INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE 02-307

AN ORDINANCE REPEALING CHAPTER 30, ARTICLE II IN ITS ENTIRETY, AND REPLACING IT WITH A NEWLY ADOPTED ARTICLE II, CHAPTER 30 RELATING TO LABOR MANAGEMENT RELATIONS, AND AUTHORIZING THE CONTINUED EXISTENCE OF COUNTY'S LABOR MANAGEMENT RELATIONS BOARD

WHEREAS, the Council of the Incorporated County of Los Alamos (the "Council") adopted an ordinance which governs the labor management relations between the Incorporated County of Los Alamos (the "County") and certain of its employees, and any labor organization representing or seeking to represent such employees; and

WHEREAS, as part of the comprehensive regulation of labor management relations, the aforementioned Code Ordinance created a Los Alamos Labor Management Relations Board (the "Board") which was consistent with the statutes, rules and regulations of the State of New Mexico; and

WHEREAS, in 2020, the New Mexico State Legislature passed, and the Governor signed, certain legislation which affects the substance of Article II, Chapter 30, including the creation and application of certain new provisions which are incumbent upon the County to adopt in order to keep and maintain its Board; and

WHEREAS, being the intention of the County to keep and maintain its Board, the Council desires to repeal Article II of Chapter 30 of the Code in its entirety and adopt a new Article II of Chapter 30 of the Code as described herein to comport with State statutory mandates, and further authorize the continued existence and operation of its Board to provide the same or greater rights to public employees and labor organizations as the Public Employee Bargaining Act.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS:

Section 1. Article II, of Chapter 30 of the Code of the Incorporated County of Los Alamos, is hereby repealed in its entirety.

Section 2. A new Article II of Chapter 30, is adopted as follows:

CHAPTER 30.
PERSONNEL AND LABOR RELATIONS

ARTICLE II. LABOR MANAGEMENT RELATIONS

SEC. 30-31. SHORT TITLE. This Ordinance may be cited as the "Incorporated County of Los Alamos Labor Management Relations Ordinance".

SEC. 30-32. PURPOSE. The purpose of the Labor Management Relations Ordinance is to guarantee County employees the right to organize and bargain collectively with their employer, to

protect the rights of the employer and the employees, and to promote harmonious and cooperative relationships between the employer and the employees; and to acknowledge the obligation of the employer and the employees to provide orderly and uninterrupted services to the citizens.

SEC. 30-33. CONFLICTS. In the event of conflict with other Incorporated County of Los Alamos ("County") code ordinances, the provisions of this Labor Management Relations Code Ordinance shall supersede other previously enacted ordinances.

County-sanctioned rules and regulations, administrative directives, departmental rules and regulations, and workplace practices shall control unless there is a conflict with a collective bargaining agreement. Where a conflict exists, the collective bargaining agreement shall control.

SEC. 30-34. DEFINITIONS. As used in the Labor Management Relations Ordinance:

A. "appropriate bargaining unit" means a group of employees designated by the Incorporated County of Los Alamos Labor Management Relations Board for the purpose of collective bargaining.

B. "appropriate governing body" means the Council of the Incorporated County of Los Alamos (the "Council").

C. "authorization card" means a signed affirmation by a member of an appropriate bargaining unit designating a particular organization as exclusive representative.

D. "Board" means the Incorporated County of Los Alamos Labor Management Relations Board.

E. "certification" means the designation, by the Los Alamos Labor Management Relations Board, of a labor organization as the exclusive representative for all employees in an appropriate bargaining unit.

F. "collective bargaining" means the act of negotiating between the employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours and other terms and conditions of employment.

G. "confidential employee" means an employee who devotes a majority of the person's time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies.

H. "emergency" means a one-time crisis that was unforeseen and unavoidable.

I. "employee" means a regular non-probationary employee of the Incorporated County of Los Alamos, and includes those employees of the Incorporated County of Los Alamos whose work is funded in whole or in part by grants or other third-party sources.

J. "employer" means the Incorporated County of Los Alamos.

K. “exclusive representative” means a labor organization that, as a result of certification, has the right to represent all employees in an appropriate bargaining unit for the purposes of collective bargaining.

