

**TENTATIVE AGREEMENT**  
**PROPOSED MEMORANDUM OF UNDERSTANDING**  
**Between**  
**The County of Tulare**  
**and**  
**Tulare County Deputy Sheriff's Association (TCDSA)**  
**for Unit 15 – Sheriff's Sergeants**  
**for July 1, 201719 through June 30, 201921**  
  
**Resolution No. ~~2017-0990~~ Agreement No. ~~28420~~**

TULARE COUNTY  
HUMAN RESOURCES & DEVELOPMENT DEPARTMENT  
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Article 1  
**PREAMBLE**

This Agreement between the duly appointed representatives of Tulare County, hereinafter referred to as "County," and the Tulare County Deputy Sheriff's Association, hereinafter referred to as "TCDSA," contains the Agreement of each concerning wages, hours and other terms and conditions of employment for the term of this Agreement.

The parties jointly agree to recommend to the County Board of Supervisors the adoption of this Agreement.

It is the purpose of this Memorandum of Understanding to promote and provide for harmonious relations, cooperation, and understanding between the County and the employees covered herein, to provide for an orderly and equitable means of resolving any misunderstanding or differences which may arise under this Agreement; and to set forth the full understanding of the parties reached as a result of good faith bargaining. The articles and provisions contained herein constitute a bilateral and binding agreement by and between the County of Tulare and the Tulare County Deputy Sheriff's Association (TCDSA).

Article 2  
**RECOGNITION**

Pursuant to California Government Code #3500 - 3510 and the Tulare County Employment Relations Policy, the County of Tulare, hereby, recognizes the Association as exclusive representative for the Deputy Sheriffs' Bargaining Unit 15 – Sheriff's Sergeants.

Article 3  
**MANAGEMENT RIGHTS**

After discussion and due consideration, the County and TCDSA recognize and agree that, except as expressly provided herein, the County shall solely and exclusively retain all other rights and authority necessary for it to manage the affairs of the County in all of its various services and other aspects, including, but not limited to the following rights:

- To direct the working forces, including scheduling and assigning work, overtime, and work hours;
- To determine and modify the organization of the County and its constituent work units;
- To determine the nature, standards, levels and mode of all operations and services to be offered by the County
- To determine the methods, means, organization, and kind of personnel by which such operations and services are to be provided;
- To determine whether goods or services should be made, purchased contracted for;

- To direct employees, including to hire, promote, assign, and transfer employees, or to demote, suspend, discipline, discharge, relieve or take other disciplinary against employees due to lack of work, lack of funds or other legitimate reasons;
- To establish, implement, and enforce reasonable rules and regulations consistent with the law, the County's Employment Relations Policy, other regulatory bodies, and existing practices in order to maintain efficient operations within the County; and
- To revise or eliminate existing methods, equipment or facilities;

Decisions under this section shall not be subject to the grievance procedure. To the extent that any of the items that are cited in this article have separate language in other articles in this MOU, those such articles shall be subject to the grievance procedure for resolution.

#### Article 4 **NON-DISCRIMINATION**

There shall be no discrimination against any person because of race, creed, color, sex, age, religion, national origin, ancestry, marital status, physical or mental handicap, to the extent that reasonable accommodation is required by law, political affiliations or opinions, or any other criteria prohibited by law, either by the County or TCDSA.

The parties mutually agree to fully protect the rights of all employees to join or not to join and participate or not to participate in the activities of TCDSA or to have TCDSA represent them in their employment relations, or to exercise their rights under this Agreement. No employee shall be intimidated, coerced, restrained, or discriminated against because of the exercise of these rights. □

#### Article 5 **AMERICANS WITH DISABILITIES ACT**

Because the Americans With Disabilities Act (ADA) requires accommodations for individuals protected under the Act, and because these accommodations must be determined on an individual, case-by-case basis, the parties agree that the provisions of this Agreement may be disregarded in order for the County to avoid discrimination relative to hiring, promotion, transfer, layoff, reassignment, dismissal, rehire, rates of pay, job and duty classification, seniority, leaves, fringe benefits, training opportunities, hours of work or other terms and privileges of employment.

TCDSA recognizes that the County has the legal obligation to meet with the individual employee to be accommodated before any adjustment is made in working conditions. Any accommodation provided to an individual protected by the ADA shall not establish a past practice, nor shall it be cited or used as evidence of a past practice in the grievance procedure.

Both parties recognize their obligation under the Americans with Disabilities Act (ADA). Both parties recognize that reasonable accommodations may need to be made in order to comply with the ADA. Each party recognizes its obligation not to frustrate any effort towards such an accommodation. The parties agree that each situation will be evaluated on a case by case basis and it is agreed that any accommodation that is made in order to comply with the ADA will be limited to that particular employee and will not create any obligation to accommodate any other employee requiring accommodation in a particular manner.

#### Article 6

## PERSONNEL FILES

Employee(s), or a TCDSA representative with the written consent of the employee(s), shall be entitled to review the contents of their official departmental or County Personnel file and any other formal file relating to their work performance at reasonable intervals, upon request, during hours when the Personnel Department is open for business. Such review shall not interfere with the normal business of the department.

It is further understood and agreed that documents such as reference letters and background investigations, are exempt from review by the employee or the Association.

No disciplinary document (i.e. Formal Reprimand, Notice of Proposed Disciplinary Action of Suspension, Demotion or Dismissal) and no counseling document (i.e. performance appraisal form and/or Memorandum of Counseling) shall be placed in an employee's official departmental or County personnel file until such employee has had the opportunity to review the document and discuss it with the issuing party.

The employee shall acknowledge that he/she has read such material by affixing his/her manual signature on the actual copy to be filed. The material shall state that such signature merely signifies that he/she has read the material to be filed and that such signature does not necessarily indicate agreement on its contents. The material shall also state that the employee may submit comments for attachment to the filed material. Refusal by the employee to sign the material shall be so noted. A copy of the annotated material shall be given/sent to the employee.

Materials and/or documents determined through the grievance procedure or through other formal appeal process(es) to be inappropriate shall, upon written request from the employee, be sealed. The employee will be notified in writing when the sealing has been accomplished.

Upon an employee's request, a Memorandum of Counseling that is four years or older and that has not been used as a basis for any subsequent disciplinary action shall be immediately removed from an employee's official personnel file at Human Resources & Development and from any file at the Sheriff's Office.

### Article 7

## UNIT MEMBERSHIP

~~The County shall exclusively provide TCDSA in writing, quarterly each year from the effective date of this Memorandum, a list of all employees subject to this Agreement, of such employee's name, employee I.D. number, class and job location by department, as applicable.~~

### Article 8

## DUES DEDUCTION

~~TCDSA has the sole and exclusive right to have employee organization membership dues and insurance premiums deducted for employees covered by this Agreement.~~

TCDSA may have the regular dues of its bargaining unit members deducted from their paychecks under the following procedures:



TCDSA is solely responsible for distributing to, and collecting from, employees the dues deduction authorization forms. It is the employee's responsibility to submit requests to start or stop dues deductions directly to TCDSA and not to the County. TCDSA is responsible for maintaining the dues deduction forms from individual employees. Copies of an individual employee's dues deduction authorization need not be provided to the County unless a dispute arises about the existence or terms of the authorization. Questions regarding TCDSA membership, dues amounts, and payroll deductions must be directed to TCDSA and not the County.

TCDSA will provide to the County an updated, certified dues deduction list of bargaining unit members on a bi-annual basis, who have provided written authorization for regular dues deductions. The County will deduct dues for only those employees who are in the bargaining unit in accordance with such certified list. TCDSA will immediately notify the County of any change to an employee's dues deduction, including starting and stopping dues deductions, or validly cancelling or revoking a dues deduction authorization, and will provide the County within five (5) business days of TCDSA being advised, an updated, certified dues deduction list only noting any specific changes from the last list provided to the County. The County shall not be obligated to put into effect any new, changed or discontinued deduction until a certified list of employees who have provided TCDSA with deduction authorization forms is submitted to the Payroll department in sufficient time to permit normal processing of the change or deduction. The County will implement the change(s) in the pay period following the County's receipt of such notification. The County will transmit the balance of funds to TCDSA as soon as practicable after such deduction is made.

In cases where an employee is not paid for a portion of the pay period and her/his salary is insufficient to cover part or all of the withholding of dues, or the statutory withholding obligations exceed the withholding of dues, or the employee is temporarily assigned out of the bargaining unit, there shall be no withholding. In the case of an employee who is receiving long-term leave benefits during a pay period, no deduction shall be made. All legally mandated and statutory tax, required deductions for health care insurance deductions and Section 125 dependent care and medical reimbursement accounts, shall have priority over dues unless the affected employee authorizes otherwise in writing to TCDSA.

TCDSA agrees to indemnify, defend and hold harmless the County against all claims, demands, suits or any other action, including costs of such suits and reasonable attorney's fees and/or other forms of liability arising from the implementation of the provisions of this section, including claims for or related to employee authorizations, revocations, deductions made, cancelled, or changed in reliance on TCDSA's representations and certifications regarding employee dues deduction authorizations.

~~The County shall collect TCDSA dues and insurance premiums through payroll deduction. These moneys shall be forwarded to TCDSA as soon as practicable after such deduction is made. This clause only applies to bargaining units where TCDSA is the Certified Representative and is subject to related provisions in the County of Tulare Employment Relations Policy. This clause shall continue in effect during the term of this MOU and during the period immediately following the expiration of this MOU while meet and confer toward a successor MOU is continuing and impasse has not been declared.~~

~~TCDSA agrees to indemnify, defend and hold harmless the County against all claims, demands, suits or any other action, including costs of such suits and reasonable attorney's fees and/or other forms of liability arising from the implementation of the provisions of this section. TCDSA and the~~

~~County agree to establish an "Agency Shop" for Unit 15. The Agency Shop Plan is described in Appendix A to this Memorandum of Understanding.~~

Article ~~98~~  
**WORK ACCESS**

Authorized TCDSA representatives shall be given access to work locations during working hours to conduct TCDSA grievance investigations and/or to observe working conditions stemming from grievances with the understanding that the time so spent will be devoted to the proper processing of grievances as specified in the grievance procedure and that such TCDSA representatives shall have authority to reach a solution for the grieving party. TCDSA agrees to provide reasonable advance notice of such visitations to the Department Head or his designated alternate. Employer reserves the right to require that such visitors be escorted.

Article ~~109~~  
**BULLETIN BOARDS**

The County agrees to allow TCDSA to use the County official bulletin boards for purpose of posting notices of union meetings, union elections and election returns, union appointments to office and union recreational or social affairs. Reasonable bulletin board space shall be provided in each county office where bulletin boards are present. Such notices must bear the signature of an agreed upon TCDSA representative and must be approved by (submitted to) the Personnel Director in advance of posting. TCDSA agrees to limit the posting of such notices to its bulletin board space and shall bear responsibility for the content of the literature. The County may remove any and all postings which the Personnel Director, determines to be not in compliance with these requirements.

