

LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201403645
1 of 43
11/17/2014 02:48:46 PM
BY MDUARTE



Luna County Ordinance Number 90

Passed, Approved and Adopted this 13th day of November 2014

STATE OF NEW MEXICO)

) SS.

COUNTY OF LUNA

The Board of Commissioners (the "Board") of Luna County in the State of New Mexico, met in regular session in full conformity with law and the rules and regulations of the County at the Commission Chambers in the Luna County Courthouse, 700 S. Silver Ave., Deming, New Mexico, being the regular meeting place of the Board on the 13th day of November, 2014, at the hour of 9:00 a.m. Upon roll call, the following members were found to be present:

Joe L. Milo, Jr., District 1

J. Jay Spirey, District 2, Chairman

R. Javier Diaz, District 3

Absent:

Also Present:

Thereupon, there was officially filed with the County Clerk, the Chairperson and each Commissioner a copy of a proposed bond ordinance in final form.

LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201403645
2 of 43
11/17/2014 02:48:46 PM
BY MDUARTE

TABLE OF CONTENTS

	Page
Section 1. <u>Definitions</u>	2
Section 2. <u>Ratification</u>	10
Section 3. <u>Authorization of Refunding</u>	10
Section 4. <u>Findings</u>	10
Section 5. <u>Bonds – Authorization and Detail</u>	11
A. <u>Authorization</u>	11
B. <u>Details of Bonds</u>	11
Section 6. <u>Prior Redemption</u>	12
A. <u>Optional Redemption</u>	12
B. <u>Mandatory Sinking Fund Redemption</u>	12
C. <u>Notice</u>	12
D. <u>Conditional Notice</u>	13
Section 7. <u>Filing of Signatures</u>	13
Section 8. <u>Execution and Authentication of Bonds</u>	13
A. <u>Execution</u>	13
B. <u>Authentication</u>	14
Section 9. <u>Negotiability</u>	14
Section 10. <u>Payment and Presentation of Bonds for Payment</u>	14
Section 11. <u>Registration, Transfer, Exchange and Ownership of Bonds</u>	14
A. <u>Registration, Transfer and Exchange</u>	14
B. <u>Limitations</u>	15
C. <u>Owner of the Bonds</u>	15
D. <u>Replacement Bonds</u>	15
E. <u>Additional Bonds</u>	15
F. <u>Charges</u>	15
G. <u>Successor Registrar or Paying Agent</u>	15
H. <u>Book Entry</u>	15
Section 12. <u>Special Limited Obligations</u>	16
Section 13. <u>Form of Bonds</u>	17
Section 14. <u>Period of Project’s Usefulness</u>	17
Section 15. <u>Disposition of Proceeds</u>	17
A. <u>Accrued Interest and Premium</u>	17
B. <u>Expenses</u>	17
C. <u>Escrow Fund Deposit</u>	17
D. <u>Purchaser Not Responsible</u>	17
Section 16. <u>Funds and Accounts</u>	17
A. <u>Capital Outlay Gross Receipts Tax Income Fund</u>	17

B.	<u>Debt Service Fund</u>	18
C.	<u>Reserve Fund</u>	18
D.	<u>Escrow Fund</u>	18
Section 17.	<u>Escrow Fund</u>	18
A.	<u>Maintenance of Escrow Fund</u>	18
B.	<u>Use of Escrow Fund</u>	18
C.	<u>Insufficiency of Escrow Fund</u>	18
Section 18.	<u>[RESERVED]</u>	18
Section 19.	<u>Deposit of Pledged Revenues</u>	18
Section 20.	<u>Administration of the Capital Outlay Gross Receipts Tax Income Fund</u>	18
A.	<u>Debt Service Fund Payments</u>	19
B.	<u>Reserve Fund</u>	19
C.	<u>Termination Upon Deposits to Maturity</u>	20
D.	<u>Defraying Delinquencies in Debt Service and Reserve Fund</u>	21
E.	<u>Interest on and Expenses relating to any Reserve Fund Insurance Policy Draws</u>	21
F.	<u>Payment of Subordinate Obligations</u>	21
G.	<u>Use of Surplus Pledged Revenues</u>	21
Section 21.	<u>General Administration of Funds</u>	22
A.	<u>Places and Times of Deposits</u>	22
B.	<u>Investment of Moneys</u>	22
Section 22.	<u>First Lien on Pledged Revenues</u>	22
Section 23.	<u>Additional Bonds Payable from Pledged Revenues</u>	23
A.	<u>Limitations Upon Issuance of Additional Obligations</u>	23
B.	<u>Parity Bonds Test</u>	23
C.	<u>Certification or Opinion Regarding Revenues</u>	24
D.	<u>Subordinate Obligations Permitted</u>	24
E.	<u>Superior Obligations Prohibited</u>	24
Section 24.	<u>Refunding Bonds</u>	24
A.	<u>Privilege of Issuing Refunding Obligations</u>	24
B.	<u>Limitation Upon Issuance of Parity Refunding Obligations</u>	24
C.	<u>Refunding Part of an Issue</u>	24
D.	<u>Limitation Upon Issuance of any Refunding Obligations</u>	25
Section 25.	<u>Equality of Parity Bonds</u>	25
Section 26.	<u>Protective Covenants</u>	25
A.	<u>Use of Bond Proceeds</u>	25
B.	<u>Payment of Bonds Herein Authorized</u>	25
C.	<u>County's Existence</u>	25
D.	<u>Extension of Interest Payments</u>	25

E.	<u>Records</u>	26
F.	<u>Audits and Budgets</u>	26
G.	<u>Other Liens</u>	26
H.	<u>Duty to Impose One-Fourth Percent County Capital Outlay Gross Receipts Tax</u>	26
I.	<u>Impairment of Contract</u>	26
J.	<u>Debt Service Fund and Reserve Fund</u>	26
K.	<u>Surety Bonds</u>	26
L.	<u>Performing Duties</u>	26
M.	<u>Tax Covenants</u>	27
N.	<u>Rebate Fund</u>	27
O.	<u>Continuing Disclosure Obligations</u>	27
Section 27.	<u>Events of Default</u>	28
A.	<u>Nonpayment of Principal</u>	28
B.	<u>Nonpayment of Interest</u>	28
C.	<u>Default of any Provision</u>	28
D.	<u>Bankruptcy</u>	28
Section 28.	<u>Remedies Upon Default</u>	28
Section 29.	<u>Duties Upon Default</u>	29
Section 30.	<u>Bonds Not Presented When Due</u>	29
Section 31.	<u>Approval of Documents; Delegated Powers</u>	29
Section 32.	<u>Amendment of Ordinance</u>	29
Section 33.	<u>Defeasance</u>	30
Section 34.	<u>Bond Insurer Provisions</u>	30
Section 35.	<u>Bond Legislation Irrepealable</u>	30
Section 36.	<u>Severability Clause</u>	30
Section 37.	<u>Repealer Clause</u>	30
Section 38.	<u>Effective Date</u>	31
Section 39.	<u>Limitation of Action Period</u>	31
Section 40.	<u>Prior Redemption and Notice of Prior Redemption and Defeasance for the Series 2007B Bonds</u>	31
Section 41.	<u>General Summary for Publication</u>	31
Section 42.	<u>Governing Law</u>	32
Section 43.	<u>Interested Parties</u>	32
Section 44.	<u>Payment Due on Other Than Business Days</u>	33
Section 45.	<u>Limitation on County's Liability</u>	33
Section 46.	<u>Bank Designation of Bonds</u>	33

ORDINANCE NO. 90

AUTHORIZING THE ISSUANCE AND SALE OF THE LUNA COUNTY, NEW MEXICO CAPITAL OUTLAY GROSS RECEIPTS TAX REFUNDING REVENUE BONDS, SERIES 2014, OR, IN THE ALTERNATIVE, THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BETWEEN LUNA COUNTY, NEW MEXICO AND A FINANCIAL INSTITUTION, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED EIGHT MILLION AND NO/100 DOLLARS (\$8,000,000) FOR THE PURPOSE OF REFUNDING THE OUTSTANDING TAXABLE CAPITAL OUTLAY GROSS RECEIPTS TAX REVENUE BONDS, SERIES 2007B; PROVIDING FOR THE ISSUANCE AND SALE OF THE BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE REVENUES DERIVED FROM THE 1/4TH OF 1% COUNTY CAPITAL OUTLAY GROSS RECEIPTS TAX WHICH IS LEVIED PURSUANT TO ORDINANCE NUMBER 66 (ADOPTED FEBRUARY 1, 2007 AND APPROVED BY A MAJORITY OF THE QUALIFIED ELECTORS OF THE COUNTY VOTING THEREON AT A SPECIAL ALL-MAIL BALLOT ELECTION HELD IN THE COUNTY ON MARCH 27, 2007) AND PURSUANT TO SECTIONS 7-20E-21 AND 7-20E-1 THROUGH 7-20E-8, NMSA 1978, AS AMENDED AND SUPPLEMENTED; PROVIDING FOR THE DISPOSITION OF THE RECEIPTS DERIVED FROM THE CAPITAL OUTLAY GROSS RECEIPTS TAX; PROVIDING FOR THE FORM, TERMS, EXECUTION AND OTHER DETAILS CONCERNING THE BONDS AND THE FUNDS APPERTAINING THERETO; PROVIDING FOR THE APPROVAL, EXECUTION AND DELIVERY OF COVENANTS AND AGREEMENTS IN CONNECTION WITH THE BONDS AND AUTHORIZING THE DETERMINATION OF INTEREST RATES, REDEMPTION PROVISIONS AND OTHER DETAILS OF THE BONDS ALL PURSUANT TO A SUBSEQUENT SALE RESOLUTION; AND RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH AND APPERTAINING THERETO.

Capitalized terms used in the following preambles have the same meaning as defined in Section 1 of this Ordinance unless the context requires otherwise.

