



LUNA COUNTY, NEW MEXICO

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ANDREA RODRIGUEZ, CLERK  
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BY MARIA

**RESOLUTION NO. 16-48**

APPROVING THE SALE OF LUNA COUNTY, NEW MEXICO GROSS RECEIPTS TAX REVENUE BONDS, SERIES 2016 (THE "BONDS"), IN THE AGGREGATE PRINCIPAL AMOUNT OF \$11,665,000; PROVIDING DETAILS CONCERNING THE BONDS, THE FUNDS APPERTAINING THERETO; PROVIDING FOR THE PAYMENT OF THE COSTS OF ISSUANCE OF THE BONDS; APPROVING OTHER DOCUMENTS RELATING TO THE BONDS; AND RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH.

**WHEREAS**, unless otherwise defined in Section 1 of this Sale Resolution or the context requires otherwise, capitalized terms in this Sale Resolution have the same meaning assigned to those terms in Section 1 of County Ordinance No. 93 (the "Bond Ordinance") adopted by the Board of County Commissioners of Luna County, New Mexico (the "Board") on March 3, 2015; and

**WHEREAS**, the Sale Resolution is adopted pursuant to the Bond Ordinance in order to approve the sale price and other matters with respect to the Bonds; and

**WHEREAS**, the Board has adopted the Bond Ordinance which authorizes the issuance of the Bonds and provides for the adoption of one or more Sale Resolutions by the Board to approve specific terms and documents relating to the issuance, delivery, sale and administration of the Bonds, and the Sale Resolution is adopted by the Board for those purposes; and

**WHEREAS**, the Board has determined to issue the Bonds in the aggregate principal amount of \$11,665,000; and

**WHEREAS**, the Board has received an offer to purchase the Bonds and has received a Bond Purchase Agreement from RBC Capital Markets, LLC and Stifel, Nicolaus & Company, Incorporated (collectively the "Underwriters" or the "Purchaser"); and

**WHEREAS**, the Purchaser has offered to purchase the Bonds for the purchase price of

\$12,198,840.20 (which is equal to the par amount of the Bonds of \$11,665,000.00 plus a net original issue premium of \$586,280.70 and less an Underwriters' discount of \$52,440.50) at a true interest rate of 2.98%;

**WHEREAS**, it is in the best interests of Luna County (the "County") to sell the Bonds to the Purchaser upon the terms as set forth in the Bond Ordinance and the Sale Resolution;

**WHEREAS**, the Board has received an offer to insure the Bonds from Assured Guaranty Municipal Corp.; and

**WHEREAS**, it is in the best interests of the County to accept the offer to insure the Bonds and have Assured Guaranty Municipal Corp. ("AGM" or "Insurer") insure the Bonds; and

**WHEREAS**, the Preliminary Official Statement and the form of the Continuing Disclosure Undertaking have been filed with the County Clerk; and

**WHEREAS**, all required authorizations, consents and approvals of any governmental body, agency or authority in connection with (i) the use and pledge of the Pledged Revenues for the payment of the Bonds, and (ii) the authorization, execution and delivery of the Bonds, which is required to have been obtained by the date on which the Sale Resolution is adopted have been or will have been obtained.

**BE IT RESOLVED BY THE BOARD, THE GOVERNING BODY OF THE COUNTY OF LUNA, NEW MEXICO:**

1. **Ratification**. All action previously taken (not inconsistent with the provisions of this Sale Resolution or the Bond Ordinance) by the Board and the officers of the County, directed toward the authorization, pledge, collection and distribution of the Pledged Revenues and the authorization, issuance and sale of the Bonds is ratified, approved and confirmed.
2. **Findings**. The Board declares that it has considered all relevant information and data and makes the following findings:

- A. The issuance of the Bonds under the Act to provide funds for the Project (as defined in the Preliminary Official Statement) is necessary and in the interest of the public health, safety and welfare of the residents of the County.
- B. The interest rates and net effective interest rates on the Bonds is reasonable under existing and anticipated bond market conditions, the true interest rate is 2.98%, which is less than the statutory maximum of twelve percent (12%) per annum, and is within the corresponding parameter established in the Bond Ordinance and necessary and advisable for the marketing and sale of the Bonds.
- C. The Bonds shall be sold to the Purchaser as initial purchasers of the Bonds at a purchase price of \$12,198,840.20 (which is equal to the par amount of the Bonds of \$11,665,000.00 plus a net original issue premium of \$586,280.70 and less an Underwriters' discount of \$52,440.50) at a true interest rate of 2.98%.
- D. The Act includes Section 4-62-1, et seq., NMSA 1978.

