof of insurability. Employees will have the option to purchase additional life insurance coverage options without proof of insurability if purchased within thirty (30) days of eligibility. Some levels of additional life insurance coverage, or any additional life insurance coverage purchased after thirty (30) days of eligibility required proof of insurability. Employees will have the option to purchase additional accidental death and dismemberment coverage including dependent coverage. Such insurance will be subject to the limitations of liability contained in those insurance policies. Benefits are subject to Imputed Income requirements as required by law.
- B.
  1. Short-term Disability Insurance Plan at no cost to the employee to provide, after sick leave is exhausted, sixty (60) percent of salary, for up to one (1) year for certified non-occupational injury or illness. The plan will also provide for continuation of the County share of premium for health and life insurance benefits while the employee is on Official Leave for non-occupational disability for up to one (1) year from the effective date of disability.
  2. Long-term disability insurance coverage at no cost to the employee to provide up to sixty (60) percent of salary with a maximum benefit of two thousand (2000) dollars per month.

Section 5. Premium Only Plan

The County will implement a Premium Only Plan that will allow an employee to pay for health insurance premiums as permitted by state and federal law, regulations, and guidelines. Under the plan, an employee's gross taxable salary will be reduced by the amount of his or her share of the premium costs of County-provided health insurance coverage as permitted by state and federal law, regulations, and guidelines.

Section 6. Retiree Medical Plan

A. Retiree Medical Grant

1. Effective August 1, 1993, and as amended by the Board of Supervisors, the County implemented a Retiree Medical Plan ("the Plan") for employees who have retired from County service and who meet certain eligibility requirements of the Plan. The plan does not create any vested rights to the benefits on the part of any employee, retiree, or any other person.
2. The County will: (a) fund the cost of the Plan; and (b) establish a trust to administer the Plan.
3. Upon paid County retirement, if eligible retiree shall receive a Retiree Medical Grant (Grant). The Grant may be applied only towards the cost of retiree and dependent coverage in a County-offered health insurance plan and/or Medicare premiums as provided below.
  - a. Upon implement of the Plan, for eligible retirees the Grant shall be an amount based on ten (10) dollars per month for each full year of credited service in an Eligible Classification up to a maximum of twenty-five (25) years. In each fiscal year, the amount of such Grant shall be adjusted by the average percentage increase or decrease in County health plan premiums no later than the effective dates of such changes, not to exceed three (3) percent per year. In no case shall the Grant exceed the actual cost of the health insurance and/or Medicare premiums.
  - b. The Grant will be adjusted as follows:
    1. The Grant will be reduced by seven and one-half percent (7½%) per year for each year of age of the employee less than 60, based upon the employee's age on the date when the employee takes active retirement from OCERS. For the purpose of deferred retirement, the date on which

the deferred retiree takes active retirement from OCERS will be deemed the retirement date.

2. The Grant will be increased by seven and one-half percent (7½%) per year for each year of age the employee is greater than age 60, based upon the employee's age on the date when the employee takes active retirement from OCERS. For the purposes of the Grant increase, no years of age after age 70 will be considered. For the purpose of deferred retirement, the date on which the deferred retiree takes active retirement from OCERS will be deemed the retirement date.
  3. Sections 6.A.3.b.1 and 6.A.3.b.2 shall not apply to Disability Retirements.
  4. The Grant for all eligible retirees (including retirees on disability) and surviving dependents will be reduced by fifty percent (50%) the first day of the month the retiree or surviving dependent becomes eligible for both Medicare Part A (without paying a premium) and Medicare Part B or immediately if the retiring employee is eligible for Medicare Part A (without paying a premium) and Medicare Part B, as of the date of retirement. This provision does not apply to a retiree or surviving dependent eligible for the Grant who has attained age 65 on or prior to October 24, 2006 and is eligible for both Medicare Part A (without paying a premium) and Medicare Part B.
- c. All current employees who become eligible for a Grant shall be provided a one (1) time opportunity of thirty (30) days to enroll in a County offered retiree health plan from the date they retire. Should a retiree fail to enroll during the aforementioned thirty (30) day period or should he or she terminate coverage or fail to make necessary payments, the retiree and dependents shall forfeit any right to a Grant, if eligible, and enrollment in a County offered retiree health plan.

