

**MEMORANDUM OF UNDERSTANDING
BY AND AMONG THE COUNTY OF MONTEREY, EL SUR RANCH
and DON SMYTHE**

This Memorandum of Understanding ("MOU") is by and among and between the County of Monterey on behalf of the Monterey County Sheriff's Office ("MCSO"), James J. Hill, III dba El Sur Ranch ("ESR"), and Don Smythe ("Smythe"), hereinafter collectively referred to as "the parties".

RECITALS:

A. The purpose of this MOU is to define the responsibilities and response policies of each party in accordance with all applicable laws as they relate to Smythe working as a Reserve Deputy Sheriff with the MCSO in connection with his work as a private patrolman for ESR.

B. Smythe has completed all necessary training to meet the standards of a Reserve Level 1 (one) Deputy Sheriff in the State of California, and has been sworn in as a MCSO Reserve Deputy Sheriff. All costs for the training (tuition, books, motel, transportation, meals, hourly wage, etc.) were paid by ESR.

C. It is the mutual desire of the MCSO, ESR, and Smythe to provide a law enforcement presence in the Big Sur area to better serve the needs of the public.

NOW, THEREFORE, and in order to achieve the foregoing goals, each party agrees to the following duties and operational guidelines:

1. MCSO shall be responsible for all costs associated with Smythe's annual training requirements to maintain his Reserve Deputy Sheriff status with the MCSO including, but not limited to, firearm(s) (handgun, shotgun and rifle) qualifications, CPR certification, first aid training, and any other training deemed reasonably necessary by the MCSO; provided, that ESR will compensate Smythe for his time involved in such training in accordance with Paragraph 5(h) below.

2. Smythe shall be responsible for attending and receiving a passing grade/score for all training reasonably deemed necessary by the MCSO.

3. ESR shall provide a fully-equipped, unmarked 4X4 pickup for Smythe's use, at ESR's expense, which shall include the following equipment: 2-way radio with MCSO primary frequency and related frequencies, shotgun, rifle, flares, and such other equipment as reasonably determined necessary by the MCSO. ESR shall provide documentation semi-annually providing proof of appropriate maintenance of the vehicle.

4. Smythe shall be available to respond to law enforcement calls for service in the Big Sur area during his shift at ESR. Smythe shall provide services as described herein under the following general conditions:

- (a) That he shall remain a resident of Carmel Valley;
- (b) That he remain an employee in good standing with ESR;
- (c) That he remain ready to provide service during his shift as further provided below; and
- (d) That he respond and provide service whether at his residence, commuting to and from his residence, or ESR during his shift.

5. The parties agree to the further specific conditions:

(a) At the start of Smythe's shift with ESR, Smythe shall notify Monterey County Communications, who shall then notify the MCSO Coastal Station Watch Commander, that Smythe is available for law enforcement calls for service in the Big Sur area. The parties agree that being at the ready status is not to constitute a resort to his law enforcement/MCSO role. If, at any time while working for ESR, Smythe is unavailable to respond to law enforcement calls for service for any reason, Smythe shall notify Monterey County Communications, who shall notify the Coastal Station Watch Commander, that Smythe is temporarily not available to work as a MCSO Reserve Deputy Sheriff. Smythe shall then re-contact Communications when he is once again available to respond to law enforcement calls for service. These notifications to Monterey County Communications create CAD records that are retrievable for a number of years. The parties understand that when Smythe is south of Hurricane Point, he will no longer be able to communicate directly with the Coastal Station Watch Commander and will have to contact County Communications to relay any messages between Smythe and the Coastal Station Watch Commander.

(b) If, at any time during Smythe's work shift with ESR, Smythe needs to resort to his law enforcement role (e.g., dispatched to a call for service by Monterey County Communications, at the request of any MCSO supervisor, or any self-initiated response to a call for backup or law enforcement officer needing assistance, any on-view observance of a crime in progress or other situation that would normally be handled by law enforcement, Smythe shall don his approved MCSO clothing clearly identifying him as an MCSO Deputy Sheriff, don all required leather gear to include handgun, and notify Monterey County Communications of his status prior to Smythe's response to the call for service and communicate his intent to so engage to Monterey County Communications.

