

***MEMORANDUM OF UNDERSTANDING***

***Between the***

***County of Monterey***

***And***

***The Monterey County Sheriff's Management Association***

***Unit C***

***July 1, 2019 – June 30, 2021***



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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 Monterey County Sheriff's Management Association (hereafter called "MCSMA") located at 1422 Constitution Ave, Box #261, Salinas, CA 93906. It shall become effective upon adoption by the Board of Supervisors.

## **ARTICLE 2: REPRESENTATION**

The following classifications are represented in this Agreement:

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.
- MCSMA's principal authorized agent shall be Association President, Monterey County Sheriff's Management Association, 1422 Constitution Ave., Box #261, Salinas, CA 93906.

## **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 MCSMA 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 is from July 1, 2019 to June 30, 2021.

## ARTICLE 6: WAGES

### 6.1 Wages

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

**2019:** 2.0% across the board base wage increase effective the first full pay period following ratification and Board of Supervisors approval of this agreement (no retro).

**2020:** 2.0% across the board base wage increase effective the first full pay period following July 1, 2020.

## 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.

#### 7.1.3 Management POST Certificate Premium Pay

Effective the first full pay period following July 1, 2020, those employees who possess a Management Certificate issued by the Commission of Peace Officers Standards and Training (POST) shall receive a Premium Pay equal to one percent (1%) of the employees' base pay. The Management POST Certificate premium pay shall be effective the first full pay period following the date listed on the Management POST certificate.

Employees shall receive no more than 5.4% 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%).

### 7.5 Monthly Expense Allowance

Unit members shall be provided a twenty-five dollar (\$25) monthly expense allowance.

## **7.6 Annual Professional Development Stipend**

Unit employees shall be eligible for an Annual Professional Development Stipend of up to one hundred fifty dollars (\$150) per year on a reimbursable basis. Employees shall submit receipts to their corresponding department for professional related expenses and then, upon approval, will be reimbursed up to \$150 per calendar year.

## **7.7 Supplemental Law Enforcement Services**

### **Officer Compensation Pursuant to Monterey Code, Chapter 2.76**

All hours worked in the performance of Supplemental Law Enforcement Services will be compensated as follows:

Employees shall use vacation, PTO or holiday hours to work Supplemental Law Enforcement events. An employee can utilize the approved vacation, PTO and holiday hours prior to and after the Supplemental Law Enforcement event. Employees shall not perform Supplemental Law Enforcement assignments during the employee's regularly scheduled shift while on approved vacation, PTO or holiday.

No leave other than leaves listed above shall be used for Supplemental Law Enforcement Services.

Commander - Straight time wages for all hours worked in excess of eighty (80) hours in a work period, unless the Commander is working as the Officer in Charge (OIC) for the event in which case the Commander shall be compensated at the rate of one and one-half (1.5) times the base rate of pay for any hours in excess of eighty (80) hours in a work period.

## **7.8 Shift Differential**

Unit employees who are routinely and consistently scheduled to work at least four (4) hours between 8:00 p.m. and 8:00 a.m. shall be eligible for shift differential pay at the rate of ninety cents (\$0.90) per hour for actual hours worked. Only hours worked within the differential period of 8:00 p.m. to 8:00 a.m. will be eligible for differential pay.

An employee who is called back to work a partial shift for any employee who is regularly assigned to a shift which is eligible for shift differential pay shall be eligible for shift differential pay for hours worked between 8:00 p.m. to 8:00 a.m.

## **SECTION 8: RETIREMENT**

### **8.1 Retirement Formulas**

Public Employees' Pension Reform Act (PEPRA) Safety Member 2.7% @ 57

Employee Cost: 10.75% (subject to yearly change based on ½ of normal cost as determined by CalPERS)

Final Compensation: Three Year Average

Classic Safety Member 3% @ 50 (hired prior to 11/5/11)

Employee Cost: 9%

Final Compensation: Single Highest Year

Classic Safety Member 3% @ 55 (hired between 11/5/11-12/31/12)

Employee Cost: 9%

Final Compensation: Three Year Average

CalPERS will have final determination of Classic vs. PEPRA membership.

