

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE COUNTY OF SONOMA,**

**AND THE**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS,**

**STATIONARY ENGINEERS, LOCAL NO. 39**

**July 2, 2018 – July 1, 2019**

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## ARTICLE 10: HOLIDAYS

### 10.1 Holidays – Paid

The County shall provide full-time and part-time County employees the following paid holidays provided that the employee is in paid status on the employee's regularly scheduled workdays before and after the holiday. All holidays shall be reduced proportionately by any unpaid time in the pay period in which it is earned.

- a) New Year's Day, January 1st\*
- b) Martin Luther King, Jr.'s Birthday, the third Monday in January
- c) Lincoln's Birthday, February 12th\*
- d) President's Day, the third Monday in February
- e) Cesar Chavez Day, March 31<sup>st</sup>\*
- f) Memorial Day, the last Monday in May
- g) Independence Day, July 4th\*
- h) Labor Day, the first Monday in September
- i) Veteran's Day, November 11<sup>th</sup>\*
- j) Thanksgiving Day, as designated by the President
- k) The day following Thanksgiving Day
- l) Christmas Day, December 25<sup>th</sup>\*
- m) Each day appointed by the Governor of the State of California and formally recognized by the Board of Supervisors of Sonoma County as a day of mourning, thanksgiving, or special observance.

\*Date Specific Holidays

### 10.2 Elimination Of Floating Holidays And Holiday Eve Hours

The entitlement to and accrual of floating holiday and holiday eve hours is eliminated effective June 30, 2013. Hours accrued prior to the elimination of floating holiday hours and holiday eve hours will remain in the Compensatory Bank, and may be taken as time off on a day mutually agreeable to the employee and the Department Head and may not be cashed out. Only an employee who is separated from County service shall be entitled to payment for any remaining hours with the Compensatory Bank at the employee's base hourly rate at the time of the employee's separation.

### 10.3 Holidays – Observed

If a date-specific holiday listed in section 10.1 falls on a Saturday, the preceding Friday shall be the County observed holiday. If a date-specific holiday falls on a Sunday, the following Monday shall be the County observed holiday. All date-specific holidays listed in section 10.1 shall be observed on the date specified in Section 10.1.

### 10.4 Holidays – Compensation Full-Time Employees

A full-time employee whose assigned work schedule does not include the date-specific holiday or the observed holiday, shall observe the holiday (and not work) on one of the employee's regularly scheduled work days during the same pay period as the County observed holiday or during the pay period immediately preceding or following the same pay period as the County observed holiday. All other full-time

employees whose regular assigned work schedule includes the date-specific holiday or the observed holiday shall receive their regular eight (8) hours pay at their base hourly rate of pay. The County shall pay an employee who actually works on either the date-specific holiday or the County observed holiday listed in Section 10.1 at the overtime rate. The County shall compensate an employee who works on both the date-specific holiday and the County observed holiday listed in Section 10.1 at the overtime rate for one holiday and at straight time based on the employee's base hourly rate of pay for the other holiday. Unless required by law, only one day shall be paid at the overtime rate of pay.

10.5 Holidays – Compensation – Employees on Leave Without Pay

An employee on leave without pay who has paid leave remaining (including vacation, sick leave, or compensatory time), shall not be permitted to use that paid leave to demonstrate that the employee was in paid status on the employee's regularly scheduled workdays before and after the holiday as required by Section 10.1.

10.6 Holidays – Compensation Part-Time Employee

For each holiday listed in section 10.1, each part-time employee shall receive holiday pay equivalent to 1/10th of an hour for each hour regularly scheduled to be worked based on the employee's ongoing work schedule. If the employee's total hours in paid status (excluding the holiday benefit) exceed the hours regularly scheduled to be worked, the employee shall receive holiday pay equivalent to 1/10 of an hour for each hour in paid status (excluding the holiday benefit). This holiday pay shall not exceed eight hours for each holiday nor, for a part-time employee, be less than 3.2 hours for each holiday in the pay period.

10.7 Floating Holiday

Each bargaining unit member will be granted eight floating holiday hours each calendar year, provided the employee is in paid status on the employee's regularly scheduled workdays before and after the floating holiday. The timing of the employee's use of the floating holiday shall be subject to advance approval of the Department Head or his designee. The floating holiday hours may be taken at any time during the calendar year, but may not be carried over into the next calendar year. Further, there will be no cash out of floating holiday hours. Floating holiday hours must be taken in no less than 1/10 of an hour increments.

**ARTICLE 11: TOOLS AND EQUIPMENT**

11.1 County Provided Tools And Equipment

Except as provided in Section 11.2, below, the County agrees to provide all tools, equipment and supplies reasonably necessary to bargaining unit employees for performance of employment duties.

## 11.2 Employee-Provided Tools

Employees assigned to Fleet Operations, Sonoma County Fair and Exposition, Inc. or Water Agency as an Automotive Mechanic, Automotive Technician, Heavy Equipment Mechanic, Lead Automotive Technician, Senior Heavy Equipment Mechanic, or Welder are required to provide the tools necessary to perform all assigned work within their particular job classification. The job description for each of these classifications will be revised, as needed, to clarify that employees are required to provide the tools necessary to perform all assigned work within the job classification.

## 11.3 Tool Replacement And Care

The County agrees to reimburse employees at replacement value for tools broken during normal usage or for tools stolen from the work site, subject to the following guidelines:

- a) No reimbursement is authorized for loss primarily attributable to the claimant's own negligence or carelessness.
- b) If an employee in a job classification listed in Section 11.2 wants his personally-owned tools to be insured by the County against loss or damage at work, the employee shall provide the County with an inventory of the employee's tools, including type of tool, quantity, make and condition. The inventory shall be forwarded to the department designee and updated as the employee deems necessary. Within seven (7) working days from receiving the employee's inventory list, the County will provide written acknowledgment of receipt. The County shall not provide insurance coverage or replacement reimbursement for any damaged or stolen tool that is not on the tool inventory provided by the employee. The County will provide a copy of each employee's master tool list each year, by the first week in January, upon request.
- c) All tools must be stored in a cabinet, box, or locker with locks in good working order. All tools shall be locked prior to the employee leaving the work site.
- d) All losses shall be reported to the County in writing as soon as discovered.
- e) Cabinets and chests will be considered tools. This policy does not include electronic equipment unless it has been authorized for use by the County. The procedures for reimbursement shall be the same as the personal property reimbursement guidelines as outlined in Board of Supervisors Resolution No. 56420 dated January 18, 1977.
- f) Non-County workers are not entitled to use the personal tools of an employee in the bargaining unit.

## 11.4 After Duty Hours Access To Personal Tools

Employees assigned to Fleet Operations or Water Agency as an Automotive Mechanic, Automotive Technician, Heavy Equipment Mechanic, Lead Automotive Technician, Senior Heavy Equipment Mechanic, or Welder shall have security access to the

































11.4, rejoin the County retirement system, and are otherwise eligible for retiree medical benefits under this section. The break in service caused by the layoff shall be bridged upon restoration such that, although no service time is earned during the break, consecutive service is restored for eligibility for this benefit.

B. County Contribution

1) Initial County Contribution:

- a. On the first pay date following completion of the eligibility requirements, regular full-time employees shall receive a lump sum contribution of \$2,400 deposited into an HRA account established in their name. Thereafter, contributions will be made each pay period based on the actual hours worked during that pay period.
- b. The lump sum contribution amount for regular part-time employees shall be pro-rated based on their allocated position only (e.g., a regular employee in a 0.5 full-time equivalent allocated position will receive a lump sum contribution of \$1,200 deposited into their HRA account).

2) Regular County Contribution:

After the initial contribution (defined above) is made, the County shall contribute \$0.58 per paid status hour (no more than eighty (80) hours biweekly), not including overtime, for each eligible employee. For a full time employee, this equates to approximately \$100 per month or \$1,200 per year, after the initial eligibility period is met.

3) Access To Account Balance:

- a. Participants may access the balance in their HRA account upon termination of employment and attainment of age 50, or upon retirement from the Sonoma County Retirement System, whichever is earlier.
- b. Participants may defer accessing the account balance to any time beyond the earliest date described in (a).
- c. Amounts that remain in the account balance are available to reimburse the participant for the same permitted medical expenses for the spouse and any other dependent covered under the retiree medical plan, however, federal regulations do not permit the inclusion of expenses for domestic partners.

4) Survivors Of Eligible Retirees With Account Balances:

- a. Spouses and eligible dependent children or dependent adults that are disabled may continue to access account balances after the death of the retiree.





































