# MEMORANDUM OF UNDERSTANDING

## PROBATION SUPERVISORY MANAGEMENT UNIT

# 2015 – 2018

COUNTY OF ORANGE
AND
THE ORANGE COUNTY EMPLOYEES ASSOCIATION

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FOR THE

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This Memorandum of Understanding sets forth the terms of agreement reached between the County of Orange and the Orange County Employees Association as the exclusively recognized employee organization for the Probation Supervisory Management Unit for the period beginning June 26, 2015 through June 22, 2018. Unless otherwise indicated herein, all provisions shall become effective June 26, 2015.

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# DEFINITIONS

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

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

CHIEF HUMAN RESOURCES OFFICER shall mean the 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 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 Employees 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.

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 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 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.

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 maximum step on the new salary range is at least one (1) full step higher than the maximum step of the old salary range.

REASSIGNMENT shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class on the same salary range or to a class where the maximum step on the new salary range is less than one (1) full step higher or lower than the maximum step of the old salary range.

RECRUITING STEP shall be the first step of the salary range allocated to a class unless otherwise authorized by the Board or the Chief Human Resources Officer.

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

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.

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

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

## ARTICLE I WORKWEEK, OVERTIME AND PREMIUM PAY

### Section 1. Workweek

A. The official work period shall be 28 days and shall begin at 12 a.m. on each Friday and end at 12 a.m. four weeks later. For purposes of payment of overtime under this MOU, each 28 day period shall be divided into two 14 day periods, with overtime being paid for work ordered and performed in excess of eighty (80) hours actually worked in each 14 day period. Work ordered and performed in excess of eighty (80) hours of paid time in each 14 day period in accordance with an emergency declared by the Board of Supervisors, activation of the County's Emergency Operations Center (EOC) or Department Operations Center (DOC), shall be overtime.

1. 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.

2. Work shall not be regularly scheduled on more than ten (10) calendar days during any pay period and scheduled days off shall fall on at least two (2) consecutive calendar days. Alternate work schedules shall not be implemented without the County and OCEA first negotiating and attempting to reach agreement on such hours of work for each division or work unit in each agency or department proposing implementation of such alternate work schedules.

B. The County agrees to give employees a seven (7) calendar day advance notice of a shift change whenever practicable.

C. Once a Supervising Juvenile Correctional Officer submits his/her work schedule for an upcoming pay period, any additional mandated Duty Officer shifts that the employee is required to work within that pay period will be paid as overtime hours as outlined in Section 2.C. below.

D. No employee shall be permitted to work more than sixteen (16) consecutive hours except in an emergency situation.

E. The County shall discuss with OCEA any proposed changes in existing scheduled hours of work before such changes are put into effect. Whenever practicable, the County shall provide written notification of such proposed changes to OCEA at least fourteen (14) calendar days before such changes are put into effect.

F. 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 A., above, except on authorized overtime.

G. This Section shall not prevent an employee or group of employees from requesting a modified work schedule. Such requests may be implemented by an agency/department.

1. Upon written request by OCEA, the County agrees to study the feasibility of establishing work schedules consisting of either:

   a. four (4) ten (10) hour workdays per week;

   b. four (4) nine (9) hour workdays each week with an additional eight (8) hour workday on alternate weeks; or

   c. flex time.

2. The County shall initiate such studies within thirty (30) days and provide a written response within ninety (90) days.

3. OCEA agrees not to request more than twelve (12) such studies concurrently for the combined units represented by OCEA and no more than three (3) concurrently for each agency/department.

4. The County agrees to discuss with OCEA any findings and recommendations prior to reaching a final decision and implementation.

H. 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. <u>Overtime</u>

A. <u>Notification of Employees of Work Required Beyond Normal Schedule</u>

If in the judgment of the agency/department, work beyond the normal workday, 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 as soon as practicable prior to when the work is expected to begin. If this additional work results in hours worked in excess of eighty (80) hours in the employee’s designated work period, the employee shall be compensated for these excess hours at the overtime rate as defined by Section 2.C.1.

B. Distribution of Overtime

1. The County shall make a reasonable effort to make overtime opportunities available on an equal basis to employees capable of performing the work.

2. If the responsible supervisor determines that overtime is necessary on work that started on an assigned shift, the assigned employee(s) may continue with that work as an extension of the assigned shift.

3. If the responsible supervisor determines that overtime is necessary on a client case or patient case already assigned to a particular employee, any such overtime may be assigned exclusively to that employee.

4. The County and OCEA may meet and confer and, in so doing shall attempt to reach agreement regarding specific provisions for the distribution of overtime among employees of various individual work units. Such provisions shall be consistent with Sections 2.B.2. and 3., above.

C. Payment for Overtime

1. Except as provided in 2.C.3., below, overtime shall be compensated at one and one-half (1 1/2) times the regular rate.

2. Except as provided in 2.C.3., below, for all regular, limited-term and probationary employees, overtime may be converted to compensatory time or paid for at the option of the department. The maximum number of CTO hours which may be accrued by any employee is one hundred and twenty (120). If an employee accrues 120 hours of CTO, he/she cannot accrue additional CTO until he/she uses some of the hours in his/her bank; instead, employees will be paid for all overtime work performed in excess of that amount.

3. Overtime hours worked by extra help employees shall be paid.

4. Compensatory time earned and accrued by an employee in excess of forty-four (44) 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.

5. No scheduled compensatory time off will be cancelled except in cases of emergency.

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 or merit increase periods. Compensatory time off may be used as part of the established workweek to earn fringe benefits and to serve out probationary and merit increase periods.

8. An employee separating from the County service shall be paid for accumulated compensatory time in a lump sum payment.

Section 3. Rest Periods and Cleanup Time

A. Employees shall be allowed rest periods of 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.

Section 4. Premium Pay

A. Night Shift Differential

1. Except as provided in 4. below, an employee who works an assigned night shift shall, in addition to his or her regular salary, be paid a night shift differential for each hour actually worked on the assigned night shift.

2. Except as provided in 4. below, 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.

3. The rate of night shift differential shall be five (5) percent of the employee's basic hourly rate with a minimum of sixty (60) cents per hour and a maximum of one (1) dollar and fifty (50) cents per hour.

4. A Supervising Juvenile Correctional Officer who works an assigned night shift of twelve (12) or more consecutive hours shall, in addition to his or her regular salary, be paid a night shift differential for eight (8) hours.

B. On-Call Pay

1. When a regular, limited-term or probationary employee is assigned on-call duty by the County, the employee shall, whenever practicable, be informed in writing at least five (5) days in advance 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 to: (1) be reachable by telephone or other communications device; (2) be able to report to work in a reasonable time; and (3) to refrain from activities which might impair his or her ability to perform assigned duties.

3. On-call pay shall not apply to extra help employees unless expressly directed in writing to be on-call.

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.

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 shall be credited with not more than one (1) minimum four (4) hour guarantee for work performed during any four (4) consecutive hour period.

5. An employee credited with four (4) hours pursuant to this Section may be assigned other work until the guaranteed time has elapsed.

6. Call-back pay shall apply only when an employee is required to physically return to work (e.g., leave home or another off-duty location) in order to perform required duties.

D. Bilingual Pay

1. Except as provided in 2. below, qualified employees who meet the following criteria shall receive an additional forty (40) cents per hour (approximately sixty-nine [69] dollars per month) for all hours actually paid. This will not apply to the class of Interpreter.

   a. An employee must be assigned by agency/departmental management to speak or translate a language in addition to English. This includes such specialized communication skills as sign language.

   b. Employees must regularly and frequently speak and/or translate a second language, i.e., once daily.

   c. To become qualified, employees must be certified as qualified by the Chief Human Resources Officer.

2. Exceptional Bilingual Pay

   Qualified employees who, in addition to meeting the criteria in 1.a., b. and c. above, are assigned by agency/department management to perform exceptional bilingual duties that are essential to the performance of their professional and/or technical duties and responsibilities shall receive an additional seventy (70) cents per hour (approximately one hundred and twenty-one (121) dollars per month) for all hours actually paid.

3. An employee shall not be eligible to receive more than one (1) type of bilingual pay concurrently.

4. Bilingual pay shall not apply to workers' compensation supplement pay.

5. An employee in a bilingual assignment may request assignment to a position which does not require bilingual certification. The request shall be made in writing to the agency/department head, who will consider it according to:

   a. agency/department need;

b. availability of a qualified replacement; and

c. availability of another suitable assignment for the requesting employee.

6. Upon the agreement of the County and OCEA, negotiations shall be reopened for the sole purpose of considering the addition or deletion of classes eligible for exceptional bilingual pay.

E. Armed Assignment Pay

Employees on pay status and assigned to a position which requires armed status on a regular, full-time basis shall receive the equivalent of one-hundred seventy-five dollars and eighty-six cents ($175.86) biweekly (approximately three-hundred eighty-one dollars and three cents ($381.03) per month).

In the event an employee is assigned to a position which requires armed status for a portion of a pay period, the Armed Assignment Pay shall be paid on a pro-rated basis for those hours worked in an armed assignment.

## ARTICLE II PAY PRACTICES

### Section 1. Compensation for Employees

Employees shall receive compensation at the biweekly or hourly rate for the range and step or flat rate assigned to the class in which they are employed.

### Section 2. Pay for New Employees

A. A new employee shall be paid at the recruiting step of the salary range in effect for the particular class or position in which the new employee is hired except as provided in Sections 2.B., C., and D., below.

B. Upon recommendation of the Chief Human Resources Officer, the Board may, by minute order, authorize that a particular position be filled at any step within the range. When the Board authorizes the filling of the position at a step which is higher than the recruiting step of the salary range, it may, by minute order, advance the salary of incumbents of positions in that class or related classes in order to retain equitable relationships.

C. The Agency or Department Head may authorize the appointment of employees at any of the first seven (7) steps of the salary range. Such appointments shall be made only when the Agency or Department Head makes a determination that there is a direct and measurable benefit to the County from such appointments and makes a determination that the applicant's previous training and experience enables him or her to make a greater contribution than a less experienced employee.

D. Upon recommendation of the Agency or Department Head, the County Executive Officer may authorize the appointment of employees beyond step seven (7) of the salary range when there is a direct and measurable benefit to the County for such appointment.