## **8.2 Public Employee Retirement System (PERS) Contributions**

The Monterey County Sheriff's Management Association (MCSMA) and the County agree to a pension cost-sharing arrangement pursuant to Public Employees' Retirement Law 20516(f) under which, in addition to the 9% currently paid by classic members as the employees' contribution, bargaining unit employees shall pay an amount equal to 3% towards the employer's PERS contribution for a total of twelve percent contribution.

MCSMA and the County agree that the 3% contributed by classic MCSMA members will be implemented on a pre-tax basis pursuant to IRS Code 414(h)(2). However, it is understood that, should it be determined that the contribution cannot be made on a pre-tax basis, or IRS issues an adverse opinion in this or another jurisdiction addressing the issue, individual members shall be liable for any taxes due. In such case, the parties agree to meet and confer on the impact of such determination, and alternative means of achieving the savings contemplated by this agreement in a manner that minimizes the tax impact on covered employees to the extent possible.

MCSMA and the County agree that, during the term of this agreement, the contribution outlined in this section shall continue as long as the employer rate is determined by CalPERS.

## **SECTION 9 BENEFITS**

### **9.1 The Flexible Benefits Plan**

The County will make available a Flexible Benefits Plan to eligible employees. Employees may elect medical, dental, and/or vision coverage for themselves and their dependents or decline coverage.

The provisions, rules and regulations governing the administration of the Flexible Benefits Plan are contained in the Flexible Benefits Plan document. Changes may be required from time to time to maintain the integrity of this flexible benefits plan as a lawful Internal Revenue Service (IRS) Section 125 plan. The County and MCSMA agree that the County shall have discretion to make such changes to ensure this plan is eligible for favorable treatment under the IRS Code. The County may add or remove benefit options to or from this plan during the term of this agreement, subject to the obligation of the parties to meet and confer only over the impact of such changes. Removal of a benefit shall occur only if the benefit is deemed contrary to public law or regulation governing IRS Section 125 benefit plans, is no longer available by vendor, or becomes insolvent.

The County continues to have the right to administer the various County sponsored insurance programs. These rights include but are not limited to the right to select the County sponsored carriers and claim insurance administrators. Changes in insurance carriers or administrators shall not result in any overall reduction in benefits.

#### **A. Eligibility**

Permanent unit employees with a minimum Full Time Equivalent (FTE) of 0.50 or more will be eligible to participate in any of the County's health insurance programs.

## **B. General Provisions**

### ***Additional Payroll Deduction***

For each month when the benefit options selected by the employee under this plan exceed the appropriate County contributions for that employee, that employee shall pay by pre or post-tax payroll deduction the full cost (100%) which exceeds the County's contributions for that employee.

### ***In-Lieu Payout***

For each month that the County contribution is not used by an employee to obtain benefit options under this plan, the full amount of funds not utilized shall be paid out, provided the employee has purchased at least individual only health insurance through CalPERS.

## **9.2 Flexible Benefits Plan Contributions**

### **9.2.1 CalPERS Medical Insurance Contributions**

The County will provide medical insurance through the California Public Employees Retirement System (PERS) medical insurance program. All rules, regulations and procedures with respect to plan eligibility, benefits, claims payments and customer service procedures, etc. for the CalPERS plans are established by CalPERS. The County makes no representations or guarantees whatsoever with respect to the CalPERS health insurance plans.

Pursuant to this Agreement the County medical insurance contribution shall be based on CalPERS Choice (Region: 1). The County contribution shall result in an employee cash back of: \$253.79/mo. (employee only); an employee contribution of \$60.62/mo. (employee plus one); and an employee contribution of \$201.27/mo. (employee plus family).

