



Monterey County

Board Order

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Agreement No.: A-12299

Upon motion of Supervisor Salinas, seconded by Supervisor Armenta, and carried by those members present, the Board of Supervisors hereby:

Approved the Memorandum of Understanding (MOU) for Deputy Public Defenders Association Unit D for July 1, 2012 through June 30, 2014.

PASSED AND ADOPTED on this 28th day of August 2012, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker, and Potter

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on August 28, 2012.

Dated: September 5, 2012
File Number: 12-726

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy

MEMORANDUM OF UNDERSTANDING

BETWEEN

**COUNTY OF MONTEREY
&
MONTEREY COUNTY PUBLIC
DEFENDERS' ASSOCIATION**

UNIT D

July 1, 2012 – June 30, 2014

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1. PARTIES

This Agreement is made and entered into between the County of Monterey (herein called the "County"), and the Monterey County Public Defenders' Association, an unincorporated association ("Association").

This agreement shall be effective and binding only upon final approval by the Association and the Monterey County Board of Supervisors. Any provision of this Agreement requiring the Board of Supervisors' action shall not become effective until approved by the Board.

2. AUTHORIZED AGENTS

For the purposes of administering the terms and conditions of this Memorandum of Understanding:

Management's principal authorized agent shall be the County Administrative Officer, or his/her duly authorized representative: mailing address: 168 West Alisal St, 3rd Floor, Salinas, California 93901, telephone (831) 755-5116.

Association's principal authorized agent shall be:

Larry Alan Katz
2055 Junction Avenue
Suite 232
San Jose, CA 95131

3. TERM

The term of this Memorandum of Understanding is from July 1, 2012 to June 30, 2014.

4. WAGES

The County will provide an equity increase to the base salary schedule of Deputy Public Defenders III and IV only, as follows:

For FY 2012-2013: 0.19% increase base salary schedule to Deputy Public Defenders, Level III.; 2.375% increase of base salary schedule to Deputy Public Defenders, Level IV.

For FY 2013-2014: 0% increase base salary schedule to Deputy Public Defenders, Level III; 2.3234% increase of base salary schedule to Deputy Public Defenders, Level IV.

There shall be no salary re-opener during the term covered by this Agreement.

5. INSURANCE BENEFITS

The County will provide medical insurance through the Public Employees' Retirement System (PERS) medical insurance program. All rules, regulations and procedures with respect to plan eligibility, benefits, claims payments and customer service procedures, etc for the CalPERS plans are established by CalPERS. The County makes no representations or guarantees whatsoever with respect to the CalPERS health insurance plans.

Permanent unit employees who are regularly scheduled to work 40 hours or more in a pay period will be eligible to participate in any of the County's health insurance programs. If a retired employee meets all eligibility requirements and requests health insurance coverage, the County will contribute toward the monthly premium as directed by CalPERS: changes annually.

5.1 Flexible Benefits Plan

A. General Provisions

The County will make available a Flexible Benefits Plan to all employees. Employees may elect from the following optional benefits:

- Employee medical coverage under CalPERS
- Dependent medical coverage under CalPERS
- No medical coverage
- Employee dental coverage under the County's self-funded plan
- Dependent dental coverage under the County's self-funded plan
- No dental coverage
- Employee vision coverage under VSP
- Dependent vision coverage under VSP
- No vision coverage
- Any other eligible optional benefits which may be made available by the County through this Flexible Benefits plan

Additional Payroll Deduction

For each month when the benefit options selected by the employee under this plan exceed the appropriate County non-elective and elective contributions for that employee, that employee shall pay by pre or post-tax payroll deduction the full cost (100%) which exceeds the County's contributions for that employee.

In-Lieu Payout

For each month that the full County non-elective and elective contributions are not used by an employee to obtain benefit options under this plan, the full amount of funds not utilized may be paid in taxable cash.

