

**MINUTES
WORK SESSION
LUNA COUNTY BOARD OF COUNTY COMMISSIONERS
Monday, November 7, 2022**

BE IT REMEMBERED that the Luna County Board of County Commissioners met at 9:02 a.m. on Monday, November 7, 2022, in Chambers of the Luna County Courthouse, Deming, New Mexico, for the purpose of conducting a Work Session.

CALL TO ORDER: Chair Smrkovsky called the meeting to order at 9:02 a.m. and led the Pledge of Allegiance and the salute to the flag of New Mexico.

ROLL CALL: Deputy Clerk Toni Esparza called roll. The following Commissioners constituting a quorum were present:

**Barbara L. Reedy, District 1
Linda M. Smrkovsky-Chair, District 2
John S. Sweetser, District 3**

- 1. PUBLIC COMMENT:** The Public has the opportunity to provide comments at this time pertaining to items on the agenda only. Please be advised that this is not a question-and-answer period. Your comments specific to the agenda items will be limited to three minutes unless the Board of County Commissioners requests more information. The time limit and opportunity to speak are given in an effort to allow public input on business matters of the County to move the agenda forward in a prompt yet efficient manner. Comments will not be allowed on individual agenda items as they are discussed by the Commissioners during new business.

Chair Smrkovsky opened the floor to public comment. There were no Public comments forthcoming.

DISCUSSION ITEM:

Luna County Personnel Ordinance No.23: As the discussion began, concerns were brought forth by each of the Elected Officials about making their Chief Deputies merit employees. It was discussed and Chair Smrkovsky made the suggestion of removing this item from the Luna County Personnel Ordinance No.23, as to not change what has been done throughout the years. Treasurer Kristie Hobbs suggested that the Holiday calendar adjusted to be in sync with the banks due to how some of the deposits need to take place for certain departments. **(*Note: Items were presented for discussion only and no actions were taken.)**

Upcoming Meetings/Events (unless otherwise specified):

Regular Meeting: November 14, 2022, at 10:00 a.m.

ADJOURN: Chair Smrkovsky motioned to adjourn. The was Adjourned at 10:40 a.m.

ATTEST:

**LUNA COUNTY BOARD OF
COUNTY COMMISSIONERS**

Berenda McWright, Luna County Clerk

Barbara L. Reedy, District 1

Approved: _____

Chair, Linda M. Smrkovsky, District 2

John S. Sweetser, District 3

**MINUTES
REGULAR MEETING
LUNA COUNTY BOARD OF COUNTY
COMMISSIONERS
Monday, November 14, 2022**

BE IT REMEMBERED that the Luna County Board of County Commissioners met in regular session at 10:00 a.m. on Monday, November 14, 2022, in the County Commission Chambers of the Luna County Courthouse, Deming, New Mexico, for the purpose of conducting any and all business to come properly before the Board.

The following staff and elected officials were present: County Manager Chris Brice, Administrative Assistant Malarie Villegas, Executive Assistant Yossie Nieblas, Budget and Procurement Director Joanne Hethcox, County Attorney Charles Kretek, Emergency Management Director Pablo Montoya, Clerk Berenda McWright, Chief Deputy Clerk Leslie Nabours, Election Specialist Rachel Bishop, Deputy Clerk Toni Esparza, Assessor Michelle Holguin, Treasurer Kristie Hobbs, Chief Deputy Treasurer Johnathan Richmond, Planning and Zoning Director Lupita Hernandez, Central Dispatch Director Lauree Sanchez, Road Department Director David Bailey, Grants Administrator Heather Lutz, Road Department Director David Bailey, Captain Michael Brown, LCDC Director Lee Cook, Training Sgt. Fabian Chayrez, IT Technician Nathan Ortberg.

CALL TO ORDER: Chair Smrkovsky called the meeting to order at 10:07 a.m. and led the Pledge of Allegiance and the salute to the flag of the State of New Mexico.

ROLL CALL: Deputy Clerk Toni Esparza called roll. The following members of the Board constituting a quorum were present:

**Barbara L. Reedy, District 1
Linda M. Smrkovsky, Chair District 2
John S. Sweetser, District 3**

APPROVAL OF AGENDA: Chair Smrkovsky entertained a motion to approve the agenda as presented. Commissioner Sweetser motioned to approve the agenda as presented. The motion was seconded by Commissioner Reedy and was approved unanimously.

MINUTES: Commissioner Reedy motioned to approve the Minutes for the Regular Meeting of October 6, 2022, and the Special Meeting of October 24, 2022, as presented. The motion was seconded by Commissioner Sweetser and was approved unanimously.

SERVICE AWARDS/RETIREMENT:

- Chair Smrkovsky tabled the presentation of the five-year service award due to Officer Paul Garcia not being present.

PRESENTATIONS:

- Municipal Court Judge Edgar Davalos performed the Swearing-in of the new LCDC Officers. Training Sgt. Fabian Chayrez presented the officers with their certificates.
- Mr. Gordon Simanton presented for SolarStone. Mr. Simanton gave a brief discussion on some of the projects, locations, and types of equipment that the company works with.

ELECTED OFFICIALS REPORT:

- **Assessor:** Assessor Michelle Holguin reported that the current year sales ratio report from Property Tax Division has been received. This report lets both the Assessor and Property Tax Division know where they stand with market values. Ms. Holguin stated that she was pleased to announce that the Assessor's Office is within all levels of current and correct market values. She explained that the front office is getting ready for the first of the year rendering period, which includes all exemptions, manufactured home stickers, and making sure that all forms on the website are updated and available to the public. The Assessor's Office is also working on livestock and Personal Property statements, which will be mailed out on December 30, 2022. Ms. Holguin again reminded the public that the e-notice sign up is online. This will allow those who sign up to receive their Notice of Values by email rather than it being mailed to their homes making it more convenient for the property owner. She also explained that when you sign up for the e-notice for either the Assessor's Office or the Treasurer's Office it will automatically sign you up for both. With the passing of Ordinance 76, first revised, the deed process is taking longer, especially with the self-done deeds or those that are mailed from out of town. Ms. Holguin explained that until the word is out about the new procedures it will take longer for her office to process deeds. Ms. Holguin explained that being that it is tax season right now anyone that is transferring property until the end of the year will only have to pay the taxes current. In the New Year, Ms. Holguin explained that anyone transferring property will not only have to pay the taxes current but will also have to pay taxes in advance to complete any deed transfers. She stated that Property Tax Division will be offering winter classes for Appraisers going toward their IAAO certification. The Assessor's Office will have two Appraisers that will be attending those classes.
- **Clerk:** Clerk Berenda McWright reported that the Clerk's Office processed 43 Same Day Registrations, 28 in Person, four by mail, 43 were removable (moved out of the country or deceased including Eric cancellations), and 63 online voter registrations. Ms. McWright stated that there are currently 13,168 Voters, 5,268 Democrats, 4,447 Republicans, 129 Libertarians, and 3,324 DTS/other. The Clerk's Office processed 410 Recordings, and three new business registrations, there were zero canceled for a total of 260 Businesses. Ms. McWright stated that all notices for the yearly fee have been mailed. The Clerk's Office issued 16 Marriage Licenses and 11 of those were filed. She stated that a total of 13 probates were opened, five were closed, and 10 were updated. A total of \$110.44 in Lodger's Taxes were collected. The Clerk's Office attended and prepared minutes for one regular and one special meeting.
- **Probate Judge:** Report was given along with the Clerk's report.
- **Treasurer:** Treasurer Kristie Hobbs reported that this tax season is already at 31% collected for this year. Ms. Hobbs stated that she feels that this good response is due to having sent out tax bills earlier than usual. The Treasurer's Office has two part-timers working to help with the mail, which has helped a lot in keeping the mail current on a day-to-day basis. Ms. Hobbs stated that her office is in the process of working with First New Mexico Bank to get an ATM machine installed at Starmax around the end of November. She also stated that there will be a State Property auction, which will consist of 400 properties all of which are Deming Ranchettes. This auction is set to be held on December 13th and 14th on the third floor of the Courthouse in the Chambers. The list of properties to be auctioned off should be on the website sometime this week. Ms. Hobbs said that the Treasurer's Office is selling Santas to help raise money for Shop with a Cop. The Santas are \$2.00 and available for purchase in the Treasurer's Office along with raffle tickets which will also help support Shop with a Cop.

- **Sheriff:** Captain Michael Brown reported for Sheriff Gannaway. There were no homicides or rapes reported. Assaults are down, burglaries are down, and larcenies are down as well. Captain Brown reported Vehicle thefts are up slightly, there was one arson, and no robberies to report. He stated that the non-criminal civil is up, and also accidents were up significantly. The Sheriff reported that the non-criminal paper service is down. Accidents are down, and there are a couple of DWIs to report for the month of October. Captain Brown stated that there are four deputies that will be graduating from the academy tomorrow (11-15-2022), and he would be attending. He stated that the Sheriff's Office has four vacant positions with two candidates moving in the hiring process, the position is still posted, and is hoping to have some good turnout with that eventually. Captain Brown stated that the Shop with a Cop bowling tournament that was held on Saturday, November 12, 2022, at Starmax helped raise over \$2,200.00.
- **Commissioners:** None of the Commissioners had anything to report.

COUNTY MANAGER'S REPORT: County Manager Chris Brice Reported.

- **Dispatch:** Mr. Brice reported that the County is on track with the new CAD and radio system, which ARPA funds were used to fund this project. Mr. Brice stated that on October 11th the kickoff for the GIS portion of it took place, and on October 20th the radio design review was done and everything is going well.
- **LCDC:** Mr. Brice reported that there were eight graduates through the academy. He stated that there is a total of 269 which is a good stable number in the State Marshall Population.
- **Road Department:** Mr. Brice reported that the Road Department is now fully staffed. Mr. Brice explained the job fair that was held last month helped in the hiring of staff for the road department. A new roll-off truck was received on the 25th. All of the department's equipment has been repaired and is up and running. Mr. Brice stated that the County received an extension and state approval to use previous leftover grant funding for the Scotchpine project and to prepare for some flood design work that the County will be doing in the future. Mr. Brice also stated that some of this money would be used on the Keeler Farm water Coop to get the water coop up and running properly and to be able to start collecting water bills again. He explained that another project that is being worked on with this money is Majestic View just off 8th Street. Mr. Brice stated that the big project at the moment is the two miles of chip seal on Lucca road that need to be done this week. He stated that there are six miles on Lucca and Solana Rd have been capped before Veteran's Day. Mr. Brice stated that all of the chip sealing, fogging, and stripping should be done by the end of November on all of these roads. Mr. Brice explained that McCann Rd will be the next project to be worked on.
- **Budget and Procurement:** No report was given.
- **Safety/Risk Management:** Report included with Emergency management report.
- **Emergency Management:** Mr. Brice Stated that the Hazzard Mitigation Plan has been approved with the City of Deming and the Village of Columbus. FEMA funds cannot be applied for without the Hazzard Mitigation Plan having been put into place and approved. Mr. Brice stated that the County assisted the Sheriff's Department and Border Patrol in locating and rescuing six people that were stranded in the Florida Mountains last month. Mr. Brice also stated that there have been Active Shooter committee meetings, and there will be an active shooter scenario soon.
- **Luna County Fire:** Mr. Brice stated that there were eight fire calls received and also there are two new volunteers on staff, which is always good. Mr. Brice also stated that Luna County Fire assisted the Deming Fire Department with calls during the funeral of the firefighter that

was lost in a car accident recently. Mr. Brice stated that the County did receive \$300,000 to pay for half of the new fire truck that was purchased.

- Mr. Brice returned from the County Managers' retreat in Santa Fe last week, which he stated had been very well attended by about 20 of the 33 County Managers. The number one issue discussed at this retreat was the statewide Detention staff shortage and what can be done to correct this issue. Mr. Brice explained that there is a statewide campaign put into place that standardizes and focuses on what is looked for in Detention officers and trying to get their pay boosted up to the level of firefighters, law enforcement, etc. This is due to the fact that a detention officer's job is to perform at the same level and they deserve that recognition for the law enforcement and first responders that they are. Mr. Brice stated that the Better Informed Public Officials for the new/re-elected officials will be held in Albuquerque on December 8th and 9th, and all rooms have already been reserved for this event. Mr. Brice stated that he would be meeting with the newly elected officials to get their travel arrangements set up. Mr. Brice also stated that the County had been awarded the Armory building and now all that is left to do is all of the paperwork that goes along with completing the transfer of an asset like this. Mr. Brice explained that the Capital Outlay funding was awarded at the previous Legislative session about a year ago, and they just received the grant agreements for these funds. With these funds, Mr. Brice explained that the County is now able to use this money as needed. Mr. Brice stated that this money is for the Armory, and fiber optic which is to be installed throughout all county buildings.
- **Casa:** No report was given.
- **PAT:** Mr. Brice reported that Parents as Teachers and the Department of Health building are coming along nicely and are on track, the estimated move-in time frame should be January at the latest February.
- **JJCS:** No report was given.
- **Grant Administrator:**
- **IT:** Mr. Brice gave an update on the IT building remodel in the Plaza building which should be complete within the next two to three weeks.
- **Planning Department:** No report was given.
- **DWI:** No report was given.
- **Luna County Health Council:** No report was given.
- **Starmax:** No report was given.

INDIGENT CLAIMS REPORT: Commissioner Reedy motioned to recess as County Commission and convene as Claims Board. The motion was seconded by Commissioner Sweetser and was approved unanimously. Budget and Procurement Director Joanne Hethcox reported that there was one claim last month in the amount of \$1,611.00, a total of \$88,754.85 was collected in GRT, and the ending balance on October 31st was \$1,900,302.02 of which \$986,351.70 is encumbered for the County's current obligations. Commissioner Sweetser motioned to consider claims dated November 14, 2022, for \$1,611.00. The motion was seconded by Commissioner Reedy and the motion was approved unanimously. Commissioner Sweetser motioned to recess as a Claims Board and reconvene as a County Commission. Commissioner Reedy seconded the motion and the motion was approved unanimously.

COMMUNITY SUPPORT REPORTS: Don Kile a representative for Cattlemen's Processing gave a short update and answered some public questions on the new USDA Beef Processing Plant that will be coming into Luna County, which will in turn offer job opportunities here in Luna County. Kristie Ann Harvey Executive Director of the Greater Luna County Economic Opportunity Council DBA The

Council reported on the Western University expansion groundbreaking last week. Ms. Harvey also gave a brief discussion and answered public questions on the importance that affordable faster Broadband has on communication, education, telehealth, and more.

PUBLIC COMMENT: Chair Smrkovsky opened the floor to public comment. Leslie Bronkin came forward with a written report which she read for the board regarding concerns about the Certification of the 2022 General Election. Ms. Bronkin accused the Clerk's Office of deleting records and recommended the board delay certification. Clerk Berenda McWright gave a brief explanation of how absentee ballot applications are handled and assured the board that records were not deleted. Ms. McWright also stated that if Ms. Bronkin had concerns she should have come to her office to discuss them prior to the Commission meeting. Commissioner Reedy expressed concerns about their roll in the canvass. Commissioner Sweetser stated that the County Clerk has expertise and recommended trusting her. Linda Harmon recommended everyone watch 2000 mules and expressed concerns about the drop boxes. Carol Schultz stated that she has voted in Luna County for 42 years and that she has complete faith in the County Clerk's Office and the election results. Scott Chandler recommended certifying the election and looking into the information provided by Leslie later. Online public comments were also forthcoming regarding the certification of the election.

CALL FOR ORDINANCE: Resolution 22-84; and Call to Adopt Ordinance 115; IRB for Solar PV Development NM 18 II LLC and Carne Energy Storage LLC for Carne Solar Project-Series 2022A A Call to Adopt Ordinance 116; IRB for Solar PV Development NM 18 II LLC and Carne Energy Storage LLC for Carne Solar Project-2022B: Megan Whitley representative for DE Shaw Renewable Investments gave some background on the project listed above. Ms. Whitley explained that this project has achieved the execution of a power purchase agreement in October of this year with El Paso Electric. This will allow El Paso Electric to purchase the energy to provide for their New Mexico customers. Ms. Whitley explained that this project would provide a large source of revenue for Luna County. She stated that the project will provide anywhere from 150 to 250 construction jobs. Commissioner Reedy motioned to approve Resolution 22-84, and Call to Adopt Ordinance 115; IRB for Solar PV Development NM 18 II LLC and Carne Energy Storage LLC for Carne Solar Project-Series 2022A A Call to Adopt Ordinance 116; IRB for Solar PV Development NM 18 II LLC and Carne Energy Storage LLC for Carne Solar Project-2022B. Commissioner Sweetser seconded the motion which carried unanimously following a roll call vote.

CONSENT AGENDA: Commissioner Sweetser motioned to approve the consent agenda. The motion was seconded by Commissioner Reedy and unanimously approved following a roll call vote.

OLD BUSINESS:

- **Ordinance 101 Amended; Procedure for Accepting Donations of Real Property:** Commissioner Reedy motioned to approve Ordinance 101; Procedure for Accepting Donations of Real Property as amended. The motion was seconded by Commissioner Sweetser and unanimously approved following a roll call vote.

NEW BUSINESS:

- **Resolution 22-85: Budget Increases:** Budget and Procurement Director Joanne Hethcox reported that there were 14 budget increases. Commissioner Reedy motioned to approve Resolution 22-85: Budget Increases. The motion was seconded by Commissioner Sweetser and unanimously approved following a roll call vote.

- **Resolution 22-86: Budget Transfers:** Ms. Hethcox reported three requests for three budget transfers. Commissioner Reedy motioned to approve Resolution 22-86: Budget Transfers. The motion was seconded by Commissioner Sweetser and unanimously approved following a roll call vote.
- **Resolution 22-87: Disposal of Assets:** Ms. Hethcox explained that there is only one request for disposal which is for a 2013 Ford Fusion which is totaled and inoperable. Commissioner Sweetser motioned to approve Resolution 22-87: Disposal of assets. The motion was seconded by Commissioner Reedy and unanimously approved following a roll call vote.
- **Recommendation of RFP 11-01 LCDC Medical & Behavioral Care Services:** Ms. Hetcox recommended approval to begin negotiations with WellPath. Commissioner Sweetser motioned to approve the Recommendation of RFP 11-01 LCDC Medical & Behavioral Care Services. The motion was seconded by Commissioner Reedy and unanimously approved following a roll call vote.
- **Resolution 22-88: Resolution Supporting the New Mexico Counties 2023 Legislative Priorities:** Commissioner Reedy motioned to approve Resolution 22-88 supporting the New Mexico Counties 2023 Legislative Priorities. The motion was seconded by Commissioner Sweetser and was unanimously approved following a roll call vote.
- **American Legion Fund Request:** Mr. Brice explained that this request from the American Legion is to fix the building's roof. Commissioner Reedy motioned to approve the American Legion Fund Request. The motion was seconded by Commissioner Sweetser and unanimously approved following a roll call vote.
- **Special Use Permit to Solar Stone Project Application:** County Attorney Charles Kretek explained that the Planning Department approved a Conditional Use Permit for SolarStone Development project which is valid contingent upon an award of capacity from the PRC. Chair Smrkovsky opened the floor for public comment. Online comments were offered by Kristie Kennedy, expressing concerns about what it will look like. The public hearing was closed. Commission Sweetser motioned to approve Special Use Permit to SolarStone Project Application. The motion was seconded by Commissioner Reedy and approved unanimously following a roll call vote.
- **Resolution 22-89: Appraisal and Terms of DESRI Carne Solar Project for Solar PV Development NM 18 II LLC & Carne Energy Storage LLC Permit Applications:** Susan Schiffner and another member of the public came forth with comments and concerns about the power from this project not benefiting Luna County. After a brief explanation by Ms. Whitely and another representative for this project, Commissioner Reedy motioned to approve Resolution 22-89: Appraisal and Terms of DESRI Carne Solar Project for Solar PV Development NM 18 II LLC & Carne Energy Storage LLC Permit Applications. The motion was seconded by Commissioner Sweetser and was unanimously approved following a roll call vote.
- **Resolution 22-90: Authorization of an Application to NMDOT for I-10 & I-40 Corridors:** After a brief explanation by Road Department Director David Bailey, Commissioner Sweetser motioned to approve Resolution 22-90: Authorization of an Application to NMDOT for I-10 and I-40 Corridors. The motion was seconded by Commissioner Reedy and was unanimously approved following a roll call vote.
- **Certification of Canvass Results for the General Election 2022.** Mr. Brice recommended the election to be certified and then the concerns that were brought up to be looked into at a later time. He stated that there were no concerns regarding the outcome of the votes. Ms. McWright gave a special thanks to the Clerk's office staff, Ezra Uzueta, Joel Rivera from the Maintenance Department, Administrative Assistant Malarie Villegas, County Attorney

Charles Kretek, the IT Department, and everyone else involved in helping the voting process run smoothly. Commissioner Sweetser motioned to approve the Certification of Canvass Results for the Regular Local Election 2022. The motion was seconded by Chair Smrkovsky and approved following a roll call vote with Commissioner Reedy voting Nay.

Upcoming Meetings/Events (Unless otherwise specified):

Thanksgiving Holiday, November 23, 2022; Luna County Offices close at noon
Thanksgiving Holiday, November 24, 2022; Luna County Offices closed
Personal Day, November 25, 2022; Luna County Offices closed
Regular Meeting: December 15, 2022; at 8:30 a.m.

ADJOURN: Upon a motion by Chair Smrkovsky the meeting was adjourned at 1:16 PM

ATTEST:

**LUNA COUNTY BOARD OF
COUNTY COMMISSIONERS**

Berenda McWright, Luna County Clerk

Barbara L. Reedy, District 1

Approved: _____

Chair, Linda M. Smrkovsky, District 2

John S. Sweetser, District 3

LCBCC Meeting December 19, 2022

Accounts Payable

11/03/2022	\$653,309.12
11/03/2022	\$5,238.44
11/08/2022	\$4,702.00
11/08/2022	\$255,852.48
11/08/2022	\$9,455.82
11/17/2022	\$370,454.33
11/17/2022	\$8,839.41
11/21/2022	\$24,879.19

P-Cards

October 2022

\$172,842.53

Total \$1,505,573.32

Luna County
Board of County Commissioners



Agenda 12/19/2022

PAYROLL

Date	Register	Amount
11/04/2022	20220139	\$617,568.43
11/04/2022	*20220140	\$24,714.47
11/08/2022	*20220141	\$7,274.41
11/18/2022	20220142	\$620,551.30
11/18/2022	*20220143	\$21,557.41
11/18/2022	**20220144	\$92,787.86
11/18/2022	***20220145	\$196,913.16

Total: \$1,581,367.04

* Special Assignment Pay

* * PTO Buyback

* * * Longevity/Retention Pay

LUNA COUNTY
PERSONNEL ORDINANCE
NUMBER 23

Adopted in 1994
Amended in 1997
Amended in 2000
Amended in 2006
Amended in 2014
Amended in 2016
Amended in 2017
Amended in 2022

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SECTION 1 - GENERAL PROVISIONS

1.1 SCOPE.

1.1.1 This ordinance serves as the personnel policy for Luna County and is a general basis and guide for the proper, efficient, and effective administration of personnel matters for the employees of Luna County. The personnel rules contained herein replace and supersede all previously issued personnel rules and regulations applicable to employees of Luna County.

1.1.2 This Ordinance applies to all employees of the County, including Elected Officials to the extent it does not contradict the duties of their office as stated in the Constitution of New Mexico or State statutes.