WHEREAS, the County is a legally and regularly created, established, organized and existing county under the general laws of the State of New Mexico; and

WHEREAS, on September 13, 2007, the County issued the Series 2007B Bonds in the original principal amount of \$7,165,000, of which \$5,930,000 is currently outstanding; and

LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201403645
6 of 43
11/17/2014 02:48:46 PM
BY MDUARTE

WHEREAS, the proceeds of the Series 2007B Bonds were used by the County to finance a portion of the costs of designing, acquiring (including land), and constructing a recreational facility, including a movie theater and bowling complex in Deming, New Mexico; and

WHEREAS, subject to confirmation pursuant to the Sale Resolution, the Board has determined to pay all principal of, interest on and any prior redemption premium due, as applicable, in connection with all of the outstanding Series 2007B Bonds as the same become due on July 1, 2017, which is the first-occurring optional prior redemption date set forth herein, from the proceeds of the Bonds herein authorized and from other legally available sources; and

WHEREAS, subject to confirmation pursuant to the Sale Resolution, the Board hereby determines that the issuance of the Bonds, under current market conditions, for the purpose of refunding and paying the Series 2007B Bonds until and on the first-occurring optional prior redemption date set forth herein will provide financial benefits to the County, and consequently will provide for the public health, safety and welfare of the County and its citizens; and

WHEREAS, the Pledged Revenues are not pledged to the payment of any bonds or other obligations that are presently outstanding and unpaid except the Series 2007B Bonds, the obligations to be refunded pursuant to the Bond Legislation; and

WHEREAS, the initial principal amount of the Bonds, the specific interest rate or rates to be borne by the Bonds, any discount or premium, the principal maturities, redemption provisions, forms and other details pertaining to the Bonds, and the final forms of the Related Documents shall be subject to determination, ratification, confirmation and approval by the Board pursuant to the Sale Resolution; and

WHEREAS, the Board has determined and hereby determines that it is in the best interests of the County and its residents that the Bonds be issued with a first lien, but not an exclusive first lien, on the Pledged Revenues on a parity with the lien thereon of future Parity Obligations; and

WHEREAS, all required authorizations, consents or approvals of any state, governmental body, agency or authority, in connection with the authorization, execution and delivery of the Bonds that are required to have been obtained by the date hereof have been obtained and that will be required to be obtained prior to the date of issuance of the Bonds will have been obtained by such date.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE COUNTY OF LUNA:

Section 1. Definitions. As used in this Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201403645
7 of 43
11/17/2014 02:48:46 PM
BY MDUARTE

"Act" means the general laws of the State, including Sections 4-62-1 through 4-62-10 NMSA 1978, as amended, and enactments of the Board relating to the issuance of the Bonds, including this Ordinance.

"Authorized Denominations" means denominations of \$5,000.00 or integral multiples of \$5,000.00, unless otherwise specified in the Sale Resolution.

"Board" means the Board of County Commissioners of the County or any future successor governing body of the County.

"Bond Insurance Policy" and "Policy" shall, as applicable, mean a bond insurance policy described in the Sale Resolution, which is issued by the Bond Insurer that guarantees the scheduled payment of principal of and interest on the Bonds when due.

"Bond Insurer" means, as applicable, the issuer of a Policy and/or the Reserve Insurance Policy described in the Sale Resolution.

"Bond Legislation" means this Ordinance and the Sale Resolution, collectively.

"Bond Purchase Agreement" or "Loan Agreement" means the bond purchase (or loan) agreement to be entered into between the County and the Purchaser in substantially the form presented at the meeting of the Board at which the Sale Resolution is adopted.

"Bondholder," "holder," "owner" or "Owner" means the registered owner of any Bond as shown on the registration books of the County for the Bonds, from time to time, maintained by the Registrar. Any reference to a majority or a particular percentage or proportion of the Bondholders shall mean the holders at the particular time of a majority or of the specified percentage or proportion in aggregate principal amount of all Bonds then outstanding.

"Bonds" means the "Luna County, New Mexico Capital Outlay Gross Receipts Tax Refunding Revenue Bonds, Series 2014" or, in the alternative, a loan pursuant to a Loan Agreement, as authorized by the Bond Legislation.

"Business Day" means a day on which commercial banks in the city in which the principal office of the Paying Agent and Registrar is located are open for conduct of substantially all of their business operations.

"Chairperson" means the Chairperson of the Board.

"Code" means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations whether proposed, temporary or final, including regulations issued and proposed pursuant to the statutory predecessor of the Code, and, in addition, all official rulings and judicial determinations applicable to the Bonds, and under the statutory predecessor of the Code and any successor provisions to those sections or regulations.

“Continuing Disclosure Undertaking” means the continuing disclosure undertaking, if any, with respect to the Bonds to be executed by the County on the day of issuance and delivery of the Bonds to the Purchaser.

“County” means the County of Luna in the State of New Mexico.

“County Local Option Gross Receipts Tax Act” means Sections 7-20E-1 through 7-20E-28 NMSA 1978, as amended.

“Debt Service Fund” means the “Luna County, New Mexico Capital Outlay Gross Receipts Tax Refunding Revenue Bonds, Series 2014, Debt Service Fund” established by Section 16 of this Ordinance.

“Depository” means The Depository Trust Company, New York, New York, or such other securities depository as may be designated in the Sale Resolution or by an officer of the County.

“Escrow Agreement” means the contract designated as the “Luna County, New Mexico Taxable Capital Outlay Gross Receipts Tax Revenue Bonds, Series 2007B, Escrow Agreement” between the County and the Escrow Bank, providing for the deposit of the bond proceeds for the Refunding in the Escrow Fund on the date of delivery of the Bonds, which contract is herein authorized to be executed by the appropriate officers of the County.

“Escrow Bank” means the national or state banking association or financial institution appointed in the Sale Resolution, or any successor national or state banking association or financial institution at the time appointed as Escrow Bank by the County.

“Escrow Fund” means the special and separate fund designated as the “Luna County, New Mexico Taxable Capital Outlay Gross Receipts Tax Revenue Bonds, Series 2007B, Escrow Fund” established by Section 16 of this Ordinance and by the Escrow Agreement and required to be maintained by the Escrow Bank pursuant to the Escrow Agreement.

“Event of Default” means any of the events stated in Section 27 of this Ordinance.

“Expenses” means the reasonable and necessary fees, costs and expenses incurred by the County with respect to the issuance of the Bonds, including the fees, compensation, costs and expenses paid or to be paid to the Paying Agent, Registrar, Escrow Bank, Purchaser, attorney’s fees, financial advisor’s fees, and, as applicable, Bond Insurer.

“Federal Securities” as used in this Ordinance shall include only direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States of America.

“Fiscal Year” means the period commencing on July 1 in each calendar year and ending on June 30 of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the County as its fiscal year.

"Herein," "hereby," "hereunder," "hereof," "hereinabove" and "hereafter" refer to the entire Ordinance and not solely to the particular section or paragraph of this Ordinance in which such word is used.

"Independent Accountant" means (A) an accountant employed by the State and under supervision of the State Auditor, or (B) any certified public accountant, registered accountant, or firm of such accountants duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the County who (i) is, in fact, independent and not under the domination of the County, (ii) does not have any substantial interest, direct or indirect, with the County, and (iii) is not connected with the County as an officer or employee of the County, but who may be regularly retained to make annual or similar audits of the books or records of the County.

"Insured Bank" means a bank or savings and loan association insured by an agency of the United States.

"Interest Payment Date" means the date or dates for the payment of interest stated in the Sale Resolution.

"NMSA" means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

"Obligations" means bonds, notes or any other instrument which evidence a borrowing or other obligation of the County, secured by the Pledged Revenues, issued or incurred for any purpose permitted by the Act.

"Official Statement" means the final disclosure document, if any, relating to the offer and sale of the Bonds (including the cover page and all summary statement appendices and other materials included or incorporated by reference or attached thereto), as amended or supplemented.

"Capital Outlay Gross Receipts Tax Income Fund" means the "Luna County, New Mexico Capital Outlay Gross Receipts Tax Income Fund" continued herein and maintained by the County into which the County shall deposit the Pledged Revenues.

"Ordinance" means this County Ordinance as amended or supplemented from time to time.

"Outstanding" or "outstanding" when used in reference to the Bonds means, on any particular date, the aggregate of all Bonds delivered under this Ordinance except:

A. those cancelled at or prior to such date or delivered or acquired by the County at or prior to such date for cancellation;

B. those otherwise deemed to be paid in accordance with Section 33 of this Ordinance;

C. those in lieu of or in exchange or substitution for which other Bonds shall have been delivered, unless proof satisfactory to the County and the Paying Agent is presented that any Bond for which a new Bond was issued or exchanged is held by a bona fide holder or in due course; and

D. those Bonds which have been refunded in accordance with this Ordinance or other ordinance of the County authorizing the issuance of the applicable bonds.

"Parity Bonds" or "Parity Obligations" means the Series 2007B Bonds, the Bonds and any other Obligations hereafter issued or incurred payable from the Pledged Revenues and issued with a lien on the Pledged Revenues on parity with the lien thereon of the Bonds.

"Paying Agent" means the County Treasurer of the County or her successor or assigns or the trust company, national or state banking association or financial institution appointed in the Sale Resolution as agent for the County for the payment of the Bonds, or any successor trust company, national or state banking association or financial institution at the time appointed as Paying Agent by the County.

"Paying Agent Agreement" means, if any, the Paying Agent Agreement between the Paying Agent and the County, pertaining to the functions of Registrar and Paying Agent for the Bonds, and any successor agreement or agreements.

"Permitted Investments" means any of the following to the extent that, at the time the investment is made, it is an investment that is authorized by the law of the State for public money of the County:

(1) Federal Securities;

(2) Obligations of, or obligations guaranteed as to principal and interest by any agency or instrumentality of the United States which are backed by the full faith and credit of the United States, but not including: General Services Administration -- participation certificates; Government National Mortgage Association (GNMA) -- GNMA guaranteed mortgage backed securities and GNMA guaranteed participation certificates; U.S. Department of Housing & Urban Development -- local authority bonds; and U.S. Export Import Bank -- all fully guaranteed obligations;

(3) Obligations of the following government sponsored agencies: Federal Home Loan Mortgage Corporation -- participation certificates and senior debt obligations; Farm Credit System (formerly: Federal Land Banks and Banks for Cooperatives) -- consolidated system wide bonds and notes; Federal Home Loan Banks -- consolidated debt obligations; Federal National Mortgage Association -- senior debt obligations and mortgage-backed securities (excluding stripped mortgage securities which are valued greater than par on the portion of unpaid principal); Student Loan Marketing Association -- senior debt obligations (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date) and letter of credit backed issues; Financing Corporation -- debt obligations; and Resolution Funding Corporation -- debt obligations;

(4) Certificates of deposit, time deposits and banker's acceptances of any bank or savings and loan association, the short term obligations of which are rated in the highest Rating Categories by S&P, Moody's, Fitch or other nationally recognized securities rating agency designated by the County in the Sale Resolution or other resolution or ordinance, provided that such deposits must be fully secured by securities designated in paragraphs (1), (2), (3) and (9) of this definition and held in safe keeping for, or on behalf of, or held in book entry form in the name of, the County;

(5) Accounts with banks and savings and loan associations located in Luna County, provided that the banks and savings and loan associations, and the collateral securing the investments permitted by this paragraph, satisfy the requirements of applicable State law;

(6) Obligations, the interest on which is excluded from gross income of the recipient for federal income tax purposes, which are rated in the highest Rating Category by S&P, Moody's, Fitch or other nationally recognized securities rating agency designated by the County in the Sale Resolution;