L. “impasse” means failure of the employer and an exclusive representative, after good-faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement.

M. “labor organization” means an employee organization, one of whose purposes is the representation of employees in collective bargaining and in otherwise meeting, consulting and conferring with the employer on matters pertaining to employment relations.

N. “lockout” means an act by the employer to prevent its employees from going to work for the purpose of resisting demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative.

O. “management employee” means an employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering or effectuating management policies. An employee shall not be deemed a management employee solely because the employee participates in cooperative decision-making programs or whose fiscal responsibilities are routine, incidental or clerical.

P. “mediation” means assistance by an impartial third party to resolve an impasse between the employer and an exclusive representative regarding employment relations through interpretation, suggestion and advice.

Q. “professional employee” means an employee whose work is predominantly intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advanced nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a professional employee is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

R. “strike” means an employee’s refusal, in concerted action with other employees, to report for duty or the willful absence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment.

S. “supervisor” means an employee who devotes a majority of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees and who has the authority in the interest of the employer to hire, promote or

discipline other employees or to recommend such actions effectively, but “supervisor” does not include an employee who performs merely routine, incidental or clerical duties or who occasionally assumes a supervisory or directory role or whose duties are substantially similar to those of the individual’s subordinates and does not include a lead employee or an employee who participates in peer review or occasional employee evaluation programs.

SEC. 30-35. RIGHTS OF EMPLOYEES.

A. Employees, other than management, supervisory, confidential, and probationary employees, may form, join, or assist any labor organization for the purpose of collective bargaining through a representative chosen by the employees without interference, restraint, or coercion. Employees also have the right to refuse to form, join, or assist any labor organization.

B. Employees have the right to engage in other concerted activities for mutual aid or benefit as provided in this Labor Management Relations Ordinance. This right shall not be construed as modifying the prohibition on strikes set forth in Section 30-48 of this Labor Management Relations Ordinance.

SEC. 30-36. RIGHTS OF EMPLOYER. Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, the employer’s rights shall include, but are not limited to, the following:

A. Direct the work of, hire, promote, assign, transfer, demote, suspend, discharge, or terminate employees;

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 the employer in emergencies; and

D. Retain all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

SEC. 30-37. LABOR MANAGEMENT RELATIONS BOARD

A. The Los Alamos Labor Management Relations Board created by Council shall hereby continue to exist, except as provided in NMSA 1978 Section 10-7E-10(A) through 10-7E-10(J) (2020).

B. The Labor Management Relations Board shall be composed of three members appointed and approved by the Council of the Incorporated County of Los Alamos. One member shall be appointed on the recommendation of individuals representing labor, one member shall be appointed on the recommendation of the County Manager, and one

member shall be appointed on the recommendation of the other two appointees.

C. Except for appointments made in 2020, Labor Management Relations Board members shall serve for a period of three (3) years with terms commencing in the month of September. Vacancies shall be filled in the same manner as the original appointment and such appointments shall only be made for the remainder of the unexpired term. A Labor Management Relations Board member may serve an unlimited number of terms and shall be authorized to continue to serve after their term expires until their successors take office.

D. During the term of appointment, no Labor Management Relations Board member shall hold or seek any other political office or public employment or be an employee of a union, an organization representing public employees, or a public employer.

E. Each Labor Management Relations Board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

SEC. 30-38. BOARD – POWERS AND DUTIES.

A. The Labor Management Relations Board shall promulgate rules and regulations necessary to accomplish and perform its functions and duties as established in the Labor Management Relations Ordinance, including the establishment of procedures for:

1) the designation of appropriate bargaining units;

2) the selection, certification, and decertification of exclusive representatives; and

3) the filing, hearing, and determination of complaints of prohibited practices.

B. The Labor Management Relations Board shall:

1) hold hearings and make inquiries necessary to carry out its functions and duties;

2) conduct studies on problems pertaining to employee-employer relations; and

3) request information and data from public employers and labor organizations necessary to carry out its functions and responsibilities.

C. The Labor Management Relations Board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence or documents relating to the matter in question. The Labor Management Relations Board may prescribe the form of subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The Labor Management Relations Board may administer oaths and affirmations, examine witnesses and receive evidence.