1.1.3 This Ordinance is subject to applicable Federal and State laws, rules and regulations. To the extent any provision in this Ordinance contradicts any Collective Bargaining Agreements ("CBA"), the CBA controls, all other provisions of this Ordinance not contradicting or addressed in any CBA are applicable to covered employees.

1.2 AMENDMENT OF POLICY. The Luna County Board of County Commissioners ("BOCC") reserve the right to amend this personnel ordinance at any time according to statutory procedures.

1.3 DISTRIBUTION POLICY. The Luna County Human Resources Department (HR Department) shall provide a copy of this ordinance to all employees. The copies will be made available electronically and a physical copy will be provided upon request. Employees shall acknowledge in writing at orientation and upon receipt of amended versions that they have read the policies contained herein or have had it read to them, understand the policies and that they will be responsible for following the policies.

1.4 EQUAL EMPLOYMENT OPPORTUNITY POLICY. Luna County strives to provide a work environment free from all forms of unlawful harassment and employment discrimination. All decisions regarding recruiting, hiring, promotion, assignment, training, termination, and other terms and conditions of employment will be made without unlawful discrimination on the basis of race, color, national origin, ancestry, sexual orientation, gender identity or expression, religion, age, pregnancy, disability, medical condition, work-related injury, covered veteran status, political ideology, genetic information, marital or familial status, or any other factor or characteristic that the law protects from employment discrimination. Individuals will be selected for promotion based on experience and demonstrated skill and abilities.

1.5 AMERICANS WITH DISABILITIES ACT POLICY. Luna County is committed to complying with the provisions of Title II of the Americans with Disabilities Act ("ADA"). The ADA is a federal law that prohibits discrimination against persons with disabilities. This law includes all services, programs and activities provided or made available by state and local governments. Luna County will ensure effective communication with individuals with disabilities and will, upon request, provide auxiliary communication aids and services to afford

those individual's equal opportunity for participation in Luna County sponsored meetings, events or activities. Luna County will, upon request, make reasonable accommodations to ensure equal opportunities in the application process, to enable qualified individuals with a disability to perform the essential functions of their job and to make in possible for an employee with a disability to enjoy equal benefits and privileges of employment.

1.6 INFECTIOUS DISEASE POLICY.

1.6.1 Luna County is committed to efforts to provide a safe environment for employees by reducing risk, to the extent practicable, during widespread outbreaks of infectious bacterial or viral diseases and ensuring the County's ability to maintain essential operations and provide necessary services to Luna County. The County will establish separate policies and/or procedures for this purpose.

1.6.2 No employee or applicant who is qualified and able to perform their job responsibilities without threatening the safety of themselves or others will be denied employment, deprived of employment benefits, denied promotions or discharged as a result of a diagnosis of an infectious disease. All decisions will be based on job related criteria and in accordance with applicable guidelines, such as those from the Center for Disease Control or the New Mexico Department of Health.

1.7 ADMINISTRATION. The County Manager, or in his absence a designee, shall be responsible for the administration and enforcement of this ordinance and any related amendments, resolutions, regulations, policies, procedures or directives adopted by the BOCC. The County Manager shall recommend to the BOCC new or revised employment relations rules and regulations as necessary. The County Manager is authorized to implement administrative instructions, procedures, policies and directives that are not directly contradictory to this Ordinance, as necessary, to effectively administer the employment relations system. The County Manager shall update and maintain the position classifications, benefits and comprehensive pay plan for Luna County employees as established by the BOCC.

1.8 PRONOUNS. All pronouns used in this personnel ordinance shall include the masculine, feminine and neutral gender, the singular and plural, and the context of this ordinance shall read accordingly.

1.9 EMPLOYMENT AGREEMENTS.

1.9.1 All employment agreements, other than for the County Manager, are approved by the County Manager and may supersede any provision of this policy

1.9.2 The employment agreement of the Luna County Manager is the exclusive domain of the BOCC and the terms and conditions therein are determined in the sole discretion of the BOCC.

SECTION 2 - DEFINITIONS

2.1 ADMINISTRATIVE LEAVE WITH PAY or APPROVED LEAVE WITH PAY.

Only the County Manager may authorize leave with pay for cause or in the best interests of the County, as determined in the sole discretion of the Luna County Manager.

2.2 ADMINISTRATIVE REASSIGNMENT. The temporary transfer or change of duties of an employee must be authorized by the County Manager and is generally reserved for situations where there is a pending investigation, disciplinary action or when it is in the best interest of the County, as determined by the County Manager.

2.3 ANNIVERSARY DATE. The date of hire of the County employee by Luna County.

2.4 APPLICANT. A person who has applied in writing for employment with Luna County on the form(s) prepared and available in the HR Department or online at lunacountynm.us.

2.5 AT-WILL EMPLOYMENT STATUS. Means an employee who serves at the pleasure of the hiring authority and may be terminated at any time with or without cause because they have no property interest in the continued position and may not utilize the formal grievance procedure set forth herein. Depending on the terms and conditions of employment, may be eligible for some, all or none of the employment benefits offered by the County.

2.6 AUTHORIZED LEAVE. Any absence, with or without pay, during scheduled work day that is approved by the appropriate Elected Official, Department Director or designee.

2.7 CAUSE or JUST CAUSE.

2.7.1 Grounds or misconduct by an employee that warrants disciplinary action.

2.7.2 Before a determination of Cause or Just Cause can be made, the following elements must exist:

2.7.2.1 The employee in question must know or should have known the potential consequences of the conduct in question;

2.7.2.2 The rule or standard violated must be reasonably related to the job duties and the safe and efficient performance thereof;

2.7.2.3 There has been a fair and objective effort to gather all information regarding the conduct in question;

2.7.2.4 There is sufficient evidence establishing the conduct in question;

2.7.2.5 The rule or standard in question is being applied fairly and even handedly;

2.7.2.6 The proposed response or action to the alleged conduct is reasonably related to the offense;

2.7.2.7 The proposed response or action to the alleged conduct is being applied fairly, considering all the circumstances and the employee's history.

2.8 CFR. The regulations of the federal government known as the Code of Federal Regulations. Found at ecfr.gov or the County Attorney's office.

2.9 COLLECTIVE BARGAINING AGREEMENT. The written legal contract between Luna County and the union or other labor organization recognized as the exclusive representative (American Federation of State, County and Municipal Employees) of a legally established bargaining units at LCSO and LCDC.

2.10 COMPENSATORY TIME.

2.10.1 Paid leave hours granted to a non-exempt employee in lieu of overtime pay, which is generally paid at the rate of 1½ times the employee's regular rate of pay as defined by the Fair Labor Standards Act ("FLSA").

2.10.2 Luna County does not award Compensatory Time, but instead pays the appropriate overtime rate of pay, unless expressly approved by the County Manager in advance with the employee in question also being notified in advance.

2.11 COUNTY BUSINESS. The authorized performance of duties by an employee on behalf of Luna County and for which the employee is compensated by the County, regardless of the time or place of performance.

2.12 COUNTY MANAGER. The appointee of the Board of County Commissioners of Luna County ("BOCC") serving as the chief executive officer of Luna County who serves as or is responsible for personnel management, budget management, fiscal decisions, property custodian and as the administrative assistant to the BOCC in the aiding and exercising of its duties and responsibilities.

2.13 DEMOTION. The voluntary or involuntary change in an employee's duties or job description with a pay reduction.

2.14 DEPARTMENT DIRECTOR. An employee who has responsibility for supervising or administering a department or division of Luna County government. An Elected Official is also classified as a Department Director for the purposes of this ordinance.

2.15 DISCRIMINATION. Any act, failure to act or decision that has an adverse effect on an employee and is based on a legally prohibited basis, including race, color, national origin, ancestry, sexual orientation, gender identity or expression, religion, age, pregnancy, disability, medical condition, work-related injury, covered veteran status, political ideology, genetic information, marital or familial status, or any other factor or characteristic that the law protects.

2.16 DUE PROCESS. The rights afforded to employees with established and recognized property interests in continued employment with Luna County. These rights apply to process for grieving unfair or improper employment practices and disciplinary actions.

2.17 ELECTED OFFICIAL. An individual elected by popular vote or appointed to fill vacancies in an elected office in Luna County (i.e., County Commissioners, County Clerk, County Treasurer, County Sheriff, County Assessor, and County Probate Judge).

2.18 ENTRY LEVEL EMPLOYEE RATE OF PAY. The bottom rate of pay for the designated pay range for each position in the Luna County organizational chart, applied to new hires and newly promoted employees.

2.19 EXEMPT EMPLOYEES.

2.19.1 Employees meeting applicable requirements in the FLSA who may be compensated on a fixed salary.

2.19.2 Exempt Employees are not eligible for overtime pay or compensatory time.

2.19.3 Exempt Employees cannot have PTO taken for time away from work that amounts to less than one full day of work, but may still be subject to discipline.

2.20 FLSA. The Federal Fair Labor Standards Act.

2.21 FMLA. The Federal Family and Medical Leave Act

2.22 GRIEVANCE. The Due Process afforded certain employees to address specified employment practices and disciplinary actions.

2.22.1 INFORMAL GRIEVANCE The procedure to address written complaints regarding unfair or improper employment practices or disciplinary actions that do not result in loss of pay, suspension, demotion or termination to the employee.

2.22.2 FORMAL GRIEVANCE The procedure to address written complaints concerning actions taken by management which resulted in loss of pay, suspension, demotion or termination to the employee.

2.23 LAYOFFS (Reduction in Force). The involuntary separation of an employee from County service without cause on the part of the employee, due to reorganization, lack of work, lack of funds, or lack of appropriation of funds.

2.24 NMSA. The laws of the State of New Mexico known as the New Mexico Statutes Annotated. Found at NMSource.com or the County Attorney's Office.

2.25 NON-EXEMPT EMPLOYEES.

2.25.1 Employees who DO NOT meet applicable requirements in the FLSA who may be compensated on a fixed salary.

2.25.2 Non-Exempt Employees are legally entitled to overtime pay or compensatory time for hours worked in excess of the legal limits.

2.25.3 Only Non-Exempt Employees are subject to involuntary reductions in PTO for all time away from work during scheduled work hours.

2.26 PAY OR WAGE INCREASE. Increases to the pay, wage or salary of individual employees and are awarded by the County Manager pursuant to applicable County policies, such as evaluations.

2.27 PAYROLL INCREASES.

2.27.1 Payroll increases are determined by the BOCC and may or may not be annual and may be a percentage or specified amount and shall be determined by the BOCC contingent upon available budget.

2.27.2 The BOCC may, in exceptional circumstances, limit payroll increases to specific classes of employees or departments, such as regular employees, part-time employees,

grant employees, contract employees, temporary employees, appointed employees, or elected officials but pay or wage increases for individual employees shall be determined by applicable County policies and are awarded in the discretion of the County Manager.

2.28 PERSONAL TIME OFF (PTO). Is compensated time away from work provided as a discretionary benefit by the County to employees and specified accrual rates.

2.29 PROMOTION. The voluntary, permanent transfer or change of duties of an employee based on a merit as determined by a process resulting in elevated classification, rank, responsibility and pay range or compensation.

2.30 RETALIATION. Adverse action taken by or on behalf of Luna County by an employee against another employee because that employee engaged in a protected activity, such as reporting sexual harassment or other inappropriate conduct.

2.31 SEXUAL HARASSMENT. Conduct that is unwelcome sexually oriented behavior, demands, comments or physical contact in the workplace when:

2.31.1 Submission to such conduct is made either explicitly or implicitly a term or condition of employment;

2.31.2 Submission to, or rejection of, such conduct is used as a basis for employment decisions or opportunities; or

2.31.3 Such conduct has the purpose or effect of substantially interfering with an individual's work performance, or creating an intimidating, hostile or offensive working environment.

2.32 TERMINATION. The involuntary end to an individual's employment with Luna County.

2.33 UNAUTHORIZED LEAVE. Any absence, without pay, from a scheduled work day without reasonable grounds or approval of the appropriate Elected Official, Department Director or designee and may result in Administrative Leave without Pay and/or disciplinary action.

2.34 USC. The laws of the federal government known as the United States Code. Found at govinfo.gov or the County Attorney's office.

2.35 USERRA. The federal Uniformed Services Employment and Reemployment Rights Act.

2.36 WORKPLACE HARASSMENT. Conduct that is unwelcome and is based on a legally prohibited basis, including race, color, national origin, ancestry, sexual orientation, gender identity or expression, religion, age, pregnancy, disability, medical condition, work-related injury, covered veteran status, political ideology, genetic information, marital or familial status, or any other factor or characteristic that the law protects. Workplace harassment encompasses discriminatory conduct, sexually inappropriate or harassing conduct, violent or physically intimidating behavior.

SECTION 3 - RECRUITMENT AND SELECTION

3.1 RECRUITMENT AND POSTING PROCEDURE. Recruitment for job vacancies may be internal only, meaning only current Luna County employees are eligible to apply or external, which means that anyone is eligible to apply. The decision whether a position is internal or external belongs to the Department Head or Elected Official with the approval of the HR Department.

3.1.1 Internal Positions. Vacancies to be filled from a pool of only current Luna County employees from any Department by posting of a job notice on the Luna County website and outside the HR Office and identified as "INTERNAL ONLY". The posting shall be for at least five (5) working days.

3.1.2 External Positions. Vacancies to be filled from a pool of interested applicants, including but not limited to current Luna County employees. External Positions shall be posted on the Luna County website and outside the HR Office and advertised for at least five (5) working days.

3.1.3 "Advertising" for purposes of this Section means placing the job description or a summary thereof at one or more of the following locations:

3.1.3.1 NM Dept. of Work Force Solutions;

3.1.3.2 Luna County website and/or Facebook page;

3.1.3.3 A newspaper of general circulation or its website;

3.1.3.4 New Mexico Counties;

3.1.3.5 Recruiting services or websites; and

3.1.3.6 Other appropriate venues, such as universities and professional societies.

3.1.4 Neither posting nor advertising is required for recruiting candidates for Discretionary Employees.

3.1.5 The County Manager may exempt any vacancy from posting and/or advertising by written directive to the HR Director and made part of the hiring file for that position.

3.2 SUBMISSION OF APPLICATIONS.

3.2.1 Applications for employment shall be accepted in the HR Department office during normal business hours or through the Luna County website anytime and must be submitted on the form provided by Luna County within the stated time period.

3.2.2 When specialized qualification is necessary, such as a certificate, license or degree, proof of the qualification must be attached to the Application unless granted a waiver.

3.2.3 Waivers of any qualification, or acceptance of an equivalency, may be requested in writing by the Applicant and attached to the Job Description. Such waivers or acceptances are granted in the sole discretion of the County Manager.

3.2.4 Applications must be accompanied by properly executed Job Descriptions and all other items required in the posting or advertisement, such as letters of interest, resumes, letters of recommendations, licenses or certifications.

3.2.5 Late, incomplete or unsigned applications will be rejected and the Applicant will be removed from consideration for the position with written notice sent to the Applicant.

3.2.6 Applicants who do not meet the Minimum Qualification Standards contained in the Job Description will be removed from consideration for the position with written notice sent to the Applicant.

3.2.7 Immigration Laws Compliance. Applicants are responsible for furnishing proof of identification and employment authorization in accordance with the Immigration Reform and Control Act of 1986, 8 U.S.C. Part 245a, and any amendments thereto.

3.2.8 Applicants meeting the requirements in this section shall be considered for positions for which they have applied and may also be considered for other vacancies. Consideration for any position does not imply or guarantee an interview, test or further participation in the hiring process.

3.3 SELECTION.

3.3.1 The HR Department will screen all applications for compliance with the requirements and remove from consideration all incomplete, nonconformed, unsigned and unqualified applications.

3.3.2 Applicants designated as Ineligible for Hire or Rehire will be removed from consideration.

3.3.3 Upon completion of the initial screening the HR Department will prepare a list of candidates eligible to continue with a copy of their application. The list will be sent to the Department Head or Elected Official.

3.3.4 Based on the applications, the Department Head and Elected Official will indicate which applicants should proceed to the next steps. The next step depends on the vacancy being filled and may include a physical exam, background check, test or other evaluation, or an interview.

3.3.5 Upon receipt of the list, the HR Department will add any current Luna County employee, veteran and highly qualified candidates not already on the list.

3.3.6 The HR Department will then contact the selected applicants and schedule the next step or steps in the hiring process.

3.3.7 A minimum of three (3) eligible applicants, or all eligible applicants if there is less than three (3) eligible applicants, shall be interviewed. All Luna County employees and veterans qualifying for the position shall be interviewed.

3.3.8 Upon completion of the hiring process, the HR Department will tabulate the results and present an anonymous ranking to the Department Head or Elected Official.

3.3.9 The highest scoring candidate will be offered the position, EXCEPT:

3.3.9.1 when one or more candidates are within five percentage (5%) points; or

3.3.9.2 when the Department Head and Elected Official can articulate legal, non-discriminatory grounds for selecting another candidate AND the HR Department concurs in the selection.

3.3.10 At any point in the hiring process, the County Manager may intervene and, by written directive, add or remove candidates from the process.

3.3.11 The selection process, and all elements thereof, shall be administered only by the HR Department under the supervision of the County Manager.

3.4 HIRING.

3.4.1 Once the successful candidate has been determined, the HR Department shall prepare a Conditional Offer Letter.

3.4.2 As a condition of employment all successful candidates must submit to the appropriate alcohol or drug screen, as determined by the applicable alcohol and drug policy.

3.4.3 Other terms of conditional employment offers, when applicable, are:

3.4.3.1 Background check;

3.4.3.2 Physical examination;

3.4.3.3 Physical fitness test;

3.4.3.4 Psychological evaluation;

3.4.3.5 Verification of certifications, licenses, degrees, other specialized qualifications; or references.

3.4.4 Verifications necessary for employment shall only be conducted by the HR Department.

3.4.5 The hiring process, and all elements thereof, shall be administered only by the HR Department under the supervision of the County Manager.

3.5 INELIGIBILITY FOR HIRE. An Applicant will be considered ineligible for hire by Luna County if the applicant has:

3.5.1 Made any false statement or deliberate omission on the employment application;

3.5.2 Not met the requirements or qualifications of the position;

3.5.3 Not met the criteria for insurance or bonding as required by Luna County or State of New Mexico;

3.5.4 Not completed or failed a drug screen;

3.5.5 Received an unsatisfactory background check;

3.5.6 Not been certified by a physician that the applicant can perform the essential duties of the position;

3.5.7 Failed to complete the medical examination, psychological examination, or other requirements; or

3.5.8 Failed to fulfill the statutory requirements of Section 4-41-8, NMSA 1978, if applying for position of Deputy Sheriff.

3.6 INELIGIBILITY FOR RE-HIRE. An Applicant who was previously employed by Luna County in any capacity will be considered ineligible for re-hire by Luna County if the Applicant has:

3.6.1 Made any false statement or deliberate omission on the employment application;

3.6.2 Not met requirements and qualifications of the position;

3.6.3 Not met the criteria for insurance or bonding as required by Luna County or State of New Mexico;

3.6.4 Not completed or failed a drug screen;

3.6.5 Received an unsatisfactory background check;

3.6.6 Not been certified by a physician that the applicant can perform the essential duties of the position;

3.6.7 Failed to complete the medical examination, psychological examination, or other

requirements; or

3.6.8 Failed to fulfill the statutory requirements of Section 4-41-8, NMSA 1978, if applying for position of Deputy Sheriff;

3.6.9 Provided inadequate resignation notice as defined in this policy;

3.6.10 Previously resigned a position with Luna County to avoid a pending disciplinary action unless the County Manager determines that the applicant has been sufficiently rehabilitated to warrant the public trust;

3.6.11 Has been previously dismissed for cause from employment with Luna County unless the County Manager determines that the applicant has been sufficiently rehabilitated to warrant the public trust; or

3.6.12 Any other valid and/or substantive reason deemed in the best interest of Luna County, as determined in the sole discretion of the County Manager. The County Manager retains authority over all discretionary decisions pursuant to this section.

3.7 DURATION OF INELIGIBILITY.

3.7.1 Applicants determined to be ineligible under this section shall be ineligible for a minimum period of one year and shall remain ineligible until eligibility is returned by the County Manager.

3.7.2 The process for requesting reinstatement of eligibility is governed by the County Manager's Directive, as it may be amended from time to time.

3.7.3 This Section is subject to the provisions of the Criminal Offender Employment Section 28-2-1, NMSA 1978 and Section 10-1-3, NMSA 1978.

SECTION 4 - EMPLOYMENT CLASSIFICATIONS

4.1 REGULAR EMPLOYEE.

4.1.1 Full-Time. An employee who has completed the probationary period and is normally scheduled to work a minimum of forty (40) hours per week indefinitely and is not subject to an employment contract or term conditions. A Full-Time Regular Employee is eligible for all employment rights and benefits provided by Luna County.

4.1.1.1 FLSA Non-exempt Employee.

A Full-Time Regular Employee who is paid on an hourly basis for hours worked and is covered by the FLSA Overtime Rules and is required to use PTO or take leave without pay for hours absent during scheduled work hours.

4.1.1.2 Full-Time FLSA Exempt Employee.

A Full-Time Regular Employee who is paid on a salary basis in an amount meeting the FLSA Salary Level Test and performs FLSA exempt job duties. Such employees are not covered by the FLSA Overtime Rules and cannot be required to use PTO or take leave without pay for hours absent during scheduled work hours unless the hours absent amount to one full workday.

4.1.2 Part-Time. An employee who has completed the probationary period and is limited to working a maximum of thirty (30) hours per week indefinitely and is not subject to an employment contract or term conditions.

4.1.2.1 Employees working a maximum of nineteen (19) hours per week are not eligible for any employment benefits provided by Luna County.

4.1.2.2 Employees working more than nineteen (19) hours per week but no more than thirty (30) are eligible for health insurance and retirement benefits.

4.1.2.3 Employees are covered by the disciplinary and grievance provisions herein.

4.1.2.4 Are not eligible to accrue PTO or receive Holiday Pay.

4.1.2.5 Part-time positions may or may not be indefinite but are not temporary or seasonal.

4.2 TEMPORARY OR SEASONAL EMPLOYEE. An employee who is scheduled to work up to forty (40) hours per week for a period not to exceed nine (9) months; is not entitled to any of the employment rights and benefits provided by Luna County; maybe be terminated at any time for any legal reason or no reason at all; and is not eligible for the formal grievance process.

4.3 TERM EMPLOYEE. An employee who has completed the probationary period, whose salary and/or benefits are funded and determined by a grant or other outside source and whose employment is for a specified period of time or term.

4.3.1 **Full-Time.** An employee who is scheduled to work forty (40) hours per week for a specified period the term of employment.

4.3.2 **Part-Time.** An employee who is limited to working a maximum of thirty (30) hours per week for a specified period or term of employment.

4.3.3 Term Employees can be terminated for any legal reason or no reason at all, without regard to job performance and will be terminated in the event funding is not continued.

4.3.4 Part-Time Term Employees working a maximum of nineteen (19) hours per week are not eligible for any employment benefits provided by Luna County.

4.3.5 Any Term Employee working more than nineteen (19) hours per week up to forty (40) hours per week may be eligible for health insurance and retirement benefits, depending on the terms and conditions of the funding for the position.

4.3.6 Term Employees are covered by the disciplinary and grievance provisions herein, excluding provisions related to termination.