(7) Money market instruments and other securities of commercial banks, broker dealers or recognized financial investors, which securities or institutions are rated in the highest Rating Category by S&P, Moody's, Fitch or other nationally recognized securities rating agency designated by the County in the Sale Resolution or other resolution or ordinance, or which securities are guaranteed by a person or entity whose long term debt obligations are rated in the highest Rating Category by S&P, Moody's, Fitch or other nationally recognized securities rating agency designated by the County in the Sale Resolution or other resolution or ordinance, including, without limitation, securities of, or other interests in, any open end or closed end management type investment company or investment trust registered under the provisions of 15 U.S.C. Sections 80(a) 1 et seq., which invest only in, or whose securities are secured only by, obligations of the type set forth in paragraphs (1), (2), (3) and (9) of this definition;

(8) The "short term investment fund" described in Section 6-10-10.1 N.M.S.A. 1978 or other similar pooled fund maintained by the State for the investment of public funds of local public bodies of the State;

(9) Stripped Securities: (i) U.S. Treasury STRIPS and (ii) REFCORP STRIPS (stripped by Federal Reserve Bank of New York);

(10) Repurchase agreements involving the purchase and sale of, and guaranteed investment contracts, the par value of which is collateralized by a perfected first pledge of, or security interest in, or the payments of which are unconditionally guaranteed by, securities described in parts (1), (2), (3) and (9) of this definition, which collateral is held by the County, or for the benefit of the County, by a party other than the provider of the guaranteed investment contract or repurchase agreement, with a collateralized value of at least 102% of the par value of such repurchase agreement or guaranteed investment contract or 102% of the market value thereof, valued at intervals of no less than monthly and which collateral is not subject to any other pledge or security interest;

(11) Cash insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with Federal Securities; and

(12) Agreements which permit the County to require a commercial bank, broker-dealer or recognized financial institution to purchase from the County at a fixed price obligations described in paragraphs (1), (2), (3), and (9) of this definition; provided that, if required by law, the contract relating to such agreement is approved by resolution of the Board and all other requirements of law relating to any such investment are satisfied and provided further that such institution, or the guarantor of such institution or agreement, shall be rated in one of the top two Rating Categories by S&P, Moody's, Fitch or other nationally recognized securities rating agency designated by the County in the Sale Resolution or other resolution or ordinance.

"Pledged Revenues" means the amounts of money derived from all of the revenue attributable to the one-fourth of one percent County capital outlay gross receipts tax transferred, on and after the effective date thereof, to the County pursuant to Section 7-1-6.13, NMSA 1978 and any distribution, on and after the effective date thereof, related to such one-fourth of one percent made pursuant to Section 7-1-6.16, NMSA 1978, which County capital outlay gross receipts tax is imposed on all persons engaging in business in the County pursuant to Ordinance Number 66 adopted and approved on February 1, 2007 and approved by a majority of the qualified electors of the County voting thereon at a special all-mail election held on January 27, 2007, as authorized by Sections 7-20E-21 and 7-20E-1 through 7-20E-8, NMSA 1978, (a) which tax equals, subject to the exemptions specified in Section 7-20E-5, NMSA 1978 and the exemptions and deductions referred to in Section 7-20E-7, NMSA 1978, one-fourth of one percent of the gross receipts of all persons engaging in business in the entire County for the privilege of engaging in business in the entire County, and (b) which amounts are collected and, after any deductions for administrative costs, any additional administrative fee and any disbursements for tax credits, refunds and the payment of interest applicable to such gross receipts tax and subject to any increase or decrease pursuant to Section 7-1-6.15, NMSA 1978, are distributed monthly (together with the balance of the County's gross receipts tax) by the Revenue Division of the Taxation and Revenue Department of the State of New Mexico to the County pursuant to Sections 7-1-6.13 and 7-1-6.16 NMSA 1978 (provided that Pledged Revenues does not include and the County is not pledging to the Bonds any of such County capital outlay gross receipts tax revenues received pursuant to Such Sections 7-1-6.13 and 7-1-6.16, NMSA, 1978, which exceeds the aforesaid, and does not include any gross receipts or excise tax revenues received pursuant to any other statute).

"Preliminary Official Statement" means the preliminary disclosure document, if any, to be used by the Purchaser in connection with the sale of the Bonds.

"Principal Payment Date" means the date or dates for the payment of principal stated in the Sale Resolution.

"Purchaser" means, as set forth in the Sale Resolution, the original purchaser or purchasers of the Bonds or, alternatively, the financial institution serving as lender under the Loan Agreement.

LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201403645

"Rebate Fund" means the "Luna County, New Mexico Capital Outlay Gross Receipts Tax Refunding Revenue Bonds, Series 2014, Rebate Fund" established by Section 26(N) of this Ordinance.

"Record Date" means the 15th day of the calendar month next preceding the Interest Payment Date.

"Refunded Bond Requirements" means the principal of and interest on (i.e., all debt service requirements for) the Series 2007B Bonds to and including their first optional redemption date.

"Refunding" means (1) refunding, refinancing, discharging and prepaying the Series 2007B Bonds on the date stated in the Sale Resolution, and (2) paying Expenses related to the issuance of the Bonds and the prepayment and discharge of the Series 2007B Bonds.

"Registrar" means the County Treasurer of the County or her successor or assigns or the trust company, national or state banking association or financial institution appointed in the Sale Resolution as agent for the County for transfer and exchange of the Bonds, or any successor trust company, national or state banking association or financial institution at the time appointed as Registrar by the County.

"Related Documents" means the Bond Purchase Agreement, the Escrow Agreement, the Continuing Disclosure Undertaking, the Tax Compliance Certificate, the Paying Agent Agreement, the Preliminary Official Statement, the Official Statement and any other document or agreement containing an obligation of the County as described in the Sale Resolution or as otherwise may be required in connection with the issuance of the Bonds.

"Reserve Fund" means the "Luna County, New Mexico Capital Outlay Gross Receipts Tax Refunding Revenue Bonds, Series 2014, Reserve Fund" established in Section 16 hereof, and to be maintained by the County.

"Reserve Fund Insurance Policy" or "Reserve Insurance Policy" means any insurance policy, surety bond or letter of credit, if any, deposited in or credited to the Reserve Fund as provided in Section 20 hereof in lieu of or in partial substitution for cash or allowable investments on deposit in the Reserve Fund. Any such insurance policy, surety bond or letter of credit, if any, will have such terms as further described in the Sale Resolution.

"Reserve Requirement" means an amount equal to (a) the least of (i) ten percent (10%) of the proceeds of the Bonds as the term "proceeds" is used in Section 148(d)(1) of the Code, (ii) the maximum annual debt service on the Bonds, or (iii) one hundred twenty-five percent (125%) of the average annual debt service on the Bonds, or (b) such lesser amount (including zero) from time to time as may be provided in the Sale Resolution.

"Sale Resolution" means a resolution of the Board, to be adopted subsequent to the adoption of this Ordinance and prior to the issuance of the Bonds, which shall determine certain details pertaining to the Bonds and the delivery thereof.

"Series 2007B Bonds" means the "Luna County, New Mexico Taxable Capital Outlay Gross Receipts Tax Revenue Bonds, Series 2007B" issued on September 13, 2007 in the aggregate principal amount of \$7,165,000 and secured by a pledge of the Pledged Revenues.

"Series 2007B Ordinance" means Luna County, New Mexico Ordinance No. 68, which authorized the issuance of the Series 2007B Bonds.

"Series 2007B Paying Agent" means the County Treasurer of the County as the current Registrar and Paying Agent for the Series 2007B Bonds.

"State" means the State of New Mexico.

"Tax Compliance Certificate" means the Tax Compliance Certificate to be delivered by the County at the time of issuance of the Bonds, as the same may be supplemented in accordance with its terms.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board and the officers of the County, directed toward the Refunding, the issuance of the Bonds for the Refunding and the sale of the Bonds to the Purchaser (including but not necessarily limited to the prior distribution of the Preliminary Official Statement, if applicable) be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of Refunding. The Refunding and the method of financing the Refunding are hereby authorized and ordered at a total cost not to exceed \$8,000,000 and the necessity thereof is hereby so declared, excluding any such cost defrayed or to be defrayed by any source other than Bond proceeds.

Section 4. Findings. The Board hereby declares that it has considered all relevant information and data and hereby makes the following findings:

- A. Moneys available for the Refunding from all sources other than the issuance of revenue bonds are not sufficient to completely defray the cost of the Refunding.
- B. The Pledged Revenues may lawfully be pledged to secure the payment of the Bonds.
- C. It is economically feasible to defray, in part, the cost of the Refunding by the issuance of the Bonds.
- D. The issuance of the Bonds pursuant to the Act to provide funds for the Refunding is necessary and in the interest of the public health, safety and welfare of the residents of the County.
- E. The issuance of the Bonds provides debt service savings for the County.

F. The County is current in the accumulation of all amounts which are required to have been accumulated in the 2007B Bond Account (as defined in the Series 2007B Ordinance) and the 2007B Reserve Account (as defined in the Series 2007B Ordinance) for the Series 2007B Bonds.

G. The issuance of the Bonds will not result in an increase to the aggregate principal and interest requirements evidenced collectively by the Bonds, as well as any other outstanding Obligations not refunded on and prior to the last maturity date of such unrefunded Obligations.

Section 5. Bonds – Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of a majority of all of the members of the Board. For the purpose of protecting the public health, safety and welfare of the residents of the County, it is hereby declared necessary that the County, pursuant to the Act, issue its negotiable, fully registered, revenue bonds to be designated “Luna County, New Mexico Capital Outlay Gross Receipts Tax Refunding Revenue Bonds, Series 2014,” in an aggregate principal amount not to exceed \$8,000,000 and the issuance, sale and delivery of the Bonds are hereby authorized, subject to the provisions of the Sale Resolution, none of which provisions shall be inconsistent with the provisions of this Ordinance. The Bonds shall be sold to the Purchaser pursuant to the Bond Purchase Agreement at a negotiated sale, subject to the terms and conditions of the Sale Resolution.

B. Details of Bonds.

(1) The Bonds shall be issued in an original aggregate principal amount to be specified in the Sale Resolution, but not to exceed \$8,000,000. The Bonds shall be in the forms, with such appropriate variations, omissions and insertions, as are permitted or required by the Bond Legislation.

(2) The Bonds shall be issued in Authorized Denominations and numbered with such prefixes or other distinguishing designations as the Registrar may determine necessary or appropriate to distinguish one Bond of a series from another. The Bonds shall be fully registered unless Bond Counsel shall otherwise determine. The Bonds shall be dated, have such principal amounts and have such maturity dates (no later than 50 years, or other shorter period of time from the date of issuance of that series) as set forth in the Sale Resolution.

(3) Interest on the Bonds shall be payable at the rates set forth in the applicable Sale Resolution. Unless otherwise provided in the Sale Resolution, interest shall be payable on each Interest Payment Date, provided that the maximum interest rate and net effective interest rate shall not exceed 12% per annum.

