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INTERIM AGREEMENT

This Interim Agreement is made and entered into this 15th day of October 2015 between the Law Offices of the Public Defender (LOPD), hereinafter “Employer” and the American Federation of State, County and Municipal Employees, Council 18 (hereinafter referred to as “AFSCME” or “the Union”) and is applicable to all eligible employees in the collective bargaining unit of the Employer described in the Recognition Article of this Agreement.

SENIORITY

Section 1. Seniority of bargaining unit positions shall be defined as follows:

- A. **Job Classification/Title Seniority** is defined as a continuous length of employment in a specific job classification/title within a particular state agency as a full-time employee without a break in employment.
- B. **LOPD Seniority** is defined as a continuous length of employment in the LOPD as a full-time employee without a break in employment.
- C. **State Seniority** is defined as a continuous length of employment in state government as a full-time employee without a break in employment.
- D. **Break in employment** is defined as any period of at least one (1) work day separated from state employment.

Section 2. Tie-break procedures.

- A. Where two (2) or more employees have the same seniority by job classification/title seniority date for determining job rights, the tie shall be broken with seniority based upon agency seniority.
- B. Where two (2) or more employees have the same seniority by agency seniority date for determining job rights, the tie shall be broken with seniority based upon state seniority.
- C. Where two (2) or more employees have the same seniority by state seniority date for determining job rights, the tie shall be broken based upon a coin toss, witnessed by the interested

employees, tossed by the supervisor of both the interested employees.

Section 3. These definitions and tie-break procedures shall govern all applicable Articles in this Agreement.

Section 4. This Article shall apply unless otherwise agreed to in agency supplemental.

ARTICLE 1
Commitment to Citizens of New Mexico

The Union and Employer recognize the mission, goals and obligations of the State of New Mexico as a provider of services to the citizens of the State through its employees. The best possible services and programs will be provided consistent with available funds. The Employer and the Union agree to uphold the well-being and care of the citizens of New Mexico.

ARTICLE 2

Purpose

The purpose of this Agreement is to provide reasonable terms and conditions of employment for employees covered hereunder and a means of amicable and equitable adjustment of any and all differences or grievances which may arise under the provisions of this Agreement, all of which the parties hereto believe and affirm will inure to the welfare and benefit of the people of the State of New Mexico.

ARTICLE 3

Recognition

Section 1. The Employer recognizes AFSCME as the exclusive representative, as that term is defined in the Public Employee Bargaining Act [hereinafter referred to as “PEBA”], for employees in the bargaining unit, defined as “wall to wall” meaning all positions are included except management (§10-7E-4(O), confidential (§10-7E-4(G) and supervisory employees (§10-7E-4(U). The parties as represented by the Labor Management Committee will meet not less than once each quarter to review and update the list of classifications in the bargaining unit. The Labor Management Committee will develop a method of posting the list of classifications for bargaining employees.

Section 2. Employees not now represented by the Union will be covered by the provisions of this Agreement if the Union is certified as the exclusive bargaining representative of those employees pursuant to the PEBA and if those employees have a sufficient community of interest with the employees currently covered by the provisions of this Agreement. Disagreements over the inclusion or exclusion from the bargaining unit of a specific employee(s) based on supervisory, management, or confidential employee status will be resolved by the PELRB unless otherwise agreed by the parties.

ARTICLE 4
Distribution of Interim Agreement

The Employer shall publish the Interim Agreement to all LOPD employees by posting the final agreement in digital form on the LOPD website at a site available for access by all employees.

ARTICLE 5

Non-Interference

The parties acknowledge that each is free to conduct its affairs and business in the manner which each respectively believes to be in its own best interest subject to the provisions of this Agreement. The parties agree that neither shall interfere with the internal affairs of the other nor with the officials or representatives of the other in the conduct of their internal business affairs and other matters not involving collective bargaining, provided, however, that nothing contained herein shall bar parties or their members from petitioning their elected political representatives or fully and actively participating in the political process.

ARTICLE 6

Non-Discrimination and Compliance with Laws

Section 1. No employee shall be discriminated against by reason of union membership or non-membership or activities on behalf or in opposition to the Union.

Section 2. Written personnel policies and procedures that affect bargaining unit employees shall be applied consistently in similar circumstances to the employees to whom the policies and procedures apply.

Accommodations made to persons determined by the Employer to be qualified individuals with a disability shall not serve as precedent for other employees.

With the exception of personnel policies and procedures dealing with compliance with the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Age Discrimination and Employment Act (ADEA), the Family and Medical Leave Act (FMLA), the Equal Pay Act (EPA) and all other applicable federal and state equal employment opportunity laws and regulations, alleged violations of this article may be grieved in accordance with the Grievance Procedure.

ARTICLE 7

Appropriations

The parties recognize that in accordance with the PEBA, any provision of this Agreement that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the legislature. By entering into this Agreement, the LOPD agrees to cooperate with the Union in efforts to obtain appropriate budget and appropriations by the legislature to implement this Agreement. Any subsequent Agreement requiring the expenditure of funds shall be subject to specific appropriation of funds.

ARTICLE 8

Provision of Information

If requested by the Union, the Employer shall furnish it with documents every calendar quarter this Agreement is in effect containing the name, most recent address and telephone number on file, and the information on the Organizational Listing (OL) or its current computer generated organizational report for each employee represented by the Union. The Union shall provide the Employer with information necessary for purposes of administration and application of this Agreement. The Employer shall provide on an annual basis a list of each agencies records custodian.

The LOPD agree that the LOPD rules and regulations will be available to all employees on the LOPD Home Page and employees will be notified when any changes are made.

ARTICLE 9

Union Rights

Section 1. The Union shall have the right to select sufficient stewards to represent employees covered by this Agreement. The exact number and location of stewards shall be determined by agreement between the parties consistent with the principle set forth above.

Section 2. The Union shall provide the Employer with the following information about stewards, union officials and union representatives (union representatives refers to the paid staff of AFSCME Council 18): a written list of the names, addresses, telephone numbers and the agency to which they are employed who are authorized to act on behalf of the Union and the extent of their authority. The list shall be updated every calendar quarter or when additions and/or deletions have occurred. Stewards shall have full power on behalf of the Union to resolve all disputes and disagreements through Step 3 of the grievance procedure in the administration of this Agreement as set forth in Article 14 of this Agreement.

Section 3. The Employer shall allow employee union officials to attend on paid status (utilizing the union time code in the time and labor reporting system), meetings agreed to by the parties for purposes of administering this Agreement. Union officials, as defined in this section are: the Local Union Presidents, Local Union Vice-Presidents and any other union official as designated by mutual agreement of the parties.

The Employer shall allow union stewards, for the purposes of representing employees only within their respective agency at grievance meetings, disciplinary appeals based on suspension, demotion, or dismissal and cases at the PELRB, paid union time

(utilizing the union time code in the time and labor reporting system). Union stewards may request up to two (2) hours of paid union time to prepare and investigate each grievance; up to a total of four (4) hours to investigate and prepare each disciplinary appeal of a suspension, demotion or dismissal and up to a total of eight (8) hours to represent an employee in a hearing of a disciplinary appeal of a suspension, demotion or dismissal and up to a total of eight (8) hours to investigate, prepare and represent an employee in a matter before the PELRB. No more than one (1) union steward may request paid union time to prepare and investigate each grievance. No more than two (2) stewards may request union time to represent an employee in a hearing of a disciplinary appeal of a suspension, demotion or dismissal or to investigate, prepare and represent an employee in a matter before the PELRB. In the event that the total amount of union time is not necessary for the steward's representation of an employee, the steward shall not use the remaining union time for any other purpose.

The Employer recognizes the importance of having union officials available to represent employees should a steward be unavailable. In the event that a steward is not available to represent an employee within the steward's respective agency at a grievance meeting, a LOPD appeal and a case before the PELRB the Employer shall allow a union official paid union time, as if they were a steward, in order to provide representation to covered employees within the union official's local. As used in this section, unavailable means that the agency steward is on leave, there is a conflict where the steward has to recuse him/herself, operational reasons prevent the steward from leaving their post or where a steward vacancy exists that the Union has been unable to fill despite good faith efforts to do so.

Union time must be pre-approved and shall not be disapproved except for operational reasons. However, the Employer retains the right to disapprove union time when the steward/union official is in

an overtime status. If disapproval necessitates an extension of time for processing a grievance, the time shall be tolled for the duration of the denial until union time is afforded the steward/union official to investigate and process the grievance. Union time shall count as hours worked for purposes of overtime computation but shall not qualify for payment of mileage or per diem unless an employee is otherwise assigned to a per diem status by the Employer. A steward/union official shall use union time within assigned work hours to investigate and process grievances in the most efficient and effective manner possible so as to minimize operational impairment. Time spent investigating and processing grievances outside of assigned work hours shall not be compensated. Where a steward/union official desires to consult with another employee concerning a grievance on work time, both employees shall request and obtain prior permission to do so.

The parties shall each designate a centralized point of contact to coordinate the use of time and address any issues related to the use, or allegations of misuse, of time. If there are concerns related to the use or alleged misuse of time, the Employer designee shall provide, as expeditiously as possible as much specific information as possible, and any supporting documentation, to the Union designee. The Union shall seek to resolve the concern as expeditiously as possible. In the event the Employer is not satisfied with the Union's resolution of the issue(s), the Employer may reopen this Section of the Agreement dealing with reasonable time. If no agreement is reached during such negotiations, the Employer may use the impasse resolution procedures provided for in the Public Employee Bargaining Act. This paragraph shall not preclude the Employer from taking disciplinary action to address the abuse of time.

Section 4. Union representatives and union officials shall have reasonable access to visit any Employer agency or worksite as necessary for purposes of administration of this Agreement. Such

consultation shall not unreasonably interfere with the operations of the Employer. The Employer may designate a management representative through whom all such visits must be coordinated. If an Employer facility is secured, then reasonable notice shall be given and the Employer shall provide a reasonable place where union representatives and union officials can talk with an employee in private.

Section 5.

- A. The Employer shall approve reasonable written request for annual leave, accrued comp time, and/or leave without pay [hereinafter referred to as "LWOP"] for up to fourteen (14) calendar days, if requested by steward/union officials, in order to participate in union executive board meetings, union conventions, and employment as union staff.
- B. The Employer shall approve reasonable requests for annual leave, accrued comp time, and/or LWOP in excess of fourteen (14) calendar days and less than twelve (12) months for the above purposes and shall assure an employee the right to return to a position of like status and pay, at the same geographic location, unless the agency has a reasonable basis to believe that the employee, upon providing fourteen (14) days notice, cannot be placed in such a position. In such an event the Employer shall grant the leave provided the employee signs a written waiver of his/her right to return. An employee who signs such a waiver shall be returned to a position of like status and pay, at the same geographic location, upon providing fourteen (14) days notice provided such a position is available. If such a position is not available, he/she will be placed in an available position that is closest to salary range, status, duties and worksite as possible. Upon the availability of a position of like status and pay, at the same geographic location, the employee shall be placed in that

position. Approval of requests for extensions of LWOP status for additional twelve (12) month periods shall not be unreasonably withheld and shall be provided on the same basis as the original request.

- C. Employees returning to LOPD service after LWOP shall receive any general salary increases implemented that they would have been entitled to had they not taken LWOP and such leave shall not affect seniority status.

Section 6. Steward/union officials who are on non-work time, or union representatives, may distribute union literature on Employer facility grounds in public areas, in non-public non-work areas, and in work areas where the distribution does not interfere with Employer operations or present a security or confidentiality breach.