4.3.7 Only Full-Time Term Employees are eligible to accrue PTO and receive Holiday Pay, depending on the terms and conditions of the funding for the position.

4.4 DISCRETIONARY EMPLOYEE. An employee who is the appointee of Elected Officials and are considered Full-Time FLSA Exempt employees with their respective salaries set by BOCC resolution.

4.4.1 The Discretionary Employees of Luna County are:

4.4.1.1 County Manager, hired by the BOCC;

4.4.1.2 Executive Secretary to the Sheriff, appointed by the Sheriff, subject to confirmation by the BOCC;

4.4.1.3 Chief Deputies of the Assessor, Clerk and Treasurer, appointed by the respective Elected Official, subject to confirmation by the BOCC; and

4.4.1.4 Any other positions authorized by a majority vote of the BOCC.

4.4.2 The Chief Deputy in the offices of the Assessor, Clerk and Treasurer are Discretionary Employees and FLSA Exempt and are designated by the Elected Official to perform the duties of the Elected Official in a leave of absence or inability to serve.

Chief Deputies will receive ninety-five percent (95%) of the elected officials' salary.

4.4.3 Discretionary Employees are considered "at-will" and can be terminated at any time for any reason or no reason, but not the wrong reason.

4.4.4 Discretionary Employees do not accrue PTO or receive Holiday Pay.

4.4.5 Discretionary Employees are entitled to avail themselves of the Grievance Procedures, except for termination.

4.5 PROBATIONARY EMPLOYEE. A Regular or Term Employee who, for the specified period of time, is considered an At-Will Employee.

4.5.1 The specified probationary period for employees in the Luna County Sheriff's Office, Luna County Detention Center and Dispatch is twelve (12) months from their date of hire.

4.5.2 The specified probationary period for employees in all other Luna County Departments is six (6) months from their date of hire.

4.5.3 The purpose of the probationary period is to evaluate the employee's performance, fitness for and behavior in the job and extended absences, paid or unpaid, do not count toward the probationary period.

4.5.4 Performance evaluations shall be conducted at:

4.5.4.1 One, Three, Six and Eleven months for employees of LCDC, LCSO and Dispatch; and

4.5.4.2 One, Three and Five months for all other County employees.

4.5.5 Evaluations are intended to determine the employee's fitness for the position and ability to work with the public, peers, supervisors and management.

4.5.6 During the probationary period, an employee hired to fill a position requiring certification shall obtain the certificate required for the position. Failure to obtain the certification within the probationary period may result in the employee's termination.

4.5.7 Absent express authorization from the HR Department and approval of the County Manager, the compensation for newly hired employees shall be the minimum wage for the position, as determined by the salary/wage plan in effect at the time of hiring. Compensation levels for employees are evaluated based on Performance Evaluations and only then may be adjusted, as deemed appropriate by the County Manager, based on the request of the Elected Office or Department Head and a recommendation from the HR Department, except for those positions governed by a Collective Bargaining Agreement.

4.5.8 Employment Probation. The probationary period for persons newly employed or re-employed by the County and are employed on At-Will Employment Status.

4.5.8.1 The Employment Probation period may not be terminated early.

4.5.8.2 Employment Probation may be extended for up to 6 months based on unsatisfactory evaluations, at the request of the Elected Official or Department Director. The HR Department shall make a recommendation on each request with the County Manager or designee having the sole authority to grant, modify or reject the request.

4.5.8.3 Employees who do not successfully complete Employment Probation are subject to termination.

4.5.8.4 Any person rehired or reemployed by the County after the end of prior county employment shall be required to serve a new Employment Probation period.

4.5.9 Positional Probation. The probationary period for current Luna County employees receiving promotions and who retain protected employment status can only be terminated from County employment for cause.

4.5.9.1 The Positional Probation period may be terminated any time after completion of one-half of the probationary period by the County Manager at the request of the Department Head or Elected Official and with a recommendation from the HR Department.

4.5.9.2 Positional Probation may be extended for up to 3 months based on unsatisfactory performance. The Department Head or Elected Official may request an extension and the HR Department shall make a recommendation on each request with the County Manager or designee having the sole authority to grant, modify or reject the request.

4.5.9.3 An employee who is temporarily assigned to a vacant position and is subsequently hired to fill that position shall serve the required probationary period on Positional Probation.

SECTION 5 – CONDITIONS OF EMPLOYMENT

5.1 PROBATIONARY/PROMOTION EVALUATIONS.

5.1.1 New hires and newly promoted employees will be evaluated in writing on forms provided by the HR Department.

5.1.1.1 New employees at LCSO, LCDC and Dispatch are on Employment Probation status for twelve (12) months and will be evaluated after 30 days, 90 days, 180 days and 330 days.

5.1.1.2 New employees in other departments and all newly promoted or transferred employees are on Positional Probation for six (6) months and will be evaluated after 30, 90 and 150 days.

5.1.2 Probationary and Promotion Evaluations are intended to establish the standards of performance expected from each employee and an assessment of that performance. The supervisor shall meet with the employee in person and shall review the Job Description and make any adjustments necessary to reflect the actual tasks being performed. Unless otherwise decided by the County Manager, the supervisor will then evaluate the employee on the following:

5.1.2.1 Quality of work;

5.1.2.2 Work habits;

5.1.2.3 Job-specific standards;

5.1.2.4 Performance expectations;

5.1.2.5 Progress in meeting expectations;

5.1.2.6 Overall productivity;

5.1.2.7 Attendance;

- 5.1.2.8 Workplace behavior and relationships;
- 5.1.2.9 Employee comments or requests; and
- 5.1.2.10 Supervisor comments and requests.
- 5.1.3 Initial or 30-Day Evaluation – The primary focus of this initial evaluation is to determine whether the employee has the necessary skills, equipment and materials to perform their job.
- 5.1.4 Intermediate or 90 and 180-Day Evaluations – The intermediate evaluations are intended to assess the employee’s capabilities and ultimate ability to perform the job for which they were hired and to identify strengths and weaknesses.
- 5.1.5 Final or 150 and 330-Day Evaluations – The final evaluations are intended to determine the employee’s fitness for their job and whether to continue their employment. Based on the evaluation, the supervisor shall recommend one of the following:
 - 5.1.5.1 Unsatisfactory completion of probation. For newly hired employees this would be a recommendation for termination of employment of a newly hired employee and must be based on poor performance or inability to satisfactorily perform the job, supported by each of the prior evaluations. For newly transferred or promoted employees, this would be a recommendation to return the employee to their prior position and salary;
 - 5.1.5.2 Extending the probationary period for up to six (6) additional months to improve one or more aspects of job performance;
 - 5.1.5.3 Early termination of Positional Probation, supported by each of the prior evaluations;
 - 5.1.5.4 Satisfactory completion of Employment or Positional Probation and change to regular employee status. The supervisor should also include a recommendation regarding the placement between the minimum and midpoint within the applicable salary range and verification of the budget to support the recommendation.

5.2 PERFORMANCE APPRAISALS.

- 5.2.1 Two written evaluations will be conducted for all employees, except Probationary Employees and Temporary or Seasonal Employees. Annual Performance Appraisals will be conducted during the first pay period that starts in November and Mid-Year Reviews will be conducted during the first pay period that starts in May.
- 5.2.2 Annual Performance Appraisals are intended to promote communication between supervisors and employees in establishing performance standards and expectations and assessing how well the employee is meeting those standards and expectations. The supervisor shall meet with the employee in person and shall review the Job Description and prior evaluations and reviews. Unless otherwise determined by the County Manager, the supervisor will evaluate the employee on the following:
 - 5.2.2.1 Adaptability;
 - 5.2.2.2 Attendance and Punctuality;
 - 5.2.2.3 Communication Skills;
 - 5.2.2.4 Dependability;
 - 5.2.2.5 Initiative;
 - 5.2.2.6 Job Knowledge;

- 5.2.2.7 Organizational Support;
- 5.2.2.8 Planning and Organization;
- 5.2.2.9 Productivity; and
- 5.2.2.10 Quality of work.

5.2.3 The Supervisor shall conduct the Annual Performance Appraisal and complete the appraisal form provided by the HR Department. At the conclusion of the Annual Performance Appraisal meeting, the employee shall be provided a copy and will have two (2) days to review and comment on the appraisal before signing it.

5.2.4 All completed Annual Performance Appraisals must be submitted to the HR Department before the commencement of the Thanksgiving Holidays.

5.2.5 Prior to December 31 of each year the County Manager will convene the Appraisal Review Committee consisting of the HR Director, Budget and Procurement Director and County Attorney and anyone else the County Manager designates to formulate a recommendation regarding merit pay increases, if any are warranted, for Regular Employees, Term Employees, Discretionary Employees and Probationary Employees who are not members of a recognized collective bargaining unit of Luna County.

5.2.6 An Unsatisfactory Annual Performance Appraisal may result in implementation of a Performance Improvement Plan, Last Chance Agreement or disciplinary action up to and including termination, subject to the provisions of this personnel policy. If termination is recommended due to an unsatisfactory evaluation, the employee may use the formal grievance process as outlined herein.

5.3 **MID-YEAR REVIEW.**

5.3.1 Mid-Year Reviews are intended to provide the employee with feedback and status on their performance, areas of excellence and areas in need of improvement and to allow the employee to request assistance or additional resources in meeting their performance standards and expectations. It is also an opportunity for supervisors to measure morale and to check on the overall well-being of their employees. Supervisors should also take this opportunity to listen to any suggestions, complaints and concerns from their employees.

5.3.2 The supervisor shall conduct the Mid-Year Review in person and complete the review form provided by the Human Resources Department. At the conclusion of the review, the employee shall be provided a copy and will have two (2) days to review and comment on the review before signing it.

5.3.3 All completed Mid-Year Review forms must be submitted to the HR Department before the Memorial Day Holiday.

5.4 **PROHIBITED POLITICAL ACTIVITIES.**

All employees are prohibited from the following:

5.4.1 Using Luna County equipment, materials, authority or employment influence for the purpose of interfering with or affecting the result of an election or a nomination for office or for any other political purpose.

5.4.2 Directly or indirectly using a position of employment to coerce, attempting to

coerce, command or advise a State or County officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, union, agency or person for a political purpose.

5.4.3 Threatening to deny promotions to any employee who does not vote for certain candidates; requiring employees to contribute part of their pay to political funds; coercing subordinate employees to buy tickets to political fund-raising events and similar events; advising employees to take part in political activity and matters of a similar nature.

5.4.4 No Luna County employee may engage in political activity prohibited by the Hatch Act, 5 U.S.C. Chapter 15. The County Manager shall notify the appropriate agency with regard to any matters pertaining to the Hatch Act.

5.4.5 Any person elected to a Luna County Office (Commissioner, Clerk, Treasurer, Assessor, Sheriff, Probate Court Judge) shall not be employed by Luna County in any other capacity after taking office. This excludes independent contractors and vendors of Luna County.

5.5 CONFLICTS.

5.5.1 Conflict Ban. Conflicts of interest are prohibited in accordance with the Governmental Conduct Act, 10-16-1 et seq. NMSA 1978 and the Luna County Code of Conduct, subject to the exceptions and exemptions therein. Specifically, Elected Officials and employees:

5.5.1.1 May not take any act the primary purpose of which is to enhance their financial interest or that of their immediate family (spouse, parents, children or siblings by blood or marriage);

5.5.1.2 Are disqualified from taking any act or participating in any activity directly affecting their or their family's financial interests; and

5.5.1.3 May not acquire a financial interest which may be directly affected or influenced by their employment or position with Luna County.

5.5.2 Termination of Outside Employment. Pursuant to Section 10-16-4.2, NMSA 1978, Elected Officials and employees must disclose all outside employment to the HR Department. A determination may be made by the County Manager that the supplementary outside employment violates this policy and may require termination of the outside employment.

5.6 ETHICAL CONDUCT. In accordance with the Governmental Conduct Act, 10-16-1, et seq., NMSA 1978, and the Luna County Code of Conduct, Elected Officials and employees:

5.6.1 Shall treat their position or employment as a public trust and shall use their powers and authority only to advance the public interest and not to obtain personal benefits or pursue interests;

5.6.2 Shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining integrity and discharging ethically the high responsibilities of public service;

5.6.3 Shall fully disclose real and potential conflicts of interest and shall take all reasonable efforts to avoid undue influence and abuse of office;

5.6.4 Shall not receive or request any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act;

5.6.5 Shall not use or disclose confidential information acquired by virtue of their position or employment for their or another's personal gain; or

5.6.6 Shall not submit a bid or proposal for any project or contract in which they participated in the preparations of specifications, qualifications or evaluation criteria.

5.7 DISCRIMINATION AND WORKPLACE HARASSMENT.

5.7.1 Luna County strives to create and maintain a work environment in which people are treated with dignity, decency and respect. The environment of the County should be characterized by mutual trust and the absence of intimidation, oppression and exploitation. Luna County will not tolerate unlawful discrimination or harassment of any kind. Through enforcement of this policy and by education of employees, Luna County will seek to prevent, correct and discipline behavior that violates this policy.

5.7.2 Elected Officials and employees, regardless of their positions, are covered by and are expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this policy. Based on the seriousness of the offense, disciplinary action may include verbal or written reprimand, suspension, or termination of employment.

5.7.3 Managers and supervisors who knowingly allow or tolerate discrimination, harassment or retaliation, including the failure to immediately report such misconduct to the HR Department, are in violation of this policy and subject to discipline.

5.7.4 Discrimination.

5.7.4.1 It is a violation of Luna County's policy to discriminate in the provision of employment opportunities, benefits or privileges; to create discriminatory work conditions; or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, the person's race, color, national origin, age, religion, disability status, sex, sexual orientation, gender identity or expression, genetic information or marital status.

5.7.4.2 Discrimination of this kind may also be strictly prohibited by a variety of federal, state and local laws, including Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1967 and the Americans with Disabilities Act of 1990. This policy is intended to comply with the prohibitions stated in these anti-discrimination laws.

5.7.4.3 Discrimination in violation of this policy will be subject to disciplinary measures up to and including termination.

5.7.5 Harassment. Luna County prohibits harassment of any kind and will take appropriate and immediate action in response to complaints or knowledge of violations of this policy. For purposes of this policy, harassment is any verbal or physical conduct designed to threaten, intimidate or coerce an employee, co-worker, or any person working for or on behalf of Luna County.

5.7.6 Sexual harassment. Luna County prohibits sexual harassment of any kind and is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct is used as the basis for employment decisions or such conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment.

5.7.7 Consensual Romantic Relationships. Luna County strongly discourages romantic or sexual relationships between a manager or other supervisory employee and employees who report directly or indirectly to that person.

5.7.7.1 If there is such a relationship, the parties need to be aware that one or both may be moved to a different department or other actions may be taken.

5.7.7.2 Elected Officials or employees in a consensual relationship that is romantic or sexual in nature with another employee who reports directly or indirectly to that employee, or if one of the parties is in a supervisory capacity in the same department in which the other party works, the parties must disclose the relationship to HR Department. The disclosure must be on the form provided by the HR Department and will be included in the appropriate personnel files.

5.7.7.3 Disclosure of consensual romantic or sexual relationships is mandatory and failure to do so can result in disciplinary action, including termination. This requirement does not apply to employees who do not work in the same department or to parties where neither one supervises or otherwise manages responsibilities over the other.

5.7.8 Once the relationship is disclosed, the situation will be assessed in light of all the facts and a determination will be made regarding whether one or both parties need to be moved to another job or department. If it is determined that one party must be moved, and there are jobs in other departments available for both, the parties may decide who will be the one to apply for a new position. If the parties cannot amicably come to a decision or the party is not chosen for the position to which he or she applied, the County Manager and the HR Director will decide which party will be moved. That decision will be based on which move will be least disruptive to the organization as a whole. If no other jobs are available for either party, the parties will be given the option of terminating their relationship or resigning.

5.7.9 All Elected Officials and employees are responsible for knowing and following the provisions of this section.

5.8 NEPOTISM.

5.8.1 The practice or appearance of nepotism is prohibited by Luna County. Any person elected or appointed to any County public office or position under the laws of the State of New Mexico is prohibited from employing as clerk, deputy or assistant, in such office or position, whose compensation is to be paid out of public funds, any persons related by consanguinity or affinity within the third degree to the person giving such employment, unless such employment shall first be approved by the County Commission; provided, that this prohibition shall not apply where the compensation of such clerk, deputy or assistant shall be at the rate of \$600 or less per year.

5.8.2 Applicants for employment and current employees must disclose personal or familial relationships with other county employees and elected officials and may not work in the chain of command with related persons. The disclosure must be on the form provided by the HR Department and will be included in the appropriate personnel file. Relationships subject to disclosure are spouse, domestic partner, child, step-child, parent, step-parent, parent-in-law, sibling, step-sibling, sibling-in-law, aunts and uncles, step-aunts and uncles, nieces and nephews, step-nieces and nephews.

5.9 EMPLOYEE SAFETY MATTERS. Luna County maintains a Safety Program intended to promote a safe work environment and working conditions that are free of known dangers. All Elected Officials, Department Directors and employees are responsible for knowing and following this program. A copy of which is available at the HR Department.

5.10 RELATING TO USE OF COUNTY VEHICLES.

5.10.1 County employees driving county vehicles must have a valid driver's license and be current on the mandatory defensive driving classes required by the County.

5.10.2 County vehicles shall be operated in compliance with all applicable laws, regulations and ordinances.

5.10.3 County vehicles are restricted to use in the course and scope of County business, provided that minimal personal use that is incidental to the conduct of County business is allowed and other personal use is prohibited.

5.10.4 County vehicles may not be taken out of Luna County without advance permission from the County Manager or designee based on a request identifying the destination, itinerary and all persons who will be driving and riding in the vehicle.

5.10.5 County vehicles, in rare instances, provides for a take-home vehicle for certain employees and the taxability of this benefit to the employee is subject to all guidelines and provisions established by the Internal Revenue Service (IRS).

Specifically, take-home vehicles are a taxable benefit unless they meet all of the following:

5.10.5.1 The vehicle is not likely to be used more than minimally for personal purposes because of its design;

5.10.5.2 The vehicle is clearly marked as a Luna County vehicle;

5.10.5.3 The employee to whom the vehicle is assigned is on-call or call-back status;

5.10.5.4 The employee to whom the vehicle is assigned is required to commute to and from work in the County vehicle; and

5.10.5.5 The employee is prohibited from travelling outside of Luna County on personal business.

5.10.6 Any violation of this policy may result in the revocation of driving privileges by the County Manager and disciplinary action.

5.11 MANDATORY TRAINING.

5.11.1 All Elected Officials, Department Directors and employees shall successfully complete training on specific subjects selected by the HR Department, including but not limited to: sexual harassment; workplace violence; and the Governmental Conduct Act.

5.11.2 Additional training requirements may be imposed by the County Manager, Elected Officials or Department Directors, through the HR Department, on legal standards, County programs, policies, requirements and obligations and other appropriate topics. The general training requirements and specific training requirements for departments or individual positions and proof of attendance will be maintained by the HR Department.

5.12 DRUG AND ALCOHOL TESTING POLICY.

Luna County strives to provide a safe work environment and part of that is voluntary compliance with the Drug-Free Workplace Act of 1988 as well as other applicable federal and state laws. In furtherance of this goal, the County has enacted two drug and alcohol policies:

5.12.1 The Luna County Drug and Alcohol Policy for CDL drivers; and

5.12.2 The Luna County Drug and Alcohol Policy applicable to all other employees.

SECTION 6 - CHANGES IN EMPLOYMENT STATUS

6.1 PROMOTION.

6.1.1 Luna County employees are encouraged to take advantage of promotion opportunities and apply for higher paying positions for which they qualify. Promotion is a reassignment of an employee to a position, with a higher salary range, different job duties, qualifications and responsibilities.

6.1.2 Upon promotion, an employee's salary will generally be set at the minimum for the applicable Salary Range, unless otherwise authorized by the HR Department and approved by the County Manager at the recommendation of the Elected Official or Department Director, subject to budgetary restrictions. The written recommendation from the Elected Official or Department Director must include justifications based on qualifications, years of experience, expertise, performance evaluations, etc.

6.1.3 Employees who accept new positions or promotions will be subject to positional probation as described in Section 4 Employment Classifications.

6.1.4 All County Employees who are not the subject of current disciplinary action may apply for a promotion or position vacancy for which the employee is qualified.

6.2 RECRUITMENT AND POSTING PROCEDURE. Recruitment for promotions will generally be internal only, meaning only current County employees may apply. When appropriate, eligibility may be limited to only current County employees within the same department. However, the County Manager, at the request of the Elected Official, Department Director or HR Department may recruit for promotions externally.

6.2.1 "Advertising" for purposes of internal only promotions means placing the job description or a summary thereof on the Luna County website and/or social media page and outside the HR Department for a minimum of five (5) working days.

6.2.2 "Advertising" for purposes of external promotions will be the same as for new hires, Section 3.1.3.

6.2.3 The County Manager may exempt any promotional position from advertising by written directive to the HR Director and made part of the hiring file for that position.

6.3 SUBMISSION OF APPLICATIONS.

Applications for promotions shall be the same process as in Section 3.2.

6.4 SELECTION.

6.4.1 The HR Department will screen all applications for compliance with the requirements and remove from consideration all incomplete, nonconforming, unsigned and unqualified or ineligible applications.

6.4.2 All County employees not excluded under the preceding subsection will be interviewed as well as any external applicants requested by the hiring authority or County Manager will also be interviewed.

6.4.3 The promotional points shall be based on the following elements:

6.4.3.1 Ten Percent (10%) overall evaluation by the interviewers based on criteria and factors set out by the Elected Official or Department Director;

6.4.3.2 Ten Percent (10%) for seniority based on total time employed by Luna County in any department;

6.4.3.3 Forty Percent (40%) on a written test, demonstration or presentation; and

6.4.3.4 Forty Percent (40%) on oral examination or interview by a panel of four interviewers with one chosen by the Elected Official or Department Head, one representative or designee of HR Department and other persons, internal or external, as chosen by the County Manager or designee.

6.4.5 Upon completion of the hiring process, the HR Department will tabulate the results and present an anonymous ranking to the Department Head or Elected Official.

6.4.6 The highest scoring candidate will be offered the position, EXCEPT:

6.4.6.1 When one or more candidates are within five percentage (5%) points; or

6.4.6.2 When the Department Head and Elected Official can articulate legal, non-discriminatory grounds for selecting another candidate AND the HR Department concurs in the selection.

6.4.7 At any point in the hiring process, the County Manager may intervene and, by written directive, add or remove candidates from the process.

6.4.8 The selection process, and all elements thereof, shall be administered only by the HR Department under the supervision of the County Manager.

6.5 TEMPORARY ASSIGNMENT.

6.5.1 A temporary assignment occurs when an employee is assigned additional or significantly different duties to meet operational needs or in order to temporarily fill a vacant position for a period not to exceed six (6) months.

6.5.2 An employee given a temporary assignment shall receive a temporary salary increase of 5% or the minimum of the new salary range, whichever is greater, and which remains in effect only for the duration of the assignment. The HR Department will review all temporary assignments and, under special circumstances, may recommend a higher increase. The County Manager will have final approval of all temporary assignments and corresponding salary increases.

6.5.3 Temporary assignments are limited to instances where a vacant position needs to be filled pending further action, such as hiring, promoting or reclassifying the position and the temporary compensation shall end on the date the employee resumes regular duties or six (6) months after the initial assignment, whichever occurs first.

