

**CHAVES COUNTY BOARD OF COMMISSIONERS  
SPECIAL BUSINESS MEETING**

**December 9, 2014 –9:00 a.m.**

**Chaves County Administrative Center – Joseph R. Skeen Building  
Commission Chambers - #1 St. Mary's Place**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**DETERMINATION OF QUORUM**

**AGENDA ITEMS:**

**A. PUBLIC HEARINGS**

1. Proposed Ordinance O-092 Authorizing Issuance and Sale of a Promissory Note Payable from Gross Receipts Tax Revenues in a Principal Amount Not to Exceed \$4,000,000
2. Proposed Ordinances O-089, O-090 and O-091 Hold Harmless Gross Receipts Tax and Consideration of Resolution R-14-062 Reducing Operating Property Tax Rate by 1 Mill

**B. OTHER BUSINESS**

3. Resolution R-14-062-Reducing Operating Tax Rate by 1 Mill

- **COUNTY MANAGERS' COMMUNICATIONS**
- **COMMISSIONER'S COMMUNICATIONS**
- **SIGNATURE OF DOCUMENTS**
- **ADJOURNMENT**

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If you are an individual with a disability who is in need of a reader, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing of a meeting, please contact the County Commissioner's office at 575-624-6600. This should be done at least one week prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the County Commissioner's office if a summary or other type of accessible format is needed.

**AGENDA ITEM:** 1

Public Hearing Regarding Proposed Ordinance O-092 Authorizing Issuance and Sale of a Promissory Note Payable from Gross Receipts Tax Revenues in a Principal Amount Not to Exceed \$4,000,000

**MEETING DATE:** December 9, 2014

**STAFF SUMMARY REPORT**

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**ACTION REQUESTED BY:** Stanton L. Riggs

**ACTION REQUESTED:** Conduct Public Hearing / Approve Ordinance

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**ITEM SUMMARY:**

Proposed Ordinance O-092 authorizes issuance and purchase of Chaves County, New Mexico gross receipts tax revenue promissory note in an aggregate principal amount not to exceed \$4,000,000 for the purpose of providing funds for construction of a county correctional facility.

This is a public hearing and has been properly advertised. The proposed Ordinance has been made available to the public in the County Clerk's Office and on the County website.

Staff recommends approval of Ordinance O-092.

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**SUPPORT DOCUMENTS:** Proposed Ordinance O-092

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**SUMMARY BY:** Stanton L. Riggs

**TITLE:** County Manager

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

The Board of County Commissioners (the "Board") of Chaves County in the State of New Mexico, met in special session in full conformity with law and the rules and regulations of the County at the County Commission Chambers, #1 St. Mary's Place, Roswell, New Mexico, being the regular meeting place of the Board on the 9<sup>th</sup> day of December, 2014, at the hour of 9:00 a.m. Upon roll call, the following members were found to be present:

James W. Duffey, Chairman

Kyle D. Smiley Wooton, Vice Chairman

Kim Chesser, Member

Robert Corn, Member

Greg Nibert, Member

Absent: \_\_\_\_\_  
\_\_\_\_\_

Also Present: Dave Kunko, Chaves County Clerk

Stanton L. Riggs, County Manager

Steve Harris, Chaves County Treasurer

Thereupon, there was officially filed with the County Clerk, the Chairman and each Commissioner, a copy of a proposed ordinance in final form.

ORDINANCE NO. O-092

AUTHORIZING THE ISSUANCE AND SALE OF A PROMISSORY NOTE IN A PRINCIPAL AMOUNT OF \$4,000,000 TO PROVIDE FUNDS FOR THE CONSTRUCTION, EXPANSION AND IMPROVEMENT OF THE CHAVES COUNTY DETENTION CENTERS; PROVIDING FOR THE PAYMENT OF SUCH NOTE FROM A DESIGNATED PORTION OF THE COUNTY GROSS RECEIPTS TAX IMPOSED BY THE COUNTY REMITTED TO THE COUNTY BY THE STATE OF NEW MEXICO; PROVIDING THAT THE NOTE WILL BE A NEGOTIABLE SECURITY PURCHASED FROM MONEYS IN THE COUNTY PERMANENT FUND AND PLACED IN THE PERMANENT FUND AS AN INVESTMENT; PRESCRIBING THE FORM AND OTHER DETAILS CONCERNING THE NOTE AND THE FUNDS APPERTAINING THERETO; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH.

Capitalized terms used in the following preambles have the same meaning as defined in Section 1 of this Ordinance unless the context requires otherwise.

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

WHEREAS, as authorized by Section 6-6-19, NMSA 1978, the County Commission adopted the County Permanent Fund Investment Policy on June 30, 2011, as amended on September 15, 2011 and on November 20, 2014 (the "Investment Policy"); and

WHEREAS, Section 6-10-10 authorizes the County to invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of any county, municipality, or school district that is entrusted to their care and custody and all money not immediately necessary for the public uses of the counties, municipalities, or school districts not invested or deposited in banks, savings and loan associations or credit unions in: (1) bonds or negotiable securities of the United States, the state or a county, municipality or school district that has a taxable valuation of real property for the last preceding year of at least one million dollars (\$1,000,000) and that has not defaulted in the payment of any interest or sinking fund obligation or failed to meet any bonds or other obligations at maturity at any time within five years last preceding; or (2) securities that are issued and backed by the full faith and credit of the United States government or issued by its agencies or instrumentalities (herein "Government Securities"); and

WHEREAS, the Investment Policy enables the County to invest in Government Securities, or certain types of Government Securities, which include the Note; and

WHEREAS, except for the Superior Lien Obligations, the Pledged Revenues are not pledged to the payment of any bonds or other obligations which are presently outstanding and unpaid; and

WHEREAS, the Board of County Commissioners (the "Board") hereby determines that the issuance of the Note for the purpose of providing funds for constructing, expanding and improving the Chaves County Detention Centers within the County will provide for the public health, peace and safety of the County and its citizens; and

WHEREAS, the Note will be purchased with moneys available in the County Permanent Fund, and will be placed in the Permanent Fund as a permitted investment under the Investment Policy; and

WHEREAS, there has been on deposit with the County Clerk and presented to the Board this Ordinance; and

WHEREAS, the Board has determined that it is in the best interest of the County to authorize issuance, sale and purchase of the Note pursuant to this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE COUNTY OF CHAVES:

Section 1. Definitions. As used in this Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Act" means the general laws of the State, including Sections 4-62-1 through 4-62-10 NMSA 1978, as amended, and enactments of the Board relating to the issuance of the Note, including this Ordinance.

"Board" means the Board of County Commissioners of the County or any future successor governing body of the County.

"Business Day" means a day on which commercial banks in the city in which the principal office of the Paying Agent and Registrar is located are open for conduct of substantially all of their business operations.

"Chairman" means the Chairwoman or Chairman of the Board.

"County" means the County of Chaves in the State of New Mexico.

"County Gross Receipts Tax Ordinances" means Ordinance No. 13 adopted and approved on September 8, 1983 and County Ordinance No. 35 adopted and approved on June 25, 1993, as amended on June 12, 1996, each as authorized by Sections 7-20E-1 through 7-20E-11 NMSA 1978.

"Debt Service Account" means the "Chaves County, New Mexico Gross Receipts Tax Revenue Promissory Note, Series 2015, Debt Service Account" established in Section 16 of this Ordinance, which shall be an account of the Chaves County Gross Receipts Tax Income Fund established in County Ordinance No. O-080 adopted September 6, 2007.