3. Bonds' Details.

- A. Principal Amount. The Bonds shall be issued in one series in the aggregate principal amount of \$11,665,000 to provide funds for the Project, and to pay Expenses relating to the issuance of the Bonds.
- B. Series Date; Registration. The Bonds shall be dated October 14, 2016 (the "Series Date"), and shall be issued in fully registered form only, without coupons, and when issued will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York as registered owner of the Bonds, all as provided in the Bond Ordinance.
- C. Interest Payment Date; Interest Rates; Maturities. The Bonds shall bear interest,

payable on December 1 and June 1, commencing December 1, 2016 (the "Interest Payment Date"). The Serial Bonds shall mature on December 1, 2030.

Date:	Principal:	Interest:
12/01/2017	\$160,000	2.00%
12/01/2018	\$160,000	3.00%
12/01/2019	\$165,000	3.00%
12/01/2020	\$170,000	4.00%
12/01/2021	\$180,000	4.00%
12/01/2022	\$185,000	5.00%
12/01/2023	\$195,000	5.00%
12/01/2024	\$205,000	5.00%
12/01/2025	\$215,000	5.00%
12/01/2026	\$345,000	5.00%
12/01/2027	\$360,000	5.00%
12/01/2028	\$380,000	5.00%
12/01/2029	\$395,000	5.00%
12/01/2030	\$415,000	5.00%

D. Term Bonds. The 2035 Term Bonds shall mature on December 1, 2035 and bear interest at the rate of 3.00%. The 2045 Term Bonds shall mature on December 1, 2045 and bear interest at the rate of 3.00%.

Date:	Principal:	Interest:
12/01/2035*	\$2,325,000	3.00%
12/01/2045*	\$5,810,000	3.00%

\*Maturity.

E. Record Date. The Record Date shall be the fifteenth (15<sup>th</sup>) day of the month preceding the Interest Payment Date.

F. Prior Redemption. The Bonds are subject to redemption as follows:

1. *Optional Redemption.* The Bonds maturing on and after December 1, 2027, are subject to optional redemption at par beginning December 1, 2026. The Term Bonds maturing December 1, 2035 and December 1, 2045, are subject to

sinking fund redemption.

2. *Mandatory Sinking Fund Redemption.* The Term Bonds are subject to mandatory sinking fund redemption, at par plus accrued interest as follows:

Year	Amount
2031	\$440,000
2032	\$450,000
2033	\$465,000
2034	\$480,000
2035*	\$490,000

\*Maturity Date.

Year	Amount
2036	\$505,000
2037	\$520,000
2038	\$540,000
2039	\$555,000
2040	\$570,000
2041	\$590,000
2042	\$605,000
2043	\$625,000
2044	\$640,000
2045*	\$660,000

\*Maturity Date.

4. Parameters of Bond Ordinance. The net effective interest rate on the Bonds is a true interest rate of 2.98%, which is less than twelve percent (12%) per annum. The maturity date of the Bonds does not exceed fifty (50) years. All other terms and conditions relating to the Bonds and the sale of the Bonds to the Purchaser set forth in this Sale Resolution are within the parameters established by the Bond Ordinance.

5. Accounts. The County shall establish such Funds and Accounts as required by the Bond Ordinance.

6. Approval and Use of Documents. The forms, terms and provisions of the Preliminary Official Statement and Continuing Disclosure Undertaking on file with the County Clerk are

ratified and approved. The Authorized Officers of the County are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Sale Resolution, including, without limitation, the distribution of material relating to the Bonds, the printing of the Bonds, the printing, execution and distribution of the Official Statement, the Continuing Disclosure Undertaking, and such other certificates as may be required by the Purchaser or bond counsel.

The use by the Purchaser, in connection with the offering and sale of the Bonds, of:  
(i) the Preliminary Official Statement is ratified and approved and (ii) the proposed form of the Official Statement is approved.

7. Financial Statements. The County shall provide the Purchaser a copy of its annual audited financial statements within two hundred and seventy (270) days of the end of each fiscal year.

