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# ORDINANCE NO. 2009-1

AUTHORIZING THE ISSUANCE OF COLFAX COUNTY, NEW MEXICO GROSS RECEIPTS TAX REVENUE BONDS, SERIES 2009 IN AN AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING $4,000,000 FOR THE PURPOSE OF DEFRAYING THE COST OF CONSTRUCTING, PURCHASING, FURNISHING AND EQUIPPING A GOVERNMENT CENTER FACILITY FOR USE BY THE COUNTY; PROVIDING THAT THE BONDS WILL BE PAYABLE FROM THE PROCEEDS OF CERTAIN GROSS RECEIPTS TAXES PAID TO THE COUNTY AND CERTAIN PROCEEDS OF THE SALE OF THE BONDS; PRESCRIBING OTHER DETAILS CONCERNING THE BONDS, INCLUDING BUT NOT LIMITED TO COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH AND THE FORM, TERMS, CONDITIONS AND MANNER OF EXECUTION OF SAID BONDS AND CONCERNING THE FACILITY; PROVIDING THAT CERTAIN DETAILS RELATING TO THE BONDS WILL BE ESTABLISHED IN A SUBSEQUENT RESOLUTION TO BE ADOPTED BY THE COUNTY; RATIFYING ALL ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH; REPEALING ORDINANCES IN CONFLICT HEREWITH.

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

WHEREAS, Sections 4-62-1(B), 4-62-3 and 4-62-4 NMSA 1978, permit the County to issue revenue bonds for constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to one or more public buildings or purchasing or improving ground relating thereto and to pledge irrevocably certain gross receipts tax revenues received by the County to the payment of the interest on and principal of the revenue bonds; and

WHEREAS, the County intends to issue the revenue bonds authorized hereby for the constructing, purchasing, furnishing and equipping of a government center facility and related improvements (collectively, the "Facility") for use by the County; and

WHEREAS, the Board determines that there is an urgent need for the Facility and that such revenue bonds shall be issued for the constructing, purchasing, furnishing and equipping of such Facility and consequently also will provide for the public health, peace and safety of the County and its citizens; and

WHEREAS, the revenue bonds shall be issued pursuant to Sections 4-62-1 through 4-62-10 NMSA 1978, and with a first (but not necessarily exclusively first) lien on the Pledged Revenues (defined below),

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COLFAX COUNTY, NEW MEXICO:

Section 1. Definitions. As used in ordinance and any ordinance or resolution amendatory hereof or supplemental hereto, or relating hereto:

"Acquisition Account" has the meaning specified in Section 18.

"Authorized Officer" means, with respect to the County, the Chairman of the Board or any other person who is designated in writing by the Chairman of the Board as an Authorized Officer for purposes of this ordinance.

"Board" means the Board of County Commissioners of the County.

"Bond Account" has the meaning specified in Section 19.

"Bond Counsel" means an attorney or firm of attorneys nationally recognized as bond counsel.

"Bonds" means the Colfax County, New Mexico Gross Receipts Tax Revenue Bonds, Series 2009.

"Certificate of Completion" means a certificate of an Authorized Officer indicating that the construction, purchasing, furnishing and equipping of the Facility have been completed and that the Facility is available for use and occupancy by the County.

"Code" means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

"Costs" means costs related to the issuance of the Bonds and all costs that under generally accepted accounting principles constitute capital costs of constructing, purchasing, furnishing and equipping the Facility.

"County" means the county and body corporate and politic known as Colfax County, New Mexico.

"Determination of Taxability" means: (i) the issuance of a "30-day letter," a revenue agent's report or a statutory notice of deficiency by the Internal Revenue Service, or a decision of a court of competent jurisdiction or the receipt by the County or the Trustee of an opinion of Bond Counsel which asserts, holds or provides in effect that interest on the Bonds is includable in the gross income of the Owners for federal income tax purposes; (ii) the failure of the Trustee to receive, within thirty days after receipt by the Trustee of a written request from the Owners of not less than a majority in principal amount of the Bonds then Outstanding, an opinion of Bond Counsel to the effect that interest on the Bonds is excludable from gross income of the Owners for federal income tax purposes; or (iii) the assessment by the Internal Revenue Service, pursuant to a statutory notice of deficiency, of a tax based on the assertion that the Bonds are specified as private activity bonds described in Section 57(a)(5)(C) of the Code.

"Event of Default" has the meaning provided in Section 34.

"Facility" means the government center facility and related improvements for use by the County constructed, purchased, furnished and equipped as a part of the Project.

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

"Gross Receipts Taxes Act" means the County Local Option Gross Receipts Taxes Act, Sections 7-20E-1 through 7-20E-9 NMSA 1978.

"Gross Receipts Tax Ordinance" means the County's Ordinance No. 86-2 adopted December 3, 1986.

"Independent Accountant" means: (i) an accountant employed by the State and under supervision of the State Auditor of the State; or (ii) 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, appointed and paid by the County, who (a) is, in fact, independent and not under the domination of the County, (b) does not have any substantial interest, direct or indirect, with the County, and (c) is not connected with the County as an officer or employee of the County, but who may be regularly retained to make annual or similar audits of the books or records of the County.

"Independent Counsel" means an attorney duly admitted to the practice of law before the highest court of the State who is not a full time employee of the County.

"Law" means the Constitution and laws of the State, and any ordinance, rule or regulation of any agency or political subdivision of the State; and any law of the United States, and any rule or regulation of any federal agency.

"Outstanding," when used with reference to the Bonds and as of any particular date, means all Bonds theretofore executed by the County and authenticated by the Trustee except: (i) any Bonds cancelled or fully paid on or before such date; (ii) any Bond in lieu of on in substitution for which another Bond has been delivered pursuant to this ordinance; (iii) any Bond for the payment or redemption of which funds or securities permitted by Section 6 in the necessary amount have theretofore been deposited with the Trustee (whether upon or prior to the maturity or redemption date of such Bond); and (iv) for the sole purpose of determining the percentage of Owners consenting to any amendment to this ordinance or authorizing or requiring any action by the Trustee or the exercise of any remedy hereunder, any Bonds owned by the

County. For all other purposes, Bonds owned by the County which are not described in clauses (i), (ii) or (iii) shall be treated as Outstanding.

"Owner" means the registered owner of any Bond.

"Parity Bonds" has the meaning specified in Section 26.

"Payment Date" means any date upon which any payment of principal of or interest on any Bond is scheduled to be made.

"Permitted Investments" means, to the extent permitted by applicable Law:

(i) Federal Securities;

(ii) stripped securities, consisting of: (a) U.S. Treasury STRIPS; (b) REFCORP STRIPS (stripped by the Federal Reserve Bank of New York); (c) Financing Corp. (FICO) STRIPS (stripped by the Federal Reserve Bank of New York which have CUSIP prefixes of 317705, 31772J, and 31771K); and (d) any stripped securities assessed or rated "AAA" by Standard & Poor's Ratings Services;

(iii) bonds, debentures, notes or other evidences of indebtedness that are issued by any of the following agencies or such other like governmental or government-sponsored agencies which may be hereafter created: Bank for Cooperatives; Federal Intermediate Credit Banks; Federal Financing Bank; Federal Home Loan Bank System; Export-Import Bank of the United States; Farmers Home Administration; Small Business Administration; Inter-American Development Bank; International Bank for Reconstruction and Development; Federal Land Banks; the Government National Mortgage Association; the Tennessee Valley Agency; or the Resolution Trust Funding Corporation;

(iv) obligations of any person, provided that (a) such obligations are secured by cash, Federal Securities or a combination thereof (A) which have been deposited into a segregated escrow account for and irrevocably pledged to the payment, when due, of the principal or redemption price of and interest on such obligations and (B) which are sufficient, without reinvestment, to provide for the payment, when due, of the principal or redemption price of and interest on such obligations, and (b) such obligations are rated "AAA" by Standard & Poor's Ratings Services and "Aaa" by Moody's Investors Service at the time of their purchase by the Trustee;

(v) obligations described in Section 103(a) of the Code which are rated by Standard & Poor's Ratings Services and Moody's Investors Service in one of its three highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise);

(vi) certificates of deposit or time deposits of any bank (including the Trustee), trust company, or savings and loan association which certificates of deposit or time deposits are fully insured by the Federal Deposit Insurance Corporation;

(vii) certificates of deposit or time deposits of any bank (including the Trustee), trust company, or savings and loan association whose direct, unsecured debt obligations are rated by Standard & Poor's Ratings Services and Moody's Investors Service, if all of the direct, unsecured debt obligations of such bank, trust company or savings and loan association at the time of purchase of such certificates of deposit or time deposits which are rated by each Standard & Poor's Ratings Service and Moody's Investors Service are rated in one of the two highest rating categories assigned by them (without regard to any refinement or gradation of rating category by numerical modifier or otherwise), or which certificates of deposit or time deposits are fully secured by a security interest in obligations described in clauses (i), (ii), or (iii) of this definition; provided, however, that if such certificates of deposit or time deposits are so secured (1) the Trustee shall have a perfected first security interest in the obligations securing such certificates of deposit or time deposits, and (2) the obligations are held by the Trustee (or an independent third party acting solely as agent for the Trustee) free and clear of any lien or claims by a third party of the Trustee shall have the option to appoint an intermediary bank, trust company or savings and loan association as its agent to hold the obligations securing such certificates of deposit or time deposits, and (3) the Trustee or its appointed agent shall hold such obligations free and clear of the liens or claims of third parties, which conclusion, upon the request of the Trustee, shall be confirmed by an opinion of Independent Counsel acceptable to the Trustee; and provided further that such certificates of deposit shall have a term not greater than 365 days;