E. 1. The County may adjust the recruiting step of classes during the term of this Agreement, wherever justified, by recruiting and labor market considerations.

2. If a recruiting step is decreased, incumbents of the class will be unaffected.

3. If a recruiting step is increased for a class, all employees in that class below the new recruiting step shall be advanced to the new recruiting step and a new merit increase date shall be assigned as provided in Section 3.C. for new employees.

4. Any regular employee whose salary could be bypassed by a new employee, if that employee was hired the date of the recruiting rate change, shall have his or her merit increase date advanced to the same date provided for such new employee.

Section 3. Merit Increase Within Range

A. Extra help employees shall not be eligible for merit increases within range.

B. Salary increases within a range shall not be automatic. They shall be based upon merit and granted only upon the affirmative recommendation of the agency/department head.

C. A new or reemployed employee in a regular or limited-term position shall have a merit increase eligibility date which shall be the first day of the pay period following the completion of the first twenty-six (26) weeks of service within that class. The granting of an Official Leave of Absence (other than a Military Leave) or the imposition of a suspension shall cause the merit increase eligibility date to be extended a number of calendar days equal to the Official Leave or suspension. The extended merit increase eligibility date will be effective the first day of the pay period after said date. Subsequent merit increase eligibility dates shall be the first day of the pay period following the completion of fifty-two (52) week intervals subject to the same postponement for Official Leaves of Absence or suspensions.

D. An employee in a part-time regular or limited-term position who has not completed one thousand forty (1040) paid hours exclusive of overtime by his or her first merit increase date shall have the merit increase eligibility date postponed until the first day of the pay period following completion of one thousand forty (1040) paid hours exclusive of overtime. Likewise, an employee in a part-time regular or limited-term position who has not completed two thousand eighty (2080) paid hours exclusive of overtime between subsequent merit increase eligibility dates shall have his or her merit increase eligibility date postponed until the first day of the pay period following completion of two thousand eighty (2080) paid hours exclusive of overtime. Where an employee's record consists of a combination of full-time and part-time service, both periods of service shall apply towards merit increase eligibility with the part-time service being applied proportionately to the appropriate full-time interval.

E. 1. Merit increases may be granted for one (1), two (2), three (3) or four (4) steps within the salary range based upon the employee's performance. Standard performance shall earn a two (2) step increase. Effective June 1, 2015, a performance rating of “meets performance objectives” shall earn a one (1) step increase.

2. For any employee hired on or after July 15, 1977, the determination as to whether or not to grant merit increases beyond Step 10 and if granted, in what amounts, shall be solely within the discretion of the agency/department head and shall be based on merit.

F. If, in the agency's/department's judgment, the employee's performance does not merit a salary increase on the merit increase eligibility date and a deferral of decision accompanied by an intensive effort at improved performance might be productive, the agency/department shall complete the structured merit rating and defer a decision regarding the merit increase any number of pay periods, but not to exceed thirteen (13) pay periods. A deferral of less than thirteen (13) pay periods may be further extended not to exceed thirteen (13) pay periods from the original merit eligibility date. The employee may be reevaluated at any time, but in any event shall be reevaluated on the structured merit rating prior to the end of the thirteenth pay period. The employee's merit increase eligibility date shall not be changed by such deferral.

G. Should an employee's merit increase eligibility date be overlooked through an error and upon discovery of the error the employee is granted a merit increase, the employee shall be compensated for the additional salary the employee would have received dating from the employee's merit increase eligibility date.

Section 4. 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 recruiting salary for the higher class or such higher amount as would be the closest to a two (2) step increase on the range over the salary received prior to the promotion not to exceed the top step of the range. A new merit increase eligibility date shall be established which shall be the first day of the pay period following completion of the first twenty-six (26) weeks of service in the new 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 a salary step no higher than the step which the employee would have achieved if the employee had remained in the class to which he or she is promoted and had demonstrated at least standard performance. The employee's merit increase eligibility date shall be reestablished in order to credit the employee with any time formerly served in the higher class.

C. Upon recommendation of the agency/department head, the County Executive Officer may, based on consideration of such factors as external market data, internal salary relationships, position responsibilities and

sound management principles, approve a rate of pay on promotion not to exceed the top of the pay range to which the employee is being promoted.

Section 5. Salary on Reassignment

A. When a regular, limited-term or probationary employee is reassigned to a class with the same recruiting step, such employee's salary and merit increase eligibility date shall not change. 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 recruiting step, such employee's salary shall be advanced the number of steps difference between recruiting steps and the employee shall retain his or her former merit increase eligibility date, except as provided in E., below. 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.

C. When a regular or limited-term employee is reassigned to a class with a lower recruiting step, such employee's salary and merit increase eligibility date shall not change. 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.

D. When a probationary or probationary limited-term employee is reassigned to a class with a lower recruiting step, such employee shall have the same salary, step status, probation status and merit increase eligibility date as would have been achieved if the employee had been in the new class throughout the period of such service in the old class.

E. When a regular, limited-term or probationary employee is involved in a series of reassignments among classes with the same salary range but different recruiting steps or a series of reassignments among classes on different salary ranges, his or her salary and merit increase eligibility date shall be determined by the Chief Human Resources Officer.

Section 6. Salary on Reduction

A. 1. When a probationary employee is reduced to a class not previously occupied by the employee, the employee shall receive the recruiting step for the lower class and shall receive a new merit increase eligibility date as provided in Section 3.C., above, or the employee's salary and merit increase eligibility date may be determined by the Chief Human Resources Officer.

2. When a promotional probationary employee, 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 occupied in good standing, the employee shall have the step status and merit increase eligibility date he or she would have achieved if the employee had remained in the lower class throughout the period of his or her service in the higher class.

B. When a regular or limited-term 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 a step on the salary range which would be the closest amount to a two (2) step reduction or the employee shall receive the maximum step of the salary range of the new class, whichever is lower. The employee's merit increase eligibility date shall be the first day of the pay period following completion of fifty-two (52) weeks of service in the new class, unless the employee thereby is placed at the recruiting step of the new salary range, in which case the employee's merit increase eligibility date shall be the first day of the pay period following the completion of twenty-six (26) weeks of service in the new 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 highest salary in the new range that does not exceed the employee's rate of pay immediately prior to reduction and shall retain his or her merit increase eligibility date.

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 the same or less than the maximum of the new class, the salary and merit increase eligibility date of the employee shall not change.

2. If the salary of the employee is greater than the maximum of the new range, 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 range 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 maximum salary for the new class.

## Y-RATE SCHEDULE

| Years of Full Time Continuous Service | Duration of Y-Rate |
|---|---|
| Less than 5 years | Two years from the date of reclassification |
| 5 years but less than 10 years | Three years from the date of reclassification |
| 10 years but less than 15 years | Four years from the date of reclassification |
| 15 years but less than 20 years | Five years from the date of reclassification |
| 20 years but less than 25 years | Six years from the date of reclassification |
| 25 years or more | Seven years from the date of reclassification |

3. When an employee on Y-Rate accepts a voluntary reduction, his or her salary shall be reduced by the amount of the difference between the maximum salary of the class from which the employee is being reduced and the maximum salary of the new class.

Section 7. 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 the same salary range, the salary and merit increase eligibility date of the employee shall be governed by Article II, Section 5.A., B. or C.

B. If the position is reclassified to a class with a higher salary range, the salary of the employee shall be governed by Article II, Section 4.A.

C. If the position is reclassified to a class with a lower salary range, the salary of the employee shall be governed by Article II, Section 6.D.2.

Section 8. 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 a step higher than the recruiting step, but no higher than the step the person received at the time of separation unless appointment is at an advanced step or rate pursuant to Article II, Section 2.C.

B. A former County employee on paid County retirement may be reemployed for not more than one hundred twenty (120) working days or nine hundred sixty (960) hours, whichever is greater, in any one (1) fiscal year in a position requiring special skills and knowledge and may be appointed to the position at any step on the salary range.

Section 9. Changes in Salary Allocation

A. Upon request of the County, negotiations shall be reopened for the sole purpose of considering an increase in salary (unrelated to a classification study) for any class included in this Agreement. Changes in salary resulting from a classification study shall be subject to the provisions of Article XVII.

B. If a class is reassigned to a different salary range, each employee in the class shall be compensated at the same step in the new salary range as he or she was receiving in the range to which the class was previously assigned.

Section 10. 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 11. Pay Check Deposit

A. 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.

B. Employees hired after June 29, 2001 will be required to authorize automatic deposit of his or her paycheck to a financial institution of the employee’s choice.

## ARTICLE III GENERAL PERSONNEL PROVISIONS

### Section 1. Probation

A. New Probation

1. Full-Time Employee

A new or reemployed employee in a regular or limited-term position shall be placed on anew probation period for fifty-two (52) weeks from the date of appointment and ending with the first day of the pay period following completion of said period.

2. Part-Time Employee

A new or reemployed part-time employee in a regular or limited-term position shall be placed on a new probation period for two thousand eighty (2080) paid hours, exclusive of overtime, ending with the first day or the pay period following completion of said period.

B. Promotional Probation

1. Any regular or limited-term employee who is promoted, excluding a temporary promotion, shall be placed on promotional probation except as provided in section B.2., below.

a. A full-time employee shall serve a probation period of fifty-two (52) weeks ending with the first day of the pay period following completion of said period. However, an employee who promotes from a class in the Probation Supervisory Management Unit to a class in the same or closely related occupational series shall serve a promotional probation period of twenty-six (26) weeks from the date of promotion ending with the first day of the pay period following completion of said period or the remainder of any uncompleted new probation period, whichever is longer.

b. A part-time employee shall be placed on promotional probation for two thousand eighty (2080) paid hours, exclusive of overtime ending with the first day of the pay period following completion of said period except that for promotion from a class in the Probation Supervisory Management Unit to a class in the same or closely related occupational series, the promotional probation period shall be one thousand forty (1040) paid hours exclusive of overtime or the remainder of any uncompleted new probation period, whichever is longer.

2. When a regular or 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.

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, and except that failing an employee on promotional probation must not be arbitrary, capricious or unreasonable.

b. An employee who fails promotional probation shall receive a performance evaluation 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 his or her former class provided 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 his or her 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 his or her former occupational series closest to, but no higher than, the salary range of the class which the employee occupied immediately prior to promotion and 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 was based on discrimination by the County in violation of Article XVI, NONDISCRIMINATION, may submit a grievance at Step 2 of the grievance procedure within ten (10) days after receipt of notice of failure of new 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.C., 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.D.4. and 5. 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 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 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 suspension, with the extended probation period ending with the first day of the pay period after said extended date.