17.22.11 Employee’s Status On Returning From Leave

Except as provided by law, on return from family care and medical leave, an employee is entitled to be returned to the same or equivalent position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee has no right to return to the same position. Use of family care and medical leave will not result in the loss of any employment benefit that accrued prior to the start of an eligible employee’s FMLA/CFRA leave.

17.22.12 FMLA/CFRA Procedures, Definitions, and Forms

A description of the required process and procedures to follow for intermittent leave and reduced leave schedules, forms to use when requesting family care and medical leave, and applicable definitions are included in the County Medical Leave Policy and found on the County Human Resources Department website, and are available from the Human Resources Department. The provisions of this Article 17 are subject to Article 26, Grievance Procedure, of this MOU, but the County Medical Leave Policy is not subject to Article 26, Grievance Procedure, of this MOU.

17.22.13 This Section 17.22 shall be interpreted as the legal minimum family care and medical leave available to eligible employees. The County may grant additional leave without pay under this Section 17.22 provided it is consistent with the applicable provisions of the Sonoma County Civil Service Rules, County leave policies, and other provisions of this Memorandum.

17.23 Employees will be required to use paid leaves before a leave of absence without pay as shown in the following table:

Event	Sick	Vacation	CTO	Comment
§ Employee’s own incapacity due to illness or injury	Yes, you may keep 40 hrs.	No	No	
§ During time needed by the employee to undergo medical or dental treatment or examination	Yes, you may keep 40 hrs.	No	No	
§ Pregnancy disability	Yes, you may keep 40 hrs.	No	No	
§ When the employee’s family member is incapacitated by illness/injury and the employee must care for him/her or for care, exam	Yes, you may keep 40 hours.	Yes	Yes	You may keep 40 hrs. in any combination of Vac. & CTO



Event	Sick	Vacation	CTO	Comment
or treatment of a family member*.				
§ Non-sick FMLA/CFRA** qualifying event (e.g., child bonding leave)	No	No	No	
Education Leave	No	Yes	Yes	Must use all Vac. & CTO
Approved undisclosed reason or extended vacation	No	Yes	Yes	Must use all Vac. & CTO

\*In the event an employee is eligible to receive Paid Family Leave to care for the serious health condition of a family member or to bond with a new child, they will not be required to use sick, vacation or CTO time, while receiving that benefit.

\*\*Family & Medical Leave Act (FMLA)/California Family Rights Act (CFRA)

#### 17.24 Leaves – Time Off For Donating Blood

If an employee does not have sufficient time outside of working hours to donate blood, subject to department operational needs, the employee may without loss of pay take off up to one (1) hour of working time twice a year for the purpose of donating blood. The employee shall give the employee’s supervisor at least five (5) working day’s notice that time off for donating blood is desired, in accordance with provisions of this Section (17.24).

#### 17.25 Disaster Leave

When there has been a natural disaster of a magnitude that requires the Board of Supervisors to Proclaim a County State of Emergency, the County will enact this disaster leave provision.

During the proclaimed emergency period and for up to one year from the termination of the said proclamation, County employees may donate accrued compensatory time and vacation leave to other County employees who have lost work time because they have been a victim of a disaster affecting their primary residence. For up to one year from the termination of said proclamation, impacted employees may use up to 320 hours of donated leave. Such donated time will not exceed the total amount of time lost by the receiving employee including vacation, compensatory time used and any unpaid leave incurred. Unused donated time at the expiration of the leave provision period will be returned to the donor.

#### 17.26 Paid Parental Leave

##### 17.26.1 Eligibility

Effective 10/1/18, for eligible events that occur on or after Board adoption of the parties reopener agreement, any permanent or probationary

employee who has been continuously employed by the County for at least 12 months prior to the start of the leave shall be eligible for Paid Parental Leave (PPL) to use within 12 months of the following eligible events:

- Birth of a child of the employee, the employee's spouse, or the employee's domestic partner
- Placement of a child with the employee's family for adoption or foster care

For the purposes of PPL, the definition of "parent" and "child" are as defined by the California Family Rights Act.

#### 17.26.2 Benefit and Use

Eligible employees shall be granted 320 PPL hours to use within 12 months of the qualifying event for the purposes of bonding. Part-time employees shall be eligible for a pro-rated number of PPL hours, based on allocated FTE.

PPL is based on a 12 month rolling calendar. No more than 320 PPL hours may be used in any 12 month period.

PPL is based on the employee's base hourly wage plus cash allowance. It is considered "paid status" for the purpose of merit, seniority, premiums, vacation and sick leave accrual, and County benefit eligibility and contributions.

PPL is pensionable and counts towards retirement service credit.

PPL may be used in a block of continuous time or as intermittent leaves as arranged in advance. Unless approved by the Director of Human Resources, PPL cannot be used retroactively.

Use of PPL shall not be cause for an employee to lose his/her current assignment on a permanent basis; however, assignments may be altered to accommodate the employee's or department's operational needs when working a reduced work schedule.

An employee in a disability period following birth of a child must use sick leave down to 40 hours before using PPL.

#### 17.26.3 Coordination of Benefits & Leaves

PPL can be fully integrated with any short-term disability or California Paid Family Leave program. STD and PFL will not reduce PPL leave entitlement. For time covered by FMLA/CFRA job protected leave for bonding, PPL must be used prior to other accrued leave or Leave Without Pay. If an employee has exhausted FMLA/CFRA entitlements for reasons other than bonding, PPL must be used prior to Leave Without Pay for arranged leaves for the purpose of bonding. Scheduling of non-CFRA protected PPL is subject to department approval. PPL does not need to be used when an employee is on leave for reasons other than bonding. To the

extent CFRA leave is available, it will run concurrently with PPL.

#### 17.26.4 Program Review Process

County and Local 39 Representatives will meet to discuss any unanticipated issues that arise, including administrative and legal issues.

#### 17.26.5 PPL Implementation

For qualifying events occurring after 10/1/2017, PPL may be applied to any remaining CFRA eligible bonding hours still available to the employee after the program effective date.

### **ARTICLE 18: COMPENSATION BENEFITS**

#### 18.1 Mileage Reimbursement

An employee who is authorized to use a motor vehicle for travel required in the performance of County work shall be reimbursed at the standard IRS business mileage rate.

#### 18.2 Deferred Compensation

##### 18.2.1 Deferred Compensation – Voluntary

The County agrees to maintain the current deferred compensation plan for bargaining unit members eligible under Federal law and the rules of the deferred compensation plan. Nothing herein renders County liable to the Union or any employee for a discontinuance of Internal Revenue Service or Franchise Tax Board approval of any County deferred compensation plan or portion thereof. The County and the Union agree to meet upon request of either party during the term of this Memorandum to consider the development of additional mutually agreeable deferred compensation investment options.

##### 18.2.2 Deferred Compensation – County Paid Program

Effective the first full pay period following Board of Supervisors adoption of a successor MOU, the County shall deposit .25% of the biweekly base salary of each employee of this bargaining unit into the County-provided 457 unless regulations prevent contributions, then contribution will be made to 401(a) Deferred Compensation account, provided that the employee is in paid status for at least 50% of the employee's regular work schedule in a pay period. Nothing in this Memorandum renders the County liable to any employee for continuance of the current deferred compensation plan in the event of a discontinuance of Internal Revenue Service or Franchise Tax Board approval of any County deferred compensation plan or portion of the plan or the employee becoming ineligible to participate in the deferred compensation plan. County paid deferred compensation under this Subsection 18.2.2 shall not be included in the calculations of retirement benefits.

The County will establish a County-paid 457 Deferred Compensation Plan for bargaining unit members eligible under federal law and plan rules.

18.2.3 Deferred Compensation – Employee Appeal

Employees may appeal to the Deferred Compensation Advisory Committee should they have a complaint regarding the administration of the program.

18.2.4 Deferred Compensation – Non-Grievability

The only deferred compensation issue that is grievable or arbitrable is whether the County has made its contribution.

18.2.5 Deferred Compensation – Program Modification

Nothing herein renders the County liable to the Union or any employee for a discontinuance of Internal Revenue Service or Franchise Tax Board approval of any County deferred compensation plan or portion thereof, or the employee becoming ineligible by law or the rules of the plan, to participate in the deferred compensation program(s).

18.3 414(h)(2) - Tax Deferred Retirement Contribution

All employees who belong to the retirement system shall have their wages adjusted according to Section 414(h)(2) of the Internal Revenue Code which will have the effect of deferring Federal and State income taxes on the retirement contributions.

