OFFICE OF THE COUNTY ATTORNEY

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March 23, 2026

Via Electronic Mail: omaipracomplaint@nmdoj.gov and blaine.moffatt@nmdoj.gov

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Re: Otero County Response to NMDOJ Compliance Inquiry Dated March 20, 2026, Regarding the Open Meetings Act and the March 13, 2026 Emergency Meeting

Subject Line: Attention NMDOJ - Otero County Response to NMDOJ Letter Dated March 20, 2026 Regarding Alleged Violations of the OMA

Dear Director Moffatt:

Otero County has reviewed the compliance inquiry issued by the Government Counsel and Accountability Bureau on March 20, 2026. The County respectfully and specifically disputes the Bureau's conclusions. The characterization of the circumstances underlying the March 13, 2026 emergency meeting as foreseeable is factually incorrect, and the Bureau's legal analysis rests on a premise that the documentary record directly refutes. This response sets forth the County's position in full.

The County also notes that this response serves simultaneously as the County's report to the Attorney General's office required by NMSA 1978, Section 10-15-1(F), which requires a public body that takes action on an emergency matter to report to the Attorney General's office within ten days the action taken and the circumstances creating the emergency. The emergency meeting occurred on March 13, 2026. This response, submitted March 23, 2026, is timely under that provision and sets out in full detail the action taken and the circumstances creating the emergency. The agenda for the March 13 emergency meeting, which described the basis and justification for the emergency action and was distributed to all designated media organizations prior to the meeting, is attached as Exhibit F.

I. PRELIMINARY MATTERS

A. The Nature of This Proceeding

The County notes at the outset that the March 20 correspondence is a compliance inquiry from the Government Counsel and Accountability Bureau, not a formal Attorney General opinion issued pursuant to NMSA 1978, Section 8-5-2. The County addresses it as such

and requests that any public characterization of this proceeding accurately reflect that distinction.

The County further notes that the Attorney General's compliance letter characterizes the March 13 authorization as invalid. That conclusion was stated publicly before the County's response deadline had run and before the factual record now before the Bureau was presented. Independent practitioners analyzing New Mexico OMA law have observed that the application of Section 10-15-3(A)'s invalidity provision to emergency meetings, where no agenda is required and the standard is reasonable notice rather than strict compliance, presents a legal question that is not as settled as the Bureau's public characterization suggests. The County respectfully submits that the factual and legal record set forth in this response warrants a more measured conclusion than the one the Attorney General publicly announced before this response was submitted.

The County further notes that NMSA 1978, Section 10-15-3(A) establishes a statutory presumption of validity: every resolution, rule, regulation, ordinance or action of any policymaking body shall be presumed to have been taken at a meeting held in accordance with the requirements of Section 10-15-1. The Bureau bears the burden of overcoming that presumption. The County's response and supporting materials demonstrate that the presumption has not been and cannot be overcome on the facts of this matter.

B. Confidential Treatment of Exhibit E

PREFATORY NOTE REGARDING EXHIBIT E: Exhibit E to this response is a written communication from counsel for the Bond Trustee. It is submitted pursuant to the express authorization of Trustee's counsel, who has authorized the County to provide this communication to the Attorney General's office for purposes of this OMA proceeding. Trustee's counsel has requested that the County exercise discretion in connection with matters involving bond covenant compliance and has specifically requested that the communication not be disclosed to press or made available to the general public. The County formally requests that the Bureau treat Exhibit E as confidential and not disclose it to the press, in response to public records requests, or otherwise, without first notifying the County. The County makes this request on the record so that any public disclosure of Exhibit E occurs with full awareness of Trustee's counsel's condition of authorization and the County's formal request for confidential treatment.

C. Conflict of Interest

The County places the Government Counsel and Accountability Bureau on formal notice of a conflict that bears on the objectivity of this proceeding. The Attorney General's office has a direct institutional interest in the validity of the Intergovernmental Service Agreement authorized at the March 13 emergency meeting, arising from the Attorney General's statutory responsibilities with respect to HB9 and the County's obligations under its outstanding revenue bonds and IGSA. That institutional interest creates an appearance of conflict between the Bureau's compliance function and the broader posture of the Attorney General's office on matters directly related to this proceeding.

The County requests written confirmation that the Government Counsel and Accountability Bureau is operating independently of any division of the Attorney General's office engaged in matters relating to HB9 and Otero County's Intergovernmental Service Agreement. The County further requests confirmation that no

information obtained or developed in this OMA proceeding is being shared with, or used by, any such division. If that confirmation cannot be provided, the County will seek appropriate relief.

