



Evelyn Minor-Lawrence  
Director

DEPARTMENT OF HUMAN RESOURCES

PUBLIC SERVICES BUILDING  
2051 Kaen Road | Oregon City, OR 97045

June 3, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of the Labor Contract Between The County of Clackamas and the  
Clackamas County Peace Officers' Association (POA)

<b>Purpose/Outcomes</b>	Settlement of labor contract
<b>Dollar Amount and Fiscal Impact</b>	\$7,469,639 (for the life of the contract)
<b>Funding Source</b>	General Fund
<b>Duration</b>	July 1, 2020 – June 30, 2023
<b>Previous Board Action</b>	June 1, 2021 - Executive Session
<b>Strategic Plan Alignment</b>	Build public trust through good government.
<b>Contact Person</b>	Eric Sarha, HR Assistant Director 503-655-8292
<b>Contract No.</b>	N/A

**BACKGROUND:**

The Department of Human Resources has concluded negotiations with the Clackamas County Peace Officers' Association. The Union membership has voted to ratify the contract for July 1, 2020 through June 30, 2023. The agreement that was ratified by the Union is attached.

The significant wage and contract language changes are outlined below:

**Pay**

**Cost of Living Adjustment (COLA)**

- For fiscal year 2020-21, 2.6% effective the first day of the pay period after the ratification date. In lieu of retroactive pay, employees shall receive a lump sum payment equivalent to 2.6% from July 1, 2020 to ratification date. (Year One Fiscal Impact \$1,212,233)
- For fiscal year 2021-22, 1.8% effective the first payroll period after July 1, 2021. (Year Two Fiscal Impact \$861,058)
- For fiscal year 2022-23, employees shall receive a cost of living increase equal to the percentage increase in the US Consumer Price Index, CPI-W: West Urban Annual Average, as reported by the U.S. Department of Labor, with a minimum of 0% and a maximum of 4.5%. (Estimated at 2.5% - Year Three Fiscal Impact \$1,217,441)
- Total COLA Fiscal Impact for the Life of Contract: \$6,576,255

## **Holiday Pay**

Added the Juneteenth holiday as adopted by the Board on July 9, 2020:

Fiscal Impact (life of contract): \$482,088

Upon ratification, each employee shall receive one (1) additional personal leave day for the 2021 and 2022 calendar years:

Fiscal Impact: \$324,879

## **Special Assignments**

Rotational Detective. Upon beginning work in the assignment the Deputy will be paid five percent (5%) above their base-hourly rate:

Fiscal Impact (life of contract): \$8,566

## **Incentive Program**

Detectives who are assigned full-time to the cities of Happy Valley or the City of Wilsonville. Employees shall receive premium pay in the amount of five percent (5%) of the employee's base pay.:

Fiscal Impact (life of contract): \$28,333

Any employee assigned the collateral duty of a Forensic Artist shall receive premium pay in the amount of one percent (1%) of the employee's base pay.:

Fiscal Impact (life of contract): \$2,879

## **Equipment**

Vests: the County will provide up to \$125 for upgrades at the time of replacement or new purchase.:

Fiscal Impact: \$35,875

## **Legal Defense Fund**

Increased County contribution from \$4.50 to \$6.00 per month toward the premium.

Fiscal Impact (life of contract): \$10,764

**RECOMMENDATION:**


Staff recommends the Board approve the attached contract for the Clackamas County Peace Officers' Association.


Respectfully submitted,

Evelyn Minor Lawrence, HR Director  
Clackamas County Director of Human Resources  
Direct line: 503-655-8812; Email: [ELawrence2@clackamas.us](mailto:ELawrence2@clackamas.us)

IN WITNESS THEREOF, the parties hereto set their hands thus \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

FOR THE UNION:


  
\_\_\_\_\_  
Stephen Steinberg  
President, CCPOA

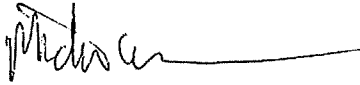
  
\_\_\_\_\_  
Anil Karia  
Attorney

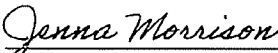
FOR THE COUNTY:


\_\_\_\_\_  
Tootie Smith  
BCC Chair


\_\_\_\_\_  
Recording Secretary

  
\_\_\_\_\_  
Angie Brandenburg  
Sheriff

  
\_\_\_\_\_  
Michael Copenhaver  
Undersheriff

  
\_\_\_\_\_  
Jenna Morrison  
Chief Deputy

  
\_\_\_\_\_  
Lee Eby  
Captain

  
\_\_\_\_\_  
Jeff Smith  
Lieutenant

\_\_\_\_\_  
Eric Sarha  
HR Deputy Director

**AGREEMENT**  
**Between**  
**CLACKAMAS COUNTY, OREGON**



**And**

**Clackamas County**  
**Peace Officers Association**

**PEACE OFFICERS**  
**ASSOCIATION**



**Clackamas County**

**July 1, 2020 – June 30, 2023**

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AGREEMENT  
between  
CLACKAMAS COUNTY, OREGON  
and  
CLACKAMAS COUNTY PEACE OFFICERS ASSOCIATION

**PREAMBLE**

This Agreement is entered into by Clackamas County, Oregon hereinafter referred to as the County, and the Clackamas County Peace Officers Association, hereinafter referred to as the Association.

The parties agree as follows:

**ARTICLE 1 – RECOGNITION**

**Section 1.** The County recognizes the Association as the exclusive bargaining agent for the purpose of establishing wages, hours and other conditions of employment for all of the classified County employees in the Sheriff’s Office, Investigators in the District Attorney’s Office, and Deputy Medical Examiners and Strategic Program Coordinators in the Department of Disaster Management, working twenty or more hours per week.

The bargaining unit excludes supervisory employees including Lieutenants and those with higher rank, confidential, and unclassified including temporary or limited term duration employees.

Classified and unclassified positions are those as identified by County Code 2.05.

**Section 2.** When any bargaining unit classification not listed on the Wage Schedule is established, the County shall designate a pay rate for the position. In the event the Association does not agree that the rate is proper, the County will negotiate with the Association over the wage rate and any disagreement over the wage rate will be submitted to the impasse resolution consistent with ORS 243.698. In such case, the County is not precluded from filling the position at the posted wage rate; however, the County acknowledges the obligation to bargain and honor any interest arbitration award.

**Section 3.** Consistent with the PECBA requirements related to information requests, the Association may request information from the Sheriff’s Office regarding the utilization of temporary employees, also known as unallocated positions, by the Sheriff’s Office, the duration of their assignments, and whether or not the positions should be converted to part-time or full-time positions. The Sheriff’s Office will respond to the Association’s information request within a reasonable time per PECBA requirements. Upon reasonable request by the Association, the Association and Sheriff’s Office will meet at a mutually agreeable time to discuss the Sheriff’s use of temporary employees, the duration of their assignments, and whether or not the positions should be converted to part-time or full-time positions.



## **ARTICLE 2 – PRESERVATION OF PUBLIC RIGHTS**

**Section 1.** The Association recognizes that an area of responsibility must be reserved to the County if County government is to effectively serve the public. Therefore, the County shall have full and complete right to manage and direct its business and it is recognized that the following responsibilities of management are exclusively functions to be exercised by the County and are not subject to negotiations insofar as this right does not affect the meaning, interpretation or application of any other term of this Agreement.

1. The determination of the governmental services to be rendered to the citizens of Clackamas County, Oregon.
2. The determination of the County's financial, budgetary and accounting procedures.
3. The management and direction of the work force including, but not limited to, the right to determine the methods, processes and manner of performing work; the right to hire, promote, transfer within the same pay range and retain employees; the right to discipline or discharge for proper cause; the right to lay off for lack of funds; the right to establish or abolish positions or reorganize the departments or division; the right to determine schedules of work; the right to purchase, dispose and assign equipment or supplies; and the right to contract or subcontract any work.

**Section 2.** The County, in exercise of the above mentioned functions, will not discriminate against any employee because of their membership in the Association or in the exercise of rights protected by this contract, including the right to file grievances or to request Association representation.

**Section 3.** The County and the Association for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered by this Agreement, or any other subject matter except as provided in Article 3, Existing Conditions.

## **ARTICLE 3 – EXISTING CONDITIONS**

Matters of employment relations, as defined by PECBA, including but not limited to, direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment that are not referred to or covered by other provisions of this Agreement shall be continued at not less than the level in effect at the time of the signing of this Agreement. Any changes in those existing employment relations during the term of the Agreement shall be negotiated with the Association in accordance with ORS 243.698.

## **ARTICLE 4 – HOURS OF WORK**

### **Section 1. Regular Hours and Workday.**

The regular hours of work each day shall be consecutive. The workday shall consist of current prevailing consecutive hours of work scheduled, provided that changes to shift starting times that are required for justifiable business reasons may be made at the time of

regular semi-annual seniority shift-bid without bargaining the change with the Association. All employees shall be scheduled to work on a regular shift and each shift shall have a regular starting and quitting time except for emergency situations.

Motors and Canine Units:

The workday for Motor and Canine Units commences and ends upon arrival and departure from the County, except that the workday for Motor Units and Canine Units assigned to contract cities commences and ends upon arrival and departure from the contract city limits. When a Motor Unit employee agrees to work a voluntary overtime shift on days off for special events, work time starts upon the employee's arrival at the event and ends upon the employee's departure from the event. Shift starting times and days for Motor Units may be altered by the County for justifiable business reasons at the time of regular semi-annual seniority shift bid without bargaining the change with the Association. Shift bid posting for Motors will include work hours and days off but need not include district assignments or city assignment.

Deputies may be assigned to Canine duties at the discretion of the County. It is anticipated that Canine Deputies will provide routine care of their assigned dogs, including feeding, grooming, and other normal dog maintenance responsibilities, outside the Canine Deputy's normal work hours. The parties have evaluated the time needed for routine care and have determined that 4 hours per week (34 minutes a day) is reasonable and sufficient to meet those responsibilities. In consideration of this activity, Canine Deputies shall receive one (1) hour release time per working day when on a 4/10 schedule for these duties. If the work schedule differs from a 4/10 schedule, the Deputy will receive the equivalent of 4 hours per week of release time divided into the workday schedule. Canine Deputies may also be required to work a full week schedule and would be eligible for overtime for routine care.

**Section 2. Workweek. Non-continuous Operations.**

The workweek shall consist of five (5) consecutive eight (8) hour days, Monday through Friday, except for employees covered by another workweek schedule listed within this Article or as outlined in the job assignment posting.

**Section 3. Workweek. Continuous Operations.**

The workweek for employees engaged in continuous operations shall consist of consecutive days.

Employees engaged in continuous operations are defined as being any employee or group of employees engaged in an operation for which there is regularly scheduled work for twenty-four (24) hours a day, seven (7) days a week such as but not limited to Patrol, Records and Corrections.

**Section 4. Four (4) Ten (10) Work Schedule.**

It is mutually agreed that the County may employ employees on a four (4) day work week ten (10) hour a day basis, referred to as the 4/10 schedule, rather than those hours set forth above in this Article. The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

**Section 5. 3-12/3-12 + 8 Hour Work Schedule.**

The 3-12/3-12 + 8 work schedule shall consist of one work week with the seven (7) day payroll week of the three (3) twelve (12) hour work days, followed by four (4) days off, and the other work week with the seven (7) day payroll week of the three (3) twelve (12) hour work days, with an eight (8) hour work day, followed by three (3) days off. This schedule may begin with either the long or the short work week. Employees assigned this schedule are subject to the section 7k exemption under the Fair Labor Standards Act. This 7k exemption establishes a 14-day work period. Overtime will be paid for hours worked in excess of 80 hours in the 14-day period. Overtime on a daily basis will be paid as provided in Article 13. The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

**Section 6. 5-9/4-9 Work Schedule.**

The 5-9/4-9 work schedule shall consist of five (5) consecutive nine (9) hour workdays followed by two (2) consecutive days off, followed by four (4) consecutive nine (9) hour workdays, followed by three (3) consecutive days off. During the 4-9 work week, Friday shall be the first of the three consecutive days off. The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

Pursuant to the 5-9/4-9 schedule, the parties agree that employees assigned to this schedule are subject to the 7k exemption under the Fair Labor Standards Act. This 7k exemption establishes a 14-day work period. Overtime will be paid for hours worked in excess of 81 hours in the 14-day period. Overtime on a daily basis will be paid for hours worked exceeding nine (9).

**Section 7. 9-80 Work Schedule.**

The 9-80 work schedule is as follows:

For the purposes of this 9-80 schedule, the work week will be defined from 12:00 p.m. on Friday to 11:59 a.m. the following Friday. The schedule is one (1) week of four (4) consecutive nine (9) hour workdays and a fifth day of a four (4) hour shift. The new work week starts thereafter on the same day followed by another four (4) hour shift, two (2) days off, and one (1) week of four (4) consecutive nine (9) hour workdays, with the following fifth day off.

The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

**Section 8. School Resource Officers.**

During the school year, School Resource Officers (SRO) shall work a five (5) day work week, eight (8) hours a day schedule, Monday through Friday. The SRO's may be assigned to a four (4) day work week, ten (10) hours a day with either Friday through Sunday off or Saturday through Monday off depending upon the needs of the specific school and/or Sheriff's Office. School Resource Officers will be assigned to day shift but may request an alternative shift and/or alternative days off. Notification of their Summer schedule shall be given at least thirty (30) days prior to the change unless mutually agreed to be shorter.

When a school holiday and a County holiday are the same, the SRO will have that day off. On days when students are not present, (unless the school requests their presence), the SRO's will report to patrol for their regular working hours.

**Section 9. Schedule of Deputy Medical Examiners.**

See Article 38.

**Section 10. Shift Trading.**

For employees who agree to trade shifts for one day, the traded shift becomes each employee's assigned shift. Failure to work the shift will have the same consequences as if the employee did not work the employee's regular shift. Shift trades may be made only between employees working in the same capacity, must be voluntarily agreed to by the employees involved, and must be approved by management after being fully informed of the trade and before the work is performed. Overtime does not apply to traded shifts.

If approved, in writing and signed by the supervisor, an employee may designate an equivalent amount of vacation hours to the employee working their shift in lieu of working a shift in exchange.

**Section 11. Schedule Assignments.**

1. Patrol Division: 4-10 schedule with consecutive days off. Management will decide if the schedule for Support Staff assigned to the Patrol Division will be another schedule as provided in Article 4.

2. Detectives: 4-10 schedule with consecutive days off. Detectives will work Monday through Thursday. Friday, Saturday, and Sunday will be their regular days off. “”. Management will decide if the schedule for Support Staff assigned to the Investigations Division will be another schedule as provided in Article 4.

This schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association. In the event the 4-10 schedule is terminated by the County for Detectives, Detectives will revert back to the 5-9/4-9 schedule in Section 6 and double-time will be reinstated under Article 15, Section 5.

3. Corrections Deputies and Corrections Deputy Recruits: 3-12/3-12 + 8 schedule.

**Section 12. DPSST Basic Academy Training.**

All DPSST Basic Academy mandatory activities such as but not limited to instruction time, flag raising, and physical fitness training shall be considered as normal work duty time and shall be compensated as such. The work week shall consist of a forty (40) hour work week, based upon a five (5) day work week, eight (8) hour work day. These eight hours of the work day may be non-consecutive due to long break periods between classes and other required activities. If the amount of time spent in required activities totals more than forty hours per week, overtime will be paid at time and one half. Attendance at voluntary Basic Academy events is not considered work time.

The County agrees to continue to pay for the employee's meals and other normal required Basic Academy expenses such as room and instruction expenses. This does not include

optional equipment expenses which shall be paid by the employee, or other equipment that the employee is normally required to purchase.

**Section 13. Civil Division.**

Deputies and Sergeants assigned to the Civil Division shall work a 5-9/4-9 schedule as provided in Section 6.

The implementation of the 5-9/4-9 work schedule shall terminate upon the mutual consent of the parties or by thirty (30) days written notification from either party of its desire to terminate. Neither party shall file a grievance if either party decides to terminate this agreement.

Civil deputies will sign up by seniority for hours of work, shift preference and days off. Civil sergeants will have alternating Fridays or Mondays off as determined by management.

**ARTICLE 5 - MEAL AND REST BREAKS**

**Section 1. Meal periods.**

All employees will be granted a meal period during their working shift, during which time employees are subject to call when needed.

All non-sworn staff may be allowed to combine one (1) of their rest periods with their meal period with Division Commander approval.

Meal periods are on paid time.

**Section 2. Rest periods.**

Employees working an eight (8) or nine (9) hour day shall be provided with rest period of fifteen (15) minutes during each half of the employee's shift. Employees working a ten (10) hour day shall be provided with a rest period of twenty (20) minutes during each half of the employee's shift. Employees working a 12-hour shift shall be provided with two twenty (20) minute rest periods during the employee's shift.

Rest periods are on paid time.

**ARTICLE 6 - SHIFT PREFERENCE, CHANGES AND DAYS OFF**

**Section 1. Seniority for Shift Preference and Days Off.**

For the purposes of shift preference and selection of off duty days within a Division, seniority shall be the major consideration along with the needs of the Sheriff's Office and the individuals involved. When shift preference or selection of off duty days is not based upon seniority, the employee shall be given notice in writing at least seven (7) calendar days before the effective date of the needs of the Sheriff's Office that precluded the use of seniority for said shift preference or selection of off duty days.

Seniority shall be determined by the length of time an employee has within a job classification with the Sheriff's Office except for Recruit and Deputy Sheriff in which case seniority shall be defined as the hire date in either of these two classifications and for

Recruit Jail Deputy and Jail Deputy in which case seniority shall be defined as the hire date in either of these two classifications. For Office Specialist 1 and Office Specialist 2 seniority shall be defined as the hire date in either of these two classifications.

An employee's request for transfer to a different shift or different days off shall be made in writing and shall go directly to the Division Commander under whom the employee is assigned. The Division Commander will act promptly upon the employee's request by written response to the employee of the approval or denial of the request. No request shall be denied unless an operational basis exists for the denial. In the event the request is denied, the Division Commander shall state the reason or reasons for denial in writing in the response to the employee.

### **Section 2. Shift Changes.**

The Division or Watch Commander will make every effort to schedule shift changes or reassignment with the least amount of additional shifts to be worked by the employee over the regular work week.

#### **1. Shift Reassignment:**

If at the request of an employee or upon a shift assignment at the discretion of management, an employee is assigned a shift, or transferred to another assignment wherein the employee is required to work any consecutive days beyond their normal work schedule to adopt the new shift assignment, such additional time worked will be compensated as either overtime pay (under Article 13, Section 1) or one (1.0) hour of straight time as pay plus 0.5 hours as straight compensatory time for each hour worked.

For example: if an employee working a four (4) ten (10) schedule works a fifth consecutive ten (10) hour day, the ten (10) hours worked will only be compensated as overtime (under Article 13, Section 1) or 10 hours of straight time and 5 hours of compensatory time. (No other hourly compensation will be paid)

#### **2. Day Off Adjust:**

Day Off Adjust is considered as regular hours that an employee is not required to work due to shift rotation or transitioning to administrative leave. Day Off Adjust is paid at the regular straight time rate of pay.

If the employee is granted a Day Off Adjust to avoid working a consecutive day beyond their previous work schedule then overtime or compensatory time do not apply for the work days that follow during the shift adjustment period. For example: If an employee working a four (4) ten (10) schedule is given a Day Off Adjust on the last day of their previous work schedule (day 4 of 4) or another following consecutive day and then starts the new schedule the employee is not entitled to any overtime or compensatory time for the days following. (i.e.: straight time only will be paid for the 5, 6, and 7<sup>th</sup> day, respectively).

If the employee requests and management agrees to take a different Day Off Adjust other than the one offered by management to avoid consecutive days worked, the employee is

not entitled to overtime or compensatory time for consecutive days worked. For example: in the above scenario if the employee is offered day 4 off but would rather have day 6 off (second day of their new schedule and work week) the employee is not entitled overtime or compensatory time for working the 5<sup>th</sup> day.

### **Section 3. Shift Rotation.**

Shift rotation for Patrol Division, Jail Division, and Records Section occurs every six (6) months with days off sign up occurring based on classification seniority. An employee wishing to transfer to patrol from any special assignment, division or position shall notify both their Division Commander and the Patrol Division Commander, in writing, no later than June 30 or December 31 prior to the start of the shift rotation sign up.

Rotation Schedule for Employees:

#### Patrol/Records:

For non-sergeant employees, shift rotation and implementation occurs every six (6) months on the first day of the first payroll period in March and the first day of the first payroll period following Labor Day. Bidding for shift rotation for non-sergeants will be completed between February 3 and February 4 and August 3 and August 4.

Patrol Sergeants' shift rotation and implementation will occur fourteen (14) days prior to the dates set for non-sergeants. Shift bidding for patrol Sergeants will occur by February 1 and August 1.

Full Time Employees assigned to a temporary duty during the Spring/Summer that begins before June 1 shall bid for a shift in February and shall remain in their regular shifts until assigned.

#### Jail:

For employees of the Jail Division, shift rotation and implementation occurs on the first day of the first payroll period in March and the first day of the first payroll period following Labor Day.

Bidding for Jail Sergeants will be completed between February 1 and February 3 and August 1 and August 3. Bidding for non-sergeants will be completed between February 5 and February 10 and August 5 and August 10.

### **Section 4. Rotation Process.**

At least ten (10) days prior to the start of the bidding for shifts, a list of personnel will be posted. The list will assign each employee a specific half (1/2) day, based upon seniority, on which each employee will make him/herself available for phone contact to select a shift and days off. The list will include a beginning and ending time for each day that calls will occur, and selections accepted.

Each employee will be called in order of seniority to select their shift and days off. If the employee does not answer the phone, return a message or answer a page within one (1)

hour, the bidding process will proceed past them. If/when the employee returns the call, the employee will select from the shifts and days off which are available at the time they called. If the employee does not return a call or during the hours posted, or provide a list of choices, their name will be placed at the top of the list at the time the employee contacts the office. The employee will be called first on the next day. If the employee does not respond, the process will be repeated for subsequent days of the sign-up period.

If the employee is not going to be available, the employee should notify their Watch Commander and the person(s) assigned to administering the calls, in writing, of their top seven (7) choices for shift and days off.

When an employee has been on paid or unpaid Administrative Leave status, due to allegations of internal violations or allegations of violations of law, for the thirty (30) calendar days prior to the start of the shift bidding day, the employee forfeits their position in the seniority based shift sign up. If the employee returns to duty status after the shift bidding period began, the employee will be assigned to a shift based on the needs of the department until the next regularly scheduled shift bidding.

Nothing in this section shall prevent the Association and/or Management from developing and applying technology to assist with improving the efficiency of the shift bidding process.

### **Section 5. Contract Cities.**

A contract City is a City that requests services of the Sheriff's Office by contract in lieu of having their own independent law enforcement services.

#### **1. Contract Cities Generally**

Patrol Division personnel who wish to bid for assignments in contract cities shall follow the provisions of Article 6, Section 1, with the following additional requirements:

- A. All contract city assigned patrol positions shall be subject to specific written expectations for assignment to or maintaining assignment to a contract city. Those expectations shall be communicated to the employees. By mutual agreement, the city, the contract city Station Commander and/or appropriate Sheriff's Office Division Commander may reassign an employee in a contract city position if not meeting written expectations.
- B. Unexpected vacancies shall be filled by the affected Division Commander temporarily until a selection for the vacant position can be made as set out in Section 1 above.
- C. When the seniority shift bid is posted pursuant to Article 6, Section 1, the available shifts that are listed shall specify the work hours and days off. The duration of any assignment in excess of six (6) months must be indicated on the seniority shift bid posting.



- D. Employees who are eligible and elect to rotate out of the contract city assignment shall notify both their Station Commander and the Patrol Commander in writing consistent with Section 3.

2. City of Wilsonville and City of Happy Valley

All Wilsonville and Happy Valley Patrol Division positions shall be for a five (5) year length of time except for Traffic Units and School Resource Officers assigned to cities, which will be governed by the time frame established in the job announcement.

Employees have the option of leaving after completion of one (1) year in the assignment.

An employee's ability to promote or be assigned to special units shall not be limited by the employee's assignment to Wilsonville or Happy Valley.

3. Other Contract Cities

- A. All full-time Patrol Division positions assigned to other contract cities (for 30 hours per week or more) shall be for a two (2) year period of time with the option of leaving after one (1) year in the assignment except for Motors Unit that will be subject to the regular semi-annual seniority shift-bid process.

An employee's ability to promote or be assigned to special units shall not be limited by the employee's assignment to contract cities.

- B. Full-time employees may not be bumped pursuant to Article 6, Section 1, prior to completion of the two (2) year commitment.

**ARTICLE 7- HOLIDAYS**

**Section 1. Holidays.**

The following days, and every day appointed by the Board of Commissioners as a holiday, shall be recognized and observed as paid holidays:

- New Year's Day (January 1<sup>st</sup>)
- Martin Luther King Jr. Birthday (Third Monday in January)
- President's Day (Third Monday in February)
- Memorial Day (Last Monday in May)
- Juneteenth (June 19<sup>th</sup>)
- Independence Day (July 4<sup>th</sup>)
- Labor Day (First Monday in September)
- Veteran's Day (November 11<sup>th</sup>)
- Thanksgiving Day (Fourth Thursday in November)
- Christmas Day (December 25<sup>th</sup>)

**Section 2. Holiday Pay.**

Continuous operations employees shall receive eight (8) hours pay for each of the holidays listed above on which they are not scheduled to work. If an employee is normally scheduled to work the holiday but has been granted the day off due to the holiday, the employee receives holiday time equivalent to their normal schedule. (i.e.: 10-hour shift, get 10 hours holiday for not working the holiday).

**Section 3. Weekend Holidays for non-continuous operations.**

If an employee is normally scheduled to work the holiday, but has been granted the day off, the employee receives holiday time equivalent to their normal schedule. (i.e.: 10-hour shift, get 10 hours holiday for not working the holiday).

Holidays shall be observed on any day within the same work week as the holiday if the employee has requested a day and received supervisor approval at least the work week prior to the holiday. However, if the employee has not received supervisor approval in the week preceding the holiday, the holiday shall be observed as follows: 1) On the Tuesday if the holiday was on a Monday for employees working a Tuesday through Friday schedule; or 2) on the preceding Thursday if the holiday was on a Friday for employees working a Monday through Thursday schedule.

**Section 4. Holiday During Leave.**

Should an employee be on authorized leave when a holiday occurs, no leave hours will be charged for that day.

**Section 5: Holiday Worked.**

If an employee works on any of the holidays listed above, the employee shall, in addition to their regular pay, be paid for all hours worked at the rate of time and one-half (1-1/2) their regular rate of pay. For purposes of this sub-section only, holiday pay shall be equal to the scheduled shift. For example, if the employee works on a holiday and is assigned an 8, 9, 10, or 12 hour day, they shall receive 8, 9, 10, or 12 hours of holiday pay respectively, not inclusive of overtime.

**Section 6. Personal Leave.**

Each employee shall receive two (2) personal leave days per calendar year. The length of each personal leave day is equal to the number of hours that employee is scheduled to work when the leave day is taken. Personal leave days cannot be used on a per hour basis. The personal leave days are non-cumulative in nature and must be used during the calendar year or they will be forfeited by the employee. Personal leave days have no value upon separation of employment.

The County cannot arbitrarily deny the use of a personal leave day. Any employee whose personal leave day(s) remains unused at the end of the calendar year because use of the day(s) was denied, the employee shall be compensated for the unused day(s) using the employee's regular rate of pay for an eight (8) hour duration. New employees shall be eligible for two (2) personal leave days after ninety (90) days of employment.

Upon ratification, each employee shall receive an additional personal leave for the 2021 calendar year, and each employee shall receive an additional personal leave for the 2022 calendar year. These additional days shall be taken pursuant to the terms above.

## **ARTICLE 8 - SICK LEAVE**

### **Section 1. Accrual.**

Employees shall accrue sick leave at the rate of eight (8) hours for each month worked. Sick leave shall be accrued without limit. Newly hired employees shall accrue eight (8) hours of sick leave per month starting upon hire, however they are not eligible to use leave until after working thirty (30) calendar days and accrue at least the minimum amounts required by state law. Employees in a paid status for 88 hours (prorated for FTE status) or more in any month shall accrue sick leave for the next month on the first day of that month as per the County's 11-Day Rule policy.

### **Section 2. Verification of Sickness.**

Absence due to sickness in excess of three (3) days may require verification by a health care provider at the request of the Division Commander. Appropriate documentation may be required for an absence of less than three (3) days if the Division Commander has reasonable suspicion (based upon a pattern of absences over a minimum of a three-month period of time) that misuse or abuse of sick leave exists.

### **Section 3. Use of Sick Leave.**

Employees may utilize sick leave for their own illness/medical care or that of a family member, or as otherwise permitted by law. Employees may utilize sick leave when unable to perform their job duties due to health related reasons. The use of sick leave shall be equal to the workday of the respective employee.

Engaging in recreation, other employment, or other activities not related to ill health will be considered misconduct and the Sheriff may discipline employees engaging in such activities subject to the principles of Article 20, Discipline and Discharge.

### **Section 4. Bereavement Leave.**

Exclusive of regular sick leave, an employee shall be granted not more than three (3) consecutive workdays' leave of absence with full pay in event of the death of a member of the employee's immediate family. Where deemed necessary by the Sheriff, or their designee, the employee shall be granted two (2) additional days with pay for travel time. Workday is the regular shift schedule the employee is assigned at the time of the leave.

In addition to the benefit provided in this section, employees may also use bereavement leave as provided by OFLA.

Immediate Family for Section 4: An employee's immediate family shall be defined as spouse, parents, parents of the spouse, domestic partner, parents of the domestic partner, children, stepchildren, brother, sister, grandparents (of employee, spouse or domestic partner), grandchildren, sister-in-law and brother-in-law and in loco parentis. Stepchildren, stepparents, or children of domestic partner residing with the employee, shall be included

in the definition of immediate family. In relationships other than those set forth above, under exceptional circumstances, such leave of absence may be granted by the Sheriff or their designee upon request.

**Section 5. Unused Accrued Sick Leave at Time of Retirement.**

Pursuant to and consistent with PERS rules and regulations, the County shall report all allowable sick leave hours to PERS upon separation from County employment.

**Section 6. Sick Leave Donation.**

An employee may donate accrued sick leave to another employee when the second employee (donee) does not, or will not, have adequate accrued sick leave to cover their leave as long as: (a) the donee will be on approved FMLA and/or OFLA leave when the donee's absence occurs; and/or (b) the donee will be on leave for the same FMLA/OFLA qualifying condition, even after the donee has exhausted the term of protected FMLA/OFLA leave, when the leave occurs. Sick leave hours shall be donated and used on an hour for hour basis. All donated leave is forfeited by the donor.

**Section 7. Pay and Subpoenas While on Leave.**

An employee is not required to perform any work while on family medical leave or sick leave absence. The Sheriff's Office will not require an employee to perform any work while on family medical leave or sick leave absence, including attendance in court. However, the parties recognize that the Sheriff's Office cannot control the issuance of a subpoena by other parties. If an employee on such leave is subpoenaed for an appearance in a case arising out of official duties, and is unable to attend, the employee shall notify the person causing the subpoena to be issued. If the employee appears pursuant to the subpoena, they shall be compensated as set forth in Article 14. If the Sheriff's Office receives a lawful subpoena compelling the employee's court attendance, the Sheriff will make an attempt to contact the employee. It shall be sufficient for the Sheriff to call the employee's listed telephone number(s), leaving a message if the employee is unavailable and there is an adult person with whom a message may be left or a device on which to leave such message. If the employee is unavailable and there is no person or device with which to leave a message, it shall be sufficient for the Sheriff to forward a copy of the subpoena to the employee by sending it to the employee's home or such other address that the employee provides for such purpose. No employee will be disciplined or counseled for failure to obey a subpoena that is served upon the employee during a County-approved family medical leave or bona fide sick leave absence.

**ARTICLE 9 - VACATION LEAVE**

**Section 1. Accrual.**

Employees having served in the County service for two (2) consecutive full calendar months, shall be credited with sixteen (16) hours vacation leave. Thereafter, vacation leave shall be accrued as follows:

- A. Less than five (5) years of continuous service, 140.4 hours per year, accrued at the rate of 11.7 hours per month. Vacation leave will not accumulate beyond 240 hours.

- B. Five (5) to ten (10) years, but less than ten (10) years of continuous service, 164.4 hours per year, accrued at the rate of 13.7 hours per month. Vacation leave will not accumulate beyond 240 hours.
- C. Ten (10) to fifteen (15) years, but less than fifteen (15) years of continuous service, 188.4 hours per year, accrued at the rate of 15.7 hours per month. Vacation leave will not accumulate beyond 320 hours.
- D. Fifteen (15) to twenty (20) years, but less than twenty (20) years of continuous service, 204.0 hours per year, accrued at the rate of 17.0 hours per month. Vacation leave will not accumulate beyond 320 hours.
- E. After twenty (20) years of continuous service, 219.6 hours per year, accrued at the rate of 18.3 hours per month. Vacation leave will not accumulate beyond 360 hours.

Effective January 1 of each calendar year, accruals exceeding the maximum shall be reduced to the maximum. See also Article 11.13. Vacation time shall be allowed to accumulate beyond the aforementioned maximum where the employee has requested vacation and such vacation request has been denied. Any vacation leave that would otherwise have been lost shall be taken as soon thereafter as the needs of the County and the availability of vacation relief allow.

Employees in a paid status for 88 hours (prorated for FTE status) or more in any month shall accrue vacation leave for the next month on the first day of that month.

**Section 2. Termination or Death.**

After six (6) months of service, upon the termination of an employee for any reason, or in the event of the death of an employee, all accumulated vacation shall be paid either to the employee or their heirs, whichever the case may be.

**Section 3. Vacation Scheduling.**

Employees shall be permitted to choose either a split (including less than a full day of vacation) or entire vacation. Whenever possible, if consistent with the needs of the County in conjunction with the availability of vacation relief, employees shall have the right to determine vacation time.

The County shall make available a vacation sign-up sheet twice each year;

- 1. For vacations occurring from the first full payroll period in March through the first payroll period following Labor Day (“Spring Bump”):
  - a. Non-Jail Staff: February 5 to February 10.
  - b. Jail Staff: February 11 to February 20.
- 2. For vacations occurring after the payroll period following Labor Day through the Friday before the March shift bid begins (“Fall Bump”)
  - a. Non-Jail Staff: August 5 to August 10.

b. Jail Staff: August 11 to August 20.

Any conflicts in requested vacation time shall be resolved by granting the requested time off to the employee with the most seniority.

The vacation schedule shall be frozen on:

- a. Non-Jail Staff: February 15 and August 15
- b. Jail Staff: February 21 and August 21.

Employees are not required to sign up to use vacation time during these two sign-up periods. An employee may request vacation at any time throughout the year provided, however, that for vacation scheduled other than during the February and August sign-up periods, seniority may be used to resolve conflicts only for vacations of less than one work week provided the employee exercises their seniority rights at least thirty (30) calendar days before the effective date of the vacation request.

The County must accept or reject an employee's request for vacation within seventy-two (72) hours of receipt of the request. The seventy-two (72) hour response time limit does not apply during the vacation sign up periods described above.

#### **Section 4. Required Use of Vacation.**

The Sheriff may require each employee to take a maximum of ten (10) days' vacation within the employee's anniversary year.

#### **Section 5. Commitment to Retire.**

1. For employees hired before June 7, 2018, an employee who provides written or email notice to the Sheriff, or their designee, and the Agency Finance Section of their commitment to retire within three years from the date such request is made shall be allowed to accrue vacation in addition to the provisions of Article 9 for the purposes of vacation payments upon termination of employment. The amount of vacation paid shall not exceed three (3) times the maximum accrual of vacation and shall be paid to the employee upon retiring from employment with the County. At the employee's choice, distribution of vacation payment may be taken in either pay, 457 deferred account funding, or a combination of both. An employee making a commitment to retire shall specify the date of their retirement not more than three years into the future. If an employee does not retire on the date specified in their commitment to retire notice, they shall lose any accrued vacation in excess of the carry over limit set at 1080 hours.
2. For employees hired after June 7, 2018, an employee who provides written or email notice to the Sheriff or their designee and the Agency Finance Section of their commitment to retire within three (3) years from the date such request is made shall be allowed to accrue vacation in addition to the provisions of Article 9 for the purposes of vacation payments upon termination of employment. The amount of vacation paid shall not exceed seven hundred and twenty (720) hours and shall be paid to the employee upon retiring from employment with the County. At the employee's choice, distribution of vacation payment may be taken in either pay,

457 deferred account funding, or a combination of both. An employee making a commitment to retire shall specify the date of their retirement not more than three (3) years into the future. If an employee does not retire on the date specified in their commitment to retire notice, excess vacation over the employee's vacation cap under Article 9.1 will be paid to the employee, and the employee is precluded from applying for Section 5 benefits again. The Sheriff may consider exceptional circumstances for reapplying for Section 5 benefits.

## **ARTICLE 10 - OTHER LEAVES**

### **Section 1. Leave of Absence.**

Leaves of absence for medical purposes is covered by County Code and policy.

Leaves of absence without pay for a limited period, not to exceed ninety (90) days, shall be granted by the Sheriff at their discretion for any reasonable purpose. Such leave may be renewed or extended by the Board of County Commissioners. Reasonable purpose will not include engaging in other employment. The Sheriff may make exceptions for those whose purpose is to engage in temporary employment that is clearly in the best interest of the Sheriff's Office.

### **Section 2. Jury Duty.**

Employees shall be granted leave with full pay any time they are required to report for jury duty or jury service, in lieu of jury fees, excluding mileage reimbursement upon any day that they are scheduled to work. Employees will be required to call their Watch Commander when less than a normal work day is required by jury duty. The Watch Commander shall determine if the employee shall be required to report to work and shall take into consideration the travel time of the employee.

### **Section 3. Family Medical Leave and Parental Leave.**

Family medical leave and parental leave will be granted in accordance with all Federal and State statutes and Clackamas County policy.

### **Section 4. Educational Leave.**

After completing one (1) year of service, an employee upon request may be granted a leave of absence without pay for educational purposes at an accredited school when it is related to their employment. The period of such leave of absence shall not exceed one (1) year, but it may be renewed or extended at the request of the employee, when necessary.

One (1) year leave of absence with any requested extension, for educational purposes, may not be provided more than once in any three (3) year period.

Employees may also be granted leaves of absence with or without pay for educational purposes, for additional lengths of time, to attend conferences, seminars, briefing sessions, or other functions of a similar nature that are intended to improve or upgrade the individual's skill or professional ability, provided it meets with the approval of the Sheriff.

## ARTICLE 11 - HEALTH AND WELFARE

### **Section 1. Accrual of Benefits.**

A regular status employee working greater than or equal to 20 hours per week is eligible for medical benefits on the first of the month following the benefit waiting period described in Section 10.

### **Section 2. Medical-Hospital.**

The County agrees to contribute toward the monthly composite premium at the existing dollar level for coverage defined in the Summary Plan Descriptions agreed to by the Association and the County. Family coverage shall include dependent college students up to the age of twenty-six (26) and dependent coverage required under Federal or State statutes. Employees will become eligible on the first day of the month following the benefit waiting period described in Section 10.

For the plan years effective January 2, 2021, January 1, 2022 and January 1, 2023, the County agrees to pay 95% of the composite premium rate for Providence medical plans and the employee agrees to pay 5% of the premium costs. However, if the premium increases more than 10% in any one year, the County and the employee shall evenly split the increased costs above 10%. The joint committee identified in Section 12 shall be utilized as a method to control increased premium costs.

The County agrees to pay 100% of the premium for employees enrolled in the Kaiser medical plan.

If the parties, while bargaining for a successor collective bargaining agreement, have not reached agreement regarding this Article 11, by September 30, 2023, the County will conduct an open enrollment process for health care coverage to be effective January 1, 2024, with the County agreeing to pay 95% of the total composite rate premium costs for the Providence Plans and 100% of the cost for the Kaiser medical plan. This temporary increase in the County's contribution will satisfy the County's obligation to maintain the status quo for the medical plans while bargaining continues.

**Insurance Opt-Out:** Employees who provide proof of other medical coverage and who opt out of coverage provided by the County will receive cash back on a monthly basis as provided by the yearly Benefits Summary, paid to the employee's HRA/VEBA. Employees may only rejoin County coverage with a qualifying condition subject to carrier rules.

### **Section 3. Life Insurance.**

The County agrees to contribute monthly an amount equal to the life insurance premium with a death benefit of \$75,000. Employees in a classified position, regularly scheduled for thirty (30) or more hours of work per week, will become eligible on the first day of the month following the benefit waiting period described in Section 10. The Life Insurance program will provide an Accelerated Benefits option provision. The cost for the Accelerated Benefits Option will be paid by the County.



**Section 4. Dental Insurance.**

The County agrees to contribute monthly an amount equal to the self-funded composite dental program rate for the existing family coverage with an individual benefit of \$1,500 per individual per year, including an orthodontic benefit for dependent children up to \$3,000. The employee may also choose alternative dental plans as provided by the County, including a plan provided through Kaiser. Employees will become eligible on the first day of the month following the benefit waiting period described in Section 10.

**Section 5. Long-term Disability Insurance.**

The County agrees to contribute monthly an amount equal to the long-term disability insurance premium for non-occupational accident or illness. Benefits, including those from other sources, will equal sixty percent (60%) of up to \$3,333 in monthly salary after an elimination period of the first 30 days of each period of total disability or the exhaustion of accumulated sick leave, whichever occurs later. Employees will become eligible on the first day of the month following the benefit waiting period described in Section 10.

The County agrees to make available a supplemental disability insurance plan up to a maximum benefit of 60% of a \$10,000 monthly salary subject to plan eligibility. Contributions are only paid by the employee.

**Section 6. Civil Insurance.**

The present policy of providing insurance for all employees against civil suits covering insurable acts while in the performance of their duties will be continued.

**Section 7. Surviving Spouse and Dependent Coverage.**

The County agrees to provide spouses and dependents of deceased employees who were covered by this Agreement with medical and dental insurance as provided for in Sections 1 and 3 of this Article, for a period of twenty-four (24) months following the death of the employee. If, during the twenty-four (24) month period, the deceased employee's spouse becomes eligible for medical or dental insurance under another plan, the County provided insurance will cease on the inception date of the new insurance.

**Section 8. Retiree Medical Benefits.**

Three and one-half percent(3.5%) of an employee's base pay as set forth in the pay plan shall be placed into a fund to be administered by the Clackamas County Sheriff's Office Independent Retiree Medical Trust, "IRMT," (subject to the agreement below) to provide medical benefits for retired eligible employees who have not yet become eligible for Medicare benefits. The Retiree Medical Trust shall have the sole responsibility and the right for determining the amounts of benefits to be received and the eligibility for receipt of those benefits, subject to the agreement below. The benefit listed above shall apply to employees working during the "rehire period" under the Retired Rehire section of Article 28.

The purpose of the IRMT is to administer the retiree medical benefits which are described in Article 11, Section 8 of the collective bargaining agreement and in the Agreement dated February 25, 2005 related to the Sheriff's Office Retiree Medical Fund.

- A. The County will continue to contribute funds at the rate set forth in Article 11(8) of the Agreement into an account designated by the Clackamas County Sheriff's Office Independent Retiree Medical Trust (IRMT). The County's obligation to contribute funds to the IRMT shall cease only upon written agreement by the County and the CCPOA.
- B. The County does not guarantee any particular level of retiree medical benefits to any individual or group of employees; and in the event that the IRMT reduces medical benefit levels, the County is not obligated to maintain retiree medical benefit levels or make up any difference in the level of retiree medical benefits.

**Section 9. Domestic Partners.**

Domestic partners, as described within this section, will be treated the same as spouses for purposes of medical, dental and life insurance programs described in this Article, subject to Federal and State laws and regulations and completion of a notarized Affidavit of Domestic Partnership provided and approved by the Department of Human Resources. For the purposes of this section, Domestic partners include same and opposite sex couples.

**Section 10. Benefits Waiting Period.**

Benefits shall become effective on the first day of the calendar month following the employee's date of hire.

**Section 11. Plan Changes Required by Law or Insurance Carrier.**

The County shall act to update any mandated coverage or changes caused by Federal or State laws, rules and regulations or required by the insurance carriers. Unilateral changes in benefits initiated solely by the insurance carriers are subject only to impact negotiations with the Association pursuant to ORS 243.698.

**Section 12. Joint Peace Officers/County Benefits Committee.**

Effective upon ratification of this agreement and in the open enrollment period following the ratification of this agreement, all Association employees shall participate in the benefit plan as agreed through negotiations between the Association and the County.

- A. The Joint Peace Officers/County Benefits Committee shall have the responsibility to make recommendations regarding the level, scope, and design of benefit plans offered to employees for medical and vision coverage, dental coverage and for disability and life insurance. The primary emphasis in plan design shall be to provide a comprehensive, competitive benefit program at a reasonable cost. The Committee will investigate all options for providing insurance including forming an employee's benefit trust and/or partial self-funding.
- B. The Committee shall be comprised of an equal number of members from the Association and County. A non-voting County Commissioner will be invited to attend all meetings. The Committee shall meet at least quarterly, or more frequently if required. Decisions of the Committee will be made by a majority of votes. Absentee members will also be given the opportunity to vote.

- C. The Committee shall make plan design recommendations for medical, vision, dental, disability and life insurance plans at least one hundred and twenty (120) days prior to the beginning of the following plan year. Any changes to plan designs must be through negotiations between the Association and the County.
- D. The County shall provide administrative coordination and support for the Committee. The Committee shall be provided all financial information and related reports as may be available.
- E. The Committee shall consider various options available to control increased premium costs.
- F. No changes will be made to benefit plans without the approval of the Association and County.

**Section 13. Health Reimbursement Account (HRA).**

The County shall provide each employee covered by this agreement the opportunity to enroll in a Health Reimbursement Account (HRA).

The County shall pay the account fee up to \$1.50 per account per month for each active employee enrolled in a HRA/VEBA. The participating employee shall be responsible for the third party annualized investment fee.

Participating employees who have used at least forty (40) hours of vacation in the prior calendar year shall have all vacation time up to eighty (80) hours in excess of the annual cap, as referenced in Article 9(1), paid into their HRA/VEBA account.

**Section 14: Flexible Spending Account (FSA).**

Employees may participate in the Flexible Savings Account offered by the County at the employee's expense for contributions. Employer will pay the administrative fee.

**ARTICLE 12 – WAGES**

**Section 1. Wages and Classification Schedule.**

In lieu of a retroactive pay adjustment, current employees will receive a one-time payment after execution by both parties. The payment will be based on 2.6% of an employee's gross pay earnings (base pay, overtime, longevity and incentives) from the beginning of the pay period closest to July 1, 2020 to the ratification date. Any new incentives or add-to-pays to this agreement are not included in this payment.

Effective July 1, 2021, the pay plan for all classifications within the bargaining unit will be increased by 1.8%.

Effective July 1, 2022, employees shall receive a cost of living increase equal to the percentage increase in the US Consumer Price Index, CPI-W: West Urban Annual Average, as reported by the U.S. Department of Labor, with a minimum of 0% and a maximum of 4.5%.

The COLA percentage will be sent to the Association President by April 1 of each year. An updated pay plan will be published by the County each year by July 1 on the Department of Human Resources website.

**“”” Section 2. Deferred Compensation.**

An amount equivalent to four percent (4%) of the employee’s base pay as set forth in the pay plan shall be placed into a deferred compensation plan for each employee, the plan to be administered by a provider with whom Clackamas County has contracted for deferred compensation services.

**Section 3. Time of Service.**

Step increases (merit raises), and longevity pay for regular full-time employees, shall be determined on the basis of calendar months within which the employee has worked without interruption in service. “Interruption in service” shall not include those authorized leaves as set forth in this Agreement.

**Section 4. Longevity Pay.**

For every five (5) years (60 months) of continuous County service, the employee shall receive \$69.07 per month longevity pay in addition to their normal compensation. Eligibility shall be based upon the number of continuous years of regular status County Service. Continuous service for the purpose of determining eligibility for longevity pay shall be service unbroken by separation from County employment that results in a changed date of hire. Upon ratification by both parties, the amounts shall increase by the amount of wage increase determined in Section 1 above. On July 1, 2021 and July 1, 2022, the amounts shall increase by the amount of wage increase determined in Section 1 above.

**Section 5. Computation of Hourly Rate. Salary scale has hourly rate.**

The base hourly rate is specifically identified for each classification in the pay plan. The pay plan also shows a 2080 base annual salary formulated on the base hourly rate of pay.

**Section 6. Records Unit Graveyard Shift Differential Pay.**

Employees in the Records Unit of the Support Services Division who work 51% of their scheduled work hours after 12:00 midnight shall receive a shift differential of \$1.00 per hour for all hours worked during their shift. If an employee is requested or required to continue working at the end of their regular shift and has been receiving shift differential based on their graveyard shift, the employee will continue to receive the shift differential. (Example: Employee is on graveyard and is mandated to work into the day shift). Employees working voluntary overtime or mandated from swing shift into graveyard are not eligible for graveyard shift.

**ARTICLE 13 – OVERTIME**

**Section 1. Overtime.**

Time and one-half (1.5) the employee’s regular hourly rate of pay shall be paid for work under any of the following conditions, but compensation shall not be paid twice for the same hours:

- A. All authorized work performed in any work day in excess of:

1. eight (8) hours for employees on a 5-8 work schedule, or
  2. nine (9) hours in a nine (9) hour work day or eight (8) hours for an eight (8) hour work day for employees on a 9-80 schedule; or
  3. nine (9) hours for employees on a 5-9/4-9 work schedule, or
  4. ten (10) hours for employees on a 4-10 work schedule, or
  5. twelve (12) hours in a twelve (12) hour work day, or eight (8) hours in an eight (8) hour work day, for employees on a 3-12/3-12 + 8 hour work schedule;
- B. All authorized work performed in excess of:
- forty (40) hours in any work week for employees on a 5-8, 9-80 or 4-10 work schedule, or
  - eighty-one (81) hours in the regular 14-day work period for employees on a 5-9/4-9 work schedule, or
  - eighty (80) hours in the regular 14-day work period for employees on a 3-12/3-12 + 8 work schedule;
- C. All authorized work performed on a scheduled day off. In the event an employee is required to work on a day off, the employee will be paid a minimum of four (4) hours at time and one-half.
- D. Employees working five consecutive days with eight hour shifts shall be paid time and one-half (1.5) for all work performed on the sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) day of their regular workweek. Employees working four consecutive days with ten hour shifts shall be paid time and one-half (1.5) for all work performed on the fifth (5<sup>th</sup>), sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) days of their regular work week. Employees working the 3-12/3-12 + 8 schedule shall be paid time and one-half (1.5) for all work performed: in their “short” week, on the days following their three regular work days; and in their “long” week, on the days following their four regular work days.
- E. On the day that daylight savings begins (“Spring Forward”) if an employee would be short one hour of work on their work shift, the employee shall either work an hour earlier than the start of their shift, an hour later at the end of their shift, or use a hour of accrued vacation or compensatory time in order to be paid for the entire shift. The employee shall notify their supervisor in the preceding payroll period of their preference. On the day that daylight savings ends (“Fall Back”) the employee will be compensated at the rate of time and one half (1.5) for any hours worked beyond their respective normal shift. The additional shift will be considered mandatory overtime.

Any paid leave used shall be considered hours worked for purposes of calculating overtime. Overtime will only be paid for actual hours worked.

For full time employees, hours worked that are an extension of a previously worked shift shall be paid at overtime at time and one half (1.5) for actual hours worked, except as maybe limited by Article 13(2).

For regular part-time employees, overtime is paid pursuant to Article 26.

## **Section 2. Assignment of Overtime Patrol Division Continuous Operations & CSO**

When there are vacancies created by approved leaves and the County determines the vacancies are to be filled, they will be filled by seniority among bargaining unit personnel under the following conditions:

- A. Electronic communication is the preferred method of staffing shortages on shifts in Patrol. All electronic communication will occur between the hours of 0700 and 2100, seven days a week.

Overtime will be filled via posted CLASSweb lines until locked in 72 hours prior to the start of the vacancy. Once the lock in period has started (available overtime will be posted via electronic communication method for each overtime shift.

- 1. If the overtime callout is less than two (2) hours away or the shift has begun – the employees will have fifteen (15) minutes to call in.
- 2. If the overtime callout is more than two (2) hours away, but less than four (4) hours away - the employee will have one (1) hour to call in.
- 3. If the overtime callout is more than four (4) hours away, but less than 24 hours away - the employee will have two (2) hours to call in.

If no one takes the overtime in the prescribed time periods above, the overtime will be awarded to the first person to call in, regardless of seniority.

- B. Employees will have the following time to call in if the overtime callout is 24 hours or more away:
  - a. 1<sup>st</sup> shift overtime will be locked at 5 PM before start of shift.
  - b. 2<sup>nd</sup> shift overtime will be locked at 9 PM before start of shift.
  - c. 3<sup>rd</sup> shift overtime will be locked at 9 PM before start of shift.
  - d. 4<sup>th</sup> shift overtime will be locked at 12 PM before start of shift.
  - e. If the vacancy is not filled by the deadline outlined in a-d of this subsection, notice of the available shift may be re-posted via electronic communication method and the vacancy will be filled on a first come-first served basis.
- C. If the electronic communication is unavailable or should an unforeseen issue arise, the Association and County agree to revert back to previously used manual callout procedure.

