CITY OF SANTA FE, NEW MEXICO

BILL NO. 2016-20

INTRODUCED BY:

Councilor Joseph Maestas

AN ORDINANCE

AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF SANTA FE, NEW MEXICO SENIOR LIEN GROSS RECEIPTS TAX REFUNDING REVENUE BONDS IN ONE OR MORE SERIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $37,000,000 FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING, PAYING AND DEFEASING THE OUTSTANDING CITY OF SANTA FE, NEW MEXICO (1) GROSS RECEIPTS TAX REFUNDING REVENUE BONDS, SERIES 2006B AND (2) GROSS RECEIPTS TAX REVENUE BONDS, SERIES 2008; AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF SANTA FE, NEW MEXICO SUBORDINATE LIEN GROSS RECEIPTS TAX REFUNDING REVENUE BONDS IN ONE OR MORE SERIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $16,000,000 FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING, PAYING AND DEFEASING THE OUTSTANDING CITY OF SANTA FE, NEW MEXICO (1) MUNICIPAL RECREATION COMPLEX/SUBORDINATE LIEN GROSS RECEIPTS TAX REFUNDING BONDS, SERIES 2005, (2) SUBORDINATE LIEN GROSS RECEIPTS TAX/WASTEWATER SYSTEM IMPROVEMENT REVENUE BONDS, SERIES 2006C, AND (3) 2008 LAND ACQUISITION

FINANCE AUTHORITY LOAN; PROVIDING THAT THE BONDS WILL BE PAYABLE AND COLLECTIBLE FROM THE GROSS RECEIPTS TAX REVENUES DISTRIBUTED TO THE CITY; ESTABLISHING THE FORM, TERMS, MANNER OF EXECUTION AND OTHER DETAILS OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF BOND PURCHASE AGREEMENTS AND ESCROW AGREEMENTS; PROVIDING FOR REDEMPTION OF THE REFUNDED BONDS; APPROVING CERTAIN OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION WITH THE REFUNDED BONDS; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION WITH THE BONDS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND RELATED MATTERS.

WHEREAS, the City of Santa Fe, New Mexico (the "City") is a legally created, established, organized and existing incorporated city under the constitution and laws of the State of New Mexico; and

WHEREAS, pursuant to Section 7-1-6.4 NMSA 1978 the City receives monthly State-Shared Gross Receipts Tax Revenues from the New Mexico Department of Taxation and Revenue equal to one and two hundred and twenty-five thousandths percent (1.225%) of the gross receipts of persons engaging in business within the City, as determined and adjusted under the Gross Receipts and Compensating Tax Act, Chapter 7, Article 9 NMSA 1978; and

WHEREAS, pursuant to the Municipal Local Option Gross Receipts Taxes Act, Sections 7-19D-1 through 7-19D-16, NMSA 1978, and the One-Half Percent Municipal Gross Receipts Tax Ordinance, the City has imposed a municipal gross receipts tax on persons engaging in business in the City in the amount of one-half of one percent (0.50%) and receives monthly One-Half Percent Municipal Gross Receipts Tax Revenues from the New Mexico Department of Taxation and Revenue equal to one-half of one percent (0.50%) of the gross receipts of persons engaging in business within the City, as determined and adjusted under the Municipal Local Option Gross Receipts Taxes Act. The One-Half Percent Municipal Gross Receipts Tax was imposed by City Ordinance No. 1981-45 and is dedicated for capital improvements to City facilities and street and road construction and reconstruction as authorized by the Municipal Gross Receipts Tax Act. Other increments of Municipal Gross Receipts Tax are imposed by the City which are not pledged for payment of Parity Obligations or Subordinate Obligations; and

WHEREAS, pursuant to Section 7-19D-11 NMSA 1978 and City Ordinance No. 1993-21, the City has imposed an infrastructure gross receipts tax on persons engaging in business in the City and receives monthly distributions of Infrastructure Gross Receipts Tax Revenues from the New Mexico Department of Taxation and Revenue equal to 1/16th of one percent (0.0625%) of the gross receipts of persons engaging in business within the City, as determined and adjusted under the Municipal Local Option Gross Receipts Taxes Act and the Tax Administration Act. The Infrastructure Gross Receipts Tax is dedicated for purposes authorized by Section 7-19D-11 NMSA 1978; and

WHEREAS, pursuant to Section 7-19D-10 NMSA 1978, and City Ordinance No. 1993-20, the City has imposed an environmental services gross receipts tax on persons engaging in business in the City and receives monthly distributions of Environmental Services Gross Receipts Tax Revenues from the New Mexico Department of Taxation and Revenue equal to 1/16th of one percent (0.0625%) of the gross receipts of persons engaging in business within the City, as determined and adjusted under the Municipal Local Option Gross Receipts Taxes Act and the Tax Administration Act. The Environmental Services Gross Receipts Tax is dedicated for purposes authorized by Section 7-19D-10 NMSA 1978; and

WHEREAS, pursuant to Ordinance No. 2004-28, passed and adopted by the Governing Body on August 11, 2004, the City has entered into a Taxable Loan Agreement dated September 24, 2004 with the New Mexico Finance Authority in an aggregate principal amount of $579,025 (herein, the "2004 Railyard Project Finance Authority Taxable Loan") payable from and constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues (of which [$401,798] of such 2004 Railyard Project Finance Authority Taxable Loan remains unpaid); and

WHEREAS, pursuant to Ordinance No. 2005-30, passed and adopted by the Governing Body on July 27, 2005, the City has issued its "City of Santa Fe Municipal Recreation Complex/Subordinate Lien Gross Receipts Tax Refunding Bonds, Series 2005" (herein the "Series 2005 Bonds") in an aggregate principal amount of $15,315,000 payable from and constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues (of which $7,345,000 of such Series 2005 Bonds remain outstanding); and

WHEREAS, pursuant to Ordinance No. 2006-04, passed and adopted by the Governing Body on January 11, 2006, the City has issued its "City of Santa Fe Gross Receipts Tax Improvement Revenue Bonds, Series 2006" (herein the "Series 2006 Bonds") in an aggregate principal amount of $17,710,000, payable from and constituting a first (but not an exclusive first) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues, and the Infrastructure Gross Receipts Tax Revenues (of which $2,045,000 of such Series 2006 Bonds remain outstanding); and

WHEREAS, pursuant to Ordinance No. 2006-27, passed and adopted by the Governing Body on June 26, 2006, the City has issued its "City of Santa Fe Gross Receipts Tax Refunding Revenue Bonds, Series 2006B" (herein the "Series 2006B Bonds") in an aggregate principal amount of $15,160,000, payable from and constituting a first (but not an exclusive first) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues, the Infrastructure Gross Receipts Tax Revenues and the Environmental Services Gross Receipts Tax (of which $8,495,000 of such Series 2006B Bonds remain outstanding); and

WHEREAS, pursuant to Ordinance No. 2006-51, passed and adopted by the Governing Body on August 28, 2006, the City has issued its "City of Santa Fe Subordinate Lien Gross Receipts Tax/Wastewater System Improvement Revenue Bonds, Series 2006C" (herein the "Series 2006C Bonds") in an aggregate principal amount of $9,780,000, payable from and constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues, the Infrastructure Gross Receipts Tax Revenues and the Environmental Services Gross Receipts Tax Revenues (of which $4,765,000 of such Series 2006C Bonds remain outstanding); and

WHEREAS, pursuant to Ordinance No. 2006-54, passed and adopted by the Governing Body on September 13, 2006, the City has entered into a Taxable Loan Agreement dated October 20, 2006 with the New Mexico Finance Authority in an aggregate principal amount of $892,227 (herein the "2006 Railyard Project Finance Authority Taxable Loan") payable from and constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues (of which [$712,409] of such 2006 Railyard Project Finance Authority Taxable Loan remains unpaid); and

WHEREAS, pursuant to Ordinance No. 2008-11, passed and adopted by the Governing Body on February 27, 2008, the City has issued its "City of Santa Fe Gross Receipts Tax Revenue Bonds, Series 2008" (herein the "Series 2008 Bonds") in an aggregate principal amount of $28,705,000, payable from and constituting a first (but not an exclusive first) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues (of which $21,215,000 of such Series 2008 Bonds remain outstanding); and

WHEREAS, pursuant to Ordinance No. 2008-35, passed and adopted by the Governing

Body on June 25, 2008, the City has entered into a Loan Agreement dated August 1, 2008, with the New Mexico Finance Authority in an aggregate principal amount of $3,610,000 (herein the "2008 Land Acquisition Finance Authority Loan") payable from and constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues (of which [$2,817,334] of such 2008 Land Acquisition Finance Authority Loan remains unpaid); and

WHEREAS, pursuant to Ordinance No. 2009-35, passed and adopted by the Governing Body on July 29, 2009, Resolution No. 2009-85 adopted on August 26, 2009 and Resolution 2009-94 adopted on September 30, 2009, the City has entered into a Loan Agreement dated September 14, 2009, with the New Mexico Finance Authority in an aggregate principal amount of $29,615,000 (herein the "2009 College Acquisition Finance Authority Loan") payable from and constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues (of which [$27,060,000] of such 2009 College Acquisition Finance Authority Loan remains unpaid); and

WHEREAS, pursuant to Ordinance No. 2010-27, passed and adopted by the Governing Body on November 10, 2010, the City issued its "City of Santa Fe Gross Receipts Tax Refunding Revenue Bonds, Series 2010A" (herein the "Series 2010A Bonds") in an aggregate principal amount of $15,005,000 payable from and constituting a first (but not an exclusive first) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues, the Infrastructure Gross Receipts Tax Revenues (of which $3,945,000 of such Series 2010A Bonds remain outstanding); and

WHEREAS, pursuant to Ordinance No. 2010-26, passed and adopted by the Governing Body on November 10, 2010, the City issued its "City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2010B (herein the "Series 2010B Bonds") in an aggregate principal amount of $10,490,000 payable from and constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues, and the Infrastructure Gross Receipts Tax Revenues (of which $8,535,000 of such Series 2010B Bonds remains outstanding); and

WHEREAS, pursuant to Ordinance No. 2012-7, passed and adopted by the Governing Body on January 25, 2012, the City issued its "City of Santa Fe, New Mexico Gross Receipts Tax Improvement and Refunding Revenue Bonds, Series 2012A (herein the "Series 2012A Bonds") in an aggregate principal amount of $32,725,000 (of which $31,530,000 of such Series 2012A Bonds remain outstanding); and

WHEREAS, pursuant to Ordinance No. 2012-6, passed and adopted by the Governing Body on January 25, 2012, the City issued its "City of Santa Fe, New Mexico Gross Receipts Tax (Subordinate Lien)/Wastewater Systems Refunding Revenue Bonds, Series 2012B ("herein the "Series 2012B Bonds") in an aggregate principal amount of $14,280,000 payable from and constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues, the Environmental Services Gross Receipts Tax Revenues, and the Infrastructure Gross Receipts Tax Revenues and a first (but not an exclusive first) lien on the Waste Water System Revenues (of which $10,605,000 of such Series 2012B Bonds remain outstanding); and

WHEREAS, pursuant to Ordinance No. 2012-35, passed and adopted by the Governing Body on November 14, 2012, the City issued its "City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Improvement Revenue Bonds, Series 2012C (herein the "Series 2012C Bonds") in an aggregate principal amount of $4,685,000 payable from and constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues, and the Infrastructure Gross Receipts Tax Revenues (of which $4,430,000 of such Series 2012C Bonds remain outstanding); and