8. Bond Proceeds. The purchase price of the Bonds is \$12,198,840.20 (which is equal to the par amount of the Bonds of \$11,665,000.00 plus a net original issue premium of \$586,280.70 and less an Underwriters' discount of \$52,440.50).

The Bond Proceeds are allocated as follows:

- A. The expenses for the cost of issuance of the Bonds are \$150,000;
- B. The expenses for the cost of the insurance policies for the Bonds are \$46,940.29; and
- C. \$12,001,899.91 shall be deposited in the Acquisition Account.

9. Further Authorization. Authorized Officers are hereby authorized to take all necessary action to effect the sale and delivery of the Bonds to the Purchaser, including, without limitation, the execution and the delivery of the Bonds to the Purchaser and the execution and delivery of closing certificates, agreements and instruments necessary or advisable in connection

with the issuance and delivery of the Bonds.

10. Bond Ordinance. Except with respect to the terms set forth in this Sale Resolution, the Bonds are governed by the Bond Ordinance. Except in the case of the provisions for the benefit of the Insurer provided for in Section 11 and 12, in the event of any conflict in the terms of this Sale Resolution and the Bond Ordinance, the terms of the Bond Ordinance shall prevail. The adoption of this Sale Resolution, and all procedures undertaken incident thereto, are in full compliance and conformity with all applicable requirements, provisions and limitations prescribed by the Constitution and laws of the state of New Mexico.

11. Provisions Relating to Bond Insurance.

(a) "Insurance Policy" shall be defined as follows: "the insurance policy issued by the Insurer guaranteeing the scheduled payment of principal of and interest on the Bonds when due." "Insurer" shall be defined as follows: "Assured Guaranty Municipal Corp., a New York stock insurance company, or any successor thereto or assignee thereof."

(b) The prior written consent of the Insurer shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Debt Service Reserve Fund, if any. Notwithstanding anything to the contrary set forth in the Bond Ordinance and the Sale Resolution, amounts on deposit in the Debt Service Reserve Fund shall be applied solely to the payment of debt service due on the Bonds.

(c) The Insurer shall be deemed to be the sole holder of the Insured Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the holders of the Bonds insured by it are entitled to take pursuant to the Bond Ordinance and Sale Resolution pertaining to (i) defaults and remedies and (ii) the duties and obligations of the Paying Agent. In furtherance thereof and as a term of the Bond Ordinance and

each Bond, the Paying Agent and each Bondholder appoint the Insurer as their agent and attorney-in-fact and agree that the Insurer may at any time during the continuation of any proceeding by or against the Issuer under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding") direct all matters relating to such Insolvency Proceeding, including without limitation, (A) all matters relating to any claim or enforcement proceeding in connection with an Insolvency Proceeding (a "Claim"), (B) the direction of any appeal of any order relating to any Claim, (C) the posting of any surety, supersedeas or performance bond pending any such appeal, and (D) the right to vote to accept or reject any plan of adjustment. In addition, the Paying Agent and each Bondholder delegate and assign to the Insurer, to the fullest extent permitted by law, the rights of the Paying Agent and each Bondholder in the conduct of any Insolvency Proceeding, including, without limitation, all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any such Insolvency Proceeding. Remedies granted to the Bondholders shall expressly include mandamus.

(d) If acceleration is permitted under the Bond Ordinance and Sale Resolution, the maturity of Bonds insured by the Insurer shall not be accelerated without the consent of the Insurer and in the event the maturity of the Bonds is accelerated, the Insurer may elect, in its sole discretion, to pay accelerated principal and interest accrued on such principal to the date of acceleration (to the extent unpaid by the Issuer) and the Paying Agent shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Insurer's obligations under the Insurance Policy with respect to such Bonds shall be fully discharged.

(e) No grace period for a covenant default shall exceed thirty (30) days or be



extended for more than 60 days, without the prior written consent of the Insurer. No grace period shall be permitted for payment defaults.

(f) The Insurer shall be included as a third party beneficiary to the Bond Ordinance and Sale Resolution.

(g) Upon the occurrence of an extraordinary optional, special or extraordinary mandatory redemption in part, the selection of Bonds to be redeemed shall be subject to the approval of the Insurer. The exercise of any provision of the Bond Ordinance and Sale Resolution which permits the purchase of Bonds in lieu of redemption shall require the prior written approval of the Insurer if any Bond so purchased is not cancelled upon purchase.