Flexible Benefits Plan Administration

The provisions, rules and regulations governing the administration of the Flexible Benefits Plan are contained in the Flexible Benefits Plan document. Changes may be required from time to time to maintain the integrity of this flexible benefits plan as a lawful IRS Section 125 plan. The County and the Union agree that the County shall have discretion to make such changes to ensure this plan is eligible for favorable treatment under the Internal Revenue Code. The County may add or remove benefit options to or from this plan during the term of this agreement, subject to the obligation of the parties to meet and confer only over the impact of such changes. Removal of a benefit shall occur only if the benefit is deemed contrary to public law or regulation governing I.R.S. Section 125 benefit plans, is no longer available by vendor, or becomes insolvent.

B. County Non-Elective Contributions

The County maximum non-elective contributions toward the Flexible Benefits Plan will be as indicated below.

The County shall not contribute any non-elective amounts toward the employee's purchase of any other optional benefits which may be provided by the County through the Flexible Benefits Plan.

Employees shall not have the option of using the non-elective contributions for any other purpose other than for purchasing employee health, employee dental and employee vision insurance. Non-elective contributions not used to purchase employee health, dental and vision insurance will be forfeited.

Health Insurance Contribution

The County's maximum non-elective contribution to the Flexible Benefits Plan for health insurance coverage will be as directed by CalPERS: changes annually.

Dental Insurance Contribution

The County's maximum non-elective contribution to the Flexible Benefits Plan for dental coverage will be equal to the cost of the employee only monthly premium for all eligible permanent employees. During the term of this contract, should the dental (employee only premium) non-elective contribution/premium increase, the County will pay the increase. Should, during the term of this contract, the non-elective contribution/premium for dental (employee only premium) decrease, the County shall retain the savings from the decrease.

Vision Insurance Contribution

The County's maximum non-elective contribution to the Flexible Benefits Plan for vision coverage will be equal to the cost of the employee only monthly premium for all eligible

permanent employees. During the term of this contract, should the vision (employee only premium) non-elective contribution/premium increase, the County will pay the increase. Should, during the term of this contract, the non-elective contribution/premium for vision (employee only premium) decrease, the County shall retain the savings from the decrease.

C. County Elective Contributions

The County maximum monthly elective contribution to the employee's Flexible Benefits Plan spending fund will be as follows:

Full-time, permanent unit employees will receive full flex credits. Flex credits are subject to change annually based on Health Plan Premiums.

Part-time, permanent unit employees who are scheduled to work a minimum of forty (40) hours, but less than sixty-four (64) hours will receive half flex credits. Flex credits are subject to change annually based on Health Plan Premiums.

The employee contribution to medical insurance premiums shall remain at the current benefit level of \$0.00/mo or cash back (employee only); up to \$61/mo or cash back (employee plus one); and \$100/mo (employee plus family) for CalPERS Choice.

Any balance of elective funds remaining after the employee elects health insurance may be utilized, at the employee's discretion, toward the purchase of dependent health, dependent dental, or dependent vision insurance and/or any other eligible optional benefits which may be made available by the County through this Flexible Benefits Plan. The use of any elective contributions toward the purchase of the benefits stated above is subject to the employee first selecting employee health insurance coverage under PERS.

5.2 Alternative Benefit Option

Eligible, full-time unit employees, who are regularly scheduled to work sixty-four (64) hours or more per pay period, providing proof of alternative health insurance coverage shall be reimbursed up to:

Monthly County Contribution

Employee/Subscriber up to \$263.00 (Monthly)

Dependent up to \$424.00 (Monthly)

Eligible, part-time unit employees, who are scheduled to work a minimum of forty (40) hours but less than sixty-four (64) hours in a pay period, providing proof of alternative health insurance coverage, shall be reimbursed up to:

Monthly County Contribution

Employee/Subscriber up to \$131.50 (Monthly)

Dependent up to \$212.00 (Monthly)

Part-time unit employees, who are scheduled to work less than forty (40) hours in a pay period, are not eligible for the Alternative Benefit Option.

