City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 2 **Ordinance/Resolution#** 2578 **Council District:** ____

For Meeting of June 28, 2010
(Adoption Date)

TITLE:

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF LAS CRUCES (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT OF $938,875, WITH INTEREST THEREON, FOR THE PURPOSE OF PURCHASING TWO FIRE PUMPERS FOR USE BY THE GOVERNMENTAL UNIT AND PAYING A LOAN PROCESSING FEE; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTIONS OF FIRE PROTECTION FUND REVENUES DISTRIBUTED BY THE STATE TREASURER TO THE GOVERNMENTAL UNIT PURSUANT TO SECTION 59A-53-7 NMSA 1978; PROVIDING FOR THE CONTINGENT DISTRIBUTION OF FIRE PROTECTION FUND REVENUES TO BE REDIRECTED BY THE STATE TREASURER TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; SETTING THE MAXIMUM RATE OF THE LOAN; APPROVING THE FORM AND TERMS OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

PURPOSE(S) OF ACTION: Authorize the execution and delivery of a loan between City of Las Cruces and New Mexico Finance Authority to fund the purchase two fire pumpers.

Name of Drafter: Gloria Podruchny		Department: Finance		Phone: 541-2050	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Originating Department		541-2050	Budget		2300
			Assistant City Manager		2271
Legal		2128	City Manager		2076

Rev. 09/2008

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The two apparatus that are being replaced are currently 12 years old (purchased in 1998), and each have over 140,000 miles of service. This does not include total hours of usage when they may be at a fire scene and not moving, but pumping. The reliability of these emergency response vehicles begins to degrade over time, as with any vehicle, and the critical nature of these vehicles is such that they must be in good working condition at all times.

Authorization to implement a long-term replacement schedule for fire apparatus was provided via the FY08 Adopted Budget, and the City of Las Cruces Fire Department staff has requested replacement of these two apparatus.

A financing option available to the City that retains a tax exempt status is financing the apparatus with a loan from the New Mexico Finance Authority (NMFA).

On April 5, 2010, City Council approved Resolution 10-246 authorizing the City Manager or Finance Director to submit a loan application to the New Mexico Finance Authority to fund the purchase of two fire apparatus and to have project signatory authority.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Ordinance
2. Proposed Form of Loan Agreement between New Mexico Finance Authority and the City of Las Cruces, New Mexico with Exhibit "A", "B", and "C"
3. Proposed Form of Intercept Agreement
4. Resolution 10-246

OPTIONS / ALTERNATIVES:

1. Approve the Ordinance that authorizes the execution of the Loan Agreement and Intercept Agreement between the City of Las Cruces and the New Mexico Finance Authority for the purpose of purchasing two fire pumpers for the City of Las Cruces Fire Department.

2. Modify the Ordinance.

3. Do Not Approve the Ordinance and direct staff to find other methods to meet the current needs.

(Continue on additional sheets as required)

COUNCIL BILL NO. 10-049
ORDINANCE NO. 2578

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF LAS CRUCES (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT OF $938,875, WITH INTEREST THEREON, FOR THE PURPOSE OF PURCHASING TWO FIRE PUMPERS FOR USE BY THE GOVERNMENTAL UNIT AND PAYING A LOAN PROCESSING FEE; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTIONS OF FIRE PROTECTION FUND REVENUES DISTRIBUTED BY THE STATE TREASURER TO THE GOVERNMENTAL UNIT PURSUANT TO SECTION 59A-53-7 NMSA 1978; PROVIDING FOR THE CONTINGENT DISTRIBUTION OF FIRE PROTECTION FUND REVENUES TO BE REDIRECTED BY THE STATE TREASURER TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; SETTING THE MAXIMUM RATE OF THE LOAN; APPROVING THE FORM AND TERMS OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

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

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing municipality under the general laws of the State; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and its residents that the Loan Agreement and Intercept Agreement be executed and delivered and that the financing of the acquisition of the Project take place by executing and delivering the Loan Agreement and Intercept Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Loan Agreement and Intercept Agreement; and

WHEREAS, other than as described in the Term Sheet, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the faith and credit of the Governmental Unit or the State; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Ordinance and the forms of the Loan Agreement and Intercept Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Project to be financed by the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the NMFA for the payment of the amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Loan Agreement and Intercept Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces that:

Section 1. Definitions. As used in the 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 3-31-1 through 3-31-12 and Sections 59A-53-1 through 59A-53-17, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement and Intercept Agreement, including this Ordinance.

"Authorized Officers" means the Mayor, Mayor Pro-Tem, City Manager, Finance Director and City Clerk of the Governmental Unit.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the NMFA to fund or reimburse the Loan Agreement.

"Closing Date" means the date of execution, delivery and funding of the Loan Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"Completion Date" means the date of final payment of the cost of the Project.

"Distributing State Agency" means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues to or on behalf of the Governmental Unit.

"Expenses" means the cost of execution of the Loan Agreement and the costs of issuance of the Bonds, if any, and the periodic and regular fees and expenses incurred by the NMFA in administering the Loan Agreement, including legal 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 Governmental Unit as its fiscal year.

"Governing Body" means the City Council of the Governmental Unit, or any future successor governing body of the Governmental Unit.

"Governmental Unit" means the City of Las Cruces, New Mexico.

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

"Indenture" means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the NMFA and the Trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the NMFA and the Trustee, as determined by the NMFA pursuant to a Pledge Notification or Supplemental Indenture (as such terms are defined in the Indenture).

"Intercept Agreement" means the Intercept Agreement dated the Closing Date between the Governmental Unit and NMFA providing for the direct payment, if required, by the Distributing State Agency to the NMFA of Pledged Revenues in amounts sufficient to pay principal and interest and any other amounts due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

"Loan" means the funds to be loaned to the Governmental Unit by the NMFA pursuant to the Loan Agreement.

"Loan Agreement" means the Loan Agreement dated the Closing Date between the NMFA and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the NMFA, and any amendments or supplements thereto, and including the exhibits attached to the Loan Agreement.

"Loan Agreement Principal Amount" means $938,875, the original principal amount of the loan as shown on the Term Sheet.

"NMFA" means the New Mexico Finance Authority.

"NMFA Debt Service Account" means the debt service account in the name of the Governmental Unit established under the Indenture and held by NMFA to pay principal and interest on the Loan Agreement as the same become due.

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

"Ordinance" means this Ordinance No. ___ as adopted by the Governing Body on June 28, 2010, approving the Loan Agreement and Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement, as amended from time to time.

"Parity Obligations" mean the Loan Agreement and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with the Loan Agreement, including any such obligations shown in Exhibit "A" to the Loan Agreement.

"Pledged Revenues" means the fire protection fund revenues distributed to the Governmental Unit, which is utilizing the Project and benefiting from the Loan Agreement, which distribution is made annually by the State Treasurer pursuant to Section 59A-53-7, NMSA 1978, as amended, in the amount certified by the State Fire Marshal or the State Fire Board.

"Processing Fee" means the processing fee to be paid on the Closing Date by the Governmental Unit to the NMFA for the costs of originating and servicing the loan, as shown on the Term Sheet.

"Program Account" means the account in the name of the Governmental Unit established under the Indenture and held by the Trustee for deposit of the net proceeds of the Loan Agreement for disbursal to the Governmental Unit for payment of the costs of the Project.

"Project" means the project described in Exhibit "A" to the Loan Agreement.

"State" means the State of New Mexico.

"Term Sheet" means Exhibit "A" to the Loan Agreement.

"Trustee" means the Bank of New York Mellon Trust Company, N.A., or any successor trustee company, national or state banking association or financial institution at the time appointed Trustee by the NMFA.

Section 2. Ratification. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the acquisition of the Project and the execution and delivery of the Loan Agreement and Intercept Agreement, be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Project, the Loan Agreement and Intercept Agreement. The acquisition of the Project and the method of financing the Project through execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Governmental Unit.

Section 4. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the Governmental Unit and its residents and the issuance and delivery of the Loan Agreement is necessary or advisable.

B. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the cost of acquiring the Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

D. It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Loan Agreement.

E. The Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety, and welfare of the residents of the Governmental Unit.

F. The Governmental Unit will acquire the Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described in the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement and the Intercept Agreement.

H. The net effective interest rate on the Loan does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5. Loan Agreement and Intercept Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of three-fourths of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and acquiring the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay the Loan Agreement Principal Amount of $938,875, and the execution and delivery of the Loan

Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to finance the acquisition of the Project and to pay the Processing Fee and related professional fees. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an aggregate principal amount of $938,875, shall be payable in installments of principal due on June 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on June 1 and December 1 of each year, commencing on June 1, 2011 at the rates designated in Exhibit "B" to the Loan Agreement.

Section 6. Approval of Loan Agreement and Intercept Agreement. The forms of the Loan Agreement and the Intercept Agreement as presented at the meeting of the Governing Body at which this Ordinance was adopted are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement and the Intercept Agreement with such changes, insertions and omissions that are consistent with this Ordinance as may be approved by such individual Authorized Officers, and the City Clerk is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and the Intercept Agreement and attest the same. The execution of the Loan Agreement and the Intercept Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 8. Disposition of Proceeds: Completion of Acquisition of the Project.

A. Program Account and the NMFA Debt Service Account. The Governmental Unit hereby consents to creation of the NMFA Debt Service Account to be held and maintained by the NMFA and to the Program Account to be held and maintained by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves: (i) the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and the NMFA Debt Service Account; and (ii) payment of the Processing Fee directly to the NMFA, all as set forth in the Term Sheet.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the NMFA Debt Service Account and the Program Account, and the Processing Fee shall be paid to the NMFA, all as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the purpose of acquiring the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will acquire the Project with all due diligence.

B. Completion of Acquisition of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the NMFA a certificate stating that acquisition of and payment for the Project has been completed. As soon as practicable, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the NMFA Debt Service Account, as provided in the Loan Agreement and the Indenture.

C. NMFA and Trustee Not Responsible. The NMFA and the Trustee shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues, Distributions of the Pledged Revenues and Flow of Funds.

A. Deposit of Pledged Revenues. The Governmental Unit shall pay Pledged Revenues to the NMFA, or pursuant to the Intercept Agreement, the Pledged Revenues shall be redirected to the NMFA, for deposit in the NMFA Debt Service Account and remittance to the Trustee in an amount sufficient to pay the Loan Agreement Payments.

B. Termination on Deposits to Maturity. No payment shall be made into the NMFA Debt Service Account if the amount in the NMFA Debt Service Account totals a sum at least equal to the entire aggregate amount to become due as to principal and interest, on, and any other amounts due under, the Loan Agreement in which case moneys in such account in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

C. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section, any moneys remaining in the NMFA Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement subject to the uses hereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues with the lien theron of the Parity Obligations as set forth herein and in the Loan Agreement. The Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance, the Loan Agreement and the Intercept Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the Intercept Agreement, and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of Ordinance. Prior to the date of the initial delivery of the Loan Agreement to NMFA, the provisions of this Ordinance may be supplemented or amended by ordinance or resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the NMFA.

Section 13. Ordinance Irrepealable. After the Loan Agreement and the Intercept Agreement have been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as provided therein.

Section 14. 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 15. 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 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and City Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 17. 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)

City of Las Cruces, 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 Ordinance No. ___, duly adopted and approved by the Governing Body of the City of Las Cruces, New Mexico (the "City"), on June 28, 2010. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, 700 North Church, Las Cruces, New Mexico.

The title of the Ordinance is:

COUNCIL BILL NO. ____
ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF LAS CRUCES (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT OF $938,875, WITH INTEREST THEREON, FOR THE PURPOSE OF PURCHASING TWO FIRE PUMPERS FOR USE BY THE GOVERNMENTAL UNIT AND PAYING A LOAN PROCESSING FEE; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTIONS OF FIRE PROTECTION FUND REVENUES DISTRIBUTED BY THE STATE TREASURER TO THE GOVERNMENTAL UNIT PURSUANT TO SECTION 59A-53-7 NMSA 1978; PROVIDING FOR THE CONTINGENT DISTRIBUTION OF FIRE PROTECTION

FUND REVENUES TO BE REDIRECTED BY THE STATE TREASURER TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; SETTING THE MAXIMUM RATE OF THE LOAN; APPROVING THE FORM AND TERMS OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

A summary of the subject matter of the Ordinance is contained in its title. This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

THE City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 28th day of June 2010.

APPROVED

By: _____
Ken Miyagishima, Mayor

ATTEST:

By: _____
Esther Martinez, City Clerk

Moved by: _____

Seconded by: _____

VOTE:
Mayor Miyagishima ____
Councillor Silva ____
Councillor Connor ____
Councillor Pedroza ____
Councillor Small ____
Councillor Sorg ____
Councillor Thomas ____

APPROVED AS TO FORM:

Asst. City Attorney

K:\dox\client\45380\210\W1269968.DOC

EXHIBIT "A"

Meeting Agenda
June 28, 2010
City Council Meeting

(See attached)

STATE OF NEW MEXICO)
COUNTY OF DOÑA ANA) ss.
CITY OF LAS CRUCES)

I, Esther Martinez, the duly acting and qualified City Clerk of the City of Las Cruces, New Mexico (the "Governmental Unit"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council (the "Governing Body"), constituting the governing body of the City had and taken at a duly called regular meeting held at the Municipal Offices, 700 North Church, Las Cruces, New Mexico, on June 28, 2010, at the hour of 1:00 p.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement and Intercept Agreement, a copy of each of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Such proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at such meeting, as therein shown.

3. Notice of such meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the City's open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2010.

CITY OF LAS CRUCES, NEW MEXICO

_____
Esther Martinez, City Clerk

[SEAL]

$938,875

LOAN AGREEMENT

dated

July 30, 2010

by and between the

NEW MEXICO FINANCE AUTHORITY

and the

CITY OF LAS CRUCES, NEW MEXICO

Certain interests of the New Mexico Finance Authority under this Loan Agreement may be assigned to The Bank of New York Mellon Trust Company, N.A. as supplemental trustee under the Indenture, as defined in Article I of this Loan Agreement.

LOAN AGREEMENT

THIS LOAN AGREEMENT dated July 30, 2010 is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the "NMFA"), and the CITY OF LAS CRUCES, NEW MEXICO (the "Governmental Unit"), a political subdivision duly organized and existing under the laws of the State of New Mexico (the "State").

W I T N E S S E T H:

WHEREAS, the NMFA is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized and created under and pursuant to the laws of the State, particularly Section 6-21-1 et seq., NMSA 1978, as amended (the "NMFA Act"); and

WHEREAS, one of the purposes of the NMFA Act is to implement a program to permit qualified entities, such as the Governmental Unit, to enter into agreements with the NMFA to facilitate financing of public projects; and

WHEREAS, the Governmental Unit is a political subdivision duly organized and existing under and pursuant to the laws of the State and is a qualified entity under the NMFA Act; and

WHEREAS, the Governing Body of the Governmental Unit, has determined that it is in the best interests of the Governmental Unit and its residents that the Governmental Unit enter into this Loan Agreement with the NMFA and accept a loan from the NMFA to finance the costs of purchasing two fire pumpers and paying related professional fees, as more fully described on the Term Sheet; and

WHEREAS, the Act authorizes the Governmental Unit to use the Pledged Revenues to finance the Project and to enter into this Loan Agreement; and

WHEREAS, the NMFA has determined that the Project is important to the overall capital needs of the residents of the State and that the Project will directly enhance the health and safety of the residents of the Governmental Unit; and

WHEREAS, the Governmental Unit is a disadvantaged qualified entity within the meaning of Section 8(B)(4)(a) of the NMFA's Amended Rules and Regulations Governing the Public Project Revolving Fund Program.

