



# City of Albuquerque

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

## Legislation Details (With Text)

**File #:** O-22-51

**Type:** Ordinance      **Status:** Enacted

**File created:** 11/7/2022      **In control:** City Council

**Final action:** 11/21/2022

**Enactment date:** 11/30/2022      **Enactment #:** O-2022-039

**Title:** Authorizing The Issuance And Sale Of The City Of Albuquerque, New Mexico Short-Term Lodgers' Tax Improvement Revenue Bonds, Taxable Series 2022 In An Aggregate Principal Amount Not To Exceed \$3,000,000 For The Purpose Of Studying, Designing, Developing, Constructing, Reconstructing, Rehabilitating, Renovating, Modernizing, Signing, Enhancing And Otherwise Improving Tourist-Related Facilities And Attractions; Providing For The Payment Of The Series 2022 Bonds From Lodgers' Tax Revenues; Providing For The Collection Of Certain Lodgers' Tax Revenues; Approving The Delegation Of Authority To Make Certain Determinations Regarding The Sale Of The Series 2022 Bonds Pursuant To The Supplemental Public Securities Act; Providing For The Terms And Other Details Concerning The Series 2022 Bonds; Providing For Certain Documents Pertaining To The Series 2022 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 2022 Bonds (Benton and Bassan, by request)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. O-51, 2. O-51Enacted

Date	Ver.	Action By	Action	Result
12/2/2022	1	City Clerk	Published	
11/28/2022	1	Mayor	Signed by the Mayor	
11/23/2022	1	City Council	Sent to Mayor for Signature	
11/21/2022	1	City Council	Passed	Pass
11/7/2022	1	President	To be heard at the Council Meeting	
11/7/2022	1	City Council	Introduced	

## CITY of ALBUQUERQUE TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-51      ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Isaac Benton and Brook Bassan, by request

### ORDINANCE

Authorizing The Issuance And Sale Of The City Of Albuquerque, New Mexico Short-Term Lodgers' Tax Improvement Revenue Bonds, Taxable Series 2022 In An Aggregate Principal Amount Not To Exceed \$3,000,000 For The Purpose Of Studying, Designing, Developing, Constructing, Reconstructing, Rehabilitating, Renovating, Modernizing, Signing, Enhancing And Otherwise Improving Tourist-Related Facilities And Attractions; Providing For The Payment Of The Series 2022 Bonds From Lodgers' Tax Revenues; Providing For The Collection Of Certain Lodgers' Tax Revenues; Approving The Delegation Of Authority To Make Certain Determinations Regarding The Sale Of The Series 2022 Bonds Pursuant To The Supplemental Public Securities Act; Providing For The Terms And Other Details Concerning The Series 2022 Bonds; Providing For Certain Documents Pertaining To The Series 2022 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 2022 Bonds (Benton and Bassan, by request)

AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO SHORT-TERM LODGERS' TAX IMPROVEMENT REVENUE BONDS, TAXABLE SERIES 2022 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$3,000,000 FOR THE PURPOSE OF STUDYING, DESIGNING, DEVELOPING, CONSTRUCTING, RECONSTRUCTING, REHABILITATING, RENOVATING, MODERNIZING, SIGNING, ENHANCING AND OTHERWISE IMPROVING TOURIST-RELATED FACILITIES AND ATTRACTIONS; PROVIDING FOR THE PAYMENT OF THE SERIES 2022 BONDS FROM LODGERS' TAX REVENUES; PROVIDING FOR THE COLLECTION OF CERTAIN LODGERS' TAX REVENUES; APPROVING THE DELEGATION OF AUTHORITY TO MAKE CERTAIN DETERMINATIONS REGARDING THE SALE OF THE SERIES 2022 BONDS PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; PROVIDING FOR THE TERMS AND OTHER DETAILS CONCERNING THE SERIES 2022 BONDS; PROVIDING FOR CERTAIN DOCUMENTS PERTAINING TO THE SERIES 2022 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 2022 BONDS.

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, 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, 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 following aggregate principal amounts:

<u>Series</u>	<u>Amount Outstanding</u>
Series 2004B Bonds	\$24,315,000
Series 2014A Bonds	\$480,000
Series 2016 Bonds	\$22,020,000
Series 2019A Bonds	\$31,175,000
Series 2020A Bonds	\$38,870,000
Series 2020B Bonds	\$7,565,000

WHEREAS, except for the Lodgers' 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 2022 Bonds in an aggregate principal amount not to exceed \$3,000,000 to pay the costs and expenses of the Project (including reimbursing the City with all or a portion of the proceeds of the Series 2022 Bonds for the use of legally available moneys of the City previously expended to pay a portion of the costs of the Project); and

WHEREAS, the Series 2022 Bonds shall be secured by a first (but not an exclusive first) lien on the Pledged Lodgers' Tax Revenues, on a parity with the lien on Lodgers' Tax Obligations; and

