STATE OF MONTANA

OFFICE OF THE STATE PUBLIC DEFENDER

AND

THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 9

2013-2015

Table of Contents

1. PREAMBLE 3
2. RECOGNITION 3
3. UNION RIGHTS 3
4. UNION SECURITY 4
5. MANAGEMENT RIGHTS 5
6. NON-DISCRIMINATION 5
8. JOB SECURITY 6
9. PAY AND HOURS 6
10. PROFESSIONAL WORKING CONDITIONS 7
11. HOLIDAYS 8
12. LEAVES 9
13. VACANCIES AND PROMOTIONS 10
14. RATINGS AND WARNINGS 11
15. NOTIFICATIONS 12
16. GRIEVANCES AND ARBITRATION 12
17. LABOR-MANAGEMENT COMMITTEE 12
18. SEVERABILITY 13
19. ENTIRE AGREEMENT 13
20. TERM OF AGREEMENT 13
21. NO STRIKE/NO LOCKOUT 14

ADDENDUM A 15
ADDENDUM B - GRIEVANCE PROCEDURE 19
ADDENDUM C - GRIEVANCE FORM 21

STATE OF MONTANA,
OFFICE OF THE STATE PUBLIC DEFENDER
AND
THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 9

1. PREAMBLE

THIS AGREEMENT is made and entered between the Office of the State Public Defender, hereinafter referred to as the "Employer," and the American Federation of State, County and Municipal Employees, Council 9, hereinafter referred to as the "Union." It is the intent and purpose of this Agreement to assure sound and mutually beneficial working relationships between the Employer and its employees, to provide an orderly, peaceful, and the sole and exclusive means of resolving grievances, to prevent interruption of work and interference with the efficient operation of the State Public Defender, and to set forth herein a basic and complete agreement between the parties concerning the employment relationship and the terms and conditions of employment which are not otherwise mandated by statute. It is understood that the Employer is engaged in furnishing an essential public service, which vitally affects health, safety, comfort and general well-being of the public and both parties hereto recognize the need for continuous and reliable service to the public.

2. RECOGNITION

Section 1 – Exclusive representative. The Employer recognizes the Union as the sole and exclusive representative of all public defenders and excluding confidential employees, supervisors and managers, and attorneys employed as independent contractors.

Section 2 – Position classifications. The bargaining unit represented by the Union shall be defined by the classifications provided under Section 2-18-301, MCA, and where necessary by individual positions within classifications. Any disagreement may be resolved through the Board of Personnel Appeals.

Section 3 - Decertification. It is understood that the Employer's recognition of the Union as exclusive representative for the bargaining unit shall be withdrawn if the Union is decertified through the procedure established by the Board of Personnel Appeals.

3. UNION RIGHTS

Section 1 – Employee representatives. In the event the Union designates an employee to act in the capacity as official spokesperson for the Union on any matter, such a designation shall be made in writing and shall specify the period covered by the designation.

Section 2 – Union officers. A written list of the accredited officers and representatives of the bargaining unit shall be furnished to the chief public defender immediately after their election and the chief public defender will be notified of any changes of elected representatives within seven calendar days.

Section 3 – Internal union business. The internal business of the Union shall be conducted by the employees during their non-duty hours; provided, however, that selected and designated Union officers or appointees shall be allowed a reasonable amount of paid time to investigate and process grievances, including arbitration matters, but the Employer will not compensate the aforementioned individuals for time spent in such activities outside of their normal work schedule, nor may an individual create any overtime liability as a direct or indirect result of such activities.

Section 4 – Union access to worksite. The Union's staff will be allowed to visit work areas of the bargaining unit employees during work hours and confer on employment relations matters, provided that such visitations shall be coordinated in advance with Management, and shall not unduly disrupt work in progress.

Section 5 – Bulletin boards. The Union may utilize a reasonable amount of space on bulletin boards as determined by local management on bulletin boards currently used for employee notices. No derogatory information concerning the Employer shall be posted by the Union.

Section 6 – Personnel files. Accredited union representatives shall, with the written approval of the bargaining unit employee, have the right to inspect the employee's personnel file, with the exception of medical information unless the issue involves such matters, and only where justification is advanced for such access by the Union or the Union receives a HIPAA release from the employee.

Section 7 – Meeting rooms. The Union may be allowed to use the employer's facilities for Union meetings contingent upon availability and management approval. The Union shall be liable for any damages as a result of such use.

Section 8 – Release time. The Employer shall grant a reasonable amount of paid release time per biennium to a designated Union representative for pre-budget negotiations.

4. UNION SECURITY

Section 1 – Representative fee. Employees covered by the terms of this Agreement shall not be required to become members of the Union but must, as a term and condition of employment, pay a representation fee to the Union.

Section 2 – Employer remittance. Upon receipt of a written authorization from an employee covered by this Agreement, the Employer shall deduct from the employee's pay the amount owed to the Union by the employee for dues or a representation fee. The Employer will remit to the Union such sums within 30 calendar days. Changes in the Union membership dues rate and representation fee will be certified to the Employer in writing over the signature of the authorized officer or officers of the Union and shall be done at least 30 calendar days in advance of such change.

