



*AGREEMENT BETWEEN*

*THE COUNTY OF DOÑA ANA, NEW MEXICO  
AND THE AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES;  
NEW MEXICO COUNCIL 18, LOCAL 1529*

*AFL-CIO*

*BLUE COLLAR*

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**Article 1**      **AUTHORITY**

1. This agreement (hereinafter referred to as the “Agreement” or “Collective Bargaining Agreement”) is entered into between Doña Ana County (hereinafter referred to as the “Employer” or “County”) and the County employees in the Doña Ana County Blue Collar Unit affiliated with AFSCME Council 18 of the American Federation of State, County and Municipal Employees, AFL-CIO (hereinafter referred to as “AFSCME” or “Union”), in accordance with the provisions of Doña Ana County Ordinance No. 215-04.
2. Doña Ana County Ordinance No. 215-04 was enacted to guarantee County employees the right to organize and bargain collectively with their Employer, to protect the rights of the Employer and the employees, to promote harmonious and cooperative relations between the Employer and the employees, and to acknowledge the obligation of the Employer and the employees to provide orderly and uninterrupted services to the citizens.

**Article 2**      **RECOGNITION**

1. Pursuant to applicable law, the County recognizes AFSCME as the sole and exclusive representative in all matters establishing and pertaining to all terms and conditions of employment for all employees in the bargaining unit occupational groups including part time and full time regular employees. Probationary employees will not be represented by the Union in disciplinary actions.
2. The County shall honor the lawful exclusive representative status granted to AFSCME by not engaging in or encouraging employees to negotiate with any other labor organization attempting to establish itself as a representative of bargaining unit employees. Exceptions to this clause may apply in the event of employees pursuing litigation against the County in which they are represented by private legal counsel.
3. AFSCME shall provide the County with a written list of its stewards, Union officials, and other Union staff who are authorized to act on behalf of the Union within thirty (30) days of the ratification and approval of this Agreement.
4. AFSCME shall provide written notice to the County of any change in union stewards or officers within ten (10) working days of such change.

**Article 3**      **MANAGEMENT RIGHTS**

1. Unless limited by the provisions of this Agreement or by other statutory provision and as clearly and specifically stated under County Ordinance No. 215-04, the Employer’s rights shall include, but are not limited to, the following:
  - A. To determine the priorities and appropriate use of public funds;
  - B. To determine the organization, mission, and structure of the County and its component agencies;

- C. To determine the necessity, nature, quantity, and quality of services to be offered to the public along with the means of operations, the materials, and personnel to be used;
- D. To hire, promote, reclassify, or transfer employees to serve the needs of the County;
- E. To establish and implement standards of recruiting, selecting and retaining County personnel;
- F. To lawfully reprimand, suspend, demote, terminate, or take other disciplinary action against employees or volunteers;
- G. To relieve employees or volunteers from duties under circumstances involving lack of work, funds, health, safety, or welfare of employees or others;
- H. To introduce new or improved methods or facilities, and to hire, promote, reclassify, or transfer personnel to serve the needs of the county;
- I. To establish and implement policies and procedures consistent with applicable law;
- J. To take whatever action it deems appropriate to manage an emergency where the health, welfare and/or safety of employees or the public is at risk. The determination of whether an emergency exists is solely within the discretion of the County Manager;
- K. Any rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

**Article 4      UNION RIGHTS**

1. Right of Access

- A. Union staff representatives and employees who are officers of the Union and/or job stewards shall have reasonable access to work areas for the purpose of conducting union business. It is understood that such representatives and officers, while visiting County facilities, will not disturb or interfere with the work of employees or other County operations. Representatives shall notify the front desk or supervisor about their presence on County facilities and shall follow all required security and safety procedures.
- B. The Union has the right to represent the interests of employees in the bargaining unit and those other rights specifically delineated in this Agreement.

**Article 5      CONTRACTING OUT**

- 1. Unless otherwise provided by law, the County recognizes the integrity of the bargaining unit and will use bargaining unit employees to perform bargaining unit functions in preference to contracting out County work. However, it is the prerogative, right, and responsibility of the County to determine the work that is to be performed by an employee, a contractor, or members of this bargaining unit. In the event the County proposes to use non-bargaining unit individuals to perform bargaining unit work, it will provide the Union with notice at the earliest opportunity, but normally at least forty-five (45) calendar days in advance. The Union may request, within three working days of receiving the notice, a meeting to discuss

its concerns. The county will be available to meet with the Union within ten working days of the Union's request.

2. The County will inform the Union, in writing, about the kind of work it would contract out and the approximate duration of the project.
3. The County is committed to contract out work on a case-by-case basis and according to specific needs as demanded by specific projects. The primary intent of contracting out will not be to displace bargaining unit employees.
4. Jobs that are currently contracted out by the County may continue to be contracted out in the same manner.

**Article 6**      **LAY OFFS-REDUCTION-IN-FORCE**

1. Separation. An employee may be laid off due to a shortage of County funds, elimination of positions, or elimination of work.
2. Notice. When a department anticipates a layoff for any of the above reasons, the Human Resources Department will provide notice to the Union and the employee, absent exigent circumstances, at least thirty (30) days in advance of the effective date of the layoff.
3. Order of Layoff. Employees will be laid off based on seniority, with the least senior employee being laid off first. The criteria for implementing a layoff will be by the following priority:
  - A. Seniority with the County;
  - B. Seniority in the Department;
  - C. Seniority at a particular job; and
  - D. For employees in codes and animal control, this step will be based on their first attended National Animal Control Association test score.
  - E. Drawing of lots.
4. A classified employee scheduled for layoff may be assigned to another position provided:
  - B. The employee's work status is satisfactory.
  - C. The employee meets the qualifications for the position.
  - D. The employee agrees to accept the pay rate of the position.

1. An employee who because of a layoff transfers out of the bargaining unit to accept another position within County government may return to the former position if it is available within three hundred sixty five days (365) without any loss of seniority. The employee shall make his decision to return to the former position within five (5) calendar days of being notified in writing that the position is available.

**Article 7      SICK LEAVE**

1. A non-probationary employee shall accrue sick leave at the flat rate of 4.00 hours per pay period. There shall be no limit to the amount of sick leave that can be accrued during the time of employment with the County.
2. Sick leave may be requested when it is used for an illness or injury which prevents the employee from performing the duties of his position; when the employee is needed for care of immediate family member who has an illness or injury; or for preventative medical, vision, dental or mental health care for the employee or members of the employee's immediate family, as defined in Bereavement Leave. The employee's sick leave shall be reduced by the actual time taken to the nearest 15-minute increment. If the employee has no available sick leave, the employee's pay will be reduced by the actual time taken off.
3. Sick leave for sudden illness or injury shall be requested by the employee to his supervisor as soon as possible. The employee will make every effort to report it no later than one (1) hour after the beginning of the employee's work shift.
4. The department director or other supervisor may require a physician's certification of the existence of a medical condition necessitating the employee's absence from work after the third consecutive working day. If abuse of leave is reasonably suspected by the department director, the director may request a physician's certificate at any time. The physician's certificate may be requested prior to the anticipated absence, during the absence, or upon the employee's return to work.
5. When a pattern of sick leave develops, such as the repeated requests for sick leave on the day before and/or the day after the employee's days off, this may be considered abuse of sick leave and the department director may deny utilization of sick leave, provided advanced notice of such pattern has been discussed with the employee, documented with the Human Resources Department, and the Human Resources Department has notified the Union by e-mail of the alleged abuse. The e-mail notice will be provided to [dnorth@afscme18.org](mailto:dnorth@afscme18.org). Nothing in this section shall preclude the department director from taking disciplinary action if the pattern continues.
6. When a medical certificate is requested by the department director, the requested information shall not include information that is legally protected under state or federal law. The note or certificate should be limited to a statement from the employee's physician indicating the date when the employee started treatment and the approximate date of return.

**Article 8      CONVERSION OF VACATION LEAVE FOR CONTRIBUTION TO ANOTHER'S SICK LEAVE**

1. As provided in this article, an employee may contribute in hourly increments vacation leave for the use by another County employee for sick leave. Vacation leave will be converted on a dollar for dollar basis. To be eligible to receive this contribution of leave, an employee must demonstrate, to the satisfaction of the Elected Official/Department Director, that the lack of accrued sick leave is not the result of abuse of sick leave.
2. The recipient employee shall not receive more leave hours than necessary to cover the absence from work based on the illness or injury for which the leave was donated. The recipient employee shall not convert or cash out donated leave hours. Any excess donated leave shall be credited back to the vacation leave balance of the contributing employee, unless the employee's accrued vacation leave is at the maximum, at which point it shall be forfeited.
4. In order to donate vacation leave to another employee, an employee who donates vacation leave will have no less than 40 hours of accrued vacation leave remaining after the donation.
5. Vacation leave may only be donated to employees with a serious illness as defined by Family Medical Leave Act.

