

**TENTATIVE AGREEMENT
PROPOSED MEMORANDUM OF UNDERSTANDING**

Between

The County of Tulare

and

**District Attorney Criminal Investigators Association of Tulare County
(DACIATC)**

Bargaining Unit #22

July 1, 201719 – June 30, 201921

Resolution No. 2017-0478 Agreement No. 28173

**TULARE COUNTY
HUMAN RESOURCES & DEVELOPMENT DEPARTMENT
COUNTY CIVIC CENTER
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A Memorandum of Understanding between the County of Tulare and the District Attorney's Criminal Investigator's Association of Tulare County (DACIATC) hereinafter referred to as DACIATC.

Article 1 RECOGNITION

Pursuant to California Government Code No. 3500 - 3510 and the Tulare County Employment Relations Policy, the County of Tulare, hereby, recognizes the DACIATC as the exclusive representative for Bargaining Unit #22- Criminal Investigators. The Bargaining Unit consists of the following classifications: Child Support Investigator, District Attorney Investigator, Supervising Criminal Investigators, and Welfare Investigator.

A current list of names and locations of representatives and officers shall be presented to the County quarterly. The list shall be kept current by the DACIATC.

Article 2 PURPOSE

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 Memorandum; 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 DACIATC.

Article 3 NON-DISCRIMINATION

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 DACIATC or to have DACIATC 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.

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, gender, sexual orientation, political affiliations or opinions, or any other criteria prohibited by law, either by the County or DACIATC.

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 4 MANAGEMENT RIGHTS

After discussion and due consideration, the County and DACIATC 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 provided in Article 17. 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 5 PERSONNEL FILES

Employee(s), or a DACIATC 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 Human Resources & Development Department is open for business. Such review shall not interfere with the normal business of the department.

No disciplinary document (i.e. Formal Reprimand, Notice of Proposed Disciplinary Action of Suspension or Reduction in Pay, Demotion or Dismissal), no counseling document (i.e. performance appraisal form and/or Memorandum of Counseling) nor any other document adversely affecting an employee shall be placed in an employee's 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.

Article 6 UNIT MEMBERSHIP

The County shall exclusively provide DACIATC, in writing, upon request, quarterly each year from the effective date of this Memorandum, a list of all employee's subject to this MOU, of such employee's name, employee identification number, class, and job location by department, as applicable.

Article 7 MEMBERSHIP DUES DEDUCTION

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

The County shall collect DACIATC dues through payroll deduction. These monies shall be forwarded to DACIATC as soon as practicable after such deduction is made. 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.

DACIATC 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.

Article 8 PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS

The County and employees covered by this Agreement shall adhere to the provisions of Government Code Sections 3300 through 3313, 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 9
WORK ACCESS**

Authorized DACIATC Representatives shall be given access to work locations during working hours to conduct DACIATC 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 DACIATC Representatives shall have the authority to reach a resolution for the grieving party. DACIATC agrees to provide reasonable advance notice of such visitations to the Department Head or designated alternate. Employer reserves the right to require that such visitors be escorted.

**Article 10
FACILITIES USE**

Upon request of the DACIATC, the County shall provide use of County Facilities outside of working hours, provided such space is available and DACIATC 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 11
ORGANIZATIONAL RELEASE TIME**

The President or Vice President, or other Officers, not to exceed at any one time, two (2) employees, may upon written request of the organization, be granted temporary time off with pay not to exceed the greater of a total of twenty-four (24) hours to attend official organizational training sessions, seminars, conventions, and/or conferences in each twelve (12) month period of this agreement. The written request must first be approved by the Department Head.

**Article 12
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 DACIATC 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. Nothing contained in this article or Memorandum of Understanding shall be considered to authorize any strike or job action affecting the delivery of services nor shall the County be precluded from pursuing any available remedies to address any prohibited action.