(viii) securities and the type described in clauses (i), (ii) or (iii) above purchased under agreements to resell such securities to any registered broker/dealer subject to Securities Investors Protection Corporation jurisdiction or to any commercial bank, if such broker/dealer or bank has an uninsured, unsecured and unguaranteed obligation rating at the time of purchase in one of the two highest rating categories by Standard & Poor's Ratings Services and Moody's Investors Service, provided: (1) a master repurchase agreement or specific written repurchase agreement governs the transaction; (2) the obligations are held by the Trustee (or an independent third party acting solely as agent for the Trustee which agent is (A) a Federal Reserve Bank, or (B) a bank which is a member of the Federal Deposit Insurance Corporation and which has combined capital, surplus, and undivided profits of not less than $50,000,000 and the Trustee shall have received written confirmation from such agent that it holds such securities free and clear of any lien or claim, as agent for the Trustee) free and clear of any lien or claims by a third party; (3) a perfected first security interest under the Uniform Commercial Code, or book entry procedures prescribed at 31 CFR 306.1 *et seq.* or 31 CFR 350.0 *et seq.* in such securities is created for the benefit of the Trustee; (4) the repurchase agreement has a term of 30 days or less; (4) the repurchase agreement matures at least ten days (or other commercially reasonable liquidation period) prior to the date on which the moneys invested therein are reasonably expected to be needed; and (5) the fair market value of the securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least 100%;

(ix) investment agreements with a domestic or foreign bank or corporation (other than a life or property casualty insurance company) the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt, or, in the case of a monoline financial guaranty insurance company, claims paying ability, of the guarantor is rated at least "AA" by Standard & Poor's Ratings Services and "Aa" by Moody's Investors Service; provided that, by the terms of the investment agreement:

(1) interest payments are to be made to the Trustee at times and in amounts as necessary to pay debt service (or, if the investment agreement is for the construction fund, construction draws) on the Bonds;

(2) the invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven days' prior notice;

(3) the investment agreement shall state that it is the unconditional and general obligation of, and is not subordinated to any other obligation of, the provider thereof; or, in the case of a bank, that the obligation of the bank to make payments under the agreement ranks pari passu with the obligations of the bank to its other depositors and its other unsecured and unsubordinated creditors;

(4) the Trustee receives the opinion of domestic counsel that such investment agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and of foreign counsel (if applicable) to the same effect;

(5) the investment agreement shall provide that if during its term (i) the provider's rating by either Standard & Poor's Ratings Services or Moody's Investors Service falls below "AA-" or "Aa3," respectively, the provider shall, at its option, within ten days of receipt of publication of such downgrade, either (a) collateralized the investment agreement by delivering or transferring in accordance with applicable state and federal laws (other than by means of entries on the provider's books) to the Trustee or a third party acting solely as agent therefor (the "Holder of the Collateral") collateral free and clear of any third-party liens or claims the market value of which collateral is maintained at levels and upon such conditions as would be acceptable to Standard & Poor's Ratings Services and Moody's Investors Service to maintain an "A" rating in an "A" rated structured financing (with a market value approach); or (b) repay the principal of and accrued but unpaid interest on the investment, and (ii) the provider's rating by either Standard & Poor's Ratings Services or Moody's Investors Service is withdrawn or suspended or falls below "A-" or "A3," respectively, the provider must, at the direction of the Trustee, within ten days of receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the Trustee;

(6) the investment agreement shall state and an opinion of counsel shall be rendered, in the event collateral is required to be pledged by the provider under the terms of the investment agreement, at the time such collateral is delivered, that the Holder of the Collateral has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the Holder of the Collateral is in possession); and

(7) the investment agreement must provide that if during its term (i) the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the Trustee, be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Trustee, and (ii) the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be

accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Trustee;

(x) shares in any investment company which is rated by Standard & Poor's Ratings Services and Moody's Investors Service in one of its three highest rating categories, registered under the federal Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, and the majority of whose investment in principal amount (valued on a cost basis) are investments described in clauses (i) through (ix) above; and

(xi) Pooled or common trust funds of the Trustee or an affiliate of the Trustee consisting of investments described in clauses (i) through (x) above including those funds from which the Trustee or any of its affiliates receives advisory or other fees.

Each reference to Standard & Poor's Ratings Services or Moody's Investors Service is deemed to include a reference to their respective successors. Each reference to a particular rating is deemed to include a reference to an equivalent rating under any successor rating system promulgated by the relevant rating agency.

"Pledged Revenues" means the revenues derived from the first one-eighth percent increment of county gross receipts tax levied by the County pursuant to the County Gross Receipts Taxes Act and the Gross Receipts Tax Ordinance, imposed on persons engaging in business in the County, which revenues are remitted monthly by the Revenue Division of the Taxation and Revenue Department of the State to the County as authorized by Sections 7-1-6.1 and 7.1.6.13 NMSA 1978, and which remittances are currently one-eighth of one percent of the taxable gross receipts reported for the County for the month in which such remittance is made..

"Principal Office" means the principal corporate trust office of Trustee, which at the date of this ordinance is located in Denver, Colorado, 950 Seventeenth Street, 12th Floor, provided that with respect to the payments on the Certificates and any exchange, transfer, tender, or surrender of the Bonds, means c/o U.S. Bank National Association, 60 Livingston Avenue, St. Paul, Minnesota 55107, or such other location designated in writing by the Trustee.

"Project" means constructing, purchasing, furnishing and equipping the Facility for use by the County, and all costs incidental to the foregoing and the issuance of the Bonds, including but not limited to the initial funding of the Reserve Account as provided in Section 14.

"Purchaser" means the original purchaser or purchasers of the Bonds.

"Rebate Fund" has the meaning specified in Section 22.

"Redemption Account" has the meaning specified in Section 20.

"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.

"Reserve Account" has the meaning specified in Section 21.

"Reserve Requirement" means the amount required to be maintained in the Reserve Account, which is equal to the lesser of: (i) 10% of the proceeds of the sale of the Bonds; (ii) the maximum annual debt service payable with respect to the Bonds during the then current or any succeeding fiscal year of the County; and (iii) 125% of the average annual debt service payable with respect to the Bonds during the then current or any succeeding fiscal year of the County.

"Revenue Account" has the meaning specified in Section 17.

"Sale Resolution" means the resolution, to be adopted by the Board subsequent to this ordinance, specifying certain details of the Bonds and sale of the Bonds as provided in this ordinance.

"Series Date" means the date of original issuance of the Bonds.

"Special Record Date" means a special date fixed to determine the names and addresses of 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 5(b).

"State" means the State of New Mexico.

"Trust Fund" has the meaning specified in Section 16.

"Trustee" means a U.S. Bank National Association and any successor Trustee appointed pursuant to Section 35 or 36.

Section 2. Ratification. All action heretofore taken (not inconsistent with the express provisions of this ordinance) by the Board and officers of the County directed toward the Project, and toward the authorization, sale and issuance of the Bonds is ratified, approved and confirmed.

Section 3. Authorization of Project. The Project is authorized at a total cost not exceeding $4,000,000, excluding any such cost defrayed or to be defrayed from proceeds of investments of Bond proceeds and by any source other than the Bonds. The Project is found and declared to be necessary.

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 County, and for the purpose of defraying the cost of the Project, it is declared that the interest or necessity of the County and the inhabitants thereof demand the issuance by the County of its fully registered (*i.e.*, registered as to payment of both principal and interest) revenue bonds without coupons to be designated "Colfax County, New Mexico Gross Receipts Tax Revenue Bonds, Series 2009" in an aggregate principal amount not exceeding $4,000,000 to be payable and collectible, both as to principal and interest solely from the Pledged Revenues.

Section 5. Bond Details.

(a) Basic Details. The Bonds shall be dated as of Series Date, issued 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), numbered consecutively from 1 upwards, shall bear interest from the Series Date until maturity at the rates and payable at the times hereafter designated in the Sale Resolution, and shall mature on the dates and in the amounts designated in the Sale Resolution; provided, however, the individual Bonds shall bear interest from the most recent interest payment date to which interest has been fully paid or duly provided for in full or, if no interest has been paid, from the Series Date. The net effective interest rate (as such term is defined in Section 6-14-3 NMSA 1978) for any maturity of the Bonds shall not exceed 12% per year. Interest shall be computed on the basis of a 360-day year consisting of 12 months of 30 days each. Notwithstanding the foregoing, upon the occurrence of a Determination of Taxability, the bonds will bear interest at annual rates equal to the rates designated in the Sale Resolution plus, in each case, three percent per annum.

(b) Payment. The principal of and any prior redemption premium applicable to any Bond shall be payable to the Owner thereof as shown on the registration books kept by the Trustee for the Bonds, upon maturity or prior redemption thereof and upon presentation and surrender at Principal Office of the Trustee. 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 County may have exercised its right to prior redeem any Bond pursuant to Section 6, 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 Owner thereof as of the Regular Record Date by check or draft mailed by the Trustee, 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 Owner thereof on the Regular Record Date at his address as it last appears on the registration books kept by the Trustee on the Regular Record Date (or by such other arrangement as may be mutually agreed to by the Trustee and any 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 Trustee for the payment of any such defaulted interest. Such Special Record Date shall be fixed by the Trustee 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, by first-class mail, to the Owners of the Bonds as of a date selected by the Trustee, stating the Special Record Date and the date fixed for the payment of such defaulted interest.

Section 6. Prior Redemption.

(a) Redemption. The Bonds shall be subject to mandatory sinking fund redemption and redemption at the County's option on the dates and at the redemption prices established in the Sale Resolution.

