



**NEW MEXICO STATE UNIVERSITY
BOARD OF REGENTS
SPECIAL MEETING AGENDA
August 24, 2022 at 9:30 AM**

Regents Room (Room 001)
Educational Services Building
NMSU Las Cruces Campus,
1780 East University Avenue
Las Cruces, NM

Online and livestreamed at <https://nmsu.zoom.us/j/96394253733>

Regents of New Mexico State University

Chair Ammu Devasthali, Vice Chair Arsenio Romero, Secretary/Treasurer Neal Bitsie, Dina Chacón-Reitzel, Christopher T. Saucedo

Non-Voting Advisory Members - ASNMSU President Garrett Moseley, Faculty Senate Chair Gaylene Fassenko, Ph.D., Employee Council Chair Susanne Berger

University Officials - Chancellor Dan E. Arvizu, Ph.D., Interim Provost Dorothy Campbell, Ph.D., Vice Chancellor Ruth A. Johnston, Ph.D., General Counsel Roy Collins III, J.D.

AGENDA

- A. **Call to Order**, *Chairwoman Ammu Devasthali*
 - 1. **Confirmation of Quorum and Roll Call**
- B. **Approval of Agenda**, *Chairwoman Ammu Devasthali*
- C. **Approval of Minutes and Prior Closed Executive Session**, *Chairwoman Ammu Devasthali*
 - 1. **Special Meeting Minutes July 8, 2022**
 - 2. **Confirmation of Prior Closed Executive Session July 8, 2022**
- D. **Consent Items**, *Chairwoman Ammu Devasthali*
 - 1. **Authorization of Doña Ana Community College District to Issue General Obligation Education Technology Lease Purchase Arrangement and Notes NTE \$3,750,000**, *DACC President Mónica F. Torres*
 - 2. **Ratification of a Collective Bargaining Agreement between Regents of New Mexico State University and American Federation of State, County and Municipal Employees, Local 2393**, *Associate Vice President Gena Jones*

E. Action Items

- 1. Resolution No. 2022-03: New Mexico Finance Authority (NMFA) Application for Financial Assistance and Project Approval, Associate Vice President D'Anne Stuart**
- 2. Resolution No. 2022-04: Resolution Authorizing Revenue Bond Issuance Series 2022, Associate Vice President D'Anne Stuart**

F. Informational Items, Chairwoman Ammu Devasthali

- 1. None.**

G. Adjournment, Chairwoman Ammu Devasthali



Board of Regents Meeting
Meeting Date: August 24, 2022
Agenda Item Cover Page

Agenda Item # C-1

- Action Item
- Consent Item
- Informational Item

Presented By: Neal Bitsie
Secretary/Treasurer,
Board of Regents

Agenda Item: Special Meeting Minutes July 8, 2022

Requested Action of the Board of Regents: Approval of the Special Meeting Minutes for July 8, 2022 as presented.

Executive Summary:

As required by the New Mexico Open Meetings Act, the board shall keep written minutes of all its meetings. The minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted. All minutes are open to public inspection. Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Minutes shall not become official until approved by the board.

References:

NM Open Meetings Act §10-15-1 G.

Prior Approvals:

N/A



**NEW MEXICO STATE UNIVERSITY
BOARD OF REGENTS
SPECIAL MEETING MINUTES
July 8, 2022 at 2:00 PM**

Regents of New Mexico State University

Chair Ammu Devasthali, Vice Chair Arsenio Romero, Secretary/Treasurer Neal Bitsie, Dina Chacón-Reitzel, Christopher T. Saucedo

Non-Voting Advisory Members - ASNMSU President Garrett Moseley, Faculty Senate Chair Gaylene Fasenko, Ph.D., Employee Council Chair Susanne Berger

University Officials - Chancellor Dan E. Arvizu, Ph.D., Interim Provost Dorothy Campbell, Ph.D., Vice Chancellor Ruth A. Johnston, Ph.D., General Counsel Roy Collins III, J.D.

MINUTES

A. Call to Order, Chairwoman Ammu Devasthali

1. Confirmation of Quorum and Roll Call

Chairwoman Devasthali called the meeting to order at 2:04pm.

The Chief of Staff confirmed the quorum. Five members of the Board of Regents; Regent Devasthali, Regent Romero, Regent Bitsie, Regent Chacón-Reitzel, and Regent Saucedo were present via Zoom.

The Chief of Staff took the roll call. ASNMSU President Garret Mosley, Faculty Senate Chair Gaylene Fasenko, Employee Council Chair Susanne Berger, Chancellor Arvizu, Provost Campbell, Vice Chancellor Johnston, and General Counsel Collins.

B. Approval of Agenda, Chairwoman Ammu Devasthali

Regent Chacón-Reitzel motioned to approve the agenda as presented. Regent Bitsie seconded the motion. All were in favor and none opposed. Motion passed.

C. Approval of Minutes and Prior Closed Executive Session, Chairwoman Ammu Devasthali

1. Regular Meeting Minutes May 6, 2022

Regent Romero made a motion to approve the minutes as presented. Regent Saucedo seconded the motion. All were in favor and none opposed. Motion passed.

2. Confirmation of Prior Closed (Executive) Session on June 20, 2022 at 8 AM

The Chief of Staff confirmed the prior executive closed session. The Board of Regents met in Prior Executive Closed Session at 8:00am on June 20th, 2022. The closed executive meeting was held to discuss pending litigation and limited personnel matters in accordance with NMSA Section 10-15- 1

H(7) and NMSA Section 10-15-1 (H2) of the New Mexico Open Meetings Act. The Chief of Staff confirmed certification from the regents. Regent Saucedo, Regent Chacón-Reitzel, Regent Bitsie, Regent Romero, and Regent Devasthali certified that only matters of that nature were discussed.

D. Consent Items, Chairwoman Ammu Devasthali

- 1. Demolition of the Greek Housing Complex at Locust Street and Wells Street, University Architect Heather Watenpaugh**
- 2. Joint Powers Agreement (JPA) between the New Mexico Department of Public Safety and New Mexico State University (Police Department), Interim Police Deputy Chief Justin Dunivan**
- 3. Honorary Naming for Autism Diagnostic Center to be Papen-Aprendamos Autism Diagnostic Center, NMSU Foundation President Derek Dictson**
- 4. Philanthropic Temporary Naming of Sunland Park Vocational Academy, NMSU Foundation President Derek Dictson**
- 5. Authorization of Doña Ana Community College District General Obligation Bond Sale, President Mónica Torres**

Regent Bitsie made a motion to approve the consent agenda as presented. Regent Romero seconded the motion. All were in favor and none were opposed. Motion passed.

E. Action Items

- 1. None.**

F. Informational Items, Chairwoman Ammu Devasthali

- 1. None.**

G. Closed (Executive) Session, Chairwoman Ammu Devasthali

- 1. Discussion of bargaining strategy preliminary to collective bargaining negotiations between the Regents of New Mexico State University and the United Electrical, Radio and Machine Workers of America in accordance with the New Mexico Open Meetings Act, NMSA Section 10-15-1, subsection (H)(5).**

H. Adjournment, Chairwoman Ammu Devasthali

Chairwoman moved that the Board of Regents go into a closed meeting to discuss bargaining strategy preliminary to collective bargaining in those situations between the Regents of New Mexico State University and the United Electrical Machine Workers of America and to discuss limited personnel matters related to in accordance with the New Mexico Open Meetings Act and NMSA Section 10-15-1 H(5) and NMSA Section 10-15-1 H(2) of the New Mexico Open Meetings Act. Regent Devasthali further moved that the Board adjourn this open meeting upon going into closed session discussion as no further action is pending board approval in

this open meeting. Regent Romero seconded the motion. The Chief of Staff took a roll call vote. All were in favor and none opposed. The motion passed. The meeting was adjourned at 2:10pm.

DRAFT



**NEW MEXICO STATE UNIVERSITY BOARD OF REGENTS
SPECIAL MEETING
August 24, 2022**

Item C-2

Confirmation of Prior Executive Session – July 8, 2022

The Board of Regents met in an online closed executive session at 2:10 pm on July 8, 2022.

The closed executive session meeting was held to discuss bargaining strategy preliminary to collective bargaining negotiations between the Regents of New Mexico State University and the United Electrical, Radio and Machine Workers of America in accordance with the New Mexico Open Meetings Act, NMSA Section 10-15-1, subsection (H)(5).

Those board members who were present please certify that only matters of that nature were discussed.

Regent Saucedo ____

Regent Chacón-Reitzel ____

Regent Bitsie ____

Regent Romero ____

Regent Devasthali ____



Board of Regents Meeting
Meeting Date: August 24, 2022
Agenda Item Cover Page

Agenda Item # D-1

- Action Item
- Consent Item
- Informational Item

Presented By: Mónica F. Torres, Ph.D.
President, DACC

Agenda Item: Authorization of Doña Ana Community College District to Issue General Obligation Education Technology Lease Purchase Arrangement and Notes NTE \$3,750,000

Requested Action of the Board of Regents: Approval of the Authorization of Doña Ana Community College District to Issue General Obligation Education Technology Lease Purchase Arrangement and Notes NTE \$3,750,000

Executive Summary:

In 2019 the New Mexico Legislature amended state law allowing Branch and Community Colleges to issue Education Technology Notes similar to what school districts do to fund education technology needs. In order to meet education technology needs the Governing Board of DACC is authorizing the issuance and sale of up \$3.750 of education technology notes. The Notes will be issued and placed with the State Treasurer and will have a final maturity of August 1, 2023 and will maintain the District's historical debt service tax rate of 0.75 mils.

References:

Doña Ana Community College Governing Board Authorizing Resolution for Issuance of Education Technology Notes (agenda item on September 1, 2022 meeting)

Prior Approvals:

N/A



August 18, 2022

Via email: Gerald.Hoehne@state.nm.us & Harrison.Rommel@state.nm.us

Gerald Hoehne, Capital Projects Director
Dr. Harrison Rommel, Finance Director
New Mexico Higher Education Department
2044 Galisteo Street, Suite 4
Santa Fe, NM 87505-2100

**RE: Doña Ana Community College District (the “District”)
Doña Ana County, New Mexico
\$3,750,000 General Obligation Education Technology Lease Purchase
Arrangement, Series 2022**

Dear Mr. Hoehne and Dr. Rommel:

Pursuant to Section 21-2A-13(A), NMSA 1978, the District wishes to advise you that it contemplates the issuance of \$3,750,000 Doña Ana Community College District General Obligation Education Technology Lease Purchase Arrangement and Notes, Series 2022 to purchase education technology equipment for the District. The Lease Purchase Arrangement is expected to be placed with the State of New Mexico Treasurer’s Office.

Thank you.

Sincerely,

Kelly Brooks, Vice President of Business and Finance
Doña Ana Community College

Cc: Katherine E. McKinney, Modrall Sperling Law Firm
Erik Harrigan, RBC Capital Markets, LLC

EXCERPT FROM THE REGULAR MEETING
OF THE GOVERNING BOARD OF THE NEW MEXICO STATE UNIVERSITY –
DOÑA ANA COMMUNITY COLLEGE

The governing board (the "Board") of New Mexico State University Doña Ana Community College District (the "District"), in the Counties of Doña Ana and Otero, and State of New Mexico, met in regular open session in full conformity with law and the rules and regulations of the Board, via Zoom videoconference, on September 1, 2022, at the hour of 6:00 p.m., at which meeting there were present and answering the roll call the following:

Present: President: _____

Secretary: _____

Members: _____

Absent: _____

Also Present: _____

f

The following resolution was then introduced for consideration by the Board:

DOÑA ANA COMMUNITY COLLEGE DISTRICT

A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF DOÑA ANA COMMUNITY COLLEGE DISTRICT, DOÑA ANA AND OTERO COUNTIES, NEW MEXICO, TAXABLE GENERAL OBLIGATION (LIMITED TAX) EDUCATION TECHNOLOGY NOTE, SERIES 2022 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$3,750,000, DATED AS OF THE DATE OF DELIVERY, PAYABLE FROM AD VALOREM TAXES LEVIED ON ALL TAXABLE PROPERTY WITHIN THE DISTRICT, WITH SUCH LEVY LIMITED AS TO RATE AS PROVIDED IN SECTION 21-2A-14(A) NMSA 1978 AND WITHIN CERTAIN PARAMETERS FOR THE ACQUISITION OF EDUCATION TECHNOLOGY EQUIPMENT; PROVIDING FOR THE FORM, TERMS AND CONDITIONS OF THE NOTE, THE MANNER OF ITS EXECUTION, AND THE METHOD OF, AND SECURITY FOR, PAYMENT; AUTHORIZING THE SALE OF THE NOTE THROUGH A NEGOTIATED SALE; PROVIDING FOR THE APPROVAL OF VARIOUS AGREEMENTS RELATING TO THE NOTE; DELEGATING AUTHORITY TO THE DELEGATE TO DETERMINE THE FINAL TERMS OF THE NOTE PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT AND COLLEGE DISTRICT TAX ACT AND TO ENTER INTO A NOTE PURCHASE AGREEMENT; AUTHORIZING OFFICERS OF THE DISTRICT TO TAKE ALL ACTION NECESSARY FOR THE ISSUANCE OF THE NOTE AND RATIFYING ACTION PREVIOUSLY TAKEN CONCERNING THE NOTE.

WHEREAS, the Governing Board (the “Board”) of NMSU – Doña Ana Community College District, (the “District”) is authorized to contract indebtedness on behalf of and upon the credit thereof by entering into a lease purchase arrangement pursuant to the College District Tax Act, Sections 21-2A-1 through 21-2A-10, NMSA 1978, as amended, and Sections 21-2A-13 through 21-2A-17 (collectively with the College District Tax Act, the “Act”) for the purpose of acquiring educational technology equipment as defined in Section 21-2A-2(E) (the “Property”);

WHEREAS, Section 21-2A-2(F) NMSA 1978 of the Act defines a lease purchase arrangement as “a financing arrangement constituting debt of a college district pursuant to which periodic lease payments composed of principal and interest components are to be paid to the holder of the lease-purchase arrangement and pursuant to which the owner of the education technology equipment may retain title to or a security interest in the equipment and may agree to release the security interest or transfer title to the equipment to the college district for nominal consideration after payment of the final periodic lease payment”; and further provides that lease purchase arrangement “also means any debt of the college district incurred for the purpose of acquiring educational technology equipment whether designated as a general obligation lease, note or other instrument evidencing a debt of the college district”; and

WHEREAS, the Board has determined and does hereby determine that it is necessary and in the best interest of the District and its residents that District issue Taxable General Obligation (Limited Tax) Education Technology Note, Series 2022 (the “Note” or the “Series 2022 Note”) with such Note constituting a lease purchase

arrangement within the meaning of the Act pursuant to this Resolution and a Sale Certificate to be executed by the President of the Board, the President of the District, or the District Vice President for Business and Finance (each a “Delegate”) as authorized by Sections 6-14-10.2 and 21-2A-13(D), NMSA 1978 (the “Sale Certificate”); provided, however, that a satisfactory price be obtained therefor; and

WHEREAS, the District has given written notice of the proposed issuance of the Note to the New Mexico Higher Education Department pursuant to Section 21-2A-13(A) NMSA 1978; and

WHEREAS, pursuant to Section 21-2A-14(B)(6), the District may sell the Note at a public sale, negotiated sale or private sale to the New Mexico Finance Authority; and

WHEREAS, the Board anticipates receiving an offer to purchase the Note in a negotiated sale with the New Mexico State Treasurer’s Office (the “Purchaser”) pursuant to a Note Purchase Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF DOÑA ANA COMMUNITY COLLEGE DISTRICT, IN THE COUNTIES OF DOÑA ANA AND OTERO AND THE STATE OF NEW MEXICO:

Section 1. The Board hereby makes the following determinations and findings:

A. It is necessary and in the best interest of the District to acquire education technology equipment as defined in Section 21-2A-2(E) NMSA 1978 through the issuance, sale, and delivery of the Note constituting a lease purchase arrangement.

B. The estimated cost of acquiring the education technology equipment and paying the cost of issuing the Note (collectively, the “Project”) is \$3,750,000.

C. The form of the Note shall be as provided in this Resolution with the terms of the Note to be established in the Sale Certificate within the parameters established in this Resolution. If such Note is delivered to the Purchaser in the calendar year 2023, the Note shall be designated as Series 2023, and references to Series 2022 in this Resolution shall be deemed to be Series 2023 without further action of the Board.

D. The source of funds for the payment of the debt shall be ad valorem taxes levied on all taxable property within the District which levy shall not exceed five mills pursuant to Sections 21-2A-6(D) and 21-2A-14 NMSA 1978; provided, however, that this five-mill limitation may be exceeded in any year in which the valuation of the property within the District declines to a level lower than the valuation of the property within the District in the year in which the Note was issued pursuant to Section 21-2A-14 NMSA 1978.

E. The estimated rate of ad valorem tax rate for the repayment of the principal and interest on the Note shall be \$0.0148 per \$1,000.00 of net taxable value per year (applicable to all obligations issued pursuant to the Act). It is estimated that there

shall be no increase in the current rate of ad valorem taxes for the taxable property within the District.

Section 2. The issuance, sale, and delivery of the Note in an amount not to exceed \$3,750,000, subject to the parameters of this Resolution, is approved with the final terms to be set forth in a Sale Certificate to be executed by the Delegate. All actions heretofore taken by the Board and the officers and employees of the District directed toward the issuance and sale of the Note be and the same hereby are, ratified, approved and confirmed.

Section 3. The Board hereby appoints the Vice President of Business and Finance of the District to serve as paying agent and registrar for the Note.

Section 4. The Board hereby adopts this Resolution pursuant to Sections 21-2A-13D and 6-14-10.2 NMSA 1978 and the Act. The final terms of the Note as set forth in the Sale Certificate shall be within the parameters set forth below:

A. The maximum par amount of the Note shall not be more than \$3,750,000.

B. The Note shall be secured by ad valorem property taxes levied on all taxable property within the District, limited as to rate pursuant to Sections 21-2A-6(D) and 21-2A-14(A) NMSA 1978 to \$5.00 per \$1,000 of taxable value per year; provided however, that this limitation may be exceeded in any year in which the valuation of property in the District declines to a level lower than the valuation of property in the year in which the Note was issued.

C. The Note shall be payable at one time or in installments with the final maturity of the Note no later than August 1, 2023.

D. The maximum interest rate on the Note shall be no greater than 10% per annum.

E. The Note shall be sold pursuant to a negotiated sale.

F. The Purchaser's discount shall not exceed 1% of the aggregate principal amount of the Note.

G. The Note shall not be subject to optional or mandatory redemption prior to maturity.

The Board hereby appoints the President of the Board, the President of the District, and Vice President for Business and Finance as the delegates (each a "Delegate") and authorizes the Delegate pursuant to this Resolution to determine the final terms of the Note as permitted by Sections 6-14-10.2 and 21-2A-13(D) NMSA 1978, to enter into a Note Purchase Agreement with the Purchaser pursuant to a negotiated sale, and to execute a Sale Certificate in conformance with these parameters. The Delegate shall present a certification to the Board at a public meeting of the Board that the terms of the Note comply with the parameters and conditions of this Resolution.

Section 5. The officers of the District, the District's Municipal Advisor, and the District's Bond Counsel are authorized to take all action necessary or appropriate to give effect to the provisions of this Resolution.

Section 6. Details of the Note.

A. In order to provide funds for the Project, the District shall issue the District's Note maturing and bearing interest as set forth in the Sale Certificate pursuant to the Act.

B. The Note shall be issued in an aggregate principal amount not to exceed \$3,750,000, dated as of the date of delivery, (herein the "Series Date"); will be issued in one series and shall consist of one or more notes numbered consecutively from R-1 upward, issuable in the denomination of \$5,000 each or integral multiples thereof (provided that no individual note will be issued for more than one maturity); shall bear interest on the basis of a 360-day year and twelve 30-day months from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from the Series Date to maturity at the rates per annum set forth in the Sale Certificate; payable to the registered owner thereof, or registered assigns, on February 1, 2023 or such other date specified in the Sale Certificate, and semiannually on February 1 and August 1 or annually on August 1 thereafter as provided in the Sale Certificate in each year in which the Note is outstanding and shall mature on August 1, 2023. The net effective interest rate on the Note shall not exceed ten percent (10%) per annum.

C. The principal of and interest on the Note due at maturity shall be payable to the registered owner thereof as shown on the registration books kept by the Vice President of Business and Finance or successor in function, as "registrar/paying agent" (such entity and any successor thereto, the "Registrar/Paying Agent") for the Note, upon maturity and upon presentation and surrender thereof at the principal offices of the Registrar/Paying Agent. If any Note shall not be paid upon such presentation and surrender at or after maturity, it shall continue to draw interest at the rate borne by the Note until the principal thereof is paid in full. Payment of interest on the Note (other than at maturity) shall be made by check or draft mailed by the Registrar/Paying Agent (or by such other arrangement as may be mutually agreed to by the Registrar/Paying Agent and such registered owner), on or before each interest payment date (or, if such interest payment date is not a business day, on or before the next succeeding business day), to the registered owner thereof on the Record Date (defined below) at the address as it appears on the registration books kept by the Registrar/Paying Agent. All such payments shall be made in lawful money of the United States of America. The term "Record Date" as used herein with respect to any interest payment date shall mean the fifteenth day (whether or not a business day) of the month immediately preceding the interest payment date. The person in whose name any Note is registered on any Record Date with respect to any interest payment date shall be entitled to receive the interest payable thereon on such interest payment date notwithstanding any transfer or exchange thereof subsequent to such Record Date and prior to such interest payment date; but interest on any Note which is not timely paid or duly provided for shall cease to be payable as provided above and shall be payable to the person in whose name such Note is registered at the close of business on a special record date (the "Special Record Date") fixed by the

Registrar/Paying Agent for the payment of any such overdue interest. The Special Record Date shall be fixed by the Registrar/Paying Agent whenever moneys become available for payment of overdue interest, and notice of any such Special Record Date shall be given not less than ten days prior thereto, by first-class mail, to the registered owners of the Note as of the fifth day preceding the mailing of such notice by the Registrar/Paying Agent, stating the Special Record Date and the date fixed for the payment of overdue interest.

D. The Note is not subject to optional or mandatory redemption prior to maturity.

E. The Note shall be sold to the Purchaser in a negotiated sale as approved in the Sale Certificate within the parameters set forth in this Resolution.

Section 8. Execution and Authentication of Note.

A. Method of Execution. The Note shall bear the manual or facsimile signature of the President of the Board and shall be attested by the manual or facsimile signature of the Secretary or Vice President of the Board. The Note shall be authenticated by the Registrar/Paying Agent. The Note bearing the signatures or facsimile signatures of the officers in office at the time of the signing thereof shall be the valid and binding obligations of the District, notwithstanding that before the delivery of the Note and payment therefor, or before the issuance thereof upon transfer or exchange, any or all of the persons whose signatures appear on the Note shall have ceased to fill their respective offices.

B. Filing Manual Signatures. The President and Secretary of the Board may, by the execution of a signature certificate pertaining to the Note, adopt as and for their respective signatures the facsimiles thereof appearing on the Note; and, at the time of the execution of the signature certificate, the President of the Board and Secretary may each adopt as and for his or her facsimile signature the facsimile signature of his or her predecessor in office in the event that such facsimile signature appears upon any of the Note. The President and Secretary of the Board, pursuant to Sections 6-9-1 through 6-9-6, inclusive, NMSA 1978, may each forthwith file his manual signature, certified by him under oath, with the Secretary of State of New Mexico, provided that such filing shall not be necessary for any officer where any previous filing shall have application to the Note.

C. Authentication. No Note shall be valid or obligatory for any purpose unless the certificate of authentication, substantially in the form hereinafter provided, has been duly executed by the Registrar/Paying Agent. The Registrar/Paying Agent's certificate of authentication shall be deemed to have been duly executed by it if manually signed by the Registrar/Paying Agent.

Section 9. Registration, Transfer, Exchange and Ownership of Note.

A. Registration, Transfer and Exchange. Books for the registration and transfer of the Note shall be kept by the Registrar/Paying Agent, which is hereby appointed by the District as registrar and as paying agent for the Note. Upon the surrender for transfer of any Note at the principal office of the Registrar/Paying Agent, duly endorsed for transfer

or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Note to be transferred in the name of the transferee or transferees a new Note in fully registered form of the same aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. The Note may be exchanged at the office of the Registrar/Paying Agent for an equal aggregate principal amount of the Note of other authorized denominations, and of the same maturity, series and interest rate. The Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Note to be exchanged a Note which the registered owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of the Note as herein provided shall be without charge to the owner or any transferee, but the Registrar/Paying Agent may require the payment by the owner of any Note requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

B. Owner of the Note. The person in whose name any Note shall be registered on the registration books kept by the Registrar/Paying Agent, shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of overdue interest; and payment of or on account of either principal or interest on any Note shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed upon transfer of such Note in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Note to the extent of the sum or sums so paid.

C. Replacement Note. If any note shall be lost, stolen, destroyed or mutilated, the Registrar/Paying Agent shall, upon receipt of the mutilated note or other proof of loss or destruction, proof of ownership, a surety bond in twice the face amount of the note, payment of the cost of preparing and issuing the new note, and other such evidence, information or indemnity relating thereto as it may reasonably require and as may be required by law, authenticate and deliver a replacement note of a like aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated note shall have matured, the Registrar/Paying Agent may pay such note in lieu of replacement.

D. Delivery of Note Certificates to Registrar/Paying Agent. The officers of the District are authorized to deliver to the Registrar/Paying Agent fully executed but unauthenticated notes in such quantities as may be convenient to be held in custody by the Registrar/Paying Agent pending use as herein provided.

E. Cancellation of Note. Whenever any Note shall be surrendered to the Registrar/Paying Agent upon payment thereof, or to the Registrar/Paying Agent for transfer, exchange or replacement as provided herein, such Note shall be promptly cancelled by the Registrar/Paying Agent, and counterparts of a certificate of such cancellation shall be furnished by the Registrar/Paying Agent to the District.

F. Book Entry. Notwithstanding any other provision herein, the Note may be issued or registered, in whole or in part, in book-entry form from time to time with no physical distribution of note certificates made to the public, with The Depository Trust Company of New York, New York (the “Depository”), acting as securities depository for the Note. A single certificate for each maturity date of the Note issued in book-entry form will be delivered to the Depository and immobilized in its custody. The book-entry system will evidence ownership of the Note in authorized denominations, with transfer of ownership effected on the books of the Depository and its participants (the “Participants”). As a condition to delivery of the Note in book-entry form, the purchaser will, immediately after acceptance of delivery thereof, deposit, or cause to be deposited, the Note certificates with the Depository, registered in the name of the Depository or its nominee. Principal and interest will be paid to the Depository or its nominee as the registered owner of the Note. The transfer of principal and interest payments to Participants will be the responsibility of the Depository; the transfer of principal and interest payments to the beneficial owners of the Note (the “Beneficial Owners”) will be the responsibility of Participants and other nominees of Beneficial Owners maintaining a relationship with Participants (the “Indirect Participants”). The District will not be responsible or liable for maintaining, supervising or reviewing the records maintained by the Depository, Participants or Indirect Participants.

If (i) the Note are not eligible for the services of the Depository, (ii) the Depository determines to discontinue providing its services with respect to the Note or (iii) the District determines that a continuation of the system of book-entry transfers through the Depository ceases to be beneficial to the District or the Beneficial Owners, the District will either identify another similar depository to perform such functions or certificates for the Note will be delivered to the Beneficial Owners or their nominees, and the Beneficial Owners or their nominees, upon authentication of Note and registration of those Note in the Beneficial Owners’ or nominees’ names, will become the owners of the Note for all purposes. In that event, the District shall mail an appropriate notice to the Depository for notification to Participants, Indirect Participants and Beneficial Owners of the substitute Depository or the issuance of Note certificates to Beneficial Owners or their nominees, as applicable.

Officers of the District are authorized to sign agreements with or letters to the Depository relating to the matters set forth in this Section.

Notwithstanding any other provision herein, so long as the Note is registered in the name of the Depository or its nominee, all payments of principal and interest on the Note, and all notices with respect to the Note, shall be made and given by the Registrar/Paying Agent or the District to the Depository as provided in this Resolution and by the Depository to its Participants or Indirect Participants and notices to the Beneficial Owners of the Note in the manner provided in an agreement or letter of the District to the Depository.

Section 10. Successor Registrar/Paying Agent. If the Registrar/Paying Agent initially appointed hereunder shall resign, or if the District shall reasonably determine that the Registrar/Paying Agent has become incapable of fulfilling its duties hereunder, the District may, upon notice mailed to each registered owner of Note at the address last

shown on the registration books, appoint a successor registrar/paying agent. Every such successor registrar/paying agent shall be a bank or trust company located in and in good standing in the United States and having a shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, of not less than \$10,000,000.

Section 11. Negotiability. Subject to the registration provisions hereof, the Note hereby authorized shall be fully negotiable and shall have all the qualities of negotiable paper, and the registered owner or owners thereof shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code.

Section 12. Form of Note. The Note shall be in substantially the following form:

[Form of Note]

REGISTERED
NO. _____

REGISTERED
\$ _____

DOÑA ANA COMMUNITY COLLEGE DISTRICT
DOÑA ANA COUNTY, NEW MEXICO
TAXABLE GENERAL OBLIGATION (LIMITED TAX) EDUCATION
TECHNOLOGY NOTE, SERIES 2022

Registered Owner: _____

Principal Amount: _____ DOLLARS

Interest Rate:
_____% per annum

Maturity Date:
August 1, 2023

Series Date:
____, 2022

CUSIP

The governing board (the "Board") of Doña Ana Community College District, Doña Ana County, New Mexico (the "District"), on the faith, credit and behalf of the District, for value received, hereby promises to pay to the registered owner named above, or registered assigns, the principal amount hereof on the Maturity Date and to pay interest on the principal amount at the Interest Rate on February 1, 2023, and thereafter on February 1 and August 1 of each year (the "Interest Payment Date") from the Series Date to its maturity. The principal of the Note of the series of which this is one (the "Note") and interest due at maturity shall be payable to the registered owner thereof as shown on the registration books kept by Vice President of Business and Finance of the District, as "registrar/paying agent" (such bank and any successor thereto, the "Registrar/Paying Agent") for the Note, upon maturity and upon presentation and surrender thereof at the principal corporate trust office of the Registrar/Paying Agent. If

any Note shall not be paid upon such presentation and surrender at or after maturity, it shall continue to draw interest at the rate borne by said Note until the principal thereof is paid in full. Payment of interest on the Note (other than at maturity) shall be made by check or draft mailed by the Registrar/Paying Agent (or by such other arrangement as may be mutually agreed to by the Registrar/Paying Agent and such registered owner), on or before each Interest Payment Date (or, if such Interest Payment Date is not a business day, on or before the next succeeding business day), to the registered owner thereof as of the close of business on the Record Date (defined below) at his address as it appears on the registration books kept by the Registrar/Paying Agent. All such payments shall be made in lawful money of the United States of America. The term "Record Date" as used herein with respect to any Interest Payment Date shall mean the 15th day of the month preceding an Interest Payment Date. The person in whose name any Note is registered at the close of business on any Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable thereon on such Interest Payment Date notwithstanding any transfer or exchange thereof subsequent to such Record Date and prior to such Interest Payment Date; but interest on any Note which is not timely paid or duly provided for shall cease to be payable as provided above and shall be payable to the person in whose name such Note is registered at the close of business on a special record date (the "Special Record Date") fixed by the Registrar/Paying Agent for the payment of any such overdue interest. The Special Record Date shall be fixed by the Registrar/Paying Agent whenever moneys become available for payment of overdue interest, and notice of any such Special Record Date shall be given not less than ten days prior thereto, by first-class mail, to the registered owners of the Note as of the fifth day preceding the mailing of such notice by the Registrar/Paying Agent, stating the Special Record Date and the date fixed for the payment of overdue interest.

The Note are fully registered and are issuable in denominations of \$5,000 and any integral multiple thereof (provided that no individual Note may be issued for more than one maturity).

The series of Note of which this note is one is limited to the total principal amount of \$3,750,000 of like tenor except as to number, denomination, maturity date, and interest rate, issued by Doña Ana Community College District, Doña Ana County, New Mexico, for the purpose of acquiring education technology equipment as defined in Section 21-2A-2(E) NMSA 1978 and paying the costs of issuing the Note under the authority of and in full conformity with the Constitution and laws of the State of New Mexico (particularly Sections 21-2A-1 through 21-2A-12, Sections 21-2A-13 through 21-2A-17 NMSA 1978, Sections 6-14-8 through 6-14-11, and acts amendatory and supplemental thereto, collectively, the "Act"), and pursuant to a resolution of the Board duly adopted on September 1, 2022, and made a law of the District prior to the issuance of this note as supplemented by a Sale Certificate executed on _____, 2022 (collectively, the "Note Resolution").

The Note is not subject to optional or mandatory redemption prior to maturity.

The Registrar/Paying Agent will maintain the books of the District for the registration of ownership of the Note. Upon the surrender for transfer of any Note at the principal corporate trust office of the Registrar/Paying Agent, duly endorsed for transfer

or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Note to be transferred in the name of the transferee or transferees a new Note in fully registered form of the same aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. The Note may be exchanged at the principal corporate trust office of the Registrar/Paying Agent for an equal aggregate principal amount of Note of other authorized denominations, and of the same maturity, series and interest rate. The Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Note to be exchanged a Note which the registered owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Note as herein provided shall be without charge to the owner or any transferee, but the Registrar/Paying Agent may require the payment by the owner of any Note requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

The person in whose name the Note shall be registered on the registration books kept by the Registrar/Paying Agent, shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of interest; and payment of or on account of either principal or interest on the Note shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed upon transfer of such Note in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Note to the extent of the sum or sums so paid.

If any Note shall be lost, stolen, destroyed or mutilated, the Registrar/Paying Agent shall, upon receipt of the mutilated Note or other proof of loss or destruction, proof of ownership, a surety Note in twice the face amount of the Note, payment of the cost of preparing and issuing the new Note, and such other evidence, information or indemnity relating thereto as it may reasonably require and as may be required by law, authenticate and deliver a replacement Note of a like aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Note shall have matured, the Registrar/Paying Agent may pay such Note in lieu of replacement.

For the punctual payment of the principal of and interest on this Note as aforesaid and for the levy and collection of taxes in accordance with the statutes authorizing the issuance of this Note, the full faith and credit of the District is hereby irrevocably pledged as provided for in the Resolution. The Board has, by the Resolution, ordered the creation of an interest and sinking fund for the payment of the Note. Such fund is to be held in trust for the benefit of the owner or owners of the Note.

It is hereby certified, recited and warranted that all the requirements of law have been complied with by the proper officials of the District in the issuance of this Note; that the total indebtedness of the District, including that of this Note, does not exceed any limit of indebtedness prescribed by the Constitution or laws of the State of

New Mexico; that provision has been made for the levy and collection of annual taxes sufficient to pay the principal of and the interest on this Note when the same become due; that the Note is issued under authority of the College District Tax Act Sections 21-2A-1 through 21-2A-10, Sections 21-2A-13 through 21-2A-17, inclusive, NMSA 1978 which recital conclusively imparts full compliance with all of the provisions of the Act; and that the Note is incontestable for any cause whatsoever after its delivery for value. This Note shall not be valid or obligatory for any purpose until the Registrar/Paying Agent shall have manually signed the certificate of authentication hereon.

IN TESTIMONY WHEREOF, the governing board of the District has caused this Note to be signed and executed with the manual or facsimile signature of the President of the Board, and attested with the manual or facsimile signature of the Secretary or Vice President of the governing board of the District, all as of the Series Date.

GOVERNING BOARD OF THE DOÑA ANA
COMMUNITY COLLEGE DISTRICT

(MANUAL or FACSIMILE SEAL)

By: _____
President of the Board

ATTEST:

By: _____
Secretary

[Form of Certificate of Authentication]

This Note is described in the Note Resolution and has been duly registered on the registration books kept by the undersigned as Registrar/Paying Agent for the Note.

Date of Authentication and
Registration: __, 2022

Vice President of Business and Finance
as Registrar/Paying Agent

By: _____

[End of Form of Certificate of Authentication]

[Form of Assignment]

ASSIGNMENT

For value received, the undersigned sells, assigns and transfers unto _____ whose social security or tax identification number is _____ the within note and irrevocably constitutes and appoints _____ attorney to transfer such note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed: _____

NOTE: The assignor’s signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatsoever.

[End of Form of Assignment]

[End of Form of Note]

Section 13. Delivery of Note; Use of Proceeds to Acquire Project; Purchaser Not Responsible. When the Note has been duly executed and authenticated, it shall be delivered to the Purchaser as the lawful purchaser thereof. The funds realized from the sale of the Note shall be applied solely for the Project, but the Purchaser of the Note shall in no manner be responsible for the application of or disposal by the District, or any of its officers, of any of the funds derived from the sale thereof.

Proceeds of the Note received as accrued interest shall be deposited into the Doña Ana Community College District, Taxable General Obligation (Limited Tax) Education Technology Note, Series 2022 Interest and Sinking Fund (the “Interest and Sinking Fund”) hereby created. Proceeds of the Note shall be deposited into the Doña Ana Community College District Taxable General Obligation (Limited Tax) Education Technology Note, Series 2022 Acquisition Fund (the “Acquisition Fund”) maintained by the District to defray, in part or in whole, the cost of the Project. Amounts, if any, remaining in the Acquisition Fund following completion of the Project shall be deposited into the Interest and Sinking Fund.

Section 14. Security for the Note. There shall be levied on all taxable property in the District, at the time and in the manner provided by law, in addition to all other taxes, direct annual ad valorem taxes sufficient to pay the principal of and interest accruing on the Note promptly as the same shall become due. This levy, pursuant to Sections 21-2A-14, NMSA 1978, shall not exceed five mills; provided, however, that this five mill limitation may be exceeded in any year in which the valuation of the property within the District declines to a level lower than the valuation of the property in the year in which the Note was issued. This Resolution is hereby declared to be the certificate to the Boards of County Commissioners of Doña Ana County and Otero County, New Mexico, as to the amount of taxes necessary to be levied for the purposes herein stated and said

taxes shall be certified, levied and extended upon the tax rolls and collected in the same manner, at the same time and subject to the same penalties as general state and county taxes are certified, levied and collected. Said taxes, when collected, shall be kept by the District in the Interest and Sinking Fund, to be used solely for the purpose of paying the principal of and interest on the Note as the same become due or mature; provided that nothing herein contained shall be so construed as to prevent the application of any other funds belonging to the District and available for that purpose, to the payment of the Note or the interest thereon, as the same become due and upon such payment the levy or levies of tax provided for in this Section may thereupon to that extent be diminished. If the taxes herein provided for shall not be levied or collected in time to pay the interest on or principal of the Note as the same become due or mature, then such interest or principal shall be paid from any funds belonging to the District, which funds may be reimbursed from the taxes herein provided for when the same are collected.

Section 15. Delegated Authority and Execution of Documents. The President of the Board, Vice-President, Secretary and other officers and employees of the District be and they hereby are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution, including without limiting the generality of the foregoing, the entering into of a registrar/paying agent agreement, the printing of the Note, the execution of a continuing disclosure undertaking for the benefit of the Note purchaser, the execution of letters and agreements with the Depository, the printing and execution of disclosure documents relating to the Note, and such certificates as may be required by the Note purchaser or bond counsel relating to, among other things, the signing of the Note, the tenure and identity of District officials, the receipt of the purchase price of the Note from the purchaser and the absence of litigation, pending or threatened, if in accordance with the facts, affecting the validity thereof. Pursuant to the Supplemental Public Securities Act, Sections 6-14-8 to 6-14-11, NMSA 1978, as amended, and Section 21-2A-13(D) NMSA 1978, the Delegate and/or designee are hereby delegated authority to award the Note and to determine any or all of the final terms of the Note, consistent with this Resolution and the Act and the Supplemental Public Securities Act, as amended. The Delegate and/or designee shall present a Sale Certificate to the Board at a public meeting certifying that the terms of the Note comply with the parameters and conditions of this Resolution

Section 16. Defeasance. When all principal and interest in connection with the Note have been duly paid, the pledge therefor and all obligations of the District hereunder shall thereby be discharged and the Note shall no longer be deemed to be outstanding. There shall be deemed to be such payment when the District has caused to be placed in escrow and in trust with a bank doing business in the State which is a member of the Federal Deposit Insurance Corporation and exercising trust powers, an amount sufficient (including the known minimum yield from direct obligations of the United States or securities that are unconditionally guaranteed by the United States (“Government Obligations”), in which such amounts are or may be initially invested) to meet all requirements of principal and interest on the Note as the same become due to their final maturities or upon designated prior redemption dates. The Government Obligations shall become due prior to the respective times on which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the District and such bank at the time of the creation of the escrow, or the Government Obligations shall be

subject to redemption at the option of the holders or owners thereof to assure such availability as needed to meet such schedule.

Section 17. Note Not Presented When Due. If the Note is not presented for payment when due at maturity, and if moneys sufficient to pay the Note are on deposit with the Paying Agent for the benefit of the owners of the Note, all liability of the District to the owner of the Note for the payment of the Note shall be completely discharged, and the Note shall not be deemed to be outstanding. Upon such occurrence, it shall be the duty of the Paying Agent to segregate and to hold the moneys received for payment of the Note in trust, without liability for interest to the owners for the benefit of the owners of the Note. If such moneys are not claimed by the owners within one year after the Note was due, the moneys shall be transferred to the District for disposition in accordance with the law.

Section 18. [Reserved]

Section 19. Investment of Funds. Moneys in any fund not immediately needed may be invested as provided by State law and applicable federal statutes and regulations,

Section 20. Irrepealable. After any of the Note has been issued, this Resolution shall constitute a contract between the District and the holder or holders of the Note and shall be and remain irrepealable and unalterable until the Note and the interest thereon shall have been fully paid, satisfied and discharged, defeased or until such payment has been duly provided for.

Section 21. Severability. If any section, paragraph, clause or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this resolution.

Section 22. Effective Date. This Resolution shall take effect immediately upon its adoption.

Section 23. Publication of Notice. In compliance with Section 21-2A-13(F) NMSA 1978, the following notice shall be published in substantially the following form one time in a newspaper having general circulation in the District as soon as is practicable after the adoption hereof. After the passage of thirty days from the publication, any action attacking the validity of the proceedings taken by the Board preliminary to, in the authorization of and entering into the lease-purchase arrangement described in this notice is perpetually barred.

[Form of Notice]

NOTICE OF ADOPTION OF RESOLUTION

NOTICE IS HEREBY GIVEN that the governing board of Doña Ana Community College District, Doña Ana County, New Mexico, did on the 1st day of September, 2022, adopt a resolution entitled:

A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF DOÑA ANA COMMUNITY COLLEGE DISTRICT, DOÑA ANA AND OTERO COUNTIES, NEW MEXICO, TAXABLE GENERAL OBLIGATION (LIMITED TAX) EDUCATION TECHNOLOGY NOTE, SERIES 2022 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$3,750,000, DATED AS OF THE DATE OF DELIVERY, PAYABLE FROM AD VALOREM TAXES LEVIED ON ALL TAXABLE PROPERTY WITHIN THE DISTRICT, WITH SUCH LEVY LIMITED AS TO RATE AS PROVIDED IN SECTION 21-2A-14(A) NMSA 1978 AND WITHIN CERTAIN PARAMETERS FOR THE ACQUISITION OF EDUCATION TECHNOLOGY EQUIPMENT; PROVIDING FOR THE FORM, TERMS AND CONDITIONS OF THE NOTE, THE MANNER OF ITS EXECUTION, AND THE METHOD OF, AND SECURITY FOR, PAYMENT; AUTHORIZING THE SALE OF THE NOTE THROUGH A NEGOTIATED SALE; PROVIDING FOR THE APPROVAL OF VARIOUS AGREEMENTS RELATING TO THE NOTE; DELEGATING AUTHORITY TO THE DELEGATE TO DETERMINE THE FINAL TERMS OF THE NOTE PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT AND COLLEGE DISTRICT TAX ACT AND TO ENTER INTO A NOTE PURCHASE AGREEMENT; AUTHORIZING OFFICERS OF THE DISTRICT TO TAKE ALL ACTION NECESSARY FOR THE ISSUANCE OF THE NOTE AND RATIFYING ACTION PREVIOUSLY TAKEN CONCERNING THE NOTE.

The Resolution directs and authorizes the issuance of Doña Ana Community College District, Doña Ana County, New Mexico Taxable General Obligation (Limited Tax) Education Technology Note, Series 2022 (the "Note"), in the aggregate principal amount not to exceed \$3,750,000; delegates authority to the Delegate to determine the final terms of the Note pursuant to the Supplemental Securities Act and Section 21-2A-13(D) and to enter into a Note Purchase Agreement pursuant to a negotiated sale with the Purchaser of the Note within the parameters of this Resolution pursuant to a Sale Certificate; provides for the delivery thereof; provides for the form of the Note; provides for levy of taxes to pay the principal of and interest on the Note; makes certain covenants with the Purchaser; and provides other details concerning the Note. Complete copies of the Resolution are available for public inspection during normal and regular business hours at the office of the Vice President for Business and Finance of Doña Ana Community College District, 2800 North Sonoma Ranch Boulevard, Las Cruces, New Mexico. This notice constitutes compliance with Sections 6-14-6 and 21-2A-F NMSA 1978.

DATED this 1st day of September, 2022.

DOÑA ANA COMMUNITY COLLEGE DISTRICT

[End of Form of Notice]

Section 24. Repealer. All acts and resolutions, or parts thereof, in conflict with this Resolution are hereby rescinded, annulled and repealed.

[Remainder of page intentionally left blank]

PASSED AND APPROVED this 1st day of September, 2022.

GOVERNING BOARD
DOÑA ANA COMMUNITY
COLLEGE DISTRICT

By _____
Laura Salazar Flores, President of the Board

[SEAL]

ATTEST:

Merlinda Hinojos, Secretary

_____ moved adoption of the resolution, and _____ seconded the motion. The motion to adopt the resolution upon being put to a vote was passed and adopted on the following recorded vote:

Those Voting Aye:

Those Voting Nay:

Those Absent:

_____ () members of the Board having voted in favor of the motion, the presiding officer declared the motion carried and the resolution adopted, whereupon the President of the Board and Secretary signed the resolution. The Secretary was directed to enter the foregoing proceedings and resolution upon the records of the minutes of the Board.

STATE OF NEW MEXICO)
)ss.
COUNTIES OF DOÑA ANA AND OTERO)

I, Merlinda Hinojos, the duly qualified and acting Secretary of the Governing Board of the New Mexico State University – Doña Ana Community College District, do hereby certify:

1. The foregoing pages are a true, correct and complete copy of the record of the proceedings of the Governing Board (the “Board”) of the New Mexico State University – Doña Ana Community College District (the “District”), had and taken at a duly called, regular, open meeting held via Zoom teleconference on the 1st day of September, 2022, at the hour of 6:00 p.m., insofar as the same relate to the Resolution relating to the authorization of the Note, a copy of which is therein set forth as recorded in the regular book of official records of the proceedings of the District kept in office of the Vice President for Business and Finance.

2. The proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at the meeting, as therein shown.

3. Notice of the meeting was given in accordance with the open meetings standards of the District presently in effect. Such notice constitutes compliance with the permitted methods of giving notice of meetings of the Board as required by the open meetings standards resolution adopted by the Board and presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the District this 1st day of September, 2022.

Merlinda Hinojos, Secretary



Board of Regents Meeting
Meeting Date: August 24, 2022
Agenda Item Cover Page

Agenda Item # D-2

- Action Item
- Consent Item
- Informational Item

Presented By: Gena Jones, Ph.D.
Associate Vice President
Human Resources

Agenda Item:

Ratification of a Collective Bargaining Agreement between Regents of New Mexico State University and American Federation of State, County and Municipal Employees, Local 2393

Requested Action of the Board of Regents:

Ratify the Collective Bargaining Agreement between AFSCME and NMSU.

Executive Summary:

The Collective Bargaining Agreement (CBA) between AFSCME and NMSU expired June 30, 2022, yet remained in full force until a new CBA was negotiated. Negotiations have been completed and a new agreement with minor changes is ready to be ratified.

References:

Please see attached clean and redlined versions of the CBA.

Prior Approvals:

AFSCME Local 2393 approved on 8/19/2022.
Chancellor Arvizu approved on 8/19/2022.

Redline Version

Preamble

This Collective Bargaining Agreement ("Agreement") is made by and between the Regents of New Mexico State University ("NMSU") and the American Federation of State, County and Municipal Employees ("AFSCME"), Council 18, Local 2393 ("Union") and is applicable to all eligible Bargaining Unit Employees ("BUEs") in the Bargaining Unit of NMSU, as defined in Article 1 of this Agreement. NMSU and the Union are referred to jointly herein as the "Parties."

NMSU will make this Agreement available on its website within thirty (30) days of the effective date of this Agreement.

Article 1 Definitions

Bargaining Unit: The group of certified NMSU Bargaining Unit Employees for whom the Union negotiated this Collective Bargaining Agreement.

Bargaining Unit Employee: A member of the Bargaining Unit, which is limited to regular, non-probationary, full-time and part-time non-exempt Employees of NMSU, employed within the State of New Mexico ("BUE," or plural, "BUEs"), and as further specified in Article 4, Section 1.

Business Day: Each Monday through Friday when NMSU is open for business; excludes official NMSU holidays and other NMSU closures.

Comp Time: Time off from work earned, in lieu of Overtime pay, at the election of the BUE.

Continuous Employment: Any period of employment with NMSU in a regular position that is not interrupted by the BUE's absence from work for more than one (1) year.

Designee: An Employee of NMSU who is designated by NMSU to act on behalf of another Employee.

Employee: A person hired by NMSU.

Fit for Duty: The ability to perform the essential functions of a position in a safe, secure, productive, and effective manner.

Grievance: Refer to Article 35, Section 1.

Health Service Provider: A doctor of medicine or osteopathy, dentist, podiatrist, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, or a licensed clinical social worker who is authorized to practice in the State of New Mexico, or in the state where the Employee resides.

HRS: Office of Human Resource Services.

Just Cause: ~~Refer to Article 34, Section 1.~~

Management Employee: An Employee who is not a member of the Bargaining Unit and has supervisory responsibilities and authority from NMSU to direct the work and conduct of BUEs, except to the extent specifically modified or limited by this Agreement or by applicable statutory or regulatory provisions.

NMSU Property: All lands, ~~and buildings,~~ equipment, materials, technology, hardware, software, and other items under the control of the ~~Board of Regents~~ NMSU.

Notice: Notice by NMSU to the Union is properly given if it is sent by email to the Union Officers. Notice by the Union to NMSU is properly given if sent by email to the Assistant Vice President (AVP) HRS, Employee Relations.

Overtime: Any period of time pre-approved and worked by a BUE in excess of forty (40) hours during the workweek. For the purpose of calculating Overtime or Comp Time, time off for a designated holiday or alternative holiday, administrative leave, ~~or jury duty is deemed time worked.~~ or ~~any~~ other paid time off from work will not be considered as time worked.

Parties: The Union and NMSU.

Progressive Discipline: The typical approach used by management to modify undesirable performance and behavior, using a range of disciplinary consequences that are applied depending on the employee's misconduct or performance, and can begin with termination.

Regular Employee: An Employee of NMSU with no predetermined employment termination date who works at least .5 FTE (full-time equivalent)[APR 6.03, Part 3(A)(3)].

Seniority: Length of Continuous Employment.

- A. NMSU Seniority. A BUE's length of continuous regular employment with NMSU.
- B. Classification Seniority. A BUE's length of continuous, regular employment in a single or specific classification.

Seniority List: A list of BUEs who are subject to this Agreement, listing each such BUE's name, position, and Seniority date.

Standby: Time that a BUE is required to be ready to report for duty or to respond to a work-related call during his/her time off where he/she cannot use his/her time off freely. Standby includes time that a BUE has been directed to remain within contact by telephone or electronic beeper in order to respond to a call within a specified timeframe during non-work hours. Standby status is never concurrent with work hours.

Supervisor: For BUEs, the person to whom they report and who, in the ordinary course of

business, is the individual responsible for assigning and reviewing their work.

Union: American Federation of State, County and Municipal Employees, Local 2393, elected as the exclusive bargaining representative for BUEs at NMSU.

Union Representative: An individual, including a Union steward, who is designated by the Union as a member and official of the Union, to represent and defend the interests of BUEs.

Union Member Dues: Total monthly amount of money paid by BUEs to the Union as the cost of membership in the Union.

Work Days: A BUE's required days of work, as defined or designated by NMSU.

Article 2 Commitment to NMSU Mission

The Parties are committed to NMSU's mission as the state's land-grant university, serving the educational needs of New Mexico's diverse population through comprehensive programs of education, research, extension education, and public service.

Article 3 Purpose

The purpose of this Agreement is to provide reasonable terms and conditions of employment for BUEs covered hereunder, to protect the rights of the Parties, to promote a harmonious and cooperative relationship between the Parties, to provide a means of amicable and equitable adjustment of any and all differences or Grievances that may arise under the provisions of this Agreement, and to acknowledge the obligation of the Parties to provide orderly and uninterrupted services to the public.

Article 4 Recognition

Section 1. Recognition.

NMSU recognizes the Union as the exclusive bargaining representative, as that term is defined in **the Public Employee Bargaining Act (PEBA) (<https://www.pelrb.state.nm.us/>)** ~~NMSU Labor Management Relations Resolution~~ (available on the NMSU website at: https://regents.nmsu.edu/tiles/2019/04/R_LMRB_Resolution.pdf (the "Resolution")), incorporated herein by reference as it currently exists or is subsequently amended by agreement of the Parties, for Employees in the following certified Bargaining Unit:

INCLUDED - BUEs, as defined herein, employed within the State of New Mexico as listed in Appendix A on the AFSCME/ Labor Relations web site at: <https://hr.nmsu.edu/labor/>

EXCLUDED - Supervisors, managers, and confidential Employees, as defined by **PEBA** the Resolution; sworn police officers; Employees employed outside the State of New Mexico; any Employee who may have previously been a BUE, but was promoted into an exempt position; and any other BUEs who do not fall within the group of "included" BUEs, as defined herein. NMSU will publish a list of Bargaining Unit classification titles with pay grades on the NMSU HRS-ELR website.

Section 2. New Classification Recognition.

Implementing a new classification title, a classification title change, or reclassification of an existing title covered under this Agreement, will not remove the position(s) from the Bargaining Unit, unless that change results in a change of the BUE to an exempt position. Any newly created non-exempt classification title within the scope of the certified Bargaining Unit, as recognized in Section 1 above, will become part of the Bargaining Unit covered by this Agreement **in accordance with the accretion procedures.**

Section 3. Dispute Recognition.

Any dispute concerning the inclusion of classifications, or specific Employee(s), in the Bargaining Unit, based on Supervisor, manager, or confidential Employee status, will be discussed between the Parties, and if not resolved, will be submitted to the ~~NMSU Labor Management Relations Board ("LMRB")~~ **Public Employee Labor Relations Board ("PELRB")** for disposition.

**Article 5
Scope of Agreement**

Section 1. Final and Complete Agreement.

This Agreement is the final and complete Agreement and expresses the entire understanding between the Parties.

Section 2. Policies and Practices.

Unless stated otherwise herein, BUEs are subject to NMSU Administrative Rules and Procedures (ARP) and the Regents Policy Manual (RPM), as they currently exist or are amended in the future. Within four weeks of a change to the ARP, notice will be given to the Union. This Agreement in all respects supersedes and replaces NMSU policies and practices that contradict this Agreement. No other NMSU policies or practices are superseded by this Agreement. NMSU will provide BUEs with other economic benefits, beyond those described in this Agreement, to the same extent as provided to other NMSU **non-exempt** Employees under its policies, rules, and regulations. References to sections of NMSU's ARP or other documents, noted in brackets, are for reference only and are not part of this Agreement.

Section 3. Changes to Agreement.

