



Human Resources and Development COUNTY OF TULARE AGENDA ITEM

BOARD OF SUPERVISORS

ALLEN ISHIDA
District One

PETE VANDER POEL
District Two

PHILLIP A. COX
District Three

J. STEVEN WORTHLEY
District Four

MIKE ENNIS
District Five

AGENDA DATE: July 9, 2013

Public Hearing Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Meet & Confer Required	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>

CONTACT PERSON: Jeffrey T. Cardell PHONE: 636-4900

SUBJECT: Adoption of the Proposed Memorandum of Understanding with the Tulare County Corrections Association.

REQUEST(S):

That the Board of Supervisors:

Approve the attached Memorandum of Understanding between the County of Tulare and Tulare County Corrections Association.

SUMMARY:

The current Memorandum of Understanding (MOU) between Tulare County and the Tulare County Corrections Association (TCCA), Unit 12, expired on June 30, 2013. Authorized representatives of the County and TCCA met and conferred regarding the terms of a tentative successor MOU that will become effective following Board approval.

The County received notice on June 21, that TCCA ratified the tentative agreement. Consistent with California Government Code, Board action is necessary for this agreement to be binding upon the County and the employee organization. The major areas of the agreement include the following:

1. **TERM.**

A one year agreement commencing July 1, 2013 through and continues through June 30, 2014.

SUBJECT: Adoption of the Proposed Memorandum of Understanding with the
Tulare County Corrections Association

DATE: July 9, 2013

2. **SALARY INCREASES.**

Salary increases for the following classifications, effective July 14, 2013:

Detention Services Officer: 2%

Probation Correctional Officer: 3%

Probation Officer: 4%

Equity increase of 4% for the Probation Officer classification, effective January 26, 2014.

3. **SICK LEAVE USAGE.**

Maintain current suspension of the sick leave buy- back program for term of agreement.

4. **EMPLOYEE BENEFIT PLAN**

For employees enrolled in the TCCA administered Health Plan that have a frozen benefit amount that is less than the amount for the premium charged for the County administered \$1,000 deductible plan for employee-only coverage for medical, dental, vision, and \$10,000 life insurance coverage, the employee shall receive the County's Minimum Benefit Amount.

5. **UNIFORM ALLOWANCE.**

Increase the uniform allowance by \$50 annually (from \$350 to \$400) for the purchase of required clothing to meet departmental standards.

FISCAL IMPACT/FINANCING:

If approved, the agreement will result in increased salary and benefit costs of approximately \$617,168 annually which will be incorporated into the proposed 2013/14 budget.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

This recommendation is in line with strategic initiative IV. Organizational Performance; to provide a qualified, productive and competitively compensated County workforce.

ADMINISTRATIVE SIGN-OFF:

Jeffrey T. Cardell
Human Resources Director

Cc: Auditor-Controller
County Counsel

SUBJECT: Adoption of the Proposed Memorandum of Understanding with the
Tulare County Corrections Association

DATE: July 9, 2013

County Administrative Office (2)

Attachment(s)

Memorandum of Understanding

Approved the attached Memorandum of Understanding between the County of Tulare and Tulare County Corrections Association (TCCA).

MEMORANDUM OF UNDERSTANDING

Between

The County of Tulare

and

Tulare County Corrections Association (TCCA)
(covering Bargaining Unit 12)

July 1, 2013 through June 30, 2014

Resolution No Agreement No

TULARE COUNTY
HUMAN RESOURCES & DEVELOPMENT DEPARTMENT
2900 W BURREL STREET
VISALIA, CA 93291
(559) 636-4900

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Article 1 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

Article 2 RECOGNITION

Pursuant to California Government Code #3500 - 3510 and the Tulare County Employment Relations Policy, the County of Tulare, hereby, recognizes the Tulare County Corrections Association (TCCA) as exclusive representative for the established Bargaining Unit identified herein,

Unit 12 - Probation Officer I, II, & III, Probation Correctional Officer I, II, & III, and Probation Detention Services Officer

The parties recognize that TCCA may represent their members in their employment relations with the County in accordance with their certification as the exclusive representative of employees in an appropriate representation unit

Article 3 MANAGEMENT RIGHTS

After discussion and due consideration it is recognized by the County and TCCA that, except where expressly provided otherwise within the provisions of this Memorandum of Understanding, the County shall and does retain whatever rights and authority are necessary for it to operate and direct the affairs of the County in all of its various aspects, including, but not limited to

- A The right to direct the working forces, and/or
- B To plan, direct and control all operations and services of the County, and/or
- C To determine the methods, means, organization and number of personnel by which such operations and services are to be conducted, and/or
- D To assign and transfer employees; and/or
- E To schedule working hours and to assign overtime, and/or
- F To determine whether goods or services should be made or purchased; and/or
- G To hire, promote, demote, suspend, discipline, discharge or relieve employees due to lack of work or other legitimate reasons; and/or
- H To make and enforce reasonable rules and regulations, and/or
- I To have a single set of uniform rules and regulations applying to all its employees, and/or
- J To change or eliminate existing methods, equipment or facilities

Article 4 NON-DISCRIMINATION

There shall be no discrimination against any person because of race, religious creed, color, national origin, ancestry, physical handicap, marital status, gender, sexual orientation, age, or any other criteria prohibited by law

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 TCCA or to have TCCA 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 EMPLOYEE RIGHT TO KNOW

If a complaint or accusation against an employee is documented the employee should be informed within ten (10) working days.

