

April 20, 2023

**FIRST AMENDED LETTER OF AGREEMENT BY AND BETWEEN
SONOMA COUNTY AND SONOMA COUNTY DEPUTY SHERIFFS'
ASSOCIATION**

I. PREAMBLE

This Letter of Agreement ("Agreement") is entered into by and between Sonoma County ("County") and the Sonoma County Deputy Sheriffs' Association Association ("Association" or "DSA") following the parties' meet and confer sessions pursuant to Section 3500 et. seq. of the California Government Code. This agreement is intended to memorialize terms and conditions by and between the Independent Office of Law Enforcement Review and Outreach ("IOLERO") and the Association concerning IOLERO's authority to review, audit and analyze administrative and public complaint investigations of bargaining unit members employed by the Sheriff's Office. Except as expressly provided below, nothing in this Agreement shall direct the activities or policies of the Sheriff's Office.

II. IOLERO PURPOSE AND LIMITATIONS

IOLERO is intended to promote the common interest of the community, the Board of Supervisors and the Sheriff in providing objective and independent review and audit of law enforcement and corrections services, including complete, objective administrative investigations of alleged misconduct, and to facilitate the Board of Supervisors' supervisory responsibilities under Government Code sections 31000.1 and 25303.7, without interfering with the performance of the constitutionally and statutorily designated powers and duties of the Sheriff-Coroner.

As such, the parties understand that IOLERO does not have the power or authority to interfere with the Sheriff Office's investigative functions, decide policies, direct activities, or impose discipline on SCLEA/DSA unit members.

III. IOLERO MANDATES AND COMPLIANCE

IOLERO and its Director shall:

(A) Comply with all applicable provisions of Ordinance 6333 and the terms of this Agreement. Where there is a conflict between Ordinance 6333 and this Agreement, this Agreement shall control, as permitted by State law;

(B) Comply with California Government Code sections 3300 et seq., the Public Safety Officers' Procedural Bill of Rights Act;

(C) Comply with all applicable constitutional and statutory law pertaining to the confidentiality and privilege of peace officer personnel records and information including official information of the Sheriff's Office and IOLERO;

(D) Not disclose any confidential and/or privileged information to anyone not authorized to receive it.

(E) Not decide policies, direct activities, or impose discipline on unit employees.

IV. IOLERO REVIEW, AUDIT AND ANALYSIS OF SHERIFF'S OFFICE ADMINISTRATIVE INVESTIGATIONS

Pursuant to Ordinance No. 6333, Section 2-394(b)(2)(i-x), IOLERO has the authority to review, audit and analyze administrative and public complaint investigations of alleged misconduct by unit members in mutual coordination and cooperation with the Sheriff-Coroner. The complaint investigations subject to this review, audit, and analysis include all categories of complaints specified in Ordinance No. 6333, Section 2-394(b)(2)(i-x).

(A) Audit Process and Procedures

(i) All public complaints of alleged misconduct by bargaining unit members received by IOLERO will be forwarded to the Sheriff's Office for investigation. The Sheriff's Office will assign a case number, and determine, in consultation with the IOLERO Director, the allegations to be investigated. The complaint will be placed into the Sheriff's Office investigative file, and assigned for investigation.

(ii) During the Sheriff's Office investigation, the IOLERO Director may contact the Sheriff's Office for periodic updates on the investigation and request access to investigative records, for the purpose of monitoring the Sheriff's Office investigation process.

(iii) Unit members required to submit to an investigative interview by the Sheriff-Coroner, be it as a subject, complainant, or witness, will be subject to the access provided by the Sheriff-Coroner to the IOLERO Director, with the understanding that the IOLERO Director will observe by closed circuit video administered by the Sheriff's Office, but not participate in, the unit member's investigative interview.

(iv) At the conclusion of the Sheriff's Office investigation, the Professional Standards Lieutenant will review it to ensure it is complete and forward it up the chain of command for approval.

(v) Once the Sheriff's Office issues its final disposition, the Sheriff's Office will advise IOLERO that the investigation is complete and ready for IOLERO's review. IOLERO will be granted access to the completed investigation file, which will include reference to all evidence that was considered in the investigation, via the Sheriff's Office Investigations Management (AIM) database as specified in subsection (B) of t h i s Agreement.

(vi) In reviewing the Sheriff's Office investigation, IOLERO Staff who have successfully completed the required background check for employment with IOLERO, will have the ability to search all completed Sheriff's Office citizen complaint investigations and all Sheriff's Office completed administrative investigations in AIM. IOLERO Staff does not include members of the Community Advisory Council ("CAC"), which, pursuant to Ordinance 6333 acts as an independent body.