WHEREAS, pursuant to Ordinance No. 2013-18, passed and adopted by the Governing Body on June 18, 2013, the City issued its "City of Santa Fe, New Mexico Gross Receipts Tax Refunding Revenue Bonds, Series 2013A ("herein the "Series 2013A Bonds") in an aggregate principal amount of $10,880,000 (of which $10,735,000 of such Series 2013A Bonds remain outstanding); and

WHEREAS, pursuant to Ordinance No. 2013-19, passed and adopted by the Governing Body on May 8, 2013, the City issued its "City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2013B (herein the "Series 2013B Bonds") in an aggregate principal amount of $13,780,000 payable from and constituting a subordinate (but not an exclusive subordinate) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues, and the Infrastructure Gross Receipts Tax Revenues (of which $13,395,000 of such Series 2013B Bonds remain outstanding); and

WHEREAS, pursuant to Ordinance No. 2014-27, passed and adopted by the Governing Body on August 27, 2014, the City issued its "City of Santa Fe, New Mexico Gross Receipts Tax Improvement Revenue Bonds, Series 2014 (herein the "Series 2014 Bonds") in an aggregate principal amount of $15,460,000 payable from and constituting a first (but not an exclusive first) lien on the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues (of which $15,460,000 of such Series 2014 Bonds remain outstanding); and

WHEREAS, except for the outstanding 2004 Railyard Project Finance Authority Taxable Loan, the Series 2005 Bonds, the Series 2006 Bonds, the Series 2006B Bonds, the Series 2006C Bonds, the 2006 Railyard Project Finance Authority Taxable Loan, the Series 2008 Bonds, the 2008 Land Acquisition Finance Authority Loan, the 2009 College Acquisition Finance Authority Loan, the Series 2010A Bonds, the Series 2010B Bonds, the Series 2012A Bonds, the Series 2012B Bonds, the Series 2012C Bonds, the Series 2013A Bonds, the Series 2013B Bonds, and the Series 2014 Bonds there are no obligations presently outstanding to which the State-Shared Gross Receipts Tax Revenues, the One-Half Percent Municipal Gross Receipts Tax Revenues, the Infrastructure Gross Receipts Tax Revenues or the Environmental Services Gross Receipts Tax Revenues have been pledged by the City; and

WHEREAS, the Governing Body hereby determines that issuance of the (i) “City of Santa Fe, New Mexico Senior Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016” (the “Senior Lien 2016 Bonds”), and (ii) "City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016" (the "Subordinate Lien 2016 Bonds" and collectively with the Senior Lien 2016 Bonds, the "2016 Bonds") to refund, pay and defease the City’s outstanding (i) Gross Receipts Tax Refunding Revenue Bonds, Series 2006B, (ii) Gross Receipts Tax Revenue Bonds, Series 2008, (iii) Municipal Recreation Complex/Subordinate Lien Gross Receipts Tax Refunding Bonds, Series 2005, (iv) Subordinate Lien Gross Receipts Tax/Wastewater System Improvement Revenue Bonds, Series 2006C, and (v) 2008 Land Acquisition Finance Authority Loan as authorized by law and the City’s home rule charter (collectively, the “Refunding”), will provide for the public health, peace and safety of the City and its citizens and will reduce debt service costs for the City; and

WHEREAS, the Senior Lien 2016 Bonds shall be issued pursuant to Sections 3-31-1 through 3-31-12, NMSA 1978, and with a first (but not an exclusive first) lien on the Pledged Revenues; and

WHEREAS, the Subordinate Lien 2016 Bonds shall be issued pursuant to Sections 3-31-1 through 3-31-12, NMSA 1978, and with a subordinate (but not an exclusive subordinate) lien on the Pledged Revenues; and

WHEREAS, the Governing Body determines that it is in the best interest of the City to sell the Bonds to the Purchaser at a price not less than the Bonds' Sale Price, contingent upon approval by the Governing Body of the final terms of the Bonds in the Sale Resolution and upon approval by the Governing Body of the terms of a Bond Purchase Agreement, all within the parameters set forth in the Bond Legislation; and

WHEREAS, Section 3-31-6(C) NMSA 1978, provides:

> "C. Any law which authorizes the pledge of any or all of the pledged revenues to the payment of any revenue bonds issued pursuant to Sections 3-31-1 through 3-31-12, NMSA 1978, or which affects the pledged revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor;" and

WHEREAS, the Exchange Act permits a municipality, including the City, that has issued or proposes to issue bonds to enter into an agreement for an exchange of interest rates as provided therein; and

WHEREAS, in connection with the Bonds, Parity Obligations or Subordinate which may be issued in the future by the City, the Governing Body may determine to enter into a Qualified Exchange Agreement for all or a portion of the Bonds, Parity Obligations or Subordinate Obligations which may provide for the payment by the City of a Variable Exchange Rate or a Fixed Exchange Rate and the payment by the Qualified Counterparty of a Fixed Exchange Rate or Variable Exchange Rate; and

WHEREAS, all required authorization, consents or approvals of any State, governmental body, agency or authority in connection with the authorization, execution and delivery of the Bonds: (i) which are required to have been obtained by the date of the adoption of the Bond Legislation have been obtained, and (ii) which will be required to be obtained prior to any Closing Date, will have been obtained by that date.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO:

Section 1. **Definitions.** The terms in this section are defined for all purposes of this ordinance and of any ordinance amendatory hereof or supplemental hereto, or relating hereto, and of any instrument or document appertaining hereto, except where the context by clear implication herein otherwise requires, shall have the following meanings:

"2004 Railyard Project Finance Authority Taxable Loan" means the Loan with the New Mexico Finance Authority, dated September 24, 2004 and authorized by Ordinance No. 2004-28.

"2006 Railyard Project Finance Authority Taxable Loan" means the Loan with the New Mexico Finance Authority, dated October 20, 2006 and authorized by Ordinance No. 2006-54.

"2008 Land Acquisition Finance Authority Loan" means the Loan with the New Mexico Finance Authority, dated August 1, 2008 and authorized by Ordinance No. 2008-35.

"2009 College Acquisition Finance Authority Loan" means the Loan with the New Mexico Finance Authority, dated September 14, 2009 and authorized by Ordinance No. 2009-35, Resolution 2009-85 and Resolution No. 2009-94.

"Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12 NMSA 1978, as amended, and enactments of the Governing Body relating to the issuance of the Bonds, including this ordinance.

"Authorized Officer" means the following officers of the City: Mayor, City Manager, Finance Director, or other officer of the City when designated by a certificate signed by the Mayor of the City from time to time, a certified copy of which shall be delivered to the Paying Agent and the Registrar.

"Bonds," or "Series 2016 Bonds" means collectively the (i) "City of Santa Fe, New Mexico Senior Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016", and (ii) "City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016" which are authorized by the Bond Legislation.

"Bond Counsel" means an attorney or firm of attorneys nationally recognized for expertise in the area of municipal bonds and the exemption of interest on municipal bonds from federal income taxation.

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

"Bond Purchase Agreement" means the bond purchase agreement between the City and the Purchaser.

"Business Day" means any day other than (i) a Saturday or Sunday, (ii) any day on which the following offices are authorized or required to remain closed: offices of the City and of banks located in the cities in which the principal offices of the Paying Agent, Registrar, and Escrow Bank are located or (iii) a day on which the New York Stock Exchange is closed.

"City," "Municipal," or "Municipality" means the municipal corporation and body corporate and politic known as the City of Santa Fe, Santa Fe County, New Mexico.

"Continuing Disclosure Undertaking" means the continuing disclosure undertaking with respect to the Bonds to be executed on the day of issuance and delivery of the Bonds to the Purchaser.

"Costs of Issuance" means all costs relating to issuance of the Bonds, including, without limitation, costs of advertising and publication, costs of preparing the Bonds, fees and expenses of the financial advisor, bond counsel, the Paying Agent, the Registrar, the Escrow Bank, rating fees and other reasonable and necessary fees and costs, including applicable gross receipts taxes, related to the issuance of the Bonds.

"Credit Facility" means a letter of credit, standby bond purchase agreement, line of credit, bond insurance policy or reserve account insurance policy, guaranty or similar agreement provided by a bank, insurer or other provider of a Credit Facility rated, at the time the Credit Facility is provided, "A" or better by Fitch and S&P (if such rating agencies are then rating the Bonds), including any substitute therefor, to provide support to pay the purchase price of, or the payment of the principal of and interest on, Obligations.

"Cross-over Refunding Bonds" means bonds or obligations issued for the purpose of refunding Obligations if the proceeds thereof are irrevocably deposited in escrow to secure repayment on an applicable redemption date or maturity date of the principal of and redemption premium on the related Obligations being refunded and the earnings on such escrow are required to be used to pay interest on the Cross-over Refunding Bonds.

"Debt Service Requirements" for any period means the sum of: (i) the amount required to pay the interest, or to make reimbursements for payments of interest, becoming due on the applicable Obligations during such period; plus (ii) the amount required to pay the principal or accreted value, or to make reimbursements for the payment of principal or accreted value, becoming due on the applicable Obligations during that period, whether at maturity, an accretion term date or upon mandatory sinking fund redemption dates, plus (iii) any net periodic payments on a notional amount required to be made by the City pursuant to a Qualified Exchange Agreement minus (iv) any net periodic payments on a notional amount to be received by the City pursuant to a Qualified Exchange Agreement.

(a) No payments required on the applicable Obligations shall be included in any computation of Debt Service Requirements for any computation period prior to the maturity or otherwise certain due dates thereof which may occur because of the exercise of an option by the City, or which may otherwise become due by reason of any other circumstance or contingency, including acceleration, which constitute other than regularly scheduled payments of principal, accreted value, interest or other regularly scheduled payments on the applicable Obligations.

(b) Debt Service Requirements required to be made pursuant to a Qualified Exchange Agreement shall be based upon the actual amount required to be paid by the City, if any, to the Qualified Counterparty. In determining that amount, any payments required to be made by either party to the Qualified Exchange Agreement at a Variable Exchange Rate shall be computed, in determining the obligation of the City under the Qualified Exchange Agreement, using the procedures set forth in the applicable sections of this ordinance.

(c) The computation of interest for the purposes of this definition shall be made without considering the interest rate payable pursuant to a Credit Facility, unless, at the time of computation of Debt Service Requirements, payments on Obligations are owed to, or Obligations are owned or held by, the provider of a Credit Facility pursuant to the provisions of that Credit Facility.

(d) The accreted value of capital appreciation bonds shall be included in the calculation of interest and principal only for the applicable year during which the accreted value becomes payable.

(e) In any computation of Debt Service Requirements relating to the issuance of additional Parity Obligations:

(1) There shall be deducted from that computation (i) amounts on deposit in an escrow account related to an issue of Cross-over Refunding Bonds and (ii) proceeds of a series of Obligations deposited to the credit of an account for the payment of capitalized interest on Obligations included as part of the computation during the applicable period.

(2) There may be made the adjustment to the Debt Service Requirements applicable to Bond Anticipation Notes described in Paragraph E of Section 21 of this ordinance.

(f) Except as provided in Paragraph F of Section 21, the purchase or tender price of Put Obligations resulting from the optional or mandatory tender or presentment for purchase of those Put Obligations shall not be included in any computation of Debt Service Requirements.

"<u>Depository</u>" means The Depository Trust Company, New York, New York, or such other securities depository as may be designated by an officer of the City.