WHEREAS, the Act provides that any law which authorizes the pledge of any or all of the Lodgers' Tax Revenues to the payment of any revenue bonds issued pursuant to the Act or which affects the Lodgers' 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 2022 Bonds, unless such outstanding revenue bonds, including the Series 2022 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 2022 Bonds to accomplish the Project; and

WHEREAS, the Council has determined that it is in the best interest of the City and its residents that the Series 2022 Bonds be issued for the construction, acquisition and installation of the Project; and

WHEREAS, the City intends to sell the Series 2022 Bonds to the State of New Mexico in a negotiated sale on the terms set forth in the Bond Ordinance as supplemented by the Sale Certificate; and

WHEREAS, there has been on deposit with the City Clerk and presented to the City Council the form of the Bond Purchase Agreement; and

WHEREAS, all required authorizations, consents or approvals of any State governmental body, agency or authority for the authorization, execution and delivery of the Series 2022 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:

#### DEFINITIONS AND RULES OF CONSTRUCTION.

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, 3-38-13 to 3-38-24 and 6-14-8 to 6-14-12 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 2022 Bonds.

AUTHORIZED DENOMINATIONS. Denominations of \$1,000 and integral multiples thereof.

AUTHORIZED OFFICER. The City's Mayor, Chief Administrative Officer, Chief Financial Officer, Director of Department of Finance and Administrative Services, 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 ORDINANCE. This ordinance, being City Twenty-Fifth Council Bill No. O-22-\_\_\_\_\_, as amended or supplemented from time to time.

BOND PURCHASE AGREEMENT. The Bond Purchase Agreement among the City and the State of New Mexico relating to the sale of the Series 2022 Bonds to the State of New Mexico.

BOND REGISTER. The books maintained by the Registrar for the registration, transfer and exchange of the Series 2022 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 2022 Bonds.

COMPLETION DATE. The date of completion of the construction, acquisition and installation of the Project or, as to that portion of the Project to be funded by the Series 2022 Bonds and as certified pursuant to Section 16.

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).

DEBT SERVICE REQUIREMENTS. With respect to Lodgers' 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 Lodgers' 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 Lodgers' 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 Lodgers' Tax Obligations which may be tendered or otherwise presented for payment at the option or demand of the owners or holders of the Lodgers' 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 Lodgers' Tax Obligations shall be included in any computation of Debt Service Requirements for that period.

**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.

**EVENT OF DEFAULT.** Any of the events set forth in Section 25.

**EXPENSES.** The reasonable and necessary fees, costs and expenses incurred by the City in connection with the issuance of the Series 2022 Bonds and any transaction or event contemplated by the Series 2022 Bonds and the Bond Ordinance including, without limitation: (i) costs of advertising and publication of legislation relating to the Series 2022 Bonds; (ii) costs of printing certificates for the Series 2022 Bonds; and (iii) 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.

**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.

**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.

INTEREST PAYMENT DATE. The date specified in the Sale Certificate for the payment of interest on the Series 2022 Bonds.

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 2004B Bonds, the Series 2009A Bonds, the Series the Series 2014A Bonds, the Series 2016 Bonds, the Series 2020A Bonds, the Series 2020B 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 15.

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 2022 Bonds mature.

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

OUTSTANDING. On any particular date the aggregate of all Lodgers' Tax Obligations issued and delivered under the applicable City ordinance or resolution authorizing the issuance of the Lodgers' 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 Lodgers' Tax Obligations, or otherwise relating thereto, provided that the payment of Insured Lodgers' Tax Obligations with the proceeds of a Bond Insurance Policy shall not result in those Insured Lodgers' Tax Obligations ceasing to be Outstanding;

(3) in the case of Variable Rate Tax Obligations, any Lodgers' Tax Obligations

deemed tendered but not yet presented for payment; and

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

OWNER. The registered owner of a Series 2022 Bond as shown, from time to time, on the registration books for the Series 2022 Bonds maintained by the relevant registrar for the City.

PARITY LODGERS' TAX OBLIGATIONS. The Series 2004B Bonds, the Series 2009A Bonds, the Series 2014A Bonds, the Series 2016 Bonds, the Series 2020A Bonds, the Series 2020B 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 2022 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 2022 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.

PERMITTED INVESTMENTS. Any investment legally permitted pursuant to Section 6-10-10 NMSA 1978, the City Charter and the City Investment Policy.

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 or PLEDGED 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.

PRINCIPAL PAYMENT DATE. The date specified in the Sale Certificate for the

payment of principal on the Series 2022 Bonds.

PROJECT. Studying, designing, developing, constructing, reconstructing, rehabilitating, renovating, modernizing, signing, enhancing and otherwise improving tourist-related facilities and attractions.

