

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE COUNTY OF STANISLAUS AND  
COUNTY ATTORNEY' ASSOCIATION**

Pursuant to the Employee Relations Ordinance of the County and Section 3500 et seq. of the Government Code, the duly authorized representatives of the County and County Attorneys' Association (CAA) having met and conferred in good faith concerning the issues of wages, hours, and terms and conditions of employment as herein set forth, declare their agreement to the provisions of this Memorandum of Understanding.


**FOR THE COUNTY:**


  
\_\_\_\_\_  
William O'Brien, Chairman  
Board of Supervisors


  
\_\_\_\_\_  
Richard W. Robinson  
Chief Executive Officer

  
\_\_\_\_\_  
Jody Hayes  
Deputy Executive Officer

  
\_\_\_\_\_  
Steve Casey  
Chief District Attorney


  
\_\_\_\_\_  
Tim Bazar  
Public Defender

  
\_\_\_\_\_  
Ramon Bawanan  
Manager II

  
\_\_\_\_\_  
Nancy Bronstein  
Senior Management Consultant


**FOR CAA:**

  
\_\_\_\_\_  
Russ Burns  
OE3 Business Manager

  
\_\_\_\_\_  
Fred Herschbach,  
OE3 President

  
\_\_\_\_\_  
Rob Wise  
OE 3 Recording-Corresponding  
Secretary

  
\_\_\_\_\_  
Don Dietrich  
Public Employee Director

  
\_\_\_\_\_  
Patrick Thistle  
OE3 Business Representative

  
\_\_\_\_\_  
W.R. McKenzie  
OE3 Member

DATE SIGNED: \_\_\_\_\_

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#### ATTACHMENTS

Attachment A - Reduction In Force Policy

Attachment B - County Code Section 3.28.120 □ . Petition to Set Aside Resignation

Attachment C - Binding Arbitration Procedures

1. SCOPE OF THE BARGAINING UNIT

This Agreement covers the wages, hours, terms and conditions of employment for the term of the agreement for all regular county employees in the classification series of Attorney I, II, III, IV and V. The scope of the bargaining unit as defined herein may be modified consistent with the provisions of the Stanislaus County Employee Relations Ordinance.

2. TERM OF THE AGREEMENT

This agreement shall remain in full force and effect for five years commencing on January 1, 2007 and ending at midnight, June 30, 2010.

COUNTY RIGHTS

Stanislaus County retains the exclusive right, except as expressly stated herein, to operate and direct the affairs of the departments of County government and all of their various aspects, including, but not limited to the right to direct the work force; to plan, direct and control all of the operations and services of the County; to determine the methods, means, organization and schedule by which such operations and services are to be conducted; to assign and transfer employees within the various departments to hire, promote, suspend, demote, discharge, reprimand, and evaluate employees; to relieve employees from duty due to lack of work or other legitimate reasons set forth in the County reduction-in-force policy; to change or eliminate existing methods, equipment, or facilities in order to maintain or increase the efficiency of governmental operations; and to exercise complete control and discretion over its organization and the technology of performing its work. Nothing contained herein shall be construed to preclude meeting and conferring between employer and employee regarding the practical consequences that decisions on these matters may have on wages, hours and terms and conditions of employment.

3. SAFETY AND LOSS CONTROL

County Attorney Association (CAA) agrees to support without qualification the County's safety and loss control efforts. The parties agree to strive to reduce the number of industrial injuries among employees and maintain a safe place of employment and to encourage employees to perform their work in a safe manner. The County acknowledges its responsibility to provide safe working conditions, and agrees to provide such alternative working arrangements as become necessary, when designated work areas become unsafe or otherwise hazardous to employee health and welfare as determined by the Stanislaus County Chief Executive Officer or his designee. The County recognizes that the employee's personal medical physician may recommend that for documented health reasons the employee is unable to work in a designated work area. As a means to verify the employee's physician recommendation the County may seek additional information from the employee's physician and/or seek a second medical opinion by directing the employee to undergo a medical examination conducted by a physician of the County's choice and at County expense.

5. NON-DISCRIMINATION/FAIR REPRESENTATION

The parties agree that the provisions of this agreement shall be applied without favor or discrimination based upon race, ancestry, religion, color, age, national origin, political affiliation or belief, disability (includes persons with AIDS or those with a record of or regarded as having a substantially limiting impairment), medical condition (cancer related), pregnancy related condition, sex, marital status or sexual orientation. The parties agree to recognize, respect, and support the County's commitment to nondiscrimination in employment as set forth in the County's Equal Employment Opportunity Program. The CAA agrees to encourage its members to assist in the implementation of that program. The CAA acknowledges its responsibility to fairly represent all employees in the bargaining unit without regard to race, ancestry, religion, color, age, national origin, political affiliation or belief, disability (includes persons with AIDS or those with a record or regarded as having a substantially limiting impairment), medical condition (cancer related), pregnancy related condition, sex, marital status, sexual orientation, job classification, or employment status and in compliance with State law. The County acknowledges and agrees that it shall not discriminate or take adverse action against employees on the basis of their choice of labor representation.

6. NO STRIKE

The CAA, its members and representatives, agree that it and they shall not engage in, authorize, sanction or support any strike, sick-in, slowdown, stoppage of work, curtailment of services, or refusal to perform the customary duties of CAA members.

7. COMPENSATION

A. Salary Increase

All members of the bargaining unit as indicated below shall receive the following salary increases effective as follows:

The first full pay period beginning on or after March 2007 – 4%

The first full pay period beginning on or after October 1, 2007 – 3%

The first full pay period beginning on or after January 1, 2009 – 3%

The first full pay period beginning on or after January 1, 2010 - 1.5%

B. Equity Adjustments

The following Classifications will receive an equity pay adjustment effective the first full pay period following July 1, 2007:

Attorney I – 5%

Attorney II – 2%

C. Retirement

Members of the bargaining unit shall receive upon retirement two percent (2%) of base salary times number of years of county employment at age fifty-five (55), including the single highest year, to be implemented on March 1, 2002, but no later than July 1, 2002.