Section 3 – Failure to pay dues. All employees covered by the terms of this Agreement shall, within 30 days of the signing of this Agreement or within 30 days of employment, whichever is later, pay dues or the representation fee to the Union. Employees who fail to comply with this requirement shall be discharged by the Employer within 30 days after receipt of written notice of default by the Union. The Union may make written notice of default and demand for discharge after the 30-day period specified above. The Employer shall initiate appropriate discharge actions under this provision to ensure discharge of the affected employee(s) on the 30th day from receipt by the Employer of the Union's written notice of default and demand for discharge.

Section 4 – List of employees' names and addresses. The Employer, within 30 days of the signing of this Agreement, shall present the Union with a list of names and addresses of all current employees covered by this Agreement, and shall notify the Union within 30 days when a new hire is completed.

Section 5 – Hold harmless clause. The Union will indemnify, defend and hold the Employer harmless against any claim made and against any suit instituted against the Employer, including attorney's fees and costs of defense thereof, on account of any provision of this Article.

5. MANAGEMENT RIGHTS

(In compliance with State Statute 39-31-303, M.C.A.)

The Union shall recognize the prerogatives of the agency to manage, direct, and control its business in all particulars, in such areas as, but not limited to:

1. direct employees;
2. hire, promote, transfer, assign, and retain employees;
3. relieve employees from duties because of lack of work or funds or under conditions where continuation of such work would be inefficient and non-productive;
4. maintain the efficiency of government operations;
5. determine the methods, means, job classifications, and personnel by which the agency operations are to be conducted;
6. take whatever actions may be necessary to carry out the missions of the agency in situations of emergency; and
7. establish the methods and processes by which work is performed.

Such rights are retained by the Employer unless such rights are specifically relinquished in this Agreement.

6. NON-DISCRIMINATION

Section 1. No member of the Union will be discharged or discriminated against for upholding Union principles.

7. SENIORITY AND LAYOFF

Section 1 – Seniority.

A. Seniority means an employee's length of continuous full-time service as a public defender with the Office of the State Public Defender or any of the predecessor Montana county governments.

B. An employee will not lose his/her seniority because of layoff, illness, or injury. However, seniority shall cease to accrue during a period of layoff, or a period of leave without pay that exceeds 12 calendar weeks excluding on-the-job injury. Previously credited service, however, will not be lost and an employee who is recalled or returns from an approved leave of absence without pay shall retain all prior seniority.

C. An employee shall retain his/her seniority rights for up to one year following a layoff or approved absence.

D. An employee shall retain his/her seniority rights for one year following an approved absence for a non-work related illness or injury.

E. Seniority shall terminate upon resignation, retirement, discharge, failure to report after recall from layoff, or for absences in excess of one year as set forth above.

F. The Employer shall maintain a seniority list, which it will update at least annually. Ranking of employees on the list who have the same seniority date shall be determined by drawing administered by the Union.

Section 2 – Layoff and Recall.

A. Seniority, qualifications, and capabilities will be the controlling factors in the selection of employees for layoff, recall from layoff, or non-disciplinary demotion within each office.

B. No permanent employee will be laid off while there are temporary or probationary employees serving in the same classification and pay band in the same office.

C. Recall shall be made by notice to the employee's last known address, with a copy to the Union. Such employee must respond to such notice within 14 calendar days after the date of the postmark and actually report to work within 30 calendar days of the response to the employer.

D. No new position within an office will be filled in the bargaining unit while there are bargaining unit employees from the office in layoff status who are available and qualified to fill vacancies.

E. An employee may secure additional employment during a period on layoff without forfeiting any rights under this Agreement.

8. JOB SECURITY

Section 1 – Probationary period. A probationary period shall be utilized for the most effective adjustment of all new employees including those who transfer from other state agencies. The probationary period shall last for one year. If the employer determines at any time during the probationary period that the services of the probationary employee are unsatisfactory, the employee may be separated upon written notice from the Employer.

Section 2 – Just cause. The Employer may discharge any employee with permanent status only for just cause. The Employer shall furnish an employee subject to discharge or suspension with a written statement of the grounds and specific reason(s) for such actions and shall in addition notify the Union of the removal of an employee for cause. An employee with permanent status may appeal his/her dismissal, suspension or other punitive disciplinary action through the grievance procedure.

9. PAY AND HOURS

Section 1 - Pay. Pay for public defenders covered by this Agreement will be in accordance with these provisions:

Subsection 1 – Broadband pay system placement. Public defender positions are in the broadband pay system according to the classification standards established by the Department of Administration.

Subsection 2 – Pay adjustments. Upon written notification to and consultation with the Union, the Employer may make adjustments to the salaries of public defenders within the parameters established.