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

REGISTRAR. The Treasurer or other agent for the City for the transfer and exchange of the Series 2022 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 and any other documents relating to the Series 2022 Bonds identified and approved in the Bond Ordinance.

SALE CERTIFICATE. One or more certificates executed by the Chief Financial Officer, Director of the Department of Finance and Administrative Services or the City Treasurer dated on or before the date of delivery of the Series 2022 Bonds, setting forth the following final terms of the Series 2022 Bonds: (i) the interest and principal payment dates; (ii) the principal amounts, denominations and maturity amortization; (iii) the sale prices; (iv) the interest rate or rates; (v) the interest payment periods; and (vi) the final terms of agreements, if any, with agents or service providers required for the purchase, sale, issuance and delivery of the Series 2022 Bonds, all subject to the parameters and conditions contained in this Bond Ordinance.

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

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

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

SERIES 2016 BONDS. The “City of Albuquerque, New Mexico Gross Receipts Tax/Lodgers’ Tax Improvement Revenue Bonds, Taxable Series 2016.”

SERIES 2020A BONDS. The “City of Albuquerque, New Mexico Gross Receipts Tax/Lodgers’ Tax Refunding Revenue Bonds, Series 2020A.”

SERIES 2020B BONDS. The “City of Albuquerque, New Mexico Gross Receipts Tax/Lodgers’ Tax/Hospitality Fee Refunding Revenue Bonds, Series 2020B.”

**SERIES 2022 BONDS.** The “City of Albuquerque, New Mexico Short-Term Lodgers’ Tax Improvement Revenue Bonds, Taxable Series 2022.”

**SERIES 2022 ACQUISITION/CONSTRUCTION FUND.** The “City of Albuquerque, New Mexico Short-Term Lodgers’ Tax Improvement Revenue Bonds, Taxable Series 2022 Acquisition/Construction Fund” created in Section 15.

**SERIES 2022 DEBT SERVICE FUND.** The “City of Albuquerque, New Mexico Short-Term Lodgers’ Tax Improvement Revenue Bonds, Taxable Series 2022 Debt Service Fund” created in Section 15.

**SPECIAL RECORD DATE.** A date established for payment of overdue interest on Series 2022 Bonds by the Paying Agent pursuant to Section 5.(B).

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

**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.

**SURPLUS FUND.** The City of Albuquerque Surplus Lodgers’ Tax Revenues Reserve Fund continued in Section 15 of the Bond Ordinance.

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

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.

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.

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

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

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.

Terms in the singular include the plural and vice versa.

**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 Project and (2) the issuance and sale of the Series 2022 Bonds are ratified, approved and confirmed.

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 the Series 2022 Bonds to the extent and in the manner provided in the Bond Ordinance.

(B) The Series 2022 Bonds will be issued pursuant to the Act.

(C) The issuance of the Series 2022 Bonds and the construction, acquisition and installation of the Project are in the interest of the public health, safety and welfare of the residents of the City.

(D) The exact principal amounts of the Series 2022 Bonds, the interest rates and sale prices of the Series 2022 Bonds will be established in the Sale Certificate, but in no event shall the net effective interest rate on the Series 2022 Bonds exceed twelve percent (12%) per annum as required by Section 6-14-3 NMSA 1978.

#### AUTHORIZATIONS.

(A) AUTHORIZATION OF SERIES 2022 BONDS AND PROCEEDS OF SERIES 2022 BONDS. This Bond Ordinance has been adopted by the affirmative vote of at least three-quarters of the members of the Council. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the City, it is declared necessary that the City issue its negotiable, fully registered Series 2022 Bonds pursuant to the Act, as set forth in this Bond Ordinance. The Series 2022 Bonds are designated as the "City of Albuquerque, New Mexico Short-Term Lodgers' Tax Improvement Revenue Bonds, Taxable Series 2022," provided that changes may be made in those designations to better identify the Series 2022 Bonds. The issuance of the Series 2022 Bonds in an aggregate principal amount not to exceed \$3,000,000 is authorized and approved. The negotiated sale of the Series 2022 Bonds to the State of New Mexico shall be approved in the Sale Certificate and Bond Purchase Agreement.

Proceeds of the Series 2022 Bonds may also be used to pay Expenses.

PROJECT. The Project is authorized and approved. The Project will include studying, designing, developing, constructing, reconstructing, rehabilitating, renovating, modernizing, signing, enhancing and otherwise improving tourist-related facilities and attractions.

EXPENSES. The payment of Expenses is authorized and approved.

## SERIES 2022 BONDS.

(A) DETAILS. The Series 2022 Bonds shall be issued in an aggregate principal amount not to exceed \$3,000,000, and the Series 2022 Bonds shall be dated the initial date of delivery to the State of New Mexico. The Series 2022 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 2022 Bond from another. The Series 2022 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 or prior redemption, payable semiannually on January 1 and July 1 of each year in the years, amounts and interest rates as set forth in the Sale Certificate.