This Agreement will not be amended unless mutually agreed to, in writing, by duly authorized representatives of the Parties. In addition to changes initiated pursuant to its Management Rights (Article 10 of this Agreement), NMSU reserves the right to propose other ~~reasonable~~ changes in the terms and conditions of employment of BUEs to meet ~~legitimate~~ public service and operating needs. Such changes ~~may be~~ are subject to negotiation upon written request by the Union in accordance with ~~NMSU's Labor Relations Resolution~~ PEBA or any other expedited impasse resolution procedures mutually agreed upon by the Parties at the time of such negotiations.

Article 6 Savings Clause

If any provision or any application of this Agreement to any BUE or group of BUEs is rendered invalid by operation of legislative or regulatory enactment, or by a court or other tribunal of competent jurisdiction, such provision will be inoperative. All other provisions will not be affected and will continue in full force and effect. If a provision is rendered invalid, upon written request of either Party, NMSU and the Union will meet within a ~~reasonable time~~ thirty (30) calendar days and attempt to negotiate a substitute for the invalid provision.

Article 7 Duration

Section 1. Term of Agreement.

This Agreement will become effective at midnight (12:00 a.m.) ~~on July 1, 2019~~ _____. This Agreement expires at 11:59 p.m. June 30, 2022 ~~[3 year CBA]2025~~.

Section 2. Renewal.

No earlier than one-hundred and twenty (120) days, and no later than sixty (60) days, prior to the expiration of this Agreement, either Party may provide to the other written notice of the intent to negotiate a successor agreement. After notice is provided, the Parties will begin negotiating a successor agreement at dates and times agreed to by the Parties.

RIGHTS OF PARTIES

Article 8 BUE Rights

Section 1. Freedom of Expression.

- A. Free Exchange of Ideas. NMSU recognizes and promotes an intellectually open campus. The free exchange of ideas through written, spoken, and other forms of expression reflects its public land-grant heritage, support of diverse points of view, and commitment to excellence in education and research. [See ARP 3.63, Part 1].

- B. Union's Right to Freedom of Expression. The Union has the same right to any freedom of expression that is available to any other person or entity, in accordance with ARP 3.63 and state and federal law. [See ARP 3.63].

- C. Petitioning and the Distribution and Posting of Literature and Signs. The Union and BUEs may distribute literature only during non-work time and in non-work areas, using the following methods: (1) hand-to-hand; (2) through the use of tables; or (3) by posting on designated bulletin boards and kiosks. Union-related postings will only be made in accordance with Article 9, Section 8(B) of this Agreement. All distributed Union literature must contain identifying information for someone to contact in case of litter problems. Written materials may only be placed in approved locations. Written materials may not be placed on any part of an NMSU building or structure without NMSU's permission. Posting on traffic signs, power poles, trees, and automobile windshields is not allowed. Tables are allowed if they do not interfere with pedestrian traffic. Materials may not be left on unattended tables. While advance scheduling of tables is not required, those individuals who schedule a distribution site through the Campus Activities Office or other appropriate NMSU office will have priority. [See ARP 3.63, Part 7(F)].

- D. Policy Enforcement. The Union and its members are subject to the same sanctions as any other person or entity that violates NMSU policies, regulations and rules, including the following:
 - 1. Directive to cease and desist or to relocate, by NMSU Employees acting within the scope their duties;
 - 2. Directive to leave NMSU Property by Employees acting within the scope of their authority (such as the police or a person in charge of the Property);
 - 3. Discipline as outlined in Article 34 of this Agreement;
 - 4. Arrest for violation of applicable law(s); or
 - 5. Restriction on future use of NMSU campus for expressive activities. [See ARP 3.63, Part 7].

Section 2. Access to Union Representatives.

- A. Grievants. In addition to BUEs' rights to Union Representatives as governed by Article 34 of this Agreement, grievants are entitled to a reasonable amount of time during scheduled work hours to meet and consult with their respective authorized Union Representative regarding formal Grievances and to attend Grievance hearings. Grievants will first obtain Supervisory approval for time to meet with their Union Representative and such supervisory approval will not be unreasonably withheld. If denial of supervisory approval necessitates an extension of time for processing a Grievance, the time will be tolled for the duration of the denial until the grievant is afforded access to the Union Representative.

- B. Union Business. BUEs will conduct other types of Union business during non- work time, which is the time before their workday begins, during lunch and breaks taken during the workday, or after their workday ends.
- C. No Workplace Disruption. In exercising their rights under this Agreement, BUEs will not disrupt the workplace or interfere with the operations of NMSU.

Section 3. No Retaliation or Disparate Treatment.

NMSU will not retaliate against the Union or its BUEs for exercising any right in accordance with this Agreement. [See ARP 3.63, Part 5]. NMSU will not discriminate against any employee by reason of Union membership or non-membership, or activities on behalf of, or in opposition to, the Union.

Section 4. Non-Work Related Use of NMSU Resources.

BUEs should always be mindful of the resources entrusted to them by the public, government entities, and private donors, including the public's perception of how NMSU conducts its business. BUEs should strive to conduct themselves consistent with the highest ethical principles, to avoid any action that may be viewed as a violation of the public trust in the use of these resources, and to act responsibly in order to preserve and safeguard NMSU resources. These resources include, but are not limited to, facilities, supplies, and equipment (such as telephones, fax machines, photocopiers, and computers) and Employee time. BUEs do not have a right or expectation to privacy as it relates to information or data contained on, or accessed through, university equipment or resources. [See ARP 3.14, ~~Preamble~~].

The personal, non-work related use of NMSU Resources is permitted only in compliance with NMSU rules, regulations, and policies, as may be amended. [See ARP 3.14, ~~ARP 15.18, Business Procedures Manual Procedure 9,~~ and ARP 15.11.) The use of assigned NMSU vehicles is subject to NMSU policy.

The application of these rules, regulations, and policies with regard to such use will depend upon the particular circumstances surrounding each such use, including factors such as the nature of the use, reasonableness, cost, time, Employee needs and work habits. BUEs should consult with their Supervisors in advance if they have questions about the appropriateness of certain practices. [See ARP 3.14, ~~Preamble~~].

Section 5. Access to Campus Facilities.

BUEs and their dependents have access to and use of all appropriate campus facilities, including all health and fitness facilities, the sports complex, dining facilities, the library, and computer facilities that are otherwise open to all BUEs and their dependents under the same terms.

Article 9 Union Rights

Section 1. Union Representatives.

The Union will have the right to select sufficient Union Representatives to administer this Agreement. The exact number and location of Union Representatives will be determined by agreement between the Parties, consistent with this principle. The Union will provide NMSU with a written list of the names, addresses, and telephone numbers of the stewards and other Union Representatives who are authorized to act on behalf of the Union and a statement of the extent of their authority. The Union will provide an updated list to NMSU when changes occur.

Section 2. Union Representative Activities.

- A. Union Representatives. NMSU will allow Union Representatives to attend, on paid status, the following meetings: (1) meetings requested by NMSU for purposes of administration of this Agreement; (2) investigatory interviews conducted by management, as addressed in Article 34 of this Agreement; and (3) disciplinary hearings, as addressed by Article 34 of this Agreement. Union Representatives will obtain prior supervisory approval to attend such meetings, and such approval will not be unreasonably withheld.
- B. Grievances. Union Representatives are entitled to use a reasonable amount of scheduled work time to investigate and process each Grievance through the Grievance and Arbitration procedure contained in this Agreement, not to exceed a total of four (4) hours of scheduled work time for each Grievance. Union Representatives will obtain prior supervisory approval for the use of scheduled work time for this purpose, and will designate the time used for this purpose as Other Leave Time (OLT) on timesheets. Supervisory approval will not be unreasonably withheld. If denial of supervisory approval necessitates an extension of time for processing a Grievance, the time will be tolled for the duration of the denial until scheduled work time is afforded the Union Representatives to process the Grievance.
- C. Union Business during Non-Work Time. Except as provided above, Union Representatives will investigate and process Grievances and conduct other Union business during non-work time, which is the time before their workday begins, during lunch and breaks taken during the workday, or after their workday ends.
- D. No Workplace Disruption. In conducting Grievances and other Union business and activities, the Union will not disrupt the workplace or interfere with the operations of NMSU.

Section 3. Union Representative Access.

Union Representatives will have reasonable access to visit any NMSU worksite for the purpose of administering this Agreement. Visits will not disrupt the workplace or interfere with the operations of NMSU. All visits must be coordinated through the Management Representative, or alternate,

designated by NMSU's HRS-ELR staff. NMSU will provide a reasonable place where Union Representatives can talk with BUEs in private.

Section 4. Explanation of this Agreement.

Within ninety (90) days of the effective date of this Agreement, NMSU and the Union will co-host one or more open forums for BUEs to explain the Agreement and answer questions about it. With supervisory approval, BUEs are entitled to attend these forums on work time. Supervisory approval will not be unreasonably withheld. Each forum will last no more than two (2) hours in length.

Section 5. Use of NMSU Property for Meetings.

Employees and Union Representatives may use NMSU rooms to hold Union meetings by reserving the room(s) in accordance with NMSU policy, practice or approval procedure established for that room.

Section 6. Union Presentation.

During formal, new-Employee orientation group sessions conducted by NMSU, the Union will give a fifteen (15) minute presentation that may include the offer to enroll in supplemental Union membership benefits and programs.

Section 7. Union Web Page.

NMSU will provide an internet link on its HRS web page to the Union's web page.

Section 8. Union Bulletin Boards.

- A. Locations. The Union provides locked bulletin boards in conspicuous, mutually agreed upon, high traffic areas at the following locations: (1) Corbett Center, (2) Branson Hall, (3) Zuhl Library, (4) Gerald Thomas Hall, (5) Frenger Mall, (6) Hadley Hall, (7) Campus Health Center, (8) Educational Services Building, **and** (9) all NMSU branch campuses. Additional locations may be added as agreed upon by the Parties.
- B. Exclusive Use. Union bulletin boards are for the exclusive use of the Union. The Union is responsible for the posting of all items on Union bulletin boards. A Union Representative will approve, by signing and dating, each item before posting. The Union will ensure that posted items are not illegal, defamatory, obscene, factually inaccurate, partisan, or political; do not contain personal criticism of any individual or NMSU administration; and do not include any item that is detrimental to the safety and security of NMSU. At least one Business Day prior to the posting, the Union will provide an informational copy of all items to HRS. NMSU may remove bulletin board items that are not consistent with this Agreement, using the Union provided keys for each bulletin board, and will notify the Union of the removal as soon as practicable.

Section 9. Right to Information.

- A. General. The Union has the right to information that is relevant and necessary to represent BUEs. This includes information relevant to the administration of any part of this Agreement, disciplinary action against a BUE, allegations of misconduct, information **reasonably** related to **and necessary for** negotiations, and information on any other subject that is reasonably related and necessary to the Union's representation of BUEs, provided that written authorization has been received from the relevant BUE with respect to any personnel information or records [Article 16, Section 2].
- B. Bargaining Unit Information. On the first of each month, NMSU will furnish the Union with an electronic report containing, if available, the name, most recent mailing address, telephone number on file, department, classification, work address, status (part-time/full-time), and the unique identification number for each BUE.

Article 10 Management Rights

Except to the extent specifically modified or limited by this Agreement or by applicable statutory or regulatory provisions, the sole and exclusive rights of NMSU Management Employees will include, but are not limited to, the following:

- A. Direct the work of, hire, promote, assign, evaluate, and transfer BUEs; and demote, suspend, dismiss, or otherwise discipline BUEs for Just Cause;
- B. Determine qualifications for employment and the nature and content of personnel examinations;
- C. Take actions as may be necessary to carry out the mission of NMSU in emergencies;
- D. Determine the size and composition of the workforce and rates of pay;
- E. Formulate financial and accounting procedures;
- F. Make technological or service improvements and change production methods;
- G. Relieve a BUE from duties because of lack of work or other legitimate reason;
- H. Determine methods, means, and personnel by which NMSU's operations are to be conducted;
- I. Determine the location and operation of its organization;
- J. Provide reasonable rules and regulations governing the conduct of BUEs (with notification to the Union); Provide reasonable standards and rules for BUEs' safety;

- K. Schedule hours, Overtime, and shifts; and
- L. Subcontract work.

EMPLOYEE RECRUITMENT, CLASSIFICATION AND LAYOFF

Article 11 Background Reviews

In order to create a safe and secure workplace and to ensure that BUEs are qualified to perform the duties and responsibilities of the positions they hold, NMSU has adopted a Background Review Rule. [*See* ARP 6.20, ~~Preamble~~]. ~~Applicants and~~ BUEs are subject to background reviews and other requirements, obligations and consequences as required by law and as set forth in the NMSU Employment Background Review Rule(s) and additional operational procedures posted on the HRS website. [*See* ARP 6.20]

Article 12 Job Vacancies and Job Postings

Section 1. Job Advancement Opportunities.

NMSU agrees to provide job advancement opportunities by offering all BUEs ~~an~~ fair, equitable, and open process for filling **bargaining unit position** vacancies. BUEs will be entitled to apply for all Bargaining Unit vacancies, including promotional opportunities.

Section 2. Job Postings.

- A. Posting Contents. The job postings for Bargaining Unit vacancies and newly created positions will contain, at a minimum, the application procedure, classification title, department, examples of job-related duties, minimum qualifications, starting wage, pay grade, expected work schedule and hours of work, and a posting date and closing date.
- B. Equal Access to Postings. NMSU will publish all job postings on the NMSU website. The Union will have equal access to all NMSU job postings. **A job posting for any of the positions of Custodial Worker, Custodial Worker Sr., Groundskeeper, Groundskeeper Sr., and Facilities Tech may be posted as an open pool for up to ninety (90) days. Within such a posting it will be noted that this is a 90-day recruitment which may be used to fill multiple vacancies, if needed, during the posting period.**
- C. Notice. NMSU will electronically publish job postings for Bargaining Unit vacancies for a minimum of fourteen (14) calendar days [*See* ARP, 6.01, Part 2].

Section 3. Job Vacancy Award.

NMSU will award all vacancies to the best qualified applicant as determined by NMSU. If two or more applicants are ~~relatively~~ equal in qualifications, classification seniority will govern to the

extent the position is within either applicant's current classification series. If classification seniority is not applicable, NMSU seniority will govern.

Article 13 Seniority

Section 1. Tie Breaker.

In the event two (2) or more BUEs have the same seniority date, the seniority order of these BUEs will be determined by the last four (4) digits of the BUEs' social security numbers, with the BUE having the lowest last four (4) digits of the social security number being considered as having the greater seniority.

Section 2. Loss of Seniority.

Except as otherwise provided by applicable law, a BUE's length of continuous regular service will be broken only by voluntary resignation, discharge for Just Cause, retirement, voluntary move to temporary work status, layoff status lasting longer than allowed by Article 14 of this Agreement, or failure to respond to a recall from layoff. However, if a BUE leaves work for any reason other than those listed above, the BUE will retain his/her seniority date for a period equal to his/her length of employment, up to a maximum of one (1) year. Any period of absence of more than one (1) year will represent a break in continuous service.

Section 3. Seniority Lists.

NMSU will prepare and forward to the Union, seniority lists as defined in this Article. The lists will be updated monthly by NMSU and will contain each BUE's name, classification title, classification seniority date, and NMSU seniority date.

Article 14 Layoff and Recall

Section 1. NMSU Layoffs -Positions Not Contingent on Funding.

- A. Layoff Notice. In instances where NMSU deems it necessary or advisable to layoff BUEs, a written layoff notice will be provided that includes, at a minimum, the effective date of the layoff and the reason for the layoff (e.g., position eliminated, discontinued, or vacated because of a lack of supporting funds, program change, or change in departmental organization). The written notice will be provided to the affected BUEs at least sixty (60) calendar days prior to the effective date of the layoff. **The affected BUE will be provided separation and contact information pertaining to NMSU benefits, retirement plans, unemployment compensation, and NMSU accounts and services.**
- B. Employee Preference. Prior to any layoff, BUEs will be asked to indicate their desires with respect to early retirement, part-time employment, voluntary resignation, intra-NMSU transfer, or other option offered by NMSU. NMSU will, ~~to the extent practicable,~~ make an an

good faith effort to relocate any BUE subject to layoff to a suitable vacant position within NMSU for which that Employee is fully qualified. This good faith effort to relocate a BUE need not extend beyond the effective date of the layoff.

- C. Order of Layoff. NMSU will determine in which classifications layoffs will occur. Layoffs of BUEs within affected classifications will occur in the following order:
1. Temporary **non-exempt employees**BUEs; then
 2. Probationary **non-exempt employees**BUEs; then
 3. Regular BUEs in order of NMSU seniority, with the lowest seniority being laid off first.
- D. Recall/Reinstatement. A BUE who is laid off may be recalled within ninety (90) days from the effective date of layoff provided the BUE meets the minimum qualifications of the offered position. BUEs will be recalled in reverse order of layoff.
1. Notice of recall from a layoff will be sent to the BUE's last known address, by certified mail, return receipt requested.
 2. The recalled BUE will have up to ten (10) workdays following receipt of the recall notice to provide written notification to NMSU of an intention to return to work.
 3. The recalled BUE will have up to fourteen (14) workdays following receipt of the recall notice to physically return to work.
 4. The transfer or recall of BUEs to other positions may result in a different rate of pay, pay grade, and job title. Specific plans for any area which is separating a BUE will be prepared prior to the layoff, approved by HRS and the provost. [See ARP 7.65 ~~(B)(5)-(6)~~].
 5. If the BUE fails to promptly respond to a recall notice or return to work, or otherwise rejects the first employment opportunity offered, employment will terminate and all recall rights will cease.
- E. Priority Recall. For a period of up to ninety (90 days) from the effective date of the layoff, the BUE will be eligible for priority recall/reinstatement in the classification of layoff, any lower level classification in that job series, or any classification for which the Employee has completed an original probationary period at NMSU and meets the minimum qualifications of the classification specification.
- F. Recall Application. To be considered for priority recall/reinstatement, the BUE must submit a completed NMSU employment application as soon as notified of the layoff, but no later than fifteen (15) calendar days after the effective date of the layoff. Based upon NMSU seniority, BUE applications will be submitted by HRS directly to the hiring

department for an interview and consideration for priority recall/reinstatement. If the department should reject the BUE, the hiring department must provide a letter of justification to the AVP HRS, indicating why the BUE would be unable to perform the essential functions of the classification title.

- G. Recall Exhaustion or Expiration. Under no circumstances will NMSU hire new Employees into laid-off classification titles, until such time as the recall list is exhausted or has expired after ninety (90) days.

Section 2. NMSU Layoffs - Positions Contingent on Funding.

A. Employment Notice at Time of Hire or Transfer. BUEs hired into positions contingent on funding will be provided with written notification at the time of hire or transfer indicating that the continuation of their employment is contingent on adequate funding. Additionally, ~~at~~ At the time of posting, departments will clearly state in the job advertisement that a position is contingent on funding.

B. Layoff Approval and Notice. Specific plans for any unit that is separating BUEs will be prepared prior to the layoff, approved by the AVP HRS and by the executive vice president and provost. Such plan will clearly identify the classifications to be eliminated or reduced, and the criteria used to determine the selection and order of the layoffs. *[See ARP 7.65(B)(6)].* At least sixty (60) calendar days prior to the effective date of the layoff, a written notice that includes the effective date of the layoff and the reason for the layoff, will be provided to the affected BUEs.

C. Priority Interview Assistance. For the duration of the notice period up to the effective date of the layoff, the BUE will be eligible for interview assistance in the classification of layoff or any classification for which the BUE meets the minimum qualifications of the classification specification. ~~For priority interview assistance, the BUE must submit a completed NMSU application as soon as notified of the layoff but no later than fifteen (15) calendar days prior to the effective date of the layoff.~~ BUEs will be responsible for monitoring vacancies and for requesting a priority interview from HRS. Applications for BUEs who meet the minimum qualifications for a posted vacancy will be submitted directly to the department by HRS for an interview. *[See generally, ARP 7.65 (C)].*

Section 3. Tuition Remission.

Laid-off BUEs who are receiving tuition remission at the time of layoff may complete the semester, or summer session, in which the layoff occurs.

Section 4. ~~Alternative Employment Assistance.~~

~~For the first ninety (90) days following the date of notice of layoff, HRS or designee will be available by appointment to assist BUEs laid off with the following:~~

- ~~1. Developing a resume;~~

- ~~2. Composing a cover letter;~~
- ~~3. Interviewing skills;~~
- ~~4. Conducting a job search;~~
- ~~5. Providing employment agency contacts; and~~
- ~~6. Recommending resources.~~
- ~~7. For the first ninety (90) days following the date of notice of layoff, laid-off BUEs may use designated NMSU equipment for purposes of developing a resume and conducting job searches. BUEs availing themselves of these services agree to comply with all NMSU rules and regulations.~~

Article 15

Classification and Reclassification

Section 1. Purpose.

The provisions of this Article apply to the creation of new non-exempt **bargaining unit** positions or the reclassification of existing non-exempt **bargaining unit** positions due to changes in the duties or responsibilities. A wage adjustment may be warranted following position reclassification.

Section 2. Reclassification Requests.

If a BUE or a Supervisor or department head has initiated a reclassification review, HRS will notify the Union of the request, and provide Union Representatives the opportunity to review and comment in writing on the reclassification within two (2) Business Days.

Section 3. Human Resources Response.

Within two (2) Business Days after the Union's written comment, HRS will notify the Union of the reclassification review results.

Section 4. Classification Re-titled.

Changes in the classification title may occur based on changes or updates in laws (e.g., Fair Labor Standards Act), significant changes in duties and responsibilities, changes in procedures, or new initiatives ~~and~~ **or** technology. A classification that is re-titled may only be removed from this Bargaining Unit when the classification is determined to be exempt in compliance with FLSA. HRS will notify the Union within five (5) Business Days after a Bargaining Unit position is changed to exempt status.

Article 16 Personnel Records

Section 1. Maintenance of Records.

NMSU will maintain all records concerning a BUE under secure conditions. Records may be maintained by Supervisors at the departmental level. In addition, NMSU will maintain one official set of records concerning a BUE [hereinafter referred to as "Personnel Record"]. The Personnel Record will be maintained by HRS. The Personnel Record may contain "confidential" documents, as defined in this Article. A BUE has the right to review any document filed in their official Personnel Record. A BUE may respond in writing to any matter contained in their Personnel Record. If a BUE elects to respond, such response(s) will be included in the BUE's Personnel Record.

Section 2. Confidentiality of Records.

NMSU respects the privacy of its employees and will strive to maintain the confidentiality of personnel records, to the ~~greatest~~ extent allowed by law and operational needs. Records about a specific BUE will not be released to the Union or any outside party **not representing NMSU** except: (1) when authorized in writing by the BUE; or (2) when necessary to comply with the law.

Section 3. Limitations on the Content of Records.

- A. NMSU will remove from a BUE's Personnel Record any documents critical of any BUE if the critical allegation(s) did not result in discipline, once investigation of any such allegation is concluded or is no longer active. A BUE's performance evaluations will not be removed from the Personnel Record ~~provided the BUE had the opportunity to grieve or submit rebuttal statements or documents.~~
- B. Documents may be removed from a BUE's Personnel Record as part of a Grievance settlement agreement or arbitration award. When documents are removed from a BUE's Personnel Record pursuant to this Article, they will not be considered in connection with any future personnel action involving the affected Employee.
- C. NMSU will allow a BUE to inspect his or her Personnel Record. Upon request, a BUE will be provided with a copy of any documents in his or her Personnel Record, within a reasonable period following the request. The documents will be provided at NMSU's expense if the BUE is facing disciplinary action. Otherwise, the BUE will pay for the cost of copying documents.

Section 4. Use of Disciplinary Records.

After thirty-six (36) months without any further disciplinary action, the record of any prior disciplinary action relating to performance or attendance issues (but not other conduct issues) will not be used to support further disciplinary action.

Article 17 Contracting of Work

Section 1. Contracting Out.

In the event NMSU decides to contract out work that has been traditionally performed by BUEs, it will provide the Union with written notice, ~~as soon as practical, but~~ not less than twenty-one (21) days prior to the proposed implementation, describing the work to be contracted, the basis for the decision to contract out, and the anticipated effect on BUEs. The Union may request bargaining within twelve (12) days of receiving this notice. In the event of an impasse in bargaining, NMSU may implement its last offer and the Union may not invoke impasse arbitration. Work "traditionally performed" will not include work temporarily contracted out to meet emergency needs or mandates of higher authorities or work contracted out in accordance with existing practice.

Section 2. Returning Work to NMSU Service.

Where the Union contends that work being performed under a service contract can be more economically, efficiently and qualitatively performed by BUEs, it will notify NMSU of its contention in writing, supported by a statement setting forth the reasons why it believes such work can be more economically, efficiently and qualitatively performed by BUEs. NMSU will, upon a specific written request, furnish the Union with information reasonably available and-relevant to its analysis, subject to withholding such information after receiving valid written objections from the contractor on grounds of confidentiality or because of the proprietary nature of the information requested. Where NMSU, after reviewing the Union's contentions and conducting further analysis on its own, determines that the work can be more economically, efficiently and qualitatively performed by BUEs, the Parties will jointly develop a plan to return such work to NMSU service.

COMPENSATION

Article 18 Wages

Section 1. Wage Increases.

- A. Budget. Wages for BUEs in the Bargaining Unit are determined by NMSU in the annual budget ~~as approved by the Board of Regents.~~ The implementation of any wage increases budgeted by NMSU is contingent upon the specific appropriations of funds by the Legislature for such purpose. If the Legislature fails to make specific appropriations of funds necessary to implement a wage increase budgeted by NMSU, either Party may open negotiations to renegotiate the increase consistent with the Legislative appropriation. NMSU agrees to cooperate with the Union in efforts to obtain appropriations from the Legislature to fund the wage increases. ~~This subsection does not conflict with the NMSU Labor Relations Resolution, as it exists or may be amended.~~

- B. BUEs Ineligible for Annual Wage Increase or Performance Adjustment.

1. BUEs hired on or after January 1 of the calendar year are not eligible for either the annual wage increase or performance-based adjustment unless an alternate date is mutually established by the Union and NMSU.
2. The following BUEs will not be eligible for a performance-based wage adjustment:
 - a. BUEs on Long Term Disability (LTD) or Leave Without Pay (LWOP) status for six (6) months or more during the preceding review period;
 - b. BUEs with an "Unsuccessful/Unacceptable Performance" (previously, "Fails to Meet Expectations") or "Partially Successful Performance/Needs Improvement" (previously, "Needs Improvement") overall performance rating on the preceding performance evaluation. ~~[See ARP 7.01, Part 2(C)-(D)].~~

Section 2. Compensation Administration.

- A. Entry Level Pay. New BUEs are normally hired at the entry level of the appropriate pay grade. With justification and prior approval of the relevant dean, director or vice president, and the executive vice president and provost or relevant campus president, and HRS, certain applicants may be hired at five (5%) percent **with 5 years above the posted minimum qualifications,** ~~or ten (10%) percent,~~ **10 years above the posted minimum qualifications or fifteen (15%) percent, 15 years above the posted minimum qualifications,** above the entry level pay grade, dependent upon experience. ~~BUEs hired above the entry level pay grade are not eligible for an end of probation pay adjustment.~~
- B. ~~Substitution of New Minimum Wage for End of Probation Adjustment.~~ Effective July 1, 2019, all NMSU eligible BUEs will receive a 4% wage increase as provided by state law. Additionally, NMSU will implement a new minimum wage of \$10.50 per hour by adjusting the pay rates of affected BUEs to no less than the new minimum. For BUEs who have not completed the probationary period before July 1, 2019, the adjustment to \$10.50 an hour is in lieu of any end of probation adjustment. However, those BUEs who were otherwise eligible for an end of probation adjustment under the 2013 Union contract, and for whom the adjustment to \$10.50 per hour on July 1, 2019 is less than a 5% increase from their entry level wage, will receive (upon receiving an evaluation rating of at least "Fully Successful/Effective Performance (previously "Meets Expectations")" an end of probation adjustment to ensure that in total, a 5% wage adjustment results. (This will affect only eligible probationary employees earning the \$10.10 per hour entry level wage; those employees will receive an additional 1% wage adjustment at the conclusion of their probationary period, if they have earned at least a Successful/Effective Performance [previously, "Meets Expectations"] evaluation rating.) No end of probation adjustment is guaranteed to BUEs hired after June 30, 2019. Supervisors will complete and submit the appropriate ~~processing form and~~

~~performance evaluation to HRS to implement the change from probationary to regular status.~~

- C. Wage Schedule. The wages of all BUEs are based on the pay grade as set by the current wage schedule and NMSU job classification descriptions. Classification descriptions are standardized descriptions of the characteristics, duties, and minimum qualifications for a group of positions. No BUE will be paid less than the minimum for his or her pay grade in the wage schedule. The qualifications statement in each classification description establishes minimum requirements that are to be met by an individual before being considered for appointment or promotion. Combinations of education and experience are specified in the classification description. Other combinations, if deemed equivalent by HRS, may qualify an individual for appointment or promotion. BUEs may be required by their Supervisor to perform duties outside the general skill level of their classification specification on a temporary basis. A Supervisor who determines that the standard classification description does not accurately describe a position should initiate reclassification action, consistent with the provisions of this Agreement.
- D. Temporary Assignments.
1. Duration. Temporary assignments will not normally exceed one (1) calendar year. ~~/See ARP 7.01, Part 4(C)].~~
 2. Higher Position Differential. A BUE who is temporarily assigned to a higher position due to a vacancy, an extended absence, or NMSU critical project/effort for a period in excess of one (1) calendar month, will receive a pay differential **in the amount of 10%**, ~~(in accordance with the rules for recruitment or selection of existing Employees),~~ from the first day of the ~~assignment~~ **month following the effective date of assignment**. To receive the pay differential, the BUE must meet minimum qualifications for the position and be provided with written notification of the duration of the assignment and associated pay differential. If **NMSU determines** there are no qualified BUEs, the duties will be reassigned to other employees **by the Manager**. ~~/See ARP 7.01, Part 4(A)].~~
 3. ~~Lower or Lateral Position.~~ The pay of a BUE who is temporarily assigned to a lower or lateral position will not be adjusted. ~~/See ARP 7.01, Part 4(8)].~~
- E. Demotion (Voluntary or Involuntary) to Lower Pay Grade. When a BUE is demoted or accepts a lower level position, the pay rate for the lower position will be the *greater* of either: (1) five (5) percent above the entry level for the lower level position; or (2) the following applicable percentage decrease in pay from the prior position:
- 5 percent decrease if the demotion is one pay grade lower;
 - 8 percent decrease if the demotion is two or three pay grades lower;
 - 15 percent decrease if the demotion is four or more pay grades lower;

- 5 percent decrease per pay grade thereafter. ~~{See ARP 7.01, Part 5}.~~
- F. Voluntary Lateral Transfer to the Same Pay Grade. A lateral transfer is not a justification for a change in pay rate. ~~{See ARP 7.01, Part 6}.~~
- G. Reclassification or Recruitment/Selection to Higher Pay Grade. When a BUE is reclassified or selected for a higher level position as part of a recruitment process, the pay rate for the higher position will be the *greater* of either: (1) five (5) percent above the entry level pay grade for the new higher level position; or (2) the following applicable percentage increase in the pay grade from the prior position:
- 5 percent if new position is one pay grade higher;
 - 8 percent if the new position is two or three pay grades higher;
 - 15 percent if the new position is four or more pay grades higher.
- H. Reclassification. Reclassification to a position with the same pay grade will not justify a pay rate adjustment. An adjustment in classification by HRS which results in change of pay grade or elimination of title may or may not result in a pay rate change. Decisions regarding such changes will be made on a case-by-case basis. ~~{See ARP 7.01, Part 8}.~~
- I. Retroactive Pay Adjustment. Pay adjustments may be applied retroactively back to the day of the calendar month in which any general pay adjustment was approved, provided that the adjustment cannot be applied to a period in a prior fiscal year without specific approval of HRS. (Example: a BUE was granted a pay adjustment effective April 26 but, due to an error, the proper amount was not paid. The error was discovered on June 15. The retroactive adjustment may be made back to April 26, the date the adjustment was approved.) ~~{See ARP 7.01, Part 10}.~~
- J. Overpayment. If a BUE is overpaid due to an administrative error, the BUE will be responsible for reimbursing NMSU for the total overpayment. The overpayment may be repaid in the same increments and frequency in which the overpayment occurred, provided, however, that the entire overpayment balance outstanding upon BUE termination may be deducted from the BUE's final paycheck. ~~{See ARP 7.01, Part 10}.~~
- K. Three-Year Longevity Increase. BUEs who complete their initial three (3) consecutive years of service with a performance rating of Fully Successful (previously "Meets Expectations") or better on their most recent evaluation will be awarded a five (5%) percent pay increase effective on the BUE's anniversary date. ~~Temporary or occasional BUEs are not eligible for the 3-year longevity award.~~ Prior service with a break in employment in excess of five (5) Business Days is not credited toward the three (3) years of longevity. Leave without pay is not included as service time. ~~{See ARP 7.01, Part 12}.~~

- L. Service Increase. Effective on the first day of the month after the employment anniversary date, BUEs may be awarded a service increase upon satisfactory completion of the specified number of years in accordance with this schedule: \$750 after 10 years; \$850 after 15 years; \$1,000 after 20 years; \$1300 after 25 years; and \$1500 after 30 years (prorated for less than full time BUEs). The increase will not be retroactive and will be subject to satisfactory **fully successful** performance as documented on the performance evaluation form. ~~[See ARP 7.01, Part 13].~~
- M. Daily Maximum Hours of Employment. No BUEs, other than fire fighters, ~~law enforcement officers, dispatchers, or~~ **supervisor** farm/ ~~or ranch hands,~~ whose duties require them to work longer hours, or BUEs working primarily in a standby position, will normally be required to work more than sixteen (16) hours in any 24-hour period, except in emergency or special situations. ~~[See ARP 7.01, Part 14].~~

Section 3. Overtime Compensation.

NMSU will compensate BUEs for Overtime at the rate of one and one-half times the BUE's regular hourly rate of pay, including any pay differential. BUEs may elect to receive Comp Time in lieu of Overtime pay as provided in Article 28, Section 8.

Section 4. Shift Differential Pay.

Shift differential pay refers to the extra compensation a BUE receives for hours worked that are outside the hours of 7:00 a.m. to 5:00 p.m., Monday through Sunday.

- A. Work Schedules. Units which need staffing outside NMSU's regular business hours will establish work schedules divided into three, 8-hour shifts, in any 24-hour workday. Shift hours ~~worked into or~~ **that begin** between 7 a.m. and ~~5-3~~ p.m. are designated as the daytime shift. Shift hours ~~worked into or~~ **begin** between 3 p.m. and ~~1 a.m.~~ **10 p.m.** are designated as the swing shift, and shift hours ~~worked into or~~ **begin** between 10 p.m. and ~~8~~ **7** a.m. are designated as the graveyard shift.
- B. Shift Differential Pay Rate. Daytime shift work is paid at the BUE's normal base hourly rate of pay; work on the second (swing) shift receives an additional ten cents (\$.10) per hour pay differential; work on the third shift (graveyard) receives an additional forty cents (\$.40) per hour pay differential. Any differential other than as specified here must have advance written approval from HRS.
- C. Shift Differential Pay Qualification. BUEs will receive shift differential pay only when their regular work schedule includes at least three or more hours of the swing or graveyard shift, in which case the BUE will receive shift differential pay only for the hours actually worked that extend into the swing or graveyard shift (and not during any leave time).
[See ARP 7.10, Part 1].

- D. Shift Duty Form. Assignment to shift duty must be evidenced by an appropriate form, executed by the BUE's department manager or Supervisor, including the applicable shift code.

Section 5. Geographic Pay Differential.

NMSU may provide pay differentials for BUEs working in geographical locations that require a higher pay rate to be competitive with the appropriate market, or where the cost of living is substantially higher than in Las Cruces, New Mexico. ~~[See ARP 7.01, Part 1(B)].~~ **A BUE who temporarily receives the geographic pay differential in excess of one (1) calendar month, will receive a pay differential effective the first day of the month following the effective date of assignment.**

Section 6. Area Differential Pay.

When BUEs are sent on temporary duty to locations outside their normal work area and the cost of temporary lodging and food exceeds the normal per diem rate, NMSU may provide a temporary pay differential to the BUE's base pay rate during the assignment to compensate for this expense. The Supervisor must submit requests for such pay differential to HRS ~~as soon as reasonably possible.~~ [See ARP 7.10, Part 2]. **A BUE who temporarily receives the area pay differential in excess of one (1) calendar month, will receive a pay differential effective the first day of the month following the effective date of assignment.**

Section 7. Hardship Differential Pay.

- A. Rule Statement. Hardship differential pay is extra compensation (a minimum \$1.25 per hour pay differential) above the BUE's regular pay rate that is occasionally paid to BUEs assigned to work for a fixed period of time on a specific project to meet an objective, and under extraordinary working conditions. ~~[See ARP 7.12, Part 1].~~ Hardship differential pay will be included in the calculation of Overtime pay. ~~[See ARP 7.12, Part 2(C)-(D)].~~ **A BUE who temporarily receives the hardship pay differential in excess of one (1) calendar month, will receive a pay differential effective the first day of the month following the effective date of assignment.**
- B. Procedural Guidance. Management will attempt to schedule BUEs such that excessive Overtime and hardship to the BUE is avoided; the hardship differential pay addresses those situations where this cannot be avoided. [See ARP 7.12, Part 2(A)].
1. Extraordinary working conditions **outside the scope of the essential functions of the position** include situations when the BUE will work an inordinate number of hours beyond the normal forty (40) hour workweek; work under unusually risky or hazardous conditions, including permit-entry confined space work assignments; or work at a remote location (non-standard location away from home) through a holiday. Such working conditions should not be the norm, and payment of extra

compensation is justified due to the significant hardship placed on the BUE during the period of time necessary to meet the work objective. [See ARP 7.12, Part 2(B)].

2. Hardship differential pay is awarded only upon written approval of both the appropriate dean or vice president and HRS.

Section 8. Physical Science Laboratory Differential.

Based upon the unique demands of working within the Physical Science Laboratory (PSL), including security measures and regulations relating to the federal contracts under which work is performed, NMSU may provide a temporary pay differential to some or all BUEs working in PSL. **A BUE who is temporarily receives the PSL differential in excess of one (1) calendar month, will receive a pay differential effective the first day of the month following the effective date of assignment.**

Section 9. Multi-Lingual Pay Differential.

In facilities or offices where NMSU deems it necessary to have multi-lingual BUEs on staff to facilitate work-related communications with members of the public, and BUEs on staff assigned to the facility are available and capable of fulfilling such need, NMSU may designate a sufficient number of BUEs in the assigned workforce to perform such duties. Such BUEs will be entitled to a pay differential in the amount of \$.10 per hour, effective only upon receipt by HRS of a Personnel Action Form (PAF) approved in writing by the Supervisor or Department Head which specifies the multi-lingual pay differential. [See ARP 7.11]. **A BUE who temporarily receives the geographic pay differential in excess of one (1) calendar month, will receive a pay differential effective the first day of the month following the effective date of assignment.**

Section 10. Degree Attainment Wage Adjustment.

BUEs with "Superior" (previously, "Exceeds Expectations") or better job performance, who earn degrees from an accredited institution of higher education during their employment, will be rewarded according to the following guidelines.

- A. **Higher Degree.** A BUE will receive recognition only once for each type of degree awarded (i.e., associate's, bachelor's, master's, and doctorate). A BUE will not receive an increase for earning a lower degree than already held. A BUE may only receive an increase for earning the same level degree as already held if the degree is directly related to the position and no increase was previously awarded. [See ARP 7.15 (A)].
- B. **Effective Date.** The applicable wage increase will be effective on the first day of the month following award of the degree, or on the first day of the month in which a degree increment request is received by HRS, whichever is later. [See ARP 7.15 (B)]. Degree increments will not be paid on a retroactive basis. [See ARP 7.15 (C)].
- C. **Pay Increase Amounts.** BUEs who meet the above criteria are eligible for a wage increase of:

1. 5 percent of their current wage, not to exceed \$1,000, for an associate degree;
2. 5 percent of their current wage, not to exceed \$1,200, for a bachelor's degree;
3. 5 percent of their current wage, not to exceed \$1,400, for a master's degree;
4. 5 percent of their current wage, not to exceed \$1,600, for a doctorate. [*See* ARP 7.15 (D)].

D. Qualification Form. BUEs who are eligible for a degree increment must submit a written request to their Supervisor, with a copy of their credit transcripts indicating a degree has been awarded. Upon verification of a "Superior/Highly Effective" (previously, "Exceeds Expectations") performance evaluation, the Supervisor will submit the proposed degree attainment pay adjustment request on an NMSU personnel action form, with the transcript and a copy of the performance evaluation attached, for approval by HRS. When approved, the pay adjustment will be effective no later than 4 weeks after the BUE request at the time the personnel action form was received by HRS.

Section 11. Journeyman License Attainment Wage Adjustment.

A BUE in Facilities and Services (FS), who: (1) works in the plumbing or electric trades; (2) earns the minimum number of hours required working as an apprentice under the supervision of a licensed journeyman; and (3) passes the journeyman test, will be reclassified and paid at the appropriate pay grade for the classification. Supervisors are responsible for submitting a request for reclassification. **BUEs who obtain a journeyman's license and are reclassified must remain employed with NMSU in a position utilizing the journeyman's license (e.g. HVAC Mechanic, HVAC Mechanic Lead, Plumber, Plumber Lead, Electrician, Master Electrician, Steam Fitter, or Plant Operator) for three (3) years after obtaining the license. Failure to complete three (3) years of employment following licensure will result in the employee reimbursing NMSU, pro-rata, for the cost of the license and the class to obtain the license.**

Article 19 Deductions

Section 1. Union Dues Payroll Deduction.

NMSU will honor voluntary uniform Union membership dues deduction authorizations. ~~NMSU will also honor separate additional voluntary deduction authorizations for the Union's political action committee (PEOPLE). The Union will provide and BUEs will use standard forms separately authorizing union dues deduction and PEOPLE deduction. A BUE will specify the amount, if any, of additional authorizations for the PEOPLE program. The Union, acting through a duly authorized~~

officer, will certify to NMSU, in writing, ~~during the month of April for the ensuing fiscal year,~~ the amount per pay period to be deducted for Union dues under deduction authorizations. ~~No changes will occur after this date until the following fiscal year.~~ The certified dues amount will not include special assessments, penalties, political contributions, or fines of any type.

NMSU will begin all voluntary deductions promptly after the authorization is received in a timeframe consistent with other Employee payroll deductions. If a BUE has insufficient earnings for the pay period, no dues or other deduction will be made for that BUE for that pay period.

Section 2. Transfer of Deducted Funds to Union.

NMSU will remit to the Union all money deducted from BUE wages under this Article promptly after the payday covering the pay period of deduction. NMSU will provide the Union with a list of the names of the BUEs from whom NMSU made deductions under this Article, indicating the ~~separate amounts~~ deducted for dues and PEOPLE. This listing may be made available in an electronic format.

Section 3. Termination of Dues.

BUEs may instruct NMSU and the Union, in writing, to terminate Union dues deductions, only between July 1 and July 14 of any year that this Agreement is in effect. ~~A BUE may terminate deductions for the Union's Political Action Committee (PEOPLE) at any time.~~ NMSU will honor the dues deduction authorization only until the BUE provides proper instructions to terminate the deductions as provided in this Section.

Section 4. Indemnification.

NMSU assumes no obligation, financial or otherwise, arising out of its application of the provisions of this Article, and the Union will indemnify and hold NMSU harmless from and against any claims, actions, or proceedings arising from deductions made by NMSU pursuant to this Article. Once the funds are remitted to the Union, their disposition is the sole and exclusive obligation and responsibility of the Union.

EMPLOYEE BENEFITS

Article 20

Insurance Benefits

Section 1. Insurance Plans.

- A. Maintenance of Insurance Benefits. Subject to changes in eligibility criteria, enrollment requirements and coverage which are applicable to all Employees, NMSU will maintain its Insurance Benefits that are in effect and delineated in the Administrative Rules and Procedures as of the effective date of this Agreement, as they relate to BUEs. These benefits include: group medical, prescription drug, group vision, group term life, AD&D,

group long-term disability, group dental plan, and voluntary life insurance programs. [See generally ARP 8.21-8.27].

- B. Part-Time BUE Participation. No insurance benefit is provided for part-time BUEs **working less than 0.75 FTE**, except that those part-time BUEs who enrolled in benefits prior to 7/1/16 are allowed to continue the benefit. [See generally ARP 8.21, Part I(A)].
- C. NMSU's Contributions. Subject to approval by the NMSU Board the Regents, NMSU will contribute the following amounts to the cost of Employee insurance benefits:

Pay rate	Percent of premium paid by NMSU	Percent of premium paid by employee
Under \$36,000	80%	20%
\$36,000-\$44,000	70%	30%
Over \$44,000	60%	40%

<u>Employee Base Pay</u>	<u>NMSU Contribution</u>
Up to \$29,999	80%
\$30,000 to \$39,999	70%
\$40,000 and above	60%

Section 2. Modification of Insurance Benefits.

The State of New Mexico provides the health insurance benefits and options to NMSU Employees. NMSU will provide the Union with advance notification of planned changes to insurance benefits (e.g., deductibles, out-of-pocket and lifetime maximums, co-pays) and permit the Union a reasonable opportunity to meet with NMSU to review the changes prior to implementing such changes.

Section 3. Health Care Flexible Spending Accounts.

All eligible BUEs may elect to participate in the NMSU Health Care Flexible Spending Account benefit under the same terms and conditions as other NMSU Employees, as it may be amended from time to time. [See ARP 8.14].

Section 4. Pre-Tax Premium Plan.

All eligible BUEs may participate in the NMSU Pre-Tax Premium Plan under the same terms and conditions as other NMSU Employees, as it may be amended from time to time. [See ARP 8.15].

**Article 21
Holiday Leave Benefit**

Section 1. Holiday Leave Benefit.

Eligible Employees (as defined in ARP 6.03) are provided with fourteen days of paid holiday leave on designated dates each year. Only BUEs determined to be essential to operations will be required to work on designated holidays, and those BUEs will receive an alternative benefit as provided in this Article. [See ARP 8.56, Part 1].

Section 2. Holiday Observance.

NMSU is closed for business in observance of the following designated holidays:

1. Martin Luther King, Jr. Day;
2. Spring Holiday (1 day);
3. Memorial Day;
4. Independence Day (observed on July 4th; except when July 4th falls on Saturday, the holiday will be observed on Friday, and when it falls on a Sunday, it will be observed on Monday);
5. Labor Day;
6. Thanksgiving Day;
7. Friday following Thanksgiving Day; and
8. Winter Break (seven week days including those in the period from December 24 through January 1; when December 24 falls on a Saturday or Sunday, the preceding Friday is also included and when January 1 falls on a Saturday or Sunday, the subsequent Monday is also included). [See ARP 8.56, Part 2].

Section 3. Eligibility for Holiday Leave Pay.

- A. Eligibility. Except as otherwise provided in this rule, BUEs are eligible for holiday leave pay for designated holidays. Holiday leave pay is prorated for eligible part time BUEs. [See ARP 8.56, Part 3].
- B. Ineligibility for Holiday Leave Pay. BUEs are ineligible for holiday leave pay under these circumstances:
 1. **Unexcused Absence:** The BUE has an unexcused absence on their last scheduled Work Day preceding the holiday, or on their first scheduled workday following a holiday.

2. **LWOP Status:** The BUE is on leave without pay (LWOP) on the day preceding the designated holiday. [See ARP 8.56, Part 3].

C. Coordination of Holiday Leave with Employment Start and End Dates.

1. ~~**Employment Start Dates:** Regular and non-regular term BUEs will not be hired with a start date between December 16 and the end of the Winter Break holiday. An exception to this restriction may be granted by the assistant vice president for HRS upon written request explaining emergent circumstances.~~
2. **Employment End Dates:** Eligible BUEs separating from NMSU will receive the holiday leave pay benefit through their date of separation from NMSU service. [See ARP 8.56, Part 5].

Section 4. Alternative Benefits for Holiday Work [See ARP 8.56, Part 4].

- A. Holiday not in Work Schedule. When an eligible BUE's regular work schedule does not include the holiday, the Supervisor will designate an alternative day of paid holiday leave within the same workweek.
- B. Comp Time in lieu of Holiday Premium Pay. If a BUE is required to work on one of NMSU's official holidays and has elected, in their semi-annual FLSA election, to receive Comp Time in lieu of Overtime pay, then the Comp Time hours credited for the holiday worked will be calculated in the same manner as for holiday premium pay below.
- C. Holiday Premium Pay. BUEs required to work on a holiday, and who do not receive an alternative day off in lieu of the holiday, will be paid holiday premium pay equal to their regular rate of pay, plus an additional 1½ times their regular rate of pay, regardless of the number of hours actually worked during the normal workweek.
- D. Calculation of Overtime in Holiday Week. Overtime pay calculations for those weeks with paid holidays will be determined in accordance with ARP 7.20, Part 3. ~~Ð~~, as it exists or is amended.

**Article 22
Other Leaves**

Section 1. Annual Leave.

- A. Accrual Rate. ~~Regular and non-regular (term)-~~BUEs will accrue twenty-one (21) workdays (168 hours) of paid annual leave each year, to be prorated for half-time or more BUEs. For each hour of annual leave taken, BUEs are compensated at their regular hourly rate. Leave is earned from the first day of employment and may be used as it is earned. Hours worked over forty (40) hours per week do not accrue either annual or sick leave. [See ARP 8.41(A)].

- B. Carry-Over Leave. Up to 240 hours accumulated annual leave may be carried forward each July 1 and may be paid upon termination of employment ~~for regular BUEs only~~. In the case of death, the maximum payment for unused leave will be 400 work hours. The end of the fiscal year (June 30) is the date for determining accumulated leave. [See ARP 8.41(E),(F),(G)].
- C. Programming Leave. It is the responsibility of the BUE and Supervisor to ensure that the use of annual leave is programmed in advance and used so the BUE will not lose any leave. Leave accrued in excess of 240 hours at the close of business on June 30 of each year will be forfeited. ~~Non-regular term appointment BUEs will forfeit all unused accrued leave on July 1 and upon termination of term appointment.~~ A BUE's pay can be docked for a voluntary day off if they do not have a leave balance to cover. [See ARP 8.41(H),(I)].
- D. Transfer of Annual Leave. Annual leave will be transferred with the BUE from one department to another. BUEs who are converting to temporary status may be paid for unused annual leave as stated above. BUEs who are terminating may request terminal leave (with administrative approval) in lieu of lump sum payment and will not accrue leave during terminal leave unless they return to ~~permanent~~ **regular** work status. BUEs who are retiring may accrue leave during terminal leave. [See ARP 8.41(J), ~~(K)~~, **(L)**, (M), ~~(N)~~].

Section 2. Sick Leave.

- A. Sick Leave Available. Regular, full-time BUEs will be granted twelve (12) workdays of paid sick leave each year. This is prorated for half-time or more BUEs. Leave will be earned from the first day of employment and may be used as it is earned. Hours worked over forty (40) hours per week do not accrue either annual or sick leave. BUEs may accrue and bank one hundred (100) Work Days (800 hours) of accumulated sick leave (prorated for less than full-time BUEs and for any partial months by 9-month BUEs). [See ARP 8.43 Part I(A); (C)-(E)].
- B. 100 Day Maximum. On July 1 of each year, a BUE who has accumulated more than one-hundred (100) workdays of sick leave will have the sick leave balance reduced to one-hundred (100) days. A department may require supporting documentation for any usage of sick leave any time abuse of sick leave is suspected. Any grant of sick leave in excess of three (3) consecutive Work Days should be supported by a medical certificate or other evidence administratively acceptable. Abuse of sick leave may be grounds for immediate dismissal. Annual leave ~~will~~ **may** be applied (if available) against ~~sick~~ leave in excess of the allotted sick leave days, but sick leave will not be applied against annual leave in any case. [See ARP 8.43 Part I(E)-(G)]
- C. Cash Value. Sick leave accrued after July 1, 2016, will have no cash value and will not result in a payout benefit. [ARP 8.43, Part H]. Those BUEs who accrued more than 600 hours of sick leave prior to July 1, 2016 will retain the sick leave payout benefit that was in place on June 30, 2016, but only with respect to those hours accrued prior to July 1, 2016. This sick leave payout benefit will be referred to as a "grandfathered" benefit. Any BUE with a grandfathered sick leave payout benefit who terminates, retires or

converts from a 12-month pay base to an academic faculty pay base will be paid, in accordance with the formula in effect on June 30, 2016, for any then remaining grandfathered sick leave benefit (calculation based on the lesser of the leave balance on July 1, 2016 or the leave balance on the date of separation). The formula in effect on June 30, 2016 stated: payment will be made at a rate of 50 percent of the BUE's straight-time hourly wage, multiplied by the number of sick leave hours accrued over 600, to a maximum of 200. The payment may not exceed 50 percent x hourly rate x 200. (According to Educational Retirement Board rules, this payment will not be included in the 5-year average wage used for the retirement benefits calculation.) [*See* ARP 8.43, Part 1(H)-(1)].

- D. Use of Sick Leave. Sick leave may be used when the BUE's, absence is reasonably required for the treatment of or recovery from illness or injury. Sick leave may also be used when the BUE's absence qualifies as protected leave under the Family Medical Leave Act. Consistent with applicable law, a physician's statement may be required to support the usage of sick leave for the BUE or qualified dependents. BUEs on Family and Medical Act (FMLA) leave must use any available sick leave concurrently with FMLA, pursuant to ARP 8.45. ~~Sick leave may be used before another available leave may be taken.~~ A BUE will not be compensated for a missed day from work if the BUE does not have accrued paid leave available. [*See* ARP 8.43, Part 1(K)].
- E. Supporting Documentation. A department may require supporting documentation for usage of sick leave any time a BUE has an insufficient leave balance and is absent from work, or if abuse of sick leave is suspected. Any BUE required to provide documentation to support an absence ~~will~~ **may** be placed on unpaid administrative leave pending NMSU's receipt and approval of such supporting documentation. In addition, any grant of sick leave in excess of three (3) consecutive Work Days ~~must~~ **should** be supported by a medical certificate or other evidence administratively acceptable. Abuse of sick leave may be grounds for immediate dismissal.
- F. Nine-Month BUEs. Regular, nine-month BUEs may earn 9 days of sick leave a year (8.00 hours per month worked, prorated based on job FTE). Annual leave or sick leave for nine-month BUEs may be used only during the regular employment time period they are scheduled to work each fiscal year. Leave is prorated for BUEs who work less than full-time. [*See* ARP 8.43, Part 2].
- G. Sick Leave Bank.
1. Eligibility. BUEs will be allowed to participate in the Sick Leave Bank ("Bank"). Participating BUEs affected by a "personal medical emergency," and who have insufficient leave to cover required work absences, will be entitled to use the Sick Leave Bank. A "Personal Medical Emergency" is defined as an "unusual and catastrophic medical or immediate family medical emergency that is likely to require a BUE's absence from duty for a prolonged period of time and to result in a substantial loss of income because of the unavailability of paid leave." Only those items allowable under NMSU sick leave rules stated above are covered by the Sick

Leave Bank; maternity leave in connection with a pregnancy without medical complications is not a "personal emergency." [See ARP 8.28(A)-(C)].

2. Donation Rules. The Bank allows BUEs to share the risk of severe circumstances by donating to a common pool of leave. Members of the pool are required to enroll in the long-term disability insurance program, **offered by NMSU**, as a protection against income loss while recovering from a severe medical condition. The long-term disability policy covers total disability after a waiting period of one-hundred and thirty-five (135) consecutive calendar days or one-hundred (100) workdays. The maximum a recipient can receive from the Sick Leave Bank is seventy (70) days per "personal emergency" with no more than one withdrawal from the bank per fiscal year or per personal emergency. No more than seventy (70) days can be withdrawn for a particular medical condition. The Bank does not provide for the first thirty (30) days of the "personal medical emergency"; these are the responsibility of the BUE and are covered by the BUE's sick and annual leave or leave without pay. Program requirements and application procedures are maintained on the web pages for HRS. [See ARP 8.28(D)-(H)].