- D. When the County determines a replacement is needed for a shift vacancy occurring with less than two hours' notice, the work will be offered first to those employees already on duty, by seniority, in classification. If no one elects to work the shift it will be offered via electronic communication as described in Article 13(2)(A). If no one in the classification where the vacancy exists wants to work the shift, then it will be offered by electronic communication to employees in classifications other than the classification where the vacancy exists.
- E. When more than two hours' notice has been received of a vacancy that has been determined needs to be filled, the County must exhaust the overtime list provided by the Association prior to filling the shift by any other means. Sign up will be seniority in classification. Bumping will be permitted with notice to the affected employee being the responsibility of the employee doing the bumping. Bumping will not occur when there is less than seventy-two (72) hours before the start of the shift, regardless of seniority.
- F. Available overtime shifts may be split among multiple employees. An employee, regardless of seniority, classification and/or division, may bump another employee from a portion of a shift, so long as the employee doing the bumping will work all of the hours signed up for by the employee being bumped and at least one additional hour. The employee doing the bumping must contact a supervisor to change the schedule. If an employee accepts overtime and later decides to decline the accepted overtime, the employee must notify a supervisor of the change if less than seventy-two (72) hours exists before the scheduled shift commences. If less than twenty-four (24) hours exist before the scheduled shift commences, the employee must have authorization from a supervisor to be excused from working the shift. An employee who fails to report for a scheduled shift will be given an unexcused absence for failing to report to work. However, employees will not be charged an unexcused absence if unable to perform their duties due to health related reasons under Article 8 or an emergency situation, and calls in to report their absence as required by Sheriff's Office practices or policies. Temporary loss of overtime sign-up privileges may be part of the progressive discipline issued to an employee failing to comply with this provision as follows: a first offense may result in a ten-day loss of overtime signup privileges; a second violation within a year, a thirty-day loss; and a third violation within a year, a sixty-day loss.
- G. When overtime assignments occur for routine or special events (including emergencies that become routine) that do not require special unit supervision or special skill and training, the County will use reasonable effort to notify employees of the available overtime. Sign up will be by seniority in classification. Bumping will be permitted, with notice to the affected member being the responsibility of the member doing the bumping. Bumping will not occur when there is less than seventy-two (72) hours before the start of the shift, regardless of seniority.

- H. Replacement personnel shall come first from the same classification and division as the employee creating the vacancy, second from the same classification but different division and third from a different classification, except as provided for in Article 13(2)(F).

### **Section 3. Assignment of Overtime Corrections Division**

When vacancies created by approved leaves and the County determines the vacancies are to be filled, they will be filled by seniority among bargaining unit personnel under the following conditions:

- A. Electronic communication is the preferred method of staffing shortages on shifts in the Corrections Divisions. All electronic communication will occur 24 hours per day, seven days a week.

Overtime will be filled via posted CLASSweb lines until locked in 120 hours prior to the start of the vacancy. Once the lock in period has started, available overtime will be posted via electronic communication method for each overtime shift.

1. If the overtime callout is less than five (5) hours away or the shift has begun – the employees will have thirty (30) minutes to call in.
2. If the overtime callout is more than five (5) hours away, the employee will have four (4) hours to call in.

If no one takes the overtime in the prescribed time periods above, the overtime will be awarded to the first person to call in, regardless of seniority.

- B. If the electronic communication is unavailable or should an unforeseen issue arise, the Association and County agree to revert back to previously used manual callout procedure.
- C. When the County determines a replacement is needed for a shift vacancy occurring with less than two hours' notice, the work will be offered first to those employees already on duty, by seniority, in classification. If no one elects to work the shift, it will be offered via electronic communication as described in Article 13(3)(A). If no one in the classification where the vacancy exists wants to work the shift, then it will be offered by electronic communication to employees in classifications other than the classification where the vacancy exists.
- D. When more than two hours' notice has been received of a vacancy that the County has been determined needs to be filled, the County must exhaust the overtime list provided by the Association prior to filling the shift by any other means. Sign up will be seniority in classification. Bumping will be permitted with notice to the affected employee being the responsibility of the employee doing the bumping. Bumping will not occur when there is less than one hundred twenty (120) hours before the start of the shift, regardless of seniority.



- E. Available overtime shifts may be split among multiple employees. An employee, regardless of seniority, classification and/or division, may bump another employee from a portion of a shift, so long as the employee doing the bumping will work all of the hours signed up for by the employee being bumped and at least one additional hour. The employee doing the bumping must also contact a supervisor to change the schedule. If an employee accepts overtime and later decides to decline the accepted overtime, the employee must notify a supervisor of the change if less than seventy-two (72) hours exists before the scheduled shift commences. If less than twenty-four (24) hours exist before the scheduled shift commences, the employee must have authorization from a supervisor to be excused from working the shift. An employee who fails to report for a scheduled shift will be given an unexcused absence for failing to report to work. However, employees will not be charged an unexcused absence if unable to perform their duties due to health related reasons under Article 8, or in an emergency situation and calls in to report their absence as required by Sheriff's Office practices or policies. Temporary loss of overtime sign-up privileges may be part of the progressive discipline issued to an employee failing to comply with this provision as follows: a first offense may result in a ten-day loss of overtime sign-up privileges; a second violation within a year, a thirty-day loss; and a third violation within a year, a sixty-day loss.
  
- F. When overtime assignments occur for routine or special events (including emergencies that become routine) that do not require special unit supervision or special skill and training the County will use reasonable effort to notify employees of the available overtime. Sign up will be by seniority in classification. Bumping will be permitted with notice to the affected member being the responsibility of the member doing the bumping. Bumping will not occur when there is less than one hundred and twenty (120) hours before the start of the shift, regardless of seniority.
  
- G. Replacement personnel shall come first from the same classification and division as the employee creating the vacancy, second from the same classification but different division, and third from a different classification, except as provided for in Article 13(3)(F).

#### **Section 4. Assignment of Overtime Other Divisions and Sections**

When vacancies are created by approved leaves and the County determines the vacancies are to be filled, they will be filled by seniority among bargaining unit personnel under the following conditions:

Overtime will be posted in a manner in which sign up is available to all employees who are eligible to perform the work. Overtime sign-up will be locked in seventy two (72) hours prior to start of the shift. Seniority will be by classification in division.

#### **Section 5. Additional Overtime Rules**

- A. A temporary employee, hired on a 90-day basis, will only be used to replace personnel who are scheduled to be absent for more than twenty (20) working days for employees working a 5/8 work schedule or 16 working days for employees working a 4/10 work schedule.

- B. The County and the Association recognize it is not in the best interest of the County to have employees be required to work overtime. The County will continue its policy of reducing or eliminating the use of mandatory overtime.

**Section 6. DPSST Basic Academy Overtime.**

Employees enrolled in the DPSST Basic Academy will be paid at time and one-half (1.5) their regular hourly rate of pay for required activities, as described in Article 4, Section 12, exceeding 40 hours in any work week. This Section shall apply in lieu of Section 1 of this Article.

**ARTICLE 14 - COURT APPEARANCES**

**Section 1. Time Outside Regular Shift for Court Appearances.**

A court appearance is all authorized time spent by an employee other than on their regular work day in criminal or civil proceedings, where their attendance is required, arising out of the performance of the employee's official duties.

If the court case is listed on the trial line the night before the scheduled appearance date and the employee is notified of the cancellation on the day of the appearance, the employee will receive the applicable minimum court time.

Regular Work Day:

1) Employees attending a court appearance that is more than 30 minutes before the start of their scheduled work day will receive a minimum of two (2) hours at time and one-half (1.5) if on a regular workday: except that employees assigned to graveyard and fourth shift patrol shall receive three (3) hours for mandatory court appearances on a regular work day instead of two (2) hours. Graveyard shift is defined as half or more of the shift is worked after midnight and fourth shift patrol is from 1700 to 0300.

2) Employees attending a court appearance within 30 minutes of their scheduled work day will receive 30 minutes of time and one-half (1.5) rate for the time worked before the start of the shift.

Regular Scheduled day off:

If an employee attends court on a regularly scheduled day off, the employee will receive a minimum of four (4) hours at the time and one-half (1.5) rate.

Multiple Court Appearances on the same day:

In the event an employee attends more than one court appearance where the start time of the second appearance falls within either four hours (day off), three hours (graveyard work day), or two hours (work day) of the start time of the first appearance, minimum compensation as set out above shall not be earned for the first appearance, unless the member was released from the subpoena and had no prior notification of the subsequent

court appearance, and minimum compensation as set out above shall apply to the latter appearance, and minimum compensation as set out above shall be earned for no more time than from the start time of the first appearance up to the start of this second appearance.

For example, if an employee receives prior notification of two subpoenas on a day off, where the appearance times are 1100 and 1300, the employee shall earn four hours of court appearance pay for the second court appearance and two hours for the first court appearance, so long as there is an off duty break of more than fifteen (15) minutes between the two court appearances. In the event there is no break between court appearances, continuous compensation would accrue at a minimum of no less than four hours.

## **Section 2. Overtime Pay While On Approved Paid Leave.**

Overtime pay while on approved paid leave will be awarded as follows:

- A. If the employee had an approved paid leave day scheduled before receiving a court subpoena, it will be handled as a day off under Article 14, unless the employee elects to be credited the approved paid leave time actually spent in court.
- B. If the employee requests a paid leave day for a day that they already had a subpoena, it will be handled as a work day under Article 14. If court time would be during their normal duty time, the employee will have their paid leave hours adjusted hour for hour so that no leave time will be lost.

## **ARTICLE 15 - CALL BACK/CALL OUTS**

### **Section 1. Call Back.**

“Call Back” is defined as an employee being contacted outside their regular work hours on a regularly scheduled work day and being called back to work.

Call back time, when authorized, will be paid as overtime. Minimum compensation for a call back will be the equivalent of two (2) hours.

A regularly scheduled work day is considered the calendar day on which the shift begins.

### **Section 2. Call Out.**

“Call Out” is defined as an employee being contacted on a scheduled day off and being called out to work.

Call out time, when authorized, will be paid as overtime. Minimum compensation for a call out will be the equivalent of four (4) hours

### **Section 3. Conditions for Call Outs and Call Backs.**

In the event an employee is called back or out to work within 30 minutes of either the beginning or end of a regularly scheduled shift, the employee will receive 30 minutes of overtime pay.

In the event an employee's shift is extended, the employee will receive overtime for the hours worked consistent with Article 13.

A de minimis contact, such as an isolated phone call by management to an employee, lasting around 5 minutes or less is not compensable.

Employees who voluntarily sign up for a scheduled overtime assignment are not eligible for call back or call out compensation and only receive overtime for actual hours worked for the scheduled overtime assignment.

Employees who voluntarily sign up for scheduled events are not eligible for call back or call out compensation and only receive overtime for actual hours worked for the scheduled event.

Employees who elect training on a day off are not eligible for call back or call out compensation and only receive overtime for actual hours worked for the training.

**Section 4. Electronic Notification Devices.**

Both the County and the Association recognize that notification of an emergency call out is greatly enhanced with the use of electronic devices and helps to facilitate expedient responses. Additionally, it is acknowledged that the carrying of County issued electronic devices during off duty time is voluntary, unless otherwise required under Article 17.

**Section 5. Call Outs for Detective, ITF and Craft.**

A. Detectives:

A Call Out is defined as an employee being contacted on their regularly scheduled days off and being called back to duty for an unplanned event. A Detective assigned to day shift who receives a Call Out after the end of their last shift of a work week and before the beginning of their next regular shift would receive Call Out pay. Any Call Out within four hours of the start of their regular shift will be paid actual overtime worked up to the start of the employee's regular shift.

If the County changes Detectives' schedules back to 5-9/4-9s from 4-10s, double time for Detectives will be reinstated as set forth below and under Article 4, Section 11.

B. ITF, CRAFT, CFU and CSI:

Call Out pay will be authorized at double time for employee's regular assigned days off. The double time pay rate applies whenever an employee is notified of the requirement to return to work during their off-duty weekend hours. The double time pay rate continues to apply for all work performed during the call out if it occurs during the employee's weekend hours. The initial response to the Call Out and subsequent follow-up investigations during the employee's weekend hours are considered "unplanned" events.

If an employee is notified during their normal work hours that they will be needed for work during their upcoming weekend off-duty hours, this would be considered a 'planned event' and the employee is entitled to be paid the overtime pay rate as contained in Article 13. When their work on the planned event is complete, the employee will return to off-duty status and subsequent Call Outs would be considered unplanned and the employee would be paid at the double time pay rate.

Minimum Call Out shall be for four (4) hours except when called out within four (4) hours of the start of their regular shift in which case the double-time will be paid up to the start of the employee's regular shift.

Call Out is defined as an employee being contacted outside their regular work schedule and being called back to duty for an unplanned event. Example: ITF or CRAFT is assigned to day shift, Monday through Thursday, receives an assignment after the end of their shift on Thursday and before the beginning of their regular shift on Monday would receive Call Out pay at the double time rate.

If employees assigned to ITF or CRAFT become subject to On Call Pay under Article 17, Section 2, those employees will no longer receive double-time for call outs under this subsection (B) and will instead be subject to Sections 2, 3 and 4 of this Article for call outs.

#### **ARTICLE 16 - TRAVEL PAY**

Whenever an employee is required to report for work in any location other than their established place of work , and transportation is not provided by the County, they shall be paid for the use of their personal transportation at the rate established by the Internal Revenue Service for reimbursement for business use of personal vehicle. The employee will not be reimbursed for use of their personal vehicle if the place they are required to report is within Clackamas County, or it is outside of the county but closer to their residence than the location where they would report to obtain a county vehicle.

Whenever an employee is required to appear for work at any location other than their established place of work, the employee will not be compensated for drive time to and from the location if the location they are required to report is closer to their residence than their established place of work. If the location the employee is required to report is further from their residence than their established place of work, they will be compensated for the actual drive time to and from the location, less the usual amount of time it takes them to report to their established place of work.

Established place of work shall be defined as any office, reporting station, or precinct maintained by or for the County in which employees are assigned to work either permanently, or on a temporary basis of 90 days or more.

Whenever the County opens a new office, reporting station, or precinct, or changes the location of an existing office, reporting station, or precinct, those employees who are affected by the move may exercise a seniority bump as provided in Article 6 of this contract.

’ ’ ’ ’ For travel requiring per diem, the rates set and maintained by the US General Services Administration (www.GSA.gov) based on the travel destination shall be used. Per diem will be provided to the employee before their departure date, so long as the County has fourteen (14) days’ notice before the departure date. Per diem will be provided to the employee after their return from travel if the County does not receive fourteen (14) days’ notice before the departure date.

## **ARTICLE 17 - ON CALL PAY**

### **Section 1. On Call Assignment.**

Employees may be assigned by management to be “on-call.” The assignment requires an employee be readily available to report to work and respond to the needed work location within 60 minutes of notice. Readily available includes that the employee has not consumed any intoxicant while on-call consistent with policy. Failure to comply with these requirements may result in disciplinary action. Assignment of on-call is at the discretion of the County and assignments will be in writing. On-call status is not payment for hours worked and is not considered compensable time.

For each hour assigned to on-call status, employees will earn the equivalent 1/8<sup>th</sup> straight time, applied to the compensatory time bank. Employees are encouraged to use the time off during the calendar year.

Employees will be paid, consistent with Articles 13 and 15, when called to work.

### **Section 2. Detectives.**

Detectives may be assigned to on-call status to be available to work when off duty. The number of Detectives assigned to on-call is at the discretion of the County.

The County will provide for a bid in six month increments for on call assignments subject to operational need. Detectives will select coverage periods in an equitable fashion by classification seniority. Unfilled coverage periods will be assigned in order of inverse classification seniority.

The County is not precluded from posting shorter periods of on-call assignment for particular operational needs, which will be filled first voluntarily and if still unfilled will be assigned by inverse classification seniority.

Employees are permitted to trade on-call periods with supervisory approval.

Detectives assigned to on-call will earn the equivalent 1/8<sup>th</sup> straight time applied to a Detective Leave Bank (DLB) to be used for later time off. Hours earned will be reported with regular pay periods. On-call status is not payment for hours worked and is not considered compensable time.

Employees may accumulate up to a maximum of 120 hours of DLB time and do not earn DLB time above this cap if on “On-call” status. If an employee changes assignments and is no longer eligible to earn DLB time, the employee retains the ownership of accrued time

up to 120 hours and may request the use of time off following existing practices within the employee's new classification. Upon separation of employment, the Detective Leave Bank has no compensable value.

Employees will be paid, consistent with Articles 13 and 15, when called to work.

Employees assigned to ITF or CRAFT may receive on-call pay under this Section 2 if assigned by the County to on-call status. In such case, double time will cease for call outs for those employees as set forth in Article 15, Section 4(B).

### **Section 3. Detective Sergeants.**

Effective on the 1<sup>st</sup> day of the month after ratification, as compensation for being "on-call," Detectives Sergeants will earn the equivalent of four (4) hours of straight time per month applied to a Detective Leave Bank (DLB) to be used for later time off. The hours reported will be upon the first day of the month. On-call status is not payment for hours worked and is not considered compensable time.

Employees may accumulate up to a maximum of 120 hours of DLB time and do not earn DLB time above this cap if on "On-Call" status. If an employee changes assignments and is no longer eligible to earn DLB time, the employee does not retain ownership of accrued time. Upon separation of employment, the DLB has no compensable value.

This section shall not apply to CCITF Sergeants.

## **ARTICLE 18 - WORK ABOVE NORMAL CLASSIFICATION**

### **Section 1. Working Out of Classification.**

Whenever an employee is assigned to perform any work for one-half or more of a shift in a classification above that in which the employee is normally classified, the employee shall be paid for such work hours at the first step in the range assigned to the higher classification or a five percent (5%) increase of base hourly rate, whichever is higher, unless said employee is being trained for a higher classification in accordance with an approved training and development plan.

### **Section 2. Special Assignments.**

- A. CCITF: A Deputy temporarily assigned and working the Clackamas County Interagency Task Force (CCITF) will be eligible to be paid five percent (5%) above their base hourly rate after successful completion of a training period for one hundred and eighty days (180) after the employee starts working in the assignment. At the end of the training period, the Unit supervisor will evaluate the member's progress in becoming a productive unit member. The Unit supervisor will recommend one of the following: (1) granting of the pay increase prospectively, (2) withholding the pay increase and re-evaluating at 365 days, or (3) removal of the individual from the assignment. If a member is re-evaluated at 365 days, the Unit supervisor shall recommend that the pay increase be granted prospectively or recommend removal from the assignment. The Unit supervisor's recommendations will be forwarded to the Division Commander for review and approval. In consideration for the additional compensation set forth above, the Sheriff shall have

authority to end an assignment to the CCITF as needed for business reasons without a demand from the Association to bargain the decision or any pay issues.

- B. Rotational Detective. Upon beginning work in the assignment the Deputy will be paid five percent (5%) above their base-hourly rate. After the conclusion of a 180-day training period, the Unit supervisor will evaluate the member's progress in becoming a productive unit member. The Unit supervisor's evaluation will be forwarded to the Division Commander for review and approval. The Sheriff shall have authority to end an assignment of a Rotational Detective as needed for business reasons without a demand from the Association to bargain the decision or any pay issues.

A Deputy working as a Rotational Detective will be eligible for the following additional benefits: (1) Compensated at the hourly rate of 1.5 for authorized overtime work, (2) Detective clothing allowance as outlined within this agreement in place of the uniform cleaning allowance, (3) Sign up for "on-call" coverage upon completion of the 180 day training period, based on Division seniority, and (4) Accrual of earned time off in the "Detective Leave Bank" (DLB), which will be capped at 120 hours in accordance with Article 17. When the Deputy rotates out of Detectives, the Deputy retains no ownership of the accrued DLB time. The hours in the DLB have zero cash value.

## **ARTICLE 19 - TRAINING/PROBATIONARY PERIODS**

### **Section 1. Training.**

Sworn employees shall be provided sufficient training to maintain DPPST certification. The employee shall participate in training, including firearms training, at times set by the Sheriff or their designee. Employees required to participate in any training that exceeds the total number of hours in their regularly scheduled work week shall be compensated at the overtime rate for time spent in training, including commuting when required by the Fair Labor Standards Act or to flex their hours with approval of their supervisor. Employees who elect training on a day off when otherwise available during a regular work day will receive overtime for time spent in training, with no 4-hour minimum.

### **Section 2. Probationary Periods.**

New Recruits (DPSST certified classifications): Employees hired as Deputy Sheriff Recruit or Jail Deputy Recruit will serve a total of 18 months (545 days) in an initial probationary status, including 365 days as a Recruit and 180 days after promotion to Deputy after successful completion of the recruit program regardless of whether they are new hires or transfer from other County employment. This probationary period is for the purpose of DPSST certification and post-training evaluation. A Recruit will not be promoted to Probationary Deputy status unless the employee has received DPSST certification and successfully completed the FTEP program. At the discretion of the Sheriff, this probationary period may be extended for the purposes of DPSST certification and successful completion of FTEP.

New employees (non-DPSST certified classifications): Employees hired into non- DPSST certified positions serve a 365 day probationary period, regardless of whether they are new



hires or transfer from other County employment. For positions requiring an FTEP program, the probationary period may be extended to account for the FTEP program.

Lateral Hire: Employees hired for a DPSST certified position who comes from another law enforcement agency are considered a lateral hire. A DPSST certified employee hired as a lateral will serve an initial probationary period of 365 days.

During any initial probationary period, an employee does not have just cause or grievance rights for discipline or discharge.

A probationary period may be extended in circumstances where training has not been completed or in circumstances of medical leave or other lawful leave (for example: workers' compensation).

Promotions: An employee serving a probationary period as a result of appointment from a promotion list shall serve a probation of 180 days. A DPSST certified employee who fails to qualify in the new position during the probationary period shall be reinstated to their former position. This provision does not provide for reinstatement to a Recruit position. A non DPSST certified employee who fails to qualify during the probationary period in the new position shall be reinstated to their former position if the position is open.

## **ARTICLE 20 - DISCIPLINE AND DISCHARGE**

### **Section 1.**

Disciplinary action may be imposed upon an employee only for just cause, using the principles of progressive discipline. Disciplinary action may take any of the following forms: written reprimand, temporary pay reduction, suspension, demotion, or dismissal.

Temporary pay reductions shall be limited to no more than six pay periods and a two-step reduction.

Counseling: Counseling is not discipline and may not be protested through the grievance process, except where the Association challenges whether the counseling is disciplinary.. Counseling is a less formal means of resolving issues related to daily operations, interpersonal conflicts, and minor matters of improper conduct. Counseling documents are not placed in an employee's personnel file, however, they may be maintained in the Watch Commander's file and may be mentioned in the next yearly evaluation. Employees may provide a written rebuttal to the counseling within ten (10) calendar days of the employee's receipt of the written counseling memorandum. Upon request, an employee may review and request copies of counseling documents in the employee's Watch Commander's file. After the later of twelve (12) months or the employee's next annual performance evaluation, the counseling will be considered stale if no further counseling or discipline has been imposed for similarly related conduct. Nothing herein prevents or prohibits command staff from discussing operational matters informally with employees.

### **Section 2.**

In the event an employee is under investigation concerning a matter that they reasonably believe may lead to discipline, the following procedural due process shall be followed:

a. Notice of Investigation:

Prior to an administrative investigatory interview, the County will provide the employee and Association with at least 24-hours' notice of an investigatory interview and will describe the nature of the charges or allegations that may result in discipline. If the accuser or witness is an employee, or the accuser's identity is otherwise protected by law, their information may be redacted if necessary to comply with statutes prohibiting the County from disclosing their identity, unless the accuser or witness expressly waives their confidentiality in writing. The 24-hour notice of interview may be less if such notice would jeopardize the successful completion of the investigation through possible loss of material evidence.

The notice of investigatory interview will also include:

- 1) The right to have an Association Representative present,
- 2) The name of the assigned investigator, and
- 3) The date, time and location of the interview.

b. Investigatory Interviews:

Employees subject to an investigative interview will be provided the following:

- 1) The employee may have an Association representative present during the interview so long as the interview is not unduly delayed.
- 2) No more than two interviewers at a time may question the employee.
- 3) The County will record the investigatory interview. A copy of the audio/video recording will be provided to the employee and Association upon request. The employee or Association is not precluded from audio recording; however, notice of recording must be provided in advance and a copy provided to the County upon request.
- 4) In a compelled interview solely for noncriminal purposes, an employee who refuses to respond to questions or to be interviewed shall be informed that refusal may lead to discipline up to and including termination. But for threat of disciplinary action for refusing to answer questions as compelled, the employee being interviewed may not be threatened with punitive action or subjected to offensive language.
- 5) If the employee is compelled to answer questions, the employee will be notified of the expectation to answer all questions fully and truthfully to the best of the employee's ability subject to discipline up to and including termination.

- 6) The interview will be reasonable in time in consideration of the nature of the allegations.
- 7) The employee and Association representative will be permitted reasonable break periods.
- 8) The Association representative may not be required to disclose, or be subject to disciplinary action for refusing to disclose statements made by the employee to the representative for purposes of the representation.
- 9) As soon as it is determined that the employee may be charged with a criminal offense, the employee must be informed of the employee's right to consult with criminal defense counsel with respect to the criminal charge.
- 10) In the event that another interview is needed, the employee and Association will be provided a copy of any audio/video recording or transcript (if prepared) of the prior interview before the subsequent interview takes place.

c. Due-Process/Loudermill Meeting:

Prior to the imposition of a disciplinary action, the employee and Association will be given the opportunity to have a Due-Process/*Loudermill* meeting. The County will provide a written Notice of Intent to Discipline ("Notice of Intent") to the employee and Association at least ten (10) calendar days prior to the Due-Process meeting. The ten (10) calendar day notice period may be waived by mutual agreement between the County and Association. The Notice of Intent will include the following information: (1) the nature of the charges, (2) the findings of the investigation, (3) the policy violations or misconduct sustained, and (4) notice of the disciplinary sanctions being considered. In addition, with its Notice of Intent, the County will provide the employee and Association a full and complete copy of the investigation file, including but not limited to audio/video files.

The Due-Process meeting is voluntary, and the employee may have an Association representative present on their behalf. The employee or Association may also provide a written statement in lieu of the Due-Process/*Loudermill* meeting so long as the statement is provided to the County no later than the scheduled meeting.

d. Internal Investigations:

The County will make reasonable efforts to conduct and conclude internal investigations promptly. The County will notify an employee when an investigation is completed and the result of the investigation. The ability to complete an internal investigation in a timely manner depends on many circumstances that are not

necessarily under the County's control. In the event an internal investigation is not concluded within ninety (90) calendar days from the date of initial notice of investigation the County will provide the employee and Association with a general explanation of the reasons for the delay and the expected duration and completion, not to exceed twelve (12) months in total. Timelines do not apply to those factors set forth in ORS 236.360(6)(b).

The County may reopen an investigation upon discovery of new material information or evidence resulting from the employee's pre-disciplinary response or the evidence could not have been discovered sooner without extraordinary measures.

Appeals shall be processed through the grievance procedure starting at Step II within thirty (30) calendar days of the effective date of the disciplinary action.

**Section 3.**

The County will provide a copy of imposition of any disciplinary action to both the employee and Association outlining the specific reason for such action.

**Section 4.**

If the County has reason to discipline an employee, it shall not be done in manner that is likely to embarrass the employee before other employees or the public. Nor shall said discipline be done in a manner personally demeaning of the employee.

**Section 5.**

A probationary employee shall be afforded the opportunity to grieve alleged contract violations pursuant to Article 21, Settlement of Disputes, of this Agreement; however, this shall not include any matter involving discipline and/or discharge. This provision applies only to an employee's initial probationary period with the County.

**Section 6.**

Written reprimands, shall be considered stale after twenty-four (24) months, and temporary pay reductions after thirty-six (36) months, and cannot be used as a basis for progressive discipline if no further counseling or discipline has been imposed for similarly related conduct, except for notice of rule.

**Section 7.**

No material reflecting critically on an employee shall be placed in an employee's personnel file until the employee has been given the opportunity to acknowledge receipt, whether in person or electronically. The employee shall have the right to attach employee comments to anything placed in the employee's personnel file or Watch Commander's training file.

**Section 8.**

No grievance material shall be kept in the personnel file other than grievances resulting from disciplinary action.

**Section 9.**

Prior to any changes in the Sheriff’s or the County’s policies on complaint and discipline procedures which are applicable to the Sheriff’s Office employees represented by the Association, including but not limited to CCSO Policy 18 (PSU) and the PSU Procedure Manual, the Association shall be given notice of those changes and an opportunity to provide comment or demand to bargain on the changes before they are adopted to the extent required by the bargaining law.

**Section 10.**

At the completion of the investigation, regardless of the findings the employee under investigation and/or the Association may review the PSU investigation file in accordance with PSU policy.

In the event of a public records request for disciplinary, investigatory, or personnel file materials, the County and/or Sheriff’s Office will provide written notice to the employee prior to the release and subject to public records law. The release of the files will follow the procedure outlined in the PSU Procedure Manual.

In the event of disclosure under *Brady* of disciplinary, investigatory, or personnel file materials to a prosecutor, the County and/or Sheriff’s Office will provide written notice to the employee prior to release. The release of the files will follow the procedure outlined in the PSU Procedure Manual.

In the event of a request by a prospective employing law enforcement agency for disciplinary, investigatory, or personnel file materials pursuant to the requirements of HB 4207 (2020), the County and/or Sheriff’s Office will provide written notice to the employee prior to the release and subject to HB 4207 (2020).

**ARTICLE 21 - SETTLEMENT OF DISPUTES**

**Section 1. Grievance and Arbitration Procedure.**

Any grievance or dispute which may arise between the parties involving the application, meaning or interpretation of this Agreement, shall be settled in the following manner:

STEP I. An Association representative, with or without the employee; shall take up the grievance or dispute with the employee’s immediate Division or Watch Commander within thirty (30) calendar days of the earliest date of either the employee grievant or Association Representative knew or should have known of the alleged grievance. The Division or Watch commander shall then attempt to adjust the matter and respond to the Association representative within fourteen (14) calendar days.

STEP II. If the grievance has not been settled, it may be presented in writing by the Association representative to the Sheriff or their designee within fourteen (14) calendar days of the Division or Watch Commander’s response. After receiving notification, the Sheriff or their designee shall respond to the Association representative in writing within fourteen (14) calendar days.

STEP III. If the grievance has not been resolved, it shall be presented by the Association representative to the Board of County Commissioners or its designees within fourteen (14) calendar days of the response of the Sheriff's Office. After receiving notification, the Board of County Commissioners or its designees shall respond in writing to the Association Representative within fourteen (14) calendar days.

STEP IV. Arbitration: If the grievance is not resolved at Step III, the Association may provide written notice and request for arbitration within fourteen (14) calendar days after the reply of the Board of County Commissioners.

If arbitration is requested, the parties shall forthwith agree upon an arbitrator who shall act as sole arbitrator of the dispute. The parties agree that any decision of the arbitrator which is within the scope of this Agreement shall be final and binding upon them. In the event that the parties fail to agree upon the selection of an arbitrator, a list of arbitrators shall be requested from the Employment Relations Board of the State of Oregon. The list requested shall consist of seven (7) arbitrators. Each party shall, in turn, strike one arbitrator at a time from the list until one name remains. The Association takes the first strike.

The arbitrator whose name remains shall act as the arbitrator of the dispute. The arbitrator shall not have authority to modify, add to, alter or detract from the provisions of this Agreement. The arbitrator shall exercise all powers relating to admissibility of evidence, conduct of the hearing and arbitration procedures, provided that in so doing, he shall not contravene any provisions of this Agreement. The compensation of the arbitrator and all expenses incurred by him/her shall be borne by the party against whom the arbitrator's decision is adverse. However, the arbitrator shall have the power to require the parties to share in the expense of the arbitration proceeding in any proportion that the arbitrator deems reasonable.

### **Section 2.**

If the County fails to adhere to the response time outlined above, such failure will allow the grievance to proceed to the next step in the process within the timelines above. Any of the time periods set forth in this Article may be extended upon mutual agreement of the parties.

### **Section 3.**

By mutual agreement, any grievance filed under the terms of this article may be referred to mediation at any time during the grievance process. The Association and the County agree to equally split the cost of such mediation.

## **ARTICLE 22 - MISCELLANEOUS**

### **Section 1. No Discrimination.**

The provisions of this Agreement shall be applied equally to all employees in the bargaining unit. There shall be no discrimination against any employee in the bargaining

unit as to age, sex, marital status, race, disability, color, creed, religion, sexual orientation, national origin, or political affiliation or other status as applicable by State or Federal law. The Association shall share equally with the County the responsibility for applying this provision of the Agreement.

The County agrees not to interfere with the rights of employees to become members of the Association, and there shall be no discrimination, interference, restraint, or coercion by the County, or any County representative, against any employee because of Association membership or because of any other cause prohibited by law.

**Section 2. Department Policy.**

The County agrees to furnish each employee in the bargaining unit with an electronic copy of all existing work rules within thirty (30) days after they become effective. New Association members shall be provided a copy of the rules.

Employees shall comply with all existing rules that are not in conflict with the terms of this Agreement, provided the rules are uniformly applied and uniformly enforced.

The County will comply with ORS 243.698 when the County seeks to change policies or work rules.

**Section 3. Adequate Protection.**

The County is dedicated to the principle of adequate levels of safety and service in the Sheriff's Office. Matters related to safety may be brought to the safety committee or command staff for review.

**Section 4. Copies of Collective Bargaining Agreement (CBA).**

The CBA will be available on the County website. Employees may print a copy at work once per year.

**Section 5. Over/Under Payments.**

Any employee knowingly receiving unauthorized payments has the obligation to call such known errors to the attention of their supervisor. Notwithstanding the foregoing, if the County discovers that an employee is receiving unauthorized payments, it may recover such payments as provided below.

**A. Underpayments**

When an error occurs resulting in a negative impact on the employee, upon notification by the employee in writing to the Payroll Manager, and verification by the payroll division, payment in correction of the error shall be made in the employee's paycheck for the current pay period.

**B. Payments in Error**

When an employee receives payments due to a clerical, technical, or computer error through no fault of the employee, and where the employee did not and could not reasonably

have known that the error occurred, the employee will only be liable for, and the County shall only recover, the overpayment for a period of one-hundred and eighty (180) days preceding the date of discovery of the error. If the discovery of the error is made by the employee who notifies the Payroll Manager in writing within ten (10) working days of discovery of the error that they believe their pay is incorrect and the County does not subsequently make a correction to stop the overpayment by the next payroll period after notification, the employee will not be liable for additional overpayments that occur following the date of notification.

C. Repayment to the County

As soon as the overpayment is known, the County will make every effort to recover overpayments by payroll deduction over a reasonable period of time.

1. The County Payroll Manager shall notify the employee in writing of the overpayment which will include information supporting that an overpayment exists, and the amount of wages and/or benefits to be repaid. For purposes of recovering the overpayments by payroll deduction, the following shall apply:
2. The employee and the County shall meet and attempt to reach mutual agreement on a repayment schedule within thirty (30) calendar days following the written notification.
3. If there is not mutual agreement at the end of thirty (30) calendar days, the County shall implement the repayment schedule stated in subsection (7) below, unless the employee or Association files a grievance under subsection (5) below.
4. If the overpayment amount to be repaid is more than twenty-five dollars (\$25), the overpayment shall be recovered in amounts not to exceed twenty-five dollars (\$25) per payroll period. The employee may elect a higher repayment amount. If an overpayment is less than twenty-five dollars (\$25), the overpayment shall be recovered in a lump sum deduction from the employee's paycheck.
5. An employee who has a factual disagreement with the County's determination that the overpayment has been made to the employee may grieve the determination through the grievance procedure.
6. This article/section does not waive the County's right to pursue other legal procedures and processes to recoup an overpayment made to former employees.
7. Employees can elect to either establish a payment plan through payroll deductions as described in 22(C)(4) above or may elect to pay overpayment in one lump sum. In the event the employee chooses to make a lump sum payment to the County, the County will adjust the amount owed for any tax paid, and



will reduce the amount of employees' wages for the year on the employee's W-2 form by the amount repaid.

## **ARTICLE 23 - USE OF RESERVE PERSONNEL**

### **Section 1.**

The County may maintain a Reserve Program. Typical or similar duties that may be assigned to Reserve Officers on a voluntary/paid basis include, but are not limited to: school athletic events, crime scene security, transporting prisoners within the Patrol Division only and traffic control (accidents/parades). Reserves may be used in conjunction with retirees and/or regular Sheriff's Office members for parks patrol and Lake Oswego Marine Patrol for the length of this collective bargaining agreement and during the period of time utilized for bargaining of a subsequent contract.

Reserve Officers will not be allowed to replace regular fulltime Corrections Officers and/or regular fulltime Deputy Sheriffs due to vacant positions, any absences including, but not limited to, vacations, training, approved leave of absence or to temporarily fill any DPSST certified bargaining unit position.

Reserve Officers may be allowed to work with regular fulltime employees on a voluntary basis and only with the permission of the regular fulltime employee to whom he/she is assigned. Reserves may be assigned with a fulltime employee and paid in emergency situations, (i.e., acts of God, natural and man-made disasters, civil disorders within the County).

### **Section 2.**

The County and the Association agree that Reserve Deputy Sheriffs being hired to perform duties listed in Section 1 must be graduates of the Clackamas County Sheriff's Academy or an equivalent law enforcement academy conducted in the state of Oregon.

### **Section 3.**

Upon request, the Association will be provided by the County every quarter a list of all voluntary and paid duties and hours performed by reserves.

## **ARTICLE 24 - DUES & CHECKOFF**

### **Section 1.**

All employees whose classification or job title is included in Article 1, Recognition, of this Agreement may voluntarily join the Association as a member. The County agrees to deduct dues, fees, costs, charges, and assessments in the amounts determined by the Association from the compensation of each employee who individually authorizes such a deduction in writing on the authorization form provided by the Association. Such authorization shall be terminable upon such notice as is specified in the authorization. The County shall deduct such authorized amount each pay period from each employee's compensation and remit such amounts monthly to the Association Treasurer. ""

**Section 2.**

Employees terminating with less than ten (10) working days in any calendar month will not be subject to dues deduction for that calendar month. ’

**“”Section 3.**

**The County will not be held liable for check off errors but will make proper adjustments with the Association for errors as soon as is practicable if notified within ten (10) days of the error. In no case shall such an adjustment extend beyond the following pay period. In order for both parties to have adequate information on dues check off, an updated list of eligible members of the bargaining unit will be delivered to the Association. Such lists shall include all members paying dues in the previous pay period. Section 4.**

The Association agrees to indemnify, defend, and hold the County harmless from and against any and all claims, suits, orders or judgements brought against the County as a result of the County’s compliance with the provisions of this Article and to reimburse any fees, costs, or expense incurred by the County in connection with the same. Notwithstanding the foregoing, the County will cover its costs associated with notifying the Association of any such claim.

**ARTICLE 25 – WORKERS’ COMPENSATION**

**Section 1.**

All County employees will be insured under the provisions of the Oregon State Workers’ Compensation Act for injuries that arise out of and occur in the course of employment for the County. The County is self-insured for workers’ compensation claims. The County and Association acknowledge the right of employees to receive workers’ compensation benefits as provided by state law and this Article.

**Section 2.**

The County will compensate the employee for injuries that arise out of and occur in the course of employment where the claim has been accepted in an amount equal to the injured employee’s regular pay, including any regular additional pay, such as longevity, that the employee was receiving at the time of the injury for up to and including 180 days from the date of injury. This wage continuation provision will continue for up to and including 180 calendar days from the date of injury, and is subject to the following conditions:

- A. The day of injury shall be considered a workday, and the employee will receive their normal salary for that day.
- B. The waiting period as stated in ORS 656.210 will be charged to sick leave or other accrued leave if available unless total temporary disability exceeds fourteen (14) consecutive days. Then, workers’ compensation covers from the first day.
- C. The employee’s regular pay will be subject to all standard deductions, such as income tax and employee benefits, as required or allowed under Federal and State Law.

- D. While the employee is receiving wage continuation under this provision, the employee will continue to receive all other County health and welfare benefits the employee was enrolled in at the time of the injury unless prohibited by law, rule, and regulation or provider contract.

**Section 3.**

After one hundred and eighty (180) calendar days from the date of injury, the Board of County Commissioners retains the discretion to continue payment and benefits beyond that guaranteed under the statutes governing workers' compensation benefits. If the injured employee requests wage continuation beyond one hundred and eighty (180) calendar days from the date of injury, the injured employee will be required to present to the Board of County Commissioners through its designee Human Resources, a physician's statement setting forth the nature of injuries, current condition, and anticipated length of absence or date of return.

After one hundred and eighty (180) calendar days from the date of injury, the employee may elect to use accrued leaves to supplement the difference between workers' compensation benefits and the employee's regular pay (including any regular additional pay).

**Section 4.**

Full medical and dental insurance coverage shall be provided for employees for a minimum of twelve (12) months from the date of injury as long as employee remains employed during this period. Employees are responsible for any applicable insurance premium cost share as provided for in Article 11. Further coverage shall be at the discretion of the Board.

**Section 5.**

The County may request the employee to return to modified or light duty, subject to medical release. An injured employee that refuses to return to modified or light duty may be subject to loss of reinstatement rights. (See also Article 37, Light Duty, Section 3.)

**ARTICLE 26 - REGULAR PART-TIME EMPLOYEE BENEFITS**

Benefits for regular part-time employees covered by this Agreement shall be as follows:

- A. Employees working an average of twenty (20) hours per week shall receive health insurance coverage as if they were full-time employees.
- B. Employees working an average of thirty (30) hours per week shall receive dental insurance coverage as if they were full-time employees in addition to health insurance.
- C. Employees working an average of thirty (30) hours per week shall be covered by the County's life insurance and disability insurance policies in addition to health insurance.
- D. Part-time employees must serve a waiting period two (2) full calendar months consistent with County policy to qualify for the above benefits.

- E. Employees working less than full-time will be eligible for PERS if they meet the requirements of ORS Chapter 237.
- F. Part-time employees will receive seniority, vacation, sick and other accruals prorated based on budgeted FTE.
- G. Employees shall be eligible to receive merit/step increases and time in service for vacation accrual and longevity pay as of the first of the month based on accumulated calendar months of service.
- H. Employees shall receive paid holidays only for those holidays which are observed on days the employee is regularly scheduled to work.
- I. Overtime will only be paid for all authorized work performed in excess of forty (40) hours in any work week or if the employee is required to work over twelve (12) hours on a regularly scheduled work day. The County and employee may also agree to a flexible schedule for a particular work week which does not create overtime obligations unless required by operational need.
- J. All other provisions of this Agreement not specifically modified above shall apply to part-time employees.

**ARTICLE 27 - COMPENSATORY TIME OFF**

If agreed to by an employee and their supervisor, compensatory leave may be taken in lieu of pay for overtime. Such leave shall not accrue beyond forty (40) hours.

**ARTICLE 28 - PUBLIC EMPLOYEES RETIREMENT SYSTEM**

**Section 1. Employer “Pick-up” of Employees PERS/OPSRP Contribution.**

Eligibility for Public Employees Retirement System (PERS) and Oregon Public Service Retirement Plan (OPSRP) is subject to ORS Chapters 238 and 238A. The County agrees to pay employee’s share of contribution on behalf of employees as set by Oregon legislature.

In the event that during the life of this agreement it becomes impossible for reasons of law, regulation or decisions for the County to pay the six percent (6%) employee contribution to PERS, then that sum shall be contributed on behalf of the employee to a retirement benefit, such as a state retirement account, County deferred compensation plan, or other individual retirement account. The intent of the parties is that the employees will be made whole in terms of the six percent (6%) retirement contribution by the County.

**Section 2. Notice of Intent to Retire.**

- 1. Employees are requested to provide a ninety (90) day written notice of intent to retire.
- 2. Retire/Rehire program:
  - A. The parties recognize that there can be a large time lag between retirements and hiring new employees to meet operational need. The intent of this

program is to improve the efficiency with attrition and maintaining qualified staffing levels. Thus, as soon as the position filled by a rehired retiree is filled by a regular employee, the County may end the employment of the rehired retiree. The County will attempt to provide two weeks' notice prior to the rehire retire position ending.

- B. For DPSST certified and non-certified, employees who provide at least twelve (12) months' notice, but no more than eighteen (18) months' notice, of commitment to retire under PERS or OPSRP, the County, at its discretion, may offer the opportunity to return to work to employees who have officially retired from the County and submitted their retirement to PERS for a "Rehire Period." The Rehire Period shall be up to an additional one hundred and eighty (180) calendar days'; or an amount of time not extended past December 31, 2024 for employees rehired under Senate Bill 1049 (2019). The County may end the Rehire Period at its discretion at any time. Within thirty (30) days of notice from the employee, the County will give notice to the employee that they are selected for the program. The County's decision to not select an employee for the Retire/Rehire program is not subject to the grievance procedure. An employee who is not selected for the Retire/Rehire program may withdraw their notice to retire within thirty (30) days of the County's notice non-selection and the conditions of the program will not apply to that employee.
- C. Employees selected for the Retire/Rehire program are subject to the following:
  - 1) Employee loses their seniority upon retirement. Seniority within the employee's assigned job/classification resets to the rehire date.
  - 2) Employee will have no more than five (5) calendar days off between retirement and returning to work to initiate the new employment relationship.
  - 3) Employee will not be eligible to receive Health and Welfare benefits under Article 11, including voluntary benefits; however, the County will continue to provide EAP. Rather, employee may receive Health and Welfare benefits by enrolling in the IRMT plan. The County will continue to pay the employee's IRMT contribution during the Rehire Period as set forth in Article 11.
  - 4) Employee will be an Association member with limited benefits:
    - a) Employee will be afforded the rights as provided under Article 20 for alleged disciplinary actions, however, employee retains no rights to grieve discipline or discharge past Step 2 of Article 21, with final decision by the Sheriff. The County may end employment for operational need not related to discipline and layoff and recall provisions of the CBA and County Code will not apply. If the

investigation or grievance process exceeds the employment period, the employment status ends even if the investigation or grievance process is unresolved.

- b) Employee may be returned to any previously held classification subject to operational need. If not returned to their classification upon retirement, employee will be paid the step closest to their previous wage. Employee will earn compensation including incentives as applicable for the assigned work. The County, at its discretion, may suspend an employee's specialty assignment.
  - c) Sick Leave will be earned and used consistent with Oregon Paid Sick Leave law.
  - d) Employee is eligible for Holidays as provided by Article 7..
  - e) Employee will not earn any additional leave accruals except for two (2) personal leave days banked upon rehire. Such days have no value upon separation of employment. Employee may also request time off without pay subject to supervisory approval.
  - f) Employee is not eligible for compensatory time accrual.
  - g) Employee is not eligible for tuition reimbursement.
  - h) Employee is eligible for all terms and conditions of this Agreement unless otherwise provided above.
- D. Upon receiving such notice from an individual employee, the County will initiate hiring to adjust for the appropriate staffing level as determined by the County.
- E. The County is not precluded from offering work to retirees as a temporary employee.

## **ARTICLE 29 - LAYOFF**

### **Section 1.**

This Article is to apply to all employees covered by this collective bargaining agreement. Where the term "Sheriff" is used, it shall also refer to the "appointing authority" if an employee is in another Department.

The Sheriff may lay off an employee when the Sheriff determines it necessary to abolish a position or that a shortage of funds or work exists. Layoff shall be by specific job classification and shall be in ascending order (bottom to top) of an employee's seniority while in the classification, as described in this Article for purposes of layoff. An employee shall be given written notice of a pending layoff at least fifteen (15) calendar days before

the effective date stating the reasons for the layoff and the fact that an election to displace another employee pursuant to Section 3 of this Article must be made within six working days of receipt of said notice.

**Section 2.**

Layoffs shall occur in the following manner:

- A. The Sheriff shall determine the specific positions to be vacated.
- B. The Sheriff will notify, in writing, all affected employees and the Association at least fifteen (15) calendar days prior to the effective date of the layoff of all employees in all affected classifications.

**Section 3.**

Where an employee is laid off, including former bargaining unit members promoted to non-represented positions within the Sheriff's Office, that employee may elect to displace (bump) an employee in another job classification at the same or a lesser pay range provided that the employee is qualified to perform the duties of the position and the employee electing to displace another has a greater seniority as defined below. Layoff and bumping shall occur within a department only.

- 1) For layoff bumping purposes in DPSST certified law enforcement positions, an employee's seniority shall be measured from the date and time they were hired or promoted into the classification into which they are bumping and shall include all time as a Department employee in that classification, plus all time as a Department employee in any equal or higher classification, whether in a represented or non-represented classification.
- 2) For layoff bumping purposes in non-DPSST certified positions, seniority shall be measured by the date and time of hire by the Sheriff's Office.
- 3) When layoff bumping occurs, the "bumped" employee who is displaced is the employee within the job classification with the least Department seniority, measured from the date and time of hiring or promotion into that classification, including all time as a Department employee in that classification, plus all time as a Department employee in any equal or higher classification, whether in a represented or non-represented classification.

Employees who are reinstated from a layoff register retain previously accrued seniority, not including the time on layoff status while not working for the Sheriff's Office.

For purposes of this Article, for DPSST certified law enforcement classifications, "qualified to perform the duties of the position" means that the employee has previously held the classification with this Department.

If an employee exercises a layoff bumping right to a position where they had not completed the probationary period, they must complete the remaining time in probationary status.

An employee who transferred from a regular-status position as a Jail Deputy to a position as a Deputy Sheriff, or from a regular status position as a Deputy Sheriff to a position as a Jail Deputy, and is then laid off, may elect to displace (bump) an employee in the prior classification previously held, if the employee electing to displace another has greater seniority as defined in this section.

#### **Section 4.**

Employees who held training positions as Recruit Deputy Sheriffs or Recruit Jail Deputies and successfully transferred to Deputy Sheriff or Jail Deputy classifications shall be credited with additional seniority for layoff and/or layoff bumping purposes as provided by the following rules:

- (a) For employees who have held positions as Recruit Deputy Sheriff and/or Deputy Sheriff, seniority for layoff or layoff bumping into these classifications is measured from the earlier hire date in either of these two classifications;
- (b) For employees who have held positions as Recruit Jail Deputy and/or Jail Deputy, seniority for layoff or layoff bumping into these classifications is measured from the earlier hire date in either of these two classifications;
- (c) For employees who have been employed as a Recruit Jail Deputy and/or Jail Deputy prior to being employed as a Recruit Deputy Sheriff and/or Deputy Sheriff, seniority for purposes of layoff bumping into a position as a Recruit Jail Deputy or Jail Deputy includes all time employed in any of those positions. This “blended Seniority” under Section 4(c) of this Article applies only to bumping resulting from layoff, and not to the identification of positions for layoff under Article 29, Section 1. This paragraph applies in a similar manner to employees who have been employed as a Recruit Deputy Sheriff and/or Deputy Sheriff prior to being employed as Recruit Jail Deputy and/or Jail Deputy.

#### **Section 5.**

When an employee displaces another employee under the conditions set forth above, the employee taking the position will be paid the rate of pay within the pay range of the employee’s new assignment and classification which most nearly approaches the rate of pay actually earned in the job from which the employee was laid off.

#### **Section 6.**

Employees who have been laid off or who have displaced another employee shall be placed on the layoff register, for the classification held at the time of their layoff, in order of layoff seniority including time spent in an equal or higher classification. Reinstatement shall be offered to those employees on the layoff list in descending order from top to bottom of layoff seniority possessed at the time of layoff prior to hiring any new employees. In other words, recall will occur so that the last employee laid off will be the first recalled. An employee’s duration of placement on the layoff register shall not exceed twenty-four (24) months from the employee’s layoff date.



Notice of recall shall be made by certified mail. Employees shall be responsible for keeping the County informed of their correct address. Failure to respond to such recall notice within five (5) calendar days of receipt of the notice shall cause loss of recall eligibility.

Employees recalled shall have accrued but unused sick leave at the time of lay off restored.

**ARTICLE 30 - TUITION REIMBURSEMENT**

Subject to a maximum of one thousand five hundred dollars (\$1500.00) per employee per fiscal year, the County will reimburse the employees for the cost of books and tuition for the completion of any approved course of study directly related to their job. Courses must be from an accredited institution such as a community college, college or university. Proof of successfully passing an approved course must be submitted prior to reimbursement. Exceptions must be approved by the Sheriff in advance of the course of study.