Employees choosing the ABO option cannot apply ABO benefit dollars towards options under the Flexible Benefits Plan.

Administration of this option shall be subject to the County guidelines. County and Union may, by mutual agreement, agree to reopen this Article and meet and confer regarding its terms and conditions at any time during the term of this MOU.

5.3 All Insurance

The County continues to have the right and the obligation to administer the various insurance programs. These rights and obligations include but are not limited to the right to select the carriers and insurance claims administrators after consideration of the recommendations of the Health Insurance Review Committee and prior meeting and consultation with the Union. Changes in insurance carriers or administrators shall not result in any appreciable reduction in benefits. In the event a change in insurance carriers is made, an open enrollment period will be authorized. The County shall provide Union and employees, a thirty (30) day written notice for premium rate changes for the County's self-funded plan.

5.4 Life

The County agrees to provide fifty thousand dollars (\$50,000) in life insurance for employees.

5.5 Vision Examination and Glasses for VDT Operators

The County will amend the Vision Service Plan effective January 1, 1990 to provide an option for a second (2nd) pair of glasses tinted and designed for use with video display terminals (VDT's) for an employee whose manager certifies in writing to Risk Management that the employee uses a VDT 60% or more of his/her normal work time in order to perform duties. Manager certification and endorsement of eligibility for VDT glasses by Risk Management must occur prior to an eye examination for an employee to be eligible for the VDT option. The employee shall pay an additional \$20.00 deductible for an exam which includes the VDT option.

5.6 Physical Examinations

Permanent full-time employees in unit D shall be entitled to a physical examination by appointment at Natividad Medical Center on an annual basis. Results of the examination shall be treated confidentially.

Workers Compensation:

When an employee is receiving Temporary Total Disability (TTD) Workers Compensation payments (integrated or not), he/she shall receive County paid medical insurance and his/her regular County contribution toward dependent medical insurance so long as the TTD continues. (Note: Normal payroll deductions continue to be withheld from TTD payments.)

5.7 Disability Income Protection Plan

County paid as outlined in the Personnel Policies and Practices Resolution (PPPR)

PROFESSIONAL BENEFITS

6.1 Bar Dues

In consideration of the fact that employees covered by this Agreement must practice their profession solely for the benefit of Monterey County, the County agrees to pay Association members' mandatory basic California State Bar dues on or before the due date deadline for said mandatory Bar dues. In order to receive this benefit, each eligible employee shall submit a copy of his/her bill from the California State Bar Association to the designated person within the Public Defender's office at least 30 calendar days in advance of the due date.

6.2 Professional Organization Membership Fees

Employees covered by this MOU shall be paid a professional expense stipend of four hundred dollars (\$400) the first full pay period of each calendar year. Eligible employees who are scheduled to work fewer than 40 hours per pay period shall receive one-half the professional expense stipend. This stipend is treated as wages for tax purposes and is a "non-accountable" (no receipts) plan under current law.

6.3 Professional Development Courses

Employees will be reimbursed up to four hundred dollars (\$400) per fiscal year for pre-approved professional development courses, minimum continuing legal education (MCLE) courses, seminars and conferences, travel, lodging, meals and associated materials which are related to the employee's career as a Deputy Public Defender (continuing education for current position). Lodging and travel costs must be within the acceptable range per the Monterey County Travel Policy.

The Public Defender shall establish internal procedures to administer this provision.

It is understood that this amount is in addition to any funds spent for training courses at the department's direction.

Employees hired after the effective date of this agreement shall be eligible for this benefit on a pro rata basis.

6.4 Professional Expense Allowance

Effective with the first full pay period following Board adoption of this Agreement, Association employees shall receive a monthly Professional Expense Allowance of forty-five dollars and eighty-four cents (\$45.84) for incidental expenses not ordinarily subject to remuneration by claim. The Professional Expense Allowance shall be paid on the second paycheck of each month. The allowance is a non-accountable (no receipts) plan for tax purposes and is taxable as wages under current law.