2. With the mutual agreement of a new probationary employee and his or her agency/department, the employee's new probation period 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. In such cases, the agency/department shall advise OCEA in writing regarding the extension of probation as soon as practicable. Denial of a request to extend a probation period shall not be subject to appeal of hearing.

3. 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 longer 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 which 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.

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. 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. The County shall discuss with the employee the specific ratings prior to such ratings being made part of the employee's personnel file.

C. 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. Any written response by the employee to the performance evaluation shall be attached to such evaluation in the official personnel files.

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.

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 official 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.

Section 4. Status of Limited-Term Employees

A. All limited-term employees shall be subject to the same hiring standards and shall earn all benefits, except Article X, LAYOFF PROCEDURE, which accrue to employees in regular positions.

B. 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.

C. Limited-term employees hired under programs which involve special employment standards shall serve a new probation period upon transfer to permanent funded positions. Upon transfer to permanent positions, such employees shall maintain their original hire date for purposes of vacation, sick leave and annual leave accrual, retirement and layoff. The requirement that such employees serve a new probation period may be waived by the County. Limited-term employees not hired under programs which involve special employment standards shall, upon transfer to

permanent funded positions, maintain their original hire date for purposes of vacation, sick leave and annual leave accrual, retirement, layoff and new employee probation.

D. 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 section E., below.

E. 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. At any time before the temporary promotion is made, such employee may request to be reassigned to his or her former class. In such a 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 not to exceed eighteen (18) months.

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 and shall have the step status and merit increase eligibility date he or she would have achieved if the employee had remained in the lower class throughout the period of his or her service in the higher 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 eighteen (18) months.

Section 6. Reemployment of Employees on Disability Retirement

A. The County will advise employees retired for 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 who within two (2) years from the 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:

a person appointed to a regular position in the County service shall be removed from the list;

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;

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 agency/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 agency/department to another.

Section 9. On-Duty Meals

A. The County shall provide meals to personnel employed in residential care institutions and Probation Department juvenile institutions who are required to be on duty through their own meal period and to take their meals while supervising the activities of the residents.

B. The County shall provide reasonable reimbursement for meals for employees in field assignments who are required by their supervisor to take their meal period while in custodial charge of a client.

C. During emergencies which require unusual amounts of overtime, employees who are required to work such excessive overtime shall be provided appropriate meals. Such meals shall either be provided by County contract, such as that provided on a fire line, or the employee shall be authorized a meal ticket. The determination as to how such meals are provided and the amount authorized shall be at the discretion of the agency/department.

Section 10. Transfer Policy for OCEA Officers and Grievance Representatives

Management shall not, wherever practicable, assign an OCEA officer or grievance representative to a different location if:

A. the employee's performance is standard or better; and

B. OCEA objects to such assignment (OCEA shall not object to such assignment change, except for good cause); and

C. there is another employee in the same classification in the agency/department who meets the specific qualifications for the assignment.

Section 11. Training

A. Upon approval of the agency/department head, employees may participate in various County sponsored training programs. The County and OCEA will inform employees of these training programs.

B. During the term of this Memorandum of Understanding, OCEA may request specific training or development opportunities for various employees in this Unit. The County agrees to discuss such requests with OCEA and consider implementation.

C. The parties will establish a working group to provide four (4) hours of non-cashable compensatory time for Standards Training in Corrections (STC) for training preparation for each day of training; any unused non-cashable compensatory time will automatically roll-over to the following year. Working group recommendations shall be submitted for approval by both parties.

## ARTICLE IV LEAVE PROVISIONS

### Section 1. Sick Leave

Sick leave shall apply to regular and limited-term employees hired prior to July 15, 1977. Employees hired on or after July 15, 1977 shall be covered by the Annual Leave Plan Article VI.

A. Accumulation of Sick Leave

1. For the purpose of this Section, each biweekly pay period for which a full-time employee receives his or her full biweekly salary shall be considered the equivalent of eighty (80) regularly scheduled paid hours.

2. 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).

3. 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).

4. 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.

5. 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 an 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 serious illness of a member of his or her immediate family, provided that such absence shall be limited to a maximum of three (3) working days for each occurrence. For purposes of this Subsection, immediate family shall mean father, father-in-law, mother, mother-in-law, step-parent, 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 stating the nature of the medical condition 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 fiscal 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. Except as prohibited by law, an employee may be required to furnish a certificate issued by a licensed physician or registered nurse or other satisfactory 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.

3. a. Upon paid retirement or death, an employee or the employee's estate shall be paid for a portion of the employee's unused sick leave in an amount computed as provided below:

| Years of Service | Percent of Unused Sick Leave Paid For |
|---|---|
| Less than 5 years | None |
| 5 but less than 10 | 25% |
| 10 but less than 15 | 50% |

| | |
|---|---|
| 15 but less than 20 | 75% |
| 20 or more | 100% |

Years of service as used herein shall be the equivalent of full-time continuous service in a regular position. Employees who elect to take deferred retirement shall not be eligible for any benefits provided by this paragraph.

b. Not more than once in each fiscal year, an employee hired prior to July 15, 1977, who, as of date of request, is eligible for Tier I paid retirement and who has accumulated unused sick leave in excess of two hundred eighty (280) hours shall, upon request, receive a payoff for up to one-third (1/3) of all his or her accumulated sick leave provided that the remaining balance is not reduced below two hundred eighty (280) hours. The percentage of sick leave paid shall be computed based on years of continuous service in accordance with Section 1.D.3.a., above. The employee's sick leave balance will be reduced by the total number of hours elected and approved for payoff by the employee prior to the application of the eligible percentage described in Section 1.D.3.a.

c. Notwithstanding the provisions of 3.b., above, an employee hired prior to July 15, 1977, who, as of the date of request, is eligible for Tier I paid retirement and who has given irrevocable written notice of his or her intent to retire, may request that a payoff of his or her accumulated sick leave be made to his or her deferred compensation account with the County to the maximum amount permitted under the regulations that govern deferred compensation programs and to the extent permitted under the provisions of 3.a., above. Such request must be made at least thirty (30) calendar days prior to the effective date of his or her retirement. Such payoff shall be made prior to the effective date of the employee's retirement.

4. Employees hired on or after July 15, 1977, shall not be eligible for any benefits provided by Paragraph D.3., above.

5. Upon request of the County, negotiations shall be reopened to consider alternative sick leave incentive/control programs.

6. When a person is reemployed in a regular or limited-term position, the Chief Human Resources Officer may, upon the request of the agency/department, apply the period of previous County continuous service for the purpose of determining sick leave earning rates.

Notwithstanding the above, if an employee separates from the County and is rehired within one year from the date of separation, previously accrued and unused paid sick days shall be reinstated to the extent required by law. The employee will also be entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring to the extent required by law.

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, step-parent, brother, sister, wife, husband, registered domestic partner, child, step-child, grandparent, grandchild or legal guardian.

Section 3. Authorized Leave Without Pay

A. Agency/Departmental Leave

A regular, limited-term or probationary employee may request 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 Sections 10, 11.A., and 15 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 or annual leave 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 and vacation accruals and/or the portion of annual leave subject to 100% payoff 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 request for an 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 IV, Section 15, 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 accruals, sick leave and annual 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, sick leave (to the extent available to the employee for such use) and annual leave have been used;

   c. When Official Leave is used for all other reasons – after all accumulated compensatory time and vacation accruals and/or the portion of annual leave subject to 100% payoff have been applied toward the absence. Use of annual leave beyond the leave balance subject to 100% payoff shall be at the discretion of the employee, subject to the annual leave provision.

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 leave which must be granted pursuant to sections 10, 11 and 15 in this Article, the 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 with 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.

Section 4. Official Leave for Nonoccupational 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 nonoccupational 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 and/or annual leave 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 pursuant to this Section per twelve (12) month period.

Section 5. Absences Caused by Pregnancy, Illness or Injury

An employee who is absent from work for a period of more than fourteen (14) consecutive calendar days due to illness, injury or pregnancy 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 I). An employee may request a change in regularly scheduled working hours to a Monday through Friday day shift for the duration of such jury duty. Such requests shall be granted if practicable.

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, 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 OCEA Business

The County shall allow a regular, limited-term or probationary employee up to six (6) working days absence without pay during each fiscal year for the term of this Agreement to perform official OCEA business, provided that:

A. OCEA shall make a request to the employee's agency/department head at least ten (10) days in advance.

B. OCEA shall not request that such Leave be effective for more than four (4) employees on any workday.

C. 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.

Section 9. Absence Without Authorization

A. Absence without authorization for three (3) consecutive working days shall be considered an automatic resignation.

B. When the County believes an employee has been absent without authorization and the County plans to invoke the provisions of 9.A., above, the County shall send written notice by certified mail to the employee's last known address at least ten (10) calendar days prior to implementing an automatic resignation. Such written notice shall contain:

1. a statement of the County's intention to implement 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 automatic resignation shall be implemented.

C. An automatic resignation shall not be implemented if the employee responds to the notice before the effective date and 1) it was physically impossible for the employee to contact his or her agency/department; 2) the employee can show that it would be arbitrary, capricious or discriminatory to implement the automatic resignation.

D. An employee who responds prior to the effective date of the proposed action shall be sent written notice of any action taken pursuant to the notice of intent.

E. An employee who is permitted to continue his or her employment pursuant to subsection B. and/or C., 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 use of sick leave, compensatory time, vacation or other paid leave to cover the absence is appropriate.

F. If an employee does not have authorization to be absent from work, such employee may request authorization from the agency/department head prior to the expiration of the time limit specified in subsection A., above.

G. Notwithstanding any other provision of this Section, the County may rescind an automatic resignation.

H. Automatic resignation shall not be considered a discharge under the provisions of Article VIII, 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 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, compensatory time or annual leave subject to 100% payoff 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 or annual 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, merit increase dates, 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 XI, a regular, limited-term or probationary employee shall be placed on Workers' Compensation Leave. If such determination cannot readily be made and all sick leave or annual leave subject to 100% payoff has been applied to the absence, the employee shall be placed on Official Leave until a final determination is made.