Unless otherwise stated in Sale Resolution, the Bonds shall bear interest from the most recent date to which interest has been paid or provided for or if no interest has been paid or provided for from the date of the Bonds until maturity or until redeemed if called for redemption prior to maturity. Unless otherwise stated in the Sale Resolution, interest on the

Bonds will be computed on the basis of a 360-day year consisting of twelve 30-day months. If, upon presentation at maturity or for prior redemption, payment of the principal amount of any Bond is not made as required by this Ordinance, interest on the unpaid principal amount of such Bond shall continue to accrue at the interest rate stated or described in that Bond until the principal amount of that Bond is paid in full.

The maximum interest rate and the maximum net effective interest rate on the Bonds issued and delivered on any given date which the County elects to have governed by the Short-Term Interest Rate Act shall be stated in the Sale Resolution adopted after the date on which the Ordinance is adopted. Prior to the issuance of any Bonds that the County elects to have governed by the Short-Term Interest Rate Act, the Board, pursuant to the Sale Resolution, shall make the findings required by Sections 6-18-13 and 6-18-14 of the Short-Term Interest Rate Act.

Section 6. Prior Redemption

A. Optional Redemption. The Bonds shall be subject to optional redemption, in whole or in part, and including redemption premiums, if any, as provided in the Sale Resolution. If the Bonds are optionally redeemed in part, the Bonds to be so redeemed shall be selected by lot by the Registrar in such manner as the Registrar shall consider appropriate and fair. The Registrar shall not be required to give notice of any optional redemption unless the Registrar has received written instructions from the County in regard thereto, at least 45 days prior to such redemption date unless waived by the Registrar.

B. Mandatory Sinking Fund Redemption. Some or all of the Bonds may be subject to sinking fund redemption, as provided in the Sale Resolution.

C. Notice. Notice of redemption shall be given by the Registrar by sending a copy of such notice by first-class, postage prepaid mail at least 30 days prior to the redemption date to the registered owner of each Bond, or portion thereof, to be redeemed at the address shown as of the close of business of the Registrar on the fifth day prior to the mailing of notice on the registration books kept by the Registrar. Any Bonds to be redeemed pursuant to the mandatory sinking fund redemption provisions of the Sale Resolution shall be called for redemption by the Registrar without the necessity of any notice to the Registrar from the County, after selection of the Bonds to be redeemed by lot in such manner as the Registrar shall consider appropriate and fair. Neither the County's failure to give such notice nor the Registrar's failure to give such notice to the registered owner of any Bond, or any defect therein, shall affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. Notices of redemption shall specify the maturity dates and the number or numbers of the Bonds to be redeemed (if less than all are to be redeemed) and if less than the full amount of any Bond is to be redeemed, the amount of such Bonds to be redeemed, the date fixed for redemption, and that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount to be redeemed, including premium, if any, plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem all

Bonds called for redemption shall on the redemption date be on deposit with the Paying Agent, the Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Bonds to be redeemed at the office of the Paying Agent, the Paying Agent will pay the Bond or Bonds so called for redemption with funds deposited with the Paying Agent by the County. From and after such date of redemption (such notice having been given and such deposit having been made) the Bonds to be redeemed shall be deemed to not be outstanding hereunder, and the County shall have no further liability in respect thereof. In the event that only a portion of the principal amount of a Bond is so redeemed, a new Bond representing the unredeemed principal shall be duly completed, authenticated and delivered by the Registrar to the registered owner pursuant to Section 11 hereof.

D. Conditional Notice. If money or securities sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption pursuant to paragraph D of this Section, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent by 2:00 p.m. on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in a manner deemed reasonable and fair by the County and the Paying Agent shall give notice, in the manner in which the original notice of optional redemption was given, that such money was not received. In that event, the Paying Agent, shall promptly return to the owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been redeemed.

Section 7. Filing of Signatures. Prior to the execution of any Bond, the Chairperson and County Clerk shall each file, pursuant to Sections 6-9-1 to 6-9-6 NMSA 1978, as amended, with the New Mexico Secretary of State his or her manual signature certified by him or her under oath; provided that filing shall not be necessary for any officer where any previous filing may have legal application to the Bonds.

Section 8. Execution and Authentication of Bonds.

A. Execution. The Bonds shall be signed with the engraved, imprinted, stamped or otherwise reproduced facsimile of the signature, or the manual signature, of the Chairperson and shall be attested with the facsimile or manual signature of the County Clerk. There shall be affixed to each Bond the printed, engraved, stamped or otherwise placed facsimile of, or imprint of, the County's corporate seal. The Bonds shall be authenticated by the manual signature of the Registrar. The Bonds when authenticated and bearing the manual or facsimile signatures of the officers in office at the time of signing thereof shall be valid and binding special obligations of the County, notwithstanding that before delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices. The Chairperson and County Clerk, at the time of the execution of the Bonds and the signature certificate, each may adopt as and for his or her own facsimile signature, the facsimile

signature of his or her predecessor in office if such facsimile signature appears upon any of the Bonds or certificates pertaining to the Bonds.

B. Authentication. No Bond shall be valid or obligatory for any purpose unless the certificate of authentication has been duly executed by the Registrar.

Section 9. Negotiability. The Bonds shall be fully negotiable and shall have all the qualities of negotiable paper, and the Bondholders shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code–Investment Securities. Except as set forth herein, the Bonds outstanding shall in all respects be equally and ratably secured, without preference, priority or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds.

Section 10. Payment and Presentation of Bonds for Payment. Principal and interest on the Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Principal shall be payable in immediately available funds at maturity thereof upon presentation and surrender of such Bond at the principal office of the Paying Agent or at the designated office of any successor Paying Agent. Interest on the Bonds shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the Record Date. Any interest which is not timely paid or provided for shall cease to be payable to the owner thereof (or of one or more predecessor Bonds) as of the Record Date, but shall be payable to the owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to Bond owners not less than ten days prior thereto. If any Bond presented for payment remains unpaid at maturity, it shall continue to bear interest at the rate or rates designated in, and applicable to, such Bond from time to time. If any Bond is not presented for payment at maturity when funds available therefor have been deposited with the Paying Agent, it shall cease bearing interest on and from the date of maturity.

Section 11. Registration, Transfer, Exchange and Ownership of Bonds.

A. Registration, Transfer and Exchange. The County shall cause books for registration, transfer, and exchange of the Bonds as provided herein to be kept at the principal office of the Registrar. Upon surrender for transfer or exchange of any fully registered Bond at the principal office of the Registrar duly endorsed by the registered owner or his attorney duly authorized in writing, or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Registrar and duly executed, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or registered owner, as appropriate, a new Bond or Bonds in authorized denominations, in fully registered form of the same aggregate principal amount, maturity and interest rate.

LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201403645
19 of 43
11/17/2014 02:48:46 PM
BY MDUARTE

B. Limitations. The Registrar shall close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

C. Owner of the Bonds. The person in whose name any Bond is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of either the principal of or interest on any such Bond shall be made only to or upon the order of the registered owner thereof or his legal representative as stated herein, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

D. Replacement Bonds. If any Bonds shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If any such lost, stolen, destroyed or mutilated Bond shall have matured, the Registrar may request the Paying Agent to pay such bond in lieu of replacement.

E. Additional Bonds. Executed but unauthenticated Bonds are hereby authorized to be delivered to the Registrar in such quantities as may be convenient to be held in custody by the Registrar pending delivery as herein provided.

F. Charges. For each new Bond issued in connection with a transfer or exchange, the Registrar may make a charge to the owner of the Bond requesting such exchange or transfer sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

G. Successor Registrar or Paying Agent. If the Registrar or Paying Agent initially appointed hereunder shall resign or is prohibited by law from continuing as Registrar or Paying Agent, or if the County shall reasonably determine that said Registrar or Paying Agent has become incapable of fulfilling its duties hereunder, the County may, upon notice mailed to each registered owner of Bonds at the address last shown on the registration books, appoint a successor Registrar or Paying Agent, or both. Every such successor Registrar or Paying Agent shall be a bank or trust company located in and in good standing in the United States and having a shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, not less than \$50,000,000. It shall not be required that the same institution serves as both Registrar and Paying Agent hereunder, but the County shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

H. Book Entry. The Bonds may be issued or registered, in whole or in part, in book-entry form from time to time with no physical distribution of bond certificates made to the public, with a Depository acting as securities depository for the Bonds. A single certificate for each maturity date of the Bonds issued in book-entry form will be delivered to the Depository and immobilized in its custody. The book-entry system will evidence ownership of the Bonds in

authorized denominations, with transfer of ownership affected on the books of the Depository and its participants ("Participants"). As a condition to delivery of the Bonds in book-entry form, the Purchaser will, immediately after acceptance of delivery thereof, deposit, or cause to be deposited, the Bond certificates with the Depository, registered in the name of the Depository or its nominee. Principal, premium, if any, and interest will be paid to the Depository or its nominee as the registered owner of the Bonds. The transfer of principal, premium, if any, and interest payments to Participants will be the responsibility of the Depository; the transfer of principal, premium, if any, and interest payments to the beneficial owners of the Bonds (the "Beneficial Owners") will be the responsibility of Participants and other nominees of Beneficial Owners maintaining a relationship with Participants (the "Indirect Participants"). The County will not be responsible or liable for maintaining, supervising or reviewing the records maintained by the Depository, Participants or Indirect Participants.

If (i) the Bonds are not eligible for the services of the Depository, (ii) the Depository determines to discontinue providing its services with respect to the Bonds or (iii) the County determines that a continuation of the system of book-entry transfers through the Depository ceases to be beneficial to the County or the Beneficial Owners, the County will either identify another Depository or Bonds certificates will be delivered to the Beneficial Owners or their nominees, and the Beneficial Owners or their nominees, upon authentication of Bonds and registration of those Bonds in the Beneficial Owners' or nominees' names, will become the owners of the Bonds for all purposes. In that event, the County shall mail an appropriate notice to the Depository for notification to Participants, Indirect Participants and Beneficial Owners of the substitute Depository or the issuance of bond certificates to Beneficial Owners or their nominees, as applicable.

Officers of the County are authorized to sign agreements with the Depository relating to the matters set forth in this Section.

Notwithstanding any other provision of this Ordinance, so long as all of the Bonds are registered in the name of the Depository or its nominee, all payments of principal, premium, if any, and interest on the Bonds, and all notices with respect to the Bonds, shall be made and given by the Paying Agent, Registrar or the County to the Depository as provided in this Ordinance and by the Depository to its Participants or Indirect Participants and notices to the Beneficial Owners of the Bonds in the manner provided in an agreement or letter of the County to the Depository.