WHEREAS, the Governmental Unit has entered into the Intercept Agreement by and between the NMFA and the Governmental Unit whereby the Pledged Revenues due to the Governmental Unit from the Distributing State Agency are intercepted by the NMFA, or the Trustee, as its assignee, to make payments due under this Loan Agreement; and

WHEREAS, the NMFA may assign and transfer this Loan Agreement to the Trustee pursuant to the Indenture; and

WHEREAS, except as described on the Term Sheet, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose at the time of the execution and delivery

of this Loan Agreement, and the Governmental Unit desires to pledge the Pledged Revenues toward the payment of this Loan Agreement; and

WHEREAS, the obligation of the Governmental Unit hereunder shall constitute a special, limited obligation of the Governmental Unit, limited to the Pledged Revenues, and shall not constitute a general obligation or other indebtedness of the Governmental Unit or a charge against the general credit or ad valorem taxing power of the Governmental Unit; and

WHEREAS, the execution, performance and delivery of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the Governing Body pursuant to the Ordinance; and

WHEREAS, the execution and performance of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the NMFA and its officers.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the parties hereto agree:

ARTICLE I
DEFINITIONS

Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Loan Agreement, unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Loan Agreement, including the foregoing recitals, unless the context clearly requires otherwise.

"Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12 NMSA 1978 and Sections 59A-53-7 and 59A-53-8 NMSA 1978, as amended, and enactments of the Governing Body relating to this Loan Agreement and the Intercept Agreement, including the Ordinance.

"Additional Payment Obligations" mean payments in addition to Loan Agreement Payments required by this Loan Agreement, including, without limitation, payments required pursuant to the provisions of Article IX and Article X hereof.

"Aggregate Annual Debt Service Requirement" means the total principal, interest, and premium payments, if any, due and payable pursuant to this Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

"Authorized Officers" means, in the case of the Governmental Unit, the Mayor, the Director of Financial Services and the City Clerk, and, in the case of the NMFA, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Governmental Unit or the NMFA designated in writing by an Authorized Officer.

"Blended Interest Rate" means the rate of interest on this Loan Agreement as shown on the Term Sheet.

"Bond Counsel" means nationally recognized bond counsel experienced in matters of municipal law satisfactory to the Trustee and listed in the list of municipal bond attorneys, as published semi-annually by The Bond Buyer's Municipal Marketplace, or any successor publication.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the NMFA to fund or reimburse the Loan Agreement.

"Closing Date" means the date of execution, delivery and funding of this Loan Agreement as shown on the Term Sheet.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"Distributing State Agency" means the State Treasurer, as described on the Term Sheet, authorized to distribute the Pledged Revenues to or on behalf of the Government Unit.

"Event of Default" means one or more events of default as defined in Section 10.1 of this Loan Agreement.

"Expense Fund" means the expense fund created pursuant to the Indenture, to be held and administered by the Trustee to pay Expenses.

"Expenses" means the costs of issuance of this Loan Agreement and the Bonds, if any, and periodic and regular fees and expenses incurred by the NMFA in administering this Loan Agreement, including legal fees.

"Fiscal Year" means the period beginning 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 Governmental Unit as its fiscal year.

"Governing Body" means the duly organized City Council of the Governmental Unit and any successor governing body of the Governmental Unit.

"Indenture" means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the NMFA and the Trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the NMFA and the Trustee, as determined by the NMFA pursuant to a Pledge Notification or Supplemental Indenture (as such terms are defined in the Indenture).

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

"Intercept Agreement" means the Intercept Agreement, dated July 30, 2010, between the Governmental Unit and the NMFA providing for the direct payment by the Distributing State Agency to the NMFA of the Pledged Revenues in amounts sufficient to pay the Loan Agreement Payments, and any amendments or supplements to the Intercept Agreement.

"Interest Component" means the portion of each Loan Agreement Payment paid as interest on this Loan Agreement as shown on Exhibit "B" hereto.

"Loan" means the funds in the Loan Agreement Principal Amount to be loaned to the Governmental Unit by the NMFA pursuant to this Loan Agreement.

"Loan Agreement" means this loan agreement and any amendments or supplements hereto, including the exhibits attached to this loan agreement.

"Loan Agreement Balance" means, as of any date of calculation, the Loan Agreement Principal Amount less the aggregate principal amount paid or prepaid pursuant to the provisions of this Loan Agreement.

"Loan Agreement Payment" means, collectively, the Principal Component and the Interest Component, if any, to be paid by the Governmental Unit as payment of this Loan Agreement as shown on Exhibit "B" hereto.

"Loan Agreement Payment Date" means each date a payment is due on this Loan Agreement as shown on Exhibit "B" hereto.

"Loan Agreement Principal Amount" means $938,875, the original principal amount of this Loan Agreement as shown on the Term Sheet.

"Loan Agreement Term" means the term of this Loan Agreement as provided under Article III of this Loan Agreement.

"NMFA Debt Service Account" means the debt service account established within the Debt Service Fund, as defined in the Indenture, in the name of the Governmental Unit, held and administered by the NMFA to pay principal and interest, if any, on this Loan Agreement as the same become due.

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

"Ordinance" means the Governmental Unit Ordinance No. ____ adopted by the Governing Body on June 28, 2010 approving this Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

"Parity Obligations" means this Loan Agreement, and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with this Loan Agreement, including any such obligations shown on the Term Sheet.

"Permitted Investments" means securities which are at the time legal investments of the Governmental Unit for the money to be invested, as applicable, including but not limited to the following, if permitted by law: (i) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank, federal home loan banks or the student loan marketing association or that are backed by the full faith and credit of the United States government; (ii) negotiable securities of the State; (iii) money market funds which invest solely in obligations described in clause (i) above which are rated in the highest rating category by Moody's Investors Service, Inc., or Standard & Poor's Rating Group; and (iv) the State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, and operated, maintained and invested by the office of the State Treasurer.

"Pledged Revenues" means revenues of the Governmental Unit pledged to payment of the Loan Agreement Payments pursuant to the Ordinance and described on the Term Sheet.

"Principal Component" means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement as shown on Exhibit "B" hereto.

"Processing Fee" means the processing fee to be paid on the Closing Date by the Governmental Unit to the NMFA for the costs of originating and servicing the Loan, as shown on the Term Sheet.

"Program Account" means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of this Loan Agreement for disbursal to the Governmental Unit for payment of the costs of the Project.

"Project" means the project described on the Term Sheet.

"Term Sheet" means Exhibit "A" attached hereto.

"Trustee" means The Bank of New York Mellon Trust Company, N.A., Denver, Colorado, or any successor trust company, national or state banking association or financial institution at the time appointed Trustee by NMFA.

"Unassigned Rights" means the rights of the NMFA to receive payment of the Processing Fee, reports and indemnity against claims pursuant to the provisions of this Loan Agreement which are withheld in the granting clauses of the Indenture from the pledge, assignment and transfer of this Loan Agreement to the Trustee.

ARTICLE II
REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Governmental Unit. The Governmental Unit represents, covenants and warrants:

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Loan Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Governmental Unit to the full extent

authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Governmental Unit by the provisions of this Loan Agreement and the Ordinance shall be exercised or performed by the Governmental Unit or by such members, officers, or officials of the Governmental Unit as may be required by law to exercise such powers and to perform such duties.

(b) Personal Liability. No covenant, stipulation, obligation or agreement contained in this Loan Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Governmental Unit or member of the Governing Body in his or her individual capacity, and neither the members of the Governing Body nor any officer, agent, or employee of the Governmental Unit executing this Loan Agreement shall be liable personally on this Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

(c) Authorization of Loan Agreement and Intercept Agreement. The Governmental Unit is a political subdivision of the State and is duly organized and existing under the statutes and laws of the State. Pursuant to the Act, as amended and supplemented from time to time, the Governmental Unit is authorized to enter into the transactions contemplated by this Loan Agreement and the Intercept Agreement and to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement, the Intercept Agreement, and the other documents related to the transaction.

(d) Use of Loan Agreement Proceeds. The Governmental Unit shall proceed without delay in applying the proceeds of this Loan Agreement (less the deposit to the NMFA Debt Service Account and the payment of the Processing Fee to the NMFA) to the acquisition of the Project.