Article ~~110~~  
**FACILITIES USE**

Upon request of TCDSA, the County shall provide use of County facilities outside of working hours, provided such space is available and TCDSA complies with all departmental and Board of Supervisors' rules and policies for use of County facilities. The request for use of facilities shall be made in advance to the County and indicate the date, time, general purpose of the meeting and the facilities requested.

Article ~~121~~  
**ORGANIZATIONAL RELEASE TIME**

**RELEASE TIME:** The President or Vice President(s) or other officers, not to exceed at any one time ~~two (2) employees per classification three (3) employees~~, may, upon written request of the organization, be granted temporary time off with pay not to exceed the greater ~~cumulative of a~~ total of ~~one hundred and fifty (150) twenty (20)~~ hours annually for this unit plus twenty (20) hours for IA training annually, or the total of the hours donated to the time bank as described below, to attend official organization training sessions, seminars, conventions and/or conferences. The written request must first be approved by the Personnel Director and subsequently by the department.

**TIME BANK:** The Association may establish a time bank to which employees in Unit 15 may each annually make a voluntary contribution of up to eight (84.0) hours from ~~his/her~~ their accumulated vacation. Time in the bank shall continue for the duration of this agreement.

If during the term of this agreement, the membership of the TCDSA votes to have and fully fund (including all benefits and compensation paid to and earned/realized by the employee on leave) the full-time release of the TCDSA President, the County agrees to meet with the TCDSA to work out the process to implement the full-time release of the President. The County makes no guarantee or representation related to the effect of the leave on the employee's retirement. At the conclusion or termination of the leave, the employee may return to the same position and pay, but has no right to reinstatement to the same location.

Article ~~43~~12  
**NEW EMPLOYEE INFORMATION**

A factual presentation of the rights and responsibilities of employees shall be presented by the County in each new employee orientation ~~session~~meeting. This shall include the naming of the certified representative of each bargaining unit, ~~and the distribution of informational packets supplied by TCDSA to employees covered by this agreement. If on file, the Human Resources & Development department will supply TCDSA with the names, job titles, departments, work locations, work numbers, home numbers, and personal cellular telephone numbers, and personal email addresses of each new employee within 30 days of hiring the employee, and once quarterly for all employees in the bargaining unit.~~

~~TCDSA will be given reasonable advanced notice of group orientation meetings. TCDSA will be given 10 days' notice of group orientation meetings, and a representative of TCDSA will be invited into the meeting room and introduced by a staff member from HR&D at the conclusion of the formal orientation prior to the dismissal of the group. The HR&D representative will also inform the employees that if their classification is represented by TCDSA, then the representative would like to speak with them after the orientation. After such introduction and announcement, the HR&D representative shall announce that the formal orientation is concluded and that if they are not meeting with a TCDSA representative they are dismissed. The TCDSA representative may then meet with the new TCDSA represented unit employees in the orientation meeting room in a small group or individually for fifteen (15) minutes after the conclusion of the orientation meeting.~~

Article ~~44~~13  
**HOURS WORKED**

This contract suspends premium payment of overtime (time and one-half) for overtime worked in excess of 40 hours through 43 in 7-day work period and overtime worked in excess of 80 hours through 86 hours in a 14-day work period; such premium payment for overtime will not be applicable during the term of this contract. See 'C.' below for premium payment of overtime.

These work periods are adopted pursuant to section 207(k) of the Fair Labor Standards Act and section 29 of the Code of Federal Regulations, part 553.

A. Work Shift: Employees scheduled for shifts that do not include time off without pay for a

"lunch hour" shall be granted a 30 minutes' lunch period subject to necessary call out as determined by the Area/Facility Supervisor.

- B. Time Off During A Work Week: Except in an emergency as determined by the Department Head employees will have at least two consecutive days off in each work week. Except in an emergency as determined by the Department Head, time off assigned within the normal work week will be scheduled in conjunction with the employee's regular days off.
- C. Work Week (Work Period): The department shall have two designated work periods and overtime shall be paid in accordance with the following:

Operational Shifts ~~(Corrections)~~

Employees assigned to an operational shift (defined as shifts other than the 5/8's or 4/10's), the work period is designated as a 14-day period. Regular hours worked in a work period shall be ~~8084~~ hours. Hours worked in excess of ~~8086~~ hours ~~up to an including 86 hours per work period will be overtime compensable at the straight time hourly rate.~~ Hours worked in excess of 86 hours in a 14-day work period shall be compensable at the rate of time and one-half. Overtime hours ~~at either the straight-time or time and one-half rate~~ shall be compensated in compensatory time or cash pursuant to Article 15.

Standard Shifts

Employees assigned to a standard shift (defined as four or five-day work schedules of 40 hours (5/8's or 4/10's), the work period is designated as a 7-day period. Regular hours worked in a work period shall be 40 hours. ~~Hours worked in excess of 40 hours up to an including 43 hours per work period will be overtime compensable at the straight-time hourly rate.~~ Hours worked in excess of 43 hours in a 7-day work period shall be compensable at the rate of time and one-half. Overtime hours ~~at either the straight-time or time and one-half rate~~ shall be compensated in compensatory time or cash pursuant to Article 15.

- D. Breaks: Each work shift shall include two fifteen (15) minute rest periods subject to the requirements of Personnel Rule 6.3.

Return time: Except in an emergency as determined by the Department Head, employees will have a minimum of eight (8) hours between scheduled shifts.

Article ~~15~~14

**OVERTIME**

1. The County and its employees represented by TCDSA will comply with all provisions of the Federal Fair Labor Standards Act (FLSA) including the Amendments of 1985.

The County and TCDSA agreed upon various overtime and payroll-related issues as follows:

1. **Bilingual Pay**: Paid at 2.5 % per hour using hours actually worked for current employees hired before July 1, 2019. For employees hired on or after July 1, 2019 the rate shall be paid at \$0.50 per hour using hours actually worked.

2. **Sick Leave Buy Back (SLBB)**: Include SLBB in the regular rate of pay calculation for

overtime premium.

3. **Overtime Premium:** Calculate the regular rate of pay for overtime premium using standard or scheduled hours in the work period.

4. **Straight Time Overtime (STO):** Pay STO as regular hours at the base rate. Pursuant to this change, the term STO is eliminated.

5. **Holiday in Lieu (HIL):** Although not legally required, agree to contract vacation credit received in lieu of holiday as an additional pay to be included in the regular rate of pay calculation for overtime. The value of holiday hours earned for [working on a holiday/regular day off on holiday/etc.] will be included in the calculation of the overtime rate in the period in which they are earned. However, the hours will not be counted towards the overtime threshold when earned or used.

### Definitions:

#### Periods:

**Pay Period** – Every 14 days.

**Work period** – Refers to an established and regularly recurring period of work.

#### Types of Hours:

**“Hours actually worked”** includes hours classified as regular and overtime. It does not include non-working hours, such as holiday, sick, vacation, etc.

**Scheduled/Standard Hours** – Those hours that are recurring and fixed within the work period.

#### Types of Overtime Pay:

**Overtime Premium** – Term used once the “hours actually worked” during the work period exceed the overtime threshold, specifically 86 hours/work period.

**“Straight time” Overtime** – Term was used when total hours (including holiday, vacation, sick, etc.) exceed the overtime threshold, BUT the “hours actually worked” do not. The term is no longer used and eliminated with this contract.

#### Compensation:

**Base Rate** – The rate paid to an employee for their ordinary hours of work (regular hours).

**Additional Pay Codes** – Additional means of compensation that an employee continuously receives every paycheck (e.g., bilingual pay, benefits tax, etc.).

**Regular Rate of Pay** – The rate used when calculating overtime pay. It is calculated by multiplying the Base Rate by 1.5 plus half of the Additional Pay Codes per hour.

Example:

Base rate = \$10 x 1.5 = \$15 Base rate @ 1.5

Additional pay codes = \$20 / 45 Hours actually worked = \$0.44 Additional pay per hour

\$0.44 / 2 = \$0.22

\$0.22 + (\$15 Base rate @ 1.5) = \$15.22 Regular rate

**Weighted Rate** – The rate used to calculate Straight Time Overtime (eliminated with this

contract) and On-call. It is calculated by taking the Base Rate plus Additional Pay Codes per hour.

Example:

Base Rate = \$10

Additional pay codes = \$20 /45 Hours actually worked = \$0.44 Additional pay per hour

\$0.44 + \$10 Base rate = \$10.44 Weighted rate

2. Effective at the beginning of the pay period following adoption of this agreement by the Board of Supervisors:

Overtime earned by the employee shall be compensated either in cash or as compensatory time-off. At the time of filing his/her time sheet, the employee shall make a choice whether to be compensated in cash or in compensatory time until a maximum of sixty (60) hours of compensatory time has been accrued. When sixty (60) hours of compensatory time are accumulated, the department will compensate the employee in cash for any additional overtime worked.

3. Joint employment that creates an overtime liability for the County is prohibited without permission from the Board.
4. If the Sheriff's department receives a "Grant" that requires premium overtime in a manner that differs from when overtime is paid in this MOU, the department shall pay overtime in accordance with the Grant language.

#### Article ~~46~~15 **CALLBACK TIME**

Any employee covered by this MOU who is called back to duty for performance of a necessary task shall receive compensation for a minimum of two (2) hours straight time, irrespective of the actual time required to perform the emergency task. In event the task exceeds two hours in duration, the total compensation shall be based on hours worked. Extension of a normal work day or shift, irrespective of lunch break, shall not be deemed call back.

Management will minimize off duty phone calls. Nevertheless, taking a call of less than a tenth of an hour while off duty will not be deemed call back.

#### Article ~~47~~16 **ON-CALL TIME**

- A. Definition: On-call time is a period of time in addition to normal work time during which an employee is not working but is required to be available for call back.
- B. Requirements: On-call duty requires the employee so assigned:
  1. To be reachable by telephone, radio or other means established by the Department;
  2. To respond to work quickly if called back;



3. To refrain from activities which might impair his/her ability to perform his/her assigned duties should he/she be called back.

On-call time shall be compensated at the rate of fifteen percent (15%) of the employee's hourly equivalent of the regular bi-weekly salary for each hour the employee is assigned to be on-call.

To be eligible for on-call compensation the employee must be informed by memorandum posted schedule from the Department or by Court subpoena of the required/authorized dates and times of such service.