"<u>Environmental Services Gross Receipts Tax</u>" means the environmental services gross receipts tax imposed pursuant to Section 7-19D-10 NMSA 1978 by the Environmental Services Gross Receipts Tax Ordinance on persons engaging in business in the City in the amount of 1/16th of one percent (0.0625%) of the gross receipts of such persons.

"<u>Environmental Services Gross Receipts Tax Ordinance</u>" means the City Ordinance No. 1993-20 imposing the Environmental Services Gross Receipts Tax, as amended.

"Environmental Services Gross Receipts Tax Revenue Fund" means the "City of Santa Fe, New Mexico Environmental Services Gross Receipts Tax Revenue Fund," maintained by the City and continued Section 17 of this ordinance, into which the City shall deposit the Environmental Services Gross Receipts Tax Revenues.

"Environmental Services Gross Receipts Tax Revenues" means the environmental services gross receipts tax revenues received by the City pursuant to Section 7-19D-10 NMSA 1978 and the Environmental Services Gross Receipt Tax Ordinance.

"Escrow Agent" means a commercial bank and a member of the Federal Deposit Insurance Corporation having full and complete trust power, or its duly authorized successor, to be named in the Sale Resolution.

"Escrow Agreement" means the escrow agreement relating to the Refunding among the City and the Escrow Agent.

"Escrow Fund" means the fund created in Section 17 of this ordinance.

"Exchange Act" means Section 6-18-8.1 NMSA 1978, as amended and supplemented.

"Exchange Termination Payment" means the net amount payable pursuant to a Qualified Exchange Agreement by the City or a Qualified Counterparty to compensate the other party for any losses and costs that such other party may incur as a result of the early termination of the obligations, in whole or in part, of the parties under such Qualified Exchange Agreement.

"Federal Securities" means direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

"Fiscal Year" for the purposes of this ordinance means the twelve months commencing on the first day of July of any calendar year and ending on the last day of June of the next calendar year; but it may mean any other 12-month period which the City hereafter may establish.

"Fitch" means Fitch Ratings Group, its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

"Fixed Exchange Rate" means a fixed rate of interest payable by the City or a Qualified Counterparty pursuant to a Qualified Exchange Agreement.

"Governing Body" means the members of the governing body designated as councilors who, together with the mayor, are the governing body of the City.

"Government Obligations" means direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America or certificates or receipts established by the United States Government or its agencies or instrumentalities representing direct ownership of future interests or principal payments on direct obligations of, or obligations fully guaranteed by, the United States of America or any of its agencies or instrumentalities the obligations of which are backed by the full faith and credit of the United States.

"Historic Test Period" means any twelve consecutive calendar months designated by an Authorized Officer from time to time out of the eighteen-calendar months next preceding the date of adoption of the City ordinance authorizing the issuance of Parity Obligations without regard to any resolution or ordinance supplementing or amending the authorizing ordinance.

"Independent Accountant" means (A) an accountant employed by the State of New Mexico and under supervision of the State Auditor of the State of New Mexico, or (B) any registered or certified public accountant or firm of such accountants duly licensed to practice and practicing as such under the laws of the State of New Mexico, appointed and paid by the City, who (1) is, in fact, independent and not under the domination of the City, (2) does not have any substantial interest, direct or indirect, with the City, and (3) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City.

"Infrastructure Gross Receipts Tax" means the infrastructure gross receipts tax imposed pursuant to Section 7-19D-11 NMSA 1978 by the Infrastructure Gross Receipts Tax Ordinance on persons engaged in business in the City in an amount of 1/16th of one percent (0.0625%) of the gross receipts of such persons.

"Infrastructure Gross Receipts Tax Ordinance" means City Ordinance No. 1993-21 imposing the Infrastructure Gross Receipts Tax, as amended.

"Infrastructure Gross Receipts Tax Revenue Fund" means the "City of Santa Fe Infrastructure Gross Receipts Tax Revenue Fund" maintained by the City and continued in Section 17 of this ordinance, into which the City shall deposit the Infrastructure Gross Receipts Tax Revenues.

"Infrastructure Gross Receipts Tax Revenues" means the infrastructure gross receipts tax revenues received by the City pursuant to Section 7-19D-11 NMSA 1978 and the Infrastructure Gross Receipts Tax Ordinance.

"Insured Bank" means any federally or state-chartered savings and loan association or federally or state-chartered commercial bank, the deposits of which are insured by the Federal Deposit Insurance Corporation and which has, or is the lead bank of a parent holding company which has (i) unsecured, uninsured and unguaranteed obligations which are rated AA or better by Fitch and S&P or (ii) combined capital, surplus and undivided profits of not less than $10,000,000.

"Moody's" means Moody's Investors Service, its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

"Obligations" means bonds, notes or any other instrument which evidences a borrowing or other obligation of the City, including Qualified Exchange Agreements, secured by Pledged Revenues, issued or incurred for any purpose permitted by the Act or the Exchange Act, as amended from time to time.

"One-Half Percent Municipal Gross Receipts Tax Ordinance" means the City of Santa Fe Ordinance No. 1981-45 imposing a one-half of one percent municipal gross receipts tax.

"One-Half Percent Municipal Gross Receipts Tax Revenue Fund" means the "City of Santa Fe, New Mexico One-Half Percent Municipal Gross Receipts Tax Revenue Fund" maintained by the

City and continued in Section 17 of this ordinance, into which the City shall deposit the One-Half Percent Municipal Gross Receipts Tax Revenues.

"One-Half Percent Municipal Gross Receipts Tax Revenues" means those revenues received by the City pursuant to the Municipal Local Option Gross Receipts Taxes Act, Sections 7-19D-1 through 7-19D-12 NMSA 1978, and the One-Half Percent Municipal Gross Receipts Tax Ordinance.

"Ordinance" means this City Ordinance No. __________, as amended or supplemented from time to time.

"Parity Obligations" means the Senior Lien 2016 Bonds, the Series 2014 Bonds, the Series 2013A Bonds, the Series 2012A Bonds, the Series 2010A Bonds, the Series 2008 Bonds, the Series 2006B Bonds, and the Series 2006 Bonds, scheduled periodic payments (but not Exchange Termination Payments) required to be made by the City pursuant to a Qualified Exchange Agreement, 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 BOKF, N.A., as agent for the City for the payment of the Bonds, the interest thereon, and any successor.

"Permitted Investments" means any of the following which at the time of such investment are legal investments for the City pursuant to adopted City investment policies and the laws of the State:

(a) Government Obligations;

(b) 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, including, but not limited to: 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;

(c) 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;

(d) Bank time deposits evidenced by certificates of deposit and bankers acceptances issued by an Insured Bank, provided that such time deposits and bankers' acceptances (1) do not exceed at any one time in the aggregate five percent (5%) of the combined total of the capital, surplus and undivided profits of such Insured Bank, or (2) are secured by obligations described in paragraphs (a), (b), (c) and (h) of this definition which obligations at all times have a market value (exclusive of accrued interest) at least equal to 102% of such time deposits so secured;

(e) Obligations, other than specified private activity bonds (as defined in Section 57(a)(5)(C) of the Internal Revenue Code, as amended (the "Tax Code")), the interest on which is excluded from gross income of the recipient for federal income tax purposes and any other instrument which does not constitute "investment property" under Section 148 of the Tax Code (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), as amended from time to time, which is rated in the highest major Rating Category by S&P and Fitch (if such rating agency is then rating the Bonds);

(f) Money market instruments and other securities of commercial banks, broker-dealers or recognized financial institutions, which securities or instruments are rated in the highest

Rating Category by S&P and Fitch, (if such rating agency is then rating the Bonds), 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 and Fitch (if such rating agency is then rating the Bonds) 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 or 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 (a), (b), (c) and (h) of this definition;

(g) Stripped Securities: (1) U.S. Treasury STRIPS and (2) REFCORP STRIPS (stripped by Federal Reserve Bank of New York);

(h) 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 (a), (b), (c) and (h) of this definition, which collateral is held by the City, or for the benefit of the City, 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; and

(i) Such other investments as are now or may be hereafter authorized as legal investments for the City by the legislature of the State under Section 6-10-10, NMSA 1978, or a similar statutory provision applicable to the City, provided that such investment is rated, at the time of purchase, "A" or better by Fitch and "A" or better by S&P (if such rating agency is then rating the Bonds).

"<u>Pledged Gross Receipts Tax Revenues</u>" or "<u>Pledged Revenues</u>" means (1) the State-Shared Gross Receipts Tax Revenues; (2) the One-Half Percent Municipal Gross Receipts Tax Revenues; (3) the Infrastructure Gross Receipts Tax Revenues; (4) the portion of the gross receipts tax distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, which represents the amount of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues, and Infrastructure Gross Receipts Tax Revenues that would have been remitted to the City but for the deductions (effective January 1, 2005) provided by Section 7-9-92 and 7-9-93 NMSA 1978 and any similar distributions made to the City in lieu of State-Shared Gross Receipts Tax Revenues, One-Half Percent Municipal Gross Receipts Tax Revenues and Infrastructure Gross Receipts Tax Revenues pursuant to law; and (5) any other gross receipts tax revenues received by the City, whether from distribution by the State or pursuant to gross receipts taxes imposed by the City, and hereafter (i.e. after the adoption of this ordinance) pledged to the payment of the Bonds by affirmative act of the Governing Body.

"Preliminary Official Statement" and "Official Statement" mean the disclosure documents utilized by the Underwriter in connection with the offer and sale of the Bonds to investors.

"Purchaser" means the purchasers, or their successors and assigns, as identified and approved in the Sale Resolution.

"Put Obligations" means any Obligations which have put or similar features requiring the City to purchase such Obligations upon notice from the owners thereof.

"Qualified Counterparty" means, with respect to a Qualified Exchange Agreement, any party whose senior long term debt obligations, or whose obligations under a Qualified Exchange Agreement are guaranteed by a party whose senior long term debt obligations, are rated (at the time of execution of the Qualified Exchange Agreement) in one of the top two Rating Categories by Fitch and S&P.

"Qualified Exchange Agreement" means any financial arrangement between the City and a Qualified Counterparty which satisfies the requirements of the Exchange Act at the time the agreement is entered into.

"Rating Category" means a generic securities rating category, without regard, in the case of a long-term rating category, to any refinement or gradation of such long-term rating category by a numerical modifier or otherwise.

"Refunded Bonds" means collectively, the Series 2005 Bonds, the Series 2006B Bonds, the Series 2006C Bonds, the Series 2008 Bonds and the 2008 Land Acquisition Finance Authority Loan.

"Refunding" means refunding, paying and defeasing the Refunded Bonds.

"Registrar" means BOKF, N.A. dba Bank of Albuquerque, as registrar and transfer agent for the Bonds, and any successor.

"Regular Record Date" means the 15th day of the calendar month (whether or not a business day) preceding each regularly scheduled interest payment date on the Bonds.

"Related Documents" means the Bond Purchase Agreement, the Continuing Disclosure Undertaking, the Escrow Agreement, and any other document or agreement containing an obligation of the City as may be required in connection with the issuance of the Bonds.

"S&P" means Standard & Poor's Ratings Service, its successors and their assigns, and, if such entity is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

"Sale Resolution" means a resolution, and all amendments thereto of the Governing Body setting and approving specifications for the Bonds within the parameters set in this Ordinance, and relating to the issuance, sale and administration thereof.

"Senior Lien 2016 Bond Fund" means the "City of Santa Fe Senior Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016, Bond Service Fund," established in Section 17 of this ordinance.

"Senior Lien 2016 Bonds" means "City of Santa Fe, New Mexico Senior Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016."

