



Committee: Directly to Council
Committee Review: N/A
Staff: Craig Howard, Deputy Director
Bob Drummer, Senior Legislative Attorney
Purpose: Final action – vote expected

AGENDA ITEM #19.5
December 14, 2021
Action

SUBJECT

Supplemental Appropriation to the Fiscal Year 2022 Operating Budget, Montgomery County Government, Merit System Protection Board Grievances:

- Montgomery County Fire and Rescue Service, \$602,159 (Source of Funds: Undesignated Fire Fund Reserves)
- Montgomery County Sheriff's Office, \$223,757 (Source of Funds: General Fund Undesignated Reserves)
- Montgomery County Police Department, \$629,039 (Source of Funds: General Fund Undesignated Reserves)

EXPECTED ATTENDEES

Rich Madaleno, Chief Administrative Officer
John Markovs, Office of the County Attorney
Justin Nunley, Office of the County Attorney

DESCRIPTION/ISSUE

The County Council will consider action on a supplemental appropriation for \$1,451,955 to fund proposed settlement agreements with 83 employees related to COVID-19 hazard pay. The Council introduced this appropriation on November 30 and held a public hearing on December 7.

SUMMARY OF KEY DISCUSSION POINTS

- On July 29, 2021, the County Executive submitted an FY22 supplemental appropriation for \$825,916 to fund a proposed settlement of grievances filed by Fire and Rescue Service and Sheriff's Office management employees related to COVID-19 differential pay.
- On November 23, 2021, the County Executive submitted a revised FY22 supplemental appropriation totaling \$1,451,955 to fund a proposed settlement of grievances filed by Police Department management employees in addition to the previously submitted proposed settlements with MCFRS and Sheriff's Office management employees.
- When the County Executive agreed with employee organizations to provide COVID-19 pay in April 2020, it was not passed through to Fire and Rescue Management, Sheriff Management, or Police Management. It was also not passed through to other County Government Management Leadership Service (MLS) employees.
- 83 grievances were filed by Fire and Rescue Management, Sheriff Management, and Police Management employees over the fact that they did not receive the COVID pay, asserting that they were working under the same or similar conditions as their subordinates.

- The Office of Labor Relations denied the grievances, and the employees appealed to the Merit System Protection Board (MSPB).
- The Executive has reached proposed settlement agreements (©6-66) with the 83 employees to provide the COVID-19 back pay, totaling \$629,039 for Police employees \$602,159 for MCFRS employees, and \$223,757 for Sheriff's Office employees. These amounts reflect the same COVID-19 pay rates that were provided to other employees who received the COVID-19 pay and for the same timeframe (for work performed between March 29, 2020 to February 14, 2021).
- The settlement agreements are contingent on the Council's funding approval, and the parties have agreed to stay MSPB proceedings until the Council's funding decision. Other terms of the proposed settlements include:
 - The County will not pay any of the employee's attorney's fees.
 - If the Council does not approve funding for the proposed settlement, the employees may continue to pursue their appeal at the MSPB.
 - For the agreements with Fire and Rescue Service and Sheriff's Office employees, the employees agree to waive any claim that COVID-19 pay should be included in the calculation of retirement benefits.
 - The agreement with Police Department employees state that the parties "understand that this Agreement does not include any promise to include the settlement payments in the calculation of retirement benefits for any Appellant." However, the agreement notes that there has been a grievance filed by FOP Lodge 35 over the inclusion of COVID pay in the calculation of retirement benefits and that appellants would receive the same treatment for pay and retirement purposes as the FOP members receive based on the outcome of that grievance.
- On July 2, 2020, the County Executive sent a letter to the Federal Emergency Management Agency (FEMA) requesting FEMA reimbursement for COVID-19 pay (©67). As part of that letter, the Executive stated that COVID-19 pandemic triggered the emergency pay provisions of the County's Collective Bargaining Agreements (CBAs). Although these unrepresented employees are not covered by the emergency provisions in the CBA's, the Personnel Regulations (COMCOR 33.07.01.10-14) provide similar emergency pay provisions for unrepresented employees who must work during a declared general emergency.
- The statements in the July 2 letter differ from the position stated by the Executive Branch, the County Council, and the County Attorney that the emergency pay provisions were never triggered because the County Executive did not declare a general emergency.
- Council staff notes that if the Council does not approve funding for the settlement agreements and the grievances proceed to the MSPB or beyond to the courts, the statements in the July 2 letter could make it more likely that the appellants would win the grievance. If the MSPB or a court ruled in favor of the appellants, the County could be required to pay a higher amount (double the hourly pay rate) to the employees than the COVID-19 pay rates agreed to as part of the settlements.

- The Council held a public hearing on this supplemental appropriation request on December 7, 2021. There was one speaker at the public hearing, Molly Elkin representing Adam Jones et al. (MCFRS Appellants), who spoke in favor of the supplemental appropriation.

FOLLOW-UP FROM NOVEMBER 30 INTRODUCTION DISCUSSION

- During discussion of this issue at the November 30 Introduction, the Council requested written answer and/or follow-up information to four items. The follow-up requests along with the responses provided by the Executive Branch on December 9 are included below.
- 1. Following up on the verbal explanation provided during the meeting, please provide a written statement of the County Attorney as to whether he would have recommended these same grievance settlements without the existence of the FEMA letter.**

Executive Branch Response

OCA will reply directly to Council staff

- 2. Following up the verbal explanation provided during the meeting, please provide a written rationale for why the Executive sent the supplemental appropriation request for the settlement agreements but did not need to send a supplemental request for the original hazard pay to Council for funding approval.**

Executive Branch Response

Currently, when emergency pay is invoked, the cost is absorbed within existing appropriation. If this results in a department overspending before the end of the fiscal year, the overage is addressed through the year-end County Executive Transfer (CET) and County Council Transfer (CCT) process. Supplemental appropriations have not historically been requested to support emergency pay.

The agreements to provide COVID differential pay were executed during an unprecedented time at the beginning of a global pandemic. The collective bargaining agreements' emergency pay provisions do not contemplate the possibility of a months-long facility shutdown to ensure public safety and social distancing. The Executive has the sole authority to negotiate labor agreements, which he did in this case. The MOAs were necessary to address agreement provisions which put the County at high risk of obligation to pay double time to County employees working onsite during the emergency response.

A supplemental appropriation is necessary to fund these FY22 MSPB grievances related to COVID differential because the FY22 Operating Budget Resolution 19-872 includes a new provision that states, "Any COVID-19 differential pay to any employees must not be paid unless the Council approves a supplemental or special appropriation authorizing the payments." This provision was not included in the FY20 or FY21 Budget Resolutions.

3. How did the Executive Branch determine it had the existing appropriation authority for approximately \$19.2 million (\$3.2 million per pay period times 6 pay periods) in FY20 funding for original hazard pay agreements when they were signed in April 2020?

Executive Branch Response

As stated above, emergency pay has historically been supported by existing appropriation, with department overages addressed through the year-end CET and CCT process. The agreements to provide COVID-related differential pay were entered into on April 3, 2020. At FY20 third quarter analysis, the projected year-end general fund surplus totaled \$14.3 million. When all tax supported funds are considered, the projected year-end surplus totaled \$6.5 million. On June 16, 2020, Council adopted Resolution 19-498 creating the Federal Coronavirus Relief Fund Non-Departmental Account (NDA) which provided \$80 million in appropriation authority to support enumerated purposes including pay differential for employees responding to the public health crisis. Resolution 19-659 subsequently provided an additional \$35.6 million in appropriation authority to the Coronavirus Relief Fund NDA to support the uses identified in 19-498, in addition to new purposes as identified in 19-659.

4. If approved by the Council, will any of the \$1.45 million for these settlement agreements be submitted for FEMA reimbursement?

Executive Branch Response

These payments are unlikely to be FEMA-eligible. FEMA reimbursement has only been provided for direct pandemic response. To date, the only MCFRS tasks determined FEMA-eligible have been paramedics responding to COVID-specific calls for service. However, we are investigating the nature of the work in question that was performed to ensure that if any of it, even a small portion, is indeed eligible that it is submitted to FEMA.

This report contains:

Transmittal Memo from the County Executive (November 23, 2021)	©1-2
Draft supplemental appropriation resolution	©3-5
Proposed Settlement Agreement with Police Department Employees	©6-29
Proposed Settlement Agreement with Fire and Rescue Service Employees	©30-56
Proposed Settlement Agreement with Sheriff's Office Employees	©57-66
July 2, 2020 letter from the County Executive to FEMA	©67-69

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OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

M E M O R A N D U M

November 23, 2021

TO: Tom Hucker, President
County Council

FROM: Marc Elrich, County Executive 

SUBJECT: **Revised** Supplemental Appropriation #22-08 to the FY22 Operating Budget
Montgomery County Government
Merit System Protection Board Grievances
Montgomery County Fire and Rescue Service, \$602,159
Montgomery County Sheriff's Office, \$223,757
Montgomery County Police Department, \$626,039

I am recommending a supplemental appropriation to the FY22 Operating Budget of the Montgomery County Fire and Rescue Service, the Montgomery County Police Department, and the Montgomery County Sheriff's Office in the total amount of \$1,451,955 to address grievances at the Merit System Protection Board. This supplemental replaces the one transmitted on July 29, 2021.

This increase is needed to resolve 83 grievances at the Merit System Protection Board related to COVID pay; \$602,159 will support personnel costs for grievances filed by employees of the Montgomery County Fire and Rescue Service, \$626,039 will support personnel costs for grievances filed by employees of the Montgomery County Police Department, and \$223,757 will support personnel costs for grievances filed by employees of the Montgomery County Sheriff's Office.

I recommend that the County Council approve this supplemental appropriation in the amount of \$1,451,955 and specify the source of funds as Undesignated Fire Fund Reserves and General Fund Undesignated Reserves. This supplemental will reduce Undesignated Fire Fund Reserves by \$602,159 and General Fund Undesignated Reserves by \$849,796 and is consistent with the fund balance policy for tax supported reserves.

I appreciate your prompt consideration of this action.

ME:rs

Attachment: Supplemental Appropriation #22-08
MCFRS Settlement Agreement
Sheriff's Office Settlement Agreement
MCPD Settlement Agreement

Cc: Richard S. Madaleno, Chief Administrative Officer, Office of the County Executive
Jennifer R. Bryant, Director, Office of Management and Budget
Marc P. Hansen, County Attorney, Office of the County Attorney
Jennifer Harling, Chief Labor Relations Officer, Office of Labor Relations
Scott Goldstein, Chief, Fire and Rescue Service
Darren M. Popkin, Sheriff, Sheriff's Office
Marcus Jones, Chief, Montgomery County Police Department
Tiffany Ward, Director, Office of Racial Equity and Social Justice

Resolution No: _____
Introduced: _____
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

SUBJECT: **Revised** Supplemental Appropriation #22-08 to the FY22 Operating Budget
Montgomery County Government
Merit System Protection Board Grievances
Montgomery County Fire and Rescue Service, \$602,159
Montgomery County Sheriff's Office, \$223,757
Montgomery County Police Department, \$626,039

Background

1. Section 307 of the Montgomery County Charter provides that any supplemental appropriation shall be recommended by the County Executive who shall specify the source of funds to finance it. The Council shall hold a public hearing on each proposed supplemental appropriation after at least one week's notice. A supplemental appropriation that would comply with, avail the County of, or put into effect a grant or a Federal, State or County law or regulation, or one that is approved after January 1 of any fiscal year, requires an affirmative vote of five Councilmembers. A supplemental appropriation for any other purpose that is approved before January 1 of any fiscal year requires an affirmative vote of six Councilmembers. The Council may, in a single action, approve more than one supplemental appropriation. The Executive may disapprove or reduce a supplemental appropriation, and the Council may reapprove the appropriation, as if it were an item in the annual budget.
2. The County Executive has requested the following FY22 Operating Budget appropriation increases:

	<u>Personnel Services</u>	<u>Operating Expenses</u>	<u>Total</u>	<u>Source of Funds</u>
Montgomery County Fire and Rescue Service	\$602,159	\$0	\$602,159	Undesignated Fire Fund Reserves
Montgomery County Sheriff's Office	\$223,757	\$0	\$223,757	General Fund Undesignated Reserves

Revised Supplemental Appropriation #22-08
Page Two

Montgomery County Police Department	\$626,039	\$0	\$626,039	General Fund Undesignated Reserves
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3. This increase is needed to resolve 83 grievances at the Merit System Protection Board related to COVID pay; \$602,159 will support personnel costs for grievances filed by employees of the Montgomery County Fire and Rescue Service, \$626,039 will support personnel costs for grievances filed by employees of the Montgomery County Police Department, and \$223,757 will support personnel costs for grievances filed by employees of the Montgomery County Sheriff's Office.
4. The County Executive recommends a supplemental appropriation to the FY22 Operating Budget in the amount of \$1,451,955 for Merit System Protection Board Grievances and specifies that the source of funds will be Undesignated Fire Fund Reserves and General Fund Undesignated Reserves.
5. Notice of public hearing was given, and a public hearing was held.

Action

The County Council for Montgomery County, Maryland, approves the following action:

A supplemental appropriation to the FY22 Operating Budget of the Montgomery County Fire and Rescue Service, the Montgomery County Police Department, and the Montgomery County Sheriff's Office is approved as follows:

	<u>Personnel Services</u>	<u>Operating Expenses</u>	<u>Total</u>	<u>Source of Funds</u>
Montgomery County Fire and Rescue Service	\$602,159	\$0	\$602,159	Undesignated Fire Fund Reserves
Montgomery County Sheriff's Office	\$223,757	\$0	\$223,757	General Fund Undesignated Reserves
Montgomery County Police Department	\$626,039	\$0	\$626,039	General Fund Undesignated Reserves

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("the Agreement") is made this 22nd day of November, by and between Montgomery County, Maryland and all its officers, agents, and employees of Montgomery County Government, jointly and severally, who will be referred to, collectively, as the County, ("the County") and [REDACTED]

[REDACTED]
(Appellants") (collectively "the Parties").

Background

On March 5, 2020, Maryland Governor Larry Hogan declared a State of Emergency and Catastrophic Health Emergency in response to the COVID-19 pandemic crisis. The Governor's declaration has been renewed multiple times and remains in place to this day. The County Executive, however, has never declared a state of emergency.

On April 3, 2020, the County entered into agreements with the three employee representative organizations, providing for hazard compensation retroactive to March 29, 2020 for bargaining unit members for the duration of the COVID-19 pandemic. The agreements with FOP Lodge 35 and IAFF Local 1664 provide that all hours worked will be compensated at the rate of \$10 per hour. The agreement with MCGEO includes two rates - \$3 per hour for back office work (*i.e.*, work that does not involve direct contact with the public) and \$10 per hour for front facing work (*i.e.*, work that requires public interaction that cannot be safely socially distanced). The County and the three employee representative organizations agreed to end this differential pay on February 14, 2021.

The County passed the corresponding COVID-19 pandemic pay through to some unrepresented employees, but not police management, such as Appellants. Appellants filed grievances indicating they were entitled to emergency pay, at a rate of double their regular hourly rate, but indicated they were willing to accept the same differential the Unions received in lieu of emergency pay. The grievances were denied. Appellants then appealed to the Merit System Protection Board, which consolidated their appeals.

Terms of the Agreement

The Parties now find it in their mutual interest to settle this matter as follows:

1) The County agrees to pay Appellants back pay in the form of a ten-dollar (\$10) differential for all regular front-facing hours worked between the dates of March 29, 2020 and February 14, 2021. Said payment is subject to withholdings and/or deductions for all applicable taxes. Hours have been calculated based on Appellants' MCTime entries. On October 19, 2021,

the County provided Appellants with an accounting of their hours worked from MCTime, which Appellants have reviewed. Appellants have reported telework hours not recorded in MCTime, to the best of their ability. Telework hours do not count towards the back pay differential. Additionally, payment under this Agreement is not intended to constitute a double payment, and to the extent any Appellant already received the \$10 differential for hours worked onsite between March 29, 2020 and February 14, 2021, either as the result of a pass through, membership in FOP Lodge 35, or otherwise, they will not receive an additional \$10 differential under this Agreement for those hours for which the Appellant has already received the \$10 differential. The attached and incorporated table titled "Attachment A" sets forth the total "Regular" hours for which each Appellant is to be paid \$10 differential pay, as well as the gross amounts to be paid for such hours, based on the methodology described in this Paragraph.

2) The County agrees to pay Appellants back pay in the form of an additional fifteen-dollar (\$15) differential for all front-facing overtime hours worked between the dates of March 29, 2020 and February 14, 2021. Said payment is subject to withholdings and/or deductions for all applicable taxes. On, October 19, 2021 the County provided Appellants with an accounting of their overtime hours worked from MCTime. Appellants reviewed those hours and reported any overtime telework hours not recorded in MCTime, to the best of their ability. Overtime telework hours do not count towards the back pay differential. Additionally, payment under this Agreement is not intended to constitute a double payment, and to the extent any Appellant already received the \$15 differential for overtime hours worked onsite between March 29, 2020 and February 14, 2021, either as the result of a pass through, membership in FOP Lodge 35, or otherwise, they will not receive an additional \$15 differential for those same hours under this Agreement. Further, the overtime rate described herein applies only to this Agreement and does not mean that overtime will be paid at that rate in the future. The attached and incorporated table titled "Attachment A" sets forth the total "Overtime" hours for which each Appellant is to be paid \$15 differential pay, as well as the gross amounts to be paid for such hours, based on the methodology described in this Paragraph.