B. Retiree Medical Plan Lump Sum; Termination; Phase Out



1. An employee who was employed by the County prior to October 24, 2006 and who separates from County service prior to meeting the eligibility requirements for the Grant shall receive a lump sum (Lump Sum benefit) cash payment in accordance with 2. below. The Plan Lump Sum benefit is terminated for all new County employees hired on or after October 24, 2006.
2. An employee who is employed by the County prior to June 23, 2006, who thereafter separates from the County and who does not qualify for a Grant shall receive a Lump Sum benefit equal to one percent (1%) of his or her final average hourly compensation multiplied by his or her qualified hours of service after August 1, 1993 and prior to June 23, 2006. The final average hourly rate shall be calculated on base salary over the six thousand two hundred forty (6240) regularly paid hours immediately preceding June 23, 2006.
3. Receipt of the Grant shall permanently revoke any claim to a Lump Sum benefit even if the retiree subsequently terminates participation in a County-offered health plan and/or Grant. Receipt of the Lump Sum benefit shall permanently revoke any claim to the Grant.

C. Eligibility Requirements for Retiree Medical Grant

1. Retiree must be actively retired from the County of Orange and receiving a monthly retirement allowance from the Orange County Employees Retirement System (OCERS).
2. Retiree must have retired with at least ten (10) years of credited County service except as provided in C.2.a.,b.,c., and d. below:
  - a. A retiree who receives a service-connected disability retirement pension under OCERS shall be eligible for a Grant equal to either ten (10) years of service or actual years of credited County service, whichever is greater.
  - b. A retiree with a minimum of five (5) years of credited County service who receives a non-service connected disability retirement pension under OCERS shall be eligible for a Grant based on actual years of credited County service. An employee with less than five (5) years of credited County service who receives a non-service connected disability retirement pension under OCERS shall not be eligible for a Grant.

- c. A separated employee with fewer than ten (10) years of credited County service or is under normal retirement age and has requested a service or non-service connected disability retirement pension under OCERS shall not be eligible to receive either the Retiree Medical Grant or the Lump Sum benefit until a determination of disability status is made by the Orange County Board of Retirement.
  - d. A separated employee who receives a Lump Sum benefit pursuant to this Section shall be ineligible for the Grant if, at a later date, the Orange County Board of Retirement grants a disability retirement.
3. All eligible retirees and enrolled dependents who are age sixty-five (65) or older must be enrolled in Medicare Part B in order to be eligible for the Grant. All eligible retirees and dependents who are entitled to Medicare Part A coverage without a premium must be enrolled in Medicare Part A to be eligible to receive the Grant.
4. Deferred Retirement
- a. An employee who, upon separation from County service, is eligible for paid retirement and elects deferred retirement must defer participation in the Grant until such time as he or she becomes an active retiree.
  - b. An employee who is not eligible for paid retirement at the time he or she separates from the County service and elects deferred retirement status shall not become eligible for participation in the Grant.
5. For purposes of this Section, a full year of credited service shall be based upon those regular hours the employee worked for the County as a regular, limited-term and/or probationary employee. Two thousand eighty (2080) regular hours, exclusive of overtime, shall equal one (1) full year of service. Hours of service performed in periods before August 1, 1993 shall be counted toward credited service only if the Employee is continuously employed by the County from August 1, 1993 until his or her retirement.