B. Workers' Compensation Leave shall continue until the employee:

1. is determined to be physically able to return to work and such medical determination, if disputed, is confirmed by Workers' Compensation Appeals Board; or

2. is determined to be physically able to return to work with medical restrictions which the County can accept and such determination, if disputed, is confirmed by Workers' Compensation Appeals Board; or

3. accepts employment outside the County; or

4. accepts employment in another County position; or

5. has been found to be permanent and stationary and is not rehabilitated as provided by law; or

6. is retired pursuant to Government Code provisions.

C. If practicable, an employee on Workers' Compensation Leave and/or 4850 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.

Section 12. Leave for Attendance at Professional Conferences

A. Employees may request three (3) working days leave with pay each fiscal year for attendance at professional conferences subject to the following conditions:

1. A request is made in advance on the appropriate Request to Attend a Conference form.

2. The conference is job related and qualifies for CEU credits if the incumbent's position requires certification.

3. The employee pays all costs connected with the conference attendance, including registration, meals, transportation and/or lodging, if any.

4. The employee agrees to provide within two (2) weeks following the conference a comprehensive report on the event through channels to the Agency Director with a copy to the Staff Development liaison (to include conference materials, handouts, etc.).

5. The employee's workload is current and his or her performance is standard or above.

B. Attendance at conferences by eligible members of this Unit shall be scheduled throughout the fiscal year to avoid concentration of absences at the same time in the agency or in the assigned unit.

C. Multiple requests to attend the same conference or conferences scheduled at the same time will be considered based upon availability of adequate caseload coverage in the applicable units, past record of conference attendance, and applicability of the conference to the specific work assignment of the employee.

D. Requests may be made for more than three (3) days leave for attendance at a professional conference in any one (1) year under this provision; however, approval shall be at the discretion of the agency/department.

E. Attendance at conferences out of the general area will require approval under the County Travel Request procedure and is not covered by this provision.

Section 13. <u>OCEA Presidential Leave</u>

A. The County agrees to grant, if requested by OCEA, Presidential Leave with pay and without loss of any benefits provided by the Memorandum of Understanding, except as provided below, to the President of OCEA during the term of this Memorandum of Understanding provided that:

1. The Presidential Leave shall be for a minimum of eight (8) hours.

2. The Presidential Leave is requested fourteen (14) calendar days in advance. Said notice may be waived by mutual agreement.

3. OCEA promptly reimburses the County for all OCEA President salary expenses incurred during the Presidential Leave.

4. OCEA promptly reimburses the County for all benefit expenses incurred during the Presidential Leave of Absence.

5. The employee shall continue to conform to the department rules and regulations that are not inconsistent with Presidential Leave.

6. There is not a compelling need for the employee to perform County work.

7. The employee is a standard or better performer.

8. When the duration or frequency of Presidential Leave is such that the employee's absence imposes a hardship on agency/departmental operations, the County may reassign or transfer the individual to a less critical position in his or her class.

B. Vacation, sick leave and annual leave accrual rates will apply to the employee as though he or she were on duty status.

C. The merit increase eligibility date, if applicable, shall be extended a number of calendar days equal to the Presidential Leave. This extended merit increase eligibility date will be effective the first day of the pay period after said date.

D. The probation period, if applicable, shall be extended by the length of the Presidential Leave. The extended probation period shall end on the first day of the pay period following said extended date.

E. The employee's eligibility for promotional examinations shall not be affected by Presidential Leave.

F. Layoff points shall not be affected by Presidential Leave.

G. In the event emergency recall of the employee becomes necessary, Presidential Leave may be suspended or cancelled during the course of the emergency. OCEA shall not be obligated for reimbursement costs listed in subsections A.3. and A.4. for the period that Presidential Leave is suspended or cancelled. Provisions of subsections A.1. through A.8., above, shall be suspended during said emergency recall.

H. Not more than one (1) employee shall be eligible for Presidential Leave at any one (1) time.

Section 14. <u>Catastrophic Leave</u>

The County will administer a Catastrophic Leave procedure designed to permit individual donations of annual leave, vacation and/or compensatory and/or PIP 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.

Section 15. 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 on 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 OCEA 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, annual leave, compensatory leave, 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 or annual leave shall be restricted to those circumstances which qualify under the provisions of Article IV., Section 1.B.

B. <u>Notification Requirements</u>

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 or 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 16. <u>Supervisory Leave</u>

Each regular employee in the bargaining unit as of July 1st each calendar year will receive twenty (20) hours of Supervisory Leave to be used prior to June 30th of the following calendar year. The Supervisory Leave will have no cash value and any unused Supervisory Leave as of June 30th will be forfeited.

## ARTICLE V VACATION

Vacation shall apply to regular and limited-term employees hired prior to July 15, 1977. Employees hired on or after July 15, 1977 shall be covered by the Annual Leave Plan Article VI.

### Section 1. Accumulation of Vacation

A. A new employee in a full-time regular or limited-term position shall earn eighty (80) hours of vacation when the employee has accumulated two thousand eighty (2080) regularly scheduled paid hours. An employee shall earn a second eighty (80) hours of vacation when the employee has accumulated four thousand one hundred sixty (4160) regularly scheduled paid hours and a third eighty (80) hours vacation when the employee has accumulated six thousand two hundred forty (6240) regularly scheduled paid hours.

B. After an employee in a regular or limited-term position has been paid for six thousand two hundred forty (6240) regularly scheduled hours, the employee shall earn .0577 hours of vacation for each hour of pay during his or her regularly scheduled workweek (approximately one hundred twenty (120) hours per year), but not to exceed credit for more than eighty (80) regularly scheduled hours in any pay period. Such credit shall be applied to the employee's vacation accumulation account only upon completion of each pay period. No credit shall be applied during the progress of any pay period or for any portion of a pay period during which the employee terminates County service.

C. Commencing with the pay period following that in which the employee completed ten (10) years of continuous full-time County service, an 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 (approximately one hundred sixty (160) per year), under the same terms and conditions as under subsection B., above.

D. A new employee in a part-time regular or limited-term position shall earn pro rata vacation in fifty-two (52) week segments. At the conclusion of fifty-two (52) weeks of employment, the ratio of regularly scheduled hours paid to two thousand eighty (2080) shall be determined. The same ratio shall be applied to eighty (80) hours to establish the amount of vacation to be credited to the employee's account as of the conclusion of the pay period in which the fifty-two (52) week period ended. The same procedure shall be applied to each subsequent fifty-two (52) week period.

E. 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 three hundred twenty (320) hours or a prorated amount equal to eight (8) 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 four hundred (400) hours and a prorated amount equal to ten (10) 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 V, 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 V, 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 IV, 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 a Suppression Volunteer, Deputy Sheriff - Emergency Service, 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. During each fiscal year, an employee may request to be paid for accrued vacation in either two (2) separate increments of up to forty (40) hours each or one (1) increment of up to eighty (80) hours. Such payment shall be made upon request unless the agency/department determines it is not economically or operationally feasible. In such case, payment shall be made as soon as feasible. It is the intent of this provision that the current practice regarding payment of vacation remain unchanged.

L. When a person is reemployed in a regular or limited-term position, the Chief Human Resources Officer may, upon the request of the agency/department, apply the period of previous County continuous service for the purpose of determining vacation earning rates.

## ARTICLE VI ANNUAL LEAVE

The Annual Leave provisions shall apply to regular and limited-term employees hired on or after July 15, 1977.

### Section 1. Accumulation of Annual Leave

A. During the first three (3) years of employment, a regular or limited term employee shall earn approximately five (5) hours and fifty-one (51) minutes of annual leave during each eighty (80) hour pay period (approximately one hundred fifty-two [152] hours per year), or a prorated amount for any pay period in which the employee is paid for less than eighty (80) hours.

B. After an employee has been paid for six thousand two hundred forty (6240) regularly scheduled hours, approximately three (3) years, the employee shall earn approximately eight (8) hours and nineteen (19) minutes of annual leave during each eighty (80) hour pay period (approximately two hundred sixteen [216] hours per year), or a prorated amount for any pay period in which the employee is paid for less than eighty (80) hours.

C. Commencing with the pay period following that in which an employee completes ten (10) years of continuous full-time County service, an employee in a regular or limited-term position shall earn nine (9) hours and fifty-one (51) minutes of annual leave during each eighty (80) hour pay period (approximately two hundred fifty-six [256] hours per year), or a prorated amount for any pay period in which the employee is paid for less than eighty (80) hours.

D. Annual Leave earned shall be added to the employee's annual 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.

E. The amount of annual leave an employee may accrue shall be unlimited.

F. Extra help employees shall not earn annual leave.

### Section 2. Use of Annual Leave for Illness or Injury

A. Annual Leave may be applied to:

1. An absence necessitated by the 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 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 serious illness of a member of his or her immediate family. For purposes of this Subsection, immediate family shall mean father, father-in-law, mother, mother-in-law, stepparent, brother, sister, wife, husband, child, stepchild, grandparent or legal ward.

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).

   For those extra help employees who qualify for paid sick leave under Labor Code section 246, the first three days or 24 hours, whichever is greater, of annual leave taken each 12 month period will be considered sick leave used pursuant to the Healthy Workplaces, Healthy Families Act of 2014. The 12 month period is July 1 through June 30 for employees hired prior to July 1, 2015. For employees hired on or after July 1, 2015, the 12 month period is the 12 month period beginning on the employee's hire date.

6. Absence from duty because of personal emergencies not to exceed thirty (30) annual leave hours during the fiscal year.

7. An absence due to an air pollution alert which prevents the employee from traveling to his or her work location.

B. An employee may be required to furnish a certificate issued by a licensed physician or registered nurse or other satisfactory evidence of illness, injury or medical condition, or medical or dental

office calls when the department has notified the employee in advance of such a requirement or when the employee has been under the care of a physician.

C. Annual Leave shall not be applied to absences which occur on a County holiday.

Section 3. Use of Annual Leave for Vacation

A. Calendared annual leave, including vacations, 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.

B. No scheduled annual leave will be cancelled by the agency/department except in cases of emergency.

C. No employee shall be required to return to work for the County in any capacity during the time of his or her paid annual leave from the County service, except in cases of emergency.

D. 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 a Fire Suppression Volunteer, Deputy Sheriff-Emergency Service, Election Board Officer or Election Night Help.