**ARTICLE 19: LAYOFF AND RESTORATION**

19.1 Layoff and Restoration - Water Agency

a) Applicability

The parties agree that the following layoff policy and procedures shall be applicable to employees of Sonoma County Water Agency who are covered by this Memorandum.

b) Force Reduction

Employees shall be subject to layoff whenever their positions are abolished, or whenever necessary because of lack of work or lack of funds.

c) Order of Layoff

- 1) Layoff procedures shall be applied on a Water Agency-wide basis. Where appropriate, after meeting and conferring with the Union, the Agency may authorize that layoff procedures be restricted to employees of one (1) or more divisions or small units of the Agency.
- 2) Whenever necessary to layoff one (1) or more employees in the Agency, in a division or unit in which there is more than one (1) employee in the class in

which the layoff is necessary, employees shall be laid off in the following order:

- (a) Extra-help and Provisional employees.
  - (b) Employees who have had their first merit increase extended or denied because of poor job performance.
  - (c) Full-time and part-time employees who have less than 1,040 hours of continuous County and Agency service.
  - (d) Part-time and full-time employees with more than 1,040 hours of continuous County and Agency service.
- 3) Continuous County and Agency service in the class in which the layoff occurs or in any other class having the same or higher salary allocation shall be counted as service in the affected class. Employees with less total continuous County and Agency service in the affected class shall be laid off before those with greater total continuous County and Agency service in the affected class. Continuous part-time service shall be prorated on an hour-for-hour basis in its relationship to full-time work.
  - 4) For purposes of this Section 19.1, continuous service means continuous employment by the County or Water Agency, in paid or unpaid status.

d) Displacement

- 1) A full-time or part-time employee who is laid off and who has greater total continuous County and Agency service than another employee in the Agency in another class with the same or lower salary allocation, and which class the employee previously occupied in good standing and for which the employee is qualified for certification, transfer or voluntary demotion, may elect to displace the junior employee in the Agency in the class in accordance with the rules on the order of layoff (Section 19.1(c)). An employee who is displaced shall be laid off and replaced by the employee who displaces him/her.
- 2) An employee who is displaced because of layoff may in the same manner displace an employee who is junior to him/her.
- 3) Should an employee have the right to displace in more than one class, the employee shall first displace in the class with the highest allocated salary.

e) Restoration

- 1) Each person other than extra-help or provisional who has been laid off or displaced from, or who has in lieu of layoff been demoted voluntarily from a position which the employee occupied in good standing shall, in writing by certified mail, be offered restoration to a vacant position in the classification from which the employee was laid off, which the County determines to fill

within two (2) years after the date the employee is laid off or displaced. The Agency shall make a reasonable attempt to notify an employee who is eligible for restoration. If an employee cannot be reached within thirty (30) calendar days, the right to restoration shall be forfeited. Should an employee not accept restoration within five (5) regular Agency business days after the receipt of the offer or should the employee decline to begin work within fifteen (15) regular Agency business days after the receipt of the offer, the employee shall be declared unavailable and shall forfeit the right to restoration unless further offer of restoration is granted by the General Manager.

- 2) Whenever more than one person has been laid off and/or displaced in the same class in the Agency, the order of restoration shall be in reverse of the order of layoff. An employee who has restoration rights in more than one class because of layoff or displacement in more than one class, shall have restoration rights in each of the classes from which the employee was laid off or displaced. Refusal to accept restoration in one class does not eliminate the right to restoration in the other class or classes.
- 3) Whenever a person is unavailable for restoration, the next senior person who is eligible for restoration shall be offered restoration in the same manner and under the same conditions. Should there be no person eligible and available for restoration, the position shall be filled by the Agency.
- 4) A person who has forfeited for restoration may, within ten (10) regular Agency business days after forfeiture, request in writing to the General Manager that the employee be considered for a further offer of restoration, should such occur within one (1) year after layoff or displacement. The employee's request shall contain a full explanation of the reason for the employee's unavailability. Within thirty (30) calendar days after the request is filed the General Manager shall either grant or deny the request. The General Manager may specify conditions under which the further offer of restoration may be granted.

f) Appeals

- 1) The Board of Directors of the Sonoma County Water Agency shall act as a separate and final hearing body for layoff appeals for all full-time and part-time employees. Extra-help employees have no appeal rights.
- 2) Implementation of a layoff decision may be appealed by an employee laid off; however, the decision to layoff may not be appealed.
- 3) Any formal written notice to a part-time or full-time employee stating that the employee is subject to layoff or layoff resulting from displacement may be appealed as follows:
  - (a) Within ten (10) regular Agency business days from the receipt of the notice, an employee may, within the provision of Section 19.1(F)(2), appeal the action to the General Manager.











Board of Directors within ten (10) business days of receipt of the order. The petition shall state whether the employee requests an open or closed hearing.

- 3) Within thirty (30) days of receipt of a petition, the matter shall be placed on the agenda of the Board of Directors for purposes of setting a hearing date.
- 4) The Board of Directors may, in its discretion, appoint a hearing officer to hear the appeal. If all parties mutually agree, the hearing will be conducted by a member of the California Bar Association, or an Administrative Law Judge or a hearing officer selected from a list provided by the State Conciliation Service. If no agreement is reached, the Board of Directors will select a hearing officer from the above list or at their discretion may hear the appeal. The hearing shall be conducted in the manner of hearings conducted under the Administrative Procedure Act. A hearing before the hearing officer shall be conducted in the manner of hearings conducted under the Administrative Procedure Act. The hearing officer may affirm, modify or revoke a decision of the General Manager. The decision of the hearing officer shall be final.
- 5) At a hearing before the Board of Directors witnesses shall testify under oath and there shall be a right to cross-examination. There shall be no right to discovery. The hearing need not be conducted according to technical rules relating to evidence and witnesses. The rules of evidence and the manner of producing evidence shall be those rules set forth in Section 11513 of the Government Code for the conduct of hearings under the Administration Procedure Act. The decisions of the Board shall be final.
- 6) At either a hearing before a hearing officer or before the Board of Directors, the appointing authority shall have the burden of proving the charges by a preponderance of the evidence. The appointing authority shall open the case and present his evidence. The employee shall then present his defense. Thereafter, each side may present rebuttal evidence.
- 7) Any decision made by the Board of Directors pursuant to this article is a personnel matter and the Board may hear and consider the matter in closed session.
- 8) Costs of a hearing officer shall be shared by the parties. If a party requests a court reporter, it shall bear the costs associated therewith, and shall provide a copy of the transcript to the other party and the hearing officer without charge.
- 9) This article shall not be construed to create any property right that would give rise to procedural due process beyond that specifically described herein.
- 10) This article is not subject to grievance or arbitration under the procedures in this Memorandum or pursuant to any other procedure or policy of the County.

## 20.2 Discipline Notice And Hearing – Sonoma County Fair

- a) The Fair Manager may take disciplinary action against any employee of the Sonoma County Fair.

- b) For purposes of this article, full-time employee means a full-time employee as defined in this Memorandum who has completed six (6) months of satisfactory full-time service (1,040 hours) in an allocated position. For purposes of this Article, a part-time employee means a part-time employee defined in this Memorandum who has completed 1,040 hours of satisfactory service in an allocated position.
- c) All employees other than full-time or part-time employees serve at the pleasure of the Fair Manager.
- d) The Fair Manager may dismiss, suspend or involuntarily demote a full-time or part-time employee only for cause.
  - 1) If the Fair Manager proposes to dismiss, suspend or involuntarily demote a full-time or part-time employee, he shall provide the employee with written notice of the charge or charges and materials upon which the proposed action is based prior to any final disciplinary action being taken. The employee may waive the right to respond. Responses, if made, may be oral or in writing and shall be communicated to the Fair Manager within five (5) business days following the date of service of notice. If mutually agreed to, the Fair Manager may extend the time to respond. If no response or request for extension of time to respond is received by the Fair Manager within such five (5) days, the right to respond will be deemed waived. The Fair Manager may place the affected employee on leave of absence with pay during the five (5) day response period. On written request within such five (5) days by the employee showing good cause therefore, the Fair Manager may extend the time for response for a reasonable period and, if mutually agreed to, may place the employee on leave with pay during the extended response period. The Fair Manager shall consider the response, if any, of the employee in determining the propriety and nature of disciplinary action.
  - 2) If the Fair Manager determines to dismiss, suspend or involuntarily demote a full-time or part-time employee, the order of the Fair Manager shall be in writing and shall state specifically the reasons for the action. The employee may appeal a decision of the Fair Manager to dismiss, suspend or involuntarily demote the employee by filing a petition for hearing with the Board of Directors of the Sonoma County Fair within ten (10) business days of receipt of the order. The petition shall state whether the employee requests an open or closed hearing.
  - 3) Within thirty (30) days of receipt of a petition, the matter shall be placed on the agenda of the Board of Directors of the Sonoma County Fair for purposes of setting a hearing date.
  - 4) The Board of Directors of the Sonoma County Fair may, in its discretion, appoint a hearing officer to hear the appeal. If all parties mutually agree, the hearing will be conducted by a member of the California Bar Association, or an Administrative Law Judge or a hearing officer selected from a list provided by the State Conciliation Service. If no agreement is reached, the Board of Directors of the Sonoma County Fair will select a hearing officer from the above list or at their discretion may hear the appeal. The hearing shall be conducted in the manner of hearings conducted under the Administrative Procedure Act.