Subsection 3. Nothing in this Agreement will preclude any employee from exercising the right to file a classification appeal with the Board of Personnel Appeals.

10. PROFESSIONAL WORKING CONDITIONS

Section 1 – State Bar of Montana dues. The Employer will pay the cost of annual dues or admission fees for each employee's membership in the State Bar of Montana. The Employer will deduct pro-rated annual dues from the final paycheck of terminating employees. New hires after April 1 who have already paid their annual dues will receive pro-rated bar due reimbursements.

Section 2 – Continuing legal education. The Employer will provide 15 hours training for continuing legal education credits per year, including required ethics credits. Any additional training or continuing legal education required by the Employer will be provided or paid for by the Employer. The Employer will give thirty days advance notice of any required training. In the event that such notice is not possible, the Employer will work with employees to schedule such training by mutual agreement. In addition, the Employer will allow paid time off for employees to attend pre-approved training and conferences related to continuing legal education or to participate in professionalism or bar meetings. No attorney can be required to reimburse the Employer for training conducted by the Office of the State Public Defender.

Section 3 – Fees and honoraria. An employee shall not accept fees or honoraria for speeches, lectures, or teaching that are related to the Employer's operation without prior approval of the Employer.

Section 4 – Caseloads. The parties agree to address workload and caseload issues through the labor-management committee. Employees may raise concerns regarding caseload and/or workload without reprisal by using the procedures set forth in Policy 117, effective October 1, 2007.

Section 5 – Bar complaints. The Employer will represent an employee in responding to disciplinary proceedings commenced by the Montana State Bar when the conduct which is the subject of the complaint was in accordance with Employer policies and procedures, at the direction of a supervisor, or was within the scope of official duties.

Section 6 – Court sanctions. The Employer will pay any sanctions or fines levied by any court against an employee for acts or omissions committed by the employee while working in accordance with Employer policies and procedures and within the scope of official duties.

Section 7 – Indemnification. The Employer will indemnify and defend an employee from liability that may arise out of the employee's performance of duties that are in accordance with Employer policies and procedures and within the scope of official duties.

Section 8 – Parking or Public Transportation. Employees who are required to pay for parking or public transportation will be reimbursed up to $35.00 per month. Employees requesting reimbursement will be required to produce documentation on a monthly basis and a State of Montana Travel Reimbursement Form. This reimbursement will be paid through the State of Montana Payroll System and may be taxable under the Internal Revenue Service and Montana Tax Policies.

Section 9 – Cell phone allowance. Employees who are required to use cell phones for work-related activities will be provided a cell phone or may request a cell phone reimbursement under the Policy 225, Cellular Devices and Services. Any reimbursement for the use of a personal cell phone will be taxable under the Internal Revenue Service and Montana Tax Policies.

The Office of the State Public Defender will provide offices with a cellular device to be utilized by staff to communicate with staff personnel who are in a travel status or who may be required to travel outside of the office. Regional Public Defenders will be required to request cellular devices through Central Office.

11. HOLIDAYS

Section 1 – Recognized holidays. For pay purposes the following shall be recognized holidays for bargaining unit employees

New Year's Day	January 1
Martin Luther King Jr. Day	3rd Monday in January
Lincoln's & Washington's Birthday	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October
Veteran's Day	November 11
Thanksgiving Day	4th Thursday in November
Christmas Day	December 25
General Election Day	In even-numbered years

In addition to the above, any day or days added by the State Legislature or Governor as paid legal holidays for State employees will be granted.

Section 2 – Holiday pay eligibility. The holidays listed in Section 1 shall be granted at the regular rate of pay to all eligible full-time employees except as provided for in Section 3. To be eligible for holiday pay an employee must be in pay status on the last scheduled working day immediately before the holiday and on the first regularly scheduled working day immediately after the holiday.

Section 3 – Holiday pay. Employees who are directed by their supervisor to work on a holiday may bank all hours worked up to eight to be taken later or cashed out on termination. The actual hours worked will be treated as regular hours worked for time reporting purposes.

12. LEAVES

Section 1 – Jury and witness duty. Employees summoned to serve as jurors or witnesses shall be granted leave per 2-18-619, MCA.

Section 2 – Sick leave. Employees shall be granted sick leave per 2-18-618, MCA, and according to the following:

Subsection 1 – Notice. Notification of absence because of illness shall be given as soon as possible to either the immediate supervisor or to the individual designated to receive such calls. Management agrees to take appropriate steps to ensure notification to employees of the names and telephone numbers of the designated individuals. If the employee fails to give such notification, the absence may be charged to leave without pay. Absence in excess of one shift without receipt of proper notification by the Employer from the employee shall constitute just cause for immediate discharge, unless the failure to give such notification was due to circumstances beyond the control of the employee.

Subsection 2 – Sick leave accumulation and exhaustion. Employees may accumulate sick leave credits without limitations. Sick leave used must not exceed the amount accrued by the employee. If an employee is ill and has exhausted his/her sick leave credits, s/he may use his/her other accrued leave. If an employee has exhausted all accrued leave, the Employer may permit the employee to be placed on a leave without pay status for one year, renewable thereafter at the Employer's option on an annual basis.

