



# City of Albuquerque

City of Albuquerque  
Government Center  
One Civic Plaza  
Albuquerque, NM 87102

## Legislation Details (With Text)

**File #:** O-14-9  
**Type:** Ordinance  
**File created:** 3/17/2014  
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**Enactment date:** 5/23/2014  
**Enactment #:** O-2014-012  
**Title:** F/S Authorizing The Issue And Sale Of The \$39,960,000 City Of Albuquerque, New Mexico Gross Receipts Tax/Lodgers' Tax Refunding and Improvement Revenue Bonds, Series 2014A For The Purpose Of (i) Financing The Cost Of Refunding The City's Outstanding Tax-Exempt Gross Receipts Tax/Lodgers' Tax Refunding Revenue Bonds, Series 2004A And (ii) Enhancing And Improving The City's Convention Center (Jones, by request)

### Sponsors:

### Indexes:

### Code sections:

**Attachments:** 1. O-9, 2. O-9 Approved Floor Substitute, 3. O-9fsfinal, 4. FS O-9Enacted

Date	Ver.	Action By	Action	Result
5/23/2014	3	City Clerk	Published	
5/23/2014	3	Mayor	Signed by the Mayor	
5/16/2014	3	City Council	Sent to Mayor for Signature	
5/8/2014	1	City Council	Passed as Substituted	Pass
5/8/2014	1	City Council	Substituted	Pass
5/5/2014	1	City Council	Accepted with a Recommendation Do Pass (Immediate Action)	
5/5/2014	1	City Council	Postponed	
4/28/2014	1	Finance & Government Operations Committee	Sent to Council with a recommendation of Do Pass	Pass
4/28/2014	1	Finance & Government Operations Committee	Sent to Council for Immediate Action	Pass
3/17/2014	1	President	Referred	
3/17/2014	1	City Council	Introduced and Referred	

## CITY of ALBUQUERQUE TWENTY-FIRST COUNCIL

COUNCIL BILL NO. F/S O-14-9 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Trudy E. Jones, by request

## ORDINANCE

**F/S Authorizing The Issue And Sale Of The \$39,960,000 City Of Albuquerque, New Mexico Gross Receipts Tax/Lodgers' Tax Refunding and Improvement Revenue Bonds, Series 2014A For The Purpose Of (i) Financing The Cost Of Refunding The City's Outstanding Tax-Exempt Gross Receipts Tax/Lodgers' Tax Refunding Revenue Bonds, Series 2004A And (ii) Enhancing And Improving The City's Convention Center (Jones, by request)**

**AUTHORIZING THE ISSUE AND SALE OF THE \$36,960,000 CITY OF ALBUQUERQUE, NEW MEXICO GROSS RECEIPTS TAX/LODGERS' TAX REFUNDING AND IMPROVEMENT REVENUE BONDS, SERIES 2014A FOR THE PURPOSE OF (i) FINANCING THE COST OF REFUNDING THE CITY'S OUTSTANDING TAX-EXEMPT GROSS RECEIPTS TAX/LODGERS' TAX REFUNDING REVENUE BONDS, SERIES 2004A AND (ii) STUDYING, DESIGNING, DEVELOPING, CONSTRUCTING, RECONSTRUCTING, REHABILITATING, RENOVATING, MODERNIZING, SIGNING, ENHANCING AND OTHERWISE IMPROVING THE CITY'S CONVENTION CENTER; PROVIDING FOR THE PAYMENT OF THE SERIES 2014A BONDS FROM CERTAIN GROSS RECEIPTS TAX REVENUES AND LODGERS' TAX REVENUES; PROVIDING FOR THE COLLECTION OF CERTAIN LODGERS' TAXES AND CERTAIN GROSS RECEIPTS TAXES; PROVIDING FOR THE TERMS AND OTHER DETAILS CONCERNING THE SERIES 2014A BONDS; PROVIDING FOR CERTAIN DOCUMENTS PERTAINING TO THE SERIES 2014A BONDS; RATIFYING ACTION PREVIOUSLY TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE; AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE ISSUE AND SALE OF THE SERIES 2014A BONDS; AND MAKING AN APPROPRIATION TO CAPITAL FUND 305.**

Capitalized terms used in the following preambles are defined in Section 1 of this Bond Ordinance, unless the context requires otherwise.

WHEREAS, the City is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State and its home rule charter; and

WHEREAS, the City has Home Rule Powers; and

WHEREAS, the Series 2004A Bonds are secured by the State-Shared Gross Receipts Tax Revenues and the Pledged Lodgers' Tax Revenues; and

WHEREAS, pursuant to Sections 3-38-1 *et seq.*, NMSA 1978 and City Ordinance Enactment No. 68-1984, the City has imposed the Lodgers' Tax on revenues on lodging within the City or

persons furnishing such lodging; and

WHEREAS, pursuant to Section 7-9-4 NMSA 1978, the State imposes a gross receipts tax on persons engaging in business in the State, and pursuant to Section 7 1 6.1 NMSA 1978, the City receives monthly distributions from the New Mexico Taxation and Revenue Department of a portion (currently 1.225% of the taxable gross receipts reported for the City for the month for which such remittance is made) of such gross receipts taxes; and

WHEREAS, pursuant to Sections 7-1-6.1 NMSA 1978 and Chapter 116, Section 1, Laws 2004, the City receives monthly distributions from the New Mexico Taxation and Revenue Department in lieu of gross receipts tax revenue that the City would have received but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978; and

WHEREAS, the City has previously sold and delivered Tax Obligations of which there remain Outstanding on the date of adoption of the Bond Ordinance the following aggregate principal amounts:

<u>Series</u>	<u>Amount Outstanding</u>
Series 2004A Bonds	\$31,965,000
Series 2004B Bonds	27,120,000
Series 2008A Bonds	3,105,000
Series 2008B Bonds	9,745,000
Series 2009A Bonds	10,445,000
Series 2009B	26,485,000
Series 2011A	18,930,000
Series 2011B	10,300,000
Series 2013	42,030,000

WHEREAS, except for the Tax Obligations listed above, on the date of adoption of this Bond Ordinance, no portion of the State-Shared Gross Receipts Tax Revenues has been pledged to the payment of any other Tax Obligations; and

WHEREAS, the City has previously sold and delivered Lodgers' Tax Obligations of which there remain Outstanding on the date of adoption of the Bond Ordinance the Series 2004A Bonds, the Series 2004B Bonds, the Series 2009A Bonds and the Series 2011A Bonds in the aggregate principal amounts set forth above; and

WHEREAS, except for the Lodger's Tax Obligations listed above, on the date of adoption of this Bond Ordinance, no portion of the Pledged Lodgers' Tax Revenues has been pledged to the

payment of any other Lodgers' Tax Obligations; and

WHEREAS, the City desires to issue and sell the Series 2014A Bonds in the aggregate principal amount of \$36,960,000 to (i) pay the cost and expenses of the Refunding Project and (ii) pay the costs and expenses of the Improvement Project (including reimbursing the City with all or a portion of the new money portion of the proceeds of the Series 2014A Bonds for the use of legally available moneys of the City previously expended to pay a portion of the costs of the Improvement Project); and

WHEREAS, the Series 2014A Bonds shall be secured by a first (but not an exclusive first) lien on the Pledged Lodgers' Tax Revenues, and a lien on the State-Shared Gross Receipts Tax Revenues on a parity (but not an exclusive parity lien) with the lien on State-Shared Gross Receipts Tax Revenues of the New Lien Tax Obligations; and

WHEREAS, the Act provides that any law which authorizes the pledge of any or all of the Lodgers' Tax Revenues or State-Shared Gross Receipts Tax Revenues to the payment of any revenue bonds issued pursuant to the Act or which affects the Lodgers' Tax Revenues or the State-Shared Gross Receipts Tax Revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, including the Series 2014A Bonds, unless such outstanding revenue bonds, including the Series 2014A Bonds, have been discharged in full or provision has been fully made therefor; and

WHEREAS, the City is authorized by the Act to issue and sell the Series 2014A Bonds to accomplish the Refunding Project and the Improvement Project; and

WHEREAS, the Council has determined that it is in the best interests of the City and its residents that the Refunded Bonds be refunded for the purpose of restructuring the debt service on the City's bonds so as to achieve significant savings as a result of current lower interest rates; and

WHEREAS, the proceeds of the Series 2014A Bonds, together with other funds legally available for that purpose, will be sufficient to defease the Refunded Bonds; and

WHEREAS, the Escrow Agent is a commercial bank having full trust powers and is a member of the Federal Deposit Insurance Corporation; and

WHEREAS, the Council has determined that it is in the best interest of the City and its residents that the Series 2014A Bonds be issued for the construction, acquisition and installation of the Improvement Project; and

WHEREAS, the Council determines that it is in the best interest of the City and its citizens to

sell the Series 2014A Bonds to the Investment Bankers at the Sale Price, and on the terms set forth in the Bond Purchase Agreement; and

WHEREAS, there has been on deposit with the City Clerk and presented to the City Council:

- (1) the form of Bond Purchase Agreement;
- (2) the form of Escrow Agreement;
- (3) the form of Continuing Disclosure Undertaking;
- (4) the Preliminary Official Statement; and
- (5) the proposed form of final Official Statement.

WHEREAS, all required authorizations, consents or approvals of any State governmental body, agency or authority for the authorization, execution and delivery of the Series 2014A Bonds which are required to have been obtained by the date of the adoption of the Bond Ordinance have been obtained, and which will be required to be obtained prior to the Closing Date, will have been obtained by that Closing Date.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. DEFINITIONS AND RULES OF CONSTRUCTION.

(A) DEFINITIONS. As used in the Bond Ordinance, the following terms have the meanings specified, unless the context clearly requires otherwise:

ACT. Sections 3-31-1 to 3-31-12, and 3-38-13 to 3-38-24 NMSA 1978, as amended, the City Charter, the Home Rule Powers and all enactments of the Council, including the Bond Ordinance, relating to the issuance of the Series 2014A Bonds.

AUTHORIZED DENOMINATIONS. Denominations of \$5,000 and integral multiples thereof.

AUTHORIZED OFFICER. The City's Mayor, Chief Administrative Officer, Director of the Department of Finance and Administrative Services, City Treasurer, or other officer or employee of the City when designated by a certificate signed by the Mayor of the City from time to time.

BOND COUNSEL. An attorney at law or a firm of attorneys, designated by the City, of nationally recognized standing in matters pertaining to the issuance of bonds issued by states and their political subdivisions.

BOND INSURANCE POLICY. A municipal bond insurance policy issued by a Credit Source insuring the payment when due of the principal of and interest on Tax Obligations.

BOND ORDINANCE. This ordinance, being City Twenty-First Council Bill No. F/S O-14-9, as amended or supplemented from time to time.

BOND PURCHASE AGREEMENT. The Bond Purchase Agreement among the City and the Investment Bankers relating to the sale of the Series 2014A Bonds to the Investment Bankers.

BOND REGISTER. The books maintained by the Registrar for the registration, transfer and exchange of the Series 2014A Bonds.

BUSINESS DAY. Any day other than (i) a Saturday or Sunday, or (ii) any day in which the offices of the

City or the offices of banks located in the State are authorized or required to remain closed.

CITY. The City of Albuquerque, in the County of Bernalillo and State of New Mexico.

CITY CHARTER. The Charter of the City adopted pursuant to the laws of the State at a special election on June 29, 1971 and amended thereafter from time to time.

CLOSING DATE. The date of the original issue, sale and delivery to the Investment Bankers or their designee of the Series 2014A Bonds.

CODE. The Internal Revenue Code of 1986, as amended from time to time. Each reference to a section of the Code in the Bond Ordinance shall be deemed to include the final and temporary United States Treasury regulations thereunder, as the same may be in effect from time to time, to the extent the same are applicable, unless the context clearly requires otherwise.

COMPLETION DATE. The date of completion of the construction, acquisition and installation of the Improvement Project or, as to that portion of the Improvement Project to be funded by the Series 2014A Bonds and as certified pursuant to Section 17.

CONTINUING DISCLOSURE UNDERTAKING. The undertaking of the City for the benefit of Owners and beneficial owners pursuant to which the City will agree that, while the Series 2014A Bonds are Outstanding, the City will annually provide certain financial information and operating data and will provide notice of certain material events in accordance with Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended.

COUNCIL. The governing body in which is vested the legislative power of the City.

COUNSEL. An attorney at law (who may be counsel to the City).

CREDIT FACILITY. A letter of credit, line of credit, Bond Insurance Policy or Reserve Fund Insurance Policy, guaranty or similar agreement provided by a Credit Source whose senior unsecured debt is rated no lower than the current rating on the applicable Obligations and in any event no lower than "AAA" by Moody's, S&P and Fitch to the extent each such rating agency is then rating such Obligations to provide support to pay the purchase price of, or the payment when due of the principal of and interest on, such Obligations.

CREDIT SOURCE. Any bank, insurance company or other financial institution which provides a Credit Facility for a series of Obligations.

DEBT SERVICE REQUIREMENTS. With respect to Tax Obligations, as applicable, and for any given period, the sum of: (1) the amount required to pay the interest, or to make reimbursements for payments of interest, becoming due on the Tax Obligations during that period, plus (2) the amount required to pay the principal or accreted value, or to make reimbursements for the payment of principal or accreted value, becoming due on Tax Obligations during that period, whether at maturity, an accretion term date or upon mandatory sinking fund redemption dates, plus (3) the periodic payments required to be made by the City pursuant to a qualified exchange agreement minus (4) the periodic payments to be received by the City pursuant to a qualified exchange agreement. No payments required for any Tax Obligations which may be tendered or otherwise presented for payment at the option or demand of the owners or holders of the Tax Obligations, or which may occur because of the exercise of an option by the City, or which may otherwise become due by reason of any other circumstance or contingency, including acceleration or exchange termination payments, which constitute other than regularly scheduled payments of principal, accreted value, interest or other regularly scheduled payments on the Tax Obligations shall be included in any computation of Debt Service Requirements for that period.

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

In any computation of Debt Service Requirements relating to the issuance of additional Senior Tax Obligations, there shall be deducted from that computation of Debt Service Requirements amounts and investments which are irrevocably committed to make designated payments on the Tax Obligations during the applicable period, including, without limitation money on deposit in any debt service account, amounts on deposit in an escrow account irrevocably committed to make designated payments on the Tax Obligations, during the applicable period and earnings on such investments which are payable during the applicable period.

For the purpose of the definition of Debt Service Requirements, the accreted value of capital appreciation bonds becoming due shall be included in the calculation of accrued and unpaid and accruing interest and principal only from and after the date which is one year prior to the date on which the accreted value becomes payable. In addition, the definition of Debt Service Requirements shall include any Expense Component.

**DEFEASANCE OBLIGATIONS.** The following obligations which are not redeemable at the option of the City:

(1) Government Obligations; and

(2) if permitted by law, obligations described in Section 103(a) of the Code, (a) provisions for the payment of the principal of, premium, if any, and interest on which (i) shall have been made by the irrevocable deposit with a bank or trust company acting as a trustee, escrow agent or holder of such obligations, securities described in clause (1) of this definition, the maturing principal of and interest on which, when due and payable, without further investment or reinvestment thereof, will provide sufficient money to pay when due the principal of, premium, if any, and interest on such obligations, and (ii) which securities described in clause (1) of this definition are not available to satisfy any other claim, including any claim of such trustee or escrow agent or of any person claiming through such trustee or escrow agent or to whom such trustee or escrow agent may be obligated, including claims in the event of insolvency of such trustee or escrow agent or proceedings arising out of such insolvency or (b) rated in its highest rating category (without regard to any refinement or gradation thereof by numerical modifier or otherwise) by S&P, Moody's or Fitch.

**DEPOSITORY.** The Depository Trust Company, 55 Water Street, Fl. 49, New York, New York 10041-0099, Fax (212) 855-8440; in accordance with then-current guidelines of the Securities and Exchange Commission, such other address and/or such other securities depository as an Authorized Officer may designate.

**ELECTRONIC MEANS.** Telephone, telecopy, telegraph, facsimile transmission or any other similar means of electronic communication. Any communication by telephone as an Electronic Means shall promptly be confirmed in writing, which may be by one of the other means of electronic communication listed in this definition.

**EMMA.** The Municipal Securities Rulemaking Board's Electronic Municipal Market Access System located on its website at [emma.msrb.org](http://emma.msrb.org).

**ESCROW AGENT.** A commercial bank and a member of the Federal Deposit Insurance Corporation having full and complete trust power, or its duly authorized successor, to be named in the Sale Resolution.

**ESCROW AGREEMENT.** The escrow agreement relating to the Refunding among the City as the fiscal agent for the Series 2004A Bonds and the Escrow Agent.