**Article 13
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 14
RENEGOTIATION**

In the event either party hereto desires to negotiate the provisions of a successor Memorandum of Understanding, such party shall serve upon the other, during the 45 day period commencing 150 days prior to the end of the MOU, its written request to commence negotiations. Negotiations shall begin thereafter within, but no later than 45 days from the date of the aforementioned notice.

**Article 15
TERM**

The provisions of this MOU shall commence upon ratification by the Association and by the Board of Supervisors and shall then remain in effect from July 1, 201719 through June 30, 201921. 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 14, RENEGOTIATION, of its desire to negotiate a successor agreement.

**Article 16
CONDUCT AND DISCIPLINE**

Disciplinary actions and appeals of disciplinary actions shall be governed by Personnel Rule 12, Employee Conduct and Discipline.

**Article 17
GRIEVANCE PROCEDURE**

Grievances shall be handled in accordance with Personnel Rule 13, Employee Grievance Procedure. However, if a complaint involves allegations of discrimination or harassment, the County's Complaint Procedure cited in Personnel Rule 14 shall be utilized.

Article 18 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. 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 19 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 meet and confer process.

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 20 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 21
EMPLOYEE TRAVEL**

When it is necessary for an employee to travel in the course of performing their assigned duties the County may, 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 accordance with Administrative Regulation #1.

**Article 22
PAYROLL**

A. SHORTAGES

A correction by the Auditor's Office to cover confirmed shortage errors in employee's paychecks, shall be provided to employees within seven (7) working days after written notification of the discrepancy to Auditor's Office. This provision is to cover only those discrepancies above a gross one hundred fifty dollars \$150.00. If the shortage is equal to 50% or more of the regular paycheck, or in any instance when in the opinion of the Auditor such shortage would be an unreasonable burden on the employee, the Auditor may order a manual warrant as soon as practical.

B. OVERPAYMENTS

Overpayment errors shall be corrected in the immediate next pay period or if the amount, in the judgment of the Auditor would constitute an unreasonable burden on the employee, in subsequent pay periods pursuant to an agreement or Court Order. As a non-binding guideline, repayments should be collected within the same number of pay periods in which the error occurred.

C. CONFIRMATION

The employee may request written confirmation of any payroll error through their payroll clerk.

D. DIRECT DEPOSIT

Employees will receive their paychecks via direct deposit to a checking or other similar account at a financial institution of their choice. The County will consider exceptions of a case-by-case basis.

**Article 23
SALARY**

Salary adjustments shall be in accordance with Personnel Rule 4.2.3 Merit Salary Adjustments.

In the first year of the agreement, there shall be a salary increase of ~~33%~~ for all classifications in the unit upon ratification and approval by the Board of Supervisors, to be effective the full pay period after adoption by the Board of Supervisors. ~~no sooner than July 9, 2017.~~

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.

Career Development Plan:

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

For employees employed and in Unit 22 on or after July 1, 2019:

- a. Level I - Payment of \$850 per year provided,
 - 1. 7 years of continuous service as an Investigator or Investigator-Welfare.
 - 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.

- b. Level II - Payment of \$1,500 per year provided,
 - 1. 2 years of continuous service at the Level I.
 - 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. Employees are only eligible for one of the above-noted payments. (non-cumulative)

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.

Article 24 EMPLOYEE BENEFIT PLAN

Instead of independent County contributions to Health, Dental, Vision, Life and Long Term Disability insurance (the core benefits package), the The County has implemented a cafeteria style benefits program that offers health flex benefit deductions on a pre-tax and post-tax basis as referenced in the Tulare County Section 125 Flex Plan. The health benefits offered are medical, dental, vision, life insurance, Health Flexible Spending Account (FSA), Dependent Care Assistance Program (Dependent Care FSA), voluntary life insurance, and Health Savings Account for employees who choose qualifying medical plans.