If an investigation is conducted the investigated employee need not be informed until the investigation is completed. When the investigation is completed the employee should be informed of the results within ten (10) working days

Upon being informed the employee may respond orally or in writing

This provision will in no way nullify or suspend the provisions of Government Code 3300 through 3311

Article 6 EMPLOYEE RIGHT TO REPRESENTATION

The County and employees covered by this Agreement shall adhere to the provisions of Government Code Sections 3300 through 3311, known as the Public Safety Officers Procedural Bill of Rights. This shall only apply to employees who are covered by the Public Safety Officer 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 7 PERSONNEL FILES

Employee(s), or a TCCA staff representative with the written consent of the employee(s), shall be entitled to review the contents of their official departmental or County Personnel file 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, 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

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

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.

Article 8 SALARY

Salary increases for the following classifications, effective July 14, 2013

Detention Services Officer 2%

Probation Correctional Officer 3%

Probation Officer 4%

An equity increase of 4% for the Probation Officer classification, effective January 26, 2014

Merit Increases

Merit increases shall be in accordance with Personnel Rule 4 2 3 Merit Salary Adjustments and 4 2 4 Salary Anniversary date

Bilingual Pay

Bilingual employees determined by the County to meet the County criteria for moderate usage will receive an additional pay of 2 5% above their base salary for continued use of this skill

Article 9 OVERTIME

- 1) The County and its employees will comply with all provisions of the Federal Fair Labor Standards Act (FLSA) including the Amendments of 1985
- 2) Qualifying overtime worked shall be compensated by cash payment at a rate of time-and-one-half.
- 3) Joint employment that creates an overtime liability for the County is prohibited without permission from the Board
- 4) Overtime shall be that time actually worked over forty (40) hours in a single work week (which begins Sunday at 12 00 a m and ends Saturday at 11 59 p m), unless otherwise modified by an agreed upon alternative work schedule pursuant to Article 10 or as otherwise noted in this Agreement
- 5) Where an employee has mutually agreed in writing with the department to flex time off between the first and second week of a biweekly pay period, such flex time will be counted towards overtime for hours actually worked over eighty (80) hours over the 14-day biweekly

pay period (e.g. If an employee agreed to flex 8 hours between the first and second workweek of a biweekly pay period and works 48 hours in the first week of the pay period and 32 hours in the second week of the pay period, the employee would have worked a total of 80 hours in the pay period and would not be entitled to overtime unless he/she worked any additional hours over the 80 hours during the biweekly pay period)

- 6) Only actual hours worked (excludes all other pay types) shall be used for purposes of determining hours worked for overtime eligibility

Article 10 ALTERNATIVE WORK SCHEDULES

An employee or a group of employees may, upon mutual agreement with their appointing authority, establish alternative 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 may establish "core" work hours and/or work days to meet the needs of the department.

Employees participating in an approved alternative work schedule shall be scheduled so that they do not accrue overtime as a result of their regular scheduling.

Article 11 EMPLOYEE WORK LOCATION

Each employee shall be assigned a work location. Travel time to work location in a town other than the town of the assigned work location shall be considered time worked. Permanent involuntary changes in an employee's work location from one town to another shall require a two week notice to the employee (except in emergency). When an employee is permanently, involuntarily reassigned anywhere more than 15 miles from his/her assigned work location the employee shall be eligible for mileage reimbursement. The County shall reimburse the employee at the current County mileage rate for the net difference between the employee's previous commute and the employee's new commute for the first two weeks of the reassignment.

Article 12 SENIORITY RIGHTS

The appointing authority shall consider, in no particular order of importance, seniority, workload, and departmental needs in the scheduling of hours, vacation and job assignments.

Article 13 HEALTH PLAN ADVISORY GROUP

TCCA shall be allowed one seat on the Health Plan Advisory Group. Such representative must be an employee in Unit 12. Such representative shall only serve during such time when TCCA has a general Memorandum of Understanding with the County or while meet and confer sessions are on-going toward a successor agreement.

Article 14 EMPLOYEE BENEFIT PLAN

Instead of independent County contributions to Health, Dental, Vision, Life and Long Term Disability insurance, the County has implemented a cafeteria style benefits program as follows 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. TCCA has an independent, Union operated benefit plan that provides all benefits mandated by the County's plan. All TCCA members are required to participate in TCCA's plan. TCCA members therefore use their employee benefit dollars to purchase benefits from the TCCA plan, not the County's plan.

A Benefit Amount

The benefit amount being received by each employee of this unit will be converted to a fixed benefit amount and will no longer be based upon a flat dollar amount plus a percentage of salary. The new fixed benefit amount shall not be changed by a step increase/decrease or a general salary increase/decrease in the classification. Any future adjustments to the benefit amount will be completed through the normal meet and confer process.

Notwithstanding any other provision in this article no health insurance enrolled employee will receive a benefit amount less than the minimum benefit amount described herein.

In the event an employee is promoted, and the benefit amount of the promotional position is less than the employee's current benefit amount, the employee's benefit amount shall be Y-Rated (shall receive the greater amount of their current Benefit Amount or promoted Benefit Amount).

Bargaining unit members employed by the County as of September 12, 2009:

The County will freeze the benefit amount for all employees at the dollar amount in effect as of September 12, 2009 and will eliminate the percentage factor in calculating future benefit amount changes. For employees enrolled in the TCCA administered Health Plan that have a frozen benefit amount that is less than the amount for the premium charged for the County administered \$1,000 deductible plan for employee-only coverage for medical, dental, vision, and \$10,000 life insurance coverage, the employee shall receive the County's Minimum Benefit Amount.

Bargaining unit members employed by the County on or after September 13, 2009:

Using the existing benefit amount formulas in place on September 13, 2009 (employees eligible for Safety Retirement \$2,900 plus 5% of gross salary and for employees not eligible for Safety Retirement \$3,500.00 plus 5% of gross salary), the County will establish a fixed benefit amount for new hires at Step 1 of the job classifications in this unit. For employees enrolled in the TCCA administered Health Plan that have a benefit amount that is less than the premium charged for the \$1,000 deductible employee only County plan, the employee shall receive the County's Minimum Benefit Amount.