(e) Payment of Loan Agreement. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in Exhibit "B" hereto, according to the true intent and meaning of this Loan Agreement. Loan Agreement Payments are payable solely from the Pledged Revenues or from the proceeds of refunding bonds or other refunding obligations which the Governmental Unit may hereafter issue in its sole discretion and which are payable from the Pledged Revenues; and nothing in this Loan Agreement shall be construed as obligating the Governmental Unit to pay Loan Agreement Payments from any general or other fund of the Governmental Unit other than such special funds. Nothing contained in this Loan Agreement, however, shall be construed as prohibiting the Governmental Unit in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(f) Acquisition and Completion of Project. The Project will consist of purchasing two fire pumpers for use by the Governmental Unit and paying related professional fees. The Project will be acquired and completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to the acquisition and completion of the Project and to the use of the Pledged Revenues. The Project complies with Sections 59A-53-7 through 59A-53-10, NMSA 1978, as amended.

(g) Necessity of Project. The acquisition of the Project under the terms and conditions provided for in this Loan Agreement is necessary, convenient and in furtherance of the governmental purposes of the Governmental Unit and is in the best interests of the Governmental Unit and its residents.

(h) Legal, Valid and Binding Special Obligation. The Governmental Unit has taken all required action necessary to authorize the execution and delivery of this Loan Agreement and the Intercept Agreement, and this Loan Agreement and the Intercept Agreement constitute legal, valid and binding special obligations of the Governmental Unit enforceable in accordance with their terms.

(i) Loan Agreement Term. The weighted average maturity of ____ years of the Loan Agreement does not exceed 120% of the reasonably expected life of the Project which is ten (10) years.

(j) Use of Project. During the Loan Agreement Term, the Project will at all times be used for the purpose of benefiting the Governmental Unit as a whole.

(k) No Private Activity. The Governmental Unit is a "governmental unit" within the meaning of Sections 103 and 141(b) (6) of the Code. In addition, no amounts disbursed from the Program Account and used to finance the Project shall be used in the trade or business of a person who is not a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code.

(l) No Excess Loan Agreement Proceeds. The amount loaned to the Governmental Unit under this Loan Agreement as set forth on the Term Sheet does not exceed the sum of: (i) the cost of the Project; and (ii) an amount necessary to pay the Processing Fee and expenses, if any.

(m) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement and the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions in this Loan Agreement and the Intercept Agreement, nor the consummation of the transactions contemplated herein and therein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Governmental Unit is a party or by which the Governmental Unit is bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Governmental Unit or its properties are subject, or constitutes a default under any of the foregoing.

(n) Irrevocable Enactments. While this Loan Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Loan Agreement, including the Ordinance shall be irrevocable until this Loan Agreement has been paid in full as to both principal and interest, and shall not be subject to amendment or modification in any manner which would in any way jeopardize the timely payment of Loan Agreement Payments.

(o) Outstanding Debt. Except for the Parity Obligations, if any, described on the

Term Sheet, there are currently no outstanding bonds, notes or other obligations of the Governmental Unit which are payable from and secured by a parity lien on the Pledged Revenues.

(p) No Litigation. To the knowledge of the Governmental Unit, no litigation or proceeding is pending or threatened against the Governmental Unit affecting the right of the Governmental Unit to execute or deliver this Loan Agreement or the Intercept Agreement or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither, the execution and delivery of this Loan Agreement or the Intercept Agreement by the Governmental Unit, nor compliance by the Governmental Unit with the obligations under such agreements, requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(q) No Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Loan Agreement and the Intercept Agreement, would constitute an Event of Default on the part of the Governmental Unit under this Loan Agreement or the Intercept Agreement.

(r) Pledged Revenues Not Budgeted. The portions of the Pledged Revenues necessary to pay the Loan Agreement Payments, as and when due, are not needed or budgeted to pay current or anticipated operational or other expenses of the Governmental Unit.

(s) Expected Coverage Ratio. The Pledged Revenues (giving credit for any increase in the Pledged Revenues which has received final approval of the Governing Body and become effective) from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably expected to equal or exceed, one hundred twenty-five percent (125%) of the maximum Aggregate Annual Debt Service Requirement.

(t) No Extension of Interest Payments. The Governmental Unit will not extend or be a party to the extension of the time for paying any interest on this Loan Agreement.

(u) Governmental Unit's Existence. The Governmental Unit will maintain its corporate identity and existence so long as this Loan Agreement is unpaid, unless another political subdivision by operation of law succeeds to the liabilities and rights of the Governmental Unit without adversely affecting to any substantial degree the privileges and rights of the NMFA.

(v) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the NMFA, as the NMFA may require, that shall include, but not be limited to, annual audits, operational data required to update information in any disclosure documents used to assign or securitize the Loan Agreement Payments by issuance of Bonds by the NMFA pursuant to the Indenture, and notification of any event deemed material by the NMFA.

(w) Tax Covenants. The Governmental Unit covenants that it shall restrict the use of the proceeds of this Loan Agreement in such manner and to such extent, if any, as may be necessary so that this Loan Agreement will not constitute an arbitrage bond under Section 148 of the Code and that it shall pay any applicable rebate to the Internal Revenue Service. Authorized Officers of the Governmental Unit, are hereby authorized and directed to execute an Arbitrage and Tax Certificate as may be required by the NMFA and such additional certificates as shall be

necessary to establish that this Loan Agreement is not an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated or proposed with respect thereto, including Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149 and 1.150 as the same currently exist, or may from time to time hereafter be amended, supplemented or revised. The Governmental Unit covenants to comply with the provisions of any such Arbitrage and Tax Certificate and the provisions thereof will be incorporated herein by reference to the same extent as if set forth herein. The Governmental Unit covenants that no use will be made of the proceeds of this Loan Agreement, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148-1(b)) of this Loan Agreement, which use, if it had been reasonably expected on the Closing Date, would have caused this Loan Agreement to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code. Pursuant to this covenant, the Governmental Unit obligates itself to comply throughout the Loan Agreement Term with the requirements of Sections 103 and 141 through 150 of the Code and the regulations promulgated with respect thereto. The Governmental Unit further represents and covenants that no bonds or other evidence of indebtedness of the Governmental Unit payable from substantially the same source as this Loan Agreement have been or will be issued, sold or delivered within fifteen (15) days prior to or subsequent to the Closing Date. The Governmental Unit hereby further represents and covenants to comply with Section 7.6 hereof, which designates this Loan Agreement as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code.

(x) Use of Fire Protection Fund Revenues. The Governmental Unit will take no action with respect to the Project that would constitute a violation of the terms of Sections 59A-53-8 through 59A-53-10 NMSA 1978, as the same may be amended or recompiled from time to time.

Section 2.2 Representations, Covenants and Warranties of the NMFA. The NMFA represents, covenants and warrants for the benefit of the Governmental Unit as follows:

(a) Authorization of Loan Agreement and Intercept Agreement. The NMFA is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized, existing and in good standing under the laws of the State, has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Loan Agreement and the Intercept Agreement and, by proper action, has duly authorized the execution and delivery of this Loan Agreement and the Intercept Agreement based upon the NMFA's findings that:

(i) The Governmental Unit is a disadvantaged qualified entity in that its median household income is $30,375, which is less than ninety percent (90%) of the State median household income of $34,133.

(ii) The Project is important to the overall capital needs of the State and directly enhances the health and safety of the citizens of the Governmental Unit.

(b) Assignment of Rights. The NMFA may not pledge or assign the Pledged Revenues, the Loan Agreement Payments or any of its other rights under this Loan Agreement and the Intercept Agreement except to the Trustee pursuant to the Indenture.

(c) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement or the Intercept Agreement, nor the

fulfillment of or compliance with the terms and conditions of this Loan Agreement or the Intercept Agreement, nor the consummation of the transactions contemplated in this Loan Agreement or the Intercept Agreement, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the NMFA is a party or by which the NMFA is bound or constitutes a default under any of the foregoing and will not conflict with or constitute a violation of any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the NMFA or its property and which conflict or violation will have a material adverse effect on the NMFA or the financing of the Project.