**Article 9      AUTHORIZED LEAVES**

1. Leave for County Business.
  - A. Vacation Leave with pay may be authorized for an employee to attend an official meeting for the good of the County as reasonably determined by management or to conduct the County's business at a location other than the employee's normal worksite.
2. Vacation Leave will be granted to one union officer as selected by the Union for the following reasons:
  - A. Attendance at a disciplinary hearing when requested by a union officer at least 36 hours in advance of the hearing.
  - B. Attendance at a grievance hearing when requested by a union officer at least 24 hours in advance of the hearing.
  - C. Meetings scheduled between the Union and the County at the County's request.
  - D. Vacation leave or use of compensatory time may be used by one union officer as selected by the Union following reasons and under the conditions cited:
    - a. Labor Board meetings where Union charges or other matters affecting the Union or the County will be heard.
    - b. The Union President may be granted leave if the above mentioned leave is available to facilitate positive labor/management relations between employees and the County.
    - c. The Union President and the County may attempt to schedule this leave in a manner that limits the amount of overtime needed to staff the Union Officers post assignment.

- d. If a union officer is assigned to a post that permits the scheduling of “flex-time” to accommodate the union officers assignment to union responsibilities, the union officer and union officer’s supervisor may implement this arrangement upon written mutual agreement with written approval of the department’s director.

3. Family and Medical Leave (FMLA)

A. The County will provide up to combined total of 12 weeks of job-protected leave to eligible employees for family and medical reasons consistent with the Family and Medical Leave Act (FMLA) relevant State law, and a total of 26-weeks of FMLA leave during a single 12-month period for a spouse, son, daughter, parent, or nearest blood relative caring for a recovering service member who suffered an injury or illness while on active-duty that renders the service-person unable to perform the duties of the member’s office, grade, rank or rating and who have been placed on the disability roster of the military branch.

B. The County will use a rolling calendar year measured back from the date an employee’s FMLA leave begins.

C. Eligibility

a. The employee must have worked for Doña County for at least one year; and

b. The employee must have worked at least 1,250 hours during the 12 months immediately preceding the request. Time worked does not include vacation, holidays, sick pay, unpaid leave, or any period of layoff.

c. Any period of employment preceding a break in service of seven (7) years or more is not counted toward the one (1) year employment requirements.

D. Qualifying Leave:

1. You may take family/medical leave for any of the following reasons:

a. the birth of a son or daughter and in order to care for such son or daughter; or

b. the placement of a son or daughter with you for adoption or foster care and in order to care for the newly placed son or daughter; or

c. to care for a spouse, son, daughter, or parent (“covered relation”) with a serious health condition; or

d. your own serious health condition that renders you unable to perform an essential function of your position.

2. Employees who choose to use FMLA leave in connection with the birth or placement for adoption or foster care of a child will be required to use their FMLA leave on a continuous, rather than on an intermittent, basis and must use such leave within 12-months of the birth or placement of the child.

E. Married employees

1. In cases where a married couple is employed by the County, the two spouses together may take a combined total of 12 weeks' leave during any 12-month period for reasons a and b, or to care for the same individual pursuant to reason c.

F. Serious Health Condition includes:

1. Inpatient care; or
2. Conditions resulting in more than three (3) days of incapacitation; or
3. Chronic health conditions; or
4. Treatment to prevent incapacitation or restorative surgery; or
5. Pregnancy-related conditions.
6. Continuing treatment by a health care provider that involves:

G. Types of FMLA Leave

1. One block of 12-weeks due to a single qualifying event.
2. Intermittent Leave taken in separate blocks of time due to a single qualifying reason.
3. Reduced Leave Schedule per workweek or workday.
  - a. Leave may only be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a related serious health condition by or under the supervision of a health care provider, for recovery from treatment or recovery from a serious health condition, or to provide care or psychological comfort to an immediate family member with a serious health condition.
  - b. Employees on intermittent leave must continue to comply with the call-in procedures of Section 6-2.

H. Medical Certification Requirement

1. When FMLA qualifying leave is foreseeable and 30 days notice has been provided, an employee must provide a medical certification before leave begins.
2. When FMLA qualifying leave is not foreseeable, an employee must provide notice to the employer of the need for leave as soon as practicable (1 or 2 working days is expected except in extraordinary circumstances). The employee must then provide medical certification within 15 working days.

3. Failure to provide requested medical certification in a timely manner may result in denial of leave until it is provided. The County, at its expense, may require an examination by a second health care provider designated by the County, if it reasonably doubts the medical certification you initially provide. If the second health care provider's opinion conflicts with the original medical certification, the County, at its expense, may require a third, mutually agreeable, health care provider to conduct an examination and provide a final and binding opinion.
4. The County may require subsequent medical recertification. Failure to provide requested certification within 15 days, except in extraordinary circumstances, may result in delay of further leave until it is provided.

I. Substitution of Paid Leave for FMLA Leave.

1. The County requires an employee to substitute paid leave for FMLA leave. Therefore, FMLA leave runs concurrently with any accrued paid leave such as vacation leave or sick leave and with workers' compensation dependant upon the qualifying event.
2. Employees may, but are not required, to use any accrued sick leave when the FMLA qualifying event is for the serious health condition of a family member as defined in the section 8-4.
3. Employees are required to use sick leave when the FMLA qualifying event is for their own serious health condition and if sick leave is exhausted, the employee may request the use of vacation leave.
4. Once accrued paid leave is exhausted, the employee, whether exempt or non-exempt, shall be placed on Leave without Pay and shall pay the employee portion of any insurance benefits if benefit continuation is desired. If the employee does not continue insurance benefits during an FMLA-qualifying leave-without-pay, the employee may reinstate terminated benefits on the first day they return to work without penalty.
5. Employees are not permitted to work in an outside job during FMLA leaves of absence unless a specific request for outside employment during the FMLA period is made in advance of the leave and approved by the Department head and Human Resources Director.

J. FMLA Designation

1. Employee Requests.

Employees must request FMLA leave 30 calendar days in advance or as soon as practicable by completing the FMLA Leave Request Form and submitting it to his/her immediate supervisor or directly to the Human Resources Department. If submitted to the supervisor, the form shall be routed to the Human Resources Office. If the employee is unable to complete the form, due to circumstances relating to a serious

health condition, the form may be initiated by the supervisor or the Human Resources Department.

2. Employer Initiation.

A supervisor will notify Human Resources when an employee has been absent 3 consecutive calendar days, at which time the Human Resources Department will make a preliminary designation of leave as FMLA qualifying.

K. Transfer of Employee to an Alternative Position

1. If an employee needs planned intermittent leave or leave on a reduced leave schedule, Doña Ana County may require the employee to transfer temporarily, to an available alternative position for which the employee is qualified and which better accommodates recurring period of leave than does the employee's regular position.

L. Job Benefits and Protection

1. During FMLA leave, the employee and dependent health, dental and vision insurance is maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the entire leave period.
2. An eligible employee returning from a FMLA qualifying leave is entitled to be restored to the same position and shift that the employee held when the FMLA qualifying leave began, or to an equivalent position and shift with equivalent benefits, pay and other terms and conditions of employment.
3. Provided the employee returns to work immediately following his/her FMLA qualifying leave benefits will be resumed upon the employee's return to work at the same level as were provided when leave began. Any new or additional coverage or changes in health benefits will be made available to an employee while on FMLA qualifying leave.
4. If the employee does not return to work from unpaid FMLA leave for a minimum of thirty (30) calendar days he/she is responsible to reimburse the County for all benefit costs borne by the County during the FMLA leave period unless the reason the employee does not return is due to:
  - a. The continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member which would otherwise entitle the employee to leave under FMLA:
  - b. Circumstances beyond the employee's control, or
  - c. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first 30 days after the employee returns to work, is deemed to have returned to work.

#### M. Return to Work

1. Employees returning from FMLA leave for a qualifying event related to personal illness or injury must provide a medical release to return to work to the Human Resources Department before returning to work.

#### N. Appeal Process

1. If an employee believes that his/her rights under the FMLA have been violated, he/she may:
  - a. File a written complaint with the Human Resources Department; or
  - b. File or have another person file on his/her behalf, a complaint with the Secretary of Labor. The complaint may be filed in person, by mail or by telephone, with the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The complaint may be filed at any local office of the Wage and Hour Division; the address may be found in the telephone directory.
  - c. File a private lawsuit pursuant to Section 107 of the FMLA.

