

# **MEMORANDUM OF UNDERSTANDING**

**COUNTY OF KERN**

**AND**

**KERN COUNTY SHERIFF'S  
COMMAND ASSOCIATION  
(KCSCA) II**

**EXPIRES MARCH 13, 2015**

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## **PREAMBLE**

This Memorandum of Understanding, hereinafter referred to as "MOU", is entered into by the County of Kern, hereinafter referred to as "COUNTY", and the Kern County Sheriff's Command Association II, hereinafter referred to as "Association" or "KCSCA II," on behalf of the employees covered hereby. This MOU sets forth the full and entire understanding of the parties regarding the matters set forth herein reached as the result of good faith negotiations regarding the wages, hours, and other terms and conditions of employment of the employees covered hereby.

## **ARTICLE I – TERM**

This MOU between the County and KCSCA II is effective upon approval by the Board of Supervisors and expires on March 13, 2015.

## **ARTICLE II – IMPLEMENTATION**

This MOU constitutes the agreement of KCSCA II, as approved by the membership of KCSCA II, and the authorized representatives of the County. It is agreed that this MOU shall not be binding upon the parties-either in whole or in part unless and until the County's Board of Supervisors approves it. Pursuant to Government Code section 3505.1 and in accordance with Article 14 of Kern County Resolution # 84-166, (hereinafter referred to as the Employer-Employee Relations Resolution or "EERR"), this MOU is being presented to the Board of Supervisors for approval.

## **ARTICLE III - INTEGRATION AND RELATED PROVISIONS**

### Section 1. Full Understanding, Modifications, and Waiver

- A. This MOU sets forth the full and entire understanding of the parties regarding the specific matters set forth herein. No other prior or existing oral or written understandings or agreements by the parties shall have any force or effect with respect to the matters covered hereunder. The parties intend for this MOU to be a fully integrated agreement with respect to such matters.
- B. Except as specifically provided herein, it is agreed and understood that each party hereto voluntarily and unqualifiedly waives its right and agrees that the other party shall not be required to negotiate with respect to any subject or matter covered herein, during the term of this MOU.
- C. No agreement, alteration, understanding, variation, waiver, or modification of any terms or provisions contained herein shall in any manner be binding upon the parties hereto unless made and executed in writing by the parties hereto and, if requested, approved by the County's Board of Supervisors.
- D. Waiver of any violation of this MOU, or the failure to enforce any of its terms, shall not constitute a waiver of the right to future enforcement of any of the terms of this MOU.
- E. Existing practices not covered by this MOU shall remain in full force and effect unless changed or abolished through the meet and confer process.

## **ARTICLE IV- RECOGNITION**

### Section 1. Association Recognition.

The County recognizes the Association as the recognized employee representative organization for all permanent Sheriff's Detention Lieutenants employed in the Kern County Sheriff's Office. The Association has been certified as such by the Kern County Board of Supervisors, pursuant to Kern County Resolution # 84-166, commonly referred to as the Employer-Employee Relations Resolution, and Government Code section 3500 et seq., commonly referred to as the Meyers-Milias-Brown Act.

It is further understood that any employee, to the extent permitted by law, shall have the right to represent himself/herself individually in his/her employment relations with the County.

### Section 2. Authorized Agents

For purposes of administering the terms and provisions of this MOU:

- A. County's principal authorized agent shall be the County Administrative Officer, or her/his duly authorized representative (Address; 1115 Truxtun Avenue, Bakersfield, California, 93301, 868-3198), except where a particular County management representative is specifically designated in connection with the performance of a specified function or obligation set forth herein.
- B. KCSCA II's principal authorized agent shall be the President of KCSCA II or her/his duly authorized representative (Address; P.O. Box 80775, Bakersfield, CA 93380-0775, 391-7549).

## **ARTICLE V - GENERAL PROVISIONS**

### Section 1. Health/Safety

- A. The County will provide safe and sanitary working conditions and equipment as required by applicable law, statute, regulation or ordinance.

### Section 2. Employee Suggestion Program

- A. The Employee Suggestion Program for County employees shall remain in effect during the term of this MOU.

### Section 3. Payroll Deduction

#### **A. Deductions**

The County of Kern agrees to the union dues check off system whereby dues, as certified by the Association to be current, will be deducted and paid to the Association, subject to the provisions of the EERR.

1. The Association agrees to pay a service fee to the County for payroll deduction for union dues, insurance, or other assessments. The payroll deduction service fee shall be two cents per deduction per biweekly pay period.



#### Section 4. Representational Fee

##### A. Scope

Each Employee represented by the KCSCA II bargaining unit shall either (1) become a member of the Association to the extent of rendering periodic dues uniformly required for membership, or (2) pay to the Association a biweekly representational fee. Such representational fee shall be an amount uniformly established by the Association's governing body, but in no event should such representational fee exceed 90% of the amount that an Association member of the same salary level would pay in dues.

##### B. Indemnification

The Association shall indemnify the County and hold it harmless against any and all suits, claims, demands or other liabilities including the County's reasonable attorney fees that may arise out of or by reason of any action taken by the County for purposes of complying with this section.

##### C. Authority

This section was implemented in accordance with Government Code section 3502.5 and the Association agrees to adhere to all statutory and judicial requirements relating to Representational Fee Agreements. Specifically:

1. The Association agrees to keep an adequate itemized record of its financial transactions and shall make a financial statement, in the form of a balance sheet and an operating statement certified as to accuracy by the Association's Board of Directors and a Certified Public Accountant licensed in the State of California, available annually (within sixty (60) days after the end of its Fiscal Year) to the County.
2. The Association further agrees to hold any disputed fees in their entirety in an escrow account to be maintained at the Kern Federal Credit Union, 1717 Truxtun Avenue, Bakersfield, California, pending resolution of the dispute pursuant to the complaint procedure outlined below.

##### D. Complaint Procedure

1. This complaint procedure shall be utilized solely to resolve disputes arising out of the deduction of a representational fee by the County, pursuant to this negotiated MOU:
2. Issues subject to this complaint procedure shall be limited to the following:
  - a. That a portion of the representational fee deduction is being utilized for nonrepresentational activities.
  - b. That the non-member is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting public employee unions.
  - c. In the event that it is determined, pursuant to this procedure, that such non-member is a member of such religion, body or sect, they may, in the alternative, designate a charitable fund from the list of United Way charities.

