

V.I.B

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Commissioner, District 1

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Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Kathy Holian**  
Commissioner, District 4

**Liz Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

## MEMORANDUM

**DATE:** *October 10, 2017*

**TO:** *Board of County Commissioners*

**VIA:** *Tony T. Flores, Deputy County Manager*

**FROM:** *Joseph Montoya, Housing Authority Director*

**ITEM AND ISSUE:** **Agenda Item \_\_\_\_\_**; A RESOLUTION AUTHORIZING THE COUNTY MANAGER TO TAKE ALL ACTIONS NECESSARY OR APPROPRIATE TO JOIN SANTA FE COUNTY AS PLAINTIFF IN AN ACTION AGAINST THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (“HUD”) BASED ON HUD’S 2012 BREACH OF THE ANNUAL CONTRIBUTIONS CONTRACT

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**Background and Discussion:**

Every public housing agency (PHA) has an annual contributions contract (ACC) with HUD, which expressly incorporates HUD Regulations by reference. HUD determines each PHA’s subsidy according to a formula. However, the regulations provide (and thus, the ACC) that if Congress’ housing appropriation is less than the total entitlement due under the formula, HUD will reduce each PHA’s subsidy on a pro-rata basis.

However, in the 2012 Appropriations Act, Congress required HUD to reduce the operating subsidy of PHAs by the amount of their “excess operating reserves,” if any. HUD did this, but not on a pro-rata basis as required in the ACCs. Therefore, a few hundred PHA’s sued HUD for breach of the ACC. After plaintiffs won summary judgment on liability, HUD and Plaintiffs stipulated to \$136,654,144 in damages. Attorney’s fees and costs were apparently added to the actual damages in coming up with this amount.

Not all PHA’s participated in the first lawsuit, including SFC. The same attorneys who represented the PHAs in the first lawsuit (Coan and Lyons) now want to bring a second lawsuit on behalf of the PHA’s who did not participate in the first—based on the same 2012 breach but with different plaintiffs. The cost of participating in the second lawsuit would be \$1,000.00 participation fee, payable upfront. The County must notify the attorneys by October 11 of its desire to participate.

The attached proposed resolution authorizes the County Manager to join the County as a plaintiff in the lawsuit against HUD and to pay the \$1000 participation fee.

**ACTION REQUESTED:**

Adopt the proposed Resolution.

Attachments:

- (1) Proposed Resolution

**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY  
RESOLUTION NO. 2017 - \_\_\_\_\_**

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A RESOLUTION AUTHORIZING THE COUNTY MANAGER TO TAKE ALL ACTIONS NECESSARY OR APPROPRIATE TO JOIN SANTA FE COUNTY AS PLAINTIFF IN AN ACTION AGAINST THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (“HUD”) BASED ON HUD’S 2012 BREACH OF THE ANNUAL CONTRIBUTIONS CONTRACT

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**WHEREAS**, in 2013 over 300 public housing agencies (“PHAs”) and two public housing trade associations brought a breach of contract action against HUD in the United States Court of Federal Claims (“Lawsuit #1”); and

**WHEREAS**, plaintiffs in Lawsuit #1 alleged that HUD breached the annual contributions contract (“ACC”) with each PHA by failing to reduce operating subsidy payments on a pro rata basis, as expressly required by HUD regulations; and

**WHEREAS**, plaintiffs in Lawsuit #1 requested an aggregate amount of \$135,836,467.00 in compensatory damages as well as costs and expenses in bringing the action; and

**WHEREAS**, the Court of Federal Claims granted the plaintiffs’ motion for partial summary judgment against HUD on the issue of liability in *Public Housing Authorities Directors Association et al. v. United States*, 130 Fed.Cl 522 (2017); and

**WHEREAS**, in *Clearwater Housing Authority et al. v. United States*, 2017 WL 2544891 (2017), the Court of Federal Claims rendered final judgment against HUD in the aggregate amount of \$136,654,144.00 pursuant to a stipulation between plaintiffs and HUD in Lawsuit #1; and

**WHEREAS**, although all PHAs in the country were adversely impacted by HUD’s erroneous distribution of the 2012 operating subsidy, not all PHA’s participated in Lawsuit #1, including Santa Fe County (“County”), and the damages awarded in Lawsuit #1 only applied to the plaintiffs in that case; and

**WHEREAS**, PHAs that did not participate in Lawsuit #1 now have the opportunity to participate in a second lawsuit (“Lawsuit #2”), which will be based on the same fundamental breach of contract by HUD as in Lawsuit #1, except that the amount of damages will be different because of the different plaintiffs involved; and

**WHEREAS**, the same law firm that represented plaintiffs in Lawsuit #1 will represent the new plaintiffs in Lawsuit #2; and

**WHEREAS**, because of HUD's 2012 breach of the ACC, the County Housing Authority received substantially less operating subsidy than it should have in 2012; and

**WHEREAS**, the cost to the County of participating as a plaintiff in Lawsuit #2 is \$1,000.00; and

**WHEREAS**, to assure that the Housing Authority receives the County's full entitlement of federal money, and to maximize the benefit to County residents who require public housing assistance, the County should participate in Lawsuit #2.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners that the County Manager is hereby authorized and directed to take whatever actions she deems necessary or appropriate, including executing an agreement of representation and paying a \$1000.00 participation fee, to join the County as a plaintiff in an action to be filed in the United States Federal Court of Claims against HUD based on HUD's 2012 breach of the ACCs.

**PASSED, APPROVED, AND ADOPTED THIS 26<sup>th</sup> DAY OF SEPTEMBER, 2017.**

**BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

By: \_\_\_\_\_  
Henry P. Roybal, Chair

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Geraldine Salazar, Santa Fe County Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gregory S. Shaffer, Santa Fe County Attorney

Date: \_\_\_\_\_