#### O. FMLA Family Military Leave Policy

1. Employees eligible for FMLA leave are entitled to leave for a covered family member's service in the Armed Forces under the following circumstances:
  - a. Up to 12 weeks of unpaid leave in any 12 month period for a qualifying exigency arising out of a covered employee's spouse, son, daughter, or parent's active duty or notification of an impending call or order to active duty in the Armed Forces in support of a contingency operation; or
  - b. Up to 26 weeks of unpaid leave in a single, 12 month period for an employee to care for his or her spouse, son, daughter, parent, or next of kin recovering from an injury or illness suffered while on active duty in the armed forces. Such illness or injury must render the covered family member unfit to perform the duties of the individual's office, grade, rank or rating.
2. Qualifying exigency. A "qualifying exigency" means:
  - a. For a short-notice deployment, meaning a call or order that's given no more than seven calendar days before deployment, the employee can take up to seven days beginning on the date of notification;
  - b. For military events and related activities, such as official military-sponsored ceremonies and family support and assistance programs sponsored by the military and related to the family member's call to duty;

- c. For urgent child-care and school activities;
  - d. For financial and legal tasks or legal arrangements to deal with the family member's active duty;
  - e. For counseling for the employee or his minor child that isn't already covered by FMLA;
  - f. To spend time with the covered service member on rest and recuperation breaks during deployment for up to five days per break;
  - g. For post-deployment activities such as arrival ceremonies and reintegration briefings or to address issues from the service member's death while on active duty; and
  - h. For other purposes arising out of the call to duty, as agreed on by the employee and the County.
3. Qualifying exigency leave applies only to families of members of the National Guard and Reserves, not to family of active members of the regular armed services.
  4. Contingency operation. A "contingency operation" means a military operation that is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or results in the call or order to, or retention on, active duty of members of the uniformed services during a war or during a national emergency declared by the President or Congress.
  5. Qualifying illness or injury. In order to obtain family military leave to care for a family member who is recovering from an injury or illness suffered while on active duty in the armed forces, an employee must demonstrate a qualifying injury or illness is suffered by a covered family member who is a member of the Armed Forces, including a member of the National Guard or reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness.
    - a. The term "outpatient status" means the status of a member of the armed forces assigned to a military medical treatment facility as an outpatient, or a unit established for the purpose of providing command and control of members of the armed forces receiving medical care as outpatients. The illness or injury must be serious enough to render the person unable to perform the duties of the member's office, grade, rank, or rating.
    - b. Next of kin. "Next of kin" is defined as the nearest blood relative to that individual.

6. Substitution of paid leave for family military leave.
  - a. For leave taken for a qualifying exigency, the County requires substitution of paid vacation leave time for unpaid FMLA leave.
  - b. For injured serviceperson caregiver leave, the County requires substitution of vacation or sick time for unpaid FMLA leave. The same rules apply as if the employee took leave for the serious health condition of a family member. The County will not provide paid sick leave in any situation in which the County would not normally provide any such paid leave.
7. Married employees. When both husband and wife work for the County, the aggregate amount of leave that can be taken by the husband and wife is 26 weeks in a single 12 month period for serviceperson caregiver leave, or a combination of active duty leave and serviceperson caregiver leave. The aggregate number of workweeks of leave to which both that husband and wife can take for only active duty leave is 12 weeks.
8. Notice and certification. If the need for leave is foreseeable, the employee must provide such notice to the County as is reasonable and practicable. The County may require that a request for leave be supported by certification.
9. Calculating the 12-month period for leave for a qualifying exigency, the County will use a rolling calendar year measured back from the date an employee's leave begins. Leave to care for a covered spouse, son, daughter, parent, or next of kin recovering from an injury or illness suffered while on active duty in the armed forces is a one-time benefit and as such, the 26 weeks are only available during a single, 12-month period. The County will begin counting the 12-month period on the first day of leave taken to care for the injured or ill service person.

P. Fitness for Duty.

1. The County may require an employee to undergo a fitness-for-duty examination when there is a reasonable belief, based on objective information obtained or reasonably available, that the employee's ability to perform essential job functions will be impaired by a medical condition or that s/he will pose a direct threat due to a medical condition. The need for a medical evaluation must be clearly supported by the nature of the work and objective medical or other factual information. The examination shall be conducted by a medical professional selected by the County. All costs associated with such an examination will be borne by the Department in which the employee is assigned.
2. If an employee is impaired in his/her capability to safely and effectively complete work assignments, and a fitness-for-duty examination supports this conclusion, options may include:
  - a. Transferring the employee to a vacant position for which the employee is

qualified and that accommodates his/her medical condition limitations;

- b. Temporarily accommodating the employee in his/her current position by modifying work assignments and/or the work environment.
  - c. If an accommodation is not feasible in enabling the employee to perform the essential functions of the job held or vacant positions for which the employee is qualified; and if an accommodation does not reduce any direct threat issues to an acceptable level, the employee may be terminated.
3. Procedure:
- a. If a supervisor has an employee appears to be impaired in his capabilities to safely and effectively perform the essential functions of the job, or who poses a direct threat, the Human Resources Director shall be contacted pertaining to a possible fitness-for-duty. The supervisor must be prepared to discuss the following:
    - 1) What objective evidence supports the need for a fitness for duty examination?
    - 2) What is the reasonable belief that the employee's ability to perform essential job duties is impaired?
    - 3) What is the basis for any belief of direct threat?
    - 4) What knowledge exists that performance issues are linked to a medical condition?
  - b. A physical, psychiatric or psychological assessment must be conducted in accordance with accepted professional standards by a licensed practitioner or physician authorized to conduct such examinations, and may only be used to make a legitimate inquiry into an employee's fitness to perform the essential functions of his position without direct threat to the individual or others.
  - c. The scope of any fitness-for-duty examination shall be limited to any condition and how such condition affects or may affect the employee's ability to perform essential functions or pose a direct threat.
  - d. All medical information obtained through the fitness-for-duty provisions shall be maintained by the Human Resources Department as strictly confidential and shall not be a part of the employee's personnel file.
  - e. When a supervisor requests a medical examination, he must inform the employee in writing of his reasons for doing so and the consequences of failure to cooperate. The County will designate the examining physician or other appropriate practitioner, but will offer the individual an opportunity to submit medical documentation from his personal physician or practitioner. The County will review and consider all such documentation supplied by the individual's personal physician or practitioner along with any documentation from the examining physician selected by the County. Should the employee wish to

submit medical documentation from his personal physician or practitioner, the employee shall pay for all examinations or documentation charges.

- f. Any employee who refuses to undergo a required fitness-for-duty examination shall be found insubordinate and subject to discipline up to and including termination.
- g. Time off from work for a fitness-for-duty evaluation and any subsequent time off from work before the employee is certified fit for duty, should be charged to the employee's appropriate leave account if available. Time off related to impairment due to medical or psychological conditions may be charged to accrued sick leave. Time off related to violent, abusive or threatening behavior that is not due to medical or psychological condition may be charged to accrued vacation leave.

Q. Military Leave. Paid Leave for Reserve or National Guard Activities.

- 1. Consistent with State and Federal laws, the County shall grant military leave for up to fifteen (15) paid work days during a calendar year when a regular County employee is a member of an organized unit of the Navy, Marines, Army, Air Force, Coast Guard, the Army National Guard, the International Guard, the Commissioned Corps of the Public Health Service, and any other category designated by the President of the United States in time of service or emergency.
- 2. Unless precluded by military necessity, an employee must provide as much advance oral or written notice of military leave as possible to his supervisor. Failure to provide notice could result in a denial of the employee's protection under the Uniformed Services Employment and Reemployment Rights Act (USERRA).
- 3. Any employee called to active duty shall submit a copy of his activation orders to the Human Resources Department. The Human Resources will take the necessary steps to change the employee's status to military status.

R. Civic Duty Leave.

- 1. Jury Duty or Court Leave.
  - a. All employees in classified positions and political appointees will be paid for wages lost during normal work hours due to time spent on jury duty. Payment shall not be authorized when an employee serves on jury duty while on leave without pay status.
  - b. Immediately upon receipt of the notification from the court, the employee shall present the subpoena, or other document that gives instructions to report for duty, to his Department head.
  - c. The employee's regular pay shall be limited to compensation for court and travel time which occurs during the employee's regularly scheduled hours of work.