Section 12. Special Limited Obligations. All of the Bonds and all payments of principal, premium, if any, and interest thereon at maturity, together with any interest accruing thereon, shall be special limited obligations of the County and shall be payable and collectible solely from the Pledged Revenues, which revenues are so pledged and are payable as set forth in Section 20 of this Ordinance. The owner or owners of the Bonds may not look to any general or other fund for the payment of the principal of or interest on such obligations, except the designated special funds pledged therefor. The Bonds shall not constitute an indebtedness or a debt of the County within the meaning of any constitutional, charter or statutory provision or limitation, nor shall they be considered or held to be general obligations of the County, and each of the Bonds shall recite that it is payable and collectible solely out of the Pledged Revenues,

pledged as set forth in this Ordinance, and that the holders thereof may not look to any general or other municipal fund for the payment of the principal of and interest on the Bonds. Nothing herein shall prevent the County from applying other funds of the County legally available therefor to the payment of the Bonds, in its sole discretion.

Section 13. Form of Bonds. The form, terms and provisions of the Bonds shall be substantially in the form provided in the Sale Resolution, with such changes therein as are not inconsistent with this Ordinance.

Section 14. Period of Project's Usefulness. It is hereby determined and recited that the period of remaining usefulness of the project financed with the proceeds of the Series 2007B Bonds is not less than the final maturity date of the Bonds.

Section 15. Disposition of Proceeds. Except as herein otherwise specifically provided, and subject to confirmation of the refunding of the Series 2007B Bonds in the Sale Resolution, the proceeds derived from the sale of the Bonds, shall be used and paid solely for the valid costs of the Refunding.

A. Accrued Interest and Premium. Unless otherwise provided in the Sale Resolution, upon the sale of the Bonds, all moneys received as accrued interest shall be deposited into the Debt Service Fund to apply on the payment of interest next due on the Bonds. All moneys received as premium on the Bonds shall be deposited in the Escrow Fund and used to purchase Federal Securities pursuant to this Ordinance and the Escrow Agreement.

B. Expenses. Unless otherwise provided in the Sale Resolution, upon the sale and delivery of the Bonds, an amount necessary to pay Expenses shall be used for payment of the Expenses in compliance with applicable law.

C. Escrow Fund Deposit. An amount of proceeds received from the sale of the Bonds, as specified in the Sale Resolution, shall be deposited in the Escrow Fund. Such amount shall be sufficient to acquire the Federal Securities necessary to pay the Refunded Bond Requirements in accordance with the terms of the Escrow Agreement and Section 17 of this Ordinance; provided, however, that the provisions of this Subsection C are subject to approval in the Sale Resolution.

D. Purchaser Not Responsible. The Purchaser of the Bonds shall in no manner be responsible for the application or disposal by the County or by its officers of the proceeds derived from the sale thereof or of any other funds herein designated.

Section 16. Funds and Accounts. The County hereby creates or continues the following special and separate funds, which shall be under the control of the County or the Escrow Bank:

A. Capital Outlay Gross Receipts Tax Income Fund. The "Luna County, New Mexico Capital Outlay Gross Receipts Tax Income Fund" into which the County shall

deposit the Pledged Revenues, which was created under Section 17 of the Series 2007B Ordinance, is continued, and shall continue to be maintained by the County.

B. Debt Service Fund. The "Luna County, New Mexico Capital Outlay Gross Receipts Tax Refunding Revenue Bonds, Series 2014, Debt Service Fund" to be maintained by the County unless provided otherwise in the Sale Resolution.

C. Reserve Fund. The "Luna County, New Mexico Capital Outlay Gross Receipts Tax Refunding Revenue Bonds, Series 2014, Reserve Fund" to be maintained and funded by the County unless provided otherwise in the Sale Resolution.

D. Escrow Fund. The "Luna County, New Mexico Taxable Capital Outlay Gross Receipts Tax Revenue Bonds, Series 2007B, Escrow Fund" to be maintained by the Escrow Bank.

Section 17. Escrow Fund

A. Maintenance of Escrow Fund. The Escrow Fund shall be maintained on behalf of the County by and in the Escrow Bank in an amount at the time of the deposit and all times subsequently at least sufficient, together with the known minimum yield to be derived from the investment of the deposits therein or any part thereof in Federal Securities to pay the Refunded Bond Requirements, both accrued and not accrued, as the same become due, all as provided in the Escrow Agreement.

B. Use of Escrow Fund. Moneys shall be withdrawn by the Escrow Bank from the Escrow Fund in sufficient amounts and at times to permit the payment without default of the Refunded Bond Requirements as provided in the Escrow Agreement. Any moneys remaining in the Escrow Fund after provision shall have been made for payment in full of the Refunded Bond Requirements shall be deposited in the Debt Service Fund.

C. Insufficiency of Escrow Fund. If for any reason the amount in the Escrow Fund shall be insufficient for the purpose of paragraphs A and B above, the County shall forthwith deposit in the Escrow Fund from the first legally available Pledged Revenues such additional moneys as shall be necessary to permit the payment in full of the Refunded Bond Requirements.

Section 18. [RESERVED]

Section 19. Deposit of Pledged Revenues. So long as any Bonds are outstanding, the Pledged Revenues shall, immediately upon receipt thereof by the County, be set aside and deposited into the Capital Outlay Gross Receipts Tax Income Fund. All money deposited into the Capital Outlay Gross Receipts Tax Income Fund shall be held separate and apart from the County's general fund and applied only in accordance with the provisions of this Ordinance and any other County ordinance authorizing the issuance of Parity Obligations.

Section 20. Administration of the Capital Outlay Gross Receipts Tax Income Fund

A. Debt Service Fund Payments.

(1) First, so long as any of the Bonds shall be outstanding, the following amounts shall be withdrawn from the Capital Outlay Gross Receipts Tax Income Fund, and credited to the Debt Service Fund:

(a) Interest Payments. Monthly, commencing on the first day of the first month following the delivery of the Bonds, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the next maturing installment of interest on the Bonds then outstanding and monthly thereafter commencing on each Interest Payment Date, one-sixth (1/6th) of the amount necessary to pay the next maturing installment of interest on the outstanding Bonds, and

(b) Principal Payments. Monthly, commencing on the first day of the first month following delivery of the Bonds, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the next maturing installment of principal on the Bonds then outstanding and monthly thereafter commencing on each Principal Payment Date, one-twelfth (1/12th) of the amount necessary to pay the next maturing installment of principal on the Bonds.

(2) Second, but concurrently with the payments required by paragraph A(1) of this section, funds remaining in the Capital Outlay Gross Receipts Tax Income Fund shall be used by the County to pay the Debt Service Requirements of Parity Obligations, currently outstanding or hereafter authorized to be issued and payable from Pledged Revenues.

If prior to any Interest Payment Date or Principal Payment Date, there has been accumulated in the Debt Service Fund the entire amount necessary to pay the next maturing installment of interest or principal, or both, the payment required in subparagraphs 2(a) and 2(b) (whichever is applicable) of this section, may be appropriately reduced and the required monthly amounts again shall be so credited to such account commencing on such Interest Payment Date or Principal Payment Date (whichever is applicable).

B. Reserve Fund. Immediately upon delivery of the Bonds, a Reserve Insurance Policy or a cash amount of not less than the Reserve Requirement shall be deposited into and credited to a separate fund hereby created to the Reserve Fund so that the Reserve Fund Requirement is accumulated upon delivery of the Bonds; provided, however, that if pursuant to the provisions of the Sale Resolution the Reserve Requirement at the time of the issuance of the Bonds is zero, then no monies shall be deposited in the Reserve Fund at that time. Any moneys and investments thereof or, in lieu thereof, a Reserve Fund Insurance Policy deposited in the Reserve Fund are irrevocably and exclusively pledged to payment of the Bonds.

(1) Thereafter, third and subordinate to the payments required by Subsection A of this Section 20 and concurrently with and on parity with the payments required for any monthly reserve fund payments for additional Parity Obligations, there shall be credited monthly to the Reserve Fund, from the moneys in the Capital Outlay Gross Receipts Tax Income

Fund, such cash amount or amounts, if any, as are necessary, taking into account the amount of any Reserve Fund Insurance Policy which may then be applicable, to maintain the Reserve Fund as a continuing reserve in an amount not less than the Reserve Requirement to meet possible deficiencies in the Debt Service Fund. The moneys, if any, and the amount of any Reserve Fund Insurance Policy which hereafter may be acquired in the Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in Subsections C and D of this Section 20, only to prevent deficiencies in the payment of the principal of and interest on the Bonds hereby authorized resulting from the failure to credit to the Debt Service Fund sufficient funds to pay the principal and interest as the same become due and payable. Cash amounts in the Reserve Fund which together with the amount of any Reserve Fund Insurance Policy are in excess of the Reserve Fund Requirement shall be withdrawn from the Reserve Fund and transferred to the Debt Service Fund.

(2) The County may at any time substitute (i) one or more Reserve Fund Insurance Policies for cash or investments therein or (ii) cash or investments thereof for a Reserve Fund Insurance Policy, so long as the amount on deposit in the Reserve Fund after such substitution is at least equal to the Reserve Requirement. In the event the County shall substitute a Reserve Fund Insurance Policy for cash or investments in the Reserve Fund, the amount on deposit in the Reserve Fund shall be that amount available to be drawn or otherwise paid pursuant to such policy at the time of calculation and such cash or investments so withdrawn may be used by the County for any legal purpose.

(3) The Reserve Fund Insurance Policy, if acquired by the County, shall be held by the Paying Agent. In the event of a draw upon any Reserve Fund Insurance Policy, the Paying Agent shall deliver a demand for payment in substantially the form required by the Bond Insurer to be delivered to (and to be received by) the Bond Insurer not later than the business day prior to the business day on which the funds are required. In the event there is cash in the Reserve Fund at the time of a draw from any Reserve Fund Insurance Policy, such cash (including any investments) shall be drawn down completely before any demand is made on any Reserve Fund Insurance Policy. If the Reserve Fund contains any Reserve Fund Insurance Policy from more than one provider, any draw shall be on a pro-rata basis from both. After such a draw, any available moneys in the Capital Outlay Gross Receipts Tax Income Fund, concurrently and on parity with the payments in subparagraph (1) of this Subsection B and the payments required to replenish the reserve fund for any additional Parity Obligations, shall be used first to reimburse each such issuer of any Reserve Fund Insurance Policy for such payment of principal of and interest on the Bonds pursuant to the terms of the any agreement relating to such Reserve Fund Insurance Policy so as to reinstate each Reserve Fund Insurance Policy and thereafter to replenish any cash in the Reserve Fund.

C. Termination Upon Deposits to Maturity. No payment need be made into the Debt Service Fund, the Reserve Fund, or both, if the amount in such funds (excluding the amount of any Reserve Fund Insurance Policy) totals a sum at least equal to the entire amount of Bonds then outstanding, both as to principal and interest to their respective maturities, and both accrued and not accrued, in which case, moneys in the Debt Service Fund and Reserve Fund in an amount at least equal to such principal and interest requirements shall be used solely to pay such as the same accrue and any moneys in excess thereof in the Debt Service Fund and Reserve

Fund and any other moneys derived from the Pledged Revenues may be used in any lawful manner determined by the County.