D. The Labor Management Relations Board shall decide issues by majority vote and shall issue its decisions in the form of written orders and opinions. The board's hearing authority does not apply to negotiation impasses or issues dealing with the collective bargaining agreement where a grievance procedure has been negotiated for that purpose by the parties as required by law.

E. The Council may hire personnel or contract with third parties as the Council deems necessary to assist the Labor Management Relations Board in carrying out its functions and may delegate any or all of its authority to those third parties, subject to final review of the Labor Management Relations Board.

F. The Labor Management Relations Board has the power to award provisions of the Labor Management Relations Ordinance through the imposition of appropriate administrative remedies, actual damages related to dues, back pay including benefits, reinstatement with the same seniority status that the employee would have had but for the violation, declaratory or injunctive relief or provisional remedies, including temporary restraining orders or preliminary injunctions. No punitive damages or attorney fees may be awarded by the Labor Management Relations Board.

G. No rule or regulation promulgated by the Labor Management Relations Board shall require, directly or indirectly, as a condition of continuous employment, any employee covered by the Labor Management Relations Ordinance to pay money to any labor organization that is certified as an exclusive representative.

SEC. 30-39. HEARING PROCEDURES.

A. The Labor Management Relations Board may hold hearings for the purposes of:

1) Information gathering and inquiry;

2) Adopting rules and;

3) Adjudicating disputes and enforcing the provisions of the Labor Management Relations Ordinance and rules adopted pursuant to the Ordinance.

B. The Labor Management Relations Board shall adopt rules setting forth procedures to be followed during hearings of the Board. Such rules shall meet minimal due process requirements of the state and federal constitutions.

C. Proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon it and the Labor Management Relations Board of a written notice together with a copy of the charges and relief requested. A prohibited practice complaint shall be dismissed if filed more than six (6) months following the conduct alleged to violate this Labor Management Relations Ordinance, or more than six (6) months after the complainant discovered or reasonably should have discovered such alleged violation.

D. The Labor Management Relations Board may appoint a hearing examiner to conduct any adjudicatory hearing authorized by Labor Management Relations Board. At the conclusion of the hearing, the examiner shall prepare a written report, including findings and recommendations, all of which shall be submitted to the Labor Management Relations Board for its decision.

E. A rule proposed to be adopted by the Labor Management Relations Board that affects a person or governmental entity outside of the Labor Management Relations Board shall not be adopted, amended or repealed without public hearing and comment on the proposed action before the Labor Management Relations Board. The public hearing shall be held after notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule, proposed amendment or repeal of an existing rule may be obtained. All meetings shall be held in the County of Los Alamos. Notice shall be published once at least thirty (30) days prior to the hearing date in a newspaper of general circulation in the County and notice shall be mailed at least thirty (30) days prior to the hearing date to all persons who have made a written request for advance notice of hearings.

F. All adopted rules shall be filed in accordance with applicable state statutes.

G. A verbatim record made by electronic or other suitable means shall be made of every rulemaking and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the Board. The party requesting the transcript shall pay for the transcription, in the case of judicial review the payment shall be made by the party filing the appeal.

H. Each party to a prohibited labor practice shall bear the cost of producing its own witnesses and paying its representative for hearings under this article.

SEC. 30-40. APPROPRIATE BARGAINING UNITS.

A. The Labor Management Relations Board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining unit for collective bargaining. Appropriate bargaining units shall be established on the basis of occupational groups or a clear and identifiable community of interest in employment terms, employment conditions, and related personnel matters among the employees involved. Occupational groups shall generally be identified as blue collar, secretarial, clerical, technical, paraprofessional, professional, corrections, firefighters, and police officers. Department, craft, or trade designations other than as specified above shall not determine bargaining units. The employer and a labor organization may, by mutual agreement, further consolidate occupational groups. The essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining, and the assurance to employees of their rights guaranteed by this Labor Management Relations Ordinance.