The Union shall have exclusive use of separate bulletin boards of an equal size near every bulletin board used by the Employer to give information to employees. The Union will provide the bulletin board and the Employer will install it unless the Employer agrees to allow the Union to use existing bulletin board space. Postings on union bulletin boards shall be confined to internal union business, including notices and announcements of meetings, news items, labor-management news, but shall not include materials of a partisan, political, defamatory or obscene nature or personal criticism of any individual. Distribution of union literature at worksites shall not include materials of a defamatory or obscene nature or personal criticism of any individual. The Employer shall not authorize the posting of notices critical of the Union, or any union member (except for instances necessary to protect employees) the Union shall receive advance written notices in these instances, or its representatives on the Employer's official bulletin boards.

Section 7. Within 180 days of the effective date of this Agreement, the Union will be afforded up to two (2) hours of work time to jointly participate with management in agency meetings in order to present and explain this Agreement to employees. As an exception to the above, at those agencies or institutions that have annual in service training, a presentation may be made during the annual training.

Section 8. Except as limited by law or this Agreement, each employee shall have the right to join and assist the Union freely, without fear of penalty or reprisal, or refrain from doing so, and the Employer and the Union shall assure that each employee shall be protected in the exercise of such right. Allegations concerning violations of these rights shall be filed with the PELRB.

Section 9. Union representatives may request the use of LOPD property to hold union meetings. Upon prior notification, the Employer will provide meeting space where feasible. Union meetings will not interrupt LOPD work and will not involve employees who are working. The Employer shall make space available for union representatives to have confidential discussions with employees on an as-needed basis subject to availability.

Section 10. Union officials and/or stewards are authorized to make reasonable use of copiers, FAX machines, computers (including email) and other office equipment for purposes of investigating and processing grievances and communicating with the Employer and other union representatives regarding official labor-management business, provided such use does not interfere with official LOPD business.

Section 11. The Union shall be permitted to use internal LOPD mail systems, including computer/electronic mail, for bargaining unit mailings in accordance with applicable executive policies. The Union shall give the Employer reasonable notice in advance of any mass

mailings. Correspondence hand delivered to bargaining unit members marked "confidential-union business" shall be treated as confidential.

Section 12. The Union will provide the LOPD Human Resources with the names and addresses of authorized union representatives who will be provided with notice of each orientation meeting held by the Department. The notice will be sent as soon as such meetings are scheduled and will include date, time and location. During orientation meetings, the Union will be permitted to give up to a thirty (30) minute presentation which may include an enrollment in supplemental union benefits and programs. The Union shall participate in the orientation meetings using the same medium as the Employer (e.g., telephone, videoconference, face-to-face meeting). In the event an orientation meeting is not held, the Union will be permitted to provide information to be included in the orientation package that the Employer mails to the employee.

Section 13. Steward Training. When an employee has been designated to fill a vacant steward slot the Employer shall permit a work day of union time in the steward's initial year of appointment and one-half work day for purposes of steward training each fiscal year thereafter that they remain a designated steward filling a steward slot.

ARTICLE 10

Deductions

Section 1. The Employer will honor voluntary union membership dues deduction authorizations. The amount of the dues shall be certified in writing and shall not include special assessments, penalties or fines of any type.

- A. The Employer shall also honor separate additional voluntary deduction authorizations for the Union's political action committee (PEOPLE) executed on or following December 1, 2003.
- B. The standard form to be used following the execution of this Agreement authorizing dues deduction and authorizing PEOPLE deduction shall be attached as an appendix to this Agreement.
- C. The Employer will begin all voluntary deductions promptly after the authorization is received in a timeframe consistent with other employee payroll deductions.

Section 2. All money deducted from wages under this Article shall be remitted to the Union and the Union's Political Action Committee (PEOPLE) promptly after the pay day covering the pay period of deduction.

- A. If an employee has insufficient earnings for the pay period, no dues or other deduction will be made for that employee for that pay period.
- B. The Employer shall provide the Union with a list of the names of each of the employees from whom the Employer is making deductions under this Article and the amount deducted.

- C. This listing may be made available in an electronic format.
- D. The Union shall certify to the Employer, in writing, by a duly authorized officer, the amount per pay period to be deducted for Union membership dues under deduction authorizations.
- E. An employee shall specify the amount, if any, of additional authorizations for the PEOPLE program.

Section 3. Processing of Union Membership Cards.

- A. All membership cards shall be submitted to the AFSCME union hall at 1202 Pennsylvania NE, Albuquerque, NM 87110, or to the employee's respective Agency HR office.
- B. The AFSCME Council 18 or Agency shall stamp, date and initial each membership card upon arrival identifying the membership card was received.
- C. Each party shall make a copy of the membership card, process the card and mail or fax a copy of the card to the other party.
- D. The Agency shall maintain a copy of the membership card in the employee's personnel file.

Section 4. The duty of the Employer to honor membership dues deduction authorizations shall continue until the employee instructs the Employer and the Union in writing to end such deduction, as long as such employee instruction to end membership is made during the first two full calendar weeks of December of any year that this Agreement is in effect. The Employer shall confirm with the Union that the employee has complied with this provision prior to termination of deductions. An employee may terminate deductions for the Union's Political Action Committee (PEOPLE) at any time.

Section 5. It is specifically agreed that the LOPD assumes no obligation, financial or otherwise, arising out of its application of the provisions of this Article, and the Union agrees that it will indemnify and hold the LOPD harmless from and against any claims, actions or proceedings arising from deductions made by the LOPD pursuant to this Article. Once the funds are remitted to the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union.

ARTICLE 11

Fair Share

Section 1. Employees who have completed their probationary period and who are not members of the Union shall, as a condition of continuing employment, pay to the Union each pay period a “fair share” payment in an amount certified by the Union. The “fair share” payment shall be a percentage of union membership dues calculated based on United States and New Mexico Statutes and case law identifying those expenditures by a labor organization which are permissibly chargeable to all employees in the appropriate bargaining unit, including but not limited to all expenditures incurred by the labor organization in negotiating the contract applicable to all employees in the bargaining unit, servicing such contract and representing all such employees in grievances and disciplinary actions.

Section 2. Employees who are required to make “fair share” payments may do so by voluntary payroll deduction authorization which may be revoked at any time. Authorizations and revocations shall be submitted in writing by the employee as follows:

- A. All Fair Share cards shall be submitted to the AFSCME union hall at 1202 Pennsylvania NE, Albuquerque, NM 87110, or to the LOPD HR office.
- B. AFSCME Council 18 or the Agency shall stamp, date and initial each Fair Share card upon arrival identifying the Fair Share card was received. Each party shall make a copy of the Fair Share card, process the card and mail or fax a copy of the card to the other party.
- C. The LOPD shall maintain a copy of the Fair Share card in the employee’s personnel file.

- D. The Employer will forward the monies so deducted to the Union together with a list of bargaining unit members from whose wages such monies were deducted.
- E. The Employer shall deduct from bargaining unit members' wages for "fair share" only that amount of money which the Union has certified in writing is the correct amount of semimonthly "fair share" payments.

Section 3. Upon written request by the Union, a bargaining unit member who has completed his/her probationary period and who is not complying with the "fair share" provisions of this article shall be terminated by the Employer, provided that the following actions have occurred:

- A. The Union shall notify the bargaining unit member of the amount of money that he/she is in arrears. The notice shall inform the bargaining unit member of impending discharge if the full amount owed is not paid to the Union within fifteen (15) working days after receipt of the notification. A copy of the notification shall be mailed simultaneously to the Human Resources Director or designee. For the purposes of this Section, the date of notification is the date of certified receipt at the member's last known address, or twenty (20) working days following the postmarked certificate of mailing, whichever is earlier.
- B. The Union shall tender to the Human Resources Director or designee a written request for termination of the bargaining unit member on the basis that the bargaining unit member has not complied with the "fair share" provisions of this Article within the time period specified in A, in that he/she has not paid the arrearage and has not documented that the money is not owed. Upon receipt of such notice the LOPD shall issue to the employee a notice of contemplated action for dismissal and

commence the termination process in accordance with the rules of the LOPD.

Section 4. It is specifically agreed that the Employer assumes no obligation, financial or otherwise, arising out of its application of the provisions of this Article, and the Union agrees that it will indemnify and hold the LOPD harmless from and against any claims, demands, actions, proceedings or liability arising from deductions made by the LOPD pursuant to this Article, including reasonable attorneys fees incurred. Once the funds are remitted to the Union, their disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union; provided this Section 4 shall not be applicable to claims or liabilities or attorneys fees incurred solely as a result of a breach by the Employer of its statutory duties or obligations under the United States Constitution.

ARTICLE 12

Pay

Section 1. General Wage Increases.

- A. For FY 2017, the LOPD budget request included \$795,300 to bring the hourly rate for approximately 173 positions up to 90% of the compa ratio. AFSCME agrees with this proposal. LOPD agrees to implement this proposal, provided that the Legislature appropriates sufficient funds for that purpose. Additionally, LOPD agrees to provide any across-the-board wage increase the Legislature appropriates for the LOPD employees in the 2016 Legislative session.
- B. Probationary employees entering a bargaining unit position subsequent to the effective date of the general wage increase for that fiscal year shall receive the general wage increase effective the first full period they obtain career status and enter the bargaining unit provided the employee had not received the general salary increase previously.

Section 2. Call-Back Pay. Employees who are called to report to work on their regular day off or that have been recalled to work after having left the Employer's premises shall be guaranteed a minimum of two (2) hours of pay for actual hours worked at the applicable straight time or overtime rate. For employees called back to work, paid time shall commence at the time the employee begins travel to report for work and ends at the completion of the call-back assignment. Employees who are currently guaranteed a minimum of pay greater than two (2) hours shall continue to be paid at the greater minimum.

Section 3. Report Pay. An employee who is pre-scheduled to work overtime and reports to duty will be guaranteed two (2) hours overtime pay at the appropriate rate. The Employer shall notify employees as soon as practical prior to their scheduled start time in the event the employee is not required to report for prescheduled overtime.

Section 4. Additional Compensable Work Time. Employees who are authorized by the Employer to perform work via the telephone in an emergency or non-emergency situation, before or after their regularly assigned shift, in excess of de minimis time, shall be compensated at straight time or overtime rate as appropriate. The Employer reserves the right to verify calls and require documentation of the call, including but not limited to: date, time and length of call; time spent addressing the emergency or required work; name of client or contact; reason for the emergency or required work; and signature of employee.

Section 5. On-Call Pay. The Employer may assign an employee to on-call status in accordance with the following:

1. **On-Call Status.** An employee assigned to “on-call” status in circumstances where the time expended will not constitute compensable hours worked under the Fair Labor Standards Act shall be paid “on-call” pay in an amount equal to one-eighth (1/8) hour of pay at their regular straight time hourly rate of pay or \$1.70 per hour, whichever is greater, for each hour of assigned “on-call” status.
2. **Unrestricted Call-Back Status.** On-call pay shall not be paid to employees who are placed on standby status and who are provided with a pager, cell phone or other electronic device and required to return to the work site as soon as practical from the

time contact is made, so long as the employee is not required to remain in any specific geographical area or required to return to work within a specific time period. Employees on such status may decline to return to work if contacted, without penalty, discipline or other reprisal if they acknowledge they are not fit to report to duty.

Section 6. Short Turnaround Pay. Employees who work a non-overtime shift that begins less than twenty-four hours after the start of their previous shift, shall be paid time and one-half for all time worked on the short turnaround shift that occurs within ten (10) hours of the scheduled end of the previous days' shift without regard to any overtime worked. An employee shall not be required to work more than 16 consecutive hours without his or her consent except in an emergency situation.

