

# COUNTY OF LUNA STATE OF NEW MEXICO

## CODE OF CONDUCT POLICY

Luna County policy regarding the “Governmental Conduct Act” 10-16-1 *et. seq.* NMSA 1978 as amended in 2011 (2012 Cumulative Supplement); and, other laws pertaining to similar subject matter.

### SECTION ONE – Purpose

- 1.1 Luna County Elected officials, employees and volunteers shall treat their government or quasi-government position as a public trust, requiring adherence to and respect for the Constitution and laws of the United States of America, the Constitution and laws of the State of New Mexico, and the ordinances and resolutions of Luna County. Elected officials, employees, and volunteers shall use the powers and resources of public office to advance the public interest rather than as an opportunity to obtain personal benefits or pursue private interests incompatible or competing with the public interest.
- 1.2 The purpose of this CODE OF CONDUCT POLICY is to restate the “Governmental Conduct Act” 10-16-1 *et. seq.* NMSA 1978 as amended in 2011; and other applicable laws with similar subject matter, IN TERMS SPECIFICALLY DIRECTED TO Luna COUNTY; and, the establishment of guidelines for ethical standards of conduct for all elected officials and employees of Luna County by setting forth those acts or actions which are incompatible with the best interests of the County and by requiring elected officials and employees to disclose personal interests, financial or otherwise, in matters affecting the County.
- 1.3 It is the further purpose of this Code of Conduct to protect County employees from undue influence, threats, fear of threats, or reprisal with respect to the work that they perform for the County.

## **SECTION TWO - Expectations / Applicability**

- 2.1 The citizens of Luna County have entrusted us (the Elected Officials and employees of Luna County) with the responsibility of ensuring that tax dollars which fund the services we provide are spent wisely and efficiently. As County employees, the public is our employer. Our work and conduct are always subject to public scrutiny and approval. Our contact with citizens and performance results will often be the basis upon which the County government is judged.
- 2.2 Elected officials and Employees of Luna County shall in all instances maintain their conduct at the highest personal and professional standards in order to promote public confidence and trust in the County and public institutions and in a manner that merits the respect and cooperation of fellow employees.
- 2.3 The County's level of professionalism is demonstrated by each Official's and employee's actions or in some cases inaction; therefore, the County expects employees to conduct themselves professionally during every interaction and every task.
- 2.4 The Code of Conduct shall apply to all elected officials, employees, and volunteers as defined herein.

## **SECTION THREE – Definitions**

- 3.1 As used in the Governmental Conduct Act; with additional definitions specific to this Policy and to Counties;
  - 3.1.1 “business” means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;
  - 3.1.2 “Commissioner” means the individual elected from each of the three districts within Luna County to represent the constituents of that district.
  - 3.1.3 “confidential information” means information that by law or practice is not available to the public.
  - 3.1.4 “Conflict of Interest” means any business activity or other relationship with a persona that compromises an elected official's or employee's loyalty to the County, and which may influence or predispose an official action or any use of authority of the office or position for personal reasons.

- 3.1.5 “contract” means an agreement or transaction having a value of more than one thousand dollars (\$1,000) with a state or local government agency for:
- 3.1.5.1 The rendition of services, including professional services;
  - 3.1.5.2 The furnishing of any material, supplies or equipment;
  - 3.1.5.3 The construction, alteration or repair of any public building or public work;
  - 3.1.5.4 The acquisition, sale, or lease of any land or building.
  - 3.1.5.5 A licensing arrangement;
  - 3.1.5.6 A loan or loan guarantee; or
  - 3.1.5.7 The purchase of financial securities or instruments.
- 3.1.6 “County Manager” means the person retained by the Board of County Commissioners to manage the daily operations of the County. It includes any other designee when acting at the direction of the County Manager.
- 3.1.7 “Elected Official” means the Board of County Commissioners, County Assessor, County Clerk, County Treasurer, and Sheriff. It does not include the Probate Judge, who is subject to the Code of Judicial Conduct.
- 3.1.8 “Employee” means employees, appointees, agents, and volunteers of the County. The inclusion of appointees, agents, and volunteers in this definition is intended only for the provisions of this CODE OF CONDUCT. It shall not create any employer/employee relationship from which rights of employment arise, including, but not limited to, pay, benefits, or rights under any law which may create rights or benefits for employees of Luna County.
- 3.1.9 “employment” means rendering of services for compensation in the form of salary as an employee;
- 3.1.10 “family” means an individual’s spouse, parents, children or siblings, by consanguinity or affinity;
- 3.1.11 “financial interest” means an interest held by an individual or the individual’s family that is:

- 3.1.11.1 an ownership interest in business or property; or
- 3.1.11.2 Any employment or prospective employment for which negotiations have already begun;
- 3.1.12 “local government agency” means a political subdivision of the state or an agency of a political subdivision of the state; (This definition makes the Governmental Conduct Act applicable to Luna County as a political subdivision of the State of New Mexico).
- 3.1.13 “official act” means: discussion in a duly called meeting; an official decision; recommendation; approval; disapproval or other action that involves the use of discretionary authority;
- 3.1.14 “public officer or employee” means any elected or appointed official or employee of Luna County (a local government agency) who receives compensation in the form of salary or is eligible for per diem or mileage;
- 3.1.15 “standards” means the conduct required by the Governmental Conduct Act and this Policy;
- 3.1.16 “state agency” means any branch, agency, instrumentality or institution of the state; and,
- 3.1.17 “substantial interest” means any ownership interest.

## **SECTION FOUR – Restatement of Ethical Principles; Prohibition of Certain Officials Acts; and Financial Disclosures (From the Governmental Conduct Act, and Other Applicable related laws).**

- 4.1 This section restates the ethical principles and prohibitions of certain official acts IN TERMS DIRECTED TO LUNA COUNTY Elected Officials and Employees (as defined in this Code of Conduct) of the County. In some instances, the Restatement for Luna County is more stringent than the Governmental Conduct Act, NMSA §10-16- 11.1

**As restated from the Governmental Conduct Act and Other Applicable Laws, County Elected Officials and Employees of Luna County shall:**

- 4.1.1 Treat the office or position and relationship as a public trust; and, shall use the powers and resources of public office or position only to advance the public interest and not to obtain personal benefits or pursue private interests.
- 4.1.2 Conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintain the integrity and discharging ethically the high responsibilities of public service.
- 4.1.3 Use full disclosure of real or potential conflicts of interest as a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.
- 4.1.4 Not request or receive, and not offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act.
- 4.1.5 Not directly or indirectly coerce or attempt to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency, or person for a political purpose.
- 4.1.6 Not threaten to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, require an employee to contribute a percentage of the employee's pay to a political fund, influence a subordinate employee to purchase a ticket to apolitical fundraising dinner or similar event, advise an employee to take part in political activity or similar activities.
- 4.1.7 Uphold and enforce the officer's or employee's duty not to use property belonging to the County or allow its use, for other than authorized purposes. (a non-exclusive example: Use of county vehicle to drop off non-employee family members at work or school).
- 4.1.8 Not take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Officers and Employees shall not solicit money services or goods for personal benefit. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.
- 4.1.9 Be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial

interest to the public officer or employee is proportionately less than the benefit to the general public.

- 4.1.10 Not during the term for which an officer is elected and no public employee during the period of employment acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act.
- 4.1.11 Not request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purpose of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars (\$100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.
- 4.1.12 Disclose in writing to the County all employment engaged in by the officer or employee other than the employment with or service to the County.
- 4.1.13 Not participate directly or indirectly in the contracting process if the officer or employee of the County is (or is to become), the employee of any person or business contracting with the County.
- 4.1.14 Not use or disclose confidential information acquired by virtue of the public officer's or employee's position with the County for the public officer's or employee's or another's private gain or to the County's detriment, unless otherwise required by law. Prior to any such disclosure, the elected official or the employee shall inform the County Attorney.
- 4.1.15 Be aware of and follow the ethical principles and rules for Bids and Contracts with the County involving public officers or employees. Such as:
  - 4.1.15.1 The County cannot enter into a contract with a public officer or employee of the County, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed through public notice the public officer's or employee's substantial interest and unless the contract is awarded pursuant to a competitive process. A person negotiating or executing a contract on behalf of the County shall exercise due diligence to ensure compliance with the provisions of NMSA §10-16-17 and NMSA §4-44-22.

