

***MEMORANDUM OF UNDERSTANDING***

***Between the***

***County of Monterey***

***And***

***The Deputy Sheriffs' Association***

***Of Monterey County***

***Master Contract for  
Units A, B, C***

***Addendum A – Unit A***

***Addendum B – Unit B***

***Addendum C – Unit C***

***July 1, 2016 – June 30, 2019***



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### **ARTICLE 1: DESIGNATION OF PARTIES**

This Memorandum of Understanding is made and entered into between the County of Monterey (hereinafter "County") located at 168 West Alisal St, 3<sup>rd</sup> Floor, Salinas, California 93901, and the Deputy Sheriffs' Association of Monterey County (hereafter called "Association") located at P.O. Box 345, Salinas, California 93902. It shall become effective upon adoption by the Board of Supervisors.

### **ARTICLE 2: REPRESENTATION**

The following classifications are represented in this Agreement:

#### **Unit A**

Deputy Sheriff – Corrections Recruit  
Deputy Sheriff – Corrections  
Deputy Sheriff – Operations

District Attorney Investigator I  
District Attorney Investigator II  
District Attorney Investigator III

#### **Unit B**

Correctional Sergeant  
Sheriff's Sergeant  
Sheriff's Investigative Sergeant

#### **Unit C**

District Attorney Investigative Captain  
Sheriff's Commander  
Sheriff's Captain

### **ARTICLE 3: AUTHORIZED AGENTS**

For purposes of administering the terms and provisions of this Memorandum of Understanding:

- Management's principal authorized agent shall be the County Administrative Officer, or his/her duly authorized representative: mailing address: 168 West Alisal St, 3<sup>rd</sup> Floor, Salinas, California 93901, telephone (831) 755-5115.
- Association's principal authorized agent shall be Association President, Deputy Sheriffs' Association of Monterey County, P.O. Box 345, Salinas, California 93902.

### **ARTICLE 4: IMPLEMENTATION**

This Memorandum of Understanding constitutes a mutual recommendation to be jointly submitted to the County's Board of Supervisors. It is agreed that this Memorandum of Understanding shall not be binding upon the parties either in whole or in part unless and until said Board of Supervisors:

- Acts formally to approve said Memorandum of Understanding, and
- Enacts necessary amendments to all County ordinances and resolutions, and acts to

appropriate the necessary funds required to implement the provisions of this Memorandum of Understanding which require funding, and

- Acts to amend all necessary contracts with providers of services, which are affected by this Memorandum of Understanding.

The County and the Association affirm the Monterey County Values as presented to the Board of Supervisors on February 5, 1999; specifically,

- We are committed to assuring honesty and integrity in all County actions.
- We are committed to providing top quality customer service.
- We are committed to practicing continuing innovation.
- We are committed to treating our fellow employees, customers and residents with respect and courtesy at all times.

#### **ARTICLE 5: TERM**

The term of this Memorandum of Understanding with accompanying addendums for Units A, B and C is from July 1, 2016 to June 30, 2019.

#### **ARTICLE 6: WAGES**

##### **6.1 Wages**

The County will provide a wage increase to the base salary schedule to members of DSA as follows:

**2016:** 2.5% across the board base wage increase effective the first full pay period following ratification and Board of Supervisors approval of this agreement (no retro).

**2017:** 2.5% across the board base wage increase effective the first full pay period following July 1, 2017.

**2018:** 3.0% across the board base wage increase effective the first full pay period following July 1, 2018.

##### **6.2 Wage Reopener**

The County agrees to reopen negotiations to meet and confer on wages, no earlier than July 2017, if the marijuana tax revenue results in more than \$29 million in additional ongoing annual revenue.

##### **6.3 Total Compensation Study**

The parties agree to conduct a joint total compensation study for the District Attorney Investigator I/II and III classifications within the term of this agreement and no later than nine (9) months prior to the expiration of this contract.

## ARTICLE 7: SPECIAL PAY PRACTICES

### 7.1 POST Certificate Premium Pay

#### 7.1.1 Intermediate POST Certificate Premium Pay

Those employees covered by this agreement who possess an intermediate POST certificate issued by the Commission of Peace Officer Standards and Training (POST) shall receive a Premium Pay equal to two-point-six percent (2.6%) of the employees' base pay.

#### 7.1.2 Advanced POST Certificate Premium Pay

Those employees covered by this agreement who possess an advanced POST certificate issued by the Commission of Peace Officer Standards and Training (POST) shall receive a Premium Pay equal to four-point-four percent (4.4%) of the employees' base pay.

Employees shall receive no more than 4.4% for POST Certificate Premium Pay.

### 7.2 Bilingual Pay

Upon assignment by the Appointing Authorities for each office, and upon passing an industry standard proficiency test as determined by the Appointing Authorities, all unit members shall be eligible to receive a Premium Pay equal to five percent (5%) of the employee's base pay.

### 7.3 Uniform Allowance

The previous \$80/month and \$50/month Uniform Allowances were eliminated in 2013 in exchange for a \$0.375 hourly base wage increase.

### 7.4 Longevity Pay

Unit members who have completed twenty (20) years of County service shall receive premium pay of six percent (6%).

## ARTICLE 8: GRIEVANCE PROCEDURE

### 8.1 Purpose

- To promote improved employer-employee relations by establishing a grievance procedure to afford employees individually or through qualified representation, a systematic means of obtaining consideration of complaints, questions, and disputes which constitute grievances as hereinafter defined.
- To enable grievances to be settled as promptly and as closely as possible to the point of origin.