D. Deferred Compensation

The County shall continue to compensate the employee one and one half percent (1.5%), of each employee's base, biweekly salary which shall be contributed by the employee to the deferred compensation plan. This compensation shall be paid by the County in recognition of the fact that the attorneys, as professionals, are not compensated for work performed beyond the regular forty hour week. In addition, the County agrees to compensate the employee an additional one half percent (.5%) effective January 1, 1998, for a total of two percent (2.0%).

8. BI-WEEKLY PAYROLL

A bi-weekly payroll system will remain in effect during the term of this agreement.

9. GROUP INSURANCE BENEFITS

A. Group Plans Available

The parties agree that health, dental and vision plans are made available to County employees and, where applicable, their dependents through a cafeteria plan. The parties acknowledge these plans are, except the self-insured dental and vision plans, independent group health plans which may adjust their respective premiums or benefits as deemed necessary by the plan provider. OE3 health insurance is available for selection by union members. Unless otherwise agreed to by the parties, the County's contribution is fixed and any increase in premiums is the responsibility of the employee.

B. Health Insurance

The parties recognize that the County has joined Pacific Business Group on Health (PBGH). The parties agree to meet and confer in the Joint Task Force for discussion of health insurance annually when rates become available in June. Current benefits and cafeteria contributions will stay in effect until December 31<sup>st</sup> of each year.

The County agrees that any changes made as a result of meet and confer pursuant to this section shall not result in a loss of salary, compensation or cafeteria contributions currently provided to CAA members.

C. Group Dental and Vision

The parties agree that group dental and vision care insurance benefits and dollar amounts that the County contributes for dental and vision insurance premiums through

the flexible benefit plan shall remain in effect during the term of this agreement.

D. Term Life Insurance

The parties agree that the County will provide \$50,000 in term life insurance coverage for employees in the bargaining unit with premiums for such insurance paid by the County. Such insurance will include a double indemnity provision in case of accidental death.

E. Payroll Deduction for Disability Insurance

The parties agree that the County withholds the disability premiums for each current and all future hired attorneys in the CAA from said employees' biweekly gross pay, in the amount requested by the CAA, and forward the collected total to the disability insurance company designated by the CAA. Unless the CAA gives written notice of a change to the Auditor-Controller, said premiums are .0040% of gross pay rounded to the nearest penny, and the insurance company is:

Paul Revere Life Insurance Company  
File #53917  
Los Angeles, CA 90074-3917

The foregoing deduction, however, is subject to sufficient funds being due to the member of the bargaining unit for whom deductions are to be made after the County has withheld all of the legally required or employee-authorized payroll deductions.

The CAA agrees to defend, indemnify and hold harmless Stanislaus County, its employees and agents against damages and claims for whatever nature arising out of deductions from employee paychecks made for the purpose of the CAA sponsored long term disability insurance protection.

F. Dependent Care/Medical Expense Reimbursement Program

Pursuant to I.R.S. section 125, the County offers the Dependent Care Assistance Plan and the Medical Expense Reimbursement Program to all represented employees at a monthly cost to the employee.

G. OE3 Medical Plan

Union member employees may elect to participate in the Operating Engineers Health Plan. This plan includes medical, dental and vision coverage. The parties agree that County contribution rates shall apply for the term of this agreement to employees choosing to participate in the group health insurance program offered by Operating Engineers.

10. PROFESSIONAL DEVELOPMENT ALLOWANCE

The parties agree that the County shall directly pay California State Bar dues and attorneys shall be reimbursed for professional development expenses related directly to the enhancement of their ability

to practice as effective Attorneys.

A. Bar Dues

The County agrees to the full payment of basic bar dues for each attorney. This will be done by the County by direct payment to the California State Bar of attorney bar dues. Each attorney must provide to the department head or his designee, his or her individual bar due bill so that the County can submit the reimbursement to the State directly on behalf of the attorney.

B. Professional Development Reimbursement

1. Attorneys appointed on or after January 1 of each year will be entitled to a professional development allowance of \$700.00 in reimbursement for the year based upon a pro-rated amount equivalent to \$58.33 for each full month of service during the year. Attorneys terminating from County service will not be eligible for cashout of any professional development money unspent as of the effective date of their termination, and shall reimburse the County for any amount of the allowance used which exceeds the monthly proportionate amount which would have been earned at the time of resignation.
2. The reimbursement shall be approved by the Department Head for purposes which may include, but are not be limited to, the private purchase of law books or periodicals, participation in professional seminars, including those which may be outside of California, covering registration, travel and accommodations reflecting actual cost of participation in the seminar, association membership and fees for certification in relevant legal specialties such as criminal law. The reimbursement may also be utilized for the purchase of Law Desk, other work related computer software and equipment. No computer games shall be reimbursed. Purchase of this type of equipment shall be reimbursed in accordance with the requirements of the Auditor-Controller as stipulated by applicable tax guidelines.
3. Request for reimbursement will not be unreasonably withheld. Unused professional development shall not be available to be cashed out by the attorney and if not used shall be lost.
4. The \$700.00 may be utilized by the attorney for reimbursement of professional development expenses as described in the second paragraph of this Section. Reimbursement will be made through the established County "claim" procedures, with the modification that the attorney may submit his or her claim for reimbursement along with the required receipts/canceled checks, to the department for processing of all necessary paperwork. The expense must be incurred in the calendar year for reimbursement to be made to the attorney. In order for the County to reimburse the attorney for expenses incurred at the end of the calendar year, the attorney shall submit claims for reimbursement of prior calendar year expenses no later than ninety days from the date of the expense.