Subsection 3 – Employees who become ill on vacation. In the event that an employee on annual leave becomes ill, the employee shall be afforded the right to change his/her annual leave status to sick leave status and to utilize available sick leave credits upon furnishing Management acceptable medical certification, if required.

Subsection 4 – Doctor's certification. The Employer may not require a doctor's certificate to substantiate sick leave usage from an employee in the bargaining unit unless the employee has been away from work in excess of three days on sick leave or unless the Employer has good reason to suspect sick leave abuse.

Subsection 5 – Holidays during sick leave. In the event a holiday falls when an employee is on paid sick leave, the absence shall not be charged to sick leave and the employee will receive the holiday benefit.

Section 3 – Annual leave. Annual leave shall be granted pursuant to 2-18-611, 612, and 617, MCA. Employees may choose to take two consecutive accrued workweeks of annual leave per year or take annual leave on a single day or split-vacation basis. All annual leave must be taken with prior Management approval, at the employee's individual discretion as long as the execution of this right does not cause an undue burden for the Employer's operation.

Section 4 – Emergency leave. Accrued and available sick leave will be allowed for necessary attendance to the illness of a member of the Employee's immediate family until other attendance can be reasonably obtained, to attend a funeral in the immediate family, to receive medical, dental or eye examinations, or for other disability related emergencies. Absence in excess of one shift without receipt of proper notification by the Employer from the employee shall constitute just cause for immediate discharge, unless the failure to give such notification was due to circumstances beyond the control of the employee.

Section 5 – Leave without pay. A leave without pay must be requested by the employee in advance, and Management shall then determine if the employee can be excused for the time requested. The employee shall use the standard leave request form. The approval or disapproval from Management shall be based on the needs of the agency, the reason for the request, and the employee's work record.

Section 6 – Military leave. Military leave shall be granted per 10-1-1009, MCA.

Section 7 – Industrial accident leave. A permanent employee injured on the job and eligible for Industrial Accident benefits shall retain all rights to his previously held position and shall be entitled to leave without pay for a period of up to twelve weeks following the date of injury.

Section 8 – Educational leave. Employees desiring a leave of absence to pursue educational objectives should make a written request for such a leave to the regional deputy public defender or his/her designee. The regional deputy public defender or designee will consider the nature of the request and the needs of the office and then determine whether the leave of absence can be granted, and if so, whether the leave will be paid or unpaid. The regional deputy public defender or designee may also consider whether the employer will provide any contributions toward tuition, fees, materials or travel. The granting or denial of education leave specific in this paragraph is the Employer's sole discretion.

Section 9 – Discretionary leave. Employees who desire a leave of absence for reasons not expressly covered by other sections of the Agreement may request a discretionary leave of absence from the regional deputy public defender or his/her designee. The employee should request the leave of absence in writing, and specify both the reasons for the leave and expected duration of the leave. The regional deputy public defender possesses the sole discretion to determine whether the request will be granted, with or without pay, and the duration for the leave of absence.

Section 10 – Exempt compensatory time. Employees earning exempt compensatory time will be limited to a balance of 180 hours. Any excess will be treated in accordance with state policy.

Section 11 – Approval. All leave must be pre-approved by the immediate supervisor

13. VACANCIES AND PROMOTIONS

Section 1. Except for Attorney 3 positions, the following procedures will be followed in the posting and filling of vacant or newly created permanent positions. The purpose of this system is to inform employees of vacancies and newly created positions and to afford employees who are interested and who feel they qualify an equal opportunity to apply for the vacant or newly created position. It is understood that newly hired employees and employees on a leave of absence for any reason may not have the same period of notice as other employees concerning position vacancies. The process for Attorney 3 positions will be outlined in the addendum.

Subsection 1. When a vacant or newly created permanent position is to be filled, the Employer shall notify employees of the vacancy. The notice will state where interested employees are to make application, the cutoff date for application submittal and the minimum qualifications.

Subsection 2. The Employer will ensure that all such applications are considered in the selection process. Members in the bargaining unit who are unsuccessful applicants shall be so notified upon completion of the selection process.

Subsection 3. All positions in the bargaining unit and those positions that immediately follow in a logical ladder shall be posted per the provisions of this section for at least seven calendar days. However, Subsection 4 will not apply to positions not included in the bargaining unit.

Subsection 4. Seniority, qualifications and capabilities shall be the controlling factors in filling new or vacant permanent positions.

14. RATINGS AND WARNINGS

Section 1. An employee may request and receive a copy of his/her current position description at any time.

Section 2. An evaluation system approved by the Chief Public Defender shall be utilized by the Employer in the evaluation of employees covered by this Agreement. Supervisors shall receive training in the operation of the performance appraisal system before evaluating employees.