### 8.2 Definition

A grievance shall be defined as a claim of a violation or inequitable application of written department-wide policy or County rules, regulations, resolutions, ordinances, or this Memorandum of Understanding by an employee or group of employees adversely affected thereby but shall not include the following:

**8.2.1** Appeals of the disciplinary actions of demotion, suspension or dismissal shall be

filed and processed pursuant to Personnel Policies & Practices Resolution, Section 8.2.3C below and the Article pertaining to disciplinary appeals in this agreement.

**8.2.2** Complaints relating to equal employment, occupational health and safety or workers' compensation shall be processed pursuant to appropriate County complaint procedures in these areas.

**8.2.3** Notwithstanding the foregoing, the grievance procedure is not applicable and shall not be used with the following:

- a. The exercising of any of the management rights currently enumerated in the County's Employer-Employee Relations Policy.
- b. Any matter, which is in the scope of representation in the meet and confer process.
- c. Discrimination based on age, race, color, religion, sex, national origin, national status, ancestry, disability or sexual orientation which shall be processed pursuant to appropriate County complaint procedures or applicable statutes.
- d. Any matter for which a different appeals procedure is provided either by statutes, ordinances, resolutions or agreement, except as specifically provided herein.

### **8.3 Basic Rules**

#### **8.3.1 Non-Discrimination**

Any employee (meaning a grievant, as that term is defined above), may file a grievance or may authorize the filing of a grievance on his/her behalf without fear of restraint, interference, coercion, discrimination or reprisal.

#### **8.3.2 Grievance Forms**

Grievance forms shall be made available to the employee through Human Resources or other County departments, online, and from recognized employee organizations, and all formal grievances shall be submitted on these forms.

Grievance forms must explicitly specify the act(s) or omission(s) being grieved; the alleged negative impact upon the grievant, the policy or the particular section of the agreement, rule, resolution or ordinance, the violation of which is being alleged as the basis for the grievance, and the remedy requested.

#### **8.3.3 Modifications**

No modifications in the basic violation being alleged pursuant to the immediately preceding paragraph shall be made subsequent to filing unless mutually agreed to by both the County and the grievant or the grievant's representative. However, corrections in citations or other clarifying amendments can be made at any time by the grievant or the grievant's representative.

#### **8.3.4 Notice of Meetings**

The County and the grievant or the grievant's representative shall be responsible for giving

notice of meetings and conferences to their representative parties at least twenty-four (24) hours prior to any meeting regarding a grievance whenever possible.

### **8.3.5 Right of Representation**

The employee has the right to the assistance of one (1) employee representative in addition to a staff representative of the Association in the preparation and/or presentation of his/her grievance in Steps 2 through 4 of this procedure provided, however, supervisory employees shall not represent non-supervisory employees where such activity would result in a conflict of interest.

An employee is also entitled to represent his/herself individually at any step of the grievance procedure.

A grievant may change his/her designation of representative during the processing of a grievance, with advance notice to the Appointing Authority.

If the employee is represented in a formal grievance meeting, the department may also designate a management representative to be present in such a meeting.

### **8.3.6 Grievance Withdrawal**

The grievant may withdraw the grievance at any stage of the grievance procedure by giving written notice to the County representative who last took action on the grievance, with a copy to the Human Resources Director or his/her designee.

### **8.3.7 Grievance Resolution**

If a grievance is resolved at Step 2 in the procedure as provided herein, the grievant concerned shall indicate acceptance of the resolution by affixing his/her signature in the appropriate space indicated on the written grievance or written resolution agreement.

### **8.3.8 Reconsideration**

By mutual agreement, the parties may return the grievance to a prior level for reconsideration. If the grievance is not then settled at the prior level, the grievant shall continue to have the rights set forth in this procedure.

### **8.3.9 Consolidation of Grievances**

Employees with essentially identical grievances, including remedy, may initiate a single grievance. Employees with essentially identical grievances may be required, at the County's discretion, to consolidate to a single proceeding at Steps 2 and 3 of this grievance procedure.

### **8.3.10 Work Rule Provisions**

If the Association believes that any change in an existing work rule or the establishment of a new work rule is unreasonable, it may file a grievance. With the concurrence of the Appointing Authority or his/her designee, the Association may file the grievance at Step 2.

## **8.4 Processing Grievances**

### **8.4.1 Time Off**

The grievant and/or his/her representative shall be granted reasonable time off with pay from regularly scheduled duty hours to process a grievance, provided that the time off will be devoted to the prompt and efficient investigation and handling of grievances, subject to the following:

**a. Representatives**

Insofar as possible, when a grievant's representative at Step 2 is a County employee, the representative shall be employed in the same work location as the grievant. When the foregoing condition cannot be met, a grievant's representative who is a County employee may be employed outside the same work location, provided said representative is no farther than ten (10) minutes away, by the most practical and common mode of transportation, from the grievant's work location. This time limit may be waived by mutual agreement of the parties when the grievant is assigned to a remote work location, or under other unusual circumstances.

County vehicles shall not be used for transportation by employee representatives in connection with the processing of grievances, nor will reimbursement be considered for the use of private vehicles.