**Article ~~48~~17**  
**VACATION**

Vacation scheduling shall be subject to staffing needs as determined by the Department. Employees may submit vacation requests during the month of ~~January~~November for the following year. The amount of time requested may be any amount up to the employee's current balance plus any time normally earned prior to the vacation requested. A vacation week selection shall consist of seven (7) days regardless of when the calendar year ends.

During each round of scheduling no more than one block of time may be scheduled for each employee. Scheduling shall be on the basis of seniority in current classification.

Once the initial requests have been processed further scheduling shall be on a first come first served basis.

Vacation Leave Entitlement/Accumulation

For each one (1) hour of service other than overtime, employees earn and accumulate vacation leave with pay in accordance with the following schedule, ~~which is effective with the pay period beginning February 23, 2003:~~

| Years of Continuous Service | Pay Periods of Continuous Service | Earning Rate Per Hour | Earning Rate Hours Per Pay Period | Earning Rate Weeks Per Year |
|-----------------------------|-----------------------------------|-----------------------|-----------------------------------|-----------------------------|
| 0 – 3                       | 1 - 78                            | .03846                | 3.077                             | 2                           |
| 3 – 7                       | 79 - 182                          | .05769                | 4.615                             | 3                           |
| 7 – 11                      | 183-286                           | .07692                | 6.154                             | 4                           |
| Over 11                     | More than 286                     | .09615                | 7.692                             | 5                           |

- a) Employees continue to earn and accumulate vacation leave while on any paid leave.
- b) Once an employee has accumulated three hundred and seventy hours (370) hours he shall receive no further vacation accruals until the employee's accrual falls below three hundred and seventy hours (370) hours.
- c) If, through no fault of the employee, an employee is unable to take sufficient vacation leave to avoid exceeding the maximum accumulation provided above, the Department Head shall notify the Personnel Director in a manner as prescribed by

the Personnel Director. The employee may thereupon be granted an extended period of time not to exceed six (6) pay periods. During this 6 pay period extension the employee will be allowed to continue to accrue vacation above the 370-hour cap. In no event shall an employee be entitled to compensation for unused earned vacation except as provided in Section 6.8.6 of the Personnel Rules.

- d) Effective with the pay period beginning February 23, 2003, employees with immediate prior public service will accrue vacation as if all their most recent years of continuous public service were with Tulare County.

#### 6.8.5 Sick Leave During Vacation

An employee may substitute sick leave for vacation leave when the employee is hospitalized or receives outpatient medical care for a serious injury or illness while on a scheduled, pre-authorized vacation.

Except as otherwise provided above vacations shall be conducted in accord with Personnel Rule 6.8.

### Article ~~19~~18 **BENEFITS PLANS**

#### A. Health Plan

Employees covered by this Agreement shall be eligible for the TCDSA Health Plan in accordance with the provisions and restrictions of that Plan and the provisions and restrictions listed below.

- 1. The current Benefit amounts (~~2019~~) payable will remain the same for Health Plan Year ~~2018~~20 and will be subject to the changes set forth below for Health Plan Year ~~2019~~21. The County shall contribute the following Benefit Amounts each pay period (26 pay periods) towards the cost of health insurance (which includes medical and life insurance and may also include dental and vision) for employees enrolled in the following coverage levels:

|                          | <u>2018</u>         | <u>2019</u> |
|--------------------------|---------------------|-------------|
| Employee Only:           | <del>\$248.58</del> | \$268.58    |
| Employee + 1 Dependent:  | <del>\$359.96</del> | \$399.96    |
| Employee + 2 Dependents: | <del>\$545.75</del> | \$585.75    |

The employee shall be responsible for paying the cost difference, if any, between the Benefit Amount and the Premium Amount through a payroll deduction.

- 2. For current employees hired on or before July 31, 2010 who validly waive health insurance coverage, \$229.88 per pay period will be the maximum amount to be received and will not be increased as other contribution rates increase during the term of this agreement.
- 3. For all new employees hired on or after August 1, 2010 (or rehired if previously employed and validly waive health insurance coverage) shall receive an opt-out payment benefit amount not to exceed \$38.46 per pay period based on a 26 pay period benefit cycle.



4. Employees electing to waive participation in the TCDSA health plan shall only be eligible for the opt-out payment benefit amount if they ~~provide satisfactory proof of other coverage~~ meet the provisions as set forth in the eligible opt out arrangement below:

B. Eligible Limited Opt Out Arrangement

Employees may elect to waive enrollment in the County's health insurance coverage in any given Plan Year. Employees who elect to waive enrollment in the County's health insurance coverage must provide evidence the Employee and the Employee's tax dependents have or will have minimum essential coverage (MEC) other than individual market coverage during the Plan Year. Employees who elect to waive enrollment may receive an opt-out payment (cash-in-lieu) as designated by the Plan Administrator. An election to opt out shall be irrevocable for the Plan Year, except as outlined in Section 5.6 of the Tulare County Section 125 Benefits Plan.

Opt-out payments will not be made if the County knows or has reason to know that the employee or family member does not or will not have MEC.

~~All employees must participate in the employee benefit plan unless they qualify to opt out as described below.~~ Employees who refuse to participate are not eligible to receive the opt-out payment benefit amount. Employees may retain eligibility to receive the cash-in-lieu a benefit amount if they opt out under one of the following conditions:

1. When both members of a married couple or registered domestic partners work for Tulare County, one employee may elect to be covered as a dependent of his/her spouse/partner and drop his/her individual health insurance coverage, regardless of bargaining unit, without a corresponding reduction in the Benefit Amount cash-in-lieu amount.
2. Employees who can provide written evidence ~~satisfactory~~ to the County Human Resources Department as stated in the eligible opt-out arrangement showing that they are covered pursuant to paragraphs "a" through "d" below and who satisfy the requirements of paragraph "e" may opt out of the employee benefit plan.
  - a. As a dependent on a parent, spouse or domestic partner's employer-provided group health plan; or
  - b. As a member of an employer-sponsored retiree group health plan or an eligible and covered dependent thereon; or
  - c. As a retiree member, or an eligible and covered dependent thereon, of a group health plan sponsored by any branch of the United States military.
  - d. As a Medicare recipient.
  - e. In addition, employees in this unit are required to maintain the base Life Insurance Policy (currently \$10,000) through the Employee Benefit Plan.
3. Employees who opt out of the health insurance and meet the requirements of paragraph B.1 or B.2 above will have the cash-in-lieu amount unused benefit amount established as a Flat Rate, added to their taxable wages.
4. An eligible employee must inform the County that the employee intends to opt out of the benefit plan as set forth above during open enrollment for health benefits or upon a

qualifying event.

5. An employee who opts out of the County's health benefit plan or the DSA Plan must rejoin their plan within thirty (30) days of losing eligibility to qualify for the opt-out provisions as described above. ~~The employee who does not comply with this provision shall, pursuant to the terms of the applicable benefit contract, lose pre-existing condition coverage upon re-enrollment at any subsequent open enrollment period or other qualifying event.~~

C. Health Savings Program Amount

The County agrees to meet and confer during the term of the agreement over the establishment of a health savings ~~account program~~ with the understanding that there shall be no County contributions to the plan and the County shall establish an administrative fee to cover any payroll processing costs associated with the plan.

D. TCDSA Health Plan Requirements

TCDSA may continue to maintain its own health benefit program if the program meets the following criteria:

1. TCDSA must maintain a bona fide health benefit program through a mainstream health care provider.
2. TCDSA must maintain a plan for compliance with all laws applicable to the operation of a health care plan including but not limited to HIPAA.
3. The County will collect an Administration Fee of \$1.00 per pay period from each TCDSA represented employee (includes both enrolled and waived) by payroll deduction. This County Administration Fee will be remitted to the County to cover costs associated with the administration of the Benefit Amount, in adding or deleting the Union-sponsored health insurance and long-term disability insurance deduction from employee's payroll, and necessary communication and coordination of coverage with TCDSA's Health Plan Administrator.
4. Employees who retire while participating in TCDSA's health plan will have the option to remain in TCDSA's plan during retirements (no County contribution to employees for TCDSA plan). Employees in the TCDSA health plan will not be allowed to join the County's health plan upon retirement unless they are a dependent of another County employer already enrolled in the County's health plan.
5. As a participant in the County IRS 125 Benefit Plan, TCDSA will comply with the health plan protocol prepared by the County.
6. Open Enrollment schedule must be in conjunction with the County's Open Enrollment period. Rates and health plan information must be provided to the County by September 28<sup>th</sup> of each year.

~~6-7.~~ TCDSA must provide minimum essential coverage in accordance to the Affordable Care Act (ACA).

The County shall deduct from TCDSA bargaining unit member's biweekly paychecks premiums for

Union-sponsored voluntary health insurance and long term disability insurance, and remit such funds directly to the Union.

Any future payroll deductions for Union-sponsored optional benefits for its members shall require mutual agreement by both parties.

The continuation of the Union sponsored health and long-term disability insurance program for Bargaining Unit 15 may be negotiated with each successor MOU beginning no sooner than July 1, 2017.

The Union agrees to indemnify and hold the County harmless for any and all claims, demands, suits or other action arising from this article.

**E. TCDSA Long Term Disability Insurance**

The County shall continue to deduct the employee's premium cost for DSA's Long Term Disability Plan. DSA shall provide the County with written notice of the amount of the premium deduction by December 15<sup>th</sup> of each year. Once the premium has been set for the calendar year, the County shall make no adjustments to the premium amount until December of the following year.

The County will continue to deduct from DSA members in BU 15 biweekly paychecks for Union-sponsored voluntary long-term disability insurance at the option of individual employees. Such insurance is to be paid for by employees and shall be subject to provision as established by the County, the Union and the insurance carrier.

Article ~~20~~19

**PRE-ADMISSION / CONCURRENT REVIEW**

Employees covered by this MOU shall be included in the County Employee Health Plan pre-admission/concurrent review program.

Article ~~24~~20

**SAFETY EQUIPMENT**

~~A. Equipment Furnished~~

~~(1) An employee covered by this agreement may turn in up to 25 rounds of ammunition per year for replacement by the department. [.40 caliber]~~

~~(2) When necessary as determined by the Department, the Department will replace worn rain gear available to employees covered by this agreement.~~

~~B. Bullet Proof Vests~~

~~The County will reimburse employees covered by this agreement up to \$240 no more often than once in five years for the purchase of an approved bullet proof vest.~~

~~AG. Vehicles~~

Anytime an employee believes a County vehicle is unsafe to operate, ~~he/she~~ employee shall

notify his/her immediate supervisor. The employee shall not then operate the vehicle until it has been determined to be safe.

The County shall remove from service any emergency vehicle that is determined to be unsafe to operate by the County Motor Pool or by the Sheriff's DepartmentOffice, upon recommendation of the Station Commander.