**ARTICLE 31 - INCENTIVE PROGRAM**

**Section 1. Incentive Schedule.**

In order to maintain and improve officers' law enforcement skills, as well as to increase the participation of officers in the life of the community, the County will implement an incentive program consisting of training and community service, Department of Public Safety Standards and Training certification, superior firearms qualification and supervisory certification. The following premiums are paid subject to the conditions of this Article:

INCENTIVES	Monthly Amounts 7/1/2019	Monthly Amounts 7/1/2020	Monthly Amounts 7/1/2021	Monthly Amounts 7/1/2022
DPSST Intermediate Certification or	\$ 42.44	\$ 43.54	\$44.32	COLA
DPSST Intermediate Certification w/Bachelors	\$ 72.11	\$ 73.98	\$75.31	COLA
DPSST Intermediate Certification w/Masters or Ph.D.	\$ 84.85	\$ 87.05	\$88.63	COLA
DPSST Advanced Certification	\$ 93.04	\$ 95.46	\$ 97.18	\$146.00
DPSST Advanced Certification w/ Bachelors	\$158.17	\$162.28	\$165.21	\$250.00
DPSST Advanced Certification w/ Masters Phd	\$186.04	\$190.87	\$194.31	\$287.50
Marksmanship Pay	\$ 42.44	\$ 43.54	\$ 44.32	COLA
Educational @ 75 hrs. annually or	\$134.42	\$137.91	\$140.40	COLA
Educational @ 50 hrs. annually or	\$ 93.04	\$ 95.45	\$ 97.18	COLA
Educational (@ 25 hrs. annually	\$ 46.51	\$ 47.72	\$ 48.58	COLA
DPSST Supervisory Certificate	\$106.07	\$108.83	\$110.79	\$163.00
DPSST Supervisory Certificate w/Bachelors	\$180.34	\$185.03	\$188.36	\$278.00

<b>INCENTIVES</b>	<b>Monthly Amounts 7/1/2019</b>	<b>Monthly Amounts 7/1/2020</b>	<b>Monthly Amounts 7/1/2021</b>	<b>Monthly Amounts 7/1/2022</b>
DPSST Supervisory Certificate w/Masters PhD	\$213.16	\$218.70	\$222.63	\$329.00
Community Service Officers w/AA degree	\$ 42.44	\$ 43.54	\$44.32	COLA
Community Service Officers w/BA degree	\$ 93.04	\$ 95.46	\$97.18	COLA
IAI Certified Crime Scene Investigator (Basic)	\$ 26.39	\$ 27.07	\$27.57	COLA
IAI Certified Crime Scene Investigator (Inter)	\$ 39.91	\$ 40.94	\$41.68	COLA
IAI Certified Crime Scene Investigator (M/phd)	\$ 67.82	\$ 69.58	\$70.84	COLA
IAI Certified Crime Scene Analyst (Inter)	\$ 39.91	\$ 40.94	\$41.68	COLA
IAI Certified Crime Scene Analyst (Intermediate w/ Bachelors)	\$ 67.82	\$ 69.58	\$70.84	COLA
IAI Certified Crime Scene Analyst (Intermediate with Masters/PhD)	\$ 79.79	\$ 81.86	\$83.34	COLA
IAI Certified Senior Crime Scene Analyst (Advanced)	\$ 87.51	\$ 89.78	\$91.40	COLA
IAI Certified Senior Crime Scene Analyst (Advanced w/Bachelors)	\$148.76	\$152.62	\$155.37	COLA
IAI Certified Senior Crime Scene Analyst (Advanced with Masters/PhD)	\$174.97	\$179.52	\$182.75	COLA
IAI Certified Latent Print Examiner	\$148.76	\$152.62	\$155.37	COLA
IACIS Certified Forensic Computer Examiner	\$ 87.51	\$ 89.78	\$91.40	COLA
IACIS Certified Forensic Computer Examiner (w/Bachelors)	\$148.76	\$152.62	\$155.37	COLA
IACIS Certified Forensic Computer Examiner (w/Masters/PhD)	\$174.97	\$179.52	\$182.75	COLA
IACIS Certified Mobile Device Examiner	\$ 26.39	\$ 27.07	\$27.57	COLA
IACIS Certified Advance Windows Forensic Examiner	\$ 26.39	\$ 27.07	\$27.57	COLA

The above amounts will increase by an amount equal to the pay plan increases provided in Article 12 as noted above.

**Section 2. Marksmanship Pay.**

To receive marksmanship pay, a DPSST certified employee must score a minimum of eighty-five percent (85%) on the annual spring firearms qualification course. The content/criteria of the test will be determined by CCSO Firearms Training Unit, subject to approval by the Undersheriff. The employee may test for marksmanship pay only one time

per year and there will be no make-up courses. The County shall pay for all authorized fees incurred at the firing range.

An employee who scores a minimum of eighty-five percent (85%) on this qualification will receive additional compensation as described above effective the pay period following qualification. This pay will remain in effect for one year, or until the effective date of the next annual spring firearms qualification whichever is later.

Practice ammunition: DPSST certified employees will be provided six (6) boxes of practice ammunition per fiscal year subject to available supply for use at the CCSO facility, but no more than two (2) boxes per visit. No later than May 15 of each year, the Department will notify the Association if it anticipates a shortage of ammunition. The Department retains the sole discretion to determine if a shortage exists. Upon request by the Association, the parties may meet and confer about an adequate supply of ammunition.

### **Section 3. IAI and IACIS Certifications.**

Effective in the first pay period of the month following execution of this agreement, Employees who use the listed certifications in the regular duties of their classification will receive the monthly values noted above. Employees receiving any DPSST certification are not eligible for any of the below certifications.

Certifications: (inclusive of basic/intermediate/advance and education: see chart Section 31.1)

1. IAI Certified Crime Scene Investigator
2. IAI Certified Crime Scene Analyst or Senior\*  
(\*If receiving Analyst incentive, the Investigator incentive is not paid.)
3. IAI Certified Latent Print Examiner
4. IACIS Certified Forensic Computer Examiner
5. IACIS Certified Mobile Device Examiner
6. IACIS Certified Advanced Windows Forensic Examiner

### **Section 4. DPSST Certification.**

Employees who obtain a DPSST Intermediate Certificate in law enforcement or corrections will be paid additional compensation as described above.

Employees who obtain a DPSST Advanced Certificate in law enforcement or corrections will be paid additional compensation as described above.

Certification pay will commence effective the pay period following submission of a successful application for certification to DPSST.

This incentive pay is not cumulative and members are eligible for one level only.

### **Section 5. Education Pay.**

All employees of Clackamas County Sheriff's Office who are members of the bargaining unit are eligible to participate in Education Pay.

This incentive pay is not cumulative and members are eligible for one level only.

Employees wishing to participate in education pay must receive prior approval of their courses.

Employees will receive ten (10) hours credit for each successfully completed quarter hour of college credit classes.

Education credits will normally be granted for any college training that is job-related. Credits will also be awarded for non-job-related college courses if they are required courses as part of a degree program in a job-related field. Approved jobs related training courses attended during off duty hours will count towards training points.

The Education pay program is separate from the Tuition Reimbursement Program. The fact that a training or college course is approved for training points does not necessarily mean that it will be approved for tuition reimbursement.

Education hours will be compiled by the Training Officer and submitted to payroll prior to June 15 each year. Pay will commence with the first payroll period in July and will continue for a period of one (1) year.

#### **Section 6. Supervisory Pay.**

Employees who complete the DPSST Supervisory Certification Program shall be granted additional compensation as described above. This incentive pay is not cumulative employees are not eligible for other DPSST incentive pays.

#### **Section 7. Community Service Officers with AA or BA degree.**

Community Service Officers who attain an Associate's degree shall be paid additional compensation as described above. Community Service Officers who attain a Bachelor's degree shall be paid additional compensation as described above. Community Service Officers applying for compensation by way of this Section shall have completed their degree work in a law enforcement field or an approved course of study related to a law enforcement career. This incentive pay is not cumulative and employees are eligible for one level only.

#### **Section 8. Detective and Evidence Technician Incentive Pay Program.**

**Description.** For the classifications of Detective and Evidence Technician, a Detective or Evidence Technician employee may receive the following incentive pay subject to exceeding expectations in yearly evaluations as provided below.

**Amounts of Incentive Pay.** This is a tiered incentive pay program:

2.5% of base pay for employees in continuous service with the classification between 5 year (60 months) to 10 years (120 months).

5.0% of base pay for employees in continuous service with the classification for over 120 months.

**Review Time Period.** Incentive pay will be based on previous year employee evaluation as defined below.

**Qualification and Yearly Evaluation:**

1. Rotation Within Various Units of Detective Division.

Detectives may be rotated through the various units when necessary to suit the needs of the Sheriff's Office. Seniority is still a consideration with regard to shift schedules and days off.

2. Evaluation Ratings.

The standard performance evaluation form will be used to evaluate and document the employee's performance for the year. An employee must receive a "Meets" or "Exceeds" rating on their performance evaluations and have the required time in grade to be eligible to receive the incentive pay.

Detectives or Evidence Technician will be evaluated on the following: report reviews, investigative audits, case reviews, training file contents and supervisory input. Other considerations may include: response (when available) to the needs of the Sheriff's Office while off duty, assisting uniform personnel in the field when on duty and available, closely monitoring dispatch calls for service while on duty and in the field, attending required training (unless excused), and assisting with the training needs of the Sheriff's Office when requested.

**Appealing Decisions of "Does not Meet Criteria."** If an employee does not qualify for the Incentive Pay Program because their evaluation was below the rating criteria set forth above, then the employee may question the determination and have the opportunity to be heard. Management would typically follow its chain of command in responding to the employee starting with a Lieutenant then up to the Division Commander. The Division Commander's decision is final. The Association and employee agree that the employee has no further avenue for review and cannot use the grievance process. An employee should check with their supervisor midway through their evaluation period and inquire as to their performance.

**Changes to Incentive Plan.** Any alterations to this plan deemed necessary will only be made through negotiations between the County and the Association.

**Section 9. Contract City Detective Incentive Pay.**

The Detectives who are assigned full-time to the cities of Happy Valley or the City of Wilsonville shall receive premium pay in the amount of five percent (5%) of the employee's base pay as set forth in the pay plan for the period of time the employee is assigned to that contract city.

In consideration of the additional compensation paid to contract city Detectives, the Sheriff shall have the authority to move said Detectives within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues associated from the move.

Because the Contract Cities Oversight Committee brought forth this issue and the County is only serving as its administrator, the contract cities retain sole discretion to decide whether to continue, modify or cease the incentive pay program. In the event the contract cities decide to modify or cease this incentive pay program, the County will provide the Association with thirty (30) calendar days' advance notice of the contract cities' decision; however, the contract cities' decision is not a subject of bargaining or grievance.

**Section 10. Detective Sergeant Incentive Pay and CCITF Sergeant Pay**

Sergeants assigned to CCITF shall receive additional compensation equivalent to five percent (5%) of their base pay for the length of their assignment.

Sergeants assigned to the Investigation Division shall receive additional compensation equivalent to six percent (6%) of their base pay for the length of their assignment. However, on the first day of the month after ratification the premium will be reduced to five percent (5%). This incentive pay does not apply to Sergeants assigned to CCITF (*Clackamas Co. Interagency Task Force*).

In consideration for the additional compensation paid to Sergeants assigned to the Investigation Division the Sheriff shall have the authority to move the Sergeants within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move.

**Section 11. Field Training Officer Pay.**

Any employee assigned the responsibility of a Field Training Officer or a person supervising a Field Training Officer shall receive premium pay in the amount of ten percent (10%) of the employee's base pay as set forth in the pay plan for the length of the assignment.

The following classifications are eligible for Field Officer Pay:

- a) Jail Deputy
- b) Jail Sergeant
- c) Deputy Sheriff
- d) Sergeant
- e) Detective
- f) Community Service Officer
- g) Evidence Technician
- h) Office Specialist 1 & 2
- i) Any other classification that uses an approved Field Training and Evaluation Program (including the above listed).

**Section 12. Bilingual Pay.**

Any employee who is fluent in Spanish, Russian, American Sign Language, or a language agreed upon by the CCPOA and the Sheriff and in the course of the employee's duties uses that language shall receive premium pay in the amount of five percent (5%) of the employee's base pay as set forth in the pay plan.

Proficiency will be established by a Human Resources approved testing process and/or by the FBI. All costs for initial testing, documentation and retesting shall be borne by the Sheriff's Office. Employees may be required to recertify fluency every five (5) years.

**Section 13. Motor Deputy Pay.**

Employees may be assigned to Motorcycle Patrol. In consideration of the additional specialized training and experience for employees working in the assignment of Motorcycle Deputy, employees shall receive premium pay in the amount of five percent (5%) of the employee's base pay as set forth in the pay plan for that period of time that the employee is assigned as a Motor Deputy.

In consideration of the additional compensation paid to Motor Deputies, the Sheriff shall have the authority to move the Motor Deputies within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move.

**Section 14. Canine Assignment and Premium Pay.**

Deputies may be assigned to Canine duties at the discretion of the Department. It is anticipated that Canine Deputies will provide maintenance of their assigned dogs, including feeding, grooming, and other normal dog maintenance responsibilities, outside the Canine Deputy's normal work hours. The parties have evaluated the time needed for routine care and have determined that four (4) hours per week [thirty-four (34) minutes a day] is reasonable and sufficient to meet those responsibilities. In consideration of this activity, Canine Deputies shall receive one (1) hour release time per working day when on a 4/10 schedule for these duties. If the work schedule differs from a 4/10 schedule, the Deputy will receive the equivalent of 4 hours per week of release time divided into the workday schedule. Canine Deputies may also be required to work a full week schedule and would be eligible for overtime for routine care.

Canine duties require specialized training and experience. Deputies assigned to Canine Patrol will receive an additional incentive of five percent (5%) base pay per pay period during the period of the assignment.

In consideration of the additional compensation paid to Canine Deputies, the Sheriff shall have the authority to move the Canine Deputies within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move.

**Section 15. SWAT/HNT, CERT, EDU/Bomb, Dive Rescue Team.**

Employees assigned to SWAT/HNT, CERT, EDU/Bomb, and Dive Rescue Team are eligible for additional premium pay.

Effective in the first pay period of the month following execution of this agreement, employees serving as a qualified member in good standing will receive a monthly incentive of \$54.16. The Sheriff shall have the authority to discontinue employee participation in these programs as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move. The above amounts will increase by

an amount equal to the yearly pay plan increases provided in Article 12 on July 1, 2021 (\$55.13) and July 1, 2022.

**Section 16. Forensic Artist Collateral Duty Premium Pay.**

Any employee assigned the collateral duty of a Forensic Artist shall receive premium pay in the amount of one percent (1%) of the employee's base pay as set forth in the pay plan for the length of their assignment.

The Sheriff retains the right to determine the appropriate number of Forensic Artists from the qualified CCPOA members. In consideration of the additional compensation paid to the Forensic Artist(s), the Sheriff shall have the authority to end the collateral duty assignment without a demand from the Association to bargain the decision or any pay issues.

**ARTICLE 32 – EQUIPMENT**

**Section 1. Repair or replacement of personal property or equipment.**

The County shall repair or replace an employee's personal property or equipment which the County requires the employee to have while working for the County and which is lost, damaged or stolen beyond usable or safe operating quality in the line of duty except as such is due to the employee's negligence.

**Section 2. Vests.**

The County shall provide DPSST certified employees with either a vest rated at Threat Level IIA (with sharp object protection) or Threat Level IIIA flexible (with side panels) at the employee's option, and the County will provide up to \$125 for upgrades at the time of replacement or new purchase. The vests shall be replaced per the manufacturer's warranty of performance guidelines (currently 5 years). So long as the vest satisfies the required threat level, the County shall have discretion in selecting or approving vests including matters such as the supplier, price, make or model of the vests. If a qualified employee wants a vest not selected or approved by the County, it shall be the employee's responsibility to pay any differences beyond what the County will pay.

**Section 3. Equipment Reimbursement.**

Effective January 1, 2016, the County will reimburse DPSST certified uniformed employees in an amount up to ninety (90) dollars per calendar year for the purchase of belts, holsters, footwear, gloves, flashlights, handcuffs, radio equipment, vest upgrade, duty belt gear and approved uniform apparel with insignia that is not provided by the Sheriff's Office (hats, uniform sweaters, external vest carriers and mock turtle necks) to be used in carrying out their assigned duties. The employee shall provide to the County proof of purchase for the equipment items to receive the reimbursement.

Requests for reimbursement with original receipt(s) attached shall be submitted between January 1 and January 15 for equipment purchased in the previous calendar year.



## **ARTICLE 33 - CLEANING AND CLOTHING ALLOWANCE**

### **Section 1. Uniform Cleaning.**

DPSST Certified employees and Community Service Officers required to wear a uniform shall be paid \$20 per month as a cleaning allowance.

### **Section 2. Clothing Allowance.**

Detectives shall receive a uniform allowance of \$600 per year, which shall be paid at a rate of \$50 per month on the first paycheck of each month. Detectives do not receive the uniform cleaning allowance.

## **ARTICLE 34 - LEGAL DEFENSE FUND**

Legal Defense Plan: For DPSST certified employees, the County will contribute towards the PORAC Legal Defense Plan that provides each of its members with an attorney as a direct result of criminal charges, investigation of use of deadly force, or a grand jury appearance against the member arising out of the member's involvement in the scope of regular performance of his or her duty as an employee for the County.

- a. Effective the month following execution of this agreement the County will contribute up to \$6.00 per month toward the premium for each DPSST certified officer paid by reimbursement of invoice provided by the Association for the "PORAC" Plan. Invoices by the Association may be quarterly.
- b. The Association will provide a complete legal defense plan description to the County and advanced written notice to the County of any changes to the plan. Substantive changes in plan benefits are subject to notice and bargaining under ORS 243.698.
- c. The County recognizes that it is not entitled to the work product of the attorneys involved in this program. The County recognizes there exists an attorney client privilege between the attorney and the member.

## **ARTICLE 35 - SAVINGS CLAUSE**

Should any Article, Section, or portion thereof, of this Agreement be determined to be unlawful and unenforceable by statute or constitutional amendment, by administrative rule or federal regulation or by any Court of competent jurisdiction or ruling by the Employment Relations Board, such determination shall apply only to the specific Article, Section or portion thereof, directly specified in the determination, the County may suspend the invalidated Article, Section or portion thereof and, the parties agree immediately to negotiate a substitute, if possible, for the invalidated Article, Section or portion thereof under ORS 243.698.

## **ARTICLE 36 - ASSOCIATION RIGHTS**

### **Section 1. Association Executive Board.**

Employees selected by the Association to act as Association representatives for grievance processing and other labor matters, shall be known as the Association Executive Board.

The names of employees so designated shall be certified in writing to the County by the Association.

**Section 2. Executive Board Release Time.**

The Executive Board members of the Association may investigate and process grievances and other labor related matters during working hours, within reasonable limits, and without loss of pay, providing it does not conflict with Sheriff's Office operations. In order to ensure that there is no conflict with Sheriff's Office operations, an absence from duty for the purposes of investigating and processing grievances or other labor related matters, must be approved in advance by a Lieutenant.

Executive Board members may attend regular Executive Board meetings during working hours without loss of pay. Regular Executive Board meetings are typically scheduled for one hour on a monthly basis, however, meetings may last up to 90 minutes due to the press of business. The Association may also from time to time schedule a second regular meeting in any individual month. The Association will provide notification to the County of the date and time of Executive Board meetings held during working hours.

The Association will exercise care to cooperate with the County to make sure there is no undue disruption to County operations caused by the operation of this section.

To accommodate the availability of the Association President to perform Association business, at the mutual agreement of the Association President and the Sheriff, the Association President will be assigned to a shift which includes a majority of its hours Monday through Friday, 8:00 a.m. to 5:00 p.m. Prior to the commencement of the shift bid, the President will meet with management to determine the President's shift assignment.

The Association shall have the right to have a bulletin board and a mailbox in each facility occupied by the Sheriff's Office.

**Section 3. Association Negotiating Committee.**

Employees selected by the Association to act as Association representatives for negotiations, shall be known as the Association Negotiating Committee. The names of employees so designated, up to a total of five (5) employees, shall be certified in writing to the County by the Association.

**Section 4. Negotiating Committee Release Time and Paid Bargaining Time.**

Negotiating Committee members may attend negotiation sessions and caucuses held at the same site up to one hour before and during the sessions without loss of pay if held during working hours. If such negotiation sessions or caucuses are held outside of the member's working hours, the member will be paid at the member's regular rate of pay including overtime if applicable. Paid time or release time for negotiating sessions or caucuses will include all time in mediation sessions.

**Section 5. County- Association Meetings.**

The County or its designee(s) may meet at mutually convenient times with the Association Executive Board, Negotiating Committee or Association officers. All meetings between the County or its designee(s) and the Association shall be held during working hours

whenever possible and without loss of pay. The purpose of the meetings may be to discuss issues which would improve the relationship between the parties.

## **ARTICLE 37 - LIGHT DUTY**

### **Section 1.**

Employees have an ongoing responsibility to notify their supervisor if they are unable to fully perform their regular duties due to injury or illness. The nature of DPSST certified law enforcement positions requires that each officer be physically able to assist fellow officers in time of need. Employees are not required to inform their supervisor of confidential medical information, only the limitations that have occurred because of a medical condition. The County may verify medical information but must do so in a manner that protects medical confidentiality and complies with Federal law (HIPAA) and EPP #42 (Personnel Records).

### **Section 2.**

Training, and specifically defensive tactics training, is an integral part of regular job duties for DPSST certified law-enforcement personnel. An injury may require limited participation in defensive tactics training. The practice sometimes referred to as “tape and play,” is a mutually accepted practice that enables an employee to participate in limited defensive tactics training while simultaneously identifying injuries that must be protected from aggravation during the training activity. Where no physical participation in defensive tactics training is possible due to the extent of illness or injury, mere observation of the training is not an effective means of participation. Employees will be expected to participate in the next scheduled training after their illness or injuries have resolved.

Issues of fitness for duty, including fitness for defensive tactics training, cannot be resolved without the involvement of trained medical professionals who are both knowledgeable about the extent of illness/injury and the specific job duties or training activities of the individual. Questions of fitness for duty will be referred to medical professionals using the County’s standard procedures. Fitness for duty issues (other than minor injuries) should be addressed in consultation with Human Resources, on an ongoing basis and prior to the day of scheduled defensive tactics training.

### **Section 3.**

The rigorous nature of job duties in DPSST certified positions at the Sheriff’s Office creates the need for additional light duty opportunities, over and above the standard County policy limiting light duty to ninety (90) days except in unusual circumstances (EPP #9). For this reason, an additional ninety (90) days of light duty will be available to employee in DPSST certified positions [for a total of one hundred (180) days], upon application to the Sheriff and his approval of such additional light duty. Approval will be contingent on continued available light duty. The Sheriff will grant the additional light duty where (1) it appears to be medically necessary and (2) there is a reasonable probability that the additional light duty will allow the employee to return to regular duty. Light duty for DPSST certified personnel in the Sheriff’s Office will be limited to one hundred and eighty (180) days total, except in unusual circumstances to be determined at discretion of the Sheriff.

**ARTICLE 38 - DEPUTY MEDICAL EXAMINERS, DISASTER MANAGEMENT  
DEPARTMENT, AND DISTRICT ATTORNEY INVESTIGATORS**

**Section 1. Application of Article.**

This Article shall apply to all Deputy Medical Examiners (DMEs) including the Senior Deputy Medical Examiner, the Strategic Program Coordinators in the Disaster Management Department, and the Investigators in the District Attorney's Office.

**Section 2. Workweek for DMEs.**

DMEs will work a regular rotating schedule of forty-eight (48) hours on duty, spread over three (3) calendar days, and ninety-six (96) hours off duty. In each twenty-four (24) hour period, twenty (20) hours will be considered on duty, with four (4) unpaid hours for rest periods. For payroll purposes, this workweek will be considered as consisting of forty (40) standard paid hours. Each forty-eight (48) hour schedule begins at 1800 hours when the DME arrives at the office to retrieve their County vehicle.

During each forty-eight (48) hour period, the DME on duty is required to be in the office from 0700 to 1800 hours each day. During office hours the DME is responsible for taking three (3) separate ten-minute (10) rest breaks and one (1) separate paid thirty (30) minute meal period.

In addition to the above office hours, DMEs are also required to attend monthly staff and monthly case review meetings, which may or may not occur during their regular forty-eight (48) hour schedule. If such meetings do not occur during a DME's regular scheduled hours, their attendance will be paid at the regular base rate up to forty (40) hours in a work week, and then at the overtime rate thereafter. If such meetings occur during a DME's regular scheduled hours, and a DME cannot attend the Staff Meeting/Case Review (for non-work-related reasons), with the prior approval of management, they may be required to use appropriate leave time or may flex their schedule.

The County and the Association agree that either party may terminate a schedule created under this Agreement at any time for any reason upon thirty (30) days' written notice to the other party. The DMEs will then revert to a shift schedule established by the Disaster Management Department.

If a DME can document that they have been engaged in field work duties, inclusive of office time and/or monthly staff or case review meetings for twenty (20) hours without breaks or meal periods, they shall be entitled to be paid overtime at the overtime rate as outlined in Section 8 below for each hour worked in excess of twenty (20) up to twenty-four (24). If such time crossed into their next scheduled twenty-four (24) hour work period, which begins at 1800, they shall return to straight time.

A DME must take an eight (8) hour rest period after their forty-eight (48) hour on duty period prior to working overtime, unless pre-approved by management. All overtime must be pre-approved by management. If a case comes in within three (3) hours prior to the end of a DME's shift, management, in discussion with the DME, will decide who will be assigned the case.

The Chief Deputy Medical Examiner will take calls and complete that investigation during their shifts when the assigned DME for that shift is on leave or is working another case and cannot respond.

For payroll purposes, the workweek begins Saturday at midnight and ends Friday at 11:59pm.

**Section 3. On-Call for DMEs.**

When a DME is on approved leave, the hours not covered by the Chief Deputy Medical Examiner's regularly scheduled hours will be offered as on-call duty to the remaining DMEs based on seniority, with the most senior employee being offered first. See also Section 7.

Upon assignment of on-call status, DMEs will receive one (1) hour regular rate of pay for every six hours of on call status, or the equivalent as prorated for duration of the assigned status. If the DME is required to respond to a call, overtime will apply as provided by this Article.

Employees' assigned on-call status are required to be readily available to report to work within 30 minutes. Readily available includes that the employee has not consumed any intoxicant while on-call consistent with policy. Failure to comply with these requirements may result in disciplinary action. On-call status is not payment for hours worked and is not considered compensable time. While on-call, DMEs will be required to carry and respond to cellular phone or phone calls.

**Section 4. Call Back Pay for DMEs.**

DMEs who are called to physically report to a worksite outside of their regular forty-eight (48) hour schedule (that is, hours outside of a scheduled shift) will be paid for actual time worked, in fifteen-minute increments, with a minimum of two (2) hours at the rate of pay as outlined in Section 8 below.

Actual time worked during call back hours will be paid at the rate of pay as outlined in Section 8 below, except phone call pay as set forth in Section 5 and Section 8 below. The overtime rate will be paid only up to the start of the regular schedule.

**Section 5. Phone Call Pay for DMEs.**

DMEs who are on-call and who answer work-related phone calls after work hours will be paid for actual time worked at the rate of pay as outlined in Section 8 below. If the phone call is fifteen (15) minutes or less, the DME shall be paid for fifteen (15) minutes at the rate as outlined in Section 8 below.

**Section 6. Leave Hours.**

Usage: Use of a day's vacation will consist of twenty (20) hours per day. Use of a day's Sick leave will consist of twenty (20) hours per day. Use of a Holidays will be paid at twenty (20) hours per day. Sick leave hours taken in less than a one-day increment will be hour for hour to the ¼ hour.

Leave accruals are consistent with the other Articles of this contract.

**Section 7. Chief Deputy Medical Examiner.**

It is recognized that the County may rely on the Chief DME for after hour phone calls, pager, or electronic messages. However, when there is only one DME on shift and that DME is absent from work, the Chief DME will offer any call-back opportunities outside the Chief DME's regularly scheduled hours to the remaining bargaining unit staff on a seniority basis before performing the work himself or herself.

**Section 8. Rates of Pay for DMEs.**

It is recognized that due to the non-standard schedule that is worked by the Deputy Medical Examiners, the following formulas will be applied to their rate of pay:

- a) Use or payment of the following accrued paid leaves: On-call, Vacation, Sick, Holiday, Personal Day, Bereavement, and Training shall be paid at the regular rate of pay x 1.23075.
- b) Work performed for Call Back, Phone Call Pay, and overtime shall be paid at the regular rate of pay x 1.846125.

Historical note: These rates of pay were specifically negotiated from a change in yearly scheduled hours from (2400 to 2080) and reflect a conversion of equitable value based on a previous yearly work schedule.

**Section 9. On-Call for Strategic Program Coordinators in Disaster Management.**

Strategic Program Coordinators in the Disaster Management Department designated in writing to be on-call shall receive one (1) hour of pay at the regular rate of pay for each eight (8) hours on-call. If called back to work, they shall be paid at the rate of one and one-half times (1.5) their regular rate of pay, with a two (2) hour minimum. Employees assigned to be on-call must be readily available to report to duty within 30 minutes. Readily available includes that the employee has not consumed any intoxicant while on-call consistent with policy. Failure to comply with these requirements may result in disciplinary action. On-call status is not payment for hours worked and is not considered compensable time.

**Section 10. Strategic Program Coordinators in Disaster Management Work Hours.**

Bargaining unit employees working full-time within classifications under the direction of the Disaster Management Department work a regular schedule of either five (5) days a week with eight (8) hours shifts or four (4) days a week with ten (10) hour shifts at the discretion of the Department Director.

Full time employees earn overtime consistent with Article 13. Part-time employees are subject to Article 26.

Leave accruals are consistent with the other Articles of this contract.

**Section 11. District Attorney Investigators Work Hours.**

Bargaining unit employees working full time within classifications under the direction of the District Attorney's Office work a regular schedule of either five (5) days a week with

eight (8) hour shifts or four (4) days a week with ten (10) hour shifts, at the discretion of the District Attorney.

Bargaining unit employees working part-time within classifications under the direction of the District Attorney's Office work a regular schedule of two (2) or three (3) days a week with ten (10) hour shifts, at the discretion of the District Attorney. Part-time employees may alternatively be assigned a regular work schedule of four (4) or five (5) days a week with no more than ten (10) hour shifts on any particular day, for total regularly scheduled work week hours not to exceed thirty (30) hours, at the discretion of the District Attorney.

Full-time employees earn overtime consistent with Article 13 and double time consistent with Article 15.5(b). Part-time employees are subject to Article 26.

Leave accruals are consistent with the other Articles of this contract.

### **ARTICLE 39 – EMPLOYEE ASSISTANCE PROGRAM/EAP**

The Sheriff or designee may, with cause, order any employee to consult with the Employee Assistance Program (EAP) counselor as necessary. The results of the consultation shall remain confidential except that the EAP will contact a Human Resources Integrated Disability Analyst to confirm the employee's consultation. The appointments will be on compensable time.

### **ARTICLE 40 - TRANSFERS**

Employees who wish to transfer between Jail and Patrol may do so upon successful completion of the recruitment process and submission and acceptance of the Request to Voluntarily Transfer.

### **ARTICLE 41 – TERMINATION**

#### **Section 1.**

Except as otherwise provided, this agreement shall become effective as of the date it has been ratified by both the County Board and the Association membership and shall remain in full force and effect until the 30th day of June, 2023 and until a subsequent contract is negotiated and executed by the County and Association. This Agreement shall automatically reopen on March 1, 2023 for negotiations.

#### **Section 2.**

This Agreement may be amended at any time by mutual agreement of the Association and County; such amendments shall be in writing and signed by both parties.

IN WITNESS THEREOF, the parties hereto set their hands thus \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

FOR THE UNION:

FOR THE COUNTY:

\_\_\_\_\_  
Stephen Steinberg  
President, CCPOA

\_\_\_\_\_  
Tootie Smith  
BCC Chair

\_\_\_\_\_  
Anil Karia  
Attorney

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Angie Brandenburg  
Sheriff

\_\_\_\_\_  
Michael Copenhaver  
Undersheriff

\_\_\_\_\_  
Jenna Morrison  
Chief Deputy

\_\_\_\_\_  
Lee Eby  
Captain

\_\_\_\_\_  
Jeff Smith  
Lieutenant

\_\_\_\_\_  
Eric Sarha  
HR Deputy Director





**APPENDIX A**  
**CLACKAMAS COUNTY SHERIFF'S OFFICE REQUEST**  
**TO VOLUNTARILY TRANSFER**

<b>NAME:</b>	<b>(LAST)</b>	<b>(FIRST)</b>	<b>(MI)</b>
<b>EMPLOYEE ID:</b>			
<b>CURRENT CLASSIFICATION:</b>	<input type="checkbox"/> Jail Deputy (121) <input type="checkbox"/> Deputy Sheriff (103)		
<b>REQUESTED CLASSIFICATION:</b>	<input type="checkbox"/> Jail Deputy (121) <input type="checkbox"/> Deputy Sheriff (103)		

Employees who wish to transfer between Jail and Patrol may do so upon successful completion of the recruitment process and submission and acceptance of this Request to Voluntarily Transfer.

In order for this request to be considered, the employee must meet the following requirements:

- Completed 18 months as a Jail Deputy (121) or Deputy Sheriff (103) level.
- Current (within the preceding 12 months) Sheriff's Office performance appraisal on file which rates employees' performance as meets or exceeds standards in all areas. Please attach performance appraisal to this request.
- No disciplinary action on file with the last 24 months.

If my request to voluntarily transfer is approved, I understand that my employment status will change in the following ways:

- While in training and performing work described in the Recruit classification indicated above, I will be placed into the Recruit classification identified as Deputy Sheriff, Recruit or Jail Deputy, Recruit Employees will maintain their current pay and merit step schedule from transfer.
- My training (DPSST/FTEP/Other training requirements) will be completed within 12 months unless extended by Division Commander.
- If moving from Deputy Sheriff, to Jail my new position will be a Jail Recruit maintaining my current pay.
- If moving from Jail to Deputy Sheriff, my new position will a Deputy Sheriff Recruit maintaining my current pay.
- My seniority will be determined in accordance with the POA Collective Bargaining Agreement (by classification in the new position).

- While in training, during my probationary period of 365 days, I may make a good faith request to be reappointed to my previous classification for reasons other than misconduct or discredit on my employment record. I will be returned to a vacant position in my former classification at my previous Step.

If, while in training during my probationary period of 365 days, the Sheriff or designee determines my performance is not meeting established standards, I will be returned to a vacant position in my former classification at my previous Step.

<b>Employee</b>	<b>Date</b>
<b>Supervisor</b>	<b>Date</b>
<b>Undersheriff</b>	<b>Date</b>

If request is approved by Sheriff's Office management, please attach completed Personnel Action Form and submit packet to Human Resources.

**ADDENDUM 1 – DRUG AND ALCOHOL TESTING POLICY**

**Clackamas County Sheriff's Office  
Peace Officers Association Employees**

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## **5.31 DRUG AND ALCOHOL POLICY**

### **Clackamas County Sheriff's Office**

#### **5.31.1 POLICY STATEMENT**

The Clackamas County Sheriff's Office (CCSO) is strongly committed to providing a safe and drug-free workplace.

The CCSO recognizes each individual's value and contribution to the services we provide to the public. Therefore, this Policy includes assistance to employees who wish to overcome an alcohol or drug dependency problem (see "Employee Assistance Program and Self-Referral").

The Drug and Alcohol Testing Policy is intended to be consistent with and enhance the Clackamas County Employment Policy and Practice #5 - Drug Free Workplace Act and Policy Proclamation.

#### **5.31.2 EDUCATION AND TRAINING**

The CCSO will distribute information to employees regarding the Drug and Alcohol Testing Policy; the dangers of drug and alcohol abuse in the workplace; drug and/or alcohol counseling, rehabilitation, and employee assistance resources. Employees will be required to sign a form acknowledging receipt of this information.

At the time of hire, new employees will receive a copy of the Drug and Alcohol Policy, which informs them of their responsibilities with respect to compliance with this Policy.

Persons who may be required to make "reasonable suspicion" recommendations or determinations will receive training on recognition of the physical, behavioral, speech and performance indicators of probable alcohol and controlled substances use. The duration of the training will be at least sixty minutes each for 1) alcohol and 2) controlled substances use recognition, with additional follow up training to be provided, to maintain and increase proficiency.

#### **5.31.3 EMPLOYEE ASSISTANCE PROGRAM AND SELF-REFERRAL**

Any employee may voluntarily request assistance in dealing with a personal drug and/or alcohol problem through the Employee Assistance Program (EAP) or other acceptable treatment program. Utilization of the EAP is confidential and an employee's utilization of the EAP will not be made known to the Sheriff's Office or the County unless the employee voluntarily chooses to share that information. However, voluntary self-referral for alcohol and/or illegal drug use is not in itself a "safe haven." The guidelines listed below will apply to self-referrals.

- A. Any employee not currently under personnel investigation who voluntarily requests assistance in dealing with a personal alcohol and/or drug problem, may do so without jeopardizing his or her employment, if the alcohol and/or drug of abuse was originally prescribed to, or legally obtained by the employee, but was later abused by the employee. For the purpose of this section, a personnel investigation commences when the Sheriff's Office begins collecting information that leads to the employee being instructed to report for drug and/or alcohol testing.

- B. Participation in the EAP or other acceptable treatment program will not, in itself, jeopardize an employee's job, and successful treatment will be viewed positively. However, participation in the EAP or treatment program will not prevent the CCSO from imposing discipline for conduct that occurs in conjunction with alcohol and/or drug use in violation of Sheriff's Office Policy, and will not relieve an employee from the responsibility to perform assigned duties safely and at a satisfactory performance level.

#### **5.31.4 DRUG EVALUATION; LEAVE OF ABSENCE**

An employee may be required to undergo an evaluation by a Substance Abuse Professional (SAP) approved by the Sheriff's Office if he or she is involved in an alcohol and/or drug related incident on or off-duty. This evaluation will determine the extent of any alcohol and/or drug problem and the appropriate treatment. The employee may then be required to participate in, and successfully complete, an alcohol and/or drug education and treatment program as recommended by the SAP in lieu of disciplinary action, as set forth in a Last Chance Agreement. Any cost of such an evaluation not covered by the employee's medical insurance shall be paid by the Sheriff's Office. The cost of the substance abuse treatment will be the responsibility of the employee if not covered by the employee's insurance. Substance abuse evaluation and treatment will be in addition to any disciplinary action taken.

Absences due to alcohol and/or drug abuse evaluation or treatment may be covered by an employee's sick leave or vacation leave. If no such paid leave is available, an unpaid leave of absence may be used according to the County's regular Policy for unpaid leave of absence.

Return to duty, after an employee has been on leave required by this Policy for evaluation or treatment of an alcohol and/or drug problem, will be allowed only in compliance with the recommendations of the SAP.

#### **5.31.5 PRESCRIPTION AND OVER-THE COUNTER MEDICATIONS**

Prescription and over-the-counter medications can present a danger to employees and their co-workers due to their effects on alertness and job performance. Employees are prohibited from reporting to work, working or returning to duty with medications that could reasonably be expected to impair their ability to safely perform their job duties. Employees are also prohibited from reporting to work with medications containing controlled substances in accordance with section 5.31.6. Employees should ask their physicians for specific instructions as to how much medication they should take, what combinations of medications they should take and when they should take medications to ensure safe use relative to work. Non-compliance with the recommended dosage of medications which results in an incident or accident will be considered a violation of this Policy.

Employees must report the use of medically prescribed drugs or other substances which could reasonably be expected to impair job performance. It is the employee's responsibility to determine from their physician whether the prescribed drug could reasonably be expected to impair his or her job performance, including the ability to operate a motor vehicle. An employee who is taking such medications should write, date, and sign a brief note stating that he/she has discussed use of the medication(s) with his/her doctor in relation to job duties; the type of medication(s); beginning and ending dates of treatment. The employee should give the note in a sealed envelope to his/her direct supervisor for confidential delivery to the Designated Employer Representative (DER). The DER working in conjunction with Sheriff's Office management will then determine whether to

require written medical authorization to work from a prescribing health care practitioner or if any other actions are necessary.

Management will restrict access to medical information to the DER, the Sheriff, Undersheriff or person appointed to fulfill the duties of the Sheriff or Undersheriff and will protect the confidentiality and security of the information.

All medicines brought onto County property/premises, including vehicles must be in their original containers with the pharmacy label showing the patient's name and dosage instructions. Use of another person's prescription is a violation of federal law and of this Policy.

Failure to notify management of the use of medication that could affect the performance on the job can lead to disciplinary action, up to and including discharge.

### **“Medical and Recreational Marijuana”**

Marijuana is a Class I controlled substance; its possession and use is illegal under federal law. Although the State of Oregon permits the possession and use of marijuana to treat medical conditions when supported in writing by a licensed medical doctor and certain conditions have been met and for limited recreational use, this is not an acceptable explanation for a positive drug test under this Policy. The Sheriff's Office is a law enforcement agency and will observe the terms of federal law, which preempt state law in this regard. The Medical Review Officer (MRO) will automatically verify positive tests as being positive without regard to the existence of a medical marijuana card or recreational use that complies with state law.

In addition, possession of marijuana on County property is grounds for discipline up to and including dismissal.

### **5.31.6 PROHIBITIONS**

The following conduct is prohibited:

- A. Buying, selling, consuming, distributing or possessing unlawful drugs or alcohol while working or engaged in work activities on behalf of the County, or while on County premises or in County vehicles, except as necessary in the performance of duties (undercover operations, confiscated evidence, etc.)
- B. Reporting for work, working or returning to duty with drugs or alcohol present in the body at the levels set forth below. For the purpose of this Policy, “drugs” include all controlled substances regulated under the federal Controlled Substances Act.
- C. Failing to promptly report arrests, convictions and/or plea-bargains for an alcohol or drug-related criminal offense to the Undersheriff or his/her designee, irrespective of the jurisdiction where such action was taken.
- D. Refusal by an employee to submit a urine specimen and/or breath alcohol sample when required by this Policy will have the same consequences as a positive drug and/or alcohol test result (see “Discipline” section). It will warrant immediate removal of the employee from duty.

- E. Failing to comply with directives regarding enforcement of this Policy, including but not limited to refusing to promptly submit to required testing; giving false, diluted or altered samples; obstructing the testing process and failing to comply with rehabilitation conditions imposed by the County or rehabilitation counselors pursuant to this Policy.
- F. Engaging in any other violation of this Policy.

**Positive Test Levels for Drugs and Alcohol**

A positive drug test result is defined as the detection of any one or more of the substances and/or metabolites of the substance at levels set forth by the DOT<sup>1</sup> at the time of testing, which are currently shown below:

<b>Substance or Class</b>	<b>Screen Cut-off</b>	<b>Confirmation Cut-off</b>
Amphetamines	500 ng/mL	250 ng/mL
Benzodiazepines	200 ng/mL	200 ng/mL
Cocaine	150 ng/mL	100 ng/mL
Marijuana (THC)	50 ng/mL	15 ng/mL
Methadone	300 ng/mL	200 ng/mL
Codeine/Morphine	2000 ng/mL	2000 ng/mL
Hydrocodone/Hydromorphone	300 ng/mL	100 ng/mL
Oxycodone/Oxymorphone	100 ng/mL	100 ng/mL
6 Acetylmorphine (Heroin)	10 ng/mL	10 ng/mL
PCP	25 ng/mL	25 ng/mL

**\*\* Limit of Quantity**

An employee will be considered in violation of prohibitions against reporting to work or working with alcohol in his/her system if his/her breath tests .01 g/210L or higher. A separate test, as provided by 5.31.10 Breath Alcohol Testing B2, must be conducted to enforce the .01 or greater BAC standard.

It is not the intent of this Policy to test for medications that are lawfully prescribed by a healthcare provider and used in accordance with the prescription. Employees who are taking medications, including medications containing controlled substances, should refer to the “Medications” section above for an explanation of their obligations. See 5.31.5.

Employees who engage in any prohibited conduct may be subject to discipline, including discharge.

**5.31.7 CALLBACK DUTY**

It is recognized that employees may be recalled to duty during normal off duty hours. When operational need dictates the necessity to recall these employees, caution and good judgment must be exercised. The employee is required to notify the supervisor requesting the callback of the side effects of any prescription drug or over-the-counter medication and, if requested, the name of the

<sup>1</sup> <https://www.transportation.gov/odapc/part40/40-87>



medication, as well as that could impair his/her ability to safely perform job duties and to receive the supervisor's approval before responding to the callback. Similarly, employees who have consumed alcoholic beverages within four (4) hours of a requested callback or, for any reason, believe they could be impaired by the consumption of alcohol, are required to notify the supervisor and obtain approval before responding to the callback.

### **5.31.8 TYPES OF DRUG AND ALCOHOL TESTING REQUIRED**

The following are occasions for drug and alcohol testing under this Policy:

#### **Reasonable Suspicion Testing**

An employee may be required to submit to a drug and/or alcohol test upon reasonable suspicion that the employee has violated the prohibitions of this Policy concerning alcohol and/or controlled substances. The determination that reasonable suspicion exists to require the employee to undergo an alcohol and/or controlled substances test must be based on specific, articulable observations concerning the appearance, behavior, speech, or body odors of the employee or other articulable observations of an employee's condition or performance that indicate possible drug or alcohol use. Examples include, but are not limited to, deteriorating work performance, poor attendance, tardiness, appearance (including, for example, noticeable odor of an alcoholic beverage), behavior, or speech of the employee. Poor attendance or tardiness alone or in combination do not constitute reasonable suspicion. The observations may include indications of the chronic and withdrawal effects of controlled substances, as well as include reliable information from other employees that supports the violation of Policy prohibitions.

The "reasonable suspicion" behavior should be witnessed by at least two persons if at all feasible, but only one observation is required. A drug and/or alcohol test can be required only by a Lieutenant who has first consulted with a Captain or higher ranking officer, a Lieutenant who has been designated to act temporarily as a Captain, or a Captain or higher ranking officer. The officer ordering the drug and/or alcohol test may rely on the observation and recommendation of Sergeants, bargaining unit or non-bargaining unit personnel. Those who make a decision to test an employee will be trained in identifying appearance or conduct that indicates the possible use of controlled substances or misuse of alcohol.

Any "reasonable suspicion" incident will be documented as soon after the incident as possible and the CCPOA will be provided with a copy of that documentation. The employee involved will be immediately removed from the workplace and escorted by a supervisor to a urine specimen collection or alcohol testing site. The employee will NOT be allowed to proceed to the site unaccompanied. A negative dilute result is unsatisfactory on a reasonable suspicion test for drugs. The employee will be given one additional opportunity to provide a valid specimen. The result of the second test will prevail. However, employees remain subject to discipline up to and including discharge, for giving intentionally altered samples.

Employees will have access to union representation if requested at every step of the "reasonable suspicion" testing procedures, except during specimen collection. The County will inform the union representative of the reasonable suspicion that supports the testing requirement. A union representative shall be notified immediately upon the request of the employee and the representative shall be afforded two (2) hours to respond. This representation shall not delay established collection and testing procedures. A list of qualified union representatives will be provided to the County.

## **Return to Duty and Follow-up Testing**

Unless the employee is discharged, CCSO shall require return to duty and follow-up testing as recommended by the SAP when an employee has engaged in prohibited drug or alcohol-related behavior or violation of the prescription medication provisions of this Policy. A negative alcohol or drug test is required prior to return to duty and at least six (6) unannounced follow-up tests are required during the twelve (12) months following return to duty. Any recommendations by the SAP shall be followed, but follow-up testing may continue for no longer than sixty months following return to duty.

Please refer to “Return to Duty Procedures” and “Disciplinary Action and Procedures” for additional information.

### **5.31.9 COSTS OF TESTING**

The County will be responsible for payment of all reasonable suspicion, return to duty, and follow-up tests that are required by the County.

The employee will be responsible for payment of any requested split tests or other tests that he/she voluntarily undergoes without being required to do so by the County. The County will initially pay for the test and then collect reimbursement from the employee.

### **5.31.10 DRUG AND ALCOHOL TESTING PROCEDURES**

Testing procedures for all employees are governed by the same standards as apply to commercial driver license holders under federal law, with the exception of forms required by the United States Department of Transportation (DOT) for CDL drivers. These standards include, but are not limited to, those governing sample acquisition, the chain of custody, laboratory selection, testing methods and procedures, and verification of test results.

#### **Drug Testing:**

- A. Urine specimen collection for drug testing will be performed by qualified individuals in conformance with current standards of practice and with respect for the privacy and dignity of the person giving the specimen. Drug test specimens will be collected to provide at least 30 mL of urine in a “primary specimen” shipping bottle and at least 15 mL of urine in a “split specimen” shipping bottle.
- B. If an employee is unable to provide an adequate volume of urine on the first attempt (“shy bladder”), he/she will have an opportunity to drink up to 40 ounces of fluids for up to three hours. At the end of this period, if no sample of adequate volume has been provided, the employee will be referred to a physician acceptable to the MRO to determine whether the incident constituted a refusal to test as outlined in 49 CFR 40.193.
- C. Only laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services will perform drug testing.
- D. When an initial screening test for drugs is positive, a second, confirmatory test will automatically be performed. Confirmed positive drug tests will be reported by the testing laboratory to the MRO for verification (see “Prohibited Conduct”).

### **Breath Alcohol Testing:**

- A. Breath alcohol testing will be performed only by qualified Breath Alcohol Technicians. Testing will be conducted using evidential breath alcohol testing devices listed on the Conforming Products List of the National Highway Traffic Safety Administration.
- B. A positive test will be confirmed as follows:
  - 1. The individual being tested is instructed not to smoke, use mouthwash, drink, or eat for a period of 15 minutes.
  - 2. Within 30 minutes of completion of the initial screening test, a confirmatory breath test is conducted as described in 49 CFR Part 40. The result is recorded in the “Confirmation Test Results” section of the Alcohol Test Form.
- C. If the result of the confirmed breath alcohol test is positive, the Breath Alcohol Technician must immediately notify the DER or his/her designated representative, who will arrange for transportation of the individual from the alcohol testing site. The Breath Alcohol Technician will then forward a copy of the Alcohol Test Form to the Designated Employer Representative.
- D. Under this Policy, an employee with a confirmed positive breath alcohol test at the levels set forth in the “Prohibited Conduct” section of this Policy shall be considered to be in violation of this Policy.

### **5.31.11 DRUG TEST RESULTS REVIEW**

Drug test results on an employee which are reported as positive, adulterated, or substituted by the testing laboratory will be reviewed and verified by the MRO. A confirmed positive test does not automatically identify an employee as having used drugs in violation of this Policy. The MRO brings detailed knowledge of possible alternate medical explanations to his/her review of the test results. This review is performed by the MRO prior to the transmission of results to the DER.

### **Medical Review Officer Reporting Options and Employer Actions**

- “Negative” – self-explanatory
- “Negative Dilute” – Upon receipt of a “negative dilute,” the employee shall be required to immediately provide another specimen. The collection shall be conducted with the minimum possible advance notice and the employee shall be escorted to the collection facility by the DER, Supervisor, or other designated person. In the event the second test result is “negative dilute,” no further action will be taken and the second test shall become the test of record. If the employee is directed to take a second test and the employee declines to do so, this is a “Refusal to Test”.
- “Canceled – Split specimen test could not be performed.” This will occur when the primary specimen was positive, and the donor requests an independent test, and the split specimen is not available for testing. The employer must ensure an immediate collection of another specimen, under direct observation, with no advance notice to the donor.
- “Canceled – Test Not Performed, Fatal Flaw (with flaw stated) or Uncorrected Flaw.” No further action required unless a “Negative” test result is required for reasonable suspicion,

return to duty or follow up. A canceled drug test is neither positive nor negative and no consequences must be attached to it.

- “Cancelled Invalid Result.” An “invalid result” means the laboratory was unable to obtain a valid result when attempting to test the specimen. If the MRO has accepted the donor’s explanation as to why the laboratory was unable to obtain a valid result, then the MRO will advise the employer “direct observation not required.” The employer is not required to take any further action unless a “negative result is required (i.e., reasonable suspicion, return to duty or follow up). If the MRO has not accepted the donor’s explanation, then the MRO will advise the employer “a second collection must take place immediately under direct observation”.
- “Positive or Positive Dilute” – The employer must comply with the requirements for a positive test as outlined in this Policy.
  - Immediately remove employee from duty; and
  - Referral to a SAP – If the employee is terminated, he/she is to be furnished with a list of SAP resources (names, addresses, and telephone numbers).
  - Return to Duty provisions must be followed.
- “Adulterated-Refusal to Test” – Follow same procedures as required on a positive test result.
- “Substituted-Refusal to Test” – Follow same procedures as required on a positive test result.

### **MRO Verification Without Notifying the Employee**

The MRO is permitted to verify a test as positive, or as a refusal to test because of a laboratory report of a positive, adulterated, or substituted specimen without interviewing the employee under the following circumstances:

- The employee expressly declines the opportunity to discuss the test with the MRO; and
- The MRO has successfully made and documented a contact with the employee and instructed the employee to directly contact him/her, and more than 72 hours have passed since the time the MRO contacted the employee.

NOTE: If a test is verified positive under the latter circumstances, the donor may give the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented him/her from contacting the MRO. On the basis of this information, the MRO may re-open the verification, allowing the donor to present information concerning a legitimate explanation for the positive test. If the MRO concludes that there is a legitimate explanation, the MRO shall verify the test as negative.

Upon verifying a test result as positive, the MRO will inform the donor of the option for having the “split” portion of his/her specimen tested. The donor must notify the MRO of a desire to exercise this option within 72 hours of being notified of the positive result.

The MRO will not delay reporting of a verified positive test result pending “split” specimen testing. If a donor requests testing of the “split” specimen but none is available, the MRO will cancel the entire test.

