

267  
**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

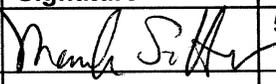
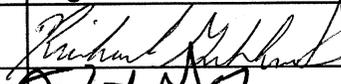
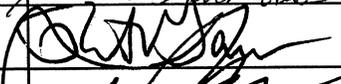
Item # 14 Ordinance/Resolution# 2584 Council District:       

For Meeting of August 11, 2010  
 (Adoption Date)

**TITLE:**

**A SUPPLEMENTAL ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF \$\_\_\_\_\_ CITY OF LAS CRUCES, NEW MEXICO JOINT UTILITY REFUNDING REVENUE BONDS, SERIES 2010, TO BE ISSUED TO REFUND, REFINANCE, PREPAY AND DISCHARGE THE CITY'S OUTSTANDING NEW MEXICO FINANCE AUTHORITY UTILITY SYSTEM LOANS; ESTABLISHING THE MATURITY DATES, INTEREST RATES, REDEMPTION PROVISIONS AND OTHER DETAILS OF THE BONDS; APPROVING THE EXECUTION OF CERTAIN DOCUMENTS RELATING TO THE BONDS; RATIFYING CERTAIN ACTIONS PREVIOUSLY TAKEN IN CONNECTION WITH THE BONDS; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE.**

**PURPOSE(S) OF ACTION:** To authorize the issuance and sale of \$\_\_\_\_\_ Joint Utility Refunding Revenue Bonds, Series 2010 to be issued to refund, refinance, and pay and discharge the City's outstanding New Mexico Finance Authority (NMFA) Utility System Loans.

<b>Drafter and Staff Contact:</b> Gloria Podruchny		<b>Department:</b> Finance Department		<b>Phone:</b> 541-2050	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Department Director		541-2050	Budget		541-2107
Other			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

Presently, the City of Las Cruces is in a position to refinance the outstanding NMFA Utility Systems Loans due to the low interest rates available for municipalities engaged in revenue bond issuance. Discharging the refunded loans will reduce the interest costs on the refunded loans, will permit the more effective arrangement of debt service requirements for system bonds, and will effect other savings and economies, all to the benefit of the City.

Due to market fluctuations, it is important to expedite the refinancing process to take advantage of the existing favorable interest rates.

(Continue on additional sheets as required)

**SUPPORT INFORMATION:**

1. Ordinance.

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>  <b>*Budget adjustment to follow via separate resolution.</b>	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	Budget Adjustment Attached	<input type="checkbox"/>	Expense reallocated from:
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
	<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.	
<b>Does this action create any revenue?</b>  <b>*Bond proceeds only available for refinancing.</b>	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**FUND SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
2010 Water Rev Bond Debt Service	53xx				
2010 Water Rev Bond Reserve	53xx				
2010 Wastewater Rev Bond Debt Service	54xx				
2010 Wastewater Rev Bond Reserve	54xx				

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the Supplemental Ordinance authorizing the issuance and sale of \$\_\_\_\_\_ Joint Utility Refunding Revenue Bonds to be issued to refund, refinance, pay and discharge the City's outstanding NMFA Utility System Loans
2. Vote "No"; this will not approve the Supplemental Ordinance and the \$\_\_\_\_\_ Joint Utility Refunding Revenue Bonds will not be issued.

(Continue on additional sheets as required)

3. Vote to "Amend"; this could delay refinancing and lead to higher interest rates.
4. Vote to "Table"; this would delay refinancing and lead to higher interest rates.

### **REFERENCE INFORMATION**

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Ordinance No. 1593
2. Ordinance No. 1998
3. Ordinance No. 2126
4. Ordinance No. 2155
5. Ordinance No. 2310
6. Ordinance No. 2383
7. Ordinance No. 2384
8. Ordinance No. 2415
9. Ordinance No. 2416

(Continue on additional sheets as required)

Draft: July 6, 2010

COUNCIL BILL NO. 11-004  
ORDINANCE NO. 2584

**A SUPPLEMENTAL ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF \$ \_\_\_\_\_ CITY OF LAS CRUCES, NEW MEXICO JOINT UTILITY REFUNDING REVENUE BONDS, SERIES 2010, TO BE ISSUED TO REFUND, REFINANCE, PREPAY AND DISCHARGE THE CITY'S OUTSTANDING NEW MEXICO FINANCE AUTHORITY UTILITY SYSTEM LOANS; ESTABLISHING THE MATURITY DATES, INTEREST RATES, REDEMPTION PROVISIONS AND OTHER DETAILS OF THE BONDS; APPROVING THE EXECUTION OF CERTAIN DOCUMENTS RELATING TO THE BONDS; RATIFYING CERTAIN ACTIONS PREVIOUSLY TAKEN IN CONNECTION WITH THE BONDS; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE.**