**b. Grievance Preparation**

A grievant or a grievant's representative who is a County employee shall not leave his/her job to perform any grievance preparation work unless he/she receives permission from his/her supervisor. Such time off shall be granted within three (3) working days except in emergencies.

When a grievant or any representative must go into a section, department, or work unit to investigate a grievance, he/she shall be permitted to do so, provided he/she explains the purpose of the visit and whom he/she is visiting to the supervisor of said section, department or work unit. If immediate access cannot be granted upon request, it shall be granted within three (3) working days.

**c. Grievance Meetings**

A grievant's representative who is a County employee shall, upon notification of his/her supervisor, be granted time off to attend grievance meetings scheduled pursuant to the Notice of Meetings Section of this procedure.

A grievant or a grievant's representative who is a County employee shall notify his/her supervisor as soon as possible in advance of the dates and times and/or change in the dates and times of scheduled grievance meetings in which they must participate.

A grievant or a grievant's representative, when said representative is a County employee, shall not log compensatory time earned or premium pay time for any time spent in the processing of a grievance.

**8.4.2 Time Limitations**

- a. The time limitations are designed to quickly settle a grievance. Time limitations may be extended by agreement of the parties.
- b. If at any stage of the grievance procedure the grievant is dissatisfied with the decision rendered it shall be the grievant's or the grievant's representative's responsibility to submit the grievance to the next designated level of review within the time limits specified.
- c. Failure by the grievant or grievant's representative to submit the grievance within the time limits specified shall constitute an automatic forfeiture and an



irrevocable waiver of the right to process the grievance to any further step.

- d. The grievance shall promptly proceed to the next step within the prescribed time limits if the appropriate management representative fails to respond within the time limits specified.

## **8.5 Grievance Procedure Steps**

### **Step 1 Informal Discussion With Supervisor**

The grievance shall first be discussed on an Informal basis by the aggrieved with his/her immediate supervisor within twenty-one (21) calendar days from the date of the action causing the grievance. This initial step of the grievance procedure shall be without the right of representation. The grievant shall inform his/her immediate supervisor that this discussion is the Initial step of the grievance procedure.

Every effort shall be made to resolve the grievance at this level. If the grievance cannot be resolved by the immediate supervisor, the supervisor shall confer with successive levels of command before replying to the grievant within seven (7) calendar days.

### **Step 2 Formal Written Grievance/Management Review**

In the event the employee believes the grievance has not been satisfactorily resolved, the grievance shall be submitted in writing to the Appointing Authority or his/her designee within seven (7) calendar days from receipt of the immediate supervisors' response.

Within twenty-one (21) calendar days of receipt of the grievance, the Appointing Authority/designee shall deliver his/her written decision to the author of the grievance.

### **Step 3 Administrative Officer**

In the event the employee believes his/her grievance has not been satisfactorily resolved, the grievance shall be submitted in writing to the Administrative Officer within seven (7) calendar days from the receipt of the Appointing Authority's written response. A meeting of the parties may be held by mutual agreement.

Within fourteen (14) calendar days from the receipt of the grievance, the Administrative Officer/designee shall deliver his/her written decision to the author of the grievance.

### **Step 4 Binding Arbitration**

Within seven (7) calendar days from the receipt of the written decision resulting from a grievance heard by the Administrative Officer, or his/her designated representative, the Association or grievant may request in writing that the grievance, as defined hereinabove, be submitted to arbitration as provided hereinafter if no settlement is reached by sending a written notice to the Administrative Officer. Such written notice shall set forth the specific issue(s) still unresolved through the grievance procedure for which arbitration is requested.

Only those unresolved grievances filed and processed in accordance with the procedural requirements set forth herein and which meet the definition of a grievance contained in this MOU may be submitted to arbitration.

Within ten (10) calendar days from the request for arbitration, the County shall request a list of arbitrators from California State Mediation and Conciliation Service (CSMCS).

Within twenty-one (21) calendar days from receipt of the list from CSMCS, the County and the grievant and/or representative will select an arbitrator.

An arbitrator shall be selected by each party alternately striking a name from such list. The party to strike first shall be alternated between the County and the Association from arbitration to arbitration.

Upon selection of an arbitrator, an arbitration date must be selected within 90-days thereafter.

Before the hearing has commenced and during the course of the hearing, the arbitrator may issue subpoenas *deuces tecum* at the request of either party. Oral evidence shall be taken only on oath or affirmation. The grievant and the Appointing Authority shall each have the right to call and examine witnesses, to cross-examine opposing witnesses on any matter relevant to the issues, to impeach any witness and to rebut the evidence produced. Technical rules relating to evidence and witnesses do not have to apply to such hearings. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding. At the hearing, the burden of proof shall be upon the grievant.

The fees and expenses of the arbitrator, court reporter and the cost of the transcript for the arbitrator shall be shared equally by the County and the grievant, it being understood and agreed that all other expenses including, but not limited to, fees for witnesses, transcripts and similar costs incurred by the County or the grievant during such arbitration proceeding, will be the responsibility of the individual party incurring the additional expense(s).

Within forty-five (45) calendar days after the conclusion of the hearing or the submission of post-hearing briefs in the matter, whichever comes later, the arbitrator shall prepare a summary record of the proceedings, findings, conclusions and a decision. The decision of the arbitrator shall be final and binding upon the parties, but shall confine itself to the issues(s) presented. It shall not add to, subtract from, nor otherwise modify the terms and conditions of this Agreement. The time requirement shall not be waived without the prior mutual consent of both the County and the grievant.

