

**INCORPORATED COUNTY OF LOS ALAMOS RESOLUTION NO. 19-26**

**A RESOLUTION DELEGATING LIMITED AUTHORITY TO CERTAIN COUNTY OFFICIALS TO INITIATE, MAINTAIN, SETTLE AND COMPROMISE LEGAL CLAIMS AND CAUSES OF ACTIONS ON BEHALF OF THE INCORPORATED COUNTY OF LOS ALAMOS**

**WHEREAS**, pursuant to Article II, Section 201.1 of the Charter of the Incorporated County of Los Alamos ("Charter"), and except where expressly limited by the Charter, the County Council is vested with all power and authority and is charged with all the duties and obligations arising under the constitution and statutes of the State of New Mexico imposed on the governing body of a county and a municipality; and

**WHEREAS**, one of these powers and authorities vested in the County Council is the power and authority to initiate, maintain, settle and compromise legal claims and causes of actions on behalf of the Incorporated County of Los Alamos ("County"); and

**WHEREAS**, legal claims and causes of action include but are not limited to threatened litigation such as pre-litigation settlement demands, proceedings before all local, state and federal trial and appellate courts, all adjudicatory proceedings before all local, state and federal agencies, boards or commissions, including but not limited to ratemaking and licensing, in which legal rights, duties and privileges of a party are to be determined after an opportunity for a trial-type hearing including the issuance of any order, the imposition or withholding of any sanction or the granting or withholding of any relief, as well as any of the foregoing types of administrative determinations or administrative actions wherein no procedure or hearing provision has been otherwise provided for or required by law; and

**WHEREAS**, the power and authority vested in the County Council to initiate, maintain, settle and compromise legal claims and causes of actions on behalf of County has not been delegated to any officer or agent of the County by Charter, Ordinance, or Resolution; and

**WHEREAS**, pursuant to Article 3, Section 307 provides that the County Attorney represents the County in all legal proceedings; and

**WHEREAS**, pursuant to 16-102(A) NMRA, the County Attorney has, (1) a duty to abide by the County's decisions regarding the objectives of legal representation, (2) a duty to consult with the County as to the means by which those objectives are to be pursued, (3) a duty to abide by the County's decision whether to settle a matter, and (4) the authority to take such action on behalf of the County as is impliedly authorized to carry out legal representation; and

**WHEREAS**, the County Council recognizes that, while the County Attorney as well as the County Manager and Utilities Manager, must have a degree of freedom in dealing with legal claims and causes of action involving the County, the County Council also recognizes that there

are also legal claims and cause of actions of sufficient importance to the County, that should not be settled without County Council approval; and

**WHEREAS**, the purpose of this Resolution is to clarify, establish and limit the authority to initiate, maintain, settle and compromise legal claims and causes of actions on behalf of the County to certain county officers and officials.

**NOW, THEREFORE, BE IT RESOLVED:**

**Section 1: EXPRESS GRANT OF CORPORATE AGENCY TO THE COUNTY ATTORNEY FOR PURPOSES OF REPRESENTATION IN ALL LEGAL PROCEEDINGS**

- A. The County Attorney, or designee, is authorized to represent the County, inclusive of all departments of the County, in all legal claims or causes of action involving the County unless otherwise prohibited by law, contract, rule or regulation.
- B. The County Attorney, or designee, is authorized to represent the officials, agents and employees of the County in their official capacity in all legal claims or causes of action involving the officials, agents, and employees acting in their official capacity as agents of the County unless otherwise prohibited by law, contract, rule or regulation.
- C. Subject to the duties imposed by 16-102(A) NMRA, only the County Attorney, or designee with express written authorization of the County Attorney, is authorized to initiate, intervene, defend or otherwise represent the County in any legal claim, cause of action, or legal proceeding, including adjudicatory proceedings under the jurisdiction of any local, state and federal agency, board or commission.