II. THE FACTUAL RECORD: WHAT ACTUALLY HAPPENED ON MARCH 12 AND 13, 2026

The Bureau's inquiry proceeds from two fundamental factual errors. The first is that the approaching contract deadline was known to the County in time to schedule a regular or specially noticed meeting. The second is that the arrival of a replacement agreement from ICE on any particular date was foreseeable or within the County's control. The documentary record refutes both premises with precision. The County had no way of knowing when or whether ICE would complete its internal approval process and tender a replacement agreement. Based on the prior pattern of missed deadlines and short-term extensions, the County had reasonable grounds to expect either another extension or that the agreement would not arrive until closer to what the County had consistently understood and relied upon as the March 31 expiration date. When the contract did arrive on March 12, the forwarded email chain transmitting it to the County revealed for the first time that the IGSA extension in place expired on March 15, not March 31 as every party on the County's side of the transaction had consistently understood and relied upon. These were two independent unforeseen circumstances, each sufficient on its own to justify emergency action, that converged on the afternoon of March 12 and left the County with no lawful alternative. The County requests that the Bureau review the following facts carefully before drawing any final conclusions.

A. The County Was Actively Planning a Properly Noticed Special Meeting on the Morning of March 12, 2026

On the morning of March 12, 2026, the Board of County Commissioners held its regular monthly meeting. 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. During that executive session, County Attorney Nichols briefed the Commission that the current IGSA was understood to expire on March 31, 2026, and that he was awaiting receipt of a replacement contract from ICE. He advised the Commission that upon receipt of the replacement contract he would schedule a properly noticed special meeting for the Board to authorize execution. That was the plan as of the conclusion of the regular meeting. It was a proper plan. It was the right plan. It was overtaken by events later that same afternoon. The March 12, 2026 regular meeting minutes, attached as Exhibit G, reflect the properly noticed executive session held that morning.

The prior IGSA had been the subject of active negotiations between the parties for approximately one year. There was no certainty as to when or whether ICE would finalize and transmit the replacement agreement. Based on the pattern of prior extensions, and consistent with the County's operating understanding that the prior IGSA expired March 31, the County anticipated it had time to receive the agreement and schedule a proper special meeting before that date. That anticipation was reasonable and was the basis of the County Attorney's briefing to the Commission that same morning.

At 1:45 PM Mountain Daylight Time on March 12, 2026, ICE Contract Specialist Shereen Demarais transmitted the completed replacement IGSA package to MTC. This was the first time the replacement agreement was transmitted to any party outside of ICE's contracting office. It had not previously been provided to MTC or to Otero County in executable form. See Exhibit A. County Manager Pamela Heltner received the forwarded chain at 2:26 PM while traveling by air and was not in a position to take immediate administrative action. A public body cannot schedule a meeting to authorize a contract it has not yet received. The plan the County Attorney had briefed to the Commission just hours earlier assumed receipt of the agreement with adequate time to notice a special meeting. That assumption was about to be overtaken by the afternoon's events.

B. Two Unforeseen Circumstances Converged on the Afternoon of March 12, 2026

The afternoon of March 12 produced two unforeseen circumstances that converged to create the emergency. The first was the arrival of the replacement IGSA itself. There had been no certainty that ICE would finalize and transmit the agreement on any particular date. Based on the prior pattern of extensions and the ongoing ICE internal approval process, the County had no way of knowing the agreement would arrive on March 12 rather than some later date. Its arrival was an unforeseen event, not a scheduled one.

The second unforeseen circumstance was the discovery, upon receipt and review of the replacement agreement, that the prior IGSA expired March 15, not March 31. The SF 1449, the federal standard form governing the term of the prior IGSA, was in the possession of both the County and MTC. The County does not contend that the March 15 date was absent from that document. What the County contends is that at some point prior to any close review of that specific provision, conversations between the parties began referencing the expiration date as March 31, 2026. That date was never verified against the SF 1449. It snowballed into a shared working assumption, held by MTC personnel, MTC's attorney, and County officials including the County Attorney, that the prior IGSA expired at the end of March. The County Attorney had briefed the Commission on that assumption as recently as the executive session that same morning.

The Bureau's compliance letter states that a known contractual end date does not meet the definition of an unforeseen circumstance. That analysis does not apply here. The March 15 date was not known in any operationally meaningful sense. A date in a document that has been superseded by a universal shared assumption to the contrary is not a 'known' date for purposes of the OMA emergency standard. The County cannot be held to have failed to plan around a deadline it did not know existed.

The precise moment the County learned the true expiration date is documented in Exhibit A. At 3:09 PM on March 12, Executive Assistant to the County Manager, Sylvia Tillbrook forwarded to County Attorney Nichols an email chain in which MTC Director of Contract Administration Shantell Anderson had written to County Manager Pamela Heltner: "We just received finally after a year of negotiating this – we have not reviewed this so we will let you know if this is good to sign. The contract ends March 15, 2026 so we will need to have this signed before hand if possible." See Exhibit A. The 3:09 PM email is the moment the County Attorney learned the prior IGSA expired March 15. Not before that moment, not from any other source.