3) The Office of Management and Budget, in conjunction with Montgomery County Police Department, has reviewed and verified Appellant's hours. The total gross amount to be paid by the County pursuant to this Agreement is based upon the hours set forth in Attachment A and shall be **\$581,550.80**.

4) The Parties understand that this Agreement does not presently include any promise by the County to include the settlement payments in the calculation of retirement benefits for any Appellant. However, the Parties acknowledge that there is currently an ongoing contract grievance filed by Fraternal Order of Police, Lodge 35 ("FOP") against the County over the issue of whether COVID pay may be included in the calculation of retirement benefits. While Appellants are not members of the FOP, the Parties agree that upon resolution of the aforementioned FOP grievance, Appellants shall receive the same outcome and treatment for pay and retirement purposes as the FOP members receive.

5) The Parties agree Appellants will not receive any compensatory time as part of this Agreement.

6) The Parties agree that the County will not pay Appellants' attorneys' fees as part of this Agreement and the Parties will bear their own attorneys' fees.

7) The Parties agree the terms of this Agreement do not constitute a precedent or practice.

8) Appellants understand that this Agreement is subject to funding approval by the County Council. The County shall submit this Agreement for funding to the County Council, on or before November 30, 2021. The County agrees to provide Appellants' counsel with at least three days' notice of the date on which the County will submit this Agreement to the Council and of the public hearing date for funding approval. The County, including its officers, representatives, and agents, will support the supplemental appropriations request to fund this Agreement, as it does all supplemental appropriations requests it submits to the County Council.

9) The Parties agree to stay MSPB proceedings in Appellants' consolidated appeal until such time as the County Council renders a funding decision, as described in Paragraph 8 of this Agreement.

10) Appellants agree that if the County Council approves funding, then this Agreement and Release, collectively, constitute a full and complete settlement of all claims which they might have for emergency pay, differential pay, compensatory time, and/or attorneys' fees due to the COVID-19 pandemic and arising out of their County employment prior to the date of this Agreement and Release. Appellants further agree that if the County Council approves funding of this Agreement in its entirety, then they will consent to dismissal of their pending consolidated appeal and further waive any right they might have to pursue any claim, grievance, or action against the County relating to emergency pay, differential pay, and/or compensatory leave arising prior to the date of this Agreement and due to the COVID-19 pandemic in any administrative forum, the Merit System Protection Board, state court or federal court.

11) Within thirty (30) calendar days of the County Council's approval of this Agreement, the County will provide payment of the net amount of the Appellants' backpay to each Appellant via payroll direct deposit, with an accounting of the amounts withheld and/or deducted, as described in paragraphs 1 and 2, from each Appellant's back pay (e.g., by submitting a paystub for each Appellant).

12) The County agrees that if the County Council does not approve funding of this Agreement in its entirety, then it will consent to a lifting of the stay and Appellants may continue to pursue their consolidated appeal at the Merit System Protection Board.

13) The Parties agree that in the event the Agreement is not funded in its entirety, then this Agreement is null and void and further, will not be construed to waive any claims or defenses the Parties may have.

14) Appellants agree that they are represented by counsel of their choosing. Further, they represent they are satisfied with the representation they have received. Further, they represent they have read this Agreement and understand the provisions herein and are not relying on any

promises or other representations not set forth above as inducement to enter the Agreement, and that they are voluntarily entering into the Agreement.

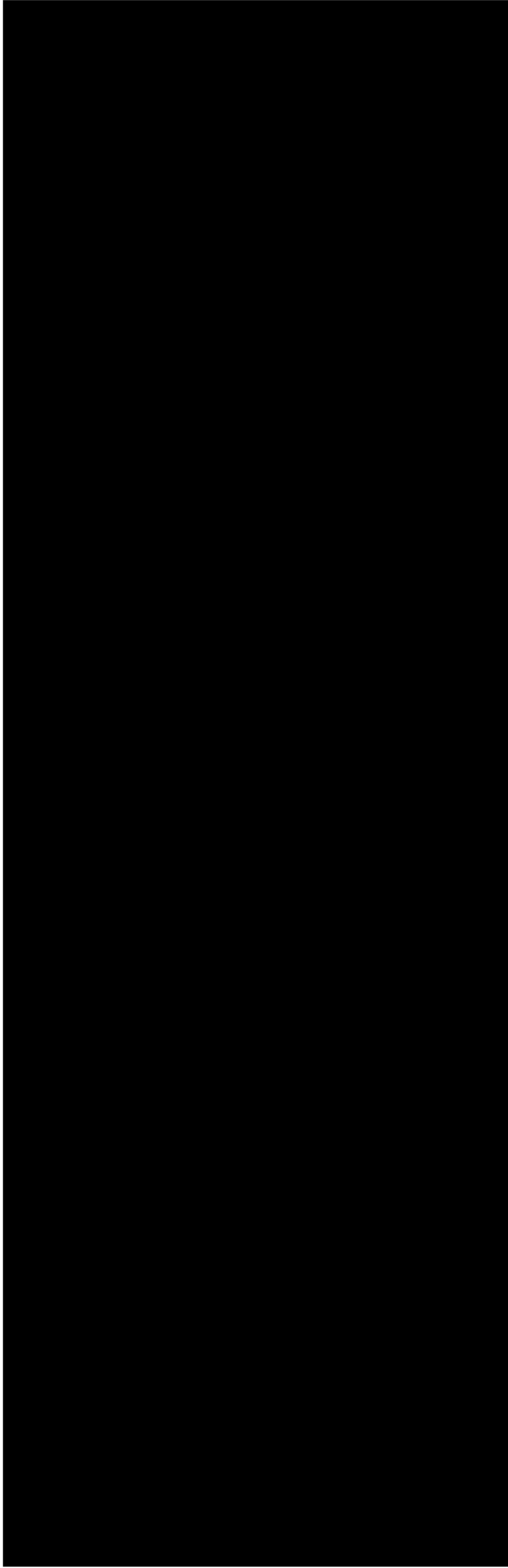
15) The Parties agree that this Agreement may be signed in counterparts and/or via DocuSign.

[SIGNATURE PAGE FOLLOWS]


Execution of the Agreement

The Agreement is fully executed upon the signature of the Deputy Chief Administrative Officer on behalf of the Chief Administrative Officer and Montgomery County and by all Appellants, on their own behalf.

For Appellants:



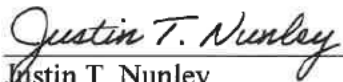
For Montgomery County, Maryland:


~~Fariba Kassiri~~ Richard S. Madaleno
Deputy Chief Administrative Officer
~~On behalf of Rich Madaleno, Chief Administrative Officer~~

11/23/21

Date

Approved as to form and legality:


Justin T. Nunley
Associate County Attorney

11/22/2021

Date

Execution of the Agreement

The Agreement is fully executed upon the signature of the Deputy Chief Administrative Officer on behalf of the Chief Administrative Officer and Montgomery County and by all Appellants, on their own behalf.

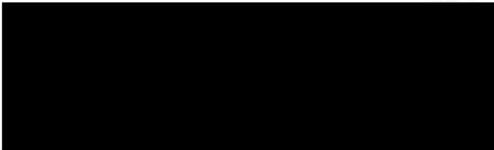
For Appellants:



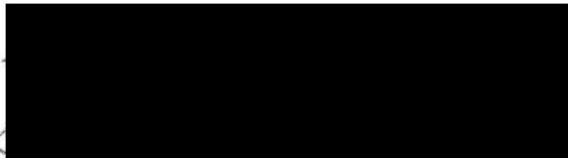
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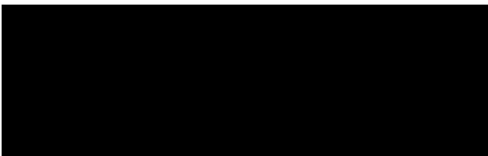
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For Montgomery County, Maryland:

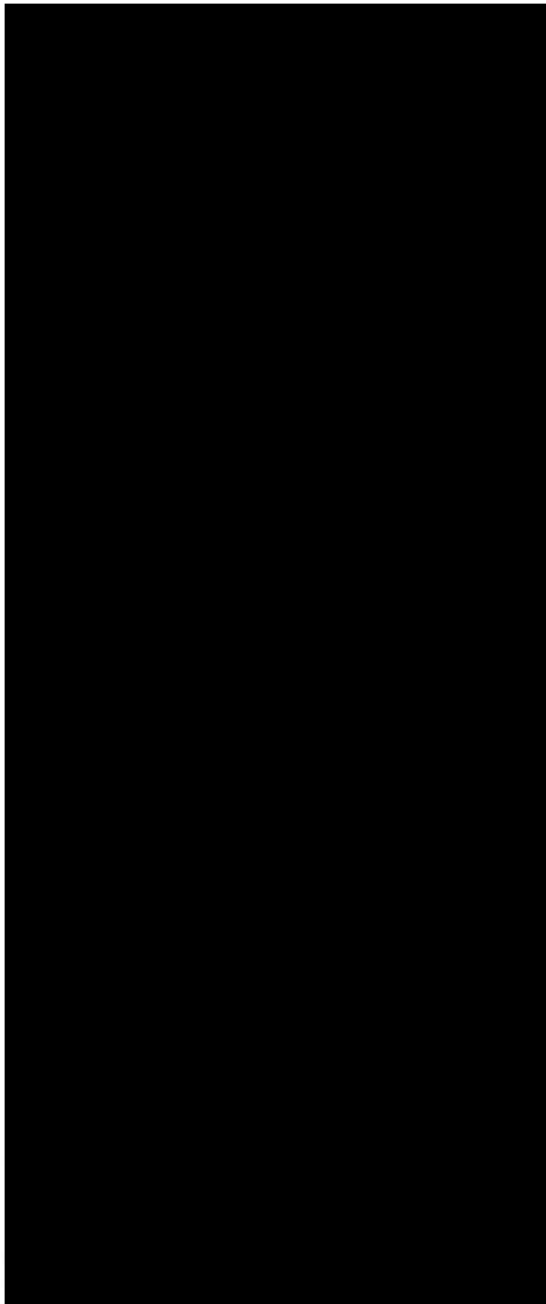
Fariba Kassiri
Deputy Chief Administrative Officer
On behalf of Rich Madaleno, Chief Administrative Officer

Date

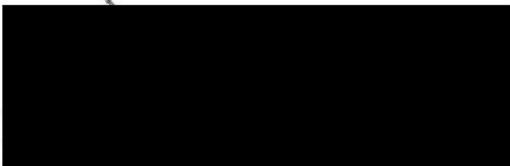
Approved as to form and legality:

Justin T. Nunley
Associate County Attorney

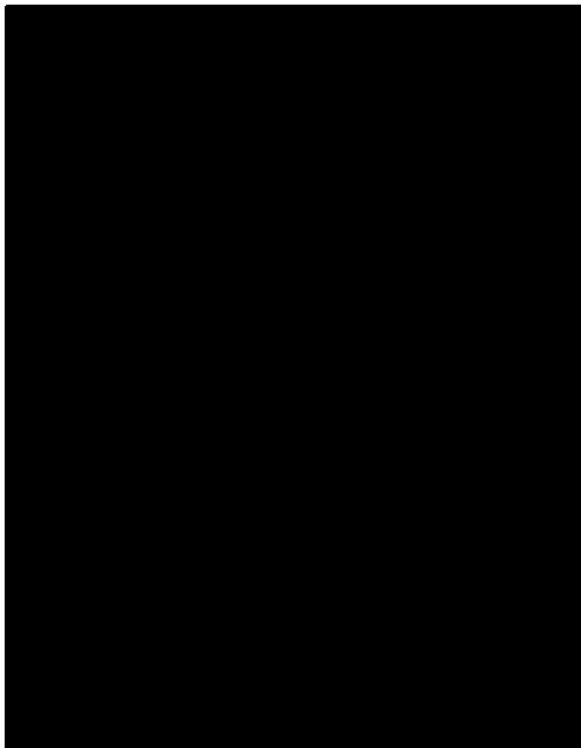
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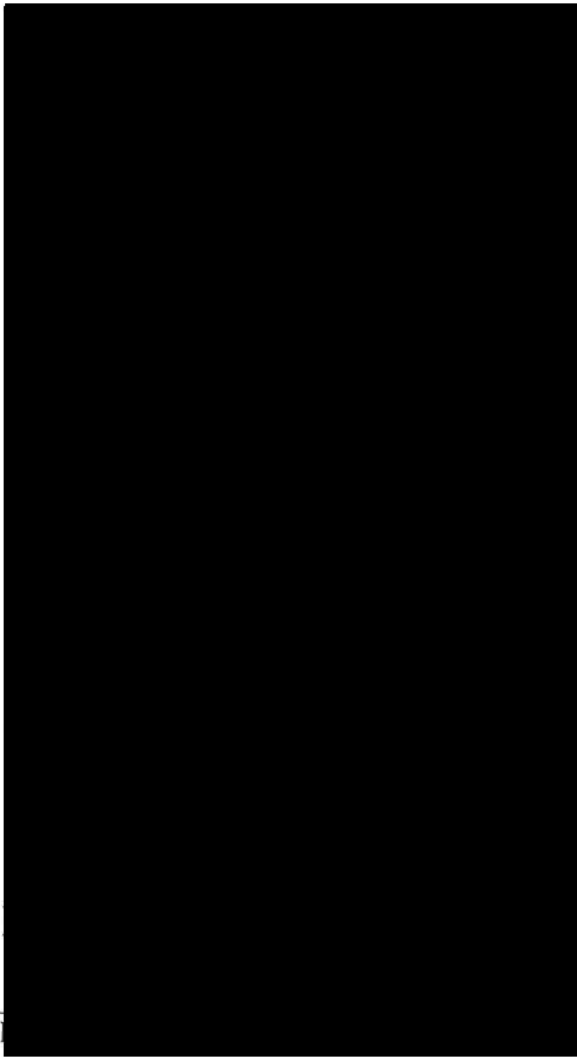


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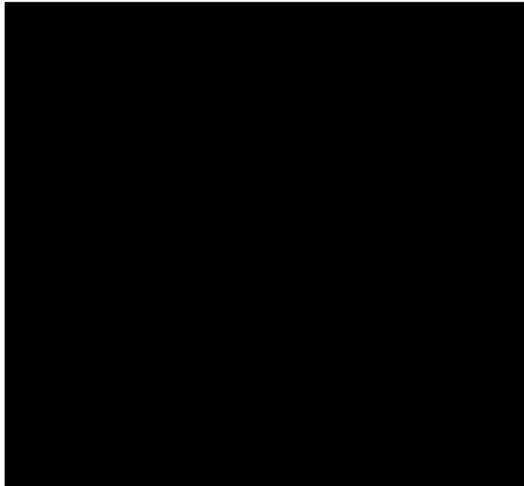
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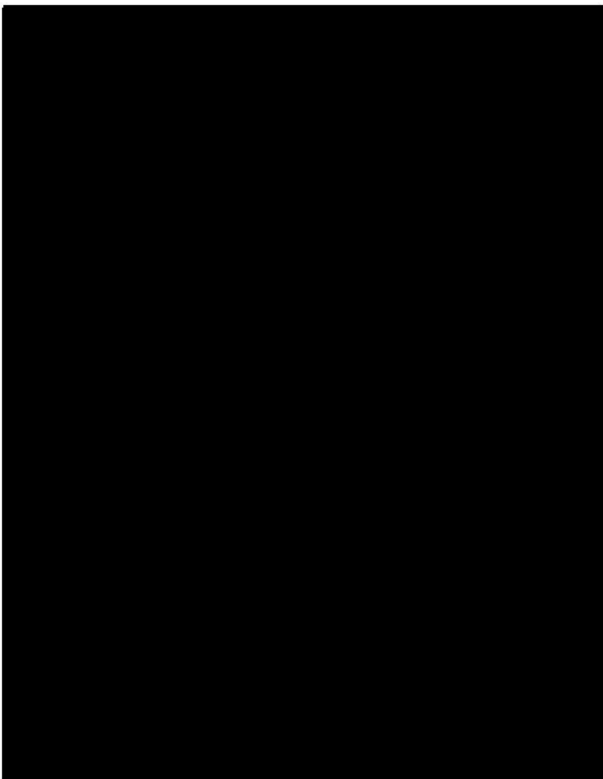
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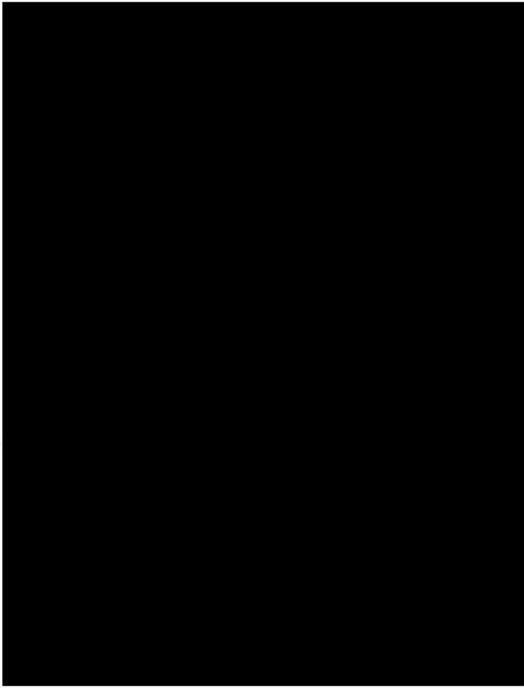
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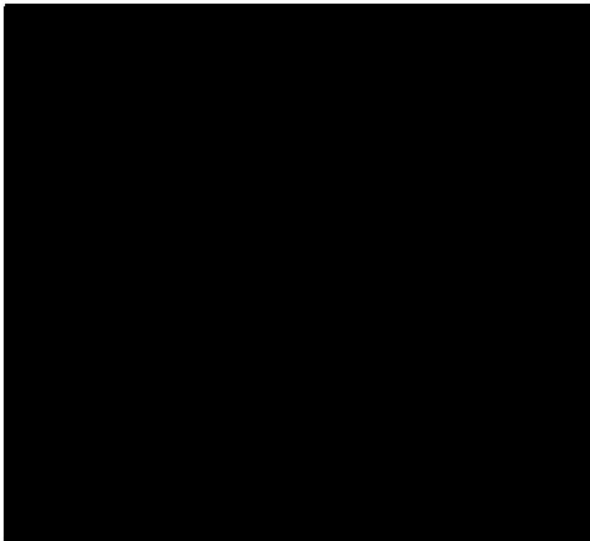