The net effective interest rate on the Series 2022 Bonds shall not exceed twelve percent (12%).

## PAYMENT OF SERIES 2022 BONDS; TRANSFERS TO PAYING AGENT.

Payments on the Series 2022 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 2022 Bonds on a timely basis so that the Paying Agent may make payments of the principal of, premium, if any, and interest on Series 2022 Bonds, when due, to the Owners and comply with the requirements of any Insurer relating to payments of Series 2022 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 2022 Bonds when due.

The principal of and premium, if any, on the Series 2022 Bonds shall be payable to the Owners upon presentation and surrender of their Series 2022 Bonds at the principal office of the Paying Agent.

Interest on the Series 2022 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 2022 Bonds. In the case of any Owner of Series 2022 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 2022 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 2022 Bond on any Interest Payment Date, interest shall continue to accrue on that Series 2022 Bond but shall cease to be payable to the Owner of that Series 2022 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.

**SERIES 2022 BONDS NOT PRESENTED FOR PAYMENT.** If any Series 2022 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 2022 Bonds is not cashed by an Owner, and an amount sufficient to pay those Series 2022 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 2022 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 2022 Bonds.

Any money which the Paying Agent segregates and holds in trust for the payment of the principal of, premium or interest on Series 2022 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 2022 Bonds.

**REDEMPTION OF SERIES 2022 BONDS.**

(A) **OPTIONAL REDEMPTION.** The Series 2022 Bonds are not subject to optional redemption prior to maturity.

**REGISTRATION, TRANSFER, EXCHANGE AND OWNERSHIP OF SERIES 2022 BONDS.**

(A) **REGISTRATION, TRANSFER AND EXCHANGE.** The City shall cause books

for the registration, transfer and exchange of the Series 2022 Bonds to be kept at the principal office of the Registrar. Upon surrender for transfer or exchange of any Series 2022 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 2022 Bond or Bonds of the same series and Maturity Date, interest rate and same aggregate principal amount in Authorized Denominations.

**OWNER OF BONDS.** The person in whose name any Series 2022 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 2022 Bonds in Section 5. (C). Payment of the principal on any Series 2022 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 2022 Bonds to the extent of the amount paid.

**REPLACEMENT OF BONDS.** If any Series 2022 Bond is lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of that Series 2022 Bond if mutilated, and evidence, information or indemnity which the Registrar may reasonably require, authenticate and deliver a replacement Series 2022 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 2022 Bond has matured or been called for redemption, the Registrar may direct the Paying Agent to pay that Series 2022 Bond in lieu of replacement.

**CHARGES.** Exchanges and transfers of Series 2022 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.

**UNAUTHENTICATED BONDS.** The officers of the City are authorized to deliver to the Registrar fully registered but unauthenticated Series 2022 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.

**NEGOTIABILITY.** Series 2022 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.

**SPECIAL LIMITED OBLIGATIONS.** The Series 2022 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 Pledged Lodgers' Tax Revenues, which Pledged Lodgers' Tax Revenues are pledged and are payable as set forth in Sections 18 and 19. However, the Series 2022 Bonds are also payable from amounts on deposit in the Series 2022 Debt Service Fund and the Series 2022 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 2022 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 2022 Bonds shall recite that they are payable and collectable solely out of the Pledged Lodgers' Tax 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 2022 Bonds or for the payment of any amounts owed under any Related Documents.

#### **EXECUTION AND CUSTODY OF SERIES 2022 BONDS.**

**(A) FILING MANUAL SIGNATURES.** Prior to the execution of any Series 2022 Bonds pursuant to Sections 6-9-1 through 6-9-6 NMSA, the Mayor, City Clerk and City Treasurer may 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.

**EXECUTION.** Series 2022 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 2022 Bond the printed, engraved, stamped or otherwise placed facsimile or imprint of the City's corporate seal. Series 2022 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 2022 Bonds, any or all of the persons who executed those Series 2022 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 2022 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 2022 Bonds or certificates pertaining to the Series 2022 Bonds.

CUSTODY. The Registrar shall hold in custody all Series 2022 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 2022 Bonds.

AUTHENTICATION. No Series 2022 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 2022 Bonds.

APPOINTMENT OF FISCAL AGENT. The initial Fiscal Agent for the Series 2022 Bonds shall be the City Treasurer. The Paying Agent and Registrar shall be the same Person for the Series 2022 Bonds.

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 2022 Bonds may be in a separate paying agent agreement executed on behalf of the City by an Authorized Officer.