D. Survivor Benefits

1. A surviving dependent of a retiree who was eligible to receive a Grant, as state above in A through C, and who qualifies for a monthly retirement allowance shall be eligible for fifty (50) percent of the Grant authorized for the retiree.
2. A surviving eligible retiree who qualifies for a monthly retirement allowance who was married to a retiree who was also eligible for a Grant shall receive the survivor benefit described in D.1., above, or his or her own Grant, whichever is greater. Such retiree shall not be eligible for both Grants.

Section 7 Reopeners

A. Reopener as a Result of the ACA

The County and the Union agree to reopen negotiations on this article and other articles which are directly affected by the implementation of the Patient Protection and Affordable Care Act (ACA).

B. Reopener on Retiree Health

The County may reopen negotiations on the retiree health program (See section 6, above) during the term of this MOU.

## ARTICLE XVII UNION AND EMPLOYEE RIGHTS

### Section 1. Employee Rights

The County shall not take any action for which the express or primary purpose is to hinder an employee from, or penalize an employee for, exercising any rights or receiving any benefits provided in this Memorandum.

### Section 2. Payroll Deduction

- A. Dues and insurance premiums paid by the members of the Craft and Plant Engineer Unit to IUOE shall be deducted by the County from the County warrants of those employees in this Unit who are members of the Union who elect to have their dues deducted in this manner. The County shall transmit the dues deducted to IUOE.
- B. IUOE shall notify the County, in writing, as to the amount of dues uniformly required of all members of IUOE and also the amount of insurance premiums required of employees who choose to participate in such programs.

### Section 3. Employee Information Listing

Once each quarter during the term of this Memorandum, the County shall provide IUOE with a complete and current listing of all employees in this Unit. Such listings shall include employee name, job classification, agency/department, timekeeping location, salary, and such other information that may be needed pursuant to Article XVI, Section 2.

### Section 4. Use of Bulletin Boards

Space shall be made available to the Union on departmental bulletin boards within the Representation Unit. Notice shall be dated and signed by the authorized representative of the Union responsible for its issuance.

Bulletin boards shall be used only for the following subjects:

- A. Union recreational, social and related news bulletins;
- B. Scheduled Union meetings;
- C. Information concerning Union elections or the results thereof;
- D. Reports of official business of Union including reports of committees or the Board of Directors; and
- E. Any other written material which first has been approved by the Agency/Department Head.

Prior to posting, material described in paragraph E., above, shall be signed by an authorized representative of both Union and the Agency/Department Head.

Section 5. Use of County Facilities

The Union may, with the approval of the Chief of Employee Relations, hold meetings of their members on County property during nonworking hours, provided request is made to the Chief Human Resources Officer as to the specific location and dates of the meeting prior to such meeting.

Section 6. Change of Assignment for Union Stewards

Management shall not, whenever practicable, permanently assign a Union steward to a different work location if the steward objects to the assignment and there is another employee in the same classification who meets the specific qualifications for the assignment. However, a steward shall not object to a change in assignment except for good cause.

Section 7. Agency Shop

Dues/Service Fees

- A. In accordance with an Agency Shop election held on July 13, 2001, all full-time, regular employees in the Craft and Plant Engineer Unit were required, as a condition of employment, to become a member of IUOE, or to pay to IUOE a service fee in an amount not to exceed periodic dues of IUOE for the term of the 2001-2004, the 2004-2006, and the 2009-2012 Memoranda of Understanding. Agency Shop was implemented with the pay period beginning September 7, 2001.
- B. The amount of dues and service fees shall be determined by IUOE and the County shall implement any change in the first pay period which commences thirty (30) days after the Chief Human Resources Officer receives written notice of the change.
- C. All employees in the representation unit shall be notified that they are required to pay dues or a service fee as a condition of continued employment and that such amounts will be automatically deducted from their paychecks. The notification shall also explain the existence, terms and conditions of the religious objector exemption described in 7.D. below.

