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RESOLUTION NO. 03-25-26/114-64

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF OTERO COUNTY, NEW MEXICO CONFIRMING AND RATIFYING RESOLUTION NO. 03-13-26/114-62 IN ITS ENTIRETY, WITHOUT CONCEDING ANY DEFECT THEREIN

WHEREAS, Otero County, New Mexico (the "County") owns and operates the Otero County Processing Center ("OCPC"), a civil immigration detention facility located at 26 McGregor Range Road, Chaparral, New Mexico, financed through the issuance of Otero County, New Mexico Jail Project Revenue Bonds, Series 2007 (the "Bonds"), pursuant to Ordinance No. 07-04 as amended by Ordinance No. 17-06 (the "Bond Ordinance");

WHEREAS, the Bonds were issued to finance construction of the OCPC and are secured exclusively by revenues generated by an Intergovernmental Service Agreement between the County and the United States Department of Homeland Security, U.S. Immigration and Customs Enforcement ("ICE") for civil immigration detention services at the OCPC;

WHEREAS, approximately $19,300,000 in principal remains outstanding under the Bonds, with the Bond Ordinance expressly prohibiting the County from impairing the revenue pledge securing the Bonds;

WHEREAS, the prior Intergovernmental Service Agreement between the County and ICE expired on March 15, 2026, and replacement was necessary to avoid a gap in the IGSA revenue stream securing the Bonds and to prevent an event of default under the governing bond documents;

WHEREAS, on March 12, 2026, ICE transmitted to the parties a replacement Intergovernmental Service Agreement, Contract No. 70CDCR26DIG000010, covering the period March 16, 2026 through March 15, 2031, with a total contract value of $283,417,748.55 (the "IGSA");

WHEREAS, upon receipt and review of the replacement IGSA on March 12, 2026, the County Attorney realized for the first time that the actual expiration date of the prior IGSA was March 15, 2026, and also identified corrections required in the agreement before it could be executed; those corrections were transmitted to ICE that same afternoon and the County Attorney awaited return of a corrected, executable version of the agreement;

WHEREAS, on the morning of March 13, 2026, the County Attorney received the corrected, executable replacement IGSA from ICE; at that point, with approximately

sixty-one hours remaining before the prior IGSA expired, the County Attorney confirmed that a regularly noticed special meeting requiring seventy-two hours advance notice under NMSA 1978, Section 10-15-1(D) was no longer legally available, and began preparations for an emergency meeting, including completing the legal research necessary to confirm the basis for emergency action, verifying compliance with the Open Meetings Act and the County's Open Meetings Resolution, and preparing the resolution and supporting documents;

WHEREAS, on March 13, 2026, the Board of County Commissioners convened an emergency meeting, provided telephonic notice to all ten media organizations designated in the County's Open Meetings Resolution, two of which were noted as no longer in operation, posted physical public notice at the County Administration Building, and streamed the meeting live, at which meeting the Board adopted Resolution No. 03-13-26/114-62 authorizing execution of the IGSA (the "March 13 Authorization");

WHEREAS, Commission Chair IRW executed the IGSA on behalf of the County on March 13, 2026, and ICE countersigned the agreement on March 14, 2026, ensuring continuous contract coverage with no gap in IGSA operations;

WHEREAS, Resolution No. 03-13-26/114-62 authorized the County Manager to execute the IGSA; because County Manager IRW was traveling out of town at the time of the March 13 emergency meeting and her technology options during travel were limited, Commission Chair IRW executed the IGSA in her capacity as the Board's standard signatory for County agreements, which is consistent with the County's standard practice under which the Chair executes agreements on behalf of the Board unless execution authority has been expressly and exclusively delegated to another officer; the Board hereby confirms that the Chair's execution was within her authority and was made on behalf of and with the full authorization of the Board;

WHEREAS, the New Mexico Department of Justice has issued a compliance inquiry dated March 20, 2026, expressing concerns regarding the March 13 emergency meeting and asserting that the March 13 Authorization may be invalid under the Open Meetings Act;