Section 3. Compassionate Leave.

In the event of the death of a member of the immediate family, a BUE is allowed a leave with pay, not to be charged against sick or annual leave, of up to three (3) regular Work Days following the death of the family member without loss of pay to attend the funeral or to handle affairs immediately associated with the death. Immediate family member includes spouse, a domestic partner as defined in ARP 8.03 [Domestic Partner Eligibility for Benefits], a child, parent, or legal guardian, a sister or brother, a grandparent, or a grandchild. Such familial relationships created by law are also included (i.e. mother/father in law; half or step siblings). [See ARP 8.47].

Section 4. Family and Medical Leave.

NMSU Employees, including BUEs, are entitled to job-protected leave under the Family and Medical Leave Act (FMLA Leave) to the extent provided by federal law and NMSU policy, rules, and procedures. ~~FMLA Leave is unpaid, except when taken concurrently with accrued sick leave or annual leave~~ **BUEs holding accrued sick leave must take sick leave concurrently with FMLA Leave until accrued sick leave is exhausted. BUEs who do not have accrued sick leave may elect to take accrued annual leave concurrently with FMLA Leave or may choose to be placed on leave without pay.** BUEs should notify HRS-Benefit Services once aware of an FMLA qualifying event. [See ARP 8.45].

Section 5. Jury Duty Leave.

- A. Jury Duty Leave. Jury duty is that service and time spent away from a NMSU job as a result of a subpoena or notice issued by court. In order for BUEs to fulfill their civic responsibility as jurors, BUEs may be granted leave for this purpose. BUEs are not required to report for work after serving eight (8) hours of jury duty during the day. If service is less than eight (8) hours in a day, BUEs will return to work for the remainder of their 8-hour

shift (or may request annual leave). Department heads are authorized to grant jury duty leave upon the presentation of a subpoena or notice issued by the appropriate court. NMSU will pay BUEs who serve such duty their normal wages for each regular workday of service, not to exceed eight (8) hours per day. A copy of a written statement furnished to the BUE by the court indicating the time spent serving jury duty must be furnished to the Supervisor. It is the responsibility of the BUE to keep the Supervisor informed of the anticipated time to be spent away from the job. BUEs must use annual leave or leave without pay for jury duty/witness service in a jurisdiction other than that of their primary work locale, with the exception of BUEs residing in El Paso and working in Las Cruces. BUEs may not receive any form of compensation from state courts other than mileage. BUEs may receive compensation while serving on federal juries. [See ARP 8.50, Part 1(A)-(I)].

- B. Witness Leave. BUEs have the same right as all citizens, and on occasion the obligation, to serve as witnesses in a court of law. As such, they are not representatives of NMSU, but are private citizens. Their conduct in the case of court appearances as private citizens should, however, reflect well on NMSU. Eligible BUEs will be granted annual leave, or placed on leave without pay if ineligible for leave, for time spent testifying as a witness. The BUE should provide their immediate Supervisor with a copy of the subpoena in order to receive approval for time off. BUEs who are plaintiffs in any legal action against NMSU must use annual leave or leave without pay for all time spent in activities related to such action. BUEs appearing on behalf of NMSU or as a representative of NMSU in any legal action, to include depositions or witness testimony, will not be required to use annual leave or leave without pay. The BUE may accept a witness fee as provided by law. [See ARP 8.50, Part 2(A)-(E)].

Section 6. Military Leave.

NMSU will comply with all federal and state laws, as amended from time to time, governing military leave. In accordance with state law, NMSU provides paid training leave for its BUEs who are members of organized units of the Army or Air National Guard or Army, Air Force, Navy, or Marine Reserves, in an amount not to exceed 15 days annually when they are ordered to active duty training with such organized units. Such leave will be in addition to other leave or vacation time with pay to which such BUEs are otherwise entitled. (See NMSA 1978, §20-4-7) [See ARP 8.46, Part 1].

Section 7. Leave Without Pay (LWOP).

LWOP for a period up to ninety (90) calendar days may be requested by a BUE and either approved or disapproved by the director/department head. Requests for LWOP in excess of ninety (90) days should be submitted to the department head or director. If the department head recommends approval, the request is forwarded through the dean or vice president to HRS for consideration. Circumstances in individual cases will determine if such leave will be granted. If leave is granted, it should be reported as a change of status. A BUE who requests and is granted a leave of absence without pay for a full pay period resulting in insufficient pay to cover the BUE's cost of the benefit premiums must make arrangements through HRS to pay the full cost (NMSU and BUE) of

insurance premiums and make timely payments to NMSU Accounts Receivable. BUEs who do not make premium payments by the last day of the month are subject to having their coverage cancelled. Annual and sick leave do not accrue during LWOP. All days, including legal holidays, in the interim period between the date LWOP commences and the date the BUE actually returns to work, are taken without pay. Any partial days, taken immediately before or after the official leave without pay period, will be deducted from leave accrued upon return. An appointing authority may involuntarily place a BUE on leave without pay if approved by HRS and executive vice president and provost. LWOP will not be granted to a BUE who has annual leave unless specifically approved by the executive vice president and provost, except under the Family and Medical Leave Act. *[See ARP 8.55(A)-(G)].*

Section 8. Administrative Leave.

NMSU may, in its discretion, provide paid administrative leave to BUEs for purposes it deems appropriate. Since each case requiring administrative leave is unique, such circumstances will not provide a precedent for treatment of other BUEs.

Section 9. Domestic Abuse Leave

NMSU will comply with all federal and state laws, as amended from time to time, governing domestic abuse leave. *[See generally ARP 8.44].*

Section 10. Absence for Purpose of On-Campus Interview.

NMSU will provide paid release time to a BUE who is requested to interview for another NMSU position. Annual leave will not be charged against a BUE who is requested to interview for another NMSU position. *[See ARP 8.51].*

Section 11. Absence for Purpose of Voting.

On Election Day, BUEs who are registered voters will be entitled to two (2) hours of paid release time to be absent from employment for the purpose of voting between the time of opening and the time of closing the polls. The appropriate Supervisor may specify the hours during this period in which the voter may be absent. This does not apply to BUEs whose workday begins more than 2 hours subsequent to the time of opening the polls or ends more than 3 hours prior to the time of closing the polls. This policy applies to city, county, state, and national elections. *[See ARP 8.49].*

Section 12. Leave Requests.

FMLA Leave requests are administered by HRS-Benefits. Other requests for leave will be considered by a Supervisor with primary consideration given to the requirements of the job. Requests should be made in writing in advance whenever possible. *[See ARP 8.40(A)].*

Subject to the foregoing, annual leave should generally be granted on a first come, first served basis. Requests should be made in writing in advance whenever possible. Such requests will not be unreasonably denied.

Section 13. Leave Records.

NMSU will establish and maintain accurate leave records updated on a pay-period basis ~~and provide regular notification to BUEs of leave balances.~~ Supervisors are responsible for establishing and maintaining appropriate leave records. [See ARP 8.40(D)].

Section 14. Contract Administration Leave.

- A. Union Representatives. NMSU will provide Contract Administration Leave for Union Representatives, including stewards who are BUEs, consistent with the following provisions. This leave will be designated as contract administration leave for pay purposes.
- B. Amount of Leave. The total amount of Contract Administration Leave granted by NMSU during a fiscal year may not exceed thirty (30) days.
- C. Requests for Leave. All requests for leave under this section will be submitted to HRS administrator designated for such purposes in writing, signed by the Union and the Union Representative, at least fifteen (15) Business Days in advance of the day on which the leave is to begin and will include:
 - 1. A general description of the activity and its purpose;
 - 2. The date and location of the activity; and
 - 3. The name(s) of the BUE(s) for whom contract administration leave is being requested.
 - 4. Where the leave request is for eight (8) hours or less, the minimum notice required is seven (7) Business Days.
- D. Approval. Approval of leave under this section will not be unreasonably withheld, consistent with Section 12 of this Article.
- E. Substituting Union Representatives. If the Union needs to substitute a Union Representative for those previously granted Contract Administration Leave, or substitute new dates, such requests will be submitted for approval as soon as possible to the HRS administrator designated for such purposes. Approval of substitutions or dates will not be unreasonably withheld, consistent with Section 12 of this Article.

Section 15. Other Leave Taken

In the event of a campus closure or facility closure under which BUEs are directed not to report to work or are released from work during otherwise regularly scheduled work hours, for reasons that are not in the BUE's control, BUEs will be paid for the regularly scheduled work hours and should report the time away from work as Other Leave Taken (OLT). ~~Similarly, when BUEs are required~~

~~to work a compressed work schedule (typically 4 ten-hour days, Monday through Thursday) due to a work assignment in a facility not controlled by NMSU, on NMSU recognized holidays, the BUE may report as Other Leave Taken (OLT) any hours they would have worked on that date, absent the holiday (typically 2 hours).~~

Section 16. Release Time for Campus-Sponsored Activities

BUEs who are members of committees that are established and sanctioned by NMSU, or who are permitted by such committees to be in attendance, will be entitled to attend committee meetings that are held during regular business hours on paid time, provided they have received prior approval from their Supervisor.

Article 23 Tuition Remission

NMSU encourages all regular BUEs to engage in life-long learning to enhance their careers by taking advantage of tuition remission programs. BUEs are entitled to the same Tuition Remission Program benefits as other Employees, in accordance with ARP 8.61.

Article 24 Domestic Partners

NMSU is committed to providing equal employment and educational opportunities to all individuals. All BUEs who have a "Qualified Domestic Partner," as defined in the ARP, will be provided services and benefits on the same basis provided to legal spouses and dependents, except where expressly prohibited by law. [See ARP 8.03, Part 1]. All NMSU policies that affect BUEs, legal spouses and their families also apply to Qualified Domestic Partners and their families. [See ARP 8.03].

Article 25 Parking

NMSU will continue to maintain parking areas designated for free use. **Outer Lot** Parking permit fees will not increase more than ~~seven dollars and fifty cents (\$7.50)~~ **10%** annually.

PERFORMANCE

Article 26 Probation

After a BUE successfully completes an original probationary period, which is the trial period of time following hiring as a new BUE at NMSU in which the individual's potential as an NMSU Employee is assessed, there will be no other probationary periods during the BUE's continuous employment. [See ARP 9.01, Parts (1)-(4)].

Article 27 Performance Evaluations

Section 1. Purpose.

Performance evaluations are intended to establish a communication tool to ensure that BUEs are performing their duties and exhibiting conduct at acceptable levels, to provide a means by which to document performance and conduct, to allocate merit increases, and to establish a procedure for correcting performance and conduct problems, should they occur. **Performance evaluations do not affect NMSU's ability to take disciplinary action.** ~~The next level Supervisor's signature is required on all performance evaluations.~~ **Written evaluations conducted by a BUE's supervisor will be provided to the employee for review and signature acknowledging receipt.** No BUE will be denied a merit pay increase based upon NMSU not providing a timely annual performance evaluation. *[See generally ARP 9.05, Part 1].*

Section 2. Performance Ratings.

- A. Performance Evaluation should be completed for BUEs after completion of a probationary period ~~(may also be used for the annual evaluation if completed in December, January or February)~~, annually, and any time a Supervisor considers an evaluation necessary. *[See ARP 9.05, Part 1].*

For each of the elements evaluated and for the overall rating, a BUE will receive one of the following ratings:

5-Distinguished Performance and Role Model Status. Clearly and consistently demonstrates extraordinary and exceptional accomplishment in all major areas of responsibility. Performs above and beyond expectations under exceptional circumstances during the review period. Others in similar roles rarely equal performance of this caliber.

4-Superior/Highly Effective Performance. Performance is continually and consistently superior, and regularly goes beyond what is expected. An exceptional contributor whose performance exceeds expectations on a consistent and sustainable basis.

3-Fully Successful/Effective Performance. Performance consistently meets the critical requirements of the position, continually achieves preset goals, and performs with distinction. Incumbent performance is reliable and consistent in adding value to the work unit.

2-Partially Successful Performance/Needs Improvement. Performance does not consistently meet or occasionally falls below what is required of the position; improvement in specific areas is required.

1-Unsuccessful/Unacceptable Performance. Performance fails to meet minimum expectations for this role, and immediate and sustained improvement is required.

Section 3. Performance Elements.

Performance elements will be based on the regular and recurring duties assigned to the BUE and previously agreed-upon goals and objectives. At a minimum, the following core competencies for NMSU system success will be rated on a performance evaluation:

- Achievement toward NMSU Strategic Goals;
- Collaboration and Teamwork;
- Critical Thinking and Problem Solving;
- Interpersonal Effectiveness;
- Job Mastery;
- Organizational Awareness;
- Resource Management;
- Results Orientation and Execution;
- Self-Awareness and Accountability;
- Service and Quality Focus; and
- Valuing Diversity and Inclusion.

Elements will be rated fairly and equitably.-The Supervisor will take into account equipment and resource problems, lack of available training, and other such matters outside a BUE's control. Pre approved time away from the job, including sick leave, annual leave, Comp Time off, and authorized duty time for Union representational purposes and other authorized activities, will not be considered negatively in the application of performance elements, but evaluations will fully take into account such pre-approved absences in a measure of timeliness and quantity of work. If a BUE does not have an opportunity to perform work encompassed within an element for reasons outside of the BUE's control, that element will not be considered in the performance evaluation process.

Section 4. Supervisor Completion.

Normally, ~~the~~ the BUE's immediate Supervisor will prepare all performance evaluations, ~~when possible.~~ A BUE who is transferred will be given an exit evaluation to be used in conjunction with the new Supervisor's year-end evaluation. Where a BUE works under a new Supervisor for at least six (6) months of the evaluation period, that Supervisor may elect not to use the former Supervisor's

evaluation. When both evaluations are used, the overall ratings may be averaged in accordance with the number of months evaluated by each Supervisor. [See generally ARP 9.05, Part 2(B),(G)].

Section 5. Deficient Performance or Violation of Standards of Conduct.

- A. Meeting with Supervisor. In the event during the current rating period, a Supervisor considers an evaluation necessary or useful, based on the Supervisor's assessment of a BUE's performance or conduct, the Supervisor will meet with the BUE to discuss the deficiencies. If a performance evaluation is conducted, the Supervisor will include in the written performance evaluation an explicit description of:
1. any violation of applicable standards of conduct; and
 2. the specific tasks and standards that will assist the BUE in accomplishing his/her overall objectives for the next evaluation period; and
 3. any training requirements.
- B. Time to Correct. The BUE will be given a reasonable **defined** amount of time to correct the performance and conduct deficiencies before the next performance evaluation is conducted, unless the deficient performance occurs late in the annual evaluation period.

Section 6. Miscellaneous.

- A. Other Provisions. Performance evaluations will also include the following:
1. an overall performance rating for the period;
 2. job mastery and conduct goals and objectives for the forthcoming period (which may include recommendations for development or training to enhance the BUE's skills); and
 3. a statement identifying area(s) for improvement and a description of improvement or development activities, and follow-up review date to review progress for an overall rating of either "Partially Successful Performance/Needs Improvement" or "Unsuccessful/Unacceptable Performance."
- B. No Forced Distribution. NMSU will not prescribe a forced distribution of levels for ratings for BUEs covered by this Agreement. Pay will be based on the overall performance evaluation rating, which will be based on the criteria set forth herein.
- C. Changes to Evaluations. NMSU may change a BUE's annual evaluation only with written justification to HRS. The BUE will have access to his/her annual evaluation and will be considered a part of the BUE's official personnel file. A statement of a BUE's objection to an evaluation or comment may be included on the evaluation or attached and placed in his/her personnel file.

- D. Disagreements on Evaluation. Disagreement with overall performance ratings of "Partially Successful Performance/Needs Improvement" (previously, "Needs Improvement") or "Unsuccessful/Unacceptable Performance" (previously "Fails to Meet Expectations") may be grieved or appealed through the Union Grievance Procedure or NMSU appeals process.

WORK RULES AND CONDITIONS

Article 28 Hours of Work

Section 1. Workweek.

- A. Workweek. For payroll purposes, the workweek will be the calendar week, from 12:00 a.m. Sunday through 11:59 p.m. Saturday. NMSU's official HRS payroll system (e.g., currently the Banner system) will be used for the entry of all time worked and leave taken.
- B. Work Schedules. Unless otherwise specified herein, the normal work schedule for full-time BUEs will consist of five (5) consecutive days, with eight (8) hours per day, Monday thru Friday. The Parties agree that due to the operational needs of NMSU, some BUEs will have work schedules other than the normal work schedule, but these alternative schedules should be kept to minimum, wherever possible. Except in extenuating circumstances, the scheduled starting and ending times will remain consistent throughout the workweek. Changes in the regularly scheduled starting and ending times will be communicated to each affected BUE, in writing, two (2) weeks prior to the scheduled changes becoming effective, unless the operational needs of NMSU demand otherwise, in which case, reasonable notice will be provided as soon as practicable. [See ARP 6.85(A)]. BUEs will be at their assigned work station or check-in station and ready to begin work at the start of their assigned shift.
- C. Alternate Work Schedule for DACC Security Officers. Security Officers at all DACC (Dona Ana Community College) locations work a 45-hour workweek, which includes a paid lunch period of 60 minutes, during which they remain on site and respond to calls. Officers are provided a consistent, alternative work schedule with Overtime compensation, along with any shift differentials in accordance with this Agreement. Any additional Overtime needed will be assigned on a rotating schedule, based on Classification seniority. When applicable, Holiday Pay will be paid in addition to Overtime compensation, as provided in ARP 7.20, Part 3 (DC), as it exists or is amended. [See ARP 8.56, Part 4].
- D. Flexible Schedules. To meet the business needs of NMSU, specified positions will have a flexible work schedule. ~~Flexible work schedules are approved for Special Events, NMSU Extension ICAN Nutrition Program and the Golf Course.~~ The schedule for such positions will be established no less than weekly and communicated to the BUE in writing no later than 12:00 a.m. on the Friday prior to the workweek. Additionally, the hours worked each week will remain consistent with the assigned FTE. Positions that have a flexible work schedule will be posted with the following language, "*flexible work schedule to be*

established each week based on needs of the hiring department." ~~At the time of hire, BUEs will be provided with a letter of offer indicating the conditions of employment to include the requirement of a flexible work schedule.~~

Section 2. Work Breaks

A fifteen (15) minute work break is allowed for each **consecutive** 4-hour work period. Break times cannot be accumulated. Break times not used when allotted will be forfeited. General guidelines regarding break times are as follows:

- A. No Added Break Times. Break times cannot be added to the meal break and generally should not be taken within one (1) hour before or after the meal break **or beginning or end of the shift/work day.**
- B. No Deducted Break Times. Break times cannot be deducted from the beginning or end of the work period to reduce overall length of total work period. ~~[See ARP 7.01].~~

Section 3. Meal Break.

A normal workday will consist of 6-8 hours of work with a minimum of one-half hour and a maximum of 1 hour of non-work time granted for a meal period. Periods of less than 1 hour meal time and specific eating on the job arrangements must be approved by the Supervisor. ~~[See ARP, 7.01, Part 11].~~

Meal breaks should normally be scheduled at the mid-point of the BUE's regular work shift. Bargaining Unit positions currently receiving a paid meal break on the effective date of this Agreement will continue to receive this benefit under this Agreement.

Section 4. Workload Standards.

NMSU will assign workloads to treat BUEs as equitably as possible. NMSU will consider re distribution of staff or positions among a department's programs, shifts, or work sites or other means to alleviate excess workload and will specifically consider hiring additional staff where there are chronic workload problems. In addition, the Parties will utilize the Labor Management Committee, Article 36, to address workload issues for BUEs that are assigned caseloads.

Section 5. Overtime Management.

Subject to an exception for designated positions agreed upon by the Parties, BUEs will not normally work Overtime. NMSU has no contractual obligation to offer Overtime work. *[See ARP 7.20, Part 3 (Preamble)].* A BUE's daily or weekly schedule will not be changed to avoid the Overtime payment or accrual of Comp Time, without the BUE's consent. *[See ARP 7.20, Part 3].* Overtime will be paid in accordance with Section 7 of this Article or the BUE will earn Comp Time in accordance with Section 8 of this Article.

Section 6. Distribution of Overtime Opportunities.

If Overtime is required that is not within the specific job assignment of an individual BUE, then the Supervisor will first offer Overtime to the BUEs under his/her supervision who are qualified to perform the necessary work. If more than one qualified BUE volunteers to work Overtime, the Supervisor will assign Overtime based on classification seniority within the work group that he/she supervises and rotate Overtime assignments ~~in a fair and equitable manner~~ **as equitably as possible**. If no volunteers are available, then the Supervisor will designate BUEs capable and qualified to perform the work based on reverse classification seniority and mandated Overtime will be rotated ~~in a fair and equitable manner~~ **as equitably as possible**. NMSU ~~will have~~ the right to require BUEs to work Overtime consistent with this section.

Section 7. Payment of Overtime.

All Overtime worked and reported by the payroll deadline will be paid to the BUE at the next regularly scheduled payday. [See ARP 7.20, Part 4].

Section 8. Compensatory (Comp) Time.

- A. Election of Comp Time. Upon election by the BUE, Overtime may be compensated with Comp Time in lieu of the increased hourly pay rate. When Comp Time is elected, the BUE is paid for all Overtime at the BUE's regular hourly rate of pay and the BUE accrues Comp Time at an additional 0.5 times the Overtime worked. Each year NMSU designates two opportunities for BUEs to change their election to receive either Comp Time or additional pay for Overtime, with elections effective on January 1 or July 1. [See ARP 7.20, Part 5(A)].
- B. Scheduling Comp Time Usage. The date(s) to be taken off from work as Comp Time will be scheduled by agreement between the Supervisor and the BUE. Supervisory approval for the use of Comp Time will not be unreasonably withheld. A Supervisor may direct a BUE to use accrued Comp Time. [See ARP 7.20, Part 5(B)].
- C. Maximum Comp Time Available. A maximum of one hundred and twenty (120) hours of Comp Time may be accrued in a fiscal year. Comp Time earned for Overtime and reported by the payroll deadline will be accrued at the next regularly scheduled payday. A BUE may request payment of accrued Comp Time at any time, which will then be paid at the next regularly scheduled payday. Accrued Comp Time which is not taken as time off or paid prior to the end of each fiscal year, or prior to transfer or termination, will be paid to the BUE. [See ARP 7.20, Part 5(C)].

Section 9. Standby Pay.

NMSU may assign a BUE to Standby status in accordance with ARP. 7.13, Part 1. BUEs placed on Standby **status** are paid \$1. ~~2500~~ per hour for each hour of assigned Standby **status**.

Section 10. Unrestricted On-Call.

Voluntary, unrestricted on-call lists may be maintained for the purposes of offering available Overtime. BUEs who are not on Standby status may decline to return to work if contacted, without penalty, discipline or other reprisal, if they acknowledge they are not fit to report to duty. [See ARP 7.13, Part 2] .

Section 11. Call-Back Pay.

On-Call BUEs who are required to return to work on a scheduled Work Day after going off-duty, or who are called to work on a non-Work Day, are guaranteed a minimum of two (2) hours of pay for the actual time worked at the BUE's regular hourly rate or Overtime rate (whichever is applicable). For BUEs called back to work, paid time will commence at the time the BUE begins travel to report for work and ends at the completion of the call-back assignment. NMSU will not use these call-back pay provisions to undermine or circumvent the distribution of Overtime. [See ARP 7.14].

Section 12. Vehicle Call-Back Allowance.

~~The Facilities Services Departments~~ may elect to offer a vehicle call-back allowance (VCB) of \$15.00 for each occasion in which a BUE is required to return to the NMSU work location on call back. In such units, the BUE will indicate a VCB event on the timecard.

Article 29

Non-Discrimination and Compliance with Laws

Section 1. Non-Discrimination.

NMSU will comply with all applicable laws relating to equal employment opportunity in the workplace and will not discriminate against any BUE based on a legally protected characteristic. Written policies and procedures will be applied as consistently as possible in substantially similar circumstances to the BUEs to whom the policies and procedures apply, except as otherwise required or allowed by law.

Section 2. Compliance with Laws.

Alleged violations of this Article may be grieved in accordance with the Grievance Procedure, outlined in Article 35, except alleged violations of personnel policies and procedures dealing with compliance with the: (1) Fair Labor Standards Act (FLSA); (2) the Americans With Disabilities Act Amendments Act (ADAAA); (3) the Age Discrimination and Employment Act (ADEA); (4) the Family and Medical Leave Act (FMLA); (5) the Equal Pay Act (EPA); and (6) all other applicable federal and state equal employment opportunity laws and regulations, all as amended. If any of these laws apply, complaints may be raised through the appropriate NMSU department, as follows: for alleged FMLA or FLSA violations, complaints should be submitted to HRS; alleged

ADA, ADEA and EPA complaints should be submitted to the Office of Institutional Equity (OIE). Nothing in this section will prevent a BUE from reporting alleged violations of law through the appropriate governmental agency.

Article 30 Health and Safety

Section 1. General Duty.

NMSU agrees to maintain at all times a safe and healthy work place consistent with applicable laws and regulations. BUEs agree to report any unsafe or unhealthy working conditions immediately to Supervisors. [~~See ARP 16.30, Preamble~~].

Section 2. Duties of the Labor-Management Committee.

As a way to promote and maintain safe and healthful working conditions in the workplace, NMSU and the Union agree that the Labor Management Committee will address health and safety issues as needed. Safety-related issues will have agenda priority at each meeting of the Labor Management Committee. Refer to Article 36 herein.

Section 3. Personal Protective Clothing and Equipment.

NMSU will select and provide protective clothing and equipment where such is ~~necessary or where~~ required by applicable laws and regulations. NMSU will also select and provide safety glasses for BUEs working in job classifications where safety glasses are required. NMSU will provide reimbursement for BUEs' prescription safety glasses damaged in the course of the BUE's regular duties through no fault of the BUE. Where a BUE's duties ~~necessitate~~ **require** the wearing of safety shoes **by law** NMSU will select and provide safety shoes, at no cost to the BUE. As shoes become damaged through normal wear and tear, the BUE will be eligible for replacement shoes **once annually**.

Section 4. Health and Safety Training.

NMSU will be responsible for ensuring that BUEs receive training in order to safely carry out the day-to-day functions of their job requirements, including the following:

- A. Cardiopulmonary Resuscitation (CPR) Training. NMSU will offer CPR training provided by a certified trainer at no cost to BUEs. BUEs will be entitled to attend training on paid work time provided they have received supervisory approval.
- B. Asbestos Training. Any BUE required to work with or around asbestos will be provided the proper training and personal protective equipment.

Section 5. Hepatitis B Vaccination.

BUEs who have potential exposure to blood and other body fluids as part of their required job duties will be offered Hepatitis B vaccination(s) at NMSU's expense.

Section 6. Asbestos Precautions.

When an asbestos hazard is discovered, all affected BUEs will be immediately notified of the existence and location of the hazard and NMSU will take precautionary measures to protect the BUEs from exposure. NMSU will conduct ongoing inspections to detect the presence of an asbestos hazard or any other health hazard and will provide updates to the Union.

Section 7. Indoor Air Quality.

NMSU will ensure non-hazardous air quality in all buildings, offices and spaces where BUEs work **in compliance with law.** When conditions in any office, building, or work area reach a hazardous level as determined by the appropriate responsible authority, NMSU will immediately take action to ensure that BUEs are provided with non-hazardous air quality at no lost compensation to BUEs.

Section 8. Physical Exams.

When the health of a BUE is adversely affected by exposure to potentially harmful physical agents, toxic materials, or infectious agents in the course of their employment, NMSU agrees to pay for any physical examinations and other necessary tests, as determined by a medical provider designated or approved by NMSU, that are administered for diagnostic purposes. NMSU will, at a BUE's request, provide an annual hearing test at no cost to those BUEs who are regularly exposed to working conditions that include noise levels in excess of OSHA toleration levels as prescribed in the regulations of the New Mexico Occupational Safety and Health Bureau (NMOSHB). Upon request, animal handlers will be given an annual screening for job-related exposures by a medical provider designated or approved by NMSU, at no cost to the BUE.

Section 9. Reports by Governmental Agencies.

A BUE **who is a member** of the Labor Management Committee will be entitled to accompany officials of any government agency conducting a safety-related investigation on the premises of NMSU, provided that the presence of the committee member does not interfere with the investigation. NMSU will ~~make a reasonable effort to provide the Union with timely~~ notification of unscheduled investigations. A copy of any investigation report that NMSU receives from any government agency regarding a safety issue will be furnished to the Union upon request.

Section 10. No Retaliation.

No retaliation or disciplinary action will be taken against a BUE for exercising rights under the terms of this Article or under the laws and regulations established by any governmental agency regarding Health and Safety in the workplace and Occupational Hazards.

Section 11. Drug-Free Workplace and Academic Environment

Federal Drug and Alcohol Regulations. NMSU is subject to the provisions of the Drug-Free Workplace Act of 1988, the special Drug-Free Workforce rules promulgated by the Department of Defense, the Drug-Free Schools and Communities Act, and other state and federal laws and regulations. ~~The NMSU Board of Regents~~ has directed the Chancellor to institute and maintain programs that meet the requirements of federal drug and alcohol laws and regulations. These programs are administered through HRS. [See ARP 16.65]. Applicants and BUEs, along with all other NMSU employees, are subject to drug and alcohol testing as required by law and by NMSU policy, as may be amended from time to time.

Article 31 Training

Section 1. NMSU Responsibility.

- A. Job Training. NMSU recognizes its responsibility to provide relevant job training for BUEs to improve their proficiency in carrying out job duties. NMSU regularly offers training sessions for the development of skills, knowledge, abilities, and individual growth, in conformance with the institution's mission, vision and strategic plan. NMSU BUEs may request to attend such trainings. Supervisors also may require BUEs to attend these trainings, or other relevant training, to enhance work performance.
- B. Union Recommendations. The Union may submit written recommendations concerning training needs, and the same will be a topic of discussion between NMSU and the Union.
- C. Time of Training. ~~All training~~ will **normally** be conducted ~~to the greatest practicable extent,~~ during regular business hours. If a Supervisor must choose between multiple BUEs within the same classification for job training, classification seniority will be the determining factor used if all other relevant circumstances are relatively equal **as determined by NMSU**. NMSU, at no cost to the BUE, will provide all training materials. All time spent in training sessions will be considered work time.
- D. CEUs. In the event a BUE's duties require completion of periodic Continuing Educational Units (CEUs), all time spent in required CEU courses will be considered work time. The costs of required CEU courses will be borne by NMSU.
- E. Cost of Licensing or Certification. The cost of licensing or certification, or renewals of licensing or certification, required to perform job duties will be borne by NMSU.
- F. Consequence for Failure to Attend. A BUE who fails or refuses to attend mandatory training will be subject to discipline, up to and including termination.

Section 2. New Technology.

- A. Training. NMSU will provide ~~adequate~~ training so that BUEs may learn to use new technology where NMSU requires the use of such new technology.
- B. Conditions for Promotion or Appointment. NMSU will not require that promotions or appointment of BUEs be conditioned upon satisfactory completion of a technology-training program unless the training and competency standards are requirements of the position.

Article 32 Uniforms and Equipment

Section 1. Uniformed Job Classifications.

For each uniformed job classification, NMSU will provide uniforms consistent with the practice in effect upon the effective date of this Agreement, provided no such BUE will be offered fewer than five (5) sets. Uniforms are laundered for BUEs working as vehicle mechanics and painters.

Section 2. Replacement of Uniforms.

As uniforms become damaged through normal wear and tear and no fault of the BUE, NMSU will provide replacement uniforms. BUEs will turn in their damaged uniforms and personal protective equipment prior to the Supervisor (or designee) ordering replacements. Replacement uniforms will be in new condition and fit properly. All issued uniforms will be returned to the appropriate Supervisor (or designee) by the BUE upon separation from NMSU or during leave without pay for periods of two weeks or more.

Section 3. Tools.

NMSU will provide, at no cost to BUEs, the proper tools for BUEs to safely complete their required tasks.

Article 33 Physical Examinations.

Section 1. Fitness for Duty

- A. Fitness for Duty. NMSU endeavors to provide a safe and productive work environment for the benefit of all members of the NMSU community. BUEs are expected to manage their health in such a way that they can safely and effectively perform their essential job functions and to discuss with their Supervisor any circumstances that may negatively affect their ability to do so. The Fitness for Duty examination process is not intended to be a substitute for sick or medical leave requests, workers' compensation claims, reporting of alleged violence in the workplace, or emergency response to situations where there is an immediate threat of harm, performance management, or disciplinary processes.

Supervisors will continue to address performance problems and conduct through the performance appraisal process and corrective or disciplinary action, as appropriate.

- B. Evaluation by Supervisor. A Supervisor who receives reliable information from the affected BUE or others that the BUE may be unfit for duty, or through personal observation believes a BUE to be unfit for duty, will validate and document the information or observations as soon as is practicable and provide a report to HRS ELR to initiate a fitness for duty examination. Actions that may trigger the need to evaluate fitness for duty include, **but are not limited to,** medical restrictions, or issues such as problems with dexterity, coordination, concentration, memory, alertness, vision, speech, inappropriate interactions with coworkers or Supervisors, inappropriate reactions to criticism, or suicidal or threatening statements.
- C. HRS Review and Determination. HRS-ELR will: (1) review the circumstances that led to the referral for an evaluation; (2) determine whether a fitness-for-duty evaluation is necessary; (3) notify the BUE in writing if an evaluation is deemed necessary; (4) select the health care professional who will perform the evaluation; and (5) review results and determine what, if any, action is appropriate.
- D. Independent Medical Examination. NMSU may require an independent medical evaluation (IME) of the BUE's physical or mental capabilities to determine his or her ability to perform essential job functions, with or without reasonable accommodations. Such evaluations are conducted by an independent, third party, licensed health care professional and are undertaken only after approval by HRS ELR. To the extent possible, NMSU will protect the confidentiality of the valuation and results. Whenever NMSU requires a medical examination from a physician selected or approved by NMSU, NMSU will pay the cost of such examination.
- E. Action following IME. NMSU will take appropriate administrative action based upon the results of the IME. Where an IME reveals a physical or mental "disability," as defined by the Americans with Disabilities Act Amendments Act, the matter will be referred to the NMSU Office of Institutional Equity for a determination regarding reasonable accommodation as set forth in Section 2 below.
- F. Involvement of Third Parties. In any situation where there is a reasonable basis to think that a crime may have been committed or the BUE is making threats to harm the BUE or others, or is acting in a manner that is immediately dangerous to the BUE or others, the Supervisor will immediately notify the NMSU Police Department and, as soon as possible, HRS-ELR. In such cases, HRS-ELR or the Supervisor will notify the Employee Assistance Program (EAP) immediately, or if after business hours, then as soon as possible the next Business Day.

Section 2. ADAAA Interactive Process and Reasonable Accommodation.

If a health care professional determines that a BUE has a physical or mental disability that substantially impairs the BUE's ability to perform the essential functions of his or her position,

OIE will work with the BUE and the Supervisor to determine if there is a reasonable accommodation(s) that will allow the BUE to continue working. Reasonable accommodation(s) are provided to any BUE determined by NMSU to be a "qualified individual with a disability," as that term is defined the Americans with Disabilities Act Amendments Act (ADAAA). NMSU will determine on a case-by-case basis, what reasonable accommodation(s) will be provided, if any, after the Supervisor, the BUE, and the BUE's medical provider(s), as necessary, engage in the ADAAA Interactive Process, coordinated by OIE. NMSU will assess the effectiveness of each proposed accommodation and determine whether the accommodation(s) will pose an undue hardship on NMSU or an undue risk of harm to the health or safety to the BUE or others. If an appropriate and reasonable accommodation cannot be made, other options (for example, placing the BUE on medical leave or terminating employment) may be considered and will be communicated to the BUE.

Section 3. Commercial Driver's License

NMSU will pay any costs to BUEs required to undergo physical examinations in connection with commercial drivers licensing **required by the BUE's position**. Whenever possible, examinations will be scheduled during the BUE's workday and the time spent to complete the examination will be considered work time.

CORRECTIVE ACTION AND REMEDIATION

Article 34 Disciplinary Actions

The primary purpose of disciplinary action is to address performance, attendance, and conduct problems by continuing to identify problems, causes, and solutions. When possible, this will be accomplished in a positive and constructive way to help the BUE become a fully productive member of NMSU. In instances where a BUE commits a serious violation of policy, or shows insufficient improvement after initial remedial actions, or engages in repeat occurrences of improper conduct, or when performance deficiencies follow corrective action measures, a Supervisor may take appropriate **further** disciplinary action.

Section 1. Just Cause.

- A. **Grounds for Discipline.** A BUE will be disciplined only for Just Cause in accordance with this Agreement. Discipline will, in no case, be effective until the BUE has received written notice of the discipline. NMSU has the burden of proof in any proceeding under this Article.
- B. **Just Cause Defined.** "Just Cause" is generally described as any conduct, action, or inaction, arising from, connected with, or impacting the BUE's work, whether on or off duty, that is inconsistent with the BUE's obligation to NMSU, or violates NMSU's interests, policies, or procedures, including performance deficiencies. Although impossible to cite an all-inclusive list of actions that constitute Just Cause, examples include, but are not limited to:

1. Falsification of documents;
2. Threatening, assaulting, or abusive behavior;
3. Sexual or other illegal harassment, on or off campus, which may explicitly or implicitly affect an Employee's performance, or unreasonably interfere with a person's employment or academic endeavors;
4. Jeopardizing the safety or health of an Employee, including oneself, or a student, guest, or customer of NMSU;
5. Dishonesty, misrepresentation, omission, or intentional fabrication of facts or events;
6. Negligent, incompetent, inefficient, or unacceptable performance of duties;
7. Insubordination, which is willful disregard of reasonable directives or policies, or a defiant attitude of noncompliance toward applicable regulations, directives, or policies;
8. Failure or refusal to complete mandatory training;
9. Conduct that interferes with the efficient and ethical operation of NMSU;
10. Inability or unwillingness to perform the duties required of a position;
11. The use, possession, or presence in the bodily system of alcohol while at work, or reporting to work under the influence or being under the influence of alcohol while on the job;
12. The manufacture, sale, distribution, or dispensing of illegal drugs at any location; the purchase, use, possession or storage of illegal drugs while present on NMSU property or during work hours for NMSU; reporting to work with illegal drugs present in the BUE's bodily system; or being under the influence of illegal drugs while on the job;
13. Possession on NMSU property of drug paraphernalia or stolen property;
14. Conviction or admission of a felony or a misdemeanor involving moral turpitude to the extent permitted under NMSA Section 28-2-4;
15. Theft of, or careless, negligent, improper, unauthorized, or malicious use of NMSU Property, including equipment and funds;

16. Failure to report for work or to promptly report a justifiable reason for absence to the department head or immediate Supervisor;
17. Repeated tardiness, poor attendance, or abuse of leave;
18. Misconduct which adversely affects the interest or reputation of NMSU or its Employees;
19. Any repetition of offenses that previously resulted in a reprimand, warning, demotion, or notification of unacceptable performance or suspension;
20. Job abandonment. [See ARP 10.10, Part 7].

Section 2. Limitations on Imposition of Discipline.

- A. Fair and Impartial Discipline. NMSU agrees to administer discipline ~~in a fair and impartial manner,~~ consistent with this Article. Similarly situated BUEs will be treated similarly regarding the application of disciplinary actions, but mitigating and aggravating circumstances will be considered.
- B. Procedural Steps. Before taking any disciplinary action related to a BUE's performance or behavior, the Supervisor, in consultation with HRS will:
 1. ~~If necessary,~~ Investigate the alleged performance deficiencies, or improper conduct or behavior;
 2. Provide written notice to the BUE that the investigation could result in disciplinary action, allow union representation when requested by the BUE, and make an ~~reasonable~~ effort to hold meetings in private;
 3. At the conclusion of an investigation, consider all facts, including any mitigating circumstances;
 4. Consult with HRS to determine the appropriate disciplinary action, if any, to be imposed; and
 5. Provide the BUE with written notice of the disciplinary action imposed in the case of Documented Verbal Warning or Written Reprimand (as defined below), or proposed, in the case of a more serious disciplinary action. The written notice of disciplinary action or proposed disciplinary action will contain the following:
 - a. The type of action being proposed;
 - b. The specific acts resulting in the proposed action;
 - c. The effective date of the proposed action;

- d. A summary of the information used to support the proposed action;
 - e. A statement that the BUE may respond to the proposed action and allegations in writing or request a review hearing in writing, within two (2) Business Days of receipt of the notice;
 - f. A statement that if the BUE does not respond in writing to the notice or make a written request for a review hearing, the disciplinary action will become final and effective two Business Days after the notification is provided; and
 - g. A statement that the Union may appeal final action **involving suspension, demotion, or termination** through arbitration on the BUE's behalf, and that if the Union declines to appeal the final action through arbitration, the BUE may file a post-action appeal with HRS-ELR within fifteen (15) Business Days of receipt of the notification of discipline or proposed discipline or, if a Review Hearing was requested, within fifteen (15) Business Days of receipt of the notice of final determination following the review hearing process. [*See* ARP 10.10, Part 6].
- C. Administrative Leave. With HRS approval, a BUE may be placed on administrative leave with pay or subjected to other interim protective measures during any notification period or investigation of conduct or performance deficiencies. The placement on administrative leave is not a disciplinary action.
- D. Timing of Discipline. NMSU will impose disciplinary action no later than thirty (30) calendar days after it acquires knowledge of the BUE's alleged misconduct, unless facts and circumstances exist which require a longer period of time. If additional time is required, NMSU will notify the ~~Union~~ **BUE** prior to the expiration of the thirty (30) calendar days. Ongoing performance deficiencies may be the subject of disciplinary action at any time.
- E. Double Jeopardy. After taking disciplinary action against a BUE, NMSU may not impose any additional disciplinary action against that BUE for the same specific incident of misconduct.

Section 3. Options for Discipline.

The Supervisor may request a disciplinary action from the listing below as appropriate to the nature and severity of the offense or unacceptable performance or conduct. Progressive discipline will be used when deemed appropriate by NMSU. There are instances when a disciplinary action, including termination, is appropriate without first imposing a less severe form of discipline. Any discipline beyond a documented verbal warning requires prior approval from HRS.

- A. Documented Verbal Warning. The Supervisor gives the BUE an explicit verbal notification of unacceptable performance or policy violation, and prepares a memorandum of record for the departmental file. A copy of the memorandum is provided to the BUE. [See ARP 10.10, Part 3(A)].
- B. Written Reprimand. The Supervisor prepares a reprimand memorandum addressed to the BUE, obtains approval from HRS, and forwards a copy to HRS for inclusion in the BUE's file. A copy is provided to the BUE. [See ARP 10.10, Part 3(B)].
- C. Suspension. The BUE is placed on leave without pay for a specified period of time no less than (1) Work Day. The Supervisor obtains approval from HRS and the appropriate dean or vice president, then provides the BUE with at least (5) Business Days advance notification before imposition of Suspension. [See ARP 10.10, Part 3(C)].
- D. Demotion. The BUE is reassigned or reclassified to a different work assignment or lower pay grade.
- E. Involuntary Termination. The BUE is permanently separated from employment at NMSU and is ineligible for rehire. Termination of employment is appropriate in cases of egregious misconduct or performance issues, or failure to rectify performance or conduct issues after other disciplinary options have been exercised. A Supervisor obtains approval from HRS and the appropriate dean or vice president prior to delivering a termination (pre-termination) notice to the BUE. [See ARP 10.10, Part 3(D)].

Section 4. Review Hearing.

- A. Hearing Process. When a BUE makes a written request for a review of any imposition of discipline or any preliminary notification of proposed discipline **of suspension, demotion, or termination**, the Supervisor will immediately notify HRS. HRS will arrange an informal review hearing at least two (2) Business Days after the BUE's request. These steps will be followed: (1) the AVP HRS (or designee) will appoint an impartial hearing officer and set the hearing date and location; (2) the hearing officer will meet with the BUE, the BUE's immediate Supervisor (or designee), and a representative of HRS ELR; and (3) at the hearing, the BUE and other participants will have the opportunity to give testimony and present documents or other evidence relevant to the imposition of the discipline. Following the hearing, the hearing officer will issue a final determination.
- B. No Review Hearing Request. Should a BUE fail to respond in writing to a notice of proposed discipline, or respond but not request a review hearing, the Supervisor will consider the written response, if any, and issue a final determination, after consultation with the HRS administrator designated for such purposes.
- C. Other Hearing Guidelines.

1. ~~The BUE may request that the immediate Supervisor (or designee) be excused from the hearing, except during the time that the hearing officer asks for the Supervisor's testimony or response to questions.~~
2. The BUE may be represented by a Union Representative or another advisor at the hearing, but neither will be allowed to answer questions posed to the BUE or to otherwise speak for the BUE. If the representative is an attorney, the BUE must inform the HRS representative **at least ten (10) business days** in advance to allow NMSU time to arrange for its counsel to be present at the hearing.
3. NMSU reserves the right to have its counsel present at any and all disciplinary hearings.
4. Time limits specified may be changed if requested or if circumstances warrant a revision. *[See generally ARP 10.10, Part 6].*

Section 5. Right to Union Representation.

A BUE has the right to Union representation, if requested by the BUE, in any of the following events: (1) during any investigatory interview or discussion with a BUE who is the subject of an investigation when the BUE reasonably believes the interview could lead to discipline; (2) at a disciplinary hearing regarding the BUE; and (3) at each step of a Grievance, in accordance with this Agreement. The Union Representative may consult with and advise the BUE at any time during the course of the relevant meeting or outside the meeting. The Union Representative may raise legitimate objections to questions during an investigatory interview or hearing, but may not unreasonably delay or interfere with the proceeding or answer questions on behalf of the BUE.

Section 6. Other Procedures.

- A. Mutual Agreement. This Article does not preclude NMSU, a BUE, and the Union from mutually agreeing to: (1) hold in abeyance a disciplinary action for a period not to exceed six (6) months in order to permit the BUE to improve conduct or performance; or (2) impose a lesser disciplinary action as a final and binding action **not subject to appeal**.
- B. Failure to Grieve or Appeal. If a BUE fails to grieve or appeal in accordance with the procedures provided in this Agreement, the BUE is considered to have accepted the decision.
- C. Time limits. Time limits specified may be changed when requests are made or circumstances warrant. The Parties may also agree to waive or extend any time limits as stated in this Article. *[See ARP 10.10, Part 6].*
- D. Exclusive Remedy. The Union's invocation of **grievance** arbitration of a suspension, demotion, or termination under this Agreement precludes the use of any other NMSU appeals processes that might otherwise apply.

- E. Resolution Encouraged. Each Party will make a reasonable effort to resolve a Grievance or appeal at the lowest level possible.
- F. Polygraph. A BUE will not be required to submit to a polygraph test.
- G. Self-Representation. A BUE may elect self-representation in any disciplinary matter consistent with Articles 34 and 35 of this Agreement.

Article 35

Grievance and Arbitration Procedure

Section 1. Grievance Definition.

"Grievance", as used in this Article, means a Union-initiated resolution procedure, based upon an alleged violation, misapplication, or misinterpretation of this Agreement. However, the Preamble and Articles 1 through 3 of this Agreement are not subject to this procedure. The term Grievance does not include a non-union grievance process provided in ARP 10.20.

Section 2. Informal Resolution.

Informal resolution of issues is encouraged before the Parties resort to a formal Grievance procedure. Informal resolution of Grievances prior to Step 1, as indicated below, will not establish a precedent or otherwise become binding as past practice or interpretation of this Agreement.

Section 3. Alternative Grievance Procedures.

- A. Non-Union Grievance. An individual BUE may bring an individual, non-Union grievance in accordance with ARP 10.20 without the consent of the Union.
- B. Union-Sponsored Grievance. Only the Union may bring a grievance or invoke arbitration under this Article.
- C. Exclusive Remedy. Utilizing this Union-Sponsored Grievance and arbitration procedure on an issue, in part or in whole, precludes the use of procedures set forth in ARP 10.20, or any other NMSU appeals process that may apply to the same issue. Use of any other non-union grievance or appeals process provided by NMSU precludes the use of this Union-Sponsored Grievance and arbitration procedure on the same issue.

Section 4. Steps in the Grievance Procedure.

A Grievance will follow these steps:

- A. Grievance Step 1 - Initiation

Grievances are filed by the Union, or with consent of the Union, on behalf of an aggrieved BUE, or group of BUEs, covered by this Agreement. Suspensions, demotions, and terminations are not eligible for the Grievance process, but will proceed directly to arbitration, as provided below, if requested by the Union within ten (10) Business Days from the date of the final determination to suspend, demote, or terminate.

Grievances must be initiated at Step 1 and continue to Step 2, by presenting a written Grievance (on the Union approved form) to the grievant's immediate Supervisor promptly and no later than ten (10) Business Days after the grievant or the Union was aware, or reasonably could have become aware, of the incident(s) giving rise to the alleged Grievance. The Union or grievant will submit the written Grievance to the immediate Supervisor, containing:

1. The BUE's name, job title, and department;
2. The name, address, and telephone of the Union Representative, if any;
3. The Article(s) of this Agreement alleged to have been violated;
4. A description of the alleged violation;
5. The relief requested; and
6. The signature of the grievant or of the Union Representative.

B. Grievance Step 2 - Immediate Supervisor Level

The immediate Supervisor will respond to the Grievance in writing within ten (10) Business Days of receipt of the written Grievance. Failure to respond will constitute a denial of the Grievance. If the Grievance is not satisfactorily resolved at Step 2, the Union may move to Step 3 by filing the written Grievance with the Department Head/Director Grievance Representative [hereinafter referred to as "DGR"] in each Department within ten (10) Business Days of receiving the Step 2 response.

C. Grievance Step 3 - Department Head/Director Level

The DGR is a person designated by NMSU in each Department to be the recipient of Step 3 Grievances on behalf of NMSU. If no DGR has been designated, then the Supervisor of the grievant's immediate Supervisor will be considered the DGR. The DGR will respond in writing within ten (10) Business Days of receipt of the written Grievance. Failure to respond will constitute a denial of the Grievance. The Union may then move to Step 4 by filing the Grievance with the Dean Vice President Grievance Representative [hereinafter referred to as "VPGR"] within ten (10) Business Days of receiving the Step 3 response.

D. Grievance Step 4 - Dean/Vice President Level

The Union or grievant will submit the written Grievance to the VPGR in the major organizational unit. The VPGR is a person designated by NMSU in each major organizational unit to be the recipient of Step 4 Grievances on behalf of NMSU. If no VPGR has been designated, then the top administrative official of the major organizational unit will be considered the VPGR. The VPGR may designate a senior administrator within his/her unit as designee to respond on his/her behalf. The VPGR or designee will respond in writing within ten (10) Business Days of receiving the written Grievance. Failure to respond will constitute a denial of the Grievance. The Union may then move the Grievance to Step 5 by filing with the Human Resource Services Grievance Representative ("HRSGR") within ten (10) Business Days of receiving the Step 4 response.

E. Grievance Step 5 - Human Resources Level

The Union or the grievant will submit the written Grievance to the HRSGR in writing. The HRSGR is a person within HRS designated and authorized by NMSU to receive and respond to Step 5 Grievances on behalf of NMSU. The HRSGR will respond in writing within ten (10) Business Days of receipt of the written Grievance. Failure to respond will constitute a denial of the Grievance. Except where the Union invokes arbitration as provided below, the determination by the HRSGR will be final.

Section 5. Final and Binding Arbitration.

If the Grievance is not satisfactorily resolved at the conclusion of the Grievance Procedure, the Union may elect to submit the Grievance to arbitration as provided below.-Arbitration may only be invoked by the Union, not by the individual grievant.

- A. Written Demand. The Union may invoke arbitration by serving a written demand for arbitration to the HRSGR within thirty (30) calendar days after the time for HRSGR response has elapsed.
- B. Request for Panel. Within ten (10) Business Days of the written demand for arbitration, the Union will make a request for a panel of seven arbitrators from either the Federal Mediation and Conciliation Service (FMCS) or the American Arbitration Association (AAA), at its discretion, unless the Parties by such time can agree upon an arbitrator or alternative panel of arbitrators from which to select an arbitrator. Within ten (10) Business Days of the receipt of a list of arbitrators or agreement to an alternative panel, the Parties will meet to select the arbitrator. The selection will be made by the Union and NMSU alternately eliminating names. The last name remaining will be the arbitrator. The Parties will flip a coin to determine who will strike the first name. NMSU will reimburse the Union for one-half of the cost of obtaining a panel of arbitrators from FMCS or AAA, unless the matter is resolved prior to an arbitration hearing being held.
- C. Arbitrator's Decision. The decision of the arbitrator will be based upon the facts established by the testimony and documents presented in the case. The arbitrator will have no power to add to, subtract from, alter, or modify any of the terms of the Agreement, but may give appropriate interpretation or application to such terms and provide appropriate relief. The

arbitrator will not have authority to make an award that includes a fine or other punitive damages or award of attorney's fees. The arbitrator's decision will be final and binding on the Parties, subject only to judicial review in accordance with the New Mexico Uniform Arbitration Act.

- D. Arbitrator's Fees and Expenses. Each Party will pay one-half of the arbitrator's fees and expenses.

Section 6. Miscellaneous Provisions.

- A. Recording. Tape recorders or other electronic recording devices will not be used by any Party participating in the Grievance, except by mutual agreement of the Parties. This provision will not apply to arbitration hearings.
- B. Modifying Time Limits or Steps by Agreement. Any of the time limits or steps set out in this procedure may be extended, waived, or otherwise modified by written agreement of the Parties.
- C. Skipping Steps. Those steps in the Grievance procedure that result in duplication of a step for a particular grievant may be skipped by the grievant (e.g., a grievant whose immediate Supervisor is a department head or dean).
- D. Failure to Respond. If NMSU fails to respond within the designated time limits, the Grievance is deemed denied and the Union may advance the Grievance to the next step in accordance with the procedures set forth in this Article.
- E. Grievable Actions. The issue of whether the action is grievable may be properly raised at any step of the Grievance procedure. The arbitrator will decide all issues regarding whether the action is grievable.
- F. Withdrawal of Grievance. A Grievance may be withdrawn by the Union at any step of the Grievance procedure without prejudice, except as to objections to timeliness.
- G. Legal Counsel. The Union and NMSU may be represented by legal counsel in arbitration.
- H. Waiver. The right to invoke arbitration is waived by any failure to strictly comply with the time limits set forth in all Grievance steps. Time limits may be extended only by mutual agreement in writing, signed by both the Union and NMSU. It is the intention of the Parties that the Grievance procedure set forth herein will be the preferred remedy of the Parties for any alleged breach of this Agreement.

LABOR MANAGEMENT ISSUES

Article 36 Labor Management Committee

Section 1. Purpose.

To help promote a mutually constructive and cooperative relationship, the Parties agree to establish a joint Labor Management Committee [hereinafter referred to as the "Committee"] which will be a standing committee for the duration of this Agreement. The Committee will have the following specific objectives:

1. Foster communication between the Parties;
2. Serve as a forum to discuss issues of mutual concern;
3. Work to build consensus for joint problem-solving and planning where the Parties recognize it is best to have a shared position;
4. Inform and educate the NMSU community about the concept and benefits of a Labor Management partnership;
5. Communicate and share the activities of the Committee with the NMSU community; and
6. Make recommendations to the appropriate NMSU bodies and monitor the progress of such actions.

Section 2. Authority.

- A. The Committee will have no authority to modify the terms of this Agreement. Disputes over alleged violations of this Agreement must be pursued through the Grievance and Arbitration provision of this Agreement.
- B. The Committee will forward its recommendations to appropriate administrative designee(s) for consideration. No such recommendation will be considered or treated as constituting a binding agreement between the Parties.

Section 3. Composition of the Committee.

The Union and NMSU will each be permitted four (4) representatives on the Committee. Additionally, the Union and NMSU will each be permitted two (2) alternate representatives to attend when representatives from the Committee are unable to attend. The Union and NMSU will each designate one (1) member to serve as co-chair. The co-chairs, along with other Committee Members, will carry out all functions of the Committee, plan the agenda and arrange meeting dates and times.

Section 4. Meetings.