#### SERIES 2022 BONDS FORMS.

(A) The Series 2022 Bonds shall be in substantially the following form with only

such changes as are not inconsistent with the Bond Ordinance:

[FORM OF SERIES 2022 BOND]

UNITED STATES OF AMERICA

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

CITY OF ALBUQUERQUE, NEW MEXICO

SHORT-TERM LODGERS' TAX IMPROVEMENT REVENUE BONDS

TAXABLE SERIES 2022

Bond No. R-1 \$ \_\_\_\_\_

INTEREST RATE	MATURITY DATE	DATE OF BOND
_____	_____, 2022	_____, 2022

PRINCIPAL AMOUNT:

REGISTERED OWNER: STATE OF NEW MEXICO

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 other laws of the State, for value received, promises to pay the Principal Amount stated above to the Registered Owner stated above or registered assigns, on the Maturity Date stated above upon presentation and surrender of this bond at the principal office of the City Treasurer in Albuquerque, New Mexico or its successors (referred to in this bond as the "Paying Agent" or "Registrar," as applicable). The City also promises to pay interest on the unpaid Principal Amount at the Interest Rate stated above on the Maturity Date. This bond shall bear interest from the most recent date to which interest has been paid or provided for or if no interest has been paid or provided for from the Date of Bond stated above until maturity. If, upon presentation of this bond on the Maturity Date, payment is not made as required by the Bond Ordinance, defined below, interest on the unpaid Principal Amount of this bond shall continue to accrue at the Interest Rate until the Principal Amount is paid in full.

**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 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 \$\_\_\_\_\_ designated as the “City of Albuquerque, New Mexico Short-Term Lodgers’ Tax Improvement Revenue Bonds, Taxable Series 2022” (the “Bonds”), issued in denominations of \$1,000 and integral multiples thereof under and pursuant to City Ordinance Twenty-Fifth Council Bill No. O-22-\_\_\_\_\_, as supplemented by the Sale Certificate (collectively, the “Bond Ordinance”) for the purpose of making certain improvements to tourist-related facilities and attractions.

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.

Payment of the principal of this bond shall be made only to or upon the order of the Registered Owner or his legal representative. Interest on this bond is payable by check or draft mailed to the Registered Owner or his legal representative (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 the Bonds maintained by the Registrar at the address appearing in the

registration books at the close of business on the fifteenth day of the calendar month next preceding the applicable Interest Payment Date (the "Record Date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the Registered Owner as of the Record Date but shall be payable to the Registered Owner as shown on the registration books at the close of business on a special record date to be fixed by the Paying Agent and Registrar for the payment of interest. The special record date shall be fixed whenever money becomes available for payment of the overdue interest and notice of the special record date shall be given to the owners of the Bonds as then shown on the Registrar's registration books not less than ten days prior to the special record date. If, upon presentation at maturity, payment of this bond is not made as required, all interest shall continue at the Interest Rate until the Principal Amount is paid in full. 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 the services of the Paying Agent. All such payments shall be valid and effectual to satisfy and discharge the liability on this bond to the extent of the sum or sums paid.

The Bonds are not subject to redemption prior to maturity.

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 first lien (but not an exclusive first 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 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 2022 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 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 2022 Bonds)

**SALE OF SERIES 2022 BONDS.** The Series 2022 Bonds shall be sold and delivered to the State of New Mexico upon receipt by the City of the purchase price as set forth in the Sale Certificate and the Bond Purchase Agreement pursuant to the terms of the Bond Ordinance.

**FUNDS AND ACCOUNTS.**

**(A) 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 Pledged Lodgers' Tax Revenues.

**SERIES 2022 DEBT SERVICE FUND.** The Series 2022 Debt Service Fund is hereby established and shall be maintained by the City.

**SERIES 2022 ACQUISITION/CONSTRUCTION FUND.** The Series 2022 Acquisition/Construction Fund is hereby established and shall be maintained by the City.

**SURPLUS FUND.** The City continues the "City of Albuquerque Surplus Lodgers'

Tax Revenues Reserve Fund” previously established and maintained by the City into which the City deposits surplus Pledged Lodgers’ Tax Revenues.

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

BOND PROCEEDS; BOND FUND DEPOSIT; APPROPRIATIONS. The total amount of proceeds, and uses thereof, from the sale of the Series 2022 Bonds shall be set forth in the Sale Certificate.

The Completion Date for any portion of the Project funded by the Series 2022 Bonds shall be evidenced by a certificate of an Authorized Officer stating that portion of the 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 2022 Acquisition/Construction Fund (other than any amount certified by an Authorized Officer as being necessary for costs of the Project not then due and payable) shall be transferred to the applicable account of the Series 2022 Debt Service Fund and used by the City for the payment of the principal of or interest next coming due on the Series 2022 Bonds or to the Surplus Fund.

The State of New Mexico shall not be responsible for the application or use by the City or by its officers of the proceeds of the Series 2022 Bonds or of any other funds designated in the Bond Ordinance.

APPROVAL OF DOCUMENTS; PAYMENT OF EXPENSES.