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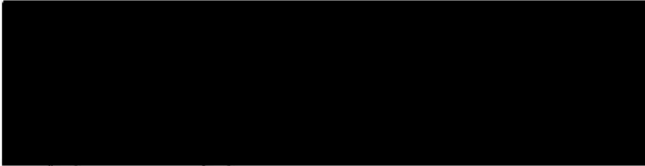
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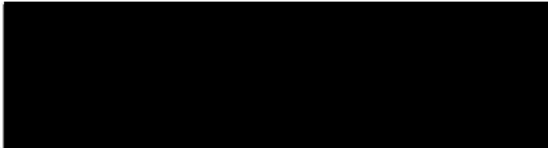




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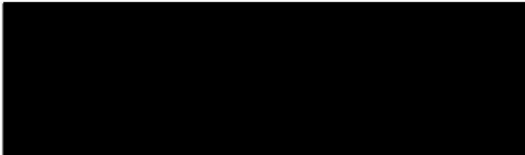
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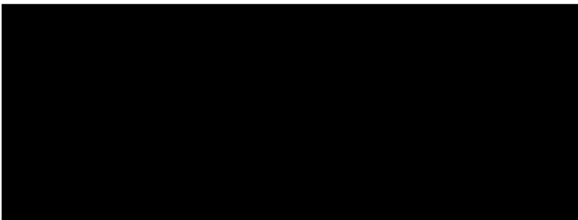
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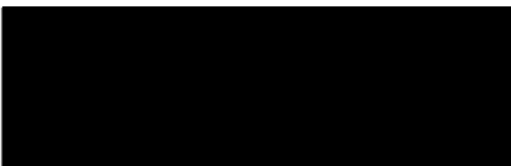
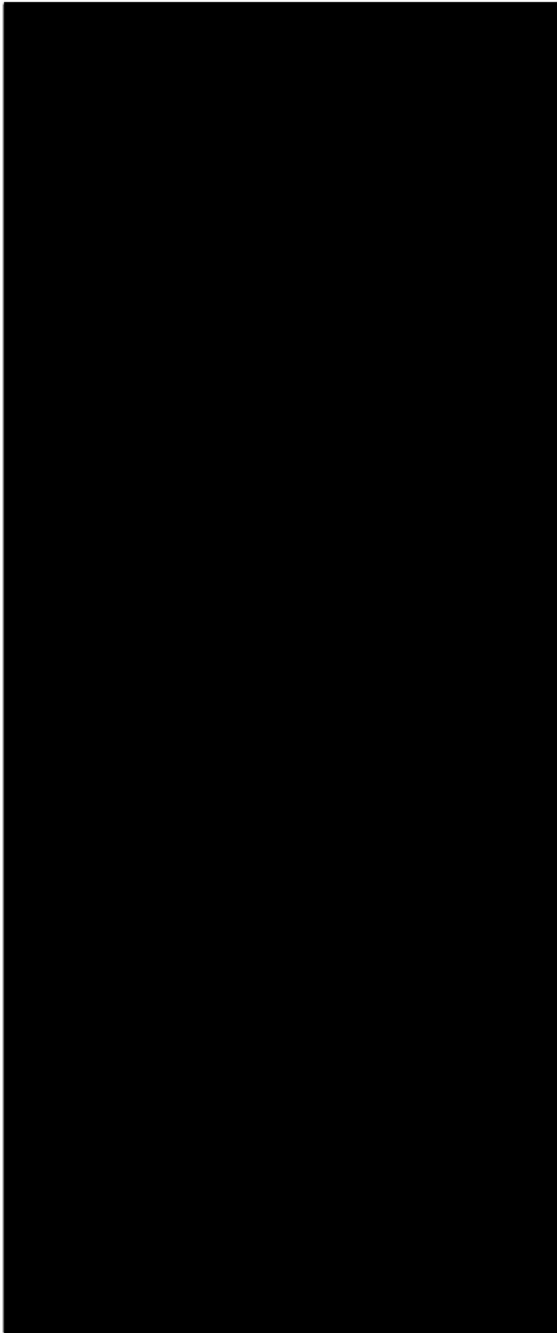


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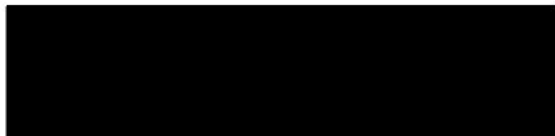




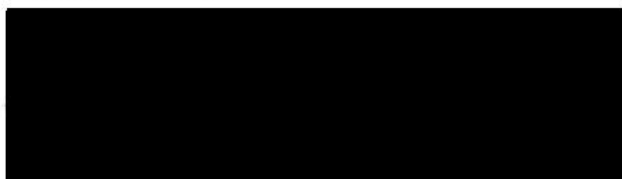
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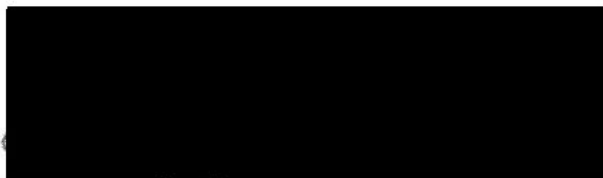
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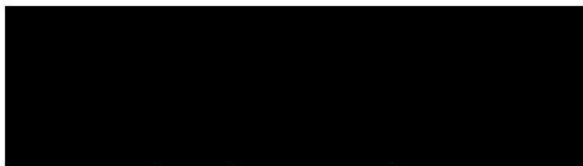
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Daniel F. HZ
11/22/21
Date

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Sean Gagen
11/18/2021
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John D. Alford
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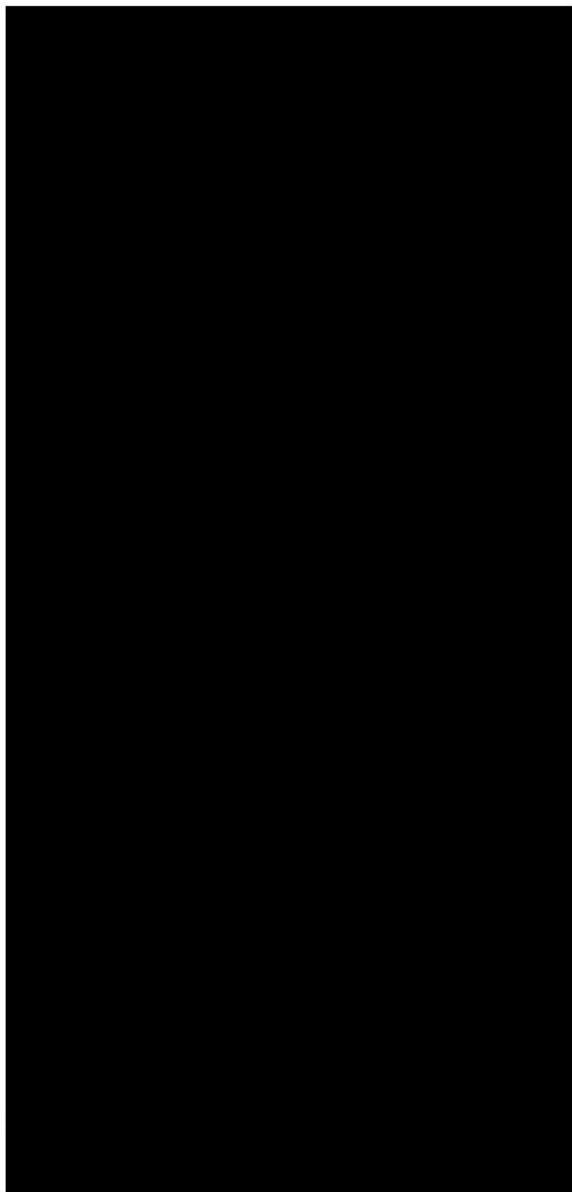
Lorraine Dommel

Date 11/19/21

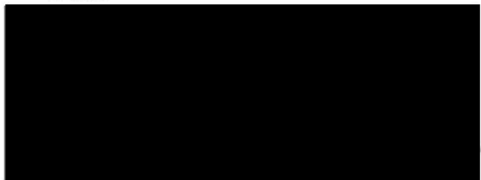
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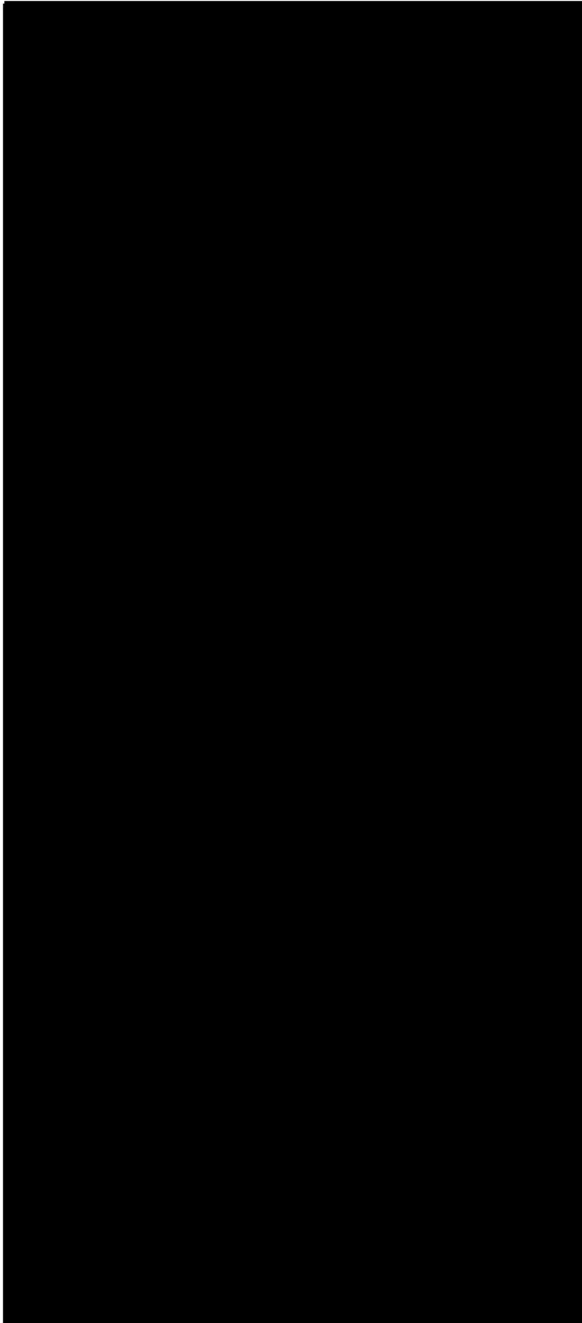


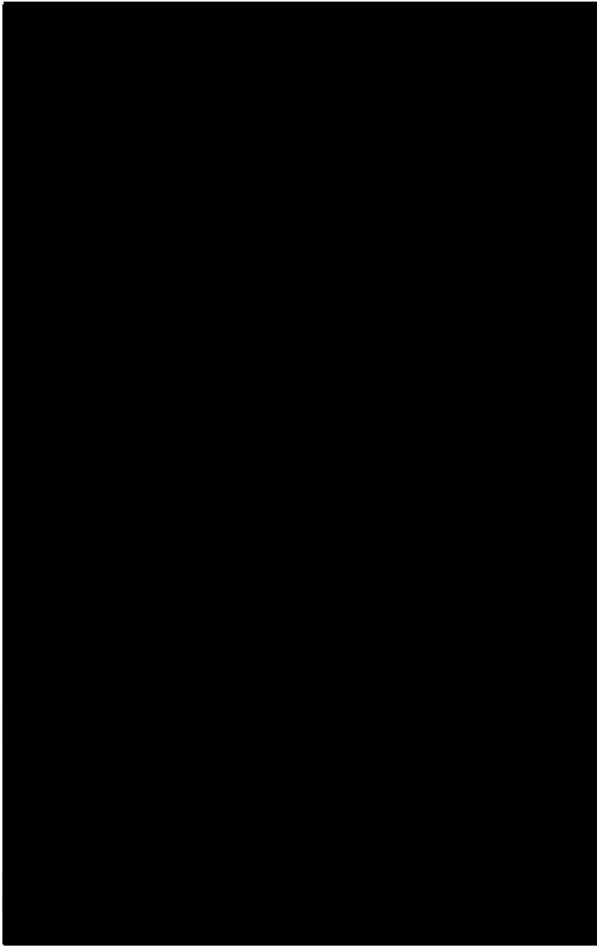
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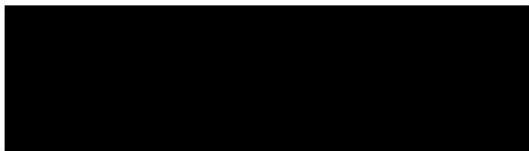


Date 11/22/2021

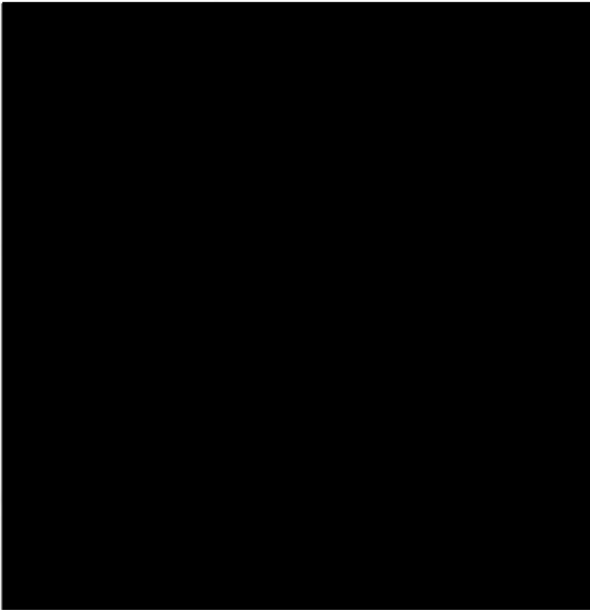




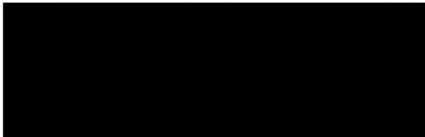
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Date



Date



11/19/2021
Date

Approved as to form and legality:

Thomas DeGonia, Esq., Counsel for Appellants

Date

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11/19/21
Date

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11/19/21
Date

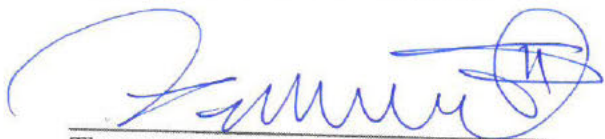
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Thomas Augustine

11/18/2021
Date

[Redacted]

Approved as to form and legality:



Thomas DeGonia, Esq., Counsel for Appellants

11/22/2021
Date

Name	Regular Hours Lt. and Above (non-telework)	Overtime Hours Lt. and Above (non-telework) (includes OT hours resulting in comp. leave earned)
	126	18.5
	1700	171
	1087.5	80
	1732	144
	1458.5	107
	1550	159
	971.5	5.5
	1563	70
	934.75	306.75
	386.75	37
	1356	385.5
	993	129.5
	983.5	30.5
	1647.75	165.75
	1156.5	129.5
	1245	214.5
	1376	83.25
	962.5	55.5
	935.68	16
	1385.25	199.5
	1004.75	154.5
	1239	34
	1034.25	38.5
	1086.25	115.5
	727	102.5
	1280.5	139
	931.5	50.5
	746	62
	1541	313
	1300.5	181.62
	1079	71.5
	1157.5	35.5
	838.5	144.5
	1007.5	50
	1257	171
	1486.25	140.75
	1256	116
	373	60
	1423	144.5
	1453.5	46
	903.75	72.5
	1684.5	137.48
	921.75	130.5
	839.5	47.5
	503	71
Total Hours	50625.68	5019 6

SETTLEMENT AGREEMENT AND RELEASE

[illegible]

Background

On March 5, 2020, Maryland Governor Larry Hogan declared a State of Emergency and Catastrophic Health Emergency in response to the COVID-19 pandemic crisis. The Governor's declaration has been renewed multiple times and remains in place to this day. The County Executive, however, has never declared a state of emergency.