(d) No Litigation. To the knowledge of the NMFA, there is no litigation or proceeding pending or threatened against the NMFA or any other person affecting the right of the NMFA to execute or deliver this Loan Agreement or the Intercept Agreement or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither, the execution and delivery of this Loan Agreement or the Intercept Agreement by the NMFA, nor compliance by the NMFA with its obligations under this Loan Agreement and the Intercept Agreement requires the approval of any regulatory body, or any other entity, which approval has not been obtained.

(e) Legal, Valid and Binding Obligations. This Loan Agreement and the Intercept Agreement constitute the legal, valid and binding obligations of the NMFA enforceable in accordance with their terms.

(f) Tax-Exempt Reimbursement of Amount Loaned. The NMFA intends to reimburse the public project revolving fund (as defined in the NMFA Act) for the amount of the Loan from the proceeds of tax-exempt bonds which the NMFA expects to issue within eighteen (18) months of the Closing Date.

(g) NMFA Compliance with Policies. As related to this Loan Agreement, the NMFA has complied with all applicable policies and procedures, as adopted and approved by the NMFA Board of Directors, or such policies or procedures have been waived by the NMFA Board of Directors.

(h) Compliance with Securities Laws. The NMFA acknowledges that no offering document or prospectus has been prepared by the Governmental Unit with respect to this Loan Agreement. The NMFA is a sophisticated accredited investor regularly making loans and purchasing securities similar to this Loan Agreement and has been provided with and has reviewed such information as it deems relevant in making its decision to make the Loan to the Governmental Unit. The NMFA will not sell, pledge, transfer, convey, hypothecate, mortgage or dispose of the Loan Agreement, or any portion thereof, except to persons who have been provided sufficient information with which to make an informed investment decision regarding the Loan Agreement and in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder and applicable state securities laws and regulations.

ARTICLE III
LOAN AGREEMENT TERM

The Loan Agreement Term shall commence on the Closing Date and shall not terminate

until this Loan Agreement has been paid in full or provision for the payment of this Loan Agreement has been made pursuant to Article VIII hereof.

ARTICLE IV
LOAN; APPLICATION OF MONEYS

On the Closing Date, the NMFA shall transfer the Loan Agreement Principal Amount as follows:

(a) To the Trustee, the amount shown on the Term Sheet as the Program Account Deposit shall be deposited in the Governmental Unit's Program Account to be maintained by the Trustee pursuant to the Indenture and disbursed pursuant to Section 6.2 hereof at the direction of the Governmental Unit as needed by the Governmental Unit for the Project; and

(b) To the NMFA, the amount shown on the Term Sheet as the NMFA Debt Service Account deposit shall be deposited into the NMFA Debt Service Account to be maintained by the NMFA or its assignee and utilized as provided in Section 5.2 hereof; and

(c) To the NMFA, payment in the amount shown on the Term Sheet as the Processing Fee.

ARTICLE V
LOAN TO THE GOVERNMENTAL UNIT; PAYMENTS BY THE GOVERNMENTAL UNIT

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The NMFA hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the NMFA an amount equal to the Loan Agreement Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. The Governmental Unit does hereby convey, assign and pledge unto the NMFA and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to: (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on parity with the Parity Obligations; (ii) the NMFA Debt Service Account, such account being held by the NMFA; (iii) the Program Account, such account being held by the Trustee; and (iv) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments and Additional Payment Obligations; provided, however, that if the Governmental Unit, its successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, according to the true intent and meaning hereof, or shall provide, as permitted by Article III of this Loan Agreement for the payment hereof and shall pay all other amounts due or to become due under this Loan Agreement in accordance with its terms and provisions, then, upon such final payment or provision for payment by the Governmental Unit, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Principal Component and Interest Component when due, the payment schedule of which is attached hereto as Exhibit "B."

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Governmental Unit and the NMFA acknowledge and agree that the Loan Agreement Payments of the Governmental Unit hereunder are limited to the Pledged Revenues, and that this Loan Agreement shall constitute a special, limited obligation of the Governmental Unit. No provision of this Loan Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Governmental Unit within the meaning of any constitutional or statutory debt limitation. No provision of this Loan Agreement shall be construed to pledge or to create a lien on any class or source of Governmental Unit moneys other than the Pledged Revenues, nor shall any provision of this Loan Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Governmental Unit moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Governmental Unit hereunder, the Pledged Revenues may be utilized by the Governmental Unit for any other purposes permitted by law.

Section 5.2 Payment Obligations of Governmental Unit. The Governmental Unit shall transfer to the NMFA from the Pledged Revenues either pursuant to the Intercept Agreement or directly from the Governmental Unit as provided by this Loan Agreement and the Intercept Agreement the amounts provided in subsections (a) (i) and (ii) of this Section 5.2 for deposit into the NMFA Debt Service Account. The NMFA Debt Service Account shall be established and held by the NMFA on behalf of the Governmental Unit. All Pledged Revenues received by the NMFA pursuant to the Intercept Agreement shall be accounted for and maintained on an ongoing basis by the NMFA in the NMFA Debt Service Account and all Loan Agreement Payments shall be remitted to the Trustee. The amounts on deposit in the NMFA Debt Service Account shall be expended and used by the NMFA or the Trustee, as the case may be, only in the manner and order of priority specified below.

(a) As a first charge and lien, but not an exclusive first charge, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), the Governmental Unit shall remit to the NMFA and the NMFA shall transfer and deposit into the NMFA Debt Service Account the following from the Pledged Revenues received either directly or pursuant to the Intercept Agreement, which the NMFA shall transfer to the Trustee in accordance with the Indenture:

(i) Interest Components. Annually, (A) beginning in July, 2010 an amount necessary to pay the first two maturing Interest Components coming due on this Loan Agreement, (which are due November 1, 2010 and May 1, 2011), and (B) in each July thereafter, the amount necessary to pay the next two maturing Interest Components on this Loan Agreement during the Loan Agreement Term, as described in Exhibit "B;"

(ii) Principal Payments. Annually, (A) beginning in July, 2010 an amount necessary to pay the first maturing Principal Component coming due on this Loan Agreement (which is due May 1, 2011), and (B) in each July thereafter, the amount necessary to pay the next maturing Principal Component on this Loan Agreement during the Loan Agreement Term, as described in Exhibit "B."

The Governmental Unit shall transfer to the NMFA from the Pledged Revenues the amounts provided in subsections (i) and (ii) of this Section 5.2(a), and the NMFA shall not intercept such amounts from the Pledged Revenues pursuant to the Intercept Agreement unless the

Governmental Unit fails to timely transfer each such amount, in which event the NMFA shall intercept such amounts from the Pledged Revenues pursuant to the Intercept Agreement. Such amounts shall be intercepted in annual payments when distributions are made by the Distributing State Agency in accordance with a schedule prepared by the NMFA at the commencement of interception of payments. The annual intercepted installments will be amounts sufficient, when combined, to meet the payments described in subparagraphs (a) (i) and (ii) above.

(b) Each Loan Agreement Payment shall be transferred by the NMFA from the NMFA Debt Service Account to the Trustee.

(c) Subject to the foregoing deposits, the NMFA or the Trustee shall annually use the balance of the Pledged Revenues received, if any, at the request of the Governmental Unit: (i) to credit against upcoming Loan Agreement Payments; or (ii) to distribute to the Governmental Unit's account in the Fire Protection Fund maintained by the State Treasurer for any purpose permitted by law.

Section 5.3 Manner of Payment. All payments of the Governmental Unit hereunder shall be paid in lawful money of the United States of America to the NMFA at the address designated in Section 11.1 herein, for remittance to the Trustee. The obligation of the Governmental Unit to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Governmental Unit, the NMFA, the Trustee, any vendor or any other person, the Governmental Unit shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 5.4 Disposition of Payments by the Trustee. The Trustee shall deposit all moneys received from the NMFA under this Loan Agreement in accordance with the Indenture.

Section 5.5 Additional Parity Obligations. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from the Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations which refund subordinate obligations as provided in Section 5.6 hereof), it must be determined that:

(a) The Governmental Unit is then current in all of the accumulations required to be made into the NMFA Debt Service Account as provided herein.