- 4.1.15.2 The County cannot enter into a contract with, or take any action favorably affecting, any person or business that is: (1) represented personally in the matter by a person who has been a public officer or employee of the County within the preceding year, if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or, (2) assisted in the transaction by a former public officer or employee of the County whose official act, while in employment with the County, directly resulted in the agency's making that contract or taking that action. For a period of one year after leaving Luna County service or employment, a former public officer or employee shall not represent for pay a person before the County.
- 4.1.15.3 The County cannot accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency or local government agency shall exercise due diligence to ensure compliance with this section.
- 4.1.16 Not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction of items of tangible personal property directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest; to an employee supervised by the public officer or employee; or, to a person over whom the public officer or employee has regulatory authority.
- 4.1.17 Not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property: to an employee supervised by the public officer or employee; or, to a person over whom the public officer or employee has regulatory authority. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a public officer or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under the supervision of the public officer or employee.
- 4.1.18 Not accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an offer of a contract in which the public officer or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority.

- 4.1.19 Not knowingly accept a contribution of anything of value from a business that contracts with the County to provide financial services involving the investment of public money or issuance of bonds for public projects.

For the purpose of this paragraph: “anything of value” means any money, property, service, loan or promise, but does not include food and refreshments with a value of less than twenty-five dollars (\$25.00) consumed in a day; and, “contribution” means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration.

- 4.1.20 At the time of hiring submit a financial disclosure statement on a prescribed form; and, each year thereafter during the month of January, submit an updated financial disclosure statement. Each disclosure statement shall disclose the nature and extent of any financial interest that the officer or employee believes or has reason to believe may be affected by an official act or actions of the officer or employee regarding that interest. The disclosures shall be made in writing to the Human Resources Director to be kept within the officers or employees file; and, shall be kept by the County Clerk. The County Clerk shall maintain the confidentiality of the valuations attributed to the reported interests, as filed by County officials and employees (as defined in this Code of Conduct), except as permitted by statute in official removal proceedings.
- 4.1.21 Understand that the provisions of the New Mexico Financial Disclosure Act (N.M.S.A. §§ 10-16A-1 *et seq.*) are restated herein; and, remain in full effect for those required to file under that Act.

## **SECTION FIVE – Luna County Specific Ethical Standards and Code of Conduct**

- 5.1 Luna County hereby adopts and sets forth standards that are more stringent and/or specific to Luna County. See the Governmental Conduct Act. §10-16-11.1. Elected officials and employees hold office or employment for the benefit of the public. They are bound to uphold the Constitutions of the United States and of the State of New Mexico; to observe the highest standards of law in the exercise of the powers and duties of their office; to impartially carry out the laws of the United States, the State of New Mexico, and Luna County; to discharge faithfully the duties of their office regardless of personal considerations; and to recognize that public interest must be their primary concern.



## **5.2 General Responsibilities of Public Office and Service**

- 5.2.1 No individual member of the Board of County Commissions has the authority to make representations, assurances, admissions, or waivers on behalf of the Board of County Commissioners without a formal grant of authority.
- 5.2.2 Elected officials and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people of Luna County and the State of New Mexico, at all times maintaining the highest degree of integrity in discharging their public responsibilities ethically.
- 5.2.3 Elected officials and employees shall not disclose privileged information acquired in a closed session (or other confidential meeting or discussion) without the explicit authorization of the County body and the County Attorney.
- 5.2.4 Elected officials and employees shall not engage in any activity that would compromise the fulfillment of their responsibilities or create an appearance of impropriety when dealing with public policy.
- 5.2.5 Elected officials and employees shall treat each other with the utmost respect, decorum, and fairness at all times, including during public discourse of conflicting views. Elected officials and employees shall not make any allegations of misconduct by elected officials or employees, unless they provide, at the time they make the allegation of misconduct or in response to requests by those responsible for the investigation, factual basis for their allegations, including information as to the source of such information. Failure to provide specifically factual information including the source of such information shall be a violation of the Code of Conduct.
- 5.2.6 The Chairperson shall ensure that members of the public treat elected officials and employees with respect at all times, including during public discourse of conflicting views.
- 5.2.7 Elected officials and employees shall protect and conserve County property and shall not use said property for other than authorized purposes.
- 5.2.8 Elected officials and employees shall comply with the requirements of the Open Meetings Act.
- 5.2.9 No former county commission or other elected official shall accept or enter into any arrangement or agreement for remuneration with the county for consultant work, part-

time or full-time employment in any capacity for a period of twelve (12) months from and after leaving office.