- D. Any employee who is a member of a bona fide religion, body or sect which has historically held religious objections to joining or financially supporting public employee organizations shall not be required to join or financially support the organization. Such an employee shall, in lieu of periodic dues or service fees, pay sums equal to the amount of service fees to a non-religious, non-labor charitable fund exempt from taxation under Section 501(a) (3) of the Internal Revenue Code, which has been selected by the employee from the following list of such funds designated by IUOE:

Red Cross, Orange County Chapter  
American Cancer Society, Orange County Chapter  
City of Hope

Such payments shall be made by payroll deduction as a condition of continued exemption from the requirements of financial support of IUOE and as a condition of continued employment.

E. Management Responsibilities

Payroll Deductions

1. The County shall deduct the dues or service fees from twenty-six (26) bi-weekly pay warrants of each regular, full-time employee in the representation unit. All dues and service fees deducted hereunder shall be promptly transmitted by the County to IUOE. The employee's earnings must be sufficient after required deductions are made to cover the amount of dues or fees authorized. When an employee is in a non-pay status for an entire pay period, no deductions under this Article will be taken.

2. Notification of Change of Status

The County shall notify IUOE promptly of any employee who, because of a change in employment status, is no longer a member of the Craft and Plant Engineer Unit, or who is no longer subject to the provisions of this Article.

F. IUOE Responsibilities

1. IUOE shall keep an adequate itemized record of its financial transactions and shall make available annually to the County, and to members of the representation unit, within sixty (60) calendar days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified to its accuracy by its president and treasurer, or by a certified public accountant.

2. Challenge Procedure

IUOE certifies to the County that it has adopted, implemented and will maintain constitutionally acceptable procedures to enable nonmember service fee payers to meaningfully challenge the propriety of the use of service fees. Those procedures shall be in accordance with applicable California law.

In accordance with state laws and regulations, all non-members were informed of their specific right to challenge the agency fee for services following the first 60 days of the implementation of the agency shop provisions.

3. Indemnification

IUOE agrees to indemnify and hold harmless the County for any loss or damage arising from the operation of this Article. The County shall, immediately upon receipt of notice of the commencement of any legal or administrative proceeding out of the operation of this Article, inform IUOE and shall fully cooperate with IUOE and shall provide IUOE with all information, documents and assistance reasonably necessary for the opposition, defense, settlement, trial or appeal of such proceeding. IUOE shall have the sole right to determine whether any such proceeding shall be opposed, defended, settled, tried or appealed.

## ARTICLE XVIII POSITION CLASSIFICATION

### Section 1. Reclassification of a Position

- A. Sections 2., 3. and 4. shall apply only to individual classification problems or studies involving small numbers of employees where the issue is a question of allocating a position from one (1) existing class to another. Classification Maintenance Reviews are excluded from the provisions of Sections 2., 3. and 4.
- B. Classification Maintenance Review is defined as 1) any study which involves all positions in a class or series except for a class or series with five (5) or fewer positions; 2) any study which involves all positions in an organizational unit which is greater than five (5) positions; 3) any study in which the class concept, minimum qualifications or salary relationship is at issue.

### Section 2. Procedure for Requesting Reclassification of a Position

- Step 1: An employee who believes his or her position is not properly classified may submit a written request to his or her Agency/Department Head that a classification study be conducted. Requests shall state the reasons the employee believes the present class is not appropriate and which class the employee believes is appropriate based on the employee's present duties.
- Step 2: Appropriate agency/department response to an employee's request for reclassification includes, but is not limited to, (a) denial of the request, or (b) forwarding of the request to the Personnel Department with a recommendation that a classification study be conducted. If the request is denied, the employee shall be given a written statement of the reasons for the denial. If management denies the request or fails to respond within thirty (30) calendar days, the employee may submit the request to the Union for consideration.
- Step 3: Within thirty (30) calendar days thereafter, the Union may request in writing that the Personnel Department conduct a classification study of the position.
- Step 4: If the Personnel Department studies a position at the employee's request as provided in Section 2., Steps 1 and 2 and the employee does not agree with the County's decision, the employee may submit a request for a restudy to the Union. The Union may then request another study as provided in Section 2., Step 3.