**ESCROW FUND.** The fund created in Section 16.

**EVENT OF DEFAULT.** Any of the events set forth in Section 29.

**EXCHANGE ACT.** Section 6-18-8.1 NMSA 1978, as amended and supplemented.

**EXPENSES.** The reasonable and necessary fees, costs and expenses incurred by the City in connection with the issuance of the Series 2014A Bonds and any transaction or event contemplated by the Series 2014A Bonds and the Bond Ordinance including, without limitation: (i) costs of advertising and publication of legislation relating to the Series 2014A Bonds; (ii) costs of printing certificates for the Series 2014A Bonds and any disclosure documents; (iii) legal fees and expenses; (iv) fees and expenses of any (a) fiscal service providers, (b) underwriter (including underwriter's discount), (c) financial advisor, (d) Independent Accountant, (e) escrow agent, and (f) Qualified Counterparty; (v) the initial premium payable to any bond insurer with respect to the Series 2014A Bonds; (vi) disclosure matters pertaining or allocable to, the Series 2014A Bonds; (vi) costs relating to the initial purchase of securities for deposit in the Escrow Fund, if any including any costs associated with any verification agent; and (viii) all reasonable and necessary fees and administrative costs of the City relating to the foregoing.

**FISCAL AGENT.** Collectively, the Paying Agent and Registrar.

**FISCAL YEAR.** The twelve month period beginning on the first day of July of each year and ending on the last day of June of the next succeeding year, or any other twelve month period, which the City or other appropriate authority may establish as the fiscal year for the City.

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

**GOVERNMENT OBLIGATIONS.** Direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America or certificates or receipts established by the United States Government or its agencies or instrumentalities representing direct ownership of future interests or principal payments on direct obligations of, or obligations fully guaranteed by, the United States of America or any of its agencies or instrumentalities the obligations of which are backed by the full faith and credit of the United States, which obligations are held by a custodian in safekeeping on behalf of the holders of such receipts, and rated or assessed in its highest Rating Category by S&P, if then rating the Series 2014A Bonds, Moody's, if then rating the Series 2014A Bonds, and Fitch, if then rating the Series 2014A Bonds.

**GROSS RECEIPTS TAX INCOME FUND.** The "City of Albuquerque Gross Receipts Tax Income Fund" continued in Section 16 of the Bond Ordinance.

**HOME RULE POWERS.** The authority of the City to exercise legislative powers given pursuant to the City Charter adopted by the City pursuant to Article X, Section 6 of the State Constitution.

**IMPROVEMENT PROJECT.** Studying, designing, developing, constructing, reconstructing, rehabilitating, renovating, modernizing, signing, enhancing and otherwise improving the City's Convention Center.

**INDEPENDENT ACCOUNTANT.** Any certified public accountant, registered accountant, or firm of accountants duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the City who (a) is, in fact, independent and not under the domination of the City, (b) does not have any substantial interest, direct or indirect, with the City, and (c) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City.



**INSURED BANK.** Any federally or state-chartered savings and loan association or federally or state-chartered commercial bank, the deposits of which are insured by the Federal Deposit Insurance Corporation and which has, or is the lead bank of a parent holding company which has, combined capital, surplus and undivided profits of not less than \$10,000,000.

**INSURED OBLIGATIONS.** Any Obligations insured by a Bond Insurance Policy or payable with the proceeds of another Credit Facility.

**INSURER.** Any insurer or insurers issuing a Bond Insurance Policy or Surety Bond, or both, for Obligations.

**INTEREST PAYMENT DATE.** January 1 and July 1 of each year (or if such day is not a Business Day, then the next succeeding Business Day), commencing January 1, 2015.

**INVESTMENT BANKERS.** Robert W. Baird & Co., JP Morgan Securities LLC, and Citigroup Global Markets, or its successor.

**LODGERS' TAX.** The occupancy tax imposed by City Ordinance Enactment No. 68-1984 on revenues on lodging within the City in an amount (at the time of adoption of the Bond Ordinance) equal to five percent (5%) of the gross taxable rent paid for lodging (not including State or local gross receipts tax) collected by the City from persons furnishing such lodging.

**LODGERS' TAX ACT.** Sections 3-38-13 to 3-38-24 NMSA 1978, as amended.

**LODGERS' TAX OBLIGATIONS.** Outstanding bonds and other obligations of the City secured by Pledged Lodgers' Tax Revenues, which as of the date of adoption of this Bond Ordinance are the Series 2004A Bonds, the Series 2004B Bonds, the Series 2009A Bonds, the Series 2011A Bonds and obligations relating thereto, including obligations of the City to the provider of any Credit Facility relating to Lodgers' Tax Obligations.

**LODGERS' TAX REVENUE FUND.** The "City of Albuquerque Lodgers' Tax Revenue Fund" continued in Section 16.

**LODGERS' TAX REVENUES.** The revenues received by the City pursuant to the Lodgers' Tax Act from the Lodgers' Tax.

**MATURITY DATE.** The date or dates on which the Series 2014A Bonds mature.

**MOODY'S.** Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

**NMSA.** New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

**OFFICIAL STATEMENT.** The final disclosure document relating to the sale of the Series 2014A Bonds (including the cover page and all summary statements, appendices and other materials included or incorporated by reference or attached thereto), as amended or supplemented.

**OUTSTANDING.** When used in reference to Tax Obligations, on any particular date, the aggregate of all Tax Obligations issued and delivered under the applicable City ordinance or resolution authorizing the issuance of the Tax Obligations, except:

(1) those canceled at or prior to such date or delivered to or acquired by the City at or prior to such date for cancellation;

(2) those which have been paid or are deemed to be paid in accordance with the City ordinance or resolution authorizing the issuance of the applicable Tax Obligations, or otherwise relating thereto, provided that the payment of Insured Tax Obligations with the proceeds of a Bond Insurance Policy shall not result in those Insured Tax Obligations ceasing to be Outstanding;

(3) in the case of Variable Rate Tax Obligations, any Tax Obligations deemed tendered but not yet presented for payment; and

(4) those in lieu of or in exchange or substitution for which other Tax Obligations shall have been delivered, unless proof satisfactory to the City and the Paying Agent for the applicable Tax Obligations is presented that any Tax Obligations for which new Tax Obligations were issued or exchanged are held by a bona fide holder or in due course.

OWNER. The registered owner of a Series 2014A Bond as shown, from time to time, on the registration books for the Series 2014A Bonds maintained by the relevant registrar for the City.

PARITY LODGERS' TAX OBLIGATIONS. The Series 2004A Bonds, the Series 2004B Bonds, the Series 2009A Bonds, the Series 2011A Bonds and any other Lodgers' Tax Obligations issued or incurred after the adoption of this Bond Ordinance payable from the Pledged Lodgers' Tax Revenues, with a first (but not an exclusive first) lien on the Pledged Lodgers' Tax Revenues on a parity with the lien on the Pledged Lodgers' Tax Revenues of the Series 2014A Bonds and prior to the lien on the Pledged Lodgers' Tax Revenues of Subordinate Lodgers' Tax Obligations.

PAYING AGENT. The City Treasurer or other agent for the City for the payment of the Series 2014A Bonds and any co-paying agent or successor paying agent which is a trust company, national or state banking association or financial institution appointed by resolution of the Council or by an Authorized Officer from time to time.

PAYMENT OBLIGATIONS. All obligations of the City to pay the Credit Source the principal amount of, interest on, and fees, costs, expenses and other amounts related to drawings, term loans and other advances and Obligations held by that Credit Source, pursuant to that Credit Facility.

PERMITTED INVESTMENTS. Any of the following which at the time of the investment are legal investments for the City for the money to be invested and any other investments which at the time of investment are legal investments of the City for the money to be invested:

(1) Government Obligations;

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

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

Financing Corporation -- debt obligations; and Resolution Funding Corporation -- debt obligations;

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

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

(6) Obligations, the interest on which is excluded from gross income of the recipient for federal income tax purposes, which are rated in the highest Rating Category by S&P, Moody's or Fitch;

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

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

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

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

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

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

PERSON. Any individual, corporation, partnership (in which case each partner shall be deemed a Person), joint venture, association, joint stock company, limited liability company, trust, unincorporated organization, or government or any agency or political subdivision of a government.

**PLEDGED LODGERS' TAX REVENUES.** Fifty percent (50%) of the Lodgers' Tax Revenues received by the City, after deduction of the administrative costs pertaining to the Lodgers' Tax to the extent required by the Lodgers' Tax Act, provided that the City is not pledging, and the term "Pledged Lodgers' Tax Revenues" does not include, any of the Lodgers' Tax Revenues in excess of fifty percent (50%) thereof.

**PLEDGED REVENUES.** The Pledged Lodgers' Tax Revenues and the State-Shared Gross Receipts Tax Revenues.

**PRELIMINARY OFFICIAL STATEMENT.** The initial disclosure document relating to the sale of the Series 2014A Bonds (including the cover page and all summary statements, appendices and other materials included or incorporated by reference or attached thereto), as amended or supplemented.

**PRINCIPAL PAYMENT DATE.** July 1 of each year (or if such day is not a Business Day, then the next succeeding Business Day), commencing July 1, 2015.

**QUALIFIED COUNTERPARTY.** Any Person entering into a Qualified Exchange Agreement with the City, its successors and assigns, or any substitute Qualified Counterparty, appointed or consented to from time to time by an Authorized Officer.

**QUALIFIED EXCHANGE AGREEMENT.** Any financial arrangement between the City and a Qualified Counterparty which satisfies the requirements of the Exchange Act at the time the agreement is entered into.

**RATING CATEGORY.** A generic securities rating category, without regard, in the case of a long term rating category, to any refinement or gradation of such long-term rating category by a numerical modifier or otherwise.

**REBATE FUND.** The fund, if any, for the Series 2014A Bonds created by ordinance or resolution of the City relating to the Series 2014A Bonds for the purpose of depositing funds to be used to make rebate payments or alternative amounts in lieu of rebate to the federal government.

**RECORD DATE.** The fifteenth day of the month immediately preceding each Interest Payment Date.

**REDEMPTION DATE.** July 1, 2014 or such other subsequent date determined by the City on which the Refunded Bonds shall be redeemed.

**REFUNDED BONDS.** The Outstanding Series 2004A Bonds.

**REFUNDED BONDS ORDINANCE.** With respect to the Series 2004A Bonds, City Bill No. F/S O-04-47, Enactment No. O-2004-45, as supplemented and modified by City Resolution No. F/S R-04-120, Enactment No. R-2004-104.

**REFUNDING PROJECT.** The defeasance at closing to July 1 of the Series 2004A Bonds with proceeds of the Series 2014A Bonds and, to the extent necessary, other money of the City legally available for the purpose, and the payment of certain yield reduction payments to the United States Treasury in connection with the refunding of the Series 2004A Bonds.

**REGISTRAR.** The Treasurer or other agent for the City for the transfer and exchange of the Series 2014A Bonds and any co-registrar or successor registrar which is a trust company, national or state banking association or financial institution appointed by resolution of the Council or by an Authorized Officer from time to time.

**RELATED DOCUMENTS.** The Bond Purchase Agreement, the Continuing Disclosure Undertaking, the Escrow Agreement, and any other documents relating to the Series 2014A Bonds identified and approved in the Bond Ordinance.

**RESERVE FUND INSURANCE POLICY.** Any policy of insurance or surety bond or other Credit Facility

issued to the City to be deposited in a reserve account, the proceeds of which shall be used to prevent deficiencies in the payment of the principal of or interest on a series of Tax Obligations written by an insurer whose policies of insurance, or issued by a Credit Source whose Credit Facility, would not adversely affect the rating of the Tax Obligations by Moody's, S&P or Fitch. At the time of the issuance of such policy, such insurer or the component insurance companies thereof or the obligations thereof shall have received the highest policy claims rating accorded insurers by the A. M. Best Company or any comparable service and either of the two highest rating categories of Moody's, S&P or Fitch.

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

SALE PRICE. The principal amount of the Series 2014A Bonds, less a net original issue discount of \$414,271.70, less an underwriter's discount of \$216,124.25 (which discount includes expenses, fees, and attorneys' fees, of the Investment Bankers).

SENIOR TAX OBLIGATIONS. The Series 2004A Bonds, the Series 2004B Bonds, the Series 2008A Bonds, the Series 2008B Bonds, the Series 2009A Bonds, the Series 2009B Bonds, the Series 2011A Bonds, the Series 2011B Bonds, the Series 2013 Bonds, and any other Tax Obligations issued or incurred after the adoption of this Bond Ordinance payable from the State-Shared Gross Receipts Tax Revenues, with a lien on the State-Shared Gross Receipts Tax Revenues on a parity with the lien on the State-Shared Gross Receipts Tax Revenues of the Series 2014A Bonds.

SERIES 2004 BONDS. The Series 2004A Bonds and the Series 2004B Bonds.

SERIES 2004A BONDS. The "City of Albuquerque, New Mexico Tax-Exempt Gross Receipts Tax/Lodgers' Tax Refunding Revenue Bonds, Series 2004A."

SERIES 2004B BONDS. The "City of Albuquerque, New Mexico Taxable Gross Receipts Tax/Lodgers' Tax Refunding Revenue Bonds, Series 2004B."

SERIES 2008A BONDS. The "City of Albuquerque, New Mexico Gross Receipts Tax Refunding Revenue Bonds, Taxable Series 2008A."

SERIES 2008B BONDS. The "City of Albuquerque, New Mexico Gross Receipts Tax Revenue Refunding Bonds (Beach, Bluewater and Manzano Vista Projects), Series 2008B."

SERIES 2009 BONDS. The Series 2009A Bonds and the Series 2009B Bonds.

SERIES 2009A BONDS. The "City of Albuquerque, New Mexico Gross Receipts Tax/Lodgers' Tax Refunding Revenue Bonds, Series 2009A."

SERIES 2009B BONDS. The "City of Albuquerque, New Mexico Gross Receipts Tax Refunding Revenue Bonds, Series 2009B."

SERIES 2011 BONDS. The Series 2011A Bonds and the Series 2011B Bonds.

SERIES 2011A BONDS. The "City of Albuquerque, New Mexico Gross Receipts Tax/Lodgers' Tax/Hospitality Fee Improvement and Refunding Revenue Bonds, Series 2011A."

SERIES 2011B BONDS. The "City of Albuquerque, New Mexico Gross Receipts Tax/Stadium Revenues Refunding Revenue Bonds, Taxable Series 2011B."

SERIES 2013 BONDS. The "City of Albuquerque, New Mexico Gross Receipts Tax Revenue Bonds."

SERIES 2014A BONDS. The "City of Albuquerque, New Mexico Gross Receipts Tax/Lodgers' Tax Refunding and Improvement Revenue Bonds, Series 2014A."

**SERIES 2014A ACQUISITION/CONSTRUCTION FUND.** The “City of Albuquerque, New Mexico Gross Receipts Tax/Lodgers’ Tax Refunding and Improvement Revenue Bonds, Series 2014A Acquisition/Construction Fund” created in Section 16.

**SERIES 2014A DEBT SERVICE FUND.** The “City of Albuquerque, New Mexico Gross Receipts Tax/Lodgers’ Tax Refunding and Improvement Revenue Bonds, Series 2014A Debt Service Fund” created in Section 16.

**SPECIAL RECORD DATE.** A date established for payment of overdue interest on Series 2014A Bonds by the Paying Agent pursuant to Section 5.(B).

**STATE.** The State of New Mexico.

**STATE-SHARED GROSS RECEIPTS TAX REVENUES.** The revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted monthly by the Revenue Division of the Taxation and Revenue Department of the State to the City as authorized by Sections 7-1-6.1 and 7-1-6.4 NMSA 1978, and which remittances as of the date of adoption of this Bond Ordinance are equal to one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported to the City for the month for which such remittance is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to the Bond Ordinance; and provided further that the amount of revenues pledged pursuant to the Bond Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City as set forth above, or (ii) the maximum amount at any time provided hereinafter to be remitted to the City under applicable law; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Bond Ordinance. State-Shared Gross Receipts Tax Revenues also includes (i) the portion of the gross receipts tax distribution to the City to be made pursuant to Section 7-1-6.46 NMSA 1978, which represents the amount of State-Shared Gross Receipts Tax Revenues set forth in the sentence above that would have been remitted to the City but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978 and (ii) any similar distributions made to the City in lieu of State-Shared Gross Receipts Tax Revenues, but State-Shared Gross Receipts Tax Revenues do not include any similar distributions in lieu of any municipal local option gross receipts tax revenues.

**SUBORDINATE LODGERS’ TAX OBLIGATIONS.** Any Lodgers’ Tax Obligations hereafter issued or incurred payable from the Lodgers’ Tax Revenues and issued with a lien thereon junior and inferior to the lien thereon of the Parity Lodgers’ Tax Obligations.

**SUBORDINATE TAX OBLIGATIONS.** All Tax Obligations now outstanding or hereafter issued or incurred with a lien on the State-Shared Gross Receipts Tax Revenues subordinate to the lien of the Senior Tax Obligations on the State-Shared Gross Receipts Tax Revenues.