Upon reviewing the replacement agreement that afternoon, the County Attorney identified corrections required before the agreement could be executed and transmitted those to ICE. The County could not call a special or emergency meeting to authorize execution of an agreement that was not yet in executable form. County Manager Pamela Heltner was traveling out of town. The County Administration Building is closed on Fridays. The County Attorney did not receive the corrected executable agreement from ICE until the morning of March 13, 2026. It was at that point, with the corrected agreement in hand and the prior IGSA expiring in approximately 61 hours, that the County Attorney confirmed the legal basis for emergency action and began preparations for the emergency meeting.

C. A Special Meeting Was Not Legally Available

NMSA 1978, Section 10-15-1(D) requires at least 72 hours advance notice for a special meeting, including written notice to news media and public posting. The corrected executable replacement IGSA was in the County Attorney's hands on the morning of March 13, 2026. The prior IGSA expired at the end of March 15, 2026. The window between receipt of the corrected executable agreement and expiration of the prior IGSA was approximately 61 hours. A properly noticed special meeting requires 72 hours. Sixty-one hours is less than 72 hours. A special meeting was not legally available. The emergency meeting was not a preference or a convenience. It was the only lawful mechanism available given the actual timeline.

D. The Meeting Was Conducted With Full Transparency

Notwithstanding the emergency posture, the County provided telephonic notice of the March 13 meeting to news media outlets, posted public notice in the lobby of the County Administration building, and streamed the meeting live for public observation. The public was not excluded. The transparency policy underlying the OMA was honored to the maximum extent possible given the compressed timeline. The OMA's core purpose, that public business be conducted in full public view, was satisfied in substance. The County notes that the Attorney General's own OMA Compliance Guide expressly states that the Act does not require a public body to allow members of the public to speak at its meetings. OMA Compliance Guide, Eighth Edition (2015), p. 7. The OMA likewise imposes no obligation to provide an agenda for emergency meetings. NMSA 1978, Section 10-15-1(F). The County provided one nonetheless. The agenda for the March 13, 2026 emergency meeting, attached as Exhibit F, set forth the basis and justification for the emergency action, the circumstances creating the emergency, and the specific action to be taken. The County was transparent with the public and the media about the purpose of the meeting from the outset.

The County also attempted to post notice of the March 13 meeting to its website, consistent with standard practice. In doing so, staff discovered for the first time that the County's agenda management software does not permit same-day publication of meeting notices. This limitation had never previously been encountered because the County had never had occasion to publish a meeting notice on the same day as the meeting itself. 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 were completed as required.

The County provided notice of the March 13 meeting in compliance with its Open Meetings Resolution, adopted pursuant to NMSA 1978, Section 10-15-1(D), which requires each public body to determine annually what notice is reasonable for that body. The Compliance Guide acknowledges that reasonable notice varies by type of meeting and public body and requires only that notice be given as far in advance as reasonably possible under the circumstances. OMA Compliance Guide, Eighth Edition (2015), p. 13. The corrected executable agreement arrived on the morning of March 13. Three hours was as far in advance as reasonably possible given those circumstances. The Compliance Guide's own Example 71 expressly states that two hours notice is appropriate when an immediate threat requires urgent action, Id. at p. 32, and the County's three-hour notice satisfies that standard.

III. THE LEGAL STANDARD: THE OMA EMERGENCY EXCEPTION APPLIES

A. Unforeseen Circumstances

NMSA 1978, Section 10-15-1(F) permits an emergency meeting when there exist unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property, or substantial financial harm to the public body.

The unforeseen circumstances here are unambiguous, and there are two of them. The first is that the County did not know, and had no way of knowing, when or whether ICE would complete its internal approval process and tender a replacement agreement. As the Declaration of Virleen Ferre establishes, ICE had missed multiple prior deadlines, and the parties had been forced to negotiate short-term extensions twice already because ICE could not finalize the replacement agreement in time. Based on that history, the County had reasonable grounds to expect either another extension or that the agreement would not arrive until closer to what the County had consistently understood and relied upon as the March 31 expiration date. The possibility also existed that no agreement would arrive before what the County understood to be the March 31 expiration date, a scenario the County had not yet had to confront. The arrival of a finalized replacement IGSA on March 12 with an effective date of March 16 was not the outcome the County was planning around. It was an unforeseen and completely surprising event.