(h) Any amendment, supplement, modification to, or waiver of, the Bond Ordinance or any other transaction document, including any underlying security agreement (each a "Related Document"), that requires the consent of Bond owners or adversely affects the rights and interests of the Insurer shall be subject to the prior written consent of the Insurer.

(i) Unless the Insurer otherwise directs, upon the occurrence and continuance of an Event of Default or an event which with notice or lapse of time would constitute an Event of Default, amounts on deposit in the Construction Fund shall not be disbursed, but shall instead be applied to the payment of debt service or redemption price of the Bonds.

(j) The rights granted to the Insurer under the Bond Ordinance or any other Related Document to request, consent to or direct any action are rights granted to the Insurer in consideration of its issuance of the Insurance Policy. Any exercise by the Insurer of such rights is merely an exercise of the Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the Bondholders and such action does not evidence any position of the Insurer, affirmative or negative, as to whether the consent of the Bond owners or

any other person is required in addition to the consent of the Insurer.

(k) Only (1) cash, (2) non-callable direct obligations of the United States of America ("Treasuries"), (3) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated, (4) subject to the prior written consent of the Insurer, pre-refunded municipal obligations rated "AAA" and "Aaa" by S&P and Moody's, respectively, or (5) subject to the prior written consent of the Insurer, securities eligible for "AAA" defeasance under then existing criteria of S & P or any combination thereof, shall be used to effect defeasance of the Bonds unless the Insurer otherwise approves.

To accomplish defeasance, the Issuer shall cause to be delivered (i) a report of an independent firm of nationally recognized certified public accountants or such other accountant as shall be acceptable to the Insurer ("Accountant") verifying the sufficiency of the escrow established to pay the Bonds in full on the maturity or redemption date ("Verification"), (ii) an Escrow Deposit Agreement (which shall be acceptable in form and substance to the Insurer), (iii) an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer "Outstanding" under the Bond Ordinance and (iv) a certificate of discharge of the Paying Agent with respect to the Bonds; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the Issuer, Paying Agent and Insurer. The Insurer shall be provided with final drafts of the above-referenced documentation not less than five business days prior to the funding of the escrow.

Bonds shall be deemed "Outstanding" under the Bond Ordinance and Sale Resolution

unless and until they are in fact paid and retired or the above criteria are met.

(l) Amounts paid by the Insurer under the Insurance Policy shall not be deemed paid for purposes of the Bond Ordinance and Sale Resolution and the Bonds relating to such payments shall remain Outstanding and continue to be due and owing until paid by the Issuer in accordance with the Bond Ordinance and Sale Resolution. The Bond Ordinance and Sale Resolution shall not be discharged unless all amounts due or to become due to the Insurer have been paid in full or duly provided for.

(m) Each of the Issuer and Paying Agent covenant and agree to take such action (including, as applicable, filing of UCC financing statements and continuations thereof) as is necessary from time to time to preserve the priority of the pledge of the Trust Estate under applicable law.

(n) Claims Upon the Insurance Policy and Payments by and to the Insurer.

If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date") there is not on deposit with the Paying Agent, after making all transfers and deposits required under the Bond Ordinance and Sale Resolution, moneys sufficient to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent shall give notice to the Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent shall make a claim under the Insurance Policy and give notice to the Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest

on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Insurance Policy.

The Paying Agent shall designate any portion of payment of principal on Bonds paid by the Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Bonds registered to the then current Bondholder, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to the Insurer, registered in the name of Assured Guaranty Municipal Corp., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Paying Agent's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by the Issuer on any Bond or the subrogation rights of the Insurer.

The Paying Agent shall keep a complete and accurate record of all funds deposited by the Insurer into the Policy Payments Account (defined below) and the allocation of such funds to payment of interest on and principal of any Bond. The Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Paying Agent.

Upon payment of a claim under the Insurance Policy, the Paying Agent shall establish a separate special purpose trust account for the benefit of Bondholders referred to herein as the "Policy Payments Account" and over which the Paying Agent shall have exclusive control and sole right of withdrawal. The Paying Agent shall receive any amount paid under the Insurance Policy in trust on behalf of Bondholders and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made.