**SURETY BOND.** Any policy of insurance or surety bond with respect to a series of Tax Obligations guaranteeing certain payments into a debt service reserve account or similar account with respect to that series of Tax Obligations, purchased to satisfy, in whole or in part, the reserve requirement for that series or to replace any money on deposit in a debt service reserve account or similar account.

**SURPLUS FUND.** The City of Albuquerque Surplus Lodgers’ Tax Revenues Reserve Fund continued in Section 16 of the Bond Ordinance.

**TAX OBLIGATIONS.** Senior Tax Obligations, Lodgers’ Tax Obligations and any other bonds, notes or

other instruments which evidence a borrowing payable from and secured by (i) the State-Shared Gross Receipts Tax Revenues, or (ii) the Pledged Lodgers' Tax Revenues, now Outstanding or hereafter issued or incurred.

VALUE. The value of any investment shall be calculated as follows:

(a) as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times): the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(b) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the City in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;

(c) as to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and

(d) as to any investment not specified above: the value thereof established by prior agreement between the City and the Credit Source.

VARIABLE INTEREST RATE. An interest rate which varies or fluctuates from time to time. Except for any historical period for which the actual rate or rates are determinable, and unless otherwise stated in the Bond Ordinance, interest shall be calculated for Variable Interest Rate Tax Obligations at the maximum interest rate then permitted on such Tax Obligations by the City ordinance authorizing the issuance of such Tax Obligations.

VARIABLE RATE OBLIGATIONS. Tax Obligations, including reimbursement obligations pursuant to a Credit Facility, the interest rate on which is subject to change from time to time.

(B) RULES OF CONSTRUCTION. For purposes of the Bond Ordinance, unless otherwise expressly provided or unless the context require otherwise:

(1) Unless otherwise stated in the Bond Ordinance, all references in the Bond Ordinance to designated Sections and other subdivisions are to the designated Section and other subdivision of the Bond Ordinance.

(2) The words "herein," "hereof," "hereunder," and "herewith" and other words of similar import in the Bond Ordinance refer to the Bond Ordinance, as a whole, and not to any particular Section or other subdivision.

(3) All accounting terms not otherwise defined in the Bond Ordinance have the meanings assigned to them in accordance with generally accepted accounting principles.

(4) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(5) The headings used in the Bond Ordinance are for convenience of reference only and shall not define or limit the provisions of the Bond Ordinance.

(6) Terms in the singular include the plural and vice versa.

SECTION 2. RATIFICATION. All actions previously taken (not inconsistent with the provisions of the Bond Ordinance) by the Council and the officers of the City, directed toward (1) the Refunding Project and (2) the issuance and sale of the Series 2014A Bonds are ratified, approved and confirmed.

SECTION 3. FINDINGS. The Council declares that it has considered all relevant information and data and

makes the following findings:

(A) The Pledged Revenues may lawfully be pledged to secure Series 2014A Bonds to the extent and in the manner provided in the Bond Ordinance.

(B) The Series 2014A Bonds will be issued pursuant to the Act.

(C) The Series 2014A Bonds are Tax Obligations and are being issued for the purpose of reducing interest costs.

(D) It is economically feasible to accomplish the Refunding Project by the issuance of the Series 2014A Bonds.

(E) The issuance of the Series 2014A Bonds and the construction, acquisition and installation of the Improvement Project are in the interest of the public health, safety and welfare of the residents of the City.

#### SECTION 4. AUTHORIZATIONS.

(A) AUTHORIZATION OF BONDS AND PROCEEDS OF BONDS. This Bond Ordinance has been adopted by the affirmative vote of the Council. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the citizens of the City, achieving cost savings and restructuring debt, it is declared necessary that the City issue its negotiable, fully registered Refunding and Improvement Bonds pursuant to the Act, as set forth in the Bond Ordinance. The Series 2014A Bonds are designated as the "City of Albuquerque, New Mexico Gross Receipts Tax/Lodgers' Tax Refunding and Improvement Revenue Bonds, Series 2014A;" provided that changes may be made in those designations to better identify the Series 2014A Bonds. The issuance of the Series 2014A Bonds in the aggregate principal amount of \$36,960,000 is authorized and approved; provided that the Series 2014A Bonds shall not be issued prior to the date on which the State Department of Finance and Administration gives its written approval to the issuance of the Series 2014A Bonds. The sale of the Series 2014A Bonds to the Investment Bankers pursuant to the Bond Purchase Agreement is approved.

Proceeds of the Series 2014A Bonds may also be used to pay Expenses.

(B) REFUNDING PROJECT. The Refunding Project is authorized and approved. The Refunded Bonds shall be defeased by depositing into the Escrow Fund, on or about the date of delivery of the Series 2014A Bonds, a redemption price of 100% of the principal amount thereof outstanding plus interest to the date of redemption.

(C) IMPROVEMENT PROJECT. The Improvement Project is authorized and approved. The Improvement Project will include studying, designing, developing, constructing, reconstructing, rehabilitating, renovating, modernizing, signing, enhancing and otherwise improving the City's Convention Center.

In accordance with United States Treasury Regulation Section 1.150-2, the City presently intends and reasonable expects to reimburse itself with all or a portion of the new money portion of the proceeds of the Series 2014A Bonds for capital expenditures on the Improvement Project initially financed or to be financed with legally available funds of the City. All of the capital expenditures covered by this paragraph were or will be made on or after the date that is 60 days prior to the effective date of this Ordinance.

(D) EXPENSES. The payment of Expenses is authorized and approved.

#### SECTION 5. SERIES 2014A BONDS.

(A) DETAILS. The Series 2014A Bonds shall be issued in the aggregate principal amount of \$36,960,000 and shall be dated the date of delivery. The Series 2014A Bonds shall be issued as fully registered bonds and shall be numbered with such prefixes or other distinguishing designations as the Registrar may determine necessary



or appropriate to distinguish one Series 2014A Bond from another. The Series 2014A Bonds shall be issued in Authorized Denominations and shall bear interest on the basis of a 360-day year and twelve 30-day months from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date until maturity at the rates set forth below, payable semiannually on January 1 and July 1 of each year beginning January 1, 2015, and shall mature on July 1 in the years and amounts set forth below:

Series 2014A Bonds		
<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2015	\$ 115,000	2.000%
2016	200,000	3.000
2017	205,000	3.000
2018	210,000	3.000
2019	215,000	3.000
2020	225,000	3.000
2021	230,000	3.000
2022	235,000	3.000
2023	245,000	4.000
2024	255,000	4.000
2025	265,000	4.000
2026	275,000	3.000
2027	285,000	3.125
2028	290,000	3.250
2029	300,000	3.250
2030	2,610,000	3.250
2031	1,000,000	3.500
2031	3,570,000	4.000
2032	4,840,000	3.500
2033	5,105,000	3.500
2037	\$16,285,000	4.000%

The net effective interest rate on the Series 2014A Bonds does not exceed twelve percent (12%) per annum.

(B) PAYMENT OF SERIES 2014A BONDS; TRANSFERS TO PAYING AGENT. Payments on the Series 2014A Bonds shall be made in such coin or currency of the United States of America as, at the respective times of payment, is legal tender for the payment of public and private debts. The City shall transfer funds to the Paying Agent for the Series 2014A Bonds on a timely basis so that the Paying Agent may make payments of the principal of, premium, if any, and interest on Series 2014A Bonds, when due, to the Owners and comply with the requirements of any Bond Insurer relating to payments of Series 2014A Bonds. As soon as known to the City, the City shall notify the Paying Agent

if there is or will be an insufficient amount of money available to pay principal and interest on the Series 2014A Bonds when due.

The principal of and premium, if any, on the Series 2014A Bonds shall be payable to the Owners upon presentation and surrender of their Series 2014A Bonds at the principal office of the Paying Agent.

Interest on the Series 2014A Bonds shall be payable on each Interest Payment Date by the Paying Agent by check mailed on the date on which due to the Owners at the close of business on the Record Date for such Interest Payment Date to the registered addresses of Owners appearing on the registration books for the Series 2014A Bonds. In the case of any Owner of Series 2014A Bonds in an aggregate principal amount in excess of \$1,000,000 as shown on the registration books who, prior to the Record Date for the Series 2014A Bonds next preceding any Interest Payment Date, has provided the Paying Agent with wire transfer instructions, interest shall be paid in immediately available funds in accordance with the wire transfer instructions provided by that Owner.

If and to the extent that the City fails to make payment or provision for payment of interest on any Series 2014A Bond on any Interest Payment Date, interest shall continue to accrue on that Series 2014A Bond but shall cease to be payable to the Owner of that Series 2014A Bond as of the applicable Record Date. When money becomes available for payment of the interest, (i) the Registrar shall establish a Special Record Date for the payment of that interest which shall be not more than 15 nor fewer than 10 days prior to the date of the proposed payment, and (ii) the Registrar shall give notice by first-class mail of the proposed payment and of the Special Record Date to each Owner not less than 10 days prior to the Special Record Date and, thereafter, the interest shall be payable to the Owners at the close of business on the Special Record Date.

While a Depository or its nominee is the owner of the Series 2014A Bonds, principal and interest payments on the Series 2014A Bonds shall be made to the Depository, or its nominee, as required by the Depository.

(C) BOOK-ENTRY. The Series 2014A Bonds shall initially be issued or registered in book-entry form, from time to time, with a Depository acting as securities depository for the Series 2014A Bonds with no physical distribution of bond certificates made to the public. A single certificate for each maturity date of each of the Series 2014A Bonds issued in book-entry form shall be delivered to such Depository and immobilized in its custody. The book-entry system shall evidence ownership of Series 2014A Bonds in Authorized Denominations, with transfer of ownership effected on the books of the Depository and its participants ("Participants"). As a condition to delivery of Series 2014A Bonds in book-entry form, the purchaser of the Series 2014A Bonds shall, immediately after acceptance of delivery thereof, deposit those Series 2014A Bonds certificates with such Depository, registered in the name of such Depository or its nominee. Principal, premium, if any, and interest will be paid to such Depository or its nominee as the registered Owner of those Series 2014A Bonds. The transfer of principal and interest payments to Participants shall be the responsibility of such Depository; the transfer of principal and interest payments to the beneficial owners of Series 2014A Bonds (the "Beneficial Owners") shall be the responsibility of such Participants and other nominees of Beneficial Owners maintaining a relationship with Participants (the "Indirect Participants"). The City shall not be responsible or liable for maintaining, supervising or reviewing the records maintained by such Depository, Participants or Indirect Participants.

If (i) the Series 2014A Bonds are not eligible for the services of the institution which has been acting as the Depository for the Series 2014A Bonds, (ii) the institution that has been acting as the Depository determines to discontinue its services with respect to the Series 2014A Bonds or (iii) the City determines that a continuation of the system of book-entry transfers through the institution that has been acting as the Depository ceases to be beneficial to

the City or the Beneficial Owners, the City shall either identify another Depository or certificates shall be delivered to Beneficial Owners or their nominees. In the event of the discontinuation of the book-entry system for the Series 2014A Bonds, the Beneficial Owners or their nominees, upon authentication of the Series 2014A Bonds and registration of the Series 2014A Bonds in the Beneficial Owners' or nominees' names, shall become the Owners for all purposes. The City shall mail an appropriate notice to the Depository for notification to Participants, Indirect Participants and Beneficial Owners of the substitute Depository or the issuance of bond certificates to Beneficial Owners or their nominees, as applicable.

Notwithstanding any other provision of the Bond Ordinance to the contrary, as long as all Series 2014A Bonds are registered in the name of a Depository or its nominee, all payments with respect to principal of, redemption premium, if any, and interest on those Series 2014A Bonds, and all notices with respect to those Series 2014A Bonds, shall be made and given by the Paying Agent or the City to the Depository, by the Depository to its Participants or Indirect Participants and by the Participants and Indirect Participants to the Beneficial Owners.

(D) SERIES 2014A BONDS NOT PRESENTED FOR PAYMENT. If any Series 2014A Bonds are not presented for payment when the principal becomes due either at maturity or at the date fixed for redemption thereof or otherwise, or if any check or draft mailed to an Owner in connection with a payment of interest on any Series 2014A Bonds is not cashed by an Owner, and an amount sufficient to pay those Series 2014A Bonds or interest is held by the Paying Agent for the benefit of the Owners, the Paying Agent shall segregate and hold such money in trust without liability for interest on that money to the Owners, for the benefit of the Owners of the applicable Series 2014A Bonds, who shall, except as provided in the following paragraph, then be restricted to only the amounts segregated for the satisfaction of any claim relating to that payment on such Series 2014A Bonds.

Any money which the Paying Agent segregates and holds in trust for the payment of the principal of, premium or interest on Series 2014A Bonds which remains unclaimed for three years after such payment has become due shall be paid to the City. After the payment of such unclaimed money to the City, the Owners shall look only to the City for the payment of those Series 2014A Bonds.

#### SECTION 6. REDEMPTION OF SERIES 2014A BONDS.

(A) OPTIONAL REDEMPTION. The Series 2014A Bonds maturing on or after July 1, 2024 are subject to redemption prior to maturity at the option of the City, in whole or in part, on July 1, 2023 and on any date thereafter at the redemption price of 100% of the principal amount of the Series 2014A Bonds, plus accrued interest to the date fixed for redemption. Unless money sufficient to pay the principal of and premium, if any, on the Series 2014A Bonds to be redeemed pursuant to this Section 6.(A) is received by the Paying Agent prior to the giving of notice of redemption in accordance with Section 6.(D), that notice shall state that the redemption is conditional upon the receipt of that money by the Paying Agent by 2:00 p.m., prevailing Mountain Time, on the redemption date. If an amount sufficient to redeem all Series 2014A Bonds called for redemption is not received by that time (i) the Paying Agent shall redeem only those Series 2014A Bonds for which the redemption price was received, (ii) the Series 2014A Bonds to be redeemed shall be selected in the manner set forth in Section 6.(C) and (iii) the redemption notice shall have no effect with respect to those Series 2014A Bonds for which the redemption price was not received and those Series 2014A Bonds shall not be redeemed. The Registrar shall give notice to the Owners of the Series 2014A Bonds previously called for redemption which shall not be redeemed, in the manner in which notice of redemption was given, identifying the Series 2014A Bonds which shall not be redeemed, stating that the redemption did not take place with respect to those Series 2014A Bonds

and shall promptly return any Series 2014A Bonds which shall not be redeemed which were previously delivered by the Owners of those Series 2014A Bonds.

(B) MANDATORY SINKING FUND REDEMPTION.

The Series 2014A Bonds maturing on July 1, 2037 are subject to mandatory sinking fund redemption. As and for a sinking fund for the redemption of the Series 2014A Bonds maturing on July 1, 2037, on or before July 1 in each of the years and in the principal amounts stated below, the City shall transfer into the applicable account of the Series 2014A Debt Service Fund the Pledged Revenues required for the payments of principal on those Series 2014A Bonds with a priority as set forth in Section 19 so that there is on deposit on the required redemption date in the Series 2014A Debt Service Fund amounts sufficient to redeem the Bonds called for redemption (after credit as provided below). Subject to the last paragraph of this subsection (B), Series 2014A Bonds which are term bonds shall be subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date on July 1 in the following years and principal amounts:

Sinking Fund Redemption (July 1)	Principal <u>Amount</u>
2034	\$2,940,000
2035	5,720,000
2036	1,195,000

The remaining \$6,430,000 of the Series 2014A Bonds maturing on July 1, 2037, shall be paid upon presentation and surrender at maturity unless redeemed pursuant to optional redemption prior to maturity.

(C) PARTIAL REDEMPTION. If less than all of the Outstanding Series 2014A Bonds are to be redeemed, the Maturity Dates of the Series 2014A Bonds to be redeemed shall be selected by the City. If less than all Series 2014A Bonds of a given Maturity Date are redeemed, the Series 2014A Bonds of that Maturity Date to be redeemed shall be selected by lot in such manner as determined by the Fiscal Agent. However, the portion of any Series 2014A Bonds to be redeemed and the portion of any Series 2014A Bonds not redeemed shall both be in Authorized Denominations. If, as indicated in a certificate of an Authorized Officer delivered to the Fiscal Agent, the City has offered to purchase all Series 2014A then Outstanding and less than all of the Series 2014A Bonds, as the case may be, have been tendered to the City for purchase, the Fiscal Agent, at the direction of an Authorized Officer, shall select for redemption all, or any part designated by the City, of the Series 2014A Bonds which have not been tendered.