Section 3. When performance appraisals are prepared by the employee's immediate supervisor and the next higher supervisor, the results of the combined evaluation shall be transmitted to the employee in the form of a copy of his/her performance appraisal. The immediate supervisor shall discuss the evaluation with the employee and note by signature retained in the personnel file that the evaluation has been discussed with the employee. If the employee desires to submit a brief written statement in explanation or mitigation of any remark on the performance appraisal form, the statement shall be attached to the performance appraisal form in the personnel file.

Section 4. Information reflecting critically on an employee may not be placed in a personnel file unless the document has been sent to the employee and initialed by the employee, or a supervisor has noted in the file that the employee has refused to initial or accept the document in question.

Section 5. An employee shall have the right to appeal through the grievance procedure if s/he feels there is incorrect material that should be removed from the personnel file.

Section 6. Formal letters of caution, consultation, warning, admonishment, and reprimand shall remain in an employee's personnel file and shall be destroyed no later than one year after they have been placed in the file unless such items can be used in support of possible disciplinary action arising from more recent employee action or behavior patterns or is applicable to pending legal or quasi-legal proceedings.

Section 7. Material placed in the personnel files of an employee without conformity with the provisions of this Section will not be used by the Employer in any subsequent evaluation or disciplinary proceeding involving the employee.

Section 8. With the Employee's written permission, the Employer will provide the Union with copies of the employee's personnel file and any employer-initiated material relating to the performance, discipline, or termination for cause of the employee.

15. NOTIFICATIONS

Section 1. The Employer shall give permanent employees subject to layoff a minimum of 21 calendar days advance notice and shall deliver a copy of such to the Union, which shall be allowed an opportunity to comment.

Section 2. The Employer shall insure reasonable access to the Union and each employee to its rules, regulations and policies on employment related matters. The Union shall be notified of any proposed changes or additions to personnel rules, regulations and policies issued by the Office of the State Public Defender or Public Defender Commission sufficiently in advance to allow discussion and comment.

Section 3. The Employer shall provide, on a timely basis, information on the rules, policies or laws, and if necessary, will provide necessary training on matters which directly affect the employees.

16. GRIEVANCES AND ARBITRATION

Section 1 – Purpose. Having a desire to create and maintain labor relations harmony between them, the parties hereto agree that they will promptly attempt to adjust all grievances involving the interpretation, application or alleged violation of a specific provision of this Agreement through the exclusive grievance process attached as Addendum B.

Section 2 – Peaceful resolution of grievances. During the processing of any matter under this Article, the Union agrees not to strike, render unfair reports or cause slowdowns, and the Employer agrees not to lock out employees represented by the Union.

17. LABOR-MANAGEMENT COMMITTEE

Section 1. The Employer and the Union agree to the establishment of a Labor-Management Committee.

Subsection 1. The purpose of this Committee is to discuss any item of concern to either party and foster good communications between the Employer and the members of the bargaining unit. The Committee will not, however, take the place of the grievance procedure outlined in Addendum B or the collective bargaining process.

Subsection 2. The Labor-Management Committee will be comprised of up to five representatives from management to include the chief public defender and up to five members appointed by the union. A representative from AFSCME Council 9 may serve as one of the representatives.

Subsection 3. The committee will meet at a mutually agreeable time, place and date within a reasonable length of time following the request of either party. The meeting will be scheduled during working hours at a time and place deemed to be in the best interest of the operation of the office. Notice of the meetings will be made to the representatives at least 10 days prior to the meeting.

Section 2. The Employer and the Union agree to the establishment of a Pay Study Committee. The Committee will be comprised of up to three representatives from management and up to three members from the Union and one member of AFSCME Council 9 staff. The committee will meet at a mutually agreeable time, place and date following the request of either party. The purpose of the committee will be to discuss and produce a wage study in order to identify a market pay rate for public defender attorneys. The committee's goal will be to come up with recommendations for the negotiations committee and the legislative session.

Section 3. Union and Management agree to address caseloads and establish a committee that will report directly to the Montana Public Defender Commission.

18. SEVERABILITY

Section 1 – Severability. In the event that any provision of this Agreement shall be declared invalid at any time or unenforceable by any court of competent jurisdiction or through government regulations or decree, such decision shall not invalidate the entire Agreement, it being the expressed intention of the parties hereto that all other provisions not declared invalid or unenforceable, shall remain in full force and effect.

19. ENTIRE AGREEMENT

Section 1. The parties acknowledge that during negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

Therefore, the Employer and the Union for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter specifically referred to or covered by this Agreement. This Article shall not be construed to in any way restrict parties from commencing negotiations or under applicable law on any succeeding agreement to take effect upon termination of this Agreement.

Section 2. The parties recognize the right, obligation and duty of the Department of Administration and its duly designated officials to promulgate rules, regulations, directives and orders from time-to-time as deemed necessary insofar as such rules, regulations, directives and orders that affect the members of the bargaining unit covered by this Agreement are not inconsistent with the terms of this Agreement and are not inconsistent with the laws of the State of Montana and federal laws.