On April 3, 2020, the County entered into agreements with the three employee representative organizations, providing for hazard compensation retroactive to March 29, 2020 for bargaining unit members for the duration of the COVID-19 pandemic. The agreements with FOP Lodge 35 and IAFF Local 1664 provide that all hours worked will be compensated at the rate of \$10 per hour. The County and the three employee representative organizations agreed to end this differential pay on February 14, 2021.

The County passed the corresponding COVID-19 pandemic pay through to some unrepresented employees, but not Fire & Rescue Management, such as Appellants. Appellants filed grievances over the fact they did not receive the \$10 per hour rate, asserting they were working under the same or similar conditions as their subordinates. Those grievances were denied. Appellants then appealed to the Merit System Protection Board, which consolidated their appeals.

Terms of the Agreement

The Parties now find it in their mutual interest to settle this matter as follows:

1) The County agrees to pay Appellants back pay in the form of a ten-dollar (\$10) differential for all regular hours worked onsite between the dates of March 29, 2020 and February 14, 2021. Said payment is subject to withholdings and/or deductions for all applicable taxes. Hours have been calculated based on Appellants' MCTime entries. On May 28, 2021, the County provided Appellants with an accounting of their hours worked from MCTime, which Appellants have reviewed. Appellants have reported telework hours not recorded in MCTime, to the best of their ability. Telework hours do not count towards the back pay differential. Additionally, payment under this Agreement is not intended to constitute a double payment, and to the extent any Appellant already received the \$10 differential for hours worked onsite between March 29, 2020 and February 14, 2021, either as the result of a pass through, membership in IAFF, or otherwise, they will not receive an additional \$10 differential under this Agreement for those hours for which

the Appellant has already received the \$10 differential. The attached and incorporated table titled "Attachment A" sets forth the total "Regular" hours for which each Appellant is to be paid \$10 differential pay, as well as the gross amounts to be paid for such hours, based on the methodology described in this Paragraph.

2) The County agrees to pay Appellants back pay in the form of an additional fifteen-dollar (\$15) differential for all overtime hours worked on-site between the dates of March 29, 2020 and February 14, 2021. Said payment is subject to withholdings and/or deductions for all applicable taxes. On May 28, 2021, the County provided Appellants with an accounting of their overtime hours worked from MCTime. Appellants reviewed those hours and reported any overtime telework hours not recorded in MCTime, to the best of their ability. Overtime telework hours do not count towards the back pay differential. Additionally, payment under this Agreement is not intended to constitute a double payment, and to the extent any Appellant already received the \$15 differential for overtime hours worked onsite between March 29, 2020 and February 14, 2021, either as the result of a pass through, membership in IAFF, or otherwise, they will not receive an additional \$15 differential for those same hours under this Agreement. Further, the overtime rate described herein applies only to this Agreement and does not mean that overtime will be paid at that rate in the future. The attached and incorporated table titled "Attachment A" sets forth the total "Overtime" hours for which each Appellant is to be paid \$15 differential pay, as well as the gross amounts to be paid for such hours, based on the methodology described in this Paragraph. For purposes of this paragraph, Overtime hours include Overtime earned as Comp Time.

3) The Office of Management and Budget, in conjunction with Montgomery County Fire & Rescue Service, has reviewed and verified Appellant's hours. The total gross amount to be paid by the County pursuant to this Agreement, as set forth in Attachment A, shall be \$545,797.50.

4) The Parties understand that this Agreement does not include any promise by the County to include the settlement payments in the calculation of retirement benefits for any Appellant. Further, Appellants agree they will not file any future grievance, appeal, or claim against the County asserting that payments under this agreement should or must be included in the calculation of retirement benefits for any Appellant.

5) The Parties agree Appellants will not receive any compensatory time as part of this Agreement.

6) The Parties agree that the County will not pay Appellants' attorneys' fees as part of this Agreement and the Parties will bear their own attorneys' fees.

7) The Parties agree the terms of this Agreement do not constitute a precedent or practice.

8) Appellants understand that this Agreement is subject to funding approval by the County Council. The County shall submit this Agreement for funding to the County Council, on or before July 30, 2021. The County agrees to provide Appellants' counsel with at least three days' notice of the date on which the County will submit this Agreement to the Council and of the public hearing date for funding approval. The County, including its officers, representatives, and agents,

will support the supplemental appropriations request to fund this Agreement, as it does all supplemental appropriations requests it submits to the County Council.

9) The Parties agree to stay MSPB proceedings in Appellants' consolidated appeal until such time as the County Council renders a funding decision, as described in Paragraph 8 of this Agreement.

10) Appellants agree that if the County Council approves funding, then this Agreement and Release, collectively, constitute a full and complete settlement of all claims which they might have for emergency pay, differential pay, compensatory time, and/or attorneys' fees due to the COVID-19 pandemic and arising out of their County employment prior to the date of this Agreement and Release. Appellants further agree that if the County Council approves funding of this Agreement in its entirety, then they will consent to dismissal of their pending consolidated appeal and further waive any right they might have to pursue any claim, grievance, or action against the County relating to emergency pay, differential pay, and/or compensatory leave arising prior to the date of this Agreement and due to the COVID-19 pandemic in any administrative forum, the Merit System Protection Board, state court or federal court.

11) Within thirty (30) calendar days of the County Council's approval of this Agreement, the County will provide payment of the net amount of the Appellants' backpay by check or electronic transfer to McGillivray Steele Elkin LLP at 1101 Vermont Avenue, N.W., Suite 1000, Washington, D.C. 20005, made payable to McGillivray Steele Elkin LLP. At that time, the County will also provide McGillivray Steele Elkin LLP with an accounting of the amounts withheld and/or deducted, as described in paragraphs 1 and 2, from each Appellant's back pay (e.g., by submitting a paystub for each Appellant or a spreadsheet compiling the information usually contained in a paystub for all Appellants). McGillivray Steele Elkin LLP will distribute to each Appellant his/her net back pay.

12) The County agrees that if the County Council does not approve funding of this Agreement in its entirety, then it will consent to a lifting of the stay and Appellants may continue to pursue their consolidated appeal at the Merit System Protection Board.

13) The Parties agree that in the event the Agreement is not funded in its entirety, then this Agreement is null and void and further, will not be construed to waive any claims or defenses the Parties may have.

14) Appellants agree that they are represented by counsel of their choosing. Further, they represent they are satisfied with the representation they have received. Further, they represent they have read this Agreement and understand the provisions herein and are not relying on any promises or other representations not set forth above as inducement to enter the Agreement, and that they are voluntarily entering into the Agreement.

15) The Parties agree that this Agreement may be signed in counterparts and/or via DocuSign.

[SIGNATURE PAGE FOLLOWS]

Execution of the Agreement

The Agreement is fully executed upon the signature of the Deputy Chief Administrative Officer on behalf of the Chief Administrative Officer and Montgomery County and by all twenty-two Appellants, on their own behalf.


For Appellants:



7/14/2021

Date

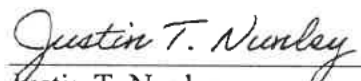
For Montgomery County, Maryland:


Fariba Kassiri
Deputy Chief Administrative Officer
On behalf of Rich Madaleno, Chief Administrative Officer

Date

7/19/21

Approved as to form and legality:


Justin T. Nunley
Associate County Attorney

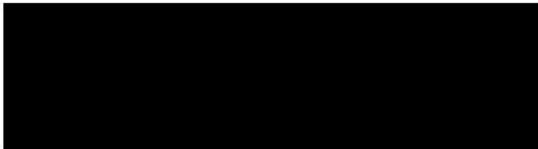
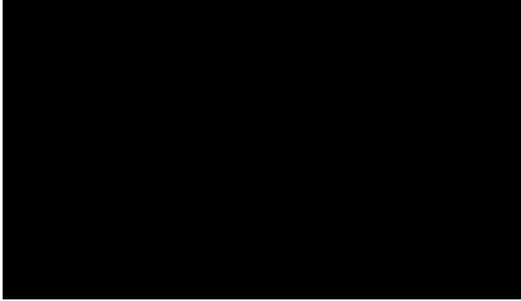
7/19/2021

Date

Execution of the Agreement

The Agreement is fully executed upon the signature of the Deputy Chief Administrative Officer on behalf of the Chief Administrative Officer and Montgomery County and by all twenty-two Appellants, on their own behalf.

For Appellants:



7/14/2021

Date



For Montgomery County, Maryland:



Execution of the Agreement

The Agreement is fully executed upon the signature of the Deputy Chief Administrative Officer on behalf of the Chief Administrative Officer and Montgomery County and by all twenty-two Appellants, on their own behalf.

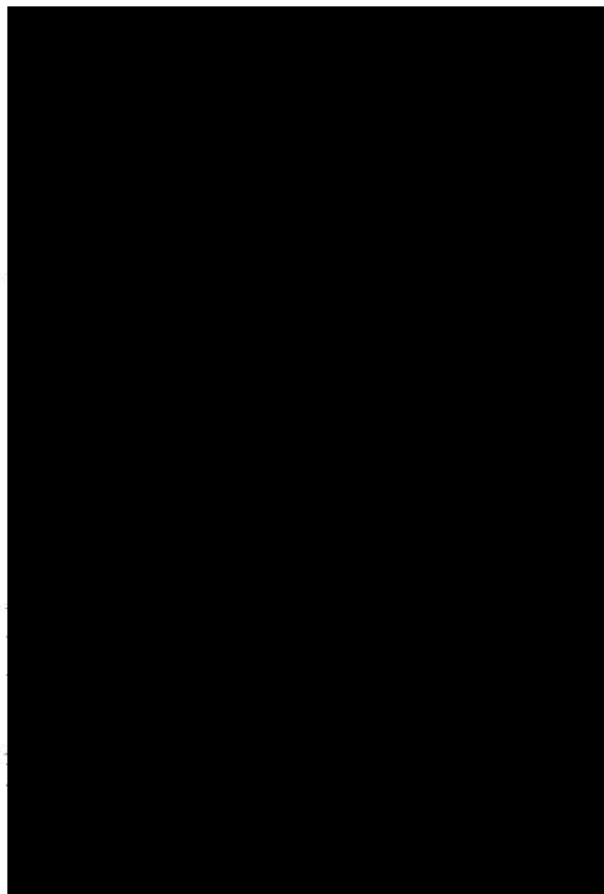
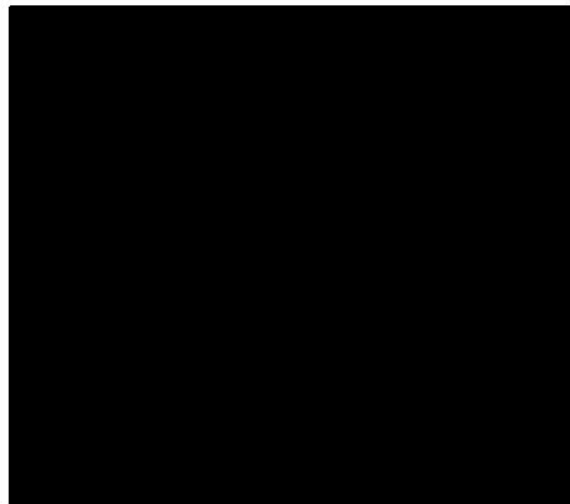
For Appellants:

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7/15/2021

Date

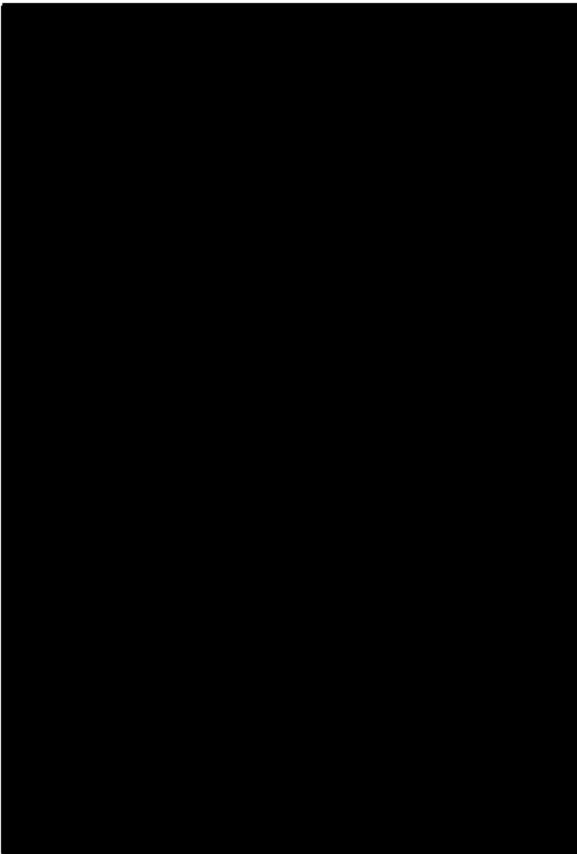
For Montgomery County, Maryland:

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Execution of the Agreement

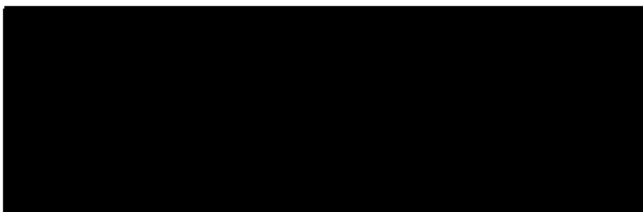
The Agreement is fully executed upon the signature of the Deputy Chief Administrative Officer on behalf of the Chief Administrative Officer and Montgomery County and by all twenty-two Appellants, on their own behalf.

For Appellants:

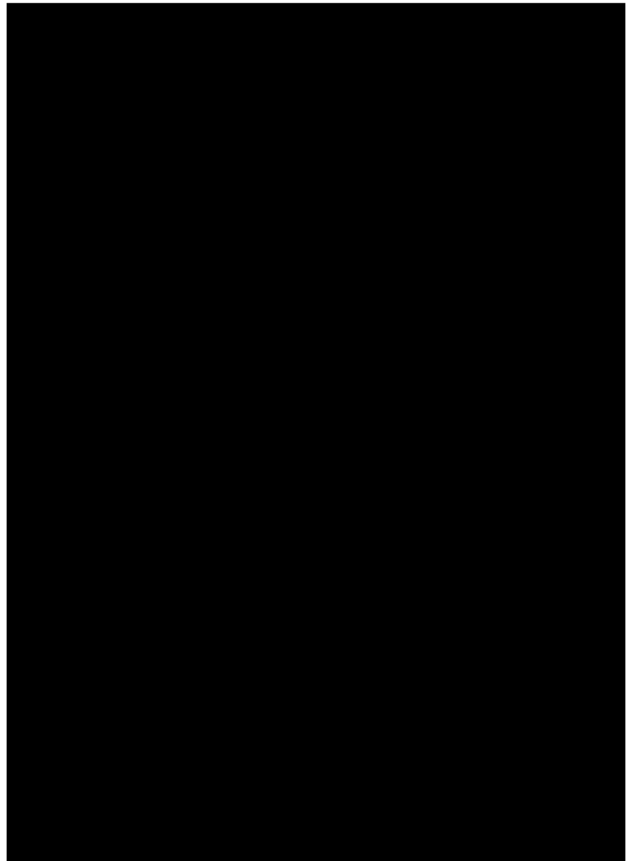
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7/14/2021

Date

A large black rectangular redaction box covering the signature area for the Appellants.

For Montgomery County, Maryland:

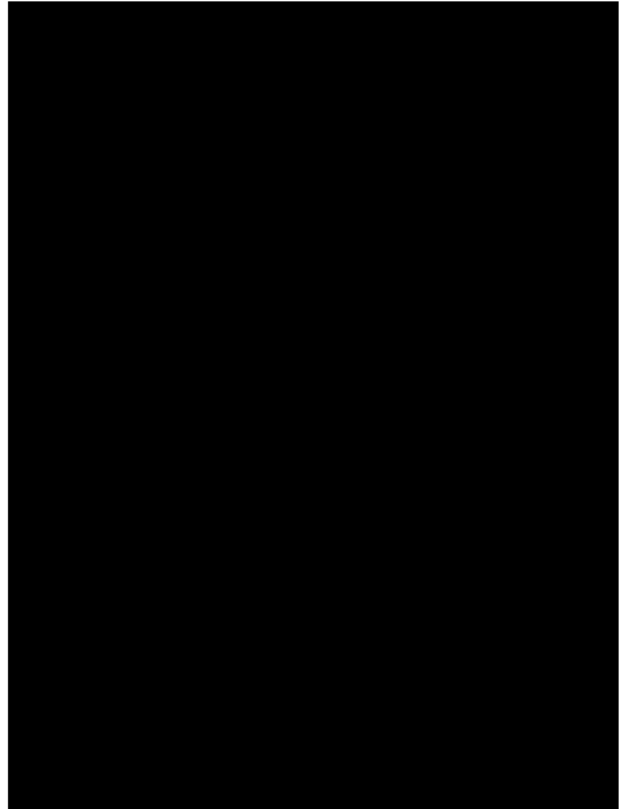

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Execution of the Agreement

The Agreement is fully executed upon the signature of the Deputy Chief Administrative Officer on behalf of the Chief Administrative Officer and Montgomery County and by all twenty-two Appellants, on their own behalf.