7. LEAVES AND HOLIDAYS

7.1 Holidays

The following listed days shall be observed as legal holidays by the County of Monterey:

New Year's Day	January 1st
Dr. Martin Luther King, Jr. Day	January 15th
Presidents Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4th
Labor Day	First Monday in September
Veterans Day	November 11th
Thanksgiving Day	Fourth Thursday in November
Day After Thanksgiving Day	Fourth Friday in November
Christmas Eve	December 24th
Christmas Day	December 25 th

The Board of Supervisors or the County Administrative Officer may designate that the actual holiday be observed on a different date in order to conform to the date of observance by the State of California or for administrative convenience.

Christmas Eve shall be observed as a holiday only in those years in which Christmas Eve falls on a Monday, Tuesday, Wednesday or Thursday.

A holiday falling when an employee is on annual leave shall not constitute as annual leave. An employee on leave of absence without pay shall not be entitled to any holiday time or pay for holidays that fall during the period of the leave of absence.

In order to receive any form of compensation (i.e. time or pay) for a holiday, an employee must be an employee on the date of the holiday and be in a paid status on the work day immediately prior to the holiday.

Floating Holiday

Consistent with county rules regarding the use of floating holidays, one floating holiday per calendar year may be taken before or by December 31 of each year. This holiday will not carry over from year to year and no compensation will be paid for this unused holiday. Pro-rated for part-time employee; supervisor approval required.

7.2 Annual Leave

A. Annual Leave Accrual

Eligible employees shall accrue annual leave on the following basis:

<u>Years of Completed Continuous County Service</u>	<u>Annual Leave Accrual</u>
Up to two (2) years	23 days
More than two (2) years	25 days
More than six (6) years	27 days
More than ten (10) years	30 days
More than fifteen (15) years	32 days
More than eighteen (18) years	33 days
More than twenty (20) years	34 days
More than twenty-five (25) years	37 days

A maximum of eight hundred fifty (850) hours of annual leave may be accrued after which no further accrual shall be made until the employees' accrual is reduced to below eight hundred fifty (850) hours by the use of annual leave. Annual leave shall be earned on the basis of each biweekly pay period worked from the beginning of the biweekly pay period following the permanent appointment. Annual leave shall not be credited for any pay period during which an employee is on any non-paid status exceeding one-half (1/2) of the employee's normally scheduled working days.

Unit employees who receive temporary disability indemnity under Division 4 of the Labor Code shall accrue annual leave during the period.

Unit employees may borrow up to twelve (12) days of annual leave during their first six (6) months of employment with the County. Repayment of borrowed annual leave shall be at the rate of four (4) hours per pay period, and shall commence in the first full pay period after six (6) months of employment, unless different arrangements are made with the appointing authority and approved by the Auditor-Controller. In the event an employee leaves County employment prior to the completion of repayment of borrowed annual leave, the amount of time remaining unpaid shall be deducted from the employee's final check.

B. Annual Leave Usage

The Public Defender or his/her designee shall be responsible for scheduling the annual leave periods of employees in such a manner as to achieve the most efficient functioning of the department and of the County service. The Public Defender or his/her designee shall determine when annual leave will be taken.

Policy Statement: All eligible Unit employees are expected to use at least eighty (80) hours of annual leave in each calendar year following the calendar year in which they are appointed.

When unscheduled usage of annual leave occurs, any person absent from work shall notify his/her department or division head at the beginning of the first day of such leave and as often thereafter as directed by the department or division head.

C. Rate of Pay While on Annual Leave

While on annual authorized leave, eligible employees shall be compensated for their regular wages and benefits.