The Committee will meet at least once per quarter, or as the Committee members mutually agree. Members may attend meetings that are held during regular business hours on paid time provided

they have received supervisory approval. Such supervisory approval will not be unreasonably withheld. Committee meetings will usually be held on NMSU Property unless the Committee agrees to other accommodations at no expense to NMSU.

Section 5. Activities.

Among other activities that Committee members may mutually agree to pursue, Committee members will pursue the following:

1. A recommended plan for training Supervisors and Union Representatives on this Agreement.
2. A recommended plan for the Union's consultation in the planning and budgeting process of NMSU comparable to opportunities for consultation available to other Employee groups.
3. Any other activity the Committee deems warranted.

SIGNATURE PAGE

By signing below, the individuals represent that they are duly authorized to sign this Collective Bargaining Agreement made by and between the Regents of New Mexico State University (NMSU) and the American Federation of State, County and Municipal Employees, Council 18, Local 2393 (the Union), on behalf of their respective Party, and indicate their full and complete agreement to the terms set forth in this document.

FOR THE UNION:

FOR NMSU:

Clean Version

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Preamble

This Collective Bargaining Agreement ("Agreement") is made by and between the Regents of New Mexico State University ("NMSU") and the American Federation of State, County and Municipal Employees ("AFSCME"), Council 18, Local 2393 ("Union") and is applicable to all eligible Bargaining Unit Employees ("BUEs") in the Bargaining Unit of NMSU, as defined in Article 1 of this Agreement. NMSU and the Union are referred to jointly herein as the "Parties."

NMSU will make this Agreement available on its website within thirty (30) days of the effective date of this Agreement.

Article 1 - Definitions

Bargaining Unit: The group of certified NMSU Bargaining Unit Employees for whom the Union negotiated this Collective Bargaining Agreement.

Bargaining Unit Employee: A member of the Bargaining Unit, which is limited to regular, non-probationary, full-time and part-time non-exempt Employees of NMSU, employed within the State of New Mexico ("BUE," or plural, "BUEs"), and as further specified in Article 4, Section 1.

Business Day: Each Monday through Friday when NMSU is open for business; excludes official NMSU holidays and other NMSU closures.

Comp Time: Time off from work earned, in lieu of Overtime pay, at the election of the BUE.

Continuous Employment: Any period of employment with NMSU in a regular position that is not interrupted by the BUE's absence from work for more than one (1) year.

Designee: An Employee of NMSU who is designated by NMSU to act on behalf of another Employee.

Employee: A person hired by NMSU.

Fit for Duty: The ability to perform the essential functions of a position in a safe, secure, productive, and effective manner.

Health Service Provider: A doctor of medicine or osteopathy, dentist, podiatrist, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, or a licensed clinical social worker who is authorized to practice in the State of New Mexico, or in the state where the Employee resides.

HRS: Office of Human Resource Services.

Management Employee: An Employee who is not a member of the Bargaining Unit and has

supervisory responsibilities and authority from NMSU to direct the work and conduct of BUEs, except to the extent specifically modified or limited by this Agreement or by applicable statutory or regulatory provisions.

NMSU Property: All lands, buildings, equipment, materials, technology, hardware, software, and other items under the control of the NMSU.

Notice: Notice by NMSU to the Union is properly given if it is sent by email to the Union Officers. Notice by the Union to NMSU is properly given if sent by email to the Assistant Vice President (AVP) HRS, Employee Relations.

Overtime: Any period of time pre-approved and worked by a BUE in excess of forty (40) hours during the workweek. For the purpose of calculating Overtime or Comp Time, time off for a designated holiday or alternative holiday, administrative leave, jury duty or any other paid time off from work will not be considered as time worked.

Parties: The Union and NMSU.

Progressive Discipline: The typical approach used by management to modify undesirable performance and behavior, using a range of disciplinary consequences that are applied depending on the employee's misconduct or performance, and can begin with termination.

Regular Employee: An Employee of NMSU with no predetermined employment termination date who works at least .5 FTE (full-time equivalent)[APR 6.03, Part 3(A)(3)].

Seniority: Length of Continuous Employment.

- A. NMSU Seniority. A BUE's length of continuous regular employment with NMSU.
- B. Classification Seniority. A BUE's length of continuous, regular employment in a single or specific classification.

Seniority List: A list of BUEs who are subject to this Agreement, listing each such BUE's name, position, and Seniority date.

Standby: Time that a BUE is required to be ready to report for duty or to respond to a work-related call during his/her time off where he/she cannot use his/her time off freely. Standby includes time that a BUE has been directed to remain within contact by telephone or electronic beeper in order to respond to a call within a specified timeframe during non-work hours. Standby status is never concurrent with work hours.

Supervisor: For BUEs, the person to whom they report and who, in the ordinary course of business, is the individual responsible for assigning and reviewing their work.

Union: American Federation of State, County and Municipal Employees, Local 2393, elected as

the exclusive bargaining representative for BUEs at NMSU.

Union Representative: An individual, including a Union steward, who is designated by the Union as a member and official of the Union, to represent and defend the interests of BUEs.

Union Member Dues: Total monthly amount of money paid by BUEs to the Union as the cost of membership in the Union.

Work Days: A BUE's required days of work, as defined or designated by NMSU.

Article 2 - Commitment to NMSU Mission

The Parties are committed to NMSU's mission as the state's land-grant university, serving the educational needs of New Mexico's diverse population through comprehensive programs of education, research, extension education, and public service.

Article 3 - Purpose

The purpose of this Agreement is to provide reasonable terms and conditions of employment for BUEs covered hereunder, to protect the rights of the Parties, to promote a harmonious and cooperative relationship between the Parties, to provide a means of amicable and equitable adjustment of any and all differences or Grievances that may arise under the provisions of this Agreement, and to acknowledge the obligation of the Parties to provide orderly and uninterrupted services to the public.

Article 4 - Recognition

Section 1. Recognition.

NMSU recognizes the Union as the exclusive bargaining representative, as that term is defined in the Public Employee Bargaining Act (PEBA) (<https://www.pelrb.state.nm.us/>) incorporated herein by reference as it currently exists or is subsequently amended by agreement of the Parties, for Employees in the following certified Bargaining Unit:

INCLUDED - BUEs, as defined herein, employed within the State of New Mexico as listed in Appendix A on the AFSCME/ Labor Relations web site at: <https://hr.nmsu.edu/labor/>.

EXCLUDED - Supervisors, managers, and confidential Employees, as defined by PEBA the Resolution; sworn police officers; Employees employed outside the State of New Mexico; any Employee who may have previously been a BUE, but was promoted into an exempt position; and any other BUEs who do not fall within the group of "included" BUEs, as defined herein. NMSU

will publish a list of Bargaining Unit classification titles with pay grades on the NMSU HRS-ELR website.

Section 2. New Classification Recognition.

Implementing a new classification title, a classification title change, or reclassification of an existing title covered under this Agreement, will not remove the position(s) from the Bargaining Unit, unless that change results in a change of the BUE to an exempt position. Any newly created non-exempt classification title within the scope of the certified Bargaining Unit, as recognized in Section 1 above, will become part of the Bargaining Unit covered by this Agreement in accordance with the accretion procedures.

Section 3. Dispute Recognition.

Any dispute concerning the inclusion of classifications, or specific Employee(s), in the Bargaining Unit, based on Supervisor, manager, or confidential Employee status, will be discussed between the Parties, and if not resolved, will be submitted to the Public Employee Labor Relations Board (“PELRB”) for disposition.

Article 5 - Scope of Agreement

Section 1. Final and Complete Agreement.

This Agreement is the final and complete Agreement and expresses the entire understanding between the Parties.

Section 2. Policies and Practices.

Unless stated otherwise herein, BUEs are subject to NMSU Administrative Rules and Procedures (ARP) and the Regents Policy Manual (RPM), as they currently exist or are amended in the future. Within four weeks of a change to the ARP, notice will be given to the Union. This Agreement in all respects supersedes and replaces NMSU policies and practices that contradict this Agreement. No other NMSU policies or practices are superseded by this Agreement. NMSU will provide BUEs with other economic benefits, beyond those described in this Agreement, to the same extent as provided to other NMSU Employees under its policies, rules, and regulations. References to sections of NMSU's ARP or other documents, noted in brackets, are for reference only and are not part of this Agreement.

Section 3. Changes to Agreement.

This Agreement will not be amended unless mutually agreed to, in writing, by duly authorized representatives of the Parties. In addition to changes initiated pursuant to its Management Rights (Article 10 of this Agreement), NMSU reserves the right to propose other changes in the terms and conditions of employment of BUEs to meet public service and operating needs. Such changes may be subject to negotiation upon written request by the Union in accordance with PEBA or any other expedited impasse resolution procedures mutually agreed upon by the Parties at the time of such

negotiations.

Article 6 - Savings Clause

If any provision or any application of this Agreement to any BUE or group of BUEs is rendered invalid by operation of legislative or regulatory enactment, or by a court or other tribunal of competent jurisdiction, such provision will be inoperative. All other provisions will not be affected and will continue in full force and effect. If a provision is rendered invalid, upon written request of either Party, NMSU and the Union will meet within a thirty (30) calendar days and attempt to negotiate a substitute for the invalid provision.

Article 7 - Duration

Section 1. Term of Agreement.

This Agreement will become effective at midnight (12:00 a.m.)_____. This Agreement expires at 11:59 p.m. June 30, 2025.

Section 2. Renewal.

No earlier than one-hundred and twenty (120) days, and no later than sixty (60) days, prior to the expiration of this Agreement, either Party may provide to the other written notice of the intent to negotiate a successor agreement. After notice is provided, the Parties will begin negotiating a successor agreement at dates and times agreed to by the Parties.

RIGHTS OF PARTIES

Article 8 - BUE Rights

Section 1. Freedom of Expression.

- A. Free Exchange of Ideas. NMSU recognizes and promotes an intellectually open campus. The free exchange of ideas through written, spoken, and other forms of expression reflects its public land-grant heritage, support of diverse points of view, and commitment to excellence in education and research.[See ARP 3.63, Part 1].
- B. Union's Right to Freedom of Expression. The Union has the same right to any freedom of expression that is available to any other person or entity, in accordance with ARP 3.63 and state and federal law.[See ARP 3.63].
- C. Petitioning and the Distribution and Posting of Literature and Signs. The Union and BUEs

may distribute literature only during non-work time and in non-work areas, using the following methods: (1) hand-to-hand; (2) through the use of tables; or (3) by posting on designated bulletin boards and kiosks. Union-related postings will only be made in accordance with Article 9, Section 8(B) of this Agreement. All distributed Union literature must contain identifying information for someone to contact in case of litter problems. Written materials may only be placed in approved locations. Written materials may not be placed on any part of an NMSU building or structure without NMSU's permission. Posting on traffic signs, power poles, trees, and automobile windshields is not allowed. Tables are allowed if they do not interfere with pedestrian traffic. Materials may not be left on unattended tables. While advance scheduling of tables is not required, those individuals who schedule a distribution site through the Campus Activities Office or other appropriate NMSU office will have priority. [See ARP 3.63, Part 7].

D. Policy Enforcement. The Union and its members are subject to the same sanctions as any other person or entity that violates NMSU policies, regulations and rules, including the following:

1. Directive to cease and desist or to relocate, by NMSU Employees acting within the scope their duties;
2. Directive to leave NMSU Property by Employees acting within the scope of their authority (such as the police or a person in charge of the Property);
3. Discipline as outlined in Article 34 of this Agreement;
4. Arrest for violation of applicable law(s); or
5. Restriction on future use of NMSU campus for expressive activities. [See ARP 3.63, Part 7].

Section 2. Access to Union Representatives.

A. Grievants. In addition to BUEs' rights to Union Representatives as governed by Article 34 of this Agreement, grievants are entitled to a reasonable amount of time during scheduled work hours to meet and consult with their respective authorized Union Representative regarding formal Grievances and to attend Grievance hearings. Grievants will first obtain Supervisory approval for time to meet with their Union Representative and such supervisory approval will not be unreasonably withheld. If denial of supervisory approval necessitates an extension of time for processing a Grievance, the time will be tolled for the duration of the denial until the grievant is afforded access to the Union Representative.

B. Union Business. BUEs will conduct other types of Union business during non-work time, which is the time before their workday begins, during lunch and breaks taken during the workday, or after their workday ends.

C. No Workplace Disruption. In exercising their rights under this Agreement, BUEs will not

disrupt the workplace or interfere with the operations of NMSU.

Section 3. No Retaliation or Disparate Treatment.

NMSU will not retaliate against the Union or its BUEs for exercising any right in accordance with this Agreement. [See ARP 3.63, Part 5]. NMSU will not discriminate against any employee by reason of Union membership or non-membership, or activities on behalf of, or in opposition to, the Union.

Section 4. Non-Work Related Use of NMSU Resources.

BUEs should always be mindful of the resources entrusted to them by the public, government entities, and private donors, including the public's perception of how NMSU conducts its business. BUEs should strive to conduct themselves consistent with the highest ethical principles, to avoid any action that may be viewed as a violation of the public trust in the use of these resources, and to act responsibly in order to preserve and safeguard NMSU resources. These resources include, but are not limited to, facilities, supplies, and equipment (such as telephones, fax machines, photocopiers, and computers) and Employee time. BUEs do not have a right or expectation to privacy as it relates to information or data contained on, or accessed through, university equipment or resources. [See ARP 3.14].

The personal, non-work related use of NMSU Resources is permitted only in compliance with NMSU rules, regulations, and policies, as may be amended. [See ARP 3.14 and ARP 15.11.) The use of assigned NMSU vehicles is subject to NMSU policy.

The application of these rules, regulations, and policies with regard to such use will depend upon the particular circumstances surrounding each such use, including factors such as the nature of the use, reasonableness, cost, time, Employee needs and work habits. BUEs should consult with their Supervisors in advance if they have questions about the appropriateness of certain practices. [See ARP 3.14].

Section 5. Access to Campus Facilities.

BUEs and their dependents have access to and use of all appropriate campus facilities, including all health and fitness facilities, the sports complex, dining facilities, the library, and computer facilities that are otherwise open to all BUEs and their dependents under the same terms.

Article 9 - Union Rights

Section 1. Union Representatives.

The Union will have the right to select sufficient Union Representatives to administer this Agreement. The exact number and location of Union Representatives will be determined by

agreement between the Parties, consistent with this principle. The Union will provide NMSU with a written list of the names, addresses, and telephone numbers of the stewards and other Union Representatives who are authorized to act on behalf of the Union and a statement of the extent of their authority. The Union will provide an updated list to NMSU when changes occur.

Section 2. Union Representative Activities.

- A. Union Representatives. NMSU will allow Union Representatives to attend, on paid status, the following meetings: (1) meetings requested by NMSU for purposes of administration of this Agreement; (2) investigatory interviews conducted by management, as addressed in Article 34 of this Agreement; and (3) disciplinary hearings, as addressed by Article 34 of this Agreement. Union Representatives will obtain prior supervisory approval to attend such meetings, and such approval will not be unreasonably withheld.
- B. Grievances. Union Representatives are entitled to use a reasonable amount of scheduled work time to investigate and process each Grievance through the Grievance and Arbitration procedure contained in this Agreement, not to exceed a total of four (4) hours of scheduled work time for each Grievance. Union Representatives will obtain prior supervisory approval for the use of scheduled work time for this purpose, and will designate the time used for this purpose as Other Leave Time (OLT) on timesheets. Supervisory approval will not be unreasonably withheld. If denial of supervisory approval necessitates an extension of time for processing a Grievance, the time will be tolled for the duration of the denial until scheduled work time is afforded the Union Representatives to process the Grievance.
- C. Union Business during Non-Work Time. Except as provided above, Union Representatives will investigate and process Grievances and conduct other Union business during non-work time, which is the time before their workday begins, during lunch and breaks taken during the workday, or after their workday ends.
- D. No Workplace Disruption. In conducting Grievances and other Union business and activities, the Union will not disrupt the workplace or interfere with the operations of NMSU.

Section 3. Union Representative Access.

Union Representatives will have reasonable access to visit any NMSU worksite for the purpose of administering this Agreement. Visits will not disrupt the workplace or interfere with the operations of NMSU. All visits must be coordinated through the Management Representative, or alternate, designated by NMSU's HRS-ELR staff. NMSU will provide a reasonable place where Union Representatives can talk with BUEs in private.

Section 4. Explanation of this Agreement.

Within ninety (90) days of the effective date of this Agreement, NMSU and the Union will co-host one or more open forums for BUEs to explain the Agreement and answer questions about it.

With supervisory approval, BUEs are entitled to attend these forums on work time. Supervisory approval will not be unreasonably withheld. Each forum will last no more than two (2) hours in length.

Section 5. Use of NMSU Property for Meetings.

Employees and Union Representatives may use NMSU rooms to hold Union meetings by reserving the room(s) in accordance with NMSU policy, practice or approval procedure established for that room.

Section 6. Union Presentation.

During formal, new-Employee orientation group sessions conducted by NMSU, the Union will give a fifteen (15) minute presentation that may include the offer to enroll in supplemental Union membership benefits and programs.

Section 7. Union Web Page.

NMSU will provide an internet link on its HRS web page to the Union's web page.

Section 8. Union Bulletin Boards.

- A. Locations. The Union provides locked bulletin boards in conspicuous, mutually agreed upon, high traffic areas at the following locations: (1) Corbett Center, (2) Branson Hall, (3) Zuhl Library, (4) Gerald Thomas Hall, (5) Frenger Mall, (6) Hadley Hall, (7) Campus Health Center, (8) Educational Services Building, and (9) all NMSU branch campuses. Additional locations may be added as agreed upon by the Parties.
- B. Exclusive Use. Union bulletin boards are for the exclusive use of the Union. The Union is responsible for the posting of all items on Union bulletin boards. A Union Representative will approve, by signing and dating, each item before posting. The Union will ensure that posted items are not illegal, defamatory, obscene, factually inaccurate, partisan, or political; do not contain personal criticism of any individual or NMSU administration; and do not include any item that is detrimental to the safety and security of NMSU. At least one Business Day prior to the posting, the Union will provide an informational copy of all items to HRS. NMSU may remove bulletin board items that are not consistent with this Agreement, using the Union provided keys for each bulletin board, and will notify the Union of the removal as soon as practicable.

Section 9. Right to Information.

- A. General. The Union has the right to information that is relevant and necessary to represent BUEs. This includes information relevant to the administration of any part of this Agreement, disciplinary action against a BUE, allegations of misconduct, information reasonably related to and necessary for negotiations, and information on any other subject that is reasonably related and necessary to the Union's representation of BUEs, provided

that written authorization has been received from the relevant BUE with respect to any personnel information or records [Article 16, Section 2].

- B. Bargaining Unit Information. On the first of each month, NMSU will furnish the Union with an electronic report containing, if available, the name, most recent mailing address, telephone number on file, department, classification, work address, status (part-time/full-time), and the unique identification number for each BUE.

Article 10 - Management Rights

Except to the extent specifically modified or limited by this Agreement or by applicable statutory or regulatory provisions, the sole and exclusive rights of NMSU Management Employees will include, but are not limited to, the following:

- A. Direct the work of, hire, promote, assign, evaluate, and transfer BUEs; and demote, suspend, dismiss, or otherwise discipline BUEs for Just Cause;
- B. Determine qualifications for employment and the nature and content of personnel examinations;
- C. Take actions as may be necessary to carry out the mission of NMSU in emergencies;
- D. Determine the size and composition of the workforce and rates of pay;
- E. Formulate financial and accounting procedures;
- F. Make technological or service improvements and change production methods;
- G. Relieve a BUE from duties because of lack of work or other legitimate reason;
- H. Determine methods, means, and personnel by which NMSU's operations are to be conducted;
- I. Determine the location and operation of its organization;
- J. Provide reasonable rules and regulations governing the conduct of BUEs (with notification to the Union); Provide reasonable standards and rules for BUEs' safety;
- K. Schedule hours, Overtime, and shifts; and
- L. Subcontract work.

EMPLOYEE RECRUITMENT, CLASSIFICATION AND LAYOFF

Article 11 - Background Reviews

In order to create a safe and secure workplace and to ensure that BUEs are qualified to perform the duties and responsibilities of the positions they hold, NMSU has adopted a Background Review Rule. [See ARP 6.20]. BUEs are subject to background reviews and other requirements, obligations and consequences as required by law and as set forth in the NMSU Employment Background Review Rule(s) and additional operational procedures posted on the HRS website. [See ARP 6.20]

Article 12 - Job Vacancies and Job Postings

Section 1. Job Advancement Opportunities.

NMSU agrees to provide job advancement opportunities by offering all BUEs an open process for filling bargaining unit position vacancies. BUEs will be entitled to apply for all Bargaining Unit vacancies, including promotional opportunities.

Section 2. Job Postings.

- A. Posting Contents. The job postings for Bargaining Unit vacancies and newly created positions will contain, at a minimum, the application procedure, classification title, department, examples of job-related duties, minimum qualifications, starting wage, pay grade, expected work schedule and hours of work, and a posting date and closing date.
- B. Equal Access to Postings. NMSU will publish all job postings on the NMSU website. The Union will have equal access to all NMSU job postings. A job posting for any of the positions of Custodial Worker, Custodial Worker Sr., Groundskeeper, Groundskeeper Sr., and Facilities Tech may be posted as an open pool for up to ninety (90) days. Within such a posting it will be noted that this is a 90-day recruitment which may be used to fill multiple vacancies, if needed, during the posting period.
- C. Notice. NMSU will electronically publish job postings for Bargaining Unit vacancies for a minimum of fourteen (14) calendar days [See ARP, 6.01, Part 2].

Section 3. Job Vacancy Award.

NMSU will award all vacancies to the best qualified applicant as determined by NMSU. If two or more applicants are equal in qualifications, classification seniority will govern to the extent the position is within either applicant's current classification series. If classification seniority is not applicable, NMSU seniority will govern.

Article 13 - Seniority

Section 1. Tie Breaker.

In the event two (2) or more BUEs have the same seniority date, the seniority order of these BUEs will be determined by the last four (4) digits of the BUEs' social security numbers, with the BUE having the lowest last four (4) digits of the social security number being considered as having the greater seniority.

Section 2. Loss of Seniority.

Except as otherwise provided by applicable law, a BUE's length of continuous regular service will be broken only by voluntary resignation, discharge for Just Cause, retirement, voluntary move to temporary work status, layoff status lasting longer than allowed by Article 14 of this Agreement, or failure to respond to a recall from layoff. However, if a BUE leaves work for any reason other than those listed above, the BUE will retain his/her seniority date for a period equal to his/her length of employment, up to a maximum of one (1) year. Any period of absence of more than one (1) year will represent a break in continuous service.

Section 3. Seniority Lists.

NMSU will prepare and forward to the Union, seniority lists as defined in this Article. The lists will be updated monthly by NMSU and will contain each BUE's name, classification title, classification seniority date, and NMSU seniority date.

Article 14 - Layoff and Recall

Section 1. NMSU Layoffs -Positions Not Contingent on Funding.

- A. Layoff Notice. In instances where NMSU deems it necessary or advisable to layoff BUEs, a written layoff notice will be provided that includes, at a minimum, the effective date of the layoff and the reason for the layoff (e.g., position eliminated, discontinued, or vacated because of a lack of supporting funds, program change, or change in departmental organization). The written notice will be provided to the affected BUEs at least sixty (60) calendar days prior to the effective date of the layoff. The affected BUE will be provided separation and contact information pertaining to NMSU benefits, retirement plans, unemployment compensation, and NMSU accounts and services.
- B. Employee Preference. Prior to any layoff, BUEs will be asked to indicate their desires with respect to early retirement, part-time employment, voluntary resignation, intra-NMSU transfer, or other option offered by NMSU. NMSU will, make a good faith effort to relocate any BUE subject to layoff to a suitable vacant position within NMSU for which that Employee is fully qualified. This good faith effort to relocate a BUE need not extend beyond the effective date of the layoff.

- C. Order of Layoff. NMSU will determine in which classifications layoffs will occur. Layoffs of BUEs within affected classifications will occur in the following order:
1. Temporary non-exempt employees; then
 2. Probationary non-exempt employees; then
 3. Regular BUEs in order of NMSU seniority, with the lowest seniority being laid off first.
- D. Recall/Reinstatement. A BUE who is laid off may be recalled within ninety (90) days from the effective date of layoff provided the BUE meets the minimum qualifications of the offered position. BUEs will be recalled in reverse order of layoff.
1. Notice of recall from a layoff will be sent to the BUE's last known address, by certified mail, return receipt requested.
 2. The recalled BUE will have up to ten (10) workdays following receipt of the recall notice to provide written notification to NMSU of an intention to return to work.
 3. The recalled BUE will have up to fourteen (14) workdays following receipt of the recall notice to physically return to work.
 4. The transfer or recall of BUEs to other positions may result in a different rate of pay, pay grade, and job title. Specific plans for any area which is separating a BUE will be prepared prior to the layoff, approved by HRS and the provost. [See ARP 7.65].
 5. If the BUE fails to promptly respond to a recall notice or return to work, or otherwise rejects the first employment opportunity offered, employment will terminate and all recall rights will cease.
- E. Priority Recall. For a period of up to ninety (90 days) from the effective date of the layoff, the BUE will be eligible for priority recall/reinstatement in the classification of layoff, any lower level classification in that job series, or any classification for which the Employee has completed an original probationary period at NMSU and meets the minimum qualifications of the classification specification.
- F. Recall Application. To be considered for priority recall/reinstatement, the BUE must submit a completed NMSU employment application as soon as notified of the layoff, but no later than fifteen (15) calendar days after the effective date of the layoff. Based upon NMSU seniority, BUE applications will be submitted by HRS directly to the hiring department for an interview and consideration for priority recall/reinstatement. If the department should reject the BUE, the hiring department must provide a letter of justification to the AVP HRS, indicating why the BUE would be unable to perform the essential functions of the classification title.

- G. Recall Exhaustion or Expiration. Under no circumstances will NMSU hire new Employees into laid-off classification titles, until such time as the recall list is exhausted or has expired after ninety (90) days.

Section 2. NMSU Layoffs - Positions Contingent on Funding.

- A. Employment Notice at Time of Hire or Transfer. BUEs hired into positions contingent on funding will be provided with written notification at the time of hire or transfer indicating that the continuation of their employment is contingent on adequate funding. Additionally, at the time of posting, departments will clearly state in the job advertisement that a position is contingent on funding.
- B. Layoff Approval and Notice. Specific plans for any unit that is separating BUEs will be prepared prior to the layoff, approved by the AVP HRS and by the executive vice president and provost. Such plan will clearly identify the classifications to be eliminated or reduced, and the criteria used to determine the selection and order of the layoffs. [See ARP 7.65(B)]. At least sixty (60) calendar days prior to the effective date of the layoff, a written notice that includes the effective date of the layoff and the reason for the layoff, will be provided to the affected BUEs.
- C. Priority Interview Assistance. For the duration of the notice period up to the effective date of the layoff, the BUE will be eligible for interview assistance in the classification of layoff or any classification for which the BUE meets the minimum qualifications of the classification specification. BUEs will be responsible for monitoring vacancies and for requesting a priority interview from HRS. Applications for BUEs who meet the minimum qualifications for a posted vacancy will be submitted directly to the department by HRS for an interview.

Section 3. Tuition Remission.

Laid-off BUEs who are receiving tuition remission at the time of layoff may complete the semester, or summer session, in which the layoff occurs.

Article 15 - Classification and Reclassification

Section 1. Purpose.

The provisions of this Article apply to the creation of new non-exempt bargaining unit positions or the reclassification of existing non-exempt bargaining unit positions due to changes in the duties or responsibilities. A wage adjustment may be warranted following position reclassification.

Section 2. Reclassification Requests.

If a BUE or a Supervisor or department head has initiated a reclassification review, HRS will notify the Union of the request, and provide Union Representatives the opportunity to review and comment in writing on the reclassification within two (2) Business Days.

Section 3. Human Resources Response.

Within two (2) Business Days after the Union's written comment, HRS will notify the Union of the reclassification review results.

Section 4. Classification Re-titled.

Changes in the classification title may occur based on changes or updates in laws (e.g., Fair Labor Standards Act), significant changes in duties and responsibilities, changes in procedures, or new initiatives or technology. A classification that is re-titled may only be removed from this Bargaining Unit when the classification is determined to be exempt in compliance with FLSA. HRS will notify the Union within five (5) Business Days after a Bargaining Unit position is changed to exempt status.

Article 16 - Personnel Records

Section 1. Maintenance of Records.

NMSU will maintain all records concerning a BUE under secure conditions. Records may be maintained by Supervisors at the departmental level. In addition, NMSU will maintain one official set of records concerning a BUE [hereinafter referred to as "Personnel Record"]. The Personnel Record will be maintained by HRS. The Personnel Record may contain "confidential" documents, as defined in this Article. A BUE has the right to review any document filed in their official Personnel Record. A BUE may respond in writing to any matter contained in their Personnel Record. If a BUE elects to respond, such response(s) will be included in the BUE's Personnel Record.

Section 2. Confidentiality of Records.

NMSU respects the privacy of its employees and will strive to maintain the confidentiality of personnel records, to the extent allowed by law and operational needs. Records about a specific BUE will not be released to the Union or any outside party not representing NMSU except: (1) when authorized in writing by the BUE; or (2) when necessary to comply with the law.

Section 3. Limitations on the Content of Records.

A. NMSU will remove from a BUE's Personnel Record any documents critical of any BUE if the critical allegation(s) did not result in discipline, once investigation of any such

allegation is concluded or is no longer active. A BUE's performance evaluations will not be removed from the Personnel Record.

- B. Documents may be removed from a BUE's Personnel Record as part of a Grievance settlement agreement or arbitration award. When documents are removed from a BUE's Personnel Record pursuant to this Article, they will not be considered in connection with any future personnel action involving the affected Employee.
- C. NMSU will allow a BUE to inspect his or her Personnel Record. Upon request, a BUE will be provided with a copy of any documents in his or her Personnel Record, within a reasonable period following the request. The documents will be provided at NMSU's expense if the BUE is facing disciplinary action. Otherwise, the BUE will pay for the cost of copying documents.

Section 4. Use of Disciplinary Records.

After thirty-six (36) months without any further disciplinary action, the record of any prior disciplinary action relating to performance or attendance issues (but not other conduct issues) will not be used to support further disciplinary action.

Article 17 - Contracting of Work

Section 1. Contracting Out.

In the event NMSU decides to contract out work that has been traditionally performed by BUEs, it will provide the Union with written notice, not less than twenty-one (21) days prior to the proposed implementation, describing the work to be contracted, the basis for the decision to contract out, and the anticipated effect on BUEs. The Union may request bargaining within twelve (12) days of receiving this notice. In the event of an impasse in bargaining, NMSU may implement its last offer and the Union may not invoke impasse arbitration. Work "traditionally performed" will not include work temporarily contracted out to meet emergency needs or mandates of higher authorities or work contracted out in accordance with existing practice.

Section 2. Returning Work to NMSU Service.

Where the Union contends that work being performed under a service contract can be more economically, efficiently and qualitatively performed by BUEs, it will notify NMSU of its contention in writing, supported by a statement setting forth the reasons why it believes such work can be more economically, efficiently and qualitatively performed by BUEs. NMSU will, upon a specific written request, furnish the Union with information reasonably available and relevant to its analysis, subject to withholding such information after receiving valid written objections from the contractor on grounds of confidentiality or because of the proprietary nature of the information requested. Where NMSU, after reviewing the Union's contentions and conducting further analysis on its own, determines that the work can be more economically, efficiently and qualitatively performed by BUEs, the Parties will jointly develop a plan to return such work to NMSU service.

COMPENSATION

Article 18 - Wages

Section 1. Wage Increases.

- A. Budget. Wages for BUEs in the Bargaining Unit are determined by NMSU in the annual budget. The implementation of any wage increases budgeted by NMSU is contingent upon the specific appropriations of funds by the Legislature for such purpose. If the Legislature fails to make specific appropriations of funds necessary to implement a wage increase budgeted by NMSU, either Party may open negotiations to renegotiate the increase consistent with the Legislative appropriation. NMSU agrees to cooperate with the Union in efforts to obtain appropriations from the Legislature to fund the wage increases.
- B. BUEs Ineligible for Annual Wage Increase or Performance Adjustment.
1. BUEs hired on or after January 1 of the calendar year are not eligible for either the annual wage increase or performance-based adjustment unless an alternate date is mutually established by the Union and NMSU.
 2. The following BUEs will not be eligible for a performance-based wage adjustment:
 - a. BUEs on Long Term Disability (LTD) or Leave Without Pay (LWOP) status for six (6) months or more during the preceding review period;
 - b. BUEs with an "Unsuccessful/Unacceptable Performance" (previously, "Fails to Meet Expectations") or "Partially Successful Performance/Needs Improvement" (previously, "Needs Improvement") overall performance rating on the preceding performance evaluation.

Section 2. Compensation Administration.

- A. Entry Level Pay. New BUEs are normally hired at the entry level of the appropriate pay grade. With justification and prior approval of the relevant dean, director or vice president, and the executive vice president and provost or relevant campus president, and HRS, certain applicants may be hired at five (5%) percent with 5 years above the posted minimum qualifications, ten (10%) percent, 10 years above the posted minimum qualifications or fifteen (15%) percent, 15 years above the posted minimum qualifications, above the entry level pay grade, dependent upon experience.
- B. Wage Schedule. The wages of all BUEs are based on the pay grade as set by the current wage schedule and NMSU job classification descriptions. Classification descriptions are standardized descriptions of the characteristics, duties, and minimum qualifications for a group of positions. No BUE will be paid less than the minimum for his or her pay grade in the wage schedule. The qualifications statement in each classification description

establishes minimum requirements that are to be met by an individual before being considered for appointment or promotion. Combinations of education and experience are specified in the classification description. Other combinations, if deemed equivalent by HRS, may qualify an individual for appointment or promotion. BUEs may be required by their Supervisor to perform duties outside the general skill level of their classification specification on a temporary basis. A Supervisor who determines that the standard classification description does not accurately describe a position should initiate reclassification action, consistent with the provisions of this Agreement.

C. Temporary Assignments.

1. Duration. Temporary assignments will not normally exceed one (1) calendar year.
2. Higher Position Differential. A BUE who is temporarily assigned to a higher position due to a vacancy, an extended absence, or NMSU critical project/effort for a period in excess of one (1) calendar month, will receive a pay differential in the amount of 10% from the first day of the month following the effective date of assignment. To receive the pay differential, the BUE must meet minimum qualifications for the position and be provided with written notification of the duration of the assignment and associated pay differential. If NMSU determines there are no qualified BUEs, the duties will be reassigned to other employees by the Manager.
3. The pay of a BUE who is temporarily assigned to a lower or lateral position will not be adjusted.

D. Demotion (Voluntary or Involuntary) to Lower Pay Grade. When a BUE is demoted or accepts a lower level position, the pay rate for the lower position will be the *greater* of either: (1) five (5) percent above the entry level for the lower level position; or (2) the following applicable percentage decrease in pay from the prior position:

- 5 percent decrease if the demotion is one pay grade lower;
- 8 percent decrease if the demotion is two or three pay grades lower;
- 15 percent decrease if the demotion is four or more pay grades lower;
- 5 percent decrease per pay grade thereafter.

E. Voluntary Lateral Transfer to the Same Pay Grade. A lateral transfer is not a justification for a change in pay rate.

F. Reclassification or Recruitment/Selection to Higher Pay Grade. When a BUE is reclassified or selected for a higher level position as part of a recruitment process, the pay

rate for the higher position will be the *greater* of either: (1) five (5) percent above the entry level pay grade for the new higher level position; or (2) the following applicable percentage increase in the pay grade from the prior position:

- 5 percent if new position is one pay grade higher;
- 8 percent if the new position is two or three pay grades higher;
- 15 percent if the new position is four or more pay grades higher.

- G. Reclassification. Reclassification to a position with the same pay grade will not justify a pay rate adjustment. An adjustment in classification by HRS which results in change of pay grade or elimination of title may or may not result in a pay rate change. Decisions regarding such changes will be made on a case-by-case basis.
- H. Retroactive Pay Adjustment. Pay adjustments may be applied retroactively back to the day of the calendar month in which any general pay adjustment was approved, provided that the adjustment cannot be applied to a period in a prior fiscal year without specific approval of HRS. (Example: a BUE was granted a pay adjustment effective April 26 but, due to an error, the proper amount was not paid. The error was discovered on June 15. The retroactive adjustment may be made back to April 26, the date the adjustment was approved.)
- I. Overpayment. If a BUE is overpaid due to an administrative error, the BUE will be responsible for reimbursing NMSU for the total overpayment. The overpayment may be repaid in the same increments and frequency in which the overpayment occurred, provided, however, that the entire overpayment balance outstanding upon BUE termination may be deducted from the BUE's final paycheck.
- J. Three-Year Longevity Increase. BUEs who complete their initial three (3) consecutive years of service with a performance rating of Fully Successful (previously "Meets Expectations") or better on their most recent evaluation will be awarded a five (5%) percent pay increase effective on the BUE's anniversary date. Prior service with a break in employment in excess of five (5) Business Days is not credited toward the three (3) years of longevity. Leave without pay is not included as service time.
- K. Service Increase. Effective on the first day of the month after the employment anniversary date, BUEs may be awarded a service increase upon satisfactory completion of the specified number of years in accordance with this schedule: \$750 after 10 years; \$850 after 15 years; \$1,000 after 20 years; \$1300 after 25 years; and \$1500 after 30 years (prorated for less than full time BUEs). The increase will not be retroactive and will be subject to fully successful performance as documented on the performance evaluation form.
- L. Daily Maximum Hours of Employment. No BUEs, other than fire fighters, dispatchers, or supervisor farm/ranch, whose duties require them to work longer hours, or BUEs working primarily in a standby position, will normally be required to work more than sixteen (16) hours in any 24-hour period, except in emergency or special situations.

Section 3. Overtime Compensation.

NMSU will compensate BUEs for Overtime at the rate of one and one-half times the BUE's regular hourly rate of pay, including any pay differential. BUEs may elect to receive Comp Time in lieu of Overtime pay as provided in Article 28, Section 8.

Section 4. Shift Differential Pay.

Shift differential pay refers to the extra compensation a BUE receives for hours worked that are outside the hours of 7:00 a.m. to 5:00 p.m., Monday through Sunday.

- A. Work Schedules. Units which need staffing outside NMSU's regular business hours will establish work schedules divided into three, 8-hour shifts, in any 24-hour workday. Shift hours that begin between 7 a.m. and 3 p.m. are designated as the daytime shift. Shift hours begin between 3 p.m. and 10 p.m. are designated as the swing shift, and shift hours begin between 10 p.m. and 7 a.m. are designated as the graveyard shift.
- B. Shift Differential Pay Rate. Daytime shift work is paid at the BUE's normal base hourly rate of pay; work on the second (swing) shift receives an additional ten cents (\$.10) per hour pay differential; work on the third shift (graveyard) receives an additional forty cents (\$.40) per hour pay differential. Any differential other than as specified here must have advance written approval from HRS.
- C. Shift Differential Pay Qualification. BUEs will receive shift differential pay only when their regular work schedule includes at least three or more hours of the swing or graveyard shift, in which case the BUE will receive shift differential pay only for the hours actually worked that extend into the swing or graveyard shift (and not during any leave time). [See ARP 7.10, Part 1].
- D. Shift Duty Form. Assignment to shift duty must be evidenced by an appropriate form, executed by the BUE's department manager or Supervisor, including the applicable shift code.

Section 5. Geographic Pay Differential.

NMSU may provide pay differentials for BUEs working in geographical locations that require a higher pay rate to be competitive with the appropriate market, or where the cost of living is substantially higher than in Las Cruces, New Mexico. A BUE who temporarily receives the geographic pay differential in excess of one (1) calendar month, will receive a pay differential effective the first day of the month following the effective date of assignment.

Section 6. Area Differential Pay.

When BUEs are sent on temporary duty to locations outside their normal work area and the cost of temporary lodging and food exceeds the normal per diem rate, NMSU may provide a temporary pay differential to the BUE's base pay rate during the assignment to compensate for this expense. The Supervisor must submit requests for such pay differential to HRS. [See ARP 7.10, Part 2]. A BUE who temporarily receives the area pay differential in excess of one (1) calendar month, will receive a pay differential effective the first day of the month following the effective date of assignment.

Section 7. Hardship Differential Pay.

- A. Rule Statement. Hardship differential pay is extra compensation (a minimum \$1.25 per hour pay differential) above the BUE's regular pay rate that is occasionally paid to BUEs assigned to work for a fixed period of time on a specific project to meet an objective, and under extraordinary working conditions. [See ARP 7.12]. Hardship differential pay will be included in the calculation of Overtime pay. [See ARP 7.12]. A BUE who temporarily receives the hardship pay differential in excess of one (1) calendar month, will receive a pay differential effective the first day of the month following the effective date of assignment.
- B. Procedural Guidance. Management will attempt to schedule BUEs such that excessive Overtime and hardship to the BUE is avoided; the hardship differential pay addresses those situations where this cannot be avoided. [See ARP 7.12, Part 2(A)].
1. Extraordinary working conditions outside the scope of the essential functions of the position include situations when the BUE will work an inordinate number of hours beyond the normal forty (40) hour workweek; work under unusually risky or hazardous conditions, including permit-entry confined space work assignments; or work at a remote location (non-standard location away from home) through a holiday. Such working conditions should not be the norm, and payment of extra compensation is justified due to the significant hardship placed on the BUE during the period of time necessary to meet the work objective. [See ARP 7.12, Part 2(B)].
 2. Hardship differential pay is awarded only upon written approval of both the appropriate dean or vice president and HRS.

Section 8. Physical Science Laboratory Differential.

Based upon the unique demands of working within the Physical Science Laboratory (PSL), including security measures and regulations relating to the federal contracts under which work is performed, NMSU may provide a temporary pay differential to some or all BUEs working in PSL. A BUE who is temporarily receives the PSL differential in excess of one (1) calendar month, will receive a pay differential effective the first day of the month following the effective date of assignment.

Section 9. Multi-Lingual Pay Differential.

In facilities or offices where NMSU deems it necessary to have multi-lingual BUEs on staff to facilitate work-related communications with members of the public, and BUEs on staff assigned to the facility are available and capable of fulfilling such need, NMSU may designate a sufficient number of BUEs in the assigned workforce to perform such duties. Such BUEs will be entitled to a pay differential in the amount of \$.10 per hour, effective only upon receipt by HRS of a Personnel Action Form (PAF) approved in writing by the Supervisor or Department Head which specifies the multi-lingual pay differential. [See ARP 7.11]. A BUE who temporarily receives the geographic pay differential in excess of one (1) calendar month, will receive a pay differential effective the first day of the month following the effective date of assignment.

Section 10. Degree Attainment Wage Adjustment.

BUEs with "Superior" (previously, "Exceeds Expectations") or better job performance, who earn degrees from an accredited institution of higher education during their employment, will be rewarded according to the following guidelines.

- A. Higher Degree. A BUE will receive recognition only once for each type of degree awarded (i.e., associate's, bachelor's, master's, and doctorate). A BUE will not receive an increase for earning a lower degree than already held. A BUE may only receive an increase for earning the same level degree as already held if the degree is directly related to the position and no increase was previously awarded. [See ARP 7.15 (A)].
- B. Effective Date. The applicable wage increase will be effective on the first day of the month following award of the degree, or on the first day of the month in which a degree increment request is received by HRS, whichever is later. [See ARP 7.15 (B)]. Degree increments will not be paid on a retroactive basis. [See ARP 7.15 (C)].
- C. Pay Increase Amounts. BUEs who meet the above criteria are eligible for a wage increase of:
 1. 5 percent of their current wage, not to exceed \$1,000, for an associate degree;
 2. 5 percent of their current wage, not to exceed \$1,200, for a bachelor's degree;
 3. 5 percent of their current wage, not to exceed \$1,400, for a master's degree;
 4. 5 percent of their current wage, not to exceed \$1,600, for a doctorate. [See ARP 7.15 (D)].
- D. Qualification Form. BUEs who are eligible for a degree increment must submit a written request to their Supervisor, with a copy of their credit transcripts indicating a degree has been awarded. Upon verification of a "Superior/Highly Effective" (previously, "Exceeds Expectations") performance evaluation, the Supervisor will submit the proposed degree attainment pay adjustment request on an NMSU personnel action form, with the transcript

and a copy of the performance evaluation attached, for approval by HRS. When approved, the pay adjustment will be effective at the time the personnel action form was received by HRS.

Section 11. Journeyman License Attainment Wage Adjustment.

A BUE in Facilities and Services (FS), who: (1) works in the plumbing or electric trades; (2) earns the minimum number of hours required working as an apprentice under the supervision of a licensed journeyman; and (3) passes the journeyman test, will be reclassified and paid at the appropriate pay grade for the classification. Supervisors are responsible for submitting a request for reclassification. BUEs who obtain a journeyman's license and are reclassified must remain employed with NMSU in a position utilizing the journeyman's license (e.g. HVAC Mechanic, HVAC Mechanic Lead, Plumber, Plumber Lead, Electrician, Master Electrician, Steam Fitter, or Plant Operator) for three (3) years after obtaining the license. Failure to complete three (3) years of employment following licensure will result in the employee reimbursing NMSU, pro-rata, for the cost of the license and the class to obtain the license.

Article 19 - Deductions

Section 1. Union Dues Payroll Deduction.

NMSU will honor voluntary uniform Union membership dues deduction authorizations. The Union, acting through a duly authorized officer, will certify to NMSU, in writing, the amount per pay period to be deducted for Union dues under deduction authorizations. The certified dues amount will not include special assessments, penalties, political contributions, or fines of any type.

NMSU will begin all voluntary deductions promptly after the authorization is received in a timeframe consistent with other Employee payroll deductions. If a BUE has insufficient earnings for the pay period, no dues or other deduction will be made for that BUE for that pay period.

Section 2. Transfer of Deducted Funds to Union.

NMSU will remit to the Union all money deducted from BUE wages under this Article promptly after the payday covering the pay period of deduction. NMSU will provide the Union with a list of the names of the BUEs from whom NMSU made deductions under this Article, indicating the amount deducted for dues. This listing may be made available in an electronic format.

Section 3. Termination of Dues.

BUEs may instruct NMSU and the Union, in writing, to terminate Union dues deductions, only between July 1 and July 14 of any year that this Agreement is in effect. NMSU will honor the dues deduction authorization only until the BUE provides proper instructions to terminate the deductions as provided in this Section.

Section 4. Indemnification.

NMSU assumes no obligation, financial or otherwise, arising out of its application of the provisions of this Article, and the Union will indemnify and hold NMSU harmless from and against any claims, actions, or proceedings arising from deductions made by NMSU pursuant to this Article. Once the funds are remitted to the Union, their disposition is the sole and exclusive obligation and responsibility of the Union.

EMPLOYEE BENEFITS

Article 20 - Insurance Benefits

Section 1. Insurance Plans.

- A. Maintenance of Insurance Benefits. Subject to changes in eligibility criteria, enrollment requirements and coverage which are applicable to all Employees, NMSU will maintain its Insurance Benefits that are in effect and delineated in the Administrative Rules and Procedures as of the effective date of this Agreement, as they relate to BUEs. These benefits include: group medical, prescription drug, group vision, group term life, AD&D, group long-term disability, group dental plan, and voluntary life insurance programs. [See generally ARP 8.21-8.27].
- B. Part-Time BUE Participation. No insurance benefit is provided for part-time BUEs working less than 0.75 FTE, except that those part-time BUEs who enrolled in benefits prior to 7/1/16 are allowed to continue the benefit. [See generally ARP 8.21, Part I(A)].
- C. NMSU's Contributions. Subject to approval by the NMSU Board the Regents, NMSU will contribute the following amounts to the cost of Employee insurance benefits:

Pay rate	Percent of premium paid by NMSU	Percent of premium paid by employee
Under \$36,000	80%	20%
\$36,000-\$44,000	70%	30%
Over \$44,000	60%	40%

Section 2. Modification of Insurance Benefits.

The State of New Mexico provides the health insurance benefits and options to NMSU Employees. NMSU will provide the Union with advance notification of planned changes to insurance benefits (e.g., deductibles, out-of-pocket and lifetime maximums, co-pays) and permit the Union a reasonable opportunity to meet with NMSU to review the changes prior to implementing such changes.

Section 3. Health Care Flexible Spending Accounts.

All eligible BUEs may elect to participate in the NMSU Health Care Flexible Spending Account benefit under the same terms and conditions as other NMSU Employees, as it may be amended from time to time. [See ARP 8.14].

Section 4. Pre-Tax Premium Plan.

All eligible BUEs may participate in the NMSU Pre-Tax Premium Plan under the same terms and conditions as other NMSU Employees, as it may be amended from time to time. [See ARP 8.15].

Article 21 - Holiday Leave Benefit

Section 1. Holiday Leave Benefit.

Eligible Employees (as defined in ARP 6.03) are provided with fourteen days of paid holiday leave on designated dates each year. Only BUEs determined to be essential to operations will be required to work on designated holidays, and those BUEs will receive an alternative benefit as provided in this Article. [See ARP 8.56, Part 1].

Section 2. Holiday Observance.

NMSU is closed for business in observance of the following designated holidays:

1. Martin Luther King, Jr. Day;
2. Spring Holiday (1 day);
3. Memorial Day;
4. Independence Day (observed on July 4th; except when July 4th falls on Saturday, the holiday will be observed on Friday, and when it falls on a Sunday, it will be observed on Monday);
5. Labor Day;
6. Thanksgiving Day;

7. Friday following Thanksgiving Day; and
8. Winter Break (seven week days including those in the period from December 24 through January 1; when December 24 falls on a Saturday or Sunday, the preceding Friday is also included and when January 1 falls on a Saturday or Sunday, the subsequent Monday is also included). *[See ARP 8.56, Part 2].*

Section 3. Eligibility for Holiday Leave Pay.

- A. Eligibility. Except as otherwise provided in this rule, BUEs are eligible for holiday leave pay for designated holidays. Holiday leave pay is prorated for eligible part time BUEs. *[See ARP 8.56, Part 3].*
- B. Ineligibility for Holiday Leave Pay. BUEs are ineligible for holiday leave pay under these circumstances:
 1. **Unexcused Absence:** The BUE has an unexcused absence on their last scheduled Work Day preceding the holiday, or on their first scheduled workday following a holiday.
 2. **LWOP Status:** The BUE is on leave without pay (LWOP) on the day preceding the designated holiday. *[See ARP 8.56, Part 3].*
- C. Coordination of Holiday Leave with Employment End Dates. Eligible BUEs separating from NMSU will receive the holiday leave pay benefit through their date of separation from NMSU service. *[See ARP 8.56, Part 5].*

Section 4. Alternative Benefits for Holiday Work *[See ARP 8.56, Part 4].*

- A. Holiday not in Work Schedule. When an eligible BUE's regular work schedule does not include the holiday, the Supervisor will designate an alternative day of paid holiday leave within the same workweek.
- B. Comp Time in lieu of Holiday Premium Pay. If a BUE is required to work on one of NMSU's official holidays and has elected, in their semi-annual FLSA election, to receive Comp Time in lieu of Overtime pay, then the Comp Time hours credited for the holiday worked will be calculated in the same manner as for holiday premium pay below.
- C. Holiday Premium Pay. BUEs required to work on a holiday, and who do not receive an alternative day off in lieu of the holiday, will be paid holiday premium pay equal to their regular rate of pay, plus an additional 1½ times their regular rate of pay, regardless of the number of hours actually worked during the normal workweek.

- D. Calculation of Overtime in Holiday Week. Overtime pay calculations for those weeks with paid holidays will be determined in accordance with ARP 7.20, Part 3., as it exists or is amended.

Article 22 - Other Leaves

Section 1. Annual Leave.

- A. Accrual Rate. Regular BUEs will accrue twenty-one (21) workdays (168 hours) of paid annual leave each year, to be prorated for half-time or more BUEs. For each hour of annual leave taken, BUEs are compensated at their regular hourly rate. Leave is earned from the first day of employment and may be used as it is earned. Hours worked over forty (40) hours per week do not accrue either annual or sick leave. [See ARP 8.41].
- B. Carry-Over Leave. Up to 240 hours accumulated annual leave may be carried forward each July 1 and may be paid upon termination of employment. In the case of death, the maximum payment for unused leave will be 400 work hours. The end of the fiscal year (June 30) is the date for determining accumulated leave. [See ARP 8.41(E),(F)].
- C. Programming Leave. It is the responsibility of the BUE and Supervisor to ensure that the use of annual leave is programmed in advance and used so the BUE will not lose any leave. Leave accrued in excess of 240 hours at the close of business on June 30 of each year will be forfeited. A BUE's pay can be docked for a voluntary day off if they do not have a leave balance to cover. [See ARP 8.41(H),(I)].
- D. Transfer of Annual Leave. Annual leave will be transferred with the BUE from one department to another. BUEs who are converting to temporary status may be paid for unused annual leave as stated above. BUEs who are terminating may request terminal leave (with administrative approval) in lieu of lump sum payment and will not accrue leave during terminal leave unless they return to regular work status. BUEs who are retiring may accrue leave during terminal leave. [See ARP 8.41(J), (L), (M)].

Section 2. Sick Leave.

- A. Sick Leave Available. Regular, full-time BUEs will be granted twelve (12) workdays of paid sick leave each year. This is prorated for half-time or more BUEs. Leave will be earned from the first day of employment and may be used as it is earned. Hours worked over forty (40) hours per week do not accrue either annual or sick leave. BUEs may accrue and bank one hundred (100) Work Days (800 hours) of accumulated sick leave (prorated for less than full-time BUEs and for any partial months by 9-month BUEs). [See ARP 8.43 Part 1(A); (C)-(E)].
- B. 100 Day Maximum. On July 1 of each year, a BUE who has accumulated more than one-hundred (100) workdays of sick leave will have the sick leave balance reduced to one-

hundred (100) days. A department may require supporting documentation for any usage of sick leave any time abuse of sick leave is suspected. Any grant of sick leave in excess of three (3) consecutive Work Days should be supported by a medical certificate or other evidence administratively acceptable. Abuse of sick leave may be grounds for immediate dismissal. Annual leave may be applied (if available) against leave in excess of the allotted sick leave days, but sick leave will not be applied against annual leave in any case. [See ARP 8.43 Part I(E)-(G)]

- C. Cash Value. Sick leave accrued after July 1, 2016, will have no cash value and will not result in a payout benefit. [ARP 8.43, Part H]. Those BUEs who accrued more than 600 hours of sick leave prior to July 1, 2016 will retain the sick leave payout benefit that was in place on June 30, 2016, but only with respect to those hours accrued prior to July 1, 2016. This sick leave payout benefit will be referred to as a "grandfathered" benefit. Any BUE with a grandfathered sick leave payout benefit who terminates, retires or converts from a 12-month pay base to an academic faculty pay base will be paid, in accordance with the formula in effect on June 30, 2016, for any then remaining grandfathered sick leave benefit (calculation based on the lesser of the leave balance on July 1, 2016 or the leave balance on the date of separation). The formula in effect on June 30, 2016 stated: payment will be made at a rate of 50 percent of the BUE's straight-time hourly wage, multiplied by the number of sick leave hours accrued over 600, to a maximum of 200. The payment may not exceed 50 percent x hourly rate x 200. (According to Educational Retirement Board rules, this payment will not be included in the 5-year average wage used for the retirement benefits calculation.) [See ARP 8.43, Part I(H)-(1)].
- D. Use of Sick Leave. Sick leave may be used when the BUE's, absence is reasonably required for the treatment of or recovery from illness or injury. Sick leave may also be used when the BUE's absence qualifies as protected leave under the Family Medical Leave Act. Consistent with applicable law, a physician's statement may be required to support the usage of sick leave for the BUE or qualified dependents. BUEs on Family and Medical Act (FMLA) leave must use any available sick leave concurrently with FMLA, pursuant to ARP 8.45. A BUE will not be compensated for a missed day from work if the BUE does not have accrued paid leave available. [See ARP 8.43, Part I(K)].
- E. Supporting Documentation. A department may require supporting documentation for usage of sick leave any time a BUE has an insufficient leave balance and is absent from work, or if abuse of sick leave is suspected. Any BUE required to provide documentation to support an absence may be placed on unpaid administrative leave pending NMSU's receipt and approval of such supporting documentation. In addition, any grant of sick leave in excess of three (3) consecutive Work Days should be supported by a medical certificate or other evidence administratively acceptable. Abuse of sick leave may be grounds for immediate dismissal.
- F. Nine-Month BUEs. Regular, nine-month BUEs may earn 9 days of sick leave a year (8.00 hours per month worked, prorated based on job FTE). Annual leave or sick leave for nine-month BUEs may be used only during the regular employment time period they are

scheduled to work each fiscal year. Leave is prorated for BUEs who work less than full-time. [See ARP 8.43, Part 2].