## ARTICLE 9: LAYOFF PROCEDURES

### 9.1 Policy

The County may layoff an employee because of lack of work, lack of funds, material change in duties or organization, or in the interest of economy or causes outside the County's direct control.

The County shall inform the Association regarding the effects of any planned reduction in force or layoffs, which will affect a department's work force.

The department shall contact the Association and offer to discuss the possible reduction and to invite suggestions for possible cost saving alternatives to layoffs. If alternatives to layoffs are not developed by the time the department determines a layoff should occur, the procedure outlined below shall be followed.

Departments and employees covered by other layoff procedures; i.e., Local Agency Personnel Standards, State Merit System, or Anti-Recession Federal Regulations, shall be governed by those procedures.

## **9.2 Procedure**

Layoffs will be determined within County departments, not the County as a whole. In the event of a reduction in force in a department, the department head shall designate the classes, positions, and number of employees to be eliminated. The department at this time shall provide the Association with a current seniority list for those employees and classes affected.

Layoffs shall be made among all representation unit employees in the same class series within a County department in the following order:

- Temporary employees
- Probationary new employees (excluding promotional probationary employees)
- Permanent employees

No permanent employee within a department shall be laid off in any class if there are temporary employees in an active status in the same class within that department.

Layoff shall be by ranking sequence of employees except as otherwise provided herein.

### **9.2.1 Rank in Class Defined**

For purposes of layoff rank shall be defined as the length of continuous service in a class series as determined by County personnel records while occupying a permanent position within the County. Continuous service for purposes of ranking for layoff shall be defined to include work related injury leave of up to one (1) year's duration.

A class series is defined as a group of classes having common characteristics and/or promotional opportunities (e.g., as it applies to employees of the Sheriff's Office covered by this Agreement, a class series is identified by the first two digits (36) of the County's class code).

In the event of a tie in ranking, the seniority definition in Section 13 shall be utilized.

### **9.2.2 Order of Layoff, Exception to Ranking Sequence**

Layoffs of employees within each category of employment status within a department and within a class series shall be based on ranking sequence unless it can be demonstrated that: 1) an employee possesses special skills, training, or abilities, or 2) the employee's past job performance or disciplinary record justifies an alternative ranking (albeit, it may not violate the *Police Officers' Procedural Bill of Rights Act*) or 3) the employee may be, by virtue of ranking sequence subject to disparate treatment.

### **9.2.3 Ranking in Previous Class**

A permanent full-time employee may elect to be ranked with employees in any class in the same department with the same or lower salary in which the employee has served in permanent status in the County service. An employee must notify his/her appointing authority within two (2) days after receipt of written notice of layoff of election of this option except if the second day following notice of layoff is not a regularly scheduled work day, the employee may give notice on the next work day.

#### **9.2.4 Demotion in Lieu of Layoff**

In lieu of layoff, the department head may offer a permanent employee a demotion to any class for which the employee is qualified. Employees demoted in lieu of layoff pursuant to this paragraph shall not be eligible for the “Y” rating procedure. An employee who accepts a demotion in lieu of layoff shall have the right of restoration to his or her former class when an opening occurs and his or her ranking sequence warrants restoration subject to the provisions of Section 9.5 below.

### **9.3 Transfer**

Employees may also request a transfer in accordance with the County’s Transfer Policy, as found in the County’s Personnel Policy and Procedures Resolution.

### **9.4 Notice**

Written notice of layoff shall be served on the affected employees in person or mailed by the United States Postal service to the employee’s latest address on file with the County. The layoff notice shall be served or mailed at least twenty-one (21) calendar days prior to the expected effective date of separation unless delay results from consideration of demotion under the provisions of Section 9.2.3.

The notice shall include:

- a. The reason for the layoff.
- b. The effective date of the action.
- c. A reference to the provisions governing reemployment.
- d. Notice that employment counseling is available.

A copy of the notice shall be given to the Association.

### **9.5 Reemployment of Employees Laid Off**

The names of persons laid off under these procedures shall be maintained on a departmental recall list for the class series from which the employee was laid off for a period of one (1) year from the date of layoff. When using a departmental recall list to fill a position in a class from which layoffs have occurred within the one (1) year recall period, the department head shall reemploy laid off employees from the appropriate departmental recall list in inverse order of layoff. During the one (1) year recall period, no new employee shall be hired nor shall any employee be promoted to a class from which layoffs have occurred until all employees on layoff status in that class have had the opportunity to return to work.

However, when the best interest of the County requires an employee with demonstrated special qualifications, skills or training, or for affirmative action considerations, the department head may make an exception to the above order of recall to appoint an employee out of ranking sequence.

Every employee given notice of layoff may request employment counseling and evaluation in order to determine those job classes within the County for which the employee meets employment eligibility requirements and desires to be considered for employment from a preferred eligible list. Such counseling and evaluation shall be available by appointment in order of request. Following the counseling and evaluation,

laid off employee's name shall be placed on a preferred eligible list for each class designated as a result of the counseling and evaluation. When the Human Resources Department receives a request to refer applicants to a department for a vacant position in a class for which there exists a preferred eligible list, the laid off employee on the list shall be considered for employment prior to any job applicant. A competitive job related selection process may be used to determine the order in which laid off employees on a preferred eligible list for a class will be referred for an interview.