"Event of default" means any of the events stated in Section 25 of this Ordinance.

"Expenses" means the reasonable and necessary fees, costs and expenses incurred by the County with respect to the issuance of the Note, including the fees, compensation, costs and expenses paid or to be paid to the Paying Agent, Registrar, Purchaser, and attorneys', investment advisors', and accountants' fees.

"Fiscal Year" means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the County as its fiscal year.

"Herein," "hereby," "hereunder," "hereof," "hereinabove" and "hereafter" refer to the entire Ordinance and not solely to the particular section or paragraph of this Ordinance in which such word is used.

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

"Insured Bank" means a bank or savings and loan association insured by an agency of the United States.

"Interest Payment Date" means each January 13 and July 13, commencing on January 13, 2016.

"Investment Policy" means the County Permanent Fund Investment Policy adopted by the County Commission on June 30, 2011, as amended on September 15, 2011 and on November 20, 2014, pursuant to Section 6-6-19, NMSA 1978.

"Note" means the "Chaves County, New Mexico Gross Receipts Tax Revenue Promissory Note, Series 2015" authorized by this Ordinance.

"Noteholder," "holder," "owner" or "Owner" means the registered owner of any Note as shown on the registration books of the County for the Note, from time to time, maintained by the Registrar. Any reference to a majority or a particular percentage or proportion of the Noteholders shall mean the Holders at the particular time of a majority or of the specified percentage or proportion in aggregate principal amount of the Note then outstanding.

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

"Ordinance" means this County Ordinance No. O-092, as amended or supplemented from time to time.

"Outstanding" or "outstanding" when used in reference to the Note means, on any particular date, the aggregate principal amount of the Note delivered under this Ordinance except:

A. such portion of principal of the Note cancelled at or prior to such date or delivered or acquired by the County at or prior to such date for cancellation;

B. such portion of principal of the Note otherwise deemed to be paid in accordance with Section 5(B) and Section 31 of this Ordinance;

C. such portion of principal of the Note in lieu of or in exchange or substitution for which other obligations shall have been delivered, unless proof satisfactory to the County and the Paying Agent is presented that any Note for which a new note was issued or exchanged is held by a bona fide holder or in due course; and

D. such portion of principal of the Note which has been refunded in accordance with this Ordinance or other ordinance of the County authorizing the issuance of the applicable refunding notes.

"Paying Agent" means the County Treasurer, as agent for the County for the payment of the Note or any successor trust company, national or state banking association or financial institution at the time appointed Paying Agent by resolution of the Board.

"Pledged Gross Receipts Tax Revenues" or "Pledged Revenues" means the amounts of money derived from (1) all of the revenue attributable to the first one-eighth of one percent increment of County gross receipts tax transferred to the County pursuant to Section 7-1-6.13, NMSA 1978, which first one-eighth increment is imposed on all persons engaging in business in the County pursuant to Ordinance No. 13 adopted and approved on September 8, 1983, and (2) one-half of the revenue attributable to the third one-eighth of one percent increment of County gross receipts tax transferred to the County pursuant to Section 7-1-6.13, NMSA 1978, which third one-eighth increment is imposed on all persons engaging in business in the County pursuant to Ordinance No. 35 adopted and approved on June 25, 1993, as amended on June 12, 1996, and as authorized by Sections 7-20E-1 through 7-20E-11, NMSA 1978, (3) which total tax equals, subject to the exemptions specified in Section 7-20E-5, NMSA 1978 and the exemptions and deductions referred to in Section 7-20E-7, NMSA 1978, three-sixteenths of one percent of the gross receipts of all persons engaging in business in the County for the privilege of engaging in business in the County, (4) the portion of the gross receipts tax distribution to the County made pursuant to Section 7-1-6.47, NMSA 1978, which represents the amount of the first one-eighth percent increment and one-half of the third one-eighth percent increment revenues that would have been remitted to the County but for the deductions (effective January 1, 2005) provided by Sections 7-9-92 and 7-9-93, NMSA 1978, and any similar distributions made to the County in lieu of such revenues pursuant to law, (5) which amounts are collected and, after any deductions for administrative costs, any additional administrative fee and any disbursements for tax credits, refunds and the payment of interest applicable to such gross

receipts tax and subject to any increase or decrease pursuant to Section 7-1-6.15, NMSA 1978, are distributed monthly (together with the balance of the County's gross receipts tax) by the Revenue Division of the Taxation and Revenue Department of the State of New Mexico to the County pursuant to Section 7-1-6.13, NMSA 1978 (provided that "Pledged County Gross Receipts Tax Revenues" does not include and the County is not pledging to the Bonds any of such County gross receipts received pursuant to such Section 7-1-6.13, NMSA, 1978, which exceeds the aforesaid, and does not include any gross receipts tax revenues received pursuant to any other statute nor does it include any County equalization distribution received pursuant to Section 7-1-6.16, NMSA 1978).

"Principal Payment Date" means January 13 and July 13 in each year beginning January 13, 2016.

"Project" means the construction, expansion and improvement of the Chaves County Detention Centers.

"Purchaser" means the Chaves County Permanent Fund, to which the Note is to be originally sold and delivered.

"Registrar" means the County Treasurer, as agent for the County for transfer and exchange of the Note or any successor trust company, national or state banking association or financial institution at the time appointed by resolution of the Board.

"State" means the State of New Mexico.

"Superior Lien Obligations" means the Chaves County, New Mexico Gross Receipts Tax Refunding Revenue Bonds, Series 2007 dated October 24, 2007 issued in an original aggregate principal amount of \$10,000,000.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board and the officers of the County, directed toward the issuance of the Note and the sale of the Note to the Purchaser be, and the same hereby is, ratified, approved and confirmed.

Section 3. Findings. The Board hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Pledged Revenues may lawfully be pledged to secure the payment of the Note with a lien on the Pledged Revenues subordinate to the lien thereon of the Superior Lien Obligations.

B. The issuance of the Note pursuant to the Act, to provide funds for the financing of the construction, expansion and improvement of the Chaves County Detention Centers is necessary and in the interest of the public health, safety and welfare of the residents of the County.



C. The net effective interest rate on the Note is less than the statutory maximum of twelve percent (12%).

D. The Chaves County Permanent Fund may lawfully purchase and hold the Note under governing State law and the Investment Policy.

Section 4. Note- Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a two-thirds majority of all of the members of the Board. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the County, it is hereby declared necessary that the County, pursuant to the Act, issue its negotiable, fully registered, promissory note to be designated "Chaves County, New Mexico Gross Receipts Tax Revenue Promissory Note, Series 2015." The Note, in an aggregate principal amount of \$4,000,000, is hereby authorized to be issued and sold at par to the Purchaser. The purchase of the Note at par as an investment in the Chaves County Permanent Fund is hereby authorized and approved.

B. Details of Note. The Note designated as the "Chaves County, New Mexico Gross Receipts Tax Revenue Promissory Note, Series 2015" is hereby authorized and created.

The Note shall be dated as of the date of issuance and delivery, shall be originally issued as a single certificate in an aggregate principal amount of \$4,000,000 and shall be numbered R-1.