B. Within thirty (30) days after the filing of a petition for representation, if a disagreement arises between the employer and a labor organization concerning the composition of the bargaining unit, the Labor Management Relations Board shall hold a hearing concerning the composition of the bargaining unit before designating an appropriate bargaining unit.

C. The Labor Management Relations Board shall not include in any appropriate bargaining unit, probationary, supervisory, managerial, or confidential employees.

D. Jobs included within a bargaining unit pursuant to this Labor Management Relations Ordinance in effect on January 1, 2020, shall remain in that bargaining unit after enactment of this Labor Management Relations Ordinance unless otherwise removed by the Labor Management Relations Board in accordance with its rules.

SEC. 30-41. ELECTIONS.

A. Whenever, in accordance with rules prescribed by the Labor Management Relations Board, a petition is filed by a labor organization containing the signatures of at least thirty percent (30%) of the eligible employees in an appropriate bargaining unit, the Labor Management Relations Board shall conduct a secret ballot representation election to determine whether and by which labor organization the employees in the appropriate bargaining unit shall be represented. Upon acceptance of a valid petition, the Labor Management Relations Board shall require the employer to provide the labor organization within ten (10) business days the names, job titles, work locations, home addresses, personal email addresses and home or cellular telephone numbers of any eligible employee in the proposed bargaining unit. This information shall be kept confidential by the labor organization and its employees or officers. The ballot shall contain the name of any labor organization submitting a petition containing signatures of at least thirty percent (30%) of the eligible employees in the appropriate bargaining unit. The ballot shall also contain a provision allowing eligible employees to indicate whether they do not desire to be represented by a labor organization. An election shall only be valid if forty percent (40%) of the eligible employees in the bargaining unit vote in the election. If the election results show that fewer than forty percent (40%) of the eligible employees in the unit voted, or that the choice of “no representation” received fifty percent (50%) or more of the valid votes cast, then the election results shall reflect that no collective bargaining representative was selected.

B. Once a labor organization has filed a valid petition calling for a representation election, other labor organizations may seek to be placed on the ballot. Such an organization shall file a petition containing the signatures of not less than thirty percent (30%) of the eligible employees in the appropriate bargaining unit no later than ten (10) days after the Labor Management Relations Board and the employer post a written notice that the petition in Subsection A of this section has been filed by a labor organization.

C. All representation elections shall include the option for "no representation," except in a run-off election where the choice of "no representation" was not one of the two choices that received the highest votes.

D. As an alternative to the provisions of Subsection A of this section, a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may submit authorization cards from a majority of the eligible employees in an appropriate bargaining unit to the Labor Management Relations Board, which shall, upon verification that a majority of the eligible employees in the appropriate bargaining unit have signed valid authorization cards, certify the labor organization as the exclusive representative of all employees in the appropriate bargaining unit. The employer may challenge the verification of the Labor Management Relations Board; the Labor Management Relations Board shall hold a fact-finding hearing on the challenge to confirm that a majority of the eligible employees in the appropriate bargaining unit have signed valid authorization cards.

E. If a labor organization receives a majority of votes cast, it shall be certified as the exclusive representative of all employees in the appropriate bargaining unit. Within fifteen (15) days of an election in which no labor organization receives a majority of the votes cast, a runoff election between the two choices receiving the largest number of votes cast shall be conducted. The Labor Management Relations Board shall certify the results of the election, and, when a labor organization receives a majority of the votes cast, the Labor Management Relations Board shall certify the labor organization as the exclusive representative of all employees in the appropriate bargaining unit.

F. An election shall not be conducted if an election or runoff election has been conducted in the twelve-month period immediately preceding the proposed representation election. An election shall not be held during the term of an existing collective bargaining agreement, except as provided in Section 30-43 herein.

G. Election disputes shall be resolved by the board.

SEC. 30-42. EXCLUSIVE REPRESENTATION.

A. A labor organization that has been certified by the Labor Management Relations Board as representing the employees in the appropriate bargaining unit shall be the exclusive representative of all employees in the appropriate bargaining unit. The exclusive representative shall act for all employees in the appropriate bargaining unit and negotiate a collective bargaining agreement covering all employees in the appropriate bargaining unit. The exclusive representative shall represent the interests of all employees in the appropriate bargaining unit without discrimination or regard to membership in the labor organization. A claim by a employee that the exclusive representative has violated this duty of fair representation shall be forever barred if not brought within six (6) months of the date on which the employee knew, or reasonably should have known, of the violation.