The County contributes a health flex benefit amount pursuant to this MOU towards health insurance premiums which includes medical, dental, vision, and life insurance. ~~in which a benefit amount granted pursuant to this MOU shall be used for the benefits specified in this article and may be used and/or supplemented by payroll deduction for the specified benefits and for other voluntary benefits subject to the limitations of the County's Section 125 plan document. The County reserves the right to establish a revised premium structure for County insurance for the purpose of beginning equalization of premium costs throughout the workforce. The below changes will be made as soon thereafter as feasible.~~

For employees participating in the Health Plan that have a benefit amount that is less than the premium charged for the ~~\$7504,000~~ deductible employee-only medical, dental, vision, \$10,000 life insurance coverage, the County will increase the benefit amount to pay for any premium increase for plan years ~~201820~~ and ~~201921~~. The increase to the benefit amount will coincide with the premium increase for plan years ~~201820~~ and ~~201921~~.

For Health Plan years 2020 and 2021, employees participating in the Tulare County (SJVIA) Health Plan the County shall increase the County contribution to Employee+Spouse, Employee+Child, Employee+Family of \$100.00 per pay period effective for the 2020 and 2021 health plan years.

I. OVERVIEW OF BENEFIT AMOUNT

A. Benefit Amount

The County allots each full time employee an annual "benefit amount" to be paid in equal amount on 24 of 26 pay periods during which 24 pay periods premiums are also withheld for the core benefits package.

ENROLLED IN:

	<u>PP</u>	<u>ANNUAL</u>
COUNTY'S HEALTH PLAN (24 PP's) (Non-Bilingual/Bilingual)	\$487.65	\$11,703.60
DSA's HEALTH PLAN (26 PP's) (Non-Bilingual/Bilingual)	\$450.14	\$11,703.60
WAIVED COVERAGE (24 PP's):		
Waivers Hired Before 7/31/10:	\$470.65	\$11,295.60
Waivers Hired After 8/1/10:	\$41.67	\$1,008.08

B. ~~Pro-Ration-Benefit Amount for Partial Year Eligibility of Benefit Amount~~

~~Pro-Rated Benefit for Partial Year Eligibility~~ Full time employees eligible for only part of the Plan Year will only be allotted a Health Flex benefit amount prorated for the full pay periods they are eligible. For part time employees whose assigned hours are 40 or more each pay period, this "~~B~~benefit ~~A~~amount" shall be prorated based on the ratio of their assigned hours to 80 hours. ~~A part time employee who waives insurance shall not have more deducted under "E" below than this prorated "Benefit Amount".~~

C. Benefit Level

The employee may choose the level of each benefit that best fits the employee's needs, subject to provider contacts. Some benefits will require minimum participation. Employees will not be allowed to make changes in the provider or level of coverage except at open enrollment or upon a qualified event as allowed under IRS 125 regulations.

D. Taxable Earnings

Any ~~B~~benefit amount that an eligible employee does not use to pay for health insurance premiums mandatory and/or voluntary benefits available through the Section 125 Plan will be

added to the employee's taxable wages. ~~Benefit Amount money added to an employee's taxable wages are not part of the employee's base salary used to determine the employee's overtime pay rate or for any other purpose except as required by law.~~

E. ~~Premium Fund~~ New Hired Pool

It is understood that employees waiving their health insurance per the terms of this Memorandum of Understanding are subject to the same terms and conditions described herein as employees participating in the County's insurance program. ~~Once the initial funding period is completed, t~~The employee's deduction for their selected health package shall be the difference between their benefit amount and the total cost of the premium for the plan selected for the designated pay period. Employees shall become eligible to receive their ~~B~~benefit ~~A~~amount ~~or cash-in-lieu of medical benefits~~ on their fourth (4th) paycheck after commencing employment with the County.

F. Eligibility

Coverage becomes effective the first day of the month following 30 days of employment.

II. ~~LIMITED OPT-OUT PROVISIONS~~ ELIGIBLE 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.

- A. ~~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 benefit amount.~~ Employees may retain eligibility to receive the cash-in-lieu benefit 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 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 cash-in-lieu of medical Bbenefits. Amount.