A vehicle shall be replaced whenever it is no longer economical to repair in the judgment of the County.

~~The Administration of the Sheriff's Department and the Association shall meet during the term of the Agreement to jointly develop, with the assistance of the County Motor Pool, advisory safety standards for the evaluation and recommended replacement of emergency vehicles.~~

BD. County Property

All safety equipment issued by the County Department shall remain the property of the County and shall be returned to the County upon request or upon the employee's termination of employment.

Article 2221

**UNIFORM ALLOWANCE / PROPERTY REPLACEMENT**

A. Uniform Allowance

1. Employees shall be required to adhere to uniform specifications, appearance, and maintenance standards established by the Sheriff's Department.
2. The County shall pay each employee covered by this Agreement a uniform reimbursement allowance of \$800 per year. This allowance shall be paid semi-annually separate from the normal payroll checks, once on the first pay date in June and once on the first pay date in December. Should an employee covered by this agreement leave the Department or be off work in excess of six (6) months on a Leave of Absence, his/her uniform allowance shall be pro-rated on a pay period basis. If permitted by law, the uniform allowance shall also be similarly pro-rated if the employee is off work in excess of six (6) months on "4850" leave.
3. All new hire employees to have their first uniform provided at County cost in accordance with departmental uniform policy requirements (except as otherwise provided in Article 21). The following items (in singular quantity unless otherwise noted) are included:

Class A Pants  
Class A Long Sleeve Shirt  
Class B Short Sleeve Shirt  
Class A Jacket  
Class A Hat  
Black Tie  
Brass Tiebar  
Brass Nameplate

Basketweave Pants Belt  
All Leather Shoes/Boots  
Two (2) TCSO patches per shirt or jacket

Should an employee separate from the department for any reason ~~during probation~~, the Sheriff has the option of requesting that the uniform provided at County cost be returned to the department.

#### B. Property Replacement

1. In accord with Resolution 80-607, for Uniforms damaged in the line of duty through other than normal wear, functional value will be the full replacement value of the item as that item is specified by the Sheriff's ~~Department~~Office.
2. In accord with Resolution 80-607, for prescription eyeglasses damaged in the line of duty through other than normal wear, functional value will be the full replacement value of the lenses and the value of standard frames as provided by the County vision plan.
3. In accord with Resolution 80-607, for contact lenses damaged in the line of duty, functional value will be the full usual, customary and reasonable replacement value of replacing the destroyed lens with the same style and type.
4. Personal property customarily used by an employee in the performance of his/her duties that is lost or damaged in the line of duty, without negligence by the employee, shall be replaced or repaired by the County.

The County and TCDSA agree to develop a policy establishing an inventory of personal property qualifying for replacement under paragraph ~~34~~ above. Once said inventory is established, an employee must obtain written approval from his/her ~~supervisor~~ Lieutenant, or another designee of the department head, to use the item of personal property in the performance of his/her duties.

#### Article ~~2322~~ VEHICLE OPERATION

Prior to operating any County vehicle an employee must provide Risk Management with a copy of his/her valid driver's license at the level required by the State DMV for legal operation of that vehicle. The employee must immediately notify their department and Risk Management of any action against that license and/or of any moving violations incurred while on County business.

~~Prior to using a personal vehicle on County business for which an employee would be eligible to claim mileage reimbursement the employee must provide Risk Management with a copy of his/her valid driver's license at the level required by the State DMV for legal operation of that vehicle. In addition the employee must provide Risk Management with a copy of their vehicle insurance policy or proof of insurance covering the vehicle in question as required by State law.~~

~~The employee must immediately notify their department and Risk Management of any action against that license or insurance and/or of any moving violations incurred while on County business.~~

~~The certification statement on the County Travel Expense Claim will be modified to add a statement~~

such as:

~~"I hereby certify that I had a valid California Driver's License and that the vehicle used was insured in accord with applicable County policy and state law during all mileage claimed above."~~

Article ~~2423~~  
**EMPLOYEE TRAVEL**

When it is necessary for an employee to travel in the course of performing their assigned duties the County ~~may shall, at its sole discretion,~~ provide the means of transportation ~~or require an employee to provide their own means of transportation and to be reimbursed in accord with Administrative Regulation #1. B. 1.~~

When traveling on out-of-County required training the department will arrange advance payment of lodging and tuition. The County will reimburse for meal expenditures up to the full amount provided by P.O.S.T.

Article ~~2524~~  
**MEDICAL SEPARATION**

1. When the County determines that an employee is unable to satisfactorily perform essential assigned functions due to a disability or other medical condition, for which no reasonable accommodation can be made, that employee may be medically separated from County service. This procedure shall apply regardless of the cause of the disability or medical condition.
2. A medical separation shall be based on:
  - a. A statement describing the essential functions the employee is not performing satisfactorily or is not capable of performing, and;
  - b. A description of any reasonable accommodations considered and why these have not enabled the employee to perform essential assigned functions satisfactorily, and;
  - c. Any medical, psychiatric or other pertinent information presented by the employee or the County.
3. The County shall pay the reasonable costs of any medical examinations required by the County.
4. An employee shall not be eligible for medical separation unless the following criteria have been satisfied.
  - a. The employee is unable to satisfactorily perform essential assigned functions due to a disability or other medical condition;
  - b. The disability or medical condition will continue for a period of time which will be detrimental to the needs of the department;

- c. All available leave balances (sick leave, vacation, CTO) have been exhausted;
  - d. The employee has exhausted any medical leave of absence(s) without pay provided under Personnel Rule 6.10. The only exception to this criteria is if the prognosis indicates that the condition is permanent or will exist for a period of time that would exceed the period of time allowed for a medical leave of absence.
5. Written notice of intent to medically separate shall be given to the employee either by delivery of the notice to the employee in person, or by mail. The notice shall:
- a. inform the employee of the action intended, the reason for the action as specified in Section 2, a, b and c above and the effective date of the action; and
  - b. inform the employee of the right to respond and to whom to respond within ten (10) calendar days from the date of such notice of intent in accordance with instructions given by the County in the written notice sent to the employee.
  - c. inform the employee of the right to apply for a disability retirement, if the employee meets the criteria.
6. After review of the employee's timely response, if any, the County shall notify the employee of any action to be taken. Such notice shall be mailed or personally delivered to the employee prior to the effective date.
7. Any employee who is medically separated shall have the right to appeal such action in accord with the procedures as set forth in Personnel Rule 12. The basis of the appeal shall be limited to whether or not the criteria, as specified in Sections 2 and 4 above, have been met.
8. Any employee who is medically separated shall be eligible to apply for re-employment or reinstatement if their medical condition improves to the point where they would be able to perform the full range of assigned, essential functions. A medical and/or psychological exam may be required prior to appointment.
9. Prior to a Medical Separation taking effect, the employee may apply for a transfer to another position providing he/she meets the necessary employment standards for and is able to perform the essential functions of that position. The employee must comply with applicable County rules and procedures concerning transfers.

Article ~~2625~~

**PAYROLL ERRORS**

A. SHORTAGES

1. Cash advance by the Auditor's Office to cover shortage errors in employee's paychecks, shall be provided to employees within three (3) working days after written notification of the discrepancy to Auditor's Office. This provision is to cover only those discrepancies above a gross fifty dollars (\$50.00).
2. For shortage errors of a gross of fifty dollars (\$50.00) or less, the adjustment will be made in the next regular payroll cycle.



## B. OVERPAYMENTS

1. When an overpayment error of a gross fifty dollars (\$50.00) or more occurs, the employee will repay the overpayment in the same amount and within the same number of pay periods in which the error occurred unless the employee agrees to repay the entire amount sooner.
2. If an overpayment of less than fifty dollars (\$50.00) gross occurs, the overpayment amount will be deducted from the employees next regular pay check.

### Article ~~2726~~

## **PEACE OFFICERS PROCEDURAL BILL OF RIGHTS**

The County and employees covered by this Agreement shall adhere to the provisions of Government Code Sections 3300 through 3312, known as the Public Safety Officers Procedural Bill of Rights.

Prior to any meeting with an employee involving disciplinary proceedings, or at any point during an interrogation or interview where disciplinary action becomes a probability, the County shall advise the employee of his/her right to representation.

### Article ~~2827~~

## **NO STRIKE - NO LOCKOUT**

In consideration of the mutual desire of the parties to promote and ensure harmonious relations, the County agrees that there shall be no lockout or the equivalent of employees covered by this MOU, and the TCDSA and its members agree that there shall be no strike or other concerted action including actions in sympathy for others, resulting in the withholding of services by its members during the term of this MOU and during the period immediately following this MOU while meet and confer toward a successor MOU is continuing and impasse has not been reached.

### Article ~~2928~~

## **SEVERABILITY**

If any provision of this MOU is declared by proper legislative, administrative or judicial authority to be unlawful, unenforceable or not in accordance with applicable Tulare County rules or law, except where specifically modified by this MOU, all other provisions of the MOU shall remain in full force and effect for the duration of this MOU. Any provision declared invalid under the above language will be subject to meet and confer. The parties agree to meet and confer within 30 days after such determination for the purpose of arriving at a mutually satisfactory replacement for such article or section.

### Article ~~3029~~

## **SALARY**

### A. Compensation

In the first year of the agreement, there shall be a salary increase of ~~43~~43% for all classifications in



the unit upon ratification and approval by the Board of Supervisors, to be effective no sooner than ~~August~~ July 9<sup>18</sup>, 201719.

In the second year of the agreement, there shall be a salary increase of ~~32~~% for all classifications in the unit, effective July ~~85~~, 201820.

#### B. Premium Pay

Subject to the position restrictions stated below employees covered by this Agreement who are placed in the assignments listed below shall receive a three (3) range premium above their regular salary. (Regular salary for this purpose includes Career Development pay.):

Detective

K-9

STEP SWAT

Field Training Officer (during periods when supervising a trainee)

Bomb Tech ~~(no more than one position to be so designated either in Unit 13 or 15)~~

Special Response Unit (SRU)

Employees assigned to K-9 shall also receive additional compensation of fourteen (14) hours each pay period at the State of California minimum wage to compensate officers for the time spent caring, grooming, feeding, training, and otherwise attending to the needs of their assigned dog(s). If the fourteen (14) hour k-9 duty work hours result in overtime eligible hours, such hours shall be paid at time and one-half at the State of California minimum wage.

Employees in these assignments may also be required to perform as lead Deputies.

#### C. Hazard Pay

Rates and eligibility shall remain as they are. Except that:

SAR: Team members of the Search and Rescue team shall be eligible to receive hazard pay for time spent exercising specialized technical skills (entry into white water and rock climbing via ropes), as determined by the department, in the course of a rescue.