Section 7. Assignment to a Higher Rated Classification.

Employees assigned to perform the duties of a higher rated classification on a temporary basis for ten (10) consecutive work days or for twenty (20) days or more in any calendar year, shall receive the pay applicable to the higher rated classification in an amount not less than 5% but not to exceed 15% of the employee's base pay for the entire period of the assignment; provided, employees who, in connection with voluntary participation in supervised training, are assigned to perform duties normally assigned to employees in a higher rated classification, shall not receive the rate of pay applicable to the higher rated classification. The amount of acting capacity pay shall be not less than 5 percent but not to exceed 15 percent.

Section 8. Multi-Lingual Pay. In facilities or offices where it is deemed necessary to have on staff multi-lingual employees to facilitate communications with members of the public, and employees on staff assigned to the facility are available and capable

of fulfilling such need, the Employer may designate a sufficient number of employees in the assigned work force to perform such duties and such employees shall be entitled to a differential in the amount of \$.10 per hour.

Section 9. Lead Worker Pay. An employee assigned to lead worker duties shall receive the pay applicable to the greater responsibility/accountability in an amount not less than 5% but not to exceed 15% of the employee's base pay for the entire period of the assignment provided employees who, in connection with voluntary participation in supervisor training are assigned to perform duties normally assigned to the supervisor shall not receive lead worker pay.

Lead Worker Definition: An employee in an LOPD job classification who has mastered full performance level and provides work direction to one or more employees. This may include duties such as: the distribution of work, employee training, and assisting and/or advising lower level employees. However, once a lead worker has executed these techniques and instructions the responsibility ends, and responsibility for work performance and evaluation rests ultimately with the supervisor.

Section 10. New Hire Pay. When establishing the entrance salary of a new employee entering LOPD employment into a bargaining unit position with an employee(s) within the same work unit and location of an agency holding a like bargaining unit position performing the same work; the Employer will ensure that the entrance salary of the new hire does not exceed the midpoint of the pay band, unless the Employer determines that doing so is appropriate due to factors such as specialized qualifications, experience, education, certification, administrative or court proceedings, or requirements of or pursuant to law, rule or regulation.

ARTICLE 13

New or Altered Classifications

Section 1. The Employer may establish new job classifications, or abolish, merge, or change existing job classifications of employees covered by this Agreement in accordance with 10.12.3 NMAC. At the time of such action, the Employer shall identify the employees covered by this Agreement to be included in any new or altered job classification and shall identify the old job classification(s), if any, which in whole or in part are being replaced. Unless it is supervisory, confidential, or managerial, as defined in PEBA, any new or altered job classification that, in whole or in part, replaces a job classification already represented by the Union, shall be included in the bargaining unit. Any issues concerning whether or not such newly created or altered job classification remains in the bargaining unit shall be determined in accordance with the PEBA.

Section 2. Classification Reviews/Studies. The Employer shall request the Human Resource Director or designee to include the appropriate representation as designated by the Union to serve as subject matter experts in any classification review/study being conducted which includes positions in the bargaining unit and is anticipated to result in:

- Creation, modification and/or deletion of job classifications;
- Grouping of job classification by job family or occupational group;
- Describing or altering the duties, knowledge, skills or abilities within job classifications.

Section 3. Job Evaluation Committee. The Employer shall direct the Human Resource Director or designee to include representation designated by the Union in any job evaluation committee established

with regard to positions in the bargaining unit. If the Human Resource Director or designee does not include the designated union member on a job evaluation committee established with regard to positions in the unit, the Union, at its option, may renegotiate this Article.

The Union shall be entitled to select three union members who are LOPD employees and who shall be trained and eligible to serve on job evaluation committees. The Union shall designate two union members as regular members and the remaining one shall act as an alternate.

Section 4. The Union shall have the right to identify and propose to the Human Resource Director or designee the review and/or study of job classifications and/or positions in relation to Section 2 and 3 of this Article. The Employer shall direct the Human Resource Director or designee to consider the Union's request in the same manner and conditions as requests identified by the Employer in accordance with 10.12.3 NMAC.

Section 5. Nothing in this Article shall be deemed a waiver of any right to negotiate salary rates assigned to job classifications to the extent consistent with the PEBA.

ARTICLE 14

Grievance and Arbitration Procedure

Section 1. Scope

- A. Allegations of violation, misapplication, or misinterpretation of this Agreement except for Article 1 and 2 shall be subject to this negotiated grievance procedure. For purposes of this Article, “day” means calendar day unless otherwise specified. In the event the day an action or response is due is a Saturday, Sunday, or legal Holiday (as defined by the Chief Public Defender) the action or response shall be due the following workday.
- B. Allegations of violation, misapplication, or misinterpretation of applicable LOPD regulations may be grieved through Step 3 (Agency Level) of this negotiated procedure. If the matter is not satisfactorily resolved at Step 3, the Union or the employee may appeal to the Chief Public Defender within thirty (30) days of the Step 3 response in accordance with applicable regulations of the LOPD. If in the future it becomes permissible under applicable statutes and regulations to do so, then the Union may pursue such complaints through arbitration in accordance with this Agreement.
- D. In accordance with the 10.12.12 NMAC Adjudication, an employee who has completed the probationary period and has been dismissed, demoted, or suspended has the right to an appeal. The employee may have the appeal decided by the Discipline Review Board in accordance with LOPD regulations or may make an irrevocable election to have the appeal decided by an Arbitrator, but not both. No later than 30 calendar days from the effective date of the dismissal, demotion or suspension, a notice of appeal and irrevocable election must be made in writing and filed with the Human Resource Director or designee. The notice

must indicate whether the employee is choosing to have the Discipline Review Board or an Arbitrator decide the appeal and must be accompanied with a copy of the final action.

An appeal indicating that an irrevocable election for Disciplinary Review Hearing has been made will proceed in accordance with LOPD regulations. An appeal indicating that an irrevocable election for Arbitration has been made will proceed in accordance with Appendix A.

- D. The parties agree that this Section shall not be used by either party as a waiver, or concession of position, as to the interpretation of the PEBA.

Section 2. Grievances may be filed on behalf of an individual aggrieved employee or group of employees (class action) covered by this Agreement or by the Union.

Section 3. An individual employee may present a grievance under the provisions of this Article and have it adjusted without the intervention of the Union so long as:

1. The adjustment is consistent with the terms of the Agreement; and
2. The Union is provided with the opportunity to be present during the grievance meetings, is provided copies of grievance documents, and is provided an opportunity to make its views known.

An employee may not retain outside representation under this grievance procedure without the advance approval of the Union. An individual employee may not invoke arbitration under this Article.

Steps in the Grievance Procedure

The parties shall use this grievance procedure in an attempt to resolve issues at the lowest possible level. Employees should attempt to resolve any problem with their immediate supervisor before filing a formal grievance under the procedures established in this Article. Informal resolution of grievances prior to Step 1 shall not be binding upon the parties as past practice or interpretation of this Agreement. The parties agree that voluntary face to face meetings can be an effective way to reach resolution and a meeting shall occur at Step 1 or Step 2 in an attempt to resolve the grievance. Meetings to resolve grievances may be conducted by mutual agreement in person, telephonically and/or by videoconferencing.

Unless otherwise designated by the LOPD in writing, the Employer representative(s) who shall, under the terms of this Agreement, be the recipient of a grievance at each step of the grievance procedure will be the Department Human Resource Office.

The Union or grievant shall submit the grievance to the Employer in writing and shall set forth:

1. The employee's name, job title, and worksite;
2. The name, address, and telephone of the steward, union official or union representative, if any;
3. The Article(s) of this Agreement alleged to have been violated;
4. A description of the alleged violation;
5. The relief requested; and
6. The signature of the grievant or of the steward, union official or union representative.

Step 1. Grievances must be initiated by presenting a written grievance to the Employer promptly and no later than thirty (30) calendar days after the grievant or the Union was aware, or reasonably could have become aware, of the incident(s) giving rise to the alleged grievance.

The Employer shall respond in writing within ten (10) calendar days of receipt of the written grievance. Failure to respond shall constitute a denial of the grievance. If the grievance is not satisfactorily resolved at this level, the grievance may be submitted to Step 2 by filing with the Employer within ten (10) calendar days of the time for response of the step 1 grievance.

Step 2. The Union or grievant shall submit the grievance to the Employer in writing. The Employer shall respond in writing within ten (10) calendar days of receipt of the written grievance. Failure to respond shall constitute a denial of the grievance. If the grievance is not satisfactorily resolved at this level, the grievance may be submitted to Step 3 by filing with the Employer within ten (10) calendar days of the time for response of the Step 2 grievance.

Step 3. The Union or grievant shall submit the grievance to the Employer in writing. The Employer shall respond in writing within fourteen (14) calendar days of receipt of the written grievance. Failure to respond shall constitute a denial of the grievance. If the grievance is not satisfactorily resolved at this level, the grievance may be submitted to Arbitration by the Union but not by the individual grievant.

Grievance Arbitration

The Union may invoke arbitration by serving a written demand for arbitration upon the Employer within thirty (30) calendar days from the time for response of the Employer. Within seven (7) calendar days of the written demand for arbitration, the Union shall make a request for a panel of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS), unless the parties within such time period can agree upon an arbitrator or alternative panel of arbitrators from which to select an arbitrator. Within seven (7) calendar days of the receipt of a list of arbitrators by both parties or agreement to an alternative panel, the parties will meet to select the arbitrator. The selection shall be made by the Union and the Employer alternately eliminating names. The last name remaining shall be the arbitrator. The parties shall flip a coin to determine who shall strike the first name. Each party shall pay one-half of the cost of obtaining the panel of arbitrators from FMCS, except that the Employer may elect not to pay one-half of the cost of obtaining a panel of arbitrators on the condition that it strikes the first name from the panel of arbitrators.

The decision of the arbitrator shall be based upon the facts established by the testimony and documents presented in the case. The arbitrator shall have no power to add to, subtract from, alter, or modify any of the terms of the Agreement, but may give appropriate interpretation or application to such terms and provide appropriate relief. The arbitrator shall not have authority to make an award which includes a fine or other punitive damages or award of attorney's fees. Each party shall pay one-half of the arbitrator's fees and expenses. The arbitrator's decision shall be final and binding on the parties subject only to judicial review in accordance with the New Mexico Uniform Arbitration Act.

Miscellaneous – Grievance Arbitration

1. Tape recorders or other electronic recording devices shall not be used by any party participating in the grievance, except by mutual written agreement of the parties. If the parties consent to such, the recording agent must provide the other party with a true and correct copy of the recording. This provision shall not apply to grievance Arbitration hearings.
2. Any of the time limits or steps set out in this Article, with the exception of Appendix A, may be extended, waived, or otherwise modified by written agreement of the parties.
3. If the Employer fails to respond within the designated time limits, the grievance shall be deemed denied and the Union may advance the grievance to the next step in accordance with the procedures set forth in this Article.
4. The issue of non-grievability may be properly raised at any step of the grievance procedure. The arbitrator shall decide all issues regarding the grievability of grievances.
5. Grievances may be withdrawn by the Union at any step of the grievance procedure without prejudice except as to objections to timeliness.
6. The arbitration procedure set forth in this Article shall not apply to events which occur before the effective date of this Agreement.
7. The two parties to this Agreement may be represented by counsel at any step of the grievance and arbitration procedure.

8. Court reporters are permitted in arbitration but not required.
Each party shall be responsible for providing and bearing the cost of their own court reporter if they desire to have one present.