The Note shall bear interest from the date of delivery, payable semi-annually on January 13 and July 13 each year, commencing on January 13, 2016. The Note shall mature on July 13, 2019 and is subject to mandatory sinking fund redemption at a redemption price equal to the principal amount thereof plus accrued and unpaid interest to the redemption date. As and for a sinking fund for the redemption of the Note maturing on July 13, 2019, the Board shall cause to be deposited into the Debt Service Account a sum which is sufficient to redeem on January 13 and July 13 of each of the following years the following portions of principal of the Note, plus accrued interest to the redemption date:

<u>Payment Date</u>	<u>Principal Payment</u>	<u>Interest Rate</u>
01/13/16	\$500,000	1.60%
07/13/16	500,000	1.60%
01/13/17	500,000	1.60%
07/13/17	500,000	1.60%
01/13/18	500,000	1.60%
07/13/18	500,000	1.60%
01/13/19	500,000	1.60%
07/13/19*	500,000	1.60%

\*Final maturity.

The form, term, and provisions of the Note, in the form set forth in Section 12 are hereby approved with only such changes therein as are not inconsistent with this Ordinance. The net effective interest rate on the Note is less than the statutory maximum rate of twelve percent (12%) per annum.

Section 5. Optional Redemption. The Note shall be subject to redemption prior to maturity at the option of the County at any time, in one or more units of \$5,000, beginning January 13, 2015 at a redemption price equal to the principal amount being redeemed, plus accrued interest to the date fixed for redemption.

A. Notice to Owners. Notice of optional redemption shall be given by the Registrar by sending a copy of such notice by electronic means or by first-class, postage prepaid mail at least thirty (30) days prior to the redemption date to the registered owner of the Note, or portion thereof, to be redeemed at the address shown as of the close of business of the Registrar on the fifth day prior to the mailing of notice on the registration books kept by the Registrar. Notice of mandatory sinking fund redemption shall not be required. Neither the County's failure to give such notice nor the Registrar's failure to give such notice to the registered owner of the Note or portion thereof, or any defect therein, shall affect the validity of the proceedings for the redemption of the Note or portion thereof for which proper notice was given. Notices of redemption shall specify the maturity dates and the portion of principal of the Note to be redeemed (if less than all outstanding principal of the Note is to be redeemed) and if less than the full amount of the Note is to be redeemed, the amount of such principal of the Note to be redeemed, the date fixed for redemption, and that on such redemption date there will become and be due and payable upon the Note or portion thereof to be redeemed at the office of the Paying Agent the principal amount to be redeemed plus accrued interest to the redemption date and that

from and after such date interest will cease to accrue on such amount. Notice having been given in the manner hereinbefore provided, the Note or portion thereof so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem the Note or portion thereof called for redemption shall on the redemption date be on deposit with the Paying Agent, the Note or portion thereof to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Note or portion thereof to be redeemed at the office of the Paying Agent, the Paying Agent will pay the Note or portion thereof so called for redemption with funds deposited by the County.

B. Conditional Notice. If money or securities sufficient to pay the optional redemption price of the Note or portion thereof to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption pursuant to paragraph A of this Section, such notice shall state that the Note or portion thereof will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent by 2:00 p.m. on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for the portion of the Note for which the optional redemption price is on deposit with the Paying Agent. If the entire portion of the Note called for optional redemption cannot be redeemed, the portion of principal of the Note to be redeemed shall be selected in a manner deemed reasonable and fair by the County and the Paying Agent shall give notice, in the manner in which the original notice of optional redemption was given, that such money was not received. In that event, the Paying Agent, shall promptly return to the owners thereof the Note or certificates which it has received evidencing the part thereof which have not been redeemed.

Section 6. Filing of Signatures. Prior to the execution of any Note, the Chairman and County Clerk may each file, pursuant to Sections 6-9-1 to 6-9-6 NMSA 1978, as amended, with the New Mexico Secretary of State his or her manual signature certified by him or her under oath; provided that filing shall not be necessary for any officer where any previous filing may have legal application to the Note.

Section 7. Execution and Authentication of Note.

A. Execution. The Note shall be signed with the engraved, imprinted, stamped or otherwise reproduced facsimile of the signature, or the manual signature, of the Chairman and shall be attested with the facsimile or manual signature of the County Clerk. There shall be affixed to the Note the printed, engraved, stamped or otherwise placed facsimile of, or imprint of, the County's corporate seal. The Note shall be authenticated by the manual signature of the Registrar. The Note when authenticated and bearing the manual or facsimile signatures of the officers in office at the time of signing thereof shall be valid and binding special obligations of the County, notwithstanding that before delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices. The Chairman and County Clerk, at the time of the execution of the Note and the signature certificate, 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 the Note or certificates pertaining to the Note.

B. Authentication. The Note shall not be valid or obligatory for any purpose unless the certificate of authentication has been duly executed by the Registrar.

Section 8. Negotiability. The Note shall be fully negotiable and shall have all the qualities of negotiable paper, and the Noteholders shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code–Investment Securities. Except as set forth herein, the portions of principal of the Note outstanding shall in all respects be equally and ratably secured, without preference, priority or distinction on account of the date or dates or the actual time or times of the issuance or sinking fund maturity of the principal of the Note.

Section 9. Payment and Presentation of Note for Payment. Principal and interest on the Note shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Except as otherwise provided in Section 4(B) of this Ordinance, principal shall be payable in immediately available funds at maturity thereof upon presentation and surrender of such Note at the principal office of the Paying Agent or at the designated office of any successor Paying Agent. Interest on the Note shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the 15th day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or provided for shall cease to be payable to the owner thereof (or of one or more predecessor obligation) as of the Record Date, but shall be payable to the owner thereof (or of one or more predecessor obligation) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to Note owners not less than ten days prior thereto. If any portion of the Note presented for payment remains unpaid at maturity, it shall continue to bear interest at the rate or rates designated in, and applicable to, such portion of the Note from time to time. If the Note is not presented for payment at maturity when funds available therefor have been deposited with the Paying Agent, it shall cease bearing interest on and from the date of maturity.

Section 10. Registration, Transfer, Exchange and Ownership of Note.

A. Registration, Transfer and Exchange. The County shall cause books for registration, transfer, and exchange of the Note as provided herein to be kept at the principal office of the Registrar. Upon surrender for transfer or exchange of the fully registered Note at the principal office of the Registrar duly endorsed by the registered owner or his attorney duly authorized in writing, or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Registrar and duly executed, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Note or portion thereof to be transferred, in the name of the transferee or registered owner, as appropriate, a new Note or

Notes in authorized denominations, in fully registered form of the same aggregate principal amount, maturity and interest rate.

B. Limitations. The Registrar shall close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

C. Owner of the Note. The person in whose name the Note or any portion thereof is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of either the principal of or interest on the Note or portion thereof shall be made only to or upon the order of the registered owner thereof or his legal representative as stated herein, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note or portion thereof to the extent of the sum or sums so paid.

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

E. Additional Notes. Executed but unauthenticated Notes are hereby authorized to be delivered to the Registrar in such quantities as may be convenient to be held in custody by the Registrar pending delivery as herein provided.

F. Charges. For each new Note issued in connection with a transfer or exchange, the Registrar may make a charge to the owner of the Note requesting such exchange or transfer sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

G. Successor Registrar or Paying Agent. If the Registrar or Paying Agent initially appointed hereunder shall resign or is prohibited by law from continuing as Registrar or Paying Agent, or if the County shall reasonably determine that said Registrar or Paying Agent has become incapable of fulfilling its duties hereunder, the County may, upon notice mailed to each registered owner of the Note or portion thereof at the address last shown on the registration books, appoint a successor Registrar or Paying Agent, or both. Every such successor Registrar or Paying Agent shall be a bank or trust company located in and in good standing in the United States and having a shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, not less than \$50,000,000. It shall not be required that the same institution serves as both Registrar and Paying Agent hereunder, but the County shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

H. Note not Book Entry. The Note shall be issued as a physical certificate and shall not be issued or registered, in whole or in part, in book-entry form.