**WHEREAS**, unless otherwise defined in Article I or elsewhere in this supplemental ordinance (the "Ordinance") or unless the context requires otherwise, capitalized terms in the following preambles have the same meanings assigned to such terms in Article I of Ordinance No. 1593, Council Bill 97-035 (the "Master Ordinance") adopted by the Council on December 18, 1996; and

**WHEREAS**, the Master Ordinance provides for the adoption of subsequent ordinances to authorize the issuance and sale of one or more series of System Bonds as well as the approval of specific terms and documents relating to the issuance and sale of System Bonds; and

**WHEREAS**, this Ordinance is adopted pursuant to the Master Ordinance in order to authorize the issuance and the sale of the Series 2010 Bonds as Parity Bonds payable from Net Revenues of the System; and

**WHEREAS**, pursuant to Ordinance No. 1998, passed and adopted by the City Council (the "Council") on May 5, 2003 the City entered into a loan agreement with the New Mexico Finance Authority (the "NMFA") in the aggregate principal amount of \$222,222 ("NMFA Loan (2003)") of which the aggregate principal amount of \$97,021 remains outstanding; and

**WHEREAS**, pursuant to Ordinance No. 2126, passed and adopted by the Council on August 16, 2004 the City entered into a loan agreement with the NMFA in the aggregate

principal amount of \$418,724 (“NMFA Loan (2004)”) of which the aggregate principal amount of \$342,953 remains outstanding; and

**WHEREAS**, pursuant to Ordinance No. 2155, passed and adopted by the Council on December 6, 2004 the City entered into a loan agreement with the NMFA in the aggregate principal amount of \$278,713 (“NMFA Loan (2005)”) of which the aggregate principal amount of \$228,629 remains outstanding; and

**WHEREAS**, pursuant to Ordinance No. 2310, passed and adopted by the Council on June 19, 2006 the City entered into a loan agreement with the NMFA in the aggregate principal amount of \$268,552 (“NMFA Loan (2006)”) of which the aggregate principal amount of \$241,820 remains outstanding; and

**WHEREAS**, pursuant to Ordinance No. 2383, passed and adopted by the Council on June 4, 2007 the City entered into a loan agreement with the NMFA in the aggregate principal amount of \$2,139,117 (“NMFA Loan (2007-I)”) of which the aggregate principal amount of \$2,139,177 remains outstanding; and

**WHEREAS**, pursuant to Ordinance No. 2384, passed and adopted by the Council on June 4, 2007 the City entered into a loan agreement with the NMFA in the aggregate principal amount of \$6,311,058 (“NMFA Loan (2007-II)”) of which the aggregate principal amount of \$6,311,058 remains outstanding; and

**WHEREAS**, pursuant to Ordinance No. 2415, passed and adopted by the Council on December 21, 2007 the City entered into a loan agreement with the NMFA in the aggregate principal amount of \$12,483,206 (“NMFA Loan (2007-III)”) of which the aggregate principal amount of \$12,483,206 remains outstanding; and

**WHEREAS**, pursuant to Ordinance No. 2416, passed and adopted by the Council on December 21, 2007 the City entered into a loan agreement with the NMFA (“NMFA Loan (2007-IV)”) and referred to collectively with NMFA Loan (2003), NMFA Loan (2004), the

NMFA Loan (2005), NMFA Loan (2006), NMFA Loan (2007-I), NMFA Loan (2007-II) and NMFA Loan (2007-III) as the "Refunded Loans") in the original aggregate amount of \$3,139,919 of which the aggregate principal amount of \$3,139,919 remains outstanding; and

**WHEREAS**, other than NMFA Loan (2003), NMFA Loan (2004), NMFA Loan (2005), the Series 2005 Bonds, the Series 2006 Bonds, NMFA Loan (2006), NMFA Loan (2007-I), NMFA Loan (2007-II), NMFA Loan (2007-III), NMFA Loan (2007-IV) and the Series 2009 Bonds, the Net Revenues of the System are not pledged to the payment of any bonds or other obligations which are presently outstanding and unpaid; and

**WHEREAS**, pursuant to the prepayment provisions contained in Article VIII of each of the loan agreements for the Refunded Loans, the Refunded Loans are currently subject to prepayment, at the option of the City, without penalty or prepayment premium; and

**WHEREAS**, the Council hereby determines that issuance of the Series 2010 Bonds for the purpose of refunding, refinancing, prepaying and discharging the Refunded Loans will reduce the interest costs on the Refunded Loans, will permit the more effective arrangement of debt service requirements for System Bonds and will effect other savings and economies, all to the benefit of the City, and consequently will provide for the public health, peace and safety of the City and its citizens; and

**WHEREAS**, the City has determined to refund, refinance, prepay and discharge the Refunded Loans on September \_\_, 2010, from the proceeds of the Series 2010 Bonds herein authorized and from other legally available sources; and