MCSMA and the County agree to reopen the Insurance Section to meet and confer on employee contributions as follows:

- In 2020 if the 2021 premium rate increase for CalPERS Choice (Region 1) exceeds six percent (6%) of the 2020 CalPERS Choice (Region 1) premiums
- In 2021 if the 2022 premium rate increase for CalPERS Choice (Region 1) exceeds six percent (6%) of the 2021 CalPERS Choice (Region 1) premiums

Part-time permanent employees with a minimum Full Time Equivalent (FTE) of 0.50, but less than 0.80 FTE, will receive half (1/2) of the County elective contributions received by full-time permanent unit employees.

Any balance of County contributions remaining after the employee elects health insurance may be utilized toward the purchase of dependent health, dental, or vision insurance. The use of any County contributions toward the purchase of the benefits stated above is subject to the employee first selecting employee health insurance coverage under a PERS plan offered through employment with the County of Monterey.

### **9.2.3 Dental Insurance Contribution**

The County's maximum contribution to the Flexible Benefits Plan for dental coverage will be equal to the cost of the employee only premium monthly for all eligible permanent employees.

#### **9.2.4 Vision Insurance Contribution:**

The County's maximum contribution to the Flexible Benefits Plan for vision coverage will be equal to the cost of the employee only premium monthly for all eligible permanent employees.

#### **9.3 Life Insurance**

The County agrees to provide fifty-thousand dollar (\$50,000) in group term life insurance for employees in paid status.

#### **9.4 Retiree Health Insurance**

The County will contribute toward the monthly premium for eligible retirees enrolled in a PERS health insurance program as directed by CalPERS.

#### **9.5 Retiree Dental Coverage**

Retirees shall be provided the option of purchasing dental coverage for themselves and their eligible dependent within the same administrative rules, and procedures set for County employees. Retiree enrollment is subject to eligibility criteria. The full premium shall be paid by the retiree. The rates shall be fixed as a percentage above the rate for active employees as follows:

##### Retirees' Rate above Employees' Rate

Retiree only	33%
Retiree plus one	31%
Family	30%

#### **9.6 Retiree Vision Coverage**

Retirees shall be provided the option of purchasing vision coverage for themselves and their eligible dependent within the same administrative rules, and procedures set for County employees. Retiree enrollment is subject to eligibility criteria. The full premium shall be paid by the retiree. The rates shall be fixed as a percentage above the rate for active employees as follows:

##### Retirees' Rate above Employees' Rate

Retiree only	39%
Retiree plus one	38%
Family	38%

#### **9.7 Retiree Physical Examination**

Unit members retiring after June 30, 1989 shall be eligible for a complete physical examination at Natividad one (1) time each fiscal year.

#### **9.8 Health Care Committee**

In preparation for successor Memorandum of Understanding negotiations, the parties agree to meet monthly and work collaboratively on identifying long term financially sustainable healthcare cost sharing between the County and the Association.

The Health Insurance Committee shall begin meeting no later than November 1, 2019, unless otherwise agreed, and include the Association and other similarly situated bargaining groups. The Association shall have up to two (2) representatives for the committee.

Any outcomes or recommendations made through this committee shall be done by mutual agreement among the parties. An update on the progress of the committee shall be presented jointly to the Board of Supervisors no later than October 2020.

**SECTION 10 ANNUAL LEAVE**

Notwithstanding the provisions of any other agreement or resolution, the Annual Leave program shall be in lieu of provisions providing vacation and sick leave benefits. Employees covered under the annual leave program shall not be eligible for any vacation and sick leave benefits except for those set forth below.

**10.1 Accrual Rate Limit**

Eligible employees shall accrue annual leave at the following rates (for the purposes of annual leave accrual, a day is defined as (8) hours:

<u>Years of Completed Continuous County Services</u>	<u>Annual Leave Accrual</u>
0 - 10 years	23 days (184 hours) 7:05 hours pay period
10 - 20 years	28 days (224 hours) 8:28 hours pay period
20 - 22 years	31 days (248 hours) 9:33 hours pay period
22 - 23 years	32 days (256 hours) 9:51 hours pay period
23 - 24 years	33 days (264 hours) 10:09 hours pay period
24 - 25 years	34 days (272 hours) 10:28 hours pay period
Over 25 years	35 days (272 hours) 10:47 hours pay period

A maximum of six hundred seventy-five (675) hours of Annual Leave may be accrued after which no further accrual shall be made until the employees' accrual is reduced to below six hundred seventy-five (675) hours by the use of Annual Leave. Annual Leave shall be earned on the basis of each biweekly pay period worked from the beginning of the biweekly pay period following the permanent appointment into a position in a class that is included in the Safety Management Unit. No Annual Leave shall be credited for any pay period during which an employee is on any non-paid status exceeding one-half (1/2) of the employee's normally scheduled working days.