B. This section does not prevent an employee, acting individually, from presenting a grievance without the intervention of the exclusive representative. Any adjustment made shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the employer and the exclusive representative.

C. The employer shall provide an exclusive representative of an appropriate bargaining unit reasonable access to employees within the bargaining unit, including the following:

1) for purposes of newly hired employees in the bargaining unit, reasonable access includes:

(a) the right to meet with new employees, without loss of employee compensation or leave benefits; and

(b) the right to meet with new employees within thirty (30) days from the date of hire for a period of at least thirty (30) minutes but not more than one hundred twenty (120) minutes, during new employee orientation or, if the employer does not conduct new employee orientations, at individual or group meetings; and;

2) for purposes of employees in the bargaining unit who are not new employees, reasonable access includes:

(a) the right to meet with employees during the employees' regular work hours at the employees' regular work location to investigate and discuss grievances, workplace-related complaints and other matters relating to employment relations; and

(b) the right to conduct meetings at the employees' regular work location before or after the employees' regular work hours, during meal periods and during any other break periods.

D. The employer shall permit an exclusive representative to use the employer's facilities or property, whether owned or leased by the employer, for purposes of conducting meetings with the represented employees in the bargaining unit. An exclusive representative may hold the meetings described in this section at a time and place set by the exclusive representative. The exclusive representative shall have the right to conduct the meetings without undue interference and may establish reasonable rules regarding appropriate conduct for meeting attendees.

E. The meetings described in this section shall not interfere with the employer's operations.

F. If the employer has the information in its records, the employer shall provide to the exclusive representative, in an editable digital file format agreed to by the exclusive

representative, the following information for each employee in an appropriate bargaining unit:

1) the employee's name and date of hire;

2) contact information, including:

(a) cellular, home and work telephone numbers;

(b) a means of electronic communication, including work and personal electronic mail addresses; and

(c) home address or personal mailing address; and

3) employment information, including the employee's job title, salary and work site location.

G. The employer shall provide the information described in Subsection F of this section to the exclusive representative within ten (10) days from the date of hire for newly hired employees in an appropriate bargaining unit, and every one hundred twenty (120) days for employees in the bargaining unit who are not newly hired employees. The information shall be kept confidential by the labor organization and its employees or officers. Apart from the disclosure required by this subsection, and notwithstanding any provision contained in the Inspection of Public Records Act, the employer shall not disclose the information described in Subsection F of this section, or employees' dates of birth or social security numbers to a third party.

H. An exclusive representative shall have the right to use the electronic mail systems or other similar communication systems of the employer to communicate with the employees in the bargaining unit regarding:

1) collective bargaining, including the administration of collective bargaining agreements;

2) the investigation of grievances or other disputes relating to employment relations; and

3) matters involving the governance or business of the labor organization.

4) all such electronic mail communications or similar communication systems used by the exclusive representative are public records and subject to the Inspection of Public Records Act or other applicable laws.

I. Nothing in this section prevents nor requires the employer from providing an exclusive representative access to employees within the bargaining unit beyond the reasonable access required under this section or limits any existing right of a labor

organization to communicate with employees.

SEC. 30-43. DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE.

A. A member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent (30%) of the employees in the appropriate bargaining unit make a written request to the Labor Management Relations Board for a decertification election. Decertification elections shall be held in a manner prescribed by rule of the board. An election shall only be valid if forty percent (40%) of the eligible employees in the bargaining unit vote in the election.

B. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the Labor Management Relations Board no earlier than ninety (90) days and no later than sixty (60) days before the expiration of the collective bargaining agreement; provided, however, a request for an election may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three years.

C. When, within the time period prescribed in Subsection B of this section, a competing labor organization files a petition containing signatures of at least thirty percent (30%) of the employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

D. When an exclusive representative has been certified but no collective bargaining agreement is in effect, the Labor Management Relations Board shall not accept a request for a decertification election or an election sought by a competing labor organization earlier than twelve (12) months subsequent to a labor organization's certification as the exclusive representative.