Section 4. General Provisions

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

B. An Official Leave of Absence shall cause the aforementioned ten (10) years (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 toward the required ten years (Section 1.C.) of County service, with the part-time service being applied proportionately to the appropriate full-time interval.

D. Additional annual leave earned during the period of annual leave may be taken consecutively.

E. In any use of annual leave, an employee's account shall be charged to the nearest quarter hour.

F. When a person is reemployed in a regular or limited term position, the Chief Human Resources Officer may, upon the request of the agency/department, apply the period of previous County continuous service for the purpose of determining annual leave earning rates.

G. The parties agree that the Annual Leave Plan shall not impact compensation, compensation earnable or final compensation as defined by the 1937 Retirement Act, above or below that to which employees would have been entitled prior to this agreement. If a court should decide that benefits under this plan, or analogous benefits, increase compensation, compensation earnable or final compensation above that to which employees would have been entitled prior to this agreement, the parties agree to meet and confer regarding employee/employer responsibility for funding said increase. Increased costs shall not be automatically assumed by the County.

H. The parties will jointly monitor and review on a regular basis, the effectiveness of the Annual Leave Plan to ensure that plan goals are met. The parties also acknowledge that in order to meet the goals of the Annual Leave Plan, refinements or changes may become necessary. If unanticipated consequences arise, the parties shall meet and attempt to mitigate those consequences. If it is found that the plan is not meeting objectives, it may be discontinued. However, neither party shall have the right to unilaterally modify this agreement as a result of discussions prior to the expiration of the overall Memorandum of Understanding between the parties.

Section 5. Payoff of Unused Annual Leave

A. During each fiscal year, an employee may request to be paid for accrued annual leave in either two (2) separate increments of up to forty (40) hours each or one (1) increment of up to eighty (80) hours. Such payment shall be made upon request unless the agency/department determines it is not economically or operationally feasible. In such case, payment shall be made as soon as feasible. It is the intent of this provision that the current practice regarding payment for vacation remain unchanged under the Annual Leave Plan.

B. An employee separating from County service shall be paid in a lump sum payment for the unused annual leave balance as provided below:

| Years of Service | Maximum Payoff |
|---|---|

| | |
|---|---|
| Less than 3 years | 240 hours maximum paid at 100% |
| 3 but less than 10 years | 320 hours maximum paid at 100% |
| 10 or more years | A maximum of 1600 hours of the accrued annual leave balance has cash value. 400 hours are paid at 100%; the remaining balance after the 400 hours are deducted, obtains cash value of 2% for each year of service, to a maximum of 50% i.e., 12 years of service equals 24% cash value for remaining balance; 25 or more years of service equals 50% cash value of the remaining balance after deducted from the 1600 hours maximum. |

C. Years of service as used herein shall be the equivalent of full-time continuous service hours in a regular position. Partial years of service will be prorated.

An employee separating from County service by way of paid County retirement may elect either to take annual leave as time off or be paid for his or her annual leave in a lump sum payment. The amount of annual leave which can be taken as time off shall be limited to the amount of hours the employee is eligible to receive at 100%. The remaining balance (up to the allowed maximum less the hours taken as time off) shall be paid in accordance with the annual leave payoff provisions above.

Section 6. Annual Leave Working Group and Reopener

The parties agree to establish a working group to study the feasibility, advisability, and potential benefits to each party of replacing the current annual leave program. The working group shall prepare a report that may make recommendations and/or identify areas of agreement and/or disagreement.

Upon completion of the working group's work and submission of its report to the Chief Human Resources Officer and OCEA, the parties agree to reopen the MOU, subject to the following limitations:

(1) Unless otherwise agreed in writing by both parties, the reopener shall be limited to the issues of annual leave, vacation leave, sick or other leave and associated general wage increases not to exceed a total of 1% in the term of this agreement that may be used as consideration for any recommended changes to the County's leave program for its OCEA represented employees; and

(2) The County hereby waives its right to unilaterally implement anything in connection with the reopener, including, but not limited to, anything covered by, discussed in, or related to, the reopener.

## 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. If a holiday falls on a Saturday but is observed on the preceding Friday by the Municipal and/or Superior Courts, employees who have been designated by the County as being necessary to the operation of said courts may be allowed to observe the Court observed Friday holiday in lieu of the Saturday, holiday provided such employees are given notice of their work schedule change not less than thirty (30) calendar days prior to the holiday.

C. When a falls on a Sunday, the next day shall be observed as the holiday, except as noted in E. below.

D. When Christmas Day or New Year's Day fall on a Saturday, the Friday immediately preceding shall be observed as the holiday, except as noted in F. below.

E. When Christmas Day, New Year's Day, Lincoln's Birthday, Independence Day or Veteran's Day falls on a Sunday, the next day (Monday) shall be observed as the holiday unless an employee is required to work on December 25, January 1, February 12, July 4 or November 11 as part of his or her normal work schedule. In such cases, the employee may, with agency/department approval, observe the holidays on December 25 January 1, February 12, July 4 or November 11. Under no circumstances shall an employee receive holiday compensation for both the actual day of observance of the holidays and the following Monday.

F. When Christmas Day or New Year's Day falls on a Saturday, the Friday immediately preceding shall be observed as the holiday unless an employee is required to work on December 25 or January 1, as part of his or her normal work schedule. In such cases, the employee may, with agency/department approval, observe the holiday on December 25 or January 1. Under no circumstances shall an employee receive holiday compensation for both the actual day of observance of the holidays and the Friday immediately preceding.

Section 2. <u>Eligibility for Holiday Pay</u>

A. An employee must be paid for all or a portion 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.

B. On each of the holidays designated above, each 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.

C. 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 shall receive eight (8) hours of compensatory time.

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.

D. 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 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 I, Section 1.A., shall be compensated as provided in Article I, Section 2.C.1.

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 D.1. or 2. of this Section, compensatory time for each hour worked to a maximum of eight (8) hours.

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

F. 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.

G. 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 I, Section 2.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 shall be reimbursed for each mile driven in the performance of his or her duties during each monthly period as follows:

1. Through December 31, 1994 the reimbursement rate shall be thirty-nine (39) cents per mile.

2. Except as provided in A.4., below, effective January 1, 1995 through June 22, 1995, the reimbursement rate shall be thirty-four (34) cents per mile.

3. Except as provided in A.4., below, effective June 23, 1995, the reimbursement rate shall be the Internal Revenue Service Standard Mileage Rate for the Business Use of a Car.

4. Effective January 1, 1995, for an employee who drives two hundred-fifty (250) or more miles in any calendar month in the performance of his or her duties the reimbursement rate shall be thirty-nine (39) cents per mile for each mile driven that month in the performance of his or her duties.

5. Effective June 29, 2001, the reimbursement rate for an employee in the class of Supervising Juvenile Correctional Officer and Supervising Probation Officer shall be thirty-nine (39) cents per mile.

6. Effective April 1, 2005, the reimbursement rate for an employee in the class of Supervising Juvenile Correctional Officer and Supervising Probation Officer shall be forty-eight (48) cents per mile.

7. Effective January 1, 2006, the reimbursement rate for an employee in the class of Supervising Probation Officer and Supervising Juvenile Correctional Officer shall be the differential rate of ten (10) cents per mile above the standard IRS mileage rate.

8. There shall not be any duplication or pyramiding of reimbursement rates paid under this Section.

B. An employee who is required by the County to furnish a privately-owned vehicle for the performance of his or her duties shall receive a minimum of ten (10) dollars in any month in which the actual mileage

reimbursement would otherwise be less than ten (10) dollars. The minimum shall not apply in any month:

1. in which the employee has not actually worked eighty (80) hours;

2. unless the employee claims the ten (10) dollar minimum and the agency/department certifies that the employee was required to use a privately-owned vehicle on County business.

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.

## ARTICLE IX DISCIPLINARY ACTION

### Section 1. Reprimand and Substandard Performance Evaluation

A. No regular, limited-term or 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 Objectives”) given to a regular, limited-term or 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. Emergency Suspensions of Five Days or Less

A. In suspending a regular, limited-term or probationary employee for five (5) days or less when it is necessary to remove the employee from the work site immediately because of a potential emergency situation, including, but not limited to, situations that may endanger life or property 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.

B. In such emergency suspensions, the procedural requirements of Section 3., below, shall be complied with within ten (10) days following the effective date of the disciplinary action.

### Section 3. Pre-Disciplinary Hearing for Suspension, Reduction or Discharge

A. In suspending an employee in a non-emergency situation or in reducing a regular, limited-term or probationary employee for reasons of unsatisfactory performance or physical disability or in discharging a regular or limited-term regular 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. Prior to the effective date of such suspension, 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 or department representative with the authority to make an effective recommendation on the proposed disciplinary action.

C. An employee shall be given reasonable time off without loss of pay to attend a hearing pursuant to this Article.

D. An employee may represent himself or herself or may be represented by OCEA in a hearing pursuant to this Article.

E. An employee shall receive written notice either sustaining, modifying or canceling a proposed discharge on or prior to the effective date of such action.

F. An employee shall receive written notice either sustaining, modifying or canceling a proposed suspension or reduction prior to the effective date of such action except that such written notice may be given after the imposition of suspensions pursuant to Section 2, above.

G. Should a proposed reduction or suspension become final, an employee shall have the right to appeal such action pursuant to Sections 4. and 5. of this Article.

H. Should a proposed discharge become final, an employee shall have the right to appeal such action pursuant to Section 6. of this Article.

Section 4. <u>Suspension</u>

A. No regular, limited-term or 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 IX, 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 5. Reduction

A. No regular employee or limited-term regular employee shall be reduced to a position in a lower class for reasons of unsatisfactory performance or physical disability 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 IX, an appeal of reduction for reasons of unsatisfactory performance or physical disability shall be initiated at the Step 2 of the grievance/appeal procedure; except for reductions imposed by the County Executive Officer which may be referred directly to arbitration.

Section 6. 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 IX, a discharge may be appealed directly to arbitration.

Section 7. Polygraph Examination

No employee shall be compelled to submit to a polygraph examination. No disciplinary action whatsoever shall be taken against an employee refusing to submit to a polygraph examination; nor shall any comment be anywhere 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 of any kind regarding an employee's offer to take, 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.