WHEREAS, the County disputes the Department of Justice's conclusions, maintains that the March 13 emergency meeting was lawfully convened, and has submitted a comprehensive response to the Department's compliance inquiry;

WHEREAS, the County desires to eliminate any residual uncertainty regarding the validity of Resolution No. 03-13-26/114-62 and all authorizations contained therein by separately confirming and ratifying that resolution in its entirety, to the extent any such ratification may be necessary or appropriate under applicable law, all without conceding any defect in Resolution No. 03-13-26/114-62 or the March 13 emergency meeting;

WHEREAS, the Board has been fully briefed on the IGSA, its terms, and the circumstances requiring its execution, and has had an opportunity to review and consider the agreement at this properly noticed special meeting at which members of the public have had the opportunity to attend and comment;

WHEREAS, execution and performance of the IGSA is necessary to fulfill the County's obligations under the Bond Ordinance, to protect the County's outstanding bond obligations and its credit rating, and the OCPC as publicly owned property, and to protect the jobs of the 284 employees of the OCPC;

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

Section 1. Confirmation and Ratification of Resolution No. 03-13-26/114-62 In Its Entirety. Without conceding any defect in the March 13, 2026 emergency meeting or in Resolution No. 03-13-26/114-62, and while expressly preserving the County's position that Resolution No. 03-13-26/114-62 was lawfully adopted and remains valid in all respects, the Board of County Commissioners separately and independently confirms, ratifies, and approves Resolution No. 03-13-26/114-62 in its entirety, including without limitation: (a) the authorization and approval of IGSA Contract No. 70CDCR26DIG000010; (b) the authorization to County Attorney IRW to procure and engage outside litigation counsel pursuant to the New Mexico Procurement Code, NMSA 1978, Section 13-1-1 et seq., including applicable small purchase and sole source notice requirements, with aggregate compensation not to exceed $350,000 without further Board authorization; and (c) all other authorizations, findings, and directives contained in Resolution No. 03-13-26/114-62. This ratification expressly includes confirmation and ratification of the execution of IGSA Contract No. 70CDCR26DIG000010 by Commission Chair IRW IRW on March 13, 2026, in her capacity as the Board's standard signatory, which execution the Board hereby confirms was made within her authority and on behalf of and with the full authorization of the Board. This ratification is taken as a precautionary measure to eliminate any residual uncertainty and does not constitute an admission that Resolution No. 03-13-26/114-62 or the March 13, 2026 emergency meeting was procedurally defective.

Section 2. Preservation of Legal Positions. Nothing in this Resolution shall be construed as an admission by the County that the March 13, 2026 emergency meeting violated the New Mexico Open Meetings Act or that the March 13 Authorization was procedurally defective. The County expressly reserves all legal arguments regarding the validity of the March 13 Authorization and the March 13 emergency meeting, including all arguments set forth in the County's response to the New Mexico Department of Justice compliance inquiry dated March 20, 2026.

Section 3. Authorization to Execute and Implement. Commission Chair IRW IRW and County Manager IRW are hereby authorized and directed to take all actions necessary or appropriate to implement this Resolution, including providing written notice of this Resolution to the ICE Contracting Office, to the Bond Trustee, U.S. Bank Trust Company, National Association, and to the New Mexico Department of Justice.

Section 4. Authorization of County Attorney. County Attorney IRW is hereby authorized and directed to transmit a copy of this Resolution to the New Mexico Department of Justice Government Counsel and Accountability Bureau as a supplemental filing in connection with the County's response to the compliance inquiry dated March

20, 2026, and to take all other legal actions necessary to protect the County's interests in connection with the IGSA and the Bond Ordinance.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption by the Board of County Commissioners.

Section 6. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, the remainder of the Resolution and the application of such provision to other persons or circumstances shall not be affected thereby.

PASSED, APPROVED, AND ADOPTED by the Board of County Commissioners of Otero County, New Mexico, at a duly noticed special meeting held on March 25, 2026.

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IRW Chair

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IRW Vice Chair

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Commissioner IRW

ATTEST:

_____

IRW County Clerk

APPROVED AS TO FORM:

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IRW County Attorney