- d. The County agrees to deduct and to remit fees so designated to the United Way.
- 3. Any non-member who objects to the deduction of the representational fee by the Association shall file a written complaint with the Association. The complaint shall specify the reason(s) for the objection to the deduction. The complaint must clearly state the basis for the objection.
  - a. Any employee who objects to the deduction of the representational fee shall forward his/her written complaint to the Association within thirty (30) calendar days after the fee is initially deducted.
  - b. Upon receipt of the written complaint, the Association shall place the entire amount of the disputed deduction into an escrow account pending resolution of the dispute and shall request a list of five (5) arbitrators from the State Mediation and Conciliation Service (SMCS).
- E. Selection of the Arbitrator

The arbitrator shall be selected by the alternate striking of the names provided by SMCS.
- F. Date for Hearing

The Association shall notify SMCS of the selected arbitrator within five (5) calendar days of the selection. Upon confirmation by the arbitrator, the Association will, forthwith, notify the complainant of the date, time and location of the complaint hearing.
- G. Payment of Costs

The arbitrator will be directed to specifically determine which party has prevailed. In the event the Association prevails in said arbitration, the complainant shall pay all costs. Should the complainant prevail, the Association shall pay the entire cost of the arbitration.
- H. Effect of the Arbitrator's Decision

The decisions of the arbitrator shall be final and binding. Upon receipt of the arbitrator's decision, fees being held in escrow shall be disbursed by the Association in accordance with said decision. In the event that the Association prevails, the County shall continue to deduct the representational fees and remit same to the Association as determined by the arbitrator.

#### Section 5. Direct Deposit

- A. All employees shall receive their pay and qualified expense reimbursements via direct deposit.

### **ARTICLE VI - RIGHTS OF PARTIES**

#### Section 1. Strikes and Lockouts

- A. During the term of this MOU, County agrees that it will not lock out employees, and Association agrees that it will not engage in, encourage, or approve any strike, slowdown, sickout or other work stoppage growing out of any dispute relating to the terms of the MOU. Association will

take whatever possible lawful steps necessary to prevent any interruption of work in violation of this MOU. Furthermore, Association and County recognize that all matters of controversy within the scope of this MOU shall be settled by the established grievance and arbitration procedures contained in Article X.

## Section 2. Bulletin Boards and County Communications System

- A. County agrees that the Association shall be entitled to the use of reasonable space, designated by the County, on departmental bulletin boards to post notices pertinent to their membership. Employer-Employee Relations Resolution provisions govern posting of notices. It is agreed between the County and the Association that the Association, on approved bulletin boards, may through its authorized representatives, post Association communications dealing with official Association business.
- B. The County reserves the right to remove any bulletin board notice that does not conform to the above standards. The Association will be given immediate notice of any material that is removed, and the County agrees, if requested by the Association, to meet and discuss this removal as soon as it is mutually convenient.
- C. The County and KCSCA II further agree that the Association may use the County communication systems for official Association business. Such use may include reasonable use of the telephone, facsimile machine, computer E-mail, County internal office mail, and copy machines. Cost of long distance telephone usage, postage and supplies for the facsimile and copy machines shall be borne by the Association. These communication systems will not be used for any communications dealing with job actions or political activities of the Association.
- D. Failure to adhere to the use of the communication system in the above manner will result in its revocation as a privilege extended to KCSCA II by the County.
- E. The County agrees that the Association may continue to conduct its business on County property as long as there is no undue interference with the operation of the Sheriff's Office and no use of County material and equipment except as otherwise provided.

## Section 3. Claims Review

- A. Employees who lose or damage personal property in the course of their County employment may process a claim for reimbursement through the Claims Review Board as provided for in the Kern County Administrative Procedures Manual.

## Section 4. Discrimination

- A. The County of Kern agrees not to discriminate against any employee for his/her activity on behalf of, or membership in, the Association, as stated in the Employer-Employee Relations Resolution. Both parties shall comply with all applicable laws prohibiting discrimination on the basis of race, color, creed, religion, age, sex, marital status, disability or inclusion in a legally protected class.

## Section 5. Personnel Files

- A. The employee may review or authorize his/her designated representative to review their personnel file at the Personnel Department upon proper written request.



- B. The County reserves the right to charge an appropriate fee for duplication of records in the personnel file.

#### Section 6. Release Time and Association Representatives

- A. Association representatives, consisting of Board Members of KCSCA II or their duly authorized representatives, not to exceed one representative per member of the Executive Committee, will be granted reasonable use of County time to perform their Association duties. The Association will provide the Sheriff and the County Administrative Officer written notice identifying the members of the Executive Committee on an annual basis.
- B. Employees who serve as designated members of the Association's meet and confer team will be allowed reasonable use of County time when meeting with the County on successor MOUs or on other formal meet and confer matters within the scope of representation. Three months prior to the expiration of the current MOU, members of the meet and confer team may be allowed reasonable release time for preparation with the appropriate notice to their supervisor.
- C. The County agrees to allow at least one authorized Association Board Member from KCSCA II or its duly authorized representative, to assist and represent an employee in the grievance process.
- D. The Association agrees that whenever investigation or processing of a formal grievance occurs during working hours, the amount of time will be limited to only that which is necessary to bring about prompt disposition of the issue.
- E. Association representatives desiring to leave their work locations to conduct Association business shall notify their supervisor, and inform them of the purpose for leaving work if they are not immediately available for call back by cellular phone or pager. Permission to leave will be granted unless the absence would cause an undue interruption of work. In this event, release from work shall be made as soon as practicable.
- F. When contacting employees at the work site regarding grievance investigations, the Association representative shall advise the appropriate supervisor of the reasons for his/her presence. The affected employee will be released to meet with the Association representative unless leaving the job would cause an undue work interruption, in which case the employee will be released as soon as possible thereafter, or arrangements made for a future meeting.
- G. Association representatives shall perform aforementioned duties without loss of pay or other benefits.