6.6 DEMOTION. Demotion is a reassignment of an employee to a position with a lower salary range, different job duties, qualifications and responsibilities typically resulting from a disciplinary action, but may also be voluntary.

6.6.1 Disciplinary Demotion. An employee may be demoted to a vacant position for which the employee is qualified when the employee would otherwise be terminated as result of the disciplinary process. Upon demotion, an employee's salary shall be reduced to the appropriate salary range for the new position.

6.6.2 Voluntary Demotion. An employee may also request a voluntary demotion to a vacant or new position for which the employee is qualified and possesses the necessary skills. The employee's salary shall be reduced to the appropriate salary range for the new position.

6.7 TRANSFER. Transfer is a reassignment of an employee from one position to another position for non-disciplinary reasons. The salary range for the new position must be equal to or greater than the current position, unless agreed to by the transferring employee. Involuntary transfers must be organizationally necessary and in the best interest of Luna County. Complaints involving involuntary transfers may be pursued through the grievance process.

6.8 RESIGNATION. An employee voluntarily resigning shall submit in writing a notice of resignation to the HR Department at least two weeks in advance of the date of resignation and may be withdrawn within that timeframe, with the consent of the County Manager. Failure to provide a written two-week notice of resignation will render the employee ineligible for rehire under Section 3.6.8. Employee's may request rescission of resignations up to thirty (30) days after employment has ended, PROVIDED that the Employee left on good terms, their position has not been posted and the request received the approval of the County Manager, Human Resources Director and their Elected Official or Department Head, on the terms and conditions set by the County Manager.

6.9 ABANDONMENT. Any Unauthorized Leave from work for three (3) or more scheduled work days in any pay period shall constitute abandonment and will be considered voluntary resignation.

6.10 LAYOFFS (REDUCTION IN FORCE). The County Manager shall make the recommendation regarding the need for layoffs based on deletion of positions, shortage of work or funds or other reasons that do not reflect negatively on the employees being laid off. The County Manager's recommendation must be presented for approval to the BOCC in writing at an open meeting:

6.10.1 The identification of the departments and employees to be laid off;

6.10.2 The grounds for the reduction in force; and

6.10.3 A written plan for implementation of the reduction in force.

6.10.4 Employees scheduled to be laid off shall have the following rights:

6.10.4.1 A right of first refusal for any open position after the layoff for which the employee is qualified at the same or lower salary than the position currently held, provided that laid off employees shall have priority for such a position;

SECTION 7 – COMPENSATION AND BENEFITS

7.1 HOURS OF WORK. The BOCC retains the authority to set the hours of operations for all County offices and delegates to the County Manager and Elected Officials the authority to set specific work schedules for each employee.

7.1.1 Work hours are determined by the Board of County Commissioners through the County Managers and generally consists of forty (40) hours per week, excluding 24/7 Departments (LCSO, LCDC and Dispatch), specialty departments (Starmax) and certain grant positions (PAT, CASA, JJCS, DWI, etc). This section is not a guarantee of work schedule or number of hours worked in any given period.

7.1.2 Employees will only work their scheduled hours unless some form of leave has been granted or approved but may flex the hours of their work schedule within the same week with advance approval from their immediate supervisor or the County Manager.

7.1.3 Hours of work includes time spent performing the duties of their position but does not include travel time commuting to and from home to work or meal periods.

7.1.4 Work schedules may change as needed, as determined at the discretion of the County, and such changes will be communicated to affected employees as soon as feasible, but must be far enough in advance to reasonably allow affected employees to accommodate such changes.

7.1.5 FLSA Exempt Employees are expected to work hours that coincide with the hours of operation of their Department, but because of the nature of their position, can expect to work hours outside the normal hours of work, as dictated by the needs of the County, without additional compensation.

7.2 BREAK PERIODS.

7.2.1 While not mandatory, work breaks and authorized meal periods shall be coordinated between the employee and their supervisor. Supervisors may occasionally limit, delay or shift breaks if continuous work is required because of workload, emergency or unusual conditions or when requested by the employee.

7.2.2 Reasonable break periods will be provided for a breastfeeding mother to express breast milk for her child for up to one (1) year after the child's birth. Designated locations, other than restrooms, shielded from public view and free from intrusion from coworkers and the public will be provided for the breaks. Breastfeeding mothers should make a request to their immediate supervisor and communicate the frequency and duration of the breaks.

7.2.3 Other authorized breaks may be the result of reasonable accommodations granted at the request of the employee pursuant to the Americans with Disabilities Act or other applicable statute. Such accommodations must be requested and agreed to in accordance with the procedure established by the HR Department.

7.2.4 Other than meal periods, break periods in this section are considered hours worked.

7.3 PAY PERIODS. All employees shall be paid on the same bi-weekly basis on the schedule established by the County Manager.

7.4 OVERTIME. Luna County complies with the applicable wage and hour requirements, such as FLSA.

7.4.1 Non-Exempt Employees shall not work overtime without authorization from their supervisor. Except in unforeseeable circumstances or emergencies, authorization must be obtained prior to working overtime hours.

7.4.2 Overtime hours accrued shall be recorded for each Non-Exempt Employee and submitted to the Department Director or Elected Official each pay period electronically on approved forms, or as directed by the Payroll Department.

7.4.3 When requested by the employee and granted by their supervisor, hours of work within the same week may be flexed to avoid overtime.

7.5 FINAL PAYCHECK.

7.5.1 An employee who resigns shall receive a final paycheck on or before the first regularly scheduled payday following the employee's effective date of resignation.

7.5.2 An employee who is terminated shall receive a final paycheck by 5:00 p.m. on or before the fifth (5th) day following termination.

7.5.3 In the case of death, final salary and any other accumulated compensation shall be given to the employee's named beneficiary on file in the HR Department.

7.5.4 Final Paychecks are subject to withholding for lost, damaged or unreturned equipment or property.

7.6 UNIFORMS AND SPECIFIED CLOTHING.

7.6.1 Certain employees may be required to wear uniforms provided by the County. Uniforms remain the property of Luna County, are not taxable to the individual employee and must be returned at the end of employment.

7.6.2 Certain employees may be required to wear specified clothing provided by the County. Specified clothing is generally taxable to the individual employee and may, with the permission of the County Manager, be retained after the end of employment.

7.6.3 Employees who wish to wear clothing with a County logo, may purchase such items only with the advance approval of the County Manager or designee.

7.7 EQUIPMENT.

7.7.1 Unless otherwise specified in the applicable Job Description, Luna County will provide and retain ownership of equipment and tools necessary for performance of job duties. Such equipment and tools are restricted to use only in the performance of job duties and may not be used for personal benefit by any employee. Unauthorized use of county equipment or tools is subject to disciplinary action, including termination, and referral for criminal investigation.

7.7.2 In rare instances when specialty equipment or tools are necessary for performance of job duties and the County does not own or have access to such items, employees may

voluntarily and temporarily provide such equipment or tools with the advance knowledge of their or Elected Official or Department Director. Reimbursement for use or consumption of materials shall be determined by the County Manager in consultation with the Procurement Department.

7.7.3 Safety equipment necessary for performance of job duties will be provided by and remain the property of Luna County and is not taxable to the individual employee. Individualized safety equipment, such as prescription safety goggles, will be provided by the County but are taxable to the individual employee and do not need to be surrendered or returned at the end of employment.

7.8 GIFTS AND GRATUITIES. All employees and representatives of Luna County are subject to the provisions of applicable laws, including but not limited to the Governmental Conduct Act, Sections 10-16-1 through 18, the Gift Act, Section 10-16B-1 through 5, and the Luna County Code of Conduct.

7.8.1 For the performance of their job, all employees are limited to that compensation and benefits established directly by the BOCC or through their designee, the County Manager.

7.8.2 Elected Officials' compensation is limited to those amounts authorized by statute as implemented and approved by the BOCC.

7.8.3 All Luna County employees and Elected Officials are prohibited from receiving or accepting compensation, gifts or other consideration for the performance of their duties or from anyone giving with the intent of modifying or influencing the employee's performance of duties, including encouraging the employee or Elected Official to make purchases from the vendor involved in the gift.

7.8.4 Employees and Elected Officials may accept gifts, gratuities or honoraria not otherwise prohibited subject to the limits in the Governmental Conduct Act, Gift Act and Luna County Code of Conduct unless acceptance results in the appearance of impropriety or brings into question the integrity of the County, the employee or Elected Official.

7.8.5 Employees will maintain the highest moral standards and any attempt to influence an employee's performance by a vendor or other person shall be immediately reported to the County Manager.

7.9 PER DIEM AND MILEAGE. All payments of and reimbursement for per diem and mileage allowance to Elected Officials and employees require prior approval and will be made pursuant to the Per Diem and Mileage Act, Section 10-8-1 through 8, NMSA 1978 and the approved policies BOCC.

7.10 REPORTING OF TIME WORKED. Hours of work are reported in accordance with the policy and procedure established by the County Manager through the Payroll Department.

7.10.1 Each employee is responsible for clocking in and out electronically when reporting to or leaving work. Failure to do so may result in a delay in the timely receipt of compensation and disciplinary action.

7.10.2 At the end of each pay period, Elected Officials or Department Directors are responsible for reviewing and approving all time for hours of work submitted by

employees no later than 1:00 p.m. on the Monday immediately after the end of the pay period.

7.10.3 The Payroll Department will keep a cumulative record of all time accrued and used.

7.11 RETIREMENT BENEFITS. Elected Officials and Luna County employees, excluding Temporary or Seasonal Employees, working year-round in excess of nineteen (19) hours or more each week are required to participate in the Public Employees Retirement Association of New Mexico (PERA) and the New Mexico Retirement Health Care Authority (RHCA), and these benefits are governed by respective state statutes and PERA and RHCA rules and provisions. Luna County will pay at least the minimum required employee contribution and the employee will be responsible for the maximum employee contribution unless otherwise approved by the BOCC.

7.12 INSURANCE BENEFITS. Luna County provides health insurance for Elected Officials and Luna County employees, excluding Temporary or Seasonal Employees, working thirty (30) or more hours a week for at least fifty (50) weeks per year. Luna County will pay at least the minimum of the percent of the premium for basic health benefits required by law. Luna County may pay more depending on financial limitations. Optional plans such as vision and supplemental policies may be offered as a payroll deduction at the employee's expense.

7.13 CLASSIFICATION AND COMPENSATION PLAN.

7.13.1 A compensation plan for employees shall be adopted by the BOCC. Such plan shall establish a schedule containing a minimum, mid-point and maximum pay range for each position in the classification plan.

7.13.2 The County Manager shall review the compensation plan regularly and may initiate comparative wage studies and market surveys of salary levels. The County Manager may then recommend changes to the compensation plan to the BOCC for review.

7.13.3 Factors to be considered in determining the compensation plan include, but are not limited to are:

7.13.3.1 Prevailing rates of pay for comparable work in similar work situations;

7.13.3.2 Pay equity between position classifications having substantially similar duties, responsibilities, and qualifications; and

7.13.3.3 Financial condition of Luna County.

7.13.4 Recommendations regarding compensation of County employees shall be made annually by the County Manager to the BOCC as part of the presentation of the preliminary budget in May of each year. The recommendations may include one or more of the following elements:

7.13.4.1 Determinations regarding Salary Ranges for one or more positions pursuant to Section 7.13.2;

7.13.4.2 Discretionary salary and wage adjustments;

7.13.4.3 Incentive pay, longevity pay, hazard pay, merit pay and other forms of supplemental pay;

7.13.4.4 Changes to non-wage compensation and benefits;

7.13.4.5 Layoffs, Reductions in Force and conversion of positions to independent contractors.

7.14 HOLIDAYS. Paid holidays will be designated by the BOCC each year. The following conditions will apply with respect to holidays.

7.14.1 Temporary/Seasonal Employees, Part-Time and Term Employees regularly working less than forty (40) hours weekly are not entitled to paid holidays, unless agreed upon pursuant to an employment agreement or authorized by the County Manager.

7.14.2 When a holiday falls during an employee's PTO, the day shall be counted as a holiday and not PTO.

7.14.3 In order to receive pay for a designated paid holiday, employees shall be in a work or PTO status. An employee who is absent without authorization or who is on unpaid leave on their scheduled work day that is a designated holiday shall not receive pay for that holiday.

7.14.4 Subject to any applicable CBA, employees in 24 hours-per-day/7days-per-week operations will receive holiday pay unless they are absent without authorized leave or are on unpaid leave for the designated holiday.

7.14.5 The amount of holiday pay is set by the BOCC, and is typically set as a dollar amount calculated by regular rate of pay times a set number of hours. If the set number of hours is less than the regularly scheduled hours in a shift, the employee will be required to use accrued PTO to make up the difference.

7.15 PAID TIME OFF (PTO). Eligible employees (Full-Time Regular Employees, Term Employees regularly working forty (40) hours and those funded by grants or other outside funding sources providing for PTO) shall accrue PTO as follows:

7.15.1 Accrual Rate.

0 - 60 months of employment = 160 hours/year (6.15 accrued hours/pay period)

61-120 months of employment = 200 hours/year (7.69 accrued hours/pay period)

121-180 months of employment = 240 hours/year (9.23 accrued hours/pay period)

181 months plus of employment = 280 hours/year (10.77 accrued hours/pay period)

7.15.2 An employee does not accrue PTO for time worked in excess of forty (40) hours per week.

7.15.3 An employee may accumulate no more than three hundred sixty (360) hours of accrued PTO. If PTO is not taken after an employee accrues 360 hours it will be donated to the Luna County Employee PTO Pool on a monthly basis unless the employee opts out in writing. During critical projects, the County Manager may grant a short-term variance to employees from this requirement.

7.15.4 PTO shall be earned on a pro-rata basis each pay period and will not be authorized for use prior to accrual.

7.15.5 Upon termination of employment, or taking office as an Elected Official, Chief Deputy, or appointed position, an employee shall be paid for the employee's unused accrued PTO up to a maximum of 360 hours.

7.15.6 An employee may take PTO immediately prior to separation from employment if approved by the County Manager.

7.15.7 All eligible employees, including Probationary Employees, must request and obtain approval in advance to use accrued PTO, except when unforeseeable or emergency circumstances prevent such a request.

7.15.8 PTO requests can only be denied by the County Manager or designee and will not be unreasonably denied subject to the needs of the County and/or department as determined in the sole discretion of the Elected Official or Department Head.

7.15.9 Regular Part-Time Employees, Temporary/Seasonal Employees regularly working less than (40) hours weekly or those funded by grants or other outside sources that do not provide for PTO, Elected Officials, Discretionary Employees do not accrue PTO.

7.15.10 Employee PTO Donation Pool.

7.15.10.1 Luna County recognizes that employees may incur emergencies or other catastrophic events that result in a need for time off in excess of accrued or available PTO. To that end Luna County has established the Luna County Employee PTO Pool that is maintained by the HR Department.

7.15.10.2 In addition to donations pursuant to Section 7.15.3, employees may donate PTO to the Pool by submitting a written request to the HR Department for a specified amount, specified period of time or until otherwise directed by the employee.

7.15.10.3 PTO donations are to the Pool, not to individual employees or specific departments, and must be whole hours and are accepted based on the donating employee's hourly rate of pay and are awarded on the receiving employee's rate of pay.

7.15.10.4 Donations, once made, are removed from the donating employee's PTO balance and once removed cannot be returned.

7.15.10.5 Any employee of Luna County is eligible to request leave from the Pool by submitting a written request to the HR Department, if:

7.15.10.5.1 They have suffered a qualifying reason as defined by the FMLA or other catastrophic event, such as the loss of their home to fire;

7.15.11.5.2 The employee has exhausted all accrued leave; and

7.15.11.5.3 The event necessitating the request has been documented or verified to the satisfaction of the County.

7.15.10.6 Employees are limited to receiving one-hundred twenty (120) hours in the twelve months preceding the request. Employees are also limited to receiving no more hours than they would otherwise be regularly scheduled to work.

7.15.10.7 In the event there are insufficient funds in the Pool to fully award all requests, awards will be paid *pro rata* to all recipients. Requests or solicitation of additional donations will then be made by the County Manager and/or HR Department or designee.

7.15.10.8 Employees receiving disability, worker's compensation or other monetary benefits as a result of the event leading to a request from the Pool, are limited to receiving PTO from the Pool necessary to cover their employee benefits contributions (e.g. health insurance premiums) while the employee receives those benefits.

7.15.11 When declared by the County Manager, Employees may sell back PTO to the

County once per year according to the terms and conditions set by the County Manager and approved by the BOCC.

7.16 BEREAVEMENT LEAVE. In the event of the death of an employee's spouse, domestic partner, parent, step-parent, parent-in-law, grandparent, grandparent-in-law, child, step-child, foster child, son-in-law, daughter-in-law, grandchild or sibling, the employee shall be entitled to bereavement leave with pay not to exceed five (5) days during any twelve (12) month period.

7.17 ADMINISTRATIVE LEAVE.

7.17.1 Administrative Leave with Pay may be granted when deemed appropriate by the County Manager based on the totality of circumstances.

7.17.2 Employees on Administrative Leave with Pay are subject to directives from the County Manager or designee during their regular work hours or designated hours for shift workers, including but not limited to directives to report to the workplace or other County office. Employees must use accrued PTO to be excused from such work directives while on Administrative Leave with Pay.

7.17.3 Leave Without Pay (Voluntary) may be granted upon request by the County Manager or designee when deemed appropriate based on the totality of circumstances or imposed (Involuntary) when necessary based on allegations of misconduct are such that the ability to perform the job is severely compromised by the allegations and other such extraordinary circumstances as determined by the County Manager.

7.17.4 An employee may submit a written request for Voluntary Administrative Leave Without Pay to the County Manager. The request shall include the reason for the request and the expected duration. Unless otherwise mandated by law, the County Manager, may grant regular employees leave without pay (LWOP) for a period not to exceed three (3) months on terms and conditions set by the County Manager when such leave without pay is in the best interest of Luna County.

7.18 GENERAL PROVISIONS FOR ADMINISTRATIVE LEAVE WITHOUT PAY AND LEAVES OF ABSENCE.

7.18.1 If an employee returns to work within three (3) months of the commencement of Administrative Leave Without Pay, the employee shall either be returned to their former position, if available, or another county employment at their prior rate of pay unless such leave was the result of disciplinary action that included a demotion and/or reduction in pay.

7.18.2 Unless prohibited by law, prior to commencing Administrative Leave Without Pay, an employee requesting such leave shall use all available PTO except for those going on military leave without pay and those granted a waiver of this requirement by the County Manager.

7.18.3 An employee on Administrative Leave Without Pay for a full pay period will not accrue PTO and all employees on such leave will not receive Holiday Pay. An employee on Administrative Leave Without Pay will be responsible for timely payments

of the employee's portion of any benefits, including but not limited to health insurance premiums, supplemental life insurance premiums, disability insurance premiums. Luna County's employer contributions toward insurance premiums shall continue while the employee is on authorized leave PROVIDED the employee timely makes any mandatory contributions. No payments by either Luna County or the employee toward retirement benefits are made during Administrative Leave Without Pay.

7.19 OCCUPATIONAL INJURY- WORKER'S COMPENSATION.

7.19.1 Worker's Compensation. Employees injured on the job or suffering from occupational diseases as defined in the Worker's Compensation Act, Section 52-1-1 et seq., NMSA 1978, may receive Worker's Compensation benefits as prescribed by law.

7.19.2 Leave Pay. An employee injured on the job may use accrued PTO for each regularly scheduled work day after the injury occurs for all such days not paid by Worker's Compensation. Worker's Compensation payments to employees who used PTO shall be paid directly to Luna County by the Worker's Compensation carrier or by the employee, if received directly by the employee.

7.19.3 Reporting Procedure. All work-related injuries must be reported to the employee's Elected Official or Department Director immediately and necessary forms, including the Notice of Accident Form must be submitted to the Risk Management Department within (15) days of accident after which the injury may result in a loss of eligibility for compensation.

7.19.4 Medical Procedures. All medical procedures shall comply with the regulations of the New Mexico Workers Compensation Act.

7.19.5 Return to Work. An employee shall return to his or her former position or be reassigned to a comparable position if a physician certifies that the employee can return to work. All return to work procedures shall comply with the regulations of the New Mexico Workers Compensation Act.

7.19.6 Modified Work Schedule.

7.19.6.1 An employee returning from worker's compensation disability may return to modified duty if an appropriate position is available and does not present a hardship, inconvenience or additional cost to Luna County. A physician must certify that the employee can return to the modified work schedule.

7.19.6.2 As allowed by law, the conditions of modified duty will be determined by the employee's Elected Official or Department Director in consultation with the County Manager.

7.20 CIVIC DUTY LEAVE. An Employee shall be given necessary time off with pay for the following:

7.20.1 Jury Duty. Administrative Leave with Pay for jury duty shall be authorized only for those days that the employee is scheduled to work. If excused by the court during a working day, the employee shall return to duty if at least four (4) hours of work remain in that employee's work day. If the employee does not return to work when at least four (4) hours of work remain, the balance of the day will be charged to PTO or leave without

pay.

7.20.2 Court Appearance Time. Administrative Leave with Pay for court appearances time shall be authorized when an employee is required by county duties or by subpoena to appear before a court to testify on job related matters.

7.20.3 Voting. For purposes of a national, state, or local election, an employee who is registered to vote will be granted up to two (2) hours Administrative Leave with Pay to vote between the time of opening and the time of closing polls. The employee's supervisor may specify the hours for the leave.

7.21 MILITARY LEAVE.

7.21.1 Paid Military Leave. Approved Leave with Pay for military service is granted for authorized active duty, Reserve or National Guard activities for a maximum of fifteen (15) working days during a one-year period corresponding to the Federal Fiscal Year. Military leave must be requested twenty (20) days in advance or as soon as such orders are received by the employee. The employee must furnish military orders or other official documentation prior to leave being granted unless the leave is for emergency purposes.

7.21.2 Unpaid Military Leave. Employees voluntarily or involuntarily serving on active duty for more than fifteen (15) working days shall be placed on Administrative Leave Without Pay for the duration of the service period and additional time as specified in the Uniformed Services Employment and Reemployment Act (USERRA). Subject employees may use accrued and accruing PTO during this period.

7.21.3 Employees Returning from Unpaid Military Leave. USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services and applicants to the uniformed services. A copy of the entire Act may be obtained through the HR Department.

7.22 INCLEMENT WEATHER. Luna County may close one or more offices and send employees home on Approved Leave with Pay due to inclement weather or other circumstances, as deemed appropriate by the County Manager. Employees who are sent home due to inclement weather or other circumstances shall not be charged PTO for all normal work hours missed. Hours paid pursuant to this provision shall not be counted as hours worked for the computation of overtime.

7.23 FAMILY AND MEDICAL LEAVE.

7.23.1 Eligible employees are entitled to leave in accordance with the FMLA. Eligible employees are determined by law. A copy of the FMLA may be obtained in the HR Department.

7.23.2 FMLA Leave may be comprised of any combination of PTO and/or Approved Leave. FMLA Leave must be requested and approved at least thirty (30) days in advance, except in the case of emergencies. Coordination of the use of PTO and Administrative Leave must occur prior to the commencement of FMLA Leave except in the case of emergency.