In selecting Series 2014A Bonds for redemption, the Fiscal Agent shall treat each Series 2014A Bond as representing that number of Series 2014A Bonds which is obtained by dividing the principal amount of any Series 2014A Bond by the minimum Authorized Denomination. If it is determined that one or more, but not all, of the units of principal amount represented by any Series 2014A Bond is to be called for redemption, then, upon notice of intention to redeem such unit or units, the Owner of such Series 2014A Bond (except with respect to Series 2014A Bonds registered to a Depository or its nominee, in which case a notation as to the amount redeemed may be made on such Series 2014A Bonds) shall promptly surrender such Series 2014A Bond to the Fiscal Agent for (i) payment to such Owner of the redemption price of the unit or units of principal amount called for redemption, and (ii) delivery to such Owner of a new

Series 2014A Bond of the same Maturity Date and series in the aggregate principal amount of the unredeemed balance, without charge therefor.

If the Owner of any such Series 2014A Bond fails to present that Series 2014A Bond to the Fiscal Agent for payment, that Series 2014A Bond nevertheless shall become due and payable on the date fixed for redemption to the extent of the unit or units of principal amount called for redemption and interest shall cease to accrue on that principal amount.

(D) NOTICE. Notice of redemption of Series 2014A Bonds shall be given by the Fiscal Agent 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 all Depositories, to EMMA and to the Owner of each Series 2014A Bond, or portion thereof, to be redeemed at the address shown as of the close of business on the fifth day prior to the mailing of notice on the Bond Register. The City shall give the Fiscal Agent notice of the redemption date and the Maturity Date and the principal amounts of each maturity of Series 2014A Bonds to be called for redemption pursuant to Section 6.(A) at least five Business Days prior to the date that the Fiscal Agent is required to give Owners notice of redemption. Series 2014A Bonds to be called for redemption pursuant to Section 6.(B) shall be called for redemption by the Fiscal Agent without the necessity of any notice to the Fiscal Agent from the City. Neither the City's failure to give such notice, the Fiscal Agent's failure to give such notice to any Depository (other than as the Owner of Series 2014A Bonds being redeemed), or the registered Owner of any Series 2014A Bonds to be redeemed, or any defect therein, nor the failure of the Depository to notify a Participant or any Participant or Indirect Participant to notify a Beneficial Owner of any such redemption, shall affect the validity of the proceedings for the redemption of any Series 2014A Bonds for which proper notice was given.

The official notice of redemption to Owners shall state:

- (1) the CUSIP numbers of the Series 2014A Bonds to be redeemed,
- (2) the redemption date,
- (3) the redemption price,
- (4) the Series 2014A Bonds to be redeemed,
- (5) if less than all Outstanding Series 2014A Bonds are to be redeemed, the bond numbers and Maturity Dates of Series 2014A Bonds to be redeemed and, in the case of a partial redemption of a Series 2014A Bonds, the principal amount to be redeemed,
- (6) that, subject to the provisions of Section 6.(A), if applicable, on the redemption date, the redemption price will become due and payable on each Series 2014A Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after that date,
- (7) the place where such Series 2014A Bonds are to be surrendered for payment of the redemption price, the name of a contact person (if the book-entry system described in Section 5.(C) is in effect), and the phone number at the office of the Paying Agent, and
- (8) if the redemption is pursuant to Section 6.(A), that the redemption is conditional, if applicable, stating the conditions set forth in Section 6.(A).

The Paying Agent shall comply with any other terms regarding redemption and notice of redemption, as are required by any agreement with a Depository.

Except as provided in Section 6.(A), notice having been given in the manner provided above, the Series 2014A Bonds or part thereof called for redemption shall become due and payable on the redemption date designated and

the Series 2014A Bonds, or part thereof to be redeemed, for which the redemption price is on deposit with the Fiscal Agent, shall not be deemed to be Outstanding and shall cease to bear or accrue interest from and after such redemption date. Subject to Section 6.(A), upon presentation of a Series 2014A Bond to be redeemed at the office of the Fiscal Agent on or after the redemption date, or, so long as the book-entry system is used for determining beneficial ownership of the Series 2014A Bond being redeemed, upon satisfaction of the terms of any other arrangement between the Fiscal Agent and the Depository, the Fiscal Agent will pay such Series 2014A Bonds or portion thereof called for redemption.

(E) SERIES 2014A BONDS NOT PRESENTED FOR REDEMPTION. Money for payment of the principal of, premium, if any, and interest, to the date fixed for redemption, on Series 2014A Bonds called for redemption which are not presented for payment on the date fixed for redemption shall be set aside by the Fiscal Agent in trust for the Owners of such Series 2014A Bonds and held as set forth in Section 5.(D). Interest on such Series 2014A Bonds shall cease to accrue on the date fixed for redemption.

(F) CANCELLATION. All Series 2014A Bonds which have been redeemed or received for transfer shall be canceled and destroyed by the Fiscal Agent and shall not be reissued and a counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Fiscal Agent to the City.

SECTION 7. [reserved].

SECTION 8. REGISTRATION, TRANSFER, EXCHANGE AND OWNERSHIP OF SERIES 2014A BONDS.

(A) REGISTRATION, TRANSFER AND EXCHANGE. The City shall cause books for the registration, transfer and exchange of the Series 2014A Bonds to be kept at the principal office of the Registrar. Upon surrender for transfer or exchange of any Series 2014A Bonds at the principal office of the Registrar duly endorsed by the Owner or his attorney duly authorized in writing, or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to such Registrar and properly executed, the City shall execute and the Registrar shall authenticate and deliver in the name of the transferee or Owner a new Series 2014A Bond or Bonds of the same series and Maturity Date, interest rate and same aggregate principal amount in Authorized Denominations.

(B) OWNER OF BONDS. The person in whose name any Series 2014A Bond is registered shall be deemed and regarded as its absolute Owner for all purposes, except as may otherwise be provided with respect to the payment of interest on Series 2014A Bonds in Section 5.(C). Payment of the principal on any Series 2014A Bonds shall be made only to or upon the order of its Owner or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability on Series 2014A Bonds to the extent of the amount paid.

(C) REPLACEMENT OF BONDS. If any Series 2014A Bond is lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of that Series 2014A Bond if mutilated, and evidence, information or indemnity which the Registrar may reasonably require, authenticate and deliver a replacement Series 2014A Bond or Bonds of the same aggregate principal amount, series and Maturity Date and interest rate, bearing a number or numbers not then outstanding. If any lost, stolen, destroyed or mutilated Series 2014A Bond has matured or been called for redemption, the Registrar may direct the Paying Agent to pay that Series 2014A Bond in lieu of replacement.

(D) CHARGES. Exchanges and transfers of Series 2014A Bonds shall be made without charge to the Owners or any transferee except that the Registrar may make a charge sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to that transfer or exchange.

(E) BONDS CALLED FOR REDEMPTION. The Fiscal Agent shall not be required to transfer or exchange (i) any Series 2014A Bonds during the five-day period preceding the mailing of notice calling Series 2014A

Bonds of such series for redemption and (ii) any Series 2014A Bonds called for redemption.

(F) **UNAUTHENTICATED BONDS.** The officers of the City are authorized to deliver to the Registrar fully registered but unauthenticated Series 2014A Bonds in such quantities as may be convenient to be held in custody by the Registrar pending the use thereof as provided in the Bond Ordinance.

**SECTION 9. NEGOTIABILITY.** Series 2014A Bonds shall be fully negotiable and shall have all the qualities of negotiable paper, and the owner or owners thereof shall possess all rights enjoyed by the owners of negotiable instruments under the provisions of the Uniform Commercial Code-Investment Securities in effect in the State.

**SECTION 10. SPECIAL LIMITED OBLIGATIONS.** The Series 2014A Bonds and all payments of principal, premium, if any, and interest thereon (whether at maturity or on a redemption date), and the obligations of the City for all other payments, fees, costs, interest and expenses under the Bond Ordinance and under all Related Documents shall be special limited obligations of the City payable solely from the Pledged Lodgers' Tax Revenues and State-Shared Gross Receipts Tax Revenues. However, the Series 2014A Bonds are also payable from amounts on deposit in the Series 2014A Debt Service Fund and the Series 2014A Acquisition/Construction Fund.

Owners and the parties under any Related Documents may not look to any general or other fund of the City for the payment of the principal of or interest on, or the fees, costs and expenses relating to, such obligations, except the designated special funds pledged therefor. Neither the Series 2014A Bonds nor the obligations of the City under any Related Documents shall constitute an indebtedness of the City within the meaning of any constitutional, charter or statutory prohibition or limitation, nor shall they be considered or held to be general obligations of the City, and the Series 2014A Bonds shall recite that they are payable and collectable solely out of the respective Pledged Revenues and from any other sources stated in the Bond Ordinance and that the Owners may not look to any general or other municipal fund for the payment of the principal, premium, if any, or interest, as applicable, on the Series 2014A Bonds or for the payment of any amounts owed under any Related Documents.

**SECTION 11. EXECUTION AND CUSTODY OF SERIES 2014A BONDS.**

(A) **FILING MANUAL SIGNATURES.** Prior to the execution of any Series 2014A Bonds pursuant to Sections 6-9-1 through 6-9-6 NMSA, the Mayor, City Clerk and City Treasurer shall each file with the Secretary of State of New Mexico his or her manual signature certified by him or her under oath; provided that such filing shall not be necessary for any officer where any previous filing may have legal application or if the Bonds are signed manually.

(B) **EXECUTION.** Series 2014A Bonds shall be signed with the manual or facsimile signature of the Mayor and the manual or facsimile signature of the City Treasurer or City Clerk. There shall be placed on each Series 2014A Bond the printed, engraved, stamped or otherwise placed facsimile or imprint of the City's corporate seal. Series 2014A Bonds when authenticated and bearing the manual or facsimile signatures of the officers in office at the time of their signing shall be valid and binding obligations of the City, notwithstanding that before delivery of those Series 2014A Bonds, any or all of the persons who executed those Series 2014A Bonds shall have ceased to fill their respective offices. The Mayor, City Clerk and City Treasurer, at the time of the execution of the Series 2014A Bonds, each may adopt as and for his or her own facsimile signature the facsimile signature of his or her predecessor in office if such facsimile signature appears upon any of the Series 2014A Bonds or certificates pertaining to the Series 2014A Bonds. No manual or facsimile signature of any officer of the City or an Authenticating Agent shall be required if the Series 2014A Bonds are issued in book-entry form without the delivery of any physical securities.

(C) **CUSTODY.** The Registrar shall hold in custody all Series 2014A Bonds signed and attested by

the Mayor, City Clerk and City Treasurer until ready for delivery to the purchaser, transferee or Owner. The City shall, from time to time, at the written request of the Registrar, provide the Registrar an adequate supply of Series 2014A Bonds.

(D) AUTHENTICATION. No Series 2014A Bonds shall be valid or obligatory for any purpose unless the certificate of authentication has been duly executed by the Registrar. That Registrar's certificate of authentication shall be deemed to have been duly executed if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all Series 2014A Bonds.

SECTION 12. APPOINTMENT OF FISCAL AGENT. The initial Fiscal Agent for the Series 2014A Bonds shall be the City Treasurer. The Paying Agent and Registrar shall be the same Person for the Series 2014A Bonds.

SECTION 13. SUCCESSOR REGISTRAR OR PAYING AGENT. If the Registrar or Paying Agent initially appointed shall resign, or if the City shall determine to appoint a successor or co-Registrar or co-Paying Agent or shall reasonably determine that a Registrar or Paying Agent has become incapable of fulfilling its duties under the Bond Ordinance, the City may, upon notice mailed to each Owner at the address last shown on the registration books, appoint a successor or co-Registrar or Paying Agent. Every such successor or co-Registrar or Paying Agent shall be a bank or trust company located and in good standing in the United States with a capital stock, surplus and undivided profits, however denominated, of not less than \$75,000,000 or the City Treasurer, or any successor in office. Notwithstanding any other provision of the Bond Ordinance, no removal, resignation or termination of the Paying Agent shall take effect until a successor shall be appointed. Additional provisions relating to the Registrar and the Paying Agent and the payment of the Series 2014A Bonds may be in a separate paying agent agreement executed on behalf of the City by an Authorized Officer.

SECTION 14. SERIES 2014A BONDS FORMS. The Series 2014A Bonds shall be in substantially the following forms with only such changes as are not inconsistent with the Bond Ordinance:

[FORM OF SERIES 2014A BOND]

UNITED STATES OF AMERICA

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

CITY OF ALBUQUERQUE, NEW MEXICO

GROSS RECEIPTS TAX/LODGERS' TAX

REFUNDING AND IMPROVEMENT REVENUE BONDS

SERIES 2014A

Bond No. \_\_\_\_\_

\$ \_\_\_\_\_

INTEREST RATE

MATURITY DATE

DATE OF BOND

CUSIP

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_, 2014

\_\_\_\_\_

PRINCIPAL AMOUNT:

REGISTERED OWNER:

The City of Albuquerque (the "City"), in the County of Bernalillo and State of New Mexico (the "State"), a municipal corporation duly organized and existing under the Constitution and laws of the State, for value received, promises to pay, solely from the special funds available for the purpose set forth below, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above (unless this bond may be and is called for prior redemption, in whole or in part, in which case on such redemption date), upon presentation and surrender of this bond to



the City Treasurer, in Albuquerque, New Mexico, or any successor (as such, the "Paying Agent") or any co-paying agent, the Principal Amount stated above and premium, if any, and to pay interest on the unpaid Principal Amount at the Interest Rate stated above on January 1 and July 1 of each year beginning on January 1, 2015 (each, an "Interest Payment Date") to the Maturity Date stated above, or until redeemed if called for redemption prior to maturity. If upon presentation and surrender at maturity or for prior redemption, payment of this bond is not made, interest shall continue at the Interest Rate stated above until the Principal Amount is paid in full. This bond will bear interest from the most recent date to which interest has been paid or provided for or if no interest has been paid or provided for, from the Date of Bond stated above. Interest on this bond is payable by check or draft mailed to the registered owner hereof (or by such other arrangement as may be mutually agreed to by the Paying Agent and the registered owner) as shown on the registration books for this issue maintained by the City Treasurer or any successor or co-registrar (as such, the "Registrar"), at the address appearing therein at the close of business on the fifteenth day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the owner hereof (or of one or more predecessor Bonds, defined below) as of the Record Date, but shall be payable to the owner hereof (or of one or more predecessor Bonds) at the close of business on a special record date to be fixed by the Paying Agent for the payment of interest. Notice of the special record date shall be given to owners of Bonds as then shown on the Registrar's registration books not less than ten days prior to the special record date. The principal of, premium, if any, and interest on this bond are payable in lawful money of the United States of America, without deduction for exchange or collection charges.

**This bond and the payments of principal of, premium, if any, and interest on this bond do not constitute an indebtedness of the City within the meaning of any constitutional, charter or statutory provision or limitation, shall not be considered or held to be a general obligation of the City and are payable and collectible solely from Pledged Revenues, proceeds of the Bonds, and amounts on deposit in certain funds designated in the Bond Ordinance. The owner of this bond may not look to any general or other municipal fund for the payment of the principal of, premium, if any, or interest on this bond. "Pledged Revenues" means, collectively, the State-Shared Gross Receipts Tax Revenues and the Pledged Lodgers' Tax Revenues. "State-Shared Gross Receipts Tax Revenues" means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978 imposed on persons engaged in business in the State, which revenues are remitted monthly by the Revenue Division of the Taxation and Revenue Department of the State to the City as authorized by Sections 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances, on the date of the initial issuance of the Bonds, equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittance is made. "Pledged Lodgers' Tax Revenues" means fifty percent (50%) of the Lodgers' Tax Revenues received by the City, after deduction of the administrative costs pertaining to the Lodgers' Tax to the extent required by the Lodgers' Tax Act; provided that the City is not pledging to the payment of the Bonds, and the term "Pledged Lodgers' Tax Revenues" does not include, any of the Lodgers' Tax Revenues in excess of 50% thereof. "Lodgers' Tax Revenues" means the revenues received by the City pursuant to the Lodgers' Tax Act from the occupancy tax imposed by City Ordinance Enactment No. 68-1984, imposed on revenues on lodging within the City in an amount (on the date of the initial issuance of the Bonds) equal to five percent (5%) of the gross taxable rent paid for lodging (not including State or local gross receipts tax) collected by the City from persons furnishing such lodging. "Lodgers' Tax Act" means Sections 3-38-13 to 3-38-24 NMSA**

**1978, as amended. For a full description of the Pledged Revenues, the State-Shared Gross Receipts Tax Revenues and the Pledged Lodgers' Tax Revenues, reference is made to the Bond Ordinance.**

This bond is one of a duly authorized series of fully registered bonds of the City issued in the aggregate principal amount of \$36,960,000 designated as the "City of Albuquerque, New Mexico Gross Receipts Tax/Lodgers' Tax Refunding and Improvement Revenue Bonds, Series 2014A" (the "Bonds"), issued in denominations of \$5,000 and integral multiples thereof under and pursuant to City Ordinance Twenty-First Council Bill No. F/S O-14-9 (the "Bond Ordinance") for the purpose of (i) refunding the City's Gross Receipts Tax/Lodgers' Tax Refunding Revenue Bonds, Series 2004A, and (ii) making certain improvements to the City's Convention Center..