A laid off employee may be removed from the department recall list or a preferred eligible list for any of the following reasons:

- The expiration of one (1) year from the date of layoff.
- Reemployment within the County.
- Failure to accept employment or report to work.
- Failure to appear for a job interview after notification by telephone or by mail addressed to the employee's last address on file with the County and notice to the Association.
- Failure to respond within twenty-one (21) days to a communication regarding availability of employment.
- Request in writing by the laid off employee to be removed from the list.
- Failure to pass background after being offered reinstatement.

#### **9.6 Status of Employees Reemployed from a Preferred Eligible List**

Employees who are re-employed from a preferred eligible list shall serve a new probationary period, and otherwise be treated as a new employee with the following exceptions:

Former employees who are hired from a preferred eligible list shall be entitled to:

Placement at up to highest step in the class into which they are hired provided that the salary upon rehire does not exceed the salary the employee was receiving at the time of layoff.

Reinstatement of credit for service time (ranking) as of the date of separation from County service.

Credit for all prior service for the purpose of determining vacation and annual leave accrual rates.

Restoration of any sick leave balance credited to the employee's account on the date of layoff.

#### **9.7 Restoration of Benefit for Recalled Employees**

Any employee who has been laid off and is hired from a departmental recall list under the terms of this article within one (1) year from the date of layoff shall be entitled to:

Restoration of permanent status for employees who are rehired from a departmental recall list and class from which they were laid off, and who have completed their probationary period. For employees who have not completed their probationary period, credit for that portion which has been completed shall be given if rehired from a departmental recall list.

Restoration of all sick leave credited to the employee's account on the date he/she was laid

off.

Credit for all prior service for the purpose of determining vacation and annual leave accrual rates.

Placement in the same step of the salary range the employee held at the time of layoff.

Reinstatement of credit for service time (ranking) as of the date of layoff.

#### **9.8 Insurance Coverage**

Each permanent employee who is enrolled in the CALPERS Health Plan at the time of layoff may elect to enroll in a CalPERS health plan/COBRA plan. In the event the laid off employee so elects, the County will pay an amount equal to two (2) times the employee only premium at the time of layoff toward the cost of the health insurance conversion plan. The above insurance provision does not apply to employees who retire coincidental to their layoff.

#### **9.9 Appeal Procedure**

An employee directly affected by the operation of this policy may, within five (5) working days after a notice of layoff is received, request a meeting with a department head or the department head's designated representative to review the application of this policy as it affects the employee's status. The employee may be accompanied by a representative of the Association.

The Association, and only the Association, after making an attempt to resolve the matter informally, may within seven (7) days of the date of an alleged violation of this policy file a grievance for final consideration and determination at the department head level in accordance with the provisions of the grievance procedure in effect between the County and the Association. A grievance filed in accordance with this paragraph shall not be subject to Arbitration, Article 7 of this Agreement.

### **ARTICLE 10: EMERGENCIES**

Nothing herein shall limit the authority of the County to prepare for or meet an emergency. An emergency shall be defined as a condition, which will or is likely to prevent the continued normal conduct of County operations or services, which will or will likely present a danger to life or property.

### **ARTICLE 11: DISCIPLINARY ACTIONS**

#### **11.1 Disciplinary Action**

The Appointing Authority may take disciplinary action against any employee in a Department who is subject to this MOU and *California Government Code 3300 et al*, provided that the rules and regulations prescribed herein are followed. As used in this section, disciplinary or punitive action shall mean dismissal, suspension without pay, disciplinary demotion, reduction in salary, transfer for purposes of punishment, or written reprimand.

### **11.2 Suspension With Pay Pending Investigation**

Notwithstanding any other provision of the Disciplinary Actions Article of this MOU, the Appointing Authority may suspend an employee from his/her position at any time for reasons of investigation for disciplinary action upon the determination of the Appointing Authority that circumstances exist that make the immediate removal of the employee from the workplace to be in the best interests of the County, and that the employee cannot be effectively used in his/her job classification within the Department. Such suspension pending investigation shall be with pay and benefits, except when criminal charges or an indictment are pending against the employee. Suspension with pay shall not be deemed disciplinary action and shall not be subject to appeal.

Written notice of such suspension shall be given to the suspended employee as soon as possible, but no later than seventy-two (72) hours after such action is taken. The Appointing Authority may reinstate any such suspended employee to his/her position for a good cause, providing the Appointing Authority is satisfied that no disciplinary action is appropriate.

### **11.3 Notice of Disciplinary Action**

In order to institute disciplinary action, the Appointing Authority, or his/her designee, shall serve written notice of the proposed disciplinary action in accordance with the following procedures:

**11.3.1** Except when emergency or other special circumstances require immediate action, a notice of proposed disciplinary action (other than written reprimand) shall be delivered to the employee, either personally or by United States Postal Service, to the current address listed on the employee's most recent Personnel Action Form, no less than five (5) calendar days prior to the effective date of any disciplinary action against the employee. The five (5) day prior notice requirement shall not apply to the following disciplinary actions, but may be given within a reasonable time after the commencement of such discipline:

- a. Suspension without pay of forty (40) hours or less (A/B Units only);
- b. Written reprimands; and
- c. Emergency or other special situations.
- d. There shall be no five (5) day notice required for Suspension With Pay Pending Investigation.