**Section 2: SETTLEMENT AUTHORITY EXPRESSLY RESERVED TO THE COUNTY COUNCIL**

- A. Absent an affirmative vote of at least four (4) members of the County Council authorizing settlement, the County shall not compromise, settle or dismiss any claim or legal cause of action alleging the invalidity or unconstitutionality of any county ordinance, resolution or other County Council action where the effect of such settlement would be to compromise the terms of such ordinance, resolution or other County Council action, including the appeal of County Council quasi-judicial decisions to the First Judicial District Court.
- B. Absent an affirmative vote of at least four (4) members of the County Council authorizing settlement, the County shall not settle or dismiss any claim or legal cause of action where the settlement amount for money damages inclusive of attorney fees exceeds THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00).

- C. Absent an affirmative vote of at least four (4) members of the County Council authorizing settlement or stipulation, the County shall not settle or stipulate to any claim or legal cause of action initiated by a state or federal agency, including an administrative notice of violation, where the penalty, fine, or cost imposed on the County by any state or federal agency exceeds FIVE THOUSAND DOLLARS (\$5,000.00) or which includes the County entering any kind of consent order, consent decree, or any other agreement with a state or federal agency where the effect would compromise the terms of an ordinance, resolution or other County Council action.

**Section 3: DELEGATION OF SETTLEMENT AUTHORITY FOR CERTAIN LEGAL CLAIMS AND CAUSES OF ACTION INVOLVING MONEY DAMAGES**

- A. The County Manager, after consultation with and approval by the County Attorney as to the form of the settlement, is authorized to settle legal claims and causes of action for amounts equal to or less than THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00) inclusive of attorney fees.
- B. The County Manager, after consultation with and approval by the County Attorney as to the form of the settlement, is authorized to agree to additional non-monetary settlement terms within the operational purview of the County Manager to settle legal claims and causes of action for amounts equal to or less than THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00).
- C. Where by contract or agreement with an entity or agency acting as an insurer for the County has been provided express authority in the contract or agreement to act as an attorney-in-fact for the County in legal claims and causes of action, and has been provided express authority in the contract or agreement to settle legal claims and causes of action for money damages against the County, the County Manager, after consultation with and approval by the County Attorney as to the form of the settlement, is authorized to agree to additional non-monetary settlement terms within the operational purview of the County Manager to settle legal claims and causes of action.

**Section 4: DELEGATION OF SETTLEMENT AUTHORITY FOR LEGAL CLAIMS AND CAUSES OF ACTIONS UNDER THE JURISDICTION OF COUNTY BOARDS AND COMMISSIONS AND LEGAL CLAIMS AND CAUSES OF ACTIONS ARISING UNDER A COLLECTIVE BARGAINING AGREEMENT**

- A. The County Council recognizes that certain legal claims and causes of action before County Boards and Commissions acting in their quasi-judicial capacity, as well as arbitrations conducted pursuant to a collective bargaining agreement, are

operational in nature, often involving personnel matters, and therefore fully within the authority of the County Manager to settle.

- B. As such, the County Manager or designee, after consultation with and approval by the County Attorney as to the form of the settlement, is authorized to settle any legal claim or cause of action pending before any County Board or Commission acting in their quasi-judicial capacity, unless the terms of the settlement would compromise the terms of an ordinance, resolution or other County Council action as provided for in Section 2(A) of this resolution, or involves the payment of money damages inclusive of attorney fees that exceed THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00) as provided for in Section 2(B) of this resolution.
- C. The County Manager, or designee, after consultation with and approval by the County Attorney as to the form of the settlement, is authorized to settle any legal claim or cause of action arising from a collective bargaining agreement unless the terms of the settlement would compromise the terms of an ordinance, resolution or other County Council action as provided for in Section 2(A) of this resolution, or involves the payment of money damages inclusive of attorney fees that exceed THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00) as provided for in Section 2(B) of this resolution.