"Series 2005 Bonds" or "2005 Bonds" means the "City of Santa Fe Municipal Recreation Complex/Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2005" authorized by Ordinance No. 2005-30.

"Series 2006 Bonds" or "2006 Bonds" means the "City of Santa Fe Gross Receipts Tax Improvement Revenue Bonds, Series 2006" authorized by Ordinance No. 2006-04.

"Series 2006B Bonds" or "2006B Bonds" means the "City of Santa Fe Gross Receipts Tax Refunding Revenue Bonds, Series 2006B" authorized by Ordinance No. 2006-27.

"Series 2006C Bonds" or "2006C Bonds" means the "City of Santa Fe Subordinate Lien Gross Receipts Tax/Wastewater System Improvement Revenue Bonds, Series 2006C" authorized by Ordinance No. 2006-51.

"Series 2008 Bonds" or "2008 Bonds" means the "City of Santa Fe Gross Receipts Tax Revenue Bonds, Series 2008" authorized by Ordinance No. 2008-11.

"Series 2010A Bonds" or "2010A Bonds" means the City of Santa Fe Gross Receipts Tax Refunding Revenue Bonds, Series 2010A" authorized by Ordinance No. 2010-27.

"Series 2010B Bonds" or "2010B Bonds" means the "City of Santa Fe Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2010B" authorized by Ordinance No. 2010-27.

"Series 2012A Bonds" or "2012A Bonds" means the "City of Santa Fe Gross Receipts Tax Refunding Revenue Bonds, Series 2012A" authorized by Ordinance No. 2012-7.

"Series 2012B Bonds" or "2012B Bonds" means the "City of Santa Fe Gross Receipts Tax (Subordinate Lien)/Wastewater System Refunding Revenue Bonds, Series 2012B" authorized by Ordinance No. 2012-6.

"Series 2012C Bonds" or "2012C Bonds" means the "City of Santa Fe Gross Receipts Tax (Subordinate Lien)/Gross Receipts Tax Improvement Revenue Bonds, Series 2012C" authorized by Ordinance No. 2012-35.

"Series 2013A Bonds" or "2013A Bonds" means the "City of Santa Fe Gross Receipts Tax Refunding Revenue Bonds, Series 2013A" authorized by Ordinance No. 2013-18.

"Series 2013B Bonds" or "2013B Bonds" means the "City of Santa Fe Gross Receipts Tax

(Subordinate Lien)/ Gross Receipts Tax Refunding Revenue Bonds, Series 2013B" authorized by Ordinance No. 2013-19.

"Series 2014 Bonds" or "2014 Bonds" means the "City of Santa Fe Gross Receipts Tax Improvement Revenue Bonds, Series 2014" authorized by Ordinance No. 2014-27.

"Series Date" means the date of issuance and delivery of the Bonds to the Underwriter.

"Special Record Date" means a special date fixed to determine the names and addresses of registered owners of the Bonds for purposes of paying interest on a special interest payment date for the payment of defaulted interest thereon, all as further provided in Section 5B hereof.

"State-Shared Gross Receipts Tax Revenues" means the revenues distributed to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Sections 7-1-6 and 7-1-6.4, NMSA 1978, at the rate authorized (currently 1.225% of the gross receipts of persons doing business within the City) from the proceeds of a state-wide gross receipts tax imposed pursuant to Chapter 7, Article 9, NMSA 1978.

"State-Shared Gross Receipts Tax Revenue Fund" means the "City of Santa Fe, New Mexico State-Shared Gross Receipts Tax Revenue Fund" maintained by the City and continued in Section 17 of this ordinance, into which the City shall deposit the State-Shared Gross Receipts Tax Revenues.

"Subordinate Lien 2016 Bond Fund" means the "City of Santa Fe Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016, Bond Service Fund," established in Section 17 of this ordinance.

"Subordinate Lien 2016 Bonds" means the "City of Santa Fe, New Mexico Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016."

"Subordinate Obligations" means the Series 2013B Bonds, the Series 2012B Bonds, the Series 2012C Bonds, the Series 2010B Bonds, the 2009 College Acquisition Finance Authority Loan, the 2008 Land Acquisition Finance Authority Loan, the Series 2006C Bonds, the 2006 Railyard Project Finance Authority Taxable Loan, the Series 2005 Bonds, the 2004 Railyard Project Finance

Authority Taxable Loan, any Exchange Termination Payments, and any other Obligations hereafter issued or incurred payable from the Pledged Revenues and issued with a lien on the Pledged Revenues junior and inferior to the lien thereon of the Bonds.

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

"Variable Exchange Rate" means a Variable Interest Rate payable by the City or a Qualified Counterparty pursuant to a Qualified Exchange Agreement.

"Variable Interest Rate" means an interest rate which varies or fluctuates from time to time.

Any provision of this ordinance regarding a Qualified Counterparty shall be deemed to be of no effect if no Qualified Exchange Agreement is in effect or if a Qualified Counterparty is in default in its obligations under a Qualified Exchange Agreement and no amount is due and owing under a Qualified Exchange Agreement.

Section 2. **Ratification.** All action heretofore taken (not inconsistent with the express provisions of this ordinance) by the Governing Body and officers of the City directed toward the Refunding, and toward the authorization, sale and issuance of the Bonds to the Purchaser herein authorized be, and the same hereby is ratified, approved and confirmed.

Section 3. **Authorization of the Refunding.** The Refunding is hereby authorized at a total cost not to exceed the proceeds of the Bonds, excluding any such cost defrayed or to be defrayed by any source other than proceeds of the Bonds and the necessity thereof is hereby so declared.

Section 4. **Authorization of Bonds.** For the purpose of protecting the public health, conserving the property and advancing the general welfare of the citizens of the City, and for the purpose of defraying the cost of the Refunding, it is hereby declared that the interest and necessity of the City and the inhabitants of the City require the issuance by the City of its fully registered (i.e., registered as to payment of both principal and interest) revenue bonds without coupons to be designated (i) "City of Santa Fe Senior Lien Gross Receipts Tax Refunding Bonds, Series 2016," in an aggregate principal amount not to exceed $37,000,000, and (ii) "City of Santa Fe Subordinate Lien Gross Receipts Tax Refunding Bonds, Series 2016," in an aggregate principal amount not to exceed $16,000,000. The Bonds shall be payable and collectible, both as to principal and interest, solely from the Pledged Revenues. The Bonds shall be sold by a private sale to the Purchaser pursuant to the Bond Purchase Agreement at the price established in the Sale Resolution and Bond Purchase Agreement.

Section 5. Bond Details.

A. Basic Details. The Senior Lien 2016 Bonds shall be issued in an aggregate principal amount not to exceed $33,000,000 and the Subordinate lien 2016 Bonds in an aggregate principal amount not to exceed $16,000,000, both for the Refunding. The Bonds shall be dated the date of their issuance and delivery to the Purchaser (herein "Series Date"), and are issuable in the denomination of $5,000 each or any integral multiple thereof (provided that no Bond may be in a denomination which exceeds the principal coming due on any maturity date and no individual Bond will be issued for more than one maturity). The Bonds shall be numbered consecutively from 1 upwards.

Each series of Bonds shall be dated the date stated in the Sale Resolution, issued in Authorized Denominations and shall bear interest on the basis of a 360-day year and twelve 30-day months 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 their date until maturity at the rate set forth in the Sale Resolution, payable semiannually on June 1 and December 1 of each year beginning on the date set forth in the Sale Resolution and shall mature on the date or dates stated in the Sale Resolution. The actual principal amount of each maturity of Bonds shall be stated in the Sale Resolution. Each series of Bonds shall be sold to the Purchaser pursuant to a Bond Purchase Agreement in a negotiated sale.

B. Payment-Regular Record Date. The principal of any Bond shall be payable to the registered owner thereof as shown on the registration books kept by the Registrar which is hereby appointed as registrar (and transfer agent) for the Bonds, upon maturity or prior redemption thereof and upon presentation and surrender at the Paying Agent which also is hereby appointed as the paying agent for the Bonds. If any Bond shall not be paid upon such presentation and surrender at or after maturity or on a designated prior redemption date on which the City may have exercised its right to prior redeem any Bond pursuant to Section 6 of this ordinance, it shall continue to draw interest at the rate borne by the Bond until the principal thereof is paid in full. Payment of interest on any Bond shall be made to the registered owner of the Bond as of the Regular Record Date by check or draft mailed by the Paying Agent, on or before each interest payment date (or, if such interest payment date is not a Business Day, on or before the next succeeding Business Day), to the registered owner thereof on the Regular Record Date at his address as it last appears on the registration books kept by the Registrar on the Regular Record Date (or by such other arrangements as may be mutually agreed to by the Paying Agent and any registered owner on such Regular Record Date). All such payments shall be made in lawful money of the United States of America. The person in whose name any Bond is registered at the close of business on any Regular Record Date with respect to any interest payment date shall be entitled to receive the interest payable thereon on such interest payment date notwithstanding any transfer or exchange thereof subsequent to such Regular Record Date and prior to such interest payment date; but any such interest not so timely paid or duly provided for shall cease to be payable as provided above and shall be payable to the person in whose name any Bond is registered at the close of business on a Special Record Date fixed by the Registrar for the payment of any such defaulted interest. Such Special Record Date shall be fixed by the Registrar whenever moneys become available for defaulted interest, and notice of any such Special Record Date shall be given not less than ten days prior thereto in the manner required by the Depository or by first-class mail, to the registered owners of the Bonds as of a date selected by the Registrar, stating the Special Record Date and the date fixed for the payment of such defaulted interest.

C. 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 effected on the books of the Depository and its participants ("Participants"). As a condition to delivery of the Bonds in book-entry form, the Underwriter 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 and interest will be paid to the Depository or its nominee as the registered owner of the Bonds. The transfer of principal and interest payments to Participants will be the responsibility of the Depository; the transfer of principal 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 City 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 City determines that a continuation of the system of book-entry transfers through the Depository ceases to be beneficial to the City or the Beneficial Owners, the City will either identify another Depository or certificates for the Bonds 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 City 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.

Authorized Officers of the City are authorized to sign agreements with Depositories 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 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 City 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 City to the Depository.

Section 6. Redemption.

A. Optional Redemption. The Bonds may be subject to redemption prior to maturity at the option of the City at the times and at the redemption prices set forth as to each series of Bonds, in the Sale Resolution.

B. Notice by City. At least 60 days prior to any date selected by the City for optional redemption of any of the Bonds, the City shall give written instructions to the Registrar with respect to the optional redemption. The Registrar shall not be required to give notice of any optional redemption unless the Registrar has received written instructions from the City in regard thereto at least 60 days prior to such redemption date (unless such deadline is waived by the Registrar). Additionally, notice of optional redemption shall be given by the City by sending a copy of such notice by first-class, postage prepaid mail, not less than thirty days prior to the optional redemption date to the Paying Agent, if the Registrar is not the Paying Agent.

C. Notice by Registrar. Additionally, notice of redemption shall be given by the Registrar by sending a copy of such notice in the manner required by the Depository or by first-class, postage prepaid mail, not more than 60 days and not less than 30 days prior to the redemption date to each registered owner of each Bond selected for redemption as shown on the registration books kept by the Registrar as of the date of mailing of notice. Failure to give such notice by mailing to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any of the Bonds.