Section 8. Investigatory Meetings

A. An employee required to attend an investigatory meeting shall receive advance notice of such meeting. Such notice shall include:

1. A statement of the reasons for such meeting, including the subject matter and the fact that the meeting could lead to discipline, and

2. A statement of the employee's right to representation.

B. All investigatory meetings shall be scheduled to allow an employee a reasonable opportunity to obtain representation. Whenever practicable, such notice shall be given at least three (3) working days prior to the meeting.

C. An employee may represent himself or herself or may be represented by OCEA in an investigatory meeting. An employee is not entitled to be represented by privately retained counsel at the meeting, provided, however, an employee eligible for Legal Defense Fund coverage (LDF) under PORAC or any other OCEA-approved LDF provider shall be entitled to be represented by privately retained counsel obtained through that coverage during the investigatory process including, but not limited to, the investigatory meeting.

## 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;

3. position classification;

4. a rating of “Meets Performance Objectives” or better performance evaluations.

### 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, he or she may refer it to the next step in the procedure. By mutual agreement of the County and OCEA, any step of the procedure may be waived.

D. The Chief Human Resources Officer may temporarily suspend grievance/appeal processing on a section-wide, unit-wide, division-wide, agency/department-wide or County-wide basis in an emergency situation. OCEA 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.

H. In order to encourage frank discussion and compromise in attempting to resolve grievances and other labor disputes, the County and OCEA agree that the files of the respective parties concerning such matters shall be confidential, except that this shall not restrict any access that either party might otherwise have to the other's files.

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. To be considered a grievant in a group grievance, each employee must be individually identified as a grievant when the grievance is submitted at Step 2.

Section 4. Employee Representation

A. An employee may represent himself or herself or may be represented by OCEA 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. Provided, however, an employee eligible for Legal Defense Fund coverage (LDF) under PORAC or any other OCEA-approved LDF provider shall be entitled to be represented by privately reained counsel obtained through that coverage during the grievance process and/or arbitration hearing.

B. Authorized grievance/appeal representatives shall be regular employees in the same agency/department or Representation Unit as the grievant/appellant who are members of and are designated by OCEA to represent employees for purposes of the grievance/appeal procedure. OCEA shall notify agency/department heads of the names and titles of

such representatives and send a copy of such notice to the Human Resources Department quarterly.

C. If an employee chooses not to be represented by OCEA, OCEA may have staff representatives present at Step 2 of the grievance/appeal procedure and/or arbitration and, if necessary, shall have the right to present OCEA's interpretation of provisions of this Agreement at issue. Such presentation shall not include comments regarding the merits of the grievance. The decision of the arbitrator in such a case shall not be precedent setting and shall not be admissible in any subsequent dispute between the County and OCEA

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 under the grievance/appeal procedure to resolve the matter 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 under the grievance/appeal procedure to resolve the grievance/appeal or to obtain facts concerning the action grieved/appealed through discussion with the grievant/appellant or other employees or through examination of appropriate County records or locations 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 if his or her supervisor determines that such interruption or absence will 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. 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 Head

An employee may formally submit a grievance to the immediate agency/department head 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 his or her designee(s) shall meet with the grievant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant. The County shall, whenever practicable, notify the grievant if more than one (1) management representative shall attend the Step 1 grievance meeting.

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 rating of “Does Not Meet Objectives”;

c. deferral or denial of a merit increase, or a dispute about the number of steps granted;

d. a written reprimand; or

e. 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 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 Human Resources Director in B., C. and D., 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 to the Chief Human Resources Officer within seven (7) calendar days from the date a decision was rendered at Step 2. Within 30 days of the submission of the arbitration request, the arbitration hearing date shall be calendared, unless the parties agree to extend the time allowed for calendaring. If mediation is going to be held and the grievance is not settled through the mediation process, the arbitration hearing date shall be calendared within 30 days of the mediation, unless the parties agree to extend the time allowed for calendaring.

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 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 2, 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 an employee or by a representative of OCEA and shall be submitted in writing.

d. The issues in all disciplinary appeals shall be: Was (employee's name) suspended/reduced/discharged for reasonable cause? If not, to what remedy is the appellant entitled under the provisions of Article IX, Section 8. of the MOU?

e. 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 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 - All Disciplinary Actions (Other than Discharge)

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 employee shall be entitled to restoration of pay and/or fringe benefits in a manner consistent with the arbitrator's decision.

c. Remedies - 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.

3. Restoration of pay and benefits shall be subject to reimbursement of all unemployment insurance and additional 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 III, Section 1.C.3. 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 XVI, NONDISCRIMINATION, of the Memorandum of Understanding between the County and OCEA?

b. If so, what shall the remedy be under the provisions of Article IX, Section 8.C.2., Findings of Facts and Remedies, of the Memorandum of Understanding between the County and OCEA?

2. Findings of Facts and Remedies

a. In the event the arbitrator finds no violation of Article XVI, NONDISCRIMINATION, the grievance shall be denied and the issue of remedy becomes moot.

b. In the event the arbitrator finds a violation of Article XVI, 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 XVI, 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. The probationary release may be sustained.

2. The employee may be reinstated 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. The employee may be reinstated 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. Except as otherwise 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 XVI, 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.

2. Grievance/Appeal hearings by an arbitrator shall be private.

3. Arbitration appeal hearings of suspensions of less than forty (40) hours shall be limited to two (2) days unless both parties agree that a longer hearing is necessary. Both parties shall be allotted equal time during arbitration hearings involving such suspensions. The two (2) day limitation for arbitration appeal hearings shall not apply to suspensions imposed by the County Executive Officer.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. The County shall be allowed to have one (1) employee, who may be called upon to testify as a witness, present at the arbitration hearing at all times.

10. The parties agree to forego the use of briefs and transcripts whenever practicable, except that any party may opt to file a closing brief in lieu of an oral closing argument. The parties agree to, whenever practicable, forgo the use of a court reporter in arbitrations resulting from a suspension.

11. The decision of the arbitrator shall be final and binding on all parties.

12. As an alternative to proceeding directly to arbitration after completion of Step 2, the parties may mutually agree to submit a grievance/appeal to mediation. A request for mediation may be presented in writing to the Chief Human Resources Officer within seven (7) calendar days from the date a decision was rendered at Step 2. A request for mediation will automatically suspend to normal processing of a grievance until the mediation process is completed or the request is denied. The County shall respond to a request for mediation within thirty (30) calendar days. The mediation process shall be optional, and any opinion expressed by the mediator shall be informal, considered advisory and shall not be admissible evidence in any arbitration that should follow. Within seven (7) calendar days after completion of the mediation process or denial of a request for mediation, an arbitration request may be filed pursuant to Section 8.A. or B., above.

## ARTICLE XI LAYOFF PROCEDURE

### Section 1. General Provisions

A. This procedure shall not apply to a temporary layoff of less 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.

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 makes such an offer in writing to the employee.

### Section 2. Order of Layoff

A. When a reduction in the work force is necessary, 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.

B. Layoffs shall be made by class within an agency/department except that:

1. Where a class has a dual or multiple concept, the Human Resources Director 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:

| Employment Status | Layoff Order |
|---|---|
| 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.

E. OCEA may designate employees who are regular OCEA officers or grievance representatives to receive special seniority for purposes of layoff. The number of employees so designated shall not exceed two (2) percent of the employees in the Representation Unit. Employees so designated shall receive two hundred sixty (260) layoff points in addition to layoff points computed pursuant to Section 3., below.

Section 3. Computation of Layoff Points

Seniority Points:

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

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

Demerit Points:

For a rating of “Does Not Meet Objectives” on the last “Performance Evaluation Report,” 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.

Layoff Points:

Layoff points shall be computed by subtracting demerit points, if any, from seniority points.

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.

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 OCEA and affected employees upon reasonable request.

Section 8. <u>Status on Reemployment</u>

A. An employee who has been laid off under the provisions of this Article and is 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 and annual leave credited to the employee's account when laid off or unpaid annual leave 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 III, Sections 1.B.1. and 1.B.2. 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 is subsequently reemployed, within a two (2) year period from the date of reduction, in a regular or limited-term position in the class from which the employee reduced shall receive the following considerations:

1. The employee shall be placed in the salary range either as if the employee had been on a Leave of Absence Without Pay, or at the step on the salary range closest to, but which does not exceed, the employee's salary in the lower class, whichever is higher.

2. The merit increase eligibility date shall be reestablished as determined by the Chief Human Resources Officer.

3. The probationary status of the employee shall be as if the employee had been on a Leave of Absence.

C. An employee who is voluntarily reduced under the provisions of this Article and is subsequently reemployed, within a two (2) year period from the date of reduction, in a class higher than the one from which the employee was reduced shall receive the following considerations:

1. The employee shall be deemed returned to the class from which the employee had been reduced as provided in B., above.

2. The employee's salary, probation period and merit increase eligibility date shall be determined by treating the employee as though he or she is being promoted from such class.

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

### Section 1. 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., or Labor Code 4850 et seq.

### Section 2. Exhaustion of 4850 Benefits

When an employee has exhausted all benefits provided by California Labor Code Section 4850, and such employee continues to be unable to return to work due to an injury or disease arising out of and in the course of County employment, the provisions of Section 3. (below), Worker's Compensation Supplement Pay, shall apply.

### Section 3. Workers' Compensation Supplement Pay

A. 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 the 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.

B. 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, annual leave and/or vacation, in that order.

C. While an employee receives workers' compensation supplement pay, no deductions nor payments shall be made from any annual leave, sick leave, compensatory time or vacation time previously accumulated by the employee. The employee shall not accrue annual leave, sick leave or vacation credit during the period in which the employee receives workers' compensation temporary disability benefits.

D. When an injury is determined to be job-related by the County or by the Workers' Compensation Appeals Board, eighty (80) percent of all annual leave, 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 annual leave, sick leave, compensatory time and/or vacation expended since the first day of disability shall be restored to the employee's account(s).

E. The merit increase eligibility date and 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 merit increase eligibility and completion of the probation period.

F. When an employee is no longer entitled to receive workers' compensation supplement pay or 4850 Leave, the employee may, at his or her option, use annual leave, sick leave, compensatory time, and vacation, in that order, if the employee is compelled to be absent from duty as set forth in Paragraph A., above.