2) Employees currently covered under the DSA Health Plan may remain in the plan and are subject to enrollment, eligibility, and other plan requirements.

- ~~B. Employees who can provide written evidence satisfactory to the County Human Resources Department showing that they are covered pursuant to paragraphs A through D, may opt out of the employee benefit plan as a:~~

43. Dependent on a parent, spouse or domestic partner's employer-provided group health plan; or

~~24.~~ Member of an employer-sponsored retiree group health plan or an eligible and covered dependent thereon; or

~~35.~~ Retiree member, or an eligible and covered dependent thereon, of a group health plan sponsored by any branch of the United States military; or

~~46.~~ Medicare recipient.

7. Enrolled in Medicaid.

~~Employees who opt out of the health insurance and meet the requirements of paragraph B.1 or B.2 above will have the unused benefit amount added to their taxable wages.~~

~~BC.~~ Employees are required to maintain the base Life Insurance and Long Term Disability Insurance policies through the County's Benefit Plan.

~~CD.~~ 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.

~~E. D.~~ An employee who opts out of the County's health benefit plan must rejoin the County's benefit 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.~~

~~F. Any benefit amount that an eligible employee does not use to pay for mandatory and/or voluntary benefits available through the Section 125 Plan will be added to the employee's taxable wages. Benefit Amount money added to an employee's taxable wages are not part of the employee's base salary used to determine the employee's overtime pay rate or for any other purpose except as required by law.~~

~~G. E.~~ New Hires- All new hires, hired on or after August 1, 2010, who validly waive participation in the County's health insurance program, shall receive \$41.67 per pay period (\$1,000 over twenty-four pay periods), in lieu of contribution to the health plans, as an opt-out payment as set forth in the eligible opt-out arrangement above for the term of this agreement. (A new hire has no previous Tulare County employment. However, a new hire that does have previous employment with the County shall be subject to the provisions of the Personnel Rules regarding re-employment, reinstatement, or rehired).

Article 25 VACATION

I. 6.8 Vacation Leave

Both parties agree to the following changes to Personnel Rule 6.8 Vacation Leave, the remaining language remains the same and applies:

6.8.1 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:

Years of Continuous Service	Pay Periods of Continuous Service	Earning Rate Per Hour	Earning Rate Hrs 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

* On the first day of the 4th year, the employee begins to accrue 3 weeks of vacation. On the first day of the 8th year, the employee begins to accrue 4 weeks of vacation. On the first day of the twelfth year, the employee begins to accrue 5 weeks of vacation.

The Vacation Accrual cap which was increased from 300 to 370 hours will continue through July 31, 2013. Thereafter the cap will be reduced to 340 hours on July 31, 2014.

II. Appropriate Use of Vacation Leave

Vacation leave may not be used for daily illnesses. Employees must use sick leave or unpaid leave for daily illnesses as required by County policy. An employee may use vacation for a planned medical procedure or appointment or an unexpected personal non-health emergency with the approval of the employee’s supervisor.

**Article 26
SICK LEAVE**

A. Sick Leave Buy Back

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, 2016 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, 2016 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 2016 and shall continue through the last full pay period in December 2016.
3. Payment would be included by the second paycheck in February 2017.
4. The sick leave buy-back program is also active in the second year of this agreement, under the same conditions as cited above with a new calculation period and payout occurring by the second paycheck in February 2018.

The sick leave buy-back program is also active under the same conditions as cited above with new calculation periods in 2018 and 2019 and payouts occurring by the second paycheck in February 2019 and February 2020.

B. Sick Leave Cash Out

For employees covered by this agreement, sick leave pay on separation shall be handled in accordance with Personnel Rule 6.7.8.