D. Other Redemption Details. The notice required by paragraph C of this Section shall specify the number or numbers of the Bond or Bonds or portions thereof to be so redeemed (if less than all are to be redeemed); and all notices required by this Section shall specify the date fixed for redemption, and shall further state that on such redemption date there will become and be due and payable upon each $5,000 unit of principal so to be redeemed at the Paying Agent the principal thereof, accrued interest, if any, to the redemption date, and the applicable prior redemption premium thereon (if any), and that from and after such date interest will cease to accrue. Accrued interest to the redemption date will be paid by check or draft mailed to the registered owner (or by alterative means if so agreed to by the Paying Agent and the registered owner). 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 upon presentation thereof at the Paying Agent, the City will pay the Bond or Bonds so called for redemption and the applicable prior redemption premium (if any). 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 9 of this ordinance and without charge to the registered owner thereof. The Registrar and Paying Agent shall comply with any other terms regarding redemption and notice of redemption as required by any applicable agreement with a Depository.

E. Conditional Redemption. If money or Government Obligations sufficient to pay the redemption price of the Bonds to be called for redemption are not on deposit with the Paying Agent prior to the giving of notice of redemption pursuant to Paragraph D of this Section 6, such notice shall state such Bonds will be redeemed in whole or in part on the redemption date in a principal amount equal to that part of the redemption price received by the Paying Agent on the applicable redemption date. If the full amount of the redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the redemption price is on deposit with the Paying Agent. If all Bonds called for redemption cannot be redeemed, the Bonds to be redeemed shall be selected in a manner deemed reasonable and fair by the City and the Registrar shall give notice, in the manner in which the original notice of redemption was given, that such money was not received and the information required by paragraph E of this Section. In that event, the Registrar 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. Negotiability. Subject to the provisions specifically made or necessarily implied herein, the Bonds shall be fully negotiable, and shall have all the qualities of negotiable paper, and the registered owner or owners thereof shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code.

Section 8. Execution.

A. Filing Manual Signatures. Prior to the execution and authentication of any Bond pursuant to Sections 6-9-1 through 6-9-6, NMSA 1978, the Mayor and City Clerk may each forthwith file with the Secretary of State of New Mexico, his or her manual signature certified by him or her under oath; provided, that such filing shall not be necessary for any officer where any previous such filing may have legal application to the Bonds.

B. Method of Execution. Each Bond of the issue shall be signed and executed by the facsimile or manual signature of the Mayor under facsimile or manual imprint of the seal of the City, which shall be printed, stamped, engraved or otherwise placed thereon; each Bond shall be executed and attested with the facsimile or manual signature of the City Clerk; and each Bond shall be authenticated by the manual signature by an Authorized Officer of the Registrar as hereafter provided. The Bonds bearing the facsimile or manual signature of the officers in office at the time of the authorization thereof shall be the valid and binding obligations of the City (subject to the requirement of authentication by the Registrar as hereinafter provided) notwithstanding that before the delivery thereof and payment therefor, or before the issuance thereof upon transfer or exchange, any or all of the persons whose facsimile signatures appear thereon shall have ceased to fill their respective offices. The Mayor and City Clerk of the City shall, by the execution of a signature certificate pertaining to the Bonds, adopt as and for their respective signatures the facsimiles thereof appearing on the Bonds; and, at the time of the execution of the signature certificate, the Mayor and City Clerk may each adopt as and for his or her facsimile signature the facsimile signature of his or her predecessor in office in the event that such facsimile signature appears upon any of the Bonds.

C. Certificate of Authentication. No Bond shall be valid or obligatory for any purpose unless the certificate of authentication, substantially in the form hereinafter provided, has been duly executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an Authorized Officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued under this ordinance.

Section 9. Provisions Relating to Registration, Transfer, Replacement and Cancellation of and Registration Records for the Bonds.

A. Registration Books -- Transfer and Exchange -- Authentication. Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer of any Bonds at the Registrar, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of a like aggregate principal amount and of the same maturity, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at the Registrar for an equal aggregate principal amount of Bonds of the same maturity of other authorized denominations. The Registrar shall authenticate and deliver a Bond or Bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as provided in this ordinance shall be without charge to the owner or any transferee, but the Registrar may require the payment by the owner of any Bond requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

B. Times When Transfer or Exchange Not Required. The Registrar shall not be required (1) to transfer or exchange all or a portion of any Bond subject to prior redemption during the period of fifteen days next preceding the mailing of notice to the registered owners calling any Bonds for prior redemption pursuant to Section 6 of this ordinance or (2) to transfer or exchange all or a portion of a Bond after the mailing to registered owners of notice calling such Bond or portion thereof for prior redemption.

C. Payment - Registered Owners. The person in whose name any Bond is registered on the registration books kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of defaulted interest as provided in Section 5B of this ordinance; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided in this ordinance. All such payments shall be valid and effectual to discharge the liability upon the Bond to the extent of the sum or sums so paid.

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

E. Delivery of Bond Certificates to Registrar. The officers of the City are authorized to deliver to the Registrar fully executed but unauthenticated Bonds in such quantities as may be convenient to be held in custody by the Registrar pending use as provided in this ordinance.

F. Cancellation of Bonds. Whenever any Bond shall be surrendered to the Paying Agent upon payment of the Bond, or to the Registrar for transfer, exchange or replacement as provided in this ordinance, the Bond shall be promptly canceled by the Paying Agent or Registrar, and counterparts of a certificate of such cancellation shall be furnished by the Paying Agent or Registrar to the City.

Section 10. Successor Registrar or Paying Agent. If the Registrar or Paying Agent initially appointed under this ordinance shall resign or is prohibited by law from continuing as Registrar or Paying Agent, or if the City shall reasonably determine that the Registrar or Paying Agent has become incapable of fulfilling its duties under this ordinance, the City 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 shareholder's 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 serve as both Registrar and Paying Agent hereunder, but the City shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

Section 11. Special Limited Obligations. The Bonds and all payments of principal and interest thereon, (whether at maturity or on a redemption date) and the obligations of the City for all other payments, fees, costs, interest and expenses of the City under this ordinance and under the Related Documents, including all payments due from the City under a Qualified Exchange Agreement, shall be special limited obligations of the City. The principal of and interest on the Bonds and all obligations of the City under the Related Documents shall be payable solely from the

Pledged Revenues (and in the case of Exchange Termination Payments, after payment of Parity Obligations and Subordinate Obligations), which revenues are hereby pledged.

Owners of the Bonds and other parties to the Related Documents, including a Qualified Counterparty, may not look to any general or other fund of the City for the payment of the principal of or interest on, or the fees, costs and expenses relating to, such obligations, except the designated special funds pledged therefor. Neither the Bonds nor the obligations of the City under the Related Documents shall constitute an indebtedness of the City within the meaning of any constitutional, charter or statutory prohibition or limitation, nor shall they be considered or held to be general obligations of the City, and the Bonds, any Related Document and any Qualified Exchange Agreement shall recite that they are payable and collectable solely out of the Pledged Revenues (and in the case of Exchange Termination Payments, after payment of Parity Obligations and Subordinate Obligations), and from the other sources stated in this Section, and that the Owners of the Bonds, any other party or a Qualified Counterparty may not look to any general or other municipal fund for the payment of the principal or interest, as applicable, on the Bonds or for the payment of any amounts owed under the Related Documents.

Nothing herein shall prevent or prohibit the City from applying other funds of the City legally available therefor to the payment or redemption of the Bonds or to the payment of any amounts owed under a Related Document, in its sole discretion.

Section 12. **Form of Bonds, Certificate of Authentication and Assignment.** Each series of Bonds shall be in substantially the form set forth in the Sale Resolution for each series, with only such changes as are not inconsistent with the Bond Legislation.

Section 13. **Period of Project's Usefulness.** It is hereby determined and recited that the useful life of the projects financed with proceeds of the Refunded Bonds is not less than the final maturity date of the Bonds.

Section 14. **Delivery of Bonds and Initial Registration.** When the Bonds have been duly executed, authenticated, registered and sold, the City Finance Director shall deliver them to the Purchaser on receipt of the agreed purchase price. The Registrar shall initially register the Bonds in the name of the Depository.

Section 15. Approval and Execution of Documents and Delegated Authority.

A. Approval of Documents; Ratification. As to any series of Bonds, the Governing Body shall approve in the Sale Resolution, if necessary, a Bond Purchase Agreement in substantially the form presented to the Governing Body at that time with such changes and additions necessary and appropriate for the issuance of such series of Bonds. Additional Related Documents for the applicable series of Bonds shall also be identified and approved by the Governing Body in the Sale Resolution.

B. Delegated Authority and Execution of Documents. The officers, agents and employees of the City are authorized, empowered and directed to take all action required by this ordinance, and all such other action as may be necessary or appropriate to effectuate the provisions of this ordinance, the Related Documents and any other documents as may be necessary or appropriate to carry out and comply with the provisions of this ordinance.

Section 16. Use of Bond Proceeds; Purchaser Not Responsible. Except as herein otherwise specifically provided in this ordinance, the proceeds from the sale of the Bonds shall be used and paid solely for the valid costs of the Refunding.

A. Escrow Fund Deposit. An amount of proceeds received from the sale of the Bonds shall be deposited in the Escrow Fund and used to pay the costs of the Refunding.

B. Payment of Costs of Issuance. An amount of proceeds received from the sale of the Bonds shall be used to pay Costs of Issuance, and to the extent not needed to pay Costs of Issuance, shall be deposited in the Senior Lien 2016 Bond Fund or Subordinate Lien 2016 Bond Fund, as applicable.

C. Purchaser Not Responsible. The validity of the Bonds is not dependent on nor affected by the validity or regularity of any proceedings related to the completion of the Refunding as defined in this ordinance. The Purchaser of the Bonds, and any subsequent owner of any Bonds, shall in no manner be responsible for the application or disposal by the City or by any officer or any employee or other agent of the City of the moneys derived from the sale of the Bonds or of any other moneys designated in this ordinance.

Section 17. **<u>Funds and Accounts</u>.** The City hereby creates, or continues, as applicable, the following special and separate trust funds:

A. <u>Escrow Fund</u>. Creates the Escrow Fund to be maintained by the Escrow Agent.

B. <u>State-Shared Gross Receipts Tax Revenue Fund</u>. The "City of Santa Fe, New Mexico State-Shared Gross Receipts Tax Revenue Account of the General Fund of the City," to be maintained by the City and deposited in an Insured Bank, into which the City shall deposit the State-Shared Gross Receipts Tax Revenues.

C. <u>One-Half Percent Municipal Gross Receipts Tax Revenue Fund</u>. The "City of Santa Fe, New Mexico One-Half Percent Municipal Gross Receipts Tax Revenue Fund," to be maintained by the City and deposited in an Insured Bank, into which the City shall deposit the One-Half Percent Municipal Gross Receipts Tax Revenues.

D. <u>Infrastructure Gross Receipts Tax Revenue Fund</u>. The "City of Santa Fe, New Mexico Infrastructure Gross Receipts Tax Revenue Fund," to be maintained by the City and deposited in an Insured Bank, into which the City shall deposit the Infrastructure Gross Receipts Tax Revenues.

E. <u>Environmental Services Gross Receipts Tax Revenue Fund</u>. The "City of Santa Fe, New Mexico Environmental Services Gross Receipts Tax Revenue Fund," to be maintained by the City and deposited in an Insured Bank, into which the City shall deposit the Environmental Services Gross Receipts Tax Revenues.

F. <u>Senior Lien 2016 Bond Fund</u>. The "City of Santa Fe Senior Lien Gross Receipts Tax

Refunding Revenue Bonds, Series 2016, Bond Service Fund" to be maintained by the City and deposited in an Insured Bank.