### **Communication of Results**

The MRO or his/her designated representative will report test results ONLY to the County’s DER who shall notify either the Sheriff, Undersheriff or person appointed to fulfill the duties of Sheriff

or Undersheriff. Confidentiality will be strictly maintained. If the result is positive, the MRO or his/her authorized representative will report the identity of the controlled substance and other information, as necessary for the County to determine whether the employee has violated this Policy.

Employees may obtain copies of their test results by requesting them in writing from the MRO within 60 days of being notified of the results.

This policy shall not limit either the County or the Association from obtaining and sharing information, as they deem necessary, to respond to grievances and other legal actions or disclose information and documents, as compelled by law.

### **5.31.12 DISCIPLINARY ACTION**

A. Any employee found to be in violation of this Drug and Alcohol Policy will be placed on administrative leave pending the results of testing and/or investigation, and is subject to discipline, up to and including discharge. Violations of this Policy may differ in terms of seriousness, the employee's prior record of violation and/or compliance and other factors consistent with "just cause" obligations. Employees may result in:

- Verbal and written reprimands
- Suspension or demotion
- Termination of employment
- Last chance agreements in lieu of termination

The CCSO may also initiate a criminal investigation and prosecute.

B. Employees who have voluntarily requested assistance concerning drug and/or alcohol problems and/or voluntarily entered into drug or alcohol evaluation and treatment programs shall have their actions taken into consideration as set forth in section 5.31.3.

C. Positive Alcohol or Drug Test. Positive alcohol and drug tests are considered a serious infraction and will generally subject an employee to discharge or last chance agreement.

D. Misuse or Other Medication Violations. An employee who has tested positive for the presence of drugs which were originally legally prescribed but may have been abused by the employee may be referred to an employee assistance program or SAP for drug counseling or treatment. As an alternative to dismissal and at the discretion of the Sheriff, the employee may be subjected to a last chance agreement as a condition of continued employment, which shall include a requirement that the employee submit to unannounced drug testing if recommended by a SAP, for a period of time recommended by the SAP. The last chance agreement will also include authorization for the County to receive information necessary to assure compliance with the last chance agreement and assure future compliance with this Policy. If the employee violates the terms of treatment or rehabilitation, again tests positive or otherwise violates the last chance agreement during such period, he/she may be discharged, following fulfillment of any Loudermill due process obligations and as otherwise provided in the Last Chance Agreement.

If the level of discipline allows an employee to return to duty, he/she must agree to the following conditions:

- Meet all recommendations/requirements of the SAP.
- In the event the SAP does not specify any follow up testing, employee shall undergo up to six (6) periodic, but unannounced, drug and/or alcohol tests at the discretion of the DER within one (1) year of returning to duty.
- Any confirmed positive alcohol or verified positive prescription drug abuse result while the employee is undergoing required return to duty or follow-up treatment and/or testing shall result in termination.

#### **5.31.13 RETURN TO DUTY PROCEDURES**

Employees who have violated this Policy may only return to duty if the level of discipline allows it and the County has determined them eligible. The following statements reflect the return to duty and follow-up testing requirements of this Policy:

- A. Employees who have had a confirmed positive alcohol test or have abused prescription drugs must be evaluated, undergo treatment, if required, and be determined fit for return to work by the Substance Abuse Professional.
- B. Employees may be subject to periodic unannounced follow-up testing as determined by the Substance Abuse Professional who evaluated the employee. If the employee was found to need assistance in resolving his/her substance misuse problem, a minimum of six (6) such follow-up tests must be conducted during the twelve (12) months following the employee's return to duty.

#### **5.31.14 RECORD KEEPING PROCEDURES**

- A. The County's DER will maintain alcohol/drug testing records in a secure filing system, separate from the County Personnel files, with information available only on a "need to know" basis.
- B. An employee is entitled, upon written request, to obtain copies of any records concerning his/her use of alcohol or controlled substances. Requests for such information may be directed to the DER, SAP, or to the County drug testing management service.
- C. Information regarding an individual's alcohol/drug test results or rehabilitation is considered to be personal and confidential and may be released only upon written consent of the individual, except:
  - 1. Such information may be released to any state official with specific regulatory authority over the Sheriff's Office or law enforcement personnel when legally required.
  - 2. Such information may be disclosed in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from an alcohol test and/ or a drug test.

- 3. When the County is compelled by a judicial determination or order that the information is not protected from disclosure.
  - 4. The information is needed by medical personnel for the diagnosis or treatment of a patient who is physically unable to authorize disclosure.
- D. The County shall release information regarding an employee's records to a subsequent employer upon receipt of a specific written request from the employee authorizing release of the records to an identified person.
- E. Record Retention.

The following schedule of record keeping will be maintained by the DER and his/her authorized agents:

Negative and canceled drug test records; alcohol test results less than 0.01 g/210L	1 year
Records of supervisor training	Indefinite or 2 years beyond job responsibilities
Records of verified positive alcohol/drug test results; refusals to be tested for drugs and/or alcohol; SAP evaluations and referrals; follow-up tests and schedules	5 years

**5.31.15 INFORMATIONAL RESOURCES**

Information on this Policy and associated procedures is available by contacting the DER as outlined on the Intranet at:

<http://web1.clackamas.us/des/drugtesting.html>

Questions may also be addressed directly to the County's drug testing management service.

**5.31.16 COMMERCIAL DRIVERS LICENSE DUTIES**

Employees performing jobs requiring a commercial drivers' license will also be required to comply with the Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulations, (see separate Policy for DOT drivers).

## ATTACHMENT A – DEFINITION OF TERMS

For the purposes of this Policy, the following definitions apply.

**Abuse/Misuse of Prescription Drugs:** The use of a drug not in accordance with the prescribed dosage or method of use.

**Adulterated Specimen:** A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

**Alcohol:** Ethyl alcohol or ethanol.

**Alcohol Screening Device (ASD):** A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

**Breath Alcohol Technician (BAT):** An individual who has been trained to proficiency in the operation of the evidential breath testing device he/she is using as required under 49 CFR Part 40.

**Breath Alcohol Testing Site:** A location which affords visual and aural privacy for the performance of breath alcohol testing. No unauthorized person shall be permitted access to the breath alcohol testing site when the evidential breath testing device is unsecured or at any time when testing is being conducted. In unusual circumstances, e.g. after an accident when a test must be conducted outdoors, the breath alcohol technician must provide visual and aural privacy to the greatest extent practicable.

**CCSO:** Clackamas County Sheriff's Office

**CFR:** United States Code of Federal Regulations

**Chain of Custody:** Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory be used from time of collection to receipt by the laboratory.

**Collection Site:** A designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

**Collector:** A person who instructs and assists applicants and employees through the urine specimen collection process.



**Confirmation Test:** A second analytical drug testing procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC-MS) is the usual confirmation method for drug testing at this time.

**Controlled Substances:** Substances listed on Schedules I through V in 21 U.S.C. 802 as they may be revised from time to time (21 CFR 1308). Controlled substances include illicit drugs and drugs which may be authorized for use by a physician or dentist for certain medical uses, but which are subject to misuse or abuse.

**County:** Clackamas County and/or Clackamas County Sheriff's Office

**Designated Employer Representative (DER):** An employee authorized by the employer to assist supervisors in taking immediate action(s) to remove employees from safety-sensitive duties and to make decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this Policy.

**Dilute Specimen:** A specimen with creatinine and specific gravity values that are lower than expected for human urine.

**DOT:** United States Department of Transportation

**Drugs:** Controlled Substances.

**FHWA:** Federal Highway Administration

**FMCSA:** Federal Motor Carrier Safety Administration

**Initial or Screening Test:** An immunoassay screen to eliminate "negative" urine specimens from further consideration.

**Medical Review Officer (MRO):** A licensed Doctor of Medicine or osteopathy with knowledge of drug abuse disorders and drug testing who is responsible for reviewing and verifying drug testing results prior to their communication to the DER.

**Negative Drug Test:** A test in which initial or confirmation testing under DOT procedures did not show evidence of a prohibited drug in an employee's or applicant's system above established levels; OR, a test which is verified as negative by the MRO (e.g. review showed positive test was due to prescription medication or other authorized use of controlled substance).

**On Duty:** Under this Policy, an employee is "on duty" when he/she is at work and ready to perform employment functions.

**Positive Drug Test:** A urine drug test result which indicates the presence of controlled substances beyond the cut-off levels specified by this Policy.

**Confirmed Positive Drug Test:** A positive drug test which has undergone an initial “screening” test AND a confirmation test which validates the first result. Drug tests are confirmed by the SAMHSA certified laboratory which performs the analyses.

**Verified Positive Drug Test:** A confirmed positive drug test (see above) after investigation by the MRO, who has determined that no legitimate explanation exists for the presence of the controlled substance that was detected.

**Prohibited Drugs:** Marijuana, Cocaine, Opiates, Phencyclidine (PCP), Amphetamines, Benzodiazepines, Methadone, 6 Acetylmorphine (Heroin). (see Urine 8 Drug Panel)

**Reasonable Suspicion:** (5.31.8) The determination that reasonable suspicion exists to require the employee to undergo an alcohol and/or controlled substances test must be based on specific, articulable observations concerning the appearance, behavior, speech, or body odors of the employee or other articulable observations of an employee’s condition or performance that indicate possible drug or alcohol use.

**Refusal to Submit:** Refusal by an individual to provide a urine specimen after receiving notice of the requirement to be tested in accordance with this Policy.

**Safety Sensitive Positions:** All sworn law enforcement positions, all positions regularly stationed at the Jail, and medical examiners.

**SAMHSA:** Substance Abuse and Mental Health Services Administration, a division of the US Department of Health and Human Services (DHHS) which is responsible for certifying laboratories to perform federal workplace drug testing.

**Screening or Initial Test:** Immunoassay screen to eliminate “negative” urine specimens from further consideration.

**Split Specimen Collection Procedure:** A collection procedure in which a urine specimen is divided or “split” between two shipping bottles, both of which are transported to the testing laboratory.

**Split Test:** If the results of the initial screening and confirmation tests of the “primary” specimen are positive, the “split” specimen may be tested at another qualified laboratory.

**Substance Abuse Professional (SAP):** Under DOT regulations, individuals who may serve as substance abuse professionals include:

- licensed physicians (Medical Doctors or Doctors of Osteopathy) or
- licensed or certified psychologists, social workers, employee assistance professionals, or addiction counselors (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

Under this Policy, the DER must inform employees who are found to have violated the alcohol prohibitions or who have had verified positive drug tests of qualified SAPs in the local area.

**Substituted Specimen:** A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

## **ATTACHMENT B**

**The Clackamas County Risk Management Department will manage the drug and alcohol testing program for the Sheriff's Office with the following provisions:**

### **DRUG AND ALCOHOL TESTING MANAGEMENT SERVICE**

The County will maintain an agreement with a drug and alcohol testing management service to advise the County on processes, developments, and changes concerning this Policy.

The firm chosen will be responsible for overseeing compliance of agents of the County with applicable federal regulations, including interacting with specimen collection and alcohol testing agents, designated drug testing laboratories and (MROs). It also submits blind specimens on behalf of the County, and maintains records as required by applicable federal regulations.

In the event of a need to change the provider of these services, the choice of provider will be made by the DER and communicated with the Peace Officers Association.

### **MEDICAL REVIEW OFFICERS**

MRO services will be provided by the testing management service.

### **DRUG TESTING LABORATORIES**

The County will use drug testing laboratories which are SAMHSA-certified, as required by federal drug testing regulations. The County drug testing management service may arrange for the services of a drug testing laboratory in order to best serve the interests of the County.

### **SUBSTANCE ABUSE PROFESSIONALS**

Under this Policy, employees who refuse testing, have confirmed positive alcohol test results, and/or have verified positive drug test results must be referred by the DER to a SAP for evaluation. The County will maintain a list of such qualified individuals in its geographic area and make this list available to employees as needed.

## ATTACHMENT C – LAST CHANCE AGREEMENT -- EXAMPLE

[This attachment is an example of a last chance agreement form that may be used. The form may vary to fit the facts and circumstances of a particular situation.]

This is an agreement between [employee's name] (the Employee); the Clackamas County Sheriff's Office and Clackamas County (the Sheriff), and the Clackamas County Peace Officers' Association (the Association).

1. This agreement serves as notice to the Employee as to what to expect for continued employment with the Sheriff. This agreement does not guarantee employment for any specific period.
2. The Employee agrees to continue in a bona fide drug and/or alcohol [tailor to each case] outpatient rehabilitation program recommended and approved by a qualified substance abuse counselor (the Counselor). The Employee fully understands that s/he is to remain in such a program, including any required aftercare, until released in writing by the Counselor. For [period of time] from the date of this agreement, the Sheriff shall have the right to conduct random breath alcohol or urinalysis testing of [employee's name] on work time at the expense of the Sheriff. Should the employee refuse to cooperate with said breath alcohol or urinalysis, or test positive for alcohol/drugs or abuse prescription medication while on the job, s/he shall be subject to termination under the Association contract. A violation of the last chance agreement shall be considered "just cause" for discharge subject to paragraph 4 below.
3. The Employee agrees to grant permission to the Counselor to release verification to the County that the Employee is meeting and has completed the requirements of the program and any required aftercare. If the Employee discontinues the program without the consent of the Counselor or is terminated from the program by the counselor, s/he will be considered in violation of the last chance agreement. A violation of the last chance agreement shall be considered "just cause" for discharge subject to paragraph 4 below.
4. The Employee agrees that this last chance agreement constitutes a final warning and that any violation or non-compliance with its terms within [x] years, shall be considered just cause for discharge and shall result in loss of employment. In the event the termination is grieved and submitted to arbitration, the arbitrator's authority will be limited to determining whether there was or was not a violation of the Last Chance Agreement. In the event the arbitrator finds there was a violation of the Agreement, that violation will automatically be considered "just cause" for termination. The parties agree to enter into a factual stipulation so limiting the scope of the issue and the arbitrator's authority.
5. Except as stated in this agreement, the terms and conditions of the Employee's work shall be the same as all other employees in the Association bargaining unit.
6. The Association and the employee agree that this resolution is in lieu of termination [and in addition to specified discipline] of [employee's name] and that the agreement resolves all disputes related to proposed discipline. The Employee and the Association agree not to challenge this agreement as proper under just cause or any other provision of the collective bargaining agreement or any other legal challenges in any forum.



**ADDENDUM 2 – DOT DRUG AND ALCOHOL TESTING POLICY**

**Clackamas County Sheriff’s Office  
Employees covered by US DOT Regulations**

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## **DRUG AND ALCOHOL TESTING POLICY**

### **Clackamas County Sheriff's Office Employees covered by US DOT Regulations**

#### **POLICY STATEMENT**

The Clackamas County Sheriff's Office (CCSO or "the County") is strongly committed to providing a safe, drug-free workplace. In addition, an employee substance abuse testing program is mandated for all entities regulated by the Department of Transportation (DOT). For these reasons, the CCSO has implemented a substance abuse testing Policy which applies to all applicants for, and employees who hold "covered driver" positions.

The Sheriff's Office recognizes each individual's value and contribution to the services we provide to the public. Therefore, this Policy includes assistance to employees who wish to overcome a drug dependency problem (see "Employee Assistance Program and Self-Referral").

This Drug and Alcohol Testing Policy ("Policy") is intended to comply with DOT regulations, changes which will supersede specific Policy provisions. To view revisions to this Policy made by the Federal Motor Carrier Safety Administration (FMSCA) or the Federal Highway Administration (FHWA) since this publication, and additional information, go to: <http://web1.clackamas.us/des/drugtesting.html>

**EFFECTIVE DATE:** February 1, 2011 **POLICY REVISED:** September 2020

#### **WHO WILL BE TESTED AND WHEN**

*Covered drivers* are defined as those who are required to hold commercial driver's licenses for their jobs. Such applicants and employees fall under the Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulations ("Controlled Substances and Alcohol Use and Testing," 49 CFR Part 382). Generally, covered drivers are operators of commercial motor vehicles which 1) are greater than 26,000 pounds GVWR, 2) carry hazardous materials in placardable quantities, or 3) carry 16 or more passengers, including the driver.

Covered drivers may be tested for drugs or alcohol whenever they are on duty.

For the purposes of this Policy, "on duty" is defined as any time an individual is on the job and ready to perform safety-sensitive functions. Performing a safety-sensitive function means any period in which the driver is actually operating, preparing to operate, or immediately available to operate a vehicle requiring a Commercial Driver License. Time spent in association with drug testing specimen collection and/or alcohol testing shall be considered "on-duty" time.

## **EDUCATION AND TRAINING**

The CCSO will distribute information to employees on the Drug and Alcohol Testing Policy; the dangers of drug and alcohol abuse in the workplace; and drug counseling, rehabilitation, and employee assistance resources. Employees will be required to sign a form acknowledging receipt of this information.

When deputies are assigned duties that involve driving vehicles requiring a Commercial Driver License (CDL) they will receive specific information regarding the CCSO's Drug and Alcohol Testing Policy and be informed of their responsibilities with respect to compliance with federal drug and alcohol testing regulations.

Employees (see 5.31.8) who may be required to make "reasonable suspicion" determinations will receive training on recognition of the physical, behavioral, speech and performance indicators of probable alcohol and controlled substances use. The duration of the training will be at least sixty minutes EACH for 1) alcohol and 2) controlled substances use recognition, with additional follow up training to be provided, to maintain and increase supervisory proficiency.

## **EMPLOYEE ASSISTANCE PROGRAM AND SELF-REFERRAL**

When a covered driver voluntarily reports a drug/alcohol problem BEFORE it is discovered through a drug or alcohol test, he/she will immediately be removed from driving duties.

Under the County's independent authority, employee assistance for self-referral will be handled as described in the Sheriff's Office Drug and Alcohol Policy.

## **PRESCRIPTION MEDICATIONS**

Prescription medications can present a danger to employees and their co-workers due to their effects on alertness and job performance. Covered drivers should ask their physicians for specific instructions as to how much medication they should take and when they should take it to ensure safe use relative to work. Non-compliance with the recommended dosage of medications which results in an incident or accident will be considered a violation of this Policy.

Under the County's independent authority, all covered drivers are specifically required to notify their immediate supervisors when they are taking medications associated with warning labels (for example, relating to the operation of vehicles, heavy equipment, or machinery). An employee who is taking such medications should write, date, and sign a brief note stating that he/she has discussed use of the medication with his/her doctor in relation to job duties; the type of medication; beginning and ending dates of treatment. The employee should give the note in a sealed envelope to his/her direct supervisor for confidential delivery to the Designated Employer Representative (DER). The DER working in conjunction with CCSO Management will then determine whether to require written medical authorization to work from a prescribing health care practitioner or if any accommodations are necessary.

The County will restrict access to medical information to the DER, the Sheriff, Undersheriff, or person appointed to fill the duties of Sheriff or Undersheriff and will protect the confidentiality and security of the information.

All medicines brought onto the CCSO property/premises must be in their original containers with the pharmacy label showing the patient's name and dosage instructions. Use of another person's prescription is a violation of federal law and of this Policy.

Failure to notify management of the use of medication that could affect the performance on the job can lead to disciplinary action, up to and including discharge.

### **“Medical Marijuana”**

Marijuana is a Class I controlled substance; its possession and use is illegal under federal law. Although the State of Oregon permits the possession and use of marijuana to treat medical conditions when supported in writing by a licensed medical doctor, this is not an acceptable explanation for a positive drug test under this Policy. The Sheriff's Office is a law enforcement agency and will observe the terms of federal law, which preempt state law in this regard. The Medical Review Officer (MRO) will automatically verify positive tests as being positive without regard to the existence of a medical marijuana card.

In addition, possession of marijuana on county property is grounds for dismissal.

## **PROHIBITIONS**

FMCSA REGULATIONS SPECIFY the following prohibitions:

- 1) Covered drivers must not use alcohol within four (4) hours prior to reporting for duty (“pre-duty use”).
- 2) Covered drivers are prohibited from possessing alcohol while on duty; from using alcohol while on duty; and from having alcohol present in their systems at a level of 0.02 g/210 L<sup>2</sup> or greater while on duty. Those with levels of 0.02 or greater as demonstrated by alcohol testing are subject to immediate removal from duty for a minimum of 24 hours (see also “Discipline”)
- 3) Covered drivers are prohibited from using alcohol after an on-the-job accident until:
  - a. The DER or his/her designated alternate has determined that alcohol testing is not required, OR
  - b. An alcohol test has been completed, OR
  - c. Eight (8) hours have passed since the accident.
- 4) Covered drivers must not show evidence of the use of controlled substances without a valid prescription.

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<sup>2</sup> Breath testing results are given in grams of alcohol per 210 liters of breath (g/210L)

- 5) Refusal by a covered driver to submit a urine, saliva or breath specimen when required by federal regulations will have the same consequences as a positive drug test result, or a breath alcohol test result of 0.04 or greater (see “Discipline” section), and result in the immediate removal of the employee from duty. In addition, refusal of a test after a fatal accident may result in more severe penalties under Federal law.

### **INVESTIGATION OF PREVIOUS TESTING**

As a condition of employment, applicants for covered driver positions or current employees being assigned covered driving duties will be required to provide written consent for the CCSO to obtain the following information from DOT regulated employers who have employed the applicant during any period during the three (3) years preceding the date of application or transfer:

- Names and addresses of previous DOT covered employers;
- Alcohol tests with a result of 0.04 or greater;
- Verified positive drug tests;
- Refusal to be tested (including verified adulterated or substituted drug test results);
- Other violations of DOT agency drug and alcohol testing regulations; and
- If the applicant violated a DOT drug and alcohol regulation, documentation of the applicant’s successful completion of DOT return to duty requirements. (Note: If the previous employer does not have information about the return to duty requirements, the CCSO must seek to obtain this information from the applicant.)

The County must ask the applicant or employee being assigned covered driving duties whether he/she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which they applied for, but did not attain, a DOT-regulated safety-sensitive transportation position during the three (3) years preceding date of application. (If they admit that he/she had a positive test or refusal to test, they must document successful completion of the return to duty process.)

### **TYPES OF DRUG AND ALCOHOL TESTING REQUIRED**

The following are occasions for drug and alcohol testing under this Policy:

#### **Pre-employment Testing**

Pre-employment drug testing is required for all covered driver positions. Applicants and/or current employees being assigned covered driving duties will be notified that drug testing is a requirement of the application process.

Under the County’s independent authority, and as permitted by the DOT, a negative dilute result is unsatisfactory on a pre-employment test. Applicants and/or current employees being assigned covered driving duties will be given one additional opportunity to provide

a valid specimen. The result of the second test will determine whether the person is eligible for employment as a covered driver.

A drug test result which is verified as positive for unauthorized use of controlled substances, or found to be substituted or adulterated, will disqualify the applicant and/or current employee being assigned covered driving duties for the covered driver position.

### **Random Testing**

*Definition of Random Test.* A random test is a test that is unannounced, and where every person in the random selection “pool” has an equal chance of being selected for testing each time a selection occurs. Random testing is considered to be an effective deterrent to substance abuse. Covered drivers are required to be randomly tested under DOT regulations.

*Method of Random Selection:* The County has contracted with an outside drug testing management service to perform computerized random selections on its covered employees. Selections occur monthly on a randomly selected date. Selections are therefore spread reasonably throughout each 12-month period.

A number of drug tests equal to at least 50% of the number of individuals in the program will be completed annually, as required by DOT drug testing regulations; a number of alcohol tests will be completed annually, as required by current DOT regulations.

#### *Procedure for Notification and Specimen Collection/Testing:*

- 1) The drug testing management service will maintain a secure data base of individuals covered by the Federal Highway Administration’s drug and alcohol testing regulations.
- 2) On a randomly selected date, the service will transmit a list of individuals who have been selected for testing to the DER.
- 3) The DER or his/her designated representative will notify the individual in person or by telephone that he/she has been selected to provide a urine and/or breath specimen for testing. The date and time of notification will be recorded on the employee instruction card.
- 4) IMMEDIATELY after being notified, each individual selected for testing must proceed to a specimen collection and/or alcohol testing facility. If the individual is in a remote location, the DER will arrange for him/her to go to a local clinical facility so that specimen collection and/or breath testing are completed expeditiously.

## Reasonable Suspicion Testing

“Reasonable suspicion” means that an individual has given a supervisor or other responsible manager reason to believe that he/she may be impaired, intoxicated, or under the influence of a controlled substance or alcohol.

A reasonable suspicion test will be required under the following conditions:

- 1) The CCSO shall require a driver to submit to an alcohol test when the CCSO has reasonable suspicion to believe that the driver has violated the prohibitions of this Policy concerning alcohol. The CCSO’s determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.
- 2) The CCSO shall require a driver to submit to a controlled substances test when the CCSO has reasonable suspicion to believe that the driver has violated the prohibitions of this Policy concerning controlled substances. The CCSO’s determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

The “reasonable suspicion” behavior should be witnessed by at least two persons if at all feasible, but only one observation is required. A drug and/or alcohol test can be required only by a Lieutenant who has first consulted with a Captain or higher ranking officer, a Lieutenant who has been designated to act temporarily as a Captain, or a Captain or higher ranking officer. The officer ordering the test may rely on the observation of and recommendation of Sergeants, bargaining unit or non-bargaining unit personnel. Those who make a decision to test an employee will be trained in identifying appearance or conduct that indicates the possible use of controlled substances or misuse of alcohol.

Any “reasonable suspicion” incident will be documented as soon after the incident as possible and the CCPOA will be provided with a copy of that documentation. The employee involved will be immediately removed from the workplace and escorted by a supervisor to a urine specimen collection or alcohol testing site. The employee will NOT be allowed to proceed to the site unaccompanied. UNDER THE COUNTY’S OWN AUTHORITY, and as permitted by the DOT, a negative dilute result is unsatisfactory on a reasonable suspicion test. The employee will be given one additional opportunity to provide a valid specimen. The result of the second test will prevail.

Employees will have access to union representation if requested at every step of the “reasonable suspicion” testing procedures, except during specimen collection. The County will inform the union representative of the reasonable suspicion that supports the testing requirement. A union representative shall be notified immediately upon the request of the employee and the representative shall be afforded two (2) hours to respond. This

representation shall not delay established collection and testing procedures. A list of qualified union representatives will be provided to the County.

### **Post-Accident Testing**

A *reportable accident* under Federal Highway Administration regulations is defined as an accident in which a covered driver was operating a commercial motor vehicle and in which:

- 1) A fatality occurred; or
- 2) The driver received a citation for a moving traffic violation AND a person involved in the accident needed medical care away from the scene of the accident; or
- 3) The driver received a citation for a moving traffic violation AND one or more vehicles involved in the accident needed to be towed from the scene of the accident.

UNDER FMCSA REGULATIONS, employees involved in a reportable accident are required to be:

- Tested for alcohol as soon as possible, but in no case later than 8 hours after the incident.
- Drug tested as soon as possible, but in no case later than 32 hours after the incident.

The CCSO will ensure that the employee involved in a *reportable accident* will be immediately removed from duty, and escorted to a collection/testing site. A union representative shall be notified immediately upon the request of the employee and the representative shall be afforded two (2) hours to respond. This representation shall not delay established testing procedures. A list of qualified union representatives will be provided to the County.

An employee who is seriously injured and cannot provide a specimen for testing may be requested to authorize the release of relevant hospital reports and other documentation that would indicate whether there were any controlled substance(s) in his/her system at the time of the incident.

The CCSO will provide its covered drivers with any necessary information and procedures to enable them to meet federal requirements for post-accident testing.

Covered drivers are prohibited from using alcohol for eight (8) hours following an accident/crash or until they have undergone a post-accident alcohol test, whichever occurs first.

An alcohol test should be administered within two (2) hours following the accident/ crash, but no later than eight hours.

A drug test should be administered as soon as possible but no later than thirty-two (32) hours after the occurrence of an accident/crash.

### **Return to Duty and Follow-up Testing**

FMCSA regulations require return to duty and follow-up drug and/or alcohol testing when a covered driver has engaged in prohibited drug or alcohol-related behavior. A negative drug and/or alcohol test is required prior to return to duty. Follow-up testing may continue for no longer than sixty months following return to duty. The CCSO will comply with any mandated testing requirements outlined by the SAP.

Please refer to “Return to Duty Procedures “and” Disciplinary Action and Procedures” for additional information.

### **Costs of Testing**

The County will be responsible for payment of all pre-employment, pre-duty, post-accident, random, and reasonable suspicion tests.

The County will be responsible for payment of any requested split tests, return to duty, and follow-up tests with a negative or canceled test result.

The employee will be responsible for payment of any requested split tests, return to duty, and follow-up tests with a positive result. The County will pay for the test and then collect from the employee.

## **DRUG AND ALCOHOL TESTING PROCEDURES**

### **Drug Testing**

- 1) Urine specimen collection for drug testing will be performed by qualified individuals in conformance with current standards of practice, using chain of custody procedures specified by DOT regulations (49 CFR Part 40) and with respect for the privacy and dignity of the person giving the specimen. Drug test specimens will be collected to provide at least 30 mL of urine in a “primary specimen” shipping bottle and at least 15 mL of urine in a “split specimen” shipping bottle.
- 2) If an employee is unable to provide an adequate volume of urine on the first attempt (“shy bladder”), he/she will have an opportunity to drink up to 40 ounces of fluids for up to three hours. At the end of this period, if no sample of adequate volume has been provided, the employee will be referred to a physician acceptable to the MRO to determine whether the incident constituted a refusal to test per 49 CFR 40.193.
- 3) Only laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services will perform drug testing.



- 4) When an initial screening test for drugs is positive, a second, confirmatory test will automatically be performed. Confirmed positive drug tests will be reported by the testing laboratory to the MRO for verification (see “Drug Test Results Review”).

### **Breath Alcohol Testing**

- 1) Breath alcohol testing will be performed only by qualified Breath Alcohol Technicians. Testing will be conducted using evidential breath alcohol testing devices listed on the Conforming Products List of the National Highway Traffic Safety Administration.
- 2) Breath alcohol tests with results below 0.02 require no further action.
- 3) Tests with results of 0.02 or above will be confirmed as follows:
  - a. The individual being tested is instructed not to smoke, use mouthwash, drink, or eat for a period of 15 minutes.
  - b. Within 30 minutes of completion of the initial screening test, a confirmatory breath test is conducted per 49 CFR Part 40. The result is recorded in the “Confirmation Test Results” section of the Alcohol Test Form.
- 4) If the result of the confirmed breath alcohol test is 0.02 or greater, the Breath Alcohol Technician must immediately notify the DER or his/her designated representative, who will arrange for transportation of the individual from the alcohol testing site. The Breath Alcohol Technician will then forward a copy of the Alcohol Test Form to the DER.

### **DRUG TEST RESULTS REVIEW**

Drug test results on a covered driver which are reported as positive, adulterated, or substituted by the testing laboratory will be reviewed and verified by the MRO.

A POSITIVE drug test result is defined as the detection of any one or more of the substances tested for under FMCSA drug and alcohol testing regulations at the levels set forth by the DOT<sup>3</sup> at the time of testing.

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<sup>3</sup> <https://www.transportation.gov/odapc/part40/40-87>

A confirmed positive test from a certified laboratory does not automatically identify an employee or applicant as having used drugs in violation of a DOT regulation. The MRO brings detailed knowledge of possible alternate medical explanations to his/her review of the test results. This review is performed by the MRO prior to the transmission of results to the County.

### **MRO Reporting Options and Employer Actions**

- “Negative” – self explanatory
- “Negative Dilute” – Upon receipt of a “negative dilute,” the employee shall be required to immediately provide another specimen. The collection shall be conducted with the minimum possible advance notice and the employee shall be escorted to the collection facility by the DER, Supervisor, or other designated person. In the event the second test result is “negative dilute,” no further action will be taken and the second test shall become the test of record. If the employee is directed to take a second test and the employee declines to do so, this is a “Refusal to Test” under the regulations.
- “Canceled – Split specimen test could not be performed.” This will occur when the primary specimen was positive, and the donor requests an independent test, and the split specimen is not available for testing. The employer must ensure an immediate collection of another specimen, under direct observation, with no advance notice to the donor.
- “Canceled – Test Not Performed, Fatal Flaw (with flaw stated) or Uncorrected Flaw.” No further action required unless a “Negative” test result is required for pre-employment, return to duty, or follow up. A canceled drug test is neither positive nor negative and no consequences must be attached to it.
- “Cancelled Invalid Result.” An “invalid result” means the laboratory was unable to obtain a valid result when attempting to test the specimen. If the MRO has accepted the donor’s explanation as to why the laboratory was unable to obtain a valid result, then the MRO will advise the employer “direct observation not required.” The employer is not required to take any further action unless a “negative result is required (i.e., pre-employment, return to duty, or follow up). If the MRO has not accepted the donor’s explanation, then the MRO will advise the employer “a second collection must take place immediately under direct observation”.
- “Positive or Positive Dilute” – The employer must comply with the requirements for a positive test under the regulations.
  - Immediately remove employee from safety-sensitive functions; and
  - Referral to a SAP – If the employee is terminated, he/she is to be furnished with a list of SAP resources (names, addresses, and telephone numbers).
  - Return to Duty provisions must be followed.
- “Adulterated-Refusal to Test” – Follow same procedures as required on a positive test result.

- “Substituted-Refusal to Test” – Follow same procedures as required on a positive test result.

### **MRO Verification Without Notifying the Employee**

The MRO is permitted to verify a test as positive, or as a refusal to test because of a laboratory report of a positive adulterated, or substituted specimen without interviewing the employee under the following circumstances:

- The employee expressly declines the opportunity to discuss the test with the MRO;
- The MRO has successfully made and documented a contact with the employee, and instructed the employee to directly contact him/her, and more than 72 hours have passed since the time the MRO contacted the employee.

NOTE: If a test is verified positive under the latter circumstances, the donor may give the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented him/her from contacting the MRO. On the basis of this information, the MRO may re-open the verification, allowing the donor to present information concerning a legitimate explanation for the positive test. If the MRO concludes that there is a legitimate explanation, the MRO shall verify the test as negative.

Upon verifying a test result as positive, the MRO will inform the donor of the option for having the “split” portion of his/her specimen tested. The donor must notify the MRO of a desire to exercise this option within 72 hours of being notified of the positive result.

The MRO will not delay reporting of a verified positive test result pending “split” specimen testing. If a donor requests testing of the “split” specimen but none is available, the MRO will cancel the test.

### **Communication of Results**

The MRO or his/her designated representative will report test results ONLY to the County’s Designated Employee representative who shall notify either the Sheriff, Undersheriff, or person appointed to fill the duties of Sheriff or Undersheriff. Confidentiality will be strictly maintained. If the result is positive, the MRO or his/her authorized representative will report the identity of the controlled substance.

Employees and applicants may obtain copies of their test results by requesting them in writing from the MRO within 60 days of being notified of the results.

### **FAILURE TO COOPERATE**

Failure to cooperate with any aspect of this Policy, including but not limited to falsifying or attempting to falsify test results or specimens or refusing to cooperate in testing will subject the employee to progressive discipline, up to and including discharge. Any covered

driver who refuses to take a drug or alcohol test to comply with FMCSA regulations (49 CFR Part 382) will be immediately removed from duty as required by these federal regulations.

### **DISCIPLINARY ACTION AND PROCEDURES**

- 1) An otherwise qualified applicant for a covered driver position whose drug test results are negative and who has documented satisfactory participation in a previous employer's drug and alcohol testing program, will be considered qualified for the position offered. Applicants with verified positive drug test results will be considered ineligible for the position.
- 2) Any covered driver found to be in violation of this Drug and Alcohol Testing Policy will be removed from duty and will be subject to progressive discipline, up to and including discharge. Violations include:
  - a. Alcohol possession or use in violation of the prohibitions stated in this Policy (e.g. pre-duty, post-accident; see pages 6 and 7)
  - b. An alcohol test result of 0.04 or greater
  - c. A verified positive drug test result
  - d. Refusal to test or to cooperate
- 3) A covered driver determined to have evidence of alcohol in his/her system in the range of 0.02 – 0.039 will be subject to progressive discipline.
  - a. On any occasion in which a covered driver has a breath alcohol test result of 0.02 or greater, but less than 0.04, he/she will be immediately removed from work for a period of at least 24 hours. The employee may deduct this time away from work from any available paid time except sick leave, or choose leave of absence without pay. No further alcohol testing will be required prior to resuming work at the beginning of the next shift following the end of the 24-hour period. These occasions will be considered violations of this Policy, and will subject the employee to progressive discipline.
- 4) Covered drivers who have volunteered information concerning drug or alcohol problems and/or voluntarily entered into drug and/or alcohol evaluation and treatment programs shall not have that admission used against them in progressive disciplinary proceedings.
- 5) **ALCOHOL RESULT OF 0.04 OR ABOVE**  
Under the County's independent authority, any covered driver who has had a **confirmed alcohol result of 0.04** or above shall be subject to progressive disciplinary procedures up to and including discharge. If returned to duty, he/she must agree to meet all return to duty requirements of the FMCSA.

6) **POSITIVE DRUG TEST**

Under the County's independent authority, any covered driver who has had a verified positive drug test shall be subject to progressive disciplinary procedures up to and including discharge. If returned to duty, he/she must agree to meet all return to duty requirements of the FMCSA.

**RETURN TO DUTY PROCEDURES**

The following statements reflect the return to duty and follow-up testing requirements of the FMCSA:

- 1) Covered drivers who have had alcohol test results of 0.04 or greater must be evaluated, undergo treatment, if required, and be recommended for return to work by the SAP. A "return to duty" alcohol test with a result less than 0.02 is required prior to resumption of safety-sensitive or covered driving functions.
- 2) Covered drivers who have had verified positive drug tests must be evaluated, undergo treatment, if required, and be recommended for return to work by the SAP. A negative "return to duty" drug test is required prior to resumption of safety-sensitive or covered driving functions.
- 3) Covered drivers may be subject to periodic unannounced follow-up alcohol and/or drug testing as determined by the SAP who evaluated the employee.

Under the County's independent authority covered drivers who have had alcohol test results of 0.04 or greater and/or a verified positive drug test and are awaiting recommendation for return to duty shall deduct this time away from work from any available paid time except sick leave (unless provided by law), or choose leave of absence without pay.

**RECORD KEEPING PROCEDURES**

The CCSO's DER will maintain drug/alcohol testing records in a secure filing system, separate from the County Personnel files, with information available only on a "need to know" basis.

A driver is entitled, upon written request, to obtain copies of any records concerning his/her use of alcohol or controlled substances. Requests for such information may be directed to the DER or to the County drug testing management service.

The County shall release information regarding a covered driver's records to a subsequent employer upon receipt of a specific written request, by the covered driver, authorizing release of the records to an identified person.

Information regarding an individual's drug test results or rehabilitation is considered to be personal and confidential and may be released only upon written consent of the individual, except:

- 1) Such information must be released to the Secretary of Transportation, any DOT agency, or any state or local officials with regulatory authority over the employer or any of its drivers.
- 2) Such information may be disclosed in a lawsuit, grievance, or other proceeding initiated by or on behalf of the covered driver and arising from an alcohol test and/or a verified positive drug test or from the CCSO's determination that the driver engaged in conduct prohibited by FMCSA regulations.
- 3) When requested by the National Transportation Safety Board as part of an accident investigation, the CCSO will disclose information regarding post-accident alcohol and/or drug testing.

Under the County's independent authority,

- 4) Such information may not be released to any state official with specific regulatory authority over the Sheriff's Office or law enforcement personnel unless legally required.
- 5) When the County is compelled by a judicial determination or order that the information is not protected from disclosure.
- 6) The information is needed by medical personnel for the diagnosis or treatment of a patient who is physically unable to authorize disclosure.

### **Record Retention**

The following schedule of record keeping will be maintained by the DER and his/her authorized agents:

- Negative and canceled drug test records; records of alcohol test results less than 0.02 1 year
- Information obtained from previous employers 3 years
- Records of supervisor training Indefinite or 2 years beyond job responsibilities
- Records of verified positive drug test results; alcohol test results of 0.02 or greater; refusals to be tested for drugs and/or alcohol; SAP evaluations and referrals; follow-up tests and schedules 5 years
- Documentation of EBT calibration; Custody Control Forms; Specimen collection/alcohol test records 2 years

- Calendar year record of total number of employees tested and the results of tests 5 years

## **SUPPLEMENT A – DEFINITION OF TERMS**

For the purposes of this Policy, the following definitions apply.

**Abuse/Misuse of Prescription Drugs:** The use of a drug not in accordance with the prescribed dosage or method of use.

**Accident:**

***Reportable accident (covered drivers):*** An accident involving a commercial motor vehicle in which:

- a. A fatality occurred; OR
- b. The driver received a citation for a moving traffic violation AND a person involved in the accident needed medical care away from the scene of the accident; OR
- c. The driver received a citation for a moving traffic violation AND one or more vehicles involved in the accident needed to be towed from the scene of the accident.

**Adulterated Specimen:** A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

**Alcohol:** Ethyl alcohol or ethanol.

**Alcohol Screening Device (ASD):** 49 CFR 40.3 – A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

**Breath Alcohol Technician (BAT):** An individual who has been trained to proficiency in the operation of the evidential breath testing device he/she is using as required under 49 CFR Part 40.

**Breath Alcohol Testing Site:** A location which affords visual and aural privacy for the performance of breath alcohol testing. No unauthorized person shall be permitted access to the breath alcohol testing site when the evidential breath testing device is unsecured or at any time when testing is being conducted. In unusual circumstances, e.g. after an accident when a test must be conducted outdoors, the breath alcohol technician must provide visual and aural privacy to the greatest extent practicable.

**CCSO:** Clackamas County Sheriff's Office

**CFR:** United States Code of Federal Regulations

**Chain of Custody:** Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of



the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory be used from time of collection to receipt by the laboratory.

**Collection Site:** A designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

**Collector:** A person who instructs and assists applicants and employees through the urine specimen collection process.

**Confirmation Test:** A second analytical drug testing procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC-MS) is the usual confirmation method for drug testing at this time.

**Controlled Substances:** Substances listed on Schedules I through V in 21 U.S.C. 802 as they may be revised from time to time (21 CFR 1308). Controlled substances include illicit drugs and drugs which may be authorized for use by a physician or dentist for certain medical uses, but which are subject to misuse or abuse.

**County:** Clackamas County and/or Clackamas County Sheriff's Office

**Covered Driver:** Individual who is required to hold a Commercial Driver's License (CDL) for his/her job with the CCSO and who is subject to drug testing under Federal Highway Administration, Department of Transportation regulations (49 CFR Parts 40 and 382).

**Designated Employer Representative (DER):** An employee authorized by the employer to assist supervisors in taking immediate action(s) to remove employees from safety-sensitive duties and to make decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40.

**Dilute Specimen:** 49 CFR 40.3 – A specimen with creatinine and specific gravity values that are lower than expected for human urine.

**DOT:** United States Department of Transportation

**Drugs:** Controlled Substances

**FHWA:** Federal Highway Administration

**FMCSA:** Federal Motor Carrier Safety Administration

**GVWR:** Gross Vehicular Weight Rating; size criterion for determining classification of a commercial motor vehicle under federal regulations.

**Initial or Screening Test:** An immunoassay screen to eliminate “negative” urine specimens from further consideration.

**Medical Review Officer (MRO):** A licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders and drug testing who is responsible for reviewing and verifying drug testing results prior to their communication to the DER.

**Negative Drug Test:** A test in which initial or confirmation testing under DOT procedures did not show evidence of a prohibited drug in an employee’s or applicant’s system above established levels; OR, a test which is verified as negative by the MRO (e.g. review showed positive test was due to prescription medication or other authorized use of controlled substance).

**On Duty:** Under this Policy, a covered driver is “on duty” when he/she is at work and ready to perform safety-sensitive functions, e.g., qualified and available to drive a commercial motor vehicle.

**Positive Drug Test:** A urine drug test result which indicates the presence of controlled substances beyond the cut-off levels specified by 49CFR Part 40.

**Confirmed Positive Drug Test:** A positive drug test which has undergone an initial “screening” test AND a confirmation test which validates the first result. Drug tests are confirmed by the SAMHSA certified laboratory which performs the analyses.

**Verified Positive Drug Test:** A confirmed positive drug test (see above) after investigation by the MRO, who has determined that no legitimate explanation exists for the presence of the controlled substance that was detected.

**Prohibited Drugs:** Marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines.

**Random Testing:** Computerized random selection and testing for drugs in which each person in the computer data base has an equal chance of selection each time a selection occurs, in accordance with regulatory requirements.

**Reasonable Suspicion:** Specific, articulable observations of an employee’s condition or performance that indicate possible drug or alcohol use. Examples include, but are not limited to, deteriorating work performance, poor attendance, tardiness, appearance (including, for example, noticeable odor of an alcoholic beverage), behavior, or speech of the employee. The observations may include indications of the chronic and withdrawal effects of controlled substances, as well as include reliable information from other employees that support the violation of Policy prohibitions.

**Refusal to Submit:** Refusal by an individual to provide a urine or breath specimen after receiving notice of the requirement to be tested in accordance with this Policy.

**Safety Sensitive Functions:** Ready to perform, performing, or just finished performing, the following duties: waiting to be dispatched, inspecting equipment, driving, loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate a vehicle, repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**SAMHSA:** Substance Abuse and Mental Health Services Administration, a division of the US Department of Health and Human Services (DHHS) which is responsible for certifying laboratories to perform federal workplace drug testing.

**Screening or Initial Test:** Immunoassay screen to eliminate “negative” urine specimens from further consideration.

**Split Specimen Collection Procedure:** A collection procedure in which a urine specimen is divided or “split” between two shipping bottles, both of which are transported to the testing laboratory.

**Split Test:** If the results of the initial screening and confirmation tests of the “primary” specimen are positive, the “split” specimen may be tested at another qualified laboratory.

**Substance Abuse Professional (SAP):** Under DOT regulations, individuals who may serve as SAPs include:

- licensed physicians (Medical Doctors or Doctors of Osteopathy) or
- licensed or certified psychologists, social workers, employee assistance professionals, or addiction counselors (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

Under this Policy, the DER must inform employees or applicants who are found to have violated the alcohol prohibitions or who have had verified positive drug tests of qualified SAPs in the local area.

**Substituted Specimen:** A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

## **SUPPLEMENT B – SERVICE PROVIDERS**

**The Clackamas County Risk Management Department will manage the drug and alcohol testing program for the Sheriff's Office with the following provisions:**

### **DRUG AND ALCOHOL TESTING MANAGEMENT SERVICE**

The County will maintain an agreement with a drug and alcohol testing management service(s) to advise the County on processes, developments, and changes concerning this Policy.

The firm(s) chosen will be responsible for overseeing compliance of agents of the CCSO with federal regulations, including interacting with specimen collection and alcohol testing agents, designated drug testing laboratories and MROs. It also performs random selections and maintains records as required by federal regulations.

In the event of a need to change the provider of these services, the choice of provider will be made by the DER and communicated with the Peace Officers Association.

### **MEDICAL REVIEW OFFICERS**

MRO services will be provided by the testing management service.

### **DRUG TESTING LABORATORIES**

The County will use drug testing laboratories which are SAMHSA-certified, as required by federal drug testing regulations. The County's drug testing management service may arrange for the services of a drug testing laboratory in order to best serve the interests of the County.

### **SUBSTANCE ABUSE PROFESSIONALS**

Under this Policy, covered employees who refuse testing, have alcohol test results of 0.01 BAC for Sheriff Office Policy (0.04 BAC for DOT policy) or greater, and/or have verified positive drug test results must be referred by the DER to a SAP for evaluation. The County will maintain a list of such qualified individuals in its geographic area and make this list available to covered drivers as needed.

The County's drug testing management service will assist the County in locating SAPs in the driver's community upon request.

# CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Sitting/Acting as (if applicable)

## Executive Session Worksheet

**Presentation Date:** 06/01/2021    **Approx. Time:** 8:00AM    **Approx. Length:**

**Executive Session Category:** Collective Bargaining

**Department:** Human Resources

**Presenters:** Eric Sarha, Deputy Director of HR

**Other Invitees:** Sherryl Childers

**ATTACHMENTS:** County and POA 2020-2022 BLACKLINE

**County Counsel Approval:** \_\_\_\_\_

**SUBMITTED BY:**

Division Director/Head Approval \_\_\_\_\_

Department Director/Head Approval \_\_\_\_\_

County Administrator Approval \_\_\_\_\_

For information on this issue or copies of attachments, please contact \_Sherryl Childers\_\_\_\_\_ @ 503-655-8235\_\_

**AGREEMENT**  
**Between**  
**CLACKAMAS COUNTY, OREGON**



**And**

**Clackamas County**  
**Peace Officers Association**

**PEACE OFFICERS**  
**ASSOCIATION**



**Clackamas County**

**July 1, 2020 – June 30, 2023**

~~2017-2020~~  
~~2020-202~~  
**AGREEMENT**  
Between  
~~Clackamas County, Oregon~~  
And



~~Clackamas County~~  
~~Peace Officers' Association~~

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AGREEMENT  
between  
CLACKAMAS COUNTY, OREGON  
and  
CLACKAMAS COUNTY PEACE OFFICERS ASSOCIATION

**PREAMBLE**

This Agreement is entered into by Clackamas County, Oregon hereinafter referred to as the County, and the Clackamas County Peace Officers Association, hereinafter referred to as the Association.

The parties agree as follows:

**ARTICLE 1 – RECOGNITION**

**Section 1.** The County recognizes the Association as the exclusive bargaining agent for the purpose of establishing wages, hours and other conditions of employment for all of the classified County employees in the Sheriff’s Office, Investigators in the District Attorney’s Office, and Deputy Medical Examiners and Strategic Program Coordinators in the Department of Disaster Management, working twenty or more hours per week.

The bargaining unit excludes supervisory employees including Lieutenants and those with higher rank, confidential, and unclassified including temporary or limited term duration employees.

Classified and unclassified positions are those as identified by County Code 2.05.

**Section 2.** When any bargaining unit classification not listed on the Wage Schedule is established, the County shall designate a pay rate for the position. In the event the Association does not agree that the rate is proper, the County will negotiate with the Association over the wage rate and any disagreement over the wage rate will be submitted to the impasse resolution consistent with ORS 243.698. In such case, the County is not precluded from filling the position at the posted wage rate; however, the County acknowledges the obligation to bargain and honor any interest arbitration award.

**Section 3.** Consistent with the PECBA requirements related to information requests, The the Association and themay request information from the Sheriff’s Office agree to meet twice a year regarding the utilization of temporary employees, also known as unallocated positions, by the Sheriff’s Office, the duration of their assignments, and whether or not the positions should be converted to part-time or full-time positions. The meetings will be staffed by a representative from Human Resources. The meetings will take place within 10 working days of March 15 and September 15 each year. The purpose of the meetingswill be to assess the Sheriff’s use of temporary employees, the duration of their assignments and whether or not the positions should be converted to part-time or full-time positions. The Sheriff’s Office will respond to the Association’s information request within a

reasonable time per PECBA requirements. Upon reasonable request by the Association, the Association and Sheriff's Office will meet at a mutually agreeable time to discuss the Sheriff's use of temporary employees, the duration of their assignments, and whether or not the positions should be converted to part-time or full-time positions.

## **ARTICLE 2 – PRESERVATION OF PUBLIC RIGHTS**

**Section 1.** The Association recognizes that an area of responsibility must be reserved to the County if County government is to effectively serve the public. Therefore, the County shall have full and complete right to manage and direct its business and it is recognized that the following responsibilities of management are exclusively functions to be exercised by the County and are not subject to negotiations insofar as this right does not affect the meaning, interpretation or application of any other term of this Agreement.

1. The determination of the governmental services to be rendered to the citizens of Clackamas County, Oregon.
2. The determination of the County's financial, budgetary and accounting procedures.
3. The management and direction of the work force including, but not limited to, the right to determine the methods, processes and manner of performing work; the right to hire, promote, transfer within the same pay range and retain employees; the right to discipline or discharge for proper cause; the right to lay off for lack of funds; the right to establish or abolish positions or reorganize the departments or division; the right to determine schedules of work; the right to purchase, dispose and assign equipment or supplies; and the right to contract or subcontract any work.

**Section 2.** The County, in exercise of the above mentioned functions, will not discriminate against any employee because of his-their membership in the Association or in the exercise of rights protected by this contract, including the right to file grievances or to request Association representation.

**Section 3.** The County and the Association for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered by this Agreement, or any other subject matter except as provided in Article 3, Existing Conditions.

## **ARTICLE 3 – EXISTING CONDITIONS**

Matters of employment relations, as defined by PECBA, including but not limited to, direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment that are not referred to or covered by other provisions of this Agreement shall be continued at not less than the level in effect at the time of the signing of this Agreement. Any changes in those existing employment relations during the term of the Agreement shall be negotiated with the Association in accordance with ORS 243.698.

## ARTICLE 4 – HOURS OF WORK

### **Section 1. Regular Hours and Workday.**

The regular hours of work each day shall be consecutive. The workday shall consist of current prevailing consecutive hours of work scheduled, provided that changes to shift starting times that are required for justifiable business reasons may be made at the time of regular semi-annual seniority shift-bid without bargaining the change with the Association. All employees shall be scheduled to work on a regular shift and each shift shall have a regular starting and quitting time except for emergency situations.