Step 5: The Human Resources Department shall determine when the position was last studied and whether there has been a change of duties or change in classification structure which justifies restudy. If the restudy is justified, the employee shall be given a Position Description Form within fifteen (15) days. If not justified, the County shall notify the Union within fifteen (15) days. The Union may then request a consultant review as provided in Section 4.

Step 6: Within one hundred twenty (120) calendar days after the Personnel Department receives the completed Position Description Form, the Personnel Department shall notify the Union of the appropriate classification of the position.

Section 3. Limitations on Concurrent Studies

- A. The County shall not be required to initiate a study if the total number of positions currently requested by the Union for reclassification studies plus this request exceeds ten (10) positions.
- B. The ten (10) position limitation shall apply only to studies for which Position Description Forms have been initiated and shall not include studies which have been referred to or are pending referral to a consultant.

Section 4. Review of Disputed Position Classification Decisions

- A. If the County does not respond at the end of one hundred twenty (120) days or if the Union does not agree with a position classification decision of the County, after the steps in Section 2. have been followed, the issue may be presented to a classification consultant for advisory review. Other provisions notwithstanding, no more than twenty-five (25) positions may be referred to a consultant per fiscal year.
- B. The consultant's review shall be documented on forms supplied by the County and used by the County for documenting its classification decisions.
- C. The consultant shall have access to the organizational and classification files of the Personnel Department and shall have the right to conduct the classification study in the manner the consultant deems most appropriate.
- D. Any salary change for any employee resulting from a consultant's advisory recommendation shall be effective no sooner than the beginning of the pay period following the decision of the County at Step 6 of the procedure described in Section 2., above.

- E. A consultant shall be chosen who has experience in conducting position classification analyses for local governmental agencies. The consultant will be chosen by a committee with an equal number of County and IUOE members. The cost of the consultant shall be shared equally by the County and IUOE.

ARTICLE XIX      DEFINED CONTRIBUTION

An employee in a regular position may, at his or her request, participate in the County's 457(b) Defined Contribution Plan.

ARTICLE XX      PROVISIONS OF LAW

It is understood and agreed that this Memorandum is subject to all current and future applicable Federal and State laws and regulations. If any part or provision of this Memorandum is in conflict or inconsistent with such applicable provisions of Federal or State laws, rules and regulations, or is otherwise held to be invalid or unenforceable by any tribunal of competent jurisdiction, such part or provision shall be suspended and superseded by such applicable law or regulations, and the remainder of this Memorandum shall not be affected thereby.

## ARTICLE XXI RETIREMENT

### Section 1. Retirement Benefit Levels

#### A. For Employees Hired Before January 1, 2013 or If Hired on or After January 1, 2013, are Not Considered “New Members” within the Meaning of the Public Employees’ Pension Reform Act of 2013 (PEPRA)

1. Except as set forth in Sections A.2 and A.3 below, employees will be provided a one-fiftieth (1/50) retirement benefit calculated pursuant to Section 31676.19 of the Government Code. (This retirement formula is commonly known as the “2.7% at 55” benefit formula.)
  - a. For employees hired on or before September 20, 1979, the retirement allowance will be computed on the highest one (1) year of final compensation per Government Code Section 31462.1.
  - b. For employees hired on or after September 21, 1979, the retirement allowance will be computed on the employee’s highest three (3) years of compensation per Government Code section 31462.
2. “1.62@ at 65” Pension Formula Election for Employees Hired Prior to May 7, 2010
  - a. Employees hired prior to May 7, 2010 will be eligible for the Pension Formula Election described below once the Board of Supervisors approves an implementing resolution (which shall be after pending tax issues have been resolved so that the election will not result in any negative tax consequences for eligible unit members). Eligible employees will have 180 calendar days from that date within which to elect one time only whether to terminate for future County service their pension calculation stated in Government Code section 31676.19 (the “2.7% at 55” benefit formula) and elect instead the pension calculation stated in Government Code section 31676.01 (the “1.62% at 65” benefit formula) for future County service.
  - b. In the event an eligible employee fails to make an election during the period set forth in Subsection 2a above, the employee shall continue to be provided with the “2.7% at 55” benefit formula and shall make the employee retirement contributions established for that benefit formula.
  - c. In the event an eligible employee elects the “1.62% at 65” benefit formula, the employee shall be eligible to participate in the County 1.62 Retirement 457(b) Defined Contribution Plan (the “DC Plan” described in Section 3 below.
  - d. Effective with the beginning of the pay period following the date an employee elects the “1.62% at 65” benefit formula, the normal