SEC. 30-44. SCOPE OF BARGAINING.

A. Except for retirement programs provided pursuant to the Public Employees Retirement Act, the employer and exclusive representatives:

1) shall bargain in good faith on wages, hours and all other terms and conditions of employment and other issues agreed to by the parties. However, neither the employer nor the exclusive representative shall be required to agree to a proposal or to make a concession; and

2) shall enter into written collective bargaining agreements covering employment relations.

B. Entering into a collective bargaining agreement shall not obviate the duty to bargain in good faith during the term of the collective bargaining agreement regarding changes to wages, hours and all other terms and conditions of employment, unless it can be demonstrated that the parties clearly and unmistakably waived the right to bargain

regarding those subjects. However, no party may be required, by this provision, to renegotiate the existing terms of collective bargaining agreements already in place.

C. In regard to the Public Employees Retirement Act, Employer, in a written collective bargaining agreement, may agree to assume any portion of an employee's contribution obligation to retirement programs provided pursuant to the Public Employees Retirement Act. Such agreements are subject to the limitations set forth in this section.

D. The obligation to bargain collectively shall not be construed as authorizing the employer and an exclusive representative to enter into an agreement that is in conflict with the provisions of any other statute of this state; provided, however, that a collective bargaining agreement that provides greater rights, remedies and procedures to employees than contained in a state statute shall not be considered to be in conflict with that state statute. In the event of an actual conflict between the provisions of any other statute of this state and an agreement entered into by the employer and the exclusive representative in collective bargaining, the statutes of this state shall prevail.

E. Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of dues shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type. The employer shall honor payroll deductions until the authorization is revoked in writing by the employee in accordance with the negotiated agreement and this subsection and for so long as the labor organization is certified as the exclusive representative. Employees who have authorized the payroll deduction of dues to a labor organization may revoke that authorization by providing written notice to their labor organization during a window period not to exceed ten (10) days per year for each employee. The employer and the labor organization shall negotiate when the commencement of that period will begin annually for each employee. If no agreement is reached, the period shall be during the ten days following the anniversary date of each employee's employment. Within ten (10) days of receipt of notice from an employee of revocation of authorization for the payroll deduction of dues, the labor organization shall provide notice to the employer of an employee's revocation of that authorization. An employee's notice of revocation for the payroll deduction of dues shall be effective on the thirtieth day after the notice provided to the employer by the labor organization. No authorized payroll deduction of dues held by the employer or a labor organization on January 1, 2021 shall be rendered invalid by this provision and shall remain valid until replaced or revoked by the employee. During the time that a Labor Management Relations Board certification is in effect for a particular appropriate bargaining unit, the employer shall not deduct dues for any other labor organization.

F. The employer and a labor organization, or their employees or agents, are not liable for, and have a complete defense to, any claims or actions under the law of this state for requiring, deducting, receiving or retaining fair share dues or fees from employees, and current or former employees do not have standing to pursue these claims or actions if the fair share dues or fees were permitted at the time under the laws of this state then in force

and paid, through payroll deduction or otherwise, on or before June 27, 2018. This subsection:

1) applies to all claims and actions pending on July 1, 2020 and to claims and actions filed on or after July 1, 2020; and

2) shall not be interpreted to infer that any relief made unavailable by this section would otherwise be available.

G. An impasse resolution or an agreement provision by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the appropriate governing body and the availability of funds. An arbitration decision shall not require the re-appropriation of funds.

H. An agreement shall include a grievance procedure to be used for the settlement of disputes pertaining to employment terms and conditions and related personnel matters. The grievance procedure shall provide for a final and binding determination. The final determination shall constitute an arbitration award within the meaning of the New Mexico Uniform Arbitration Act; such award shall be subject to judicial review pursuant to the standard set forth in the New Mexico Uniform Arbitration Act. An arbitration decision shall not require the re-appropriation of funds. The costs of an arbitration proceeding conducted pursuant to this subsection shall be shared equally by the parties.