### **Section 5.3 County Operations**

- 5.3.1 The Board of County Commissioners employs a County Manager to handle the day-to-day business and general management of the County. All County Elected Officials and Employee's shall follow the established chain of command; however, it is recognized that for informational purposes only, dialogue between employees and Board members may be necessary. The Board shall encourage the development, implementation, and enforcement of responsible policies and procedures for efficient operation by the County management staff. [NMSA § 4-38-19]
- 5.3.2 Commissioners shall not direct the work of employees of the County except through policy that is established by ordinances and resolutions adopted by the Board of County Commissioners. It is the responsibility solely of the County Manager to assign and direct the work of County employees. It is recognized that only the County Manager; and, at times, the County Attorney, report directly to the Board of County Commissioners.
- 5.3.3 The Board of County Commissioners has adopted ordinances, policies, and resolutions that govern County personnel matters. It is recognized that these formal acts of the Board of County Commissioners and any collective bargaining agreements entered into by the Board of County Commissioners establish the only procedures for addressing personnel discipline and grievances. It is a violation of the Code of Conduct for any elected official to interfere with these procedures or attempt to influence the outcome of the processes. It is a violation of the Code of Conduct for any elected official to seek information concerning a personnel action except when it is appropriately discussed in closed session of the Board of County Commissioners. It is not a violation of the Code of Conduct for the County Assessor, County Clerk, County Treasurer, or the Sheriff to participate, as permitted by ordinance, resolution, and collective bargaining agreement, in the personnel processes when the involved personnel is an employee of the elected official's office. It is not a violation of the Code of Conduct for an elected official, if he/she desires, to appear as a witness in the personnel disciplinary or grievance processes.
- 5.3.4 Elected officials and employees recognize that the Board of County Commissioners operates as a body politic and corporate and that one elected official, employee, or agent cannot bind the County without specific delegation of authority by the Board. [NMSA § 4-38-1]

- 5.3.5 The Commissioner who serves as the Board's Chairperson has certain duties and authority distinct from the other Commissioners. These are: to open all meetings of the Board, call the members to order, announce all business on the agenda and put same to a vote when required to maintain/enforce order and decorum among members of the Board; to sign documents on behalf of the Board; to administer oaths to any person concerning any matter submitted to the Board or connected with its powers and duties; and to sign all orders on the County Treasury and County documents, as authorized by a majority of the Board. [NMSA § 4-38-11] unless specifically delegated to the Chairperson of the Board, the Chairperson has no more authority than any other member.
- 5.3.6 The selection of the Chairperson shall be made at the first meeting in January of each year.
- 5.3.7 A County Commission may decline to serve as Chairperson or Vice Chairperson. The Board of County Commissioners shall conduct meetings in an orderly manner with decorum and respect to all participants under the process of the Open Meetings Act; and, as set forth in the annual open Meetings Act Resolution. Should issues of procedure arise that cannot be resolved by agreement among the Commission, the issue(s) will be held in abeyance until the County Attorney can research the procedure issue and propose a way to resolve the procedure question as set forth in the Annual Open Meetings Act Resolution.
- 5.3.8 Any County Commission may place a matter on the agenda for the Board of County Commissioners meetings in any of its official capacities subject to the processes of the Open Meetings Act. (NMSA 1978 §§ 10-15-1 et.seq.); or, any ordinance adopted setting forth agenda and meeting procedures.
- 5.3.9 Any item that is suggested for discussion in a closed session must be reviewed by the County Attorney for conformity with the Open Meetings Act §10-15-1(H) prior to placement on the Agenda.
- 5.3.10 The County Assessor, County Clerk, Sheriff, and County Treasurer shall advise the Board of County Commissions through the County Manager on all matters concerning their respective offices, to include suggestions and recommendations for more efficient administration of County finances, government, or other functions. Cooperation between the various elected officials in the exercise of their respective official duties shall be the goal, and in the event one or several elected officials fail or neglect to cooperate in exercising their respective duties, to the detriment of efficiency in County government, mediation will be sought.

