ADMINISTRATION
1101 NEW YORK AVENUE
ALAMOGORDO, NM 88310

WWW.CO.OTERO.NM.US
(575) 437-7427
(575) 443-2928

OTERO COUNTY
BOARD OF COUNTY COMMISSIONERS

RESOLUTION NO. 03-13-26/114-62

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF OTERO COUNTY, NEW MEXICO, DECLARING AN EMERGENCY; AUTHORIZING EXECUTION OF INTERGOVERNMENTAL SERVICE AGREEMENT NO. 70CDCR26DIG000010 WITH U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT FOR THE OTERO COUNTY PROCESSING CENTER; AUTHORIZING LITIGATION TO PROTECT THE COUNTY'S OUTSTANDING JAIL PROJECT REVENUE BONDS, SERIES 2007; AUTHORIZING ENGAGEMENT OF OUTSIDE LITIGATION COUNSEL; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the Board of County Commissioners of Otero County, New Mexico (the "Board") is the governing body of Otero County (the "County"), a political subdivision of the State of New Mexico; and

WHEREAS, the County owns and operates the Otero County Processing Center ("OCPC"), located at 26 McGregor Range Road, Chaparral, New Mexico 88081, an adult civil immigration detention facility employing approximately 284 County and subcontractor personnel; and

WHEREAS, the County financed construction of the OCPC through the issuance of its Jail Project Revenue Bonds, Series 2007 (the "2007 Bonds"), pursuant to NMSA 1978, Chapter 4, Article 62 and Ordinance No. 07-04, as amended by Ordinance No. 17-06 (CUSIPs 688824AJ0 and 688824AK7), with total remaining debt service of in excess of $19,300,000 in outstanding principal, including a bond service payment of $5,259,800 due April 1, 2026; and

WHEREAS, the sole source of revenues pledged to secure the 2007 Bonds is the Intergovernmental Service Agreement ("IGSA") between the County and U.S. Immigration and Customs Enforcement ("ICE") pursuant to 8 U.S.C. § 1231(g)(1), which expires by its terms on March 15, 2026; and

WHEREAS, ICE has tendered a replacement IGSA, Contract No. 70CDCR26DIG000010, with a period of performance of March 16, 2026 through March 15, 2031; and

WHEREAS, the replacement IGSA was transmitted to the County on March 12, 2026, leaving fewer than four days before expiration of the existing agreement, precluding compliance with the 72-hour notice requirement for a special meeting and necessitating an emergency meeting; and

WHEREAS, absent Board authorization and execution of the replacement IGSA, the County faces imminent default on its debt service obligations. Under Article V.I of the County's Operations, Management and Maintenance Agreement with Management and Training Corporation dated February 2024 (the "Operations Agreement"), the April 1, 2026 debt service payment of $5,259,800 must be made from the Bond Account, Acquisition Account,

Revenue Fund, and Surplus Fund held by the Trustee; the Reserve Fund is expressly excluded from the debt service shortfall calculus under that provision, and the obligation to cure any shortfall is not conditioned upon any transfer from the Reserve Fund. Counsel for the Trustee, U.S. Bank Trust Company, National Association, has advised the County that the shortfall in those operating accounts as of the April 1, 2026 payment date is likely to be substantial. Accordingly, a default event under the Bond Ordinance and Operations Agreement on April 1, 2026 is imminent regardless of the Debt Service Reserve Fund balance. Default constitutes severe and irreparable financial loss to the County within the meaning of NMSA 1978, § 10-15-1(F); and

WHEREAS, the County Attorney has advised the Board that recently enacted state legislation threatens the County's ability to perform its obligations under the replacement IGSA and to honor its bond covenants, and that immediate litigation is necessary to protect the County's legal rights and prevent irreparable harm; and

WHEREAS, the Board finds that the circumstances described herein constitute an emergency requiring immediate action within the meaning of NMSA 1978, § 10-15-1(F) and the County's Open Meetings Resolution No. 01-08-26/114-41, ¶ 4.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Otero County, New Mexico, as follows:

Section 1. Declaration of Emergency.

The Board hereby declares that an emergency exists within the meaning of NMSA 1978, § 10-15-1(F) and the County's Open Meetings Resolution No. 01-08-26/114-41, ¶ 4, for the reasons set forth in the recitals above, which are incorporated herein by reference. The Board finds that immediate action is necessary to prevent substantial financial loss to the County and damage to County property and fiscal integrity.

Section 2. Authorization to Execute Replacement IGSA.

The Board hereby authorizes and directs the County Manager to execute Intergovernmental Service Agreement No. 70CDCR26DIG000010 with the United States Department of Homeland Security, U.S. Immigration and Customs Enforcement, for detention services at the Otero County Processing Center, for a period of performance of March 16, 2026 through March 15, 2031. The County Manager is authorized to execute such agreement, with such modifications as the County Attorney deems necessary and appropriate, on behalf of the County.

Section 3. Authorization to Initiate Litigation.

The Board hereby authorizes the County Attorney to initiate such legal proceedings as the County Attorney deems necessary and appropriate to protect the County's outstanding Jail Project Revenue Bonds, Series 2007, and the County's rights under the replacement IGSA, including filing complaints for declaratory and injunctive relief and applications for temporary restraining orders and preliminary injunctions in state and federal courts of competent jurisdiction.

Section 4. Authorization to Engage Outside Litigation Counsel.

The Board hereby authorizes the County Attorney to engage outside litigation counsel to assist in any litigation initiated pursuant to Section 3 of this Resolution, as follows: (a) the County Attorney is authorized to execute an immediate professional services contract with qualified outside litigation counsel pursuant to the small purchase authority of NMSA 1978, § 13-1-

125(B), without competitive sealed proposals, to provide continuity of representation through and including any application for temporary restraining order; and (b) the County Attorney is simultaneously authorized to post a sole source procurement notice pursuant to NMSA 1978, §§ 13-1-126 and 13-1-126.1, and upon expiration of the required notice period, to execute a supplemental professional services contract with the same firm for continued litigation representation through final resolution of all proceedings authorized under Section 3. The County Attorney is further authorized to execute amendments and modifications to either contract without further Board action. The aggregate compensation under all contracts, amendments, and modifications authorized by this Section shall not exceed $350,000. The County Manager is authorized to execute such contracts and amendments on terms approved by the County Attorney.

Section 5. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Section 6. Effective Date.

This Resolution shall take effect immediately upon adoption by the Board of County Commissioners.

ADOPTED AND APPROVED this 13th day of March, 2026, by the Board of County Commissioners of Otero County, New Mexico, convened in emergency session pursuant to NMSA 1978, § 10-15-1(F).

BOARD OF COUNTY COMMISSIONERS
OTERO COUNTY, NEW MEXICO

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IRW Chairwoman

_____

IRW Vice Chair

_____

IRW Member

ATTEST:

_____

IRW County Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____

IRW County Attorney