

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY
RESOLUTION NO. 2017 - 108**

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

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 10th DAY OF OCTOBER, 2017.

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

By: Henry P. Roybal

Henry P. Roybal, Chair

Date: 10/10/17

Geraldine Salazar
Geraldine Salazar, Santa Fe County Clerk

Date: October 10, 2017

APPROVED AS TO FORM:

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

Date: 10-10-17

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

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I Hereby Certify That This Instrument Was Filed for
Record On The 11TH Day Of October, 2017 at 08:20:30 AM
And Was Duly Recorded as Instrument # 1838447
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar

Deputy A. Laura Hernandez

County Clerk, Santa Fe, NM