For Appellants:

For Montgomery County, Maryland:

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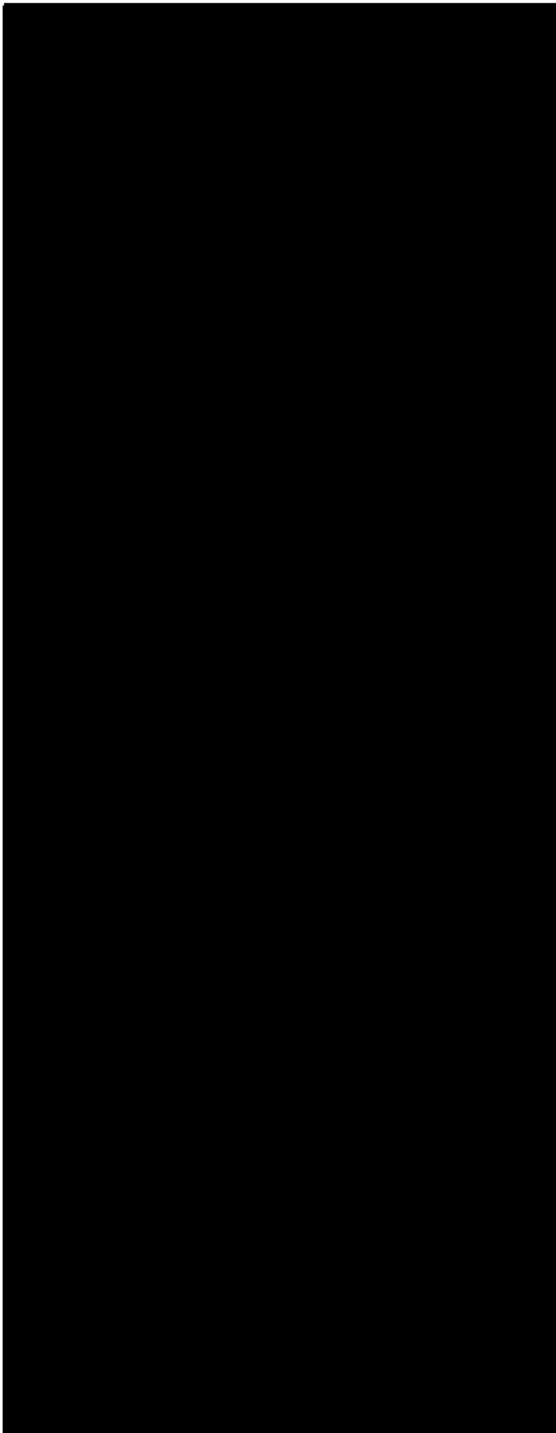
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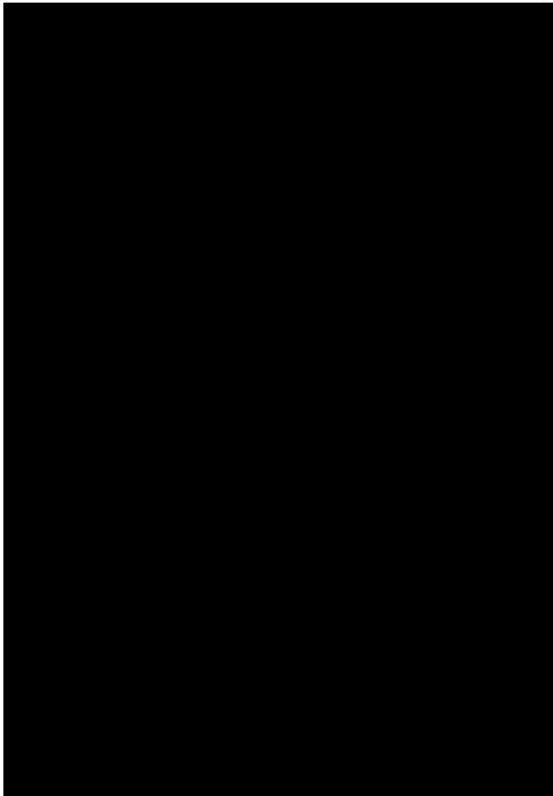
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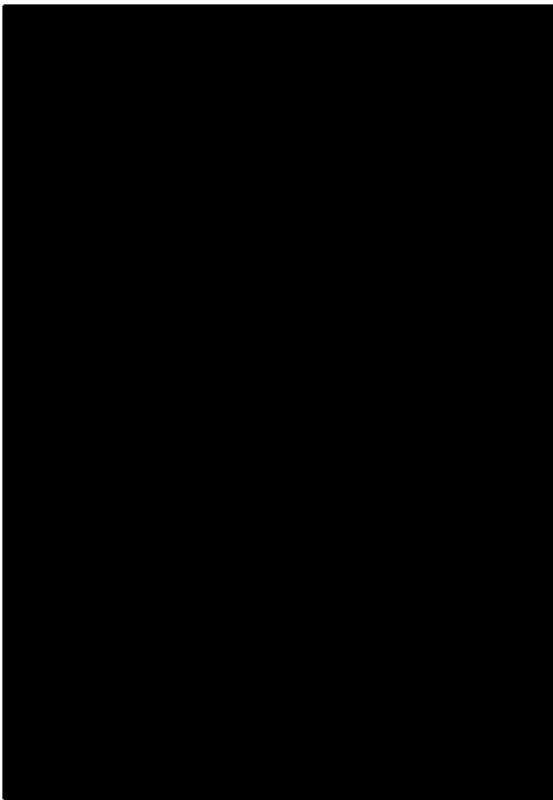
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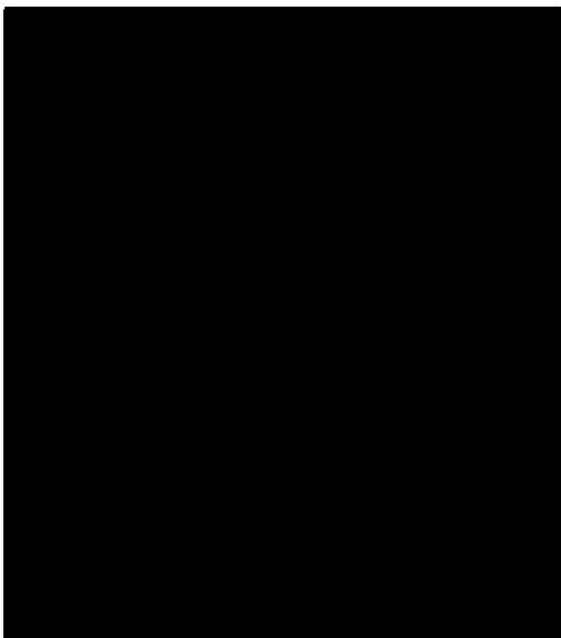
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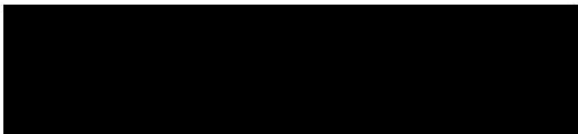
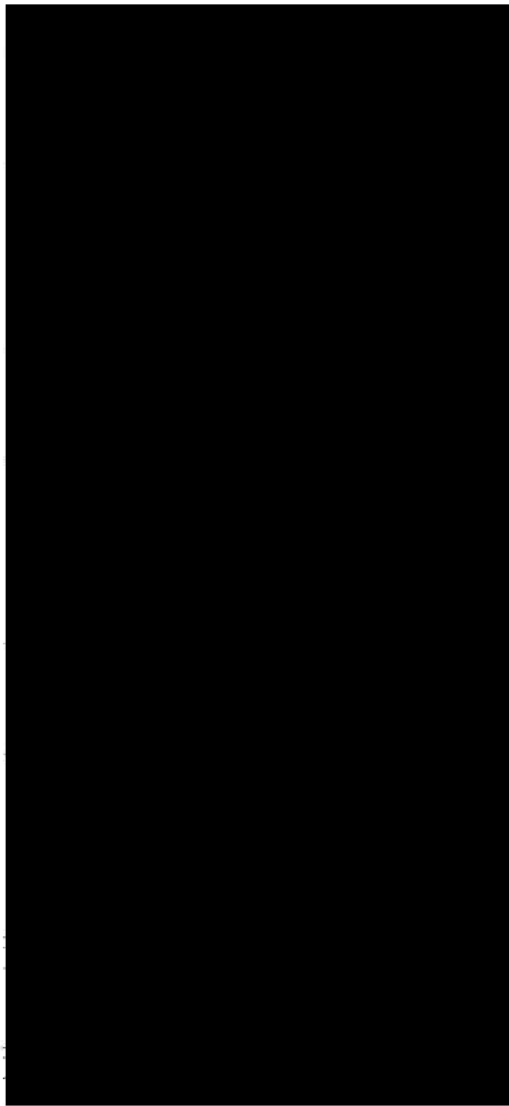




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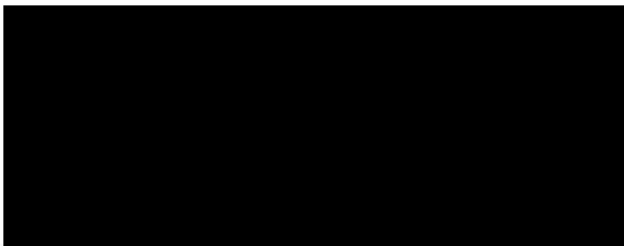
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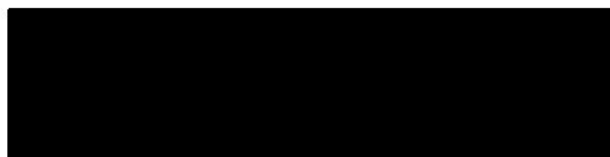
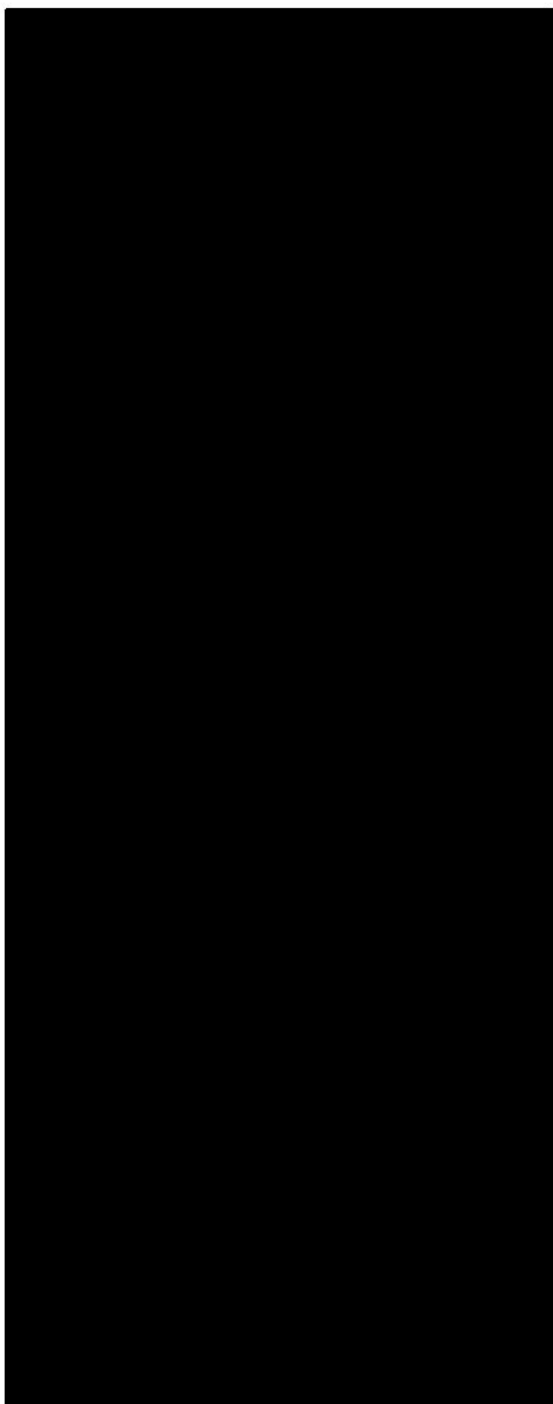




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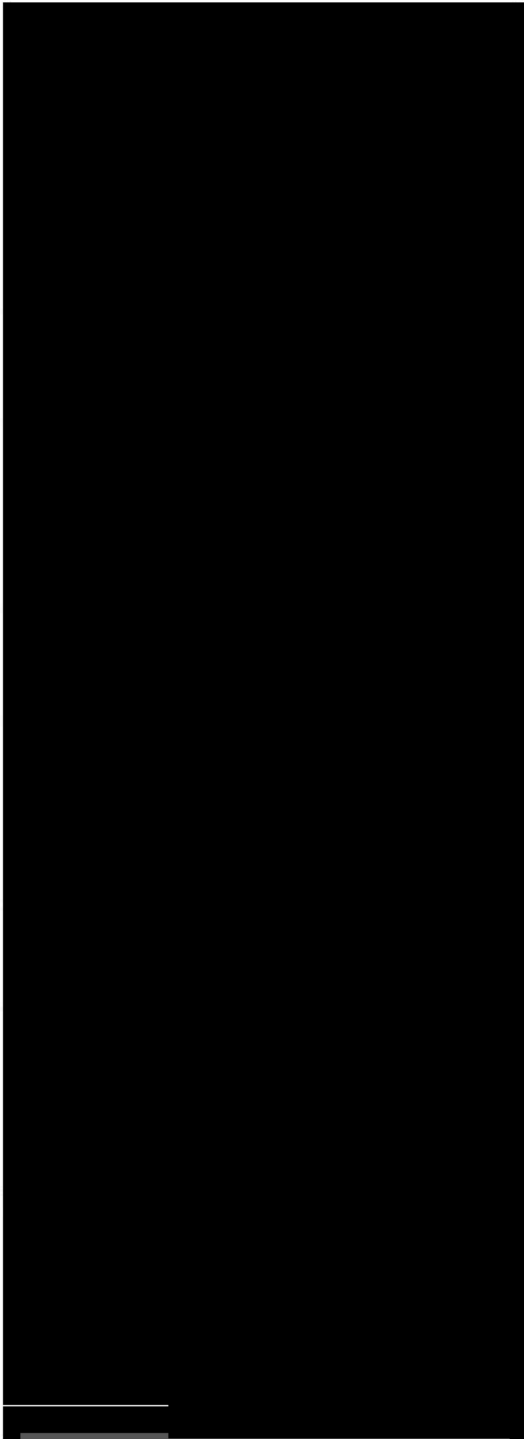
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Date