(b) No default shall exist in connection with any of the covenants or requirements of the Ordinance or this Loan Agreement.

(c) The Pledged Revenues received by or credited to the Governmental Unit for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of the issuance of such additional Parity Obligations (the "Historic Test Period")

shall have been sufficient to pay an amount representing two hundred percent (200%) of the combined maximum Aggregate Annual Debt Service Requirements coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

(d) A written certification or opinion by the Governmental Unit's Financial Services Director that the Pledged Revenues for the Historic Test Period are sufficient to pay the required amounts under the test in subsections (a) and (b) of this Section, shall be conclusively presumed to be accurate in determining the right of the Governmental Unit to authorize, issue, sell and deliver the Parity Obligations proposed to be issued.

(e) No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.6 hereof.

(f) The Governmental Unit shall not issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior and superior to this Loan Agreement.

Section 5.6 Refunding Obligations. The provisions of Section 5.5 hereof are subject to the following exceptions:

(a) If at any time after the Closing Date, while this Loan Agreement, or any part thereof, is outstanding, the Governmental Unit shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Loan Agreement, such bonds or other obligations, or any part thereof, may be refunded (but the holders of this Loan Agreement or bonds to be refunded may not be compelled to surrender this Loan Agreement or their bonds, unless this Loan Agreement, the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the Governmental Unit's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subparagraph (e) of Section 5.5 hereof and in subparagraphs (b) and (c) of this Section.

(b) No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on a parity with this Loan Agreement unless:

(i) The outstanding obligations so refunded are Parity Obligations and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof.

(c) The refunding bonds or other obligations so issued shall enjoy complete equality of lien on the Pledged Revenues with the portion of this Loan Agreement or any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such

refunding bonds or such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of this Loan Agreement or the bonds or other obligations of the same issue refunded thereby. If only a part of this Loan Agreement or the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is refunded, then such obligations may not be refunded without the consent of the holder or holders of the unrefunded portion of such obligations, unless:

(i) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof; or

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

(d) Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the Governmental Unit may provide by ordinance or resolution, but without any impairment of any contractual obligations imposed upon the Governmental Unit by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including, but not necessarily limited to, this Loan Agreement).

Section 5.7 Investment of Governmental Unit Funds. Money on deposit in the NMFA Debt Service Account established by the NMFA for the Governmental Unit may be invested by the NMFA in Permitted Investments at the discretion of the NMFA. Money on deposit in the Program Account held by the Trustee and created hereunder may be invested by the Trustee in Permitted Investments at the written direction of the NMFA or at the discretion of the Trustee. Any earnings on any of said account shall be held and administered in the account and utilized in the same manner as the other moneys on deposit therein.

Section 5.8 Governmental Unit May Budget for Payments. The Governmental Unit may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to defray any insufficiency of the Pledged Revenues to pay Loan Agreement Payments; provided, however, the Governmental Unit has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

ARTICLE VI
THE PROJECT

Section 6.1 Agreement To Acquire and Complete the Project. The Governmental Unit hereby agrees that to effectuate the purposes of this Loan Agreement and to effectuate the acquisition and completion of the Project, it shall make, execute, acknowledge and transmit any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations

and, in general, do all things which may be requisite or proper to complete the Project. The Governmental Unit agrees to acquire and complete the Project through the application of moneys to be disbursed from the Program Account pursuant to Section 6.2 of this Loan Agreement.

Section 6.2 Disbursements From the Program Account. So long as no Event of Default shall occur, the Trustee shall disburse moneys from the Program Account in accordance with Section 6.2 of the Indenture upon receipt by the Trustee of a requisition substantially in the form of Exhibit "C" attached hereto signed by an Authorized Officer of the Governmental Unit.

No disbursement shall be made from the Program Account without the approval of Bond Counsel: (i) to reimburse the Governmental Unit's own funds for expenditures made prior to the Closing Date; (ii) to refund or advance refund any tax-exempt obligations issued by or on behalf of the Governmental Unit; or (iii) to be used, directly or indirectly, to finance a project used or to be used in the trade or business of a person who is not a "governmental unit," within the meaning of Section 141(b)(6) of the Code.

Section 6.3 Completion of Acquisition of the Project. Upon completion of the acquisition of the Project, an Authorized Officer of the Governmental Unit shall deliver a certificate to the NMFA and the Trustee stating that, to the best of his or her knowledge; the Project has been completed and accepted by the Governmental Unit, and all costs have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 6.4 Application of Loan Agreement Proceeds Subsequent to Completion of the Project. Upon completion of the Project as signified by delivery of the completion certificate contemplated in Section 6.3 hereof, or in the event that the NMFA and the Trustee shall not have received a certificate of completion as required by Section 6.3 hereof by the date three (3) years from the Closing Date (or such later date as is approved by Bond Counsel), the Trustee shall transfer the amounts remaining in the Program Account (except amounts necessary for payment of amounts not then due and payable) to the NMFA Debt Service Account and such amounts shall be used for the payment of Loan Agreement Payments.

ARTICLE VII
COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 7.1 Further Assurances and Corrective Instruments. The NMFA and the Governmental Unit agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention hereof.

Section 7.2 NMFA and Governmental Unit Representatives. Whenever under the provisions hereof the approval of the NMFA or the Governmental Unit is required, or the Governmental Unit or the NMFA is required to take some action at the request of the other, such approval or such request shall be given for the NMFA or for the Governmental Unit by an Authorized Officer of the NMFA or the Governmental Unit, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 7.3 Requirements of Law. During the Loan Agreement Term, the Governmental Unit and the NMFA shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the parties hereto, the Project or the Pledged Revenues.

Section 7.4 First Lien; Equality of Liens. The Loan Agreement Payments constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues. The Governmental Unit covenants that the Loan Agreement Payments and any Parity Obligations herein authorized to be issued and from time to time outstanding shall be equitably and ratably secured by a first lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance of such obligations, it being the intention of the Governmental Unit that there shall be no priority between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

Section 7.5 Expeditious Completion. The Governmental Unit shall complete the Project with all practical dispatch.

ARTICLE VIII
PREPAYMENT OF LOAN AGREEMENT PAYMENTS

The Governmental Unit is hereby granted the option to prepay any of the Principal Components of this Loan Agreement in whole or in part on any day on or after one (1) year following the Closing Date without penalty or prepayment premium. The Governmental Unit may designate the due dates of any Principal Components being prepaid in the event of a partial prepayment. Notice of intent to make such prepayment shall be provided to the NMFA and the Trustee by the Governmental Unit no less than forty-five (45) days prior to the prepayment date. The Trustee shall recalculate the Loan Agreement Payments due under this Loan Agreement in the event of a partial prepayment in a manner which is consistent with the manner in which the Bonds, if any, are prepaid.

ARTICLE IX
INDEMNIFICATION

From and to the extent of the Pledged Revenues, and to the extent permitted by law, the Governmental Unit shall and hereby agrees to indemnify and save the NMFA and the Trustee harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition or operation of the Project during the Loan Agreement Term, from: (i) any act of negligence or other misconduct of the Governmental Unit or breach of any covenant or warranty by the Governmental Unit hereunder; (ii) the incurrence of any cost or expense in connection with the acquisition or operation of the Project in excess of the Loan Agreement proceeds and interest on the investment thereof; and (iii) in connection with any action or proceeding brought thereon. The Governmental Unit, upon notice from the NMFA or the Trustee, shall defend the NMFA or the Trustee, as applicable, in any action or proceeding arising from any such claim.