Reference is made to the Bond Ordinance on file in the offices of the City Clerk for a more complete statement of the general covenants and conditions pursuant to which the Bonds are issued. The acceptance of the terms and conditions of the Bond Ordinance is an explicit and material part of the consideration of the issuance of this bond and each owner, by acceptance of this bond, agrees and assents to all such terms and conditions as though fully set forth in this bond.

The Bonds maturing on or after July 1, 2024 are subject to redemption prior to maturity at the option of the City, in whole or in part, on July 1, 2023 and on any date thereafter, at the redemption price of 100% of the principal amount of the Bonds, plus accrued interest to the date fixed for redemption.

The Bonds maturing on July 1, 2037 are subject to mandatory sinking fund redemption. As and for a sinking fund for the redemption of the Bonds maturing on July 1, 2037, on or before July 1 in each of the years and in the principal amounts stated below, the City shall transfer into the applicable account of the Series 2014A Debt Service Fund the Pledged Revenues required for the payments of principal on those Bonds with a priority as set forth in Section 19 of the Bond Ordinance so that there is on deposit on the required redemption date in the Series 2014A Debt Service Fund amounts sufficient to redeem the Bonds called for redemption (after credit as provided below). Subject to the last paragraph of this subsection (B), Bonds which are term bonds shall be subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date on July 1 in the following years and principal amounts:

Sinking Fund Redemption (July 1)	Principal <u>Amount</u>
2034	\$2,940,000
2035	5,720,000
2036	1,195,000

The remaining \$6,430,000 of the Bonds maturing on July 1, 2037, shall be paid upon presentation and surrender at maturity unless redeemed pursuant to optional redemption prior to maturity.

If less than the total amount of the Bonds outstanding is redeemed, Bonds to be redeemed shall be selected as determined by the City. However, if less than all Bonds of a given maturity are redeemed, the Bonds to be redeemed within that maturity shall be selected by lot in such manner as

determined by the Fiscal Agent. Notice of redemption of this bond, or any part thereof, shall be given by the Fiscal Agent providing not less than 30 days' prior written notice by registered or certified first-class postage prepaid mail to the owner of this bond at the address shown on the registration books as of the fifth day prior to the mailing of notice as provided in the Bond Ordinance. Notices of redemption shall specify the details set forth in the Bond Ordinance including, the date fixed for redemption and that on such redemption date there shall become and be due and payable upon each Bond or part thereof to be redeemed at the office of the Paying Agent the principal amount thereof to be redeemed plus accrued interest, if any, to the redemption date and the stipulated premium, if any, and that from and after such date interest shall cease to accrue on the principal amount redeemed. Neither the Fiscal Agent's failure to give notice to the registered owner of any Bond, or any defect therein, nor the failure of any securities depository to notify its participants, or any participant or indirect participant to notify a beneficial owner of such redemption, shall affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given.

This bond is subject to transfer upon surrender at the principal office of the Registrar, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing for another Bond, maturity, aggregate principal amount and interest rate. This bond may be exchanged at the office of the Registrar for an equal aggregate principal amount of Bonds in fully registered form of the same maturity and interest rate and of other authorized denominations. Exchanges and transfers of this bond shall be without charge to the owner but the Registrar may require the payment by the owner of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

The Bonds are secured by an irrevocable lien (but not an exclusive lien) upon the Pledged Revenues. Additional bonds or other obligations may be issued and made payable from the Pledged Revenues, subject to the conditions in the Bond Ordinance, having a lien thereon on a parity with the lien of the Bonds, in accordance with the provisions of the Bond Ordinance. Additional bonds or other obligations may not be issued and made payable from the Pledged Revenues having a lien thereon prior and superior to the Bonds.

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

This bond is subject to the condition, and every owner hereof by accepting the same agrees with the obligor and every subsequent owner of this bond, that the principal of and interest on this

bond shall be paid, and this bond is transferable, free from and without regard to any equities, set-offs or cross-claims between the obligor and the original purchaser or any other owner hereof.

It is hereby certified that all acts and conditions necessary to be done or be performed or to have happened precedent to the issuance of the Bonds to make them legal, valid and binding special obligations of the City have been performed and have happened as required by law; the Bonds do not exceed or violate any constitutional, statutory or charter limitations; and all other conditions, acts and things required to exist, to have happened, or to have been performed precedent to the issuance of the Bonds to make them the legal, valid and binding special obligation of the City exist, have happened and have been performed in due time, form and manner, as required by law.

This bond shall not be valid or obligatory for any purpose until the Registrar shall have manually signed the Certificate of Authentication on this bond.

IN WITNESS WHEREOF, the City has caused this bond to be signed on the City's behalf with the manual or facsimile signature of the Mayor and to be countersigned with the manual signature of the City Clerk; has caused the corporate seal of the City to be affixed on this bond; and has caused this bond to be attested with the manual signature of the Registrar, all as of the Date of Bond stated above.

CITY OF ALBUQUERQUE, NEW MEXICO

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
City Clerk

(SEAL)

(Form of Registrar's Certificate of Authentication)

Date of Authentication: \_\_\_\_\_

Certificate of Authentication

This is one of the City of Albuquerque, New Mexico Gross Receipts Tax/Lodgers' Tax Refunding and Improvement Revenue Bonds, Series 2014A described in the Bond Ordinance and this bond has been registered on the registration books kept by the undersigned as Registrar for such Bonds.

\_\_\_\_\_  
City Treasurer, Albuquerque,  
New Mexico, as Registrar

(End of Form of Registrar's Certificate of Authentication)

(Form of Legal Opinion Certificate)

STATE OF NEW MEXICO            )  
COUNTY OF BERNALILLO        ) ss.       LEGAL OPINION CERTIFICATE  
CITY OF ALBUQUERQUE            )

The undersigned, City Clerk of the City of Albuquerque, in the County of Bernalillo and State of New Mexico, does hereby certify that the following approving legal opinions of Sherman & Howard L.L.C., bond counsel, and Kutak Rock LLP, special tax counsel to wit:

(Form of attorneys' approving opinions)

are full, true and correct copies of manually executed and dated copies thereof on file in the records of the City in my office, that manually executed and dated copies of the opinions were forwarded to a representative of the original purchasers and that the opinions were dated and issued as of the date of delivery of, and the payment for, the Series 2014A Bonds of which this bond is one.

IN WITNESS WHEREOF, I have executed this certificate and have affixed the official seal of the City of Albuquerque below.

\_\_\_\_\_  
City Clerk  
Albuquerque, New Mexico

(SEAL)

(End of Form of Legal Opinion Certificate)

(Form of Assignment)

For value received, \_\_\_\_\_ hereby sells, assigns and transfers unto \_\_\_\_\_ whose Social Security or Tax Identification No. is \_\_\_\_\_ the within bond and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney, to transfer the same on the books of the Registrar, with full power of substitution in the premises.

Dated: \_\_\_\_\_

NOTE: The assignor's signature to this Assignment must correspond with the name as written on the

face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

(End of Form of Assignment)

(End of Form of Series 2014A Bonds)

SECTION 15. SALE OF SERIES 2014A BONDS. The Series 2014A Bonds shall be sold to the Investment Bankers at the Sale Price, pursuant to the terms of the Bond Ordinance and the Bond Purchase Agreement. After the Series 2014A Bonds have been duly executed and authenticated by the Registrar, upon receipt of the Sale Price by the City, the Series 2014A Bonds shall be delivered to the Investment Bankers by an Authorized Officer or to the Depository, if any, on behalf of the Investment Bankers if the Series 2014A Bonds are issued in book-entry form.

SECTION 16. FUNDS AND ACCOUNTS.

(A) GROSS RECEIPTS TAX INCOME FUNDS. The City shall continue the "City of Albuquerque Gross Receipts Tax Income Fund" previously established and maintained by the City into which the City deposits the State-Shared Gross Receipts Tax Revenues.

(B) LODGERS' TAX REVENUE FUND. The City shall continue the "City of Albuquerque Lodgers' Tax Revenue Fund" previously established and maintained by the City into which the City deposits the Lodgers' Tax Revenues.

(C) ESCROW FUND. The City hereby creates the Escrow Fund to be maintained by the Escrow Agent.

(D) SERIES 2014A DEBT SERVICE FUND. The Series 2014A Debt Service Fund is hereby established and shall be maintained by the City.

(E) SERIES 2014A ACQUISITION/CONSTRUCTION FUND. The Series 2014A Acquisition/Construction Fund is hereby established and shall be maintained by the City.

(F) SURPLUS FUND. The City continues the City of Albuquerque Surplus Lodgers' Tax Revenues Reserve Fund.

(G) ADDITIONAL FUNDS. The City shall create any additional funds which may be required.

SECTION 17. BOND PROCEEDS; BOND FUND DEPOSIT; APPROPRIATIONS.

(A) total amount of the proceeds from the sale of the Series 2014A Bonds in the amount of \$36,545,728.30 plus available funds in the amount of \$787,817.50 held in the Debt Service Fund for the Refunded Bonds, shall be used as follows:

(1) \$32,752,817.50. shall be used to pay, and is hereby appropriated for the payment in full of, the redemption price (including principal and accrued interest) of the Series 2004A Bonds on the redemption date.

(2) \$1,685,333.70 shall be used to pay, and is hereby appropriated for the payment of, certain yield reduction payments to the United States Treasury with respect to the refunding of the Series 2004A Bonds.

(3) \$2,316,383.68 shall be used to pay, and is hereby appropriated for the costs of the Improvement Project (including reimbursing Capital Acquisition Fund 305 for the use of legally available moneys of the City previously expended to pay a portion of the costs of the Improvement Project).

(4) \$216,124.25 shall be used to pay, and is hereby appropriated for the payment of, the underwriter's discount with respect to the Series 2014A Bonds.

(5) \$362,886.67 shall be used to pay, and is hereby appropriated for payment of, Expenses related to the costs of issuing the Series 2014A Bonds and the costs of the Refunding Project applicable to the Series 2014A Bonds. Any money appropriated for the payment of Expenses related to the costs of issuing the Series 2014A Bonds which is not necessary for that purpose shall be used to make debt service payments on the Series 2014A Bonds.

The Completion Date for any portion of the Improvement Project funded by the Series 2014A Bonds shall be evidenced by a certificate of an Authorized Officer stating that portion of the Improvement Project has been completed. As soon as practicable, and in any event not more than 60 days after the Completion Date, any balance remaining in the applicable account of the Series 2014A Acquisition/Construction Fund (other than any amount certified by an Authorized Officer as being necessary for costs of the Improvement Project not then due and payable) shall be transferred to the applicable account of that Series 2014A Debt Service Fund and used by the City for the payment of the principal of or interest next coming due on that series of Bonds.

The Investment Bankers shall not be responsible for the application or use by the City or by its officers of the proceeds of the Series 2014A Bonds or of any other funds designated in the Bond Ordinance.

On the Closing Date, the City Treasurer or other Authorized Officer may approve variations in the amounts to be deposited, transferred and used as set forth in this Section 17 as necessary or desirable, to the extent permitted by law.

#### SECTION 18. APPROVAL OF DOCUMENTS; PAYMENT OF EXPENSES.

(A) DOCUMENT APPROVAL. The proposed forms and provisions of the Bond Purchase Agreement, the Escrow Agreement, the Continuing Disclosure Undertaking, the Preliminary Official Statement and the proposed form of the Official Statement are approved. Any changes in, or additions to, those documents inconsistent with the terms of the Bond Ordinance shall be approved by the Council by subsequent ordinance or resolution.

(B) EXECUTION OF DOCUMENTS. The Council approves the execution by the Mayor or other Authorized Officer of the Bond Purchase Agreement, the Continuing Disclosure Undertaking, and the Escrow Agreement, on behalf of the City, and the Mayor or other Authorized Officer is authorized to deliver the Bond Purchase Agreement, the Continuing Disclosure Undertaking, and the Escrow Agreement, with such changes therein as are not inconsistent with the Bond Ordinance and as are approved by an Authorized Officer, whose execution thereof, in their final forms, shall constitute conclusive evidence of their approval and compliance with this Section 18.

(C) USE OF OFFICIAL STATEMENT. The use and distribution of the Preliminary Official Statement and Official Statement for the sale of the Series 2014A Bonds, with terms which are not inconsistent with the terms of the Bond Ordinance and the Related Documents, by the Investment Bankers in connection with the sale and issuance of the Series 2014A Bonds are approved.

(D) EXPENSES. All Expenses shall be paid directly by the City to the party entitled thereto using moneys available from the proceeds of the Series 2014A Bonds or from the Gross Receipts Tax Income Fund, pursuant to the priorities established by Section 19.

(E) FURTHER ACTS. From and after the date of the adoption of the Bond Ordinance, the officers, agents and employees of the City are authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to issue the Series 2014A Bonds and to carry out and comply with the provisions of the Bond Ordinance and the Related Documents.

#### SECTION 19. DEPOSIT AND PRIORITIES FOR USE OF PLEDGED REVENUES.

(A) DEPOSIT OF PLEDGED REVENUES. So long as any Series 2014A Bonds are Outstanding,

the Pledged Lodgers' Tax Revenues shall, immediately upon receipt thereof by the City, be set aside and deposited into the Lodgers' Tax Revenue Fund. All money deposited into the Lodgers' Tax Revenue Fund shall be held separate and apart from the City's general fund and applied only in accordance with the provisions of the Bond Ordinance and any other City ordinance authorizing the issuance of Lodgers' Tax Obligations. Money shall not be accumulated in or transferred from the Lodgers' Tax Revenue Fund for the payment of principal of, premium, if any, or interest on the Series 2014A Bonds or other Parity Lodgers' Tax obligations after the payment each month of, or the setting aside of funds each month sufficient to pay, the amounts required to be deposited pursuant to this Section 19.

So long as any Series 2014A Bonds are Outstanding, the State-Shared Gross Receipts Tax Revenues shall, immediately upon receipt thereof by the City, be set aside and deposited into the Gross Receipts Tax Income Fund. All money deposited into the Gross Receipts Tax Income Fund shall be held separate and apart from the City's general fund and applied only in accordance with the provisions of the Bond Ordinance and any other City ordinance authorizing the issuance of Tax Obligations. Money shall not be accumulated in or transferred from the Gross Receipts Tax Income Fund for the payment of the principal of, premium, if any, or interest on the Series 2014A Bonds or other Tax Obligations after the payment each month of, or the setting aside of funds each month sufficient to pay, the amounts required to be deposited pursuant to this Section 19.

(B) DEBT SERVICE FUNDS.

(1) As a first charge on the Pledged Lodgers' Tax Revenues, the amounts necessary to pay the Debt Service Requirements on Parity Lodgers' Tax Obligations at the time Outstanding or to fund any debt service reserve account as required by the terms of the Bond Ordinance or any ordinance or resolution authorizing the issuance of such Parity Lodgers' Tax Obligations shall be withdrawn from the Lodgers' Tax Revenue Fund and shall be concurrently credited to the Series 2014A Debt Service Fund or any relevant debt service account, with the same priority and, if insufficient to pay all of the enumerated Debt Service Requirements, pro rated in proportion to the amounts of such Debt Service Requirements:

(a) Prior to each interest payment date, that amount necessary to pay the next maturing installment of interest on each series of Parity Lodgers' Tax Obligations then Outstanding.

(b) Prior to each principal payment date, that amount necessary to pay the next regularly scheduled installment of principal, whether at maturity or a mandatory sinking fund redemption date, of each series of Parity Lodgers' Tax Obligations then Outstanding.

(c) Prior to their respective due dates, the amounts necessary to pay or reimburse the Credit Source for payments of Debt Service Requirements (but not tender price) on Parity Lodgers' Tax Obligations made by that facility provider. The tender price of a series of Parity Lodgers' Tax Obligations and any interest payment owed to any Credit Source which exceeds the amount of interest which would be payable at the maximum bond interest rate on that series, shall not be reimbursed from the Lodgers' Tax Revenue Fund with the priority set forth in this Section 19.(B) but shall be reimbursed with the priority set forth in Section 19.(C).

(2) As a first charge on the State-Shared Gross Receipts Tax Revenues, the amounts necessary to pay the Debt Service Requirements on Senior Tax Obligations at the time Outstanding shall be withdrawn from the Gross Receipts Tax Income Fund and shall be concurrently credited to the Series 2014A Debt Service Fund or any relevant debt service account, with the same priority and, if insufficient to pay all of the enumerated Debt Service Requirements, pro rated in proportion to the amounts of such Debt Service Requirements (monthly, in the case of the



Series 2014A Bonds, in accordance with Section 20.(G)):

(a) Prior to each interest payment date, that amount necessary to pay or reimburse the next maturing installment of interest on each series of Senior Tax Obligations then Outstanding.