(c) At the time Smythe assumes his MCSO law enforcement role as noted in Paragraphs 5(b) above or 5(e) below), ESR employment, supervision and control over Smythe shall be suspended, and Smythe shall then be under the sole employment, supervision and control of the MCSO. In his capacity as a MCSO Reserve Deputy Sheriff, Smythe shall be responsible to comply with all Federal, State, local and MCSO laws, policies, and procedures, as they relate to law enforcement officers.

(d) At the time Smythe completes his MCSO law enforcement responsibility (e.g., completes his call for service, completes his backup role, etc.), Smythe shall immediately revert back to being under the employment, supervision and control of ESR or under his own supervision and control, if he is not at that time on shift at ESR, as the case may be. Smythe shall, at that time, notify Monterey County Communications who shall notify the Coastal Station Watch Commander that Smythe is no longer acting under the authority of the MCSO. Smythe shall then remove any MCSO clothing and any other items that identify him as a MCSO Reserve Deputy Sheriff.

(e) If, while working for ESR, Smythe encounters what he reasonable believes to be criminal activity or other activity that would require law enforcement action on ESR property, Smythe shall (1) continue his role as an ESR employee, (2) notify Monterey County Communications as to the nature of the incident, and (3) seek direction from a MCSO Supervisor as to how to proceed. After a MSO Supervisor has been made aware of the incident, he/she will consider the factors involved in the incident and determine if a MCSO Deputy Sheriff should respond to the scene or if Smythe should assume the role of a MCSO Reserve Deputy Sheriff and conduct the investigation and direct Smythe accordingly.

(f) While in the role of a MCSO Reserve Deputy Sheriff, Smythe shall be responsible for the completion of all necessary MCSO paperwork and forms and shall deliver all completed paperwork and forms to the MCSO Coastal Station as soon as practicable. This may be completed at such times that Smythe is under the control of either ESR or MCSO.

(g) Any issues, concerns, or complaints by or about Smythe relating to the MCSO shall be handled through the MCSO Coastal Station chain of command.

(h) The parties acknowledge and agree that while Smythe is acting in his MCSO law enforcement role, the use of the equipped vehicle is being donated by ESR to MCSO and that while Smythe is acting in that role and while training as contemplated by this MOU, Smythe's time is being donated to MCSO. ESR will compensate Smythe for Smythe's time as agreed to separately by ESR and Smythe; provided that Smythe's time that is not compensated by ESR shall be considered to be volunteered by Smythe to MCSO.

6. Indemnification: MCSO shall indemnify, defend, and hold harmless ESR, its officers, agents, and employees, from and against any and all claims, liabilities, and losses (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring in connection with or resulting from the actions or inactions of Smythe during the time period this MOU is in effect while he is acting in his role as a MCSO Reserve Deputy Sheriff. The MCSO's obligations under this Paragraph 6 shall survive the termination of the MOU for any reason whatsoever.

7. Insurance: MCSO shall maintain adequate self-insurance and excess insurance for general liability and business automobile liability in amounts sufficient to provide for its indemnification in Paragraph 7 above.

8. Termination: Any party may terminate this MOU upon 24 hours' written notice to the other parties. Such notice shall be personally delivered, mailed, postage pre-paid and addressed, or faxed or e-mailed to the other parties as follows:

Monterey County Sheriff's Office
1414 Natividad Road
Salinas, CA 93906
Fax: (831) 759-7249

El Sur Ranch
Attn: James Hill
Post Office Box 1588
Monterey, CA 93942-1588
Fax: (831) 625-2558
E-Mail: ntfire@aol.com

Don Smythe
316 Mid Valley Center #228
Carmel, CA 93923
Fax: (831) 625-9331
E-Mail: Don@cvcypress.com

Termination notices must be in writing and shall be deemed given or delivered only when delivered personally, by registered or certified mail, or by overnight courier (fare prepaid), or by e-mail or facsimile transmission, to the addresses, e-mail addresses, and facsimile numbers shown above, or to such address, e-mail address, or fax number as a party may indicate by a notice delivered to the other parties. Notice shall be deemed given and received the same day when delivered personally, three (3) business days after mailing when sent by registered or certified mail, and the next business day when delivered by overnight courier or by e-mail or facsimile transmission.