B Pro-Rated Benefit for Partial Year Eligibility

Full time employees eligible for only part of the Plan Year will only be allotted a benefit prorated for the full pay periods they are eligible. For part time employees whose assigned hours are 40 or more each pay period, this "benefit 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 C below than this prorated "benefit amount".

C Remainder Benefit Amounts Added to Salary

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

D Initiation of Benefits for New Employees

Employees shall become eligible to receive their benefit amount at such time as sufficient funds have been accumulated to provide for advance payment of the premium for the health plan selected by the employee. It is understood that the County, based on average benefit amounts and average premiums calculated over a three (3) month cycle, anticipates that it will take three (3) pay periods to establish the liquidity to fund payments for premiums as described above.

Once the initial funding period is completed, 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.

County administered benefits will be effective beginning the third full pay period of employment. TCCA benefits will become effective in accord with the Health and Welfare benefit contracts administered by TCCA.

E Waivers

Bargaining unit members employed by the County on or after September 13, 2009:

Employees hired on or after September 13, 2009 and who validly waive health insurance coverage shall receive \$1,000 paid in equal increments of \$41.67 per pay period over 24 pay periods in lieu of the Benefit Amounts cited above. It is further 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.

Bargaining unit members employed by the County as of September 12, 2009:

Employees who are waiving health insurance coverage on or before September 12, 2009 shall receive the greater of their Frozen Amount or Minimum Benefit Amount.

Article 15 HEALTH & SAFETY

In accordance with the requirements of the Occupational Safety and Health Act of 1970, as amended, as outlined in OSHA Mandate #3203, the County of Tulare shall provide a safe and healthful work place.

The Board of Supervisors by Resolution No. 78-1093 adopted a Safety Statement for the County which sets out the responsibilities for safety within the County work environment as follows:

- 1) Insurance and Risk Management has the responsibility for the implementation of loss prevention and safety measures and will utilize and expect to receive full support from all departments of the County.
- 2) Department Heads will integrate accident prevention and property conservation measures with all operations. The Department Head, Department Safety Representative, or other designee is responsible for administering the Safety Program in each department, arranging Safety meetings, conducting Safety Inspections, and reporting periodically to Risk Management. In addition, the Department Head is responsible for the promotion of prevention of accidents in their areas, for the removal of hazards and the correction of

unsound practices as well as department representation at County-wide Safety meetings

- 3) Each employee has responsibilities to self, family, fellow workers and employer to practice the standards of property conservation and safety that have been established for the County. Each employee must understand and accept the fact that loss prevention is an important part of the job.

It shall also be the responsibility of every employee to immediately report every safety incident to their supervisor. Each employee is required to read the County Safety Rules and Regulations which are available in every department or from Insurance and Risk Management. These rules and regulations are contained in the Loss Control Procedures Manual which shall be the governing manual for the safety program.

TCCA shall be allowed one seat on the County-Wide Safety Review Committee. Such representative must be an employee in Unit 12. Such representative shall only serve during such time when TCCA has a general Memorandum of Understanding with the County or while meet and confer sessions are on-going toward a successor agreement.

The annual physical required for a Class C or B Driver's License, when required for County employment, shall be performed by the County Health Department at no cost to the employee. It shall be the employee's responsibility to contact the Health Department far enough in advance so as to allow reasonable time for the scheduling of the physical.

Article 16 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 Personnel Rule 15.4.

Article 17 VEHICLE OPERATION

While operating any County vehicle an employee must have a valid driver's license at the level required by the State DMV for legal operation of that vehicle.

While operating a personal vehicle on County business for which an employee would be eligible to claim mileage reimbursement, the employee must have a valid driver's license at the level required by the State DMV for legal operation of that vehicle. In addition, the employee must have at least the minimum insurance policy covering that vehicle as is required by State law.

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

In order to receive reimbursement for personal vehicle expenses an employee must sign the following certification on the expense claim form:

"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 18 TRANSPORT IN PRIVATE VEHICLES

Employees covered by this MOU are not required to utilize their private vehicles to transport minors when the employee reasonably believes that the minors

- Are violent
- Have made threats of violence
- Suffer from contagious diseases or other conditions which may pose a health risk

In cases where it is necessary to transport a minor described in one or more of the categories above, the employee may

- Secure a caged vehicle, if available
- Contact another officer with a caged vehicle for assistance
- Contact law enforcement for assistance
- Delay transport until such time as it can be safely conducted

Employees shall not conduct any business related transport in private vehicles absent specific prior approval from a supervisor. The sole exception shall be an emergency when no supervisor can be reached. Such an emergency situation requiring private vehicle transport shall be documented and submitted to the employee's immediate supervisor as quickly as is reasonably possible following the event.

Article 19 CALL BACK

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

If, as a result of time actually worked during a call back, the total time worked by an employee during the work week qualifies the employee for overtime compensation, Article 9, Overtime shall apply.

Article 20 SHIFT DIFFERENTIAL

Any compensation authorized by this Article shall not be considered as part of the basic salary of employees while they are taking vacation or sick leave.

- (a) Employees covered by this MOU and permanently scheduled to work an eight-hour shift in which four (4) to six (6) hours of their basic work day fall between 2:00/2:30 p.m. and 10:00/10:30 p.m., shall receive an additional 4% salary for each such shift worked.
- (b) Detention Services Officers covered by this MOU and permanently scheduled to work a shift in which six (6) hours of their basic work day fall between 10:00/10:30 p.m. and 6:00/6:30 a.m., shall receive an additional 6% salary for each such shift worked.
- (c) Probation Correctional Officers covered by this MOU and permanently scheduled to work a twelve-hour shift from 6:00 p.m. to 6:00 a.m., shall receive an additional 4% salary for each hour worked between 6:00 p.m. to 10:00 p.m.