G. Sick Leave Bank.

1. Eligibility. BUEs will be allowed to participate in the Sick Leave Bank ("Bank"). Participating BUEs affected by a "personal medical emergency," and who have insufficient leave to cover required work absences, will be entitled to use the Sick Leave Bank. A "Personal Medical Emergency" is defined as an "unusual and catastrophic medical or immediate family medical emergency that is likely to require a BUE's absence from duty for a prolonged period of time and to result in a substantial loss of income because of the unavailability of paid leave." Only those items allowable under NMSU sick leave rules stated above are covered by the Sick Leave Bank; maternity leave in connection with a pregnancy without medical complications is not a "personal emergency." [See ARP 8.28(A)-(C)].
2. Donation Rules. The Bank allows BUEs to share the risk of severe circumstances by donating to a common pool of leave. Members of the pool are required to enroll in the long-term disability insurance program, offered by NMSU, as a protection against income loss while recovering from a severe medical condition. The long-term disability policy covers total disability after a waiting period of one-hundred and thirty-five (135) consecutive calendar days or one-hundred (100) workdays. The maximum a recipient can receive from the Sick Leave Bank is seventy (70) days per "personal emergency" with no more than one withdrawal from the bank per fiscal year or per personal emergency. No more than seventy (70) days can be withdrawn for a particular medical condition. The Bank does not provide for the first thirty (30) days of the "personal medical emergency"; these are the responsibility of the BUE and are covered by the BUE's sick and annual leave or leave without pay. Program requirements and application procedures are maintained on the web pages for HRS. [See ARP 8.28(D)-(H)].

Section 3. Compassionate Leave.

In the event of the death of a member of the immediate family, a BUE is allowed a leave with pay, not to be charged against sick or annual leave, of up to three (3) regular Work Days following the death of the family member without loss of pay to attend the funeral or to handle affairs immediately associated with the death. Immediate family member includes spouse, a domestic partner as defined in ARP 8.03 [Domestic Partner Eligibility for Benefits], a child, parent, or legal guardian, a sister or brother, a grandparent, or a grandchild. Such familial relationships created by law are also included (i.e. mother/father in law; half or step siblings). [See ARP 8.47].

Section 4. Family and Medical Leave.

NMSU Employees, including BUEs, are entitled to job-protected leave under the Family and Medical Leave Act (FMLA Leave) to the extent provided by federal law and NMSU policy, rules, and procedures. BUEs holding accrued sick leave must take sick leave concurrently with FMLA

Leave until accrued sick leave is exhausted. BUEs who do not have accrued sick leave may elect to take accrued annual leave concurrently with FMLA Leave or may choose to be placed on leave without pay. BUEs should notify HRS-Benefit Services once aware of an FMLA qualifying event. [See ARP 8.45].

Section 5. Jury Duty Leave.

- A. Jury Duty Leave. Jury duty is that service and time spent away from a NMSU job as a result of a subpoena or notice issued by court. In order for BUEs to fulfill their civic responsibility as jurors, BUEs may be granted leave for this purpose. BUEs are not required to report for work after serving eight (8) hours of jury duty during the day. If service is less than eight (8) hours in a day, BUEs will return to work for the remainder of their 8-hour shift (or may request annual leave). Department heads are authorized to grant jury duty leave upon the presentation of a subpoena or notice issued by the appropriate court. NMSU will pay BUEs who serve such duty their normal wages for each regular workday of service, not to exceed eight (8) hours per day. A copy of a written statement furnished to the BUE by the court indicating the time spent serving jury duty must be furnished to the Supervisor. It is the responsibility of the BUE to keep the Supervisor informed of the anticipated time to be spent away from the job. BUEs must use annual leave or leave without pay for jury duty/witness service in a jurisdiction other than that of their primary work locale, with the exception of BUEs residing in El Paso and working in Las Cruces. BUEs may not receive any form of compensation from state courts other than mileage. BUEs may receive compensation while serving on federal juries. [See ARP 8.50, Part 1(A)-(I)].
- B. Witness Leave. BUEs have the same right as all citizens, and on occasion the obligation, to serve as witnesses in a court of law. As such, they are not representatives of NMSU, but are private citizens. Their conduct in the case of court appearances as private citizens should, however, reflect well on NMSU. Eligible BUEs will be granted annual leave, or placed on leave without pay if ineligible for leave, for time spent testifying as a witness. The BUE should provide their immediate Supervisor with a copy of the subpoena in order to receive approval for time off. BUEs who are plaintiffs in any legal action against NMSU must use annual leave or leave without pay for all time spent in activities related to such action. BUEs appearing on behalf of NMSU or as a representative of NMSU in any legal action, to include depositions or witness testimony, will not be required to use annual leave or leave without pay. The BUE may accept a witness fee as provided by law. [See ARP 8.50, Part 2(A)-(E)].

Section 6. Military Leave.

NMSU will comply with all federal and state laws, as amended from time to time, governing military leave. In accordance with state law, NMSU provides paid training leave for its BUEs who are members of organized units of the Army or Air National Guard or Army, Air Force, Navy, or Marine Reserves, in an amount not to exceed 15 days annually when they are ordered to active duty training with such organized units. Such leave will be in addition to other leave or vacation

time with pay to which such BUEs are otherwise entitled. (*See* NMSA 1978, §20-4-7) [*See* ARP 8.46, Part 1].

Section 7. Leave Without Pay (LWOP).

LWOP for a period up to ninety (90) calendar days may be requested by a BUE and either approved or disapproved by the director/department head. Requests for LWOP in excess of ninety (90) days should be submitted to the department head or director. If the department head recommends approval, the request is forwarded through the dean or vice president to HRS for consideration. Circumstances in individual cases will determine if such leave will be granted. If leave is granted, it should be reported as a change of status. A BUE who requests and is granted a leave of absence without pay for a full pay period resulting in insufficient pay to cover the BUE's cost of the benefit premiums must make arrangements through HRS to pay the full cost (NMSU and BUE) of insurance premiums and make timely payments to NMSU Accounts Receivable. BUEs who do not make premium payments by the last day of the month are subject to having their coverage cancelled. Annual and sick leave do not accrue during LWOP. All days, including legal holidays, in the interim period between the date LWOP commences and the date the BUE actually returns to work, are taken without pay. Any partial days, taken immediately before or after the official leave without pay period, will be deducted from leave accrued upon return. An appointing authority may involuntarily place a BUE on leave without pay if approved by HRS and executive vice president and provost. LWOP will not be granted to a BUE who has annual leave unless specifically approved by the executive vice president and provost, except under the Family and Medical Leave Act. [*See* ARP 8.55(A)-(G)].

Section 8. Administrative Leave.

NMSU may, in its discretion, provide paid administrative leave to BUEs for purposes it deems appropriate. Since each case requiring administrative leave is unique, such circumstances will not provide a precedent for treatment of other BUEs.

Section 9. Domestic Abuse Leave

NMSU will comply with all federal and state laws, as amended from time to time, governing domestic abuse leave. [*See generally* ARP 8.44].

Section 10. Absence for Purpose of On-Campus Interview.

NMSU will provide paid release time to a BUE who is requested to interview for another NMSU position. Annual leave will not be charged against a BUE who is requested to interview for another NMSU position. [*See* ARP 8.51].

Section 11. Absence for Purpose of Voting.

On Election Day, BUEs who are registered voters will be entitled to two (2) hours of paid release time to be absent from employment for the purpose of voting between the time of opening and the time of closing the polls. The appropriate Supervisor may specify the hours during this period in

which the voter may be absent. This does not apply to BUEs whose workday begins more than 2 hours subsequent to the time of opening the polls or ends more than 3 hours prior to the time of closing the polls. This policy applies to city, county, state, and national elections. [See ARP 8.49].

Section 12. Leave Requests.

FMLA Leave requests are administered by HRS-Benefits. Other requests for leave will be considered by a Supervisor with primary consideration given to the requirements of the job. Requests should be made in writing in advance whenever possible. [See ARP 8.40(A)].

Subject to the foregoing, annual leave should generally be granted on a first come, first served basis. Requests should be made in writing in advance whenever possible. Such requests will not be unreasonably denied.

Section 13. Leave Records.

NMSU will establish and maintain accurate leave records updated on a pay-period basis. Supervisors are responsible for establishing and maintaining appropriate leave records. [See ARP 8.40(D)].

Section 14. Contract Administration Leave.

- A. Union Representatives. NMSU will provide Contract Administration Leave for Union Representatives, including stewards who are BUEs, consistent with the following provisions. This leave will be designated as contract administration leave for pay purposes.
- B. Amount of Leave. The total amount of Contract Administration Leave granted by NMSU during a fiscal year may not exceed thirty (30) days.
- C. Requests for Leave. All requests for leave under this section will be submitted to HRS administrator designated for such purposes in writing, signed by the Union and the Union Representative, at least fifteen (15) Business Days in advance of the day on which the leave is to begin and will include:
 - 1. A general description of the activity and its purpose;
 - 2. The date and location of the activity; and
 - 3. The name(s) of the BUE(s) for whom contract administration leave is being requested.
 - 4. Where the leave request is for eight (8) hours or less, the minimum notice required is seven (7) Business Days.
- D. Approval. Approval of leave under this section will not be unreasonably withheld, consistent with Section 12 of this Article.

- E. Substituting Union Representatives. If the Union needs to substitute a Union Representative for those previously granted Contract Administration Leave, or substitute new dates, such requests will be submitted for approval as soon as possible to the HRS administrator designated for such purposes. Approval of substitutions or dates will not be unreasonably withheld, consistent with Section 12 of this Article.

Section 15. Other Leave Taken

In the event of a campus closure or facility closure under which BUEs are directed not to report to work or are released from work during otherwise regularly scheduled work hours, for reasons that are not in the BUE's control, BUEs will be paid for the regularly scheduled work hours and should report the time away from work as Other Leave Taken (OLT).

Section 16. Release Time for Campus-Sponsored Activities

BUEs who are members of committees that are established and sanctioned by NMSU, or who are permitted by such committees to be in attendance, will be entitled to attend committee meetings that are held during regular business hours on paid time, provided they have received prior approval from their Supervisor.

Article 23 - Tuition Remission

NMSU encourages all regular BUEs to engage in life-long learning to enhance their careers by taking advantage of tuition remission programs. BUEs are entitled to the same Tuition Remission Program benefits as other Employees, in accordance with ARP 8.61.

Article 24 - Domestic Partners

NMSU is committed to providing equal employment and educational opportunities to all individuals. All BUEs who have a "Qualified Domestic Partner," as defined in the ARP, will be provided services and benefits on the same basis provided to legal spouses and dependents, except where expressly prohibited by law. [See ARP 8.03, Part 1]. All NMSU policies that affect BUEs, legal spouses and their families also apply to Qualified Domestic Partners and their families. [See ARP 8.03].

Article 25 - Parking

NMSU will continue to maintain parking areas designated for free use. Outer Lot Parking permit fees will not increase more than 10% annually.

PERFORMANCE

Article 26 - Probation

After a BUE successfully completes an original probationary period, which is the trial period of time following hiring as a new BUE at NMSU in which the individual's potential as an NMSU Employee is assessed, there will be no other probationary periods during the BUE's continuous employment. *[See ARP 9.01, Parts (1)-(4)].*

Article 27 - Performance Evaluations

Section 1. Purpose.

Performance evaluations are intended to establish a communication tool to ensure that BUEs are performing their duties and exhibiting conduct at acceptable levels, to provide a means by which to document performance and conduct, to allocate merit increases, and to establish a procedure for correcting performance and conduct problems, should they occur. Performance evaluations do not affect NMSU's ability to take disciplinary action. Written evaluations conducted by a BUE's supervisor will be provided to the employee for review and signature acknowledging receipt. No BUE will be denied a merit pay increase based upon NMSU not providing a timely annual performance evaluation. *[See generally ARP 9.05, Part 1].*

Section 2. Performance Ratings.

- A. Performance Evaluation should be completed for BUEs after completion of a probationary period annually, and any time a Supervisor considers an evaluation necessary. *[See ARP 9.05, Part 1].*

For each of the elements evaluated and for the overall rating, a BUE will receive one of the following ratings:

5-Distinguished Performance and Role Model Status. Clearly and consistently demonstrates extraordinary and exceptional accomplishment in all major areas of responsibility. Performs above and beyond expectations under exceptional circumstances during the review period. Others in similar roles rarely equal performance of this caliber.

4-Superior/Highly Effective Performance. Performance is continually and consistently superior, and regularly goes beyond what is expected. An exceptional contributor whose performance exceeds expectations on a consistent and sustainable basis.

3-Fully Successful/Effective Performance. Performance consistently meets the critical requirements of the position, continually achieves preset goals, and performs with distinction. Incumbent performance is reliable and consistent in adding value to the work unit.

2-Partially Successful Performance/Needs Improvement. Performance does not consistently meet or occasionally falls below what is required of the position; improvement in specific areas is required.

1-Unsuccessful/Unacceptable Performance. Performance fails to meet minimum expectations for this role, and immediate and sustained improvement is required.

Section 3. Performance Elements.

Performance elements will be based on the regular and recurring duties assigned to the BUE and previously agreed-upon goals and objectives. At a minimum, the following core competencies for NMSU system success will be rated on a performance evaluation:

- Achievement toward NMSU Strategic Goals;
- Collaboration and Teamwork;
- Critical Thinking and Problem Solving;
- Interpersonal Effectiveness;
- Job Mastery;
- Organizational Awareness;
- Resource Management;
- Results Orientation and Execution;
- Self-Awareness and Accountability;
- Service and Quality Focus; and
- Valuing Diversity and Inclusion.

Elements will be rated fairly and equitably. The Supervisor will take into account equipment and resource problems, lack of available training, and other such matters outside a BUE's control. Pre approved time away from the job, including sick leave, annual leave, Comp Time off, and authorized duty time for Union representational purposes and other authorized activities, will not be considered negatively in the application of performance elements, but evaluations will fully take into account such pre-approved absences in a measure of timeliness and quantity of work. If a BUE does not have an opportunity to perform work encompassed within an element for reasons outside of the BUE's control, that element will not be considered in the performance evaluation process.

Section 4. Supervisor Completion.

Normally, the BUE's immediate Supervisor will prepare all performance evaluations. A BUE who is transferred will be given an exit evaluation to be used in conjunction with the new Supervisor's year-end evaluation. Where a BUE works under a new Supervisor for at least six (6) months of the evaluation period, that Supervisor may elect not to use the former Supervisor's evaluation. When both evaluations are used, the overall ratings may be averaged in accordance with the number of months evaluated by each Supervisor. *[See generally ARP 9.05, Part 2(B), (G)].*

Section 5. Deficient Performance or Violation of Standards of Conduct.

- A. Meeting with Supervisor. In the event during the current rating period, a Supervisor considers an evaluation necessary or useful, based on the Supervisor's assessment of a BUE's performance or conduct, the Supervisor will meet with the BUE to discuss the deficiencies. If a performance evaluation is conducted, the Supervisor will include in the written performance evaluation an explicit description of:
1. any violation of applicable standards of conduct; and
 2. the specific tasks and standards that will assist the BUE in accomplishing his/her overall objectives for the next evaluation period; and
 3. any training requirements.
- B. Time to Correct. The BUE will be given a reasonable defined amount of time to correct the performance and conduct deficiencies before the next performance evaluation is conducted, unless the deficient performance occurs late in the annual evaluation period.

Section 6. Miscellaneous.

- A. Other Provisions. Performance evaluations will also include the following:
1. an overall performance rating for the period;
 2. job mastery and conduct goals and objectives for the forthcoming period (which may include recommendations for development or training to enhance the BUE's skills); and
 3. a statement identifying area(s) for improvement and a description of improvement or development activities, and follow-up review date to review progress for an overall rating of either "Partially Successful Performance/Needs Improvement" or "Unsuccessful/Unacceptable Performance."
- B. No Forced Distribution. NMSU will not prescribe a forced distribution of levels for ratings for BUEs covered by this Agreement. Pay will be based on the overall performance evaluation rating, which will be based on the criteria set forth herein.

- C. Changes to Evaluations. NMSU may change a BUE's annual evaluation only with written justification to HRS. The BUE will have access to his/her annual evaluation and will be considered a part of the BUE's official personnel file. A statement of a BUE's objection to an evaluation or comment may be included on the evaluation or attached and placed in his/her personnel file.
- D. Disagreements on Evaluation. Disagreement with overall performance ratings of "Partially Successful Performance/Needs Improvement" (previously, "Needs Improvement") or "Unsuccessful/Unacceptable Performance" (previously "Fails to Meet Expectations") may be grieved or appealed through the Union Grievance Procedure or NMSU appeals process.

WORK RULES AND CONDITIONS

Article 28 - Hours of Work

Section 1. Workweek.

- A. Workweek. For payroll purposes, the workweek will be the calendar week, from 12:00 a.m. Sunday through 11:59 p.m. Saturday. NMSU's official HRS payroll system (e.g., currently the Banner system) will be used for the entry of all time worked and leave taken.
- B. Work Schedules. Unless otherwise specified herein, the normal work schedule for full-time BUEs will consist of five (5) consecutive days, with eight (8) hours per day, Monday thru Friday. The Parties agree that due to the operational needs of NMSU, some BUEs will have work schedules other than the normal work schedule, but these alternative schedules should be kept to minimum, wherever possible. Except in extenuating circumstances, the scheduled starting and ending times will remain consistent throughout the workweek. Changes in the regularly scheduled starting and ending times will be communicated to each affected BUE, in writing, two (2) weeks prior to the scheduled changes becoming effective, unless the operational needs of NMSU demand otherwise, in which case, reasonable notice will be provided as soon as practicable. [See ARP 6.85(A)]. BUEs will be at their assigned work station or check-in station and ready to begin work at the start of their assigned shift.
- C. Alternate Work Schedule for DACC Security Officers. Security Officers at all DACC (Dona Ana Community College) locations work a 45-hour workweek, which includes a paid lunch period of 60 minutes, during which they remain on site and respond to calls. Officers are provided a consistent, alternative work schedule with Overtime compensation, along with any shift differentials in accordance with this Agreement. Any additional Overtime needed will be assigned on a rotating schedule, based on Classification seniority. When applicable, Holiday Pay will be paid in addition to Overtime compensation, as provided in ARP 7.20, Part 3 (C), as it exists or is amended. [See ARP 8.56, Part 4].

- D. Flexible Schedules. To meet the business needs of NMSU, specified positions will have a flexible work schedule. The schedule for such positions will be established no less than weekly and communicated to the BUE in writing no later than 12:00 a.m. on the Friday prior to the workweek. Additionally, the hours worked each week will remain consistent with the assigned FTE. Positions that have a flexible work schedule will be posted with the following language, "*flexible work schedule to be established each week based on needs of the hiring department.*"

Section 2. Work Breaks

A fifteen (15) minute work break is allowed for each consecutive 4-hour work period. Break times cannot be accumulated. Break times not used when allotted will be forfeited. General guidelines regarding break times are as follows:

- A. No Added Break Times. Break times cannot be added to the meal break and generally should not be taken within one (1) hour before or after the meal break or beginning or end of the shift/work day.
- B. No Deducted Break Times. Break times cannot be deducted from the beginning or end of the work period to reduce overall length of total work period.

Section 3. Meal Break.

A normal workday will consist of 6-8 hours of work with a minimum of one-half hour and a maximum of 1 hour of non-work time granted for a meal period. Periods of less than 1 hour meal time and specific eating on the job arrangements must be approved by the Supervisor.

Meal breaks should normally be scheduled at the mid-point of the BUE's regular work shift. Bargaining Unit positions currently receiving a paid meal break on the effective date of this Agreement will continue to receive this benefit under this Agreement.

Section 4. Workload Standards.

NMSU will assign workloads to treat BUEs as equitably as possible. NMSU will consider re distribution of staff or positions among a department's programs, shifts, or work sites or other means to alleviate excess workload and will specifically consider hiring additional staff where there are chronic workload problems. In addition, the Parties will utilize the Labor Management Committee, Article 36, to address workload issues for BUEs that are assigned caseloads.

Section 5. Overtime Management.

Subject to an exception for designated positions agreed upon by the Parties, BUEs will not normally work Overtime. NMSU has no contractual obligation to offer Overtime work. [See ARP 7.20, Part 3 (Preamble)]. A BUE's daily or weekly schedule will not be changed to avoid the Overtime payment or accrual of Comp Time, without the BUE's consent. [See ARP 7.20, Part 3]. Overtime will be paid in accordance with Section 7 of this Article or the BUE will earn Comp Time in accordance with Section 8 of this Article.

Section 6. Distribution of Overtime Opportunities.

If Overtime is required that is not within the specific job assignment of an individual BUE, then the Supervisor will first offer Overtime to the BUEs under his/her supervision who are qualified to perform the necessary work. If more than one qualified BUE volunteers to work Overtime, the Supervisor will assign Overtime based on classification seniority within the work group that he/she supervises and rotate Overtime assignments as equitably as possible. If no volunteers are available, then the Supervisor will designate BUEs capable and qualified to perform the work based on reverse classification seniority and mandated Overtime will be rotated as equitably as possible. NMSU has the right to require BUEs to work Overtime consistent with this section.

Section 7. Payment of Overtime.

All Overtime worked and reported by the payroll deadline will be paid to the BUE at the next regularly scheduled payday. [See ARP 7.20, Part 4].

Section 8. Compensatory (Comp) Time.

- A. Election of Comp Time. Upon election by the BUE, Overtime may be compensated with Comp Time in lieu of the increased hourly pay rate. When Comp Time is elected, the BUE is paid for all Overtime at the BUE's regular hourly rate of pay and the BUE accrues Comp Time at an additional 0.5 times the Overtime worked. Each year NMSU designates two opportunities for BUEs to change their election to receive either Comp Time or additional pay for Overtime, with elections effective on January 1 or July 1. [See ARP 7.20, Part 5(A)].
- B. Scheduling Comp Time Usage. The date(s) to be taken off from work as Comp Time will be scheduled by agreement between the Supervisor and the BUE. Supervisory approval for the use of Comp Time will not be unreasonably withheld. A Supervisor may direct a BUE to use accrued Comp Time. [See ARP 7.20, Part 5(B)].
- C. Maximum Comp Time Available. A maximum of one hundred and twenty (120) hours of Comp Time may be accrued in a fiscal year. Comp Time earned for Overtime and reported by the payroll deadline will be accrued at the next regularly scheduled payday. A BUE may request payment of accrued Comp Time at any time, which will then be paid at the next regularly scheduled payday. Accrued Comp Time which is not taken as time off or paid

prior to the end of each fiscal year, or prior to transfer or termination, will be paid to the BUE. [See ARP 7.20, Part 5(C)].

Section 9. Standby Pay.

NMSU may assign a BUE to Standby status in accordance with ARP. 7.13, Part 1. BUEs placed on Standby status are paid \$1.25 per hour for each hour of assigned Standby status.

Section 10. Unrestricted On-Call.

Voluntary, unrestricted on-call lists may be maintained for the purposes of offering available Overtime. BUEs who are not on Standby status may decline to return to work if contacted, without penalty, discipline or other reprisal, if they acknowledge they are not fit to report to duty. [See ARP 7.13, Part 2].

Section 11. Call-Back Pay.

On-Call BUEs who are required to return to work on a scheduled Work Day after going off-duty, or who are called to work on a non-Work Day, are guaranteed a minimum of two (2) hours of pay for the actual time worked at the BUE's regular hourly rate or Overtime rate (whichever is applicable). For BUEs called back to work, paid time will commence at the time the BUE begins travel to report for work and ends at the completion of the call-back assignment. NMSU will not use these call-back pay provisions to undermine or circumvent the distribution of Overtime. [See ARP 7.14].

Section 12. Vehicle Call-Back Allowance.

Departments may elect to offer a vehicle call-back allowance (VCB) of \$15.00 for each occasion in which a BUE is required to return to the NMSU work location on call back. In such units, the BUE will indicate a VCB event on the timecard.

Article 29 - Non-Discrimination and Compliance with Laws

Section 1. Non-Discrimination.

NMSU will comply with all applicable laws relating to equal employment opportunity in the workplace and will not discriminate against any BUE based on a legally protected characteristic. Written policies and procedures will be applied as consistently as possible in substantially similar circumstances to the BUEs to whom the policies and procedures apply, except as otherwise required or allowed by law.

Section 2. Compliance with Laws.

Alleged violations of this Article may be grieved in accordance with the Grievance Procedure, outlined in Article 35, except alleged violations of personnel policies and procedures dealing with compliance with the: (1) Fair Labor Standards Act (FLSA); (2) the Americans With Disabilities Act Amendments Act (ADAAA); (3) the Age Discrimination and Employment Act (ADEA); (4) the Family and Medical Leave Act (FMLA); (5) the Equal Pay Act (EPA); and (6) all other applicable federal and state equal employment opportunity laws and regulations, all as amended. If any of these laws apply, complaints may be raised through the appropriate NMSU department, as follows: for alleged FMLA or FLSA violations, complaints should be submitted to HRS; alleged ADA, ADEA and EPA complaints should be submitted to the Office of Institutional Equity (OIE). Nothing in this section will prevent a BUE from reporting alleged violations of law through the appropriate governmental agency.

Article 30 - Health and Safety

Section 1. General Duty.

NMSU agrees to maintain at all times a safe and healthy work place consistent with applicable laws and regulations. BUEs agree to report any unsafe or unhealthy working conditions immediately to Supervisors. *[See ARP 16.30]*.

Section 2. Duties of the Labor-Management Committee.

As a way to promote and maintain safe and healthful working conditions in the workplace, NMSU and the Union agree that the Labor Management Committee will address health and safety issues as needed. Safety-related issues will have agenda priority at each meeting of the Labor Management Committee. Refer to Article 36 herein.

Section 3. Personal Protective Clothing and Equipment.

NMSU will select and provide protective clothing and equipment where such is required by applicable laws and regulations. NMSU will also select and provide safety glasses for BUEs working in job classifications where safety glasses are required. NMSU will provide reimbursement for BUEs' prescription safety glasses damaged in the course of the BUE's regular duties through no fault of the BUE. Where a BUE's duties require the wearing of safety shoes by law NMSU will select and provide safety shoes, at no cost to the BUE. As shoes become damaged through normal wear and tear, the BUE will be eligible for replacement shoes once annually.

Section 4. Health and Safety Training.

NMSU will be responsible for ensuring that BUEs receive training in order to safely carry out the day-to-day functions of their job requirements, including the following:

- A. Cardiopulmonary Resuscitation (CPR) Training. NMSU will offer CPR training provided by a certified trainer at no cost to BUEs. BUEs will be entitled to attend training on paid work time provided they have received supervisory approval.
- B. Asbestos Training. Any BUE required to work with or around asbestos will be provided the proper training and personal protective equipment.

Section 5. Hepatitis B Vaccination.

BUEs who have potential exposure to blood and other body fluids as part of their required job duties will be offered Hepatitis B vaccination(s) at NMSU's expense.

Section 6. Asbestos Precautions.

When an asbestos hazard is discovered, all affected BUEs will be immediately notified of the existence and location of the hazard and NMSU will take precautionary measures to protect the BUEs from exposure. NMSU will conduct ongoing inspections to detect the presence of an asbestos hazard or any other health hazard and will provide updates to the Union.

Section 7. Indoor Air Quality.

NMSU will ensure non-hazardous air quality in all buildings, offices and spaces where BUEs work in compliance with law. When conditions in any office, building, or work area reach a hazardous level as determined by the appropriate responsible authority, NMSU will immediately take action to ensure that BUEs are provided with non-hazardous air quality at no lost compensation to BUEs.

Section 8. Physical Exams.

When the health of a BUE is adversely affected by exposure to potentially harmful physical agents, toxic materials, or infectious agents in the course of their employment, NMSU agrees to pay for any physical examinations and other necessary tests, as determined by a medical provider designated or approved by NMSU, that are administered for diagnostic purposes. NMSU will, at a BUE's request, provide an annual hearing test at no cost to those BUEs who are regularly exposed to working conditions that include noise levels in excess of OSHA toleration levels as prescribed in the regulations of the New Mexico Occupational Safety and Health Bureau (NMOSHB). Upon request, animal handlers will be given an annual screening for job-related exposures by a medical provider designated or approved by NMSU, at no cost to the BUE.

Section 9. Reports by Governmental Agencies.

A BUE who is a member of the Labor Management Committee will be entitled to accompany officials of any government agency conducting a safety-related investigation on the premises of NMSU, provided that the presence of the committee member does not interfere with the investigation. NMSU will provide the Union with notification of unscheduled investigations. A

copy of any investigation report that NMSU receives from any government agency regarding a safety issue will be furnished to the Union upon request.

Section 10. No Retaliation.

No retaliation or disciplinary action will be taken against a BUE for exercising rights under the terms of this Article or under the laws and regulations established by any governmental agency regarding Health and Safety in the workplace and Occupational Hazards.

Section 11. Drug-Free Workplace and Academic Environment

Federal Drug and Alcohol Regulations. NMSU is subject to the provisions of the Drug-Free Workplace Act of 1988, the special Drug-Free Workforce rules promulgated by the Department of Defense, the Drug-Free Schools and Communities Act, and other state and federal laws and regulations. NMSU has directed the Chancellor to institute and maintain programs that meet the requirements of federal drug and alcohol laws and regulations. These programs are administered through HRS. [See ARP 16.65]. Applicants and BUEs, along with all other NMSU employees, are subject to drug and alcohol testing as required by law and by NMSU policy, as may be amended from time to time.

Article 31 - Training

Section 1. NMSU Responsibility.

- A. Job Training. NMSU recognizes its responsibility to provide relevant job training for BUEs to improve their proficiency in carrying out job duties. NMSU regularly offers training sessions for the development of skills, knowledge, abilities, and individual growth, in conformance with the institution's mission, vision and strategic plan. NMSU BUEs may request to attend such trainings. Supervisors also may require BUEs to attend these trainings, or other relevant training, to enhance work performance.
- B. Union Recommendations. The Union may submit written recommendations concerning training needs, and the same will be a topic of discussion between NMSU and the Union.
- C. Time of Training. Training will normally be conducted during regular business hours. If a Supervisor must choose between multiple BUEs within the same classification for job training, classification seniority will be the determining factor used if all other relevant circumstances are relatively equal as determined by NMSU. NMSU, at no cost to the BUE, will provide all training materials. All time spent in training sessions will be considered work time.
- D. CEUs. In the event a BUE's duties require completion of periodic Continuing Educational Units (CEUs), all time spent in required CEU courses will be considered work time. The costs of required CEU courses will be borne by NMSU.

- E. Cost of Licensing or Certification. The cost of licensing or certification, or renewals of licensing or certification, required to perform job duties will be borne by NMSU.
- F. Consequence for Failure to Attend. A BUE who fails or refuses to attend mandatory training will be subject to discipline, up to and including termination.

Section 2. New Technology.

- A. Training. NMSU will provide training so that BUEs may learn to use new technology where NMSU requires the use of such new technology.
- B. Conditions for Promotion or Appointment. NMSU will not require that promotions or appointment of BUEs be conditioned upon satisfactory completion of a technology-training program unless the training and competency standards are requirements of the position.

Article 32 - Uniforms and Equipment

Section 1. Uniformed Job Classifications.

For each uniformed job classification, NMSU will provide uniforms consistent with the practice in effect upon the effective date of this Agreement, provided no such BUE will be offered fewer than five (5) sets. Uniforms are laundered for BUEs working as vehicle mechanics and painters.

Section 2. Replacement of Uniforms.

As uniforms become damaged through normal wear and tear and no fault of the BUE, NMSU will provide replacement uniforms. BUEs will turn in their damaged uniforms and personal protective equipment prior to the Supervisor (or designee) ordering replacements. Replacement uniforms will be in new condition and fit properly. All issued uniforms will be returned to the appropriate Supervisor (or designee) by the BUE upon separation from NMSU or during leave without pay for periods of two weeks or more.

Section 3. Tools.

NMSU will provide, at no cost to BUEs, the proper tools for BUEs to safely complete their required tasks.

Article 33 - Physical Examinations

Section 1. Fitness for Duty

- A. Fitness for Duty. NMSU endeavors to provide a safe and productive work environment for the benefit of all members of the NMSU community. BUEs are expected to manage their health in such a way that they can safely and effectively perform their essential job functions and to discuss with their Supervisor any circumstances that may negatively affect their ability to do so. The Fitness for Duty examination process is not intended to be a substitute for sick or medical leave requests, workers' compensation claims, reporting of alleged violence in the workplace, or emergency response to situations where there is an immediate threat of harm, performance management, or disciplinary processes. Supervisors will continue to address performance problems and conduct through the performance appraisal process and corrective or disciplinary action, as appropriate.
- B. Evaluation by Supervisor. A Supervisor who receives reliable information from the affected BUE or others that the BUE may be unfit for duty, or through personal observation believes a BUE to be unfit for duty, will validate and document the information or observations as soon as is practicable and provide a report to HRS ELR to initiate a fitness for duty examination. Actions that may trigger the need to evaluate fitness for duty include, but are not limited to, medical restrictions, or issues such as problems with dexterity, coordination, concentration, memory, alertness, vision, speech, inappropriate interactions with coworkers or Supervisors, inappropriate reactions to criticism, or suicidal or threatening statements.
- C. HRS Review and Determination. HRS-ELR will: (1) review the circumstances that led to the referral for an evaluation; (2) determine whether a fitness-for-duty evaluation is necessary; (3) notify the BUE in writing if an evaluation is deemed necessary; (4) select the health care professional who will perform the evaluation; and (5) review results and determine what, if any, action is appropriate.
- D. Independent Medical Examination. NMSU may require an independent medical evaluation (IME) of the BUE's physical or mental capabilities to determine his or her ability to perform essential job functions, with or without reasonable accommodations. Such evaluations are conducted by an independent, third party, licensed health care professional and are undertaken only after approval by HRS ELR. To the extent possible, NMSU will protect the confidentiality of the valuation and results. Whenever NMSU requires a medical examination from a physician selected or approved by NMSU, NMSU will pay the cost of such examination.
- E. Action following IME. NMSU will take appropriate administrative action based upon the results of the IME. Where an IME reveals a physical or mental "disability," as defined by the Americans with Disabilities Act Amendments Act, the matter will be referred to the NMSU Office of Institutional Equity for a determination regarding reasonable accommodation as set forth in Section 2 below.

- F. Involvement of Third Parties. In any situation where there is a reasonable basis to think that a crime may have been committed or the BUE is making threats to harm the BUE or others, or is acting in a manner that is immediately dangerous to the BUE or others, the Supervisor will immediately notify the NMSU Police Department and, as soon as possible, HRS-ELR. In such cases, HRS-ELR or the Supervisor will notify the Employee Assistance Program (EAP) immediately, or if after business hours, then as soon as possible the next Business Day.

Section 2. ADAAA Interactive Process and Reasonable Accommodation.

If a health care professional determines that a BUE has a physical or mental disability that substantially impairs the BUE's ability to perform the essential functions of his or her position, OIE will work with the BUE and the Supervisor to determine if there is a reasonable accommodation(s) that will allow the BUE to continue working. Reasonable accommodation(s) are provided to any BUE determined by NMSU to be a "qualified individual with a disability," as that term is defined the Americans with Disabilities Act Amendments Act (ADAAA). NMSU will determine on a case-by-case basis, what reasonable accommodation(s) will be provided, if any, after the Supervisor, the BUE, and the BUE's medical provider(s), as necessary, engage in the ADAAA Interactive Process, coordinated by OIE. NMSU will assess the effectiveness of each proposed accommodation and determine whether the accommodation(s) will pose an undue hardship on NMSU or an undue risk of harm to the health or safety to the BUE or others. If an appropriate and reasonable accommodation cannot be made, other options (for example, placing the BUE on medical leave or terminating employment) may be considered and will be communicated to the BUE.

Section 3. Commercial Driver's License

NMSU will pay any costs to BUEs required to undergo physical examinations in connection with commercial drivers licensing required by the BUE's position. Whenever possible, examinations will be scheduled during the BUE's workday and the time spent to complete the examination will be considered work time.

CORRECTIVE ACTION AND REMEDIATION

Article 34 - Disciplinary Actions

The primary purpose of disciplinary action is to address performance, attendance, and conduct problems by continuing to identify problems, causes, and solutions. When possible, this will be accomplished in a positive and constructive way to help the BUE become a fully productive member of NMSU. In instances where a BUE commits a serious violation of policy, or shows insufficient improvement after initial remedial actions, or engages in repeat occurrences of improper conduct, or when performance deficiencies follow corrective action measures, a Supervisor may take appropriate further disciplinary action.

Section 1. Just Cause.

- A. Grounds for Discipline. A BUE will be disciplined only for Just Cause in accordance with this Agreement. Discipline will, in no case, be effective until the BUE has received written notice of the discipline. NMSU has the burden of proof in any proceeding under this Article.
- B. Just Cause Defined. "Just Cause" is generally described as any conduct, action, or inaction, arising from, connected with, or impacting the BUE's work, whether on or off duty, that is inconsistent with the BUE's obligation to NMSU, or violates NMSU's interests, policies, or procedures, including performance deficiencies. Although impossible to cite an all-inclusive list of actions that constitute Just Cause, examples include, but are not limited to:
1. Falsification of documents;
 2. Threatening, assaulting, or abusive behavior;
 3. Sexual or other illegal harassment, on or off campus, which may explicitly or implicitly affect an Employee's performance, or unreasonably interfere with a person's employment or academic endeavors;
 4. Jeopardizing the safety or health of an Employee, including oneself, or a student, guest, or customer of NMSU;
 5. Dishonesty, misrepresentation, omission, or intentional fabrication of facts or events;
 6. Negligent, incompetent, inefficient, or unacceptable performance of duties;
 7. Insubordination, which is willful disregard of reasonable directives or policies, or a defiant attitude of noncompliance toward applicable regulations, directives, or policies;
 8. Failure or refusal to complete mandatory training;
 9. Conduct that interferes with the efficient and ethical operation of NMSU;
 10. Inability or unwillingness to perform the duties required of a position;
 11. The use, possession, or presence in the bodily system of alcohol while at work, or reporting to work under the influence or being under the influence of alcohol while on the job;
 12. The manufacture, sale, distribution, or dispensing of illegal drugs at any location; the purchase, use, possession or storage of illegal drugs while present on NMSU property or during work hours for NMSU; reporting to work with illegal drugs

present in the BUE's bodily system; or being under the influence of illegal drugs while on the job;

13. Possession on NMSU property of drug paraphernalia or stolen property;
14. Conviction or admission of a felony or a misdemeanor involving moral turpitude to the extent permitted under NMSA Section 28-2-4;
15. Theft of, or careless, negligent, improper, unauthorized, or malicious use of NMSU Property, including equipment and funds;
16. Failure to report for work or to promptly report a justifiable reason for absence to the department head or immediate Supervisor;
17. Repeated tardiness, poor attendance, or abuse of leave;
18. Misconduct which adversely affects the interest or reputation of NMSU or its Employees;
19. Any repetition of offenses that previously resulted in a reprimand, warning, demotion, or notification of unacceptable performance or suspension;
20. Job abandonment. [*See* ARP 10.10, Part 7].

Section 2. Limitations on Imposition of Discipline.

- A. Fair and Impartial Discipline. NMSU agrees to administer discipline consistent with this Article. Similarly situated BUEs will be treated similarly regarding the application of disciplinary actions, but mitigating and aggravating circumstances will be considered.
- B. Procedural Steps. Before taking any disciplinary action related to a BUE's performance or behavior, the Supervisor, in consultation with HRS will:
 1. Investigate the alleged performance deficiencies, or improper conduct or behavior;
 2. Provide written notice to the BUE that the investigation could result in disciplinary action, allow union representation when requested by the BUE, and make an effort to hold meetings in private;
 3. At the conclusion of an investigation, consider all facts, including any mitigating circumstances;
 4. Consult with HRS to determine the appropriate disciplinary action, if any, to be imposed; and

5. Provide the BUE with written notice of the disciplinary action imposed in the case of Documented Verbal Warning or Written Reprimand (as defined below), or proposed, in the case of a more serious disciplinary action. The written notice of disciplinary action or proposed disciplinary action will contain the following:
 - a. The type of action being proposed;
 - b. The specific acts resulting in the proposed action;
 - c. The effective date of the proposed action;
 - d. A summary of the information used to support the proposed action;
 - e. A statement that the BUE may respond to the proposed action and allegations in writing or request a review hearing in writing, within two (2) Business Days of receipt of the notice;
 - f. A statement that if the BUE does not respond in writing to the notice or make a written request for a review hearing, the disciplinary action will become final and effective two Business Days after the notification is provided; and
 - g. A statement that the Union may appeal final action involving suspension, demotion, or termination through arbitration on the BUE's behalf, and that if the Union declines to appeal the final action through arbitration, the BUE may file a post-action appeal with HRS-ELR within fifteen (15) Business Days of receipt of the notification of discipline or proposed discipline or, if a Review Hearing was requested, within fifteen (15) Business Days of receipt of the notice of final determination following the review hearing process. [See ARP 10.10, Part 6].
- C. Administrative Leave. With HRS approval, a BUE may be placed on administrative leave with pay or subjected to other interim protective measures during any notification period or investigation of conduct or performance deficiencies. The placement on administrative leave is not a disciplinary action.
- D. Timing of Discipline. NMSU will impose disciplinary action no later than thirty (30) calendar days after it acquires knowledge of the BUE's alleged misconduct, unless facts and circumstances exist which require a longer period of time. If additional time is required, NMSU will notify the BUE prior to the expiration of the thirty (30) calendar days. Ongoing performance deficiencies may be the subject of disciplinary action at any time.
- E. Double Jeopardy. After taking disciplinary action against a BUE, NMSU may not impose any additional disciplinary action against that BUE for the same specific incident of misconduct.

Section 3. Options for Discipline.

The Supervisor may request a disciplinary action from the listing below as appropriate to the nature and severity of the offense or unacceptable performance or conduct. Progressive discipline will be used when deemed appropriate by NMSU. There are instances when a disciplinary action, including termination, is appropriate without first imposing a less severe form of discipline. Any discipline beyond a documented verbal warning requires prior approval from HRS.

- A. Documented Verbal Warning. The Supervisor gives the BUE an explicit verbal notification of unacceptable performance or policy violation, and prepares a memorandum of record for the departmental file. A copy of the memorandum is provided to the BUE. [See ARP 10.10, Part 3(A)].
- B. Written Reprimand. The Supervisor prepares a reprimand memorandum addressed to the BUE, obtains approval from HRS, and forwards a copy to HRS for inclusion in the BUE's file. A copy is provided to the BUE. [See ARP 10.10, Part 3(B)].
- C. Suspension. The BUE is placed on leave without pay for a specified period of time no less than (1) Work Day. The Supervisor obtains approval from HRS and the appropriate dean or vice president, then provides the BUE with at least (5) Business Days advance notification before imposition of Suspension. [See ARP 10.10, Part 3(C)].
- D. Demotion. The BUE is reassigned or reclassified to a different work assignment or lower pay grade.
- E. Involuntary Termination. The BUE is permanently separated from employment at NMSU and is ineligible for rehire. Termination of employment is appropriate in cases of egregious misconduct or performance issues, or failure to rectify performance or conduct issues after other disciplinary options have been exercised. A Supervisor obtains approval from HRS and the appropriate dean or vice president prior to delivering a termination (pre-termination) notice to the BUE. [See ARP 10.10, Part 3(D)].

Section 4. Review Hearing.

- A. Hearing Process. When a BUE makes a written request for a review of any imposition of discipline or any preliminary notification of proposed discipline of suspension, demotion, or termination, the Supervisor will immediately notify HRS. HRS will arrange an informal review hearing at least two (2) Business Days after the BUE's request. These steps will be followed: (1) the AVP HRS (or designee) will appoint an impartial hearing officer and set the hearing date and location; (2) the hearing officer will meet with the BUE, the BUE's immediate Supervisor (or designee), and a representative of HRS ELR; and (3) at the hearing, the BUE and other participants will have the opportunity to give testimony and present documents or other evidence relevant to the imposition of the discipline. Following the hearing, the hearing officer will issue a final determination.

- B. No Review Hearing Request. Should a BUE fail to respond in writing to a notice of proposed discipline, or respond but not request a review hearing, the Supervisor will consider the written response, if any, and issue a final determination, after consultation with the HRS administrator designated for such purposes.
- C. Other Hearing Guidelines.
 - 1. The BUE may be represented by a Union Representative or another advisor at the hearing, but neither will be allowed to answer questions posed to the BUE or to otherwise speak for the BUE. If the representative is an attorney, the BUE must inform the HRS representative at least ten (10) business days in advance to allow NMSU time to arrange for its counsel to be present at the hearing.
 - 2. NMSU reserves the right to have its counsel present at any and all disciplinary hearings.
 - 3. Time limits specified may be changed if requested or if circumstances warrant a revision. [*See generally* ARP 10.10, Part 6].

Section 5. Right to Union Representation.

A BUE has the right to Union representation, if requested by the BUE, in any of the following events: (1) during any investigatory interview or discussion with a BUE who is the subject of an investigation when the BUE reasonably believes the interview could lead to discipline; (2) at a disciplinary hearing regarding the BUE; and (3) at each step of a Grievance, in accordance with this Agreement. The Union Representative may consult with and advise the BUE at any time during the course of the relevant meeting or outside the meeting. The Union Representative may raise legitimate objections to questions during an investigatory interview or hearing, but may not unreasonably delay or interfere with the proceeding or answer questions on behalf of the BUE.

Section 6. Other Procedures.

- A. Mutual Agreement. This Article does not preclude NMSU, a BUE, and the Union from mutually agreeing to: (1) hold in abeyance a disciplinary action for a period not to exceed six (6) months in order to permit the BUE to improve conduct or performance; or (2) impose a lesser disciplinary action as a final and binding action not subject to appeal.
- B. Failure to Grieve or Appeal. If a BUE fails to grieve or appeal in accordance with the procedures provided in this Agreement, the BUE is considered to have accepted the decision.
- C. Time limits. Time limits specified may be changed when requests are made or circumstances warrant. The Parties may also agree to waive or extend any time limits as stated in this Article. [*See* ARP 10.10, Part 6].

- D. Exclusive Remedy. The Union's invocation of grievance arbitration of a suspension, demotion, or termination under this Agreement precludes the use of any other NMSU appeals processes that might otherwise apply.
- E. Resolution Encouraged. Each Party will make a reasonable effort to resolve a Grievance or appeal at the lowest level possible.
- F. Polygraph. A BUE will not be required to submit to a polygraph test.
- G. Self-Representation. A BUE may elect self-representation in any disciplinary matter consistent with Articles 34 and 35 of this Agreement.

Article 35 - Grievance and Arbitration Procedure

Section 1. Grievance Definition.

"Grievance", as used in this Article, means a Union-initiated resolution procedure, based upon an alleged violation, misapplication, or misinterpretation of this Agreement. However, the Preamble and Articles 1 through 3 of this Agreement are not subject to this procedure. The term Grievance does not include a non-union grievance process provided in ARP 10.20.

Section 2. Informal Resolution.

Informal resolution of issues is encouraged before the Parties resort to a formal Grievance procedure. Informal resolution of Grievances prior to Step 1, as indicated below, will not establish a precedent or otherwise become binding as past practice or interpretation of this Agreement.

Section 3. Alternative Grievance Procedures.

- A. Non-Union Grievance. An individual BUE may bring an individual, non-Union grievance in accordance with ARP 10.20 without the consent of the Union.
- B. Union-Sponsored Grievance. Only the Union may bring a grievance or invoke arbitration under this Article.
- C. Exclusive Remedy. Utilizing this Union-Sponsored Grievance and arbitration procedure on an issue, in part or in whole, precludes the use of procedures set forth in ARP 10.20, or any other NMSU appeals process that may apply to the same issue. Use of any other non-union grievance or appeals process provided by NMSU precludes the use of this Union-Sponsored Grievance and arbitration procedure on the same issue.

Section 4. Steps in the Grievance Procedure.

A Grievance will follow these steps:

A. Grievance Step 1 - Initiation

Grievances are filed by the Union, or with consent of the Union, on behalf of an aggrieved BUE, or group of BUEs, covered by this Agreement. Suspensions, demotions, and terminations are not eligible for the Grievance process, but will proceed directly to arbitration, as provided below, if requested by the Union within ten (10) Business Days from the date of the final determination to suspend, demote, or terminate.

Grievances must be initiated at Step 1 and continue to Step 2, by presenting a written Grievance (on the Union approved form) to the grievant's immediate Supervisor promptly and no later than ten (10) Business Days after the grievant or the Union was aware, or reasonably could have become aware, of the incident(s) giving rise to the alleged Grievance. The Union or grievant will submit the written Grievance to the immediate Supervisor, containing:

1. The BUE's name, job title, and department;
2. The name, address, and telephone of the Union Representative, if any;
3. The Article(s) of this Agreement alleged to have been violated;
4. A description of the alleged violation;
5. The relief requested; and
6. The signature of the grievant or of the Union Representative.

B. Grievance Step 2 - Immediate Supervisor Level

The immediate Supervisor will respond to the Grievance in writing within ten (10) Business Days of receipt of the written Grievance. Failure to respond will constitute a denial of the Grievance. If the Grievance is not satisfactorily resolved at Step 2, the Union may move to Step 3 by filing the written Grievance with the Department Head/Director Grievance Representative [hereinafter referred to as "DGR"] in each Department within ten (10) Business Days of receiving the Step 2 response.

C. Grievance Step 3 - Department Head/Director Level

The DGR is a person designated by NMSU in each Department to be the recipient of Step 3 Grievances on behalf of NMSU. If no DGR has been designated, then the Supervisor of the grievant's immediate Supervisor will be considered the DGR. The DGR will respond in writing within ten (10) Business Days of receipt of the written Grievance. Failure to respond will constitute a denial of the Grievance. The Union may then move to Step 4 by filing the Grievance with the Dean Vice President Grievance Representative [hereinafter referred to as "VPGR"] within ten (10) Business Days of receiving the Step 3 response.

D. Grievance Step 4 - Dean/Vice President Level

The Union or grievant will submit the written Grievance to the VPGR in the major organizational unit. The VPGR is a person designated by NMSU in each major organizational unit to be the recipient of Step 4 Grievances on behalf of NMSU. If no VPGR has been designated, then the top administrative official of the major organizational unit will be considered the VPGR. The VPGR may designate a senior administrator within his/her unit as designee to respond on his/her behalf. The VPGR or designee will respond in writing within ten (10) Business Days of receiving the written Grievance. Failure to respond will constitute a denial of the Grievance. The Union may then move the Grievance to Step 5 by filing with the Human Resource Services Grievance Representative ("HRSGR") within ten (10) Business Days of receiving the Step 4 response.

E. Grievance Step 5 - Human Resources Level

The Union or the grievant will submit the written Grievance to the HRSGR in writing. The HRSGR is a person within HRS designated and authorized by NMSU to receive and respond to Step 5 Grievances on behalf of NMSU. The HRSGR will respond in writing within ten (10) Business Days of receipt of the written Grievance. Failure to respond will constitute a denial of the Grievance. Except where the Union invokes arbitration as provided below, the determination by the HRSGR will be final.

Section 5. Final and Binding Arbitration.

If the Grievance is not satisfactorily resolved at the conclusion of the Grievance Procedure, the Union may elect to submit the Grievance to arbitration as provided below. Arbitration may only be invoked by the Union, not by the individual grievant.

- A. Written Demand. The Union may invoke arbitration by serving a written demand for arbitration to the HRSGR within thirty (30) calendar days after the time for HRSGR response has elapsed.
- B. Request for Panel. Within ten (10) Business Days of the written demand for arbitration, the Union will make a request for a panel of seven arbitrators from either the Federal Mediation and Conciliation Service (FMCS) or the American Arbitration Association (AAA), at its discretion, unless the Parties by such time can agree upon an arbitrator or alternative panel of arbitrators from which to select an arbitrator. Within ten (10) Business Days of the receipt of a list of arbitrators or agreement to an alternative panel, the Parties will meet to select the arbitrator. The selection will be made by the Union and NMSU alternately eliminating names. The last name remaining will be the arbitrator. The Parties will flip a coin to determine who will strike the first name. NMSU will reimburse the Union for one-half of the cost of obtaining a panel of arbitrators from FMCS or AAA, unless the matter is resolved prior to an arbitration hearing being held.

- C. Arbitrator's Decision. The decision of the arbitrator will be based upon the facts established by the testimony and documents presented in the case. The arbitrator will have no power to add to, subtract from, alter, or modify any of the terms of the Agreement, but may give appropriate interpretation or application to such terms and provide appropriate relief. The arbitrator will not have authority to make an award that includes a fine or other punitive damages or award of attorney's fees. The arbitrator's decision will be final and binding on the Parties, subject only to judicial review in accordance with the New Mexico Uniform Arbitration Act.
- D. Arbitrator's Fees and Expenses. Each Party will pay one-half of the arbitrator's fees and expenses.

Section 6. Miscellaneous Provisions.

- A. Recording. Tape recorders or other electronic recording devices will not be used by any Party participating in the Grievance, except by mutual agreement of the Parties. This provision will not apply to arbitration hearings.
- B. Modifying Time Limits or Steps by Agreement. Any of the time limits or steps set out in this procedure may be extended, waived, or otherwise modified by written agreement of the Parties.
- C. Skipping Steps. Those steps in the Grievance procedure that result in duplication of a step for a particular grievant may be skipped by the grievant (e.g., a grievant whose immediate Supervisor is a department head or dean).
- D. Failure to Respond. If NMSU fails to respond within the designated time limits, the Grievance is deemed denied and the Union may advance the Grievance to the next step in accordance with the procedures set forth in this Article.
- E. Grievable Actions. The issue of whether the action is grievable may be properly raised at any step of the Grievance procedure. The arbitrator will decide all issues regarding whether the action is grievable.
- F. Withdrawal of Grievance. A Grievance may be withdrawn by the Union at any step of the Grievance procedure without prejudice, except as to objections to timeliness.
- G. Legal Counsel. The Union and NMSU may be represented by legal counsel in arbitration.
- H. Waiver. The right to invoke arbitration is waived by any failure to strictly comply with the time limits set forth in all Grievance steps. Time limits may be extended only by mutual agreement in writing, signed by both the Union and NMSU. It is the intention of the Parties that the Grievance procedure set forth herein will be the preferred remedy of the Parties for any alleged breach of this Agreement.

LABOR MANAGEMENT ISSUES

Article 36 - Labor Management Committee

Section 1. Purpose.

To help promote a mutually constructive and cooperative relationship, the Parties agree to establish a joint Labor Management Committee [hereinafter referred to as the "Committee"] which will be a standing committee for the duration of this Agreement. The Committee will have the following specific objectives:

1. Foster communication between the Parties;
2. Serve as a forum to discuss issues of mutual concern;
3. Work to build consensus for joint problem-solving and planning where the Parties recognize it is best to have a shared position;
4. Inform and educate the NMSU community about the concept and benefits of a Labor Management partnership;
5. Communicate and share the activities of the Committee with the NMSU community; and
6. Make recommendations to the appropriate NMSU bodies and monitor the progress of such actions.

Section 2. Authority.

- A. The Committee will have no authority to modify the terms of this Agreement. Disputes over alleged violations of this Agreement must be pursued through the Grievance and Arbitration provision of this Agreement.
- B. The Committee will forward its recommendations to appropriate administrative designee(s) for consideration. No such recommendation will be considered or treated as constituting a binding agreement between the Parties.