Section 11. Special Limited Obligations. The Note and all payments of principal and interest thereon at maturity, together with any interest accruing thereon, shall be special limited obligations of the County and shall be payable and collectible solely from the Pledged Revenues, which revenues are so pledged and are payable as set forth in Section 19 of this Ordinance. The owner or owners of the Note may not look to any general or other fund for the payment of the principal of or interest on such obligations, except the designated special funds pledged therefor. The Note shall not constitute an indebtedness or a debt of the County within the meaning of any constitutional, charter or statutory provision or limitation, nor shall it be considered or held to be a general obligation of the County, and each Note shall recite that it is payable and collectible solely out of the Pledged Revenues, pledged as set forth in this Ordinance, and that the holders thereof may not look to any general or other County fund for the payment of the principal of and interest on the Note. Nothing herein shall prevent the County from applying other funds of the County legally available therefor to the payment of the Note, in its sole discretion.

Section 12. Form of Note, Certificate of Authentication, and Assignment. The forms, terms and provisions of the Note, Certificate of Authentication, and Assignment shall be substantially in the forms set forth below, with such changes therein as are not inconsistent with this Ordinance.

[Form of Note]

UNITED STATES OF AMERICA

STATE OF NEW MEXICO

COUNTY OF CHAVES

CHAVES COUNTY, NEW MEXICO  
GROSS RECEIPTS TAX REVENUE PROMISSORY NOTE  
SERIES 2015

Note No. R-1

\$4,000,000

INTEREST RATE  
1.60% per annum

MATURITY DATE  
July 13, 2019

DATE OF NOTE  
January 13, 2015

PRINCIPAL AMOUNT: FOUR MILLION DOLLARS

REGISTERED OWNER: CHAVES COUNTY, NEW MEXICO PERMANENT FUND

The County of Chaves (the "County"), in the State of New Mexico (the "State"), a political subdivision duly organized and existing under the Constitution and laws of the State, for value received, promises to pay, solely from the special funds available for the purpose set forth below, to the Registered Owner stated above, or registered assigns, on the Maturity Date stated above (unless this Note may be and is called for prior redemption, in whole or in part, in which case on such redemption date), upon presentation and surrender of this Note to the County Treasurer, in Roswell, New Mexico, or any successor (as such, the "Paying Agent"), the Principal Amount stated above and premium, if any, and to pay interest on the unpaid Principal Amount at the Interest Rate stated above on January 13 and July 13 of each year beginning on January 13, 2016 (each, an "Interest Payment Date") to the Maturity Date stated above, or until redeemed if called for redemption prior to maturity. If upon presentation and surrender at maturity or for prior redemption, payment of this Note is not made, interest shall continue at the Interest Rate stated above until the Principal Amount is paid in full. This Note will bear interest from the most recent date to which interest has been paid or provided for or if no interest has been paid or provided for, from the Date of Note stated above. Interest on this Note is payable by check or draft mailed to the registered owner hereof (or by such other arrangement as may be mutually agreed to by the Paying Agent and the registered owner) as shown on the registration books for this issue maintained by the County Treasurer or any successor (as such, the "Registrar"), at the address appearing therein at the close of business on the fifteenth day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the owner hereof as of the Record Date, but shall be payable to the owner hereof at the close of business on a special record date to be fixed by the Paying Agent for the payment of interest. Notice of the special record date shall be given to owners of the Note as then shown on the Registrar's registration books not less than ten days prior to the special record date. The principal of, premium, if any, and interest on this Note are payable in lawful money of the United States of America, without deduction for exchange or collection charges.

This Note has been duly authorized as a fully registered Note of the County in the aggregate principal amount of \$4,000,000 issued in a single certificate, designated as Chaves County, New Mexico Gross Receipts Tax Revenue Promissory Note, Series 2015 (the "Note"), issued under and pursuant to County Ordinance No. O-092 (the "Ordinance").

The Note shall mature on July 13, 2019 and is subject to mandatory sinking fund redemption at a redemption price equal to the principal amount thereof plus accrued and unpaid interest to the redemption date. As and for a sinking fund for the redemption of the Note maturing on July 13, 2019, the Board shall cause to be deposited into the Debt Service Account a sum which is sufficient to redeem on January 13 and July 13 of each of the following years the following portions of principal of the Note, plus accrued interest to the redemption date:

<u>Payment Date</u>	<u>Principal Payment</u>	<u>Interest Rate</u>
01/13/16	\$500,000	1.60%
07/13/16	500,000	1.60%
01/13/17	500,000	1.60%
07/13/17	500,000	1.60%
01/13/18	500,000	1.60%
07/13/18	500,000	1.60%
01/13/19	500,000	1.60%
07/13/19*	500,000	1.60%

\*Final maturity.

The portion of principal of this Note maturing on and after January 13, 2015 is subject to prior redemption at par at the option of the County, in one or more units of principal of \$5,000, in whole or in part on any date. If this Note is optionally redeemed in part, the portion of this Note to be so redeemed shall be selected by lot by the Registrar in such manner as the Registrar shall consider appropriate and fair.

Notice of optional redemption shall be given by the Registrar by sending a copy of such notice by electronic means or by first-class, postage prepaid mail at least thirty (30) days prior to the redemption date to the registered owner of the Note, or portion thereof, to be redeemed at the address shown as of the close of business of the Registrar on the fifth day prior to the mailing of notice on the registration books kept by the Registrar. Notice of mandatory sinking fund redemption shall not be required. Neither the County's failure to give such notice nor the Registrar's failure to give such notice to the registered owner of the Note or portion thereof, or any defect therein, shall affect the validity of the proceedings for the redemption of the Note or portion thereof for which proper notice was given. Notices of redemption shall specify the maturity dates and the portion of principal of this Note to be redeemed (if less than all outstanding principal of this Note is to be redeemed) and if less than the full amount of this Note is to be redeemed, the amount of such principal of this Note to be redeemed, the date fixed for redemption, and that on such redemption date there will become and be due and payable upon this Note or portion thereof to be redeemed at the office of the Paying Agent the principal amount to be redeemed plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Notice having been given in the manner



hereinbefore provided, this Note or portion thereof so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem this Note or portion thereof called for redemption shall on the redemption date be on deposit with the Paying Agent, this Note or portion thereof to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of this Note or portion thereof to be redeemed at the office of the Paying Agent, the Paying Agent will pay this Note or portion thereof so called for redemption with funds deposited by the County.

Books for the registration and transfer of this Note or portions thereof shall be kept by the Registrar. Upon the surrender for transfer or exchange of this Note or portions thereof at the principal office of the Registrar, duly endorsed or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of this Note or portion thereof to be transferred, in the name of the transferee or owner a new note or portion thereof in fully registered form of the same aggregate principal amount, maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of this Note or portion thereof shall be without charge to the owner or any transferee, but the Registrar may require the payment by the owner of this Note or portion thereof of any tax or other similar governmental charge required to be paid with respect to such exchange or transfer. The Registrar will close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

The person in whose name this Note or portion thereof is registered on the registration books kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of interest in the Ordinance; and payment of or on account of either principal or interest on the Note or portion thereof shall be made only to or upon the written order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to discharge the liability upon the Note or portion thereof to the extent of the sum or sums so paid.