I. The following meetings shall be closed:

1) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between Employer and the exclusive representative of the employees of the employer;

2) collective bargaining sessions; and

3) consultations and impasse resolution procedures at which the employer and the exclusive representative of the appropriate bargaining unit are present.

J. The following negotiation procedures shall apply to the employer and exclusive representatives:

1) The negotiations for the first contract shall be opened upon written notice by either party to the other requesting that negotiating sessions be scheduled. Subsequent requests for negotiations shall be post marked no earlier than 120 days nor later than 60 days prior to the contract ending date or as negotiated by the parties. The parties may open negotiations at any time by mutual agreement.

2) All negotiations will be conducted in closed sessions. Negotiations will be held at a facility and at a time mutually agreed upon by the parties.

3) Recesses and study sessions may be called by either team. Prior to the conclusion of any negotiating sessions, the reconvening time will be agreed upon. Caucuses may be taken as needed.

4) Tentative agreements reached during negotiations will be reduced to writing, dates, and initialed by each team spokesperson. Such tentative agreements are conditional and may be withdrawn should later discussion change either party's understanding of the language as it related to another part of the agreement.

5) Agreement on contract negotiations is accomplished when the union president and the county manager sign the agreement. Provisions in multiyear agreements providing for economic increases for subsequent years shall be contingent upon the governing body appropriating the funds necessary to fund the increase for the subsequent year(s). Should the governing body not appropriate sufficient funds to fund the agreed upon increase, either party may reopen negotiations.

SEC. 30-45. IMPASSE RESOLUTION.

A. The following impasse procedures shall be followed by the employer and exclusive representatives:

1) If an impasse occurs during negotiation between the parties, either party may request mediation services from the Labor Management Relations Board. A mediator from the federal mediation and conciliation service shall be assigned by the Labor Management Relations Board to assist negotiations unless the parties agree to another mediator; and

2) if the impasse continues after a thirty (30) day mediation period, either party may request a list of seven (7) arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately striking names from such list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Subsections G and H of Section 30-44 of this Labor Management Relations Ordinance and the Uniform Arbitration Act no later than thirty (30) days after the arbitrator has been notified of selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. The costs of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth in the New Mexico Uniform Arbitration Act.

C. The employer may enter into a written agreement with the exclusive representative setting forth an alternative impasse resolution procedure.

D. In the event that an impasse continues after the expiration of a contract, the

existing contract will continue in full force and effect until it is replaced by a subsequent written agreement. However, this shall not require the employer to increase any employees' levels, steps or grades of compensation contained in the existing contract.

SEC. 30-46. EMPLOYERS – PROHIBITED PRACTICES.

The employer or its representative shall not:

A. Discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;

B. Interfere with, restrain, or coerce any employee in the exercise of any right guaranteed under this Labor Management Relations Ordinance or use public funds to influence the decision of its employees or the employees of its subcontractors regarding whether to support or oppose a labor organization that represents or seeks to represent those employees, or whether to become a member of any labor organization; provided, however, that this subsection does not apply to activities performed or expenses incurred:

1) addressing a grievance or negotiating or administering a collective bargaining agreement;

2) allowing a labor organization or its representatives access to the employer facilities or properties;

3) performing an activity required by federal or state law or by a collective bargaining agreement;

4) negotiating, entering into or carrying out an agreement with a labor organization;

5) paying wages to a represented employee while the employee is performing duties if the payment is permitted under a collective bargaining agreement; or

6) representing the employer in a proceeding before the Labor Management Relations Board or in a judicial review of that proceeding.

C. Dominate or interfere in the formation, existence or administration of a labor organization;

D. Discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization;

E. Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of this Labor Management Relations Ordinance or

because an employee is forming, joining or choosing to be represented by a labor organization;

F. Refuse to bargain collectively in good faith with the exclusive representative in accordance with the terms of this Labor Management Relations Ordinance;

G. Refuse or fail to comply with a provision of this Labor Management Relations Ordinance or Labor Management Relations Board rule; or

H. Refuse or fail to comply with a collective bargaining agreement.

I. During the negotiation and the impasse procedure, county councilors and management employees are prohibited from communicating or negotiating with the exclusive representative on issues which are the subject of negotiations and from making any offers, commitment, or promise whatsoever to employees or the exclusive representative, other than through the appointed county negotiating team. It is the intent of this language that the integrity of the negotiating process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams.