ARTICLE 15

Performance Appraisal

Section 1. Employees shall receive written performance appraisals on an annual basis. The end of year appraisal shall include the final performance rating for the year. The Employer shall provide the employee with a copy of the signed appraisal and a copy will be placed in the employee's personnel file accompanied by any comments and/or statement of objection that the employee may have included and/or attached. All interim reviews shall be consistent with the criteria set forth below in this Article.

Section 2. Performance criteria shall be specific, attainable, relevant, measurable, objective and consistent with an employee's job duties, responsibilities and relate to his/her job description. Measurement criteria shall be job and outcome related. The criteria shall be provided to an employee in writing at the beginning of the rating period and changed during the period only after review with the employee.

- A. When an employee does not have an opportunity to perform work described by a criteria that criterion will not be considered in the performance appraisal process.
- B. Performance measurement criteria shall be applied fairly, objectively and equitably. The Employer shall take into account when evaluating an employee's performance, matters outside an employee's controls, such as equipment and resource problems and lack of training. Pre-approved time away from the job including sick leave (not including call in notification), personal days, annual leave and authorized duty time for union representational purposes and other authorized activities shall not be considered. Appraisals shall fully take into account such

approved absences in a measure of timeliness and quantity of work.

Section 3. The employee's supervisor shall prepare the annual performance appraisal in a fair and objective manner and will acknowledge any duties outside the employee's specific duties/functions that were assigned and/or performed during the evaluation period.

Should circumstances exist that prevent the employee's supervisor from preparing the annual performance appraisal, only a supervisor/manager that has actually reviewed the employee's performance may prepare and sign the employee's performance appraisal. In conjunction with the transfer of an employee or his/her supervisor, the supervisor shall prepare an appraisal of the employee which shall be considered with other appraisals received during the year in order to develop the annual summary rating.

Section 4. When a performance appraisal is established it shall include at least the following:

1. performance expectations applicable to the period it is being established for which may be changed only after review with the employee;
2. modifications to the employee's job assignments, if any applicable to the next period which may be changed only after review with the employee; and
3. recommendations, if any, for training to enhance the employee's skills.

The Employer may change an employee's end-of-cycle final appraisal only with written justification, which cites the employee's performance criteria and the employee's actual performance.

Section 5. The Employer shall not prescribe a forced distribution of levels for ratings for employees covered by this Agreement.

ARTICLE 16

Health Benefits

Section 1. Contribution Rates.

The LOPD shall contribute the following amounts towards the cost of employee health benefits:

Employee Base Pay	LOPD Contribution
Up to \$50,000	80%
\$50,001 to \$60,000	70%
\$60,001 and above	60%

Section 2. Re-Opener. By giving written notice of its desire to do so on or before July 1 of each calendar year the Union, at its option, may reopen this Article of the Agreement.

ARTICLE 17

Personnel Records

Section 1. Maintenance of Records.

- A. The Employer shall maintain all records concerning an employee under secure conditions. The Employer shall maintain one official set of records concerning an employee [hereinafter referred to as "Personnel Records"].
1. The official set shall be kept at the LOPD Human Resources Unit.
 2. The personnel record may contain "confidential" documents, as defined in this Article.
 3. Other than documents related to general maintenance of the personnel record, the Employer shall notify the employee of all documents being placed in the employee's file.
 4. An employee shall have a right of access to any document filed in their official Personnel Records after such document is filed and upon request will be provided a copy of any document contained in their personnel record.
 5. Employees may respond in writing to any matter contained in their file, and the responses shall be included at the employee's request.

Nothing in this Section shall require duplicate sets of records to be maintained at LOPD. With the exception of files on conduct or performance maintained by an employee's immediate supervisor in accordance with subsection B below or confidential investigatory files in accordance with subsection C below, all

other files maintained by the Employer and its managers which contain performance or conduct information specific to an employee shall be made available by inspection and copy by the employee upon request.

B. Personal records of files maintained by an employee's immediate supervisor shall not be considered an official state record but shall be considered as an extension of the supervisor's memory. If maintained, such records or files shall be disclosed in accordance with the following:

1. Except as modified below, the supervisor may, but is not required to disclose the records to the employee upon request;
2. The supervisor is required to disclose such records to the employee if the supervisor takes a tangible employment action based in part on the information in the records;
3. The supervisor may not disclose the records, or any portion thereof, to any other party unless also disclosed to the employee;
4. The supervisor may not transfer custody of or copy the records, or any portion thereof, to any other party;
5. The supervisor shall maintain only timely and relevant material.

C. Records of confidential investigations that do not result in an adverse employment action shall only be disclosed by the LOPD pursuant to a court order or lawful subpoena that has been obtained as part of an official investigation or as part of litigation. Such records shall only be accessible to the general counsel, executive management, or those authorized to conduct

investigations on the behalf of the agency on a need to know basis. Employees who are the subject of a confidential investigation may pursue remedies exclusive of this contract for unauthorized disclosure of records of the investigation but shall have no remedy under this contract for unauthorized disclosure.

Section 2. Confidentiality of Records.

A. In accordance with subsection C of 10.12.1.12 NMAC, the following documents shall be regarded as confidential:

1. any documents pertaining to an employee's physical and/or mental examinations and/or medical treatment;
2. any documents maintained for purposes of the Americans with Disabilities Act; letters of reference concerning employment, licensing, or permits;
3. any documents containing statements of opinion about an employee;
4. documents concerning alleged or proven infractions and disciplinary actions;
5. performance appraisals and/or evaluations whether formal or not;
6. opinions as to whether an employee should be reemployed;
7. college transcripts;
8. military discharge, if other than honorable;

9. information on the race, color, religion, national origin, ancestry, political affiliation, sexual orientation, or disability of an employee; and
10. laboratory reports or test results concerning an employee.

Unless otherwise required by law, the Employer agrees to maintain the confidentiality of an employee's personal information, including but not limited to their social security number, date of birth, residential address, credit references and/or credit history.

B. Confidential documents are not subject to inspection by the general public without written permission of the employee whom they concern or pursuant to a lawful subpoena.

1. The Employer will make such documents available to the Union, with the prior written consent of the employee, if necessary for and relevant to a grievance pursuant to the grievance and arbitration provisions hereof as determined by an arbitrator selected under the provisions of this Agreement, but only upon agreement of the Union to maintain the confidentiality of such material to the greatest extent possible while pursuing the grievance.
2. The Employer shall not provide references or disclose any information from confidential documents or the documents themselves, by any means of communication, to any person or organization, except with the prior written consent of the employee to whom the employment reference and document disclosure pertains.
3. Grievances over allegations of violation, misapplication, and misinterpretation of this Section shall be filed in accordance

with Section 1.B of the Grievance and Arbitration Article of this Agreement.

Section 3. Limitations on the Content of Records.

- A. The Employer shall not maintain in an employee's Personnel Records any documents critical of any employee's which have not resulted in discipline when investigation of any such materials is not on-going or has ceased. Nothing contained herein shall require the removal of an employee's formal performance evaluations, so long as the employee has had the opportunity to submit rebuttal statements or documents if he or she has disagreed with any part of an evaluation.
- B. Confidential and other documents may be removed from an employee's Personnel Record as part of a grievance settlement agreement or arbitration award. When documents are removed from an employee's Personnel Record pursuant to this Article, they shall not be considered in connection with any future personnel action involving the affected employee.
- C. The Employer shall allow an employee to inspect his or her Personnel Records. Upon request, an employee will be provided with copies of any documents in his or her Personnel Records at the Employer's expense if the employee is facing disciplinary charges; or by reimbursing the cost for copying if the employee is not facing disciplinary charges.

Section 4. Removal of Reprimands. One (1) year after an employee has received a letter of reprimand, the employee may request that the letter of reprimand be removed from the employee's personnel file. If the employee has not committed any further infractions of work rules during the preceding year, the Employer shall not use the reprimand as the basis for further discipline, and

shall remove the letter of reprimand from the employee's personnel file, unless such action could subject the Employer to potential liability to third parties. Denial of an employee's request under this section shall be explained to the employee in writing. Such explanation shall include an indication of when the Employer may be willing to remove the reprimand, which shall normally be within five (5) years of the date of issuance. In cases of denial, an employee may reinitiate a request for removal at a later date.

ARTICLE 18

Management Rights

Section 1. Except to the extent specifically modified or limited by this Agreement or by applicable statutory or regulatory provisions, the sole and exclusive rights of management shall include the following:

1. direct the work of, hire, promote, assign, evaluate, transfer, demote, suspend, dismiss, or otherwise discipline employees;
2. determine qualifications for employment and the nature and content of personnel examinations;
3. take actions as may be necessary to carry out the mission of the State in emergencies;
4. determine the size and composition of the work force;
5. formulate financial and accounting procedures;
6. make technological or service improvements and change production methods;
7. relieve an employee from duties because of lack of work or other legitimate reason;
8. determine methods, means, and personnel by which the Employer's operations are to be conducted;
9. determine the location and operation of its organization;
10. provide reasonable rules and regulations governing the conduct of employees; and

11. provide reasonable standards and rules for employees' safety.

Section 2. Prior to implementing any change in existing terms or conditions of employment relating to items 9, 10 or 11 of Section 1 above, the Employer shall provide the Union with reasonable notice under the circumstances of such contemplated action and, if requested to do so, shall bargain with the Union in good faith to impasse prior to implementing such changes.

Section 3. LOPD may maintain policies and procedures that contain provisions that are more generous to the employee than those within this Agreement.

ARTICLE 19

Mid-Contract Bargaining

Section 1. Changes in Statutes and Regulations. The parties recognize that from time to time the U.S. Congress, federal agencies, and the State Legislature may enact changes that affect terms and conditions of employment and that the Public Defender Commission may adopt, repeal, and/or modify its regulations and that these legislative or regulatory actions may alter established terms and conditions of employment or conflict with or nullify terms of this Agreement. Accordingly, within thirty (30) calendar days following the enactment of such legislative or regulatory action, if requested by a party hereto, the parties shall negotiate over the matter to the extent consistent with law.

Section 2. Supplemental Bargaining. The parties acknowledge that there are terms and conditions of employment that are unique to employees covered by this Agreement who are employed by LOPD. Accordingly, the parties agree to engage in supplemental bargaining to discuss and seek to agree to matters not controlled by federal or state legislation or regulation. The Union must provide written notice to LOPD Human Resources of all such matters on which it desires to engage in supplemental bargaining within thirty (30) days of the effective date of this Agreement, and supplemental bargaining shall be limited to such matters for the duration of this Agreement. Any supplemental agreements concluded shall be appendices to this Agreement. Supplemental agreements may not modify or conflict with the terms of this Agreement. Prior to engaging in formal negotiations, the Employer and the Union shall first address the issue informally. In any circumstances where the parties engage in supplemental bargaining, the parties shall resolve any impasse in accordance with the PEBA.

Section 3. Union Time for Employee Bargaining Representatives.

Employee representatives engaged in mid-contract bargaining pursuant to law and/or this Agreement shall be released from duty without charge to pay or personal leave to participate in negotiations when otherwise in a duty status. Time to prepare for such negotiations may be granted at the Employer's discretion but, if not granted, employee representatives shall be granted reasonable amounts of paid time off (accrued vacation, compensatory time, etc.) or LWOP upon request. Nothing in this Section authorizes the payment of mileage and per diem for the time spent preparing for or engaging in negotiations. The number of employee representatives entitled to time under this Section shall be the greater of:

- A. the number of management representatives involved in bargaining;
- B. one employee representative for every two hundred (200) employees affected by such negotiation or
- C. three (3) employee representatives.