If this Note or portion thereof shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of the Note or portion thereof, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement note or notes of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If any such lost, stolen, destroyed or mutilated Note or portion thereof shall have matured, the Registrar may request the Paying Agent to pay such note in lieu of replacement.

This Note does not constitute an indebtedness of the County within the meaning of any constitutional or statutory provision or limitation, shall not be considered or held to be a general obligation of the County, and is payable and collectible solely out of the Pledged Revenues, as defined in the Ordinance.

The registered owner may not look to any general or other fund for the payment of the principal of, interest upon, and any prior redemption premium in connection with this obligation except the special funds (i.e., the Pledged Revenues) pledged therefor. Payment of this Note and the interest thereon shall be made solely from, and as security for such payment there are pledged, pursuant to the Ordinance, a special fund identified as the "Chaves County, New Mexico Gross Receipts Tax Revenue Promissory Note, Series 2015, Debt Service Account" into which the County covenants to pay from the Pledged Revenues sums sufficient to pay when due the principal of and interest on this Note. Reference is made to the Ordinance for a description of said funds and the nature and extent of the security afforded thereby for the payment of the principal of and the interest on this Note or portion thereof. This Note and any portion thereof is equitably and ratably secured by a lien on the Pledged Revenues, and this Note constitutes an irrevocable lien upon the Pledged Revenues subordinate to the lien thereon of the Superior Lien Obligations (as defined in the Ordinance). Additional obligations may be issued and made payable from the Pledged Revenues, upon satisfaction of the conditions set forth in the Ordinance, having a lien thereon either on a parity with, superior to, or subordinate and junior to, the lien of the Note on the Pledged Revenues.

This Note is issued for the purpose of (1) constructing, expanding and improving the Chaves County Detention Centers, and (2) paying expenses and costs of issuance related to the issuance of the Note.

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

This Note is subject to the condition, and every owner hereof by accepting the same agrees with the obligor and every subsequent owner hereof, that the principal of and interest on this Note shall be paid, and this note is transferable, free from and without regard to any equities, set-offs or crossclaims 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 performed by the County or to have happened precedent to and in the issuance of this Note to make it a legal, valid and binding special obligation of the County have been performed and have happened as required by law, and that the Note does not exceed or violate any constitutional or statutory limitation of or pertaining to the County.

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

IN WITNESS WHEREOF, Chaves County, New Mexico, has caused this Note to be signed and executed on the County's behalf with the facsimile or manual signature of the Chairman and the facsimile or manual signature of the County Clerk and has caused the corporate seal or a facsimile thereof of the County to be affixed hereon, all as of the Date of Note.

CHAVES COUNTY, NEW MEXICO

[MANUAL OR FACSIMILE SEAL]

By \_\_\_\_\_  
James W. Duffey, Chairman

By \_\_\_\_\_  
Dave Kunko, County Clerk

[Form of Registrar's Certificate of Authentication]

Certificate of Authentication

This is the Note described in the Ordinance, and this Note has been registered on the registration books kept by the undersigned as Registrar for the Note.

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

CHAVES COUNTY TREASURER,  
As Registrar and Paying Agent

By \_\_\_\_\_  
Steve Harris, County Treasurer  
Authorized Officer

[End of Form of Registrar's Certificate of Authentication]

[Form of Assignment]

Assignment

For value received, \_\_\_\_\_ hereby sells, assigns and transfer unto \_\_\_\_\_ the within note 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.

\_\_\_\_\_

Social Security or Tax Identification No. of Assignee \_\_\_\_\_

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

NOTE: The assignor's signature to this Assignment must correspond with the name as written on the face of the within note in every particular, without alteration or enlargement or any change whatsoever.

[End of Form of Assignment]

[End of Form of Note]

Section 13. Period of Project's Usefulness. It is hereby determined and recited that the period of usefulness of the Project financed with the proceeds of the Note is not less than the final maturity date of the Note.

Section 14. Disposition of Proceeds. Except as herein otherwise specifically provided, the proceeds derived from the sale of the Note shall be used and paid solely for the valid costs of the Project, and shall be deposited and applied by the County in the following priority:

A. Accrued Interest and Premium. Upon the sale of the Note, all moneys received as accrued interest and any premium therefor, shall be deposited into the Debt Service Fund, to apply on the payment of interest next due on the Note.

B. Expenses. Upon the sale of the Note, an amount necessary to pay Expenses shall be used for payment of the Expenses in compliance with applicable law.

C. Project Costs. The remaining proceeds of the Note shall be used for payment of costs of the Project

Section 15. Purchaser Not Responsible. The Purchaser of the Note shall in no manner be responsible for the application or disposal by the County or by its officers of the funds derived from the sale thereof or of any other funds herein designated.

Section 16. Funds and Accounts. The County hereby continues and creates the following special and separate funds, which shall be under the control of the County:

A. Income Fund. Continues the "Chaves County, New Mexico Gross Receipts Tax Income Fund" previously continued in Ordinance No. O-080 to be maintained by the County, into which the County shall deposit the Pledged Revenues.

B. Debt Service Account. Creates the "Chaves County, New Mexico Gross Receipts Tax Revenue Promissory Note, Series 2015, Debt Service Account" to be maintained by the County.

Section 17. Deposit of Pledged Revenues and Flow of Funds.

A. Income Fund. The Pledged Revenues are hereby pledged to the payment of the Note. So long as any portion of the Note is outstanding either as to principal or interest, or both, the County shall credit all Pledged Revenues received from the New Mexico Taxation and Revenue Department to the Income Fund. So long as any portion of the Note shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues:

B. Debt Service Account. As a second charge on the Pledged Revenues subordinate to the lien thereon of the Superior Lien Obligations, the following amounts shall be withdrawn from the Income Fund and shall be concurrently credited to the Debt Service Account:

(1) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Note, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the first maturing installment of interest on the Note, and monthly thereafter, commencing on each Interest Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Note then outstanding.

(2) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Note, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the first maturing installment of principal of the outstanding Note and monthly thereafter, commencing on each Principal Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of principal on the Note then outstanding.

C. Credit. In making the deposits required to be made into the Debt Service Account, if there are any amounts then on deposit in the Debt Service Account available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph B above shall be reduced by the amount available in the Debt Service Account and available for such purpose. Nothing herein shall prevent the County, in its discretion, from making any of the foregoing deposits from other legally available funds.

D. Transfer of Money out of Debt Service Account. Each payment of principal and interest becoming due on the Note shall be transferred from the Debt Service Account to the Paying Agent on or before two Business Days prior to the due date of such payment.

E. Payment of Superior Lien Obligations. Prior to the payment of the Pledged Revenues required by paragraphs B and G of this Section, any amounts on deposit in the Income Fund shall be used by the County for the payment of principal of, interest on and debt service reserve fund deposits relating to Superior Lien Obligations payable from the Pledged Revenues, as applicable, as the same accrue. If funds on deposit in the Income Fund are not sufficient to pay when due the required payments of principal of, interest on the Note and any other outstanding Superior Lien Obligations, then the available funds in the Pledged Revenue Funds will be used, first, on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Superior Lien Obligations, for the payment of principal of and interest on all series of outstanding Superior Lien Obligations and, second, to the extent of remaining available funds in the Pledged Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Superior Lien Obligations, for the required debt service reserve fund deposits for all series of outstanding Superior Lien Obligations.