5. Any law books, periodicals or other material purchased under this provision shall remain the property of the attorney. This provision shall be viewed as independent of consideration of budget accounts in the Department.
6. The County agrees to make a good faith effort to schedule and pay for the legal training mandated for each attorney, by state law. Such expenditures shall be spent at the sole discretion of the Department Head in each Department, based upon the needs of the Department, the availability of funds, and the availability of qualified training relevant to an individual's job assignment. The Department Head will attempt to equitably apportion training seminars. This paragraph of the Memorandum of Understanding is exempt from the grievance procedure.

11. LEAD ASSIGNMENT

A. Definition

Under the direction of the Chief Deputy Assistant or Department Head, provides direction and guidance to Attorneys and other staff assigned to a particular work unit. Attorneys in Lead assignment shall counsel, train and coach Attorneys. They may review and critique work as well as distribute work and delegate assignments. They may also evaluate personnel leave requests and schedule time off. The Lead Attorneys shall not initiate personnel disciplinary actions, evaluate personnel or initiate other personnel actions. They may also perform special projects, develop policies/procedures or perform any other tasks directed by a Chief Deputy Assistant or Department Head.

B. Minimum Qualifications

To be eligible for the lead assignment, Attorneys must be classified a grade equal or greater than the personnel s/he leads and shall have background in the work area of the unit to be assigned.

C. Selection and Term

Attorneys in the lead assignment shall be selected on an in-house competitive basis from those qualified for the assignment. Personnel occupying this assignment shall be limited to not more than two (2) years, which can be extended based upon operational necessity and the approval of the Department Head. Personnel can be removed from the assignment at the discretion of the Chief Deputy Assistant or Department Head based upon unsatisfactory performance or the discontinued need to staff the assignment.

D. Compensation

The compensation for the lead assignment shall be at two and one-half percent (2.5%) of the attorney base wages. The compensation shall remain in effect for the duration of the persons assignment to the lead position.

12. REQUIRED PROFESSIONAL ASSOCIATION DUES

The County agrees to continue its past practice of providing reimbursement for members of the bargaining unit required to join and pay dues to either the California District Attorneys' Association or the California Deputy Public Defenders' Association. Reimbursement may be made not more than once in a 12 month period upon presentation of a receipt by the attorney evidencing that dues have been paid.

13. HOLIDAY/VACATION TIME PROVISIONS

A. Designated Holidays

- January 1, New Year's Day
- The third Monday in January, Martin Luther King Day
- The third Monday in February, Washington's Birthday
- The last Monday in May, Memorial Day
- July 4, Independence Day
- The first Monday in September, Labor Day
- November 11, Veterans Day
- November \_\_\_\_, (the Thursday designated as Thanksgiving Day)
- The day after Thanksgiving Day
- December 24, Christmas Eve, 4 hours when Christmas Eve fall on any day of the week except Saturday or Sunday
- December 25, Christmas Day

When January 1, July 4, November 11 or December 25 fall on a Sunday the holiday shall be observed on the following Monday.

When January 1st, July 4th, or November 11th fall on a Saturday the holiday shall be observed on the preceding Friday.

B. Working on a Holiday

Employees who work on a holiday will receive equivalent vacation time credit. Equivalent vacation time credit will also apply when a holiday falls on a Saturday for those working regular weekday schedules.

C. County Holiday Policy

The parties agree that only the immediate days of mourning or holiday declared by the President of the United States and the Governor of California will be considered County holidays in addition to the specific list of holidays already present in the County Code.

D. Combining Optional Holiday Time with Vacation

The parties recognize that on December 31, 1983, any optional holiday time was combined with vacation benefits. The rate of accrual of vacation hours was increased on January 1, 1984 by 16 hours of special vacation time each calendar year in lieu of optional holiday time. See sub-division F of this section for vacation accrual rates.

Optional holiday time on the books as of December 31, 1983 for an employee, was frozen on the books and may be:

1. taken as time off,
2. cashed out with the approval of the employee, the department head and the County Auditor-Controller, or
3. may be cashed out upon the employees termination

E. Vacation Accumulation Maximum

The parties agree that employees who have reached the 600 hour vacation accumulation maximum shall not accrue any additional vacation time. Accrual of vacation time shall again commence in the pay period that the employee's vacation time has fallen below the 600 hour maximum. It is the policy of the County that employees take at least their normal vacation each year; provided, however, that for reasons deemed sufficient by their Department Head, an employee may, with the consent of the department head, take less than the normal vacation time with a correspondingly longer vacation the following year.

Employees who are nearing the vacation accumulation maximum of 600 hours (at 520 hours or higher) will receive notification from the department. Employees are encouraged to request vacation upon receiving this notice pursuant to department procedures.

Failure by the employee to make a good faith effort to request vacation in accordance with departmental procedures, will result in vacation accrual stoppage at 600 hours.

If the employee does make a good faith effort to request vacation time and the request is denied by the department or if an approved vacation is canceled, the employee will receive up to 80 hours of vacation cash-out. It is understood employees may have to request vacation time outside of high use times, i.e., holiday seasons and summer months.

F. Vacation Accumulation Rate

The parties agree that consistent with the county code the following vacation accumulation rates are in effect during the term of the agreement:

3.08 hours per pay period (ten days a year) for the first through completion of the second year of continuous services.

4.62 hours per pay period (fifteen days a year) for the third year through and including the tenth year of continuous service.

6.16 hours per pay period (twenty days a year) for the start of the eleventh year through and including the twentieth year of continuous service.

7.70 hours per pay period (twenty-five days a year) for the Twenty-first year of continuous service and thereafter until separation from County service.

In addition, employees shall earn 16 hours of special vacation time each calendar year in lieu of optional holiday time. Special vacation shall be earned in addition to the regular vacation and shall be earned by prorating said amount over twenty-six pay periods.

G. Limited Cash Conversion

Employees covered by this memorandum with 100 or more hours of accrued vacation recorded on the payroll records may request cash out of up to 65 hours of accrued vacation once per fiscal year. Such conversion will be granted upon approval of the Department Head and Auditor-Controller and the availability of funds. Requests for vacation conversion shall not be unreasonably denied.