D. Defraying Delinquencies in Debt Service and Reserve Fund. If, in any month the County shall, for any reason fail to pay into the Debt Service Fund the full amount above stipulated from the Pledged Revenues then an amount shall be paid into the Debt Service Fund in such month from the moneys, if any, in the Reserve Fund (including the amount of any Reserve Fund Insurance Policy except that there shall be no draw on any Reserve Fund Insurance Policy except immediately prior to an interest or principal payment date) equal to the difference between the amount paid from Pledged Revenues and the full amount so stipulated. Moneys used in that manner shall be replaced in the Reserve Fund and any Reserve Fund Insurance Policy Issuer shall be reimbursed for any draw as provided in Subsection B(3) of this Section from the first revenues thereafter received from Pledged Revenues not required to be otherwise applied. If the County shall, for any reason, fail to pay into the Reserve Fund the full amount above stipulated from the Pledged Revenues (or to reinstate the Reserve Fund Insurance Policy as provided in Subsection B(3) of this Section), the difference between the amount paid and the amount so stipulated shall in like manner be paid into the Reserve Fund from the first revenues thereafter received from Pledged Revenues not required to be otherwise applied. The moneys in the Debt Service Fund and the Reserve Fund (including the amount represented by the Reserve Fund Insurance Policy) shall be used solely and only for the purpose of paying the principal of and the interest on the Bonds issued hereunder; provided, however, that any moneys in the Debt Service Fund and the Reserve Fund (excluding the amount represented by any Reserve Fund Insurance Policy) in excess of accrued and unaccrued principal and interest requirements to the maturities of the outstanding Bonds may be withdrawn and used for any lawful purpose.

E. Interest on and Expenses relating to any Reserve Fund Insurance Policy Draws. Fourth, but subordinate and subsequent to the payments required by Subsections A through D of this Section 20, Pledged Revenues shall be used to pay interest on amounts advanced under and reasonable expenses relating thereto under any agreement relating to any Reserve Fund Insurance Policy.

F. Payment of Subordinate Obligations. From any balance remaining in the Capital Outlay Gross Receipts Tax Income Fund after making the payments hereinabove required, there shall be paid the interest on and the principal of additional bonds or other obligations, if any, hereafter authorized to be issued and payable from the Pledged Revenues, including reasonable reserves therefor, as the same accrue, with a lien on the Pledged Revenues subordinate to the lien and pledge of the Bonds as the same become due and payable.

G. Use of Surplus Pledged Revenues. At the end of each Fiscal Year, all amounts remaining in the Capital Outlay Gross Receipts Tax Income Fund after all annual obligations of principal or interest on and expenses relating to the Bonds and additional bonds payable from the Pledged Revenues have been fully met and any necessary payments into the Reserve Fund, if any, and of interest on amounts advanced under and reasonable expenses relating to a Reserve Fund Insurance Policy, if any, and the reserve account and rebate account, if any, for additional bonds payable from the Pledged Revenues shall be made pursuant to the

foregoing provisions of this Section, all remaining amounts shall be transferred to any other fund or account as may be required or permitted by Constitution and laws of the State, as the Board may direct. The foregoing is subject to the exceptions that if Section 4-62-1.B, NMSA 1978 is amended, modified or construed by a competent court (1) so as to permit such transfer of Pledged Revenues to any other fund or account prior to the end of each Fiscal Year without restriction, then such transfers to any other fund or account may be made monthly after the aforesaid monthly deposits into the Debt Service Fund and, as applicable and if required by the provisions of the Sale Resolution, the Reserve Fund have been made or (2) so as to permit such transfer of Pledged Revenues to any other fund or account prior to the end of each Fiscal Year but after the required annual accumulations into any required bond and reserve fund and accounts have been fully made, then such transfers may be made after the aforesaid annual deposits into the Debt Service Fund and, as applicable, Reserve Fund have been made. The owners of the Bonds (including beneficial owners thereof) consent that if during any Fiscal Year the accumulations provided under (1) or (2) of the preceding sentence have been made, such owners waive any rights which they may have to require that such excess amounts not be transferred from the Capital Outlay Gross Receipts Tax Income Fund to any other County fund or account until the end of such Fiscal Year.

Section 21. General Administration of Funds. The funds designated in Section 16 shall be administered and invested as follows:

A. Places and Times of Deposits. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be deposited in one or more bank accounts in an Insured Bank or Bank. Each account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the designated purpose. Payments shall be made into the proper account on the first day of the month except when the first day shall not be a Business Day, then payment shall be made on the next succeeding Business Day. No later than four Business Days prior to each Interest Payment Date, moneys sufficient to pay interest and principal then due on the Bonds shall be transferred to the Paying Agent. Nothing in this Ordinance shall prevent the County from establishing one or more bank accounts in an Insured Bank or Banks for all the funds required by this Ordinance or shall prevent the combination of such funds and accounts with any other bank account or accounts for other funds and accounts of the County.

B. Investment of Moneys. Moneys in any fund or account not immediately needed may be invested in any Permitted Investments. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The County Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

Section 22. First Lien on Pledged Revenues. The Pledged Revenues and the amounts and securities on deposit in the Debt Service Fund, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the County grants a security interest

therein for, the payment of the principal of, premium, if any, and interest on the Bonds, subject to the uses thereof permitted by, and the priorities set forth in, this Ordinance. The Bonds constitute an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged Revenues on parity with the lien thereon of the Parity Bonds.

Section 23. Additional Bonds Payable from Pledged Revenues.

A. Limitations Upon Issuance of Additional Obligations. No provision of this Ordinance shall be construed in such a manner as to prevent the issuance by the County of additional Parity Obligations. Before any additional Parity Obligations are issued, the conditions set forth in the ordinances authorizing the issuance of Parity Obligations must be satisfied.

B. Parity Bonds Test. Before any additional Parity Obligations are actually issued, it must be determined that:

(1) The County is then current in the accumulation of all amounts which are required to have then been accumulated in the Debt Service Fund as required by Section 20 of this Ordinance; and

(2) The requirements of either of the following subparagraphs (a) or (b) of this Section are met and a certificate or opinion as provided for in Paragraph C of this Section has been obtained:

(a) The annual Pledged Revenues for the Fiscal Year immediately preceding the date of the ordinance authorizing the issuance of any Parity Bonds shall have been sufficient to pay an amount representing at least one hundred fifty percent (150%) of the maximum annual principal and interest coming due in subsequent Fiscal Years on (1) the outstanding Bonds, (2) other outstanding Parity Bonds payable from and constituting a lien upon the Pledged Revenues, and (3) the Parity Bonds proposed to be issued, excluding reserves therefor; or

(b) If, during the period beginning on the first day of the completed Fiscal Year immediately preceding the date of the ordinance authorizing the issuance of the Parity Bonds proposed to be issued and ending on the date of such ordinance, a change in the rate of Pledged Revenues has been adopted by law, the estimate of the Pledged Revenues (sometimes herein the "Estimated Revenues"), determined by changing the actual Pledged Revenues for the preceding Fiscal Year by the percentage of rate increase or decrease in the gross receipts tax rate, shall have been sufficient to pay an amount representing at least one hundred fifty percent (150%) of the maximum annual principal and interest coming due in subsequent Fiscal Years on (1) the outstanding Bonds, (2) other outstanding Parity Bonds payable from and constituting a lien upon the Pledged Revenues, and (3) the Parity Bonds proposed to be issued, excluding reserves therefor. The preceding Fiscal Year shall be determined as aforesaid from the date of adoption of the ordinance authorizing the issuance of additional Parity Bonds and shall not be determined from the date of publication of such ordinance or adoption of any ordinance which amends or supplements such ordinance.

C. Certification or Opinion Regarding Revenues. A written certificate or opinion by an Independent Accountant that the Pledged Revenues or the Estimated Revenues, when determined as provided in Paragraph B of this Section, are sufficient to pay the required amounts under the applicable test in Paragraph B of this Section, shall conclusively determine the right of the County to issue additional Parity Bonds. The Independent Accountant may utilize the results of any annual audit to the extent it covers the applicable period.

D. Subordinate Obligations Permitted. No provision of this Ordinance shall be construed in such a manner as to prevent the issuance by the County of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of the Bonds

E. Superior Obligations Prohibited. The County shall not issue bonds payable from the Pledged Revenues having a lien thereon prior and superior to the Bonds.

Section 24. Refunding Bonds. The provisions of Section 23 of this Ordinance are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time the County shall find it desirable to refund any Parity Obligations or other outstanding obligations constituting a lien upon the Pledged Revenues, the Bonds or other Obligations, or any part thereof, may be refunded, but only with the consent of the holders, unless the obligations shall then mature or be callable for redemption, or the plan of refunding calls for payment of the obligations at maturity or at a redemption date, regardless of whether the lien priority is changed by the refunding, except as provided in Paragraphs B and C of this Section.

B. Limitation Upon Issuance of Parity Refunding Obligations. No refunding obligations shall be issued with a lien on the Pledged Revenues on parity with the lien of the Bonds, unless:

(1) The lien on the Pledged Revenues of the outstanding obligations so refunded is on a parity with the lien on the Pledged Revenues of the Bonds; or

(2) The refunding obligations are issued in compliance with Paragraph B of Section 23 of this Ordinance.

C. Refunding Part of an Issue. The refunding bonds or other refunding obligations issued shall enjoy complete equality of lien with the portion of any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such refunding bonds or other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the owner or owners of the same issue refunded thereby. If only a part of any issue or issues is refunded, then there may be no refunding without the consent of the holders of the unrefunded portion of such obligations, unless:

LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201403645

(1) The refunding obligations do not increase the aggregate principal and interest requirements for any Fiscal Year commencing prior to the last maturity date of such unrefunded obligations; or

(2) The refunding bonds or other refunding obligations are issued in compliance with Paragraph B of Section 23 of this Ordinance.

D. Limitation Upon Issuance of any Refunding Obligations. Any refunding obligations payable from Pledged Revenues shall be issued with such details as the County may by ordinance provide, subject to the inclusion of any such rights and privileges designated in Paragraph C of this Section but without impairing any contractual obligation imposed by any proceedings authorizing any unrefunded portion of any issue or issues, including the Bonds.

Section 25. Equality of Parity Bonds. The Parity Bonds, for any source of the Pledged Revenues, from time to time outstanding shall not be entitled to any priority one over the other in the application of the Pledged Revenues, as applicable, regardless of the time or times of their issuance or the date incurred, it being the intention of the Board that, except as set forth herein, there shall be no priority among Parity Bonds regardless of whether they are actually issued and delivered or incurred at different times.