**WHEREAS**, it is in the best interests of the City to authorize and issue the Series 2010 Bonds with the terms and conditions as set forth in this Ordinance; and

**WHEREAS**, the Purchaser has agreed, pursuant to its bid for the Series 2010 Bonds submitted at [10:00] a.m. on August 11, 2010 to purchase the Series 2010 Bonds at a purchase price of \$\_\_\_\_\_; and

**WHEREAS**, the forms of the Continuing Disclosure Undertaking to be delivered at the time of delivery of the Bonds (the “Continuing Disclosure Undertaking”), the Preliminary Official Statement and the form of the final Official Statement of the City with respect to the offering and sale of the Bonds have been presented to the Council for approval; and

**WHEREAS**, all required authorizations, consents and approvals of each governmental body, agency or authority in connection with the authorization, execution and delivery of the Series 2010 Bonds which are to have been obtained prior to the date on which this Ordinance is adopted or which will be required to be obtained prior to the date of issuance of the Series 2010 Bonds, have or will have been obtained by such dates.

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

#### **ARTICLE I DEFINITIONS**

As used in this Ordinance, the following terms have the meanings specified, unless the context clearly requires otherwise. Other capitalized terms used in this Ordinance, which are not defined in this Article or in this Ordinance, have the same meanings assigned to such terms in Article I of the Master Ordinance, unless the context clearly requires otherwise.

“Bond Legislation” means the Master Ordinance and this Ordinance.

“Closing Date” means the date on which the City receives the purchase price for the Series 2010 Bonds from the Purchaser against delivery of the Series 2010 Bonds.

“Continuing Disclosure Undertaking” means the Continuing Disclosure Undertaking with respect to the Series 2010 Bonds to be executed on the day of issuance and delivery of the Series 2010 Bonds to the Purchaser.

“Costs of Issuance” means all costs relating to the issuance of the Series 2010 Bonds, including, without limitation, costs of advertising and publication, costs of preparing the Series 2010 Bonds, legal fees, financial advisor fees, expenses and applicable gross receipts taxes, costs of printing and distributing the Preliminary Official Statement and the Official Statement, rating fees and other reasonable and necessary fees and costs related to the issuance of the Series 2010 Bonds.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“DTC Participants” means brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities and to facilitate the clearance and settlement of securities among DTC Participants.

“Interest Payment Date” means each December 1 and June 1, starting with June 1, 2011.

“Maturity Date” means with respect to any Series 2010 Bond, the date on which the principal amount thereof is due in accordance with its terms.

“Net Effective Interest Rate” means the interest rate based on the actual price paid to the City for the Series 2010 Bonds, calculated to maturity according to standard tables of bond values, as provided by Section 6-14-2(A) NMSA 1978.

“NMFA” means the New Mexico Finance Authority.

“NMFA Loan (2003)” means the loan agreement between the City and the NMFA authorized pursuant to Ordinance No. 1998 in the original aggregate principal amount of \$222,222 and payable from Net Revenues of the System.

“NMFA Loan (2004)” means the loan agreement between the City and the NMFA authorized pursuant to Ordinance No. 2126 in the original aggregate principal amount of \$418,724 and payable from Net Revenues of the System.

“NMFA Loan (2005)” means the loan agreement between the City and the NMFA authorized pursuant to Ordinance No. 2155 in the original aggregate principal amount of \$278,713 and payable from Net Revenues of the System.

“NMFA Loan (2006)” means the loan agreement between the City and the NMFA authorized pursuant to Ordinance No. 2310 in the original aggregate principal amount of \$268,552 and payable from Net Revenues of the System.

“NMFA Loan (2007-I)” means the loan agreement between the City and the NMFA authorized pursuant to Ordinance No. 2383 in the original aggregate principal amount of \$2,139,117 and payable from Net Revenues of the System.

“NMFA Loan (2007-II)” means the loan agreement between the City and the NMFA authorized pursuant to Ordinance No. 2384 in the original aggregate principal amount of \$6,311,058 and payable from Net Revenues of the System.

“NMFA Loan (2007-III)” means the loan agreement between the City and NMFA authorized pursuant to Ordinance No. 2415 in the original aggregate principal amount of \$12,483,206 and payable from Net Revenues of the System.

“NMFA Loan (2007-IV)” means the loan agreement between the City and the NMFA authorized pursuant to Ordinance No. 2416 in the original aggregate principal amount of \$3,139,919 and payable from Net Revenues of the System.

“Official Statement” means the final disclosure document relating to the issuance and sale of the Series 2010 Bonds.

“Owners” means the registered owners of the Series 2010 Bonds issued pursuant to the terms of the Bond Legislation.

“Payment Date” means any date, including a date of prior redemption, if applicable, on which the Series 2010 Bonds are due and payable.

“Person” means any natural person, corporation, partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or any other organization or entity, whether or not legal entities, and governments and agencies and political subdivisions thereof.