G. Subordinate Lien 2016 Bond Fund. The "City of Santa Fe Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2016, Bond Service Fund" to be maintained by the City and deposited in an Insured Bank.

Section 18. Administration of Pledged Gross Receipts Tax Revenue Funds. So long as any of the Bonds shall be outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Gross Receipts Tax Revenues:

A. Bond Service Fund Payments. First, as a first charge on the Pledged Gross Receipts Tax Revenues and on a parity with other outstanding Parity Obligations, the following amounts shall be withdrawn from the One-Half Percent Municipal Gross Receipts Tax Revenue Fund, and from the Infrastructure Gross Receipts Tax Revenue Fund if the moneys in the One-Half Percent Municipal Gross Receipts Tax Revenue Fund are not sufficient to make the required payment, and, if such moneys are still insufficient, then from the State-Shared Gross Receipts Tax Revenue Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order) and shall be concurrently credited to the Senior Lien 2016 Bond Fund hereby created and to be maintained by the City:

(1) Interest Payments. Monthly, commencing on the first day of the first month following the delivery of the Senior Lien 2016 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 Senior Lien 2016 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 Senior Lien 2016 Bonds, and

(2) Principal Payments. Monthly, commencing on the first day of the first month following delivery of the Senior Lien 2016 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 Senior Lien 2016 Bonds then outstanding and monthly thereafter commencing on the first day of the twelfth month preceding each principal payment date, one-twelfth (1/12th) of the amount necessary to pay the next maturing installment of principal on the Senior Lien 2016 Bonds.

If prior to any interest payment date or principal payment date, there has been accumulated in the Senior Lien 2016 Bond Fund the entire amount necessary to pay the next maturing installment of interest or principal, or both, the payment required in subparagraphs (1) and (2) (whichever is applicable) of this paragraph, 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. <u>Debt Service Reserve Fund</u>. No debt service reserve fund will be created or required for the Bonds.

C. <u>Termination Upon Deposits to Maturity</u>. No payment need be made into the Senior Lien 2016 Bond Fund if the amount in such fund totals a sum at least equal to the entire amount of the Senior Lien 2016 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 Senior Lien 2016 Bond 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 Senior Lien 2016 Bond Fund and any other moneys derived from the Pledged Revenues may be used in any lawful manner determined by the City.

D. <u>Defraying Delinquencies in the Senior Lien 2016 Bond Fund; Use of Moneys in the Senior Lien 2016 Bond Fund</u>. If, in any month, amounts in the One-Half Percent Municipal Gross Receipts Tax Revenue Fund are insufficient to make the payments into the Senior Lien 2016 Bond Fund required by Paragraph A of this Section 18, there shall be withdrawn first from the

Infrastructure Gross Receipts Tax Revenue Fund and then from the State-Shared Gross Receipts Tax Revenue Fund, and deposited in the Senior Lien 2016 Bond Fund the additional amounts necessary to make the payments into the Senior Lien 2016 Bond Fund required by Paragraph A of this Section 18. The moneys in the Senior Lien 2016 Bond Fund shall be used solely and only for the purpose of paying the principal of and the interest on the Senior Lien 2016 Bonds issued under this ordinance; provided, however, that any moneys in the Senior Lien 2016 Bond Fund in excess of accrued and unaccrued principal and interest requirements to the respective maturities of the outstanding Senior Lien 2016 Bonds may be used in any lawful manner.

E. Payment of Additional Obligations and Qualified Exchange Agreements. Second, either concurrently with or subsequent to the payments required by Paragraph A of this Section 18, depending upon whether the additional Obligations are Parity Obligations or Subordinate Obligations as provided in this ordinance, the Pledged Gross Receipts Tax Revenues shall be used by the City for the payment of Debt Service Requirements on additional Obligations, if any, hereafter authorized to be issued and payable from the Pledged Revenues as the same accrue. In the event that such obligations are Parity Obligations, the payments of Debt Service Requirements on such additional Obligations shall be made concurrently with the payments required by Paragraphs A and D of this Section 18 (provided that such payments may be made at any intervals as may be provided in the ordinance or resolution authorizing such additional Obligations). The following amounts required to be paid by the City shall be paid from Pledged Gross Receipts Tax Revenues with the same priority as other payments of Debt Service Requirements on Parity Obligations:

(1) Any amount to reimburse or pay a bond insurer or reserve account insurer or guarantor, or to make payments or reimbursements pursuant to another Credit Facility, for payments of Debt Service Requirements made on Parity Obligations; and amounts payable to a Qualified Counterparty under a Qualified Exchange Agreement, excluding Exchange Termination Payments, if such payments are designated in a City ordinance relating to that Qualified Exchange Agreement as

having a lien on Pledged Revenues on a parity with the lien thereon of Parity Obligations;

(2) Reimbursement of any reserve fund Credit Facility obtained for any issue of Parity Obligations; and

(3) Cash deposits to any required reserve fund established with respect to any issue of Parity Obligations.

Each payment of Debt Service Requirements on Parity Obligations shall be transferred to the Paying Agent for payment of Parity Obligations, or directly to a Qualified Counterparty, bond insurer, reserve account insurer or guarantor or other provider of a Credit Facility entitled to receive payments on Parity Obligations, on or before the due date of such payment.

F. Payment of Expenses and Certain Obligations which are not Parity Obligations. After and subject to the payments required, and provisions contained in, any of the preceding paragraphs of this Section, any remaining Pledged Gross Receipts Tax Revenues shall be used, to the extent necessary, for payment of: (i) any other amounts, expenses, fees and interest owed by the City relating to the issuance, delivery, servicing, payment, redemption and refunding of Parity Obligations and (ii) other Obligations relating to Parity Obligations owed by the City pursuant to the Related Documents, any Qualified Exchange Agreement (excluding Exchange Termination Payments), bond insurance policy, reserve fund insurance policy or similar documents which are not payable pursuant to any other prior paragraph of this Section.

G. Subordinate Obligations. After and subject to the payments required by, and provisions contained in, the preceding paragraphs of this Section 18, any remaining Pledged Gross Receipts Tax Revenues shall be used, as necessary, by the City for the payment of the principal of, and interest on, all Obligations with a lien on the Pledged Revenues which is subordinate and junior to the lien of the Parity Obligations on Pledged Revenues, including without limitation, the 2004 Railyard Project Finance Authority Taxable Loan, the 2005 Bonds, the 2006C Bonds, the 2006 Railyard Project Finance Authority Taxable Loan, the 2008 Land Acquisition Finance Authority

Loan, the 2009 College Acquisition Finance Authority Loan, the Series 2010B Bonds, the Series 2012B Bonds, the Series 2012C Bonds, the Series 2013B Bonds, the Subordinate Lien 2016 Bonds and any Exchange Termination Payments.

(a) Subordinate Lien 2016 Bond Service Payments. So long as any of the Subordinate Lien 2016 Bonds shall be outstanding, the following amounts shall be withdrawn from the One-Half Percent Municipal Gross Receipts Tax Revenue Fund, then from the Infrastructure Gross Receipts Tax Revenue Fund if the moneys in the One-Half Percent Municipal Gross Receipts Tax Revenue Fund are not sufficient, and, if such moneys are still insufficient, then from the State-Shared Gross Receipts Tax Revenue Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order), and credited to the Subordinate Lien 2016 Bond Fund:

(i) Interest Payments. Monthly, commencing on the first day of the first month following the delivery of the Subordinate Lien 2016 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 Subordinate Lien 2016 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 Subordinate Lien 2016 Bonds, and

(ii) Principal Payments. Monthly, commencing on the first day of the first month following delivery of the Subordinate Lien 2016 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 Subordinate Lien 2016 Bonds then outstanding and monthly thereafter commencing on the first day of the twelfth month preceding each principal payment date, one-twelfth (1/12th) of the amount necessary to pay the next maturing installment of principal on the Subordinate Lien 2016 Bonds.

H. Use of Surplus Revenues. After making the payments required to be made by

Paragraphs A to H of this Section 18, the remaining Pledged Gross Receipts Tax Revenues, if any, may be applied to any other lawful purposes. The One-Half Percent Municipal Gross Receipts Tax Revenues received by the City pursuant to the One-Half Percent Municipal Gross Receipts Tax Ordinance shall be used only for the purposes authorized by that ordinance. The Infrastructure Gross Receipts Tax Revenues received by the City pursuant to the Infrastructure Gross Receipts Tax Ordinance shall be used only for the purposes authorized by that ordinance. The Environmental Services Gross Receipts Tax Revenues received by the City pursuant to the Environmental Services Gross Receipts Tax Ordinance shall be used only for the purposes authorized in that ordinance.

I. Variable Interest Rate. In making the computations required by this Section, interest on Obligations which bear a Variable Interest Rate shall be computed: (i) at the actual Variable Interest Rate or Variable Exchange Rate for the computation period, if such rate can be computed exactly, or (ii) if the Variable Interest Rate or Variable Exchange Rate cannot be computed exactly, at the actual rate for the immediately preceding computation period.

Section 19. General Administration of Funds. The funds and accounts designated in Sections 16 through 18 of this ordinance shall be administered as follows:

A. Investment of Money. Any moneys in any fund designated in Sections 16 through 18 may be invested in any Permitted Investments. The obligations so purchased as an investment of moneys in a fund shall be deemed at all times to be part of the fund, and the interest accruing thereon and any profit realized therefrom shall be credited to the fund, and any loss resulting from each investment shall be charged to the fund. The City Finance Director shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

B. Deposits of Funds. Except for direct investments in Permitted Investments allowed by Paragraph A of this Section 19, the moneys and investments comprising each of the funds and accounts hereinabove designated in Sections 16 through 18 of this ordinance shall be maintained and kept separate from all other funds and accounts in an Insured Bank or Insured Banks. The amounts prescribed shall be paid to the appropriate funds as specified in Sections 16 through 18. Each payment shall be made into the proper bank account and credited to the proper fund not later than the last day designated; provided that when the designated date is a Sunday or a legal holiday, then such payment shall be made on the next preceding secular day. Nothing in this ordinance shall prevent the establishment of one such bank account or more (or consolidation with any existing bank account), for all of the funds and accounts in Sections 16 through 18 of this ordinance.

Section 20. **Lien on Pledged Revenues.** The Pledged Gross Receipts Tax Revenues and the amounts and securities on deposit in the Bond Fund, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein, for the payment of the principal of and interest on the Bonds, subject to the uses thereof permitted by, and the priorities set forth in, this ordinance. The Senior Lien 2016 Bonds constitute an irrevocable first lien (but not an exclusive first lien) on the Pledged Revenues on parity with the lien thereon of Parity Obligations. The Subordinate Lien 2016 Bonds constitute an irrevocable subordinate lien (but not an exclusive subordinate lien) on the Pledged Revenues on parity with the lien thereon of Subordinate Obligations but subordinate to the lien thereon of Parity Obligations.

Section 21. **Additional Bonds and Other Obligations.**

A. Limitations Upon Issuance of Parity Obligations. No provision of this ordinance shall be construed in such a manner as to prevent the issuance by the City of additional Obligations payable from Pledged Revenues and constituting a lien upon such revenues on parity with or subordinate to the lien of the Bonds on Pledged Revenues.