20. TERM OF AGREEMENT

Section 1. This Agreement shall be effective as of the 1st day of July, 2013, and shall remain in full force and effect through the 30th day of June, 2015. If one of the parties desires to modify this Agreement, it shall give the other written notice of its intent to do so. In such case, the parties agree to give written notice not sooner than 120 and no less than 90 days prior to the expiration date, and agree to meet no later than 90 days prior to the expiration date in order to renegotiate this Agreement. The Employer and the Union will meet to reopen negotiations in

sufficient time to permit adequate negotiations on economic matters. The Union shall have the right to engage in concerted activity after December 31, 2014, for matters pertaining to wages and economic benefits in the Fiscal Years 2014-2015 biennium.

21. NO STRIKE/NO LOCKOUT

Section 1 – Strikes. During the term of this Agreement, neither the Union nor its agents or representatives will cause, sanction or take part in any strike or any other interference with the operation of the Employer's business, except as provided in Article 20.

Section 2 – Lockouts. During the term of this Agreement, there shall be no lockouts by the Employer.

DATED this 25 day of October, 2013

FOR THE STATE:

William Hooks, Chief Public Defender
Office of State Public Defender

State Office of Labor Relations

FOR THE UNION:

Timm Lwardoski, Executive Director
AFSCME Council 9

Bargaining Team Member

Bargaining Team Member

Bargaining Team Member

ADDENDUM A
July 1, 2013 – June 30, 2015 Pay Plan
Office of the State Public Defender and
AFSCME Council 9

This addendum represents the parties' complete agreement concerning the placement, adjustment and progression of bargaining unit employees' pay under the broadband pay plan prescribed under Section 2-18-303, MCA.

Section 1 – Statement of broadband pay plan goal. The goal of the Office of State Public Defender (OPD) is to provide competitive pay ranges based on experience, job responsibilities, and the office's ability to pay. The following pay plan provisions represent an initial step toward that goal by providing for statutory across-the-board pay raises (Section 2). The parties recognize that the pay plan in this agreement does not accomplish these goals due to current funding.

Section 2 – To be eligible for a 3% pay plan adjustment, an employee must have been employed on July 1, 2013. Pay adjustments for eligible employees will be retroactive back to the first full pay period that includes July 1, 2013.

Section 3. – Pay Plan Adjustments. An employee will receive a 3% wage adjustment based on the base pay prior to July 1, 2013. This will be paid retroactively from July 1, 2013. Effective November 15, 2014, an employee will receive an additional 5% wage adjustment based on the base pay prior to July 1, 2013 plus the 3% adjustment received on July 1, 2013. These amounts are outlined in the schedule below. The 3% wage adjustment or 5% wage adjustment will not be paid on any market or ladder adjustment made on or after July 1, 2013.

Market adjustments will be paid to employees who are employed as of the date of ratification, retroactively to July 1, 2013.

Employees shall advance in the matrix based on years of experience on July 1, 2013 and thereafter based on the schedule in Section 4, if funding is available.

Section 4 – Pay Rates. The pay rates for public defenders are outlined below.

Rank	Experience	New Pay Schedule	July 1, 2013 3%	November 15, 2014 5%
1	No License	40,315	41,515	43,575
1	0	50,060	51,362	53,596
1	1	52,147	53,449	55,683
2	2	54,243	55,644	58,065
2	3	58,752	60,280	62,903
2	4	63,270	64,915	67,740
2	5	67,792	69,555	72,581
2	6	69,351	71,154	74,250
2	7	70,266	72,094	75,230
2	8 and above	71,182	73,033	76,201
3	5	69,351	71,154	74,250
3	6	70,912	72,756	75,921
3	7	72,311	74,191	77,419
3	8	75,325	77,284	80,646
3	9	78,337	80,374	83,871
3	10 and above	81,350	83,465	87,097

Subsection – 1 Attorney 1: 0-2 years. The entry level position requires supervision and training. These attorneys typically would be involved in courts of limited jurisdiction (city, municipal, justice, treatment); youth court cases; civil cases; and cases in rural regions. Upon successful completion of the two year period of service, attorneys in this tier would automatically move to the Attorney 2 level on the following July 1.

Subsection - 2 Attorney 2: 2-8 years. These are more experienced attorneys with demonstrated skill levels in various kinds of cases, able to work with less supervision, and handle more responsibility. These attorneys typically would be involved with lower level felony cases; youth court cases; civil cases, including representing parents in abuse/neglect/dependency cases, and cases involving involuntary commitments and/or guardianships. Movement within Attorney 2 from 2 through 8 years is based on experience. Pay will be adjusted July 1. Movement from this tier to Attorney 3 would not be automatic. Attorneys in this level may request movement to the next level.