A hearing before the hearing officer shall be conducted in the manner of hearings conducted under the Administrative Procedure Act. The hearing officer may affirm, modify or revoke a decision of the Fair Manager. The decision of the hearing officer shall be final.

- 5) At a hearing before the Board of Directors of the Sonoma County Fair witnesses shall testify under oath and there shall be a right to cross-examination. There shall be no right to discovery. The hearing need not be conducted according to technical rules relating to evidence and witnesses. The rules of evidence and the manner of producing evidence shall be those rules set forth in Section 11513 of the Government Code for the conduct of hearings under the Administration Procedure Act. The decisions of the Board shall be final.
- 6) At either a hearing before a hearing officer or before the Board of Directors of the Sonoma County Fair, the appointing authority shall have the burden of proving the charges by a preponderance of the evidence. The appointing authority shall open the case and present his/her evidence. The employee shall then present his/her defense. Thereafter, each side may present rebuttal evidence.
- 7) Any decision made by the Board of Directors of the Sonoma County Fair pursuant to this article is a personnel matter and the Board may hear and consider the matter in closed session.
- 8) Costs of a hearing officer shall be shared by the parties. If a party requests a court reporter, it shall bear the costs associated therewith, and shall provide a copy of the transcript to the other party and the hearing officer without charge.
- 9) This Article shall not be construed to create any property right that would give rise to procedural due process beyond that specifically described herein.
- 10) This Article is not subject to grievance or arbitration under the procedures in this Memorandum or pursuant to any other procedure or policy of the County.

## **ARTICLE 21: SAFETY**

### **21.1 Shared Safety Obligations**

The County is committed to providing a safe and healthy workplace for its employees. It is the duty of all employees to follow safe work practices and procedures and to report any unsafe practices or conditions to their immediate supervisor or designee.

### **21.2 Safety Program**

The County provides an Occupational Safety and Health Program in accordance with Sonoma County Administrative Policy 6-4 Safety Management Policy and Sonoma County Safety Management Program adopted by the Board of Supervisors on February 26, 2008, Resolution #08-0157.

21.3 Safety – Hazard Report, Action, Appeals Process

All hazard reports, actions, and appeals shall follow the process contained in the County of Sonoma Safety Management Policy, Administrative Policy 6-4, and Sonoma County Safety Management Program, and shall not be grievable.

21.4 Safety Training

The County shall continue a County-wide training program for employees, subject to the review and approval of the County-wide committee. Safety training shall include training in identification and correction of health and safety hazards, training in safe work practices, training in hazard reporting and appeal processes, training in CAL-OSHA regulations and procedures. Safety training shall be provided employees on a regular basis. Written records shall be maintained by the Safety Coordinator reflecting the date, duration, and subject matter of any training provided. Training shall be conducted at the lowest practical level of supervision.

21.5 Non-Grievability

This Article 21 is not grievable nor arbitrable.

21.6 Cooperative Committee

21.6.1 To foster union-management cooperation, Local 39 and the County agree to convene as needed and no more frequently than four (4) times during a calendar year a Cooperative Committee composed of no more than six (6) employee bargaining unit members, chosen by the Union, in addition to the Union Business Representative, and six (6) County representatives.

21.6.2 Either the Union or the County may request a meeting of the committee. An agenda will be developed prior to the meeting by the Union Business Representative and a designated County representative. The purpose of the Cooperative Committee is to discuss ideas, as agendized, that impact bargaining unit members and/or bargaining unit work, and aim at improving performance, mutual welfare and public benefit within the County departments and divisions that include bargaining unit members. The Committee, however, will not consider matters within the scope of bargaining or matters that are the subject of a grievance. Without prior mutual agreement between the County and the Union, no Cooperative Committee meeting shall exceed one (1) hour.

21.6.3 The parties understand and agree that this Section 21.6 does not abrogate or imply the abrogation of any provision of this MOU. After a trial period consisting of four (4) Cooperative Committee meetings, either the Union or the County may terminate this Section 21.6. This Section 21.6 is not subject to Article 26, Grievance Procedure.

## **ARTICLE 22: MISCELLANEOUS PROVISIONS**

### **22.1 Emergency Meals**

The County may arrange for meals to be provided at County expense to employees who are required to be kept on duty for prolonged periods of time or for emergency situations.

### **22.2 Employment In More Than One Position**

Except for working elections as provided by resolution of the Board of Supervisors, no person employed in a full-time position may be employed by the County of Sonoma in any other full-time, part-time or extra help position, nor shall any person be employed by the County in two (2) or more part-time positions which will, in combination, provide for more than eighty (80) hours of regularly scheduled work in any bi-weekly pay period.

### **22.3 Nondiscrimination For Union Activity**

This MOU shall be equally applied to all employees without discrimination as to Union activity. Disputes over this provision shall be subject to the grievance procedure in Article 26.

### **22.4 No Discrimination**

Provisions of this Memorandum of Understanding shall be equally applied to all employees in the unit without unlawful discrimination as to age, sex, race, color, natural origin, ancestry, religion, physical disability, mental disability, medical condition (e.g., cancer related), genetic information, marital status, gender, gender identity, gender expression, or sexual orientation. The parties agree that the prohibition against sexual discrimination include sexual harassment. The County and the Union shall equally share the responsibility of the application of this provision. An employee alleging unlawful discrimination may utilize the County's Equal Employment Opportunity Discrimination Complaint Procedure to first seek adjustment of a complaint, but may not use the Grievance Procedure of this Memorandum of Understanding.

### **22.5 Water Agency Personnel Policies**

#### **22.5.1 Classification**

The Board of Directors of the Water Agency will establish job classifications and job specifications for each Agency job classification in accordance with procedures established for County job classifications.

Whenever the General Manager proposes that a new position be created or an existing position abolished, the General Manager shall report the justification in writing to the County Administrator with a copy to the Director of Human Resources. Should the County Administrator concur with the recommended change, a copy of the report and recommendation to the Board of Directors shall be furnished in advance to the appropriate employee organization.

Whenever the General Manager, employee or employee organization believes that a significant change has occurred in the duties and responsibilities of an existing position, which are outside the duties of the current classification, he/she/it shall report the significant facts in writing within thirty (30) County business days to the Director of Human Resources, with a copy to the County Administrator and as applicable to the appropriate employee organization for study and a recommendation report to the Board of Directors. The Human Resources Department staff report shall be presented at a regular meeting of the Board of Directors at which all interested parties shall be given an opportunity to be heard. All interested parties involved in the study, including the employee and the union if applicable, shall be furnished copies of the Human Resources Department staff report at least ten (10) working days prior to the Board of Directors meeting.

Where the Board of Directors finds that there are significant factors which justify a change in classification of a position, the Board of Directors will place the position in the appropriate class. Where the Board of Directors finds that a change in classification is not justified, it shall so inform the department, employee, and/or the employee organization.

A reclassified position shall be filled through certification from the employment list unless the Board of Directors provides for retention of the incumbent. The Board of Directors may retain the incumbent of a reclassified position if the incumbent has satisfactorily performed the duties of the position continuously for at least one (1) year.

#### 22.5.2 Hiring Procedures

- a) Hiring Authority--Employment of Staff. The General Manager shall have the authority to hire employees of the Agency.
- b) Hiring Procedures. The General Manager shall use the resources of the County Human Resources Department in the hiring of regular and temporary employees in accordance with Resolution No. DR 42365 of the Board of Directors, dated October 15, 1973, establishing certain rules and regulations for the administration of the Agency's business.