It is further understood and agreed that during the life of this agreement the County may switch the accrual of Annual Leave from a pay period to an hourly basis. Under an hourly accrual system, accruals would automatically be prorated based on hours worked. Paid Annual Leave shall be considered hours worked for purposes of Annual Leave accrual.

Employees hired or promoted into Bargaining Unit C after July 27, 1999, will not receive Industrial Sick Leave Pay. Employees hired or promoted into Unit C on or before July 27, 1999, will continue to receive Industrial Sick Leave Pay.

**10.2 Annual Leave Usage**

Each Appointing Authority shall be responsible for scheduling the Annual Leave periods of his/her employees in such a manner as to achieve the most efficient functioning of the department or agency and of the County service. The Appointing Authority shall determine when Annual Leave will be

taken.

**Policy Statement:** All eligible employees in the Annual Leave program are expected to use at least 80 (eighty) hours of annual leave in each calendar year following the calendar year in which they are appointed.

When unscheduled usage of Annual Leave occurs, verification of reason for absence may be required of the employee. Further, employees claiming illness or injury may be required to furnish a certificate issued by a licensed physician or other satisfactory evidence of illness. Any person absent from work shall notify his/her department or division head at the beginning of the first day of such leave and as often thereafter as directed by the department or division head. The County Administrative Officer or the Appointing Authority may request that a medically trained employee verify the employee's illness by a visit to the employee's residence or may invoke the provision of Section B.7 entitled "Physical Fitness Examination" of the Personnel Policies and Practices Resolution.

### **10.3 Annual Leave Cash Out**

Permanent, full-time unit employees with over one (1) year of service in their current class may cash out up to 40 (forty) hours of Annual Leave or PTO time per calendar year, however forty (40) hours must remain in his/her Annual Leave and/or PTO bank after the cash out.

#### **10.3.1 Election to Cash Out Annual Leave**

In order to cash out or otherwise require the County to buy back vacation, annual leave or paid time off, the employee must first meet the eligibility criteria set forth in the applicable provision of the bargaining agreement. If such criteria are met, only then the employee may request and be granted compensation in lieu of vacation/annual leave/PTO for up to the amounts set forth in the bargaining agreement under the terms set forth below. If such criteria are not met as of December 31<sup>st</sup> of the calendar year in which the election is required to be made, the employee has no right to elect to cash out accrued time in the next calendar year.

- A.** An eligible employee must elect to pre-designate an irrevocable cash-out amount of up to the maximum number of hours of vacation/annual leave/PTO for the upcoming calendar year as set forth for his/her respective class. Requests for cash out must be made prior to December 1 of the calendar year before the cash out will be made (for example, requests for the 2017 calendar year will be made before December 1, 2016).
- B.** Cash out designations shall be made in hours, not dollar amounts, and must be in increments of 8 hours.

Any such request will be subject to the following:

- i.** Any employee utilizing this provision will be required to submit an irrevocable election by December 1<sup>st</sup> of the calendar year prior to the calendar year in which the vacation/annual leave/PTO hours to be cashed out are earned.
- ii.** An employee who elected to receive the cash out as set forth above, may request a full or a partial payment of the cash out at any time in the designated calendar year, but only once per calendar quarter. For requested cash out occurring in 2017, full or partial cash out payment is not guaranteed in the month of January.