H. Vacation Credit for Holidays

Eight hours of vacation credit for holidays will be given during the bi-weekly period in which the holiday occurs. The exceptions to this are:

1. New hires or employees who return from leave of absence will receive vacation credit for a holiday if the first day worked is on or before the holiday.
2. Terminated or discharged employees, or those beginning an unpaid leave of absence, will accrue vacation credit for a holiday if the last day for which pay is received falls after the holiday, or if the last day worked falls on the holiday.
3. Employees on disciplinary suspension without pay will not receive vacation credit for a holiday occurring during the period without pay.
4. Employees taking time off without pay will not accrue the holiday if they are on an unpaid status during the major portion of the pay period.
5. Optional (floating) holidays will continue to be credited to vacation balances at the first of the year.

14. SICK LEAVE

A. Cashout Provisions

All employees whose service with the County is terminated after one year of continuous service shall be paid a sum of money equal to twenty-five percent of their hourly rate of pay at the time of their termination multiplied by their total number of accumulated and unused hours of sick leave. Termination of service shall include death, in which event payment shall be made to the person or persons entitled to succeed to the estate of the deceased employee. This section, as amended, shall include all accumulated or unused sick leave acquired while in the service of the County.

The maximum amount of sick leave that shall be applied toward the cash out provisions as provided for in the MOU shall be 600 hours. For example if an employee retires from County service, he or she would be cashed out for 25% of 600 hours or 150 hours. Time in excess of the 600 hours may continue to accrue and be used in the case of illness.

In addition, any current employee who has accrued time in excess of 600 hours may, upon retirement, consistent with current MOU provisions, cash out the amount of time accrued as of the pay period ending January 6, 1995. The total sick leave accrual on this date shall become the employee's individual maximum or cap for sick leave cashout purposes while the employee remains in the continuous employment of the County. For example, if the employee has 1000 hours on the date the cashout maximum takes effect, he or she would be cashed out for 25% of 1000 hours or 250 hours upon retirement. Any time accrued and in excess of this time will not be subject to cashout.

The purpose of this provision is to place a ceiling on the County's cashout liability for sick leave while maintaining unlimited accrual of sick leave for catastrophic illness.

Furthermore, the County agrees all sick leave accrued above the employees individual cashout maximum shall be converted toward service credit upon retirement on an hour-for-hour basis.

B. Conversion of Sick Leave Cashout Benefits to Health Insurance Upon Retirement

If the County establishes a program which allows for the conversion of sick leave cashout benefits to cover the cost of health premiums upon retirement, that program will be made available to all employees covered by this agreement. The parties agree to meet and confer prior to implementation. This program must meet the criteria of the Auditor-Controller and Internal Revenue Codes for tax purposes.

15. PAID LEAVE TIME

The parties recognize that Attorneys are required, as a condition of their employment, to frequently work more than eight hours per day or 40 hours per week. It is further recognized that Attorneys do not receive compensation other than as provided by this agreement for homicide on-call work, either in cash or in compensatory time off for overtime. Recognizing this situation, the parties agree that in lieu of any other compensation for overtime, the Department Head shall approve paid leave time not to exceed 60 hours in a 12 month period effective each calendar year. The parties recognize that this leave time is not cumulative and must be taken within a 12 month period or is lost. The parties further recognize that the Department Head or his designee has full discretion to grant time off under this section consistent with office workload and staffing requirements. Departments will be responsible to maintain records of time off.

16. WASH TIME

Employees shall be authorized with the approval of the Department Head or designee, the ability to use a wash time policy. Wash time can be used for up to two (2) work hours and shall be done within a week (seven days) (as practical). It is recognized by the attorneys that paid leave time is granted because time worked beyond the regular work week will not be compensated nor will it always be possible to use wash time within the work schedule. Attorneys who have not worked time in excess of the work week and who are absent from work, are required to use accrued vacation or sick leave to cover the absence. Wash time shall not be unreasonably denied.

17. IMPLEMENTATION OF INTERNAL REVENUE SERVICE CODE SECTION 414 (H2)

CAA agrees to the implementation of Section 414 (H2) of the Internal Revenue Service Code.

18. RETIREMENT

A. Third Retirement Tier

The parties acknowledge implementation of an optional employer funded third tier in the County Miscellaneous Retirement System. The plan was optional for all employees to switch from Tier 1 or 2 on a one time basis through October 10, 1986.

B. County Retirement Contribution

Effective the start of the first pay period after January 1, 1996, the County shall pay to the retirement system, all or a portion of the employee's retirement contribution up to a maximum of 3.0% of the employees' salary, vested in the employee. Employees in Tier I, Tier IV and Tier III of the retirement system who are not making contributions to the system, shall receive the equivalent of 3.0% of their salary in lieu of this 3% County retirement contribution. Tier I or IV employees whose retirement contribution is less than 3.0% of his or her salary, shall have the difference paid to the employee.

19. ON CALL AND HOMICIDE AND ENVIRONMENTAL PROTECTION CALL BACK

A. Regular on Call

Attorneys in the District Attorney's office (other than members of the Homicide Team) shall be paid \$250.00 in addition to regular salary for each seven day period during which the attorney is required to remain "on-call" beyond regular working hours when such "on-call" duty is ordered by the District Attorney and approved by the Chief Executive Officer.

B. Homicide On-Call/Homicide and Environmental Protection Call-Back Pay

Homicide on-call pay shall be \$150.00 per week.

In addition, the homicide on-call attorney shall receive time and one half compensation at the regular hourly rate of compensation, for each hour that he or she is called back to work outside of the normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. Provided however, that the attorney performing approved call back work shall not be compensated for less than three hours upon each occasion that the employee is called upon to perform such service, irrespective of the fact that the actual amount of overtime service performed may be less than three hours, and no employee shall be compensated for more than eight hours overtime work in any one eight-hour period. At the option of the Department Head or his designee the compensation shall be in cash or compensatory time off. Cashout of the compensatory time accrued shall be consistent with existing county policy. This compensation is limited to the performance of emergency homicide call back duties.