Recruitment-Regular Position. With respect to regular positions, the County Human Resources Department will conduct a recruitment and examination to establish an employment list of eligible candidates in accordance with the procedures used to establish employment lists for County positions. The Human Resources Department will certify the names of all candidates or any lesser number as the Agency shall request to the General Manager for consideration and selection. The list shall be prepared in the same manner, including, but not limited to, allocation of promotional and veteran's bonus points, and for the same length of time as a County recruitment list. The name of an employee or a former employee may be added to the list on the same basis that a current or former County employee could be added as a free name to a County recruitment list. For example, a regular Agency employee who resigns in good standing pursuant



to this Policy may, within five (5) years of his or her resignation, request in writing that he or she be considered for reappointment to (a) the classification from which he or she resigned, (b) a classification in which he or she formerly held a position, or (c) a lower level classification in the same series of either of the two preceding classifications. If the General Manager would rehire the employee, the former employee's name may be added to a list.

Promotional Certification List. If the General Manager requests a promotional certification list, the Human Resources Director shall certify to the General Manager a list of names of those candidates from the Water Agency having the three (3) highest standings on the employment list as determined by the final examination score.

Temporary Employees. With respect to temporary employees, the County Human Resources Department shall follow the same process for preparing a list of eligible candidates as it does for an extra-help recruitment for county employment.

Candidate Appeal Procedures. Agency employees who are candidates for regular positions have appeal rights to the Director of Human Resources on the same basis as County employees. A candidate may appeal in writing to the Director of Human Resources specific test items in a written or performance examination prior to notification of examination results on the basis of typographical error, incorrect keying or factual error. A written appeal must be delivered or postmarked within seven (7) regular County business days immediately following the day(s) the examination is given. After written notice of the results of an examination, including an unassembled examination/application appraisal, a candidate may appeal on the basis of erroneous scoring, fraud in rating, or improper conduct of examination. Appeals of examination results must be delivered or postmarked within seven (7) regular County business days immediately following the postmark mailing date of the notice of examination results. The Director of Human Resources shall investigate each examination appeal and may grant relief that the Director finds to be justified. If the Director of Human Resources does not resolve the appeal to the satisfaction of the appellant, the employee may, within seven (7) regular County business days after postmark of written notice of the Director's decision, appeal the decision in writing to the Director of Human Resources requesting an appeal hearing. If all parties mutually agree, the hearing will be conducted by a member of the California Bar Association, or an Administrative Law Judge or a hearing officer provided by the State Conciliation Service. If no agreement is reached, the Board of Directors will select a hearing officer from the above list or at the Board's discretion may hear the appeal.

The hearing shall be conducted in the manner of hearings conducted under the Administrative Procedure Act. The hearing officer may affirm, modify or revoke the decision of the Human Resources Director. The decision of the hearing officer or Board shall be final.

An employee alleging unlawful discrimination in the final job interview selection process is encouraged to utilize the County's Equal Employment Opportunity Discrimination Complaint Procedure.

### 22.5.3 Promotional Procedures

- a) Agency Positions: Vacancies in allocated positions at the Agency shall be filled by promotion whenever practical and in the best interest of the Agency. Promotional recruitment and examinations shall be conducted by the Human Resources Department in the same manner as open examinations, except that eligibility is limited to: (1) regular employees of the Agency; and (2) County employees with permanent or probationary status in allocated positions. For each eligible employee, whether part-time or full-time, one (1) service point shall be added to the employee's final examination score for each completed year of continuous service. Service points are computed to the final filing date, to a maximum of five (5) points for up to five (5) years of continuous service. Promotional points shall be given to an employee who was laid off and reinstated within two (2) years of the date of layoff. The time between layoff and reinstatement shall not count as service.

The final examination score for each candidate shall be a whole number of points, not to exceed one hundred (100) points. For this purpose, each score which is greater than a whole number by 0.5 or more shall be counted as the next greater whole number. Each score which is greater than a whole number by less than 0.5 shall be counted as the nearest whole number.

- b) County Positions: Regular employees of the Agency are allowed to participate in County promotional examinations. When authorized by the Civil Service Commission, regular employees of the Agency shall be granted promotional points in County promotional examinations in the same manner as similarly situated County employees. Continuous service as a regular employee with the Agency and/or the County shall count toward the computation of promotional points.

### 22.5.4 Provisional Appointments

Whenever it is necessary to fill a vacancy and an employment list with at least three (3) eligible candidates is not available, the General Manager may, with the approval of the Director of Human Resources, appoint to the position any person who has filed an application and who meets the minimum qualifications for the class. The Human Resources Department shall make reasonable effort to schedule examinations so that provisional appointments do not exceed six (6) months. A provisional appointment shall be terminated within one (1) month after the date of certification to the General Manager of candidates who are available for employment.

#### 22.5.5 Temporary Promotions

When an incumbent of a position is on extended leave or a position becomes vacant and it is necessary to fill the position temporarily, the General Manager may request the Director of Human Resources to authorize the General Manager to make a temporary promotion from a directly related, lower level job class. Whenever possible, candidates for temporary promotion should be selected from a certifiable employment list. The individual selected does not have future restoration rights to the higher level class as a result of the temporary promotion. When the position is permanently filled or the incumbent returns to work, the individual temporarily promoted will be returned to his/her former job class.

#### 22.5.6 Transfer

Regular employees of the Agency may transfer to an allocated position in a County Department with the approval of the General Manager, the County Director of Human Resources and the affected County Department Head. Before a transfer will be approved, the County must verify that the employee was hired by the Agency through a competitive examination process equivalent to that used by the County in selecting regular employees. A County employee occupying a permanently allocated position may transfer to the Agency if approved by the General Manager, the County Director of Human Resources and the employee's Department Head.

#### 22.6 Retirement Credit for Prior Public Service

Employees who are contributing members of the Sonoma County Employees' Retirement Association can purchase retirement credit for public service time rendered prior to employment with the County of Sonoma pursuant to Government Code Sections 31641.1 and 31641.2, during the term of this MOU.

#### 22.7 Distribution

This Memorandum is available on-line at the County's inter-net and intra-net sites.

#### 22.8 Favored Nation Clause

If, during the term of this MOU another bargaining unit negotiates an increase or improvement in compensation or other economic benefits that is greater than that agreed to by Local 39, the County agrees to open the MOU and meet and confer with Local 39 on the subject of compensation.

### **ARTICLE 23: NO STRIKE**

#### 23.1 Union Representation

A material inducement to County's execution of this Memorandum is the Union's representation that the employees it represents will loyally and fully perform their respective duties in an efficient manner so as to provide maximum service to the public, and that the Union will fully perform its obligations owed to the County.

23.2 Prohibited Activity

Accordingly, the Union and the employees it represents agree not to engage in any work stoppage activities during the term of this Memorandum, including but not limited to, strikes (including sympathy strikes), slowdown, sick-ins, or other concerted activities against the County.

23.3 Union Responsibilities

The Union shall not be liable to the County for "wildcat" job action by the employees it represents. The Union shall use its best efforts to prevent any "wildcat" job action and shall: encourage its members, at the earliest possible time, to discontinue the job action; immediately declare in writing delivered to the County and publicize that the job action is illegal and unauthorized; and direct its members in writing to cease the conduct and resume work.

23.4 Written Assurances

This promise by the Union is both a covenant and a condition precedent to the continuing performance by the County of any obligation whatsoever owed by the County to the Union or the employees it represents during the term of this Memorandum. If the County is at any time uncertain of the Union's continued performance, it may demand, and the Union will provide, written assurances of its continued good faith performance of this Memorandum.

23.5 No Lockout

The County agrees that it will not cause a lockout of employees during the term of this Memorandum. The parties agree that the term "lockout" does not apply to a layoff consistent with the layoff provision of this Memorandum nor to job related discipline of an employee.

**ARTICLE 24: AGENCY SHOP SERVICE FEE**

24.1 Union – Fair and Equal Representation

It is recognized that the Union must provide fair and equal representation to all employees in all represented classes without regard to Union membership or non-membership.

24.2 Agency Shop – Service Fee

As a condition of employment, all represented employees must be members or service fee payers of the Union. If any employee does not voluntarily make application for membership or service fee status within forty-five (45) days of the effective date of this section or within forty-five (45) days of beginning work, whichever is later, the County shall enroll the employee as a service fee payer automatically and by default. The County shall deduct the service fee from the employee's paycheck. Payroll deductions shall be made bi-weekly. However, the initial deduction for any employee shall not begin unless either a voluntary authorization for deduction of Union dues or a service fee has been properly executed or the 45-day application period for considering voluntary enrollment has expired. Changes in the amount of the monthly membership

dues must be delivered to the ACTTC, Payroll Division, at least thirty (30) calendar days prior to the last pay day of the calendar month prior to the change becoming effective.