~~Clandestine Labs: Team members assigned to and trained to enter, clean and investigate clandestine laboratories shall receive hazard pay for time spent exercising specialized skills as determined by the Department, during an investigation.~~

SERT: When team members are called out during a riot or high risk cell extraction and only for the time spent conducting the action (and does not apply to "routine" cell searches).

STEPSWAT Entry Team: When on a barricaded suspect.

Dive Team: When in the water in the course of a rescue.

Bomb Unit: When called out on a suspected improvised exploding device.

The commanding officer shall notify employees that were engaged in the hazardous duty, as soon as administratively possible, of the actual time that the Hazard Pay commenced and ceased.

Payment shall not be made for time that is considered de minimis. If an employee disagrees with the Hazard Pay time designation, the commanding officer shall meet with the employee.

Hazard pay is an additional pay (a separate rate of pay that is in addition to an employee's rate of pay earned for actual hours worked) and it compensated at the employee's base rate of pay.

#### D. Career Development Plan

For purposes of retention and as an incentive to self-development, additional pay is authorized for any Sergeant who meets the following criteria:

1. For employees employed and in Unit 15 on or after July 23, 1995:

a. Senior Level - Payment of \$1,200 per year provided,

1. 7 years of continuous service as a Sheriff Sergeant.

2. Possession of POST Intermediate Certificate.

3. Completion of 120 hours of job related education or training as identified by department.

4. PAF of 6 or higher.

The payments shall be paid on a bi-weekly basis. These career development payments shall not be considered as part of the employees' base salary rate for purposes of calculating the Flexible Benefits Program but shall be considered as part of the employees' base salary for overtime and retirement benefits.

To continue to be eligible for the Career Development Plan a participant must maintain his/her performance ratings at 5 or better. A rating of less than 5 will result in loss of eligibility for the current Career Development Plan level for a period of at least one year. To regain that level the employee must again meet the program criteria for performance for that Career Development Plan level.

#### ED. Salary Upon Promotion

Promotion to Sergeant:

A newly promoted Sergeant shall have their appropriate step at their new salary range determined based on their base pay in accordance with Personnel Rules. Premium (except for Field Training Officer) and Career Development Plan Pays shall be included in an employee's base pay for purposes of calculating a pay increase upon promotion.

The new rate shall not exceed Step 5 of the pay grade for Sergeant.

Promotion to Lieutenant:

A newly promoted Lieutenant shall have Premium Pays (excluding Field Training Officer) included in their base pay to determine their salary in the Lieutenant position.

Article ~~3430~~  
**RENEGOTIATION**

In the event that a County emergency is declared by a resolution of the Board of Supervisors pursuant to Section 29127 of the Government Code the Deputy Sheriffs' Association shall, upon request, meet and confer in an effort to mitigate the impacts of such emergency. Any modification to this memorandum pursuant to this article shall be by mutual agreement.

Article ~~3231~~  
**TERM**

The provisions of this MOU shall commence July 1, 20~~17~~19 and shall then remain in effect for through June 30, 20~~19~~21. The provisions of this MOU shall also continue from year to year thereafter; provided, however, that either party may serve written notice on the other as provided for in Article 31, RENEGOTIATION, of its desire to negotiate a successor agreement.

Article ~~3332~~  
**TRANSFER POLICY**

Except as may be provided in subsequent MOU's:

- 1) An employee desiring an intra-departmental transfer shall request this by filling out the online transfer form memo to his/her supervisor specifying the desired locations. Transfer requests must be renewed annually. The names of employees requesting a particular location will be reviewed for each vacancy that occurs in the location in the classification. ~~The supervisor shall notify the employee of acceptance or rejection at the time of the hiring decision.~~
- 2) The appointing authority shall give major consideration to seniority, workload and departmental needs in the scheduling of hours, vacation and job assignments.
- 3) No intra-departmental transfer shall be made unless:
  - (a) The employee consents, and/or
  - (b) A business purpose can be demonstrated.
- ~~4) Within 10 working days of his/her request an involuntarily transferred employee will be given a written statement of the reason(s) for the transfer.~~
- 45) When an employee is permanently, involuntarily reassigned anywhere more than 20 miles from his/her assigned permanent work location the County shall reimburse the employee at the current County mileage rate for the first two weeks of the reassignment. Said reimbursement shall be for the shorter of the most direct route from either his/her previous work location or his/her residence to the new permanent work location.
- 56) Transfer within a classification from an assignment eligible for premium pay to an assignment in the same classification that is not eligible for premium pay does not constitute a demotion and is not appealable as such.

Article ~~3433~~  
**LISTS**

Promotional eligible lists shall remain in effect for a period of six (6) months unless exhausted at an earlier date. An eligible list may be extended for a period not greater than an additional one (1) year by the Director when it appears in the best interests of the County.

In addition, the parties agree to modify Personnel Rule 5.4.2 as follows:

#### 5.4.2 Duration of Lists

Employment lists shall remain in effect for six (6) months, unless sooner exhausted or abolished by the Personnel Director. Employment lists may be extended by action of the Personnel Director for additional periods, but in no event shall an employment list remain in effect for more than (2) two years.

### ~~Article 35~~ **DISPLACEMENT**

~~Regular full time Deputy Sheriff positions will be filled with bargaining unit employees.~~

~~The Department may continue to use Extra Help Deputy Sheriff's for the summer "Lake" and "River" patrols.~~

### Article ~~36~~34 **APPEAL OF DISCIPLINE**

#### 1. **"SKELLY" PRE-DISCIPLINARY REVIEW**

At any time prior to 5:00 p.m. on the ~~effective date of the proposed discipline, the employee may make a request for a Skelly Hearing. The Notice of Proposed Discipline shall not be effective less than 10 calendar days from the date of service on the employee or his/her representative. last work day and at least two work days prior to the effective date,~~ the employee subject to the proposed discipline may respond in writing to rebut the charges against him/her, or to state any mitigating circumstances; or, the employee may request an informal review by the Sheriff. The Sheriff will review the written record, including written statements and documents presented by the employee, discuss the proposed discipline with the Department Head, and determine whether the proposed action should be made final, should be modified to a lesser penalty, or should be withdrawn. While conducting his review, the Sheriff may meet with the employee and his/her representative and anyone else the Sheriff may deem appropriate to his review. The decision of the Sheriff is binding on the Department.

The Sheriff may delegate this review to anyone he deems appropriate except someone who is otherwise directly involved in the administration or review of this proposed action.

Reduction in pay, in lieu of suspension, shall be treated as its equivalent suspension.

#### 2. **APPEAL OF DISCIPLINARY ACTIONS:**

A written Notice of Appeal, in a form acceptable to the Personnel Director, must be filed with and received by the Personnel Director within five (5) working days from the effective date of the

disciplinary action. Failure to file a Notice of Appeal within this specified time period shall be deemed a waiver of any right to appeal the action taken. No exceptions to this failure-to-file time period will be permitted.

The Notice of Appeal must state the reasons for the appeal and whether the Hearing Panel or Administrative Law Judge type of hearing is selected.

In the event that the State of California's procedures allow for the selection of an Administrative Law Judge (ALJ), the County and the Association shall be allowed one strike-through each on the selection of an ALJ. Once the strike-through(s) have occurred, the next ALJ appointed by the State shall hear the matter. Either party must serve written notice upon the other within seven (7) calendar days of being notified of the name of the ALJ in order for the strike-through to be considered timely.

### **PROCEDURES APPLICABLE TO ALL HEARINGS**

The County's representative, the department's representative, the appellant, and the appellant's representative, if any, shall meet in a conference at least twenty (20) days prior to the hearing in an attempt to resolve the appeal. If resolution is not possible, the parties shall narrow the issues of the appeal, stipulate to as many facts as possible, exchange all relevant information and evidence, including a summary of anticipated testimony, copies of specific provisions and/or rules, policies, procedures, ordinances regulations and/or articles of the MOU which the appellant alleges has been violated, and the names of the representatives who will be presenting the case. The parties shall also submit to each other a written statement of their position. Except for rebuttal testimony, modification of position statements or newly discovered facts, positions or witness not shared at the conference will not be presented to or considered by the hearing officer. In the case of newly discovered facts discovered after the conference, they must be shared with the other party within 48 hours of the discovery or within 48 hours prior to the scheduled hearing, whichever is earlier, in order to be considered by the hearing officer.

The hearing shall be open to the public only if the employee so requests. The employee shall be present in person at the hearing and may be represented by counsel and/or by a representative of an employee organization of which the employee is a member. The employee's department may be represented by counsel and/or have a lay representative present throughout the hearing.

- 36.1 All witnesses who are not parties may be excluded from the hearing by the hearing officer or Panel Chairman except when testifying. If the employee does not testify in his or her own behalf, the employee may be called and examined as an adverse witness. All testimony shall be taken under oath or affirmation.
- 36.2 The rules of evidence do not apply and any evidence upon which reasonable persons might rely in the conduct of their everyday affairs may be admitted. Persons who provide direct testimony may be called by the other party for cross examination under oath. Cross examination shall be limited to those areas covered in their prior testimony. The hearing officer controls which evidence is admitted.
- 36.3 The hearing officer may take official notice of any matter which may be judicially noticed.

The County Administrative Officer may promulgate such additional hearing procedures as he deems necessary.

## **TYPES OF HEARINGS**

The Notice of Appeal submitted by the employee must state which of the following types of appeals is requested. Only one type may be selected for any one Disciplinary Action. The selection of the type of hearing is final and binding. Absence of a request will be deemed a request for a Hearing Panel which is not subject to judicial review under Cal. Code Civ. Proc. 1094 et seq.

### **A. HEARING PANEL**

Employees who elect to have a disciplinary action reviewed by a Hearing Panel waive the right to judicial review of the final decision of the Hearing Panel under Cal. Code Civ. Proc. 1094 et seq.

The Disciplinary Action will be reviewed by the Hearing Panel consisting of one County employee selected by the appellant, one person selected by the department and one person appointed by the Board of Supervisors. No panel member may be otherwise involved in the appeal nor may they be a witness to the facts underlying the action.

The Board appointed member shall chair the committee and shall be the hearing officer as set forth in Section III above. If the Board appointed member is not an attorney, the Board shall also appoint a legal advisor who will advise the committee chair on the admissibility of evidence.

36.3.1 Each party shall have the right to subpoena witnesses. The Board of Supervisors will, on request, issue in blank subpoenas.

36.3.2 Each party shall select their panel member and notify the Personnel Director within fifteen (15) calendar days after notice of the filing of the appeal. Failure by either party to select without good cause as determined by the Panel Chairman, shall result in forfeiture of the case.

36.3.3 Failure on the part of the County or the appellant to appear before the Hearing Panel, without good cause as determined by the Panel Chairman, shall result in forfeiture of the case.