(b) Prior to each principal payment date, that amount necessary to pay the next regularly scheduled installment of principal, whether at maturity or a mandatory sinking fund redemption date, of each series of Senior Tax Obligations then Outstanding.

(c) Prior to their respective due dates, the amounts necessary to pay or reimburse the provider of a Credit Facility for payments of Debt Service Requirements (but not tender price) on Senior Tax Obligations made by that Credit Source. The tender price of a series of Senior Tax Obligations and any interest payment owed to any Credit Source which exceeds the amount of interest which would be payable at the maximum bond interest rate on that series, shall not be reimbursed from the Gross Receipts Tax Income Fund with the priority set forth in this Section 19.(B) but shall be reimbursed with the priority set forth in Section 19.(C).

(3) The City may pay the Debt Service Requirements on the Series 2014A Bonds and, unless otherwise required under the ordinance or resolution under which they were issued, any other Tax Obligations that are Senior Tax Obligations and Parity Lodgers' Tax Obligations from Pledged Revenues as described in Sections 19.(B) (2) and 19.(B)(3) in such order, in whole or in part, as to the use of State-Shared Gross Receipts Tax Revenues and Pledged Lodgers' Tax Revenues as the City may from time to time determine in its sole discretion.

(C) OTHER TAX OBLIGATIONS. To the extent not required to be deposited or paid pursuant to Sections 19.(A) or 19.(B): (i) State-Shared Gross Receipts Tax Revenues available in the Gross Receipts Tax Income Fund shall be used, as necessary, to pay (x) payment obligations owed by the City to the Credit Source for Senior Tax Obligations, including the tender price of and certain interest payments on, Senior Tax Obligations paid by that Credit Source; and (y) fees, expenses and interest owed by the City to any other provider of fiscal services for a series of Senior Tax Obligations; and (ii) Pledged Lodgers' Tax Revenues available in the Lodgers' Tax Revenue Fund shall be used, as necessary, to pay (x) payment obligations owed by the City to the Credit Source for Parity Lodgers' Tax Obligations, including the tender price of and certain interest payments on, Parity Lodgers' Tax Obligations paid by that Credit Source; and (y) fees, expenses and interest owed by the City to any other provider of fiscal services for a series of Parity Lodgers' Tax Obligations. Amounts from the Gross Receipts Tax Income Fund or the Lodgers' Tax Revenue Fund to be used to pay interest pursuant to this Section 19.(C) shall be deposited by the City into a separate account maintained by the City on or before the due date thereof.

(D) DEBT SERVICE RESERVE REQUIREMENTS. To the extent not required to be deposited or paid pursuant to Sections 19.(A), 19.(B) or 19.(C), State-Shared Gross Receipts Tax Revenues available in the Gross Receipts Tax Income Fund shall be used, as necessary, to pay any debt service reserve account as required by the terms of any ordinance or resolution authorizing the issuance of Senior Tax Obligations.

(E) SUBORDINATE TAX OBLIGATIONS. To the extent not required to be deposited or paid pursuant to Sections 19.(A), 19.(B), 19.(C) or 19.(D): (i) State-Shared Gross Receipts Tax Revenues available in the Gross Receipts Tax Income Fund shall be used, as necessary, to pay Debt Service Requirements on Subordinate Gross Receipts Tax Obligations as the same accrue; and (ii) Pledged Lodgers' Tax Revenues available in the Lodgers' Tax Revenue Fund shall be used, as necessary, to pay Debt Service Requirements on Subordinate Lodgers' Tax Obligations as the same accrue.

(F) USE OF SURPLUS PLEDGED LODGERS' TAX REVENUES. To the extent not required in any month to be deposited or paid pursuant to Sections 19.(A), 19.(B), 19.(C), 19.(D) or 19.(E) or any ordinance or resolution authorizing the issuance of any Parity Lodgers' Tax Obligations, any Pledged Lodgers' Tax Revenues remaining in the Lodgers' Tax Revenue Fund shall be transferred from the Lodgers' Tax Revenue Fund to the Surplus Fund and held therein until such time as it is practicable to use such funds to pay, redeem or defease Lodgers' Tax Obligations and then shall be so used, subject to any limitations imposed by the Code.

(G) USE OF SURPLUS STATE-SHARED GROSS RECEIPTS TAX REVENUES. To the extent not required in any month to be deposited or paid pursuant to Sections 19.(A), 19.(B), 19.(C), 19.(D) or 19.(E) or any ordinance or resolution authorizing the issuance of any Tax Obligations, any State-Shared Gross Receipts Tax Revenues remaining in the Gross Receipts Tax Income Fund may be transferred from the Gross Receipts Tax Income Fund and applied to any other lawful purpose or purposes; as determined by the City, subject to any limitations imposed by the Code.

## SECTION 20. GENERAL ADMINISTRATION OF FUNDS.

### (A) USE OF AMOUNTS AND TERMINATION OF DEPOSITS IN DEBT SERVICE FUND.

(1) MONEY IN DEBT SERVICE FUNDS. Except as provided in Section 20.(A)(2), the money credited to the Series 2014A Debt Service Fund shall be used by the City only to pay, or to reimburse a Credit Source for the payment of, the Debt Service Requirements of the Series 2014A Bonds and the money credited to the Series 2014A Debt Service Fund shall be used by the City only to pay, or to reimburse a Credit Source for the payment of, the Debt Service Requirements of the Series 2014A Bonds. Money on deposit in the Series 2014A Debt Service Fund shall be transferred to the Paying Agent on or before each relevant payment date.

(2) TERMINATION UPON DEPOSITS TO MATURITY. No payment needs to be made into the Series 2014A Debt Service Fund or any debt service reserve fund for the Series 2014A Bonds, respectively, if no Debt Service Requirements on the Series 2014A Bonds are then past due and the amounts on deposit in the Series 2014A Debt Service Fund for the payment of such Series 2014A Bonds are at least equal to all Debt Service Requirements on such Series 2014A Bonds to their Maturity Dates or mandatory redemption dates, or to any date for which the City has exercised or has obligated itself to exercise its option to redeem such Series 2014A Bonds prior to their Maturity Dates or redemption dates. In such event, money in the Series 2014A shall be used for the payment of the Debt Service Requirements or such optional redemption payments, if applicable, when due, on the Series 2014A Bonds. Any money in those accounts in excess of the amounts required by the preceding sentence may be used as provided in Section 19.(D).

(B) CREDIT OR DEFICIENCY. In making the determinations of the amounts to be transferred from the Gross Receipts Tax Income Fund and Lodgers' Tax Revenue Fund as provided in Section 19 or this Section 20, the City may take into account any amount then on deposit in any fund or escrow relating to the Series 2014A Bonds which is available and required to be used for the designated payment. If any deposit made to a fund for the payment of any Series 2014A Bonds is less than the amount required to be deposited, the City shall pay or credit to that fund from Pledged Revenues in the Gross Receipts Tax Income Fund or the Lodgers' Tax Revenue Fund, as applicable to the Series 2014A Bonds, the first money available to pay that deficiency using the priorities set forth in Section 19 and this Section 20.

(C) TRANSFER OF MONEY. Each payment of principal and interest coming due on the Series 2014A Bonds shall be transferred from the applicable fund to the Paying Agent.

(D) VARIABLE INTEREST RATE. In making the computations required by Section 19 and this Section 20, interest on Variable Interest Rate Tax Obligations which cannot be computed exactly shall be computed at the maximum interest rate permitted for those Tax Obligations unless otherwise required by the City ordinance authorizing the issuance of such Tax Obligations.

(E) INVESTMENT OF MONEY. Any money in any fund created or continued in Section 16 shall be invested in Permitted Investments; provided that moneys in the Escrow Fund shall be invested only as provided in Section 33 and the Escrow Agreement. The investments purchased using money in any such fund shall be deemed at all times to be part of that fund. The interest accruing in the funds and any profit realized therefrom shall be credited to the fund in which the relevant investments are deemed to be held. Any loss resulting from such investment shall be charged to the applicable fund. The City Treasurer shall present for redemption or sale on the prevailing market any obligations purchased as an investment of money in the applicable fund whenever it shall be necessary to do so in order to provide money to meet any payment or transfer from such fund. Neither the City Treasurer nor any other officer of the City shall be liable or responsible for any loss resulting from any such investment made in accordance with the Bond Ordinance.

(F) DEPOSITS OF FUNDS. The money and investments deposited in the funds created or continued in Section 16 shall be maintained and kept in one or more Insured Banks; the money and investments deposited in the Escrow Fund shall be maintained with the Escrow Agent. Each payment shall be made into and credited to the proper fund at the designated time, except that when the designated time is not a Business Day, then such payment shall be made on the next succeeding Business Day. Nothing herein shall prevent the establishment of one or more such funds in insured banks for all of the accounts designated in Section 16.

(G) DEPOSITS OF PLEDGED REVENUES FOR SERIES 2014A BONDS.

(1) The City shall make substantially equal monthly deposits into the Series 2014A Debt Service Fund as required in order to pay the amount of interest on the Series 2014A Bonds, which will become due on the Interest Payment Date next following the date of deposit. The monthly deposits required in the preceding sentence shall begin in the calendar month subsequent to the Closing Date.

(2) Deposits to the Series 2014A Debt Service Fund for the next installments of principal becoming due on the Series 2014A Bonds shall be made in substantially equal monthly deposits commencing in the first month which is less than 13 months prior to the month in which that installment of principal is due.

Deposits for the payment of principal of and interest on the other Senior Tax Obligations or Parity Lodgers' Tax Obligations required by Section 19.(B) may be made more or less frequently than monthly.

(H) VALUATION. The "value" of Permitted Investments shall be determined at least every six months as follows:

(1) if the price of the investment is not set as described in Section 20(H)(4), as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times): the average of the bid and asked prices for such investments published on or more recently prior to such time of determination;

(2) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the City in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing

service;

(3) as to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest;

(4) as to investments in clauses (1), (2), (3) and (9) of the definition of Permitted Investments pursuant to which a financial institution is obligated to purchase the investment from the City at a fixed price through maturity of the investment: the price set forth in such agreement, provided that such institution, or the guarantor of such institution or agreement, shall be rated in one of the top two Rating Categories by S&P, Moody's and Fitch if then rating the Series 2014A Bonds, or by another national rating agency; and

(5) as to any investment not specified above: the cost of the Permitted Investments (including any amount paid as accrued interest) or the principal amount thereof, whichever is less; except that Permitted Investments purchased at a premium may initially be valued at the cost thereof, but in each year after such purchase shall be valued at a lesser amount determined by ratably amortizing the premium over the remaining term.

No loss or profit on Permitted Investments shall be deemed to take place as a result of fluctuations in the market quotations prior to the sale or maturity thereof.

#### SECTION 21. LIEN ON PLEDGED REVENUES; PROCEEDS; ETC.

(A) SERIES 2014A BONDS. Payments of Debt Service Requirements on the Series 2014A Bonds are secured by an irrevocable lien on, and the City grants and confirms to the owners of the Series 2014A Bonds a security interest in, the State-Shared Gross Receipts Tax Revenues and the Pledged Lodgers' Tax Revenues for the payment of the principal of and interest on the Series 2014A Bonds. The Series 2014A Bonds shall be issued as Senior Tax Obligations and Parity Lodgers' Tax Obligations.

The City pledges and grants a security interest in and lien (but not an exclusive lien) on the money and Permitted Investments on deposit in the Series 2014A Debt Service Fund, the Series 2014A Acquisition/Construction Fund and any other fund (other than the Escrow Fund) for the Series 2014A Bonds held pursuant to the Bond Ordinance for the Series 2014A Bonds for the payment of such Series 2014A Bonds.

(B) OTHER RELATED DOCUMENTS. Payments under any other Related Documents shall be secured by an irrevocable lien on, and the City grants to the parties entitled to payments under those Related Documents a security interest in, the Pledged Revenues for those payments.

(C) REBATE PAYMENTS. Any investment income which is required to be rebated to the United States pursuant to Section 148(f) of the Code is not subject to the pledge and security interest provided in this Section 21.

SECTION 22. EQUALITY OF BONDS. Except as specifically stated in the Bond Ordinance, the Series 2014A Bonds from time to time Outstanding shall not be entitled to any priority one over the other, within each series, in the application of the respective Pledged Revenues, regardless of the time or times of their issuance, it being the intention of the Council that there shall be no priority among the Series 2014A Bonds, within each series, regardless of the fact that they may be actually issued and delivered at different times.

SECTION 23. ADDITIONAL BONDS OR OTHER OBLIGATIONS PAYABLE FROM STATE-SHARED GROSS RECEIPTS TAX REVENUES.

(A) LIMITATIONS UPON ISSUANCE OF ADDITIONAL SENIOR TAX OBLIGATIONS. No provision of the Bond Ordinance shall be construed in such a manner as to prevent the issuance of additional Senior Tax Obligations or to prevent the issuance of Tax Obligations refunding all or a part of a series of Senior Tax Obligations.

However, before additional Senior Tax Obligations are issued:

(1) The City shall then be current in the accumulations required to be made pursuant to any ordinance or resolution authorizing the issuance of any Senior Tax Obligations; and

(2) With respect to additional Senior Tax Obligations:

(a) The State-Shared Gross Receipts Tax Revenues received by the City for either (i) the Fiscal Year or (ii) any twelve consecutive months out of the eighteen calendar months immediately preceding the date of the issuance of such additional Senior Tax Obligations, shall have been sufficient to pay an amount representing two hundred and twenty-five percent (225%) of the combined maximum annual principal and interest payments (excluding any reserves therefor) coming due in any subsequent Fiscal Year on: (i) the then Outstanding Senior Tax Obligations, and (ii) the Senior Tax Obligations proposed to be issued.

(b) A written certificate or opinion by an Independent Accountant that such annual State-Shared Gross Receipts Tax Revenues are sufficient to pay the amounts required by paragraph (a) above shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver the proposed additional Senior Tax Obligations.

(c) In making the computations required by this Section 23.(A)(2) and Section 24.(B), that part of the interest rate on Variable Rate Gross Receipts Tax Obligations which cannot be computed exactly shall be computed at the maximum interest rate then permitted on such obligations by the City ordinance authorizing the issuance of such obligations.

(B) SUBORDINATE TAX OBLIGATIONS PERMITTED. No provision of the Bond Ordinance shall be construed to prevent the issuance by the City of Subordinate Gross Receipts Tax Obligations.

(C) SUPERIOR TAX OBLIGATIONS PROHIBITED. No provision of the Bond Ordinance shall be construed to permit the City to issue, and the City shall not issue, obligations payable from the State-Shared Gross Receipts Tax Revenues having a lien thereon prior and superior to the Senior Tax Obligations.

SECTION 24. REFUNDING BONDS PAYABLE FROM STATE-SHARED GROSS RECEIPTS TAX REVENUES. The provisions of Section 23 are subject to the following exceptions:

(A) PRIVILEGE OF ISSUING REFUNDING TAX OBLIGATIONS. Outstanding Tax Obligations may be refunded, regardless of whether the priority of the lien for the payment of the refunding obligations on the State-Shared Gross Receipts Tax Revenues is different than the lien of the refunded Tax Obligations on State-Shared Gross Receipts Tax Revenues, except as provided in Section 23.(C) and in Sections 24.(B), 24.(C) and 24.(D).

(B) LIMITATIONS UPON ISSUANCE OF REFUNDING GROSS TAX OBLIGATIONS. No refunding Gross Receipts Tax Obligations shall be issued as Senior Tax Obligations unless:

(1) The Tax Obligations refunded are Senior Tax Obligations and the issuance of the refunding Tax Obligations does not increase the maximum annual Debt Service Requirements of the refunded Tax Obligations and all other Outstanding Tax Obligations on the refunding date; or

(2) The refunding Senior Tax Obligations are issued in compliance with Section 23.(A).

(C) REFUNDING PART OF A SERIES. While the Series 2014A Bonds are Outstanding, except as set forth in subparagraph (3) below, the refunding Tax Obligations shall enjoy complete equality of lien on the State-Shared Gross Receipts Tax Revenues with the portion of any Tax Obligations of the same series which is not refunded and the Owners of the refunding Tax Obligations shall be subrogated to all of the rights and privileges enjoyed by the

Owners of the refunded Tax Obligations.

A part of a series of Outstanding Tax Obligations may be refunded only with the consent of the Owners of the unrefunded portion of that series unless:

(1) The issuance of the refunding Tax Obligations does not increase the maximum annual Debt Service Requirements evidenced by the refunded Tax Obligations and by the Outstanding Tax Obligations of such series not refunded on the refunding date; or

(2) The refunding Senior Tax Obligations are issued in compliance with Section 23.(A); or

(3) The lien on the State-Shared Gross Receipts Tax Revenues for the payment of the refunding Tax Obligations is subordinate to the lien thereon for the payment of the unrefunded portion of the series.