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. Any one of the following shall be an Event of Default under this Loan Agreement:

(a) Failure by the Governmental Unit to pay any amount required to be paid under this Loan Agreement on the date on which it is due and payable;

(b) Failure by the Governmental Unit to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the Governmental Unit by the NMFA or the Trustee unless the NMFA and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the NMFA or the Trustee but cannot be cured within the applicable thirty (30) day period, the NMFA and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Governmental Unit within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Governmental Unit is unable to carry out the agreements on its part herein contained, the Governmental Unit shall not be deemed in default under this paragraph (b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default);

(c) Any warranty, representation or other statement by or on behalf of the Governmental Unit contained in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement is false or misleading in any material respect;

(d) A petition is filed against the Governmental Unit under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the NMFA and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests;

(e) The Governmental Unit files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(f) The Governmental Unit admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Governmental Unit for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the NMFA and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3 hereof, the NMFA or the Trustee may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to collect all other amounts due under this Loan Agreement when those payments become due or to enforce performance of any agreement of the Governmental Unit in this Loan Agreement or the Intercept Agreement:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the NMFA and the Trustee under this Loan Agreement and the Intercept Agreement against the Governmental Unit, and compel the Governmental Unit to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein; or

(b) By suit in equity to enjoin any acts or things which are unlawful or violate the rights of the NMFA or the Trustee; or

(c) Intervene in judicial proceedings that affect this Loan Agreement or the Pledged Revenues; or

(d) Cause the Governmental Unit to account as if it were the trustee of an express trust for all of the Pledged Revenues; or

(e) Take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and to collect amounts due under this Loan Agreement when those payments become due or to enforce any other of its rights thereunder; or

(f) Apply any amounts in the Program Account toward satisfaction of any of the obligations of the Governmental Unit under this Loan Agreement.

Section 10.3 Limitations on Remedies. A judgment requiring a payment of money entered against the Governmental Unit may reach only the available Pledged Revenues.

Section 10.4 No Remedy Exclusive. Subject to Section 10.3 hereof, no remedy herein conferred upon or reserved to the NMFA or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the NMFA or the Trustee to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

Section 10.5 Waivers of Events of Default. The NMFA or the Trustee may in its discretion waive by written waiver any Event of Default hereunder and the consequences of such an Event of Default provided, however, that there shall not be waived: (i) any Event of Default in the payment of the principal of this Loan Agreement at the date when due as specified herein; or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on

all arrears of payments of principal and all expenses of the NMFA or the Trustee, in connection with such Event of Default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the NMFA or the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the NMFA and the Trustee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 10.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Governmental Unit shall default under any of the provisions hereof and the NMFA or the Trustee shall employ attorneys or incur other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of the Governmental Unit herein contained, the Governmental Unit agrees that it shall on demand therefor pay to the NMFA or the Trustee, as applicable, the fees of such attorneys and such other expenses so incurred, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Governmental Unit under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

ARTICLE XI
MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows: if to the Governmental Unit: City of Las Cruces, P.O. Box 20000, Las Cruces, New Mexico 88004, Attention: City Clerk; if to the NMFA, New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; and if to the Trustee, The Bank of New York Mellon Trust Company, N.A., 1775 Sherman Street, Suite 2775, Denver, Colorado 80203, Attention: Trust Division. The Governmental Unit, the NMFA, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the NMFA, the Governmental Unit and their respective successors and assigns, if any.

Section 11.3 Amendments. This Loan Agreement may be amended only with the written consent of the NMFA and the Governmental Unit.

Section 11.4 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the NMFA, either directly or through the NMFA, or against any officer, employee, director, trustee or member

of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute, constitution or otherwise, of any such officer, employee, director or member of the Governing Body or of the NMFA is hereby expressly waived and released by the Governmental Unit and by the NMFA as a condition of and in consideration for the execution of this Loan Agreement.

Section 11.5 Severability. In the event that any provision of this Loan Agreement, other than the requirement of the Governmental Unit to pay hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.6 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Assignment by the NMFA. Pursuant to the Indenture, this Loan Agreement and the Intercept Agreement may be assigned and transferred by the NMFA to the Trustee, which assignment and transfer is hereby acknowledged and approved by the Governmental Unit.

Section 11.8 Compliance with Governing Law. It is hereby declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

Section 11.9 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.10 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

[Signature pages follow]

IN WITNESS WHEREOF, the NMFA, on behalf of itself, and as approved by the Board of Directors of the NMFA on May 27, 2010, has executed this Loan Agreement in its corporate name with its corporate seal hereunto affixed and attested by its duly authorized officers; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

[SEAL]

By: _____
Stephen R. Flance, Chairman

ATTEST:

By: _____
Ron Curry, Secretary

PREPARED FOR EXECUTION BY OFFICERS OF THE
NEW MEXICO FINANCE AUTHORITY:

Sutin, Thayer & Browne A Professional Corporation
As Bond Counsel

By: _____
Mark Chaiken

APPROVED FOR EXECUTION BY OFFICERS OF THE
NEW MEXICO FINANCE AUTHORITY:

By: _____
Reynold E. Romero, General Counsel

CITY OF LAS CRUCES, NEW MEXICO

[SEAL]

By: _____
Ken Miyagishima, Mayor

ATTEST:

By: _____
Esther Martinez, City Clerk

EXHIBIT "A"

TERM SHEET

NMFA Loan No. 2472-PP

Governmental Unit:	City of Las Cruces, New Mexico
Project Description:	Purchase two fire pumpers for use by the Governmental Unit and payment of related professional fees
Loan Agreement Principal Amount:	$938,875
Disadvantaged Funding Amount:	$ 75,000
Pledged Revenues:	The distribution of State Fire Protection Funds to the Governmental Unit made annually by the State Treasurer pursuant to Section 59A-53-7 NMSA 1978.
Coverage Ratio:	125%
Distributing State Agency:	State Treasurer
Currently Outstanding Parity Obligations:	NMFA Loan No. 1954-PP, maturing in May, 2014
Additional Parity Bonds Test:	200%
Authorizing Legislation:	Ordinance No. ____ adopted on June 28, 2010
Closing Date:	July 30, 2010
Blended Interest Rate:	_____%
Program Account Deposit:	$925,000
Processing Fee:	$ 13,875

PROGRAM ACCOUNT DEPOSITS MUST BE USED WITHIN THREE YEARS

EXHIBIT "B"

DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT

[SEE ATTACHED]

EXHIBIT "C"

FORM OF REQUISITION

RE: $938,875 Loan Agreement by and between the City of Las Cruces, New Mexico, and the NMFA (the "Loan Agreement").

TO: The Bank of New York Mellon Trust Company, N.A.
c/o New Mexico Finance Authority
207 Shelby Street
Santa Fe, New Mexico 87501
Attn: Accounting

You are hereby authorized to disburse from the Program Account – City of Las Cruces, New Mexico (2010 Fire Pumpers Loan), with regard to the above-referenced Loan Agreement the following:

NMFA LOAN NO. 2472-PP CLOSING DATE: JULY 30, 2010

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

_____

_____

AMOUNT OF PAYMENT: $_____

PURPOSE OF PAYMENT: _____

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – City of Las Cruces, New Mexico (2010 Fire Pumpers Loan).

All representations contained in the Loan Agreement and the related closing documents remain true and correct and the City of Las Cruces, New Mexico, is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the City of Las Cruces shall and understands its obligation to complete the acquisition of the Project from other legally available funds.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: _____ By: _____
Authorized Officer

Title: _____
(Print Name and Title)

INTERCEPT AGREEMENT

This INTERCEPT AGREEMENT is made and entered into July 30, 2010, by and between the NEW MEXICO FINANCE AUTHORITY (the "NMFA"), a public body politic and corporate constituting a governmental instrumentality separate and apart from the State of New Mexico (the "State") under the laws of the State and the CITY OF LAS CRUCES, NEW MEXICO, a political subdivision duly organized and existing under the laws of the State (the "Governmental Unit").