employee contribution rate to the retirement system for the employee will be calculated pursuant to Government Code section 31621. The employee will also make the contributions described in Section 2.B and C of this Article.

3. Election Option of “2.7% at 55” or “1.62% at 65” Pension Formula for Those Employees Hired by the County between May 7, 2010 and prior to January 1, 2013
  - a. Employees hired on or after May 7, 2010 and prior to January 1, 2013 were required to make the pension benefit formula election provide for in Board Resolution 10-072.
  - b. Employees had forty-five (45) calendar days from the date of hire or appointment to elect either the “2.7% at 55” benefit formula or the “1.62% at 65” benefit formula. Regardless of which benefit formula was selected, the employee is required to make retirement contributions in accordance with the provisions of Section 2.B and C below.
  - c. In the event an eligible employee failed to make an election during the 45 day period set forth in subsection 3.b above, the employee was deemed to have elected the “1.62% at 65” benefit formula.
  - d. An employee who elected, or was deemed to have elected, the “1.62% at 65” benefit formula is eligible to participate in the “DC Plan” described in Section 3 below.
  - e. After the employee made an election or was deemed to have made an election as described in Subsection 3.b and c. above, the employee is required to make retroactive contributions that would have been made from the employee’s hire or appointment date, for the appropriate election as described in this Article. County matching contributions to the DC Plan, for employees who chose the “1.62% at 65” benefit formula are not retroactive to the employee’s date of hire and are calculated from the date that the employee made an election or was deemed to have made an election of the “1.62% at 65” benefit formula.
  - f. Effective with the pay period following the date an employee elected or was deemed to have elected the “1.62% at 65” benefit formula, the normal employee contribution rate to the retirement system for the employee will be calculated pursuant to Section 31621 of the Government Code. The employee will also make the contributions described in Section 2.B and C below.

- B. For employees hired on or after January 1, 2013, who are considered “New Members” within the meaning of the Public Employees’ Pension Reform Act of 2013:
  - 1. The retirement formula will be the “1.62% at 65” benefit formula described in Government Code section 31676.01, utilizing the average three highest years of compensation per Government Code section 7522.32. Pensionable compensation and other pension related conditions are governed by the provisions of PEPRA and the OCERS Board of Retirement. Employees will also make the contributions described in Section 2.B and C. below.
  - 2. “New Members” are eligible to participate in the “DC Plan” described in Section 3 below.