#### Section 7. Employer Rights

- A. The County and its elected and appointed officials shall retain all customary rights, powers, functions and authority consistent with State law, County ordinances, and rules of the Civil Service Commission, including, but not limited to, the right to:
  - 1. Determine the mission of its constituent departments, commissions and boards;
  - 2. Set standards of service;
  - 3. Engage in all types of personnel transactions and disciplinary proceedings in accordance with County ordinances and Civil Service rules;

4. Plan for and direct the work force toward the organizational goals of County government;
5. Effect a reduction in authorized positions because of lack of work, or for other legitimate reasons;
6. Determine work methods, number and classifications of personnel, and types of equipment required accomplishing an objective;
7. Take any necessary actions to carry out its mission in emergencies;
8. Exclude the following employees from exercising any role in any employee organization, other than membership (including payroll deduction):
  - a. Managerial employees who serve as department heads and assistant department heads, and heads of operational divisions when such division serves in a quasi-departmental status.
  - b. Employees having a confidential relationship with the Board of Supervisors, County Administrative Officer, Director of Personnel, and County Counsel. Such excluded employees shall not exceed two percent (2%) of the permanent work force. Excluded employees may not represent any employee organization, which represents other County employees on matters within the scope of representation.
9. Modify, supplement or otherwise change this MOU to reflect present and future State law and local ordinance, after consultation with employee organization representatives.

The exercise and retention of such rights does not preclude employees or their representatives from consulting or presenting grievances about the practical consequences that decisions on these matters may have upon wages, hours, and other terms and conditions of employment.

**B. Departmental Reassignments:**

1. The Association agrees that the Sheriff has the right to reassign personnel in the Sheriff's Department based on the Sheriff's discretion.
2. An employee reassigned by operation of this section has the right, under California Government Code §3300, et seq., to appeal any alleged punitive action at an administrative hearing. An administrative hearing for this purpose is a hearing held by a senior officer within the Sheriff's Office at the rank of Chief Deputy or above.
3. No such protested departmental reassignment shall take effect until such time as the employee has had his/her administrative hearing.
4. When the department effects a departmental reassignment, the department will afford due consideration to the financial impact such reassignment may have upon the employee, prior to the completion of the reassignment.

## ARTICLE VII - PAID LEAVE

### Section 1. Jury Duty

- A. In accordance with Code of Civil Procedure section 219, all employees governed by this MOU are exempt from jury duty.

### Section 2. Sick Leave

- A. Accrual –

1. Each full time employee covered by this MOU shall accrue sick leave as follows:

<u>Years of Continuous Service</u>	<u>Bi-weekly Accrual</u>	<u>Days/Year</u>
0 through 5	2.46154 hours	8
6 or more	3.69231 hours	12

Unused sick leave will be accumulated up to a maximum of 1152 hours (144 days).

- B. Upon active retirement (excluding deferred retirement) or death, an employee or his/her estate will be paid for his/her unused sick leave as follows:

1. 0-19 years of continuous service = 50% Payoff
2. 20-24 years of continuous service = 75% payoff
3. 25 or more years continuous service = 100% payoff

- a. “Continuous Service” shall mean uninterrupted employment with the County of Kern. Authorized leaves of absence shall not be considered as a break in service.

- C. Sick Leave Bonus. Employees shall be eligible to receive an annual cash bonus equivalent to 24 hours at their regular rate of pay if on the pay day immediately preceding Christmas they have accrued the maximum amount of unused sick leave (1152 hours) and have used ten hours (10), or less, of sick leave during the previous payroll periods during that calendar year.

- D. Employees shall not be downgraded on their Employee Performance Reports for being absent pursuant to a leave governed by the Family and Medical Leave Act.

### Section 3. Pregnancy Disability and Maternity Leaves

- A. Pregnancy Disability leave is governed by Government Code section 12945, the Family and Medical Leave Act (“FMLA”) and the Kern County Civil Service Rules. Maternity Leave (i.e., leave following the birth of a child or following the placement of a child as a result of an adoption or foster care) is governed by FMLA, California Family Rights Act (“CFRA”) and the Kern County Civil Service Rules.

### Section 4. Vacation

- A. The vacation entitlement for regular full-time employees covered by this MOU is:

13 days (104 hours)                      vacation after one (1) year of service

- |                     |   |
|---------------------|---|
| 18 days (144 hours) | vacation after five (5) years of service (new accrual rates begin at start of 5 <sup>th</sup> year of service)      |
| 23 days (184 hours) | vacation after ten (10) years of service (new accrual rates begin at start of 10 <sup>th</sup> year of service)     |
| 28 days (224 hours) | vacation after fifteen (15) years of service (new accrual rates begin at start of 15 <sup>th</sup> year of service) |
- B. The granting of any vacation request, by a department head or designated supervisor shall be subject to the workload and staffing requirements of the department.
- C. With respect to employees with maximum vacation accruals, if the employee has been denied a proper written request for a vacation and subsequently submits a second proper written request for a vacation for a different period of time, and that second request is denied, the employee shall upon written request, be entitled to receive cash in an amount equal to the amount of vacation time the employee would have accrued while utilizing the vacation time if the second vacation request had been approved. The requests must conform to the scheduling policy of the department.
- D. Employees shall not be downgraded on the Employee Performance Report for the use of authorized vacation.
- E. Financial Hardship - In the event an employee incurs a serious financial hardship as the result of family illness or death, the employee may make written request to the Sheriff to cash-out all or part of the employee's accrued vacation. Upon investigation, the Sheriff may direct the claim to the Auditor-Controller-County Clerk for payment. Any disputes arising from the denial of any claim for payment will be resolved by application of the Grievance and Arbitration Procedure.

#### Section 5. Holidays

- A. During the term of this MOU, the following holiday schedule shall apply:

New Year's Day  
 Martin Luther King's Birthday (third Monday in January)  
 Memorial Day (last Monday in May)  
 Presidents Day (3rd Monday in February)  
 4th of July  
 Labor Day  
 Thanksgiving Day  
 Day after Thanksgiving  
 Christmas Eve  
 Christmas Day  
 New Year's Eve

1. Holidays that fall on Saturday shall be observed on the previous Friday. Holidays which fall on Sunday shall be observed on the following Monday.

2. In a year in which Christmas and New Year's Day fall on a Saturday and are observed on Friday, Christmas Eve and New Year's Eve day holidays shall be observed on the preceding Thursday.
3. In a year in which Christmas Eve and New Year's Eve fall on a Saturday or Sunday, the holidays shall be observed on the preceding Friday.
4. The actual holiday shall be defined as the day of the week on which the holiday falls.
5. A designated holiday shall be the day observed in lieu of the actual holiday.
6. Employees regularly scheduled to work on an actual or designated holiday shall receive their regular pay. In addition, such employees shall be entitled to holiday compensation, as defined below, if they actually work on the actual or designated holiday.
7. In no event shall an employee receive holiday compensation for both the actual and designated holiday.
8. Employees shall be paid holiday compensation only if the employee works on the actual holiday or designated holiday. The holiday compensation shall equal time and one-half for each hour worked up to a maximum of the number of hours a day that commander regularly works (i.e., 8, 10 or 12).