**Section 5: PROCEDURE AND SETTLEMENT AUTHORITY FOR LEGAL CLAIMS AND CAUSES OF ACTIONS WHERE A STATE OR FEDERAL REGULATORY AGENCY ALLEGES THE COUNTY HAS VIOLATED A LAW, RULE OR REGULATION**

- A. The County Council recognizes that alleged violations of law, regulations, and rules of state and federal regulatory agencies have a profound, and often cumulative impact, on the County as well as the general welfare of the citizens of the County, thereby warranting the establishment of a procedure to ensure that County's legal rights, duties and privileges are appropriately represented and defended before these state and federal regulatory agencies.
- B. Upon receipt of any notice of an alleged violation of any law, rule or regulation made by any state or federal agency against the County, the county official, agent or employee receiving said notice shall immediately provide the County Attorney a copy of said notice. The County Attorney shall forward a copy of any said notice to the County Council, and to the Board of Public Utilities if the notice involves the operation of the County-owned utility system.
- C. Any response by the County to any alleged violation of any law, rule or regulation made by any state or federal agency against the County shall be made by the County Attorney, or designee, working in conjunction with the County Manager, or

designee(s), if the matter involves general county business, or the Utilities Manager, or designee(s) if the matter involves the operation of the County-owned utility system.

- D. If the matter involves general county business, the County Manager, or designee, after consultation with and approval by the County Attorney as to the form of the settlement, is authorized to settle any legal claim or cause of action arising from alleged violation of any law, rule or regulation made by any state or federal agency unless the terms of the settlement would compromise the terms of an ordinance, resolution or other County Council action as provided for in Section 2(A) of this resolution, involves the payment of money damages inclusive of attorney fees that exceed THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00) as provided for in Section 2(B) of this resolution, or where the penalty or fine imposed on the County by any state or federal agency exceeds FIVE THOUSAND DOLLARS (\$5,000.00) or which includes the County entering any kind of consent order, consent decree, or any other agreement with a state or federal agency where the effect would compromise the terms of an ordinance, resolution or other County Council action as provided for in Section 2(C) of this resolution.
- E. If the matter involves the operation of the County-owned utility system, the Utilities Manager, or designee, after consultation and approval by the County Attorney as to the form of the settlement, is authorized to settle any legal claim or cause of action arising from alleged violation of any law, rule or regulation made by any state or federal agency unless the terms of the settlement would compromise the terms of an ordinance, resolution or other Council action as provided for in Section 2(A) of this resolution, or where the penalty or fine imposed on the County by any state or federal agency exceeds FIVE THOUSAND DOLLARS (\$5,000.00) or which includes the County entering any kind of consent order, consent decree, or any other agreement with a state or federal agency where the effect would compromise the terms of an ordinance, resolution or other County Council action, as provided for in Section 2(C) of this resolution.

**Section 6: PROCEDURE AND SETTLEMENT AUTHORITY IN ADJUDICATORY PROCEEDINGS UNDER THE JURISDICTION OF A FEDERAL OR STATE AGENCY**

- A. The County Council recognizes that adjudicatory proceedings before state and federal agencies, as by way of illustration include but are not limited to the United States Environmental Protection Agency, the New Mexico Environment Department, the New Mexico Public Regulation Commission, and the Federal Aviation Administration, directly impact the legal rights, duties and privileges of the County warranting the establishment of a procedure to insure that County's legal

rights, duties and privileges under the jurisdiction of these agencies are appropriately represented and defended.