## Section 2 Retirement Contributions

- A. Members' normal contribution rates shall continue to be established and adjusted subsequent to and in accordance with state law and the actuarial recommendations adopted by the Retirement Board and the Board of Supervisors.
- B. The County will adopt employee contribution rates equal to County contributions for full reserve funding of cost-of-living increases to retirees for all active members of the retirement system as recommended by the OCERS actuary. Employees will pay the full member contribution for each of the benefit plans provided by the County.
- C. Employee Retirement Contributions to Offset the Increased Cost of the “2.7% at 55” benefit formula.
  - 1. The implementation of the “2.7% at 55” retirement benefit formula shall be without additional cost to the County for as long as the enhanced benefit formula is provided to employees, ie., it will be borne entirely by the employees. Effective with the pay period that commenced on June 24, 2005, unit members began making an additional employee contribution to the retirement system. This contribution is in addition to the normal employee contribution calculated under Section 31621.8 of the Government Code (or Section 31621 of the Government Code, if applicable), and is in addition to the employee contribution required to help provide full reserve funding of cost-of-living increases to retirees for all active members of the retirement system as recommended by the actuary. The additional employee contribution made under this paragraph is known as the “Reverse Pickup” and is designed to offset both the prospective increased costs, as well as the increased costs attributable to past service liability of providing this enhanced retirement benefit.

- a. The portion of the additional employee contribution that is attributable to past service liability shall be in accordance with, and for the purposes stated, in Section 31678.3(d) of the Government Code. This additional employee contribution shall continue beyond the expiration date of this MOU, for the purpose of amortizing, over a 30 year period, the cost of the enhanced retirement benefit.
  - b. The portion of the additional employee contribution that is attributable to the prospective increased cost of the benefit shall also continue beyond the expiration date of this MOU but unlike the past service liability, does not expire at the end of the 30 year period set forth above.
2. The relative-ratio based methodology will be used to determine the additional employee contribution toward the “2.7% at 55” retirement benefit formula.
  3. After implementation of this benefit, the County and IUOE will annually review its costs including costs impacted by changes in investment earnings and evaluate whether any adjustments to employee contributions are necessary.

### Section 3. Defined Contribution Retirement Plan

- A. Beginning on May 7, 2010, the County will make available a County 1.62 retirement Section 457(b) Defined Contribution Plan (the “DC Plan”) to those employees who are covered by the “1.62% at 65” benefit formula (whether by election or have been hired on or after January 1, 2013 and are deemed to be “new members” within the meaning of PEPRA ). These employees will be permitted to make voluntary contributions to the DC Plan. The County will make matching contributions as described in Section 3.B. below.
- B. During the first one-year period following the plan commencement date, the County will contribute a biweekly amount to a Section 401(a) Defined Contribution Plan for an eligible employee equal to the biweekly amount that the employee contributes to the County DC Plan, not to exceed two (2) percent of the employee’s base salary (the “match”). During the second year and in subsequent years following the plan commencement date, the County will contribute to a Section 401(a) Defined Contribution Plan for an eligible employee a biweekly amount equal to fifty (50) percent of the biweekly amount that the employee contributes to the County DC Plan. The County contribution to the Section 401(a) Defined Contribution Plan shall not exceed two (2) percent of the employee’s base salary, unless the Board of Supervisors authorizes additional County contributions permitted under Article XXI, Retirement, Section 3.(D). County contributions to the 401(a) Defined Contribution Plan shall vest on behalf of the participant after that



participant has been continuously employed by the County for a period of five (5) years. For this purpose, one year shall be equal to 2080 paid hours of service, exclusive of overtime.

- C. Employee contributions to the County DC Plan and the County contributions to the Section 401(a) Defined Contribution Plan shall be subject to contribution limits imposed by the Internal Revenue Service. In no event shall the County be required to pay any portion of the matching contributions that would cause the employee to exceed applicable Internal Revenue Service contribution limits.
- D. Notwithstanding the foregoing, the parties agree that at no time shall the County's matching contribution to the Section 401(a) Defined Contribution Plan be less than fifty (50) percent of an employee's biweekly contribution to the County DC Plan, nor shall the maximum amount of the County's matching contribution to a Section 401(a) Defined Contribution Plan be less than two (2) percent of an employee's base salary.

#### Section 4. Tax-Deferred Retirement Plan

The County administers an approved tax-deferred retirement plan which allows employees to reduce their taxable gross income by the amount of their retirement contribution. The plan shall be in effect for the term of this Memorandum of Understanding subject to approval by the Internal Revenue Service.