- d. Because the County continues to pay employees during their time of service on juries, if released from jury duty prior to the end of the County's normal work day, the employee shall return to work.
  - e. Upon completion of jury duty for which the employee received his regular pay, the employee will forward any compensation received from the court to the County Finance Director immediately upon receipt. Reimbursements received for out-of-pocket expenses such as meals, mileage and lodging may be kept by the employee, unless the County has reimbursed the employee or paid for such expenses.
  - f. Temporary employees who are called to serve as jurors will be granted time off without pay for court appearances.
  - g. Court Leave with regular pay is authorized only when an employee is required to testify on behalf of the County in a matter that came about as a result of his/her employment. This benefit is not authorized in matters in which the employee is a private litigant.
2. Voting Time.
- a. The County encourages employees to register and vote in every election where they are eligible to vote. On election day, the employee shall be allowed up to two (2) hours administrative leave with pay to vote, provided the employee's work day does not begin more than two (2) hours after the polls are open or ends more than the three (3) hours before the polls close.
  - b. The employee shall request such leave at least three (3) days in advance with his Department head in order to allow adequate time to make arrangements for full department coverage.

S. Bereavement Leave.

- 1. An employee in a classified, full-time position may take up to three days paid Bereavement Leave for a death in the immediate family.
- 2. For the purpose of this Section, immediate family shall include: spouse, domestic partner; child, stepchildren; parents of the employee, spouse, or domestic partner; grandparents of the employee or spouse; grandchildren; brother or sister; brother-in-law or sister-in-law; mother or father-in-law or eligible dependent..
- 3. Payment for Bereavement Leave shall be computed at the bereaved employee's regular base rate.
- 4. Two (2) additional Bereavement Leave days shall be allowed if the funeral is being held at a location greater than 300 miles (measured by the shortest route) from the County Government Center.

5. If requested by the supervisor, an employee must present reasonable proof of death, relationship, and/or attendance at the service.

T. Blood Donation.

1. Employees may be granted reasonable time during their work shift for the purpose of donating blood when participating in a County-sponsored blood-drive. All such absences shall be scheduled with the employee's supervisor or Department head.

U. Holidays.

1. Legal holidays, including the date the holiday will be observed, shall be designated each year by the Board of County Commissions (BOCC), and must be used in an 8-hour increment unless the holiday designated by the Board is a partial day holiday. The BOCC will designate the number of hours for holiday on those partial days.
2. An employee budgeted to work 8-hour shifts shall receive holiday pay of 8-hours if he/she works on the holiday and 8 hours of regular pay.
3. An employee who regularly works 12-hour shifts and who is budgeted to work at least 84 hours in a pay period shall receive holiday pay of 12-hours for the holiday if he works it. If the employee does not work the holiday, the employee shall only receive 8 hours of holiday pay.
4. An employee who is budgeted to work 10-hour shifts shall receive holiday pay of 10-hours for the holiday if he works it. If the employee does not work the holiday, the employee shall only receive 8 hours of holiday pay.
5. In order to receive holiday pay for a designated legal holiday, an employee must be in a work or approved paid leave status on the scheduled work day immediately preceding and following the holiday. An employee absent without approved paid leave on the scheduled work day before or after a holiday will not receive holiday pay for that holiday.

V. Personal Day.

1. Employees who have completed their initial probationary period shall receive one (1) day of personal leave each fiscal year. The hours shall be based upon the employee's budgeted work schedule (e.g., 4, 6, 8 or 10 hours per day) each fiscal year. The personal day must be used prior to the end of the County's fiscal year or be forfeited.
2. Requests for the use of an employee's personal-leave day must be made in advance and approved by the employee's supervisor.
3. Personal-leave days shall not be compensated upon termination of employment.
4. Personal-leave days must be taken in consecutive hours during a single work shift.

W. Administrative Leave With Pay.

1. The County Manager will make the final decision whether to authorize administrative leave with pay. It will be used only in those cases when it is in the best interest of the County. Employees who are on paid administrative leave must be accessible to the Department head during regular business hours, and shall be available to be called into the office.

**Article 10 VACATION LEAVE**

1. An employee shall accrue vacation as follows:

Continuous Service	Accrual Bi-Weekly	Accrual Yearly
0 to 36 months	3.08	80
37 to 60 months	4.08	106
61 to 84 months	4.62	120
85 to 120 months	5.08	132
121(+) months	6.15	160

2. Beginning July 1, 2010, no employee may carry more than 240 hours vacation time into a new county fiscal year. If 90 days before July 1<sup>st</sup> beginning in 2010, an employee has more or will accrue more than 240 hours of vacation leave by July 1<sup>st</sup>, management may direct that the employee take vacation leave at specific times according to the needs of the county when the employee has not submitted leave requests to use the excess vacation leave at least 75 days prior to July 1<sup>st</sup> of each year.
3. Employees shall be compensated in cash at their regular rate of pay for any unused vacation leave up to 240 hours when they are separated from the County.
4. Vacation leave may be used in addition to sick leave for the purpose of attending physician appointments and follow-up treatment provided the employee provides at least 24 hours notice. Less notice may be provided if an emergency exists.
5. It is the responsibility of the employee to manage their vacation time to ensure scheduling allows for requested leave.

**Article 11 LEAVE OF ABSENCE WITHOUT PAY**

1. The County Manager may grant leave without pay for either a short term or a long-term period for good cause shown and provided the employee is in good standing. Good cause may include sabbatical, education, medical, family problems or Union business. Requests for leave without pay to accept other employment shall not be considered good cause. All requests for leave without pay are subject to the following:

- A. The employee shall be returned to the same or a similar position, if the employee returns to work within three (3) months of the day from effective date of the leave.
  - B. The county shall attempt to reemploy an employee returning from leave without pay after three (3) months in a similar position of which the employee is qualified, if the employee's position is no longer available.
- 2. Absence without approved leave is subject to disciplinary action by the County. It may also result in the loss of pay. Absence without approved leave for two (2) consecutive workdays shall be considered job abandonment by the employee and is considered just cause for termination.
  - 3. The decision by the County Manager whether to grant a leave of absence without pay is final, not subject to review, appeal, or grievable.

### **Article 12 HOLIDAYS**

- 1. Holidays are those days designated as holidays by the BOCC in its annual resolution.
- 2. Holidays shall be paid to the employee for eight (8) hours on the day of the holiday if the employee is scheduled off. If a full time employee is scheduled to work a holiday, the employee will be compensated two (2) times their regular hourly rate for all hours worked on the holiday. Holiday hours and pay are in addition to hours worked and are not considered in calculating overtime.
- 3. An employee must be in a work or approved paid leave status on their scheduled workday (workday = 8, 10, or 12 hour day) immediately preceding and following the holiday to receive holiday pay. An employee absent without approved paid leave on their scheduled workday before or after a holiday will not receive Holiday Pay for that holiday.

### **Article 13 WORK PERFORMANCE EVALUATIONS**

- 1. It is the policy of the County to manage performance through ongoing communication between an employee and his/her supervisor regarding performance expectations and employee accomplishments.
- 2. Each supervisor is responsible to set and communicate clear performance standards for his/her employees and to observe and discuss employee performance at the beginning of and throughout the review period.
- 3. The employee is responsible for understanding the duties and responsibilities required of the position, the employee work-plan goals and measures, the core competencies and for asking any questions concerning those expectations and/or the evaluation process.
- 4. Periodic performance evaluations provide an opportunity for employees and supervisors to review and discuss work performance; identify performance elements in which the employee does well and those elements which require improvement; and to plan future performance objectives and career development.

5. Formal performance evaluation shall be conducted annually during the first quarter of the fiscal year for all employees who have completed their probationary period.
6. Informal evaluations should be conducted periodically for coaching and performance improvement and retained in the supervisors working file.
7. All formal performance evaluations shall be prepared on the approved County performance evaluation form, and forwarded to the Human Resources Department to be placed in the employee's Official Personnel File.
8. If an employee changes assignment, position, or department during the performance cycle, performance up to that point will not be disregarded. The current supervisor shall complete an interim evaluation of the employee's performance prior to the employee's change in assignment, position or department and sent to the Human Resource Department for retention in the employee's official personnel file.
9. Employees are responsible for contributing to the development of the performance objectives and for providing performance input throughout the evaluation period and explanation of actions occurring during the rating period.
10. Employees are encouraged to record their perceptions of their performance, accomplishments, training requests and future goals and objectives. Supervisors should review and incorporate these into the evaluation as appropriate.
11. The employee shall receive a copy of the performance evaluation instrument delineating goals, objectives and core competencies to be evaluated within 30 calendar days of being placed in the position and the year-end evaluation delineating performance.
12. At the end of the performance evaluation cycle, the supervisor will meet with each employee under his/her supervision and evaluate performance, discuss training needs and to establish goals and objectives for the next evaluation cycle.
13. Prior to finalization of any work-performance evaluation, an employee shall be given the opportunity to provide input for consideration by the supervisors. After consideration of items brought to the supervisor's attention, the supervisor shall finalize the work-performance evaluation form, and both the supervisor and employee shall sign it. The employee's refusal to sign the performance evaluation form does not make the performance evaluation unofficial.
14. Both the supervisor and the employee shall retain a copy of the work-performance evaluation form to facilitate ongoing discussions about work performance objectives, progress, or revised responsibilities.
15. The supervisor's assessment of the employee's work performance is not grievable; however, the employee has a right to attach a rebuttal to the work-performance evaluation form.