- iii. For employees who have pre-designated cash out amounts and who have not requested actual payment(s) of the entire designated cash out amount by December 1<sup>st</sup> of that calendar year, the County will automatically pay out the pre-designated amount (or remaining amount designated but not paid) by the last paycheck of the calendar year.
- iv. Employees who have not elected to pre-designate a cash out by the applicable deadline (December 1<sup>st</sup> of the prior calendar year) will be deemed to have waived their right and will not be eligible to cash out any vacation/annual leave/PTO in the following calendar year (for example, if no designation is made by December 1, 2016, no cash out is available in 2017).

#### **10.4 Annual Leave Pay-Off Upon Termination**

Any eligible employee who terminates or is terminated, shall be paid at the then prevailing hourly rate of pay for each hour of earned Annual Leave based on the pay rate in effect for such person on the last day actually worked or spent on authorized leave.

#### **10.5 Rate of Pay While on Annual Leave**

While on authorized annual leave, eligible employees shall be compensated at their base salary rate.

#### **10.6 Use of Annual Leave When Permanently Incapacitated**

Annual leave shall not be used to continue the salary of any eligible employee after it has been determined by a licensed healthcare professional that such officer or employee is permanently incapacitated for a return to County employment.

### **SECTION 11 SICK LEAVE**

#### **11.1 Sick Leave Balance; Usage and Pay-Off**

Sick leave balances were frozen at the amount credited to the employee as of January 8, 1982. Sick leave may be used until the sick leave balance is exhausted. Sick leave may be used in the same manner as prescribed in Article 27 Sick Leave of the Monterey County Personnel Policies and Practices Resolution.

#### **11.2 Retirement Sick Leave Pay Off**

An employee may, upon retirement or death, cash out up to seven hundred fifty (750) hours of sick leave, subject to eligibility criteria and pertinent law.

### **SECTION 12 PROFESSIONAL LEAVE**

Permanent unit employees shall be granted ten (10) days of Professional Leave on January 1 of each year. Employees permanently hired or promoted into a unit classification shall, on the first pay period concurrent with or following their date of hire, be given a pro rata amount, to the nearest full hour, of Professional Leave based on the number of pay periods remaining in the calendar year in which they became Unit C employees (i.e., hired at the beginning of pay period NO. 8:  $26-7=19$ ,  $19/26 \times 40=29$  hours) but in no event shall less than eight (8) hours be credited.

This leave may be taken only during the calendar year in which it is granted and no carry over of unused Professional Leave to future years is allowed. There is no cash out value to any Professional Leave.

## **SECTION 13 FITNESS PROGRAM**

The County and MCSMA agree to meet during the term of this Agreement to define a mutually agreed upon Fitness Program with the intent of maintaining the physical fitness of the employees and reducing work related injuries.

## **SECTION 14 ADMINISTRATIVE LEAVE FOR OVERTIME EXEMPT CLASSES**

Employees who are not in overtime eligible classes shall not receive compensation for overtime but may be authorized Administrative Leave with pay by their Appointing Authority or his/her designee in the event that County operations result in extraordinary work assignments for such employees. Such Administrative Leave shall not exceed two (2) working days in any pay period. The County Administrative Officer may approve additional Administrative Leave with pay, upon written request from an employee's Appointing Authority showing special circumstances warranting such leave. Such approval shall be given in writing.

The provisions of this section shall be administered by the Appointing Authority but shall in no way establish any right to any type of overtime compensation for overtime exempt employees, regardless of whatever records are kept by the Appointing Authority.

### **14.1 Emergency Overtime for Exempt Classes**

The provisions of the Section titled "Administrative Leave For Overtime Exempt Classes" notwithstanding, employees who are in overtime exempt classes may become eligible to receive compensation for hours worked in excess of eighty (80) hours in a pay period if authorized during specific emergency situations which require the extraordinary performance of services by employees in overtime exempt classes in order to protect life or property or to prevent a disruptive interruption of County services, as declared by the County Administrative Officer. Special compensation for such emergencies shall be defined as time actually worked in excess of eighty (80) hours in a pay period. In such emergencies, employees in overtime exempt classes in Units C may, at the discretion of the County Administrative Officer, be compensated on an hour-for-hour credit basis for each hour in excess of eighty (80) hours in a pay period. Hour credits for such time may be treated as Administrative Leave or paid in cash, at the option of the employee.