(vii) Any information used in the course of the investigation under review that is maintained in a database system in a manner that the IOLERO Director or Staff cannot gain direct access to will be attached to the investigative file in AIM, subject to the limitation that any information to which IOLERO is prohibited by law from obtaining shall not be attached to the investigative file in AIM.

(viii) Unit members may be directly contacted by IOLERO as part of IOLERO's efforts to ensure the completeness and fairness of the Sheriff-Coroner's investigation, to include any supervisor of an employee who is the subject of the investigation under

review. IOLERO does not have the authority to direct any unit members' activities that may be requested by IOLERO under this sub-part.

At the conclusion of IOLERO's review, audit and analysis of the investigation, the IOLERO Director may provide advice and/or recommendations to the Sheriff's Office in an individual case-specific report as specified in sub-section (C) of this Agreement. Individual case specific reports will be maintained by IOLERO as confidential peace officer records in accordance with California Penal Code sections 832.5, 832.7 and 832.8.

IOLERO will not retain, nor disclose, any physical or digital copies of the underlying investigative file that it accessed through the Sheriff's Office that IOLERO relied on in preparing the case specific report.

Complaints received directly by the Sheriff's Office are subject to automatic review by IOLERO in mutual coordination and cooperation with the Sheriff's Office as specified in Ordinance 6333, section 2-394(b)(2)(i)-(x). Complaints falling under this sub-part shall be forwarded to IOLERO and then be subject to the steps described in subsections ii-viii above.

(B) Access to Investigative Files

(i) At its request, the IOLERO Director will be granted access to prior personnel complaints for the involved unit member, that are included in the AIM database.

(ii) In accessing any of these records, the IOLERO Director shall not knowingly allow any unauthorized person to have sight or sound access to such records without express authorization of the Sheriff, unless compelled to do so by applicable law or court order. The IOLERO Director is not the custodian of records for unit members' personnel files; such authority rests solely with the Sheriff's Office. As part of its review of use of force investigations, at its request, IOLERO will be granted access to body

worn camera videos and may post such videos on IOLERO's web site. Public posting shall be determined by IOLERO on a case by case basis to the extent allowed by law, in consideration of victim privacy rights and policy and procedure governing active investigations. Procedures for IOLERO's access to and posting of body worn camera videos will be as set forth in the applicable Sheriff Department policy and procedure and subject to State law, to which IOLERO will adhere.

(C) Case-Specific Reports

(i) Case-specific reports are confidential communications among the IOLERO Director and the Sheriff's Office, and will be maintained by IOLERO as confidential peace officer records in accordance with Penal Code sections 832.5, 832.7 and 832.8.

(ii) Should the IOLERO Director conclude that a Sheriff's Office investigation was incomplete, biased or otherwise deficient, the case specific report shall identify the bases and reasons for that conclusion. If IOLERO intends to independently investigate the facts of the subject investigation it deems incomplete or otherwise deficient, IOLERO will notify the Sheriff of its intention as part of the case specific report.

(D) Independent Investigations

(i) IOLERO may initiate an independent investigation under either of the following circumstances:

- a. The case-specific report concludes that the Sheriff's Office investigation was incomplete or otherwise deficient. In this case, IOLERO's independent investigation shall not take

place until the Sheriff's Office investigation is referred to IOLERO as described under section IV (A) (v) above.

- b. The investigation involves an incident resulting in the death of a person in custody of Sheriff's Office personnel or results in a death of a person from the actions of Sheriff's Office personnel. In this case, IOLERO's independent investigation shall commence no sooner than 90 days following the District Attorney's Office's receipt of the completed criminal investigation, or communication of a charging decision, whichever comes first. In any case, IOLERO's investigation shall commence no sooner than the commencement of the Sheriff's Office administrative investigation.
- (ii) In either event, IOLERO's independent investigation will not in any way interfere with the Sheriff's Office investigation or any criminal investigation into the matter. The release of the IOLERO and SCSO investigation reports shall be coordinated between the agencies in accordance with this agreement and the Operational Agreement executed by and between IOLERO and the Sheriff's Office.
 - (iii) In furtherance of conducting an independent investigation, IOLERO may:
 - a. Contact complainants, witnesses, and/or custodians of evidence to elicit relevant information. Such contact of bargaining unit members will take place during regular business hours whenever possible. IOLERO does not have the authority to direct any unit member's activities that may be requested by IOLERO under this sub-part.
 - b. Subpoena testimony and/or documents as deemed necessary pursuant to Ordinance 6333 and Government Code section 25303.7.