F. Termination Upon Deposits to Maturity. No payment need be made into the Debt Service Account if the moneys in the Debt Service Account total a sum at least equal to the entire amount of the Note then outstanding, both as to principal and interest to its sinking fund maturity dates, and both accrued and not accrued, in which case, moneys in said funds in an amount at least equal to such principal and interest requirements shall be used solely to pay such as the same accrue and any moneys in excess thereof in said funds and any other moneys derived from the Pledged Revenues may be used in any lawful manner determined by the County.

G. Defraying Delinquencies in the Debt Service Account. If, on any Interest Payment Date or Principal Payment Date, the amount on deposit in the Debt Service Account is insufficient to make the payments of principal and interest then due on the Note, then an amount shall be paid from the Income Fund into the Debt Service Account on such date equal to the difference between the amount on deposit in the Debt Service Account and the full amount to be paid on such date.

H. Subordinate Obligations. After making the payments or deposits hereinabove required to be made pursuant to the preceding paragraphs of this Section, the County may use any amounts remaining in the Income Fund for the payment of debt service and related expenses on subordinate obligations payable from Pledged Revenues hereafter issued by the County.

I. Use of Surplus Pledged Revenues. After making all the payments hereinabove required to be made by this Section, the remaining Pledged Revenues, if any, may be applied to any other lawful purpose, as the County may from time to time determine.

Section 18. General Administration of Funds. The funds and accounts designated in Section 16 shall be administered and invested as follows:

A. Places and Times of Deposits. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be deposited in one or more bank

accounts in an Insured Bank or Banks or deposited with the Paying Agent. Each account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the designated purpose. No later than two Business Days prior to each Interest Payment Date, moneys sufficient to pay interest and principal then due on the Bonds shall be transferred to the Paying Agent.

B. Investment of Moneys. Moneys in any fund or account not immediately needed may be invested in any investment permitted by law. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The County Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

Section 19. RESERVED.

Section 20. Lien on Pledged Revenues. The Pledged Revenues and the amounts and securities on deposit in the Debt Service Account and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the County grants a security interest therein for, the payment of the principal of, premium, if any, and interest on the Note, subject to the uses thereof permitted by, and the priorities set forth in, this Ordinance. The Note constitutes an irrevocable lien on the Pledged Revenues subordinate to the lien thereon of the Superior Lien Obligations.

Section 21. Additional Obligations Payable from Pledged Revenues.

A. Superior Lien Obligations. Additional obligations with a lien on Pledged Revenues on parity with the lien thereon of the Superior Lien Obligations may be issued in compliance with the provisions for issuing additional obligations set forth in the ordinances authorizing the issuance of the Superior Lien Obligations.

B. Obligations on Parity with or Subordinate to the Note. Nothing in this Ordinance shall prevent the County from issuing bonds or other obligations payable from the Pledged Revenues and having a lien on the Pledged Revenues on parity with or subordinate to the lien thereon of the Note.

Section 22. Refunding Obligations.

A. Superior Lien Refunding Obligations. Refunding obligations with a lien on Pledged Revenues on parity with the lien thereon of the Superior Lien Obligations may be issued in compliance with the provisions for issuing refunding obligations set forth in the ordinances authorizing the issuance of the Superior Lien Obligations.

B. Refunding Obligations on Parity with the Note. Nothing in this Ordinance shall prevent the County from issuing refunding obligations payable from the Pledged Revenues and having a lien on the Pledged Revenues on parity with or subordinate to the lien of the Note;

provided, that refunding obligations issued to refund Superior Lien Obligations shall comply with the provisions for issuing refunding obligations set forth in the ordinances authorizing the issuance of Superior Lien Obligations.

Section 23. RESERVED.

Section 24. Protective Covenants. The County hereby covenants and agrees with each and every holder of the Note issued hereunder:

A. Use of Note Proceeds. The County will proceed without delay to apply the proceeds of the Note as set forth in Section 15 of this Ordinance.

B. Payment of Note Herein Authorized. The County will promptly pay the principal of and the interest on the Note at the place, on the date and in the manner specified herein and in the Note according to the true intent and meaning hereof.

C. County's Existence. The County will maintain its corporate identity and existence so long as any of portion of the Note remains outstanding, unless another political subdivision by operation of law succeeds to the liabilities and rights of the County, without adversely affecting to any material degree the privileges and rights of any owner of the Note.

D. Extension of Interest Payments. In order to prevent any accumulation of claims for interest after maturity, the County will not directly or indirectly extend or assent to the extension of time for the payment of any claim for interest on any of the Note, and the County will not directly or indirectly be a party to or approve any arrangements for any such extension. If the time for payment of any such interest shall be extended, such installment or installments of interest, after such extension or arrangement, shall not be entitled in case of default hereunder to the benefit or security hereof, except subject to the prior payment in full of the principal of the Note hereunder and then outstanding and of the matured interest on the Note, the payment of which has not been extended.

E. Records. So long as any portion of the Note remains outstanding, proper books of record and account will be kept by the County separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues.

F. Audits and Budgets. The County will, within two hundred ten (210) days following the close of each Fiscal Year, cause an audit of its books and accounts relating to the Pledged Revenues to be commenced by an Independent Accountant showing the receipts and disbursements in connection with such revenues. The County agrees to furnish forthwith a copy of each of such audits and reports to the Purchaser or the holder of the Note, upon written request, together with such other financial information reasonably requested by the Purchaser from time to time and reasonably available to the County.

G. Other Liens. Other than as described and identified by this Ordinance, there are no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues.



H. Duty to Impose County Gross Receipts Tax. If State law or any County ordinance or part thereof, which in any manner affect the Pledged Revenues, shall ever be held to be invalid or unenforceable, it shall be the duty of the County to immediately take any action necessary to produce sufficient Pledged Revenues to comply with the contracted obligations of this Ordinance, except as is provided in Paragraph I of this Section.

I. Impairment of Contract. The County agrees that any law, ordinance or resolution of the County that in any manner affects the Pledged Revenues or the Note shall not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely the Note or any portion thereof outstanding, unless the Note has been discharged in full or provision has been fully made therefor or unless the required consents of the holders of the then outstanding portion of the Note are obtained pursuant to Section 30 of this Ordinance.

J. Debt Service Account. The Debt Service Account shall be used solely and only, and those funds are hereby pledged, for the purposes set forth in this Ordinance.

K. Surety Bonds. Each County official and employee being responsible for receiving Pledged Revenues shall be bonded at all times, which bond shall be conditioned upon the proper application of Pledged Revenues.

L. Performing Duties. The County will faithfully and punctually perform all duties with respect to the Note required by the Constitution and laws of the State of New Mexico and the ordinances and resolutions of the County relating to the Note.

M. Market Value. The County will value the Note at par at all times while it is held as an investment in the Chaves County Permanent Fund.

Section 25. Events of Default. Each of the following events is hereby declared an "Event of Default":

A. Nonpayment of Principal. Failure to pay the principal of the Note when the same becomes due and payable, either at maturity or otherwise.

B. Nonpayment of Interest. Failure to pay any installment of interest when the same becomes due and payable.

C. Default of any Provision. Default by the County in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Note or in this Ordinance on its part to be performed, and the continuance of such default (other than a default set forth in subparagraphs A and B of this Section) for sixty (60) days after written notice specifying such default and requiring the same to be remedied has been given to the County by the holders of twenty-five percent (25%) in aggregate principal amount of the Note then outstanding.

D. Bankruptcy. The County (i) files a petition or application seeking reorganization, arrangement under Federal bankruptcy law, or other debtor relief under the laws of any jurisdiction, or (ii) is the subject of such petition or application which the County does not contest or is not dismissed or discharged with sixty (60) days.