**11.3.2** The notice(s) of proposed disciplinary action shall together include the following:

- a. The nature of the proposed disciplinary action;
- b. The effective date of the proposed action;
- c. The causes for the proposed action in ordinary, concise language with the dates and places thereof, when known;
- d. A statement that the material upon which the proposed action is based is available for inspection; and
- e. A statement advising the employee of his/her right to respond, either verbally or in writing, to the Appointing Authority or his/her designee proposing the disciplinary action prior to the effective date, and the right to be represented in that response.

In order to implement either the proposed disciplinary action or a lesser disciplinary action

based on the same cause(s), a notice of disciplinary action shall be delivered to the employee by or as soon after the effective date of the disciplinary action as possible. This notice of disciplinary action shall contain the information specified in items 11.3.2.a, 11.3.2.b and 11.3.2.c above, and in addition, shall include a statement of the employee's right of appeal, if any, and representation by a party of his/her choice. The notice shall also include a referral to the Appeals from Disciplinary Action Section of this MOU.

**11.4 Written Reprimand**

The Appointing Authority, or his/her authorized designee, may reprimand an employee by furnishing him/her with a written statement of the specific reasons for such reprimand. A copy of the reprimand shall be given to the Executive Director-Administration/Chief District Attorney Investigator for inclusion in the employee's personnel file, and shall be subject to appeal as set forth in Section 11.11.3; however, the employee shall have the right of rebuttal, whether or not the employee appeals. The rebuttal, if it is in writing, shall be attached to the reprimand and placed in the employee's personnel file. The Appointing Authority, or his/her designee, may correct the written reprimand at his/her discretion. If the Appointing Authority removes the written reprimand from the employee's personnel file, the employee's rebuttal (if any) shall likewise be removed.

**11.5 Suspension Without Pay**

A suspension without pay invoked as disciplinary action under this section against an employee shall not exceed one (1) year.

**11.6 Reduction in Salary**

The Appointing Authority may reduce the salary of an employee for disciplinary reasons, provided that such reduction shall be to a step within the salary range of the classification of the position held by the employee. An employee so reduced in salary shall retain his/her anniversary date.

**11.7 Disciplinary Demotion**

The Appointing Authority may demote an employee, for disciplinary reasons, to any position with a lower salary, provided the employee meets the qualifications for the lower-level position. Such demoted employee shall not be eligible for promotion for a period of six (6) calendar months after the effective date of the demotion.

**11.8 Dismissal**

The continued tenure of each employee shall be subject to his/her satisfactory conduct and the rendering of efficient service. Should there be cause for disciplinary action, an employee may be dismissed for either reason.

**11.9 Absence Without Leave Separation**

An employee who has unauthorized absences from duty, which exceed three (3) consecutive working days shall be considered to have abandoned his/her position and to have automatically resigned. Resignation shall be deemed effective upon the posting by United States Mail of a Notice of Automatic Resignation, sent by the Appointing Authority or his/her designee to the last known address of the employee, as shown on his/her latest Personnel Action.



#### **11.10 Statute of Limitations**

No disciplinary action shall be taken against any Department employee for any cause unless the notice of the proposed disciplinary action is served within one (1) year of the of the Department's discovery of an act, omission, or other misconduct or non-performance, by a person authorized to initiate an investigation of the allegation, with the exception of those circumstances set forth in Government Code §3304(d).

Nothing herein shall preclude the County or the Appointing Authority from disciplining an employee for cause, which consists of a course of conduct or history of performance that began more than one (1) year prior to the notice of disciplinary action. Such disciplinary and/or performance record of beyond one (1) year shall be used only to determine the level of discipline to be imposed.

#### **11.11 Appeals from Disciplinary Action**

Only permanent employees who are not serving their initial probationary period shall have the right of appeal from disciplinary action. Appeals from the various disciplinary actions listed in the Disciplinary Action Section of this MOU shall be taken in accordance with the following provisions:

**11.11.1** An employee who receives a transfer for the specific purpose of punishment, that does not involve a reduction in salary or loss of pay, may request an evidentiary hearing before the Appointing Authority, or his/her authorized designee. The decision of the Appointing Authority, or his/her authorized designee shall be final and binding.

**11.11.2** An employee who receives a transfer for the specific purpose of punishment that involves a loss of pay may request a full evidentiary hearing before the Appointing Authority, or his/her authorized designee, whose decision in the matter shall be final and binding.

**11.11.3** An employee who receives a written reprimand that does not involve a reduction in salary or loss of pay may request an evidentiary hearing with the next level of supervision/management above the individual issuing the written reprimand. The employee shall also retain his/her right of rebuttal. If it is in writing, the rebuttal shall be attached to the reprimand and placed in the employee's personnel file. If after the hearing, the Appointing Authority, or his/her authorized designee decides to remove the written reprimand from the employee's personnel file, the employee's rebuttal (if any) shall likewise be removed.

**11.11.4** A "full evidentiary hearing" under the provisions of Section 11.11.2 above, when requested by the employee, shall involve the right to be represented, the calling and cross-examination of witnesses, and the issuance of subpoenas *deuces tecum*. The individual hearing the matter must not have been involved in the initial decision to issue the discipline. The individual who took the disciplinary action shall be present, and Department shall have the burden of proof.

An "evidentiary hearing" under the provisions of Section 11.11.1 or 11.11.3 above, where the action taken results in neither reduction in salary nor loss of pay, when requested by the employee, shall involve the right to be represented, to produce evidence, and to present argument; but it shall not include the right to confront or cross-examine witnesses. The individual who took the disciplinary action shall be present, and Department shall have the

burden of proof.