G. 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.

H. Nothing in this provision shall be construed as waiving any right to greater benefits which may be available pursuant to Labor Code Section 4850.

Section 4. 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.

## 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 OCEA 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. OCEA 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.

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 Officer.

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 Officer. During the period that the Safety Officer is conducting an investigation, the employee will be assigned to other work at no loss of earnings. If the Safety Officer 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.

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 Occupational Safety and Health for the purpose of determining compliance with the California OSHA requirements, an OCEA 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 OCEA 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 number of Safety Representatives at each facility shall be determined as follows:

1. For facilities with fewer than one hundred (100) Bargaining Unit employees, one (1) Safety Representative may be selected.

2. For facilities with one hundred (100) or more Bargaining Unit employees, one (1) Safety Representative may be selected for each one hundred (100) Bargaining Unit employees or for each fraction thereof.

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. If the complaint is not resolved, a grievance may be filed at Step 2 of the grievance procedure.

## ARTICLE XIV OCEA AND EMPLOYEE RIGHTS

### Section 1. Employee Rights

The County shall not hinder or discipline an employee for exercising any rights or benefits provided in the Memorandum of Understanding.

### Section 2. Payroll Deduction

A. Membership dues of OCEA members in this Representation Unit and insurance premiums for such OCEA sponsored insurance programs as may be approved by the Board of Supervisors, shall be deducted by the County from the pay warrants of such members. The County shall promptly transmit the dues and insurance premiums so deducted to OCEA.

B. OCEA shall notify the County, in writing, as to the amount of dues uniformly required of all members of OCEA 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 OCEA with a listing of all current employees in this Unit. Such file shall include employee name, job classification, agency/department, timekeeping location, salary range and step. The County shall also provide OCEA with any other information needed pursuant to Article XVIII, Section 3. OCEA agrees to pay all costs necessary to providing such lists.

### Section 4. Use of Bulletin Boards

Space shall be made available to OCEA on agency/departmental bulletin boards within the Representation Unit provided such use does not interfere with the needs of the agency/department and material posted is not derogatory to the County, County employees or other employee organizations. Notice shall be dated and signed by the authorized representatives of OCEA responsible for its issuance.

### Section 5. Use of County Facilities

OCEA may, with the approval of the Chief Human Resources Officer, 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.

## ARTICLE XV MANAGEMENT RIGHTS

The County retains any rights, powers or authority it had prior to the signing of this Agreement except as those rights are or may during the term of this Agreement be directly or indirectly affected by this Agreement or applicable law. Such rights shall include, by way of example but not limitation, the right to manage the County and direct the work force, including the right to hire, select, discipline, transfer and assign work. Nothing in this provision shall be construed to restrict grievances concerning this Agreement or to limit or waive the rights of the parties pursuant to law or this Agreement.

## ARTICLE XVI NONDISCRIMINATION

Section 1.

The County and the Orange County Employees Association 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.

OCEA shall not discriminate in membership or representation as required by state and federal law.

## ARTICLE XVII POSITION CLASSIFICATION

### Section 1. The Establishment of New Classes

The County will provide OCEA an informational copy of the new class specification for any proposed class relevant to this Bargaining Unit. The County agrees to meet and confer with OCEA in an attempt to reach agreement on the salary range and probation period for any such proposed class before submitting the class to the Board of Supervisors for adoption.

### Section 2. Reclassification of a Position

A. Sections 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 to the appropriate class. Classification Maintenance Reviews are excluded from the provisions of Sections 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.

C. By mutual agreement, the County may contract with a consultant to carry out Classification Maintenance Reviews. Provisions of Section 5. will apply.

### Section 3. 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, denial of request or forwarding of the request to the Human Resources Department with a recommendation that a classification study be conducted.

a. 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 OCEA for consideration.

b. If the Human Resources Department studies a position at the employee's request as provided above and the employee does not agree with the County's decision, the employee may submit the request to OCEA.

Step 3: After receiving an employee request for study, OCEA may request in writing that the Human Resources Department conduct a classification study of the position or refer the matter to a consultant, as provided in Step 4. Such requests are to be timely.

Step 4: 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.

a. If the study is justified, and the request is made under Step 2.A., the employee shall be given a Position Description Form within fifteen (15) days. Within one hundred twenty (120) calendar days after the Human Resources Department receives the completed Position Description Form, the Human Resources Department shall notify OCEA of the appropriate classification of the position.

b. If the study is justified and the request is made under Step 2.B., the Human Resources Department shall complete the study in thirty (30) days and communicate the results to OCEA. If the study is not completed within thirty (30) days, upon request of OCEA the matter shall be referred to a consultant under the provisions of Section 5. of this Article.

c. If the study is not justified, the County shall notify OCEA within fifteen (15) days. OCEA may accept the County position that the study is not justified or may request a consultant review as provided in Section 5.

Section 4. <u>Limitations on Concurrent Studies</u>

A. The County shall not be required to initiate a study if the total number of positions currently requested by OCEA for reclassification studies plus the new request exceeds twenty-five (25) positions.

B. The numerical 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.

C. In the event of a major layoff of County employees, all time limits in Section 3. of this Article shall be extended forty-five (45) days.

Section 5. Review of Disputed Position Classification Decisions

A. If the County does not respond at the end of the appropriate time period as specified in Section 3., Step 4 of this Article, or OCEA does not agree with a position classification decision of the County after the steps in Section 2. or 3. of this Article have been followed, the issue may be presented to a classification consultant for advisory review. Other provisions notwithstanding, no more than fifty (50) positions may be referred to a consultant per fiscal year except that any maintenance study done by a consultant shall not be included.

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 Human Resources 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 4 of the procedure described in Section 3., 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 OCEA members. The cost of the consultant shall be shared equally by the County and OCEA.

## ARTICLE XVIII 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 of the 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 full paid by the County but will also receiva 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 IV, 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.

H. The County's contribution toward the employee-only premium, as stated in Subsection A above, may be reduced in accordance with the County 2013 Health Plan Recommendations, at such time as the County deems appropriate. In addition, the County's contribution toward the employee's premium as stated in Sections 1.A., 1.B. and 1.C., and plan designs for the County-sponsored health plans, may be altered during the term of this MOU in accordance with the County 2013 Health Plan Recommendations, at such time the County deems appropriate.

Section 2. <u>Health Plan Enrollment</u>

A. New eligible employees will be enrolled in the health plan 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 as required by 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. Other Insurance Coverage

A. OCEA shall maintain a trust fund administered in compliance with applicable state and federal law, for the purpose of providing health, disability and other welfare benefits for employees in regular or limited term positions in this Representation Unit.

B. The County shall, on a biweekly basis, forward thirty (30) cents per hour for all regular hours paid for all employees in this Representation Unit for deposit in said trust fund; the County shall forward at least monthly an amount equal to thirty (30) cents for each regularly scheduled hour in each full pay period of unpaid leave which meets the requirements of Family Leave pursuant to Article IV, Section 15 and applicable law.

C. Insurance coverages provided through the trust fund with monies contributed by the County shall be made available by OCEA to all employees in the Representation Unit on an equal basis regardless of membership status.

D. OCEA shall indemnify and hold the County harmless from any claims or legal actions brought under this Section.

E. Not more than once each contract year, upon written request, the trustees of the trust fund will provide the County with correspondence verifying the trust fund's compliance with applicable law during the previous contract year. Not more than once each contract year, the trustees shall also, upon written request, provide the County with the following:

1. Upon completion, a copy of the annual independent financial report of the trust fund by a certified Public Accountant and form 5500

2. The annual report shall include the following information:

   a. the actual cost of benefits provided by the trust fund;

b. member contributions to the cost of benefits provided by the trust fund;

c. rate increases by carriers for the immediately preceding year of insured benefits provided through the trust fund, if applicable (or, if not included in the report, these shall be provided separately);

d. a summary of other trust fund expenditures; and

e. the beginning and ending cash balances of the trust fund.

3. The annual report shall be provided to the County within thirty (30) days of either the County's written request or the report's completion, whichever shall last occur.

4. A letter from the Certified Public Accountant for the trust fund verifying that the transaction of the trust fund during the preceding year have been reviewed, that payments have been made consistent with contractual agreements, and that required tax returns have been filed in accordance with applicable laws.

Section 4. Premium Only Plan

The County will administer 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 5. 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. As set forth pursuant to the September 2006 reopener between the parties, 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, a 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 retiree health insurance plan and/or Medicare premiums as provided below.

   a. Upon implementation 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 during retirement, the amount of such Grant shall be adjusted by the average percentage increase or decrease in County retiree health plan premiums no later than the effective dates of such change, 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 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 September 12, 2006 and is eligible for both Medicare Part A (without paying a premium) and Medicare Part B.

   c. All current employees who retire and become eligible for a Grant shall be provided a one 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. <u>Retiree Medical Plan Lump Sum; Termination; Phase Out</u>

1. An employee who was employed by the County prior to June 23, 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 B.2 below. The Plan Lump Sum benefit is terminated for all new County employees hired on or after June 23, 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 compensation shall be calculated on base salary over the six thousand two hundred forty (6240) regularly paid hours immediately proceeding 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. <u>Eligibility Requirements for Retiree Medical Grant</u>

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 who has less 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 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 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 has been 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 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 6. Accidental Death and Dismemberment Insurance

The County shall provide basic accidental death and dismemberment insurance in the amount of one hundred thousand dollars ($100,000) for all Probation Supervisory Management Unit employees without proof of insurability. The policy shall provide benefits for death or dismemberment

occurring in the line of duty. Such insurance will be subject to the limitations of liability contained in those insurance policies.

Section 7. Working Group and Reopener

A. Working Group

The parties agree to establish a Working Group to review insurance issues. Each party may have up to five (5) members as representatives on the working group. Other bargaining groups and stakeholders (eg., AOCW, IUOE, AFSCME, OCMA, unrepresented employees) will be invited to participate in the working group. Among the issues to be examined by the working group are the following:

(1) plan design (eg., benefits, wellness and other incentive programs);
(2) cost containment ideas;
(3) impact of the ACA on County insurance plans/programs;
(4) establishment of wellness and/or fitness centers;
(5) gym memberships;
(6) continued use of Healthy Steps as a component of the County's wellness program; and
(7) other issues the parties agree to discuss

The Working Group will commence its work within 45 days of the adoption of the MOU and will strive to complete its work, including making recommendations to the parties, no later than April 30, 2016. The Working Group may continue to work on insurance issues after April 30, 2016 upon agreement of the parties.