The second unforeseen circumstance is that when the replacement agreement did arrive on March 12, the forwarded email chain transmitting it to the County made apparent for the first time that the prior IGSA expired on March 15, 2026, rather than March 31, 2026 as County officials, MTC personnel, MTC's attorney, and others to whom the County had communicated its understanding had believed. That discovery created a time-critical situation that was more compressed than the raw hour count suggests. From the moment the true expiration date became apparent, the County faced not only the 72-hour notice requirement for a special meeting but also the practical reality that the replacement agreement itself required corrections before it could be executed, those corrections had to be transmitted to and approved through ICE's legal counsel, and the ordinary logistics of scheduling a Board meeting, including confirming commissioner availability, preparing materials, and arranging the meeting space, had to be accomplished within whatever time remained. By the time a corrected, executable agreement was back in the County Attorney's hands on the morning of March 13, the 72-hour window for a properly

noticed special meeting had already closed as a matter of arithmetic, and the layered practical obstacles that would have consumed any remaining time made it an impossibility in any event. The circumstance was not anticipated, was not within the County's prior knowledge, and was not the product of any decision or omission by the County. It arose from a misunderstanding held across the County's side of the transaction that was corrected only upon the County's receipt and review of the replacement agreement. Either circumstance, standing alone, satisfies the OMA emergency standard. Together they are overwhelming.

The Attorney General's own OMA Compliance Guide defines emergency, for purposes of the agenda requirements, as a matter that could not be foreseen by the public body and that requires immediate attention to avoid substantial financial loss. OMA Compliance Guide, Eighth Edition (2015), p. 17. The standard is whether the matter could not be foreseen at the time, not whether it is unforeseeable in hindsight. That is the County's precise situation. Neither the arrival of a replacement IGSA on March 12 with a March 16 effective date, nor the discovery that the prior IGSA expired March 15 rather than March 31, could have been foreseen before the 3:09 PM email arrived on March 12. The standard is met on both independent grounds.

The Bureau's conclusion that the circumstances were foreseeable because the term of the contract provided adequate time to plan for renewal misapplies the statutory standard. The County was planning for a March 31 renewal, not a March 15 renewal. The foreseeable scenario and the actual scenario were materially different. A shared misunderstanding about a contract expiration date is not a planning failure in the legally relevant sense. It is an unforeseen circumstance. Nor is the uncertainty inherent in ICE's opaque internal approval process a planning failure; the County cannot be expected to plan around a federal agency's internal timeline that is entirely outside its knowledge or control. The OMA does not require perfect contract administration or perfect foresight of a federal counterparty's actions as a precondition for invoking the emergency exception. It requires that the circumstances be genuinely unforeseen at the time of the emergency determination. They were.

B. Substantial Financial Harm

The OMA emergency standard is satisfied independently by the second prong: substantial financial harm to the public body. The IGSA is the exclusive source of revenue pledged to service Otero County's outstanding Jail Project Revenue Bonds, Series 2007, with approximately $19,300,000 in principal outstanding through final maturity in April 2028. A bond payment of $5,259,800 was due April 1, 2026. Allowing the prior IGSA to expire without an authorized replacement would have eliminated the County's sole source of pledged bond revenue, constituting an event of default under the governing bond documents and exposing the County to bond acceleration, enforcement proceedings by the Trustee, and potential foreclosure on the OCPC, a publicly owned facility.

The County's assessment of that risk was not made in isolation and did not rest solely on its own legal analysis. On March 13, 2026, following receipt of the corrected executable IGSA from ICE and while preparing for the emergency meeting, the County Attorney consulted by telephone with counsel for the Bond Trustee at approximately 1:30 PM. Trustee's counsel subsequently transmitted a written communication at 3:19 PM the same afternoon, copied to the Trustee's representative, confirming the Trustee's position in

writing before the emergency meeting was held that evening. In that communication, Trustee's counsel stated that in their view, the expiration of the current IGSA and the County's failure to enter into a new IGSA would violate the bond covenants and trigger events of default under the Bond Ordinance and governing contractual undertakings related to the Bonds. Trustee's counsel further confirmed that the April 1, 2026 debt service shortfall was likely to be substantial, noting a seven-figure shortfall caused in part by payment delays resulting from the multiple intermittent extensions of the prior IGSA. This was not the County's self-serving internal assessment of potential risk. It was the independent professional judgment of the Trustee's own counsel, delivered in writing the same afternoon as the emergency meeting, whose clients hold the outstanding bonds and whose duty runs to those bondholders. The substantial financial harm was not speculative. It was confirmed in writing, on the same day, by the party in the best position to evaluate it.

The Bureau's inquiry acknowledges awareness of the bond structure but concludes that the bond obligations were a consequence of planning failure rather than an emergency condition. This analysis again conflates awareness of the bond structure, which has been in place since 2007, with awareness that the IGSA was expiring 16 days earlier than the County had understood. The County knew about its bond obligations. It did not know the IGSA was expiring on March 15 rather than March 31. Those are not the same thing, and the distinction is dispositive.