Upon the determination of the District Attorney, based upon need and appropriateness, the environmental protection Attorney shall be eligible to receive call-back compensation only, as provided in this section. Furthermore, the District Attorney or his designee shall be empowered to determine whether compensation shall or shall not be authorized. The parties understand that approval or denial of compensation will occur after the callback work has been performed.

No on-call compensation for the environmental protection assignment shall be granted.

C. Public Defender On-Call

When on-call duty is ordered by the Public Defender and approved by the Chief Executive Officer, the on-call Attorney shall be paid \$28.57 for each day that he or she is required to remain "on-call" beyond the regular working hours.

D. Holiday On Call

When an Attorney is on-call on a day which is designated as a holiday pursuant to Section 3.48.010 of the Ordinance Code, the attorney shall receive, in addition to the on-call pay described above, equivalent vacation hours credit for the holiday.

20. MALPRACTICE INDEMNIFICATION

The parties agree that the County will provide malpractice defense and indemnity for attorneys against whom malpractice claims may arise. It is recognized that this defense and indemnification applies only to claims which arise in and out of the course of the attorney's County employment.

21. BINDING ARBITRATION

The County and the CAA agree to binding arbitration of grievances (excluding EEO grievances) and discipline as provided by the attached procedures.

22. CLASSIFIED STATUS

All represented classifications assigned to the District Attorney's Office and Public Defender's Office are included in the classified service of the County. Probation periods for covered employees shall be consistent with current County Code provisions. With the exception that attorneys employed immediately prior to the effective date of implementation of classified status, who held their current classification or any previous classification included in the bargaining unit, for one year or longer, excluding any unpaid leaves, and whose overall performance was evaluated as "Satisfactory" or better, were granted permanent status effective.

Members of the bargaining unit who did not hold a classification assigned to this unit for one year or longer, or who did not receive the necessary overall performance rating, were eligible for permanent appointment, consistent with County Code Provisions, effective on the employee's next step advancement eligibility date, limited to the classification held at the time of the transition.

The parties agree the Stanislaus County Discipline Procedure, as amended by MOU Section 24, "Binding Arbitration", shall apply to members of this bargaining unit who have permanent status. Further, CAA agrees that there shall be a 45 day maximum suspension limit which may be ordered by the Department Head. However, the Hearing Board, or arbitrator, upon making the finding not to sustain a discharge action, may find that in lieu of a discharge a suspension in excess of 45 days is appropriate, and may make such a finding in accordance with existing practice.

23. NO CHARGES ON PROBATIONARY TERMINATIONS

The parties agree that the County will no longer be required to prepare a statement to the file as to why an individual's probationary period was terminated.

24. ACCESS TO PERSONNEL FILES

The parties agree that the Stanislaus County Chief Executive Office policy on access by an employee to the contents of his or her Chief Executive Office personnel file will continue. That policy provides that upon request, an employee may review in the presence of a CEO staff member, the contents of his or her file and be provided with a copy of any materials in that file. Requests for copies of material contained within the file must be reasonable and should not typically include a request for copies of all documents contained within this file. The intent is to provide the employee with copies of documents which he or she may have not received previously. With the written consent of the employee, a designated representative of the employee may review the contents of the file.

25. BARGAINING UNIT LISTS

The parties agree that the County will provide the CAA a list of the bargaining unit showing members of the bargaining unit by department and classification. This list shall be provided to the CAA upon request and no more than twice per calendar year. CAA agrees to take all due precautions to insure that the information on the list will not be used for purposes other than CAA representation of its bargaining unit members and will not be used in any manner so as to harm the confidentiality or right of privacy of members of the bargaining unit. CAA agrees to indemnify, defend and hold harmless Stanislaus County, its employees and agents against damages or claims of whatever nature arising out of CAA control and use of bargaining unit lists.

26. BEST EFFORTS IN CONTRACT ADMINISTRATION

The parties agree to mutually utilize their best efforts in the administration of this agreement. Best efforts shall mean expeditiously meeting together, communicating with employees and department heads and taking other such actions to attempt to minimize disputes arising over administration of these provisions.

27. JOB STEWARDS

One attorney in each department will be permitted reasonable time off (i.e. no more than an average of one hour per week) with prior supervisor approval, to assist in the investigation of any alleged MOU violations or grievances of employees within the department and in the bargaining unit.

The CAA agrees to keep the County and each Department Head advised of the attorneys designated by the CAA for the above duties.

28. MEMO/DOCUMENTS

The County agrees that OE 3 may obtain from bargaining unit employees, a copy of memos and documents related to employee wages, hours and other terms and conditions of employment which are given to members of the bargaining unit.

29. PERFORMANCE EVALUATION POLICY

Performance evaluations should be completed on a regular basis and shall not cover a period of greater than one year. For any employee who has not received an annual evaluation for a period of time greater than one year, a current performance evaluation may be completed which will encompass no more than the prior twelve months of actual performance. For example, if an employee has not been evaluated for four years, the employee would be given only one evaluation covering the most recent performance, i.e. no more than twelve months of actual work time. Performance evaluations shall be reviewed with the employee on a timely basis. Late or missed evaluations shall not be subject to the grievance procedure. The due date is normally tied to the employee's salary anniversary date, even if the employee is at the top step of the salary schedule. Department Heads are encouraged to evaluate all classified employees on a regular basis, even those who have reached the top step.

30. PAYROLL DEDUCTIONS

A. Operating Engineers Credit Union Deduction

The parties agree that the County will maintain a payroll deduction for the Operating Engineers Credit Union. This deduction shall be taken in accordance with the policy of the Auditor-Controller. It is further acknowledged that the monthly fee required by the Auditor-Controller for fewer than fifty participants will be waived if additional OE 3 represented bargaining units negotiate the deduction and there is a total of fifty or more participants from the OE 3 bargaining units when combined.