7.23.3 No part of FMLA Leave shall be considered a break in employment for purposes of determining seniority or service time and shall not change an employee's anniversary date but is considered a break in employment for retirement benefits purposes when on unpaid FMLA Leave.

7.23.4 Employees shall not accrue PTO or receive Holiday Pay while on unpaid FMLA leave.

7.23.5 Employees that qualify are entitled to the FMLA benefit extensions provided in the National Defense Authorization Act.

SECTION 8 – EMPLOYEE DISCIPLINE

8.1 BASIS FOR DISCIPLINE.

8.1.1 Discipline. Disciplinary actions for employees are based on a showing of cause or just cause as defined in this Ordinance. Disciplinary actions will be consistent with governing laws, regulations and policies and will be taken without regard to race, age, religion, national origin, ancestry, gender or gender identity, familial status, veteran status, sexual orientation, genetic information, physical or mental disability or medical condition. No employee will be disciplined for refusing to perform an unlawful act.

8.1.2 HR Department. Requests for disciplinary action must be in writing and submitted to the HR Department by the appropriate supervisor. In consultation with the Elected Official, Department Head or supervisor, the appropriate level of discipline will be determined by the HR Department and all formal disciplinary documentation will be prepared by the HR Department.

8.1.3 Consultation with County Manager. Termination, involuntary demotion, and suspension without pay require final approval from the County Manager before implementation.

8.2 PROGRESSIVE DISCIPLINE. An employee shall be progressively disciplined when appropriate. Corrective action will depend on the severity of the infraction(s) and the employee's work record and performance. Because of the serious nature of some infractions, progressive discipline may be inappropriate and the first disciplinary action may be termination.

8.2.1 Verbal Reprimand. When determined by the Supervisor, in consultation with the HR Department, a verbal reprimand is used for minor infractions to inform employees that performance, actions, behavior or conduct needs to change. Supervisors will provide written notification containing details of verbal reprimands to the HR Department for placement in the employee's personnel file.

8.2.2 Written Reprimand. When determined by the Supervisor, in consultation with the HR Department, an employee shall receive a written reprimand because the efficiency or infraction is of a greater degree than that for which a verbal reprimand may be used or when a pattern of minor infractions exists. Written reprimands shall be placed in the employee's personnel file. The employee will be provided a copy of the statement after signing an acknowledgement of receipt. If an employee refuses to sign an acknowledgment of receipt, it shall be deemed insubordination and shall result in further progressive discipline. The employee may respond by noting on the reprimand that the employee does not agree with the reprimand.

8.2.3 Suspension. When determined by the Supervisor, in consultation with the HR Department, an employee may be suspended or placed on administrative leave without pay for a serious offense or for continued inadequate job performance or misconduct. Such suspension will not exceed ninety (90) working days per offense. Suspension of an employee is subject to the Level 3 Grievance procedure. The County Manager must give final approval of any suspension before implementation.

8.2.4 Demotion or Reassignment. An employee may be involuntarily demoted or reassigned for continued inadequate job performance or other cause. The demotion of an employee is subject to the Level 3 Grievance procedure. Reassignment is not subject to the Level 3 Grievance procedure unless it also results in a reduction in pay. The County Manager must give final approval of any demotion or reassignment resulting in a reduction in pay prior to implementation.

8.2.5 Corrective Action. Corrective Action may be imposed in conjunction with or in place of any of the preceding levels of discipline. The purpose of Corrective Action is to educate and prevent similar misconduct or infractions in the future. As such, the Corrective Action should be related to the misconduct or infraction and may include, but is not limited to, additional training, education, policy and/or review, revision or creation, certification, testing or other appropriate measures.

8.2.6 Termination. When progressive discipline has failed to change unacceptable behavior or performance, an employee may be subject to termination. Termination without progressive discipline may be appropriate when the employee has engaged in any behavior, misconduct or job performance that is serious and unacceptable for Luna County employees. Termination may also result from the loss of required certification or licensing or the ability to gain or maintain the required certification necessary to perform the essential functions of the assigned county position. Termination may also result from the inability to perform essential functions of the position. The termination of a regular employee is subject to the formal grievance procedure. The County Manager must give final approval of any termination prior to implementation.

8.2.7 Performance Improvement Plans or Last Chance Agreement. In lieu of termination, when deemed appropriate by the HR Department, an employee may be offered a Performance Improvement Plan or Last Chance Agreement. The terms and conditions of such Plans or Agreements are determined in the sole discretion of the HR Department, in consultation with the Department Head or Elected Official. Acceptance by the employee of a Plan or Agreement is voluntary and unsatisfactory completion or compliance will result in termination without any right to the grievance process.

8.2.8 Forgiveness. Verbal Reprimands and Written Reprimands may be removed from employee Personnel Files under the following circumstances:

8.2.8.1 A written request from the Employee requesting removal after six (6) months for Verbal Reprimands or twelve (12) months for Written Reprimands;

8.2.8.2 The Employee has not committed the same or similar infraction within the applicable time period;

8.2.8.3 The Employee has not been subject to more severe discipline for any infraction or misconduct within the applicable time period; and

8.2.8.4 No law, regulation, rule or licensing requirement prohibits the removal of the disciplinary action from the Personnel File; and

8.2.8.5. Approval by the County Manager, HR Department and County Attorney.

8.3 PRE-DETERMINATION HEARING. Only eligible employees who have completed the probationary period and are notified of possible suspension, demotion, reassignment with loss of pay or termination shall be entitled to a Pre-Determination Hearing before the appropriate Elected Official, Department Director, or designee.

8.3.1 Notice. An employee shall be notified in writing, at least three (3) business days prior to date and time of a Pre-Determination Hearing. The basis for the proposed disciplinary action, all supporting evidence, the time and place, and date of hearing shall be included in the notification.

8.3.2 Administrative Leave/Administrative Reassignment. An employee may be placed on administrative leave with or without pay or administrative reassignment pending the outcome of an investigation or hearing. All administrative reassignments will be administered by the HR Department in consultation with the County Manager.

8.3.3 Hearing Procedure. The Pre-Determination Hearing shall be informal and shall be conducted by the employee's Elected Official, Department Director or designee. The purpose of the hearing is to provide the employee with a reasonable opportunity to address or refute the basis for the proposed disciplinary action. The employee may be accompanied by a representative, however the representative may only observe and may not participate in any other manner unless expressly allowed by the Hearing Officer. The HR Department or other management employee may also be present at the hearing but may not participate unless expressly allowed by the Hearing Officer. The employee may respond to the notice of disciplinary action in writing prior to or on the date and time of the hearing in conjunction with or in lieu of appearing at the hearing.

8.3.4 Waiver. The Pre-Determination Hearing may be waived by the employee in which case the proposed disciplinary action takes effect immediately.

8.3.5 Decision. In consultation with the HR Department and/or County Attorney, the Hearing Officer shall render a final decision within five (5) business days of the hearing or receipt of the written response to the disciplinary hearing.

8.3.6 Appeal. An employee dissatisfied with the final decision may file an appeal as outlined in the formal grievance procedure.

8.3.7 Consent to Discipline. At any point in the disciplinary or grievance process, the employee and County Manager, through the HR Department, may enter into an agreement regarding resolution of pending disciplinary matters on terms and conditions agreeable to both parties but must include a waiver of grievance rights by both parties.

SECTION 9 – GRIEVANCE PROCEDURE

9.1 PURPOSE. The purpose of the grievance procedure is to provide employees with a process for resolving complaints or problems related to violations of policies or procedures, unsafe, improper or illegal working conditions or disciplinary matters.

9.2 ELIGIBILITY. All classifications of Luna County employees have the right to avail

themselves of the Grievance Procedure and to do so must submit a written grievance to the HR Department within fifteen (15) calendar days, in the absence of exigent circumstances, of the last occurrence or discovery of the action or inaction generating the grievance containing:

- 9.2.1 The date, time and place of the action or inaction generating the grievance;
- 9.2.2 All persons involved in or witness to the action or inaction generating the grievance;
- 9.2.3 Policy or procedure being violated or the unsatisfactory working condition or disciplinary action imposed;
- 9.2.4 The specific relief requested; and
- 9.2.5 Be signed and dated by the employee.

9.3 LEVEL 1 GRIEVANCE – HR DEPARTMENT OR DESIGNEE.

Upon timely submission of a valid employee grievance, the HR Department, or designee, will have fifteen (15) calendar days to attempt to resolve the matter with the employee and appropriate Department Head or Elected Official. The HR Department may utilize any method deemed appropriate, including mediating, arbitrating or directive.

9.4 LEVEL 2 GRIEVANCE – COUNTY MANAGER OR DESIGNEE.

An employee or Department Head or Elected Official may appeal a Level 1 Grievance resolution, by timely submitting a Notice to the HR Department within fifteen (15) calendar days. The County Manager, or designee, will have fifteen (15) calendar days to resolve the matter by any method deemed appropriate, including mediating, arbitrating or directive.

9.5 LEVEL 3 GRIEVANCE – GRIEVANCE HEARING.

Level 3 Grievance procedure is only available to employees appealing a Level 2 Grievance resolution imposing or upholding serious disciplinary action, namely suspension, demotion, involuntary transfer resulting in loss of pay or termination. The Notice must be submitted to the HR Department within (15) calendar days identifying the specific provisions of the resolution being grieved, the relief requested and any policies, procedures, law or other persuasive material supporting the requested relief.

9.5.1 The HR Department shall appoint an impartial hearing officer to act as the Grievance Hearing Officer. The Grievance Hearing Officer may be any person, including non-employees, except for a person in the aggrieved employee's chain of command.

9.5.2 The HR Department, in conjunction with the Grievance Hearing Officer, shall issue a Notice of Grievance Hearing within five (5) business days of receipt of a Notice from the aggrieved employee setting a hearing date no later than thirty (30) calendar days after service of the Notice of Grievance Hearing on the aggrieved employee. The hearing date may be extended by written request for either party for reasonable cause.

9.5.3 The Grievance Hearing shall be conducted in a semi-formal and professional Manner, the Rules of Evidence shall not apply and relevance shall be the sole basis for the admissibility of evidence and testimony. The aggrieved employee and Luna County may be represented by legal counsel, at their own expense.

9.5.4 The aggrieved employee shall present its case first, including witnesses, documentation and other evidence. Upon completion, Luna County shall then be allowed

to present its case, including witnesses, documentation and other evidence. Both sides may cross-examine and will have one opportunity to present rebuttal evidence. Opening and closing statements may be made at the option of the Grievance Hearing Officer.

9.5.5 Final Decision. The Grievance Hearing Officer will issue a final written decision in writing within fifteen (15) business days of the conclusion of the Grievance Hearing unless extended in writing for reasonable cause. Notice of any extension shall be given to the aggrieved employee and Luna County. The Grievance Hearing Officer may accept, reject or modify the Level 2 resolution and, if modifying, impose any disciplinary action allowed by this Ordinance.

9.6 COMPLAINTS REGARDING DISCRIMINATION, SEXUAL AND WORKPLACE HARASSMENT.

9.6.1 Luna County expressly prohibits employees and visitors from engaging in conduct that constitutes sexual harassment, workplace harassment, discrimination or retaliation and perpetrators of such conduct will be subject to discipline, up to and including termination.

9.6.2 Responsibility to Report.

9.6.2.1 An employee who believes they have been subjected to retaliation, discrimination, sexual or workplace harassment is encouraged, but not required, to immediately let the offending person know the conduct is offensive and/or unwelcome.

9.6.2.2 Employees who witness or become aware of retaliation, discrimination, sexual or workplace harassment are required to submit a complaint to the HR Department within fifteen (15) calendar days and failure to do so can result in disciplinary action, up to and including termination.

9.6.3 Complaints regarding sexual harassment, workplace harassment, retaliation or discrimination based on race, age, religion, national origin, ancestry, gender, gender expression or gender identity, marital or familial status, veteran status, sexual orientation, genetic information, physical or mental disability or medical condition, shall be submitted to the HR Department in writing within fifteen (15) calendar days, in the absence of exigent circumstances, of the last occurrence or discovery of the conduct generating the complaint and must contain:

9.6.3.1 The date, time and place of the action or inaction generating the complaint;

9.6.3.2 All persons involved in or witness to the action or inaction generating the complaint;

9.6.3.3 The specific relief requested, if any; and

9.6.3.4 Be signed and dated by the employee.

9.6.4 All complaints of retaliation, sexual harassment, workplace harassment or prohibited discrimination will be promptly investigated and, when appropriate, disciplinary action against the perpetrator will be initiated by the HR Department.

SECTION 10 – MISCELLANEOUS

10.1 DESIGNATED WORK AREAS. All employees shall be ready to work at their designated work areas on time and continue working until the end of the work day.

10.2 PERSONAL BUSINESS.

10.2.1 Excessive personal business or personal business which is disruptive to the work environment is prohibited during work hours and violation of this provision can result in disciplinary action, including termination, and loss of privileges such as the right to make or receive visitors or phone calls or to have a cell phone in their designated work area.

10.2.2 Personal business conducted outside work hours that impedes or prohibits an employee's ability to perform their job duties or that creates a conflict of interest or the appearance of impropriety is also prohibited.

10.3 COUNTY PROPERTY. County property and equipment is intended for use in the performance of job duties and, except for de minimus personal use, the intentional misuse or use of county property or equipment for personal business is prohibited. Except in the ordinary course of business, Luna County property, equipment, records or other material should not be removed from the premises of Luna County offices except as allowed by applicable policies or practices or as permitted by the appropriate Elected Official or Department Director.

10.4 RETURN OF COUNTY PROPERTY. At the time that an Employee resigns or employment is terminated, the employee shall return all Luna County property to the appropriate Elected Official, Department Director, or HR Department, as directed by their supervisor.

10.5 DRESS AND APPEARANCE. Employees are constantly in the public eye, consequently it is important that employees present a professional image to the public. Employees must always be clean and appropriately dressed in clothing suitable for their work assignments. Elected Officials or Department Directors may promulgate reasonable and appropriate dress codes for their respective departments after consultation with the HR Department and with approval by County Manager.

10.6 CONTENTS OF PERSONNEL FILE. Subsequent to hiring, a separate record file shall be prepared and maintained on each employee. These records shall be kept in the HR Department or in a place designated by the County Manager. It is the responsibility of the HR Department to ensure that the records of the employees are completed; are up-to-date; and remain confidential. The file shall contain but is not limited to the following:

10.6.1 The original Application form;

10.6.2 The original Personnel Action Form showing occupation, date of hire and salary;

10.6.3 Documentation related to disciplinary action;

10.6.4 Performance evaluations and commendations;

10.6.5 Letters, forms, memorandums and certificates;

10.6.6 Other related actions/forms concerning PERA application and payroll deductions;

10.6.7 Employee benefits information; and

10.6.8 Any and all relevant personnel documentation.

10.7 MAINTENANCE OF PERSONNEL FILES. Public access to personnel files is restricted except as required by the New Mexico Inspection of Public Records Act. Physical access to an employee records is subject to the control of the HR Department but employees or persons with written authorization from the employee may be granted access to the personnel file on the terms and conditions set by the HR Department.

10.8 WEAPONS IN THE WORKPLACE.

10.8.1 Subject to applicable law, Luna County employees are prohibited from carrying or possessing a handgun, firearm or other prohibited weapon on Luna County property, with the exception of law enforcement personnel, employees who possess a New Mexico Concealed Carry Permit and employees who have requested and received permission from the County Manager.

10.8.2 Luna County employees permitted to carry or possess a weapon under this provision, must comply with all laws, rules, regulations and conditions of the permission.

10.8.3 Luna County employees with New Mexico Concealed Carry Permits must notify the County Manager in writing prior to carrying or possession a weapon on County Property.

10.8.4 Luna County employees, other than law enforcement, who wish to carry or possess a weapon on County Property must first request and receive authorization from the County Manager.

10.8.5 Luna County reserves the right to refuse or disallow any employee from carrying a weapon in or on Luna County property and written authorization may be revoked without cause at any time.

10.8.6 County Property. This Ordinance covers all county owned or leased buildings and vehicles.

10.8.7 Prohibited Weapons. Prohibited weapons include any form of weapon or explosive device restricted under State or Federal regulations (chemical dispensing devices, such as pepper spray that are sold commercially for personal protection are exempt from this Ordinance).

10.8.8 Searches. Luna County reserves the right to conduct searches of any Luna County property.

10.8.9 Violations. Any employee who violates this Section shall be subject to disciplinary action, up to and including termination.

10.9 ADDITIONAL RULES. Employees shall adhere to all additional lawful rules, policies, directives and requests stated verbally or in writing by their supervisors. Employees are required to follow all standards, rules, procedures, and policies that are expected in the workplace. Failure to do so constitutes insubordination and can result in disciplinary action, up to and including termination.

10.10 SEVERABILITY. If any part of this Ordinance is found to be unconstitutional, invalid or otherwise in conflict with the laws of the State of New Mexico or the United States of

America, the validity of the remaining portions of this Ordinance shall not be affected.

AMENDED THIS _____ DAY OF _____, 20____.

BOARD OF COMMISSIONERS OF LUNA COUNTY:

ATTEST:

Linda M. Smrkovsky, Chair
District 2

Berenda McWright,
County Clerk

Barbara Reedy, Commissioner
District 1

John S. Sweetser, Commissioner
District 3

STATE OF NEW MEXICO)
) ss.
COUNTY OF LUNA)

The Board of County Commissioners (the "Board") of Luna County (the "County"), in the State of New Mexico, met in open regular session in full conformity with law and the ordinances and rules of the County, in the Commission Chambers at the Luna County Courthouse, 700 South Silver Street, Deming, New Mexico 88030, in the County, being the regular meeting place of the Board, at 9:30 a.m. on Monday, December 19, 2022, at which time there were present and answering the roll call the following members*:

Chairperson:

Linda Smrkovsky, District 2

Commissioners:

Barbara Reedy, District 1

John Sweetser, District 3

Absent:

None

The County Manager, County Clerk and County Attorney were also present.

Thereupon the following proceedings, among others, were had and taken, to wit:

There was officially filed with the County Clerk, the Chairperson and each Commissioner, a copy of an ordinance in final form, which is as follows:

LUNA COUNTY, NEW MEXICO

ORDINANCE NO. 115

AUTHORIZING THE ISSUANCE AND SALE OF LUNA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (CARNE SOLAR PROJECT), SERIES 2022A, IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$200,000,000, TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF SOLAR ENERGY FACILITIES TO BE CONSTRUCTED FOR THE PURPOSE OF GENERATING ELECTRICITY AND LOCATED WITHIN THE COUNTY BUT OUTSIDE THE BOUNDARIES OF ANY INCORPORATED MUNICIPALITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, A SUBLEASE AGREEMENT, THE BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Luna County (the “County”) of the State of New Mexico (the “State”) is a legally and regularly created, established, organized and existing political subdivision of the State; and

WHEREAS, pursuant to the New Mexico County Industrial Revenue Bond Act, NMSA, 1978, Sections 4-59-1 to -16, (1975, as amended through 2021) (the “Act”), the Board of County Commissioners (the “Board”) of the County is authorized to issue industrial revenue bonds to

acquire industrial revenue projects to be located within the County, but outside the boundaries of any incorporated municipality, and to use the proceeds of such bonds for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in the State, promoting the use of natural resources of the State and promoting a sound and proper balance in the State between agriculture, commerce and industry; and

WHEREAS, the County desires to promote industry and develop trade or other economic activity to secure and maintain a balanced and stable economy in the County and to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, Solar PV Development NM 18 II LLC, a New Mexico limited liability company and Carne Energy Storage, LLC, a Delaware limited liability company authorized to do business in the State (collectively, the “Company”) along with their affiliated entities presented to the Board a proposal (the “Proposal”) in connection with the adoption of an inducement resolution (Resolution No. 22-84) on November 14, 2022 (the “Inducement Resolution”), pursuant to which the County expressed its intent to proceed with issuance of taxable industrial revenue bonds for projects to be developed by the Company and other affiliated entities identified in the Inducement Resolution; and

WHEREAS, pursuant to the Inducement Resolution and the Proposal, the Company has requested the County to proceed to (a) issue its Taxable Industrial Revenue Bonds (Carne Solar Project), Series 2022A (the “Series 2022A Bonds”); and (b) acquire, construct, equip, and install an industrial revenue project (the “Project”), including, without limitation, certain real property rights, fee title, easements, rights-of-way and leasehold interests, solar generation equipment and other tangible personal property consisting of solar thermal energy collection, concentration and heat transfer and conversion equipment, solar tracking hardware and software, photovoltaic

panels and inverters, support structures and associated electrical generating equipment used to generate electricity from solar thermal energy, and related equipment, to be located within the County but outside the boundaries of any incorporated municipality, and to be used by the Company and its respective successors, assigns or affiliates for the generation, transportation and delivery of electricity (collectively, the “Project Property”); and

WHEREAS, under the Proposal, the County would enter into an indenture for the Series 2022A Bonds (the “Indenture”), with the Company, one or more affiliates of the Company, as purchaser of the Series 2022A Bonds (the “Purchaser”), and one or more financial institutions organized and existing under and by virtue of the laws of the United States, as depository (the “Depository”) pursuant to which, together with this ordinance (this “Bond Ordinance”), the County would issue the Series 2022A Bonds; and

WHEREAS, under the Proposal, the County would enter into a sublease with the Company for the Series 2022A Bonds (the “Sublease Agreement”), whereby the Company would lease or sublease to the County the site for the Project (the “Project Site”), and would enter into a lease with the Company for the Series 2022A Bonds (the “Lease Agreement”) pursuant to which the Company would lease or sublease from the County the Project Property including the Project Site, and the Company would make payments sufficient to pay the principal of and interest on the Series 2022A Bonds and to pay all other obligations incurred pursuant to the provisions of the Lease Agreement, the Indenture, the Sublease Agreement and this Bond Ordinance; and

WHEREAS, the Series 2022A Bonds shall be special limited obligations of the County, payable solely from the Basic Rent (as defined in the Lease Agreement) paid by the Company to the County as described in the Indenture and shall never constitute a debt or indebtedness of the

County and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power, as further described herein; and

WHEREAS, the County is authorized to enter into, deliver and perform all of its obligations under the Bond Documents (defined below) and to issue, execute and deliver the Series 2022A Bonds pursuant to the Act and this Bond Ordinance; and

WHEREAS, the Series 2022A Bonds in an aggregate principal amount up to \$200,000,000 will be issued, sold and delivered by the County, in a private sale to the Purchaser under the Indenture, pursuant to a bond purchase agreement for the Series 2022A Bonds (the “Bond Purchase Agreement”) to be entered into among the County, the Purchaser and the Company; and

WHEREAS, the proceeds of the Series 2022A Bonds will be applied to pay the costs of the Project in whole or in part, including, but not limited to, the reimbursement of any costs incurred by the Company and payment of transaction expenses associated with the transaction; and

WHEREAS, the Board has determined that it is in the best interest of the County to issue the Series 2022A Bonds and to execute and deliver the Bond Documents (defined below), and other documents related thereto; and

WHEREAS, in connection with the issuance of the Series 2022A Bonds, there have been filed with the County Clerk and presented to the Board the forms of documents listed below, which the County will execute substantially in such form in connection with the issuance of the Series 2022A Bonds:

1. the Lease Agreement;
2. the Indenture (with the form of the Series 2022A Bonds attached);
3. the Sublease Agreement; and

4. the Bond Purchase Agreement.

