

***MEMORANDUM OF
UNDERSTANDING

BETWEEN

COUNTY OF MONTEREY
&
MONTEREY COUNTY PUBLIC
DEFENDERS' ASSOCIATION

UNIT D***

September 1, 2021 – August 31, 2024



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ARTICLE 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.

ARTICLE 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.

ARTICLE 3 TERM

The term of this Memorandum of Understanding is from September 1, 2021 to August 31, 2024.

ARTICLE 4 WAGES

MCPDA’s acceptance of the terms of this MOU is contingent upon the County’s implementation of the base wage adjustments found in the Recommendations section of the Background and Findings Report No. 19-006, dated July 31, 2020, set forth on Page 6, Line 3 for MCPDA classifications. The County agrees to implement the base wage adjustments effective the first full pay period following MCPDA ratification and Board of Supervisors approval of this agreement.

The County will provide a wage increase to the base salary schedule to members of Unit D as follows:

- Year 1- No base wage increase
- Year 2- 2.0% effective the first full pay period following July 1, 2022.
- Year 3- 2.0% effective the first full pay period following July 1, 2023.

ARTICLE 5 INSURANCE BENEFITS

5.1 Flexible Benefits Plan

The County will make available a Flexible Benefits Plan to all employees. Employees may elect medical, dental, and/or vision for themselves and their eligible dependents.

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 Association 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 has been determined by the IRS or any other governmental entity to be contrary to public law or regulation governing I.R.S. Section 125 benefit plans, is no longer available through vendor, or vendor becomes insolvent.

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 Association. Changes in insurance carriers or administrators shall not result in any substantial reduction in benefits. In the event a change in insurance carriers is made, an open enrollment period will be authorized. The County shall provide Association and employees, a thirty (30) day written notice for premium rate changes for the County's self-funded plan.

A. Eligibility

Permanent unit employees with a 0.50 Full Time Equivalent (FTE) or more will be eligible to participate in any of the County's health insurance programs.

B. General Provisions

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.

Forfeiture:

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 (excluding optional post-tax benefits), the full amount of funds not utilized shall be forfeited.

401(a) Plan:

In exchange for a defined fixed County contribution towards the cost of CalPERS health plans, the County shall establish a Governmental 401(a) plan for each employee and contribute a total of \$300 per month on behalf of the employee effective January 2022.

5.2 Flexible Benefits Plan Contributions

A. CalPERS Medical Insurance Contribution

Unless the Association is otherwise notified, pursuant to Section 5.1 above, 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.

- The County shall provide a fixed elective contribution towards the cost of CalPERS healthplans as follows:
 - \$850 for employee only
 - \$1,700 for employee plus one
 - \$2,200 for employee plus family
- In exchange for a defined elective County contribution towards the cost of CalPERS healthplans, the County shall establish a Governmental 401(a) plan for each employee and contribute a total of \$300 per month on behalf of the employee effective January 2022

MCPDA and the County agree to reopen the Insurance Benefits Article to meet and confer on employee contributions as follows:

- In 2022 if the 2023 premium rate increase for CalPERS Gold (Region 1) exceeds sixpercent (6%) of the 2022 CalPERS Gold (Region 1) premiums.

In 2023 if the 2024 premium rate increase for CalPERS Gold (Region 1) exceeds six percent (6%) of the 2023 CalPERS Gold (Region 1) premiums.

Part-time, permanent unit employees with a minimum 0.50 Full Time Equivalent (FTE) but less than a 0.80 FTE will receive half of the County contribution. County contribution is subject to change annually based on Health Plan Premiums.

Any balance of funds remaining after the employee elects health insurance may be utilized, at the employee's discretion, toward the purchase of dental and/or vision insurance. 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.

B. Dental Insurance Contribution

The County's maximum 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. Dependent dental coverage is available at the employee's cost.

C. Vision Insurance Contribution

The County's maximum 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. Dependent vision coverage is available at the employee's cost.

D. Computer Vision Coverage

The County provides an option for a pair of glasses tinted and designed for use with computers for an employee only.

5.3 Retiree Health Insurance

The County will contribute toward the monthly premium for eligible retirees enrolled in a PERS health insurance program as directed by CalPERS.

5.4 Life Insurance

The County agrees to pay fifty thousand dollars (\$50,000) coverage in group term life insurance for employees in paid status.

5.5 Physical Examinations

Permanent full-time bargaining unit employees 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.

5.6 Workers Compensation

When a bargaining unit employee on leave of absence is receiving Temporary Total Disability (TTD) Workers Compensation payments (integrated or not) he/she shall continue to receive County contribution toward the cost of medical, dental and vision insurance and his/her regular County contribution toward dependent medical, dental and vision, if any.

5.7 Disability Income Protection Plan

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

ARTICLE 6 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

This provision was eliminated as a result of 2016 contract negotiations.

In exchange for eliminating the annual Professional Organization Membership Fees of \$400, the annual Professional Development Course Reimbursement of \$500 and the monthly Professional Expense Allowance of \$45.84, each member of Unit D will receive a one-time payment of \$100 and a \$0.697 hourly base wage increase effective the first

full pay period following MCPDA ratification and Board of Supervisors approval of this agreement.

6.3 Professional Development Courses

This provision has been eliminated per Article 6.2 above.

6.4 Professional Expense Allowance

This provision has been eliminated per Article 6.2 above.