ARTICLE XXII     WORKSITE SENIORITY

All employees in the Unit shall accumulate seniority on a worksite basis within any single classification represented in this MOU. This seniority shall apply only for purposes of choice of shifts, transfers, and assignments and does not apply in other circumstances covered within this MOU (e.g. layoffs or overtime).

Worksite designations shall be established jointly with the Department and IUOE. The County shall provide a seniority list for each worksite by classification to Yule's Chief Steward at the beginning of each calendar year.

There shall be no change to an existing employee's worksite seniority ranking when:

- a. an employee is reassigned to that worksite;
- b. an employee at a worksite accepts a promotion at the same worksite;
- c. a new employee is hired to that worksite.

The most recently reassigned, promoted or newly hired employee will have the lowest seniority in classification at a worksite. The choice of shifts, transfers and assignments by seniority may be made only when vacancies occur and provided that the employee is capable of performing the work.

For purposes of this Article, "vacancy" is defined as a position that either has been newly created for a worksite or has been vacated by a previous incumbent at a worksite.

ARTICLE XXIII IDENTIFICATION BADGES

The County shall provide identification badges for the purpose of identifying employees of the Unit required to work in secured areas.

ARTICLE XXIV MANAGEMENT RIGHTS

Any of the rights, powers or authority the County had prior to the signing of this Memorandum are retained by the County, except those specifically abridged, delegated or modified by this Memorandum provided that such management rights do not restrict employees from filing grievances concerning the application or interpretation of this Memorandum nor restrict the Union from consulting with management about the possible consequences of management decisions that affect employees in the Unit.

ARTICLE XXV    MODIFICATION AND WAIVER

Except as specifically provided herein, it is agreed and understood that the parties hereto reserve the right, only upon mutual agreement, to negotiate with respect to any subject or matter covered herein or with respect to any other matter within the scope of representation, during the term of this Memorandum.

ARTICLE XXVI NO STRIKE/NO LOCKOUT

Except as provided in the IUOE Constitution and Bylaws, employees of the Unit shall not participate in any way in job actions taken by other employees of the County of Orange.

Strikes

During the life of this agreement, no work stoppages, strikes or slowdowns that can be interpreted as job actions shall be caused or sanctioned by IUOE nor shall any lockouts be caused by the County.

## ARTICLE XXVII FLEXIBLE SPENDING ACCOUNTS

The County will administer the following Flexible Spending Accounts:

### Section 1. Dependent Care Reimbursement Account (DCRA)

The County will administer a Dependent Care Reimbursement Account that will allow eligible employees the opportunity to allocate a specified amount of biweekly pre-tax salary into the employee's dependent care reimbursement account to pay for dependent care expenses as permitted by state and federal law, regulations and guidelines and as permitted by the County's Section 125 Plan document.

### Section 2. Health Care Reimbursement Account (HCRA)

The County will administer a Health Care Reimbursement Account that will allow eligible employees the opportunity to allocate a specified amount of biweekly pre-tax salary into the employee's health care reimbursement account to pay for health care expenses as permitted by state and federal law, regulations, and guidelines and as permitted by the County's Section 125 Plan document.





## APPENDIX A

Classes included in the Craft and Plant Engineer Unit:

Class Code	Class Title
3112	Air Conditioning Mechanic
3390	Assistant Plant Operating Engineer
3116	Carpenter
3122	Electrician
3123	Elevator Mechanic I
3124	Elevator Mechanic II
3125	Environmental Control System Specialist I
3126	Environmental Control System Specialist II
3166	Facilities Mechanic
3167	Facilities Mechanic Leadworker
3164	Locksmith
3156	Metalsmith
3128	Painter
3393	Plant Operating Engineer
3136	Plumber
3104	Trades Helper I
3106	Trades Helper II
3107	Trades Helper III

# CRAFT AND PLANT UNIT MEMORANDUM OF UNDERSTANDING

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