The Lease Agreement, the Indenture, the Sublease Agreement and the Bond Purchase Agreement are herein collectively referred to as the “Bond Documents”; and

WHEREAS, the County is authorized to issue the Series 2022A Bonds under the Act and after having considered the Proposal, the Board has concluded that it is desirable at this time to authorize the issuance of the Series 2022A Bonds to finance the Project and that the County’s issuance of the Series 2022A Bonds will constitute and be a valid public purpose; and

WHEREAS, the Board has been advised that the disclosure provisions of Rule 15c-2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 are not applicable to this transaction inasmuch as the Series 2022A Bonds are being sold in a private sale without participation of an underwriter; and

WHEREAS, pursuant to the Inducement Resolution, there has been published in *The Deming Headlight*, a newspaper of general circulation within the County, public notice of the Board’s intention to adopt this Bond Ordinance, which notice contained certain information concerning the ownership, purpose, location and the amount of the Series 2022A Bonds to be issued to finance the Project, which notice was published at least fourteen (14) days prior to final action upon this Bond Ordinance; and

WHEREAS, the County has given notice to the County Assessor and any entity located in the County authorized to levy taxes on property in the County of its intent to consider this Bond Ordinance authorizing the issuance of the Series 2022A Bonds at least thirty (30) days prior to the date hereof and at which this Bond Ordinance is to be considered for adoption by the Board; and

WHEREAS, the County and the Company have agreed that the Company will pay to the County and Deming Public Schools certain annual in-lieu tax payments (“PILT Payments”) for the period that the County owns and leases the Project Property; and

WHEREAS, pursuant to County Resolution No. 22-89 adopted by the Board on November 14, 2022 (the “Permit Resolution”), the County has issued its final approval of the Permit (as defined in the Permit Resolution) for an approximately 130 megawatt (“MW”) solar energy generating system and associated approximately 65 MW battery energy storage system (the “Carne Solar Project”), which Permit shall expire on December 31, 2053.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY, NEW MEXICO:

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Bond Ordinance previously taken by the Board and the officials of the County directed toward approval of the issuance and sale of the Bonds be approved and the same hereby are ratified, approved and confirmed. All capitalized terms in this Bond Ordinance shall have the meanings set forth in the Indenture, which has been filed with the County Clerk, unless otherwise defined herein.

Section 2. FINDINGS.

A. General. The Board hereby declares that it has considered relevant information presented to it relating to the Series 2022A Bonds and the Project and hereby finds and determines that the issuance of the Series 2022A Bonds pursuant to this Bond Ordinance is necessary and advisable and in the interest of, and will promote the use of the natural resources of, the State and promote industry and trade and a sound and proper balance in the State between agriculture, commerce and industry.

B. The Board finds that:

(1) The Series 2022A Bonds will be issued for the purpose of financing the Project;

(2) The face amount of the Series 2022A Bonds to be issued with respect to financing the Project is an aggregate principal amount up to \$200,000,000;

(3) The Company is the developer of the Project and the Company (or its respective successors, assigns or affiliates) will operate the Project;

(4) The Project Property will be located within Luna County, but outside the boundaries of any incorporated municipality.

Section 3. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Series 2022A Bonds in an aggregate principal amount up to \$200,000,000, and the use of the proceeds of the Series 2022A Bonds to finance the cost of the Project, in whole or in part, including, but not limited to, the reimbursement of any costs incurred by the Company and payment of transaction expenses related thereto are hereby approved and confirmed. The sale of the Series 2022A Bonds at par in an aggregate principal amount up to \$200,000,000 is approved. The Series 2022A Bonds shall be designated as set forth in the recitals of this Bond Ordinance, provided that the County may subsequently designate a different bond title, including, but not limited to, the series designation.

B. Form and Terms.

Subject to the limitations set forth in this Bond Ordinance, the Series 2022A Bonds shall (i) be in the form and denomination and shall be numbered and dated as set forth in the Indenture; (ii) be payable as to principal and interest and subject to optional and mandatory redemption and defeasance in the amounts, upon the conditions and at the times and prices set forth in the Indenture; and (iii) be issued in the principal amount of up to

\$200,000,000, bearing interest at the rate and maturing on the date or dates set forth in the Indenture.

C. Execution. The Series 2022A Bonds shall be executed on behalf of the County with the manual or facsimile signature of the Board Chairperson or Chairperson Pro-Tem and shall be attested by the manual or facsimile signature of the County Clerk or a Deputy County Clerk and shall have impressed or imprinted thereon the official seal of the County. If any of the officers who shall have signed or sealed any of said Series 2022A Bonds shall cease to be such officer of the County before the Series 2022A Bonds so signed and sealed shall have been actually authenticated and delivered by the County, such Series 2022A Bonds nevertheless may be authenticated, issued and delivered with the same force and effect as though the person or persons who signed or sealed such Series 2022A Bonds had not ceased to be such officer or officers of the County; and also any such Series 2022A Bonds may be signed and sealed on behalf of the County by those persons who, on the actual date of the execution of such Series 2022A Bonds, shall be the proper officers of the County, although at the nominal date of such Series 2022A Bonds any such person shall not have been such officer of the County.

D. Interest Rate. The interest rate on the Series 2022A Bonds shall be as specified in the Indenture, but shall not exceed [four] percent ([4.000]%) per annum.

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The form, terms and provisions of the Bond Documents and the Series 2022A Bonds in the form on deposit in the office of the County Clerk are in all respects approved, authorized and confirmed.

The Board Chairperson, Chairperson Pro-Tem or the County Manager, upon consultation with and the advice of the County Attorney, are each individually authorized to approve revisions to the form, terms and provisions of the Bond Documents on behalf of the Board,

provided that such revisions to the form, terms and provisions are consistent with this Bond Ordinance and provided that all such changes, insertions, deletions, modifications and other revisions shall be deemed approved by the Board upon execution and delivery of the Bond Documents, such execution and delivery to be conclusive evidence of such approval, and the Board Chairperson or Chairperson Pro-Tem are each individually authorized to execute and deliver in the name and on behalf of the County, and the County Clerk and Deputy County Clerk are hereby authorized to attest, as appropriate, the Bond Documents and the Series 2022A Bonds.

The Board Chairperson, Chairperson Pro-Tem or County Manager are each individually authorized and the County Clerk and Deputy County Clerk are further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including leases, subleases, security agreements and subordination agreements and instruments as requested from time to time by the Company or any lender or lenders or tax equity participants providing financing for the Project, and to do such other acts and things, either prior to or after the date of delivery of the Bonds, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents and are consistent with the terms of this Bond Ordinance.

The Board Chairperson, Chairperson Pro-Tem or County Manager shall take such action as is necessary to effectuate the provisions of the Indenture and shall take such action as is necessary in conformity with the Act to finance the costs of the Project and for carrying out other transactions as contemplated by this Bond Ordinance and the Bond Documents, including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Series 2022A Bonds.

Section 5. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS. The following determinations and findings are made:

A. The Series 2022A Bonds will be outstanding for a maximum of thirty (30) years from the date of issuance. No principal will be due for the 1st year to and including the 29th year that the Series 2022A Bonds are outstanding. Assuming issuance of the Series 2022A Bonds on February 1, 2023 in the maximum principal amount of \$200,000,000 bearing an annual interest rate of [four] percent ([4.00]%), interest payments will be due in the amount of \$[8,000,000] in each of the years 2024 through 2052 and the full principal plus interest thereon shall be due at maturity on February 1, 2053 in the amount of \$[208,000,000].

B. The Series 2022A Bonds will bear interest at a rate not to exceed [four] percent ([4.00]%) per annum, as specified in the Indenture.

C. The Series 2022A Bonds may be redeemed at any time without premium.

D. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the Project Property.

E. The Lease Agreement requires that the Company (or its respective successors, assigns or affiliates) maintain the Project Property in good repair and condition and carry proper insurance with respect to the Project Property as provided in the Lease Agreement.

F. The Lease Agreement requires the Company to make lease payments in an amount sufficient to pay the principal of and interest on the Series 2022A Bonds as principal and interest become due and to pay all related costs.

Section 6. LIMITED OBLIGATIONS. The Series 2022A Bonds shall be special limited obligations of the County, payable solely from the Basic Rent (as defined in the Lease Agreement) paid by the Company to the County as described in the Indenture and any other property or interest of the County specifically pledged under the Indenture or other security

documents, and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in this Bond Ordinance, the Bond Documents or the Series 2022A Bonds or any other instrument shall be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Series 2022A Bonds, all as provided in the Bond Documents and the Series 2022A Bonds), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing powers, nor shall the breach of any agreement contained in this Bond Ordinance, the Bond Documents, the Series 2022A Bonds or any other instrument be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Series 2022A Bonds, all as provided in the Bond Documents and the Series 2022A Bonds), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, the County having no power to pay out of its general funds, or otherwise contribute any part of the costs of constructing or equipping the Project Property, nor power to operate the Project Property as a business or in any manner except as lessor of the Project Property.

Section 7. RATIFICATION OF AGENCY. The Company will act as agent for the County with respect to the Project and in the acquisition of the Project Property. The County authorizes the Company to act as agent for the County for the purchase of solar generation equipment used to generate electricity from solar energy and related equipment as defined in NMSA 1978, Section 7-9-54.3 (2010) with respect to the Project. The Company, as agent, will also request and obtain Type 9 Nontaxable Transaction Certificates ("Certificates") from the New Mexico Taxation and Revenue Department, and the County will cooperate with the

Company to so obtain such Certificates and will allow the Company to use the Certificates that have been properly executed for acquisition of tangible personal property relating to the Project and the Project Property under and consistent with the New Mexico Gross Receipts and Compensating Tax Act, NMSA 1978, Sections 7-9-1 to -116 (1966, as amended through 2022) and applicable regulations. The Company shall not use the Certificates other than for the purchase of equipment and other tangible property as permitted by law, nor shall the Company use such Certificates after the completion of the Project. All actions taken by the Company since November 14, 2022, the date of adoption of the Inducement Resolution, that are not inconsistent with this Section 7, are hereby ratified and confirmed.

Section 8. NO RECOURSE AND LIABILITY. No covenant, stipulation, obligation or agreement herein contained or contained in any document hereby approved and authorized for execution shall be deemed to be a covenant, stipulation, obligation or agreement of any official, officer, Board member or employee of the County in his/her individual capacity, and neither the members of the Board nor any officials executing the Series 2022A Bonds shall be liable personally on the Series 2022A Bonds or be subject to personal liability or accountability by reason of the issuance thereof.

Section 9. APPROVAL OF INDEMNIFICATION. The Board specifically requires that the Lease Agreement contain provisions relating to indemnification which provide that the Company will indemnify and hold harmless the County and its Board members, officials, employees and agents from and against liability to the Company and to any third parties that may be asserted against the County or its Board members, officials, officers, employees or agents with respect to the County's legal ownership or leasehold interest in the Project and Project Property or the issuance of the Series 2022A Bonds in one or more series, except to the extent NMSA 1978, Sections 56-7-1 (2005) and 56-7-2 (2003) apply, and except claims for any loss or

damage arising out of or resulting from the gross negligence or willful misconduct of the County or its Board members, officials, employees or agents of the County.

Section 10. BOND ORDINANCE IRREPEALABLE. After the Series 2022A Bonds are issued, this Bond Ordinance shall be and remain irrevocable until all Series 2022A Bonds, including interest, are fully paid, canceled and discharged or there has been defeasance of such Bonds in accordance with the Indenture.

Section 11. CARNE SOLAR PROJECT PERMIT. Pursuant to the Permit Resolution, the County has approved the Permit for the Carne Solar Project. As indicated in the Permit Resolution, the Carne Solar Project shall be “grandfathered,” meaning that the Carne Solar Project will remain approved and permitted, and exempt from any new or different requirements of any final solar policy that is adopted pursuant to County Ordinance 107 or which are adopted to supersede and replace the Pilot Program (as defined in the Permit Resolution) until December 31, 2053 or further extended upon the mutual agreement of the Company and the County. As reflected in the Permit Resolution, the County acknowledges and agrees that any requested extension or modification of the Permit will be reviewed by County Planning Department staff and granted or denied solely pursuant to the County Planning Department’s administrative procedure, and exempt from any new or different requirements of any final solar policy that is adopted pursuant to County Ordinance 107 or which are adopted to supersede and replace the Pilot Program. Any extension or modification of the Permit related to the Carne Solar Project shall not be treated as and shall not require a new permit application.

Section 12. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 13. SEVERABILITY. If any section, paragraph, clause or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 14. RECORDING; AUTHENTICATION; EFFECTIVE DATE; TERMINATION DATE; PUBLICATION. This Bond Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the Board Chairperson or Chairperson Pro-Tem and attested by the signature of the County Clerk or a Deputy County Clerk, and shall be recorded in the ordinance book of the County, kept for that purpose, and shall be in full force and effect 30 days after such recordation in the book of ordinances. If the Series 2022A Bonds have not been issued by December 31, 2025, this Bond Ordinance shall terminate and the authorization to issue the Series 2022A Bonds shall expire. Notice of adoption of this Bond Ordinance shall be published once in *The Deming Headlight*, a newspaper of general circulation within the County, which publication shall be by title and contain a general summary of the subject matter thereof in substantially the following form:

(Form of Summary of Bond Ordinance for Publication)

LUNA COUNTY, NEW MEXICO

Notice of Adoption of Ordinance

NOTICE is hereby given of the title and a general summary of the subject matter contained in Ordinance No. 115, duly adopted and approved by the Board of County Commissioners (the "Board") of Luna County, New Mexico (the "County") on December 15, 2022 (the "Bond Ordinance"), relating to the authorization and issuance by the County of its

Luna County, New Mexico Taxable Industrial Revenue Bonds (Carne Solar Project), Series 2022A (the “Series 2022A Bonds”). Complete copies of the Bond Ordinance are available upon request and payment of a reasonable fee during normal and regular business hours of the County Clerk at 700 S. Silver Ave., Deming, New Mexico 88030.

The title of the Bond Ordinance is:

LUNA COUNTY, NEW MEXICO

ORDINANCE NO. 115

AUTHORIZING THE ISSUANCE AND SALE OF LUNA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (CARNE SOLAR PROJECT), SERIES 2022A, IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$200,000,000, TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF SOLAR ENERGY FACILITIES TO BE CONSTRUCTED FOR THE PURPOSE OF GENERATING ELECTRICITY AND LOCATED WITHIN THE COUNTY BUT OUTSIDE THE BOUNDARIES OF ANY INCORPORATED MUNICIPALITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, A SUBLEASE AGREEMENT, THE BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

The following is a general summary of the subject matter contained in the Bond Ordinance.

The recitals state that the County is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (“State”) and is authorized under the New Mexico County Industrial Revenue Bond Act (the “Act”) to issue industrial revenue bonds to acquire industrial revenue bond projects located in Luna County, but outside the boundaries of any incorporated municipality; that Solar PV Development NM 18 II LLC, a New Mexico limited liability company and Carne Energy Storage, LLC, a Delaware limited liability company authorized to do business in the State (collectively, the “Company”) along with its affiliated entities presented to the Board a proposal (the “Proposal”) in connection with the adoption of Resolution No. 22-84 on November 14, 2022, whereby the County would acquire a project (the “Project”) including, without limitation, certain real property rights, fee title, easements, rights-of-way and leasehold interests, solar generation equipment and other tangible personal property consisting of solar thermal energy collection, concentration and heat transfer and conversion equipment, solar tracking hardware and software, photovoltaic panels and inverters, support structures and associated electrical generating equipment to be used by the Company and its successors, assigns and affiliates for the generation, transportation and delivery of electricity (collectively, the “Project Property”) and issue its Series 2022A Bonds to finance the costs of the Project in whole or in part, including, but not limited to, reimbursement of any costs incurred by the Company and payment of transaction expenses related thereto; that the Series 2022A Bonds would be issued pursuant to an Indenture for the Series 2022A Bonds (the “Indenture”) entered into among the County, the Company, one or more affiliates of the Company, as purchaser of the Series 2022A Bonds (the “Purchaser”) and one or more financial institutions organized and existing under and by virtue of the laws of the United States, as depositary (the “Depositary”); the County would enter into a sublease agreement with the Company for the Series 2022A Bonds for lease or sublease of the site for the Project (the

“Sublease Agreement”) and would enter into a lease or sublease with the Company for the Series 2022A Bonds (the “Lease Agreement”) under which the Project Property would be leased and sold to the Company and the Company would make payments sufficient to pay the principal of and interest on the Series 2022A Bonds; that the County is authorized to enter, deliver and perform all its obligations under the Bond Documents (defined below) and to issue, execute and deliver the Series 2022A Bonds to be sold to the Purchaser pursuant to the bond purchase agreement for the Series 2022A Bonds (the “Bond Purchase Agreement”) to be entered into among the County, the Purchaser and the Company, and together with the Lease Agreement, the Sublease Agreement and the Indenture, the “Bond Documents”); that the County has concluded it is desirable to authorize the issuance of the Series 2022A Bonds to finance the Project and that the issuance of the Series 2022A Bonds constitute a valid public purpose under the Act; that the County and the Company have agreed that the Company will pay to the County and Deming Public Schools certain annual in-lieu tax payments (“PILT Payments”) for the period that the County owns and leases the Project Property; and that notice of the Board’s intention to consider adoption of the Bond Ordinance was published in conformance with legal requirements.

Sections 1 through 3 ratify previous action taken toward approval of the issuance and sale of the Series 2022A Bonds; provide that the Board has considered relevant information presented to it relating to the Series 2022A Bonds and the Project; provide that the Board has made certain findings including that the purpose for issuance of the Series 2022A Bonds is to finance the Project; provide that the Company is the developer of the Project and that the Company (or its respective successors, assigns or affiliates) will operate the Project; and provide that the issuance of the Series 2022A Bonds upon the terms set forth in the Bond Ordinance and in the principal amount not to exceed \$200,000,000, is approved and confirmed.

Sections 4 through 5 provide for the approval of the form, terms and provisions of the Bond Documents and the form and terms of the Series 2022A Bonds; that the Board Chairperson, Chairperson Pro-Tem or the County Manager, upon consultation with and the advice of the County Attorney, are each individually authorized to approve revisions to the Bond Documents with the approval of such revisions to be evidenced by the execution and delivery of such documents; provide that the Board Chairperson or Chairperson Pro-Tem are each individually authorized to execute and deliver, and the County Clerk or Deputy County Clerk are authorized to attest, as appropriate, the Bond Documents and the Series 2022A Bonds; that the Board Chairperson, Chairperson Pro-Tem or County Manager are each individually authorized, and provide that the County Clerk and Deputy County Clerk are further authorized, to execute and deliver all certifications, instruments, security agreements, subordination agreements and consents and other documents as requested by the Company or any lender or lenders or tax credit participant providing financing for the Project, and to take all actions for the carrying out of the transactions contemplated by the Bond Ordinance, the Bond Documents and the Series 2022A Bonds; and making certain determinations regarding payment of the Series 2022A Bonds for the insuring and maintenance of the Project.

Sections 6 through 8 provide that the Series 2022A Bonds are special limited obligations of the County, payable solely from the Basic Rent (as defined in the Lease Agreement), and that the Series 2022A Bonds shall never constitute a debt or indebtedness of the County or the State within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or charge against its general credit or taxing power; provide that the Company will act as agent of the County with respect to

the Project and acquisition of the Project Property; and provide that no covenant, obligation or agreement of the County with respect to the Bond Ordinance, the Bond Documents or the Series 2022A Bonds shall constitute a covenant, obligation or agreement of any official, officer, Board member or employee of the County in his/her individual capacity and that neither the members of the Board nor any officials executing the Series 2022A Bonds shall be liable personally on the Series 2022A Bonds or be subject to personal liability by reason of the issuance thereof.

Sections 9 through 14 provide for an indemnification in the Lease Agreement of the County and its Board and other officials from and against liability to the Company and to any third parties; provide that the Bond Ordinance is irrevocable while the Series 2022A Bonds are outstanding; provide for the “grandfathering” of the Project with respect to the permit granted under County Resolution 22-89 adopted by the Board on November 14, 2022; provide severability and repealer provisions and direct the authentication and recording of the Bond Ordinance; provide effective and termination dates; and provide for the publication of notice of adoption of the Bond Ordinance and the form of Summary of the Bond Ordinance for publication.

This notice constitutes compliance with the Public Securities Limitation of Action Act, NMSA 1978, Sections 6-14-4 to-7 (1975).

(End of Form of Summary for Publication)

[Signature page follows]

PASSED, ADOPTED, SIGNED AND APPROVED this 19th day of December, 2022.

BOARD OF COUNTY COMMISSIONERS, LUNA
COUNTY, NEW MEXICO

(SEAL)

Linda Smrkovsky, Chairperson – District II

Barbara Reedy – District I

John Sweetser – District III

ATTEST:

Berenda McWright, County Clerk

[Ordinance No. 115 Signature Page]

Commissioner _____ then moved that the ordinance as filed with the County Clerk be passed and adopted. Commissioner _____ seconded the motion.

The question being upon the passage and adoption of said ordinance, the motion was voted upon with the following result:

Those Voting Yea:

Linda Smrkovsky, District 2, Chairperson
Barbara Reedy, District 1
John Sweetser, District 3

Those Voting Nay:

None

Those Absent:

None

The Chairperson thereupon declared that at least a majority of all the members of that Board having voted in favor thereof, the motion was carried and the ordinance duly passed and adopted. After consideration of matters not relating to the ordinance, the meeting on motion duly made, seconded and unanimously carried, was adjourned.

BOARD OF COUNTY COMMISSIONERS
LUNA COUNTY, NEW MEXICO

By _____
Linda Smrkovsky,
Chairperson

(SEAL)

Attest:

By _____
Berenda McWright,
County Clerk

COUNTY OF LUNA

I, Berenda McWright, County Clerk of Luna County, New Mexico (the “County”), do hereby certify:

1. The foregoing pages are a true, correct and complete copy of the record of the proceedings of the Board of County Commissioners (the "Board") of the County, constituting the governing body of the County, taken at a duly called regular, open meeting of the Board held in the Commission Chambers at the Luna County Courthouse, 700 South Silver Street, Deming, New Mexico 88030, in the County, being the regular meeting place of the Board, at 9:30 a.m. on Monday, December 19, 2022, insofar as the same relate to the proposed ordinance, a copy of which is set forth in the official records of the proceedings of the County kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Notice of such meeting was given in compliance with the permitted methods of giving notice of meetings of the Board as required by the open meetings standards then in effect.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of Luna County,
New Mexico, this 19th day of December, 2022.

(SEAL)

Berenda McWright, County Clerk

[illegible]

The Board of County Commissioners (the “Board”) of Luna County (the “County”), in the State of New Mexico, met in open regular session in full conformity with law and the ordinances and rules of the County, in the Commission Chambers at the Luna County Courthouse, 700 South Silver Street, Deming, New Mexico 88030, in the County, being the regular meeting place of the Board, at 9:30 a.m. on Monday, December 19, 2022, at which time there were present and answering the roll call the following members*:

Chairperson:

Linda Smrkovsky, District 2

Commissioners:

Barbara Reedy, District 1
John Sweetser, District 3

Absent:

None

The County Manager, County Clerk and County Attorney were also present.