Flex hours may not be used to qualify for Night Shift Differential

Article 21 SHIFT ROTATION & SCHEDULE

The Department shall have the exclusive authority to assign shift schedules for employees covered by this agreement. Once shift schedules have been assigned for employees working at Juvenile Hall and the Youth Camp facilities, the employees within that assigned shift shall be rotated to the next scheduled shift every four (4) months.

Employees with the assignments qualifying for shift rotation shall choose their desired shifts based on seniority. Seniority is determined by continuous time within the job classification qualifying for shift rotation. Shift rotation shall occur every four months. This exercise shall occur once per year with an employee choosing all desired shifts and their rotation order. During the annual shift selection process, staff must select at least one swing shift, and cannot select the same shift type (morning, swings, graveyard or split) twice in a row. If a seniority tie exists between employees as to a shift request, the Department shall consider scheduling needs prior to assigning the disputed shift. Shift selection will occur between Oct 1 and Oct 15, with results posted by Oct 30. Shift rotation selection for JDF staff for year 2010, will occur between Aug 1 and Aug 15 with results posted by Aug 30.

DSO's will be required to select one graveyard or swing shift during the annual shift rotation process. DSO's will participate in the shift rotation selection in August 2010, but will select three rather than four shifts, with the first rotation effective in January 2011.

Article 22 UNIFORMS & PROPERTY REPLACEMENT

A Uniform Allowance

1 Employees receiving the uniform allowance shall be required to adhere to dress code specifications, appearance and maintenance standards established by the Probation Department.

2 The Probation Department shall pay to each employee represented by TCCA a uniform allowance in the amount of \$400 per year. This allowance shall be paid following the next full pay period after approval of this MOU by the Board of Supervisors and in subsequent years the allowance shall be paid in the second pay date of July. New employees shall receive their uniform allowance within sixty (60) days of commencing employment. The second uniform allowance for a new employee will be pro-rated based on the date of hire.

Should an employee covered by this agreement leave the Department or be off work in excess of six (6) months on an unpaid Leave of Absence, his/her uniform allowance shall be pro-rated on a per 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 employees are required to dress in accordance with the Probation Department dress code as required by their position and/or facility assignment as indicated below. (For additional information refer to Tulare County Probation Administrative Manual Sections 4.7.0 and 4.7.1)

A Shirts

1 Only solid colored polo or Oxford type long/short sleeved shirts, with or without front pocket, in authorized colors, embroidered badges and identification lettering. Only sworn officers are authorized to wear the 7-point star. Non-sworn staff is authorized to wear "Tulare County Probation Department" in place of the star.

2 Shirt colors authorized by the department are Black, Forest Green, Navy Blue, Tan, Grey and White. Probation Correctional Officers are authorized to wear Black shirts only and Detention Service Officers are authorized to wear White shirts only.

B Pants

Properly fitting, black or khaki colored, cotton twill material pants only. Denim jeans will no longer be allowed for employees receiving a uniform allowance.

4 Tulare County Youth Facility
Reference Tulare County Probation Department Youth Facility Policy and Procedures Manual Section 2.5

All employees in the classification of Probation Correctional Officer and assigned to the Probation Youth Facility (YF) shall be required to adhere to uniform specifications, appearance and maintenance standards as established by the department.

B PROPERTY REPLACEMENT

Property Replacement: Employees who lose or damage property used in the course and scope of their County employment may submit a claim for reimbursement through the normal administrative procedures set forth in Board Resolution #2003-0851, which is administered through the Risk Management division.

Article 23 PROBATIONARY PERIOD

Every Probation Officer must serve a probationary period in the Probation Officer class series of at least twenty-six (26) full pay periods in accordance with all applicable County rules and procedures. This means that if an employee gets promoted early from a Probation Officer I to a Probation Officer II (prior to completing the probation period for the I class), the employee will be required to serve a probationary period of at least 13 full pay periods at the II level plus any additional time necessary so that the total time spent as a probationary employee within the Probation Officer class series equals at least twenty-six (26) full pay periods. If an employee were to laterally transfer into a Probation Officer II class he/she would be required to serve a probationary period of twenty-six (26) full pay periods in accordance with all applicable County rules and procedures.

The probationary period for the Probation Correctional Officer I classification shall be thirteen (13) full pay periods.

Article 24 EMPLOYEE GRIEVANCE PROCEDURE

Employees covered by this MOU shall be covered by Personnel Rule 13 - Grievance Procedure

I DEFINITION, SCOPE, AND RIGHT TO FILE

A A grievance is a claimed violation, misinterpretation, inequitable application or non-compliance with provisions of a County

- 1) Collective bargaining agreement,
- 2) Ordinance,
- 3) Resolution,
- 4) Written Rule,
- 5) Written Regulation,
- 6) Written Policy

B The following are not grievable through this process

- 1) Matters, such as Disciplinary Actions and Performance Evaluations, reviewable under some other established County administrative appeal procedure
- 2) Employment examinations
- 3) Appointments to a position
- 4) The Board of Supervisors exercise of legislative or judicial authority and the authority to appropriate funds and adopt the budget
- 5) Discrimination complaints reviewable under the County's discrimination complaint procedure

C A grievance may be filed by an employee in his own behalf, or jointly by any group of employees. At the employee's request, a union representative may assist in the preparation of the grievance during non-work time

II INFORMAL GRIEVANCE

A Within five (5) work days of the event giving rise to the grievance, the grievant shall present the grievance informally for disposition by the immediate supervisor or at any appropriate level of authority within the department. The immediate supervisor (or other appropriate level of authority) shall respond informally within five (5) work days