(b) Notice by County. Unless waived by the Trustee, at least 45 days prior to any date selected by the County for prior redemption of any of the Bonds the County shall give written instructions to the Trustee with respect to such prior redemption. Additionally, notice of redemption shall be given by sending a copy of such notice by registered or certified first-class, postage prepaid mail not less than 30 days prior to the redemption date to the Purchaser.

(c) Notice by Trustee. Additionally, notice of redemption shall be given by the Trustee by sending a copy of such notice by first class, postage prepaid mail, not more than 60 days and not less than 30 days prior to the redemption date to each Owner as shown on the registration books kept by the Trustee as of the date of selection of units of principal for redemption. The Trustee shall not be required to give notice of any prior redemption unless it has received written instructions from the County in regard thereof, at least 45 days prior to such redemption date or unless waived by the Trustee. Failure to give such notice by mailing to the 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 Section 6(c) 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 6 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 Principal Office of the Trustee the principal thereof 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 Owner (or by alternative means if so agreed to by the Trustee and the 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 Principal Office of the Trustee, the County 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 Trustee to the Owner pursuant to Section 9 and without charge to the Owner thereof.

Section 7. Negotiability. Subject to the provisions specifically made or implied herein, the Bonds shall be fully negotiable, and shall have all the qualities of negotiable paper, and the 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) Method of Execution. Each Bond shall be executed by the manual signature of the Chairman under the seal of the County, each Bond shall be executed and attested with the manual signature of the County Clerk and countersigned with the manual signature of the County Treasurer; and each Bond shall be authenticated by the manual signature of an authorized officer of the Trustee as hereafter provided. The Bonds bearing the signatures of the officers in office at the time of the authorization thereof shall be the valid and binding obligations of the County (subject to the requirement of authentication by the Trustee) 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 signatures appear thereon shall have to ceased to fill their respective offices.

(b) 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 Trustee. The Trustee's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 9. Registration, Transfer, Exchange, Replacement and Cancellation.

(a) Registration Books; Transfer and Exchange. Books for the registration and transfer of the Bonds shall be kept by the Trustee. Upon the surrender for transfer of any Bonds at the Principal Office of the Trustee, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his attorney duly authorized in writing, the Trustee 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 Principal Office of the Trustee for an equal aggregate principal amount of Bonds of the same maturity of other authorized denominations. The Trustee shall authenticate and deliver a Bond or Bonds that the Owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as herein provided shall be without charge to the Owner or any transferee, but the Trustee 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) When Transfer or Exchange Not Required. The Trustee shall not be required: (i) 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 Owners calling any Bonds for prior redemption pursuant to Section 6; or (ii) to transfer or exchange all or a portion of a Bond after the mailing to Owners of notice calling such Bond or portion thereof for prior redemption.

(c) Payment to Owners. The person in whose name any Bond shall be registered on the registration books kept by the Trustee 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 interest as is provided in Section 5(b), 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 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 herein. All such payments shall be valid and effectual to discharge the liability upon such 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 Trustee 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 maturity, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured, the Trustee may pay such Bond in lieu of replacement.

(e) Delivery of Bond Certificates to Trustee. The officers of the County are authorized to deliver to the Trustee fully executed but unauthenticated Bonds in such quantities as may be convenient to be held in custody by the Trustee pending use as herein provided.

(f) Cancellation of Bonds. Whenever any Bond shall be surrendered to the Trustee upon payment thereof, or for transfer, exchange or replacement as provided herein, such Bond shall be promptly cancelled by the Trustee, and counterparts of a certificate of such cancellation shall be furnished by the Trustee to the County.

Section 10. Securities Depository. Except as set forth in this ordinance, the Bonds shall be issued in book-entry form with no physical distribution of Bonds made to the public. The Depository Trust Company or any successor securities depository ("DTC") shall act as securities depository for the Bonds. A single certificate for each maturity of the Bonds shall be issued to DTC and immobilized in its custody. The book-entry system will evidence ownership of the Bonds in principal amounts of $5,000 or integral multiples thereof, with transfers of ownership effected on the records of DTC and its participants (the "Participants") pursuant to rules and procedures established by DTC and the Participants. As a condition to delivery of the Bonds, the Purchaser shall, immediately after acceptance of delivery thereof, deposit the Bonds with DTC, registered in the name of DTC or its nominee. Principal and interest will be paid to DTC or its nominee as Owner of the Bonds. Transfer of principal and interest payments to the Participants shall be the responsibility of DTC; transfer of principal and interest payment to beneficial owners of the Certificates (the "Beneficial Owners") by the Participants shall be the responsibility of the Participants and other nominees of the Beneficial Owners maintaining a relationship with the Participants. Neither the County nor the Trustee shall be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, the Participants or persons acting through the Participants. If (i) the Bonds are not eligible for DTC services, (ii) DTC determines to discontinue providing its services with respect to the Bonds, or (iii) the Trustee determines that a continuation of the system of book-entry transfers through DTC is not in the best interest of the Trustee or the Beneficial Owners, the Trustee shall either identify another qualified securities depository or cause physical Bonds to be delivered to the Beneficial Owners or their nominees and thereupon the Beneficial Owners or their nominees, upon authentication of the Bonds and registration of the Bonds in the Beneficial Owners' or nominees' name, shall become the Owners of the Bonds for all purposes. Upon the occurrence of any such event, the Trustee shall mail an appropriate notice to DTC for notification to the Participants and the Beneficial Owners of the substitute depository or the issuance of Bonds to the Beneficial Owners or their nominees, as applicable. All notices and payments addressed to DTC shall contain the information required by, and sent as set forth in, a letter of representation to DTC executed by the County and the Trustee, which execution is hereby authorized. Notices of redemption shall be given to DTC as provided in such letter of representation.

Section 11. Special Obligations. All of the Bonds, together with the interest accruing thereon, shall be payable and collectible solely out of the Pledged Revenues, which are irrevocably so pledged; the Owner or Owners thereof may not look to any general or other fund for the payment of the principal of or interest on such obligations, except the designated special funds pledged therefor; and the Bonds shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation; nor shall they be considered or held to be general obligations of the County; and each of the Bonds shall recite that it is payable and collectible solely from the Pledged Revenues, which are so pledged, and that the Owner thereof may not look to any general or other fund for the payment of principal and interest on, and prior redemption premium due in connection with, the Bonds.

Section 12. Forms of Bonds, Certificate of Authentication, Assignment and Legal Opinion Certificate. The Bonds and the related Certificate of Authentication, Form of Assignment and the Legal Opinion Certificate shall be in substantially the following forms:

(Form of Bond)

UNITED STATES OF AMERICA
STATE OF NEW MEXICO
COUNTY OF COLFAX

No. R-____ $________________

GROSS RECEIPTS TAX REVENUE BOND
SERIES 2009

| Interest Rate | Maturity Date | Series Date | CUSIP |
|---|---|---|---|
| ____% per annum | _____ 1, 20__ | ___________, 2009 | |

REGISTERED OWNER:

PRINCIPAL AMOUNT:

Colfax County, New Mexico (the "County"), for value received, promises to pay upon presentation and surrender of this bond, solely from the special funds provided therefor as hereinafter set forth, to the registered owner named above, or registered assigns, on the Maturity Date specified above (unless this bond, if subject to prior redemption, shall have been called for prior redemption in which case on such redemption date), upon the presentation and surrender hereof at the Principal Office (as defined in the Bond Ordinance (defined below)) of U.S. Bank National Association, or its successor (the "Trustee"), the Principal Amount stated above, in lawful money of the United States of America, and to pay to the registered owner hereof as of the Regular Record Date (being the 15th day of the calendar month preceding each regularly scheduled interest payment date as defined in Ordinance No. ____, adopted on June 30, 2009, as supplemented by Resolution No. ______ adopted on _______, 2009 (which authorizes this bond and which together are referred to herein as the "Bond Ordinance")), by check or draft mailed to such registered owner, on or before each interest payment date as hereinafter provided (or, if such interest payment date is not a business day, on or before the next succeeding business day), at his address as it last appears on the Regular Record Date on the registration books kept for that purpose by the Trustee for the bonds or by such other arrangement as may be agreed to by the Trustee and the registered owner hereof, interest on said sum in lawful money of the United States of America from the Series Date specified above or the most recent interest payment date to which interest has been fully paid or duly provided for in full (as more fully provided in the Bond Ordinance) until maturity at the per annum Interest Rate specified above, payable on February 1, 2010 and semiannually thereafter on February 1 and August 1 in each year. Any such interest not so timely paid or duly provided for shall cease to be payable to the registered owner as of the Regular Record Date and shall be payable to the registered owner as of a Special Record Date (as defined in the Bond Ordinance), as further provided in the Bond Ordinance. If upon presentation and surrender to the Paying Agent at or after maturity or on a designated prior redemption date on which the County may have exercised its right to prior redeem this bond pursuant to the Bond Ordinance, payment of this bond is not made as herein provided, interest hereon shall continue at the rate herein designated until the principal hereof is paid in full. Notwithstanding the foregoing, upon the occurrence of a Determination of Taxability (as defined in the Bond Ordinance), this bond shall bear interest at an annual rate equal to the Interest Rate specified above plus three percent per annum.

The bonds of the series of which this bond is a part maturing on and after August 1, 20___ are subject to prior redemption at the County's option in one or more units of principal of $5,000 on and after August 1, 20___ in whole at any time, or in part on any interest payment date thereafter in such order of maturities as the County may determine (and by lot if less than all of the bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner as it shall consider appropriate and fair), for the principal amount of each $5,000 unit of principal so redeemed, accrued interest to the redemption date and a premium computed as follows (expressed as percentages of principal amounts of bonds so redeemed):

| Dates When Redeemed (Both Dates Inclusive) | Redemption Premium |
|---|---|
| August 1, 20__ to July 31, 20__ | _____% |
| August 1, 20__ to July 31, 20__ | _____% |
| August 1, 20__ and thereafter | |

The bonds of the series of which this bond is a part maturing on August 1, 20__ will be redeemed in installments on August 1, 20__ and on each August 1 thereafter to and including August 1, 20__, through the operation of mandatory sinking fund installments provided for in the Bond Ordinance.