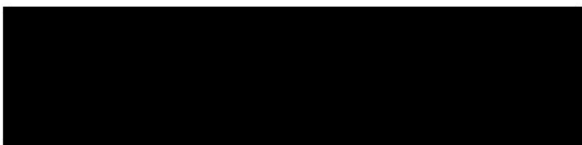
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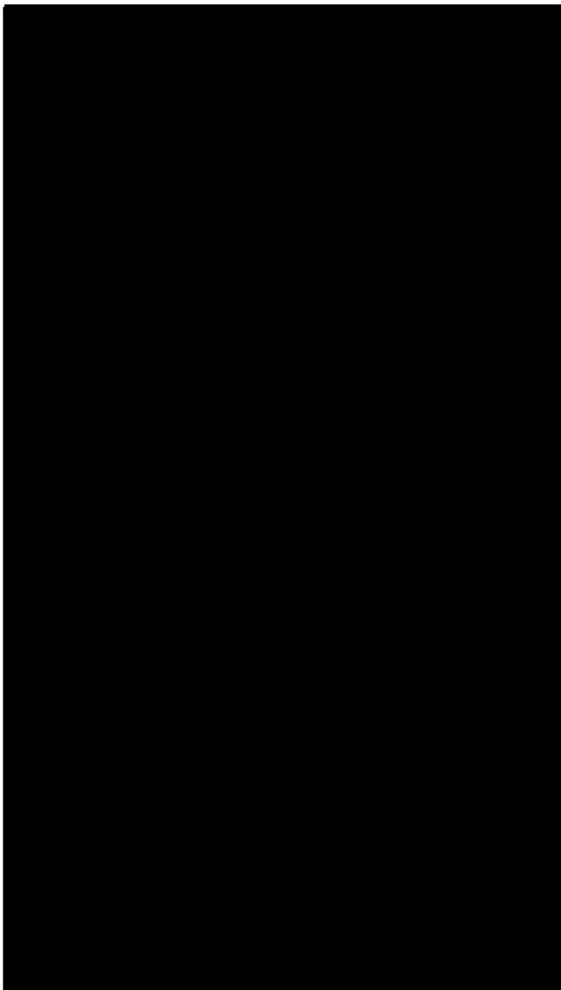
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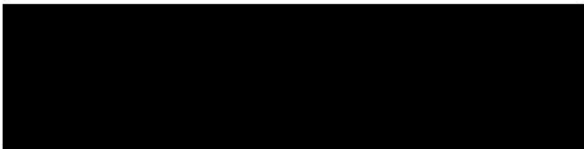
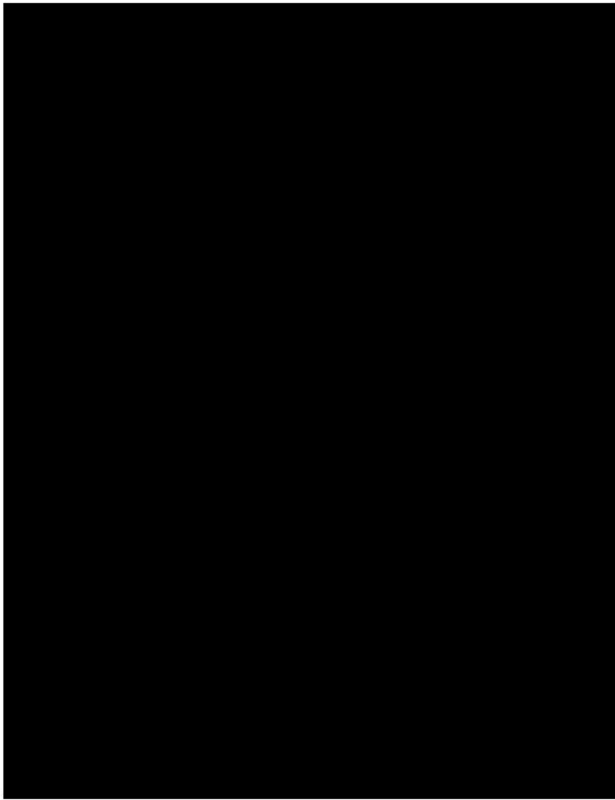
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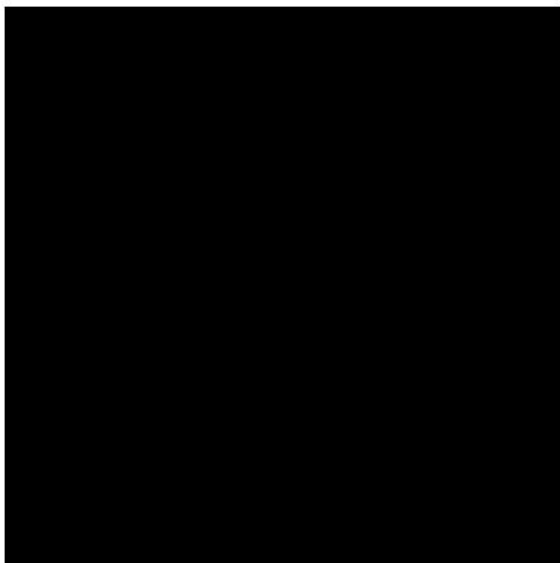
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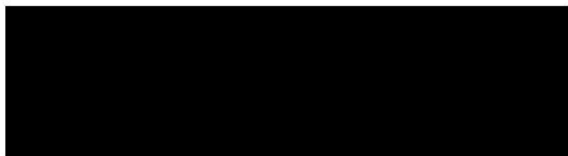
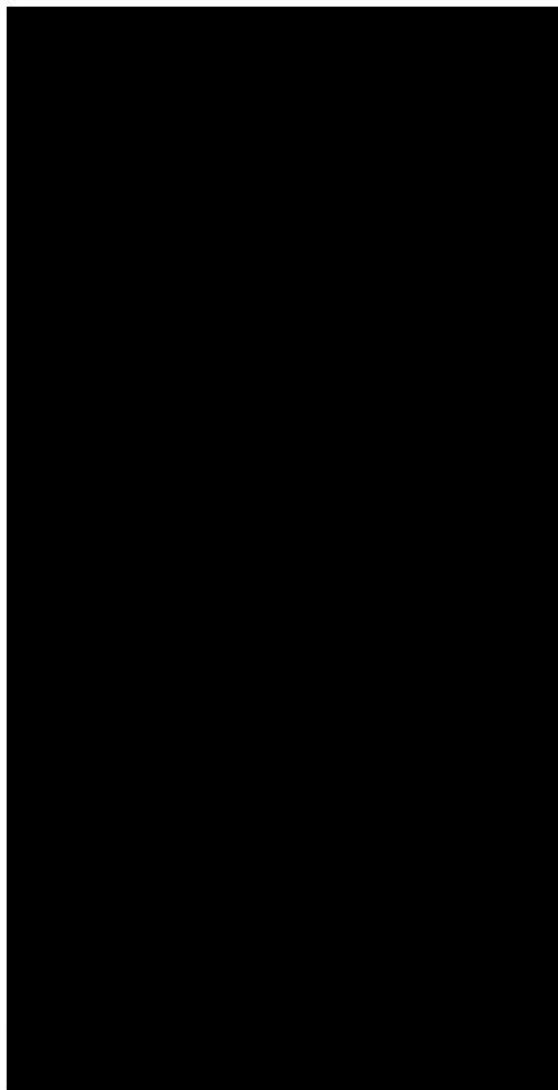




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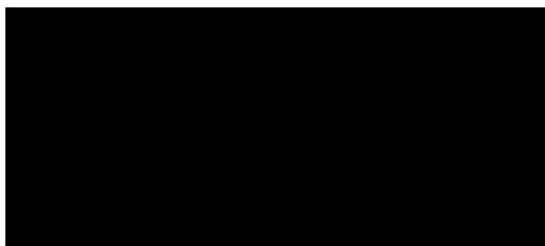
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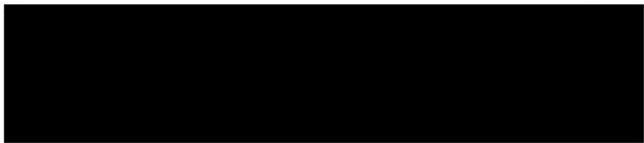
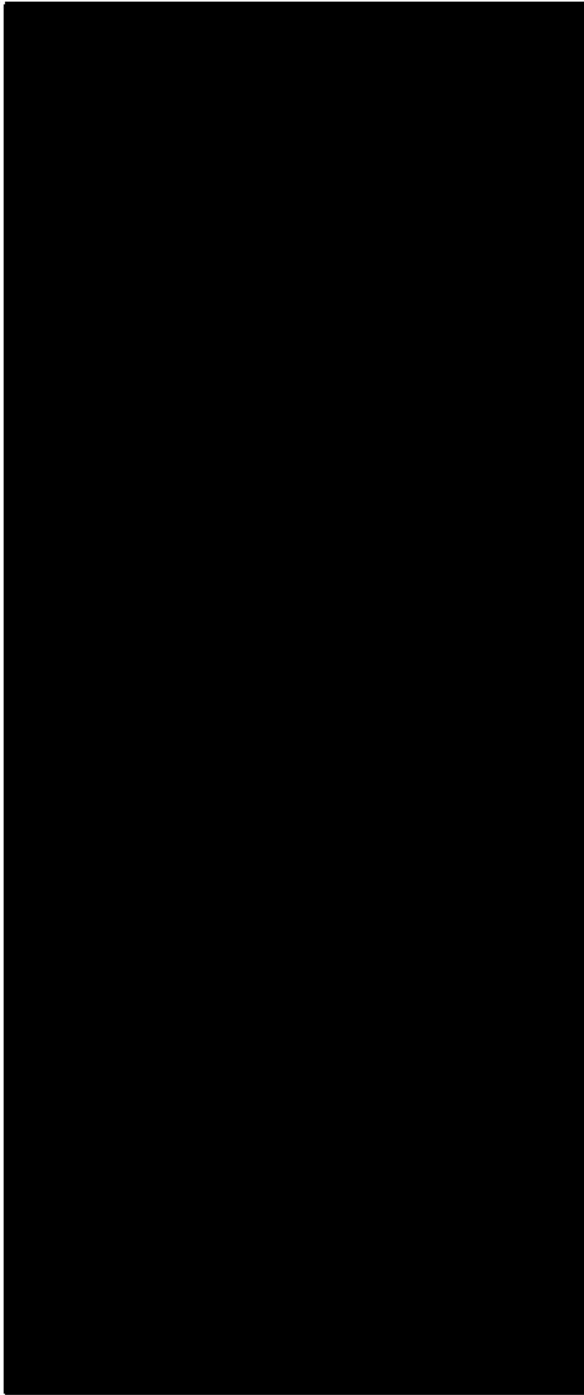




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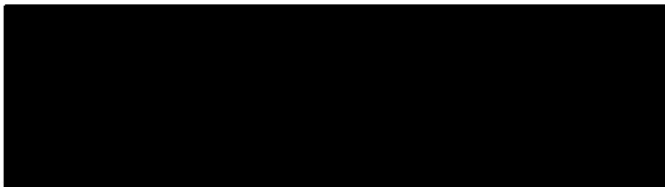
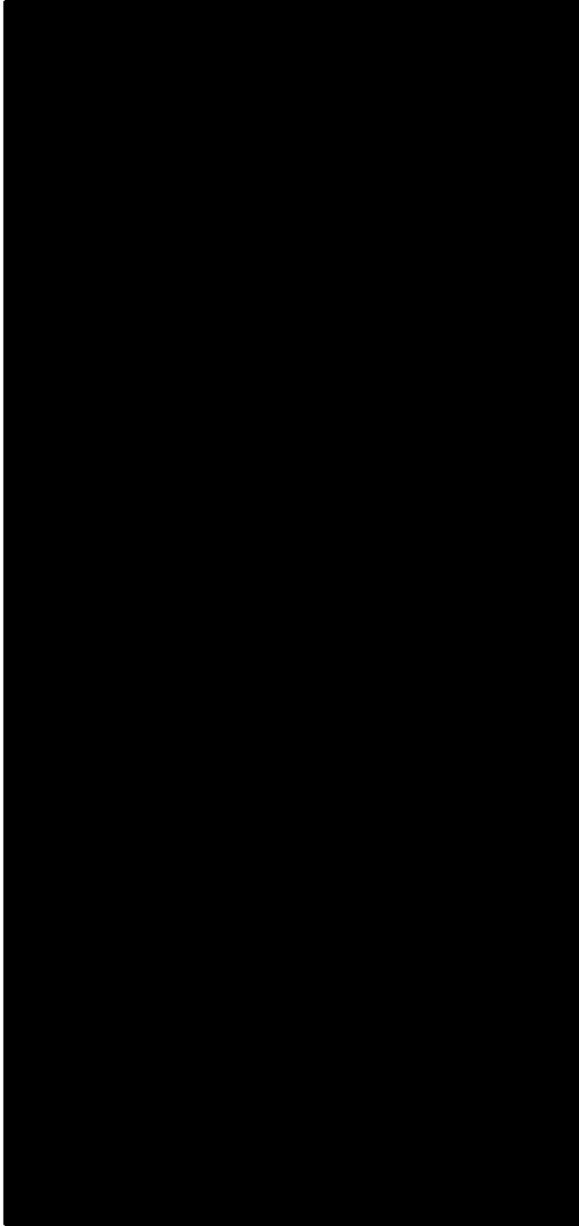
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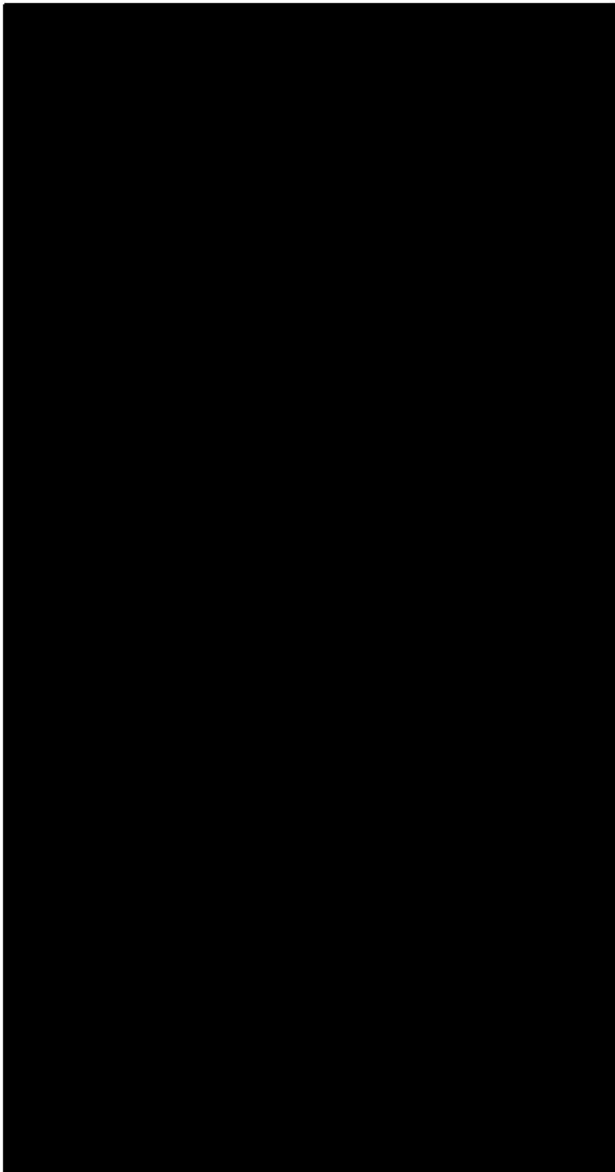
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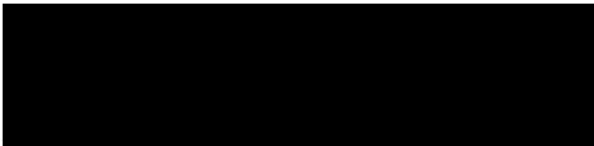
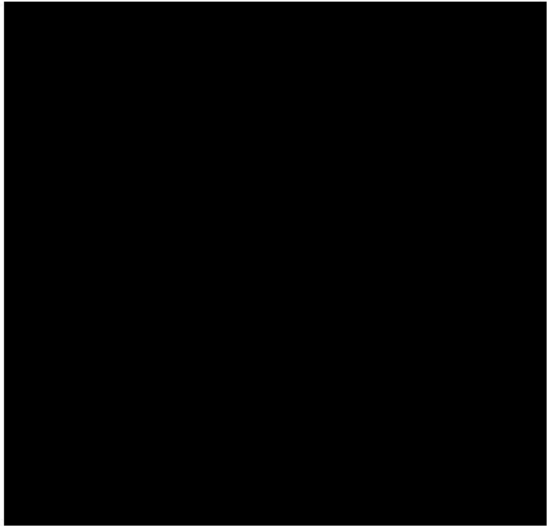




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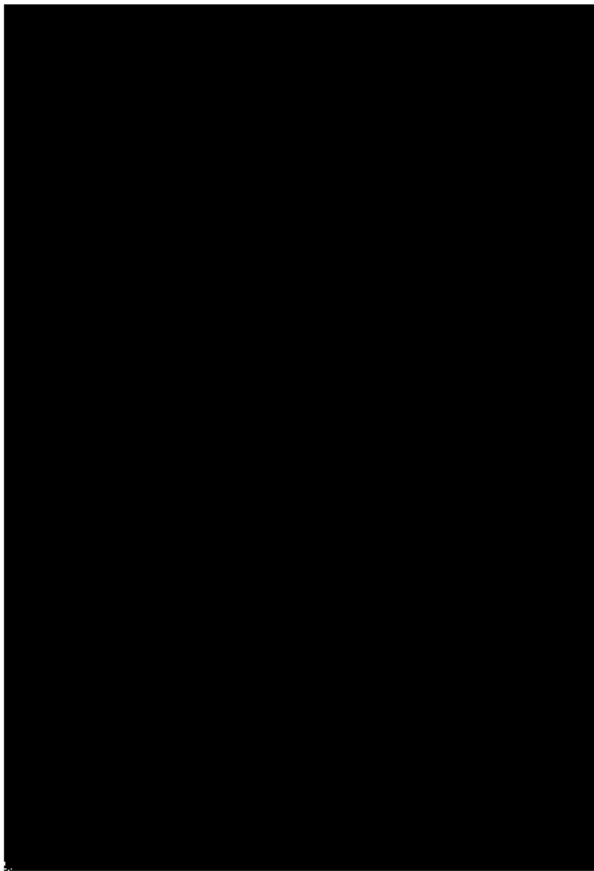
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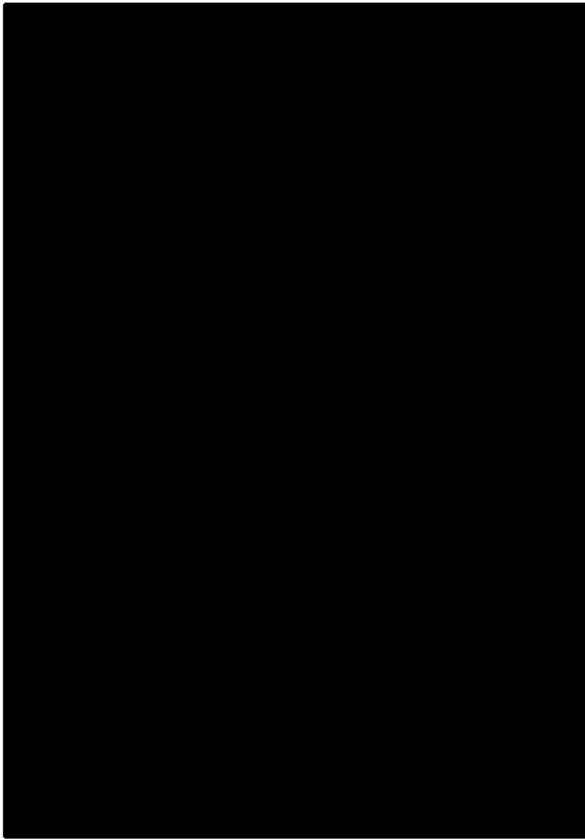




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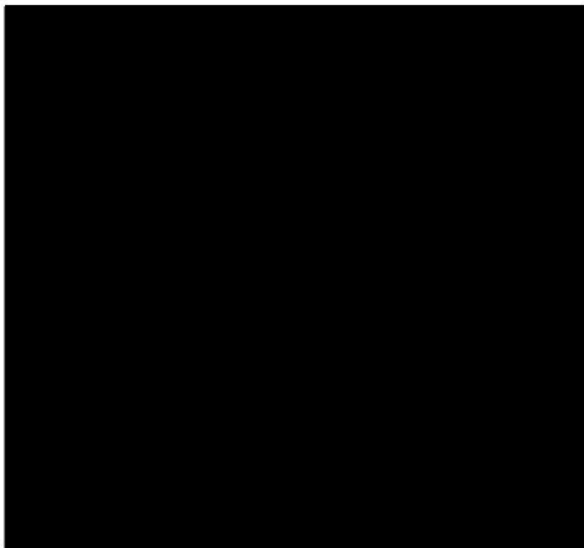
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7/14/2021

Date



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7/14/2021

Date

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Approved as to form and legality:

A handwritten signature in black ink, appearing to read 'John Stewart', written over a horizontal line.