“Preliminary Official Statement” means the initial disclosure document dated August \_\_, 2010, relating to the issuance and sale of the Series 2010 Bonds.

“Purchaser” means \_\_\_\_\_ as the best bidder for the Series 2010 Bonds.

“Refunded Loans” means NMFA Loan (2003), NMFA Loan (2004), NMFA Loan (2005), NMFA Loan (2006), NMFA Loan (2007-I), NMFA Loan (2007-II), NMFA Loan (2007-III) and NMFA Loan (2007-IV).

“Series 2005 Bonds” means the City of Las Cruces, New Mexico Joint Utility Revenue Bonds, Series 2005 authorized pursuant to City Ordinance No. 2202.

“Series 2006 Bonds” means the City of Las Cruces, New Mexico Joint Utility Revenue Bonds, Series 2006 authorized pursuant to City Ordinance No. 2320.

“Series 2009 Bonds” means the City of Las Cruces, New Mexico Joint Utility Refunding Revenue Bonds, Series 2009 authorized pursuant to City Ordinance No. 2513.

“Series 2010 Bonds” or “Bonds” means the City of Las Cruces, New Mexico, Joint Utility Refunding Revenue Bonds, Series 2010 authorized pursuant to the Bond Legislation.

“Series 2010 Debt Service Account” means the Debt Service Account for the Series 2010 Bonds created and maintained under Section 5.02 herein.

“Series 2010 Paying Agent” means the City Treasurer, or its successors, as Paying Agent and, as applicable, as “Registrar,” with respect to the Series 2010 Bonds.

“Series 2010 Refunding Project” or “Project” means refunding, refinancing, prepaying and discharging the Refunded Loans on September \_\_, 2010, and paying all Costs of Issuance and expenses pertaining to the foregoing issuance of the Series 2010 Bonds and to the prepayment and discharge of the Refunded Loans.

“Series 2010 Refunding Account” means the Refunding Account for the Series 2010 Bonds created and maintained under Section 5.04 herein.

“Series 2010 Reserve Account” means the Reserve Account for the Series 2010 Bonds created and maintained under Section 5.03 herein.

“Series 2010 Reserve Requirement” means the Reserve Requirement for the Series 2010 Bonds, to be equal to the amount established herein and to be funded in a manner set forth herein.

## **ARTICLE II RATIFICATION**

All action heretofore taken, not inconsistent with the provisions of this Ordinance, by the Council and the officers of the City directed toward the issuance of the Bonds for the purpose of financing the Series 2010 Refunding Project be, and the same hereby is, ratified, approved and

confirmed, including without limiting the generality of the foregoing, the adoption of the Master Ordinance, the distribution of a Preliminary Official Statement, an Official Notice of Bond Sale and a final Official Statement, and the sale of the Series 2010 Bonds to the Purchaser.

### **ARTICLE III FINDINGS AND DECLARATIONS**

The Council declares that it has considered all relevant information and data and makes the following findings and declarations:

A. The issuance of the Series 2010 Bonds under the home rule powers of the City granted by the City Charter, the Bond Legislation and Sections 3-31-1 to 3-31-12 NMSA 1978 is necessary and in the interest of the public health, safety, morals and welfare of the residents of the City.

B. The Series 2010 Bonds may be authorized by an affirmative vote of a majority of all the members of the Council.

C. The Series 2010 Bonds are not general obligations of the City, but are special limited obligations payable only from the Net Revenues provided in the Master Ordinance and this Ordinance, and the Owners may not look to any other municipal fund for payment of the Series 2010 Bonds.

D. The City will finance the costs of the Series 2010 Refunding Project, in whole or in part, with the proceeds of the Series 2010 Bonds.

E. The net effective interest rate on the Series 2010 Bonds is less than the statutory maximum of 12% per annum.

F. The bid of \_\_\_\_\_ received at a public sale of the Series 2010 Bonds held at [10:00] a.m. on August 11, 2010 won the best bid for the Series 2010 Bonds, is hereby accepted by the Council and the Series 2010 Bonds are awarded to \_\_\_\_\_.

**ARTICLE IV  
PARITY BONDS**

Section 4.01. Pledge of Net Revenues. In accordance with Article XXII of the Master Ordinance, the City hereby declares that the Series 2010 Bonds shall be Parity Bonds and designates and confirms that the Net Revenues are pledged for the payment of the Series 2010 Bonds and such other obligations of the City as may be expressly provided herein and in the Master Ordinance on a parity with the pledge of Net Revenues for the payment of Parity Bonds and other obligations of the City related to Parity Bonds.