#### Section 6. Vacation Donation Plan for Catastrophic Conditions

- A. Catastrophic leave benefits have been established for county employees governed by this MOU who have exhausted all accumulated vacation, sick leave and compensatory time off ("CTO"). The purpose of those benefits is to provide a portion or all of an employee's pay during the time the employee would otherwise be on medical leave of absence without pay pursuant to the Kern County Civil Service Rules. Catastrophic leave benefits are contingent on the receipt of donated vacation time in the manner described below.
- B. Catastrophic leave shall conform to the rules for leave of absence without pay set forth in the Kern County Civil Service Rules except that, during that portion of the leave of absence, which is also "catastrophic leave", the employee will be paid. Although employees on catastrophic leave will receive catastrophic pay, for all other purposes, except as indicated below, such employees will be considered on leave of absence without pay pursuant to the Kern County Civil Service Rules and they shall not accrue any leave rights while on catastrophic leave.
- C. In no event may an employee take more than six (6) months of catastrophic leave during any twelve (12) month period. Catastrophic leave and leaves of absence without pay shall run concurrently.
- D. An employee is eligible for catastrophic leave when the employee faces financial hardship due to injury or prolonged illness of the employee or employee's spouse, parent or child (based on medical evidence) and the employee is absent from work caring for himself or herself or family members.
- E. Employees governed by this MOU may donate vacation time to another employee who meets the conditions described above. Employees may not, however, donate sick leave or CTO.



- F. Employees (or their designees) requesting establishment of a catastrophic leave bank must submit a written request to the Personnel Department. The request must provide sufficient information to enable the Director of Personnel to determine whether the reason for the leave qualifies as catastrophic. This information will be maintained confidentially to the extent required by law. Catastrophic leave requests for injury/illness must include supporting medical verification from a licensed physician. If the request is for a family member, it should also specify that the employee's attendance of the ill or injured family member is required. Leave requests must include the estimated date of return to work.
- G. It is the responsibility of the employee or co-workers to canvass other employees for the donation of leave credits, however; donations are voluntary; coercion of fellow employees is strictly prohibited. Donations must be made on the County approved authorization form. All donations are irrevocable. Donations are taxable on the part of the recipient, in accordance with IRS regulations, and are subject to withholding as required by law.
- H. Donations must be a minimum of eight (8) hours. The County will convert the donor's vacation time hours to a dollar equivalent amount. Ninety percent (90%) of that dollar amount will then be converted to hours, using the recipient's hourly wage, resulting in hours applied to recipient's catastrophic pay.
- I. Health insurance coverage and retirement contributions will continue in the same manner as if the recipient employee was on sick leave. The recipient employee will not accrue sick leave or vacation benefits while using catastrophic leave.
- J. Catastrophic leave shall be terminated when one or more of the following occurs:
1. The employee has exhausted six (6) months of catastrophic leave during any twelve (12) month period.
  2. The employee has exhausted all of his or her rights under the Civil Service Rules for unpaid medical leaves of absence, whether paid in part or in full from catastrophic leave pay.
  3. Donated leave credits have been exhausted.
  4. Death of the ill or injured employee or subject family member.
  5. The employee returns to full-time active, County employment.
- K. The Vacation Donation Program for Catastrophic Conditions shall be administered by the County in a manner consistent with foregoing terms and conditions.

## **ARTICLE VIII – COMPENSATION**

### **Section 1. Shift Differential**

- A. Represented employees are not eligible for Shift Differential Pay.

## Section 2. Bilingual Pay

The County recognizes the need for bilingual employees, including represented Members, to better serve the people of Kern County. In accordance with the Kern County Administrative Procedures Manual, the County agrees to pay those employees who can demonstrate written and spoken bilingual skills.

## Section 3. Uniform Allowance

- A. Throughout the term of this MOU, the uniform allowance paid shall be \$900 per year. The uniform allowance will be payable one-half at the completion of the 13<sup>th</sup> pay period and one-half at the completion of the 26<sup>th</sup> pay period of each year.

Uniform allowance is paid retroactively, not prospectively and will be prorated for any period of time in the preceding thirteen (13) payroll periods during which the employee was not employed or was on a leave of absence without pay.

- B. The County will continue to provide badges, patches, rank insignias, and time/service stripes and name tags.
- C. The County will continue to provide KCSCA II Members with printed business cards with up to five lines of print including name, rank, phone, fax, assignment or similar information.
- D. The County will continue to provide KCSCA II Members with off-duty badges and cases.
- E. The County will continue to provide reasonable safety equipment to the extent required by law.
- F. The County agrees to continue to provide the ability for members who retire in good standing to purchase their duty weapon (handgun) upon their separation from service.

## Section 4. Longevity Pay

Employees with 30 or more years of service will receive 2% longevity pay on base wages. The term "years of service" shall mean years of service for the County of Kern as calculated by the Kern County Employees' Retirement Board in determining eligibility for retirement.

## Section 5. Salary Adjustments

- A. Effective with the first pay period following one year after commencement of the health benefits contributions as provided for in Article IX Section 1.A, the base salary for all represented classifications will increase by 2%.
- B. Effective in the third year of the MOU, the parties agree to re-open the MOU for the express purpose of negotiating salary increases. Salaries will only be increased by mutual agreement.

# **ARTICLE IX – BENEFITS**

## Section 1. Medical/Dental/Vision/Prescription Drug

- A. Effective with the pay received on May 15, 2012 (pay period 12-08), all eligible employees shall be required to pay, by payroll deduction, twenty percent (20%) of the insurance premium for the

employees' medical, dental and vision insurance (hereafter collectively referred to as ("health insurance")) except for new employees who decline the County's health insurance coverage in accordance with the provision provided below. (All insurance premiums referenced in this subsection shall equal ninety-eight percent (98%) of the applicable COBRA premium.). New employees may decline coverage under the County's health insurance provided that the employee executes a declaration, in a form acceptable to the County, in which the employee: (i) declares that the employee has medical insurance coverage for the employees; and (ii) declines coverage under the County's health insurance program for the employee and the employee's dependents. New employees who decline coverage may not enroll in the County's health insurance program until the next open enrollment period. New employees who have not declined coverage shall have the option of obtaining County health insurance for the new employee's dependents. In the event that such employees opt to obtain health insurance for dependents, the employee shall be required to pay, by payroll deduction, twenty percent (20%) of the appropriate premium for dependents. The health insurance program offered to new employees and their dependents shall consist of three components: medical, dental and vision. That program must be accepted or declined in its entirety. It is not permissible to pick and choose among those components.