All sums deducted by the County shall be remitted to the Union at an address given to the County by the Union, by the tenth (10) calendar day following the pay period when the deductions were made, together with a list of names and the amount deducted for each employee for whom a deduction was made. The County will also notify the Union of the name of each employee who revokes his "Voluntary Authorization for Deduction of Union Dues." This does not apply to "Special Assessments or penalties" levied by the Union that are over and above the regular paid dues.

#### 24.3 Agency Shop – Religious Exemption

Any employee who is a member of a religious organization whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join or financially support the Union. Such employee(s) shall execute a written declaration that the employee is a member of a bona fide religion, body or sect which holds a conscientious objection to joining or financially supporting any public employee organization as a condition of employment. Such employee(s) shall pay, in lieu of a service fee a sum equal to such fee to a non-religious, non-labor charitable fund(s) exempt from taxation, chosen by the employee from those charities listed with the charitable federations that participate in the County's combined fund drive.

#### 24.4 Agency Shop – Separation from Unit - Exception

The provisions of Section 24.2 above shall not apply during periods of separation from the eligible bargaining unit by any employee otherwise subject to that Article but shall reapply to such employee following the first full pay period following the return of the employee to the bargaining unit. The term "separation" includes layoffs, transfer out of the covered bargaining units by request, promotion, demotion, reclassification or for any other lawful reason, and leaves of absence of a duration of more than one (1) full pay period, whether paid or unpaid and for any reason, including disability.

#### 24.5 Agency Shop – Chargeable Costs

To the extent authorized by law, the costs of its collective bargaining activities shall be considered by the Union when making a determination of the amount of the agency shop service fee authorized by this Article. Examples of chargeable costs include but are not limited to (1) expenditures for labor contract negotiations (e.g., the fees and expenses of the Union representative and staff support, including research of and preparation for negotiating matters within the scope of representation); and (2) expenditures for administration of contracts (e.g., meetings and discussions with management concerning grievances under the contracts, meetings with employees as part of grievance resolutions, and costs of representatives for arbitrations and staff support including research and preparation).

24.6 Agency Shop – Non-Chargeable Costs

Currently, the following activities are not included in the calculation or determination of the agency shop service fee:

- a) Lobbying or other political activity except as authorized by law;
- b) Payments to affiliates, except for chargeable costs as authorized by law;
- c) Social activities except as authorized by law;
- d) Charitable and philanthropic activities;
- e) Insurance and other benefit programs except as authorized by law; and
- f) Any cost that, by law, cannot be included in an agency shop service fee.

24.7 Agency Shop – Advance Reduction of Service Fee

The amount of the service fee shall be equal to the regular dues, assessments or fees established by the Union, less \$1.00 per month.

24.8 Agency Shop – Notice of Service Fee

All enrolled service fee payers shall receive annual written notice sent by certified mail from the Union, which includes legally adequate audited information concerning the breakdown of “chargeable” and “non-chargeable” expenses, a reasonably prompt opportunity as provided below to challenge the amount of the fee before an impartial decision-maker, and an escrow shall be set up by the Union for the amounts reasonably in dispute while such challenges are pending. Specifically, such notice shall, at a minimum, include:

- a) An accounting report prepared, signed and verified by an independent auditor, who is a certified public accountant, for the overall purpose of providing an itemization of the expenditures of the Union in detail necessary for an employee reasonably to be able to determine what the Union spends on both chargeable items and non-chargeable items, and consider whether expenses designated as chargeable are related to the Union’s collective bargaining functions. However, this requirement can be met without requiring or allowing non-members or the County to become the Union’s auditors. The accounting will utilize data from the prior fiscal year. At a minimum, this accounting report must:
  - (1) State the amount of the agency shop service fee and provide an overview of how the accounting reports were translated into calculation of this fee;
  - (2) Disclose the Union’s major categories of expenses, including employee compensation, specifying the actual expenditures within each category and the amount spent in each expenditure for chargeable items and non-chargeable items; each major category and the allocations of expenditures therein for chargeable and non-chargeable expenses must be verified by the Auditor;

- (3) Disclose what percentage of total Union expenditures is allocable to chargeable items and what percentage is allocable to non-chargeable items;
- (4) State the total sum of money the Union pays affiliates and demonstrate what percentage of such money is used for chargeable and what percentage is used for non-chargeable activities;
- (5) Disclose what percentage of regular membership dues is allocable to chargeable items and what percentage is allocable to non-chargeable items and, consequently, what percentage of dues will be collected as the agency shop service fee;
- (6) Explain the methodology used in producing this accounting report.

To enable the independent auditor to prepare the accounting report, the Union shall provide the auditor access to all records reasonably necessary for such a preparation, including a record of the employee's activities in sufficient detail to enable the auditor to make the necessary determinations of chargeable or non-chargeable. In the event that payments are made to any other organization, the auditor shall be provided access either to such organizations' records or relevant audited financial statements when reasonably necessary to prepare the above accounting.

- b) Instructions on filing a challenge to the amount of the agency shop service fee with the Union, which, at a minimum, shall provide as follows:
  - (1) Non-members who wish to challenge collection of the agency shop service fee because the amount identified allegedly contains expenditures for non-chargeable activities must file an objection letter with the Union within thirty (30) calendar days of receipt of notice (notice shall be rebuttably presumed to have been received no later than five (5) calendar days after it is postmarked). A non-member may file a letter by presenting it to the Union business office in person or by certified mail, return receipt requested. The non-member shall provide a copy of the letter to the County's Director of Labor Relations within three (3) calendar days of its filing with the Union;
  - (2) The letter shall be signed by the challenger or the challenger's agent under penalty of perjury and must state with specificity the particular expenditures being challenged, and the grounds for such challenge. The letter must contain the name and mailing address of the challenger;
  - (3) During the pendency of the challenge, the amount of the agency shop service fee reasonably in dispute shall be placed in an escrow account established by the Union;
  - (4) Within thirty (30) calendar days after receipt, the Union shall schedule a date for arbitration, which shall be conducted in accordance with procedures established by American Arbitration Association. Pending the commencement of arbitration, the Union and the challenger may, by mutual agreement, attempt to resolve the dispute informally;

- (5) The arbitrator shall be selected in accordance with the procedures of the American Arbitration Association;
- (6) The Union shall have the burden of proving that the fee amount complies with this Article and applicable law; and
- (7) The costs of the arbitrator and court reporter, if any, shall be borne entirely by the Union. The challenging employee shall be responsible for his/her costs including but not limited to attorney fees and copies of the court reporter's original transcript.

#### 24.9 Agency Shop – Non-Discrimination

No employee shall be discriminated against or harassed on the basis of his or her status as a non-Union member or a non-Union agency shop service fee payer. Reasonable communication regarding the Union and/or Union membership shall not be considered discrimination or harassment under this Article.

#### 24.10 Agency Shop – Service Fee – Part-time Employees

The financial obligations of employees who work less than full-time are subject to the agency shop service fee provisions of Section 24.2 above. The agency shop service fee shall be set on a prorata basis expressed as a percentage of salary.

#### 24.11 Agency Shop – Notice of New Employees

The following provisions will apply regarding notice of new employees:

- a) The County shall provide the Union with the names and addresses of new employees each pay period.
- b) Union Stewards shall be authorized to receive the names and addresses of new employees each pay period from the departmental payroll clerk.
- c) The names and addresses provided the Union shall be kept confidential.

#### 24.12 Agency Shop – Indemnification

The Union shall defend, indemnify, hold harmless, release and save the County, its agents and employees, from and against any and all claims, demands, suits, orders, judgments, expenses or other forms of liability arising out of or in connection with this Article and/or any action taken or not taken by the County and/or the Union under this Article, including, but not limited to, the collection and procedures for collection of agency shop service fees and the amount of such fees. This Section shall be in addition to any other remedy available to the County under this contract or provision of law.

#### 24.13 Agency Shop – Rescission of Provision

The implementation of the provisions of this Article shall not prohibit or restrict an election to rescind this provision as provided by Government Code Section 3502.5. This agency shop provision may be rescinded pursuant to Government Code Section 3502.5 or its successor provision.



24.14 Agency Shop – Recordkeeping and Reporting

The Union shall comply with the financial record-keeping and reporting requirements of Government Code Section 3502.5(d) or its successor provision.

24.15 Agency Shop – Violation of Article 24

If a court finds the implementation of this Article in violation of constitutional law, the Union shall have sixty (60) days to comply with the Court's order or the County may thereafter cancel Article 24. In the interim, all collections of agency shop service fees by way of payroll deductions by the County shall be suspended, except as allowed by the Court. Also except as allowed by the Court, no unpaid agency shop fee that would otherwise have been due during the time such violation existed may be collected retroactively after the violation was corrected.