#### Motors and Canine Units:

The workday for Motor and Canine Units commences and ends upon arrival and departure from the County, except that the workday for Motor Units and Canine Units assigned to contract cities commences and ends upon arrival and departure from the contract city limits. When a Motor Unit employee agrees to work a voluntary overtime shift on days off for special events, work time starts upon the employee's arrival at the event and ends upon the employee's departure from the event. Shift starting times and days for Motor Units may be altered by the County for justifiable business reasons at the time of regular semi-annual seniority shift bid without bargaining the change with the Association. Shift bid posting for Motors will include work hours and days off but need not include district assignments or city assignment.

Deputies may be assigned to Canine duties at the discretion of the County. It is anticipated that Canine Deputies will provide routine care of their assigned dogs, including feeding, grooming, and other normal dog maintenance responsibilities, outside the Canine Deputy's normal work hours. The parties have evaluated the time needed for routine care and have determined that 4 hours per week (34 minutes a day) is reasonable and sufficient to meet those responsibilities. In consideration of this activity, Canine Deputies shall receive one (1) hour release time per working day when on a 4/10 schedule for these duties. If the work schedule differs from a 4/10 schedule, the Deputy will receive the equivalent of 4 hours per week of release time divided into the workday schedule. Canine Deputies may also be required to work a full week schedule and would be eligible for overtime for routine care.

### **Section 2. Workweek. Non-continuous Operations.**

The workweek shall consist of five (5) consecutive eight (8) hour days, Monday through Friday, except for employees covered by another workweek schedule listed within this Article or as outlined in the job assignment posting.

### **Section 3. Workweek. Continuous Operations.**

The workweek for employees engaged in continuous operations shall consist of consecutive days.

Employees engaged in continuous operations are defined as being any employee or group of employees engaged in an operation for which there is regularly scheduled work for twenty-four (24) hours a day, seven (7) days a week such as but not limited to Patrol, Records and Corrections.

**Section 4. Four (4) Ten (10) Work Schedule.**

It is mutually agreed that the County may employ employees on a four (4) day work week ten (10) hour a day basis, referred to as the 4/10 schedule, rather than those hours set forth above in this Article. The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

**Section 5. 3-12/3-12 + 8 Hour Work Schedule.**

The 3-12/3-12 + 8 work schedule shall consist of one work week with the seven (7) day payroll week of the three (3) twelve (12) hour work days, followed by four (4) days off, and the other work week with the seven (7) day payroll week of the three (3) twelve (12) hour work days, with an eight (8) hour work day, followed by three (3) days off. This schedule may begin with either the long or the short work week. Employees assigned this schedule are subject to the section 7k exemption under the Fair Labor Standards Act. This 7k exemption establishes a 14-day work period. Overtime will be paid for hours worked in excess of 80 hours in the 14-day period. Overtime on a daily basis will be paid as provided in Article 13. The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

**Section 6. 5-9/4-9 Work Schedule.**

The 5-9/4-9 work schedule shall consist of five (5) consecutive nine (9) hour workdays followed by two (2) consecutive days off, followed by four (4) consecutive nine (9) hour workdays, followed by three (3) consecutive days off. During the 4-9 work week, Friday shall be the first of the three consecutive days off. The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

Pursuant to the 5-9/4-9 schedule, the parties agree that employees assigned to this schedule are subject to the 7k exemption under the Fair Labor Standards Act. This 7k exemption establishes a 14-day work period. Overtime will be paid for hours worked in excess of 81 hours in the 14-day period. Overtime on a daily basis will be paid for hours worked exceeding nine (9).

**Section 7. 9-80 Work Schedule.**

The 9-80 work schedule is as follows:

For the purposes of this 9-80 schedule, the work week will be defined from 12:00 p.m. on Friday to 11:59 a.m. the following Friday. The schedule is one (1) week of four (4) consecutive nine (9) hour workdays and a fifth day of a four (4) hour shift. The new work week starts thereafter on the same day followed by another four (4) hour shift, two (2) days off, and one (1) week of four (4) consecutive nine (9) hour workdays, with the following fifth day off.

The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

**Section 8. School Resource Officers.**

During the school year, School Resource Officers (SRO) shall work a five (5) day work week, eight (8) hours a day schedule, Monday through Friday. The SRO's may be assigned to a four (4) day work week, ten (10) hours a day with either Friday through Sunday off or Saturday through Monday off depending upon the needs of the specific school and/or Sheriff's Office. School Resource Officers will be assigned to day shift but may request an alternative shift and/or alternative days off. Notification of their Summer schedule shall be given at least thirty (30) days prior to the change unless mutually agreed to be shorter. When a school holiday and a County holiday are the same, the SRO will have that day off. On days when students are not present, (unless the school requests their presence), the SRO's will report to patrol for their regular working hours.

**Section 9. Schedule of Deputy Medical Examiners.**

See Article 38.

**Section 10. Shift Trading.**

For employees who agree to trade shifts for one day, the traded shift becomes each employee's assigned shift. Failure to work the shift will have the same consequences as if the employee did not work the employee's regular shift. Shift trades may be made only between employees working in the same capacity, must be voluntarily agreed to by the employees involved, and must be approved by management after being fully informed of the trade and before the work is performed. Overtime does not apply to traded shifts.

If approved, in writing and signed by the supervisor, an employee may designate an equivalent amount of vacation hours to the employee working their shift in lieu of working a shift in exchange.

**Section 11. Schedule Assignments.**

1. Patrol Division: 4-10 schedule with consecutive days off. Management will decide if the schedule for Support Staff assigned to the Patrol Division will be another schedule as provided in Article 4.

2. ~~Investigations Division~~—Detectives: 4-10 schedule with consecutive days off. Detectives will work Monday through Thursday. Friday, Saturday, and Sunday will be their regular days off. either select Monday or Friday as the "third" day off based on Division seniority with the understanding that the Monday/Friday is divided between employees such that coverage is provided Monday through Friday every week as determined by Management. Management will decide if the schedule for Support Staff assigned to the Investigations Division will be another schedule as provided in Article 4.

This schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association. In the event the 4-10 schedule is terminated by the County for Detectives, Detectives will revert back to the 5-9/4-9 schedule in Section 6 and double-time will be reinstated under Article 15, Section 5.

3. Corrections Deputies and Corrections Deputy Recruits: 3-12/3-12 + 8 schedule.

**Section 12. DPSST Basic Academy Training.**

All DPSST Basic Academy mandatory activities such as but not limited to instruction time, flag raising, and physical fitness training shall be considered as normal work duty time and shall be compensated as such. The work week shall consist of a forty (40) hour work week, based upon a five (5) day work week, eight (8) hour work day. These eight hours of the work day may be non-consecutive due to long break periods between classes and other required activities. If the amount of time spent in required activities totals more than forty hours per week, overtime will be paid at time and one half. Attendance at voluntary Basic Academy events is not considered work time.

The County agrees to continue to pay for the employee’s meals and other normal required Basic Academy expenses such as room and instruction expenses. This does not include optional equipment expenses which shall be paid by the employee, or other equipment that the employee is normally required to purchase.

**Section 13. Civil Division.**

Deputies and Sergeants assigned to the Civil Division shall work a 5-9/4-9 schedule as provided in Section 6.

The implementation of the 5-9/4-9 work schedule shall terminate upon the mutual consent of the parties or by thirty (30) days written notification from either party of its desire to terminate. Neither party shall file a grievance if either party decides to terminate this agreement.

Civil deputies will sign up by seniority for hours of work, shift preference and days off. Civil sergeants will have alternating Fridays or Mondays off as determined by management.

**ARTICLE 5 - MEAL AND REST BREAKS**

**Section 1. Meal periods.**

All employees will be granted a meal period during their working shift, during which time employees are subject to call when needed.

All non-sworn staff may be allowed to combine one (1) of ~~his/her~~their rest periods with ~~his/her~~their meal period with Division Commander approval.

Meal periods are on paid time.

**Section 2. Rest periods.**

Employees working an eight (8) or nine (9) hour day shall be provided with rest period of fifteen (15) minutes during each half of the employee’s shift. Employees working a ten (10) hour day shall be provided with a rest period of twenty (20) minutes during each half of the employee’s shift. Employees working a 12-hour shift shall be provided with two twenty (20) minute rest periods during the employee’s shift.

Rest periods are on paid time.

## **ARTICLE 6 - SHIFT PREFERENCE, CHANGES AND DAYS OFF**

### **Section 1. Seniority for Shift Preference and Days Off.**

For the purposes of shift preference and selection of off duty days within a Division, seniority shall be the major consideration along with the needs of the Sheriff's Office and the individuals involved. When shift preference or selection of off duty days is not based upon seniority, the employee shall be given notice in writing at least seven (7) calendar days before the effective date of the needs of the Sheriff's Office that precluded the use of seniority for said shift preference or selection of off duty days.

Seniority shall be determined by the length of time an employee has within a job classification with the Sheriff's Office except for Recruit and Deputy Sheriff in which case seniority shall be defined as the hire date in either of these two classifications and for Recruit Jail Deputy and Jail Deputy in which case seniority shall be defined as the hire date in either of these two classifications. For Office Specialist 1 and Office Specialist 2 seniority shall be defined as the hire date in either of these two classifications.

An employee's request for transfer to a different shift or different days off shall be made in writing and shall go directly to the Division Commander under whom the employee is assigned. The Division Commander will act promptly upon the employee's request by written response to the employee of the approval or denial of the request. No request shall be denied unless an operational basis exists for the denial. In the event the request is denied, the Division Commander shall state the reason or reasons for denial in writing in the response to the employee.

### **Section 2. Shift Changes.**

The Division or Watch Commander will make every effort to schedule shift changes or reassignment with the least amount of additional shifts to be worked by the employee over the regular work week.

#### **1. Shift Reassignment:**

If at the request of an employee or upon a shift assignment at the discretion of management, an employee is assigned a shift, or transferred to another assignment wherein the employee is required to work any consecutive days beyond their normal work schedule to adopt the new shift assignment, such additional time worked will be compensated as either overtime pay (under Article 13, Section 1) or one (1.0) hour of straight time as pay plus 0.5 hours as straight compensatory time for each hour worked.

For example: if an employee working a four (4) ten (10) schedule works a fifth consecutive ten (10) hour day, the ten (10) hours worked will only be compensated as overtime (under Article 13, Section 1) or 10 hours of straight time and 5 hours of compensatory time. (No other hourly compensation will be paid)



## 2. Day Off Adjust:

Day Off Adjust is considered as regular hours that an employee is not required to work due to shift rotation or transitioning to administrative leave. Day Off Adjust is paid at the regular straight time rate of pay.

If the employee is granted a Day Off Adjust to avoid working a consecutive day beyond their previous work schedule then overtime or compensatory time do not apply for the work days that follow during the shift adjustment period. For example: If an employee working a four (4) ten (10) schedule is given a Day Off Adjust on the last day of their previous work schedule (day 4 of 4) or another following consecutive day and then starts the new schedule the employee is not entitled to any overtime or compensatory time for the days following. (i.e.: straight time only will be paid for the 5, 6, and 7<sup>th</sup> day, respectively).

If the employee requests and management agrees to take a different Day Off Adjust other than the one offered by management to avoid consecutive days worked, the employee is not entitled to overtime or compensatory time for consecutive days worked. For example: in the above scenario if the employee is offered day 4 off but would rather have day 6 off (second day of their new schedule and work week) the employee is not entitled overtime or compensatory time for working the 5<sup>th</sup> day.

### **Section 3. Shift Rotation.**

Shift rotation for Patrol Division, Jail Division, and Records Section occurs every six (6) months with days off sign up occurring based on classification seniority. An employee wishing to transfer to patrol from any special assignment, division or position shall notify both their Division Commander and the Patrol Division Commander, in writing, no later than June 30 or December 31 prior to the start of the shift rotation sign up.

Rotation Schedule for Employees:

#### Patrol/Records:

For non-sergeant employees, shift rotation and implementation occurs every six (6) months on the first day of the first payroll period in March and the first day of the first payroll period following Labor Day. Bidding for shift rotation for non-sergeants will be completed between February 3 and February 4 and August 3 and August 4.

Patrol Sergeants' shift rotation and implementation will occur fourteen (14) days prior to the dates set for non-sergeants. Shift bidding for patrol Sergeants will occur by February 1 and August 1.

Full Time Employees assigned to a temporary duty during the Spring/Summer that begins before June 1 shall bid for a shift in February and shall remain in their regular shifts until assigned.

## Jail:

For employees of the Jail Division, shift rotation and implementation occurs on the first day of the first payroll period in March and the first day of the first payroll period following Labor Day.

Bidding for Jail Sergeants will be completed between February 1 and February 3 and August 1 and August 3. Bidding for non-sergeants will be completed between February 5 and February 10 and August 5 and August 10.

### **Section 4. Rotation Process.**

At least ten (10) days prior to the start of the bidding for shifts, a list of personnel will be posted. The list will assign each employee a specific half (1/2) day, based upon seniority, on which each employee will make him/herself available for phone contact to select a shift and days off. The list will include a beginning and ending time for each day that calls will occur, and selections accepted.

Each employee will be called in order of seniority to select his/her/their shift and days off. If the employee does not answer the phone, return a message or answer a page within one (1) hour, the bidding process will proceed past him/her/them. If/when the employee returns the call, s/he/the employee will select from the shifts and days off which are available at the time they called. If the employee does not return a call or during the hours posted, or provide a list of choices, his/her/their name will be placed at the top of the list at the time the employee contacts the office. The employee will be called first on the next day. If s/he/the employee does not respond, the process will be repeated for subsequent days of the sign-up period.

If the employee is not going to be available, s/he/they employee should notify their Watch Commander and the person(s) assigned to administering the calls, in writing, of their top seven (7) choices for shift and days off.

When an employee has been on paid or unpaid Administrative Leave status, due to allegations of internal violations or allegations of violations of law, for the thirty (30) calendar days prior to the start of the shift bidding day, the employee forfeits their position in the seniority based shift sign up. If the employee returns to duty status after the shift bidding period began, the employee will be assigned to a shift based on the needs of the department until the next regularly scheduled shift bidding.

Nothing in this section shall prevent the Association and/or Management from developing and applying technology to assist with improving the efficiency of the shift bidding process.

### **Section 5. Contract Cities.**

A contract City is a City that requests services of the Sheriff's Office by contract in lieu of having their own independent law enforcement services.

## 1. Contract Cities Generally

Patrol Division personnel who wish to bid for assignments in contract cities shall follow the provisions of Article 6, Section 1, with the following additional requirements:

- A. All contract city assigned patrol positions shall be subject to specific written expectations for assignment to or maintaining assignment to a contract city. Those expectations shall be communicated to the employees. By mutual agreement, the city, the contract city Station Commander and/or appropriate Sheriff's Office Division Commander may reassign an employee in a contract city position if not meeting written expectations.
- B. Unexpected vacancies shall be filled by the affected Division Commander temporarily until a selection for the vacant position can be made as set out in Section 1 above.
- C. When the seniority shift bid is posted pursuant to Article 6, Section 1, the available shifts that are listed shall specify the work hours and days off. The duration of any assignment in excess of six (6) months must be indicated on the seniority shift bid posting.
- D. Employees who are eligible and elect to rotate out of the contract city assignment shall notify both their Station Commander and the Patrol Commander in writing consistent with Section 3.

## 2. City of Wilsonville and City of Happy Valley

All Wilsonville and Happy Valley Patrol Division positions shall be for a five (5) year length of time except for Traffic Units and School Resource Officers assigned to cities, which will be governed by the time frame established in the job announcement.

Employees have the option of leaving after completion of one (1) year in the assignment.

An employee's ability to promote or be assigned to special units shall not be limited by the employee's assignment to Wilsonville or Happy Valley.

## 3. Other Contract Cities

- A. All full-time Patrol Division positions assigned to other contract cities (for 30 hours per week or more) shall be for a two (2) year period of time with the option of leaving after one (1) year in the assignment except for Motors Unit that will be subject to the regular semi-annual seniority shift-bid process.

An employee's ability to promote or be assigned to special units shall not be limited by the employee's assignment to contract cities.

B. Full-time employees may not be bumped pursuant to Article 6, Section 1, prior to completion of the two (2) year commitment.

## **ARTICLE 7- HOLIDAYS**

### **Section 1. Holidays.**

The following days, and every day appointed by the Board of Commissioners as a holiday, shall be recognized and observed as paid holidays:

New Year's Day (January 1<sup>st</sup>)  
Martin Luther King Jr. Birthday (Third Monday in January)  
President's Day (Third Monday in February)  
Memorial Day (Last Monday in May)  
Juneteenth (June 19<sup>th</sup>)  
Independence Day (July 4<sup>th</sup>)  
Labor Day (First Monday in September)  
Veteran's Day (November 11<sup>th</sup>)  
Thanksgiving Day (Fourth Thursday in November)  
Christmas Day (December 25<sup>th</sup>)

### **Section 2. Holiday Pay.**

Continuous operations employees shall receive eight (8) hours pay for each of the holidays listed above on which they are not scheduled to work. If an employee is normally scheduled to work the holiday but has been granted the day off due to the holiday, the employee receives holiday time equivalent to their normal schedule. (i.e.: 10-hour shift, get 10 hours holiday for not working the holiday).

### **Section 3. Weekend Holidays for non-continuous operations.**

If an employee is normally scheduled to work the holiday, but has been granted the day off, the employee receives holiday time equivalent to their normal schedule. (i.e.: 10-hour shift, get 10 hours holiday for not working the holiday).

Holidays shall be observed on any day within the same work week as the holiday if the employee has requested a day and received supervisor approval at least the work week prior to the holiday. However, if the employee has not received supervisor approval in the week preceding the holiday, the holiday shall be observed as follows: 1) On the Tuesday if the holiday was on a Monday for employees working a Tuesday through Friday schedule; or 2) on the preceding Thursday if the holiday was on a Friday for employees working a Monday through Thursday schedule.

### **Section 4. Holiday During Leave.**

Should an employee be on authorized leave when a holiday occurs, no leave hours will be charged for that day.

### **Section 5: Holiday Worked.**

If an employee works on any of the holidays listed above, he/shethe employee shall, in addition to his/hertheir regular pay, be paid for all hours worked at the rate of time and

one-half (1-1/2) [his/her/their](#) regular rate of pay. For purposes of this sub-section only, holiday pay shall be equal to the scheduled shift. For example, if the employee works on a holiday and is assigned an 8, 9, 10, or 12 hour day, they shall receive 8, 9, 10, or 12 hours of holiday pay respectively, not inclusive of overtime.

### **Section 6. Personal Leave.**

Each employee shall receive two (2) personal leave days per calendar year. The length of each personal leave day is equal to the number of hours that employee is scheduled to work when the leave day is taken. Personal leave days cannot be used on a per hour basis. The personal leave days are non-cumulative in nature and must be used during the calendar year or they will be forfeited by the employee. Personal leave days have no value upon separation of employment.

The County cannot arbitrarily deny the use of a personal leave day. Any employee whose personal leave day(s) remains unused at the end of the calendar year because use of the day(s) was denied, the employee shall be compensated for the unused day(s) using the employee's regular rate of pay for an eight (8) hour duration. New employees shall be eligible for two (2) personal leave days after ninety (90) days of employment.

Upon ratification, each employee shall receive an additional personal leave for the 2021 calendar year, and each employee shall receive and additional personal leave for the 2022 calendar year. These additional days shall be taken pursuant to the terms above.

## **ARTICLE 8 - SICK LEAVE**

### **Section 1. Accrual.**

Employees shall accrue sick leave at the rate of eight (8) hours for each month worked. Sick leave shall be accrued without limit. Newly hired employees shall accrue eight (8) hours of sick leave per month starting upon hire, however they are not eligible to use leave until after working thirty (30) calendar days and accrue at least the minimum amounts required by state law. Employees in a paid status for 88 hours (prorated for FTE status) or more in any month shall accrue sick leave for the next month on the first day of that month as per the County's 11-Day Rule policy.

### **Section 2. Verification of Sickness.**

Absence due to sickness in excess of three (3) days may require verification by a health care provider at the request of the Division Commander. Appropriate documentation may be required for an absence of less than three (3) days if the Division Commander has reasonable suspicion (based upon a pattern of absences over a minimum of a three-month period of time) that misuse or abuse of sick leave exists.

### **Section 3. Use of Sick Leave.**

Employees may utilize sick leave for their own illness/[medical care](#) or that of a family member, or as otherwise permitted by law. Employees may utilize sick leave when unable to perform their job duties due to health related reasons. The use of sick leave shall be equal to the work-day of the respective employee.

Engaging in recreation, other employment, or other activities not related to ill health will be considered misconduct and the Sheriff may discipline employees engaging in such activities subject to the principles of Article 20, Discipline ~~A~~and Discharge.

#### **Section 4. Bereavement Leave.**

Exclusive of regular sick leave, an employee shall be granted not more than three (3) consecutive workdays' leave of absence with full pay in event of the death of a member of ~~his~~ the employee's immediate family. Where deemed necessary by the Sheriff, or their designee, the employee shall be granted two (2) additional days with pay for travel time. Workday is the regular shift schedule the employee is assigned at the time of the leave.

In addition to the benefit provided in this section, employees may also use bereavement leave as provided by OFLA.

Immediate Family for Section 4: An employee's immediate family shall be defined as spouse, parents, parents of the spouse, domestic partner, parents of the domestic partner, children, stepchildren, brother, sister, grandparents (of employee, spouse or domestic partner), grandchildren, sister-in-law and brother-in-law and in loco parentis. Stepchildren, stepparents, or children of domestic partner residing with the employee, shall be included in the definition of immediate family. In relationships other than those set forth above, under exceptional circumstances, such leave of absence may be granted by the Sheriff or ~~his~~ their designee upon request.

#### **Section 5. Unused Accrued Sick Leave at Time of Retirement.**

Pursuant to and consistent with PERS rules and regulations, the County shall report all allowable sick leave hours to PERS upon separation from County employment.

#### **Section 6. Sick Leave Donation.**

An employee may donate accrued sick leave to another employee when the second employee (donee) does not, or will not, have adequate accrued sick leave to cover ~~their leave~~ an injury or illness as long as: (a) the donee will be on approved FMLA and/or OFLA leave when the donee's absence occurs; and/or (b) the donee will be on leave for the same FMLA/OFLA qualifying condition, even after the donee has exhausted the term of protected FMLA/OFLA leave, when the leave occurs ~~illness of the second employee qualifies under FMLA or the Oregon Family Leave Act (OFLA) guidelines~~. Sick leave hours shall be donated and used on an hour for hour basis. All donated leave is forfeited by the donor.

#### **Section 7. Pay and Subpoenas While on Leave.**

An employee is not required to perform any work while on family medical leave or sick leave absence. The Sheriff's Office will not require an employee to perform any work while on family medical leave or sick leave absence, including attendance in court. However, the parties recognize that the Sheriff's Office cannot control the issuance of a subpoena by other parties. If an employee on such leave is subpoenaed for an appearance in a case arising out of official duties, and is unable to attend, the employee shall notify the person causing the subpoena to be issued. If the employee appears pursuant to the subpoena, they shall be compensated as set forth in Article 14. If the Sheriff's Office's receives a lawful

subpoena compelling the employee's court attendance, the Sheriff will make an attempt to contact the employee. It shall be sufficient for the Sheriff to call the employee's listed telephone number(s), leaving a message if the employee is unavailable and there is an adult person with whom a message may be left or a device on which to leave such message. If the employee is unavailable and there is no person or device with which to leave a message, it shall be sufficient for the Sheriff to forward a copy of the subpoena to the employee by sending it to the employee's home or such other address that the employee provides for such purpose. No employee will be disciplined or counseled for failure to obey a subpoena that is served upon the employee during a County-approved family medical leave or bona fide sick leave absence.

## **ARTICLE 9 - VACATION LEAVE**

### **Section 1. Accrual.**

Employees having served in the County service for two (2) consecutive full calendar months, shall be credited with sixteen (16) hours vacation leave. Thereafter, vacation leave shall be accrued as follows:

- A. Less than five (5) years of continuous service, 140.4 hours per year, accrued at the rate of 11.7 hours per month. Vacation leave will not accumulate beyond 240 hours.
- B. Five (5) to ten (10) years, but less than ten (10) years of continuous service, 164.4 hours per year, accrued at the rate of 13.7 hours per month. Vacation leave will not accumulate beyond 240 hours.
- C. Ten (10) to fifteen (15) years, but less than fifteen (15) years of continuous service, 188.4 hours per year, accrued at the rate of 15.7 hours per month. Vacation leave will not accumulate beyond 320 hours.
- D. Fifteen (15) to twenty (20) years, but less than twenty (20) years of continuous service, 204.0 hours per year, accrued at the rate of 17.0 hours per month. Vacation leave will not accumulate beyond 320 hours.
- E. After twenty (20) years of continuous service, 219.6 hours per year, accrued at the rate of 18.3 hours per month. Vacation leave will not accumulate beyond 360 hours.

Effective January 1 of each calendar year, accruals exceeding the maximum shall be reduced to the maximum. See also Article 11.13. Vacation time shall be allowed to accumulate beyond the aforementioned maximum where the employee has requested vacation and such vacation request has been denied. Any vacation leave that would otherwise have been lost shall be taken as soon thereafter as the needs of the County and the availability of vacation relief allow.

Employees in a paid status for 88 hours (prorated for FTE status) or more in any month shall accrue vacation leave for the next month on the first day of that month.

## **Section 2. Termination or Death.**

After six (6) months of service, upon the termination of an employee for any reason, or in the event of the death of an employee, all accumulated vacation shall be paid either to the employee or his/her/their heirs, whichever the case may be.

## **Section 3. Vacation Scheduling.**

Employees shall be permitted to choose either a split (including less than a full day of vacation) or entire vacation. Whenever possible, if consistent with the needs of the County in conjunction with the availability of vacation relief, employees shall have the right to determine vacation time.

The County shall make available a vacation sign-up sheet twice each year;

1. For vacations occurring from the first full payroll period in March through the first payroll period following Labor Day (“Spring Bump”):
  - a. Non-Jail Staff: February 5 to February 10.
  - b. Jail Staff: February 11 to February 20.
2. For vacations occurring after the payroll period following Labor Day through the Friday before the March shift bid begins (“Fall Bump”)
  - a. Non-Jail Staff: August 5 to August 10.
  - b. Jail Staff: August 11 to August 20.

Any conflicts in requested vacation time shall be resolved by granting the requested time off to the employee with the most seniority.

The vacation schedule shall be frozen on:

- a. Non-Jail Staff: February 15 and August 15
- b. Jail Staff: February 21 and August 21.

Employees are not required to sign up to use vacation time during these two sign-up periods. An employee may request vacation at any time throughout the year provided, however, that for vacation scheduled other than during the February and August sign-up periods, seniority may be used to resolve conflicts only for vacations of less than one work week provided the employee exercises his/her/their seniority rights at least thirty (30) calendar days before the effective date of the vacation request.

The County must accept or reject an employee’s request for vacation within seventy-two (72) hours of receipt of the request. The seventy-two (72) hour response time limit does not apply during the vacation sign up periods described above.

## **Section 4. Required Use of Vacation.**

The Sheriff may require each employee to take a maximum of ten (10) days’ vacation within the employee’s anniversary year.



## **Section 5. Commitment to Retire.**

1. For employees hired before ~~execution of this agreement (2018) June 7, 2018~~, an employee who provides written or email notice to the Sheriff, or ~~their~~ designee, and the Agency Finance Section of their ~~signs~~ a commitment to retire within three years from the date such request is made shall be allowed to accrue vacation in addition to the provisions of Article 9 for the purposes of vacation payments upon termination of employment. The amount of vacation paid shall not exceed three (3) times the maximum accrual of vacation and shall be paid to the employee upon retiring from employment with the County. At the employee's choice, distribution of vacation payment may be taken in either pay, 457 deferred account funding, or a combination of both. An employee making a commitment to retire shall specify the date of his/her/their retirement not more than three years into the future. If an employee does not retire on the date specified in their commitment to retire notice, ~~the signed commitment to retire, he/she/they~~ shall lose any accrued vacation in excess of the carry over limit set at 1080 hours.
2. For employees hired after ~~June 7, 2018~~ ~~execution of this agreement (2018)~~, an employee who provides written or email notice to the Sheriff, or ~~his~~their designee, and the Agency Finance Section of their ~~signs~~ a commitment to retire within three (3) years from the date such request is made shall be allowed to accrue vacation in addition to the provisions of Article 9 for the purposes of vacation payments upon termination of employment. The amount of vacation paid shall not exceed seven hundred and twenty (720) hours and shall be paid to the employee upon retiring from employment with the County. At the employee's choice, distribution of vacation payment may be taken in either pay, 457 deferred account funding, or a combination of both. An employee making a commitment to retire shall specify the date of their/his/her retirement not more than three (3) years into the future. If an employee does not retire on the date specified in their commitment to retire notice, ~~the signed commitment to retire,~~ excess vacation over the employee's<sup>2</sup> vacation cap under Article 9.1 will be paid to the employee, and the employee is precluded from applying for Section 5 benefits again. The Sheriff may consider exceptional circumstances for reapplying for Section 5 benefits.

## **ARTICLE 10 - OTHER LEAVES**

### **Section 1. Leave of Absence.**

Leaves of absence for medical purposes is covered by County Code and policy.

Leaves of absence without pay for a limited period, not to exceed ninety (90) days, shall be granted by the Sheriff at his/her/their discretion for any reasonable purpose, ~~which is defined as bona fide educational purposes related to work~~. Such leave may be renewed or extended by the Board of County Commissioners. Reasonable purpose will not include engaging in other employment. The Sheriff may make exceptions for those whose purpose is to engage in temporary employment that is clearly in the best interest of the Sheriff's Office.

**Section 2. Jury Duty.**

Employees shall be granted leave with full pay any time they are required to report for jury duty or jury service, in lieu of jury fees, excluding mileage reimbursement upon any day that they are scheduled to work. Employees will be required to call their Watch Commander when less than a normal work day is required by jury duty. The Watch Commander shall determine if the employee shall be required to report to work and shall take into consideration the travel time of the employee.

**Section 3. Family Medical Leave and Parental Leave.**

Family medical leave and parental leave will be granted in accordance with all Federal and State statutes and ~~the~~ Clackamas County policy.

**Section 4. Educational Leave.**

After completing one (1) year of service, an employee upon request may be granted a leave of absence without pay for educational purposes at an accredited school, when it is related to ~~his~~~~their~~ employment. The period of such leave of absence shall not exceed one (1) year, but it may be renewed or extended at the request of the employee, when necessary.

One (1) year leave of absence with any requested extension, for educational purposes, may not be provided more than once in any three (3) year period.

Employees may also be granted leaves of absence with or without pay for educational purposes, for additional lengths of time, to attend conferences, seminars, briefing sessions, or other functions of a similar nature that are intended to improve or upgrade the individual’s skill or professional ability, provided it meets with the approval of the Sheriff.

**ARTICLE 11 - HEALTH AND WELFARE**

**Section 1. Accrual of Benefits.**

A regular status employee working greater than or equal to 20 hours per week is eligible for medical benefits on the first of the month following the benefit waiting period described in Section 10.

**Section 2. Medical-Hospital.**

The County agrees to contribute toward the monthly composite premium at the existing dollar level for coverage defined in the Summary Plan Descriptions agreed to by the Association and the County. Family coverage shall include dependent college students up to the age of twenty-six (26) and dependent coverage required under Federal or State statutes. Employees will become eligible on the first day of the month following the benefit waiting period described in Section 10.

~~For calendar year 2018, the County agrees to pay 95% of the composite premium rate for Providence medical plans and the employee agrees to pay 5% of the premium costs. The County agrees to pay 100% of the premium for employees enrolled in the Kaiser medical plan.~~

For the plan years effective January ~~21, 2021~~~~2019~~, January 1, 2022 and January 1, 2023~~0~~, the County agrees to pay 95% of the composite premium rate for Providence medical plans and the employee agrees to pay 5% of the premium costs. However, if the premium increases more than 10% in any one year, the County and the employee shall evenly split the increased costs above 10%. The joint committee identified in Section 12 shall be utilized as a method to control increased premium costs.

The County agrees to pay 100% of the premium for employees enrolled in the Kaiser medical plan.

If the parties, while bargaining for a successor collective bargaining agreement, have not reached agreement regarding this Article 11, by September 30, ~~2023~~~~2020~~, the County will conduct an open enrollment process for health care coverage to be effective January 1, ~~2024~~~~2021~~, with the County agreeing to pay 95% of the total composite rate premium costs for the Providence Plans and 100% of the cost for the Kaiser medical plan. This temporary increase in the County's contribution will satisfy the County's obligation to maintain the status quo for the medical plans while bargaining continues.

**Insurance Opt-Out:** Employees who provide proof of other medical coverage and who opt out of coverage provided by the County will receive cash back on a monthly basis a monthly stipend as provided by the yearly Benefits Summary, paid to the employee's HRA/VEBA. ~~For 2018 this value is \$176 per month and in no case will be less than this value for the term of this agreement as defined in Article 40.~~ Employees may only rejoin County coverage with a qualifying condition subject to carrier rules.

### **Section 3. Life Insurance.**

The County agrees to contribute monthly an amount equal to the life insurance premium with a death benefit of \$75,000. Employees in a classified position, regularly scheduled for thirty (30) or more hours of work per week, will become eligible on the first day of the month following the benefit waiting period described in Section 10. The Life Insurance program will provide an Accelerated Benefits option provision. The cost for the Accelerated Benefits Option will be paid by the County.

### **Section 4. Dental Insurance.**

The County agrees to contribute monthly an amount equal to the self-funded composite dental program rate for the existing family coverage with an individual benefit of \$1,500 per individual per year, including an orthodontic benefit for dependent children up to \$3,000. The employee may also choose alternative dental plans as provided by the County, including a plan provided through Kaiser. Employees will become eligible on the first day of the month following the benefit waiting period described in Section 10.

### **Section 5. Long-term Disability Insurance.**

The County agrees to contribute monthly an amount equal to the long-term disability insurance premium for non-occupational accident or illness. Benefits, including those from other sources, will equal sixty percent (60%) of up to \$3,333 in monthly salary after an elimination period of the first 30 days of each period of total disability or the exhaustion

of accumulated sick leave, whichever occurs later. Employees will become eligible on the first day of the month following the benefit waiting period described in Section 10.

The County agrees to make available a supplemental disability insurance plan up to a maximum benefit of 60% of a \$10,000 monthly salary subject to plan eligibility. Contributions are only paid by the employee.

**Section 6. Civil Insurance.**

The present policy of providing insurance for all employees against civil suits covering insurable acts while in the performance of their duties will be continued.

**Section 7. Surviving Spouse and Dependent Coverage.**

The County agrees to provide spouses and dependents of deceased employees who were covered by this Agreement with medical and dental insurance as provided for in Sections 1 and 3 of this Article, for a period of twenty-four (24) months following the death of the employee. If, during the twenty-four (24) month period, the deceased employee's spouse becomes eligible for medical or dental insurance under another plan, the County provided insurance will cease on the inception date of the new insurance.

**Section 8. Retiree Medical Benefits.**

Three and one ~~half percent~~ ~~quarter percent~~ (3.25%) of an employee's base pay as set forth in the pay plan shall be placed into a fund to be administered by the Clackamas County Sheriff's Office Independent Retiree Medical Trust, "IRMT," (subject to the agreement below) to provide medical benefits for retired eligible employees who have not yet become eligible for Medicare benefits. ~~Effective January 1, 2019, the contribution will change to 3.5%.~~ The Retiree Medical Trust shall have the sole responsibility and the right for determining the amounts of benefits to be received and the eligibility for receipt of those benefits, subject to the agreement below. The benefit listed above shall apply to employees working during the "rehire period" under the Retired-Retiree Rehire section of Article 28.

The purpose of the IRMT is to administer the retiree medical benefits which are described in Article 11, Section 8 of the collective bargaining agreement and in the Agreement dated February 25, 2005 related to the Sheriff's Office Retiree Medical Fund.

- A. The County will continue to contribute funds at the rate set forth in Article 11(8) of the Agreement into an account designated by the Clackamas County Sheriff's Office Independent Retiree Medical Trust (IRMT). The County's obligation to contribute funds to the IRMT shall cease only upon written agreement by the County and the CCPOA.
- B. The County does not guarantee any particular level of retiree medical benefits to any individual or group of employees; and in the event that the IRMT reduces medical benefit levels, the County is not obligated to maintain retiree medical benefit levels or make up any difference in the level of retiree medical benefits.

**Section 9. Domestic Partners.**

Domestic partners, as described within this section, will be treated the same as spouses for purposes of medical, dental and life insurance programs described in this Article, subject

to Federal and State laws and regulations and completion of a notarized Affidavit of Domestic Partnership provided and approved by the Department of Human Resources. For the purposes of this section, Domestic partners include same and opposite sex couples.

**Section 10. Benefits Waiting Period.**

Benefits shall become effective on the first day of the calendar month following the employee's date of hire. ~~on the first day of the month following two (2) months of continuous employment. Continuous employment as related to health and welfare benefits shall be defined as being in a paid status during the entire benefits waiting period, except for an unpaid period not to exceed ten (10) working days, or eight (8) working days for employees on a four day work week, or the prorated equivalent for part-time employees.~~

**Section 11. Plan Changes Required by Law or Insurance Carrier.**

The County shall act to update any mandated coverage or changes caused by Federal or State laws, rules and regulations or required by the insurance carriers. Unilateral changes in benefits initiated solely by the insurance carriers are subject only to impact negotiations with the Association pursuant to ORS 243.698.

**Section 12. Joint Peace Officers/County Benefits Committee.**

Effective upon ratification of this agreement and in the open enrollment period following the ratification of this agreement, all Association employees shall participate in the benefit plan as agreed through negotiations between the Association and the County.

- A. The Joint Peace Officers/County Benefits Committee shall have the responsibility to make recommendations regarding the level, scope, and design of benefit plans offered to employees for medical and vision coverage, dental coverage and for disability and life insurance. The primary emphasis in plan design shall be to provide a comprehensive, competitive benefit program at a reasonable cost. The Committee will investigate all options for providing insurance including forming an employee's benefit trust and/or partial self-funding.
- B. The Committee shall be comprised of an equal number of members from the Association and County. A non-voting County Commissioner will be invited to attend all meetings. The Committee shall meet at least quarterly, or more frequently if required. Decisions of the Committee will be made by a majority of votes. Absentee members will also be given the opportunity to vote.
- C. The Committee shall make plan design recommendations for medical, vision, dental, disability and life insurance plans at least one hundred and twenty (120) days prior to the beginning of the following plan year. Any changes to plan designs must be through negotiations between the Association and the County.
- D. The County shall provide administrative coordination and support for the Committee. The Committee shall be provided all financial information and related reports as may be available.

- E. The Committee shall consider various options available to control increased premium costs.
- F. No changes will be made to benefit plans without the approval of the Association and County.

**Section 13. Health Reimbursement Account (HRA).**

The County shall provide each employee covered by this agreement the opportunity to enroll in a Health Reimbursement Account (HRA).

The County shall pay the account fee up to \$1.50 per account per month for each active employee enrolled in a HRA/VEBA. The participating employee shall be responsible for the third party annualized investment fee.

Participating employees who have used at least forty (40) hours of vacation in the prior calendar year shall have all vacation time up to eighty (80) hours in excess of the annual cap, as referenced in Article 9(1), paid into their HRA/VEBA account.

**Section 14: Flexible Spending Account (FSA).**

Employees may participate in the Flexible Savings Account offered by the County at the employee’s expense for contributions. Employer will pay the administrative fee.

**ARTICLE 12 – WAGES**

**Section 1. Wages and Classification Schedule.**

In lieu of a retroactive pay adjustment, current employees will receive a one-time payment after execution by both parties. The payment will be based on ~~2.62%~~ of an employee’s gross pay earnings (base pay, overtime, longevity and incentives) from the beginning of the pay period closest to July 1, ~~2017-2020~~ to the ~~ratification~~~~execution~~ date. Any new incentives or add-to-pays to this agreement are not included in this payment.

Effective July 1, ~~2021~~, the pay plan for all classifications within the bargaining unit will be increased by ~~1.82.5%~~.

~~Effective July 1, 2019, the pay plan for all classifications within the bargaining unit will be increased 3.0%.~~

~~After ratification by both parties, employees shall receive a % cost of living increase effective the first day of the pay period after the ratification date.~~

~~Effective July 1, 2020, employees shall receive a cost of living increase equal to the percentage increase in the US Consumer Price Index, CPI-W: West Urban Annual Average, as reported by the U.S. Department of Labor, with a minimum of 0% and a maximum of 4.5%.~~

Effective July 1, 2022, employees shall receive a cost of living increase equal to the percentage increase in the US Consumer Price Index, CPI-W: West Urban Annual

Average, as reported by the U.S. Department of Labor, with a minimum of 0% and a maximum of 4.5%.

The COLA percentage will be sent to the Association President by April 1 of each year. An updated pay plan will be published by the County each year by July 1 on the Department of Human Resources website.

~~The Consumer Price Index (CPI) used in calculating wage adjustments shall be based on the Consumer Price Index—Urban Wage Earners and Clerical Workers (CPI-W), U.S. Cities Average for All Items, as reported by the U.S. Department of Labor, Bureau of Labor and Statistics. The change in the CPI-W shall be the indicator located in the “Annual” column of the “12 Months Percent Change” report. The COLA percentage will be sent to the Association President by April 1 of each year.~~

### **Section 2. Deferred Compensation.**

An amount equivalent to four percent (4%) of the employee’s base pay as set forth in the pay plan shall be placed into a deferred compensation plan for each employee, the plan to be administered by a provider with whom Clackamas County has contracted for deferred compensation services.

### **Section 3. Time of Service.**

Step increases (merit raises), and longevity pay for regular full-time employees, shall be determined on the basis of calendar months within which the employee has worked without interruption in service. “Interruption in service” shall not include those authorized leaves as set forth in this Agreement.

### **Section 4. Longevity Pay.**

For every five (5) years (60 months) of continuous County service, the employee shall receive \$~~63.77~~69.07 per month longevity pay in addition to ~~his~~their normal compensation. Eligibility shall be based upon the number of continuous years of regular status County Service. Continuous service for the purpose of determining eligibility for longevity pay shall be service unbroken by separation from County employment that results in a changed date of hire. Upon ratification by both parties, the amounts shall increase by the amount of wage increase determined in Section 1 above. On July 1, ~~2021~~2018 and July 1, ~~2022~~2019, the amounts shall increase by the amount of wage increase determined in Section 1 above.

### **Section 5. Computation of Hourly Rate. Salary scale has hourly rate.**

The base hourly rate is specifically identified for each classification in the pay plan. The pay plan also shows a 2080 base annual salary formulated on the base hourly rate of pay.

### **Section 6. Records Unit Graveyard Shift Differential Pay.**

Employees in the Records Unit of the Support Services Division who work 51% of their scheduled work hours after 12:00 midnight shall receive a shift differential of \$1.00 per hour for all hours worked during their shift. If an employee is requested or required to continue working at the end of their regular shift and has been receiving shift differential based on their graveyard shift, the employee will continue to receive the shift differential. (Example: Employee is on graveyard and is mandated to work into the day shift).

Employees working voluntary overtime or mandated from swing shift into graveyard are not eligible for graveyard shift.

## ARTICLE 13 – OVERTIME

### **Section 1. Overtime.**

Time and one-half (1.5) the employee’s regular hourly rate of pay shall be paid for work under any of the following conditions, but compensation shall not be paid twice for the same hours:

- A. All authorized work performed in any work day in excess of:
  - 1. eight (8) hours for employees on a 5-8 work schedule, or
  - 2. nine (9) hours in a nine (9) hour work day or eight (8) hours for an eight (8) hour work day for employees on a 9-80 schedule; or
  - 3. nine (9) hours for employees on a 5-9/4-9 work schedule, or
  - 4. ten (10) hours for employees on a 4-10 work schedule, or
  - 5. twelve (12) hours in a twelve (12) hour work day, or eight (8) hours in an eight (8) hour work day, for employees on a 3-12/3-12 + 8 hour work schedule;
- B. All authorized work performed in excess of:
  - forty (40) hours in any work week for employees on a 5-8, 9-80 or 4-10 work schedule, or
  - eighty-one (81) hours in the regular 14-day work period for employees on a 5-9/4-9 work schedule, or
  - eighty (80) hours in the regular 14-day work period for employees on a 3-12/3-12 + 8 work schedule;
- C. All authorized work performed on a regularly scheduled days off. In the event an employee is required to work on a day off, the employee will be paid a minimum of four (4) hours at time and one-half.
- D. Employees working five consecutive days with eight hour shifts shall be paid time and one-half (1.5) for all work performed on the sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) day of their regular workweek. Employees working four consecutive days with ten hour shifts shall be paid time and one-half (1.5) for all work performed on the fifth (5<sup>th</sup>), sixth (6<sup>th</sup>) and seventh (7<sup>th</sup>) days of their regular work week. Employees working the 3-12/3-12 + 8 schedule shall be paid time and one-half (1.5) for all work performed: in their “short” week, on the days following their three regular work days; and in their “long” week, on the days following their four regular work days.
- E. On the day that daylight savings begins (“Spring Forward”) if an employee would be short one hour of work on their work shift, the employee shall either work an hour earlier than the start of their shift, an hour later at the end of their shift, or use



a hour of accrued vacation or compensatory time in order to be paid for the entire shift. The employee shall notify their supervisor in the preceding payroll period of ~~his/her~~their preference. On the day that daylight savings ends (“Fall Back”) the employee will be compensated at the rate of time and one half (1.5) for any hours worked beyond their respective normal shift. The additional shift will be considered mandatory overtime.

Any paid leave used shall be considered hours worked for purposes of calculating overtime. Overtime will only be paid for actual hours worked.

For full time employees, hours worked that are an extension of a previously worked shift shall be paid at overtime at time and one half (1.5) for actual hours worked, except as maybe limited by Article 13(2).

For regular part-time employees, overtime is paid pursuant to Article 26.

## **Section 2. Assignment of Overtime Patrol Division Continuous Operations & CSO**

-When there are vacancies created by ~~sick, vacation or training-approved~~ leaves and the County determines the vacancies are to be filled, they will be filled by seniority among bargaining unit personnel under the following conditions:

- A. Electronic communication is the preferred method of staffing shortages on shifts in ~~Patrol and Corrections Divisions~~. All electronic communication will occur between the hours of 0700 and 2100, seven days a week.

Overtime will be filled via posted CLASSweb lines until locked in ~~under Article 13(3)(E) 72 hours prior to the start of the vacancy~~. Once the lock in period has started (~~120 hours for Jail and 72 hours for Patrol and Services~~)-available overtime will be posted via electronic communication method for each overtime shift.

1. If the overtime callout is less than two (2) hours away or the shift has begun – the employees will have fifteen (15) minutes to call in.
2. If the overtime callout is more than two (2) hours away, but less than four (4) hours away - the employee will have one (1) hour to call in.
3. If the overtime callout is more than four (4) hours away, but less than 24 hours away - the employee will have two (2) hours to call in.

If no one takes the overtime in the prescribed time periods above, the overtime will be awarded to the first person to call in, regardless of seniority.

- ~~1. Employees will have one (1) hour to call in if the overtime callout is less than four (4) hours away and two (2) hours if the overtime callout is more than four (4) hours away but less than twenty-four (24) hours away.~~

- ~~a. Vacant shift less than four (4) hours away— if one (1) hour has passed and the overtime has not been taken, the overtime shall be awarded to the first employee to call in regardless of seniority.~~
- ~~b. Vacant shift more than four (4) hours, less than twenty four (24) hours away— if two hours have passed and the overtime has not been awarded, the overtime shall be awarded to the first employee to call in regardless of seniority.~~

B. Employees will have the following time to call in if the overtime callout is 24 hours or more away:

- a. 1<sup>st</sup> shift overtime will be locked at 5 PM before start of shift.
- b. 2<sup>nd</sup> shift overtime will be locked at 9 PM before start of shift.
- c. 3<sup>rd</sup> shift overtime will be locked at 9 PM before start of shift.
- d. 4<sup>th</sup> shift overtime will be locked at 12 PM before start of shift.
- e. If the vacancy is not filled by the deadline outlined in a-d of this subsection, notice of the available shift may be re-posted via electronic communication method and the vacancy will be filled on a first come-first served basis.

C. If the electronic communication is unavailable or should an unforeseen issue arise, the Association and County agree to revert back to previously used manual callout procedure.

~~D. The Association will provide the County with a seniority list of employees twice a year to coincide with scheduled shift changes. The list will include hours and days of the week during which the employee will be available to work extra shifts. The list will also include the employee's primary and secondary contract telephone or pager numbers.~~

E.D. When the County determines a replacement is needed for a shift vacancy occurring with less than two hours' notice, the work will be offered first to those employees already on duty, by seniority, in classification. If no one elects to work the shift, ~~then calls will be made from the seniority list within classification it will be offered via electronic communication as described in Article 13(2)(A).~~ If no one in the classification where the vacancy exists wants to work the shift, then it will be offered by electronic communication ~~calls shall be made from the seniority list~~ to employees in classifications other than the classification where the vacancy exists.

E. When more than two hours' notice has been received of a vacancy that has been determined needs to be filled, the County must exhaust the overtime list provided by the Association prior to filling the shift by any other means. Sign up will be seniority in classification. Bumping will be permitted with notice to the affected employee being the responsibility of the employee doing the bumping. Bumping will not occur when there is less than seventy-two (72) hours ~~(one hundred and twenty (120) for Corrections Division)~~ before the start of the shift, regardless of

seniority. ~~Corrections Division employees may sign up for overtime in half shift segments.~~

F. Available overtime shifts may be split among multiple employees. A junior employee may not bump two senior employees who are each signed up for one-half of the same shift. If one half of a shift is signed up for by an employee with less seniority than the employee desiring to bump, the bumping employee may bump for the whole shift or for the half shift signed up for by the junior employee. An employee, regardless of seniority, classification and/or division, may bump another employee from a portion of a shift, so long as the employee doing the bumping will work all of the hours signed up for by the employee being bumped and at least one additional hour. The employee doing the bumping must ~~also~~ contact a supervisor to change the schedule. If an employee accepts overtime and later decides to decline the accepted overtime, the employee must notify a supervisor of the change if less than seventy-two (72) hours exists before the scheduled shift commences. If less than twenty-four (24) hours exist before the scheduled shift commences, the employee must have authorization from a supervisor to be excused from working the shift. An employee, who fails to report for a scheduled shift, will be given an unexcused absence for failing to report to work. However, employees will not be charged an unexcused absence if unable to perform their duties due to health related reasons under Article 8 or an emergency situation, and calls in to report their absence as required by Sheriff's Office practices or policies. Temporary loss of overtime sign-up privileges may be part of the progressive discipline issued to an employee failing to comply with this provision as follows: a first offense may result in a ten-day loss of overtime sign-up privileges; a second violation within a year, a thirty-day loss; and a third violation within a year, a sixty-day loss.

G. When overtime assignments occur for routine or special events (including emergencies that become routine) that do not require special unit supervision or special skill and training, the County will use reasonable effort to notify employees of the available overtime. Sign up will be by seniority in classification. Bumping will be permitted, with notice to the affected member being the responsibility of the member doing the bumping. Bumping will not occur when there is less than seventy-two (72) hours ~~(one hundred and twenty (120) for Corrections Division)~~ before the start of the shift, regardless of seniority.

H. Replacement personnel shall come first from the same classification and division as the employee creating the vacancy, second from the same classification but different division and third, from a different classification, ~~.-~~ Except as provided for in Article 13(2)(F).

### **Section 3. Assignment of Overtime Corrections Division**

When vacancies created by approved leaves and the County determines the vacancies are to be filled, they will be filled by seniority among bargaining unit personnel under the following conditions:

A. Electronic communication is the preferred method of staffing shortages on shifts in the Corrections Divisions. All electronic communication will occur 24 hours per day, seven days a week.

Overtime will be filled via posted CLASSweb lines until locked in 120 hours prior to the start of the vacancy. Once the lock in period has started, available overtime will be posted via electronic communication method for each overtime shift.

1. -If the overtime callout is less than five (5) hours away or the shift has begun – the employees will have thirty (30) minutes to call in.

2. -If the overtime callout is more than five (5) hours away, the employee will have four (4) hours to call in.

If no one takes the overtime in the prescribed time periods above, the overtime will be awarded to the first person to call in, regardless of seniority.

B. If the electronic communication is unavailable or should an unforeseen issue arise, the Association and County agree to revert back to previously used manual callout procedure.

C. When the County determines a replacement is needed for a shift vacancy occurring with less than two hours' notice, the work will be offered first to those employees already on duty, by seniority, in classification. If no one elects to work the shift, it will be offered via electronic communication as described in Article 13(3)(A). If no one in the classification where the vacancy exists wants to work the shift, then it will be offered by electronic communication to employees in classifications other than the classification where the vacancy exists.

D. When more than two hours' notice has been received of a vacancy that the County has been determined needs to be filled, the County must exhaust the overtime list provided by the Association prior to filling the shift by any other means. Sign up will be seniority in classification. Bumping will be permitted with notice to the affected employee being the responsibility of the employee doing the bumping. Bumping will not occur when there is less than one hundred twenty (120) hours before the start of the shift, regardless of seniority.

E. Available overtime shifts may be split among multiple employees. An employee, regardless of seniority, classification and/or division, may bump another employee from a portion of a shift, so long as the employee doing the bumping will work all of the hours signed up for by the employee being bumped and at least one additional hour. The employee doing the bumping must also contact a supervisor to change the schedule. If an employee accepts overtime and later decides to decline the accepted overtime, the employee must notify a supervisor of the change if less than seventy-two (72) hours exists before the scheduled shift commences. If less than twenty-four (24) hours exist before the scheduled shift commences, the employee must have authorization from a supervisor to be excused from working the shift.