(D) LIMITATIONS UPON ISSUANCE OF REFUNDING TAX OBLIGATIONS. Any refunding Tax Obligations shall be issued with such details as the City may provide by ordinance and resolution, but without any impairment of any contractual obligations imposed upon the City by any proceedings authorizing the issuance of any Outstanding Tax Obligations.

SECTION 25. ADDITIONAL BONDS OR OTHER OBLIGATIONS PAYABLE FROM PLEDGED LODGERS' TAX REVENUES.

(A) LIMITATIONS UPON ISSUANCE OF PARITY LODGERS' TAX OBLIGATIONS. No provision of the Bond Ordinance shall be construed to prevent the issuance by the City of additional Parity Lodgers' Tax Obligations, nor to prevent the issuance of bonds or other obligations refunding all or a part of Parity Lodgers' Tax Obligations; provided, however, that before any additional Parity Lodgers' Tax Obligations are actually issued, the City shall be current in the accumulations required to be made pursuant to any ordinance or resolution authorizing the issuance of Parity Lodgers' Tax Obligations.

(B) SUBORDINATE OBLIGATIONS PERMITTED. No provision of the Bond Ordinance shall be construed to prevent the issuance by the City of additional bonds or other obligations payable from the Pledged Lodgers' Tax Revenues with a lien on Pledged Lodgers' Tax Revenues subordinate and junior to the lien thereon of the Series 2014A Bonds.

(C) SUPERIOR OBLIGATIONS PROHIBITED. The City shall not issue bonds or incur obligations payable from the Pledged Lodgers' Tax Revenues having a lien thereon prior and superior to the lien of the Series 2014A Bonds on Pledged Lodgers' Tax Revenues.

SECTION 26. PROTECTIVE COVENANTS. The City covenants and agrees, so long as any Series 2014A Bonds remain Outstanding:

(A) USE OF PROCEEDS OF TAX OBLIGATIONS. The City shall proceed without delay to apply the proceeds of each series of Obligations to the purposes for which they are issued.

(B) PAYMENT OF OBLIGATIONS. The City shall promptly pay Debt Service Requirements on each series of Obligations at the place, on the date and in the manner specified in the City ordinances and resolutions and the documents relating to those Obligations.

(C) CITY'S EXISTENCE. The City shall maintain its corporate identity and existence unless another political subdivision by operation of law succeeds to the liabilities and rights of the City under the Bond Ordinance, without adversely affecting to any substantial degree the privileges and rights of any Owner.

(D) PROHIBITION OF ANY EXTENSION OF INTEREST PAYMENTS. In order to prevent any

accumulation of claims for interest after maturity, the City shall not directly or indirectly extend or assent to the extension of time for the payment of any claim for interest on any Series 2014A Bonds. If the time for payment of any interest is extended, such payment shall not be made by the City, in case of default under the Bond Ordinance, until the prior payment in full of the Debt Service Requirements on all Series 2014A Bonds on which the payment of interest has not been extended.

(E) RECORDS. The City shall keep proper books of record and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues.

(F) AUDITS. The City shall, within 270 days following the close of each Fiscal Year, cause an audit of its books and accounts relating to the Pledged Revenues to be completed by an Independent Accountant showing the receipts and disbursements in connection with the Pledged Revenues.

(G) DUTY TO IMPOSE TAX. If State law or the City Charter or any City ordinance or part thereof, which affects the Pledged Revenues, shall ever be held to be invalid or unenforceable, the City shall immediately take any action which is legally available to the City necessary to produce sufficient Pledged Revenues to comply with the obligations of the City under the Bond Ordinance.

(H) IMPAIRMENT OF CONTRACT. In accordance with Section 3-31-6(C) NMSA 1978, no law, ordinance or resolution of the City which affects the Pledged Revenues or the Series 2014A Bonds shall be repealed or otherwise directly or indirectly modified in such a manner as to impair Outstanding Series 2014A Bonds or obligations of the City under the Bond Ordinance or any Related Documents, unless the Series 2014A Bonds or obligations have been discharged in full or provision has been fully made therefor.

(I) COLLECTION OF LODGERS' TAX. The City shall take whatever action is necessary to collect the Lodgers' Tax and to enforce collection thereof by all persons furnishing lodgings to which such tax is applicable.

(J) ADMINISTRATIVE COSTS. Upon the occurrence and continuance of an Event of Default, the City shall not, except to the extent required by law to do so, deduct administrative costs from the Lodgers' Tax in determining Pledged Lodgers' Tax Revenues.

SECTION 27. REPRESENTATIONS AND WARRANTIES OF THE CITY. The City represents and warrants that:

(A) HOME RULE POWER; EXISTENCE. The City has Home Rule Powers and has been validly created and is operating under the laws of the State and the City's Charter.

(B) AUTHORITY. The City has all requisite power and authority under the laws of the State and the Home Rule Powers to enter into, execute and deliver the Related Documents, to issue and sell the Series 2014A Bonds and to perform its covenants contained in the Bond Ordinance.

(C) EXECUTION AUTHORIZED. The execution and delivery of the Related Documents and use of the disclosure documents for the Series 2014A Bonds and the issuance and sale of the Series 2014A Bonds have been duly authorized by the Council and, except for the approval of the State Department of Finance and Administration referred to in Section 4.(A), no further authorization or approval of such execution, use, delivery, issuance or sale is required by law.

(D) ENFORCEABILITY OF BONDS. The Series 2014A Bonds, when issued, delivered and paid for, shall constitute valid and binding special, limited obligations of the City enforceable in accordance with their terms and entitled to the benefits and security of the Bond Ordinance, subject to the limitations contained in the Bond Ordinance and

subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and the enforceability of indemnification provisions and except to the extent that the enforceability thereof may be limited by the availability of equitable remedies.

(E) **ENFORCEABILITY OF RELATED DOCUMENTS.** The Related Documents, when executed and delivered by the City shall constitute valid and binding special limited obligations of the City enforceable in accordance with their terms, subject to any applicable bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and the enforceability of indemnification provisions except to the extent that the enforceability thereof may be limited by the availability of equitable remedies.

(F) **NO CONFLICT.** The execution and delivery of the Related Documents, the Series 2014A Bonds and the other agreements contemplated by the Bond Ordinance and compliance with the provisions thereof, shall not conflict with nor constitute on the part of the City a breach of or a default under any existing law, court or administrative regulation, decree, order or, to the knowledge of the City, any agreement, indenture, mortgage or lease to which the City is a party or by which it is or may be bound.

(G) **OTHER LIENS.** Other than as described and identified by the Bond Ordinance, there are no liens or encumbrances of any nature on or against the Pledged Revenues on the date of adoption of the Bond Ordinance.

**SECTION 28. TAX COMPLIANCE.** The City covenants that it shall use, and shall restrict the use and investment of, the proceeds of the Series 2014A Bonds in such manner and to such extent as may be necessary so that (a) the Series 2014A Bonds shall not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Code, or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest thereon shall not be treated as a preference item under Section 57 of the Code. The City further covenants (a) that it shall take or cause to be taken such actions that may be required of it for the interest on the Series 2014A Bonds to be and to remain excluded from gross income for federal income tax purposes, (b) that it shall not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) that it, or persons acting for it, shall, among other acts of compliance, (i) apply the proceeds of the Series 2014A Bonds to the governmental purposes of the borrowings, (ii) restrict the yield on investment property, (iii) make timely and adequate rebate payments or payments of alternative amounts in lieu of rebate to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

Authorized Officers are authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Series 2014A Bonds as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections available under Section 148 of the Code for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Series 2014A Bonds or interest thereon or assisting in the compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments of penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Series 2014A Bonds, and (c) to give one or more appropriate certificates of the City, for



inclusion in the transcripts of the proceedings for the Series 2014A Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Series 2014A Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Series 2014A Bonds.

SECTION 29. EVENTS OF DEFAULT. Each of the following events is an “Event of Default”:

(A) NONPAYMENT OF PRINCIPAL. Failure to pay the principal of any Series 2014A Bonds when the same becomes due and payable, either at maturity, or by proceedings for prior redemption, or otherwise.

(B) NONPAYMENT OF INTEREST. Failure to pay any installment of interest on any Series 2014A Bonds on the due date thereof.

(C) INCAPABLE TO PERFORM. The City shall for any reason be rendered incapable of performing its obligations under the Bond Ordinance.

(D) DEFAULT OF ANY OTHER PROVISION. Default by the City in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Series 2014A Bonds or in the Bond Ordinance on its part to be performed, and the continuance of such default (other than a default set forth in Sections 29.(A), 29.(B) or 29.(C)) for 60 days after written notice specifying such default and requiring the same to be remedied has been given to the City by the Owners of 25% in aggregate principal amount of the Series 2014A Bonds then Outstanding or the Series 2014A Bonds Outstanding.

SECTION 30. REMEDIES UPON DEFAULT. Upon the happening and during the continuance of any Event of Default, the Owners of not less than 25% in aggregate principal amount of the Series 2014A Bonds then Outstanding affected by the Event of Default, including but not limited to a trustee or trustees therefor, may proceed against the City to:

(A) protect and enforce the rights of the Owners by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained in the Bond Ordinance or for the enforcement of any proper legal or equitable remedy as those Owners may deem necessary or desirable to protect and enforce their respective rights;

(B) enjoin any act or thing which may be unlawful or in violation of any right of any Owner;

(C) require the Council to act as if it were the trustee of an express trust; and

(D) any combination of those remedies.

All proceedings shall be instituted and maintained for the equal benefit of all Owners of the Series 2014A Bonds then Outstanding. The failure of an Owner to exercise any right granted by this Section 30 shall not relieve the City of any obligation to perform any duty. Each right or privilege of any such Owner (or trustee or receiver therefor) is in addition and cumulative to any other right or privilege and the exercise of any right or privilege by or on behalf of any Owner shall not be deemed a waiver of any other right or privilege of such Owner.

No remedy in the Bond Ordinance is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given under the Bond Ordinance or now or hereafter existing at law or in equity or by statute.

All rights, remedies and powers provided by the Bond Ordinance may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law and all the provisions relating to an Event of Default or the exercise of remedies upon the occurrence of an Event of Default are intended to be subject to all applicable

provisions of law which may be controlling and to be limited to the extent necessary so that they shall not render the Bond Ordinance invalid or unenforceable under the provisions of any applicable law.

SECTION 31. APPLICATION OF MONEY. All money received with respect to any right given or action taken under the provisions of the Bond Ordinance after the occurrence, and during the continuance, of an Event of Default with respect to the Series 2014A Bonds, except as otherwise specified in the Bond Ordinance, after payment of the costs, fees and expenses of the proceedings resulting in the collection of such money, shall be deposited in the appropriate Debt Service Fund and applied to the payment of the Series 2014A Bonds in accordance with the terms and provisions of Section 19 of this Bond Ordinance.

Whenever money is to be applied pursuant to the provisions of this Section 31, it shall be applied at such times, and from time to time, as the Paying Agent determines, having due regard to the amount of money available for application and the likelihood of additional money becoming available in the future. Whenever the Paying Agent determines to apply such money, the Paying Agent shall fix a Special Record Date and the date (which shall be an Interest Payment Date unless the Paying Agent deems another date more suitable) upon which payment is to be made and on such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Paying Agent shall give notice to the Owners of the deposit of any such money and of the fixing of any such date, and shall not be required to make payment of principal to the Owner of any Series 2014A Bonds until presented to the Paying Agent for appropriate endorsement or for cancellation if fully paid.

SECTION 32. DUTIES UPON DEFAULT; RIGHTS CONFERRED. Upon the happening and during the continuance of any Event of Default, the City will do and perform all proper acts on behalf and for the Owners to protect and preserve the security created for the payment of the Series 2014A Bonds and any Payment Obligations and to insure the payment of the Debt Service Requirements promptly as the same become due. The Owners of not less than 25% in aggregate principal amount of Outstanding Series 2014A Bonds, after written demand, may proceed to protect and enforce the rights provided by this Section 32.

SECTION 33. SUFFICIENCY OF ESCROW FUND; INVESTMENTS. The Escrow Agent shall invest the monies in the Escrow Fund only in "Government Obligations" as defined the Refunded Bond Ordinance. All such "Government Obligations" shall mature at such times as provided in the Escrow Agreement.

SECTION 34. DEFEASANCE.

(A) DEFEASANCE OF BOND ORDINANCE. If, when all Series 2014A Bonds become due and payable in accordance with their terms or otherwise as provided in the Bond Ordinance and the entire amount of the principal of, premium, if any, and interest due and payable on all of the Series 2014A Bonds is paid or if provisions are made for the payment thereof when due and payable, and all other sums payable under the Bond Ordinance are paid, then all covenants, agreements and other obligations of the City to the Owners of the Series 2014A Bonds shall cease, terminate and become void and be discharged and satisfied. However, the covenants of the Bond Ordinance relating to the rebate requirements of Section 148(f) of the Code shall survive until all applicable requirements have been satisfied.

(B) SERIES 2014A BONDS.

(1) When all principal, interest and prior redemption premium, if any, in connection with any Series 2014A Bond have been duly paid or provided for, the pledge and lien of the Bond Ordinance, and all obligations hereunder (except as provided for in Section 35), shall be discharged with respect to that Series 2014A Bond and that Series 2014A Bond shall no longer be deemed to be Outstanding within the meaning of the Bond Ordinance. There shall

be deemed to be such due payment or to be adequate provisions for the prompt and complete payment of a Series 2014A Bond when the City has placed in escrow and in trust with a commercial bank or trust company located within or without the State and exercising trust powers, an amount sufficient (including the known minimum yield from Defeasance Obligations in which such amount may be initially invested) to meet all requirements of principal, interest and prior redemption premium, if any, on that Series 2014A Bond as the same become due to its final maturity or upon the designated prior redemption date. The Defeasance Obligations shall become due prior to the respective times at which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the City and such bank or trust company at the time of the creation of the escrow, or the Defeasance Obligations shall be subject to redemption at the option of the owners thereof to assure such availability as so needed to meet such schedule.

(2) If any Series 2014A Bonds are deemed to be paid and discharged pursuant to this Section 34, within 15 days after the date of defeasance, the City shall irrevocably direct the Fiscal Agent to give written notice to each Owner of Series 2014A Bonds deemed paid and discharged at the address shown on the Bond Register on the date on which those Series 2014A Bonds are deemed paid and discharged. The notice shall state, to the extent applicable, the same information required by Section 6.(D) for the redemption of Series 2014A Bonds and shall describe the Defeasance Obligations.

SECTION 35. SURVIVAL OF CERTAIN PROVISIONS. Notwithstanding the foregoing, with respect to Series 2014A Bonds deemed paid pursuant to Section 34.(B), any provisions of the Bond Ordinance which relate to indemnification and the payment of fees and expenses, the payment of the principal of and premium on Series 2014A Bonds at maturity or on a prior redemption date, interest payments and dates thereof, exchange, registration of transfer and registration of Series 2014A Bonds, replacement of mutilated, destroyed, lost or stolen Series 2014A Bonds, the safekeeping and cancellation of Series 2014A Bonds, non-presentment of Series 2014A Bonds, the holding of money in trust and payments to the Fiscal Agent in connection with all of the foregoing, shall remain in effect and be binding upon the Owners of Series 2014A Bonds and the Fiscal Agent for those Series 2014A Bonds, notwithstanding the release and discharge of the Bond Ordinance. The provisions of this Section 35 shall survive the release, discharge and satisfaction of the Bond Ordinance.

SECTION 36. NOTICES. Except as otherwise specifically required in the Bond Ordinance, notice with respect to the Series 2014A Bonds shall be effective when received and it shall be sufficient service of any notice, request, demand or other paper if the same is given: (i) orally, or (ii) by certified or registered mail, or (iii) by Electronic Means, or (iv) hand delivered; provided that any notice given orally, including notice by telephone, must be confirmed by notice in writing as set forth in clause (ii), (iii) (except by telephone) or (iv) above initiated within one Business Day after oral notice is given. Notice shall be given as follows:

If to the City:

City of Albuquerque, New Mexico

One Civic Plaza, N.W. (87102)

Post Office Box 1293 (87103)

Albuquerque, New Mexico

Attention: Director, Department of Finance and  
Administrative Services

Telephone: (505) 768-3396

Facsimile: (505) 768-3447

Copy to City Attorney at same address

Telephone: (505) 748-4500

Facsimile: (505) 768-4525

If to the Fiscal Agent:

City Treasurer

City of Albuquerque, New Mexico

One Civic Plaza, N.W., First Floor (87102)

Post Office Box 1293 (87103)

Albuquerque, New Mexico

Telephone: (505) 768-3309

Facsimile: (505) 768-3447

Any such party may, by notice as set forth above to the other parties, designate any further or different address to which subsequent notices, certificates or other communication shall be sent.