ARTICLE 20

Annual Leave

Section 1. Accrual. Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay shall accrue annual leave at the rate of:

3.08 hours per pay period if less than three years of cumulative employment;

3.69 hours per pay period if three years or more but less than seven years of cumulative employment;

4.61 hours per pay period if seven years or more but less than eleven years of cumulative employment;

5.54 hours per pay period if eleven years or more but less than fifteen years of cumulative employment; or

6.15 hours per pay period if fifteen years or more of cumulative employment.

Part time employees shall accrue annual leave on a prorated basis.

Section 2. Use. At any time, but no more than one year in advance, employees may request the use of accrued short-term leave (annual leave, compensatory time use, or personal leave). Such request shall be in writing and shall be approved or denied by the Employer as soon as practical after the request is made. If the employee makes the request at least twice as long in advance as the length of the leave requested (e.g. twenty days in advance for ten days of leave), the supervisor shall approve/deny the requested leave within five days of receipt of the request, or one day prior to the beginning of the leave

requested, whichever is sooner. In unanticipated situations, or when the employee is out of the office, an employee may make requests verbally. The Employer will only deny leave requests for specific and legitimate operational needs which shall be fully explained if requested by the employee. Previously approved leave requests may be cancelled only in case of a reasonably unforeseen circumstance which may require cancellation of the leave. Unless the parties negotiate otherwise during supplemental negotiations, leave shall be granted on a first come–first serve basis subject to the specific and legitimate operational needs of the Employer.

Section 3. Vacation Schedules/Procedures. Where operational needs preclude the routine approval of leave for vacation periods (40 or more consecutive hours), the approval and scheduling of vacation periods shall be on a first come – first serve basis unless changed in facilities operating twenty-four hours per day and seven days a week by mutual agreement during supplemental negotiations. Employees, who believe they will lose accrued vacation in any calendar year because they will have accrued more than two hundred and forty (240) hours and because of scheduling difficulties they have been unable to schedule vacation to utilize such hours in excess of two hundred and forty (240), shall confer with their supervisor on or before July 1 of each calendar year and the employee and the supervisor shall develop a schedule providing for contiguous leave time consistent with the employee's original request which will permit the employee to use such excess hours by the end of the calendar year. In the event that the scheduled leave is cancelled by the Employer, preventing the employee from reducing his/her accrual to less than two hundred and forty (240) hours by the end of the last full pay period ending in December, then the Employer shall approve paid time off in the same amount of lost time in the next calendar year, to be used by the last full pay period ending in March.

ARTICLE 21

Sick Leave

Section 1. Accrual. Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay shall accrue sick leave at the rate of 3.69 hours per biweekly pay period. Part-time employees shall accrue sick leave on a prorated basis.

Section 2. Use. An employee may use sick leave for personal medical treatment or illness or for medical treatment or illness of a relation by blood or marriage within the third degree, or of a person residing in the employee's household. Employees affected by pregnancy, childbirth, and related medical conditions must be treated the same as persons affected by other medical conditions.

Section 3. Procedures. Employees shall contact their supervisor or supervisor's designee at their earliest opportunity and no later than 30 minutes after the scheduled beginning of their workday or in the case of employees assigned to shift work at entities that maintain 24-hour operations two (2) hours prior to the scheduled beginning of their workday. If the supervisor or designee is not available at the designated phone number, the employee shall leave a message for the supervisor or designee in accordance with written instructions issued by the Employer. In the event the employee is incapacitated, a family member may call in on behalf of the employee. A sick leave request will normally be verbal but may be in writing if the employee knows in advance of the necessity for sick leave. The Employer shall not ask the employee to provide information relative to the request, except as permitted by applicable law.

Section 4. Health Care Provider Certification. Employees may be required to provide health care provider certification for the use of paid sick leave only in the following circumstances:

- A. If the sick leave is for more than three (3) consecutive work days.
- B. If an employee habitually maintains a low sick leave balance without providing evidence of the need for such relatively high utilization or when the supervisor has a reasonable suspicion that the employee is utilizing sick leave for purposes other than those authorized by Section 2 above. In such circumstances, the Employer shall first counsel the employee that the employee's utilization may lead to a practitioner certification requirement. If the employee does not show improvement in utilization or does not provide evidence of the need for relatively heavy utilization, the Employer may provide the employee with a written instruction notifying the employee of the requirement of health care provider certification, or other acceptable documentation, for sick leave absences. The certification requirement will be reviewed after six months and if the employee substantially complies with requirements for documentation or uses substantially less sick leave, the certification requirement shall be rescinded.
- C. Employees (and dependents) with chronic health conditions that may reasonably require frequent absences and charges to sick leave, may provide the employee with an annual certification in order to meet the requirements of this section.

A "health care provider" means a doctor of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) in the state in which the doctor practices or any other person determined to be capable of providing health care services under regulations promulgated under the Family and Medical Leave Act of 1983, 29 U.S.C., Section 201 et seq.

ARTICLE 22

Other Paid Leave

Section 1. Interview Leave. Current practices regarding grant of administrative time for interviews shall be maintained. In addition, employees shall be provided the opportunity to flex time work schedule within the work week without charge to leave to permit them to participate in interviews for a job with the State.

Section 2. Administrative Leave. In the event that the Chief Public Defender elects to grant general administrative leave for any purpose other than by reason of inclement weather, all employees shall have such leave approved on a fair and equitable basis. Employees required to maintain necessary services and otherwise not able to observe the administrative leave during the time in which it is granted shall be credited with the time.

Section 3. Physical Fitness Leave. The Employer shall permit employees the opportunity to flex their work schedule within the work week up to 1.5 hours to enable them to participate in exercise programs.

Section 4. Bereavement Leave. Employees shall be granted two (2) days of administrative leave for bereavement of an immediate family member defined as: mother, father, sister, brother, spouse, daughter, son, step parent or child, grandparent, grandchild or domestic partner.

Section 5. Religious Observances. Upon fifteen (15) days advance notice, the Employer shall approve an employee's request for annual leave, personal leave, and/or compensatory time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the workday or work week.

ARTICLE 23

Holidays

Section 1. Holiday Falling During Sick Leave. Holidays that occur during an employee's sick leave will not be charged to sick leave, and will be recorded and paid as holidays.

ARTICLE 24

Discipline and Discharge

Section 1. Discipline. The primary purpose of discipline is to correct performance or behavior that is below satisfactory standards, or contrary to the Employer's legitimate interests, in a constructive manner that promotes employee responsibility.

Progressive discipline shall be used whenever appropriate. Progressive discipline can range from a reminder, to an oral or written reprimand, to a suspension, demotion or dismissal. There are instances when a disciplinary action, including dismissal, is appropriate without first having imposed a less severe form of discipline.

LOPD shall utilize alternative methods to resolve conflicts or improper employee performance or behavior whenever appropriate.

An employee who has completed the probationary period required by LOPD Rules may be suspended, demoted, or dismissed only for just cause which is any behavior relating to the employee's work that is inconsistent with the employee's obligation to the LOPD.

Section 2. Pre-Disciplinary Investigations and Meetings. Employees shall have the following rights in addition to those rights established by LOPD rules and regulations:

- A. At any meeting where the Employer is investigating any employee for possible disciplinary actions, the Employer shall:
 - 1. notify the employee at the outset of the meeting that the employee is being investigated for possible disciplinary action;

2. on request, allow the employee the opportunity for union representation; and
3. if the Employer elects to proceed with the interview, provide the employee with a reasonable amount of time to confer with his/her representative.

The Employer may not make a verbatim record of such interview unless it notifies the employee at the outset of the meeting of its intention to do so. If the Employer does elect to make a verbatim record of the meeting, the employee shall be provided with a true and correct copy of the record. In addition, if the Employer is recording the meeting, the employee may also record the meeting provided that the meeting will not be unduly delayed while the employee obtains a recording device.

- B. An employee may refuse to answer questions of a superior that probe possible criminal conduct until the employee has obtained legal advice and/or counsel. The employee shall be given a reasonable period of time to secure counsel; and
- C. If a superior needs to talk to an employee concerning the employee's performance or conduct, the meeting shall be held in private. In all cases, the confidentiality of the disciplinary process shall be maintained by the Employer and its representatives as required by law, LOPD Rules and this Agreement.

Section 3. Time Limits. Except for disciplinary actions related to performance which are governed by Article 25 and/or cases where outside agencies or divisions are involved in the investigation, the Employer may impose any disciplinary action or issue a notice of contemplated action no later than forty-five (45) days after it acquires knowledge of the employee's misconduct for which the disciplinary

action is imposed, unless facts and circumstances exist which require a longer period of time.

Section 4. Appeals. Reprimands may be grieved through Step 3(Deputy Chief or designee) of the negotiated grievance procedure. If the Union or employee is dissatisfied with the response at Step 3, the Step 3 decision may be appealed within ten (10) calendar days to the Chief Public Defender or his/her designee. The Chief Public Defender or designee will meet with the Step 3 respondent, the employee and his/her representative or conduct a paper review of the Step 3 respondent's decision. In any event, the Chief Public Defender or designee shall issue a final and binding decision of the appeal within twenty-one (21) calendar days.

ARTICLE 25
Disciplinary Actions Related to
Unsatisfactory Employee Performance

Section 1. Application. This Article applies to an employee who has attained career status.

Section 2. Basis for Action. The LOPD may discipline an employee for performance which continues to be unsatisfactory after the employee has been given a reasonable opportunity to correct it.

Section 3. Procedures.

- A. An employee may not receive an overall rating of less than satisfactory on the employee's annual performance appraisal unless the employee has been advised, in writing, that he/she is not meeting the performance standards. An employee shall be informed of performance deficiencies that may lead to a less than satisfactory performance rating within reasonable proximity of when the Employer became aware of the deficiency, but always within thirty (30) days.
- B. When an employee has been placed on notice that he/she has not met his/her performance expectations, and the Employer decides to pursue a performance-based action, the employee's supervisor shall inform the employee that the employee has one hundred-eighty (180) days from issuance of the rating to improve to a satisfactory level. This shall not preclude the Employer from taking performance-based disciplinary actions against the employee after thirty (30) days from the beginning of the Performance and Development Plan if the employee exhibits a critical failure to perform, substantially fails to comply with the Performance and Development Plan or exhibits deteriorating

performance. The Employer shall create a Performance and Development Plan to identify the following:

1. an identification of the job assignments and performance skills for which performance is unsatisfactory;
 2. a description of what the Employer will do to assist the employee to attain a satisfactory level and a description of what the employee must do to improve the unsatisfactory performance during the one hundred-eighty (180) day Performance and Development Plan;
 3. a statement as to how often the supervisor and the employee will meet during the one hundred-eighty (180) day Performance and Development Plan period to provide the employee with coaching and feedback to assist the employee to attain a satisfactory performance level; and
 4. a statement indicating that failure to meet the Performance and Development Plan expectations during or at the end of the one hundred-eighty (180) day period may result in disciplinary action up to and including termination.
 5. At the conclusion of the one hundred-eighty (180) day Performance and Development Plan period the Employer will meet with the employee to discuss the final outcome/rating of the employee's performance and will notify the employee of the final outcome in writing.
- C. If, at the conclusion of the Performance and Development Plan period, the Employer elects to initiate discipline against an employee for unsatisfactory performance, the Employer shall notify the employee, within forty-five (45) days, in writing by a Notice of Contemplated Action of the Employer's decision to

initiate disciplinary action. The Notice of Contemplated Action shall include:

1. specific documented instances of unsatisfactory performance by the employee on which the action is based;
 2. the specific job assignments/skills involved in each specification of unsatisfactory performance;
 3. a written description of the efforts made by the Employer to assist the employee in improving performance during the Performance and Development Plan period; and
 4. written explanation of how the Employer provided the employee with a reasonable opportunity to attain satisfactory performance.
- D. If the Employer decides not to take action based on unsatisfactory performance, it shall expunge the notices described in this Section from all official records.
- E. If the Employer does not provide the employee a reasonable opportunity to attain satisfactory performance as outlined in the Performance and Development Plan, it may not issue discipline under this Article.