C. Family Sick

Employees shall be able to use sixty (60) family sick hours annually for those persons identified in Personnel Rule 6.7.4 (c), provided however, that should the State or other forum with the authority to do so determine that the family sick hours authorized herein do not also count against the hours authorized by the State Labor code, Section 233, then the County may thereafter limit the use of these sixty (60) hours to those persons identified in Section 233.

**Article 27
SPECIAL ASSIGNMENT PAY**

The County and DACIATC agree to continue special assignment pay of 5% of their base hourly rate of pay to one (1) position assigned Training Officer duties, as designated by the Department Head.

Article 28

EQUIPMENT

It is agreed that during the term of this memorandum of understanding the County and the DACIATC will meet to develop a list of equipment to be provided by the District Attorney. Such mutually developed list of equipment shall be subject to approval by the District Attorney whose decision on what to be included shall be final subject to the following:

Any equipment deemed to be essential safety equipment pursuant to law shall be provided; and,

The cost for such equipment shall be absorbed within the existing budget of the District Attorney and shall not require an additional appropriation of funds.

Article 29 LAYOFFS

In the event that employee layoffs become necessary during the term of this agreement, the County is obligated to meet and confer over the impacts of the layoffs. The County reserves the right to make and consider alternative proposals to reduce costs to lessen the severity of the layoffs.

Article 30 OVERTIME

Overtime shall be in accordance with Personnel Rule 4.3. Overtime shall be compensated in the following manner:

1) Compensation for qualifying overtime work for FLSA non-exempt employees shall be in the form of straight time compensatory time off (CTO) and one-half in cash up to sixty (60) hours.

2) Qualifying overtime worked when an employee has a CTO balance of sixty (60) or more hours shall be compensated by cash payment at a rate of time-and-one-half.

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

1. Bilingual Pay: Paid at 2.5% 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.

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 (typically 40 hours/work period).

“Straight time” Overtime – Term used when total hours (including holiday, vacation, sick, etc.) exceed the overtime threshold, BUT the “hours actually worked” do not.

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 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

Article 31 UNIFORMS

Approval to dress in the department approved alternate uniform will be at the discretion of the Chief of Investigations or the Assistant Chiefs. The alternate uniform is to be worn only during the course of official district attorney duties.

When the alternate uniform has been authorized, an inspection for uniformity of each employee will be held prior to the commencement of the operation. Should any one employee not adhere to the approved alternate uniform guidelines, the supervisor or Assistant Chief presiding over

the operation will excuse the employee or return the entire unit to casual business attire for the remainder of the operation.

Employees shall be required to adhere to uniform specifications, appearance, and maintenance standards established by the District Attorney's office. The District Attorney's office shall determine the specifications (quality, color, etc.) concerning the alternate uniform and shall codify such in the department's operational manual.

Employees hired on or after August 1, 2014 shall be provided with an alternative uniform, as soon as administratively possible, by the District Attorney's office. The alternate uniform shall consist of a shirt (1), pants (1), Boots (1), and belt (1).

The District Attorney's office shall provide an annual uniform allowance in the gross amount of \$250 (subject to applicable taxes) to each employee covered by this agreement to be paid on the first pay date in June.

Employees shall not be eligible to receive both the initial department provided uniform and uniform allowance in the same fiscal year.

Should an employee covered by this agreement be off work in excess of six (6) months on a Leave of Absence (anytime during the period commencing from the first pay date in June to the first pay date in June of the following year), 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.

Article 32 ADMINISTRATIVE APPEALS

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 be entitled to confront and cross-examine witnesses, upon mutual agreement.
- 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

- A. 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.
- B. 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 33 BILINGUAL PAY

New employees that are hired on or after August 1, 2014 that pass the County's designated bilingual proficiency test shall receive an additional 2.5% bilingual pay for their ability to speak and use another language in the performance of their job duties.

The County's designated bilingual proficiency test consists of the ability to speak and read and/or write in Spanish or a South East Asian language. Other languages can be added if the department determines that there is a demonstrated need for another language.