The County notes that the Attorney General's own OMA Compliance Guide provides a directly analogous example of a valid financial emergency. Example 27 of the Compliance Guide describes a county commission that, one hour before its regular meeting, is informed that the bank holding county deposits is about to fail and that $50,000 in county funds exceeds federal deposit insurance limits. The Guide states that the county commission may consider and act on the matter at its regular meeting to avoid the $50,000 loss. OMA Compliance Guide, Eighth Edition (2015), p. 17. The County was not protecting $50,000 in uninsured deposits. It was protecting $19,300,000 in outstanding public bonds, with a $5,259,800 payment due April 1, 2026, and its bondholder obligations confirmed as at risk by independent Trustee's counsel that same afternoon. If a $50,000 loss qualifies as a financial emergency under the AG's own Compliance Guide, a $19.3 million bond default represents that standard by a factor of nearly four hundred.

The County also notes that the substantial financial harm prong of the OMA emergency standard was added to Section 10-15-1(F) by the Legislature in 2013, effective June 14, 2013. Prior AG guidance on the emergency standard predates that amendment and does not govern the County's situation. See AG Op. No. 90-29 (1990) (discussing pre-amendment standard focused on health, safety, and property threats). The current statute expressly recognizes substantial financial harm as an independent emergency basis. Under that standard, imminent default on $19,300,000 in outstanding public bonds with a $5,259,800 payment due April 1, 2026 constitutes substantial financial harm as a matter of plain statutory language. The County further notes that under the AG's own pre-amendment guidance, notice for emergency meetings need only be given 'as practicable.' AG Op. No. 90-29.

C. The County's Prior Consistent Application of the Emergency Provision

The County's use of the emergency meeting provision in March 2026 is consistent with its prior practice and with the Attorney General's office's own understanding of that provision in comparable circumstances.

On June 17, 2022, the Board of County Commissioners held an emergency meeting to certify the canvass of the 2022 Primary Election. That meeting was called under Section 10-15-1(F) of the Open Meetings Act in response to a New Mexico Supreme Court Writ of Mandamus issued June 15, 2022 compelling certification. The County provided written notification of that emergency meeting to the Attorney General's office, addressed to Attorney General Hector H. Balderas and copied by name to Sally Malave, Esq., Director of the Open Government Division, the division then responsible for OMA oversight and the direct institutional predecessor to the Government Counsel and Accountability Bureau. The notification described the meeting, identified the statutory authority, and attached the published agenda.

The County does not contend that the 2022 notification satisfied every procedural requirement of Section 10-15-1(F). It did not. The notice arrived outside the ten-day window. The County acknowledges that.

What the County does contend is that the Open Government Division received actual notice of the emergency meeting, the Director of that Division was named on the notification, and the Division took no action. It issued no compliance letter. It requested no correction. It raised no objection to the use of the emergency provision in that context. That non-response, by the office specifically responsible for OMA enforcement, reflects a deliberate institutional judgment. The AG's office was not uninformed. It was actively engaged with the Otero County Commission on multiple matters during the same period, including an ongoing election code investigation. The June 17 emergency meeting was not hidden from view. The non-response to it was a choice.

The contrast with the present matter is material. In March 2026, the Bureau issued a compliance letter asserting a violation and simultaneously issued a public press release declaring the County's IGSA invalid before the County's response deadline had even run. The County has not been afforded the institutional patience extended in 2022. The difference in treatment is not explained by the severity of any procedural defect. It is explained by the subject matter of the meeting.

The OMA emergency provision cannot be applied as valid when the underlying action serves the enforcing authority's policy preferences and invalid when it does not. Consistency in the application of transparency law is not optional.

D. Substantial Compliance as an Independent and Alternative Ground

Even if the Bureau's characterization of the emergency classification question were correct, the County's actions satisfy the OMA under New Mexico's substantial compliance approach. New Mexico courts, beginning with *Gutierrez v. City of Albuquerque*, 631 P.2d 304, 307 (N.M. 1981), have construed the OMA to ensure reasonable public access to meetings rather than to impose rigid, hyper-technical requirements that unduly burden governmental action. In *Parkview Community Ditch Ass'n v. Peper*, 323 P.3d 939, 942-43 (N.M. Ct. App. 2014), the Court of Appeals applied this principle and held that technical defects in OMA procedures do not invalidate a public body's action where the

body has substantially complied with the Act's core transparency requirements. Here, the County provided telephonic notice to all ten media organizations designated in its Open Meetings Resolution, two of which were noted as no longer in operation, posted physical notice in the County Administration Building, and streamed the meeting live, and members of the public attended and observed the Board's deliberations in real time. Members of the public were free to contact commissioners directly by phone or email prior to the meeting, consistent with the County's standard practice for special and emergency meetings. In these circumstances, the transparency purpose of the OMA was honored in substance, and any arguendo defect in how the meeting was characterized does not warrant invalidation of the Board's action under applicable New Mexico authority.

IV. THE CHILLING EFFECT OF HINDSIGHT-BASED OMA ENFORCEMENT

The County raises a concern that extends beyond the immediate facts of this matter and that the Bureau should weigh carefully in determining how to proceed.