Section 4. The Employer shall fully consider a demotion, in appropriate circumstances in lieu of termination for unsatisfactory performance.

Section 5. Reprimands may be grieved through Step 3 (Deputy Chief or designee) of the negotiated grievance procedure. If the Union or employee is dissatisfied with the response at Step 3, the Step 3 decision may be appealed within ten (10) calendar days to the

Chief Public Defender or designee. The Chief Public Defender or designee may meet with the LOPD management representative, the employee and his/her representative or conduct a paper review of the agency decision. In any event, the Chief Public Defender or designee shall issue a final and binding decision on the appeal within twenty-one (21) calendar days.

Section 6. Caseload/Workload Management. The following defenses may be asserted by the employee in response to disciplinary action for failure to complete caseload/workload assignments as required:

- A. the worker was unable to complete caseload/workload activities on assigned cases because there was not sufficient time available to take actions required by policy and regulations; and/or
- B. the worker was unable to complete caseload/workload assignments in a timely manner because of the actions of others over which the employee has no control.

The employee shall have the burden of establishing these defenses.

ARTICLE 26

Contracting of Work

Section 1. Contracting Out. In the event the Employer decides to contract out work which has been traditionally performed by employees in the bargaining unit, it shall provide the Union with written notice, as soon as practical but not less than twenty-one (21) days prior to the proposed implementation, describing the work to be contracted, the basis for the decision to contract out the work, and the anticipated effect on employees. The Union may request bargaining within twelve (12) days of receipt of the notice. In the event of an impasse in bargaining the Employer may implement its last offer and the Union may not invoke impasse arbitration provided the Employer's action will not result in an employee's classification being downgraded, regular straight time hours being reduced, being laid off or being transferred more than 35 miles. If any such adverse actions would occur, the Employer may only contract out the work consistent with the resolution of the impasse by an arbitrator. Work "traditionally performed" shall not include work temporarily contracted out to meet emergency needs or mandates of higher authorities or work contracted out in accordance with existing practice.

Section 2. Returning Work to LOPD Service. Where the Union contends that work being performed under a service contract can be more economically, efficiently and qualitatively performed by employees in the bargaining unit, it shall notify the Employer of its contention in writing, supported by a statement setting forth the reasons why it believes such work can be more economically, efficiently and qualitatively performed by bargaining unit employees. The Employer will, upon a specific written request, furnish the Union with information reasonably available and relevant to its analysis, subject to withholding such information after receiving valid written objections from the contractor on grounds of confidentiality or

because of the proprietary nature of the information requested. Where the Employer, after reviewing the Union's contentions and conducting further analysis on its own, determines that the work can be more economically, efficiently and qualitatively performed by employees in the bargaining unit, the parties shall jointly develop a plan to return such work to LOPD service.

ARTICLE 27

Physical Examinations

Whenever the Employer requires a physical examination from a physician selected or approved by the Employer, and where applicable law allows such an examination, the employee will be on paid status for the amount of time to complete the examination and the Employer will pay the cost of such examination. The Employer shall also pay any costs and provide duty time to employees required to undergo testing and physical examinations in connection with Commercial Drivers Licensing if the Employer requires a CDL.

ARTICLE 28

Schedules and Staffing

Section 1. Work Week

A. For purposes of this Agreement, the work week will be a calendar week beginning at 12:01 a.m. Saturday and ending 12:00 midnight the following Friday. All full-time employees normal work week will consist of forty (40) hours per week and shall include two consecutive days off.

No regular work shift shall be split into more than two (2) segments with an unpaid break of greater than one (1) hour.

B. The Employer may change established work schedules in order to meet legitimate public service and operational needs. Assignment of overtime shall not constitute a change in the work schedule. Prior to implementing such changes the Employer shall provide written notice to the Union and affected employees as follows:

1. Sixty (60) days when adding one or more workdays to the work week (i.e. Saturday and/or Sunday);
2. Forty-five (45) days when changing the length of the workday (e.g. from eight (8) hours to ten (10) hours) or changing starting/quitting times by more than two (2) hours;
3. Twenty-one (21) days when changing starting/quitting time by two (2) hours or less.

The written notice of changes in 1 and 2 above shall be executed by the Chief Public Defender. The Union may request bargaining over the change within fifteen (15) days of receipt of the notice. The failure of the parties to reach Agreement shall not require the

Employer to delay implementation of the change. In the event of an impasse in bargaining, the parties shall resolve the impasse in accordance with the PEBA or any other expedited impasse resolution procedures mutually agreed upon by the parties; provided, however, the impasse resolution shall be limited to proposals relating to the impact and implementation and not the decision to make the change.

Section 2. Flex Schedule. Employees may apply for a schedule that deviates from a worksite's normally scheduled work hours and workdays [hereinafter referred to as "flex" or "compressed work schedule (CWS)"]. The Employer shall not unreasonably deny or rescind an employee's requested flex or CWS schedule. In the event an employee is denied a flex or CWS schedule, or that schedule is rescinded, the Employer shall provide the employee in writing the reasons for the denial or rescission of the schedule. If an employee's application cannot be approved because another employee is also requesting or is on the same or similar schedule, then Agency seniority shall be the determining factor as to which employee shall be granted or maintained on their requested flex or CWS schedule.

Section 3. Breaks. The Employer shall provide employees a reasonable number of rest periods during the work day, consistent with the situation at any particular worksite.

Section 4. Meal Periods. All full-time employees may take at least one thirty (30) minute unpaid meal period each workday, not to be used in conjunction with breaks or early release. Unpaid meal periods shall not interfere with the operational needs of the agency. This provision does not apply to 24-hour operations.

Section 5. Staffing and Workload Standards. The Employer shall assign workloads to treat employees as equitably as possible. The Employer shall consider re-distribution of staff or positions among an agency's programs, shifts, or work sites or other means of

alleviating excess workload and shall specifically consider hiring additional staff where there are chronic workload problems.

Section 6. Make Up Time. When an employee is occasionally late for work and has called in or made a reasonable attempt to do so, the Employer, if possible, shall allow them to make-up up to one (1) hour of the lost work time within the same work week.

Section 7. Job Sharing. Employees may share the same job position and the Employer shall approve reasonable job sharing provisions proposed by employees wishing to share a job.

Section 8. Worksite. Where practicable, the Employer will provide reasonable alternative worksite accommodation due to a temporary medical condition.

Section 9. Parent-Teacher Conferences. The Employer shall approve written, timely requests to use annual leave, accrued comp time, and/or leave without pay so the employee may attend parent - teacher conferences. A "parent-teacher conference" includes regularly schedule meetings between parents and teachers to review a student's progress, as well as other conferences requested by school officials to address disciplinary concerns or academic issues. Excused time shall include reasonable travel time to and from the worksite to the school. An employee shall notify his/her supervisor at least forty-eight (48) hours in advance of the need to be excused for a parent-teacher conference. The Employer shall make a good faith effort to accommodate requests that are untimely due to unforeseen circumstances.

Section 10. Staffing. Upon request twice each calendar year, the Chief Public Defender shall meet with the Union at a mutually agreed upon time and place to discuss staffing related issues. In anticipation of such a meeting, on written request, the Employer shall

provide the Union with all relevant staffing related information within the possession or control of the Employer, including information related to the methodology it used to determine staffing levels, that is permissibly released under law.

ARTICLE 29

Overtime and Compensatory Time

Section 1. Overtime. The Employer shall compensate FLSA non-exempt employees at the rate of one and one-half times the employee's regular hourly rate of pay for hours worked in excess of forty (40) hours during the employee's designated work week; (hereinafter referred to as "Overtime Pay"). The Employer may not adjust the length of any bargaining unit employees' workday or work week to avoid payment of overtime or accrual of Comp Time by non-exempt employees without the employee's consent. In the event an employee is absent from work on an authorized paid leave status during regularly scheduled non overtime hours the Employer shall pay the employee for all such scheduled non-overtime hours with charge to the appropriate paid leave and shall not substitute actual time worked for authorized paid leave.

Section 2. Overtime Scheduling. This section governs those agencies where there is no supplemental agreement regarding overtime assignments. If overtime is required of an individual employee:

- A. The supervisor/manager shall first offer overtime to the employees under his/her supervision who are qualified to perform the necessary tasks.
- B. If more than one qualified employee volunteers to work overtime, the supervisor shall assign overtime based on agency seniority within the work group that he/she supervises.
- C. The supervisor/manager shall rotate overtime assignments in a fair and equitable manner. If no volunteers are available, then the supervisor/manager will designate employees capable and qualified to perform the work based on reverse agency seniority.

- D. Mandatory overtime shall be rotated in a fair and equitable manner.
- E. The Employer shall have the right to require employees to work overtime consistent with this section.

Section 3. Compensatory Time for FLSA Non-Exempt Employees. FLSA non-exempt employees may accrue up to 240 hours of compensatory time off (hereinafter referred to as "Comp Time") at the rate of one and one-half hours for each hour of time worked where such time worked would otherwise be compensated by Overtime Pay.

- A. Overtime will be paid in cash or Comp Time at the employee's election, unless the employee is informed that only Comp Time is being offered.
- B. When only Comp Time is offered, the employee may refuse the overtime assignment without penalty.
- C. The date to be taken as Comp Time off shall be scheduled by agreement between the supervisor and the employee and supervisory approval for the use of Comp Time will be granted in a fair and equitable manner.
- D. All unused Comp Time will be paid upon an employee's leaving the LOPD or a department, division or other subgroup which has an individual budget, or upon death, to the employee's estate, at the final regular rate received by the employee.

Section 4. Compensatory Time for FLSA Exempt Employees. FLSA exempt employees may accrue up to 80 hours of Comp Time, or more if the LOPD allows for a more generous accrual, at the rate of one hour for each hour worked in excess of forty (40) hours during

the employee's designated work week except agencies, at their discretion, may offer cash overtime payments.

- A. The date to be taken as Comp Time shall be scheduled by agreement between the supervisor and the employee and supervisory approval for the use of Comp Time will be granted in a fair and equitable manner. Unused Comp Time may be paid at the discretion of the Employer as availability of funds allow.
- B. An employee who has a Comp Time balance of at least 75 hours shall confer with his/her supervisor in an effort to develop a plan for usage of Comp Time so as to avoid accumulated Comp Time in excess of 80 hours. In the event, after good faith discussions, the employee and the supervisor cannot agree on a plan, the supervisor may designate times when accumulated Comp Time may be used in order to reduce the accumulated balance to no more than 70 hours. Should the employee decline to use accumulated Comp Time during the designated periods, the employee may be required to work overtime in excess of the 80 hour cap without additional compensation. If the supervisor fails to designate a period(s) for use of the accumulated Comp Time, the employee may accumulate Comp Time in excess of the 80 hour cap to a maximum of 120 hours. If the supervisor continues to fail to designate periods for use of the accumulated Comp Time, the Employer shall either pay the employee in cash one hour for each hour of overtime or refrain from assigning overtime to the employee.