B Except as provided in 13.2 above, presentation of an INFORMAL grievance shall be a prerequisite to the institution of a formal grievance

III DISCRIMINATION COMPLAINTS

If a complaint alleges discrimination, the Human Resources Director shall be immediately informed and, upon completion of his investigation and review, shall advise the County Administrative Officer (CAO), the department and the employee of the resolution of the

complaint

IV FORMAL GRIEVANCE

If the grievant believes that the issue(s) of the grievance have not been resolved within five (5) work days of the informal presentation he may initiate a formal grievance within five (5) work days thereafter. A formal grievance can be initiated by completing and filing a County Employee Grievance Form with the Human Resources & Development Department. The form shall contain

- 1) Name(s), class title(s), department(s) and mailing address(s) of the grievant(s),
- 2) A clear statement of the nature of the grievance (citing the applicable ordinance, rule, regulation, or contract language),
- 3) The date upon which the event giving rise to the alleged grievance occurred,
- 4) The date upon which the informal discussion with the supervisor or Human Resources Officer took place,
- 5) A proposed solution to the grievance,
- 6) The date of the execution of the grievance form,
- 7) The signature of the grievant(s),
- 8) The name of the organization, if any, representing the grievant followed by the signature of the organization's representative

C Step 1

Within ten (10) working days after a formal grievance is filed, the Supervisor or Manager shall investigate the grievance, confer with the grievant in an attempt to resolve the grievance, and make a decision in writing. The department head may first seek to resolve the issue(s) through a meeting including the grievant and such staff as the grievant's supervisor, a manager of that supervisor and/or a department Human Resources specialist.

D Step 2

- 1 If the grievance is not resolved in Step 1 to the satisfaction of the grievant, he may, within not more than five (5) work days from his receipt of the Supervisor's or Manager's decision, request consideration of the grievance by the Appointing Authority, by so notifying the Human Resources & Development Department in writing.
- 2 Within ten (10) work days after such notification, the Appointing Authority shall commence investigation of the grievance, confer with the grievant and other persons affected and their representatives (if any) to the extent he deems necessary, and render a decision in writing.

- 3 If the written decision of the Appointing Authority resolves the grievance to the satisfaction of the grievant, it shall end the grievance process

E Step 3

- 1 A final appeal may be filed by the grievant, in writing, with the Human Resources & Development Department not more than five (5) work days from receipt of the Appointing Authority's decision
- 2 The grievance will be reviewed by the Grievance Panel consisting of one County employee selected by the grievant, one person appointed by the department and one member appointed by the Board of Supervisors. The Board appointed member shall chair the committee
- 3 Failure on the part of the County or the grievant to appear before the Grievance Panel, without good cause as determined by the Panel Chairman, shall result in forfeiture of the case
- 4 The decision of the Grievance Panel shall be made in writing within thirty (30) calendar days after the conclusion of the appeal hearing. The decision of the Grievance Panel shall be final and binding on all parties, subject to ratification by the Board of Supervisors if the decision requires an unbudgeted expenditure

V **GENERAL CONDITIONS**

A The Human Resources & Development Department shall act as the central repository for all grievance records. The Human Resources & Development Department will be sent a copy of the decision at each level or step.

B Any time limit may be extended only by mutual agreement in writing.

C An aggrieved employee may be represented by any person or by the organization certified as the representative for the Representation (Bargaining) Unit in which the aggrieved employee is included. The representative shall be a non-attorney lay advocate unless otherwise mutually agreed in advance that both parties may be represented by attorneys. The representative is entitled to be present at all formal meetings, conferences and hearings pertaining to the grievance.

D At any level, in order to provide a timely and appropriate response, the named County official may delegate the handling of the grievance.

E At any level, should either party raise a procedural issue such as, but not limited to, whether the other party filed or responded in a timely manner or whether a particular issue falls within the jurisdiction of the grievance procedure, the County Administrative Officer (CAO) shall meet with the parties within five work days solely to hear and rule on the procedural issue(s). The CAO will issue his ruling within five work days. The decision of the CAO shall be final and binding on all parties.

F The processing of an appeal shall be considered County Business with the aggrieved employee and the representative (if a County employee) receiving reasonable release from duty for this purpose without loss of pay.

Article 25 SICK LEAVE PAY ON SEPARATION

For employees covered by this agreement, sick leave pay on separation shall be handled in accordance with Personnel Rule 6 7 8 with the amounts of sick leave eligible for conversion under 6 7 8 b) modified as follows, an employee retiring directly from active service and otherwise meeting the requirements of Rule 6 7 8 b) may elect to have

- a) Up to twenty percent (20%) of his/her accumulated sick leave credits at the time of separation paid as compensation calculated on the hourly rate of pay for the position occupied 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
- b) Up to one-hundred percent (100%) of accumulated unused sick leave remaining after the conversion provided under a) above converted to additional service credits as of the date of their retirement

Article 26 MEDICAL SEPARATION

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. The provisions for said medical separation shall be in accordance with the County's Return to Work Policy and applicable Personnel Rules.

Article 27 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 until the parties have initiated the meet and confer process and if required, approved and implemented by the Board of Supervisors.

Article 28 UNIT MEMBERSHIP

The County shall exclusively provide TCCA in writing, quarterly each year from the effective date of this Memorandum, a list of all employees subject to this M.O.U., of such employee's name, Employee I.D. Number, class and job location.

Article 29 PAYROLL DEDUCTION

The County shall continue to collect TCCA dues and insurance premiums through payroll deduction. These moneys shall be forwarded to TCCA as soon as practicable after such deduction is made.

TCCA 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 30 PAYROLL

1 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 **on** a case-by-case basis.