The OMA emergency exception exists because the Legislature recognized that public bodies will sometimes face circumstances that cannot be anticipated and cannot wait. The exception is not a loophole or an escape hatch. It is a deliberate legislative grant of authority for precisely the kind of compressed, high-stakes situation the County faced on March 12, 2026. It reflects the Legislature's considered judgment that rigid procedural compliance, when genuinely impossible given the circumstances as they actually existed, should not come at the cost of catastrophic financial harm to a public body and the community it serves.

When OMA enforcement applies hindsight to circumstances that were genuinely unforeseen at the time of the emergency determination, and characterizes a good-faith emergency response as a planning failure because the circumstances appear in retrospect to have been theoretically avoidable, it produces a result the Legislature did not intend and a consequence that undermines the capacity of local governments to function effectively. If county officials must fear that every emergency meeting decision will be second-guessed through the lens of what could hypothetically have been done differently, the rational institutional response is hesitation and paralysis. Officials will become reluctant to invoke the emergency exception even in genuine emergencies, knowing that any action taken under time sensitive pressure is vulnerable to post-hoc scrutiny based on information and perspective that the decision-makers did not and could not have had at the moment they were required to act.

That outcome serves no public interest. It does not serve the residents of Otero County. A default on the County's outstanding bonds would damage the County's credit rating, raising the cost of every future dollar the County borrows to fund roads, schools, public safety, and other essential services. Those higher borrowing costs are ultimately borne by taxpayers, the residents of Otero County, through higher taxes or reduced services for years to come. It does not serve the 284 employees of the OCPC, whose livelihoods depend on the facility's continued operation, or the approximately $21 million in annual wages they represent to the local economy, wages that flow through local businesses, families, and communities throughout the region. It does not serve the transparency values the OMA was enacted to protect, because a county that defaults on its bonds, loses a public property with substantial value, and eliminates hundreds of jobs is not a county well-

positioned to serve its constituents openly or effectively. And it does not serve the OMA itself, which is diminished when its enforcement mechanism is applied to penalize good-faith emergency responses to genuinely unforeseen circumstances.

The AG's own Compliance Guide checklist confirms the County met both required prongs for an emergency meeting: the circumstances were not expected, and failure to act immediately would have resulted in substantial financial loss to the public body. OMA Compliance Guide, Eighth Edition (2015), p. 45. The County's emergency determination was made in direct conformity with that standard.

The Compliance Guide also describes the approach the Attorney General takes when a violation is found: the AG first advises the public body of non-compliance and advises it to begin again, unless the violation was part of a pattern or practice of violations. OMA Compliance Guide, Eighth Edition (2015), p. 39-40. The Guide specifically states that the Attorney General will not prosecute where there has been a good faith attempt to comply with the Act. Every fact in this record reflects good faith: the County complied with its Open Meetings Resolution in providing notice of the March 13 meeting, conducted the meeting in public, streamed it live, and is now voluntarily convening a ratification meeting to provide a second fully noticed opportunity for Board action. This is not the profile of a knowing and flagrant violation. It is the profile of a county that did everything it could to protect the public's interests while honoring the transparency values the OMA embodies.

The OMA emergency standard asks whether the circumstances were unforeseen, not whether they were unforeseeable in hindsight. It asks whether immediate action was necessary to prevent substantial financial harm, not whether the situation might have been avoided with the benefit of information that became available only when the emergency arose. The County asks the Bureau to apply that standard as the Legislature wrote it and as it was intended to operate: from the perspective of what the public body knew and could reasonably have known at the time of the emergency determination, not from the perspective of what might be reconstructed through hindsight.

The County also notes that the conditions giving rise to genuine governmental emergencies are not static. The Legislature enacted the OMA emergency exception in recognition that unforeseen circumstances requiring immediate action will arise. That recognition is more rather than less applicable in an era of continuous federal contracting cycles, same-day electronic transmissions, and bond market obligations that do not pause for 72-hour notice windows. The compressed timeline the County faced on March 12 and 13, 2026, from discovery of a contract expiration date to receipt of a corrected executable agreement to independent confirmation from Trustee counsel of imminent default, unfolded within approximately 24 hours. Public bodies operating in the modern governance environment must have confidence that the emergency meeting provision means what it says and will be applied as written when circumstances genuinely require it. If they do not have that confidence, the option becomes unusable and the Legislature's intent is defeated.

The Bureau's interpretation of the emergency standard would render the exception a nullity. If a good-faith misunderstanding about a contract expiration date, shared across multiple parties on the County's side of the transaction, corrected only upon receipt of the replacement agreement, leaving fewer than 72 hours to act before a bond default, does

not qualify as an unforeseen circumstance, it is difficult to conceive of circumstances that would. A standard that no factual scenario can satisfy is not a standard. It is a prohibition. The Legislature did not enact a prohibition. It enacted an exception, carefully worded and deliberately available for exactly the kind of situation the County faced. The County respectfully asks the Bureau to apply it as written.