**11.11.5** A disciplinary appeal to arbitration may be filed only by an employee who is not a probationary employee and who occupies a permanent position, and only from disciplinary actions listed in the Disciplinary Action Section of this MOU other than those set forth in 11.11.1 through 11.11.4 above.

**11.11.6** The appeal to arbitration must be filed in writing within a period of ten (10) calendar days after the employee is notified of the decision to take disciplinary action. The failure to file the appeal within the prescribed time limit shall constitute an irrevocable waiver of the employee's disciplinary appeal rights, and the discipline imposed shall become final and binding at the expiration of the ten-day time period.

A disciplinary appeal to arbitration shall be filed with the County Administrative Officer, shall be handled confidentially, and a copy of the appeal filed shall promptly be sent to both the Appointing Authority and the County Counsel's Office.

**11.11.7** Within twenty (20) days after the appeal is filed with the County Administrative Officer, the parties shall begin the process to select a mutually acceptable arbitrator. The parties shall then select a mutually agreeable hearing date.

Except as otherwise mutually agreed upon by the parties in a specific case, an arbitrator shall be selected and a hearing shall be scheduled within sixty (60) calendar days after the appeal is filed.

**11.11.8** The appellant and the Appointing Authority may appear personally and may be represented by counsel at the hearing. The hearing shall be private unless the appellant requests a public hearing.

**11.11.9** Before the hearing has commenced and during the course of the hearing, the arbitrator may issue subpoenas *deuces tecum* at the request of either party. Oral evidence shall be taken only on oath or affirmation. The appellant and the Appointing Authority shall each have the right to call and examine witnesses, to cross-examine opposing witnesses on any matter relevant to the issues, to impeach any witness and to rebut the evidence against him/her. Technical rules relating to evidence and witnesses do not have to apply to such hearings. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. At the hearing, the burden of proof shall be upon the Appointing Authority.

**11.11.10** As soon as may be practicable after the conclusion of the hearing, the arbitrator shall prepare a summary record of the proceedings and prepare recommended findings, conclusions and a decision. The hearing officer shall submit a copy of said record of findings, conclusions and decision to the Board of Supervisors. The arbitrator's decision shall not add to, subtract from, or otherwise modify the terms and conditions of this Agreement.

**11.11.11** Within thirty (30) days after the filing of the record and recommended findings, conclusions and decision of the hearing officer with the Board, the Board shall adopt such recommended findings, conclusions and decision, or shall reject the recommendations of the hearing officer and adopt its own findings, conclusions and decision after a review of

the record. The Board shall affirm, modify or reverse the order of the Appointing Authority causing the disciplinary action. Upon rejection of the recommendation by the Board, the entire administrative record shall be delivered to the Board, and the Board shall have an additional ninety (90) days from the date of rejection to review the entire administrative record and adopt its own findings, conclusions and decision in the matter.

**11.11.12** The decision of the Board shall be final.

**11.11.13** Each party shall bear its/his/her own costs in the disciplinary appeal; except that the expense of the arbitrator, the cost of a certified court reporter and the expense of a transcript of the hearing for the arbitrator shall be shared equally by the parties involved in the action being appealed. All other expenses including, but not limited to, fees for witnesses, transcripts for a party and similar or other costs incurred by a party during the disciplinary appeal shall be the responsibility of that individual party.

#### **ARTICLE 12: HOLIDAY LEAVE**

Effective January 1, 2007, the following listed days shall be observed as legal holidays by the County of Monterey:

New Year's Day	Veterans Day
Martin Luther King Day	Thanksgiving Day
President's Day	Day after Thanksgiving Day
Memorial Day	Christmas Eve Day*
Independence Day	Christmas Day
Labor Day	

If any of the above listed holidays falls on a Saturday, the preceding Friday shall be the holiday in lieu of the day observed. If any of the above listed holidays falls on a Sunday, the following Monday shall be the holiday in lieu of the day observed.

\*Christmas Eve shall be observed as a holiday only on those days when December 24th actually falls on a Monday, Tuesday, Wednesday or Thursday. All employees shall receive an equal number of holidays.

In addition, employees shall receive one (1) floating holiday per calendar year. Subject to the standard provisions for all floating holidays for County employees, this day will be taken at the employee's discretion with advance approval by the Appointing Authority or designee. This floating holiday must be taken as time off during the calendar year or it will be forfeited. (Note that the floating holiday is not part of the holiday "banked" hours for Units A and B.)

#### **ARTICLE 13: SENIORITY**

##### **Sheriff's Office**

As of September 1, 2013, all employees having passed probation as a Deputy Sheriff-Operations and currently assigned to the Enforcement Operations Bureau (EOB) as a Deputy Sheriff-Operations will be assigned a numerical ranking based on their seniority in the EOB. For example, the employee with the most seniority as a Deputy Sheriff-Operations will be assigned number 1, and then the next most senior will be assigned Number 2, and so on until every eligible EOB employee is assigned a number.

This assigned number will be utilized to determine EOB seniority in selecting shifts for as long as that employee continues to work in EOB or until they change ranks, at which time their seniority date will be determined by the date of appointment to the new rank. Nothing in this policy supersedes the Sheriff's authority to initiate disciplinary proceedings in accordance with the MOU.