2 Shortages

Cash advance by the Auditor's Office to cover confirmed 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).

For shortage errors of a gross of fifty dollars (\$50.00) or less, the adjustment will be made in the next regular payroll cycle.

3 Overpayment

When an overpayment error of a gross fifty dollars (\$50.00) or more occurs, the County will request that the employee 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. The County may use a legal process to obtain repayment if the employee refuses.

If an overpayment of less than fifty dollars (\$50.00) gross occurs, the County will request that the employee have the overpayment amount deducted from the employee's next regular pay check. The County may use a legal process to obtain repayment if the employee refuses.

Article 31 WORK ACCESS AND EMPLOYEE INFORMATION

Authorized TCCA representatives shall be given access to work locations during working hours to conduct TCCA 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 TCCA representatives shall have authority to reach a solution for the grieving party. TCCA agrees to provide reasonable advance notice of such visitations to the Department Head or his designated alternate. TCCA further agrees to limit the number of representatives actively participating in the process to one (1) at any one particular point in time. The department reserves the right to require that such visitors be escorted.

The County agrees to allow TCCA to use the County official bulletin boards in areas where TCCA represents the employees 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 TCCA representative and must be approved by, and submitted to, the Human Resources Director. TCCA agrees to limit the posting of such notices to its bulletin board space and shall bear responsibility for the content of the literature. In addition, the notice must also clearly bear the initial date of posting. Each individual notice shall be posted for a period not to exceed seven (7) calendar days, unless prior approval has been given.

by the Human Resources Director

The County agrees to allow authorized TCCA representatives access to those employee lunch rooms which are used by employees in Units represented by TCCA. The representative shall at all times conduct his/herself in a professional and business-like manner as to not interfere with other employees or the general public who have no involvement in the organization. If any representative does not conduct his/herself in this manner, the Department can refuse access to the individual. This action shall in no way restrict the employee organization from appointing another individual to conduct the service. Such access shall only be before and after work and during designated lunch break periods and shall be for the purpose of disseminating information to and servicing the represented employees. Such access shall not be used to promote or encourage job action(s).

Article 32 EMPLOYEE ORGANIZATION TIME-OFF

The President or Vice President(s) or other officers, or directors, not to exceed two (2) at any one time may, upon written request of the organization, be granted temporary time off with pay not to exceed a total of 40 hours annually to attend official organization conventions and/or conferences. The written request must first be submitted to the Human Resources Director at least five (5) working days prior to the requested day off. Approval must be given by the Human Resources Director and subsequently by the departments of which the persons are employed. This shall include official presentations before the Boards of Supervisors and/or Retirement.

Article 33 ORIENTATION PRESENTATION

A factual presentation of the rights and responsibilities of employees shall be presented by the County in each new employee orientation session. This shall include the naming of the certified representative of each bargaining unit and the distribution of informational packets supplied by TCCA to employees covered by this agreement. TCCA will be given reasonable advance notice of group orientation meetings.

The County will provide TCCA with a list of the names, classifications and work locations of new employees after each new employee orientation.

Article 34 POSITION RECLASSIFICATION

Upon written request from TCCA to the Employee Relations Officer, and the agreement of the appointing authority, a classification study will be performed to determine if the subject classes are appropriately classified in accordance with Personnel Rule 3. This study shall be performed and discussed with TCCA in a timely manner.

Article 35 JOB DESCRIPTION

An employee may request a written job description of the duties for their position. Each job description request shall be granted in a timely manner.

County will provide TCCA the current Classification Specification and any subsequent updates for each classification represented by TCCA.

Article 36 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 TCCA 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. Nothing contained in this article or Memorandum of Understanding shall be considered to authorize any strike or job action affecting the delivery of services where such action would be otherwise prohibited by State Law, and the County shall not be precluded from pursuing any available remedies to address any such action.

Article 37 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, 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.

Article 38 CONDUCT AND DISCIPLINE

Should any of the following be in conflict with the Peace Officers' Bill of Rights (POBOR) as it applies to classifications covered by this MOU, the POBOR shall prevail.

I **DISCIPLINARY ACTIONS NOT INVOLVING LOSS OF PAY OR SUSPENSIONS OF FIVE (5) DAYS OR LESS: "SKELLY" PRE-DISCIPLINARY REVIEW AND APPEAL**

A disciplinary action of a suspension without pay of five (5) work days (40 hours) or any lesser disciplinary action may only be appealed to the Chief of Probation. **Within seven (7) calendar days of receipt of the proposed notice of disciplinary action**, 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 Chief of Probation. The Chief of Probation will review the written record, including written statements and documents presented by the employee, discuss the proposed discipline with appropriate Division Manager, 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 Chief of Probation may meet with the employee and his/her representative and anyone else the Chief of Probation may deem appropriate to his review. The decision of the Chief of Probation shall be final and binding on the County and the appellant.

The Chief of Probation 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.

II DISCIPLINARY ACTIONS OF SUSPENSION OF MORE THAN FIVE (5) DAYS, DEMOTIONS AND DISMISSALS: "SKELLY" PRE-DISCIPLINARY REVIEW

Within seven (7) calendar days of receipt of the proposed notice of disciplinary action, 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 Chief of Probation. The Chief of Probation will review the written record, including written statements and documents presented by the employee, discuss the proposed discipline with the appropriate Division Manager, 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 Chief of Probation may meet with the employee and his/her representative and anyone else the Chief of Probation may deem appropriate to his review. The decision of the Chief of Probation is binding on the appropriate Division Manager.

The Chief of Probation 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.

III. DISCIPLINARY ACTIONS OF SUSPENSION OF MORE THAN FIVE (5) DAYS, DEMOTIONS AND DISMISSALS: APPEAL

A written Notice of Appeal, in a form acceptable to the Human Resources Director, must be filed with and received by the Human Resources Director within three (3) 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.