Section 26. Remedies Upon Default. Upon the happening and continuance of any of the events of default as provided in Section 25 of this Ordinance, then in every case the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Note then outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the County, the Board and its agents, officers and employees to protect and enforce the rights of any holder of the Note or portion thereof under this Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award relating to the execution of any power herein granted for the enforcement of any legal or equitable remedy as such holder or holders may deem most effectual to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of any Noteholder, or to require the Board to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Note or portions thereof then outstanding. The failure of any Noteholder so to proceed shall not relieve the County or any of its officers, agents or employees of any liability for failure to perform any duty. Each right or privilege of such holder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege.

Section 27. Duties Upon Default. Upon the happening of any of the events of default provided in Section 25 of this Ordinance, the County, in addition, will do and perform all proper acts on behalf of and for the owners of the Note to protect and preserve the security created for the payment of the Note and to insure the payment of the principal of and interest on the Note promptly as the same become due. All proceeds derived therefrom, so long as any portion of the Note, either as to principal or interest, are outstanding and unpaid, shall be applied as set forth in Section 17 of this Ordinance. In the event the County fails or refuses to proceed as provided in this Section, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Note then outstanding, after demand in writing, may proceed to protect and enforce the rights of the owners of the Note or portions thereof as hereinabove provided.

Section 28. Note Not Presented When Due. If the Note shall not be duly presented for payment when due at maturity, and if moneys sufficient to pay the Note are on deposit with the Paying Agent for the benefit of the owners of the Note, all liability of the County to such owners for the payments of the Note shall be completely discharged, the Note shall not be deemed to be outstanding and it shall be the duty of the Paying Agent to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of the owners of the Note.

Section 29. Approval of Documents; Delegated Powers. The officers of the County be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance, including, without limiting the generality of the

foregoing, the publication of the summary of this Ordinance set out in Section 38 (with such changes, additions and deletions as they may determine), the printing of the Note, the execution thereof, of the Note Placement Agreement, if any, and of such certificates and agreements as may be required by the Purchaser or bond counsel.

Section 30. Amendment of Ordinance. This Ordinance may be amended without the consent of the holder of any Note to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained herein. Prior to the date of the initial delivery of the Note to the Purchaser, the provisions of this Ordinance may be supplemented with the written consent of the Purchaser with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. Except as provided above, this Ordinance may be amended without receipt by the County of any additional consideration, but with the written consent of the holders of three-fourths (3/4ths) of principal amount of the Note then outstanding (not including any portion of the Note which may be held for the account of the County); but no ordinance adopted without the written consent of the holders of the outstanding Note shall have the effect of permitting:

- A. An extension of the maturity of the Note; or
- B. A reduction of the principal amount or interest rate of the Note; or
- C. A reduction of the principal amount of the Note required for consent to such amendatory ordinance; or
- D. The establishment of priorities as between portions of the Note outstanding under the provisions of this Ordinance; or
- E. The modification of or otherwise affecting the rights of the holders of less than all outstanding principal of the Note.

Section 31. Defeasance. When all principal and interest in connection with the Note have been duly paid, the pledge and lien for the payment of the Note shall thereby be discharged and the Note shall no longer be deemed to be outstanding within the meaning of this Ordinance. Payment shall be deemed made with respect to any Note or Notes when the County has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Federal Securities) to meet all requirements of principal and interest as the same become due to their final maturities. Any Federal Securities shall become due when needed in accordance with a schedule agreed upon between the County and such bank at the time of the creation of the escrow. Federal Securities within the meaning of this Section shall include only direct obligations of, or obligations the principal of and interest of which are unconditionally guaranteed by the United States of America, cash, or U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – “SLGS”).

Section 32. RESERVED.

Section 33. Ordinance Irrepealable. After the Note is issued, this Ordinance shall be and remain irrepealable until the Note and the interest thereon shall be fully paid, canceled and discharged, as herein provided, or there has been defeasance as herein provided.

Section 34. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 35. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 36. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of ordinances of the County kept for that purpose, authenticated by the signatures of the Chairman and County Clerk, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 38 below) shall be published in a newspaper which maintains an office and is of general circulation in the County, or posted in accordance with law, and said Ordinance shall be in full force and effect thirty days after recording.

Section 37. Limitation of Action Period. After the passage of the thirty (30) days from the publication required by Section 38 hereof, any action attacking the validity of any proceedings had or taken by the County preliminary to and in the authorization and issuance of the Note shall be perpetually barred.

Section 38. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

[Form of Summary of Ordinance for Publication]

Chaves County, New Mexico  
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in an Ordinance duly adopted and approved by the Board of County Commissioners of Chaves County, New Mexico, on December 9, 2014, relating to the authorization and issuance of the County's Gross Receipts Tax Revenue Promissory Note, Series 2015. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the County Clerk, #1 St. Mary's Place, Suite 110, Roswell, New Mexico.

The title of the Ordinance is:

**AUTHORIZING THE ISSUANCE AND SALE OF A PROMISSORY NOTE IN  
A PRINCIPAL AMOUNT OF \$4,000,000 TO PROVIDE FUNDS FOR THE**

CONSTRUCTION, EXPANSION AND IMPROVEMENT OF THE CHAVES COUNTY DETENTION CENTERS; PROVIDING FOR THE PAYMENT OF SUCH NOTE FROM A DESIGNATED PORTION OF THE COUNTY GROSS RECEIPTS TAX IMPOSED BY THE COUNTY REMITTED TO THE COUNTY BY THE STATE OF NEW MEXICO; PROVIDING THAT THE NOTE WILL BE A NEGOTIABLE SECURITY PURCHASED FROM MONEYS IN THE COUNTY PERMANENT FUND AND PLACED IN THE PERMANENT FUND AS AN INVESTMENT; PRESCRIBING THE FORM AND OTHER DETAILS CONCERNING THE NOTE AND THE FUNDS APPERTAINING THERETO; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH.

The title sets forth a general summary of the subject matter contained in the Ordinance. This notice constitutes compliance with Section 6-14-6 NMSA 1978.

[End of Form of Summary for Publication]

PASSED, APPROVED AND ADOPTED THIS 9<sup>TH</sup> DAY OF DECEMBER, 2014.

CHAVES COUNTY, NEW MEXICO

[SEAL]

By: \_\_\_\_\_  
James W. Duffey, Chairman  
Board of County Commissioners

ATTEST:

By: \_\_\_\_\_  
Dave Kunko, County Clerk

Commissioner \_\_\_\_\_ moved adoption of the foregoing ordinance, duly seconded by Commissioner \_\_\_\_\_.

The motion to adopt said ordinance, as amended, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Those Voting Nay: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Those Absent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ (\_\_) Commissioners having voted in favor of said motion, the Chairman declared said motion carried and said ordinance adopted, whereupon the Chairman and County Clerk signed the ordinance upon the records of the minutes of the Board.

After consideration of the matters not relating to the ordinance, the meeting on motion duly made, seconded and unanimously carried, was adjourned.