(iv) Following the completion of an independent investigation, the IOLERO Director may provide a supplemental case-specific report to the Sheriff's Office, which may include discipline recommendations, as appropriate, for unit members subject to IOLERO's investigation. The supplemental case-specific report will be maintained by IOLERO as a confidential peace officer personnel record. IOLERO will not retain, nor disclose, any physical or digital copies of the underlying investigative file that it accessed through the Sheriff's Office that IOLERO relied on in preparing the supplemental case-specific report.

(F) Custodian/Records Maintenance

(i) It is understood by the parties to this agreement that as an agency specifically designated to receive complaints by members of the public against personnel of the Sheriff's Office, IOLERO is authorized and obligated to store and maintain confidentiality of peace officer records and information in accordance with Penal Code sections 832.5, 832.7 and 832.8.

(ii) IOLERO and the Sheriff's Office understand that the disclosure of investigative personnel records and/or BWC records may have a significant impact on current or former unit members and their families. In order to give affected current and former unit members and their families adequate time to prepare for such releases, prior to disclosing any records or information within their respective control, IOLERO and the Sheriff's Office shall give each other reasonable notice in advance of disclosure, where lawful, including the intended date by which the disclosure will be made. IOLERO shall notify the Sheriff's Office at least five business days prior to the disclosure unless such advance notice conflicts or interferes with the timelines for disclosure established by law or court order. Upon receiving such notification from IOLERO, the Sheriff's Office will follow its existing policy

regarding member notification of release of records. Unless otherwise required by applicable law or court order, IOLERO will not disclose records or information prior to receiving confirmation from the Sheriff's Office that all applicable unit member notification and threat assessment procedures have been satisfied.

IOLERO, in consultation with County Counsel, will redact records to be disclosed under this subsection in accordance with applicable law.

(iii) The parties recognize that the Sheriff's Office and IOLERO must comply with all existing laws and court orders, including Government Code section 6253.3.

V. WHISTLEBLOWER COMPLAINTS

Unit members are subject to IOLERO's authority under Ordinance 6333 to act as a receiving and investigative agency for whistleblower complaints involving the Sheriff's Office. A whistleblower complaint is defined as a complaint by a Sheriff's Office employee of an alleged violation of federal or state law, or noncompliance with a local, state or federal rule, policy, or regulation. For the purposes of these complaints, all statewide legal protections pursuant to California Labor Code sections 1102.5, 1106 et. seq., including confidentiality of the whistleblower and prohibition against retaliation, shall apply.

(A) Intake, Evaluation and Referral

(i) Upon receipt of a whistleblower complaint, IOLERO will immediately conduct a confidential interview of the complainant as soon as reasonably practical, in person if possible. To the extent possible, the interviewer is encouraged to obtain a signed interview statement from the complainant during the interview. The complainant may have an attorney or other personal representative present during the interview.

(ii) The information obtained during the intake interview must be properly documented by the interviewer. At a minimum, a memorandum of interview will be prepared preserving the complainant's account of the facts and record facts necessary to determine the nature and scope of the allegations being presented. As part of the intake process, IOLERO will request from the complainant copies of all relevant documents or other records supporting the complainant's allegations, as well as the names of any possible witnesses.

(iii) Once the intake is completed, the information obtained during the intake interview will be evaluated by IOLERO to determine the necessary and appropriate referral of the complaint to the agency responsible for the enforcement of any rules, regulations, policies, or laws which are the subject of the complaint.

(iv) Referral to the appropriate enforcement agency will be transmitted through confidential communications and guided by IOLERO's identification of the state, federal and/or local rule(s), policy or regulation(s) implicated by the complaint.

(B) Confidentiality and Protection From Retaliation

(i) The complainant will be advised that IOLERO will maintain the information received in confidence to the extent permitted by law, and to the extent permitted by law, will disclose that information confidentially only to those officials responsible for the investigation and enforcement of the statutes, rules or regulations implicated by the complaint. The complainant will also be advised that the subject employer may not retaliate against the complainant for making the complaint or for otherwise exercising his or rights as a whistleblower.

VI.

EFFECT AND FULL UNDERSTANDING

The provisions of this Letter of Agreement are subject to and to be read with County Ordinance 6333 and the Operational Agreement executed by and between IOLERO and the Sheriff's Office pursuant to Section 2-394(d) of Ordinance No. 6333. To the extent the provisions of this Agreement conflict with provisions in Ordinance No. 6333 or the Operational Agreement, the provisions of this Letter of Agreement will control as permitted by applicable law.

Any alteration, variation, waiver or modification of any terms or provisions contained in this Letter of Agreement shall be effectuated as authorized by and in accordance with California Government Code section 3500 et. seq., and the County's Employee Relations Policy and Procedure.

 
Sonoma County

Date: 5/5/2023


Sonoma County Sheriff

Date: 04/27/2023

Cody Ebert - President