B. Reopener as a Result of the ACA

The County may reopen negotiations on this Article[1] and other provisions of the MOU (eg., Flexible Spending Accounts in Article XXV), for purposes of addressing issues resulting from the implementation of the Patient Protection and Affordable Care Act (ACA), including but not limited to, the potential impact of the Excise Tax (commonly known as the "Cadillac Tax") on high cost employer-sponsored health coverage. Federal administrative agencies have not yet issued definitive guidance regarding the Excise Tax which is expected to begin in 2018. The parties acknowledge that some of the benefits provided in the MOU may be included in the coverage to which the Excise Tax liability may apply. As a result, the issues that likely need to be addressed are: which health group plan coverages must be taken into consideration for purposes of this tax, how to calculate this tax, and what steps, if any, can be taken to avoid payment of the Excise Tax (eg., modification of benefits).

[1] Section 3 of this Article will not be reopened unless (and only to the extent that) its provisions are impacted by the ACA.

Notwithstanding the above, the County may not reopen negotiations on these issues unless the issues have first been discussed as part of the Insurance Working Group meetings (See Section 6.A above).

The County will not be responsible for the payment of any Excise Tax on health coverage from unit members' enrollment in County-sponsored health plans.

## ARTICLE XIX DEFINED CONTRIBUTION

Section 1.

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

Section 2.

The parties agree to establish a working group to explore: (1) the possibility of expanding investment options in the County's Defined Contribution plans to include unitization of the OCERS fund; and (2) the retiree medical plan.

ARTICLE XX RETIREMENT

Section 1. Retirement Benefit Levels for Probation Safety Members

A. For Safety Members Hired Prior to January 1, 2013 and for Safety Members Hired on or After January 1, 2013 who are Considered "Legacy Members" of OCERS within the Meaning of the Public Employees' Pension Reform Act of 2013 ("PEPRA").

1. Probation Department safety members will be provided the 3% at 50 retirement formula as set forth in Government Code Section 31664.1

a. For employees hired on or before September 20, 1979, the retirement allowance will be computed on the highest one(1) years 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 upon the employee's highest three (3) years of compensation per Government Code section 31462.1

B. For Employees Hired on or After January 1, 2013 who are Considered "New Members" Within the Meaning of PEPRA.

1. The retirement formula will be the "2.7% at 57" retirement formula described in Government Code section 7522.25(d), 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.

Section 2. Retirement Contributions

A. Members' normal and cost of living contribution rates will be established and adjusted subsequent to and in accordance with state law and 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 actuary.

C. Employees will pay the full member contribution for each of the benefit plans provided by the County.

Section 3. Tax-Deferred Retirement Plan

The County will administer an approved tax-deferred retirement plan which will allow 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 XXI SEPARABILITY

In the event that any provisions of this Memorandum are declared invalid by any court of competent jurisdiction, such decision shall not invalidate the entire Memorandum, it being the express understanding of the parties hereto that all other provisions not declared invalid shall remain in full force and effect.

## ARTICLE XXII RECOGNITION

Pursuant to the Employee Relations Resolution of the County of Orange and applicable State law, the Orange County Employees Association is the Exclusively Recognized Employee Organization for the Probation Supervisory Management Unit for classes in effect on June 19, 2009. Said classes are listed in Appendix A.

## ARTICLE XXIII 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.

## ARTICLE XXIV LABOR MANAGEMENT COMMITTEES

### Section 1. Introduction

A. The County and OCEA desire to mutually encourage a cooperative, collaborative partnership approach to addressing and resolving workplace issues. The County and OCEA further desire to provide an opportunity for labor and management representatives to promote and maintain harmonious labor/management relations through the establishment of Agency/Department Labor Management Committees. This section is not intended to change or replace mutually agreeable existing arrangements, including labor-management forums, except by mutual agreement.

B. The Labor Management Committee (LMC) process is intended for agency and department management and labor representatives to collaborate in a regularly scheduled (at least monthly) forum to develop solutions to workplace issues that are deemed appropriate for discussion. The County and OCEA recognize that this process will provide an important opportunity to achieve mutually acceptable solutions to workplace issues.

C. It is the intent of the process that each party should raise issues prior to making decisions or adopting courses of action that may affect the other party.

D. An issue may be considered by the LMC members unless the issue:

1. Concerns only an individual employee, such as that employee's performance evaluation, discipline or an individual problem with another employee;

2. Has County-wide impact; or

3. Involves the classification of one or more employees.

E. LMC members will have the authority to discuss and develop solutions to workplace issues submitted by employees and management and to present those solutions to the LMC Sponsors.

F. The activities of LMCs will be effectively communicated to all employees through monthly newsletters or other mutually agreeable methods.

### Section 2. Structure

A. The LMC program shall be jointly administered by four central LMC Program Sponsors, two of whom shall be appointed by the Chief Human Resources Officer and two of whom shall be appointed by OCEA. Any issue concerning the implementation or administration of the LMC process may be referred to the LMC Program Sponsors by request of either party.

B. 1. Every agency/department shall have an LMC.

2. The agency/department LMC structure shall consist of management representatives selected by the agency/department and employee representatives selected by OCEA. The LMC Program Sponsors may also select representatives to participate on the LMC.

3. Each agency/department LMC shall have two sponsors who may or may not be members of the LMC: the agency/department head and a representative designated by OCEA. The role of the sponsors is to monitor the direction and progress of the LMC and to provide the support and resources necessary to constructively address and resolve workplace issues.

Section 3. Time off for LMC Activities

A. A reasonable number of employees shall be allowed reasonable time off without loss of pay to serve as employee representatives in the LMC process.

B. In addition to A, above, reasonable time off without loss of pay shall be given to employees and LMC employee representatives as necessary to effectuate the purposes of the LMC process.

Section 4. Process

A. Employees may submit a form entitled Workplace Issue Statement Form describing the workplace issue, the recommended change(s) and the advantage(s) associated with the change. Employees may choose to remain anonymous when submitting their workplace issue; however, anonymity may hinder the ability of the LMC to fully evaluate the issue presented.

B. Employees may submit the Workplace Issue Statement form to any active LMC member or to LMC sponsors.

C. The LMC member shall discuss and develop possible solutions to the submitted workplace issues. An LMC member may contact the employee who submitted the workplace issue to obtain additional information/clarification.

D. Workplace issue solutions will be determined by a consensus of the members present at the LMC meeting and submitted as a recommendation to the LMC sponsors.

E. Within 30 days of receipt of the LMC recommendation, the agency/department LMC sponsors shall respond to the LMC members in writing, indicating their acceptance, suggested modifications or rejection of each proposed solution and/or schedule for implementation. The sponsors shall provide written reasons for a rejection/modification of a solution submitted by the LMC.

F. Any issue which is not resolved by the agency/department LMC shall upon request by either departmental sponsor be submitted to the central LMC Program Sponsors for advisory review.

## ARTICLE XXVI SALARY

### Section 1. Salary Increases

Effective the first day of the first pay period following adoption of this 2015-18 MOU, the salary schedule will be increased 4.5%. 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.

Effective July 8, 2016, the salary schedule will be increased by 2.50%. In addition, full-time 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.

Effective July 7, 2017, the salary schedule will be increased by 2.50%. 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.

Extra Help employees are ineligible from receiving the one-time off schedule lump sum payments.

### Section 2. Working Group Regarding Efficiency/Performance

The parties agree to establish a working group to discuss efficiency and performance incentives and programs to include, but not be limited to, the following:

- Programs implemented by other jurisdictions (eg., LEAN, Six Sigma)
- Additional compensation for top step employees who achieve “meets” or “exceeds” performance evaluations
- Possible individual and/or team-based incentives for performance, ingenuity, etc.
- “Create savings, share the wealth” incentives

The working group shall commence its work in or about Fall 2016 and shall endeavor to complete its work and make recommendations to the County’s Chief Human Resources Officer and OCEA on or before July 1, 2017.

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# APPENDIX A

Classes included in the Probation Supervisory Management Unit as of January 26, 2016:

| | |
|---|---|
| 7403PM | Supervising Juvenile Correctional Officer |
| 7413PM | Supervising Probation Officer |

MEMORANDUM OF UNDERSTANDING
2015 - 2018
COUNTY OF ORANGE
AND
THE ORANGE COUNTY EMPLOYEES ASSOCIATION
FOR THE PROBATION SERVICES MANAGEMENT UNIT

Orange County Employees Association

Lezlee Neebe
OCEA President

Jennifer Muir
General Manager

Charles Barfield
Assistant General Manager

Donald Drozd
General Counsel

Tim Steed
Internal Organizer

Elesena Ontiveras
Senior Employee Relations
Representative

County of Orange

Frank Kim
County Executive Officer

Terri Bruner
Interim Chief Human Resources
Officer

Bruce Barsook
Liebert, Cassidy & Whitmore
Lead Negotiator

Robert O'Brien
Human Resource Services

Margaret Briggs
Human Resource Services

Kim Evans
Human Resource Services

Aaron Peardon
Senior Employee Relations
Representative

Jamie Newton
Senior Employee Relations
Representative

Glenn Lowery
Senior Employee Relations
Representative

Celestine "Bo" Gutierrez
Employee Relations Representative

Denise Velasco
Employee Relations Representative

Heather Sutherland
Employee Relations Representative

Doug Cochran
Probation Services Management Unit

Jerrold Suella
Probation Services Management Unit

Jaime Martinez
County Executive Office

Diane Greek
Human Resource Services - SSA

Colette Farnes
Human Resource Services - OCPW

Debbie Armijo
Office of County Counsel

Bryan Prieto
Probation Department

Andi Bernard
Human Resource Services -
Probation Department

Shawn Weiske
Human Resource Services - OCCR

Susan DeBaun
Human Resource Services

Dan Beam
Sheriff's Special Officer/Deputy
Coroner Unit

Sandy Zirtzman
Office of the Public Defender

Ann Barlow
Human Resource Services - OCWR

Lt. Jason Park
Sheriff's Department

Dianna Piletz
Sheriff's Department

Renee Catanzariti
HRS Employee Benefits

Tracy Vonada
HRS/Employee Benefits

Date:_____

Date:_____