An employee, who fails to report for a scheduled shift, will be given an unexcused absence for failing to report to work. However, employees will not be charged an unexcused absence if unable to perform their duties due to health related reasons under Article 8, or in an emergency situation and calls in to report their absence as required by Sheriff's Office practices or policies. Temporary loss of overtime sign-up privileges may be part of the progressive discipline issued to an employee failing to comply with this provision as follows: a first offense may result in a ten-day loss of overtime signup privileges; a second violation within a year, a thirty-day loss; and a third violation within a year, a sixty-day loss.

F. When overtime assignments occur for routine or special events (including emergencies that become routine) that do not require special unit supervision or special skill and training the County will use reasonable effort to notify employees of the available overtime. Sign up will be by seniority in classification. Bumping will be permitted with notice to the affected member being the responsibility of the member doing the bumping. Bumping will not occur when there is less than one hundred and twenty (120) hours before the start of the shift, regardless of seniority.

G. Replacement personnel shall come first from the same classification and division as the employee creating the vacancy, second from the same classification but different division, and third, from a different classification. -Except as provided for in Article 13(3)(F).

#### **Section 4. Assignment of Overtime Other Divisions and Sections**

When vacancies are created by approved leaves and the County determines the vacancies are to be filled, they will be filled by seniority among bargaining unit personnel under the following conditions:

Overtime will be posted in a manner in which sign up is available to all employees who are eligible to perform the work. Overtime signup will be locked in seventy two (72) hours prior to start of the shift. Seniority will be by classification in division.

#### **Section 5. Additional Overtime Rules**

- A. A temporary employee, hired on a 90-day basis, will only be used to replace personnel who are scheduled to be absent for more than twenty (20) working days for employees working a 5/8 work schedule or 16 working days for employees working a 4/10 work schedule.
- B. The County and the Association recognize it is not in the best interest of the County to have employees be required to work overtime. The County will continue its policy of reducing or eliminating the use of mandatory overtime.

#### **Section 6.3. DPSST Basic Academy Overtime.**

Employees enrolled in the DPSST Basic Academy will be paid at time and one-half (1.5) their regular hourly rate of pay for required activities, as described in Article 4, Section 12, exceeding 40 hours in any work week. This Section shall apply in lieu of Section 1 of this Article.

## ARTICLE 14 - COURT APPEARANCES

### **Section 1. Time Outside Regular Shift for Court Appearances.**

A court appearance is all authorized time spent by an employee other than on their regular work day in criminal or civil proceedings, where their attendance is required, arising out of the performance of the employee's ~~his~~ official duties.

If the court case is listed on the trial line the night before the scheduled appearance date and the employee is notified of the cancellation on the day of the appearance, the employee will receive the applicable minimum court time.

#### Regular Work Day:

1) Employees attending a court appearance that is more than 30 minutes before the start of their scheduled work day will receive a minimum of two (2) hours at time and one-half (1.5) if on a regular workday: except that employees assigned to graveyard and fourth shift patrol shall receive three (3) hours for mandatory court appearances on a regular work day instead of two (2) hours. Graveyard shift is defined as half or more of the shift is worked after midnight and fourth shift patrol is from 1700 to 0300.

2) Employees attending a court appearance within 30 minutes of their scheduled work day will receive 30 minutes of time and one-half (1.5) rate ~~overtime~~ for the time worked before the start of the shift.

#### Regular Scheduled day off:

If an employee attends court on a regularly scheduled day off, the employee will receive a minimum of four (4) hours at the time and one-half (1.5) rate. ~~except that, employees assigned to graveyard shift shall receive three (3) hours for mandatory court appearances on a regular work day instead of two (2) hours. Graveyard shift is defined as half or more of the shift is worked after midnight.~~

#### Multiple Court Appearances on the same day:

In the event an employee attends more than one court appearance where the start time of the second appearance falls within either four hours (day off), three hours (graveyard work day), or two hours (work day) of the start time of the first appearance, minimum compensation as set out above shall not be earned for the first appearance, unless the member was released from the subpoena and had no prior notification of the subsequent court appearance, and minimum compensation as set out above shall apply to the latter appearance, and minimum compensation as set out above shall be earned for no more time than from the start time of the first appearance up to the start of this second appearance.

For example, if an employee receives prior notification of two subpoenas on a day off, where the appearance times are 1100 and 1300, the employee shall earn four hours of court appearance pay for the second court appearance and two hours for the first court appearance, so long as there is an off duty break of more than fifteen (15) minutes between

the two court appearances. In the event there is no break between court appearances, continuous compensation would accrue at a minimum of no less than four hours.

**Section 2. Overtime Pay While On Approved Paid Leave.**

Overtime pay while on approved paid leave will be awarded as follows:

- A. If the ~~employee member~~ had an approved paid leave day scheduled before receiving a court subpoena, it will be handled as a day off under Article 14, unless the ~~employee member~~ elects to be credited the approved paid leave time actually spent in court.
  
- B. If the ~~employee member~~ requests a paid leave day for a day that they already ~~has had~~ a subpoena, it will be handled as a work day under Article 14. If court time would be during ~~their~~his normal duty time, the ~~employee member~~ will have their paid leave hours adjusted hour for hour so that no leave time will be lost.

**ARTICLE 15 - CALL BACK/CALL OUTS**

**Section 1. Call Back.**

“Call Back” is defined as an employee being contacted outside their regular work hours on a regularly scheduled work day and being called back to work.

Call back time, when authorized, will be paid as overtime. Minimum compensation for a call back will be the equivalent of two (2) hours.

A regularly scheduled work day is considered the calendar day on which the shift begins.

**Section 2. Call Out.**

“Call Out” is defined as an employee being contacted on a ~~regularly~~ scheduled day off and being called out to work.

Call out time, when authorized, will be paid as overtime. Minimum compensation for a call out will be the equivalent of four (4) hours

**Section 3. Conditions for Call Outs and Call Backs.**

In the event an employee is called back or out to work within 30 minutes of either the beginning or end of a regularly scheduled shift, the employee will receive 30 minutes of overtime pay.

In the event an employee’s shift is extended, the employee will receive overtime for the hours worked consistent with Article 13.

A de minimis contact, such as an isolated phone call by management to an employee, lasting around 5 minutes or less is not compensable.

Employees who voluntarily sign up for a scheduled overtime assignment are not eligible for call back or call out compensation and only receive overtime for actual hours worked for the scheduled overtime assignment.

Employees who voluntarily sign up for scheduled events are not eligible for call back or call out compensation and only receive overtime for actual hours worked for the scheduled event.

Employees who elect training on a day off are not eligible for call back or call out compensation and only receive overtime for actual hours worked for the training.

#### **Section 4. Electronic Notification Devices.**

Both the County and the Association recognize that notification of an emergency call out is greatly enhanced with the use of electronic devices and helps to facilitate expedient responses. Additionally, it is acknowledged that the carrying of County issued electronic devices during off duty time is voluntary, unless otherwise required under Article 17.

#### **Section 5. Call Outs for Detective, ITF and Craft.**

A. Detectives:

~~For Detectives:~~ A ~~Call Out~~ ~~call-out~~ is defined as an employee being contacted on their regularly scheduled days off and being called back to duty for an unplanned event. A Detective assigned to day shift who receives a ~~Call Out~~ ~~call-out~~ after the end of their last shift of a work week and before the beginning of their next regular shift would receive Call Out pay. Any ~~Call Out~~ ~~call-out~~ within four hours of the start of their regular shift will be paid actual overtime worked up to the start of the employee's regular shift.

If the County changes Detectives' schedules back to 5-9/4-9s from 4-10s, double time for Detectives will be reinstated as set forth below and under Article 4, Section 11.

B. ITF, ~~and~~ CRAFT, ~~CFU and CSI~~:

~~For ITF and CRAFT:~~ Call Out pay will be authorized at double time for employee's regular assigned days off. The double time pay rate applies whenever an employee is notified of the requirement to return to work during their off-duty weekend hours. The double time pay rate continues to apply for all work performed during the call out if it occurs during the employee's weekend hours. The initial response to the ~~callout~~ ~~Call Out~~ and subsequent follow-up investigations during the employee's weekend hours are considered "unplanned" events.

If an employee is notified during their normal work hours that they will be needed for work during their upcoming weekend off-duty hours, this would be considered a 'planned event' and the employee is entitled to be paid the overtime pay rate as contained in Article 13. When their work on the planned event is complete, the



employee will return to off-duty status and subsequent ~~Call Outseal-outs~~ would be considered unplanned and the employee would be paid at the double time pay rate.

Minimum Call Out shall be for ~~(4)~~ four (4) hours except when called out within four (4) hours of the start of their regular shift in which case the double-time will be paid up to the start of the employee's regular shift.

Call ~~Outout~~ is defined as an employee being contacted outside their regular work schedule and being called back to duty for an unplanned event. Example: ITF or CRAFT is assigned to day shift, Monday through Thursday, receives an assignment after the end of ~~his/her~~their shift on Thursday and before the beginning of ~~his/her~~their regular shift on Monday would receive Call Out pay at the double time rate.

If employees assigned to ITF or CRAFT become subject to On Call Pay under Article 17, Section 2, those employees will no longer receive double-time for call outs under this subsection (B) and will instead be subject to Sections 2, 3 and 4 of this Article for call outs.

#### **ARTICLE 16 - TRAVEL PAY**

Whenever an employee is required to report for work in any location other than ~~their~~his/her established place of work ~~or whenever an employee, as part of his/her regular work is required to travel~~, and transportation is not provided by the County, ~~they~~he/she shall be paid for the use of ~~his/her~~their personal transportation at the rate established by the Internal Revenue Service for reimbursement for business use of personal vehicle. The employee will not be reimbursed for use of their personal vehicle if the place they are required to report is within Clackamas County, or it is outside of the county but closer to their residence than the location where they would report to obtain a county vehicle.

Whenever an employee is required to appear for work at any location other than their established place of work, the employee will not be compensated for drive time to and from the location if the location they are required to report is closer to their residence than their established place of work. If the location the employee is required to report is further from their residence than their established place of work, they will be compensated for the actual drive time to and from the location, less the usual amount of time it takes them to report to their established place of work.

Established place of work shall be defined as any office, reporting station, or precinct maintained by or for the County in which employees are assigned to work either permanently, or on a temporary basis of 90 days or more.

Whenever the County opens a new office, reporting station, or precinct, or changes the location of an existing office, reporting station, or precinct, those employees who are affected by the move may exercise a seniority bump as provided in Article 6 of this contract.

~~For required appearances within Clackamas County, the employee shall use his/her/their own transportation without any reimbursement for the use of a personal vehicle or their own assigned take-home vehicle if available. The employee's work time commences when he/she reports to the designated location.~~

~~For required appearances outside of Clackamas County, an employee living closer to the location of the required appearance may elect to drive his/her/their personal vehicle directly to the location of the required appearance rather than reporting to the Sheriff's Office to obtain a County vehicle. Under such circumstances, the employee shall not be reimbursed for the use of his/her/their personal vehicle, however, the employee's work time commences when he/she/the employee leaves home for the required appearance. All other employees shall report to the Sheriff's Office to obtain a County vehicle to travel to appearances outside Clackamas County. The employees work time commences with his/her/their arrival at the Sheriff's Office.~~

For travel requiring per diem, the rates set and maintained by the US General Services Administration ([www.GSA.gov](http://www.GSA.gov)) based on the travel destination shall be used, and Per diem will be provided to the employee before their departure date, so long as the County has fourteen (14) days' notice before the departure date. Per diem will be provided to the employee after their return from travel if the County does not receive fourteen (14) days' notice before the departure date.

## **ARTICLE 17 - ON CALL PAY**

### **Section 1. On Call Assignment.**

Employees may be assigned by management to be "on-call." The assignment requires an employee be readily available to report to work and respond to the needed work location within 60 minutes of notice. Readily available includes that the employee has not consumed any intoxicant while on-call consistent with policy. Failure to comply with these requirements may result in disciplinary action. Assignment of on-call is at the discretion of the County and assignments will be in writing. On-call status is not payment for hours worked and is not considered compensable time.

For each hour assigned to on-call status, employees will earn the equivalent 1/8<sup>th</sup> straight time, applied to the compensatory time bank. Employees are encouraged to use the time off during the calendar year.

Employees will be paid, consistent with Articles 13 and 15, when called to work.

### **Section 2. Detectives.**

Detectives may be assigned to on-call status to be available to work when off duty. The number of Detectives assigned to on-call is at the discretion of the County.

The County will provide for a bid in six month increments for on call assignments subject to operational need. Detectives will select coverage periods in an equitable fashion by classification seniority. Unfilled coverage periods will be assigned in order of inverse classification seniority.

The County is not precluded from posting shorter periods of on-call assignment for particular operational needs, which will be filled first voluntarily and if still unfilled will be assigned by inverse classification seniority.

Employees are permitted to trade on-call periods with supervisory approval.

Detectives assigned to on-call will earn the equivalent 1/8<sup>th</sup> straight time applied to a Detective Leave Bank (DLB) to be used for later time off. Hours earned will be reported with regular pay periods. On-call status is not payment for hours worked and is not considered compensable time.

Employees may accumulate up to a maximum of 120 hours of DLB time and do not earn DLB time above this cap if on “On-call” status. If an employee changes assignments and is no longer eligible to earn DLB time, the employee retains the ownership of accrued time up to 120 hours and may request the use of time off following existing practices within the employee’s new classification. Upon separation of employment, the Detective Leave Bank has no compensable value.

Employees will be paid, consistent with Articles 13 and 15, when called to work.

Employees assigned to ITF or CRAFT may receive on-call pay under this Section 2 if assigned by the County to on-call status. In such case, double time will cease for call outs for those employees as set forth in Article 15, Section 4(B).

### **Section 3. Detective Sergeants.**

Effective on the 1<sup>st</sup> day of the month after ratification, as compensation for being “on-call,” Detectives Sergeants will earn the equivalent of four (4) hours of straight time per month applied to a Detective Leave Bank (DLB) to be used for later time off. The hours reported will be upon the first day of the month. On-call status is not payment for hours worked and is not considered compensable time.

Employees may accumulate up to a maximum of 120 hours of DLB time and do not earn DLB time above this cap if on “On-Call” status. If an employee changes assignments and is no longer eligible to earn DLB time, the employee does not retain ownership of accrued time. Upon separation of employment, the DLB has no compensable value.

This section shall not apply to CCITF Sergeants.

## **ARTICLE 18 - WORK ABOVE NORMAL CLASSIFICATION**

### **Section 1. Working Out of Classification.**

Whenever an employee is assigned to perform any work for one-half or more of a shift in a classification above that in which the employee is normally classified, the employee shall be paid for such work hours at the first step in the range assigned to the higher classification or a five percent (5%) increase of base hourly rate, whichever is higher, unless said employee is being trained for a higher classification in accordance with an approved training and development plan.

## **Section 2. Special Assignments.**

- A. CCITF: A Deputy temporarily assigned and working the Clackamas County Interagency Task Force (CCITF) will be eligible to be paid five percent (5%) above their/his/her base hourly rate after successful completion of a training period for the probationary periods described within. One hundred and eighty days (180) after the employee starts working in the assignment. At the end of the training period, the Unit supervisor will evaluate the member's progress in becoming a productive unit member. The Unit supervisor will recommend one of the following: (1) granting of the pay increase prospectively, (2) withholding the pay increase and re-evaluating at 365 days, or (3) removal of the individual from the assignment. If a member is re-evaluated at 365 days, the Unit supervisor shall recommend that the pay increase be granted prospectively or recommend removal from the assignment. The Unit supervisor's recommendations will be forwarded to the Division Commander for review and approval. In consideration for the additional compensation set forth above, the Sheriff shall have authority to end an assignment to the CCITF as needed for business reasons without a demand from the Association to bargain the decision or any pay issues.
- B. Rotational Detective. Upon beginning work in the assignment the Deputy will be paid five percent (5%) above their base-hourly rate. After the conclusion of a 180-day training period, the Unit supervisor will evaluate the member's progress in becoming a productive unit member. The Unit supervisor's evaluation will be forwarded to the Division Commander for review and approval. The Sheriff shall have authority to end an assignment of a Rotational Detective as needed for business reasons without a demand from the Association to bargain the decision or any pay issues.

A Deputy working as a Rotational Detective will be eligible for the following additional benefits: (1) Compensated at the hourly rate of 1.5 for authorized overtime work, (2) Detective clothing allowance as outlined within this agreement in place of the uniform cleaning allowance, (3) Sign up for "on-call" coverage upon completion of the 180 day training period, based on Division seniority, and (4) Accrual of earned time off in the "Detective Leave Bank" (DLB), which will be capped at 120 hours in accordance with Article 17. When the Deputy rotates out of Detectives, the Deputy retains no ownership of the accrued DLB time. The hours in the DLB have zero cash value.

## **ARTICLE 19 - TRAINING/PROBATIONARY PERIODS**

### **Section 1. Training.**

Sworn employees shall be provided sufficient training to maintain DPPST certification. The employee shall participate in training, including firearms training, at times set by the Sheriff or ~~his~~their designee. Employees required to participate in any training that exceeds the total number of hours in their regularly scheduled work week shall be compensated at the overtime rate for time spent in training, including commuting when required by the Fair Labor Standards Act or to flex their hours with approval of their supervisor. Employees

who elect training on a day off when otherwise available during a regular work day will receive overtime for time spent in training, with no 4-hour minimum.

## **Section 2. Probationary Periods.**

New Recruits (DPSST certified classifications): Employees hired as Deputy Sheriff Recruit or Jail Deputy Recruit will serve a total of 18 months (545 days) in an initial probationary status, including 365 days as a Recruit and 180 days after promotion to Deputy after successful completion of the recruit program regardless of whether they are new hires or transfer from other County employment. This probationary period is for the purpose of DPSST certification and post-training evaluation. A Recruit will not be promoted to Probationary Deputy status unless the employee has received DPSST certification and successfully completed the FTEP program. At the discretion of the Sheriff, this probationary period may be extended for the purposes of DPSST certification and successful completion of FTEP.

New employees (non-DPSST certified classifications): Employees hired into non- DPSST certified positions serve a 365 day probationary period, regardless of whether they are new hires or transfer from other County employment. For positions requiring an FTEP program, the probationary period may be extended to account for the FTEP program.

Lateral Hire: Employees hired for a DPSST certified position who comes from another law enforcement agency are considered a lateral hire. A DPSST certified employee hired as a lateral will serve an initial probationary period of 365 days.

During any initial probationary period, an employee does not have just cause or grievance rights for discipline or discharge.

A probationary period may be extended in circumstances, ~~such as where training has not been completed or in circumstances~~ of medical leave or other lawful leave. ~~(For for example: worker's compensation).~~

Promotions: An employee serving a probationary period as a result of appointment from a promotion list shall serve a probation of 180 days. A DPSST certified employee who fails to qualify in the new position during the probationary period shall be reinstated to ~~his/her~~their former position. This provision does not provide for reinstatement to a Recruit position. A non DPSST certified employee who fails to qualify during the probationary period in the new position shall be reinstated to ~~his/her~~their former position if the position is open.

## **ARTICLE 20 - DISCIPLINE AND DISCHARGE**

### **Section 1.**

Disciplinary action may be imposed upon an employee only for just cause, using the principles of progressive discipline. Disciplinary action may take any of the following forms: written reprimand, temporary pay reduction, suspension, demotion, or dismissal.

Temporary pay reductions shall be limited to no more than six pay periods and a two-step reduction.

Counseling: Counseling is not discipline and may not be protested through the grievance process, except where the Association challenges whether the counseling is disciplinary. Counseling is a less formal means of resolving issues related to daily operations, interpersonal conflicts, and minor matters of improper conduct. Counseling documents are not placed in an employee's personnel file, however, they may be maintained in the Watch Commander's file and may be mentioned in the next yearly evaluation. Employees may provide a written rebuttal to the counseling within ten (10) calendar days of the employee's receipt of the written counseling memorandum. Upon request, an employee may review and request copies of counseling documents in the employee's Watch Commander's file. After the later of twelve (12) months or the employee's next annual performance evaluation, the counseling will be considered stale if no further counseling or discipline has been imposed for similarly related conduct. Nothing herein prevents or prohibits command staff from discussing operational matters informally with employees.

## **Section 2.**

In the event an employee is under investigation concerning a matter that they reasonably believe may lead to discipline, the following procedural due process shall be followed:

### a. Notice of Investigation:

Prior to an administrative investigatory interview, the County will provide the employee and Association with at least 24-hours' notice of an investigatory interview and will describe the nature of the charges or allegations that may result in discipline. If the accuser or witness is an employee, or the accuser's identity is otherwise protected by law, their information may be redacted if necessary to comply with statutes prohibiting the County from disclosing their identity, unless the accuser or witness expressly waives their confidentiality in writing. The 24-hour notice of interview may be less if such notice would jeopardize the successful completion of the investigation through possible loss of material evidence.

The notice of investigatory interview will also include:

- 1) The right to have an Association Representative present,
- 2) The name of the assigned investigator, and
- 3) The date, time and location of the interview.

### b. Investigatory Interviews:

Employees subject to an investigative interview will be provided the following:

- 1) The employee may have an Association representative present during the interview so long as the interview is not unduly delayed.
- 2) No more than two interviewers at a time may question the employee.

- 3) The County will record the investigatory interview. A copy of the audio/video recording will be provided to the employee and Association upon request. The employee or Association is not precluded from audio recording; however, notice of recording must be provided in advance and a copy provided to the County upon request.
- 4) In a compelled interview solely for noncriminal purposes, an employee who refuses to respond to questions or to be interviewed shall be informed that refusal may lead to discipline up to and including termination. But for threat of disciplinary action for refusing to answer questions as compelled, the employee being interviewed may not be threatened with punitive action or subjected to offensive language.
- 5) If the employee is compelled to answer questions, the employee will be notified of the expectation to answer all questions fully and truthfully to the best of the employee's ability subject to discipline up to and including termination.
- 6) The interview will be reasonable in time in consideration of the nature of the allegations.
- 7) The employee and Association representative will be permitted reasonable break periods.
- 8) The Association representative may not be required to disclose, or be subject to disciplinary action for refusing to disclose statements made by the ~~officer~~employee to the representative for purposes of the representation.
- 9) As soon as it is determined that the employee may be charged with a criminal offense, the employee must be informed of the employee's right to consult with criminal defense counsel with respect to the criminal charge.
- 10) In the event that another interview is needed, the employee and Association will be provided a copy of any audio/video recording or transcript (if prepared) of the prior interview before the subsequent interview takes place.

c. Due-Process/Loudermill Meeting:

Prior to the imposition of a disciplinary action, the employee and Association will be given the opportunity to have a Due-Process/Loudermill meeting. The County will provide a written Notice of Intent to Discipline ("Notice of Intent") to the employee and Association at least ten (10) calendar days prior to the Due-Process meeting. The ten (10) calendar day notice period may be waived by mutual

agreement between the County and Association. The Notice of Intent will include the following information: (1) the nature of the charges, (2) the findings of the investigation, (3) the policy violations or misconduct sustained, and (4) notice of the disciplinary sanctions being considered. In addition, with its Notice of Intent, the County will provide the employee and Association a full and complete copy of the investigation file, including but not limited to audio/video files.

The Due-Process meeting is voluntary, and the employee may have an Association representative present on their behalf. The employee or Association may also provide a written statement in lieu of the Due-Process/Loudermill meeting so long as the statement is provided to the County no later than the scheduled meeting.

d. Internal Investigations:

The County will make reasonablebest efforts to conduct and conclude internal investigations promptly. The County will notify an employee when an investigation is completed and the result of the investigation. The ability to complete an internal investigation in a timely manner depends on many circumstances that are not necessarily under the County's control. In the event an internal investigation is not concluded within ninety (90) calendar days from the date of initial notice of investigation the County will provide the employee and Association with a general explanation of the reasons for the delay and the expected duration and completion, not to exceed twelve (12) months in total. Timelines do not apply to those factors set forth in ORS 236.360(6)(b).

The County may reopen an investigation upon discovery of new material information or evidence resulting from the employee's pre-disciplinary response or the evidence could not have been discovered sooner without extraordinary measures.

Appeals shall be processed through the grievance procedure starting at Step II within thirty (30) calendar days of the effective date of the disciplinary action.

~~Counseling: Counseling is not discipline and may not be protested through the grievance process. Counseling is a less formal means of resolving issues related to daily operations, interpersonal conflicts, and minor matters of improper conduct. Counseling documents are not placed in an employee's personnel file, however, they may be maintained in the Watch Commander's file and may be mentioned in the next yearly evaluation. Employees may provide a written rebuttal to the counseling within ten calendar days of the counseling. Upon request, an employee may review and request copies of counseling documents in the employee's Watch Commander's file. After the later of 12 months or the employee's next annual performance evaluation, the counseling will be considered stale if no further counseling or discipline has been imposed for similarly related conduct. Nothing herein prevents or prohibits command staff from discussing operational matters informally with employees.~~



**Section 32.**

The County will provide a copy of imposition of any disciplinary action to both the employee and Association outlining the specific reason for such action.

**Section 43.**

If the County has reason to discipline an employee, it shall not be done in manner that is likely to embarrass the employee before other employees or the public. Nor shall said discipline be done in a manner personally demeaning of the employee.

**Section 54.**

A probationary employee shall be afforded the opportunity to grieve alleged contract violations pursuant to Article 21, Settlement of Disputes, of this Agreement; however, this shall not include any matter involving discipline and/or discharge. This provision applies only to an employee's initial probationary period with the County.

**Section 65.**

Written reprimands, shall be considered stale after twenty-four (24) months, and temporary pay reductions after thirty-six (36) months, and cannot be used as a basis for progressive discipline if no further counseling or discipline has been imposed for similarly related conduct, except for notice of rule.

**Section 76.**

No material reflecting critically on an employee shall be placed in an employee's personnel file until the employee has been given the opportunity to acknowledge receipt, whether in person or electronically. The employee shall have the right to attach employee comments to anything placed in the employee's personnel file or Watch Commander's training file.

**Section 87.**

No grievance material shall be kept in the personnel file other than grievances resulting from disciplinary action.

**Section 98.**

Prior to any changes in the Sheriff's or the County's policies on complaint and discipline procedures which are applicable to the Sheriff's Office employees represented by the Association, including but not limited to CCSO Policy 18 (PSU) and the PSU Procedure Manual, the Association shall be given notice of those changes and an opportunity to provide comment or demand to bargain on the changes before they are adopted to the extent required by the bargaining law.

**Section 10.**

At the completion of the investigation, regardless of the findings the employee under investigation and/or the Association may review the PSU investigation file in accordance with PSU policy. the County will provide the Association with a complete copy of the PSU investigative file, regardless of the final investigation findings.

In the event of a public records request for disciplinary, investigatory, or personnel file materials, the County and/or Sheriff's Office will provide written notice to the employee

prior to the release and subject to public records law. The release of the files will follow the procedure outlined in the PSU Procedure Manual.

In the event of disclosure under *Brady* of disciplinary, investigatory, or personnel file materials to a prosecutor, the County and/or Sheriff's Office will provide written notice to the employee prior to release. The release of the files will follow the procedure outlined in the PSU Procedure Manual.

In the event of a request by a prospective employing law enforcement agency for disciplinary, investigatory, or personnel file materials pursuant to the requirements of HB 4207 (2020), the County and/or Sheriff's Office will provide written notice to the employee prior to the release and subject to HB 4207 (2020).

## **ARTICLE 21 - SETTLEMENT OF DISPUTES**

### **Section 1. Grievance and Arbitration Procedure.**

Any grievance or dispute which may arise between the parties involving the application, meaning or interpretation of this Agreement, shall be settled in the following manner:

STEP I. An Association representative, with or without the employee; shall take up the grievance or dispute with the employee's immediate Division or Watch Commander within thirty (30) calendar days of the earliest date of either the employee grievant or Association Representative knew or should have known of the alleged grievance. The Division or Watch commander shall then attempt to adjust the matter and respond to the Association representative within fourteen (14) calendar days.

STEP II. If the grievance has not been settled, it may be presented in writing by the Association representative to the Sheriff or ~~his/her~~their designee within fourteen (14) calendar days of the Division or Watch Commander's response. After receiving notification, the Sheriff or ~~their/his/her~~ designee shall respond to the Association representative in writing within fourteen (14) calendar days.

STEP III. If the grievance has not been resolved, it shall be presented by the Association representative to the Board of County Commissioners; or its designees within fourteen (14) calendar days of the response of the Sheriff's Office. After receiving notification, the Board of County Commissioners or its designees shall respond in writing to the Association Representative; within fourteen (14) calendar days.

~~STEP IV. Mediation: If the grievance has not been resolved with the response provided by the Board of County Commissioners or its designees at Step 3, the Association may continue the grievance by submitting it to mediation within fourteen (14) calendar days from either the Board of County Commissioners response or within fourteen (14) calendar days from the due date of the response. The parties may mutually agree to a local mediator or default to use a mediator provided by the Employment Relations Board. The parties agree to equally share the cost of the mediator. Unless otherwise agreed by the parties, the period for mediation will be limited to one hundred and~~

~~twenty (120) calendar days, starting from timely notice of mediation by the Association. The parties must meet at least once and agree to meet in good faith to resolve the grievance. After the earlier of one hundred and twenty (120) calendar days of mediation or notice of impasse by the Association after at least one mediation session, the Association may move the grievance to the next step. Termination cases are not subject to the mediation process and may move to the next step. The parties may mutually agree to forego mediation.~~

~~STEP ~~V~~IV. Arbitration: If the grievance is not resolved at Step III during the mediation period, the Association may provide written notice and request for arbitration within fourteen (14) calendar days after the reply of the Board of County Commissioners of notice of mediation impasse. ~~For termination cases the Association will provide written notice and request for arbitration within fourteen (14) calendar days after the reply of the Board of County Commissioners.~~~~

If arbitration is requested, the parties shall forthwith agree upon an arbitrator who shall act as sole arbitrator of the dispute. The parties agree that any decision of the arbitrator which is within the scope of this Agreement shall be final and binding upon them. In the event that the parties fail to agree upon the selection of an arbitrator, a list of arbitrators shall be requested from the Employment Relations Board of the State of Oregon. The list requested shall consist of seven (7) arbitrators. Each party shall, in turn, strike one arbitrator at a time from the list until one name remains. The Association takes the first strike.

The arbitrator whose name remains shall act as the arbitrator of the dispute. The arbitrator shall not have authority to modify, add to, alter or detract from the provisions of this Agreement. The arbitrator shall exercise all powers relating to admissibility of evidence, conduct of the hearing and arbitration procedures, provided that in so doing, he shall not contravene any provisions of this Agreement. The compensation of the arbitrator and all expenses incurred by him/her shall be borne by the party against whom the arbitrator's decision is adverse. However, the arbitrator shall have the power to require the parties to share in the expense of the arbitration proceeding in any proportion that the arbitrator deems reasonable.

## **Section 2.**

If the County fails to adhere to the response time outlined above, such failure will allow the grievance to proceed to the next step in the process within the timelines above. Any of the time periods set forth in this Article may be extended upon mutual agreement of the parties.

## **Section 3.**

By mutual agreement, any grievance filed under the terms of this article may be referred to mediation at any time during the grievance process. The Association and the County agree to equally split the cost of such mediation.

## ARTICLE 22 - MISCELLANEOUS

### **Section 1. No Discrimination.**

The provisions of this Agreement shall be applied equally to all employees in the bargaining unit. There shall be no discrimination against any employee in the bargaining unit as to age, sex, marital status, race, disability, color, creed, religion, sexual orientation, national origin, or political affiliation or other status as applicable by State or Federal law. The Association shall share equally with the County the responsibility for applying this provision of the Agreement.

~~All references to employees in this Agreement designate both sexes, and wherever the male gender is used, it shall be construed to include male and female employees.~~

The County agrees not to interfere with the rights of employees to become members of the Association, and there shall be no discrimination, interference, restraint, or coercion by the County, or any County representative, against any employee ~~in or~~ because of Association membership or because of any other cause prohibited by law.

### **Section 2. Department Policy.**

The County agrees to furnish each employee in the bargaining unit with an electronic copy of all existing work rules within thirty (30) days after they become effective. New Association members shall be provided a copy of the rules.

Employees shall comply with all existing rules that are not in conflict with the terms of this Agreement, provided the rules are uniformly applied and uniformly enforced.

The County will comply with ORS 243.698 when the County seeks to change policies or work rules.

### **Section 3. Adequate Protection.**

The County is dedicated to the principle of adequate levels of safety and service in the Sheriff's Office. Matters related to safety may be brought to the safety committee or command staff for review.

### **Section 4. Copies of Collective Bargaining Agreement (CBA).**

The CBA will be available on the County website. Employees may print a copy at work once per year.

### **Section 5. Over/Under Payments.**

Any employee knowingly receiving unauthorized payments has the obligation to call such known errors to the attention of their supervisor. Notwithstanding the foregoing, if the County discovers that an employee is receiving unauthorized payments, it may recover such payments as provided below.

#### A. Underpayments

When an error occurs resulting in a negative impact on the employee, upon notification by the employee, in writing to the Payroll Manager, and verification by the payroll division,

payment in correction of the error shall be made in the employee's paycheck for the current pay period.

B. Payments in Error

When an employee receives payments due to a clerical, technical, or computer error, through no fault of the employee, and where the employee did not and could not reasonably have known that the error occurred, the employee will only be liable for, and the County shall only recover, the overpayment for a period of one-hundred and eighty (180) days preceding the date of discovery of the error. If the discovery of the error is made by the employee who notifies the Payroll Manager in writing within ten (10) working days of discovery of the error that they believe their pay is incorrect and the County does not subsequently make a correction to stop the overpayment by the next payroll period after notification, the employee will not be liable for additional overpayments that occur following the date of notification.

C. Repayment to the County

As soon as the overpayment is known, the County will make every effort to recover overpayments by payroll deduction over a reasonable period of time.

1. The County Payroll Manager shall notify the employee in writing of the overpayment which will include information supporting that an overpayment exists, and the amount of wages and/or benefits to be repaid. For purposes of recovering the overpayments by payroll deduction, the following shall apply:
2. The employee and the County shall meet and attempt to reach mutual agreement on a repayment schedule within thirty (30) calendar days following the written notification.
3. If there is not mutual agreement at the end of thirty (30) calendar days, the County shall implement the repayment schedule stated in subsection (7) below, unless the employee or Association files a grievance under subsection (5) below.
4. If the overpayment amount to be repaid is more than twenty-five dollars (\$25) ~~dollars~~, the overpayment shall be recovered in amounts not to exceed twenty-five dollars (\$25) ~~dollars~~ per payroll period. The employee may elect a higher repayment amount. If an overpayment is less than twenty-five dollars (\$25) ~~dollars~~, the overpayment shall be recovered in a lump sum deduction from the employee's paycheck.
5. An employee who has a factual disagreement with the County's determination that the overpayment has been made to the employee may grieve the determination through the grievance procedure.
6. This article/section does not waive the County's right to pursue other legal procedures and processes to recoup an overpayment made to former employees.

7. Employees can elect to either establish a payment plan through payroll deductions as described in 22(C)(4) above or may elect to pay overpayment in one lump sum. In the event the employee chooses to make a lump sum payment to the County, the County will adjust the amount owed for any tax paid, and will reduce the amount of employees' wages for the year on the employee's W-2 form by the amount repaid.

## **ARTICLE 23 - USE OF RESERVE PERSONNEL**

### **Section 1.**

The County may maintain a Reserve Program. Typical or similar duties that may be assigned to Reserve Officers on a voluntary/paid basis include, but are not limited to: school athletic events, crime scene security, transporting prisoners within the Patrol Division only and traffic control (accidents/parades). Reserves may be used in conjunction with retirees and/or regular Sheriff's Office members for parks patrol and Lake Oswego Marine Patrol for the length of ~~this~~the 2017—2020 collective bargaining agreement and during the period of time utilized for bargaining of a subsequent contract.

Reserve Officers will not be allowed to replace regular fulltime Corrections Officers and/or regular fulltime Deputy Sheriffs due to vacant positions, any absences including, but not limited to, vacations, training, approved leave of absence or to temporarily fill any DPSST certified bargaining unit position.

Reserve Officers may be allowed to work with regular fulltime employees on a voluntary basis and only with the permission of the regular fulltime employee to whom he/she is assigned. Reserves may be assigned with a fulltime employee and paid in emergency~~s~~ies situations, (i.e., acts of God, natural and man-made disasters, civil disorders within the County).

### **Section 2.**

The County and the Association agree that Reserve Deputy Sheriffs being hired to perform duties listed in Section 1 must be ~~a~~a-graduates of the Clackamas County Sheriff's Academy or an equivalent law enforcement academy conducted in the state of Oregon.

### **Section 3.**

Upon request, the Association will be provided by the County every quarter a list of all voluntary and paid duties and hours performed by reserves.

## **ARTICLE 24 - ~~FAIR SHARE AGREEMENT~~DUES & CHECKOFF**

### **Section 1.**

All employees whose classification or job title is included in Article 1, Recognition, of this Agreement may voluntarily join the Association as a member. The County agrees to deduct dues, fees, costs, charges, and assessments in the amounts determined by the Association from the compensation of each employee who individually authorizes such a deduction in writing on the authorization from provided by the Association. Such authorization shall be terminable upon such notice as is specified in the authorization. The County shall deduct

~~such authorized amount each pay period from each employee's compensation and remit such amounts monthly to the Association Treasurer. The County and the Association agree to a "Fair Share" agreement for all employees whose classification or job title is included in Article 1, Recognition, of this Agreement.~~

## **Section 2.**

~~Employees terminating with less than ten (10) working days in any calendar month will not be subject to dues deduction for that calendar month. In as much as it is required that the Association represent every employee within the bargaining unit, making each employee thus a recipient of the Association's services, it is mutually agreed and recognized by the parties that each employee who, on July 1, 1977, or any date thereafter, is an employee of the County and a member of the bargaining unit set forth in Article 1, Recognition, to which the Association serves as the bargaining agent, but who is not a member and chooses to remain not a member of the Association, shall proportionately and fairly share in the cost of the collective bargaining process.~~

~~The County and the Association jointly supervised an election by the employees in the bargaining unit, and a majority of those employees voted that non members of the Association who are in the bargaining unit shall pay his or her "fair share in lieu of dues." Therefore, the costs per non-Association employee is fixed proportionately at the amount of dues uniformly required of each member of the Association, which amount shall be deducted each pay period from each Association member and each non-Association member's compensation and remitted monthly to the Treasurer of the Association.~~

## **Section 3.**

~~The County will not be held liable for check off errors but will make proper adjustments with the Association for errors as soon as is practicable if notified within ten (10) days of the error. In no case shall such an adjustment extend beyond the following pay period. In order for both parties to have adequate information on dues check off, an updated list of eligible members of the bargaining unit will be delivered to the Association. Such lists shall include all members paying dues in the previous pay period. Such uniform amounts as the Association Treasurer certifies to the County as the monthly dues approved by the members of the Association shall remain as the reasonable amount to be deducted there under.~~

## **Section 4.**

~~The Association agrees to indemnify, defend, and hold the County harmless from and against any and all claims, suits, orders or judgements brought against the County as a result of the County's compliance with the provisions of this Article and to reimburse any fees, costs, or expense incurred by the County in connection with the same. Notwithstanding the foregoing, the County will cover its costs associated with notifying the Association of any such claim. A like amount in lieu of dues will be automatically deducted from employees in the bargaining unit who have not signed an authorization form requesting Association membership dues deduction. It is understood that the like amount in lieu of dues shall only be used as directed by the Constitution and By-laws of the Association and by the majority vote of the membership. Employees terminating with less than ten (10) working days in any calendar month will not be subject to dues or a like amount in lieu of dues deduction.~~

~~Section 5. Any individual employee objecting on bona fide religious tenets or teachings of a church or religious body of which such employee is a member will inform the County and Association of his/her objection. The employee will meet with the representative of the Association and establish a mutually satisfactory arrangement for distribution of a contribution of an amount of money equivalent to regular Association membership dues to a non-religious charity.~~

~~Section 6. The County will not be held liable for check-off errors but will make proper adjustments with the Association for errors as soon as is practicable if notified within ten (10) days of the error. In no case shall such an adjustment extend beyond the following pay period. In order for both parties to have adequate information on dues check off, an updated list of eligible members of the bargaining unit will be delivered to the Association.~~

~~Such lists shall include all members paying dues in the previous pay period.~~

## **ARTICLE 25 – WORKERS’ COMPENSATION**

### **Section 1.**

All County employees will be insured under the provisions of the Oregon State Workers’ Compensation Act for injuries that arise out of and occur in the course of employment for the County. The County is self-insured for worker<sup>2</sup>s’ compensation claims. The County and Association acknowledge the right of employees to receive worker<sup>2</sup>s’ compensation benefits as provided by state law and this Article.

### **Section 2.**

The County will compensate the employee for injuries that arise out of and occur in the course of employment where the claim has been accepted in an amount equal to the injured employee’s regular pay, including any regular additional pay, such as longevity, that the employee was receiving at the time of the injury for up to and including 180 days from the date of injury. This wage continuation provision will continue for up to and including 180 calendar days from the date of injury, and is subject to the following conditions:

- A. The day of injury shall be considered a workday, and the employee will receive ~~his/her~~their normal salary for that day.
- B. The waiting period as stated in ORS 656.210 will be charged to sick leave or other accrued leave if available unless total temporary disability exceeds fourteen (14) consecutive days. Then, worker<sup>2</sup>s’ compensation covers from the first day.
- C. The employee’s regular pay will be subject to all standard deductions, such as income tax and employee benefits, as required or allowed under Federal and State Law.
- D. While the employee is receiving wage continuation under this provision, ~~he/she~~the employee will continue to receive all other County health and welfare benefits ~~he/she~~the employee was enrolled in at the time of the injury unless prohibited by law, rule, and regulation or provider contract.



**Section 3.**

After one hundred and eighty (180) calendar days from the date of injury, the Board of County Commissioners retains the discretion to continue payment and benefits beyond that guaranteed under the statutes governing workers' compensation benefits. If the injured employee requests wage continuation beyond one hundred and eighty (180) calendar days from the date of injury, the injured employee will be required to present to the Board of County Commissioners through its designee Human Resources, a physician's statement setting forth the nature of injuries, current condition, and anticipated length of absence or date of return.

After one hundred and eighty (180) calendar days from the date of injury, the employee may elect to use accrued leaves to supplement the difference between worker's compensation benefits and the employee's regular pay (including any regular additional pay).

**Section 4.**

Full medical and dental insurance coverage shall be provided for employees for a minimum of twelve (12) months from the date of injury as long as employee remains employed during this period. Employees are responsible for any applicable insurance premium cost share as provided for in Article 11. Further coverage shall be at the discretion of the Board.

**Section 5.**

The County may request the employee to return to modified or light duty, subject to medical release. An injured employee that refuses to return to modified or light duty may be subject to loss of reinstatement rights. (See also Article 37, Light Duty, Section 3.)

**ARTICLE 26 - REGULAR PART-TIME EMPLOYEE BENEFITS**

Benefits for regular part-time employees covered by this Agreement shall be as follows:

- A. Employees working an average of twenty (20) hours per week shall receive health insurance coverage as if they were full-time employees.
- B. Employees working an average of thirty (30) hours per week shall receive dental insurance coverage as if they were full-time employees in addition to health insurance.
- C. Employees working an average of thirty (30) hours per week shall be covered by the County's life insurance and disability insurance policies in addition to health insurance.
- D. Part-time employees must serve a waiting period two (2) full calendar months consistent with County policy to qualify for the above benefits.
- E. Employees working less than full-time will be eligible for PERS if they meet the requirements of ORS Chapter 237.

- F. Part-time employees will receive seniority, vacation, sick and other accruals prorated based on budgeted FTE.
- G. Employees shall be eligible to receive merit/step increases and time in service for vacation accrual and longevity pay as of the first of the month based on accumulated calendar months of service.
- H. Employees shall receive paid holidays only for those holidays which are observed on days the employee is regularly scheduled to work.
- I. Overtime will only be paid for all authorized work performed in excess of forty (40) hours in any work week or if the employee is required to work over twelve (12) hours on a regularly scheduled work day. The County and employee may also agree to a flexible schedule for a particular work week which does not create overtime obligations unless required by operational need.
- J. All other provisions of this Agreement not specifically modified above shall apply to part-time employees.

**ARTICLE 27 - COMPENSATORY TIME OFF**

If agreed to by an employee and ~~his~~-their supervisor, compensatory leave may be taken in lieu of pay for overtime. Such leave shall not accrue beyond forty (40) hours.

**ARTICLE 28 - PUBLIC EMPLOYEES RETIREMENT SYSTEM**

**Section 1. Employer “Pick-up” of Employees PERS/OPSRP Contribution.**

Eligibility for Public Employees Retirement System (PERS) and Oregon Public Service Retirement Plan (OPSRP) is subject to ORS Chapters 238 and 238A. The County agrees to pay employee’s share of contribution on behalf of employees as set by Oregon legislature.

In the event that during the life of this agreement it becomes impossible for reasons of law, regulation or decisions for the County to pay the six percent (6%) employee contribution to PERS, then that sum shall be contributed on behalf of the employee to a retirement benefit, such as a state retirement account, County deferred compensation plan, or other individual retirement account. The intent of the parties is that the employees will be made whole in terms of the six percent (6%) retirement contribution by the County.

**Section 2. Notice of Intent to Retire.**

- 1. Employees are requested to provide a ninety (90) day written notice of intent to retire.
- 2. Retire/Rehire program:
  - A. The parties recognize that there can be a large time lag between retirements and hiring new employees to meet operational need. The intent of this program is to improve the efficiency with attrition and maintaining qualified staffing levels. Thus, as soon as the position filled by a rehired retiree is filled by a regular employee, the County may end the employment of the

rehired retiree. The County will attempt to provide two weeks' notice prior to the rehire retire position ending.

- B. For DPSST certified and non-certified, employees who provide at least twelve (12) months' notice, but no more than eighteen (18) months' notice, of commitment to retire under PERS or OPSRP, the County, at its discretion, may offer ~~the employee~~ the opportunity to return to work to employees who have officially retired from the County and submitted their retirement to PERS for a "Rehire Period." The Rehire Period shall be for up to an additional one hundred and eighty (180) calendar days ~~from the employee's retirement date;~~ or an amount of time not extended past December 31, 2024 for employees rehired under Senate Bill 1049 (2019). The County may end the Rehire Period at its discretion at any time. Within thirty (30) days of notice from the employee, the County will give notice to the employee that they are selected for the program. The County's decision to not select an employee for the Retire/Rehire program is not subject to the grievance procedure. An employee who is not selected for the Retire/Rehire program may withdraw their notice to retire within thirty (30) days of the County's notice non-selection and the conditions of the program will not apply to that employee.
- C. Employees selected for the Retire/Rehire program are subject to the following:
- ~~1) Retire/Rehire program not to exceed one hundred and eighty (180) calendar days from the employee's retirement date.~~
  - 1) Employee loses ~~maintains~~ their ~~current~~ seniority upon retirement. Seniority within the employee's assigned job/classification resets to the rehire date.
  - 2) Employee will have no more than ~~five (5)~~ ~~three (3)~~ calendar days off between retirement and returning to work to initiate the new employment relationship.
  - 3) Employee will ~~not~~ be eligible to receive Health and Welfare benefits ~~continue on County health insurance under Article 11, including voluntary benefits;~~ however, the County will continue to provide EAP. ~~and~~ Rather, employee may receive Health and Welfare benefits ~~by not enrolling in~~ the IRMT plan. The County will continue to pay the employee's IRMT contribution during the Rehire Period as set forth in Article 11.
  - 4) Employee will be an Association member with limited benefits:
    - a) Employee will be afforded the rights as provided under Article 20 for alleged disciplinary actions, however, employee retains no rights to grieve discipline or discharge past Step 2 of Article 21, with final decision by the Sheriff. The County may end employment for operational need not related to discipline and layoff and recall

provisions of the CBA and County Code will not apply. If the investigation or grievance process exceeds the employment period, the employment status ends even if the investigation or grievance process is unresolved.

b) Employee may be returned to any previously held classification subject to operational need. If not returned to their classification upon retirement, employee will be paid the step closest to their previous wage. Employee will earn compensation including incentives as applicable for the assigned work. The County, at its discretion, may suspend an employee's specialty assignment.

c) Sick Leave will be earned and used consistent with Oregon Paid Sick Leave law. *(note: FMLA/OFLA would not apply)*

d) Employee is eligible for Holidays as provided by Article 7, ~~as occurring during the one hundred and eighty (180) day period.~~

e) Employee will not earn any additional leave accruals except for two (2) personal leave days banked upon rehire. Such days have no value upon separation of employment. Employee may also request time off without pay subject to supervisory approval.

f) Employee is not eligible for compensatory time accrual.

g) Employee is not eligible for tuition reimbursement.

a)h) Employee is eligible for all terms and conditions of this Agreement unless otherwise provided above.

D. Upon receiving such notice from an individual employee, the County will initiate hiring to adjust for the appropriate staffing level as determined by the County.

E. The County is not precluded from offering work to retirees as a temporary employee.

## **ARTICLE 29 - LAYOFF**

### **Section 1.**

This Article is to apply to all employees covered by this collective bargaining agreement. Where the term "Sheriff" is used, it shall also refer to the "appointing authority" if an employee is in another Department.

The Sheriff may lay off an employee when the Sheriff determines it necessary to abolish a position or that a shortage of funds or work exists. Layoff shall be by specific job classification and shall be in ascending order (bottom to top) of an employee's seniority

while in the classification, as described in this Article for purposes of layoff. An employee shall be given written notice of a pending layoff at least fifteen (15) calendar days before the effective date stating the reasons for the layoff and the fact that an election to displace another employee pursuant to Section 3 of this Article must be made within six working days of receipt of said notice.

## **Section 2.**

Layoffs shall occur in the following manner:

- A. The Sheriff shall determine the specific positions to be vacated.
- B. The Sheriff will notify, in writing, all affected employees and the Association at least fifteen (15) calendar days prior to the effective date of the layoff of all employees in all affected classifications.

## **Section 3.**

Where an employee is laid off, including former bargaining unit members promoted to non-represented positions within the Sheriff's Office, that employee may elect to displace (bump) an employee in another job classification at the same or a lesser pay range provided that the employee is qualified to perform the duties of the position and the employee electing to displace another has a greater seniority as defined below. Layoff and bumping shall occur within a department only.

- 1) For layoff bumping purposes in DPSST certified law enforcement positions, an employee's seniority shall be measured from the date and time they were hired or promoted into the classification into which they are bumping and shall include all time as a Department employee in that classification, plus all time as a Department employee in any equal or higher classification, whether in a represented or non-represented classification.
- 2) For layoff bumping purposes in non-DPSST certified positions, seniority shall be measured by the date and time of hire by the Sheriff's Office.
- 3) When layoff bumping occurs, the "bumped" employee who is displaced is the employee within the job classification with the least Department seniority, measured from the date and time of hiring or promotion into that classification, including all time as a Department employee in that classification, plus all time as a Department employee in any equal or higher classification, whether in a represented or non-represented classification.

Employees who are reinstated from a layoff register retain previously accrued seniority, not including the time on layoff status while not working for the Sheriff's Office.

For purposes of this Article, for DPSST certified law enforcement classifications, "qualified to perform the duties of the position" means that the employee has previously held the classification with this Department.

If an employee exercises a layoff bumping right to a position where they had not completed the probationary period, they must complete the remaining time in probationary status.

An employee who transferred from a regular-status position as a Jail Deputy to a position as a Deputy Sheriff, or from a regular status position as a Deputy Sheriff to a position as a Jail Deputy, and is then laid off, may elect to displace (bump) an employee in the prior classification previously held, if the employee electing to displace another has greater seniority as defined in this section.

#### **Section 4.**

Employees who held training positions as Recruit Deputy Sheriffs or Recruit Jail Deputies and successfully transferred to Deputy Sheriff or Jail Deputy classifications shall be credited with additional seniority for layoff and/or layoff bumping purposes as provided by the following rules:

- (a) For employees who have held positions as Recruit Deputy Sheriff and/or Deputy Sheriff, seniority for layoff or layoff bumping into these classifications is measured from the earlier hire date in either of these two classifications;
- (b) For employees who have held positions as Recruit Jail Deputy and/or Jail Deputy, seniority for layoff or layoff bumping into these classifications is measured from the earlier hire date in either of these two classifications;
- (c) For employees who have been employed as a Recruit Jail Deputy and/or Jail Deputy prior to being employed as a Recruit Deputy Sheriff and/or Deputy Sheriff, seniority for purposes of layoff bumping into a position as a Recruit Jail Deputy or Jail Deputy includes all time employed in any of those positions. This “blended Seniority” under Section 4(c) of this Article applies only to bumping resulting from layoff, and not to the identification of positions for layoff under Article 29, Section 1. This paragraph applies in a similar manner to employees who have been employed as a Recruit Deputy Sheriff and/or Deputy Sheriff prior to being employed as Recruit Jail Deputy and/or Jail Deputy.