The bonds of the series of which this bond is a part maturing on August 1, 20__ will be redeemed in installments on August 1, 20__ and on each August 1 thereafter to and including August 1, 20__, through the operation of mandatory sinking fund installments provided for in the Bond Ordinance.

The bonds of the series of which this bond is a part maturing on August 1, 20__ will be redeemed in installments on August 1, 20__ and on each August 1 thereafter to and including August 1, 20__, through the operation of mandatory sinking fund installments provided for in the Bond Ordinance.

Redemption shall be made upon prior mailed notice to a representative of the original purchaser and to each registered owner of each bond selected for redemption as shown on the registration books kept by the Registrar in the manner and upon the conditions provided in the Bond Ordinance.

The bonds of the series of which this is one are fully registered (i.e., registered as to payment of both principal and interest), and are issuable in the denomination of $5,000 or any denomination which is an integral multiple of $5,000 (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). Upon surrender of any of such bonds at the Principal Office of the Trustee with a written instrument satisfactory to the Trustee duly executed by the registered owner or his duly authorized attorney, such bond may, at the option of the registered owner or his duly authorized attorney, be exchanged for an equal aggregate principal amount of such bonds of the same maturity of other authorized denominations, subject to such terms and conditions as set forth in the Bond Ordinance.

This bond is fully transferable by the registered owner hereof in person or by his duly authorized attorney on the registration books kept by the Trustee upon surrender of this bond together with a duly executed written instrument of transfer satisfactory to the Trustee. Upon such transfer a new fully registered bond of authorized denomination or denominations of the same aggregate principal amount and maturity will be issued to the transferee in exchange for this bond, subject to such terms and conditions as set forth in the Bond Ordinance. The County and the Trustee may deem and treat the person in whose name this bond is registered as the absolute owner hereof for the purpose of making payment and for all other purposes.

This bond is one of a series of bonds designated "Colfax County, New Mexico Gross Receipts Tax Revenue Bonds, Series 2009" of like tenor and date, except as to interest rate, number and maturity, authorized for the purpose of: (i) constructing, purchasing, furnishing and equipping a government center facility for use by the County; and (ii) all costs incidental to the foregoing and the issuance of the Bonds, including but not limited to the initial funding of the Reserve Account as provided in the Bond Ordinance.

This bond is issued pursuant to and in strict compliance with the Constitution and laws of the State of New Mexico.

This bond does not constitute an indebtedness of the County within the meaning of any constitutional or statutory provision or limitation, shall not be considered or held to be a general obligation of the County, and is payable and collectible solely from the "Pledged Revenues," which are the revenues derived from the first one-eighth percent increment of county gross receipts tax levied by the County imposed on persons engaging in business in the County.

The bonds are equitably and ratably secured by a lien on the Pledged Revenues; and the bonds constitute an irrevocable and first lien (but not necessarily an exclusively first lien) upon the Pledged Revenues. Additional obligations may be issued and made payable from the Pledged Revenues and having a lien thereon inferior and junior to the lien, or, subject to designated conditions, having a lien thereon on a parity with the lien of the bonds of the series of which this bond is a part, in accordance with the provisions of the Bond Ordinance.

The County covenants and agrees with the registered owner of this bond and with each and every person who may become the registered owner hereof that it will keep and perform all of the covenants of the Bond Ordinance.

This bond is subject to the conditions, and every registered owner hereof by accepting the same agrees with the obligor and every subsequent registered owner hereof that the principal of and the interest on this bond shall be paid, and this bond is transferable, free from, and without regard to any equities between the obligor and the original or any intermediate registered owner hereof for any set-offs or cross-claims.

It is further certified, recited and warranted that all the requirements of law have been fully complied with by the Board of County Commissioners and officers of the County in the issue of this bond; and that it is issued pursuant to and in strict conformity with the Constitution and laws of the State of New Mexico, and particularly the terms and provisions of Sections 4-62-1 through 4-62-10 NMSA 1978, as amended, and all laws thereunto enabling and supplemental thereto.

This bond shall not be valid or obligatory for any purpose until the Trustee shall have manually signed the certificate of authentication herein.

IN WITNESS WHEREOF, Colfax County, New Mexico has caused this bond to be signed, subscribed, and executed, and attested with the manual signatures of the Chairman of the Board of County Commissioners and its County Clerk, respectively; has caused its corporate seal to be affixed hereon; has caused this bond to be countersigned with the manual signature of the County Treasurer, all as of the Series Date.

______________________________
Chairman

(SEAL)

Attest:

______________________________
County Clerk

Countersigned:

______________________________
County Treasurer

(End of Form of Bond)

(Form of Certificate of Authentication)

CERTIFICATE OF AUTHENTICATION

Date of Authentication:

This is one of the bonds described in the within-mentioned Bond Ordinance, and this bond has been duly registered on the registration books kept by the undersigned as Trustee for such Bonds.

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By__________________________________
Authorized Officer

(End of Form of Certificate of Authentication)

(Form of Assignment)

ASSIGNMENT

For value received, hereby sells, assigns and transfer unto the within bond and hereby irrevocably constitutes and appoints, attorney, to transfer the same on the books of the Trustee, with full power of substitution in the premises.

Signature Guaranteed: Name and Address of Transferee:

Dated: Social Security Number or Other Tax Identification Number

(End of Form of Assignment)

(Form of Legal Opinion Certificate)

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

LEGAL OPINION CERTIFICATE

I, Rayetta M. Trujillo, County Clerk of Colfax County, New Mexico, do hereby certify that the following approving legal opinion of Brownstein Hyatt Farber Schreck, L.L.P., to wit:

(Approving opinion to be inserted)

is a true, perfect and complete copy of a manually executed and dated copy thereof on file in the records of the County in my office; that manually executed and dated copies of the opinion were forwarded to a representative of the original purchasers, and that the opinion was dated and issued as of the date of delivery of and the payment for the bonds of the series of which this bond is one.

IN WITNESS WHEREOF, I have caused to be hereunto set my manual signature and having affixed hereto the official seal of Colfax County, New Mexico.

______________________________
County Clerk
Colfax County, New Mexico

(SEAL)

(End of Form of Legal Opinion Certificate)

Section 13. Delivery of Bonds and Initial Registration. When the Bonds have been duly executed, authenticated, registered and sold, the County shall deliver them to the Purchaser on receipt of the agreed purchase price.

Section 14. Disposition of Bond Proceeds. The proceeds of the sale of the Bonds shall be paid to the Trustee. Upon the Trustee's receipt such proceeds, the Trustee shall deposit an amount equal to the Reserve Requirement in the Reserve Account and shall deposit the balance in the Acquisition Account. Except as otherwise specifically provided in this ordinance, the proceeds derived from the sale of the Bonds shall be used and paid solely for the purposes of the Project.

Section 15. 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 Project. The Purchaser, and any subsequent Owner of any Bonds, shall in no manner be responsible for the application or disposal by the County or by any officer or any employee or other agent of the County of the moneys derived from the sale of the Bonds or of any other moneys designated in this ordinance.

Section 16. Trust Fund. There is established with Trustee a special trust fund to be designated as the "Colfax County, New Mexico Gross Receipts Tax Revenue Bonds, Series 2009 Trust Fund" and referred to as the "Trust Fund." In consideration of the payment by the Purchaser for the Bonds, the County grants, bargains, sells, assigns and transfers the Trust Fund and all moneys from time to time therein to the Trustee in trust for the Owners as provided in this ordinance. The Trustee shall keep the Trust Fund separate and apart from all other funds and moneys held by it. Within the Trust Fund, there are established the Revenue Account more particularly described in Section 17, the Acquisition Account more particularly described in Section 18, the Bond Account more particularly described in Section 19, the Redemption Account more particularly described in Section 20, the Reserve Account more particularly described in Section 21. On the Closing Date Trustee will receive and deposit the proceeds of the sale of the Bonds in the Trust Fund and such accounts, in accordance with Section 14.

Section 17. Revenue Account.

(a) Establishment. Within the Trust Fund, there is established a special account to be designated and referred to as the "Revenue Account."

(b) Payment of Pledged Revenues. The County shall promptly pay to the Trustee for deposit in the Revenue Account any Pledged Revenues received by the County.

(c) Deposits. The Trustee shall deposit all Pledged Revenues into the Revenue Account immediately upon receipt.

(d) First Claim Bond Payments. As a first claim on moneys in the Revenue Account, the Trustee shall withdraw from the Revenue Account, on the first day of each calendar month, beginning on the date specified in the Sale Resolution one-sixth of the next installment of interest on the Bonds and one-twelfth of the next principal payment on the Bonds (provided that if the next principal payment is the final scheduled principal payment, the principal payment may be calculated by subtracting amounts held in the Reserve Account) and deposit such amounts in the Bond Account.

(e) Second Claim for Redemption Payments. As a second claim on moneys in the Revenue Account, the Trustee shall transfer to the Redemption Account from the Revenue Account all moneys on hand or received in the Revenue Account that are to be used for the redemption of Bonds in accordance with Section 6.

(f) Third Claim for Reserve Requirement. As a third claim on moneys in the Revenue Account, the Trustee shall transfer to the Reserve Account from the Revenue Account such amounts as may be necessary from time to time in order that the amount in the Reserve Account be not less than the Reserve Requirement.