Section 3. Composition of the Committee.

The Union and NMSU will each be permitted four (4) representatives on the Committee. Additionally, the Union and NMSU will each be permitted two (2) alternate representatives to attend when representatives from the Committee are unable to attend. The Union and NMSU will each designate one (1) member to serve as co-chair. The co-chairs, along with other Committee Members, will carry out all functions of the Committee, plan the agenda and arrange meeting dates and times.

Section 4. Meetings.

The Committee will meet at least once per quarter, or as the Committee members mutually agree. Members may attend meetings that are held during regular business hours on paid time provided they have received supervisory approval. Such supervisory approval will not be unreasonably withheld. Committee meetings will usually be held on NMSU Property unless the Committee agrees to other accommodations at no expense to NMSU.

Section 5. Activities.

Among other activities that Committee members may mutually agree to pursue, Committee members will pursue the following:

1. A recommended plan for training Supervisors and Union Representatives on this Agreement.
2. A recommended plan for the Union's consultation in the planning and budgeting process of NMSU comparable to opportunities for consultation available to other Employee groups.
3. Any other activity the Committee deems warranted.

SIGNATURE PAGE

By signing below, the individuals represent that they are duly authorized to sign this Collective Bargaining Agreement made by and between the Regents of New Mexico State University (NMSU) and the American Federation of State, County and Municipal Employees, Council 18, Local 2393 (the Union), on behalf of their respective Party, and indicate their full and complete agreement to the terms set forth in this document.

FOR THE UNION:

FOR NMSU:

Yvonne Mendoza, AFSCME President

Dan E. Arvizu, Chancellor

Date: _____

Date: _____

Ammu Devasthali, Chair
NMSU Board of Regents

Date: _____



Board of Regents Meeting
Meeting Date: August 24, 2022
Agenda Item Cover Page

Agenda Item # E-1

Action Item

Consent Item

Informational Item

Presented By: D'Anne Stuart

Associate Vice President

Agenda Item: Resolution No. 2022-03: New Mexico Finance Authority (NMFA) Application for Financial Assistance and Project Approval

Requested Action of the Board of Regents: Approval for the NMFA Application Submission

Executive Summary: The Board is being asked to authorize the administration to submit an application to the New Mexico Finance Authority for review and approval to proceed with arrangements for financing the Project. The rates obtained by NMFA will be passed along to NMSU.

Prior Approvals:

Regents Financial Strategies, Performance and Budget Committee May, 25, 2022

RESOLUTION

AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO FINANCE AUTHORITY.

WHEREAS, New Mexico State University ("Governmental Unit") is a qualified entity under the New Mexico Finance Authority Act, Sections 6-21-1 through 6-21-31, NMSA 1978 ("Act"), and New Mexico State University Board of Regents ("Governing Body") is authorized to borrow funds and/or issue bonds for financing of public projects for benefit of the Governmental Unit; and

WHEREAS, the New Mexico Finance Authority ("Finance Authority") has instituted a program for financing of projects from the public project revolving fund created under the Act and has developed an application procedure whereby the Governing Body may submit an application ("Application") for financial assistance from the Finance Authority for public projects; and

WHEREAS, the Governing Body intends to issue up to \$28,500,000 Regents of New Mexico State University Improvement Revenue Bonds, Series 2022 in one or more series (the "Bonds"); and

WHEREAS, the Governing Body intends to issue the Bonds to provide funds for (i) purchasing, erecting, altering, remodeling, expanding, improving, repairing, furnishing and equipping of buildings, improvements and facilities for the use of the University, including but not limited to improving the University's Recreation Activity and Aquatic Center, Aggie Memorial Stadium, Corbett Center Student Union Building and the Pan American Center, (ii) funding capitalized interest on the Bonds, if necessary, and (iii) paying Expenses for the Bonds; and

WHEREAS, the application prescribed by the Finance Authority has been completed and submitted to the Governing Body and this resolution approving submission of the completed Application to the Finance Authority for its consideration and review is required as part of the Application.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF NEW MEXICO STATE UNIVERSITY:

Section 1. That all action (not consistent with the provision hereof) heretofore taken by the Governing Body and the officers and employees thereof directed toward the Application and the Project, be and the same is hereby ratified, approved and confirmed.

Section 2. That the completed Application submitted to the Governing Body, be and the same is hereby approved and confirmed.

Section 3. That the officers and employees of the Governing Body are hereby directed and requested to submit the completed Application to the Finance Authority for its review, and are further authorized to take such other action as may be requested by the Finance Authority in its consideration and review of the Application and to further proceed with arrangements for financing the Project.

Section 4. All acts and resolutions in conflict with this resolution are hereby rescinded, annulled and repealed.

Section 5. This resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED this 24th day of August, 2022.

THE BOARD OF REGENTS OF
NEW MEXICO STATE UNIVERSITY

By _____
Ammu Devasthali, Chair
Board Of Regents

[SEAL]

ATTEST:

By _____
Neal Bitsie, Secretary-Treasurer,
Board Of Regents

Reference Material

NEW MEXICO FINANCE AUTHORITY



BE BOLD. Shape the Future.®



**NEW MEXICO
FINANCE AUTHORITY**

NMFA Use Only:

App. #:	-PP
FA assigned:	
Legislative Authorization	

**PUBLIC PROJECT REVOLVING FUND
BUILDING APPLICATION**

I. GENERAL INFORMATION

A. APPLICANT /ENTITY

Application Date:	
--------------------------	--

Applicant/Entity:			
Address:			
County		Census Tract:	
Federal Employer Identification Number (EIN) as issued by the IRS:			
Legislative District:	Senate:		House:
Phone:		Fax:	
Individual Completing Application:			
Address:			
Phone:		Fax:	
		Email Address:	

B. CONSULTING PROFESSIONALS (Bond/Legal Counsel, Architect, Engineer, etc.), if available:

Firm:			
Contact:			
Address:			
Phone:		Fax:	
		Email Address:	

C. PRIMARY CONTACT PERSON:

Name:					
Contact:					
Address:					
Phone:		Fax:		Email Address:	

II. PROJECT SUMMARY

A. Project Description. Complete the following information in the provided space below. Include any additional documents that may be useful in reviewing this project, i.e. architectural designs, feasibility studies, business plan, etc.

1. Description of the project.

2. Proposed Project Start Date: _____ Proposed Project Completion Date: _____
 When do you need NMFA funds available? _____

3. How will the ongoing maintenance, operation, and replacement of this project be funded?

4. Provide a detailed drawdown schedule for project payments. The schedule may reflect monthly or quarterly payments.

B. Total Project Cost & Sources of Funds Detail.

Construction Activities	NMFA Funds Requested	Other Public Funds*	Private Funds	Total
Planning and Design	\$	\$	\$	\$
Construction	\$	\$	\$	\$
Equipment	\$	\$	\$	\$
Infrastructure Activities				
Facility Acquisition	\$	\$	\$	\$
Land Acquisition	\$	\$	\$	\$
Utilities (Electric, Gas, Water, etc.)	\$	\$	\$	\$
Engineering and Architectural	\$	\$	\$	\$
Contingencies	\$	\$	\$	\$
Project Administration/Legal Fees	\$	\$	\$	\$
Other	\$	\$	\$	\$
Total Cost:	\$	\$	\$	\$

*Specify any other public funds, and amounts and terms of these funds, i.e. FmHA, CDBG, EPA, etc.

Source	Amount	Terms / # of Years
	\$	
	\$	
	\$	
Total:	\$	

Attach a letter verifying that each non-NMFA funding source has been approved, or is in the process of being approved for this project. Explain any exceptions.

C. Will this project require right-of-way acquisition? Yes No

If yes, specify any right-of-way needs, and whether acquisition may or may not delay beginning of project.

D. Who will hold title to the land where the project is to be located?

If this is land owned by the Bureau of Land Management, State Land Office, or Tribal Land, please attach lease agreements. (If there is no clear title, attach an explanation of ownership arrangements)

E. Does this project require a Joint Powers Agreement (JPA)? Yes No

If yes, provide a copy of the JPA, which should include a list of the current membership.

III. FINANCING

A. 1. Specify the revenue to be pledged as security for the NMFA loan (a revenue source must be pledged for this type of project).

- Municipal Local Option GRT – please specify: _____
- County Option GRT – please specify: _____
- Other Tax-Based Revenue: _____
- State-Shared GRT
- Law Enforcement Funds
- Fire Protection Funds
- Net System Revenues: _____
- Other Revenue: _____

2. Is there an alternative revenue source available to pledge to pay debt service in the event that the primary pledged revenue is unavailable or insufficient? Yes No If yes, specify:

3. Preferred financing term: _____ years.

B. Is any debt being repaid from the revenue source(s) referenced in A (1)? Yes No

If yes, provide bond or loan documents and payment schedule for any existing debt service being paid from the same revenues that would be used to repay a NMFA loan.

IV. READINESS TO PROCEED ITEMS

A. **The following items must accompany this application in order for this application to be considered complete:**

- Equipment cost breakdown (if applicable)
- Three most recently completed fiscal year audit reports
- Current unaudited financials
- Current fiscal year budget
- Verification of ownership of land where project will be located
- Documentation that each non-NMFA project funding source has been approved, or is in the process of being approved (if applicable)

- Joint Powers Agreement (if applicable)

B. In addition, complete the following information in the provided space below. **These items will be required prior to disbursement of NMFA proceeds:**

- Provide a detailed drawdown schedule for project payments
- Final technical information for the project, stamped and approved by a registered engineer
- Cost breakdown of the project, certifiable by either an engineer or architect
- Area map, site map, and floor map (if applicable)
- Verification of ownership of land where project will be located
- Documentation that each Non-NMFA project funding source has been approved, or is in the process of being approved (if applicable)
- Documentation showing status of right-of-way acquisition (if applicable)
- Explanation of land ownership arrangements (if applicable)
- List all required permits and licenses necessary to complete this project. Detail the status of each item, a plan of action, and time frame for completing incomplete permits and licenses. Also provide a copy of all permits and licenses.
- Is there litigation pending which would have a bearing on this project or applicant?
Yes No
If yes, provide a complete summary of all circumstances relating to such litigation.

Indicate the regular meeting dates for your authorizing body: _____

V. CERTIFICATION

I certify that:

We have the authority to request and incur the debt described in this application and, upon award, will enter into a contract for the repayment of any NMFA loans and/or bonds.

We will comply with all applicable state and federal regulations and requirements.

To the best of my knowledge all information contained in this application is valid and accurate and the submission of this application has been authorized by the governing body of the undersigned jurisdiction.

Signature:

Title:

(highest elected official)

Jurisdiction:

Print Name:

Date:

Signature:

Date:

Finance Officer/Director:

Fiscal Year 6/30	2013A				2013B				2014 Loan				2017A			
	Principal (4/1)	Coupon	Interest	Total	Principal (4/1)	Coupon	Interest	Total	Principal (4/1)	Coupon	Interest	Total	Principal (4/1)	Coupon	Interest	Total
2023	770,000	4.00%	351,200	1,121,200	1,705,000	5.00%	169,750	1,874,750	1,165,000	3.07%	252,815	1,417,815	1,635,000	5.000%	1,715,375	3,350,375
2024	805,000	4.00%	320,400	1,125,400	825,000	5.00%	84,500	909,500	1,240,000	3.07%	217,049	1,457,049	1,720,000	5.000%	1,633,625	3,353,625
2025	830,000	4.00%	288,200	1,118,200	865,000	5.00%	43,250	908,250	1,325,000	3.07%	178,981	1,503,981	1,795,000	5.000%	1,547,625	3,342,625
2026	870,000	3.00%	255,000	1,125,000					1,410,000	3.07%	138,304	1,548,304	1,890,000	5.000%	1,457,875	3,347,875
2027	890,000	3.13%	228,900	1,118,900					1,500,000	3.07%	95,017	1,595,017	1,290,000	5.000%	1,363,375	2,653,375
2028	920,000	3.25%	201,088	1,121,088					1,595,000	3.07%	48,967	1,643,967	1,350,000	5.000%	1,298,875	2,648,875
2029	950,000	3.25%	171,188	1,121,188									1,420,000	5.000%	1,231,375	2,651,375
2030	980,000	3.25%	140,313	1,120,313									1,490,000	5.000%	1,160,375	2,650,375
2031	1,010,000	3.38%	108,463	1,118,463									1,565,000	5.000%	1,085,875	2,650,875
2032	1,045,000	3.50%	74,375	1,119,375									1,640,000	5.000%	1,007,625	2,647,625
2033	1,080,000	3.50%	37,800	1,117,800									1,725,000	5.000%	925,625	2,650,625
2034													1,810,000	5.000%	839,375	2,649,375
2035													1,900,000	5.000%	748,875	2,648,875
2036													1,995,000	5.000%	653,875	2,648,875
2037													2,100,000	3.375%	554,125	2,654,125
2038													1,750,000	5.000%	483,250	2,233,250
2039													1,835,000	5.000%	395,750	2,230,750
2040													1,930,000	5.000%	304,000	2,234,000
2041													2,025,000	5.000%	207,500	2,232,500
2042													2,125,000	5.000%	106,250	2,231,250
Total	10,150,000		2,176,925	12,326,925	3,395,000		297,500	3,692,500	8,235,000		931,131	9,166,131	34,990,000		18,720,625	53,710,625

Fiscal Year 6/30	2017B				2017C				Series 2019A			
	Principal (4/1)	Coupon	Interest	Total	Principal (4/1)	Coupon	Interest	Total	Principal (4/1)	Coupon	Interest	Total
2023	810,000	2.720%	552,464	1,362,464	585,000	5.000%	561,950	1,146,950	1,450,000	5.000%	693,250	2,143,250
2024	830,000	2.920%	530,432	1,360,432	615,000	5.000%	532,700	1,147,700	1,525,000	5.000%	620,750	2,145,750
2025	855,000	3.020%	506,196	1,361,196	645,000	5.000%	501,950	1,146,950	1,600,000	5.000%	544,500	2,144,500
2026	880,000	3.150%	480,375	1,360,375	675,000	5.000%	469,700	1,144,700	1,685,000	5.000%	464,500	2,149,500
2027	910,000	3.250%	452,655	1,362,655	710,000	5.000%	435,950	1,145,950	1,765,000	5.000%	380,250	2,145,250
2028	940,000	3.400%	423,080	1,363,080	745,000	5.000%	400,450	1,145,450	1,855,000	5.000%	292,000	2,147,000
2029	970,000	3.550%	391,120	1,361,120	780,000	5.000%	363,200	1,143,200	1,945,000	5.000%	199,250	2,144,250
2030	1,005,000	3.650%	356,685	1,361,685	820,000	5.000%	324,200	1,144,200	2,040,000	5.000%	102,000	2,142,000
2031	1,040,000	3.750%	320,003	1,360,003	860,000	5.000%	283,200	1,143,200				
2032	1,080,000	3.800%	281,003	1,361,003	905,000	4.000%	240,200	1,145,200				
2033	1,125,000	3.950%	239,963	1,364,963	940,000	4.000%	204,000	1,144,000				
2034	1,165,000	3.950%	195,525	1,360,525	980,000	4.000%	166,400	1,146,400				
2035	1,215,000	3.950%	149,508	1,364,508	1,020,000	4.000%	127,200	1,147,200				
2036	1,260,000	3.950%	101,515	1,361,515	1,060,000	4.000%	86,400	1,146,400				
2037	1,310,000	3.950%	51,745	1,361,745	1,100,000	4.000%	44,000	1,144,000				
2038												
2039												
2040												
2041												
2042												
Total	15,395,000		5,032,267	20,427,267	12,440,000		4,741,500	17,181,500	13,865,000		3,296,500	17,161,500

Fiscal Year 6/30	Series 2019B				Total Debt Service		
	Principal (4/1)	Coupon	Interest	Total	Principal (4/1)	Interest	Total
2023	335,000	2.230%	233,097	568,097	8,455,000	4,529,901	12,984,901
2024	340,000	2.330%	225,627	565,627	7,900,000	4,165,083	12,065,083
2025	350,000	2.410%	217,705	567,705	8,265,000	3,828,407	12,093,407
2026	360,000	2.510%	209,270	569,270	7,770,000	3,475,023	11,245,023
2027	370,000	2.600%	200,234	570,234	7,435,000	3,156,380	10,591,380
2028	375,000	2.700%	190,614	565,614	7,780,000	2,855,073	10,635,073
2029	390,000	2.750%	180,489	570,489	6,455,000	2,536,621	8,991,621
2030	400,000	2.850%	169,764	569,764	6,735,000	2,253,336	8,988,336
2031	410,000	2.950%	158,364	568,364	4,885,000	1,955,904	6,840,904
2032	420,000	3.000%	146,269	566,269	5,090,000	1,749,471	6,839,471
2033	435,000	3.050%	133,669	568,669	5,305,000	1,541,056	6,846,056
2034	445,000	3.100%	120,401	565,401	4,400,000	1,321,701	5,721,701
2035	460,000	3.530%	106,606	566,606	4,595,000	1,132,189	5,727,189
2036	475,000	3.530%	90,368	565,368	4,790,000	932,158	5,722,158
2037	495,000	3.530%	73,601	568,601	5,005,000	723,471	5,728,471
2038	510,000	3.530%	56,127	566,127	2,260,000	539,377	2,799,377
2039	530,000	3.530%	38,124	568,124	2,365,000	433,874	2,798,874
2040	550,000	3.530%	19,415	569,415	2,480,000	323,415	2,803,415
2041					2,025,000	207,500	2,232,500
2042					2,125,000	106,250	2,231,250
Total	7,650,000		2,569,739	10,219,739	106,120,000	37,766,187	143,886,187



Board of Regents Meeting
Meeting Date: August 24, 2022
Agenda Item Cover Page

Agenda Item # E-2

Action Item

Consent Item

Informational Item

Presented By: D'Anne Stuart

Associate Vice President

Agenda Item: Resolution No. 2022-04: Resolution Authorizing Revenue Bond Issuance Series 2022

Requested Action of the Board of Regents: Approval of Resolution Declaring the Board of Regents' Authorization to Issue Series 2022 System Revenue Bonds.

Executive Summary: This resolution authorizes administration to proceed with the issuance of revenue bonds not to exceed \$28.5 M and delegates authority to approve the final terms of the bonds within established parameters.

The bond issuance proceeds will be used to fund facility improvements including, but not limited to, Recreation Activity, Aquatic Center, Aggie Memorial Stadium, Corbett Center Student Union and Pan American Center.

Prior Approvals:

Regents Financial Strategies, Performance and Budget Committee May, 25, 2022

Final

STATE OF NEW MEXICO)
 COUNTY OF DOÑA ANA)ss.
 NEW MEXICO STATE UNIVERSITY)

ON THIS the 24th day of August, 2022, the Board of Regents of New Mexico State University, convened in a special meeting in full conformity with the law and the rules and regulations of the Regents in the Educational Services Building on the New Mexico State University campus, in Las Cruces, New Mexico, at the hour of 9:00 am. Upon roll call, the following members were found to be present:

Chair: _____

Vice Chair: _____

Secretary-Treasurer: _____

Members: _____

Absent: _____

Also present: _____

The Chair announced that one of the items on the agenda for the meeting was the consideration of a resolution authorizing issuance of the Regents of New Mexico State University Improvement Revenue Bonds, Series 2022 in an aggregate principal amount not to exceed \$28,500,000 to be issued in one or more series.

Thereupon, there was officially filed with the Secretary-Treasurer, the Chair and each Member a copy of a proposed bond resolution in final form.

RESOLUTION NO. ____

AUTHORIZING THE ISSUANCE AND SALE OF UP TO \$28,500,000 OF THE REGENTS OF NEW MEXICO STATE UNIVERSITY IMPROVEMENT REVENUE BONDS, SERIES 2022 IN ONE OR MORE SERIES TO PROVIDE FUNDS FOR PURCHASING, ERECTING, ALTERING, REMODELING, EXPANDING, IMPROVING, REPAIRING, FURNISHING AND EQUIPPING BUILDINGS, IMPROVEMENTS AND FACILITIES FOR THE USE OF NEW MEXICO STATE UNIVERSITY, INCLUDING, BUT NOT LIMITED TO IMPROVING THE UNIVERSITY'S RECREATION ACTIVITY AND AQUATIC CENTER, AGGIE MEMORIAL STADIUM, CORBETT CENTER STUDENT UNION BUILDING AND PAN AMERICAN CENTER, FUNDING CAPITALIZED INTEREST, IF NEEDED, AND PAYING THE EXPENSES RELATED TO THE ISSUANCE OF THE BONDS; PROVIDING FOR THE FORM, TERMS AND CONDITIONS OF THE BONDS, DELEGATING AUTHORITY TO THE DELEGATE TO EXECUTE AND DELIVER A BOND PURCHASE AGREEMENT FOR THE SALE OF THE BONDS TO THE PURCHASER PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; PRESCRIBING OTHER DETAILS PERTAINING TO THE PAYMENT OF PRINCIPAL OF AND INTEREST ON SUCH BONDS; ENTERING INTO CERTAIN COVENANTS AND OTHER AGREEMENTS; AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, the Regents of New Mexico State University (hereinafter called "Board" or "Regents", respectively), on behalf of New Mexico State University, a state educational institution established by Section 11 of the Article XII of the State Constitution (hereinafter called "New Mexico State University" or "University," respectively), has the following revenue bonds outstanding which have been issued pursuant to the general laws of the State of New Mexico, including Sections 6-17-1 through 6-17-19, 6-14-1 through 6-14-12 and 21-8-1 through 21-8-44 NMSA 1978, being as follows:

The Regents of New Mexico State University Improvement Revenue Bonds, Series 2013A dated April 17, 2013, now outstanding in the principal amount of \$9,380,000 maturing on April 1, 2023 through April 1, 2033 (hereinafter called the "Series 2013A Bonds"); and

The Regents of New Mexico State University Refunding Revenue Bonds, Series 2013B dated April 17, 2013, now outstanding in the principal amount of \$1,690,000 maturing on April 1, 2023 through April 1, 2025 (hereinafter called the "Series 2013B Bonds" and, together with the Series 2013A Bonds, the "Series 2013 Bonds"); and

The Regents of New Mexico State University Subordinate Lien Improvement Revenue Note, Series 2014 dated April 21, 2014, now outstanding in the principal amount of

\$5,830,000 maturing April 1, 2023 through April 1, 2028 (hereinafter called the “Series 2014 Note”); and

The Regents of New Mexico State University System Refunding and Improvement Revenue Bonds, Series 2017A dated July 13, 2017, now outstanding in the principal amount of \$26,660,000 maturing April 1, 2023 through April 1, 2042 (hereinafter called the “Series 2017A Bonds”); and

The Regents of New Mexico State University Taxable Refunding Revenue Bonds, Series 2017B, dated July 13, 2017, now outstanding in the principal amount of \$11,110,000 maturing April 1, 2023 through April 1, 2037 (hereinafter called the “Series 2017B Bonds”); and

The Regents of New Mexico State University Refunding Revenue Bonds, Series 2017C (Crossover Refunding), dated July 13, 2017, now outstanding in the principal amount of \$9,210,000 maturing April 1, 2023 through April 1, 2037 (hereinafter called the “Series 2017C Bonds” and together with the Series 2017A Bonds and Series 2017B Bonds, the “Series 2017 Bonds”); and

The Regents of New Mexico State University Refunding Revenue Bonds, Series 2019A, dated November 13, 2019, now outstanding in the principal amount of \$13,865,000 maturing April 1, 2023 through April 1, 2030 (hereinafter called the “Series 2019A Bonds”); and

The Regents of New Mexico State University Taxable Refunding Revenue Bonds, Series 2019B, dated November 13, 2019, now outstanding in the principal amount of \$5,130,000 maturing April 1, 2023 through April 1, 2040 (hereinafter called the “Series 2019B Bonds” and together with the Series 2019A Bonds, the “Series 2019 Bonds”); and

WHEREAS, other than the Series 2013 Bonds, the Series 2017 Bonds, and the Series 2019 Bonds (collectively, the “Senior Lien Parity Bonds”), the University does not have any other obligations outstanding payable from and constituting a first lien on the Pledged Revenues; and

WHEREAS, other than the Series 2014 Note, the University does not have any obligations outstanding payable from and constituting a subordinate lien on the Pledged Revenues; and

WHEREAS, it is necessary and advisable to authorize the issuance and delivery of additional senior lien parity bonds for the Improvement Project; and

WHEREAS, for such reasons the Regents consider it necessary and advisable and in the best interests of the University that the Series 2022 Bonds be issued in an amount not to exceed \$28,500,000 in one or more series; and

WHEREAS, the proceeds of the Series 2022 Bonds and other legally available moneys of the University, if required, will be sufficient to pay the costs of the Improvement Project; and

WHEREAS, it is in the best interests of the University to sell the Bonds in a private placement to the New Mexico Finance Authority (the "Purchaser") upon the terms set forth in the Bond Purchase Agreement and the Sale Certificate; and

WHEREAS, the Regents anticipate an offer to purchase the Bonds pursuant to the Bond Purchase Agreement which will provide for an underwriting discount, an original issue discount or premium and for payment of Expenses, in the amount to be approved by the Delegate pursuant to Section 6-14-10.2 NMSA 1978, all within the parameters set forth in this Resolution; and

WHEREAS, the Regents have determined, and do hereby determine that the Series 2022 Bonds shall be issued at this time, and desire to authorize issuance of the Series 2022 Bonds and to provide for the payment of the principal of and interest thereon with the exact aggregate principal amount, series designations, and certain other details and terms of the Series 2022 Bonds to be established in the Bond Purchase Agreement and Sale Certificate; and

WHEREAS, the Regents shall annually establish adequate budgetary provisions to promptly pay as they become due, all principal and interest on the Series 2022 Bonds as the same become due, all in compliance with law; and

WHEREAS, the issuance of the Series 2022 Bonds will not take effect until the Series 2022 Bonds have first been approved in writing by the New Mexico State Board of Finance and the New Mexico Higher Education Department; and

WHEREAS, the form of a Bond Purchase Agreement relating to the Series 2022 Bonds has been presented to the Regents for approval by the Regents in connection with the adoption of this Resolution with the final terms to be approved by the Delegate within the parameters set forth in this Resolution; and

WHEREAS, the Regents deem it necessary and advisable to authorize, issue and deliver the Series 2022 Bonds.

THEREFORE, BE IT RESOLVED BY THE BOARD OF REGENTS OF NEW MEXICO STATE UNIVERSITY:

Section 1. Definitions. Throughout this Resolution, the following terms as used herein shall have the meaning set forth below, unless the text hereof specifically indicates otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Acquisition Fund" means the Regents of New Mexico State University Improvement Revenue Bonds, Series 2022 Acquisition Fund, established by Section 12 of the Bond

Resolution, to be maintained by the Regents or the Purchaser pursuant to a Capital Projects Escrow Agreement if required by the Purchaser.

"Act" means the general laws of the State, including Sections 6-17-1 through 6-17-19 NMSA 1978, as amended, 6-14-1 through 6-14-12 NMSA 1978, as amended, and the enactments of the Regents relating to the issuance of the Bonds, including the Bond Resolution and the Sale Certificate.

"Authorized Officer" means the Chair and Vice-Chair of the Regents and the following officers of the University: Chancellor, Vice-Chancellor/Chief Operating Officer, Associate Vice President for Finance and Business Services or any other officer of the University when designated by a certificate signed by the Chair of the Regents from time to time, a certified copy of which shall be delivered to the Paying Agent and the Registrar.

"Bond Purchase Agreement" means the agreement for purchase and sale of the Bonds to be entered into between the Regents and the Purchaser and to be approved by the Delegate within the parameters set forth in this Resolution.

"Bond Resolution" means this Resolution, as amended or supplemented by the Sale Certificate.

"2013 Bond Resolution" means the Resolution of the Regents adopted on January 28, 2013, as amended by a Resolution adopted by the Regents on April 3, 2013 authorizing the issuance of the Series 2013A Bonds, the Series 2013B Bonds, and the Series 2013C Bonds.

"2014 Note Resolution" means the Resolution of the Regents adopted on January 31, 2014, as amended by a Resolution adopted by the Regents on April 16, 2014 authorizing the issuance of the Series 2014 Note.

"2017 Bond Resolution" means Resolution 2017-02 of the Regents adopted March 6, 2017, as amended and supplemented by Resolution 2017-03 adopted by the Regents on June 16, 2017 authorizing the issuance of the Series 2017 Bonds.

"2019 Bond Resolution" means Resolution No. 2019-03 of the Regents adopted on September 4, 2019, authorizing the issuance and sale of the Series 2019 Bonds, as amended and supplemented by the Sale Certificate executed on October 23, 2019.

"Bonds" "Series 2022 Bonds," and "2022 Bonds" means, collectively, the bonds designated as "The Regents of New Mexico State University Improvement Revenue Bonds, Series 2022" authorized by the Bond Resolution to be issued in one or more series in the original principal amount not to exceed \$28,500,000.

"Business Day" means any day other than a Saturday, Sunday, legal holiday, or a day on which banking institutions or the New York Stock Exchange are authorized or obligated by law or executive order to be closed.

“Capital Projects Escrow Agreement” means the agreement, if required by the Purchaser, between the University, the Purchaser and BOKF, NA, as escrow agent, for deposit of the proceeds of the Bonds for requisition by the University for costs of the Improvement Project.

“Capitalized Interest Account” means the account in the Interest and Retirement Fund designated as the “Regents of New Mexico State University Improvement Revenue Bonds, Series 2022 Capitalized Interest Account”, established by Section 12 of the Bond Resolution, to be maintained by the Regents or trustee for the Purchaser for the deposit of capitalized interest, if any, on the Bonds.

"Code" means the Internal Revenue Code of 1986, as amended, including when appropriate, the statutory predecessor of the Code, and all applicable regulations whether proposed, temporary or final, including regulations issued and proposed pursuant to the statutory predecessor of the Code, and, in addition, all official rulings and judicial determinations applicable to the Bonds, and under the statutory predecessor of the Code and any successor provisions to those sections or regulations.

"Continuing Disclosure Undertaking" means the continuing disclosure undertaking with respect to the Bonds, if any, to be executed on the day of issuance and delivery of the Bonds to the Purchaser and to be approved at the time of execution of the Sale Certificate.

"Debt Service Grants" means, collectively, the aggregate of the payments received or to be received by the Regents, whether as grants or otherwise, pursuant to agreements of the Regents with the United States of America, or any of its agencies, within the meaning of the provisions of Section 6-17-14 NMSA 1978, as amended.

“Delegate” means the Chair of the Board of Regents, the Chancellor of the University, the Vice-Chancellor/Chief Operating Officer of the University, the Associate Vice President for Finance and Business Services of the University or other authorized officer of the University delegated the authority to approve the final terms of the Bonds.

"Expenses" means all expenses relating to the issuance of the Bonds, including, without limitation, costs of advertising and publication of the Bond Resolution, rating agency fees and expenses, costs of printing the Preliminary Official Statement (if any), the Official Statement (if any) and the Bonds, financial advisor fees and expenses, legal fees and expenses, escrow agent and accounting fees and expenses, fees and expenses of the Purchaser, and all reasonable and necessary fees and administrative costs of the Regents related thereto.

"Fiscal Year" means the twelve-month period used by the University for its general accounting purposes as the same may be changed from time to time, presently being a period beginning on July 1 of each year and ending on June 30 of the next succeeding year.

"Government Obligations" means direct obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

"Improvement Project" means purchasing, erecting, altering, remodeling, expanding, improving, repairing, furnishing and equipping of buildings, improvements and facilities for the use of the University, including but not limited to improving the University's Recreation Activity and Aquatic Center, Aggie Memorial Stadium, Corbett Center Student Union Building and the Pan American Center, funding capitalized interest on the Bonds, if necessary, and paying Expenses.

"Income from the Permanent Fund" and "Income from the Income Fund" mean the gross income from the Permanent Fund of the University and the gross income from the Income Fund of the University derived from the lease or rentals of such of the University's lands as remain unsold or its other property, as in part established and provided for by Article XII of the New Mexico Constitution, which income may be pledged to the payment of the obligations of the Regents pursuant to Sections 6-17-1 through 6-17-19 NMSA 1978.

"Independent Accountant" means (i) an accountant employed by the State of New Mexico and under the supervision of the State Auditor of the State of New Mexico, or (ii) any certified public accountant, registered accountant or firm of such accountants duly licensed to practice and practicing as such under the laws of the State of New Mexico, appointed and paid by the University who (a) is, in fact, independent and not under the domination of the University or the Regents, (b) does not have any substantial interest, direct or indirect, with the University, and (c) is not connected with the University or the Regents as an officer or employee of the University or the Regents, but who may be regularly retained to make annual or similar audits of the books or records of the University and the Regents.

"Insured Bank" means a bank or savings and loan association whose deposits are insured by an agency of the United States.

"Interest and Retirement Fund" means that fund for the deposit of Pledged Revenues from the Revenue Fund to be used for the payment of principal of and interest on Senior Lien Parity Bonds and Subordinate Lien Bonds, previously established by the Regents and maintained by the University, and subject to the priority of payment provisions set forth in Section 14 of this Resolution.

"Interest Payment Date" means each April 1 and October 1, commencing April 1, 2023 or such other date established in the Sale Certificate.

"Obligations" means, collectively, all Outstanding Senior Lien Parity Bonds and Outstanding Subordinate Lien Bonds.

"Operating and Maintenance Expenses" means the reasonable operating and maintenance expenses of the System which shall be deemed to include all costs of heating and lighting the buildings, improvements or facilities comprising the System, insurance, the cost of services of employees operating and maintaining the buildings, improvements or facilities comprising the System, the cost of food, repairs, costs of reasonable replacements of equipment and any other incidental costs not herein specifically enumerated, but which are reasonably necessary to

operate and maintain the buildings, facilities, improvements and equipment comprising the System.

"Outstanding" or "outstanding" when used in reference to bonds of the Regents means, on any particular date, the aggregate of all such bonds delivered under the applicable resolution authorizing the issuance of such bonds, except:

A. those canceled at or prior to such date or delivered or acquired by the Regents at or prior to such date for cancellation;

B. those otherwise deemed to be paid in accordance with Sections 23 and 24 of the Bond Resolution or similar section of any resolution of the Regents authorizing the issuance of the applicable bonds;

C. those in lieu of or in exchange or substitution for which other bonds shall have been delivered, unless proof satisfactory to the Regents and the paying agent for the applicable bonds is presented that any bond for which a new bond was issued or exchanged is held by a bona fide holder in due course; and

D. those which have been refunded in accordance with the Bond Resolution or similar section of any resolution of the Regents authorizing the issuance of the applicable bonds.

"Paying Agent/Registrar" means the Associate Vice President for Finance and Business Services of the University, or successor in function, and any substitute paying agent/registrar appointed by the University pursuant to Section 8 of the Bond Resolution, as agent of the Regents for the payment, registration, transfer and exchange of the Bonds.

"Permitted Investments" means direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, or any of its agencies other than Farm Credit Consolidated System-wide Discount Notes, Federal Farm Credit Banks Consolidated System-wide Bonds, Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives and Farmers Home Administration, or obligations fully guaranteed by the United States of America, to the extent permitted under the Investment Policy of the Regents.

"Pledged Revenues" means:

A. The gross income and revenues of whatever nature derived from the operation or ownership of the System (except as otherwise excluded under the definition of System).

B. All gross proceeds of student tuition and fees of every nature collected from students at the University, except (i) the fees now known as "Student Activity Fees," "Bus Fees" and "Equipment Maintenance Fees" and (ii) fees expressly imposed for the use or

availability of buildings, structures or facilities excluded from the System under the definition thereof.

C. The gross amounts received by the University from the Income from the Permanent Fund and the Income from the Income Fund.

D. The proceeds of Debt Service Grants and the proceeds of any interest subsidy with respect to Parity Bonds (to the extent any such Debt Service Grant or interest subsidy is applicable with respect to a series of Parity Bonds) paid for or on account of the Regents or the University by any governmental body or agency.

E. All other income or revenues received by the University from proprietary activities carried on by the University, but excluding: (i) the proceeds of ad valorem taxes, (ii) State appropriations, and (iii) the proceeds of any University appropriations, gifts, contracts, grants and endowments, whether from or with public, private or governmental sources, which are restricted as to use. If the pledge of any one or more sources of other income or revenue to the payment of Senior Lien Parity Bonds shall ever be held by final decision of a court of competent jurisdiction to be invalid or to make Senior Lien Parity Bonds invalid because of constitutional restrictions on State indebtedness, the income or revenue derived from such source or sources shall not be subject to the pledge herein contained; and provided further, that there shall not be included in the other income or revenue which is the subject of this paragraph any income or revenue excluded under the provisions of paragraphs A or B of this definition.

"Preliminary Official Statement" and "Official Statement" mean the disclosure documents of the University, if any, to be used by the Purchaser in connection with the offer and sale of the Bonds to the public and to be approved as to form at the time of execution of the Sale Certificate.

"Purchaser" means the New Mexico Finance Authority or such other purchaser of the Bonds as provided in the Sale Certificate and Bond Purchase Agreement.

"Rebate Fund" means "The Regents of New Mexico State University Improvement Revenue Bonds Series 2022 Rebate Fund" established by Section 12 of the Bond Resolution, to be maintained by the Regents.

"Record Date" means the 15th day of the month preceding any interest payment date of the Bonds.

"The Regents of New Mexico State University" and "Regents" mean the body corporate in which is vested the management and control of the University pursuant to Article XII, Section 13 of the State Constitution and Section 21-8-1 *et seq.*, NMSA 1978.

"Renewal and Replacement Fund" means "The Regents of New Mexico State University Revenue Bonds Renewal and Replacement Fund" previously established by the Regents and maintained by the University.

"Revenue Fund" means the fund of the Regents for the deposit of Pledged Revenues, previously established by the Regents and maintained by the University.

"Sale Certificate" means one or more certificates executed by the Delegate dated on or before the date of delivery of the Bonds, setting forth the following final terms of the Bonds: (i) the interest and principal payment dates; (ii) the principal amounts, denominations and maturity amortization; (iii) the sale prices; (iv) the interest rate or rates; (v) the interest payment periods; (vi) the redemption and tender provisions; (vii) the creation of any capitalized interest fund, including the size and funding of such fund(s); (viii) the amount of Purchaser's discount; (ix) the acquisition of and terms related to a bond insurance policy, if any, (x) the designation of any portion of the Bonds as taxable under the Code, and (xi) the final terms of agreements, if any, with agents or service providers required for the purchase, sale, issuance and delivery of the Bonds, all subject to the parameters and conditions contained in this Resolution.

"Senior Lien Debt Service Account" means that account which is part of the Interest and Retirement Fund for the deposit of Pledged Revenues to be used for the payment of the principal of, premium, if any, and interest on the Senior Lien Parity Bonds, previously established by the Regents and maintained by the University.

"Senior Lien Parity Bonds" means all bonds or obligations of the Regents now outstanding or hereafter issued or outstanding payable from and constituting a first lien on the Pledged Revenues on a parity with the outstanding the Series 2013A Bonds, the Series 2013B Bonds, the Series 2017A Bonds, the Series 2017B Bonds, the Series 2017C Bonds, the Series 2019A Bonds, the Series 2019B Bonds, and the Series 2022 Bonds.

"Series 2013 Bonds" means, collectively, the Series 2013A Bonds and the Series 2013B Bonds.

"Series 2013A Bonds" means the Regents of New Mexico State University Improvement Revenue Bonds, Series 2013A (Tax-Exempt).

"Series 2013B Bonds" means the Regents of New Mexico State University Refunding Revenue Bonds, Series 2013B (Tax-Exempt).

"Series 2014 Note" means the Regents of New Mexico State University Subordinate Lien Improvement Revenue Note, Series 2014.

"Series 2017 Bonds" means, collectively, the outstanding Series 2017A Bonds, the Series 2017B Bonds, and the Series 2017C Bonds.

"Series 2017A Bonds" means the outstanding Regents of New Mexico State University System Refunding and Improvement Revenue Bonds, Series 2017A.

"Series 2017B Bonds" means the outstanding Regents of New Mexico State University Taxable System Refunding Revenue Bonds, Series 2017B.

“Series 2017C Bonds” means the Regents of New Mexico State University Refunding Revenue Bonds, Series 2017C (Crossover Refunding).

“Series 2019 Bonds” means, collectively, the outstanding Series 2019A Bonds and Series 2019B Bonds.

“Series 2019A Bonds” means the outstanding Regents of New Mexico State University Refunding Revenue Bonds, Series 2019A.

“Series 2019B Bonds” means the outstanding Regents of New Mexico State University Taxable Refunding Revenue Bonds, Series 2019B.

“Series 2022 Debt Service Account” means the account created in Section 14 of this Resolution.

"State" means the State of New Mexico.

“Subordinate Lien Bonds” means the Series 2014 Note and all bonds or obligations of the Regents now outstanding or hereafter issued or outstanding payable from and constituting a lien on the Pledged Revenues subordinate and junior to the lien thereon of the Senior Lien Parity Bonds on a parity with the lien of the Series 2014 Note on the Pledged Revenues.

"Subordinate Lien Debt Service Account" means that account which is part of the Interest and Retirement Fund for the deposit of Pledged Revenues to be used for the payment of the principal of, premium, if any, and interest on the Subordinate Lien Bonds, after payment of the principal of, premium, if any, and interest on the Senior Lien Parity Bonds as set forth in Section 14 of this Resolution and as previously established by the Regents and maintained by the University.

"System" means all housing facilities (student, faculty and other) and all other buildings, structures, improvements and facilities located on any campus of the University from the use and availability of which income or revenue (including in the term "income or revenue" the proceeds of student tuition and fees, other than the fees now known as Student Activity Fees, Bus Fees and Equipment Maintenance Fees) is produced, present and future, owned or operated by the University or the Regents, including, without limitation, dormitories, student unions, auditoriums, dining halls, book stores, stadiums, golf courses, swimming pools, hospitals or infirmaries, utility facilities, and printing plants owned or operated by the University or the Regents; provided that as additional housing and other facilities are acquired by the University or the Regents from time to time hereafter, and as existing facilities in the System are improved or extended, such additional, improved or extended facilities shall become part of the System; except that the Regents retain the right to acquire, construct, improve or extend any one or more such facilities hereafter and to provide by resolution that any such facility so acquired, constructed, improved or extended shall not become a part of the System, and any such facility so excepted shall not become a part of the System and the income and revenues derived therefrom shall not be part of the Pledged Revenues.

"Tax Compliance Certificate" means the Tax Compliance Certificate to be executed and delivered by the Regents at the time of the issuance of the Bonds, as the same may be amended or supplemented in accordance with its terms. for the portion of the Bonds issued as federally tax-exempt obligations under the Code

"University" and "New Mexico State University" mean the state educational institution designated as New Mexico State University and so confirmed by Section 11 of Article XII of the New Mexico Constitution, as amended.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Bond Resolution) by the Regents and the officers, agents, attorneys, advisors, and employees of the University, directed toward the Improvement Project; the issuance of the Bonds for the Improvement Project; and the sale of the Bonds to the Purchaser be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of Improvement Project. The Improvement Project is hereby authorized and ordered at a total cost estimated not to exceed \$28,500,000 excluding any cost defrayed or to be defrayed from any source other than the Bond proceeds.

Section 4. Findings. The Board hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. It is in the best interest of the University to undertake the Improvement Project.

B. Moneys available for the Improvement Project from all sources other than the issuance of revenue bonds are not sufficient to defray the cost of the Improvement Project.

C. The issuance by the Regents of the Bonds to provide funds for the Improvement Project is necessary and authorized under the Act.

D. The Pledged Revenues may lawfully be pledged to secure the payment and redemption of the Bonds.

E. It is economically feasible to defray the cost of the Improvement Project by the issuance of the Bonds.

Section 5. Bonds - Authorization and Detail.

A. Authorization. This Bond Resolution has been adopted by the affirmative vote of a majority of all of the members of the Board. It is hereby declared necessary that the University, pursuant to the Act, issue its negotiable, fully registered, revenue bonds as Senior Lien Parity Bonds to be designated "The Regents of New Mexico State University Improvement Revenue Bonds, Series 2022," in an aggregate principal amount not to exceed \$28,500,000. The sale of the Bonds to the Purchaser pursuant to a private placement, and the issuance and delivery

of the Bonds within the parameters set forth in this Resolution with the final terms of the Bonds to be accepted in the Sale Certificate is hereby authorized.

B. Details of Bonds. There is hereby authorized and created one or more series of bonds designated as The Regents of New Mexico State University Improvement Revenue Bonds, Series 2022. The Bonds will be issued in one or more series with a fixed rate of interest, as established in the Sale Certificate.

The Bonds shall be issued in the original aggregate principal amount not to exceed \$28,500,000 for the Improvement Project, with the exact aggregate principal amount of the, series designations and other details to be approved by the Delegate in the Sale Certificate. The forms, terms, and provisions of the Bonds, in the form set forth in Section 8 herein are hereby approved with only such changes therein as are not inconsistent with this Resolution and the Sale Certificate.

The Bonds shall be negotiable instruments but shall be issued only as fully registered bonds, in denominations of \$5,000 (or such denominations required by the Purchaser) or any integral multiple thereof, in such numbers and denominations as may be requested by the Purchaser. The Bonds shall be numbered separately and consecutively and shall be dated as provided in the Sale Certificate. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date, payable semi-annually on April 1 and October 1 in each year commencing on the date established in the Sale Certificate until their respective maturities at the interest rates and shall mature in the designated amounts and on April 1 of each of the years stated in the Sale Certificate.

C. Special Obligations. All of the Bonds, together with the interest accruing thereon, shall be special, limited obligations of the Regents and shall be payable and collectible solely from the Pledged Revenues as Senior Lien Parity Bonds, which income is irrevocably so pledged. No obligation under the Bond Resolution or under the Bonds shall ever be or become a charge or debt against the State or a pledge of the faith and credit of the State or shall be payable from the proceeds of ad valorem taxes but shall be payable solely as provided in the Bond Resolution.

D. Sale of Bonds; Delegation of Authority to Approve Final Terms with the Parameters Set Forth Herein; Approval of Documents. The Regents and University hereby authorize and approve the sale of the Bonds to the Purchaser in a private placement within the parameters set forth below and as described in the Sale Certificate and Bond Purchase Agreement. After the Bonds have been duly executed and authenticated and upon receipt of the purchase price therefor, the Bonds shall be delivered to the Purchaser by an Authorized Officer in accordance with the Bond Purchase Agreement. The final terms of the Bonds shall be within the parameters set forth below:

1. The proceeds of the Bonds shall be used for the Improvement Project.
2. The maximum par amount of the Bonds shall not be more than \$28,500,000.

3. The final maturity of the Bonds shall be no later than April 1, 2043.
4. The maximum interest rate on the Bonds shall be no greater than 12% per annum.
5. The Bonds shall be secured by a first lien, but not an exclusive first lien, on the Pledged Revenues, on a parity with the outstanding Parity Senior Bonds.
6. The Bonds shall be sold pursuant to a private placement with the Purchaser.
7. The Purchaser's discount shall not exceed 1% of the aggregate principal amount of the Bonds.
8. The Bonds may be subject to optional and/or mandatory sinking fund redemption as set forth in the Sale Certificate.
9. The Bonds and the Bond Purchase Agreement shall be in substantially the forms submitted to the Regents with the adoption of this Resolution.
10. The Bonds or any portion thereof may be issued as tax-exempt or taxable under the Code.
11. A bond insurance policy, if any, insuring the payment of principal and interest on the Bonds may be acquired to insure the payment of principal and interest on the Bonds.

The Delegate is hereby authorized pursuant to this Authorizing Resolution to determine the final terms of the Bonds as permitted by Section 6-14-10.2 NMSA 1978 and to execute a Sale Certificate and a Bond Purchase Agreement with the Purchaser in conformance with these parameters and to enter into such agreements, including a Capital Projects Escrow Agreement (if required by the Purchaser), and execute such documents with a municipal bond insurer for the procurement of insurance on the Bonds, if any.

Section 6. Prior Redemption. The Bonds may be subject to optional and/or mandatory redemption by the Regents at redemption prices and on the dates established therefor in the Sale Certificate.

A. Notice. Notice of redemption shall be given by the Paying Agent/Registrar by sending a copy of such notice by electronic means or by first-class, postage prepaid mail at least thirty (30) days prior to the redemption date to the registered owner of each Bond, or portion thereof, to be redeemed at the address shown as of the close of business of the Paying Agent/Registrar on the 45th day prior to the redemption date. Except for Bonds to be redeemed pursuant to the sinking fund provisions, if any, of the Sale Certificate, the University shall give the Paying Agent/Registrar written instructions to give notice of redemption to the owners of the bonds to be redeemed at least forty-five (45) days prior to such redemption date. Neither the University's failure to give such notice nor the Paying Agent/Registrar's failure to give such notice to the registered owner of any Bond, or any defect therein, shall affect the

validity of the proceedings for the redemption of any Bonds for which proper notice was given. Notices of redemption shall specify the maturity dates and the number or numbers of the Bonds to be redeemed (if less than all are to be redeemed) and if less than the full amount of any Bond is to be redeemed, the amount of such Bonds to be redeemed, the date fixed for redemption, and that on such redemption date there will become due and payable upon each Bond to be redeemed at the office of the Paying Agent/Registrar the principal amount to be redeemed plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem all Bonds called for redemption shall on the redemption date be on deposit with the Paying Agent/Registrar, the Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Bonds to be redeemed at the office of the Paying Agent/Registrar, the Paying Agent/Registrar will pay the Bond or Bonds so called for redemption with funds deposited with the Paying Agent/ Registrar by the University.

B. Conditional Redemption. If money or Government Obligations sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent/Registrar prior to the giving of notice of optional redemption pursuant to paragraph B of this Section, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent/Registrar by 2:00 p.m. on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit with the Paying Agent/Registrar. If all of the Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in a manner deemed reasonable and fair by the University and the Paying Agent/Registrar shall give notice, in the manner in which the original notice of optional redemption was given, that such money was not received. In that event, the Paying Agent/Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been redeemed.

Section 7. Execution of Bonds and Filing of Signatures. Each Bond shall be signed and executed in the name of and on behalf of the Regents with the manual or facsimile of the signature of the Chair; and shall be signed, executed and attested with such a manual or facsimile of the signature of the Secretary-Treasurer. Prior to the execution of any Bond pursuant to Sections 6-9-1 to 6-9-6 NMSA 1978, as amended, the Chair and Secretary-Treasurer shall each file with the New Mexico Secretary of State his or her manual signature certified by him or her under oath; provided that filing shall not be necessary for any officer where any previous filing may have legal application to the Bonds.

Section 8. Registration, Transfer and Exchange.

A. Registration and Transfer. The University shall keep or cause to be kept at the office of the Paying Agent/Registrar books or records of the registration and transfer of the Bonds (the "Registration Books"), and the University hereby appoints the Paying

Agent/Registrar as its registrar and transfer agent to keep such books or records and make such transfers of registrations under such reasonable regulations as the University and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such transfers of registrations as herein provided. The Paying Agent/Registrar shall obtain and record in the Registration Books the address of the registered owner of each Bond to which payments with respect to the Bonds shall be mailed, as herein provided; but it shall be the duty of each registered owner to notify the Paying Agent/Registrar in writing of the address to which payments shall be mailed, and such interest payments shall not be mailed unless such notice has been given. The University shall have the right to inspect the Registration Books during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity. Registration of each Bond may be transferred in the Registration Books only upon presentation and surrender of such Bond to the Paying Agent/Registrar for transfer of registration and cancellation, together with proper written instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, (i) evidencing the assignment of the Bond, or any portion thereof in any integral multiple of \$5,000, to the assignee or assignees thereof, and (ii) the right of such assignee or assignees to have the Bond or any such portion thereof registered in the name of such assignee or assignees. Upon the assignment and transfer of any Bond or any portion thereof, a new Bond or Bonds shall be issued in conversion and exchange therefor in the manner herein provided. If any Bond or portion thereof is assigned and transferred or converted each Bond issued in exchange therefor shall have the same principal maturity date and bear interest at the same rate as the Bond for which it is exchanged. A form of assignment shall be printed or endorsed on each Bond which shall be executed by the registered owner or its duly authorized attorney or representative to evidence an assignment thereof. Upon surrender of any Bonds or any portion or portions thereof for transfer of registration, an authorized representative of the Paying Agent/Registrar shall make such transfer in the Registration Books, and shall deliver a new fully registered Bond or Bonds, having the characteristics herein described, payable to such assignee or assignees (which then will be the registered owner or owners of such new Bond or Bonds), or to the previous registered owner in case only a portion of a Bond is being assigned and transferred, all in exchange for such assigned Bond or Bonds or any portion or portions thereof, in the same form and manner, and with the same effect, as provided in Section 8(D), below, for the transfer or exchange of Bonds by any registered owner of a Bond. The University shall pay the Paying Agent/Registrar's standard or customary fees and charges for making such transfer and delivery of a substitute Bond or Bonds, but the one requesting such transfer shall pay any taxes or other governmental charges required to be paid with respect thereto. The Paying Agent/Registrar shall not be required to make transfers of registration of any Bond or any portion thereof (i) during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date, or, (ii) with respect to any Bond or any portion thereof called for redemption prior to maturity, within 45 days prior to its redemption date.

B. Ownership of Bonds. The entity in whose name any Bond shall be registered in the Registration Books at any time shall be deemed and treated as the absolute owner thereof for all purposes of this Resolution, whether or not such Bond shall be overdue, and the University and the Paying Agent/Registrar shall not be affected by any notice to the contrary;

and payment of, or on account of, the principal of, premium, if any, and interest on any such Bond shall be made only to such registered owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

C. Payment of Bonds and Interest. The University hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Bonds, and to act as its agent to transfer and exchange or replace Bonds, all as provided in this Resolution. The Paying Agent/Registrar shall keep proper records of all payments made by the University and the Paying Agent/Registrar with respect to the Bonds, and of all transfers and exchanges of Bonds, and all replacements of Bonds, as provided in this Resolution. However, in the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the University. Notice of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Bondholder appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.

D. Transfer and Exchange or Replacement; Authentication. Each Bond issued and delivered pursuant to this Resolution, to the extent of the unpaid or unredeemed principal balance or principal amount thereof, may, upon surrender of such Bond at the office of the Paying Agent/Registrar, together with a written request therefor duly executed by the registered owner or the assignee or assignees thereof, or its or their duly authorized attorneys or representatives, with guarantee of signatures satisfactory to the Paying Agent/Registrar, may, at the option of the registered owner or such assignee or assignees, as appropriate, be transferred and exchanged for fully registered bonds in the form prescribed in this Bond Resolution, in the denomination of \$5,000, or any integral multiple of \$5,000 as requested in writing by such registered owner or such assignee or assignees, in an aggregate principal amount equal to the unpaid or unredeemed principal balance or principal amount of any Bond or Bonds so surrendered, and payable to the appropriate registered owner, assignee, or assignees, as the case may be. Each such Bond shall have a principal maturity date corresponding to the due date of the installment of principal or portion thereof for which the Bond is being exchanged; and each such Bond shall bear interest at the single rate applicable to and borne by such installment of principal or portion thereof for which it is being exchanged. If a portion of any Bond shall be redeemed prior to its scheduled maturity as provided herein, a Bond or Bonds having the same maturity date, bearing interest at the same rate, in the denomination or denominations of any integral multiple of \$5,000 at the request of the registered owner, and in aggregate principal amount equal to the unredeemed portion thereof, will be issued to the registered owner upon surrender thereof for cancellation. If any Bond or portion thereof is assigned and transferred, each Bond issued in exchange therefor shall have the same principal maturity date and bear interest at the same rate as the Bond for which it is being exchanged. Each substitute Bond shall bear a letter and/or number to distinguish it from each other Bond. The Paying Agent/Registrar shall transfer and exchange or replace Bonds as provided herein, and each fully registered bond delivered in transfer of and exchange for or replacement of any Bond or portion thereof as

permitted or required by any provision of this Resolution shall constitute one of the Bonds for all purposes of this Resolution, and may again be transferred and exchanged or replaced. Each Bond authenticated after the first scheduled Record Date shall bear interest from the interest payment date next preceding the date on which such substitute Bond was so authenticated, unless such Bond is authenticated after any Record Date but on or before the next following interest payment date, in which case it shall bear interest from such next following interest payment date; provided, however, that if at the time of delivery of any Bond the interest on the Bond for which it is being exchanged is due but has not been paid, then such Bond shall bear interest from the date to which such interest has been paid in full.

An authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Bond, date and manually sign the Certificate of Authentication on each Bond, and no such Bond shall be deemed to be issued or outstanding unless such Certificate is so executed. The Paying Agent/Registrar promptly shall cancel all Bonds surrendered for transfer and exchange or replacement. No additional ordinances, orders, or resolutions need be passed or adopted by the Regents or any other body or person so as to accomplish the foregoing conversion and exchange or replacement of any Bond or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Bonds in the manner prescribed herein. The duty of transfer and exchange or replacement of Bonds as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of the above Paying Agent/Registrar's Authentication Certificate, the transferred and exchanged or replaced Bond shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Bonds originally issued pursuant to this Bond Resolution.

E. In General. All Bonds issued in exchange or replacement of any other Bond or portion thereof, (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Bonds to be payable only to the registered owners thereof, (ii) may be redeemed prior to their scheduled maturities, (iii) may be transferred and assigned, (iv) may be converted and exchanged for other Bonds, (v) shall have the characteristics of negotiable bonds, (vi) shall be signed and sealed, and (vii) the principal of and interest on the Bonds shall be payable, all as provided, and in the manner required or indicated, in the form of Bond set forth in this Bond Resolution.

F. Payment of Fees and Charges. The University hereby covenants with the registered owners of the Bonds that it will (i) pay the standard or customary fees and charges of the Paying Agent/Registrar for its services with respect to the payment of the principal of and interest on the Bonds, when due, and (ii) pay the fees and charges of the Paying Agent/Registrar for services with respect to the transfer of registration of Bonds, and with respect to the transfer and exchange of Bonds solely to the extent above provided in this Resolution.

G. Substitute Paying Agent/Registrar. The University covenants with the registered owners of the Bonds that at all times while the Bonds are outstanding the Associate Vice President for Finance and Business Services of the University, or successor in function, originally appointed as Paying Agent/Registrar pursuant to this Bond Resolution will continue to serve in such capacity or the University will provide a competent and legally qualified bank, trust company, financial institution, or other agency to act as and perform the services of Paying

Agent/Registrar for the Bonds under this Resolution, and that the Paying Agent/Registrar will be one entity. The University reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 120 days written notice to the Paying Agent/Registrar, to be effective not later than 60 days prior to the next principal or interest payment date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the University covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial institution, or other agency to act as Paying Agent/Registrar under this Resolution. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the Bonds, to the new Paying Agent/Registrar designated and appointed by the University. Upon any change in the Paying Agent/Registrar, the University promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each registered owner of the Bonds, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Resolution, and a certified copy of this Resolution shall be delivered to each Paying Agent/Registrar.

H. Book-Entry. Notwithstanding the above provisions of this Section, the Bonds may be issued or registered, in whole or in part, in book-entry form from time to time with no physical distribution of bond certificates made to the public, with the Depository Trust Company of New York, New York ("Depository") acting as securities depository for the Bonds. A single certificate for each maturity date of the Bonds issued in book-entry form will be delivered to the Depository and immobilized in its custody. The book-entry system will evidence ownership of the Bonds in authorized denominations, with transfer of ownership effected on the books of the Depository and its participants ("Participants"). As a condition to delivery of the Bonds in book-entry form, the Purchaser will, immediately after acceptance of delivery thereof, deposit, or cause to be deposited, the Bond certificates with the Depository, registered in the name of the Depository or its nominee. Principal, premium, if any, and interest will be paid to the Depository or its nominee as the registered owner of the Bonds. The transfer of principal, premium, if any, and interest payments to Participants will be the responsibility of the Depository; the transfer of principal, premium, if any, and interest payments to the beneficial owners of the Bonds (the "Beneficial Owners") will be the responsibility of Participants and other nominees of Beneficial Owners maintaining a relationship with Participants (the "Indirect Participants"). The University will not be responsible or liable for maintaining, supervising or reviewing the records maintained by the Depository, Participants or Indirect Participants.

If (i) the Bonds are not eligible for the services of the Depository, (ii) the Depository determines to discontinue providing its services with respect to the Bonds or (iii) the University determines that a continuation of the system of book-entry transfers through the Depository ceases to be beneficial to the University or the Beneficial Owners, the University will either identify another similar depository to perform such functions or certificates for the Bonds will be delivered to the Beneficial Owners or their nominees, and the Beneficial Owners or their nominees, upon authentication of the Bonds and registration of those Bonds in the Beneficial Owners' or nominees' names, will become the owners of the Bonds for all purposes. In that

event, the University shall mail an appropriate notice to the Depository for notification to Participants, Indirect Participants and Beneficial Owners of the substitute Depository or the issuance of bond certificates to Beneficial Owners or their nominees, as applicable.

Officers of the University are authorized to sign agreements with the Depository relating to the matters set forth in this Section.

Notwithstanding any other provision of the Bond Resolution, so long as all of the Bonds are registered in the name of the Depository or its nominee, all payments of principal, premium, if any, and interest on the Bonds, and all notices with respect to the Bonds, shall be made and given by the Paying Agent/Registrar or the University to the Depository as provided in this Bond Resolution and by the Depository to its Participants or Indirect Participants and notices to the Beneficial Owners of the Bonds in the manner provided in an agreement or letter of the University to the Depository.

Section 9. Form of Bonds. The form of all Bonds issued in exchange or replacement of any other Bond or portion thereof, including the Paying Agent/Registrar's Certificate, and the form of Assignment shall be, respectively, substantially as follows, with such appropriate variations, omissions, or insertions as are permitted or required by this Bond Resolution or the Sale Certificate.

FORM OF BOND

No. _____

\$ _____

\$ _____
 UNITED STATES OF AMERICA
 STATE OF NEW MEXICO
 COUNTY OF DOÑA ANA

THE REGENTS OF NEW MEXICO STATE UNIVERSITY
 IMPROVEMENT REVENUE BONDS, SERIES 2022

Interest Rate	Maturity Date	Series Date	CUSIP NO.
_____ %	April 1, _____	____, 2022	_____

ON THE MATURITY DATE specified above, THE REGENTS OF NEW MEXICO STATE UNIVERSITY (the "Regents"), for and on behalf of New Mexico State University (the "University"), being a state educational institution of the State of New Mexico, hereby promises to pay to _____ or to the registered assignee hereof (either being hereinafter called the "registered owner") the principal amount of \$ _____ and to pay interest thereon from _____, to the maturity date specified above or the date of redemption prior to maturity at the interest rate per annum specified above with interest being payable on April 1, 2023 and semiannually on each October 1 and April 1 thereafter to its maturity. This Bond will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from its date.

THE PRINCIPAL OF AND INTEREST ON this Bond are payable in lawful money of the United States of America, without exchange or collection charges. The principal of this Bond shall be paid to the registered owner hereof upon presentation and surrender of this Bond at maturity or upon the date fixed for its redemption prior to maturity, at the office of the University's Associate Vice President for Finance and Business Services, or his successor in function, who is the "Paying Agent/Registrar" for this Bond. The payment of interest on this Bond shall be made by the Paying Agent/Registrar to the registered owner hereof on each interest payment date by check or draft (or by other arrangement as may be mutually agreed to by the Paying Agent/Registrar and the registered owner), dated as of such interest payment date, drawn by the Paying Agent/Registrar on, and payable solely from, funds of the University required by the Resolutions authorizing the issuance of the Bonds (collectively, the "Bond Resolution") to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided; and such check or draft shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, on each such interest payment date, to the registered owner hereof, at the address of the registered owner, as it appeared on the 15th day of the month next preceding each such date (the "Record Date") on the Registration Books kept by the Paying Agent/Registrar, as hereinafter described. Any accrued interest due upon the redemption of this Bond prior to maturity as provided herein shall be paid to the registered owner at the office of the

Paying Agent/Registrar upon presentation and surrender of this Bond for redemption and payment at the office of the Paying Agent/Registrar. The University covenants with the registered owner of this Bond that on or before each principal payment date and interest payment date for this Bond it will make available to the Paying Agent/Registrar, from the "Interest and Retirement Fund" continued by the Bond Resolution, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Bonds, when due.

IF THE DATE for the payment of the principal of or interest on this Bond shall be a Saturday, a Sunday, a legal holiday, or a day on which banking institutions in the city where the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

THIS BOND is one of an issue of Bonds initially dated _____, 2022, authorized in accordance with the Constitution and laws of the State of New Mexico in the original principal amount of \$ _____ for the purpose of providing funds for purchasing, erecting, altering, remodeling, expanding, improving, repairing, furnishing and equipping of buildings, improvements and facilities for the use of the University, including but not limited to improving the University's Recreation Activity and Aquatic Center, Aggie Memorial Stadium, Corbett Center Student Union Building and the Pan American Center, funding capitalized interest on the Bonds, if necessary, and paying Expenses related to the issuance of the Bonds.

THE BONDS maturing on or after April 1, 20__, are subject to prior redemption at the option of the University, on or after April 1, 20__, in whole or in part at any time, in one or more units of principal of \$5,000 in such order of maturities as the University may determine (and by lot if less than all of the Bonds of such maturity is called, such selection by lot to be made by the Paying Agent/Registrar in such manner as it shall consider appropriate and fair). The Bonds may be redeemed only in an integral multiple of \$5,000. The redemption price of the Bonds selected for redemption shall be equal to the principal amount of each \$5,000 unit so redeemed, plus accrued interest to the redemption date.

[THE BONDS maturing on April 1, 20__ are also subject to mandatory sinking fund redemption on and after April 1, 20__, by lot in such manner as the Paying Agent/Registrar may determine, pursuant to the terms of the sinking fund provisions of the Bond Resolution, for the principal amount thereof and accrued interest to the redemption date. Notice of the call for sinking fund redemption shall be given by the Paying Agent/Registrar by mail in the manner provided in the Bond Resolution. Failure to mail notice of redemption and any defects therein shall not affect the validity of such redemption.]

AT LEAST 30 days prior to the date fixed for any redemption of Bonds or portions thereof prior to maturity a written notice of such redemption shall be sent by the Paying Agent/Registrar by electronic means or by United States mail, first-class postage prepaid, to the registered owner of each Bond to be redeemed at its address as it appeared on the 45th day prior to the redemption date. By the date fixed for any such redemption, due provision shall be made with the Paying Agent/Registrar for the payment of the required redemption price for the Bonds

or portions thereof which are to be so redeemed, plus accrued interest thereon to the date fixed for redemption. If such written notice of redemption is sent and if due provision for such payment is made, all as provided above, the Bonds or portions thereof which are to be so redeemed thereby automatically shall be treated as redeemed prior to their scheduled maturities, and they shall not bear interest after the date fixed for redemption, and they shall not be regarded as being outstanding except for the right of the registered owner to receive the redemption price plus accrued interest from the Paying Agent/Registrar out of the funds provided for such payment. If a portion of any Bond shall be redeemed a substitute Bond or Bonds having the same maturity date, bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000, at the written request of the registered owner, and in aggregate principal amount equal to the unredeemed portion thereof, will be issued to the registered owner upon the surrender thereof for cancellation, at the expense of the University, all as provided in the Bond Resolution.

THIS BOND OR ANY PORTION OR PORTIONS HEREOF IN ANY INTEGRAL MULTIPLE OF \$5,000 may be assigned and shall be transferred only in the Registration Books of the University kept by the Paying Agent/Registrar acting in the capacity of registrar for the Bonds, upon the terms and conditions set forth in the Bond Resolution. Among other requirements for such assignment and transfer, this Bond must be presented and surrendered to the Paying Agent/Registrar, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Bond or any portion or portions hereof in any integral multiple of \$5,000 to the assignee or assignees in whose name or names this Bond or any such portion or portions hereof is or are to be transferred and registered. The form of Assignment printed or endorsed on this Bond shall be executed by the registered owner, or its duly authorized attorney or representative, to evidence the assignment hereof. A new Bond or Bonds payable to such assignee or assignees (which then will be the new registered owner or owners of such new Bond or Bonds), or to the previous registered owner in the case of the assignment and transfer of only a portion of this Bond, may be delivered by the Paying Agent/Registrar in transfer of and exchange for this Bond. The University shall pay the Paying Agent/Registrar's standard or customary fees and charges for making such transfer, but the one requesting such transfer shall pay any taxes or other governmental charges required to be paid with respect thereto. The registered owner of this Bond shall be deemed and treated by the University and the Paying Agent/Registrar as the absolute owner hereof for all purposes, including payment and discharge of liability upon this Bond to the extent of such payment, and the University and the Paying Agent/Registrar shall not be affected by any notice to the contrary.

ALL BONDS OF THIS SERIES are issuable solely as fully registered bonds, without interest coupons, in the denomination of any integral multiple of \$5,000. As provided in the Bond Resolution, this Bond, or any unredeemed portion hereof, may, at the request of the registered owner or the assignee or assignees hereof, be transferred or exchanged for a like aggregate principal amount of fully registered bonds, without interest coupons, payable to the appropriate registered owner, assignee, or assignees, as the case may be, having the same maturity date, and bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000 as requested in writing by the appropriate registered owner, assignee, or assignees, as the case may be, upon surrender of this Bond to the Paying Agent/Registrar for

cancellation, all in accordance with the form and procedures set forth in the Bond Resolution and the Sale Certificate executed in connection with the Bonds. The University shall pay the Paying Agent/Registrar's standard or customary fees and charges for transferring or exchanging any Bond or any portion thereof, but the one requesting such transfer or exchange shall pay any taxes or governmental charges required to be paid with respect thereto as a condition precedent to the exercise of such privilege of transfer or exchange. The Paying Agent/Registrar shall not be required to make any such transfer or exchange (i) during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date, or, (ii) with respect to any Bond or portion thereof called for redemption prior to maturity, within 45 days prior to its redemption date.

IN THE EVENT any Paying Agent/Registrar for the Bonds is changed by the University, resigns, or otherwise ceases to act as such, the University has covenanted in the Bond Resolution that it promptly will appoint a competent and legally qualified substitute therefor, and promptly will cause written notice thereof to be mailed to the registered owners of the Bonds.

IT IS HEREBY certified, recited, and covenanted that this Bond has been duly and validly issued and delivered; that all acts, conditions, and things required or proposed to be performed, exist, and be done precedent to or in the issuance and delivery of this Bond have been performed, existed, and been done in accordance with law; and that the interest on and principal of this Bond and the Series of which it is a part, together with other outstanding revenue bonds of the University, which are secured by and payable from a pledge of, and an irrevocable first lien (but not an exclusive first lien) on, the Pledged Revenues which have been defined in the Bond Resolution to mean the gross income and revenues of the System (defined in the Bond Resolution), the gross proceeds of the collection of student tuition and certain student fees, the income from the Permanent Fund and the income from the Income Fund (both defined in the Bond Resolution), certain debt service grants of the United States Government or its agencies, and all other University income or revenues from proprietary activities except that Pledged Revenues does not include certain facilities excluded in the Bond Resolution from the System, the proceeds of ad valorem taxation, State appropriations or restricted contracts and grants. For a full description of the funds, System, Pledged Revenues and the nature and extent of the security afforded thereby for the payment of the principal of, premium, if any, and interest on the Bonds, reference is made to the Bond Resolution. The Bonds, together with other outstanding revenue bonds, are equally and ratably secured by a pledge of the Pledged Revenues.

THE UNIVERSITY reserves the right to issue additional Parity Senior Lien Bonds under the terms and conditions stated in the Bond Resolution and such bonds may be made payable from the same source, secured in the same manner and placed on a parity with this Bond.

THE OWNER hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation. This Bond is not an obligation or indebtedness of the State of New Mexico, but is a special obligation of the University.

BY BECOMING the registered owner of this Bond, the registered owner thereby acknowledges all of the terms and provisions of the Bond Resolution, agrees to be bound by such terms and provisions, acknowledges that the Bond Resolution is duly recorded and available for

inspection in the official minutes and records of the governing body of the University, and agrees that the terms and provisions of this Bond and the Bond Resolution constitute a contract between the registered owner hereof and the University.

IN WITNESS WHEREOF, the University has caused this Bond to be signed with the manual or facsimile signature of the Chair of The Regents of the University and countersigned with the manual or facsimile signature of the Secretary-Treasurer of The Regents of the University, and has caused the official seal of the University to be duly impressed, or placed in facsimile, on this Bond.

Ammu Devasthali, Chair
The Regents of
New Mexico State University

(UNIVERSITY SEAL)

Countersigned:

Neal Bitsie, Secretary-Treasurer
The Regents of
New Mexico State University

(Form of Paying Agent/Registrar's Authentication Certificate)

PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE

It is hereby certified that this Bond has been issued under the provisions of the Bond Resolution described on the face of this Bond.

Dated: _____, 2022

Paying Agent/Registrar

By: _____
D'Anne Stuart, Associate Vice
President for Finance and Business
Services of New Mexico State
University

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned registered owner of this Bond, or duly authorized representative or attorney thereof, hereby assigns this Bond to

(Assignee's Social Security
or Taxpayer Identification Number)

(print or type Assignee's name
and address, including zip code)

and hereby irrevocably constitutes and appoints

attorney to transfer the registration of this Bond on the Paying Agent/Registrar's Registration Books with full power of substitution in the premises.

Dated _____

Signature Guaranteed:

NOTICE: This signature must be guaranteed by a member of the New York Stock Exchange or a commercial bank or trust company.

Registered Owner

NOTICE: This signature must correspond with the name of the Registered Owner appearing on the face of this Bond in every particular without alteration or enlargement or any change whatsoever.

Section 10. Disposition of Proceeds. The proceeds of the Bonds, promptly upon receipt thereof, will be deposited and used by the Regents as follows:

A. Accrued Interest. First, any accrued interest received from the issuance and sale of the Bonds shall be deposited in the 2022 Debt Service Account of the Interest and Retirement Fund to be used to pay interest on the Bonds.

B. Capitalized Interest Account. Second, an amount to be established in the Sale Certificate, if any, shall be deposited in the Capitalized Interest Account of the 2022 Debt Service Account to be used to pay interest on the Bonds. Upon certification by the senior financial officer of the University that the remaining amounts held in the Capitalized interest Account is not needed to pay interest on the Bonds, such amount may be transferred to the Acquisition Fund for the Improvement Project.

C. Acquisition Fund. Third, the balance of the proceeds received from the issuance and sale of the Bonds shall be deposited in the Acquisition Fund to be held by the Purchaser or an escrow agent pursuant to a Capital Projects Escrow Agreement, if required by the Purchaser. The moneys deposited in the Acquisition Fund shall be used solely for the Improvement Project and the payment of Expenses. Investment earnings on moneys deposited in the Acquisition Fund may be transferred to the 2022 Debt Service Account upon certification by the senior financial officer of the University that the amount remaining in the Acquisition Fund, after giving effect to such transfer, is anticipated to be sufficient to complete the Improvement Project. After the Improvement Project is completed, all money remaining in the Acquisition Fund, if any may be deposited into the Debt Service Account of the Interest and Retirement Fund to be used for the payment of the principal of and the interest on the Bonds next coming due or may be used for any other lawful purpose if there is provided a written opinion of nationally-recognized bond counsel to the effect that such use is permissible under State law and, if applicable, that such use will not adversely affect the exclusion of interest on the Bonds from gross income of the owners thereof for federal income tax purposes under the Code.

D. Purchaser Not Responsible. The validity of the Bonds is not dependent on nor affected by the validity or regularity of any proceedings related to the Improvement Project. The Purchaser of the Bonds, and any subsequent owner of any Bonds, shall in no manner be responsible for the application or disposal by the University or by any officer or any employee or other agent of the University of the moneys derived from the sale of the Bonds.

Section 11. Approval of Documents. The form of a Bond Purchase Agreement has been filed in the office of the Associate Vice President for Finance and Business Services of the University and presented to the Regents at the time of the adoption of this Resolution. The Chair of the Regents, the Vice Chair of the Regents, or the Delegate is authorized and directed to execute, and the Secretary-Treasurer of the Regents is authorized and directed to affix the seal of the University to, and attest, the Bonds, the Tax Compliance Certificate, the Capital Projects Escrow Agreement (if required by the Purchaser), documents related to the acquisition of a bond insurance policy, if any, and the Bond Purchase Agreement, as required, in substantially the forms presented to the Regents, subject, in the case of the Bond Purchase Agreement and the Official Statement, to completion to reflect the final terms of the sale of the Bonds, or with such

changes therein as are not inconsistent with the Bond Resolution and the Sale Certificate and as shall be approved by the Delegate, Chair or the Vice Chair, the Delegate's, Chair's or Vice Chair's execution thereof to constitute conclusive evidence of approval of any and all changes or revisions thereof from the form approved hereby; any such changes which are inconsistent with the terms of the Bond Resolution or the Sale Certificate shall be approved by subsequent resolution of the Regents. From and after the execution and delivery of the Bonds, the Tax Compliance Certificate, the Capital Projects Escrow Agreement (if any) and the Bond Purchase Agreement, the officers, agents and employees of the Regents are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Tax Compliance Certificate, the Capital Projects Escrow Agreement, agreements related to a bond insurance policy, if any, and the Bond Purchase Agreement, as executed.

Section 12. Bond Funds.

A. Funds Continued. The Regents hereby continue the following special and separate funds previously established by the Regents:

(i) Revenue Fund. "The Regents of New Mexico State University Revenue Bonds Revenue Fund" for the deposit of Pledged Revenues shall be maintained in any account or accounts in one or more regular depositories of the Regents.

(ii) Interest and Retirement Fund. "The Regents of New Mexico State University Revenue Bonds Interest and Retirement Fund" shall be maintained in an account or accounts in one or more depositories of the Regents. The Senior Lien Debt Service Account and Subordinate Lien Debt Service Account have been established as separate accounts of the Interest and Retirement Fund.

(iii) Renewal and Replacement Fund. "The Regents of New Mexico State University Revenue Bonds Renewal and Replacement Fund" shall be maintained with one or more regular depositories of the Regents.

B. Acquisition Fund. The Regents hereby establish "The Regents of New Mexico State University Improvement Revenue Bonds, Series 2022 Acquisition Fund" for the deposit of certain of a portion of the Bond proceeds.

C. Rebate Fund. The Regents hereby establish "The Regents of New Mexico State University Improvement Revenue Bonds, Series 2022 Rebate Fund" for the purposes set forth in Section 32 of the Bond Resolution.

Section 13. Disposition of Pledged Revenues. So long as any of the Senior Lien Parity Bonds or the Subordinate Lien Parity Bonds are outstanding, either as to principal or interest, or both, the Regents shall cause the Pledged Revenues to be collected and deposited as received on a regular basis in the Revenue Fund and to make the payments from the Revenue Fund into the Interest and Retirement Fund, the Renewal and Replacement Fund and as otherwise required or permitted by Section 14 of the Bond Resolution.

Section 14. Deposit and Use of Pledged Revenues.

A. Senior Lien Debt Service Account. While any Senior Lien Parity Bonds are outstanding, Pledged Revenues shall first be transferred from the Revenue Fund into the Senior Lien Debt Service Account as provided below.

- i. such amounts, at least five days prior to the applicable interest payment date, as will be sufficient, together with other monies, if any, then on deposit therein for such purpose, to pay the interest scheduled to come due on the Senior Lien Parity Bonds on the next interest payment date; and
- ii. such amounts, at least five days prior to the applicable principal payment date, as will be sufficient to pay the next maturing principal payment on the Senior Lien Parity Bonds.

Interest due on the Bonds shall be paid from moneys on deposit in the Senior Lien Debt Service Account on parity with the other outstanding Senior Lien Parity Bonds. The Regents hereby create the 2022 Debt Service Account within the Interest and Retirement Account for the deposit of Pledged Revenues on a parity with the other outstanding Senior Lien Parity Bonds and the payment of principal and interest on the Bonds.

In order to allow for seasonal variations in Pledged Revenues, the Regents may make the payment of such installments in an amount greater than the above required amounts. If on or before the applicable payment date there has been accumulated in the Senior Lien Debt Service Account an amount in excess of the amount required to then be on deposit therein, the payment required by such date may be appropriately reduced by the excess on deposit in the Senior Lien Debt Service Account; provided that the amount accumulated in the Senior Lien Debt Service Account on the fifth day prior to an interest payment date for Senior Lien Parity Bonds must always be sufficient to pay in full all principal and interest becoming due on such interest payment date on all Senior Lien Parity Bonds then outstanding. Except as provided in paragraph C of this Section, the moneys in the Senior Lien Debt Service Account shall be used only to pay the principal of and interest on Senior Lien Parity Bonds as the same become due and shall be transferred to the Paying Agent/Registrar by 1:00 p.m. New York City time at least five days preceding the due date thereof.

B. Debt Service Reserve Account. No debt service reserve account shall be required for the Bonds unless required by the Purchaser.

C. Termination Upon Deposits to Maturity. No payment need be made into the Senior Lien Debt Service Account if the amount on deposit in the Interest and Retirement Fund totals a sum at least equal to the entire amount of principal and interest due and to become due on the Outstanding Senior Lien Parity Bonds to their respective maturities, both accrued and not accrued. In such case, moneys in the Interest and Retirement Fund shall be used solely to pay principal and interest on Senior Lien Parity Bonds as the same become due, and any moneys

in excess thereof in the Interest and Retirement Fund and any other Pledged Revenues may be used as provided below in this Section.

D. Defraying Delinquencies in the Senior Lien Debt Service Account. If at any time a deposit due pursuant to paragraph A of this Section for the debt service payable on the Bonds shall not be paid, for any reason, into the Senior Lien Debt Service Account, then the difference between the amount paid and the amount required shall be paid therein from the first Pledged Revenues thereafter received not required to be otherwise applied.

E. Subordinate Lien Debt Service Account and Reserve Accounts for Subordinate Lien Bonds. After and subject to the payments required by subparagraph (A) for the outstanding Senior Lien Parity Bonds, Pledged Revenues shall be deposited into the Subordinate Lien Debt Service Account and any Reserve Accounts, if any, for the outstanding Subordinate Lien Bonds.

F. Renewal and Replacement Fund. The Renewal and Replacement Fund may be used for the purpose of paying the costs of improvements, replacements, enlargements, extensions, additions, or other capital expenditures relating to the facilities of the University or the acquisition of land in connection therewith, and for paying extraordinary repairs and maintenance of University facilities, or for paying principal of and interest on any bonds, when and to the extent the amount in the Interest and Retirement Fund is insufficient for such purpose.

After making the required deposits from the Revenue Fund as set forth in Paragraphs A, D, and E of this Section, the Regents may make deposits from the Revenue Fund into the Renewal and Replacement Fund in each Fiscal Year until the amount therein is equal to a maximum amount of 10% of the value of the University's buildings, equipment, furnishings and library books as stated in the Regents' annual audit for such Fiscal Year. If the amount on deposit in the Renewal and Replacement Fund is reduced to an amount less than such maximum amount, or if the Regents provide for an increase in such maximum amount in any resolution authorizing Additional Senior Lien Bonds, the Regents may, after making the deposits required by Paragraphs A, D and E of this Section, make additional deposits from the Revenue Fund into the Renewal and Replacement Fund up to the then applicable maximum amount. Notwithstanding anything to the contrary set forth in the Bond Resolution, the Regents may use interest earned on the amounts on deposit in the Renewal and Replacement Fund for any lawful purpose or purposes authorized by the Constitution and laws of the State.

G. Use of Surplus Pledged Revenues. After making the payments hereinabove required to be made under this Section and except as provided in Section 32 herein, the remaining Pledged Revenues, if any, may be applied to payment of junior lien obligations and as determined by the Regents to any other lawful purpose or purposes authorized by the Constitution and laws of the State or as the Regents may direct and Pledged Revenues will be budgeted for the Operating and Maintenance Expenses as is necessary from that portion of the Pledged Revenues which may be used by the Regents for such purposes.

Section 15. General Administration of Funds. The funds and accounts designated in the Bond Resolution shall be administered as follows:

A. Investment of Money. Money in the Revenue Fund may be invested in any manner allowed by the laws of the State and money in the Senior Lien Debt Service Account and Subordinate Lien Debt Service Account may be invested in Permitted Investments maturing prior to the date on which the money so invested will be needed for the payment of principal of or interest on Outstanding Obligations. Money in the Renewal and Replacement Fund may be invested in Permitted Investments maturing not more than 10 years from the date of purchase. Moneys in each such Fund may also be invested in any of the following as may hereafter be permitted by the laws of the State:

(i) interest-bearing demand or time deposits (including certificates of deposit) in Insured Banks, which deposits are fully insured by the Federal Deposit Insurance Corporation or continuously secured by Permitted Investments (valued at least every 14 days) not less than the amount so invested; and

(ii) investment agreements with Insured Banks, which agreements are fully insured by the Federal Deposit Insurance Corporation or continuously secured by Permitted Investments (valued at least every 14 days) not less than the amount so invested.

Except as otherwise set forth in the Bond Resolution, the obligations so purchased as an investment of moneys in any such fund or account shall be deemed at all times to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account (subject to withdrawal at any time as permitted by Section 14 of the Bond Resolution), and any loss resulting from such investment shall be charged to the fund or account. Any obligations so purchased as an investment of moneys in any fund or account shall be presented for redemption or sale on the prevailing market whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund or account.

B. Deposits of Funds. The moneys and investments comprising the funds designated in the Bond Resolution shall be maintained and kept in an Insured Bank or Banks. Each payment shall be made into and credited to the proper fund at the designated time, except that when the designated time shall be a Saturday, a Sunday or a legal holiday, then such payment shall be made on the next succeeding Business Day; provided that moneys for the payment of the Outstanding Obligations shall be deposited with the Paying Agent/Registrar by 1:00 p.m. New York City time at least five days prior to the applicable payment date. Nothing herein shall prevent the establishment of one or more such accounts in Insured Banks for all of the funds and accounts in Section 12 of the Bond Resolution or shall prevent the combination of such funds with any other Insured Bank account or accounts for other funds and accounts of the Regents. The moneys in funds which are not invested shall be secured at all times in a manner required by the laws of the State for the securing of public moneys of the Regents. The depository holding the amounts on deposit in the Interest and Retirement Fund shall make such credit arrangements with any other bank or banks at which Outstanding Obligations are payable as will assure, to the extent of the moneys in the Interest and Retirement Fund, prompt payment of the principal of, premium, if any, and interest on the Outstanding Obligations as set forth in the applicable resolution of the Regents.

Section 16. Lien on Pledged Revenues; Equality of Senior Lien Parity Bonds. The Bonds are secured by an irrevocable first lien, but not an exclusive first lien, on the Pledged Revenues. The Regents hereby pledge and grant to the owners of Senior Lien Parity Bonds, now owned or hereafter acquired, a security interest in the Pledged Revenues and in the moneys and securities on deposit in the Revenue Fund and Interest and Retirement Fund for the payment of the principal of, premium, if any, and interest on the Senior Lien Parity Bonds.

The owners of the Bonds and other Senior Lien Parity Bonds from time to time outstanding shall not be entitled to any priority one over the other in the application of the Pledged Revenues, regardless of the time or times of their issuance.

Section 17. Additional Bonds.

A. Limitations Upon Issuance of Additional Bonds. Nothing in the Bond Resolution shall be construed in such a manner as to prevent the issuance by the Regents of Additional Senior Lien Parity Bonds for the purpose of extending, enlarging, expanding, bettering or otherwise improving the System, payable from the Pledged Revenues and constituting a lien upon the Pledged Revenues on a parity with, but not prior or superior to, the lien of the Bonds, nor to prevent the issuance of bonds or other obligations refunding all or a part of the Bonds. The payment of principal of and interest on any Senior Lien Parity Bond hereafter issued may be made on any date established by the Regents. Before any additional Senior Lien Parity Bonds are authorized or actually issued (excluding refunding bonds or refunding obligations which refund Senior Lien Parity Bonds but including parity refunding bonds and obligations which refund subordinate obligations) all of the following conditions shall be met:

(i) The senior financial officer of the University shall sign a written certificate to the effect that the Regents are not in default in any covenant, condition, or obligation relating to any outstanding Senior Lien Parity Bonds, and the resolutions authorizing the issuance thereof, and that the Interest and Retirement Fund contains the amount then required to be on deposit therein.

(ii) The senior financial officer of the University shall sign a written certificate to the effect that, during either the University's Fiscal Year immediately preceding the date of the adoption of the resolution authorizing the Senior Lien Parity Bonds proposed to be issued, or a twelve consecutive calendar month period, ending not more than ninety days prior to the passage of the resolution authorizing the issuance of the proposed Senior Lien Parity Bonds, the Pledged Revenues, after deducting Operating and Maintenance Expenses for such Fiscal Year or twelve-month period, actually received by the Regents were at least equal to one hundred seventy-five percent (175%) of the average annual principal and interest requirements on all outstanding Senior Lien Parity Bonds, but excluding the Senior Lien Parity Bonds proposed to be issued.

(iii) The senior financial officer of the University shall sign a written certificate to the effect that during each Fiscal Year of the University (commencing with the Fiscal Year which includes the date of the adoption of the resolution authorizing the issuance of the proposed Senior Lien Parity Bonds), while any Senior Lien Parity Bonds, including the

proposed Senior Lien Parity Bonds, are scheduled to be outstanding, the Pledged Revenues reasonably estimated by such officer to be received during each of such Fiscal Years (after deducting estimated Operating and Maintenance Expenses for each such Fiscal Year), respectively, will be at least equal to one hundred seventy-five percent (175%) of the annual principal and interest requirements on all then outstanding Senior Lien Parity Bonds, including the proposed Senior Lien Parity Bonds, during such Fiscal Year.

B. Subordinate Obligations Permitted. Nothing herein contained shall be construed to prevent the Regents from issuing bonds or other obligations payable from the Pledged Revenues having a lien thereon subordinate, inferior and junior to the lien of the Bonds in accordance with the resolutions authorizing the issuance of the Outstanding Subordinate Lien Bonds.

C. Superior Obligations Prohibited. Nothing herein contained shall be construed to permit the Regents to issue bonds or other obligations payable from the revenues of the System and having a lien thereon prior and superior to the Bonds.

Section 18. Refunding Bonds. The provisions of Section 17 of the Bond Resolution are subject to these exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time the Regents shall find it desirable to refund bonds or other obligations payable from and constituting a lien upon Pledged Revenues, the bonds or other obligations, or any part thereof, may be refunded (but the owners of bonds to be refunded may not be compelled to surrender their bonds, unless the bonds or other obligations, at the time or times of their required surrender for payment shall then mature, or shall then be callable for prior redemption at the Regents' option upon proper call), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed (except as provided in Paragraph C of Section 17, i.e., prohibiting superior lien bonds, and except as provided in paragraphs B, C and D of this Section). Any bonds issued for refunding purposes may be delivered in exchange for the outstanding bonds authorized to be refunded, or sold at public or private sale, or sold in part and exchanged in part.

B. Limitations upon Issuance of Parity Refunding Obligations. No refunding bonds or other refunding obligations payable from Pledged Revenues shall be issued on a parity with the Bonds unless:

(i) The outstanding obligations so refunded are Senior Lien Parity Bonds and the refunding bonds or other refunding obligations do not increase annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with paragraph A of Section 17 of the Bond Resolution.

C. Refunding Part of an Issue. The refunding bonds or other refunding obligations issued shall enjoy complete equality of lien on the Pledged Revenues with the portion

of any bonds or other obligations of the same issue which are not refunded, if any; and the holder or holders of such refunding bonds or other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the owner or owners of the same issue refunded thereby.

D. Limitations Upon Issuance of Any Refunding Obligations. Any refunding bonds or other refunding obligations payable from Pledged Revenues shall be issued with such details as the Regents may by resolution provide, subject to the inclusion of any such rights and privileges designated in paragraph C of this Section but without impairment of any contractual obligation imposed upon the Regents by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including but not necessarily limited to the Bonds). If only a part of the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is refunded, then such obligations may not be refunded, unless:

(i) The refunding bonds or other refunding obligations do not increase any annual principal and interest requirements for any Fiscal Year evidenced by such refunded obligations and by the then outstanding obligations not refunded; or

(ii) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded; or

(iii) The refunding bonds or other refunding obligations are issued in compliance with paragraph A of Section 17 hereof.

Section 19. General Covenants. The Regents covenant and agree that:

A. The Regents will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in the Bond Resolution and in each and every Senior Lien Parity Bond. The Regents will promptly pay or cause to be paid from the Pledged Revenues the principal of and interest on every Senior Lien Parity Bond, on the dates and in the places and manner prescribed in such Senior Lien Parity Bonds. The Regents will, at the times and in the manner prescribed herein, deposit or cause to be deposited, from the Pledged Revenues, the amounts of money specified herein.

B. The Regents are duly authorized under the laws of the State to issue and deliver the Bonds. All action on the Regents' part for the authorization, issuance and delivery of the Bonds has been duly and effectively taken, and the Bonds in the hands of the owners thereof are and will be valid and enforceable special obligations of the Regents in accordance with their terms.

C. The Regents lawfully own and are lawfully possessed of the lands upon which the existing campuses, buildings and facilities constituting the University are located. The Regents are lawfully qualified to pledge the Pledged Revenues to the payment of Senior Lien Parity Bonds in the manner prescribed herein, and have lawfully exercised such rights.

D. The Regents will, from time to time, and before the same become delinquent, pay and discharge all taxes, assessments and governmental charges, if any, which shall be lawfully imposed upon the University, or the campus, buildings and facilities of the University.

E. The Regents will, if necessary to meet the payment to the Interest and Retirement Fund, adopt such reasonable regulations and requirements relating to the residence of the students attending the University and the use of the University's facilities as shall be necessary to assure that the facilities will be as fully occupied and utilized as reasonably possible.

F. The Regents will continuously and efficiently operate and maintain in good condition, the University and the facilities and services thereof, so long as any Senior Lien Parity Bonds are outstanding.

G. While the Senior Lien Parity Bonds are outstanding and unpaid, the Regents will not additionally encumber the Pledged Revenues in any manner, except as permitted by the Bond Resolution.

H. Proper books of record and account will be kept in which full, true and correct entries will be made of all dealings, activities and transactions relating to the Pledged Revenues, and all books, documents and vouchers relating thereto shall at all reasonable times be made available for inspection upon request of any owner of Senior Lien Parity Bonds.

I. Each year while any of the Senior Lien Parity Bonds are outstanding, an audit will be made of the University's books and accounts relating to the Pledged Revenues by a certified or registered public accountant, such audit to be based on the Fiscal Year of the University.

J. While any Senior Lien Parity Bonds are outstanding and unpaid, the Regents shall keep the System in reasonable repair and shall not sell, convey, mortgage, or in any manner transfer title to, or lease (except to provide professional management of auxiliary facilities or services after the chief financial officer of the University certifies that the Regents reasonably anticipate that (a) the University will receive increased Pledged Revenues as a result of such lease or that (b) the Operating and Maintenance Expense of the University will be reduced as a result of such lease), or otherwise dispose of any property providing Pledged Revenues, except that whenever the Regents deem it necessary to dispose of any furnishings and equipment, they may sell or otherwise dispose of such furnishings and equipment when they have made arrangements to replace the same or provide substitutes therefor. However, the Regents reserve the right to abandon the use of, or sell at fair market value, any facilities that provide Pledged Revenues, provided that:

(i) The Regents are in full compliance with all covenants and undertakings in connection with all of the Senior Lien Parity Bonds outstanding;

(ii) The Regents will, in the event of sale, apply the proceeds to either (a) redemption of outstanding Senior Lien Parity Bonds in accordance with the provisions governing repayment of Senior Lien Parity Bonds in advance of maturity, or (b) replacement of the facility disposed of by another facility and in such case the revenues of such facility shall be part of the Pledged Revenues, or (c) depositing such proceeds in the Senior Lien Debt Service Account for payment of the next ensuing payments of principal of and interest on Senior Lien Parity Bonds;

(iii) The chief financial officer of the University certifies, prior to any abandonment of use, that (a) the facility to be abandoned is of substandard quality and no longer capable of producing positive net revenues after payment of operation and maintenance expenses thereof, and/or (b) the conversion, abandonment, razing or removal is necessary to carry out the University's campus master plan, and/or (c) the conversion, abandonment, razing or removal is in the best interest of the University;

(iv) The chief financial officer of the University certifies that the Pledged Revenues during either the University's prior Fiscal Year or the twelve calendar month period immediately preceding such abandonment, sale or other disposition would have been at least 175% of the maximum annual principal and interest requirements on all outstanding Senior Lien Parity Bonds for such Fiscal Year or twelve-month period, if such sale, abandonment or disposition had occurred at the beginning of such Fiscal Year or twelve-month period; and

(v) The chief financial officer of the University certifies that the estimated Pledged Revenues for the then succeeding Fiscal Year plus the estimated revenues of the facility, if any, to be added to the Pledged Revenues satisfy the earnings test required in Section 17 for the issuance of Additional Senior Lien Parity Bonds.

K. Insurance on the University's facilities and equipment will be maintained in an amount equal to 80% of the full insurable value thereof. In case of loss, the proceeds of such insurance will be used to repair, restore or replace such facilities, if necessary to the University's function. If the insurance proceeds are not sufficient to repair, restore or replace such facility, any available revenues of the Regents may be used for such purpose. If the Regents determine that the repair, restoration or replacement of such facilities is not necessary to the function of the University or other revenues are not available at the time to make such repairs, restoration or replacement, then the insurance proceeds shall be used promptly as follows:

(i) for the redemption prior to maturity of Senior Lien Parity Bonds, if any, ratably in the proportion that the outstanding principal of each series or issue of Parity Bonds bears to the total outstanding principal of all Senior Lien Parity Bonds; provided that if on any such occasion the principal of any such series or issue of Senior Lien Parity Bonds is not subject to redemption within 12 months of the date that such proceeds are available to the Regents, such series or issue shall not be regarded as outstanding in making the foregoing computation; or

(ii) for payment of the next ensuing payments of principal of, premium, if any, and interest on Senior Lien Parity Bonds in the same proportion as prescribed in clause (i) above; or

(iii) if Senior Lien Parity Bonds are available for purchase, insurance proceeds may be used for the purchase on the open market and retirement of Senior Lien Parity Bonds, in the same proportion as prescribed in the foregoing clause (i), to the extent practicable; provided that the purchase price for any such Senior Lien Parity Bond shall not exceed the redemption price of such Senior Lien Parity Bond on the first date upon which it thereafter becomes subject to redemption; or

(iv) to the extent that the foregoing clauses (i), (ii) and (iii) cannot be complied with, the insurance proceeds, or the remainder thereof, shall be deposited in a special and separate trust fund, at an official depository of the Regents, to be designated the Insurance Account. The Insurance Account shall be held until such time as either clause (i), (ii) and/or (iii) can be complied with, or until other revenues become available which, together with the moneys in the Insurance Account, will be sufficient to make the repairs or replacements originally required.

L. The Regents will at all times impose and collect rates and charges for the use of all buildings and facilities comprising the System and for all commodities and services sold or supplied therein or furnished thereby, and will impose and collect such student tuition and fees for the use and availability of the System, as will be fully sufficient, together with the other income and revenues of the University received from sources other than (i) sources excluded from the System, (ii) the proceeds of ad valorem taxation, (iii) State appropriations, or (iv) the proceeds of any University appropriations, gifts, contracts, grants and endowments, whether from or with public, private or governmental sources, which are restricted as to use, to permit the performance of all the covenants in and requirements of the Bond Resolution, including the prompt payments required by Section 14 into the Senior Lien Debt Service Account, the Subordinate Lien Debt Service Account, the Renewal and Replacement Fund, the Rebate Fund and the payment of Operating and Maintenance Expenses.

Section 20. Events of Default. Each of the following events is hereby declared to be an "event of default":

A. Nonpayment. The failure to make any payment of principal of, premium, if any, or interest on any Parity Bond on the date the same becomes due and payable.

B. Default of Any Provision. Default in the due and punctual observance or performance of any of the covenants, conditions and agreements on the part of the Regents in the Senior Lien Parity Bonds or in any resolution of the Regents authorizing the issuance of outstanding Senior Lien Parity Bonds, other than as specified in paragraph A of this Section, and failure to remedy such default for a period of sixty (60) days after written notice thereof specifying such failure and requiring the same to be remedied shall have been given to the Regents by the holders of not less than twenty-five percent (25%) in aggregate principal amount of the outstanding Senior Lien Parity Bonds.

C. Bankruptcy. The Regents shall file a petition seeking relief or a petition shall be filed against the Regents seeking relief, which shall not be stayed or dismissed within sixty (60) days, under any bankruptcy law or similar law for relief of debtors.

Section 21. Rights and Remedies. Upon the occurrence of any event of default, the owners of not less than twenty-five percent (25%) in aggregate principal amount of the Senior Lien Parity Bonds, including a trustee or trustees for the owners of Senior Lien Parity Bonds, shall, in addition to all other remedies and rights of owners of any of the Senior Lien Parity Bonds, have the right and power for the equal benefit and protection of all owners of the Senior Lien Parity Bonds similarly situated, by suit, action, mandamus or proceeding, at law or in equity, to protect, enforce and compel performance by the Regents and any of the officers, agents and employees of the Regents, to perform and carry out its and their duties and obligations under the resolution or the law pursuant to which the Senior Lien Parity Bonds have been issued, or to enforce the covenants and agreements of the Regents with the owners of the Senior Lien Parity Bonds. Nothing in this Section shall be construed to authorize any action by or on behalf of such owners which is contrary to any presently existing law, nor to require the Regents to perform any act or to do anything which shall require the expenditure in any manner or for any purpose of any funds by the Regents other than the Pledged Revenues.

Section 22. Amendment of Resolution.

A. Limitations upon Amendments. The Bond Resolution as supplemented by the Sale Certificate may be amended without the consent of the owners of the Bonds to cure any ambiguity, to cure, correct or supplement any defect or inconsistent provision contained therein or to cause or continue to cause interest on the Bonds to be excluded from gross income for federal income tax purposes, if applicable. Except as provided above, the Bond Resolution as supplemented by the Sale Certificate may only be amended or supplemented by resolutions adopted by the Regents in accordance with the laws of the State, with the written consent of the owners of a majority in aggregate principal amount of the Bonds then outstanding (not including in any case any Bonds which may then be held or owned for the account of the Regents, but including such refunding bonds as may be issued for the purpose of refunding any of the Bonds, if such refunding bonds are not owned by the Regents); provided, however, that no such resolutions shall have the effect of permitting:

- (i) An extension of the maturity of any Bond; or
- (ii) A reduction in the principal amount of any Bond, the rate of interest thereon, or the redemption premium payable thereon; or
- (iii) The creation of a lien upon or a pledge of Pledged Revenues ranking prior to the lien or pledge created by the Bond Resolution; or
- (iv) A reduction of the principal amount of Bonds required for consent to such amendatory or supplemental resolution; or

(v) The establishment of priorities as between Bonds issued and outstanding under the provisions of the Bond Resolution; or

(vi) The modification of, or otherwise affecting, the rights of the owners of less than all of the Bonds then outstanding (other than as originally permitted hereby); or

(vii) The modification of the terms of payment of principal of or interest on the Bonds or the imposition of any conditions with respect to such payment.

B. Notice of Amendment. Notice of a proposed amendment requiring the consent of the owners of Bonds shall be mailed to the owners of the Bonds then Outstanding at their addresses as the same last appear in the registration books kept by the Paying Agent/Registrar. Such notice shall briefly set forth the nature of the proposed amendment and shall state that copies of the resolution pertaining to such amendment are on file at the office of the Paying Agent/Registrar for inspection by all owners of Bonds. If within sixty (60) days, or such longer period as shall be prescribed by the Regents following the giving of such notice, the owners of a majority in aggregate principal amount of the Bonds Outstanding shall have consented to and approved the amendment as herein provided, the amendment shall become effective and no owner of any Bond shall have any right to object to such amendment, or the operation thereof.

C. Proof of Instruments. The fact and date of the execution of any instrument under the provisions of this Section may be proved by the certificate of any officer in any jurisdiction who by the laws thereof is authorized to take acknowledgments of deeds within such jurisdiction that the person signing such instrument acknowledged before him the execution thereof, or may be proved by an affidavit of a witness to such execution sworn to before such officer.

Section 23. Defeasance. When all principal, interest and prior redemption premiums, if any, in connection with the Bonds have been duly paid, the pledge and lien therefor on the Pledged Revenues and all obligations of the Regents hereunder shall thereby be discharged and the Bonds shall no longer be deemed to be Outstanding within the meaning of the Bond Resolution. There shall be deemed to be such payment when the Regents have caused to be placed in escrow and in trust with a bank doing business in the State which is a member of the Federal Deposit Insurance Corporation and exercising trust powers, an amount sufficient (including the known minimum yield from Government Obligations or Tax-Exempt Obligations, defined below, in which such amounts are initially invested) to meet all requirements of principal, interest and prior redemption premium, if any, on the Bonds as the same become due to their final maturities or upon designated prior redemption dates. The Government Obligations or Tax-Exempt Obligations shall become due prior to the respective times on which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the Regents and such bank at the time of the creation of the escrow, or the Government Obligations or Tax-Exempt Obligations shall be subject to redemption at the option of the holders or owners thereof to assure such availability as needed to meet such schedule. Tax-Exempt Obligations within the meaning of this Section are those obligations exempt from federal income tax having

a rating within the highest rating category assigned to such obligations by Moody's Investors Service or Standard & Poor's Corporation to the extent then allowed by the laws of the State to be purchased by the Regents for the purpose of paying the Bonds. If any Bond is to be redeemed prior to maturity, notice of redemption shall have been given or arrangements satisfactory to the Paying Agent/Registrar shall have been made for the giving of such notice. No Bonds may be refunded unless they mature or are callable for prior redemption under their terms, as set forth in the Sale Certificate, within fifteen (15) years, or such other period as may then be allowed by the laws of the State, from the date of issuance of the refunding bonds or unless the owners thereof voluntarily surrender them for exchange or payment.

Section 24. Bonds Not Presented When Due. If any Bonds shall not be duly presented for payment when due at maturity or on the redemption date thereof, and if moneys sufficient to pay such Bonds are on deposit with the Paying Agent/Registrar for the benefit of the owners thereof, and in the case of Bonds to be redeemed, if notice of redemption has been given as provided in the Bond Resolution or other applicable resolution, all liability of the Regents to such owners for the payment of such Bonds shall be completely discharged, such Bonds shall not be deemed to be Outstanding and it shall be the duty of the Paying Agent/Registrar to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of the owners of such Bonds for a period of four (4) years, after which time such moneys shall be returned to the Regents for use in any lawful manner.

Section 25. Delegated Powers. The officers of the Regents and the University are authorized and directed to take all action necessary or appropriate to effectuate the provisions of the Bond Resolution, including, without limiting the generality of the foregoing, the publication of the Notice of Resolution Authorizing the Issuance of Public Securities set out in Section 34 below (with or without such changes, additions and deletions not inconsistent herewith as they may determine are necessary), the distribution of material relating to the Bonds, the printing of the Bonds, the printing and the execution of the Bond Purchase Agreement, the Tax Compliance Certificate, the Capital Projects Escrow Agreement (if any) and such certificates and documents as may be required by the Purchaser. Pursuant to Section 6-14-10.2 NMSA 1978 and the provisions of this Resolution, the Delegate is delegated the authority to approve the final terms of the Bonds and to execute the Sale Certificate and Bond Purchase Agreement all within the parameters set forth in this Authorizing Resolution.

Section 26. Bond Resolution Irrepealable. Except with respect to amendments as provided in Section 22 above, after any of the Bonds are issued, the Bond Resolution shall be and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and discharged, as herein provided, or there has been defeasance as herein provided.

Section 27. Approval of Bonds. Prior to the delivery of the Bonds, an officer or representative of the Regents or the University shall give written notice of the intention of the Regents to issue the Bonds to the State Board of Finance, together with a copy of this resolution and any supplemental showings or materials which may be required by the State Board of Finance, and none of the Bonds shall be delivered until the State Board of Finance, the New Mexico Higher Education Department, and any other appropriate governmental authority shall have issued such approvals with respect to the issuance of the Bonds as are required by law.

Section 28. Severability. If any one or more provisions of the Bond Resolution or the application thereof to any set of circumstances or the pledge of any one or more sources of revenue hereunder shall ever be held by final decision of a court of competent jurisdiction to be invalid or ineffective for any reason, such holding shall not affect the validity and enforceability of the remaining provisions and pledges of the Bond Resolution or the application of such remaining provisions to other circumstances.

Section 29. Repealer Clause. All bylaws, orders and resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order or resolution, or part thereof, heretofore repealed.

Section 30. Damaged, Mutilated, Lost, Stolen, or Destroyed Bonds.

A. Replacement Bonds. In the event any outstanding Bond is damaged, mutilated, lost, stolen, or destroyed, the Paying Agent/Registrar shall cause to be printed, executed, and delivered, a new bond of the same principal amount, maturity, and interest rate, as the damaged, mutilated, lost, stolen, or destroyed Bond, in replacement for such Bond in the manner hereinafter provided.

B. Application for Replacement Bonds. Application for replacement of damaged, mutilated, lost, stolen, or destroyed Bonds shall be made by the registered owner thereof to the Paying Agent/Registrar. In every case of loss, theft, or destruction of a Bond, the registered owner applying for a replacement bond shall furnish to the University and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft, or destruction of a Bond, the registered owner shall furnish to the University and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft, or destruction of such Bond, as the case may be. In every case of damage or mutilation of a Bond, the registered owner shall surrender to the Paying Agent/Registrar for cancellation the Bond so damaged or mutilated.

C. No Default Occurred. Notwithstanding the foregoing provisions of this Section, in the event any such Bond shall have matured, and no default has occurred which is then continuing in the payment of the principal of, redemption premium, if any, or interest on the Bond, the University may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Bond) instead of issuing a replacement Bond, provided security or indemnity is furnished as above provided in this Section.

D. Charge for Issuing Replacement Bonds. Prior to the issuance of any replacement bond, the Paying Agent/Registrar shall charge the registered owner of such Bond with all legal, printing, and other expenses in connection therewith. Every replacement bond issued pursuant to the provisions of this Section by virtue of the fact that any Bond is lost, stolen, or destroyed shall constitute a contractual obligation of the University whether or not the lost, stolen, or destroyed Bond shall be found at any time, or be enforceable by anyone, and shall be

entitled to all the benefits of this Bond Resolution equally and proportionately with any and all other Bonds duly issued under this Bond Resolution.

E. Authority for Issuing Replacement Bonds. This Section of this Bond Resolution shall constitute authority for the issuance of any such replacement bond without necessity of further action by the Regents or any other body or person, and the duty of the replacement of such bonds is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Bonds in the form and manner and with the effect, as provided in Section 8 of this Resolution for Bonds issued in transfer or exchange for other Bonds.

Section 31. Covenants Regarding Tax Exemption. The University covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Chair of the Board of Regents and other officers of the University having responsibility for the issuance of the Bonds shall give an appropriate certificate of the University, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the University regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Bonds.

With respect to the Bonds intended to be tax-exempt under the Code, the University covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) if required, make timely rebate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Chair of the Board of Regents, the Chancellor, the Vice Chancellor/Chief Operating Officer, the Associate Vice President for Finance and Business Services, and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, if any, as may be required or appropriate to assure such exclusion of that interest.

In order to facilitate compliance with the above covenants the University will make any necessary deposits into the Rebate Fund for the sole benefit of the United States of America, and such Fund shall not be subject to the claim of any other person, including without limitation the bondholders.

It is the understanding of the University that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or ruling are hereafter promulgated which modify, or expand provisions of the Code, as applicable to the

Bonds, the University will not be required to comply with any covenant contained herein to the extent that such modification or expansion, in the opinion of nationally-recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under Section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Bonds, the University agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally-recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under Section 103 of the Code.

Section 32. Further Procedures. The Chair of the Regents, the Secretary-Treasurer of the Regents, the Associate Vice President for Finance and Business Services of the University, and all other officers, employees, and agents of the University, and each of them, shall be and they are hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the University all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Bond Resolution and the Bonds.