Thereupon the following proceedings, among others, were had and taken, to wit:

There was officially filed with the County Clerk, the Chairperson and each Commissioner, a copy of an ordinance in final form, which is as follows:

LUNA COUNTY, NEW MEXICO

ORDINANCE NO. 116

AUTHORIZING THE ISSUANCE AND SALE OF LUNA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (CARNE SOLAR PROJECT), SERIES 2022B, IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$135,000,000, TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF SOLAR ENERGY FACILITIES TO BE CONSTRUCTED FOR THE PURPOSE OF STORING ELECTRICITY AND LOCATED WITHIN THE COUNTY BUT OUTSIDE THE BOUNDARIES OF ANY INCORPORATED MUNICIPALITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, A SUBLEASE AGREEMENT, THE BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Luna County (the “County”) of the State of New Mexico (the “State”) is a legally and regularly created, established, organized and existing political subdivision of the State; and

WHEREAS, pursuant to the New Mexico County Industrial Revenue Bond Act, NMSA, 1978, Sections 4-59-1 to -16, (1975, as amended through 2021) (the “Act”), the Board of County Commissioners (the “Board”) of the County is authorized to issue industrial revenue bonds to

acquire industrial revenue projects to be located within the County, but outside the boundaries of any incorporated municipality, and to use the proceeds of such bonds for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in the State, promoting the use of natural resources of the State and promoting a sound and proper balance in the State between agriculture, commerce and industry; and

WHEREAS, the County desires to promote industry and develop trade or other economic activity to secure and maintain a balanced and stable economy in the County and to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, Solar PV Development NM 18 II LLC, a New Mexico limited liability company and Carne Energy Storage, LLC, a Delaware limited liability company authorized to do business in the State (collectively, the “Company”) along with their affiliated entities presented to the Board a proposal (the “Proposal”) in connection with the adoption of an inducement resolution (Resolution No. 22-84) on November 14, 2022 (the “Inducement Resolution”), pursuant to which the County expressed its intent to proceed with issuance of taxable industrial revenue bonds for projects to be developed by the Company and other affiliated entities identified in the Inducement Resolution; and

WHEREAS, pursuant to the Inducement Resolution and the Proposal, the Company has requested the County to proceed to (a) issue its Taxable Industrial Revenue Bonds (Carne Solar Project), Series 2022B (the “Series 2022B Bonds”); and (b) acquire, construct, equip, and install an industrial revenue project (the “Project”), including, without limitation, certain real property rights, fee title, easements, rights-of-way and leasehold interests, solar energy storage facilities and associated electrical storage equipment and other tangible personal property consisting of solar thermal energy collection, storage, concentration and heat transfer and conversion

equipment, solar tracking hardware and software, photovoltaic panels and inverters, support structures, turbines and associated electrical generating equipment used to generate electricity from solar thermal energy, and related equipment, to be located within the County but outside the boundaries of any incorporated municipality, and to be used by the Company and its respective successors, assigns or affiliates to store electricity from solar energy in the County (collectively, the “Project Property”); and

WHEREAS, under the Proposal, the County would enter into an indenture for the Series 2022B Bonds (the “Indenture”), with the Company, one or more affiliates of the Company, as purchaser of the Series 2022B Bonds (the “Purchaser”), and one or more financial institutions organized and existing under and by virtue of the laws of the United States, as depository (the “Depository”) pursuant to which, together with this ordinance (this “Bond Ordinance”), the County would issue the Series 2022B Bonds; and

WHEREAS, under the Proposal, the County would enter into a sublease with the Company for the Series 2022B Bonds (the “Sublease Agreement”), whereby the Company would lease or sublease to the County the site for the Project (the “Project Site”), and would enter into a lease with the Company for the Series 2022B Bonds (the “Lease Agreement”) pursuant to which the Company would lease or sublease from the County the Project Property including the Project Site, and the Company would make payments sufficient to pay the principal of and interest on the Series 2022B Bonds and to pay all other obligations incurred pursuant to the provisions of the Lease Agreement, the Indenture, the Sublease Agreement and this Bond Ordinance; and

WHEREAS, the Series 2022B Bonds shall be special limited obligations of the County, payable solely from the Basic Rent (as defined in the Lease Agreement) paid by the Company to the County as described in the Indenture and shall never constitute a debt or indebtedness of the

County and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power, as further described herein; and

WHEREAS, the County is authorized to enter into, deliver and perform all of its obligations under the Bond Documents (defined below) and to issue, execute and deliver the Series 2022B Bonds pursuant to the Act and this Bond Ordinance; and

WHEREAS, the Series 2022B Bonds in an aggregate principal amount up to \$135,000,000 will be issued, sold and delivered by the County, in a private sale to the Purchaser under the Indenture, pursuant to a bond purchase agreement for the Series 2022B Bonds (the "Bond Purchase Agreement") to be entered into among the County, the Purchaser and the Company; and

WHEREAS, the proceeds of the Series 2022B Bonds will be applied to pay the costs of the Project in whole or in part, including, but not limited to, the reimbursement of any costs incurred by the Company and payment of transaction expenses associated with the transaction; and

WHEREAS, the Board has determined that it is in the best interest of the County to issue the Series 2022B Bonds and to execute and deliver the Bond Documents (defined below), and other documents related thereto; and

WHEREAS, in connection with the issuance of the Series 2022B Bonds, there have been filed with the County Clerk and presented to the Board the forms of documents listed below, which the County will execute substantially in such form in connection with the issuance of the Series 2022B Bonds:

1. the Lease Agreement;
2. the Indenture (with the form of the Series 2022B Bonds attached);
3. the Sublease Agreement; and

4. the Bond Purchase Agreement.

The Lease Agreement, the Indenture, the Sublease Agreement and the Bond Purchase Agreement are herein collectively referred to as the “Bond Documents”; and

WHEREAS, the County is authorized to issue the Series 2022B Bonds under the Act and after having considered the Proposal, the Board has concluded that it is desirable at this time to authorize the issuance of the Series 2022B Bonds to finance the Project and that the County’s issuance of the Series 2022B Bonds will constitute and be a valid public purpose; and

WHEREAS, the Board has been advised that the disclosure provisions of Rule 15c-2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 are not applicable to this transaction inasmuch as the Series 2022B Bonds are being sold in a private sale without participation of an underwriter; and

WHEREAS, pursuant to the Inducement Resolution, there has been published in *The Deming Headlight*, a newspaper of general circulation within the County, public notice of the Board’s intention to adopt this Bond Ordinance, which notice contained certain information concerning the ownership, purpose, location and the amount of the Series 2022B Bonds to be issued to finance the Project, which notice was published at least fourteen (14) days prior to final action upon this Bond Ordinance; and

WHEREAS, the County has given notice to the County Assessor and any entity located in the County authorized to levy taxes on property in the County of its intent to consider this Bond Ordinance authorizing the issuance of the Series 2022B Bonds at least thirty (30) days prior to the date hereof and at which this Bond Ordinance is to be considered for adoption by the Board; and

WHEREAS, the County and the Company have agreed that the Company will pay to the County and Deming Public Schools certain annual in-lieu tax payments (“PILT Payments”) for the period that the County owns and leases the Project Property; and

WHEREAS, pursuant to County Resolution No. 22-89 adopted by the Board on November 14, 2022 (the “Permit Resolution”), the County has issued its final approval of the Permit (as defined in the Permit Resolution) for an approximately 130 megawatt (“MW”) solar energy generating system and associated approximately 65 MW battery energy storage system (the “Carne Solar Project”), which Permit shall expire on December 31, 2053.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY, NEW MEXICO:

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Bond Ordinance previously taken by the Board and the officials of the County directed toward approval of the issuance and sale of the Bonds be approved and the same hereby are ratified, approved and confirmed. All capitalized terms in this Bond Ordinance shall have the meanings set forth in the Indenture, which has been filed with the County Clerk, unless otherwise defined herein.

Section 2. FINDINGS.

A. General. The Board hereby declares that it has considered relevant information presented to it relating to the Series 2022B Bonds and the Project and hereby finds and determines that the issuance of the Series 2022B Bonds pursuant to this Bond Ordinance is necessary and advisable and in the interest of, and will promote the use of the natural resources of, the State and promote industry and trade and a sound and proper balance in the State between agriculture, commerce and industry.

B. The Board finds that:

(1) The Series 2022B Bonds will be issued for the purpose of financing the Project;

(2) The face amount of the Series 2022B Bonds to be issued with respect to financing the Project is an aggregate principal amount up to \$135,000,000;

(3) The Company is the developer of the Project and the Company (or its respective successors, assigns or affiliates) will operate the Project;

(4) The Project Property will be located within Luna County, but outside the boundaries of any incorporated municipality.

Section 3. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Series 2022B Bonds in an aggregate principal amount up to \$135,000,000, and the use of the proceeds of the Series 2022B Bonds to finance the cost of the Project, in whole or in part, including, but not limited to, the reimbursement of any costs incurred by the Company and payment of transaction expenses related thereto are hereby approved and confirmed. The sale of the Series 2022B Bonds at par in an aggregate principal amount up to \$135,000,000 is approved. The Series 2022B Bonds shall be designated as set forth in the recitals of this Bond Ordinance, provided that the County may subsequently designate a different bond title, including, but not limited to, the series designation.

B. Form and Terms.

Subject to the limitations set forth in this Bond Ordinance, the Series 2022B Bonds shall (i) be in the form and denomination and shall be numbered and dated as set forth in the Indenture; (ii) be payable as to principal and interest and subject to optional and mandatory redemption and defeasance in the amounts, upon the conditions and at the times and prices set forth in the Indenture; and (iii) be issued in the principal amount of up to

\$135,000,000, bearing interest at the rate and maturing on the date or dates set forth in the Indenture.

C. Execution. The Series 2022B Bonds shall be executed on behalf of the County with the manual or facsimile signature of the Board Chairperson or Chairperson Pro-Tem and shall be attested by the manual or facsimile signature of the County Clerk or a Deputy County Clerk and shall have impressed or imprinted thereon the official seal of the County. If any of the officers who shall have signed or sealed any of said Series 2022B Bonds shall cease to be such officer of the County before the Series 2022B Bonds so signed and sealed shall have been actually authenticated and delivered by the County, such Series 2022B Bonds nevertheless may be authenticated, issued and delivered with the same force and effect as though the person or persons who signed or sealed such Series 2022B Bonds had not ceased to be such officer or officers of the County; and also any such Series 2022B Bonds may be signed and sealed on behalf of the County by those persons who, on the actual date of the execution of such Series 2022B Bonds, shall be the proper officers of the County, although at the nominal date of such Series 2022B Bonds any such person shall not have been such officer of the County.

D. Interest Rate. The interest rate on the Series 2022B Bonds shall be as specified in the Indenture, but shall not exceed [four] percent ([4.000]%) per annum.

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The form, terms and provisions of the Bond Documents and the Series 2022B Bonds in the form on deposit in the office of the County Clerk are in all respects approved, authorized and confirmed.

The Board Chairperson, Chairperson Pro-Tem or the County Manager, upon consultation with and the advice of the County Attorney, are each individually authorized to approve revisions to the form, terms and provisions of the Bond Documents on behalf of the Board,

provided that such revisions to the form, terms and provisions are consistent with this Bond Ordinance and provided that all such changes, insertions, deletions, modifications and other revisions shall be deemed approved by the Board upon execution and delivery of the Bond Documents, such execution and delivery to be conclusive evidence of such approval, and the Board Chairperson or Chairperson Pro-Tem are each individually authorized to execute and deliver in the name and on behalf of the County, and the County Clerk and Deputy County Clerk are hereby authorized to attest, as appropriate, the Bond Documents and the Series 2022B Bonds.

The Board Chairperson, Chairperson Pro-Tem or County Manager are each individually authorized and the County Clerk and Deputy County Clerk are further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including leases, subleases, security agreements and subordination agreements and instruments as requested from time to time by the Company or any lender or lenders or tax equity participants providing financing for the Project, and to do such other acts and things, either prior to or after the date of delivery of the Bonds, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents and are consistent with the terms of this Bond Ordinance.

The Board Chairperson, Chairperson Pro-Tem or County Manager shall take such action as is necessary to effectuate the provisions of the Indenture and shall take such action as is necessary in conformity with the Act to finance the costs of the Project and for carrying out other transactions as contemplated by this Bond Ordinance and the Bond Documents, including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Series 2022B Bonds.

Section 5. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS. The following determinations and findings are made:

A. The Series 2022B Bonds will be outstanding for a maximum of thirty (30) years from the date of issuance. No principal will be due for the 1st year to and including the 29th year that the Series 2022B Bonds are outstanding. Assuming issuance of the Series 2022B Bonds on February 1, 2023 in the maximum principal amount of \$135,000,000 bearing an annual interest rate of [four] percent ([4.00]%), interest payments will be due in the amount of \$[5,400,000] in each of the years 2024 through 2052 and the full principal plus interest thereon shall be due at maturity on February 1, 2053 in the amount of \$[140,400,000].

B. The Series 2022B Bonds will bear interest at a rate not to exceed [four] percent ([4.00]%) per annum, as specified in the Indenture.

C. The Series 2022B Bonds may be redeemed at any time without premium.

D. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the Project Property.

E. The Lease Agreement requires that the Company (or its respective successors, assigns or affiliates) maintain the Project Property in good repair and condition and carry proper insurance with respect to the Project Property as provided in the Lease Agreement.

F. The Lease Agreement requires the Company to make lease payments in an amount sufficient to pay the principal of and interest on the Series 2022B Bonds as principal and interest become due and to pay all related costs.

Section 6. LIMITED OBLIGATIONS. The Series 2022B Bonds shall be special limited obligations of the County, payable solely from the Basic Rent (as defined in the Lease Agreement) paid by the Company to the County as described in the Indenture and any other property or interest of the County specifically pledged under the Indenture or other security documents, and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State

Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in this Bond Ordinance, the Bond Documents or the Series 2022B Bonds or any other instrument shall be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Series 2022B Bonds, all as provided in the Bond Documents and the Series 2022B Bonds), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing powers, nor shall the breach of any agreement contained in this Bond Ordinance, the Bond Documents, the Series 2022B Bonds or any other instrument be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Series 2022B Bonds, all as provided in the Bond Documents and the Series 2022B Bonds), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, the County having no power to pay out of its general funds, or otherwise contribute any part of the costs of constructing or equipping the Project Property, nor power to operate the Project Property as a business or in any manner except as lessor of the Project Property.

Section 7. RATIFICATION OF AGENCY. The Company will act as agent for the County with respect to the Project and in the acquisition of the Project Property. The County authorizes the Company to act as agent for the County for the purchase of solar generation equipment used to generate electricity from solar energy and related equipment as defined in NMSA 1978, Section 7-9-54.3 (2010) with respect to the Project. The Company, as agent, will also request and obtain Type 9 Nontaxable Transaction Certificates (“Certificates”) from the New Mexico Taxation and Revenue Department, and the County will cooperate with the Company to so obtain such Certificates and will allow the Company to use the Certificates that have been properly executed for acquisition of tangible personal property relating to the Project

and the Project Property under and consistent with the New Mexico Gross Receipts and Compensating Tax Act, NMSA 1978, Sections 7-9-1 to -116 (1966, as amended through 2022) and applicable regulations. The Company shall not use the Certificates other than for the purchase of equipment and other tangible property as permitted by law, nor shall the Company use such Certificates after the completion of the Project. All actions taken by the Company since November 14, 2022, the date of adoption of the Inducement Resolution, that are not inconsistent with this Section 7, are hereby ratified and confirmed.

Section 8. NO RECOURSE AND LIABILITY. No covenant, stipulation, obligation or agreement herein contained or contained in any document hereby approved and authorized for execution shall be deemed to be a covenant, stipulation, obligation or agreement of any official, officer, Board member or employee of the County in his/her individual capacity, and neither the members of the Board nor any officials executing the Series 2022B Bonds shall be liable personally on the Series 2022B Bonds or be subject to personal liability or accountability by reason of the issuance thereof.

Section 9. APPROVAL OF INDEMNIFICATION. The Board specifically requires that the Lease Agreement contain provisions relating to indemnification which provide that the Company will indemnify and hold harmless the County and its Board members, officials, employees and agents from and against liability to the Company and to any third parties that may be asserted against the County or its Board members, officials, officers, employees or agents with respect to the County's legal ownership or leasehold interest in the Project and Project Property or the issuance of the Series 2022B Bonds in one or more series, except to the extent NMSA 1978, Sections 56-7-1 (2005) and 56-7-2 (2003) apply, and except claims for any loss or damage arising out of or resulting from the gross negligence or willful misconduct of the County or its Board members, officials, employees or agents of the County.

Section 10. BOND ORDINANCE IRREPEALABLE. After the Series 2022B Bonds are issued, this Bond Ordinance shall be and remain irrepealable until all Series 2022B Bonds, including interest, are fully paid, canceled and discharged or there has been defeasance of such Bonds in accordance with the Indenture.

Section 11. CARNE SOLAR PROJECT PERMIT. Pursuant to the Permit Resolution, the County has approved the Permit for the Carne Solar Project. As indicated in the Permit Resolution, the Carne Solar Project shall be “grandfathered,” meaning that the Carne Solar Project will remain approved and permitted, and exempt from any new or different requirements of any final solar policy that is adopted pursuant to County Ordinance 107 or which are adopted to supersede and replace the Pilot Program (as defined in the Permit Resolution) until December 31, 2053 or further extended upon the mutual agreement of the Company and the County. As reflected in the Permit Resolution, the County acknowledges and agrees that any requested extension or modification of the Permit will be reviewed by County Planning Department staff and granted or denied solely pursuant to the County Planning Department’s administrative procedure, and exempt from any new or different requirements of any final solar policy that is adopted pursuant to County Ordinance 107 or which are adopted to supersede and replace the Pilot Program. Any extension or modification of the Permit related to the Carne Solar Project shall not be treated as and shall not require a new permit application.

Section 12. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 13. SEVERABILITY. If any section, paragraph, clause or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or

unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 14. RECORDING; AUTHENTICATION; EFFECTIVE DATE; TERMINATION DATE; PUBLICATION. This Bond Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the Board Chairperson or Chairperson Pro-Tem and attested by the signature of the County Clerk or a Deputy County Clerk, and shall be recorded in the ordinance book of the County, kept for that purpose, and shall be in full force and effect 30 days after such recordation in the book of ordinances. If the Series 2022B Bonds have not been issued by December 31, 2025, this Bond Ordinance shall terminate and the authorization to issue the Series 2022B Bonds shall expire. Notice of adoption of this Bond Ordinance shall be published once in *The Deming Headlight*, a newspaper of general circulation within the County, which publication shall be by title and contain a general summary of the subject matter thereof in substantially the following form:

(Form of Summary of Bond Ordinance for Publication)

LUNA COUNTY, NEW MEXICO

Notice of Adoption of Ordinance

NOTICE is hereby given of the title and a general summary of the subject matter contained in Ordinance No. 116, duly adopted and approved by the Board of County Commissioners (the “Board”) of Luna County, New Mexico (the “County”) on December 15, 2022 (the “Bond Ordinance”), relating to the authorization and issuance by the County of its Luna County, New Mexico Taxable Industrial Revenue Bonds (Carne Solar Project), Series 2022B (the “Series 2022B Bonds”). Complete copies of the Bond Ordinance are available upon

request and payment of a reasonable fee during normal and regular business hours of the County Clerk at 700 S. Silver Ave., Deming, New Mexico 88030.

The title of the Bond Ordinance is:

LUNA COUNTY, NEW MEXICO

ORDINANCE NO. 116

AUTHORIZING THE ISSUANCE AND SALE OF LUNA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (CARNE SOLAR PROJECT), SERIES 2022B, IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$135,000,000, TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF SOLAR ENERGY FACILITIES TO BE CONSTRUCTED FOR THE PURPOSE OF STORING ELECTRICITY AND LOCATED WITHIN THE COUNTY BUT OUTSIDE THE BOUNDARIES OF ANY INCORPORATED MUNICIPALITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, A SUBLEASE AGREEMENT, THE BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

The following is a general summary of the subject matter contained in the Bond Ordinance.

The recitals state that the County is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (“State”) and is authorized under the New Mexico County Industrial Revenue Bond Act (the “Act”) to issue industrial revenue bonds to acquire industrial revenue bond projects located in Luna County, but outside the boundaries of any incorporated municipality; that Solar PV Development NM 18 II LLC, a New Mexico limited liability company and Carne Energy Storage, LLC, a Delaware limited liability company authorized to do business in the State (collectively, the “Company”) along with its affiliated entities presented to the Board a proposal (the “Proposal”) in connection with the adoption of Resolution No. 22-84 on November 14, 2022, whereby the County would acquire a project (the “Project”) including, without limitation, certain real property rights, fee title, easements, rights-of-way and leasehold interests, solar energy storage facilities and associated electrical storage equipment and other tangible personal property consisting of solar thermal energy collection, storage, concentration and heat transfer and conversion equipment, solar tracking hardware and software, photovoltaic panels and inverters, support structures, turbines and associated electrical generating equipment to be used by the Company and its successors, assigns and affiliates for the generation, transportation and delivery of electricity (collectively, the “Project Property”) and issue its Series 2022B Bonds to finance the costs of the Project in whole or in part, including, but not limited to, reimbursement of any costs incurred by the Company and payment of transaction expenses related thereto; that the Series 2022B Bonds would be issued pursuant to an Indenture for the Series 2022B Bonds (the “Indenture”) entered into among the County, the Company, one or more affiliates of the Company, as purchaser of the Series 2022B Bonds (the “Purchaser”) and one or more financial institutions organized and existing under and by virtue of the laws of the United States, as depository (the “Depository”); the County would enter into a sublease agreement with the Company for the Series 2022B Bonds

for lease or sublease of the site for the Project (the “Sublease Agreement”) and would enter into a lease or sublease with the Company for the Series 2022B Bonds (the “Lease Agreement”) under which the Project Property would be leased and sold to the Company and the Company would make payments sufficient to pay the principal of and interest on the Series 2022B Bonds; that the County is authorized to enter, deliver and perform all its obligations under the Bond Documents (defined below) and to issue, execute and deliver the Series 2022B Bonds to be sold to the Purchaser pursuant to the bond purchase agreement for the Series 2022B Bonds (the “Bond Purchase Agreement”) to be entered into among the County, the Purchaser and the Company, and together with the Lease Agreement, the Sublease Agreement and the Indenture, the “Bond Documents”); that the County has concluded it is desirable to authorize the issuance of the Series 2022B Bonds to finance the Project and that the issuance of the Series 2022B Bonds constitute a valid public purpose under the Act; that the County and the Company have agreed that the Company will pay to the County and Deming Public Schools certain annual in-lieu tax payments (“PILT Payments”) for the period that the County owns and leases the Project Property; and that notice of the Board’s intention to consider adoption of the Bond Ordinance was published in conformance with legal requirements.

Sections 1 through 3 ratify previous action taken toward approval of the issuance and sale of the Series 2022B Bonds; provide that the Board has considered relevant information presented to it relating to the Series 2022B Bonds and the Project; provide that the Board has made certain findings including that the purpose for issuance of the Series 2022B Bonds is to finance the Project; provide that the Company is the developer of the Project and that the Company (or its respective successors, assigns or affiliates) will operate the Project; and provide that the issuance

of the Series 2022B Bonds upon the terms set forth in the Bond Ordinance and in the principal amount not to exceed \$135,000,000, is approved and confirmed.