- B. All employees hired prior to the first day of payroll period 97-14 (hereafter "pre-1997 employees") will be offered an open enrollment period beginning April 1, 2012 through April 30, 2012, for the limited purpose of the following changes:

i. Employees may drop or decline County health insurance for themselves and all of their dependents if they meet the provisions in the MOU and Employee Health Benefits Eligibility Policy for declination of coverage, including certification of medical and prescription insurance coverage for the employee through another employer; or

ii. Employees may drop/remove a dependent(s) from their Kern County health insurance if it lowers the cost to the employee; or

iii. Employees may change their medical and/or dental plans(s) to a lower cost medical and/or dental plan(s); or

iv. A combination of items (ii) and (iii).

The limited open enrollment shall not allow employees to add dependents, enroll in coverage not already in effect, change their medical and/or dental plans(s) to higher cost medical and/or dental plans(s), or change their pre-tax/post-tax designation.

Pre-1997 employees must complete limited open enrollment forms provided by the County if they wish to make changes during the limited open enrollment. Forms must be received by the CAO-Health Benefits Division on or before April 30, 2012 in order for the limited open enrollment request to be valid.

- C. The County will continue to provide an annual open enrollment for employees to change dental plans and/or enroll eligible dependents.
- D. The County and the Association will continue utilizing the Health Benefits Committee to study and identify ways in which to improve insurance plans and contain costs.

- E. The County will continue to provide medical/dental/vision and prescription drug coverage as described in the Summary Plan Documents maintained by the third party administrators, which may be revised from time to time in accordance with law.
- F. The County will continue to offer a lower cost health plan option.
- G. The County will investigate the possibility of improving the current mental health benefit, including the possibility of providing mental health benefits through the Kern County Mental Health Department.

#### Section 2. Retiree Health Premium Supplement Program

- 1. The employee contribution rate for the Program will remain at 1.62% of base salary.
- 2. The County contribution will remain at \$3 million annually, plus a percentage equal to the annual increase in the composite rate for the County health plan (i.e., the per capita composite rate used for County budget purposes).
- 3. The contribution rates for both employees and the County will increase annually at a percentage equal to the annual increase in the composite rate for the County health plan (i.e., the per capita composite rate used for County budget purposes). Except that contribution rates may not be lowered, until/unless an actuarial study determines the plan has achieved a funding basis in excess of 100%.
- 4. The parties agree to continue to exclude from the Premium Supplement Program those employees who, because of age at time of employment (45 years old and over), could never receive a benefit.
- 5. The Premium Supplement Program shall include the following: (a) the minimum qualifying criteria is age 50, with 20 years of County service, as defined in the plan document, and the benefit shall increase by ten percent (10%) per year of service so that 25 years of service will qualify for 100% of the available benefit; and (b) any employee with five or more years of County service who retires, or retired, on or after January 1, 1997, due to a service connected disability pursuant to the County Employees' Retirement Law of 1937, will become eligible for 100% of the available benefit regardless of age. The enhanced benefits shall only apply prospectively from January 1, 2000 and thereafter. No retroactive benefits shall be paid.

#### Section 3. Life & Disability Insurance

The County will continue to provide, at no cost to the employee, group term life insurance in a policy amount of \$100,000 for each member of the bargaining unit. The County agrees to continue to allow participation in the employee-paid long-term Disability Insurance program that is available to Management and Confidential employees.

#### Section 4. Travel Expense

Any employee required to travel on business for the County, and who utilizes his/her privately owned vehicle in accordance with the County Administrative Procedures Manual shall be reimbursed in accordance with County policy. Per Diem expenses for food and lodging are set forth in the County Administrative Procedures Manual. The County shall review the mileage and per diem expenses at least annually for rate adjustment.

#### Section 5. Vehicle Authorization

The County recognizes the unique duties required of the members of the Sheriff's Command staff such as emergency callback, twenty-four hour responsibilities for supervision and critical incident management and the necessity for response anywhere in the over 8,000 square miles that encompass Kern County. As such, the County agrees to provide a suitable response vehicle to all members of the KCSCA II for use during county business.

Participation in the Sheriff's Home Vehicle Retention Program shall be subject to Sheriff's Office policies governing that program.

#### Section 6. KERN\$FLEX

- A. Employees covered by this MOU will continue to be eligible to participate in the Cafeteria Plan provided to County managers and mid-managers known as KERN\$FLEX, which provides for KERN\$FLEX special pay.
- B. Employees covered by this MOU will be eligible to participate in the KERN\$FLEX I plan, which includes flexible spending accounts for dependent care expenses, un-reimbursed medical expenses and a premium reduction component for specified insurance programs.
- C. The administration of KERN\$FLEX I will be regulated by the Plan Document as adopted, and periodically amended, by the Kern County Board of Supervisors and by the applicable state and federal laws.

#### Section 7. Communications Devices

The County recognizes the need for communications devices such as cellular phones and pagers for proper management of law enforcement personnel. The county agrees to continue to provide such devices to members represented by KCSCA II.

#### Section 8. Retirement Plan

- A. The County agrees to continue safety retirement, with the retirement benefit formula contained in Government Code section 31664.1 (i.e., 3% @ age 50) for those employees hired prior to the adoption of this MOU (hereafter "current employees").
- B. The parties agree to the retirement formula contained in the Government Code section 31664 ("2% at age 50") for all employees hired on or after the date of adoption of this MOU (hereafter "new employees").
- C. The County agrees to continue Government Code 31727.7 for all retirement members, relating to non-job related disability benefits.
- D. One year following the commencement of payment of health benefit contributions as described in Article IX Section 1. A, all current employees shall pay one-sixth of their normal contributions to retirement as set forth in Resolution #2004-144 formally adopted by the Board of Supervisors on May 11, 2004,
- E. Two years following commencement of payment of health benefit contributions as described in Article IX Section 1. A, all current employees shall pay an additional one-sixth of their normal



contributions to retirement, for a total of one-third, as set forth in Resolution #2004-144 formally adopted by the Board of Supervisors on May 11, 2004.