D. Annual Leave Buy Back: Permanent employees with Over One Year of Service

Permanent employees with at least one year to nine years of service in Unit D and one (1) to nine (9) years of service in County employment may sell back to the County up to one hundred twenty (120) hours of their annual leave in any calendar year if the following conditions are met:

- i. The employee has used (taken) at least 120 hours of combined annual and professional leave during the preceding calendar year; provided
- ii. The employee must have at least forty (40) hours of annual leave remaining after the “cash out” of some of their annual leave and,
- iii. No more than one request for partial cash out may be made in any calendar quarter.

E. Annual Leave Buy Back: Permanent Employees with Over Ten Years of Service

Permanent employees with over one year of service in Unit D and over ten years of service in County employment may sell back to the County an additional 40 hours of annual leave; up to one hundred sixty (160) hours of their annual leave in any calendar year if the following conditions are met:

- i. The employee has used (taken) at least 120 hours of combined annual and professional leave during the preceding calendar year; provided
- ii. The employee must have at least forty (40) hours of annual leave remaining after the “cash out” of some of their annual leave and,

iii. No more than one request for partial cash out may be made in any calendar quarter.

F. Annual Leave Pay-off Upon Termination

Any eligible Unit employee who terminates or is terminated, shall be paid at the then prevailing hourly rate of pay for each hour of earned annual leave based on the pay rate in effect for such person on the last day actually worked or spent on authorized leave.

7.3 Professional Leave

Unit Employees in the Deputy Public Defender I - IV classifications shall be granted ten (10) days of professional leave on January 1 of each year.

Employees hired on a permanent basis after the beginning of the calendar year shall be given a pro rata amount – to the full hour – of professional leave based on the number of pay periods remaining in the calendar year in which they were hired, but in no event shall less than eight (8) hours be credited.

This leave must be taken during the calendar year and no carry over to future fiscal years is permitted. Professional leave time may be scheduled in the same manner annual leave is scheduled. No payment for unused professional leave time will be permitted.

7.4 Sick Leave Balance: Usage and Payoff

Current sick leave balances shall be frozen at the amount credited to the employee as of January 8, 1982. Sick leave may be used until the sick leave balance is exhausted. Unused sick leave may be paid off upon retirement pursuant to the provisions of sections A.27.7 of the PPPR. Sick leave may be used in the same manner as prescribed in Article 27 of the PPPR.

7.5 Military Leave

Unit employees shall be entitled to such leaves of absence and other benefits provided in the applicable provisions of the Military and Veterans Code.

7.6 Bereavement Leave

Use of accrued annual leave may be granted upon recommendation of the appointing authority up to a maximum of five (5) days per occurrence in the case of the death of a father, mother, brother, sister, wife, husband, registered domestic partner, child, or child of registered domestic partner.

7.8 Leave of Absence Without Pay

A. General Provisions

A leave of absence without pay, that is unrelated to a pending investigation of a unit member or discipline of a unit member, may be granted by the Public Defender or his/her designee. Notwithstanding any other provision of this section, the Board of Supervisors may, by Resolution or Order, make provisions for other leaves of absence without pay.

B. Limitations

A leave of absence without pay may not be granted for a period to exceed:

- i. Thirty (30) calendar days for personal reasons unless there is no inconvenience to the department.
- ii. Six (6) months for illness beyond that covered by sick leave.
- iii. Six (6) months for education or training which will benefit both the employee and the County.

Upon finding of unusual or special circumstances, a leave of absence without pay may be extended beyond the time specified above if approved by the Public Defender or his or her designee.

An employee shall not be granted a leave of absence without pay in excess of thirty (30) calendar days until he/she has first used all accumulated annual and professional leave, if any; provided, however, if said leave of absence without pay is granted because of illness or injury, said employee may use accumulated annual or professional leave, if any, but shall not be so required.

C. Leave Accrual While on Leave Without Pay

Annual leave shall not accrue during leave of absence without pay, but annual leave balances shall not be lost.