Section 26. Protective Covenants. The County hereby covenants and agrees with each and every holder of the Bonds issued hereunder:

A. Use of Bond Proceeds. The County will proceed without delay to apply the proceeds of the Bonds as set forth in Section 15 of this Ordinance.

B. Payment of Bonds Herein Authorized. The County will promptly pay the principal of and the interest on every Bond at the place, on the date and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

C. County's Existence. The County will maintain its corporate identity and existence so long as any of the Bonds remain outstanding, unless another political subdivision by operation of law succeeds to the liabilities and rights of the County, without adversely affecting to any material degree the privileges and rights of any owner of the Bonds.

D. Extension of Interest Payments. In order to prevent any accumulation of claims for interest after maturity, the County will not directly or indirectly extend or assent to the extension of time for the payment of any claim for interest on any of the Bonds, and the County will not directly or indirectly be a party to or approve any arrangements for any such extension. If the time for payment of any such interest shall be extended, such installment or installments of interest, after such extension or arrangement, shall not be entitled in case of default hereunder to the benefit or security hereof, except subject to the prior payment in full of the principal of all Bonds hereunder and then outstanding and of the matured interest on such Bonds, the payment of which has not been extended.

LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201403645

25 30 of 43
11/17/2014 02:48:46 PM
BY MDUARTE

E. Records. So long as any of the Bonds remain outstanding, proper books of record and account will be kept by the County separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues.

F. Audits and Budgets. The County will, within two hundred and seventy (270) days following the close of each Fiscal Year, cause an audit of its books and accounts relating to the Pledged Revenues to be commenced by an Independent Accountant showing the receipts and disbursements in connection with such revenues. The County agrees to furnish forthwith a copy of each of such audits and reports to the Purchaser and the holder of any of the Bonds at its written request.

G. Other Liens. Other than as described and identified by this Ordinance, there are no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues. This Ordinance does not prohibit the issuance, consistent with the requirements herein, of (1) Parity Obligations with a lien on the Pledged Revenues on parity with the lien thereon of the Bonds or (2) additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of the Bonds.

H. Duty to Impose One-Fourth Percent County Capital Outlay Gross Receipts Tax. If State law or any County ordinance or part thereof, which in any manner affects the Pledged Revenues shall ever be held to be invalid or unenforceable, it shall be the duty of the County to take any legally permissible action necessary to produce sufficient Pledged Revenues to comply with the contracted obligations of this Ordinance, except as is provided in Paragraph I of this Section.

I. Impairment of Contract. The County agrees that any law, ordinance or resolution of the County that in any manner affects the Pledged Revenues or the Bonds shall not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely any Bonds outstanding, unless such Bonds have been discharged in full or provision has been fully made therefor or unless the required consents of the holders of the then outstanding Bonds are obtained pursuant to Section 32 of this Ordinance.

J. Debt Service Fund and Reserve Fund The Debt Service Fund and Reserve Fund shall be used solely and only, and those funds are hereby pledged, for the purposes set forth in this Ordinance.

K. Surety Bonds. Each County official and employee being responsible for receiving Pledged Revenues shall be bonded at all times, which bond shall be conditioned upon the proper application of Pledged Revenues.

L. Performing Duties. The County will faithfully and punctually perform all duties with respect to the Bonds required by the Constitution and laws of the State of New Mexico and the ordinances and resolutions of the County relating to the Bonds.

LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201403645

31 of 43
11/17/2014 02:48:46 PM
BY MDUARTE

M. Tax Covenants. The County covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Chairperson and other officers of the County having responsibility for the issuance of the Bonds shall give an appropriate certificate of the County, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the County regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Bonds.

The County covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely rebate payments to the federal government, if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Chairperson and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, if any, as may be required or appropriate to assure such exclusion of that interest.

N. Rebate Fund. In furtherance of the covenants set forth in the preceding paragraph, the County hereby establishes a fund separate from any other funds established and maintained hereunder designated as the Rebate Fund. Money and investments in the Rebate Fund shall not be used for the payment of the Bonds and amounts credited to the Rebate Fund shall be free and clear under any pledge under this Ordinance. Money in the Rebate Fund shall be invested pursuant to the procedures in the manner provided in Section 21(B) for investment of money, and all amounts on deposit in the Rebate Fund shall be held by the County, or a designated trustee, in trust, to the extent required to pay rebatable arbitrage to the United States of America. The County shall unconditionally be entitled to accept and rely upon the recommendation, advice, calculation and opinion of an accounting firm or other person or firm with knowledge of or experience in advising with respect to the provisions of the Code relating to rebatable arbitrage. The County shall remit all rebate installments and the final rebate payment to the United States of America as required by the provisions of the Code. Any moneys remaining in the Rebate Fund after redemption and payment of all the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and remitted to the County.

O. Continuing Disclosure Obligations. The officers of the County are authorized to sign such documents and to take such actions in the future with respect to the County's continuing disclosure obligations as are necessary or desirable to comply with the Continuing Disclosure Undertaking and the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended. Notwithstanding any other provisions of this Ordinance, failure of the County to comply with the Continuing Disclosure Undertaking shall not be considered an "event of default" under Section

27 hereof, and holders and beneficial owners of Bonds shall be entitled to exercise only such rights with respect thereto as are provided in the Continuing Disclosure Undertaking.

Section 27. Events of Default. Each of the following events is hereby declared an "event of default":

A. Nonpayment of Principal. Failure to pay the principal of any of the Bonds when the same becomes due and payable, either at maturity or otherwise.

B. Nonpayment of Interest. Failure to pay any installment of interest when the same becomes due and payable.

C. Default of any Provision. Default by the County in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or in this Ordinance on its part to be performed, and the continuance of such default (other than a default set forth in subparagraphs A and B of this Section) for sixty (60) days after written notice specifying such default and requiring the same to be remedied has been given to the County by the holders of twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding.

D. Bankruptcy. The County (i) files a petition or application seeking reorganization, arrangement under Federal bankruptcy law, or other debtor relief under the laws of any jurisdiction, or (ii) is the subject of such petition or application which the County does not contest or is not dismissed or discharged with sixty (60) days.

Section 28. Remedies Upon Default. Upon the happening and continuance of any of the events of default as provided in Section 27 of this Ordinance, then in every case the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the County, the Board and its agents, officers and employees to protect and enforce the rights of any holder of Bonds under this Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award relating to the execution of any power herein granted for the enforcement of any legal or equitable remedy as such holder or holders may deem most effectual to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of any Bondholder, or to require the Board to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Bonds then outstanding. The failure of any Bondholder so to proceed shall not relieve the County or any of its officers, agents or employees of any liability for failure to perform any duty. Each right or privilege of such holder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege.

LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201403645

33 of 43
11/17/2014 02:48:46 PM
BY MDUARTE

Section 29. Duties Upon Default. Upon the happening of any of the events of default provided in Section 27 of this Ordinance, the County, in addition, will do and perform all proper acts on behalf of and for the owners of the Bonds to protect and preserve the security created for the payment of the Bonds and to insure the payment of the principal of and interest on the Bonds promptly as the same become due. All proceeds derived therefrom, so long as any of the Bonds, either as to principal or interest, are outstanding and unpaid, shall be applied as set forth in Section 20 of this Ordinance. In the event the County fails or refuses to proceed as provided in this Section, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the owners of the Bonds as hereinabove provided.

Section 30. Bonds Not Presented When Due. If any Bonds shall not be duly presented for payment when due at maturity, and if moneys sufficient to pay such Bonds are on deposit with the Paying Agent for the benefit of the owners of such Bonds, all liability of the County to such owners for the payments of such Bonds shall be completely discharged, such Bonds shall not be deemed to be outstanding and it shall be the duty of the Paying Agent to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of the owners of such Bonds as may be provided in any agreement hereafter entered into between the Paying Agent and an officer of the County.

Section 31. Approval of Documents; Delegated Powers. The form, terms and provisions of the Bond Purchase Agreement and, if any, the Paying Agent Agreement, the Continuing Disclosure Undertaking, the Preliminary Official Statement and the Official Statement shall be approved, authorized and confirmed in the Sale Resolution, and the County shall enter into the Related Documents in substantially the forms presented at the meeting at which the Sale Resolution is adopted. The officers of the County be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of the Bond Legislation, including, without limiting the generality of the foregoing, the publication of the summary of this Ordinance set out in Section 41 (with such changes, additions and deletions as they may determine), the distribution of material relating to the Bonds, any printing of the Bonds, the printing, execution and distribution of the Preliminary Official Statement and the Official Statement, if any, and the execution of the Bond Purchase Agreement and the Continuing Disclosure Undertaking and of such certificates as may be required by the Purchaser or bond counsel and including preparation and submission to the Secretary of the Treasury of a statement meeting the informational reporting requirements of Section 149(e) of the Code. As applicable, the use and distribution of the Preliminary Official Statement and the Official Statement (as further approved in the Sale Resolution) in connection with the sale of the Bonds to the public is hereby ratified, authorized, approved and acknowledged.

Section 32. Amendment of Ordinance. This Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained herein. Furthermore, the provisions of this Ordinance shall be supplemented by the provisions of the Sale Resolution, which provisions shall not be inconsistent with the provisions of this Ordinance. Except as provided above, this Ordinance may be amended without receipt by the County of any additional consideration, but with the written consent of the holders of three-fourths (3/4ths) of the Bonds then outstanding (not

including Bonds which may be held for the account of the County); but no ordinance adopted without the written consent of the holders of all outstanding Bonds shall have the effect of permitting:

- A. An extension of the maturity of any Bond; or
- B. A reduction of the principal amount or interest rate of any Bond; or
- C. A reduction of the principal amount of Bonds required for consent to such amendatory ordinance; or
- D. The establishment of priorities as between Bonds issued and outstanding under the provisions of this Ordinance; or
- E. The modification of or otherwise affecting the rights of the holders of less than all the outstanding Bonds.

Section 33. Defeasance. When all principal and interest in connection with the Bonds hereby authorized have been duly paid, the pledge and lien for the payment of the Bonds shall thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the meaning of this Ordinance. Payment shall be deemed made with respect to any Bond or Bonds when the County has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Federal Securities) to meet all requirements of principal and interest as the same become due to their final maturities. Any Federal Securities shall become due when needed in accordance with a schedule agreed upon between the County and such bank at the time of the creation of the escrow.

Section 34. Bond Insurer Provisions. The Bond Insurer's provisions relating to the Bond Insurance Policy and/or the Reserve Insurance Policy, if any, shall be set forth in the Sale Resolution.

Section 35. Bond Legislation Irrepealable. After any of the Bonds are issued, this Ordinance and the Sale Resolution shall be and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and discharged, as herein provided, or there has been defeasance as herein provided.

Section 36. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 37. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 38. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of ordinances of the County kept for that purpose, authenticated by the signatures of the Chairperson and County Clerk, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 41 below) shall be published in a newspaper which maintains an office and is of general circulation in the County, or posted in accordance with law, and said Ordinance shall be in full force and effect thirty days after recording.