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.

- A 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.
- B 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.
- C The hearing officer may take official notice of any matter which may be judicially noticed.
- D 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.

A HEARING PANEL

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.

- 1 Each party shall have the right to subpoena witnesses. The Board of Supervisors will, on request, issue in blank subpoenas.
- 2 Each party shall select their panel member and notify the Human Resources Director within ten (10) 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.
- 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.

- 4 The decision of the Hearing Panel shall be by majority vote and shall be made in writing within sixty (60) days 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
- 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

1 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 Human Resources 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

2 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 Human Resources & Development 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 Human Resources & Development Department, will acknowledge service of the Statement of Charges

3 Notice of Defense

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

- (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
- (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

- (3) Object to the form of the Statement of Charges on the ground that it is so indefinite or uncertain that the employee cannot identify the transaction or prepare a defense
 - (4) Admit the Statement of Charges in whole, or in part
 - (5) Present new matter by way of defense
 - (6) No exceptions to the time period provided herein shall be permitted
- b 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.
- c The Notice of Defense shall be in writing, signed by, or on behalf of, the employee and shall state the employee's mailing address.
- d 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 Human Resources & Development Department. Should the employee fail to provide a written list of available dates within the time lines indicated above, the appeal shall be dismissed.
- e 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.

4 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.

a 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)

b 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.

5 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.

6 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.

7 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.

8. 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.

9 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.

Article 39 FULL AGREEMENT

It is understood this Memorandum of Understanding (MOU) represents a complete and final understanding on all negotiable issues between the parties. This MOU supersedes all previous Memoranda of Understanding between the parties except as specifically referred to in this MOU. All ordinances or rules covering any practice, subject or matter not specifically referred to in the MOU shall not be superseded, modified or repealed by implication or otherwise by the provisions hereof.

The parties, for the term of this MOU, voluntarily agree to waive the obligation to negotiate with respect to any practice, subject or matter not specifically referred to or covered in this MOU even though such practice, subject, or matter may not have been within the knowledge of the parties at the time this MOU was negotiated and signed.

In the event any new practice, subject or matter arises during the term of the MOU and an action is proposed by the County, the Union shall be afforded all possible notice and shall have the right to meet and confer if required by law. In the absence of agreement on such a proposed action, the County reserves the right to take necessary action by Management direction.

Article 40 AMERICANS WITH DISABILITIES ACT

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 41 HOLIDAYS/VACATION LEAVE

For Holidays see Personnel Rule 6 6 with the following modifications

Holidays to be observed by the County shall include

- 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

Probationary employees may use paid leave to bring an eight-hour holiday up to the employee's scheduled workday if the employee's regular work day is longer than eight hours

6 8 VACATION LEAVE

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 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
* On the first day of the 4 th 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.				

- a) Employees continue to earn and accumulate vacation leave while on any paid leave

- b) Credits for vacation with pay may be accumulated up to a maximum of three hundred-seventy (370) hours. Once an employee has accumulated three hundred-seventy (370) hours he shall receive no further vacation accruals until the employee's accrual falls below three hundred-seventy (370) hours, effective through June 30, 2013
- c) Employees who came directly to Tulare County from prior public service in which they were eligible to earn and use vacation leave may accrue vacation as if all their most recent years of continuous public service were with Tulare County

6 8 2 Scheduling of Vacations

Vacations may be taken at any time following the completion of the first thirteen (13) full pay periods of continuous service. Vacations shall be scheduled, and the time at which an employee takes vacation leave is determined by the prior approval of the Department Head with due regard to the employee and the needs of the County. The law permits the County to require an employee to use CTO before accrued vacation time.

Employees may submit vacation requests yearly, in conjunction with yearly seniority shift bidding. Holidays are included in vacation bidding. Shift bidding will begin Oct 1st and be completed by Oct 15th. The results of the shift bidding shall be posted by October 30th.

When approving leave for vacation, the priority is to assure proper staff coverage for all facility functions. The number of employees to be allowed off on any shift will be evaluated based upon the needs of the facility including but not limited to gender balance, availability of replacement staff, as well as security and program needs.

The amount of time requested may be any amount up to the employees' current balance plus any time normally earned prior to the vacation requested. During each round of scheduling no more than one block of time may be scheduled for each employee. Employees submitting more than one vacation request must indicate priority consideration for each request. Scheduling shall be on the basis of seniority for each selection round until all requests are processed. All vacation requests to be considered for pre-approval must be submitted between November 1st through November 15th. Approved vacation shall be published by Dec 1st.

Vacations which have been approved prior to promotion or transfer will remain the same, absent compelling business needs of the unit/division/departments.

Employees must submit requests for blocks of vacation based on their current balance. These requests may be submitted annually based on the below listed guide. Blocks of time are a minimum of 40 hour increments up to a maximum of hours accrued. If an employee has 300 current hours and is submitting a Yearly Request, the combination of the 40 hr blocks of time must total 240 hours.

<i>Current Hours</i>	<i>Requests per rotation</i>	<i>Yearly Request</i>
<i>0-150 hours</i>	<i>No minimum block of time</i>	<i>Minimum 40 hrs block of time</i>
<i>150-200 hours</i>	<i>No minimum block of time</i>	<i>Minimum 80 hrs block of time</i>
<i>200-250 hours</i>	<i>No minimum block of time</i>	<i>Minimum 80 hrs block of time</i>
<i>250+</i>	<i>Minimum 40 hrs block of time</i>	<i>Minimum 120 hrs block of time</i>

Employees must be aware of their accrual rate, and must submit block vacation requests based not only on their current balance but on their rate of accrual. It is the employee's responsibility to request sufficient blocks of vacation, based on his/her accrual rate, to remain below the 370 hour vacation cap.