SEC. 30-47. EMPLOYEES – LABOR ORGANIZATIONS – PROHIBITED PRACTICES.

A. An employee, a labor organization, or its representative shall not:

1) Discriminate against an employee with regard to labor organization membership because of race, color, religion, creed, age, disability, sex, or national origin;

2) Solicit membership for an employee or labor organization during the employee's duty hours. This does not include the work breaks or lunch periods;

3) Interfere with, restrain or coerce any employee in the exercise of any right guaranteed by the provisions of the Labor Management Relations Ordinance;

4) Refuse to bargain collectively in good faith with the employer;

5) Refuse or fail to comply with any collective bargaining agreement with the employer. This issue is subject to the required negotiated grievance procedure negotiated by the parties;

6) Refuse or fail to comply with any provision of the Labor Management Relations Ordinance; or

7) Picket homes or private businesses of employees, appointed individuals, or elected officials of County.

8) During the negotiation and the impasse procedure the employees, the exclusive representative or any of its employees are prohibited from communicating or

negotiating with the exclusive representative on issues which are the subject of negotiations with anyone other than the appointed county negotiating team. It is the intent of this language that the integrity of the negotiating process be maintained. All negotiations and concessions shall occur only between the respective appointed negotiating teams.

SEC. 30-48. STRIKES AND LOCKOUTS PROHIBITED.

A. No employee or labor organization shall engage in a strike. No labor organization shall cause, instigate, encourage, or support a strike. The employer shall not cause, instigate or engage in an employee lockout.

B. The employer may apply to the district court for injunctive relief to end a strike, and an exclusive representative of employees affected by a lockout may apply to the district court for injunctive relief to end a lockout.

C. The Labor Management Relations Board, upon a clear and convincing showing of proof at a hearing that a labor organization directly caused or instigated an employee strike, may impose appropriate penalties on that labor organization, up to and including decertification of the labor organization with respect to any of its bargaining units which struck as a result of such causation or instigation.

SEC. 30-49. AGREEMENTS VALID – ENFORCEMENT.

All collective bargaining agreements and other agreements between the employer and an exclusive representative are valid and enforceable according to their terms when entered into in accordance with the provisions of this Labor Management Relations Ordinance.

SEC. 30-50. JUDICIAL ENFORCEMENT – STANDARD OF REVIEW.

A. The Labor Management Relations Board may request the District Court to enforce any order issued pursuant to the Labor Management Relations Ordinance, including those for appropriate temporary relief and restraining orders. The Court shall consider the request for enforcement on the record made before the Board. The Court shall uphold the action of the Labor Management Relations Board and take appropriate action to enforce it unless the Court concludes that the order is:

1) Arbitrary, capricious, or an abuse of discretion;

2) Not supported by substantial evidence on the record considered as a whole; or

3) Otherwise not in accordance with law.

B. Any person or party, including any labor organization, affected by a final rule, order, or decision of the Board, may appeal to the District Court for further relief. All such appeals shall be based upon the record made at the Labor Management Relations Board hearing.

All such appeals to the District Court shall be taken within thirty (30) calendar days of the date of the final rule, order, or decision of the Board. Actions taken by the Labor Management Relations Board shall be affirmed unless the Court concludes that the action is:

1) Arbitrary, capricious, or an abuse of discretion;

2) Not supported by substantial evidence on the record taken as a whole; or

3) Otherwise not in accordance with law.

SEC. 30-51. SEVERABILITY. If any part or application of the Labor Management Relations Ordinance is held invalid, the remainder or its application to other situations or persons shall not be affected.

SEC. 30-52—30-80. – RESERVED.

Section 3. Effective Date. This Ordinance shall be effective thirty (30) days after publication of notice of its adoption.

ADOPTED this 10th day of November, 2020.

INCORPORATED COUNTY OF LOS ALAMOS

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Sara C. Scott
Council Chair

ATTEST:

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Naomi D. Maestas
Los Alamos County Clerk