V. THE IGSA IS A VALID FEDERAL CONTRACT INDEPENDENT OF THE OMA QUESTION

Whatever view the Bureau ultimately takes of the March 13, 2026 meeting under the Open Meetings Act, the replacement IGSA (Contract No. 70CDCR26DIG000010) is a bilateral agreement between Otero County and the United States Department of Homeland Security, U.S. Immigration and Customs Enforcement, that has already been fully executed. ICE Contracting Officer Brittany Tobias countersigned the IGSA on March 14, 2026, and the agreement has been in effect since March 16, 2026, governing the housing of approximately 900 federal civil immigration detainees.

Commission Chair Vickie Marquardt signed the IGSA on March 13, 2026, in her capacity as the Board's standard signatory, consistent with the County's longstanding practice under which the Chair executes agreements on behalf of the Board absent an express delegation to another officer. The Chair's execution reflected the Board's authorization in Resolution No. 03-13-26/114-62 and was within the scope of the County's internal allocation of contracting authority.

Federal contract law governs the formation, interpretation, and enforcement of a contract between a local government and the federal government. A state procedural rule governing how a local governing body must convene and act, including the Open Meetings Act, can inform the County's internal authority, but it does not, by itself, extinguish the federal government's contractual rights under a fully executed federal agreement. The United States is not subject to the New Mexico OMA, was not a party to the March 13 meeting, and did not condition its execution of the IGSA on any particular state-law procedural finding.

Accordingly, even if the March 13 authorization were treated as defective under Section 10-15-3(A) for state-law purposes, that would not operate to nullify ICE's countersigned contract or to retroactively undo the federal obligations now in performance. The appropriate focus, if the Bureau were to identify any OMA concern, would be on prospective corrective measures, such as the ratification meeting the County is already convening, rather than on an attempt to invalidate an existing federal agreement that is currently governing detention operations.

VI. RATIFICATION

Without conceding any Open Meetings Act violation, and while specifically disputing the Bureau's analysis of the March 13, 2026 emergency meeting, the County is voluntarily convening a fully noticed public meeting to consider ratification of Resolution No. 03-13-26/114-62 and the IGSA. This approach is precisely what the Attorney General's Open Meetings Act Compliance Guide contemplates when it states that, where non-compliance is found, the Attorney General typically advises the public body of the violation and directs it to 'begin again' in a properly noticed meeting. OMA Compliance Guide, Eighth Edition (2015), pp. 39-40.

The County recognizes, consistent with Section 10-15-3(A) and the New Mexico Court of Appeals' decision in *Palenick v. City of Rio Rancho*, 2012-NMCA-018, that a later, properly noticed action cannot be treated as retroactively validating an earlier action taken in violation of the Act. *Palenick* makes clear that a subsequent OMA-compliant vote is effective from the date it is taken forward, not backward to an earlier date. At the same time, *Palenick* confirms that a public body may lawfully take new action on the same subject in a meeting that fully complies with the OMA, and that such later action is valid in its own right.

The County's ratification meeting follows that model. The Board will receive public comment, deliberate in open session, and take two separate votes: one independently authorizing the IGSA as a new Board action by adopting Resolution No. 03-25-26/114-63, and one separately ratifying Resolution No. 03-13-26/114-62 in its entirety by adopting Resolution No. 03-25-26/114-64. The meeting indisputably satisfies all OMA notice and agenda requirements. If, notwithstanding the County's position, the Bureau were to conclude that any aspect of the March 13 meeting was defective, the subsequent Board action will independently satisfy Section 10-15-1 and provide a complete prospective cure under the framework recognized by *Palenick* and the Attorney General's own guidance. Notice was provided on Sunday, March 22, 2026, satisfying the 72-hour advance notice requirement under NMSA 1978, Section 10-15-1(D). The meeting is scheduled for Wednesday, March 25, 2026 at 6:00 PM.

VII. SUPPORTING MATERIALS

The following materials are submitted in support of this response:

1. Exhibit A: Email chain establishing the March 12, 2026 timeline. Shereen Demarais, ICE Contract Specialist, to Shantell Anderson, MTC Director of Contract Administration, March 12, 2026, 1:45 PM MDT (first transmission of replacement IGSA); Anderson to Pamela Heltner, County Manager, March 12, 2026, 2:26 PM MDT (noting March 15 expiration date for the first time); Sylvia Tillbrook, Executive Assistant to the County Manager, to R.B. Nichols, County Attorney, March 12, 2026, 3:09 PM MDT.

2. Exhibit B: Declaration of Pamela Heltner, County Manager, Otero County, New Mexico.

3. Exhibit C: Declaration of Michael P. Petrogeorge, Esq., Vice President and General Counsel, Management and Training Corporation, dated March 23, 2026, confirming MTC's understanding that the prior IGSA expired March 31, 2026, the extension history establishing the end-of-month pattern, and that the March 15 expiration date was a genuine surprise to MTC personnel.