Current employees that were hired on or before July 31, 2014 that are currently in a position that is designated as Full Bilingual (the 5% pay is included in the positions base rate of pay) shall continue to receive 5% bilingual pay in a grandfathered status.

Current employees that were hired on or before July 31, 2014 that are currently receiving Moderate Bilingual pay (which is paid at 2.5% as an additional pay) shall continue to receive

such pay, however, they are eligible to receive another 2.5% bilingual pay (5% total) by passing the County's designated bilingual proficiency test.

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 34 ALTERNATIVE WORK SCHEDULES

An employee or a group of employees may, after discussion with their supervisor and upon mutual agreement with their appointing authority/Department Head or his/her designee, establish alternate work schedules and/or work hours including, but not limited to, 4-10 work week or 9-80 bi-weekly work periods. The appointing authority/Department Head may establish "core" work hours and/or work days to meet the needs of the department. This agreement shall be considered consistent with and subject to Personnel Rule 4.3.7.

Article 35 INTERMEDIATE PEACE OFFICER STANDARDS TRAINING (POST) CERTIFICATE

For purposes of retention and as an incentive for self-development, an additional pay of \$850.00 annually is authorized for any employee in the unit that meets the following criteria:

- A) 5 years of continuous service as an Investigator in the unit or as a Deputy Sheriff.
- B) Possession of POST Intermediate Certificate.
- C) Completion of 120 hours of job related education or training as identified by department.
- D) PAF rating of six (6) or higher to initially receive compensation for certification.

The POST Certification payments shall be paid on a bi-weekly basis. This certification pay shall not be considered as part of the employees' base salary rate for purposes of calculating flexible benefits or retirement benefits, but shall be considered for purposes of calculating overtime.

To continue to be eligible for the POST Intermediate Certification pay, a participant must maintain his/her performance evaluation rating at five (5) or better. A rating of less than five (5) will result in loss of eligibility for the POST Intermediate Certification pay for at least twenty-six (26) pay periods. To regain POST Intermediate Certification pay, an employee must again meet the program criteria for performance by attaining at least a five (5) rating or better on their annual performance evaluation.

Article 36
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 in accordance with Personnel Rule 9 Training. Employees covered by this MOU may take classes and obtain tuition reimbursement subject to the Tuition Reimbursement guidelines cited in Section 9.4.

Article 37
DEFERRED COMPENSATION 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 38
PERSONNEL RULES AND POLICY REVISIONS

The County and DACIATC met and conferred on revisions to the Personnel Rules and Employment Relations Policy and came to agreement on such revisions. New Information & Communications Technology policies (Mobile Devices and Theft) were also agreed upon. Additionally, the County and DACIATC agreed that the County will provide a form to new and current employees allowing them 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 39~~
~~REOPENER~~

~~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 39
SB 1085 UNION LEAVE OF ABSENCE

Union Representative Leave of Absence (SB 1085/Government Code 3558.8):

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. No more than two (2) employees shall be on leave at the same time pursuant to this section; and employees must have a minimum overall satisfactory evaluation rating for the most recent evaluation period, and employees cannot be in any probationary status and/or on administrative leave. If employee is due a merit increase during the SB 1085 leave, the merit increase shall be delayed one full pay period for each full pay period the employee is on leave. For any employee going on leave, who is on a medical leave, the Union will ensure compliance with all medical restrictions.
3. 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, and including reasonable County administrative fees of \$2.50 per employees on leave, per pay period. This administrative fee only applies to an employee on the union representative leave of absence section of this article.
4. Reimbursement by the Union shall occur within 30 days of the County billing the Union. The leave of absence will be approved if it does not interfere with the performance of County services and department operations. If the leave is denied, the County will provide the Union with written notification of impacted operational needs. The Union shall provide the County with alternate leave dates for the leave to occur which shall be granted by the County.

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.

ORIGINAL AGREEMENT SIGNED BY:

For the County of Tulare:

For the DACIATC:

Date

Date