Such amounts shall be disbursed by the Paying Agent to Bondholders in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments. Notwithstanding anything herein to the contrary, the Issuer agrees to pay to the Insurer (i) a sum equal to the total of all amounts paid by the Insurer under the Insurance Policy (the "Insurer Advances"); and (ii) interest on such Insurer Advances from the date paid by the Insurer until payment thereof in full, payable to the Insurer at the Late Payment Rate per annum (collectively, the "Insurer Reimbursement Amounts"). "Late Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in The City of New York, as its prime or base lending rate (any change in such rate of interest to be effective on the date such change is announced by JPMorgan Chase Bank) plus three percent (3%), and (ii) the then applicable highest rate of interest on the Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of three hundred and sixty (360) days. The Issuer hereby covenants and agrees that the Insurer Reimbursement Amounts are secured by a lien on and pledge of the Pledged Revenues and payable from such Pledged Revenues on a parity with debt service due on the Bonds.

Funds held in the Policy Payments Account shall not be invested by the Paying Agent and may not be applied to satisfy any costs, expenses or liabilities of the Paying Agent. Any funds remaining in the Policy Payments Account following a Bond payment date shall promptly be remitted to the Insurer.

(o) The Insurer shall, to the extent it makes any payment of principal of or interest on the Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Insurance Policy (which subrogation rights shall also include the rights of any such recipients in connection with any Insolvency Proceeding). Each obligation of the Issuer to the Insurer under the Related Documents shall survive discharge or termination of such Related Documents.

(p) The Issuer shall pay or reimburse the Insurer any and all charges, fees, costs and expenses that the Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights or security in any Related Document; (ii) the pursuit of any remedies under the Bond Ordinance or any other Related Document or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, the Bond Ordinance or any other Related Document whether or not executed or completed, or (iv) any litigation or other dispute in connection with the Bond Ordinance or any other Related Document or the transactions contemplated thereby, other than costs resulting from the failure of the Insurer to honor its obligations under the Insurance Policy. The Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Bond Ordinance or any other Related Document.

(q) After payment of reasonable expenses of the Paying Agent, the application of funds realized upon default shall be applied to the payment of expenses of the Issuer or rebate only after the payment of past due and current debt service on the Bonds and amounts required to restore the Debt Service Reserve Fund to the Debt Service Reserve Requirement.

(r) The Insurer shall be entitled to pay principal or interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer (as such

terms are defined in the Insurance Policy) and any amounts due on the Bonds as a result of acceleration of the maturity thereof in accordance with the Bond Ordinance and Sale Resolution, whether or not the Insurer has received a Notice of Nonpayment (as such terms are defined in the Insurance Policy) or a claim upon the Insurance Policy.

(s) The notice address of the Insurer is: Assured Guaranty Municipal Corp., 1633 Broadway, New York, New York 10019, Attention: Managing Director - Surveillance, Re: Policy No. 217792-N & No. 217792-R, Telephone: (212) 974-0100; Telecopier: (212) 339-3556. In each case in which notice or other communication refers to an Event of Default, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

(t) The Insurer shall be provided with the following information by the Issuer or Paying Agent, as the case may be:

(i) Annual audited financial statements within two hundred and seventy (270) days after the end of the Issuer's fiscal year (together with a certification of the Issuer that it is not aware of any default or Event of Default under the Bond Ordinance), and the Issuer's annual budget within thirty (30) days after the approval thereof together with such other information, data or reports as the Insurer shall reasonably request from time to time;

(ii) Notice of any draw upon the Debt Service Reserve Fund within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the Debt Service Reserve Requirement and (ii) withdrawals in connection with a refunding of Bonds;

(iii) Notice of any default known to the Paying Agent or Issuer within five Business Days after knowledge thereof;

(iv) Prior notice of the advance refunding or redemption of any of the

Bonds, including the principal amount, maturities and CUSIP numbers thereof;

(v) Notice of the resignation or removal of the Paying Agent and Bond Registrar and the appointment of, and acceptance of duties by, any successor thereto;

(vi) Notice of the commencement of any proceeding by or against the Issuer commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding");

(vii) Notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on, the Bonds;

(viii) A full original transcript of all proceedings relating to the execution of any amendment, supplement, or waiver to the Related Documents; and

(ix) All reports, notices and correspondence to be delivered to Bondholders under the terms of the Related Documents.

In addition, to the extent that the Issuer has entered into a continuing disclosure agreement, covenant or undertaking with respect to the Bonds, all information furnished pursuant to such agreements shall also be provided to the Insurer, simultaneously with the furnishing of such information.

(u) The Insurer shall have the right to receive such additional information as it may reasonably request.