9. Term: This MOU shall become effective on the last date of execution by all parties and shall remain in effect for one (1) year from date of signing. This MOU may be extended on a year-to-year basis upon review and mutual agreement of the parties, so long as such extension is agreed to thirty (30) days before the end of the one year term.

10. Arbitration of Disputes: All disputes between ESR on the one hand and MCSO or Smythe on the other arising from or relating to the terms of this MOU or the breach hereof (whether contract, tort, or otherwise) shall be submitted to binding arbitration before a single arbitrator in accordance with the California Arbitration Act (California Code of Civil Procedure sections 1280 through 1294.2). **The parties understand that they are waiving their rights to a jury trial.** No one who has ever had any business, financial, family, or social relationship with any party to this MOU shall serve as an arbitrator unless the related party informs the other parties of the relationship and the other parties consent in writing to the use of that arbitrator. Each party shall be entitled to discovery of essential documents and witnesses, as determined by the arbitrator. The arbitrator may resolve any dispute over the exchange of documents or over the depositions as they would be

resolved in civil litigation. The arbitrator shall have the power to enter a default award if a party fails to participate in the arbitration. The arbitrator shall have the power to award all relief available at law or in equity, including temporary, preliminary, and permanent injunctive relief. Within 20 days after completion of the arbitration, the arbitrator shall submit a tentative decision in writing, specifying the reasoning for the decision and any calculations necessary to explain the award. Each party shall have 20 days in which to submit written comments to the tentative decision. Within 20 days after the deadline for written comments, the arbitrator shall announce the final award. The arbitration shall take place in Monterey, California, at a time and place selected by the arbitrator. The decision or award of the arbitrator shall be final and binding on the parties. Any arbitral award may be entered as a judgment or order in any court of competent jurisdiction.

If Smythe is a party to an arbitration under this Paragraph 10 and the dispute being arbitrated involves his employment by ESR, the following shall apply: ESR shall pay the Smythe's share of the arbitrator's expenses and fees, meeting room charges, and any other expenses that Smythe would not have incurred if the case were litigated in the judicial forum having jurisdiction over it.

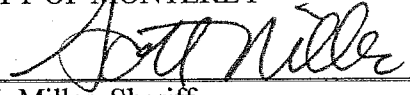
Subject to the preceding subparagraph, to the extent permitted under applicable law, the arbitrator will award the prevailing party such party's expenses and fees of arbitration, including reasonable attorney fees and witness fees.

Disputes between the MCSO and Smythe shall not be subject to arbitration under this Paragraph 10.

11. Counterparts: This MOU may be executed in one or more counterparts, each of which shall be considered an original and all of which together shall be considered one and the same instrument, and shall become effective when counterparts, which together contain the signatures of all of the parties, shall have been delivered between the parties. Delivery of executed signature pages by e-mailed PDF or facsimile transmission shall constitute effective and binding execution and delivery of this instrument.

[MOU Signature Page]

COUNTY OF MONTEREY



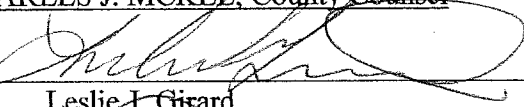
Scott K. Miller, Sheriff
Monterey County Sheriff's Office

01-09-12

Date

Approved as to form:


CHARLES J. MCKEE, County Counsel

By: 

Leslie J. Girard
Assistant County Counsel

1/3/12

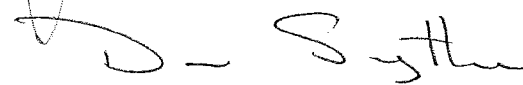
Date



James J. Hill, III
dba El Sur Ranch

1/15/2012

Date



Don Smythe

1/23/12

Date

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