CHAVES COUNTY, NEW MEXICO

[SEAL]

By: \_\_\_\_\_  
James W. Duffey, Chairman  
Board of County Commissioners

ATTEST:

By: \_\_\_\_\_  
Dave Kunko, County Clerk

Signature Page for Ordinance



**AGENDA ITEM:** 2  
089,

Public Hearing Regarding Proposed Ordinances O-090 and O-091 Hold Harmless Gross Receipts Tax and Consideration of Resolution R-14-062 Reducing Operating Property Tax Rate by 1 Mill

**MEETING DATE:** December 9, 2014

**STAFF SUMMARY REPORT**

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**ACTION REQUESTED BY:** Stanton L. Riggs

**ACTION REQUESTED:** Conduct Public Hearing  
Approve Ordinances  
Approve Resolution

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**ITEM SUMMARY:**

Proposed Ordinances O-089, O-090 and O-091 1/8 Hold Harmless Gross Receipts Taxes would change the Gross Receipts Tax Rate as set forth below:

- |                 |   |
|-----------------|---|
| Ordinance O-089 | 1/8 (0.125%) HHGRT begin July 1, 2015 and sunset June 30, 2020<br>Dedicated to general purposes;                            |
| Ordinance O-090 | 1/8 (0.125%) HHGRT begin July 1, 2015 and sunset June 30, 2023<br>Dedicated to Detention Center construction and operation; |
| Ordinance O-091 | 1/8 (0.125%) HHGRT begin July 1, 2015<br>Dedicated to operation of Detention Center and Road Department.                    |

This is a public hearing and has been properly advertised. The proposed Ordinances have been made available to the public in the County Clerk's Office and on the County website.

In addition to the public hearing, staff is requesting the Commission consider Resolution R-14-062, lowering Chaves County's Operating Property Tax Rate by 1 mill beginning in 2015.

Staff recommends approval of Ordinances O-089, O-090 and O-091; as well as Resolution R-14-062.

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**SUPPORT DOCUMENTS:** Proposed Ordinances O-089, O-090 and O-091  
Resolution R-14-062

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**SUMMARY BY:** Stanton L. Riggs

**TITLE:** County Manager

ORDINANCE NUMBER O-089  
ADOPTING A COUNTY HOLD HARMLESS GROSS RECEIPTS TAX

BE IT ORDAINED BY THE GOVERNING BODY OF  
CHAVES COUNTY

**Section 1. Imposition of Tax.** There is imposed on any person engaging in business in the county, for the privilege of engaging in business in this county an excise tax equal to one-eighth of one percent (.125%) of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. The tax imposed under this ordinance is pursuant to the County Local Option Gross Receipts Taxes Act as it now exists or as it may be amended and shall be known as the "county hold harmless gross receipts tax."

**Section 2. General Provisions.** This ordinance hereby adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and Compensating Tax Act as it now exists or as it may be amended.

**Section 3. Specific Exemptions.** No county hold harmless gross receipts tax shall be imposed on the gross receipts arising from:

- A. transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county; or
- B. direct satellite broadcast services.

**Section 4. Dedication.** Revenue from the county hold harmless gross receipts tax will be used for general purposes.

**Section 5. Effective Date.** The effective date of the county hold harmless gross receipts tax shall be July 1, 2015.

**Section 6. Delayed Repeal.** Ordinance Number O-089 is repealed effective June 30, 2020.

ADOPTED BY THE GOVERNING BODY OF CHAVES COUNTY THIS 9<sup>TH</sup> DAY OF DECEMBER, 2014.

\_\_\_\_\_  
James W. Duffey, Chairman

ATTEST:

\_\_\_\_\_  
Dave Kunko  
County Clerk

ORDINANCE NUMBER O-090  
ADOPTING A COUNTY HOLD HARMLESS GROSS RECEIPTS TAX

BE IT ORDAINED BY THE GOVERNING BODY OF  
CHAVES COUNTY

**Section 1. Imposition of Tax.** There is imposed on any person engaging in business in the county, for the privilege of engaging in business in this county an excise tax equal to one-eighth of one percent (.125%) of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. The tax imposed under this ordinance is pursuant to the County Local Option Gross Receipts Taxes Act as it now exists or as it may be amended and shall be known as the "county hold harmless gross receipts tax."

**Section 2. General Provisions.** This ordinance hereby adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and Compensating Tax Act as it now exists or as it may be amended.

**Section 3. Specific Exemptions.** No county hold harmless gross receipts tax shall be imposed on the gross receipts arising from:

- A. transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county; or
- B. direct satellite broadcast services.

**Section 4. Dedication.** Revenue from the county hold harmless gross receipts tax will be used for Chaves County Detention Center construction and operation.

**Section 5. Effective Date.** The effective date of the county hold harmless gross receipts tax shall be July 1, 2015.

**Section 6. Delayed Repeal.** Ordinance Number O-089 is repealed effective June 30, 2023.

ADOPTED BY THE GOVERNING BODY OF CHAVES COUNTY THIS 9<sup>TH</sup> DAY OF DECEMBER, 2014.

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James W. Duffey, Chairman

ATTEST:

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Dave Kunko  
County Clerk

ORDINANCE NUMBER O-091  
ADOPTING A COUNTY HOLD HARMLESS GROSS RECEIPTS TAX

BE IT ORDAINED BY THE GOVERNING BODY OF  
CHAVES COUNTY

**Section 1. Imposition of Tax.** There is imposed on any person engaging in business in the county, for the privilege of engaging in business in this county an excise tax equal to one-eighth of one percent (.125%) of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. The tax imposed under this ordinance is pursuant to the County Local Option Gross Receipts Taxes Act as it now exists or as it may be amended and shall be known as the "county hold harmless gross receipts tax."

**Section 2. General Provisions.** This ordinance hereby adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and Compensating Tax Act as it now exists or as it may be amended.

**Section 3. Specific Exemptions.** No county hold harmless gross receipts tax shall be imposed on the gross receipts arising from:

- A. transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county; or
- B. direct satellite broadcast services.

**Section 4. Dedication.** Revenue from the county hold harmless gross receipts tax will be used for the operation of the Chaves County Detention Center and Chaves County Road Department.

**Section 5. Effective Date.** The effective date of the county hold harmless gross receipts tax shall be July 1, 2015.

ADOPTED BY THE GOVERNING BODY OF CHAVES COUNTY THIS 9<sup>TH</sup> DAY OF DECEMBER, 2014.

\_\_\_\_\_  
James W. Duffey, Chairman

ATTEST:

\_\_\_\_\_  
Dave Kunko  
County Clerk

**RESOLUTION R-14-062  
LOWERING CHAVES COUNTY'S  
OPERATING PROPERTY TAX RATE**

**WHEREAS**, in New Mexico, county government is primarily funded by property tax revenues; and

**WHEREAS**, New Mexico law allows counties to impose an Operating Property Tax Rate up to 11.850 mills; and

**WHEREAS**, Chaves County's current Operating Property Tax Rate is 10.350 mills; and

**WHEREAS**, the Chaves County Board of Commissioners desires to lower the operating rate by 1 mill; and

**WHEREAS**, the new Operating Property Tax Rate would be 9.350 mills. This is the lowest Operating Property Tax Rate since 1995.

**NOW THEREFORE BE IT RESOLVED** by the Chaves County Board of Commissioners that the 2015 Operating Property Tax Rate is hereby reduced by 1 mill, from 10.350 mills to 9.350 mills effective January 1, 2015.

Done this 9<sup>th</sup> day of December, 2014.

**CHAVES COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
James W. Duffey, Chairman

\_\_\_\_\_  
Kyle D. Smiley Wooton, Vice-Chairman

\_\_\_\_\_  
Kim Chesser, Member

\_\_\_\_\_  
Greg Nibert, Member

\_\_\_\_\_  
Robert B. Corn, Member

**ATTEST:**

\_\_\_\_\_  
Dave Kunko  
County Clerk