(v) The Issuer will permit the Insurer to discuss the affairs, finances and accounts of the Issuer or any information the Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the Issuer and will use commercially reasonable efforts to enable the Insurer to have access to the facilities, books and records of the Issuer on any business



day upon reasonable prior notice.

(w) The Issuer shall notify the Insurer of any failure of the Issuer to provide notices, certificates and other information under the transaction documents.

(x) Notwithstanding satisfaction of the other conditions to the issuance of Additional Bonds set forth in the Bond Ordinance, no such issuance may occur (1) if an Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) exists unless such default shall be cured upon such issuance and (2) unless the Debt Service Reserve Fund is fully funded at the Debt Service Reserve Requirement (including the proposed issue) upon the issuance of such Additional Bonds, in either case unless otherwise permitted by the Insurer.

(y) In determining whether any amendment, consent, waiver or other action to be taken, or any failure to take action, under the Bond Ordinance and Sale Resolution would adversely affect the security for the Bonds or the rights of the Bondholders, the Paying Agent shall consider the effect of any such amendment, consent, waiver, action or inaction as if there were no Insurance Policy.

(z) No contract shall be entered into or any action taken by which the rights of the Insurer or security for or sources of payment of the Bonds may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of the Insurer.

(aa) If the Bonds are issued for refunding purposes, there shall be delivered an opinion of Bond Counsel addressed to the Insurer (or a reliance letter relating thereto), or a certificate of discharge of the Paying Agent for the Refunded Bonds, to the effect that, upon the making of the required deposit to the escrow, the legal defeasance of the Refunded Bonds shall have occurred.

12. Provisions Relating to Reserve Policy.

(a) The Issuer shall repay any draws under the Reserve Policy and pay all related reasonable expenses incurred by AGM and shall pay interest thereon from the date of payment by AGM at the Late Payment Rate. "Late Payment Rate" means the lesser of (x) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in the City of New York, as its prime or base lending rate ("Prime Rate") (any change in such Prime Rate to be effective on the date such change is announced by JPMorgan Chase Bank) plus three percent (3%), and (ii) the then applicable highest rate of interest on the Bonds and (y) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of three hundred and sixty (360) days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate publicly, Prime Rate shall be the publicly announced prime or base lending rate of such national bank as AGM shall specify. If the interest provisions of this subparagraph (a) shall result in an effective rate of interest which, for any period, exceeds the limit of the usury or any other laws applicable to the indebtedness created herein, then all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto, be applied as additional interest for any later periods of time when amounts are outstanding hereunder to the extent that interest otherwise due hereunder for such periods plus such additional interest would not exceed the limit of the usury or such other laws, and any excess shall be applied upon principal immediately upon receipt of such moneys by AGM, with the same force and effect as if the Issuer had specifically designated such extra sums to be so applied and AGM had agreed to accept such extra payment(s) as additional interest for such later periods. In no event shall any agreed-to or actual exaction as consideration for the indebtedness created herein exceed the limits

imposed or provided by the law applicable to this transaction for the use or detention of money or for forbearance in seeking its collection.

Repayment of draws and payment of expenses and accrued interest thereon at the Late Payment Rate (collectively, "Policy Costs") shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to one-twelfth (1/12) of the aggregate of Policy Costs related to such draw.

Amounts in respect of Policy Costs paid to AGM shall be credited first to interest due, then to the expenses due and then to principal due. As and to the extent that payments are made to AGM on account of principal due, the coverage under the Reserve Policy will be increased by a like amount, subject to the terms of the Reserve Policy. The obligation to pay Policy Costs shall be secured by a valid lien on all revenues and other collateral pledged as security for the Bonds (subject only to the priority of payment provisions set forth under the Bond Ordinance and Sale Resolution).

All cash and investments in the debt service reserve fund established for the Bonds (the "Reserve Fund") shall be transferred to the debt service fund for payment of debt service on Bonds before any drawing may be made on the Reserve Policy or any other credit facility credited to the Reserve Fund in lieu of cash ("Credit Facility"). Payment of any Policy Costs shall be made prior to replenishment of any such cash amounts. Draws on all Credit Facilities (including the Reserve Policy) on which there is available coverage shall be made on a pro-rata basis (calculated by reference to the coverage then available thereunder) after applying all available cash and investments in the Reserve Fund. Payment of Policy Costs and reimbursement of amounts with respect to other Credit Facilities shall be made on a pro-rata basis prior to replenishment of any cash drawn from the Reserve Fund. For the avoidance of doubt, "available coverage" means the coverage then available for disbursement pursuant to the terms of the applicable alternative credit instrument without regard

to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.