16. The original copy of the completed, signed work-performance evaluation form, and any attachment submitted by the employee, will be forwarded to the Human Resources Department and placed in the employee's Official Personnel File.
17. The Department head shall forward all completed evaluations to the Human Resources office by October 15 each year.

**Article 14**     **NON-DISCRIMINATION**

1. The County and the Union agree that the provisions of this agreement shall be applied equally to all employees and without discrimination based on age, race, color, creed, religion, national origin, gender, disability, sexual orientation, pregnancy, marital status, political affiliation or any state or federally protected class.
2. The Union recognizes its responsibility as the bargaining agent and agrees to represent all employees in the bargaining unit without discrimination, interference, restraint, or coercion.

**Article 15**     **EMPLOYEE INFORMATION**

1. Employee Information
  - A. The County will provide the Union with the following information in a quarterly report listing all bargaining unit employees: name, job title, assigned salary, office or department, and date of last hire. The report may be submitted in electronic or paper format.
  - B. The Union will provide in writing within 30 days of the execution of this agreement an email address and mailing address to which the quarterly report may be sent.

**Article 16**     **DUES DEDUCTIONS**

1. Upon receipt by the Human Resources Department of a voluntary authorization for dues deduction card signed by a non-probationary employee, the County will deduct from the pay of the employee, beginning the first full pay period after receipt of the card, membership dues levied by the Union in accordance with its dues structure and paragraph 6 below.
2. The employee may terminate the collection of union dues by presenting a document signed by the employee to the Human Resources Department between June 1st and June 30th of any year of this agreement directing the county to cease such collection. The Human Resources Department will notify the Union president by email within two working days of receipt of the document. The termination of dues will take effect at the end of the first full pay period in July of that year.
3. The County will forward to AFSCME Council 18 all dues withheld pursuant to valid authorization cards. Dues withheld for each payroll period will be forwarded to the person/office designated in writing by the AFSCME Council 18 Executive Director.

AFSCME will inform the County Human Resources Department in writing of such designation within thirty days of the adoption of this agreement by both parties.

4. The Union will indemnify and hold the County harmless against any and all claims, demands, suits or other forms of liability that arise out of or as a result of the County's compliance with this section.
5. Employees promoted or transferred to a position outside the bargaining unit will be automatically withdrawn from the union/bargaining unit by personnel action of the Human Resources Department.
6. Dues will be set within thirty days of the adoption of this agreement by both parties and may be modified only one time in a calendar year unless otherwise agreed in writing by both parties.

#### **Article 17     DISCIPLINARY ACTIONS**

1. Policy. Management in general subscribes to the tenets that just cause and progressive discipline should guide decisions involving employee discipline. Management is further committed to discipline fairly, consistently, and without unlawful discrimination.
2. "Days" shall mean Monday through Friday, not including holidays observed by the Doña Ana County Board of Commissioners. In counting days, the day of the act does not count. The day following the day of the act is the first day. If any notice by management is served by mail to the employee's last known address, three days will be added to the applicable deadline. Generally, the mailing of notices will only occur where the employee has been terminated under a disciplinary action.
4. The determination of discipline shall be the sole responsibility of Management.
  - A. Management reserves the right to investigate allegations of employee misconduct and poor performance.
  - B. Duty to Cooperate. An employee will cooperate in all investigations conducted by management. Failure to cooperate may be the basis for disciplinary action. Nothing herein precludes an employee from exercising any constitutional or statutory right to which the employee is entitled.
  - C. An employee may be placed on administrative leave with pay, if appropriate, during an investigation of alleged misconduct.
  - D. No documentation related to the matter will be placed in the employee's official personnel file until the investigation is complete.

- E. An employee has the right to be represented by a steward, Union staff representative, or a union officer at any phase of an investigation against the employee that may lead to disciplinary action.
  
- F. Prior to the imposition of discipline, management will provide the employee with written notice of management's intent to discipline. Verbal counseling and written letters of reprimand are covered in paragraph J. Any supervisor who proposes any discipline more serious than verbal counseling or a written reprimand, will coordinate such disciplinary proposal with the Department Director and Human Resources Administrator for that Department to ensure that the discipline is fair, consistent, and without unlawful discrimination.
  - a. The employee shall have five (5) working days from receipt of the notice to secure Union representation if so desired.
  
  - b. The written notice will include:
    - 1). The allegations forming the basis of the proposed discipline;
  
    - 2). The county rules, regulations, policies, and/or procedures that have been violated;
  
    - 3). The proposed disciplinary action;
  
    - 4). A list of documents that support the proposed discipline;
  
    - 5). A notice that the employee may request a meeting to discuss the proposed action;
  
    - 6). A notice that the employee has the right to have representation at the meeting;
  
    - 7). The proposed date of any meeting to discuss the disciplinary action;
  
    - 8). A notice that failure to appear at the meeting or respond in writing will result in imposition of the proposed disciplinary action.
  
- G. Meeting. The employee will have the right to meet with the department director. If the employee wishes to meet with the department director, the employee must notify the director in writing of his request to have such meeting within five (5) days of receiving the written notice of discipline. Failure to make such request waives any right to meet with management prior to the imposition of the proposed discipline. The employee may elect to submit only a written statement to the department director. Such statement must be submitted within five (5) days of receiving the written notice of discipline. If the department director is the management official proposing the discipline, the Human Resources Director will appoint another director to meet with the employee.

- H. Unless management, the employee, and the union agree in writing, the meeting will occur within ten (10) days of the employee receiving written notice of the proposed disciplinary action.
- I. If a meeting is held, management will render its final decision within three (3) days of the meeting. If no meeting is held, management will process the disciplinary action as it was proposed in the written notification. If the employee timely submitted a written response, the written response will be considered in deciding the disciplinary matter.

5. Procedure:

- A. Evidence/Testimony. Management and the employee will be permitted to submit documents and call witnesses at the meeting. Although the formal rules of evidence do not apply, the director may refuse to permit the calling of witnesses whose testimony the director deems irrelevant or cumulative. The director may deny the consideration of evidence that he finds irrelevant or cumulative.
- B. Witnesses. Witnesses who are employees of the county will generally appear during work hours and will not lose pay for their attendance. Witnesses who are employees of the county and who are required to appear outside their normal work hours will be paid at their appropriate rate of pay under the Fair Labor Standards Act.
- C. Representation. The employee may be accompanied by a Union representative or by an attorney. Absent compelling circumstance, the presentation of evidence by the employee, including the examination and cross-examination of witnesses, shall be done directly by the employee and not by any other person including but not limited to the employee's named representative.
- D. Final imposition of discipline will be written and include a summary of the findings supporting the discipline and the specific rules, regulations, policies, and/or procedures that have been violated. Any discipline that includes suspension without pay or termination of employment must be approved and signed by the Department Director and Human Resources Department Director.
- E. Final disciplinary actions will become part of the employee's official personnel file and shall not be purged unless ordered by a court of proper jurisdiction.
- F. A supervisor in the employee's line of supervision may orally counsel an employee and/or issue a letter of reprimand concerning misconduct and/or job performance. The provisions of paragraphs 3E, 3F, 3G, 3H, and 3I do not apply to oral counseling or letters of reprimand. Prior to issuing a letter of reprimand, the supervisor will confer with the Department Director and the Department's Human Resources Administrator. The employee may be accompanied by a Union representative during any meeting that may result in disciplinary action.

- G. In disciplinary actions involving suspension without pay, an employee may be allowed to utilize accrued vacation or compensatory time in lieu of suspension without pay. This option is available only if the employee does not appeal the suspension without pay. The disciplinary action of suspension without pay will remain documented in the employee's official personnel record.
- H. Appeal: Disciplinary actions may be appealed as provided under the article outlining the grievance procedure. Oral counseling and letters of reprimand may not be appealed. Although letters of reprimand may not be appealed, the employee may file a rebuttal letter in the employee's personnel file. The rebuttal letter will be attached to the letter of reprimand.
- I. The following list includes those actions that may be a basis for disciplinary action. This list is not intended to be all-inclusive, but is illustrative of the types of actions that may lead to disciplinary action.
- a. The employee's performance does not meet expectations.
  - b. The employee has been abusive in his or her language, or has threatened or caused physical harm to others.
  - c. The employee has violated a written policy, code of conduct, resolution, order, or has failed to obey any reasonable directions given him by his supervisor or other responsible County Official.
  - d. The employee has been found under the influence of alcohol or drugs while on duty and/or in County facilities. The employee has violated the Substance Abuse Prevention or the Drug Free Work Place policies.
  - e. The employee has been convicted of a felony or has engaged in any activity that violates state or federal criminal statutes.
  - f. The employee has provided false or misleading information in any document, report, or statement related to his employment with the County. This includes but is not limited to the employment application and related materials, complaints, and grievances.
  - g. The employee has caused damage to County property or wasted of County supplies, through negligence or misconduct.
  - h. The employee is unsafe to himself, to other employees, or to the public in the performance of his duties and responsibilities.
  - i. The employee has been inexcusably absent, has failed to receive prior approval for any absence, or has abandoned his or her position. Abandonment is defined as unauthorized absence from work for two consecutive work days.

