OFFICE OF THE COUNTY ATTORNEY

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FOR IMMEDIATE RELEASE

March 17, 2026

STATEMENT OF OTERO COUNTY

Regarding the Emergency Meeting of the Board of County Commissioners, March 13, 2026

Background: The County's Bond Obligation

Otero County owns the Otero County Processing Center in Chaparral, New Mexico. The facility was financed through Jail Project Revenue Bonds, Series 2007, issued pursuant to Ordinance No. 07-04, adopted April 17, 2007, nearly two decades ago, by a prior Board of County Commissioners. The current commissioners had no role in that decision.

Under the Bond Ordinance, the bonds are repaid exclusively from revenues generated by the County's Intergovernmental Service Agreement with U.S. Immigration and Customs Enforcement for civil immigration processing at the facility. This is not a policy choice available to the current commission, it is a legal obligation embedded in a bond contract made with investors in 2007. The Bond Ordinance legally prohibits the County from impairing that revenue pledge. No other revenue source meets that legal obligation.

No county tax dollars are at stake. The bonds are secured solely by federal contract revenues. The County's obligation is to honor the bond covenants made to investors when those bonds were issued. Failure to maintain the federal contract would place the County in default on approximately $19.3 million in outstanding bond obligations, jeopardize the County's credit standing for future borrowing, and put 284 jobs and tens of millions of dollars in annual wages and gross receipts tax revenues at risk for the residents of Otero County. In the event of default, bondholders would have the right to foreclose on the OCPC facility, which has an appraised value of approximately $68 million.

Why an Emergency Meeting Was Necessary

The Board of County Commissioners held its regular monthly meeting on the morning of March 12, 2026, which concluded at approximately 1:00 p.m. That meeting included a properly noticed executive session pursuant to NMSA 1978, Section 10-15-1(H)(7) for attorney-client privileged discussion of pending and threatened litigation, including the County's exposure under HB9 and its bond obligations.

Later that afternoon, the County received the replacement agreement from ICE. Upon review, the County Attorney identified corrections required before the agreement could be executed and transmitted those to ICE. The County Attorney also determined at that time that the existing agreement expired March 15, not March 31 as County staff had previously understood, based on the dates of prior short-term extensions, leaving an extremely compressed timeline.

The County Administration Office is closed on Fridays. On the morning of March 13, the County Attorney received the corrected agreement from ICE and, working independently, completed the legal research necessary to confirm the basis for an emergency meeting, verified compliance with the Open Meetings Act, and prepared the resolution and supporting documents. Once the County Attorney confirmed the corrected contract was executable and the legal basis for emergency action was established, the decision was made to convene the emergency meeting.

The 72-hour notice required for a special meeting was not possible because the corrected, executable contract was not in hand until the morning of March 13 and the existing agreement expired March 15. The

County had been awaiting a replacement contract from ICE for many months. The actual expiration date was not confirmed until the County received and reviewed the new agreement on March 12.

Telephonic notice was issued to all ten media organizations designated in the County's Open Meetings Resolution, and the notice was physically posted in the lobby of the County Administration Building, as required. All Board action was taken in open session. ICE countersigned the replacement agreement on the morning of March 14, 2026, one day before the existing agreement expired, ensuring continuous contract coverage with no gap.

Regarding Website Posting

The County also attempted to post the meeting notice to its website, as is standard practice for regular meetings. The County's agenda management software does not permit same-day publication of meeting notices, a limitation not previously encountered because the County had not previously needed to call a same-day emergency meeting. The County Manager's executive assistant came in on overtime on March 13 to assist the County Attorney in resolving this limitation. When a technical solution could not be found, the County relied on the legally required notice methods for emergency meetings under its Open Meetings Resolution, telephonic notice to all ten designated media organizations and physical posting in the lobby of the County Administration Building, both of which were completed as required by law.

Regarding the Rolling Quorum Allegation

No rolling quorum occurred. On the evening of March 12, the County Attorney made preliminary inquiries to commissioners regarding scheduling availability, not knowing at that point when or if the corrected contract would be received from ICE. On the morning of March 13, once the County Attorney had confirmed the legal and factual basis for the emergency meeting, each commissioner was contacted individually by telephone to inform them of the circumstances and confirm availability. These were individual attorney-client communications from the County Attorney to each commissioner separately. No commissioner communicated with any other commissioner regarding the substance of the emergency meeting outside of open session. Individual attorney-client communications from the County Attorney to commissioners informing them of a legal emergency and confirming availability for a meeting are not deliberation and do not constitute a rolling quorum under the Open Meetings Act or applicable case law.

Regarding Outside Litigation Counsel

Authorization to engage outside litigation counsel was included in the emergency resolution because the same circumstances requiring the emergency meeting also require immediate legal action to protect the County's bond obligations and legal rights. The resolution authorized the County Attorney to procure outside counsel in compliance with the New Mexico Procurement Code, including applicable small purchase and sole source notice requirements.

Regarding HB9

The County takes no position on immigration policy. The Board's action was taken solely to protect legal obligations incurred in 2007, obligations the current commission inherited and is legally bound to honor. The County is evaluating all available legal options to protect its bond obligations, its credit standing, and the economic wellbeing of the community. The County does not comment further on matters that may be the subject of litigation.

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