#### **Section 5.**

When an employee displaces another employee under the conditions set forth above, the employee taking the position will be paid the rate of pay within the pay range of the employee’s new assignment and classification which most nearly approaches the rate of pay actually earned in the job from which the employee was laid off.

#### **Section 6.**

Employees who have been laid off or who have displaced another employee shall be placed on the layoff register, for the classification held at the time of their layoff, in order of layoff seniority including time spent in an equal or higher classification. Reinstatement shall be offered to those employees on the layoff list in descending order from top to bottom of layoff seniority possessed at the time of layoff prior to hiring any new employees. In other words, recall will occur so that the last employee laid off will be the first recalled. An employee’s duration of placement on the layoff register shall not exceed twenty-four (24) months from the employee’s layoff date.

Notice of recall shall be made by certified mail. Employees shall be responsible for keeping the County informed of their correct address. Failure to respond to such recall notice within five (5) calendar days of receipt of the notice shall cause loss of recall eligibility.

Employees recalled shall have accrued but unused sick leave at the time of lay off restored.

**ARTICLE 30 - TUITION REIMBURSEMENT**

Subject to a maximum of one thousand five hundred dollars (\$1500.00) per employee per fiscal year, the County will reimburse the employees for the cost of books and tuition for the completion of any approved course of study directly related to their job. Courses must be from an accredited institution such as a community college, college or university. Proof of successfully passing an approved course must be submitted prior to reimbursement. Exceptions must be approved by the Sheriff in advance of the course of study.

**ARTICLE 31 - INCENTIVE PROGRAM**

**Section 1. Incentive Schedule.**

In order to maintain and improve officers' law enforcement skills, as well as to increase the participation of officers in the life of the community, the County will implement an incentive program consisting of training and community service, Department of Public Safety Standards and Training certification, superior firearms qualification and supervisory certification. The following premiums are paid subject to the conditions of this Article:

<b>INCENTIVES</b>	<b>Monthly Amounts 7/1/2019</b>	<b>Monthly Amounts 7/1/2020</b>	<b>Monthly Amounts 7/1/2021</b>	<b>Monthly Amounts 7/1/2022</b>
DPSST Intermediate Certification or	\$ 42.44	\$ 43.54	\$44.32	COLA
DPSST Intermediate Certification w/Bachelors	\$ 72.11	\$ 73.98	\$75.31	COLA
DPSST Intermediate Certification w/Masters or Ph.D.	\$ 84.85	\$ 87.05	\$88.63	COLA
DPSST Advanced Certification	\$ 93.04	\$ 95.46	\$ 97.18	\$146.00
DPSST Advanced Certification w/ Bachelors	\$158.17	\$162.28	\$165.21	\$250.00
DPSST Advanced Certification w/ Masters Phd	\$186.04	\$190.87	\$194.31	\$287.50
Marksmanship Pay	\$ 42.44	\$ 43.54	\$ 44.32	COLA
Educational ® 75 hrs. annually or	\$134.42	\$137.91	\$140.40	COLA
Educational ® 50 hrs. annually or	\$ 93.04	\$ 95.45	\$ 97.18	COLA
Educational (@ 25 hrs. annually	\$ 46.51	\$ 47.72	\$ 48.58	COLA
DPSST Supervisory Certificate	\$106.07	\$108.83	\$110.79	\$163.00
DPSST Supervisory Certificate w/Bachelors	\$180.34	\$185.03	\$188.36	\$278.00

<b>INCENTIVES</b>	<b>Monthly Amounts 7/1/2019</b>	<b>Monthly Amounts 7/1/2020</b>	<b>Monthly Amounts 7/1/2021</b>	<b>Monthly Amounts 7/1/2022</b>
DPSST Supervisory Certificate w/Masters PhD	\$213.16	\$218.70	\$222.63	\$329.00
Community Service Officers w/AA degree	\$ 42.44	\$ 43.54	\$44.32	COLA
Community Service Officers w/BA degree	\$ 93.04	\$ 95.46	\$97.18	COLA
IAI Certified Crime Scene Investigator (Basic)	\$ 26.39	\$ 27.07	\$27.57	COLA
IAI Certified Crime Scene Investigator (Inter)	\$ 39.91	\$ 40.94	\$41.68	COLA
IAI Certified Crime Scene Investigator (M/phd)	\$ 67.82	\$ 69.58	\$70.84	COLA
IAI Certified Crime Scene Analyst (Inter)	\$ 39.91	\$ 40.94	\$41.68	COLA
IAI Certified Crime Scene Analyst (Intermediate w/ Bachelors)	\$ 67.82	\$ 69.58	\$70.84	COLA
IAI Certified Crime Scene Analyst (Intermediate with Masters/PhD)	\$ 79.79	\$ 81.86	\$83.34	COLA
IAI Certified Senior Crime Scene Analyst (Advanced)	\$ 87.51	\$ 89.78	\$91.40	COLA
IAI Certified Senior Crime Scene Analyst (Advanced w/Bachelors)	\$148.76	\$152.62	\$155.37	COLA
IAI Certified Senior Crime Scene Analyst (Advanced with Masters/PhD)	\$174.97	\$179.52	\$182.75	COLA
IAI Certified Latent Print Examiner	\$148.76	\$152.62	\$155.37	COLA
IACIS Certified Forensic Computer Examiner	\$ 87.51	\$ 89.78	\$91.40	COLA
IACIS Certified Forensic Computer Examiner (w/Bachelors)	\$148.76	\$152.62	\$155.37	COLA
IACIS Certified Forensic Computer Examiner (w/Masters/PhD)	\$174.97	\$179.52	\$182.75	COLA
IACIS Certified Mobile Device Examiner	\$ 26.39	\$ 27.07	\$27.57	COLA
IACIS Certified Advance Windows Forensic Examiner	\$ 26.39	\$ 27.07	\$27.57	COLA

~~The above amounts will increase by an amount equal to the pay plan increases provided in Article 12 on July 1, 2018 and July 1, 2019. The above amounts will increase by an amount equal to the pay plan increases provided in Article 12 as noted above.~~

**Section 2. Marksmanship Pay.**

~~DPSST certified bargaining unit employees members of the Sheriff's Office may participate in the annual firearms marksmanship program.~~ To receive marksmanship pay,



a ~~DPSST certified~~ employee must score a minimum of eighty-five percent (85%) on the annual spring firearms qualification course. The content/criteria of the test will be determined by CCSO Firearms Training Unit, subject to approval by the Undersheriff. The employee may test for marksmanship pay only one time per year and there will be no make-up courses. ~~This restriction is necessary because members will be firing a portion of their regularly issued yearly firearms ammunition.~~ The County shall pay for all authorized fees incurred at the firing range.

An employee who scores a minimum of eighty-five percent (85%) on this qualification will receive additional compensation as described above effective the pay period following qualification. This pay will remain in effect for one year, or until the effective date of the next annual spring firearms qualification whichever is later.

Practice ammunition: DPSST certified employees will be provided six (6) boxes of practice ammunition per fiscal year subject to available supply for use at the CCSO facility, but no more than two (2) boxes per visit. No later than May 15 of each year, the Department will notify the Association if it anticipates a shortage of ammunition. The Department retains the sole discretion to determine if a shortage exists. Upon request by the Association, the parties may meet and confer about an adequate supply of ammunition.

### **Section 3. IAI and IACIS Certifications.**

Effective in the first pay period of the month following execution of this agreement, Employees who use the listed certifications in the regular duties of their classification will receive the monthly values noted above. Employees receiving any DPSST certification are not eligible for any of the below certifications.

Certifications: (inclusive of basic/intermediate/advance and education: see chart Section 31.1)

1. IAI Certified Crime Scene Investigator
2. IAI Certified Crime Scene Analyst or Senior\*  
(\*If receiving Analyst incentive, the Investigator incentive is not paid.)
3. IAI Certified Latent Print Examiner
4. IACIS Certified Forensic Computer Examiner
5. IACIS Certified Mobile Device Examiner
6. IACIS Certified Advanced Windows Forensic Examiner

### **Section 4. DPSST Certification.**

Employees who obtain a DPSST Intermediate Certificate in law enforcement or corrections will be paid additional compensation as described above.

Employees who obtain a DPSST Advanced Certificate in law enforcement or corrections will be paid additional compensation as described above.

Certification pay will commence effective the pay period following submission of a successful application for certification to DPSST.

This incentive pay is not cumulative and members are eligible for one level only.

**Section 5. Education Pay.**

All employees of Clackamas County Sheriff's Office who are members of the bargaining unit are eligible to participate in Education Pay.

This incentive pay is not cumulative and members are eligible for one level only.

Employees wishing to participate in education pay must receive prior approval of their courses.

Employees will receive ten (10) hours credit for each successfully completed quarter hour of college credit classes.

Education credits will normally be granted for any college training that is job-related. Credits will also be awarded for non-job-related college courses if they are required courses as part of a degree program in a job-related field. Approved jobs related training courses attended during off duty hours will count towards training points.

The Education pay program is separate from the Tuition Reimbursement Program. The fact that a training or college course is approved for training points does not necessarily mean that it will be approved for tuition reimbursement.

Education hours will be compiled by the Training Officer and submitted to payroll prior to June 15 each year. Pay will commence with the first payroll period in July and will continue for a period of one (1) year.

**Section 6. Supervisory Pay.**

Employees who complete the DPSST Supervisory Certification Program shall be granted additional compensation as described above. This incentive pay is not cumulative employees are not eligible for other DPSST incentive pays.

**Section 7. Community Service Officers with AA or BA degree.**

Community Service Officers who attain an Associate's degree shall be paid additional compensation as described above. Community Service Officers who attain a Bachelor's degree shall be paid additional compensation as described above. Community Service Officers applying for compensation by way of this Section shall have completed their degree work in a law enforcement field or an approved course of study related to a law enforcement career. This incentive pay is not cumulative and employees are eligible for one level only.

**Section 8. Detective and Evidence Technician Incentive Pay Program.**

**Description.** For the classifications of Detective and Evidence Technician, a Detective or Evidence Technician employee may receive the following incentive pay subject to exceeding expectations in yearly evaluations as provided below.

**Amounts of Incentive Pay.** This is a tiered incentive pay program:

2.5% of base pay for employees in continuous service with the classification between 5 year (60 months) to 10 years (120 months).

5.0% of base pay for employees in continuous service with the classification for over 120 months.

**Review Time Period.** Incentive pay will be based on previous year employee evaluation as defined below.

### **Qualification and Yearly Evaluation:**

#### 1. Rotation Within Various Units of Detective Division.

Detectives may be rotated through the various units (~~currently Homicide and Violent Crimes Unit (HVCU), Child Abuse Team, and Property Crimes~~) when necessary to suit the needs of the Sheriff's Office. Seniority is still a consideration with regard to shift schedules and days off.

#### 2. Evaluation Ratings Exceeds Expectations.

The standard performance evaluation form will be used to evaluate and document the employee's performance for the year. An employee must receive a specific "Meets" or "Exceeds" Expectations rating on their performance evaluations and have the required time in grade to be eligible to receive the incentive pay.

Detectives or Evidence Technician will be evaluated on the following: report reviews, investigative audits, case reviews, training file contents and supervisory input. Other considerations may include: response (when available) to the needs of the Sheriff's Office while off duty, assisting uniform personnel in the field when on duty and available, closely monitoring dispatch calls for service while on duty and in the field, attending required training (unless excused), and assisting with the training needs of the Sheriff's Office when requested.

**Appealing Decisions of "Does not Meet Criteria."** If an employee does not qualify for the Incentive Pay Program because his/her/their evaluation was below the rating criteria set forth above, then the employee may question the determination and have the opportunity to be heard. Management would typically follow its chain of command in responding to the employee starting with a Lieutenant then up to the Division Commander. The Division Commander's decision is final. The Association and employee agree that the employee has no further avenue for review and cannot use the grievance process. An employee should check with his/her/their supervisor midway through his/her/their evaluation period and inquire as to his/her/their performance.

**Changes to Incentive Plan.** Any alterations to this plan deemed necessary will only be made through negotiations between the County and the Association.

**Section 9. Contract City Detective Incentive Pay.**

The Detectives who are assigned full-time to the cities of Happy Valley or the City of Wilsonville shall receive premium pay in the amount of five percent (5%) of the employee's base pay as set forth in the pay plan for the period of time the employee is assigned to that contract city.

In consideration of the additional compensation paid to contract city Detectives, the Sheriff shall have the authority to move said Detectives within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues associated from the move.

Because the Contract Cities Oversight Committee brought forth this issue and the County is only serving as its administrator, the contract cities retain sole discretion to decide whether to continue, modify or cease the incentive pay program. In the event the contract cities decide to modify or cease this incentive pay program, the County will provide the Association with thirty (30) calendar days' advance notice of the contract cities' decision; however, the contract cities' decision is not a subject of bargaining or grievance.

**Section 109. Detective Sergeant Incentive Pay and CCITF Sergeant Pay**

Sergeants assigned to CCITF shall receive additional compensation equivalent to five percent (5%) of their base pay for the length of their assignment.

Sergeants assigned to the Investigation Division shall receive additional compensation equivalent to six percent (6%) of their base pay for the length of their assignment. However, on the first day of the month after ratification the premium will be reduced to five percent (5%). This incentive pay does not apply to Sergeants assigned to CCITF (*Clackamas Co. Interagency Task Force*).

In consideration for the additional compensation paid to Sergeants assigned to the Investigation Division the Sheriff shall have the authority to move the Sergeants within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move.

**Section 110. Field Training Officer Pay.**

Any employee assigned the responsibility of a Field Training Officer or a person supervising a Field Training Officer shall receive premium pay in the amount of ten percent (10%) of the employee's base pay as set forth in the pay plan for the length of the assignment.

The following classifications are eligible for Field Officer Pay:

- a) Jail Deputy
- b) Jail Sergeant
- c) Deputy Sheriff
- d) Sergeant
- e) Detective
- f) Community Service Officer
- g) Evidence Technician

- h) Office Specialist 1 & 2
- i) Any other classification that uses an approved Field Training and Evaluation Program (including the above listed).

**Section 121. Bilingual Pay.**

Any employee who is fluent in Spanish, Russian, American Sign Language, or a language agreed upon by the CCPOA and the Sheriff and in the course of the employee's duties uses that language shall receive premium pay in the amount of five percent (5%) of the employee's base pay as set forth in the pay plan.

Proficiency will be established by a Human Resources approved testing process and/or by the FBI. All costs for initial testing, documentation and retesting shall be borne by the Sheriff's Office. Employees may be required to recertify fluency every five (5) years.

**Section 132. Motor Deputy Pay.**

Employees may be assigned to Motorcycle Patrol. In consideration of the additional specialized training and experience for employees working in the assignment of Motorcycle Deputy, employees shall receive premium pay in the amount of five percent (5%) of the employee's base pay as set forth in the pay plan for that period of time that the employee is assigned as a Motor Deputy.

In consideration of the additional compensation paid to Motor Deputies, the Sheriff shall have the authority to move the Motor Deputies within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move.

**Section 143. Canine Assignment and Premium Pay.**

Deputies may be assigned to Canine duties at the discretion of the Department. It is anticipated that Canine Deputies will provide maintenance of their assigned dogs, including feeding, grooming, and other normal dog maintenance responsibilities, outside the Canine Deputy's normal work hours. The parties have evaluated the time needed for routine care and have determined that four (4) hours per week [thirty-four (34) minutes a day] is reasonable and sufficient to meet those responsibilities. In consideration of this activity, Canine Deputies shall receive one (1) hour release time per working day when on a 4/10 schedule for these duties. If the work schedule differs from a 4/10 schedule, the Deputy will receive the equivalent of 4 hours per week of release time divided into the workday schedule. Canine Deputies may also be required to work a full week schedule and would be eligible for overtime for routine care.

Canine duties require specialized training and experience. Deputies assigned to Canine Patrol will receive an additional incentive of five percent (5%) base pay per pay period during the period of the assignment.

In consideration of the additional compensation paid to Canine Deputies, the Sheriff shall have the authority to move the Canine Deputies within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move.

**Section 154. SWAT/HNT, CERT, EDU/Bomb, Dive Rescue Team.**

Employees assigned to SWAT/HNT, CERT, EDU/Bomb, and Dive Rescue Team are eligible for additional premium pay.

Effective in the first pay period of the month following execution of this agreement, employees serving as a qualified member in good standing will receive a monthly incentive of ~~\$50~~54.16. The Sheriff shall have the authority to discontinue employee participation in these programs as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move. The above amounts will increase by an amount equal to the yearly pay plan increases provided in Article 12 on July 1, 2021 (\$55.13) and July 1, 2022 ~~on July 1, 2018 and July 1, 2019~~.

**Section 16. Forensic Artist Collateral Duty Premium Pay.**

Any employee assigned the collateral duty of a Forensic Artist shall receive premium pay in the amount of one percent (1%) of the employee's base pay as set forth in the pay plan for the length of their assignment.

The Sheriff retains the right to determine the appropriate number of Forensic Artists from the qualified CCPOA members. In consideration of the additional compensation paid to the Forensic Artist(s), the Sheriff shall have the authority to end the collateral duty assignment without a demand from the Association to bargain the decision or any pay issues.

**ARTICLE 32 – EQUIPMENT**

**Section 1. Repair or replacement of personal property or equipment.**

The County shall repair or replace an employee's personal property or equipment which the County requires the employee to have while working for the County and which is lost, damaged or stolen beyond usable or safe operating quality in the line of duty except as such is due to the employee's negligence.

**Section 2. Vests.**

The County shall provide DPSST certified employees with either a vest rated at Threat Level IIA (with sharp object protection) or Threat Level IIIA flexible (with side panels) at the employee's option, and the County will provide up to \$125 for upgrades at the time of replacement or new purchase. The vests shall be replaced per the manufacturer's warranty of performance guidelines (currently 5 years), ~~and the County will provide up to \$125 for upgrades at the time of replacement or new purchase.~~ So long as the vest satisfies the required threat level, the County shall have discretion in selecting or approving vests including matters such as the supplier, price, make or model of the vests. If a qualified employee wants a vest not selected or approved by the County, it shall be the employee's responsibility to pay any differences beyond what the County will pay.

**Section 3. Equipment Reimbursement.**

Effective January 1, 2016, the County will reimburse DPSST certified uniformed employees in an amount up to ninety (90) dollars per calendar year for the purchase of belts, holsters, footwear, gloves, flashlights, handcuffs, radio equipment, vest upgrade,

duty belt gear and approved uniform apparel with insignia that is not provided by the Sheriff's Office (hats, uniform sweaters, external vest carriers and mock turtle necks) to be used in carrying out their assigned duties. The employee shall provide to the County proof of purchase for the equipment items to receive the reimbursement.

Requests for reimbursement with original receipt(s) attached shall be submitted between January 1 and January 15 for equipment purchased in the previous calendar year.

### **ARTICLE 33 - CLEANING AND CLOTHING ALLOWANCE**

#### **Section 1. Uniform Cleaning.**

DPSST Certified employees and Community Service Officers required to wear a uniform shall be paid \$20 per month as a cleaning allowance.

#### **Section 2. Clothing Allowance.**

Detectives shall receive a uniform allowance of \$600 per year, which shall be paid at a rate of \$50 per month on the first paycheck of each month. Detectives do not receive the uniform cleaning allowance.

### **ARTICLE 34 - LEGAL DEFENSE FUND**

Legal Defense Plan: For DPSST certified employees, the County will contribute towards the PORAC Legal Defense Plan that provides each of its members with an attorney as a direct result of criminal charges, investigation of use of deadly force, or a grand jury appearance against the member arising out of the member's involvement in the scope of regular performance of his or her duty as an employee for the County.

- a. Effective the month following execution of this agreement ~~and the selection of the legal defense plan,~~ the County will contribute up to ~~\$6,004.50~~ per month toward the premium for each DPSST certified officer paid by reimbursement of invoice provided by the Association for the "PORAC" Plan. Invoices by the Association may be quarterly.
- b. The Association will provide a complete legal defense plan description to the County and advanced written notice to the County of any changes to the plan. Substantive changes in plan benefits are subject to notice and bargaining under ORS 243.698.
- c. The County recognizes that it is not entitled to the work product of the attorneys involved in this program. The County recognizes there exists an attorney client privilege between the attorney and the member.

### **ARTICLE 35 - SAVINGS CLAUSE**

Should any Article, Section, or portion thereof, of this Agreement be determined to be unlawful and unenforceable by statute or constitutional amendment, by administrative rule or federal regulation or by any Court of competent jurisdiction or ruling by the Employment Relations Board, such determination shall apply only to the specific Article, Section or portion thereof, directly specified in the determination, the County may suspend

the invalidated Article, Section or portion thereof and, the parties agree immediately to negotiate a substitute, if possible, for the invalidated Article, Section or portion thereof under ORS 243.698.

## **ARTICLE 36 - ASSOCIATION RIGHTS**

### **Section 1. Association Executive Board.**

Employees selected by the Association to act as Association representatives for grievance processing and other labor matters, shall be known as the Association Executive Board. The names of employees so designated shall be certified in writing to the County by the Association.

### **Section 2. Executive Board Release Time.**

The Executive Board members of the Association may investigate and process grievances and other labor related matters during working hours, within reasonable limits, and without loss of pay, providing it does not conflict with Sheriff's Office operations. In order to ensure that there is no conflict with Sheriff's Office operations, an absence from duty for the purposes of investigating and processing grievances or other labor related matters, must be approved in advance by a Lieutenant.

Executive Board members may attend regular Executive Board meetings during working hours without loss of pay. Regular Executive Board meetings are typically scheduled for one hour on a monthly basis, however, meetings may last up to 90 minutes due to the press of business. The Association may also from time to time schedule a second regular meeting in any individual month. The Association will provide notification to the County of the date and time of Executive Board meetings held during working hours.

The Association will exercise care to cooperate with the County to make sure there is no undue disruption to County operations caused by the operation of this section.

To accommodate the availability of the Association President to perform Association business, at the mutual agreement of the Association President and the Sheriff, the Association President will be assigned to a shift which includes a majority of its hours Monday through Friday, 8:00 a.m. to 5:00 p.m. Prior to the commencement of the shift bid, the President will meet with management to determine the President's shift assignment.

The Association shall have the right to have a bulletin board and a mailbox in each facility occupied by the Sheriff's Office.

### **Section 3. Association Negotiating Committee.**

Employees selected by the Association to act as Association representatives for negotiations, shall be known as the Association Negotiating Committee. The names of employees so designated, up to a total of five (5) employees, shall be certified in writing to the County by the Association.

### **Section 4. Negotiating Committee Release Time and Paid Bargaining Time.**

Negotiating Committee members may attend negotiation sessions and caucuses held at the same site up to one hour before and during the sessions without loss of pay if held during



working hours. If such negotiation sessions or caucuses are held outside of the member's working hours, the member will be paid at the member's regular rate of pay including overtime if applicable. Paid time or release time for negotiating sessions or caucuses will include all time in mediation sessions.

**Section 5. County- Association Meetings.**

The County or its designee(s) may meet at mutually convenient times with the Association Executive Board, Negotiating Committee or Association officers. All meetings between the County or its designee(s) and the Association shall be held during working hours whenever possible and without loss of pay. The purpose of the meetings may be to discuss issues which would improve the relationship between the parties.

**ARTICLE 37 - LIGHT DUTY**

**Section 1.**

Employees have an ongoing responsibility to notify their supervisor if they are unable to fully perform their regular duties due to injury or illness. The nature of DPSST certified law enforcement positions requires that each officer be physically able to assist fellow officers in time of need. Employees are not required to inform their supervisor of confidential medical information, only the limitations that have occurred because of a medical condition. The County may verify medical information but must do so in a manner that protects medical confidentiality and complies with Federal law (HIPAA) and EPP #42 (Personnel Records).

**Section 2.**

Training, and specifically defensive tactics training, is an integral part of regular job duties for DPSST certified law-enforcement personnel. An injury may require limited participation in defensive tactics training. The practice sometimes referred to as "tape and play," is a mutually accepted practice that enables an employee to participate in limited defensive tactics training while simultaneously identifying injuries that must be protected from aggravation during the training activity. Where no physical participation in defensive tactics training is possible due to the extent of illness or injury, mere observation of the training is not an effective means of participation. Employees will be expected to participate in the next scheduled training after their illness or injuries have resolved.

Issues of fitness for duty, including fitness for defensive tactics training, cannot be resolved without the involvement of trained medical professionals who are both knowledgeable about the extent of illness/injury and the specific job duties or training activities of the individual. Questions of fitness for duty will be referred to medical professionals using the County's standard procedures. Fitness for duty issues (other than minor injuries) should be addressed in consultation with Human Resources, on an ongoing basis and prior to the day of scheduled defensive tactics training.

**Section 3.**

The rigorous nature of job duties in DPSST certified positions at the Sheriff's Office creates the need for additional light duty opportunities, over and above the standard County policy limiting light duty to ninety (90) days except in unusual circumstances (EPP #9). For this reason, an additional ninety (90) days of light duty will be available to employee

in DPSST certified positions [for a total of one hundred (180) days], upon application to the Sheriff and his approval of such additional light duty. Approval will be contingent on continued available light duty. The Sheriff will grant the additional light duty where (1) it appears to be medically necessary and (2) there is a reasonable probability that the additional light duty will allow the employee to return to regular duty. Light duty for DPSST certified personnel in the Sheriff's Office will be limited to one hundred and eighty (180) days total, except in unusual circumstances to be determined at discretion of the Sheriff.

## **ARTICLE 38 - DEPUTY MEDICAL EXAMINERS, DISASTER MANAGEMENT DEPARTMENT, AND DISTRICT ATTORNEY INVESTIGATORS**

### **Section 1. Application of Article.**

This Article shall apply to all Deputy Medical Examiners (DMEs) including the Senior Deputy Medical Examiner, the Strategic Program Coordinators in the Disaster Management Department, and the Investigators in the District Attorney's Office.

### **Section 2. Workweek for DMEs.**

DMEs will work a regular rotating schedule of forty-eight (48) hours on duty, spread over three (3) calendar days, and ninety-six (96) hours off duty. In each twenty-four (24) hour period, twenty (20) hours will be considered on duty, with four (4) unpaid hours for rest periods. For payroll purposes, this workweek will be considered as consisting of forty (40) standard paid hours. Each forty-eight (48) hour schedule begins at 1800 hours when the DME arrives at the office to retrieve their County vehicle.

During each forty-eight (48) hour period, the DME on duty is required to be in the office from 0700 to 1800 hours each day. During office hours the DME is responsible for taking three (3) separate ten-minute (10) rest breaks and one (1) separate paid thirty (30) minute meal period.

In addition to the above office hours, DMEs are also required to attend monthly staff and monthly case review meetings, which may or may not occur during their regular forty-eight (48) hour schedule. If such meetings do not occur during a DME's regular scheduled hours, their attendance will be paid at the regular base rate up to forty (40) hours in a work week, and then at the overtime rate thereafter. If such meetings occur during a DME's regular scheduled hours, and a DME cannot attend the Staff Meeting/Case Review (for non-work-related reasons), with the prior approval of management, they may be required to use appropriate leave time or may flex their schedule.

The County and the Association agree that either party may terminate a schedule created under this Agreement at any time for any reason upon thirty (30) days' written notice to the other party. The DMEs will then revert to a shift schedule established by the Disaster Management Department.

If a DME can document that they have been engaged in field work duties, inclusive of office time and/or monthly staff or case review meetings for twenty (20) hours without breaks or meal periods, they shall be entitled to be paid overtime at the overtime rate as outlined in Section 8 below for each hour worked in excess of twenty (20) up to twenty-

four (24). If such time crossed into their next scheduled twenty-four (24) hour work period, which begins at 1800, they shall return to straight time.

A DME must take an eight (8) hour rest period after their forty-eight (48) hour on duty period prior to working overtime, unless pre-approved by management. All overtime must be pre-approved by management. If a case comes in within three (3) hours prior to the end of a DME's shift, management, in discussion with the DME, will decide who will be assigned the case.

The Chief Deputy Medical Examiner will take calls and complete that investigation during ~~his/her~~their shifts when the assigned DME for that shift is on leave or is working another case and cannot respond.

For payroll purposes, the workweek begins Saturday at midnight and ends Friday at 11:59pm.

### **Section 3. On-Call for DMEs.**

When a DME is on approved leave, the hours not covered by the Chief Deputy Medical Examiner's regularly scheduled hours will be offered as on-call duty to the remaining DMEs based on seniority, with the most senior employee being offered first. See also Section 7.

Upon assignment of on-call status, DMEs will receive one (1) hour regular rate of pay for every six hours of on call status, or the equivalent as prorated for duration of the assigned status. If the DME is required to respond to a call, overtime will apply as provided by this Article.

Employees' assigned on-call status are required to be readily available to report to work within 30 minutes. Readily available includes that the employee has not consumed any intoxicant while on-call consistent with policy. Failure to comply with these requirements may result in disciplinary action. On-call status is not payment for hours worked and is not considered compensable time. While on-call, DMEs will be required to carry and respond to cellular phone or phone calls.

### **Section 4. Call Back Pay for DMEs.**

DMEs who are called to physically report to a worksite outside of their regular forty-eight (48) hour schedule (that is, hours outside of a scheduled shift) will be paid for actual time worked, in fifteen-minute increments, with a minimum of two (2) hours at the rate of pay as outlined in Section 8 below.

Actual time worked during call back hours will be paid at the rate of pay as outlined in Section 8 below, except phone call pay as set forth in Section 5 and Section 8 below. The overtime rate will be paid only up to the start of the regular schedule.

### **Section 5. Phone Call Pay for DMEs.**

DMEs who are on-call and who answer work-related phone calls after work hours will be paid for actual time worked at the rate of pay as outlined in Section 8 below. If the phone

call is fifteen (15) minutes or less, the DME shall be paid for fifteen (15) minutes at the rate as outlined in Section 8 below.

**Section 6. Leave Hours.**

Usage: Use of a day's vacation will consist of twenty (20) hours per day. Use of a day's Sick leave will consist of twenty (20) hours per day. Use of a Holidays will be paid at twenty (20) hours per day. Sick leave hours taken in less than a one-day increment will be hour for hour to the ¼ hour.

Leave accruals are consistent with the other Articles of this contract.

**Section 7. Chief Deputy Medical Examiner.**

It is recognized that the County may rely on the Chief DME for after hour phone calls, pager, or electronic messages. However, when there is only one DME on shift and that DME is absent from work, the Chief DME will offer any call-back opportunities outside the Chief DME's regularly scheduled hours to the remaining bargaining unit staff on a seniority basis before performing the work himself or herself.

**Section 8. Rates of Pay for DMEs.**

It is recognized that due to the non-standard schedule that is worked by the Deputy Medical Examiners, the following formulas will be applied to their rate of pay:

- a) Use or payment of the following accrued paid leaves: On-call, Vacation, Sick, Holiday, Personal Day, Bereavement, and Training shall be paid at the regular rate of pay x 1.23075.
- b) Work performed for Call Back, Phone Call Pay, and overtime shall be paid at the regular rate of pay x 1.846125.

Historical note: These rates of pay were specifically negotiated from a change in yearly scheduled hours from (2400 to 2080) and reflect a conversion of equitable value based on a previous yearly work schedule.

**Section 9. On-Call for Strategic Program Coordinators in Disaster Management.**

Strategic Program Coordinators in the Disaster Management Department designated in writing to be on-call shall receive one (1) hour of pay at the regular rate of pay for each eight (8) hours on-call. If called back to work, they shall be paid at the rate of one and one-half times (1.5) their regular rate of pay, with a two (2) hour minimum. Employees assigned to be on-call must be readily available to report to duty within 30 minutes. Readily available includes that the employee has not consumed any intoxicant while on-call consistent with policy. Failure to comply with these requirements may result in disciplinary action. On-call status is not payment for hours worked and is not considered compensable time.

**Section 10. Strategic Program Coordinators in Disaster Management Work Hours.**

Bargaining unit employees working full-time within classifications under the direction of the Disaster Management Department work a regular schedule of either five (5) days a

week with eight (8) hours shifts or four (4) days a week with ten (10) hour shifts at the discretion of the Department Director.

Full time employees earn overtime consistent with Article 13. Part-time employees are subject to Article 26.

Leave accruals are consistent with the other Articles of this contract.

**Section 11. District Attorney Investigators Work Hours.**

Bargaining unit employees working full time within classifications under the direction of the District Attorney’s Office work a regular schedule of either five (5) days a week with eight (8) hour shifts or four (4) days a week with ten (10) hour shifts, at the discretion of the District Attorney.

Bargaining unit employees working part-time within classifications under the direction of the District Attorney’s Office work a regular schedule of two (2) or three (3) days a week with ten (10) hour shifts, at the discretion of the District Attorney. Part-time employees may alternatively be assigned a regular work schedule of four (4) or five (5) days a week with no more than ten (10) hour shifts on any particular day, for total regularly scheduled work week hours not to exceed thirty (30) hours, at the discretion of the District Attorney.

Full-time employees earn overtime consistent with Article 13 and double time consistent with Article 15.5(b). Part-time employees are subject to Article 26.

Leave accruals are consistent with the other Articles of this contract.

**ARTICLE 39 – EMPLOYEE ASSISTANCE PROGRAM/EAP**

The Sheriff or designee may, with cause, order any employee to consult with the Employee Assistance Program (EAP) counselor as necessary. The results of the consultation shall remain confidential except that the EAP will contact a Human Resources Integrated Disability Analyst to confirm the employee’s consultation. The appointments will be on compensable time.

**ARTICLE 40 - TRANSFERS**

Employees who wish to transfer between Jail and Patrol may do so upon successful completion of the recruitment process and submission and acceptance of the Request to Voluntarily Transfer.

**ARTICLE 41 – TERMINATION**

**Section 1.**

Except as otherwise provided, this agreement shall become effective as of the date it has been ~~executed~~ ratification ratified by both the County Board and the Association membership and shall remain in full force and effect until the 30th day of June, ~~2023~~2020 and until a subsequent contract is negotiated and executed by the County and Association. This Agreement shall automatically reopen on March 1, ~~2023~~2020 for negotiations.

**Section 2.**

This Agreement may be amended at any time by mutual agreement of the Association and County; such amendments shall be in writing and signed by both parties.

IN WITNESS THEREOF, the parties hereto set their hands thus \_\_\_\_\_ day of \_\_\_\_\_, ~~2018~~2021.

FOR THE UNION:

FOR THE COUNTY:

\_\_\_\_\_  
Stephen Steinberg  
President, CCPOA

\_\_\_\_\_  
~~Jim Bernard~~ Tootie Smith  
BCC Chair

\_\_\_\_\_  
Anil Karia  
Attorney

\_\_\_\_\_  
Mary Raethke  
Recording Secretary

\_\_\_\_\_  
~~Angie Brandenburg~~ ~~Craig Roberts~~  
Sheriff

\_\_\_\_\_  
~~Matt Ellington~~ Michael Copenhaver  
Undersheriff

\_\_\_\_\_  
~~Chris Hoy~~ Jenna Morrison  
Chief Deputy

\_\_\_\_\_  
~~James Rhodes~~ Lee Eby  
Captain

\_\_\_\_\_  
Jeff Smith

Captain

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Eric Sarha  
HR Deputy Director

---

Kyle Abraham~~Steven Schuback~~,  
Chief Negotiator—~~Peek~~, Barran Liebman,  
LLP Rubanoff, Hatfield

**APPENDIX A**  
**CLACKAMAS COUNTY SHERIFF'S OFFICE REQUEST**  
**TO VOLUNTARILY TRANSFER**

<b>NAME:</b>	<b>(LAST)</b>	<b>(FIRST)</b>	<b>(MI)</b>
<b>EMPLOYEE ID:</b>			
<b>CURRENT CLASSIFICATION:</b>	<input type="checkbox"/> Jail Deputy (121) <input type="checkbox"/> Deputy Sheriff (103)		
<b>REQUESTED CLASSIFICATION:</b>	<input type="checkbox"/> Jail Deputy (121) <input type="checkbox"/> Deputy Sheriff (103)		

Employees who wish to transfer between Jail and Patrol may do so upon successful completion of the recruitment process and submission and acceptance of this Request to Voluntarily Transfer.

In order for this request to be considered, the employee must meet the following requirements:

- Completed 18 months as a Jail Deputy (121) or Deputy Sheriff (103) level.
- Current (within the preceding 12 months) Sheriff's Office performance appraisal on file which rates employees' performance as meets or exceeds standards in all areas. Please attach performance appraisal to this request.
- No disciplinary action on file with the last 24 months.

If my request to voluntarily transfer is approved, I understand that my employment status will change in the following ways:

- While in training and performing work described in the Recruit classification indicated above, I will be placed into the Recruit classification identified as Deputy Sheriff, Recruit or Jail Deputy, Recruit Employees will maintain their current pay and merit step schedule from transfer.
- My training (DPSST/FTEP/Other training requirements) will be completed within 12 months unless extended by Division Commander.
- If moving from Deputy Sheriff, to Jail my new position will be a Jail Recruit maintaining my current pay.
- If moving from Jail to Deputy Sheriff, my new position will a Deputy Sheriff Recruit maintaining my current pay.
- My seniority will be determined in accordance with the POA Collective Bargaining Agreement (by classification in the new position).



- While in training, during my probationary period of 365 days, I may make a good faith request to be reappointed to my previous classification for reasons other than misconduct or discredit on my employment record. I will be returned to a vacant position in my former classification at my previous Step.

If, while in training during my probationary period of 365 days, the Sheriff or designee determines my performance is not meeting established standards, I will be returned to a vacant position in my former classification at my previous Step.

<b>Employee</b>	<b>Date</b>
<b>Supervisor</b>	<b>Date</b>
<b>Undersheriff</b>	<b>Date</b>

If request is approved by Sheriff's Office management, please attach completed Personnel Action Form and submit packet to Human Resources.

**ADDENDUM 1 – DRUG AND ALCOHOL TESTING POLICY**

**Clackamas County Sheriff's Office  
Peace Officers Association Employees**

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## **5.31 DRUG AND ALCOHOL POLICY**

### **Clackamas County Sheriff's Office**

#### **5.31.1 POLICY STATEMENT**

The Clackamas County Sheriff's Office (CCSO) is strongly committed to providing a safe and drug-free workplace.

The CCSO recognizes each individual's value and contribution to the services we provide to the public. Therefore, this Policy includes assistance to employees who wish to overcome an alcohol or drug dependency problem (see "Employee Assistance Program and Self-Referral").

The Drug and Alcohol Testing Policy is intended to be consistent with and enhance the Clackamas County Employment Policy and Practice #5 - Drug Free Workplace Act and Policy Proclamation.

#### **5.31.2 EDUCATION AND TRAINING**

The CCSO will distribute information to employees regarding the Drug and Alcohol Testing Policy; the dangers of drug and alcohol abuse in the workplace; drug and/or alcohol counseling, rehabilitation, and employee assistance resources. Employees will be required to sign a form acknowledging receipt of this information.

At the time of hire, new employees will receive a copy of the Drug and Alcohol Policy, which informs them of their responsibilities with respect to compliance with this Policy.

Persons who may be required to make "reasonable suspicion" recommendations or determinations will receive training on recognition of the physical, behavioral, speech and performance indicators of probable alcohol and controlled substances use. The duration of the training will be at least sixty minutes each for 1) alcohol and 2) controlled substances use recognition, with additional follow up training to be provided, to maintain and increase proficiency.

#### **5.31.3 EMPLOYEE ASSISTANCE PROGRAM AND SELF-REFERRAL**

Any employee may voluntarily request assistance in dealing with a personal drug and/or alcohol problem through the Employee Assistance Program (EAP) or other acceptable treatment program. Utilization of the EAP is confidential and an employee's utilization of the EAP will not be made known to the Sheriff's Office or the County unless the employee voluntarily chooses to share that information. However, voluntary self-referral for alcohol and/or illegal drug use is not in itself a "safe haven." The guidelines listed below will apply to self-referrals.

- A. Any employee not currently under personnel investigation who voluntarily requests assistance in dealing with a personal alcohol and/or drug problem, may do so without jeopardizing his or her employment, if the alcohol and/or drug of abuse was originally prescribed to, or legally obtained by the employee, but was later abused by the employee. For the purpose of this section, a personnel investigation commences when the Sheriff's Office begins collecting information that leads to the employee being instructed to report for drug and/or alcohol testing.

- B. Participation in the EAP or other acceptable treatment program will not, in itself, jeopardize an employee's job, and successful treatment will be viewed positively. However, participation in the EAP or treatment program will not prevent the CCSO from imposing discipline for conduct that occurs in conjunction with alcohol and/or drug use in violation of Sheriff's Office Policy, and will not relieve an employee from the responsibility to perform assigned duties safely and at a satisfactory performance level.

#### **5.31.4 DRUG EVALUATION; LEAVE OF ABSENCE**

An employee may be required to undergo an evaluation by a Substance Abuse Professional (SAP) approved by the Sheriff's Office if he or she is involved in an alcohol and/or drug related incident on or off-duty. This evaluation will determine the extent of any alcohol and/or drug problem and the appropriate treatment. The employee may then be required to participate in, and successfully complete, an alcohol and/or drug education and treatment program as recommended by the SAP in lieu of disciplinary action, as set forth in a Last Chance Agreement. Any cost of such an evaluation not covered by the employee's medical insurance shall be paid by the Sheriff's Office. The cost of the substance abuse treatment will be the responsibility of the employee if not covered by the employee's insurance. Substance abuse evaluation and treatment will be in addition to any disciplinary action taken.

Absences due to alcohol and/or drug abuse evaluation or treatment may be covered by an employee's sick leave or vacation leave. If no such paid leave is available, an unpaid leave of absence may be used according to the County's regular Policy for unpaid leave of absence.

Return to duty, after an employee has been on leave required by this Policy for evaluation or treatment of an alcohol and/or drug problem, will be allowed only in compliance with the recommendations of the SAP.

#### **5.31.5 PRESCRIPTION AND OVER-THE COUNTER MEDICATIONS**

Prescription and over-the-counter medications can present a danger to employees and their co-workers due to their effects on alertness and job performance. Employees are prohibited from reporting to work, working or returning to duty with medications that could reasonably be expected to impair their ability to safely perform their job duties. Employees are also prohibited from reporting to work with medications containing controlled substances in accordance with section 5.31.6. Employees should ask their physicians for specific instructions as to how much medication they should take, what combinations of medications they should take and when they should take medications to ensure safe use relative to work. Non-compliance with the recommended dosage of medications which results in an incident or accident will be considered a violation of this Policy.

Employees must report the use of medically prescribed drugs or other substances which could reasonably be expected to impair job performance. It is the employee's responsibility to determine from their physician whether the prescribed drug could reasonably be expected to impair his or her job performance, including the ability to operate a motor vehicle. An employee who is taking such medications should write, date, and sign a brief note stating that he/she has discussed use of the medication(s) with his/her doctor in relation to job duties; the type of medication(s); beginning and ending dates of treatment. The employee should give the note in a sealed envelope to his/her direct supervisor for confidential delivery to the Designated Employer Representative (DER). The DER working in conjunction with Sheriff's Office management will then determine whether to

require written medical authorization to work from a prescribing health care practitioner or if any other actions are necessary.

Management will restrict access to medical information to the DER, the Sheriff, Undersheriff or person appointed to fulfill the duties of the Sheriff or Undersheriff and will protect the confidentiality and security of the information.

All medicines brought onto County property/premises, including vehicles must be in their original containers with the pharmacy label showing the patient's name and dosage instructions. Use of another person's prescription is a violation of federal law and of this Policy.

Failure to notify management of the use of medication that could affect the performance on the job can lead to disciplinary action, up to and including discharge.

### **“Medical and Recreational Marijuana”**

Marijuana is a Class I controlled substance; its possession and use is illegal under federal law. Although the State of Oregon permits the possession and use of marijuana to treat medical conditions when supported in writing by a licensed medical doctor and certain conditions have been met and for limited recreational use, this is not an acceptable explanation for a positive drug test under this Policy. The Sheriff's Office is a law enforcement agency and will observe the terms of federal law, which preempt state law in this regard. The Medical Review Officer (MRO) will automatically verify positive tests as being positive without regard to the existence of a medical marijuana card or recreational use that complies with state law.

In addition, possession of marijuana on County property is grounds for discipline up to and including dismissal.

### **5.31.6 PROHIBITIONS**

The following conduct is prohibited:

- A. Buying, selling, consuming, distributing or possessing unlawful drugs or alcohol while working or engaged in work activities on behalf of the County, or while on County premises or in County vehicles, except as necessary in the performance of duties (undercover operations, confiscated evidence, etc.)
- B. Reporting for work, working or returning to duty with drugs or alcohol present in the body at the levels set forth below. For the purpose of this Policy, “drugs” include all controlled substances regulated under the federal Controlled Substances Act.
- C. Failing to promptly report arrests, convictions and/or plea-bargains for an alcohol or drug-related criminal offense to the Undersheriff or his/her designee, irrespective of the jurisdiction where such action was taken.
- D. Refusal by an employee to submit a urine specimen and/or breath alcohol sample when required by this Policy will have the same consequences as a positive drug and/or alcohol test result (see “Discipline” section). It will warrant immediate removal of the employee from duty.

- E. Failing to comply with directives regarding enforcement of this Policy, including but not limited to refusing to promptly submit to required testing; giving false, diluted or altered samples; obstructing the testing process and failing to comply with rehabilitation conditions imposed by the County or rehabilitation counselors pursuant to this Policy.
- F. Engaging in any other violation of this Policy.

Positive Test Levels for Drugs and Alcohol

A positive drug test result is defined as the detection of any one or more of the substances and/or metabolites of the substance at levels set forth by the DOT<sup>1</sup> at the time of testing, which are currently listed in the table shown below:

Substance or Class	Screen Cut-off	Confirmation Cut-off
Amphetamines	500 ng/mL	250 ng/mL
Benzodiazepines	200 ng/mL	200 ng/mL
Cocaine	150 ng/mL	100 ng/mL
Marijuana (THC)	50 ng/mL	15 ng/mL
Methadone	300 ng/mL	200 ng/mL
<del>Opiates</del> <i>Codeine/Morphine</i> <i>Hydrocodone,</i> <i>Hydromorphone,</i> <i>Oxymorphone</i> <i>Fentanyl</i>	<del>300 ng/mL</del>	<del>2000 ng/mL</del> <del>150 ng/mL</del>  **LOQ 2 ng/mL
<u>Codeine/Morphine</u>	<u>2000 ng/mL</u>	<u>2000 ng/mL</u>
<u>Hydrocodone/Hydromorphone</u>	<u>300 ng/mL</u>	<u>100 ng/mL</u>
<u>Oxycodone/Oxymorphone</u>	<u>100 ng/mL</u>	<u>100 ng/mL</u>
6 Acetylmorphine (Heroin)	10 ng/mL	10 ng/mL
PCP	25 ng/mL	25 ng/mL

\*\* Limit of Quantity

An employee will be considered in violation of prohibitions against reporting to work or working with alcohol in his/her system if his/her breath tests .01 g/210L or higher. A separate test, as provided by 5.31.10 Breath Alcohol Testing B2, must be conducted to enforce the .01 or greater BAC standard.

It is not the intent of this Policy to test for medications that are lawfully prescribed by a healthcare provider and used in accordance with the prescription. Employees who are taking medications, including medications containing controlled substances, should refer to the “Medications” section above for an explanation of their obligations. See 5.31.5.

Employees who engage in any prohibited conduct may be subject to discipline, including discharge.

<sup>1</sup> <https://www.transportation.gov/odapc/part40/40-87>

### **5.31.7 CALLBACK DUTY**

It is recognized that employees may be recalled to duty during normal off duty hours. When operational need dictates the necessity to recall these employees, caution and good judgment must be exercised. The employee is required to notify the supervisor requesting the callback of the side effects of any prescription ~~drug~~ or over-the-counter medication and, if requested, the name of the medication, as well as that could impair his/her ability to safely perform job duties and to receive the supervisor's approval before responding to the callback. Similarly, employees who have consumed alcoholic beverages within four (4) hours of a requested callback or, for any reason, believe they could be impaired by the consumption of alcohol, are required to notify the supervisor and obtain approval before responding to the callback.

### **5.31.8 TYPES OF DRUG AND ALCOHOL TESTING REQUIRED**

The following are occasions for drug and alcohol testing under this Policy:

#### **Reasonable Suspicion Testing**

An employee may be required to submit to a drug and/or alcohol test upon reasonable suspicion that the employee has violated the prohibitions of this Policy concerning alcohol and/or controlled substances. The determination that reasonable suspicion exists to require the employee to undergo an alcohol and/or controlled substances test must be based on specific, articulable observations concerning the appearance, behavior, speech, ~~or~~ body odors of the employee or other articulable observations of an employee's condition or performance that indicate possible drug or alcohol use. Examples include, but are not limited to, deteriorating work performance, poor attendance, tardiness, appearance (including, for example, noticeable odor of an alcoholic beverage), behavior, or speech of the employee. Poor attendance or tardiness alone or in combination do not constitute reasonable suspicion. The observations may include indications of the chronic and withdrawal effects of controlled substances, as well as include reliable information from other employees that supports the violation of Policy prohibitions.

The "reasonable suspicion" behavior should be witnessed by at least two persons if at all feasible, but only one observation is required. A drug and/or alcohol test can be required only by a Lieutenant who has first consulted with a Captain or higher ranking officer, a Lieutenant who has been designated to act temporarily as a Captain, or a Captain or higher ranking officer. The officer ordering the drug and/or alcohol test may rely on the observation and recommendation of Sergeants, bargaining unit or non-bargaining unit personnel. Those who make a decision to test an employee will be trained in identifying appearance or conduct that indicates the possible use of controlled substances or misuse of alcohol.

Any "reasonable suspicion" incident will be documented as soon after the incident as possible and the CCPOA will be provided with a copy of that documentation. The employee involved will be immediately removed from the workplace and escorted by a supervisor to a urine specimen collection or alcohol testing site. The employee will NOT be allowed to proceed to the site unaccompanied. A negative dilute result is unsatisfactory on a reasonable suspicion test for drugs. The employee will be given one additional opportunity to provide a valid specimen. The result of the second test will prevail. However, employees remain subject to discipline up to and including discharge, for giving intentionally altered samples.

Employees will have access to union representation if requested at every step of the “reasonable suspicion” testing procedures, except during specimen collection. The County will inform the union representative of the reasonable suspicion that supports the testing requirement. A union representative shall be notified immediately upon the request of the employee and the representative shall be afforded two (2) hours to respond. This representation shall not delay established collection and testing procedures. A list of qualified union representatives will be provided to the County.

### **Return to Duty and Follow-up Testing**

Unless the employee is discharged, CCSO shall require return to duty and follow-up testing as recommended by the SAP when an employee has engaged in prohibited drug or alcohol-related behavior or violation of the prescription medication provisions of this Policy. A negative alcohol or drug test is required prior to return to duty and at least six (6) unannounced follow-up tests are required during the twelve (12) months following return to duty. Any recommendations by the SAP shall be followed, but follow-up testing may continue for no longer than sixty months following return to duty.

Please refer to “Return to Duty Procedures” and “Disciplinary Action and Procedures” for additional information.

### **5.31.9 COSTS OF TESTING**

The County will be responsible for payment of all reasonable suspicion, return to duty, and follow-up tests that are required by the County.

The employee will be responsible for payment of any requested split tests or other tests that he/she voluntarily undergoes without being required to do so by the County. The County will initially pay for the test and then collect reimbursement from the employee.

### **5.31.10 DRUG AND ALCOHOL TESTING PROCEDURES**

Testing procedures for all employees are governed by the same standards as apply to commercial driver license holders under federal law, with the exception of forms required by the United States Department of Transportation (DOT) for CDL drivers. These standards include, but are not limited to, those governing sample acquisition, the chain of custody, laboratory selection, testing methods and procedures, and verification of test results.

#### **Drug Testing:**

- A. Urine specimen collection for drug testing will be performed by qualified individuals in conformance with current standards of practice and with respect for the privacy and dignity of the person giving the specimen. Drug test specimens will be collected to provide at least 30 mL of urine in a “primary specimen” shipping bottle and at least 15 mL of urine in a “split specimen” shipping bottle.
- B. If an employee is unable to provide an adequate volume of urine on the first attempt (“shy bladder”), he/she will have an opportunity to drink up to 40 ounces of fluids for up to three hours. At the end of this period, if no sample of adequate volume has been provided, the



employee will be referred to a physician acceptable to the MRO to determine whether the incident constituted a refusal to test as outlined in 49 CFR 40.193.

- C. Only laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services will perform drug testing.
- D. When an initial screening test for drugs is positive, a second, confirmatory test will automatically be performed. Confirmed positive drug tests will be reported by the testing laboratory to the MRO for verification (see “Prohibited Conduct”).

**Breath Alcohol Testing:**

- A. Breath alcohol testing will be performed only by qualified Breath Alcohol Technicians. Testing will be conducted using evidential breath alcohol testing devices listed on the Conforming Products List of the National Highway Traffic Safety Administration.
- B. A positive test will be confirmed as follows:
  - 1. The individual being tested is instructed not to smoke, use mouthwash, drink, or eat for a period of 15 minutes.
  - 2. Within 30 minutes of completion of the initial screening test, a confirmatory breath test is conducted as described in 49 CFR Part 40. The result is recorded in the “Confirmation Test Results” section of the Alcohol Test Form.
- C. If the result of the confirmed breath alcohol test is positive, the Breath Alcohol Technician must immediately notify the DER or his/her designated representative, who will arrange for transportation of the individual from the alcohol testing site. The Breath Alcohol Technician will then forward a copy of the Alcohol Test Form to the Designated Employer Representative.
- D. Under this Policy, an employee with a confirmed positive breath alcohol test at the levels set forth in the “Prohibited Conduct” section of this Policy shall be considered to be in violation of this Policy.