(g) Payment for Additional Obligations. Concurrently with or subsequent to the payments required by Sections 17(d) and 17(f), depending upon whether the additional obligations are parity or subordinate as herein provided, any balance remaining in the Revenue Account after making the payments hereinabove provided shall be used by the County for the payment of interest on and the principal of additional obligations, if any, hereafter authorized to be issued and payable from the Pledged Revenues as the same accrue. In the event that such additional obligations are on a parity with the Bonds, the payments of interest on and principal of such additional obligations and any reserve fund therefor shall be made concurrently with the payments required by Sections 17(d) and 17(f) (provided that such payments may be made at any intervals as may be provided in the ordinance or resolution authorizing such additional obligations).

(h) Remaining Moneys. Moneys remaining in the Revenue Account after application for the purposes described above will be paid monthly to the County and may be used by the County for any lawful purpose.

(i) No Other Transfers. No amounts shall be withdrawn; or transferred from or paid out of the Revenue Account except as provided in this Section 17 and Section 19(e).

Section 18. Acquisition Account.

(a) Establishment. Within the Trust Fund, there is established a special account to be designated and referred to as the "Acquisition Account."

(b) Deposit. The Trustee shall deposit in the Acquisition Account the amounts required to be deposited therein pursuant to Section 14. Except as provided in Sections 18(d) and 19(e), all moneys deposited in or transferred to the Acquisition Account shall be disbursed only for the payment of Costs.

(c) Disbursements. Disbursements from the Acquisition Account shall be made by the Trustee upon receipt of a written request for disbursement executed by an Authorized Officer of the County. Each such requisition shall be in substantially the following form:

(Form of Requisition and Certificate)

REQUISITION AND CERTIFICATE

To: U.S. Bank National Association, as Trustee

The undersigned, pursuant to the Ordinance No. _____, adopted on June 30, 2009 (as supplemented by Resolution No. ___ adopted on _______, 2009, the "Bond Ordinance"), of the Board of County Commissioners of Colfax County, New Mexico (the "County"), requests the disbursement of $___________ from the Acquisition Account (as defined in the Bond Ordinance) to pay the following costs and expenses related to the Project (as defined in the Bond Ordinance) or to the issuance of the Bonds (as defined in the Bond Ordinance):

| Amount | General Classification of Expenditure | Payee |
|---|---|---|

Attached are the bills and invoices for the items listed above.

The undersigned certifies that:

(1) obligations in the stated amounts were incurred for Costs (as defined in the Bond Ordinance) and are due and payable (or, if the County is indicated as the payee, were duly paid by the County) and that each item is a proper charge against the Acquisition Account and has not been the subject of a previous withdrawal from the Acquisition Account;

(2) to the best knowledge of the undersigned there has not been filed with or served upon the County notice of any lien, right or attachment upon, or claim affecting the right of any such payee to receive payment of, the respective amounts stated in this requisition which has not been released or will not be released simultaneously with the payment of such obligation; and

(3) with respect to any item for payment for labor or to contractors, builders or materialmen, (a) the obligations stated have been properly incurred, (b) such work was actually performed or such materials or supplies were actually furnished or installed in or about the Facility (as defined in the Bond Ordinance), and (c) either such materials or supplies are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of this requisition.

DATED: ____________________, 200__.

______________________________
Authorized Officer

(End of Form of Requisition and Certificate)

So long as the Trustee reasonably relies in good faith upon such a request for disbursement, it shall have no liability on account of disbursements from the Acquisition Account made in accordance with such request for disbursement.

(d) Transfer to Bond Account Upon Completion. After completion of the construction of the Project, the County shall cause an Authorized Officer to execute and deliver the Certificate of Completion to the Trustee. Upon the earlier of (i) receipt by the Trustee of such certificate, or (ii) August 1, 2012, the Trustee shall transfer any amounts remaining in the Acquisition Account into the Bond Account, and the Acquisition Account shall be closed. Upon deposit of such amounts into the Bond Account, such amounts shall be segregated into a separate subaccount and applied as a credit against the next succeeding principal payment on the Bonds following the date of such deposit. In the event that the amount so deposited exceeds such principal payment, it shall be applied as a credit against the next subsequent principal payment on the Bonds.

(e) No Other Transfers. No amounts shall be withdrawn or transferred from or paid out of the Acquisition Account except as provided in this Section 18 and Section 19(e).

Section 19. Bond Account.

(a) Establishment. Within the Trust Fund, there is established a separate account to be designated and referred to as the "Bond Account." The Bond Account shall be maintained by the Trustee until the principal of and interest on the Bonds are paid in full pursuant to the terms of this ordinance or the Bonds have been deemed paid in accordance with Section 30.

(b) Deposits. The Trustee shall deposit in the Bond Account, as received, all moneys paid to it pursuant to Sections 17(d), 18(d), 19(e), 21(c) and 23.

(c) Payment on Bonds. The Trustee shall withdraw from the Bond Account, on each Payment Date, an amount equal to the principal and interest payments due with respect to the Bonds on such Payment Date, and shall cause the same to be applied to the payment of principal and interest payments due with respect to the Bonds on such Payment Date.

(d) Transfer on Redemption. The Trustee shall transfer to the Redemption Account from the Bond Account all moneys on hand or received in the Bond Account that are to be used for the redemption of Bonds in accordance with Section 6.

(e) Transfers on Event of Default. Notwithstanding any other provision of this ordinance to the contrary, if an Event of Default occurs and is continuing prior to the payment in full of the Bonds, the Trustee may and, upon the written request of the Owners of 66-2/3% of the principal amount of Bonds then Outstanding, shall deposit into the Bond Account all moneys on hand in all other accounts of the Trust Fund, and distribute such moneys from the Bond Account to the registered holders of the Bonds in proportion to the total amount of principal and interest due on their Bonds on the distribution date, and for this purpose the principal of all Bonds shall be deemed to be immediately due and payable (without regard to the stated maturity thereof). Upon payment in full of all amounts owed on the Bonds and all items of expense with respect to the Project, the excess, if any, shall be paid to the County.

(f) No Other Transfers. No amounts shall be withdrawn or transferred from or paid out of the Bond Account except as provided in this Section 19.

Section 20. Redemption Account.

(a) Establishment. Within the Trust Fund there is established a separate account to be designated and referred to as the "Redemption Account."

(b) Deposits. The Trustee shall deposit in the Redemption Account, as received, all moneys paid to it pursuant to Section 6, 17(e) and 21(f). All of such moneys shall be set aside in the Redemption Account for the purpose of redeeming the Bonds in advance of their maturity and shall be applied on or after the date of redemption designated pursuant to Section 6 to the payment of principal and interest with respect to the Bonds to be redeemed upon presentation and surrender of such Bonds.

(c) Use of Excess Moneys. Moneys held in the Redemption Account after the date on which such moneys are to be applied for the redemption of Bonds shall, upon redemption of all Outstanding Bonds, be paid to the County.

(d) No Other Transfers. No amounts shall be withdrawn or transferred from or paid out of the Redemption Account except as provided in this Section 20 and Section 19(e).

Section 21. Reserve Account.

(a) Establishment. Within the Trust Fund there is established a separate account to be designated and referred to as the "Reserve Account." Such account shall be maintained by the Trustee until the Bonds are paid in full.

(b) Deposits. The Trustee shall deposit in the Reserve Account the moneys required to be deposited therein pursuant to Sections 14 and 17(f).

(c) Transfers to Bond Account. If on any Payment Date the amounts in the Bond Account are less than the amounts of principal and interest payments due with respect to the Bonds on such Payment Date, the Trustee shall transfer from the Reserve Account to the Bond Account an amount sufficient to make up such deficiency. In the event of any such transfer, the Trustee shall, within five days after making such transfer, give notice to the County of the amount and date of such transfer.

(d) Use. Moneys in the Reserve Account shall be: (i) used solely for the purpose of making payments on the Bonds on behalf of the County to the extent necessary to make up deficiencies in the Bond Account in the event that moneys in the Bond Account are less than the amounts of the principal and interest payments due with respect to the Bonds, and for that purpose moneys may be withdrawn from the Reserve Account and transferred to the Bond Account, as provided in Section 21(c); or (ii) transferred to the Redemption Account.

(e) Shortfall. So long as any Bonds remain Outstanding, if on any Payment Date, the amount of all payments due and payable on the Bonds exceeds the amount on hand in the Bond Account, the Trustee shall apply the moneys on hand in the Reserve Account first to the payment of all interest due with respect to all Bonds, pro rata if necessary, and second to the payment of the portion of the unpaid principal balance of each Bond which is then due, pro rata if necessary.

(f) Redemption. Amounts on deposit in the Reserve Account shall be available to the County for redemption of the Bonds and shall be transferred by the Trustee to the Redemption Account for this purpose on any Payment Date if redemption is then authorized and upon written direction of the County.

(g) No Other Transfers. No amounts shall be withdrawn or transferred from or paid out of the Reserve Account except as provided in this Section 21 and Section 19(e).

(h) Valuation. The Trustee shall, not less than semiannually, determine the aggregate value of cash and the fair market value of securities in the Reserve Fund. In determining the fair market value of securities in the Reserve Fund, the Trustee shall use reasonable methods, including, without limitation, the use of quoted prices for recent transactions in such securities on established exchanges, as reported by sources deemed by the Trustee to be reasonably reliable.