## **ARTICLE 15: HOLIDAY LEAVE**

### **15.1 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.

\* When December 24<sup>th</sup> (Christmas Eve) actually falls on a Saturday or Sunday, the preceding

Friday shall be the holiday in lieu of the day observed.

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.

### **15.2 Holiday Leave for Overtime Exempt Classes**

If a holiday, as defined in this Agreement, falls on a day other than a normal workday, the employee shall be entitled to take a regularly scheduled work day off in the same pay period. The determination of the day off shall be made in consultation with the employee's supervisor.

## **ARTICLE 16: GRIEVANCE PROCEDURE**

### **16.1 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.

### **16.2 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:

**16.2.1** Appeals of the disciplinary actions of demotion, suspension or dismissal shall be filed and processed pursuant to Personnel Policies & Practices Resolution, Section 16.2.3C below and the Article pertaining to disciplinary appeals in this agreement.

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

**16.2.3** 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**

#### **16.3.1 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.

#### **16.3.2 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.

#### **16.3.3 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.

#### **16.3.4 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.

#### **16.3.5 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.

#### **16.3.6 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.

#### **16.3.7 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.

#### **16.3.8 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.

#### **16.3.9 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.

#### **16.3.10 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, MCSMA may file the grievance at Step 2.

### **16.4 Processing Grievances**

#### **16.4.1 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.

### **16.4.2 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.

## **16.5 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, MCSMA 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 MCSMA 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 17: LAYOFF PROCEDURES**

### **17.1 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 MCSMA regarding the effects of any planned reduction in force or layoffs, which will affect a department's work force.

The department shall contact MMCSMA 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.

### **17.2 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 MCSMA 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.

#### **17.2.1 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.

#### **17.2.2 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.

#### **17.2.3 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 or 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.

#### **17.2.4 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 17.5 below.

### **17.3 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.

### **17.4 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 MCSMA.

## **17.5 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 MCSMA.
- 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.

## **17.6 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.

### **17.7 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.

### **17.8 Insurance Coverage**

Each permanent employee who is enrolled in a 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 concurrent with layoff.

### **17.9 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 MCSMA.

MCSMA, and only MCSMA, 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 MCSMA. A grievance filed in accordance with this paragraph shall not be subject to Arbitration, Article 16 of this Agreement.

## ARTICLE 18: 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 19: DISCIPLINARY ACTIONS

### 19.1 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.

### 19.2 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.

### 19.3 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:

**19.3.1** 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. Written reprimands; and
- b. Emergency or other special situations.

- c. There shall be no five (5) day notice required for Suspension With Pay Pending Investigation.

**19.3.2** 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 19.3.2.a, 19.3.2.b and 19.3.2.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.

#### **19.4 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 19.11.3; 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.

#### **19.5 Suspension Without Pay**

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

#### **19.6 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.

#### **19.7 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.

### **19.8 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.

### **19.9 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.

### **19.10 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.

### **19.11 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:

**19.11.1** 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.

**19.11.2** 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.

**19.11.3** 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.

**19.11.4** A "full evidentiary hearing" under the provisions of Section 19.11.2 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 19.11.1 or 19.11.3 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.

**19.11.5** 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 19.11.1 through 19.11.4 above.

**19.11.6** 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.

**19.11.7** 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.

**19.11.8** 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.

**19.11.9** 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.

**19.11.10** 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.

**19.11.11** 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.

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

**19.11.13** 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 20: 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 21: 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 MCSMA 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 MCSMA or by any member of the bargaining unit, MCSMA 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 MCSMA promptly and in good faith performs the obligations of this paragraph, and providing MCSMA had not otherwise authorized such work stoppage, MCSMA 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 22: 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 23: 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.

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 Monterey County Sheriff's Management Association, term July 1, 2019 to June 30, 2021.

For Sheriff's Management Association

For County of Monterey

/s/ Joseph Moses

/s/ Kim Moore

/s/ Ray Tongol

/s/ Ariana Hurtado

/s/ Patsy Girard