Sections 4 through 5 provide for the approval of the form, terms and provisions of the Bond Documents and the form and terms of the Series 2022B Bonds; that the Board Chairperson, Chairperson Pro-Tem or the County Manager, upon consultation with and the advice of the County Attorney, are each individually authorized to approve revisions to the Bond Documents with the approval of such revisions to be evidenced by the execution and delivery of such documents; provide that the Board Chairperson or Chairperson Pro-Tem are each individually authorized to execute and deliver, and the County Clerk or Deputy County Clerk are authorized to attest, as appropriate, the Bond Documents and the Series 2022B Bonds; that the Board Chairperson, Chairperson Pro-Tem or County Manager are each individually authorized, and provide that the County Clerk and Deputy County Clerk are further authorized, to execute and deliver all certifications, instruments, security agreements, subordination agreements and consents and other documents as requested by the Company or any lender or lenders or tax credit participant providing financing for the Project, and to take all actions for the carrying out of the transactions contemplated by the Bond Ordinance, the Bond Documents and the Series 2022B Bonds; and making certain determinations regarding payment of the Series 2022B Bonds for the insuring and maintenance of the Project.

Sections 6 through 8 provide that the Series 2022B Bonds are special limited obligations of the County, payable solely from the Basic Rent (as defined in the Lease Agreement), and that the Series 2022B Bonds shall never constitute a debt or indebtedness of the County or the State within the meaning of any provision or limitation of the State Constitution or statutes, and shall

not constitute or give rise to a pecuniary liability of the County or charge against its general credit or taxing power; provide that the Company will act as agent of the County with respect to the Project and acquisition of the Project Property; and provide that no covenant, obligation or agreement of the County with respect to the Bond Ordinance, the Bond Documents or the Series 2022B Bonds shall constitute a covenant, obligation or agreement of any official, officer, Board member or employee of the County in his/her individual capacity and that neither the members of the Board nor any officials executing the Series 2022B Bonds shall be liable personally on the Series 2022B Bonds or be subject to personal liability by reason of the issuance thereof.

Sections 9 through 14 provide for an indemnification in the Lease Agreement of the County and its Board and other officials from and against liability to the Company and to any third parties; provide that the Bond Ordinance is irrepealable while the Series 2022B Bonds are outstanding; provide for the “grandfathering” of the Project with respect to the permit granted under County Resolution 22-89 adopted by the Board on November 14, 2022; provide severability and repealer provisions and direct the authentication and recording of the Bond Ordinance; provide effective and termination dates; and provide for the publication of notice of adoption of the Bond Ordinance and the form of Summary of the Bond Ordinance for publication.

This notice constitutes compliance with the Public Securities Limitation of Action Act, NMSA 1978, Sections 6-14-4 to-7 (1975).

(End of Form of Summary for Publication)

[Signature page follows]

PASSED, ADOPTED, SIGNED AND APPROVED this 19th day of December, 2022.

BOARD OF COUNTY COMMISSIONERS, LUNA
COUNTY, NEW MEXICO

(SEAL)

Linda Smrkovsky, Chairperson – District II

Barbara Reedy – District I

John Sweetser – District III

ATTEST:

Berenda McWright, County Clerk

[Ordinance No. 116 Signature Page]

Commissioner _____ then moved that the ordinance as filed with the County Clerk be passed and adopted. Commissioner _____ seconded the motion.

The question being upon the passage and adoption of said ordinance, the motion was voted upon with the following result:

Those Voting Yea:

Linda Smrkovsky, District 2, Chairperson
Barbara Reedy, District 1
John Sweetser, District 3

Those Voting Nay:

None

Those Absent:

None

The Chairperson thereupon declared that at least a majority of all the members of that Board having voted in favor thereof, the motion was carried and the ordinance duly passed and adopted. After consideration of matters not relating to the ordinance, the meeting on motion duly made, seconded and unanimously carried, was adjourned.

BOARD OF COUNTY COMMISSIONERS
LUNA COUNTY, NEW MEXICO

By _____
Linda Smrkovsky,
Chairperson

(SEAL)

Attest:

By _____
Berenda McWright,
County Clerk

STATE OF NEW MEXICO)
) ss.
COUNTY OF LUNA)

I, Berenda McWright, County Clerk of Luna County, New Mexico (the “County”), do hereby certify:

1. The foregoing pages are a true, correct and complete copy of the record of the proceedings of the Board of County Commissioners (the "Board") of the County, constituting the governing body of the County, taken at a duly called regular, open meeting of the Board held in the Commission Chambers at the Luna County Courthouse, 700 South Silver Street, Deming, New Mexico 88030, in the County, being the regular meeting place of the Board, at 9:30 a.m. on Monday, December 19, 2022, insofar as the same relate to the proposed ordinance, a copy of which is set forth in the official records of the proceedings of the County kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Notice of such meeting was given in compliance with the permitted methods of giving notice of meetings of the Board as required by the open meetings standards then in effect.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of Luna County,
New Mexico, this 19th day of December, 2022.

(SEAL)

Berenda McWright, County Clerk

**LUNA COUNTY BOARD OF COUNTY
COMMISSIONERS**

**RESOLUTION NO. 22-91
Proposed Inter/Intra Fund Budget Increases**

WHEREAS, the Board of County Commissioners of Luna County has the statutory authority to approve, modify and amend the County's annual operating budget; and

WHEREAS, development of an annual budget includes a considerable amount of professional guessing about events that may occur in the future; and

WHEREAS, during the course of the budget year actual events can result in receiving revenues or making expenditures that were not expected at the time the budget was prepared and adopted; and

WHEREAS, it is necessary to adjust the County's adopted budget to properly provide for these unexpected events.

NOW THEREFORE BE IT RESOLVED that the Board of County Commissioners of Luna County hereby adopts the changes to the County's Fiscal Year 111, July 1, 2022 through June 30, 2023 Budget proposed by the County's management staff and attached hereto in spreadsheet form, as amendments to the previously adopted operating budget.

PASSED, APPROVED AND ADOPTED THIS 19th DAY OF DECEMBER, 2022.

BOARD OF COUNTY
COMMISSIONERS OF LUNA
COUNTY

Barbara L. Reedy, District One

Linda M. Smrkovsky, District Two

ATTEST:

Berenda L. McWright, Luna County Clerk

John S. Sweetser, District Three

Be it remembered that at a Regular meeting of the Board of County Commissioners of Luna County in Deming NM on the 19th day of December, 2022, the following budget adjustments are proposed and entered of record.

<div> <div>SCHEDULE OF BUDGET ADJUSTMENTS</div> <div> Budget Resolution Number 22-91 Proposed Inter/Intra FUND Budget Increase/Decrease </div> <div> Entity Code DFA Resolution Number </div> </div>										
ITEM NO	Adjustment Type	Fund/ DFA Fund	Dept.	From	Amount	To	Amount	Purpose	Approved Budget Balance	Adjusted Budget Balance
One	Increase	401/11000	Genera Fund - Sheriff's Department	401/11000	\$ (15,831.22)	401-77-1225 Sheriff's Salary Reimbursements (Revenue)	\$ (15,831.22)	Reimbursed funds from MSC1 for traffic patrol during I-10 construction.	\$ (18,741.92)	\$ (34,573.14)
					\$ 15,831.22	401-08-2005 Salaries - Overtime	\$ 15,831.22	Spending of reimbursed funds from MSC1 for traffic patrol during I-10 construction.	\$ 98,474.05	\$ 114,305.27
Two	Increase	401/11000	General Fund	401/11000	\$ 10,000.00	401-00-2200 Funding Appropriations	\$ 10,000.00	To help pay for repairs for the American Legion per proposal approved by LCBCC.	\$ 237,000.00	\$ 247,000.00
Three	Increase	421/21800	Domestic Violence Shelter	421/21800	\$ 36,000.00	421-00-2200 Funding Appropriations	\$ 36,000.00	To assist in funding the Domestic Violence Shelter per Agreement between LC and La Casa Inc.	\$ -	\$ 36,000.00
Four	Increase	704/20900	Cooks Peak Volunteer Fire Department	704/20900	\$ (300,000.00)	704-77-1490 CPVFD Fire Funds (Revenue)	\$ (300,000.00)	NM DHSEM Award for the purchase of a new fire apparatus.	\$ (152,920.00)	\$ (452,920.00)
					\$ 300,000.00	704-00-2028 Capital Outlay	\$ 300,000.00	NM DHSEM Award for the purchase of a new fire apparatus.	\$ 389,162.82	\$ 689,162.82
					\$ 46,000.00		\$ 46,000.00		\$ 552,974.95	\$ 598,974.95

NOW, THEREFORE, it is respectfully requested that the Board of County Commissioners of Luna County, authorize the above adjustments to the Luna County Budget.

Done at Deming New Mexico this Thursday the 19th day of December, 2022.

BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY

Barbara L. Reedy, District 1

Linda M. Smrkovsky, District 2

John S. Sweetser, District 3



ATTEST:

Berenda L. McWright, Luna County Clerk

Entered By:

Date

Checked By:

Date

**LUNA COUNTY BOARD OF COUNTY
COMMISSIONERS**

**RESOLUTION NO. 22-92
Proposed Inter Department/Fund Transfers**

WHEREAS, the Board of County Commissioners of Luna County has the statutory authority to approve, modify and amend the County's annual operating budget; and

WHEREAS, development of an annual budget includes a considerable amount of professional guessing about events that may occur in the future; and

WHEREAS, during the course of the budget year actual events can result in receiving revenues or making expenditures that were not expected at the time the budget was prepared and adopted; and

WHEREAS, it is necessary to adjust the County's adopted budget to properly provide for these unexpected events.

NOW THEREFORE BE IT RESOLVED that the Board of County Commissioners of Luna County hereby adopts the changes to the County's Fiscal Year 111, July 1, 2022 through June 30, 2023 Budget proposed by the County's management staff and attached hereto in spreadsheet form, as amendments to the previously adopted operating budget.

PASSED, APPROVED AND ADOPTED THIS 19th DAY OF DECEMBER, 2022.

BOARD OF COUNTY
COMMISSIONERS OF LUNA
COUNTY

Barbara L. Reedy, District One

Linda M. Smrkovsky, District Two

ATTEST:

Berenda L. McWright, Luna County Clerk

John S. Sweetser, District Three

Be it remembered that at a Regular meeting of the Board of County Commissioners of Luna County in Deming NM on the 19th day of December, 2022 the following budget adjustments are proposed and entered of record.

Budget Resolution Number 22-92

Proposed Inter Department Transfer

ITEM NO	Adjustment Type	Fund/ DFA Fund	Dept.	From	FROM Current Balance	Transfer amount	TO Line Number	Transfer Amount	Purpose
One	Transfer	401/11000	General Fund - Planning Department	401-14-2008 Printing and Publishing	\$3,394.76	\$2,000.00	401-14-2010 Mileage/Per Diem	\$2,000.00	To pay for trainings through the remainder of the fiscal year.
Two	Transfer	401/11000	General Fund - Dispatch	401-20-2101 Professional Contract/ Services	\$63,075.00	\$10,200.00	401-20-2012 Equip/Supplies/ Mtn/Repairs	\$10,200.00	To pay for 4 computer for the New CAD system for Dispatch.
Three	Transfer	401/11000	General Fund - Economic Development	401-58-2002 Salaries - Full-Time	\$132,519.38	\$60,000.00			
				401-58-2063 Match - PERA - 17.17%	\$28,143.53	\$10,000.00			
				401-58-2064 Match - FICA 6.2%	\$9,077.71	\$3,000.00			
				401-58-2065 Match - Group Insurance	\$29,979.48	\$10,000.00	401-58-2101 Professional Contract/ Services	\$60,000.00	To pay for contract services per agreement.
				401-58-2092 Tourism Activities	\$34,375.00	\$15,000.00	401-58-2205 Special Projects	\$38,000.00	To pay for contract services per agreement.
Four	Transfer	402/20400	Road Department	402-10-2023 Grounds	\$20,383.59	\$3,000.00	402-10-2010 Mileage/Per Diem	\$3,000.00	To pay for trainings through the remainder of the fiscal year.
Five	Transfer	801/59900	Entertainment Complex	801-80-2029 Capital Improvements	\$347,671.23	\$5,000.00	801-80-2008 Printing and Publishing	\$5,000.00	To pay for advertising through remainder of the fiscal year.
					\$668,619.68	\$118,200.00		\$118,200.00	

The seal of Luna County, New Mexico, is a circular emblem. It features a central red sun with rays, set against a black background. Above the sun are three red vertical bars of increasing height. Below the sun are three red horizontal bars. At the bottom of the seal is a black silhouette of a mountain range. The year "1901" is inscribed in white at the very bottom. The words "LUNA COUNTY" are written in white across the top half of the seal.

Barbara L. Reedy, District 1
Linda M. Smrkovsky, District 2
John S. Sweetser, District 3

BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY

John S. Sweetser, District 3

Date _____

Date _____

Be it remembered that at a Regular Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 19th day of December, 2022, the following proceedings were had and entered of record.

LUNA COUNTY

RESOLUTION 22-93

DISPOSITION OF PERSONAL PROPERTY

WHEREAS, pursuant to Section 4-38-1, NMSA 1978, the powers of a county as a body politic and corporate shall be exercised by a Board of County Commissioners;

WHEREAS, Section 4-38-13, NMSA 1978, provides that the Board of County Commissioners shall have the power at any session to make such orders concerning the property belonging to the county as they may deem expedient;

WHEREAS, Section 13-6-1, NMSA 1978 declares that a County may dispose of tangible personal property and delete it from the public inventory upon a specific finding that each item is of current resale value of five thousand dollars (\$5,000.00) or less and is worn out, unusable or obsolete to the extent that the item is no longer economical or safe for continued use;

WHEREAS, a designated committee of three Luna County Officials has declared that all of the tangible personal property that is the subject of this resolution meets the criteria set for in Section 13-6-1, NMSA 1978; and

WHEREAS, pursuant to Section 13-6-2, NMSA 1978, the personal property will be disposed of by live or online auction open to the public or by an inter-governmental transfer to another state agency or local public body.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Board of County Commissioners of Luna County:

1. Finds that the property described in the Attachments hereto and incorporated by reference into this Resolution consists of property owned by the County of Luna with varying resale values, which is worn-out, unusable or obsolete to the extent that the items are no longer economical or safe for continued use by the County;
2. A copy of this Resolution and Attachments shall be sent to the State Auditor and the Local Government Division of the Department of Finance and Administration at least thirty (30) days before the disposal of the property, pursuant to Section 13-6-1(B)(2), NMSA 1978;
3. A copy of this Resolution and Attachments shall be made a permanent part of the official minutes of Luna County and maintained as a public record subject to the Inspection of Public Records Act.
4. All of the personal property will be disposed of by live or online auction process open to the public or through inter-governmental transfer.

Done at Deming, New Mexico this 19th day of December, 2022.

BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY

ATTEST:

Barbara L. Reedy
Commissioner, District 1

Berenda McWright, County Clerk

Linda M. Smrkovsky
Commissioner, District 2

John S. Sweetser
Commissioner, District 3

Be it remembered that at the Regular Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 19th day of December 2022, the following proceedings were had and entered of record.

RESOLUTION 22-94

ESTABLISHING SALARIES FOR ELECTED OFFICIALS

WHEREAS, Section 4-44-1, NMSA 1978 establishes classification of counties for the purpose of fixing salaries of public officer on a biennial basis, pursuant to Section 4-44-2, NMSA 1978; and

WHEREAS, Luna County is classified as a B Over County and as such, the Luna County Board of Commissioners shall establish salaries not to exceed salaries set by the Legislature, Section 4-44-4.1, NMSA 1978;

WHEREAS, the New Mexico Constitution, Article IV, Section 27, prohibits changing the salary of any elected official during the term of office in which the change is made;

WHEREAS, the Board of County Commissioners of Luna County last formally addressed the salaries of elected officials by Resolution 20-55, but approved an increase Elected Officials' salaries to the maximum allowed by law with the Preliminary Budget Approval on May 26, 2022 for eligible elected officials on January 1, 2023;

WHEREAS, the Board of County Commissioners of Luna County standardized the salaries of the Chief Deputies for the Assessor, Clerk and Treasurer offices at ninety-five (95%) of the elected officials' salary in Resolution 21-26 passed the Regular Meeting on March 11, 2021; and

WHEREAS, the Board of County Commissioners of Luna County in Resolution 21-28, passed on March 11, 2021, authorized Additional Compensation of Three Thousand Five Hundred Dollars (\$3,500.00) for the Assessor pursuant to Section 4-39-4, NMSA 1978, and for the Chief Deputy Assessor pursuant to Section 4-39-5, NMSA 1978.

NOW THEREFORE BE IT RESOLVED, the Board of County Commissioners of Luna County wishes to memorialize the aforementioned actions recognizing the salaries listed below effective January 1, 2023, and applied to eligible elected officials:

Position	Current Salary	New Salary	Eligible 01/01/2023
Assessor	\$61,559.94	\$75,733.00	Yes
Chief Deputy Assessor	\$58,481.94 (95%)	\$71,946.35	Yes
Clerk	\$66,484.74	\$75,733.00	No
Chief Deputy Clerk	\$63,160.60 (95%)	\$71,946.35	No
Commissioner District 1	\$24,544.26	\$30,196.00	Yes
Commissioner District 2	\$24,544.26	\$30,196.00	Yes
Commissioner District 3	\$26,507.80	\$30,196.00	No
Probate Judge	\$21,525.66	\$26,482.00	Yes
Sheriff	\$64,175.28	\$78,952.00	Yes
Treasurer	\$66,484.74	\$75,733.00	No
Chief Deputy Treasurer	\$63,160.60 (95%)	\$71,946.35	No

The Assessor and Chief Deputy Assessor shall also continue receiving Additional Compensation of Three Thousand Five Hundred (\$3,500.00) per year.

DONE THIS 19TH DAY OF DECEMBER, 2022

LUNA COUNTY BOARD OF COMMISSIONERS

ATTEST:

**Linda M. Smrkovsky, Commissioner
District 2**

Berenda McWright, Clerk

**Barbara L. Reedy, Commissioner
District 1**

**John S. Sweetser, Chairperson
Commissioner, District 3**

Be it remembered that at a Regular meeting of the Luna County Board of County Commissioners in Deming New Mexico, on the 19th day of December 2022, the following proceedings were had and entered of record.

RESOLUTION #22-95

A RESOLUTION IN SUPPORT OF EXPANDING TELECOMMUNICATION SERVICES IN COLUMBUS NEW MEXICO

WHEREAS, The Board of County Commissioners (BOCC) of Luna County, to the extent of its authority, wants to ensure equitable access to telecommunications services throughout the community;

WHEREAS, The BOCC encourages the private sector to pursue the expansion and improvement of telecommunication infrastructure and services that are efficient and responsive to the needs of the community;

WHEREAS, the Village of Columbus has one existing cell tower, with cell reception extending only as far as 5 miles West and 12 miles East of Columbus;

WHEREAS, the Village of Columbus and its surrounding community, to include law enforcement agencies such as the Luna County Sheriff's Office, State Police and the United States Border Patrol, experience various network problems such as dropped calls, difficulty connecting, and slow mobile internet, or experience no connectivity at all;

WHEREAS, Luna County has established an Ordinance to regulate the installation of cell towers; Ordinance 53: AN ORDINANCE REGULATING THE SITING AND PERMITTING OF WIRELESS TELECOMMUNICATION FACILITIES, and any new towers are required to follow this process to safely and effectively comply with County regulations.

NOW, THEREFORE, BE IT RESOLVED:

That the BOCC is in full support of a Wireless Telecommunication Facility being constructed in the area of, or near the Village of Columbus to enhance the quality of cell phone reception to the community and local law enforcement, thus improving the quality of life and safety of its community members.

DONE THIS 19th DAY OF DECEMBER , 2022

**BY THE BOARD OF COUNTY COMMISSIONERS OF
LUNA COUNTY, STATE OF NEW MEXICO**

ATTEST:

**Barbara L. Reedy,
Commissioner, District 1**

Berenda McWright, County Clerk

**Linda M. Smrkovsky, Chairperson
Commissioner, District 2**

**John S. Sweetser,
Commissioner, District 3**

STATE OF NEW MEXICO
County of Luna

Barbara L. Reedy
Commissioner, District 1

Linda M. Smrkovsky
Chair, District 2



John S. Sweetser
Commissioner, District 3

Chris A. Brice
County Manager

700 South Silver Avenue • Post Office Box 551 • Deming, New Mexico 88031
Telephone (575) 546-0494 Facsimile (575) 544-4293
lunacountynm.us

From: LUNA COUNTY BOARD OF COUNTY COMMISSIONERS
Date: December 1, 2022

2023 Luna County Holiday Schedule

Holiday	Day of Observance	Date
New Year's Day	Monday	01/02/2023
Martin Luther King, Jr. Day	Monday	01/16/2023
President's Day	Monday	02/20/2023
Good Friday	Friday	04/07/2023
Memorial Day	Monday	05/29/2023
Juneteenth National Independence Day	Monday	06/19/2023
Independence Day	Tuesday	07/04/2023
Labor Day	Monday	09/04/2023
Indigenous Peoples' Day	Monday	10/09/2023
Veterans Day	Friday	11/10/2023
Thanksgiving Day-Close noon	Wednesday	11/22/2023
Thanksgiving Day	Thursday	11/23/2023
Personal Day	Friday	11/24/2023
Christmas Eve	Friday	12/22/2023
Christmas Day	Monday	12/25/2023

Board of County Commissioner Chairman

Date

Be it remembered that at the Regular Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 19th day of December 2022, the following proceedings were had and entered of record.

RESOLUTION 22-96

AUTHORIZING THE PURCHASE OF PROPERTY

WHEREAS, Luna County, by and through the Board of County Commissioners, intends to purchase the property located in, Deming, Luna County;

- A parcel of land being a 10 acre tract in the northeast quarter of Section 25, T24S, R9W; See Exhibit A

NOW THEREFORE, BE IT RESOLVED by signature of the Board of Commissioners of Luna County, it is agreed to authorize the County Manager to purchase the property by process and in compliance with the laws of the State of New Mexico and Luna County Ordinances and Resolutions, policies and procedures, including entering into an agreement and take all other action necessary.

Done at Deming, New Mexico this 19th day of December, 2022

Board of County Commissioners of Luna County

ATTEST:

Linda M. Smrkovsky, Chairperson
Commissioner, District 2

Berenda McWright,
County Clerk

Barbara L. Reedy,
Commissioner, District 1

John S. Sweetser,
Commissioner, District 3

EXHIBIT A

A parcel of land being a 10.000 acre tract in the northeast quarter of Section 25, Township 24 South, Range 9 West, N.M.P.M., Luna County, New Mexico, being more particularly described as follows:

Beginning at the northeast corner of the subject tract, being the intersection of a 50 foot wide easement on McCan Road and a 30 foot wide easement on Rockhound Road, from which the northeast corner of Section 25 bears N.85d51'E. 58.24 feet, and from which corner a found pin capped King 7250 bears S.14dE. 0.13 feet; thence along said 50 foot easement on McCan Road S0d13'57"E. 1588.00 feet to the south line of the parent tract from which a found pin capped King 7250 bears S.36dE. 0.10 feet; thence along said line West 274.31 feet to a set 5/8" pin capped Bunton 7473; thence leaving the aforementioned south boundary N.0d13'57"W. 1588.00 feet to a set 5/8" pin capped Bunton 7473 on the south easement line of Rockhound Road; thence along said line East 274.31 feet to the point of beginning.

This parcel contains 10.000 acres more or less and is subject to any easements of record.