B. Voluntary Dues Deduction

The County will deduct CAA membership dues using the appropriate authorization form which must be completed by any member of the Attorneys bargaining unit who voluntarily elects to have the dues deduction. Notwithstanding that the County recognizes the CAA as the recognized employee organization representing the Attorney's bargaining unit, the County agrees to also deduct OE 3 dues using the appropriate authorization form which must be completed by any member of the Attorney's bargaining unit voluntarily electing to have the deduction. The County will forward such deductions to Operating Engineers at the address on file with the County Auditor-Controller's Office. The CAA deduction will be forwarded by the Auditor-Controller to the address on file. OE 3 and CAA agree to defend, indemnify and hold harmless the County and its employees or agents against claims of whatever nature arising out of deductions from employee paychecks.

31. USE OF DEPARTMENT BULLETIN BOARDS

CAA shall be assigned a space for posting communications with its members in each work area. Such space is only for the purpose of such communications, as an aid to CAA. It is further acknowledged that CAA may use the County interdepartmental mail system and groupwise to communicate with its members.

32. REDUCTION-IN-FORCE POLICY

The parties agree that the County Reduction-In-Force Policy included as part of this agreement as Attachment A, applies to all employees covered by this agreement.

33. AUTOMATIC RESIGNATION

The parties agree that an employee who is willfully absent without authorization and without contacting his or her supervisor for five consecutive working shifts, or longer, will be presumed to have voluntarily resigned from County service, effective on the date at which the unauthorized absence began. The provisions of County Code Section 3.28.010, "Petition to Set Aside Resignation", appended to this agreement as Attachment B shall apply.

34. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

The County and the CAA acknowledge and agree that the ADA may require modification of County Policy or MOU provision in order to provide reasonable accommodation to individuals protected under the Act on a case by case basis. The County and the Association agree to meet and confer if the accommodation will require some modification of the MOU or County policy which affects any term or condition of employment or is otherwise a mandatory subject of bargaining. Said meet and confer will be on a case by case basis and no single accommodation shall establish a past practice.

35. ATTORNEY'S RECLASSIFICATION PROJECT

The parties agree that all Attorney positions shall be block budgeted to the V Level so that all Attorneys have an equal opportunity to be promoted to the highest level based on work performed and qualifications as outlined in the new Attorney job descriptions. Attorneys are eligible for promotion to the next level at their established next review date, effective January 1, 2002.

Promotion from level IV to Level V will work the same way as from Level I to Level II, Level II to Level III, and from Level III to Level IV, fully allocated and noncompetitive, based on the job descriptions and the work done by the employee.

The parties have agreed to review the new job descriptions and implementation again in 6 months to ensure that the new classification system is working for everyone.

36. AGENCY SHOP

The parties agree to meet and confer regarding agency shop.

37. CONTINUING OTHER POLICIES

The parties agree that the County Reduction-In-Force Policy, Grievance Procedure, Equal Employment Opportunity Grievance Procedure, sick leave, vacation, holiday, retirement and discipline policies and other written County policies effecting wages, hours and other terms and conditions of employment, excluding workload or caseload issues, in effect immediately prior to the commencement of this agreement shall remain in effect during the term of this agreement unless amended by these provisions or subsequent agreement of the parties.

38. SEVERABILITY

It is not the intent of the parties hereto to violate any laws, ruling or regulations of any governmental authority or agency having jurisdiction over the subjects of this collective bargaining agreement, and the parties hereto agree that in the event that any provisions of this agreement are finally held or determined to be illegal or void as being in contravention of any such laws, rulings or regulations, nevertheless, the remainder of the agreement shall remain in full force and effect unless the parts so found to be void are wholly inseparable from the remaining portion of this agreement.

39. FULL UNDERSTANDING, MODIFICATION AND WAIVER

- A. This Agreement sets forth the full and entire understanding of the parties regarding matters set forth herein, and any and all prior or existing Memoranda of Understandings, and Agreements, regarding the matters set forth herein, whether formal or informal are hereby superseded and terminated
- B. It is the intent of the parties that Ordinances, Board resolutions, rules and regulations enacted pursuant to this Agreement be administered and observed in good faith.
- C. Nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this agreement.
- D. The County acknowledges that in any joint meetings or negotiation between the County, the CAA, and any other employee organization, the rights, duties and obligations of Government Code Section 3505.3, remain in full force and effect, and are in no way waived or limited by any agreement to negotiate jointly.

40. FUTURE MEET AND CONFER TOPICS

The parties agree during the term of this agreement to meet and confer at the request of either party to the extent required under the Meyers-Milias-Brown Act. These mutual, non-binding discussions are specifically limited to the following:

- A. PBGH Health Plan Changes
- B. Retiree Health Trust Fund
- C. Pay Incentive Program
- A. Examine Medical Separations Pursuant to Government Code 19253.5(a)
- B. Amend Stanislaus County Personnel Policies:
  - 1) 3.08.050 To include Psychologists.
  - 2) 3.28.130 Redefine time limits to appeal dismissal for AWOL.
  - 3) 3.08.280e Define appropriate salary upon voluntary demotion.
  - 4) 3.36.030f Determine vacation accrual after unpaid leave of absences.
  - 5) 3.08.050 Redefine drug testing procedures.
  - 6) 3.08.280c Reinstatement of current and former employees to previously held positions.
  - 7) Other County Personnel Policies mutually agreed to by the County and the Union.

The County agrees that any changes made as a result of meet and confer pursuant to this section shall not result in a loss of salary, compensation or cafeterias contributions currently provided to OE3 members, except item e 3) 3.08.280e.