**5.31.11 DRUG TEST RESULTS REVIEW**

Drug test results on an employee which are reported as positive, adulterated, or substituted by the testing laboratory will be reviewed and verified by the MRO. A confirmed positive test does not automatically identify an employee as having used drugs in violation of this Policy. The MRO brings detailed knowledge of possible alternate medical explanations to his/her review of the test results. This review is performed by the MRO prior to the transmission of results to the DER.

**Medical Review Officer Reporting Options and Employer Actions**

- “Negative” – self-explanatory
- “Negative Dilute” – Upon receipt of a “negative dilute,” the employee shall be required to immediately provide another specimen. The collection shall be conducted with the minimum possible advance notice and the employee shall be escorted to the collection facility by the

DER, Supervisor, or other designated person. In the event the second test result is “negative dilute,” no further action will be taken and the second test shall become the test of record. If the employee is directed to take a second test and the employee declines to do so, this is a “Refusal to Test”.

- “Canceled – Split specimen test could not be performed.” This will occur when the primary specimen was positive, and the donor requests an independent test, and the split specimen is not available for testing. The employer must ensure an immediate collection of another specimen, under direct observation, with no advance notice to the donor.
- “Canceled – Test Not Performed, Fatal Flaw (with flaw stated) or Uncorrected Flaw.” No further action required unless a “Negative” test result is required for reasonable suspicion, return to duty or follow up. A canceled drug test is neither positive nor negative and no consequences must be attached to it.
- “Cancelled Invalid Result.” An “invalid result” means the laboratory was unable to obtain a valid result when attempting to test the specimen. If the MRO has accepted the donor’s explanation as to why the laboratory was unable to obtain a valid result, then the MRO will advise the employer “direct observation not required.” The employer is not required to take any further action unless a “negative result is required (i.e., reasonable suspicion, return to duty or follow up). If the MRO has not accepted the donor’s explanation, then the MRO will advise the employer “a second collection must take place immediately under direct observation”.
- “Positive or Positive Dilute” – The employer must comply with the requirements for a positive test as outlined in this Policy.
  - Immediately remove employee from duty; and
  - Referral to a SAP – If the employee is terminated, he/she is to be furnished with a list of SAP resources (names, addresses, and telephone numbers).
  - Return to Duty provisions must be followed.
- “Adulterated-Refusal to Test” – Follow same procedures as required on a positive test result.
- “Substituted-Refusal to Test” – Follow same procedures as required on a positive test result.

### **MRO Verification Without Notifying the Employee**

The MRO is permitted to verify a test as positive, or as a refusal to test because of a laboratory report of a positive, adulterated, or substituted specimen without interviewing the employee under the following circumstances:

- The employee expressly declines the opportunity to discuss the test with the MRO; and
- The MRO has successfully made and documented a contact with the employee and instructed the employee to directly contact him/her, and more than 72 hours have passed since the time the MRO contacted the employee.

**NOTE:** If a test is verified positive under the latter circumstances, the donor may give the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented him/her from contacting the MRO. On the basis of this information, the MRO may re-open the verification, allowing the donor to present information concerning a legitimate explanation for the positive test. If the MRO concludes that there is a legitimate explanation, the MRO shall verify the test as negative.

Upon verifying a test result as positive, the MRO will inform the donor of the option for having the “split” portion of his/her specimen tested. The donor must notify the MRO of a desire to exercise this option within 72 hours of being notified of the positive result.

The MRO will not delay reporting of a verified positive test result pending “split” specimen testing. If a donor requests testing of the “split” specimen but none is available, the MRO will cancel the entire test.

### **Communication of Results**

The MRO or his/her designated representative will report test results ONLY to the County’s DER who shall notify either the Sheriff, Undersheriff or person appointed to fulfill the duties of Sheriff or Undersheriff. Confidentiality will be strictly maintained. If the result is positive, the MRO or his/her authorized representative will report the identity of the controlled substance and other information, as necessary for the County to determine whether the employee has violated this Policy.

Employees may obtain copies of their test results by requesting them in writing from the MRO within 60 days of being notified of the results.

This policy shall not limit either the County or the Association from obtaining and sharing information, as they deem necessary, to respond to grievances and other legal actions or disclose information and documents, as compelled by law.

### **5.31.12 DISCIPLINARY ACTION**

- A. Any employee found to be in violation of this Drug and Alcohol Policy will be placed on administrative leave pending the results of testing and/or investigation, and is subject to discipline, up to and including discharge. Violations of this Policy may differ in terms of seriousness, the employee’s prior record of violation and/or compliance and other factors consistent with “just cause” obligations. Employees may result in:
- Verbal and written reprimands
  - Suspension or demotion
  - Termination of employment
  - Last chance agreements in lieu of termination

The CCSO may also initiate a criminal investigation and prosecute.

- B. Employees who have voluntarily requested assistance concerning drug and/or alcohol problems and/or voluntarily entered into drug or alcohol evaluation and treatment programs shall have their actions taken into consideration as set forth in section 5.31.3.
- C. Positive Alcohol or Drug Test. Positive alcohol and drug tests are considered a serious infraction and will generally subject an employee to discharge or last chance agreement.
- D. Misuse or Other Medication Violations. An employee who has tested positive for the presence of drugs which were originally legally prescribed but may have been abused by the employee may be referred to an employee assistance program or SAP for drug

counseling or treatment. As an alternative to dismissal and at the discretion of the Sheriff, the employee may be subjected to a last chance agreement as a condition of continued employment, which shall include a requirement that the employee submit to unannounced drug testing if recommended by a SAP, for a period of time recommended by the SAP. The last chance agreement will also include authorization for the County to receive information necessary to assure compliance with the last chance agreement and assure future compliance with this Policy. If the employee violates the terms of treatment or rehabilitation, again tests positive or otherwise violates the last chance agreement during such period, he/she may be discharged, following fulfillment of any Loudermill due process obligations and as otherwise provided in the Last Chance Agreement.

If the level of discipline allows an employee to return to duty, he/she must agree to the following conditions:

- Meet all recommendations/requirements of the SAP.
- In the event the SAP does not specify any follow up testing, employee shall undergo up to six (6) periodic, but unannounced, drug and/or alcohol tests at the discretion of the DER within one (1) year of returning to duty.
- Any confirmed positive alcohol or verified positive prescription drug abuse result while the employee is undergoing required return to duty or follow-up treatment and/or testing shall result in termination.

#### **5.31.13 RETURN TO DUTY PROCEDURES**

Employees who have violated this Policy may only return to duty if the level of discipline allows it and the County has determined them eligible. The following statements reflect the return to duty and follow-up testing requirements of this Policy:

- A. Employees who have had a confirmed positive alcohol test or have abused prescription drugs must be evaluated, undergo treatment, if required, and be determined fit for return to work by the Substance Abuse Professional.
- B. Employees may be subject to periodic unannounced follow-up testing as determined by the Substance Abuse Professional who evaluated the employee. If the employee was found to need assistance in resolving his/her substance misuse problem, a minimum of six (6) such follow-up tests must be conducted during the twelve (12) months following the employee's return to duty.

#### **5.31.14 RECORD KEEPING PROCEDURES**

- A. The County's DER will maintain alcohol/drug testing records in a secure filing system, separate from the County Personnel files, with information available only on a "need to know" basis.
- B. An employee is entitled, upon written request, to obtain copies of any records concerning his/her use of alcohol or controlled substances. Requests for such information may be directed to the DER, SAP, or to the County drug testing management service.

- C. Information regarding an individual’s alcohol/drug test results or rehabilitation is considered to be personal and confidential and may be released only upon written consent of the individual, except:
1. Such information may be released to any state official with specific regulatory authority over the Sheriff’s Office or law enforcement personnel when legally required.
  2. Such information may be disclosed in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from an alcohol test and/ or a drug test.
  3. When the County is compelled by a judicial determination or order that the information is not protected from disclosure.
  4. The information is needed by medical personnel for the diagnosis or treatment of a patient who is physically unable to authorize disclosure.
- D. The County shall release information regarding an employee’s records to a subsequent employer upon receipt of a specific written request from the employee authorizing release of the records to an identified person.
- E. Record Retention.

The following schedule of record keeping will be maintained by the DER and his/her authorized agents:

Negative and canceled drug test records; alcohol test results less than 0.01 g/210L	1 year
Records of supervisor training	Indefinite or 2 years beyond job responsibilities
Records of verified positive alcohol/drug test results; refusals to be tested for drugs and/or alcohol; SAP evaluations and referrals; follow-up tests and schedules	5 years

**5.31.15 INFORMATIONAL RESOURCES**

Information on this Policy and associated procedures is available by contacting the DER as outlined on the Intranet at:

<http://web1.clackamas.us/des/drugtesting.html>

Questions may also be addressed directly to the County’s drug testing management service.

### **5.31.16 COMMERCIAL DRIVERS LICENSE DUTIES**

Employees performing jobs requiring a commercial drivers' license will also be required to comply with the Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulations, (see separate Policy for DOT drivers).

## **ATTACHMENT A – DEFINITION OF TERMS**

For the purposes of this Policy, the following definitions apply.

**Abuse/Misuse of Prescription Drugs:** The use of a drug not in accordance with the prescribed dosage or method of use.

**Adulterated Specimen:** A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

**Alcohol:** Ethyl alcohol or ethanol.

**Alcohol Screening Device (ASD):** A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

**Breath Alcohol Technician (BAT):** An individual who has been trained to proficiency in the operation of the evidential breath testing device he/she is using as required under 49 CFR Part 40.

**Breath Alcohol Testing Site:** A location which affords visual and aural privacy for the performance of breath alcohol testing. No unauthorized person shall be permitted access to the breath alcohol testing site when the evidential breath testing device is unsecured or at any time when testing is being conducted. In unusual circumstances, e.g. after an accident when a test must be conducted outdoors, the breath alcohol technician must provide visual and aural privacy to the greatest extent practicable.

**CCSO:** Clackamas County Sheriff's Office

**CFR:** United States Code of Federal Regulations

**Chain of Custody:** Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory be used from time of collection to receipt by the laboratory.

**Collection Site:** A designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

**Collector:** A person who instructs and assists applicants and employees through the urine specimen collection process.

**Confirmation Test:** A second analytical drug testing procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC-MS) is the usual confirmation method for drug testing at this time.

**Controlled Substances:** Substances listed on Schedules I through V in 21 U.S.C. 802 as they may be revised from time to time (21 CFR 1308). Controlled substances include illicit drugs and drugs which may be authorized for use by a physician or dentist for certain medical uses, but which are subject to misuse or abuse.

**County:** Clackamas County and/or Clackamas County Sheriff's Office

**Designated Employer Representative (DER):** An employee authorized by the employer to assist supervisors in taking immediate action(s) to remove employees from safety-sensitive duties and to make decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this Policy.

**Dilute Specimen:** A specimen with creatinine and specific gravity values that are lower than expected for human urine.

**DOT:** United States Department of Transportation

**Drugs:** Controlled Substances.

**FHWA:** Federal Highway Administration

**FMCSA:** Federal Motor Carrier Safety Administration

**Initial or Screening Test:** An immunoassay screen to eliminate "negative" urine specimens from further consideration.

**Medical Review Officer (MRO):** A licensed Doctor of Medicine or osteopathy with knowledge of drug abuse disorders and drug testing who is responsible for reviewing and verifying drug testing results prior to their communication to the DER.

**Negative Drug Test:** A test in which initial or confirmation testing under DOT procedures did not show evidence of a prohibited drug in an employee's or applicant's system above established levels; OR, a test which is verified as negative by the MRO (e.g. review showed positive test was due to prescription medication or other authorized use of controlled substance).

**On Duty:** Under this Policy, an employee is "on duty" when he/she is at work and ready to perform employment functions.

**Positive Drug Test:** A urine drug test result which indicates the presence of controlled substances beyond the cut-off levels specified by this Policy.



**Confirmed Positive Drug Test:** A positive drug test which has undergone an initial “screening” test AND a confirmation test which validates the first result. Drug tests are confirmed by the SAMHSA certified laboratory which performs the analyses.

**Verified Positive Drug Test:** A confirmed positive drug test (see above) after investigation by the MRO, who has determined that no legitimate explanation exists for the presence of the controlled substance that was detected.

**Prohibited Drugs:** Marijuana, Cocaine, Opiates, Phencyclidine (PCP), Amphetamines, Benzodiazepines, Methadone, 6 Acetylmorphine (Heroin). (see Urine 8 Drug Panel)

**Reasonable Suspicion:** (5.31.8) The determination that reasonable suspicion exists to require the employee to undergo an alcohol and/or controlled substances test must be based on specific, articulable observations concerning the appearance, behavior, speech, or body odors of the employee or other articulable observations of an employee’s condition or performance that indicate possible drug or alcohol use.

**Refusal to Submit:** Refusal by an individual to provide a urine specimen after receiving notice of the requirement to be tested in accordance with this Policy.

**Safety Sensitive Positions:** All sworn law enforcement positions, all positions regularly stationed at the Jail, and medical examiners.

**SAMHSA:** Substance Abuse and Mental Health Services Administration, a division of the US Department of Health and Human Services (DHHS) which is responsible for certifying laboratories to perform federal workplace drug testing.

**Screening or Initial Test:** Immunoassay screen to eliminate “negative” urine specimens from further consideration.

**Split Specimen Collection Procedure:** A collection procedure in which a urine specimen is divided or “split” between two shipping bottles, both of which are transported to the testing laboratory.

**Split Test:** If the results of the initial screening and confirmation tests of the “primary” specimen are positive, the “split” specimen may be tested at another qualified laboratory.

**Substance Abuse Professional (SAP):** Under DOT regulations, individuals who may serve as substance abuse professionals include:

- licensed physicians (Medical Doctors or Doctors of Osteopathy) or
- licensed or certified psychologists, social workers, employee assistance professionals, or addiction counselors (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

Under this Policy, the DER must inform employees who are found to have violated the alcohol prohibitions or who have had verified positive drug tests of qualified SAPs in the local area.

**Substituted Specimen:** A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

## **ATTACHMENT B**

**The Clackamas County Risk Management Department will manage the drug and alcohol testing program for the Sheriff's Office with the following provisions:**

### **DRUG AND ALCOHOL TESTING MANAGEMENT SERVICE**

The County will maintain an agreement with a drug and alcohol testing management service to advise the County on processes, developments, and changes concerning this Policy.

The firm chosen will be responsible for overseeing compliance of agents of the County with applicable federal regulations, including interacting with specimen collection and alcohol testing agents, designated drug testing laboratories and (MROs). It also submits blind specimens on behalf of the County, and maintains records as required by applicable federal regulations.

In the event of a need to change the provider of these services, the choice of provider will be made by the DER and communicated with the Peace Officers Association.

### **MEDICAL REVIEW OFFICERS**

MRO services will be provided by the testing management service.

### **DRUG TESTING LABORATORIES**

The County will use drug testing laboratories which are SAMHSA-certified, as required by federal drug testing regulations. The County drug testing management service may arrange for the services of a drug testing laboratory in order to best serve the interests of the County.

### **SUBSTANCE ABUSE PROFESSIONALS**

Under this Policy, employees who refuse testing, have confirmed positive alcohol test results, and/or have verified positive drug test results must be referred by the DER to a SAP for evaluation. The County will maintain a list of such qualified individuals in its geographic area and make this list available to employees as needed.

## ATTACHMENT C – LAST CHANCE AGREEMENT -- EXAMPLE

[This attachment is an example of a last chance agreement form that may be used. The form may vary to fit the facts and circumstances of a particular situation.]

This is an agreement between [employee's name] (the Employee); the Clackamas County Sheriff's Office and Clackamas County (the Sheriff), and the Clackamas County Peace Officers' Association (the Association).

1. This agreement serves as notice to the Employee as to what to expect for continued employment with the Sheriff. This agreement does not guarantee employment for any specific period.
2. The Employee agrees to continue in a bona fide drug and/or alcohol [tailor to each case] outpatient rehabilitation program recommended and approved by a qualified substance abuse counselor (the Counselor). The Employee fully understands that s/he is to remain in such a program, including any required aftercare, until released in writing by the Counselor. For [period of time] from the date of this agreement, the Sheriff shall have the right to conduct random breath alcohol or urinalysis testing of [employee's name] on work time at the expense of the Sheriff. Should the employee refuse to cooperate with said breath alcohol or urinalysis, or test positive for alcohol/drugs or abuse prescription medication while on the job, s/he shall be subject to termination under the Association contract. A violation of the last chance agreement shall be considered "just cause" for discharge subject to paragraph 4 below.
3. The Employee agrees to grant permission to the Counselor to release verification to the County that the Employee is meeting and has completed the requirements of the program and any required aftercare. If the Employee discontinues the program without the consent of the Counselor or is terminated from the program by the counselor, s/he will be considered in violation of the last chance agreement. A violation of the last chance agreement shall be considered "just cause" for discharge subject to paragraph 4 below.
4. The Employee agrees that this last chance agreement constitutes a final warning and that any violation or non-compliance with its terms within [x] years, shall be considered just cause for discharge and shall result in loss of employment. In the event the termination is grieved and submitted to arbitration, the arbitrator's authority will be limited to determining whether there was or was not a violation of the Last Chance Agreement. In the event the arbitrator finds there was a violation of the Agreement, that violation will automatically be considered "just cause" for termination. The parties agree to enter into a factual stipulation so limiting the scope of the issue and the arbitrator's authority.
5. Except as stated in this agreement, the terms and conditions of the Employee's work shall be the same as all other employees in the Association bargaining unit.
6. The Association and the employee agree that this resolution is in lieu of termination [and in addition to specified discipline] of [employee's name] and that the agreement resolves all disputes related to proposed discipline. The Employee and the Association agree not to challenge this agreement as proper under just cause or any other provision of the collective bargaining agreement or any other legal challenges in any forum.

7. This is the complete agreement between the parties who sign in knowingly and of their own free will, after seeking advice of counsel.
8. The contents of this agreement related to the employee's involvement in alcohol/drug treatment and testing and placement on a "last chance agreement" shall be maintained in confidence and strictly on a "need to know" basis by the parties. Such information may not be released to any state official with specific regulatory authority over the Sheriff's Office or law enforcement personnel, unless legally required.
9. This agreement does not set future precedent between the Sheriff and the Association and shall not be used as evidence of waiver of rights by the Association or the Sheriff in any future disputes between the parties.

\_\_\_\_\_  
[Employee's name]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clackamas County Peace Officers Association

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clackamas County

\_\_\_\_\_  
Date

**ADDENDUM 2 – DOT DRUG AND ALCOHOL TESTING POLICY**

**Clackamas County Sheriff’s Office  
Employees covered by US DOT Regulations**

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## **DRUG AND ALCOHOL TESTING POLICY**

### **Clackamas County Sheriff's Office Employees covered by US DOT Regulations**

#### **POLICY STATEMENT**

The Clackamas County Sheriff's Office (CCSO or "the County") is strongly committed to providing a safe, drug-free workplace. In addition, an employee substance abuse testing program is mandated for all entities regulated by the Department of Transportation (DOT). For these reasons, the CCSO has implemented a substance abuse testing Policy which applies to all applicants for, and employees who hold "covered driver" positions.

The Sheriff's Office recognizes each individual's value and contribution to the services we provide to the public. Therefore, this Policy includes assistance to employees who wish to overcome a drug dependency problem (see "Employee Assistance Program and Self-Referral").

This Drug and Alcohol Testing Policy ("Policy") is intended to comply with DOT regulations, changes which will supersede specific Policy provisions. To view revisions to this Policy made by the Federal Motor Carrier Safety Administration (FMSCA) or the Federal Highway Administration (FHWA) since this publication, and additional information, go to: <http://web1.clackamas.us/des/drugtesting.html>

**EFFECTIVE DATE:** February 1, 2011 **POLICY REVISED:** ~~September 2020~~ April 2018

#### **WHO WILL BE TESTED AND WHEN**

*Covered drivers* are defined as those who are required to hold commercial driver's licenses for their jobs. Such applicants and employees fall under the Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulations ("Controlled Substances and Alcohol Use and Testing," 49 CFR Part 382). Generally, covered drivers are operators of commercial motor vehicles which 1) are greater than 26,000 pounds GVWR, 2) carry hazardous materials in placardable quantities, or 3) carry 16 or more passengers, including the driver.

Covered drivers may be tested for drugs or alcohol whenever they are on duty.

For the purposes of this Policy, "on duty" is defined as any time an individual is on the job and ready to perform safety-sensitive functions. Performing a safety-sensitive function means any period in which the driver is actually operating, preparing to operate, or immediately available to operate a vehicle requiring a Commercial Driver License. Time spent in association with drug testing specimen collection and/or alcohol testing shall be considered "on-duty" time.



## **EDUCATION AND TRAINING**

The CCSO will distribute information to employees on the Drug and Alcohol Testing Policy; the dangers of drug and alcohol abuse in the workplace; and drug counseling, rehabilitation, and employee assistance resources. Employees will be required to sign a form acknowledging receipt of this information.

When deputies are assigned duties that involve driving vehicles requiring a Commercial Driver License (CDL) they will receive specific information regarding the CCSO's Drug and Alcohol Testing Policy and be informed of their responsibilities with respect to compliance with federal drug and alcohol testing regulations.

Employees (see 5.31.8) who may be required to make "reasonable suspicion" determinations will receive training on recognition of the physical, behavioral, speech and performance indicators of probable alcohol and controlled substances use. The duration of the training will be at least sixty minutes EACH for 1) alcohol and 2) controlled substances use recognition, with additional follow up training to be provided, to maintain and increase supervisory proficiency.

## **EMPLOYEE ASSISTANCE PROGRAM AND SELF-REFERRAL**

When a covered driver voluntarily reports a drug/alcohol problem BEFORE it is discovered through a drug or alcohol test, he/she will immediately be removed from driving duties.

Under the County's independent authority, employee assistance for self-referral will be handled as described in the Sheriff's Office Drug and Alcohol Policy.

## **PRESCRIPTION MEDICATIONS**

Prescription medications can present a danger to employees and their co-workers due to their effects on alertness and job performance. Covered drivers should ask their physicians for specific instructions as to how much medication they should take and when they should take it to ensure safe use relative to work. Non-compliance with the recommended dosage of medications which results in an incident or accident will be considered a violation of this Policy.

Under the County's independent authority, all covered drivers are specifically required to notify their immediate supervisors when they are taking medications associated with warning labels (for example, relating to the operation of vehicles, heavy equipment, or machinery). An employee who is taking such medications should write, date, and sign a brief note stating that he/she has discussed use of the medication with his/her doctor in relation to job duties; the type of medication; beginning and ending dates of treatment. The employee should give the note in a sealed envelope to his/her direct supervisor for confidential delivery to the Designated Employer Representative (DER). The DER working in conjunction with CCSO Management will then determine whether to require written medical authorization to work from a prescribing health care practitioner or if any accommodations are necessary.

The County will restrict access to medical information to the DER, the Sheriff, Undersheriff, or person appointed to fill the duties of Sheriff or Undersheriff and will protect the confidentiality and security of the information.

All medicines brought onto the CCSO property/premises must be in their original containers with the pharmacy label showing the patient's name and dosage instructions. Use of another person's prescription is a violation of federal law and of this Policy.

Failure to notify management of the use of medication that could affect the performance on the job can lead to disciplinary action, up to and including discharge.

### **“Medical Marijuana”**

Marijuana is a Class I controlled substance; its possession and use is illegal under federal law. Although the State of Oregon permits the possession and use of marijuana to treat medical conditions when supported in writing by a licensed medical doctor, this is not an acceptable explanation for a positive drug test under this Policy. The Sheriff's Office is a law enforcement agency and will observe the terms of federal law, which preempt state law in this regard. The Medical Review Officer (MRO) will automatically verify positive tests as being positive without regard to the existence of a medical marijuana card.

In addition, possession of marijuana on county property is grounds for dismissal.

## **PROHIBITIONS**

FMCSA REGULATIONS SPECIFY the following prohibitions:

- 1) Covered drivers must not use alcohol within four (4) hours prior to reporting for duty (“pre-duty use”).
- 2) Covered drivers are prohibited from possessing alcohol while on duty; from using alcohol while on duty; and from having alcohol present in their systems at a level of 0.02 g/210 L<sup>2</sup> or greater while on duty. Those with levels of 0.02 or greater as demonstrated by alcohol testing are subject to immediate removal from duty for a minimum of 24 hours (see also “Discipline”)
- 3) Covered drivers are prohibited from using alcohol after an on-the-job accident until:
  - a. The DER or his/her designated alternate has determined that alcohol testing is not required, OR
  - b. An alcohol test has been completed, OR
  - c. Eight (8) hours have passed since the accident.
- 4) Covered drivers must not show evidence of the use of controlled substances without a valid prescription.

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<sup>2</sup> Breath testing results are given in grams of alcohol per 210 liters of breath (g/210L)

- 5) Refusal by a covered driver to submit a urine, saliva or breath specimen when required by federal regulations will have the same consequences as a positive drug test result, or a breath alcohol test result of 0.04 or greater (see “Discipline” section), and result in the immediate removal of the employee from duty. In addition, refusal of a test after a fatal accident may result in more severe penalties under Federal law.

### **INVESTIGATION OF PREVIOUS TESTING**

As a condition of employment, applicants for covered driver positions or current employees being assigned covered driving duties will be required to provide written consent for the CCSO to obtain the following information from DOT regulated employers who have employed the applicant during any period during the three (3) years preceding the date of application or transfer:

- Names and addresses of previous DOT covered employers;
- Alcohol tests with a result of 0.04 or greater;
- Verified positive drug tests;
- Refusal to be tested (including verified adulterated or substituted drug test results);
- Other violations of DOT agency drug and alcohol testing regulations; and
- If the applicant violated a DOT drug and alcohol regulation, documentation of the applicant’s successful completion of DOT return to duty requirements. (Note: If the previous employer does not have information about the return to duty requirements, the CCSO must seek to obtain this information from the applicant.)

The County must ask the applicant or employee being assigned covered driving duties whether he/she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which they applied for, but did not attain, a DOT-regulated safety-sensitive transportation position during the three (3) years preceding date of application. (If they admit that he/she had a positive test or refusal to test, they must document successful completion of the return to duty process.)

### **TYPES OF DRUG AND ALCOHOL TESTING REQUIRED**

The following are occasions for drug and alcohol testing under this Policy:

#### **Pre-employment Testing**

Pre-employment drug testing is required for all covered driver positions. Applicants and/or current employees being assigned covered driving duties will be notified that drug testing is a requirement of the application process.

Under the County’s independent authority, and as permitted by the DOT, a negative dilute result is unsatisfactory on a pre-employment test. Applicants and/or current employees being assigned covered driving duties will be given one additional opportunity to provide

a valid specimen. The result of the second test will determine whether the person is eligible for employment as a covered driver.

A drug test result which is verified as positive for unauthorized use of controlled substances, or found to be substituted or adulterated, will disqualify the applicant and/or current employee being assigned covered driving duties for the covered driver position.

### **Random Testing**

*Definition of Random Test.* A random test is a test that is unannounced, and where every person in the random selection “pool” has an equal chance of being selected for testing each time a selection occurs. Random testing is considered to be an effective deterrent to substance abuse. Covered drivers are required to be randomly tested under DOT regulations.

*Method of Random Selection:* The County has contracted with an outside drug testing management service to perform computerized random selections on its covered employees. Selections occur monthly on a randomly selected date. Selections are therefore spread reasonably throughout each 12-month period.

A number of drug tests equal to at least 50% of the number of individuals in the program will be completed annually, as required by DOT drug testing regulations; a number of alcohol tests will be completed annually, as required by current DOT regulations.

#### *Procedure for Notification and Specimen Collection/Testing:*

- 1) The drug testing management service will maintain a secure data base of individuals covered by the Federal Highway Administration’s drug and alcohol testing regulations.
- 2) On a randomly selected date, the service will transmit a list of individuals who have been selected for testing to the DER.
- 3) The DER or his/her designated representative will notify the individual in person or by telephone that he/she has been selected to provide a urine and/or breath specimen for testing. The date and time of notification will be recorded on the employee instruction card.
- 4) IMMEDIATELY after being notified, each individual selected for testing must proceed to a specimen collection and/or alcohol testing facility. If the individual is in a remote location, the DER will arrange for him/her to go to a local clinical facility so that specimen collection and/or breath testing are completed expeditiously.

## Reasonable Suspicion Testing

“Reasonable suspicion” means that an individual has given a supervisor or other responsible manager reason to believe that he/she may be impaired, intoxicated, or under the influence of a controlled substance or alcohol.

A reasonable suspicion test will be required under the following conditions:

- 1) The CCSO shall require a driver to submit to an alcohol test when the CCSO has reasonable suspicion to believe that the driver has violated the prohibitions of this Policy concerning alcohol. The CCSO’s determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.
- 2) The CCSO shall require a driver to submit to a controlled substances test when the CCSO has reasonable suspicion to believe that the driver has violated the prohibitions of this Policy concerning controlled substances. The CCSO’s determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

The “reasonable suspicion” behavior should be witnessed by at least two persons if at all feasible, but only one observation is required. A drug and/or alcohol test can be required only by a Lieutenant who has first consulted with a Captain or higher ranking officer, a Lieutenant who has been designated to act temporarily as a Captain, or a Captain or higher ranking officer. The officer ordering the test may rely on the observation of and recommendation of Sergeants, bargaining unit or non-bargaining unit personnel. Those who make a decision to test an employee will be trained in identifying appearance or conduct that indicates the possible use of controlled substances or misuse of alcohol.

Any “reasonable suspicion” incident will be documented as soon after the incident as possible and the CCPOA will be provided with a copy of that documentation. The employee involved will be immediately removed from the workplace and escorted by a supervisor to a urine specimen collection or alcohol testing site. The employee will NOT be allowed to proceed to the site unaccompanied. UNDER THE COUNTY’S OWN AUTHORITY, and as permitted by the DOT, a negative dilute result is unsatisfactory on a reasonable suspicion test. The employee will be given one additional opportunity to provide a valid specimen. The result of the second test will prevail.

Employees will have access to union representation if requested at every step of the “reasonable suspicion” testing procedures, except during specimen collection. The County will inform the union representative of the reasonable suspicion that supports the testing requirement. A union representative shall be notified immediately upon the request of the employee and the representative shall be afforded two (2) hours to respond. This

representation shall not delay established collection and testing procedures. A list of qualified union representatives will be provided to the County.

### **Post-Accident Testing**

*A reportable accident* under Federal Highway Administration regulations is defined as an accident in which a covered driver was operating a commercial motor vehicle and in which:

- 1) A fatality occurred; or
- 2) The driver received a citation for a moving traffic violation AND a person involved in the accident needed medical care away from the scene of the accident; or
- 3) The driver received a citation for a moving traffic violation AND one or more vehicles involved in the accident needed to be towed from the scene of the accident.

UNDER FMCSA REGULATIONS, employees involved in a reportable accident are required to be:

- Tested for alcohol as soon as possible, but in no case later than 8 hours after the incident.
- Drug tested as soon as possible, but in no case later than 32 hours after the incident.

The CCSO will ensure that the employee involved in a *reportable accident* will be immediately removed from duty, and escorted to a collection/testing site. A union representative shall be notified immediately upon the request of the employee and the representative shall be afforded two (2) hours to respond. This representation shall not delay established testing procedures. A list of qualified union representatives will be provided to the County.

An employee who is seriously injured and cannot provide a specimen for testing may be requested to authorize the release of relevant hospital reports and other documentation that would indicate whether there were any controlled substance(s) in his/her system at the time of the incident.

The CCSO will provide its covered drivers with any necessary information and procedures to enable them to meet federal requirements for post-accident testing.

Covered drivers are prohibited from using alcohol for eight (8) hours following an accident/crash or until they have undergone a post-accident alcohol test, whichever occurs first.

An alcohol test should be administered within two (2) hours following the accident/ crash, but no later than eight hours.

A drug test should be administered as soon as possible but no later than thirty-two (32) hours after the occurrence of an accident/crash.

### **Return to Duty and Follow-up Testing**

FMCSA regulations require return to duty and follow-up drug and/or alcohol testing when a covered driver has engaged in prohibited drug or alcohol-related behavior. A negative drug and/or alcohol test is required prior to return to duty. Follow-up testing may continue for no longer than sixty months following return to duty. The CCSO will comply with any mandated testing requirements outlined by the SAP.

Please refer to “Return to Duty Procedures “and” Disciplinary Action and Procedures” for additional information.

### **Costs of Testing**

The County will be responsible for payment of all pre-employment, pre-duty, post-accident, random, and reasonable suspicion tests.

The County will be responsible for payment of any requested split tests, return to duty, and follow-up tests with a negative or canceled test result.

The employee will be responsible for payment of any requested split tests, return to duty, and follow-up tests with a positive result. The County will pay for the test and then collect from the employee.

## **DRUG AND ALCOHOL TESTING PROCEDURES**

### **Drug Testing**

- 1) Urine specimen collection for drug testing will be performed by qualified individuals in conformance with current standards of practice, using chain of custody procedures specified by DOT regulations (49 CFR Part 40) and with respect for the privacy and dignity of the person giving the specimen. Drug test specimens will be collected to provide at least 30 mL of urine in a “primary specimen” shipping bottle and at least 15 mL of urine in a “split specimen” shipping bottle.
- 2) If an employee is unable to provide an adequate volume of urine on the first attempt (“shy bladder”), he/she will have an opportunity to drink up to 40 ounces of fluids for up to three hours. At the end of this period, if no sample of adequate volume has been provided, the employee will be referred to a physician acceptable to the MRO to determine whether the incident constituted a refusal to test per 49 CFR 40.193.
- 3) Only laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services will perform drug testing.

- 4) When an initial screening test for drugs is positive, a second, confirmatory test will automatically be performed. Confirmed positive drug tests will be reported by the testing laboratory to the MRO for verification (see “Drug Test Results Review”).

### **Breath Alcohol Testing**

- 1) Breath alcohol testing will be performed only by qualified Breath Alcohol Technicians. Testing will be conducted using evidential breath alcohol testing devices listed on the Conforming Products List of the National Highway Traffic Safety Administration.
- 2) Breath alcohol tests with results below 0.02 require no further action.
- 3) Tests with results of 0.02 or above will be confirmed as follows:
  - a. The individual being tested is instructed not to smoke, use mouthwash, drink, or eat for a period of 15 minutes.
  - b. Within 30 minutes of completion of the initial screening test, a confirmatory breath test is conducted per 49 CFR Part 40. The result is recorded in the “Confirmation Test Results” section of the Alcohol Test Form.
- 4) If the result of the confirmed breath alcohol test is 0.02 or greater, the Breath Alcohol Technician must immediately notify the DER or his/her designated representative, who will arrange for transportation of the individual from the alcohol testing site. The Breath Alcohol Technician will then forward a copy of the Alcohol Test Form to the DER.

### **DRUG TEST RESULTS REVIEW**

Drug test results on a covered driver which are reported as positive, adulterated, or substituted by the testing laboratory will be reviewed and verified by the MRO.

A POSITIVE drug test result is defined as the detection of any one or more of the substances tested for under FMCSA drug and alcohol testing regulations at the levels set forth by the DOT<sup>3</sup> at the time of testing listed in the table shown below.

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<sup>3</sup> <https://www.transportation.gov/odapc/part40/40-87>



<u>Substance or Class</u>	<u>Initial Screening Cut-off</u>	<u>Confirmation Cut-off</u>
Amphetamines	500 ng/mL	250 ng/mL
Methamphetamines*		
MDMA (Ecstasy)		
Cocaine	150 ng/mL	100 ng/mL
Marijuana (THC)	50 ng/mL	15 ng/mL
Opiates	2000 ng/mL	2000 ng/mL
Codeine/Morphine	2000 ng/mL	2000 ng/mL
6-Acetylmorphine (Heroin)	10 ng/mL	10 ng/mL
Hydrocodone/Hydromorphone	300 ng/mL	100 ng/mL
e	100 ng/mL	100 ng/mL
Oxycodone/Oxymorphone		
Phencyclidine (PCP)	25 ng/mL	25 ng/mL

- ~~Methamphetamines, MDMA (Ecstasy), Codeine/Morphine and 6 Acetylmorphine (Heroin) all act as "metabolites" tested under the main substance or class.~~
- ~~Drug testing cutoff levels are the minimum concentrations of drugs or metabolites that must be present in specimens, before labs will report the drug testing results as positive.~~

A confirmed positive test from a certified laboratory does not automatically identify an employee or applicant as having used drugs in violation of a DOT regulation. The MRO brings detailed knowledge of possible alternate medical explanations to his/her review of the test results. This review is performed by the MRO prior to the transmission of results to the County.

### **MRO Reporting Options and Employer Actions**

- “Negative” – self explanatory
- “Negative Dilute” – Upon receipt of a “negative dilute,” the employee shall be required to immediately provide another specimen. The collection shall be conducted with the minimum possible advance notice and the employee shall be escorted to the collection facility by the DER, Supervisor, or other designated person. In the event the second test result is “negative dilute,” no further action will be taken and the second test shall become the test of record. If the employee is directed to take a second test and the employee declines to do so, this is a “Refusal to Test” under the regulations.
- “Canceled – Split specimen test could not be performed.” This will occur when the primary specimen was positive, and the donor requests an independent test, and the split specimen is not available for testing. The employer must ensure an immediate collection of another specimen, under direct observation, with no advance notice to the donor.

- “Canceled – Test Not Performed, Fatal Flaw (with flaw stated) or Uncorrected Flaw.” No further action required unless a “Negative” test result is required for pre-employment, return to duty, or follow up. A canceled drug test is neither positive nor negative and no consequences must be attached to it.
- “Cancelled Invalid Result.” An “invalid result” means the laboratory was unable to obtain a valid result when attempting to test the specimen. If the MRO has accepted the donor’s explanation as to why the laboratory was unable to obtain a valid result, then the MRO will advise the employer “direct observation not required.” The employer is not required to take any further action unless a “negative result is required (i.e., pre-employment, return to duty, or follow up). If the MRO has not accepted the donor’s explanation, then the MRO will advise the employer “a second collection must take place immediately under direct observation”.
- “Positive or Positive Dilute” – The employer must comply with the requirements for a positive test under the regulations.
  - Immediately remove employee from safety-sensitive functions; and
  - Referral to a SAP – If the employee is terminated, he/she is to be furnished with a list of SAP resources (names, addresses, and telephone numbers).
  - Return to Duty provisions must be followed.
- “Adulterated-Refusal to Test” – Follow same procedures as required on a positive test result.
- “Substituted-Refusal to Test” – Follow same procedures as required on a positive test result.

### **MRO Verification Without Notifying the Employee**

The MRO is permitted to verify a test as positive, or as a refusal to test because of a laboratory report of a positive adulterated, or substituted specimen without interviewing the employee under the following circumstances:

- The employee expressly declines the opportunity to discuss the test with the MRO;
- The MRO has successfully made and documented a contact with the employee, and instructed the employee to directly contact him/her, and more than 72 hours have passed since the time the MRO contacted the employee.

NOTE: If a test is verified positive under the latter circumstances, the donor may give the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented him/her from contacting the MRO. On the basis of this information, the MRO may re-open the verification, allowing the donor to present information concerning a legitimate explanation for the positive test. If the MRO concludes that there is a legitimate explanation, the MRO shall verify the test as negative.

Upon verifying a test result as positive, the MRO will inform the donor of the option for having the “split” portion of his/her specimen tested. The donor must notify the MRO of a desire to exercise this option within 72 hours of being notified of the positive result.

The MRO will not delay reporting of a verified positive test result pending “split” specimen testing. If a donor requests testing of the “split” specimen but none is available, the MRO will cancel the test.

### **Communication of Results**

The MRO or his/her designated representative will report test results ONLY to the County’s Designated Employee representative who shall notify either the Sheriff, Undersheriff, or person appointed to fill the duties of Sheriff or Undersheriff. Confidentiality will be strictly maintained. If the result is positive, the MRO or his/her authorized representative will report the identity of the controlled substance.

Employees and applicants may obtain copies of their test results by requesting them in writing from the MRO within 60 days of being notified of the results.

### **FAILURE TO COOPERATE**

Failure to cooperate with any aspect of this Policy, including but not limited to falsifying or attempting to falsify test results or specimens or refusing to cooperate in testing will subject the employee to progressive discipline, up to and including discharge. Any covered driver who refuses to take a drug or alcohol test to comply with FMCSA regulations (49 CFR Part 382) will be immediately removed from duty as required by these federal regulations.

### **DISCIPLINARY ACTION AND PROCEDURES**

- 1) An otherwise qualified applicant for a covered driver position whose drug test results are negative and who has documented satisfactory participation in a previous employer’s drug and alcohol testing program, will be considered qualified for the position offered. Applicants with verified positive drug test results will be considered ineligible for the position.
- 2) Any covered driver found to be in violation of this Drug and Alcohol Testing Policy will be removed from duty and will be subject to progressive discipline, up to and including discharge. Violations include:
  - a. Alcohol possession or use in violation of the prohibitions stated in this Policy (e.g. pre-duty, post-accident; see pages 6 and 7)
  - b. An alcohol test result of 0.04 or greater
  - c. A verified positive drug test result
  - d. Refusal to test or to cooperate
- 3) A covered driver determined to have evidence of alcohol in his/her system in the range of 0.02 – 0.039 will be subject to progressive discipline.

- a. On any occasion in which a covered driver has a breath alcohol test result of 0.02 or greater, but less than 0.04, he/she will be immediately removed from work for a period of at least 24 hours. The employee may deduct this time away from work from any available paid time except sick leave, or choose leave of absence without pay. No further alcohol testing will be required prior to resuming work at the beginning of the next shift following the end of the 24-hour period. These occasions will be considered violations of this Policy, and will subject the employee to progressive discipline.
- 4) Covered drivers who have volunteered information concerning drug or alcohol problems and/or voluntarily entered into drug and/or alcohol evaluation and treatment programs shall not have that admission used against them in progressive disciplinary proceedings.
- 5) **ALCOHOL RESULT OF 0.04 OR ABOVE**  
Under the County's independent authority, any covered driver who has had a **confirmed alcohol result of 0.04** or above shall be subject to progressive disciplinary procedures up to and including discharge. If returned to duty, he/she must agree to meet all return to duty requirements of the FMCSA.
- 6) **POSITIVE DRUG TEST**  
Under the County's independent authority, any covered driver who has had a verified positive drug test shall be subject to progressive disciplinary procedures up to and including discharge. If returned to duty, he/she must agree to meet all return to duty requirements of the FMCSA.

### **RETURN TO DUTY PROCEDURES**

The following statements reflect the return to duty and follow-up testing requirements of the FMCSA:

- 1) Covered drivers who have had alcohol test results of 0.04 or greater must be evaluated, undergo treatment, if required, and be recommended for return to work by the SAP. A "return to duty" alcohol test with a result less than 0.02 is required prior to resumption of safety-sensitive or covered driving functions.
- 2) Covered drivers who have had verified positive drug tests must be evaluated, undergo treatment, if required, and be recommended for return to work by the SAP. A negative "return to duty" drug test is required prior to resumption of safety-sensitive or covered driving functions.
- 3) Covered drivers may be subject to periodic unannounced follow-up alcohol and/or drug testing as determined by the SAP who evaluated the employee.

Under the County's independent authority covered drivers who have had alcohol test results of 0.04 or greater and/or a verified positive drug test and are awaiting

recommendation for return to duty shall deduct this time away from work from any available paid time except sick leave (unless provided by law), or choose leave of absence without pay.

### **RECORD KEEPING PROCEDURES**

The CCSO's DER will maintain drug/alcohol testing records in a secure filing system, separate from the County Personnel files, with information available only on a "need to know" basis.

A driver is entitled, upon written request, to obtain copies of any records concerning his/her use of alcohol or controlled substances. Requests for such information may be directed to the DER or to the County drug testing management service.

The County shall release information regarding a covered driver's records to a subsequent employer upon receipt of a specific written request, by the covered driver, authorizing release of the records to an identified person.

Information regarding an individual's drug test results or rehabilitation is considered to be personal and confidential and may be released only upon written consent of the individual, except:

- 1) Such information must be released to the Secretary of Transportation, any DOT agency, or any state or local officials with regulatory authority over the employer or any of its drivers.
- 2) Such information may be disclosed in a lawsuit, grievance, or other proceeding initiated by or on behalf of the covered driver and arising from an alcohol test and/or a verified positive drug test or from the CCSO's determination that the driver engaged in conduct prohibited by FMCSA regulations.
- 3) When requested by the National Transportation Safety Board as part of an accident investigation, the CCSO will disclose information regarding post-accident alcohol and/or drug testing.

Under the County's independent authority,

- 4) Such information may not be released to any state official with specific regulatory authority over the Sheriff's Office or law enforcement personnel unless legally required.
- 5) When the County is compelled by a judicial determination or order that the information is not protected from disclosure.
- 6) The information is needed by medical personnel for the diagnosis or treatment of a patient who is physically unable to authorize disclosure.

## Record Retention

The following schedule of record keeping will be maintained by the DER and his/her authorized agents:

- Negative and canceled drug test records; records of alcohol test results less than 0.02 1 year
- Information obtained from previous employers 3 years
- Records of supervisor training Indefinite or 2 years beyond job responsibilities
- Records of verified positive drug test results; alcohol test results of 0.02 or greater; refusals to be tested for drugs and/or alcohol; SAP evaluations and referrals; follow-up tests and schedules 5 years
- Documentation of EBT calibration; Custody Control Forms; Specimen collection/alcohol test records 2 years
- Calendar year record of total number of employees tested and the results of tests 5 years

## **SUPPLEMENT A – DEFINITION OF TERMS**

For the purposes of this Policy, the following definitions apply.

**Abuse/Misuse of Prescription Drugs:** The use of a drug not in accordance with the prescribed dosage or method of use.

**Accident:**

***Reportable accident (covered drivers):*** An accident involving a commercial motor vehicle in which:

- a. A fatality occurred; OR
- b. The driver received a citation for a moving traffic violation AND a person involved in the accident needed medical care away from the scene of the accident; OR
- c. The driver received a citation for a moving traffic violation AND one or more vehicles involved in the accident needed to be towed from the scene of the accident.

**Adulterated Specimen:** A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

**Alcohol:** Ethyl alcohol or ethanol.

**Alcohol Screening Device (ASD):** 49 CFR 40.3 – A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

**Breath Alcohol Technician (BAT):** An individual who has been trained to proficiency in the operation of the evidential breath testing device he/she is using as required under 49 CFR Part 40.

**Breath Alcohol Testing Site:** A location which affords visual and aural privacy for the performance of breath alcohol testing. No unauthorized person shall be permitted access to the breath alcohol testing site when the evidential breath testing device is unsecured or at any time when testing is being conducted. In unusual circumstances, e.g. after an accident when a test must be conducted outdoors, the breath alcohol technician must provide visual and aural privacy to the greatest extent practicable.

**CCSO:** Clackamas County Sheriff's Office

**CFR:** United States Code of Federal Regulations

**Chain of Custody:** Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of

the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory be used from time of collection to receipt by the laboratory.

**Collection Site:** A designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

**Collector:** A person who instructs and assists applicants and employees through the urine specimen collection process.

**Confirmation Test:** A second analytical drug testing procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC-MS) is the usual confirmation method for drug testing at this time.

**Controlled Substances:** Substances listed on Schedules I through V in 21 U.S.C. 802 as they may be revised from time to time (21 CFR 1308). Controlled substances include illicit drugs and drugs which may be authorized for use by a physician or dentist for certain medical uses, but which are subject to misuse or abuse.

**County:** Clackamas County and/or Clackamas County Sheriff's Office

**Covered Driver:** Individual who is required to hold a Commercial Driver's License (CDL) for his/her job with the CCSO and who is subject to drug testing under Federal Highway Administration, Department of Transportation regulations (49 CFR Parts 40 and 382).

**Designated Employer Representative (DER):** An employee authorized by the employer to assist supervisors in taking immediate action(s) to remove employees from safety-sensitive duties and to make decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40.

**Dilute Specimen:** 49 CFR 40.3 – A specimen with creatinine and specific gravity values that are lower than expected for human urine.

**DOT:** United States Department of Transportation

**Drugs:** Controlled Substances

**FHWA:** Federal Highway Administration

**FMCSA:** Federal Motor Carrier Safety Administration



**GVWR:** Gross Vehicular Weight Rating; size criterion for determining classification of a commercial motor vehicle under federal regulations.

**Initial or Screening Test:** An immunoassay screen to eliminate “negative” urine specimens from further consideration.

**Medical Review Officer (MRO):** A licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders and drug testing who is responsible for reviewing and verifying drug testing results prior to their communication to the DER.

**Negative Drug Test:** A test in which initial or confirmation testing under DOT procedures did not show evidence of a prohibited drug in an employee’s or applicant’s system above established levels; OR, a test which is verified as negative by the MRO (e.g. review showed positive test was due to prescription medication or other authorized use of controlled substance).

**On Duty:** Under this Policy, a covered driver is “on duty” when he/she is at work and ready to perform safety-sensitive functions, e.g., qualified and available to drive a commercial motor vehicle.

**Positive Drug Test:** A urine drug test result which indicates the presence of controlled substances beyond the cut-off levels specified by 49CFR Part 40.

**Confirmed Positive Drug Test:** A positive drug test which has undergone an initial “screening” test AND a confirmation test which validates the first result. Drug tests are confirmed by the SAMHSA certified laboratory which performs the analyses.

**Verified Positive Drug Test:** A confirmed positive drug test (see above) after investigation by the MRO, who has determined that no legitimate explanation exists for the presence of the controlled substance that was detected.

**Prohibited Drugs:** Marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines.

**Random Testing:** Computerized random selection and testing for drugs in which each person in the computer data base has an equal chance of selection each time a selection occurs, in accordance with regulatory requirements.

**Reasonable Suspicion:** Specific, articulable observations of an employee’s condition or performance that indicate possible drug or alcohol use. Examples include, but are not limited to, deteriorating work performance, poor attendance, tardiness, appearance (including, for example, noticeable odor of an alcoholic beverage), behavior, or speech of the employee. The observations may include indications of the chronic and withdrawal effects of controlled substances, as well as include reliable information from other employees that support the violation of Policy prohibitions.

**Refusal to Submit:** Refusal by an individual to provide a urine or breath specimen after receiving notice of the requirement to be tested in accordance with this Policy.

**Safety Sensitive Functions:** Ready to perform, performing, or just finished performing, the following duties: waiting to be dispatched, inspecting equipment, driving, loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate a vehicle, repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**SAMHSA:** Substance Abuse and Mental Health Services Administration, a division of the US Department of Health and Human Services (DHHS) which is responsible for certifying laboratories to perform federal workplace drug testing.

**Screening or Initial Test:** Immunoassay screen to eliminate “negative” urine specimens from further consideration.

**Split Specimen Collection Procedure:** A collection procedure in which a urine specimen is divided or “split” between two shipping bottles, both of which are transported to the testing laboratory.

**Split Test:** If the results of the initial screening and confirmation tests of the “primary” specimen are positive, the “split” specimen may be tested at another qualified laboratory.

**Substance Abuse Professional (SAP):** Under DOT regulations, individuals who may serve as SAPs include:

- licensed physicians (Medical Doctors or Doctors of Osteopathy) or
- licensed or certified psychologists, social workers, employee assistance professionals, or addiction counselors (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

Under this Policy, the DER must inform employees or applicants who are found to have violated the alcohol prohibitions or who have had verified positive drug tests of qualified SAPs in the local area.

**Substituted Specimen:** A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

## **SUPPLEMENT B – SERVICE PROVIDERS**

**The Clackamas County Risk Management Department will manage the drug and alcohol testing program for the Sheriff's Office with the following provisions:**

### **DRUG AND ALCOHOL TESTING MANAGEMENT SERVICE**

The County will maintain an agreement with a drug and alcohol testing management service(s) to advise the County on processes, developments, and changes concerning this Policy.

The firm(s) chosen will be responsible for overseeing compliance of agents of the CCSO with federal regulations, including interacting with specimen collection and alcohol testing agents, designated drug testing laboratories and MROs. It also performs random selections and maintains records as required by federal regulations.

In the event of a need to change the provider of these services, the choice of provider will be made by the DER and communicated with the Peace Officers Association.

### **MEDICAL REVIEW OFFICERS**

MRO services will be provided by the testing management service.

### **DRUG TESTING LABORATORIES**

The County will use drug testing laboratories which are SAMHSA-certified, as required by federal drug testing regulations. The County's drug testing management service may arrange for the services of a drug testing laboratory in order to best serve the interests of the County.

### **SUBSTANCE ABUSE PROFESSIONALS**

Under this Policy, covered employees who refuse testing, have alcohol test results of 0.01 BAC for Sheriff Office Policy (0.04 BAC for DOT policy) or greater, and/or have verified positive drug test results must be referred by the DER to a SAP for evaluation. The County will maintain a list of such qualified individuals in its geographic area and make this list available to covered drivers as needed.

The County's drug testing management service will assist the County in locating SAPs in the driver's community upon request.