- j. The employee has taken any action that discriminates on the basis of race, color, sexual orientation, sex, religion, national origin, age, disability, or any other legally protected status.
- k. The employee has engaged in improper political activities.
- l. The employee has engaged in conduct, either during or outside of regular work hours that brings discredit upon the County.
- m. The employee has taken an action or failed to take an action that prevents him from doing his assigned duties.

## **Article 18      GRIEVANCE PROCEDURE**

### 1. Purpose

- A. The purpose of this grievance procedure is to secure, at the lowest possible administrative level, equitable resolutions to disputes, which may arise and are subject to review under this procedure. There shall be no other grievance or appeal procedure on any matter for the members of the bargaining unit other than that contained in this article.

### 2. Definitions

- A. A “grievance” is defined as a dispute that alleges a violation of this collective bargaining agreement or state and federal laws providing rights or benefits to bargaining unit employees. Disciplinary actions involving terminations, suspensions without pay, and demotions may also be grieved under this collective bargaining agreement. No other action may be grieved. Grievances shall be signed by the grievant, in writing, and state specifically the action being grieved, including at a minimum the date of occurrence, the names of persons involved in the occurrence, a detailed narrative of the occurrence, and the requested remedy sought by the grievant. The grievant shall certify in the grievance that the grievant has served a copy of the grievance on the Union president.
- B. A “grievant” may be any bargaining unit employee, group of bargaining unit employees, or the Union. A probationary employee whose position is within the bargaining unit may not be a grievant. Neither the union nor any group of employees may grieve an action that involves a probationary employee.
- C. “Days” shall mean Monday through Friday, not including holidays observed by the Doña Ana County Board of Commissioners. In counting days, the day of the act does not count. The day following the day of the act is the first day. If any notice by management is served by mail to the grievant’s last known address, three days will be added to the applicable deadline. Generally, the mailing of notices will only occur where the employee has been terminated under a disciplinary action.
- D. “County Manager” shall mean the county manager or someone designated by the county manager to act on his behalf.

### 3. Procedure

- A. Grievance proceedings will be informal at all steps of this procedure.
  - B. The number of days indicated at each level of this procedure will be considered a maximum and every effort shall be made to expedite the process.
  - C. If the grievant fails to comply with the grievance time limits as set forth under any of the procedural steps, the grievance shall be considered null and void and shall not be processed any further.
  - D. The time limits set forth herein may be extended only by written mutual agreement and only before any time limit has passed. If a time limit has passed, the grievance shall be time barred and shall not be processed any further. Management will advise the grievant in writing of the failure to meet a deadline, which will be hand delivered to the grievant or mailed by first class mail to the grievant's last known mailing address.
  - E. A grievance shall not be considered timely unless the grievant serves the grievance on their immediate supervisor and the Human Resources Department no later than six (6) days after the action which precipitated or forms the basis of the grievance. If the grievance is against the immediate supervisor, the grievant shall serve the grievance on the next level supervisor and the Human Resources Department within the six (6) days. Failure to serve the grievance as required within the six (6) days will time bar the grievance and it shall not be processed any further.
  - F. Employees have the right, at all times during the grievance procedure, to be accompanied by a Union staff representative or Union officer who is also an employee of the County.
4. Steps. The following steps will be used when the grievance is not an appeal of a disciplinary action. In grievances involving disciplinary action, the grievance will be served on the County Manager and the Human Resources Director, and it will be processed immediately to the Third Step, by-passing the first two steps.
- A. First Step. The grievant shall serve a written grievance with the grievant's immediate supervisor and the Human Resources Department unless the grievance is against the immediate supervisor in which case the employee shall serve the written grievance at the next supervisory level and the Human Resources Department. In situations involving termination, the grievant shall submit a written grievance to the county manager within ten (10) days of the final decision to terminate.
  - B. Second Step. If the grievance is not resolved within ten (10) days at the First Step, the grievant may serve a copy of the written grievance with the Department Director. This written grievance must be served within ten (10) days from the date of the immediate supervisor's response or the date that a response was due, whichever is earlier, or the grievance is forever barred.

- C. Third Step. If the grievance is not resolved within ten (10) days at the Second Step, the grievant may serve a copy of the written grievance with the County Manager. This written grievance must be served within ten (10) days from the date of the Department Director's response or the date that a response was due, whichever is earlier, or the grievance is forever barred.
- a. Timing of Meeting. Management will hold a meeting on the grievance within ten (10) days of receiving the written grievance at this step.
  - b. Evidence/Testimony. Management and the grievant will be permitted to submit documents and call witnesses at the meeting. Although the formal rules of evidence do not apply, the county manager may refuse to permit the calling of witnesses whose testimony the county manager deems irrelevant or cumulative. The county manager may deny the consideration of evidence that he finds irrelevant or cumulative.
  - c. Witnesses. Witnesses who are employees of the county will generally appear during work hours and will not lose pay for their attendance. Witnesses who are employees of the county and who are required to appear outside their normal work hours will be paid at their appropriate rate of pay under the Fair Labor Standards Act.
  - d. Representation. The grievant may be accompanied by a Union representative or by an attorney. The presentation of evidence by the grievant, including the examination and cross-examination of witnesses, shall be done directly by the grievant and not by any other person including but not limited to the grievant's named representative. Generally, management's case will be presented by the Director of the employee's department.
  - e. The county manager will issue his decision within ten (10) days of the meeting unless otherwise agreed in writing between the county manager and the grievant.
- D. Arbitration. If the county manager fails to render a decision within ten (10) days of the meeting, the union may request in writing to the Human Resources Director that the grievance be submitted to arbitration. The Union's written request for arbitration shall be submitted to the Human Resources Director within ten (10) days of the county manager's decision or within fifteen (15) days of the meeting, whichever is earlier. Failure to meet these deadlines renders the grievance null and void, ending the grievance. No grievant, other than the Union, may request arbitration under this process. If the Union does not request arbitration, the decision by the county manager is final.
- E. Arbitration Process. If the Union makes a timely and appropriate request for arbitration, the following procedures will apply.

- a. The arbitrator will be selected from a list of seven arbitrators requested by the Human Resources Department from the Federal Mediation and Conciliation Service. The parties will meet at the Human Resources Department within ten (10) days of receiving the list. The parties will alternate in the striking of names on the list until there is one name remaining who shall be the arbitrator. Union and management will flip a coin to determine who strikes the first name.
- b. The arbitration will occur within 30 days of the selection of the arbitrator.
- c. The arbitrator's decision will be in writing and will include the decision, the rationale, and the granted relief. The arbitrator shall not have the authority to expand the rights that employees or the Union have under the terms of this collective bargaining agreement.
- d. If, in a grieved disciplinary matter, the arbitrator finds that the grievant/employee committed the underlying acts for which the grievant is being disciplined, the arbitrator may not modify the discipline imposed in paragraph C above. The arbitrator may recommend a modification of the discipline, but the implementation of such recommendation shall require concurrence of management.
- e. The arbitrator's decision shall be final and binding on the parties subject to appeal only within the provisions of the New Mexico Uniform Arbitration Act.
- f. The arbitrator's fees and costs and any fees or costs related to obtaining the list of arbitrators or selecting the arbitrator shall be shared equally by the parties. All other expenses shall be assumed by the party incurring the costs, including the cost of witnesses.

## 5. Miscellaneous Provisions.

- A. No reprisal or retaliation shall be taken by anyone against any employee who participates in the grievance process.
- B. An employee, acting individually, may present a grievance without permission of the Union. In such a situation, the Union may attend any meetings under this procedure and may present its position.
- C. Management will take reasonable steps to ensure the attendance of witnesses who are employees and whose attendance is requested timely in writing by the grievant or the grievant's representative.
- D. Management, the grievant, and the union will produce within two days of a written request any relevant documents requested by any party to the grievance proceeding. If the written request is served less than two days before any scheduled meeting, the party from whom the document is requested will take reasonable effort to produce the requested documents before the meeting.