- F. New employees shall pay one hundred percent (100%) of their normal contribution to retirement as set forth in Resolution #2004-144 formally adopted by the Board of Supervisors on May 11, 2004.
- G. If for any reason, including but not limited to a redeposit under current law, a new employee becomes eligible to receive service credit at the retirement formula contained in the Government Code section 31664.1 ("3% at age 50"), the employee shall pay the normal contributions calculated to include two components; the basic contribution rate and the "supplemental contribution rate."
  - i. The basic contribution rate shall be calculated to provide an average annuity at age 50 equal to one-one hundredth of the final compensation of the member in accordance with Government Code section 31939.25.
  - ii. The supplemental contribution rate shall be an additional one percent (1%) of the employee's compensation earnable, such that the aggregate amount of the supplemental and basic contribution rates will provide an average annuity at age 50 equal to three two-hundredths of the final compensation of the member (the employee's normal contribution for the 3% at age 50 enhanced retirement benefit).
- H. In accordance with Government Code Section 31641.95, on April 15, 1997, the County Board of Supervisors adopted a resolution permitting employees to purchase retirement credit for all legally eligible prior public service. All purchases of retirement credit shall be in accordance the referenced resolution and the rules and regulations of the Kern County Employees' Retirement Association and the Government Code.
- I. This MOU does not create a vested right to continue the purchase of retirement credit for prior service that is independent of this or successor MOUs. Said terms and conditions will remain in full force and effect until final approval of a successor MOU or the parties reach impasse and exhaust all legally required impasse resolution procedures.
- J. Employees who, in good faith, have designated an effective date of retirement from County service may rollover their accumulated vacation and sick leave balances to the Kern County Employees' Retirement Association no earlier than three (3) months prior to the designated date of retirement. This rollover shall be for the express purpose of receiving credit in the KCERA retirement system for all legally eligible prior public service.
- K. In addition to the ability to roll-over accumulated vacation in the manner described in subsection "I" above, employees may also roll-over their accumulated vacation balance (only) for the express purpose of receiving credit in the KCERA retirement system for all legally eligible prior service one time during the employee's tenure as a County employee. The employee must submit a written request to his/her department head no later than April 1st prior to the fiscal year in which the employee intends to rollover such amounts. The department head may, in his/her sole discretion, waive the April 1st filing deadline for any employee.

#### Section 9. Labor Code Section 4850 Time:

Employees receiving pay while on leave under the provision of Labor Code section 4850 ("4850 leave") shall receive (a) one day CTO credit for each County holiday which falls while the employee is on 4850 leave, based on the daily number of hours the employee was scheduled to work prior to 4850 leave; (b) uniform allowance during each six month period while on 4850 leave, and (c) if working 12 hour shifts (i.e., 84 hours per period), four (4) hours of "built-in" overtime each pay period.

### **ARTICLE X - GRIEVANCE AND ARBITRATION PROCEDURE**

#### **OBJECTIVES**

1. To informally settle disagreements at the employee-supervisor level;
2. To provide an orderly procedure to handle the grievance through each level of supervision;
3. To correct, if possible, the cause of the grievance to prevent future complaints;
4. To promote harmonious relations among employees, their supervisors, and departmental administrators;
5. To assure fair and equitable treatment of all employees; and
6. To resolve grievances at the departmental level before appeal to higher levels.

#### **DEFINITIONS**

The following terms, as used in the Article, shall have the following meaning:

**Grievance:** A complaint by an employee, alleging a violation of this MOU, rules and regulations (except C.S.C. rules) or policies governing personnel practices and working conditions. A grievance may be filed when the employee believes an injustice has been done because of an unfair application or deviation from a departmental policy or an alleged violation of any term or condition of the MOU.

**Day:** Calendar day, exclusive of Saturday, Sunday, and County holidays.

**Employee:** Any represented employee regardless of status.

**Immediate Supervisor:** The person who assigns, reviews, or directs the work of an employee.

**Superior:** The person to whom an immediate supervisor reports.

**Representative:** A person who appears on behalf of the employee.

**Department Head/Appointing Authority:** The Sheriff-Coroner.

#### **EXCLUSIONS**

1. Any and all work assignments and reassignments, unless the complaint arises out of a allegation that the employee was required to work out-of-classification in violation of that provided by Kern County Ordinance Code or the Kern County Administrative Procedures Manual, and did not receive the out-of-classification pay or unless there is evidence the assignment of work is a form of disciplinary action.
2. Classification and salary matters relative to classifications.

3. Appeals involving demotions, dismissals, incremental denials, suspensions, promotions, separations, and examination procedures. (These matters are within the Civil Service Commission's authority.)
4. County policy and ordinance questions, including subjects involving newly established or amendments to existing Board of Supervisors' resolutions, ordinances, or minute orders, unless the allegation is that they are not uniformly administered.
5. Work performance evaluations.
6. Impasses in meeting and conferring upon terms of a proposed MOU.
7. Grievances filed after twenty days from date of occurrence, or after twenty days from the date the employee had knowledge of an occurrence (but in no case later than one year from date of occurrence).

### **TIME LIMITS**

Time limits are established to settle grievances quickly. Time limits may be extended by agreement of the parties. If the grievant is not satisfied with the decision rendered, it shall be the grievant's responsibility to initiate the action that submits the grievance to the next level of review within the time limits specified. Failure of the employee to submit the grievance within the time limits imposed shall terminate the grievance process, and the matter shall be considered resolved. Failure of the County to respond within the time limits specified will allow the grievant to submit the grievance to the next higher step of the grievance procedure.

### **THE PARTIES' RIGHTS AND RESTRICTIONS**

1. A party to the grievance shall have the right to record a formal grievance meeting at the expense of the requesting party.
2. The grievance procedure shall not limit the right of any employee to present a grievance individually.
3. An employee may have a representative present at all steps of the grievance procedure.
4. Reasonable time in processing a grievance will be allowed during regular working hours, with advanced supervisor approval. Supervisory approval will not be unreasonably withheld.
5. Only a person selected by the employee from within a recognized employee organization, and made known to management prior to a scheduled grievance meeting, shall have the right to represent or advocate as an employee's representative.
6. Nothing within this grievance procedure shall be construed as limiting the right of management to manage the affairs of the County.
7. Grievances of an identical nature concerning the same subject matter may be consolidated.
8. The Association, as an organization, may file a grievance that the County has violated specific rights afforded in the MOU. Such grievances shall be filed directly at Stage 2 (Department Head level), and shall be bound by the time limitations and all other provisions of this Article.