Section 5. Notice for FLSA Non-Exempt Employees. By November 1 of each calendar year the Employer shall send a written notice to bargaining unit employees notifying them of accrual limitations under this Article.

ARTICLE 30

Continuation of Benefits

Employees shall enjoy all economic benefits contained in this Agreement. Where other or greater economic benefits are not contained herein, but are contained in legislative enactment or rule or regulation of the Public Defender Commission, the Employer shall continue such economic benefits.

ARTICLE 31

Furlough and Reduction in Force

Section 1. In the event the LOPD contemplates a furlough or reduction in force (RIF), prior to implementing its furlough or reduction in force plans, the Chief Public Defender or designee shall notify and meet with the Union to discuss the furlough or reduction in force plan and consider alternatives.

Section 2. Furlough. In the event of a furlough, other than a furlough implemented because of a temporary loss of federal funds, the Employer may not furlough an employee in a manner that results in the loss of more than 80 hours of pay during a twelve month period or more than 53 hours of pay in any pay period, unless agreed to by the Union and there are no other alternatives available.

The furlough plan shall affect all employees within the organizational unit impacted to the same extent including the return to full service.

Section 3. Reduction in Force. Employees to be affected by a reduction in force shall be provided the right of first refusal to any position to be filled within the agency for which they meet the established requirements at the same or lower midpoint than the midpoint of the position the employee currently holds unless there is an actual layoff candidate exercising RIF rights for that position. All reasonable efforts shall be made to ensure that an employee shall not receive a pay reduction. However, if the pay band of the position to which the employee is claiming is lower than the employee's current pay band, the employee shall be paid at a rate no higher than the maximum rate for the pay band of the position to which the employee is claiming unless approved by the Chief Public Defender or designee.

No employee in career status shall be laid off while there are term, probationary, emergency or temporary status employees in the same classification in the same organizational unit. The order of layoff due to a reduction in force as well as the return to LOPD service shall be by LOPD seniority date.

ARTICLE 32

Filling of Vacancies

Section 1. The Employer shall advertise all bargaining unit job vacancies which the Employer intends to fill in a reasonable manner, including posting a notice on all bulletin boards at the location where the vacancy exists, for a period of at least fourteen (14) calendar days prior to selection.

Section 2. Qualifications. Job Related Qualification Standards (JRQS) established for a position shall be approved by the Chief Public Defender or designee prior to recruitment. JRQS shall consist only of job related education, experiences, licensure, certification registration, and/or legal requirements that are:

- A. appropriate to the occupation and job duties of the position;
- B. necessary for successful performance of the essential duties of the position; and
- C. are not designed to unduly restrict competition.

Section 3. If multiple applicants are substantially equally qualified, then Seniority as defined in this Agreement shall govern the applicant selection for vacancies within the bargaining unit covered by this Agreement.

Section 4. Transfers. The Employer may not involuntarily transfer an employee to a post of duty that is more than thirty-five (35) miles from his/her current post of duty.

ARTICLE 33

Job Classifications

Section 1. Right to Job Description. Within fourteen (14) calendar days of receipt of an employee's request the Employer shall provide an employee with a copy of the current document on file that describes and/or supports the employee's individual position assignment.

If the Employer does not already have a current document on file that describes and/or supports the employee's individual position assignment, then the Employer shall provide within fourteen (14) calendar days, the employee with the appropriate form(s) for a position assignment analysis. This form(s) will be completed by the employee and supervisor within thirty (30) calendar days after receipt of the form(s). Once completed, the form(s) will be filed with the LOPD Human Resource Office for placement in the proper position control files.

Section 2. Requesting Position Assignment Review. Any employee covered by this Agreement who believes his or her actual position assignment in the LOPD is not assigned to the class that best represents the duties assigned by the Employer and performed by the employee may initiate a request for a review of their position assignment and/or a new position classification assignment through procedures established by the Public Defender Commissions's regulations. Employees shall be classified in the appropriate position assignment.

The Employer shall direct the Human Resource Director or designee to ensure the procedures referred to in Section 2 are in writing and available to employees and/or the Union.

In addition to the form(s) for a position assignment analysis, the employee and the employee's union representative shall be allowed to submit additional information and/or documentation relevant to the employee's current job tasks and/or assignments being performed by the employee. The Employer shall direct the Human Resource Director or designee to allow the employee and the employee's union representative to meet with HR Director designated staff in order to present the case for the review of the position assignment, which may include a desk audit.

The position assignment review process shall begin as soon as the employee submits the request and shall be completed within ninety (90) calendar days, unless unusual circumstances intervene. In the event of a delay, LOPD Human Resources shall inform the employee in writing of the delay. If the employee's position is subsequently assigned to a different classification, the employee shall be paid the appropriate rate of pay for the new job classification prospectively as provided by LOPD rules.

Section 3. LOPD Initiated Individual Position Reclassification.

In the event that the LOPD decides to submit a reclassification request of a bargaining unit position to the Human Resource Director or designee for the review of an individual position's assignment that could result in its removal from the bargaining unit, the LOPD will also notify the Union of the request. In addition to the LOPD's submittal the employee and the employee's union representative shall be allowed to submit additional information and/or documentation relevant to the LOPD's request. The Employer shall allow the employee and employee's union representative to meet with Human Resource designated staff in order to present the case for the review of the position assignment, which may include a desk audit.

ARTICLE 34

Health and Safety

Section 1. Health and Safety Standards and Measures. Safety is an integral part of the responsibilities of every manager, supervisor and employee. Safety management exists to assist managers, supervisors and employees in the better performance of their duties. Employees, supervisors and managers shall comply with such rules, regulations and practices as may be prescribed in order to provide safe, sanitary and healthful working conditions. For all employees covered by this Agreement, the Employer shall:

- A. provide safe and healthy working conditions and practices;
- B. comply with the federal Occupational Safety and Health Act (OSHA) and all other applicable federal, state and local laws and regulations, and departmental safety rules and regulations;
- C. provide safe, healthy, and clean work sites and grounds; and
- D. provide employees with adequate information on communicable diseases and infestations and hazards to which they may have routine exposure.

Section 2. Health and Safety Committees. To facilitate the development and active maintenance of safety management programs, Health and Safety Committees (hereinafter referred to as "HSC") are established. The LOPD Labor Management Committee may serve as the HSC by mutual agreement of the parties. The Employer and the Union shall appoint a reasonable and equal number of management and union selected employees to an HSC in each agency of the Employer where there are employees covered by this Agreement. Additional HSCs may be established within the LOPD's remote location(s)/facility upon mutual agreement of the parties.

HSCs shall meet regularly at reasonable intervals based on the tasks needing to be accomplished and employee members shall attend on paid status. The agency HSC shall:

- A. Recommend safety and health standards specific to LOPD's operations;
- B. Review LOPD loss control information to ensure adequate measures are being taken to prevent recurrence of the same or similar losses;
- C. Establish guidelines designed to minimize employee risk of becoming harmed by prisoner, or client,; and
- D. Be briefed, upon request, by Employer representatives undertaking workplace redesign and seek remedies for workplaces with inadequate heating, ventilation, cooling, air quality, and workspace.

Section 3. Security. In all agencies of the Employer where there may be a high risk of a client, or member of the public with whom employees must interact, posing a threat of physical harm to employees, such employees shall not be required to work at their work site, or where they are exposed to such risk or threat of physical harm, for periods of time when adequate security is not provided. For purposes of facilities and agencies of the Employer where the treatment or placement of the client, patient, resident, or inmate is predicated on the potential risk or threat of physical harm by such client, patient, resident, or inmate, adequate security is defined as prior provision of training to employees adequate to carry out their job duties in such facilities or agencies.

Section 4. Emergency Transportation. An employee who suffers an on-the-job injury or illness and requires immediate emergency care shall be transported to a treatment facility at the expense of the Employer.

Section 5. Reimbursement for Property Loss. Should employees, during the course of their duties, suffer damage to clothing or personal effects, including a motor vehicle, which are necessary to do their job, the Employer shall reimburse the reasonable cost, at actual market or depreciated value, of repair or replacement of such items. This section shall not apply to wear and tear and damage to personal effects normally associated with the work being performed. Where damages result in whole or in part from an employee's own negligence, the Employer shall not reimburse the employee for a proportion of the damages that is equivalent to the employee's proportion of fault.

Section 6. Hostage Taking and Battery. Employees who, during the performance of their duties, are seized or detained by force or threat and/or are victims of a significant battery, shall, immediately after the incident, be granted a reasonable period of administrative leave with pay to recover from the immediate impact of any physical or psychological harm caused by the action. Such period of leave shall not exceed forty (40) hours.

Section 7. Critical Incident Stress Debriefing. The Employer shall provide employees appropriate and adequate Critical Incident Stress Debriefing [hereinafter referred to as "CISD"]. CISD is to be used for critical job-related incidents including, but not limited to, mass casualty, riots, work peer suicide, serious work injury, and/or work related death of co-worker. Such CISD shall include, when appropriate, initial debriefing, individual and group therapy and/or counseling, and/or follow-up. All debriefings and other CISD

sessions shall be strictly confidential. Where Workers' Compensation benefits are available for an employee injury, this Section, if otherwise applicable, may be used to provide reasonable supplemental treatment not provided by Workers' Compensation.

Section 8. Early Return to Work Modified Work Assignments.

The Employer shall make a good faith effort to provide employees covered by this Agreement with opportunities for returning to work on a modified work assignment due to temporary medical conditions and/or restrictions while recovering from non-work related injury or illness. An employee requesting an early return to work in modified duty assignment may request such assignment for a period of up to one (1) year consistent with accompanying medical recommendations. Any medical documentation requested by the Employer shall be confidential with access and use restricted as required by federal and/or state laws, regulations and/or guidelines. An employee who returns to work on modified work assignment shall be paid no less than their last rate of pay.

ARTICLE 35

Training

Section 1. New Technology. In the event the Employer makes technological or service improvements or changes production methods, the Employer will provide employees affected by such changes with adequate training, during normal working hours, to learn to use the new technology, services or production methods. The Employer will provide employees affected by substantial changes with at least fifteen (15) work days advance notice prior to the changes being implemented unless impossible due to emergency or unforeseen circumstances. The Employer recognizes that relevant training opportunities should be made available to employees on a fair and equal basis. Accordingly, where feasible before selecting employees for training, interest shall be solicited among all employees in the work unit in which the training is to be offered and selection of candidates made by LOPD seniority in the work unit where all other factors are equal.

ARTICLE 36

Labor-Management Committee

Section 1. LOPD Labor Management Committee. The parties shall establish a Labor-Management Committee [hereinafter referred to as "LMC"] which shall be a standing committee for the duration of this Agreement. The LMC shall meet at least quarterly at a mutually agreed upon time and place on paid status for all members, to include travel time. The Union and the Employer shall each appoint one co-chairperson, one official note taker and three other members. A majority from both sides in attendance shall constitute a quorum.

The LMC shall be free to address, without restriction, any topic of mutual interest or concern which affects working conditions of bargaining unit employees. It is understood and agreed that while the parties shall not be restricted in the topics to be addressed other than set forth above, neither the discussions, nor the outcome thereof shall be considered or treated as constituting a binding agreement between the parties unless reduced to writing, specifically identified in the body thereof as constituting such an agreement, and signed and dated by the authorized representatives of the parties respectively (such as a Memorandum of Understanding).

Section 2. Caseload Committees. The parties agree to establish a joint committee to address caseload management issues in the LOPD. The committees shall consist of equal members from the Union and management. The committees may discuss and develop recommendations on caseload management issues that do not require additional staff or funding, including the following: the most efficient manner of administering the LOPD's caseload; developing or modifying caseload monitoring plans. The recommendations of the committee shall be presented to the Chief Public Defender or designee for consideration. The Chief Public Defender or designee

shall respond to the committee within forty-five (45) days after the submission of the recommendation.