5.3.11 Elected Officials, Department heads, managers, and supervisors in all County offices shall build and maintain a culture of compliance with laws and rules by:

5.3.11.1 Leading by following the County professionalism expectations and leadership models, using their behavior as a model for all employees.

5.3.11.2 Encouraging employees to bring forth questions and concerns relating to the operation of the County government without fear of retaliation.

5.3.11.3 Ensuring that all employees' complete training and needed updates related to their work and to compliance.

5.3.11.4 Applying appropriate and consistent disciplinary action in accordance with the most current Personnel Policy Ordinance.

#### **Section 5.4    Avoidance and Disclosure of Conflicts of Interest**

5.4.1 Full disclosure of real or potential conflicts of interest shall be the guiding principle for determining appropriate conduct. At all times, diligent effort shall be made to avoid undue influence and abuse of office in public service.

5.4.2 When acting in a quasi-judicial role, any elected official or employee shall disqualify himself/herself from any official act, including discussion or vote, directly affecting a financial interest or any other interests which would impair the official's or employee's ability to decide fairly and impartially the matter before him/her. Elected Officials or Employees shall remove himself/herself from the quasi-judicial role if any ex parte communication has occurred. When not acting in a quasi-judicial role, any elected official or employee shall disqualify himself/herself from any official act, (including discussion), affecting a financial interest. Elected officials and employees may not take any official action for the purpose of enhancing their financial interests and shall disqualify themselves from engaging in any official act directly affecting their financial interests.

5.4.3 Elected officials and employees shall not acquire a financial interest in a business or other activity when they believe or have reason to believe that it will be directly affected by their official act.

5.4.4 No County elected officer shall accept or receive to their own use, or for or on account of any deputy or deputies, clerk or clerks appointed by them or employed in their office, or for or on account of expenses incurred by them or by any such deputy or deputies, clerk or clerks, or for or on account of their office, any salary, compensation allowance, fees or

emoluments in any form whatsoever for the performance of their official duties, other than as authorized by law. [NMSA § 4-44-21].

- 5.4.5 Any elected County official who has received an individual campaign contribution shall publicly announce said contribution prior to consideration of any official action by the Board directly or indirectly relating to that contributor. Personal or professional relationships shall be similarly disclosed. The elected official shall then make a statement whether the disclosed relationship will affect his/her ability to remain fair and impartial. After a disclosure, if two (simple majority) members of the Board determine that a reasonable person would not be able to remain impartial under the circumstances disclosed, the member determined to have a conflict of interest shall not participate further in any discussion or proceeding relating to the item.

## **Section 5.5 Procurement and Contracts**

- 5.5.1 Luna County shall not enter into contracts involving, nor take action favorably affecting, any person or business represented by a person who has been an elected official or employee within the preceding year. When it is determined by the County Manager that granting an exception to this provision is in the best interests of the County, the County Manager may waive this prohibition. If the prohibition is waived, the County Manager shall notify the Board of County Commissioners of the waiver within 30 days of the granting of the waiver.
- 5.5.2 Elected officials and employees shall not accept anything of value exceeding \$25 from any person doing business with the County or person who reasonably anticipates doing business with the County in the future. This limitation of \$25 does not apply to meals.
- 5.5.3 Elected officials and employees shall be cognizant of the fact that under the New Mexico Criminal Code it is either a misdemeanor or a fourth-degree felony to commit “unlawful interest in a public contract”, i.e., the receipt of anything of value, directly or indirectly, from either a seller or a seller’s agent, or a purchaser or a purchaser’s agents in connection with the sale or purchase by the County of securities, goods, leases, land, or anything of value. [NMSA § 30-23-6]
- 5.5.4 Elected officials and employees shall not participate directly or indirectly in any County matter when they know that they or a member of their immediate family has a financial interest in the organization seeking or obtaining a contract, absent a waiver issued pursuant to the statute. [The Procurement Code NMSA §§ 13-1-193, 13-1-194]

- 5.5.5 Elected officials and employees shall not participate directly or indirectly in a County procurement process and contemporaneously seek employment with an employee of the person contracting or seeking to contract with the County, absent a waiver issued pursuant to the statute. [The Procurement Code NMSA §§ 13-1-193, 13-1-194]
- 5.5.6 Luna County shall not accept a bid from a person who directly or indirectly participated in the preparation of specifications on which the competitive bidding was held.