24.16 Agency Shop – Non-Arbitrability of

Except as provided below, Article 24 shall be grievable and arbitrable under Article 26 of this agreement.

The following are not grievable nor arbitrable under this agreement:

- a) The adequacy of the Union's notice required by Section 24.8 above; and/or
- b) Other issues bearing on the constitutionality of the Union's collection of an agency shop service fee as prescribed by the courts.

Disputes regarding the amount of the agency shop service fee shall be arbitrable under this memorandum but only pursuant to Section 24.8 above.

**ARTICLE 25: FULL UNDERSTANDING AND SEPARABILITY**

25.1 Full Understanding, Modification, Waiver

- a) This Memorandum of Understanding sets forth the full and entire understanding of the parties regarding the matters set forth herein. Any other prior or existing understanding or agreements by the parties, whether formal or informal, regarding any such matters are hereby superseded or terminated in their entirety.
- b) Except as specifically provided herein, it is agreed and understood that the Union voluntarily and unqualifiedly waives its right to and releases the County from any obligation to meet and confer on any subject or matter contained herein. The Union acknowledges that County has fulfilled its obligations under Government Code Section 3505 for fiscal years 2016/2017 and 2017/2018.
- c) No agreement, alteration, understanding, variation, waiver, or modification of any of the terms or provisions contained herein shall in any manner be binding upon the parties hereto, unless made and executed in writing by the parties hereto, and if required, approved and implemented by County's Board of Supervisors.

- d) Nothing in this Agreement shall be construed to limit or remove the existing or future jurisdiction or authority of the Civil Service Commission as provided in Ordinance No. 305-A as amended, or as provided in the Rules adopted thereunder.
- e) The waiver of any breach, term, or condition of this Memorandum of Understanding by either party shall not constitute a precedent in the future enforcement of all its terms and provisions.

## 25.2 Separability

If during the term of this Memorandum, any item or portion thereof is held to be invalid or rendered invalid by operation of law, or rule, regulation, or order issued by governmental authority or by any tribunal of competent jurisdiction, or if compliance with or enforcement of the section or portion thereof shall be restrained by any tribunal such provision of this Memorandum shall be immediately suspended and be of no effect hereunder so long as such law, rule, regulation or order shall remain in effect.

Such invalidation of a part or portion of this Memorandum shall not invalidate any remaining portion which shall continue in full force and effect.

Except in an emergency, at the written request of either party within ten (10) days of the action invalidating a portion of this Memorandum, the parties shall meet and confer for the purpose of arriving at a mutually satisfactory replacement of such section or portion thereof.

## **ARTICLE 26: GRIEVANCE PROCEDURE**

### 26.1 Purpose

County and the Union agree to this Grievance Procedure in order to provide an orderly procedure to resolve employees grievances promptly.

### 26.2 Definitions

A grievance is a claim by an employee, a group of employees, or the Union on behalf of an employee(s), concerning the interpretation, application or an alleged violation of this Memorandum. All other complaints are specifically excluded from this procedure including but not limited to, complaints which arise from the following: all disciplinary appeals; all appeals from examinations; performance review evaluation; placement of volunteers; provisions of the Fair Labor Standards Act; and any provision of this Memorandum specifically identified as not grievable.

- a) Day shall mean calendar day.
- b) A “grievant” shall mean an employee, a group of employees or the Union who, in good faith has an actual grievance with County over a grievable matter as defined in Section 26.2. At any step of the grievance procedure, the employee may represent him/herself, or may be represented by a Union representative who may be a

County employee or a non-County employee. If the Union is a grievant, it shall be represented by an elected officer, steward or business agent

26.3 Initiation Deadline

The grievance must be initiated within twenty-five (25) days from the date of the action or occurrence giving rise to the grievance or within fifteen (15) days of when the grievant knew of or could have reasonably discovered such action or occurrence.

26.4 Time Limits

Time limits specified in each step of the procedure shall be strictly observed and may only be extended by mutual agreement of the parties in writing. Failure of a grievant to observe a time limit shall terminate the grievance. Failure of the party to whom the grievance is submitted to observe the time limits shall give the grievant the right to move the grievance to the next level.

26.5 First Step

The grievance shall first be discussed on an informal basis by the grievant with the grievant's immediate supervisor within fifteen (15) days from the date of the action causing the grievance as provided above. The immediate supervisor shall respond within six (6) days. Every effort shall be made by the parties to resolve the grievance at this level and may include conferences among supervisory or administrative personnel. Such discussions will be held whenever possible during the grievant's work hours.

26.6 Second Step Grievance

In the event the grievant believes the grievance has not been satisfactorily resolved, the grievant shall submit the grievance in writing, with a copy to the County's Director of Labor Relations, to the immediate supervisor within seven (7) days after receipt of the immediate supervisor's response. The written grievance shall:

- a) Fully describe the grievance and how the grievant is/was adversely affected by the County;
- b) Set forth the section(s) of this Memorandum allegedly violated;
- c) Indicate the date(s) of the incident(s) grieved; and
- d) Specify the remedy or solution to the grievance sought by the grievant.

26.7 Second Step Response

The written grievance shall be responded to in writing by the immediate supervisor within seven (7) days from the time the written grievance is received. The supervisor shall send a copy of the response to the Director of Labor Relations. The written response shall include:

- a) A complete statement of the immediate supervisor's position and the facts upon which it is based; and

b) The remedy or correction which has been offered, if any.

26.8 Third Step Grievance

If the grievant is not satisfied with the response at Step Two, the grievant may appeal the decision to the department/agency head, with a copy to the Director of Labor Relations, within seven (7) days after receipt of the written response at Step Two.

26.9 Third Step Response

Within five (5) days after receiving the completed grievance form, the department/agency head, or representative, shall meet with grievant and thoroughly discuss the grievance. The department head shall give a written decision to the grievance within fifteen (15) days after the discussion and send a copy of the decision to the Director of Labor Relations.

26.10 Mediation

Prior to an arbitration hearing, the parties may mutually agree to request the assistance of a mediator from the State Conciliation Service in an attempt to resolve the grievance. The mediator shall have no authority to resolve the grievance except by written agreement of the Union and the County. In the event the grievance is not resolved, neither stipulations, admissions, settlement proposals nor concessions agreed to or offered during mediation shall be admissible in a subsequent hearing.

26.11 Arbitrable Grievances

A grievance which directly and primarily involves the application, alleged violation, or interpretation of this Memorandum, except as otherwise provided in this Memorandum, is arbitrable.

26.12 Selection of Arbitrator

Following completion of the third step of the grievance procedure, if the grievance is subject to arbitration and remains unresolved, the Union on behalf of the grievant may request arbitration. The request for arbitration must be given to the County Counsel and the Director of Labor Relations in writing within fifteen (15) days of the receipt of the response from Step Three. An arbitrator may be selected by mutual agreement of the Union and County. 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.

26.13 Arbitration Issues

The parties shall, within thirty (30) days following the receipt of a written request for arbitration, exchange in writing their understanding of the questions to be submitted to arbitration. Thereafter, the parties to the arbitration shall use their best efforts to exchange a written summary of the evidence they intend to offer and to reach agreement on and reduce to writing the question or questions to be submitted to arbitration. The agreed upon question or questions, if agreement is reached, together with the exchanged summaries of evidence and a list of witnesses to be used by each

side, shall be submitted to each other and the arbitrator five (5) days prior to the arbitration hearing.

26.14 Arbitrator's Authority and Decision

The arbitrator shall have no power to alter, amend, change, add to, or subtract from any of the terms of this Memorandum. The decision and award of the arbitrator shall be made solely upon the evidence and arguments presented to the arbitrator by the respective parties. If a grievance is submitted to arbitration by the Union, neither offers for settlement nor concessions for settlement made during the grievance procedure shall be admissible in arbitration.

26.15 Binding/Non-Binding Decision

The decision of the arbitrator shall be binding upon the Union. To the extent that the award of the arbitrator is not in excess of \$5,000.00, it is binding on the County. To the extent that such award exceeds \$5,000.00, it is advisory. If within sixty (60) days of receiving notice of decision and award requiring an expenditure in excess of \$5,000.00, final action is not taken by the County to implement it, then the arbitrator's decision and award shall have no force or effect whatsoever as to the amount in excess of \$5,000.00. The Union may then resort to a court of competent jurisdiction to pursue whatever other legal remedies are available to it under the provisions of this Memorandum.

26.16 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. The decision of the arbitrator is final. If requested by either party, the decision shall be accompanied by findings of fact and conclusions of law.