## ATTACHMENT A

### REDUCTION-IN-FORCE

Whenever in the judgement of the Board of Supervisors it becomes necessary in the interest of economy or because the necessity for a position no longer exists, the Board of Supervisors may abolish a position or classification, and if necessary reduce personnel by laying off employees without the filing of disciplinary charges and without granting the employee the right of appeal except as accorded in these provisions. In reducing the number of employees every effort will be made to avoid displacing existing employees by allowing voluntary demotion or transfer to vacant positions. In laying off employees in the Classified Service, the order of separation shall be based upon seniority as herein specified.

In the event that a Reduction-In-Force action is to be recommended in the Attorney's Unit during the period of this agreement, a good faith effort will be made by the County to notify the Union, and meet upon Union request to discuss alternatives to the Reduction-In-Force action including voluntary time-off, approval of leave of absence requests, and voluntary lay-offs. The County will do what it reasonably can to make available to employees who are laid off retraining opportunities as available through Federal or State job training programs or other available County programs.

#### ORDER OF SEPARATION

Employees in the same class shall be separated considering seniority and type of appointment with the least senior employee in any category of appointment being the first separated and with tied seniority scores broken as provided herein. The sequence of appointment types shall be:

1. Provisional
2. Extra-Help
3. Trainee
4. Regular Full-Time and Regular Part-Time

Within regular part-time and regular full-time appointments, employees with probationary status shall be laid off before employees with permanent status in the same class regardless of relative seniority.

SENIORITY: Employee's seniority will be based on amount of total continuous service with the County. In an affected classification, that employee with the least total continuous service shall be the first separated from the affected department except as otherwise provided herein. In cases of equal seniority among employees, the order of separation shall be determined by the Director of Personnel based on a review of relative performance efficiency as evidenced in performance evaluations and such relevant materials as may be submitted by the Department and affected employee in an informal hearing.

PERFORMANCE: Notwithstanding the above, service time credit for the purpose of determining seniority shall not include employment during any periods between completion of a performance evaluation evidencing an overall rating below satisfactory and completion of a subsequent evaluation with satisfactory or better overall rating.

WRITTEN NOTICE: Written notice of layoff shall be served on affected employees in person or by a certified letter mailed to the last address on file with the Director of Personnel. Notice will be served or mailed at least 21 calendar days prior to the effective date of the separation. Notice shall be deemed served upon return of a delivery receipt or receipt showing attempted delivery.

DEMOTION IN LIEU OF LAYOFF: In lieu of being laid off, an employee may elect to voluntarily demote within the same department to a lower paid classification in the same series or to a classification previously held in the County. Less senior employees who may be displaced as a result of demotion actions shall in turn be subject to the provisions of this section. In order to exercise these options, the employee affected must so advise the Chief Executive Office in writing no later than seven working days after receiving notice of layoff.

TRANSFER IN LIEU OF LAYOFF: In lieu of being laid off, an employee may request to voluntarily transfer or demote to a vacant position in another department in the same or comparable classification or to a classification previously held. Such requests require approval by the gaining Department Head.

SENIORITY LIST: The County agrees to provide the Labor Representative of with the seniority list for each classification in the bargaining unit affected by reduction-in-force actions, prior to the time the notice of layoff is submitted to the affected bargaining unit employees.

County Attorney Association agrees to take all due precautions to insure that the information on the list will be used for no purpose other than County Attorney Association representation of employees affected by a reduction-in-force action and will not be used in any manner so as to harm the confidentiality or right of privacy of members of the bargaining unit. County Attorney Association agrees to indemnify, defend and hold harmless Stanislaus County, its employees and agents against damages, or claims of whatever nature arising out of County Attorney Association control and use of such lists:

RE-EMPLOYMENT: For a period of eighteen months from the effective date of lay off no regular position in the affected classification in the department involved shall be filled without first providing employees possessing rights to re-employment with an opportunity to be rehired. Any permanent employee displaced as a result of a Reduction-In- Force action shall have the right to be re-employed to a lower paid classification in the same series, within the same department, and bargaining unit, in addition to the classification from which the employee was laid off. Re-employment lists shall be in inverse order of lay-off with the most senior employee from among those laid off rehired first. Such re-employment would be at the same salary step or the salary range assigned such classification and with the same seniority as the employee had earned at the time of lay-off. Should the determined consistent with County Code Section 3.24.050, "Salary on Demotion". Benefits paid out at the time of separation such as vacation or such leave may be bought back at employee expense. If the affected employee had permanent status at the time of the reduction-in-force action, that employee will be required to serve an additional six month probationary period at the time of re-employment if the employee is brought back after a twelve month break in service. Written notice of the re-employment opportunity shall be

sent by certified mail to the last known address of the former employee by the Chief Executive Office. The former employee shall have 14 calendar days to respond to the notice.

ADMINISTRATIVE DECISIONS: The Chief Executive Officer is authorized to render decisions resolving questions of seniority, performance, and continuous service incident to the administration of this section.

SPECIAL CIRCUMSTANCES: Employees assigned to a position on the basis of bona fide occupational qualifications may be exempted from the reduction-in-force list for their classification where those skills are necessary to continue the level of service rendered by the program.

APPEALS: Persons subject to layoff or demotion under these provisions may appeal to the Chief Executive Officer any allegations of error, fraud, irregularity or bias in application of the reduction-in-force procedures. The affected person may, within seven days after receipt of the decision by the Chief Executive Officer, appeal that decision. An appeal shall be filed with the Chief Executive Officer. The Chief Executive Officer shall forthwith transmit the appeal request to the hearing board established pursuant to Section 3.28.060 of the Stanislaus County Code. The hearing board shall within a reasonable time from the filing of the appeal, commence the hearing thereof and shall notify the interested parties of the time and place of hearing at least five days in advance hereof.

At the hearing, both the appellant and the County shall have the right to be heard publicly, to be represented by Counsel and to present evidentiary facts. The parties may agree to a hearing closed to the public and the hearing board may at any time exclude any person who may be a witness in the appeal under consideration. The hearing shall be informal and the hearing board shall not be bound by any rules of evidence governing trial procedure and state courts. The hearing board shall render a written decision, copy of which shall be transmitted to the Chief Executive Officer. The Chief Executive Officer shall serve a copy of the decision upon the appellant. The decision of the hearing board shall be final.