**Article 19**     **HEALTH AIDS & PERSONAL ITEMS DAMAGED IN THE LINE OF DUTY**

1. Health aids damaged in the scope of assigned work will be repaired or replaced by the County. Health aids include prescription eye glasses, hearing aids, insulin pumps, and other medically prescribed aids.

**Article 20**     **SAVINGS CLAUSE**

1. If any provision of this agreement is declared invalid by any tribunal of competent jurisdiction, the validity of the remaining portions of the agreement shall not be affected.
2. If such a declaration of invalidity occurs, the parties will meet within two weeks of the declaration, to negotiate a provision to replace the provision that has been declared invalid.

**Article 21**     **PERSONNEL FILES**

1. The employee's official file and Departmental file will be administered in accordance with the following provisions:
  - A. The County will maintain an official personnel file for each employee. The official personnel file will be maintained in the County Human Resources Department under secure conditions.
  - B. An employee may review material contained in the official file. An employee wishing to access the official file will generally provide at least twenty-four (24) hour advance written notice during normal administrative working hours. The employee will be required to show proper identification. A designated representative from the Human Resources Department and/or employee's department will be present during the file review. The employee may be required to sign and date a form maintained in the personnel file indicating who reviewed the file and the date of the review.
  - C. The County will honor reasonable requests for a copy of any document in the official file.
  - D. Prior to the placement of any adverse material in the employee's official file, the employee will be provided the opportunity to review and respond to the material. The employee may take up to ten (10) work days to prepare a response.
  - E. Each supervisor may maintain a separate working file for each employee. Any supervisory working file is not accessible by the employee.
  - F. With specific written authorization from an employee, the Union will be allowed to review an employee's official file.

**Article 22      LEGAL PROTECTION**

1. Employees are covered under the New Mexico Tort Claims Act, Section 41.4-1 et. seq. NMSA 1978 for actions taken within the scope of their employment.

**Article 23      UNIFORMED JOB CLASSIFICATIONS (EXCLUDING ANIMAL CONTROL AND CODES)**

1. The County shall provide the following uniform articles to new employees in positions that are required to wear uniforms:
  - A. Five shirts;
  - B. Five pairs of pants;
  - C. One jacket;
  - D. One pair of work boots.
2. The County may require additional uniform articles, and if it does so, it will provide an appropriate number of such articles to the employee.
3. The County will replace uniform articles that become damaged or too worn. If there is a disagreement relating to the replacement of a uniform article, the department director's determination shall be final.
4. The County shall provide proper tools for employees to complete their work safely.

**Article 24      UNIFORM AND EQUIPMENT FOR ANIMAL CONTROL/CODES OFFICERS**

1. The Sheriff's Department shall provide the following uniform articles to each newly hired Animal Control and Codes Enforcement Officer:
  - a. Four long sleeve shirts;
  - b. Four short sleeve shirts;
  - c. Four pants;
  - d. One winter jacket;
  - e. One raincoat;
  - f. One Class A uniform:
    - (1) One long sleeve shirt;
    - (2) One pair of pants;
    - (3) One necktie.
  - g. One pair of boots.
2. An officer may elect to purchase a different brand of boots. If an officer chooses to do so, the officer shall be allowed a credit of \$50.00 for the boot purchase. The officer shall be responsible for any cost, including taxes, shipping, etc., that exceeds \$50.00. The boots

must be black and cannot be any type of tennis shoe. Management reserves the right to disapprove the wear of any boot that it determines to be inappropriate for wear at work. An officer may receive advance approval of the desired boot by providing a photograph of the boot to the Sheriff for his approval.

3. The Sheriff's Department shall replace any item in paragraph 1a through 1g when it has become damaged or too worn for wear at work. The officer must return the old uniform article to receive a new article at no cost. If there is a disagreement relating to the replacement of a uniform article, the Sheriff's determination shall be final.

**Article 25**      **MEDICAL GROUP INSURANCE**

1. The employee, the employee's dependents, and the employee's family shall be eligible for medical group insurance coverage beginning the first day of the third pay period following the employee's hire, in accordance with the prescribed plan(s) of the State of New Mexico.
2. The employee's cost of medical, dental, and vision benefits, will be as follows: employee only-0 percent; employee plus one-25 percent; and employee plus family-25 percent.

**Article 26**      **CALL-BACK**

1. An employee called back to work shall be paid at the rate of one and one half (1½ ) times the employee's regular rate of pay. A minimum of two (2) hours shall be paid to the employee.
2. Call-back occurs when an off duty employee, lunch time excluded, is unexpectedly notified by a supervisor to return to work due to unforeseen circumstances beyond the control of management. Call-back does not include an employee being called in to cover another employee's absence, unless the employee called back has already worked that day. It also does not include the situation when the time worked immediately follows or precedes regular work time, in this case overtime may apply.

**Article 27**      **ON-CALL PAY**

1. Employees, except for animal control officers, who are required to be on "on-call" status during other than normal business work hours within a pay period shall be compensated at the rate of \$60 per week.
2. Animal control officers will generally be in an "on-call" status for one day at a time. On-call status will generally rotate through all animal control officers subject to on-call before an officer is on-call again. Each animal control officer who is subject to the rotating on-call status will receive \$15.00 additional pay every pay period as compensation for their rotating through on-call status.

**Article 28**      **PROMOTIONS AND TRANSFERS**

1. Qualified employees within the bargaining unit will be given first consideration for filling a vacancy within the bargaining unit, promotions within the bargaining unit, transfer or assignment within the bargaining unit.
2. Selection for promotion or transfer will be made on basis of education, experience, training, skills, job performance and other abilities, as well as test scores, where applicable. Where these are equal among candidates, seniority in the department will be the deciding factor.
3. When there is a vacancy within a department which could allow an employee assigned to that unit a promotional opportunity, a notice of such vacancy will be posted on the appropriate bulletin boards for a period of seven (7) calendar days. In cases where a promotional testing list exists, vacancies will not be posted but selection will be made from the list. All circulars will be made available to the Union President.
4. An employee who applies for a position and does not meet the stated criteria/qualifications will, upon written request, be given appropriate written reason(s) why the applicant was not qualified. The reasons shall be returned to the applicant within twenty (20) calendar days after the written request has been received. The written reason(s) is intended to be instructional for the applicant. The reason(s) shall not be grievable under this agreement's Grievance procedure unless the reason(s) violate protections set forth in this agreement. The Union President or his/her designee may meet with the department director on recommended criteria for consideration when a position vacancy exists.
5. Pay Adjustments:
  - A. If an employee applies for and is selected for a position within a higher grade than the employee's current assigned grade, the employee will receive the higher of:
    - a. The entry rate of pay of the higher grade, or
    - b. 5% for each salary grade the new position is higher than the current position.
  - B. In the case of a demotion, the employee shall be placed in the pay grade for the position to which the employee is demoted at a rate of pay commensurate with the employee's education, years of service, and directly related work experience as compared to other represented employees in the new pay grade.

**Article 29**      **WAGE INCREASE & RE-OPENER**

1. Bargaining Unit employees shall receive a salary increase equal to 2.4% of each employee's salary effective upon ratification of this agreement by the Board of County Commissioners. The salary increase will start at the beginning of the first full pay period after the Board of County Commissioner's approval.

2. The Union and the County may re-open this agreement for wage negotiations in April 2009, April 2010, and April 2011.

**Article 30**     **MEETING SPACE**

1. A Union staff member or union officer may request use of meeting rooms during normal department business hours on County facilities to conduct union business with employees in the bargaining unit. County employees attending union meetings during normal department business hours will be on authorized leave status or normal scheduled time off. The County shall not discriminate against union members attempting to use meeting room facilities.
2. The County shall not interfere with the rights of employees and the Union to meet on matters related to the investigation or filing of a grievance.
3. The Union shall attempt to reserve meeting rooms by providing at least seven days notice. A request for use of meeting rooms by bargaining unit employees must be submitted to the department or office head or designee for approval. The department head or designee should respond to the person requesting the room no later than two days after the request is received

**Article 31**     **BULLETIN BOARDS**

1. The County shall provide space for union bulletin boards in areas accessible and frequented by Bargaining Unit Employees. Bulletin Boards must be similar in size and style as currently exists in the County facilities. Bulletin boards used by the Union shall be secured with a lock and the Union shall designate up to three officers as custodians of the keys to the bulletin boards. The names of the three officers will be provided to the Department Director. Bulletin boards shall be limited to the posting of notices concerning union businesses such as information related to the recreational and social affairs of the Union or Chapter; Union or Chapter meetings, Union or Chapter elections; reports of enactments and judicial decision affecting public employee labor relations; and notices or announcements pertaining to the activities of the Chapter, State or National Association.
2. The union bulletin boards shall not be used for political purposes or for statements/criticism concerning management.