Section 33. Parties Interested Herein. Nothing in the Bond Resolution expressed or implied is intended or shall be construed to confer upon, or to give to any person or entity, other than the Regents, the Paying Agent/Registrar and the registered owners of the Bonds, any right, remedy or claim under or by reason of the Bond Resolution or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in the Bond Resolution contained by and on behalf of the Regents shall be for the sole and exclusive benefit of the Regents, the Paying Agent/Registrar and the registered owners of the Bonds.

Section 34. Notice of Resolution Authorizing the Issuance of Public Securities for Publication and Limitation of Actions. In accordance with the provisions of Section 6-14-6 NMSA 1978, the Associate Vice President for Finance and Business Services of the University, shall cause the following "Notice of Resolution Authorizing the Issuance of Public Securities" to be published once in a newspaper of general statewide circulation, and cause a copy of the Bond Resolution to be kept on file in the office of the Associate Vice President for Finance and Business Services of the University for public examination during regular business hours until at least thirty (30) days from and after the date of publication thereof. The "Notice of Resolution Authorizing the Issuance of Public Securities" shall be in substantially the following form:

NOTICE IS HEREBY GIVEN pursuant to the provisions of Section 6-14-6 NMSA 1978, that on August 24, 2022, the Regents of New Mexico State University (the "Regents") adopted a resolution (the "Resolution") authorizing the issuance of up to \$28,500,000 Improvement Revenue Bonds, Series 2022 (the "Bonds"), and the sale of such bonds on terms and conditions to be provided in a Sale Certificate to be executed by a delegate of the Regents within the parameters of this Resolution, providing for the payment of principal of and interest on the Bonds and entering into certain covenants and agreements in that connection.

The title of the Resolution is as follows:

AUTHORIZING THE ISSUANCE AND SALE OF UP TO \$28,500,000 OF THE REGENTS OF NEW MEXICO STATE UNIVERSITY IMPROVEMENT REVENUE BONDS, SERIES 2022 IN ONE OR MORE SERIES TO PROVIDE FUNDS FOR PURCHASING, ERECTING, ALTERING, REMODELING, EXPANDING, IMPROVING, REPAIRING, FURNISHING AND EQUIPPING BUILDINGS, IMPROVEMENTS AND FACILITIES FOR THE USE OF NEW MEXICO STATE UNIVERSITY, INCLUDING, BUT NOT LIMITED TO IMPROVING THE UNIVERSITY'S RECREATION ACTIVITY AND AQUATIC CENTER, AGGIE MEMORIAL STADIUM, CORBETT CENTER STUDENT UNION BUILDING AND PAN AMERICAN CENTER, FUNDING CAPITALIZED INTEREST, IF NEEDED, AND PAYING THE EXPENSES RELATED TO THE ISSUANCE OF THE BONDS; PROVIDING FOR THE FORM, TERMS AND CONDITIONS OF THE BONDS, DELEGATING AUTHORITY TO THE DELEGATE TO EXECUTE AND DELIVER A BOND PURCHASE AGREEMENT FOR THE SALE OF THE BONDS TO THE PURCHASER PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; PRESCRIBING OTHER DETAILS PERTAINING TO THE PAYMENT OF PRINCIPAL OF AND INTEREST ON SUCH BONDS; ENTERING INTO CERTAIN COVENANTS AND OTHER AGREEMENTS; AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH.

A summary of the Resolution is as follows:

Preambles recite or include such matters as the status of New Mexico State University, at Las Cruces, New Mexico (the "University") as a state educational institution under the management and control of The Regents of New Mexico State University ("Regents"); the Regents' intent to issue the Bonds, which are to be secured by a pledge of the revenues derived in part from the operation of buildings and facilities on the campus of the University ("System") and derived in part from student tuition and fees and other income received by the University other than ad valorem taxes as specified in the Bond Resolution (collectively, "Pledged Revenues") for the purpose of providing funds for purchasing, erecting, altering, remodeling, expanding, improving, repairing, furnishing and equipping of buildings, improvements and facilities for the use of the University, including but not limited to improving the University's Recreation Activity and Aquatic Center, Aggie Memorial Stadium, Corbett Center Student Union Building and the Pan American Center, funding capitalized interest on the Bonds, if necessary, and paying all costs incidental to the foregoing and to the issuance of the Bonds; the authority of the Regents under the laws of the State of New Mexico ("State") to issue the Bonds; and that the Bonds will be sold in accordance with a the Resolution and the Sale Certificate ("Sale Certificate") to be executed by the Delegate setting forth the final terms of the Bonds.

Sections 1 through 9 define terms used in the Bond Resolution; authorize the issuance of the 2022 Bonds in the aggregate principal amount of up to \$28,500,000 (the "Bonds") to be payable and collectible solely from the Pledged Revenues; provide that the Bonds shall be issued only as fully registered bonds; provide that the exact principal amount, interest rates and maturity

schedule shall be within the parameters established in the Resolution and set forth in the Sale Certificate; provide details related to payment of principal and interest on the Bonds by the Paying Agent/Registrar; set forth provisions related to registration, transfer and exchange of the Bonds; provide that a successor Paying Agent/Registrar may be appointed by the Regents; provide that the Bonds may be subject to prior redemption at the option of the Regents on terms to be set forth in the Sale Certificate; provide details relating to such redemption and notice thereof; state that the Bonds are fully negotiable; provide for compliance with the Uniform Facsimile Signatures of Public Officials Act; set forth terms for execution and authentication of the Bonds; provide that the Bonds are special obligations of the Regents payable solely from Pledged Revenues and not a charge or debt against the State or a pledge of the faith and credit of the State; state that neither the full faith and credit nor the taxing power of the State or any political subdivision thereof are pledged for the payment of the principal of or interest on the Bonds; provide a form of the Bonds; and provide that the Bonds may be in book entry form.

Sections 10 through 14 provide for disposition of bond proceeds; approves the form of a Bond Purchase Agreement; establish special funds for deposit of the Pledged Revenues; and provide that Pledged Revenues shall be used for payment of the principal and interest on the Bonds and parity bonds and subordinate bonds, to satisfy rebate requirements and for other lawful purposes as directed by the Regents.

Sections 15 through 19 provide for general administration of funds and state the Bonds are secured by an irrevocable but not necessarily an exclusive first lien on the Pledged Revenues, and provide for the issuance of additional parity obligations and subordinate obligations payable from the Pledged Revenues if certain conditions are met; prohibit issuance of any obligation having a lien on the Pledged Revenues prior and superior to the lien of the Bonds; provide conditions for issuance of refunding bonds with a lien upon the Pledged Revenues; and set forth protective covenants for the benefit of the bondholders.

Sections 20 through 24 define events of default under the Bond Resolution; state rights and remedies of bondholders upon occurrence of an event of default; provide for amendment to Bond Resolution; provide for defeasance of the Bonds; and set forth details related to Bonds not presented when due.

Sections 25 through 36 delegate powers to the officers of the University; provide the Resolution is irrevocable so long as the Bonds are outstanding; require State Board of Finance and Higher Education Department approval prior to issuance of the Bonds; provide a severability and a repealer clause; provide for custody of the Bonds, and tax exemption covenants for the tax-exempt portion of the Bonds, authorize further procedures; provide for publication of this notice; and provide for an effective date.

A copy of the Resolution is on file in the office of the Associate Vice President for Finance and Business Services of New Mexico State University, Hadley Hall, at New Mexico State University, in Las Cruces, New Mexico, where it may be examined during regular business hours of the University from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. The Resolution shall be so available for inspection for a period of at least thirty (30) days from and after the date of the publication of this notice.

NOTICE IS FURTHER GIVEN that, pursuant to law, for a period of thirty (30) days from and after the date of publication of this notice, any person in interest shall have the right to contest the validity of any proceedings had or taken by the Regents preliminary to the authorization and issuance of the Bonds, and that after the passage of thirty (30) days from this publication any action attacking the validity of any proceedings had or taken by the Regents preliminary to and in the authorization and issuance of the Bonds is perpetually barred by the Public Securities Limitation of Action Act, Sections 6-14-4 to 6-14-7 NMSA 1978.

DATED: August 24, 2022

Neal Bitsie, Secretary-Treasurer
The Regents of New Mexico State University

(End of Form of Notice)

Section 35. Effective Date. The Bond Resolution shall take effect on the date adopted and approved as set forth below.

[Remainder of Page Intentionally Left Blank]

Adopted and approved on August 24, 2022.

[SEAL]

Ammu Devasthali, Chair,
The Regents of New Mexico State University

ATTEST:

Neal Bitsie, Secretary-Treasurer,
The Regents of New Mexico State University

Regent _____ then moved adoption of the foregoing resolution, duly seconded by Regent _____.

The motion to adopt the resolution, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye: _____

Those Voting Nay: _____

Those Absent: _____

_____ (___) Regents having voted in favor of said motion, the Chair declared said motion carried and said resolution adopted, whereupon the Chair and the Secretary-Treasurer signed the resolution upon the records of the minutes of the Regents.

After consideration of the matters not relating to the resolution, the meeting on motion duly made, seconded and unanimously carried, was adjourned.

[SEAL]

Ammu Devasthali, Chair,
The Regents of New Mexico State University

ATTEST:

Neal Bitsie, Secretary-Treasurer,
The Regents of New Mexico State University

STATE OF NEW MEXICO)
COUNTY OF DOÑA ANA)ss.
NEW MEXICO STATE UNIVERSITY)

I, Neal Bitsie, Secretary-Treasurer of The Regents of New Mexico State University, do hereby certify that the above and foregoing is a true, full and correct copy of a Resolution adopted by the Regents at a regular meeting held on the 24th day of August, 2022.

IN WITNESS WHEREOF, I have set my hand and seal of the Regents of New Mexico State University, this the 24th day of August, 2022.

Neal Bitsie, Secretary-Treasurer,
The Regents of New Mexico State University

Reference Material

BOND PURCHASE AGREEMENT



BE BOLD. Shape the Future.®

\$28,500,000
BOARD OF REGENTS OF NEW MEXICO STATE UNIVERSITY
IMPROVEMENT REVENUE BONDS
SERIES 2022
BOND PURCHASE AGREEMENT
October __, 2022

Board of Regents
New Mexico State University

Ladies and Gentlemen:

The New Mexico Finance Authority (the “Purchaser”) enters into this Bond Purchase Agreement (“Agreement”) with New Mexico State University (the “University”) to purchase the New Mexico State University Improvement Revenue Bonds, Series 2022 in the aggregate principal amount of \$28,500,000 (the “Bonds”). The Bonds are issued pursuant to Sections 21-8-1 through 21-8-44, Sections 6-14-1 through 6-14-12, NMSA 1978, and Sections 6-17-1 through 6-17-19, NMSA 1978, as amended (the “Act”), and the Bond Resolution of the Board of Regents of the University (the “Board”) adopted on August 24, 2022 authorizing the sale of the Bonds (the “Authorizing Resolution”) in the total principal amount of \$28,500,000 (the “Purchase Price”) and authorizing the Delegate to act on behalf of the University in selling and delivering the Bonds, which authorization shall be evidenced by a sale certificate initially executed by the Delegate on October __, 2022 (the “Sale Certificate” and, together with the Authorizing Resolution, the “Resolution”). Capitalized terms in this Agreement (including Exhibits) shall have the same definitions as set forth in the Resolution, unless the term is defined herein or the context used clearly requires otherwise.

1. Purchase, Sale and Delivery of the Bonds.

A. On the basis of the representations, warranties, covenants and agreements contained in this Agreement, the Resolution and the Bonds, and subject to the terms and conditions set forth herein and therein, the University agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the University, the Bonds for the Purchase Price as set forth in the form of Delivery, Deposit and Cross-Receipt Certificate attached as Exhibit A to this Agreement. The Bonds shall be in the principal amounts, mature on the dates, bear interest at the rates and have the terms set forth in the Sale Certificate subject to the parameters and conditions established by the Board in the Resolution.

B. The date of delivery of and payment for the Bonds is referred to in subparagraph C below in this Agreement as the “Closing Date.” The Bonds shall be delivered to the Purchaser in typewritten form on the Closing Date upon receipt of the Purchase Price by the University, and a copy of the Bonds shall be available for examination by the Purchaser prior to the Closing Date.

C. The parties hereto understand and agree that the Closing Date will occur on or about November 17, 2022, or such other mutually agreeable date.

D. Proceeds from the sale of the Bonds in an amount equal to the Purchase Price as set forth in the form of Delivery, Deposit and Cross-Receipt Certificate attached as Exhibit A to this Agreement shall be available to the University on the Closing Date, upon receipt of a properly executed requisition in substantially the same form attached to this Agreement as Exhibit B-1 directing the Trustee to transfer the proceeds of the Bonds to the Escrow Account, as defined below.

2. Representations, Warranties and Covenants of the University. By the University's acceptance of this Agreement, the University hereby represents and warrants to, and agrees with, the Purchaser as follows:

A. The University is an educational institution duly organized and validly existing under the laws of the State;

B. In connection with the issuance of the Bonds, the University has complied in all respects with the Constitution of the State and the laws of the State, including the Act;

C. The University is authorized to issue the Bonds for the purpose of (i) purchasing, erecting, altering, remodeling, expanding, improving, repairing, furnishing and equipping of buildings, improvements and facilities for the use of the University, including but not limited to improving the University's Recreation Activity and Aquatic Center, Aggie Memorial Stadium, Corbett Center Student Union Building and the Pan American Center, funding capitalized interest on the Bonds, if necessary, and paying Expenses, all for the benefit of the University (collectively, the "Project"). The University has the power to enter into the transactions contemplated by, and to carry out its obligations under, this Agreement, the Authorizing Resolution and the Sale Certificate. The Chair of the Board has duly executed the Authorizing Resolution and the Delegate has duly executed the Sale Certificate, both of which are valid and enforceable against the University and which authorize the execution and delivery of this Agreement and the execution, issuance, sale and delivery of the Bonds. At or prior to Closing, the University: (i) will have full legal right, power and authority to (A) perform its obligations under and comply with the provisions of the Resolution and the Act, (B) issue, execute and deliver, and perform its obligations under the Bonds, and (C) carry out and consummate the transactions contemplated by and perform its obligations under this Agreement, and the documents delivered in connection with the Resolution and the Act; and (ii) will have the full legal right, power and authority under the Act to execute and deliver this Agreement, to adopt the Authorizing Resolution and to execute the Sale Certificate;

D. The Resolution and this Agreement constitute legal, valid and binding agreements of the University, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights. The Bonds, when issued, delivered and paid for, in accordance with the Resolution and this Agreement, will constitute legal, valid and binding special, limited obligations of the University entitled to the benefits of the Resolution and will be enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity

relating to or affecting the enforcement of creditors' rights; and upon the issuance, authentication and delivery of the Bonds as aforesaid, the Resolution will provide the legally valid and binding pledge of the Pledged Revenues that it purports to create as set forth in the Resolution. The "Pledged Revenues" consist of, collectively,

1.. The gross income and revenues of whatever nature derived from the operation or ownership of the System (except as otherwise excluded under the definition of System).

2. All gross proceeds of student tuition and fees of every nature collected from students at the University, except (i) the fees now known as "Student Activity Fees," "Bus Fees" and "Equipment Maintenance Fees" and (ii) fees expressly imposed for the use or availability of buildings, structures or facilities excluded from the System under the definition thereof.

3. The gross amounts received by the University from the Income from the Permanent Fund and the Income from the Income Fund.

4. The proceeds of Debt Service Grants and the proceeds of any interest subsidy with respect to Parity Bonds (to the extent any such Debt Service Grant or interest subsidy is applicable with respect to a series of Parity Bonds) paid for or on account of the Regents or the University by any governmental body or agency.

5. All other income or revenues received by the University from proprietary activities carried on by the University, but excluding: (i) the proceeds of ad valorem taxes, (ii) State appropriations, and (iii) the proceeds of any University appropriations, gifts, contracts, grants and endowments, whether from or with public, private or governmental sources, which are restricted as to use. If the pledge of any one or more sources of other income or revenue to the payment of Senior Lien Parity Bonds shall ever be held by final decision of a court of competent jurisdiction to be invalid or to make Senior Lien Parity Bonds invalid because of constitutional restrictions on State indebtedness, the income or revenue derived from such source or sources shall not be subject to the pledge herein contained; and provided further, that there shall not be included in the other income or revenue which is the subject of this paragraph any income or revenue excluded under the provisions of paragraphs A or B of this definition.

E. The proceeds of the Bonds will be used by the University only for payment of costs of the Project. The distribution and use of the Bond proceeds will be in compliance with the provisions of the Resolution;

F. The proceeds of the Bonds will be deposited in the Capital Projects Escrow Account (the "Escrow Account") created pursuant to the Capital Projects Escrow Agreement Regarding Proceeds of Sale and Delivery of New Mexico State University Improvement Revenue Bonds, Series 2022 (the "Escrow Agreement") held by the Trustee, as Escrow Agent, and shall be used by the University only (i) for payment of costs of the Project, (ii) to pay debt service on the Bonds and (iii) for payment of the University's costs of issuance of the Bonds. Money on deposit in the Escrow Account held by the Escrow Agent may be invested by the Escrow Agent as permitted by applicable State law. Any earnings on the

Escrow Account shall be held and administered in the account and utilized in the same manner as the other moneys on deposit therein;

G. Moneys deposited to the Escrow Account, being the Purchase Price of the Bonds, will be made available to the University upon submittal of Requisitions to the Finance Authority and the Escrow Agent in the form attached as Exhibit B-2 to this Agreement;

H. The distribution and use of the Bond proceeds will be in compliance with the provisions of the Resolution;

I. The proceeds of the Bonds will be expended within three (3) years of the Closing Date, unless a longer term is approved by Bond Counsel in writing. Upon completion of the Project, the University agrees to deliver a Certificate of Completion to the Purchaser and the Trustee substantially in the forms attached as Exhibit C to this Agreement stating that, to the best of his or her knowledge, the Project has been completed and accepted by the University, and all costs have been paid

J. There is no litigation or proceeding pending or, to the knowledge of the undersigned, after due inquiry, threatened, in any way affecting the existence of the University, or seeking to restrain or to enjoin the issuance, sale or delivery of the Bonds, or in any way contesting or affecting the validity or enforceability of the Bonds, the Resolution, this Agreement or the pledge of the Pledged Revenues to repayment of the Bonds, or contesting the powers of the University or its authority with respect to the Bonds, the Resolution, or this Agreement;

K. The issuance, sale and delivery of the Bonds, the execution and delivery of this Agreement and compliance with the obligations on the part of the University contained in this Agreement and in the Bonds do not conflict with or constitute a breach or default under any administrative regulation, judgment, decree, loan agreement, indenture, note, bond, resolution, agreement or other instrument to which the University is a party or to which the University, or any of its properties or other assets, is otherwise subject;

L. Statements contained in any certificate of the University provided to the Purchaser pursuant to this Agreement or in connection with the delivery of the Bonds and delivered to the Purchaser shall be deemed representations and warranties by the University to the Purchaser;

M. The University is not in default, and has not been in default, in the payment of principal of, premium, if any, or interest on, any bonds, notes or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, or interest;

N. Since August 1, 2022, the University has not incurred any material liabilities, direct or contingent, nor has there been any adverse change in the financial position of the University, whether or not arising from transactions in the ordinary course of business;

O. At or prior to the Closing Date, except as may be required under the securities law of the State, all approvals, consents and orders of any governmental authority

having jurisdiction in the matter which would constitute a condition precedent to any of the actions to be taken by the University with respect to the Bonds prior to the Closing Date will have been obtained and will be in full force and effect;

P. The University agrees to provide continuing disclosure to the Purchaser, as the Purchaser may reasonably require, that shall include, but not be limited to: annual audits, operational data required to update information in any disclosure documents used to assign or securitize debt service on the Bonds by issuance of bonds by the Purchaser pursuant to the Indenture, as defined below, and notification of any event deemed material by the Purchaser;

Q. The annual audited financial statements of the University shall include a schedule of excluded facilities or similar schedule which shall identify each facility excluded from the System by a resolution of the Regents (the "Excluded Facilities"), the date on which each such facility began to be excluded, and all items of revenue and income received and expenditures incurred by each Excluded Facility which shall be separately stated from all items of revenue, income and expenditures of facilities included in the System. In the event that the accountants preparing the annual audited financial statements of the University deem not to include a schedule of Excluded Facilities, the University shall submit separately to the Purchaser information regarding revenues, income and expenditures of the Excluded Facilities; and

R. The University agrees that neither this Agreement nor the Bonds will be amended without the prior written consent of the Purchaser, and, if the Bonds have been pledged under the Indenture, without the prior written consent of the Trustee (as defined below) pursuant to the Indenture.

3. Representations and Warranties of the Purchaser. The Purchaser represents and warrants, and agrees with the University, as follows:

A. The Purchaser is authorized to purchase the Bonds;

B. In connection with the purchase of the Bonds, the Purchaser acknowledges that no offering document or prospectus has been prepared with respect to the sale of the Bonds to the Purchaser, and that the Purchaser is buying the Bonds in a private placement by the University to the Purchaser. The Purchaser has reviewed such information as it deems relevant in making its decision to purchase the Bonds;

C. The Purchaser acknowledges that the Bonds will not be listed on any securities exchanges and that no trading market now exists in the Bonds, and none may exist in the future;

D. The Purchaser is purchasing the Bonds for its own account (and not on behalf of another) and has no present intention of reselling the Bonds; however, the Purchaser reserves the right to sell, pledge, transfer, convey, hypothecate, mortgage, or dispose of the Bonds at some future date determined by the Purchaser, but only to persons who have been provided sufficient information with which to make an informed decision to invest in the Bonds and in compliance with the Securities Act of 1933, as amended and as then in effect,

the regulations promulgated thereunder and applicable state securities laws and regulations; and

E. [The Purchaser intends to reimburse the Public Project Revolving Fund (as defined in the New Mexico Finance Authority Act, NMSA 1978, Sections 6-21-1 *et seq.*) for the amount of the Bonds from the proceeds of tax-exempt bonds which the Purchaser expects to issue within eighteen (18) months of the Closing Date.]

4. Redemption. The Bonds maturing on and after April 1, ___ are subject to redemption at the option of the University prior to their scheduled maturity, in whole or in part, on any day on or after _____, with funds derived from any available and lawful source, and the University shall designate the amount that is to be redeemed, and if less than a whole maturity is to be redeemed, the University shall direct the paying agent/registrar of the Bonds to call by lot Bonds, or portions thereof within such maturity, for redemption (provided that a portion of a Bond may be redeemed only in an integral multiple of \$5,000), at the redemption price of par, plus accrued interest to the date fixed for prepayment or redemption.]

5. Conditions of Closing. The University's obligation to sell and the Purchaser's obligations under this Agreement to purchase and pay for the Bonds shall be subject to the following conditions:

A. The University shall have performed its obligations and agreements to be performed under the Resolution and this Agreement at or before the Closing Date, and the representations and warranties of the University contained in this Agreement shall be accurate as of the date of this Agreement and as of the Closing Date;

B. This Agreement and the Escrow Agreement shall have been duly authorized and executed by the University and the Purchaser and shall be in full force and effect;

C. The New Mexico Higher Education Department and the New Mexico State Board of Finance shall have provided written approval of the Bonds;

D. As determined by the Purchaser in its sole discretion, there shall not have been any material adverse change since the date of this Agreement relating to the University, or its operations, or any material adverse change in the law affecting the validity or tax-exempt status of the Bonds;

E. On the Closing Date, the Purchaser shall receive the following, each in a form satisfactory to the Purchaser:

(1) The written opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A. ("Bond Counsel") dated the Closing Date approving the legality and enforceability of the Bonds and regarding the tax-exempt status of the Bonds, addressed and delivered to the University and the Purchaser;

(2) A written opinion of Sutin, Thayer & Browne A Professional Corporation ("Purchaser's Counsel") that the Bonds may be pledged by the Purchaser as a loan

or as securities pursuant to the Indenture, as determined by the Purchaser pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture);

(3) A certificate, dated the Closing Date, of an authorized officer of the University to the effect that each of the representations and warranties of the University set forth in this Agreement is true, accurate and complete as of the Closing Date;

(4) A General and No-Litigation Certificate dated the Closing Date of an authorized officer of the University in a form acceptable to the Purchaser;

(5) An executed IRS Form 8038-G Tax Exempt Governmental Obligations Return;

(6) A specimen Series 2022 Bond;

(7) An executed Authorizing Resolution and Sale Certificate of the University with respect to the Bonds;

(8) An executed Tax Certificate of the University with respect to the Series 2022 Bonds;

(9) An executed Escrow Agreement;

(10) A Delivery, Deposit and Cross-Receipt Certificate, in substantially the form attached to this Agreement as Exhibit A or otherwise satisfactory to the Purchaser, providing for the deposit of the Purchase Price as provided in the Resolution;

(11) Such additional certificates, opinions or other documents as Bond Counsel, Purchaser, or Purchaser's Counsel may reasonably require to evidence the satisfaction, as of the Closing Date, of the conditions then to be satisfied in connection with the transactions contemplated by the Resolution and this Agreement;

F. All matters relating to this Agreement, the Bonds, the sale of the Bonds to the Purchaser, the Resolution and the consummation of the transactions contemplated by this Agreement and the Resolution shall be mutually satisfactory to and approved by the University and the Purchaser; and

G. No order, decree or injunction of any court of competent jurisdiction, nor any order, ruling, regulation or administrative proceeding by any governmental body or board, shall have been issued or commenced with the purpose or effect of prohibiting the issuance or sale of the Bonds.

H. As determined by the Purchaser in its sole discretion, there shall not have been any material adverse change since the date of this Agreement relating to the University, or its operations, or any material adverse change in the law affecting the validity or tax-exempt status of the Bonds.

If the University is unable to satisfy the conditions to the obligations of the Purchaser contained in this Agreement, or if the obligations of the Purchaser are terminated for any reason permitted by this Agreement, this Agreement may be terminated and neither the Purchaser nor the University shall have any further obligations under this Agreement. Payment by the Purchaser to the University of the Purchase Price shall be conclusive evidence that all of the conditions set forth in this section have been satisfied or waived by the Purchaser.

6. The Purchaser's Right to Cancel. The Purchaser shall have the right in its sole discretion to cancel its obligations under this Agreement to purchase the Bonds by notifying the University in writing of its election to do so between the date hereof and the Closing Date, if any of the following events occur prior to the Closing:

A. Legislation not yet introduced in the U.S. Congress shall be enacted or actively considered for enactment by the U.S. Congress, or recommended by the President of the United States of America to the U.S. Congress for passage, or favorably reported for passage to either House of the U.S. Congress by any committee of such House to which such legislation has been referred for consideration; a decision by a court of the United States of America or the United States Tax Court shall be rendered; or a ruling, regulation (proposed, temporary or final) or an official statement by or on behalf of the Treasury Department of the United States of America, the Internal Revenue Service or other agency or department of the United States of America shall be made or proposed to be made which has the purpose or effect, directly or indirectly, of imposing federal income taxes upon interest on the Bonds;

B. Any other action or event shall have transpired which has the purpose or effect, directly or indirectly, of materially adversely affecting the federal income tax consequences of any of the transactions contemplated herewith or contemplated by the Resolution and this Agreement and, in the sole judgment of the Purchaser, reasonably exercised, materially adversely affects the purchase of the Bonds by the Purchaser;

C. Legislation shall be enacted, or actively considered for enactment by the Congress, with an effective date on or prior to the date of Closing, or a decision by a court of the United States of America shall be rendered, or a ruling or regulation by the Securities and Exchange Commission (the "SEC") or other governmental agency having jurisdiction over the subject matter shall be made, the effect of which is that (1) the Bonds are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and then in effect, or (2) the Resolution is not exempt from the registration, qualification or other requirements of the Trust Indenture Act of 1939, as amended and then in effect;

D. A stop order, ruling or regulation by the SEC shall be issued or made, the effect of which is that the sale of the Bonds, as contemplated herein, is in violation of any provision of the Securities Act of 1933, as amended and as then in effect, the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect;

E. There shall exist any fact or there shall occur any event which, in the sole judgment of the Purchaser, either (1) makes untrue or incorrect in any material respect

any statement or information provided by the University to the Purchaser in connection with the sale of the Bonds by the University to the Purchaser or (2) is not reflected in statements or information provided by the University to the Purchaser in connection with the sale of the Bonds by the University to the Purchaser but should be reflected therein in order to make the statements and information contained therein not misleading in any material respect;

F. There shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Purchaser, impractical or inadvisable to proceed with the purchase of the Bonds;

G. Trading in the University's outstanding securities shall have been suspended by the SEC or trading in securities generally on the New York Stock Exchange shall have been suspended or limited or minimum prices shall have been established on such Exchange;

H. A banking moratorium shall have been declared either by Federal, New York or State authorities; or

I. Any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance, sale or delivery of the Bonds or in any way contesting or affecting any authority for or the validity of the Bonds, this Agreement, the Resolution, the existence or powers of the University, or any of the transactions described herein.

7. Representations and Agreements to Survive Delivery. All representations, warranties, covenants and agreements of the University and the Purchaser set forth in this Agreement and any other document relating to the issuance of the Bonds shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the University or the Purchaser, and shall survive the delivery of the Bonds to the Purchaser.

8. Payment of Expenses. The Purchaser shall pay the fees, expenses and costs incurred by it, its counsel and its financial advisor relating to the preparation, issuance, delivery and sale of the Bonds. The University shall pay the expenses incurred by it, relating to the preparation, issuance, sale and delivery of the Bonds including the University's fees for its legal counsel and its financial advisor from the proceeds of the Bonds or other legally available moneys.

9. Parties in Interest. This Agreement is solely for the benefit of the Purchaser and the University and their respective successors and no other person, partnership, association or corporation shall acquire or have any right under or by virtue of this Agreement.

10. Applicable Law; Nonassignability. This Agreement shall be construed in accordance with the laws of the State of New Mexico. This Agreement may not be assigned by the University or the Purchaser.

11. Notice. Any notice or other communication to be given to the Purchaser under this Agreement may be given by mailing or delivering the same in writing to the New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive

Officer; and any notice or other communication to be given to the University under this Agreement may be given by delivering the same in writing to New Mexico State University, Hadley Hall, 2850 Weddell St., Las Cruces, New Mexico, (mailing address: MSC 3Z, PO Box 30001, New Mexico State University, Las Cruces, NM 88003)Attention: Associate Vice President for Finance and Business Services.

12. Entire Agreement. This Agreement, when accepted by the University in writing as heretofore specified, shall constitute the entire agreement among the University and the Purchaser and is made solely for the benefit of the Purchaser and the University, and no other person shall acquire or have any right hereunder or by virtue hereof.

13. Amendments; Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document. This Agreement may not be effectively amended, changed, modified or altered without the written consent of all the parties hereto, and, if the Bonds have been pledged under the Indenture, without the prior written consent of the Trustee pursuant to the Indenture.

[Remainder of page intentionally left blank]

Please sign and return a duplicate original of this Agreement to the Purchaser. Upon your signing and delivering this Agreement, it will constitute a binding agreement.

NEW MEXICO FINANCE AUTHORITY

By: _____
Marquita D. Russel, Chief Executive Officer

Accepted and confirmed
as of October __, 2022
:

NEW MEXICO STATE UNIVERSITY
BOARD OF REGENTS

By: _____
D'Anne Stuart,
Associate Vice President for Finance and
Business Services

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EXHIBIT A

FORM OF DELIVERY, DEPOSIT AND CROSS-RECEIPT CERTIFICATE
\$28,500,000
BOARD OF REGENTS OF NEW MEXICO STATE UNIVERSITY
IMPROVEMENT REVENUE BONDS
SERIES 2022

STATE OF NEW MEXICO)
) ss: DELIVERY, DEPOSIT AND
DOÑA ANA COUNTY) CROSS-RECEIPT CERTIFICATE

IT IS HEREBY CERTIFIED by the undersigned, the duly chosen, qualified and acting Chair of the Board of Regents (the "Board") of New Mexico State University (the "University"):

1. On the date of this Certificate, the University executed and delivered, or caused to be delivered, its \$28,500,000 New Mexico State University Improvement Revenue Bonds, Series 2022 (the "Bonds") to the New Mexico Finance Authority, the purchaser of the Bonds (the "Finance Authority"), as authorized by the University's Resolution adopted on August 24, 2022 (the "Bond Resolution"), supplemented by the Sale Certificate executed on October __, 2022, relating to the issuance, sale and delivery of the Bonds. Proceeds of the Bonds in the amount of \$28,500,000, which consists the full purchase price therefore, are being deposited as set forth below.

2. Such amounts relating to the Bonds will be placed in the funds and accounts created under the Escrow Agreement (as defined in the Bond Purchase Agreement), between the Finance Authority and BOKF, NA, as Escrow Agent, and its successors and assigns, and all supplemental indentures thereto and used as set forth below and in the Bond Resolution:

Escrow Account Deposit, including \$_____ for	\$
Expenses:	
Deposit to Debt Service Fund:	<u>0</u>
TOTAL:	\$

3. Moneys deposited to the Escrow Account, being the "purchase price" of the Bonds, will be made available to the University upon submittal of a Requisition to the Finance Authority and the Escrow Agent in the form attached to the Bond Purchase Agreement as Exhibit B-2 and will be used as set forth in the Bond Resolution and the Bond Purchase Agreement.

WITNESS our hands and seal this November 17, 2022.

NEW MEXICO STATE UNIVERSITY
BOARD OF REGENTS

By: _____
President

(SEAL)

Attest:

By: _____
Secretary-Treasurer

It is hereby certified by the undersigned, on behalf of the Finance Authority, the lawful purchaser of the Bonds, that on this day the Finance Authority received from New Mexico State University, its Improvement Revenue Bonds, Series 2022, in the aggregate principal amount of \$28,500,000.

NEW MEXICO FINANCE AUTHORITY

By: _____
Marquita D. Russel, Chief Executive Officer

EXHIBIT B-1

FORM OF REQUISITION

REQUISITION
(PAYMENT OF PURCHASE PRICE)

RE: \$28,500,000 New Mexico State University, Improvement Revenue Bonds, Series 2022
–New Mexico Finance Authority Purchase Transaction

TO: BOKF, NA
c/o New Mexico Finance Authority
PPRF@nmfa.net

LOAN NO.: PPRF-_____

CLOSING DATE: November 17, 2022

You are hereby authorized to disburse from the Program Account – New Mexico State University Improvement Revenue Bonds, Series 2022, with regard to the above-referenced Bond Purchase Transaction, the following:

REQUISITION NUMBER: 1

NAME AND ADDRESS OF PAYEE: New Mexico State University Capital Projects
Escrow Account held by BOKF, NA

AMOUNT OF REQUISITION: \$28,500,000

PURPOSE OF REQUISITION: To fund Capital Projects Escrow Account for the
sole benefit and use of New Mexico State
University

The requisition of funds is for the purpose stated above and is a proper charge against the Program Account – New Mexico State University.

All representations contained in the Bond Purchase Agreement and the related closing documents remain true and correct and New Mexico State University is not in breach of any of the covenants contained therein.

NEW MEXICO STATE UNIVERSITY

DATED: _____

By: _____

Print Name and Title

EXHIBIT B-2

FORM OF REQUISITION

REQUISITION
(PAYMENT FROM CAPITAL PROJECTS ESCROW ACCOUNT)

RE: \$28,500,000 New Mexico State University, Improvement Revenue Bonds, Series 2022
–New Mexico Finance Authority Purchase Transaction

TO: BOKF, NA
c/o New Mexico Finance Authority
PPRF@nmfa.net

LOAN NO.: PPRF-_____

CLOSING DATE: November 17, 2022

You are hereby authorized to disburse from the Capital Projects Escrow Account – New Mexico State University Improvement Revenue Bonds, Series 2022, with regard to the above-referenced Bond Purchase Transaction, the following:

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

AMOUNT OF REQUISITION: \$_____

PURPOSE OF REQUISITION: _____

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Capital Projects Escrow Account – New Mexico State University Improvement Revenue Bonds, Series 2022.

All representations contained in the Bond Purchase Agreement and the related closing documents remain true and correct and the New Mexico State University is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the New Mexico State University understands its obligation to complete the acquisition of the Project from other legally available funds.

NEW MEXICO STATE UNIVERSITY

DATED: _____

By: _____

Print Name and Title

APPROVED FOR DISTRIBUTION:

NEW MEXICO FINANCE AUTHORITY

By _____

Print Name and Title

DATED: _____

EXHIBIT C

CERTIFICATE OF COMPLETION

RE: \$28,500,000 New Mexico State University, Improvement Revenue Bonds, Series 2022
–New Mexico Finance Authority Purchase Transaction

TO: New Mexico Finance Authority
PPRF@nmfa.net

Susen Ellis
Vice President, Corporate Trust
BOKF, NA
100 Sun Avenue NE, Suite 500
Albuquerque, New Mexico 87109

LOAN NO.: PPRF-_____

CLOSING DATE: November 17, 2022

In accordance with Section 2.I of the Bond Purchase Agreement, the undersigned states, to the best of his or her knowledge, that the acquisition of the Project has been completed and accepted by the University, and all costs have been paid as of the date of this Certificate. Notwithstanding the foregoing, this certification is given without prejudice to any rights against third parties which exist at the date of this Certificate or which may subsequently come into being.

Capitalized terms used herein, are used as defined or used in the Bond Purchase Agreement.

DATED: _____

By _____
Authorized Officer of University

Title _____
Print Name and Title

Board of Regents

August 24, 2022

SERIES 2022 BONDS IMPROVEMENT PROJECT

D'Anne Stuart
Associate Vice President
Finance and Business Services



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New Mexico State University

Requested Actions

Resolution 2022-3: New Mexico Finance Authority (NMFA) Application Resolution for Financial Assistance and Project Approval.

NMSU is utilizing the New Mexico Finance Authority (NMFA) to obtain funds in the form of a bond issuance to finance facility improvements. The rates obtained by NMFA will be passed along to NMSU.

This resolution authorizes administration to submit the NMFA application and approval to proceed with the process.

Resolution 2022-4: Resolution Authorizing Revenue Bond Issuance Series 2022.

This resolution authorizes administration to proceed with the issuance of revenue bonds not to exceed \$28.5 M, and delegates authority to approve the final terms of the bonds within established parameters.



Proposed Revenue Bond Issuance Series 2022 Bonds Improvement Project

- University has existing debt, paid from student fee revenues, that is retiring
- This issuance is structured to take advantage of this capacity and does not result in an increase in student fees
- Estimated proceeds are \$28,000,000

Fiscal Year	Existing Debt Service Related to Student Fee Revenues	Proposed Series 2022 Debt Service	Total Proposed Debt Service Related to Student Fee
2023	3,319,319	\$280,681	3,600,000
2024	2,849,841	750,159	3,600,000
2025	2,626,229	973,771	3,600,000
2026	1,867,177	1,727,750	3,594,927
2027	1,543,909	2,055,750	3,599,659
2028	1,544,865	2,051,250	3,596,115
2029	1,545,203	2,050,000	3,595,203
2030	1,418,881	2,176,750	3,595,631
2031	1,046,561	2,550,000	3,596,561
2032	1,046,391	1,607,000	2,653,391
2033	785,253	1,867,500	2,652,753
2034		2,653,500	2,653,500
2035		2,653,000	2,653,000
2036		2,653,250	2,653,250
2037		2,654,000	2,654,000
2038		2,655,000	2,655,000
2039		2,656,000	2,656,000
2040		2,656,750	2,656,750
2041		2,657,000	2,657,000
2042		2,656,500	2,656,500
	\$19,593,629	\$41,985,611	\$61,579,240



Project Overview

Project	Facility	Project	Facility/Area Priority	Cost Estimate	Request
1	University Recreation (Activity and Aquatic Center) <i>note: projects will be aligned with master plan (ASNMSU)</i>	Replacement of pool filtration and chlorination equipment	1	100,000	
		Outdoor recreation fitness expansion	2	1,200,000	
		Indoor pool lighting	3	100,000	
		Replacement of fitness equipment	4	200,000	
		Activity center locker room renovation	5	2,000,000	
		Outdoor shower area for outdoor pool	6	200,000	3,800,000
2	Aggie Memorial Stadium	Football locker room addition	1	15,000,000	15,000,000
3	Corbett Center Student Union <i>note: projects will be reviewed with CCSU advisory committee</i>	Life safety - fire alarm system	1	2,500,000	
		Site work for eSports	2	2,000,000	
		HVAC work	3	900,000	
		Student requested projects		500,000	5,900,000
4	Pan American Center	Replace retractable seating	1	1,200,000	
		Arena seating replacement - lower bowl	2	1,200,000	
		Upper bowl, new sound system, lighting replacement	3	900,000	3,300,000

Total 28,000,000

Project 1 – University Recreation \$3,800,000

Facility upgrades and improvements to the Activity Center and the Aquatic Center. *Enhancement projects will be aligned with master plan (ASNMSU).*

- Outdoor fitness expansion
- Locker room renovation
- Replacement of pool filtration and
- Fitness equipment replacement and
- New indoor pool lighting
- Outdoor shower

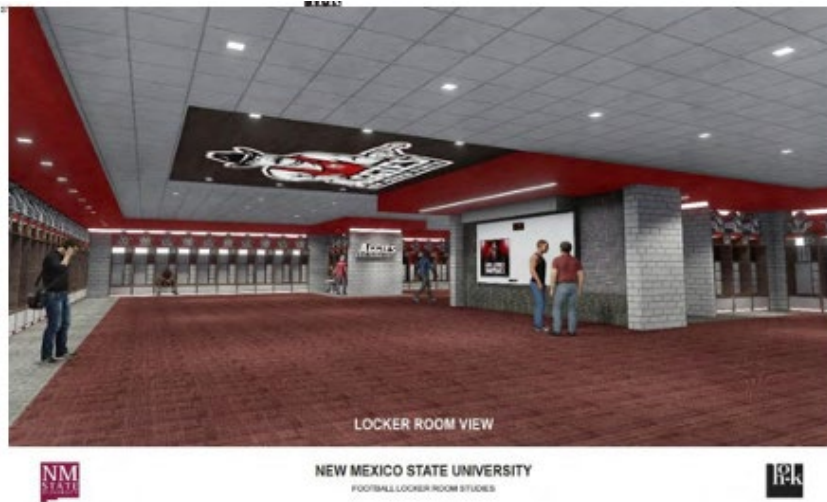
Concept Image



Project 2 – Aggie Memorial Stadium \$15,000,000

New Football Locker Room Addition

- Direct access to the field
- Provides emergency access
- Training area to promote good health and nutrition*
- Additional office space for staff and graduate assistants*
- Student athlete lounge to enhance recruiting
- Larger equipment room
- Video and film viewing room for teams and NFL scouts



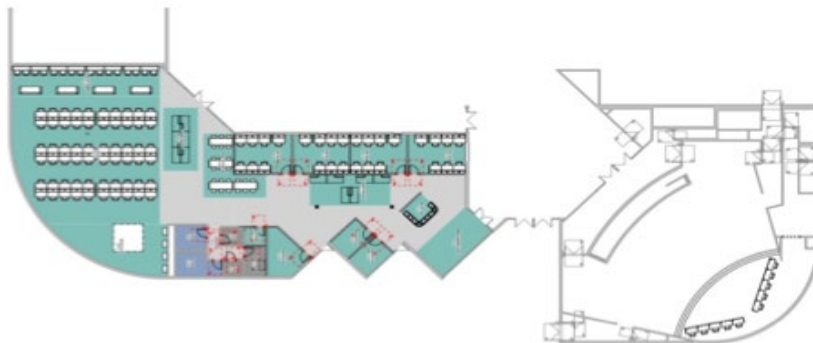
Images from HOK, NM State Athletics Facilities Master Plan (2018) and Football Locker Room Studies 2021

* currently lacking in the stadium buildings

Project 3 – Corbett Center Student Union \$5,900,000

As the hub for student life, this facility is the most visited building on campus.

- Fire Alarm System Updates
 - life safety updates are necessary to meet code including installation of voice/evacuation fire alarm
 - required before any additional building modifications, such as dining renovation (\$3.5M Sodexo capital investment), can be performed
- eSports Expansion and Renovation
 - will accommodate on-campus, regional, and national event production and hosting opportunities
 - will expand eSports academic function and improve student life and experience
 - promotes NMSU as a regional hub to attract the 21st century students
- HVAC system upgrades
- Student recommended project(s)

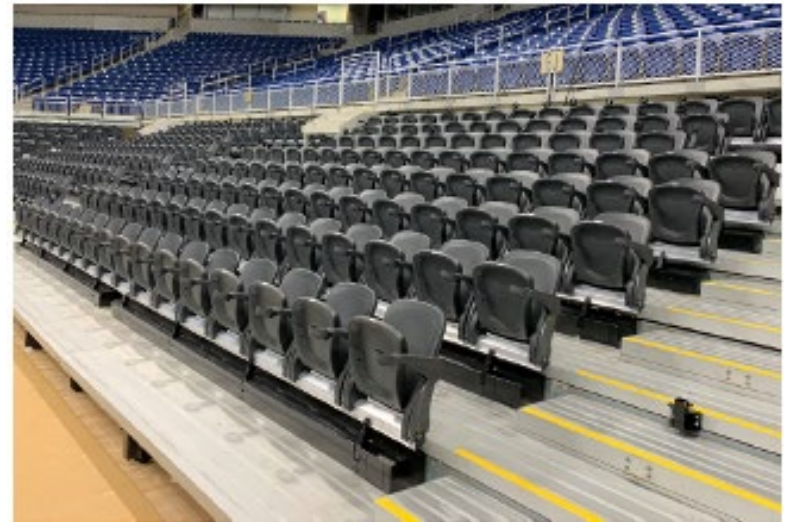
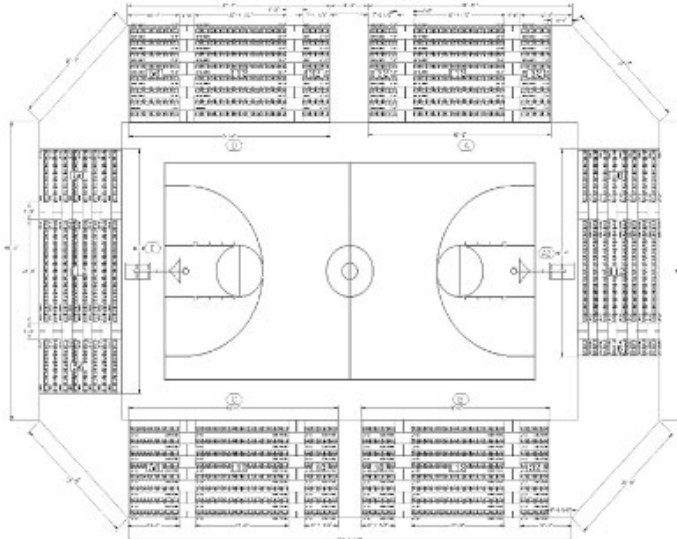


Project 4 – Pan American Center \$3,300,000



Updates to improve event experience

- Telescopic platform seating replacement
- Lower bowl seat replacement
- Upper bowl seat replacement
- New sound system



Funding Timeline

DATE	ACTION	PARTIES
07/29/2022	Submit Draft Application to NMFA Board for August Agenda	RBC, NMSU
08/15/2022	Submit HED Application for September Meeting	NMSU
08/24/2022	NMSU Board of Regents Adoption of Authorizing Resolution and Application Resolution	All
08/25/2022	NMFA Board Meeting to Approve NMSU Bond	All
08/29/2022	Publication of the Notice of Adoption Resolution	BC
09/15/2022	Higher Education Capital Projects Committee Meeting	All
09/29/2022	30-Day Statute of Limitation Ends	BC
To Be Determined	New Mexico State Board of Finance Meeting	All
Week of October 24th	Simultaneous Financing with NMFA	All
11/17/2022	Closing	All
11/27/2022	Deadline to Post Material Event Notice on EMMA	NMSU

System Revenue Bonds Series 2022

FINANCE PLAN UPDATE



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Series 2022 Overview

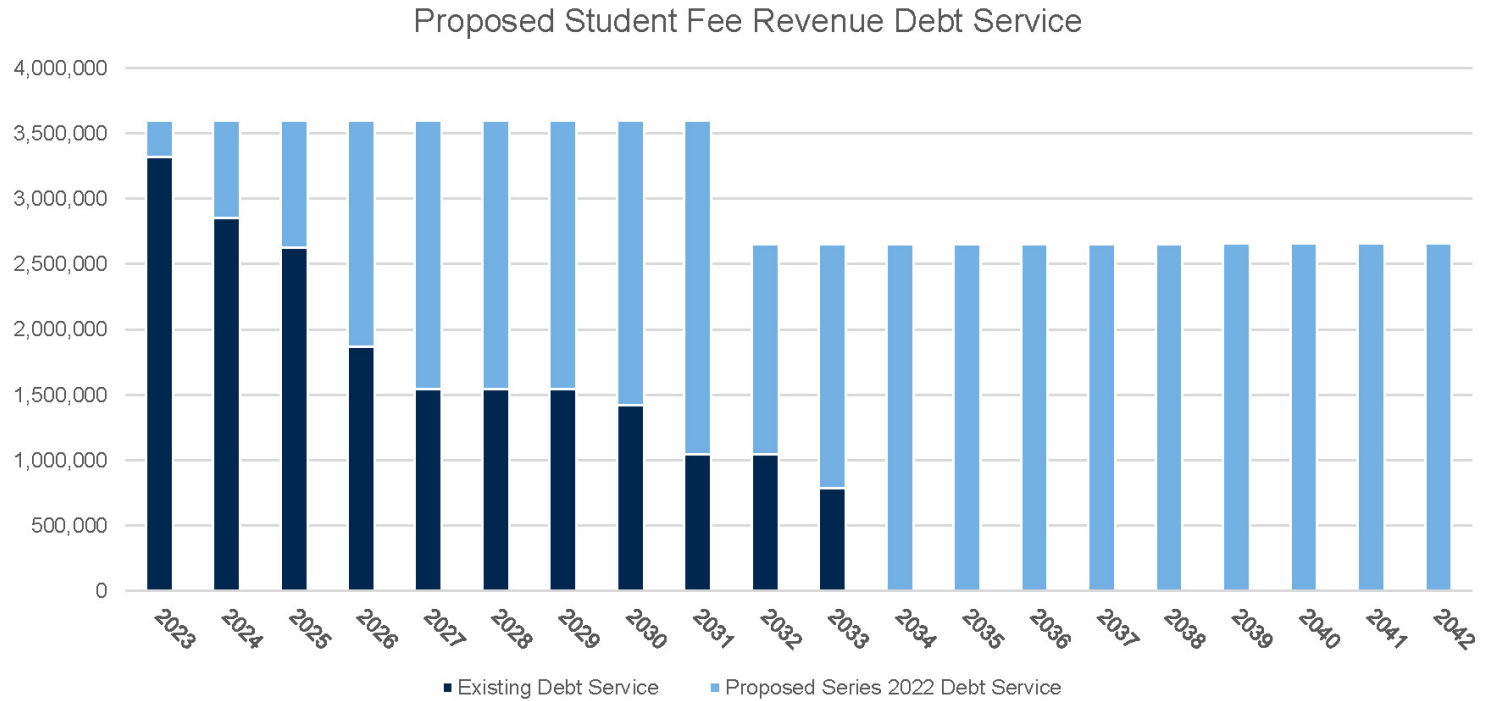
Sources:	
Par Amount	\$25,755,000.00
Premium	3,380,845.30
	\$29,135,845.30

Uses:	
Project Fund Deposit	\$28,000,000.00
Capitalized Interest	\$1,003,716.00
Cost of Issuance	132,000.00
Deposit to Debt Service Fund	129.30
	\$29,135,845.30

Bond Statistic	Series 2022
Arbitrage Yield	3.253%
True Interest Cost (TIC)	3.718%
All-In TIC	3.764%
Average Coupon	5.000%
Average Life	13.383
Optional Redemption	4/1/2032 @ 100 Par

Date	Series 2022			
	Principal	Interest	Cap-I	Total
04/01/2023	\$0	\$432,827	-\$152,146	\$280,681
04/01/2024	0	1,287,750	-537,591	750,159
04/01/2025	0	1,287,750	-313,979	973,771
04/01/2026	440,000	1,287,750		1,727,750
04/01/2027	790,000	1,265,750		2,055,750
04/01/2028	825,000	1,226,250		2,051,250
04/01/2029	865,000	1,185,000		2,050,000
04/01/2030	1,035,000	1,141,750		2,176,750
04/01/2031	1,460,000	1,090,000		2,550,000
04/01/2032	590,000	1,017,000		1,607,000
04/01/2033	880,000	987,500		1,867,500
04/01/2034	1,710,000	943,500		2,653,500
04/01/2035	1,795,000	858,000		2,653,000
04/01/2036	1,885,000	768,250		2,653,250
04/01/2037	1,980,000	674,000		2,654,000
04/01/2038	2,080,000	575,000		2,655,000
04/01/2039	2,185,000	471,000		2,656,000
04/01/2040	2,295,000	361,750		2,656,750
04/01/2041	2,410,000	247,000		2,657,000
04/01/2042	2,530,000	126,500		2,656,500
	\$25,755,000	\$17,234,327	-\$1,003,716	\$41,985,611

Series 2022 – Outstanding Debt Service Related to Student Fee Revenues



Series 2022 – Total Outstanding Debt Service

FYE 6/30	Total Outstanding Senior Lien Debt Service	Series 2022 Debt Service	Total Senior Lien Debt Service	Series 2014 Subordinate Lien Debt Service	Total Outstanding Debt Service	2021 Pledged Revenue Available for Debt Service	Senior Lien Coverage	Total Coverage
2022	\$11,963,330		\$11,963,330	\$1,376,278	\$13,339,608	\$165,236,483	13.81x	12.39x
2023	11,567,086	\$280,681	11,847,767	1,417,815	13,265,582	165,236,483	13.95x	12.46x
2024	10,608,034	750,159	11,358,193	1,457,049	12,815,242	165,236,483	14.55x	12.89x
2025	10,589,426	973,771	11,563,197	1,503,981	13,067,178	165,236,483	14.29x	12.65x
2026	9,696,720	1,727,750	11,424,470	1,548,304	12,972,773	165,236,483	14.46x	12.74x
2027	8,996,364	2,055,750	11,052,114	1,595,017	12,647,130	165,236,483	14.95x	13.07x
2028	8,991,106	2,051,250	11,042,356	1,643,967	12,686,323	165,236,483	14.96x	13.02x
2029	8,991,621	2,050,000	11,041,621		11,041,621	165,236,483	14.96x	14.96x
2030	8,988,336	2,176,750	11,165,086		11,165,086	165,236,483	14.80x	14.80x
2031	6,840,904	2,550,000	9,390,904		9,390,904	165,236,483	17.60x	17.60x
2032	6,839,471	1,607,000	8,446,471		8,446,471	165,236,483	19.56x	19.56x
2033	6,846,056	1,867,500	8,713,556		8,713,556	165,236,483	18.96x	18.96x
2034	5,721,701	2,653,500	8,375,201		8,375,201	165,236,483	19.73x	19.73x
2035	5,727,189	2,653,000	8,380,189		8,380,189	165,236,483	19.72x	19.72x
2036	5,722,158	2,653,250	8,375,408		8,375,408	165,236,483	19.73x	19.73x
2037	5,728,471	2,654,000	8,382,471		8,382,471	165,236,483	19.71x	19.71x
2038	2,799,377	2,655,000	5,454,377		5,454,377	165,236,483	30.29x	30.29x
2039	2,798,874	2,656,000	5,454,874		5,454,874	165,236,483	30.29x	30.29x
2040	2,803,415	2,656,750	5,460,165		5,460,165	165,236,483	30.26x	30.26x
2041	2,232,500	2,657,000	4,889,500		4,889,500	165,236,483	33.79x	33.79x
2042	2,231,250	2,656,500	4,887,750		4,887,750	165,236,483	33.81x	33.81x
	\$146,683,386	\$41,985,611	\$188,668,997	\$10,542,409	\$199,211,405			