Before any additional Parity Obligations are actually issued (excluding refunding bonds the proceeds of which are used to refund Parity Obligations as provided in Section 22, but including Parity Obligations which are refunding bonds which refund subordinate obligations), the following conditions shall be met:

(i) The Parity Obligations must be Obligations; and

(ii) The City shall then be current in all of the deposits required to be made with respect to the Parity Obligations (including, if applicable, any obligation to fund any reserve account required by the terms of any ordinance authorizing the issuance of any such Obligations), as set forth in Section 18; and

(iii) (a) No additional Parity Obligations shall be issued unless the Pledged Gross Receipts Tax Revenues for the Historic Test Period shall have been sufficient to pay an amount representing two hundred percent (200%) of the combined maximum annual Debt Service Requirements coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor); and

(b) The One-Half Percent Municipal Gross Receipts Tax Revenues and the Infrastructure Gross Receipts Tax Revenues, together with the other gross receipts tax revenues received by the City, whether from distribution by the State or pursuant to gross receipts taxes imposed by the City (other than the State-Shared Gross Receipts Tax Revenues) pledged to the Parity Obligations and the Parity Obligations proposed to be issued, for the Historic Test Period shall be sufficient to pay an amount representing one hundred percent (100%) of the combined maximum annual Debt Service Requirements coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor); and

(c) No additional Parity Obligations shall be issued unless the Pledged Gross Receipts Tax Revenues for the Historic Test Period shall have been sufficient to pay an amount representing one hundred fifty percent (150%) of the combined maximum annual Debt Service

Requirements coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and Subordinate Obligations (excluding Exchange Termination Payments) and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor); and

(d) In making the computations required by this subparagraph (iii) other gross receipts tax revenues, including without limitation, the Environmental Services Gross Receipts Tax Revenues, received by the City, whether from distribution by the State or pursuant to gross receipts taxes imposed by the City (other than State-Shared Gross Receipts Tax Revenues) pledged to the Parity Obligations, Subordinate Obligations and the Parity Obligations proposed to be issued, may be included only to the extent such gross receipts tax revenues are pledged to a particular series of such outstanding Obligations or proposed Parity Obligations and only to the extent of the maximum annual Debt Service Requirements on such outstanding Obligations or proposed Parity Obligations.

B. Superior Obligations Prohibited; Subordinate Obligations Permitted.

(i) The City shall not be permitted to issue additional Obligations payable from Pledged Revenues with a lien on Pledged Revenues superior to the lien of Parity Obligations thereon; and

(ii) No provision of this ordinance shall be construed in such a manner as to prevent the issuance by the City of additional Obligations payable from the Pledged Revenues with a lien on Pledged Revenues subordinate and junior to the lien of the Bonds thereon, nor to prevent the issuance of Obligations refunding all or part of the Bonds as permitted by Section 22.

C. Variable Interest Rate. In making the computations required by this Section 21 and Section 22, Obligations which bear a Variable Interest Rate shall be deemed to bear interest at the maximum rate permitted for those Obligations.

D. Certificate of City Finance Director. A written certificate or opinion of the City Finance Director that the Pledged Revenues for the applicable Historic Test Period are sufficient to pay the amounts required in this Section 21 shall be required in making a determination that the requirements set forth in this Section have been satisfied and shall be conclusively presumed to be accurate in determining that such requirements have been satisfied.

E. Bond Anticipation Notes. Whenever the City shall have authorized the issuance of Parity Obligations under the Act and the City shall, at the time, be permitted by the laws of the State to issue notes representing loans in anticipation of the sale of such Parity Obligations ("Bond Anticipation Notes"), the City may by resolution or ordinance authorize the issuance of Bond Anticipation Notes in anticipation of the sale of such Parity Obligations, provided, however, that before any Bond Anticipation Notes are actually issued, the conditions of Paragraph A of Section 21 shall be met. Bond Anticipation Notes shall not be issued in an amount exceeding the principal amount of the Parity Obligations in anticipation of the sale of which such notes are proposed to be issued.

For the purposes of determining compliance with this Section, as of the date of issuance of any Bond Anticipation Notes, the aggregate principal amount of all outstanding Bond Anticipation Notes (including such proposed Bond Anticipation Notes) shall never exceed the principal amount of a hypothetical issue of Parity Obligations which could be issued hereunder having an assumed final maturity of twenty (20) years, bearing an assumed rate of interest equal to the highest rate then borne by any Bond Anticipation Note then outstanding (or, if none, the interest rate borne by the proposed Bond Anticipation Notes to be issued) and having debt service due in each Fiscal Year in approximately equal amounts.

F. Put Obligations. In making the computations required by this Section 21 and Section 22, the principal amount of any Put Obligations to be outstanding in the Fiscal Year when the combined maximum annual Debt Service Requirements come due shall be excluded from the maximum annual Debt Service Requirements only if the Credit Facility providing liquidity or standby purchase support for Put Obligations is rated, on the date the computations are made, "A" or better by Fitch or S&P (if such rating agencies are then rating the Bonds). If there is no Credit Facility for the

Put Obligations or the rating requirement for the Credit Facility set forth in the preceding sentence is not satisfied, the principal amount of the Put Obligations to be outstanding in the Fiscal Year when combined maximum annual Debt Service Requirements come due shall be considered in computing maximum annual Debt Service Requirements.

Section 22. **Refunding Bonds.** The provisions of Section 21 hereof are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time after the Bonds, or any part thereof, shall have been issued and remain outstanding, the City shall find it desirable to refund any outstanding Parity Obligations or other outstanding obligations payable from the Pledged Revenues, such bonds or other obligations, or any part thereof, may be refunded (but only with the consent of the registered owner or owners thereof, unless the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the City's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed (except as provided in Paragraph A of Section 21 and in Paragraphs B and C of this Section 22).

B. Limitations Upon Issuance of Refunding Obligations. No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on a parity with the Bonds herein authorized, unless:

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

(2) The refunding bonds or other refunding obligations are issued in compliance with Paragraph A of Section 21 of this ordinance.

C. Refunding Part of an Issue. The refunding bonds or other obligations so 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 there be; and the registered owner or owners of such refunding bonds or such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the registered owner or owners of the bonds or other obligations of the same issue refunded thereby.

D. Limitations Upon Issuance of any Refunding Obligations. Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the City may by ordinance provide, subject to the inclusion of any such rights and privileges designated in Paragraph C of this Section 22, but without any impairment of any contractual obligations imposed upon the City by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including but not necessarily limited to the issue herein authorized). If only a part of the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues are refunded, then such obligations may not be refunded without the consent of the registered owner or owners of the unrefunded portion of such obligations, unless:

(1) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest requirements evidenced by such refunding obligations and by the outstanding obligations not refunded on and 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 A of Section 21 hereof, or

(3) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

E. Cross-over Refunding Bonds. If the refunding bonds to be issued are Cross-over Refunding Bonds, the ordinance providing for the issuance thereof shall provide (1) that until the date on which the principal portion of the related Obligations being refunded is to be paid or redeemed from the proceeds of such Cross-over Refunding Bonds, the Cross-over Refunding Bonds shall not be Parity Obligations and shall be payable solely from the escrow provided for in the related ordinance, and (2) a certificate of an Independent Accountant shall be prepared to demonstrate the sufficiency of the moneys and investments in the escrow to pay the principal of and interest on the Cross-over Refunding Bonds until the date on which the principal portion of the related Obligations being refunded is to be paid or redeemed and to pay or redeem the related Obligations being refunded.

Section 23. **Equality of Bonds.** The Bonds authorized to be issued hereunder and from time to time outstanding shall not be entitled to any priority one over the other in the application of the Pledged Revenues, regardless of the time or times of their issuance, it being the intention of the Governing Body that there shall be no priority among the Bonds regardless of the fact that they may be actually issued and delivered at different times.

Section 24. **Protective Covenants.** The City hereby covenants and agrees with each and every registered owner of the Bonds that:

A. Payment of Bonds Herein Authorized. The City will promptly pay the principal of and the interest on every Bond issued hereunder and secured hereby at the place, on the dates and in the manner specified herein and in the Bonds according to the true intent and meaning hereof. Such principal and interest are payable solely from the Pledged Revenues. Nothing in the Bonds, any Qualified Exchange Agreement or this ordinance shall be construed as obligating the City to pay principal or interest on any of the Bonds from, and the holders of the Bonds and any Qualified Counterparty may not look to, any general or other fund of the City, except those specifically set forth herein.

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

C. Audits. The City further agrees that it will, within 270 days following the close of each Fiscal Year, cause an audit of such books and accounts to be made by an Independent Accountant, showing the revenues and expenditures of the Pledged Revenues. The City agrees to furnish forthwith a copy of each of such audits and reports to the Underwriter upon request. Any registered owner of a Bond shall have the right to discuss, with the Independent Accountant or person making the audit, the report and the contents thereof and to ask for such additional information as he may reasonably require.

D. Extending Interest Payments. In order to prevent any accumulation of claims for interest after maturity, the City will not directly or indirectly extend or assent to extension of time for the payment of any claim for interest on any of the Bonds and it will not directly or indirectly be a party to or approve any arrangement for any such extension or for the purpose of keeping alive any of such interest.

E. Performing Duties. The City 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 City including but not limited to the proper segregation of the Pledged Revenues and their application of the respective funds.

F. Other Liens. Other than the outstanding Subordinate Obligations, the outstanding Parity Obligations and the Bonds as recited in 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 of Parity Obligations with a lien on the Pledged Revenues on parity with the lien thereon of the Bonds.

G. City's Existence. The City will maintain its corporate identity and existence so long as any of the Bonds herein authorized remain outstanding unless another political subdivision by operation of law succeeds to the liabilities and rights of the City, without affecting to any substantial degree the privileges and rights of any registered Owner of any outstanding Bonds.

H. Duty With Respect to Pledged Revenues. If the statutes or any ordinance which materially affects the Pledged Revenues or any part of such ordinances, shall ever be held to be invalid or unenforceable, it shall be the duty of the City, to the extent authorized by law, to immediately take any action necessary to produce sufficient Pledged Revenues to comply with the contracted obligations of this ordinance, except as provided in Paragraph I of this Section 24.

I. Impairment of Contract. The City agrees that any law or ordinance or resolution of the City in any manner affecting the Pledged Revenues or the Bonds, or otherwise appertaining thereto, 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 consent of the required percentage of the registered owners of the then outstanding Bonds is obtained pursuant to Section 32 of this ordinance.

J. Tax Covenant. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Tax Code, including applicable regulations, rulings and judicial decisions, or (ii) be treated other than as bonds to which Section 103(a) of the Tax Code applies, and (b) the interest thereon will not be treated as a preference item under Section 57 of the Tax Code. The City further covenants (a) that it will take or cause to be taken such actions that may be required of it for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes, (b) that it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) that it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purposes of the borrowings, (ii) restrict the yield on investment property, (iii) make timely and adequate rebate payments, yield reduction payments or payments of alternative amounts in lieu of rebate to the federal government, (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 Tax Code.

Authorized Officers of the City are hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the

Bonds as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in or available under Section 148 of the Tax Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Bonds or interest thereon or assisting in the compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount, yield reduction payments or payments of penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate or yield reduction payments, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, including amounts required to be rebated to the United States pursuant to Section 148(f) of the Tax Code, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of the proceedings for the Bonds, setting forth the reasonable expectations of the City 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 the interest on and the tax status of the Bonds.

K. Limitation on Parity Obligations with Variable Interest Rates. The City shall not issue Parity Obligations with a Variable Interest Rate which, at the time of issuance, are assigned a lower rating than the rating then assigned to the Bonds by Fitch or S&P, unless the written consent of such rating agency to a lower rating is obtained prior to issuance of such Parity Obligations.