(A) DOCUMENT APPROVAL. The proposed forms and provisions of the Bond Purchase Agreement is 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.

EXECUTION OF DOCUMENTS. The Council approves the execution by the Mayor or other Authorized Officer of the Bond Purchase Agreement on behalf of the City, and the Mayor or other Authorized Officer is authorized to deliver the Bond Purchase Agreement, with such changes therein as are not inconsistent with the Bond Ordinance and Sale Certificate 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 17.

EXPENSES. All Expenses shall be paid directly by the City to the party entitled thereto using moneys available from the proceeds of the Series 2022 Bonds, pursuant to the priorities established by Section 18.

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 2022 Bonds and to carry out and comply with the provisions of the Bond Ordinance and the Related Documents.

DEPOSIT AND PRIORITIES FOR USE OF PLEDGED REVENUES.

(A) DEPOSIT OF PLEDGED REVENUES. So long as any Series 2022 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, the Sale Certificate and any other City ordinance authorizing the issuance of Lodgers' Tax Obligations.

DEBT SERVICE FUND.

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 2022 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:

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.

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.

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.

The City may pay the Debt Service Requirements on the Series 2022 Bonds and, unless otherwise required under the ordinance or resolution under which they were issued,

any other Parity Lodgers' Tax Obligations as described in Section 18 in such order, in whole or in part, as to the use of Pledged Lodgers' Tax Revenues as the City may from time to time determine in its sole discretion.

SUBORDINATE TAX OBLIGATIONS. To the extent not required to be deposited or paid pursuant to Sections 18.(A) or 18.(B): (i) 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.

USE OF SURPLUS PLEDGED LODGERS' TAX REVENUES. To the extent not required in any month to be deposited or paid pursuant to Sections 18.(A), 18.(B) or 18.(C) 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.

#### GENERAL ADMINISTRATION OF FUNDS.

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

MONEY IN DEBT SERVICE FUNDS. Except as provided in Section 19.(A) (2), the money credited to the Series 2022 Debt Service Fund shall be used by the City only to pay the Debt Service Requirements of the Series 2022 Bonds. Money on deposit in the Series 2022 Debt Service Fund shall be transferred to the Paying Agent on or before each relevant payment date.

TERMINATION UPON DEPOSITS TO MATURITY. No payment needs to be made into the Series 2022 Debt Service Fund, if no Debt Service Requirements are then past due and the amounts on deposit in the Series 2022 Debt Service Fund for the payment of such Series 2022 Bonds are at least equal to all Debt Service Requirements on the Series 2022 Bonds to their Maturity Date, or to any date for which the City has exercised or has obligated itself to exercise its option to redeem such Series 2022 Bonds prior to their Maturity Dates or redemption dates. In such event, money in the Series 2022 Debt Service Fund shall be used for the payment of the Debt Service Requirements when due, on the Series 2022 Bonds. Any money in the Series 2022 Debt Service Account in excess of the amounts required by the preceding sentence may be used as provided in Section 18.(D).

**CREDIT OR DEFICIENCY.** In making the determinations of the amounts to be transferred from the Lodgers' Tax Revenue Fund as provided in Section 18 or this Section 19, the City may take into account any amount then on deposit in any fund or escrow relating to the respective Series 2022 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 2022 Bonds is less than the amount required to be deposited, the City shall pay or credit to that fund from Pledged Revenues in the Lodgers' Tax Revenue Fund, as applicable to the Series 2022 Bonds, the first money available to pay that deficiency using the priorities set forth in Section 18 and this Section 19.

**TRANSFER OF MONEY.** Each payment of principal and interest coming due on the Series 2022 Bonds shall be transferred from the applicable fund to the Paying Agent.

**INVESTMENT OF MONEY.** Any money in any fund created or continued in Section 15 shall be invested in Permitted Investments. 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.

**DEPOSITS OF FUNDS.** The money and investments deposited in the funds created or continued in Section 15 shall be maintained and kept in one or more Insured Banks. 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 15.

**DEPOSITS OF PLEDGED REVENUES FOR SERIES 2022 BONDS.**

The City shall make substantially equal monthly deposits into the Series 2022 Debt Service Fund as required in order to pay the amount of interest on the Series 2022 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.

Deposits to the Series 2022 Debt Service Fund for the next installments of principal becoming due on the Series 2022 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 Parity Lodgers' Tax Obligations required by Section 18 may be made more or less frequently than monthly.

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

if the price of the investment is not set as described in Section 19(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;

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;

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

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 2022 Bonds, or by another national rating agency; and

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.