## **SECTION SIX – Implementation and Training on the Code of Conduct**

This includes advising all County Elected Officials, employees, and volunteers at least annually of the Governmental Conduct Act and this Code of Conduct Policy.

- 6.1 Within thirty (30) days after this general Code of Conduct Policy is adopted, it shall be given to each County employee and elected official; and, reviewed with all elected officials and department heads. Within the next thirty (30) days after receiving the Code of Conduct, each elected official and department head shall have a meeting with their employees to discuss the provisions of the same. All new public officers and employees of the County shall review the Code of Conduct at the time of entering service; and, prior to or at the time of being hired, each employee shall review Section 5, 6, 7, and 8 and all subparts.
- 6.2 The Assessor, Clerk, Sheriff, and Treasurer and each department head may draft a separate code of conduct for all officers and employees in that office or department. The separate office/department code(s) of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and this Code of Conduct Policy, that are peculiar and appropriate to the function and purpose for which the office/department was created or exists. The separate code(s) or policies must be reviewed by the County Manager and County Attorney to make sure that a separate code provision does not conflict with this Code of Conduct Policy or the Governmental Conduct Act. For the elected offices, approval (after conflict review) can be made by the elected official; and, for the departments under the County Manager, approval (after conflict review) can be made by the County manager and the Department Head. Office specific Codes of Conduct shall be reviewed for changes and updates at least once every four years or when an elected officer or department head is changed. [This Policy also applies to JPA Boards that are under Fiscal Agent Guidance of the County.]

- 6.3 All public servants shall attend a minimum of two hours of ethics continuing education and training biennially.
- 6.4 The County Manager shall ensure that each newly elected official and employee is given a copy of the Code of Conduct.
- 6.5 A copy of the Code of Conduct Policy shall be available to review in each department, as well as published on the County's Internet website.
- 6.6 This Code of Conduct Policy may be amended at any time at the direction of the Board of County Commissions; and, shall, at a minimum, be reviewed every four years, with the next review due in 2017.

## **SECTION SEVEN – Code Compliance**

### **7.1 General restatement of State Law:**

- 7.1.1 There are enforcement procedures and penalties both civil and criminal under the Governmental Conduct Act NMSA 1978 §§ 10-16-14. §§ 10-16-18. In addition, violations of State law or this Policy can result in discipline, including dismissal, demotion or suspension; and, enforcement actions may include seeking civil injunctive of other appropriate orders including fines. The County regards ethical and professionalism violations as a serious breach of public trust. Under §10-16-17, criminal penalties for violations could result in a misdemeanor which includes a fine of not more than one thousand dollars (\$1,000) or imprisonment or both.
- 7.1.2 There are enforcement procedures and penalties both civil and criminal under the Financial Disclosure Act: i.e. possible conviction of a misdemeanor punished by a fine or by imprisonment or both; and, any person who knowingly and willfully violates the provisions of the Financial Disclosure Act is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. Civil penalties may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000); and, violations can result in discipline, including dismissal, demotion or suspension.
- 7.1.3 The District Attorney of the 6<sup>th</sup> Judicial District is authorized to investigate and prosecute any complaint brought involving a violation of NMSA §§ 4-44-22 through 4-44-27. [NMSA §4-44-27]. The Attorney General and the District Attorney for the 6<sup>th</sup> Judicial District are both authorized to bring a civil action for the enforcement of the

Procurement Code. [NMSA § 13-1-196];and, for violations of ethical conduct as set forth in the Governmental Conduct Act or the Financial Disclosure Act. The District Attorney may also commence an action to remove a County elected official from office, in accordance with NMSA § 10-4-1 et seq.