## **INFORMAL GRIEVANCE DISPOSITION**

1. Within twenty (20) days from the occurrence of the issue that gave rise to the complaint, or within twenty (20) days from the employee's knowledge of the occurrence (but no later than one (1) year from the date of occurrence), an employee will promptly and informally meet to discuss the complaint with his/her immediate supervisor. In those circumstances where the nature of the complaint involves the immediate supervisor, the employee may informally discuss the complaint with the next higher level of supervision, provided the employee gives the immediate supervisor prior notification. Such initial discussion shall precede the use of the formal grievance procedure. If the supervisor fails to reply to the employee within five (5) days of the meeting, or if the employee is not satisfied with the decision, the employee may utilize the formal grievance procedure. Grievance forms are available in the department for this purpose.

## **FORMAL GRIEVANCE PROCEDURE**

- Step 1. The formal grievance procedure shall be initiated by the employee, stating the nature of the grievance, the alleged violation by section or number, the desired solution, in writing on the grievance form, together with any desired solution, and with any supporting documents attached to the grievance form.

The grievance form and any supporting documents shall be delivered to the supervisor with whom the informal meeting was held, no later than five (5) days from receipt of the supervisor's informal response or within ten (10) days from the close of the informal meeting if no decision is rendered. The supervisor shall hold a formal meeting with the employee within five (5) days of the receipt of the formal grievance to review the facts, gather all supporting documents, discuss the complaint and desired solution, and discuss the proper appeal procedure. The supervisor will issue a written decision on the original grievance form within five (5) days of the close of the formal meeting.

- Step 2. If the employee feels the immediate supervisor has not resolved the grievance, the employee may appeal to the next higher level of supervision and department head jointly. At this time, all supporting documents and evidence relative to the grievance shall be included with the appeal and made known to both parties. The person occupying the next higher level of supervision (identified by the department), together with the department head shall hold a formal meeting with the employee and his/her representative, if requested, within ten (10) days from the date of the appeal receipt, and attempt to settle the grievance. A decision shall be made, in writing, on the original grievance form to the employee by the department head within ten (10) days from the close of the formal meeting.

- Step 3. If the employee is not satisfied with the decision of the department head, he/she may appeal the decision to the County Administrative Officer within five (5) days from receipt of the department head's decision. In his/her appeal to the County Administrative Officer all supporting documents must be attached to the grievance form, together with the grievant's reason for appeal and stated remedy requested. The CAO or his/her designee will review the original grievance, all supporting documents, the department head's response, and the remedy requested, and issue a written decision within ten (10) days of receipt of the grievance. If the employee is not satisfied with the decision of the CAO or designee, the employee may submit the grievance to advisory arbitration by written request to the County Administrative Officer who shall, within five (5) days of receipt of the grievant's request, set a date for a meeting to:

- 1) Attempt to settle the grievance.
- 2) Agree to any stipulations.
- 3) Agree upon the issue statement. (Issue statement will reflect issue as presented in original grievance as written on grievance form).
- 4) Select an impartial arbitrator.

#### **SELECTION OF THE ADVISORY ARBITRATOR**

If the parties fail to agree on an arbitrator, a list of five (5) neutrals will be jointly requested from the Federal Mediation Service, the State Mediation and Conciliation Service, or the American Arbitrator's Association. The agency will be mutually selected. The parties shall select a neutral by alternately striking a name from the list, with the remaining name being the selected neutral. Should both parties agree that the first list submitted is unsatisfactory; the parties may request a second list. The arbitration procedure will be informal and private. The arbitration procedure shall not be bound by any of the rules of evidence governing trial procedure in State courts.

The arbitrator will not have the power to add to, subtract from, or otherwise modify the provisions of any MOU, Rules, Regulations, or Ordinances of the County of Kern.

The arbitrator will confine himself/herself to the issue submitted. The arbitrator's decision will be binding upon approval by the Board of Supervisors. The cost of the arbitrator shall be borne equally between the County and the grievant. Each party shall bear its own costs relating to arbitration including, but not limited to, witness fees, the costs of transcripts and attorney fees. The arbitrator shall be requested to submit his/her decision within thirty (30) days from the close of the hearing.

#### **ARTICLE XI – SEVERABILITY**

- A. If any provisions of this MOU, or the application of such provision shall be rendered or declared invalid by any court action, or by reason of any existing or subsequently enacted legislation, the remaining parts or portions shall remain in full force and effect.
- B. In the event of suspension or invalidation of any Article or Section of this MOU, the parties agree to meet and confer within thirty (30) days after such determination for the purpose of attempting to arrive at a mutually satisfactory replacement for such Article or Section.

#### **ARTICLE XII – FITNESS AND WELLNESS PROGRAM**

The County and the Kern County Sheriff's Office wish to maintain a physically fit workforce, and as such, the County provides a voluntary Fitness/Wellness medical testing program for all represented safety-retirement classifications. Fitness testing and medical examinations for participants will be performed biennially on the employee's own time or with the employee's approved paid leave time. The Sheriff's Office will schedule all of the exams and tests; however, it is the employee's responsibility to contact the Sheriff's Office to ensure that the exams and testing are done on a timely basis.

All general and specific medical information derived as a result of an employee's participation in this program is confidential and shall not be disclosed to any person or entity, including the County, without the express written consent of the employee or proper legal process; furthermore, that information will not be used for any employment purpose except to determine the employees entitlement to the Fitness/Wellness premium pay.



## Section 1. Medical Clearance and Fitness Testing

### A. Medical Clearance Exam:

1. Eligible employees who choose to participate will receive an initial physician-supervised physical to determine if the employee is medically fit to perform the fitness exam.
2. The medical evaluation described above will include:
  - a. Physical Exam
  - b. Review of Health Questionnaire
3. The Medical Clearance Exam will be performed on the employee's own time or with the employee's approved paid leave time, through the County approved physician.
4. The Qualifying Medical Clearance Exam shall be paid for by the County.
5. The Medical Clearance Exam shall be used on a biennial basis to determine if the employee is medically fit to perform on-going fitness examinations.