(b) If the Issuer shall fail to pay any Policy Costs in accordance with the requirements of subparagraph (a) hereof, AGM shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under the Bond Ordinance and Sale Resolution other than (i) acceleration of the maturity of the Bonds or (ii) remedies which would adversely affect owners of the Bonds.

(c) The Bond Ordinance and Sale Resolution shall not be discharged until all Policy Costs owing to AGM shall have been paid in full. The Issuer's obligation to pay such amounts shall expressly survive payment in full of the Bonds.

(d) The Issuer shall include any Policy Costs then due and owing AGM in the calculation of the additional bonds test in the Bond Ordinance and Sale Resolution.

(e) The Bond Ordinance and Sale Resolution shall require the Trustee to ascertain the necessity for a claim upon the Reserve Policy in accordance with the provisions of subparagraph (a) hereof and to provide notice to AGM in accordance with the terms of the Reserve Policy at least five (5) business days prior to each date upon which interest or principal is due on the Bonds. Where deposits are required to be made by the Issuer with the Trustee to the debt service fund for the Bonds more often than semi-annually, the Trustee shall be instructed to give notice to AGM of any failure of the Issuer to make timely payment in full of such deposits within two business days of the date due.

13. Repealer Clause. All bylaws, orders and resolutions, or parts thereof, inconsistent with this Sale Resolution are repealed to the extent of such inconsistency. This repealer shall not be construed to revive any bylaw, order or resolution, or part thereof, previously repealed.

14. Effective Date and Publication. This Sale Resolution shall be in full force and effect immediately upon adoption and approval by the Board and its execution and approval by the Chairman. A title and general summary of the subject matter contained in this Sale Resolution shall be published in substantially the following form after adoption of this Sale Resolution pursuant to Section 6-14-6, NMSA 1978.

[Form of Notice]

Luna County, New Mexico

Notice of Adoption of Sale Resolution

NOTICE IS HEREBY GIVEN that the Board of County Commissioners of Luna County, did on the 8th day of September, 2016, adopt a resolution entitled:

APPROVING THE SALE OF LUNA COUNTY, NEW MEXICO GROSS RECEIPTS TAX REVENUE BONDS, SERIES 2016 (THE "BONDS"), IN THE AGGREGATE PRINCIPAL AMOUNT OF \$11,665,000; PROVIDING DETAILS CONCERNING THE BONDS, THE FUNDS APPERTAINING THERETO; PROVIDING FOR THE PAYMENT OF THE COSTS OF ISSUANCE OF THE BONDS; APPROVING OTHER DOCUMENTS RELATING TO THE BONDS; AND RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH.

The Resolution directs and authorizes the issuance of Luna County, New Mexico Gross Receipts Tax Revenue Bonds, Series 2016, in an aggregate principal amount of \$11,665,000; awards the sale of the Bonds to the Purchaser and provides for the delivery thereof; provides for the form of the Bonds; provides for levy of gross receipts taxes to pay the principal of and interest on the Bonds; makes certain covenants with the Purchaser; and provides other details concerning the Bonds. Complete copies of Ordinance No. 93 and the Sale Resolution are available for public inspection during normal and regular business hours at the office of the County Manager of Luna County, 700 S. Silver Ave., Deming, New Mexico 88030. This

notice constitutes compliance with Section 6-14-6, NMSA 1978.

**BOARD OF COUNTY COMMISSIONERS  
LUNA COUNTY, NEW MEXICO**

By: /s/ R. Javier Diaz  
R. JAVIER DIAZ, Chairman

[End of Form of Notice]

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PASSED, ADOPTED, AND APPROVED this 8th day of September, 2016

**BOARD OF COUNTY COMMISSIONERS  
LUNA COUNTY, NEW MEXICO**

By:

  
R. JAVIER DIAZ, Chairman

  
LINDA M. SMRKOVSKY, Member

  
JOE L. "OLEO" MILO, Member



ATTEST:

  
COUNTY CLERK

LUNA COUNTY-NM  
ANDREA RODRIGUEZ, CLERK  
201603120  
23 of 23  
09/08/2016 11:38:24 AM  
BY MARIA