**ARTICLE V  
DETAILS OF BONDS**

Section 5.01. The Series 2010 Bonds shall be designated and known as the “City of Las Cruces, New Mexico Joint Utility Refunding Revenue Bonds, Series 2010,” shall be issued in Authorized Denominations in the aggregate principal amount of \$\_\_\_\_\_, shall be dated the date of issue, shall be issued as Current Interest Bonds and shall bear interest from their date until maturity at the rates hereinafter designated payable on June 1, 2011 and semiannually thereafter on December 1 and June 1 in each year, and shall mature on June 1 in each of the years hereinafter designated, as follows:

Amounts Maturing	Interest Rate (Per Annum)	Year Maturing
\$	%	

provided, however, that the individual Series 2010 Bonds shall bear interest from the most recent interest payment date to which interest has been fully paid or duly provided for in full or, if no interest has been paid, from their date.

Section 5.02. Series 2010 Debt Service Account. The Series 2010 Debt Service Account is established as a separate and distinct account of the City to be maintained and

controlled by the City or its designee within the Debt Service Fund for the payment of the Debt Service Requirements on the Series 2010 Bonds.

Section 5.03. Series 2010 Reserve Account. The Series 2010 Reserve Account is established as a separate and distinct account to be maintained and controlled by the City or its designee within the Reserve Fund.

Section 5.04. Creation of Accounts; Deposits. On the date of delivery of the Series 2010 Bonds, the net proceeds from the sale of the Series 2010 Bonds, together with amounts released from the debt service reserve and debt service funds for the Refunded Loans, shall be deposited or used as follows:

A. Any accrued interest shall be deposited into the Series 2010 Debt Service Account.

B. \$ \_\_\_\_\_ which amount is hereby established as the Series 2010 Reserve Requirement, shall be deposited to the Series 2010 Reserve Account. Cash on deposit in the Series 2010 Reserve Account may be substituted, in whole or in part, with a Reserve Account Insurance Policy. Amounts contained in the Series 2010 Reserve Account may be invested only in Permitted Investments, with maturities of not longer than five years. The Permitted Investments on deposit in the Series 2010 Reserve Account shall be marked to their fair market value on and as of June 1 of each year. Any deficiency in the Series 2010 Reserve Account as a result of such annual valuation shall be paid into the Series 2010 Reserve Account by the City from moneys on deposit in the Income Fund within one month of such valuation.

C. \$ \_\_\_\_\_ shall be deposited in the Series 2010 Refunding Account for the Series 2010 Bonds to be used to defray the costs of refunding, refinancing, prepaying and discharging the Refunded Loans on September \_\_, 2010, including the Costs of Issuance to be paid by the City. After the Refunded Loans are refunded, refinanced, prepaid and discharged and the Costs of Issuance are paid, all money remaining in the Series 2010 Refunding Account, if any, shall be credited to the Series 2010 Debt Service Account.

The City Finance Director shall be, and hereby is, authorized to make any necessary adjustments in the amounts to be deposited in the funds and accounts described in this Section on the Closing Date.

Section 5.05. Book Entry.

A. The Series 2010 Bonds shall be initially issued in book-entry form as one separate bond certificate for each Maturity Date, in each instance equal to the aggregate principal amount of the Bonds due on the applicable Maturity Date. On the Closing Date, each such bond certificate shall be registered in the name of Cede & Co., as nominee of DTC (“Cede”).

B. Without limiting the provisions of Paragraph C below, for such time as any Series 2010 Bond is registered in the name of Cede, the City and the Series 2010 Paying Agent shall treat, and be entitled to treat, Cede as the sole and exclusive Owner of the Series 2010 Bonds for all purposes, including without limitation, provision of notices and payment of Series 2010 Bond Obligations.

C. With respect to Series 2010 Bonds in the name of Cede, neither the City nor the Series 2010 Paying Agent shall have any responsibility or obligation to any DTC Participant or any Person on behalf of whom such a DTC Participant holds an interest in the Series 2010 Bonds. In particular and without limitation of the immediately preceding sentence, neither the City nor the Series 2010 Paying Agent shall have any responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede or any DTC Participant with respect to the ownership of Series 2010 Bonds; (ii) the delivery to any DTC Participant or any other Person, other than an Owner, of any notice with respect to the Series 2010 Bonds, including without limitation any notice of redemption; or (iii) the payment to any DTC Participant or any other Person, other than any Owner, of any amount with respect to the Series 2010 Bonds.

D. DTC shall be entitled to request the substitution of a different nominee for Cede, and any substitution shall be accomplished by a transfer complying with the provisions of

Section 6.04 of the Master Ordinance. In such event, all references herein to Cede shall mean and include such new nominees.

E. In the event that (i) the City determines that DTC is incapable of satisfactorily discharging the responsibilities of a securities depository with respect to the Series 2010 Bonds; (ii) the City otherwise determines that it is in the best interest of the beneficial owners of the Series 2010 Bonds that the Series 2010 Bonds should no longer be maintained under the book entry system of DTC; or (iii) DTC ceases to perform the services of a securities depository with respect to the Series 2010 Bonds, then the City shall either (a) with notice thereof to DTC, appoint a successor securities depository qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, and direct DTC to submit any Series 2010 Bonds registered in the name of Cede to the Series 2010 Paying Agent for transfer to or at the direction of the successor securities depository, or (b) notify DTC that it will cause definitive bond certificates for the Series 2010 Bonds to be available through DTC, registered in the names and manner as specified by DTC and applicable DTC Participants.