**LIEN ON PLEDGED REVENUES; PROCEEDS; ETC.**

(A) SERIES 2022 BONDS. Payments of Debt Service Requirements on the Series 2022 Bonds are secured by an irrevocable lien on, and the City grants and confirms to the owners of the Series 2022 Bonds a security interest in, the Pledged Lodgers' Tax Revenues for the payment of the principal of and interest on the Series 2022 Bonds. The Series 2022 Bonds shall be issued as 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 2022 Debt Service Fund, the Series 2022 Acquisition/Construction Fund and any other fund for the Series 2022 Bonds held pursuant to the Bond Ordinance for the Series 2022 Bonds for the payment of such Series 2022 Bonds.

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 Lodgers' Tax Revenues for those payments.

EQUALITY OF BONDS. Except as specifically stated in the Bond Ordinance, the Series 2022 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 Pledged Lodgers' Tax 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 2022 Bonds regardless of the fact that they may be actually issued and delivered at different times.

**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.

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 2022 Bonds.

**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 2022 Bonds on Pledged Lodgers' Tax Revenues.

**PROTECTIVE COVENANTS.** The City covenants and agrees, so long as any Series 2022 Bonds remain Outstanding:

(A) **USE OF PROCEEDS OF LODGERS' TAX OBLIGATIONS.** The City shall proceed without delay to apply the proceeds of the Series 2022 Bonds to the purposes for which they are issued.

**PAYMENT OF OBLIGATIONS.** The City shall promptly pay Debt Service Requirements on Lodgers' Tax Obligations at the place, on the date and in the manner specified in the City ordinances and resolutions and the documents relating to those Lodgers' Tax Obligations.

**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.

**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 2022 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 2022 Bonds on which the payment of interest has not been extended.

**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.

**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.

**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.

**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 2022 Bonds shall be repealed or otherwise directly or indirectly modified in such a manner as to impair Outstanding Series 2022 Bonds or obligations of the City under the Bond Ordinance or any Related Documents, unless the Series 2022 Bonds or obligations have been discharged in full or provision has been fully made therefor.

**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.

**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.

**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.

**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 2022 Bonds and to perform its covenants contained in the Bond Ordinance.

**EXECUTION AUTHORIZED.** The execution and delivery of the Related Documents for the Series 2022 Bonds and the issuance and sale of the Series 2022 Bonds have been duly authorized by the Council and no further authorization or approval of such execution, use, delivery, issuance or sale is required by law.

**ENFORCEABILITY OF BONDS.** The Series 2022 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.

**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.

**NO CONFLICT.** The execution and delivery of the Related Documents, the Series 2022 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.

**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.

**EVENTS OF DEFAULT.** Each of the following events is an "Event of Default":

**NONPAYMENT OF PRINCIPAL.** Failure to pay the principal of any Series 2022 Bonds when the same becomes due and payable, either at maturity, or by proceedings for prior redemption, or otherwise.

**NONPAYMENT OF INTEREST.** Failure to pay any installment of interest on any Series 2022 Bonds on the due date thereof.

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

**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 2022 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 25.(A), 28.(B) or 28.(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 2022 Bonds then Outstanding or the Series 2022 Bonds Outstanding.

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 2022 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 2022 Bonds then Outstanding. The failure of an Owner to exercise any right granted by this Section 26 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.

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 2022 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 Series 2022 Debt Service Fund and applied to the payment of the Series 2022 Bonds in accordance with the terms and provisions of Section 18 of this Bond Ordinance.

Whenever money is to be applied pursuant to the provisions of this Section 27, 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 2022 Bonds until presented to the Paying Agent for appropriate endorsement or for cancellation if fully paid.

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 2022 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 2022 Bonds, after written demand, may proceed to protect and enforce the rights provided by this Section 28.

SURVIVAL OF CERTAIN PROVISIONS. 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 2022 Bonds at maturity or on a prior redemption date, interest payments and dates thereof, exchange, registration of transfer and registration of Series 2022 Bonds, replacement of mutilated, destroyed, lost or stolen Series 2022 Bonds, the safekeeping and cancellation of Series 2022 Bonds, non-presentment of Series 2022 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 2022 Bonds and the Fiscal Agent for those Series 2022 Bonds, notwithstanding the release and discharge of the Bond Ordinance. The provisions of this Section 29 shall survive the release, discharge and satisfaction of the Bond Ordinance.

NOTICES. Except as otherwise specifically required in the Bond Ordinance, notice with respect to the Series 2022 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: Chief Financial Officer  
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 2022 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 30 to each Owner of Series 2022 Bonds affected by such event, at his address as it appears on the register for the Series 2022 Bonds. In any case where notice to an Owner of Series 2022 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 2022 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.