Section 22. Rebate Fund. There is established with the Trustee a special trust fund to be designated as the "Colfax County, New Mexico Gross Receipts Tax Revenue Bonds, Series 2009 Rebate Fund" and referred to as the "Rebate Fund." Money and investments in the Rebate Fund shall not be used for the payment the Bonds and amounts credited to the Rebate Fund shall be free and clear under any pledge under this ordinance. Money in the Rebate Fund shall held by the Trustee, in trust, to the extent required to pay rebatable arbitrage to the United States of America. The County and the Trustee shall unconditionally be entitled to accept and rely upon the recommendation, advice, calculation and opinion of an accounting firm or other person or firm with knowledge of or experience in advising with respect to the provisions of the Code relating to rebatable arbitrage. The County shall pay into the Rebate Fund and the Trustee shall remit all rebate installments and the final rebate payment to the United States of America as required by the provisions of the Code. Any moneys remaining in the Rebate Fund after redemption and payment of all the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and remitted to the County.

Section 23. Deposit and Investment of Moneys in Funds.

(a) Investment. All moneys held by the Trustee in the Trust Fund and the Rebate Fund shall be deposited or invested in Permitted Investments maturing not later than the times necessary to make the payments called for under this ordinance (unless otherwise specified herein), pursuant to written instructions of an Authorized Officer of the County. If the County does not provide the Trustee with written instructions for such investment, the Trustee may invest such moneys in Permitted Investments that the Trustee deems practicable, having due regard for the safety of such moneys and for the dates upon which such moneys will be required for uses and purposes specified in this ordinance. Such Permitted Investments shall be registered in the name of and held by the Trustee. The Trustee may purchase from or sell to itself or any affiliate, as principal or agent, investments authorized by this Section 23. The Trustee shall have no liability or responsibility for any loss or for failure to maximize earnings resulting from any investment made in accordance with the provisions herein. The Trustee shall be entitled to assume, absent receipt by the Trustee of written notice to the contrary, that any investment that at the time of purchase is a Permitted Investment remains a Permitted Investment.

(b) Acquisition Account. All interest or income on the Acquisition Account shall be retained in the Acquisition Account until the Acquisition Account is closed pursuant to Section 18(d).

(c) Bond Account. All interest or income received by the Trustee on investment of the Bond Account shall be retained in the Bond Account and be applied to the payment of delinquent payments on the Bonds, if any, and otherwise shall be applied as set forth in Section 23(e).

(d) Reserve Account. All interest or income on the Reserve Account shall, to the extent not needed to be retained in the Reserve Account in order that the amount in the Reserve Account equals the Reserve Requirement, be transferred to the Bond Account at least semiannually.

(e) Application to Bond Payments. Provided that there are no delinquent payments on the Bonds, amounts retained or deposited in or transferred to the Bond Account pursuant to Sections 23(c) and 23(d) shall be applied as a credit against the next payment of principal of and/or interest on the Bonds following the date of deposit or transfer. At the time of deposit or transfer of said moneys in or to the Bond Account, the Trustee shall report the amount thereof to the County and the amount of the next payment payable by the County under this ordinance shall be reduced by an amount equal to the amount of said deposit or transfer.

(g) Rebate Fund. All interest or income on the Reserve Fund shall be retained in the Rebate Fund. Notwithstanding any other provision of this Section 23, all income on any account in the Trust Fund that constitutes rebatable arbitrage shall be paid into the Rebate Fund.

(h) Trustee Not Liable. The Trustee shall not be liable for any loss resulting from the making or disposition of any investment pursuant to this Section 23, except where such loss arises out of the Trustee's wrongful or grossly negligent act or failure to act. Any loss not resulting from the Trustee's wrongful or grossly negligent conduct shall be charged to the account with respect to which such investment was made.

(i) Investment Directions. The County shall at all times direct the Trustee to invest the moneys held in the Trust Fund in accordance with applicable Law and in a manner which shall maintain the exemption from gross income of the interest payable on the Bonds for federal income tax purposes.

(j) Other Income. All interest income on amounts credited to any account not specifically provided for under this Section 23 shall be deposited in such account and used for the purposes of such account. All interest income in any account created hereunder, remaining after all payments or disbursements required by the Trustee have been made and the Bonds have been paid in full shall be paid to the County.

(k) Confirmations and Statements. The County acknowledges that regulations of the Comptroller of the Currency grant the County the right to receive brokerage confirmations of the security transactions as they occur. The County specifically waives such notification to the extent permitted by law. The County shall receive periodic cash transaction statements from the Trustee that will detail all investment transactions.

Section 24. Termination Upon Deposits to Maturity. No payment need be made into the Bond Account, the Reserve Account or both if the amounts in the Bond Account, the Reserve Account and the Surplus Account total a sum at least equal to the entire amount of the Bonds then Outstanding, both as to principal and interest to their respective maturities, and both accrued and not accrued, in which case, moneys in said funds 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 said funds and any other moneys derived from the Pledged Revenues may be used in any lawful manner determined by the County.

Section 25. First Lien on Pledged Revenues. The Bonds constitute an irrevocable and first lien (but not necessarily an exclusively first lien, upon compliance with the provisions of Section 26 or 27 for issuance of Parity Bonds) on the Pledged Revenues.

Section 26. Additional Bonds and Other Obligations.

(a) Limitations Upon Issuance. The County may issue additional bonds or other obligations payable from the Pledged Revenues and constituting a lien upon the Pledged Revenues on a parity with, but not prior nor superior to, the lien of the Bonds (collectively, "Parity Bonds"). Before any Parity Bonds are authorized or actually issued, including those parity lien refunding obligations which refund subordinate bonds or other subordinate lien obligations as permitted in Section 27(b) (but excluding any parity lien refunding obligations which refund outstanding parity lien bonds and other parity lien obligations as permitted by Sections 27(b)(1) and 27(d)(1)):

(i) The County must then be current in all of the accumulations required to be made pursuant to Sections 17(d), 17(e) and 17(f);

(ii) The County must obtain a written report of an Independent Accountant to the effect that the ratio of Pledged Revenues for the twelve months immediately preceding the date of issuance of the additional Parity Bonds to the maximum annual debt service on the Bonds and any Parity Bonds (including the Parity Bonds sought to be issued, but excluding the last payment of principal of and interest on the Bonds) for each succeeding fiscal year of the County, will not be less than [1.20:1]. Any reports delivered pursuant to this Section 26(a)(ii) shall state the relevant assumptions on which the report is based.

(b) Subordinate Obligations Permitted. Nothing in this ordinance shall be construed so as to prevent the issuance by the County of additional bonds or other obligations payable from the Pledged Revenues and constituting a lien thereon subordinate or junior to the lien of the Bonds.

(c) Superior Obligations Prohibited. Nothing in this ordinance shall be construed so as to permit the County to issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior and superior to the Bonds.

Section 27. Refunding Bonds. The provisions of Section 26 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 County shall find it desirable to refund any outstanding bonds 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 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 County'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 Sections 26(b), 27(b) or 27(c)).

(b) Limitations Upon Issuance of Parity Refunding Obligations. Subject to the provisions of Section 27(d), no refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on a parity with the Bonds, unless:

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

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 26(a).

(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 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 County may by ordinance provide, but without any impairment of any contractual obligations imposed upon the County by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including, without limitation, the Bonds). If only a part of the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is 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:

(i) 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

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 26(a); or

(iii) 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.

Section 28. Equality of Bonds. No Bond shall be entitled to any priority over another in the application of the Pledged Revenues, regardless of the time or times of their issuance, it being the intention of the Board 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 29. Protective Covenants. The County covenants and agrees with each and every Owner of the Bonds that, so long as any of the Bonds remains Outstanding:

(a) Payment of Bonds. The County shall promptly pay the principal of and the interest on every Bond at the place, on the dates and in the manner specified herein and in said Bonds according to the true intent and meaning hereof.

(b) Extending Interest Payments. In order to prevent any accumulation of claims for interest after maturity, the County shall 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 shall 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 said interest; and in case the time for payment of any such interest shall be extended, such installment or installments of interest after such extension or arrangement shall not be entitled in case of default hereunder to the benefit or security of this ordinance except subject to the prior payment in full of the principal of all Bonds issued hereunder and then Outstanding, and of matured interest on such Bonds the payment of which has not been extended.

(c) Performing Duties. The County shall faithfully and punctually perform all duties with respect to the Project and the Bonds required by the Constitution and laws of the State of New Mexico and the ordinances and resolutions of the County.

(d) County's Existence. The County shall maintain its corporate identity and existence outstanding unless another political subdivision by operation of Law succeeds to the duties, privileges, powers, liabilities, disabilities, immunities and rights of the County and is obligated by law to receive and distribute the Pledged Revenues in place of the County, without affecting to any substantial degree the privileges and rights of any Owner of any Outstanding Bonds.

(e) Impairment of Contract. No law or ordinance or resolution of the County in any manner affecting the Pledged Revenues or the Bonds, or otherwise appertaining thereto, shall 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 Owners of the then Outstanding Bonds is obtained pursuant to Section 46.

(f) Audits. The County shall, at the time of the annual audit required by Law, cause an audit of its books and records relating to the Pledged Revenues to be performed by an Independent Accountant showing the receipts and disbursements in connection with the Pledged Revenues. The County shall furnish a copy of each of such audits to any Owner promptly upon the Owner's written request.

(g) Duty to Impose Gross Receipts Tax. If any County ordinance or any part thereof that in any manner affects the Pledged Revenues shall ever be held to be invalid or unenforceable, the County shall immediately take such action as may be necessary to produce sufficient Pledged Revenues to comply with its obligations under this ordinance, except as provided in Section 29(e).

(f) Tax Covenant. The County shall not take any action or omit to take any action with respect to the Bonds, the proceeds thereof, any other funds of the County or any facilities financed with the proceeds Bonds if such action or omission: (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Code; (ii) would cause interest on the Bonds to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Code except to the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under Section 56 of the Code in calculating corporate alternative minimum taxable income; or (iii) would cause interest on the Bonds to lose its exclusion from net income under present New Mexico income tax laws, the State Income Tax Act and the Corporate Income and Franchise Tax Act.