4. Exhibit D: Declaration of Virleen Ferre, Vice President, Contracts Administration, Management and Training Corporation, dated March 23, 2026, confirming the full extension history of the prior IGSA (original termination March 31, 2025; extended through June 30, 2025; October 31, 2025; and March 15, 2026), the ongoing ICE internal approval process that prevented earlier execution of a replacement agreement, and that from MTC's operational perspective the receipt of the final IGSA on March 12, 2026 created a genuine emergency requiring immediate County action.

5. Exhibit E: Written communication from counsel for the Bond Trustee to R.B. Nichols, County Attorney, dated March 13, 2026, 3:19 PM, confirming that in Trustee counsel's view the expiration of the IGSA and the County's failure to enter into a new IGSA would violate the bond covenants and trigger events of default, and confirming a seven-figure debt service shortfall. Full identifying information appears on the face of the exhibit. Submitted with the express authorization of counsel for the Trustee. [SUBJECT TO CONFIDENTIALITY REQUEST: SEE SECTION I.B]
6. Exhibit F: Agenda for the March 13, 2026 Emergency Meeting of the Board of County Commissioners of Otero County, New Mexico, including the stated basis and justification for the emergency action and description of the action to be taken. Distributed to all designated media organizations prior to the meeting and posted at the County Administration Building.
7. Exhibit G: Minutes of the Regular Meeting of the Board of County Commissioners of Otero County, New Mexico, March 12, 2026, reflecting the properly noticed executive session convened pursuant to NMSA 1978, Section 10-15-1(H)(7) for attorney-client privileged discussion of pending and threatened litigation, including matters related to the County's bond obligations and HB9 exposure.

The County reserves the right to supplement this response with additional declarations and documentary evidence as circumstances require.

VIII. CONCLUSION

The March 13, 2026 emergency meeting was lawfully convened. The replacement IGSA was received by the County on the afternoon of March 12, 2026, for the first time. The actual expiration date of the prior IGSA was unknown to County officials, to MTC personnel and counsel, and to others on the County's side of the renewal process prior to that transmission. The County does not make representations regarding ICE's internal knowledge of the prior agreement's expiration date. From receipt of the corrected executable agreement on the morning of March 13 to the expiration of the prior IGSA on March 15, the County had approximately 61 hours, a window that precluded a 72-hour special meeting notice as a matter of law. The financial harm that would have followed from inaction was immediate, certain, and devastating: default on $19,300,000 in outstanding public bonds, loss of 284 jobs representing $21 million in annual wages to the local economy, and potential foreclosure on a publicly owned facility.

The County acted in good faith, with full transparency, and in the only manner lawfully available given the circumstances that actually existed on March 12 and 13, 2026. The Bureau's inquiry applies hindsight to a genuine emergency and reaches conclusions that the factual record does not support.

The County also places on record a broader observation that the Bureau should weigh in determining how to proceed. The State of New Mexico, through its Legislature, its Governor, and now its Attorney General, has placed Otero County in an impossible legal position. HB9 was enacted with the County's bond structure fully part of the public record. The Attorney General's own office approved the 2024 Operations Agreement

underlying that structure. The Legislature passed HB9 with no grandfathering provision and no safe harbor for outstanding bond obligations. It simultaneously enacted SB273, which appropriates $5,940,000 to the County for a single fiscal year, an amount that does not fully cover even the current fiscal year's bond obligations, falls far short of the April 1, 2028 balloon payment of $10,376,850, is subject to a mandatory clawback, and cannot substitute for the irrevocable revenue pledge Otero County made to its bondholders under its own Bond Ordinance. SB273 does not solve the problem. It acknowledges the problem exists and provides an inadequate response to it. The Governor signed both HB9 and SB273. The Attorney General will soon be responsible for enforcing HB9. At no point has any branch of state government offered protection, accommodation, or meaningful assistance adequate to the scale of the County's bond obligations, leaving the County with no adequate remedy and no way out. The County respectfully hopes that the Open Meetings Act enforcement process is not being used as a backdoor mechanism to advance enforcement of HB9. The County asks the Bureau to consider whether the resources of the Government Counsel and Accountability Bureau are best directed at a county that acted in good faith under impossible circumstances not of its own making.

Should the Bureau wish to discuss this response or request additional information, County Attorney R.B. Nichols is available at rnichols@co.otero.nm.us or 575-437-7427.

Very respectfully,

R.B. Nichols

R.B. Nichols
County Attorney
Otero County, New Mexico

cc: Pamela Heltner, County Manager (pheltner@co.otero.nm.us)
Vickie Marquardt, Commission Chair (vmarquardt@co.otero.nm.us)