26.17 Arbitration Expenses Shared

The cost of employing the arbitrator shall be borne equally by the parties to the arbitration. All other costs such as, but not limited to, attorney's fees and witness fees shall be borne only by the party incurring that cost.

**ARTICLE 27: RETIREMENT**

27.1 Retirement – Employees Hired On Or Before December 31, 2012 And Employees Who Are Hired After That Date If Qualified For Pension Reciprocity

This Section 27.1 (including subsections) shall apply to employees hired on or before December 31, 2012 who are contributing members of the Sonoma County Employees' Retirement Association (SCERA). This Section 27.1 (including subsections) shall also apply to employees hired on or after January 1, 2013, and qualify for pension reciprocity pursuant to Government Code Section 7522.02(c) and any related SCERA reciprocity requirements.

#### 27.1.1 Final Compensation Based On Single Year

For purposes of determining a retirement benefit, final compensation for employees covered by this Section 27.1 shall mean the average annual compensation earnable by the member as specified in Government Code Section 31462.1.

#### 27.1.2 3% @ 60 Pension Formula

The 3.0% at 60 pension formula shall be available to employees covered by this Section 27.1 who are contributing members of the SCERA.

#### 27.1.3 Required Employee Contribution

SCERA members covered by this Section 27.1 will contribute the amount required by SCERA as employee contributions, and shall continue to pay an additional 3.03% of pay, pretax, to their employee retirement account. This 3.03% of pay contribution of the employee's pensionable compensation shall be paid as part of the County's contribution to pay for the unfunded accrued actuarial liability resulting from past service. This additional 3.03% contribution will continue until July 2024. Employees also will continue to pay a pretax statutory contribution of approximately 1% or slightly more, contingent upon age of entry into the retirement system.

#### 27.1.4 Employee Cost Share – 50% of Normal Cost

- a. Effective the first full pay period following September 1, 2016, and subject to Sonoma County Employees Retirement Association (SCERA) Board approval of the cost share arrangement under the terms described herein, active County General legacy members of SCERA will contribute one third of the actuarially determined difference between the average General legacy employee retirement rate (exclusive of the 3.03% payroll contribution toward the UAAL described in section 27.1.3 of the MOU) and one half the total normal cost ("total normal cost" includes both employer and member shares) calculated as an average for General legacy Members of the Sonoma County Employees Retirement Association (SCERA) covered by this Section 27.1 based on rates of all active County General legacy members, with the difference computed to a factor and applied equally to all legacy members. Such legacy employees will receive a lump sum benefit allowance as reimbursement for this pension cost share arrangement each pay period equal to the dollar value of the deduction described in this paragraph, less any required taxes.
- b. Effective the first full pay period following July 1, 2017, and subject to Sonoma County Employees Retirement Association (SCERA) Board approval of the cost share arrangement under the terms described herein, active County General legacy members of SCERA will contribute an additional one third (for a total of two thirds) of the actuarially determined difference between the average General legacy employee retirement rate (exclusive of the 3.03% payroll contribution toward the UAAL described in section 27.1.3 of the MOU) and one half the total

normal cost (“total normal cost” includes both employer and member shares) calculated as an average for General legacy Members of the Sonoma County Employees Retirement Association (SCERA) covered by this Section 27.1 based on rates of all active County General legacy members, with the difference computed to a factor and applied equally to all legacy members. Such legacy employees will receive a lump sum benefit allowance as reimbursement for this pension cost share arrangement each pay period equal to the dollar value of the deduction described in this paragraph, less any required taxes.

- c. The lump sum benefit allowance described in Sections 27.1.4 (a) and (b) will not be included in wages for computations of overtime, pension benefits or for any County benefit related purpose.

## 27.2 Retirement – Employees Hired On Or After January 1, 2013

This Section 27.2 (including subsections) shall apply to employees hired on or after January 1, 2013, who are or become contributing members of the SCERA and who do not qualify for pension reciprocity pursuant to Government Code Section 7522.02(c).

### 27.2.1 Final Compensation Based On Three Year Average

As required by Government Code Section 7522.32, effective January 1, 2013, for the purposes of determining a retirement benefit for SCERA members covered by this Section 27.2, final compensation shall mean the highest average annual pensionable compensation earned during 36 consecutive months of service.

### 27.2.2 2% @ 62 Pension Formula

As required by Government Code Section 7522.20, the 2.0% at 62 pension formula shall be available to employees covered by this Section 27.2 who are contributing members of the SCERA.

### 27.2.3 Required Employee Contributions

As required by Government Code Section 7522.04(g), SCERA members covered in this Section 27.2 shall pay 50% of normal costs. In addition, SCERA members covered by this Section 27.2 shall pay 3.03% of the employee’s pensionable compensation toward the County’s employer contribution to retirement costs. This additional 3.03% contribution shall continue until July 2024.

## 27.3 Retirement – Credit for Prior Public Service

In addition to any other retirement buyback provision authorized by law and applicable rules of SCERA, employees who are contributing members of SCERA can purchase retirement credit for public service time rendered prior to employment with the County of Sonoma to the extent allowed by Government Code Sections 7522.46, 31641.1 and 31641.2 and other provisions of law, during the term of this MOU.

**ARTICLE 28: ENACTMENT**

The Board of Supervisors will amend its written policies and take other appropriate action by resolution or otherwise in order to give full force and effect to this Memorandum. The below named representatives of the County and the Union agree to recommend the Board's implementation of this Memorandum of Understanding:

**Signatures**

County of Sonoma

International Union of Operating Engineers  
Stationary Engineers, Local 39

s/Rick Bolanos  
Rick Bolanos, LCW

s/Bart Florence  
Bart Florence, Business Manager

s/Robert Scott  
Robert Scott

s/Stahly Robert Aldrich  
Stahly Robert Aldrich, President

s/Cheryl Enold  
Cheryl Enold

s/Steve Crouch  
Steve Crouch, Director of Public Employees

s/Susanne Oliver  
Susanne Oliver

s/Stan Eichenberger  
Stan Eichenberger, Chief Negotiator

s/Janie Carduff  
Janie Carduff

s/Adam Arnold  
Adam Arnold, Bargaining Team Member

s/Chris Junge  
Chris Junge, Bargaining Team Member

s/Dave Ricetti  
Dave Ricetti, Bargaining Team Member

s/Eric Schaller  
Eric Schaller, Bargaining Team Member



s/Craig Fildes  
Craig Fildes, Bargaining Team Member

s/DeWayne Burgess  
DeWayne Burgess, Bargaining Team Member

s/Louie Lopez  
Louie Lopez Bargaining Team Member

s/Lucia Kasulis  
Lucia Kasulis, Bargaining Team Member

s/Terry Adair  
Terry Adair, Bargaining Team Member

s/Thomas Dowdell  
Thomas Dowdell, Bargaining Team Member

(Signed Document on File with Employee Relations)

**APPENDIX A: LOCAL 39 SALARY TABLES**

<b>Job Code</b>	<b>Job Class</b>		<b>A Step Rate</b>
5222	AUTOMOTIVE MECHANIC		26.90
5223	AUTOMOTIVE TECHNICIAN		27.30
5330	BUILDING MAINTENANCE WORKER		18.45
5331	BUILDING MECHANIC I		27.08
5335	BUILDING MECHANIC II		30.65
1703	COMMUNICATIONS TECHNICIAN I		24.28
1705	COMMUNICATIONS TECHNICIAN II		31.87
5112	ELECTRICIAN-INSTRUMENTATION TECHNICIAN		44.48
5225	HEAVY EQUIPMENT MECHANIC		20.91
5226	HEAVY EQUIPMENT TECHNICIAN		29.46
5340	LANDFILL FACILITIES SPECIALIST		36.46
5224	LEAD AUTOMOTIVE TECHNICIAN		29.78
5228	LEAD HEAVY EQUIPMENT TECHNICIAN		32.28
1710	SENIOR COMMUNICATIONS TECHNICIAN		35.04
5142	WATER AGENCY CHEMIST		47.95
5098	WATER AGENCY ENVIRONMENTAL COMPLIANCE INSPECTOR		47.95
5097	WATER AGENCY ENVIRONMENTAL COMPLIANCE TECHNICIAN		34.51
5132	WATER AGENCY LEAD MECHANIC		45.56
5129	WATER AGENCY MECHANIC		41.24
5125	WATER AGENCY PLANT OPERATOR		41.24
5123	WATER AGENCY PLANT OPERATOR-IN-TRAINING		32.06
5126	WATER AGENCY SENIOR PLANT OPERATOR		45.34
5210	WELDER		29.46

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