



**MEMORANDUM OF UNDERSTANDING**

**2005 – 2008**

**BETWEEN THE COUNTY OF BUTTE**

**AND**

**THE BUTTE COUNTY  
PROFESSIONAL EMPLOYEES' ASSOCIATION**



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**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE COUNTY OF BUTTE  
AND  
BUTTE COUNTY PROFESSIONAL EMPLOYEES' UNIT**

Pursuant to the provisions of the Meyers-Miliias-Brown Act, Section 3500 et seq. of the California Government Code and Chapter 11 of the Butte County Personnel Rules and Regulations, representative of the County of Butte, hereinafter called "County", and the Butte County Professional Employees' Bargaining Unit, hereinafter called "Association," have "met and conferred" concerning the subject of wages, hours and working conditions for employees in the Professional Employees' Unit of representation.

This memorandum represents the good faith effort of both the County and the Association representatives to reach agreement on matters of wages, hours and conditions of employment. It is understood that this agreement is not binding upon the County until such time as it is ratified by the Butte County Board of Supervisors and the membership of the unit. It is agreed as follows:

**1.00     RECOGNITION**

The County recognizes the Butte County Professional Employees' Bargaining Unit Association as the exclusive representative for employees designated in the Professional Employees' Bargaining Unit of County employees pursuant to Section 3501b of the California Government Code and the County Employer/Employee Relations Policy set forth in Chapter 11 of the Butte County Personnel Rules. Such designated classifications and positions are attached hereto as Appendix A.

**2.00     MANAGEMENT RIGHTS**

The County reserves all rights with respect to matters of general legislative and managerial policy including, among others, the exclusive rights to determine the mission of its constituent departments, commissions and boards; set standards of selection for employment; direct its employees; take disciplinary action; relieve its employees of duties because of lack of work or for other legitimate reasons; maintain efficiency of governmental operations; determine the methods, means and personnel by which governmental operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. These rights shall be limited only as specified in this agreement.

**3.00 MEMBERSHIP DUES & SERVICE FEES**

**3.01 General Provisions**

The Association shall be provided payroll deduction for membership dues. The Association shall provide the County Auditor with a written authorization on a form approved by the County, signed by the unit member authorizing the payroll deduction and setting forth the full amount to be deducted each month. The County shall, through the Auditor's Office, forward in a timely manner payroll deductions withheld from employees within the unit. The Association shall immediately notify the Auditor of any cancellation or changes in the deduction authorization.

**3.02 Agency Shop**

Pursuant to legislation enacted by SB 739 and amendment to the Meyers-Milias-Brown Act, the County and the Union agree to abide by the following provisions as they relate to an agency shop.

1. Agency Shop as defined under Meyers-Milias-Brown means “an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, general assessments of the organization.” The County and the Union agree that an agency shop arrangement between the County and Union has been placed in effect because:
  - (a) A signed petition of 30% of the employees in the applicable bargaining unit requesting an agency shop agreement was submitted and an election to implement an agency fee arrangement was held and passed.
2. Any employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or finally support public employee organizations shall not be required to join or financially support any public employee organization as a condition of employment. Such employees shall be required, in lieu of periodic dues, initiation fees, or agency fees, to pay sums equal to the dues, initiation fees, or agency fees to a nonreligious, nonlabor charitable fund exempt from taxation under Section 501(C)(3) of the Internal Revenue Code, chosen by the employee from a list. Proof of the payments shall be made on a bi-weekly deduction report to the Union as a condition of continued exemption from the requirement of financial support to the Union.

- \* American Red Cross
- \* Butte College Foundation Fund

\* Pediatric Aids Foundation

- (a) To qualify for the religious exemption, the employee must provide to the Union, with a copy to the County, a written request for the exemption, along with verifiable evidence of membership in a religious body as described above. The County will implement the religious exemption within thirty (30) days of the written request unless notified by the Union that the requested exemption is not valid.
3. Covered employees shall execute written authorization for either Union dues deductions, the agency fee, or, if eligible, the charitable contribution. In the absence of a written authorization, the County shall deduct the agency fee from the employees pay check. The County agrees to promptly remit to the union all monies deducted accompanied by a "Bi-weekly Agency Fee Deduction report" to include the names, home addresses (unless the employee objects in writing), social security numbers and amounts of deductions in the same manner and timeframes as the current provision of the dues deduction reports.
4. An Agency shop provision may be rescinded only as provided by State Law.
5. An agency shop arrangement shall not apply to management, confidential, or supervisory employees.
6. The Union shall keep an adequate itemized record of its financial transactions and shall make available annually, to the County and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an opening statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or a certified public accountant.

**3.03 County Responsibilities**

No later than thirty (30) days following the date of implementation of this Section the County agrees to provide the Union with a list of the names, home addresses (unless the employee objects in writing), social security numbers, and department for each employee in the bargaining unit. Subsequently, the County shall provide the Union the name, social security number, and department for each new employee hired into the bargaining unit as soon as practicable, but no later than thirty (30) days after the date of hire.

- a. With respect to all sums deducted by the County pursuant to this MOU, whether for membership dues or fair share service fees, the County agrees to promptly remit such monies to the Union each month together with an alphabetical list of unit members, categorized as to member or non-member of the Union, for whom such deductions have been taken, including social security number, gross monthly pay, department, and the amount of dues/fees deducted. The County shall also indicate any changes in personnel from the list previously furnished.
- b. If through error, the full amount due to be deducted is not deducted and remitted to the Union, the County will, upon written request from the Union and notice to the affected employee, provide subsequent deductions until the shortage is corrected. For its part, the Union shall promptly refund to the employee any deductions erroneously withheld from the employee's wages by the County and remitted to the Union.

**3.04 Union Responsibilities**

The Union will provide to the County the formula for calculating membership dues for members and fair share service fees for non-members. Such formula must be comparable with the County payroll system. Any changes in the amount of dues/fees will be certified to the County by the Union, and shall become effective no later than thirty (30) days following the date that the County receives such certification from the Union. Additionally, the Union agrees to furnish any information needed by the County to fulfill the provisions of this Section. The Union shall comply with all applicable statutory and case law in administering this section.

**3.05 Indemnification and Hold Harmless**

The County shall not be liable to the Association, employees or any other party by reason of this section for the remittance or payment of any sum other than the actual deductions made from the employee's paycheck. The Association shall save the County harmless against any and all claims, demands, suits, orders, judgments or other forms of liability that may arise out of or by reason of action taken by the employer under this section.

**4.00 ASSOCIATION RIGHTS**

**4.01 Use of County Facilities and Resources**

With the approval of the Chief Administrative Officer or other County authorized official, the Association may use certain County facilities, resources and supplies as long as the County is reimbursed for the cost of any supplies or materials, including email and pagers, provided to the Association and that such use or supply does not interfere with the efficiency, safety and security of

County operations. The County shall provide a list of other officials authorized to permit Association usage of County facilities, resources and supplies. The Association agrees to pay the County upon demand from the Auditor, costs of such benefits or supplies received from the County, included but not limited to services of County-owned or leased Xerox or other copying machines, print shop reproduction facilities and central services purchases for expendable office supplies for Association use.

**4.02 Bulletin Boards**

The Association shall be provided reasonable designated space on County bulletin boards which does not interfere with the County's official use of the bulletin board. With prior approval of the County Administrative Officer as to size, type and location, the Association may install and maintain separate bulletin boards in employee rest areas in County buildings.