John Stewart, Esq., Counsel for Appellants

7/16/2021

Date

ATTACHMENT A

Appellant	Time Code	Reg Hrs	OT Hrs	COVID19 Premium Pay Due
	MCG Comp Lv 1_0x		48	\$ 720.00
	MCG OT GD 25 Above		755.5	\$ 11,332.50
	MCG Regular Pay	1759		\$ 17,590.00
	MCG Comp Lv 1_0x		3	\$ 45.00
	MCG COVID19 Diff Front Face			\$ (100.00)
	MCG OT GD 25 Above		601	\$ 9,015.00
	MCG Regular Pay	1807.5		\$ 18,075.00
	MCG Comp Lv 1_0x		40	\$ 600.00
	MCG OT GD 25 Above		435.5	\$ 6,532.50
	MCG Regular Pay	1675.75		\$ 16,757.50
	MCG OT GD 25 Above		394.5	\$ 5,917.50
	MCG Regular Pay	1896		\$ 18,960.00
	MCG Comp Lv 1_0x		10	\$ 150.00
	MCG OT GD 25 Above		725	\$ 10,875.00
	MCG Regular Pay	1699		\$ 16,990.00
	MCG COVID19 Diff OT Front			\$ 71.25
	MCG OT GD 25 Above		1286.75	\$ 19,301.25
	MCG Regular Pay	1950		\$ 19,500.00
	MCG OT GD 25 Above		25.5	\$ 382.50
	MCG Regular Pay	1770		\$ 17,700.00
	MCG Comp Lv 1_0x		10.5	\$ 157.50
	MCG OT GD 25 Above		469.25	\$ 7,038.75
	MCG Regular Pay	1783		\$ 17,830.00
	MCG Comp Lv 1_0x		176	\$ 2,640.00
	MCG OT GD 25 Above		1200.25	\$ 18,003.75
	MCG Regular Pay	1582		\$ 15,820.00
	MCG OT GD 25 Above		330	\$ 4,950.00
	MCG Regular Pay	1776		\$ 17,760.00
	MCG Comp Lv 1_0x		86	\$ 1,290.00
	MCG OT GD 25 Above		1115	\$ 16,725.00
	MCG Regular Pay	1772		\$ 17,720.00
	MCG Comp Lv 1_0x		51.5	\$ 772.50
	MCG OT GD 25 Above		246.9	\$ 3,703.50
	MCG Regular Pay	1646.15		\$ 16,461.50
	MCG OT GD 25 Above		450.5	\$ 6,757.50
	MCG Regular Pay	876.5		\$ 8,765.00
	MCG OT GD 25 Above		229	\$ 3,435.00
	MCG Regular Pay	1627.5		\$ 16,275.00
	MCG OT GD 25 Above		422	\$ 6,330.00
	MCG Regular Pay	1740		\$ 17,400.00
	MCG OT GD 25 Above		541.75	\$ 8,126.25
	MCG Regular Pay	1922		\$ 19,220.00
	MCG OT GD 25 Above		170	\$ 2,550.00
	MCG Regular Pay	1645		\$ 16,450.00
	MCG COVID19 Diff Front Face			\$ (642.50)
	MCG OT GD 25 Above		700	\$ 10,500.00
	MCG Regular Pay	1592		\$ 15,920.00
	MCG OT GD 25 Above		334	\$ 5,010.00
	MCG Regular Pay	1938		\$ 19,380.00
	MCG Comp Lv 1_0x		10.25	\$ 153.75
	MCG COVID19 Diff Front Face			\$ (240.00)
	MCG OT GD 25 Above		692.25	\$ 10,383.75
	MCG Regular Pay	1835		\$ 18,350.00
	MCG OT GD 25 Above		115	\$ 1,725.00
	MCG Regular Pay	1546		\$ 15,460.00
	MCG OT GD 25 Above		686.75	\$ 10,301.25
	MCG Regular Pay	290		\$ 2,900.00
	Totals:	36128.4	12361.65	\$ 545,797.50

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("the Agreement") is made this 19 day of July, 2021, by and between Montgomery County, Maryland and all its officers, agents, and employees of Montgomery County Government, jointly and severally, who will be referred to, collectively, as the County, ("the County") and [REDACTED] ("Appellant") (collectively "the Parties").

Background

On March 5, 2020, Maryland Governor Larry Hogan declared a State of Emergency and Catastrophic Health Emergency in response to the COVID-19 pandemic crisis. The Governor's declaration has been renewed multiple times and remains in place to this day. The County Executive, however, has never declared a state of emergency.

On April 3, 2020, the County entered into agreements with the three employee representative organizations, providing for hazard compensation retroactive to March 29, 2020 for bargaining unit members for the duration of the COVID-19 pandemic. The agreements with FOP Lodge 35 and IAFF Local 1664 provide that all hours worked will be compensated at the rate of \$10 per hour. The County and the three employee representative organizations agreed to end this differential pay on February 14, 2021.

The County passed the corresponding COVID-19 pandemic pay through to some unrepresented employees, but not Fire & Rescue Management, such as Appellant. Appellant filed a grievance over the fact he did not receive the \$10 per hour rate, asserting he was working under the same or similar conditions as his subordinates. That grievance was denied. Appellant then appealed to the Merit System Protection Board.

Terms of the Agreement

The Parties now find it in their mutual interest to settle this matter as follows:

1) The County agrees to pay Appellant back pay in the form of a ten-dollar (\$10) differential for all regular hours worked onsite between the dates of March 29, 2020 and February 14, 2021. Said payment is subject to withholdings and/or deductions for all applicable taxes. Hours have been calculated based on Appellant's MCTime entries. The County provided Appellant with an accounting of his hours worked from MCTime, which Appellant has reviewed. Appellant has reported telework hours not recorded in MCTime, to the best of his ability. Telework hours do not count towards the back pay differential. Additionally, payment under this Agreement is not intended to constitute a double payment, and to the extent Appellant already received the \$10 differential for hours worked onsite between March 29, 2020 and February 14, 2021, either as the result of a pass through, membership in IAFF, or otherwise, he will not receive an additional \$10 differential under this Agreement for those hours for which the Appellant has already received the \$10 differential. The agreed number of "Regular" hours for which each Appellant is to be paid \$10 differential pay is 850 hours.

2) The County agrees to pay Appellant back pay in the form of an additional fifteen-dollar (\$15) differential for all overtime hours worked on-site between the dates of March 29, 2020 and February 14, 2021. Said payment is subject to withholdings and/or deductions for all applicable taxes. The County provided Appellant with an accounting of his overtime hours worked from MCTime. Appellant reviewed those hours and reported any overtime telework hours not recorded in MCTime, to the best of his ability. Overtime telework hours do not count towards the back pay differential. Additionally, payment under this Agreement is not intended to constitute a double payment, and to the extent Appellant already received the \$15 differential for overtime hours worked onsite between March 29, 2020 and February 14, 2021, either as the result of a pass through, membership in IAFF, or otherwise, he will not receive an additional \$15 differential for those same hours under this Agreement. Further, the overtime rate described herein applies only to this Agreement and does not mean that overtime will be paid at that rate in the future. The agreed number of overtime hours for which each Appellant is to be paid \$15 differential pay is 338 hours.

3) The Office of Management and Budget, in conjunction with Montgomery County Fire & Rescue Service, has reviewed and verified Appellant's hours. The total gross amount to be paid by the County pursuant to this Agreement, based on the hours set forth in paragraphs 1 and 2 above, shall be \$13,570.

4) The Parties understand that this Agreement does not include any promise by the County to include the settlement payments in the calculation of retirement benefits for Appellant. Further, Appellant agrees he will not file any future grievance, appeal, or claim against the County asserting that payments under this agreement should or must be included in the calculation of retirement benefits for Appellant.

5) The Parties agree Appellant will not receive any compensatory time as part of this Agreement.

6) Appellant is presently representing himself. Nonetheless, the Parties agree that the County will not pay Appellant's attorneys' fees as part of this Agreement and the Parties will bear their own attorneys' fees.

7) The Parties agree the terms of this Agreement do not constitute a precedent or practice.

8) Appellant understands that this Agreement is subject to funding approval by the County Council. The County shall submit this Agreement for funding to the County Council, on or before July 30, 2021. The County agrees to provide Appellant with at least three days' notice of the date on which the County will submit this Agreement to the Council and of the public hearing date for funding approval. The County, including its officers, representatives, and agents, will support the supplemental appropriations request to fund this Agreement, as it does all supplemental appropriations requests it submits to the County Council.

9) The Parties agree to stay MSPB proceedings in Appellant's appeal until such time as the County Council renders a funding decision, as described in Paragraph 8 of this Agreement.

10) Appellant agrees that if the County Council approves funding, then this Agreement and Release, collectively, constitute a full and complete settlement of all claims which he might have for emergency pay, differential pay, compensatory time, and/or attorneys' fees due to the COVID-19 pandemic and arising out of his County employment prior to the date of this Agreement and Release. Appellant further agrees that if the County Council approves funding of this Agreement in its entirety, then he will consent to dismissal of his pending appeal and further waive any right he might have to pursue any claim, grievance, or action against the County relating to emergency pay, differential pay, and/or compensatory leave arising prior to the date of this Agreement and due to the COVID-19 pandemic in any administrative forum, the Merit System Protection Board, state court or federal court.

11) Within thirty (30) calendar days of the County Council's approval of this Agreement, the County will provide payment of the net amount of the Appellant via payroll direct deposit, with an accounting of the amounts withheld and/or deducted pay (e.g., by submitting a paystub).

12) The County agrees that if the County Council does not approve funding of this Agreement in its entirety, then it will consent to a lifting of the stay and Appellant may continue to pursue his appeal at the Merit System Protection Board.

13) The Parties agree that in the event the Agreement is not funded in its entirety, then this Agreement is null and void and further, will not be construed to waive any claims or defenses the Parties may have.

14) Appellant acknowledges he is representing himself. Further, he represents he has read this Agreement and understands the provisions herein and is not relying on any promises or other representations not set forth above as inducement to enter the Agreement, and that he is voluntarily entering into the Agreement.

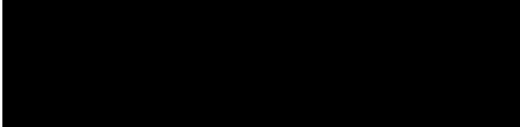
15) The Parties agree that this Agreement may be signed in counterparts and/or via DocuSign.

[SIGNATURE PAGE FOLLOWS]

Execution of the Agreement


The Agreement is fully executed upon the signature of the Deputy Chief Administrative Officer on behalf of the Chief Administrative Officer and Montgomery County and by Appellant, on his own behalf.

For Appellant:



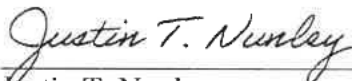
7/16/21
Date

For Montgomery County, Maryland:


Fariba Kassiri
Deputy Chief Administrative Officer
On behalf of Rich Madaleno, Chief Administrative Officer

7/19/21
Date

Approved as to form and legality:


Justin T. Nunley
Associate County Attorney

7/19/2021
Date

SETTLEMENT AGREEMENT AND RELEASE

20 THIS SETTLEMENT AGREEMENT AND RELEASE (the Agreement) is made this day of July, 2021, by and between Montgomery County, Maryland and all its officers, agents, and employees of Montgomery County Government, jointly and severally, who will be referred to, collectively, as the County, ("the County") and [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] ("Appellants") (collectively "the Parties").

Background

On March 5, 2020, Maryland Governor Larry Hogan declared a State of Emergency and Catastrophic Health Emergency in response to the COVID-19 pandemic crisis. The Governor's declaration has been renewed multiple times and remains in place to this day. The County Executive, however, has never declared a state of emergency.

On April 3, 2020, the County entered into agreements with the three employee representative organizations, providing for hazard compensation retroactive to March 29, 2020 for bargaining unit members for the duration of the COVID-19 pandemic. The agreements with FOP Lodge 35 and IAFF Local 1664 provide that all hours worked will be compensated at the rate of \$10 per hour. The agreement with MCGEO includes two rates - \$3 per hour for back office work (*i.e.*, work that does not involve direct contact with the public) and \$10 per hour for front facing work (*i.e.*, work that requires public interaction that cannot be safely socially distanced). The County and the three employee representative organizations agreed to end this differential pay on February 14, 2021.

The County passed the corresponding COVID-19 pandemic pay through to some unrepresented employees, but not Sheriff management, such as Appellants. Appellants filed grievances indicating they were entitled to emergency pay, at a rate of double their regular hourly rate, but indicated they were willing to accept the same differential the Unions received in lieu of emergency pay. The grievances were denied. Appellants then appealed to the Merit System Protection Board, which consolidated their appeals.

Terms of the Agreement

The Parties now find it in their mutual interest to settle this matter as follows:

1) The County agrees to pay Appellants back pay in the form of a ten-dollar (\$10) differential for all regular front-facing hours worked between the dates of March 29, 2020 and February 14, 2021. Said payment is subject to withholdings and/or deductions for all applicable taxes. Hours have been calculated based on Appellants' MCTime entries. On June 10, 2021, the County provided Appellants with an accounting of their hours worked from MCTime, which Appellants have reviewed. Appellants have reported telework hours not recorded in MCTime, to the best of their ability. Telework hours do not count towards the back pay differential. Additionally, payment under this Agreement is not intended to constitute a double payment, and to the extent any Appellant already received the \$10 differential for hours worked onsite between

March 29, 2020 and February 14, 2021, either as the result of a pass through, membership in MCGEO, or otherwise, they will not receive an additional \$10 differential under this Agreement for those hours for which the Appellant has already received the \$10 differential. The attached and incorporated table titled "Attachment A" sets forth the total "Regular" hours for which each Appellant is to be paid \$10 differential pay, as well as the gross amounts to be paid for such hours, based on the methodology described in this Paragraph.

2) The County agrees to pay Appellants back pay in the form of an additional fifteen-dollar (\$15) differential for all front-facing overtime hours worked between the dates of March 29, 2020 and February 14, 2021. Said payment is subject to withholdings and/or deductions for all applicable taxes. On June 10, 2021, the County provided Appellants with an accounting of their overtime hours worked from MCTime. Appellants reviewed those hours and reported any overtime telework hours not recorded in MCTime, to the best of their ability. Overtime telework hours do not count towards the back pay differential. Additionally, payment under this Agreement is not intended to constitute a double payment, and to the extent any Appellant already received the \$15 differential for overtime hours worked onsite between March 29, 2020 and February 14, 2021, either as the result of a pass through, membership in MCGEO, or otherwise, they will not receive an additional \$15 differential for those same hours under this Agreement. Further, the overtime rate described herein applies only to this Agreement and does not mean that overtime will be paid at that rate in the future. The attached and incorporated table titled "Attachment A" sets forth the total "Overtime" hours for which each Appellant is to be paid \$15 differential pay, as well as the gross amounts to be paid for such hours, based on the methodology described in this Paragraph.

3) The Office of Management and Budget, in conjunction with Montgomery County Sheriff's Office, has reviewed and verified Appellant's hours. The total gross amount to be paid by the County pursuant to this Agreement is based upon the hours set forth in Attachment A and shall be \$207,851.94.

4) The Parties understand that this Agreement does not include any promise by the County to include the settlement payments in the calculation of retirement benefits for any Appellant. Further, Appellants agree they will not file any future grievance, appeal, or claim against the County asserting that payments under this agreement should or must be included in the calculation of retirement benefits for any Appellant.

5) The Parties agree Appellants will not receive any compensatory time as part of this Agreement.

6) The Parties agree that the County will not pay Appellants' attorneys' fees as part of this Agreement and the Parties will bear their own attorneys' fees.

7) The Parties agree the terms of this Agreement do not constitute a precedent or practice.

8) Appellants understand that this Agreement is subject to funding approval by the County Council. The County shall submit this Agreement for funding to the County Council, on

or before July 30, 2021. The County agrees to provide Appellants' counsel with at least three days' notice of the date on which the County will submit this Agreement to the Council and of the public hearing date for funding approval. The County, including its officers, representatives, and agents, will support the supplemental appropriations request to fund this Agreement, as it does all supplemental appropriations requests it submits to the County Council.

9) The Parties agree to stay MSPB proceedings in Appellants' consolidated appeal until such time as the County Council renders a funding decision, as described in Paragraph 8 of this Agreement.