Section 30. Defeasance. When all principal, any applicable prior redemption premium, and interest in connection with the Bonds 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 Board has placed in escrow and in trust with a commercial bank located within or without the State 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, interest and any applicable prior redemption premium as the same become due to its maturity or designated redemption date as of which the County shall have exercised or obligated itself to exercise its option to call such 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 Board 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 30 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 31. Delegated Powers. The officers of the County are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance, including, without limiting the generality of the foregoing, the printing and reprinting of the Bonds, the original and (if necessary) subsequent delivery to the Trustee of a number (as determined by the responsible officer) of fully or partially executed Bonds to be held by the Trustee for use as herein provided, the execution of a bond purchase agreement between the County and the Purchaser, a continuing disclosure agreement for benefit of the holders of the Bonds, an agreement between the County and the Trustee, the final official statement and other documents and agreements related to the Bonds and the use of a preliminary official statement related to the Bonds as may be approved in the Sale Resolution.

Section 32. Events of Default. Each of the following events is an "Event of Default":

(a) Nonpayment of Principal. Any payment of the principal of any of the Bonds is not made when due and payable, either at maturity, upon acceleration, by proceedings for prior redemption, or otherwise.

(b) Nonpayment of Interest. Any payment of any installment of interest on the Bonds is not be made when the same becomes due and payable.

(c) Default of any Provision. Any failure by the County to observe or perform any covenant, condition or agreement on its part to be observed or performed (other than as referred to in Section 32(a) or Section 32(b), and other than the failure by the County to observe and perform the covenants, conditions and agreements which result solely in a Determination of Taxability), which failure continues for a period of thirty days after written notice specifying the failure and requesting that it be remedied has been given to the County by the Trustee or by the Owners of 66-2/3% in principal amount of the Bonds then Outstanding.

(d) Falsity of Representation. Any representation by the County in this ordinance proves to have been incorrect in any material respect when made.

(e) Bankruptcy. The filing by the County of a voluntary petition in bankruptcy, or adjudication of the County as a bankrupt, or assignment by the County for the benefit of its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the County in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or any similar acts that may hereafter be enacted.

The Trustee shall give to all Owners of the Bonds notice of all Events of Default known to the Trustee by virtue of actual knowledge by an officer of the Trustee, and indicating what, if any, actions have been taken to cure such Event of Default, within 30 days after the occurrence of an Event of Default; provided that, except in the case of default in the payment of principal and interest on any of the Bonds, the Trustee shall be protected in withholding such notice from the Bondholders if and so long as its board of directors, an executive committee or trust default committee or chief executive officer of the Trustee in good faith determines that the withholding of such notice is in the interest of the Bondholders; and further provided that no such notice shall be given unless and until any such default becomes an Event of Default.

Section 33. Remedies Upon Default. Upon the happening and continuance of any Event of Default, the Trustee may, and, upon the written request of the Owner or Owners of not less than 66-2/3% in principal amount of the Bonds then Outstanding, the Trustee shall, without further notice, take one or any combination of the following remedial steps:

(a) Acceleration. Declare all of the principal of and all accrued interest on any Bonds then Outstanding to be immediately due and payable, whereupon such principal and interest shall be immediately due and payable; or

(b) Other Remedies. Take whatever action at law or in equity may appear necessary or desirable to protect and enforce the rights of any 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 in an award or execution of any power herein granted for the enforcement of any power, legal or equitable remedy as such 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 Owner, or to require the Board 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 Owners of the Bonds then Outstanding.

The Owners of not less than 66-2/3% in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken under this ordinance; provided, that such direction shall not be otherwise than in accordance with the provisions of law and that the Trustee shall be indemnified as provided in Section 40. The Trustee shall not be liable for actions taken at the direction of the Owners pursuant to this Section 33. All rights of action (including the right to file proof of claim) under this ordinance or under any of the Bonds, may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, without the necessity of joining as plaintiffs or defendants any Owners of the Bonds hereby secured, and any recovery of judgment shall be for the equal benefit of the Owners of the Bonds then Outstanding. In case the Trustee or Bondholders shall have proceeded to enforce any right under this ordinance and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee or Bondholders, then and in every such case the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee and the Bondholders shall continue as if no such proceedings had been taken. The failure so to proceed shall not relieve the County or any of its officers, agents or employees of any liability for failure to perform any duty. Each right or privilege of the Trustee or any such Owner is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of the Trustee or any Owner shall not be deemed a waiver of any other right or privilege thereof.

Section 34. Trustee Standard of Care. In carrying out its duties and exercising its powers under this ordinance upon the occurrence and during the continuance of an Event of Default, Trustee shall exercise that degree of care under the circumstances then prevailing which men of prudence and discretion exercise in the management of their own business affairs. The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default as may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this ordinance and the Trust Agreement. Any permissive right of the Trustee enumerated in this ordinance shall not be construed as a duty of the Trustee, and no implied covenants or obligations shall be read against the Trustee in this ordinance. The Trustee shall be answerable only for its own negligence or willful default. The Trustee shall not be required to give any bond or surety in respect of the execution of the its obligations under this ordinance or otherwise in respect of the premises.

Section 35. Removal of Trustee. The Owners of a majority in aggregate principal amount of all Bonds Outstanding may by written request, remove the original Trustee and any successor thereto, and may appoint a successor Trustee, but any such successor shall be a bank or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least Fifty Million Dollars and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 35 the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

Section 36. Resignation of Trustee. The Trustee may at any time resign by giving notice to the County and the Owners of such resignation. Upon receiving such notice of resignation, if there is a single Owner, the Owner shall, and, otherwise the County shall, with the written consent of the Owners of a majority in principal amount of the Bonds Outstanding, promptly appoint a successor Trustee by an instrument in writing; provided, however, that in the event the County does not appoint a successor Trustee within 30 days following receipt of such notice of resignation, the resigning Trustee may petition the appropriate court having jurisdiction to appoint a successor Trustee, and any resignation or removal of the Trustee and appointment of a successor Trustee shall only become effective upon acceptance of appointment by the successor Trustee.

Section 37. Acceptance of Appointment by Successor Trustee. Any successor Trustee appointed as provided hereunder shall execute, acknowledge and deliver to the County and to its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named herein; but, nevertheless, on the request of the County or of the successor Trustee, upon payment of its charges for compensation, expenses, disbursements and advances then unpaid, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee all the rights and powers of Trustee so ceasing to act. Upon request of any such successor Trustee, the County shall execute any and all instruments in writing for more fully and certainly vesting in and conforming to such successor Trustee all such rights and powers. Any Trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such Trustee to secure any amounts then due to it pursuant to this ordinance. No successor Trustee shall accept appointment as provided in this Section 37 unless at the time of acceptance such successor Trustee shall be qualified under the provisions of Section 35. Upon acceptance of appointment by a successor Trustee, the successor Trustee shall give notice of such succession to each Owner.

Section 38. Compensation of Trustee. The County shall from time to time pay to Trustee reasonable compensation for the acceptance, administration and performance of the trust created by this ordinance, including reasonable Trustee fees and expenses during an Event of Default as well as any extraordinary services rendered, and shall reimburse the Trustee for all its advances and expenditures made in accordance with the provisions of this ordinance (including the reasonable expenses and disbursements of its counsel); provided that such amount may be deducted by the Trustee from amounts credited to the Revenue Account. The Trustee's right to receive compensation, reimbursement and indemnification of money due and owing hereunder shall survive the Trustee's resignation or removal, the payment of the Bonds and the defeasance of this ordinance

Section 39. Limited Liability of Trustee. The Trustee shall have no obligation or responsibility for providing information to the Owners concerning the investment character of the Bonds, for the sufficiency or collection of any Revenues or other moneys required to be paid to it under this ordinance, or for the actions or representations of any other party. The Trustee shall have no obligation or liability to the County or the Owners with respect to this ordinance itself or the failure or refusal of any other party to perform any covenant or agreement made by any of them hereunder, but shall be responsible solely for the business-like performance of the duties expressly imposed upon it hereunder. The recitals of facts, covenants and agreements contained herein and in the Bonds shall be taken as statements, covenants and agreements of the County, and the Trustee assumes no responsibility for the correctness of the same, and makes no representations as to the validity or sufficiency of this ordinance or the Bonds, and shall incur no responsibility with respect thereto, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon it. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own gross negligence, bad faith or willful misconduct. The Trustee shall not be responsible for the value of or title to the Facility. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it under the terms of and in accordance with this ordinance, except where such loss arises out of Trustee's wrongful or grossly negligent act or failure to act. The Trustee shall have no responsibility with respect to any information statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the Bonds. Except in instances of its own negligence or willful misconduct, the Trustee shall not be personally liable for any debts contracted or for damages to persons or personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in possession of or managing the Project.

Section 40. Indemnification of Trustee. To the extent permitted by law, the County shall indemnify and save the Trustee harmless from and against all claims, losses and damages, including reasonable legal fees and expenses, arising out of: (i) the use, maintenance, condition or management of or from any work or thing done on the Facility by the County; (ii) any breach or default on the part of the County in the performance of any of its obligations under this ordinance, if such breach or default is reduced to a written settlement or a judgment favorable to the Trustee; (iii) any tortious act or failure to act of the County or of any officer, servant or employee of County with respect to the Facility; or (iv) the authorization of payment of the Costs by the County. No indemnification will be made under this Section 40 or elsewhere in this ordinance for willful misconduct, gross negligence, or breach of duty under this ordinance by the Trustee, its officers, agents, employees, successors or assigns.