36.3.4 The decision of the Hearing Panel shall be by majority vote and shall be made in writing within sixty (60) calendar days after the filing of the appeal. This limit may be extended an additional thirty (30) days by the Chairman of the Panel upon showing by either party of reasonable cause for delay to the satisfaction of the Chairman. The decision of the Hearing Panel shall be final and binding on all parties and shall not be subject to judicial review under Cal. Code Civ. Proc 1094 et seq.

36.3.5 The Panel Chairman shall maintain the record of the hearing and all exhibits.

### **B. ADMINISTRATIVE LAW JUDGE**

The employee is advised that the date of the hearing is dependent on the calendar of the Administrative Law Judge and may have to be scheduled six to nine months or more in advance.

Administrative Law Judge hearing procedure:

36.3.6 Statement of Charges - Preparation

Within fifteen (15) calendar days after the receipt of the Notice of Appeal selecting an Administrative Law Judge hearing, the County Counsel's Office shall prepare, and file with the Personnel Director, a Statement of Charges. Such statement shall specify the Rules which the employee is alleged to have violated, and the acts or omissions with which the employee is charged.

36.3.7 Statement of Charges - Issuance

Upon the filing of the Statement of Charges, County Counsel shall either cause a copy thereof to be delivered to the employee personally, or sent to the employee by certified or registered mail at the last known mailing address of the employee on file in the Personnel Department. Included with the Statement of Charges shall be a form entitled "Notice of Defense" which, when completed, signed by or on behalf of the employee, and returned to the Personnel Department, will acknowledge service of the Statement of Charges.

36.3.8 Notice of Defense

36.3.8.1 Within five (5) calendar days after service upon the employee of the Statement of Charges, an employee shall file with the Personnel Director a Notice of Defense in which the employee may:

- 36.3.8.1.1 Request a hearing. If the employee requests a hearing the employee must indicate their estimation for the length of time necessary to present their case.
- 36.3.8.1.2 Object to the Statement of Charges on the ground that it does not state acts or omissions upon which the Appointing Authority may proceed.
- 36.3.8.1.3 Object to the form of the Statement of Charges on the grounds that it is so indefinite or uncertain that the employee cannot identify the transaction or prepare a defense.
- 36.3.8.1.4 Admit the Statement of Charges in whole, or in part.
- 36.3.8.1.5 Present new matter by way of defense.
- 36.3.8.1.6 No exceptions to the time period provided herein shall be permitted.

36.3.8.2 The employee shall be entitled to a hearing on the merits of the charges if the employee files a Notice of Defense, and any such notice shall be deemed a specific denial of all parts of the accusation not expressly



admitted. Failure to file a Notice of Defense shall constitute a waiver of the employee's right to a hearing. New matter not identified in the Notice of Defense may not be presented in the hearing. Unless objection is taken as provided in paragraph 3. of the above subsection B., all objections to the form of the Statement of Charges shall be deemed waived.

36.3.8.3 The Notice of Defense shall be in writing, signed by, or on behalf of, the employee and shall state the employee's mailing address.

36.3.8.4 Upon receipt of the Notice of Defense, the County shall contact the State Office of Administrative Hearings and ascertain presently available dates when a Hearing Officer might be available to conduct a formal disciplinary hearing pursuant to these Rules and shall notify the employee of such dates, and of the dates on which the County's representative will be available for the hearing. The employee shall then deliver to County Counsel, within (10) calendar days, the employee's choice of the available dates for the hearing. Such dates shall not be inconsistent with the dates provided by the County or indicated to be available by the Office of Administrative Hearings. The employee shall concurrently provide notice of the name and address of any party who might be representing the employee at the hearing. County Counsel shall thereafter give the employee notice of the time, date, and place of the hearing. Said notice shall either be delivered to the employee personally or sent to the employee by certified or registered mail, at the last known mailing address of the employee on file in the Personnel Department. Should the employee fail to provide a written list of available dates within the time lines indicated above, the appeal shall be dismissed.

36.3.8.5 The Notice of Defense must specify every defense that the employee intends to rely upon. The employee shall be bound by the Notice of Defense and may not change the Notice of Defense unless revised as provided for herein. At any time prior to the submission of the matter to the hearing officer, the appellant may amend the Notice of Defense. Such right to amend shall include the right to amend according to proof at the hearing. All parties shall be given written notice thereof, except when the amendment is made according to proof at the hearing. If the amendment presents new matter, the Appointing Authority shall be afforded a reasonable opportunity by the hearing officer to prepare a response thereto.

### 36.3.9 Conduct of Hearing -

Failure on the part of the County or the appellant to appear before the Hearing Panel, without good cause as determined by the Panel Chairman, shall result in forfeiture of the case.

The Office of Administrative Hearings is empowered to issue subpoenas as provided in Section 27721 of the Government Code of the State of California in accordance with the procedure provided in Section 11510 of said Government Code. The hearing officer is empowered to receive evidence, administer oaths, rule on questions of law and procedure, rule on the admissibility of evidence, and continue the hearing. The hearing need not be conducted according to technical rules relating to evidence and witnesses.



Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used only for the purpose of explaining or supplementing other evidence. Irrelevant or unduly repetitious evidence may be excluded by the hearing officer. All hearings shall be reported by a certified court reporter. Persons who provide direct testimony by affidavit may be called by the other party for cross examination under oath. Cross examination shall be limited to those areas covered in the affidavit.

#### 36.3.9.1 Affidavits

At any time fifteen (15) or more days prior to a hearing or a continued hearing, either party shall mail or deliver to the opposing party a copy of the affidavits which he proposes to introduce as direct evidence, together with a notice as provided below. Unless the opposing party, within ten (10) days after such mailing or delivery, mails or delivers to the proponent a request to cross examine an affiant, his right to cross examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally.

The notice referred to above shall be substantially in the following form:

The accompanying affidavit of (here insert name of affiant) will be introduced as direct evidence at the hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify (here insert name of proponent or his representative) at (here insert address) that you wish to cross examine him. To be effective your request must be mailed or delivered to (here insert name of proponent or his representative) on or before (here insert a date seven [7] days after the date of mailing or delivering the affidavit to the opposing party)

#### 36.3.9.2 Official Notice

The hearing officer may take official notice of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be so noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity, on request, to refute any officially noticed matters by evidence or by written or oral presentation of authority, the matter of such refutation to be determined by the hearing officer.

#### 36.3.10 Amended Statement of Charges

At any time prior to the submission of the matter to the hearing officer, the Appointing Authority may amend the Statement of Charges. Such right to amend shall include the right to amend according to proof at the hearing. All parties shall be given written notice thereof, except when the amendment is made according to proof at the hearing. If the amendment presents new matter, the employee shall be afforded a reasonable opportunity by the hearing officer to prepare a defense thereto. Any new matter shall be deemed controverted, and any objections to any such amendments may be made orally and shall be noted in the record.

### 36.3.11 Recommended Decision

The hearing officer shall prepare a record of the proceedings, and shall prepare recommended findings, conclusions and a recommended decision. The hearing officer shall promptly, normally within thirty (30) calendar days, file the record of the proceedings and the recommended findings, conclusions and decisions with the Board of Supervisors. Upon receipt of the Recommended Decision the Chief Clerk of the Board of Supervisors shall promptly forward a copy of the proceedings and the recommended findings, conclusions and decisions to the employee, the counsel for the employee and County Counsel.

### 36.3.12 Decision

Within a reasonable time, but no sooner than one week, after filing of the recommended findings, conclusions and decision, the Board of Supervisors shall, after a review of the record, adopt such recommended findings, conclusions and decision, or shall reject the recommendations in whole or in part, and adopt its own findings, conclusions and decision. The Board of Supervisors shall affirm, modify or reverse the order of the Appointing Authority. The decision of the Board of Supervisors shall be final and not subject to rehearing or reconsideration.

### 36.3.13 Judicial Review of Decision

Judicial review of a decision of the Board of Supervisors made after a hearing pursuant to this Rule shall be made pursuant to Section 1094.6 of the Code of Civil Procedure of the State of California, if the Board determines that the employee shall be dismissed, demoted or suspended. The method of judicial review, the time limits for judicial review, and all of the other provisions of said Section 1094.6 shall govern such judicial review. When giving written notice to the employee of the decision of the Board of Supervisors, the Board shall provide notice to the employee that the time within which judicial review must be sought is governed by said Section 1094.6.

### 36.3.14 Costs of Hearing:

The amount paid to the State for the services of the hearing officer assigned to hear the appeal and of the amount paid to the State, or directly to the reporter, for the services of the reporter who reports the proceedings shall be paid by the County.

For purposes of this article, all mail shall be deemed received within five (5) business days of mailing.

## Article 3735

### **GRIEVANCE PROCEDURE**

Represented employees may use the grievance procedure to resolve complaint(s) concerning the interpretation or application of the provisions of this MOU, rules or regulations governing County personnel practices, or working conditions in accord with the provisions Personnel Rule 13.

Article ~~3836~~  
**HOLIDAYS**

All employees covered by this MOU shall be entitled to the following holidays:

- a) January 1st (New Year's Day)
- b) Third Monday in January (Martin Luther King, Jr. Birthday)
- c) Third Monday in February (President's Day)
- d) Last Monday in May (Memorial Day)
- e) July 4th (Independence Day)
- f) First Monday in September (Labor Day)
- g) November 11th (Veteran's Day)
- h) Thanksgiving Day
- i) The Day after Thanksgiving Day
- j) December 24th (Christmas Eve Day)
- k) December 25th (Christmas Day)
- l) Every day appointed by the President or Governor, and approved by the Board of Supervisors, for a public fast, thanksgiving, or holiday.
- m) One personal holiday to be taken off at the request of the employee with departmental approval (i.e. no set date). The personal holiday for a given year is credited July 1 and must be used by the following June 30 or it is forfeited.

The first eight hours of required work on a County holiday shall be credited as vacation time on an hour for hour basis and calculate as noted above in section 14. Nevertheless, time worked on a Holiday shall continue to count as time worked for overtime purposes. Except as provided above, Holidays shall be conducted in accord with Personnel Rule 6.6.

Article ~~3937~~  
**SICK LEAVE**

Employees in Unit 15 - Sheriff's Sergeants shall not be covered by the forty (40) hour limitation on use of sick leave for family illness and/or medical appointments contained in Personnel Rule 6.7.4. An employee shall be entitled to use sick leave as it is accrued for the reasons set forth in Section 6.7.4 of the Personnel Rules. Unit 15 will not be subject to the 13 pay period waiting period prior to the right to use accrued sick leave. Except as provided above Sick Leave shall be conducted in accord with Personnel Rule 6.7.