**4.03 Access to Employees**

With prior notice to the facility manager, the Association or its officially designated representative or paid staff shall have access to County employees during off duty time in the non-work areas of County facilities for the purpose of Association business. With prior notice to the facility manager, the paid staff of the Association shall be allowed reasonable access to employee members during the work period and at the work location to investigate and/or represent employees within the Unit in formal grievance or appeal matters.

**4.04 Information to Association**

- a. The County agrees to provide the Association annually during the month of January, a complete updated listing of the name, classification and department of assignment of all employees designated in the Unit. Upon the request of the Association, the County also agrees to provide on a monthly basis, a copy of the monthly status report. In the event of a layoff in classes represented by the Association, the Association shall be provided with a copy of the resulting reemployment list(s).
- b. Except in cases of emergency, the County will maintain communication with the Local Association President and designated Association Representative on all actions, within the scope of representation, that impact members thirty (30) days prior to implementation of said action.

**4.05 New Classifications**

Except in cases of emergency, the Association shall be advised a minimum of fifteen (15) days in advance of any new position or classification to be created or

changed in any way which falls within the scope of representation. Upon request, of the Association, the County shall have at least two meet and confer sessions with the Association on classification issues falling within the scope of representation. The Association shall normally be limited to three representatives, excluding paid staff, unless otherwise agreed by the parties.

**4.06 New Member Information**

The County will distribute information regarding the Association and Unit to each employee hired into a Unit position.

**5.00 ASSOCIATION REPRESENTATIVES**

**5.01 Association Negotiators**

The Association shall be allowed to designate up to five (5) employees on paid time, with two (2) alternates, to serve as representatives to negotiate with the County. These representatives shall be exclusive of paid staff negotiators. The Association shall provide the Director of Human Resources with the name, classification and department assigned of each of the negotiators.

Should any change or alternates be appointed after the original list is established, the Association shall advise the Director of Human Resources immediately. Employees designated as negotiators shall, as authorized by the Director of Human Resources, be granted reasonable release time from scheduled duties without loss of pay to meet with the County representatives during negotiations on matters of wages, hours and conditions of employment. The County shall not be responsible for any travel, overtime or miscellaneous cost resulting from the Association exercising this right.

**5.02 Employee Representatives**

The Association shall have the right to establish Employee Representatives for the Unit according to the following conditions:

- a. The Association agrees to notify the County Director of Human Resources of the names, classifications and departments of their representatives, which shall not exceed eight (8) in number. The Association shall immediately inform the Director of Human Resources of any changes to the original list and provide update by name, department and classification.
- b. A reasonable amount of time will be granted the employee and the representative to handle initial grievance and appeal procedures, at each step of the grievance or appeal procedure. The parties agree that in

handling grievances, the employee and the representative will use only the amount of time actually necessary. The County is not responsible for any travel, overtime, or other miscellaneous cost resulting from the exercise of this right.

- c. If an employee wishes to discuss a grievance or appeal on County time with a designated representative, the employee shall be allowed an opportunity within a reasonable amount of time to verify if the designated representative is available to be seen. If the representative is present and available, the employee shall complete a "Employee Representation Release Form" (Appendix B) and submit it to the immediate supervisor prior to meeting with the representative. Such release form shall only contain the employee's name, classification title, representative's name and work location of representative, time left, date, and upon return, the employee shall note the time returned on the form. The supervisor shall determine if the employee can, because of work activity, be released at the time requested. If the employee is not released, the supervisor shall set an alternative time as soon as practical.
- d. Upon authorization of the immediate supervisor, a representative shall be released to perform the duties specified in this section. A representative shall sign in and out of the work area stating the time and date of leaving and returning and where the representative may be reached. In the event the representative is unable to be released by the immediate supervisor at the time requested, the supervisor shall arrange a release time as soon as practical thereafter.
- e. With prior approval by the Director of Human Resources, the Association may use the Human Resources Training Room for Employee Representative Training. Employee Representatives attending such training shall have available an aggregate pool of twelve (12) hours paid time to attend training. Training time shall not exceed four hours per session and the County shall not be responsible for any overtime hours or travel related to such training.
- f. Association officers and/or elected delegates may be released from work upon request of the Association to attend Association conferences, conventions, and seminars.
- g. Requests for release shall be submitted in accordance with normal request for time off procedures. Employees released pursuant to subsection (a) above shall suffer no loss of pay or benefits due to their release from work. The Association shall reimburse the County for the wages and wage related benefits paid to the released employee during the time the employee is released from work but being compensated by

the County. Such reimbursement shall be billed to the Association monthly.

- h. Total amount of release time available pursuant to paragraphs a through g above shall not exceed two hundred (200) hours per year for all employees qualified. Nor shall any individual employee be released for more than forty (40) hours per year.

**6.00 NON-DISCRIMINATION**

**6.01 Individual Rights**

Neither the County nor Association shall interfere with, intimidate, restrain, coerce, or discriminate against employees because of the exercise of their right to engage in or refrain from Unit activity pursuant to Section 3500 et seq. of the California Government Code.

**7.00 HOURS OF WORK**

**7.01 Work Schedules**

Except as provided below, the normal work schedule shall be 8:00 a.m. to 5:00 p.m. each day of the year except Saturdays, Sundays and holidays. The normal work schedule shall be eighty (80) hours per biweekly pay period for a full-time employee. Overtime exempt classifications in this unit may be required to work in excess of eighty (80) hours in any biweekly pay period and are exempt from overtime compensation.

Except for overtime, callback and standby assignments, departments which necessitate a different operational schedule shall maintain and post an employee assignment schedule. No employee, except in case of emergency, shall be required to work a different work schedule than assigned unless the employee has been notified at least ten (10) days in advance of the change in work schedule. A change in an employee's work location not resulting in a change to the employee's assigned work schedule, does not require a 10 day notice.

A County appointing authority has the right to schedule the employee's work hours to meet department needs. By mutual agreement, an employee and the appointing authority may reschedule the hours during any pay period to provide a minimum of eighty (80) hours of compensated time in each pay period. Hours of work in excess of eighty (80) hours per pay period may not be carried forward to subsequent pay periods. Appointing authorities are encouraged to reschedule excess work hours during the pay period whenever practical.

**7.02 Alternate Schedules**

- a. Upon the request of an employee(s) flex-time, job-sharing and voluntary reduced work hours programs may be established. Any job-sharing program will require that the benefits be pro-rated or as otherwise mutually agreed upon by both parties in writing. Alternate schedules shall be seriously considered by the Department Head. Should the request for an alternate schedule be denied, the employee(s) may request a meeting with the Department Head, Human Resources, and an Association representative to discuss and attempt to resolve the conflict that resulted in the denial. Such meetings shall be at the discretion of the Department Head.
- b. Should the County elect to eliminate an existing special schedule, it will notify the Association and provide opportunity for the Association to meet and confer on the impact of the decision.
- c. Alternate work schedules may include 9/80 schedules, 4/10 schedules, and/or other alternative scheduling patterns. Individuals assigned to such schedules shall accrue leaves and holidays on the same basis as employees working the standard 5/8 work schedule; that is, eight (8) hours per day.
- d. The above Section (7.02) shall not be subject to the grievance or arbitration sections of this Agreement.