W I T N E S S E T H:

WHEREAS, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, authorized the creation of the NMFA within the State to assist in financing the cost of public projects of participating qualified entities, including the Governmental Unit, such as purchasing two fire pumpers for use by the Governmental Unit; and

WHEREAS, pursuant to Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, and Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, (collectively, the "Act") the NMFA and the Governmental Unit are authorized to enter into agreements to facilitate the financing of the Project as described in the Loan Agreement by and between the NMFA and the Governmental Unit of even date herewith; and

WHEREAS, the Governmental Unit desires to acquire the Project which acquisition is permitted under the Act; and

WHEREAS, the NMFA has established its Loan Program (the "Program") funded by its public project revolving fund (as defined in the Act) for the financing of infrastructure and equipment projects upon the execution of the Loan Agreement and the assignment of loan agreements to a trustee (the "Trustee"); and

WHEREAS, the Governmental Unit desires to borrow $938,875 from the Program for the purpose of financing the acquisition of the Project, which Loan is to be governed by this Intercept Agreement and by the Loan Agreement, respectively; and

WHEREAS, the Act confers upon the NMFA the authority to loan funds to the Governmental Unit to finance the Project, and Section 59A-53-7, NMSA 1978, as amended, authorizes the Governmental Unit to direct that its distribution of fire protection funds from the State Treasurer be paid to the NMFA or its assignee, to secure payments under the Loan Agreement;

NOW THEREFORE, the parties hereto agree:

Unless otherwise defined in this Intercept Agreement and except where the context by clear implication otherwise requires, capitalized terms used in this Intercept Agreement shall have for all purposes of this Intercept Agreement the meanings assigned thereto in the Loan Agreement and the Indenture, as defined in the Loan Agreement.

Section 1. Authorization to the NMFA. The Governmental Unit hereby recognizes that the NMFA has made a Loan to the Governmental Unit in the amount of $938,875 to finance the acquisition of the Project. Pursuant to Section 5.2(a) of the Loan Agreement and this Intercept Agreement, the Governmental Unit shall directly make timely payment of all Loan Agreement Payments to the NMFA. In the event that the Governmental Unit fails to make timely payments of the Loan Agreement Payments, the Governmental Unit agrees that all payments due on the Loan from the Pledged Revenues shall be paid by the Distributing State Agency to the NMFA or its designee, on behalf of the Governmental Unit, from scheduled distributions of the Pledged Revenues in accordance with the Intercept Schedule attached hereto as Exhibit "A" (the "Intercept Schedule").

This Intercept Agreement shall be deemed a written certification, authorization and request by the Governmental Unit to the Distributing State Agency to pay to the NMFA, on behalf of the Governmental Unit, sums shown on the Intercept Schedule from annual distributions of the Pledged Revenues pursuant to Section 59A-53-7, NMSA 1978, as amended, to insure compliance with the Loan Agreement and repayment of the Loan. Upon written notice to the Distributing State Agency from the NMFA, the amount of the Pledged Revenues to be paid to the NMFA shall be increased from the amounts shown on Exhibit "A" to defray any delinquencies in the NMFA Debt Service Account established for the Governmental Unit. Any accumulation of the Pledged Revenues in an amount in excess of the next Loan Agreement Payment shall be redirected by the NMFA to the benefit of the Governmental Unit on a timely basis as provided in Section 5.2 of the Loan Agreement.

To the extent that the Pledged Revenues are insufficient to meet the debt service requirements due on the Loan and other Parity Obligations (as defined in the Loan Agreement) now or hereafter issued or incurred, the amounts intercepted under this Intercept Agreement shall be applied to allow partial payment on a pro-rata basis of the debt service due and owing on the Loan Agreement and other Parity Obligations.

Section 2. Term; Amendments. This Intercept Agreement will remain in full force and effect from its effective date as herein provided until such time as the Loan made pursuant to the Loan Agreement and this Intercept Agreement have been paid in full. Nothing herein shall be deemed in any way to limit or restrict the Governmental Unit from issuing its own obligations, providing its own program or participating in any other program for the financing of public projects which the Governmental Unit may choose to finance. This Intercept Agreement may be amended only by written instrument signed by the parties hereto.

Section 3. Authorization. The execution and performance of the terms of this Intercept Agreement have been authorized and approved by Ordinance No. ____, passed and adopted on June 28, 2010 by the Governing Body of the Governmental Unit, which Ordinance is in full force and effect on the date hereof.

Section 4. Severability of Invalid Provisions. If any one or more of the provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed

separable from the remaining provisions and shall in no way affect the validity of any of the other provisions hereof.

Section 5. Counterparts. This Intercept Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6. Further Authorization. The Governmental Unit agrees that the NMFA shall do all things necessary or convenient to the implementation of the Program to facilitate the Loan to the Governmental Unit.

Section 7. Effective Date. This Intercept Agreement shall take effect on the Closing Date of the Loan.

Section 8. Initial Intercept Date. As indicated on the Intercept Schedule, the first distribution of the Pledged Revenues that is to be intercepted by the Distributing State Agency under the terms of this Intercept Agreement consist of Pledged Revenues due to the Governmental Unit distributed beginning in July 2010.

Section 9. Final Intercept Date. Once the Loan has been fully paid off and satisfied, NMFA shall provide written notice to the Distributing State Agency to discontinue the interception of the Governmental Unit's Pledged Revenues.

[Signature page follows]

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties to this Intercept Agreement have caused their names to be affixed hereto by the proper officers thereof as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By: _____
William C. Sisneros, Chief Executive Officer

(SEAL)

Attest:

By: _____
_____

CITY OF LAS CRUCES, NEW MEXICO

By: _____
Ken Miyagishima, Mayor

(SEAL)

Attest:

By: _____
Esther Martinez, City Clerk

Acknowledged:

By: _____
State Treasurer

Date: _____

By: _____
State Fire Marshal

Date: _____

EXHIBIT "A"

INTERCEPT SCHEDULE
CITY OF LAS CRUCES, NEW MEXICO

Loan No. 2472-PP

Month	Pledged Revenues	Amount
Each July, beginning July, 2010 through 2019	The distribution of Fire Protection Fund Revenues to City of Las Cruces, New Mexico, pursuant to Section 59A-53-7, NMSA 1978, which distributions are made annually by the State Treasurer	$0*

* Except in the event that the Governmental Unit fails to make timely payments of the Loan Agreement Payments, as provided in Section 5.2(a) of the Loan Agreement at which time a monthly collection schedule will be prepared by the NMFA and given to the Governmental Unit and the State Fire Marshal. The State Fire Marshal shall thereafter distribute Pledged Revenues set forth in the collection schedule to be applied to payment of the Loan as provided in the Loan Agreement and this Intercept Agreement.

RESOLUTION NO. 10-246

A RESOLUTION AUTHORIZING THE CITY MANAGER OR FINANCE DIRECTOR TO SUBMIT A LOAN APPLICATION TO THE NEW MEXICO FINANCE AUTHORITY TO FUND THE PURCHASE OF TWO FIRE APPARATUS AND TO HAVE PROJECT SIGNATORY AUTHORITY.

The City Council is informed that:

WHEREAS, the Las Cruces Fire Department has requested replacement of two fire trucks; and

WHEREAS, currently two front line pumpers are coming up on 150,000 miles and their ten year anniversary; and

WHEREAS, authorization to implement a long term replacement schedule for fire apparatus was provided via the FY08 Adopted Budget; and

WHEREAS, the City of Las Cruces Fire Department staff has requested replacement of these two apparatus; and

WHEREAS, the New Mexico Finance Authority (NMFA) offers the Public Project Revolving Fund (PPRF) loan program to provide funding for infrastructure and capital equipment projects with low-cost and low-interest rate loans to local government entities; and

WHEREAS, to be considered for a PPRF loan, an application must be submitted to the NMFA; and

WHEREAS, Las Cruces Fire staff plans to use these PPRF loan monies to fund the $900,000 estimated cost of the purchase of two fire apparatus.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the City Manager, or the Finance Director, is hereby authorized to submit the loan application for funding the $900,000 estimated cost of the purchase of two fire apparatus, plus professional fees, and be project signatory authority for all related paperwork.

(II)

THAT City staff and officials are authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 5th of April, 2010.

Mayor

ATTEST:

City Clerk

(SEAL)

VOTE:

Mayor Miyagishima:	Aye
Councillor Silva:	Aye
Councillor Connor:	Aye
Councillor Pedroza:	Aye
Councillor Small:	Aye
Councillor Sorg:	Aye
Councillor Thomas	Aye

Moved by: Connor

Seconded by: Small

Approved as to Form:

City Attorney