## **7.2 County Specific Compliance**

- 7.2.1 Violations of this Code of Conduct by any elected official, employee or appointed official or volunteer shall be reported to the County Manager, who will ensure a prompt, objective, and thorough investigation (the level of which is at the discretion of the County Manager). When appropriate, the County Manager will report the results of the investigation to the Board of County Commissioners. If the alleged violation is against the County Manager, it shall be reported to the County Attorney, who will ensure a prompt, objective, and thorough investigation the level of which is at the discretion of the County Attorney. The County Attorney will report the results of the investigation to the Board of County Commissioners.
- 7.2.2 With regard to violations of this Code of Conduct alleged against an employee or volunteer fire fighter, the alleged misconduct will be processed in accordance with the disciplinary procedures established by ordinances, resolutions, or for employees only, an applicable collective bargaining agreement.
- 7.2.3 The pursuit of censure for elected officials; or, disciplinary corrective action for employees, does not foreclose other remedies also available by law. All penalties contained herein are non-exclusive, and do not foreclose other remedies available by law. The County reserves the right to refer any conduct, whether covered by the Code of Conduct or not, to any agency or law enforcement agency with competent jurisdiction for criminal or civil prosecution.
- 7.2.4 The County shall inform and educate the elected officials and employees who are subject to this Code of Conduct. A person who violates the Code unintentionally or for good cause and not for personal motive, shall be given reasonable notice and time to correct the matter.

## **7.3 Compliance Procedures and Processes**

- 7.3.1 The County Manager is to accept all complaints or allegations of misconduct submitted to the County by citizens or public servants, whether covered by the provisions of this Code of Conduct or not, and monitor them to ensure that they are appropriately dealt with.



- 7.3.2 The County Manager is to inform the subject of the complaint about the complaint, when legally necessary, and inform the complainant where the complaint is at in the process, and inform them when the matter is concluded.
- 7.3.3 The County Manager is to direct the complaint to the appropriate law enforcement agency, and/or County Attorney for review; determine the need, level and responsibility for any necessary investigation; and, impose and/or consult with the appropriate official for disciplinary action as set forth in the most current Personnel Policy ordinance. If appropriate for a complaint that is easily answered and is not an alleged Code of Conduct violation, the County Manager may resolve the complaint and provide a copy of the complaint and resolution to the County Attorney or County HR Director as appropriate.
- 7.3.4 For complaints alleging violations of this Code of Conduct, the County Manager may schedule a preliminary meeting as part of or in lieu of any investigation process;
- 7.3.5 All complaints filed under this policy, shall remain confidential to allow the County to perform a self critical analysis to the extent allowed by law. (See, the Inspection of Public Records Act, NMSA 1978 §§ 14-12-1 *et.seq.*, as amended). Confidentiality for purposes of this Policy shall include all persons on a “need to know” basis so that the self critical analysis can be resolved and be of best benefit;
- 7.3.6 The County Manager may issue opinions on the meaning and interpretation of this Code of Conduct that will be applicable in handling any case under review. Any such opinion shall be issued with the assistance of the County Attorney;
- 7.3.7 The County Manager shall maintain an open door policy and shall meet privately and confidentially with public servants or the public to answer their questions and provide them with information about this Code of Conduct and the obligations of elected officials, candidates and public servants in an effort to resolve their issues informally. These discussions shall be kept confidential to the extent possible; and, except when probably criminal conduct may have occurred, or there are imminent threats to the health and safety of other individuals being made, or their identity must legally be disclosed in order to enforce county, state or federal law;
- 7.3.8 If an investigation finds that an employee or volunteer violated this Code of Conduct Policy, the County Manager will take the necessary steps for appropriate action to be taken; or, in the case of a violation out of one of the Offices of the Assessor, Clerk, Sheriff, or Treasurer, follow the process as set forth in the most current Personnel Policy Ordinance. (Failure of an Elected Official to follow the process in the most current

Personnel Policy ordinance can be a violation of this Code of Conduct and could render the Elected Official subject to the applicable provisions herein);

7.3.9 If an investigation finds that a candidate or elected official has violated this Code of Conduct, the matter will be brought before the Board of County Commissioners by the County Manager, who may impose any of the following penalties after the entry of written findings of fact and conclusions of law.

7.3.9.1 A written finding of censure; and,

7.3.9.2 When an elected official has committed an act that the Board of County Commissioners believes could be grounds for removal from office, they will refer their decision to the District Attorney.