**8.00 COMPENSATION**

**8.01 Salary**

**1. Market Adjustments**

Effective October 8, 2005 two five percent (5%) steps will be added to all County salary ranges. The new top step (step 7) will be adjusted to market. Thereafter, the following shall apply:

**Market adjustments of 10% or greater.**

Two steps will be added to the salary schedule. Step 7 will be adjusted to market. For market adjustments of ten percent (10%) or more, the initial step placement for employees will be step-to-step. Employees in steps 1 through 4 will move to subsequent steps in accordance with County rules on their next, and subsequent, merit dates. Individuals at step 5 will advance as follows:

- Employees at step 5 for four or more years will be eligible for advancement to step 6 on the first day of the first full pay period in January 2006;
- Employees at step 5 for three years but less than four years will be eligible for advancement to step 6 on the first day of the first full pay period in April 2006;
- Employees at step 5 for two years but less than three years will be eligible for advancement to step 6 on the first day of the first full pay period in July 2006;
- Employees at step 5 for less than two years will be eligible for advancement to step 6 on the first day of the first full pay period in October 2006.

A new merit date shall be established effective the date employee's salary is increased. Normal step advancement rules shall apply.

**Market adjustments between 5% and 10%.**

Employees shall be advanced one step in the new range. Employees in steps 2 through 5 will move to subsequent steps in accordance with County rules on their next, and subsequent, merit dates. Individuals at step 6 (the old step 5) will advance as follows:

- Employees at the old step 5 for four or more years will be eligible for advancement to step 7 on the first day of the first full pay period in January 2006;
- Employees at the old step 5 for three years but less than four years at the old step 5 will be eligible for advancement to step 7 on the first day of the first full pay period in April 2006;
- Employees at the old step 5 for two years but less than three years at the old step 5 will be eligible for advancement to step 7 on the first day of the first full pay period in July 2006;
- Employees at the old step 5 for less than two years at the old step 5 will be eligible for advancement to step 7 on the first day of the first full pay period in October 2006.

A new merit date shall be established effective the date employee's salary is increased. Normal step advancement rules shall apply.

**Market adjustments less than 5%.**

Employees shall be placed in the step in the new range closest to, but not below, their current monthly salary. Employees will move to subsequent steps (if applicable) in accordance with County rules on their next, and subsequent, merit dates.

2. Salaries in effect on September 30, 2006 shall be increased by two (2%) percent effective the pay period commencing on October 7, 2006.
3. Salaries in effect on September 30, 2007 shall be increased by two (2%) percent effective the pay period commencing on October 6, 2007.

Adjustments by job classification are set forth in Attachment F.

## 8.02 Overtime

### a. Eligible Positions

All positions in classifications designated by the Director of Human Resources as subject to the overtime provisions of the FLSA shall be eligible for overtime. Exceptions may be made for individual positions within a classification. When the appointing authority, using the exemption definitions in the FLSA, certifies in writing the specific position is exempt, copies of the appointing authority's decision shall be delivered to the Director of Human Resources and the employee.

### b. Overtime Defined

Overtime is any work rounded to the nearest fifteen (15) minutes in excess of the normal workday or eight (8) hours per day or forty (40) hours per week. For employees whose normal assigned work day is in excess of eight (8) hours, overtime shall be work rounded to the nearest fifteen (15) minutes beyond the normally assigned hours. For the purpose of calculating overtime, all paid time off with the exception of sick leave, shall be considered time worked.

Employees required to work overtime shall be permitted a one half hour paid meal break for each four (4) hours of such overtime.

### c. Overtime Authorization

Employees shall be required to work overtime when assigned by the appointing authority or designated representative. No employee shall work overtime without prior approval of the appointing authority or designated representative.

### d. FLSA Exemption Appeals

The parties agree to process any challenge to the Director of Human Resource's determination concerning exemption from the provisions of the FLSA through arbitration prior to filing with the Department of

Labor or court. Retroactive pay due, if any, will be decided through the appeals process.

e. Overtime Compensation

Employees shall be compensated for overtime at one and one-half (1-1/2) times their regular rate of pay. Overtime compensation may at the discretion of the Department Head, be paid with regular wages in the pay period in which it was earned or be credited as Compensatory Time Off (CTO) to a maximum of 240 hours.

f. Use of Accumulated Compensatory Time Off (CTO)

1. An employee who has requested use of accumulated CTO shall be permitted by the appointing authority to use such time within a reasonable period unless the request unduly disrupts departmental operations.
2. Once the employee has reached the cap of 240 hours of CTO, the appointing authority may require the employee to take off any excess hours during the work week in which it is earned. Any CTO accumulation in excess of the 240 hours cap which is not taken in the work week in which it is earned, shall be paid with regular wages in the pay period in which it is earned.
3. An employee who has accumulated CTO shall, upon termination from County employment, be paid for the CTO with the termination pay settlement.

g. Fringe Benefits Not Affected By Overtime

Overtime work shall not be a basis of increasing vacation, sick leave, or other benefits, nor shall it be the basis for advancing completion of the required period for probation or salary step advancement.

h. Overtime Exempt Employees

Overtime exempt employees receive Administrative Leave in lieu of overtime. Section 8.05 provides for provision of additional Administrative Leave for employees working extraordinary hours on an extended basis.

In addition to the provisions above, upon the recommendation of the Department Head, the County Administrative Officer may approve

providing of straight time compensatory time off (or paid pursuant to Section 8.02(e)) under all of the following circumstances:

1. The existence/occurrence of extraordinary circumstances such as: natural or man caused disasters including chemical spills, storms, earthquakes, extended out of area trials, civil disturbances, job actions, major administrative problems, emergency callouts, etc.
2. An employee working hours significantly in excess of normal and beyond that compensated for by administrative leave. Granting of Compensatory Time Off pursuant to this section shall be for specific occurrences only. It shall not be utilized for cumulative time worked; which shall continue to be handled pursuant to Section 8.05. This Section shall not be construed to place salaried management personnel on a hourly overtime basis, nor to compensate employees for all hours worked on an hour for hour basis. It shall apply only in the extraordinary circumstances outlined above. Decisions of the County Administrative Officer shall be final and not subject to any form of appeal.

**8.03 Call Back / On Call**

An employee who is required to physically return to work shall receive either a minimum of two (2) hours straight time pay or time off, or time and one-half pay, or CTO for the time actually worked, whichever is greater and be entitled to receive mileage reimbursement pursuant to Section 15.02. An employee handling a phone call not requiring that he/she physically return to work shall be entitled to the minimum overtime payment. The employee receiving a call during normal sleeping hours shall be entitled to a one (1) hour straight pay minimum or time and one-half (1-1/2) pay or CTO for the time actually spent on a call, whichever is greater.

**8.04 Standby Pay**

Each employee in the unit of representation shall be entitled to receive forty (\$40.00) dollars for each eight (8) hour standby shift, or portion thereof, as ordered and authorized by an appointing authority. A standby shift is defined as any eight (8) hours shift following the employee's normally assigned shift. Standby pay is pro-rated to the number of hours an employee is assigned to standby status, and is available only within the defined standby zone following the regular schedule (i.e., if an employee is regularly scheduled to work an eight (8) hour day, the standby pay commences after eight (8) hours have been worked in a day).

**8.05 Administrative Leave**

a. Regular Administrative Leave

Employees exempt from paid overtime shall earn seven (7) (56 hours) days administrative leave per year as specified in Section 12.14(j) of the Personnel Rules accumulated to a maximum of forty-four (44) days. In 2005 only, Attorney's working in the District Attorney's office will accrue an additional two (2) days (16 hours) of Administrative Leave.

b. Extraordinary Circumstances

In extraordinary circumstances such as, natural or man caused disasters including but not limited to, chemical spills, storms, earthquakes, extended out of area trials, civil disturbances, a Department Head may recommend to the Board of Supervisors that additional administrative leave be granted to an employee(s). Extraordinary circumstances shall mean circumstances involving extended periods of very long hours. The additional leave shall not be construed to constitute overtime compensation nor shall it be construed to compensate employees on an hour for hour basis. Examples for classifications which might qualify for additional leave shall include Deputy District Attorney and County Counsel classifications involved in extended trials, etc.

c. Review Committee

A committee of the Board of Supervisors will be appointed to work with the Director of Human Resources, the Association and Department Heads to review the issue of administrative leave and overtime work performed by unit members. Recommendations of the committee will be submitted to the full Board of Supervisors. No changes shall be made on matters within the Scope of Representation without the County and Association first having met and conferred.

**8.06 Bilingual Pay Differential**

When it has been determined that an employee's use of bilingual language skills or specialized communications skills are essential and critical for the successful performance of the functions of a County department, the employee shall receive a pay differential of five dollars (\$5.00) per day (\$50.00 per pay period) of compensated service. The Director of Human Resources shall formulate policies and procedures for administering the provisions of this section which will require the written justification by the appointing authority, verification of the employee's language or communication skill ability and procedures for review of continued need on no less than an annual basis.

**8.07 Temporary Assignment to a Higher Paid Classification**

- a. Whenever an employee is assigned in writing by the department head to work in a higher classification and, therefore, performs substantially all of the duties of the higher classification for a period of more than ten (10) cumulative working days or eighty (80) cumulative working hours in a fiscal year, (or eight (8) cumulative working days the employee, shall be entitled to be compensated with an additional five percent (5%) over his/her current rate of pay, beginning with the eleventh (11th) day or the eighty-first (81st) hour of the assignment (or ninth (9th) day or the seventy-third (73rd) hour of the assignment for thirty-six (36) hour work week employees). A continuous out-of-classification assignment bridging two (2) fiscal years shall be treated as if it occurred during the prior fiscal year. For example, an employee receiving the compensation for an assignment which commences on June 15 of one fiscal year and ended on July 5 of the succeeding fiscal year, would receive compensation for the entire assignment. Similarly, an employee whose 11th day or eighty-first (81st) hour (or ninth (9th) day or seventy-third (73rd) hour for thirty-six (36) hour work week employees) of out-of-classification assignment occurred during the prior fiscal year would commence receiving compensation as of the 11th day or eighty-first (81st) hour (or ninth (9th) day or seventy-third (73rd) hour for thirty six (36) hour work week employees.
- b. Employees assigned in writing by the Department Head to work in a higher classification as a Department Head shall be compensated at the appropriate Department Head salary range. All other provisions for higher paid classification pay shall be as provided above.
- c. Employees assigned by the Department Head to serve as team leaders supervising other employees in the same classification shall be eligible to receive compensation pursuant to Section a, above.

**8.08 Shift Differential Pay**

A regular employee who is required as part of a normal work schedule to work four (4) hours or more of the shift between the hours of 5:00 p.m. and 7:00 a.m. or the Saturday and Sunday shift between 7:00 a.m. and 5:00p.m., shall receive, in addition to regular pay, one (\$1.00) dollar for each hour of shift worked as a shift differential compensation rounded to the hour. The shift differential shall be pro-rated to the nearest seventy-five cents (\$.75) for each one fourth (1/4) of the shift served during the qualifying period. Employees shall not be entitled to shift differential compensation while on sick leave, vacation or other paid leaves. The reassignment by the appointing authority of an employee from a

shift covered by differential pay to a shift not covered by differential pay shall not be considered as a demotion or loss of pay and shall not be subject to the grievance or appeal process, nor shall it be subject to the provisions of 7.02 b.

#### **8.09 Disability Insurance**

- a. Each regular employee in the unit shall be required to participate in the Disability Insurance Plan ("The Plan"). Premiums will be paid totally by the employees through payroll deduction. Required participation means that the employee must make payroll contributions to The Plan but application to receive disability payments benefits under The Plan is purely discretionary on the part of the employee.
- b. The Disability Insurance Plan shall be integrated with the County's sick leave plan and the employee(s) shall be allowed to use all accrued time available in addition to sick leave for each disability in accordance with the following formula:
  - The employee's gross biweekly wage shall be multiplied by a factor of 0.85 and the resulting product reduced by the amount of disability payments for the biweekly period. The resulting balance shall represent the amount of gross sick leave, vacation, CTO, and/or administrative leave pay from which mandatory and voluntary deductions shall be made.
- c. An employee receiving disability benefit payments who fails to provide the County Auditor within thirty (30) days of the onset of the disability a copy of the approval of disability benefits, shall be deemed in violation of the terms of this agreement and the Auditor shall immediately forward to the disability benefits carrier a report indicating that the employee had received full sick leave, vacation, CTO, and/or administrative leave to the maximum allowed, for the time in question.
- d. The County shall continue to explore possible simplification of Disability and Worker's Compensation salary integration procedures.

#### **8.10 Step Increases**

- a. If an employee is promoted within ninety (90) days prior to their merit date, they will normally be granted an additional salary step increase beyond what is normally provided by Personnel Rule 12.6. Such additional step may be denied for reasonable cause; including the employee being hired, promoted or receiving extraordinary step increases within the previous twelve months, etc.

- b. In addition to the provisions of Personnel Rule 12.6, the appointing authority may grant out of sequence merit advancements up to twice for an employee in a specific classification.

**8.11 Extra Help Work**

The County shall amend the Personnel Rules to delete the prohibition against regular County employees working extra help when:

- 1) The extra help work is voluntary; and
- 2) The work is in a different occupational category

**8.12 Promotional Interviews**

- a. When an appointing authority receives a certified list of eligibles from the Director of Human Resources to fill a regular-help position by promotion, the appointing authority shall interview each of the eligibles on the list that is available and interested in the position before making a final selection for the position.
- b. If, under Section 6.3 e of the Personnel Rules, a competitive rating of application and/or supplemental application is used as a part of the testing process for departmental promotions; at least one other of the examination techniques (oral board or written examination) will be used.

**8.13 Pay Differentials**

Public Health Nurses assigned to the CCS division of Public Health shall receive an additional five (5%) percent of base pay.

**9.00 VACATION LEAVE**

**9.01 Vacation**

Each regular full-time employee of the Unit shall be entitled to earn vacation. Vacation shall be earned according to the following schedule:

- a) 4.615 hours of vacation [one hundred twenty (120) hours per year] for each biweekly pay period in paid status until completion of five (5) years of continuous service.
- b) 6.154 hours of vacation [one hundred sixty (160) hours per year], for each biweekly pay period in paid status after completion of five (5) years of continuous service and until completion of ten (10) years of continuous service.

- c) 7.692 hours of vacation [two hundred (200) hours per year], for each biweekly pay period in paid status after completion of ten (10) years of continuous service and until completion of twenty (20) years of continuous service.
- d) 8.308 hours of vacation [two hundred sixteen (216) hours per year], for each biweekly pay period in paid status after completion of twenty (20) years of continuous service.

Vacation will be credited biweekly on a prorated portion of full-time compensated service. Employees with less than six (6) months of uninterrupted service shall not be entitled to a vacation. Vacation time off may be requested by the employee subject to the approval of the appointing authority. Effective the beginning of the first pay period commencing the calendar year, an employee's vacation accrual shall not exceed twice the annual earnings.

When a Unit employee is unable to take scheduled vacation during a calendar year due to unusual and extenuating departmental needs which result in the employee's annual vacation accrual to exceed the maximum limits authorized, the department head shall advise the Auditor that the employee will exceed the annual vacation accrual limits and shall schedule the excess accrual vacation days to be taken off between the period of January 1 and March 31 of the new calendar year. Should the employee voluntarily choose not to take the scheduled vacation during the extension period, the employee shall cease to accrue vacation hours until the total vacation accrual falls below two (2) times the earning rate. Should a department head, as a result of emergency needs of the County, be unable to schedule the excess accrual vacation days off during the extension period, the employee shall be paid for the excess accrual days.

Unit employees becoming seriously ill while on scheduled vacations may request that the hours he/she were ill be charged against his/her sick leave balance rather than their vacation leave balance. This request may be made only in the case of serious illness which required hospital and/or physician treatment and prevented the employee from carrying on normal activities. Doctor's verification is required.

#### **9.02 Vacation Buy Back**

- a. Employees taking at least forty (40) hours of vacation time shall, concurrently, have the option of requesting pay in lieu of time off for up to an additional forty (40) hours of accrued vacation time once per fiscal year. Vacation buy-back shall only be available in increments of eight (8) hours. Such requests are subject to the approval of each respective department head and the availability of funds.

- b. In addition to vacation buy-back pursuant to 9.02(a) above, employees shall have the option of requesting an additional one hundred four (104) hours of vacation time during each year of the current contract in increments of eight (8) hours. Such requests are subject to the approval of each respective department head and the availability of funds.

## **10.00 LEAVES OF ABSENCE**

### **10.01 Extended Bereavement Leave**

In addition to the bereavement leave benefit set forth in Section 13.3 of the Butte County Personnel Rules, a regular employee who believes it necessary to be absent from duty because of the death of a member of the employee's immediate family who resided out of the State of California, or over 400 miles one way from his/her home, may have an additional two days of bereavement leave to be charged to sick leave.

### **10.02 Use of Bereavement Leave**

The County has amended Section 12.3 of the Butte County Personnel Rules to allow the use of bereavement leave in the case of the death of individuals, other than those already listed, living in an employee's household as a family member and to include brother-in law, sister-in law and registered Domestic Partners. Approval shall be on a case by case basis by the Director of Human Resources in his/her sole discretion.

### **10.03 Family Leave**

Family leave shall be as set forth in the County's Family and Medical Leave Policy in Attachment D. Included in this Policy are the following provisions:

- a. Employees shall be granted a leave of absence not to exceed four (4) calendar months upon presentation of proof of pregnancy. The non-compensated portion of such leave shall not be granted under this section until the employee has exhausted sick leave, except for ten (10) days or ten (10%) percent of the employees balance whichever is greater, and compensatory time off leave balances but may be extended by mutual agreement by the employee and the County. The employer may require reasonable proof of the employee's ability to return to work.
- b. Employees adopting children who have not previously resided in the employee's household, or whose spouse gives birth, shall be granted a leave of absence not to exceed thirty (30) days upon presentation of proof of adoption or proof of birth by spouse. The non-compensated

portion of such leave shall not be granted under this section until the employee has exhausted sick leave, except for ten (10) days or ten (10%) percent of the employee's balance, whichever is greater, and compensatory time off leave balances but may be extended by mutual agreement of the employee and the County.

- c. Maternity, Paternity, Adoption, and other Family care leave requests shall be reviewed and acted upon in accordance with Federal and State legislation governing such leaves. If the provisions of this section exceed the minimum provided under such legislation, the provisions of this section shall be controlling.

#### **10.04 Paternity Leave**

Paternity leave shall be as set forth in the County's Family Care and Medical Leave Policy in Attachment D.

#### **10.05 Salaried Employee Leave**

Exempt employees shall be provided "salaried employee leave" for authorized absences of less than a full day if they have no paid time available. No deduction shall be made from employees pay for absences of less than one day. Should Federal regulations under the Fair Labor Standards Act be amended to not require payment for time off from work for less than a day, this Article may be reopened by the County provided notice is given to the Association for "meet and confer" negotiations.

#### **10.06 Paid Administrative Leave**

An appointing authority or designated representative, in his/her sole discretion, may, when extraordinary circumstances exist and necessary for the operation of the department, place an employee on paid administrative leave, subject to call.

#### **10.07 Voluntary Furlough Program**

**Purpose** - The purpose of the voluntary furlough program is a joint labor-management effort to assist the County in times of economic hardship. It is a cost containment program designed to reduce operating expenditures, preserve public services and reduce the need for layoffs of permanent staff. This program shall remain in effect until September 30, 2008.

**Conditions** - A department head or designee may grant a permanent, regular help, probationary, or part-time employee voluntary unpaid time off subject to the following conditions:

1. Unpaid leave may be taken in increments of one (1) full hour.
2. Unpaid leave may be granted by the department head or designee for all scheduled work periods.
3. Credit towards sick leave, vacation leave and holiday eligibility and medical insurance shall accrue as though the employee were on paid status. Additionally, credit shall accrue for merit advancement, completion of probation and seniority for purpose of layoff. Credit for retirement shall accrue as though the employee were on paid status except when the employee's PERS-reportable hours fall below 1,730 in the calendar year.

**Procedure** - The following procedure will be used in the management of the voluntary time off program:

1. Each department head or designee shall distribute to eligible employees a "Voluntary Time Off Request Form".
2. An employee requesting voluntary time off without pay shall complete the form indicating the number of hours (or day or days), and date(s) of the leave, and return the form to the department head or designee.
3. The department head or designee shall review the requested time off dates and times and resolve any scheduling conflicts. Seniority shall be used to resolve scheduling conflicts if the number of requests for the same time off is excessive. The department head or designee shall notify the employee of approval of the request.
4. The department head or designee shall forward all approved request forms to the Auditor-Controller.
5. The department head or designee shall post a schedule with all approved voluntary unpaid time off requests.
6. Upon mutual agreement between the employee and department head or designee, unpaid time off may be scheduled at any time during the period from present to September 30, 2008.

**Incentive** - As an incentive for employees to use the voluntary time off program, additional vacation credits shall be granted to the employee's vacation accrual at the rate of one (1) additional hour of vacation for each ten (10) hours of unpaid hours taken.

**11.00 SICK LEAVE**

**11.01 Sick Leave Accrual**

Employees shall earn sick leave with pay at rate of 3.6923 hours per biweekly pay period [ninety-six (96) hours per year]. Sick leave may be accumulated without limit during a period of continuous employment.