ARTICLE 37
Labor-Management Task Force on Pay Equity

The parties shall convene a Labor-Management Task Force to study issues connected with Pay Equity. The task force shall consist of three Union representatives from exclusive representative Union and three LOPD representatives. Task Force recommendations will be forwarded to the Chief Public Defender for consideration and action.

ARTICLE 38

Conditions of Appointment

Section 1. Term Employees.

- A. Contingent upon legislative authorization, the Employer shall convert all employees in term positions who do not work under a federal grant or program of a designated duration to a perm position. An employee's date of hire and seniority shall reflect his/her date of appointment to the term position.
- B. A term employee shall be notified of vacant career positions in the same classification and the same organizational unit. If the employee applies and meets all published job related qualification standards (JRQS) for the position then the term employee shall be selected. In the event more than one term employee fully meets all published JRQS for the position, LOPD seniority (as defined elsewhere herein) shall govern the selection. If LOPD seniority does not break the tie then state seniority (as defined elsewhere herein) shall govern the selection.
- C. The order of separation for term employees affected by an expiration of appointment due to reduction or loss of funding or when the special project or program ends for the affected term employees, shall be by agency seniority. If funding for the program or the project is resumed within 6 months, separated term employees shall be offered reemployment in LOPD seniority order in the same position they held prior to separation.

Section 2. Probationary Period. Unless there is a break in service, once an employee attains career status, he/she shall not be required to serve another probationary period.

ARTICLE 39

Whistleblower Protection

Employees shall have the right, without interference or fear of penalty or reprisal, to disclose in good faith to internal auditors, Inspectors General, or other appropriate governmental authorities information that may evidence improper governmental activity (including, but not limited to, action that is in violation of any state or federal law or regulation; action that is economically wasteful; or action that involves gross misconduct, gross incompetence, or gross inefficiency) or conditions that may threaten the health or safety of employees or the public.

ARTICLE 40

Miscellaneous

LAW OFFICES OF THE PUBLIC DEFENDER (LOPD)

Section 1. Health and Safety

After contact with a client, or potential client, who has been found by Department of Corrections or county jail testing to have Tuberculosis, Hepatitis B, Hepatitis C, or HIV the Department employees will be screened by a Health Care Provider determined by the Department.

The LOPD will provide annual training to bargaining unit employees on infectious diseases.

District Defenders shall consult annually with jail management to discuss safety procedures at jails and inform all staff of the procedures.

The LOPD will provide first aid kits including CPR masks for all floors of each office and state vehicles beginning in Fiscal Year 2010.

Section 2. Friday Flex Schedule

LOPD employees who as part of their job duties are required to work in a municipal, county or state detention or correctional facility shall be allowed to flex their schedule by fifteen (15) minutes for each contiguous four (4) hour block of time worked in a correctional facility. All time must be used in the week earned and cannot be converted to pay or accumulated. All time earned in this fashion is expected to be utilized on Friday afternoon to shorten the work week.

Section 3. Training

The LOPD in consultation with the LLMC shall conduct an annual survey of all employees to assess employee training needs, including but, not limited to, health and safety training.

ARTICLE 41

Whole Agreement

This Agreement shall be deemed the final and complete Agreement between the parties and, in conjunction with written supplemental and any other written Agreements reached between the parties, expresses the entire understanding of the Employer and the Union. In the event of a conflict between this Agreement and any other rule, law, regulation, or policy, the terms of this Agreement shall prevail unless the conflicting rule, law, regulation, or policy is considered as controlling authority in accordance with the PEBA.

ARTICLE 42

General Savings Clause

If any Article, section or provision of this Agreement is found to be invalid, unenforceable, or no longer appropriate by any board or court of competent jurisdiction, the specific Article, section or provision shall cease to be in effect. If this occurs, either party shall have the right to re-open negotiations with respect to the specific Article, section or provision of this Agreement found to be invalid, unenforceable, or no longer appropriate. All other provisions of this Agreement not found to be invalid, unenforceable, or no longer appropriate will continue to be in full force and effect and shall not be subject to renegotiation.

ARTICLE 43

Waiver

Section 1. For the duration of this Agreement, the Employer is not obligated to bargain over union initiated changes in terms and conditions of employment unless such changes are proposed pursuant to the terms of this Agreement.

Section 2. In addition to changes initiated pursuant to its Management Rights (Article 18 of this Agreement), the Employer reserves the right to propose other reasonable changes in the terms and conditions of employment of employees to meet legitimate public service and operating needs, and such changes are subject to negotiation in accordance with the PEBA or any other expedited impasse resolution procedures mutually agreed upon by the parties at the time of such negotiations.

ARTICLE 44
Expiration

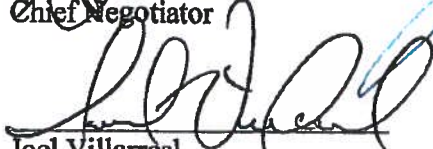
This Interim Agreement shall take effect on October 15, 2015 and shall expire on December 31, 2016. Negotiations for a successor agreement shall convene no later than September 1, 2016. If either party provides notice to reopen for negotiations, this Agreement will continue in full force and effect until it is replaced by a subsequent written Agreement in accordance with PEBA.

For the Union:

For the Law Offices of the
Public Defender:


Stephen Curtice
Chief Negotiator


Jorge A. Alvarado
Chief Public Defender


Joel Villarreal
Staff Representative
AFSCME Council 18


Barbara Auten
Human Resources Director

APPENDIX A

Filing a Disciplinary Appeal and Making an Irrevocable Election for Arbitration

Within seven (7) calendar days of the receipt of notice of appeal and that an irrevocable election for arbitration has been made, the LOPD Human Resources Director shall notify the employee, the Union, and the Agency of his/her receipt.

Within seven (7) calendar days of the receipt of notice from the Director, the Union shall make a request for a panel of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS), unless the parties within such time period can agree upon an arbitrator or alternative panel of arbitrators from which to select an arbitrator.

Within seven (7) calendar days of the receipt of a list of arbitrators by both parties, or agreement to an alternative panel, the parties will meet to select the arbitrator.

The selection shall be made by the Union and the Employer alternately eliminating names. The last name remaining shall be the arbitrator. The parties shall flip a coin to determine who shall strike the first name.

Each party shall pay one-half of the cost of obtaining the panel of arbitrators from FMCS, except that the Employer may elect not to pay one-half of the cost of obtaining a panel of arbitrators on the condition that it strikes the first name from the panel of arbitrators.

Hearings:

In accordance with the Personnel Act 10-9-18 (A) (H), the appealing employee and the agency whose action is reviewed have the right to be heard publicly and to present facts pertinent to the appeal.

In accordance with the Personnel Act 10-9-18 (C) (H), the technical rules of evidence shall not apply.

In the case of evidence relating to polygraph examinations, the proponent must have followed all the provisions of rule 11-707 NMRA.

The Arbitrator shall admit evidence relevant only to those allegations against the employee included in both the notice of contemplated action and the notice of final action.

In the event that an interpreter is needed, due to visual or hearing impairment or due to non-understanding of English well enough to understand the proceedings, the party responsible for the person in need of the interpreter shall bear the burden of providing said interpreter.

Record of the Hearing:

In accordance with NMSA 10-9-18 (D) (H), a record shall be made of the hearing.

The hearing shall be recorded by a court reporter, video and/or audio-recording device, provided by the Employer, under the supervision of the Arbitrator. No other recording of the hearing, by whatever means, shall be permitted without the approval of the Arbitrator.

The Employer will provide a copy of the record to the Arbitrator and shall make a copy of the record available for review by the Union.

The Employer shall provide a copy of the record for submission to District Court in the event of an appeal.

Decisions of the Arbitrator:

The Arbitrator's decision shall be final and binding on the parties' subject to judicial review in accordance with NMSA 10-9-18 (G)(H).

The Arbitrator shall not have authority to make an award that includes a fine or other punitive damages or award of attorneys' fees.

In the event of an appeal to District Court, the party staging the appeal shall prepare the Record Proper, subject to review by the other party prior to submission to District Court.

The appealing party will ensure there is ample time for review.

Reinstatement:

In accordance with 11.12.1 *et seq.* NMAC, if the Arbitrator finds that the action taken by the agency was without just cause, the Arbitrator may modify the disciplinary action or order the agency to reinstate the appealing employee to the employee's former position or to a position of like status and pay. The reinstatement shall be effective within thirty (30) days of the Arbitrator's decision. The Arbitrator may award back pay as of the date of the dismissal, demotion or suspension or as of the later date the Arbitrator may specify.

Cost of Arbitration:

Each party shall pay one-half of the arbitrator's fees and expenses.

In the event that the Union does not represent the employee in their appeal before an Arbitrator the burden of representation and burden of cost falls on the employee.

APPENDIX B
Membership, Fair Share and PEOPLE Deduction Forms

Union Membership Dues or Fair Share Authorization

Authorization for Payroll Deduction of Membership Dues: I, _____, accept membership in AFSCME Council 18. I request and authorize the State of New Mexico to deduct union dues from my pay and transmit them to AFSCME Council 18. The amount of dues deduction shall be the amount approved by AFSCME's membership as set forth in the AFSCME constitution and certified in writing to my Employer. This authorization shall be revocable only during the first two weeks of every December.

SIGNATURE

DATE

NAME (print)

DEPARTMENT/AGENCY

SOCIAL SECURITY NUMBER

Authorization for Payroll Deduction of Fair Share Fees:

I, _____, as a non-member who is represented by AFSCME Council 18, authorize the state of New Mexico to deduct fair share fees from my pay each pay period and to transmit them to AFSCME on my behalf. The fees deducted shall be in an amount legally permissible and certified by AFSCME. I understand that this authorization is voluntary and for my convenience.

I may revoke this authorization at any time by providing written notice in accordance with the provisions of the Agreement. I further understand that as a condition of continuing employment with the State of New Mexico, in a position covered by the Agreement, I must pay fair share fees and if I fail to pay fair share fees I may be terminated from employment with the State of New Mexico.

SIGNATURE

DATE

NAME (print)

DEPARTMENT/AGENCY

SOCIAL SECURITY NUMBER

Authorization for Payroll Deduction of PEOPLE Contributions

I hereby authorize the State of New Mexico to deduct each pay period the amount certified below as a voluntary contribution to be

paid to the treasurer of the PEOPLE qualified committee, AFSCME, AFL-CIO, P.O. Box 65334, Washington, D.C. 20035, to be used in accordance with the by-laws of the PEOPLE qualified committee for the purpose of making political contributions. My contribution is voluntary, and I understand that it is not required as a condition of membership in any organization, or as a condition of continued employment, and is free of reprisal, and that I may revoke this authorization at any time by giving written notice.

SIGNATURE

DATE

NAME (print)

HOME ADDRESS

CITY STATE ZIP

JOB TITLE DEPARTMENT/AGENCY

HOME PHONE

SOCIAL SECURITY NUMBER

Amount per pay period (check one box)

\$2 (VIP Membership) \$4 (MVP Membership) Other (specify) \$_____

For VIP/MVP Membership (indicate jacket size)

XS S M L XL 2XL 3XL 4XL

In accordance with federal law, the PEOPLE committee will accept contributions only from AFSCME members and their families. Contributions or gifts to AFSCME PEOPLE are not deductible as charitable contributions for federal income tax purposes.