ARTICLE 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 1 st
Dr. Martin Luther King, Jr. Day	January 15 th
Presidents Day	Third Monday in February
Memorial Day	Last Monday in May
Juneteenth Day	June 19 th
Independence Day	July 4 th
Labor Day	First Monday in September
Veterans Day	November 11 th
Thanksgiving Day	Fourth Thursday in November
Day After Thanksgiving Day	Fourth Friday in November
Christmas Eve*	December 24 th
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.

*When December 24th (Christmas Eve) actually falls on a Saturday or Sunday, the preceding Friday shall be the holiday in lieu of the day observed.

** When December 25th (Christmas) actually falls on a Saturday or Sunday, the following Monday shall be the holiday in lieu of the day observed.

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 workday 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
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not carry over from year to year and no compensation will be paid for this unused

holiday. Floating Holiday is pro-rated for part-time employee; supervisor approval required.

7.2 Winter Recess

If the Public Defender’s Office is able to close its offices (or Division(s) if the entire Department is unable to close its offices) between December 26th and December 31st during the term of this agreement, they shall close the office to minimize the County’s carbon footprint. Determination of the closure shall be made by the Department Head.

- A. Four paid days (which is equivalent to thirty-two (32) hours for a regular full-time employee) will be made available to Unit D employees to use from December 26th- December 31st for both years of this agreement.
- B. If attorneys are required, by the Department Head, to work during this period, up to four paid days will be made available by December 23rd. Any time not used by December 22nd of the following year shall be forfeited.
 - a. These “Winter Recess” exchange days shall be scheduled in the same manner as vacation unless the department’s policy is to schedule vacation per a vacation sign up list; in which case these days shall be scheduled in the same manner as a Floating Holiday.
- C. Unit member must be employed by December 23rd (in each applicable year of the contract) to be eligible to receive Winter Recess hours for that year. Employees *in unpaid leave of absence* status as of this date shall be entitled to these Winter Recess hours once the employee returns to active paid status.
 - a. These “Winter Recess” exchange days shall be scheduled in the same manner as vacation unless the department’s policy is to schedule vacation per a vacation sign up list; in which case these days shall be scheduled in the same manner as a Floating Holiday.
- D. Winter Recess hours cannot be cashed out. No payment for unused Winter Recess hours shall be permitted.
- E. Winter Recess hours will be pro-rated on the employee’s full-time equivalency (FTE) on the date the hours are loaded in the Advantage Human Resources Management System.

7.3 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 (7:05 hours)
More than two (2) years	25 days (7:42 hours)
More than six (6) years	27 days (8:19 hours)
More than ten (10) years	30 days (9:14 hours)
More than fifteen (15) years	32 days (9:51 hours)
More than eighteen (18) years	33 days (10:09 hours)
More than twenty (20) years	34 days (10:28 hours)
More than twenty-five (25) years	37 days (11:23 hours)

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 and in compliance with all leave rules and practices, 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.

7.4 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.

7.5 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 any accumulated leave balances shall be granted by the Appointing Authority because of the death of a member of the employee's immediate family. 'Immediate family' shall mean the father, mother, brother, sister, spouse, child, foster child, grandparent, grandchild, eligible domestic partner, child of eligible domestic partner, father-in-law, mother-in-law, daughter-in-law, son-in-law, step parent, step daughter, step son, step brother or step sister. Such absence by the employee shall be limited to five (5) working days per occurrence. Any leave used for bereavement shall not be counted as part of the overtime calculation.

It is the intent of the County to attempt to accommodate newly hired employees who have not accumulated leave balances and are faced with death of an immediate family member as defined above.

As of condition of granting leave for bereavement purposes, the Appointing Authority may request verification of the qualifying loss.

7.7 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

Except as otherwise required by pertinent law, a leave of absence without pay may not be granted for a period exceeding:

- 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.

ARTICLE 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.

ARTICLE 9 RETIREMENT BENEFITS

9.1 California Public Employees’ Retirement System (CalPERS)

Due to implementation of the Public Employees’ Pension Retirement Act (PEPRA) CalPERS has designated members as either “Classic” or “PEPRA.” The employee designation is determined by CalPERS.

PEPRA Members- Are defined as employees hired on or after January 1, 2013, and prior to that date were not members of CalPERS or a retirement system that has reciprocity with CalPERS.

Retirement Formula	2% @ 62
Employee Contribution	7% (subject to yearly change based on 1/2 of normal cost as determined by CalPERS)
Final Compensation compensation limits	Highest three-year average, subject to CalPERS

Classic Members- Are defined as employees hired prior to January 1, 2013 or were members of CalPERS or a retirement system that has reciprocity with CalPERS.

<u>Retirement Formula</u>	2% @ 55
Employees Contribution	7%
Final Compensation	Single highest year, subject to CalPERS compensation limits

9.2 457(b) Deferred Compensation Plan

Unit employees may participate in the County deferred compensation plan in accordance with the Monterey County 457(b) Deferred Compensation Plan.

9.3 401(a) Defined Contribution Plan

The County shall establish a Governmental 401(a) Defined Contribution Plan account for each permanent employee in this unit and contribute a total of \$300 per month on behalf of the employee.

9.4 Retirement Sick Leave Cash Out

An employee may, upon retirement or death, cash out up to seven hundred fifty (750) hours of available sick leave, subject to eligibility criteria and pertinent law.

ARTICLE 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
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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: 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.

ARTICLE 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.

ARTICLE 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:
