

**Henry P. Roybal**  
*Commissioner, District 1*

**Miguel Chavez**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

## **MEMORANDUM**

**DATE:** *October 28, 2015*

**TO:** *Board of County Commissioners*

**FROM:** *Michael Kelley, Public Works Director*

**VIA:** *Katherine Miller, County Manager*

**ITEM AND ISSUE:** BCC Meeting November 10, 2015

**Request Approval to Extend the Lease Agreement between Santa Fe County and Bokum Burro Alley, LLC for the Lease of Office Space for an Additional Two Years through February 28, 2018./ \$561,425.76 and Authorizing the County Manager to Sign the Purchase Order and Lease Amendment. (Agnes Leyba-Cruz, Public Works/Michael Kelley/Public Works)**

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**SUMMARY:**

The purpose of this request is to extend the lease agreement between Bokum Burro Alley, LLC and Santa Fe County for an additional two years from February 28, 2016 through February 28, 2018 for an addition contract increase of \$561,425.76.

**BACKGROUND:**

On December 10, 2013, the Board of County Commission approved a lease agreement between Bokum Burro Alley, LLC and Santa Fe County for the lease of office space located at 142 West Palace Avenue in Santa Fe. The initial term of the lease is two years and will expire on February 28, 2016. The lease has an option to extend the lease for an additional two years provided that the County notifies the Lessor, Bokum Burro Alley, LLC, on or before December 31, 2015.

Through the lease agreement, Bokum Burro Alley, LLC provides the County with 15,580 square feet of office space at \$15.5247 per square foot, janitorial services at \$2,800 per month, and the use of parking spaces at 436.50 per month. The County has various County Departments and Divisions located in the Bokum Building including the Finance Department, Procurement Division, Information Technology, and the Assessor Office.

**ACTION REQUESTED:**

The Public Works Department requests approval of the extension of the lease between Bokum Burro Alley, LLC and Santa Fe County for the lease of office space located at 142 Palace Avenue in Santa Fe, for an additional two years for a contract increase of \$561,425.76 for the two year term and authorize the County Manager to Sign the Purchase Order and Lease Amendment.



**AMENDMENT NO. 2  
TO PROPERTY LEASE AGREEMENT  
BETWEEN SANTA FE COUNTY AND BOKUM/BURRO ALLEY, LLC**

This Amendment No. 2 is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015 by and between **Santa Fe County**, hereinafter referred to as "Lessee", a New Mexico political subdivision, and **Bokum Burro Alley, LLC**, a New Mexico limited liability company, located at 142 West Palace Avenue, Suite 300, Santa Fe, NM hereafter referred to as "Lessor".

**WHEREAS**, Lessee and Lessor entered into Lease Agreement No. 2014-0178-PW/GG on December 10, 2013, with a term of two years, that provides for the Lessee's lease of 14,549 square feet of office space in the building commonly referred to as the "Bokum Building" located at 142 West Palace Avenue, Santa Fe, NM; and

**WHEREAS**, Amendment No. 1 increased the square footage of office space leased, increased the number of parking spaces available to the Lessee, increased Lessee's payment for janitorial and maintenance services and increased the Lessee's monthly lease payment; and

**WHEREAS**, according to the Lease Agreement, the Agreement may be amended by an instrument in writing executed by the Lessee and the Lessor; and

**WHEREAS**, the Lessee and Lessor wish to amend the Lease Agreement No. 2014-0178-PW/GG to extend the term of the agreement for two years from March 1, 2016 through February 28, 2018.

**NOW, THEREFORE**, the parties agree as follows:

1. Paragraph 4 (Term of the Lease) of Lease Agreement No. 2014-0178-PW/GG is amended by inserting subparagraph "a" to read as follows:

- a. By Amendment No. 2 to this Agreement, the County wishes to exercise all its options to extend the term of this Agreement and the parties agree to extend the term for two years commencing March 1, 2016 and terminating February 28, 2018, unless earlier terminated pursuant to Paragraph 5 (Appropriations and Authorizations).

2. All other provisions of Lease Agreement No. 2014-0187-PW/GG not specifically amended or modified by this Amendment No. 1 and Amendment No. 2 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment No. 2 to Agreement 2014-0187-PW/GG as of the date first written above.

**LESSEE- SANTA FE COUNTY:**

\_\_\_\_\_  
Robert A. Anaya, Chair  
Board of County Commissioners of Santa Fe County

\_\_\_\_\_  
Date

**ATTESTATION:**

\_\_\_\_\_  
Geraldine Salazar  
Santa Fe County Clerk

\_\_\_\_\_  
Date

**APPROVED AS TO LEGAL FORM**

\_\_\_\_\_  
*Gregory S. Shaffer*  
Gregory S. Shaffer  
Santa Fe County Attorney

\_\_\_\_\_  
*10-21-15*  
Date

**FINANCE DEPARTMENT APPROVAL**

\_\_\_\_\_  
*Carole H. Jaramillo*  
Carole H. Jaramillo  
Santa Fe County Finance Director

\_\_\_\_\_  
*10/23/15*  
Date

**LESSOR-BOKUM BURRO ALLEY, LLC:**

\_\_\_\_\_  
*Richard A. Montoya*  
(Signature)

\_\_\_\_\_  
*10/26/15*  
Date

\_\_\_\_\_  
Richard A. Montoya  
(Print Name)

\_\_\_\_\_  
MANAGER Bokum LLC  
(Print Title)

10/2/2015

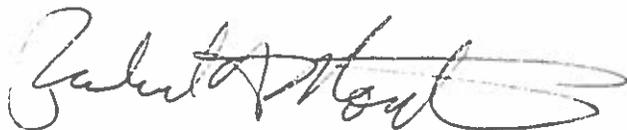
**Bill Taylor**

**Santa Fe County**

Bokum Burro Alley currently has two one year options on the lease. I would like to propose a single two year extension for the Bokum Building known as 142 W. Palace, Santa Fe, NM 87501. I believe this would simplify the current status and would be beneficial to both parties.

Please inform me the steps to accomplish this arrangement.

Thank you,

A handwritten signature in black ink, appearing to read "Richard A. Montoya". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard A Montoya

Manager Bokum Burro Alley LLC



**AMENDMENT NO. 1  
TO PROPERTY LEASE AGREEMENT  
BETWEEN SANTA FE COUNTY AND  
BOKUM/BURRO ALLEY, LLC**

This Amendment No. 1 is made and entered into as of this 13 day of May, 2014 by and between Santa Fe County, a political subdivision of the State of New Mexico, hereinafter "Lessee," and Bokum Burro Alley, LLC, a New Mexico limited liability company, located at 142 West Palace Avenue, Suite 300, Santa Fe, NM, hereinafter referred to as "Lessor."

**WHEREAS**, Lessee and Lessor entered into Lease Agreement No. 2014-0178-PW/GG dated December 10, 2013 and with a term of two (2) years, that provides for the Lessee's lease of 14,549 square feet of office space in the building commonly referred to as the "Bokum Building" located at 142 West Palace Avenue, Santa Fe, New Mexico;

**WHEREAS**, according to the Lease Agreement, the Agreement may be amended by an instrument in writing executed by the Lessee and the Lessor;

**WHEREAS**, the Lessee and Lessor wish to amend Lease Agreement No. 2014-0178-PW/GG to increase the square footage of office space leased by the Lessee; make available to the Lessee eight (8) additional parking spaces; increase the amount of the Lessee's payment for janitorial and maintenance services due to the increased square footage; and increase the Lessee's monthly lease payment .

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Paragraph 1 (Conditions of Lease) of Lease Agreement No. 2014-0178-PW/GG is amended by deleting "Exhibit A-1" and replace with "Exhibit B-1" attached hereto; deleting "14,549" and replace with "15,580".
2. Paragraph 1.c (Conditions of Lease) is amended by deleting "32" and replace with "40", deleting "18" and replace with "20", and deleting "14" and replace with "20".
3. Paragraph 2 (Compensation; Monthly Rent) is amended by inserting a subparagraph "A" to read as follows:

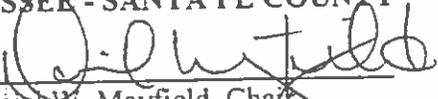
A. By Amendment No. 1 to this Lease Agreement, commencing June 1, 2014 the Lessee shall pay Lessor annual rent at the rate of \$15.5247 per square foot for 15,580 square feet of office space. In addition to the lease of office space, Lessee shall pay Lessor for janitorial services as specified in Paragraph 6 (c) in the amount of \$2,800.00 per month and the use of six (6) parking spaces on Chappelle Street and two (2) parking spaces at the Sandoval Parking Garage in the amount of \$436.50 per month. Commencing June 1, 2014 Lessee will pay monthly installments of \$23,392.74 per month due and payable on the first day of each month effective June 1, 2014.

4. Paragraph 23 (Attachments) is amended by inserting a subparagraph "2" to read as follows:

2. By Amendment No. 1, Exhibit B-1 is attached to and supersedes Exhibit A-1 and forms a part of this Lease.
5. All other provisions of Lease Agreement No. 2014-0187-PW/GG not specifically amended or modified by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

LESSEE - SANTA FE COUNTY

  
Daniel W. Mayfield, Chair  
Santa Fe Board of County Commissioners

Date 5/13/14

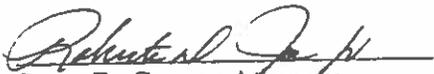
ATTEST:

  
Geraldine Salazar  
Santa Fe County Clerk

Date 5-13-2014



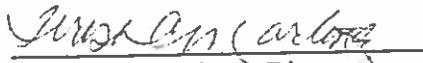
Approved as to form

  
Santa Fe County Attorney

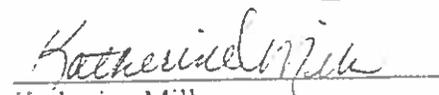
Date 4/29/14

APPROVED

Finance Department

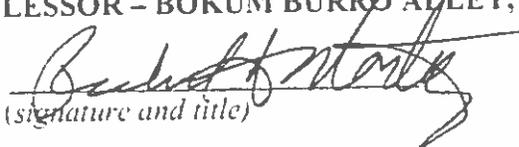
  
Teresa C. Martinez, Director

Date 5/1/2014

  
Katherine Miller  
Santa Fe County Manager

Date 5-2-14

LESSOR - BOKUM BURRO ALLEY, LLC

  
(signature and title)

Date 5/1/2014

**LEASE AGREEMENT  
FOR BOKUM BUILDING BETWEEN  
SANTA FE COUNTY AND  
BOKUM/BURRO ALLEY, LLC**

This Lease Agreement is made and entered into this 10<sup>th</sup> day of December, 2013 by and between **Bokum Burro Alley, LLC**, a New Mexico limited liability company, located at 142 West Palace Avenue, Suite 300, Santa Fe New Mexico, hereinafter referred to as the "Lessor" and **Santa Fe County**, hereinafter referred to as the "Lessee."

In consideration of the covenants and agreements of the Lessee as set forth in the Lease, the Lessor does hereby lease, let and demise unto the Lessee, under the conditions specified below, the premises located at 142 West Palace Avenue, Santa Fe, New Mexico, and commonly referred to as the "Bokum Building" (the "Premises").

**1. Conditions of the Lease.**

- a. This Lease pertains to 14,549 square feet of office space that is designated on the attached floor plans as follows: 1<sup>st</sup> floor level attached hereto as Exhibit A-1 (with the exception of the space marked on Exhibit A-1), entire second floor level attached hereto as Exhibit A-2 and entire third floor level attached hereto as Exhibit A-3.
- b. Lessee shall also have use of common areas, including all restrooms, hallways, and stairs.
- c. Lessee shall have exclusive use of 32 parking spaces, including 18 parking spaces at Sandoval Parking Garage, and 14 parking spaces at the private parking lot on Chappelle Street.
- d. Lessor shall provide janitorial services for the Premises, inclusive of the common areas as defined in 6 (c).
- e. Lessee shall be responsible for all security and telephone, internet and other communications utilities.
- f. Lessor shall be responsible for the payment of all electric, gas, refuse, water and sewer charges.
- g. Lessor shall pay real property taxes to include any special and general assessments, on the tax parcel containing the Premises and against any alterations, additions and improvements thereon.

- 2. Compensation; Monthly Rent.** The Lessee agrees to pay the Lessor annual rent in the amount of \$15.5247 per square foot for 14,549 square feet of office space. In addition to the lease of space, the lessee agrees to pay the Lessor for janitorial services as specified in



Paragraph 6 (c) in the amount of \$2,500.00 per month. The Lessee will pay monthly installments of \$18,822.41 for the lease of the Premises and \$2,500.00 for janitorial services for a total of \$21,322.41 per month due and payable on the first day of each month.

3. **Insurance.** Lessee shall secure liability insurance for its activities on the Premises. Lessor shall provide fire and extended coverage insurance on the Premises and all alterations, additions and improvements thereto.

4. **Term of Lease.** The Lessor agrees to lease the Premises to the Lessee, under the conditions specified in Section 1 of this Lease Agreement, for a period of 2 years commencing on March 1, 2014 and continuing until February 28, 2016. Lessee shall have the option of extending the lease for 2 additional 1-year terms which extensions shall be effective upon Lessee mailing Lessor written notice of its election to extend the lease for an additional twelve months, on or before December 31, 2015 and December 31, 2016, respectively. If the first extension option is exercised this Lease term will be extended through February 28, 2017. If the second extension option is exercised this Lease will be extended through February 28, 2018.

*Feb 28, 2016  
MAR 1, 2016 -  
Feb 28, 2017  
MAR 1, 2017  
Feb 28, 2018  
2018*

5. **Appropriations and Authorizations.** This Lease is contingent upon sufficient appropriations and authorizations being made for performance of the Lease by the Board of County Commissioners of Lessee and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Lease shall terminate upon written notice by Lessee shall have no duty to reimburse Lessor for expenditures made in performance of this Lease. Lessee is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and provided for expenditure by Lessee. The Lessee's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by Lessor in any way or form, including a lawsuit.

6. **Condition of Premises, Maintenance and Repairs**

(a) Lessee acknowledges that it is the current occupant of a portion of the Premises, has inspected the Premises prior to execution of this Lease, finds the Premises in good order and repair, and accepts the Premises in its current "as is" condition.

(b) Except for damage occasioned by Lessee or its employees, contractors, guests and invitees, Lessor shall keep and maintain the Premises in good order, condition and repair, including every part and appurtenance thereof, including without limitation, the exterior and interior of all doors, door checks, windows, glass, walls, ceilings, floors, store front, fixtures, plumbing and sewage facilities within or connected with the Premises including the free flow up to the main sewer line, heating and cooling systems, electrical systems and sprinkler systems.

(c) Lessor shall provide janitorial and maintenance services for the Premises as follows:

1. Clean all floors of the facility (1st, 2nd and 3rd floors) nightly including weekends and holidays.
2. Vacuum and clean the floors nightly, weekends and holidays.
3. Clean and mop all restrooms.
4. Dispose of all trash.
5. Clean all interior windows.
6. Dust offices.
7. Clean and mop the elevator.
8. Clean interior and exterior glass doors to the facility.
9. Sweep sidewalks outside surrounding the facility.
10. Ensure that the facility is secured and locked.
11. Clean air ducts as needed.
12. In the winter months, sweep and remove snow from the sidewalks surrounding the facility.
13. In the winter months, remove snow and apply salt to all sidewalks in the surrounding the facility.
14. Maintain and ensure that the parking spaces provided for in Article 1.c of this Lease Agreement are available for Lessee's use, including keeping all mechanical access controls in working condition, clearing the parking spaces of debris and weeds, and snow removal during the winter months.

#### **7. Alterations, Additions and Improvements**

(a) Lessee shall not make any alterations, additions or improvements to the Premises without the written consent of Lessor, which consent shall not be unreasonably withheld, and then only upon the terms and conditions as may be reasonably imposed by Lessor along with any grant of approval.

(b) Lessee agrees that all alterations, additions and improvements desired by Lessee shall be made at the expense of Lessee. Lessee shall not permit any mechanic's or material men's liens to be filed against or attach to the Premises as a result of any work done by Lessee in the Premises. If any lien is filed against or attaches to the Premises, Lessee shall immediately notify Lessor in writing and Lessee shall cause such lien to be removed within 60 days of notice thereof, or, if Lessee, in good faith, desires to contest such lien, Lessee shall be privileged to do so, and shall, in the event of judgment or foreclosure on such lien, cause the same to be discharged and removed prior to the execution of such judgment.

(c) Lessee agrees that any approved construction will be performed in a neat and workmanlike manner and in compliance with plans and specifications previously submitted to and approved by Lessor. Lessee shall be responsible at its sole cost and expense for the removal of rubbish, refuse and dirt, and any damage, caused by Lessee's activities under this paragraph.

8. **Ownership of Improvements.** Lessee agrees that any and all alterations, additions and improvements except for signs, shelving and moveable furniture, fixtures and equipment shall merge with and become a permanent part of the Premises and any and all interest of Lessee shall vest in Lessor. At the termination of this Lease, Lessee shall be responsible for removing any signs, shelving and moveable furniture and equipment owned by Lessee from the Premises and Lessee shall repair any damage caused by the removal of same. Additionally, Lessor may, at its option, require Lessee to remove any additions, repair and alterations in order to restore the Premises to the condition existing at the time Lessee took possession, with all costs of removal to be borne by Lessee.

9. **Signs.** Subject to applicable governmental ordinances, rules and regulations, Lessee may, at Lessee's expense erect and maintain a sign or signs to carry out the purpose for which Lessee is leasing the Premises, provided that the location, type and design of all exterior signs shall be first approved in writing by Lessor. Within 10 days of the expiration of this Lease, or any renewal or extension thereof, Lessee shall remove such sign or signs and shall repair any damages to the Premises caused thereby at Lessee's expense.

10. **Inspection.** With at least 24 hours prior notice by telephone, the Lessor or its officers, agents and representatives shall have the right to enter any and all parts of the Premises during normal business hours (8 a.m. to 5:00 p.m.) or, in an emergency, at hour to inspect the Premises or clean or make repairs or alterations to the Premises as the Lessor may deem necessary.

11. **Use of Premises.** Lessee agrees that the Premises shall be occupied and used solely for County business purposes. Lessee shall further occupy the Premises, conduct its business and control its subtenants, agents, employees, invites and visitors in such a manner as is lawful, and will not create any nuisance.

12. **Compliance with Laws, Rules and Regulations.** Lessee agrees that during the Term, Lessee shall comply with all present and future federal, state and local laws, regulations, rules and ordinances affecting the Premises.

13. **Condemnation.**

(a) If during the Term all or substantially all of the Premises are permanently taken by condemnation or eminent domain or purchase in lieu thereof, and the taking would prevent or materially interfere with the use of the Premises for the purpose for which they are then being used, either party may terminate this Lease effective as of the day of physical possession by the condemning authority and rent shall be abated for the unexpired portion of this Lease.

(b) If only a portion of the Premises are taken and the Lease is not terminated pursuant to subparagraph (a) above, Lessor, in its sole and exclusive discretion and at its sole risk and expense, may restore and reconstruct the Premises so that it may be occupied and is in conformity with any applicable building codes, and the rent shall be adjusted so that

Lessee shall, for the remainder of the Term, pay that portion of the rent that the Premises remaining after the taking bears to the whole of the Premises before the taking.

(c) Lessee shall not have any right to any award or payment, or portion thereof, made to Lessor in connection with any condemnation, taking or purchase in lieu thereof.

**14. Destruction of or Damage to Property.** Lessee agrees that if at any time during the Term, or any extension or renewal thereof, the Premises shall be totally or partially destroyed due to any cause whatsoever, upon Lessee's written notice to Lessor of such destruction, Lessor shall have the option to rebuild or repair the Premises to such state of condition and repair as existed immediately prior to such destruction or damage, provided that rebuilding or repair shall be completed within 180 days of Lessor's obtaining appropriate permits to commence repairs or construction. In such case, rental herein shall be abated or adjusted until the Premises have been rebuilt or repaired. If, within 30 days following receipt of Lessee's written notice of destruction or damage, Lessor elects not to rebuild or repair the Premises, Lessor shall so notify Lessee in writing, and thereupon this Lease shall terminate and become null and void. Lessor shall have no duty or obligation to rebuild or repair any furniture, fixtures, equipment or other personal property belonging to Lessee or used in Lessee's business. Notwithstanding the foregoing, if Lessor is unable, or will be unable, to complete repairs or construction as required herein, Lessee may terminate this Lease with written notice to Lessor and all further obligations shall cease as of the date of Lessor's receipt of such notice.

**15. Assignment or Sublease.** This Lease shall not be an asset of Lessee and Lessee shall have no right to assign this Lease or sublet the Premises without Lessor's prior written consent. Consent to assignment or subletting shall be granted only if (i) Lessee is not in default of the Lease, (ii) the entire Premises are to be used for the same purpose or purposes as stated herein; and (iii) upon payment to Lessor of a negotiated amount of any increased rent, premium, key fee or purchase price paid specifically for this Lease and received by Lessee from any assignee.

**16. Quiet Enjoyment.** Lessor has full right to execute and to perform this Lease and to grant the estate demised, and the Lessee, upon payment of the required rents and performing the terms, conditions, covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Premises during the full Term provided that Lessor shall not be responsible for the acts or omissions of any other Lessee or third party which may interfere with Lessee's use and enjoyment of the Premises. Lessee shall observe the rights of Lessor's other Lessees to the quiet enjoyment of their leaseholds and shall not permit acts or omissions of any person or persons under Lessee's control which may interfere with such other Lessee's quiet enjoyment of their leaseholds.

**17. Default by Lessee.** Lessee's failure to make any payment due herein for a period of 10 days after written notice thereof by Lessor to Lessee, or Lessee's failure to comply with any term or condition of this Lease for a period of 30 days after written notice thereof by Lessor to Lessee, shall be a default under this Lease, which default shall be subject to the remedies provided herein and such other remedies as may be available by law.



## 18. Remedies for Lessee's Default.

(a) If Lessee shall default under the terms of this Lease, Lessor may, at Lessor's option, at any time subsequent to such default and prior to curing of such default, declare the Lease terminated by delivering written notice of termination to Lessee and may immediately re-enter and occupy the Premises.

(b) Upon receipt of notice of termination, Lessee agrees to deliver the Premises to Lessor peaceably. Lessor may take such steps and use such force as necessary and appropriate to re-enter and occupy the Premises to include but not limited to changing all entry locks and refusing Lessee entry upon the Premises. Lessor may re-let the Premises, or any portion thereof, and may determine and collect rent.

(c) Nothing herein shall limit or prejudice the right of Lessor to prove and obtain as damages by reason of termination for default or breach of this Lease, an amount equal to the maximum amount allowed by statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater than, equal to, or less than, the amount of the difference referred to above, and whether such amount be immediately and otherwise due and payable.

(d) Lessor's remedies as stated in this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Lessor may be lawfully entitled in the event of any default or breach, or threatened default or breach, of the agreements, terms and conditions herein.

## 19. Waiver of Default or Remedy

(a) Failure of Lessor to declare an event of default immediately upon its occurrence, or Lessor's delay in taking any action in connection with an event of default, shall not constitute a waiver of the default, but Lessor shall have the right to declare the default at any time and take such action as is lawful or authorized under this Lease. Pursuit of any one or more the remedies set forth herein above shall not preclude pursuit of any one or more the other remedies provide elsewhere in this Lease or provided by law, nor shall pursuit of any remedy provided constitute forfeiture or waiver of any rent or damages accruing to Lessor by reason of the violation of any of the terms, provisions or covenants of this Lease.

(b) Failure by Lessor to enforce one or more of the remedies provided upon an event of default shall not be deemed or construed to constitute a waiver of the default or of any other violation or breach of any of the terms, provisions and covenants contained in this Lease.

(c) Acceptance of keys to the Premises or entry upon or into the Premises by Lessor or its agents or employees shall not be deemed an acceptance of surrender of the Premises unless Lessor shall so state and consent in writing.

(d) The receipt of rent by Lessor, with knowledge of any breach of this Lease by Lessee

(c) Except as otherwise required or permitted herein, any notice or document required to be delivered by this Lease shall be deemed to be delivered (whether or not actually received) either three (3) business days after deposit in the United States mail, Certified Mail - Return Receipt Requested, postage prepaid and addressed to the parties at the respective addresses set out in the preceding subparagraphs or as of the date and time hand delivered at the respective addresses set out in the preceding subparagraphs. Evidence of personal delivery shall be proven by the sworn and notarized affidavit of the deliverer and evidence of mailing shall be proven by postal receipt.

**25. Bankruptcy or Insolvency.** Lessee agrees that should Lessee make an assignment for the benefit of creditors or should Lessee be adjudged bankrupt, either by voluntary or involuntary proceedings, or if otherwise a receiver or trustee should be appointed by any court of competent jurisdiction for Lessee because of any insolvency, or if any execution, attachment, replevin, or other court order should be issued against Lessee or any of Lessee's property, whereby the Premises shall be taken or occupied or attempted to be taken or occupied by someone other than Lessee, the occurrence of such event shall be deemed a breach of this Lease and, in such event, Lessor shall have the option to terminate this Lease and to re-enter the Premises and take possession thereof. In no event shall this Lease be deemed an asset of Lessee after the assignment for the benefit of creditors, the adjudication in bankruptcy, the appointment of a receiver or trustee, or the issuance of writs of execution, attachment or replevin or other court order against Lessee or Lessee's property whereby the Premises shall be taken or occupied or attempted to be taken or occupied by someone other than Lessee.

**26. Miscellaneous.**

(a) This Lease constitutes the entire agreement between Lessor and Lessee respecting the lease of the Premises and supersedes and replaces any and all prior and contemporaneous written and oral agreements, promises, representations, or conditions with respect thereto.

(b) The Lease shall be construed and enforced in accordance with the laws of the State of New Mexico.

(c) This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, successors, assigns and personal representatives and should Lessor's interest in the Premises cease to exist for any reason during the Term excepting a mortgage foreclosure, then notwithstanding the happening of such event, this Lease nevertheless shall remain unimpaired and in full force and effect and Lessee and Lessee's subleases agree to attorn to the then new owner of the Premises.

(d) This Lease may be modified only by a writing duly executed by the parties.

(e) If any provision of this Lease, or application thereof shall be declared invalid or unenforceable by any court of competent jurisdiction, the remainder of this Lease, and any application of its other provisions, shall continue in full force and effect.



or of any default on the part of Lessee in observance or performance of any of the terms, covenants or conditions of this Lease, shall not be deemed to be a waiver of any provision of this Lease. No receipt of monies by Lessor from Lessee after the termination or cancellation hereof shall reinstate, continue or extend the term hereof, or affect any notice heretofore given to Lessee, or operate as a waiver of the right of Lessor to enforce the payment of fixed or additional rent or other charges then due or thereafter falling due, or operate as a waiver of the right of Lessor to recover possession of the Premises by any means.

**20. Holding Over.** In the event of holding over by Lessee after the expiration or termination of this Lease, the hold over shall be as a tenancy at will and all of the terms and provisions of this Lease shall be applicable during that period, except that Lessee shall pay Lessor as rental for the period of such hold over an amount equal to one and one-quarter (1.25) times the amount of the monthly rent payable for the Term. Lessee agrees to immediately vacate and deliver the Premises to Lessor after expiration of the Term upon Lessee's receipt of notice from Lessor to vacate. No holding over by Lessee, whether with or without consent of Lessor, shall operate to extend this Lease except as otherwise expressly provided herein.

**21. Rights of First Mortgagee.** Lessee and all of Lessee's subleases or assigns accept this Lease subject and subordinate to the terms and provisions of any recorded real estate contract, mortgage or deed of trust lien presently existing or hereafter created upon the Premises.

**22. Estoppel Certificates.** Lessee agrees to furnish promptly, from time to time, upon request of Lessor or Lessor's mortgagee, statements certifying, if applicable and correct, that Lessee and Lessee's subleases are in possession of the Premises; the Premises are acceptable; the lease and any subleases are in full force and effect; the Lease and any subleases are unmodified; Lessee and any subleases claim no present charge, lien, or claim of offset against rent; the rent is paid for the current month, but is not prepaid for more than one month and will not be prepaid for more than one month in advance; there is no existing default by reason of some act or omission by Lessee, any sublease or Lessor; and, such other matters as may be reasonably required by Lessor or Lessor's mortgagees.

**23. Attachments.** The following documents are attached to and form a part of this Lease:

1. Exhibit A-1, Exhibit A-2 and Exhibit A-3 - Floor Plans Showing Premises

**24. Notice**

(a) All notices required of Lessee to Lessor, and rent and other payments required to be made by Lessee, shall be delivered by mail to Lessor at P.O. Box 2452, Santa Fe, New Mexico, 87504-2452, or at any other address which Lessor may specify from time to time by written notice.

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(f) The titles and paragraph headings used in this Lease are solely for the convenience of the parties and shall not be used to explain, modify, simplify, construe or aid in the interpretation of the provisions of this Lease.

27. **Warranty of Authority.** The persons signing hereunder as Lessee, or on behalf of Lessee, warrant that they are authorized to enter into this Lease on behalf of Lessee.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

**LESSEE SANTA FE COUNTY:**

Kathleen S. Holian  
Kathleen S. Holian, Chair  
Santa Fe Board of County Commissioners

12/10/13  
Date

**ATTEST:**

Geraldine Salazar  
Geraldine Salazar  
Santa Fe County Clerk

12/10/2013  
Date

**APPROVED AS TO FORM:**

Stephen C. Ross  
Stephen C. Ross  
Santa Fe County Attorney

11-20-13  
Date

**FINANCE DEPARTMENT:**

Teresa C. Martinez  
Teresa C. Martinez  
Finance Director

11/26/2013  
Date

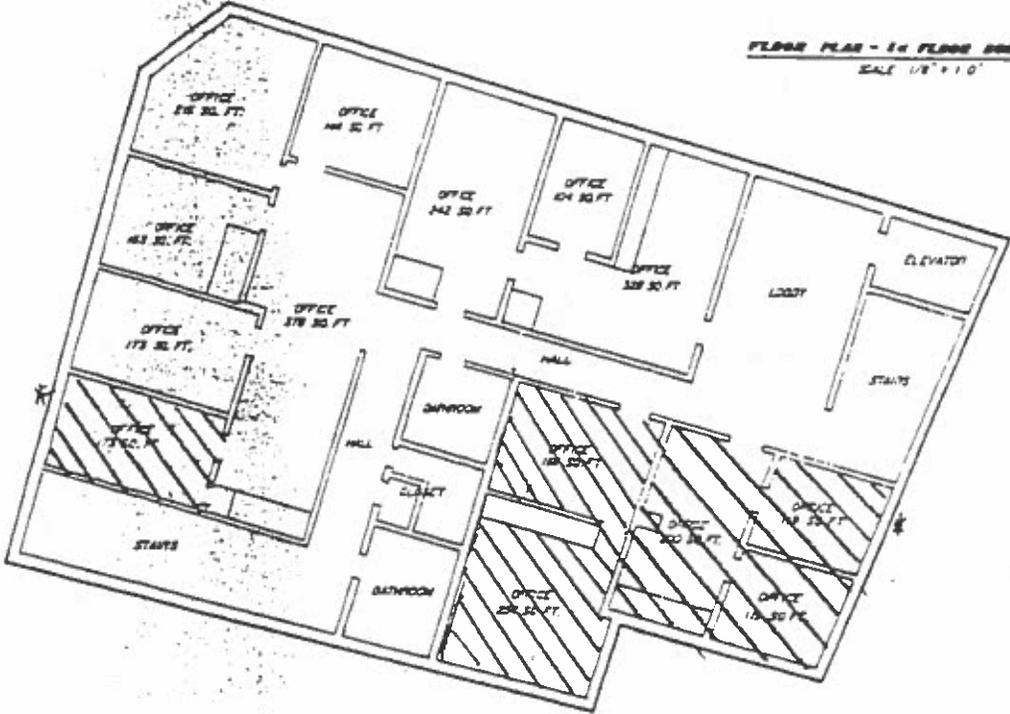
**LESSOR BOKUM/BURRO ALLEY, LLC:**

Richard A. Montoya  
Richard A. Montoya  
Its: President

Dec 4, 2013  
Date



EXHIBIT  
A-1

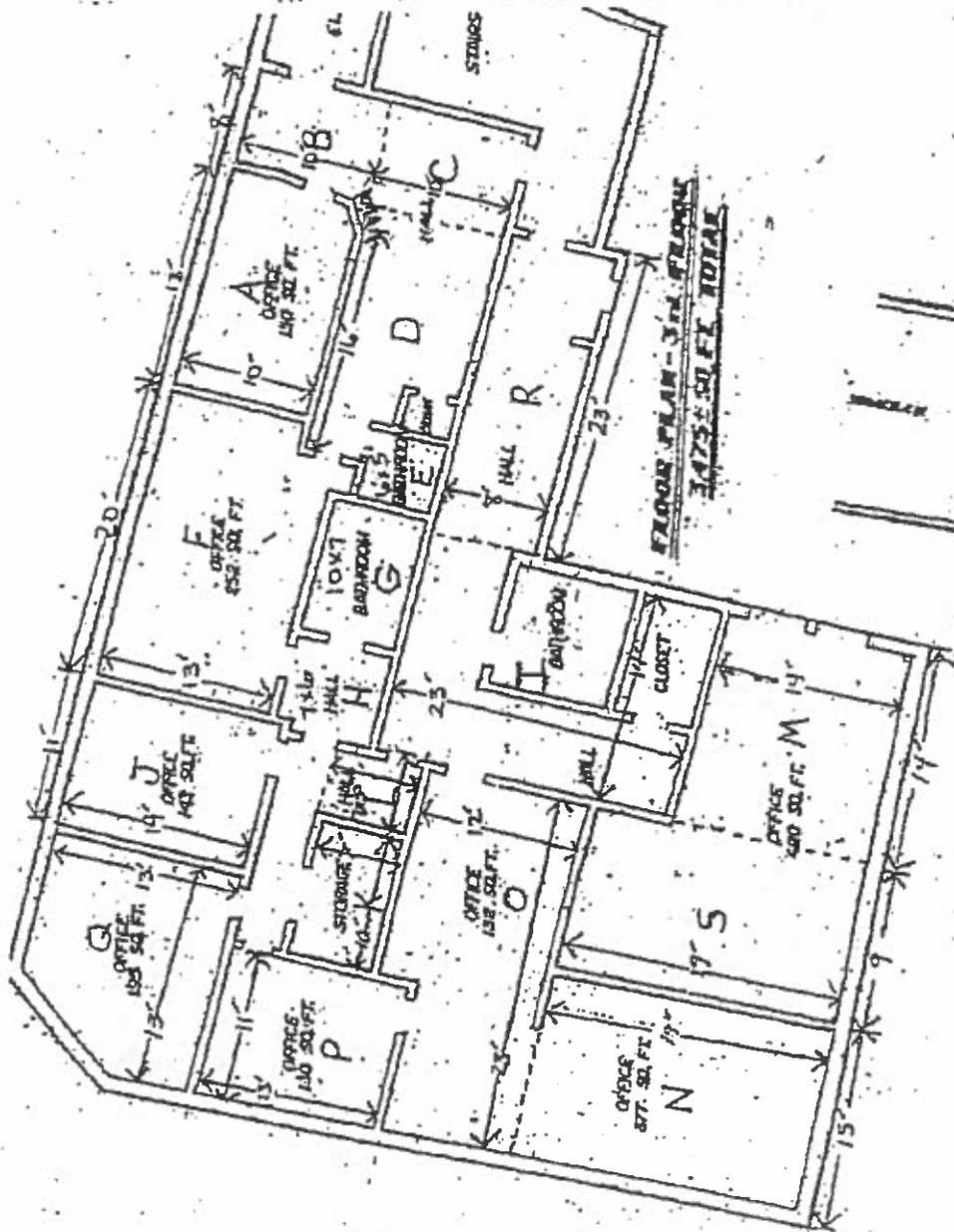


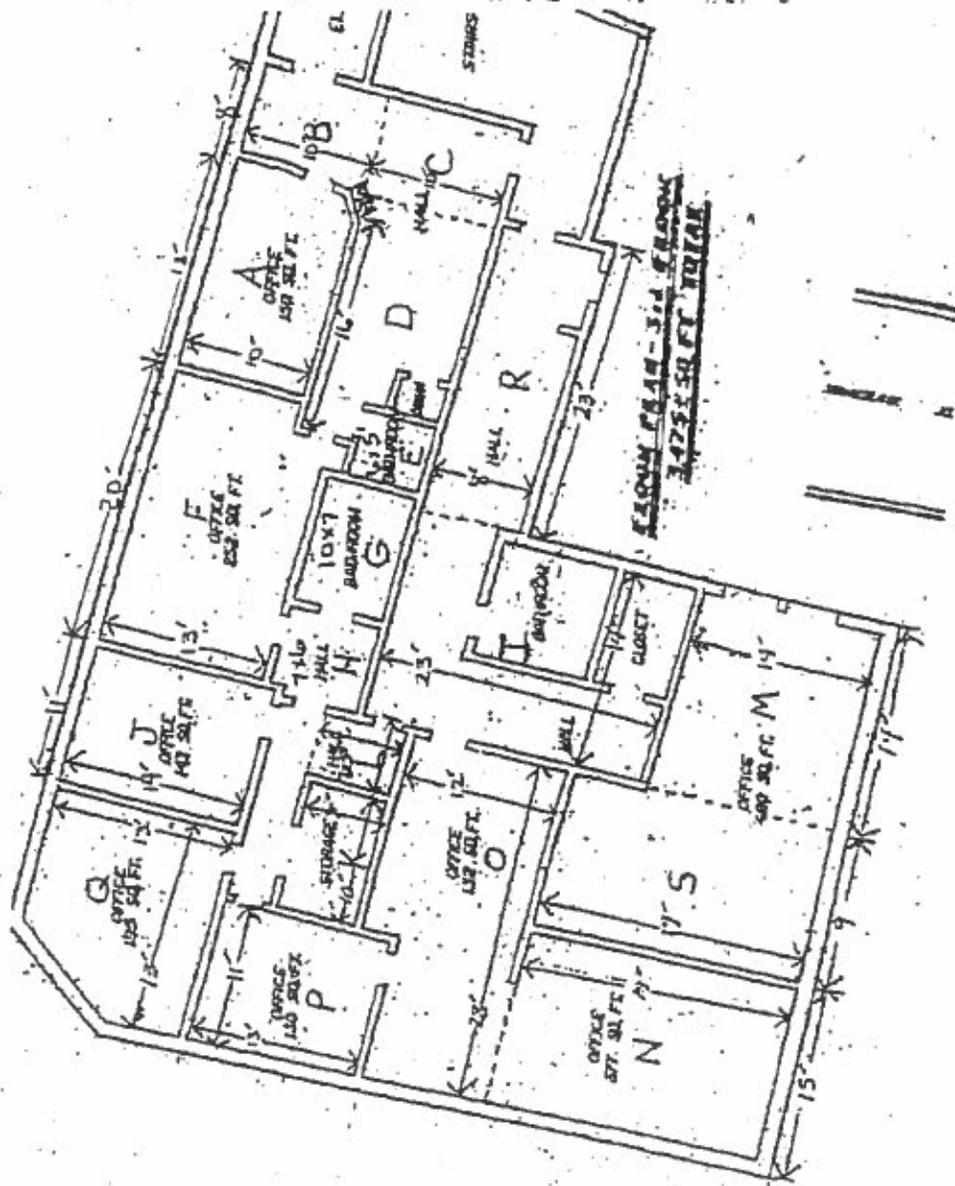
\* Excluded Area

BOKUM BUILDING  
142 W. Palace Avenue, City of Santa Fe,  
Santa Fe County, New Mexico

EXHIBIT  
A-2

Second Floor







**LEASE AGREEMENT  
FOR BOKUM BUILDING BETWEEN  
SANTA FE COUNTY AND  
BOKUM/BURRO ALLEY, LLC**

This Lease Agreement is made and entered into this 10<sup>th</sup> day of December, 2013 by and between **Bokum Burro Alley, LLC**, a New Mexico limited liability company, located at 142 West Palace Avenue, Suite 300, Santa Fe New Mexico, hereinafter referred to as the "Lessor" and **Santa Fe County**, hereinafter referred to as the "Lessee."

In consideration of the covenants and agreements of the Lessee as set forth in the Lease, the Lessor does hereby lease, let and demise unto the Lessee, under the conditions specified below, the premises located at 142 West Palace Avenue, Santa Fe, New Mexico, and commonly referred to as the "Bokum Building" (the "Premises").

**1. Conditions of the Lease.**

- a. This Lease pertains to 14,549 square feet of office space that is designated on the attached floor plans as follows: 1<sup>st</sup> floor level attached hereto as Exhibit A-1 (with the exception of the space marked on Exhibit A-1), entire second floor level attached hereto as Exhibit A-2 and entire third floor level attached hereto as Exhibit A-3.
- b. Lessee shall also have use of common areas, including all restrooms, hallways, and stairs.
- c. Lessee shall have exclusive use of 32 parking spaces, including 18 parking spaces at Sandoval Parking Garage, and 14 parking spaces at the private parking lot on Chappelle Street.
- d. Lessor shall provide janitorial services for the Premises, inclusive of the common areas as defined in 6 (c).
- e. Lessee shall be responsible for all security and telephone, internet and other communications utilities.
- f. Lessor shall be responsible for the payment of all electric, gas, refuse, water and sewer charges.
- g. Lessor shall pay real property taxes to include any special and general assessments, on the tax parcel containing the Premises and against any alterations, additions and improvements thereon.

- 2. Compensation; Monthly Rent.** The Lessee agrees to pay the Lessor annual rent in the amount of \$15.5247 per square foot for 14,549 square feet of office space. In addition to the lease of space, the lessee agrees to pay the Lessor for janitorial services as specified in

Paragraph 6 (c) in the amount of \$2,500.00 per month. The Lessee will pay monthly installments of \$18,822.41 for the lease of the Premises and \$2,500.00 for janitorial services for a total of \$21,322.41 per month due and payable on the first day of each month.

3. **Insurance.** Lessee shall secure liability insurance for its activities on the Premises. Lessor shall provide fire and extended coverage insurance on the Premises and all alterations, additions and improvements thereto.
4. **Term of Lease.** The Lessor agrees to lease the Premises to the Lessee, under the conditions specified in Section 1 of this Lease Agreement, for a period of 2 years commencing on March 1, 2014 and continuing until February 28, 2016. Lessee shall have the option of extending the lease for 2 additional 1-year terms which extensions shall be effective upon Lessee mailing Lessor written notice of its election to extend the lease for an additional twelve months, on or before December 31, 2015 and December 31, 2016, respectively. If the first extension option is exercised this Lease term will be extended through February 28, 2017. If the second extension option is exercised this Lease will be extended through February 28, 2018.
5. **Appropriations and Authorizations.** This Lease is contingent upon sufficient appropriations and authorizations being made for performance of the Lease by the Board of County Commissioners of Lessee and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Lease shall terminate upon written notice by Lessee shall have no duty to reimburse Lessor for expenditures made in performance of this Lease. Lessee is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and provided for expenditure by Lessee. The Lessee's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by Lessor in any way or form, including a lawsuit.
6. **Condition of Premises, Maintenance and Repairs**

(a) Lessee acknowledges that it is the current occupant of a portion of the Premises, has inspected the Premises prior to execution of this Lease, finds the Premises in good order and repair, and accepts the Premises in its current "as is" condition.

(b) Except for damage occasioned by Lessee or its employees, contractors, guests and invitees, Lessor shall keep and maintain the Premises in good order, condition and repair, including every part and appurtenance thereof, including without limitation, the exterior and interior of all doors, door checks, windows, glass, walls, ceilings, floors, store front, fixtures, plumbing and sewage facilities within or connected with the Premises including the free flow up to the main sewer line, heating and cooling systems, electrical systems and sprinkler systems.

(c) Lessor shall provide janitorial and maintenance services for the Premises as follows:

1. Clean all floors of the facility (1st, 2nd and 3rd floors) nightly including weekends and holidays.
2. Vacuum and clean the floors nightly, weekends and holidays.
3. Clean and mop all restrooms.
4. Dispose of all trash.
5. Clean all interior windows.
6. Dust offices.
7. Clean and mop the elevator.
8. Clean interior and exterior glass doors to the facility.
9. Sweep sidewalks outside surrounding the facility.
10. Ensure that the facility is secured and locked.
11. Clean air ducts as needed.
12. In the winter months, sweep and remove snow from the sidewalks surrounding the facility.
13. In the winter months, remove snow and apply salt to all sidewalks in the surrounding the facility.
14. Maintain and ensure that the parking spaces provided for in Article 1.c of this Lease Agreement are available for Lessee's use, including keeping all mechanical access controls in working condition, clearing the parking spaces of debris and weeds, and snow removal during the winter months.

#### **7. Alterations, Additions and Improvements**

(a) Lessee shall not make any alterations, additions or improvements to the Premises without the written consent of Lessor, which consent shall not be unreasonably withheld, and then only upon the terms and conditions as may be reasonably imposed by Lessor along with any grant of approval.

(b) Lessee agrees that all alterations, additions and improvements desired by Lessee shall be made at the expense of Lessee. Lessee shall not permit any mechanic's or material men's liens to be filed against or attach to the Premises as a result of any work done by Lessee in the Premises. If any lien is filed against or attaches to the Premises, Lessee shall immediately notify Lessor in writing and Lessee shall cause such lien to be removed within 60 days of notice thereof, or, if Lessee, in good faith, desires to contest such lien, Lessee shall be privileged to do so, and shall, in the event of judgment or foreclosure on such lien, cause the same to be discharged and removed prior to the execution of such judgment.

(c) Lessee agrees that any approved construction will be performed in a neat and workmanlike manner and in compliance with plans and specifications previously submitted to and approved by Lessor. Lessee shall be responsible at its sole cost and expense for the removal of rubbish, refuse and dirt, and any damage, caused by Lessee's activities under this paragraph.

8. **Ownership of Improvements.** Lessee agrees that any and all alterations, additions and improvements except for signs, shelving and moveable furniture, fixtures and equipment shall merge with and become a permanent part of the Premises and any and all interest of Lessee shall vest in Lessor. At the termination of this Lease, Lessee shall be responsible for removing any signs, shelving and moveable furniture and equipment owned by Lessee from the Premises and Lessee shall repair any damage caused by the removal of same. Additionally, Lessor may, at its option, require Lessee to remove any additions, repair and alterations in order to restore the Premises to the condition existing at the time Lessee took possession, with all costs of removal to be borne by Lessee.

9. **Signs.** Subject to applicable governmental ordinances, rules and regulations, Lessee may, at Lessee's expense erect and maintain a sign or signs to carry out the purpose for which Lessee is leasing the Premises, provided that the location, type and design of all exterior signs shall be first approved in writing by Lessor. Within 10 days of the expiration of this Lease, or any renewal or extension thereof, Lessee shall remove such sign or signs and shall repair any damages to the Premises caused thereby at Lessee's expense.

10. **Inspection.** With at least 24 hours prior notice by telephone, the Lessor or its officers, agents and representatives shall have the right to enter any and all parts of the Premises during normal business hours (8 a.m. to 5:00 p.m.) or, in an emergency, at hour to inspect the Premises or clean or make repairs or alterations to the Premises as the Lessor may deem necessary.

11. **Use of Premises.** Lessee agrees that the Premises shall be occupied and used solely for County business purposes. Lessee shall further occupy the Premises, conduct its business and control its subtenants, agents, employees, invites and visitors in such a manner as is lawful, and will not create any nuisance.

12. **Compliance with Laws, Rules and Regulations.** Lessee agrees that during the Term, Lessee shall comply with all present and future federal, state and local laws, regulations, rules and ordinances affecting the Premises.

13. **Condemnation.**

(a) If during the Term all or substantially all of the Premises are permanently taken by condemnation or eminent domain or purchase in lieu thereof, and the taking would prevent or materially interfere with the use of the Premises for the purpose for which they are then being used, either party may terminate this Lease effective as of the day of physical possession by the condemning authority and rent shall be abated for the unexpired portion of this Lease.

(b) If only a portion of the Premises are taken and the Lease is not terminated pursuant to subparagraph (a) above, Lessor, in its sole and exclusive discretion and at its sole risk and expense, may restore and reconstruct the Premises so that it may be occupied and is in conformity with any applicable building codes, and the rent shall be adjusted so that

Lessee shall, for the remainder of the Term, pay that portion of the rent that the Premises remaining after the taking bears to the whole of the Premises before the taking.

(c) Lessee shall not have any right to any award or payment, or portion thereof, made to Lessor in connection with any condemnation, taking or purchase in lieu thereof.

**14. Destruction of or Damage to Property.** Lessee agrees that if at any time during the Term, or any extension or renewal thereof, the Premises shall be totally or partially destroyed due to any cause whatsoever, upon Lessee's written notice to Lessor of such destruction, Lessor shall have the option to rebuild or repair the Premises to such state of condition and repair as existed immediately prior to such destruction or damage, provided that rebuilding or repair shall be completed within 180 days of Lessor's obtaining appropriate permits to commence repairs or construction. In such case, rental herein shall be abated or adjusted until the Premises have been rebuilt or repaired. If, within 30 days following receipt of Lessee's written notice of destruction or damage, Lessor elects not to rebuild or repair the Premises, Lessor shall so notify Lessee in writing, and thereupon this Lease shall terminate and become null and void. Lessor shall have no duty or obligation to rebuild or repair any furniture, fixtures, equipment or other personal property belonging to Lessee or used in Lessee's business. Notwithstanding the foregoing, if Lessor is unable, or will be unable, to complete repairs or construction as required herein, Lessee may terminate this Lease with written notice to Lessor and all further obligations shall cease as of the date of Lessor's receipt of such notice.

**15. Assignment or Sublease.** This Lease shall not be an asset of Lessee and Lessee shall have no right to assign this Lease or sublet the Premises without Lessor's prior written consent. Consent to assignment or subletting shall be granted only if (i) Lessee is not in default of the Lease, (ii) the entire Premises are to be used for the same purpose or purposes as stated herein; and (iii) upon payment to Lessor of a negotiated amount of any increased rent, premium, key fee or purchase price paid specifically for this Lease and received by Lessee from any assignee.

**16. Quiet Enjoyment.** Lessor has full right to execute and to perform this Lease and to grant the estate demised, and the Lessee, upon payment of the required rents and performing the terms, conditions, covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Premises during the full Term provided that Lessor shall not be responsible for the acts or omissions of any other Lessee or third party which may interfere with Lessee's use and enjoyment of the Premises. Lessee shall observe the rights of Lessor's other Lessees to the quiet enjoyment of their leaseholds and shall not permit acts or omissions of any person or persons under Lessee's control which may interfere with such other Lessee's quiet enjoyment of their leaseholds.

**17. Default by Lessee.** Lessee's failure to make any payment due herein for a period of 10 days after written notice thereof by Lessor to Lessee, or Lessee's failure to comply with any term or condition of this Lease for a period of 30 days after written notice thereof by Lessor to Lessee, shall be a default under this Lease, which default shall be subject to the remedies provided herein and such other remedies as may be available by law.



## 18. Remedies for Lessee's Default.

(a) If Lessee shall default under the terms of this Lease. Lessor may, at Lessor's option, at any time subsequent to such default and prior to curing of such default, declare the Lease terminated by delivering written notice of termination to Lessee and may immediately re-enter and occupy the Premises.

(b) Upon receipt of notice of termination, Lessee agrees to deliver the Premises to Lessor peaceably. Lessor may take such steps and use such force as necessary and appropriate to re-enter and occupy the Premises to include but not limited to changing all entry locks and refusing Lessee entry upon the Premises. Lessor may re-let the Premises, or any portion thereof, and may determine and collect rent.

(c) Nothing herein shall limit or prejudice the right of Lessor to prove and obtain as damages by reason of termination for default or breach of this Lease, an amount equal to the maximum amount allowed by statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater than, equal to, or less than, the amount of the difference referred to above, and whether such amount be immediately and otherwise due and payable.

(d) Lessor's remedies as stated in this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Lessor may be lawfully entitled in the event of any default or breach, or threatened default or breach, of the agreements, terms and conditions herein.

## 19. Waiver of Default or Remedy

(a) Failure of Lessor to declare an event of default immediately upon its occurrence, or Lessor's delay in taking any action in connection with an event of default, shall not constitute a waiver of the default, but Lessor shall have the right to declare the default at any time and take such action as is lawful or authorized under this Lease. Pursuit of any one or more the remedies set forth herein above shall not preclude pursuit of any one or more the other remedies provided elsewhere in this Lease or provided by law, nor shall pursuit of any remedy provided constitute forfeiture or waiver of any rent or damages accruing to Lessor by reason of the violation of any of the terms, provisions or covenants of this Lease.

(b) Failure by Lessor to enforce one or more of the remedies provided upon an event of default shall not be deemed or construed to constitute a waiver of the default or of any other violation or breach of any of the terms, provisions and covenants contained in this Lease.

(c) Acceptance of keys to the Premises or entry upon or into the Premises by Lessor or its agents or employees shall not be deemed an acceptance of surrender of the Premises unless Lessor shall so state and consent in writing.

(d) The receipt of rent by Lessor, with knowledge of any breach of this Lease by Lessee

(c) Except as otherwise required or permitted herein, any notice or document required to be delivered by this Lease shall be deemed to be delivered (whether or not actually received) either three (3) business days after deposit in the United States mail, Certified Mail - Return Receipt Requested, postage prepaid and addressed to the parties at the respective addresses set out in the preceding subparagraphs or as of the date and time hand delivered at the respective addresses set out in the preceding subparagraphs. Evidence of personal delivery shall be proven by the sworn and notarized affidavit of the deliverer and evidence of mailing shall be proven by postal receipt.

**25. Bankruptcy or Insolvency.** Lessee agrees that should Lessee make an assignment for the benefit of creditors or should Lessee be adjudged bankrupt, either by voluntary or involuntary proceedings, or if otherwise a receiver or trustee should be appointed by any court of competent jurisdiction for Lessee because of any insolvency, or if any execution, attachment, replevin, or other court order should be issued against Lessee or any of Lessee's property, whereby the Premises shall be taken or occupied or attempted to be taken or occupied by someone other than Lessee, the occurrence of such event shall be deemed a breach of this Lease and, in such event, Lessor shall have the option to terminate this Lease and to re-enter the Premises and take possession thereof. In no event shall this Lease be deemed an asset of Lessee after the assignment for the benefit of creditors, the adjudication in bankruptcy, the appointment of a receiver or trustee, or the issuance of writs of execution, attachment or replevin or other court order against Lessee or Lessee's property whereby the Premises shall be taken or occupied or attempted to be taken or occupied by someone other than Lessee.

**26. Miscellaneous.**

(a) This Lease constitutes the entire agreement between Lessor and Lessee respecting the lease of the Premises and supersedes and replaces any and all prior and contemporaneous written and oral agreements, promises, representations, or conditions with respect thereto.

(b) The Lease shall be construed and enforced in accordance with the laws of the State of New Mexico.

(c) This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, successors, assigns and personal representatives and should Lessor's interest in the Premises cease to exist for any reason during the Term excepting a mortgage foreclosure, then notwithstanding the happening of such event, this Lease nevertheless shall remain unimpaired and in full force and effect and Lessee and Lessee's subleases agree to attorn to the then new owner of the Premises.

(d) This Lease may be modified only by a writing duly executed by the parties.

(e) If any provision of this Lease, or application thereof shall be declared invalid or unenforceable by any court of competent jurisdiction, the remainder of this Lease, and any application of its other provisions, shall continue in full force and effect.

or of any default on the part of Lessee in observance or performance of any of the terms, covenants or conditions of this Lease, shall not be deemed to be a waiver of any provision of this Lease. No receipt of monies by Lessor from Lessee after the termination or cancellation hereof shall reinstate, continue or extend the term hereof, or affect any notice heretofore given to Lessee, or operate as a waiver of the right of Lessor to enforce the payment of fixed or additional rent or other charges then due or thereafter falling due, or operate as a waiver of the right of Lessor to recover possession of the Premises by any means.

**20. Holding Over.** In the event of holding over by Lessee after the expiration or termination of this Lease, the hold over shall be as a tenancy at will and all of the terms and provisions of this Lease shall be applicable during that period, except that Lessee shall pay Lessor as rental for the period of such hold over an amount equal to one and one-quarter (1.25) times the amount of the monthly rent payable for the Term. Lessee agrees to immediately vacate and deliver the Premises to Lessor after expiration of the Term upon Lessee's receipt of notice from Lessor to vacate. No holding over by Lessee, whether with or without consent of Lessor, shall operate to extend this Lease except as otherwise expressly provided herein.

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**IN WITNESS WHEREOF**, the parties have executed this Lease as of the date first set forth above.

**LESSEE SANTA FE COUNTY:**

Kathleen S. Holian  
Kathleen S. Holian, Chair  
Santa Fe Board of County Commissioners

12/10/13  
Date

**ATTEST:**

Geraldine Salazar  
Geraldine Salazar  
Santa Fe County Clerk

12/10/2013  
Date

**APPROVED AS TO FORM:**

Stephen C. Ross  
Stephen C. Ross  
Santa Fe County Attorney

11-20-13  
Date

**FINANCE DEPARTMENT:**

Teresa C. Martinez  
Teresa C. Martinez  
Finance Director

11/26/2013  
Date

**LESSOR BOKUM/BURRO ALLEY, LLC:**

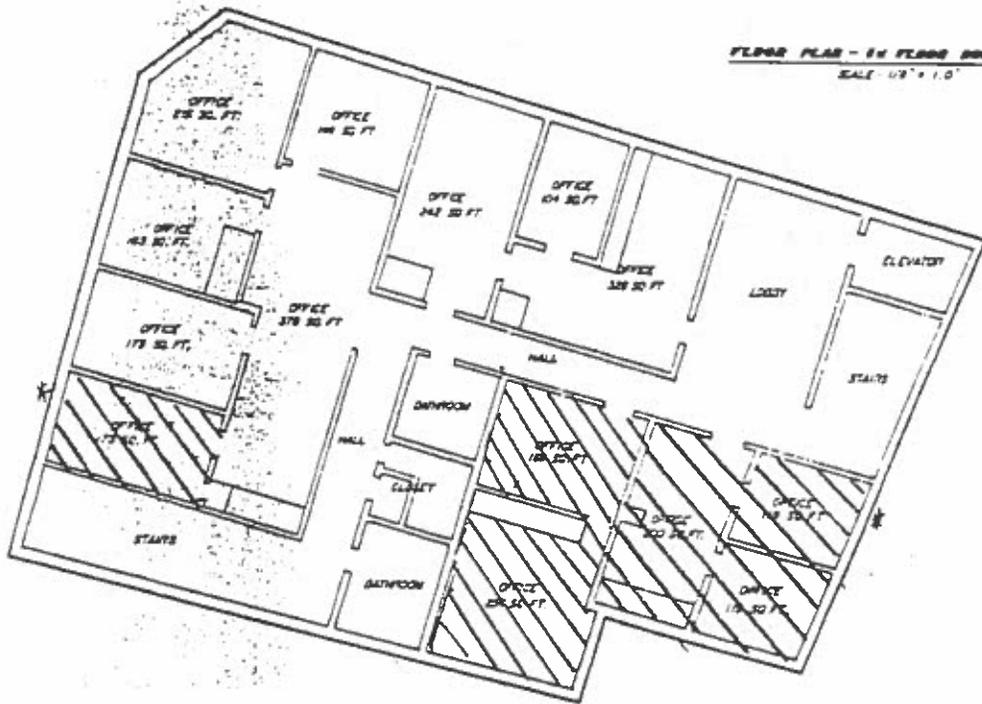
Richard A. Montoya  
Richard A. Montoya  
Its: President

Dec 4, 2013  
Date



EXHIBIT

A-1



FLOOR PLAN - 1st FLOOR BOKUM BUILDING  
SCALE - 1/8" = 1'-0"

  
\* Excluded Area

BOKUM BUILDING  
142 W. Palace Avenue, City of Santa Fe,  
Santa Fe County, New Mexico







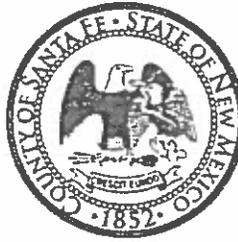




**Henry P. Roybal**  
Commissioner, District 1

**Miguel Chavez**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Kathy Holian**  
Commissioner, District 4

**Liz Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

To: Board of County Commissioners

From: Bernadette Salazar, Human Resources Director 

Via: Katherine Miller, County Manager

Date: November 3, 2015

Re: Request approval of the Collective Bargaining Agreement between the County of Santa Fe and the New Mexico Coalition of Public Safety Officers Regional Emergency Communications Center (RECC), NMCP SO-RECC

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**BACKGROUND AND SUMMARY**

The Santa Fe County Management Team and the New Mexico Coalition of Public Safety Officers Regional Emergency Communications Center (RECC), NMCP SO-RECC began negotiating the collective bargaining agreement August 2015. The parties have worked diligently together to come to a mutual agreement in the best interest of the County and our employees. A few of the highlighted items agreed upon are listed below:

- Added previous amendments
- Added grievance procedure language
- Removed swing shift language as it no longer applies
- Clarification of language in the arbitration article
- Enhanced shift bid process for efficiency purposes
- Provided for 3% cost of living adjustments which is within the allocated budget
- The term is until December 31, 2018 with one (1) non-economic re-opener

**ACTION REQUESTED**

The action requested is approval of the Collective Bargaining Agreement between the County of Santa Fe and the New Mexico Coalition of Public Safety Officers (Regional Emergency Communications Center-RECC)

**ATTACHEMENT**

*The Collective Bargaining Agreement between the County of Santa Fe and the New Mexico Coalition of Public Safety Officers (Regional Emergency Communications Center-RECC)*

Thank you for your consideration.



**AGREEMENT BETWEEN THE COUNTY OF SANTA FE AND  
THE NEW MEXICO COALITION OF PUBLIC SAFETY OFFICERS  
(REGIONAL EMERGENCY COMMUNICATIONS CENTER-RECC)**

**October 27, 2015 – December 31, 2018**

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## **ARTICLE 1 RIGHTS**

### **A. Coalition**

The RECC and County recognize the New Mexico Coalition of Public Safety Officers (Coalition) as the exclusive Bargaining Unit for the following non-probationary employees to include Emergency Communication Specialist I, II, III, Training Coordinator, Quality Assurance Specialist, Team Leader, NCIC Coordinator, and Data Entry Specialist. The Coalition may bargain for these Members of Service (MOS) in negotiating wage rates, work hours, benefits, obligations and other conditions of employment as defined by New Mexico PEBA and/or any other topics as mutually agreed upon.

### **B. Position changes**

When the County creates a new position within the RECC that is not currently classified as a Bargaining Unit position, the County and the Coalition will meet to determine whether the position should be included in the Bargaining Unit. If the County contemplates changing a current Bargaining Unit position, the County will meet with the Coalition to discuss proposed changes.

### **C. Management Rights**

Except as specifically restricted by an express provision of this Agreement or other statutory provisions, the County retains and may exercise all management rights.

### **D. MOS Definition**

An MOS is a Member of Service also known as Bargaining Unit Employee.

## **ARTICLE 2 MEMBERSHIP**

### **A. Coalition Dues**

1. The County agrees to deduct membership dues levied by the Coalition from the paycheck of Bargaining Unit Employees who have voluntarily executed a dues deduction authorization. Such dues deductions shall not include any fees, assessments, or fines of any kind. Deductions will commence the first full pay period after receipt of the signed authorization form by the Human Resources Office. The amount of dues deductions will be certified in writing to the Human Resources Office by the President of the Coalition.
2. The County shall make withdrawals of Coalition dues from MOS's wage without cost to the MOS or the Coalition. All Coalition dues shall be forwarded to the Coalition within ten days of withdrawal unless unforeseen circumstances occur.

3. If MOS is later assigned outside of the Coalition, MOS shall notify the County of any changes in membership dues deduction.
4. The County will notify the Coalition of any claims brought forward pertaining to Coalition dues. The Coalition will indemnify, pay for the defense of, and hold the County harmless of any and all claims made and against any suits instituted against the County for compliance with issues pertaining of Coalition dues. The Coalition agrees to refund any amount paid to it in error on account of the payroll deduction provisions as determined by the County.

#### **B. Dues Suspended or Terminated**

1. Upon signed authorization, when a member in good standing with the Coalition is on non-pay status or when an MOS is called to active military duty for an entire pay period or more, no dues deduction shall be made. In any pay period, when net wages are not sufficient to cover the full withholdings, no deductions shall be made. In this regard all other legal and required deductions shall have priority.
2. A member may terminate Coalition membership, by notifying the Coalition and the County of his/her intention by means of a signed cancellation, to be submitted to the County HR Director. The member must give minimum of ten days' notice to the County of such intention. Members may terminate their dues on the 1st Monday of March or the 1st Monday of September each year. A member may terminate dues at any time if the County and the employee determine the member to be in a financial hardship. Once the member is no longer considered to be in a hardship, dues will be deducted again if the member signs another authorization card.

#### **C. Increased Dues**

In the event that the Coalition increases dues, the Coalition will notify the County at least 30 days prior to the effective date for the dues increase by submitting new authorizations for each member. Coalition dues shall not change more than once annually.

### **ARTICLE 3 ALLOCATED MEETING TIME**

#### **A. Authorized Representatives**

1. Board Members and Stewards
  - a) The County and RECC shall recognize the president, the vice president and three stewards.
  - b) Authorized representatives shall be certified in writing to the County.
  - c) Coalition members may schedule meetings with management to discuss any matters pertaining to the collective bargaining agreement. Such meetings will not interfere with the delivery of quality services to the citizens. Recognized representatives shall

be afforded time without pay during normal scheduled work hours for the purpose of attending collective bargaining sessions. The Coalition Representatives shall be afforded accrued annual leave, accrued compensatory time, or leave without pay for any formal disciplinary or grievance proceedings. If the employer requests the Coalition Representative to participate in any meeting, the Coalition Representative is not required to take personal leave or leave without pay. The Employer and Coalition shall make every effort to schedule such meetings during a time which will not interfere with the normal functions of the RECC and a time that will not jeopardize the safety of the citizens of Santa Fe County.

- d) The Coalition shall not use the County or department's interoffice mail service, mailboxes, or e-mail for the dissemination of Coalition literature or correspondence.
- e) The Coalition shall not use County time, equipment, property, or materials for Coalition business.

#### **ARTICLE 4 WORK SCHEDULES AND PAY PERIOD**

- A. The County has the right of assignment of employees and determination of the employees work schedules in accordance with its duty to ensure minimum staffing of the RECC. The County will adhere to the shift bid policy unless a crisis arises. Any changes to an employee's work schedule will be made in writing to the employee upon becoming aware of the necessary change. The change will be based upon need and will revert to the bid shift as soon as possible.
- B. The pay period for Bargaining Unit Employees shall be two (2) consecutive workweeks.
- C. The County shall assess the public safety communication needs and ensure adequate staffing. The County will afford the Coalition opportunity to provide comments on staffing levels. In emergency situations, changes can be implemented prior to receipt of comments.
- D. Communications**
  - 1. Workday- The normal workday for the RECC shall be either 8, 10, or 12 hours or any combination thereof.
  - 2. Workweek- A normal scheduled workweek shall consist of three, four or five consecutive days.
  - 3. Work Shifts- Normal work shifts may include day, and graveyard shifts, and shall be subject to shift bids as provided herein.
  - 4. Breaks and Meal Periods

- a) The MOS workday may include a one-hour meal break per shift and one, 15 minute break for every consecutive four (4) hours worked each shift, unless otherwise provided in this Agreement.
- b) Breaks and meal periods can be interrupted and adjusted to accommodate a call for service or if staffing is compromised.
- c) Breaks or meal periods taken the first or last hour of shift must be approved by a supervisor.

**E. Minimum staffing and shift coverage**

- 1. Minimum staffing at any given time will be seven (7) employees plus one Team Leader.
- 2. Two (2) MOS will be allowed leave at any given time at the discretion of the Center Manager or RECC Director according to staffing needs.
- 3. A MOS whose leave request is denied may find coverage through a shift trade.

**F. Shift Trades**

- 1. Coalition employees, if signed off and of equal skill, shall have the option to trade shifts. Shift trades are an agreement between Coalition employees, and are done on a voluntary basis. Shift trades are intended to incur no cost to the Department. Shift trade hours shall not constitute hours for calculating FLSA hours to include but not limited to overtime. Shift trades must be returned no later than the pay period immediately following the trade.
- 2. The Coalition employees, upon the concurrence and approval of the Center Manager or RECC Director, shall be responsible for arranging and carrying out a shift trade. All shift trade documentation, with appropriate signatures, shall be completed no less than two (2) days before the trade. Once the shift trade documentation process is completed and approved by the Center Manager or RECC Director, the shift then becomes the responsibility of the employee accepting the trade.
- 3. An MOS who agrees to a shift trade and subsequently is unable to complete the shift trade is responsible for finding coverage for that shift. If an MOS fails to report for an agreed upon shift trade, they may be subject to disciplinary action.
- 4. No more than two (2) shift trades per month per MOS will be allowed unless otherwise approved by the RECC Director or Center Manager.

## **ARTICLE 5 REGULAR OVERTIME AND COMPENSATORY TIME**

**A. Fair Labor Standards Act (FLSA)-** MOS under the Agreement shall be paid overtime in compliance with the Fair Labor Standards Act (FLSA).

### **B. Regular Overtime**

1. The appropriate supervisor shall approve all regular overtime prior to an MOS performing the work.
2. Working overtime is a condition of continued employment with the County. Overtime shall be assigned by the County based on the needs of the County. Refusal to work overtime shall constitute just cause for disciplinary action.
3. MOS placed “on-call” shall be compensated consistent with Santa Fe County HR policies.

### **C. Overtime for Communication’s MOS-Procedures**

1. Regular Overtime- When minimum staffing is compromised; the RECC shall compile a voluntary list to work overtime organized by seniority. If overtime assignments are not filled voluntarily then mandatory overtime will be imposed.
2. Voluntary overtime of four (4) or more consecutive hours shall count towards the mandatory overtime requirements.

### **D. Compensatory Time**

1. MOS may elect to accumulate compensatory time in lieu of payment for overtime, however an MOS may accumulate no more than eighty (80) hours of compensatory time. If there is limited budget, the RECC Director may require compensatory time in lieu of overtime.
2. MOS may use their accumulated compensatory time as time off with pay when approved by their supervisor. However, time off shall not be approved when it disrupts the normal operations of the RECC, nor when it creates a situation that would bring any shift below minimum staffing levels.

## **ARTICLE 6 PAYROLL**

### **A. Time Sheets/Time Records**

1. Time sheets/time records must be turned in to the MOS's supervisor as directed by the supervisor, and then time sheets must be turned in to the RECC Director consistent with Santa Fe County HR and Payroll Policies.
2. A supervisor may complete an MOS's time sheet when the MOS is physically unable to do so themselves due to hospitalization, or a debilitating injury or illness; however a signature from the employee must be obtained.
3. If MOS fails to turn in their time sheets/time records as stated above, the County may pay the MOS for its best estimate of hours worked by the MOS. Any corrections to the employee's paycheck shall be paid in the next appropriate pay period.

## **ARTICLE 7 TRAINING**

- A. The County and RECC shall provide in-service training for MOS designed to maintain the appropriate standard of performance and to increase MOS's skills. Authorizing attendance at training courses shall be the responsibility of the RECC Director, or his/her designee. Decisions to authorize or deny attendance at training courses shall be based on one or more of the following:
  1. The effect the absence of the MOS will have on the RECC's operations and its ability to continue to provide the services and perform the function for which it is responsible.
  2. The relationship of the subject of the training to the function performed by the MOS in the RECC.
  3. Financing the request of the MOS that is in the best interest of the RECC.
- B. Approved training time shall be considered as time worked and be compensated except when:
  1. Training is not directly related to the MOS's job. Training time is directly related to an MOS's job if it aids the MOS in handling his/her present job or contributes to employee development as approved by the Director or designee.
- C. The County and RECC shall provide basic, continuing and advanced training to MOS at the RECC's expense if it is required as a condition of employment to maintain basic certification standards.
  1. The RECC shall respond to an MOS's request to attend training within 14 calendar days.
  2. The Training Officer shall schedule and post training activities. A memo will be issued stating the start and end time as well as date(s) of training.

**D. There are two ways training expenses might be paid:**

1. By the County; MOS may receive approval for reimbursement for travel, meals, lodging, registration, and other costs to be included annually within the RECC budget.
2. By other public or private agencies; MOS may receive approval for training expenditures by grants from other governments, private organizations or professional organizations, provided they have first obtained the approval of the RECC Director or his or her designee prior to application for public and/or private funding.

**E. Members shall be compensated in accordance with the County's approved per diem and mileage for use of personal vehicles if requested prior to the training and when a County vehicle is not available when MOS attends RECC approved training.**

1. The Santa Fe County area shall include all lands within the boundary lines of Santa Fe County.
2. MOS shall not be compensated for per diem when such training has included provisions for accommodations, such as meals and lodging.
3. MOS shall not be compensated for any type of homework, which is part of classroom studies. However, if the instructor includes in-class time for the MOS to conduct homework, that time will be compensated provided that it is not overtime, and:
  - a) The homework is conducted at the place of training, or
  - b) The homework is conducted at a RECC approved facility approved by the MOS's supervisor.

**F. Upon the receipt of any advanced training certification, MOS shall forward a copy to the Training Officer and the Human Resources office. MOS should maintain a personal training file, including licenses and certificates, for all job related training. The RECC and MOS shall be responsible to ensure that all their licenses and certifications are current. The MOS shall maintain their Law Enforcement and Emergency Medical Dispatch and continuing education credits. The MOS shall be responsible for filling out and submitting the necessary forms as provided by the RECC Director or his/her designee. Failure to uphold certification may result in termination.**

1. RECC shall track and notify, on an annual basis, those MOS whose licenses are due to expire.

## ARTICLE 8 UNIFORMS

The RECC will provide any and all uniforms required by the RECC Director.

## ARTICLE 9 SENIORITY

- A. Center Seniority-** shall be defined as the total length of uninterrupted employment with the RECC. MOS shall not attain center seniority until completion of the required probationary period, at which time center seniority shall relate back to the commencement of the most recent period of continuous employment with the RECC.
- B. Classification Seniority-** shall be defined as the period of most recent continuous services in the MOS's job classification. For the purpose of this article, Emergency Communication Specialist I, II and III are one classification. MOS shall not attain classification seniority until completion of the probationary period in the classification, at which time seniority classification shall relate back to the most recent date of appointment to such classification. Seniority within the Team Leader position will be determined by date of promotion into that classification.
- C. Ties in Seniority**
1. Ties in seniority in all cases will be determined with consideration to the following: Center Seniority supersedes Classification Seniority.
  2. Ties in Center Seniority will be broken first by hire date, then by training completion/final sign-off date. Ties in Classification Seniority will be broken by Center Seniority.
- D. An MOS shall forfeit seniority rights only for the following reasons:**
1. The MOS resigns.
  2. The MOS is dismissed and is not reinstated.
  3. The MOS is absent without leave for a period of five scheduled working days or more. Exceptions to this may be made by the RECC Director on the grounds of good cause for failure to report.
  4. The MOS fails to report after layoff within the requisite time set forth in the notice of recall. Exceptions to this may be made by the RECC Director on the grounds of good cause or failure to notify or report.
- E. When an MOS is suspended and later reinstated, he/she shall not lose any seniority credit for any period of actual service. If however, he/she has been separated from service by resignation or discharge for cause and is again employed he/she shall not receive any**

seniority credit for service rendered prior to this separation from service unless reinstated after a grievance.

## **ARTICLE 10 DISCIPLINARY ACTION**

- A.** Disciplinary actions will be based on just cause. Disciplinary actions shall be consistent with governing laws and regulations and shall be taken without regard to race, age, religion, color, national origin, ancestry, sex, sexual orientation, or gender identity, physical or mental disability or serious medical conditions, spousal affiliation, or Coalition membership or non-membership. No employee shall be disciplined for refusing to perform an unlawful action.
- B.** It is the County's policy that, as a general rule, discipline is progressive in nature, beginning with the least severe action necessary to correct the undesirable situation, and increasing in severity if the condition is not corrected. However, instances might occur when a disciplinary action including dismissal is appropriate without first having imposed a less severe form of discipline. The circumstances surrounding an offense, such as the severity of the misconduct, the number of times it has occurred, and any previous counseling, and the employee's disciplinary history will suggest what action should be taken. The conduct at issue in a prior discipline need not be similar to the conduct involved in a subsequent discipline to serve as the basis for progressive discipline.

### **C. FORMS OF DISCIPLINARY ACTION**

- 1. ORAL REPRIMAND-** An oral reprimand is generally used for minor offenses or to correct minor faults in an employee's performance. An oral reprimand is not grievable and not subject to the notice and hearing requirements of this section.
- 2. WRITTEN REPRIMAND-** A written reprimand may be issued by a supervisor for an offense of a more serious nature which requires more formal action than an oral reprimand. The written reprimand shall become a part of the employee's Human Resources file. To initiate a written reprimand for a MOS, the employee's supervisor will serve a Notice of Proposed Disciplinary Action to the employee within fifteen (15) working days of becoming aware of the incident that describes the basis for the proposed action, or within fifteen (15) working days of completion of an investigation. The Notice of Proposed Disciplinary Action will describe the conduct, actions, or omissions that form the basis for the proposed written reprimand and give a general explanation of evidence the County has. A written reprimand may be grieved up to the RECC Director.
- 3. SUSPENSION-** A suspension may be ordered for an offense of a more serious nature or for repeat of a minor offense. An employee may be suspended for a period not to exceed thirty (30) working days. During a suspension, an employee will not be paid or accrue leave. Each suspension shall be recorded and filed in the employee's Human Resources file.

4. **DEMOTION-** An employee may be demoted for an offense of a more serious nature or for repeat of minor offense. The employee may be demoted to a lesser position for which the employee is otherwise qualified. When demoted, the employee will receive a decrease in compensation commensurate with the new position. Each demotion will be recorded and filed in the employees Human Resources file.

5. **DISMISSAL** – An employee may be terminated for an offense of a more serious nature or for repeat of a minor offense.

D. The purpose of corrective action is to provide the MOS an opportunity to improve his/her behavior or performance and conform to RECC acceptable standards. Corrective action may include employee training, counseling and performance improvement plans.

E. **GROUNDS FOR DISCIPLINARY ACTION** A Bargaining Unit employee may only be suspended, demoted, or dismissed for just cause which is any behavior relating to the employee's work that is inconsistent with the employee's obligation to the County. Just cause includes, but is not limited to, the following:

1. **Negligent or inefficient performance**

- a) Unsatisfactory or negligent performance of duties;
- b) Insubordination;
- c) Continued violation of safety practices;
- d) Failure to cooperate with fellow employees;
- e) Failure to adhere to the established work schedule;
- f) Failure to obtain prior authorization to work overtime;
- g) Failure to meet or maintain job qualifications, as set forth in the job description, including failure to maintain a valid driver's license;
- h) Sleeping on duty;
- i) Failure to attend mandatory training unless otherwise approved by the RECC Director; or
- j) Any other behavior that justifies discipline under this category.

2. **Tardiness/ Absenteeism**

- a) Abuse of sick leave;
- b) Unauthorized absence from work, including tardiness;
- c) Failure to abide by time frames for sick calls; or
- d) Any other behavior that justifies discipline under this category.

3. **Careless, negligent or improper use of County property, equipment or funds**

- a) Falsifying official documents or records;
- b) Theft or vandalism of County property;
- c) Unauthorized use or possession of County property or equipment;

- d) Operating a County vehicle or equipment in a negligent, reckless or tortious manner;
- e) Unauthorized disclosure of confidential information from County records;
- f) Falsification, destruction, or unauthorized or fraudulent manipulation of time records or other County records;
- g) Operation of a County vehicle or equipment while under the influence of a controlled substance or intoxicant;
- h) Inappropriate use of IT resources; or
- i) Any other behavior that justifies discipline under this category.

**4. Improper Conduct**

- a) On the job conduct toward the public or employees that causes discredit to the County;
- b) Personal conduct which impairs the employee's ability to perform his or her duties or causes discredit to the County;
- c) Conflict of interest which results in private gain to the employee or detriment to the County;
- d) Threatening or harassing an employee, an Elected Official or anyone doing business with Santa Fe County;
- e) Consumption, possession, or distribution of alcohol or drugs on the job, or reporting to work under the influence of alcohol or drug;
- f) Accepting a bribe or consideration given with the intent to influence the performance of duty;
- g) Use of official position or authority for personal profit or advantage;
- h) Bribery or coercion of, or attempting to bribe or coerce an employee or Elected Official;
- i) Influencing, or attempting to influence, a Hearing Officer, other than through established grievance procedures;
- j) Failure to cooperate in an investigation;
- k) Distributing of literature, vending, soliciting, or collecting contributions while on the job and on County premises, or assisting with the same without prior authorization of the County Manager;
- l) Unauthorized possession of a weapon on the job site;
- m) Fighting or other disruptive behavior in the workplace;
- n) Gambling during work hours; or
- o) Any other behavior that justifies discipline under this category.

5. Violation of any federal or state law including all civil rights statutes.

6. Conviction of a misdemeanor or felony.

7. Violation of the County of Santa Fe Human Resources Handbook or department-specific procedures.

F. The County Manager may approve administrative leave pending disciplinary action.

**G. DISCIPLINARY PROCESS-** The following procedures apply when a supervisor proposes to suspend, demote, or dismiss a classified employee or an employee in a term position who has completed the probationary period.

1. **DELIVERY OF CORRESPONDENCE** - For the purposes of the disciplinary process, the County will make an effort to hand-deliver any documentation, or correspondence related to the disciplinary process including but not limited to disciplinary action forms, memos, documents and correspondence and will be considered served immediately upon delivery. In cases where hand delivery is not practical, such materials will be mailed priority, certified return receipt requested and will be considered served on the first date of attempted delivery by the U.S. Postal Service. For the purpose of this Section, days mean workdays to include Monday through Friday and not to include holiday or time when the County administrative offices are closed.
2. **NOTIFICATION OF PROPOSED DISCIPLINARY ACTION-** To initiate the suspension, demotion, or dismissal of a classified employee or an employee in term status who has completed the probationary period, the employee's supervisor will serve a Notice of Proposed Disciplinary Action to the employee within fifteen (15) working days of becoming aware of the incident that describes the basis for the proposed action, or within fifteen (15) working days of completion of an investigation. A copy of the notification of proposed disciplinary action shall be submitted simultaneously to the Human Resources Division. The Notice of Proposed Disciplinary Action will describe the conduct, actions, or omissions that form the basis for the proposed disciplinary action, give a general explanation of what evidence the County has, and will include the date, time and place of the pre-determination hearing.
3. **PRE-DETERMINATION HEARING** – The employee shall be given an opportunity to respond to the recommended discipline at the pre-determination hearing. The pre-determination hearing shall be recorded by the use of electronic recorder. The employee's immediate supervisor, Division Director, and Department Director/Elected Official or designee, and a representative for the Human Resources Division shall be present at the pre-determination hearing. The employee has the right to have a representative of his or her choice during the hearing. Pre-determination hearings will be held within five (5) working days from the date of hand delivery or certified mailing of the proposed discipline. The pre-determination hearing is not an evidentiary hearing, but an opportunity for the employee to present his or her side of the situation. It is a check against a mistaken decision, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.
4. **DECISION ON DISCIPLINARY ACTION-** Following the pre-determination hearing, within five (5) working days the Department Director shall submit his or her recommendation to the Human Resources Director. The decision on disciplinary action following the pre-determination hearing shall be made in writing by the

Human Resources Director or designee and hand-delivered to the employee, if the employee is not on leave within seven (7) working days or post-marked within seven (7) working days of the pre-determination hearing. The decision shall specify whether the proposed disciplinary action will be upheld, reduced or eliminated. The decision shall describe the conduct, actions or omissions that form the basis for the disciplinary action and shall specify when the disciplinary action will be effective.

5. **APPEAL OF DISCIPLINARY ACTION-** If the employee or past employee wishes to appeal the disciplinary action, he or she shall submit a written appeal to the County Manager within five (5) working days from the date he or she was served with the decision on the disciplinary action. The County Manager will review all pertinent information and will either confirm, modify, or reject the disciplinary action. The County Manager may request additional information or documentation before rendering a decision. The County Manager will render a decision within seven (7) working days from the date of receipt of the appeal.

## **ARTICLE 11 ARBITRATION**

- A. This procedure shall be the sole and exclusive method for resolving any and all claims arising from the grievance process or a disciplinary process which resulted in suspension, demotion or termination.
  1. Prior to a request for binding arbitration the procedure for the settlement of the grievance or disciplinary appeal process, must have been exhausted.
  2. The Coalition, employee, or past employee, must serve a request for arbitration on the Human Resources Director, within ten (10) days from completion of the final grievance step or completion of the disciplinary process, along with Federal Mediation and Conciliation (FMCS) arbitration form R-43 and a check for half of the fee to obtain a list of seven arbitrators. The Coalition or the employee shall only complete Section 2 of the form and the signature block at Section 9, or similar sections of the form if the form is revised, prior to submitting the form to the County. The County will complete the form exclusive of section 2 and a check for half of the fee to obtain a list of seven arbitrators and shall serve the form and a request for arbitration on the Coalition President. Failure to include the signed form completed as instructed above and/or failure to include a check is a waiver of the right to arbitration.
  3. Within ten (10) days from receipt of the request for arbitration, the county will submit the form seeking a list of seven arbitrators to (FMCS) and a copy to the other party. Failure to timely submit the form shall entitle the party seeking arbitration to submit a form seeking a list to the FMCS.

4. For the purpose of this Article, days mean workdays to include Monday through Friday and not to include holidays or time when the County Administrative Offices are closed. The parties will make an effort to hand-deliver any documentation or correspondence related to the arbitration process, which will be considered served immediately upon delivery. In cases where hand delivery is not practical, such materials will be mailed priority, certified return receipt requested and will be emailed to the Human Resources Director or to the bargaining unit employee if the County has a personal email address, and to the Coalition President and will be considered served effective when the email is sent.

**B.** The County and the Coalition shall select an arbitrator in the following manner:

1. Each party will strike one (1) name alternately until a single name remains and he or she shall be the Arbitrator. The party initiating arbitration shall strike the first name from the FMCS list of arbitrators.
2. The County shall write to the arbitrator to advise that they have been selected to conduct the arbitration, providing the arbitrator with a copy of this article governing arbitration and contact information for both parties.

**C.** An arbitrator may conduct pre-hearing conferences telephonically with the parties, to include motions for discovery, scheduling of exchange of exhibits and a list of witnesses with a summary of the anticipated testimony, and other pre-hearing items. The arbitration will be held in Santa Fe County. The arbitration shall be held within sixty (60) days of notification of selection of the arbitrator, absent agreement in writing signed by the parties extending that deadline.

**D.** The Arbitrator shall decide issues of arbitrability prior to hearing the merits of the case. If the Arbitrator determines the case is arbitrable, then the Arbitrator shall consider the facts of the grievance in arbitration and following the hearing shall prepare and submit to the parties, in writing, a report and decision within thirty (30) calendar days after the conclusion of the hearing or submission of briefs, whichever is later. Arbitration shall be conducted according to the rules established by the FMCS.

**E.** The grievant, e.g. the party alleging the violation of this Agreement, shall have the burden of proof in grievances. The County shall have the burden of proof in disciplinary actions. The party with the burden of proof shall present its case first. The standard of proof shall be preponderance of the evidence. At the hearing, the parties may offer evidence that is relevant to any issue being considered by the arbitrator. The arbitrator shall be the judge of the relevancy of the evidence offered. Legal rules of evidence shall not strictly apply.

**F.** The cost of services of the Arbitrator shall be shared equally by the parties. Each party will be responsible for compensating its own witnesses and representatives. The

arbitrator may require the parties to place in escrow two thousand dollars (\$2000) each to be applied to the arbitrator's fees, expenses, and costs. If the fees, expenses, and costs exceed the amount in escrow, the parties will share the additional fees, expenses, and costs equally. If the fees, expenses, and costs are less than the amount in escrow, the unused escrow funds shall be divided evenly between the parties.

- G. The Arbitrator shall have the authority to determine if there was just cause for any disciplinary action. However, in no case shall he/she have the power to add to, nor subtract from, or modify this agreement, nor shall he/she substitute his/her discretion for that of the employer where such discretion has been retained by the employer, nor shall he/she exercise any responsibility or function of the employer.
- H. The Arbitrator's award in disciplinary cases is limited to back pay and/or reinstatement, or reinstatement to a similar position at the parties' discretion if irreconcilable personality conflicts exist. The award shall be limited to the amount of wages and benefits the employee otherwise would have earned subject to discount based on any earnings or compensation received by the grievant including, but not limited to, unemployment insurance benefits. The employee has an obligation to mitigate his/her damages. The arbitrator may not award attorney's fees, punitive damages, general compensatory damages, or costs.
- I. The Arbitration Award shall be considered an award issued under the provisions of the State's Uniform Arbitration Act.
- J. The hearing on the merits shall be tape recorded. Either party may arrange for the hearing on the merits to be recorded by stenographic means. The cost of creating a transcript shall be borne by the party requesting the transcription/stenographer.

## **ARTICLE 12 INTERNAL INVESTIGATIONS**

- A. Bargaining Unit Employee who becomes the subject of an internal investigation will be notified in writing within fifteen (15) working days of becoming aware of the incident in question. The Bargaining Unit Employee may be placed on administrative leave with pay pending the investigation and shall remain available to the county during the employee's regular work hours. Investigation material will be kept in a separate file from the employee's official personnel file.

## **ARTICLE 13 PROMOTIONS AND TRANSFERS**

- A. The County-RECC will continue to offer promotions on an equal opportunity basis.
- B. The RECC shall maintain a fair and impartial promotional procedure and transfer process.

1. The RECC Director shall have the authority to temporarily place any MOS into any transferred or promoted position when such vacancy becomes available for a period not to exceed ninety (90) days.
  2. If an MOS is placed as a temporary acting Team Leader responsible for all duties of a Team Leader longer than one (1) consecutive full pay period, the MOS will be compensated with up to fifteen (15%) increase effective at the start of the second full pay period until the MOS is no longer performing the duties of a Team Leader.
- C. When the RECC has authorization for a vacant position, and such position is available to be filled, the County-RECC will hire.
1. The RECC Director shall take into consideration the following criteria:
    - a) Review of previous work history;
    - b) Length of service in the field;
    - c) Training and education; and
    - d) Testing, either written or oral, when applicable.

**D. Promotions, Demotions and Transfers**

MOS who are promoted (those receiving an increase in both salary and grade) shall be placed at the corresponding step on the appropriate wage scale.

**ARTICLE 14 FITNESS FOR DUTY**

- A. The County recognizes that from time to time MOS experience personal problems that can affect their job performance. As a result, the County shall maintain the Employee Assistance Program, budget permitting.
1. The program is designed to assist MOS with personal issues of a confidential nature. At the discretion of the MOS, he/she may voluntarily submit to counseling and remain anonymous.
  2. The RECC may observe a decline in an MOS's job performance and have a reasonable basis to believe that it is due to personal problems. As a result, the RECC may order a Fitness for Duty Evaluation.

## **ARTICLE 15 INJURIES**

Workers compensation benefits will be provided to Bargaining Unit Employees as required by law.

## **ARTICLE 16 INOCULATIONS AND IMMUNIZATION**

Employees will be covered pursuant to Worker's Compensation benefits.

## **ARTICLE 17 DRUGS AND ALCOHOL POLICY**

- A. RANDOM TESTING-** Each holder of a Commercial Drivers; License (CDL) and each MOS in a safety or security related position is subject to random drug and alcohol testing. A safety or security related position is one in which an employee operates equipment that is potentially dangerous to other employees or citizens of the County, one in which an employee has access to or dispenses drugs, one in which an employee works in a facility that requires the care of individuals, one in which an employee has access to or carries a firearm, or one in which an employee operates or maintains heavy equipment or coordinates, relays, or controls radio communication for law enforcement, fire or emergency medical services personnel.
- B. TESTING ON REASONABLE CAUSE-** If there is reasonable suspicion to believe that an MOS may be impaired by drugs or alcohol on the job, or if the MOS is found with drugs or alcohol in the workplace, immediate drug or alcohol testing may be ordered. Reasonable suspicion exists when one's experience and training tends to indicate that a given person is under the influence of alcohol or a controlled substance. Acceptable indicators include, but are not limited to, odor of alcoholic beverage on the breath, slurred or incoherent speech, staggering walk, loss of physical coordination, bloodshot eyes, inability to successfully complete a field sobriety test, erratic behavior, unexplained or uncharacteristic irritability, excessive tardiness, poor work performance, or excessive unexplained absences from work.

### **C. PROCEDURE FOR TESTING ON REASONABLE CAUSE**

**STEP 1** In the event any County MOS has reasonable suspicion to believe an MOS may be impaired by drugs or alcohol while on the job, the MOS's supervisor must be notified. The supervisor shall notify the Risk Manager and the Human Resources Director. A trained supervisor, County Risk Management personnel or Human Resources personnel shall then directly observe the MOS's behavior and document any irregularities. If a test is ordered, the observer must document and submit to the Human Resources Director the specific indicators observed within forty-eight (48) hours.

**STEP 2** If reasonable suspicion exists, the MOS shall be asked to execute a written consent for immediate alcohol or drug testing. Failure to consent to testing may be grounds for discipline, up to and including termination

**STEP 3** If reasonable suspicion exists, and consent is given, the MOS shall be immediately transported for appropriate testing. Testing may include use of the breathalyzer or blood or urine testing. The MOS shall be transported by a trained supervisor, the County Risk Personnel or the Human Resources Personnel to the Testing location. Analysis of any samples collected will be performed by a laboratory selected by the County.

**STEP 4** Following completion of testing, the MOS will be placed on administrative leave with pay until the test results are available. The County shall transport the MOS home.

**STEP 5** If the testing discloses that the MOS was not impaired by alcohol or drugs at the time of the test, the MOS shall return to work. If the test discloses that the MOS was not impaired at the time of the test but does disclose trace amounts of alcohol or drugs, or the test disclosed that the MOS was impaired by alcohol or drugs at the time of the test, the MOS may be placed on unpaid leave until a decision on continued employment is made by the Department Director and Human Resources Director.

**PARTICIPATION IN A TREATMENT PROGRAM-** An MOS who is not terminated after a positive test result may be required to participate in an alcohol or drug treatment program through the Employee Assistance Program or another program, and comply with other conditions specified by the County as a condition of continued employment. Any MOS who participates in such a program in addition to disciplinary action may be subject to other conditions as a condition of continued employment and shall be placed on leave without pay while participating in the program. However, an MOS may be permitted to use accrued sick leave, annual leave, or compensatory time in lieu of unpaid leave while participation in the program. Upon successful completion of an agreed upon treatment program, the MOS shall be permitted to return to his or her position.

## **ARTICLE 18 OFFICE MEETINGS**

The Department and Coalition may confer upon matters of mutual concern. These conferences may be requested by either the Coalition President or Department director and shall be governed by the following: The Director shall establish a conference place, time and day. Those required to attend will be paid.

## **ARTICLE 19 COALITION/COMMUNICATION**

- A. Upon the written request of the Coalition, the County shall provide the Coalition with the names of new employees hired to fill Bargaining Unit positions.
- B. The Coalition may request information and the County will respond pursuant to the Inspection Public Records Act, § 14-2-1 NMSA 1978 et seq.
- C. The RECC will provide spaces at the Center for the Coalition to post notices. Barring emergency circumstances, this notice space shall be clearly visible to all Bargaining Unit Employees.

1. Should the Coalition decide to utilize any of these spaces, the Coalition shall provide a bulletin board, including any and all parts thereof, to extend no larger than the space provided. County personnel shall handle installation of the board(s).
2. The bulletin board may be used for the posting of recreation and social affairs of the Coalition, Coalition meetings, Coalition elections, reports of Coalition committees, Coalition newsletters, reports of Coalition meetings, rulings or policies of the state or national associations, legislative enactments, and judicial decisions affecting public employee labor relations.
3. The bulletin board may not be used by the Coalition for the posting of political statements; campaign material; material that can adversely affect County employees, elected officials, or appointed officials. In the event that there is a dispute as to posted material, the material shall be immediately removed from the bulletin board. Abuse of these provisions with regard to the bulletin board may result in loss of bulletin board privileges.

#### **ARTICLE 20 STANDARDS, POLICY AND PROCEDURES**

- A. The parties acknowledge the necessity to modify Department standards, policies, and procedures from time to time as needs dictate. Nothing in this Agreement shall be construed to prevent the Department from making such changes. The parties recognize that if a policy or procedure is in conflict with this Agreement, the Agreement controls.
- B. County agrees to furnish the Coalition with notice of the County's intention to make changes in County department policies and procedures that would affect working conditions of employees. If the Coalition does not respond within five (5) working days of the receipt of such notice, the County may assume that the Coalition does not wish to provide input over such changes. Changes may be implemented without having prior input in emergency situation.
- C. Bargaining Unit Employees will follow the most recent HR Handbook for any items not covered in this agreement to include the Grievance Procedure.
  1. If the RECC forms a Committee relevant to daily operations of the RECC, the Coalition will have at least one (1) member appointed by the Coalition leadership to the Committee. Participation or Review does not constitute a waiver of the Coalition Rights to Collective Bargaining.

## **ARTICLE 21 SHIFT BID**

- A. Four (4) times each year, in January, April, July and October; MOS will be invited to bid for their shift preference for the following three (3) month period. January for the months of February, March and April – April for the months of May, June and July – July for the months of August, September and October- October for the months of November, December and January.
- B. MOS may bid for any shift based on seniority; there shall not be any amount of time that an MOS can stay on a shift.
- C. Two (2) shift bids will take place telephonically, and two (2) bids will take place as an in person meeting with all the team members present, with the exception of MOS who are on pre-approved leave or have a family emergency. If one of these situations exists, the MOS who is on leave will select, in writing, another MOS to bid for them.

MOS will receive a copy of the bid schedule, seniority list and call time schedule at least two (2) weeks before the scheduled bid.

- D. The RECC Director reserves the right to hold an in person bid and to make shift assignments for the good of the organization.
- E. Requests for shift adjustments or reassignments, not covered by the shift bid process, will be considered on a case-by case basis. Any adjustments or reassignments will be made by the RECC Director in writing.
- F. If an MOS does not participate in the shift bid process, they will be assigned to a shift by the Director after everyone else has completed their bid.

## **ARTICLE 22 SEVERABILITY**

If any portion of this Agreement is determined by a final order of an administrative agency or court of competent jurisdiction over the parties to be contrary to law, the affected provision shall be rendered null and void. All other provisions not affected by the illegal provision shall remain in full force and effect.

## **ARTICLE 23 FIREARMS**

The parties agree to abide by the County's firearms policy.

**ARTICLE 24 INSURANCE**

The County shall offer to the covered bargaining unit members and their eligible dependents medical, life, dental, and optical insurance in accordance with the following contributions to the cost of the insurance, as defined in NMSA 1978, Section 10-7-4.2(B):

	County's Contribution	Coalition Employee's Contribution
Coalition Employees who earn \$30,000 annually or less	80%	20%
Coalition Employees who earn \$30,001 to \$50,000 annually	75%	25%
Coalition Employees who earn more than \$50,000 annually	63%	37%

Percentages may be revised to comply with state law. Medical, life, dental, and optical benefits shall be offered the life of this Agreement. Bargaining unit employees will pay 100% of disability insurance offered by the County.

**ARTICLE 25 RETIREMENT**

Santa Fe County will provide eligible employees PERA benefits under Municipal Plan 3. The County will pay 75% of the employee's contribution.

**ARTICLE 26 HOLIDAY PAY AND SICK LEAVE**

A. The following days shall be observed as holidays and Bargaining Unit Employees will be granted time off with pay unless scheduled for duty:

New Year's Day	January 1
Martin Luther King Day	3rd Monday in January
Memorial Day	Last Monday in May
Independence Day	July 4th
Labor Day	1st Monday in September
Columbus Day	Second Monday in October
Veteran's Day	November 11th
Thanksgiving Day	4th Thursday in November
The Day after Thanksgiving	
Christmas Day	December 25 <sup>th</sup>

Other days officially designated by the County Commission or County Manager as a holiday for County employees.

- B. Bargaining unit employees scheduled to work on a holiday will receive holiday pay at straight time at the employee's regular hourly rate of pay for the normal regular hours worked and time and one half for all hours actually worked.
- C. Bargaining unit employees not scheduled to work on a holiday will receive holiday pay at straight time at the employee's regular hourly rate of pay for the normal regular hours worked.
- D. Bargaining unit employees will accrue and utilize vacation and sick leave in accordance with County policy.
- E. MOS who call in sick on a holiday shall not be granted holiday pay.

## ARTICLE 27 ANNUAL LEAVE

- A. Each Bargaining Unit Employee is eligible to accrue annual leave. Annual leave may be used after it has been accrued upon the approval of the employee's supervisor. Bargaining Unit Employees accrue annual leave for each hour actually worked, excluding overtime, and for each paid hour according to the schedule below:

<u>Years of eligible service</u>	<u>Annual hours accrued per hour of work</u>
1 thru 5 years	.0606
6 thru 10 years	.0805
11 or more years	.0848

- B. Upon separation from employment, an employee shall be entitled to payment of accrued annual leave at their current hourly rate, as of the date of separation. In the event of the death of an employee, the employee's estate shall be entitled to payment of the accrued annual leave as of the last day worked.
- C. Requests for annual leave, compensatory time, off or personal holiday will be subject to the HR Handbook however employees are encouraged to request this type of leave as early as possible to maximize the possibility of approval.

## **ARTICLE 28 SICK LEAVE**

Each bargaining unit member will accrue sick leave for each hour actually worked excluding overtime and for each hour paid at 0.0385 per hour worked. A MOS is required to notify the on-duty supervisor no less than two (2) hours before their scheduled shift if they call in sick.

## **ARTICLE 29 PERSONAL LEAVE**

Each bargaining unit employee will receive one personal leave day with pay each calendar year. A personal leave day must be scheduled in the same manner as annual leave. Personal leave may not be carried over into the following calendar year. Personal leave cannot be divided and taken on separate days.

## **ARTICLE 30 BEREAVEMENT LEAVE**

Bargaining Unit Employees shall be eligible to use up to three (3) days of bereavement leave in the event of the death of an immediate family member. For purposes of this Section, an "immediate family member" is defined as a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, domestic partner's child, domestic partner's parent, step-parent, step-child, step-sibling, foster child, father-in-law, mother-in-law, son- and daughter-in-law, and brother-in-law and sister-in-law. Bereavement leave will be paid up to three (3) days.

## **ARTILCE 31 COURT TIME**

Bargaining Unit Employees who are required to appear in judicial or administrative proceedings related to their employment with the County will be paid for actual time spent at the proceedings with a minimum of two (2) hours. An employee may not take Court Time to testify or litigate against the County.

## **ARTICLE 32 SHIFT DIFFERENTIALS**

- A. Bargaining unit employees working Graveyard Shift hours (1800 hours-0600 hours) will receive a Shift Differential pay of 10% of their hourly rate for those hours.

**ARTICLE 33 WAGES**

Effective the first full pay period in January 2016, bargaining unit employees shall receive a 3% cost of living adjustment. No cost of living adjustments shall be implemented after the first full pay period in January 2016. Starting pay for the positions of ECS I, II and III is as follows:

<b>Years of Service</b>	<b>1</b>	<b>2</b>	<b>3</b>
ECS I	\$14.00		
ECS II		\$16.00	
ECS III			\$17.50

**ARTICLE 34 TERM OF AGREEMENT**

This Agreement will become effective upon ratification by the Coalition, approval by the County Commission and upon signature by both parties and shall remain in effect until December 31, 2018. Each party has the right to open one (1) economic item no earlier than October 1, 2016 and no later than November 1, 2016.

**SIGNATORIES OF THE PARTIES**

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement on the dates indicated.

\_\_\_\_\_  
David Griffith, President NMCPSO

\_\_\_\_\_  
Robert A. Anaya, Chairman  
Board of County Commissioners  
County of Santa Fe

\_\_\_\_\_  
Joe Doolittle RECC

Attest:

Approved as to form:

\_\_\_\_\_  
Geraldine Salazar, County Clerk  
County of Santa Fe

\_\_\_\_\_  
Gregory S. Shaffer, County Attorney  
County of Santa Fe