Subsection – 3 Attorney 3: at least 5 years. Promotion to Attorney 3 would be at the discretion of OPD management, dependent on OPD's ability to fund the salary and benefits, attorney performance, and the need for attorney services at this level. These attorneys typically would be involved in high-level felony cases, high-level civil cases, and or be experienced rural attorneys. Considerations for promotion would include:

- The commitment and ability to perform at the highest ethical and professional levels;
- A demonstrated willingness and ability to serve effectively as a leader or mentor to other attorneys and staff in OPD;
- A demonstrated willingness and ability to advocate for the interests of OPD and its employees
- A demonstrated commitment to accept assignment to complex cases, and a demonstrated ability to effectively represent clients in such cases. It is contemplated that such cases will be the predominant or primary assignments for an attorney seeking to move to Attorney 3. However, the mere numbers of such cases assigned to an attorney will not be the determinative factor, so attorneys who practice in regions in which there is a relative lack of such cases will not be slighted.

Subsection 4 – Transition. All current B and BH employees will transition to Attorney 2. The agency will undertake the process to fill Attorney 3 slots. No current employee will suffer a reduction in base salary by adopting the new pay plan.

The base pay for current B and BH attorneys will be grandfathered by taking into consideration their placement under the former B and BH pay plan.

B AND BH	Rank	Experience	New Pay Schedule	July 1, 2013 3%	November 15, 2014 5%
B	2	6	69,351	71,154	74,250
B	2	7	70,912	72,756	75,921
B	2	8	72,472	74,356	77,591
B	2	9	74,030	75,955	79,259
B	2	10 and above	75,584	77,549	80,923
BH	2	7	72,311	74,191	77,419
BH	2	8	75,325	77,284	80,646
BH	2	9	78,337	80,374	83,871
BH	2	10 and above	81,350	83,465	87,097

Subsection 5 - Attorney 3. Attorneys wanting to become Attorney 3 will make the request in writing to their Regional Director and copied to the Chief Public Defender.

When a need for an Attorney 3 position becomes available as determined by management all requests will be considered. Management will make the final decision.

Attorneys who are moved into Attorney 3 will initially be placed using their number of years of experience.

Thereafter no movement is automatic but rather Attorney 3 salaries will be reviewed on July 1 every year to determine any further adjustments in pay plan.

Attorneys who elect to return to Attorney 2 from Attorney 3 will be placed at the appropriate pay rate as specified in the contract.

Subsection 6 – New hires who are not licensed to practice law in the State of Montana. Any employee who is not licensed to practice law in the State of Montana will be paid at the lowest pay rate contained in the schedule regardless of their previous relevant experience. Once they obtain licensure, they will be paid at the pay rate that corresponds to their relevant experience, up to five years.

Subsection 7– New hires who are licensed to practice law in the State of Montana. Employees who are licensed to practice law in the State of Montana and hired after the ratification of this pay addendum may be credited with up to five years previous relevant legal experience under the schedule.

Subsection 8 – Relevant experience.

(a) All experience employed by the OPD will be credited on a year-for-year basis.
(b) All experience employed as a full-time public defender in a public defender office will be credited on a year-for-year basis.
(c) Previous experience employed as a full-time prosecutor will be credited a half-year for each year of experience.
(d) Previous experience as a court-appointed attorney will be credited on a half-year for each year of experience.
(e) All previous civil or law clerk experience will be credited on a quarter-year for each year of experience.
(f) The maximum credit an employee may receive for previous experience under these subsections (b) through (e) will be five years. Credit will not be given for any other work experience. In calculating credit under this subsection, only time as a licensed attorney will be counted, and only one subsection can apply for any one year (the highest number).

Subsection 9 – Review Process. The parties agree to develop a review process for employees who disagree with their initial placement on the schedule. Employees will be required to submit a written document to AFSCME.

Subsection 10 – Review Panel. The Review Panel will be made up of two representatives of management and two members appointed by the Union.

Section 4 – Location pay. OPD, at its discretion, may set base pay rates above those shown in the s for employees working in high-cost or difficult-to-recruit locations. If OPD elects to set base pay rates above those shown in the schedule under these conditions, it will apply those pay adjustments uniformly and consistently to all bargaining unit employees within the specific location. OPD will notify the union in writing of the amount and rationale for any increase granted pursuant to this section within 10 days of implementation.

Section 5 – Rovers Stipend. Subsequent to ratification of this agreement, employees designated as major crimes unit rovers, those assigned to regularly travel to different regions as a condition of their employment will receive a $3,500 Rover stipend in addition to the rates contained in Schedule A. Employees shall not receive any Rover stipend or other Rover related compensation once they are no longer regularly assigned and working as a Rover. The OPD will notify the union in writing of the amount and rationale for any increase granted pursuant to this section within 10 days of implementation.

Section 6 – Employees under formal corrective action plans or training assignments. Employees who are under a written, formal corrective action plan or under training assignments will not receive pay increases until they successfully complete those plans.

Section 7– Employees with probationary-status licenses. Employees with probationary-status law licenses pursuant to action taken by the Commission on Practice will not receive the discretionary pay increases or any time credit during the probationary time period.

