



March 25, 2026

VIA ELECTRONIC MAIL ONLY:

Otero County Commission
Vickie Marquardt, Chair
c/o R. B. Nichols, County Attorney
1101 New York Ave.
Alamogordo, NM 88310-6935

Re: NMDOJ Response Letter to Otero County Regarding the Open Meetings Act and Compliance under the Joint Powers Agreements Act

Dear Ms. Marquardt:

The New Mexico Department of Justice (the “NMDOJ”) responds to the Otero County Commission’s (the “County”) letter received on March 23, 2026. The Government Counsel and Accountability Bureau (“GCA”) of the NMDOJ appreciates the voluntary efforts of the County to reconvene a properly noticed meeting on March 25, 2026 at 6:00PM to cure the Open Meetings Act (“OMA”) violation from the County’s emergency meeting held on March 13, 2026, when the County approved an Intergovernmental Service Agreement (“IGSA”) between the County and the Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”) (Resolution No. 03-13-26/114-62).

While we believe the County’s efforts to reconvene a special meeting on March 25, 2026, may provide an avenue to cure the OMA violation from the County’s meeting on March 13, 2026, we bring to your attention the Joint Powers Agreements Act, NMSA 1978, §§ 11-1-1 to -7 (the “Act”). The IGSA is void as because it was entered into without the authority of the Secretary of the Department of Finance and Administration (“DFA”).

A. The NMDOJ Appreciates the County’s Response is to Cure its OMA Violations

As an initial matter, it is our understanding that the County intends to cure its violations of OMA at the County’s special meeting scheduled for March 25, 2026, at 6:00pm, pursuant to NMSA 1978, § 10-15-3(A). The County noticed this meeting on March 22, 2026. The meeting agenda for

New Mexico Department of Justice

408 Galisteo Street | Santa Fe, NM 87501 | (505) 490-4060 | NMDOJ.GOV

the March 25 meeting notes that the County intends to receive public comment, deliberate in open session, and take two separate votes: one to independently authorize the IGSA as a new Board action by adopting Resolution No. 03-25-26/114-63 and one to ratify Resolution No. 03-13-26/114-63. The NMDOJ appreciates the County's efforts in correcting and curing OMA violations through voluntary action.

As stated in the NMDOJ's letter dated March 20, 2026, the OMA ensures that public business is conducted in full public view and that actions and deliberations of public bodies are open to the public. The Attorney General has statutory authority to enforce OMA, *see* NMSA 1978, § 10-15-3(b), and resolve issues of noncompliance. We appreciate your attention to these issues related to the OMA.

B. The IGSA is Void as it Was Made Without the Authority of the Secretary of DFA in violation of the Joint Powers Agreements Act

The Act states that joint powers agreements must be approved by the Secretary of DFA. Section 11-1-3. Such agreements are defined as contracts "entered into between two or more public agencies," including "the federal government or a federal department, agency or instrumentality" and "a county, municipality, public corporation or public district of this state or another state.". Section 11-1-2. Because the IGSA is a contract between two public agencies, as defined in the Act, *see* § 11-1-2(A), (B), it requires approval by the Secretary of DFA. Since no such approval has been given, the contract is void. *See* § 11-1-3.

Sincerely,



Blaine N. Moffatt
Director
Government Counsel & Accountability Bureau

cc: Pamela Heltner, County Manager
pheltner@co.otero.nm.us