### B. Qualifying Fitness Testing:

1. Upon receiving medical clearance as described in Section A. above to perform the fitness testing, eligible employees will perform one of two fitness tests to establish a fitness level expressed in terms of a Metabolic Equivalent (MET). The County will provide a premium pay for those employees who have qualified through such County testing as achieving certain MET levels as follows:
  - a. 2% of base pay to employees who have achieved a fitness score of 11 METS.
  - b. 4% of base pay (not cumulative) to employees who have achieved a fitness score of 12 METS or above.
2. Eligible employees will have the option to perform either the Cardio Pulmonary Treadmill with Oxygen Uptake/METS (MET exam) or the KRN Work Capacity Test. An employee that receives a score of 11 METS or above on either test will be entitled to the appropriate compensation for a period of two years. The employees will have to re-qualify in accordance with the procedure below.
3. The MET Exam is a medically supervised exam which must be performed through the County's approved physician at County expense.
4. The KRN Work Capacity Test is described as follows:

Achievement Level	Description
KRN 11 MET	3-mile hike with 45lb pack in 47:14 minutes
KRN 12 MET	3-mile hike with 45lb pack in 46:03 minutes

### 5. KRN Work Capacity Testing Process:

- a. All certified sites will be lap-based, not out and back courses. Prior to the commencement of the testing process all sites will be certified by

selected personnel as determined by Sheriff's management, through the use of a measuring wheel, to verify the length of a lap. If there is an adjustment to be made for altitude it will be pre-identified.

- b. Personnel will be tested on a certified course under direct observation. The tests will be timed and the weight of the vest will be verified prior to the beginning of the test.
- c. The person being tested should be wearing light clothing and appropriate footwear. They should be rested and hydrated before beginning the test.
- d. Personnel to be tested must have been cleared by the Department's Medical Provider prior to attempting any testing. This requires verified completion of the examination described in section A, Initial Qualifying Exam.
- e. Department personnel of the rank above the classification being tested will serve as proctors to observe testing for personnel of lesser rank.
- f. Personnel are not allowed to run or jog during the test. One foot must be on the ground at all times. This is not a contest of speed; it is to certify that they have covered the required distance within the required time limit. Personnel will be given one warning by the proctor. If they continue to violate testing policy they will be disqualified and have to retest at the next available scheduled testing.

C. Biennial Medical Clearance Exam and Fitness Testing:

To maintain the physical fitness incentive pay, the following process applies:

- 1. Biennially, following the initial Medical Clearance Exam, all eligible employees who choose to participate must take the Medical Clearance Exam described in item A 2 of this policy.
- 2. The Medical Clearance Exam must be performed at least biennially to maintain the fitness incentive pay.
- 3. The qualifying and biennial Medical Clearance Exams shall be paid for by the County. Any necessary medical clearance exams for optional fitness retesting shall be paid by the employee.
- 4. If an employee is unable to take one of the fitness tests described above, while on 4850 time or other approved disability leave (not to exceed one year), the County shall continue to pay the fitness premium. In no event shall the fitness premium be paid during any period of unpaid leave or absence.

D. Optional Fitness Testing Re-Test:

In the event the employee is unsuccessful in passing the Fitness Test, voluntary retesting will be subject to medical approval, and is to be performed on the employee's own time, or with approved paid leave, and at the employee's expense.

- 1. The following is the time line for re-testing of employees that did not reach the minimum requirement for incentive payment of 11 METS or better or 12 METS during the MET exam Fitness Test:

11 – 11.9 METS:	Re-test performed one month (minimum) after the initial Fitness Test.
10 – 10.9 METS:	Re-test performed one month (minimum) after the initial Fitness Test.
9 – 9.9 METS:	Re-test performed two months (minimum) after the initial Fitness Test.
8 – 8.9 METS:	Re-test performed three months (minimum) after the initial Fitness Test.

Employees not reaching the minimum requirement for incentive payment of 11 METS or better or 12 METS during the KRN test may reschedule to take another KRN test but may not do so until at least sixty (60) days following their last KRN test.

2. If applicable, re-testing METS services shall be paid in full, by the employee, directly to the provider at the time of the service. Retesting for KRN testing shall be paid, in full, directly to the Sheriff's Office prior to the time of the test and shall equal the actual salary paid to the Sheriff Office employee who acts as the test proctor for one and a half hours.
3. If the Fitness Test results in a score of 7 METS or below, the employee may consult with the provider's medical staff to recommend an appropriate time to re-test.
4. Employees will not be allowed to perform either METS Test or the KRN Work Capacity Test if they fail the Medical Clearance Exam or vital signs are abnormal.

## Section 2. Scheduling and Payment of Fitness Incentive

### A. Scheduling:

Eligible personnel who voluntarily desire testing must contact the Human Resources Division of the Kern County Sheriff's Office to obtain the necessary authorization. Human Resources staff will schedule the initial Medical Clearance Exam and/or the Biennial Medical Clearance Exam Qualifying Test and the applicable Fitness Test.

### B. Results:

Provider will send results of the METS exam(s) to the Kern County Sheriff's Office designee on a weekly basis, and shall include the date of the exam, employee's name, re-test date (if applicable), and the MET level achieved.

The Sheriff's Office will use this information to determine the incentive percentage paid.

### C. Exam Process:

The overall exam may take up to two (2) hours. It is recommended that employees wear loose fitting clothing and athletic shoes at the time of the exam.


D. Payment of the Fitness Incentive:


Payment of the fitness incentive will begin the first day of the first pay period following the County's receipt and processing of eligible fitness test results.

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This MOU entered into and signed this 13<sup>th</sup> day of March, 2012.

Kern County Sheriff's Command Association II

  
\_\_\_\_\_  
Kevin Wright  
President

  
\_\_\_\_\_  
James Clark  
Vice President

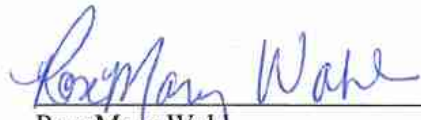
County of Kern

  
\_\_\_\_\_  
Zack Scrivner, Chairman  
Board of Supervisors

  
\_\_\_\_\_  
John Nilon  
County Administrative Officer

  
\_\_\_\_\_  
Susan Wells  
Employee Relations Officer

  
\_\_\_\_\_  
Devin Brown  
Deputy County Counsel

  
\_\_\_\_\_  
RoseMary Wahl  
Undersheriff