#### **ARTICLE VI REDEMPTION OF BONDS**

The Series 2010 Bonds maturing on and after June 1, 2021 shall be subject to redemption prior to maturity at the City's option in one or more units of principal of \$5,000 on and after June 1, 2020, in whole or in part at any time, in such order of maturities as the City may determine (and by lot if less than all of the Series 2010 Bonds of any maturity is called, such selection by lot to be made by the Registrar in such manner considered appropriate and fair) for a redemption price equal to the principal amount of each \$5,000 unit so redeemed, with accrued interest thereon to the redemption date.

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

**ARTICLE VII  
FORM OF THE BONDS**

The Series 2010 Bonds, Registrar's Certificate of Authentication, and the Form of Assignment shall be in substantially the following forms, with such changes therein as are not inconsistent with this Ordinance:

(Form of Series 2010 Bond)

UNITED STATES OF AMERICA  
STATE OF NEW MEXICO  
COUNTY OF DOÑA ANA

No. \_\_\_\_\_ \$ \_\_\_\_\_

CITY OF LAS CRUCES  
JOINT UTILITY REFUNDING REVENUE BONDS  
SERIES 2010

INTEREST RATE	MATURITY DATE	SERIES DATE	CUSIP
_____ % per annum	June 1, ____	_____, 2010	_____

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_

The City of Las Cruces (herein "City"), in the County of Doña Ana and State of New Mexico, for value received, hereby promises to pay, solely from the special funds provided therefor as hereinafter set forth, to the registered owner named above, or registered assigns, on the Maturity Date specified above, upon the presentation and surrender hereof at the principal office of the City Treasurer, or its successor (herein the "Paying Agent"), the Principal Amount stated above, in lawful money of the United States of America, and to pay to the registered owner hereof as of the Regular Record Date (being the fifteenth day of the calendar month whether or not a business day preceding each regularly scheduled interest payment date as defined in Ordinance No. \_\_\_\_, adopted August 11, 2010, which authorizes this bond, and which, together with Ordinance No. 1593 adopted on December 18, 1996, are referred to herein as the "Bond Ordinance"), by check or draft mailed to such registered owner, on or before each

interest payment date as hereinafter provided (or, if such interest payment date is not a business day, on or before the next succeeding business day), at his address as it last appears on the Regular Record Date on the registration books kept for that purpose by the City Treasurer, as registrar (i.e., transfer agent) for the bonds, or its successor (herein the "Registrar") or by such other arrangement as may be agreed to by the Paying Agent and the registered owner hereof, interest on such sum in lawful money of the United States of America from the Series Date specified above or the most recent interest payment date to which interest has been fully paid or duly provided for in full (as more fully provided in the Bond Ordinance) until maturity at the per annum Interest Rate specified above, payable on June 1, 2011 and semiannually thereafter on December 1 and June 1 in each year. Any such interest not so timely paid or duly provided for shall cease to be payable to the registered owner as of the Regular Record Date and shall be payable to the registered owner as of a special record date, as further provided in the Bond Ordinance. If upon presentation and surrender to the Paying Agent at or after maturity, payment of this bond is not made as herein provided, interest hereon shall continue at the rate herein designated until the principal hereof is paid in full. If the Bonds are issued in book-entry only form, an authorized officer of the City and the applicable securities depository ("Depository") may make other arrangements for the payments on the Bonds.

The bonds of the series of which this bond is one maturing on and after June 1, 2021 shall be subject to redemption prior to maturity at the City's option in one or more units of principal of \$5,000 on and after June 1, 2020, in whole or in part at any time, in such order of maturities as the City may determine (and by lot if less than all of the Bonds of any maturity is called, such selection by lot to be made by the Registrar in such manner considered appropriate and fair) for a redemption price equal to the principal amount of each \$5,000 unit so redeemed, with accrued interest thereon to the redemption date.

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

The bonds of the series of which this bond is one are fully registered (i.e., registered as to payment of both principal and interest), and are issuable in the denomination of \$5,000 or any denomination which is an integral multiple of \$5,000 (provided that no bond may be in a denomination which exceeds the principal coming due on any maturity date and no individual bond will be issued for more than one maturity). Upon surrender of any of such bonds at the Registrar with a written instrument satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney, such bond may, at the option of the registered owner or his duly authorized attorney, be exchanged for an equal aggregate principal amount of such bonds of the same maturity of other authorized denominations, subject to such terms and conditions as set forth in the Bond Ordinance.