With the exception of this seniority system for current non-probationary employees in the class of Deputy Sheriff-Operations, all other seniority for selecting shifts in the Sheriff's Office will be determined by date of hire as a Deputy Sheriff-Corrections, or by date of promotion, if applicable.

After September 1, 2013, any employee that transfers into EOB as a Deputy Sheriff-Operations will have their seniority for shifts determined by their date of hire as a Deputy Sheriff-Corrections or as a Deputy Sheriff if that classification is created), whichever is earlier.

#### **District Attorney's Office**

Seniority shall be based on an employee's date of appointment to a classification or rank. In the event of a tie, seniority shall be based upon employees' date of hire with the department. In the event of a tie, seniority shall be based on date of hire with the County. In the event an employee transfers out of the department into another position within the County and then back into the department, the seniority date, for purposes of layoffs, promotions, and transfers, shall be the date the employee transfers back into the department. In the event that two (2) or more employees have the same seniority date, the employee who applied for employment first shall have more seniority.

The seniority list on the date of this agreement will show the names, job titles, and seniority date of all employees.

The employer will keep the seniority list up to date at all times and will provide the Association with up-to-date copies of the list in December and June of each year.

Except in cases of operational necessity defined by the Appointing Authority, vacation selection shall be by seniority subject to administrative rules established by the Appointing Authority.

### **ARTICLE 14: COUNTY RIGHTS**

The County will continue to have, whether exercised or not, all the rights, powers and authority heretofore existing, including, but not limited to the following: determine the standards of services to be offered by the Sheriff's Office and District Attorney's Office; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; issue and enforce rules and regulations; maintain the efficiency of governmental operations; determine the methods, means and personnel by which the Sheriff's Office and the District Attorney's Office operations are to be conducted; determine the content of job classifications; exercise complete control and discretion over its organization and the technology of performing its work; and fulfill all of its legal responsibilities. All the rights, responsibilities and prerogatives that are inherent in the County by virtue of statutory and charter provisions cannot be subject to any grievance or arbitration proceeding.

Further, the exercise by the County through its Board and management representatives of its

rights hereunder shall not in any way, directly or indirectly, be subject to the grievance procedure set forth herein.

#### **ARTICLE 15: CONCERTED ACTIVITIES**

The parties to this agreement recognize and acknowledge that the services performed by the County employees covered by this agreement are essential to the public health, safety, and general welfare of the residents of the County of Monterey. Association agrees that under no circumstances will the Association recommend, encourage, cause or permit its members to initiate, participate in, nor will any member of the bargaining unit take part in, any strike, sit-down, stay-in, sick-out, slow-down, or picketing (hereinafter collectively referred to as work-stoppage), in any office or department of the County, nor to curtail any work or restrict any production, or interfere with any operation of the County.

In the event of any such work stoppage by any member of the bargaining unit, the County shall not be required to negotiate on the merits of any dispute, which may have given rise to such work stoppage until said work stoppage has ceased.

In the event of any work stoppage, during the term of this agreement, whether by the Association or by any member of the bargaining unit, the Association by its officers, shall immediately declare in writing and publicize that such work stoppage is illegal and unauthorized and further direct its members in writing to cease the said conduct and resume work. Copies of such written notice shall be served upon the County. In the event of any work stoppage the Association promptly and in good faith performs the obligations of this paragraph, and providing the Association had not otherwise authorized such work stoppage, the Association shall not be liable for any damages caused by the violation of this provision. However, the County shall have the right to discipline, to include discharge, any employee who instigates, participates in, or gives leadership to, any work stoppage activity herein prohibited, and the County shall also have the right to seek full legal redress, including damages, as against any such employee.

#### **ARTICLE 16: SEPARABILITY**

If any section, subsection, paragraph, clause or phrase of this agreement is, for any reason, held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this agreement, it being hereby expressly declared that this document, each section, subsection, paragraph, sentence, clause and phrase thereof, would have been adopted irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

#### **ARTICLE 17: FULL UNDERSTANDING, MODIFICATION, WAIVER**

It is intended that this agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and 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. Existing benefits and working conditions which are not referenced in this agreement, such as e.g., those contained in the Salary and Benefits Resolution and the Personnel Resolution, and which are subject to the meet and confer process, shall continue without change unless modified subject to the meet and confer process.

Attachment E

Except as specifically provided herein, it is agreed and understood that each party hereto voluntarily and unqualifiedly waives its rights, and agrees that the other not be required, although they may mutually agree otherwise, to negotiate with respect to any subject or matter covered herein or with respect to any other matter within the scope of negotiations, during the term of this agreement.

Any agreement, alteration, understanding, variation, waiver, or modification of any of the terms of provisions contained herein shall not be binding upon the parties hereto unless made and executed in writing by all parties hereto, and if required, approved and implemented by the County's Board of Supervisors.

A waiver of any breach, term or condition of this agreement by either party shall not constitute a precedent in the future enforcement of all its terms and provisions.

This Memorandum of Understanding between the County of Monterey and the Deputy Sheriff's Association, term July 1, 2016 to June 30, 2019.

For Deputy Sheriff's Association

For County of Monterey

/s/ Julie Callahan

/s/ Brette Neal

/s/ Daniel Mitchell

/s/ Patsy Girard

/s/ Nathaniel DiMaggio

/s/ Ariana Hurtado

/s/ David Ramon

/s/ Dennis Wallach