8. MANAGEMENT RIGHTS

The County will continue to have, whether exercised or not, all the rights, powers and authority heretofore existing, including, but not limited to the following: Determine the standards of services to be offered by the constituent departments; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; issue and enforce rules and regulations; maintain the efficiency of governmental operations; determine the methods, means and personnel by which the County operations are to be conducted; determine job classifications of County employees; exercise complete control and discretion over its work and fulfill all of its legal responsibilities. These rights, powers, and authority are expressly retained by the County and may be fully exercised to the extent they are not in violation of the Constitution and laws of the State of California, including the California Rules of Professional Conduct and the Rules of the California State Bar. All the rights, responsibilities and prerogatives that are inherent in the County by virtue of all federal, state, and local laws and regulations provisions cannot be subject to any grievance or arbitration proceeding.

The exercise of the foregoing powers, rights, authority, duties, and responsibilities by the Board of Supervisors, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement and then only to the extent of such specific and express terms thereof are in conformance with the Constitution and Laws of the United States and the Constitution and Laws of the State of California.

9. RETIREMENT BENEFITS

9.1 Retirement Formula

The County shall provide for a 2% @ 55 retirement formula for all permanent unit employees.

9.2 Employee Retirement Contribution

Unit D employees shall pay 3.5% (three and one-half percent) of the 7% (seven percent) Member Contribution toward CalPERS.

9.3 Deferred Compensation

Permanent employees may participate in the County deferred compensation plan.

10. GRIEVANCE PROCEDURE

10.1 Grievance Defined

A grievance is defined as a dispute over the interpretation or application of this Memorandum of Understanding by an employee adversely affected thereby, but shall not include the following:

Disciplinary actions as defined herein that shall be subject to appeal;

Complaints regarding Equal Opportunity, Occupational Health and Safety, Workers' Compensation or discrimination complaints based on a protected classification or the applicable procedures for such complaints;

The exercise of any County rights as specified in this Memorandum, so long as the exercise of such rights does not conflict with other provisions of this Agreement;

Any impasse or dispute in the meeting and conferring process, or any matter within the scope of representation;

Any matter for which a different appeals procedure is provided either by statutes, ordinances, resolutions, or agreements;

The Association shall be entitled to file a grievance on behalf of an employee adversely affected by a grievable matter;

The Association may file a grievance on its own behalf only on those matters which pertain to the rights of the Association as an organization as specified in Article 5 of this Agreement.

10.2 Limited Grievance Procedure Application

An employee shall be entitled to file a grievance which alleges that the County has failed to provide a specific condition of employment which is established by the Personnel Practices and Policies Resolution provided that the enjoyment of such right is not made subject to the discretion of the department head or the County, and provided further that the condition of employment which is the subject matter of the grievance is a matter within the scope of representation as defined in California Government Code Section 3504.

10.3 No Discrimination

There shall be no restraint, interference, coercion, discrimination or reprisal against any employee for exercising any rights under the grievance procedure.

10.4 Time Limits

The time limits set forth herein are essential to the grievance procedure and shall be strictly observed. The time limits may be extended by agreement of the parties; however, any such extension must be confirmed in writing.

The grievant has the right to promptly proceed to the next step within the prescribed time limits if the appropriate management representative fails to respond within the time limits specified.

Failure of the aggrieved employee to file an appeal within the prescribed time limits for any step of the procedure shall constitute abandonment of the grievance.

10.5 Grievance Procedure Steps

Step 1: Discussion with Immediate Supervisor

1. The grievant shall first discuss the grievance informally with his/her immediate supervisor. The discussion shall be held within fifteen (15) working days of the action causing the grievance or of the date the action reasonably could have been expected to be known to the grievant. In no event shall any grievance be accepted for consideration more than six (6) months from the date of the action causing the grievance, regardless of the date the action became known to the grievant.