#### AMENDMENT OF BOND ORDINANCE.

(A) LIMITATIONS UPON AMENDMENTS. Prior to any Series 2022 Bonds being issued, the Bond Ordinance may be amended by ordinance or resolution of the Council without the consent of Owners. After Series 2022 Bonds have been issued, the Bond Ordinance may be amended by ordinance or resolution of the Council without the consent of Owners:

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

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

To obtain or maintain a rating or shadow rating on any Series 2022 Bonds from any rating agency which amendment, in the judgment of Bond Counsel, does not materially adversely affect the Owners;

To achieve compliance with federal securities or tax laws; and

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

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 2022 Bonds which are affected by the amendment

or supplement (not including Series 2022 Bonds which are then owned by or for the account of the City). However, no such ordinance shall have the effect of permitting:

An extension of the maturity of any Series 2022 Bonds; or

A reduction in the principal amount of, premium, if any, or interest rate on any Series 2022 Bonds; or

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

A reduction of the principal amount of Series 2022 Bonds required for consent to such amendment or supplement.

NOTICE OF AMENDMENT. Notice of a proposed amendment requiring the consent of the Owners shall be mailed to the Owners of the Series 2022 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.

MANNER OF EVIDENCING OWNERSHIP OF SERIES 2022 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 2022 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 2022 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 2022 Bonds, shall be conclusive and binding upon all future Owners of the same Series 2022 Bonds.

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

**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 2022 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.

**LIMITATION OF RIGHTS.** With the exception of rights in the Bond Ordinance expressly conferred, nothing in the Bond Ordinance or in the Series 2022 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 2022 Bonds, any legal or equitable right, remedy or claim under or in respect to the Bond Ordinance or the Series 2022 Bonds or any covenant, condition or stipulation of the Bond Ordinance or in the Series 2022 Bonds, and all covenants, stipulations, promises and agreements in the Bond Ordinance and in the Series 2022 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.

**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 the publication of notice of adoption of the Bond Ordinance, the distribution of material relating to the Series 2022 Bonds, the printing of the Series 2022 Bonds, certificates pertaining to the Series 2022 Bonds and the delivery of and security for the Series 2022 Bonds as may be reasonably required by the State of New Mexico.

The Chief Financial Officer of the City, or his successor in interest, 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 Chief Financial Officer, 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.

Pursuant to the Supplemental Public Securities Act, Section 6-14-8 et seq., NMSA 1978, the Chief Financial Officer, Director of the Department of Finance and Administrative Services and the City Treasurer are each hereby delegated authority to execute the Bond Purchase Agreement and the Sale Certificate and to determine any or all of the final terms of the Series 2022 Bonds, subject to the parameters and conditions contained in this Bond Ordinance. The Chief Financial Officer, Director of the Department of Finance and Administrative Services or the City Treasurer shall present the Sale Certificate to the Council in a timely manner, before or after delivery of the Series 2022 Bonds, at a regularly scheduled public meeting of the Council.

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 2022 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.

LIMITATION OF ACTION. After the passage of 30 days from the publication required by Section 43, 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 2022 Bonds shall be perpetually barred.

BOND ORDINANCE IRREPEALABLE. After any of the Series 2022 Bonds are issued, the

Bond Ordinance shall be and remain irrevocable until all Series 2022 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.

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.

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.

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 43) shall be published in a newspaper which maintains an office and is of general circulation in the City, in accordance with law.

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-Fifth Council Bill No. O-22-\_\_\_\_\_ on \_\_\_\_\_, 2022. Complete copies of the Ordinance are available for public inspection during the normal and

regular business hours of the City Clerk, City of Albuquerque.

The title of the Ordinance is:

**AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO SHORT-TERM LODGERS' TAX IMPROVEMENT REVENUE BONDS, TAXABLE SERIES 2022 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$3,000,000 FOR THE PURPOSE OF STUDYING, DESIGNING, DEVELOPING, CONSTRUCTING, RECONSTRUCTING, REHABILITATING, RENOVATING, MODERNIZING, SIGNING, ENHANCING AND OTHERWISE IMPROVING TOURIST-RELATED FACILITIES AND ATTRACTIONS; PROVIDING FOR THE PAYMENT OF THE SERIES 2022 BONDS FROM LODGERS' TAX REVENUES; PROVIDING FOR THE COLLECTION OF CERTAIN LODGERS' TAX REVENUES; APPROVING THE DELEGATION OF AUTHORITY TO MAKE CERTAIN DETERMINATIONS REGARDING THE SALE OF THE SERIES 2022 BONDS PURSUANT TO THE SUPPLEMENTAL PUBLIC SECURITIES ACT; PROVIDING FOR THE TERMS AND OTHER DETAILS CONCERNING THE SERIES 2022 BONDS; PROVIDING FOR CERTAIN DOCUMENTS PERTAINING TO THE SERIES 2022 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 2022 BONDS.**

The title sets forth a general summary of the subjects matter contained in the Ordinance. This notice also constitutes compliance with Sections 6-14-4 through 6-14-7, NMSA 1978.

[END OF FORM OF SUMMARY OF ORDINANCE FOR PUBLICATION]

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