**11.02 Uses of Sick Leave**

Sick leave shall be granted for the following:

- a. The employee's illness or disability.
- b. The employee's routine medical or dental appointments.
- c. Care and supervision of an immediate family member as defined in the County's Family Care and Medical Leave Policy in Attachment D.
- d. Family medical appointments or emergencies.
- e. Qualifying domestic partner pursuant to Labor Code Section 223.

Whenever an employee believes it necessary to be absent from duty for the care and supervision of an immediate family member, the employee may request sick leave for up to eighty (80) cumulative hours per calendar year, with pay unless otherwise provided for by the County's Family Care and Medical Leave Policy.

**11.03 Sick Leave Buy-Back Option**

On retirement or termination in good standing, an employee who has on accrual more than two hundred and forty (240) hours of sick leave may be compensated for that portion over two hundred and forty (240) hours at one-half (1/2) the normal rate of pay for the employee up to a maximum of \$3,000.00.

**11.04 Donation of Paid Time**

The donation of paid time program shall continue for the term of this agreement as outlined in Attachment C.

**12.00 HOLIDAYS**

**12.01 Designated Holidays**

- |    |                              |                          |
|----|------------------------------|--------------------------|
| 1) | New Year's Day               | January 1                |
| 2) | Martin Luther King' Birthday | Third Monday in January  |
| 3) | Presidents Day               | Third Monday in February |
| 4) | Cesar Chavez Day             | March 31                 |
| 5) | Memorial Day                 | Last Monday in May       |
| 6) | Independence Day             | July 4                   |

- 7) Labor Day First Monday in September
- 8) Veteran's Day November 11
- 9) Thanksgiving Day Designated Thursday in November
- 10) Post-Thanksgiving Day Friday following
- 11) Christmas Day December 25
- 12) Every day appointed by the President and/or Governor, and the Board of Supervisors for a public fast, thanksgiving or holiday, when the day is celebrated as a State or Federal holiday. Days declared as permanent Federal holidays shall be observed as County holidays.

When a designated holiday falls on Sunday, the following Monday shall be observed. When a designated holiday falls on Saturday, the preceding Friday shall be observed.

- a. Eligibility for Holiday Pay. Each regular employee in a compensated employment status on the assigned work day immediately preceding and the assigned work day immediately following a designated holiday shall be entitled to compensation for the designated holiday. Extra-help employees shall not be entitled to paid holidays or compensated time off for holidays worked.
- b. Holiday Compensation. Regular employees required to work on a designated holiday or whose regular scheduled day off falls on a designated holiday shall, at the discretion of the appointing authority, be entitled to equivalent compensated time off scheduled either the day preceding the designated holiday or within one hundred eighty (180) days following the designated holiday.

### 13.00 HEALTH AND INSURANCE PLAN

#### 13.01 Health Plan

- a. Employee Health Plan Eligibility. All regular help employees assigned to a one-half (1/2) time or more position and the employees' dependents, including registered domestic partner, shall be entitled to participate in the County-sponsored Cafeteria Plan. Employees working less than full-time and hired after November 1, 1987 (with no qualifying leave or accrued leave usage), shall receive pro-rated benefits or pro-rated funding of county share health contributions rounding to the nearest one-quarter time: i.e. Either fifty percent (50%) for employee working thirty-six (36) hours to forty-five (45) hours per payroll period, seventy-five percent (75%) for employees working forty-six (46) to sixty-four (64) hours per payroll period, or one hundred percent (100%) for employees working sixty-five (65) hours or more per payroll period. This pro-rated amount is in addition to the regular employee share. Eligible employees enrolling in the program within thirty (30) days following their

appointment will be covered subject to the contract limitation with the health plan carrier. Employees enrolling after the thirty (30) day enrollment period will be approved only upon evidence of insurability.

**13.02 Description**

The Butte County Flexible Benefits Plan consisting of the Tax Deferred Medical Premium option, the Dependent Care Reimbursement option and the unreimbursed Health Care Cost option, (hereafter "Cafeteria Plan") is available to all employees in regular-help positions (hereafter "employee"). There will be two (2) participation levels, identified as Employee "A" and Employee "B" as per Section 13.03. Once the selection is made, it will remain in force until the current calendar year end and when a selection is made during the following year's open enrollment period. The fee for a third party administrator will be paid by the County.

The basic group term life insurance will continue to be provided at County expense and will not be part of the Cafeteria Plan.

**13.03 Participation Levels**

Employee A - CORE PLAN

In addition to the amounts set forth below, the County will pay the PERS Minimum Health Contribution of \$48.40/month of the premium for the medical coverage elected through PERS. Effective January 2006, this amount will increase to \$64.60 and effective January 2007, this amount will be increased to \$80.80. If the employee elects medical coverage, then the employee must participate in a dental plan option and the vision insurance (Core Plan) effective the month following ratification of this agreement. The County will pay to Employee's Flexible Benefit Account the following amounts:

	<u>January 2005</u>	<u>January 2006</u>
Employee only	\$375.05	\$378.31
Employee plus one	\$702.03	\$724.84
Family	\$942.52	\$977.37

Effective January 2007, the County contributions set forth above will be increased by an amount equal to 50% of the increase in the Blue Shield HMO, DPO and VSP Insurance programs. Included in the County portion of the increase will be the \$16.20 increase(s) in the PERS Minimum Contribution. Effective January 2008, the amounts paid in 2007 will be increased by the amount necessary, including the PERS minimum health contribution, for the County to pay 80% of the employee, employee plus one, and family health contributions for the Blue Shied HMO, DPO and VSP insurance programs.

Employees that have elected to participate in the "Core Plan" can also elect to participate in optional benefits. If the employee has any surplus Flexible Benefit Account credits after making all elections required to participate in the health insurance, the employee can use that surplus toward the Flexible Benefit Options listed in the Flexible Benefit Options Exhibit. Employees that wish to participate in the optional benefits in the plan, with the exception of the cash back option, but do not have any surplus credits, can elect to have pre-tax payroll deductions in an amount to cover the cost of their elections.

#### Employee B - FLEXIBLE BENEFIT OPTIONS

Employees who elect not to participate in Option A will be asked to sign a waiver and will be required to provide proof of medical insurance (see Section 13.04). They will have an opportunity to participate in the Flexible Benefit Options listed in Attachment H.

The County will provide an employer flex credit monthly contribution of Three Hundred Fifty Three Dollars and Seventy-One cents (\$353.71) per month for "employees" who elect option B. Effective January, 2006, the Employer Flex Credit amount will increase to Three Hundred Seventy Three Dollars and Seventeen cents (\$373.17) per month. Effective January 2007 and January 2008 the monthly flex credit contribution will increase by an amount equal to increase in the employee only flex credit contribution as set forth in 13.03 above plus the increase in the PERS Minimum Health Contribution. Employees can use this contribution toward any of the Flexible Benefit Options listed in the Flexible Benefits Options Exhibit. Employees that wish to participate in the Flexible Benefit Options, with the exception of the cash back option, but do not have sufficient flex credits, can elect to have pre-tax payroll deductions in an amount to cover the cost of their elections.

#### **13.04 Administration**

- a) No benefits will be paid to employees in Category B until proof of insurance is on file in the Human Resources Department.
- b) Part-time regular help employees will receive proportional benefits as provided above. All employees assigned to a one-half (1/2) time or more position, and the employees' dependents including registered domestic partners, shall be entitled to participate in the County's Flexible Benefits Plan as set forth in 13.01 above. This section does not affect part-time employees grandfathered into full-time benefit status under Section 13.01 of the MOU.