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

This bond is one of a series of bonds designated "City of Las Cruces Joint Utility Refunding Revenue Bonds, Series 2010," of like tenor and date, except as to interest rate, number and maturity, authorized for the purpose of refunding, refinancing, prepaying and discharging the City's eight (8) outstanding NMFA utility system loans which include NMFA Loan (2003), NMFA Loan (2004), NMFA Loan (2005), NMFA Loan (2006), NMFA Loan (2007-I), NMFA Loan (2007-II), NMFA Loan (2007-III) and NMFA Loan (2007-IV) (the "Refunded Loans" as more fully described in the Bond Ordinance) on September \_\_, 2010, including but not necessarily limited to amounts necessary to initially fund the Series 2010 Reserve Account as provided in the Bond Ordinance, and the payment of all costs and expenses

pertaining to the foregoing and the issuance of the Bonds and to the prepayment and the discharge of the Refunded Loans, including any amounts which may be required to be deposited into the Rebate Fund, as defined in the Bond Ordinance and to the extent permitted by law. This bond is issued pursuant to and in strict compliance with the Constitution and laws of the State of New Mexico.

This bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, shall not be considered or be held to be a general obligation of the City, and is payable and collectible solely out of the Net Revenues of the City's Joint Water, Sanitary Sewer and Natural Gas Utility System pursuant to the pledge made by and as defined in the Bond Ordinance, which revenues are so pledged; and the holder of this bond may not look to any general or other fund for the payment of the principal and interest on this obligation, except the special funds pledged therefor. For a description of the funds, the nature and extent of the security afforded thereby for the payment of the principal of and interest on the bonds, and other details concerning the bonds, reference is made to the Bond Ordinance. The bonds of the series of which this bond is one are equally and ratably secured by a lien on the Net Revenues of the City's Joint Water, Sanitary Sewer and Natural Gas Utility System; the bonds of the series of which this bond is one constitute an irrevocable and first lien, but not necessarily an exclusive first lien, upon the Net Revenues of the City's Joint Water, Sanitary Sewer and Natural Gas Utility System. Bonds and other obligations, in addition to the series of which this bond is one, may be issued and made payable from the Net Revenues of the City's Joint Water, Sanitary Sewer and Natural Gas Utility System having a lien thereon (i) inferior and junior to the lien or, (ii) subject to designated conditions, having a lien thereon on a parity with the lien of the bonds of the series of which this bond is one, in accordance with the provisions of the Bond Ordinance.

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

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

It is further certified, recited and warranted that all the requirements of law have been fully complied with by the City Council and officers of the City in the issuance of this bond; and that it is issued pursuant to and in strict conformity with the Constitution and laws of the State of New Mexico, and particularly the terms and provisions of Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, and all laws thereunto enabling and supplemental thereto.

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

IN WITNESS WHEREOF, the City of Las Cruces has caused this bond to be signed, subscribed, and executed and attested with the facsimile or manual signatures of its Mayor and its City Clerk, respectively; has caused of its corporate seal or a facsimile to be affixed on this bond, all as of the Series Date.

\_\_\_\_\_  
(Signature)  
MAYOR

(CITY SEAL)

Attest: \_\_\_\_\_  
(Signature)  
CITY CLERK

(Form of Registrar's Certificate of Authentication)

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

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

CITY TREASURER,  
CITY OF LAS CRUCES, NEW MEXICO,  
as Registrar

By: \_\_\_\_\_  
Authorized officer

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

(Form of Assignment)

ASSIGNMENT

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

Signature Guaranteed:

\_\_\_\_\_  
Name and Address of Transferee

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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

Social Security Number or other Tax  
Identification Number

(End of Form of Assignment)

(End of Form of Series 2010 Bond)

**ARTICLE VIII  
PAYING AGENT AND REGISTRAR**

The City Treasurer of the City of Las Cruces is appointed as Fiscal Agent for the Series 2010 Bonds in the capacities of Paying Agent and Registrar for the Series 2010 Bonds.

**ARTICLE IX  
SALE OF THE BONDS**

Section 9.01. Purchase Price. The Series 2010 Bonds are hereby sold to the Purchaser at the total purchase price set forth in the preambles of this Ordinance.

Section 9.02. Net Effective Interest Rate. The net effective interest rate on the Series 2010 Bonds is \_\_%, which is less than 12% as required by the Master Ordinance.

**ARTICLE X  
MASTER ORDINANCE**

Section 10.01. Parameters. It is found and determined that the terms established for the Series 2010 Bonds in this Ordinance are within the parameters and guidelines of the Master Ordinance, as supplemented and amended.

Section 10.02. Governing Instruments. The Series 2010 Bonds are governed by the Master Ordinance as supplemented and amended by this Ordinance which is adopted as an ordinance of the City.