Article ~~4038~~  
**SICK LEAVE BUY BACK**

A. Sick Leave Buy Back Program

An employee covered by this MOU can sell his/her accrued sick leave back to the County in accord with the following:

1. Table of hours eligible for buy back:
  - a) 0-2 years of service (not yet eligible).
  - b) 3-4 years of service up to 40 hours.
  - c) 5 and up years of service up to 60 hours.

An employee's years of service shall be determined by the employee's most recent date of hire. An employee who has completed 3 or 4 years of service at the pay period ending with December 24, 2017 shall be eligible, subject to usage, to sell back up to forty (40) hours of sick leave. An employee who has completed five (5) or more years of more of service at the pay period ending with December 24, 2017 shall be eligible, subject to usage, to sell back up to sixty (60) hours of sick leave. An employee must be on-payroll during the pay period of the payout in order to be eligible to receive the payout.

2. Buy back is subject to:

- a) Employee's sick leave balance cannot be reduced below forty (40) hours.
- b) Employee's eligible sick hours for the buy-back are reduced by any sick leave hours the employee has taken in the buy-back usage review period.
- c) The buy-back usage review period shall commence with the first full pay period in January 2017 and shall continue through the last full pay period in December 2017.

3. Payment would be included by the second paycheck in February 2018.

4. The sick leave buy-back program shall also be active in 2018 and 2019 under the same conditions as cited above with payouts occurring by the second paycheck in February of 2019 and 2020.

B. Sick Leave Upon Retirement

An employee who separates from the County service after having completed ten (10) years of service, and who retires in accordance with the provisions of the Tulare County Employee's Retirement System, may elect to initially receive compensation in an amount equal up to twenty percent (20%) of the accumulated sick leave credits of the employee at the time of separation; provided, however, that such compensation shall in no event exceed an amount equal to such employee's salary for two hundred fifty (250) hours of service. Such compensation shall be calculated on the hourly rate of pay for the position occupied at the time of separation. Such compensation shall not be paid upon the election of the employee to take a deferred retirement. Once such compensation has been calculated and paid, the above provisions relating to additional service credits shall take effect.

Article 4439  
**RE-EMPLOYMENT**

When a person is re-employed within two (2) years, the time away from work shall be treated as an unpaid leave of absence except that vacation and compensating time off that were converted to cash shall not be restored.

Article 4240  
**REINSTATEMENT**

An employee who voluntarily leaves County service shall not be reinstated until at least thirty (30) calendar days have elapsed since the last day of his/her prior County service.

Article ~~4341~~  
**ADMINISTRATIVE REGULATIONS AND RETURN TO WORK PROGRAM**

The parties agree to the Administrative Regulations and the Return to Work program, which includes changes to Personnel Rules 6.10 and 6.11, as amended.

Article ~~4442~~  
**PERFORMANCE APPRAISALS**

Each performance domain shall receive a summary numeric rating from the following ten (10) point scale:

|                       |                        |                       |                              |                       |                               |                            |                 |                                    |                 |
|-----------------------|------------------------|-----------------------|------------------------------|-----------------------|-------------------------------|----------------------------|-----------------|------------------------------------|-----------------|
| <b>1</b><br><u>is</u> | <b>2</b><br><u>not</u> | <b>3</b><br><u>is</u> | <b>4</b><br><u>not quite</u> | <b>5</b><br><u>is</u> | <b>6</b><br><u>reasonable</u> | <b>7</b><br><u>exceeds</u> | <b>8</b>        | <b>9</b><br><u>clearly exceeds</u> | <b>10</b>       |
| reasonable and        | consistent with        | reasonable and        | consistent with              | with normal           | expectations of               | normal                     | expectations of | normal                             | expectations of |
| expectations of       | proficiency            | expectations of       | proficiency                  | proficiency           |                               | proficiency                |                 | proficiency                        |                 |

All ratings must be fully documented. Raters will cite examples of effective or ineffective performance on each domain. The rater must specify the consequences, whether positive or negative, of such performance.

Article ~~4543~~  
**IMPLEMENTATION**

Those portions of this agreement that require implementation by the Auditor's Office and/or the Retirement Division of the Treasurer's Office shall be implemented at such time and in such a manner as is consistent with the normal course of business.

Article ~~4644~~  
**MAINTENANCE OF BENEFITS**

All existing ordinances, resolutions, and policies of the County pertaining to the employment relationship shall remain in full force and effect, except as modified by this agreement or through the process of meet and confer where mutual agreement is reached.

No agreement, alteration, understanding, variation, waiver, or modification of any of the terms or provisions contained herein shall in any manner be binding upon the parties hereto unless made and executed in writing by all parties hereto and, if required, approved and implemented by the

Board of Supervisors.

Article ~~4745~~  
**PRE-EMPLOYMENT CONTRACT**

The Department may implement the Pre-employment contract attached as Addendum A to prior MOU's. The County shall indemnify and hold harmless TCDSA solely for actions against TCDSA arising out of the meeting and conferring on and/or agreeing to the implementation of this Pre-employment Agreement.

Article ~~4846~~  
**PROBATIONARY PERIODS**

The combined probationary periods for Deputy Sheriff's I & II for P.O.S.T. purposes shall not exceed one (1) year. A Deputy Sheriff II shall have a promotional probationary period which shall not affect his/her P.O.S.T. certification process.

~~Article 49~~  
~~**RIDE-ALONG**~~

~~Subject to a determination by the United States Department of Labor that the Ride-Along program does not create an obligation for payment of either wages or overtime Detention/Correction officers may, on a strictly voluntary basis without additional compensation, participate in a Ride-Along program with Patrol Division Deputy Sheriffs. Except for being completely voluntary, the structure and duration of the Ride-Along program are at the discretion of the Sheriff and the Board.~~

Article ~~5047~~  
**USE OF VOLUNTEERS**

The Sheriff may, subject to approval by the Board of Supervisors, institute a Citizen Volunteer program in which volunteers will perform non-law enforcement functions some of which may currently be performed by Deputy Sheriffs. The County will keep the TCDSA informed of program development and will meet with TCDSA prior to implementation for further discussion. Should TCDSA request further meet and confer on impacts of specific components of this program the ground rules used for meet and confer on this MOU shall apply in their entirety.

Article ~~5148~~  
**CIVILIANIZATION**

The Sheriff may, subject to approval by the Board of Supervisors, civilianize positions in the Department in which non-sworn employees will perform non-law enforcement functions some of which may currently be performed by Sheriff's Sergeants. The County will keep the TCDSA informed of program development and will meet with TCDSA prior to implementation for further discussion. Should TCDSA request further meet and confer on impacts of specific components of this program the ground rules used for meet and confer on this MOU shall apply in their entirety.

Article ~~5249~~  
**BILINGUAL PAY**

New employees that are hired on or after July 1, 2019 that pass the County's designated bilingual proficiency test shall receive an additional \$0.50 per hour multiplied by the number of hours worked in a pay period for their ability to speak and use another language in the performance of their job duties. The County will designate certain positions covered by this MOU to be moderate bilingual. Qualified employees who occupy those positions and possess the necessary skills will receive a bilingual differential of 2.5% additional salary. The Sheriff may reassign staff so as to meet the need in a position initially designated for a bilingual Sheriff's Sergeant with a bilingual position other than Sheriff's Sergeant. The County shall offer the bilingual test upon the request of any bargaining unit member.

Current employees that were hired on or before July 1, 2019 that are currently receiving moderate bilingual pay differential of 2.5% additional salary shall continue to receive the 2.5% bilingual pay in a grandfathered status.

Employees are expected to use their bilingual skills, as necessary, to carry out their job duties. The County will cease bilingual pay compensation for any employee who does not use their bilingual skills, when needed, to perform their job duties.

Article ~~5350~~  
**VACATION DONATION POLICY**

Employees in this unit are eligible to participate in the County Vacation Donation Program for paid vacation leave donation for catastrophic illness in accordance with Personnel Rule 6.8.8.

Article ~~5451~~  
**TUITION REIMBURSEMENT**

In addition to training otherwise provided by the department, employees covered by this MOU shall be included in the County tuition reimbursement program. Effective January 1, 2003, employees covered by this MOU may take classes and obtain tuition reimbursement subject to the Tuition Reimbursement Guidelines in Personnel Rule 9 Training.

Article ~~5552~~  
**PERSONNEL RULES REVISIONS AND POLICIES**

The County and TDCSA met and conferred on revisions to the Personnel Rules and came to agreement on such revisions. Additionally, the County and TCDSA agreed on revisions to the Employment Relations Policy and to the new Information & Communication Technology policies (Mobile Device and Theft). The County shall also provide a form to TCDSA members to either opt in/out of the Counties obligation to release their personal cell phone number to other unions or employee associations in accordance with AB 2843.

Article ~~5653~~



## NOTICE

The County will adhere to the provisions of Government Code Sections 3504.5 by providing the required notice to TCDSA.

- a) Except in cases of emergency as provided in this section, the governing body of a public agency, and boards and commissions designated by law or by the governing body of a public agency, shall give reasonable written notice to each recognized employee organization affected of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the governing body or the designated boards and commissions and shall give the recognized employee organization the opportunity to meet with the governing body or the boards and commissions.
- b) In cases of emergency when the governing body or the designated boards and commissions determine that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the governing body or the boards and commissions shall provide notice and opportunity to meet at the earliest practicable time following the adoption of the ordinance, rule, resolution, or regulation.

## Article ~~5754~~ ERRORS OR OMISSIONS

This document is intended to represent the full and complete MOU reached by the County and the Tulare County Deputy Sheriff's Association, Unit 15, Sheriff's Sergeants. Should it be discovered by mutual agreement of the parties that this document does not represent the agreement of the County and the Tulare County Deputy Sheriff's Association, Unit 15, Sheriff's Sergeants due to error, omission, oversight, etc. the County and the Tulare County Deputy Sheriff's Association, Unit 15, Sheriff's Sergeants agree to make the necessary corrections to accurately reflect the agreement.

## Article ~~5855~~ ADMINISTRATIVE APPEALS PROCEDURE: FOR NON-DISCIPLINARY ACTIONS

The following administrative appeal process is established pursuant to Government Code § 3304.5. It shall supplement, though not replace, the disciplinary appeal process established in a Memorandum of Understanding.

This procedure shall not apply to disciplinary actions for which employees already are entitled to receive an appeal hearing pursuant to a Memorandum of Understanding. It shall only apply to punitive actions, as that term is defined by Government Code § 3303, for which employees do not already receive an appeal hearing under their Memorandum of Understanding.