DATED this 25 day of October, 2013

FOR THE STATE:

William Hooks, Chief Public Defender
Office of State Public Defender

State Office of Labor Relations,

FOR THE UNION:

Timm Twardoski, Executive Director
AFSCME Council 9

Bargaining Team Member

Bargaining Team Member

Bargaining Team Member

ADDENDUM B - GRIEVANCE PROCEDURE

Step 1. All grievances involving the interpretation, application or alleged violation of a specific provision of this Agreement shall be taken up with the employee's immediate supervisor within 15 working days of the grievance. The immediate supervisor shall have five working days to respond. All grievances must be discussed with the immediate supervisor prior to the filing of a formal grievance and no formal grievance may be filed until the immediate supervisor has been given opportunity to attempt resolution.

Step 2. If the grievance is not resolved informally, a formal grievance may be presented in writing within 10 working days from the receipt of the immediate supervisor's response of Step 1 to the Regional Deputy Public Defender. The Regional Deputy Public Defender shall have 10 working days from receipt of the grievance to respond in writing.

Step 3. If the grievance is not resolved at Step 2, it may be presented to the Chief Public Defender within 10 working days of the receipt of the Step 2 response. The Chief Public Defender shall have 15 working days to respond to the grievance in writing.

Step 4. Should the Union consider the decision of the Chief Public Defender unsatisfactory, the Union shall, within 15 working days of receipt of such decision, notify the Chief Public Defender and the Chief of the State Office of Labor Relations of its decision to take the grievance to final and binding arbitration.

RULES OF GRIEVANCE PROCESSING

1. Time limits of any stage of the grievance procedure may be extended by written mutual agreement of the parties at that step.

2. A grievance not filed or advanced by the grievant within the time limits provided shall be deemed permanently withdrawn as having been settled on the basis of the decision most recently received. Failure on the part of the Employer's representative to answer within the time limit set forth in any step will entitle the Employee to the next step.

3. An appointed authority may replace any titled position in the grievance procedure, provided that such appointee has full authority to act in the capacity of the person being replaced.

4. When the grievance is presented in writing there shall be set forth all of the following:

   a. A complete statement of the grievance and facts upon which it is based.

   b. The rights of the individual claimed to have been violated and the remedy or correction requested.

5. Those employees desiring to use alternative grievance procedures through the Montana Board of Personnel Appeals may not pursue the same complaint under the provisions of this contractual procedure. Similarly, an employee pursuing a grievance under the provisions of this contract may not pursue the same grievance under another procedure.

6. In the event of a classification related grievance, the statutory classification appeal route shall be followed wherein the grievance may be submitted to the Board of Personnel Appeals for final resolution. Where a question arises as to whether the matter falls under

the jurisdiction of the Board or could possibly be arbitrated, the matter shall be referred to the Board for a decision.

RULES OF ARBITRATION

1. Within 10 working days of receipt of the Union's notice of the intent to arbitrate a grievance, the parties shall call upon the Chief of the State Office of Labor Relations to submit a list of mutually acceptable Arbitrators.

2. Each party shall be entitled to strike names from the list in alternate order and the name so remaining shall be the arbitrator. The arbitrator shall render a decision within 20 working days of the hearing and that decision shall be final and binding.

3. Each party shall share equally the cost of the arbitrator. In the event one of the parties wants transcripts from the proceedings of the arbitration, the party requesting the transcripts shall pay all costs. If each party requests a transcript, they shall equally share the cost.

4. The arbitrator may not add to, subtract from or modify the terms of this Agreement.

5. In the event the arbitrator charges a fee(s) for canceling an arbitration hearing, the party requesting the cancellation is responsible for payment.

ADDENDUM C - GRIEVANCE FORM

The following form shall be used to process grievances in accordance with Addendum B, Grievance Procedure. The employee(s) shall fill out the following form if they are not satisfied with the Step 1 answer of the immediate supervisor within 10 working days of receipt of said response:

EXPLANATION OF THE GRIEVANCE (to include identification of articles and sections of the contract that were violated, and when the grievance occurred -- also attach documents, if any, to support your claim):

_____

_____

_____

_____

YOUR PROPOSED SOLUTION TO THE GRIEVANCE:

_____

_____

_____

_____

_____ _____

Employee's Signature Date

STEP 2 RESPONSE (The ------ or his/her designee shall answer within 10 working days of receipt of this form the grievance described by the employee.):

_____

_____

_____

_____

_____ _____

Signature, ---------- Date

(or his/her designee)

Step 3. If no settlement is reached at Step 2, forward this form to the ---------- within 10 working days of the receipt of the written Step 2 response. The ---------- shall have 15 working days in which to respond to the grievance in writing.

REASONS (The Employee shall state the reason(s) for not accepting Management's answer at Step 2.):

_____

Employee's Signature Date

STEP 3 RESPONSE (The ---------- shall respond to the Employee's grievance below within 15 working days of receipt of the grievance at step three.):

Signature of Chief Public Defender (or his/her designee) Date