Requests for less than five consecutive days will not be accepted until after the vacation block pre approval period has been completed.

Employees not involved in shift bidding may submit written vacation requests yearly, in October for the next calendar year. Employees submitting requests by Oct. 15th will receive approval or denial by Oct. 30th. Employees submitting more than one vacation request must indicate priority consideration for each request. Scheduling shall be on the basis of seniority for each selection round until all requests are processed.

All employees having 200 hours or more of vacation accrued at the time of vacation bidding must submit requests for a minimum of 80 hours, in increments of 40 or 80 hour blocks.

Once the initial requests have been processed further scheduling shall be on a first come first served basis. Employees submitting requests shall be notified of approval or denial within two (2) weeks of the date the request was submitted.

Employees may retract vacation up to two (2) weeks prior to the scheduled date with approval of SPO or above, via the chain of command.

Supervisors will check employee vacation balances to ensure sufficient time is available to cover time requested at minimum two weeks prior to vacation time.

Specific vacation related matters such as accumulation, approval, etc. not specifically addressed here remain subject to current Tulare County and Probation Department Policy.

6.8.3 Exclusions
Except as provided in Section 6.5, an employee does not accrue vacation during any leave without pay.

6.8.4 Holiday During Vacation
If a County observed holiday, as noted in Section 6.6.1, occurs while the employee is on vacation leave, such holiday time is not deducted from the amount of vacation leave to which the employee is entitled.

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

- 6 8 6 **Accounting For Vacation Used**
Each employee has one-tenth (1/10) hour deducted from his accrued vacation credits for each one-tenth (1/10) hour of vacation leave taken. All vacation leave shall be reported on such forms as may be prescribed by the County Auditor- Controller
- 6 8 7 **Vacation Leave Pay on Separation**
Upon separation, an employee receives compensation at his current salary rate for all unused earned vacation as of the effective date of separation, subject to the following
- a) An employee shall not use accrued vacation credits to extend his separation date
 - b) A full-time employee who has resigned, or who has been laid-off without prejudice, and who is subsequently reinstated or re-employed in a full-time position within a two (2) year period shall have their vacation leave rate, at the time of reinstatement or re-employment, computed, pursuant to Section 6 8 1, to include their total pay periods of continuous full-time service prior to the resignation or lay-off
- 6 8 8 **Vacation in Lieu of Sick 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 42 RETIREMENT

The County will prospectively enhance the retirement for all employees to 2% at age 57 as soon as the County's Retirement Board can implement following execution of this MOU. The County will prospectively enhance the retirement for all safety employees to 2% at age 50 effective December 23, 2007. Employees not eligible for safety retirement will remain at the 2% at age 57 retirement benefit level

Article 43 PROBATION OFFICER & PROBATION CORRECTIONAL OFFICER SERIES & FLEXIBLY-ALLOCATED CLASSIFICATIONS

The Probation Officer series (Probation Officer I, II, and III) will be flexibly allocated. The County may continue to limit both the total number of Probation Officer positions and the number of those positions that may only be filled to the Probation Officer II level

Article 44 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. During this period, the contract shall remain in full force and effect as provided in Article TERM, of this agreement.

Article 45 DRINKING WATER

The County will provide drinking water at work locations via drinking fountains, bottled water or other reasonable means as determined by the County.

Article 46 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. Employees covered by this MOU may take classes and obtain tuition reimbursement subject to the Tuition Reimbursement Guidelines in Addendum A of this agreement.

Article 47 PERSONNEL RULES REVISION

The County and TCCA will continue to meet and confer **during the term of the agreement** on proposed Personnel Rules changes and **impact of** any policy change issues. This meet and confer shall be conducted under the ground rules used for bargaining this MOU including the opportunity to seek resolution through the impasse procedure of the County Employment Relations Policy.

Article 48 SENIORITY SCORES

For purposes of calculating seniority points for layoff, an employee's score on his/her most recent Performance Appraisal will only be used as a tie breaker.

Article 49 SICK LEAVE BUY BACK

The Sick Leave Buy Back program is suspended for the term of this agreement.

Article 50 TCCA HEALTH PLAN

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

- 1) TCCA must maintain a bona fide health benefit program through a main-stream health care provider.
- 2) TCCA's health benefit program must result in real savings to Unit 12 employees over the

current County plan

- 3) TCCA must maintain an initial implementation and enrollment plan
- 4) TCCA must maintain an ongoing service plan including
 - a) A plan for annual reenrollment
 - b) An ombudsman to address problem claims
 - c) A complete employee information packet
 - d) A payroll coordination plan
- 6) TCCA must maintain a plan for compliance with all laws applicable to the operation of a health care plan including but not limited to HIPAA
- 7) The County will collect a \$3 00 per pay period administration fee from TCCA
- 8) Unit 12 employees who retire while participating in TCCA's health plan will remain in TCCA's plan during retirement.
- 9) As a participant in the County IRS125 Benefit Plan, TCCA will comply with the health plan protocol prepared by the County

Article 51 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 52 ERRORS OR OMISSIONS

This document is intended to represent the full and complete MOU reached by the County and the Tulare County Corrections Association (TCCA). Should it be discovered that this document does not represent the agreement of the County and the Tulare County Corrections Association (TCCA) due to error, omission, oversight, etc. the County and the Union agree to make the necessary corrections to accurately reflect the agreement.


Article 53 TERM

The term of this agreement is July 1, 2013 through June 30, 2014

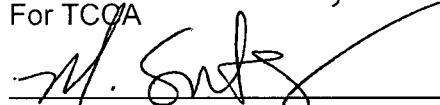


For Tulare County

7/1/13 Date



For TCCA



6-25-13 Date