10) Appellants agree that if the County Council approves funding, then this Agreement and Release, collectively, constitute a full and complete settlement of all claims which they might have for emergency pay, differential pay, compensatory time, and/or attorneys' fees due to the COVID-19 pandemic and arising out of their County employment prior to the date of this Agreement and Release. Appellants further agree that if the County Council approves funding of this Agreement in its entirety, then they will consent to dismissal of their pending consolidated appeal and further waive any right they might have to pursue any claim, grievance, or action against the County relating to emergency pay, differential pay, and/or compensatory leave arising prior to the date of this Agreement and due to the COVID-19 pandemic in any administrative forum, the Merit System Protection Board, state court or federal court.

11) Within thirty (30) calendar days of the County Council's approval of this Agreement, the County will provide payment of the net amount of the Appellants' backpay to each Appellant via payroll direct deposit, with an accounting of the amounts withheld and/or deducted, as described in paragraphs 1 and 2, from each Appellant's back pay (e.g., by submitting a paystub for each Appellant).

12) The County agrees that if the County Council does not approve funding of this Agreement in its entirety, then it will consent to a lifting of the stay and Appellants may continue to pursue their consolidated appeal at the Merit System Protection Board.

13) The Parties agree that in the event the Agreement is not funded in its entirety, then this Agreement is null and void and further, will not be construed to waive any claims or defenses the Parties may have.

14) Appellants agree that they are represented by counsel of their choosing. Further, they represent they are satisfied with the representation they have received. Further, they represent they have read this Agreement and understand the provisions herein and are not relying on any promises or other representations not set forth above as inducement to enter the Agreement, and that they are voluntarily entering into the Agreement.

15) The Parties agree that this Agreement may be signed in counterparts and/or via DocuSign.

[SIGNATURE PAGE FOLLOWS]

Execution of the Agreement

The Agreement is fully executed upon the signature of the Deputy Chief Administrative Officer on behalf of the Chief Administrative Officer and Montgomery County and by all fifteen Appellants, on their own behalf.

For Appellants:



7/8/2021
Date



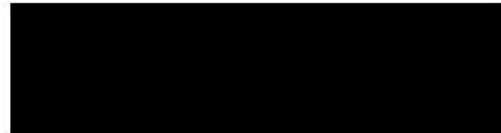
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Date



07/12/2021
Date




07/06/2021
Date



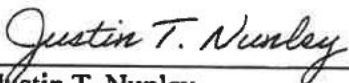
7/8/2021
Date

For Montgomery County, Maryland:


Fariba Kassiri
Deputy Chief Administrative Officer
On behalf of Rich Madaleno, Chief Administrative Officer

7/20/21
Date

Approved as to form and legality:


Justin T. Nunley
Associate County Attorney

07/20/2021
Date

[Redacted]

7/7/2021
Date

[Redacted]

07/07/21
Date

[Redacted]

07-06-2021
Date

[Redacted]

7/6/21
Date

[Redacted]

7/7/2021
Date

[Redacted]

07/07/2021
Date



7/7/21
Date



7-7-21
Date



7-9-21
Date



7/7/21
Date

Approved as to form and legality:

Thomas DeGonia, Esq., Counsel for Appellants

7/19/2021
Date



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Marc Elrich
County Executive

July 2, 2020

Korri Faria
Emergency Management Specialist
Program Delivery Manager (PDMG)
Public Assistance Division
Recovery Dictorate
Office of Response and Recovery

Re: Montgomery County (MD) Government FEMA Reimbursement Request Related to the
COVID-19 Pandemic Costs State Disaster No. 4491DR-MD - COVID19

Dear Ms. Faria:

I submit this letter in support of the Montgomery County (MD) Government's request for reimbursement for costs related to the COVID-19 pandemic. This letter should provide you with the necessary context regarding the relationship between the County and the labor organizations who represent County employees to support the approval of the maximum possible reimbursement for overtime, premium pay, and compensatory costs arising from the pandemic.

The County understands that FEMA determines the eligibility of overtime, premium pay, and compensatory time costs based on the Applicant's pre-disaster written labor policy, provided that the policy: (1) does not include a contingency clause that payment is subject to Federal funding; (2) is uniformly applied regardless of the Presidential declaration that Applicant is a disaster zone; and (3) has set non-discretionary criteria for when the Applicant activates various pay types. In this case, the County satisfies all three criteria with respect to the COVID-19-related compensation expenditures.

The County's employees are represented by three bargaining units. The Fraternal Order of Police Montgomery County Lodge No. 35, Inc. (FOP) represents police officers. The Montgomery County Career Fire Fighters Association, International Association of Fire Fighters, Local 1664, AFL-CIO (IAFF) represents firefighters. The United Food and Commercial Workers, Local 1994, Municipal and County Government Employees Organization (MCGEO) represents office, professional, technical, service, labor, and trade employees within the County. Each bargaining unit has entered into a collective bargaining agreement (CBA) with the County governing the compensation and working conditions under which the represented employees are expected to operate. Each bargaining unit's CBA has an effective date of July 1, 2019 and an expiration date of June 30, 2020.¹

¹ All three unions have entered into new CBAs with the County, which take effect on July 1, 2020 and expire on either June 30, 2022 (IAFF) or June 30, 2023 (FOP, MCGEO). Copies of these agreements will be forwarded to FEMA once the documents are finalized.

Within each bargaining unit's CBA, there is a term that requires the County to provide additional compensation to employees in the event of declared emergency. In all three agreements, a "general emergency" is defined as any period of time determined to be an emergency, such as inclement weather conditions, which requires the County offices to close and services to be discontinued, except for emergency services. *See* IAFF CBA Sec. 18.1; FOP CBA Art. 15, Sec. B(1); MCGEO CBA Sec. 5.17(a). In the event of a general emergency, bargaining unit members under each agreement are entitled to "twice their regular hourly rate," including if the employee is in an overtime status, for any hours the employee is required to work. *See* IAFF CBVA Sec. 18.2; FOP CBA Art. 15, Sec. B(2); MCGEO CBA Sec. 5.17(b).²

Historically, the general emergency pay provisions – which have been a part of the County's personnel regulations and CBAs for decades – have been applied in discrete, regional emergency events. For example, in June 2012, the Derecho struck the DC Capital Region causing roughly 1,600,000 people to lose power in Maryland. In October 2012, Hurricane Sandy, a Category 2 storm, brought another powerful storm to the area. In January 2016, a crippling blizzard struck the Region leaving record levels of snow in its wake. In response to each of these events, a State of Emergency was declared, the emergency pay provisions were triggered, and FEMA reimbursed the County for the emergency pay tied to the overtime hours worked toward the disaster response.

In this case, the event triggering the emergency pay provision of the CBAs is the global COVID-19 pandemic. On March 5, 2020, Maryland Governor Larry Hogan declared a State of Emergency in response to the growing crisis, which expressly referenced and applied to the 24 counties in Maryland. The Governor's declaration has been extended multiple times and remains in place to this day. On March 26, 2020, the Federal government granted the State of Maryland a Major Disaster Declaration, thereby making the State eligible for federal aid. These events – the Governor's emergency declarations, further reinforced by the Federal government's disaster declaration – triggered the emergency pay provisions of the CBAs.

The County and our union partners quickly realized that the terms of the emergency pay provisions, while unquestionably invoked, were a financial catastrophe for the County. These provisions simply were not written anticipating a sustained emergency event that could last months if not years. Accordingly, the parties came together to negotiate a temporary modification of the emergency pay provisions, reducing the rate of pay from double pay to a package including a flat \$10 per hour for employees who directly deal with the public, \$3 per hour for those who are required to work onsite but with little public interaction, a grant of compensatory leave, liberal administrative leave, and telework. The historic agreements to modify the emergency pay rate in the existing CBAs were signed on April 3, 2020, took effect on March 26, 2020, and do not expire until the Governor's Declaration of Emergency is lifted. As a result of reaching agreement with the unions to reduce the emergency pay rate, the County has been able to continue to provide critical services to the County's more than 1 million residents and the County's financial exposure has been reduced significantly. Indeed, the

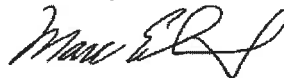
² Identical provisions can be found in the successor CBAs that will take effect on July 1, 2020. (68)

estimated cost to the County had it paid the double rate described in the CBAs would likely have cost in excess of \$80 million over the period between March 26, 2020 and June 20, 2020. The negotiated pay package, which revised the emergency pay term of the CBAs, reduced that cost to just over \$20 million for that same period of time – a significant savings.

Based upon these facts and the terms of the CBAs and the April 3, 2020 modification agreements, there is little doubt that the County's costs associated with COVID-19 premium, overtime, and compensatory time meet each of the identified FEMA criteria for reimbursement. The CBAs with the emergency pay provisions were in place well before the COVID-19 pandemic began and the April 3rd modifications were made to ensure fiscal stability. The associated costs should, therefore, be eligible for reimbursement by FEMA.

I would be happy to discuss this with you at your convenience and am available to answer any questions you might have.

Sincerely,



Marc Elrich
County Executive

cc: Andrew Kleine, Chief Administrative Officer
Fariba Kassiri, Deputy Chief Administrative Officer
Steven Blivess, Acting Chief Labor Relations Officer
Earl Stoddard, Director, Office of Emergency Management and Homeland Security
Michael Goldfarb, Office of Emergency Management and Homeland Security
Richard Madaleno, Director, Office of Management and Budget

ADDENDUM
Agenda Item #19.5
December 14, 2021
Action

ADDENDUM

December 13, 2021

TO: County Council

FROM: Craig Howard, Deputy Director

SUBJECT: Supplemental Appropriation to the Fiscal Year 2022 Operating Budget, Montgomery County Government, Merit System Protection Board Grievances: Montgomery County Fire and Rescue Service, \$602,159; Montgomery County Sheriff's Office, \$223,757; and Montgomery County Police Department, \$629,039

PURPOSE: Final Action – Vote Expected

This addendum supplements the staff report for Item #19.5 on the County Council's December 14, 2021 agenda. The purpose of this addendum is to provide two items that were received or transmitted after the publication of the staff report:

- 1) A memorandum dated December 10, 2021 from Marc Hansen, County Attorney responding to the Council's request during the November 30 discussion to provide a written explanation as to whether he would have recommended the grievance settlements without the existence of the July 2 FEMA letter. The County Attorney's memorandum is attached at ©71-73.
- 2) A memorandum dated December 9, 2021 sent to the County Executive and Chief Administrative Officer by the Council President on behalf of the County Council. This memorandum is attached at ©74-75.



OFFICE OF THE COUNTY ATTORNEY

Marc Elrich
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Gabe Albornoz, President
Montgomery County Council

FROM: Marc P. Hansen *Marc Hansen*
County Attorney

DATE: December 10, 2021

RE: COVID-19 Pay Grievance Settlement

During the Council session on November 30, 2021, I recommended that the Council approve a supplemental appropriation to fund a settlement agreement that would resolve grievances filed by 83 public safety managers who were seeking COVID pay in the amount of \$10 per hour (Settlement Agreement). Council asked that I provide it with written confirmation of the reasons why I recommended settlement of these grievances.

There was a significant probability that the Merit System Protection Board would have found that the COVID pandemic created a *de facto* emergency, which would have entitled, as a matter of pay equity, the public safety managers to \$10 per hour COVID pay. In support of this conclusion, I noted the following:

- 1) COVID had created a global pandemic.
- 2) The Federal Government had issued Maryland a major disaster declaration.
- 3) Governor Hogan had declared a state of emergency for the entire State.
- 4) The County Government had closed most County facilities.

These four factors, standing alone, justified a conclusion that the Merit Board likely would have found that a *de facto* emergency existed.

In addition, I would add that the County had agreed with MCGEO, IAFF, and FOP that represented members of public safety agencies would be entitled to \$10 per hour COVID pay; in exchange the unions relinquished any claim for emergency pay that might have been due under the applicable collective bargaining agreements—which if successfully invoked would have entitled represented employees to double pay. Given that public safety managers were incurring

the same risk as the public safety employees that they supervised, the Merit Board would likely have concluded that the managers should, as a matter of pay equity, receive the same \$10 per hour COVID pay. Moreover, settlement at \$10 per hour was prudent because it foreclosed any possibility of the managers obtaining emergency pay (*i.e.* double pay) that might be due under the Personnel Regulations. Finally, the managers waived their claim for attorney fees under the Settlement Agreement.

Some Councilmembers specifically asked what role the July 2, 2020, letter sent by the County Executive to FEMA requesting federal reimbursement for COVID pay, played in my recommendation that the Council should approve funding of the Settlement Agreement. Although I acknowledged that the FEMA letter was a factor in reaching my conclusion that the Settlement Agreement was in the best interests of the County, I observed that I would have recommended settlement even if the FEMA letter had not been written. The factors identified in 1-4, above, were sufficient reasons for me supporting the Settlement Agreement, and these factors existed independent and apart from the FEMA letter.

A councilmember asked why the Council was being asked to approve the Settlement Agreement, but that the Council had not been asked to approve the Memoranda of Agreements (MOA's) entered in April 2020 with MCGEO, IAFF, and FOP to pay \$10 per hour COVID pay to public safety employees in exchange for foregoing any claim that the pandemic triggered emergency pay under the collective bargaining agreements.

I stated that the Settlement Agreement was before the Council because there were insufficient appropriated funds to pay the settlement amount to the 83 public safety managers—hence, a supplemental appropriation was necessary. By contrast, there appeared to be sufficient appropriated funds to cover the \$10 per hour COVID pay—at least for a period of time. I understand that OMB has provided Council with an explanation of the funding authority under which COVID pay provided for in the MOA's was funded.

I further noted that the MOA's were settlements of potential litigation and the County Executive was authorized, under Section 20-2 of the County Code, to settle potential litigation. Finally, I noted that the County Executive's authority to settle pending or potential litigation is subject to the availability of appropriated funds, and that if available appropriated funds became insufficient to fund the MOA's, then the Executive would have been obligated to stop COVID pay and seek additional appropriation authority from the Council.

cc: Evan Glass, Vice President, County Council
Andrew Friedson, County Council
Tom Hucker, County Council
Will Jawando, County Council
Sidney Katz, County Council
Nancy Navarro, County Council
Craig Rice, County Council
Hans Riemer, County Council


Robert Drummer, Sr. Legislative Attorney
Marlene Michaelson, Executive Director, County Council
Craig Howard, Deputy Director, County Council
Marc Elrich, County Executive
Rich Madaleno, Chief Administrative Officer
Ken Hartman, Assistant Chief Administrative Officer
John Markovs, Deputy County Attorney
Silvia Kinch, Chief, Division of Labor Relations & Public Safety
Justin Nunley, Associate County Attorney



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

M E M O R A N D U M

TO: Marc Elrich, County Executive
Richard Madaleno, Chief Administrative Officer

FROM: Gabe Albornoz, Council President 

DATE: December 9, 2021

SUBJECT: Revised Supplemental Appropriation to the Montgomery County FY22 Operating Budget Merit System Protection Board Grievances

The following is sent on behalf of the County Council.

On September 21, 2021, the County Council was informed of a letter that the County Executive sent on July 2, 2020, to the Federal Emergency Management Agency (FEMA). We were disappointed to learn about this letter after the fact, and further, to read several statements that directly contradicted the position of the Executive Branch, the County Council, and the County Attorney related to the COVID-19 pandemic and the “emergency pay” provision in the County’s collective bargaining agreements. This letter put the County in a legally indefensible position related to employee grievances, and we were disturbed to learn that a letter carrying such significant legal and fiscal consequences was not reviewed for approval by the Office of the County Attorney (OCA) prior to its distribution (and that OCA only recently learned of the letter when researching the grievances that were filed).

This issue raises serious concerns with Executive Branch processes and protocols, including:

1. Negotiating agreements for COVID hazard pay that had no set end date and were never sent to the Council for approval, resulting in over \$89,000,000 in unplanned and unbudgeted expenditures.
2. Erroneously assuming and insisting during public sessions, despite guidance to the contrary, that FEMA would reimburse the County for most if not all the \$89,000,000 COVID hazard pay. As a result, approximately \$70,000,000 in Federal Coronavirus Reliefs Funds were used to fund COVID hazard pay that could have been used to provide direct assistance to residents.

3. Failing to submit a COVID stipend agreement reached with MCVFRA to the Council for approval and subsequently spending \$789,677 without a Council appropriation, in violation of the County Charter.
4. Failure to send the Council associated legislation with the collective bargaining agreements when required by law.
5. Failure to publish collective bargaining agreements online and failure to address issues regarding newly negotiated side agreements.

We must take action to identify the problems, mitigate the damage done, and ensure that this pattern of miscommunication and mismanagement comes to a definitive end. As a course correction, the Council is requesting the following information and actions:

1. We request that both the County Executive and the Chief Administrative Officer appear before the Montgomery County Council for review of these issues.
2. Provide all emails, memoranda, and/or other documents related to or discussing the July 2, 2020, letter that the County Executive sent to FEMA.
3. Provide a written description of the required review process for letters or memos sent by the County Executive or Chief Administrative Officer, including who reviews them and in which order before a signature is approved. If this review process differs from what was required under prior administrations, please note any changes and why they were made.
4. Effective immediately, provide the Council with prompt notice whenever any litigation, grievance, or unfair labor practice is filed against the County that may have a potential significant fiscal or policy impact.

Please provide all requested materials within two weeks of receipt of this letter.