**Article 32**     **USE OF E-MAIL, TELEPHONE AND FAX**

1. Union Stewards are allowed to use telephones (including cell phones) and fax machines to communicate with AFSCME representatives. Communications shall be brief and infrequent.
2. The Union shall reimburse the County for any long distance charges incurred by use of County landline telephones or fax machines.

**Article 33**      **NEW EMPLOYEES AND NEW JOB CLASSIFICATIONS**

1. New employees hired into existing bargaining unit job classifications shall be considered part of the bargaining unit and shall be entitled to all benefits and obligations as other bargaining unit employees after completion of the probationary period.
2. When the County creates a new classification, it shall inform the Union within thirty (30) calendar days as to whether the new classification is to be placed in the bargaining unit or in a different group. If the County decides to place the new classification outside of the bargaining unit, the Union has the right, within fifteen (15) calendar after receipt of notification, to appeal such decision with the Director of Human Resources or Designee. A meeting between the Director of Human Resources and a Union staff representative or Union Officer as determined by the Union shall take place within fifteen (15) calendar days after receipt of the appeal to attempt to resolve the matter. The County and the Union shall be permitted to have two additional representatives at the meeting.
3. If the County and the Union are not able to agree on the proper placement of a new job classification, either party may file a petition for a unit clarification hearing with the local Labor Relations Board.

**Article 34**      **JOB DESCRIPTIONS AND CLASSIFICATION CHANGE**

1. No changes will be made to existing job descriptions without fourteen (14) calendar days notification to the Union. At the written request of the Union, the parties will meet and discuss changes in an existing job description.
2. The Union may request annually a copy of job descriptions for bargaining unit positions. The County will provide a copy of the job description unless it has not changed from the previous year.

**Article 35**      **INOCULATION AND IMMUNIZATION**

1. An Employee who while on duty is exposed to a contagious disease and who requests inoculation and immunizations for such disease will receive the medically necessary inoculation and immunizations for himself and his family at the County's expense.
2. The County will take appropriate measures, as determined by County Risk Management, to protect employees from contagious diseases.

**Article 36**      **SAFETY**

1. Safety is an integral part of the responsibilities of every manager, supervisor, and employee. Safety management exists to assist managers, supervisors, and employees in performance of their duties.

2. The employee will comply with all rules, regulations, and practices as may be prescribed to provide safe, sanitary, and health working conditions.
3. The County will:
  - A. Provide and develop safe and healthy working conditions and practices;
  - B. Provide clean work sites and grounds as required by OSHA;
  - C. Provide an area for Employee meal and break periods as required by OSHA standards; and
  - D. Maintain in safe working condition county-owned motor vehicles, tools, and equipment.

**Article 37      STORAGE OF EQUIPMENT**

1. The County will continue to provide for storage of county issued equipment as currently provided.

**Article 38      INTERNAL AFFAIRS, INVESTIGATIONS, AND POLOGRAPH EXAMINATION**

1. An employee accused of misconduct has the right to have a member (representative) of the collective bargaining unit present during any interview related to the alleged violation.
2. A representative may not interfere with the investigation. If possible, the interview of an employee will be during the employee's work hours.
3. The employee will be informed of the nature of the investigation before any interview begins. The interviewer will give the employee information sufficient to reasonably inform the employee of the allegations against the employee.
4. All findings that result in a suspension, demotion, or termination will be grievable.
5. If there is a finding against an employee that results in disciplinary action including a written letter of reprimand, suspension, demotion, or termination, the employee may request and be given a copy of any audio/video recording that is used as a basis in the decision to discipline the employee.
6. An employee who provides a statement during an investigation may request and receive a copy of the employee's own statement. Generally, the County will not provide these statements until it has completed its investigation.
7. An employee must truthfully and completely answer any questions relating to the matter under investigation whether the employee is a participant or witness to the matter.

8. The County Manager may in appropriate cases order an employee to submit to a polygraph examination as a condition of continued employment only after the Department Director has reviewed the case and recommends that the employee submit to a polygraph examination. The employee may have a representative observe the examination. The representative may not interfere with the polygraph examination and will generally view the examination through a window.

**Article 39**     **OVERTIME**

1. Overtime for hours worked will be paid at the rate of one and half times the employee's base pay. Paid leave hours, including vacation and sick leave hours, will not be used in computing hours worked for the purpose of arriving at overtime.
2. An employee who has accrued compensatory time off must first use that accrued compensatory time when requesting vacation leave. Vacation leave may only be used after the employee has exhausted all accrued compensatory time off.

**Article 40**     **HOURS OF WORK FOR BUILDING ATTENDANTS**

1. Hours of work for building attendants will be as follows:
  - 5:00 a.m. – 2:00 p.m. to include a one (1) hour lunch
  - 6:00 a.m. – 3:00 p.m. to include a one (1) hour lunch
  - 7:00 a.m. – 4:00 p.m. to include a one (1) hour lunch
  - 8:00 a.m. – 5:00 p.m. to include a one (1) hour lunch
  - 9:00 a.m. – 6:00 p.m. to include a one (1) hour lunch
2. Shift preference will be assigned by seniority. In order to preserve a good balance of experience and skills on each shift, no more than 50% of building attendants on a shift will be assigned based on seniority. When there is an uneven number of building attendants assigned to a shift, no more than 50% minus one building attendant will be assigned based on seniority.
3. Management shall give 5 calendar days notice of any transfer resulting in a change of shift or work day, except when management has determined that an operational necessity does not permit the 5 calendar day notice.

**Article 41**     **DRUG AND ALCOHOL TESTING**

1. The parties agree that a drug/alcohol free work place is a goal of both Management and the Union. Employees are prohibited from the unauthorized possession, distribution, or use of drugs or alcohol while on county property, while operating any county equipment or vehicle, or during their work hours. Employees are further prohibited from being under the influence of non-prescribed drugs or alcohol while on county property, while operating any county equipment or vehicle, or during their work. Violation of this prohibition may result in disciplinary action up to and including termination.

2. The County may, at its sole discretion, administer drug/alcohol testing when there is reasonable suspicion that an employee is in possession of, consuming, or under the influence of drugs and/or alcohol. Failure of an employee to cooperate in such testing shall result in the employee's termination in accordance with the "Disciplinary Actions" section and "Grievance Procedure" of this agreement. All testing will be accordance with all federal and state laws for those positions required by such laws, including but not limited to those laws governing commercial driver licenses.
3. Prior to the implementation of drug and alcohol policies and procedures, the Union will be given the opportunity to review the proposed policies and/or procedures and provide input to the Human Resource Director.

**Article 42**      **DURATION OF AGREEMENT**

1. This collective bargaining agreement shall become effective on the date it is ratified by the Doña Ana County Board of County Commissioners and shall remain in full force and effect for three (3) years from the date it is ratified.
2. Following ratification of this agreement by the DAC Board of County Commissioners, the parties to this agreement shall add language to this article stating in specific terms the duration of the agreement. This agreement is effective until February 9, 2012.

**Article 43**      **RENEWAL OF AGREEMENT**

1. This collective bargaining agreement shall terminate as specified in the article discussing duration of the agreement unless Management or the Union has notified the other in writing within 120 days prior to the agreement's termination date that the party desires to modify or amend the agreement. If a party gives such notice, the agreement will continue to be in effect for 180 days from the date such notice is received by the other party or until the parties have entered a new agreement whichever occurs first. Negotiations shall commence within thirty (30) days after a party submits its initial proposals or on a mutually agreed-upon time.

**Article 44**      **ENTIRE AGREEMENT**

4. This Agreement, upon ratification, supersedes all prior practices and agreements, whether written or oral, unless specifically stated to the contrary herein, and constitutes the complete and entire agreement between the parties and concludes collective bargaining for its term.
2. Management and the Union, for the duration of this agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered by this agreement, except where it has specifically been agreed to do so in the agreement.
3. The parties acknowledge that, during the negotiations which resulted in this agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any

subject or matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement.

DATED this the \_\_\_\_\_ day of \_\_\_\_\_ 2009.

AFSCME Local 1529  
Representative

Doña Ana County  
County Manager

By: \_\_\_\_\_  
Name: Robert Collazo

By: \_\_\_\_\_  
Name: Brian D. Haines

ATTEST:

By: \_\_\_\_\_  
Name: Mickey Reyes  
Union President

By: \_\_\_\_\_  
Name: Lynn J. Ellins  
County Clerk