When the Bond Ordinance provides for notice to the Owners of Series 2014A Bonds of any event, such notice shall be sufficiently given (unless otherwise expressly provided in the Bond Ordinance) if in writing and given in accordance with this Section 36 to each Owner of Series 2014A Bonds affected by such event, at his address as it appears on the register for the Series 2014A Bonds. In any case where notice to an Owner of Series 2014A Bonds is given by mail, neither the failure to mail such notice nor any defect in any notice mailed to any particular Owner of Series 2014A Bonds shall affect the sufficiency of such notice with respect to any other Owner, and any notice which is mailed in the manner provided in this paragraph shall conclusively be presumed to have been duly given.

Where the Bond Ordinance provides for notice upon the occurrence of any event, that notice may be waived by the person entitled to receive that notice, either before or after the event, and such waiver shall be the equivalent of notice.

The Fiscal Agent shall provide S&P, if the Series 2014A Bonds are then rated by S&P, Moody's, if the Series 2014A Bonds are then rated by Moody's, and Fitch, if the Series 2014A Bonds are then rated by Fitch, with prior written notice of any amendments to the Bond Ordinance and the redemption of Series 2014A Bonds pursuant to Sections 6.(A) or 6.(B) or paid pursuant to Section 34.(B). Such notice shall be sent (a) to Moody's at: Moody's Investors Service, 7 World Trade Center, 250 Greenwich Street, New York, New York 10007, (b) to S&P at: Standard & Poor's Corporation, Attention: Municipal Finance Department, 55 Water Street, New York, New York 10041, and (c) to Fitch at: Fitch Ratings, One State Street Plaza, New York, New York 10004.

SECTION 37. RESERVED.

SECTION 38. AMENDMENT OF BOND ORDINANCE.

(A) LIMITATIONS UPON AMENDMENTS. Prior to any Series 2014A Bonds being issued, the Bond Ordinance may be amended by ordinance or resolution of the Council without the consent of Owners. After Series 2014A Bonds have been issued, the Bond Ordinance may be amended by ordinance or resolution of the Council without the consent of Owners:

(1) To cure any ambiguity, or to cure, correct or supplement any defect or inconsistent provision contained in the Bond Ordinance;

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

(3) To obtain or maintain a rating or shadow rating on any Series 2014A Bonds from any rating agency which amendment, in the judgment of Bond Counsel, does not materially adversely affect the Owners;

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

(5) To make any other changes in the Bond Ordinance which, in the opinion of Bond Counsel, is not materially adverse to the Owners.

(B) ADDITIONAL AMENDMENTS. Except as provided above, the Bond Ordinance may only be amended or supplemented by ordinance adopted by the Council without receipt by the City of any additional consideration, but with the written consent of the Owners of a majority of the principal amount of the Outstanding Series 2014A Bonds which are affected by the amendment or supplement (not including Series 2014A Bonds which are then owned by or for the account of the City). However, no such ordinance shall have the effect of permitting:

(1) An extension of the maturity of any Series 2014A Bonds; or

(2) A reduction in the principal amount of, premium, if any, or interest rate on any Series 2014A Bonds; or

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

(4) A reduction of the principal amount of Series 2014A Bonds required for consent to such amendment or supplement.

(C) NOTICE OF AMENDMENT. Notice of a proposed amendment requiring the consent of the Owners shall be mailed to the Owners of the Series 2014A Bonds then Outstanding affected by the amendment at their addresses as the same last appear in the registration books kept by the Registrar. Such notice shall briefly set forth the nature of the proposed amendment and shall state that copies of the instrument pertaining to such amendment are on file at the principal corporate office of the Registrar for inspection by all Owners. If, within 60 days or such longer period as shall be prescribed by the City following the giving of such notice, the requisite percentage of Owners affected by the amendment have consented to and approved the amendment, the amendment shall become effective and no Owner shall have any right to object to such amendment, or the operation thereof.

SECTION 39. MANNER OF EVIDENCING OWNERSHIP OF SERIES 2014A BONDS. Any request, direction, consent or other instrument provided or required by the Bond Ordinance to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by Owners in person or by an agent appointed in writing. Proof of the execution of any such request, direction or other instrument or of the writing appointing any such agent and of the ownership of the applicable Series 2014A Bonds, if made in the following manner, shall be sufficient for any of the purposes of the Bond Ordinance and shall be conclusive in favor of the Fiscal Agent and the City with regard to any action taken by them, or either of them, under such request or other instrument, namely:

(A) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments in such jurisdiction that the person signing such writing acknowledged before him the execution thereof or by the affidavit of a witness of such execution; and

(B) The ownership of Series 2014A Bonds shall be proved by the Bond Register.

Any action taken or suffered by the Fiscal Agent pursuant to any provision of the Bond Ordinance, upon the request or with the assent of any person who at the time is the Owner of any Series 2014A Bonds, shall be conclusive and binding upon all future Owners of the same Series 2014A Bonds.

SECTION 40. [reserved].

SECTION 41. APPLICABLE LAW. The Bond Ordinance shall be governed by the laws of the State without reference to choice of law principles thereof.

SECTION 42. PAYMENTS AND PERFORMANCE ON BUSINESS DAYS. Except as otherwise required in the Bond Ordinance: (i) any covenant required to be performed on any date which is not a Business Day may be performed on the first Business Day thereafter and (ii) if the date for any payment on the Series 2014A Bonds at a place of payment shall be other than a Business Day, then payment shall be made on the next succeeding Business Day, and no interest shall accrue for the intervening period other than as specifically provided for in the Bond Ordinance.

SECTION 43. LIMITATION OF RIGHTS. With the exception of rights in the Bond Ordinance expressly conferred, nothing in the Bond Ordinance or in the Series 2014A Bonds, expressed or implied, is intended or shall be construed to give to any Person other than the Owners, the Fiscal Agent, the City and the parties to which such right, remedy or claim is expressly granted by the Bond Ordinance or the Series 2014A Bonds, any legal or equitable right, remedy or claim under or in respect to the Bond Ordinance or the Series 2014A Bonds or any covenant, condition or stipulation of the Bond Ordinance or in the Series 2014A Bonds, and all covenants, stipulations, promises and agreements in the Bond Ordinance and in the Series 2014A Bonds shall be for the sole and exclusive benefit of the Owners, each Insurer, the City and the parties to which such right, remedy or claim is expressly granted.

SECTION 44. DELEGATED POWERS. The officers of the City are authorized and directed to take all action necessary or appropriate to effectuate the provisions of the Bond Ordinance, including, without limiting the generality of the foregoing, the publication of the summary substantially in the form set out in Section 51, the printing of the Series 2014A Bonds, and the execution of such documents as are not inconsistent with the terms of the Bond Ordinance including, without limitation, certificates as may be required by the Investment Bankers, including, but not limited to the absence and existence of factors affecting the exemption of interest on the Series 2014A Bonds from federal income taxation.

The Director of the Department of Finance and Administrative Services of the City, or his successor in interest or title, is hereby authorized and directed to make such changes or corrections to the procedures established in the Bond Ordinance relating to the times of day or the days on which actions are required to be taken, or the persons responsible for particular actions, the form of notice of the occurrence of events, the types and forms of actions required and other similar administrative matters which, in his judgment, are necessary and appropriate to accomplish the purposes of the Bond Ordinance. The Director of the Department of Finance and Administrative Services, or his successor in interest or title, shall give notice of any such changes or corrections to all persons affected thereby, to Bond Counsel for the City and shall file with the City Clerk a certificate of such changes and corrections.

SECTION 45. IMMUNITY OF MAYOR, COUNCIL MEMBERS, COMMISSIONERS, OFFICERS AND EMPLOYEES OF CITY. No recourse shall be had for the enforcement of any obligation, promise or agreement of the City contained in the Bond Ordinance or in any Series 2014A Bonds for any claim based thereon or otherwise in respect thereof, against any Mayor, Council member, officer or employee, as such, in his individual capacity, past, present or future, of the City or of any successor to the City, whether by virtue of any constitutional provision, statute or rule of law, or

by the enforcement of any assignment or penalty or otherwise. It is expressly agreed and understood that no personal liability shall attach to, or be incurred by, any Mayor, Council member, officer or employee, as such, past, present or future, of the City or of any successor to the City, either directly or through the City or any successor to the City. All personal liability against every such Mayor, Council member, officer and employee is, as a condition of, and as part of the consideration for, the adoption of the Bond Ordinance, expressly waived and released.

SECTION 46. LIMITATION OF ACTION. After the passage of 35 days from the publication required by Section 51, any action attacking the validity of any proceedings had or taken by the City preliminary to and in the authorization and issuance of the Series 2014A Bonds shall be perpetually barred.

SECTION 47. BOND ORDINANCE IRREPEALABLE. After any of the Series 2014A Bonds are issued, the Bond Ordinance shall be and remain irrepealable until all Series 2014A Bonds and the interest thereon shall be fully paid canceled and discharged, as provided in the Bond Ordinance, or there has been defeasance as provided in the Bond Ordinance.

SECTION 48. SEVERABILITY CLAUSE. If any provision of the Bond Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction because it conflicts with any other provision or provisions of any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions in the Bond Ordinance invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in the Bond Ordinance, shall not affect the remaining portions of the Bond Ordinance, or any part thereof.

SECTION 49. REPEALER CLAUSE. Any bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with the Bond Ordinance are repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

SECTION 50. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. Upon due adoption of this Bond Ordinance, it shall be recorded and preserved by the City Clerk, authenticated by the signature of the President of the Council and City Clerk, and approved by the Mayor and the seal of the City impressed hereon, and the title and general summary of the subject matter contained in the Bond Ordinance (substantially in the form set out in Section 51) shall be published in a newspaper which maintains an office and is of general circulation in the City, in accordance with law.

SECTION 51. SUMMARY FOR PUBLICATION. The form of this Bond Ordinance for the purpose of publication shall be substantially as set forth in this Section, and the Council hereby declares that the publication prescribed shall be conclusive of the sufficiency of such form:

(Form of Ordinance for Publication)

#### NOTICE OF ADOPTION OF ORDINANCE

The City Council of the City of Albuquerque, New Mexico, hereby gives notice of the adoption of its Ordinance Twenty-First Council Bill No. F/S O-14-9 on \_\_\_\_\_, 2014. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, City of Albuquerque/Bernalillo County Government Center, One Civic Plaza, NW, Albuquerque, New Mexico.

The title of the Ordinance is:

**AUTHORIZING THE ISSUE AND SALE OF THE \$36,960,000 CITY OF ALBUQUERQUE, NEW MEXICO GROSS RECEIPTS TAX/LODGERS' TAX REFUNDING AND IMPROVEMENT REVENUE BONDS, SERIES 2014A FOR THE PURPOSE OF (i) FINANCING THE COST OF REFUNDING THE CITY'S OUTSTANDING TAX-EXEMPT GROSS RECEIPTS TAX/LODGERS' TAX REFUNDING REVENUE BONDS, SERIES 2004A AND (ii) STUDYING, DESIGNING, DEVELOPING, CONSTRUCTING, RECONSTRUCTING, REHABILITATING, RENOVATING, MODERNIZING, SIGNING, ENHANCING AND OTHERWISE IMPROVING THE CITY'S CONVENTION CENTER; PROVIDING FOR THE PAYMENT OF THE SERIES 2014A BONDS FROM CERTAIN GROSS RECEIPTS TAX REVENUES AND LODGERS' TAX REVENUES; PROVIDING FOR THE COLLECTION OF CERTAIN LODGERS' TAXES AND CERTAIN GROSS RECEIPTS TAXES; PROVIDING FOR THE TERMS AND OTHER DETAILS CONCERNING THE SERIES 2014A BONDS; PROVIDING FOR CERTAIN DOCUMENTS PERTAINING TO THE SERIES 2014A BONDS; RATIFYING ACTION PREVIOUSLY TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE; AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE ISSUE AND SALE OF THE SERIES 2014A BONDS; AND MAKING AN APPROPRIATION TO CAPITAL FUND 305.**

The following is a general summary of the subjects matter contained in the Ordinance (the "Ordinance"):

Preambles recite or include such matters as: the operation of the City of Albuquerque, New Mexico (the "City") as a constitutional home rule city; City has imposed and collects a Lodgers' Tax in the amount of 1% of gross taxable rent paid for lodging within the City; the City's imposition of a gross receipts tax; and that it is in the best interests of the City to issue and sell the Series 2014A Bonds to finance the cost of refunding the City's Gross Receipts Tax/Lodgers' Tax Refunding Revenue Bonds, Series 2004A (the "Refunding Project") and make certain improvements to the City's Convention Center (the "Improvement Project") pursuant to the Ordinance payable from and with a first lien on the lodgers' tax revenues and a parity lien on the state-shared gross receipts tax revenues distributed to the City (the "Pledged Revenues").

Sections 1 through 3 define terms used in the Ordinance; ratify prior action of the City relating to the Refunding Project, the Improvement Project and the Series 2014A Bonds, and include findings that the financing of the Refunding Project and the Improvement Project is feasible and in the best interests of the residents of the City.

Sections 4 and 5 authorize the Refunding Project and the Improvement Project and expenses; authorize the Bonds in the principal amount of \$36,960,000 and specify certain terms of the Bonds; specify details of the Bonds, including that the Bonds shall be issued as fully registered bonds in book-entry form and dated the date of their delivery; that the net effective interest rate on the Bonds does not exceed 12% per annum, the interest and principal payment dates for the Bonds, and the method of paying the Bonds.

Sections 6 through 10 provide for optional and mandatory sinking fund redemption of the Bonds; provide for the ownership, registration, exchange and transfer of the Bonds; provide that the Bonds shall be fully negotiable; and provide that the Bonds shall be special limited obligations of the City payable and collectible solely from municipal gross receipts tax, state-shared gross receipts tax and lodgers' tax revenues, proceeds of the Bonds, and amounts on deposit in certain funds and accounts and that the Bonds shall not be a general obligation of the City.

Sections 11 through 15 provide details concerning the execution and authentication of the Bonds; provide for the appointment of a fiscal agent, paying agent, authenticating agent and registrar; provide for a successor registrar or paying agent; provide the forms of the Bonds; and provide for the sale of the Bonds to the purchasers.

Sections 16 through 20 provide for the establishment of various funds and accounts relating to the Bonds;



provide for the disposition of the proceeds of the Bonds and certain other funds; provide for the approval of certain documents relating to the Bonds; provide for the application of municipal gross receipts tax, state-shared gross receipts tax and lodgers' tax revenues to the payment of the Bonds and other bonds and obligations payable from municipal gross receipts tax, state-shared gross receipts tax and lodgers' tax revenues; and provide details relating to the investment of Bond proceeds and municipal gross receipts tax, state-shared gross receipts tax and lodgers' tax revenues.

Sections 21 through 25 provide that the Bonds are secured by an irrevocable lien upon the municipal gross receipts tax, state-shared gross receipts tax and lodgers' tax revenues; provide for equality among Bonds within each series; and permit the issuance of additional bonds, refunding bonds and other obligations payable from municipal gross receipts tax, state-shared gross receipts tax and lodgers' tax revenues under certain conditions.

Sections 26 through 33 provide protective covenants, including tax covenants, for the benefit of the purchasers of Bonds; set forth representations of the City; define events of default; establish remedies and duties upon default; provide for the application of money received pursuant to default; and provide for the investment of monies in the escrow fund.

Sections 34 through 39 provide details relating to defeasance of the ordinance and the Bonds and the survival of certain provisions of the ordinance after defeasance; provide details relating to notices; limit the references in the ordinance to an insurer; provide details relating to amendments to the ordinance; and provide for the method of evidencing ownership of Bonds.

Section 40 through 51 provide that the ordinance shall be governed by the laws of New Mexico; provide for payments and covenants to be performed on business days; limit rights of parties under the ordinance; delegate powers to the officers of the City to effectuate the provisions of the ordinance; provide for the immunity of officials; provide a limitation of action period; state that the ordinance is irrepealable; provide severability and repealer clauses; provide for publication of this notice; and provide a summary of the ordinance for publication.

COMPLETE COPIES OF THE ORDINANCE ARE ON FILE IN THE OFFICE OF THE CITY CLERK AT CITY HALL AT THE ADDRESS STATED ABOVE AND ARE AVAILABLE FOR INSPECTION DURING REGULAR OFFICE HOURS. THIS NOTICE ALSO CONSTITUTES COMPLIANCE WITH SECTION 6-14-4 THROUGH 6-14-7, NMSA 1978.

WITNESS my hand and the Seal of the City of Albuquerque as of \_\_\_\_\_, 2014.

By \_\_\_\_\_

City Clerk

[END OF FORM OF SUMMARY OF ORDINANCE FOR PUBLICATION]

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