**ARTICLE XI  
SEVERABILITY**

Section 11.01. Severability. If any Section, paragraph, clause or provision of this Ordinance shall for any reason be held 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 11.02. Headings. The headings used in this Ordinance are for convenience only, and shall not be construed as modifying the text.

**ARTICLE XII  
ORDINANCE IRREPEALABLE**

This Ordinance shall be and remain irrevocable until the principal of, premium, if any, and interest on the Series 2010 Bonds are fully paid and the Series 2010 Bonds are canceled or there has been a defeasance of the Series 2010 Bonds as provided in the Master Ordinance and all of the City's obligations under a Reserve Account Insurance Policy, if any, have been paid and discharged.

**ARTICLE XIII  
REPEALER CLAUSE**

All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with the Master Ordinance as supplemented and amended by this Ordinance are repealed to the extent of such inconsistency. This repealer shall not be construed to revive any bylaw, order or resolution, or part thereof, previously repealed.

**ARTICLE XIV  
APPROVAL OF DOCUMENTS AND DELEGATED POWERS**

The form, terms and provisions of the Preliminary Official Statement and the Continuing Disclosure Undertaking in the form presented at this meeting, are in all respects approved, authorized and confirmed. The officers of the City are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance, including, without limiting the generality of the foregoing, the execution of documents required for issuance of the Series 2010 Bonds; the printing of the Series 2010 Bonds, if applicable; the preparation, execution and delivery to the Purchaser of the final Official Statement; and the execution of such other certificates and other documents as may be reasonably required by the Purchaser including, but not necessarily limited to, the absence and existence of factors affecting the excludability of interest on the Series 2010 Bonds from federal income taxation, as applicable.

**ARTICLE XV  
CONTINUING DISCLOSURE OBLIGATION OF CITY**

Any Authorized Officer of the City is authorized to sign such documents with respect to the City's continuing disclosure obligations as are necessary or desirable to comply with the

Continuing Disclosure Undertaking and requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

**ARTICLE XVI  
PREPAYMENT AND NOTICE WITH RESPECT TO THE REFUNDED LOANS**

The City has elected and does hereby declare its intent to exercise on the behalf and in the name of the City its option to refund, refinance, prepay and discharge the Refunded Loans on September \_\_, 2010. The City is hereby obligated to exercise such option, which option shall be deemed to have been exercised irrevocably upon delivery of the Series 2010 Bonds. [On July \_\_, 2010 notice of prepayment of the Refunded Loans was delivered to the NMFA pursuant to the prepayment notice requirements in Article VIII of each of the loan agreements for the Refunded Loans.]

**ARTICLE XVII  
EFFECTIVE DATE AND GENERAL SUMMARY FOR PUBLICATION**

Upon due adoption of this Ordinance, it shall be recorded and preserved by the City Clerk, authenticated by the signature of the Mayor and City Clerk, and the seal of the City impressed hereon, and the title and a general summary of the subject matter contained in this Ordinance (set out below) shall be published in a newspaper which maintains an office and is of general circulation in the City. This Ordinance shall be in full force and effect thereafter as provided by law.

Pursuant to Section 3-17-5 NMSA 1978, as amended, 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 No. 2513

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 on August 11, 2010 (the "Ordinance"). Complete copies of the

Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, City of Las Cruces, 700 North Main Street, Las Cruces, New Mexico 88001.

The title of this Ordinance is:

**A SUPPLEMENTAL ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF \$ \_\_\_\_\_ CITY OF LAS CRUCES, NEW MEXICO JOINT UTILITY REFUNDING REVENUE BONDS, SERIES 2010, TO BE ISSUED TO REFUND, REFINANCE, PREPAY AND DISCHARGE THE CITY'S OUTSTANDING NEW MEXICO FINANCE AUTHORITY UTILITY SYSTEM LOANS; ESTABLISHING THE MATURITY DATES, INTEREST RATES, REDEMPTION PROVISIONS AND OTHER DETAILS OF THE BONDS; APPROVING THE EXECUTION OF CERTAIN DOCUMENTS RELATING TO THE BONDS; RATIFYING CERTAIN ACTIONS PREVIOUSLY TAKEN IN CONNECTION WITH THE BONDS; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE.**

The title contains a general summary of the subject matter contained in the Ordinance.

The notice also constitutes compliance with Sections 6-14-4 through 6-14-7, NMSA 1978.

WITNESS my hand and the Seal of the City of Las Cruces, New Mexico as of August 11, 2010.

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

(S E A L)

(End of Form of Summary of Ordinance for Publication)

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

DONE AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2010.

APPROVED:

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
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:

  
\_\_\_\_\_  
City Attorney

K:\dox\client\45380\203\W1279774.DOCX

**EXHIBIT A**

**Affidavit of Publication of Notice of Proposed Ordinance**

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 special meeting held at the Municipal Offices, 700 North Main Street, Las Cruces, New Mexico, on August 11, 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 special 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]