- c) Any money deposited in the Flexible Benefits Account of an employee must be used during the plan year; otherwise, the remaining balance reverts to the County. Upon separation, the money will be disbursed in conformance with the rules and procedures explained to and authorized by the employee at the time of his/her enrollment.

### **13.05 Retired Employee Options**

Employees who retire under the provisions of the County's retirement contract with the Public Employees' Retirement System (PERS) may continue to insure themselves and their insured dependents for the health benefit portion of the health plan by advising the Director of Human Resources and advancing the full premium for health only coverage in a manner prescribed by the Director of Human Resources.

As an option to the sick leave buy-back plan specified in Section 11.03 of the Memorandum, the employee may convert unused sick leave to health insurance premium payments as follows: The County shall calculate the value of the employee's unused sick leave based on one day of sick leave on accrual on the date of retirement being converted to one month of employee only health insurance premium. This conversion shall be made at the time of retirement, and the amount shall be credited to the employee's "account." The employee's (and dependents, if applicable) health insurance premium, and any future premium increases, will be deducted from the account until the account is depleted. Upon depletion, the employee will be notified that they are responsible for assuming payment of the premiums. To continue on the plan, the employee shall advance the full health insurance premium for quarterly coverage for the employee (and dependents, if applicable).

Employees having ten (10) years of cumulative service with Butte County who, upon termination, immediately retire under the provisions of the County's contract with the Public Employees' Retirement System shall be eligible for the twelve (12) months of County paid health premiums (employee only) immediately following retirement; and may also continue to insure their dependents by advising the Director of Human Resources and advancing the dependents portion of the health insurance premium for quarterly coverage for that year, or by deducting the dependents portion from the employee's "account".

The employee may cover either the employee only or the employee and insured dependent(s) under this section to the Medicare Supplemental Qualifying Age. Rights to continuation of health coverage above are in addition to any right the employee has under COBRA.

**13.06 Benefit Plan Review Committee**

The County shall establish a committee composed of representatives from each of the employee organizations and the County to periodically review the County's Flexible Benefits Plan with regard to additional options which may be added for employees' selection.

**13.07 Life Insurance**

The County shall maintain in effect existing Twenty-five Thousand (\$25,000) Dollar life insurance policy for Unit members. The County shall maintain a program whereby employees may buy additional life insurance at group rates through the County.

**13.08 Employee Assistance Program**

The County shall maintain in effect for Unit employees the Employee Assistance Program, and shall contribute the full cost per employee, per month, to fund the program.

**14.00 RETIREMENT PLAN**

**14.01 Retirement Credit for Sick Leave**

The Public Employees' Retirement System (PERS) contract allows unused accumulated sick leave to be converted to service time per Government Code Section 20862.8. An employee may, upon retirement from the County under PERS, use any sick leave accumulation not used as part of the calculated option for sick leave conversion to health insurance coverage to service credit in accordance with the PERS formula. Additionally this application must be made at the time of retirement. Cash out stands alone.

**14.02 Retirement Contribution**

The County will maintain in effect the 2% @ 55 Retirement Program for the term of this contract. The County shall continue to pay the employee's seven percent (7%) contribution to the retirement plan in a manner prescribed by PERS for the term of this agreement.

**15.00 REIMBURSEMENT OF EXPENSES**

Employees in the following grouping (upon approval of the appointing authority) shall be eligible to be reimbursed for 100% of the professional license or certificate fees required as a prerequisite to their position:

- Attorneys
- Physicians
- Psychiatrists
- Psychologist
- Nurse Practitioners and Registered Nurses
- Other classifications/positions may be added to the grouping upon written agreement of the parties.

**15.01 Mileage Allowance**

- a) An employee who has received authorization to use a privately owned vehicle for County business shall be reimbursed at the IRS rate for each mile driven on County business during the month.
- b) An employee who, during any month, is required to and provides a privately owned vehicle for County use in excess of 70% of their regularly scheduled working hours during the month shall receive a flat taxable payment of \$25.00 per month (pro-rated for less than full time employees, i.e. \$12.50 per month for a 50% employee), effective with the ratification of this agreement. Employees shall receive, in addition, the IRS rate per mile for all miles traveled on County business during the month.

Providing the vehicle shall be defined as having the vehicle available at the employee's work site during the employee's assigned working hours. Authorized time off of less than two consecutive pay periods shall not affect calculation of vehicle availability. The department head shall be responsible for initial certification and decertification of an employee's eligibility for a vehicle under this section.

- c. Pursuant to Personnel Rule 13.10(b), a Certificate of Insurance is required to be on file for the Vehicle Allowance and for mileage reimbursement.

The County shall pay deductible expenses to a maximum of five hundred (\$500.00) dollars when employees, using their own vehicles, are involved in an accident on County business. This provision shall not apply, however, in cases where the accident was caused by the gross negligence of the employee.

**15.02 Tuition Reimbursement**

Upon approval of the Department Head employees enrolled in college classes or courses which are job related shall be entitled to reimbursement of one-half

(1/2) of the cost of required instructional materials or tuition, upon proof of successful completion of the class or course, up to a maximum of \$500 per fiscal year. In order to receive the reimbursement, upon completion of the approved course(s) the employee must still be in the employ of the department that authorized the reimbursement.

1. In lieu of the above, an employee who is enrolled in an accredited college course or courses in the pursuit of a formal degree that the appointing authority has approved in advance and in writing and verifying the course or courses directly apply to the position and department of employment, may be provided up to half the cost of the college units completed per semester upon proof of completion of the semester with a GPA of 3.0 or better. In return, employee agrees that if he/she voluntarily leaves the employ of the department within three (3) years of receiving this tuition reimbursement pursuant to this paragraph shall reimburse the County for the reimbursement received.

Some or all of that repayment may be accomplished through a deduction from the employee's final paycheck assuming that check is for an amount equal to or greater than the amount that is the subject of this agreement.

The County of Butte reserves the right to recover any outstanding amounts that may be due under this agreement as provided by law.

## **16.00 GRIEVANCE PROCEDURE**

### **16.01 Intent**

It is the intent of this grievance procedure to afford the parties the opportunity to resolve workplace problems at the lowest possible level, and to thereby further the principles of developing more harmonious employer/employee relations.

An employee (or employees) or the Association shall have the right to present a grievance pursuant to this procedure. The employee (or employees) may be represented by the Association or an individual of his/her choice in the formal steps of this procedure; provided however, that employees may not be represented by officers or staff who are employees of an employee organization/Association other than the exclusive representative, without the expressed permission of such exclusive representative. Employees who present a grievance shall not suffer reprisal or other punitive action by the County or the Association because of the exercise of the right to present or appeal a grievance. An employee (or employees) who have a grievance shall be given reasonable time off without loss of pay or benefits to present the grievance to County management pursuant to this procedure. If the Association files on behalf of a member(s), the member(s) must be named.

## **16.02 Definition and Scope of a Grievance**

- a. A grievance may be filed by an employee, a group of employees, or by the Association of a management interpretation or application of this Memorandum of Understanding, the County Personnel Ordinance or the Personnel Rules.
- b. Specifically excluded from the grievance procedure are subjects involving the amendment of state or federal law; Board of Supervisor's resolution, ordinance or minute order; disciplinary actions except as provided for in Section 17.03; discriminatory acts; or other matters which have other means of appeal.