1. Right to Administrative Appeal
  - A. Any public safety officer (as defined by Government Code § 3301), who is subjected to punitive action (as defined by Government Code § 3303) other than dismissal, demotion, suspension (or reduction in pay in lieu of a suspension), or a written



reprimand, is entitled to an administrative appeal pursuant to this procedure. An officer shall not be entitled to appeal an action prior to its imposition.

- B. Officers subjected to dismissal, demotion, suspension (or reduction in pay in lieu of a suspension), or a written reprimand, shall continue to be entitled to an appeal in accordance with existing procedures set forth in their Memorandum of Understanding.
- C. An officer who appeals a punitive action under this procedure shall bear his/her own costs in association with the appeal hearing, including but not limited to, any and all attorney fees.

## 2. Notice of Appeal

- A. Within five (5) calendar days of receipt by an officer of notification of punitive action, the officer shall notify the Department Head in writing of the officer's intent to appeal the punitive action.
- B. The notice of appeal shall specify the action being appealed and the substantive and procedural grounds for the appeal.

## 3. Hearing Officer

The Department's Appointing Authority shall serve as the hearing officer. Alternatively, the Appointing Authority may designate a hearing officer who will issue an advisory opinion to the Appointing Authority. The Appointing Authority may adopt, modify, or reject the hearing officer's advisory decision and the Appointing Authority's decision shall be final and binding.

## 4. Burden of Proof/Persuasion

- A. Unless the action being appealed involves allegations of misconduct (i.e., allegations that the employee has violated one or more federal, state, or local laws, and/or County regulations, procedures, or rules) the limited purpose of the hearing shall be to provide the officer the opportunity to establish a record of the circumstances surrounding the action. The Department's burden shall be satisfied if the Department establishes that the action was reasonable, even though reasonable persons might disagree about whether the action was the best one under the circumstances.
- B. If the punitive action involves charges of misconduct, (i.e., allegations that the officer has violated one or more laws, regulations, procedures, or rules), the Department shall have the burden of proving by a preponderance of the evidence the facts which form the basis for the charge of misconduct and the burden of persuasion that the punitive action was reasonable under the circumstances.

## 5. Conduct of Hearing

- A. The formal rules of evidence do not apply, although the hearing officer shall have discretion to exclude evidence that is incompetent, irrelevant or cumulative, or the presentation of which will otherwise consume undue time.
- B. The parties may present opening statements.

- C. The parties may present evidence through documents and direct testimony.
  - D. The parties shall not be entitled to confront and cross-examine witnesses.
  - E. Following the presentation of evidence, if any, the parties may present closing arguments.
6. Recording of the Hearing  
If desired, either party may record the hearing.
7. Representation  
The officer may be represented by a representative of his or her choice at all stages of the proceedings. All costs associated with such representation shall be borne by the employee. The Department shall also be entitled to representation at all stages of the proceedings.
8. Decision
- A. The hearing officer shall serve the parties with written notice of his/her decision within thirty (30) calendar days of submission of the case by the parties for decision.
  - B. The decision shall be served by first class mail upon the officer or the officer's attorney or representative.

Article ~~5956~~

**ADMINISTRATIVE APPEALS PROCEDURE:  
FOR REPAYMENT OF OVERPAYMENTS OF ADVANCED DISABILITY PAYMENTS**

The following hearing process is established pursuant to Labor Code §4850 et seq.

1. Right to Disability Payments
- A. Pursuant to Labor Code §4850.3, the County of Tulare ("County"), being subject to the County Employees Retirement Law of 1937, may make advanced disability pension payments to any local safety officer (as defined by Government Code §3301) ("officer") who is qualified for benefits under Labor Code §4850.
  - B. Pursuant to Labor Code §4850.4(d)(1), advanced disability pension payments shall be paid by the County to any officer if the officer files an application for disability retirement at least 60 days prior to the payment of benefits as well as other requirements as set forth in the Labor Code.
2. Right to Hearing
- A. Any officer employed by the County is subject to the provisions of this hearing process.
  - B. Pursuant to Labor Code §4850.4(f), after final adjudication of the officer's application for disability, if the officer's application is denied, the County and the officer shall arrange for the officer to repay any advanced disability pension payments received by the officer pursuant to Labor Code §4850 et seq.

- a. The repayment plan shall take into account the officer's ability to repay the advanced disability payments received.
  - b. Absent an agreement on repayment, the matter shall be submitted for a local agency administrative appeals remedy that includes an independent level of resolution to determine a reasonable repayment plan.
  - c. If repayment is not made according to the repayment plan, the local agency may take reasonable steps, including litigation, to recover the payments advanced.
3. Process for Hearing
  - A. Upon a determination that the officer's application for disability pension is denied, the County shall serve upon the officer a written letter, demanding reimbursement of the overpayment amount. Documentation of the overpayment amount shall accompany the demand letter.
  - B. If the officer fails to repay the overpayment or make arrangements for repayment of the overpayment, a hearing shall be scheduled by the County to determine a repayment schedule.
  - C. A Notice of Hearing shall be mailed to the officer and to the Human Resources Director, by County Counsel, giving notification of the date, time and location of the hearing, and the name of the Hearing Officer. Unless otherwise stipulated by the parties in writing, the hearing shall be conducted within 90 days of the Notice of Hearing.
4. Hearing Panel
  - A. A panel consisting of three persons shall be convened for the hearing. The hearing panel shall be comprised of a Hearing Officer who is appointed by the Chairman of the Board of Supervisors, a person appointed by the Human Resources Director, and a County employee appointed by the officer. The Hearing Officer shall issue the majority decision to the Department Head and the officer. The hearing panel's decision shall be final and binding upon the Department Head.
  - B. The Human Resources Director shall have ten (10) days after being notified of the hearing date to notify the Hearing Officer of the name of the person appointed to sit as a representative on the hearing panel.
  - C. The officer shall have ten (10) days after being notified of the hearing date to notify the Hearing Officer of the name of the person s/he appoints to sit as a representative on the hearing panel.
  - D. If the officer fails to notify the Hearing Officer of the name of the appointee on the hearing panel within ten (10) days of notification of the hearing date the ability to appoint a representative shall be deemed waived by the officer, and the hearing may proceed and be heard by the Hearing Officer and the other panelist appointed by the Human Resources Director.
5. Burden of Proof/Persuasion

The limited purpose of the hearing shall be to provide the hearing panel the opportunity to establish a record of the circumstances surrounding the overpayment and the officer's ability to repay the overpayment. The panel shall consider the officer's financial circumstances, based on the evidence submitted, in order to determine a reasonable repayment plan. The County's burden shall be satisfied if the County establishes that there was an overpayment, and that the local safety officer has an ability to repay the funds to the County.

6. Conduct of Hearing

A. The formal rules of evidence do not apply, although the Hearing Officer shall have discretion to exclude evidence that is incompetent, irrelevant or cumulative, or otherwise found to not be probative or the presentation of which will otherwise consume undue time. Any evidence upon which reasonable persons might rely in the conduct of their everyday affairs may be admitted.

B. The parties may present evidence through documents and direct testimony.

a. All testimony is to be taken under oath or affirmation.

b. Hearsay evidence may be used only for the purpose of explaining or supplementing other evidence or where otherwise corroborated.

c. The Hearing Officer may take official notice of any matter which may be judicially noticed under the California Evidence Code.

C. The parties shall be entitled to confront and cross-examine witnesses. Cross-examination shall be limited to those areas covered in their prior testimony, unless the Hearing Officer permits otherwise.

D. Following the presentation of evidence, if any, the parties may present closing arguments.

7. Recording of the Hearing

If desired, either party may record the hearing.

8. Representation

The officer may be represented by a representative of his or her choice at all stages of the proceedings. All costs associated with such representation shall be borne by the officer. The Department in which the officer is employed shall also be entitled to representation at all stages of the proceedings.

9. Decision

A. The Hearing Officer shall serve the parties with written notice of his/her decision within thirty (30) calendar days of submission of the case by the parties for decision.

B. The decision shall be served by first class mail upon the officer or the officer's attorney or representative.

10. Failure to Participate

The officer's failure to participate in choosing a representative to serve on the hearing panel within ten days and/or attend the hearing shall be deemed a waiver of rights to the hearing, and the County may seek resolution of the case in a court of competent jurisdiction.

Article 6057

**DEFERRED COMPENSATION-COUNTY CONTRIBUTION TO PLAN**

The County will contribute up to \$1,500 annually to an employee's Deferred Compensation Plan. The County will contribute 25% of the amount that the employee contributes to the plan (for each \$1.00 that the employee contributes to the plan the County will contribute .25 cents to the plan) up to a maximum County contribution of \$1,500 in a calendar year, effective January 1, 2018.

—Article 61

**~~REOPENER REGARDING CHANGES TO EMPLOYEE HEALTH  
AND OTHER BENEFITS CASH OUT~~**

~~The Parties acknowledge that the County desires to make changes to an employee's ability to elect and/or receive cash payments in lieu of health and other benefits based on the 9th Circuit decision of Flores v. City of San Gabriel. Accordingly, during the term of this agreement, the County may request to meet and confer regarding potential changes, elimination, or decreases in the amount of such cash payments. Upon the County's request, the Parties will promptly meet and confer to discuss changes to this MOU consistent with the County's desire to: (1) ensure the County's benefits plan(s) is/are bona fide; and/or (2) to reduce the County's potential liability for FLSA overtime payments.~~

Article 58

**SB 1085 UNION LEAVE**

Pursuant to the provisions of SB 1085/Government Code section 3558.8, the County shall grant an employee, with prior department approval and upon written request of the Union, a reasonable leave of absence without loss of compensation or other benefits for the purpose of enabling employees to serve as stewards or officers of the Union. Leave may be granted on a full-time, part-time, periodic, or intermittent bases under the following procedures:

1. The Union officer or steward shall submit a written request to the department head at least 10 business days in advance of the requested leave. The request shall specify it is being made pursuant to SB 1085 and include dates/duration, classification, and bargaining unit.
2. The Union shall reimburse the County for all benefits and compensation paid to and earned/realized by the employee on leave, including but not limited to all wages and benefits.
2. Reimbursement by the Union shall occur within 30 days of the County billing the Union.

At the conclusion or termination of the leave granted under this section, the officer or steward shall have a right to reinstatement to the same position and location they held prior to such leave, or if not feasible, a substantially similar position without loss of seniority, rank, or classification.

The County shall not be liable for any act, omission, or injury suffered by any employee of the County if that act, omission or injury occurs during the course and scope of the employee's leave under this section to work for the Union. To the extent that the County is held liable for any such act, omission or injury, the Union shall indemnify and hold harmless the County.

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For Tulare County:

For TCDSA:

\_\_\_\_\_  
Rhonda Sjostrom  
Human Resources Director

\_\_\_\_\_  
Sgt. Javier Martinez  
President, TCDSA

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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