2. Every reasonable effort shall be made to resolve the grievance at this level. The immediate supervisor shall verbally respond to the grievant within five (5) working days of the informal discussion between the grievant and supervisor.

Step 2: Formal Written Grievance

1. In the event the employee believes the grievance has not been satisfactorily resolved, the employee shall submit the grievance in writing to the department head within ten (10) working days after receipt of the immediate supervisor's verbal response. The grievant shall file one (1) copy with the Human Resources Department. Such written grievance shall:

- a) Fully describe the grievance and how the employee(s) was/were adversely affected;
- b) Set forth the section(s) of the Memorandum of Understanding, allegedly violated;
- c) Indicate the date(s) of the incident(s) grieved;
- d) Specify the remedy or solution to the grievance sought by the employee(s);
- e) Identify the grievant and be signed by the grievant;
- f) Identify the person, if any, chosen by the grievant to be his/her representative.

2. No modifications in the basic violation being alleged pursuant to this grievance procedure shall be made subsequent to filing of a grievance unless mutually agreed to by both the County and the grievant or the grievant's representative. However, corrections in citations or other clarifying amendments can be made at any time by the grievant or the grievant's representative.

3. The department head or his/her designee shall hold a meeting and discuss the grievance with the grievant within seven (7) working days of the receipt of the appeal. The department head or his/her designee shall deliver his/her written decision to the grievant and/or his/her representative within three (3) working days of the date of the grievance meeting. The department head's or his/her designee's decision shall include the reasons on which the decision is based and the remedy or correction which has been offered, if any, to the grievant.

Step 3: Deputy Human Resources Director/Mediation

1. If a grievance is not settled at Step 2 of the procedure, the grievance may be appealed, in writing to the Human Resources Director or his/her designee within ten (10) working days from the receipt of the department head's or his/her designee's written decision.

Said grievance appeal must specifically set forth the reason the answer(s) previously provided by management is/are not satisfactory. A meeting may be held by mutual agreement of the parties.

2. The Human Resources Director or his/her designee shall hold a meeting with the grievant within seven (7) working days of the receipt of the appeal. The Human Resources Director or his/her designee shall deliver his/her written decision within ten (10) working days of the date of the meeting.

3. In the event a represented employee chooses to waive a hearing by the Human Resources Director or his/her designee, the Association on behalf of the employee may, within the ten (10) day appeal period, make a written request to the Human Resources Director or his/her designee to seek within ten (10) working days the assistance of a mediator from the State Conciliation Service in an attempt to resolve the grievance.

The mediator shall have no authority to resolve the grievance except by mutual agreement of the Association and the County. In the event the grievance is not resolved, neither evidence nor concessions agreed to or offered during mediation shall be admissible at the subsequent hearing.

If the grievance is not resolved through mediation, the Human Resources Director or his/her designee shall issue a written decision.

Step 4: Arbitration

1. If a grievance is not settled at Step 3 of the procedure, the Association and only the Association may appeal the grievance in writing to the County Administrative Officer within ten (10) working days from receipt by the Human Resources Director or his/her designee's written decision.

2. The parties shall select a mutually acceptable arbitrator through the services of the State of California, Office of Mediation and Conciliation. Either the County or the Association may request a list of arbitrators. Each party shall have the right to alternately strike an arbitrator's name from the list until the name of an arbitrator has been agreed upon, or no name has been mutually agreed upon. In the case that no arbitrator from the list has been mutually selected, another list shall be requested from State Mediation. The process of requesting a list and alternately striking names shall continue until both the County and the Association has mutually agreed upon an arbitrator

The fees and expenses of the arbitrator; the transcript for the arbitrator; and the court reporter shall be shared equally by the parties, it being understood and agreed that all other expenses including, but not limited to, fees for witnesses, transcripts and similar costs incurred by the parties during such arbitration, will be the responsibility of the individual party involved.

3. The decision of an arbitrator shall be final and binding upon the parties but shall not add to, subtract from, nor otherwise modify the terms and conditions of this Agreement.