Section 41. Protection of Trustee. The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any written resolution, notice, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or provided pursuant to any of the provisions of this ordinance, and Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee shall not be bound to recognize any person as an Owner of any Bond or to take any action at his request unless such Bond shall be deposited with Trustee or satisfactory evidence of the ownership of such Bond shall be furnished to the Trustee. The Trustee may consult with Independent Counsel with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance therewith. Whenever in the administration of its duties under this ordinance, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) shall be deemed to be conclusively proved and established by the certificate of an Authorized Officer of the County and such certificate shall be full warranty to the Trustee for any action taken or suffered under the provisions of this ordinance upon the faith thereof, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

Section 42. Trustee Ownership of Bonds. The Trustee may buy, sell, own, hold and deal in any of the Bonds, and may join in any action which any Owner may be entitled to take with like effect as if the Trustee were not acting as such under this ordinance. The Trustee, either as principal or agent, may also engage in or be interested in any other unrelated financial or other transaction with the County, and may act as depositary, trustee, or agent for any committee or body of Owners or other obligations of the County as freely as if it were not the Trustee hereunder.

Section 43. Use of Agents. The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duties hereunder, and the Trustee shall not be answerable for the default or misconduct of any such attorney, agent or receiver selected by it with reasonable care. The Trustee shall not be required to risk or expend its own funds hereunder and adequate indemnity against all risk and liability is reasonably assured to it; the Trustee may, nevertheless, begin suit, or appear in and defend suit, or do anything else in its judgment proper to be done by it as such Trustee, without assurance of reimbursement or indemnity, and in such case the Trustee shall be reimbursed for all costs and expenses, outlays and counsel fees and other reasonable disbursements properly incurred in connection therewith. The Trustee shall not be answerable for the exercise of any discretion or power under this ordinance or for anything whatever in connection with the funds and accounts established hereunder, except only for its own bad faith, willful misconduct or negligence.

Section 44. Separability. If any section, paragraph, clause or provision 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 45. Repealer Clause. All ordinances or resolutions or parts of ordinances or resolutions inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution or part of any ordinance or resolution heretofore repealed.

Section 46. Amendment. This ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity, or to cure, correct or supplement any defect or inconsistent provision contained herein, or to comply with the provisions of the Code, or to comply with any rule or regulation of the Securities and Exchange Commission relating to the Bonds. Except as provided above, this ordinance may be amended or supplemented by ordinance adopted by the Board in accordance with the laws of the State, without receipt by the County of any additional consideration but with the written consent of the Owners of 66-2/3% of the Bonds authorized by this ordinance and Outstanding at the time of the adoption of such amendatory or supplemental ordinance; provided, however, that no such ordinance (without the consent of the Owners of all of the Bonds authorized by this ordinance and Outstanding at the time of adoption of such amendatory or supplemental ordinance) shall have the effect of permitting:

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

(b) A reduction in the principal amount of any Bond, the rate of interest thereon or the prior redemption premium due in connection therewith; or

(c) The creation of a lien upon or pledge of Pledged Revenues ranking prior to the lien or pledge created by this ordinance; or

(d) A reduction of the principal amount of Bonds required for consent to such amendatory or supplemental ordinance; or

(e) The establishment of priorities as between Bonds issued and Outstanding under the provisions of this ordinance; or

(f) The modification of or otherwise affecting the rights of the Owners of less than all of the Bonds then Outstanding.

Notwithstanding the generality of the foregoing, this ordinance may be amended by the Sale Resolution to the extent that may be required by any insurer proposing to issue a municipal bond insurance policy with respect to the Bonds or by any rating agency proposing to issue a rating with respect to the Bonds.

Section 47. Notices. All notices to be given under this ordinance shall be in writing and given by mail to the party entitled thereto at its address set forth below, or at such address as the party may specify by notice to the other parties from time to time, provided that notices to the Owners shall be given by mail at their addresses shown in the Bond register maintained by the Trustee:

| | |
|---|---|
| If to the County: | Colfax County<br>P.O. Box 1498<br>Raton, New Mexico 87740<br>Attn: County Manager |
| If to the Trustee: | U.S. Bank National Association<br>950 17th Street, 12th Floor<br>Mail Stop DN-CO-T12CT<br>Denver, Colorado 80202<br>Attn: Corporate Trust |

Section 48. Ordinance Irrepealable. After any of the Bonds are issued, this ordinance shall be and remain irrepealable until the Bonds and interest thereon shall be fully paid, cancelled and discharged as therein provided, or have been deemed paid as provided in Section 30.

Section 49. Publication of Notice. The following notice shall be published one time in the *Raton Range*, being a legal newspaper published and of general circulation in the County, as soon as is practicable following the adoption hereof.

(Form of Notice of Adoption)

COLFAX COUNTY, NEW MEXICO
NOTICE OF ADOPTION OF ORDINANCE NO. 2009-1

Notice is given of the adoption by the Board of County Commissioners of Colfax County, New Mexico of its Ordinance No. 2009-1 on June 30, 2009, relating to Colfax County, New Mexico Gross Receipts Tax Revenue Bonds, Series 2009. The title of the Ordinance is:

AUTHORIZING THE ISSUANCE OF COLFAX COUNTY, NEW MEXICO GROSS RECEIPTS TAX REVENUE BONDS, SERIES 2009 IN AN AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING $4,000,000 FOR THE PURPOSE OF DEFRAYING THE COST OF CONSTRUCTING, PURCHASING, FURNISHING AND EQUIPPING A GOVERNMENT CENTER FACILITY FOR USE BY THE COUNTY; PROVIDING THAT THE BONDS WILL BE PAYABLE FROM THE PROCEEDS OF CERTAIN GROSS RECEIPTS TAXES PAID TO THE COUNTY AND CERTAIN PROCEEDS OF THE SALE OF THE BONDS; PRESCRIBING OTHER DETAILS CONCERNING THE BONDS, INCLUDING BUT NOT LIMITED TO COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH AND THE FORM, TERMS, CONDITIONS AND MANNER OF EXECUTION OF SAID BONDS AND CONCERNING THE FACILITY; PROVIDING THAT CERTAIN DETAILS RELATING TO THE BONDS WILL BE ESTABLISHED IN A SUBSEQUENT RESOLUTION TO BE ADOPTED BY THE COUNTY; RATIFYING ALL ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH; REPEALING ORDINANCES IN CONFLICT HEREWITH.

A general summary of the Ordinance is contained in its title.

Complete copies of the Ordinance are on file in the Office of the County Clerk at the Colfax County Courthouse, 230 North Third Street, Raton, New Mexico, and are available for inspection and/or purchase during regular office hours. This Notice constitutes compliance with Sections 6-14-4 through 6-14-7 NMSA 1978.

DATED: June 30, 2009.

(SEAL)

Rayetta M. Trujillo

Rayetta M. Trujillo
County Clerk

(End of Form of Notice of Adoption)

Section 50. Interested Parties. Nothing in this ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the County, the Trustee, the Purchaser and the Owners of the Bonds, any right, remedy or claim under or by reason of this ordinance or any covenant, condition or stipulation hereof.

Section 51. Limitation on County's Liability. NOTWITHSTANDING ANY PROVISION OF THIS ORDINANCE TO THE CONTRARY, THE OBLIGATIONS OF THE COUNTY UNDER THIS ORDINANCE ARE SPECIAL, LIMITED OBLIGATIONS OF THE COUNTY PAYABLE SOLELY FROM THE PLEDGED REVENUES AND CERTAIN PROCEEDS OF THE SALE OF THE BONDS. NEITHER THE FAITH AND CREDIT, NOR THE TAXING POWER OF THE STATE OF NEW MEXICO OR ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE COUNTY, IS PLEDGED TO THE PAYMENT OR PERFORMANCE OF SUCH OBLIGATIONS. NO AGREEMENTS OR PROVISIONS CONTAINED IN THIS ORDINANCE OR ANY OTHER DOCUMENT OR INSTRUMENT RELATED TO THE BONDS SHALL GIVE RISE TO ANY PECUNIARY LIABILITY OF THE COUNTY, ITS OFFICERS, ITS EMPLOYEES OR MEMBERS OF ITS GOVERNING BODY OR CONSTITUTE A CHARGE AGAINST THE COUNTY'S GENERAL CREDIT, OR OBLIGATE THE COUNTY FINANCIALLY IN ANY WAY, EXCEPT WITH RESPECT TO THE PLEDGED REVENUES, AND THEIR APPLICATION AS PROVIDED IN THIS ORDINANCE. NO FAILURE OF THE COUNTY TO COMPLY WITH ANY TERMS, COVENANTS OR AGREEMENTS IN THIS ORDINANCE OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATED TO THE BONDS SHALL SUBJECT THE COUNTY, ITS OFFICERS, ITS EMPLOYEES OR MEMBERS OF ITS GOVERNING BODY TO ANY PECUNIARY CHARGE OR LIABILITY EXCEPT TO THE EXTENT THAT THE SAME CAN BE PAID OR RECOVERED FROM THE PLEDGED REVENUES AND CERTAIN PROCEEDS OF THE SALE OF THE BONDS.

Section 52. Governing Law. All rights and obligations of the parties with respect to the Bonds and this ordinance shall be construed, enforced, and interpreted according to the laws of the State. Venue with regard to any action relating to the Bonds or this ordinance shall be in federal or state district court located in the State.

PASSED AND ADOPTED THIS 30th DAY OF JUNE, 2009 BY A VOTE OF 3 FOR AND Ø AGAINST.

Whitney O. Hite, Chairman

Jim Maldonado

Jim Maldonado, Vice Chairman

William H Conley

William H. Conley, Member

(SEAL)

Attest:

Rayetta M. Trujillo, County Clerk

Approved as to form:

Robin C. Blair, County Attorney

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