Relevant provisions in Chapter 3.28.060 and 3.28.070 of the Stanislaus County Code shall govern the hearing process.

## **ATTACHMENT B**

### **3.28.130 Petition to set aside resignation**

In the event a person claims his resignation was given by reason of mistake, fraud, duress, undue influence, or that for any other reason it was not his free and voluntary act, he may submit a written petition to the Director of Personnel to set aside his resignation and such petition shall be treated in the same manner as an appeal from an order for discharge; provided, however, that no such petition shall be considered by the hearing board unless it is filed with the Director of Personnel within thirty days after (A) the last date upon which services to the County are rendered; or (B) the date the resignation is tendered to the appointing power, whichever is later. (Prior code § 2-252.)

## ATTACHMENT C

### **Binding Arbitration by an Outside Arbitrator in Lieu of Section 3.28.060 Hearing Board and Hearing Officers of The Stanislaus County Discipline Ordinance**

A. Submission of the Disciplinary Appeal to the Hearing Board or Hearing Officer

The parties agree that the employee and the recognized employee organization may elect to have the disciplinary matter heard by the current discipline appeals board as provided by Stanislaus County Code Section 3.28.060, Hearing board and hearing officers in lieu of binding arbitration by an outside arbitrator. Should the employee and the recognized employee organization elect to utilize the hearing board or hearing officer as provided by Chapter 3.28.060 of the Stanislaus County Code, the decision of the hearing board or hearing officer shall be final and the employee shall forego the option of arbitration by an outside arbitrator. The employee organization agrees to assume half of the cost of the hearing officer.

In the event that an employee chooses to represent himself/herself, or arranges for representation independent of the recognized employee organization, the cost of the hearing officer shall be waived. Binding arbitration shall not be an option for an employee who is not represented or seeks representation outside of the recognized employee organization.

B. Submission of the Disciplinary Appeal to Binding Arbitration

1. Notice of Action and Appeal

In the event the Department Head determines to discharge, suspend or reduce in rank or compensation a permanent employee after completing the procedures provided in section 3.28.020, he shall serve upon the employee an order in writing stating (A) the nature of the disciplinary action, (B) the effective date of the action, (C) the causes therefore, (D) the specific acts or omissions upon which the causes are based, stated in ordinary and concise language, and (E) the right of the employee to appeal. The employee acted against may, within seven (7) days of service of the order, appeal the action of the Department Head. If the employee fails to appeal within the time specified, or subsequently withdraws his/her appeal, the punitive action taken by the Department Head shall be final.

An appeal shall be in writing, shall be filed with the Director of Personnel and shall contain a complete answer to each charge set

forth in the order. The answer shall include any objections the employee may have as to the form or substance of the order or the procedures followed by the Department Head.

The recognized employee organization, on behalf of the represented employee, may, within fourteen (14) calendar days of service of the order, request in writing to the Director of Personnel the use of binding arbitration in lieu of the discipline appeals board. Should the request for appeal be filed within the seven (7) calendar day period, and the request for binding arbitration not be submitted to the Director of Personnel within the fourteen (14) calendar day period, the matter will be scheduled and heard by the discipline appeals board.

2. Selection of Arbitrator - If the recognized employee organization elects to have the disciplinary proceeding heard by an arbitrator, the arbitrator may be selected by mutual agreement between the Director of Personnel and the employee organization. However, should the parties fail to mutually agree on an arbitrator, they shall make a joint request of the State Conciliation Service for a list of five (5) qualified arbitrators. The arbitrator shall be selected from the list by the parties alternately striking names with the first strike determined by chance, until only one (1) name remains, and that person shall serve as arbitrator.

The Director of Personnel shall forthwith transmit the order and appeal to the arbitrator for hearing. The arbitrator shall, within a reasonable time of the filing of the appeal, commence the hearing thereof, and the Director of Personnel shall notify the interested parties of the time and place of hearing at least five (5) days in advance thereof.

3. Arbitration Issues - The parties shall endeavor to exchange summaries of evidence, and a list of witnesses to be used by each side, shall be submitted to each other and the arbitrator no less than five (5) working days prior to the arbitration hearing.
4. Arbitration Expenses Shared - The cost of employing the arbitrator and the court reporter for all discharges, excluding the transcript, shall be borne equally by both parties to the arbitration. The cost of the transcript shall be covered as provided by Stanislaus County Code Section 3.28.110, subsection A, Hearing Procedure. All other costs such as, but not limited to, attorney's fees shall be borne by the party incurring that cost. If both parties agree to the use of a court reporter other than for discharges, or the arbitrator

requires the use of a court reporter, the cost of the court reporter shall be shared equally.

5. Duty of Arbitrator - The duties of the arbitrator shall be those of the hearing board as referred to throughout the Stanislaus County Code, including, but not limited to, Sections 3.28.070 Hearing rules' and 3.28.110 Hearing procedure.
6. Arbitrator's Decision Due - Unless the parties agree otherwise, the arbitrator shall render the decision in writing within thirty (30) days following the close of the hearing. A copy of the written decision shall contain findings of fact which may be stated in the language of the pleadings or be referenced thereto. If requested by either party, the decision shall be accompanied by findings of fact and conclusions of law.

A copy of the written decision shall be transmitted to the Department Head and the Director of Personnel. The Director of Personnel shall cause to be served a copy of the decision upon the employee. Service by mail at the employee's last known address shall be sufficient for purposes of this section. A copy of the decision shall be placed in the employee's personal history file. The decision of the arbitrator shall be final and binding on both parties.

7. Non-Employee Organization Representation - In the event that an employee chooses to represent himself/herself, or arranges for representation independent of the recognized employee organization, the cost of the hearing officer shall be waived. Binding arbitration shall not be an option for an employee who is not represented or seeks representation outside of the recognized employee organization.