The parties expressly agree that the term of this section shall expire as of the expiration date of this contract and that the status quo shall revert to a situation where there is no arbitration of grievances that occur after the expiration date of this agreement until or unless the Board of Supervisors approves a successor agreement.

10.6 Notice of Meetings

The County and the grievant or the grievant's representative shall be responsible for giving notice of meetings and conferences to their representative parties at least twenty-four (24) hours prior to any meeting regarding a grievance whenever possible.

10.7 Representation

1. The employee has the right to the assistance of one (1) employee representative/job Association representative in addition to a staff representative of the Association in the preparation and/or presentation of his/her grievance in Steps 1 through 4 of this procedure provided, however, that supervisory employees shall not represent non-supervisory employees.

2. An employee is also entitled to represent him/herself individually at any step of the grievance procedure, except in the arbitration procedure outlined in this Agreement. Only the Association may file for arbitration of a grievance.

3. A grievant may not change his/her designation of representative organization during the processing of a grievance, except by mutual agreement of the parties.

4. If the employee is represented in a formal grievance meeting, the department may also designate a management representative to be present in such a meeting.

10.8 Grievance Withdrawal

The grievant and his/her representative may withdraw the grievance at any stage of the grievance procedure by giving written notice to the County representative who last took action on the grievance, with a copy to the Human Resources Department.

10.9 Grievance Resolution

If a grievance is resolved at Step 2 or 3 in the procedure as provided herein, the grievant concerned shall indicate acceptance of the resolution by affixing his/her signature in the appropriate space on the grievance form or appropriate document. If the employee has been represented by the Association at the Step of the procedure at which a resolution is reached, the Association representative shall also sign the appropriate document acknowledging that the employee has accepted the resolution.

Decisions on grievances where an employee represents him/herself shall not be considered precedent setting or binding with regard to any future grievances filed with respect to the same or similar matters.

10.10 Consolidation

The County may consolidate grievances, where, in its discretion, the grievances present substantially similar issues.

The Association may file group grievances at the second step of the grievance procedure by listing each person who claims to be adversely affected and all other data required in this article.

10.11 Processing Grievances

The grievant shall be granted reasonable time off with pay from regularly scheduled duty hours to process a grievance, provided that the time off will be devoted to the prompt and efficient investigation and handling of grievances, subject to the following:

1. Neither a grievant nor a grievant's representative who is a county employee shall suffer any lost pay for attending any regularly scheduled grievance hearing required by the procedure herein set forth.
2. A grievant or a grievant's representative shall notify their supervisor as soon as possible of scheduled grievance hearings and of any changes in the time or date of scheduled hearings in which they must participate.
3. In no event shall a grievant be represented by more than one (1) County employee.

11. SEPARABILITY

If any section, subsection, paragraph, clause or phrase of this Agreement is, for any reason, held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Agreement, it being hereby expressly declared that this document, each section, subsection, paragraph, sentence, clause and phrase thereof, would have been adopted irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

12. FULL UNDERSTANDING, MODIFICATION, WAIVER

12.1 It is intended that this Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any other prior or existing understanding or agreements by the parties, whether formal or informal, regarding any such matters are hereby superseded or terminated in their entirety.

12.2 Any agreement, alteration, understanding, variation, waiver, or modification of any of the terms or provisions contained herein shall not be binding upon the parties hereto unless made and executed in writing by all parties hereto and, if required, approved and implemented by the County's Board of Supervisors.

12.3 The waiver of any breach, term or condition of the Agreement by either party shall not constitute precedent in the future enforcement of all of its terms and provisions.

12.4 The parties shall consult in good faith on any disagreement as to the meaning or interpretation of any term or provision of this Agreement.

For the Public Defenders' Association

For the County of Monterey

/s/Thomas O'Keefe

/s/Brette Neal

/s/Deana Davis

Date: July 19, 2012