Section 39. Limitation of Action Period. After the passage of the thirty (30) days from the publication required by Section 41 hereof, any action attacking the validity of any proceedings had or taken by the County preliminary to and in the authorization and issuance of the Bonds shall be perpetually barred.

Section 40. Prior Redemption and Notice of Prior Redemption and Defeasance for the Series 2007B Bonds. The County has elected and does hereby declare its intent to exercise on the behalf and in the name of the County its option to prior redeem the Series 2007B Bonds maturing on and after July 1, 2018 on July 1, 2017, at a redemption price equal to 100% of the principal amount of the Series 2007B Bonds to be redeemed, plus accrued interest to the redemption date, as approved in the Sale Resolution. Promptly upon issuance of the Bonds, the County shall deliver to the Series 2007B Paying Agent a notice of prior redemption and defeasance of the Series 2007B Bonds. No earlier than 60 days and no later than 30 days prior to the redemption date of the Series 2007B Bonds on the date approved in the Sale Resolution, the Series 2007B Paying Agent shall deliver such notice electronically or by certified first-class, postage pre-paid mail to each registered owner of the Series 2007B Bonds. Such notice may be in substantially the form attached as an exhibit to the Sale Resolution and shall contain such information as required in Section 6.E of the Series 2007B Ordinance.

The provisions of this Section 40 are specifically subject to the further approval of the refunding of the Series 2007B Bonds in the Sale Resolution.

Section 41. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

[Form of Summary of Ordinance for Publication]

Luna County, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in County Ordinance No. 90, duly adopted and approved by the Board of County Commissioners of Luna County, New Mexico, on November 13, 2014, relating to the authorization and issuance of the County's Capital Outlay Gross Receipts Tax Refunding Revenue Bonds, Series 2014. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the County Clerk, Luna County Courthouse, 700 S. Silver Ave., Deming, New Mexico.

The title of the Ordinance is:

AUTHORIZING THE ISSUANCE AND SALE OF THE LUNA COUNTY, NEW MEXICO CAPITAL OUTLAY GROSS RECEIPTS TAX REFUNDING REVENUE BONDS, SERIES 2014, OR, IN THE ALTERNATIVE, THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BETWEEN LUNA COUNTY, NEW MEXICO AND A FINANCIAL INSTITUTION, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED EIGHT MILLION AND NO/100 DOLLARS (\$8,000,000) FOR THE PURPOSE OF REFUNDING THE OUTSTANDING TAXABLE CAPITAL OUTLAY GROSS RECEIPTS TAX REVENUE BONDS, SERIES 2007B; PROVIDING FOR THE ISSUANCE AND SALE OF THE BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE REVENUES DERIVED FROM THE 1/4TH OF 1% COUNTY CAPITAL OUTLAY GROSS RECEIPTS TAX WHICH IS LEVIED PURSUANT TO ORDINANCE NUMBER 66 (ADOPTED FEBRUARY 1, 2007 AND APPROVED BY A MAJORITY OF THE QUALIFIED ELECTORS OF THE COUNTY VOTING THEREON AT A SPECIAL ALL-MAIL BALLOT ELECTION HELD IN THE COUNTY ON MARCH 27, 2007) AND PURSUANT TO SECTIONS 7-20E-21 AND 7-20E-1 THROUGH 7-20E-8, NMSA 1978, AS AMENDED AND SUPPLEMENTED; PROVIDING FOR THE DISPOSITION OF THE RECEIPTS DERIVED FROM THE CAPITAL OUTLAY GROSS RECEIPTS TAX; PROVIDING FOR THE FORM, TERMS, EXECUTION AND OTHER DETAILS CONCERNING THE BONDS AND THE FUNDS APPERTAINING THERETO; PROVIDING FOR THE APPROVAL, EXECUTION AND DELIVERY OF COVENANTS AND AGREEMENTS IN CONNECTION WITH THE BONDS AND AUTHORIZING THE DETERMINATION OF INTEREST RATES, REDEMPTION PROVISIONS AND OTHER DETAILS OF THE BONDS ALL PURSUANT TO A SUBSEQUENT SALE RESOLUTION; AND RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH AND APPERTAINING THERETO.

The title sets forth a general summary of the subject matter contained in the Ordinance. This notice constitutes compliance with Section 6-14-6 NMSA 1978.

[End of Form of Summary for Publication]

Section 42. Governing Law. All rights and obligations of the parties with respect to the Bonds and this Ordinance shall be construed, enforced, and interpreted according to the laws of the State. Venue with regard to any action relating to the Bonds or this Ordinance shall be in federal or state district court in the State.

Section 43. Interested Parties. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the County, the Registrar, the Paying Agent, the Purchaser and the registered owners of the Bonds.

any right, remedy, or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof.

Section 44. Payment Due on Other Than Business Days. In any case where the date of payment of principal, premium, if any, or interest on the Bonds or the date fixed for redemption of any Bonds, or the date for performing any act or exercising any right, shall be a day other than a business day, then payment of interest or principal and premium, if any, or the performance of such act or exercise of such right need not be made on such date but may be made on the next succeeding business day with the same force and effect as if it had been made on the date scheduled for such payment, performance, or exercise.

Section 45. Limitation on County's Liability NOTWITHSTANDING ANY PROVISION OF THIS ORDINANCE TO THE CONTRARY, THE OBLIGATIONS OF THE COUNTY UNDER THIS ORDINANCE ARE SPECIAL, LIMITED OBLIGATIONS OF THE COUNTY PAYABLE SOLELY FROM THE PLEDGED REVENUES AND CERTAIN PROCEEDS OF THE SALE OF THE BONDS. NEITHER THE FAITH AND CREDIT, NOR THE TAXING POWER OF THE STATE OF NEW MEXICO OR ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE COUNTY, IS PLEDGED TO THE PAYMENT OR PERFORMANCE OF SUCH OBLIGATIONS. NO AGREEMENTS OR PROVISIONS CONTAINED IN THIS ORDINANCE OR ANY OTHER DOCUMENT OR INSTRUMENT RELATED TO THE BONDS SHALL GIVE RISE TO ANY PECUNIARY LIABILITY OF THE COUNTY, ITS OFFICERS, ITS EMPLOYEES OR MEMBERS OF ITS GOVERNING BODY OR CONSTITUTE A CHARGE AGAINST THE COUNTY'S GENERAL CREDIT, OR OBLIGATE THE COUNTY FINANCIALLY IN ANY WAY, EXCEPT WITH RESPECT TO THE PLEDGED REVENUES, AND THEIR APPLICATION AS PROVIDED IN THIS ORDINANCE. NO FAILURE OF THE COUNTY TO COMPLY WITH ANY TERMS, COVENANTS OR AGREEMENTS IN THIS ORDINANCE OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATED TO THE BONDS SHALL SUBJECT THE COUNTY, ITS OFFICERS, ITS EMPLOYEES OR MEMBERS OF ITS GOVERNING BODY TO ANY PECUNIARY CHARGE OR LIABILITY EXCEPT TO THE EXTENT THAT THE SAME CAN BE PAID OR RECOVERED FROM THE PLEDGED REVENUES AND CERTAIN PROCEEDS OF THE SALE OF THE BONDS.

Section 46. Bank Designation of Bonds. For purposes of and in accordance with Section 265 of the Code, the County hereby designates the Bonds as an issue qualifying for the exception for certain qualified tax-exempt obligations to the rule denying banks and other financial institutions 100% of the deduction for interest expenses which is allocable to tax-exempt interest. The County reasonably anticipates that the total amount of tax-exempt obligations (other than obligations described in Section 265(b)(3)(C)(ii) of the Code) which will be issued by the County and by any aggregated issuer during this calendar year will not exceed \$10,000,000. For purposes of this Section 43, "aggregated issuer" means any entity which: (i) issues obligations on behalf of the County; (ii) derives its issuing authority from the County; or (iii) is controlled directly or indirectly by the County within the meaning of Treasury Regulation Section 1.150-1(e). The County hereby represents that: (a) it has not created and does not intend to create and does not expect to benefit from any entity formed or availed of to avoid the purposes of Section 265(b)(3)(C) or (D) of the Code; and (b) the total amount of obligations so

designated by the County, and all aggregated issuers, for this calendar year does not exceed \$10,000,000.

[Remainder of page left blank intentionally.]

LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201403645
39 of 43
11/17/2014 02:48:46 PM
BY MDUARTE

PASSED, APPROVED AND ADOPTED THIS 13th DAY OF NOVEMBER, 2014.

LUNA COUNTY, NEW MEXICO



By Gay Spivey
Chairperson

ATTEST

By Andrea Rodriguez
County Clerk

LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201403645
40 of 43
11/17/2014 02:48:46 PM
BY MDUARTE

Signature Page for Ordinance

Commissioner DIAZ moved adoption of the foregoing ordinance, duly seconded by Commissioner MILO.

The motion to adopt said ordinance, as amended, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye:

JOE L. MILO, JR., DISTRICT 1

J. JAY SPIVEY, DISTRICT 2, CHAIRMAN

R. JAVIER DIAZ, DISTRICT 3

Those Voting Nay:

Those Absent:

THREE (3) Commissioners having voted in favor of said motion, the Chairperson declared said motion carried and said ordinance adopted, whereupon the Chairperson and County Clerk signed the ordinance upon the records of the minutes of the Board.

LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201403645
41 of 43
11/17/2014 02:48:46 PM
BY MDUARTE

After consideration of the matters not relating to the ordinance, the meeting on motion duly made, seconded and unanimously carried, was adjourned.

LUNA COUNTY, NEW MEXICO

[SEAL]

By Ray Spivey
Chairperson

ATTEST:

By Andrea Rodriguez
County Clerk



LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201403645
42 of 43
11/17/2014 02:48:46 PM
BY MDUARTE

Signature Page for Ordinance

STATE OF NEW MEXICO)
) ss.
COUNTY OF LUNA)

I, Andrea Rodriguez, the duly elected, qualified, and acting County Clerk of Luna County, New Mexico (the "County"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the Board of County Commissioners of Luna County, New Mexico (the "Board"), constituting the governing board of the County, had and taken at a duly called regular, open meeting held in the Luna County Courthouse, 700 S. Silver Ave., Deming, New Mexico, being the regular meeting place of the Board, on the 13th day of November, 2014, at the hour of 9:00 a.m. insofar as the same relate to the proposed bond issue, a copy of which is set forth in the official records of the proceedings of the County kept in my office.

2. Said proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of said meeting was given in accordance with the open meetings standards of the Board presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of November, 2014.



LUNA COUNTY, NEW MEXICO

By Andrea Rodriguez
County Clerk

LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201403645
43 of 43
11/17/2014 02:48:46 PM
BY MDUARTE

Signature Page for Ordinance