#### **7.4 Limitations on Complaints**

7.4.1 Complaints filed more than one year after a violation of this Code is alleged to have occurred shall be dismissed as untimely; and,

7.4.2 All complaints submitted shall be resolved, determined, or dismissed by the County Manager within 90 days from the submission of the complaint. If the complaint is not resolved or determined within 90 days, the complaint shall be automatically dismissed, unless the County Manager, in writing issues a letter showing good cause and stating the time needed as an extension to resolve or determine the matter.

7.4.3 If a complaint filed under this Code of Conduct is determined to be a non-Code of Conduct issues, the County Manager shall refer the complaint to the appropriate process under the most appropriate policy or ordinance. Any complaint referred for review under another policy or ordinance shall comply with any submission criteria and timing procedures established in the appropriate policy. For example: *An employee brings a complaint under the Code of Conduct six months after the event giving rise to the allegations in the complaint. The County Manager analyzes the complaint and determines that it is a non-code of Conduct issue, but is appropriately brought under the employee grievance procedures of the Personnel Policy. The complaint will be sent to the appropriate supervisor for processing; and, all notice provisions and timing of processes in the grievance procedures shall be applied. In this example, the complaint/grievance if not submitted within the time limits of the grievance procedures, should be dismissed as untimely.*

## **7.5 Appeal**

- 7.5.1 Any decision of the Board of County Commissions, finding a violation of this Code, with respect to an elected official, or candidate may be appealed to the 11<sup>th</sup> Judicial District Court. Any decision regarding a County employee or volunteer firefighter, by the County Manager shall be appealed as covered by the terms of the employment rules and regulations or collective bargaining agreement, as applicable.

## **SECTION 8 – No Retaliation**

- 8.1 The Board of County Commissioners does not tolerate retaliation against any person who has reported a violation of this Code or other County Ordinances or state laws when made in good faith. This non-retaliation provision applies whether the complaint is ultimately determined to be well founded or unfounded. All County personnel and elected officials are specifically prohibited from taking any adverse employment action or other retaliatory action against anyone in retaliation for reporting a good faith claim of violation. Anyone who feels that they have been retaliated against in violation of this policy should submit a sworn complaint to the County Manager setting forth the claim of retaliation.
- 8.2 A complainant's report of facts may be regarded as being covered by the Whistleblower protection Act, NMSA § 10-16C-1, *et seq.*, and the County shall not retaliate against a complainant for filing a complaint. However, in regard to County employees, merely filing a complaint shall not provide immunity, or protection from County actions related to the complainant's own misconduct, poor job performance, a reduction in work force or other legitimate business purpose. The County reserves the right to act in the public interest in balancing the rights of a complainant to bring forward charges of misconduct while maintaining orderly and efficient operations of County government.
- 8.3 If the County Manager finds that a complaint for violation of this Code submitted by an employee is without merit and was made with intent to harm, harass or intimidate the subject of the complaint, he/she shall refer the complaint to the appropriate Supervisor and County HR Director for review and possible disciplinary action under the most current Personnel Policy Ordinance. For complaints of violations not covered by this Code found to be without merit, the County Manager may determine if a complaint was made with the intent to harm, harass or intimidate the subject and may take disciplinary action under the most current Personnel Policy Ordinance.

## SECTION 9 – Miscellaneous Provisions


### 9.1. Severability.

9.1.1 The provisions of this Code of Conduct are severable, and if any provision, sentence, clause, section, or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, the illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Policy or their application to the persons or circumstances. It is hereby declared to be the intent of the Board of County Commissioners that this Code of Conduct policy would have been adopted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included therein, and if the person or circumstances to which this Policy or part thereof is inapplicable had been specifically exempted there from.

APPROVED AND ADOPTED THIS 10th DAY OF April, 2014

LUNA COUNTY  
BOARD OF COUNTY COMMISSIONERS

  
\_\_\_\_\_  
Joe L. Milo, Jr., Commissioner

  
\_\_\_\_\_  
J. Jay Spivey, Commissioner

  
\_\_\_\_\_  
R. Javier Diaz, Commissioner

ATTEST:

  
\_\_\_\_\_  
Andrea Rodriguez, County Clerk