L. Notice of Qualified Exchange Agreements to Rating Agencies. The City shall not enter into a Qualified Exchange Agreement which is a Parity Obligation or with respect to any Parity Obligations without first providing notice of such Qualified Exchange Agreement to Fitch and S&P and without first receiving written confirmation from Fitch and S&P that entering into such Qualified

Exchange Agreement, in and of itself, would not result in a reduction of the ratings then assigned to the Bonds by Fitch and S&P.

M. Continuing Disclosure Undertaking. Authorized Officers of the City are authorized to sign such documents with respect to the City's continuing disclosure obligations as are necessary or desirable to comply with the Continuing Disclosure Undertaking and requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

Section 25. Defeasance. When all principal and interest in connection with the Bonds hereby authorized have been duly paid, the pledge and lien and all obligations hereunder shall thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the meaning of this ordinance. There shall be deemed to be such due payment as to any Bond when the Governing Body has placed in escrow and in trust with a commercial bank located within or without the State of New Mexico and exercising trust powers, an amount sufficient (including the known minimum yield from Federal Securities in which such amount may initially be invested) to meet all requirements of principal and interest as the same become due to its maturity or designated redemption date as of which the City shall have exercised or obligated itself to exercise its option to call the Bond. The Federal Securities shall become due prior to the respective times on which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the Governing Body and such bank at the time of the creation of the escrow or the Federal Securities shall be subject to the redemption at the option of the holders thereof to assure such availability as so needed to meet such schedule. Federal Securities within the meaning of this Section 25 shall include only direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America and which are not callable prior to maturity by the issuer of such obligations.

Section 26. Events of Default. Each of the following events is hereby declared an "event of default":

A. Nonpayment of Principal. If payment of the principal of any of the Bonds herein authorized to be issued shall not be made when the same become due and payable; or

B. Nonpayment of Interest. If payment of any installment of interest shall not be made when the same becomes due and payable; or

C. Incapable to Perform. If the City shall for any reason be rendered incapable of fulfilling its obligations (but not including any obligation of the City under any Qualified Exchange Agreement) hereunder; or

D. Default of any Provision. If the City shall default 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 (other than defaults described in Subparagraphs A, B and C of this Section 26), and if such default shall continue for 60 days after written notice specifying such default and requiring the same to be remedied shall have been given to the City by the registered owners of 25% in principal amount of the Bonds then outstanding.

E. Bankruptcy or Insolvency of City. (1) The City shall (a) apply for or consent to the appointment of or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the City or of all or a substantial part of its property, (b) commence a voluntary case under the Federal Bankruptcy Code, or (c) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, or reorganization, or (2) a proceeding or case shall be commenced, without application or consent of the City, in any court of competent jurisdiction seeking (a) the liquidation, reorganization, dissolution, winding-up or adjustment of debts of the City, (b) appointment of a trustee, receiver, custodian, liquidator or the like of the City or of all or a substantial part of its assets, or (c) similar relief in respect of the City under any law relating to bankruptcy, insolvency, reorganization, winding-up or adjustment of debts.

Section 27. Remedies of Defaults. Upon the happening and continuance of any of the events of default as provided in Section 26 of this Ordinance, then and in every case the registered owner or owners of not less than 25% in principal amount of the Bonds then outstanding, including but not limited to a trustee or trustees, may proceed against the City, its Governing Body, and its agents, officers and employees to protect and enforce the rights of any registered owner 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 specific performance of any covenant or agreement contained herein or award or execution of any power herein granted for the enforcement of any power, legal or equitable remedy as such registered owner or owners may deem most effectual to protect and enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any right of any registered owner, or to require the Governing Body of the City to act as if it were the trustee of an expressed 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 registered owners of the Bonds then outstanding. The failure of any such registered owner so to proceed shall not relieve the City or any of its officers, agents or employees of any liability for failure to perform any duty. Each right or privilege of any such registered owner (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 registered owner shall not be deemed a waiver of any other right or privilege thereof.

Section 28. **<u>Duties Upon Default</u>.** Upon the happening of any of the events of default as provided in Section 26 of this ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the registered owners of the Bonds to protect and preserve the security created for the payment of the principal of and interest on the Bonds promptly as the same become due. All proceeds derived from the Pledged Revenues, so long as any of the Bonds herein authorized, either as to principal or interest, are outstanding and unpaid, shall be paid into the proper fund and used for the purposes therein provided. In the event the City fails or refuses to proceed as in this Section 28 provided, the registered owner or registered owners of not less than 25% in principal amount of the

Bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the registered owners as hereinabove provided.

Section 29. Enforcement. Any registered owner of any one or more of the Bonds, may, either by law or in equity, by suit, action, mandamus or other appropriate proceedings in any court of competent jurisdiction enforce the payment of principal of, and interest on, any Bond on or after the date on which such payment is due, and may by suit, action, mandamus or other appropriate proceeding or proceedings enforce and compel the performance of such payment in accordance with the provisions of this ordinance.

Section 30. Severability. If any Section, paragraph, clause or provision of this ordinance shall 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 31. Repealer Clause. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

Section 32. Amendment.

A. Limitations upon Amendments. This ordinance may be amended or supplemented by ordinance or resolution of the Governing Body without the consent of registered owners:

(1) To cure any ambiguity, or to cure, correct or supplement any defect or inconsistent provision contained in this ordinance;

(2) To grant to the registered owners any additional rights, remedies, powers or authority that may lawfully be granted to them;

(3) To obtain or maintain a rating on the Bonds from any rating agency which amendment, in the judgment of Bond Counsel, does not materially adversely affect the registered owners of the Bonds;

(4) To achieve compliance with federal securities or tax laws;

(5) To make any other changes in this ordinance which, in the opinion of Bond Counsel, is not materially adverse to the registered owners; and

(6) To make any other changes in this ordinance in connection with the execution of a Qualified Exchange Agreement, which changes do not adversely affect the rating(s) assigned to the Bonds by Fitch and S&P (if such rating agencies are then rating the Bonds) and do not adversely affect the registered owners.

B. Additional Amendments. Except as provided above, this ordinance may only be amended or supplemented by ordinance adopted by the Governing Body in accordance with the laws of the State, without receipt by the City of any additional consideration, but with the written consent of the registered owners of a majority of the principal amount of the outstanding Bonds which are affected by the amendment or supplement (not including Bonds which are then owned by or for the account of the City); provided, however, that, without first obtaining the consent of all registered owners of the outstanding Bonds, no such ordinances shall have the effect of permitting:

(1) An extension of the maturity of any Bond; or

(2) A reduction in the principal amount of or interest rate on any Bond; or

(3) The creation of a lien on or a pledge of Pledged Revenues ranking prior to the lien or pledge of Parity Obligations on Pledged Revenues; or

(4) A reduction of the principal amount of Bonds required for consent to such amendment or supplement.

C. Proof of Instruments. The fact and date of the execution of any instrument under the provisions of this Section may be proved by the certificate of any officer in any jurisdiction who by the laws of that jurisdiction is authorized to take acknowledgments of deeds within that jurisdiction that the person signing the instrument acknowledged before him the execution of that instrument, or may be proved by an affidavit of a witness to the execution sworn to before such officer.

D. Proof of Bonds. The principal amount and number of Bonds owned by any person executing such instrument and the date of holding that instrument may be proved by a certificate executed by a bank or trust company showing that on the date mentioned that person had on deposit with the bank or trust company the Bonds described in the certificate.

Section 33. **Ordinance Irrepealable.** After any of the Bonds herein authorized are issued, this ordinance shall be and remain irrepealable until the Bonds and interest thereon shall be fully paid, canceled and discharged as therein provided, or there has been defeasance as provided in Section 25 of this ordinance.

Section 34. **Effective Date, General Summary for Publication.** Upon due adoption of this ordinance, the ordinance shall be recorded and preserved by the City Clerk, authenticated by the signature of the Mayor and City Clerk, and the seal of the City impressed hereon, and the title and general summary of the subject matter contained in this ordinance (set out below) shall be published in a newspaper which maintains an office and is of general circulation in the City and this ordinance shall be in full force and effect after its publication in accordance with law.

Pursuant to Section 3-17-5 NMSA 1978, as amended, 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)

CITY OF SANTA FE, NEW MEXICO

NOTICE IS HEREBY GIVEN of the title and of a general summary of the subject matter contained in an ordinance duly adopted and approved by the Governing Body of the City of Santa Fe on May 25, 2016. A complete copy of the ordinance is available for public inspection during the normal and regular business hours of the City Clerk in the office of the City Clerk, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

The title of the ordinance is:

AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF SANTA FE, NEW MEXICO SENIOR LIEN GROSS RECEIPTS TAX REFUNDING

REVENUE BONDS IN ONE OR MORE SERIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $37,000,000 FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING, PAYING AND DEFEASING THE OUTSTANDING CITY OF SANTA FE, NEW MEXICO (1) GROSS RECEIPTS TAX REFUNDING REVENUE BONDS, SERIES 2006B AND (2) GROSS RECEIPTS TAX REVENUE BONDS, SERIES 2008; AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF SANTA FE, NEW MEXICO SUBORDINATE LIEN GROSS RECEIPTS TAX REFUNDING REVENUE BONDS IN ONE OR MORE SERIES IN AN AGGREGATE PRINICIPAL AMOUNT NOT TO EXCEED $16,000,000 FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING, PAYING AND DEFEASING THE OUTSTANDING CITY OF SANTA FE, NEW MEXICO (1) MUNICIPAL RECREATION COMPLEX/SUBORDINATE LIEN GROSS RECEIPTS TAX REFUNDING BONDS, SERIES 2005, (2) SUBORDINATE LIEN GROSS RECEIPTS TAX/WASTEWATER SYSTEM IMPROVEMENT REVENUE BONDS, SERIES 2006C, AND (3) 2008 LAND ACQUISITION FINANCE AUTHORITY LOAN; PROVIDING THAT THE BONDS WILL BE PAYABLE AND COLLECTIBLE FROM CERTAIN GROSS RECEIPTS TAX REVENUES DISTRIBUTED TO THE CITY; PROVIDING THAT CERTAIN TERMS OF THE BONDS WILL BE PROVIDED IN A SUBSEQUENT RESOLUTION; PROVIDING FOR REDEMPTION OF THE REFUNDED BONDS; PROVIDING FOR THE COLLECTION OF CERTAIN GROSS RECEIPTS TAX REVENUES; APPROVING CERTAIN OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION WITH THE REFUNDED BONDS; RATIFYING ACTION PREVIOUSLY TAKEN IN

CONNECTION WITH THE BONDS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND RELATED MATTERS.

A general summary of the subject matter contained in such ordinance is set forth in the title. COMPLETE COPIES OF THE ORDINANCE ARE ON FILE IN THE OFFICE OF THE CITY CLERK AT THE CITY HALL, 200 LINCOLN AVENUE, SANTA FE, NEW MEXICO, AND ARE AVAILABLE FOR INSPECTION AND/OR PURCHASE DURING REGULAR OFFICE HOURS. THIS NOTICE ALSO CONSTITUTES COMPLIANCE WITH SECTION 3-17-5 AND SECTIONS 6-14-4 THROUGH 6-14-7, NMSA 1978.

WITNESS my hand and the seal of the City on ____________, 2016.

CITY OF SANTA FE

(SEAL)

____

YOLANDA Y. VIGIL, CITY CLERK

(End of Form of Ordinance for Publication)

APPROVED AS TO FORM:

Kelley A. Brennan

KELLEY A. BRENNAN, CITY ATTORNEY

M/Legislation/Bills 2016/GRT Refunding Bond