- B. As provided in Section 1(D) of this resolution, only the County Attorney, or designee with express written authorization of the County Attorney, is authorized to initiate, intervene, defend or otherwise represent the County in any legal claim, causes of action or legal proceeding, including adjudicatory proceedings under the jurisdiction of any state and federal agencies.
- C. If the adjudicatory proceeding involves general county business, the County Manager, or designee, after consultation with and approval by the County Attorney as to the form of the settlement, is authorized to settle any legal claim or cause of action subject to an adjudicatory proceeding before a state or federal agency unless the terms of the settlement would compromise the terms of an ordinance, resolution or other County Council action as provided for in Section 2(A) of this resolution, involves the payment of money damages inclusive of attorney fees and that exceed THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00) as provided for in Section 2(B) of this resolution, or where the penalty or fine imposed on the County by any state or federal agency exceeds FIVE THOUSAND DOLLARS (\$5,000.00) or which includes the County entering any kind of consent order, consent decree, or any other agreement with a state or federal agency where the effect would compromise the terms of an ordinance, resolution or other County Council action as provided for in Section 2(C) of this resolution.
- D. If the adjudicatory proceeding involves the operation of the County-owned utility system, the County Utilities Manager, or designee, after consultation with and approval by the County Attorney as to the form of the settlement, is authorized to settle any legal claim or cause of action subject to an adjudicatory proceeding before a state or federal agency unless the terms of the settlement would compromise the terms of an ordinance, resolution or other County Council action as provided for in Section 2(A) of this resolution, involves the payment of money damages inclusive of attorney fees that exceed THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00) as provided for in Section 2(B) of this resolution, or where the penalty or fine imposed on the County by any state or federal agency exceeds FIVE THOUSAND DOLLARS (\$5,000.00) or which includes the County entering any kind of consent order, consent decree, or any other agreement with a state or federal agency where the effect would compromise the terms of an ordinance, resolution or other County Council action as provided for in Section 2(C) of this resolution.

**Section 7: PROCEEDINGS BEFORE THE COURT OF THE INCORPORATED COUNTY OF LOS ALAMOS (COMMONLY REFERRED TO AS "MUNICIPAL COURT")**

- A. The County Council recognizes that when the County Attorney, and designees, act in a prosecutorial role in the Court of the Incorporated County of Los Alamos, and, as such, act in a role that is distinct from the day-to-day role where the County Attorney is acting as the general counsel for the County.
- B. The County Attorney, or designees, shall have full authority to adjudicate and resolve particular criminal cases before the Court of the Incorporated County of Los Alamos in such a manner as the County Attorney, or designee, deems just without fear or favor, and free of any influence, direction or control from any county official, agent, or employee including any county board or board member.

**Section 8: AUTHORITY GRANTED PURSUANT TO CONTRACTS FOR INSURANCE**

This resolution shall neither apply to nor limit any authority granted by contract or agreement to an entity or agency acting as an insurer for the County whereby the insurer has been provided express authority in the contract or agreement to act as an attorney-in-fact for the County in legal claims and causes of action, and has been provided express authority in the contract or agreement to settle legal claims and causes of action against the County covered by the contract or agreement for insurance.

**Section 9: AUTHORITY TO INTERPRET AND APPLY THE TERMS OF THIS RESOLUTION**

The County Council recognizes that the extent and limitations of the authority, as well as the terms and conditions placed on that authority, provided for by this resolution are questions of law. As such, the County Attorney is granted the authority to decide the applicability, the extent and limitations of the authority, and the terms and conditions placed on the authority provided by this resolution when applied to any particular legal claim, cause of action, or settlement.

**Section 10:** This Resolution shall be kept on file in the County Attorney's Office in a folder known as the "Repository of Resolutions of the Los Alamos County Council Delegation Corporate Authority to County Officers and Officials."

[This section intentionally left blank]

**Section 11: Effective Date.** This Resolution shall become effective upon adoption and remain in effect until amended or rescinded.

**PASSED AND ADOPTED** this 29<sup>th</sup> day of October, 2019.

**COUNCIL OF THE INCORPORATED  
COUNTY OF LOS ALAMOS**

---

**Sara C. Scott  
Council Chair**

**ATTEST:**

---

**Naomi D. Maestas  
Los Alamos County Clerk**