## **16.03 Grievance Procedure Steps**

The grievance procedure shall consist of the following steps, each of which must be completed prior to any request for further consideration of the matter. However, the County and Association may agree to start the grievance procedure at any step on issues involving Association rights, or harassment. Further, County management is required at all formal levels of the grievance procedure to consult with the Director of Human Resources, or his/her designee concerning the relationship of the grievance to Federal, State, or County law, resolution or minute order or Memorandum of Understanding to the employee's wages, hours or conditions of employment. The Director of Human Resources shall also provide advice as to the effect of any proposed grievance settlement on other County departments. No grievance resolution shall be final until this consultation step has been completed. Time limits set forth herein are not waived pending consultation with the Director of Human Resources or his/her designee.

Prior to filing the formal grievance pursuant to Step 1 below, the employee is required to informally discuss the matter with their supervisor to determine if the issue may be resolved. If the supervisor, however, is not available to meet with the employee or does not respond within five (5) days, the employee may formally file the grievance in accordance with Step 1 or 2 below, whichever is appropriate. If an employee fails to informally discuss the matter with their supervisor as outlined above, the grievance may not be advanced to the written formal level. **NOTE:** A grievance must be submitted formally in writing to Step 1, if such option exists, or to Step 2, if Step 1 option does not exist, within fifteen (15) days of the occurrence or the employee's knowledge of the occurrence which gives rise to the grievance.

Step (1) Second-Level Management Representative. (This step is optional and may be omitted from the procedure in a department or a division thereof by the

appointing authority. The County shall provide the Association with a written list of those departments which will utilize this step.) If the issue is not settled by the informal discussion, it may be formally submitted to the second level management representative designated by the appointing authority. The grievance shall be submitted within fifteen (15) days of the occurrence or the employee's knowledge of the occurrence which gives rise to the grievance, and shall be submitted formally in writing stating the nature of the grievance and the suggested solution. Within seven (7) days after receiving the written grievance, the second-level management representative shall meet with the employee. Within seven (7) days thereafter a written decision shall be delivered to the employee.

Step (2) Appointing Authority. If the grievance is not settled under Step 1 option, it may be formally submitted to the appointing authority. The grievance shall be submitted within seven (7) days after receipt of the written decision from Step 1. Within seven (7) days after receipt of the written grievance, the appointing authority or designated representative shall meet with the employee. Within seven (7) days thereafter, a written decision shall be delivered to the employee.

Step (3) Mediation. If the grievance is not resolved after Step 2, as an alternative to proceeding directly to Step 4, Arbitration, the grievance may be submitted to mediation. A request for mediation may be presented in writing to the Director of Human Resources within seven (7) calendar days from the date a decision was rendered at Step 2. As soon as practicable thereafter, or as otherwise agreed to by the parties, a mediator shall hear the grievance. A request for mediation will automatically suspend the normal processing of a grievance until the mediation process is completed. The mediation process shall be optional, and any opinion expressed by the mediator shall be informal and shall be considered advisory.

Step (4) Arbitration. If the parties are unable to reach a mutually satisfactory resolution of the grievance as a result of discussion at Steps 1, 2 or 3, or if there is a dispute as to whether or not the grievance meets the definition of grievance under Section 16.02 hereof, the issue shall be submitted to an impartial arbitrator who shall be designated by mutual agreement of grievant and his/her representative and the Director of Human Resources. To the extent possible, the parties shall utilize a standing arbitrator to be randomly selected from a panel of seven (7) jointly agreed to by the parties.

1. Should the grievant and his/her representative and the Director of Human Resources fail to reach agreement on selection of the arbitrator within fifteen (15) days, they shall jointly request a list of seven (7) qualified arbitrators from the California State Mediation and Conciliation Service. If mutual selection cannot be made from the list

received within seven (7) days, the parties shall select the arbitrator by alternately striking names until only one name remains; that person shall serve as the arbitrator. The party which strikes the first name from the list of arbitrators shall be determined by a toss of a coin.

2. The grievant and his/her representative shall invoke the arbitration step within twenty-one (21) days of receipt of a decision at Step 2 of this procedure by submitting a written request for arbitration to the Director of Human Resources.
3. In cases in which the Association represents the grievant, the County and Association shall share the arbitration cost on a 50/50 basis. In cases in which the Association is not representing the grievant or the Association declines to carry a case to the arbitration step, the fees and expenses of arbitration shall be shared on a 50/50 basis by the County and the employee. Each party, however, shall bear the cost of its presentation including preparation and post-hearing briefs, if any, provided that witnesses necessary to the presentation of the employee's case shall be granted necessary time off without loss of pay or benefits to appear at the arbitration hearing.
4. Decisions of arbitrators on matters properly before them shall be final and binding on the parties hereto to the extent permitted by law.
5. No arbitrator shall entertain, hear, decide, or make recommendations on any dispute unless such dispute involves a position in the Unit represented by the Association and unless such dispute falls within the definition of a grievance as set forth in Section 16.02 and is consistent with all provisions herein. Any dispute as to arbitrability shall be decided prior to any hearing on the merits unless the arbitrator rules that the issues are not separable. Whenever possible, a bench arbitrability decision shall be issued immediately.
6. Proposals to add to or change the Memorandum of Understanding or written agreements or addenda supplementary thereto shall not be arbitrated and no proposal to modify, amend or terminate this Memorandum of Understanding, nor any matter or subject arising out of or in connection with such proposal, maybe referred to arbitration under this section.
7. No arbitrator shall have the power to amend or modify this Memorandum of Understanding or a law, ordinance, resolution, regulation or rule which is within the authority of the Board of Supervisors or other legislative body or to establish any new terms or conditions of employment. The Arbitrator's decision shall be limited

only to the applications and interpretation of the existing rule in the matter referred for consideration.

8. The County and Association shall exchange witness lists seven (7) calendar days prior to Arbitration Hearings. Should it become necessary to supplement the list(s), the other party will be notified as soon as possible.

#### **16.04 Consistent Awards**

No settlement or award shall be made under the grievance procedure which is inconsistent with the terms and conditions of this Memorandum of Understanding or any other County law, ordinance, resolution, regulation or rule that is not superseded by the MOU. The Director of Human Resources shall have the authority to settle grievances of up to \$10,000 in accordance with Board Resolution No. 01-013.

#### **16.05 Administration of the Grievance Procedure**

- a. As used herein, a "formally submitted grievance" shall include a concise description of the problem; the section or sections of the memorandum, law, ordinance, resolution, regulation or rule alleged to have been violated; the proposed remedy; the date of the grievance; the date the grievance was filed; and the signature(s) of the person or persons filing the grievance.
- b. If an employee does not present the grievance, or does not appeal the decision rendered regarding the grievance within the time limits the grievance shall be considered resolved.
- c. If a County representative does not render a decision to the employee within the time limits, the employee may, within seven (7) days thereafter, appeal to the next step in the procedure.
- d. If in the judgment of a management representative, the management representative does not have the authority to resolve the grievance, the grievance may be referred to the next step of the procedure.
- e. By agreement in writing, the parties may extend any or all of the time limits of the grievance procedure.
- f. A copy of all formal grievance decisions shall be forwarded to the grievant, the Director of Human Resources and the Association.

